

**Volume III – Comments and Responses for the
Planning Report and
Final Environmental Impact Statement**

Navajo-Gallup Water Supply Project

New Mexico – Arizona



Navajo Nation



City of Gallup



Jicarilla Apache Nation



**U.S. Department of the Interior
Bureau of Reclamation**

July 2009

Mission Statements

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian tribes and our commitments to island communities.

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.

**Volume III – Comments and Responses for the
Planning Report and
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New Mexico – Arizona



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City of Gallup



Jicarilla Apache Nation



**U.S. Department of the Interior
Bureau of Reclamation**

July 2009



COMMENTS AND RESPONSES

Introduction

Organization of Comments and Responses and How They Were Addressed

Federal Government Agencies (FG)

Tribal Governments (TG)

State and Local Government Agencies (SLG)

Power and Water Interests (PWI)

Other Organizations (OO)

Individuals (IND)

Public Hearings (PH)

INTRODUCTION

The purpose of this “Comments and Responses” volume is to describe how the comments received on the Navajo-Gallup Water Supply Project (proposed project) planning report and draft environmental impact statement (PR/DEIS) were considered and addressed in this planning report and final environmental impact statement (PR/FEIS). Public and agency comment letters, e-mails, and public hearing transcripts are included in this volume along with the Bureau of Reclamation’s (Reclamation) responses. Changes made to the PR/FEIS resulting from public comments ranged from minor editorial changes to updating information and analyses by incorporating data from the *Cost and Economic Update to 2007 Prices of the Planning Report and Draft Environmental Impact Statement, Navajo-Gallup Water Supply Project, New Mexico–Arizona* (Reclamation, 2007).

On March 30, 2007, the PR/DEIS for the proposed project was filed with the Environmental Protection Agency (EPA) and a Notice of Availability was published in the *Federal Register*. Public hearings were held in May and June 2007. News releases announcing availability of the document and dates, times, and locations of public hearings were released on March 30, 2007.

The official 90-day public comment period ran from March 30 to June 28, 2007. Approximately 400 copies of the PR/DEIS were distributed to Federal agencies, State and local government agencies, environmental groups, utilities, individuals, and other interested parties on the distribution list.

During the comment period, five public hearings were held to provide an opportunity for public testimony about the PR/DEIS:

Date	Location	Number of attendees
May 22, 2007	Gallup, New Mexico	54
May 23, 2007	Crownpoint, New Mexico	39
May 24, 2007	St. Michaels, Arizona	29
June 5, 2007	Shiprock, New Mexico	43
June 6, 2007	Farmington, New Mexico	84

About 280 comments identified from letters and public hearings were addressed for inclusion in this PR/FEIS. Of the nearly 280 comments identified, 98 were from Tribes and Tribal nations (73 of those were Navajo Nation), 90 were State and local governments, 36 were power and water interests, 10 were other organizations, and 45 were from individuals. Nearly 30 percent of all comments were from public hearings.

ORGANIZATION OF COMMENTS AND RESPONSES AND HOW THEY WERE ADDRESSED

The National Environmental Policy Act (NEPA) requires that the agency preparing an environmental impact statement (EIS) consider and respond to all substantive comments on the DEIS. Some types of comments received do not require an agency response, as directed by NEPA regulations, and include those:

- Expressing a position or a preference regarding one or more of the alternatives
- Asking the proponent to make modifications to its proposal
- Not relevant to the EIS scope

There were a number of identical or similar comments, and if the substance of a comment already received a response, the reader is referred to a previous response. The following summary tables provide a list of who commented on the PR/DEIS, the alphanumeric designation of the comment document, the page number where the comment document and corresponding response appear, and the comments themselves. The actual written comments and public hearing testimony follow the summary tables.

Table 1—List of comment documents and page numbers of comments and responses

Commenter	Comment number designation	Page No.	
		Comment starts on	Response
Federal Government Agencies (FG)			
International Boundary and Water Commission – United States and Mexico – El Paso, Texas	FG-01	9	487
National Park Service – Intermountain Regional Office – Denver, Colorado	FG-02	11	487
United States Environmental Protection Agency – Dallas, Texas	FG-03	13	487
Tribal Governments (TG)			
The Hopi Tribe – Kykotsmovi, Arizona	TG-01-01	15	487
Navajo Nation Department of Diné Education – Window Rock, Arizona	TG-02-01	17	487
The Navajo Nation Department of Water Resources – Fort Defiance, Arizona	TG-03-01 to TG-03-18	19	487
Southern Ute Indian Tribe – Ignacio, Colorado	TG-04-01 to TG-04-16	25	489
Navajo Nation Environmental Protection Agency – Shiprock, New Mexico	TG-05-01	35	491
Jicarilla Apache Nation – Dulce, New Mexico	TG-06-01 to TG-06-08	37	491
Red Valley Chapter – Red Valley, Arizona	TG-07-01	51	493
State and Local Government Agencies (SLG)			
City of Gallup Water Board – Gallup, New Mexico	SLG-01	63	493
City of Gallup – Gallup, New Mexico	SLG-02-01 to SLG-02-02	65	493
New Mexico Interstate Stream Commission – Santa Fe, New Mexico	SLG-03-01 to SLG-03-09	69	493
Colorado Water Conservation Board – Denver, Colorado	SLG-04-01 to SLG-04-29	77	494
State of New Mexico Commissioner of Public Lands – Santa Fe, New Mexico	SLG-05-01	85	495

Table 1—List of comment documents and page numbers of comments and responses

Commenter	Comment number designation	Page No.	
		Comment starts on	Response
State and Local Government Agencies (SLG) (continued)			
The Southwestern Water Conservation District – Durango, Colorado	SLG-06-01 to SLG-06-35	87	495
San Juan Water Commission – Farmington, New Mexico	SLG-07-01 to SLG-07-08	93	497
Power and Water Interests (PWI)			
Colorado River Energy Distributors Association	PWI-01-01 to PWI-01-14	97	497
Irrigation & Electrical Districts Association of Arizona – Phoenix, Arizona	PWI-02-01 to PWI-02-10	101	498
Water Development Steering Committee, SJRBRIP	PWI-03-01 to PWI-03-09	107	499
BHP Navajo Coal Company, Arizona Public Service Company, and Public Service Company of New Mexico	PWI-04-01 to PWI-04-04	131	499
Other Organizations (OO)			
Citizens Progressive Alliance – Farmington, New Mexico	OO-01-01 to OO-01-10	135	500
Individuals (IND)			
Dale Boser Jr. –, Gallup, New Mexico	IND-01	159	500
J. Tonny Bowman – Yahtahey, New Mexico	IND-02-01 to IND-02-03	161	500
Taylor McKinnon – Bluff, Utah	IND-03-01 to IND-03-05	177	500
Rebecca G. Perry-Piper – Ponderosa, New Mexico	IND-04-01	181	501
Kathleen Parker–, Rio Rancho, New Mexico	IND-05-01 to IND-05-10	187	501

Table 1—List of comment documents and page numbers of comments and responses

Commenter	Comment number designation	Page No.	
		Comment starts on	Response
Public Hearing 1 (PH)			
Vice President Ben Shelly, Navajo Nation– Window Rock, Arizona	PH-01-01	201	501
Frank Mraz, Gamerco & Associates – Gallup, New Mexico	PH-01-02	204	501
Ron Berg, Berg Chiropractic, Gallup – New Mexico	PH-01-03	206	501
Paul Spruhan – Gallup, New Mexico	PH-01-04	208	501
Mike Daly – Gallup, New Mexico	PH-01-05-01 to PH-01-05-02	211	501
Gloria Skeet de Cruz, Bread Springs Chapter – Vanderwagon, New Mexico	PH-01-06	215	501
Julius Elwood – Crownpoint, New Mexico	PH-01-07-01 to PH-01-07-03	218	501
Larry Winn, Gallup Water Board – Gallup, New Mexico	PH-01-08-01	224	501
Tanya Trujillo, State of New Mexico – Santa Fe, New Mexico	PH-01-09	229	501
Lance Allgood, City of Gallup – Gallup, New Mexico	PH-01-10	230	501
Ray Gilmore, Navajo Nation Water Rights – Window Rock, Arizona	PH-01-11	231	501
Public Hearing 2 (PH)			
Andrew Robertson – Albuquerque, New Mexico	PH-02-01-01	243	502
Chee Smith, Jr., Whitehorse Lake – Crownpoint, New Mexico	PH-02-02-01	247	502
Rege Leach	PH-02-03	249	502
Tom Becenti, Becenti Chapter – Crownpoint, New Mexico	PH-02-04	250	502
Dorothy Becenti, Becenti Chapter – Crownpoint, New Mexico	PH-02-05	253	502
Leonard Tsosie, WHL/Torreon Chapter – Window Rock, Arizona	PH-02-06-01	254	502
Frank Willetto, Pintado Chapter – Crownpoint, New Mexico	PH-02-07	260	502
Roger Toledo, Ojo Encino Chapter – Cuba, New Mexico	PH-02-08-01	264	502
Jerry Silago, NTUA – Crownpoint, New Mexico	PH-02-09-01	267	502

Table 1—List of comment documents and page numbers of comments and responses

Commenter	Comment number designation	Page No.	
		Comment starts on	Response
Public Hearing 2 (PH) (continued)			
Mitchell Capitan – Crownpoint, New Mexico	PH-02-10-01 to PH-02-10-03	271	502
Leo Martin	PH-02-11-01 to PH-02-11-03	275	502
Bobby Willie – Smith Lake, New Mexico	PH-02-12-01	280	502
Jackson Gibson, Thoreau/Smith Lake Chapter – Thoreau, New Mexico	PH-02-13-01	283	502
Public Hearing 3 (PH)			
Kee Ike Yazzie – Window Rock, Arizona	PH-03-01-01	297	502
Ray Berchman, Navajo Nation – Window Rock, Arizona	PH-03-02	298	503
Stanley Pollack, Navajo Nation Department of Justice – Window Rock, Arizona	PH-03-03	302	503
Brenna Clani, Navajo Nation – Window Rock, Arizona	PH-03-04	304	503
Raymond Maxx, Navajo Nation – Tuba City, Arizona	PH-03-05	306	503
Alfred Barney, Sawmill/Red Lake – Navajo, New Mexico	PH-03-06-01	310	503
Lena Fowler, Navajo Nation Water Rights – Tuba City, Arizona	PH-03-07	312	503
Perry Wilson, Crystal Chapter – Navajo, New Mexico	PH-03-08	316	503
Jeff Kiely, Northwest New Mexico Council of Governments – Gallup, New Mexico	PH-03-09	319	503
Ray Gillmore, Navajo Nation Water Rights – Window Rock, Arizona	PH-03-10	325	503
Katie Gilbert, Navajo Nation Water Rights – Window Rock, Arizona	PH-03-11	331	503
Kenneth Begay, NTUA – Fort Defiance, Arizona	PH-03-12	339	503
Teresa Showe, Navajo Nation – Fort Defiance, Arizona	PH-03-13-01	345	503
Alfred Barney, Sawmill/Red Lake – Navajo, New Mexico	PH-03-14-01	348	503
Michael Benson, Navajo Nation – Fort Defiance, Arizona	PH-03-15	350	503
Effie Ashley, St. Michaels Chapter – St. Michaels, Arizona	PH-03-16	353	503
Kee Ike Yazzie – Window Rock, Arizona	PH-03-17	358	503

Table 1—List of comment documents and page numbers of comments and responses

Commenter	Comment number designation	Page No.	
		Comment starts on	Response
Public Hearing 4 (PH)			
J.C. Begay, Red Valley Chapter – Red Valley, Arizona	PH-04-01-01	373	503
Charley P. Joe, Shiprock Chapter – Shiprock, New Mexico	PH-04-02	375	503
Tonny Bowman – Yahtahey, New Mexico	PH-04-03-01	376	503
Wilson Ray, Huefano Chapter – Bloomfield, New Mexico	PH-04-04	380	503
John Casuse, Standing Rock Chapter – Shiprock, New Mexico	PH-04-05-01	382	503
Stanley Hardy, Toadlena/Two Gray Hills Chapter – Newcomb, New Mexico	PH-04-06-01 to PH-04-06-03	384	503
Lorenzo Bates, Upper Fruitland Chapter – Kirtland, New Mexico	PH-04-07	386	503
J.C. Begay, Red Valley Chapter – Red Valley, Arizona	PH-04-08	389	503
Mel R. Begay, Navajo Nation Coyote Canyon – Brimhall, New Mexico	PH-04-09	390	504
Lena Fowler, Navajo Nation Water Resources – Tuba City, Arizona	PH-04-10	394	504
Tonny Bowman – Yahtahey, New Mexico	PH-04-11-01	397	504
Chili Yazzie, Shiprock Chapter President – Shiprock, New Mexico	PH-04-12-01	399	504
Fannie Atcitty, Shiprock Chapter – Gallup, New Mexico	PH-04-13-01 to PH-04-13-02	403	504
Donald Benally, Shiprock Chapter – Shiprock, New Mexico	PH-04-14-01	407	504
J.C. Begay, Red Valley Chapter – Red Valley, Arizona	PH-04-15-01	411	504
Public Hearing 5 (PH)			
Dr. Joe Shirley, Jr., Navajo Nation President – Window Rock, Arizona	PH-05-01-01	422	504
Jay Burnham, City of Farmington – Farmington, New Mexico	PH-05-02	427	504
Chee Smith, Jr., Whitehorse Lake –Crownpoint, New Mexico	PH-05-03-01	428	504
George Whitehorse, Sr., Whitehorse Lake – Crownpoint, New Mexico	PH-05-04	430	504
Martha Charlie, WHL – Milan, New Mexico	PH-05-05	432	504
Sam Sage, Counselor Chapter – Counselor, New Mexico	PH-05-06	433	504

Table 1—List of comment documents and page numbers of comments and responses

Commenter	Comment number designation	Page No.	
		Comment starts on	Response
Public Hearing 5 (PH) (continued)			
Arvin Trujillo, Navajo Nation – Window Rock, Arizona	PH-05-07	435	504
Frank Willetto, Pueblo Pintado Chapter – Crownpoint, New Mexico	PH-05-08	438	504
Ray Gilmore, NNWRC – Window Rock, Arizona	PH-05-09-01	440	504
Jackson Gibson – Thoreau, New Mexico	PH-05-10	442	504
Rachel Billy, Smith Lake Chapter – Smith Lake, New Mexico	PH-05-11	445	504
Laverna Ahkeah, Cudei Chapter – Shiprock, New Mexico	PH-05-12-01	446	504
Isabel Betoni, Sandspring/Whitehorse Lake – Crownpoint, New Mexico	PH-05-13	449	504
Tony Padilla, Lake Valley Chapter – Kirtland, New Mexico	PH-05-14	450	504
Lorenzo Bates, Upper Fruitland Chapter – Kirtland, New Mexico	PH-05-15	453	504
Leonard Tsosie, NNC – Crownpoint, New Mexico	PH-05-16-01	455	505
Andrew Robertson – Albuquerque, New Mexico	PH-05-17-01	460	505
Dale Buser – Gallup, New Mexico	PH-05-18	463	505
Jay McCollum, First Baptist Church – Gallup, New Mexico	PH-05-19	464	505
J.C. Begay, Red Valley Chapter – Red Valley, Arizona	PH-05-20-01	465	505
Wilson Ray, Huerfano Chapter – Bloomfield, New Mexico	PH-05-21	466	505
Gilbert Roger, Whiterock Chapter – Crownpoint, New Mexico	PH-05-22	468	505
Dorothy Redhorse – Littlewater, New Mexico	PH-05-23-01 to PH-05-23-02	469	505
Lucy Cayatineto	PH-05-24	472	505
Steve Cone – Farmington, New Mexico	PH-05-25	474	505
Shirlee Manuelito – Lake Valley, New Mexico	PH-05-26	477	505
Sterling Manuelito	PH-05-27	479	505
Tommy McDonald – Crownpoint, New Mexico	PH-05-28	481	505

Comment FG-01



OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

MAY 03 2007

Mr. Rege Leach
Bureau of Reclamation
Western Colorado Area Office
835 East Second Ave., Suite 300
Durango, Colorado, 81301

Dear Mr. Leach:

We are in receipt of the March 30, 2007 letter from the Bureau of Reclamation providing the opportunity to review and comment on the Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project.

The mission of the International Boundary and Water Commission, United States and Mexico (IBWC), is to apply the rights and obligations which the Governments of the United States and Mexico assumed under numerous boundary and water treaties and related agreements. The Treaty of February 3, 1944, (the 1944 Water Treaty) for "Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande" (TS 994; 59 Stat 1219), and agreements concluded hereunder by the United States and Mexico, requires that the United States Section, International Boundary and Water Commission (USIBWC) assure adequate water deliveries from the Colorado River to Mexico.

The USIBWC does not have any comments on the water supply project. Thank you for the opportunity to review and comment. Please keep us on your mailing list for any future projects. If you have any questions, please call Glenn Hansel, Environmental Engineer, at (915) 832-4734.

Sincerely,

A handwritten signature in black ink, reading "Gilbert G. Anaya".

