

Attachment 2

**Correspondence Related to Tribal Scoping Comments
and Government-to-Government Consultation**



United States Department of the Interior

BUREAU OF RECLAMATION

Albuquerque Area Office
555 Broadway Blvd., NE Suite 100
Albuquerque, New Mexico 87102-2352

IN REPLY REFER TO:

ALB-715
WTR-4.00

OCT 20 2005

Honorable Ruben A. Romero
Governor
Pueblo of Taos
P.O. Box 1846
Taos, NM 87571

Subject: Solicit Government-to-Government Consultation on the Proposed San Juan-Chama Project Contract Conversions

Dear Governor Romero:

Seven contractors that have six water service contracts for San Juan-Chama Project water have requested that their contracts be converted to repayment contracts. The contractors are: City and County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and City of Española. The difference between the two types of contracts, that is of interest to many, is longevity. Water service contracts have an expiration date and repayment contracts do not.

Reclamation invites government-to-government consultation to address concerns related to this project. Please call Kim Greenwood at 505-462-3557 to schedule a meeting with Reclamation management and your tribal leadership at your convenience.

In addition, Reclamation will prepare an environmental assessment under the provisions of the National Environmental Policy Act for the proposed San Juan-Chama water contract amendments. You may participate in a public meeting on Monday, November 7, at 7 p.m. at the Geneveva Chavez Community Center on 3221 Rodeo Road in Santa Fe, New Mexico.

Sincerely,

Steve Hansen

FOR Connie L. Rupp
Area Manager

cc: Ms. Susan Jordan, Esq.
Nordhaus, Haltom, Taylor,
Taradash, & Bladh
1239 Paseo de Peralta
Santa Fe, NM 87501

4.3 Tribal Consultation

Reclamation consults with Indian Tribes as part of its trust responsibility and seeks an exchange of information regarding potential project effects to Indian trust assets, sacred sites, other cultural or biological resources, tribal health and safety, or other aspects of cultural heritage. Formal requests for government-to-government consultations (Attachment 2) were sent to the following sovereigns:

- Pueblo of Acoma
- Pueblo of Cochiti
- Pueblo of Isleta
- Pueblo of Jemez
- Jicarilla Apache Nation
- Pueblo of Laguna
- Mescalero Apache Tribe
- Pueblo of Nambe
- Pueblo of Ohkay Owingeh
- Pueblo of Picuris
- Pueblo of Pojoaque
- Ramah Navajo Chapter
- Pueblo of San Felipe
- Pueblo of San Ildefonso
- Pueblo of Sandia
- Pueblo of Santa Ana
- Pueblo of Santa Clara
- Pueblo of Santa Domingo
- Southern Ute Tribe
- Pueblo of Taos
- Pueblo of Tesuque
- Ute Mountain Ute Tribe
- Ysleta del Sur Pueblo
- Pueblo of Zia
- Pueblo of Zuni
- Navajo Nation
- Alamo-Navajo Chapter

In addition, the Bureau of Indian Affairs was solicited for input regarding the proposed contract amendments and environmental documentation.

Meetings or conversations took place with representatives of Ysleta del Sur, Southern Ute Tribe, Pueblo, Sandia Pueblo (Sandia Water Task Force), and Santa Ana Pueblo. Government-to-government sessions were held with Pueblo of Taos, Pueblo of Ohkay Owingeh. In addition, written comments were received from Pueblo of Sandia, Pueblo of Ohkay Owingeh, Pueblo of Taos, Ysleta del Sur Pueblo, Pueblo of Nambe, Pueblo of San Ildefonso, Pueblo of Tesuque, and Pueblo of Pojoaque (see letter in Attachment 2). Reclamation was invited to discuss the contract conversion proposal at several meetings of the Six Middle Rio Grande Pueblos Coalition (Coalition). This informal exchange of information (not government-to-government consultation) was conducted at Coalition meetings held in November 2001 and January 2002. The Sandia Pueblo and Reclamation officials also met on December 2, 2005.

Agency Coordination and Consultation

The New Mexico Interstate Stream Commission is serving as a cooperating agency for preparation of this EA.

The following governments, organizations or persons were or will be consulted regarding the proposed contract amendments:

- City of Santa Fe
- County of Santa Fe
- County of Los Alamos
- Town of Taos
- Village of Taos Ski Valley
- Village of Los Lunas
- City of Española
- U.S. Bureau of Indian Affairs
- New Mexico Interstate Stream Commission
- U.S. Fish and Wildlife Service
- NM State Historic Preservation Officer

Agency correspondence regarding the proposal is provided in Attachment 4. The U.S. Fish and Wildlife Service will be consulted regarding effects to endangered species. The New Mexico State Historic Preservation Office will be consulted regarding effects to cultural resources.

4.5 How Scoping Input Has Been Used

The information obtained through the scoping process has been used to help prepare this Draft EA. A scoping summary report has been prepared to identify important areas of concern (Attachment 5). Topics have been included and described in a way that complies with NEPA and addresses comments and questions that have been raised. Information obtained through scoping led Reclamation to reassess the range of possible alternatives. Reclamation considered not moving forward on the contractors' requests. Reclamation also considered reducing the contractors' allocations and reallocating some water to other uses such as endangered species or tribal water resources. Chapter 2 of this document presents the reasons these alternatives were determined to be infeasible. Interagency coordination also assisted in determining the feasibility of alternatives considered.

Tribal Correspondence

CHESTNUT LAW OFFICES

Attorneys at Law
121 Tijeras Avenue N.E., Suite 2001
Albuquerque, New Mexico 87102

Peter C. Chestnut
Ann Berkley Rodgers
Carolyn J. Abeita

Mailing:
Post Office Box 27190
Albuquerque, New Mexico 87125

Telephone:
(505) 842-5111
Facsimile:
(505) 843-9211

December 31, 2001

ALBUQUERQUE FILE

RECEIVED FOR
OFFICIAL FILE CO

JAN 2 2002

Classification: WJR-1.10
Project: SN
Contract No.: 2000-00-11
Folio No.: 37162

11/02/02	WR	153
		440
		150

Ms. Lori Robertson
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
500 Marquette NW, Suite 1313
Albuquerque, New Mexico 87102-2162

Re: Proposed San Juan-Chama Project Water Contract Amendments

Dear Ms. Robertson:

I will be unable to attend the Public Scoping Meeting scheduled for January 7, 2002, in Santa Fe concerning proposed contract amendments between Reclamation and six entities which have existing Contracts for delivery of San Juan-Chama Project water.

Please provide me with information concerning the proposed changes, so that I can advise the Pueblo of San Ildefonso concerning any possible impacts on the Pueblo from the proposed amendments. The Pueblo is beginning to become aware of possible impacts from Project water, and needs to be informed concerning the possible affects of changes in existing Contracts. It appears that the change from a "specific expiration date" to a form of contract that continues indefinitely may raise some concerns.

Thank you for providing information to me concerning this matter.

Best wishes for the New Year.

Sincerely,

Peter C. Chestnut

PCC/mjj

cc: Governor, SAN ILDEFONSO PUEBLO

DIAMOND RASH GORDON & JACKSON, P.C.

Attorneys at Law
300 E. Main Street
Seventh Floor
El Paso, Texas 79901-1379

Tel.: 915-533-2277
Fax: 915-545-4623

Tom Diamond
Norman J. Gordon*
Ronald L. Jackson
John R. Batoon
Robert J. Truhill
Josette Flores

Alan V. Rash
Of Counsel

January 7, 2002

*Board Certified - Civil Trial Law
Texas Board of Legal Specialization

United States Department of the Interior
Bureau of Reclamation
Albuquerque Area Office
505 Marquette N.W. Suite 1313
Albuquerque, NM 87102-2162

VIA FIRST CLASS MAIL &
CERTIFIED MAIL RETURN RECEIPT REQUESTED
7000 1530 0003 3783 8026

Attn: Ms. Lori Robertson

**Re: Proposed San Juan-Chama Project Water Contract Amendments
Request Copy of Draft Environmental Assessment**

Dear Ms. Robertson:

This will receipt by this office of a letter from Marc D. Rucker in connection with the above-referenced project. Tribal representatives are unable to attend the January 7, 2002 scoping meeting. However, please provide this office as well as the Tribal Governor's office with a copy of the Environmental Assessment which will be distributed for public review and comment in early 2002.

Enclosed herewith, please find a copy of the Pueblo's Consultation Policy.

Please contact me if you have any questions or require additional information.

Sincerely,



Robert J. Truhill

RJT/mrc
Enclosure

cc: Governor Albert Alvidrez
Lt. Governor Carlos Hisa
Rick Quezada, Tribal War Captain
Adolph Greenberg, Ph.D., Tribal Ethnographer

ALBUQUERQUE AREA OFFICE		
RECEIVED FOR OFFICIAL FILE COPY		
JAN 9 2002		
Classification		
Project		
Control No.		
Folder No.		
DATE	INITIALS	FILE NO.
1/10/02	MR	153

CONSULTATION POLICY

Ysleta Del Sur Pueblo

Preface: This document formalizes the existing procedures for consultation (government to government, or otherwise) between the Pueblo of Ysleta del Sur and the United States federal government including any and all agencies/offices/departments/bureaus therein. This policy statement reflects completely the procedures followed and adhered to by this federally recognized Indian tribe during previous consultations and therefore the procedures to be followed and adhered to in future consultations.

Consultation: Consultation is the formal, bilateral process of negotiation, cooperation and policy-level decision-making between two sovereign entities: the Tigua Tribe of Ysleta del Sur Pueblo and the United States Government or its designate. Consultation, therefore, is a process that leads ultimately to a decision. Consultation is not just a process or a mean to an end. As such, it should not be viewed by others and is not viewed by the Pueblo of Ysleta del Sur as a mere formality during the stages of any project. Consultation is not notifying our Tribal Council that an action will occur, requesting written comments on the action or alternative actions, and then proceeding with the action or one of the a priori alternatives. Such authoritarian, top-down procedures do not constitute consultation because a decision is not affected bilaterally between two sovereign entities.

Consultation Objectives:

- 1) Assures that the Tribal Council and its designates understand fully the technical and legal issues, implications, and probable impacts involved in and resulting from an action or alternatives so that an informed policy-level decision can be made.
- 2) Improved policy-level decision-making of both the Tribal Council and the federal government.
- 3) Bilateral decision-making between and among sovereigns leading to co-managerial structure.
- 4) Protection of Ysleta del Sur Pueblo's cultural and natural resources, cultural tradition, economy and lifestyle.

- 5) Compliance with and respect for Tribal laws and Tribal integrity.
- 6) Full compliance with federal Indian law, federal statutes, and federal policy.
- 7) Develop and achieve mutual decisions through working relationships.
- 8) Improve the integrity and efficacy of decisions over time.
- 9) Recognition that the Tribe is both a stakeholder and regulator in projects that have potential or real impacts on tribal resources, culture, and lifestyle.

