

uses. Also, as stated in the Contract, the Contract shall in no way limit the Tribe's right to fully use its allocation of stored water. The Tribe's portion of Project water is determined each year by allotting to it 1/6 of the stored water based on the maximum content of the reservoir in that year. Also 1/6 of any additional water stored during the year after the maximum content is reached is allocated to the Tribe. That accounting method would remain unchanged under the conditions of the Contract, unless the District and the Tribe agreed to make changes. While Reclamation has concluded that the Contract would not impact the Southern Ute Indian Tribe's water, the Tribe does not fully concur. The Tribe has stated however that any negative impact may be avoided through new, improved reservoir accounting methods agreed upon by the District and the Tribe. The District and the Tribe have initiated discussions regarding the accounting system.

Because the Proposed Alternative will not result in new or additional depletions within the San Juan River Basin and will protect the Tribe's interest in Vallecito Reservoir, there is no potential effect to tribal water rights or claims. The Tribe's water in Vallecito Reservoir will not be reduced in any amount by the Proposed Alternative. The ability of downstream Navajo Reservoir operations to meet endangered fish flow recommendations would not be affected and this ability is important for Endangered Species Act compliance for ITA-related water use and development of all four Indian Tribes and Nations.

Based on the nature of the Proposed Alternative and the No Action Alternative, there are no Indian Trust Assets or Environmental Justice concerns in the project area that would be affected by either Alternative.

5. ENVIRONMENTAL COMMITMENTS

Any additional future use of Project water for M&I purposes beyond the 3,000 af addressed by this EA, including any Minor Uses water totaling greater than the 2,000 af as described in the Contract and any Third-Party Contracts for greater than the initial 1,000 af as described in the Contract, will require additional NEPA and 1920 Act compliance. The District will not take any actions through the Contract which are not in conformance with the NEPA document as determined by Reclamation for the Contract without additional NEPA compliance. Also, any water uses proposed outside of the service area would be subject to additional NEPA and 1920 Act Compliance.

If a water lease involves construction of a new diversion facility and/or improvements to an existing diversion facility on the Pine River, there would be potential impacts to historic resources. Those proposed undertakings, once identified, would undergo standard cultural resources review under applicable laws and policies. Since the area(s) of potential impact are rather small, it is anticipated impacts will be avoided or minimized in the event that historic properties are identified. The review would be limited to the diversion facility itself because, as stated earlier, neither distribution of water nor approval of water use is a part of the Proposed Alternative.

6. CONSULTATION AND COORDINATION

Environmental scoping for the Contract was conducted during the summer of 2005. Requests for input were mailed to various organizations and levels of government and a public scoping meeting was held on August 4, 2005 in the project area. Appendix D contains a summary of scoping comments received.

Overall there were questions and diverse opinions and statements concerning the effect of the Proposed Alternative on irrigated agriculture, on growth, about the geographic area for water use, about changes in streamflows, and about costs of water. Input was also received on the need for reliable and safe domestic water supplies.

The draft EA was released to the public in April 2006. Availability of the draft EA was announced through news releases, and letters of notice of availability were mailed to the list in Appendix E.

Comments received on the draft EA, along with Reclamation's responses, are shown below:

A. Need for Contract and amount of water included in Contract

Comment A1: The Contract is open-ended; no limit on amount of water that could be converted. Total amount of converted water should be limited to 2,000 af.

Response A1: The Contract states that up to 6,700 af of Project water could be made available for miscellaneous uses. It is anticipated that this amount would be sufficient to meet the non-irrigation needs of the area for at least 50 years. Because of the unknowns surrounding some of the future use (specifically the need for future uses and how these future uses might relate to the hydrological effects within the Pine River Basin), it was determined that only the first 3,000 af would be addressed for initial compliance with NEPA and the 1920 Act. The use of the initial 3,000 af would be limited to the existing Pine River Irrigation Project service area. Prior to using the remaining 3,700 af, further NEPA and 1920 Act compliance would be required. While the Contract states that additional water (above the 6,700 af) could be used for miscellaneous purposes, compliance with NEPA and the 1920 Act would be required prior to its use. This compliance would serve as a limit and a check to the amount of water that could be used for miscellaneous uses. As indicated in the EA, use of water would be changed only if and when the demand for this change occurred.

Comment A2: Understand the need for some conversion to M&I water, but not near the amount proposed in the Contract. The proposal far exceeds the needs or desires of shareholders. On what basis did the District determine the need for 6,700 af; perhaps total amount of water changed should be 3,000 af.

Response A2: As stated in Response A1, the amount of water being considered for use for miscellaneous uses was determined as the amount necessary to meet the needs of the area for many years into the future. The water would be used only as the demand for it was realized. Reclamation is not aware of any detailed analysis performed by the District

to determine the amount of water that should be made available for miscellaneous uses under the Contract. The District Board, as representatives for the shareholders, has determined that this is an appropriate amount to include in a contract to meet potential future demands.