Gilbert G. Anaya
Supervisory Environmental Protection Specialist
Environmental Management Division

The Commons, Building C, Suite 100 • 4171 N. Mesa Street • El Paso, Texas 79902
(915) 832-4100 • (FAX) (915) 832-4190 • <http://www.ibwc.state.gov>

MAY - 8 2007

Comment FG-02

navgal navGAL - No Comment DES

Page 1

From: <Cheryl_Eckhardt@nps.gov>
To: <navgal@uc.usbr.gov>
Date: Thu, Jun 21, 2007 7:55 AM
Subject: No Comment DES

Hi Rege,

NPS has no comment on DES 07/0009, Navajo-Gallup Water Supply Project [Navajo Nation (New Mexico portion), Window Rock, Arizona Area and the City of Gallup, New Mexico].

Cheryl

Cheryl Eckhardt
NEPA/106 Specialist
NPS - Intermountain Regional Office
12795 W. Alameda Pkwy.
Denver, Colorado 80225-0287
Tel: 303.969.2851
Fax: 303.969.2717
Email: cheryl_eckhardt@nps.gov

CC: <Dale_Morlock@nps.gov>, <Ellen_Singleton@nps.gov>, <Roxanne_Runkel@nps.gov>

Comment FG-03



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

June 27, 2007


Mr. Rege Leach
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue
Suite 300
Durango, Colorado 81301

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality Regulations (CEQ) for Implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Environmental Impact Statement (DEIS) for the proposed Navajo-Gallup Water Supply Project, New Mexico.

EPA classified your DEIS and proposed action as "LO," i.e., EPA has "Lack of Objections" to the proposed alternative. Our classification will be published in the Federal Register according to our responsibility under Section 309 of the Clean Air Act, to inform the public of our views on proposed Federal actions.

EPA appreciates the opportunity to review the DEIS. We request that you send our office one (1) copy of the Final EIS at the same time that it is sent to the Office of Federal Activities (2251A), EPA, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20044.

Sincerely yours,


Michael P. Jansky, PE
Regional EIS Coordinator

JUN 29 2007

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 25% Postconsumer)

Comment TG-01



Benjamin H. Nuvamsa
CHAIRMAN

Todd Honyaoma Sr.
VICE-CHAIRMAN

May 3, 2007

Mr. Rege Leach
Bureau of Reclamation, Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Dear Mr. Leach,

This letter is in response to your March 30, 2007 correspondence with an enclosed copy of the Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project. The Hopi Tribe claims cultural affiliation to the prehistoric cultural groups in this project area, known to Hopi people as *Hisatsinom*, People of Long Ago, and therefore we appreciate your continuing solicitation of our input and efforts to address our concerns.

The Hopi Cultural Preservation Office supports the identification and avoidance of prehistoric archaeological sites and Traditional Cultural Properties, and we **have an interest in** and concerns about potential impacts of proposed projects on prehistoric archaeological sites and Traditional Cultural Properties. We understand that significant cultural resource impacts would result from the proposed project, an area rich in cultural resources significant to the Hopi Tribe.

We further understand that an analysis predicts 104 historic properties in the area of potential effects for the SJRPNM preferred alternative, and that approximately 83 of these sites would require treatment, and 183 cultural resource sites are predicted in the NIIP Amarillo Alternative, and approximately 145 of these sites would require treatment. **The total** costs of a cultural resources program for the preferred alternative is estimated at approximately \$11 million, based on January, 2005 dollars.

We neither support nor oppose the SJRPNM preferred alternative and the NIIP Amarillo Alternative. However, if either of these alternatives is implemented, we accept Reclamation's invitation to participate in consultations including an ethnographic overview and Traditional Cultural Properties study of the project area, and the development of the Programmatic Agreement to stipulate procedures for continuing to consider measures to avoid, reduce, or mitigate adverse effects on significant cultural resources during the implementation of the project, including participation in site visits to discuss draft eligibility determinations and preliminary treatment of affected sites.

MAY 11 2007

P. O. Box 123 — KYKOTSMOVI, AZ. — 86039 — (928) 734-3000

Comment TG-01 – continued

Mr. Rege Leach
May 3, 2007
Page 2

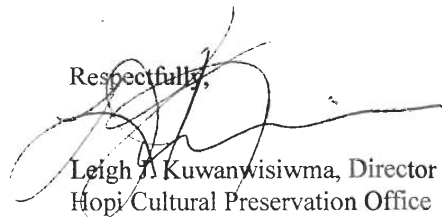
We appreciate that the Bureau of Reclamation will consult with the Hopi Tribe to determine if we consider any cultural resources within the area of potential effect as having religious and cultural significance for their communities. We are assured that the stipulations will ensure that a study of Hopi Traditional Cultural Properties is conducted within the project area, and we accept this stipulation for a Hopi Traditional Cultural Property study funded by the proponents.

In addition, there multiple land jurisdictions are involved in this proposal, and it includes the involvement of Federal, State, and Tribal governments, as well as numerous Tribal governments defined as concurring parties. Therefore, to ensure the respectful disposition and reburial of Ancestral Puebloan human remains and funerary objects that may be disturbed as a result of this project, as close to their original burial locations as possible, we request participation in the development of the Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action.

1

Should you have any questions or need additional information, please contact Terry Morgart at the Hopi Cultural Preservation Office. Thank you again for your consideration.

Respectfully,



Leigh A. Kuwanwisiwma, Director
Hopi Cultural Preservation Office

Comment TG-02

Navajo-Gallup Water Supply Project Planning Report and Draft Environmental Impact Statement Public Hearing

This is one way you can provide comments on the Planning Report and Draft Environmental Impact Statement. They can be 1) sent in the envelope provided, 2) faxed to 970.385.6539, or 3) sent to: Mr. Rege Leach, Bureau of Reclamation, Western Colorado Area Office, 835 East 2nd Avenue, Durango CO 81301

Your Name: Dr. Tommy Lewis
Representing: Department of Diné Education, Navajo Nation
Address: Post Office Box 670, Window Rock, AZ 86515
Phone: (928) 871-7617 or 7475
E-Mail: tlewis101974@yahoo.com

COMMENTS:

JUN - 6 2007

Comment TG-02 – continued



**DEPARTMENT OF DINÉ EDUCATION
THE NAVAJO NATION**

P.O. Box 670 · Window Rock, Arizona 86515
PHONE (928) 871 – 7475 · FAX (928) 871 – 7474



May 23, 2007

Proposed Navajo-Gallup Water Supply Project

The Department of Dine' Education strongly supports the proposed Navajo-Gallup Water Supply Project because it will benefit 165 schools (public schools, BIE funded schools, church schools, etc.) at the present time. These schools are located in the Shiprock, Crownpoint, Gallup, Window Rock, and St. Michaels areas, and the growth rates are as follows:

- Currently, we have 65,789 students in this region in grades K-12 and the number will reach approximately 88,550 over a ten year period at the current growth rate of 3 percent per year.
- Enrollment will reach 174,700 by the year 2040 at the current growth rate of 3 percent per year.
- We anticipate 15 new schools over the next ten year period to accommodate the current growth rate that will bring the total number of schools to 185.
- We anticipate 45 new schools by 2040 to accommodate the current growth rate that will bring the total number of schools to 210.
- These schools are heavily dependent on water supply in order to offering a safe and clean learning environment.
- These schools can not operate without water supply; therefore alternative water resources are very critical and important for the benefit of our children and future generation.

1

Tommy Lewis
5-31-07

BOARD OF EDUCATION

Jimmie C. Begay, President · Rebecca Benally, Vice President · Vee F. Browne, Secretary

Members: Dr. Dolly Manson · Katherine D. Arviso · Marjorie Dodge

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Dr. Tommy Lewis, Superintendent of Schools

Comment TG-03

Fax sent by :

06-28-07 16:27 Pg: 2/6



THE NAVAJO NATION Department of Water Resources

P.O. BOX 678 • FORT DEFIANCCE, AZ 86504 • (928) 729-4004 FAX: 729-4126

JOE SHIRLEY, JR.
PRESIDENT

FRANK DAYISL JR.
VICE PRESIDENT

June 28, 2007

Rege Leach
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Colorado 81301

**SUBJECT: Navajo Nation Department of Water Resources Comments on
the March 2007 Navajo Gallup Water Supply Project
Planning Report and Draft Environmental Impact
Statement.**

Dear Mr. Leach,

We are enclosing the Navajo Nation Department of Water Resources (NNDWR) comments on the March 2007 Navajo Gallup Water Supply Project Planning Report and Draft Environmental Impact Statement. The NNDWR would like to thank Reclamation for providing this opportunity to provide these comments and the Reclamation staff is to be commended for making significant document improvements.

Executive Summary, Introduction, Page S-1

Reclamation's statement that the indication of a Preferred Alternative is solely to meet the requirements of NEPA is an over simplification and that Reclamation takes no position on whether the project should be authorized is irrelevant within an EIS. The Preferred Alternative is based on the screening process described within the text of the EIS in order to meet the Project's stated Purpose and Need; therefore, it would be much more useful for Reclamation to explain more fully what the Preferred Alternative is within the Executive Summary instead of explaining what it is not.

Executive Summary, Introduction, Pages S-1 and S-2

Reclamation indicates that it is attempting to attain greater transparency and accountability with regard to its engineering analysis. This statement raises questions about the accountability and transparency of the current cost estimate. This statement could be construed as a disservice to the

1

JUN 28 2007

1

Comment TG-03 – continued

Fax sent by :

06-28-07 16:27 Pg: 3/6

dedicated and talented Reclamation staff who prepared this work.

Reclamation also notes that the cost estimate is at appraisal level, not feasibility level and that "Additional analysis, detail, and updating of appraisal level cost estimates presented in this draft report are needed before project authorization can be supported." Reclamation notes that the cost of completing the additional work for a feasibility level product is "substantial" but there is no specific explanation. With the serious concerns expressed in these paragraphs, it is incumbent on Reclamation to explain what areas of the current cost estimate needs to be reevaluated, what work and budget would be required to complete the work to a feasibility level.

2

Executive Summary, Preferred Alternative, Page S-6

Reclamation notes that the current cost estimate was peer reviewed by Boyle Engineer but Boyle Engineer did not report any problems with transparency or accountability regarding the cost estimate.

Reclamation states, "This estimate represents what this project could be constructed for at a January 2005 price level. This assumes that no unknown factors were encountered or changes made." Does this mean that this project could be constructed at the total project costs presented and any potential increases would only be due to unknown factors. It would be useful for an explanation of what those unknown variables are and what it would take to address these concerns. Reclamation increased the indirect variable in the 2003 cost estimate and then increased again after the Boyle review. Does this mean that these indirect variables will need to be increased again?

3

Finally, it should be noted that neither Boyle Engineers nor Reclamation went through a Value Engineering process. Considering that the project cost is a major concern, should a Value Engineering be done and if it will be done, it should be performed sooner rather than later before a more refined level of design is reached.

4

Executive Summary, Economic and Financial Analysis, Page S-9

This section compares this project with only two other western water projects but in Part 2 of Appendix D, Reclamation compares this project with 18 other Western United States water projects. This project compares very favorable with those 18 projects and it would be appropriate to present the broader comparison within the Executive Summary.

5

Chapter 1, Introduction, Page I-1

As in the Executive Summary, Reclamation notes that the cost

Comment TG-03 – continued

Fax sent by :

06-28-07 16:27 Pg: 4/6

estimate is at an appraisal level, not at a feasibility level. Reclamation states that "Additional analysis, detail, and updating of appraisal level cost estimates presented in this draft report are needed before project authorization can be supported." Reclamation notes that the cost of completing the additional work for a feasibility level product is "substantial" but only a qualitative description of the work is given with no specific explanation. With the serious concerns expressed in these paragraphs, it is incumbent on Reclamation to explain what areas of the current cost estimate needs to be reevaluated, what work and budget would be required to complete the work to a feasibility level.

6

This paragraph appears to contradict the statement on Page S-6 in that the estimate represents what the project could be constructed for at the January 2005 price level.

Chapter 1, Navajo Indian Irrigation Project, Pages I-11 and I-12

Reclamation notes that NIIP would deplete 270,000 acre-feet per year, and would divert 337,500 acre-feet per year. It should be noted that this level of diversion includes significant conservation measures and alternatives that were incorporated into NIIP's biological assessment and biological opinion. In the final draft, the conservation measures and alternatives, especially those dealing with the 16,420 acre-feet of Hogback Irrigation Project depletions should be noted.

7

Chapter 1, Animas La Plate Project, Page I-14

Reclamation states that ALP construction is appropriately 45 percent complete while it was recently noted that it was 48 percent complete at the end of March 2007. In the final draft, the percent completion should be stated in the context of a specific time frame.

8

Chapter 1, Non-Indian Water Rights, Page I-17

In footnote 7, the statement "firmly believes that" should be replaced with "interprets".

9

Chapter 1, Document Organization, Page I-20 and I-21

There should be a reference to the numerous chapter resolutions supporting the project and the resolutions from the Navajo Nation Resources Committee supporting the Preferred Alternative.

10

Chapter 2, Introduction, II-1 and II-3

Reclamation frequently refers to the "current" year population of 90,000 which is presumably 2007. In this document, the specific year should be noted. This syntax leads to some confusion when on

11

Comment TG-03 – continued

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Page II-3, Reclamation notes that the project services area "includes" more than 77,000 people in New Mexico and Arizona in the present tense, but then states that this value is based on a 1990 statistic.

11

Chapter 2, Water Resources, Table II-2, Page II-4

The source of this information was provided by the NAPI General Manager and this should be added to footnote 9. This water amount should not be included in the groundwater and ALP column.

12

Footnote 5 should cite the Navajo Nation Department of Water Resources, 2001, as the reference for the sustainable ground water production numbers.

Chapter 2, Water Resources, Table II-4, Page II-7 and Page II-10

A footnote should be added to the 7,247 acre-feet of demand for NAPI that the source was provided by the NAPI General Manager.

Chapter 3, Introduction, Page III-1

Reclamation notes that a hydrologic determination is a project constraint but this issue has been addressed.

13

In the last paragraph, the statement "the lack of infrastructure, and the lack of groundwater" should be added after "the groundwater overdraft problem".

14

Chapter 3, Arizona Upper Colorado River Basin Water, Page III-1

The 1,000 acre-foot request by the City of Page will face objections that will need to be addressed by ADWR before a water permit can be issued.

15

Chapter 4, The No Action Alternative, Page IV-4

The poverty on the Navajo Nation is directly linked to the lack of adequate infrastructure, which makes it difficult to develop a sustainable economy. Under the No Action Alternative, it is very likely that these conditions will not improve.

16

Chapter 4, Figures IV-1 through IV-6

These figures portray outdated NTUA public water system coverages. The current NTUA systems are far more extensive than those portrayed in these figures. Due to the Congressional interest in the potable water service connections, it would be very helpful to incorporate more recent NTUA coverages.

17

Chapter V - Indian Trust Assets, Page V-21

Comment TG-03 – continued

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06-28-07 16:27 Pg: 6/6

The Navajo Nation has sizable mineral deposits; specifically coal, which can be utilized for generating energy. These resources should be noted in this section and the development of this energy generating capacity requires significant amounts of water.

18

Again, we appreciate the opportunity to provide these comments and look forward to working with you on finalizing this document leading to a prompt Record of Decision.

Sincerely,



Ray Benally, P.E., R.L.S.
Director
Navajo Nation Department of Water Resources

Comment TG-04

navgal navGAL - Comments re PR/DEIS

Page 1

From: "Daryl Vitale" <dvitale@greenelawyer.com>
To: <navgal@uc.usbr.gov>
Date: Thu, Jun 28, 2007 4:52 PM
Subject: Comments re PR/DEIS

Attached are the Comments of the Southern Ute Indian Tribe on the Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project (Mar. 2007).

Daryl Ann Vitale
Assistant to M. Catherine Condon
Greene, Meyer & McElroy, P.C.
1007 Pearl St., Suite 220
Boulder, Colorado 80302
303-442-2021, ext. 111

CC: "Cathy Condon" <ccondon@greenelawyer.com>

Comment TG-04 – continued



BRUCE R. GREENE
ELIZABETH MEYER
SCOTT B. McELROY
ALICE E. WALKER
M. CATHERINE CONDON

OF COUNSEL
PHOEBE ANNE GREYSON

DANIEL E. STEUER
TUCKER M. KATZ

Via E-mail and U.S. Mail

June 28, 2007

Rege Leach
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, CO 81301

Re: Comments of the Southern Ute Indian Tribe on the Planning Report and Draft
Environmental Impact Statement for the Navajo-Gallup Water Supply Project (Mar. 2007)

Dear Mr. Leach:

On behalf of our client, the Southern Ute Indian Tribe (the "Tribe"), we submit the following comments on the March 2007 Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project ("DEIS"). The Tribe strongly supports the Navajo-Gallup Water Supply Project ("Proposed Project") which is a component of the New Mexico-Navajo Nation Water Rights Settlement Agreement. The Tribe supports the efforts of other Tribes in settling their water rights claims. The Tribe also appreciates the support the Navajo Nation gave to the Tribe with respect to the Colorado Ute Indian Water Rights Settlement.