Consultation Procedures:

The consultation venue works or proceeds in much the same way that federal agencies typically operate. This means a series of technical meetings followed by a series of policy meetings. The technical meetings provide opportunities for consultation by and with the appropriate technical staff of both entities. The policy meetings provide opportunities for the resolution of those issues left unresolved at the technical level and for the resolution of those issues that are clearly policy grounded. The outcome of this procedure is the development of a common understanding of the technical and legal issues affecting or are affected by a decision. It is this common understanding in a democratized context that provides the basis for decision-making. The Tigua Tribal Council will address more cooperatively those issues with which they had been thoroughly consulted with prior to a decision.

Consultation requires that federal agencies and the Tribal Council fully understand their roles in the context of the federally-mandated government-to-government relationship and the responsibilities which devolve upon the federal government under the Trust doctrine. In this environment, both the Tribal Council and the federal agency will benefit from the perspectives each brings to the table. This means personal communication, which is one of the foundations for meaningful consultation. To make this process work, the following series of activities should guide consultation:

1. Federal agency contacts the Governor of the Pueblo of Ysleta del Sur to inform him of an impending project or to conduct an activity which may or may not impact a tribal resource or tribal concern.
2. The Governor, after meeting with the Tribal Council and/or it designates, responds back to the federal agency that this issue is or is not important. If it is important, the Governor will communicate to the federal agency that the Tribe will initiate consultation.
3. Consultation is initiated through technical staff meetings which will inform the respective staffs in a comprehensive way so that each can brief and/or make recommendations to their

respective policy level entities in an informed way.

4. After the technical staff has briefed the Tribal Council, the Council will define the consultation protocol it wishes to follow, which will typically entail additional technical and policy level meetings, research activities, and a final policy level meeting to make a decision. These are then transmitted in written form to the federal agency. The outcome here should be a memorandum of agreement to establish a working relationship between entities.

5. The consultation protocol is followed.

6. A decision couched in bilateral cooperation between the federal agency and the Tribal Council is formulated. This decision will be fully compliant with federal and tribal laws and policies. The decision will protect the resources to which the Tigua Tribe of Ysleta del Sur Pueblo has specific aboriginal and Spanish land grant reserved rights. The decision will protect the cultural tradition and the religious practices of the Tribe.

This consultation policy will insure that Tribal Council and the federal government have not only communicated but have developed mutual understanding and trust. Within this context, policy level decision-making can and must work.

ORIGINAL

Governor
Stewart Paisano
Lt. Governor
Alex Lujan
Treasurer



Box 6008
Bernalillo, New Mexico 87004
(505) 867-3317

March 4, 2002

Ken Maxey, Area Manager
Bureau of Reclamation
Albuquerque Area Office
505 Marquette NW, Suite 1313
Albuquerque, NM 87102-2162

RE: Proposed San Juan Chama Contract Conversion

Dear Mr. Maxey:

The Pueblo of Sandia hereby provides written comments regarding the Bureau of Reclamation's ("BOR") consideration of requests to convert six San Juan Chama contracts into repayment contracts. The Pueblo provides these comments pursuant to the National Environmental Policy Act ("NEPA") and reserves its right to submit additional comments as part of the public participation process under NEPA. To date, the BOR has completed the scoping process but has yet to issue a draft "Environmental Assessment" for public comment.

The contracts are between the BOR and six local governmental entities in New Mexico.¹ The conversion of these six contracts would render them perpetual, securing to the contracting parties a perpetual supply of San Juan Chama water. Currently, the parties hold contracts subject to a term limit with an option to renew.

The proposal to contract for the perpetual delivery of San Juan Chama water resources to non-Indian users on the Rio Grande is troubling to the Pueblo. The Pueblo holds senior water rights that are time immemorial and necessary for providing a homeland to our people. One attribute of our water rights is that they are not subject to loss due to non-use. The Pueblo is concerned that when it exercises its full water entitlement, there will be no water available in the Rio Grande system.

Indeed, the State Engineer of New Mexico has acknowledged that the surface waters of the

¹ The contracts are currently with the City of Espanola, Los Alamos County, Town of Los Lunas, City of Santa Fe, Town of Taos, and the Village of Taos Ski Valley.

ALBUQUERQUE AREA OFFICE

RECEIVED FOR OFFICIAL FILE COPY		
MAR 25 2002		
Classification	WTR-403	
Project	3.1	
Contract	2001061	
Publication	30040	
3/27	lex	150
3/29	2/14	105
4/3	10	400
4/8	Words	440
4/10		150
FAST MARK ON ENCL		3-22-0
		4/05M

Rio Grande have been fully appropriated since the Rio Grande Compact was executed in 1939. Because of this situation, the State Engineer will not grant any new permits unless the new diversion is offset by retiring other water rights in the system. While the Pueblo is not subject to the State's requirements for water use, the State's practices are indicative of the grave situation we all face in the Rio Grande basin.

Under these circumstances, it would be highly imprudent to perpetually obligate San Juan Chama water. Under the prior appropriation system, and in accordance with Indian water rights doctrine, when an Indian tribe exercises its senior water right and not enough water is available in the system, junior users must be shut off. By converting the San Juan Chama contracts into repayment contracts, non-Indian users are essentially given senior status by securing them a perpetual water supply, even if an Indian tribe with the senior water right is suffering from a lack of available water. This flies in the face of the prior appropriation system and the well-established priority of Indian water rights.

Another reason for not converting the contracts is that San Juan Chama water may be used in water settlements with Indian tribes. When the current contracts expire in 2016-2020, the situation on the river may warrant a reallocation of the San Juan Chama water. An adjudication or settlement of water rights may be brewing at that time and all parties may be searching for excess water to meet the demands of all the water users. Having San Juan Chama water available could mean less junior water users will have to be shut off.

Furthermore, the current San Juan Chama contractors are not using their full entitlement. It is disturbing that BOR would entertain the idea of extending their contracts into perpetuity when there is no showing of an immediate need for the water. The Pueblo believes that if such need cannot be demonstrated, BOR should not renew the contract, let alone convert the contract into perpetual status, and BOR should reallocate the unused water.

This approach is in accordance with Congress' intent when it authorized the San Juan Chama project. Congress stressed that by authorizing certain projects in the legislation, it did not intend "to limit, restrict, or otherwise interfere with such comprehensive development as will provide for the consumptive use by States of the Upper Colorado River Basin of waters . . . nor to preclude consideration and authorization by the Congress of additional projects under the allocations in the compacts as additional needs are indicated." 43 U.S.C. § 620b; *see also* H.R. Rep. No. 87-685, at 1686-87 (1961); H.R. Rep 84-1087, at 2361 (1956). Thus, Congress authorized the delivery of San Juan Chama water to New Mexico based on a perceived need and the ability to consume that water. Moreover, Congress did not prohibit reallocation of the water, stressing the need for flexibility when approaching water development issues. To convert the contracts into perpetual status under the current circumstances where all of the San Juan Chama water is not being consumptively used and other demands will emerge due to a water-short system would be contrary to the intent of Congress.

The Pueblo requests that the BOR carefully consider these issues in its NEPA review process. Specifically, the Pueblo requests that BOR comply with Secretarial Order No. 3175 and the Departmental Manual, 512 DM 2, which impose certain requirements on Interior offices, such as (1) address the anticipated effects on Indian trust resources and assets in planning decision, and operational documents; (2) ensure that decisions are consistent with the trust responsibility; and (3) consult with affected Indian tribes when impacts are evident.

The Pueblo further requests that the BOR comply with its own "Indian Trust Asset Policy and NEPA Implementing Procedures." In this document, the BOR recognizes water rights and instream flows as "Indian Trust Assets" ("ITA") that must be protected from adverse impacts. This document also imposes requirements for NEPA reviews involving ITAs. The NEPA document must include a discussion regarding the impacts of the proposed action on ITAs. If any ITAs are impacted, the NEPA document must discuss mitigation measures and compensation, as well as the results of consultation with affected Indian tribes. The NEPA public involvement process also should provide information regarding the proposed action and the potential impacts to Indian tribes, as well as involve affected Indian tribes in the decisionmaking process through government-to-government consultation. Finally, the FONSI or ROD must include a statement regarding any impacts to ITAs, a listing of unresolved ITA issues, a list of commitments to prevent, mitigate, or compensate adverse impacts to ITAs, and a summary of any mitigation monitoring and enforcement programs related to ITAs.

The Pueblo awaits publication of BOR's draft "Environment Assessment" and may provide additional comments at that time. In the meantime, the Pueblo is willing to meet with you and further discuss these concerns if you so wish. Please direct any questions to Beth Janello, Environment Director, (505) 867-3317, or the Pueblo's legal counsel, Hilary Tompkins, (505) 247-0147.

Sincerely,



Stewart Paisano
Governor

cc: Beth Janello, Director, Environment Department, Pueblo of Sandia
Hilary C. Tompkins, Esq., Sonosky, Chambers, Sachse, Endreson & Mielke

Governor
P.O. Box 1846
Taos, NM 87571
Ph. 505/758-9593
Fax: 505/758-4604



War Chief
P.O. Box 3164
Taos, NM 87571
Ph. 505/758-3883
Fax: 505/758-2706

April 3, 2002

Mr. Kenneth G. Maxey
Area Manager
United States Department of the Interior
Bureau of Reclamation
Albuquerque Area Office
505 Marquette N.W., Suite 1313
Albuquerque, NM 87102-2162

**Re: San Juan-Chama Water Contract Amendments; City of Albuquerque
Drinking Water Project Environmental Impact Statement**

Dear Mr. Maxey:

I have recently received letters from you requesting government-to-government consultations on the above referenced matters. The Pueblo scheduled the meeting with you today to begin government-to-government consultation on these matters.

The War Chief and I are here today as the sovereign representatives of Taos Pueblo with ultimate responsibility to protect the Pueblo's welfare and resources. Because of the potential for these proposed actions to impact our water rights, Nelson Cordova, Taos Pueblo's Water Rights Coordinator, Mr. Gil Suazo, a member of the Pueblo's Water Rights Task Force, and our attorneys, Les Taylor and Susan Jordan, will also represent us. Your future correspondence on these matters should be addressed to me and copied to all of them.

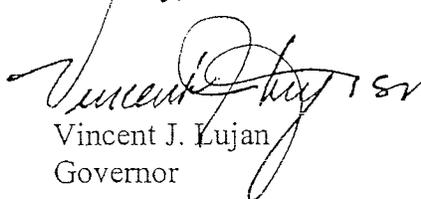
Taos Pueblo's primary concern in both of these matters is to protect our water rights. The adjudication of our water rights on tributaries to the Rio Grande in the Taos Valley is pending in federal district court. State of New Mexico, ex rel. State Engineer, et al. v. Eduardo Abeyta, et al., Nos. CIV-69-07896-JC and CIV-69-07939-JC (consolidated) (D.N.M. filed February 4, 1969) (Rio Pueblo de Taos and Rio Hondo). The Pueblo, and the United States as our trustee, are actively pursuing a negotiated settlement of this litigation. The Bureau of Reclamation has allocated 2,990 acre-feet of San Juan-Chama Project water for this settlement.