Comment A3: Absent an exchange agreement, the Division of Water Resources would not be able to issue well permits for domestic supplies in a large part of the Pine River drainage.

Response A3: The Contract is designed to provide water for such exchanges.

B. Area served by Contract water

Comment B1: Converted water should only be used within the District boundaries. Taking District water outside of the District goes against the District Contract. Clarify the service area vs. the Pine River District boundary.

Response B1: The District boundary/service area is defined as an area consisting of the Pine River Basin, the lower Piedra River Basin, and the Florida River Basin east of the Florida River. District water, including irrigation and domestic, has historically been delivered in these areas. Municipal and industrial (M&I) use is not tied to the land (like irrigation water) and can therefore be used outside of District boundaries. M&I use is limited only by the three provisions of the 1920 Act as discussed in the EA (i.e. only practicable supply, not detrimental to irrigation, and approved by the Board). The ruling in Civil Court case No. 03CV300 in District Court, La Plata County, Colorado determined how water from Vallecito Reservoir may be used within or outside of the District; water used under this Contract shall also follow the Court determination. It should be noted, however, that the 3,000 af of water considered in this EA must be used within the service area, unless the plan is modified after further NEPA and 1920 Act compliance.

Comment B2: Need to clarify where various water amounts referred to would be used. While the EA states that all of the 3,000 af will be used within the District service area, the draft Contract appears to allow Third Party Contracts of less than 20 af to be used outside of the District service area.

Response B2: The initial 3,000 af of water to be made available for miscellaneous uses would be used within the existing service area as described in B1. The Contract defines two categories of leased water; "minor uses" for leased water amounts up to 20 af which would be provided exchange water and "Third Party Contracts" for leased water amounts of greater than 20 af which would be provided to larger users such as the Town of Bayfield. Most, if not all, of this water would be released from Vallecito Reservoir to the Pine River and would remain in the river, serving as exchange water to offset the diversions of junior or non-decreed water uses (e.g. domestic wells and ponds). Some of the water could be supplied to diversions, for example for the town of Bayfield. The distribution of water that is physically diverted from the river is beyond the scope of this action. For accounting purposes, the minor uses would be leased in blocks of approximately 500 af.

The Contract does allow Third Party Contracts of less than 20 af to be used outside of the District service area. In the Contract, it was recognized that future uses outside the service area (i.e., from the remaining 3,700 af that is not covered under this EA) could be in quantities of less than 20 af but these uses would not be for exchange purposes since the water would be used outside the basin. Hence, the District requested the ability to lease water to these minor uses outside the service area using Third Party Contracts. However, since this use would be for outside the service area, it is not covered by this EA and additional NEPA and 1920 Act compliance would be required prior to the use. The Contract will be revised to clarify this.

Comment B3: The District does not extend upstream from the dam where numerous augmentation agreements have been issued. How is this problem handled? Is a shareholder vote needed for sale of water upstream from the reservoir?

Response B3: As explained in Response B1, municipal and industrial (M&I) use is not tied to the land (like irrigation water) and can therefore be used outside of District boundaries. The District has historically provided water throughout the Pine River Basin, including upstream of Vallecito Reservoir, and areas upstream are therefore considered part of the District service area for purposes of this Contract. The locations where water will be used under the Contract may be further defined through additional actions, such as water court applications.

Comment B4. The EA says that the service area includes the entire Pine River Basin, the lower Piedra basin and the Florida Basin east of the Florida River. This is a larger area than those lands shown on the EA map. If these areas are not identified as Project land, they would be outside of the District as referenced in the civil action 03CV300.

Response B4: For purposes of the EA, the project service area is as described in B1 above. Figure 1 in the EA includes a general outline of the District boundaries which is not meant to provide a firm and final boundary description. The locations where water will be used under the Contract may be further defined through additional actions, such as water court applications.

Comment B5: Is there a difference between the District, as established by irrigation District law (CRS 37-41-202), the Project Area, and the District Service Area? Shouldn't the service area be defined as an area within which the return flows have patterns similar to those of Project irrigated lands?

Response B5: Also, see Comment B1. The location of return flows within the service area, whether water is used for miscellaneous purposes or irrigation, is similar. The timing of return flows from miscellaneous uses could be different than those from irrigation; however, given the small quantity of return flow associated with the small quantity of miscellaneous uses (when compared to overall flow in the Pine River), the difference in the timing of the return flows is not anticipated to be significant.

C. Content of draft Contract

Comment C1: Does the Contract require a vote of approval by PRID (District) shareholders? If shareholders voted not to lease 2,000 af in 2003, why would they now want to convert 6,700 af.?