The Tribe is concerned, however, that the Bureau of Reclamation ("Reclamation") has not adequately analyzed or mitigated the impacts on the Tribe's own water rights. While the Tribe supports the Proposed Project to fulfill the United States' commitment to the Navajo Nation, the Tribe is concerned that Reclamation has not adequately analyzed the impacts to the Tribe's trust assets. In addition to the attached comments provided by Dr. Miller,¹ the Tribe has the following concerns with respect to the DEIS's description of the Proposed Project: (1) Reclamation's description of the environmental baseline; (2) Reclamation's analysis of the effects of the Proposed Project on the Tribe's waters rights; (3) the U.S. Fish & Wildlife Service's ("F&WS") seemingly sole reliance on the flow recommendations, rather than the San Juan River Basin Recovery Implementation Program ("SJRRIP"), in its analysis of the Proposed Project as set forth

¹See Memorandum of William J. Miller, Miller Ecological Consultants, Inc., to Catherine Condon, Greene, Meyer and McElroy (June 21, 2007), which is incorporated herein by reference.

Comment TG-04 – continued



Rege Leach
June 28, 2007
Page 2

in the Draft Biological Opinion ("Draft BO"), DEIS, Appendix C; and (4) the description of the proposed depletion guarantee.

I. THE TRIBE'S WATER RIGHTS IN THE SAN JUAN RIVER BASIN

The Colorado Ute Indian Water Rights Final Settlement Agreement ("Settlement Agreement") was signed on December 10, 1986, and quantified the Colorado Ute Tribes' water rights from several rivers and projects, including the proposed ALP Project. The ALP Project included 29,900 AF per year (26,500 AF per year of M&I water and 3,400 AF per year of agricultural irrigation water) for the Southern Ute Indian Tribe, and 32,300 AF per year (6,000 AF per year of M&I water and 26,300 AF per year of agricultural irrigation water) for the Ute Mountain Ute Tribe. The Settlement Agreement was subsequently amended to eliminate the irrigation component and reduced the proposed water depletions and allocations for the ALP Project facilities required for settlement of the Tribe's rights. *See Colorado Ute Settlement Act Amendments of 2000.*

1

The Settlement Agreement also quantified water rights on rivers in the San Juan and Dolores Basins other than the Animas and La Plata Rivers. With respect to the Southern Ute Indian Tribe, these water rights include the following:

1. On the Pine River, the Tribe retained its reserved water right with an 1868 priority date for 181.7 cfs, as set forth in the 1930 federal decree and 1934 state decree, and was allocated a 1/6th interest in Vallecito Reservoir.
2. On the Florida River, the Tribe was allocated 563 AF per year of Florida Project water (in addition to the 2,000 AF per year previously allocated) and 1,090 AF per year of non-project reserved water rights.
3. On Stollsteimer Creek, the Tribe received a reserved water right with an 1868 priority date for storage of 1,850 AF per year in Pargin Reservoir, a reserved water right with a 1986 priority date for one refill in Pargin Reservoir in the amount of 1,850 acre-feet and two reserved water rights for a total of 5.5 cfs from Stollsteimer Creek.
4. On the Piedra River, the Tribe received a reserved water right with an 1868 priority date for direct flow diversions of 1,595 AF per year.
5. On Devil Creek, the Tribe received a reserved water right with an 1868 priority date subordinated to all rights with an adjudication date prior to 1976 for direct flow diversions of 183 AF per year.
6. On the San Juan River, the Tribe received a reserved water right with an 1868 priority date for direct flow diversion of 1,530 AF per year.

Comment TG-04 – continued



Rege Leach
June 28, 2007
Page 3

7. On Round Meadow Creek, the Tribe received a reserved water right with an 1868 priority date for direct flow diversions of 975 AF per year.
8. On Cat Creek, the Tribe received a reserved water right with an 1868 priority date for direct flow diversions of 1,372 AF per year.

See Final Supplemental Environmental Impact Statement - Animas-La Plata Project, Table 1-1 (July 2000).

The District Court, Water Division 7, State of Colorado, issued various consent decrees adjudicating these rights. Some of the Tribe's settlement water rights are currently being put to use, while some are not. In every instance, however, water rights with types of uses, diversion points and places of use are identified in the relevant decrees.

II. ALL OF THE TRIBE'S SETTLEMENT WATER RIGHTS SHOULD BE IN THE ENVIRONMENTAL BASELINE FOR THE SAN JUAN RIVER BASIN

Table V-3 reflects the best available estimates of the existing and future projects that have valid water rights and environmental clearances and are included as depletions in the existing environmental baseline. DEIS at V-11 - V-12. The Tribe's ALP water rights are clearly in the baseline, together with all of its settlement water rights that are currently put to use. What is not clear from the information provided in the table is whether the Tribe's unused settlement water rights are in the baseline. Further confusion is provided by the statement that the "Colorado Ute Tribes have approximately up to 36,104 acre feet of future use direct diversion and groundwater that *may* not be included in the existing ESA baseline." DEIS at V-29 (emphasis added).

The Colorado Water Conservation Board contends that all of the Tribe's settlement water rights are in the environmental baseline. See letter from Colorado Water Conservation Board to Rege Leach (June 28, 2007). The Tribe agrees. If they are not in the environmental baseline, they are required to be included to implement the Tribe's settlement in much the same way as this Proposed Project is intended to implement the Navajo Nation's settlement. All of these rights are decreed water rights. The Tribe has met all the requirements necessary for these waters to be in the environmental baseline. It was agreed when the SJRRIP was established that the States would decide what water rights would constitute the baseline.

Assuming that all of the Tribe's water rights are in the environmental baseline, then the Proposed Project can move forward with little or no effect to the Tribe's trust resources. Table V-3 and the language set forth in the DEIS, however, must be revised to indicate that all of the Tribe's water uses are in the environmental baseline.

Comment TG-04 – continued



Rege Leach
June 28, 2007
Page 4

**III. RECLAMATION HAS A TRUST RESPONSIBILITY
TO THE SOUTHERN UTE INDIAN TRIBE
TO PROTECT THE TRIBE'S WATER RIGHTS**

As an agency of the federal government, Reclamation has a trust responsibility to all Indian tribes and tribal members, including the Southern Ute Indian Tribe and its members:

The United States has a trust responsibility to protect rights reserved by or granted to Indian Tribes by treaty, statutes, and Executive orders. This trust responsibility requires that Federal agencies such as Reclamation take actions reasonably necessary to protect ITAs. Interior Secretarial Order Number 3215, dated April 28, 2000, further states:

The proper discharge of the Secretary's trust responsibility requires, without limitation, that the Trustee, with a high degree of care, skill, and loyalty: Protect and preserve Indian Trust Assets from loss, damage, unlawful alienation, waste, and depletion.

DEIS at V-19. *See also* Attachment 5, Bureau of Reclamation, Indian Trust Asset Policy (Aug. 31, 1994) *in* Protection of Indian Trust Resources (notebook on file with the Department of the Interior).²

The Indian Trust Assets entitled to protection under the trust responsibility include water rights. *See id.* Thus, Reclamation has a trust responsibility to take all actions reasonably necessary to protect the Tribe's water rights, including its historic, existing and future use water rights. In fact, the United States' trust responsibility to the Tribe is of "the highest fiduciary standards," *Gila River Pima-Maricopa Indian Community v. United States*, 9 Cl. Ct. 660, 678 (1986), *aff'd*, 877 F.2d 961 (Fed. Cir. 1989),³ and it does not wane because Congress has imposed upon it additional statutory obligations. *Nevada v. United States*, 463 U.S. 110, 128 (1983). Certainly, the United States may not subordinate its trust responsibility to protect the Tribe's water rights by claiming that it must protect the Navajo Nation's water rights.

²In February 1996, then Secretary of the Interior Babbitt and Assistant Secretary Deer transmitted to Interior employees a compilation of the policies and procedures adopted by the bureaus and offices of the Department of Interior relating to trust protection practices. This compilation notebook is referred to herein as "Protection of Indian Trust Resources."

³*See also In re the General Adjudication of all Rights to Use Water in the Gila River System and Source*, 35 P.3d 68, 74 (Ariz. 2001).

Comment TG-04 – continued



Rege Leach
June 28, 2007
Page 5

The Department of the Interior (“Department”) and Reclamation have adopted policies and procedures to ensure that their actions comply with the trust responsibility. The Department’s policy states:

It is the policy of the Department of the Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members, and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety.⁴

512 DM 2.2 (Dec. 1995).

The Department’s procedures implementing this policy require that “[a]ny effect [on Indian trust resources] must be explicitly addressed in the planning/decision documents, including, but not limited to . . . Environmental Impact Statements . . .” 512 DM 2.4(A). Such documents “shall . . . [e]xplain how the decision will be consistent with the Department’s trust responsibility.” 512 DM 2.4(A)(2).

Thus, if certain of the Tribe’s water uses are not in the baseline, the DEIS must explicitly address the Proposed Project’s impacts on the Tribe’s water rights and explain how the Proposed Project will be consistent with Reclamation’s responsibility to protect these water rights. To the extent that significant adverse impacts from the Proposed Project cannot be avoided, mitigation must be implemented to ensure that there is no interference with the Tribe’s ability to exercise its water rights. In other words, Reclamation must ensure that those uses will not be lost by allowing the Proposed Project to move forward.

3

IV. THE BIOLOGICAL OPINION NEEDS TO RECOGNIZE THE ROLE OF THE SAN JUAN RIVER BASIN RECOVERY IMPLEMENTATION PROGRAM AND NOT RELY SOLELY ON MEETING THE FLOW RECOMMENDATIONS FOR RECOVERY OF THE ENDANGERED FISH

The SJRRIP was established in 1991. The goals of the SJRRIP are to conserve populations of the Colorado pikeminnow and razorback sucker in the Basin consistent with the recovery goals while allowing water development to proceed in compliance with federal and state laws, interstate compacts, Supreme Court decrees, and federal trust responsibilities to the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Jicarilla Apache Nation and the Navajo Nation. On June 19, 2002, the Coordination Committee, SJRRIP, adopted the *Principles for Conducting Endangered Species*

⁴While Reclamation claims that it is in the process of consulting with the Tribal governments to identify and address the Indian Trust Asset issues and concerns, DEIS at V-20, Reclamation has not consulted with the Tribe.

Comment TG-04 – continued



Rege Leach
June 28, 2007
Page 6

Act Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin ("Principles").

The depletion guarantee appears to be inconsistent with the Principles. These Principles provide the framework for consultations on new and existing water development and water activities in the Basin. Use of the depletion guarantee, in order to facilitate the modeling of the Proposed Project relative to the flow recommendations, does not adequately recognize the greater role of the SJRRIP as a whole, as the reasonable and prudent alternative for water development in the Basin.

4

If the Draft BO and DEIS had relied on the SJRRIP as a whole as part of the approach to mitigating impacts from the Proposed Project, rather than just using the depletion guarantee in order to ensure that the critical elements of the flow recommendations were met, it would have been consistent with the Principles. Because the Proposed Project includes a depletion guarantee to ensure it meets the critical elements of the flow recommendations, it is possible that the next proposed project will exceed the flow recommendations. Although the actual implications of not meeting the flow recommendations have yet to be determined, it is believed that not meeting the flow recommendations will, at the least, create problems for implementing a proposed project and may result in a jeopardy opinion.

5

**V. THE DEIS AND THE DRAFT BO NEED TO BE REVISED
TO CLARIFY HOW AND WHEN THE
DEPLETION GUARANTEE WILL BE TRIGGERED**

The Tribe is aware that concerns have been expressed regarding the depletion guarantee as described in the Draft BO which seems to imply that depletions will be borrowed from other unused water users in the Basin. Draft BO at 8-9. However, it is the Tribe's understanding that the depletions set aside for the other unused water users in the Basin have not been permanently allocated to the Navajo Nation's Proposed Project. Rather, once the Navajo Nation's depletions reach a certain level, the depletion for the Proposed Project will be offset by unused Navajo Nation depletions in the Basin. It is also the Tribe's understanding that the depletion guarantee is not binding on the use of water by any person or entity, other than the Navajo Nation.

6

The language defining the depletion guarantee is not as clear as it needs to be. Thus, the language must be revised. It is the Tribe's understanding that this issue is currently being discussed with the Navajo Nation and other water users in the Basin and that the parties intend to amend the language accordingly. If the language is modified to adequately reflect our understanding of how the depletion guarantee will be implemented, the Tribe has no further comments. However, in the event that the depletion guarantee issue is not resolved, the Tribe reserves the right to provide additional comments.

Comment TG-04 – continued



Rege Leach
June 28, 2007
Page 7

VI. CONCLUSION

The Tribe does not wish to unduly delay issuance of the final environmental impact statement ("FEIS") for the Navajo-Gallup Water Supply Project. Indeed, the Tribe supports the Proposed Project. However, the Tribe believes that it is essential that Reclamation fully address the above-described issues regarding baseline depletions, the depletion guarantee, disclosure of impacts and sufficiency of mitigation for the FEIS to meet the intent and the legal requirements of NEPA and the trust responsibility. The Tribe would like to meet with Reclamation as soon as possible to discuss these comments and their resolution.

Sincerely,

A handwritten signature in cursive script, reading "M. Catherine Condon".

M. Catherine Condon

MCC/dav

enc. Memorandum of William J. Miller, Miller Ecological Consultants, Inc., to Catherine Condon, Greene, Meyer and McElroy (June 21, 2007)

cc: Clement Frost, Chairman
Jim Formea
Chuck Lawler
Steve Whiteman
William J. Miller
Monte Mills

Comment TG-04 – continued



2111 S. College Ave., Unit D
Fort Collins, CO 80525
(970) 224-4505

MEMORANDUM

Date: June 21, 2007

To: Catherine Condon, Greene Meyer and McElroy
From: William J. Miller, Miller Ecological Consultants, Inc.
CC: Steve Whiteman, Chuck Lawler, SUIT
Subject: Comments on Navajo-Gallup Water Supply Project Draft EIS

My comments on the above referenced document are limited to the sections on Aquatic Resources, Special Status Species and the Draft Biological Opinion.

General Comments:

The supportive data used for the DEIS Aquatic Resources is generally from reports written in 2000 for data collected in 1999. The SJRBRIP has a monitoring program that occurs annually. It would be more appropriate to determine impacts using either the most recent final annual report (i.e. 2005) rather than rely on the older data sets. There should be a thorough review of the numbers stated for species occurrence. The current number of species varies within a page and even within a paragraph for the same species category. A table of the species with a designation as native or non-native would correct this inaccuracy.

7

There is very little detail and no supportive information to verify any of the stated impacts to aquatic species. The technical memorandum or report that contains the analysis relied on for the stated impacts should be attached as an appendix. A report titled "Ecosystems Research Institute 2003. Navajo-Gallup Water Supply Project Aquatic Disturbance, U.S. Department of the Interior, Bureau of Reclamation" cited by the US Fish and Wildlife Service in the Fish and Wildlife Coordination Report may contain that analysis. The Biological Assessment for the project should be included as an appendix.

8

The report needs a thorough review by an editor for clarity and consistency.

Specific Comments:

Aquatic Resources Page V-63 : The number of fish species listed is inconsistent in this section. Paragraph one states 8 native species and 19 non-native species occur. These numbers total 27 species. The paragraph states there are 26 species. The "Native Fishes" paragraph states "seven" native species which differs from the "8" species stated above. The paragraph also states "four native" and "five rare or endangered native," which totals to nine species. List the species in a table and then insert the correct numbers in the paragraphs.

9

Comment TG-04 – continued

Aquatic Resources Page V-64: Only two native species are described, page V-63 stated four would be described. The “Non-native fishes” paragraph states “twenty-one non-native fish.” This differs from the “19 non-native species” stated on page V-63. The statement that “12 non-native species are spiny-rayed and pose a documented choking hazard” is incorrect. Only channel catfish were documented as a choking hazard in the report cited in the DEIS. The DEIS should be revised to correct this statement.

9

Aquatic Resources, Page V-68: The first partial paragraph should be edited to clarify the statement regarding the duration of time the 2500 cfs criteria are missed.

10

Aquatic Resources, Page V-69: A report by Propst et al. (2003) is cited as the source for the amount of loss due to entrainment. That report did not calculate entrainment but report abundance of small bodied fish. What data was used and how were the entrainment values calculated? The calculation methodology and data should be included for review.

11

The third full paragraph describes loss of flannelmouth and bluehead larvae. Bluehead sucker have not been previously discussed in this section but should be added.

Aquatic Resources, Page V-70: The DEIS concludes that the NIIP Amarillo Alternative will have no effect on the native fish community or trout habitat below Navajo Dam. Yet the DEIS states that this alternative would have more impact on the flow recommendations than the SJRPNM alternative. It would seem that if the alternative has more impact on the flow recommendations, which were derived to benefit the native fish community, then there would be a greater impact to the native fish community.

