

NEPA Scoping Summary on Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas

**Doña Ana, Sierra and Socorro Counties, New Mexico and El
Paso and Hudspeth Counties, Texas**

Upper Colorado Region

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RECLAMATION
Managing Water in the West

Mission Statements

The U.S. Department of the Interior protects America's natural resources and heritage, honors our cultures and tribal communities, and supplies the energy to power our future.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

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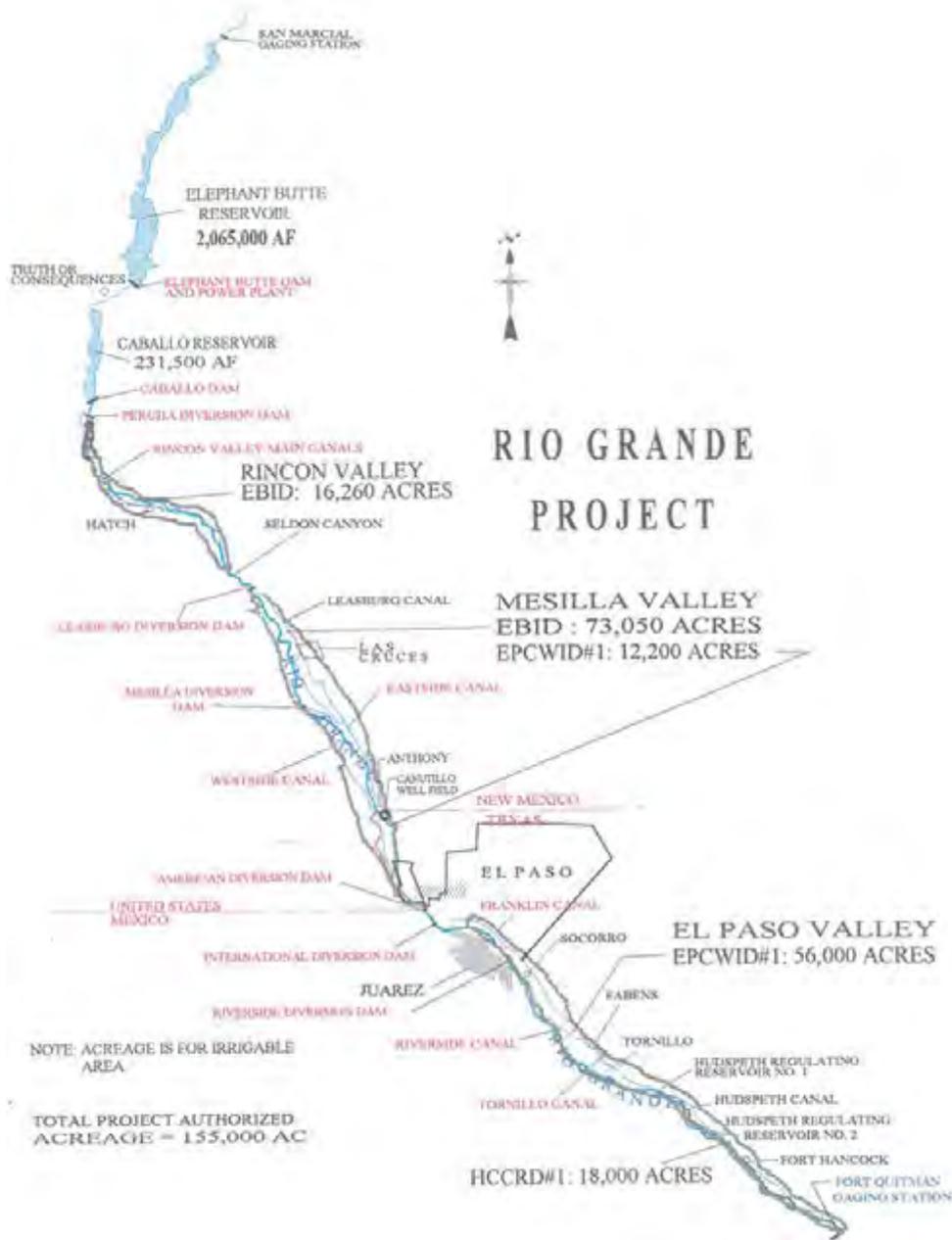
Introduction

This summary is being prepared as part of the National Environmental Policy Act (NEPA) process that the Bureau of Reclamation (Reclamation) began in January 2014 to prepare an environmental impact statement (EIS) to determine whether proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas has the potential to cause significant environmental effects (40 CFR 1508.9(a)). The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No.1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, Pub. L. 97-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir. The Project area is from Elephant Butte Dam in New Mexico to El Paso/Hudspeth County Line, Texas, as shown on Figure 1.

This scoping summary sets forth the issues raised during the scoping process and describes the proposed scope of environmental analyses to be included in the EIS. Upon completion in June 2013 of the Supplemental Environmental Assessment (sEA) covering the 2008 Operating Agreement from 2013-2015, Reclamation made the decision to prepare an environmental impact statement to fully analyze the effects of the Operating Agreement through 2050. The EIS will build on the sEA analyses and findings, review of comments received during the public scoping process, and other appropriate analyses. The sEA, completed in June 2013, is available at:

<http://www.usbr.gov/uc/albuq/envdocs/ea/riogrande/op-ProcEd/Supplemental/Final-SuppEA.pdf>.

Figure 1 Operating Agreement Project Location



Purpose of this Summary

Under NEPA, the purposes of scoping are many. Scoping is used to obtain input on the range of issues, impacts, and alternatives that should be evaluated in the environmental analysis process; identify and eliminate from detailed study, the issues which are not significant, or which have been covered by prior environmental review; and establish

timing of decisions and schedules (40 CFR 1501.7 and 1508.25 and 43 CFR 46.235). The purpose of the scoping process is to describe the preliminary results of Reclamation's scoping effort and to achieve the purposes stated above.

Background

The Rio Grande Project (Project) was authorized by Congress under the authority of the Reclamation Act of 1902, as amended and supplemented. The Project provides irrigation water to two irrigation districts, Elephant Butte Irrigation District (EBID) located in New Mexico, and El Paso County Water Improvement District No. 1 (EP1) located in Texas, and, pursuant to the Warren Act, return flows of Rio Grande Project water are conveyed to the Hudspeth County Conservation and Reclamation District No. 1 located in Texas. Under the Convention with Mexico of 1906, the United States is obligated to deliver up to 60,000 acre-feet (AF) of water annually in a full allocation year; otherwise, the water allocation to Mexico is reduced by the same percentage as is water to the irrigated lands in the United States.

In 1937, Congress authorized the execution of amended repayment contracts with EBID and EP1. These contracts reduced the repayment obligations and established a corresponding right of use to a proportion of the annual water supply based upon an established irrigated acreage in each district: 57 percent to EBID and 43 percent to EP1. These contracts among Reclamation and the two districts also added a three percent buffer to the authorized amount of land that could be irrigated with Project water. Today, the Project irrigates 155,000 (plus three percent) total acres. Within EP1's boundaries there are a total of 67,000 acres (plus three percent or 69,010 acres) of land that have appurtenant Project-water rights, and within EBID's boundaries, there are 88,000 acres (plus three percent or 90,640 acres) of land that have appurtenant Project-water rights.

The districts' amended repayment contracts required three changes to occur in historic operations. First, once the two districts paid the total reimbursable costs for the Project, the two districts were required to take over the day-to-day responsibility for operation and maintenance of the irrigation delivery and drainage system. Second, once this transfer of operation and maintenance occurred, Reclamation and the two districts were required to

agree to and formalize a set of operating procedures that would govern the operations of those transferred Project works. Third, upon that transfer, Reclamation would no longer calculate, allocate, and deliver water to Project *land* but rather Reclamation would deliver an annual water allocation – an “annual diversion allocation” – to each district in an amount that corresponded to the percentage of Project land within their boundaries: 57 percent of the legally-available Project water supply to EBID and 43 percent to EP1.

The Operating Agreement settles a 2008 court challenge by Texas alleging violation of the calculation of New Mexico credit water under the Rio Grande Compact by the Bureau of Reclamation. The Operating Agreement was negotiated among EBID, EP1 and Reclamation, ending a contract dispute, first raised in 1979, that was the subject of litigation in federal district court cases filed in Texas and New Mexico. New Mexico is now suing these settling parties. New Mexico’s issues include: 1) whether the 2008 Operating Agreement settlement violated NEPA and other state and federal water statutes; and, 2) whether Reclamation unlawfully released New Mexico Compact credit water in violation of the Rio Grande Compact. Currently, this case is stayed because Texas has sued both New Mexico and Colorado regarding alleged violations of the Rio Grande Compact. As of June 2014, the Supreme Court has not yet ruled on New Mexico’s motion to dismiss Texas’s filing.

Shortly after EBID and EP1 became responsible for Project water deliveries within their districts, Congress authorized storage of San Juan Chama water within the Rio Grande Project. While obviously dependent upon actual water availability, this activity has not been evaluated for long term effects. Scoping included storage of San Juan Chama Project (SJCP) water in Elephant Butte Reservoir as authorized by Congress in this EIS, because NEPA allows analyzing within the same EIS for proposed agency actions with common timing or geography. (40 CFR 1508.25(a)(3)). Reclamation prepared but did not implement an EA (see <http://www.usbr.gov/uc/albuq/envdocs/ea/bernalillo/sjc/index.html>) on this activity in 2010. Since preparing the subject EA, new information is available that renders the associated FONSI obsolete. Therefore, the FONSI has been rescinded. The proposed action of issuing the 40-year replacement contract for storage of Albuquerque Bernalillo County

Water Utility Authority (ABCWUA) SJCP water in Elephant Butte Reservoir will be analyzed through 2050 in this EIS. This EIS on the Continued Implementation of the 2008 Operating Agreement will build on analyses and findings from the 2010 EA, review of comments received during the public scoping process, and other appropriate analyses, to address storage of San Juan Chama Project water in Elephant Butte Reservoir.

Reclamation's goal is to complete National Environmental Policy Act (NEPA) compliance, in the form of a Record of Decision after completion of the EIS, no later than December 31, 2015, in order to annotate the results in the water operations manual for the Rio Grande Project before the start of the 2016 irrigation season. The 2010 manual is available at: <http://www.usbr.gov/uc/albuq/rm/RGP/pdfs/RGP-Ops-Manual-2010.pdf>.

National Environmental Policy Act Requirements

NEPA regulations (40 CFR 1501.7) require scoping to determine the scope of the issues to be addressed in the environmental review and to identify significant issues. According to NEPA, scoping should occur early on in the environmental review process and should involve the participation of the affected parties.

The lead Federal agency of the proposed action is required to:

- “Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds);
- Determine the scope and the significant issues to be analyzed in depth in the EIS;
- Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;
- Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead agency retaining responsibility for the Statement;
- Indicate any public environmental assessments and other EISs which are being or will be prepared that are related to but are not part of the scope of the EIS under consideration;
- Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the EIS; and
- Indicate the relationship between the timing of the preparation of environmental analyses and the agency’s tentative planning and decision making schedule” (40 CFR 1501.7).

Public involvement activities are required by Council on Environmental Quality (CEQ) regulations that state, “Agencies shall: Make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 CFR 1506.6(a)). Public scoping meetings help to satisfy this requirement.

CEQ regulations (40 CFR 1508.22, 516 DM 2.3D) require the implementing agency to notify the public that it is preparing an EIS for a project under consideration. With regard to this EIS,

Reclamation published a Notice of Intent (NOI) in the Federal Register on Monday June 14, 2010. A copy of the NOI is included in Attachment A to this scoping report, and permanently archived at: <http://www.usbr.gov/uc/albuq/rm/RGP/EIS/RGOA-EIS-FedRegNOI.pdf>.

Purpose and Need for Action

The purpose and need for action is to meet contractual obligations to EBID and EPCWID to implement a written set of criteria and procedures for allocating, delivering, and accounting for Rio Grande Project water to both districts consistent with their rights under applicable law each year in compliance with various court decrees, settlement agreements, and contracts. These include the 2008 Compromise and Settlement Agreement among Reclamation, EBID, and EPCWID, and contracts between the United States and the EBID and EPCWID. The purpose and need of an ancillary but potentially similar action is to implement the provisions of the Act of December 4, 1981, P.L. 97-140, 95 Stat. 1717, to allow the storage of San Juan-Chama project water acquired by contract with the Secretary of the Interior pursuant to Public Law 87-483 in Elephant Butte Reservoir.

Proposed Action

The proposed federal action is to continue to implement the 2008 Operating Agreement for the Rio Grande Project over the remaining term (through 2050), and a potentially similar action under 40 CFR 1508.25, to implement long-term contracts for storage of San Juan-Chama water in the Rio Grande Project.

Lead and Cooperating Agencies

For purposes of this NEPA review, Reclamation's Upper Colorado Region Office, working with its Albuquerque Area Office, is the lead agency for NEPA. Information regarding this EIS is permanently archived at: <http://www.usbr.gov/uc/albuq/rm/RGP/>. In compliance with NEPA implementing regulations, any Federal, state, or local agency or tribe with jurisdiction by law or that has special expertise with respect to a particular environmental issue may be invited to become a cooperating agency. Reclamation initially contacted several agencies in September 2013, requesting input on their jurisdiction by law or special expertise, and inviting them to become cooperating agencies (see Attachment B). The Cooperating Agencies were requested to sign a Memorandum of Understanding to provide this input, which was made available during scoping, and placed

on the permanent archive site at: <http://www.usbr.gov/uc/albuq/rm/RGP/EIS/RGOA-EIS-CoopAgSpExp.pdf>.

The following agencies were invited to participate as cooperating agencies:

- **Federal:**
 - United States Section, International Boundary and Water Commission (MOU signed 12-12-13)
 - U.S. Fish and Wildlife Service, Southwest Regional Office
- **State:**
 - Colorado Division of Water Resources (MOU signed 12-20-13)
 - El Paso County Water Improvement District No. 1 (MOU signed 6-6-14)
 - Elephant Butte Irrigation District of New Mexico (MOU signed 1-29-14)
 - Hudspeth County Conservation and Reclamation District No. 1 of Texas
 - New Mexico Interstate Stream Commission
 - State of New Mexico Historic Preservation Division
 - State of Texas, Rio Grande Compact Commission (MOU signed 12-9-13)
 - Texas Historical Commission
- **Local:**
 - Albuquerque Bernalillo County Water Utility Authority
 - City of Santa Fe, Water Division (MOU signed 12-12-13)

The following agencies indicated interest but have not yet responded:

- U.S. Fish and Wildlife Service, Southwest Region
- Albuquerque Bernalillo County Water Utility Authority

The following agencies declined (see letters in Attachment C):

- New Mexico Interstate Stream Commission (2-14-14)
- State of New Mexico Historic Preservation Division (10-17-13)

The role of cooperating agencies is generally to participate in the NEPA process, including to provide information or prepare environmental analyses over which they have special expertise,

upon request of the lead agency, and to make available staff support at the lead agency's request to enhance interdisciplinary capabilities. Reclamation intends to award a contract for assistance in EIS preparation by October 2014, and will include the cooperating agencies on the interdisciplinary team convened to prepare the EIS.

Government-to-Government Consultation

In accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, Reclamation sent letters to two tribes requesting their input on consulting on preparation of the EIS. Copies of letters to the Ysleta del Sur Pueblo in Texas and the Mesacalero Tribe in New Mexico were sent to the Bureau of Indian Affairs' Southern Pueblos Agency and Mescalero Agency superintendents, respectively (see Attachment B). Reclamation anticipates receiving feedback from these tribes in August 2014.

During the preparation of the Supplemental Environmental Assessment (sEA) covering the 2008 Operating Agreement from 2013-2015, the Mescalero Apache Tribe was the only tribe offering comments. The Mescalero Tribe's historical lands lie within the Project area. In response to Reclamation's scoping letter on the sEA, the Mescalero Apache Tribe had concerns with native plants growing along the irrigation canals in the service areas of the EBID and EPCWID. The Mescalero Tribe collects plant material for cultural purposes.

Comment Period

Reclamation provided a 30-day comment period beginning from the Federal Register Notice published on January 15, 2014, closing February 14, 2014. Only two letters were received, and no comment cards were turned in at either the scoping meetings or mailed to Reclamation. No comments were received after this date, except for additional requests for notification of the ongoing process.

Public Notice

In addition to publishing an NOI in the Federal Register (Vol. 79, No. 10, Wednesday, January 15, 2014), newspaper legal notices were published in three newspapers—the *Santa Fe New Mexican*, *Albuquerque Journal* and *Las Cruces Sun News*—in New Mexico; and in the *El Paso Times* in Texas. Publication run dates were January 26th for the *Albuquerque Journal* and *Las Cruces Sun News*, January 27th – 28th for the *Santa Fe New Mexican* and January 26th for the *El Paso Times*. All legal notices published in New Mexico newspapers can be retrieved in one archive at: www.PublicNoticeAds.com. The *El Paso Times* does not archive legal notices. Reclamation’s social media sites announced the public scoping meetings, and the website (<http://www.usbr.gov/uc/albuq/rm/RGP/>) has been established to provide updated information to the public on the EIS and the scoping meeting materials were posted to this website. Copies of legal notices are included in Attachment A.

Public Scoping Meetings

Three public scoping meetings were held:

- **Thursday, January 30, 2014**, 3:00 p.m. to 5:00 p.m., Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE, Suite 100, Albuquerque, New Mexico 87102
- **Friday, January 31, 2014**, 6:00 p.m. to 8:00 p.m., Elephant Butte Irrigation District, 530 South Melendres Street, Las Cruces, New Mexico 88005
- **Saturday, February 1, 2014**, 9:00 a.m. to 11:00 a.m., Bureau of Reclamation, El Paso Field Division, 10737 Gateway West, Suite 350, El Paso, Texas 79935

Scoping meetings were held on both weekday and weekend dates, and both day and evening timeframes. Reclamation staff conducted the meetings, including preparation of the handouts and being in attendance to answer questions. Attendance at Albuquerque and Las Cruces included primarily representatives of government agencies, but only Reclamation staff attended the meeting in El Paso.

Table 1 Members of Public at Scoping Meetings

<i>Date</i>	<i>Name</i>	<i>Affiliation</i>	<i>City, State</i>
January 30, 2014	Kim Bannerman	New Mexico Interstate Stream Commission	Santa Fe, NM
January 30, 2014	Sarah Bond	New Mexico Attorney General Office	Santa Fe, NM
January 30, 2014	Rick Carpenter	City of Santa Fe	Santa Fe, NM
January 30, 2014	Dale Doremus	New Mexico Interstate Stream Commission	Santa Fe, NM
January 30, 2014	Kevin Doyle	Tetra Tech	Santa Fe, NM
January 30, 2014	Stephen Farris	New Mexico Attorney General Office	Albuquerque, NM
January 30, 2014	David Gensler	Middle Rio Grande Conservancy District	Albuquerque, NM
January 30, 2014	Beiling Liu	New Mexico Interstate Stream Commission	Albuquerque, NM
January 30, 2014	Alaina Pershall	Tetra Tech	Albuquerque, NM
January 30, 2014	Subhas Shah	Middle Rio Grande Conservancy District	Albuquerque, NM
January 30, 2014	Pinu'u Stout	Pueblo of San Felipe	San Felipe, NM
January 30, 2014	Dominque Work	New Mexico Interstate Stream Commission	Santa Fe, NM
January 31, 2014	Marcy Driggers	City of Las Cruces	Not given
January 31, 2014	Conrad Keyes, Jr.	Paseo de Norte Water Coalition	Not given
January 31, 2014	Anthony Levine	Self	Not given
January 31, 2014	Lacy Levine	New Mexico Department of Agriculture	Not given
January 31, 2014	Zack Libbin	Elephant Butte Irrigation District	Not given
January 31, 2014	Ryan Ward	New Mexico Department of Agriculture	Las Cruces, NM
February 1, 2014	Michael Landis	Bureau of Reclamation	El Paso, TX
February 1, 2014	Woodrow W. Irving, Jr.	Bureau of Reclamation	El Paso, TX

Albuquerque Area Office staff who met the public and answered questions at the scoping meetings included Rhea Graham, Special Project Officer and EIS Project Manager, James Wilber, Environment and Lands Division Manager, Bert Cortez, Special Assistant in El Paso Field Office, and Ken Rice, Assistant Deputy Area Manager. The scoping meetings began with registration at the door, where attendees were asked to sign in and were provided various handouts (See <http://www.usbr.gov/uc/albuq/rm/RGP/EIS/RGOA-EIS-BkgOvervInfo.pdf>). The sign-in sheets were created solely for the purpose of updating Email addresses to communicate information about the EIS. The format used was an open house, where attendees were encouraged to walk around the various stations, view the displays, and ask questions of project staff.

Comment cards (see <http://www.usbr.gov/uc/albuq/rm/RGP/EIS/RGOA-EIS-PubScCommentCrd.pdf>) were provided, or attendees were given the option of Emailing comments. Two comment letters were sent by Email and are provided in Attachment D.

Non-EIS Scoping Comment Issues

NEPA regulations state that all significant issues relative to the proposed project should be addressed in the EIS. The comment issues raised and described in the Scoping Summary will be addressed in the EIS. However, comments that are beyond the scope of NEPA, outside of the scope of the proposed project, outside of the affected area, or not related to the matter at hand, need not be addressed in the EIS. In addition there were a number of comments received that were statements regarding the ongoing legal challenges regarding this EIS and the Operating Agreement. Those comments provided no insight on the scope of the EIS.

Scoping Comment Summary

Two comment letters were received via Email on February 14, 2014, from the New Mexico Interstate Stream Commission (NMISC) and the City of Las Cruces. The NMISC letter was reviewed and 63 distinct comments were noted (see Attachment E), as listed on Table 1. The NMISC attached four letters of previous correspondence to their February 14, 2014, scoping comments letter regarding the Operating Agreement, in which Reclamation's October 30, 2013, letter replied to the NMISC's June 6, 2013, letter; and Reclamation's January 17, 2014, letter replied to the NMISC's December 6, 2013, letter. The NMISC is in litigation against Reclamation regarding their disagreements with how NEPA has and is being conducted by Reclamation on the Operating Agreement. Comments concerning this proposed action and the EIS were regarding:

- The NMISC's opinion of alleged NEPA violations regarding the Operating Agreement, and the inclusion of the inter-related action of San Juan Chama storage in Elephant Butte Reservoir.
- The NMISC recommends the EIS explore alternatives and rigorously examine effects of the D1/D2 time period of 1951-1978, vs. the D3 time period for calculation of the offset for groundwater pumping by the EBID.
- The NMISC recommends the EIS explore the effects of evaporative losses in the carryover provision calculation in the Operating Agreement.
- The NMISC recommends the EIS clarify the endangered species effects to be analyzed, based on materials provided in scoping.
- The NMISC has concerns regarding effects to water quality when surface water allocations are reduced due to drought.
- The NMISC recommends eight specific alternatives to be considered for the proposed action.

As such, most of their comments relate to the Project Description and how the affected environment is described or the effects analysis conducted using the Proposed Action. Both the City of Las Cruces and the NMISC have concerns regarding the baseline selected for the EIS.