Response C1: To meet the conditions of the 1920 Act, only a resolution by the Board of the Pine River Irrigation District is required. The Contract does not require a vote of approval by District shareholders. The District Board, as representatives for the shareholders, has determined that 6,700 af is an appropriate amount to meet future demands. The ruling in court case 03CV300 states that the District Board can allocate water between irrigation and domestic within the District boundaries without a vote of the shareholders. The District considers the service area to be the District boundaries. Only 3,000 af of the 6,700 af is being approved at this time in the Contract and all of this 3,000 af must be used within the service area; therefore, according to 03CV300 the District board has the discretion to allocate the 3,000 af within the District. This would apply to the 3,700 af of remaining Contract water if and when it was determined that there was a need.

Comment C2: Has there been water court approval for the proposed 3,700 af that can be used outside the District?

Response C2: A decision has not been made if water court approval is required and therefore an application has not been submitted to the water court.

Comment C3: Adding municipal uses and fish and wildlife uses appears to require a change of use application in the District court. A change in the water right for the storage water in Vallecito should be obtained to use the decreed water from Case 1248-B.

Response C3: The Vallecito Reservoir water storage decree includes domestic uses. Whether or not a change of use would be needed in order to release water for fish and wildlife purposes is yet to be determined.

D. Impacts of water distribution

Comment D1: The EA should analyze impacts of distributing water.

Response D1: Water distribution is not included in the Contract and the need for distribution systems is not known at this time and is not part of this EA. If distribution systems are planned and constructed in the future, they are highly likely to require Federal involvement (i.e. permits, land use, funding, etc.), and NEPA compliance would be required by the Federal action agency. Also as indicated in this EA, uses of water over the 3,000 af covered in this EA would require additional NEPA and 1920 Act compliance.

Comment D2: What are the cumulative impacts?

Response D2: Cumulative impacts are discussed to the extent possible in the EA. Overall, growth patterns, housing and land costs, water availability, and other factors are leading to a trend for increased residential and small tract development in the Project area.

E. Donation Agreement

Comment E1: There is no mention of the proposed “Donation Agreement” between Pine River District and the Colorado Water Conservation Board. This is a glaring omission of an operational scenario with potentially significant environmental impacts. How does the Contract relate to the proposed donation agreement?

Response E1: A Donation Agreement is being considered between the District, the Southern Ute Tribe, and the Colorado Water Conservation Board. Such an agreement would protect designated releases from Vallecito Reservoir for instream flow downstream from the reservoir. Water to be used for instream flow under the proposed Donation Agreement would be derived from a refill right which would be sought by the parties to the Donation Agreement in Division 7 Water Court. The Donation Agreement and the Contract are not related and each is proceeding independently.

F. Hydrology analysis

Comment F1: There are two methods discussed on how water could be “restored” to the reservoir. The Table 5 example would significantly affect winter flows. Need to clarify which method would be used.

Response F1: This section of the EA has been revised to remove the ambiguity.

Comment F2: A reduction of 6 cfs in the release in the winter to restore storage may not be possible because of the winter use of water downstream. This is shown as a possibility in the EA. The answer is weak because remedies have to be provided which may not be easily available.

Response F2: Section 4.2.2 of the EA has been revised to remove the ambiguity as to how water released under the Proposed Alternative would be restored. The approach for restoring this water is to keep in storage (i.e., not release) those historical reservoir releases that did not meet the needs of project users. The analysis of historical operations concluded that this water was available in both the winter and summer months.

Comment F3: EA states that overall reservoir operations and streamflows should not be significantly different between the No Action and Proposed Alternatives. There is no basis provided for this conclusion. Effect on streamflows will depend on the ultimate distribution systems, where M&I water is used, and where and to what extent return flows enter the river.

Response F3: Table 4, Change in Historical Vallecito Reservoir Releases under the Proposed Alternative displays statistics of mean monthly releases. These changes are considered insignificant. The annual volume of historical releases will not change under this proposed plan according to Reclamation’s hydrology analysis.

The 65-year average end-of-irrigation season, November 15th historical reservoir content is 50,548 af. The corresponding modeled content under the Proposed Alternative is 48,102 af. This is an average annual reduction in content of 2,447 af or a decrease of 1.51 feet in water surface elevation. The lowest November 15th historical content was

13,289 af in 1977. Under the Proposed Alternative, this content would have been 3,000 af less, which corresponds to a 3.80 foot reduction in water surface elevation. The reservoir content would still have been restored to its historical content for the next irrigation season in 1978.

Furthermore, the analysis presented in Section 4.2 does not take into account several factors that would further reduce the impacts to the streamflow and reservoir operations including return flows, amount of water released each year for M&I uses, amount of over-releases, timing of releases (i.e. seasonal versus year-round), and reduction in irrigated acreage. These are all addressed in Section 4.2.

Comment F4: Lowered levels of Vallecito or Navajo Reservoirs could impact ability to use water for fire fighting. Fire economic losses can be substantial and should be considered.

Response F4: The minor reductions in the level and content of Vallecito Reservoir would have an insignificant effect on water availability for fire fighting. The level of Navajo Reservoir would not be affected.