12

Aquatic Resources, Page V-71: The aquatic mitigation measures are listed as BMPs for water quality and monitoring and reporting depletions. How does monitoring a depletion, which equates to a direct loss of aquatic habitat, mitigate for the loss? Reporting the loss does not offset the loss. The mitigation measure that offsets the loss in aquatic resources should be stated in this section.

13

Aquatic Resources, Special Status Species: This section is generally lacking in detail to support the stated conclusions. Several of the aquatic species are not fully described as to occurrence in the project area (past and present) nor are the potential impacts (or lack thereof) fully documented. As such, this section lacks credibility and major revisions should occur prior to the FEIS. As an example, the Impact Analysis for the SJRPNM alternative (page V-85) refers the reader to the Biological Assessment for detailed information. The Biological Assessment was not included as an attachment to the DEIS. It should be provided.

14

Several citations used as the basis for a statement do not support the statement. For example, the discussion of bluehead sucker impacts on page V-87 cites Propst et al. 2003 as the source for the number of Age 1+ individuals, yet the discussion is the entrainment of larval fish. The DEIS should use data from adult monitoring and larval studies in the San Juan River not just the immature fish, which are larger than could be entrained by the diversion.

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There are no proposed mitigation measures to offset the loss the special status aquatic species.

16

Comment TG-05

06/28/2007 13:07 15053681037

NNEPA WATER QUALITY

PAGE 01/01



NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY
Water Quality/NNPDES Program
P.O. Box 1999
Shiprock, New Mexico 87420
Phone: (505) 368-1037
FAX: (505) 368-1416

Joe Shirley, Jr.
PRESIDENT

Ben Shelly
VICE PRESIDENT

June 28, 2007

Mr. Rege Leach
Bureau of Reclamation
Western Colorado Area Office
FAX: 970-385-6539

RE: Comments on the Navajo-Gallup Water Supply Project PR/DEIS

Mr. Leach,

Thank you for the opportunity to review the Navajo-Gallup Water Supply Project PR/DEIS. The following comments are being provided to you with the hope that they will help correct some outdated information in the Water Quality section of the document:

- 1) The U.S. Environmental Protection Agency approved the Navajo Nation Surface Water Quality Standards (NNSWQS) in March of 2006. Our program now also has authority to issue Clean Water Act 401 Certifications for projects on the Navajo Nation.
- 2) The latest version of the NNSWQS is available on-line at <http://www.navajonationepa.org>. Changes to the designated uses and the associated standards for the San Juan River since the 1999 version was promulgated should be reflected in the PR/DEIS.
- 3) The Ute Mountain Ute Tribe's water quality standards have also been approved within the past few years. Scott Clow, a Water Quality Specialist with their Environmental Programs Department can be reached at 970-564-5431 for more specific information regarding their water quality standards.

If you have any questions, please do not hesitate to call me at 505-368-1037. Again, thank you for the opportunity to review and comment on the PR/DEIS.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Austin", is written over a horizontal line.

Stephen A. Austin
Sr. Hydrologist

JUN 28 2007

1

Comment TG-06

navgal navGAL - Jicarilla Apache Nation's comments on Navajo-Gallup Water Supply Project PR-DEIS
--

Page 1

From: "Susan G. Jordan" <SJordan@NordhausLaw.com>
To: <navgal@uc.usbr.gov>
Date: Thu, Jun 28, 2007 4:12 PM
Subject: Jicarilla Apache Nation's comments on Navajo-Gallup Water Supply Project PR-DEIS

On behalf of this firm's client the Jicarilla Apache Nation, I am submitting for the record the attached comments on the Planning Report - Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project. Please let me know if you have any questions.

Susan G. Jordan, Esq.
Nordhaus Law Firm, LLP
1239 Paseo de Peralta
Santa Fe, NM 87501
Tel. (505) 982-3622
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CC: <dannvicenti@yahoo.com>, "Vilma M. Ruiz" <VRuiz@NordhausLaw.com>, "Mike Hamman" <mahamman@jicarillautility.com>, "andrea lefevre" <lefevreandrea@yahoo.com>, <RLeach@uc.usbr.gov>

Comment TG-06 – continued



**Jicarilla Apache Nation's
Comments on the March 2007 Preliminary Planning Report/Draft
Environmental Impact Statement for the
Navajo-Gallup Water Supply Project
June 28, 2007**

The Jicarilla Apache Nation is pleased to submit these brief comments on the March 2007 Preliminary Planning Report/Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project ("PR-DEIS"). We enclose and incorporate by reference in these comments our written testimony submitted on June 26, 2007 to the United States Senate Committee on Energy and Natural Resources on the pending authorizing legislation, S. 1171, the Northwestern New Mexico Rural Water Project Act, and the accompanying detailed comments on that bill.

The estimated costs for the Project, and allocations of costs, are of significant interest to the Jicarilla Apache Nation as a co-sponsor and project participant. The PR-DEIS states that Reclamation is re-estimating costs and anticipates providing updated cost estimates through errata sheets to be made available during the public comment period on the PR-DEIS. To our knowledge, however, no such errata sheets have been made available and the public comment period ends on June 28, 2007. We are therefore reserving for further comment the issue of cost estimates.

Page I-7, Table I-1: State of New Mexico Schedule of anticipated Upper Basin depletions: This table reflects the State's projections. It should be expressly qualified in the table footnotes and the text as not necessarily representing the Jicarilla Apache Nation's (or any water user's) estimate of its own depletions in 2000 or in future years.

Page III-6, second paragraph: this paragraph wrongly indicates that the authorization for the Jicarilla Apache Nation to subcontract water to the City of Gallup will be given in S.1171. The authorization for the Jicarilla Apache Nation to subcontract its water rights exists in the Jicarilla Apache Tribe Water Rights Settlement Act of 1992. In fact, the last paragraph on page III-6 correctly states that no further congressional authorization would be needed for this potential subcontract.

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JUN 28 2007

Comment TG-06 – continued

Page III-6, last paragraph: The first sentence should be revised to read as follows: "The Jicarilla Apache Nation has a contract right to water under the Navajo Reservoir Supply."

3

Pages V-11 and V-12, Table V-3, Baseline and current depletion summary in the Basin: This table needs to be revised for consistency with the corresponding table in the January 2007 Final Environmental Impact Statement for Navajo Reservoir Operations, which includes corrections to depletions amounts for the Jicarilla Apache Nation and associated footnotes. For instance, the Above Navajo Dam – Jicarilla depletion should be 2,195 acre-feet/year, not 2,190. The entries for the San Juan Power Plant 16,200 acre-feet/year should include the footnote (number 8 in the Navajo Reservoir Operations table): "Water contract with the Jicarilla Apache Nation for long-term depletions for the San Juan Generating Station." The Unspecified Minor Depletions entry should include the footnote (in number 10 in the Navajo Reservoir Operations table): "This amount includes 770 acre-feet of water subcontracted by the Jicarilla Apache Nation to 'minor contractors' below Navajo Dam."

4

Pages V-22 and V-23, Table V-5, Summary of major existing and future Tribal uses of Basin water: while we have only reviewed the information in this table concerning the Jicarilla Apache Nation's water rights, we have found that it contains significant errors and is unintentionally misleading. For instance, the 1880 priority date is given for the Nation's 2,195 acre-feet per year depletion right but not for the evaporation right for stock ponds and reservoirs. The Nation's "small" subcontracts to third parties are listed under existing uses, while other existing subcontracts to third parties are listed under future uses. In this way, the table conflates the concept of existing uses of water rights with the concept of historic and existing use rights. The listing of third party subcontracts is incomplete, and the amount identified as "remaining," which appears to mean uncontracted, from the Nation's entitlement to the Navajo Reservoir Supply or the Navajo River is incorrect. Moreover, the table incorrectly states that this amount is not included in the environmental baseline for recent Endangered Species Act consultations. The table creates further confusion by including a lease to the City of Gallup under future uses for the Navajo Nation but not under future uses for the Jicarilla Apache Nation, even though the text of the document discusses the potential for this lease. We strongly recommend omitting this erroneous and confusing table entirely.

5

Pages V-16 and V-17: In our comments on the October 2006 preliminary draft, we noted that the assumption that "not meeting one or more of the flow criteria was considered to be an impact to the endangered fish" stated on page V-13 and similar language on pages V-16 to V-17 is incorrect in light of the June 29, 2005 letter from the New Mexico State Administrator of the Fish and Wildlife Service to the Coordination Committee of the San Juan River Recovery Implementation Program, which states in part: "the Service wants to be clear that if model results show the flow recommendations cannot be achieved, the project can be in

6

Comment TG-06 – continued

compliance with the ESA based on actions taken by the Program." In the March 2007 draft, the language on page V-13 was revised consistent with our comment, but the language on pages V-16 and V-17 was not. Those pages should now be revised for consistency with page V-13.

6

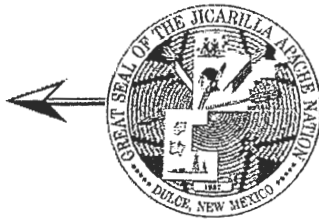
Page V-31, fifth paragraph: The second to last sentence should be revised to read "Contingent upon the successful negotiation of a subcontract between the Jicarilla Apache Nation and the city of Gallup, the 7,500 acre-foot demand for the city would be met from deliveries of Navajo Reservoir Supply water subcontracted from the Jicarilla Apache Nation to the city."

7

Page V-147, fourth paragraph: The paragraph does not mention the Nation's 10-year subcontract to PNM, BHP Navajo Coal Company and the San Juan Generating Station for up to 8,500 acre-feet per year. This subcontract expressly reserves the Nation's right to temporarily or permanently reduce the water supply made available under the subcontract in order to supply the Navajo-Gallup Water Supply Project or to utilize the water on-Reservation, subject to prior notice to the other parties. The last two sentences of the paragraph should be deleted and replaced with the following language: "The Jicarilla Apache Nation currently has subcontracted 16,200 AFY to PNM, 8,500 AFY to PNM, BHP Navajo Coal Company and the San Juan Generating Station, and 770 AFY to minor subcontractors. The Nation has the right to temporarily or permanently reduce the water supply made available under the 8,500 AFY subcontract in order to supply the Navajo-Gallup Water Supply Project or to utilize the water on-Reservation, including for the JANNRWSP."

8

Comment TG-06 – continued



THE JICARILLA APACHE NATION

P.O. BOX 507 • DULCE, NEW MEXICO • 87528-0507

**Jicarilla Apache Nation
Testimony Submitted to the United States Senate
Committee on Energy and Natural Resources
on S. 1171
The Northwestern New Mexico Rural Water Projects Act
June 26, 2007**

The Jicarilla Apache Nation is pleased to submit this testimony supporting and commenting on S. 1171. The Jicarilla Apache Nation is a co-sponsor in the planning process for the Navajo Gallup Water Supply Project, a vital piece of this legislation and the Navajo Nation Water rights settlement package. We are a member of the Steering Committee for the Project. We have devoted substantial staff time and resources over the last several years to the planning and environmental compliance process for the Project.

The Nation's water rights in the San Juan River Basin are the subject of a 1992 settlement agreement and the Jicarilla Apache Tribe Water Rights Settlement Act, Public Law 102-441, 106 Stat. 2237. We traveled a long road to successfully negotiate our settlement, and we find ourselves on an equally long road to secure the implementation of the settlement in order to fully realize its benefits for our people. When faced with obstacles to the use of our settled water rights, we have consistently shown leadership in finding solutions that benefit not only our people, but also our neighbors in the San Juan River Basin. We have, for example, provided leased water supplies to large and small water users, ranging from individual farmers and the Elks Lodge to BHP Billiton and PNM. We have also served as a founding member of the San Juan River Recovery Implementation Program to protect endangered species while water development is pursued.

Most recently, we have stepped up to the plate to offer to negotiate a water lease, or subcontract, to the City of Gallup to provide their water supply for the Navajo-Gallup Water Supply Project that would otherwise be unavailable. The water rights that would be the subject of a subcontract to be negotiated between the Jicarilla Apache Nation and the City of Gallup are already adjudicated to the Nation. Consequently, these water rights are already within the recognized Upper Basin supply in New Mexico. It is important for the Committee to understand the Nation's pivotal role in the creative solutions that make the Project, and ultimately the Navajo Nation settlement, achievable.

Comment TG-06 – continued

We share with the Navajo Nation a common interest in bringing clean, reliable water service to grossly underserved areas of our reservations. The Jicarilla Apache people desire to pursue our way of life by making their homes on our reservation lands throughout the basin, and not being crowded into increasingly limited space in Dulce, New Mexico because of the lack of potable water. To meet this need, we have worked with the United States Bureau of Reclamation and the other Project Participants to provide for the connection of a water line at Counselor, New Mexico from the Cutter Lateral portion of the Project. We are also separately planning construction of the approximately eight-mile portion of the additional water line that will be needed from Counselor to our lands at Teepees on New Mexico State Highway 550 in order to deliver this water to our people, without the assistance of appropriations authorized under this bill. The water that would be delivered to us through the Project is water already adjudicated to us under the 1992 settlement and related Partial Final Decree. We will receive no additional water rights under this bill.

For these reasons, the Jicarilla Apache Nation has a demonstrated commitment to and interest in a successful outcome to this legislation and the associated Navajo-Gallup Water Supply Project. It is imperative that the legislation recognize and support the Nation's role in the Project.

In addition to the attached detailed comments that we are providing to the Committee staff, we share the following thoughts in the interest of ensuring that key provisions of the legislation are clarified. We look forward to continuing to work with members of the Committee and Congress, the State of New Mexico, the Navajo Nation, the City of Gallup, and the Administration to refine and implement the legislation.

The Jicarilla Apache Nation does not object to the concept of a top water bank, provided that its implementation does not adversely affect the Nation's water rights, storage for the Nation, or costs under our contract for water from the Navajo Reservoir Supply, and provided also that the beneficiaries of the top water bank pay their fair share of construction and operation and maintenance costs associated with Navajo Reservoir.

The provisions concerning shortages should be carefully reconsidered and redrafted in consultation with us to protect the Jicarilla Apache Nation's water rights, including entitlement to delivery in times of shortage, under the Jicarilla Apache Tribe Water Rights Settlement Act. We believe and expect that it is not Congress' intent to adversely modify the Nation's rights under our existing settlement. Indeed, the bill appropriately states that unless expressly provided, nothing in it modifies, conflicts with, preempts, or otherwise affects the Jicarilla Apache Tribe Water Rights Settlement Act (Section 103(1)), page 18 lines 2-4 and page 19 lines 1-2). The legislation must be crafted to protect the Nation from suffering a lower priority in time of shortage.

Comment TG-06 – continued

We wish to share a few concerns the Nation has regarding what we view as unclear language referring to cost share provisions in the Bill. The Secretary is directed to determine the share “based on the *ability of the Jicarilla Apache Nation to pay* the construction costs of the Project facilities that are *allocable* to the Jicarilla Apache Nation,” and this share is specified to be *at least* 25 percent of the costs so allocable.

We have some concerns with how the portion “allocable” to the Nation will be determined. The Nation’s staff have reviewed the items allocated to us as reflected in the March 2007 Draft Planning Report and Environmental Impact Statement for the Project (“PR-DEIS”), and if our understanding is correct, the allocation reflected in that document is appropriate. The legislation should make clear that a different allocation will not be imposed on us. While we are not concerned with the *items* contemplated to be allocated to us, we are concerned that the Bureau of Reclamation’s cost estimates for these items are substantially greater than they should be. Notably, the PR-DEIS states that Reclamation is re-estimating costs and anticipates providing updated cost estimates through errata sheets to be made available during the public comment period on the PR-DEIS. To our knowledge, however, no such errata sheets have been made available and the public comment period ends on June 28, 2007. We are therefore reserving for further comment the issue of cost estimates in our comments on the PR-DEIS. To protect the continuing voice of the Project Participants in all cost determinations associated with the Project, the legislation should clarify that the construction costs reimbursable by the Jicarilla Apache Nation shall be reduced by the amounts that the Nation expends from its own funds or non-federal sources on pre-construction activities for the Project.

The draft legislation does not effectively define the “ability to pay” determination. This provision should specify that “ability to pay” will be determined on the basis of the per capita income, median household income, and poverty rate of the population on the Jicarilla Apache Reservation. This specificity will ensure that the determination of “ability to pay” reflects the true ability of our people to pay for the water supply.

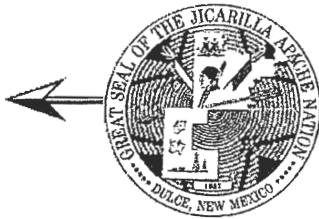
The requirement that the Nation should pay a minimum percentage of 25 percent of the construction costs allocable to the Nation is inappropriate. A proper ability to pay determination based on the ability of our population will result in a cost share percentage below 25 percent. Indeed, this minimum leaves the Nation unacceptably exposed to the burden of a cost share far greater than 25 percent that has no relationship to ability to pay. Notably, the April 2006 study by Dornbusch Associates entitled “Social Impacts from the Navajo-Gallup Water Supply Project” (Appendix D-IV, page 12, to the PR-DEIS) found that the Jicarilla Apache people earn median incomes far below the New Mexico state average.

