MINUTES OF THE
NEW MEXICO INTERSTATE STREAM COMMISSION
May 19, 2010

A regular meeting of the State of New Mexico Interstate Stream Commission ("ISC") was called to order on May 19, 2010, by Chairman Jim Dunlap at 12:10 p.m. The meeting was held at the ISC office, 5550 San Antonio Dr., N.E., Albuquerque, New Mexico.

QUORUM OF MEMBERS PRESENT:
Chairman Jim T. Dunlap
Vice-Chairman J. Phelps White
Commissioner Patricio Garcia
Commissioner Buford Harris
Commissioner Julia Davis Stafford
Commissioner Blane Sanchez

ABSENT:
Commissioner Mark Sanchez
Secretary John D'Antonio
Commissioner Jim Wilcox

OTHERS:
Bill Hume
Carl Ortega - DFA
Mark Webber - LFC

AGENDA ITEM #1 – CONVENE:
Chairman Jim Dunlap called the meeting to order at 12:10 p.m.

AGENDA ITEM #2 – APPROVAL OF AGENDA:
Vice-Chairman J. Phelps White moved, seconded by Commissioner Buford Harris, to approve the final draft agenda. The motion carried unanimously. [Attachment 1]
AGENDA ITEM #3 – CLOSED SESSION DISCUSSION PURSUANT TO NMSA 1978, ARTICLE 10, CHAPTER 15, SECTION 1, SUBSECTION (H) (8) RELATING TO THE ACQUISITION OF WATER RIGHTS IN THE RIO GRANDE BASIN:

Commissioner Julia Stafford moved, seconded by Commissioner Buford Harris, to meet in closed session pursuant to NMSA 1978, Article 10, Chapter 15, Section 1, Subsection (H) (8) regarding the acquisition of water rights in the Rio Grande Basin. The motion carried unanimously.

A roll call was taken as follows:

Chairman Jim T. Dunlap  yes  
Vice-Chairman J. Phelps White  yes  
Secretary John D'Antonio  absent  
Commissioner Patricio Garcia  yes  
Commissioner James Wilcox  absent  
Commissioner Mark Sanchez  absent  
Commissioner Julia Stafford  yes  
Commissioner Blane Sanchez  yes  
Commissioner Buford Harris  yes  

The Commission met in closed session.

A motion was made by Commissioner Julia Stafford, seconded by Commissioner Patricio Garcia, to return to open session. The motion carried unanimously. It was stated for the record that the only items discussed in closed session were those set out in the motion to go into closed session and that no action was taken.

AGENDA ITEM #4a - APPROVAL OF CONSENT AGENDA:

Commissioner Patricio Garcia moved, seconded by Commissioner Julia Stafford, to approve the April 21, 2010, ISC meeting minutes. The motion carried unanimously.

AGENDA ITEM #4b - APPROVAL OF CONSENT AGENDA:

Commissioner Patricio Garcia moved, seconded by Commissioner Julia Stafford, to approve the May 5, 2010, ISC meeting minutes. The motion carried unanimously.

AGENDA ITEM #5 – SECRETARY REPORT:

Secretary John D'Antonio was not present at this meeting therefore no Secretary Report was presented.

AGENDA ITEM #6 – STAFF REPORT:

Director Estevan López began his report by stating that on April 21st, in the Middle Rio Grande, the United States Court of Appeals for the 10th Circuit ruled on the Minnow appeal. The Court ruled that intervening events, namely, the 2003 Biological Opinion, mooted plaintiff's discretion/scope-of-consultation claim under the Endangered Species Act. As a result, the court dismissed the appeal and remanded it to District Court Judge Parker with orders to vacate...
several of its memorandum opinions and orders and to dismiss plaintiff's scope-of-consultation claim under the ESA.