Table 2 New Mexico Interstate Stream Commission Scoping Comments

Identifier	Comment Synopsis	EIS Section
NMISC-001	"...has a vital interest in the EIS because the 2008 Operating Agreement has had, and will continue to have, major effects on water users in New Mexico and relates to the Rio Grande Compact..."	Project Description
NMISC-002	"...continues to have fundamental objections regarding the EIS."	Project Description
NMISC-003	"...has communicated in depth...later commented extensively when (1) the BOR inappropriately and illegally applied its Finding of No Significant Impact (FONSI) and environmental assessment for a 2007 EA to the 2008 Operating Agreement; ..."	Project Description
NMISC-004	"...has communicated in depth...later commented extensively when (2) when the BOR conducted the first environmental assessment for the 2008 Operating Agreement in 2013 and inappropriately termed it a supplemental environmental assessment (SEA) based on the erroneously conducted 2007 EA, and;..."	Project Description
NMISC-005	"...has communicated in depth...later commented extensively when (4 sic) prior to issuance of the notice for scoping of the EIS, the NMISC communicated with BOR regarding the scope of the EIS."	
NMISC-006	The October 30, 2013 letter replied to the June 6, 2013 letter; the January 17, 2014 letter replied to the December 6, 2013 letter.	NEPA process
NMISC-007	"...required under...NEPA to have conducted a review of the 2008 Operating Agreement, which was a discretionary federal action, prior to taking that action, i.e., executing the Agreement."	Proposed Action and Alternatives
NMISC-008	"In conducting this after-the-fact review...has made a series of changing decisions related to studies of the 2008 Operating Agreement...did not perform proper NEPA analysis or conduct required public comment procedures ...until the SEA was issued in June 2013. Until that time...maintained that the 2007 EA and FONSI were sufficient to meet NEPA requirements."	Proposed Action
NMISC-009	"...the SEA described the 2008 Operating Agreement very differently than the 2007 EA...did admit some of the foreseen and now unfolding consequences of the 2008 Operating Agreement, but did remedy those consequences."	Project Description; Proposed Action
NMISC-010	"...scope of the EIS again looks very different from either the SEA or the 2007 EA...especially true of the inclusion of the SJCP storage contracts..."	Project Description; Proposed Action
NMISC-011	"...impossible...to track an understandable...position on NEPA compliance for the initial federal action and continued operations..."	Proposed Action
NMISC-012	"...irretrievably committed to a course of action before engaging in a valid NEPA process...signed the 2008 Operating Agreement on March 10, 2008 and only now, almost six years later, is drafting an EIS on that major federal action."	Proposed Action
NMISC-013	"...actions indicate the EIS is merely an attempt to justify the 2008 Operating Agreement after the fact..."	Proposed Action
NMISC-014	" While now acknowledging such review is required...nevertheless proposes to continue implementing the 2008 Operating Agreement in the interim."	Proposed Action
NMISC-015	"...ongoing operations under the 2008 Operating Agreement are an express violation of NEPA because an EIS must precede implementation of major federal actions significantly affecting the human environment. The BOR's NEPA Handbook states in Section 11.5,...NEPA compliance is required <u>before any discretionary</u> Federal action with potentially significant environmental impacts is initiated."	Proposed Action
NMISC-016	"Decisions should not be made without full compliance with NEPA...BOR's NEPA Handbook at 11-4 (2012) states... <u>To do this is illegal and a violation of NEPA.</u> "	Proposed Action
NMISC-017	"...ignored the concerns of entities affected by the 2008 Operating Agreement...concerns of the City of Las Cruces have not been addressed...City of Las Cruces has never been asked to be a cooperating agency."	Project Description
NMISC-018	"...not provided specific information on the baseline for its analysis of the environmental changes caused by the proposed action..."	Project Description
NMISC-019	"...not provided specific information on the baseline...for its analysis of the environmental changes caused by its alternatives as identified in the EIS..."	Alternatives
NMISC-020	"...not provided specific information on the...modeling tools it will use to conduct its analysis."	Affected Environment; Groundwater Modeling Report
NMISC-021	"...has never reverted to its pre-2008 Operating Agreement operations...continuing to change the environmental baseline...by proceeding...has biased the baseline information for the EIS evaluation and violated NEPA's prohibition against predetermined outcomes."	Project Description
NMISC-022	"...baseline analysis used...in the past has many flaws...previously communicated...substantial technical issues associated with the no-action baseline analysis used...false assumptions (e.g. that the EBID historically ordered all the water it was allocated) and a problematic initial condition (the year used was 2007, by which time the Project operations had already been modified ad hoc...from historic operations...described in the 2007 EA)".	Project Description
NMISC-023	"...baseline assumptions and analysis should be reconsidered and rigorously evaluated in the EIS".	Project Description
NMISC-024	"...additional information regarding the full scope of the modeling effort underway for analysis of the 2008 Operating Agreement...no information on the specifics of the model will be released until the model report is published".	Affected Environment; Groundwater Modeling Report
NMISC-025	"...model will be a central element of...analysis and is vital to determining if the scope of the EIS is correct".	Affected Environment; Groundwater Modeling Report
NMISC-026	"...again requests disclosure of the specific models, modeling tools, and relevant data sets for surface water and groundwater quantity and quality".	Affected Environment; Groundwater Modeling Report
NMISC-027	"...would like to be included in any technical advisory committee or other stakeholder group created for the EIS analysis".	NEPA process

Identifier	Comment Synopsis	EIS Section
NMISC-028	"Regardless of the rationale for the changes, the 2008 Operating Agreement decreases EBID allocation and creates real or apparent reductions in the Project performance, as quantified by the 'diversion ratio'. The effect of each individual factor that affects the diversion ratio should be evaluated and quantified. Specifically...must (1) quantify the effects of groundwater pumping in Texas and Mexico (not just in New Mexico) in both the Mesilla and Hueco Basins; ..."	Affected Environment
NMISC-029	"Regardless of the rationale for the changes, the 2008 Operating Agreement decreases EBID allocation and creates real or apparent reductions in the Project performance, as quantified by the 'diversion ratio'. The effect of each individual factor that affects the diversion ratio should be evaluated and quantified. Specifically...must (2) examine changes in Project measurement, reporting, and accounting practices since the D1/D2 time period (defined as 1951 through 1978); ..."	Proposed Action, Project Description, Affected Environment
NMISC-030	"Regardless of the rationale for the changes, the 2008 Operating Agreement decreases EBID allocation and creates real or apparent reductions in the Project performance, as quantified by the 'diversion ratio'. The effect of each individual factor that affects the diversion ratio should be evaluated and quantified. Specifically...must (3) quantify the amount by which EBID's allocation has been reduced as a result of these impacts".	Proposed Action, Project Description, Affected Environment, Effects Analysis
NMISC-031	"EBID's allocation under the 2008 Operating Agreement in full-supply years must be quantified. Since this allocation is less than the amount needed to supply the irrigated acreage in EBID...the 2008 Operating Agreement necessarily results in increased irrigation well pumping within EBID."	Project Description; Effects Analysis
NMISC-032	"BOR admits the proposed action encourages increased groundwater pumping but fails to propose any real analysis of those effects and its cumulative impacts on the human environment".	Project Description; Proposed Action
NMISC-033	"To truly demonstrate the effects of the 2008 Operating Agreement on the two irrigation district's surface supply...must review and evaluate pre-2008 Operating Agreement distribution of Project water."	Proposed Action
NMISC-034	"...analysis will include pumping from the D1/D2 period. However...does not appear to use that time period as the baseline...should analyze the period from 1951 to 1978 as its pre-2008 operating Agreement distribution".	Proposed Action
NMISC-035	"...specifically requests...evaluate the impact of the 2008 Operating Agreement on the historic distribution...in equal amounts to all irrigable land...based on...the historic and equal distribution is 57% to EBID and 43% to EP No. 1".	Proposed Action, Alternatives
NMISC-036	"Texas portion not considered in the modeling effort. The project extends many miles into Texas in the Hueco Basin and two of the Project's 5 diversion dams are located in Texas...Mexico's use of groundwater also has impacts on the Project and...the 2008 Operating Agreement...the EIS must include the Texas portion of the Project, Hudspeth, and the impact of Mexico's groundwater use".	Project Description; Groundwater modeling
NMISC-037	"In the recently completed SEA, only two alternatives were considered...consideration of other alternatives is not reasonable because implementation of any alternative other than the proposed action would require renegotiation of the 2008 Operating Agreement and the related settlement agreement...appears to be evidence...taken action and committed resources that clearly prejudice...selection of alternatives in the EIS".	Proposed Action and Alternatives
NMISC-038	"...based on the statement in the SEA Response to Comments NM-009...now alleges no control over the document that governs its action related to the Project...more authority to change the 2008 Operating Agreement than it states...is a signatory...specifically includes a provision for modification of the agreement (Paragraph 6.7)...additional alternatives are within reason...to negotiate...with the other parties".	Project Description
NMISC-039	"...Forty Most Asked Questions...specifically states that [a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable...46 Fed. Reg. at 18026-01".	Proposed Action and Alternatives
NMISC-040	"...required to examine these alternatives even if it does not think it has the legal authority to implement them".	Proposed Action and Alternatives
NMISC-041	"...the EIS should consider more than the two alternatives examined in the SEA...including (1) inclusion of a no carryover storage provision in the 2008 Operating Agreement in accordance with historic operations; ..."	Proposed Action and Alternatives
NMISC-042	"...the EIS should consider more than the two alternatives examined in the SEA...including (2) adding carryover storage for actual conservation (i.e., as measured by reduction in agricultural depletions); ..."	Proposed Action and Alternatives
NMISC-043	"...the EIS should consider more than the two alternatives examined in the SEA...including (3) removing credits and changes and using actual deliveries of water in accounting; ..."	Proposed Action and Alternatives
NMISC-044	"...the EIS should consider more than the two alternatives examined in the SEA...including (4) requiring BOR to consider impairment actions against groundwater pumpers in Texas and New Mexico whenever it suspects groundwater pumping is depleting Project supply; ..."	Proposed Action and Alternatives
NMISC-045	"...the EIS should consider more than the two alternatives examined in the SEA...including (5) a different allocation of water within the 2008 Operating Agreement; ..."	Proposed Action and Alternatives
NMISC-046	"...the EIS should consider more than the two alternatives examined in the SEA...including (6) accounting fairly for changes in Project efficiency caused by climate change; ..."	Proposed Action and Alternatives
NMISC-047	"...the EIS should consider more than the two alternatives examined in the SEA...including (7) including a full technical and legal analysis of how the 2008 Operating Agreement effects (sic) Compact credit water accounting, and; ..."	Proposed Action and Alternatives
NMISC-048	"...the EIS should consider more than the two alternatives examined in the SEA...including (8) bringing the allocation committee into compliance with the Federal Advisory Committee Act"	Proposed Action and Alternatives
NMISC-049	"All these [8] reasonable alternatives should be examined."	Proposed Action and Alternatives
NMISC-050	"Current Congressional authorization for the Project does not allow for [carryover] storage, so Congressional authorization for this major change is required."	Project Description and Proposed Action
NMISC-051	"Project carryover accounts do not fully correspond to water in reservoir storage, in part due to the failure of the 2008 Operating Agreement to account for evaporation of these accounts, and, in part due to Project accounting credits...since 2006, some quantity of water flowing into the Reservoir has been sequestered directly into these carryover accounts to make up for this discrepancy...this inflow was not made available for allocation between EBID and EP No. 1...net effect of these issues on allocation to both EBID and EP No. 1 should be quantified in this analysis".	Project Description
NMISC-052	"Comments and questions related to review of the carryover provisions...critically examine the effects to Articles VI and VIII of the Compact...additional amount of water New Mexico would need to deliver to the Reservoir to meet compact delivery obligations; and..."	Project Description
NMISC-053	"Comments and questions related to review of the carryover provisions... the effects on upstream storage in post-Compact reservoirs that result when all allocation and carryover is called for by EBID and EP No. 1 in a given year".	Affected Environment, BA, Effects Analysis

<i>Identifier</i>	<i>Comment Synopsis</i>	<i>EIS Section</i>
NMISC-054	"Because of the linkage in the Compact of Project storage operations to upstream reservoir operations, changes in Project operations may have an impact on the ability of BOR to meet its middle Rio Grande endangered species obligations...The EIS should evaluate these issues".	Affected Environment, BA, Effects Analysis
NMISC-055	"Because of the linkage in the Compact of Project storage operations to upstream reservoir operations, changes in Project operations may have an impact on the ability of BOR to meet...potentially, its tribal trust responsibility to Pueblos and Tribes. The EIS should evaluate these issues."	Project Description, Affected Environment, Effects Analysis
NMISC-056	"...must evaluate the impact of the 2008 OA on New Mexico's obligations under the Compact due to increasing Reservoir evaporative loss?(sic)".	Project Description, Affected Environment, Effects Analysis
NMISC-057	"The BOR should clarify its position relative to review of the species in this EIS...in the SEA...examined the effects on two species...not mentioned...the interior least tern and piping clover...stated that SWFL critical habitat is outside the scope of the EIS..."	Project Description, Affected Environment, Effects Analysis
NMISC-058	"...not adequately analyzed the effects of the 2008 Operating Agreement on water quality...consider the impact of reduced water allocation on the water quality of surface water in New Mexico..."	Project Description, Affected Environment, Effects Analysis
NMISC-059	"evaluate and quantify the impact of reduced surface water allocation and the consequential increased groundwater pumping on groundwater quality in New Mexico and Texas (if any) and any resulting salinization of Project lands".	Project Description, Affected Environment, Effects Analysis
NMISC-060	"Groundwater quality modeling should be performed to evaluate impacts of pumping on water quality in the future."	Project Description, Affected Environment, Effects Analysis
NMISC-061	"...CEQ regulations specifically preclude inclusion of those [SJCP storage] contracts in the EIS...require that a federal agency '[i]dentify and eliminate from detailed study the issues...which have been covered by prior environmental review...a FONSI was issued. See http://www.usbr.gov/uc/albuq/envdocs/ea/bernalillo/sjc/indix.html ...accordingly the ABCWUA SJCP storage contract has already been covered by prior environmental review..."	Proposed Action and Alternatives
NMISC-062	"...City of Santa Fe SJCP storage contract should also be eliminated from review...was included in the Environmental Assessment and FONSI issued for the ABCQUA (sic) SJCP contract....has been covered by prior environmental review and the CEQ Regulations require it to be eliminated from review here".	Proposed Action and Alternatives
NMISC-063	"...separate letter to Mike Hamman...the NMISC will not be a cooperating agency in the EIS".	NEPA process

The City of Las Cruces letter was reviewed and 13 distinct comments were noted (see Attachment F), as listed on Table 2.

Table 3 City of Las Cruces Scoping Comments

<i>Identifier</i>	<i>Comment Synopsis</i>	<i>EIS Section</i>
CLC-001	Scoping materials..."no evident concern for issues relating to municipal water supply".	Project Description
CLC-002	"Proposed Action should have included the alternative of whether the 2008 Operating Agreement should have been initiated to begin with,...whether it should be set aside and the EIS undertaken as of a 2007 baseline...the 'Proposed Action' creates a baseline which assumes continuation of the OA."	Proposed Action and Alternatives
CLC-003	"human environment...see 40CFR1508.14...Las Cruces' interest is twofold; protection of the human environment through conservation of water resources and sustainability of water supply...impacts must include the degree of effect on public health and safety...see 40CFR1508.27".	Affected Environment; Effects Analysis
CLC-004	"human environment...effects to be considered must include direct effect, indirect effects, secondary effects and cumulative effects...see 40CFR1508.8".	Effects Analysis; Cumulative Impacts
CLC-005	"...determine the effects of additional pumpage by irrigators in EBID on groundwater storage in the aquifer...covering the 50 years of the OA".	Project Description; Effects Analysis
CLC-006	"...historical allocation of surface water stored in Elephant Butte Reservoir has been changed...to 50% to each district, or potentially to less than 50% for EBID by the OA...prompted additional applications for groundwater wells to supplement a reduced supply of surface water by irrigators within EBID...placing additional stress on groundwater in storage in the aquifer...City's sole water supply is based upon the diversion of groundwater in storage in the aquifer."	Project Description; Effects Analysis
CLC-007	"City does not have a conjunctive use source of surface water from the Rio Grande although efforts have been made to develop one with EBID and/or the United States."	Project Description
CLC-008	"...City is a member of EBID with water righted lands entitled to yearly allocations of Rio Grande Project surface water...was established as a Special Water Users' Association for the purpose of utilizing the annual allocations of agricultural project water for future municipal water supply through the conversion of agricultural surface water to municipal uses through a surface water treatment facility...large amounts of money have been spent to acquire surface water rights and the viability of the City's surface water treatment component of its future water supply is now in jeopardy".	Project Description
CLC-009	"The City will only know if the program is viable if it can have a reliable long term analysis of surface water available for Ag/MI over the 50 year life of the OA."	Affected Environment, Effects Analysis
CLC-010	"In sum, the scope of the EIS must include: 1) an analysis of whether the OA should have been initiated, i.e. whether it was an alternative that should have been undertaken and whether it should be set aside and the EIS undertaken as of a 2007 baseline;..."	Proposed Action and Alternatives
CLC-011	"In sum, the scope of the EIS must include: 2) an analysis of the long term hydrologic impacts on groundwater in storage that results from increased groundwater diversions by irrigators that is caused by the OA; ..."	Proposed Action and Alternatives; Affected Environment
CLC-012	"In sum, the scope of the EIS must include: 3)an analysis of the long term hydrologic impacts on the viability of the Ag/MI transfer program given the decreases in surface water that will result from the OA."	Project Description
CLC-013	"...placed on the notice list for future BOR announcements related to the Rio Grande Project. Notices should be sent to two addresses."	Distribution list for DEIS

Comments concerning this proposed action and the EIS were primarily regarding the City of Las Cruces' relationship with Operating Agreement signatory EBID, specifically the effects of additional pumping by EBID irrigators of the aquifer, and calculation of the offsets for that

additional pumping in determining the annual allocation of Rio Grande Project water between EBID and EP1. In addition, the City of Las Cruces believes the 2008 Operating Agreement should not have been implemented. As such, most of their comments relate to the Project Description and how the affected environment is described or the effects analysis conducted using the Proposed Action. Other comments provided suggestions for how the EBID could provide water supplies to the City of Las Cruces through a water transfer program of agricultural and municipal uses. While these suggestions are outside of the direct scope of this EIS, the EBID is a Cooperating Agency, and these comments will be shared with them.

Draft EIS Outline

The NEPA analysis and documentation will identify and evaluate all relevant impacts, conditions, and issues associated with the proposed action, and its alternatives in accordance with the President's Council on Environmental Quality's (CEQ) Regulations outlined in 40 CFR parts 1500 to 1508, hereafter referred to as the CEQ regulations, and the Department of Interior's (DOI) regulations for implementing NEPA found at 43 CFR Part 46. Reclamation anticipates that the EIS will analyze, at a minimum, the environmental effects resulting from continuation of the OA through 2050, as well as its alternatives, including the no action alternative, on the following resources:

- Natural Resources
- Water Resources
- Surface water
- Ground water
- Vegetation
- Wildlife
- Threatened and endangered species
- Socioeconomic Resources
- Indian Trust Assets

In addition to meeting the requirements of NEPA, the EIS must also document compliance with the related environmental laws and regulations, Clean Air Act; Clean Water Act; Safe Drinking Water Act; Federal Water Pollution Control Act; Endangered Species Act; National Historic

Preservation Act; Archeological and Historic Preservation Act; Plain Writing Act of 2010; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Reclamation's draft EIS outline is provided below:

Chapter 1 Introduction¹

Chapter 2 Alternatives

Chapter 3 Affected Environment

Chapter 4 Effects Analysis

Chapter 5 Cumulative Impacts

Chapter 6 Other Required Disclosures

Chapter 7 Public Involvement, Consultation and Coordination

Chapter 8 List of Preparers

Chapter 9 Distribution List

Chapter 10 References

¹ Contains both the Purpose and Need and the Project Description

Attachment A – Federal Register NOI and Newspaper Legal Notices

education activities, scientific research projects, boundary marking, and enforcement of existing regulations. There would be no manipulation of the marsh other than emergency, safety-related, or limited improvements or maintenance actions. The destabilized marsh would continue to erode at an accelerated rate.

Alternative B: Hydrologic Restoration and Minimal Wetland Restoration—Under alternative B, the focus is on the most essential actions to reestablish hydrologic conditions that shield the marsh from erosive currents and protect the Hog Island Gut channel and channel wall. A breakwater structure would be constructed on the south end of the marsh, in alignment with the northernmost extent of the historic promontory, and wetlands would be restored to strategic areas where the water is less than 4 feet deep. This alternative also includes fill of some deep channel areas near the breakwater. The final element of this alternative is the reestablishment of hydrologic connections to the inland side of the Haul Road to restore bottomland swamp forest areas that were cut off when the Haul Road was constructed.

Approximately 30 acres west of the Haul Road could be influenced by tidal flows as a result. These actions would not necessarily happen in any particular order, and may be dictated by available funds. However, it is assumed that the breakwater would be constructed first. This alternative would create approximately 70 acres of various new wetland habitats and allow the continued natural accretion of soils and establishment of wetlands given the new hydrologic conditions.

Alternative C: Hydrologic Restoration and Fullest Possible Extent of Wetland Restoration (NPS Preferred Alternative)—Under alternative C, the marsh would be restored in a phased approach up to the historic boundary of the marsh and other adjacent areas within NPS jurisdictional boundaries. Phased restoration would continue until a sustainable marsh is achieved and the overall goals of the project are met. The historic boundaries lie between the historic promontory and Dyke Island, the triangular island off the end of the Haul Road. The outer edges of the containment cell structures would be placed at the park boundary in the river.

The initial phase of this alternative would first establish a breakwater structure at the southern alignment of the historic promontory to provide immediate protection to Dyke Marsh from erosion. After the breakwater is established, the deep channel areas north of the historic promontory would

be filled within the NPS boundary, and the marsh would be restored to the 4-foot contour at strategic locations to further reduce the risk of erosion and storm surges and promote sedimentation within the existing marsh. Afterwards, two cells would be constructed along the northern edge of the breakwater, restoring the original extent of the promontory's land mass.

All subsequent phases would establish containment cells out no further than the historic marsh boundary. The location of these cells would be prioritized based on the most benefits the specific locations could provide to the existing marsh. The timing of these subsequent phases and the size and number of cells built during these phases would be dependent upon available funds and materials.

In addition to the construction of containment cells, tidal guts would be cut into the restored marsh area that would be similar to the historical flow channels of the original marsh.

This alternative, like Alternative B, would also introduce breaks in the Haul Road, returning tidal flows to approximately 30 acres west of the Haul Road, which would help to re-establish the historic swamp forest originally found on the site.

Additional wetland may be restored south of the new breakwater to fill out the southernmost historic extent of the marsh. This area would not be protected from storms, and would be one of the last features implemented. In addition, the marsh restoration would extend north of Dyke Island, and tidal guts would be created. This alternative contains an optional restoration cell in the area currently serving as a mooring area for the marina. Such an option would only be implemented should the marina concession no longer be economically viable for the current concessioner, and then only if no other concessioner expresses interest in taking over the business, which would eliminate the need for the mooring field. In total, under this alternative, approximately 245 acres of various wetland habitats could be created.

Dated: October 21, 2013.

Stephen E. Whitesell,

*Regional Director, National Park Service,
National Capital Region.*

[FR Doc. 2014-00633 Filed 1-14-14; 8:45 am]

BILLING CODE 4310-DL-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[14XR0680A1, RX.00236101.0021000,
RR04313000]

Notice of Intent To Prepare an Environmental Impact Statement and Announcement of Public Scoping Meetings for Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Reclamation is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No. 1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, Pub. L. 97-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir.

DATES: Comments on the scope of the EIS must be received by February 14, 2014.

Three public scoping meetings will be held to solicit public input on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS. See the **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Written comments regarding the scope and content of the EIS should be sent to Ms. Rhea Graham, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Mail Stop ALB-103, Albuquerque, New Mexico 87102, or provided via email at rgraham@usbr.gov.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the EIS, should contact Ms. Graham using the information cited above. See the **SUPPLEMENTARY INFORMATION** section for locations of public scoping meetings. **FOR FURTHER INFORMATION CONTACT:** Ms. Rhea Graham, Bureau of Reclamation;

telephone 505-462-3560; email at rgraham@usbr.gov. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact Ms. Graham during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Graham. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act, Reclamation will serve as the lead federal agency for preparation of the EIS on the continued implementation of the Operating Agreement for the Rio Grande Project, New Mexico and Texas. The responsible official for this action is Reclamation's Upper Colorado Regional Director.

Background

The Rio Grande Project includes Elephant Butte and Caballo dams and reservoirs, a power generating plant, and five diversion dams (Percha, Leasburg, Mesilla, American, and International) located on the Rio Grande in New Mexico and Texas. The Rio Grande Project was authorized by Congress under the authority of the Reclamation Act of 1902 and the Rio Grande Project Act of February 25, 1905. The Rio Grande Project Operating Agreement was signed in 2008 to allocate Rio Grande Project water, which includes water stored in Elephant Butte and Caballo reservoirs and return flows to the Rio Grande between the EBID in the Rincon and Mesilla valleys of New Mexico and the EPCWID in the Mesilla and El Paso valleys of Texas and Mexico. The Rio Grande Project also provides water to Mexico under the 1906 international treaty. Rio Grande Project water is provided by Reclamation to irrigate a variety of crops and for municipal and industrial water uses.

Purpose and Need for Action

The purpose and need for action is to meet contractual obligations to EBID and EPCWID to implement a written set of criteria and procedures for allocating, delivering, and accounting for Rio Grande Project water to both districts consistent with their rights under applicable law each year in compliance with various court decrees, settlement agreements, and contracts. These include the 2008 Compromise and Settlement Agreement among Reclamation, EBID, and EPCWID, and contracts between the United States and the EBID and EPCWID. The purpose and need of an ancillary but potentially similar action is to implement the

provisions of the Act of December 29, 1981, to allow the storage of San Juan-Chama project water acquired by contract with the Secretary of the Interior pursuant to Public Law 87-483 in Elephant Butte Reservoir.

Proposed Action

The proposed federal action is to continue to implement the 2008 Operating Agreement for the Rio Grande Project over the remaining term (through 2050), and a potentially similar action under 40 CFR 1508.25, to implement long-term contracts for storage of San Juan-Chama water in the Rio Grande Project.

Scoping Process

This notice initiates the scoping process which guides the development of the EIS. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Reclamation using the contact information provided above. To be most effective, written comments should be received prior to the close of the comment period and should clearly articulate the commentor's concerns.

Dates and Addresses of Public Scoping Meetings

The scoping meeting dates and addresses are:

- Thursday, January 30, 2014, 3:00 p.m. to 5:00 p.m., Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102
- Friday, January 31, 2014, 6:00 p.m. to 8:00 p.m., Elephant Butte Irrigation District, 530 South Melendres Street, Las Cruces, New Mexico 88005
- Saturday, February 1, 2014, 9:00 a.m. to 11:00 a.m., Bureau of Reclamation, El Paso Field Division, 10737 Gateway West, Suite 350, El Paso, Texas 79935

Special Assistance for Public Scoping Meetings

If special assistance is required at the scoping meetings, please contact Ms. Graham at 505-462-3560 or email at rgraham@usbr.gov. Please notify Ms. Graham at least two weeks in advance of the meeting to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Before including your address, phone number, email address, or other

personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 5, 2013.

Brent Rhees,

Deputy Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 2014-00476 Filed 1-14-14; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-904]

Certain Acousto-Magnetic Electronic Article Surveillance Systems, Components Thereof, and Products Containing Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 11, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Tyco Fire & Security GmbH of Switzerland; Sensormatic Electronics, LLC of Boca Raton, Florida; and Tyco Integrated Security, LLC of Boca Raton, Florida. A letter supplementing the complaint was filed on December 23, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain acousto-magnetic electronic article surveillance systems, components thereof, and products containing same by reason of infringement of U.S. Patent No. 5,729,200 (“the ‘200 patent’”) and U.S. Patent No. 6,181,245 (“the ‘245 patent’”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection

The newspapers of New Mexico make public notices from their printed pages available electronically in a single database for the benefit of the public. This enhances the legislative intent of public notice - keeping a free and independent public informed about activities of their government and business activities that may affect them. Importantly, Public Notices now are in one place on the web (www.PublicNoticeAds.com), not scattered among thousands of government web pages.

County: Bernalillo
Printed In: Albuquerque Journal
Printed On: 2014/01/26

Notice of a Public Meeting Notice of Public Meetings Concerning Scoping for Preparation of an Environmental Impact Statement on Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas (Action by February 14, 2014) Dates/Locations of meetings: January 30, at 555 Broadway Ave, N.E., Suite 100, Albuquerque, NM from 3:00p.m. to 5:00p.m. January 31, at 530 South Melendres St, Las Cruces, NM from 6:00p.m. to 8:00p.m. February 1, at 10737 Gateway West Suite 350 El Paso, Texas from 9:00a.m. to 11:00a.m. BACKGROUND: The Bureau of Reclamation is preparing an environmental impact statement (EIS) will be prepared for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No.1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, Pub. L. 97-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir. The Project area is from Elephant Butte Dam in New Mexico to El Paso/Hudspeth County Line, Texas. The public is invited to comment on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS. PUBLIC SCOPING INPUT In addition to your presence at this public meeting, you may submit written comments as described below. To be most helpful, comments should be as specific as possible and sent to Reclamation at the following address: Bureau of Reclamation, Albuquerque Area Office, Attention: Rhea Graham, ALB-103, 555 Broadway NE, Suite 100, Albuquerque, New Mexico 87102. E-mail comments may be sent to rgraham@usbr.gov by February 14, 2014. Comments, including names and home addresses of respondents will be made available for public review upon request although individuals may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a person's identity from public disclosure, as allowable by law. Please state your request to withhold names or addresses prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. If you have any questions, please contact Ms. Graham at 505-462-3560. Journal: January 26, 2014

Public Notice ID: 20998902

The newspapers of New Mexico make public notices from their printed pages available electronically in a single database for the benefit of the public. This enhances the legislative intent of public notice - keeping a free and independent public informed about activities of their government and business activities that may affect them. Importantly, Public Notices now are in one place on the web (www.PublicNoticeAds.com), not scattered among thousands of government web pages.