Comment TG-06 – continued

This requirement casts a shadow over the negotiating process in providing a leased water supply for the City of Gallup. Without fully understanding the entire exposure the Nation has in paying for its portion of the Project, it is extremely difficult to proceed with substantive negotiations with Gallup and the Navajo Nation in finalizing a secure water supply for the City.

We would like to see in the bill a provision for establishment of a committee, including a seat for the Jicarilla Apache Nation, to set and review Project construction and operation, maintenance and replacement budgets and extraordinary expenditures.

Comment TG-06 – continued



THE JICARILLA APACHE NATION

P.O. BOX 507 • DULCE, NEW MEXICO • 87528-0507

**Jicarilla Apache Nation
Detailed Comments for
Committee Staff on Energy and Natural Resources
on S. 1171
The Northwestern New Mexico Rural Water Projects Act
June 26, 2007**

Pages 8-11, Section 101(b), top water bank in Navajo Reservoir: The Jicarilla Apache Nation does not object to the concept of a top water bank, provided that its implementation not adversely affect the Nation's water rights, storage for the Nation, or costs under our contract for water from the Navajo Reservoir Supply, and provided also that the beneficiaries of the top water bank pay their fair share of construction and operation and maintenance costs associated with Navajo Reservoir. Page 9, lines 11-20, provides that the water bank shall be operated in a manner that does not impair delivery under contracts entered into under New Mexico State Engineer File Nos. 2847, 2848, 2849, and 2917. This list should not omit the additional permits – file Nos. 2873 and 3215 – that are included along with the listed file numbers in the definition of "Navajo Reservoir Supply" in the December 8, 1992 contract between the United States and the Jicarilla Apache Nation for delivery from this supply pursuant to the Jicarilla Apache Water Rights Settlement Act.

Page 10, lines 17-24, describes a requirement for the operation of the top water bank as follows:

water in the top water bank [shall] be the first water spilled or released for flood control purposes in anticipation of a spill, on the condition that top water bank water shall not be released or included for purposes of calculating whether a release should occur for purposes of satisfying releases required under the San Juan River Recovery Implementation Program [SJRRIP].

For clarity, this subsection should be divided into two separate requirements: (1) top water bank water shall be the first to be spilled or released for flood control purposes and (2) top water bank water shall not affect the calculation of the release required under the SJRRIP. Since the Flow Recommendations of the SJRRIP consider reservoir storage without the top water bank present, it is

Comment TG-06 – continued

appropriate to disregard the top water bank in calculating whether a release should occur. However, it is not appropriate to exclude top water bank water from the water that would be released. We do not believe that the intent is to exclude it, but as currently written, the provision could be misread to exclude top water bank water from a release.

The legislation should clearly require the beneficiaries of the top water bank to enter contracts with the United States for storage, including an obligation to pay their proportional share of construction and operations, maintenance and replacement costs. The cost shares of the Jicarilla Apache Nation and other contractors should be reduced accordingly.

Page 13, lines 10-22, use of the Navajo Indian Irrigation Project works to convey water: Planning for the Navajo-Gallup Water Supply Project has contemplated the use of NIIP works for conveyance. This provision authorizes that use, and importantly, prohibits the reallocation of NIIP construction costs because of such use. The legislation should also restrict the reallocation and repayment of NIIP operation, maintenance and replacement costs to the Navajo-Gallup Water Supply Project. The Jicarilla Apache Nation has expressed concern in the planning process for the possibility that NIIP OM&R costs that are unrelated to conveyance for the Nation's water through the Project might be charged to the Nation. We have felt assured that such costs would not be charged to us. The legislation should clarify this point.

Pages 14-17, shortage determinations and allocations: The bill would establish a *priority* of allocation of *shortages*, not water supply, in the event of a shortage determination. The bill further includes provisions for determining which uses in New Mexico will be counted as normal diversion requirements. The quantity of water that reliably can be anticipated to be diverted or delivered under a contract from inflows to the San Juan River arising below Navajo Dam under New Mexico State Engineer File No. 3215 would be excluded from the normal diversion requirements. We are concerned about how these potentially confusing provisions will be interpreted and applied in practice.

The provisions concerning shortages should be carefully reconsidered and redrafted in consultation with us to protect the Jicarilla Apache Nation's water rights, including entitlement to delivery in times of shortage, under the Jicarilla Apache Tribe Water Rights Settlement Act. We believe and expect that it is not Congress' intent to adversely modify the Nation's rights under our existing settlement. Indeed, the bill appropriately states that unless expressly provided, nothing in it modifies, conflicts with, preempts, or otherwise affects the Jicarilla Apache Tribe Water Rights Settlement Act (Section 103(1)), page 18 lines 2-4 and page 19 lines 1-2). The legislation must be crafted to protect the Nation from suffering a lower priority in time of shortage.

Comment TG-06 – continued

The provision on page 17, lines 13-17 that preserves the Secretary's ability to reallocate water in accordance with cooperative agreements between water users is important to ensure that the constructive shortage sharing recommendations of recent years, to which the Nation has been a signatory, can continue to foster solutions that avoid a Secretarial shortage determination and the attendant potential for disruptive litigation.

Page 27, lines 18-21: The bill states that the design and construction of the Project shall not be subject to the Indian Self Determination Act. The Jicarilla Apache Nation would like this section to be amended to allow the Nation to utilize the Act appropriately for our involvement in design and construction work.

Page 30, lines 11-24 and page 31, lines 1-12 provide for conveyance of Project facilities to the City of Gallup or the Navajo Nation. The legislation should expressly state that such conveyance shall not adversely affect the cost allocations or repayment obligations of the Project Participants, and should further provide for the continuation of the committee to establish and review budgets as recommended in our comment below on cost allocation.

Page 32, lines 11-18 provide, in part, that any payments for water under any subcontract with the Jicarilla Apache Nation shall not alter the construction repayments or operation, maintenance and replacement payment requirements of Project Participants. This language is important to clarify that our payment obligations will not be affected by revenues we may receive under a subcontract. However, when a payment is made for the use of unused Project capacity, the payments due from the Project Participants should be commensurately reduced.

Title III of the bill uses the phrases "allocate water supply" and "allocation" in a way that may cause confusion. Section 301(2), page 24, lines 12-14 lists among the purposes of the subtitle "to allocate the water supply for the Project among the Nation, the city of Gallup, New Mexico, and the Jicarilla Apache Nation." Section 303(b)(2), pages 34-36, provides for "allocation" of the water diverted under the Project to these entities by specified amounts of water for use. These provisions should be revised to make it clear that they are specifying the use of delivery capacity, not the allocation of underlying water rights or contract rights to the Navajo Reservoir Supply. For instance, the bill describes an "allocation" of 7,500 acre-feet per year to the City of Gallup (page 35, lines 1-5), but if that water is to be supplied by a potential subcontract from the Jicarilla Apache Nation under our 1992 contract rights to the Navajo Reservoir Supply, then the water allocation remains the Jicarilla Apache Nation's and Gallup will be entitled to delivery under the subcontract through the Project.

Page 45, lines 11-13 provide the important clarification that the Jicarilla Apache Nation is not obligated to enter into a water subcontract with the City of Gallup. The phrase "nothing in this paragraph" is used, however, when the wording should be "nothing in this Act" (page 45, lines 1-2).

Comment TG-06 – continued

We wish to share a few concerns the Nation has regarding what we view as unclear language referring to cost share provisions in the Bill. The Secretary is directed to determine the share "based on the *ability of the Jicarilla Apache Nation to pay* the construction costs of the Project facilities that are *allocable* to the Jicarilla Apache Nation," and this share is specified to be *at least* 25 percent of the costs so allocable.

We have some concerns with how the portion "allocable" to the Nation will be determined. The Nation's staff have reviewed the items allocated to us as reflected in the March 2007 Draft Planning Report and Environmental Impact Statement for the Project ("PR-DEIS"), and if our understanding is correct, the allocation reflected in that document is appropriate. The legislation should make clear that a different allocation will not be imposed on us. While we are not concerned with the *items* contemplated to be allocated to us, we are concerned that the Bureau of Reclamation's cost estimates for these items are substantially greater than they should be. Notably, the PR-DEIS states that Reclamation is re-estimating costs and anticipates providing updated cost estimates through errata sheets to be made available during the public comment period on the PR-DEIS. To our knowledge, however, no such errata sheets have been made available and the public comment period ends on June 28, 2007. We are therefore reserving for further comment the issue of cost estimates in our comments on the PR-DEIS. To protect the continuing voice of the Project Participants in all cost determinations associated with the Project, the legislation should clarify that the construction costs reimbursable by the Jicarilla Apache Nation shall be reduced by the amounts that the Nation expends from its own funds or non-federal sources on pre-construction activities for the Project.

The draft legislation does not effectively define the "ability to pay" determination. This provision should specify that "ability to pay" will be determined on the basis of the per capita income, median household income, and poverty rate of the population on the Jicarilla Apache Reservation. This specificity will ensure that the determination of "ability to pay" reflects the true ability of our people to pay for the water supply.

The requirement that the Nation should pay a minimum percentage of 25 percent of the construction costs allocable to the Nation is inappropriate. A proper ability to pay determination based on the ability of our population will result in a cost share percentage below 25 percent. Indeed, this minimum leaves the Nation unacceptably exposed to the burden of a cost share far greater than 25 percent that has no relationship to ability to pay. Notably, the April 2006 study by Dornbusch Associates entitled "Social Impacts from the Navajo-Gallup Water Supply Project" (Appendix D-IV, page 12, to the PR-DEIS) found that the Jicarilla Apache people earn median incomes far below the New Mexico state average.

This requirement casts a shadow over the negotiating process in providing a leased water supply for the City of Gallup. Without fully understanding the entire

Comment TG-06 – continued

exposure the Nation has in paying for its portion of the Project, it is extremely difficult to proceed with substantive negotiations with Gallup and the Navajo Nation in finalizing a secure water supply for the City.

We would like to see in the bill a provision for establishment of a committee, including a seat for the Jicarilla Apache Nation, to set and review Project construction and operation, maintenance and replacement budgets and extraordinary expenditures.

Page 59, lines 17-21, Section 401(a)(4) provides that the State of New Mexico may administer releases of stored water from the Navajo Reservoir in accordance with subparagraph 9.1 of the Navajo Nation settlement agreement. The effect of this provision is unclear. The referenced subparagraph of the agreement states that the Navajo Nation and the United States will not challenge the State's making available water under specified circumstances. It seems that bill language should be revised to simply provide for the waiver by the United States of the objection as contemplated by the agreement.

Page 68, lines 24-25, and page 69, lines 1-3 and lines 14-19 literally require the court to enter the partial final decree and supplemental partial final decree described in the Navajo Nation settlement agreement by specified dates. The bill could be clearer on the effect of a failure to meet these deadlines.

Page 73, lines 9-13 states that "nothing in the Agreement, the Contract, or this section quantifies or adversely affects the land and water rights, or claims or entitlements to water, of any Indian tribe or community other than the rights, claims, or entitlements of the Nation." This provision should specify that nothing in the Act, rather than merely the section, quantifies or adversely affects, and should also specify that nothing in the hydrologic determination by the Secretary quantifies or adversely affects such rights, claims or entitlements.

Comment TG-07

Red Valley Chapter
Post Office Box 304
Red Valley, Arizona 86544
Phone: 928-653-5800

Mr. Rege Leach, Civil Engineer
United States Department of the Interior
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue Suite 300
Durango, Colorado 81301-5475

June 22, 2007

Dear Mr. Leach:

I am writing to advise you that the Red Valley Chapter has serious concerns about the proposed Navajo-Gallup Water Supply Project Planning Report and draft Environment Impact Statement for the San Juan River Lateral would divert water south along U. S. Highway 491 to Chapter communities in the Navajo Nation and the City of Gallup, because of the Navajo-Gallup Water Supply Project Settlement's adverse effect on the ability to resolve the Red Valley Chapter's water claims in the San Juan River Lateral will begin at the San Juan River near Shiprock south along Highway 491 to the Window Rock, Arizona area and the City of Gallup area.

The Red Valley Chapter as that in settling the pressing problems associated with the Massive claims of the Navajo-Gallup Water Supply Project, you not lose sight of the critical need to address the claims of the Red Valley Chapter in the mainstream San Juan River. Working together, we are confident that the Red Valley Chapter's water claims can be crafted in way that will not foreclose the possibility of a fair resolution of the Navajo-Gallup water supply project in the future.

Let me explain by saying that the Navajo Nation greatly appreciates the tremendous effect which Navajo Nation Chapters have devoted to addressing the difficult water issues to confront the permanent homeland for the Navajo people. Nothing is more important to the welfare of the Navajo Nation than developing a reliable long-term Navajo-Gallup Water supply project Planning Report and draft Environmental Impact Statement to meet the needs of the State of New Mexico and Navajo Nation citizens. That cannot be done while the water rights of the Red Valley Chapter in the State of the New Mexico nor Navajo Nation remain uncertain and cloud the rights of other water users in the State and Navajo Nation.

At this point in time the Red Valley Chapter demanding to divert water tap delivery from the "Shiprock water Project Tank", Navajo-Gallup Water Supply Project pipe line to Red Valley Chapter region, through sublaterals. The Red Valley chapter knows that the State and Navajo Nation Water Rights Commissioners have worked hard to find fair and equitable solutions to these difficult problems.

We hope to work with you to find a way to address the issues which we raise in this letter, as well as to find a solution to the difficult issues the Red Valley Chapter region.

JUN 28 2007

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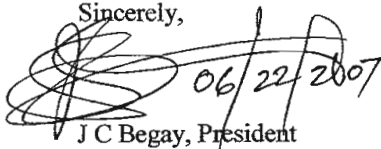
Comment TG-07 – continued

As you all aware, the need for quality of the drinking water is a great demanding in the North-Eastern region of the state of the New Mexico; (A.) Provide a long-term, reliable water supply to Red Valley Chapter region, and (B.) More than 40% of Navajo households still haul water to meet daily needs, and (C.) Submit an oral and written report to the Red Valley Chapter region on the findings with regard to the impact of past Uranium Mining activities on the quality of the drinking water, and (D.) Analyze drinking water well samples for contaminates drinking water in the Red Valley Chapter region, and (E) see attached, Exhibit A & B Resolutions and documents."C"

As Red Valley Chapter President, I will ask for your expertise knowledge, honesty, trust and cooperation. Hence, as a community leader and a chapter membership of Red Valley Chapter, Navajo Nation, we shall continue to pursue and reach of the balanced excellence that our Navajo People and leaders have historically strive for traditionally and spiritually.

I would appreciate any information you could provide at this early stage in our plan. Again, ahe'hee and thank you.

