

BID Meeting 08-09-04

Thank you Mr. Crawford for letting me address some issues in the revised draft of the Navajo Nation Water Rights documents that constitute their settlement. I will not have enough time to cover all issues but I will concentrate on some major points that will affect the BID. If you have not been made aware of yet the effect of the 321 CFS demand by the two old Navajo ditch diversions with a senior priority date to everyone else in the basin of 1868 will mean you may get cutoff from diverting water off the river into your ditch in July thru September or October.

Lets concentrate on your 1907 priority date diversion, as that's what most of you have on your ditch. Mr. Whipple has stated to me about a week ago he has determined it takes a combination of 700CFS entering the Navajo Reservoir and crossing the State line on the Animas River to satisfy all direct flow (non-stored) water rights senior to the June 17, 1955 priority of the BOR to store water in Navajo Lake. He said if there was no water entering the San Juan River at the confluence of the Animas River the inflow to Navajo Lake would have to be 450 CFS to also satisfy all water rights senior to June 17, 1955.

BHP and APS have the next most junior right to direct flow use with a May, 1955 priority date and a right to about 50,000 Af / year diversion and maybe thirty some thousand consumptive use or depletion. Their CFS requirement averages about 45 CFS.

There are only 3 ditches junior to the BID's 1907 right on the Animas River and amount to about 125 CFS demand. Therefore when the combined CFS of SJ and Animas goes to 575 or the inflow to Navajo Lake alone goes to 405 the BID is getting close to be cutoff. This 1907 right will not prove to be very senior in August and Sept. of most years and will be cutoff or partially cutoff.

Lets examine the concession the negotiator, Mr. Whipple, got in the revised draft before you now to alleviate this cutoff dilemma. The Navajo's have said they will call for NIIP stored water, up to 15,000 Af / year, to substitute for their 1868-321 CFS demand if the flows get low enough to not be able to satisfy all direct flow (unstored) water rights. This would be good if the settlement agreement did not have all the conditions it has for this to happen. The agreement is so hard to understand all these conditions I had to ask Mr. Whipple myself how it worked. I would not expect one other person in this room, including your lawyer, to understand until he has really spent hours studying it.

In order to get the stored water relief the following must occur:

1. There must not be a projected shortage by the BOR of stored water thru Dec. 31 of that year. A 10% shortage projection reduces the 15,000 Af in half and a 20% shortage reduces the release to 0. ✓

2. All Echo ditches and Hammond and in fact all irrigation uses must have an annual diversion limit off the river of the amount of acre-feet of their water rights. This means you no longer get to divert 1 CFS for every 40 acres but you will be limited to 1 CFS for every 117 acres. This would give you an average CFS of 48 through the irrigation season instead of 140 you were given in the Echo Decree. Why agree to this to get stored water as a substitute? It will not be possible to operate your ditch.
3. Hammond must agree to pages 24 and 25 of the settlement agreement, which has conflicting numbers.
4. LaPlata area must be readjudicated this time in acre-feet per acre which they never have been before in three previous adjudications including the Echo Decree In 1948. They have not even been informed of this as I have talked to 2 big users out there.
5. The final thing about these annual diversion limits on your ditch appears on page 14 of the partial final decree and even says if the court does not adjudicate annual limits on your ditch the State Engineer (Mr. Whipple including) can enforce this on their own through their new rules to administer the river.

✓ The BID cannot agree to this settlement as written and should vigorously oppose it by legal means now through the adjudication court by filing a brief by the 13th of August to support the San Juan Agriculture Association and Mr. Gary Horner to enjoin (stop) this settlement agreement from being signed now. Failure to get it stopped now means an insurmountable battle in inter se some year down the road and the State Engineer may be cutting off your ditch next year.