County: Dona Ana
Printed In: Las Cruces Sun-News
Printed On: 2014/01/26

Notice of a Public
Meeting

Notice of Public Meetings Concerning Scoping for Preparation of an Environmental Impact Statement on Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas (Action by February 14, 2014)

Dates/Locations of meetings:

January 30, at 555 Broadway Ave, N.E., Suite 100, Albuquerque, NM from 3:00p.m. to 5:00p.m.

January 31, at 530 South Melendres St, Las Cruces, NM from 6:00p.m. to 8:00p.m.

February 1, at 10737 Gateway West Suite 350 El Paso, Texas from 9:00a.m. to 11:00a.m.

BACKGROUND:

The Bureau of Reclamation is preparing an environmental impact statement (EIS) will be prepared for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No.1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, Pub. L. 97-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir. The Project area is from Elephant Butte Dam in New Mexico to El Paso/Hudspeth County Line, Texas. The public is invited to comment on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS.

PUBLIC SCOPING INPUT

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Publication# 52700
Run Date: Jan 26, 2014

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County: Santa Fe
Printed In: Santa Fe New Mexican
Printed On: 2014/01/27

Notice of a Public Meeting

Notice of Public Meetings Concerning Scoping for Preparation of an Environmental Impact Statement on Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas (Action by February 14, 2014)

Dates/Locations of meetings:

January 30, at 555 Broadway Ave, N.E., Suite 100, Albuquerque, NM from 3:00p.m. to 5:00p.m.

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BACKGROUND:

The Bureau of Reclamation is preparing an environmental impact statement (EIS) will be prepared for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No.1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, Pub. L. 97-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir. The Project area is from Elephant Butte Dam in New Mexico to El Paso/Hudspeth County Line, Texas. The public is invited to comment on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS.

PUBLIC SCOPING INPUT

In addition to your presence at this public meeting, you may submit written comments as described below. To be most helpful, comments should be as specific as possible and sent to Reclamation at the following address: Bureau of Reclamation, Albuquerque Area Office, Attention: Rhea Graham, ALB-103, 555 Broadway NE, Suite 100, Albuquerque, New Mexico 87102. E-mail comments may be sent to rgraham@usbr.gov by February 14, 2014. Comments, including names and home addresses of respondents will be made available for public review upon request although individuals may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a person's identity from public disclosure, as allowable by law. Please state your request to withhold names or addresses prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. If you have any questions, please contact Ms. Graham at 505-462-3560.

Legal #96336

Published in The Santa Fe New Mexican on January 27, 2014.

The newspapers of New Mexico make public notices from their printed pages available electronically in a single database for the benefit of the public. This enhances the legislative intent of public notice - keeping a free and independent public informed about activities of their government and business activities that may affect them. Importantly, Public Notices now are in one place on the web (www.PublicNoticeAds.com), not scattered among thousands of government web pages.

County: Santa Fe
Printed In: Santa Fe New Mexican
Printed On: 2014/01/28

Notice of a Public Meeting

Notice of Public Meetings Concerning Scoping for Preparation of an Environmental Impact Statement on Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas (Action by February 14, 2014)

Dates/Locations of meetings:

January 30, at 555 Broadway Ave, N.E., Suite 100, Albuquerque, NM from 3:00p.m. to 5:00p.m.

January 31, at 530 South Melendres St, Las Cruces, NM from 6:00p.m. to 8.00p.m.

February 1, at 10737 Gateway West Suite 350 El Paso, Texas from 9:00a.m. to 11.00a.m.

BACKGROUND:

The Bureau of Reclamation is preparing an environmental impact statement (EIS) will be prepared for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No.1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, Pub. L. 97-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir. The Project area is from Elephant Butte Dam in New Mexico to El Paso/Hudspeth County Line, Texas. The public is invited to comment on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS.

PUBLIC SCOPING INPUT

In addition to your presence at this public meeting, you may submit written comments as described below. To be most helpful, comments should be as specific as possible and sent to Reclamation at the following address: Bureau of Reclamation, Albuquerque Area Office, Attention: Rhea Graham, ALB-103, 555 Broadway NE, Suite 100, Albuquerque, New Mexico 87102. E-mail comments may be sent to rgraham@usbr.gov by February 14, 2014. Comments, including names and home addresses of respondents will be made available for public review upon request although individuals may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a person's identity from public disclosure, as allowable by law. Please state your request to withhold names or addresses prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. If you have any questions, please contact Ms. Graham at 505-462-3560.

Legal #96336

Published in The Santa Fe New Mexican on January 28, 2014.

BUREAU OF RECLAMATION
555 BROADWAY NE, SUITE 100
ALBUQUERQUE, NM 87102-2352

BUREAU OF RECLAMATION
ALB. AREA OFFICE
RECEIVED

2014 FEB -6 AM 10: 12

AD # 893239

LINES 162

FEB 06 2014

COST: \$486.14

PUBLISHERS AFFIDAVIT

STATE OF TEXAS
COUNTY OF EL PASO

Before me, a Notary in and for El Paso County, State of Texas, on this day personally, appeared JOE WOODS who states upon oath that he is the CLASSIFIED MANAGER of the EL PASO TIMES, a daily newspaper published in the City and County El Paso, State of Texas, which is a newspaper of general circulation and which has been continuously and regularly published for the period of not less than one year in the said County of El Paso, and that he was upon the dates herein mentioned in the EL PASO TIMES.

That the LEGAL NOTICE copy was published in the EL PASO TIMES for the date(s) of such follows 1 DAY(s) to wit JANUARY 26, 2014.

Signed _____



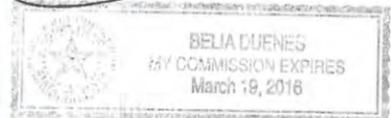
Subscribed and sworn to before me,
This 26TH day of JANUARY, 2014.



Notice of a
Public Meeting
Notice of Public Meetings
Concerning Scoping for
Preparation of an Environ-
mental Impact Statement
on Continued Implementa-
tion of the 2008 Operat-
ing Agreement for the
Rio Grande Project, New
Mexico and Texas (Action
by February 14, 2014)
Dates/Locations of meet-
ings:
January 30, at 555 Broad-
way Ave, N.E., Suite 100,
Albuquerque, NM from
3:00p.m. to 5:00p.m.
January 31, at 530 South
Melendres St, Las Cruces,
NM from 6:00p.m. to
8:00p.m.
February 1, at 10737 Gate-
way West Suite 350 El
Paso, Texas from
9:00a.m. to 11:00a.m.
BACKGROUND:
The Bureau of Reclama-
tion is preparing an envi-
ronmental impact state-
ment (EIS) will be pre-
pared for the proposed
continued, implementa-

tion of the 2008 Operat-
ing Agreement over its
entire remaining term
(through 2050) for the
Rio Grande Project in New
Mexico and Texas. The
Operating Agreement is a
written detailed descrip-
tion of how Reclamation
allocates, releases from
storage, and delivers Rio
Grande Project water to
users within the Elephant
Butte Irrigation District
(EBID) in New Mexico, the
El Paso County Water Im-
provement District No. 1
(EPCWID) in Texas, and to
users covered by the
1906 international treaty
with Mexico. In addition,
this EIS proposes to eval-
uate the environmental
effects of renewing San
Juan Chama Project stor-
age contracts under au-
thority of the Act of De-
cember 29, 1981, Pub. L.
97-140, 95 Stat.
1717, providing for storage
in Elephant Butte Reser-
voir. The Project area is
from Elephant Butte
Damin New Mexico to El
Paso/Hudspeth County
Line, Texas. The public is
invited to comment on
the scope of the EIS, po-
tential alternatives, and
issues to be addressed in
the EIS.

PUBLIC SCOPING INPUT
In addition to your pre-
sence at this public meet-
ing, you may submit writ-
ten comments as describ-
ed below. To be most
helpful, comments should
be as specific as possible
and sent to Reclamation
at the following address:
Bureau of Reclamation,
Albuquerque Area Office,
Attention: Rhea Graham,
ALB-103, 555 Broadway
NE, Suite 100, Albuquer-
que, New Mexico 87102.
E-mail comments may be
sent to rgraham
@usbr.gov by February 14,
2014. Comments, includ-
ing names and home ad-
resses of respondents
will be made available for
public review upon re-
quest although individuals
may request that we
withhold their home ad-
dress from public disclo-
sure, which we will honor
to the extent allowable by
law. There also may be
circumstances in which
we would withhold a per-
son's identity from public
disclosure, as allowable
by law. Please state your
request to withhold
names or addresses
prominently at the begin-
ning of your comment.
We will make all submis-
sions from organizations
or businesses, and from
individuals identifying
themselves as represen-
tatives or officials of or-
ganizations or businesses,
available for public disclo-
sure in their entirety. If
you have any questions,
please contact Ms. Gra-
ham at 505-462-3560.



Attachment B - Letters to Cooperating Agencies and Tribes



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Region
Albuquerque Area Office
555 Broadway NE, Suite 100
Albuquerque, NM 87102-2352

IN REPLY REFER TO:

SEP 16 2013

ALB-150
ENV-6.00

Interested Parties (See Enclosed List)

Subject: Invitation to Participate as a Cooperating Agency for an Environmental Impact Statement on Certain Actions within the Rio Grande Project

Dear Ladies and Gentlemen:

The Bureau of Reclamation is preparing an environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA), to analyze the environmental effects of continued implementation of the Rio Grande Project Operating Agreement (OA) over its entire remaining term, through 2050. In addition, this EIS will evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, 97, 95 Stat. 1717 in Elephant Butte Reservoir.

Reclamation is responsible for coordinating the preparation of the EIS, for the administrative tasks associated with the NEPA process, and for making the final decisions, according to our authorities. The Council on Environmental Quality NEPA Implementing Regulations (40 CFR 1500-1508) call for lead agencies to reduce paperwork and delay; and eliminate duplication with state and local procedures by inviting participation of cooperating agencies to prepare an EIS. Cooperating agencies assume certain responsibilities, which may include participating in the scoping process, developing applicable information, supporting environmental analyses, and assisting the lead agency with preparation of the EIS on those topics that pertain to the cooperating agency's jurisdiction by law or special expertise.

We invite you to participate in preparing this EIS as a cooperating agency because we believe your agency or organization may have jurisdiction by law or special expertise, with respect to this actions and/or issues to be considered in this EIS. Please provide a written response by October 4, 2013, to indicate your interest in becoming a cooperating agency. In your response, please specify a point of contact. Should you request to participate as a cooperating agency, we will provide a Memorandum of Understanding (MOU) template. The MOU, which is executed through signature by Reclamation and the cooperating agency, defines the roles, responsibilities, points of contact, and other requirements and agreements, for both Reclamation and the cooperating agency.

If you have any questions about the project; or for additional information, please contact Ms. Rhea Graham at 505-462-3560 or at rgraham@usbr.gov. Thank you for your interest and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike A. Hamman", with a long horizontal flourish extending to the right.

Mike A. Hamman
Area Manager

Enclosure

Mr. James Salopek, President
Elephant Butte Irrigation District
530 South Melendres Street
Las Cruces, NM 88005

Mr. Johnny Stubbs, President
El Paso County Water Control
and Improvement District No. 1
P.O. Box 749
Clint, TX 79836-0749

Mr. Daniel Chavez, General Manager
Hudspeth County Conservation and Reclamation,
District No. 1
P.O. Box 125
Ft. Hancock, Texas 79839

Mr. Mark Sanchez, Executive Director
Albuquerque Bernalillo County Water
Utility Authority
P.O. Box 568
Albuquerque, NM 87103-0568

Mr. Rick Carpenter
Water Resources and Conservation Manager
City of Santa Fe
Sangre de Cristo Water Division
PO Box 909
Santa Fe, NM 87504-0909

Mr. Pat Gordon, Commissioner
Texas Rio Grande Compact Commission
401 East Franklin Avenue, Suite 560
El Paso, TX 79901-1212

Mr. Scott Verhines, State Engineer
New Mexico Compact Commissioner
New Mexico Office of the State Engineer
PO Box 25102
Santa Fe, NM 87504-5102

Mr. Dick Wolfe, State Engineer
Colorado Compact Commissioner
Colorado Division of Water Resources
1313 Sherman St., Suite 821
Denver, CO 80203

Mr. Gilbert Anaya
Supervisory Environmental Engineer
International Boundary & Water Commission,
United States Section
Environmental Management Division
4171 North Mesa, Suite C-100
El Paso, TX 79902-1441

Dr. Jeff Pappas
State Historic Preservation Officer and Director
New Mexico Historic Preservation Division
Department of Cultural Affairs
Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, NM 87501

Dr. Mark Wolfe
State Historic Preservation Officer
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711-2276

Dr. Benjamin Tuggle
Regional Director
Southwest Regional Office
U.S. Fish & Wildlife Service
P.O. Box 1306
Albuquerque, NM 87103-1306



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Regional Office
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102

IN REPLY REFER TO:

ALB-103
ENV-3.00

JUN 24 2014

Honorable Frederick Chino, Senior
Mescalero Apache Tribe of the
Mescalero Reservation
P.O. Box 227
Mescalero, NM 88340

Subject: Request for Consultation on Environmental Impact Statement (EIS), (Action by August 15, 2014)

Dear President Chino:

The purpose of this letter is to consult with the Mescalero Apache Tribe of the Mescalero Reservation during the preparation of the EIS for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The operating agreement is a written detailed description of how the Bureau of Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No. 1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, the EIS proposes to evaluate the environmental effects of renewing San Juan-Chama Project storage contracts under authority of the December 29, 1981, Act, Public Law 97-140, 95 Statute 1717, providing for storage in Elephant Butte Reservoir.

Reclamation's goal is to complete National Environmental Policy Act of 1969 (NEPA) compliance, in the form of a Record of Decision after completion of the EIS, no later than December 31, 2015, in order to annotate the results in the water operations manual for the Rio Grande Project before the start of the 2016 irrigation season. The enclosed Notice of Intent to prepare an EIS was issued on January 15, 2014, and scoping comments were received from two agencies. We are preparing a scoping report, and hope to award a contract for EIS preparation by October 1, 2014.

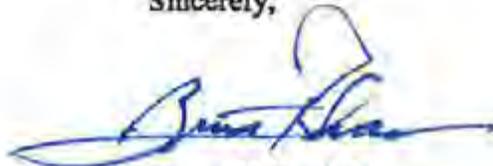
During the preparation of the Supplemental Environmental Assessment (SEA) covering the 2008 Operating Agreement from 2013-2015, the Mescalero Apache Tribe was the only tribe offering comments. The SEA is available at: <http://www.usbr.gov/uc/albuq/envdocs/ca/riogrande/op-Procud/Supplemental/Final-SuppEA.pdf>. As noted on page 76 of that document, "... in response to a Reclamation scoping letter, the Mescalero Apache Tribe had concerns with native plants

growing along the irrigation canals in the service areas of the EBID and EPCWID. The Mescalero Tribe collects plant material for cultural purposes."

The EIS will build on the SEA analyses and findings along with other appropriate analyses. Please advise if you prefer a consultation meeting with your Tribal Council, or at some other venue. We are contacting you in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, for recommended options to facilitate further coordination. A reply by August 15, 2014, regarding your preference for consultation would be appreciated.

Please contact Ms. Rhea Graham, Special Project Officer at 505-462-3560, to request a consultation with either myself or Mr. Mike Hamman the Albuquerque Area Office Manager.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry Walkoviak", with a large, stylized flourish above the name.

Larry Walkoviak
Regional Director

Enclosure

VIA ELECTRONIC MAIL

cc: Rene Cochise, Superintendent
Mescalero Agency
P.O. Box 189
Mescalero, NM 88340
Rene.cochise@bia.gov

Mr. Mike Hamman, Area Manager
Albuquerque Area Office
Bureau of Reclamation
555 Broadway Avenue Northeast
Suite 100 (ALB-100)
Albuquerque, NM 87102
Mhamman@usbr.gov

education activities, scientific research projects, boundary marking, and enforcement of existing regulations. There would be no manipulation of the marsh other than emergency, safety-related, or limited improvements or maintenance actions. The destabilized marsh would continue to erode at an accelerated rate.

Alternative B: Hydrologic Restoration and Minimal Wetland Restoration—Under alternative B, the focus is on the most essential actions to reestablish hydrologic conditions that shield the marsh from erosive currents and protect the Hog Island Cut channel and channel wall. A breakwater structure would be constructed on the south end of the marsh, in alignment with the northernmost extent of the historic promontory, and wetlands would be restored to strategic areas where the water is less than 4 feet deep. This alternative also includes fill of some deep channel areas near the breakwater. The final element of this alternative is the reestablishment of hydrologic connections to the inland side of the Haul Road to restore bottomland swamp forest areas that were cut off when the Haul Road was constructed.

Approximately 30 acres west of the Haul Road could be influenced by tidal flows as a result. These actions would not necessarily happen in any particular order, and may be dictated by available funds. However, it is assumed that the breakwater would be constructed first. This alternative would create approximately 20 acres of various new wetland habitats and allow the continued natural accretion of soils and establishment of wetlands given the new hydrologic conditions.

Alternative C: Hydrologic Restoration and Fullest Possible Extent of Wetland Restoration (NPS Preferred Alternative)—Under alternative C, the marsh would be restored in a phased approach up to the historic boundary of the marsh and other adjacent areas within NPS jurisdictional boundaries. Phased restoration would continue until a sustainable marsh is achieved and the overall goals of the project are met. The historic boundaries lie between the historic promontory and Dyke Island, the triangular island off the end of the Haul Road. The outer edges of the containment cell structures would be placed at the park boundary in the river.

The initial phase of this alternative would first establish a breakwater structure at the southern alignment of the historic promontory to provide immediate protection to Dyke Marsh from erosion. After the breakwater is established, the deep channel areas north of the historic promontory would

be filled within the NPS boundary, and the marsh would be restored to the 4-foot contour at strategic locations to further reduce the risk of erosion and storm surges and promote sedimentation within the existing marsh. Afterwards, two cells would be constructed along the northern edge of the breakwater, restoring the original extent of the promontory's land mass.

All subsequent phases would establish containment cells out no further than the historic marsh boundary. The location of these cells would be prioritized based on the most benefits the specific locations could provide to the existing marsh. The timing of these subsequent phases and the size and number of cells built during these phases would be dependent upon available funds and materials.

In addition to the construction of containment cells, tidal guts would be cut into the restored marsh area that would be similar to the historical flow channels of the original marsh.

This alternative, like Alternative B, would also introduce breaks in the Haul Road, returning tidal flows to approximately 30 acres west of the Haul Road, which would help to re-establish the historic swamp forest originally found on the site.

Additional wetland may be restored south of the new breakwater to fill out the southernmost historic extent of the marsh. This area would not be protected from storms, and would be one of the last features implemented. In addition, the marsh restoration would extend north of Dyke Island, and tidal guts would be created. This alternative contains an optional restoration cell in the area currently serving as a mooring area for the marina. Such an option would only be implemented should the marine concession no longer be economically viable for the current concessioner, and then only if no other concessioner expresses interest in taking over the business, which would eliminate the need for the mooring field. In total, under this alternative, approximately 245 acres of various wetland habitats could be created.

Dated: October 21, 2013.

Stephan E. Whitesell,
Regional Director, National Park Service,
National Capital Region.

[FR Doc. 2014-00633 Filed 1-14-14; 8:45 am]
BILLING CODE 4310-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[14XR0880A1, RX.00238101.0021000,
RR04313000]

Notice of Intent To Prepare an Environmental Impact Statement and Announcement of Public Scoping Meetings for Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Reclamation is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No. 1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1961, Pub. L. 87-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir.

DATES: Comments on the scope of the EIS must be received by February 14, 2014.

Three public scoping meetings will be held to solicit public input on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS. See the **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Written comments regarding the scope and content of the EIS should be sent to Ms. Rhea Graham, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE, Suite 100, Mail Stop ALB-103, Albuquerque, New Mexico 87102, or provided via email at rgraham@usbr.gov.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the EIS, should contact Ms. Graham using the information cited above. See the **SUPPLEMENTARY INFORMATION** section for locations of public scoping meetings. **FOR FURTHER INFORMATION CONTACT:** Ms. Rhea Graham, Bureau of Reclamation;

(telephone 505-462-3560; email at rgraham@usbr.gov). Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact Ms. Graham during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Graham. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act, Reclamation will serve as the lead federal agency for preparation of the EIS on the continued implementation of the Operating Agreement for the Rio Grande Project, New Mexico and Texas. The responsible official for this action is Reclamation's Upper Colorado Regional Director.

Background

The Rio Grande Project includes Elephant Butte and Caballo dams and reservoirs, a power generating plant, and five diversion dams (Parcha, Leesburg, Mesilla, American, and International) located on the Rio Grande in New Mexico and Texas. The Rio Grande Project was authorized by Congress under the authority of the Reclamation Act of 1902 and the Rio Grande Project Act of February 25, 1905. The Rio Grande Project Operating Agreement was signed in 2008 to allocate Rio Grande Project water, which includes water stored in Elephant Butte and Caballo reservoirs and return flows to the Rio Grande between the EBID in the Rincon and Mesilla valleys of New Mexico and the EPCWID in the Mesilla and El Paso valleys of Texas and Mexico. The Rio Grande Project also provides water to Mexico under the 1906 international treaty. Rio Grande Project water is provided by Reclamation to irrigate a variety of crops and for municipal and industrial water uses.

Purpose and Need for Action

The purpose and need for action is to meet contractual obligations to EBID and EPCWID to implement a written set of criteria and procedures for allocating, delivering, and accounting for Rio Grande Project water to both districts consistent with their rights under applicable law each year in compliance with various court decrees, settlement agreements, and contracts. These include the 2008 Compromise and Settlement Agreement among Reclamation, EBID, and EPCWID, and contracts between the United States and the EBID and EPCWID. The purpose and need of an ancillary but potentially similar action is to implement the

provisions of the Act of December 29, 1981, to allow the storage of San Juan-Chama project water acquired by contract with the Secretary of the Interior pursuant to Public Law 87-483 in Elephant Butte Reservoir.

Proposed Action

The proposed federal action is to continue to implement the 2008 Operating Agreement for the Rio Grande Project over the remaining term (through 2050), and a potentially similar action under 40 CFR 1508.25, to implement long-term contracts for storage of San Juan-Chama water in the Rio Grande Project.

Scoping Process

This notice initiates the scoping process which guides the development of the EIS. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Reclamation using the contact information provided above. To be most effective, written comments should be received prior to the close of the comment period and should clearly articulate the commentator's concerns.

Dates and Addresses of Public Scoping Meetings

The scoping meeting dates and addresses are:

- Thursday, January 30, 2014, 3:00 p.m. to 5:00 p.m., Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE, Suite 100, Albuquerque, New Mexico 87102
- Friday, January 31, 2014, 8:00 p.m. to 8:00 p.m., Elephant Butte Irrigation District, 530 South Melendres Street, Las Cruces, New Mexico 88005
- Saturday, February 1, 2014, 9:00 a.m. to 11:00 a.m., Bureau of Reclamation, El Paso Field Division, 10737 Gateway West, Suite 350, El Paso, Texas 79935

Special Assistance for Public Scoping Meetings

If special assistance is required at the scoping meetings, please contact Ms. Graham at 505-462-3560 or email at rgraham@usbr.gov. Please notify Ms. Graham at least two weeks in advance of the meeting to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Refers including your address, phone number, email address, or other

personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 5, 2013.

Brant Reeves,

Deputy Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 2014-00478 Filed 1-15-14; 8:43 am]

BILLING CODE 4310-004-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-904]

Certain Acousto-Magnetic Electronic Article Surveillance Systems, Components Thereof, and Products Containing Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 11, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Tyco Fire & Security GmbH of Switzerland; Sensormatic Electronics, LLC of Boca Raton, Florida; and Tyco Integrated Security, LLC of Boca Raton, Florida. A letter supplementing the complaint was filed on December 23, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain acousto-magnetic electronic article surveillance systems, components thereof, and products containing same by reason of infringement of U.S. Patent No. 5,729,200 ("the '200 patent'") and U.S. Patent No. 6,181,245 ("the '245 patent'"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Regional Office
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102

IN REPLY REFER TO:

ALB-103
ENV-3.00

JUN 24 2014

Honorable Frank Paiz
Ysleta Del Sur Pueblo
Tribal Council Office
P.O. Box 17579
El Paso, TX 79907

Subject: Request for Consultation on Environmental Impact Statement (EIS), (Action by August 15, 2014)

Dear Governor Paiz:

The purpose of this letter is to consult with the Ysleta Del Sur Pueblo during the preparation of the EIS for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The operating agreement is a written detailed description of how the Bureau of Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District in New Mexico, the El Paso County Water Improvement District No. 1 in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, the EIS proposes to evaluate the environmental effects of renewing San Juan-Chama Project storage contracts under authority of the December 29, 1981, Act, Public Law 97-140, 95 Statute 1717, providing for storage in Elephant Butte Reservoir.

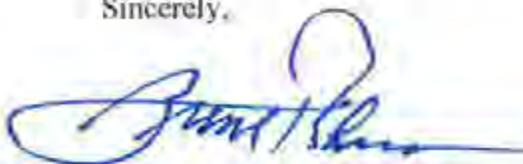
Reclamation's goal is to complete the National Environmental Policy Act of 1969 (NEPA) compliance, in the form of a Record of Decision on the NEPA review after completion of the EIS, no later than December 31, 2015, in order to annotate the results in the water operations manual for the Rio Grande Project before the start of the 2016 irrigation season. The enclosed Notice of Intent to prepare an EIS was issued on January 15, 2014, and scoping comments were received from two agencies. We are preparing a scoping report, and plan to award a contract for EIS preparation by October 2014.