Comment F5: It is unclear whether the entire 3,000 af is a new use that will then be “restored” or the “converted” use is a result of “drying up” irrigated land and changing the use of the water previously used on that land.

Response F5: The analysis in the EA is based on the concept that additional water could be made available and used for miscellaneous uses while at the same time maintaining the historical uses of Project water. This approach was taken in the EA to determine what impacts the new use would have on the environment and the historical uses if all 3,000 af of the water being made available under the Contract was actually used simultaneously with all the existing uses. The results of the analysis show that no significant impacts would occur to any resource under this scenario.

In reality, the uses are not expected to occur immediately after the signing of the Contract; rather it is anticipated that the water made available under the Contract would gradually be put to use for miscellaneous uses, over a period of time, as the demand for this type of water is realized. An initial estimate based on aerial photography indicates that from 1945 to 2005, roughly 1,300 acres of Project irrigated lands have been retired as a result of development in the area. This represents approximately 2,700 af of PRID water that is available now for miscellaneous uses. Given the current and projected growth trends, it is reasonable to assume that additional agricultural land will continue to be retired in the future. It is also reasonable to assume that this continued retirement of agricultural land caused by development and growth in the area would result in the full 3,000 af of water being available for miscellaneous uses.

Comment F6: In order to avoid impacts to other water rights, use of water for miscellaneous purposes must account for transit losses.

Response F6: Losses in the reservoir and channel transit are determined, where appropriate, by the Colorado Division of Water Resources and any additional releases

needed to account for such losses are included in the administration of the Pine River and in the Contract.

G. Effects on agriculture and 1920 Act compliance

Comment G1: Provisions of the 1920 Act are not met—namely “not detrimental to irrigation” and “only practicable source of water.”

Response G1: The 1920 Act compliance report and the hydrology analysis show that using 3,000 af of Project water for miscellaneous uses would not be detrimental to irrigation supplies because water released for miscellaneous uses could be restored prior to the next irrigation season (with the exception of 2 years in the historical record, in which case ample storage water in the reservoir was available for all uses). The 1920 Act report addresses the “only practicable source of water” issue. Key points in the report bring out storage requirements, location of potential alternate water sources, and the area being served (by the initial 3,000 af) as reasons for Vallecito Reservoir being the only practicable source of this supply. While in some areas groundwater and other surface water supplies may be available to meet localized short-term needs, it is not considered a practicable source for long-term future demands because of water quantity and/or quality issues as well as economic and water right considerations. Also in the future the Southern Ute Indian Tribe could decide to lease water. If this occurred, it would simply reduce the amount of Pine River Project water needed for leasing.

Comment G2: EA does not show that agricultural users will not be harmed if water is allowed to be “pooled” and sold.

Response G2: The EA addresses water that would be used within the existing District service area and does not provide NEPA compliance for use of “pooled” water. It is anticipated that the water being “pooled” under the Voluntary Shareholder Pool allowed by 03CV300 would be used outside the existing service area and thus would come under the remaining 3,700 af of water to be made available for miscellaneous uses. Before this water is used for miscellaneous uses, compliance with NEPA and the 1920 Act would be required to analyze, among other things, if it would be detrimental to existing irrigation uses. Water from Vallecito Reservoir under this Contract will be leased, not sold.

Comment G3: Project was constructed for agriculture. To allow water to be sold outside the District in order to enhance and enable more suburban sprawl and the loss of more farmland is not in the best interest of the community or country.

Response G3: The 1920 Act provides authority to Reclamation to allow changes in Project water uses to meet existing and future water needs of the area as long as project irrigation purposes are protected. The District has determined that such a need exists in the area. 03CV300 provides the conditions for lease of water outside of the District. Land use planning is the responsibility of county, Tribal, or city governments and should not be directed by the District or Reclamation.

Comment G4: If 1,300 acres of land have been removed from irrigation since the Project began, how have shares increased by almost 10,000? What water and what land are tied to those shares?

Response G4: The 1,300 acres was determined by reviewing irrigated land from the 1960's compared to the early 2000s. Most of this decrease was land that was removed around Bayfield but also includes lands used for roads, homes, gas well pads, and other uses. Some of the shares from the removed land have been retained by the District; however, most of the shares are still with the original tract of land but water is no longer needed for this land and is not called from the reservoir.

The addition of 10,000 shares does not represent newly irrigated land, but rather land that had been historically irrigated with Project water but without shares and therefore no payments had been made to the District for this water. The addition of these shares was the District's attempt to ensure that payments are received for the delivery of all Project water.

Comment G5. How is "pooled water" to be administered so that irrigators are not injured? The EA should present more information on the "voluntary shareholder pool", for example how will it be determined what acreage a shareholder may still irrigate if a shareholder gives up just a portion of their water, what will be done with the irrigator's adjudicated water from dried up acreage, and will voluntary pool participants continue to pay O&M on a ditch even though the shareholder's water is no longer carried in the ditch? Since domestic water must be guaranteed year round, how is storage for irrigation protected from depletion? Even if historically storage has never dropped below 10,071 af, isn't that water primarily tribal and therefore not available?