Sincerely,



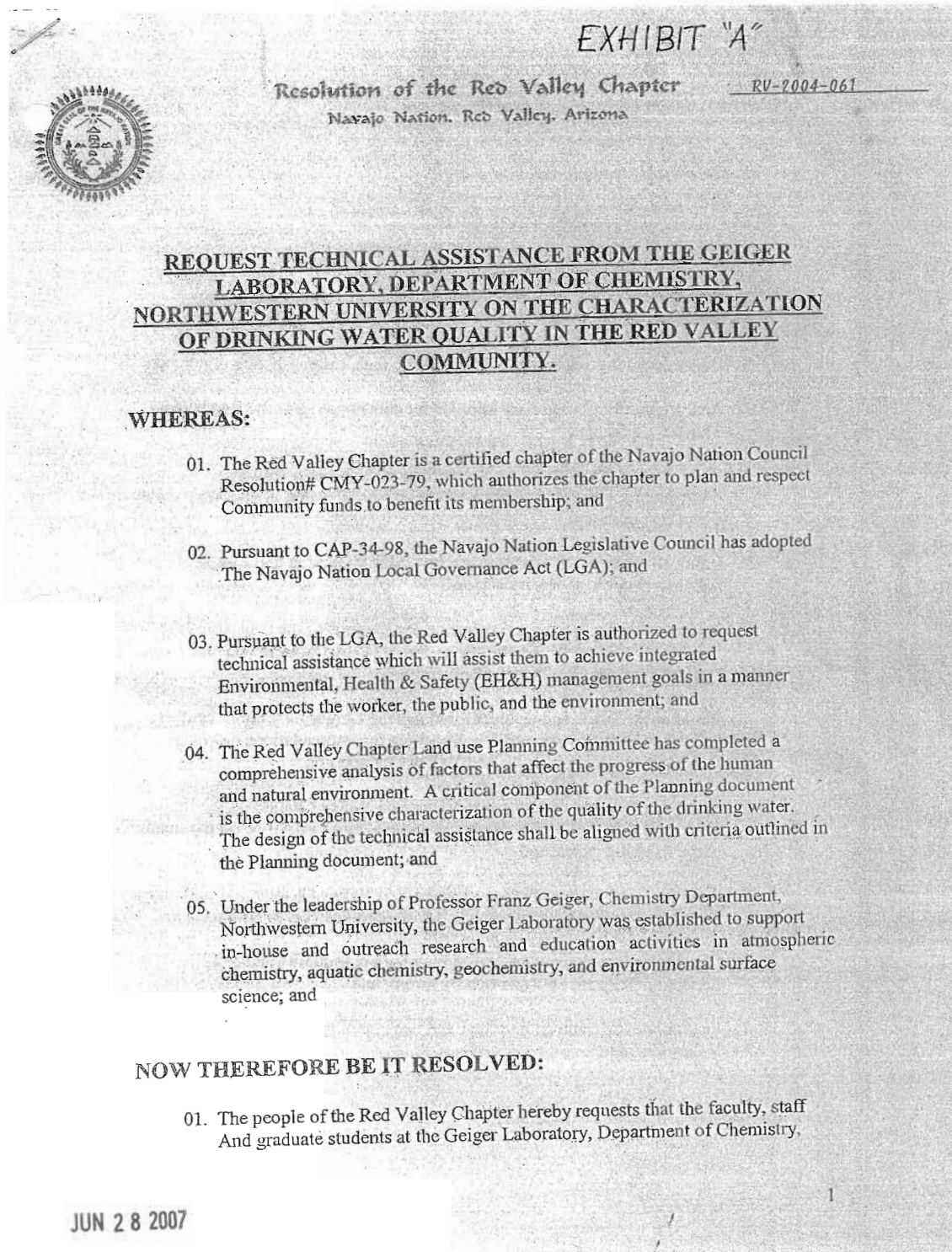
06/22/2007

J C Begay, President

Enclosure:

Cc. Ray Gilmore, Navajo Water Rights Commissioner
Chapter Officers
Chrono File

Comment TG-07 – continued



Comment TG-07 – continued

Northwestern University conduct the following tasks:

1. Data reduction and interpretation of the U.S. Environmental Agency (USEPA) – U.S. Army Corps of Engineers (USACE) water data base; and
2. Collect drinking water well samples in the Red Valley Chapter region; and
3. Analyze drinking water well samples for contaminants in the Red Valley Chapter region; and
4. Use current Federal Drinking Water Standards to assist with the Characterization of the quality of the drinking water in the Red Valley Chapter region; and
5. Conduct a comparative analysis of the USEPA-USACE and Geiger Laboratory drinking water data; and
6. Submit an oral and a written report on the findings of the analysis of the Drinking water well samples from the USEPA-USACE and the Geiger Laboratory to the Red Valley Chapter; and
7. Based on scientific and technical findings the Geiger Laboratory staff will Submit an Action Plan, which will include recommendations on water Remediation program to the Red Valley Chapter; and
8. Submit an oral and written report to the Red Valley Chapter on the findings With regard to the impact of past uranium mining activities on the quality of the drinking water; and
9. Submit an oral and written report to the Red Valley Chapter on the findings With regard to the Environmental, Health & Safety (ES & H) issues; and
10. Develop and implement an Action Plan for a community and K-12 Education program on water quality issues; and
11. Incorporate the findings into the Land use Planning document for the Red Valley Chapter.

JUN 28 2007

Comment TG-07 – continued

CERTIFICATION

We hereby, certify that the foregoing Resolution was duly considered by the people of the Red Valley Chapter at which a quorum was present and the same was passed by a vote of 28 in favor and 0 opposed, this 13th day of June, 2004.

Phil Harrison
Phil Harrison, Chapter President

Tony Light 6/13/04
Tony Light, Chapter Vice-President

Willie Johnson 6/13/04
Willie Johnson, Council Delegate

Roselyn Aguirre
Roselyn Aguirre, Chapter Secretary

Alma Vogt
(pro-temp) 6/13/04

JUN 28 2007

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Comment TG-07 – continued

Feb-22-2001 14:20

From: OFFICE OF THE SPEAKER

915208717255

T-580 P.002/005 F-916

EXHIBIT "B"

RESOLUTION OF THE PEOPLE OF THE RED VALLEY CHAPTER

Request Technical Assistance from the U. S. Geological Survey and New Mexico Bureau of Mines to Support the Interpretation of U. S. Environmental Agency – U. S. Army Corps of Engineers Water Quality Data-Base.

WHEREAS:

1. The citizens of the Red Valley chapter are participants in Tribal, State and Federal elections and deem the right to make recommendations that will affect their community; and,
2. Pursuant to CAP-34-98, the Navajo Nation Council has adopted the Navajo Nation Local Governance Act (LGA); and,
3. Pursuant to the LGA, the Red Valley Chapter is authorized to request technical assistance which will assist them to achieve integrated safety management goals in a manner that protects the worker, the public, and the environment; and,
4. The U. S. Environmental Agency and the U. S. Army Corps of Engineers have completed the collection of water-quality data in the Red Valley Chapter region; and,
5. The mission of the U. S. Geological Survey's Water Resources Division (WRD) is to provide reliable, impartial, timely information that is needed to understand the Nation's water resources. WRD actively promotes the use of this information by decision makers to:
 - a. Minimize the loss of life and property as a result of water-related natural hazards, such as floods, droughts, and land movement.
 - b. Effectively manage groundwater and surface-water resources for domestic, agricultural, commercial, industrial, recreational, and ecological uses.
 - c. Protect and enhance water resources for human health, aquatic health, and environmental quality.
 - d. Contribute to wise physical and economic development of the Nation's resources for the benefit of present and future generations; and
6. The Bureau of Mines and Mineral Resources, New Mexico Institute of Mining and Technology, was established to conduct applied research into the geology and mineral resources. The Bureau conducts studies and disseminates information on geology, mineral and energy resources, water resources, geologic hazards, environmental problems, and extractive metallurgy. Such information is used regularly by federal, state, local agencies, public organizations, private industry, and individual citizens to make informed decisions about resource development and management, water supplies, land use, environmental impacts, natural hazard assessment, and waste disposal.

JUN 28 2007

Comment TG-07 – continued

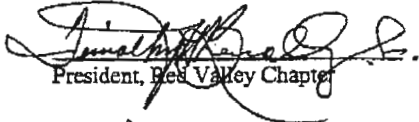
NOW THEREFORE BE IT RESOLVED THAT:

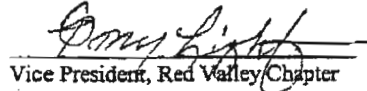
1. The people of the Red Valley Chapter hereby requests the U. S. Geological Survey and the Bureau of Mines and Mineral Resources use the U. S. Environmental Agency – U. S. Army Corps of Engineers water data base to:

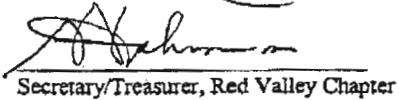
- a. Characterize general water quality conditions; and
- b. Characterize the impact of past uranium mining activities on water quality conditions; and
- c. Develop technical reports for use by the Chapters; and
- d. Develop technical reports for use by K-12 Schools who will develop lesson plans on water quality.

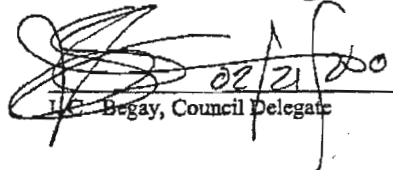
CERTIFICATION

We, hereby, certify that the foregoing Resolution was duly considered by the people of the Red Valley Chapter at which a quorum was present and the same was passed by a vote of 39 in favor and 0 opposed, this 11 day of FEBRUARY, 2001.


President, Red Valley Chapter


Vice President, Red Valley Chapter


Secretary/Treasurer, Red Valley Chapter


02/21/2001
H.C. Begay, Council Delegate

Attachments

Comment TG-07 – continued

EXHIBIT "C"



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

NOV -9-2000

Office of the Regional Administrator

Mr. J.C. Begay, Navajo Nation Council Delegate
Red Valley and Cove Chapters
PO Box 183
Red Valley, AZ 86544

Rec'd.
11/29/2000
9:30 AM

Dear Mr. Begay,

This letter is in response to your request for information about the Navajo Nation Environmental Protection Agency (NNEPA) and the U.S. Environmental Protection Agency (USEPA) Abandoned Uranium Mine Project. I am sorry for the delay. We are transitioning between project managers and my staff is in the process of responding to roughly 200 requests for information about the first round of field sampling. Please note that the USEPA and the NNEPA are currently evaluating these data to determine the most appropriate follow-up actions.

We briefly discussed your request for a project status report after the Navajo Tribal Council Meeting on July 18. I am including a copy of a general project status report and am also providing a summary of the problem areas we identified in the Red Valley and Cove study areas. USEPA provided preliminary results to the following chapter officials:

Willie W. Johnson Sr., President, Red Valley Chapter
(PO Box 304, Red Valley, AZ 86544)
Tele: 520-653-5800.

Thomas Young, Sr., President, Cove Chapter
(PO Box 276, Red Valley, AZ 86544)
Tele: 520-653-4025

Joe Ray Harvey, Grazing Official, Red Valley and Cove Chapters

Based on our first round of field sampling, we identified the following areas and characterized the types of environmental concerns:

Cove Area

- Alco Canyon Springs (North of the Cove Community)- there is a radiation and metals exposure hazard in water from an unknown source
- Lukachukai Canyons (South of the Cove Community) - there is a radiation and metals

JUN 28 2007

Comment TG-07 – continued



exposure hazard in water from an unknown source

- Cove (Old Ore Transfer Station) - there is a radiation hazard from waste ore
- Pine Water Springs - there is a lead hazard in water from an unknown source

Red Valley Area

- North Thumb Rock Spring and West Thumb Rock Spring - there is a radiation exposure hazard in water from an unknown source

We would like to send you, as well as the above and any newly elected officials, a complete set of the data in the form of maps and CD Rom computer diskettes. We would also extend an offer for you to meet with the U.S. EPA project manager and Navajo EPA staff to discuss the results, the risks posed and possible follow up actions.

If you have any additional questions about the Navajo Abandoned Uranium Mine Project, please contact my staff member, Andy Bain at (415) 744-2186 or George Padilla at NNEPA (520) 871-6861.

Yours,

Felicia Marcus,
Regional Administrator

Enclosure

cc: Derrith Watchman Moore, NNEPA
Arlene Luther, NNEPA
George Padilla, NNEPA
Laura Yoshii, USEPA
Keith Takata, USEPA

JUN 28 2007

Comment TG-07 – continued



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Abandoned Uranium Mines
Navajo Lands Project Status - Summer 2000

The Navajo Abandoned Uranium Mines Project is conducted by the USEPA Region 9 Superfund Program in coordination with the Navajo EPA and Navajo AML/UMTRA. The USEPA began this project following the Congressional committee report entitled "Deep Pockets: Taxpayer Liability for Environmental Contamination" of July 1993 and hearings on November 4, 1993. At that time, the Navajo Nation presented testimony on the abandoned uranium mines and requested assistance in determining if the old mines pose a health risk to residents. USEPA presented testimony on its federal authority under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) also known as Superfund, and how the EPA could assist the tribe. The US Departments of Energy and Interior also participated.

In 1994 USEPA, with the assistance of the Navajo EPA, investigated the abandoned uranium mines in the area of Red Valley. From that study EPA developed three steps for investigating other areas with old uranium mines. The three steps are as follows: 1) A radiation survey conducted by helicopter to find the sources of radiation in the areas of the old mines, 2) The testing of water used for human consumption, and 3) The surveying of homes for construction with materials from the old mines.

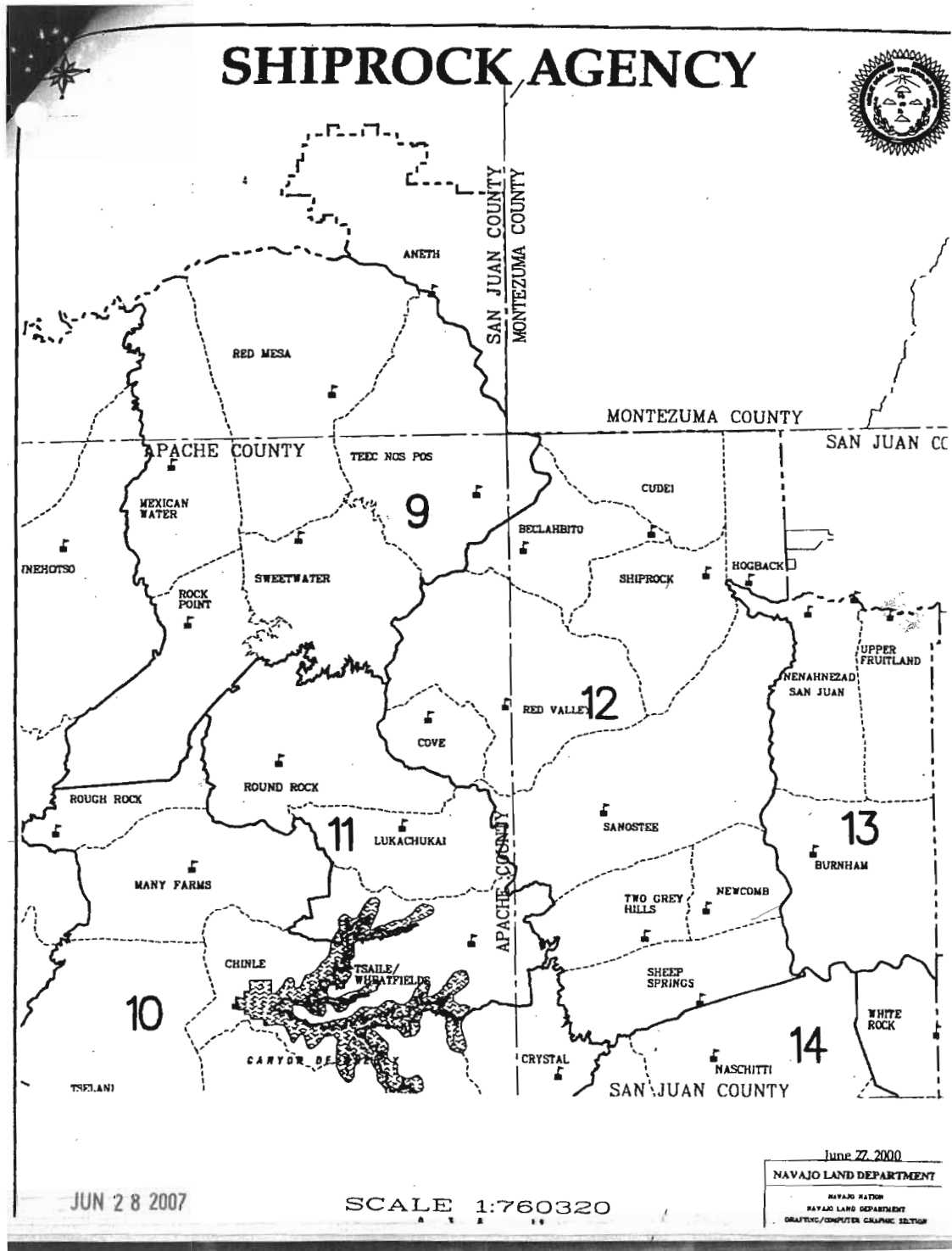
The investigations were conducted by USEPA with technical assistance provided by USDOE, Remote Sensing Laboratory, Nellis AFB, and the US Army Corps of Engineers, Los Angeles District. The field teams coordinate work with the Navajo EPA, Navajo AML/UMTRA and local communities in more than 30 Chapters. The helicopter team has surveyed more than 1000 square miles in areas of the old mines. The aerial surveys have located hundreds of sources of radiation from single or clusters of mines, and loading areas. The field team has sampled more than 200 water sources that are being analyzed for 23 metals and 11 radionuclides.

The products of this project include maps and information for Chapters concerning the radiation found in their communities and maps of radiation sources for other offices such as those involved in land use planning. Technical reports for Navajo EPA, Navajo AML/UMTRA, Navajo Water Resources, NTUA (utility), and health professionals are also being created. Information has been provided as data were collected, analyzed and evaluated.

In summary, the purpose of this project is to identify the radiation sources, characterize the exposure, and recommend methods to reduce radiation exposure. Essential in this is educating people about the radiation and working with individual communities, Navajo EPA, and other agencies to collect data, share results, and help develop solutions.

Contacts at the USEPA: Andrew Bain 415-744-2186, Vicki Rosen 415-744-2187

Comment TG-07 – continued



Comment SLG-01

Navajo-Gallup Water Supply Project **Planning Report and Draft Environmental Impact Statement** **Public Hearing COMMENTS**

Name: Elizabeth Barriga
 Representing: Gallup citizen & City of Gallup staff
 Address: 230 S. Second St.
 Gallup, NM 87305-1470
 Phone: (505) 863-1393
 E-Mail: ebarriga@ci.gallup.nm.us

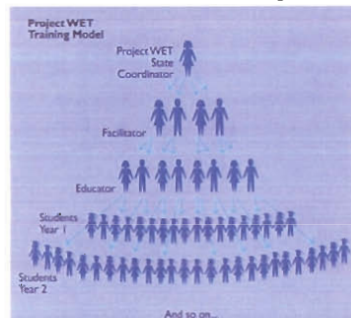
COMMENTS:

The City of Gallup has been very proactive with water conservation. These are some of the current water conservations measures Gallup has undertaken:

- The City of Gallup utilities has an inclining rate structure, one of the most effective means of conserving water.
- In 2002, the City of Gallup passed a Time and Day of Irrigation requiring designated days and time of irrigation. No irrigation on Mondays or during the afternoon hours between 10AM to 4PM.
- ASTRO Turf installed at four Gallup ballfields will be 1.74 million cf = 13 million gallons of water saved per year.
- Effluent water at the Sports Complex and the City of Gallup Golf Course saves the City of Gallup 88 million gallons of potable water per year.
- New Water Waste Ordinance passed August 2006: includes monetary fines for water waste, updated water conserving indoor fixture plumbing requirements, and new car wash regulations.
- Fall 2005, the City of Gallup passed a resolution supporting annual McKinley County Youth Water Awareness Days teaching McKinley County students fun, interactive water education from professional natural resource presenters. Three successful annual McKinley County Youth Water Awareness Days educated our teachers, students and volunteers during year 2005, 2006 and 2007.