**Pecos Basin:**

Director Estevan López stated that last week we received a preliminary report from the River Master and it proposes a 2009 New Mexico state-line credit of 1,600 acre-feet. This would bring the cumulative credit to a historical high of 100,100 acre-feet. Objections to the report are being drafted as ISC staff's analysis indicates a slightly higher credit for New Mexico. The final accounting should be completed by early July, 2010.

We continue to work on the evaluation of the Seven Rivers pump test. The ISC staff will update the Commission on the results of that report in the future.

**AGENDA ITEM# 7 - PRESENTATION REGARDING PROPOSED AGREEMENT BETWEEN INTERSTATE STREAM COMMISSION AND INTEL CORPORATION FOR ACQUISITION OF WATER RIGHTS:**

Director López began by stating that about 3½ years ago, Intel Corporation came to the ISC and asked if we could work collaboratively with it regarding Intel's water offset obligations. They proposed to work out an agreement that would be of mutual benefit to the state and Intel.

Mr. Frank Robinson, Manager of Intel Corporation in Rio Rancho, New Mexico, stated that their main interest in the agreement was to address uncertainties in their water supply. He stated that they are a semiconductor manufacturing facility and the secure water supply is critical to their immediate manufacturing. Mr. Robinson stated that Intel operates under an OSE license that permits them to pump up to 3,248.6 acre-feet of ground water per year and that requires Intel to address its surface water depletion effects. Intel has been acquiring the water rights necessary to meet those obligations, but the uncertainty associated with the acquisitions was the driver to come to the ISC to explore an opportunity to get resources in place to address those long term impacts so that Intel can focus on its primary function, which is making semiconductors. From Intel's perspective, this agreement would remove the uncertainty.

**Questions from the Commissioners:**

Chairman Jim Dunlap asked Mr. Frank Robinson how many employees are at Intel at the present time. Mr. Frank Robinson responded that in terms of actual employees, there are about 3,200 employees.

Mr. Kevin Flanigan gave a Power Point presentation on the agreement. He stated that the agreement is a trade of water assets and funding which mutually benefits both Intel and the state. It is a conveyance of water rights and financial resources from Intel to the ISC in return for the ISC's assumption and relief of certain of Intel's obligations to offset its pumping depletion impacts to the Rio Grande.

A summary of major terms is that Intel will transfer to the ISC 740.9 acre-feet per year of consumptive use pre-1907 surface water rights. Intel will provide the ISC $10 million for endangered species and environmental uses, predominantly in the Middle Rio Grande. The ISC is planning to offset the bulk of Intel's future stream depletions not offset by return flow using the acquired rights and Rio Grande Compact relinquishment water. Once Intel stops
pumping, the agreement will ensure the eventual extinguishment of 3,248.6 acre-feet of groundwater pumping rights, permanently reducing water use in the fully appropriated basin.

Mr. Flanigan explained how the acquired water rights will benefit the middle valley. Consultation is underway for a new Biological Opinion for all water operations in the middle valley. Given the reduced availability of supplemental water, which is the water leased and used by Reclamation for minnow flows, the new Biological Opinion might result in a threat of water takings to existing water users. The Intel agreement would provide the ISC with water rights and funding which could be used to leverage a favorable Biological Opinion and protect existing water uses in the basin.

Intel has a license and permit to pump up to 3,248.6 acre-feet per year. The vast majority of the groundwater Intel pumps (average of about 3,000 acre-feet per year) is not consumed. The groundwater Intel pumps is treated to ultra-pure standards and used in Intel's manufacturing process, where very little is consumed. Unconsumed groundwater is routed to Rio Grande as return flow via Albuquerque Bernalillo County Water Utility Authority water waste treatment plant.

The ISC's offset obligations are limited: 1) In time. ISC will not offset any depletions resulting from any Intel pumping which occurs after 100 years; 2) In magnitude. The ISC will not offset any depletions resulting from pumping in excess of Intel's licensed amount of 3,248.6 acre-feet per year; 3) From insufficient return flow credits. In any given year prior to shut-down, ISC will offset no more than the quantity of return flow + 250 acre-feet.

