

B.I.D. Key Issues in Revised Draft July 9, 2004

1. Comments were submitted by the B.I.D.'s attorney, Gary Risley, on the initial draft issued for comments Dec. 5, 2003. In essence the B.I.D. was highly concerned about the 1868 priority dates for the Fruitland - Cambridge Ditch and the Hogback - Cudei Ditch with CFS diversion demands of 100 CFS and 225 CFS respectively. The B.I.D., along with the San Juan Agriculture Water Users Association, suggested that since a N.M. State filing by the federal agency for the Navajo's had requested an appropriation of 110 CFS for the Hogback diversion in 1909 this should be considered. This would be 115CFS at 1868 and 110 CFS demands for Hogback - Cudei and would be more compatible with other non-Navajo water users.

The July 9, 2004 revised draft has 1955 stored water up to 15,000 AF/year available with all kinds of conditions that must be met far out of the control of the BID and not known for sure until the partial final decree of the Navajo is final and possibly all other rights finalized about 2015 or later. This is not acceptable. The extra 6 months of negotiations gained us nothing and we were not even aware to warn you this was not going to be acceptable.

2. In the revised draft on July 9, 2004 seventeen new pages (12-29) were added to the settlement agreement which includes annual AF/year diversion limits and CIR on all the irrigation water users including the two old Navajo ditches. You apparently argue that this was adjudicated in the 1948 Echo Decree, that the Navajo Ditches are only bound by their annual AF/year diversions if all other users are, etc.

This settlement agreement is incorporated in the partial final decree of the Navajo's and you have linked how we must be adjudicated and administered or there is no agreement with the Navajo's. We believe the Navajo settlement and associated appendixes should be about Navajo Nation water amounts and priorities only and not ours. We reject this concept and will not let this settlement agreement be signed by the State, which short-circuits our ability to come to an agreement with the State Engineer what our diversion is for the B.I.D. If you have agreed with the Navajo's and BOR what our rights are by signing the agreement we are irreparably harmed by letting you sign this agreement without our concerns addressed and corrected. The Echo Decree must stand without any modifications.

3. The revised draft of July 9, 2004 of the settlement agreement under 9.2.6. (2) is maybe Federal law but contrary to State law and settled court cases. The BID will not support anything believed to be contrary to State law as they have only this to rely on to protect the BID ditch and its members from harm.
4. The BID requests that Steve Reynolds letter (copy attached) be evaluated by the current State Engineer in determining the priority date of the reservoir water defined under File No. 2847, 2849, 2873, and 2917 combined. No separate permits were ever filed previously to this combined permit within the 3 years allowed. The BID has 400 or so acres of permit 2870 (1-26) that has a priority date of Oct. 1955. If the combined permit (reservoir water) has a 1958 priority date as Mr. Reynolds said in this letter it will affect us considerably. Please respond in writing giving all considerations on your determination.
5. What will be the impact on San Juan Basin water resources from the Ute Mountain Ute claim?

STATE OF NEW MEXICO

STATE ENGINEER OFFICE

SANTA FE

S. E. REYNOLDS
STATE ENGINEER

July 10, 1986

BATAAN MEMORIAL BUILDING
STATE CAPITOL
SANTA FE, NEW MEXICO 87503

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Dear Mr. Ranquist:

Receipt of your June 20, 1986, letter submitting three notices of intention to appropriate the waters of the Las Animas River for use by the City of Farmington, is hereby acknowledged.

Please be advised that the United States Department of the Interior, through its Bureau of Reclamation, is entitled to make beneficial consumptive use of all of the unappropriated waters of the San Juan River and its tributaries to which the State of New Mexico is entitled under the terms of the Upper Colorado River Basin Compact, pursuant to its filings listed in the table below.

<u>File</u>	<u>Quantity (acre-feet/annum)</u>	<u>Priority Date</u>
* 2847	235,000 <i>Rio Chama</i>	June 17, 1955
2848 <i>- Sup Permitt</i>	23,000 <i>- Hammond</i>	June 17, 1955
* 2849	630,000 <i>- Resv. Storage</i>	June 17, 1955
* 2873	28,800 <i>- Resv. EVAP</i>	January 17, 1956
2883 <i>- Sup Permitt</i>	49,510 <i>ALP</i>	May 1, 1956
* 2917	225,000 <i>misc</i>	September 16, 1957
* 2847, 2849, 2873 & 2917 Combined		March 6, 1958
3215	362,080 <i>supplement storage water 500 cfs</i>	December 16, 1968
Total	1,553,390	

All of the files listed are accessible, of course, in the records of the State Engineer Office.

I am advised that the Department of the Interior would formally release back to the State of New Mexico the water rights for the Animas-La Plata Project under file No. 2883, if the Animas-La Plata Project were deauthorized by the Congress. As I am sure

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you are aware, the Secretary of the Interior, on June 30, 1986, executed a formal binding cost-sharing and financing agreement pursuant to the terms of Public Law 99-88, which directs the Secretary to initiate construction on the Animas-La Plata Project upon his execution of such an agreement. Accordingly, it seems most unlikely that the Congress would deauthorize the Animas-La Plata Project.

Even though the Animas-La Plata Project were deauthorized, Bureau of Reclamation would still have the right under its remaining file numbers to all of the unappropriated waters of the San Juan River and its tributaries allocated to New Mexico with the priority dates shown in the table above. In view of the foregoing, I find it appropriate, pursuant to Section 72-5-7, NMSA 1978, to refuse to consider the notices of intention filed with your June 20, 1986 letter.

Please be advised that it would be possible for the City of Farmington to acquire the right to store water to which it is entitled under rights it holds, or may acquire, for municipal purposes by making application to change the point of diversion and method of use of its water rights without losing the priority of those rights. Filing of a notice of intention would not be necessary to preserve those priority dates; however, the permits would have to be conditioned to ensure that the change would not result in an increase in beneficial consumptive use to the detriment of other rights.

Sincerely,



S. E. Reynolds
State Engineer

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