

J. Whipple
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HAMMOND CONSERVANCY DISTRICT

**790 CR 4990
Bloomfield, NM 87413
505-632-3043**

January 8, 2004

Mr. John Whipple
New Mexico Interstate Stream Commission
Post Office Box 25102
Santa Fe, NM 87504-5102

Re: Hammond Conservancy District's Board of Directors' Comments to the
Proposed Navajo Nation Water Rights Settlement Agreement

Dear Mr. Whipple:

We, the Board of Directors for the Hammond Conservancy District, represent approximately 1,600 landowners within the Hammond Project. Hammond Conservancy District ("Hammond") owns and controls water rights in the San Juan River Basin, including its entitlement to the permanent use of 23,000 acre-feet per annum of Navajo Reservoir Supply water rights acquired pursuant to New Mexico State Engineer Permit No. 2848. The purpose of this letter is to provide you notice that Hammond objects to the Navajo Nation Water Rights Settlement Agreement and the three Appendices (hereinafter collectively referred to as the "Settlement Documents") as currently proposed.

Several references in the Settlement Documents denote Permit No. 2848 as a "combined" permit and specifies it to be one of many permits under which the Navajo Nation's water rights are proposed to be fulfilled or serviced. The files of the New Mexico State Engineer indicate that Permit No. 2848 has never been combined with any other Permit in the San Juan Basin. Moreover, State Engineer and Department of the Interior correspondence indicate that both agencies agree that Hammond's Permit No. 2848 is not a combined permit. See letter from Special Assistant Attorney General Jeffrey T. Pender to Maria O'Brien, dated August 5, 1998, and letter from Tim Vollmann, Regional Solicitor for the United States Department of the Interior, dated August 17, 1998, attached hereto as Exhibit "A".

In the Settlement Agreement, the "Navajo Reservoir Supply" is defined as water the Secretary of the Interior is entitled to use under the rights acquired pursuant to New Mexico State Engineer File Nos. 2848, 2849, 2873, 2917 combined, and 3215. *Contract Between the United States and the Navajo Nation* ("Contract"), Appendix 3, at p. 4. However, Permit No. 2848 is a state permit the Secretary of Interior specifically acquired on behalf of, and for the use of, the Hammond project. The Settlement Documents erroneously designate Hammond water supplies as part of Reclamation's combined permits. *Navajo Nation Water Rights Settlement Agreement*

("Settlement Agreement") at §8.2; see also *Partial Final Judgment and Decree of the Water rights of the Navajo Nation* ("Partial Final Judgment and Decree"), at pp. 7, 10, 20.

Hammond is concerned that some portion of its entitlement to water under Permit No. 2848 may be used in the future to satisfy the commitment to supply water to the Navajo Nation. In addition, inclusion of Permit No. 2848 may improperly encumber Hammond's water rights, which could affect Hammond's obligations to make repayment of its indebtedness to the Bureau of Reclamation.

As a user of water supplied from the Navajo Reservoir, Hammond understands that it is subject to the sharing of shortage language in the Navajo Indian Irrigation Project Act of June 13, 1962. However, the Secretary of the Interior acquired a storage right for the Hammond water rights under Permit No. 2848, for which Hammond contracts for the storage and delivery of Project water. Hammond and its landowners are the beneficial users of this water; water reserved to be utilized by Hammond Project.

In the San Juan River Adjudication, Hammond, and the landowners within the Hammond Project, intend to claim the full amount of water rights under Permit No. 2848. Any proposed language in the Settlement Documents that encumbers Hammond's claims to water rights in the stream adjudication is strongly objected to. Thus, Hammond cannot support the Settlement Documents as currently drafted.

