



New Mexico State Senate

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OFFICE OF ATTORNEY GENERAL

January 12, 2004

Patricia Madrid  
New Mexico Attorney General

Dear Ms. Madrid,

Notice of Intent and Permits to Appropriate Surface Water in the San Juan River Basin were filed with the State Engineer between June 17, 1955 and 1968. These were assigned file numbers 2847, 2848, 2849, 2873, 2883, 2917 and 3215. These documents were apparently filed under NM State Statute 72-5-33 of the State water laws. Plans and specifications for these Department of the Interior, Bureau of Reclamation, projects were sent in to the Sate Engineer for some of the projects. The State Engineer endorsed these permits to appropriate, acknowledging he had received said permits and /or plans and specifications. In the current proposed draft of the settlement of the Navajo Nation water rights on page 7 of Appendix 1, Partial Final Judgment and Decree of the Water Rights of the Navajo Nation, it states in part "the water rights acquired by the Secretary of the Interior and held by the United States pursuant to New Mexico State Engineer File Nos. 2848, 2849, 2873, 2917 combined, and 3215 etc."

The first opinion we seek from you is did the Secretary of the Interior acquire a water right pursuant to the above file nos.? Did he acquire a storage right?

Also in the proposed draft of the proposed settlement of the Navajo Nation water rights language appears such as "an average diversion over a period of ten consecutive years." Under NM State Statute 72-5-1 water rights are limited per annum and does not mention an average over ten years. The second opinion we seek is this compatible or in compliance with state water law as it is proposed to be adjudicated in a New Mexico State District Court?

Sincerely,

Senator Raymond Kysar  
300 W. Arrington, #100  
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