The one other thing I wish to touch on is Navajo Lake stored water. Mr. Whipple has told me the BOR can store water in Navajo Lake for future years and it is not available to you in a current water year. In other words he must believe the BOR by storing it in priority takes ownership of this water forever to do with only as they please. State Water law and decided court cases say no to this concept. In the first place the State does not depart with ownership of the water but gives an usufructuary right to water. In other words someone must have a water right, based on a per annum basis to get storage right for that water right. All water rights must and are limited to the beneficial use of that water. Therefore only that amount of water that is needed for beneficial use each water year can be claimed as theirs in reservoir. There can be no water hog's of a precious resource. Failure of Mr. Whipple to understand and represent to you otherwise constitutes breach of his position as State employee and I will not tolerate it. ✓

Lets examine the Fruitland-Cambridge ditch that Mr. Lorenzo Bates lives on. This ditch is being offered 3,335 acres of irrigated land of which I understand only about 2500 acres are currently being irrigated. Of this 3,335 acres they have been given an annual diversion limit of 18,180 Af/ year and an annual depletion amount of 7970 Af / year. This amounts to an annual diversion limit of 5.45 Af/ acre and a depletion of 2.4 Af / acre. They have been allowed a CFS of 100 CFS rate of flows down their ditch for the irrigation season of about 6 months or 184 days. 100 CFS / day delivers 200 Af / day and for 184 days would amount to 36,800 Af / year annual diversion total. If they are only allowed to annually divert 18,180 Af/ year they will exceed their limit at 100 CFS in only 91 days or approximately one - half of the irrigation season of 6 months. If they reduce their Cfs to average 49 CFS they would stay within the 18, 180 Af / year annual limit. Has this been explained to you Mr. Bates or other users on your be ditch?

Your attorney, Mr. Risley knows full well that the State Engineer is not recognizing NM State Water law and decided court cases that the excess water stored each year in Navajo Lake must be released to your ditch if you are being cutoff and the BOR has no beneficial use of this water the rest of the current water year. (Raton court case)

Your attorney also knows that all water stored in priority in any reservoir and then released into a water course such as the San Juan River is not private water but can only be distributed by priority date to any other user downstream by the State Engineer (Luna Irrigation case) Why does the State Engineer and Mr. Whipple, believe otherwise? I guess only they can tell you this.

Why is an attorney, such as Mr. Risley agreeing to the settlement when it does not comply with existing State Law? In Mr. Risley's conclusion, paragraph 3, he admits it's not within State law but he suggests, "Statutes can be amended". He says fighting over this is not in the interest of the BID. I say what is worth fighting over to Mr. Risley? Two years ago this was not his position.

Questions Submitted to ISC Engineer, John Whipple, to be answered in writing as soon as possible after the BID meeting of August 9, 2004.

1. Mr. Whipple you have stated to me that the BOR can store water in Navajo Lake for future years (carry-over stored water) even though they don't have a beneficial use for that water in the current water year and withhold it from other beneficial users downstream that are getting cutoff because their water right is out of priority. Is this currently State law and in agreement with NM court cases already decided? If so, how can you explain NM State Statute 72-5-17 about excess storage space is mandated by state law to be made available to other water right users? According to you there would never be excess storage. Are not all NM water rights based on a per annum beneficial use basis? If you think not what does NM State Statute 72-5-1, line 8, mean? Doesn't 9.2.6 (2) violate N.M. state law and decided state court cases? How can you, as a state employee, apparently under the advice of some state lawyer, take this position as the negotiator with the Navajo Nation of this agreement?

2. Is it not true that under 9.2 of the settlement agreement the alternate water source for San Juan River Users using up to 15,000 AF/ year is conditioned on everything in 9.6.1 thru 9.6.3 occurring and also is conditional upon (g) on page 14 of the Partial Final Decree of the Water Rights of the Navajo Nation? Therefore is it not true that the alternate stored water provision may not be known if it's available to keep other non-Navajo ditches being cutoff until the year 2025 when the partial final decree is approved? Also in this same section (g) on page 14 it states even if the court does not enforce annual diversion limits on all non-Navajo irrigation uses the State Engineer may do it through his new rules and regulations he is proposing currently. Isn't this correct?