During the preparation of the Supplemental Environmental Assessment (SEA) covering the 2008 Operating Agreement from 2013-2015, the Pueblo of Ysleta del Sur did not offer comments. The SEA is available at: <http://www.usbr.gov/uc/albuq/envdocs/ea/riogrande/op-Proced/Supplemental/Final-SuppEA.pdf>. The EIS, will build on the SEA analyses and findings along with other appropriate analyses. Please advise if you prefer a consultation meeting with your Tribal Council, or some other venue. We are contacting you in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, for recommended

options to facilitate further coordination. A reply by August 15, 2014, regarding your preference for consultation would be appreciated.

Please contact Ms. Rhea Graham, Special Project Officer at 505-462-3560, to request a consultation with either myself or Mr. Mike Hamman the Albuquerque Area Office Manager.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry Walkoviak", with a large, stylized loop at the end.

Larry Walkoviak
Regional Director

Enclosure

VIA ELECTRONIC MAIL

cc: Mr. John Antonio, Superintendent
Southern Pueblos Agency
1001 Indian School Road, Northwest
Albuquerque, NM 87104
John.antonio@bia.gov

Mr. Mike Hamman, Area Manager
Albuquerque Area Office
Bureau of Reclamation
555 Broadway Avenue, Northeast
Suite 100 (ALB-100)
Albuquerque, NM 87102
Mhamman@usbr.gov

education activities, scientific research projects, boundary marking, and enforcement of existing regulations. There would be no manipulation of the marsh other than emergency, safety-related, or limited improvements or maintenance actions. The destabilized marsh would continue to erode at an accelerated rate.

Alternative B: Hydrologic Restoration and Minimal Wetland Restoration—Under alternative B, the focus is on the most essential actions to reestablish hydrologic conditions that shield the marsh from erosive currents and protect the Hog Island Gut channel and channel wall. A breakwater structure would be constructed on the south end of the marsh, in alignment with the northernmost extent of the historic promontory, and wetlands would be restored to strategic areas where the water is less than 4 feet deep. This alternative also includes fill of some deep channel areas near the breakwater. The final element of this alternative is the reestablishment of hydrologic connections to the inland side of the Haul Road to restore bottomland swamp forest areas that were cut off when the Haul Road was constructed. Approximately 30 acres west of the Haul Road could be influenced by tidal flows as a result. These actions would not necessarily happen in any particular order, and may be dictated by available funds. However, it is assumed that the breakwater would be constructed first. This alternative would create approximately 70 acres of various new wetland habitats and allow the continued natural accretion of soils and establishment of wetlands given the new hydrologic conditions.

Alternative C: Hydrologic Restoration and Fullest Possible Extent of Wetland Restoration (NPS Preferred Alternative)—Under alternative C, the marsh would be restored in a phased approach up to the historic boundary of the marsh and other adjacent areas within NPS jurisdictional boundaries. Phased restoration would continue until a sustainable marsh is achieved and the overall goals of the project are met. The historic boundaries lie between the historic promontory and Dyke Island, the triangular island off the end of the Haul Road. The outer edges of the containment cell structures would be placed at the park boundary in the river.

The initial phase of this alternative would first establish a breakwater structure at the southern alignment of the historic promontory to provide immediate protection to Dyke Marsh from erosion. After the breakwater is established, the deep channel areas north of the historic promontory would

be filled within the NPS boundary, and the marsh would be restored to the 4-foot contour at strategic locations to further reduce the risk of erosion and storm surges and promote sedimentation within the existing marsh. Afterwards, two cells would be constructed along the northern edge of the breakwater, restoring the original extent of the promontory's land mass.

All subsequent phases would establish containment cells out no further than the historic marsh boundary. The location of these cells would be prioritized based on the most benefits the specific locations could provide to the existing marsh. The timing of these subsequent phases and the size and number of cells built during these phases would be dependent upon available funds and materials.

In addition to the construction of containment cells, tidal guts would be cut into the restored marsh area that would be similar to the historical flow channels of the original marsh.

This alternative, like Alternative B, would also introduce breaks in the Haul Road, returning tidal flows to approximately 30 acres west of the Haul Road, which would help to re-establish the historic swamp forest originally found on the site.

Additional wetland may be restored south of the new breakwater to fill out the southernmost historic extent of the marsh. This area would not be protected from storms, and would be one of the last features implemented. In addition, the marsh restoration would extend north of Dyke Island, and tidal guts would be created. This alternative contains an optional restoration cell in the area currently serving as a mooring area for the marins. Such an option would only be implemented should the marina concession no longer be economically viable for the current concessioner, and then only if no other concessioner expresses interest in taking over the business, which would eliminate the need for the mooring field. In total, under this alternative, approximately 245 acres of various wetland habitats could be created.

Dated: October 31, 2013.

Stephen E. Whitesell,

Regional Director, National Park Service,
National Capital Region.

[FR Doc. 2014-00833 Filed 1-14-14; 9:45 am]

BILLING CODE 4310-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[14XR0680A1, RX.00238101.0021000,
RR04313000]

Notice of Intent To Prepare an Environmental Impact Statement and Announcement of Public Scoping Meetings for Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Reclamation is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No. 1 (EPCWID) in Texas, and to users covered by the 1906 International treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, Pub. L. 97-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir.

DATES: Comments on the scope of the EIS must be received by February 14, 2014.

Three public scoping meetings will be held to solicit public input on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS. See the SUPPLEMENTARY INFORMATION section for meeting dates.

ADDRESSES: Written comments regarding the scope and content of the EIS should be sent to Ms. Rhea Graham, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Mail Stop ALB-103, Albuquerque, New Mexico 87102, or provided via email at rgraham@usbr.gov.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the EIS, should contact Ms. Graham using the information cited above. See the SUPPLEMENTARY INFORMATION section for locations of public scoping meetings. **FOR FURTHER INFORMATION CONTACT:** Ms. Rhea Graham, Bureau of Reclamation;

telephone 505-462-3560; email at rgraham@usbr.gov. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact Ms. Graham during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Graham. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act, Reclamation will serve as the lead federal agency for preparation of the EIS on the continued implementation of the Operating Agreement for the Rio Grande Project, New Mexico and Texas. The responsible official for this action is Reclamation's Upper Colorado Regional Director.

Background

The Rio Grande Project includes Elephant Butte and Caballo dams and reservoirs, a power generating plant, and five diversion dams (Percha, Leesburg, Mesilla, American, and International) located on the Rio Grande in New Mexico and Texas. The Rio Grande Project was authorized by Congress under the authority of the Reclamation Act of 1902 and the Rio Grande Project Act of February 25, 1905. The Rio Grande Project Operating Agreement was signed in 2008 to allocate Rio Grande Project water, which includes water stored in Elephant Butte and Caballo reservoirs and return flows to the Rio Grande between the EBID in the Rincon and Mesilla valleys of New Mexico and the EPCWID in the Mesilla and El Paso valleys of Texas and Mexico. The Rio Grande Project also provides water to Mexico under the 1906 international treaty. Rio Grande Project water is provided by Reclamation to irrigate a variety of crops and for municipal and industrial water uses.

Purpose and Need for Action

The purpose and need for action is to meet contractual obligations to EBID and EPCWID to implement a written set of criteria and procedures for allocating, delivering, and accounting for Rio Grande Project water to both districts consistent with their rights under applicable law each year in compliance with various court decrees, settlement agreements, and contracts. These include the 2008 Compromise and Settlement Agreement among Reclamation, EBID, and EPCWID, and contracts between the United States and the EBID and EPCWID. The purpose and need of an ancillary but potentially similar action is to implement the

provisions of the Act of December 29, 1881, to allow the storage of San Juan-Chama project water acquired by contract with the Secretary of the Interior pursuant to Public Law 87-483 in Elephant Butte Reservoir.

Proposed Action

The proposed federal action is to continue to implement the 2008 Operating Agreement for the Rio Grande Project over the remaining term (through 2050), and a potentially similar action under 40 CFR 1508.25, to implement long-term contracts for storage of San Juan-Chama water in the Rio Grande Project.

Scoping Process

This notice initiates the scoping process which guides the development of the EIS. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Reclamation using the contact information provided above. To be most effective, written comments should be received prior to the close of the comment period and should clearly articulate the commentator's concerns.

Dates and Addresses of Public Scoping Meetings

The scoping meeting dates and addresses are:

- Thursday, January 30, 2014, 3:00 p.m. to 5:00 p.m., Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102
- Friday, January 31, 2014, 6:00 p.m. to 8:00 p.m., Elephant Butte Irrigation District, 530 South Melendres Street, Las Cruces, New Mexico 88005
- Saturday, February 1, 2014, 8:00 a.m. to 11:00 a.m., Bureau of Reclamation, El Paso Field Division, 10737 Gateway West, Suite 350, El Paso, Texas 79935

Special Assistance for Public Scoping Meetings

If special assistance is required at the scoping meetings, please contact Ms. Graham at 505-462-3560 or email at rgraham@usbr.gov. Please notify Ms. Graham at least two weeks in advance of the meeting to enable Reclamation to secure the needed services. If a request cannot be honored, the requester will be notified.

Public Disclosure

Before including your address, phone number, email address, or other

personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 5, 2013.

Brent Rhees,

Deputy Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 2014-00476 Filed 1-14-14; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-904]

Certain Acousto-Magnetic Electronic Article Surveillance Systems, Components Thereof, and Products Containing Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 11, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Tyco Fire & Security GmbH of Switzerland; Sensormatic Electronics, LLC of Boca Raton, Florida; and Tyco Integrated Security, LLC of Boca Raton, Florida. A letter supplementing the complaint was filed on December 23, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain acousto-magnetic electronic article surveillance systems, components thereof, and products containing same by reason of infringement of U.S. Patent No. 6,729,200 ("the '200 patent'") and U.S. Patent No. 6,181,245 ("the '245 patent'"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection

Attachment C - Two Letters Declining to Be Cooperating Agency



STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

Susana Martinez
 Governor

BATAAN MEMORIAL BUILDING
 3407 GALISTEO STREET, SUITE 236
 SANTA FE, NEW MEXICO 87501
 PHONE (505) 827-6320 FAX (505) 827-6338

ORIGINAL

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Mike A. Hamman
 Area Manager
 Bureau of Reclamation
 Albuquerque Area Office
 55 Broadway Boulevard NE, Suite 100
 Albuquerque, New Mexico 87102-2352

Attn: Rhea Graham

Dear Mr Hamman,

On behalf of the New Mexico State Historic Preservation Officer (SHPO), I want to thank you for inviting the New Mexico Historic Preservation Division to be a cooperating agency during the development of the Bureau of Reclamation's (Reclamation) Rio Grande Project Operating Agreement Environmental Impact Statement (EIS).

We decline to enter the EIS process as a cooperating agency at this time. However, our office is concerned about how Reclamation will address cultural resources and compliance with Section 106 of the National Historic Preservation Act in the EIS. We want Reclamation to consult with our office during the development of the EIS and before the record of decision (ROD) to ensure that the document includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects. You can find guidance on coordinating the NHPA compliance with National Environmental Policy Act (NEPA) in Federal regulation 36 CFR 800.8 provides. Please note that it may be necessary for Reclamation and the SHPO to negotiate a programmatic agreement (PA) before the ROD can be completed per 36 CFR 800.14.

The SHPO is looking forward to consulting with Reclamation during the development of the EIS. If you have any questions or comments please feel free to call me directly at (505) 827-4225 or e-mail me at bob.estes@state.nm.us

Sincerely,

Bob Estes

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington
SCOTT A. VERHINES, Secretary, Santa Fe
BUFORD HARRIS, Mesilla
BLANE SANCHEZ, Isleta
PHELPS ANDERSON, Roswell
MARK SANCHEZ, Albuquerque
JAMES WILCOX, Carlsbad
RANDAL CROWDER, Clovis
TOPPER THORPE, Cliff



BATAAN MEMORIAL BUILDING, ROOM 101
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO
(505) 827-6160
FAX: (505) 827-6188

February 14, 2014

Mike Hamman, Area Manager
Bureau of Reclamation
Albuquerque Area Office
555 Broadway NE, Suite 100
Albuquerque, NM 87102

RE: Invitation to New Mexico Interstate Stream Commission to be a Cooperating Agency for the Environmental Impact Statement for the 2008 Rio Grande Project Operating Agreement

Dear Mr. Hamman:

Thank you for your January 17, 2014 letter regarding the New Mexico Interstate Stream Commission's (NMISC) participation in the preparation of an Environmental Impact Statement (EIS) to analyze the environmental effects of continued operation of the 2008 Operating Agreement (2008 OA) for the Rio Grande Project (RGP) and San Juan-Chama Storage Contracts. NMISC's comments on the scope of the EIS are addressed under separate cover.

As you know, the NMISC has a vital interest in the EIS because the 2008 OA has had and will continue to have major effects on water users in New Mexico and relates to the Rio Grande Compact between Colorado, Texas and New Mexico. As stated in previous correspondence, NMISC believes that the National Environmental Policy Act (NEPA) requires that Reclamation's environmental review and analysis must start from the baseline operations that preceded the changes made in 2007. However, your letter indicates that the Bureau of Reclamation (Reclamation) will continue to implement the 2008 OA during the pendency of the EIS despite Reclamation's failure to conduct the proper environmental review. It is NMISC's position that by proceeding with the NEPA process while continuing to operate the RGP under the 2008 OA, Reclamation biases the baseline information for the EIS and violates NEPA's prohibition against predetermined outcomes. For these reasons, NMISC declines to formally participate as a Cooperating Agency.

However, because the NMISC offers special expertise in matters related to water management in the lower and middle Rio Grande, and the NMISC is the only entity that can fully represent Compact issues in New Mexico NMISC hereby requests to be included in any technical and

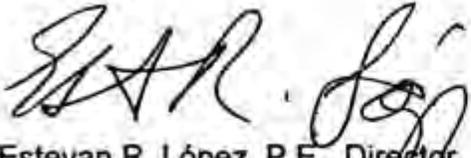
Mike Hamman, Bureau of Reclamation

Page 2 of 2

February 14, 2014

stakeholder subcommittees or work groups regarding the EIS. Therefore, we look forward to participation on behalf of the State of New Mexico as an interested and affected stakeholder.

Sincerely,

A handwritten signature in black ink, appearing to read "Estevan R. Lopez". The signature is fluid and cursive, with the first name being the most prominent.

Estevan R. López, P.E., Director
New Mexico Interstate Stream Commission

cc: Rhea Graham, Bureau of Reclamation
Scott Verhines, State Engineer
Stephen Farris, Assistant Attorney General
Sarah Bond, New Mexico Attorney General's Office
Rolf Schmidt-Petersen, NMISC, Rio Grande Bureau
Amy Haas, NMISC General Counsel
Kim Bannerman, NMISC Attorney, Lower Rio Grande



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Region
Albuquerque Area Office
555 Broadway NE, Suite 100
Albuquerque, NM 87102-2352

IN REPLY REFER TO:
ALB-150
ENV-6.00

March 1 / 2014

Mr. Scott Verhines, P.E.
Secretary
New Mexico Interstate Stream Commission
P.O. Box 25012
Santa Fe, New Mexico 87504

Dear Mr. Verhines:

I am responding to you since Mr. Estevan Lopez has been nominated to become our next Commissioner of the Bureau of Reclamation and we are unsure of his current status with the New Mexico Interstate Stream Commission (NMISC). I received his letter dated February 14, 2014, stating that the NMISC declines to participate as a Cooperating Agency in the Environmental Impact Statement (EIS) for the continued implementation of the 2008 Operating Agreement (OA) for the Rio Grande Project (RGP). The reason given is that the NMISC objects to Reclamation operating the RGP in accordance with the existing Environmental Assessment for the OA.

Your letter includes a request that NMISC be included in any technical and stakeholder and subcommittees or work groups regarding the EIS, because of the NMISC's role in Rio Grande Compact issues in New Mexico. Reclamation intends to use authorities delegated under the National Environmental Policy Act and through the Council on Environmental Quality and the Department of the Interior to conduct this EIS; however, since the NMISC has declined to participate as a Cooperating Agency, Reclamation cannot extend the same roles and responsibilities to the NMISC that cooperating agencies enjoy. I do assure you, however, that if Reclamation determines that it is necessary to expand the involvement of the public to include additional stakeholders and possible work groups as needed to complete the EIS, the NMISC will most definitely be included. The NMISC is also directed to the website: <http://www.usbr.gov/uc/albuq/rm/RGP/> to help agencies and the public stay abreast of the activities and progress of the EIS process.

Please continue to coordinate with Ms. Rhea Graham, at 505-462-3560 or rgraham@usbr.gov, regarding any questions about this EIS.

Sincerely,

MIKE A. HAMMAN

Mike A. Hamman
Area Manager

cc: See next page.

cc: Mr. Stephen R. Farris
Assistant Attorney General
Office of the Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508

Ms. Sarah Bond
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508

Mr. Rolf Schmidt-Petersen
Rio Grande Basin Manager
New Mexico Interstate Stream Commission
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

Ms. Amy Haas
General Counsel
New Mexico Interstate Stream Commission
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

Ms. Kim Bannerman
New Mexico Interstate Stream Commission
Lower Rio Grande
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

[REDACTED]

[REDACTED]

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington
SCOTT A. VERHINES, Secretary, Santa Fe
BUFORD HARRIS, Mesilla
BLANE SANCHEZ, Isleta
PHELPS ANDERSON, Roswell
MARK SANCHEZ, Albuquerque
JAMES WILCOX, Carlsbad
RANDAL CROWDER, Clovis
TOPPER THORPE, Cliff



BATAAN MEMORIAL BUILDING, ROOM 101
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FAX: (505) 827-6188

February 14, 2014

U.S. Bureau of Reclamation
Albuquerque Area Office
555 Broadway NE, Suite 100
Mail Stop: ALB-103
Albuquerque, NM 87102

Submitted Via Email to: rgraham@usbr.gov

RE: Comments on the Scoping for the Environmental Impact Statement for the Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas

To Whom It May Concern:

The New Mexico Interstate Stream Commission ("NMISC") submits the following comments on the environmental impact statement ("EIS") for the continued implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas (the "2008 Operating Agreement"). The notice of intent to prepare the EIS and announcement of public scoping meetings was published in the Federal Register, Vol. 79, No. 10 on January 15, 2014. The NMISC has a vital interest in the EIS because the 2008 Operating Agreement has had, and will continue to have, major effects on water users in New Mexico and relates to the Rio Grande Compact between Colorado, Texas and New Mexico (the "Compact").

For the reasons highlighted below, and as set forth in our earlier comments to the U.S. Bureau of Reclamation ("BOR") on the EIS, the NMISC continues to have fundamental objections regarding the EIS.

I. Previous Communications Regarding the EIS and Related Analysis

The NMISC has communicated in depth with the BOR on environmental compliance for the 2008 Operating Agreement. For instance, although the inadequate public notice kept us from timely participating before issuance, we later commented extensively when: (1) the BOR inappropriately and illegally applied its Finding of No Significant Impact ("FONSI") and environmental assessment for a 2007 Operating Agreement ("2007 EA") to the 2008 Operating Agreement; (2) when the BOR conducted the first environmental assessment for the 2008 Operating Agreement in 2013 and inappropriately termed it a supplemental environmental assessment ("SEA") based on the erroneously conducted 2007 EA, and; (4) prior to issuance of

the notice for scoping of the EIS, the NMISC communicated with BOR regarding the scope of the EIS. We do not intend to duplicate those comments in detail here. However, as many of those comments are pertinent to the scope of the current EIS, we have attached the following correspondence:

1. June 6, 2013 letter from NMISC to Jim Wilber, BOR;
2. October 30, 2013 letter from BOR to Scott Verhines, New Mexico State Engineer;
3. December 6, 2013 letter from NMISC to BOR, and;
4. January 17, 2014 letter from BOR to NMISC.

Moreover, NMISC staff attended the public scoping meeting in Albuquerque, NM on January 30, 2014, on the current EIS ("Albuquerque scoping meeting") and NMISC staff and contractors previously attended public meetings on the SEA.

II. General Comments

The BOR was required under the National Environmental Policy Act ("NEPA") to have conducted a review of the 2008 Operating Agreement, which was a discretionary federal action, prior to taking that action, i.e., executing the Agreement. In conducting this after-the-fact review, the BOR has made a series of changing decisions related to studies of the 2008 Operating Agreement. For example, BOR did not perform proper NEPA analysis or conduct required public comment procedures for the 2008 Operating Agreement until the SEA was issued in June 2013. Until that time, the BOR maintained that the 2007 EA and FONSI was sufficient to meet NEPA requirements. Yet, the SEA described the 2008 Operating Agreement very differently than the 2007 EA. The SEA did admit some of the foreseen and now unfolding consequences of the 2008 Operating Agreement, but did not remedy those consequences. From preliminary communications regarding the scope of the EIS and the Albuquerque scoping meeting, the scope of the EIS again looks very different from either the SEA or the 2007 EA. This is especially true of the inclusion of the San Juan Chama Project ("SJCP") storage contracts in Elephant Butte Reservoir (the "Reservoir") within the scope of this EIS. This ongoing series of changing decisions makes it impossible for the NMISC, other affected public entities like the City of Las Cruces, and the general public to track an understandable BOR position on NEPA compliance for the initial federal action and continued operations of the Rio Grande Project (the "Project").

More importantly, the BOR's positions and actions have demonstrated that it has already determined the outcome of the EIS, in violation of NEPA. The BOR irretrievably committed to a course of action before engaging in a valid NEPA process. BOR signed the 2008 Operating Agreement on March 10, 2008 and only now, almost six years later, is drafting an EIS on that major federal action. The Council on Environmental Quality Regulations on NEPA ("CEQ Regulations") expressly state that an EIS "shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made." 40 C.F.R. § 1502.2(g) (2004) (emphasis added). All of the BOR's actions indicate the EIS is merely an attempt to justify the 2008 Operating Agreement after the fact, which the BOR continues to implement despite failing to conduct proper environmental review. While now acknowledging such review is required, the BOR nevertheless proposes to continue implementing the 2008 Operating Agreement in the interim.

In addition, the BOR's ongoing operations under the 2008 Operating Agreement are an express violation of NEPA because an EIS must precede implementation of major federal actions significantly affecting the human environment. The BOR's NEPA compliance handbook states in section 11.5., "Doing NEPA on Decisions Already Made—NEPA compliance is required before any discretionary Federal action with potentially significant environmental impacts is initiated. Decisions should not be made without full compliance with NEPA. To do this is illegal and a violation of NEPA." BOR's NEPA Handbook at 11-4 (2012) (emphasis added).

Finally, the BOR has continually ignored the concerns of entities affected by the 2008 Operating Agreement. For example, the concerns and comments of the City of Las Cruces have not been addressed by the BOR. Furthermore, the City of Las Cruces has never been asked to be a cooperating agency.

III. Baseline for Analysis and Modeling

To date, the BOR has not provided specific information on the baseline for its analysis of the environmental changes caused by the proposed action or its alternatives as identified in the EIS or the modeling tools it will use to conduct its analysis. The BOR is now planning to scope and prepare an EIS to analyze the environmental effects of the remainder of the 50-year term of the 2008 Operating Agreement while also analyzing SJCP storage in the Reservoir. In conducting the current review, the prior environmental review for the 2007 EA and SEA, the BOR has never reverted to its pre-2008 Operating Agreement operations, and thereby continuing to change the environmental baseline. By proceeding with the NEPA process while continuing to operate the Project under the terms of the 2008 Operating Agreement, the BOR has biased the baseline information for the EIS evaluation and violated NEPA's prohibition against predetermined outcomes. *Forest Guardians v. U.S. Fish & Wildlife Service*, 611 F.3d 692, 713 (10th Cir. 2010) ("[I]f an agency predetermines the NEPA analysis by committing itself to an outcome, the agency likely has failed to take a hard look at the environmental consequences of its actions due to its bias in favor of that outcome and, therefore, has acted arbitrarily and capriciously.") (citing *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002)).

Furthermore, the baseline analysis used by the BOR in the past has many flaws that the NMISC previously communicated to BOR. In the SEA, there are substantial technical issues associated with the no-action baseline analysis used. There are demonstrably false assumptions (e.g. that the Elephant Butte Irrigation District historically ordered all the water it was allocated) and a problematic initial condition (the year used was 2007, by which time the Project operations had already been modified ad hoc by BOR from historic operations as then described in the 2007 EA). Accordingly, these baseline assumptions and analysis should be reconsidered and rigorously evaluated in the EIS.

The NMISC still needs additional information regarding the full scope of the modeling effort underway for analysis of the 2008 Operating Agreement. Although the NMISC staff specifically asked for this information at the Albuquerque scoping meeting, we were told that the BOR representatives present did not know the answer, and in any event that no information on the specifics of the model will be released until the model report is published. The model will be the central element of the BOR's analysis and is vital to determining if the scope of the EIS is

correct. Again, it is impossible to comment on whether the modeling effort is adequate without additional information. NMISC again requests disclosure of the specific models, modeling tools, and relevant data sets for surface water and groundwater quantity and quality.

The NMISC has considerable expertise in surface water and groundwater modeling and would like to be included in any technical advisory committee or other stakeholder group created for the EIS analysis.

IV. Diversion Ratio

The BOR admits that the 2008 Operating Agreement introduces a new and significant factor in water allocation calculations. Regardless of the rationale for the changes, the 2008 Operating Agreement decreases Elephant Butte Irrigation District's ("EBID") allocation and creates real or apparent reductions in the Project performance, as quantified by the "diversion ratio". The effect of each individual factor that affects the diversion ratio should be evaluated and quantified. Specifically, and discussed more in depth below, the evaluation of the 2008 Operating Agreement must: (1) quantify the effects of groundwater pumping in Texas and Mexico (not just in New Mexico) in both the Mesilla and Hueco Basins; (2) examine changes in Project measurement, reporting, and accounting practices since the D1/D2 period¹; and, (3) quantify the amount by which EBID's allocation has been reduced as a result of these impacts.