Intel's OSE license and permit requires full offset of all Rio Grande stream depletions. Intel's return flow credits fully offset, and actually exceed, its stream depletion impacts.

Mr. Flanigan continued his presentation and explained how the ISC will fulfill its offset obligations. Stream depletion impacts from junior-priority groundwater pumping in the Middle Rio Grande are divided into the amount of impact on Middle Rio Grande Valley water users and the amount of impact to the Rio Grande Compact at Elephant Butte Reservoir. The Middle Rio Grande pre-1907 water rights acquired from Intel will be used to offset that portion of the stream depletion impacts which affect the middle valley. The ISC is planning to use Rio Grande Compact relinquishment water from overdelivery to Elephant Butte Reservoir to offset that portion of the stream depletion impacts which affect Elephant Butte Reservoir and the Compact.

The offset plan is a comprehensive plan to ensure that all ongoing and residual stream depletions to the Rio Grande due to Intel pumping will be fully offset in accordance with New Mexico water law and OSE rules and regulations. They are subject to OSE review and approval and similar in concept to a return flow plan.

The offset plan will include, at a minimum, which party will offset what portion of the depletions, offset sources for approval (return flows, pre-1907 surface water rights, relinquishment water, etc.), how each offset source will be utilized and comprehensive and regular reporting requirements.

Mr. Flanigan and Director López spoke on the economic aspects of the value of agreement to Intel.

The cost of agreement to Intel would be $22,000,000; whereas the cost of the agreement to the ISC is on the order of $3,000,000. Director López stated that in terms of our analysis, we
consider that Intel is making an investment of about $22,000,000 and getting a value of about $47,000,000. Similarly, the ISC is putting out somewhere in the order of $3,000,000 and would be foregoing $3,000,000 and that could be deemed as a cost for us. For that $3,000,000, the value to the ISC would be $33,000,000. While the numbers between Intel and the ISC may not line up correctly, for the relatively small investment that the state makes, the state gets huge benefits.

Mr. Flanigan highlighted the benefits to the agriculture interests. The agreement cuts down on flow of water rights out of agriculture. It provides protection and insulation from Endangered Species Act ("ESA") threats, ensures full offset of all future Intel stream depletions and results in eventual extinguisgment of 3,248.6 acre-feet of groundwater pumping rights permanently reducing water use in the fully appropriated basin.

The benefits from the environmental point of view: the agreement provides 740.9 acre-feet of MRG pre-1907 surface water rights for environmental uses and for the Strategic Water Reserve, provides $10 million to support endangered and threatened species and for related environmental purposes and results in eventual extinguishment for 3,248.6 acre-feet of groundwater pumping rights, permanently reducing water use in the fully appropriated basin.

The benefits to municipal interests: the agreement removes competition for pre-1907 rights from the market, provides protection and insulation from ESA threats and results in eventual extinguishment of 3,248.6 acre-feet of groundwater pumping rights permanently reducing water use in the fully appropriated basin.

The benefits to business interests: the agreement improves the competitive position of the Rio Rancho plant relative to Intel's other facilities helping to ensure the plant's economic viability and keeping thousands of jobs in New Mexico.

The benefits to senior water rights interests: the agreement provides protection and insulation from ESA threats to the basin's limited water supplies, ensures full offset of all future Intel stream depletions and protects the senior water users in the basin - the Pueblos, MRGCD and the Rio Grande Compact - and results in eventual extinguishment of 3,248.6 acre-feet of groundwater pumping rights permanently reducing water use in the fully appropriated basin.

Recently, an independent cost-benefit risk review was performed at the ISC by F. Lee Brown, Ph.D., Professor Emeritus of Economics and Public Administration from University of New Mexico. He analyzed the benefits, costs and risks associated with the agreement from the perspective of the ISC.

