Pecos Basin Water Issues:

Update Regarding Intrepid Water Rights Litigation

A Presentation to the Interim Water and Natural Resources Committee of the New Mexico State Legislature

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Summary of Intrepid/Mississippi/ US Potash Rights

- US Potash began mining potash in Eddy County in 1931 and built a refinery near the Pecos River near Loving.
- In the 1930s and 1940s, US Potash acquired and applied for a cumulative total of over 34,000 acre-feet per year of surface water rights. They had a return flow requirement of approximately 15,000 acre-feet per year, for a total right of withdrawal of 19,836 acre-feet per year.

Summary of Intrepid/Mississippi/ US Potash Rights

- US Potash received licenses for all of these rights.
- Diversions were not measured until 1955.
 Between 1955 and refinery's closure in 1973,
 the average diversion was ~5,000 af/y, and the maximum diversion was ~5,800 af/y.
- Supply in the Pecos River was above the historic diversion amount every year prior to 1965.

Summary of Intrepid/Mississippi/ US Potash Rights

- In the late 1970's, Intrepid's predecessors constructed a new refinery away from the Pecos River that uses groundwater from a separate aquifer.
- Between 1978 and 1995, Pecos River rights were unused except for a small portion exercised for salt processing.
- Between 1995 and 2001, Intrepid entered into a Cooperative Conservation Agreement with the ISC to forbear from using the water rights.
- Intrepid's predecessors filed, and received, multiple applications for extensions of time from the OSE between 1978 and 2017.

Intrepid Litigation

- In 2017 and 2018, Intrepid filed eight applications for temporary changes of place and purpose of use for oil and gas/commercial sales.
- Intrepid received preliminary approvals from OSE to sell/lease 5,700 acre-feet per year.

Intrepid Litigation

- Applications/Approvals were protested by NM Interstate Stream Commission, Carlsbad Irrigation District, Pecos Valley Artesian Conservancy District, and Otis Mutual Domestic Water Association.
- Parties agreed to adjudicate Intrepid's water rights in the adjudication court, and then return to the OSE Hearings Unit for other challenges to the applications (i.e., detrimental to public welfare, contrary to conservation of water in NM).
- Expedited inter se adjudication trial is set for December 2020
 - Discovery closes August 31, 2020

NMISC's Perspective - What's at Stake?

- The unrestricted exercise of Intrepid's claimed water rights will jeopardize the success of the 2003 Pecos Settlement Agreement (Settlement).
- The State of New Mexico, through the support of the legislature, has invested over \$100 million in Pecos River Compact compliance, including the Settlement.
- The Settlement aimed to get at least an additional 10,000 acrefeet per year to the state line so as to ensure New Mexico's compliance with the U.S. Supreme Court's 1988 Amended Decree in *Texas v. New Mexico No. 65*. So far, the Settlement has been successful in keeping New Mexico in compliance.

2003 Pecos Settlement Agreement

Objectives:

 Permanent compliance with the 1988 Amended Decree



- Increased and more stable water supply for CID
- Reduced likelihood of a priority call
- 4. Decrease overall consumptive use to improve hydrologic balance in the basin

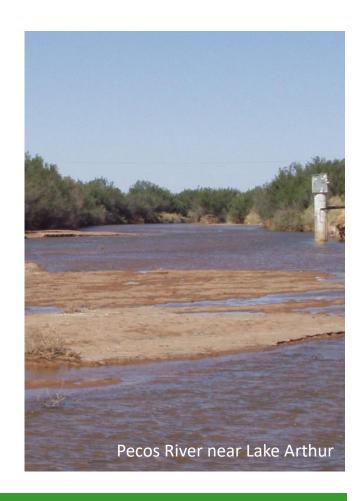
How Does the Settlement Work?

1. Water Rights Purchases

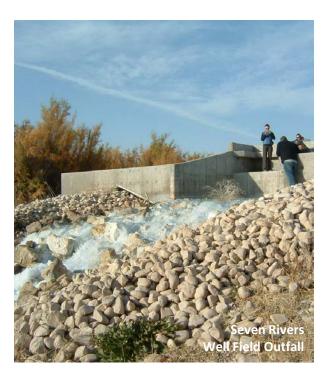
- 4,500-6,000 acres in CID
 - Water rights available for state-line delivery
- 7,500-11,000 acres in the Roswell Artesian Basin (RAB)
 - Artesian water rights available in augmentation well fields

2. Augmentation Well Fields

- 15,750 AF/year capacity
- Purposes:
 - State-line delivery
 - Increased supply for CID



Use of State-Purchased RAB Water Rights for Augmentation of CID Supply



Target Date	Target Supply (AF)
March 1	50,000
May 1	60,000
June 1	65,000
July 15	75,000
September 1	90,000

Use of State-Purchased CID Water Rights for State-Line Delivery

Cumulative Compact Credit	CID Supply	Delivery Outcome
≤50,000 < 50,000 acre-feet >50,000	No Delivery Required CID can re-allocate State-purchased water rights.	
	Delivery Required	
≥ 50,000 acre-feet < 115,000 acre-feet	≤90,000	No Delivery Required CID can re-allocate State-purchased water rights.
	>90,000	Delivery Required
≥ 115,000 acre-feet		No Delivery Required CID can re-allocate State-purchased water rights.

SETTLEMENT

Water Pumped for CID

YEAR	ACRE-FEET		
2010	0		
2011	12,798		
2012	18,884		
2013	12,243		
2014	0		
2015	0		
2016	0		
2017	0		
2018	0		
TOTAL	43,925		

Water Delivered to the State-Line

YEAR	CID Annual Allotment (acre-feet per acre)	Allotment for State-Purchased Acreage (acre-feet)	Water Released to State-Line (acre-feet)
2010	3.2	14,394	17,680
2011	1.4	6,297	0
2012	0.8	3,598	0
2013	2.0	8,996	15,922
2014	3.697	16,629	17,895
2015	3.697	16,629	23,230
2016	3.697	16,629	0
2017	3.697	16,629	0
2018	3.697	16,629	0
		TOTAL	74,727

Pecos River Compact Cumulative Departures - 1952 to 2019

