



# United States Department of the Interior

BUREAU OF RECLAMATION  
Lower Colorado Region  
Phoenix Area Office  
6150 West Thunderbird Road  
Glendale, AZ 85306-4001

IN REPLY REFER TO:

PXAO-1500

2.1.4.17

**MAY 31 2019**

VIA ELECTRONIC MAIL AND U. S. MAIL

Honorable Darr Shannon  
Chairwoman  
New Mexico Central Arizona Project Entity  
P.O. Box 386  
Cliff, New Mexico 88028

Subject: Clarification Regarding Environmental Analysis for the New Mexico Unit of the Central Arizona Project

Dear Chairwoman Shannon:

As you know, the Bureau of Reclamation (Reclamation), in partnership with the New Mexico Interstate Stream Commission (Commission), is undertaking an environmental analysis of the New Mexico Unit of the Central Arizona Project (Unit). In our letter dated March 28, 2019, Reclamation formally advised the New Mexico Central Arizona Project Entity (Entity) that an environmental analysis of the Unit was not likely to be complete by December 31, 2019, the statutory timeframe that would make the Unit eligible to receive additional construction funding (Enclosure 1). The Entity's board members discussed Reclamation's letter during a special board meeting on April 15, 2019, and several members expressed surprise with Reclamation's March 28 letter and inquiring why the statutory funding deadline could not be met (Enclosure 2).

Based on questions about project delays and Reclamation actions that were raised during the special board meeting, this letter further explains Reclamation's efforts to date regarding the Unit, including: (1) Reclamation's statutorily-designated role in the environmental analysis of a Unit; (2) the initial National Environmental Policy Act (NEPA) schedule; (3) Reclamation's efforts to complete environmental analyses of the Unit despite numerous project changes, and repeated delays in receiving requested design information about the Unit, which correspondingly impeded and prolonged completion of environmental analyses; and (4) the current schedule for completion of the NEPA process.

## **(1) Statutory Authorization for a Unit**

It is important to first clarify the statutory authorization for a Unit and Reclamation's role in the environmental analysis of a Unit. Section 212 of the Arizona Water Settlements Act of

2004 (2004 Act)<sup>1</sup> authorized the Unit<sup>2</sup> with certain operational parameters and identified potential funding sources. In Section 212(h) of the 2004 Act, Reclamation was designated as the lead federal agency with respect to environmental analyses, specifically including the NEPA.

The 2004 Act requires the State of New Mexico (State) to choose whether it will pursue the Unit. Under Section 212(c) of the 2004 Act, the State needed to declare its intent to build a Unit during a 10-year period ending in December 2014. The State made this declaration in November 2014, when the Entity was not yet created. The Entity was later created under New Mexico state law in July 2015, and it began to consider a Unit to benefit its constituents. The Entity, the Commission, and Reclamation entered into agreements for the environmental analysis in November 2015, so that planning and review for the Unit could commence in earnest.

Section 212(j) of the 2004 Act establishes a deadline for a potential funding source for the Unit related to NEPA: a record of decision (ROD) concluding the NEPA review and approving the Unit must be issued by December 31, 2019, if the Unit is to have access to certain additional construction funds, \$34 million in 2004 dollars (hereafter, “Additional Construction Funding”).<sup>3</sup> The Entity has the option to pursue a Unit regardless of whether the Additional Construction Funding is available.

## **(2) The Initial NEPA Schedule**

Pursuant to Section 212(h) of the 2004 Act, Reclamation must comply with NEPA and all other applicable environmental laws and regulations on the proposed Unit consistent with the thoroughness that NEPA and these other statutes require. Before environmental analysis began through the formal start of the NEPA process, Reclamation worked extensively and regularly with the Entity to explain the NEPA process and information requirements for the NEPA review. This coordination has included at least monthly meetings on project status and NEPA requirements. Reclamation briefed the Entity and the Commission on January 14, 2016, on the initial EIS schedule, along with the information that would be required prior to initiating preparation of the EIS. Reclamation described the level of design detail needed to initiate and complete the NEPA analyses. That 3-year NEPA schedule assumed completion of initial design before the formal start of the NEPA process (initiation of formal public scoping with publication of a Notice of Intent to Prepare an EIS in the *Federal Register*), and availability of more detailed design information at the Draft EIS stage. This 3-year schedule provided sufficient time for the

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<sup>1</sup> Pub. L. No. 108-451, 118 Stat. 3478 (Dec. 10, 2004).

<sup>2</sup> The Colorado River Basin Project Act of 1968, Pub. L. No. 90-537, 82 Stat. 885 (Sep. 30, 1968) authorized a project similar to the Unit described in the 2004 Act, but it was not constructed.

<sup>3</sup> Section 212 (j)(2) of the 2004 Act contains provisions to potentially extend the deadline for Additional Construction Funding: “If New Mexico exercises all reasonable efforts to obtain the issuance of such Record of Decision, but the Secretary is not able to issue such Record of Decision by December 31, 2019, for reasons outside the control of the State of New Mexico, the Secretary may extend the deadline for a reasonable period of time, not to extend beyond December 31, 2030.”

Entity's project design to proceed in parallel with EIS development. Reclamation subsequently has further stated that changes to the project description (such as design changes) and delays in providing Reclamation with needed information would delay the NEPA schedule. In early April 2016, the Entity requested design authority for the Unit pursuant to Section 202(c)(3) of the 2004 Act. Reclamation confirmed the Entity's design authority by letter dated May 2, 2016.

Reclamation formally initiated the NEPA process in June 2018, despite having insufficient information from the Entity regarding the design and operation of a Unit to adequately conduct NEPA review. Ordinarily, Reclamation would not have begun the NEPA process until the Entity provided additional design and operational information beyond what the Entity had available at the time. This information is generally needed to evaluate the effects of a proposed project on resource areas, such as the effect of water diversions on downstream hydrology and biology, and for the public to be able to comment on such effects. However, Reclamation initiated the formal NEPA process in June 2018 with the limited information available so that the Entity could have a chance of meeting the statutory deadline and preserve the option for the Additional Construction Funding. This compressed NEPA schedule was based on a commitment from the Entity to provide the necessary detailed design information in time for analysis at NEPA milestones.<sup>4</sup>

### **(3) Reclamation's efforts to assist with Unit planning and to complete NEPA review**

Board member questions and comments during the Entity's April 15 meeting expressed surprise at the NEPA schedule delays and questioned the cause of these delays. Since 2004, Reclamation has made longstanding efforts to help the State, and later the Entity, plan for a Unit, especially once the State declared its intent to pursue a Unit in 2014 and after the Entity was established in 2015. Reclamation assisted various Unit planning efforts (including but not limited to: formal technical support to evaluate stakeholder proposals in 2013; project evaluation in 2014; and a 2015 value planning study). Reclamation also has provided extensive assistance and guidance regarding the NEPA process.