The agreement has a benefit to cost ratio to the state of about 3 to 1 ($3 in benefits would be generated for every $1 in cost). Additional unquantifiable benefits include the enhancement of the Strategic Water Reserve in the MRG, the improved competitive position of Intel's Rio Rancho operations and the reduction in demand for pre-1907 surface water rights.

From an economic perspective, the transaction provides major net benefits to the ISC and New Mexico as a whole.

Ms. Amy Haas presented the business terms of the agreement. She addressed the respective obligations of the parties and explained the limitations on those obligations. The essential terms are as follows:
• Intel will transfer 740.9 acre-feet of pre-1907 surface water rights to the ISC at Closing.
• Intel shall pay to the ISC $10,000,000, increased for inflation from the date the agreement is executed.
• The ISC will offset Intel’s depletion effects to the Rio Grande as a result of its ground water pumping subject to certain limitations.
• Intel will make its first payment to ISC of $1,000,000 at Closing, increased for inflation from the date of execution.
• On each of the 9 successive anniversaries at Closing, Intel will make 9 subsequent payments of $1,000,000 adjusted for inflation.
• In no event will any payment to the ISC be less than $1,000,000, regardless of the inflation adjustment.
• However, Intel may prepay the principal if: 1) the Commission approves an accelerated payment; or, 2) if inflation in any 1 year period is 10%, then Intel may prepay up to $2.5 million, adjusted for inflation.
• All payments are for the ISC’s exclusive use for Strategic Water Reserve purposes and to support threatened endangered species and related environmental purposes in the Rio Grande.

Mr. Flanigan addressed the ISC’s offset obligations contained in Paragraph 3.C of the agreement, emphasizing the three limitations on the ISC’s obligation.

Ms. Haas described additional obligations of the Parties at Closing pursuant to Paragraphs 3.D and E of the Agreement.

Mr. Flanigan explained the Additional Terms and Conditions under Paragraph 8 of the agreement.

Ms. Haas described the five Conditions Precedent to Closing contained in Paragraph 9 of the agreement and explained that the obligations of the parties at Closing are contingent upon satisfaction of each of them.

Ms. Haas also described the Condition Precedent to Execution contained in Paragraph 10 of the agreement; specifically, the exchange of opinion letters by counsel for each party prior to the execution of the agreement.

Ms. Haas stated that in anticipation of Commission approval of this agreement, she and Intel have exchanged the opinion letters.

Ms. Haas further described the three actions required at Closing, specifically:

1. Intel shall pay to ISC One Million Dollars ($1,000,000) subject to increase for inflation from the date of execution of the agreement.
2. Intel shall convey to ISC a partial interest in its license; and,
3. Intel shall convey to ISC 740.9 acre-feet of water rights.

Ms. Haas added that the agreement will expire by its terms upon fulfillment by the parties of their respective obligations.

Ms. Haas also described the termination provisions contained in Paragraph 14 of the agreement. Ms. Haas also spoke on certain miscellaneous provisions contained in Paragraph
16 of the agreement, specifically, the assignment provision (Paragraph 16.D), the assignment of return flow agreement provision (Paragraph 16.E) and the indemnification provision (Paragraph 16.F).

**Questions from the Commissioners:**

Chairman Jim Dunlap asked if Mr. Frank Robinson, Manager from Intel's Corporation, had any further questions or comments.

Mr. Frank Robinson stated that he had no further questions or comments at this time.

Chairman Jim Dunlap asked the audience to make public comments.

Director López stated that in the last two weeks he met with numerous stakeholder groups regarding the Intel agreement.

Ms. Cecilia Abeyta from the New Mexico Farm and Livestock Bureau thanked the state and Intel for the opportunity to review the agreement between the ISC and Intel and for looking after agricultural interests. Ms. Cecilia Abeyta stated that she has a concern about the money that is being allocated for the purposes of the Strategic Water Reserve. She asked for clarification on what "related environmental purposes" are and what guarantee they would have that the money stays in the Strategic Water Reserve.

