

1.3 Proposed Action:

The proposed action is “execution of a contract between the District and Reclamation that makes a limited amount of project irrigation water available for miscellaneous uses other than irrigation and that further documents the terms and conditions for using this water.” Water made available for miscellaneous uses would be released from Vallecito Reservoir, the major feature of the Pine River Project, (1) as exchange water to the Pine River³; or (2) to the Pine River for direct diversion by private parties or other users, through existing, improved, or new diversion facilities. In most cases the water would be combined with non-project water to meet needs. While the Contract identifies up to 6,700 acre-feet (af) of water that could be potentially made available for miscellaneous uses in the long-term, this EA only addresses approval of use of 3,000 af of that water, all of which would be used within the existing service area of the District. The service area includes the entire Pine River Basin, the lower Piedra River Basin, and portions of the Florida River Basin east of the Florida River.

Execution of the contract is contingent on a finding by Reclamation that the proposed action is in compliance with the 1920 Act, which, among other provisions, states that a proposed action shall not be detrimental to existing irrigation uses.

The proposed action would only make water available for release to the Pine River by the District. Distribution of the water is not part of the proposed action. The proposed action also does not provide approval or control for any particular land use such as for new homes, municipal supplies, wells, or other activities for which Reclamation has no authority or responsibility. While the District’s responsibilities end once the water is released from Vallecito Reservoir, for the purposes of analyzing potential effects of the proposed action, the delivery point as defined in this document is the point on the Pine River where Project water is being used as part of an exchange plan or as a direct diversion. Generally, this area includes the Water Critical Area, as defined by the Colorado Division of Water Resources, which extends along the river corridor from Vallecito Dam to the Pine River Canal diversion point, approximately 4 miles downstream of Bayfield, Colorado.

2. BACKGROUND

2.1 Background and History:

The Pine River Project consists of Vallecito Dam and Reservoir and associated land and facilities. The project was authorized in 1937 under provisions of the Department of the Interior Appropriation Act of June 25, 1910 (36 Stat. 835). Construction was initiated in May 1938, and the project facilities were dedicated on September 14, 1941. The authorized purposes of the project are to provide supplemental irrigation water to both the

³ Exchange water is water provided from Vallecito Reservoir to offset the diversions of junior or non-decreed water uses in the Pine River so that those uses can continue to divert. For example, a new domestic well can lease exchange water that can be released from Vallecito to the Pine River to replace the well’s diversions and thus protect senior water rights in compliance with Colorado water law.

Southern Ute Indian Tribe (Tribe) and non-Indian water users and to provide flood control benefits. Approximately 17,000 acres of land on the Southern Ute Indian Tribe's Reservation and approximately 40,000 acres of private land receive irrigation water.

Fifty percent of the Project cost was allocated to flood control and 50 percent to irrigation, with 5/6 of the irrigation cost and Project water supply assigned to the non-Indians and 1/6 of the irrigation cost and Project water supply assigned to the Southern Ute Indian Tribe. The District is responsible for the operation and management of the Project. The District's portion of the construction costs has been repaid; and pursuant to Civil Action No. 1248-B, District Court, La Plata County Colorado, the non-tribal Project water rights are in the name of the District. Case No. W-1603-76B establishes the Tribe's reserved water rights in the Pine River, including rights in Vallecito Reservoir. A Memorandum of Understanding (Contract No. Ilr-1161, as amended July 9, 1964) between the Bureau of Reclamation and the Bureau of Indian Affairs defines the cooperative use and operation of Vallecito Reservoir for the Pine River Indian Irrigation Project.

2.2 Need for Municipal, Industrial, and Domestic Water:

M&I water in the service area is supplied from individual wells and cisterns or small water suppliers. The service area is experiencing tremendous growth and, as a result, agricultural lands are being subdivided for development. Domestic water supplies are frequently in short supply and in many instances the water quality is poor. Because part of the project area has no developable groundwater and many domestic wells do not meet water quality standards, some residents have water hauled to their homes for consumption. The lack of centralized sewage disposal systems and other human factors along with natural sources contribute to the poor groundwater quality. The area has a need to acquire additional water to supply the long-term needs of a growing population, and Project water is the only practicable source of water supply to meet this need.

2.3 Historic Use of Water for Non-Irrigation Purposes:

Use of Project water for M&I purposes has been occurring since the Project was completed. Historically, both Indian and non-Indian water users within the District used Project water from the irrigation canals for domestic purposes as has the town of Bayfield, Colorado. Bayfield has supplemented its water supply by buying shares from irrigation ditches which receive Project and direct-flow (adjudicated) water, and changing the use of the water in District Water Court from irrigation to M&I. The town also has a contract with the District for domestic water.

The Colorado Division of Water Resources designated the Pine River watershed upstream of the Pine River Canal (about 4 miles downstream from Bayfield) as a "water critical area" which means there is not adequate water in the Pine River to meet the decreed water rights all of the time. In order for out-of-priority water uses (e.g., recent wells and ponds) to continue to use water during times when there is insufficient water in the basin, replacement or exchange water is released from Vallecito Reservoir. The

District currently provides Project water for exchange for about 225 domestic wells and/or ponds to allow these junior uses to continue.

