

Agreement Among the
State of New Mexico, the City of Farmington and the Navajo Nation

The State of New Mexico, the City of Farmington and the Navajo Nation, hereinafter referred to as "the Parties," enter into this Agreement under the following terms and conditions:


1. This Agreement is made for the purpose of advancing the settlement of legal disputes, including pending litigation by and among the Parties in the general stream adjudication of the San Juan River Basin in New Mexico being determined in *New Mexico v. United States*, No. 75-184, District Court of San Juan County, or in another court of competent jurisdiction (San Juan River Adjudication).
2. The provisions of this Agreement, including the attached Terms of Consent Order, and any other written or oral communications related thereto, are covered by Rule 11-408 of the New Mexico Rules of Evidence. The Terms of Consent Order attached hereto and any supporting documentation shall not constitute evidence of water rights claimed by the City of Farmington, and no compromises made in the course of negotiating this Agreement may be used as either evidence or argument by any Party to this Agreement in the San Juan River Adjudication.
3. This Agreement is effective upon execution by the Parties, and may be amended or terminated only by written agreement of all of the Parties.
4. The State of New Mexico and the City of Farmington agree to execute a consent order substantially containing the water right elements described by the Terms of Consent Order attached hereto to determine certain rights of the City of Farmington to divert and use waters of the Animas River, and to submit the consent order to the Court for entry in the San Juan River Adjudication, once all of the following conditions are met:
 - (a) the State of New Mexico and the Navajo Nation execute the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Settlement Agreement);
 - (b) the Congress approves the Settlement Agreement, and the Secretary of the Interior executes the Settlement Agreement on behalf of the United States; and
 - (c) the Court in the San Juan River Adjudication enters a Partial Final Decree adjudicating the rights of the Navajo Nation to use and administer waters of the San Juan River Basin as described in paragraph 3.0 of the Settlement Agreement.

The City of Farmington acknowledges that the content and form of the consent order will include, in addition to the terms attached hereto, standard provisions required by either the Court or the State Engineer.

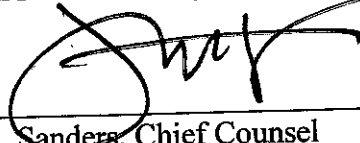
5. Even if the conditions described in paragraph 4 are not met in accordance with the associated milestone dates for said conditions described in the Settlement Agreement, the State of New Mexico agrees to execute a consent order containing the water right elements described by the Terms of Consent Order attached hereto, and to submit the consent order to the Court for entry in the San Juan River Adjudication, so long as the City of Farmington has fulfilled the commitment described in paragraph 8 of this Agreement for the City to support the Settlement Agreement, including enabling legislation, and has not caused conditions (b) or (c) of paragraph 4 to not be met.
6. The Navajo Nation agrees to not challenge the consent order submitted to the Court for entry in the San Juan River Adjudication pursuant to paragraph 4 so long as:
 - (a) the Settlement Agreement has not been terminated pursuant to subparagraph 11.2 of the Settlement Agreement;
 - (b) the consent order submitted to the Court for entry in the San Juan River Adjudication in accordance with paragraph 4 is substantially of the content of the Terms of Consent Order attached hereto; and
 - (c) the City of Farmington has fulfilled the commitment described in paragraph 8 of this Agreement.
7. Paragraph 6 constitutes the entire agreement of the Navajo Nation as to the quantification of the City of Farmington's rights to be determined and settled by the consent order described in paragraph 4. The Navajo Nation may challenge the consent order if the consent order is submitted to the Court in the San Juan River Adjudication pursuant to paragraph 5 or if any of the conditions specified in paragraph 6 are not met. In the event that the Navajo Nation challenges the consent order and the Settlement Agreement has not been terminated pursuant to subparagraph 11.2 of the Settlement Agreement, the Navajo Nation shall be bound by the provisions of subparagraph 9.6 of the Settlement Agreement with respect to the challenge of the City's rights that are the subject of the Terms of Consent Order.
8. The City of Farmington agrees to actively support the Settlement Agreement, including passage of the Congressional legislation described in paragraph 5.0 of the Settlement Agreement and the Court's entry in the San Juan River Adjudication of the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement.
9. This Agreement constitutes the entire understanding among the Parties.

In witness whereof, the Parties hereto have duly executed this Agreement.