As noted in our March 28, 2019 letter to the Entity's Chair, Ms. Darr Shannon, the Entity's amendments and numerous updates to the proposed action, as late as April 2019, are a primary source of delay in the NEPA schedule. The Entity submitted its first formal proposal for the Unit to be analyzed under NEPA, known as the proposed action, in July 2016. The Entity revised the proposed action once in December 2017, four times in 2018 (February, March, July, October), and twice in 2019 (January and April). Of the seven times the Entity changed the proposed action, four of these changes were made after the June 2018 formal start of NEPA. Many of these project changes were significant deviations from the original proposed action. For example: a December 2017 change was required because the Entity did not secure landowner permissions to construct a diversion feature; an October 2018 change eliminated a storage pond, two wells, reduced the length of a reconstructed ditch, and relocated another well; and the most recent change dated April 9, 2019, involved changing a project reservoir from lined to unlined. Additional changes to the proposed action continue to be discussed by the Entity as of the date of

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<sup>4</sup> Questions regarding missing and unknown project details were among the main comments received from the public during the public scoping period for the EIS.

this letter. Changes to the proposed action change the NEPA schedule because, when the proposed action changes, calculations, estimations, tables, maps, and conclusions in the NEPA analysis must be reexamined, and may need to be redone, which takes time and money. Similar to project changes, the Entity has sent nine versions of project cost calculations for the Unit since October 2017; Reclamation received eight of these after the formal start of the NEPA process. These project costs are required to complete the economic analyses for the EIS and establish financial viability for the project.

Another primary source of delay in the NEPA schedule has been the extended period of time the Entity has taken to respond to Reclamation's requests for specific design information needed to conduct the NEPA analysis. Reclamation sent the Entity numerous letters and emails detailing data gaps and identifying when information was required in order for the NEPA process to remain on schedule. Some of these include the following:

- A May 15, 2018 joint letter from Reclamation and the Commission detailing data needs with corresponding due dates for each. This letter stated that “[d]elays in providing this data will further compromise the ability to meet the December 31, 2019 deadline for a ROD, and may have additional negative consequences” (Enclosure 3).
- An August 1, 2018 Reclamation email to the Entity with a list of required design information including overdue information from the May 15 letter. (Enclosure 4). Reclamation notified the Entity that “we will not meet the August 3rd date for the draft [Description of Proposed Action and Alternatives (DOPAA)] because of the missing data.” Reclamation also requested that the Entity “please get us the data as soon as possible . . . so we can move forward with the DOPAA and the rest of the EIS.”
- The Commission then emailed the Entity on August 14, 2018, notifying the Entity that the NEPA schedule was already delayed because the Entity needed additional time to provide technical information (Enclosure 5). This communication also requested a meeting “to discuss this critical issue” and stressed “again that it is essential to the success of the NEPA process that certain prioritized data needs related to the Entity’s proposed action be addressed immediately.”
- A September 28, 2018 Reclamation email to the Entity with a list of overdue information that still had not been resolved and restating that the NEPA analysis cannot proceed without the required information.

Despite multiple emails and meetings between Reclamation, the Commission, and the Entity during the summer and fall of 2018 to follow-up on the essential design information requested in the May 15, 2018 letter, the Entity provided few answers in a timely manner. The Entity provided several responses to Reclamation's requests for design information as late as March and April 2019, well after the start of the NEPA process. While the Entity ultimately provided Reclamation with a majority of the requested design information, the latest submittal

came 9 months after the initial request, which delayed completion of the NEPA analysis and extended the NEPA schedule.

Because the Additional Construction Funding is tied to the NEPA schedule, Reclamation worked diligently and with a sense of urgency to follow-up with the Entity regarding changes to the proposed action and unresolved data requests. For example, in 2018 alone, Reclamation and the Commission arranged five face-to-face meetings in Albuquerque with the Entity to facilitate and expedite the Entity's development of the proposed action. In addition to these meetings, Reclamation has reached out to the Entity to address its changes to the proposed action and information gaps through numerous telephone calls and emails. In these meetings and discussions, Reclamation consistently reiterated that both the delayed information and the substantial changes to the proposed action were delaying essential NEPA evaluations and the overall NEPA schedule.

#### **(4) Current Schedule for Completion of the NEPA Process**

Reclamation informed the Entity, in part detailed above, numerous times that delays in providing essential design information would and had delayed the NEPA schedule. In March 2019 Reclamation evaluated the NEPA schedule and determined that the December 31, 2019 ROD date likely could no longer be met given the combination of design delays, multiple changes to the proposed action, and remaining time needed for environmental analysis of those designs. Reclamation also determined that no additional amount of staffing or financial resource commitment would have allowed the EIS to meet the December 31, 2019 ROD date. Reclamation informed the Entity of this conclusion in a telephone call on March 15, 2019. Reclamation followed up with the March 28 letter to Ms. Darr Shannon requesting verification that the Entity wanted Reclamation to continue work on the NEPA analysis despite the likely delay in the ROD.

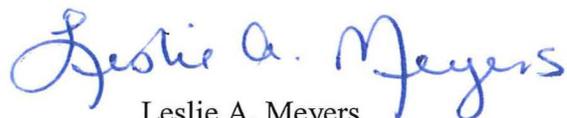
The Entity's April 22, 2019 letter to Reclamation states its desire to proceed with the NEPA analysis for a Unit. If the proposed action remains in its current form, the target date for a ROD is June 2020. Reclamation continues to have full confidence in its NEPA contractor and has been impressed with the work and planning its team has conducted, particularly given the challenges associated with changes to the proposed action and information delays.

For the reasons above, and others, a NEPA schedule resulting in a ROD before December 31, 2019, can no longer be met. The current project schedule has a ROD issuance date of June 2020. The project schedule is a function of the timing of project revisions by the Entity and is contingent on timely responses to future data requests from the Joint Leads.