Director López responded that the language is broad enough so that it embodies Strategic Water Reserve goals and that related environmental purposes fall within the goals of the Reserve. Director López added that the water rights ultimately will be put in the Strategic Water Reserve.

Discussion ensued and Ms. Abeyta stated that all positive aspects were addressed and asked if we foresee any negative aspects that have not been identified.

Director López responded that the ISC has received questions on how the future offsets will be met, and we have to continue discussion with all stakeholders to make sure everyone understands and is satisfied.

Mr. Todd Stevenson, Director of the Department of Game and Fish, commented that they see this agreement as positive and urged that we move forward. The Department of Game and Fish has worked collectively with the Middle Rio Grande Endangered Species Collaborative Program for several years with several state agencies and with ISC. They see this agreement as a significant step forward continuing that effort with the ability to use part of 741 acre-feet.

Director López elaborated on the importance of the endangered species issues and their impact on water users in the middle valley. He stated that in the past, there has been litigation where there were threats that water users; i.e. farmers and others, may be interrupted due to the need to use water for fish. The ISC, along with other state agencies, the Department of Game and Fish, the Pueblos, and the MRGCD are all working together as the Endangered Species Collaborative in the middle valley. We have been able to keep the program under control where fish is not in jeopardy. The current Biological Opinion expires in 2013, and the flow requirements under the current Biological Opinion we do not believe there will be water available to have a similar Biological Opinion. The Bureau of Reclamation has estimated that
they will not be able to access 8,000 acre-feet of water. Director López stated that we would have to reconsider the Biological Opinion to make sure it continues to work.

Vice-Chairman Phelps White commented that in his observation in this particular transaction he sees 100% cooperation between government and the private sector and he thinks that both entities should be complimented in working together in accomplishing this agreement.

Director López stated that he feels this is a solid agreement; however, he would like to have a full opportunity to build solid support that we need amongst the community. He stated that requests have been made that the ISC delay action on this agreement by 30 days.

AGENDA ITEM #8 – REQUEST APPROVAL OF RESOLUTION AUTHORIZING THE DIRECTOR TO ENTER INTO A WATER RIGHTS ACQUISITION AGREEMENT WITH INTEL CORPORATION:

Chairman Jim Dunlap asked the Commissioners their opinions regarding the approval of resolution authorizing the Director to enter into the agreement with Intel.

Discussion ensued and Commissioner Patricio Garcia moved, seconded by Commissioner Buford Harris, to postpone the approval of the resolution authorizing the Director to enter into a water rights acquisition agreement with Intel Corporation by thirty (30) days. The motion carried unanimously to postpone the agreement for thirty (30) days.

Chairman Jim Dunlap stated that in reviewing the agreement and what the ISC staff, the attorneys and Intel Corporation did in getting this agreement together for the State of New Mexico, he believes it is a good agreement, as well, but also agrees on a 30-day postponement.

Director Estevan López stated that he will continue to make himself available to answer questions about the agreement and would like to make everyone fully apprised of the benefits. Director Estevan López hopes that everyone will be supportive of the agreement.

AGENDA ITEM #9 – SET FUTURE DATE, OTHER BUSINESS AND INFORMATION ITEMS NOT REQUIRING INTERSTATE STREAM COMMISSION ACTION:

Director López recommended that June 16, 2010, be the next ISC meeting. The Commissioners agreed with Director and will tentatively schedule on their calendars.

AGENDA ITEM #10 – ADJOURNMENT:

Commissioner Patricio Garcia moved, seconded by Commissioner Blane Sanchez, to adjourn. The motion carried unanimously.

The Commission adjourned the meeting at 3:30 p.m.

Minutes were prepared by Laura Mae Trujillo and edited by Amy I. Haas.

Approved at the 6-10-2010 meeting of the Interstate Stream Commission.

Jim T. Dunlap, Chairman 6-10-2010