

Attachment 5
Public Comments

FRED J. WALTZ
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April 20, 2006

VIA FACSIMILE (505) 462-3797
& U.S. MAIL

Ms. Nancy Purdy
Bureau of Reclamation
555 Broadway Blvd., N.E., Suite 100
Albuquerque, New Mexico 87102

Re: San Juan-Chama Project Water
Service Contract Conversions

Dear Ms. Purdy:

I am writing to you on behalf of the Rio de Chama Acequias Association (RCAA) which represents 27 acequias located along the Rio Chama between Abiquiu Reservoir and the confluence of the Rio Grande. These acequias provide water for the irrigation of over 1000 acres and for livestock and domestic uses. The RCAA acequias are among the oldest in the state having been constructed soon after settlement of the area in 1598 by Juan de Oñate.

The RCAA acequias desperately need San Juan-Chama Project water to enable them and their rural communities to survive periodic droughts. They presently do not have any contracts with the BOR for this water. Provision of San Juan-Chama Project water for rural agricultural communities in northern New Mexico is consistent with the original intent and purposes of the San Juan-Chama Project Act. Therefore the RCAA urges the BOR to not convert any of the pending municipal water service contracts into repayment contracts. To do this would permanently put San Juan-Chama Project water out of the reach of rural acequia communities.

The seven proposed repayment contracts to Santa Fe County, City of Santa Fe, Town of Taos, Taos Ski Valley, Los Lunas, Los Alamos County, and Espanola would permanently provide San Juan-Chama Project water to seven municipalities or counties, none of which were ever intended to receive such water. The Act which created the Project had three main goals (1) water for the City of Albuquerque, (2) water for the Middle Rio Grande Conservancy District, and (3) water for rural northern New Mexico agricultural communities. The first two goals have been accomplished. If the seven proposed repayment contracts are entered into, the third goal of the San Juan-Chama Project Act will never be fully achieved.

In summary the RCAA urges the Bureau of Reclamation to not convert the six water service contracts into repayment contracts, and instead to use a portion of such water for a water service contract for supplemental irrigation, domestic, and livestock uses with the RCAA on behalf of its 27 member acequias in the lower Rio Chama Valley.

Sincerely,



Fred J. Waltz
Attorney for RCAA

FJW/co

xc: clients

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May 12, 2006

135 Rincon Valverde

Ponderosa, NM

87044

Mr. Charles Fischer
 Bureau of Reclamation
 Albuquerque Area Office
 555 Broadway NE
 Suite 100
 Albuquerque, NM 87102

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Dear Mr. Fischer,

My public comment (non-technical written) on Reclamation Managing Water In The West Draft Environmental Assessment San Juan-Chama Water Contract Amendments With City of Santa Fe, County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and City of Española April 17, 2006, will be brief as possible and is for the record. Any comments submitted to you prior to this May 12, 2006 non-technical written public comment are null and void. Please,

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May 12, 2006

respectfully, let this that follows be
my final non-technical written public
comment;

-beginning of non-technical written public
comment-

Bureau of Reclamation should choose
the No Action Alternative instead of the
Proposed Alternative, BOR should then
undertake an Environmental Impact
Study and publish a subsequent draft
to submit to the public for comment.
At the same time, the State Engineer
of New Mexico, New Mexico Interstate
Stream Commission and BOR should
moratorium all third-party leasing
uninitiated one second post the time
the moratorium begins, being negotiated on
the part of the City of Española, Los
Alamos County, the Village of Los Lunas,
the City of Santa Fe, the County of
Santa Fe, the Town of Taos, and the
Village of Taos Ski Valley that involve
San Juan-Chama Project water.
Additionally, the State Engineer of
New Mexico, New Mexico Interstate

-non-technical written public comment - May 12, 2006

Stream Commission and BOR should moratorium all diverting uninitiated one second past the time the moratorium begins, being negotiated; on the part of the City of Española, Los Alamos County, the Village of Los Lunas, the City of Santa Fe, the County of Santa Fe, the Town of Taos, and the Village of Taos Ski Valley; that involve San Juan-Chama Project water. Also, the State Engineer of New Mexico, New Mexico Interstate Stream Commission

Stream Commission and BOR should moratorium all well-drilling uninitiated one second past the time the moratorium begins, being negotiated; on the part of the City of Española, Los Alamos County, the Village of Los Lunas, the City of Santa Fe, the County of Santa Fe, the town of Taos, and the Village of Taos Ski Valley; that involve San Juan-Chama Project water. The moratoriums on third-party leasing, diverting and well-drilling involving San Juan-Chama Project Water should begin simultaneously.

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These moratoriums should not be lifted on third-party leasing, diverting and well drilling involving San Juan-Chama Project water until all mitigations dealt with in this BOR EA of April 17, 2006, that I am presently offering non-technical written public comment on, "Amendment 1", Bureau of Reclamation Indian Trust Asset Policy and NEPA Implementing Procedures

Question and Answers About The Policy And Procedures Enclosed; Page 10, Part IV,

"Assessing Impacts ITAs, IV-8; Page 12; Question IV-12's answers," line 14; emphasizing Page 13, "Question IV-12's answers, line 8; through to answers Page 16, Part VI,

"Interrelationship of ITA Policy and Procedure And Other Statistics and Regulations" ending at aforementioned's VI-3; are attempted optimally. These moratoriums should not be lifted on third-party leasing, diverting and well drilling involving San Juan-Chama Project Water until the Final Decision is issued by BOR on the EIS and this decision is taken to court and

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settled.

I commend BOR for its transparency in this matter. I would like to be updated on the outcome of BOR's living document concerning San Juan-Chama Water Contract Amendments with City of Santa Fe, County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas and City of Espanola."