In line with this analysis, EBID's allocation under the 2008 Operating Agreement in full-supply years must be quantified. Since this allocation is less than the amount needed to supply the irrigated acreage in EBID, as BOR admits, the 2008 Operating Agreement necessarily results in increased irrigation well pumping within EBID. The BOR admits the proposed action encourages increased groundwater pumping but fails to propose any real analysis of those effects and its cumulative impacts on the human environment.

V. Surface Water Allocations

At the Albuquerque scoping meeting, the information provided by BOR indicates that one of the issues to be analyzed in the EIS is the surface water allocations made to the irrigation districts affected by the 2008 Operating Agreement - EBID and the El Paso County Water Improvement District No. 1 ("EP No. 1"). The BOR's vague statement on analysis of surface water allocations to EBID and EP No. 1 provides no indication of how this analysis will be conducted.

To truly demonstrate the effects of the 2008 Operating Agreement on the two irrigation district's surface supply, the BOR must review and evaluate pre-2008 Operating Agreement distribution of Project water. The BOR indicates that its analysis will include pumping from the D1/D2 period. However, its analysis does not appear to use that time period as the baseline. If this is BOR's intent, it should analyze the period from 1951 to 1978 as its pre-2008 Operating Agreement distribution. The NMISC specifically requests that the BOR evaluate the impact of the 2008 Operating Agreement on the historic distribution of the Rio Grande Project water in equal amounts to all irrigable land within the Project; that is, based on irrigable acreage within the Project, the historic and equal distribution is 57% to EBID and 43% to EP No. 1.

¹ The D1/D2 time period is defined as 1951 through 1978.

VI. Groundwater

In the materials presented during the public scoping meeting in Albuquerque, the BOR states that as part of the EIS it plans to analyze groundwater levels, recharge, and groundwater pumping in the Rincon and Mesilla Basins. At that meeting, NMISC staff asked the BOR representatives whether these same issues would be examined in the Texas portion of the Project area. BOR staff stated that at this time the Texas portion had not been considered in the modeling effort. The Project extends many miles into Texas in the Hueco Basin and two of the Project's 5 diversion dams are located in Texas. Moreover, Mexico's use of groundwater also has impacts on the Project and, accordingly, also effects of the 2008 Operating Agreement. The NEPA requires review of the entire affected environment, and does not allow the BOR to only review parts of the human environment impacted. See 40 C.F.R. §§ 1502.4(a) & 1502.15 (2004). The federal action, i.e., the 2008 Operating Agreement, affects the entire Project area and the area receiving tail water, Hudspeth Irrigation District, and, therefore, the EIS must include the Texas portion of the Project, Hudspeth, and the impact of Mexico's groundwater use.

VII. Alternatives Evaluation

The CEQ Regulations require the BOR to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a) (2004) (emphasis added). The CEQ Regulations also state that "[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision." *Id.* at § 1502.2(f). In the recently completed SEA, only two alternatives were considered, "no action" and continued implementation of the EA. In the final SEA Response to Comments NM-009, BOR concludes that consideration of other alternatives is not reasonable because implementation of any alternative other than the proposed action would require renegotiation of the 2008 Operating Agreement and the related settlement agreement. First, this appears to be evidence that the BOR has taken action and committed resources that clearly prejudice its selection of alternatives in the EIS. Furthermore, this response is untrue and inadequate.

According to the SEA, the 2008 Operating Agreement describes how the BOR allocates water between EBID, EP No. 1 and Mexico. However, based on the statement in the SEA Response to Comments NM-009, the BOR now alleges no control over the document that governs its actions related to the Project. The BOR has more authority to change the 2008 Operating Agreement than it states. The BOR is a signatory to the 2008 Operating Agreement, which specifically includes a provision allowing for modification of the agreement (Paragraph 6.7). Thus, these additional alternatives are within reason as the BOR has the ability to work to negotiate the additional alternatives with the other parties to the 2008 Operating Agreement. Moreover, even if the alternative were outside the legal jurisdiction of the BOR, the Council on Environmental Quality's guidance document, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations", specifically states that "[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable" 46 Fed. Reg. at 18026-01. Thus, the BOR is required to examine these alternatives even if it does not think it has the legal authority to implement them. Again, asserting that the BOR has absolutely no authority to alter anything within the 2008

Operating Agreement further demonstrates that it has already pre-determined the outcome of the EIS, in violation of NEPA.

To comply with NEPA and CEQ Regulations, the EIS should consider more than the two alternatives examined in the SEA. There are numerous reasonable alternatives to the proposed action, including: (1) inclusion of a no carryover storage provision in the 2008 Operating Agreement in accordance with historic operations; (2) adding carryover storage for actual conservation (i.e., as measured by reduction in agricultural depletions); (3) removing credits and charges and using actual deliveries of water in accounting; (4) requiring BOR to consider impairment actions against groundwater pumpers in Texas and New Mexico whenever it suspects groundwater pumping is depleting Project supply; (5) a different allocation of water within the 2008 Operating Agreement; (6) accounting fairly for changes in Project efficiency caused by climate change; (7) including a full technical and legal analysis of how the 2008 Operating Agreement effects Compact credit water accounting, and; (8) bringing the allocation committee into compliance with the Federal Advisory Committee Act, 5 U.S.C. App. §§ 1-15 . All these reasonable alternatives should be examined. See *Davis v. Mineta*, 302 F.3d 1104, 1118-19 (10th Cir. 2002) (holding that the NEPA analysis conducted for a highway project was inadequate in part for failing to examine "reasonable alternatives to the Project").

VIII. 2008 Operating Agreement Carryover Provision Impact

The effects of the carryover accounts provided for in the 2008 Operating Agreement need to be examined very carefully in the EIS.² Project carryover accounts do not fully correspond to water in reservoir storage, in part due to the failure of the 2008 Operating Agreement to account for evaporation of these accounts, and, in part due to Project accounting credits. As a result, since 2006, some quantity of water flowing into the Reservoir has been sequestered directly into these carryover accounts to make up for this discrepancy. As an effect, this inflow was not made available for allocation between EBID and EP No. 1. The net effect of these issues on allocation to both EBID and EP No. 1 should be quantified in this analysis.

In addition, the NMISC has the following questions and comments related to review of the carryover provisions:

(1) The BOR must critically examine the effects to Articles VII and VIII of the Compact in its evaluation of carryover; the additional amount of water New Mexico would need to deliver to the Reservoir to meet compact delivery obligations; and, the effects on upstream storage in post-Compact reservoirs that result when all allocation and carryover is called for by EBID and EP No. 1 in a given year.

(2) The BOR, the NMISC, and others are engaged in addressing endangered species compliance issues in the Middle Rio Grande. Because of the linkage in the Compact of Project storage operations to upstream reservoirs operations, changes in Project operations may have an impact on the ability of BOR to meet its middle Rio Grande endangered species obligations

² Current Congressional authorization for the Project does not allow for this type of storage, so Congressional authorization for this major change is required.

and, potentially, its tribal trust responsibility to Pueblos and Tribes. The EIS should evaluate these issues.

(3) Under the Compact, New Mexico bears all evaporative losses of the Rio Grande water (i.e., non San Juan Chama water) in the Reservoir. The BOR must evaluate the impact of the 2008 OA on New Mexico's obligations under the Compact due to increasing Reservoir evaporative loss?

IX. Endangered Species Issues

The BOR has articulated inconsistent and mutually exclusive positions on whether this EIS will include analyses of impacts to affected endangered species and their habitat. For example, Mike Hamman's October 30, 2013 letter to the Compact Commissioner's for New Mexico, Texas and Colorado indicated that Endangered Species Act ("ESA") issues, including Southwestern Willow Flycatcher ("SWFL") will be considered in the EIS. The materials presented at the public scoping meeting stated that the SWFL, Western yellow-billed cuckoo, silvery minnow and meadow jumping mouse will all be analyzed in the EIS. However, in its January 17, 2014 letter to the NMISC, the BOR stated that SWFL critical habitat is outside the scope of the EIS. Moreover, in the SEA, the BOR examined the effects on two species it has not mentioned in relation to the EIS; the interior least tern and the piping plover. Does the BOR intend to examine these same species here? The BOR should clarify its position relative to review of the species in this EIS.

According to the CEQ Regulations, the BOR is required to include discussion of environmental effects, including ecological effects. 40 C.F.R. § 1502.16 (2004). Accordingly, all of these species should be examined in depth, including, as discussed above impacts on upstream storage due to the 2008 Operating Agreement, and resultant effects on the species in the middle Rio Grande valley.

X. Water Quality Issues

The BOR acknowledges the interconnection between groundwater and surface water, yet it has not adequately analyzed the effects of the 2008 Operating Agreement on water quality. The EIS must consider the impact of reduced water allocation on the water quality of surface water in New Mexico. The BOR must also evaluate and quantify the impact of reduced surface water allocation and the consequential increased groundwater pumping on groundwater quality in New Mexico and Texas (if any) and any resulting salinization of Project lands. Groundwater quality modeling should be performed to evaluate impacts of pumping on water quality in the future.

XI. Inclusion of the San Juan Chama Project Storage Contracts

In its January 17, 2014 letter to the NMISC, as well as in the materials available at the public scoping meetings, the BOR asserts that the SJCP storage contracts are included in the EIS because they are "similar actions". Without agreeing that the contracts are similar actions, the NMISC asserts that the CEQ Regulations specifically preclude inclusion of those contracts in the EIS. The CEQ Regulations require that a federal agency "[i]dentify and eliminate from detailed study the issues which are not significant or which have been covered by prior

environmental review." 40 C.F.R. § 1501.7(a)(3) (2004) (emphasis added). The Albuquerque Bernalillo County Water Utility Authority ("ABCWUA") SJCP contract has already been covered by a prior environmental review, as evidenced by the Environmental Assessment issued for the contract in January 2010. As part of the assessment, a FONSI was issued. See <http://www.usbr.gov/uc/albuq/envdocs/ea/bernalillo/sjc/index.html>. Accordingly, the ABCWUA SJCP storage contract has already been covered by prior environmental review, and, even if determined to be similar, according to the CEQ Regulations should be eliminated from the scope of the EIS.

Similarly, the City of Santa Fe SJCP storage contract should also be eliminated from review in the EIS. The full effect of the Santa Fe storage contract was included in the Environmental Assessment and FONSI issued for the ABCQUA SJCP contract. Thus, it too has been covered by prior environmental review and the CEQ Regulations require it to be eliminated from review here.

XII. NMISC Inclusion in Technical or Stakeholder Committees

As indicated by separate letter to Mike Hamman, for many of the reasons outlined above, the NMISC will not be a cooperating agency in the EIS. However, the NMISC offers special expertise in matters related to water management in the lower and middle Rio Grande and, the NMISC, is the only entity that can fully represent the Compact issues in the lower Rio Grande as they relate to New Mexico. The NMISC hereby requests to be included in any technical and stakeholder subcommittees that may be assembled regarding the EIS.

Thank you for the opportunity to comment on the scope of the EIS.

Sincerely,



Estevan R. López, P.E., Director
New Mexico Interstate Stream Commission

ERL/kmb/lmt

Attachments

cc: Mike Hamman, BOR
Steve Farris, New Mexico Attorney General's Office
Sarah Bond, New Mexico Attorney General's Office
Rolf Schmidt-Petersen, NMISC Rio Grande Bureau Chief
Amy Haas, NMISC General Counsel
Kim Bannerman, NMISC Attorney, Lower Rio Grande

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June 6, 2013

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

**Re: United States Bureau of Reclamation Draft Supplemental Environmental Assessment –
Implementation of Rio Grande Project Operating Procedures, New Mexico and Texas [May 8,
2013]**

Dear Mr. Wilber:

The New Mexico Interstate Stream Commission (NMISC) submits the following comments concerning the U.S. Bureau of Reclamation (Reclamation) May 8, 2013 Draft Supplemental Environmental Assessment, Rio Grande Project Operating Procedures (Draft EA).

At the outset, the NMISC reiterates its concern that the review and comment deadline imposed by Reclamation has stifled meaningful public review and comment upon the complex technical issues addressed in the Draft EA. The limited comment period provided does not allow a reasonable opportunity for input. See Reclamation Manual ENV P03, Establish policy for implementation of the National Environmental Policy Act § 1.B(1) ("Reclamation will provide all reasonable opportunity for input and involvement from the public and other Federal, State, Tribal, and local agencies on environmental issues.") On May 15, 2013, NMISC requested a four-week extension of the comment period to obtain supporting technical information, hold a public meeting, and review, analyze, and comment on the Draft EA and supporting technical information. Reclamation denied the full requested extension on May 21, 2013, allowing instead a two-week extension (until June 6, 2013), and, on that same date, provided the NMISC with large (although incomplete) technical data files (data, spreadsheets and calculation scripts). Reclamation conceded in its data submittal communication that its technical report was not complete:

The details provided here will be addressed in a technical appendix to the final Supplemental EA. The technical appendix is currently being developed and is not yet available. It should be noted that a number of data values, calculations and assumptions have been revised since the release of the Draft Supplemental EA.... Where discrepancies occur, the data, methods,

assumptions and calculations detailed in this response and the accompanying files supersede those in the Draft Supplemental EA.

In light of the fact that Reclamation has not yet completed its Technical Appendix, it is premature for NMISC to provide final and complete comments on technical conclusions. NMISC requests a 30-day review period following the receipt of a revised Draft Supplemental EA and complete Technical Appendix, along with all "final" versions of data, methods, assumptions and calculation scripts. Notwithstanding this request, in the meantime the NMISC has made reasonable efforts to conduct a preliminary review and provides preliminary comments herein on Reclamation's preliminary analyses. The NMISC's general comments are included below and more specific comments are included in Attachment 1. Attachment 2 contains a summary of NMISC correspondence to Reclamation regarding the Draft EA process.

General Comments

As you know, NEPA is the fundamental federal law to ensure that federal agencies make informed decisions and provide for timely public notice and participation in environmental analyses and decision-making. The Council on Environmental Quality (CEQ) regulations are binding on all federal agencies, and each federal agency has its own NEPA guidance consistent with the statute and CEQ guidelines. Reclamation's Draft EA violates NEPA, including the CEQ regulations and Reclamation's own NEPA handbook.

Since 2007 Reclamation has repeatedly violated NEPA regarding Rio Grande Project operations by undertaking a major federal action significantly affecting the environment without preparing the required Environmental Impact Statement (EIS). Reclamation cannot continue issuing interim EAs while ignoring the significant, cumulative and long-term effects of the 2008 Operating Agreement for the Rio Grande Project (2008 OA). In the 2007 EA, Reclamation claimed to examine the effects of the operating agreement over a five-year period, and promised that in 2012 it would issue a study of the 50-year life of the agreement. Now, in 2013, Reclamation instead issued another draft 3-year study, this time promising to analyze the environmental effects of the 50-year period of the 2008 OA in a later EIS, which Reclamation estimates it will prepare in 2016. Neither the original 2007 EA nor the current Draft EA address the actual fifty-year 2008 OA federal action. Reclamation's continued failure to analyze impacts over the 50-year period avoids analysis of the cumulative and long-term impacts to New Mexico's Project water supply, economic impacts to farmers and communities in New Mexico, and ongoing harm to the aquifer. Reclamation's actions are akin to the prohibited practice of segmenting a large project into many small projects in order to avoid NEPA analysis. Rather than continuing to "segment" its analysis to avoid revealing the cumulative and long-term impacts, in order to comply with NEPA and applicable regulations, Reclamation must withdraw the Draft EA, revert to its pre-2007 operating practices, and complete an EIS that adequately examines the impacts over the life of the 2008 OA.

The Draft EA also violates NEPA because it fails to consider all impacts that are reasonably related to the 2008 OA, including without limitation the impacts related to other federal laws, including the Endangered Species Act and the Rio Grande Compact. Specifically, the Draft EA fails to analyze impacts to critical habitat upstream of Elephant Butte Dam, and fails to describe how Project Operations, including carry-over storage, can be implemented in a manner that is consistent with the requirements of the Rio Grande Compact.

Reclamation has also violated NEPA's prohibition against predetermined outcomes because it irretrievably committed Reclamation to a course of action before engaging in a valid NEPA process. Reclamation signed the 2008 OA on March 10, 2008 and only now, five years later, concedes that it will prepare an EIS on that federal action, but nevertheless proposes to continue implementing the 2008 OA in the interim. By agreeing that an EIS is necessary, Reclamation admits the 2008 OA is a major federal action significantly impacting the human environment. And Reclamation's ongoing operations under the 2008 OA are an express violation of NEPA because an EIS must *precede* implementation of the major federal actions significantly affecting the human environment. Reclamation's NEPA compliance handbook, states at section 11.5, "Doing NEPA on Decisions Already Made--NEPA compliance is required **before any discretionary** Federal action with potentially significant environmental impacts is initiated. Decisions should not be made without full compliance with NEPA. **To do this is illegal and a violation of NEPA.** The one exception to this requirement is in emergency situations." Bureau of Reclamation, Reclamation's NEPA Handbook at 11-4 (2012) (emphasis added). There is no emergency here nor has Reclamation claimed there is an emergency.

In addition, the Draft EA describes the impacts of the proposed action quite differently than they were described in the initial 2007 FONSI/EA, e.g., the Draft EA indicates the 2008 OA results in increased groundwater pumping and aquifer impacts in New Mexico (see, p. 46) whereas the initial FONSI/EA speculated the effect of the 2008 OA might be to *reduce* EBID's reliance on groundwater. (See, para. 5, p. ii). The Draft EA must explain and quantify the differences with respect to groundwater pumping and aquifer impacts in New Mexico and must provide a similar analysis for groundwater pumping and aquifer impacts in Texas.

Reclamation also has not adequately considered alternatives to the proposed action. 40 C.F.R. § 1502.14. First, and as explained in more detail below, Reclamation considered only two alternatives: a no-action alternative and the proposed alternative. Agencies are required to analyze reasonable alternatives to the proposed action. There are numerous reasonable alternatives to the proposed action, including but not necessarily limited to those previously raised by NMISC, that Reclamation did not consider, including removing carryover storage from the agreement, eliminating groundwater pumping as Project water in conformance with the State Court adjudication ruling, and accounting for groundwater pumping in Texas. Reclamation's failure to evaluate these reasonable alternatives violates NEPA.

Further, Reclamation has failed to take the requisite "hard look" at the impacts of the proposed action. The analysis in the Draft EA, as discussed in more detail below and in Attachment 1, relies on flawed, incomplete, and outdated information. It fails to utilize the best available science, fails to analyze impacts to the aquifer, contains many vague and incomplete conclusions, and fails to recognize judicial determinations by the New Mexico adjudication court regarding rights to groundwater. For all these reasons, the draft EA is inadequate to inform either Reclamation or the public of the likely impacts of the 2008 OA, let alone allow Reclamation to make an informed decision about whether an EIS is required.

General Comments on Draft EA by Section

Section 1, Summary:

Reclamation states on page 1 that it attempted to conduct a technical analysis as part of the Draft EA, but concludes, in part, that:

- 1) for the period 2013-2015, differences in potential impacts between previous operations of the project under the No Action alternative and the projected operations under the OA are projected to be minimal and insignificant, and 2) based on the available data and analytical tools, we can only reasonably predict potential impacts to the human environment over a limited time frame.

However, there is no empirical evidence to support the conclusion that the short term impacts will be minimal.

The justification for not doing a full fifty-year analysis of the potential impacts of the 2008 OA in an EIS is not valid for the following reasons:

- 1- The results presented in tables 4.1 to 4.7 show significant changes to each district's allocations.
- 2- Existing groundwater models were not used to evaluate the impact on groundwater resources, riparian habitat and economic loss/gain. This indicates that the best available science was not used in developing the Draft EA.
- 3- The Draft EA fails to consider potential impacts from the designation of Critical Habitat for the Southwestern Willow Flycatcher by the U.S. Fish and Wildlife Service.
- 4- The Draft EA recognizes that the 2008 OA has resulted in significant adverse effects in New Mexico but fails to analyse any alternatives that minimize those impacts.

Even in the face of its statements in the Draft EA and its analysis that the 2008 OA has had a significant negative effect on EBID water supplies and significantly increased the supplies for EPI (Section 4.2.2.2 Surface Water), Reclamation proposes to continue operations under the 50-year 2008 OA while an EIS is being prepared and tools further developed or refined. Reclamation must revert to the historic operating procedures used for the Rio Grande Project before the 2007 EA was completed, and immediately commence an EIS. The NMISC once again formally requests that Reclamation do so.

Section 3, Alternatives:

From the brief description in the Draft EA, it is not clear what operations the No Action Alternative entails. The No Action alternative appears to be a modification of the 2008 OA; not the operation conducted by Reclamation prior to 2007. Reclamation must describe whether the no action alternative is the operation that occurred immediately prior to 2007 or something different. In either case, Reclamation must describe the No Action Alternative in more detail.

In regard to the "proposed action," the Draft EA is unclear as to what operations the proposed action entails. Is it the operations that were used for the 2007 Operating Procedures (OP), the 2008 OA in the first year, or the

2008 OA as operated today? NMISC is aware that the Reclamation's Allocation Committee has made a number of changes to operations since 2008, some of which may be significant. But, to the best of our knowledge, no technical descriptions of their changes have been provided to interested public stakeholders, nor has any NEPA analysis been conducted on them. Reclamation must document all changes that have been made to Rio Grande Project operations subsequent to the 2007 OP, describe their effects, and then fully describe what the "proposed" action entails relative to changes made since 2007.

As mentioned above, other alternatives are and have been available for review. They include, but are not limited to, removing carryover, modifying carryover to be a wet water operation that reflects a real decrease in consumption in EP1, and modifying the D3 procedure so that EP1's allocation is appropriately reduced, and EBID not charged, for pumping in Texas, for actual EP1 deliveries as opposed to charged deliveries, and for credits. Reclamation must also work with its cooperating agencies in Texas to meter all Texas groundwater pumping so that the effects of the pumping would be appropriately accounted against EP1's allocations. Reclamation's failure to collect such data means that it cannot and has not adequately analyzed the effects of the proposed action, or analyze other alternatives.

Further, rather than presenting an analysis of the environmental impacts of the 2007 OP and 2008 OA, much of the Draft EA focuses on the United States' and EP1's previous litigation positions concerning the Rio Grande Project, some of which have been rejected by the courts or are currently being litigated. In Stream System Issue 104 of the New Mexico Lower Rio Grande Adjudication, to which Reclamation is a party and EP1 is Amicus, Judge Wechsler rejected Reclamation's claim to groundwater as a source of water for the Project. And, in Stream System Issue 101 the farm delivery and crop irrigation requirements of individual farmers were adjudicated and are now binding on all farmers. Therefore, the descriptive assumptions about groundwater use in the Draft EA are now out of date and inaccurate. Reclamation must revise its analysis and description of alternatives in accordance with the Court's decision and New Mexico state law.

It also appears the Project area of the Draft EA is different than that of both the 2007 EA and the 2008 OA. The 2007 EA and its operations as well as those in the 2008 OA relate to Rio Grande Project operations in their entirety from Caballo Dam to the El Paso-Hudspeth County line in Texas. But the Draft EA analysis focuses solely on operations in New Mexico. This is a structural flaw in the Draft EA that results in a failure to fully address the cumulative and long-term impacts of the proposed action. Reclamation must revise its analysis to include Project operations in their entirety from Caballo Dam to the El Paso-Hudspeth County line in Texas.

Please do not hesitate to contact me at 505-827-6160 or at rolf.schmidt@state.nm.us if you have questions.

Sincerely,



Rolf Schmidt-Petersen
Rio Grande Basin Manager
NM Interstate Stream Commission

Jim Wilber
Page 6 of 6
June 6, 2013

Attachment 1 – Additional NMISC Comments by Draft EA Section

Attachment 2 - Summary of NMISC Correspondence to Reclamation Prior to Release of the Draft EA

cc: Ken Rice, Reclamation
Stephen Farris, NMAGO

**ATTACHMENT 1:
ADDITIONAL NMISC COMMENTS ON THE DRAFT EA**

1. Summary Section

Comment 1

The Draft EA stated that the 2008 OA has two key and significant changes: First, the OA provides carryover accounting for EBID and EP1, and second, it explicitly but inaccurately purports to account for the conjunctive use of surface water and groundwater within EBID. The Draft EA, however, does not provide adequate evaluations for these two key changes because:

- The carryover accounts change Elephant Butte reservoir storage and its storage pattern in a year. Several Rio Grande Compact provisions are related to Elephant Butte storage. The impact on the Compact due to this key change was not evaluated. Reclamation must assess this issue.
- For the 2008 OA, D-2 curve is used for Project Allocation to EP1 and D-3 adjustment is used for Project Allocation to EBID. The Draft EA assumes that the D-2 curve that was developed based on 1951-1978 historical data could represent the Project system if no extra EBID (or New Mexico) groundwater pumping occurred beyond the level of the 1951-1978 period. In reality, the whole system has changed in many ways. The changes include, but are not limited to, groundwater pumping in both New Mexico and Texas (including municipal and industrial), cropping patterns in both New Mexico and Texas, timing and duration of irrigation season, accounting, etc. And, in the 2008 OA, EBID is debited for all changes in Project efficiency regardless of cause. This has resulted in significant reductions in EBID allocations for reasons beyond New Mexico groundwater pumping above the 1951-1978 levels. For these reasons, in part, the D-2 curve cannot be used as the basis for EP1 and Mexico allocations without adjustments for all these factors. The Draft EA does not recognize these facts. It is suggested that Reclamation assess the incremental changes in Project Allocation (especially to EP1) and delivery induced by factors other than New Mexico pumping.

Comment 2

Section I.3 Principles Underlying the Operating Agreement – Pages 3-4

1. Both key changes (carryover accounting and D-3) constitute a significant deviation from historical operations and were not analyzed in detail in the current EA.
2. The second key change effectively allocates farmers individual groundwater uses as Project water to EBID, and therefore significantly changes the distribution of water among EBID farmers because not all of them own groundwater wells. This is in direct contradiction to the state adjudication court's ruling in Stream System Issue 104 and violates the federal requirement that the Rio Grande Project deliver an equal amount of water to each irrigated acre.