Response G5: The administration of "pooled water" is not a subject of this EA because this use would be addressed in a future NEPA/1920 Act compliance document if it occurs; however, the administration would be planned to protect irrigators and factors mentioned in the comment will be considered as part of the 1920 Act compliance.

The hydrology/operations analysis in the EA has been revised to distinguish between the District's 5/6 portion of Project water and the Southern Ute Indian Tribe's 1/6 portion of Project water. In general, sufficient water would be held in storage to provide the amount of Leased Water under the Contract required each year, in excess of Tribal allocation. At the end of each water year (October 31), the water remaining in Vallecito Reservoir is reallocated between the District and the Tribe. Neither entity can "carry over" water from one water year to the next.

Comment G6. Isn't it a conflict to have Steve Harris (author of 1920 compliance report) involved since he also represents the proposed La Plata Water District?

Response G6: No. The LaPlata-Archuleta Water District (LAPLAWD) has not been formed and there are no contracts or other agreements between the District and representatives of the proposed water district. Reclamation reviewed the 1920 Act compliance report and concurs with the findings. In addition, Reclamation performed additional hydrologic analyses as part of the NEPA compliance and determined that the conclusions in the 1920 Act Report were valid.

Comment G7. The Pine River Project was constructed for agriculture and that should remain the purpose. Decree of Adjudication (1248-B) clearly states in Article 8 that “Water shall not, in any case, be diverted or held for mere purposes of speculation and in every case the right to flow and use of water, under the several priorities hereby found and adjudged, shall be limited in time as well as volume or quantity, to the reasonable and actual needs of the land, or other beneficial uses.”

Response G7: The District’s water right decree allows for uses other than irrigation. The agricultural purpose will be protected under the Proposed Alternative. The use of Pine River Project water for purposes other than agriculture is not speculative and will be beneficially used.

Comment G8. Under the “voluntary pool” concept, although the same amount of water is being withdrawn as was available to individual ditches, the carriage capacity of the ditch could be impacted by removal of the water historically run in the ditch. If shares “pooled” are excess shares held by someone who has more than enough water, then no “dry up” of fields would really occur. The “pool” concept assumes that donations provide real water; this may not be true and will be difficult to monitor. What are the details in protecting irrigators under the “pool” concept?

Response G8: Reclamation is unaware of individual shareholders with “excess shares.” Administration of a “pool” concept is not a subject of this EA or Contract. Details, if a “pool” concept is implemented, will be addressed when necessary and protection of irrigation will be a priority.

Comment G9: Return flows may be reduced and returns are sometimes used to supply Project users. A diversion which results in removal of water from the critical reach area is 100 percent depletive; return flows described would occur downstream and not be available to senior water rights.

Response G9: Based on the present evaluation, return flows within the water critical reach of the Pine River will not be reduced by the use of the initial 3,000 af. Presently most return flows from Pine River Project water deliveries are not within the water critical reach of the Pine River. Return flow from any uses, which are not for exchange, are not expected to be different than the historical return flow pattern.

Comment G10: Problems with ground water may be overstated and ground water may actually be an alternative source of water in the Pine River in most cases.

Response G10: Ground water will continue to be an adequate source of domestic water in some areas; however, this use will need to be replaced in order to protect other water right holders. The Proposed Alternative is designed to do this.

Comment G11: While the conversion of water under the storage pool may be the best concept, it appears that there are other water sources.

Response G11: The EA points out potential sources such as new storage reservoirs. Reclamation believes that the Pine River Project water is the only practicable source of water to meet the anticipated future demands for M&I water.

Comment G12: M&I water should be rationed during droughts and shortages. Also the required amount of water released from Navajo Dam should be reduced during droughts. Lowered inflow to Navajo Reservoir will impact Navajo levels and uses.

Response G12: The operational and hydrology analysis in the EA shows that M&I users would receive a full supply, without impacting the irrigation supply, even in times of drought. Inflows to Navajo Reservoir are not anticipated to be impacted under the Contract.

Comment G13: A conversion under the 1920 Act requires not only non-injury to Project irrigation uses, but also non-injury to other adjudicated water rights. Changes in return flow patterns, especially in dry years, could injure water rights.

Response G13: The 1920 Act does protect both Project water and other adjudicated water rights. The Pine River Project will continue to operate under State of Colorado water law and regulations which protect water right holders. Also, if water beyond the original 3,000 af is used for other uses, additional 1920 Act compliance and review will be conducted to determine if water rights and irrigation are affected.

H. NEPA compliance

Comment H1: Not all comments provided during scoping were addressed. Provide a listing of items that were deemed outside the scope of this action (i.e., growth, distribution of water, use of revenues, etc).