Hammond is a member of the San Juan Agricultural Water User Association and supports the Association's efforts to obtain a fair and equitable settlement of the Navajo Nation water rights. Hammond understands the Association is concerned with language in the Settlement Documents regarding the Navajo's "Average diversions" and "Average depletions" "over a period of ten consecutive years". See *Contract* at No. 4, "Water Delivery Provisions"; see also *Partial Final Judgment and Decree*, pp. 4-5. Hammond shares these concerns and questions how such provisions will operate in conjunction with the requirement that shortages shall be shared among the water users?

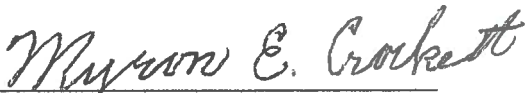
Another issue for which the Hammond has concerns is the Navajo allocation of 200 cfs of direct-flow diversions from the Navajo ditches with an 1868 priority. Hammond is concerned this allocation may impair Hammond's direct-flow rights. Separate from its water rights under Permit No. 2848, Hammond has acquired, under state law, direct-flow water rights. Hammond owns these water rights outright and currently exercises these rights when sufficient inflow is available into the Navajo Reservoir before it will call for water under Permit No. 2848. Diversions of 200 cfs from the Navajo ditches may impair the Hammond's direct-flow water rights and cause Hammond to rely even more heavily on storage and water delivery under Permit No. 2848.

Finally, Hammond is concerned that all water users in New Mexico be afforded protection upon any attempts to transfer Navajo water uses to locations off Navajo lands. Hammond's understanding of the Settlement is that it currently provides that any such transfers would require approval of the State Engineer. In addition, the Navajos have jurisdiction over federally reserved rights within Indian lands so long as non-Indian rights are not impaired, and if

the Navajos change the point of diversion of any water rights adjudicated to them under the decree to a location outside the boundaries of Navajo lands, such transfers must be done in accordance with state law. See *Partial Final Judgment and Decree* at ¶12 and ¶15. As such, Hammond fully expects that its water rights will continue to be protected by the State Engineer and State courts as represented in the Settlement Documents in the event of the adoption of the proposed Settlement Agreement.

Hammond appreciates the efforts taken by the State of New Mexico, the Navajo Nation and the United States to reach an amicable resolution to the Navajo water rights claims. Hammond also appreciates the opportunity to submit its comments to the proposed Settlement Agreement. We are hopeful that Hammond's concerns will be addressed in writing and that its objections will be resolved prior to the execution of the final Settlement Agreement. Please notify us when the final draft of the Settlement Agreement is available.

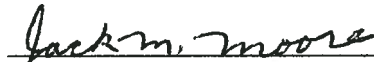
Respectfully,



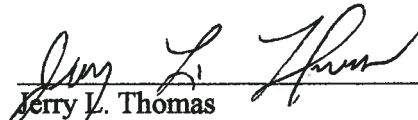
Myron E. Crockett
President



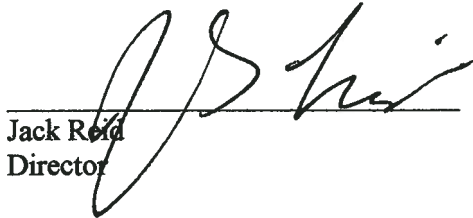
R. Russell Smith
Secretary Treasurer



Jack M. Moore
Director



Jerry L. Thomas
Director



Jack Reid
Director

Cc: Dr. John Leeper, Navajo Nation Department of Water Resources
Mr. John D'Antonio, New Mexico State Engineer,
Governor Bill Richardson, Governor of New Mexico
Senator Pete Domenici, United States Senate
Senator Jeff Bingaman, United States Senate
Representative Tom Udall, United States House of Representatives
Representative Stevan Pearce, United States House of Representatives
Representative Heather Wilson, United States House of Representatives



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
SANTA FE

THOMAS G. TURNEY
State Engineer

BATAAN MEMORIAL BUILDING, ROOM 101
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO 87504-3102
(505) 827-6175
FAX: (505) 827-6188