3. The diversion ratio described in the last paragraph does not represent the interaction between surface water and groundwater as Reclamation indicates since it uses charged diversions not actual diverted water at each river head-gate, as was done for the D-2 method.
4. Section 1.3, P. 4, Para 1, Line 5: Historically, farmers in both EBID and farmers and EP1 used groundwater pumping for supplemental irrigation. Thus, groundwater pumping has occurred in both New Mexico and Texas. It is not appropriate to only include EBID's pumping without recognizing Texas pumping (not only for irrigation but also municipal and industrial uses). Please depict fully and clearly the historical pumping in the Project area, including Texas.
5. The Draft EA fails to mention a major change in operations related to the ability of each district to call for all its allocated and carryover water in any given year, which would increase reservoir releases and, consequently, can cause a direct impact on upstream states and the Rio Grande Compact. Under the Rio Grande Project, Reclamation cannot deliver more water annually to either District than is necessary for equal delivery and beneficial use on each irrigable acre within the Project.
6. Section 1.4, P. 6: Neither the 2007 EA nor this Draft EA evaluated the effect of the 2008 OA on the Rio Grande Compact.

2. Purpose and Need to Implement Operating Procedures Section

Page 7: The third paragraph indicates that the allocation is adjusted to reflect changes in actual river conveyance efficiency; this is not the case. The diversion ratio is influenced by a number of factors, included changes in Project Accounting, that are not related to actual river conveyance efficiency.

3. Alternatives Section

Comment 1

As outlined in a number of instances below, the Project data provided in the Draft EA is not consistent with Project data previously reported by Reclamation to the Rio Grande Compact Commission or other official datasets previously provided by Reclamation, for the same time period.

Comment 2

The no-action alternative, as it is represented in the spreadsheet, does not accurately represent prior operations (1980 to 2007) for the following reasons:

- a. It is not consistent with Reclamation's reported historical data.
- b. It includes a drought adjustment factor that was not used during the 1980 to 2007 period.
- c. It uses current estimated diversion ratio. Under prior operations EBID would have been allocated and delivered more surface water, hence, the diversion ratio would be different than the values calculated during the past 5 years.
- d. It assumes that EBID uses all its allocated water each year but EP1 does not. This is not consistent with actual and prior Rio Grande Project operations in which both Districts did not use all their allocated water.

Comment 3

Reclamation inappropriately uses, or mislabels, “usable water in Project storage” with “total Project storage”, as indicated by data provided by Reclamation after the Draft EA was released.

Comment 4

The use of Project Net Inflow is not appropriate for simulating pre-2008 OA operations since the reservoir storage, evaporation and credit water data represented in the Draft EA are not consistent with actual data and operational procedures.

Comment 5

The Draft EA does not adequately analyze the effects of the 2008 OA on the Mesilla and Rincon aquifers. The only estimate of changes to aquifer recharge are associated with the seepage from the mainstem of the Rio Grande, which does not include other physical sources of recharge such as canal seepage and on-farm recharge.

Comment 6

Section 3.2 No Action: Page-8

Delivering water to the Hudspeth County Irrigation District was not mentioned as a Reclamation action. Reclamation delivers return flows from the Project to the Hudspeth Irrigation District.

Comment 7

Section 3.2.1 Storing Project Water: Page-9

It is not clear how computations of “legally available water for release” take into account Rio Grande Compact credit water. More details are needed on how this amount is computed.

Comment 8

Section 3.2.2 Allocating Project Water:

A release of about 763,842 AF, not 790,000 AF, results in about 931,000 AF of water available for diversions according to the D-2 curve.

Comment 9

Section 3.2.2.2 Allocation to EBID and EPI: Page-10-11

1. Under no action, the D-2 equation should not include the third term ($\max(0, X-763842)$). This was added during the development of the 2008 OA.
2. It should be noted that, in contrast to how D-1 and D-2 are used in the 2008 OA, in developing the D-1 and D-2 curves, all annual (January to December) releases and actual gross diversions were taken into account.

3. Various pages (11,13): The Draft EA implies all differences between the diversion ratio and D-2 Diversions/Release are caused by changes in Project Supply and groundwater pumping. This ignores other factors including changes in Project accounting practices since the D-2 period.

Comment 10

Section 3.3 Proposed Action (continued Implementation of OA): Page 13

The first paragraph indicates that the 2008 OA takes into account conjunctive management of surface water and groundwater within EBID and ignores any impact of groundwater pumping within EP1. To the best of our knowledge, the 2008 OA is silent in regard to groundwater with the exception of a reference to pumping from the Canutillo well field in Texas. Please reference the specific section of the 2008 OA where groundwater is discussed to support the statement in the first paragraph and provide reasons for not taking into account conjunctive management within EP1. When and if discussed in the next version of the Supplemental Environmental Assessment, please apply the discussion to both Districts.

Comment 11

Section 3.3.1 The Operating Agreement: Page 13

The last paragraph implies that the reduction in EBID's allocation under the D-3 is due to changing hydrologic conditions within New Mexico. That is not correct; under the D-3 accounting procedures, EBID pays for all losses in the Project area, including losses due to Texas and Mexico groundwater pumping, and drought conditions.

Comment 12

Section 3.3.2 Carryover Water: Page 14

1. Last paragraph: Mexico's allocation under the no action alternative is computed based on stored usable water in the reservoir; while, under the 2008 OA, Mexico's allocation is computed based on water released from the reservoir (estimated or actual). Therefore, the description provided in the text is not correct, and the carryover provision has a significant impact on Mexico's allocation.
2. The description of the carryover provision ignores the fact that carryover water does not suffer any evaporative losses and transport losses are not well accounted.

Comment 13

Section 3.3.3 Offsets for Water Conveyance Efficiencies: Page 15

1. Second paragraph: Nothing in the 2008 OA or the operation manual obligates EP1 to offset their groundwater pumping impact on the river. For the past five years (2008 to 2012), EP1 was only been charged once for 10,000 AF (during 2010), while they pump annually between 30,000 AF to 40,000 AF (estimated number for EP1 pumping for municipal, industrial, and irrigation uses in the Mesilla basin, not counting Hueco Bolson basin pumping). That

indicates that the description of the action does not match Project operations in the period from 2008 to 2012.

2. The equation above the last paragraph confirms that EBID pays for all losses in the Project area.

Comment 14

On Page 15: Reclamation includes an inaccurate characterization of the effects on EBID of use of the "diversion ratio". EBID does not lose water only when the diversion ratio is less than 1.0. EBID loses water whenever the diversion ratio is less than the Diversion/Release ratio from the D-2 curve, for the pertinent release amount. Note that since the Diversion Ratio used in the OA is Charges/Releases, not Diversions/Releases, and since Charges are systematically less than Diversions in most years, EBID loses water for that reason alone (in addition to other factors that reduce delivery efficiency within the Project such as groundwater pumping in New Mexico and Texas.)

4. Environmental Consequences Section

Comment 1

The Draft EA does not include narrative or empirical analyses that demonstrate the Proposed Action will not result in a predicted deviation from historic water quantities or qualities, as evidenced by marked change in Rio Grande Project supplies, allocations, and quality of regulated water, such as drinking water. In a similar manner, Reclamation does not provide evidence of a thorough and objective review of potential impacts to vegetation and wildlife communities, including incremental cumulative impacts, by imposition of the OA in the Lower Rio Grande Basin.

Comment 2

Section 4.2.2.2 Surface Water: Page 24

"[T]he estimated difference in annual Project allocation to EBID is similar in magnitude to the estimated recharge to EBID groundwater supplies" These statements are unsupported. What is the legal basis for EBID's "groundwater supplies?" What is the extent of such supplies? And how do EBID farmers without rights to groundwater pumped from wells make up for the surface water relinquished by EBID under the Operating Agreement?

Comment 3

Section 4.2.2.3 Groundwater: Page 42

"This physical connection between the surface water and the shallow groundwater in the Project, as described in Section 1.3, was understood prior to the first Project water deliveries, particularly within the EBID service area. A 1917 supplemental Congressional authorization for the Project recognized this relationship when it specified excavation of drains that would collect shallow groundwater and deliver it to the river, and thereby transport water downstream."

This statement misstates the purpose for construction of drains in the Project, which was to correct the problem of waterlogged lands. The Reclamation Service attributed the problem of waterlogged lands to inefficient irrigation practices. For example, see a report on Drainage on the Rio Grande Project included in the 1918 Rio Grande Project History that describes the traditional irrigation method and later water logging problems. Thus rather than intending to appropriate the shallow groundwater for use in the Project, the intent was to drain off waste water that impeded beneficial uses.

The circumstances under which drains in the Rio Grande Project were constructed are discussed in Ira G. Clark's treatise, *Water in New Mexico, A History of Its Management and Use* (University of New Mexico, 1987). Clark writes as follows:

The Reclamation Service had assumed that some drainage would be needed, but it was soon apparent that it had not fully recognized the possibility of critical waterlogging due to the slow escapement of groundwater from the irrigated valleys . . . Having depended on a highly unpredictable water supply in the past, farmers flooded their fields far in excess of their needs and actually to the detriment of their crops.

* * *

Incorporation of the community ditches into the project alleviated the situation somewhat. The Reclamation Service could now deal directly with each water user, and it replaced cost-plus rental with individual contracts. This discouraged prodigal use because the charge for water was increased sharply after the irrigator had received three acre-feet for each acre he farmed. This eased rather than resolved the problem, however, and the district was still in dire need of a large-scale drainage system. In 1916 the companion Texas and New Mexico water users' associations had voted to contract with the government for the expenditure of not to exceed ten dollars per acre for drainage, and the Reclamation Service prepared a plan. The interior department appropriation included an item for the work, subject to the provision that it could be spent only after the formation of irrigation districts which could execute agreements for repaying the entire cost, a power which the association lacked. Both Texas and New Mexicans hurriedly set about organizing such districts, but the situation in New Mexico was too critical to delay action until this could be done. Senator Andreius A. Jones secured the adoption of a joint resolution in October, 1917 for the immediate expenditure of \$15,000 for drainage in New Mexico pending the formation of an irrigation district, a meager but helpful beginning. Work progressed more rapidly after the Elephant Butte Irrigation district replaced the water users' association, and by the end of 1920 \$1,500,000 had been spend in building a system of deep drains for the Mesilla and Rincon valleys. By 1921 the most critical period was passed, and two years later the Reclamation Service could report a substantial lowering of the water table and rapid rehabilitation of damaged acreage.

Water in New Mexico at 197.

Comment 4

Section 4.2.2.3 Groundwater: Page 43

"The amount of water that can be pumped using pre-basin groundwater rights is currently being determined through a basin adjudication process by the State of New Mexico."

1. The information in the Draft EA is not current. The settlement agreement referenced was superseded by a subsequent settlement between the State, EBID, the New Mexico Pecan Growers Association and the Southern Rio Grande Diversified Crop Farmers Association, reached after two days of trial. Under the settlement, rights to irrigate from surface water and groundwater combined, and rights to irrigate from groundwater only, were adjudicated a FDR of 4.5 AFY and transferrable CIR of 2.6 AFY. Individual farmers may prove up to a FDR of 5.5 AFY based upon proof of beneficial use of that amount of water. Neither the United States, which was a party to the proceeding, nor EPI, which was an *amicus*, attended trial or participated in pre-trial proceedings.
2. Prior to the settlement for irrigation water requirements in the LRG stream adjudication, there were no effective limits on the amount of water that could be pumped for irrigation from pre-basin wells. To this date, to the best of our knowledge, no limits exist for water pumped for irrigation from wells within EPI.

Comment 5

Section 4.4 Socioeconomic Resources:

This section should be refined. The information, data, and methodology are incomplete, fail to support the narrative and claimed assertions in the Draft EA, and do not conform with accepted economic and financial methodology and reporting practices that are commonly used by economists and financial analysts.

Comment 6

Section 4.2.2.2 Surface Water: Page 20

The Draft EA concluded that the 2008 OA has no effect on the total available surface water supply because the 2008 OA has no effect on inflows to Project storage or surface runoff within the Project. It may be true that the Proposed Action has no effect on inflows to Project storage if the Compact is not impacted. Even so, it does not mean that the Project storage itself, which is affected by the operations, is not impacted. Therefore, both the Project Inflows and Elephant Butte's elevation are needed for the analysis. Figure 4.3 should present a comparison between the Proposed Action and No Action for the 2008-2012 period. Please evaluate changes in the storage under the 2008 OA and the Prior Op.

Comment 7

Section 4.2.2.2 Surface Water: Page 22 Table 4.1a, b and c

The Allocation Summary results in provided in Chapter 4, Tables 4.1a, b and c, contained a number of errors. This table has since been superseded by information in spreadsheet form provided by Reclamation on 5/21/2013. However, conclusions based on this original Table occur throughout the Draft EA.

- (1) The "Prior Operations (Estimated)" are based on a model of Project Operations that is as yet unreliable. The analysis we have reviewed tends to underestimate the water availability under "Prior Operations", and thus underestimate the difference between EBID's allocation under the 2008 OA and EBID's allocation under Prior Operations.
- (2) Exception: the 2008 numbers (Prior Ops allocation to EBID: 495KAF, difference from 2008 OA Actual: -170KAF) are consistent with other Reclamation records and New Mexico's findings in Barroll, Shafike and Liu (2011) and Barroll's affidavit.

Comment 8

Section 4.2.2.2 Surface Water: Page 23

In the last paragraph there is an apparent attempt to estimate "seepage" and by inference "recharge to EBID" associated with recent Project Operations. This estimate is incorrect in theory and in calculation. To calculate seepage, a physical water budget would be required. The Draft EA instead compares releases with charged deliveries: since charged deliveries are not physical diversions, using them in a physical water budget is invalid. Deliveries to Mexico would be a necessary term in such an analysis, and are not mentioned here. In fact, the change in recharge within EBID caused by the change in operations is in the opposite directions, and much larger. In full supply years EBID's allocation is 170,000 AF smaller, which corresponds to a reduction in canal seepage on the order of 75,000 AF and a reduction in on-farm return flow from surface water application on the order of 25,000 AF.

Comment 9

Section 4.2.2.2 Surface Water: Pages 23-28

- a. Last paragraph on page 23: The discussion is incorrect since Project charges are not the same as actual gross diversions.
- b. The discussion on page 26 shows that releases under the proposed action are higher than releases under the no action alternative (Releases under the no action alternative could not be verified and seem overestimated; specifically for 2008, the release was estimated at 843,545 AF.) If this is true, the proposed action would have an impact on Article VII and Article VIII of the Rio Grande Compact.
- c. Reclamation claims the reason for the 10,720 AF/y average increase in total Project releases is due to uncertainty in the analysis. Reclamation does not acknowledge other possible reasons for this increase, such as the improper release of New Mexico's credit water by Reclamation in 2011 and 2012. The discussion on page 28 on computing usable water needs more detail describing how credit water was computed and if it was decreased monthly by evaporation or not.

Comment 10

Section 4.2.2.2 Surface Water: Page 30

The analysis of 2013-2015 effects, starting page 30, appears to be based on a similar analysis to Table 4.1a, b and c, and is similarly biased toward underestimation of the impact of the 2008 OA on EBID's allocation.

Comment 11

Page 32: "Importantly, the OA results in a large increase in annual allocation to EBID under wetter conditions when the diversion ratio is greater than 1.2."

Based on actual conditions already experienced, this statement is false. It describes conditions that have never in fact occurred, despite full-supply conditions in 2008, 2009 and 2010, and are unlikely to ever occur under the 2008 OA. The diversion ratio is already biased to the low side because of accounting changes since the D2 period, plus it is highly dependent on drain flows within New Mexico that cannot return to pre-2008 OA levels so long as EBID is not allocated a full supply of surface water.

Comment 12

Section 4.2.2.2 Surface Water: Page 33

NMISC does not have comments on the probabilistic analysis and at this time. However, table 4.3 indicated that the average decrease in EBID allocations under wet conditions (80% non-exceedence probability) is 205,800 AF. This, if technically correct, supports the State's stated concerns about significant impact.

Comment 13

Section 4.2.2.2 Surface Water Page 40

Conclusions on page 40 not supported:

- a. The conclusion that EBID's overall conjunctive supply is not anticipated to be affected by the proposed action is not supported by the analysis.
- b. The conclusion on the annual release from Project storage is not supported since there is nothing in the proposed action that limits reservoir releases.

Comment 14

Section 4.2.2.3 Groundwater:

(1) The Draft EA gives an erroneous and misleading account of how groundwater pumping impacts are treated under the 2008 OA. On page 45 the Draft EA reads "EPI accepted direct charges against its diversion allocation to offset the effects to the Project surface supplies caused by withdrawals from the Canutillo well field and other identified pumping in the Texas portion of the Mesilla Valley." The discussion is not correct. The 2008 OA only includes references to Reclamation's requirements to report the effects of Canutillo pumping, and contains no mention of other Texas pumping in the Mesilla Basin. No such reporting or any adjustment to accounting was performed in 2008, 2009 or 2011, so the full impact of Canutillo pumping was charged against the EBID allocation.

(2) On page 15: "Under the Proposed Action, and in accordance with the 2008 Settlement, both districts would be accountable for offset losses in river efficiency within their respective states." This is

not correct. The 2008 OA does not contain any provision to address Texas' pumping impact on Project supply and delivery. In fact, the Texas pumping impact has been counted against EBID's allocation in the past five years. Any temporary adjustment, such as the 2010 charge for EP1 pumping in the Mesilla Valley, does not change the fact that the 2008 OA must be changed to consider all the factors, other than New Mexico pumping, that affect Project deliveries.

Comment 15

Section 4.2.2.3 Groundwater: Pages 46-49

The Draft EA has an inadequate and erroneous description of the effects of the Proposed Action (the 2008 OA) on groundwater:

- (1) The change in groundwater recharge to EBID omits the largest components of recharge: canal seepage and on-farm return flows from surface water application. In full supply years, the reduction in EBID's allocation probably results in a decrease in recharge from those sources of approximately 100,000 AF.
- (2) The estimated change in groundwater pumping within EBID (25,600 AF on page 48) is based on the unreliable results in Table 4.1a. In fact, during full supply years, the reduction in EBID's allocation by over 150,000 AF would result in EBID farmers requiring approximately 75,000 AF of additional groundwater, approximately doubling the amount of irrigation well pumping that would have occurred in such a year.
- (3) The impacts of increased groundwater demands and decreased recharge in New Mexico have not been analyzed in any way. This must be addressed in an EIS.

Comment 16

Section 4.2.2.3 Groundwater: Page 48

The Draft EA used average values of reallocation and the associated increased groundwater demand to suggest that there would be only a small impact on EBID and New Mexico aquifers. It is not appropriate to use an average when depicting a situation when variance is large or the distribution is not normal. Please include minimum and maximum impacts in the evaluation.

Comment 17

Section 4.2.2.3 Water Quality

(Note that this is the second section with this same designation. Should be Section 4.2.2.4)

This Draft EA did not assess changes in groundwater quality due to implementation of the 2008 OA. Reclamation must assess groundwater water quality changes for 2008-2012 and perform model simulations for the future. Impacts on groundwater quality must be evaluated because of the strong interconnection between the groundwater and surface water, as the Draft EA acknowledged.

5. Consultation and Coordination Section

The statement on Page 81 of Appendix C is not correct. The Compact does not guarantee delivery of water to the Project sufficient to provide a specific release.

**ATTACHMENT 2:
SUMMARY OF NMISC CORRESPONDENCE TO
RECLAMATION PRIOR TO RELEASE OF THE DRAFT EA**

The NMISC previously submitted six (6) letters to Reclamation concerning development of the Draft EA:

2/3/12, Rolf Schmidt- Petersen to Marsha Carra

NMISC provides questions, in response to Reclamation's 1/10/2012 Scoping Notice to conduct a 5-Year EA, regarding: the scoping process, whether an EIS might be considered, whether Reclamation has authority to modify procedures from those of the 2008 Operating Agreement (OA), and whether this action is associated with the federal litigation NM v US, BOR. NMISC asserts that an EIS for a full 50-year period is needed to remedy the lack of analysis prior to execution of the 2008 OA.

2/17/12, Estevan Lopez to Mike Hamman

NMISC provides questions in response to Reclamation's invitation to ISC to be a cooperating agency for an Environmental Assessment for Rio Grande Project Operating Procedures. NMISC notes that questions of the 2/3/2012 letter remain unanswered, asks for clarification regarding the scope of the NEPA action, i.e., whether it will include a 5- or 50-year period of analysis; and asks for clarification regarding "role of cooperating agency".

4/11/12, Estevan Lopez to Mike Hamman

NMISC responds to Reclamation's invitation to be a cooperating agency for a Long-Term (through 2050) Environmental Assessment for the Rio Grande Project Operating Procedures, declines to participate as a cooperating agency, noting that scoping does not address the issues raised in previous letters nor those raised in litigation. The NMISC requests participation as an interested and affected stakeholder.

4/25/12, Rolf Schmidt-Petersen to Molly Thrash

NMISC responds to Reclamation's announcement of a 7-day window for public comment and provides three documents noting the State of New Mexico's concerns regarding the 2008 Rio Grande Project Operating Agreement and the "profound changes that Reclamation has made pursuant to this agreement". NMISC requests that information provided in these documents be considered in the NEPA process, and notes that additional comments will be provided prior to the end of the 7-day comment period.

4/30/2012, Rolf Schmidt-Petersen to Molly Thrash

NMISC provides comments, responding to Reclamation's 4/23/12 *email*, inviting public comments as part of the Scoping Process. NMISC requests: confirmation that a 50-year analysis will be conducted, clarification of Purpose and Need, formal identification of Federal *discretionary* action, inclusion of clear articulation of baseline data and conditions, and, credible technical evaluation of impacts to specific resources and receptors including consideration of Texas actions on Project supply. Among other topics, NMISC requests that the analysis consider impacts on Endangered Species Act issues, on Articles VI, VII and VIII of the Rio Grande Compact, and the upstream water supply; and, impacts on the sustainability of the groundwater resource in New Mexico including groundwater salinity.

11/6/2012, Rolf Schmidt-Petersen to Molly Thrash

NMISC reiterates previous concerns with the NEPA process being implemented, including concern that a FONSI will be the outcome with insufficient technical analysis of impacts on New Mexico water users. NMISC itemizes specific technical concerns and requests preparation of an EIS.

Outcome

None of the NMISC letters were directly acknowledged. Partial answers to some of the questions have emerged with the issuance of the Draft Supplemental Environmental Assessment; however, many of the stated NMISC concerns remain unaddressed.



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Region
Albuquerque Area Office
555 Broadway NE, Suite 100
Albuquerque, NM 87102-2352

OCT 30 2013

ALB-103
WTR-4.11

VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. Scott Verhines, P.E.
New Mexico State Engineer
130 South Capitol Street
Concha Ortiz y Pino Building
P.O. Box 25102
Santa Fe, NM 87504-5102

Subject: Rio Grande Compact Commission 2013 Meeting

Dear Mr. ^{Scott} Verhines:

I am updating you as requested during the 2013 Rio Grande Compact Commission meeting in Alamosa, Colorado, regarding the designation of Southwest willow flycatcher (SWFL) critical habitat within the Elephant Butte reservoir boundary. As you are aware, the Supplemental Environmental Assessment covering the Rio Grande Project Operating Agreement (OA) was issued on June 21, 2013, and Reclamation is now undertaking the OA Environmental Impact Statement (EIS), including consultation under the Endangered Species Act (ESA) for this effort. As I stated at the Commission meeting, with all of the other high priority work underway it was unlikely we could complete the necessary consultation with the US Fish and Wildlife Service (FWS) on the SWFL critical habitat designation in 2013. We will, however, be consulting with the FWS on this matter and other ESA issues associated with the OA EIS beginning in early 2014. We fully expect through the consultation process and the implementation of Reclamation's final SWFL management plan, that the ability to fully utilize Elephant Butte Reservoir for its intended purpose will not be compromised by the critical habitat designation.

Letters inviting Cooperating Agencies to participate in the OA EIS were mailed September 16, 2013, and seven agencies have indicated an interest in participating. The EIS Notice of Intent for publication in the Federal Register is drafted, and we are awaiting word regarding the approval timeframes for Federal Register publications. We believe our lead time was adequate to accommodate the government shutdown impacts, and anticipate we will hold public scoping meetings in December 2013. Assuming that our budget under the current Continuing Resolution is extended, our current project schedule is for completing the Draft EIS during March 2015, at which time the Biological Opinion would have been completed. Those entities that are

Subject: Río Grande Compact Commission 2013 Meeting

participating as cooperators will be routinely noticed of milestones and will be briefed on draft documents as they are developed. Cooperating agencies will also be asked to provide pertinent data they wish to be considered in the NEPA and ESA consultation process. In addition, Reclamation will periodically update the Commission with progress reports including milestones achieved during the consultation process with the FWS.

Please contact Ms. Rhea Graham, Special Project Officer, at 505-462-3607 if you have any questions regarding the EIS schedule or myself at 505-462-3551 regarding other matters.

Sincerely,



Mike A Hamman
Area Manager

Identical Letter Sent To:

Mr. Dick Wolfe
Colorado Compact Commissioner
Colorado Division of Water Resources
1313 Sherman St, Rm. 818
Denver, CO 80203

Mr. Patrick R. Gordon
Texas Compact Commissioner
401 East Franklin
Suite 560
El Paso, TX 79901

cc: Mr. Estevan Lopez
Interstate Stream Commission Director
407 Galisteo Street
Bataan Memorial Building
P.O. Box 25102
Santa Fe, NM 87504-5102

Continued on next page.

Subject: Rio Grande Compact Commission 2013 Meeting

cc: Continued from previous page.