Reclamation remains committed to the working relationship that it has established with the Entity, and looks forward to completing the NEPA process. We understand that the Entity's development of a Unit is an important part of developing water resources in this arid area of New Mexico, and we stand ready to continue working with the Entity as it pursues a Unit.

Reclamation would be happy to meet with the Entity at its earliest convenience to discuss the best path forward for this project.

Sincerely,



Leslie A. Meyers  
Area Manager

Enclosures – 5

cc: Mr. John D'Antonio, Jr.  
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Mr. Anthony Gutierrez  
Executive Director  
New Mexico Central Arizona Project Entity  
P.O. Box 386  
Cliff, New Mexico 88028

Mr. Vance Lee  
Vice-Chairman  
New Mexico Central Arizona Project Entity  
305 Pyramid Street  
Lordsburg, New Mexico 88045

Mr. Van J. (Bucky) Allred  
Secretary  
New Mexico Central Arizona Project Entity  
P.O. Box 507  
Reserve, New Mexico 87830

Mr. Pete Domenici, Jr.  
Domenici Law Firm, P.C.  
320 Gold Avenue SW, Suite 1000  
Albuquerque, New Mexico 87102  
(w/encl to each)



## United States Department of the Interior

BUREAU OF RECLAMATION  
Lower Colorado Region  
Phoenix Area Office  
6150 West Thunderbird Road  
Glendale, AZ 85306-4001

IN REPLY REFER TO:

PXAO-1500  
2.1.1.04

**MAR 28 2019**

Ms. Darr Shannon  
Chairman  
P. O. Box 386  
Cliff, New Mexico 88028

Dear Ms. Shannon:

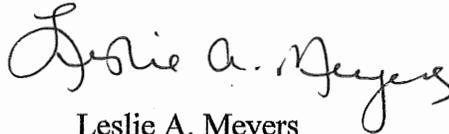
This letter is a follow up to a telephone conference call on March 15, 2019, where you and my staff discussed the fact that it is becoming increasingly unlikely that the Secretary of the Interior will have sufficient information to issue a Record of Decision by December 31, 2019. As you know, the United States Bureau of Reclamation and the New Mexico Interstate Stream Commission (collectively, the Joint Leads) have been conducting a process under the National Environmental Policy Act to analyze the impacts of, and reasonable alternatives to, the proposed New Mexico Unit of the Central Arizona Project (CAP). In 2004, Congress authorized the development of a New Mexico Unit of the CAP under certain conditions set forth in the Arizona Water Settlements Act (AWSA). The New Mexico CAP Entity submitted: an initial proposal for a New Mexico Unit in July 2016; amended proposed actions in December 2017, February 2018, July 2018, and August 2018; and numerous updates to the proposed action in 2018 and 2019. In an effort to meet the December 31, 2019 Record of Decision deadline for additional construction funding, the Joint Leads issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) on June 12, 2018, and have prepared a description of the Entity's Proposed Action and many components of a Preliminary Draft EIS with the available information. Given the time remaining and the incomplete status of the Preliminary Draft EIS, it is unlikely that a Record of Decision could be issued by December 31, 2019.

Please confirm whether the Entity would like the Joint Leads to continue expending resources toward the completion of an EIS for a New Mexico Unit. If the Entity would like the Section 212(j) funding to remain available, I suggest that you formally request that the Secretary extend the AWSA's December 31, 2019 deadline for a Record of Decision, pursuant to the discretion vested in the Secretary by Section 212(j)(2). The Entity has spoken about the potential for additional engineering/design work; in your extension request we recommend that you also consider the time required for these activities.

Please note that this letter is not an indication whether any extension request will be granted or denied. Any decision regarding an extension will be made by the Secretary, pursuant to Section 212(j)(2) of the AWSA.

As discussed previously, we would like to meet to discuss the EIS schedule should the Entity desire to request an extension. Thank you for your attention to this matter, and I look forward to hearing from you.

Sincerely,



Leslie A. Meyers  
Area Manager  
Phoenix Area Office  
Bureau of Reclamation

cc: Ali Effati  
Gila Basin Manager  
New Mexico Interstate Stream Commission  
Bataan Memorial Building, Room 101  
Santa Fe, NM 87504-5102

**NEW MEXICO CAP ENTITY  
SPECIAL MEETING MINUTES  
APRIL 15, 2019  
10:00 AM**

MEMBERS PRESENT OR ABSENT:

Catron County – Van (Bucky) Allred  
Grant County – Billy Billings  
Hidalgo County – Joel Edwards  
Luna County – John Sweetser  
City of Deming – Jim Massengill  
City of Lordsburg – Absent  
Village of Santa Clara – Absent  
Grant Soil & Water – Ty Bays

Hidalgo Soil & Water – Darr Shannon  
San Francisco Soil & Water – Howard Hutchinson  
Fort West Irrigation Assoc. – Esker Mayberry  
Gila Farm Irrigation Assoc. – Joe Runyan  
Gila Hot Springs Irrigation Assoc. – Allen Campbell  
Upper Gila Irrigation Assoc. – Robert Agnew  
Interstate Stream Comm. – Marcos Mendiola

- I. Meeting was called to order by Chairman Shannon at 10:00 am at the Grant County Commission Chambers; 1400 Highway 180 East; Silver City, NM. Pledge of Allegiance was recited by all.
  
- II. Roll Call:
  - a. NM CAP Entity Parties
  - b. Telephone Guests:
    1. Dara Parker, Senator Heinrich Office
    2. Dominique Work, NM Interstate Stream Commission
    3. John Rasmussen, Bureau of Reclamation – Phoenix Office
  
- III. Approval of the Agenda  
Moved by Ty Bays and seconded by Howard Hutchinson that we approve today's Agenda. All in favor. Motion passed.
  
- IV. Approval of the Minutes
  - a. Regular Meeting Minutes of April 12, 2019  
Moved by Billy Billings and seconded by Esker Mayberry that we approve the Regular Meeting Minutes from April 2, 2019. All in favor. Motion passed.
  
- V. Public Comment (limited to 3 minutes, if anyone would like to speak longer than 3 minutes, please make your request to the Chairman at least 6 working days prior to the meeting).
  1. Mary Burton \_\_\_\_\_ - I am witnessing struggles that we in this County are going through. (somewhat inaudible).....
  2. Allyson Siwik – Regarding the BOR letter, requesting an extension....encouraging the NM CAP Entity Board to not ask for an extension.