The Echo decree only adjudicated farm delivery duties of water for each water right user and a maximum CFS diverted from the river to supply this water right. Is this not correct? Placing annual diversion acre-feet limits on the irrigation ditches, as the now settlement requests, or stored water will not be available to keep non-Navajo ditches from being cutoff will mean the CFS will have to be reduced substantially on all ditches and will make them inoperable. Is this not correct?

Answers to Gary Risley's Summary of Settlement

1. Mr. Risley's is suppose to represent the ditch and not the individuals on the ditch. This proposed revised draft affects the amount diverted from the river drastically so he must not understand it.
2. The "New" water has to include also the 31,000 AF on the old Navajo ditches, as they have never used this before.
3. This is all they were ever entitled to.
4. Apparently you do not understand what the provision involving limiting the Echo ditch diversions to an annual volume diversion entails.
5. Mr. Risley does not fully understand the conditions and limitations placed on this provision. We will not know until the partial final decree is approved by the court in 2005 whether this concession applies or is not there.
6. This excess water stored in excess of a water right to be serviced each year has never been their water. There can be carry over water from one year to the next if no other beneficial user downstream needs this water.
- 6 & 7. This is simply not correct. Mr. Risley does not understand how junior a priority the BID ditch has and early diversion will be detrimental instead of helpful as others return flow will not be available to BID. The old Navajo ditches will not be using lake water except under extreme conditions imposed on the BID and other ditches. As to the \$40,000 to administer the ditch priorities for the BID. This is ^{NOT} being new except it may occur if you let the settlement proceed as revised.
8. The BOR's permit 3215 does claim this water but with a 1968 priority date. As long as the BOR does not claim it as private water in should not be detrimental to other senior rights.
9. Again Mr. Risley does not fully understand the settlement. His Statement the Upper Colorado Compact awarded the U.S. all previously unappropriated water is *fiduciar* ^{not} ~~rights~~. The State Engineer issued permits in 1955-1968 reserving the water for BOR projects. This is when the BOR said they claimed no more water was available to appropriate. The State Engineer appropriated water until about 1959 to private entities anyway (C of F). Title to the water on the BOR permits has never been established because the SE will not let the beneficial user appropriate it. Title will probably be given to the BOR and then contracted to the Navajo's if this current revised draft is not changed. This only applies to the old Navajo ditch water rights - not contract water. Contract water does not require State Engineer permits. Only BOR and Interstate Stream ok's.
10. Settlement will remove doubts about what the Navajo Nation's water is but some water rights that are too junior most years will be worthless.
11. Risley must understand that if the BOR is given the water right and then contracts it to the Navajo's this contracted right is not under the jurisdiction of the State Engineer or adjudication court and only the BOR and ISC would have to approve an out of state transfer.

Notes for BID Meeting 8-9-04

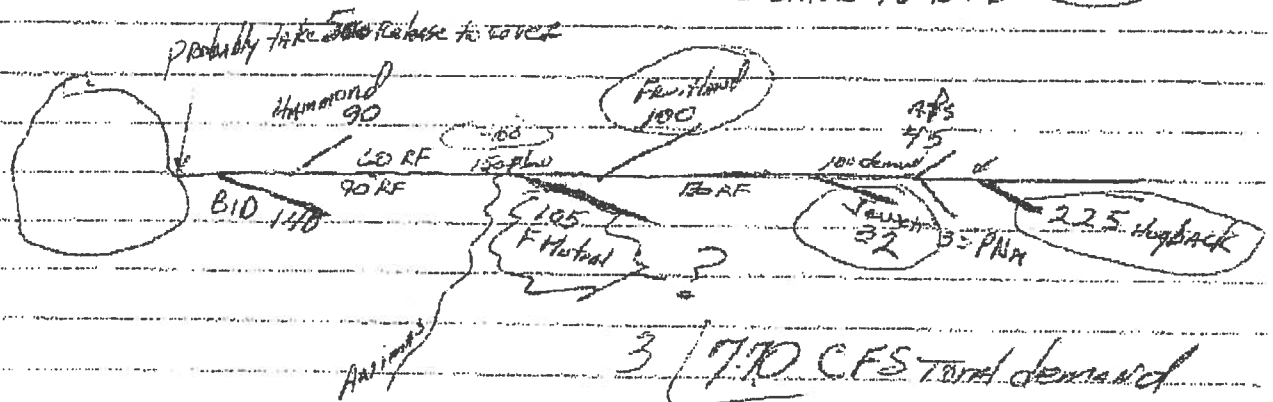
Farmers Ditch Ext. 5.26 CFS - Animes (1907)
 Lower Animes Ext. 16.05 CFS " (1908)
 Farmers Mutual Ditch 104.53 CFS 1966-Animes (1889) San Juan

