

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

RESOLUTION NO. 2013-02

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SETTLEMENT AGREEMENT WITH THE NEW MEXICO STATE ENGINEER REGARDING APPLICATION NO. 4818 AND RELATED LITIGATION

WHEREAS, on May 12, 1959, the New Mexico State Engineer (“State Engineer”) issued Permit No. 2883 to the United States Department of the Interior (“Interior”) for 49,510 AFY of surface water diversions for New Mexico’s share of the Animas-La Plata Project (“ALP Project”);

WHEREAS, on March 5, 1985, the Joint Powers Agreement formed the San Juan Water Commission (“SJWC”) to acquire water for the use and benefit of all the citizens, municipalities, water users associations and other water users in San Juan County, New Mexico;

WHEREAS, on January 8, 1990, SJWC entered into a repayment contract with Interior for facilities to divert 30,800 AFY and deplete 15,400 AFY of New Mexico’s ALP Project water allocation;

WHEREAS, on December 21, 2000, the Colorado Ute Settlement Act Amendments of 2000 reduced the amount of ALP Project water allocated to New Mexico by 20,580 AFY (depletions), including reducing SJWC’s allocation from 15,400 AFY (depletions) to 10,400 AFY (depletions);

WHEREAS, on January 18, 2001, SJWC filed with the State Engineer an Application to Appropriate the Public Waters of the State of New Mexico (“Application No. 4818”), pursuant to NMSA 1978, Section 72-5-33, seeking to appropriate the water no longer needed for the downsized ALP Project;

WHEREAS, the State Engineer refused to publish SJWC’s Application No. 4818 and SJWC has litigated its right to appropriate water no longer needed for the downsized ALP Project for more than seven years;

WHEREAS, on August 16, 2011, the Eleventh Judicial District Court granted summary judgment to SJWC and ordered the State Engineer to publish SJWC’s Application No. 4818;

WHEREAS, the State Engineer has appealed the Eleventh Judicial District Court’s order to the New Mexico Court of Appeals, where it currently is pending;

WHEREAS, SJWC is a litigant in the Navajo Nation *inter se* proceeding in the San Juan River Basin Adjudication and has objected to the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (“Navajo Settlement”), in part, on the ground that certain terms of the Navajo Settlement conflict with SJWC’s pre-existing rights under Application No. 4818;

WHEREAS, settlement of SJWC’s Application No. 4818 and SJWC’s objections to the Navajo Settlement would resolve expensive and time-consuming litigation;

WHEREAS, SJWC’s Executive Director has negotiated a tentative agreement with the State Engineer to settle both SJWC’s Application No. 4818 and SJWC’s objections to the Navajo Settlement;

WHEREAS, at a meeting on February 6, 2013, SJWC members reviewed the proposed settlement agreement with the State Engineer, and SJWC’s Executive Director and legal counsel fully briefed the members about the terms of the proposed settlement agreement;

WHEREAS, the proposed settlement agreement provides significant benefits to SJWC and all citizens of San Juan County;

WHEREAS, the terms of the proposed settlement agreement are to remain confidential until such time as it is fully executed, and execution is contingent upon fulfillment of certain preconditions;

NOW, THEREFORE, BE IT RESOLVED that:

1. The terms of the proposed settlement agreement with the State Engineer reviewed by SJWC’s members on February 6, 2013, are approved.
2. The Executive Director is authorized to execute the proposed settlement agreement with the State Engineer upon fulfillment of certain preconditions.

PASSED, APPROVED, AND ADOPTED THIS 6TH DAY OF FEBRUARY 2013.

SAN JUAN WATER COMMISSION