We expect you to ensure that your proposed San Juan-Chama contract amendments and proposed actions relating to the City of Albuquerque's project will not interfere with our ability to exercise our native Rio Grande Basin water rights or the continued allocation of 2,990 acre-feet of San Juan-Chama Project water for a Taos Valley water rights settlement. With regard to the San Juan-Chama contract amendments, especially, we believe that your proposed action cannot be taken

without adversely affecting Taos Pueblo's interests. We urge you to give serious consideration to the alternative of not amending the contracts, and to leaving open the possibility of not renewing them upon expiration.

We request that you provide us a preliminary draft of the environmental assessment or environmental impact statement for each of these proposals so that we can have a meaningful consultation about how to protect the Pueblo from any adverse effects. We also request that you commit to complete government-to-government consultation with Taos Pueblo before making a final decision on either proposal.

Sincerely,



Vincent J. Lujan
Governor

cc: Nelson Governor, Water Rights Coordinator, Taos Pueblo
Gil Suazo, Member, Water Rights Task Force, Taos Pueblo
Louis Romero, War Chief
Lester K. Taylor, Esq.
Susan G. Jordan, Esq.

NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS ASSOCIATION

Route 1, Box 117 A
Santa Fe, NM 87501

Pueblo of Nambé
Pueblo of Tesuque
Pueblo of Pojoaque
Pueblo of San Ildefonso

Ernest Mirabal, Chairman, Nambé Pueblo
Terrance Leno, Vice-Chairman, Tesuque Pueblo
Peter C. Chestnut, Secretary

April 9, 2002

Kenneth G. Maxey, Area Manager
UNITED STATES BUREAU OF RECLAMATION
505 Marquette NW
Albuquerque, New Mexico 87103

APR 22 2002

Classification: WTR-400
 Project: SN
 Contract No.: 200-1107
 Field No.: 20-774

LINE	QUANTITY	UNIT	AMOUNT
4/26	1/4		100
4/25	400		400
4/20	440		440
			510
			130
			153

Re: Request by Four Pueblos for Permanent Service Contracts from San Juan Chama Project and Objections by the Pueblos of Tesuque, San Ildefonso, Pojoaque, and Nambé to Proposed San Juan-Chama Water Contract Amendments

Dear Mr. Maxey:

This is a request by the Pueblos of Tesuque, San Ildefonso, Pojoaque, and Nambé (collectively "the four Pueblos") that you secure a permanent supply of water from the San Juan Chama Project for the benefit of the four Pueblos.

The four Pueblos are parties to the oldest ongoing water rights adjudication in the United States, *State v. Aamodt*, No. CIV 6639 M (N.M. Federal District Court). The parties in *Aamodt* have been engaged in intensive and productive settlement discussions for the past two years. As a result of those discussions, it has become clear that without an imported source of water for use in the Rio Pojoaque-Tesuque Basin, the settlement of the case will be impossible and the parties will be relegated to years of additional litigation. The foundation for the draft settlement is the construction of a regional pipeline, which will distribute both native and imported water (at least 3000 acre feet annually) in the basin and perhaps to other parts of Santa Fe County and the City of Santa Fe. The parties, however, have not identified a source for the imported water supply. Given the cost of securing an alternative supply of water from the Rio Grande, San Juan-Chama water may be the only realistic source for such an imported water supply. Accordingly, we request that the Bureau of Reclamation begin immediately to investigate the means for securing such a supply for the four Pueblos and our settlement partners. We request consultation with each Pueblo to assure an adequate measure of water being available to meet each Pueblo's present and future water needs.

In the meantime, it makes no sense to convert the current water service contracts held by the City/County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and the City of Espanola to permanent repayment contracts which will be perpetual in nature. The entities holding the contracts at issue have had decades to put the San Juan Chama water to beneficial use but have not done so. Indeed, there are serious questions whether

Objections by the Pueblos of Tesuque, San Ildefonso, Pojoaque, and
Nambé to Proposed San Juan-Chama Water Contract Amendments
April 9, 2002
Page 2 of 2

some of those entities will ever be able to put the water to use. Before locking that water away in permanent contracts, Reclamation must determine whether that water is needed to meet the United States' trust responsibilities to the Indian nations, including the four Pueblos, who depend on the water of the Rio Grande for their survival. In these circumstances, the Bureau of Reclamation must prepare an Environmental Impact Statement (EIS) before making a decision on this important matter since its decision will have a major impact on the Pueblos and the environment, and, therefore, constitutes a "major federal action" under the National Environmental Policy Act. The Pueblos request that they be consulted on a government-to-government basis for the scoping of the EIS and proposed federal actions.

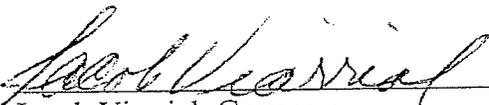
Please provide each Pueblo with a copy of all documents connected with this project to date and all documents produced in the future for this project. Copies should be sent to each Pueblo Governor, representative, and attorney listed on the attached mailing list.

In closing, we request that you meet with the Northern Pueblos Tributary Water Rights Association to discuss this matter of such great importance to the four Pueblos. Please contact Peter Chestnut (505- 842-5864) to arrange a meeting date with the NPTWRA.

PUEBLO OF NAMBÉ


Tom Talache, Governor

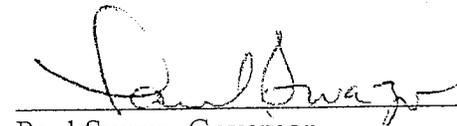
PUEBLO OF POJOAQUE


Jacob Viarrial, Governor

PUEBLO OF SAN ILDEFONSO


John Gonzales, Governor

PUEBLO OF TESEQUE


Paul Swazo, Governor

cc: Ernest Mirabal
Pam Williams
Michael Schoessler
Brian Perry
Rob Barracker
Joe Sparks
Scott McElroy
Jim Cooney
Peter Chestnut

ALB-440
WTR-1.10

JUN 03 2002

Northern Pueblos Tributary
Water Rights Association
Route 1, Box 117A
Santa Fe NM 87501

Subject: San Juan-Chama Project Water Contracts

Dear Ladies and Gentlemen:

Your letter of April 9, 2002, expresses concerns over two issues relating to San Juan-Chama Project (Project) water allocations and contracting: 1) a permanent Project water supply for the benefit of the Pueblos of Tesuque, San Ildefonso, Pojoaque, and Nambe (Four Pueblos); and 2) the Four Pueblos' objections to the Bureau of Reclamation's (Reclamation) proposal to convert six Project water service contracts to repayment contracts. Additionally, your letter poses several questions, which are addressed below.

Project Water Allocation

The Project water supply represents a portion of the State of New Mexico's allocation of Colorado River water under the Colorado River Compact of December 21, 1928, which states, in part, that "The Chief Official of each signature State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey, shall cooperate, ex-officio: (a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of the water in the Colorado River Basin, and the interchange of available information in such matters." Reclamation, in cooperation with the New Mexico State Engineer's Office, made allocations of the State of New Mexico's Project water supply over a period of several years. All of the allocation decisions were made with input from interested parties, who were informed of all allocation activities by public notification procedures.

Only 2,990 acre-feet of Project water remains unallocated. This remaining allocation is being held by the Department of the Interior for use in future water rights settlements in the Taos area. Therefore, there is no Project water available at this time for allocation to the Four Pueblos.

Conversions of Six Contracts from Water Service to Repayment

Reclamation's execution of the proposed contract amendments is subject to the concurrence from the New Mexico State Engineer, who has assured us and the public that he will examine each entity's history of water use in determining if a conversion from water service to repayment form of contract is appropriate.

The United States' trust responsibilities are being addressed through environmental compliance activities, and the National Environmental Policy Act. An initial public scoping meeting was held in Santa Fe on January 7, 2002, and a letter to the tribal governments inviting government-to-government consultation was sent on January 11, 2002. This letter was sent to respective Governors of each of the Four Pueblos. A copy was also sent to Mr. Peter Chestnut. It is enclosed for your reference.

With respect to the level of environmental compliance, an Environmental Assessment process is ongoing. The outcome of that process will determine if an Environmental Impact Statement will be required. The Four Pueblos will be kept informed as the environmental compliance process develops. Each of the Four Pueblos has been added to the list of interested parties requesting public information on the contracting process.

Request for Copies of Documents

No draft contract amendments are available as yet. Reclamation has received delegation of authority and approval to negotiate only the City of Santa Fe and Santa Fe County's contract conversion. No approval to negotiate the other five contract conversion amendments has been received from the Commissioner of Reclamation. We have not entered into negotiations as yet. Once final draft contract amendments are available, copies will be sent to all interested parties, including the Four Pueblos, for a 30-day review period. Environmental compliance must be met through the process described above before any of the contracts will be executed.

Enclosed is a copy of the presentation made at the January 7, 2002 scoping meeting. It describes the proposed contract actions and process. A copy of this presentation was provided to Mr. Chestnut by letter of January 9, 2002.

Finally, we would be happy to meet with the Four Pueblos to discuss the proposed contract actions and any other matters of concern regarding the allocation of Project water. Ms. Kim Greenwood will contact Mr. Chestnut in the very near future to make arrangements. If you have any further questions, please do not hesitate to call me at (505) 248-5357.

Sincerely,

(SGD.) Kenneth G. Maxey

Kenneth G. Maxey
Area Manager

Enclosure

cc: Mr. Peter Chestnut
121 Tijeras Avenue NE, Suite 2001
PO Box 27190
Albuquerque NM 87125

bc: Regional Director, Salt Lake City UT
Attention: UC-446

ALB-153, ALB-510

ORIGINAL



San Juan Tribal Council
P.O. Box 1099
San Juan Pueblo, New Mexico 87566
Phone: (505) 852-4400
Fax: (505) 852-4820

ALBUQUERQUE AREA OFFICE

RECEIVED FOR OFFICIAL FILE COPY		
JUL 17 2002		
Classification	WTR-4-03	
Project	32	
Control No.	2002038	
Folder No.	30040	
DATE	INITIALS	AMOUNT
7/18	SW	100
7/22		105
7/23	Alum	400
		150

July 15, 2002

Mr. Kenneth G. Maxey
Area Manager
United States Department of the Interior
Bureau of Reclamation
Albuquerque Area Office
505 Marquette N.W., Suite 1313
Albuquerque, NM 87102-2162

Re: Proposed San Juan-Chama Water Service Contract Amendments; Meeting on July 29, 2002 to discuss this matter and the City of Albuquerque Water Agreements

Dear Mr. Maxey:

I am writing to confirm our meeting on July 29, 2002 on the Bureau of Reclamation's proposed amendments of your San Juan-Chama Project ("SJCP" or "Project") contracts with the City/County of Santa Fe, the Department of Energy, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and City of Española (collectively "the Water Service Contracts"). We will also discuss at this meeting our concerns about the water agreements the city of Albuquerque entered into with Reclamation and the Middle Rio Grande Conservancy District. The meeting will be held from 10:00 to 11:30 am, at the Santa Fe office of the Nordhaus Law Firm, 200 W. de Vargas Street, Suite 9.