STATE OF NEW MEXICO

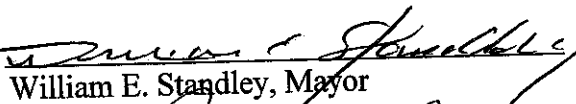
By: 
John R. D'Antonio, State Engineer

Date: 11 Mar '05

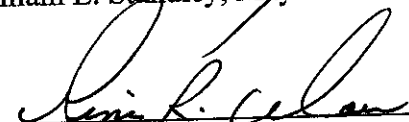
By: 
D.L. Sanders, Chief Counsel
Office of the State Engineer

Date: 11 March 05

CITY OF FARMINGTON

By: 
William E. Standley, Mayor

Date: 2-11-05


Attest: 
City Clerk

Date: 2-11-05

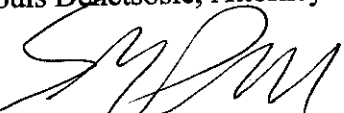
By: 
Jay Burnham, City Attorney

Date: 2/10/05

NAVAJO NATION

By: 
Louis Denetsosie, Attorney General

Date: 2/22/05

By: 
Stanley M. Pollack, Water Rights Counsel
Navajo Nation Department of Justice

Date: 2/23/05

TERMS OF CONSENT ORDER

The State of New Mexico and the City of Farmington agree to the following terms of a consent order to describe elements of certain of the City's rights to divert and use the waters of the San Juan River Stream System:

1. Origination. The water rights described by paragraphs 3 and 4 derive from rights previously adjudicated in the case of *Echo Ditch Company, et al. v. The McDermott Ditch Company, et al.*, San Juan County District Court, Cause No. 01690 (April 8, 1949), which decree is known as the "Echo Ditch Decree," and include rights adjudicated to the Town of Farmington by the Echo Ditch Decree and rights adjudicated to other entities or persons that have been transferred to municipal use by the City pursuant to permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. The water rights described by paragraph 5 are in accordance with the License approved by the State Engineer pursuant to New Mexico State Engineer File No. 2995.

2. General Elements. The following elements apply to the water rights described in paragraphs 3 through 5:

(a) The rights described in paragraphs 3 through 5 are for the diversion of water from the Animas River, a tributary of the San Juan River; except, that the rights described in paragraph 5 also may be supplied by diversion or storage of water originating in the drainage above the City of Farmington's municipal storage reservoir described in paragraph 5.

(b) The rights described in paragraphs 3 through 5 are for the diversion and use of water for municipal water supply purposes, including municipal, domestic, industrial, commercial, and residential uses.

(c) The alternate points of diversion from the Animas River for the rights described in paragraphs 3 through 5 are as follows:

(1) heading of the Farmers Ditch located on the Animas River at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T.31N., R.11W., N.M.P.M., whence the West $\frac{1}{4}$ corner of said Section 26 bears S 82° 02' W, 998.5 feet distant;

(2) pumping station on the Animas River (commonly referred to as Animas Pump Station #2) located at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T.30N., R.12W., N.M.P.M., whence the NW corner of said Section 28 bears N 43° 41' 35" W, 3995.04 feet distant; and

(3) pumping station on the Willett Ditch (commonly referred to as Animas Pump Station #1) located at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T.29N., R.13W., N.M.P.M., whence the NE corner of said Section 14 bears N 89° 00' E, 2380 feet distant.

(d) The rights described in paragraphs 3 through 5 are to supply uses within the geographic areas in New Mexico that can be served by the City of Farmington's existing municipal water system facilities and any future extensions of the water system facilities, including areas outside the corporate limits of the City that are connected to the water system and served through contracts for delivery of City water such as contracts entered historically by the City for delivery of water to the Lower Valley Water Users Association, the Upper La Plata Water Users Association and the Shiprock Navajo Tribal Utility Authority for uses within their water service areas.

(e) The City of Farmington shall not be entitled hereafter to increase diversions in association with the rights to consume the amounts of water described in

paragraphs 3 through 5 over and above the amounts of diversion specified by the respective paragraphs regardless of actual return flows of portions of said amounts of diversion to the San Juan River Stream System; except, that diversions pursuant to paragraph 3 may be greater than the consumptive use described in that paragraph depending upon measured return flows to the extent provided by paragraph 3.

(f) The City of Farmington shall measure diversions and deliveries of water made pursuant to paragraphs 3 through 5 at the points of diversion and delivery described therein, and shall measure return flows to the river from diversions made pursuant to paragraph 3, as necessary to demonstrate that the diversions and deliveries of water are in accordance with the provisions of the respective paragraphs and that the consumptive uses described by the respective paragraphs are not exceeded.

(g) The City of Farmington shall measure and record storage in the Farmington municipal reservoir described in paragraph 5 as well as diversions from reservoir storage.

(h) Records of diversions, deliveries, storage and return flows for each calendar month obtained from measurements made pursuant to subparagraphs (f) and (g) of this paragraph shall be submitted to the New Mexico State Engineer no later than the tenth day of the following month.

