

**COMMENT TO THE NEW MEXICO INTERSTATE STREAM COMMISSION**

**NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT REQUEST**

Saint Patrick's Day 2004

"electors Concerned about Animas Water" -- CAW  
1217 Chaco Avenue  
Farmington, NM 87401

John D'Antonio, New Mexico State Engineer  
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Secretary Interstate Stream Commission  
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Santa Fe, New Mexico 87504-5102

Jim Dunlap, Chair, New Mexico Interstate Stream Commission  
Bataan Memorial Building, Room 101  
Post Office Box 25102  
Santa Fe, New Mexico 87504-5102

Ladies & Gentlemen:

This comment incorporates a request pursuant to the New Mexico Inspection of Public Records Act (NMSA 1978, Chapter 14, Article 2).

For some eighteen months now, the the State Engineer's Office and the Interstate Stream Commission of the State of New Mexico ["State"] have participated in the Navajo-San Juan River Federal Indian Water Rights Negotiation ["Negotiation"] with the Navajo Nation ["Tribe"] and its federal trustee, the Navajo-San Juan River Federal Indian Water Rights Negotiation Team ["Team"], seeking to craft a settlement of the Tribe's claims to water from the San Juan River. During this time no other entities, groups or individuals have been permitted to attend or participate in the Negotiation, which has been conducted in absolute secrecy.

Your counsel in this Negotiation, John Utton, recently observed in public meetings that strong pressure from New Mexico's congressional delegation has been driving and accelerating the settlement process, forcing the State to severely restrict the time allowed for public comment on your proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement. The Team and the State authorized Mr. Utton to release draft Navajo settlement documents to congressional staffers Michael Connor, Erik Webb, Mark Welliver and Shelly Randel on November 14, 2003. Mr. Utton attempted to scheduled a conference call with these staff members for November 17, 2003. **We are requesting copies of transcripts of conference calls between Mr. Utton and any New Mexico congressional delegation staff personnel. Additionally, we request an opportunity to view all records involving**

**communications from November 15, 2003 to date, between State and New Mexico congressional delegates or their staff on the subject or substance of the Negotiation.**

At a public meeting last week in Bloomfield, the State Engineer indicated that, subsequent to a January 15th deadline, the State has continued to receive and accept comments on the proposed settlement. **We request an opportunity to view all comments on the proposed Navajo settlement received by the State from January 16 to date.**

We have also learned, through requests submitted under the Freedom of Information Act, that the Team has, in fact, failed to follow longstanding federal policy established in the Criteria & Procedures for the participation of the United States in the negotiation of Indian water rights claims. This failure of the Team to apply federal policy, as outlined in 55FR9223, threatens the long-term harmony and cooperation among parties with an interest in a just settlement. It is of vital importance for the State to provide the citizens of New Mexico with all records of the Negotiation, including the technical studies assessing the practicably irrigable acreage (PIA) of the Navajo Nation in the San Juan River Basin. **Therefore, we request an opportunity to view all records of the Negotiation over the past 18 months.**

By virtue of its status as an agency of the State of New Mexico, the New Mexico State Engineer's Office and the Interstate Stream Commission are subject to New Mexico's Inspection of Public Records Act (NMSA 1978, Chapter 14, Article 2). Section 14-2-1 of this Act states that every person has a right to inspect any public records of this State save those which are specifically excepted. Section 14-2-8 sets forth the requirements for a written request to view such records and the requirement that the custodian of those records permit the inspection within fifteen (15) days or explain in writing, within three (3) business days after receipt of the request, when that request will be acted upon.

I look forward to your timely written reply in compliance with provisions of the New Mexico Inspection of Public Records Act as stated above.

Sincerely,



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