2.4 Negotiations between Reclamation and the District:

For a variety of reasons, up until the mid 1990s, the historical use of minor amounts of Project water for M&I purposes was never resolved. Then, in the mid 1990s, the District formed the Vallecito Water Company (VWC) as a separate, non-profit corporation to plan, construct, and operate a rural domestic water system to serve southeastern La Plata County. At that time, the District Board of Directors and the District shareholders voted to provide up to 2,000 af of Pine River Project water annually from storage in Vallecito Reservoir for VWC as the water supply for the M&I system. With VWC proposing to use 2,000 af of Project water for the proposed rural domestic water system, Reclamation staff contacted the District Board of Directors and stated Reclamation's position that a change in use of water would require a contract that involved Reclamation approval. Reclamation and the District initiated discussions in 1995; however, issues over contract term limits and payment amounts were not resolved and no agreements were reached. Subsequently, in 2001, the District dissolved VWC due to financial and organizational concerns. However, the need for M&I water in the area and the District's desire to provide a reliable supply to meet that need continued.

In 2003, a group called Opponents of the Gopher Hole Project, LLC,⁴ filed suit against the District opposing a new proposed lease of 2,000 af of water from the Project to provide a water supply for the proposed La Plata-Archuleta Water District (LAPLAWD). The La Plata County District Court ruled, among other things, that the District Board of Directors has discretion to allocate water between domestic and irrigation uses without express approval of the shareholders. While this ruling resolved issues at the State and local level, Federal authority to allow the use of irrigation water for M&I uses remained unresolved.

In 2004, Reclamation and the District again initiated discussions in an attempt to resolve the outstanding issue of the Federal authority to use Project water for M&I purposes. Reclamation presented a contractual concept that involved the use of the 1920 Act. This Act authorizes the Secretary of the Interior to enter into contracts to supply water from any project irrigation system for purposes other than irrigation, upon such conditions of delivery, use, and payment as the Secretary may deem proper, provided: (1) That the approval of such contract by the water users' association or associations shall have been first obtained; (2) That no such contract shall be entered into except upon a showing that there is no other practicable source of water supply for the purpose; (3) That no water shall be furnished for the uses aforesaid if the delivery of such water shall be detrimental to the water service for such irrigation project or to the rights of any prior appropriator; and (4) That the moneys derived from such contracts shall be placed into the Reclamation Fund to the credit of the project from which such water is supplied.

⁴ Opponents of the Gopher Hole Project, LLC vs. Pine River Irrigation District, District Court, La Plata County, Colorado, No. 03 CV 300.

Reclamation and the District initiated contract negotiations in December 2004, but temporarily suspended negotiations when the subject of contract term and renewal became an issue. Reclamation subsequently determined the contract could contain a 40 year repayment term, at the end of which time the District's repayment obligations would be fulfilled. Contract negotiations resumed in June 2005 and both parties are close to a final contract. The final draft contract, hereafter referred to as the Contract is included as Appendix A.

2.5 Related Activities:

There are several water activities related to the ongoing rapid growth in La Plata County. The "La Plata-Archuleta Water District" has been proposed, but not enacted, to construct a rural water system for southeast La Plata County with possible expansion into Archuleta County. Such a district could treat and distribute water to rural areas to address water quality and quantity, fire protection, and other problems. Vallecito Reservoir would be a potential supply source for the water district.

A "Voluntary Shareholder Pool" has been authorized by District Court Decree (Civil Court case No. 03CV300 in District Court, La Plata County, Colorado). Some ranchers and farmers in the Pine River Irrigation District have begun the process to implement the "Voluntary Shareholder Pool" by forming a corporation to act as the pooling agent and requesting statements of interest to include their irrigated land in the Pool. In early 2006, the District Board of Directors approved a contract with the corporation. Participants in the Pool agree to commit a portion of their irrigation water for long-term lease to other uses. Revenues from the lease would go to individual Pool members and the District. Water provided by the Voluntary Shareholder Pool is not included in the 3,000 af of water being evaluated in this EA; and prior to its use, would have to comply with the Contract and be subject to future NEPA compliance and review under the 1920 Act.

A Donation Agreement is being considered between the District, the Southern Ute Indian Tribe, and the Colorado Water Conservation Board. Such an agreement would protect designated releases from Vallecito Reservoir for instream flow downstream from the reservoir and settle various water management questions. Water to be used for instream flow under the proposed Donation Agreement would be derived from a new reservoir refill right which would be sought by the parties to the Donation Agreement in Division 7 Water Court. Project water supplies and operations would not be affected by the Donation Agreement. The Donation Agreement and the Contract are not related and each is proceeding independently.

3. ALTERNATIVES

This section of the EA describes the Proposed Alternative and the No Action Alternative, as well as other alternatives considered.