

# San Juan Water Commission

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MEMBERS:  
City of Aztec  
City of Bloomfield  
City of Farmington  
San Juan County  
S.J. County Rural Water Users Association

Approved March 3, 2010

## SAN JUAN WATER COMMISSION REGULAR MEETING MINUTES FEBRUARY 3, 2010

The San Juan Water Commission met in a Regular Meeting pursuant to due Notice, Wednesday, February 3, 2010 at 9:00 A.M. in the San Juan Water Commission's conference area in the San Juan Water Commission Office Building, 7450 East Main Street, Farmington, New Mexico.

### **CALL TO ORDER**

Chairman Mark Duncan called the regular meeting of the San Juan Water Commission (SJWC) to order at 9:15 A.M.

#### **Members Present**

City of Aztec	Robert Oxford - Alternate Commissioner ---
City of Bloomfield	Lynne Raner - Commissioner ---
City of Farmington	Jay Burnham - Alternate Commissioner ---
San Juan County	Mark Duncan - Commissioner ---
S.J. Rural Water Users Assoc.	Jim Dunlap - Commissioner Keith Lee - Alternate Commissioner

#### **Members Absent**

City of Aztec	Mike Arnold - Alternate Commissioner
City of Bloomfield	Keith Johnson - Alternate Commissioner
City of Farmington	Cy Cooper - Commissioner
San Juan County	Tony Atkinson - Alternate Commissioner
S.J. Rural Water Users Assoc.	none

#### **Legal Present**

Jim Durrett - San Juan County/SJWC

#### **Staff Present**

Randy Kirkpatrick - Executive Director  
Shaun Bishop  
Aaron Chavez

#### **Visitors: (2)**

\* In the absence of Commissioner M. Arnold, Alternate Commissioner B. Oxford was the voting member for the City of Aztec. In the absence of Commissioner C. Cooper, Alternate Commissioner

J. Burnham was the voting member for the City of Farmington.

### **APPROVAL OF AGENDA**

Chairman M. Duncan called for approval of the Final Agenda. Motion was made by L. Raner, seconded by J. Dunlap, to approve the Final Agenda as written, and upon voice vote the motion carried unanimously, (J. Burnham, M. Duncan, J. Dunlap, B. Oxford, and L.. Raner all voted yes).

### **CONSIDERATION OF APPROVAL OF THE JANUARY 19, 2010 REGULAR MEETING MINUTES**

Motion was made by L.. Raner, seconded by J. Dunlap to approve the January 19, 2010 regular meeting minutes as written, and upon voice vote the motion carried unanimously (J. Burnham, M. Duncan, J. Dunlap, B. Oxford, and L.. Raner all voted yes).

### **COMMENTS FROM THE PUBLIC**

There were no comments from the public.

### **ANIMAS-LA PLATA PROJECT**

B. Longwell began his Project update by saying the BOR had not been pumping this winter in part because of low flow in the river. B. Longwell went over a couple of scenarios relating to First Fill saying that First Fill should be completed by the Summer of 2011 if we have a typical-average water year from this point forward. However, if we stay with the minimum probable projections that the BOR did from the Colorado Basin Forecast Center we could be looking at the Spring of 2012 before First Fill is completed. B. Longwell said at the Pumping Plant itself, the motors and pumps, were working very well and from May through the end of July there had been no vibration problems, which was always a concern when you have pumps of this size. B. Longwell said they were having some problems with a few mechanical systems and the crest gates. B. Longwell said in investigating the problems with the crest gates the BOR had found that the type of operating system that was specified was not going to work (physics wise) with the environmental conditions that the Project operates under. B. Longwell said the BOR was looking at some alternative operating systems but the focus at the moment was to get a temporary operating system in place as a short-term fix to get the gates operating through the summer. B. Longwell said the BOR was also working on the water filtration system for the seals on the pumps because the filtering capability of the current system was undersized and was not keeping the water injected around the pumps clean enough to protect the seals. B. Longwell said the BOR was working with the contractor to get larger filters installed so the system would work the way it should.

