

John Whipple

From: scone
Sent: Sunday, August 26, 2001 9:01 PM
To: tturney
Cc: jwhipple; psaaavedra; ecoriz; rgenualdi; ngaume; rcheney; barryh; markl; keithh; alp; nmfog; tsoussan; JOHN.BEZDEK; DGjere; sjwc; BMcDonald.NPS.DOI.Mail; RGOLD.4ucro; PSchumacher; MLORING.4UCRO; rassam; bstandley; mfischer; jburnham; troberts; whall; rgenualdi; pturney
Subject: New Mexico Inspection of Public Records Act request

ATTENTION: NEW MEXICO OPEN RECORDS ACT REQUEST
(transmitted electronically)
26 August 2001

"electors Concerned about Animas Water" -- CAW
1217 Chaco Avenue
Farmington, NM 87401

Tom Turney, New Mexico State Engineer
Office of the State Engineer
PO BOX 25102
Santa Fe, New Mexico 87504-5102

Dear Mr. Turney:

Although I was unable to attend the August 22nd special meeting of the San Juan Water Commission, I have carefully reviewed a tape recording of your presentation to those commissioners. Your comments have raised areas of concern which are best addressed with the submission of the following New Mexico Open Records Act request:

1) You discussed the "Application for Permit to appropriate the Public Surface waters of the State of New Mexico" [Application], File No. 4818, filed on January 18, 2001, by L. Randy Kirkpatrick, Executive Director of the San Juan Water Commission. In the Application Mr. Kirkpatrick identifies his organization as the "San Juan Water Commission", Applicant and holder of the right to water for beneficial use". In your comments you stated that, "This application has sparked considerable interest. I have directed that this Application not be published at this time." You explained that "many parties have already indicated that they intend to protest the Application." You proceeded to name the Navajo Nation, the Bureau of Indian Affairs and the Department of the Interior. You went on to say that, "One municipality in this Basin has indicated that they are considering protesting the Application."
WITH RESPECT TO THESE COMMENTS, PLEASE PROVIDE US WITH COPIES OF ALL COMMUNICATIONS TO AND FROM YOUR OFFICE WITH PARTIES AND OR INDIVIDUALS WHO HAVE INDICATED AN INTENTION OR INCLINATION TO PROTEST THE SAN JUAN WATER COMMISSION'S APPLICATION FILE NO. 4818.

2) In describing formal negotiations between your Office and the Navajo Nation to settle their claims of entitlement to San Juan River water, you said, "The Navajo Nation is placing strong pressure on the State to complete these settlement discussions." You went on to say that the Navajos "are exerting extraordinary pressure on New Mexico to complete these settlement discussions. I have never seen such pressure exerted . . . negotiations are very, very intense. To bring economic certainty the State plans to move forward rapidly with the negotiations with the Navajo Nation." In your comments, you made no mention of past letters you have sent to both New Mexico Senators and the Department of the Interior (in support of the Navajo

Nation), requesting a Navajo-San Juan Federal Indian Water Rights Assessment Team to coordinate Interior's support for elements of a settlement plan "without the formal appointment of a federal negotiating team.". Neither did you describe your plea to Interior on behalf of the State that, "the [Navajo] Nation have available to it some level of support for personnel and technical support necessary to efficiently and effectively participate in these discussions." It comes as no surprise that you failed to announce what your attorney has stated to me in no uncertain terms -- that all of the State's negotiation meetings with the Navajo Nation and the Navajo-San Juan Federal Indian Water Rights Assessment Team are strictly closed to the public and that such primary stakeholders as San Juan County, the Ute Mountain Ute tribe, the Apache Nation, and the cities of Farmington, Bloomfield and Aztec are to have no seat at the negotiation table. ACCORDINGLY, PLEASE PROVIDE US WITH RECORDS AND CORRESPONDENCE IN ALL FORMS FROM 1 MAY 2001 TO DATE TO AND FROM THE NAVAJO-SAN JUAN FEDERAL INDIAN WATER RIGHTS ASSESSMENT TEAM, THE NAVAJO NATION, AND THE INTERSTATE STREAM COMMISSION REGARDING EFFORTS TO NEGOTIATE A SETTLEMENT OF THE NAVAJO NATION'S CLAIMS TO SAN JUAN RIVER WATER. IN ADDITION, PLEASE PROVIDE ALL RECORDS AND CORRESPONDENCE ON FILE IN YOUR OWN OFFICE REGARDING THESE NEGOTIATIONS.

3) As you know, the "Colorado Ute Settlement Act Amendments of 2000", at SEC. 15 (a), require that, "Upon the request of the State Engineer of the State of New Mexico, the Secretary shall, as soon as practicable, in a manner consistent with applicable law, assign, without consideration, to the New Mexico Animas-La Plata beneficiaries or to the New Mexico Interstate Stream Commission in accordance with the request of the State Engineer, the Department of the Interior's interest in New Mexico State Engineer Permit Number 2883, dated May 1, 1956, in order to fulfill the New Mexico non-Navajo purposes of the Animas-La Plata Project, so long as the permit assignment does not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water involved." The U.S. Bureau of Reclamation has maintained that the Colorado State Engineer must protect New Mexico's allocations of Animas-La Plata Project water through the State of Colorado for delivery across the state line. Likewise, it is the Bureau's position that the New Mexico State Engineer must protect that A-LP Project water through New Mexico "to the correct diversion points". In your comments last week, I believe you expressed concern that the Secretary's assignment of New Mexico State Engineer Permit Number 2883 may create a problem for the State of New Mexico. You stated that your concerns could be "addressed by initiating State-to-State discussions with the State of Colorado on how they intend to protect [Animas-La Plata] Project water so that it arrives undiminished at the state line." You continued by informing the Water Commission that, "Accordingly, I have asked Norm Guame to contact the state of Colorado to initiate these discussions."