Mr. Craig Cotten
Rio Grande Compact Commission
Engineer Adviser for Colorado
301 Murphy Drive
Alamosa, CO 81101

Mr. Herman Settemeyer
Rio Grande Compact Commission
Engineer Adviser for Texas
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NEW MEXICO INTERSTATE STREAM COMMISSION

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VIA EMAIL and U.S. MAIL

December 6, 2013

Mike Hamman, Area Manager
Bureau of Reclamation
Albuquerque Area Office
555 Broadway NM, Suite 100
Albuquerque, NM 87502

Subject: Invitation to Participate as a Cooperating Agency for the Environmental Impact Statement for the Rio Grande Project 2008 Operating Agreement and San Juan Chama Project Storage Contracts

Dear Mr. Hamman:

The New Mexico Interstate Stream Commission (NMISC) received your letter on September 18, 2013 inviting the NMISC to participate as a cooperating agency in the preparation of an Environmental Impact Statement (EIS) to analyze the environmental effects of continued operation under the Rio Grande Project (RGP) 2008 Operating Agreement (2008 OA) over its entire remaining term, through 2050, and now including the environmental effects of renewing storage contracts for San Juan Chama Project water in Elephant Butte Reservoir under authority of the Act of December 29, 1981, 97, 95 Stat. 1717. In addition, we have received a copy of your letter dated October 30, 2013 requesting coordination with the Rio Grande Compact Commission (RGCC) on the designation of the Southwest Willow Flycatcher (SWFL) critical habitat within the Elephant Butte Reservoir boundary. NMISC is very interested in working with United States Bureau of Reclamation (Reclamation) as well as Colorado and Texas to address Endangered Species Act (ESA) issues associated with the SWFL critical habitat designation as it relates to the Rio Grande Compact. As we recently discussed with Jim Wilber of your staff, the NMISC appreciates Reclamation allowing us additional time to explore our level of participation in the EIS.

In correspondence to Reclamation, NMISC has repeatedly expressed concerns that previous Environmental Assessments did not adequately address the technical, scientific, or administrative impacts of the 2008 OA including an initial evaluation of the full 50-year term of the OA in order to assess the significant cumulative and long-term environmental and socioeconomic impacts of the 2008 OA in the Lower Rio Grande Basin. Further, the requisite analysis that demonstrates the basis, purpose and need for an EIS was not fully developed. It is the NMISC's position that RGP operations

Mike Hamman, Bureau of Reclamation

Page 2

December 6, 2013

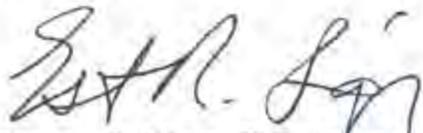
should revert to pre-2007 operations during the pendency of the EIS to avoid biasing the baseline information for the studies. While Reclamation is now planning to scope and prepare an EIS to analyze the environmental effects of the 50-year life of the 2008 OA *combined with* SJCP storage contracts in Elephant Butte Reservoir, it has not reverted to the pre-2007 operations methods.

NMISC's level of engagement is dependent upon both the scope of the EIS and Reclamation's plans for continued Rio Grande Project operations. Therefore, NMISC requests a meeting with you to gain clarification of the following:

- How will Reclamation establish the foundation for the RGP data set and associated information to be used in the EIS analysis of the 2008 OA?
- Will Reclamation evaluate impacts related to the Endangered Species Act and the Rio Grande Compact, including critical habitat for the SWFL and storage relative to upstream operations?
- It is not clear why the SJCP storage contracts have been added to the 2008 OA environmental analysis. How do these storage contracts relate to the accounting and operations under the RGP and why were they grouped with the 2008 OA EIS? Why has the Albuquerque Bernalillo County Water Utility Authority's storage contract been added to the analysis after an EA was completed in 2010 for that contract?
- Will analysis include RGP operations in their entirety from Elephant Butte Dam to the El Paso Hudspeth County line in Texas?
- How many alternatives are being considered and what are they comprised of?
- Will Reclamation revert to its pre-2007 operations during the pendency of the EIS?
- Will the EIS evaluate the impacts of the 2008 OA on the City of Las Cruces' senior water rights and the City's plans to acquire water rights for future municipal and industrial use?
- Will the EIS evaluate how the 2008 OA will affect permit related issues under the federal Clean Water Act?
- NMISC would like to discuss alternate paths for the RGCC states to coordinate with Reclamation on ESA issues associated with the SWFL critical habitat designation.

Thank you for your invitation and the opportunity to participate in the preparation of this important EIS. We request a meeting at your earliest convenience to acquire additional information on the scope of the EIS and to discuss the potential for and nature of our participation.

Sincerely,



Estevan R. López, P.E., Director
New Mexico Interstate Stream Commission

ERL/mt

Mike Hamman, Bureau of Reclamation
Page 3
December 6, 2013

cc: Scott Verhines, State Engineer
Stephen Farris, Assistant Attorney General
Rolf Schmidt-Petersen, Chief, Rio Grande Bureau
Amy Haas, ISC General Counsel



United States Department of the Interior

INTERSTATE STREAM COMM
ENGINEER OFFICE
SANTA FE, NEW MEXICO

BUREAU OF RECLAMATION
Upper Colorado Region
Albuquerque Area Office
555 Broadway NE, Suite 100
Albuquerque, NM 87102-2352

2014 JAN 22 AM 10:36

IN REPLY REFER TO

ALB-150
ENV-6.00

JAN 17 2014

Mr. Estevan R. Lopez, P.E.
Director
New Mexico Interstate Stream Commission
P.O. Box 25012
Santa Fe, New Mexico 87504

Dear ^{Estevan} Mr. Lopez:

I received your letter dated December 6, 2013, stating that the New Mexico Interstate Stream Commission's (NMISC) level of participation with the Environmental Impact Statement (EIS) for the continued implementation of the 2008 Operating Agreement (OA) for the Rio Grande Project (RGP) and San Juan-Chama Project (SJCP) storage contracts was dependent upon both the scope of the EIS and the Bureau of Reclamation's plans for continued RGP operations.

Your letter includes a series of questions about the EIS, which relate to defining its scope or how Reclamation will address some of the issues that may eventually be identified in the scoping process. Accordingly, most of these questions will be addressed during the EIS scoping process. Nonetheless, below I will attempt a response to your bulleted questions in the order they were presented in your letter:

- Reclamation is required to prepare and complete the EIS in strict accordance with the Council on Environmental Quality (CEQ) and Department of the Interior regulations for implementing the National Environmental Policy Act (NEPA). All available data for the Rio Grande Project including that provided by other state and Federal agencies and irrigation districts will necessarily be utilized to fully analyze identified alternatives as required.
- As stated in the Federal Register notice (see enclosed publication notice), three scoping meetings will be held to solicit public input on the scope of the EIS, potential alternatives, and issues to be addressed.
- Reclamation included the SJCP storage contracts in the EIS because Federal agencies are required to analyze the impacts of their discretionary actions, and the CEQ regulations authorize Federal agencies to group similar actions into one EIS. Other questions related to the inclusion of the SJCP storage contracts can be addressed during the scoping process.

- The geographic area of impact for the EIS will be considered during the scoping process and is not yet determined.
- Public input related to the alternatives to be addressed in the EIS will be provided for during the scoping process.
- In accordance with the Environmental Assessment (EA) for the 2008 OA, Reclamation will continue to operate the RGP pursuant to the 2008 OA.
- The scoping process will consider effects on water rights recognizing that certain claimed rights and priorities are currently in litigation before the Honorable James J. Wechsler in Stream System Issue SS-97-104.
- As part of the scoping process, the EIS will evaluate the impact of the 2008 OA on permit related issues under the Federal Clean Water Act.
- Discussion and coordination on ESA issues associated with Southwestern willow flycatcher critical habitat designation is outside the scope of this EIS; however, Reclamation would welcome a meeting with New Mexico and the other Rio Grande Compact states to discuss those issues.

Publication of the notice of intent to conduct this EIS in the Federal Register occurred on January 15, 2014, which began the public scoping period. Public scoping meetings are planned for January 30 through February 1, 2014. Reclamation looks forward to receiving NMISC's comments during the 30-day public scoping period.

For NMISC to participate as a Cooperating Agency in the EIS process, please review and execute the enclosed Memorandum of Understanding (MOU). As noted in the MOU, activities of Reclamation as the Lead Agency and NMISC as an invited Cooperating Agency are governed by NEPA, CEQ Regulations for implementing NEPA, and the Department Regulations for implementing NEPA. Reclamation intends to use authorities delegated under the NEPA and through the CEQ and the Department to conduct this EIS. Roles and responsibilities specific to this planned EIS are outlined in this MOU. If NMISC intends to participate as a Cooperating Agency, Reclamation requests that NMISC execute the MOU no later than February 15, 2014.

It is our preference that the NMISC sign up as a Cooperating Agency prior to discussing the scoping matters you have raised as we are restricted by the NEPA process and constraints due to on-going litigation to discuss these matters in detail. The cooperator status will allow for us to conduct separate or joint meetings with all our cooperators to discuss details on the analyses and other matters under the EIS process.

Additionally, as stated in Reclamation's October 31, 2013, letter, Reclamation plans to continue to address the concerns of Rio Grande Compact Commission through the Engineer Advisors

process. Reclamation is always open to meeting with the NMISC and the Engineer Advisors regarding Rio Grande Compact matters.

Please continue to coordinate with Ms. Rhea Graham, at 505-462-3560 or rgraham@usbr.gov, regarding the NMISC's response to Reclamation's invitation to participate as a Cooperating Agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike A. Hamman", with a long horizontal flourish extending to the right.

Mike A. Hamman
Area Manager

Enclosures - 2



education activities, scientific research projects, boundary marking, and enforcement of existing regulations. There would be no manipulation of the marsh other than emergency, safety-related, or limited improvements or maintenance actions. The destabilized marsh would continue to erode at an accelerated rate.

Alternative B: Hydrologic Restoration and Minimal Wetland Restoration—Under alternative B, the focus is on the most essential actions to reestablish hydrologic conditions that shield the marsh from erosive currents and protect the Hog Island Gut channel and channel wall. A breakwater structure would be constructed on the south end of the marsh, in alignment with the northernmost extent of the historic promontory, and wetlands would be restored to strategic areas where the water is less than 4 feet deep. This alternative also includes fill of some deep channel areas near the breakwater. The final element of this alternative is the reestablishment of hydrologic connections to the inland side of the Haul Road to restore bottomland swamp forest areas that were cut off when the Haul Road was constructed. Approximately 30 acres west of the Haul Road could be influenced by tidal flows as a result. These actions would not necessarily happen in any particular order, and may be dictated by available funds. However, it is assumed that the breakwater would be constructed first. This alternative would create approximately 70 acres of various new wetland habitats and allow the continued natural accretion of soils and establishment of wetlands given the new hydrologic conditions.

Alternative C: Hydrologic Restoration and Fullest Possible Extent of Wetland Restoration (NPS Preferred Alternative)—Under alternative C, the marsh would be restored in a phased approach up to the historic boundary of the marsh and other adjacent areas within NPS jurisdictional boundaries. Phased restoration would continue until a sustainable marsh is achieved and the overall goals of the project are met. The historic boundaries lie between the historic promontory and Dyke Island, the triangular island off the end of the Haul Road. The outer edges of the containment cell structures would be placed at the park boundary in the river.

The initial phase of this alternative would first establish a breakwater structure at the southern alignment of the historic promontory to provide immediate protection to Dyke Marsh from erosion. After the breakwater is established, the deep channel areas north of the historic promontory would

be filled within the NPS boundary, and the marsh would be restored to the 4-foot contour at strategic locations to further reduce the risk of erosion and storm surges and promote sedimentation within the existing marsh. Afterwards, two cells would be constructed along the northern edge of the breakwater, restoring the original extent of the promontory's land mass.

All subsequent phases would establish containment cells out no further than the historic marsh boundary. The location of these cells would be prioritized based on the most benefits the specific locations could provide to the existing marsh. The timing of these subsequent phases and the size and number of cells built during these phases would be dependent upon available funds and materials.

In addition to the construction of containment cells, tidal guts would be cut into the restored marsh area that would be similar to the historical flow channels of the original marsh.

This alternative, like Alternative B, would also introduce breaks in the Haul Road, returning tidal flows to approximately 30 acres west of the Haul Road, which would help to re-establish the historic swamp forest originally found on the site.

Additional wetland may be restored south of the new breakwater to fill out the southernmost historic extent of the marsh. This area would not be protected from storms, and would be one of the last features implemented. In addition, the marsh restoration would extend north of Dyke Island, and tidal guts would be created. This alternative contains an optional restoration cell in the area currently serving as a mooring area for the marina. Such an option would only be implemented should the marina concession no longer be economically viable for the current concessioner, and then only if no other concessioner expresses interest in taking over the business, which would eliminate the need for the mooring field. In total, under this alternative, approximately 245 acres of various wetland habitats could be created.

Dated: October 21, 2013.

Stephen E. Whitesell,
Regional Director, National Park Service,
National Capital Region.

[FR Doc. 2014-00633 Filed 1-14-14; 8:45 am]

BILLING CODE 4310-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[14XR0680A1, RX.00236101.0021000,
RR04313000]

Notice of Intent To Prepare an Environmental Impact Statement and Announcement of Public Scoping Meetings for Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Reclamation is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed continued implementation of the 2008 Operating Agreement over its entire remaining term (through 2050) for the Rio Grande Project in New Mexico and Texas. The Operating Agreement is a written detailed description of how Reclamation allocates, releases from storage, and delivers Rio Grande Project water to users within the Elephant Butte Irrigation District (EBID) in New Mexico, the El Paso County Water Improvement District No. 1 (EPCWID) in Texas, and to users covered by the 1906 international treaty with Mexico. In addition, this EIS proposes to evaluate the environmental effects of renewing San Juan Chama Project storage contracts under authority of the Act of December 29, 1981, Pub. L. 97-140, 95 Stat. 1717, providing for storage in Elephant Butte Reservoir.

DATES: Comments on the scope of the EIS must be received by February 14, 2014.

Three public scoping meetings will be held to solicit public input on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS. See the **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Written comments regarding the scope and content of the EIS should be sent to Ms. Rhea Graham, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Mail Stop ALB-103, Albuquerque, New Mexico 87102, or provided via email at rgraham@usbr.gov.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the EIS, should contact Ms. Graham using the information cited above. See the **SUPPLEMENTARY INFORMATION** section for locations of public scoping meetings. **FOR FURTHER INFORMATION CONTACT:** Ms. Rhea Graham, Bureau of Reclamation;

telephone 505-462-3560; email at rgraham@usbr.gov. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact Ms. Graham during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Graham. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act, Reclamation will serve as the lead federal agency for preparation of the EIS on the continued implementation of the Operating Agreement for the Rio Grande Project, New Mexico and Texas. The responsible official for this action is Reclamation's Upper Colorado Regional Director.

Background

The Rio Grande Project includes Elephant Butte and Caballo dams and reservoirs, a power generating plant, and five diversion dams (Percha, Leesburg, Mesilla, American, and International) located on the Rio Grande in New Mexico and Texas. The Rio Grande Project was authorized by Congress under the authority of the Reclamation Act of 1902 and the Rio Grande Project Act of February 25, 1905. The Rio Grande Project Operating Agreement was signed in 2008 to allocate Rio Grande Project water, which includes water stored in Elephant Butte and Caballo reservoirs and return flows to the Rio Grande between the EBID in the Rincon and Mesilla valleys of New Mexico and the EPCWID in the Mesilla and El Paso valleys of Texas and Mexico. The Rio Grande Project also provides water to Mexico under the 1906 international treaty. Rio Grande Project water is provided by Reclamation to irrigate a variety of crops and for municipal and industrial water uses.

Purpose and Need for Action

The purpose and need for action is to meet contractual obligations to EBID and EPCWID to implement a written set of criteria and procedures for allocating, delivering, and accounting for Rio Grande Project water to both districts consistent with their rights under applicable law each year in compliance with various court decrees, settlement agreements, and contracts. These include the 2008 Compromise and Settlement Agreement among Reclamation, EBID, and EPCWID, and contracts between the United States and the EBID and EPCWID. The purpose and need of an ancillary but potentially similar action is to implement the

provisions of the Act of December 29, 1981, to allow the storage of San Juan-Chama project water acquired by contract with the Secretary of the Interior pursuant to Public Law 87-483 in Elephant Butte Reservoir.

Proposed Action

The proposed federal action is to continue to implement the 2008 Operating Agreement for the Rio Grande Project over the remaining term (through 2050), and a potentially similar action under 40 CFR 1508.25, to implement long-term contracts for storage of San Juan-Chama water in the Rio Grande Project.

Scoping Process

This notice initiates the scoping process which guides the development of the EIS. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Reclamation using the contact information provided above. To be most effective, written comments should be received prior to the close of the comment period and should clearly articulate the commentator's concerns.

Dates and Addresses of Public Scoping Meetings

The scoping meeting dates and addresses are:

- Thursday, January 30, 2014, 3:00 p.m. to 5:00 p.m., Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102
- Friday, January 31, 2014, 6:00 p.m. to 8:00 p.m., Elephant Butte Irrigation District, 530 South Melendres Street, Las Cruces, New Mexico 88005
- Saturday, February 1, 2014, 9:00 a.m. to 11:00 a.m., Bureau of Reclamation, El Paso Field Division, 10737 Gateway West, Suite 350, El Paso, Texas 79935

Special Assistance for Public Scoping Meetings

If special assistance is required at the scoping meetings, please contact Ms. Graham at 505-462-3560 or email at rgraham@usbr.gov. Please notify Ms. Graham at least two weeks in advance of the meeting to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Before including your address, phone number, email address, or other

personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 5, 2013.

Brent Rhees,

Deputy Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 2014-00476 Filed 1-14-14; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-904]

Certain Acousto-Magnetic Electronic Article Surveillance Systems, Components Thereof, and Products Containing Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 11, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Tyco Fire & Security GmbH of Switzerland; Sensormatic Electronics, LLC of Boca Raton, Florida; and Tyco Integrated Security, LLC of Boca Raton, Florida. A letter supplementing the complaint was filed on December 23, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain acousto-magnetic electronic article surveillance systems, components thereof, and products containing same by reason of infringement of U.S. Patent No. 5,729,200 ("the '200 patent'") and U.S. Patent No. 6,181,245 ("the '245 patent'"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection

Memorandum of Understanding
Between
U.S. Department of the Interior, Bureau of Reclamation
And
[New Mexico Interstate Stream Commission]
As a Cooperating Agency
Regarding the
Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project,
New Mexico and Texas

1. Introduction

Pursuant to the National Environmental Policy Act (NEPA), this memorandum of understanding (MOU) creates a cooperating agency relationship between the Bureau of Reclamation, Albuquerque Area Office (Reclamation), and the [New Mexico Interstate Stream Commission], (Cooperator) in the preparation of an environmental impact statement (EIS) for Continued Implementation of the 2008 Operating Agreement (Agreement) for the Rio Grande Project, New Mexico and Texas.

2. Purpose

The purpose of this MOU is to define the relationships and duties of the lead and cooperating agencies in the EIS preparation process. It is understood by all parties that this MOU provides the framework to fulfill compliance requirements for NEPA and other applicable environmental laws and regulations. Completion of NEPA compliance does not imply that there will be a favorable decision to continue the Agreement.

3. Authorities for the MOU

Activities of the lead and cooperating agencies contemplated under this MOU are authorized under:

- A. The National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C 4321-4347)
- B. Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500-1508; especially 1501.5 on lead agencies, and 1508.5 on cooperating agencies)
- C. Department of the Interior Regulations for the Implementation of the National Environmental Policy Act of 1969 (43 CFR 46; especially 46.220 on lead agencies and 46.225 on cooperating agencies)

4. Lead Agency Responsibilities

As lead agency, Reclamation shall:

- A. Be responsible for preparation of the EIS and the NEPA compliance process. These responsibilities include determining purpose and need, selecting

alternatives for analysis, identifying effects of alternatives, selecting preferred alternative, issuing the record of decision, filing, developing schedules, and making staff commitments to keep the NEPA process on track and within the time schedule.

- B. Address other environmental review and consultation requirements such as the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Order 12898.
- C. Involve the public as defined in the Council on Environmental Quality regulations at 40 CFR 1500-1508 and Section 106 of the National Historic Preservation Act. Also, as defined at 43 CFR 46.110, be responsible for incorporating consensus-based management into the NEPA analyses and for involving persons, organizations, or communities who might be interested in or affected by the project.
- D. Sponsor meetings of cooperating agencies, as appropriate, either individually or as a group, and provide advance information for discussions at these meetings when possible.
- E. To the fullest extent possible consistent with its responsibility as lead agency, use the data, environmental analyses, and technical studies of the Cooperator, giving particular weight to those topics on which the Cooperator is acknowledged to possess special expertise. As appropriate, ensure that cooperators' comments, including divergent views, are appropriately documented.
- F. Provide the Cooperator with advance copies of the draft and final EIS and related compliance documents for review.

5. Cooperating Agency Responsibilities

- A. The [New Mexico Interstate Stream Commission] is a Cooperating Agency in this EIS and is recognized to have special expertise in the following areas:
 - a.
 - b.

In accordance with 40 CFR 1501.6 and 43 CFR 46.230, the Cooperator shall:

- B. Participate in the scoping process and in particular, assist with identification of significant environmental issues within their area of special expertise or jurisdiction, to be addressed.
- C. Assume on request from Reclamation, responsibility for developing information, arranging for the collection or assembly of data; analyze data, especially related to those portions of the EIS concerning which the Cooperator has special expertise or jurisdiction.
- D. Make staff available to enhance the interdisciplinary capability of the EIS team.
- E. At the request of Reclamation, assist in the development and evaluation of alternatives, and the estimation of the effects of implementing each alternative on resources for which the cooperating agency has jurisdiction or special expertise.
- F. Provide timely review of draft documents (normally 30 days, except otherwise agreed) when requested.
- G. As appropriate and practicable, attend cooperating agency meetings.
- H. Retain the right to comment on all issues related to the EIS through the normal EIS public review and comment process.
- I. Promptly inform the lead agency of concerns related to the EIS process.

6. Joint Responsibilities

- A. The parties will not release any pre-decisional draft documents to the public or other parties unless mutually agreed to by Reclamation and the Cooperator or required through the Freedom of Information Act. This is not intended to interfere with Cooperators seeking input from the agency they represent. Draft documents can be provided to such organizations as long as the Cooperator abides by these non-release terms and comments are directed back to the cooperating agency representative or point of contact specified in this MOU.
- B. Reclamation may meet separately with any one or more Cooperators to discuss specific topics. Reclamation will inform all Cooperators of substantive information from these discussions.
- C. This MOU does not affect funding agreements already in place or to be executed among the parties regarding Reclamation's completion of NEPA compliance. For costs not explicitly covered under such agreements, it is understood that the respective agencies are responsible for their own costs with regard to completion of tasks outlined herein such as attendance at meetings, assembling data, and making staff available to enhance the interdisciplinary capability of the EIS team.

- D. All parties agree that work will proceed as expeditiously as possible. The parties agree to comply with the scheduled milestones and timeframes, including those for Cooperator review and submissions.

7. Other Provisions

- A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities or responsibilities of any party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the parties to perform beyond their respective authorities.
- B. Financial obligations. Nothing in this MOU shall require any of the parties to assume any obligation or expend any sum or funds in excess of authorization and appropriations available or in any other way take action in violation of the Anti-Deficiency Act (31 U.S.C. 1341).
- C. Immunity and defenses retained. Each party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU and cooperative work on the EIS.
- D. Conflict of interest. The parties agree not to utilize any individual for purposes of EIS development, environmental analyses, or representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the EIS.
- E. Management of information. The Cooperator acknowledges that all data and information provided will become part of Reclamation's official record and will be available for public review, except as restricted by the Freedom of Information Act or the Privacy Act. The Cooperator agrees that internal working draft documents for the development of the EIS will not be made available for review by individuals or entities other than the parties to this MOU. All draft documents are part of the official Reclamation record and may only be released by Reclamation to the extent allowed by the Freedom of Information Act or the Privacy Act. Cooperators agree that to allow full and frank discussion of preliminary analysis and recommendations, meetings to review such predecisional and deliberative documents will not be open to the public.
- F. Responsibility for decision making. While the parties agree to make reasonable efforts to resolve procedural and substantive disagreements, they acknowledge that Reclamation retains final responsibility for the decisions identified in the EIS and Record of Decision, according to its authorities.
- G. Coordination with Reclamation contractors. Should Reclamation use the services of contractors for any part of the EIS process, the Cooperator may communicate with the contractor only through Reclamation's representative or with

Reclamation's permission. Under no circumstances may the Cooperator direct the contractor to conduct any work tasks.

8. Agency Representative

Reclamation and the Cooperator shall designate a point of contact for the EIS. Each party may change the point of contact by providing written notice to the other party. An alternate or backup representative may also be appointed.

9. Resolution of Disputes

Reclamation is responsible for all decisions involving the EIS and will make all final decisions on disputes arising during the NEPA process. Reclamation will document for the administrative record the nature of any dispute and the resolution process used. For disputes involving different interpretations of information, Reclamation agrees to consider different interpretations if such interpretations are supported by sufficient credible data, as determined by Reclamation. For other disputes, Reclamation and the cooperating agency will use their best efforts to resolve issues in a manner agreeable to both parties. If a disputed issue cannot be resolved in a collaborative and timely manner, Reclamation will make a final decision. The Cooperator retains the right to comment on all issues related to the EIS, including those in dispute, through the normal EIS public review and comment process.

10. Administration of the MOU

- A. Approval. This MOU becomes effective on the date of the last signature.
- B. Amendment. This MOU may be amended through written agreement of the parties.
- C. Termination. Reclamation or the Cooperator may terminate their status under this MOU by providing written notice of termination to the other party. Otherwise, the roles and responsibilities will terminate when a Record of Decision is issued.

Signatures

The parties hereto have executed this MOU on the dates shown below.

Bureau of Reclamation

_____ Date _____
Title

[NEW MEXICO INTERSTATE STREAM COMMISSION]

Title

Date _____

Attachment D - Two Letters Received in Public Scoping

Attachment E – NMISC Letter with Comments Identified

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington
SCOTT A. VERHINES, Secretary, Santa Fe
BUFORD HARRIS, Mesilla
BLANE SANCHEZ, Isleta
PHELPS ANDERSON, Roswell
MARK SANCHEZ, Albuquerque
JAMES WILCOX, Carlsbad
RANDAL CROWDER, Clovis
TOPPER THORPE, Cimarron



BATAAN MEMORIAL BUILDING, ROOM 101
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SANTA FE, NEW MEXICO
(505) 827-6180
FAX: (505) 827-6188

February 14, 2014

U.S. Bureau of Reclamation
Albuquerque Area Office
555 Broadway NE, Suite 100
Mail Stop: ALB-103
Albuquerque, NM 87102

Submitted Via Email to: rgraham@usbr.gov

RE: Comments on the Scoping for the Environmental Impact Statement for the Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas

To Whom It May Concern:

The New Mexico Interstate Stream Commission ("NMISC") submits the following comments on the environmental impact statement ("EIS") for the continued implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas (the "2008 Operating Agreement"). The notice of intent to prepare the EIS and announcement of public scoping meetings was published in the Federal Register, Vol. 79, No. 10 on January 15, 2014. The NMISC has a vital interest in the EIS because the 2008 Operating Agreement has had, and will continue to have, major effects on water users in New Mexico and relates to the Rio Grande Compact between Colorado, Texas and New Mexico (the "Compact").