3. Trust Rights and Permits 01417. Pursuant to the rights previously adjudicated to the Town of Farmington in trust for irrigation use by owners of lots and parcels of land situated within the corporate limits of the Town as generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and pursuant to the permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A, the

City of Farmington has rights to divert 4,813 acre-feet, or the quantity of water necessary to supply a consumptive use of 2,580 acre-feet, whichever is less, of surface water in any one year from the Animas River, with a maximum diversion rate of 10.0 cubic-feet-per-second (cfs), at the alternate points of delivery described in subparagraph 2(c). The priorities of the diversion rights under this paragraph are as follows:

- (a) a diversion of 1,603.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 859.6 acre-feet, whichever is less, in any year, at a maximum diversion rate of 3.33 cfs, with a priority date of 1877, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 132 and 142, and from Permits Nos. 01417-1 and 01417-1A;
- (b) a diversion of 695.7 acre-feet, or the quantity of water necessary to supply a consumptive use of 372.9 acre-feet, whichever is less, in any year, at a maximum diversion rate of 1.45 cfs, with a priority date of 1878, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 165 and 171, and from Permits Nos. 01417-3 and 01417-3A;
- (c) a diversion of 1,226.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 657.5 acre-feet, whichever is less, in any year, at a maximum diversion rate of 2.55 cfs, with a priority date of 1891, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 213 and 226, and from Permits Nos. 01417-2 and 01417-2A;
- (d) a diversion of 24.5 acre-feet, or the quantity of water necessary to supply a consumptive use of 13.1 acre-feet, whichever is less, in any year, at a maximum diversion

rate of 0.05 cfs, with a priority date of 1896, deriving from Permits Nos. 01417-5 and 01417-5A; and

(e) a diversion of 1,262.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 676.9 acre-feet, whichever is less, in any year, at a maximum diversion rate of 2.62 cfs, with a priority date of 1897, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 258 and 267, and from Permits Nos. 01417-4 and 01417-4A.

The diversions by the City of Farmington pursuant to this paragraph shall be limited to the amounts of consumptive use described in this paragraph; except, that the City in any year may increase diversions over and above the described amounts of consumptive use up to the maximum amounts of diversions described in this paragraph provided that the City measures the actual amounts of return flows resulting from the diversions made pursuant this paragraph demonstrating that up to 2,233 acre-feet of the diversions are being returned in that year to the San Juan River at the current location of the Farmington Wastewater Treatment Plant outfall, but may only so increase the diversions by the measured amount being returned.

4. Decreed Municipal Use Rights. Pursuant to the rights previously adjudicated to the Town of Farmington for municipal water supply purposes as generally described by the Echo Ditch Decree at Part 1, Section III, page 64, the City of Farmington has the right to divert 7,240 acre-feet, or the quantity of water necessary to supply a delivery of 3,620 acre-feet to the Farmington municipal reservoir described in paragraph 5 or to the Farmington municipal water supply system directly if not to storage, whichever is less, of surface water from the Animas River in any year, at a maximum diversion rate of 10.0 cfs, or the rate of flow necessary to deliver 5.0 cfs to the Farmington municipal reservoir or to the Farmington municipal water

supply system directly if not to storage, whichever is less, and with a priority date of 1877. The City may divert water under the rights described in this paragraph at the alternate points of delivery described in subparagraph 2(c). The rights under this paragraph derive from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 213 and 226. The City may consumptively use or deplete the full amount of water delivered to the Farmington municipal reservoir pursuant to this paragraph, including by reservoir evaporation, and is not required to return any portion of the delivery to the reservoir to the San Juan River Stream System.

5. License 2995. Pursuant to License No. 2995, the City of Farmington has the right with a priority date of August 20, 1959, to divert at a maximum rate of 50.0 cfs from the Animas River at the alternate points of delivery described in subparagraphs 2(c)(1) and 2(c)(2), or from the drainage above the Farmington municipal reservoir described in this paragraph, or from both sources in combination, as necessary to fill and refill as often as water is available 6,855 acre-feet of storage capacity in the Farmington municipal reservoir and to supply a diversion from reservoir storage of 7,200 acre-feet in any year. The City may consumptively use or deplete the full amount of water diverted from the Farmington municipal reservoir pursuant to this paragraph, and is not required to return any portion of the diversion from the reservoir to the San Juan River Stream System. The Farmington municipal reservoir is commonly known as "Farmington Lake" and is formed by the storage dam located at a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, T.30N., R.12W., N.M.P.M., whence the SW corner of said Section 21 bears S 61° 44' W, 3014.1 feet distant.

6. Settlement in Full. The rights described in paragraphs 2 and 3 comprise in full the rights of the City of Farmington deriving from the rights previously adjudicated to the Town of

Farmington in trust for irrigation use by owners of lots and parcels of land situated within the corporate limits of the Town generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and the rights of the City pursuant to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. The rights described in paragraphs 2 and 4 comprise in full the rights of the City deriving from the rights previously adjudicated to the Town of Farmington for municipal water supply purposes generally described by the Echo Ditch Decree at Part 1, Section III, page 64. The rights described in paragraphs 2 and 5 comprise in full the rights of the City deriving from the appropriation of water pursuant to License No. 2995.