



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
SANTA FE

John R. D'Antonio, Jr., P.E.
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March 22, 2005

Mr. John Stomp
City of Albuquerque
Post Office Box 1293
Albuquerque, New Mexico 87103

Re: San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement; Comments by the City of Albuquerque.

Dear John:

Transmitted herewith for your consideration is John Whipple's memorandum addressing many topics associated with the issues you have raised regarding the proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, the possible impacts of the settlement on San Juan-Chama Project water supplies, and the City of Albuquerque's comments on the settlement. DL Sanders' legal analysis of the City's request that the San Juan-Chama Project no longer be required to share in shortages with the Navajo Reservoir water supply contract uses is attached to Mr. Whipple's memorandum. Based on the memorandum and analysis, I offer the following observations.

The shortage sharing provisions of Section 11(a) of the Act of June 13, 1962, Public Law 87-483, allow for an effective sharing of available runoff between the co-equal priorities of the San Juan-Chama Project and the Navajo Reservoir water supply contracts consistent with state law. Section 11(a) of the Act allows for Navajo Reservoir operations to cover the administration of runoff as between the project and the reservoir supply for long periods of time to the benefit of the San Juan-Chama Project, only requiring pro-rata sharing of the runoff available above Navajo Dam in years of shortage. The proposed legislation to authorize the Settlement Agreement would provide an additional protection to the San Juan-Chama Project by clarifying that in a year of shortage, the project would be allocated a diversion of 135,000 acre-feet of water, less its pro-rata share of shortage of runoff, which amount if physically available likely would be sufficient both to fulfill its contract deliveries and replenish some amount of storage in Heron Reservoir even though at the same time Navajo Reservoir contract deliveries are shorted and Navajo Reservoir storage

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remains essentially fully depleted. The proposed legislation also would amend Section 11(a) to provide a new constraint on Navajo Reservoir water supply contracts whereby the San Juan-Chama Project and Navajo Reservoir contracts approved by Congress prior to or by the proposed legislation would not be required to share in shortages with any Navajo Reservoir contracts that may be approved subsequent to the proposed legislation, if any.

In addition, the proposed settlement would protect the water supplies available to the United States with the June 17, 1955, priority for both the Navajo Reservoir water supply contracts and the San Juan-Chama Project by limiting the senior reserved rights for the Fruitland and Hogback irrigation projects to existing acreage under the ditches without consideration of practicably irrigable acreage or possible expansion of the projects by 11,000 acres as described in Section 11(c) of Public Law 87-483. Further, the proposed settlement would provide for a total contract demand for water from Navajo Reservoir of about 400,000 acre-feet to 430,000 acre-feet per year, on average, as compared to 508,000 acre-feet per year of diversion for the Navajo Indian Irrigation Project authorized by Public Law 87-483, plus 23,000 acre-feet per year of diversion for the Hammond Irrigation Project, plus unspecified amounts for municipal and industrial use contracts. The Settlement Agreement would require the Navajo Nation to make application to the State Engineer to increase its diversions over 353,000 acre-feet per year to further develop its rights related to the Navajo Indian Irrigation Project if any portion of the rights is used for purposes other than to irrigate lands within that project or to supply water to the Fruitland and Hogback projects. Under the settlement, the State Engineer could only approve such an application if the increase in diversions would not impair existing water users, including the San Juan-Chama Project and other Navajo Reservoir water supply contractors.

The proposed settlement and settlement legislation thus enhances the substantial bargain previously obtained by the San Juan-Chama Project interests in 1962 as to the allocations of runoff above Navajo Reservoir between the project, Navajo Reservoir water supply contracts and the Fruitland and Hogback irrigation projects. Several substantial protections and benefits to the San Juan-Chama Project were negotiated in consideration of the comments provided on earlier drafts of the settlement by the City of Albuquerque through Mayor Martin Chavez and yourself.

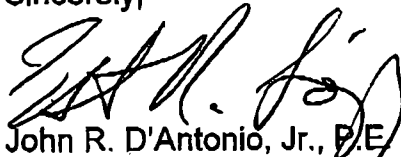
I believe that the proposed settlement should be compared to a future without settlement, which is not the same as the status quo. Without settlement, the Navajo Nation will litigate its water rights claims, and the potential future demands on the runoff originating above Navajo Reservoir under a litigation scenario are greater than those that would occur under the proposed Settlement Agreement. Some of the protections afforded the San Juan-Chama Project by the proposed settlement also

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would not be obtained through litigation. On balance, it is my opinion that this settlement ought to be embraced.

Please call John Whipple to discuss any questions or comments you may have regarding his enclosed memorandum, and, if necessary, have your attorneys call DL Sanders to discuss legal issues should you have any. Naturally, matters of public policy may be discussed with me. Do not hesitate to have Mayor Chavez call me should he so desire.

Sincerely,


John R. D'Antonio, Jr., P.E.
New Mexico State Engineer

copy: Senator Pete V. Domenici
Senator Jeff Bingaman
Congressman Tom Udall
Congresswoman Heather Wilson
Congressman Steve Pearce
Erik Webb
Nate Gentry
Mike Conner
Mayor Martin Chavez
Bill Hume
Steve Farris
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