NMISC-001

For the reasons highlighted below, and as set forth in our earlier comments to the U.S. Bureau of Reclamation ("BOR") on the EIS, the NMISC continues to have fundamental objections regarding the EIS.

NMISC-002

I. Previous Communications Regarding the EIS and Related Analysis

NMISC-003

The NMISC has communicated in depth with the BOR on environmental compliance for the 2008 Operating Agreement. For instance, although the inadequate public notice kept us from timely participating before issuance, we later commented extensively when: (1) the BOR inappropriately and illegally applied its Finding of No Significant Impact ("FONSI") and environmental assessment for a 2007 Operating Agreement ("2007 EA") to the 2008 Operating Agreement; (2) when the BOR conducted the first environmental assessment for the 2008 Operating Agreement in 2013 and inappropriately termed it a supplemental environmental assessment ("SEA") based on the erroneously conducted 2007 EA; and; (4) prior to issuance of

NMISC-004

NMISC-005

Bureau of Reclamation
Page 2 of 8
February 14, 2014

the notice for scoping of the EIS, the NMISC communicated with BOR regarding the scope of the EIS. We do not intend to duplicate those comments in detail here. However, as many of those comments are pertinent to the scope of the current EIS, we have attached the following correspondence:

NMISC-006

1. June 6, 2013 letter from NMISC to Jim Wilber, BOR;
2. October 30, 2013 letter from BOR to Scott Verhines, New Mexico State Engineer;
3. December 6, 2013 letter from NMISC to BOR, and;
4. January 17, 2014 letter from BOR to NMISC.

Moreover, NMISC staff attended the public scoping meeting in Albuquerque, NM on January 30, 2014, on the current EIS ("Albuquerque scoping meeting") and NMISC staff and contractors previously attended public meetings on the SEA.

NMISC-007

General Comments

NMISC-008

The BOR was required under the National Environmental Policy Act ("NEPA") to have conducted a review of the 2008 Operating Agreement, which was a discretionary federal action, prior to taking that action, i.e., executing the Agreement. In conducting this after-the-fact review, the BOR has made a series of changing decisions related to studies of the 2008 Operating Agreement. For example, BOR did not perform proper NEPA analysis or conduct required public comment procedures for the 2008 Operating Agreement until the SEA was issued in June 2013. Until that time, the BOR maintained that the 2007 EA and FONSI was sufficient to meet NEPA requirements. Yet, the SEA described the 2008 Operating Agreement very differently than the 2007 EA. The SEA did admit some of the foreseen and now unfolding consequences of the 2008 Operating Agreement, but did not remedy those consequences. From preliminary communications regarding the scope of the EIS and the Albuquerque scoping meeting, the scope of the EIS again looks very different from either the SEA or the 2007 EA. This is especially true of the inclusion of the San Juan Chama Project ("SJCP") storage contracts in Elephant Butte Reservoir (the "Reservoir") within the scope of this EIS. This ongoing series of changing decisions makes it impossible for the NMISC, other affected public entities like the City of Las Cruces, and the general public to track an understandable BOR position on NEPA compliance for the initial federal action and continued operations of the Rio Grande Project (the "Project").

NMISC-010

NMISC-009

NMISC-011

NMISC-012

More importantly, the BOR's positions and actions have demonstrated that it has already determined the outcome of the EIS, in violation of NEPA. The BOR irrevocably committed to a course of action before engaging in a valid NEPA process. BOR signed the 2008 Operating Agreement on March 10, 2008 and only now, almost six years later, is drafting an EIS on that major federal action. The Council on Environmental Quality Regulations on NEPA ("CEQ Regulations") expressly state that an EIS "shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made." 40 C.F.R. § 1502.2(g) (2004) (emphasis added). All of the BOR's actions indicate the EIS is merely an attempt to justify the 2008 Operating Agreement after the fact, which the BOR continues to implement despite failing to conduct proper environmental review. While now acknowledging such review is required, the BOR nevertheless proposes to continue implementing the 2008 Operating Agreement in the interim.

NMISC-013

NMISC-014

NMISC-015

In addition, the BOR's ongoing operations under the 2008 Operating Agreement are an express violation of NEPA because an EIS must precede implementation of major federal actions significantly affecting the human environment. The BOR's NEPA compliance handbook states in section 11.5., "Doing NEPA on Decisions Already Made—NEPA compliance is required before any discretionary Federal action with potentially significant environmental impacts is initiated. Decisions should not be made without full compliance with NEPA. To do this is illegal and a violation of NEPA." BOR's NEPA Handbook at 11-4 (2012) (emphasis added).

NMISC-016

Finally, the BOR has continually ignored the concerns of entities affected by the 2008 Operating Agreement. For example, the concerns and comments of the City of Las Cruces have not been addressed by the BOR. Furthermore, the City of Las Cruces has never been asked to be a cooperating agency.

NMISC-017

III. Baseline for Analysis and Modeling

NMISC-020

To date, the BOR has not provided specific information on the baseline for its analysis of the environmental changes caused by the proposed action or its alternatives as identified in the EIS or the modeling tools it will use to conduct its analysis. The BOR is now planning to scope and prepare an EIS to analyze the environmental effects of the remainder of the 50-year term of the 2008 Operating Agreement while also analyzing SJCP storage in the Reservoir. In conducting the current review, the prior environmental review for the 2007 EA and SEA, the BOR has never reverted to its pre-2008 Operating Agreement operations, and thereby continuing to change the environmental baseline. By proceeding with the NEPA process while continuing to operate the Project under the terms of the 2008 Operating Agreement, the BOR has biased the baseline information for the EIS evaluation and violated NEPA's prohibition against predetermined outcomes. *Forest Guardians v. U.S. Fish & Wildlife Service*, 611 F.3d 692, 713 (10th Cir. 2010) ("[I]f an agency predetermines the NEPA analysis by committing itself to an outcome, the agency likely has failed to take a hard look at the environmental consequences of its actions due to its bias in favor of that outcome and, therefore, has acted arbitrarily and capriciously.") (citing *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002)).

NMISC-018

NMISC-019

NMISC-021

NMISC-022

Furthermore, the baseline analysis used by the BOR in the past has many flaws that the NMISC previously communicated to BOR. In the SEA, there are substantial technical issues associated with the no-action baseline analysis used. There are demonstrably false assumptions (e.g. that the Elephant Butte Irrigation District historically ordered all the water it was allocated) and a problematic initial condition (the year used was 2007, by which time the Project operations had already been modified ad hoc by BOR from historic operations as then described in the 2007 EA). Accordingly, these baseline assumptions and analysis should be reconsidered and rigorously evaluated in the EIS.

NMISC-023

NMISC-024

The NMISC still needs additional information regarding the full scope of the modeling effort underway for analysis of the 2008 Operating Agreement. Although the NMISC staff specifically asked for this information at the Albuquerque scoping meeting, we were told that the BOR representatives present did not know the answer, and in any event that no information on the specifics of the model will be released until the model report is published. The model will be the central element of the BOR's analysis and is vital to determining if the scope of the EIS is

NMISC-025

correct. Again, it is impossible to comment on whether the modeling effort is adequate without additional information. NMISC again requests disclosure of the specific models, modeling tools, and relevant data sets for surface water and groundwater quantity and quality.

The NMISC has considerable expertise in surface water and groundwater modeling and would like to be included in any technical advisory committee or other stakeholder group created for the EIS analysis.

IV. Diversion Ratio

The BOR admits that the 2008 Operating Agreement introduces a new and significant factor in water allocation calculations. Regardless of the rationale for the changes, the 2008 Operating Agreement decreases Elephant Butte Irrigation District's ("EBID") allocation and creates real or apparent reductions in the Project performance, as quantified by the "diversion ratio". The effect of each individual factor that affects the diversion ratio should be evaluated and quantified. Specifically, and discussed more in depth below, the evaluation of the 2008 Operating Agreement must: (1) quantify the effects of groundwater pumping in Texas and Mexico (not just in New Mexico) in both the Mesilla and Hueco Basins; (2) examine changes in Project measurement, reporting, and accounting practices since the D1/D2 period¹; and, (3) quantify the amount by which EBID's allocation has been reduced as a result of these impacts.

In line with this analysis, EBID's allocation under the 2008 Operating Agreement in full-supply years must be quantified. Since this allocation is less than the amount needed to supply the irrigated acreage in EBID, as BOR admits, the 2008 Operating Agreement necessarily results in increased irrigation well pumping within EBID. The BOR admits the proposed action encourages increased groundwater pumping but fails to propose any real analysis of those effects and its cumulative impacts on the human environment.

V. Surface Water Allocations

At the Albuquerque scoping meeting, the information provided by BOR indicates that one of the issues to be analyzed in the EIS is the surface water allocations made to the irrigation districts affected by the 2008 Operating Agreement - EBID and the El Paso County Water Improvement District No. 1 ("EP No. 1"). The BOR's vague statement on analysis of surface water allocations to EBID and EP No. 1 provides no indication of how this analysis will be conducted.

To truly demonstrate the effects of the 2008 Operating Agreement on the two irrigation district's surface supply, the BOR must review and evaluate pre-2008 Operating Agreement distribution of Project water. The BOR indicates that its analysis will include pumping from the D1/D2 period. However, its analysis does not appear to use that time period as the baseline. If this is BOR's intent, it should analyze the period from 1951 to 1978 as its pre-2008 Operating Agreement distribution. The NMISC specifically requests that the BOR evaluate the impact of the 2008 Operating Agreement on the historic distribution of the Rio Grande Project water in equal amounts to all irrigable land within the Project; that is, based on irrigable acreage within the Project, the historic and equal distribution is 57% to EBID and 43% to EP No. 1.

¹ The D1/D2 time period is defined as 1951 through 1978.

VI. Groundwater

NMISC-036

In the materials presented during the public scoping meeting in Albuquerque, the BOR states that as part of the EIS it plans to analyze groundwater levels, recharge, and groundwater pumping in the Rincon and Mesilla Basins. At that meeting, NMISC staff asked the BOR representatives whether these same issues would be examined in the Texas portion of the Project area. BOR staff stated that at this time the Texas portion had not been considered in the modeling effort. The Project extends many miles into Texas in the Hueco Basin and two of the Project's 5 diversion dams are located in Texas. Moreover, Mexico's use of groundwater also has impacts on the Project and, accordingly, also effects of the 2008 Operating Agreement. The NEPA requires review of the entire affected environment, and does not allow the BOR to only review parts of the human environment impacted. See 40 C.F.R. §§ 1502.4(a) & 1502.15 (2004). The federal action, i.e., the 2008 Operating Agreement, affects the entire Project area and the area receiving tail water, Hudspeth Irrigation District, and, therefore, the EIS must include the Texas portion of the Project, Hudspeth, and the impact of Mexico's groundwater use.

VII. Alternatives Evaluation

NMISC-037

The CEQ Regulations require the BOR to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a) (2004) (emphasis added). The CEQ Regulations also state that "[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision." *Id.* at § 1502.2(f). In the recently completed SEA, only two alternatives were considered, "no action" and continued implementation of the EA. In the final SEA Response to Comments NM-009, BOR concludes that consideration of other alternatives is not reasonable because implementation of any alternative other than the proposed action would require renegotiation of the 2008 Operating Agreement and the related settlement agreement. First, this appears to be evidence that the BOR has taken action and committed resources that clearly prejudice its selection of alternatives in the EIS. Furthermore, this response is untrue and inadequate.

NMISC-038

According to the SEA, the 2008 Operating Agreement describes how the BOR allocates water between EBID, EP No. 1 and Mexico. However, based on the statement in the SEA Response to Comments NM-009, the BOR now alleges no control over the document that governs its actions related to the Project. The BOR has more authority to change the 2008 Operating Agreement than it states. The BOR is a signatory to the 2008 Operating Agreement, which specifically includes a provision allowing for modification of the agreement (Paragraph 6.7). Thus, these additional alternatives are within reason as the BOR has the ability to work to negotiate the additional alternatives with the other parties to the 2008 Operating Agreement. Moreover, even if the alternative were outside the legal jurisdiction of the BOR, the Council on Environmental Quality's guidance document, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations", specifically states that "[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable" 46 Fed. Reg. at 18026-01. Thus, the BOR is required to examine these alternatives even if it does not think it has the legal authority to implement them. Again, asserting that the BOR has absolutely no authority to alter anything within the 2008

NMISC-039

NMISC-040

NMISC-041

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NMISC-046

NMISC-047

NMISC-048

Operating Agreement further demonstrates that it has already pre-determined the outcome of the EIS, in violation of NEPA.

To comply with NEPA and CEQ Regulations, the EIS should consider more than the two alternatives examined in the SEA. There are numerous reasonable alternatives to the proposed action, including: (1) inclusion of a no carryover storage provision in the 2008 Operating Agreement in accordance with historic operations; (2) adding carryover storage for actual conservation (i.e., as measured by reduction in agricultural depletions); (3) removing credits and charges and using actual deliveries of water in accounting; (4) requiring BOR to consider impairment actions against groundwater pumpers in Texas and New Mexico whenever it suspects groundwater pumping is depleting Project supply; (5) a different allocation of water within the 2008 Operating Agreement; (6) accounting fairly for changes in Project efficiency caused by climate change; (7) including a full technical and legal analysis of how the 2008 Operating Agreement effects Compact credit water accounting, and; (8) bringing the allocation committee into compliance with the Federal Advisory Committee Act, 5 U.S.C. App. §§ 1-15 . All these reasonable alternatives should be examined. See *Davis v. Mineta*, 302 F.3d 1104, 1118-19 (10th Cir. 2002) (holding that the NEPA analysis conducted for a highway project was inadequate in part for failing to examine "reasonable alternatives to the Project").

NMISC-049

VIII. 2008 Operating Agreement Carryover Provision Impact

NMISC-051

NMISC-050

The effects of the carryover accounts provided for in the 2008 Operating Agreement need to be examined very carefully in the EIS.² Project carryover accounts do not fully correspond to water in reservoir storage, in part due to the failure of the 2008 Operating Agreement to account for evaporation of these accounts, and, in part due to Project accounting credits. As a result, since 2006, some quantity of water flowing into the Reservoir has been sequestered directly into these carryover accounts to make up for this discrepancy. As an effect, this inflow was not made available for allocation between EBID and EP No. 1. The net effect of these issues on allocation to both EBID and EP No. 1 should be quantified in this analysis.

NMISC-052

In addition, the NMISC has the following questions and comments related to review of the carryover provisions:

NMISC-053

(1) The BOR must critically examine the effects to Articles VII and VIII of the Compact in its evaluation of carryover; the additional amount of water New Mexico would need to deliver to the Reservoir to meet compact delivery obligations; and, the effects on upstream storage in post-Compact reservoirs that result when all allocation and carryover is called for by EBID and EP No. 1 in a given year.

NMISC-054

(2) The BOR, the NMISC, and others are engaged in addressing endangered species compliance issues in the Middle Rio Grande. Because of the linkage in the Compact of Project storage operations to upstream reservoirs operations, changes in Project operations may have an impact on the ability of BOR to meet its middle Rio Grande endangered species obligations

² Current Congressional authorization for the Project does not allow for this type of storage, so Congressional authorization for this major change is required.

NMISC-055

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and, potentially, its tribal trust responsibility to Pueblos and Tribes. The EIS should evaluate these issues.

NMISC-056

(3) Under the Compact, New Mexico bears all evaporative losses of the Rio Grande water (i.e., non San Juan Chama water) in the Reservoir. The BOR must evaluate the impact of the 2008 OA on New Mexico's obligations under the Compact due to increasing Reservoir evaporative loss?

IX. Endangered Species Issues

NMISC-057

The BOR has articulated inconsistent and mutually exclusive positions on whether this EIS will include analyses of impacts to affected endangered species and their habitat. For example, Mike Hamman's October 30, 2013 letter to the Compact Commissioner's for New Mexico, Texas and Colorado indicated that Endangered Species Act ("ESA") issues, including Southwestern Willow Flycatcher ("SWFL") will be considered in the EIS. The materials presented at the public scoping meeting stated that the SWFL, Western yellow-billed cuckoo, silvery minnow and meadow jumping mouse will all be analyzed in the EIS. However, in its January 17, 2014 letter to the NMISC, the BOR stated that SWFL critical habitat is outside the scope of the EIS. Moreover, in the SEA, the BOR examined the effects on two species it has not mentioned in relation to the EIS; the interior least tern and the piping plover. Does the BOR intend to examine these same species here? The BOR should clarify its position relative to review of the species in this EIS.

According to the CEQ Regulations, the BOR is required to include discussion of environmental effects, including ecological effects. 40 C.F.R. § 1502.16 (2004). Accordingly, all of these species should be examined in depth, including, as discussed above impacts on upstream storage due to the 2008 Operating Agreement, and resultant effects on the species in the middle Rio Grande valley.

NMISC-058 X. Water Quality Issues

The BOR acknowledges the interconnection between groundwater and surface water, yet it has not adequately analyzed the effects of the 2008 Operating Agreement on water quality. The EIS must consider the impact of reduced water allocation on the water quality of surface water in New Mexico. The BOR must also evaluate and quantify the impact of reduced surface water allocation and the consequential increased groundwater pumping on groundwater quality in New Mexico and Texas (if any) and any resulting salinization of Project lands. Groundwater quality modeling should be performed to evaluate impacts of pumping on water quality in the future.

NMISC-059

XI. Inclusion of the San Juan Chama Project Storage Contracts

NMISC-060

In its January 17, 2014 letter to the NMISC, as well as in the materials available at the public scoping meetings, the BOR asserts that the SJCP storage contracts are included in the EIS because they are "similar actions". Without agreeing that the contracts are similar actions, the NMISC asserts that the CEQ Regulations specifically preclude inclusion of those contracts in the EIS. The CEQ Regulations require that a federal agency "[i]dentify and eliminate from detailed study the issues which are not significant or which have been covered by prior

NMISC-061

environmental review." 40 C.F.R. § 1501.7(a)(3) (2004) (emphasis added). The Albuquerque Bernalillo County Water Utility Authority ("ABCWUA") SJCP contract has already been covered by a prior environmental review, as evidenced by the Environmental Assessment issued for the contract in January 2010. As part of the assessment, a FONSI was issued. See <http://www.usbr.gov/uc/albuq/envdocs/ea/bernalillo/sic/index.html>. Accordingly, the ABCWUA SJCP storage contract has already been covered by prior environmental review, and, even if determined to be similar, according to the CEQ Regulations should be eliminated from the scope of the EIS.

NMISC-062

Similarly, the City of Santa Fe SJCP storage contract should also be eliminated from review in the EIS. The full effect of the Santa Fe storage contract was included in the Environmental Assessment and FONSI issued for the ABCQUA SJCP contract. Thus, it too has been covered by prior environmental review and the CEQ Regulations require it to be eliminated from review here.

NMISC-063

XII. NMISC Inclusion in Technical or Stakeholder Committees

As indicated by separate letter to Mike Hamman, for many of the reasons outlined above, the NMISC will not be a cooperating agency in the EIS. However, the NMISC offers special expertise in matters related to water management in the lower and middle Rio Grande and, the NMISC, is the only entity that can fully represent the Compact issues in the lower Rio Grande as they relate to New Mexico. The NMISC hereby requests to be included in any technical and stakeholder subcommittees that may be assembled regarding the EIS.

Thank you for the opportunity to comment on the scope of the EIS.

Sincerely,



Estevan R. López, P.E., Director
New Mexico Interstate Stream Commission

ERL/kmb/lml

Attachments

cc: Mike Hamman, BOR
Steve Farris, New Mexico Attorney General's Office
Sarah Bond, New Mexico Attorney General's Office
Rolf Schmidt-Petersen, NMISC Rio Grande Bureau Chief
Amy Haas, NMISC General Counsel
Kim Bannerman, NMISC Attorney, Lower Rio Grande

Attachment F – City of Las Cruces Letter with Comments Identified

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February 14, 2014

SENT BY EMAIL TO: rgraham@usbr.gov

Ms. Rhea Graham
United States Bureau of Reclamation
Albuquerque Area Office
Mail Stop Alb. 103
555 Broadway NE, Suite 100
Albuquerque, NM 87102

*Re: City of Las Cruces' Comments on scope of Environmental Impact Statement (EIS)
for proposed continued implementation of the 2008 Operating Agreement ("OA") (until
2050) for the Rio Grande Project in Texas and New Mexico.*

Dear Ms. Graham:

The City of Las Cruces ("City") submits these comments on the scope of the Bureau of Reclamation's Environmental Impact Statement ("EIS") for proposed continued implementation of the 2008 Operating Agreement ("OA") (until 2050) for the Rio Grande Project in Texas and New Mexico.

The "Action" item is described as follows:

Purpose and Need for Action

The purpose and need for action is to meet contractual obligations to EBID and EPCWID to implement a written set of criteria and procedures for allocating, delivering, and accounting for Rio Grande Project water to both districts consistent with their rights under applicable law each year in compliance with various court decrees, settlement agreements, and contracts. These include the 2008 Compromise and Settlement Agreement among Reclamation, EBID, and EPCWID, and contracts between the United States and the EBID and EPCWID.

* * *

Proposed Action

The proposed federal action is to continue to implement the 2008 Operating Agreement for the Rio Grande Project over the remaining term (through 2050), and a potentially similar action under 40 CFR 1508.25, to implement long-term contracts for storage of San Juan-Chama water in the Rio Grande Project¹.

A representative of the City attended the scoping meeting in Las Cruces on January 31, 2014. The materials presented by the Bureau of Reclamation revealed no evident concern for issues relating to municipal water supply. The "Proposed Action" is defined as "continue to implement the 2008 Operating Agreement for the Rio Grande Project..." Las Cruces believes that the Proposed Action should have included the alternative of whether the 2008 Operating Agreement should have been initiated to begin with, given the City's concerns for the "human environment," and therefore whether it should be set aside and the EIS undertaken as of a 2007 baseline. As stated, the "Proposed Action" proposes continuation of the OA when its effects on the human environment should have been analyzed first, to determine whether the OA should have been initiated, not continued. In other words, the "Proposed Action" creates a baseline which assumes continuation of the OA.

The term "human environment" is "interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." See 40 C.F.R. 1508.14. The City notes that social effects must be considered once NEPA is triggered by impacts to the natural or physical environment and the relationship with people within that environment. Las Cruces' interest is two-fold: protection of the human environment through conservation of water resources and sustainability of water supply. See 40 C.F.R. 1508.27. The impacts must include the degree of effect on public health and safety. See 40 C.F.R. 1508.27. Effects to be considered include direct effects, indirect effects, secondary effects and cumulative effects. See 40 C.F.R. 1508.8.

In this regard, the City has strongly advocated for a comprehensive Environmental Impact Statement covering the 50 years of the OA that would determine the effects of additional pumpage by irrigators in EBID on groundwater in storage in the aquifer. The City's concern is prompted by the fact that the historical allocation of surface water stored in Elephant Butte Reservoir has been changed from 57% to EBID and 43% to El Paso County Water Improvement District No. 1 to 50% to each district, or potentially to less than 50% for EBID by the OA. This in turn has prompted additional applications for groundwater wells to supplement a reduced supply of surface water by irrigators within EBID, thus placing an additional stress on groundwater in storage in the aquifer. The issue is of concern to the City of Las Cruces because the City's sole water supply is based upon the diversion of groundwater in storage in the aquifer.

¹ An "Action" item related to San Juan-Chama contractors is also proposed. Las Cruces is not involved with that "Action" item.

CLC-007 As set forth below, the City does not have a conjunctive use source of surface water from the Rio Grande although efforts have been made to develop one with EBID and/or the United States.

CLC-008 The City has sought to develop an Ag/MI transfer program that depends on the long-term conversion of surface water within EBID to municipal/industrial use within the City. In that regard, the City is a member of EBID with water righted lands entitled to yearly allocations of Rio Grande Project surface water. The City's water planning calls for the transition to renewable surface water where and when it is available for future growth and to preserve its groundwater rights as a sustainable supply under a program of conjunctive use of surface and groundwater. To this end, the City was established as a Special Water Users' Association for the purpose of utilizing the annual allocations of agricultural project water for future municipal water supply through the conversion of agricultural surface water to municipal uses through a surface water treatment facility, and is listed on the EBID assessment rolls. See generally NMSA 1978, § 73-10-48 *et seq.* (2003). Large amounts of money have been spent to acquire surface water rights and the viability of the City's surface water treatment component of its future water supply is now in jeopardy. The OA appears to have eviscerated that program by shutting off much of the surface supply. The City will only know if the program is viable if it can have a reliable long-term analysis of surface water available for Ag/MI over the 50-year life of the OA.

CLC-009 In sum, the scope of the EIS must include: 1) an analysis of whether the OA should have been initiated, *i.e.*, whether it was an alternative that should have been undertaken and whether it should be set aside and the EIS undertaken as of a 2007 baseline; 2) an analysis of the long-term hydrologic impacts on groundwater in storage that results from increased groundwater diversions by irrigators that is caused by the OA; and 3) an analysis of the long-term hydrologic impacts on the viability of the Ag/MI transfer program given the decreases in surface water that will result from the OA.

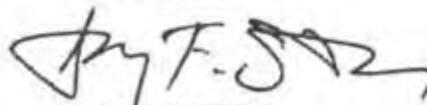
CLC-010

CLC-011

CLC-012 The City would appreciate being placed on the notice list for future BOR announcements related to the Rio Grande Project. Notices should be sent to two addresses. Please send one notice to Jorge Garcia and Marcy Driggers, P.O. Box 20000, Las Cruces, NM 88004, and another to Stein & Brockmann, P.A., c/o Jay F. Stein and James C. Brockmann, P.O. Box 2067, Santa Fe, NM 87504-2067.

CLC-013

Sincerely,



JAY F. STEIN
JAMES C. BROCKMANN

cc: Jorge Garcia, Ph.D., P.E., Utilities Director, City of Las Cruces
Marcy Driggers, Esq., Assistant City Attorney, City of Las Cruces
Lee Wilson, Ph.D.