BHP (APS) 45 CFS (APS) - San Juan River
 PNM 35 CFS

Inflow needed to get full supply
350 for size - maybe 450

San Juan River

Service to BID



3 | 7.10 CFS total demand
257 CFS night supply

1 CFS/day = 2 AF/day
 100 CFS/day = 200 AF/day
 250 CFS/day = 500 AF/day
 400 CFS/day = 800 AF/day - Fish
 500 CFS/day = 1000 AF/day - "

1180
 1922
 5200 Acres
 3
 10800 A-F

140 CFS/day = 280 AF
 $\frac{16800}{280} = 60$ days out of water
 Irrigation season 210 days

5100
 5.5
 28000
 28000
 30800

140 CFS for 210 days = 58,800 AF

30,800 = 110 days
280

3 months Storage @ 280 AF day = 25,200 AF @ 3/AF = 8400 = 340 AF
 OR 179/ACRE storage fee

Notes for B I D Meeting 8-9-04

Reservoir Holds 1.7 million AF

Beneficial Use Needed Now 2,250,000 total year

" " " After June 57% x 2,250,000 = 1,282,500 AF

Fish Flows/year releases 750,000 - winter flows

210,000 - summer "

285,000 AF

8000 AF/foot of reservoir depth above 5990'

$$\frac{128,250}{8000} = 16 \text{ ft } 5990' + 16 = 6206 \text{ Res. Elev for 64's}$$

Takes another 20 feet for fish flows

.13	
.17	
.22	
<u>.52</u>	monthly demands
	%
.21	
.15	
.18	

9.2 & 9.6 and Page 14 of PFD limit stored water to substitute for 1868 Priority water Doesn't happen unless court or SE enforces annual diversion limits on all ditches

NOTES FOR BID Meeting 8-9-04 (3)

$$1 \text{ CFS} = 1,989 \text{ AF/day}$$

$$321 \text{ CFS} = 638.5 \text{ AF/day}$$

$$100 \text{ CFS} = 198.9 \text{ AF/day}$$

$$F-C \frac{18,180}{198.9} = 91 \text{ days and out of total AF div.}$$

$$H-C 221 \text{ CFS} = 439.6 \text{ AF/day}$$

$$H-C \frac{48,550}{439.57} = 110.45 \text{ days and out of total div.}$$

$$\text{Fruitland} \frac{7970}{3335} = 2.4 \text{ AF/acre depletion} \quad \frac{18,180}{3335} = 5.45 \text{ AF/acre} \quad \frac{7970}{18,180} = 0.44 \quad 52\% \text{ return flow}$$

$$\text{Hochuck} \frac{21,280}{8830} = 2.4 \text{ AF/acre depletion} \quad \frac{48,550}{8830} = 5.50 \text{ AF/acre} \quad \frac{21,280}{48,550} = 0.44 \quad 59\% \text{ return flow}$$

$$\text{NIP} \frac{270,000}{110,630} = 2.44 \text{ AF/acre depletion} \quad \frac{508,000}{110,630} = 4.59 \text{ AF/acre} \quad \frac{270,000}{508,000} = 0.53 \quad 47\% \text{ return flow}$$

BID for comparison 1 CFS/40 acres about 5000 acres or 140 CFS

Acres feet 3.02 AF/acre or about 16,900 AF/year delivered at the farm turnout of each user.

No annual diversion AF/year at river diversion.

Now, losses are built in the CFS allowable amount.