August 5, 1998

Maria O'Brien, Esq.
P.O. Box 2168
Albuquerque, NM 87103-2168

RE: Your request for information regarding OSE permit # 2848

Dear Ms. O'Brien:

At our meeting on Monday, July 20, 1998, at the offices of the Nordhaus Law Firm, you expressed concern whether Notice of Intention #2848 was actually part of file #2847, 2849, 2873, 2917 Combined. Based on my review of the attached records from the OSE water rights files, I must conclude that Notice of Intention #2848 is not part of file #2847, 2849, 2873, 2917 Combined, but rather a separate Notice of Intention. Please note the following:

1. The permit application for #2847, 2849, 2873, 2917 Combined, does not request that #2848 be included.
2. Paragraph 4(c) of the application for Permit #2847, 2849, 2873, 2917 Combined, implies that Notice of Intention #2848 (Hammond Project) is a separate application from #2847, 2849, 2873, 2917 Combined:

Which with the application for the Hammond Project mentioned in the Explanatory covers all unappropriated water in the San Juan River and its tributaries above proposed Navajo Dam. (emphasis added)

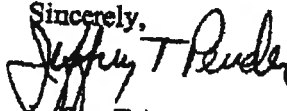
3. On page 2 of the "Explanatory" referred to in paragraph 4(c) of the application for Permit #2847, 2849, 2873, 2917 Combined, reference is made to file #2848 as a separate permit but with a priority date equal to the priority date of the "Combined" application:

Reference is also made to the United States application for a permit, File No. 2848, for a water supply with equal priority to application herein for the Hammond Project, Notice of Intent for which was heretofore filed on June 17, 1955. All or part of the water supply for that project will be delivered for the Navajo Dam and Reservoir described herein. (emphasis added)

4. The State Engineer's endorsement at the end of the permit application does not include Notice of Intention #2848.

Should you or Tim have any further questions concerning this matter, call me directly at (505) 827-6114. I hope this has been helpful.

Sincerely,



Jeffrey T. Pender
Special Assistant Attorney General

attach: Notice of Intention # 2848
Applic. # 2847, 2849, 2873, 2917 Comb.

cc w/o attach: Tim Vollman
Les Taylor/ Jessica Aberly
Elizabeth Taylor
Richard Cole



United States Department of the Interior

OFFICE OF THE SOLICITOR
 Regional Office, Southwest Region
 2400 Louisiana Blvd., N.E.
 Building One, Suite 200
 Albuquerque, New Mexico 87110

August 17, 1998
 (via fax and U.S. mail)

Maria O'Brien
 Timothy J. DeYoung
 Modrall, Sperling, Roehl, Harris & Siak, P.A.
 P.O. Box 2168
 Albuquerque, New Mexico 87103-2168

Re: Settlement Contract between the Jicarilla Apache Tribe
 and the Secretary of the Interior, Section 1(e)

Dear Maria and Tim:

The purpose of this letter is to address the concern, which you have raised on behalf of the Hammond Conservancy District in your letter of August 6, 1998, and at our meetings on July 23 and August 12, regarding the reference to State Engineer Permit 2848 in the definition of "Navajo Reservoir Supply" in Section 1(e) of the December 8, 1992, Settlement Contract approved by Section 5 of the Jicarilla Apache Tribe Water Rights Settlement Act, Public Law 102-441, 106 Stat. 2237 (1992). I was chairman of the Department of the Interior's inter-agency Negotiating Team which negotiated the language of the Settlement Contract with the Tribe in 1991, in concert with the New Mexico Interstate Stream Commission. For purposes of this letter I have consulted with present and former officials of the Bureau of Reclamation who assisted me in the negotiation of this Contract.