3. Donna Stevens – If the EIS cannot be completed by the deadline, does not want an extension. (somewhat inaudible)
4. S. Gonzales – A water protector...time to let it go (very inaudible)
5. Norm Gaume – NM CAP Entity provided incorrect information to the Legislature during the 2019 session.

VI. Old Business

- a. Adjustment of Completion Dates on Scopes of Work for CAP 1901P and CAP 1902P.

1. Anthony Gutierrez – We approved two work orders at our March meeting. Because of delays in the process regarding the additional funds for professional services, we need to extend these for 30 days. CAP 1901P will now be extended to April 30, 2019; and CAP 1902P will be extended to May 9, 2019.

Moved by Ty Bays and seconded by Esker Mayberry to extend the deadline on these two work orders to April 30, 2019 and to May 9, 2019 respectively. All in favor Motion passed.

VII. New Business

- a. Letter from Bureau of Reclamation Relating to Concerns of the EIS Schedule and the December 31, 2019 Deadline. Potential Response Identifying Path Forward.

1. Anthony Gutierrez – I was not available for the March 15 meeting. The letter states specifics on the proposed action and subsequent amendments to the proposed action. I don't really agree with some of these. We provided an amendment in July 2018...after the Notice of Intent. Our engineers supplied and updated the requests from the BOR for a better understanding of the proposed action. We have numerous updates to the proposed action, trying to fill data gaps, and provide additional information for those components. The actual language in the letter is stating that the possibility of a ROD by the end of 2019, is not likely possible. Why is the EIS behind schedule? We have not been able to understand why this cannot be met. We haven't had any documents or discussions until we got this letter from the BOR not being able to meet this deadline. We need to know why it can't be met. There are many questions that need to be answered regarding this extension. They are analyzing the proposed action and also alternatives. Every time they have to analyze the proposed action, they also have to readdress the alternatives. The final EIS will not be available until 2021.

2. Pete Domenici, Jr. – First of all we received this letter between the BOR and the Chairman. We also received a letter responding to questions I have asked for. The importance of these answers were somewhat expected. We tried to identify how the \$62M will be available, and the projects can be spread out regarding the funding. Many projects are moving forward, but in a given year, we might get \$10M. The business plan to be developed does something similar...it lays out four steps to building the NM Unit, and the first two steps are about millions of dollars. The NEPA documents which are allowed, and we can propose other projects as long as they are covered by the ROD. The \$62M is extremely valuable to us. I agree with Anthony, it provides a baseline that will have a shelf life of five to ten years...if that doesn't work we have a business plan. I appreciate the BOR asking this question in this letter. The statute allows extension up to 2030. How you get an extension...we have tried to see how to get this done. We spoke with their legal counsel, and didn't get a lot of guidance, or pushback or negatives. This decision comes out of Washington, DC. The discussion focused on a three to four month

scheduling challenge. There was a Federal government shutdown for about 5 weeks. How much the shutdown affected the schedule...we don't really know. It is too early to decide to write a letter to request an extension. We just found this out recently. Certainly, my feeling is we want at some point we want to obtain an extension...maybe not request it, but obtain it. It is in all of our interest to get an extension.

3. Allen Campbell – I can't sleep when something is irritating me. I concur that Anthony's statement is correct. I would request if this is political...or if it is for necessity for more time. Political....NEPA has all been constructed by our President. If we request further reasons specific regarding to this request for extension...Mr. Domenici is spot on regarding CUFA...The last comment is the people who are opposing this are the ones to get rid of \$68T of fossil fuel.

4. Joe Runyan – A few components were hurdles and slow down the project. I concur that we find the answers to this letter.

5. Anthony Gutierrez – There are things they have to do with the cooperating agencies, and I am guessing, but I think those are things that need to be done.

6. Howard Hutchinson – I have the same distress as Mr. Campbell with this issue. I am not in a great mood today because my dog got me up at 4:30 this morning. We have gone through this process for 15 years and expended a great deal of money. We have exhibited some delays, but those delays and the money spent was with Governor Richardson's administration where they forced the people of this reason into over 200 studies with many many delays. There was at least \$4M in expenditures during that period which didn't do much good to move us forward. I want to thank Norm Gaume for having done his IPRA request for the Draft EIS. That allowed me to do my own IPRA request, and I did get a draft back. I found that the contractor for the BOR was seriously erring on the baseline for economic analysis, special impact analysis, cultural impact analysis, scope of area being examined..... Basically, it is a disaster if it had been released as the public comment EIS. In my communication as a cooperating agency with the joint lead agencies..I pointed out these deficiencies in that draft. The last an most recent cooperating agency conference call...they need to start all over again. I think that is really the basis for this letter from the BOR. I believe they were caught with their pants down. I would like to again thank Mr. Gaume to do the IPRA request, as it opened up the ability to see how flawed that document was. The contractor that is doing the EIS document has no concept of NM Water law or concept of the history of this area. When they started this off it was January of 2018 when we had our initial meeting with the contractor regarding the EIS and producing the NOI. Shortly after that, myself and Mr. Allred and others on this Board received inquiries asking to assist with land owners to do biological surveys on properties to determine the presence of endangered species. We have these requests about a week or two before the close of the period that they could even do the surveys for some of these species. At that point, I was thinking why would this contractor consider this to be one of the more serious endeavors that they were to do to complete this document. It would have been scheduling immediately after they were awarded the contract. Would have immediately been seeking the property owners to contact to get to their property to do these surveys. This was alarming...then we realized they could not get the surveys done because they have to be done at specific periods of time. We were basically going to have to assume that these endangered species were present in the construction areas, and that they would be affected and trigger immediately in formal consultation with the USFWS and a biological assessment presence, and a biological opinion from the USFWS. All of this has