Response H1: The EA addresses the use of up to 3,000 af of Project water for miscellaneous purposes, but the distribution of this water within the District service area is not know at this time. The EA discusses growth trends in the area and recognizes increased residential use in a historically agricultural area. This growth is regulated by local governments and the Southern Ute Indian Tribe and Bureau of Indian Affairs and is not considered an impact of the subject Contract. Revenues generated for the Pine River Project could be used for future maintenance and repair activities at Vallecito Dam.

Comment H2: Why does the EA address only 3,000 af, instead of the Contract amount of 6,700 af?

Response H2: Use of only 3,000 af will be approved under this EA and the Contract. The use of the 3,000 af can be reasonably foreseen in the coming decades and environmental changes resulting from this use (primarily as they relate to the basin hydrology) can be reasonably predicted. In the future additional water may be made available for miscellaneous uses; however, there is insufficient information to evaluate the impacts of this use to the basin hydrology at this time. Reclamation believes it is a better approach to consider the additional 3,700 af only when additional information is available.

Comment H3: The referral to the additional 3,700 af of water shows that there are plans to enlarge the amount converted. The full extent should be carefully reviewed to see if continual enlargement of the dedicated Contract pool will have limitations.

Response H3: As indicated in response H2, use of additional water for miscellaneous purposes would be subject to future analysis to assure protection of Project purposes and to evaluate and present environmental impacts.

Comment H4: EA indicates that proceeds of the Contract will go toward the Project, but there is no discussion of how the funds would be used and what the reasonably foreseeable impacts of this use are. Would the Southern Ute Indian Tribe's O&M assessments be affected or reduced from the expenditures?

Response H4: There are no specific proposals at this time; but, in general the funds would be used for Safety of Dam work at Vallecito Dam facilities. Any major projects would be subject to evaluation under NEPA. Use of the funds for safety of dam work would benefit all Vallecito water users but would not necessarily reduce present or future O&M assessments.

Comment H5: The EA fails to address the direct, indirect, secondary and cumulative effects of the proposed Contract. Issues such as diversions, treatment facilities, wastewater facilities, urban growth, and land use changes need to be addressed.

Response H5: When and if, water under this Contract is used for a rural water system, the diversions, treatment facilities, distribution pipelines and other facilities must include NEPA compliance before construction can occur based on the actual locations of the facilities. Also, water used under this Contract by a rural water system would have to have 1920 Act compliance. The EA does discuss trends in growth and land use although control or directing these trends is the responsibility of local governments.

Comment H6: Analysis in EA relies upon guesswork and assumption, outdated studies, and upon unsupported guesses about future land use trends and water demand.

Response H6: The operational and hydrology analysis, which forms the basis for the impact analysis in the EA, was developed using historical Vallecito Reservoir operations records and documented ditch diversion data that date back to as early as 1941. Reclamation believes that this information is adequate to evaluate effects of the Proposed Alternative. Residential growth is projected to continue in the Project area. The degree of this growth is dependent on many factors and cannot be precisely predicted. The Contract provides for the gradual use of water over a long period of time, not all occurring immediately. As stated elsewhere, this Contract allows for use of water for miscellaneous uses if the demand for the water occurs, but if the demand does not occur the water will continue to be used as it has historically been.

Comment H7: The EA indicates that future conversion proposals will be subject to NEPA. This will result in piecemealing and an environmental analysis of the whole project will not be conducted. Incremental approach to impact analysis will place unreasonable burden on small ditch companies to monitor all proposals and attempt to analyze incremental changes in water use and delivery.

Response H7: Any additional future use of Project water for M&I purposes not addressed by the EA including any Minor Uses water totaling greater than the 2,000 af as described in the proposed Contract and any Third-Party Contracts for greater than the initial 1,000 af as described in the proposed Contract, will require additional NEPA

compliance, including an analysis of cumulative impacts and an analysis of agricultural effects. Increases above those amounts may not occur for many years or decades and it is not possible to provide the environmental compliance for all future uses at this time. For instance, a rural water system will require additional NEPA compliance whether or not it is included in the present EA. The contract does not increase the burden on small or large ditch companies to monitor water use and delivery.

Comment H8: An EIS should be prepared to address the direct, indirect, secondary and cumulative impacts of the Proposed Alternative. Beneficiaries such as the Voluntary Shareholder Pool should fund.

Response H8: If an action is determined to be a major federal action resulting in significant environmental impacts, an EIS is required. Reclamation does not believe this to be the case for execution of the proposed Contract. As stated in the Contract, the District or Third-Party contractor are responsible for all expenditures related to NEPA compliance.

Comment H9: An adequate range of alternatives should be identified and analyzed.