I am also writing to provide you a more detailed discussion of the issues raised in my letter to you of February 19, 2002 on the Water Service Contracts and at our initial government-to-government consultation meeting on February 25, 2002. I appreciated your personal attention to the Pueblo's concerns at our last meeting, and your commitment to consider further the issues we raised. We are anxious to hear your thoughts on our comments and receive an update on the status of this matter. For the reasons we have discussed and as further explained below, the Pueblo of San Juan remains opposed to the proposed amendments to the Water Service Contracts.

Reclamation has erroneously assumed that the Water Service Contracts will be renewed if they are not converted.

The Water Service Contracts are limited term contracts with fixed expiration dates. However, for purposes of scoping the National Environmental Policy Act (“NEPA”) issues, Reclamation has assumed to date that the Water Service Contracts will all be renewed upon expiration if they are not converted into repayment contracts through the proposed action. You have advised us that this assumption is based on two grounds: (1) the “term of contract” provisions of the contracts, and (2) Section 1 of Public Law 88-44. Neither the contract provisions nor Public Law 88-44 supports an assumption that the Water Service Contracts would be renewed.

The “term of contract” provision in the City and County of Santa Fe’s Water Service Contract states:

This contract shall be effective upon execution by all parties through December 31, 2016: Provided, however, That this contract may be renewed at the option of the Contractor for an additional period upon terms and conditions satisfactory to the parties hereto.

Contract No. 7-07-50-X0879, § 21.

The Village of Los Lunas’ contract and the City of Española’s contract contain identical provisos. Contract No. 8-07-53-X0159, § 21; Contract No. 8-07-53-W0190, § 21. The relevant proviso in the “term of contract” clause of the Town of Taos’ contract is also essentially the same, differing only in the substitution of “an additional 40-year term” for “an additional period”:

This contract shall be effective upon execution by all parties concerned, and shall remain in effect through December 31, 2021; Provided, however, That this contract may be renewed for an additional 40-year term at the option of the Contractor upon terms and conditions satisfactory to the parties hereto.

Contract No. 2-07-53-X0552, § 21. The proviso in the Village of Taos Ski Valley’s contract likewise differs only in the substitution of “will be renewed for an additional period of not less than 10 years” for “may be renewed for an additional 40-year term.” Contract No. 8-07-53-W0165, § 21

The Energy Research and Development Administration (“ERDA”) contract, which is now held by the Department of Energy (“DOE”), has a proviso to the term of contract clause that is unique among the six Water Service Contracts. It lacks the “upon terms and conditions satisfactory to the parties hereto” language common to the proviso in the other five contracts, and

Mr. Kenneth G. Maxey
July 15, 2002
Page 3

allows ERDA/DOE to unilaterally exercise the option to renew upon written notice. The entire clause reads:

This Agreement shall be effective upon execution by the parties and shall extend for 10 years thereafter: Provided, however, that ERDA shall have the option to renew this Agreement for four succeeding 10-year periods for a total period not to exceed 50 years. ERDA shall give written notice of its exercise of this option at least 90 days prior to the end of each 10-year period.

Contract No. 7-07-51-X0883, § 17. The ERDA/DOE contract was executed on January 10, 1977, and hence the “total period not to exceed 50 years” runs on January 10, 2027.

Each of the contract provisos discussed above is an option to renew. As such, the power they confer on the contractor depends on their terms. “The optionee’s power will depend on the terms of the option; and so will the legal effects produced by its exercise.” Eric Mills Holmes, *Corbin on Contracts* § 11.8, at 537 (rev. ed. 1996).

While the ERDA/DOE contract provides for renewal upon written notice by the contractor, the Water Service Contracts lack any language of this sort. Indeed, the difference between the proviso of the DOE/ERDA contracts and those of the other five Water Service Contracts is strong evidence that those contracts do not provide the contractors a unilateral right to renew them on the same terms and conditions. If the options to renew conveyed that power, they would contain language analogous to the DOE/ERDA language. In fact, they do not provide for unilateral renewal on written notice, and they specifically make renewal subject to the negotiation of terms and conditions satisfactory to both parties. Consequently, if the parties do not reach agreement on all terms and conditions, these five contracts will simply expire. Even the DOE/ERDA contract will in no event extend more than 50 years after its execution, by the plain terms of its renewal provision.

The second basis you have cited for assuming that the contracts will be renewed, Section 1 of Public Law 88-44,¹ likewise does not provide for unilateral renewal of these contracts on their existing terms. Section 1 provides:

[T]he Secretary of the Interior shall, upon request of the other party to any long-term contract for municipal . . . water supply[,] . . . include provision for renewal thereof subject to renegotiation of (1) the charges set forth in the contract in the

¹ The other substantive provision of Public Law 88-44, Section 2, provides for a contract clause addressing the priority of rights to a project’s water supply. Consequently, it does not bear on contract renewal.

light of circumstances prevailing at the time of renewal and (2) any other matters with respect to which the right to renegotiate is reserved in the contract.

Act of June 21, 1963, Pub. L. 88-44, 77 Stat 68, § 1.

Public Law 88-44 thus provides that, if requested by the other party, a water service contract will include a provision for renewal *subject to renegotiation of terms*. At minimum under Public Law 88-44, renewal will be subject to renegotiation of the contract charges. Renewal will also be subject to “any other matters with respect to which the right to renegotiate is reserved in the contract.” § 2, 77 Stat at 68. As explained above, conditioning renewal on the renegotiation of terms cannot render a contract unilaterally renewable on its existing terms.

As a result, Public Law 88-44 does not alter the fact that the five Water Service Contracts are not unilaterally renewable on their existing terms. Nor does it limit the provisions in those contracts for renewal “upon terms and conditions satisfactory to the parties” to mere renegotiation of the contract charges.

Finally, the right to the use of water acquired under the provisions of the Reclamation Act of 1902, as amended, is subject to the requirement of beneficial use. See 43 U.S.C. § 372 (2002). In Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981), the Tenth Circuit held that the beneficial use requirement was not met where a contract between Reclamation and the City of Albuquerque contemplated the storage of water for future uses that were recognized as beneficial under state law, but “the application of water to be stored . . . to any of these purposes is too remote or speculative to constitute a beneficial use.” 657 F.2d at 1137-38. Notably, the Tenth Circuit rejected the United States’ argument that “the City has a reasonable time to develop use for the water and to thus perfect its appropriation,” because as the court explained, “[t]his right, however, is not unlimited.” 657 F.2d at 1135. “Until the City can apply the water it cannot be said to have a beneficial use, nor, for that matter, a completed appropriation.” Id.

Renewals under contract terms authorized by Public Law 88-44 do not escape this beneficial use requirement. As Senate Report 88-238 (1963) on Public Law 88-44 explains:

The bill provides that the other party to any such long-term contract may have a right of renewal, subject to renegotiation, and a continuing right to its share of water *so long as it is beneficially utilized*.

S. Rep. No. 88-238, at 1 (1963), reprinted in 1963 U.S.C.C.A.N. 696 (emphasis added).

Accordingly, the Water Service Contracts are not unilaterally renewable by the contractors on their existing terms, and Reclamation cannot assume that they will be renewed on their existing terms if they are not converted to repayment contracts.

Reclamation is not considering a reasonable range of alternatives, as required by NEPA.

NEPA and the Council on Environmental Quality's NEPA regulations, require Reclamation to consider a reasonable range of alternatives to the proposed action. Section 102(2)(C)(iii) of NEPA requires an environmental impact statement to include a discussion of the "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(iii). The alternatives requirement is the "heart" of the environmental impact statement. 40 C.F.R. § 1502.14 (2001). The alternatives discussion in an EIS must "[r]igorously explore and objectively evaluate all reasonable alternatives" and "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." 40 C.F.R. § 1502.14(a) and (b) (2001).

Here, Reclamation anticipates preparing only an Environmental Assessment. Even if Reclamation were correct that the impacts of the proposed action will not be significant and therefore an EIS will not need to be prepared, Reclamation would still need to consider alternatives. Section 102(2)(E) of NEPA requires a federal agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E) (2002). Unlike the Section 102(2)(C) requirement discussed above, the Section 102(2)(E) requirement is not limited to situations where an EIS is prepared.

The proposed conversion of the Water Service Contracts unquestionably "involves unresolved conflicts concerning alternative uses of available resources," and thus requires the consideration of alternatives. As you know, the Pueblo of San Juan's objections to Reclamation's continuing failure to meet our intended allocation of SJCP water is an unresolved conflict over the Project water supply. See generally, Bureau of Reclamation, Albuquerque Area Office, "Final Environmental Assessment for San Juan-Chama Water Contracts with the Pueblo of San Juan" (October 2001).

The two alternatives on which Reclamation has begun scoping -- that is, the proposed action and no action -- do not reflect a reasonable range of alternatives. You assumed that the "no action" alternative includes the renewal of the contracts on their existing terms and conditions upon expiration. For the reasons explained above, this assumption does not hold. The contracts can only be renewed on terms and conditions acceptable to both parties, not unilaterally on their existing conditions.

Reclamation cannot ignore reasonable alternatives to permanently allocating a substantial amount of the SJCP water supply. The reasonable alternatives include not converting and not renewing the six water service contracts. Another alternative would be not to convert the contracts but to renew them for smaller quantities of water. Reclamation must consider these and other alternatives in order to comply with NEPA.

The proposed action would have significant adverse effects, particularly on the Pueblo of San Juan.

Your letter of January 11, 2002 summarized the findings of Reclamation's initial scoping of the issues to be addressed in the NEPA compliance process for the proposed contract amendments. You stated that Reclamation has not identified any potential effects on tribal resources or any potential for substantial changes in hydrology or any other environmental resources.

As explained in my letter of February 19, 2002, Reclamation's initial NEPA conclusions result from invalid assumptions. Primary among them is your assumption that if Reclamation does not convert the Water Service Contracts to repayment contracts, you must renew them on their existing terms. For the reasons discussed above, this assumption is incorrect.

Reclamation's erroneous assumption that the contracts would be renewed on the same terms is the basis for your initial conclusion that the effects of the proposed action are essentially the same as "no action." Consequently, that conclusion is flawed. It is also belied by Reclamation's representations that contract conversion is sought to make the water supply to the contractors more secure for future development. The logical conclusion from this intended purpose is that future development of the water supply – and its environmental impacts – are more likely if the contracts are converted than if they are not.

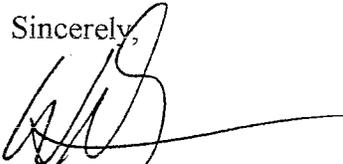
Moreover, the conversion of the contracts would forever foreclose the benefits of the Project to the Pueblo intended by the United States and expected by the Pueblo. The Pueblo has long-held and legitimate expectations to substantial benefits from the Project. Although we welcomed the execution of our repayment contract for 2,000 acre-feet annually of SJCP water last year, that 2,000 acre-feet is less than half of the amount that was previously allocated to the Pueblo.

We are concerned that Reclamation's assumption of renewal on the existing terms and artificially constrained range of alternatives appear designed to result in a finding of no significant impact and avoidance of NEPA's requirement to prepare a full EIS. Reclamation must correct the erroneous assumptions and evaluate a reasonable range of alternatives before concluding whether the proposed action will have significant impacts.