indicated to me that the contractor selected to do this EIS is either grossly incompetent or deliberately fouling up the waters. I think if anybody is going to request an extension, it should be the BOR and the ISC, but particularly the BOR. Because when we did our agreement with the BOR, a number of us raised the issue as to whether we should let the BOR to hire the person or company to do this EIS. The BOR insisted that they be the ones to hire and complete the EIS. I think I know of several companies that are well suited and have demonstrated the capacity to produce well drafted EIS that we could have sought out as a Board. But the BOR insisted and would not allow us to go forward without that being in our contract agreement. Here we sit...I have heard back from the engineers and the BOR, and the environmental coordinator for the BOR and the contractors for the EIS have continuously requested information more and more and more.....I am looking for some of the information being requested, and it involves considerations of design and construction that are beyond the EIS requirements. The concept of how to do an EIS is to look at the design, look at the footprint, and make determinations if there will be impacts that occur within that footprint. Going out further after you get a ROD....you get your design in, done your basic analysis, but there are details to follow through with. There will have to be drilling to occur to factually examine the geological formation in these project areas. We are not going to spend money to do that before we have a ROD. There is concrete involved...we are not going to go out and pay for concrete before we have a ROD....we will not buy pumps, pipe, etc...that keep popping up by this contractor. BOR...do your EIS on the footprint and the basic design. It looks to me we are going beyond 30% design with our engineer and the contractors. We should tell them...move forward and by God we need to get this done within the one year period just like the Secretary of Interior and President of the United States ordered. If it takes 24 hours a day 7 days a week to get that done... GET AFTER IT. The implication in this letter is that this Board has failed to perform and is responsible for the delay and that IS NOT FACTUAL. That contractor is right now having to go back in because of my comments an correct all the errors in the internal draft. If he doesn't correct them, then this cooperating agency is going to object to the publication of this EIS to the public because it is so flawed.

7. Allen Campbell – I believe there is sufficient malfeasance involved. I suggest we burn through a little more of the CAP money, and have our attorney write a letter in stronger language to the BOR.

8. Howard Hutchinson – I think an Inspector General from the Department of Interior should be assigned to look at what has been going on here.

9. Chairman Shannon – Mr. Gutierrez – do we have two decisions to make regarding this letter?

10. Anthony Gutierrez – Should we continue to move forward and the other decision is doing research on why the letter was sent, and that will take some time. I think we should address the issue on the EIS.

11. Ty Bays – The Cliff Gila Valley is the most studied river regarding endangered species as there is. When they study the endangered species, they have to get a permit from the USFWS and yet this contractor seems to not be able to get this information from the USFWS. This is a complete joke. I think they should move on and get the work done.

Moved by Ty Bays and seconded by Allen Campbell that we do continue expending resources toward the completion of the EIS for the NM Unit.

12. Howard Hutchinson – the next item on our agenda is looking at this project. Some of the figures and timelines in this document...I would endorse this motion, but I think we should...in our communications find out why we are in the quandary. We should be insisting that the money we have already paid them be adequate for what we are doing. This Board has hired an engineering firm to design out these plans, and now the BOR is going to take their engineering staff and go through these plans...or what they are going to do with them. The money they are spending is more than we have spent to generate our plans in the first place. At our last meeting, Mr. Schultz pointed out that the BOR used to actually design and build these projects out of their internal funds. The AWSA sort of put that burden on us, but to have to go back and spend this money for their engineering reviews internally...that should be part of the communication that goes forward when we inquire what their delay is.

13. Billy Billings – Relayed to Mr. Hutchinson, Mr. Campbell, Mr. Domenici, and Mr. Gutierrez a huge thank you for all their research and in depth explanations regarding this issue. Again...moved by Ty Bays and seconded by Allen Campbell that we do continue expending resources toward the completion of the EIS for the NM Unit. All in favor. None opposed. Motion passed.

b. Bureau of Reclamation Bi-Annual Project Plan for period of July 1, 2019 to June 30, 2021.

1. Anthony Gutierrez – This is a bi-annual project plan from the BOR..it is a record of funding and uses. Dominique, we have this on our agenda because it was supposed to be on the Agenda for the ISC.

2. Dominique Work – The final agenda is due 72 hours before the meeting...As of right now, I have not heard anything because right now we do not have a Director.

3. Anthony Gutierrez – This plan goes out to 2021, and so I do recommend approval of this document.

4. Chairman Shannon – Does anyone have any questions of Mr. Gutierrez regarding this bi-annual plan?

5. Howard Hutchinson – On page 4, this has work to be completed in 2021...so that goes from July 2020 to June of 2021. I think this is telling us that the BOR does not intend to complete the EIS project within the one year period designated by the Secretary of Interior and the President of the United States. What we have here is a failure to communicate....we were told in the cooperating agency conference call that we could expect the draft EIS by the middle of May of this year. The cooperating agencies would receive the internal draft by the end of April and we would be given a two week period to review and then it would be published in the Federal Register. I don't know what is going on in Phoenix, but I don't know what other recourse we have but to approve this. That is tacitly approving their failure to complete this project in a timely manner. I have very mixed feelings about this. We should be on course for a ROD for December of 2019. Are we approving of them to extend the time period to vote on this?

6. Pete Domenici, Jr. – I have questions for Dominique...I am concerned about the same page that Howard is talking about. It is page 5 in my package...it says the two categories of description of work...It is the National Environmental Protection....on both of these I am concerned about FY 2021 in a document that we approve. I would like to see that work only if necessary, but I contemplate and I don't agree that the ROD will come out until 2021.

7. Dominique Work – The BOR has to provide a bi-annual project plan every year, and a tentative one the following year. We feel it would be imprudent to allocate any money past 2020 in case the project is not done. The issue is that nobody wants to find themselves stuck if the project is not finished.
8. Anthony Gutierrez - I don't think it is the dollar amount...we would like to anticipate that a ROD would be issued in 2020 not in 2021. That would extend it past June 30, 2020.
9. Dominique Work – But the final EIS must come before the ROD.
10. Anthony Gutierrez – I don't see why we would want to push it back an additional 4 months.
11. Dominique Work – The schedule that was published...we would expect it to be much further along than we are now. I think BOR is being cautious because of other unforeseen delays.
12. Pete Domenici, Jr. – My request would be to move the work to be completed during 2021 and have it just above the NEPA contract, and say something about it being completed in 2020.
13. Dominique Work – I think you should address that request to the BOR.
14. John Rasmussen – Could you send that request to me in an email?
15. Chairman Shannon – So you would like Mr. Gutierrez to request moving this wording around to be sent to you in an email?
16. Dominique Work – We meet on Friday of this week, and I do not think this gives us enough time.
17. Allen Campbell – I have been a contractor for a long time. There is always a timeline, and 8 months before the time of proposed culmination, I would never consider asking for an extension that early first of all. I would honor my contract which they should be honoring our contract as we are paying them....after the point of delivery....I would be cautious. This is how business is done. This is how the standards work. This is B\_\_\_\_S\_\_\_\_\_.
18. Chairman Shannon – and you are referring to the bi-annual plan, correct?
19. Allen Campbell – Yes
20. Ty Bays – I am not a lawyer, but I do not see how we can approve this bi-annual project. We would be accepting their dates, so I think we should reject this plan and request that they clarify the dates, the NEPA, and clarify this into a format for a schedule.  
Moved by Ty Bays, and seconded by Allen Campbell that we do reject this bi-annual plan and request clarification of the dates.
21. Howard Hutchinson – On page 5 regarding Cultural Resources, we see the same problem as the contract is under 2021. I think that everything needs to be completed to have the EIS produced. The graphic study...cultural resources, consultation under the National Historic Preservation Act...I agree with Mr. Bays and his motion. I do not know how we can approve this.
22. Pete Domenici, Jr. – What is the cultural resources status? There is an awful lot of work that still needs to be done.
23. John Rasmussen – This should be done before the EIS.
24. Joe Runyan – Could Dominique give her explanation please?