Response H9: The purpose and need for the Project was stated as “A plan and legal agreement are needed to provide the framework to make a limited amount of Pine River Project irrigation water available for other miscellaneous non-irrigation uses in order to address existing and future ... needs”. In addition to the No Action Alternative, contracting for alternative amounts of water to be made available for miscellaneous uses was considered.

Comment H10: Lack of baseline analysis on many resources in EA. No information gathered to determine potential impacts of the reduction of winter releases and ditch flows on many resources.

Response H10: Reclamation believes that the existing information used for the EA to describe existing or baseline resources is adequate to evaluate effects of the Proposed Alternative.

Comment H11: Who will determine, and how will it be determined, whether additional environmental analysis is needed for water uses? How will the Southern Ute Indian Tribe be involved?

Response H11: Reclamation will be the lead agency and will coordinate with potentially affected parties, including the Tribe. Environmental analysis will be needed for all new water uses beyond the original 3,000 af addressed in this EA.

I. Cultural resources

Comment I1: Cultural resources could be affected if new diversion facilities and/or improvements to existing diversion facilities are necessary. Consultation with the State Historic Preservation Officer would be necessary in these cases.

Response I1: This is correct. The EA states that cultural resource compliance would occur once a proposed diversion facility/improvement was identified. By definition, this includes consultation with the State Historic Preservation Officer.

Comment I2: The Southern Ute Tribe has sites of special cultural significance along the Pine River, including the Bear Dance and Sun Dance areas which need to be addressed.

Response I2: Agreed. Once a proposed diversion facility/diversion is identified, Reclamation or other lead agency will consult with the Southern Ute Tribe to ensure that sites of cultural significance are identified and protected.

J. Fisheries

Comment J1: From Tables 3 and 4 in the EA, it appears that certain changes would be significant, particularly during the winter months. Need to analyze impacts of winter time flow reductions because low winter flows can cause habitat loss, anchor ice, and direct fish mortality. It is not clear how winter operations and “restoring storage” would be handled and winter operations can have significant fishery impacts.

Response J1: The Colorado Division of Wildlife has collected instream flow data downstream from Vallecito Dam and recommends summer flows of 136 cfs and winter flows of 75 cfs to preserve the natural environment to a reasonable degree. As can be seen in Table 3 in the EA present mean winter flows, and certainly present minimum winter flows fall below these recommendations and would continue to do so under the Contract. Under these conditions the fishery is not optimized and problems mentioned such as habitat loss, anchor ice, and mortality can occur. The point in the EA is that this condition will not significantly change under the Proposed Alternative. The hydrology and operations analysis in Section 4.2 does show that historic minimum releases (pre-2003) would not have to be reduced to allow for water released under the Contract to be restored.

Comment J2: A more rigorous analysis of fishery impacts is needed; for example, would a 13 percent decrease in November mean releases impact brown trout spawning.

Response J2: Significant drops in flows after brown trout spawn in the time period around October can cause loss of brown trout redds. Table 3 shows that this situation has occurred under existing conditions and would be expected to continue under Contract conditions. Changes would be greatest in November; however, December-February flows are normally the limiting factor in the Pine River for brown trout egg survival in the Pine River and would continue to be so.

Comment J3: Concerned that the Proposed Alternative does not replace existing and future depletions to the Pine River in the amount, location and timing in which they will occur. It appears that the proposed method for “restoring” the changed water could double the impact to the Pine River in the fall and winter seasons. Year-round releases of the converted water are needed.

Response J3: There are two types of releases to provide Leased water. (1) Exchange water is released to replace water depleted from off stream uses. Some of the uses are year round such as domestic wells and some are summer uses such as ponds and lawn/gardens. The Colorado Division of Water Resources administers and is solely responsible for determining when to release the exchange water during the call period. Exchange water replaces the diversion amount of the off-stream use, not the depletion

which is normally much less. For instance, if a well pumps 1 acre-foot for domestic use in a year, 1 acre-foot is released from Vallecito Reservoir but only about 0.15 af of the well water is actually depleted and 0.85 af returns to the stream on a year round basis through ground water. The domestic uses are primarily from wells which have a year round impact on the river; other uses are primarily during irrigation months. Many of the wells are upstream of Vallecito Reservoir so there is no impact to the flows below Vallecito Reservoir. There is not a double impact to the Pine River. The exchange water increases the river flow during the call period and has a minor, if any, impact during the winter. (2) The second type of release is water for a direct diversion during the call period. For example, releases may be made for the Town of Bayfield which would divert the amount released (possibly with conveyance losses). The return flow from Bayfield will generally occur after the call period, thus increasing river flows.

K. Land use

Comment K1: EA indicates land use trends will continue toward smaller agricultural tracts and increased residential use. This is an unfounded and irresponsible assumption which is based on recent conversions. Basic research is needed to determine how much land has been converted from agriculture and how much is planned for conversion.