For the foregoing reasons, Reclamation's assumption that the Water Service Contracts will be renewed on their existing terms is invalid and your initial NEPA conclusions are in error. If Reclamation intends to move forward with the proposed action, Reclamation must consider a reasonable range of alternatives, including not converting or renewing the contracts, and must disclose the significant impacts of the proposed action.

Mr. Kenneth G. Maxey
July 15, 2002
Page 7

I hope that this review is helpful to you. I look forward to hearing your thoughts on these comments at our meeting on July 29th.

Sincerely,

Governor Wilfred Garcia

cc: San Juan Pueblo Water Rights Negotiation Team (through Connie Martinez)
Office of Environmental Affairs
Pueblo of San Juan
P.O. Box 717
San Juan Pueblo, NM 87566
ph: (505) 852-4212
fax: (505) 852-4820

Charles Lujan
Director
Office of Environmental Affairs
Pueblo of San Juan
P.O. Box 717
San Juan Pueblo, NM 87566
ph: (505) 852-4212
fax: (505) 852-1432

Susan G. Jordan, Esq.
Naomi J. Barnes, Esq.
Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP
200 West de Vargas Street, Suite 9
Santa Fe, NM 87501
ph: (505) 982-3622
fax: (505) 982-1827

Mr. Kenneth G. Maxey

July 15, 2002

Page 8

Lester K. Taylor, Esq.

Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP

500 Marquette Avenue, N.W., Suite 1050

Albuquerque, NM 87102

(505) 243-4275

fax: (505) 243-4404

ALB-440
WTR-4.03

SENT VIA FACSIMILE

JUL 28 2002

Governor Wilfred Garcia
San Juan Tribal Council
P.O. Box 1099
San Juan Pueblo, NM 87566

Dear Governor Garcia:

Thank you for confirming our meeting scheduled for 10:00 a.m. at the Santa Fe office of the Nordhaus Law Firm, on July 29, 2002. We will come prepared to discuss the proposed amendments to six Project water service contracts as well as agreements recently executed by the City of Albuquerque, the Middle Rio Grande Conservancy District, and Reclamation.

Your letter goes into detail to support the contention that Reclamation has erroneously assumed that the water service contracts will be renewed upon expiration, unless they are converted to repayment contracts. In view of the fact that the contractors are requesting these contract conversions, we might readily assume that they would likewise request renewals of the existing contracts if conversion was not a viable option. It is not clear why the water service form of contract was chosen at the time these contracts were executed. We might speculate that the entities were uncertain of their future water requirements and did not wish to commit to permanent operation and maintenance costs. It has become clear to these entities, however, that they in fact do need to secure, on a long-term basis, the water supplies allocated to them by the subject water service contracts.

It is true that the contracts are renewable contingent upon agreement by the parties on mutually acceptable terms. It is very probable that such agreement could be reached. Renewal of the contracts would be well within the scope of the intended Project purposes. Interests opposing renewing these contracts would have to provide very strong arguments to support discontinuing water supplies upon which these contractors have come to rely.

Project water is imported to the Rio Grande Basin from the Colorado River to satisfy the State of New Mexico's entitlement of the Colorado River pursuant to the Upper Colorado River Basin Compact of April 6, 1949 (63 Stat. 31). Delivery of New Mexico's Colorado River Compact entitlement through the San Juan-Chama Project has been authorized by the Colorado River Storage Project Act of April 11, 1956, (70 Stat. 105) and the Navajo Indian Irrigation Project and San Juan-Chama Project, Initial Stage Act of June 13, 1962 (76 Stat. 96). The New Mexico Interstate Stream Commission recommended to the Secretary of the Interior the water quantities

allocated to each of the six entities. After the Secretary notified Congress of this recommendation, Reclamation, acting in an authorized delegated capacity for the Secretary, executed contracts with the six entities for the recommended quantities of water. Therefore, a reallocation of the use of this water cannot be at the unilateral option of the Bureau of Reclamation.

We agree that the right to the use of Project water is subject to state and federal beneficial use requirements. As the State of New Mexico and the Secretary of the Interior work together to make Project water allocations, we make allowances for the fact that municipal entities may require a certain amount of time to pass before putting all their water allocation to beneficial use. Growth of municipalities is a reality which state and federal agencies must consider in making water allocations. It would be irresponsible to support these entities with temporary water allocations only, knowing that the water supplies they have used to plan their futures will be discontinued.

It is premature to claim that Reclamation is not considering a reasonable range of alternatives in the NEPA process. A public scoping meeting was held in early January to gather information. Since that time many comments have been received for Reclamation's consideration. No decision has been made to fulfill NEPA requirements with an Environmental Assessment. It is possible that an Environmental Impact Statement will be required. In either case, we are still in the early stages of environmental compliance work and fully intend to consider a full range of alternatives.

Reclamation is committed to full environmental compliance and public disclosure of any contract actions it contemplates. We welcome your input and look forward to discussing these matters more fully on July 29. Meanwhile, please feel free to call me at 505-248-5357.

Sincerely,

Kenneth G. Maxey

Kenneth G. Maxey
Area Manager

cc: Susan G. Jordan, Esq.
Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP
200 West de Vargas St., Suite 9
Santa Fe, NM 87501

Lester K. Taylor, Esq.
Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP
500 Marquette Avenue, NW, Suite 1050
Albuquerque, NM 87102

bc : ALB-150, ALB-510

I respectfully suggest, however, that you consider more carefully the role of the State of New Mexico in the allocation of San Juan-Chama Project water. We find nothing in the Project authorizing legislation to provide the State any authority to decide who receives a contract or the amount of their allocation. If you believe that the State's role is more than advisory, please provide us the specific legal authority upon which you rely.

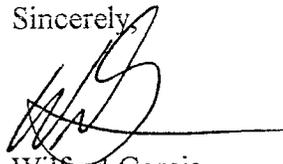
When we met, you said Reclamation was considering whether to (1) move forward with the NEPA process for the proposed conversions, or (2) take no further action now in favor of dealing with the issue in the future when the water service contracts are closer to their expiration dates. You indicated this decision will be made by Rick Gold, the Regional Director for Reclamation's Western Regional Office. Please let me know the current status.

If Reclamation determines to move forward with review and consideration of the proposal to convert the Five Contractors' water service contracts, I request that you provide all records in Reclamation's possession relating to whether the Five Contractors are meeting the beneficial use requirements. This information is essential to Reclamation's decision on the proposed conversions. In order for the Pueblo to meaningfully comment and consult on the proposal, we must also have this information.

Finally, I appreciate your commitment to review Reclamation's records for information pertaining to the history of the Pueblo's allocation of San Juan-Chama Project water. Our attorneys are sending you a letter regarding this matter to facilitate your review of your files.

Thank you again for your personal attention to the Pueblo's concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wilfred Garcia', with a horizontal line extending to the right.

Wilfred Garcia
Governor

cc: Tribal Council, Pueblo of San Juan
Water Rights Negotiation Committee, Pueblo of San Juan
Charles Lujan, Executive Director, Office of Environmental Affairs, Pueblo of San Juan
Lester K. Taylor, Esq.
Susan G. Jordan, Esq.
Naomi J. Barnes, Esq.

ALB-440
WTR-1.10

OCT 01 2002

Governor Wilfred Garcia
San Juan Tribal Council
PO Box 1099
San Juan Pueblo NM 87566

Subject: San Juan-Chama Project (Project) Water Allocation

Dear Governor Garcia:

At our meeting July 29, 2002, you raised several concerns which relate to the Pueblo of San Juan's (Pueblo) allocation of Project water. As I understand them, your concerns include 1) the reduction of the Pueblo's original allocation of Project water from 5,796 acre-feet to 2,000 acre-feet; 2) the proposed conversion of six Project contracts from water service to repayment contracts and the range of alternatives to be included in the environmental assessment of these proposed contract conversions; 3) the recent agreement between Reclamation and the City of Albuquerque (City) to lease up to 40,000 acre-feet of water at \$100 per acre-foot; 4) Reclamation law as it pertains to beneficial water use (in particular, under what circumstances would Reclamation revoke an allocation of Project water for lack of beneficial use); and Reclamation's waiver of operation and maintenance costs for some water users.

Pueblo's Project Water Allocation

When examining the history of Project water allocations, it is important to note that Project water is imported to the Rio Grande Basin from the Colorado River to satisfy the State of New Mexico's entitlement of the Colorado River pursuant to the Upper Colorado River Basin Compact of April 6, 1949 (63 Stat. 31). Delivery of New Mexico's Colorado River Compact entitlement through the Project is authorized by the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105) and the Navajo Indian Irrigation Project and San Juan-Chama Project, Initial Stage, Act of June 13, 1962 (76 Stat. 96). Any allocation of the State of New Mexico's Upper Colorado River Basin Compact entitlement must be in compliance with the above legislation and have the expressed consent of the State of New Mexico.

Reclamation's August 1967 Project Definite Plan Report (DPR), as revised in May 1972, included Pueblo-owned lands within the service area of the Llano Unit, one of the original irrigation tributary units of the Project. Of the total service area of 4,669 acres planned for the Llano Unit, about 41 percent was owned by the Pueblos of San Juan and Santa Clara. The

diversion demand for the San Juan Pueblo was estimated in the DPR to be 5,796 acre-feet per year. On April 25, 1973, repayment Contract No. 14-06-500-2041 was executed with the Onate Conservancy District, which included provisions for irrigation service to the San Juan Pueblo. However, due to a lack of support, the district disbanded and the Llano Unit was never developed. In February 1989, a hydrologic report addendum reduced estimates of the yield of the San Juan-Chama Project from 101,800 to 96,200 acre-feet annually. At that time, all the remaining uncontracted Project water allocations were reduced on a pro rata basis, with the allocation of water to the Llano Unit reduced to 5,165 acre-feet and designated for the San Juan Pueblo.

Although Reclamation approached the Pueblo as early as November 1989 to negotiate a repayment contract for all or a part of its designated Project water, the Pueblo was never able to contract because it could not afford the operation and maintenance (O&M) charges allocated to its designated Project water supply. In early 1992, the New Mexico Interstate Stream Commission (Commission) recommended to Reclamation that an allocation of 6,500 acre-feet of Project water be made for the Jicarilla Apache Tribe. Accordingly, in late 1992, a contract between the United States and the Jicarilla Apache Tribe was executed to incorporate the terms of the Jicarilla Apache Water Rights Settlement Act of October 23, 1992, and provide for the delivery of 6,500 acre-feet of Project water. At the same time that the Commission recommended the allocation to the Jicarilla Tribe, it revised its recommendation for the Pueblo, reducing the recommended allocation from 5,165 acre-feet to 2,000 acre-feet.