-end of non-technical written public comment-

Rebecca G. Perry-Piper

Rebecca G. Perry-Piper
135 Rincon Valverde
Ponderosa, NM 87044

Again Mr. Fischer, thank you for your efforts to assist me in preserving New Mexico's undeveloped areas as they exist presently.

Again,
Rebecca G. Perry-Piper



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 824 Gold Avenue, SW
 Albuquerque, NM 87102
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May 15, 2006

Charles Fischer
 Albuquerque Area Office
 Bureau of Reclamation
 555 Broadway NE
 Albuquerque, NM 87102

Via Mail & Facsimile: 505-462-3780

Re: Draft Environmental Assessment for San Juan-Chama Water Contract Amendments with City of Santa Fe, County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and City of Española

Dear Mr. Fischer:

Thank you for the opportunity to provide comments on the content and scope of the Draft Environmental Assessment (“EA”) for the San Juan-Chama Water Contract Amendments with City of Santa Fe, County of Santa Fe, County of Los Alamos, Town of Taos, Village of Taos Ski Valley, Village of Los Lunas, and City of Española. These comments are submitted on behalf of Defenders of Wildlife (“Defenders”). Defenders is a national non-profit, public-interest organization with over 450,000 members and supporters, including over four thousand of whom reside in New Mexico. Defenders works to preserve the integrity and diversity of natural ecosystems, prevent the decline of native species, and restore threatened habitats and wildlife populations. Furthermore, Defenders has a long-standing interest in the survival and recovery of the Rio Grande silvery minnow and the restoration of the Rio Grande.

Definition and Selection of Alternatives

Development of alternatives is the heart of the EIS. 40 C.F.R. § 1502.14. CEQ regulations call on the INS to “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated,” “[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits,” “[i]nclude the alternative of no action,” and “[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives.” *Id.* § 1502.14 (emphasis added).

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Reclamation Has Given a Misleading Definition to the No Action Alternative

Reclamation has incorrectly defined the No Action alternative and in so doing has skewed the effects analysis. By defining the No Action Alternative as essentially the same as the Proposed Action Alternative, the baseline will not visibly differ from the future with the Proposed Action, nor will the effects.

According to the Draft EA, the No Action Alternative is “the future without the federal project or activity.” Draft EA at 9. Yet Reclamation has assumed that federal activity will take place – that the contracts will be renewed. *Id.* at 10. Here, No Action properly means that the federal activity would not take place – in this case, Reclamation would not convert the contracts to repayment contracts – and the contracts would approach their expiration date, the contractors could approach Reclamation to renew the contracts, and Reclamation “could then enter into negotiations for contract renewal.” This, not the assumption of automatic renewal under the same terms, is the true No Action Alternative. See 46 Fed. Reg. 18026 (1981) Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process: Questions and Answers About the NEPA Regulations (“No action” in such cases [involving federal decisions on proposals for projects] would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.”).

Assuming automatic renewal of the contracts gives the reader a false picture of future conditions. The Draft EA uses the No Action Alternative as “the baseline for a comparison between alternatives.” *Id.* at 12. By assuming that contracts are in effect for both the No Action and Proposed Action Alternatives, just in different forms, the Proposed Action will have few effects because you are comparing it to a baseline that also has the contracts. As Reclamation aptly states, “The two alternatives have similar water management outcomes.” *Id.* at 8. In essence, Reclamation has ensured that the Proposed Action Alternative will not have a significant impact by deciding that the agency would automatically renew the contracts in the No Action Alternative.

Reclamation Has Not Given Reasonable Alternatives a Fair Discussion

Furthermore, Reclamation has given such brief treatment to the alternatives that it is not clear why not pursuing conversion of the contracts is infeasible. Specifically, what is the obligation to contractors, *id.* at 10, that would require Reclamation to execute amendments to the contracts? This is particularly puzzling since Reclamation is not required to renew the contracts, yet there is an obligation to amend the contracts?

Defenders also questions why the alternative of converting the contracts but reducing the allocations is also infeasible. If Reclamation cannot unilaterally reallocate San Juan-Chama (“SJ-C”) water, Reclamation can certainly negotiate with contractors regarding reallocation – a reasonable alternative that is not analyzed in the Draft EA. This alternative may in fact meet the purpose and need set out in the Draft EA better than the Proposed Action Alternative. If the driving force behind amending these contracts is the need for “certainty of water supplies ... for

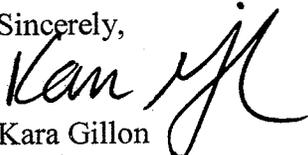
a specific allocation of SJ-C Project water” and “secure and long-lasting water supplies,” id. at 4, a reduced allocation may be more certain than the current allocations, as reflected in the draft 1999 report that determined a reduced firm yield from the Project. While reallocated supplies may be reduced, they may be more certain and less vulnerable to drought or other causes that may reduce the firm yield.

Elements of the Proposed Action Alternative Are Imprecise

The construction and/or operation and maintenance (O&M) charges for each alternative are not clear to the reader. According to sections 1.3 and 2.1, repayment contracts recover construction costs of the Project and water service contracts cover a share of annual O&M plus “fixed charges to be established by the Secretary.” Id. at 6. In the case of SJ-C contracts, rates charged under both contracts are the same. What is not clear is whether the U.S. will continue to receive O&M payments from the seven contractors during and/or after their repayment obligations are fulfilled. The Final EA must clarify if the water service contracts include O&M assessments, if the repayment contracts will include O&M assessments, whether the assessments are incurred during repayment or for a longer period, and whether the money received by the U.S. will not change, id. at 9.

If you have any questions regarding these suggestions or comments, please do not hesitate to contact me.

Sincerely,



Kara Gillon
Staff Attorney