

# **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 acre-feet 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:

1. Permanent compliance with the 1988 Amended Decree
2. Increased and more stable water supply for CID
3. 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



Pecos River near Lake Arthur

## 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
<i>&lt; 50,000 acre-feet</i>	$\leq 50,000$	<b>No Delivery Required</b> CID can re-allocate State-purchased water rights.
	$> 50,000$	<b>Delivery Required</b>
<i><math>\geq 50,000</math> acre-feet <math>&lt; 115,000</math> acre-feet</i>	$\leq 90,000$	<b>No Delivery Required</b> CID can re-allocate State-purchased water rights.
	$> 90,000$	<b>Delivery Required</b>
<i><math>\geq 115,000</math> acre-feet</i>	--	<b>No Delivery Required</b> CID can re-allocate State-purchased water rights.

## 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
<b>TOTAL</b>	<b>43,925</b>

# Water Delivered to the State-Line

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

## Pecos River Compact Cumulative Departures - 1952 to 2019