Below are May 2nd & 3rd, 2006 Water Festival results:

- ◆ Attendance: over 1000 students
 (350 – 4th & 5th graders & over 650 – 8th & 9th grade students) with over 100 volunteers
- ◆ Professional Resource Agencies presenting: 17
- ◆ Participation: 30 classes from McKinley County schools
- ◆ Local involvement: over 10 local area businesses, clubs and organizations
- Teaching Project WET (Water Education for Teachers) classroom curriculum to McKinley County School teachers— Saturday, March 25, 2006. Over 48 teachers taught.



- Upon request, the Water Conservation Coordinator makes water conservation presentations and provides free NM OSE water conservation pamphlets for anyone interested: On-going distribution of over 500 water conservation kits.
- City Water Conservation staff has written 20 articles water conservation articles for the local newspaper "The Herald", to date.
- City of Gallup Rebates save 12.7 million gallons of water saved annually.
 - ◆ Xeriscape Rebate Program— saving 904,683 gallons of water per year.
 - ◆ Turf Removal Program – saving 5.7 million gallons of water per year.
 - ◆ NEW Rain Barrel Rebate Program – saving 148,400 gallons of water per year.
 - ◆ Toilet & Showerhead Rebate Program – saving 5.9 million gallons of water per year.
- Water Cop investigated and warned over 100's commercial and residential customers regarding water waste running from their properties.

MAY 31 2007

Comment SLG-01 – continued

All of Gallup's potable water wells are confined and the water levels are dropping at an alarming rate. Over 20 feet per year. Since the wells are so deep 900 – 3000 feet deep and are encased in sandstone and clay there is no recharge. Water conservation can help prolong our water supply for only a limited period of time. It would not be enough to provide for future water needs.

The City of Gallup's demographics include over a 40% population of Native Americans. All of Gallup's 20,000 residents and future residents will benefit with the **Northwestern New Mexico Rural Water Supply Project = Navajo Gallup Water Supply Project**. Especially, based on the 2000 census data, 32% of the 69,154 Navajo housing units were deficient in plumbing which equals 22,000 houses with no running water in our own backyards, here in America! That figure does not include the Jicarillo Apache Nation housing units also without running water. These American people have to haul water as depicted in the pictures below every week. These people know water conservation better than most of our country using only 250 gallons per week! These Native American people are the same ones that by the "Prior Appropriation Doctrine" and the "Tribal Reserved Water Rights" are the first in time to have water rights in New Mexico and throughout the United States. Yet, these are the only people in our country who still have no running water!

I, Elizabeth Barriga, a City of Gallup Water Board member and resident of Gallup strongly support the Northwestern New Mexico Rural Water Supply Project = NGWSP.

Billions of dollars are being spent in Florida after the 2004 hurricanes hit, rebuilding on land that is still below sea level and may be destroyed tomorrow by yet another hurricane. Since the independence of our Country, year 1776 to our present year 2007 (231 years : TWO HUNDRED & THIRTY ONE Years) running wet water has never been provided for our very own Native American people. Can funding be allocated to help our poorest people to have the basic of necessities in the United States – running wet potable water?



Comment SLG-02

**Bob Rosebrough
1506 South Grandview
Gallup, NM 87301**

May 31, 2007

Rege Leach
Western Colorado Area Office
Bureau of Reclamation
835 East 2nd Ave., Suite 300
Durango, CO 81301

Re: The Navajo-Gallup Water Supply Project

Dear Mr. Leach:

I entered my term as mayor of Gallup (2003-2007) at midstream of the decades-long efforts to secure a long-term and sustainable water supply for the eastern Navajo Reservation and Gallup, its neighbor city. I was clear from the start that my choices would not be whether, but how, to add the City's support and partnership to the concerted work by the Navajo Nation and the Jicarilla Apache Nation to plan for and secure such a water supply.

INITIAL ACTION TAKEN. One of my first actions as mayor was to establish "100-Day Initiatives" and to organize citizen task forces around these strategies:

- a. A Water Task Force was formed whose first charge was to plan for and convene a community-wide Town Hall on Water was created to include citizens both from within the City and from neighboring Native American communities, as well as experts and stakeholders who could bring good information and advice to the process.
- b. We commissioned a white paper from the Northwest New Mexico Council of Governments, whose Director Patty Lundstrom has served for 15 years as Chair of the intergovernmental Steering Committee for the Navajo-Gallup Water Supply Project.
- c. We then brought together over 80 community and neighboring citizens and experts for a 3-day Town Hall. The results were remarkable, both in terms of the cooperation and goodwill that was fostered and in terms of the specific recommendations brought forward to the Gallup City Council.
- d. The first recommended action, which the Council unanimously endorsed, was the formalization of the Water Task Force into an appointed "Gallup Water Board." This Board was formed, got to work immediately and has continued functioning on through the present day.
- e. The second action was to charge this new Water Board with the task of evaluating the

JUN 12 2007

Comment SLG-02 – continued

Rege Leach
6/7/2007
Page 2 of 3

City's water rate structure and recommending a short-term, mid-term and long-range financing plan that would ensure a water-secure future for the City. The Water Board took this on systematically and courageously, and brought to City Council a thoughtful and comprehensive recommendation on a financing plan best served by a revised water rate structure that would not only increase revenues for immediate and longer-term infrastructure, but would support the City's participation in the Navajo-Gallup Water Supply Project and at the same time encourage conservation of the precious water resource.

- f. A further action of the Water Board involved research into the short-and long-term viability of wastewater recycling utilizing advanced reverse-osmosis (*RIO*) technology, as well as continuing the pursuit of other water resources as part of the overall City water strategy. This research continues in earnest today, with some promising possibilities emerging.

BRIDGE BUILDING & PARTNERSHIP WITH THE NAVAJO NATION. Of equal or greater importance than the work of our Town Hall and our Water Board, in my mind, was the work of building bridges of friendship and partnership with our Navajo Nation neighbors, and this was another initiative at the top of my short list of priorities:

- a. I believe we made great strides in this partnership work, and the Navajo-Gallup Water Supply Project was a center-piece of that progress. We broke through a lot of red tape and other barriers to cooperation in order to start forging a new regional water partnership.
- b. In this new effort, we would upgrade and then use the City's water infrastructure to help convey the Navajo Nation's water supply from one place to another, thus establishing a new "Water Commons" in which all citizens would share in the region's water supply.
- c. Our first breakthrough project was a collaborative with the Navajo Nation, the Indian Health Service and the Navajo Tribal Utility Authority to convey water from the Gallup system to Navajo residents just outside the City limits along Boardman Avenue. This project has broken ground and laid pipe, and we are looking for municipal water to start flowing through those water faucets later this summer.
- d. The State of New Mexico also came to our assistance in a big way, with investments during my term as Mayor of over \$5 million in new infrastructure development that would support providing "Real Water to Real People in Real Time" – even as we awaited the advent of surface water supply in the area from the new Navajo-Gallup Water Supply Project pipeline from the San Juan River.

Comment SLG-02 – continued

Rege Leach
6/7/2007
Page 3 of 3

SUPPORT OF PLANNING REPORT & DRAFT EIS. I believe that the *Planning Report* and *Draft EIS* for this project accurately reflect the more than 15 years of work that has been done collaboratively by the Navajo Nation, the City of Gallup and their local and State partners:

- a. The project has been served with distinction by the staff of the Bureau of Reclamation, whose project leaders have exhibited professionalism and competence while supporting the initiative and leadership of the local sponsoring entities.
- b. The project has also been served with high excellence by a persevering band of technical planners, attorneys, government officials and political leaders across the participating organizations. As such, it represents a positive and effective model for intergovernmental cooperation –virtually unprecedented in this area.
- c. The complexity and cost of the Navajo-Gallup Water Supply Project have challenged the City of Gallup to be extremely vigilant in its evaluation of water supply alternatives, financial resources for sustained water supply and other factors affecting the City's water future.
 - i. The City's potential as a participating partner and as an anchor to the Navajo-Gallup system certainly remains paramount.
 - ii. However, the assistance of Federal and State government in making this participation financially feasible will likewise be extremely important going forward.

2

Thank you for considering this letter.

Sincerely,



Bob Rosebrough

Comment SLG-03

NEW MEXICO INTERSTATE STREAM COMMISSION**COMMISSION MEMBERS**

DUNLAP, Chairman, Farmington
 HELPS WHITE, III, Vice-Chairman, Roswell
 JOHN R. D'ANTONIO, JR., P.E., Secretary, Santa Fe
 BUFORD HARRIS, Mesilla
 BLANE SANCHEZ, Isleta
 JULIA DAVIS STAFFORD, Cimarron
 PATRICIO GARCIA, Rio Chama
 MARK S. SANCHEZ, Albuquerque
 JAMES WILCOX, Carlsbad



BATAAN MEMORIAL BUILDING, ROOM 101
 POST OFFICE BOX 25102
 SANTA FE, NEW MEXICO 87504-5102

(505)827-6160
 FAX:(505)827-6188

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PROJECT			
CONTROL #			
NAME	DATE	INITIAL	CYS
K. Beck			
R. Leach			
P. Wrey			

June 26, 2007

Mr. Rege Leach
 Bureau of Reclamation
 Western Colorado Area Office
 835 East Second Avenue, Suite 300
 Durango, Colorado 81301

Dear Mr. Leach:

The New Mexico Interstate Stream Commission offers the following comments on the Bureau of Reclamation's March 2007 Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project, New Mexico-Arizona (DEIS). The State of New Mexico strongly supports the Navajo-Gallup Water Supply Project as an essential element of the Settlement Agreement between the Navajo Nation and the State of New Mexico relating to the Navajo Nation's water rights in the San Juan River Basin of New Mexico. The State of New Mexico greatly appreciates Reclamation's continued planning efforts to obtain environmental compliance for the Navajo-Gallup Water Supply Project. Implementation of the project is a key component of the settlement agreement and would provide much needed renewable water supply for many citizens within the Navajo Nation and New Mexico. As you know, legislation to authorize the project and approve the Settlement Agreement has been introduced to Congress (S. 1171 and HR 1970). The Settlement Agreement provides certainty in the basin for both water development and water administration in New Mexico.

The State of New Mexico strongly supports the selection of the preferred alternative in the DEIS and looks forward to a final EIS and eventual project construction.

Appraisal-Level Cost Estimate and Design

As the DEIS notes, this project has been under development for decades. For example, Congress authorized the completion of a feasibility study for an earlier version of the project in 1971 (PL 92-199), and in 1984 an earlier version of a draft EIS was prepared. In 1993 an additional appraisal level cost estimate was completed and throughout the 1990's Reclamation conducted studies relating to the project. As the DEIS notes, "More than twenty-five years of studies have reached essentially the same conclusions". (Technical Appendix A at 23). Based on the level of appropriations already received and studies already completed, and the State of New Mexico is anxious to review the revised "feasibility level cost estimate for the project.

Comment SLG-03 – continued

Mr. Rege Leach
6/26/2007
Page 2

Navajo-Gallup Project Water Supply (Pages III-2 to III-10, and pages V-28 to V-29)

The availability of water for the project uses in New Mexico, and the accounting of project depletions in New Mexico within that state's Upper Basin apportionment, has been resolved by resolutions of the Upper Colorado River Commission and the Bureau of Reclamation's 2007 Hydrologic Determination signed by the Secretary of the Interior on May 23, 2007. The Final EIS should reflect these events.

1

The DEIS correctly notes that issues regarding the accounting of project uses in Arizona within the allocations of water made to that state by compact or decree have not been resolved between the Navajo Nation and Arizona or by the Basin States. The process to complete the EIS for this project should proceed as scheduled, and the EIS may be supplemented, if necessary, at such time that the accounting of the project uses within Arizona is resolved. Consistent with S.1171 authorizing the project, regardless of how the accounting of project uses in Arizona is resolved, a Navajo Reservoir water supply contract with the Secretary will be required.

2

New Mexico Upper Basin Depletions (Tables I-1 and V-3, & Appendix C, Part III, Table 4)

The depletion amounts for anticipated uses in New Mexico that were included in Table I-1 of the DEIS are consistent with those used in the 2007 Hydrologic Determination signed by the Secretary of the Interior on May 23, 2007, but the DEIS at Table V-3 and the Biological Assessment for the Navajo-Gallup Water Supply Project at Table 4 contain different amounts for baseline depletions in New Mexico. The differences between the anticipated depletions and the baseline depletions in New Mexico that are shown in these tables should be explained. The Biological Opinion for the project and the EIS should provide for future reconciliation of some of the differences through appropriate revisions to the historic and baseline depletions used in the San Juan River Basin Hydrology Model and consequent recalculation of the threshold depletion in the basin that triggers implementation of the Navajo Nation depletion guarantee. Appropriate model revisions include recomputing irrigation depletions to reflect the same methodology used for the 2007 Hydrologic Determination and revising certain depletion amounts for Navajo Nation uses to reflect the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement. Also, the baseline depletions tables should include clarifying footnotes and be organized to better reflect the uses within each state (see San Juan River Basin Recovery Implementation Program, Final Program Document, September 2006, Appendix A).

3

Navajo Depletion Guarantee (Pages VI-2 to VI-3, and Appendix C, Part III, Pages 8 to 12)

The Draft Biological Opinion for the Navajo-Gallup Water Supply Project proposes that the Navajo Nation reduce its consumptive uses in New Mexico under the Navajo Indian Irrigation Project, or under other Navajo projects for which depletions are in the hydrologic baseline, by up to 20,780 acre-feet per year to offset an equivalent amount of its water use under the project if and when necessary to keep total depletions of San Juan River flows caused by all uses in the basin within Arizona, Colorado, New Mexico and Utah combined from exceeding about 859,640

Comment SLG-03 – continued

Mr. Rege Leach

6/26/2007

Page 3

acre-feet per year during any five-year administrative period. The State of New Mexico has several concerns regarding the concept and the proposed implementation of the Navajo Nation depletion guarantee and is working with the Navajo Nation, the Bureau of Reclamation, the State of Colorado and other participants in the San Juan Recovery Implementation Program to address these concerns.

4

Under the Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin (Principles) adopted by the San Juan River Basin Recovery Implementation Program, implementation of the program's Long-Range Plan and progress toward recovery of the species are intended to provide the reasonable and prudent alternatives for water development in the basin (see Final Program Document, September 2006, Appendix C). The Biological Opinion and the EIS should not preclude reconsultation under section 7 of the Endangered Species Act to eliminate the proposed depletion guarantee requirement and identify reasonable and prudent alternatives for the project from the Recovery Implementation Program's Long Range Plan.

5

New Mexico continues to have several concerns regarding the technical aspects of the monitoring of actual depletions in the basin and the implementation of the depletion guarantee, and regarding the use of data from the Bureau of Reclamation's San Juan River Basin Hydrology Model to limit or administer depletions in the basin. Interstate Stream Commission staff continues to work with Reclamation staff towards resolving technical data and computational issues in the San Juan River Basin Hydrology Model, and technical and institutional issues relating to the discussion of operational flexibility and the depletion guarantee at pages 8-10 of the Draft Biological Opinion. The DEIS at page VI-3 refers to additional modeling to be completed prior to any future implementation of the depletion guarantee, but the modeling process is not clear. Reclamation has certain modeling responsibilities that cannot be transferred to the program or other parties.

6

The Biological Opinion also should make clear that nothing in it, including the Navajo Nation depletion guarantee, is binding on, or affects the rights of, water users in the San Juan River Basin, other than the Navajo Nation. In addition, consistent with S.1171, the Biological Opinion should be revised to cover the City of Gallup subcontracting for its project water supply with either the Jicarilla Apache Nation or the Navajo Nation, or both in combination.

7

Navajo Indian Irrigation Project Water Rights Transfers (Pages III-7 to III-9)

Under the Settlement Agreement, the Navajo Nation would be allowed to subcontract Navajo Indian Irrigation Project water, and to transfer the purpose and place of use of its project water subject to approval by the New Mexico State Engineer. The transferable portion of the depletion per acre could be less than that indicated by the DEIS.