In the early 1990's, a draft contract was offered to the Pueblo for 10 acre-feet of the 2,000 acre-foot allocation, and Reclamation established and then extended a deadline of October 3, 1992, for the Pueblo to initiate negotiations for the contract. In its place a "standby" contract was offered to hold the Project water allocation beyond the October 3, 1992, deadline. The "standby" contract provided that 2,000 acre-feet of Project water would be held for the Pueblo until January 1, 1996. Beginning in 1994, the Pueblo asked for relief from paying the annual "standby" charges accruing pursuant to the "standby" contract. As of February 23, 1996, \$20,000 was owed to Reclamation for "standby" charges. Finally, on February 7, 1997, the Pueblo requested that the Secretary of the Interior enter into negotiations for a repayment contract to secure the 2,000 acre-feet of Project water, and on May 4, 1999, Reclamation received a copy of the Pueblo's Resolution No. 99-17 authorizing the negotiation of a repayment contract. As you know, the contract was signed on October 25, 2001, and the Pueblo's "standby" payments totaling \$34,000 were credited to its repayment obligation.

Only 2,990 acre-feet of Project water remain unallocated. That water is being held in reserve by the Secretary of the Interior for possible future water rights settlements in the Taos area.

Project water is imported to the Rio Grande Basin to satisfy New Mexico's entitlement to Colorado River water pursuant to the Upper Colorado River Basin Compact. The Secretary of the Interior has worked with the State of New Mexico in the past to allocate the Project water supply to the current entities and is now currently working with the State to secure those Project water allocations through contracts. Since original allocation recommendations were made by

the State of New Mexico in 1976, no additional requests to change these allocations have been made. Project water represents the State of New Mexico's Colorado River entitlement and cannot be unilaterally reallocated by the Secretary of the Interior.

Conversion of Six Water Service Contracts to Repayment Contracts

When it came to the attention of the City of Santa Fe (City) and Santa Fe County (County) that the contract for their Project water allocation was to expire in the not-too-distant future, they became concerned. In order to finance their Project water distribution facilities and to assure the area's future water supply, they believed it would be to their benefit to convert the form of contract. The remaining five contractors with similar water service contracts, which contain renewal dates, have similar concerns over securing their future water supplies. Following the City and County's example, all five contractors approached Reclamation with requests to convert the form of contract.

Reclamation is authorized to amend these contracts to comply with the contractors' requests, and in fact may be obligated to do so, depending on how Reclamation law is interpreted. The process to evaluate the contractors' requests includes, but is not necessarily limited to, deciding whether it is in the best interests of the United States to do so and the extent to which Reclamation has flexibility in the contracting process. We must also evaluate Reclamation's role in reallocating Project water and comply with the National Environmental Policy Act (NEPA). The Albuquerque Area Office has received approval of a basis on which to negotiate an amendment to the City and County's contract to accomplish the conversion. We expect to receive approval to amend the remaining five contracts in the near future. The NEPA process began in January 2002 with a public scoping meeting. The six contractors have provided funds to cover the costs of the contract and environmental compliance work.

No decision has been made to fulfill NEPA requirements with an Environmental Assessment. It is possible that an Environmental Impact Statement will be required. In either case, we are still in the early stages of environmental compliance work and fully intend to consider a full range of alternatives. Reclamation is committed to full environmental compliance and public disclosure of any contract actions it contemplates.

If you need further information on the NEPA process, please call Ms. Lori Robertson at (505) 248-5326. Ms. Nancy Purdy is the contracting specialist who initiated the contract conversion process at the request of the contractors. She can be reached at (505) 248-5406.

Reclamation's Agreement with the City of Albuquerque

As you know, an agreement was made with the City in June 2002 to lease up to 40,000 acre-feet of Project water for supplemental flows in the Rio Grande. Similar contracts were executed for smaller amounts with other Project contractors. In the past, Reclamation has paid from \$6 to \$45 per acre-foot for water leased for these supplemental flow purposes. The June agreement with the City provides for payment of \$100 per acre-foot, as do the others for smaller amounts of water. The higher \$100 price was negotiated in recognition of the fact that the water leased

under these agreements consisted of annual Project water allocations delivered in prior years and stored either in El Vado or Abiquiui Reservoirs. The contractors have incurred costs for storage of this water. The \$100 price recognizes this cost and also acknowledges that the stored water has a higher market value than \$45, which as you know, covers water service or repayment and O&M costs. The water leased from the Pueblo does not bear these additional storage costs.

Beneficial Use

Section 8 of the Reclamation Act of 1902 states, in part:

Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water . . . Provided, That . . . beneficial use shall be the basis, the measure, and the limit of the right. (32 Stat. 390; 43 U.S.C. §§ 372, 382).

Article V of the Colorado River Compact, which apportioned the Colorado River among the upper and lower basin states, provides for the Secretary of the Interior to cooperate with the states in the allocation of water:

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey, shall cooperate, ex-officio:

(a) To promote the systematic determination and coordination of the facts as to flow; appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

Project water is the State of New Mexico's apportionment of Colorado River water, pursuant to the Upper Colorado River Basin Compact of April 6, 1949. Article III, Section (b)(2) states that "Beneficial use is the basis, the measure and the limit of the right to use;" of water by the states allocated Colorado River water by the Upper Colorado River Basin Compact.

It is not appropriate to speculate under what circumstances the Secretary of the Interior, in consultation with the State of New Mexico, would reallocate Project water for lack of beneficial use. Generally, it is the policy of the New Mexico State Engineer and Reclamation to provide municipalities a reasonable amount of time in which to put their Project allocations to beneficial use. In order to allow for anticipated growth, it may be necessary to provide such municipalities with a larger allocation than what they may be able to put to use immediately. Withholding this larger-than-needed allocation would impose unreasonable planning obstacles on these entities.

Waiver of Operation and Maintenance Costs

In 2001, Reclamation executed a lease agreement with the Jicarilla Apache Nation (Nation) to lease its 6,500 acre-foot allocation of Project water for a two-year term. Article 10(f) of the

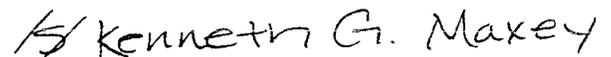
Nation's water rights settlement contract with the Secretary of the Interior provides that all or part of the annual O&M costs may be waived if the Nation demonstrates that, practically speaking, no market exists for all or part of the water contracted from the Project. The United States agreed, for the purposes of this two-year lease agreement that no other viable market existed for the leased water, since the Nation did not have time to evaluate market conditions.

The United States is authorized to enter into agreement with the Middle Rio Grande Conservancy District (District) to provide for the payment of O&M charges on certain newly reclaimed Pueblo Indian lands and lands purchased by the United States by virtue of the Act of June 7, 1924. The United States has done so over the years during which the District has operated and maintained the Middle Rio Grande Project.

Unless specifically authorized by the Congress in the form of a settlement agreement or legislation, the United States may not pay O&M costs on the behalf of Indian entities. In the case of the San Juan-Chama Project legislation, no such authorization exists, and Reclamation is required to collect these costs in advance from all Project beneficiaries.

If you wish to discuss any of these matters further, please feel free to call me at (505) 248-5357.

Sincerely,



Kenneth G. Maxey
Area Manager

cc: Susan G. Jordan, Esq.
Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP
200 West de Vargas Street Suite 9
Santa Fe NM 87501

Lester K. Taylor, Esq.
Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP
500 Marquette Avenue NW Suite 1050
Albuquerque NM 87102

bc : ALB-150, ALB-510

ALB-440
PRJ-1.10

JAN 0 9 2003

Honorable Wilfred Garcia
Governor, San Juan Tribal Council
PO Box 1099
San Juan Pueblo NM 87566

Subject: Proposed Conversion of San Juan-Chama Project (Project) Contracts

Dear Governor Garcia:

Your letter of September 3, 2002, asks us to respond to two questions: 1) What is the current status of a decision to be made by the Regional Director regarding the requests by six Project contractors to convert their contracts from water service to repayment; and 2) What specific legal authority do we rely upon to support our position that the State of New Mexico's role is more than advisory in determining allocations of Project water.

Contract Conversions

Reclamation will not be taking any further action on the contract conversion requests until issues related to *Silvery Minnow v. Keys* are resolved. If a decision is made to move forward, public notification will be made through the NEPA process.

Legal Authority

Section 8 of the Reclamation Act of 1902 states, in part:

Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water . . . Provided, That . . . beneficial use shall be the basis, the measure, and the limit of the right. (32 Stat. 390; 43 U.S.C. §§ 372, 382).

Article V of the Colorado River Compact, which apportioned the Colorado River among the upper and lower basin states, provides for the Secretary of the Interior to cooperate with the states in the allocation of water:

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey, shall cooperate, ex-officio:

(a) To promote the systematic determination and coordination of the facts as to flow; appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

Project water is the State of New Mexico's apportionment of Colorado River water, pursuant to the Upper Colorado River Basin Compact of April 6, 1949.

If you wish to discuss any of these matters further, please feel free to call me at (505) 248-5357.

Sincerely,

Steve Hansen

FOR Kenneth G. Maxey
Area Manager

cc: Ms. Susan G. Jordan, Esq.
Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP
200 West de Vargas Street, Suite 9
Santa Fe NM 87501

Mr. Lester K. Taylor, Esq.
Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP
500 Marquette Avenue NW, Suite 1050
Albuquerque NM 87102

bc: ~~ALB~~-150, ALB-510

NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS ASSOCIATION
Route 1, Box 117 A
Santa Fe, NM 87501

Pueblo of Nambé
Pueblo of Tesuque
Pueblo of Pojoaque
Pueblo of San Ildefonso

Ernest Mirabal, Chairman, Nambé Pueblo
James S. Hena, Vice-Chairman, Tesuque Pueblo
Peter C. Chestnut, Secretary

September 28, 2005

Via Hand Delivery

Connie Rupp, Area Manager
ALBUQUERQUE AREA OFFICE
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
555 Broadway Avenue, Suite 100
Albuquerque, New Mexico 87102

Re: **San Juan-Chama Project**

Dear Ms. Rupp:

On behalf of the Pueblos of Nambé, San Ildefonso, Pojoaque, and Tesuque (the four Pueblos) through the Northern Pueblos Tributary Water Rights Association ("Association"), I write to express the Association's deep concern with the Bureau of Reclamation's decision to enter into negotiations at this time to convert six San Juan-Chama Project water service contracts into repayment contracts without first conducting proper government-to-government consultation with the four Pueblos that comprise the Association.

Our Association was formed in 1973 to coordinate the four Pueblos' positions on those issues that are common to all four related to the quantification of the four Pueblos' water rights in the *Aamodt* (Pojoaque River Basin) water rights adjudication. As you may know, the *Aamodt* adjudication is the leading Pueblo water rights adjudications filed in New Mexico and remains one of the oldest court cases on the federal court docket within the entire United States of America.

Although the four Pueblos coordinate our work on *Aamodt* and related water matters through the Association and have done so for more than three decades, it is extremely important for you, as federal trustee on behalf of the four Pueblos, to understand that the four Pueblos each have their own sovereign interests and their own present and future water needs. Therefore, anytime you think about *Aamodt*, remember that you are charged with protecting the interests of four separate sovereign Pueblos.