Under this Act of Congress and the Settlement Contract the Jicarilla Apache Tribe may divert up to 33,500 acre-feet per year (not to exceed 25,500 acre-feet depletion) from the Navajo Reservoir supply. Hence, the need for the definition in Section 1(e) of the Contract, which states:

(e) "Navajo Reservoir Supply" means the water that the Secretary of the Interior is entitled to use under the rights acquired pursuant to New Mexico State Engineer File Nos. 2848, 2849, 2873, 2917 combined, and 3215. The Secretary's water rights for the San Juan-Chama Project and for the New Mexico portion of the Animas-La Plata Project are not a part of the Navajo Reservoir Supply.

You have stated that Permit 2848, which is held in the name of the Secretary of the Interior for the Hammond Project, should not be considered as "combined" with any other permit of the

Secretary of the Interior. We agree. The word "combined" in the fourth line of the definition modifies only "2917", not 2848 or any of the other permits referenced in that sentence. As Jeff Pender of the State Engineer Office pointed out in his letter to you of August 5, 1998, Permit 2917 by its terms refers to 2848 as a separate permit; it combines only 2847, 2849, 2873, and 2917, not 2848. It certainly was not the intention of the parties to the Settlement Contract to alter somehow the combination of permits on file with the State Engineer Office.

The rationale behind the definition in Section 1(e) is simple. It merely defines "Navajo Reservoir Supply" by reference to all of the Secretary's permits for water which flows through Navajo Reservoir. The comprehensive reference reflects the provision in Section 8(a) of the Contract that the Tribe must share shortages with other contractors in accordance with Section 11(a) of the Act of June 13, 1962. The Hammond Conservancy District is, of course, subject to a similar provision in its contract with the Secretary. No one at the negotiating table ever suggested that the Tribe be able "to use Hammond's water." A key element of the settlement was the Tribe's subordination of its reserved water right with a 19th century priority date in return for a contract for project water rights subject to the requirement of shortage sharing with other contractors.

I hope this explanation is helpful.

Sincerely,



Tim Vollmann
Regional Solicitor

cc: Les Taylor, Jessica Aberly
Counsel for Jicarilla Apache Tribe
Jeff Pender, Counsel, State Engineer Office, Santa Fe
Brad Bridgewater, Department of Justice, Denver
Rick Gold, Deputy Regional Director, Bureau of Reclamation
Upper Colorado Region, Salt Lake City
Pat Schumaker, Bureau of Reclamation, Durango



STATE OF NEW MEXICO

OFFICE OF THE STATE ENGINEER

John R. D'Antonio, Jr., P.E.
State Engineer

P.O. Box 25102
Santa Fe, NM 87504
(505) 827-6091

January 6, 2004

Douglas G. Smith
16 Road 5290
Farmington, New Mexico 87401

Dear Mr. Smith;

Thanks much for your December 16, 2003 letter of comment regarding the proposed Navajo Nation water rights settlement.


The proposed settlement is intended to provide water rights and associated water development projects for the benefit of the Navajo Nation in exchange for a release of claims by the Nation that could otherwise potentially displace existing water uses in the San Juan River Basin in New Mexico. In doing so, the existing non-Navajo water users in the Basin are protected to the extent of the various priorities. The subordinated priorities for the NIIP and Navajo-Gallup Water Supply Project are those held by the Secretary of the Interior for the Navajo Reservoir Supply with dates of 1955, 1956, 1958 and 1968. The subordinated priority in New Mexico for the Animas-La Plata Project water is 1956. Your comment regarding these dates in the table is noted.

Claims for water rights for recreational and livestock use by Federal agencies will be settled as part of the overall San Juan River adjudication process.

The additional demand on the Navajo Reservoir Supply under the proposed settlement will be that of the Navajo-Gallup Water Supply Project, about 37,000 acre feet annually. The Supply is sufficient for this demand.

The priorities for the Fruitland-Cambridge and Hogback-Cudei projects date from the establishment of the Navajo Indian Reservation pursuant to the Winters Doctrine.

Sincerely,


John R. D'Antonio, Jr. PE
State Engineer

cc: Mr. Paul Saavedra
Mr. Phil Mutz