IN CONNECTION WITH THE ABOVE COMMENTS, PLEASE PROVIDE COPIES OF RECORDS OF ALL CORRESPONDENCE WITH THE STATE OF COLORADO REGARDING THE PROTECTION OF ANIMAS-LA PLATA PROJECT WATER TO AND ACROSS THE STATE LINE.

4) In your comments you voiced concerns about the current negotiations between the Bureau of Reclamation and the San Juan Water Commission for an amendatory repayment contract for the Animas-La Plata Project. You stated, "There are other areas of the proposed contract we have concerns over. As an example, we are concerned over the language that gives conclusive decision-making authority to the United States during times of shortage. This provision may work against New Mexico interests. Because of our experiences on this issue, we must assure that these types of protection for New Mexico interests are included in any contract."

PLEASE PROVIDE COPIES OF ALL RECORDS AND OR CORRESPONDENCE ADDRESSING ANY CONCERNS OF YOUR OFFICE ABOUT AREAS OF THE PROPOSED CONTRACT BETWEEN THE SAN JUAN WATER COMMISSION AND THE U.S. BUREAU OF RECLAMATION.

5) Regarding the guidelines of New Mexico's forty (40) year planning horizon, you stated, "Municipal and rural water entities can acquire and hold a water right provided that they can reasonably put the water to beneficial use within 40 years. This 40 year question will have to be addressed by each project beneficiary. As long as the right is held in the Secretary's name it is not subject to this 40 year consideration. Although not recently, I have looked at some projected municipal uses, and as I recall there are some communities who have acquired existing water rights and with the addition of this A-LP Project right, they would be beyond this 40 year planning horizon."

PLEASE PROVIDE ALL PERTINENT RECORDS OF PROJECTED MUNICIPAL USES FOR COMMUNITIES WHICH WOULD EXCEED THE STATE'S FORTY (40) YEAR PLANNING HORIZON WITH THE ADDITION OF A-LP PROJECT RIGHTS.

6) You also commented on some of the inaccuracies within the the San Juan Water Commission's Joint Powers Agreement, stating that, "Because of the downsizing of A-LP [New Mexico State Engineer] Permits 4487 through 4501 relating to the various cities and rural water user associations divvying up the original 15,400 acre-feet of water are going to have to be revisited so they can be integrated into the Project as authorized for construction by Congress."

PLEASE PROVIDE RECORDS TO DOCUMENT THE MANNER IN WHICH THE INACCURACIES IN THE WATER COMMISSION'S JOINT POWERS AGREEMENT MUST BE ADDRESSED DUE TO ACCOMODATE THE DOWNSIZING OF THE ANIMAS-LA PLATA PROJECT.

7) You stated that the U.S. Bureau of Reclamation is going to update its 1988 hydrologic determination of water availability to contract for Navajo Reservoir, and that proposed draft depletion schedules recently developed by your staff "would indicate that water is available from the Navajo Reservoir Supply for uses under the Navajo-Gallup Project in New Mexico."

PLEASE PROVIDE ALL RECORDS OF THE REFERENCED DRAFT DEPLETION SCHEDULES RECENTLY PREPARED BY YOUR STAFF.

8) Your office recently published an "Application for Permit to Appropriate the Public Surface Waters of the State of New Mexico", FILE NO. 4830, filed by the City of Albuquerque on 18 May 2001 for the transbasin diversion of 47,000 acre-feet of water from the San Juan Basin to the Rio Grande Basin in connection with the San Juan-Chama Project.

PLEASE PROVIDE COPIES OF ALL FORMAL PROTESTS AND ANY OTHER WRITTEN INDICATIONS OF OBJECTION TO THIS APPLICATION, AS WELL AS ANY RECORDS IN YOUR POSSESSION SHOWING THAT SUCH A DIVERSION WOULD BE IN ACCORD WITH THE FIRST-PHASE AUTHORIZATION OF THE SAN JUAN-CHAMA PROJECT.

By virtue of its status as an agency of the State of New Mexico, the New Mexico State Engineer's Office is subject to New Mexico's Inspection of Public Records Act (NMSA 1978, Chapter 14, Article 2). Section 14-2-1 of this Act states that every person has a right to inspect any public records of this State save those which are specifically excepted. Section 14-2-8 sets forth the requirements for a written request to view such records and the requirement that the custodian of those records permit the inspection within fifteen (15) days or explain in writing, within three (3) business days after receipt of the request, when that request will be acted upon.

I look forward to your timely written reply in compliance with provisions of the New Mexico Inspection of Public Records Act as stated above.

Sincerely,

Steve Cone
for "electors Concerned about Animas Water" -- CAW --
(505) 327-0743

multiple cc's not listed

A-LP CENTRAL

<http://www.angelfire.com/al/alpcentral>

in defense of the Animas & LaPlata rivers