B. Longwell said both the temporary operating system for the crest gates and the larger filters should be in place by March, when pumping will resume. B. Longwell said pumping was scheduled to continue until June 2010; when pumping would stop because that was when the next scheduled "holding" period would begin. Depending on how the dam structure performs, pumping should resume in July 2010. B. Longwell said there were no problems with the dam structure itself and that the seepage rates are very low. Chairman M. Duncan asked if the seepage rate was greater when the reservoir was full. B. Longwell said seepage could occur anywhere in the structure and while all dams were unique, all dams had similar characteristics where seepage was concerned. B. Longwell said as the water level increases and the reservoir gets deeper, the "head" of the dam increases. B. Longwell said with regard to seepage, the BOR looks at the "head" of the dam because when you have more "head" it produces more driving pressure pushing the water through the structure. B. Longwell said you see different levels of seepage depending on the water level in the reservoir and at what level you have more or less seepage at a given reservoir depends on the geology of that particular structure.

B. Longwell said the BOR currently had four contracts out associated with pipeline construction on the Navajo Nation Municipal Pipeline - with the Navajo Engineering Construction Authority (NECA) holding two of those contracts. B. Longwell said the NECA was working on the Fruitland Reach and had completed about 80% of that contract work. B. Longwell said if the weather cooperates, NECA should have the work on the Fruitland Reach completed in March 2010. B. Longwell said the NECA is gearing up to start work on the Shiprock Reach and will be working two crews this summer, with crews working both sides of the San Juan River. B. Longwell said if everything went as planned, pipeline construction work on the Fruitland and Shiprock Reach should be completed by the summer of 2011. B. Longwell said the City of Farmington had essentially finished construction of the two-million gallon potable water tank near the Farmington Airport and had completed approximately 50% of the pipeline construction from the tank site to the northeast bank of the San Juan River.

Regarding the operation of the ALP, R. Kirkpatrick distributed a flow chart to illustrate the steps that the

Commission's entity members will need to take to be consistent with the IGA. R. Kirkpatrick said the Commission's proposed reporting process for ALP water was to meet the Association's requirements and had nothing to do with the State of New Mexico's administration of water. R. Kirkpatrick stressed that the Commission must have a reporting procedure in place to track each entities actual water use to show the Association members that it was not using more than its share of ALP water. R. Kirkpatrick said it was critically important that all the entities report their daily water use to the Commission, with those numbers broken down by the amount of ALP water used and the amount used from other water supplies. R. Kirkpatrick said the Commission will be required to account for the water that is by-passed down the river or taken from storage and that the Association will require the Commission to confirm whether the water was used or not used. R. Kirkpatrick said the Commission needed reliable and accurate usage figures because it was the Commission that would be paying the OM&R - and the OM&R figure would be based on the amount the Commission tells the Association its entity members are going to use. R. Kirkpatrick said if we don't notify the Association when we have an increase or decrease from our projected amount, we will be charged for the projected amount, whether the water is used or not.

R. Kirkpatrick said staff was currently using water rights information available through the OSE along with information reported by the entities to assess each entity's water rights and use. R. Kirkpatrick said the Commission's staff would be meeting with each entity's managers and water management personnel to resolve any discrepancies between what an entity shows as its existing water rights and what the OSE has on file. R. Kirkpatrick said staff would welcome recommendations from all entity members to help develop and streamline the reporting process so that all the entity members would feel comfortable with the process.

J. Dunlap said when the Commission had hammered out its reporting system for the Association, he recommended that the Commission meet with the OSE to explain the reporting requirements of the Association and go over the Commission's reporting procedure with them.

*D L Sanders, Chief Counsel for the Office of the State Engineer (OSE) entered the meeting at 9:50 A.M.*

R. Kirkpatrick asked the Commission to hear Item-Comments from Commissioners, Alternates and Staff before Item-Closed Executive Session, to accommodate the schedule of guest D L Sanders, Chief Counsel for the OSE. Chairman M. Duncan asked if there was any opposition to switching the order of these two items and upon hearing none, proceeded with Item-Comments from Commissioners, Alternates and Staff.

#### **COMMENTS FROM COMMISSIONERS, ALTERNATES, AND STAFF**

J. Dunlap said all the Commissioners received a copy of the letter written by B. Oxford titled "The Big Misrepresentation of the Navajo Statement" that was printed in the Aztec newspaper.

J. Dunlap said that B. Oxford's letter contained some questionable allegations and because of that, he wanted to give Mr. Sanders the opportunity to respond and express his thoughts regarding the letter to the Commission. Chairman M. Duncan invited Mr. Sanders to address the Commission.