25. Dominique Work – This document regarding the BOR bi-annual plan....I do feel very cautious regarding this plan. It seems dangerously optimistic to assume that everything should be done in 2020.

26. Joe Runyan – This is complicated. I side with the cautionary view of Dominique.

27. Allen Campbell – I think this letter is a very poor example to request a meeting. We need to move on, so lets request them to come to our meeting and explain this a little better. This letter says very little, there is no rationale.

28. Ty Bays – If we accept this as is, we know this work won't be done until 2021. I don't see where we can in good conscience vote and approve this. We need more explanation, not just comments over the phone.

29. Joe Runyan – Should we table this bi-annual plan?

30. Pete Domenici, Jr. – I do think we should table this. We need to understand this, and we don't want to push this until 2020. This will be the top document sent to the Secretary of Interior, it is an extremely critical document. I don't think we need to approve this for 2021.

31. Joe Runyan – So Mr. Bays, would you like to table this?

32. Ty Bays – I have a motion on the floor....

33. Howard Hutchinson – will the ISC act on this before our Board's action?

34. Dominique Work – no, only after the NM CAP Entity acts on this.

Moved by Howard Hutchison and seconded by Mr. Campbell that we table this item until our next meeting.

c. Executive Director and General Council Travel to Washington, DC to Discuss EIS Schedule with the Secretary of the Interior.

1. Allen Campbell – I think a visit to the Secretary of Interior is a good idea. I think there is malfeasance involved....we should get clarification from them as to whether this is consistent with the President of the United States and the Secretary of Interior.

2. Howard Hutchinson – What would the timeline be for this?

3. Anthony Gutierrez – We don't have a timeline at this time.

Moved by Howard Hutchinson and seconded by Esker Mayberry that we do approve the Executive Director and the General Council to travel to Washington, DC to discuss the EIS schedule with the Secretary of Interior. All in favor. Motion passed.

VIII. Executive Director Report and Round Table Discussion (NM CAP Entity Members Only)

1. Anthony Gutierrez – I am going to meet with the State Engineer on this coming Friday, so hopefully we can get some answers to what we need.

2. Pete Domenici, Jr. – Could Marcos explain what the Legislature did with our budget?

3. Marcos Mendiola – In House Bill 2 we had an operating budget for the ISC and the NM CAP Entity. We asked for \$1.7 M to conduct engineering and NEPA services needed with the BOR. SB 280, we requested \$1.7 M and this was vetoed by the Governor's Office. The Bar authority is in place.

4. Anthony Gutierrez – Regarding what Mr. Gaume stated about us telling lies to the Legislature.....the Representative could not even explain to the Committees what he was trying

to explain. I have never seen this before...he had to apologize because of his lack of understanding what he was trying to accomplish.

5. Ty Bays – Mr. Gaume lied to this Board about a plan to an Environmental group, and a lie is a lie.

6. Howard Hutchinson – just wondering if Mr. Gutierrez has an update regarding our business plan, and what happened to our audit presenters?

7. Chairman Shannon – Our audit was approved, after we got the Auditors on the phone. We did not have any faults in our audit.

8. Anthony Gutierrez – The engineers will hopefully have the business plan by our next meeting.

9. Chairman Shannon – I would like to reiterate Mr. Billings comments regarding the appreciation to Mr. Hutchinson, Mr. Campbell, Mr. Domenici, and Mr. Gutierrez for being so diligent regarding their information.

10. Allen Campbell – I have compared the six years since the last fire, the rainfall...the average flow for the 6 years before the fire was 200%. This is just another environmental factor or the weather...it is still very encouraging that this actually appears to be quite beneficial to our area and I would be willing to share this with anyone. I think it is accurate.

11. Howard Hutchinson – the cubic feet per second regarding the gauges, and I have noted with some dismay that the San Francisco gauge has been reading 51 cfs for several months that I know there was more flow than that. I did report that to the Interim of the ISC and to the BOR. They did come and do a gauge reading, and then it changed to around 2,000 cfs.

12. Allen Campbell – We have a new gauge where the East Fork and the West Fork come together. There is always a potential that the stream can change after a big flood. They are working very hard on this, but the government shutdown messed a lot of this up. We do have gauges that are not reading very well.

IX. Next Meeting – Regular Meeting Date would be May 7, 2019 (Tuesday) at 10:00 AM

X. Adjourn

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019

\_\_\_\_\_  
DARR SHANNON  
CHAIRMAN  
NM CAP ENTITY

\_\_\_\_\_  
VAN (BUCKY) ALLRED  
SECRETARY  
NM CAP ENTITY



BUREAU OF RECLAMATION  
Phoenix Area Office  
6150 W. Thunderbird Road  
Glendale, Arizona 85306-4001



NEW MEXICO INTERSTATE STREAM COMMISSION  
New Mexico Interstate Stream Commission  
Bataan Memorial Building, Room 101  
Santa Fe, NM 87504-5102

IN REPLY REFER TO:

PXAO-1500  
2.1.4.13

MAY 15 2018

VIA ELECTRONIC AND U.S. MAIL

Mr. Anthony Gutierrez  
Executive Director  
NM CAP Entity  
PO Box 386  
Cliff, New Mexico 88028

Dear Mr. Gutierrez:

Thank you for your amendments to the proposed action we received on February 8, and March 22, 2018. We would also like to thank you for your participation and engagement in the three proposed action discussions we had this year. As the Joint Lead Agencies have indicated in emails and telephone discussions, we are still waiting for the NM CAP Entity (Entity) to provide the various information requested below regarding the proposed action to enable us to begin the National Environmental Policy Act (NEPA) process. The project-specific information described below is essential to initiate a thorough analysis, and obtain informed public participation early in the NEPA process. This requested information is particularly important considering the streamlined timeframes created by the Secretary of the Interior's Order No. 3355 on NEPA, and the upcoming December 31, 2019 deadline for a Record of Decision (ROD) under the Arizona Water Settlements Act (AWSA). As discussed in our meetings on January 9, February 15, and March 16, 2018, these essential information needs, grouped by NEPA milestones, are:

1. Prior to publishing the Notice of Intent (anticipated June 2018):
  - Geographic Information System (GIS) files for the San Francisco component (GIS files for Virden and Cliff-Gila have been received).
  - A complete project confirmation package, including final maps and an official letter from the Entity that the NEPA analysis can proceed based on the locations and the uses described in the proposed action that has been provided to the Joint Leads as of the date of this letter. This includes a confirmation of the locations and uses identified by the Executive Director on March 23, 2018 for the San Francisco component.
  - For the San Francisco component, clarification of the March 23rd data in the following respects:
    - depiction of proposed versus existing infrastructures;
    - how the two additional existing diversions will be incorporated into the proposed action;
    - whether improvements are proposed to the existing diversions and associated ditches;
    - supporting engineering documentation comparable to information provided for the

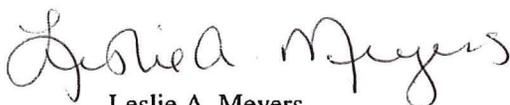
Cliff-Gila and Virden components (February 15, 2018 Occam Engineers Inc. memo);  
and,

- whether the proposed action includes use of the river to convey stored water to downstream points of diversion and beneficial use.
  - Any additional components under consideration by the Entity. In order for the public to be provided an opportunity to comment on all components of the proposed action, any material changes to the proposed action need to be identified prior to scoping.
2. During the scoping period:
- Estimated quantities and timing of diverted water at each project location. A breakdown of adjudicated and AWSA water needs to be included.
  - In light of recent changes to the proposed action, storage quantities for all facilities.
  - Depth to groundwater at storage locations.
  - Access, rights-of-way, and property ownership at all project locations.
  - Project and temporary construction footprints, footprints for the San Francisco and Cliff-Gila pumping plants. This includes estimates of cut and fill volumes and locations, spoil areas, construction duration, borrow sites, areas of canal lining, processing and staging sites, and power sources.

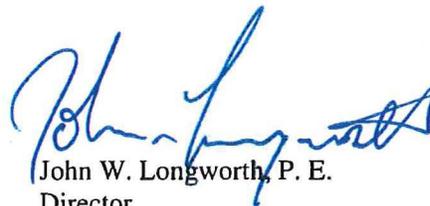
Additionally, as identified in our proposed action discussions, in order to proceed with any ground disturbing geotechnical investigations, the Joint Leads must complete a separate NEPA analysis, which includes any potential effects to cultural or biological resources. If the Entity plans on conducting geotechnical investigations, the Entity needs to provide a thorough description of locations, methods, and impact areas as soon as possible. If any proposed geotechnical investigation has the potential to impact cultural resources, or Endangered Species Act listed species, surveys and consultation may need to be conducted, which could require several months. Furthermore, the proposed geotechnical investigations may result in changes to the proposed action (i.e., location, size, function, etc.). Therefore, the results of the geotechnical investigations are critical to the Environmental Impact Statement schedule.

Please provide the information described above to the Joint Leads, by or before the NEPA milestones identified above. Delays in providing this data will further compromise the ability to meet the December 31, 2019 deadline for a ROD, and may have additional negative consequences. Again, we thank you and the Entity for your continued work on the New Mexico Unit.

Sincerely,



Leslie A. Meyers  
Area Manager  
Phoenix Area Office  
Bureau of Reclamation



John W. Longworth, P. E.  
Director  
New Mexico Interstate Stream Commission

cc: Darr Shannon  
Chairman  
NM CAP Entity  
PO Box 386  
Cliff, New Mexico 88028



Smith, Alexander &lt;alexandersmith@usbr.gov&gt;

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## data gaps

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**Sean Heath** <sheath@usbr.gov>

Wed, Aug 1, 2018 at 7:30 AM

To: Anthony Gutierrez &lt;anthony.capexec@gmail.com&gt;

Cc: Dave Maxwell &lt;dave@oeipro.com&gt;, "Effati, Ali, OSE" &lt;Ali.Effati@state.nm.us&gt;, "Work, Dominique, OSE (Dominique.Work@state.nm.us)" &lt;Dominique.Work@state.nm.us&gt;, Alex Smith &lt;alexandersmith@usbr.gov&gt;, Colleen Cunningham &lt;colleen.cunningham@state.nm.us&gt;, "Sobien, Helen, OSE" &lt;helen.sobien@state.nm.us&gt;, Jeffrey Riley &lt;JRiley@usbr.gov&gt;, Rodney Smith &lt;rodney.smith@sol.doi.gov&gt;

Anthony,

Here is the list of data gaps that we discussed yesterday. The list includes items from the May 15, 2018 Joint Leads letter that we have not received yet. From our discussion yesterday, we know that we will not meet the August 3rd date for the draft DOPAA because of the missing data. Please get us the data as soon as possible (especially priority 1) so we can move forward with the DOPAA and the rest of the EIS.