Response K1: As stated above, this Contract allows for a limited amount of Project water to be made available for other uses, it does not require, regulate, or approve the use. Therefore, if the existing trends toward smaller tracts needing M&I water does not materialize as anticipated, then the use will not occur. The Contract does not attempt to predict the future but rather allows the District flexibility to meet future water needs which might occur.

L. Indian Trust Assets

Comment L1: The Southern Ute Indian Tribe expressed concerns with the ITA analysis in the EA. There is a need for clear distinction between the Pine River Irrigation District and the Pine River Indian Irrigation Project water rights, Project area, and irrigated land. Need to be clear which water is converted. Question is not whether ITAs are significantly affected but whether they are affected at all. The Southern Ute Tribe cannot but conclude that the Proposed Alternative will most probably affect ITAs. The Tribe is concerned that in some years their water supply may be adversely affected; however, the Tribe suggests that negative impacts may be avoided by new, improved reservoir accounting methods agreed upon by the District and the Tribe. Serving water upstream from Vallecito may impact the filling of the Tribe's portion of Vallecito without an improved reservoir accounting method. To seek to determine the answer to this issue conclusively, Reclamation must consult with the BIA, together with the Tribe, and revise the draft EA with appropriate hydrologic analysis. The Tribe must be granted a reasonable period to review this revised EA.

Response L1: The Tribe's water in the Pine River Project will not be reduced in any amount due to this Contract. Clarification has been added to the EA to identify water to be made available for miscellaneous uses as "District water" and an explanation how the District accounts for the Tribe's 1/6 portion of Project water is included. The hydrology

and operations analysis has been revised to show that the Tribe's water is not included in the water that would be used for miscellaneous uses and would not be used to restore water released for miscellaneous uses (See Appendix F).

While Reclamation has concluded that the Contract would not impact the Southern Ute Indian Tribe's water, it is noted here that the Tribe does not fully concur with this conclusion. The Tribe does believe however that any negative impact may be avoided through new, improved reservoir accounting methods agreed upon by the District and the Tribe. The District and the Tribe have initiated discussions regarding the accounting system. Given the scope and nature of the action as presented in the EA, Reclamation has determined that there would be no impact to Tribal water resources or other ITA's.

To date, the amount of upstream water use has been insignificant; however, the District is agreeable to improving the reservoir accounting procedures to avoid any impact that may occur to the Tribe as a result of providing miscellaneous uses upstream of the reservoir.

Comment L2: EA inaccurately states that Project water rights are in the name of the Pine River District; this ignores the decree in Case No. W-1603-76B which establishes the Tribe's reserved water rights in the Pine River, including rights in Vallecito Reservoir.

Response L2: EA has been revised to identify the Tribe's reserved water rights.

Comment L3: EA fails to define the nature and parameters of Reclamation's trust obligation regarding ITAs. The Bureau of Indian Affairs should be included in consultation on this Project.

Response L3: The United States has a trust responsibility to protect and maintain rights reserved by or granted to Indian Tribes by treaties, statutes, and executive orders. This trust responsibility requires that Federal agencies take actions reasonably necessary to protect ITAs. Reclamation believes this trust responsibility would not be impacted by implementing the Proposed Alternative. Reclamation consulted with the Tribe and the Bureau of Indian Affairs prior to finalizing the EA.

Comment L4: Because the potential establishment of a LaPlata-Archuleta Water District is an indirect consequence of the proposed action, the proposed action could, and probably would affect ITAs. For example, the proposed and possible inclusion of Tribal lands and mineral interests within the boundaries of the District could affect the duration and profitability of Tribal mineral leasehold development through potential District taxation of the production of mineral lessees from tribal trust minerals.

Response L4: While the draft Contract states that up to 6,700 af of District water could be made available for miscellaneous uses, the Proposed Alternative being analyzed in this EA is making available the initial 3,000 af of District water for use within the Project Service Area. The creation of LAPLAWD or any rural water system is not an indirect action of this Contract because this Contract is not a condition to formation of a rural water system. A rural water system, such as LAPLAWD, will be formed or not formed, independent of whether this Contract is completed. How a rural water system will impact Tribal trust minerals is not clear and there does not appear to be any connection. Even if

Tribal trust assets are within a Title 32 Special District in the State of Colorado, as contemplated for LAPLAWD, those assets are excluded by law from being part of such a district – surrounded but not a part of the district. There is no mechanism under Colorado law for a special district to tax or financially impact those ITA's in any manner.

Comment L5: EA suggestions that mineral development is a contributor to poor groundwater quality could inhibit the profitability of Tribal minerals; no documentation supporting the allegations are included.

Response L5: The water quality discussion has been revised.

Comment L6: Southern Ute expenditures of tens of thousands of dollars for river restoration cannot be ignored nor can extensive tribal recreation activities.

Response L6: Given the insignificant effects the Proposed Alternative would have on the reservoir content and streamflows downstream of Vallecito Reservoir, Reclamation believes that there would be no impact to the Tribe's river restoration efforts or the Tribe's recreational activities.

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