Mr. Sanders said he felt the most disturbing thing about B. Oxford's letter was being called a liar but rather than focus his attention on that, he was going to respond by presenting the facts. Mr. Sanders distributed a handout that listed some of the points he was going to make relating to the Hogback-Cudei Irrigation Project. Mr. Sanders said while he did not profess to be an expert on Indian water rights that he was certainly knowledgeable in the area of Indian water rights. Mr. Sanders said within western water laws that it was well receptive from one of the original doctrine that Tribes do own property and water rights. Mr. Sanders said with respect to property, in the case of Winters, resulting in the Winters Doctrine, "as Indians are removed from land and relocated they were given a homeland and on that homeland they were entitled to be provided a sufficient water supply for a permanent homeland - but it wasn't provided to quantification". Continuing Mr. Sanders said, subsequently, the Supreme Court held that the standard for quantifying federal Indian reserve water rights was the "Practicably Irrigable Acreage" standard (PIA) and that standard does not require that there be historical irrigation. Mr. Sanders said the Navajo Indian Irrigation Project (NIIP) was just the type of project that the government looked at for "Practicably Irrigable Acreage". Mr. Sanders said the purpose of the reservation was to provide the Tribe with a permanent homeland and to create an agrarian society - and to provide for that, there must be provided sufficient water supplies. Mr. Sanders said the purpose of NIIP was not to be economically viable but rather to provide the agri-benefits to assist the Tribe toward self-sufficiency.

Mr. Sanders said the premises by which the Navajo Nation Water Rights Settlement was negotiated included, the PIA quantifying standard - that the Tribe's water rights claims did not exceed the water available in the San Juan - and that forfeiture and abandonment policies do not apply to Indian Tribes. Regarding the NIIP,

Hogback-Cudei, and Fruitland Irrigation Projects, the NIIP was designed to irrigate 110,000 acres, the Hogback to irrigate 8,830 acres, and the Fruitland Project 3,335 acres. Mr. Sanders said when looking at water rights for the Tribe, that it was reasonable to look at the design potential of these three projects to determine the amount of acreage that was irrigable or susceptible to irrigation.

Mr. Sanders read from B. Oxford's letter, "This is perhaps the biggest lie to fool the general public by the settling parties, including most importantly our own State Engineer, John D'Antonio and DL Sanders, the State Engineer's top lawyer. They know full well that this Indian ditch (Hogback-Cudei) is only irrigating 3,400 acres, and probably has never irrigated any more than this in the past." Now responding, Mr. Sanders said that the overall maximum amount that had been irrigated in one year was 4,180 (3,800 acres in Hogback in 1957 and 380 acres in the Cudei in 1937). However, Mr. Sanders said the OSE's review found that it was very likely that the total number of acres that had been irrigated at some point in time exceeded 4,180 acres - just how many acres had been irrigated at some point was unclear so it was decided to quantify the water rights by the acres under a ditch/project that could be irrigated. Mr. Sanders said the Tribe agreed to limit irrigation water rights to acres within a project either identified as being subject to irrigation from an existing irrigation ditch or identified as irrigable and planned to be placed under irrigation. Mr. Sanders said whether a project is economically viable was not part of the standard used in this settlement. Mr. Sanders said, in the future, if the Tribe asserts claims that they have not settled, those claims would have to have some rational relationship to reality. Just the fact that water exists over here and there is land over there - if it is not reasonably feasible to move the water to the land - then the claim may be without merit. Mr. Sanders said, nonetheless, within the valley itself, in addition to the 14,000 acres that the Tribe has not chosen to pursue within the planned projects of Hogback and Fruitland; there is another 21,000 acres directly off the San Juan in the San Juan Valley that the Tribe could reasonably irrigate. Mr. Sanders said that 35,000 acres brings the total number of acres close to the 41,540 maximum acreage that could be developed under the Settlement.

B. Oxford said his concern was that the uses weren't being reported correctly with regard to existing or future uses. B. Oxford said if the uses are not recorded correctly, as either an existing use or a future use, there was no way to tell how much water is actually going to come off the river - and that could cause serious harm. Mr. Sanders said the OSE understood Mr. Oxford's concern but instead of getting tied up in the numbers, he (we) should be looking at the bigger picture. Mr. Sanders said the OSE did take into consideration existing users when negotiating the Settlement and that the Settlement did include several provisions to protect existing irrigators, such as the 'Alternate Water Supply provision, which specifically relates to Bloomfield irrigators. Mr. Sanders said, simply stated, the Alternate Water Supply provision means that if the river flow is not enough to meet demand, whether they are irrigating existing acreage or developing new acreage, the Tribe will not assert a priority call on the river until they have expired the 12,000 ac that they have available out of Navajo Reservoir. B. Oxford said his argument was not that the Tribe was entitled to irrigate 8,830 acres but rather that people needed to know what the Tribe was actually irrigating now so they would understand that if the Tribe did irrigate their total acreage entitlement, it would take more water out of the river. B. Oxford said even if the Tribe takes 12,000 out of Navajo Reservoir, especially in July and August, he feels there will not be enough water available to satisfy all the uses.