Thanks

Sean Heath  
Manager, Environmental Division  
Phoenix Area Office, Bureau of Reclamation  
6150 W. Thunderbird Road  
Glendale AZ 85306-4001  
623-773-6250 (*office*)  
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 **Data Gaps 07312018.docx**  
17K

***DRAFT***  
**Data Gaps Identified Based on Alternative Development Meeting**  
**July 31, 2018**

Risk Management:

- Engineering design timeline? (when and what they are doing)
  - E.g., Geotechnical investigations and site specific engineering could change the proposed action
- Confirmation that project features are located on willing landowners' properties
  - Potential compensation and easements for landowners for infrastructure on private lands

**Priority 1 (need for DOPPA – August 3):**

- GIS files for updated components (from July 5, 2018 Entity letter)
- Confirm the storage volume and do they plan to fill more than one time per year?
- Preferred diversion structure type(s) for new construction – fixed crest? (what type are being modelled)
  - Any other specifics (e.g., keyed into bedrock or depth of scour; across floodplain or in channel with sheet piles in flood plain, etc.)?
- Is the CAPE going to formally integrate the GBIC proposal into the Proposed Action as part of this EIS? Or is this an alternative?
  - Is the rock weir worth considering (5<sup>th</sup> diversion type)?
- Ft West ditch extension-location and design (need to know where the Entity needs new land rights on FS property)
- Gila Farms-Ft West connector-location and design
- Wells:
  - How will water be accounted for with ASR pumps to ensure only AWSA water pumped?
  - Use of production wells, how are these used? Will they pump only AWSA water?
  - Would production wells potentially replace the need for other proposed infrastructure?
- AWSA diversion amounts at W-S and Pleasanton diversions and timing
- Depth to groundwater at storage locations; confirm storage pond locations or provide modified or new locations
- Yield models
- Scheduling and allocation of diverted water among the 3 project areas
- Quantities, location and timing of diverted water
- AF of demand for AWSA water in each area
  - Need verification of 3,000AF Cliff-Gila and 1,000AF San Fran.
  - Need demand for Virden

Priority 2 (for analysis of Admin DEIS – September 1)

- Refined total cost
  - Construction
  - O&M&R cost
- Location of construction footprints (e.g., spoil areas, laydown yards, borrow sites, construction access roads, etc.)
- Location of permanent footprints (e.g., access roads, pumping plants, etc.)
- Duration and timing of construction, will work be phased?
- Power sources and related construction
- Feasibility:
  - Legal and permitting constraints with use of production wells as new points of diversion
  - Legal and permitting constraints with exchanges involving the release of water from Weedy Canyon and pumping an equivalent storage right amount from private groundwater wells to be developed on private lands.
- How to deal with runoff in Winn and Weedy Canyon Dams?
  - Will the Entity store runoff into the existing Winn Canyon Dam and proposed Weedy Canyon Dam and how to operate if CUFA not met? (diversion accounting; protection of facilities)
- Use of San Francisco diverted water
- Seepage and return flows
- Proposed crops and approximate percentage of each crop for all areas
- Irrigation method for each crop and estimated water usage (and on farm costs for each method)
- Percentage of water NOT used for agricultural purposes (and for what purpose)



Smith, Alexander &lt;alexandersmith@usbr.gov&gt;

## [EXTERNAL] Meeting to discuss certain prioritized data needs related to the CAP Entity's proposed action for a New Mexico Unit

Longworth, John W., OSE &lt;john.longworth@state.nm.us&gt;

Tue, Aug 14, 2018 at 1:16 PM

To: "darrshannon52@gmail.com" <darrshannon52@gmail.com>, "vancelee@aznex.net" <vancelee@aznex.net>, "allred@gilernet.com" <allred@gilernet.com>, "bucky.allred@catroncountynm.gov" <bucky.allred@catroncountynm.gov>  
 Cc: "alexandersmith@usbr.gov" <alexandersmith@usbr.gov>, "sheath@usbr.gov" <sheath@usbr.gov>, "Rodney.Smith@sol.doi.gov" <Rodney.Smith@sol.doi.gov>, "Schmidt, Rolf I., OSE" <rolf.schmidt@state.nm.us>, "Effati, Ali, OSE" <Ali.Effati@state.nm.us>, "Mendiola, Marcos, OSE" <Marcos.Mendiola@state.nm.us>, "Work, Dominique, OSE" <Dominique.Work@state.nm.us>, "Anthony.capexec@gmail.com" <Anthony.capexec@gmail.com>, "pdomenici@domicilaw.com" <pdomenici@domicilaw.com>, "lhollingsworth@domicilaw.com" <lhollingsworth@domicilaw.com>

Madam Chair and officers of the NM CAP Entity,

In anticipation of the Entity's September 4<sup>th</sup> meeting, the Joint Leads would like to stress again that it is essential to the success of the NEPA process that certain prioritized data needs related to the Entity's proposed action be addressed immediately. Those Joint Lead data needs were sent to the Entity via an email from Reclamation on January 2<sup>nd</sup> and via a letter from the Joint Leads to Mr. Anthony Gutierrez on May 15<sup>th</sup>. The data gaps were also discussed with Mr. Gutierrez, Mr. Maxwell, and Ms. Hollingsworth during meetings on January 8, February 15, March 11, and July 31, 2018.

The NEPA contractor's first critical deliverable under our schedule (the Draft Description of Proposed Action and Alternatives (DOPAA)) was due on August 3, 2018. The DOPAA is the building block of the EIS and shapes the impacts analysis. Because of the missing information, the NEPA contractor has not been able to complete this deliverable. At our meeting on July 31<sup>st</sup>, representatives of the Entity told the Joint Leads that more time was needed before they could provide the technical information required for preparation of the DOPAA.

This EIS schedule is already on a very tight timeline. In order to meet the AWSA's statutory deadline of December 31, 2019 for issuance of a Record of Decision (ROD) to secure additional construction funding pursuant to the AWSA, the Joint Leads have already reduced the number of internal draft documents to be produced and the agency review time for documents in order to provide more time for the Entity to furnish the information needed for this process. There is very little room to compress the schedule further.

Certain regulatory timeframes cannot be shortened, including the 45-day public review and comment period after publication of the draft EIS and the 30-day waiting period after the publication of the final EIS. The schedule for the NEPA process is attached. As you can see, there is currently only 45 days between the end of the NEPA process and the AWSA deadline for completion of the ROD. Therefore, it is critical that no further delays occur. Additional delays in

providing data will further compromise the Joint Leads' ability to meet the December 31, 2019 deadline for issuance of a ROD to secure the construction money.

In order to discuss this critical issue, we would like to meet with the Entity's officers and staff either in Albuquerque or Silver City on any of the following dates:

August 21, 2018

August 22, 2018 morning and early afternoon (in Albuquerque)

August 28, 2018 (in Albuquerque)

We look forward to hearing from you in the very near future regarding this matter.

Sincerely,

John W. Longworth, P.E.

Director, New Mexico Interstate Stream Commission

505-827-6103

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**2 attachments**

 **NM Unit EIS\_StreamlinedSchedule v7\_20180807.pdf**  
354K

 **Data Gaps 08-13-18.pdf**  
29K