The four Pueblos have gone on record for years expressing our concern about the need for the Bureau of Reclamation to first take into account the water needs of the four Pueblos prior to any action being taken to convert the six soon-to-expire San Juan-Chama Project water service contracts into never-ending permanent contracts. We have requested numerous times that the Bureau of Reclamation perform this task in the context of the *Aamodt* settlement. Most recently, we sent a resolution to the Secretary of the Interior (to which we have received no response) that includes

San Juan-Chama Project
September 28, 2005
Page 2

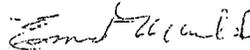
discussion of our concern with the conversion of these contracts in the absence of any tangible progress by the Bureau of Reclamation (including any tangible progress from your two predecessors as Area Manager) on securing the water supply needed for the four Pueblos as part of the pipeline contemplated in the *Aamodi* settlement.

In this context, and notwithstanding our efforts to work through issues cooperatively with two of the contractors with whom you are now negotiating (the City of Santa Fe and the County of Santa Fe) it is entirely inappropriate for the Bureau of Reclamation, as federal trustee for the Pueblos, to even enter into negotiations that imply willingness from Reclamation to convert these six San Juan-Chama Project water service contracts into permanent repayment contracts before the water rights to meet present and future needs of the four Pueblos are secured. Until we hear otherwise from the Secretary of the Interior, and notwithstanding the renewal clause in these water service contracts acknowledging that these contracts may be renewed at the contractor's option, it is our understanding the Bureau of Reclamation exercises discretion over this water supply and considerable discretion about how the process is conducted. At a minimum, this process should not have been reinitiated without first consulting with the four Pueblos. It is highly inappropriate to have begun a public process premised on these contractors receiving the same supply of San Juan-Chama Project water without having first conducted government-to-government consultations on the numerous and repeated concerns we have raised.

It is bad enough that all the Pueblos of New Mexico were not consulted when the decisions were made to allocate, and in some instances, reallocate, San Juan-Chama Project water into these six water service contracts that are now at issue and soon set to expire. Please do not compound the past errors of the Bureau of Reclamation by ignoring us once again.

The four Pueblos' representatives at our monthly Association meeting on September 21, 2005 directed me, by unanimous motion, to send this letter. A resolution from the Association will be forthcoming.

Sincerely,



Ernest Mirabal

cc: Secretary of the Interior, attention Jennifer Gimbel
John Keys
Mark Limbaugh
Nancy Purdy
Chris Kinney
Governor Tom Talache

San Juan-Chama Project
September 28, 2005
Page 3

Governor George Rivera
Governor Dale Martinez
Governor Mark Mitchell

E:\CLIENTS\N P T W R A\AMODT\2005\C Rupp_ltr_9-28-05.wpd

NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS ASSOCIATION

**Route 1, Box 117 A
Santa Fe, NM 87501**

Pueblo of Nambé
Pueblo of Tesuque
Pueblo of Pojoaque
Pueblo of San Ildefonso

Ernest Mirabal, Chairman, Nambé Pueblo
James S. Hena, Vice-Chairman, Tesuque Pueblo
Peter C. Chestnut, Secretary

October 25, 2005

VIA FAX: 505/476-2226
Governor Bill Richardson
Attn. Bill Hume, Senior Policy Advisor
STATE OF NEW MEXICO
State Capitol #400
Santa Fe, New Mexico 87501

VIA FAX: 505/827-5766
Estevan Lopez
Tanya Trujillo
OFFICE OF STATE ENGINEER
INTERSTATE STREAM COMMISSION
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

VIA FAX: 505/827-3887
Ted Bagley
John Stroud
OFFICE OF STATE ENGINEER
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

VIA FAX: 842-8890
John Utton, Santa Fe County Water Attorney
SHEEHAN, SHEEHAN & STELZNER, P.A.
707 Broadway NE, Suite 300
Albuquerque, New Mexico 87103

VIA FAX: 505/827-5766
John D'Antonio
OFFICE OF STATE ENGINEER
P.O. Box 25102
Santa Fe, New Mexico 87504

VIA FAX: 505/827-5766
D.L. Sanders
OFFICE OF STATE ENGINEER
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

VIA FAX: 505/955-6748
Kyle Harwood, Assistant City Attorney
CITY OF SANTA FE
P.O. Box 909
Santa Fe, New Mexico 87504

Re: Support Resolution

Dear People:

The Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque met together as the Northern Pueblos Tributary Water Rights Association on October 24, 2005. The four Pueblo unanimously passed Resolution No. 2005-16 "Supporting Buckman Direct Diversion Project and Conversion of San Juan-Chama Project Water Contracts, Support of Revised *Aamodt* Settlement Agreement".

October 25, 2005

Page 2

A copy of that Resolution is attached for your information.

The Pueblos intend this Resolution to address satisfactorily concerns raised about Pueblo support for the Buckman Direct Diversion Project and Conversion of the San Juan-Chama Project Contracts, as specified in the conceptual proposal for the revised *Aamodi* Settlement.

The Pueblos trust this will allow the State to proceed with publishing the revised Settlement Agreement on the New Mexico Office of State Engineer website, and move forward with work needed to present the revised Settlement Agreement to the public. We think the November 15 meeting in the Pojoaque Valley could be followed by a November 16 meeting in the Tesuque Valley. Both dates were available when discussed at the mediation sessions in October. While having back to back presentations will be challenging, we think the effort is needed so that all non-federal governments can meet the Court's December 15, 2005 date for taking official action on whether to support the revised *Aamodi* Settlement Agreement, or not.

Please feel free to contact me with any questions or concerns about the enclosed Resolution.

Thank you for your prompt attention to this matter.

Sincerely,



Peter C. Chestnut, Secretary

cc: Pueblo attorneys w/o enclosures

NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS ASSOCIATION

**Route 1, Box 117 A
Santa Fe, NM 87501**

Pueblo of Nambé
Pueblo of Tesuque
Pueblo of Pojoaque
Pueblo of San Ildefonso

Ernest Mirabal, Chairman, Nambé Pueblo
James S. Mena, Vice-Chairman, Tesuque Pueblo
Peter C. Chestnut, Secretary

RESOLUTION NO. NPTWRA 2005 - 16

**SUPPORTING BUCKMAN DIRECT DIVERSION PROJECT AND
CONVERSION OF SAN JUAN-CHAMA PROJECT WATER CONTRACTS,
AS PART OF PUEBLO SUPPORT FOR THE AAMODT LITIGATION REVISED
SETTLEMENT AGREEMENT**

The following Resolution was considered and approved at a regularly scheduled meeting of representatives for the Pueblos of Nambé, San Ildefonso, Tesuque, and Pojoaque meeting together and acting through the Northern Pueblos Tributary Water Rights Association (NPTWRA):

- WHEREAS** The Northern Pueblos Tributary Water Rights Association (Association) is comprised of the Pueblos of Nambé, San Ildefonso, Pojoaque, and Tesuque (the four Pueblos); and
- WHEREAS** The Association was formed in 1973 to coordinate the four Pueblos' positions on those issues that are common to all four related to the quantification of the four Pueblos' water rights in the *Aamodt* (Pojoaque River Basin) water rights adjudication; and
- WHEREAS** The parties to the court-ordered *Aamodt* mediation process have completed a revised *Aamodt* Settlement Agreement; and
- WHEREAS** In order for the revised *Aamodt* Settlement Agreement to become effective, the four Pueblos must receive, among other things, a firm and reliable supply of 2,500 acre-feet per year of water; and
- WHEREAS** In order for the revised *Aamodt* Settlement Agreement to become effective, the City of Santa Fe and the County of Santa Fe must provide wet water deliveries to the Rio Nambé, Pojoaque and to Tesuque Pueblo on the Rio Tesuque to offset City and County out-of-basin groundwater pumping; and
- WHEREAS** In order for the revised *Aamodt* Settlement Agreement to become effective, the County of Santa Fe must provide up to 100 acre-feet per year of the County's water to Tesuque Pueblo, at no cost to Tesuque Pueblo for water or delivery, until such time as that water is needed for non-Pueblo customers of a water utility above Tesuque Pueblo as further described in the Agreement; and

- WHEREAS** In order for the revised *Aamodt* Settlement to become effective, the City of Santa Fe and the County of Santa Fe must have the four Pueblos' support for their Buckman Direct Diversion Project and conversion of their current San Juan-Chama Project water service contract into repayment contracts; and
- WHEREAS** The City of Santa Fe has made great efforts to determine how to implement the wet water offsets required by the revised *Aamodt* Settlement Agreement; and
- WHEREAS** The County has acquired 588 acre-feet of Top of the World rights for use by Non-Pueblo water users which requires final approval by the State Engineer; and
- WHEREAS** The County of Santa Fe has made great efforts to purchase and secure 1,188 acre-feet per year of Top of the World water rights that, if approved for transfer by the New Mexico Office of the State Engineer, will be used as part of the four Pueblos' 2,500 acre -feet pipeline supply required by the revised *Aamodt* Settlement Agreement and such purchase by the County is dependent on the timely approval by the New Mexico Office of the State Engineer of the previously secured 588 acre-feet for transfer to a point of diversion at San Ildefonso Pueblo; and
- WHEREAS** The County enacted Resolution No. 2005-78 that is attached to this Resolution, states that "requests that the State of New Mexico work with the Pueblos, Santa Fe County, and the City of Santa Fe in ensuring that all governmental entities in the region have a secure water supply available to them; and
- WHEREAS** In order for the revised *Aamodt* Settlement Agreement to become effective, the County, City and State must support the *Aamodt* Settlement Agreement which includes a firm and reliable supply of 2500 acre-feet for the four Pueblos.

NOW THEREFORE BE IT RESOLVED, that the four Pueblos through the Association as part of its support for the revised *Aamodt* Settlement Agreement, support the Buckman Direct Diversion Project and the conversion of the City of Santa Fe's and the County of Santa Fe's San Juan-Chama Project water service contract into permanent repayment contracts

AND BE IT FURTHER RESOLVED, that the four Pueblos through the Association, as part of its support for the revised *Aamodt* Settlement Agreement, support conversion of the other existing San Juan_Chama water service contracts into permanent repayment contracts.

Pueblo de San Ildefonso

By: [Signature]

Pueblo of Nambé

By: [Signature]

Pueblo of Tesuque

By: [Signature]

Pueblo of Pojoaque

By: [Signature]

CERTIFICATION

The undersigned, as Chairman of the Northern Pueblos Tributary Water Rights Association, hereby certifies that the foregoing resolution was adopted by the Pueblo Representatives, and a quorum of the Association at a duly called meeting held on October 24, 2005, at San Ildefonso Pueblo, the vote being 4 in favor, 0 opposing, and 0 abstaining.