Mr. Sanders said the OSE negotiated the Settlement so that the Tribe would have adequate water to put their full entitlement (acreage) under the three Projects to use if they wished (Hogback, Fruitland and NIIP), and at the same time, to protect existing non-Indian users through provisions like the Alternative Water Supply provision. Mr. Sanders said one possible solution to address Mr. Oxford's concern regarding how many acres were or were not being irrigated currently, may be to insert an asterisk (or some sort of mark) by the existing acreage for Hogback, which would serve to denote that there was additional information regarding the Hogback elsewhere in the Settlement document. Agreeing with Mr. Sanders, J. Burnham said it made sense to him to use asterisks to identify those areas where discrepancies may exist because additional information gives the reader a clearer picture of the story. Mr. Sanders said he would investigate the possibility of using an asterisk by the Hogback with the Tribe.

J. Dunlap asked if the Tribe had to follow the same OSE procedures, as the non-Indian user had to follow, if they want to change the place or purpose of use. Mr. Sanders said yes, if the Tribe is going to use the water elsewhere than within the boundaries of the existing project, they had to come to the OSE, and the OSE would examine if the change would impair anyone (there are some exceptions relating to NIIP). R. Kirkpatrick asked if the Tribe could use NIIP water that was currently not being used on the reservation, for another use. Responding, Mr. Sanders said yes, with caveats.

Wrapping up the discussion, Chairman M. Duncan said he wanted to assure the OSE that Mr. Oxford's letter was a personal comment and that Mr. Oxford's letter did not express the concerns of the San Juan Water

Commission. Chairman M. Duncan said because Mr. Oxford was an Alternate Commissioner some people could misinterpret the comments expressed in his letter as being those of the Commission and because of that he wanted to give the State Engineer's office the opportunity to respond and that the Commission appreciated Mr. Sanders for taking the time to come to the meeting.

Copies of the *Water Resources Update* for February 2010, prepared by A. Chavez, were distributed to the Commissioners, Alternates, and the public for their review.

#### **CLOSED EXECUTIVE SESSION**

Motion was made by L. Raner, seconded by J. Burnham, to go into a Closed Executive Session pursuant to Sections 10-15-1-H. (7) and (8), NMSA 1978, under the attorney-client privilege to discuss matters pertaining to the threatened or pending litigation in which the public body is or may become a participant and the acquisition or disposal of water rights; and upon voice vote the motion was carried unanimously (J. Burnham, M. Duncan, J. Dunlap, B. Oxford, and L.. Raner all voted yes).

Chairman M. Duncan closed the meeting at 10:45 A.M.

Motion was made by J. Dunlap, seconded by L. Raner to reopen the meeting and upon voice vote the motion carried unanimously (J. Burnham, M. Duncan, J. Dunlap, B. Oxford, and L.. Raner all voted yes).

Chairman M. Duncan reopened the meeting at 11:20 AM.

Chairman M. Duncan stated that no discussion, other than that [discussion] pertaining to the threatened or pending litigation in which the public body is or may become a participant and the acquisition or disposal of water rights took place during the Closed Executive Session.

#### **ADJOURNMENT**

There being no further business, Chairman M. Duncan adjourned the meeting at 11:21 A.M.

**APPROVED THIS 3<sup>RD</sup> DAY OF MARCH, 2010  
SAN JUAN WATER COMMISSION:**

Signature on File  
**Mark Duncan, Chairman**

**Attest:**

Signature on File  
**L. Randy Kirkpatrick, Executive Director**

February 3, 2010 Regular Meeting Minutes Approved March 3, 2010

Motion was made by M. Arnold, seconded by K. Lee to approve the February 3, 2010 Regular Meeting Minutes, and upon voice vote the motion carried unanimously (M. Arnold, C. Cooper, M. Duncan, K. Lee, and L. Raner all voted yes).