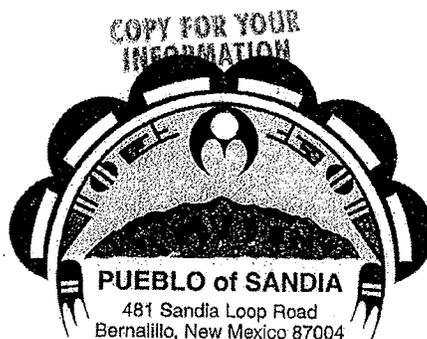
[Signature]
Ernest Mirabal, Chairman

Attest:

[Signature]
Secretary

Stewart Paisano
Governor

Lawrence R. Gutierrez
Lt. Governor



(505) 867-3317
Fax (505) 867-9235

www.sandiapueblo.nsn.us

December 7, 2005

Copy

Connie L. Rupp, Area Manager
UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Reclamation, Albuquerque Area Office
555 Broadway N.E. Suite 100
Albuquerque, New Mexico 87102-2352

RE: Government-to-Government Consultation on the Proposed San Juan-Chama Project Contract Conversions for City and County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and City of Espanola

Dear Ms. Rupp:

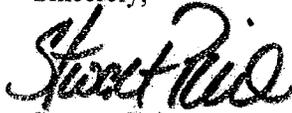
Thank you for meeting with my staff on December 2, 2005, regarding the subject proposed action. I regret that I had an unavoidable conflict, and could not be present; staff member Charles Fischer and your time is greatly appreciated. Based on discussions with my staff, the outcome of the meeting was productive in terms of learning how the Bureau of Reclamation intends to protect the Pueblo of Sandia (Pueblo's) senior and Prior and Paramount (P&P) water rights.

The purpose of this letter is to summarize the meeting's action items. First, Lynn Trujillo, general counsel, will be provided with a copy of the current draft contract language to review, in response to an e-mail message sent to Nancy Purdy of your staff on December 2, 2005. Second, you clarified that while Reclamation is unable to regulate conditions of water use permits for San Juan Chama (SJC) Project contractors, Reclamation does share the Pueblo's concern of potential adverse impacts from implementation of these water rights contracts to the Pueblo's non-adjudicated, senior and P&P water rights. Third, since the State of New Mexico issues permits for SJC repayment contracts and is a cooperating agency on this EA, the Pueblo requests an opportunity to review an administrative draft of the EA prior to its release to the public.

Thank you again for your willingness to address government-to-government consultation and federal trust responsibility in a meaningful manner. The Pueblo looks forward to continue working with Reclamation to ensure the actions taken to manage water operations protect both the existing uses and environmental needs when new opportunities are offered to our neighbors.

If you have any further questions please contact Rhea Graham, water resources manager of my staff at 867-4533.

Sincerely,



Stuwart Paisano
Governor

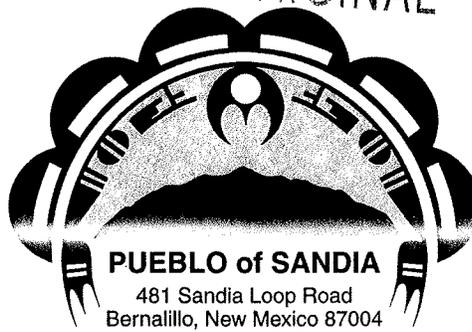
urlg

cc: ~~Charles Fischer~~, Bureau of Reclamation
David Mielke, Esq., Sonosky, Chambers, Sachse, Endreson, & Mielke
Lynn Trujillo, Esq., Pueblo of Sandia In-house Counsel
Alex Puglisi, Pueblo of Sandia Environment Director
Rhea Graham, Pueblo of Sandia
File

P:\05rg094.plh

ORIGINAL

~~APR 04 2006~~



Governor

Lawrence Gutierrez

Lt. Governor

Scott Paisano

April 5, 2006

Connie L. Rupp, Area Manager

UNITED STATES DEPARTMENT OF THE INTERIOR

Bureau of Reclamation, Albuquerque Area Office

555 Broadway NE, Suite 100

Albuquerque, New Mexico 87102-2352

RECEIVED BOR ALBUQUERQUE AREA OFFICE OFFICIAL FILE COPY (505) 867-3317 APax (505) 867-9235		
www.sandiapueblo.nsn.us		
Class	ENV 7.00	
Prj	SL	
Cntr #	6000807	
Fldr #	39489	
Date	Initia	To
4/6	CR	100
4/7	ZK	105
4/6	A	107
4/7	M	150

175
170

RE: Email Transmittal at staff level only of Draft Environmental Assessment as Requested in Government-to-Government Consultation on the Proposed San Juan-Chama Project Contract Conversions for City and County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and City of Espanola

Dear Ms. Rupp:

This letter transmits our comments on the subject Draft Environmental Assessment (EA), which was communicated through email by Charles Fischer of your staff to Alex Puglisi of my staff, and to staff of the Interstate Stream Commission, requesting comment by April 6, 2006. [See Enclosure 1] The Pueblo of Sandia did not anticipate when memorializing the collective agreement of our meeting on December 2, 2005, (see our letter dated December 7, 2005) that our request for "...opportunity to review an administrative draft of the EA prior to its release to the public" would receive a response bypassing pueblo sovereignty and government-to-government consultation protocols.

According to a conversation between my staff and the contractor who prepared this EA, the reason that copies of the letters received during the course of public scoping and through government-to-government consultation were noted but not included in Attachment 2, is that it made the document too voluminous. Specifically, the Pueblo of Sandia disagrees with the characterization of our meeting, and upon receipt of copies of these letters on April 5, 2006, believes that the incorporation of comments received during scoping is inadequate, and fails to address issues of concern, as only the supportive letters received from the New Mexico Interstate Stream Commission are mentioned in the text.

We submit the following additional comments:

- Figure 1 omits locations of Pueblo lands on the map of land ownership. This oversight implies that the section on Indian trust assets was given only cursory attention, despite the mandate of all Federal agencies to recognize Indian trust assets. Please update the map used in Figure 1 to accurately portray land ownership in the project area before releasing the document to the public.

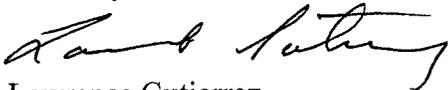
NE

- Using a conservative market value of \$5,000.00 per acre-ft for water rights in the Middle Rio Grande Valley, and given the non-adjudicated status of the Pueblo of Sandia's rights senior to the San Juan-Chama Project, it is inconceivable how Reclamation justifies that a permanent transfer of water rights with a minimum market value of \$43,100,000.00 meets the criteria for treatment for analysis under the National Environmental Policy Act using an Environmental Assessment. For instance, the State of New Mexico successfully brought legal action requiring analysis of economic impacts in an Environmental Impact Statement for this basin, due to concerns about other water needs. This conclusion responds to:
 - Section 3.2 (page 20) discloses that "any planned diversion of San Juan-Chama water would be evaluated to ensure that water rights of Pueblos and Tribes recognized as having "prior and paramount" priority, would be protected from foreclosure".
 - Table 3 quantifies that "Contracting for a term without expiration could possibly speed up the pace of water development projects for 8,620 acre-ft of San Juan-Chama water. Other water needs in the basin such as for Indian tribes, endangered species, agriculture, and other M&I uses may not be fully satisfied."

The Pueblo of Sandia believes that an Environmental Impact statement is warranted due to the significant economic impact of this action, its possible effects on Pueblo water rights, and the lack of detail about how the analysis to protect prior and paramount water rights priority would occur. Given the fact that letters sent to Reclamation were not addressed specifically other than to acknowledge their receipt, we believe that our concerns raised in good faith government-to-government consultation remain unaddressed. The Pueblo of Sandia strongly encourages Reclamation to consider addressing these concerns in an appropriate manner prior to release of this Draft EA to the public.

Please contact Alex Puglisi of my staff at (505) 867-4533 should you have any questions.

Sincerely,



Lawrence Gutierrez
Governor

Enclosure

Cc: David Mielke, Esq., Sonosky, Chambers, Sachse, Endreson, & Mielke
Lynn Trujillo, Esq., Pueblo of Sandia In-house counsel
Alex Puglisi, Pueblo of Sandia Environment Director
Rhea Graham, Pueblo of Sandia

Enclosure 1

**Email Message Sent to Staff Requesting Comment as Requested in
Government-to-Government Consultation on December 2, 2005**

-----Original Message-----

From: Charles Fischer [mailto:CFischer@uc.usbr.gov]

Sent: Thursday, March 23, 2006 2:11 PM

To: rschmidt@ose.state.nm.us; Alex Puglisi; kevin.flanigan@state.nm.us

Cc: Nancy Purdy

Subject: San Juan Chama Water Contract Conversions Administrative EA

Gentlemen:

Please see attached administrative draft EA. Please provide me with your comments by COB April 6 to be incorporated into the public draft EA. We are planning to distribute the public draft on April 10 and have a public meeting on April 25 in Santa Fe.

Thank you for your consideration,

Charles Fischer

Environmental Protection Specialist

Bureau of Reclamation

Albuquerque Area Office

505-462-3656



United States Department of the Interior

BUREAU OF RECLAMATION

Albuquerque Area Office
555 Broadway Blvd. NE, Suite 100
Albuquerque, NM 87102-2352



IN REPLY REFER TO:

ALB-715
WTR-4.00

APR 19 2006

Honorable Lawrence Gutierrez
Governor
Pueblo of Sandia
481 Sandia Loop
Bernalillo, NM 87004

Subject: Solicit Government-to-Government Consultation on the Proposed San Juan-Chama Project Contract Conversions

Dear Governor Gutierrez:

On December 2, 2005, my staff and I met with the former administration's technical staff to discuss the proposed San Juan-Chama Project contract conversions. Unfortunately, neither Governor Paisano nor his Lieutenant was able to attend the meeting. In response to a letter from your staff dated April 5, 2006, Bureau of Reclamation would like to hold government-to-government consultation with you on the contract conversions to brief you on the project and answer any questions or concerns you may have with regard to it.

Seven contractors that have six water service contracts for San Juan-Chama Project water have requested that their contracts be converted to repayment contracts. The contractors are: City and County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and City of Española. The difference between the two types of contracts, of interest to many, is longevity. Water service contracts have an expiration date and repayment contracts do not.

In addition, Reclamation has prepared a draft environmental assessment under the provisions of the National Environmental Policy Act for the proposed San Juan-Chama water contract amendments. The 30 day public review period begins on April 17, 2006. There is also a public meeting scheduled on April 25, 2006, at 6:30 PM at the Genoveva Chavez Community Center in Santa Fe.

Reclamation invites government-to-government consultation to address concerns raised in your recent letter. Please call Jackie Teague at 505-462-3542 to schedule a meeting with Reclamation management and your tribal leadership at your convenience.

Sincerely,

CONNIE L. RUPP

Connie L. Rupp
Area Manager

cc: See next page.

cc: Mr. David Mielke, Esq.
Sonosky, Chamber, Sachse,
Endreson, & Mielke
500 Marquette NW, Suite 1310
Albuquerque, NM 87103

Mr. Alex Pugliesi
Director, Environment Dept.
Pueblo of Sandia
481 Sandia Loop
Bernalillo, NM 87004

bc: ALB-100, ALB-107, ALB-150, ALB-175, ALB-400, ALB-440

WBR:KGreenwood:anvigil:462-3557:4/17/06

G:\SecFiles\WtrMgmt\KGreenwood\G2G Consult SJCContConv – April06.doc