8

Comment SLG-03 – continued

Mr. Rege Leach
6/26/2007
Page 4

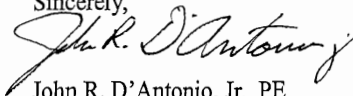
Navajo Nation Existing and Future Uses (Pages V-21 to V-26)

The Navajo Nation depletions listed in table V-5 are not accurate representations of existing or future depletions. For example, the Shiprock Helium Plant was dismantled decades ago, and little use has been made under the two Kerr-McGee permits for decades. Most, if not all, of the use under the three state permits has been abandoned or forfeited, and the permits would be cancelled under the proposed Navajo Nation water rights settlement. The permitted amounts of use under the three permits are not in the baseline depletions. Also, the Hogback Project rehabilitation future use amount shown in the table would result in a total depletion for the project that exceeds the total depletion right provided the Navajo Nation for the project in the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement. The depletions shown for the Navajo Indian Irrigation Project represent baseline depletions from specific Endangered Species Act section 7 consultations on the project, and a significant portion of the Navajo Indian Irrigation Project future use depletion amount is currently being utilized.

9

Thank you for the opportunity to provide comments on the DEIS. Please call me or John Whipple to discuss any questions or concerns you may have regarding these comments. Mr. Whipple and Reclamation staff are currently working together to resolve the hydrologic modeling, baseline depletion and depletion guarantee issues identified herein. We look forward to your continued cooperation and assistance to resolve remaining issues regarding the Navajo-Gallup Water Supply Project and to work towards the implementation of the project.

Sincerely,



John R. D'Antonio, Jr., PE
Secretary

Copy: John Leeper
Mike Hamman
Lance Algood

Comment SLG-03 - continued

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington
J. PHELPS WHITE, III, Vice-Chairman, Roswell
JOHN R. D'ANTONIO, JR., P.E., Secretary, Santa Fe
BUFORD HARRIS, Mesilla
BLANE SANCHEZ, Isleta
JULIA DAVIS STAFFORD, Cimarron
PATRICIO GARCIA, Rio Chama
JUDITH M. ESPINOSA, Albuquerque
JAMES WILCOX, Carlsbad



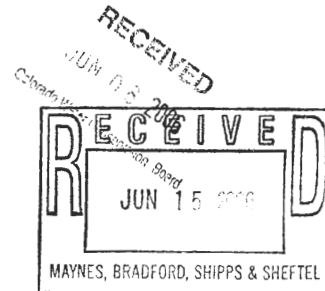
BATAAN MEMORIAL BUILDING, ROOM 101
STATE CAPITOL
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO 87504-5102

(505)827-6160
FAX: (505)827-6188

June 6, 2006

Mr. Scott Balcomb, Commissioner
Upper Colorado River Commission
PO Drawer 790
Glenwood Springs, Colorado 81602

Mr. Rod Kuharich, Director
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203



Re: New Mexico's Response to Colorado's May 24, 2006, Letter to John D'Antonio, Jr.

Gentlemen:

This letter is in response to your May 24, 2006, letter to me regarding the Upper Colorado River Basin hydrologic determination update, my telephone conversation with Rod Kuharich on May 25, 2006, and our subsequent telephone conferences and meetings on the subject. You have requested New Mexico's support for Colorado's proposed changes to the draft resolution of the Upper Colorado River Compact Commission on the May 2006 draft Hydrologic Determination and to the proposed determination, and you request certain assurances from New Mexico relating to specific issues identified in the letter. While New Mexico cannot agree to all of the State of Colorado's suggested changes to the May 2006 draft Hydrologic Determination or to the proposed resolution of the Upper Colorado River Commission relating to the determination, New Mexico and Colorado have agreed to revised versions of the documents which are attached to this letter.

The draft Hydrologic Determination has been prepared to indicate the availability of water within the State of New Mexico's Upper Basin allocation for the Navajo-Gallup Water Supply Project, which is a component of a Navajo Nation water rights settlement in the San Juan River Basin in New Mexico. The draft Hydrologic Determination uses many of the same assumptions used in the 1988 Hydrologic Determination, and indicates that sufficient water is likely to be available within New Mexico's Upper Basin allocation to supply the Navajo-Gallup Project. The May 2006 draft Hydrologic Determination shows the same total Upper Basin depletion during the 1953-1977 critical water supply period as was shown in the 1988 Hydrologic Determination, but refines the analysis by deducting the critical period evaporation, rather than the long-term average evaporation, from the critical period total depletion to determine the availability of water for use by the states during the period. The Upper Colorado Regional Office of the Bureau of Reclamation and the engineering staff representing the States of the Upper

JUL 03 2007

Comment SLG-03 – continued

Mr. Balcomb, Mr. Kuharich
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Division accepted this approach in the draft Hydrologic Determination as technically appropriate and sound.

The Hydrologic Determination would provide for the continuation of Upper Basin water development, provide a mechanism for resolving certain long-standing disputes within the Upper Basin as to the accounting procedures for consumptive uses in the basin, and assist in moving forward the Navajo Nation water rights settlement. In addition, under the settlement, the Navajo Nation would agree that its rights to the use of water in the San Juan Basin, and its exercise of these rights, are subject to both the Upper Colorado River Basin Compact and New Mexico state water law. Thus, the settlement provides great benefits to users of San Juan River Basin water in both Colorado and New Mexico.

Although the position of the Southwestern Water Conservation District, as conveyed by your letter, addresses more than the technical merits of the Hydrologic Determination and the corresponding Commission resolution, we address the District's and Colorado's requests as follows. As a participant in the San Juan River Basin Recovery Implementation Program, New Mexico continues to support and work towards the dual goals of the program: (1) to conserve populations of Colorado pikeminnow and razorback sucker in the San Juan River Basin consistent with the recovery goals established under the Endangered Species Act; and (2) to proceed with water development in the basin in compliance with federal and state laws, interstate compacts, Supreme Court decrees, and federal trust responsibilities to the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Jicarilla Apache Nation and the Navajo Nation. The State of Colorado and water development interests in both New Mexico and Colorado also participate in the Program. New Mexico continues, as does Colorado, to make available its required cost-share funds pursuant to Public Law 106-392, as amended, to assist in the implementation of capital recovery projects in the San Juan River, and supports extension of the term of the Recovery Implementation Program as necessary to accomplish the goals of the program.

Moreover, to proceed with the Animas-La Plata (ALP) Project and its role as a vehicle in the settlement of the Colorado Ute Tribes' reserved water rights claims, which benefit water users in both Colorado and New Mexico, the states of Colorado and New Mexico agreed to the re-operation of Navajo Reservoir to benefit the populations of endangered fish in the San Juan River. The re-operation of Navajo Reservoir to assist with meeting the flow recommendations of the Recovery Implementation Program, in combination with the other activities of the Recovery Implementation Program, provides a reasonable and prudent alternative for Endangered Species Act compliance for all existing and future San Juan River Basin federal water development and water management activities in Colorado as well as in New Mexico. The State of New Mexico continues to support the preferred alternative of the Bureau of Reclamation's Navajo Reservoir Operations Final Environmental Impact Statement to operate Navajo Reservoir to help meet the flow recommendations or a reasonable alternative.

Neither the states of New Mexico and Colorado nor the Fish and Wildlife Service considers the Recovery Implementation Program's flow recommendations to be inviolate. Therefore, New Mexico agrees with Colorado that the flow recommendations should not be used to impede additional water development in the San Juan River Basin in both states that is consistent with each states' allocation under the Upper Colorado River Basin Compact. New Mexico and Colorado have worked with the water development interests in both states and through the Recovery Implementation Program to ensure

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that the Program provides a reasonable and prudent alternative for Endangered Species Act compliance. Section 7 consultations rely on the Recovery Implementation Program for Endangered Species Act compliance by utilizing, among other things, the Program as the reasonable and prudent alternative. Water development projects in the San Juan River Basin in Colorado and New Mexico, while perhaps hindered by, have not been stopped, because of the Recovery Implementation Program's flow recommendations, or a project's inability to utilize the Recovery Implementation Program as a reasonable and prudent alternative for Endangered Species Act compliance. The Recovery Implementation Program, in total, is intended to provide the reasonable and prudent alternative to offset the depletion and other impacts of water development in the San Juan River Basin. New Mexico supports the continuation of the Recovery Implementation Program as a reasonable and prudent alternative to offset the impacts of water development in the basin in accordance with the program documents, including in particular the Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin adopted by the program on June 19, 2002. The Principles document also describes how the Recovery Implementation Program addresses and provides compliance for the "take" provisions of Section 9 of the Endangered Species Act. New Mexico further agrees that it will not use the Recovery Implementation Program, including the flow recommendations, to hinder or impair any future water development in the Colorado portion of the San Juan River Basin.

New Mexico also supports the right of each Upper Basin state to develop its Upper Colorado River Basin Compact allocation. The Navajo-Gallup Water Supply Project would provide about 29,500 acre-feet per year of depletions in New Mexico, of which about 20,800 acre-feet are for use by the Navajo Nation under a proposed Navajo Reservoir water supply contract and 8,700 acre-feet are for use by the Jicarilla Apache Nation and the City of Gallup under the Jicarilla Apache Nation's existing Navajo Reservoir water supply contract. Pursuant to the Colorado Ute Indian Water Rights Settlement Act Amendments of 2000, the ALP Project will provide about 43,500 acre-feet per year of depletions in Colorado and 13,600 acre-feet per year of depletions in New Mexico which were the subject of the Project's previous Section 7 consultation under the ESA. In addition, it is anticipated that the proposed Long Hollow Reservoir Project will deplete about 1,500 acre-feet of water per year, on average, in the La Plata River drainage in Colorado. I confirm New Mexico's support for the Long Hollow Reservoir Project as stated in my January 31, 2006, letter to Hal Simpson, Colorado State Engineer.

The State of New Mexico disagrees, however, with the State of Colorado's position regarding where the states may choose to use their La Plata River Compact apportionments. The La Plata River Compact is administered daily by the State Engineers of Colorado and New Mexico, and issues regarding the compact administration should be discussed and addressed by the State Engineers.

With respect to the San Juan-Chama Project, the flow bypass parameters for operation of the San Juan-Chama Project at its points of diversion in Colorado were mandated by section 8 of Public Law 87-483, which authorized the project in June 1962. The Bureau of Reclamation's hydrologic modeling prepared for water planning and federal environmental compliance activities in the San Juan River Basin uses the Public Law 87-483, section 8, bypass requirements. I am not adverse to discussing possible modifications to San Juan-Chama Project bypass requirements, in consultation with the Bureau of

Comment SLG-03 – continued


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Reclamation and the project contractors, so long as the San Juan-Chama Project yield is not adversely affected.

Finally, New Mexico will continue to work through the Seven Basin States process to identify and help bring to fruition water augmentation opportunities throughout the Colorado River Basin, including weather modification. The San Juan Water Commission, a New Mexico entity and participant in the ALP Project, has in the past contributed funding to snowpack augmentation in the San Juan Mountains of Colorado. The State of New Mexico remains committed to all of the concepts contained in the draft Seven Basin States agreement transmitted to the Secretary of the Interior via letter dated February 3, 2006, so long as the states continue to honor and support each state's rights to develop its compact allocation.

Thank you for your support of New Mexico's right to develop its compact allocation, and for your support of the Hydrologic Determination update and the proposed resolution. Please call me to discuss this matter further if you have any questions or believe that further discussion would be helpful.

Sincerely,



John R. D'Antonio, Jr., PE
Secretary and State Engineer

Copy: Dennis Strong, Commissioner, Upper Colorado River Commission
Patrick Tyrrell, Commissioner, Upper Colorado River Commission
Don Ostler, Executive Director, Upper Colorado River Commission
Rick Gold, Upper Colorado Regional Director, Bureau of Reclamation
Hal Simpson, Colorado State Engineer
Nate Gentry, Office of Senator Pete Domenici
Mike Connor, Office of Senator Jeff Bingaman
Steve Farris, Office of the New Mexico Attorney General
Bill Hume, Office of Governor Bill Richardson

JUL 03 2007

Comment SLG-04

navgal navGAL - Navajo-Gallup WSP PR&DEIS comment letter

Page 1

From: "Seaholm, Randy" <Randy.Seaholm@state.co.us>
To: <navgal@uc.usbr.gov>
Date: Fri, Jun 29, 2007 10:52 AM
Subject: Navajo-Gallup WSP PR&DEIS comment letter

Please accept the comments of the State of Colorado on the NGWSP. We are sending you a fully signed copy by mail. Thanks for your consideration.

Randy Seaholm

Colorado Water Conservation Board

1313 Sherman Street, Room 721

Denver, Colorado 80203

Phone: 303-866-3506

FAX: 303-866-4474

e-mail: randy.seaholm@state.co.us

Comment SLG-04 – continued

Pam Tirey - NGWSP PRDEIS Comments607.doc

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STATE OF COLORADO

**Colorado
Water
Conservation Board**
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
FAX: (303) 866-4474
www.cwcb.state.co.us



June 28, 2007

Bill Ritter, Jr.
Governor

Harris D. Sherman
Executive Director

Rod Kuharich

Mr. Rege Leach
U.S. Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Re: Comments on Planning Report and Draft EIS for the Navajo-Gallup Water Supply Project

Dear Mr. Leach:

Thank you for the opportunity to comment on the "Planning Report and Draft Environmental Impact Statement, Navajo-Gallup Water Supply Project" (PR&DEIS) released March 30, 2007.

The Colorado Water Conservation Board (CWCB) is the state agency charged with promoting, protecting, conserving and developing Colorado's water resources in order to secure the greatest utilization of those resources for the benefit of present and future generations, and to minimize the risk of flood damage and related economic losses. The CWCB has a long association with activities concerning the Colorado River Compact and the "Law of the River." The Colorado Water Conservation Board, on behalf of the State of Colorado, hereby submits the following comments for consideration in the development of the EIS for the Navajo-Gallup Water Supply Project (NGWSP).

The proposed action by Reclamation to construct the NGWSP, which would divert water from the San Juan River to entities in New Mexico some of which are in the Lower Colorado River Basin, has potential legal, social and environmental implications throughout the San Juan River Basin and possibly the entire Colorado River Basin. Given the substantial investment that Reclamation will make in implementing the Navajo settlement and the NGWSP, impacts should be considered in a manner that recognizes the possible consequences of this project without involving any interpretations of the Colorado River Compact among the seven Colorado River Basin States and related issues associated with the "Law of the River."

We would like to begin our comments by noting the Upper Colorado River Commission (UCRC), which includes the states of Colorado, New Mexico, Utah and Wyoming, has passed two resolutions that helped advance approval of the Navajo Settlement and the construction of the NGWSP. First, the UCRC passed a resolution in June 2003 establishing a process for the approval of projects that would divert water from the Upper Colorado River Basin for use in the

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Comment SLG-04 – continued

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Lower Colorado River Basin. The substance of the resolution was that water diverted from the Upper Basin would be accounted for as part of that state's Upper Basin apportionment as indicated by the following language contained in the resolution.

NOW, THEREFORE, BE IT RESOLVED by the Upper Colorado River Commission that the States of Colorado, New Mexico, Utah and Wyoming, support and to the extent necessary consent to the diversion of water from the Upper Basin for use in the Lower Basin solely within New Mexico via the proposed Navajo-Gallup Water Supply Project; provided, that any water so diverted by said project to the Lower Basin portion of New Mexico, being a depletion of water at Lee Ferry, shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III (a) of the Upper Colorado River Basin Compact;

The UCRC went on to note that such approvals should be done on a case-by-case basis.

Secondly, the UCRC passed a resolution in support of the 2006 Hydrologic Determination (HD), which support included recognition of the concerns by the Southwestern Water Conservation District (SWCD). The following is taken from the minutes of the UCRC for June 2006.

Barry Spear, General Counsel for Southwestern Water Conservation District, "When this process started for us, we asked New Mexico for a number of assurances to protect the water users in the southern part of the State of Colorado in exchange for our recommendation to the State of Colorado to support the draft HD. We have not received those assurances, and we feel that --we are disappointed in that. However, we have agreed to the language of the letter which Mr. D'Antonio mentioned earlier. We are looking forward to the good-faith compliance of the terms of that letter from New Mexico and working with New Mexico in the future.

I also would like to say that the Southwestern District has had a long history of supporting Indian tribes in their pursuit of water rights and establishing their water rights. We have supported the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, and we have supported the Navajo Nation and the Jicarilla. We continue with that support. We support the Navajo Settlement Agreement. We support the Navajo-Gallup Pipeline. But what we would like to do is, we do reserve our right to lobby our legislators to add language to legislation which would protect water users in Southwestern Colorado.

Subsequently, New Mexico has provided the referenced letter which we have attached hereto.

Furthermore, the June 9, 2006 Resolution of the Upper Colorado River Commission (PR&DEIS Attachment B) addressing the HD states: "that nothing in this Resolution, or resulting from the adoption of this Resolution, shall limit the right or ability of any Upper Basin State to develop the full apportionment made to it under the Colorado River Compact and the Upper Colorado River Basin Compact." However, we would note that the depletion guarantee contained in the NGWSP draft Biological Opinion has the potential to limit southwest Colorado's ability to develop under the Compacts because it fails to fully consider the benefits of the San Juan Recovery Implementation Program (SJRIP). However, we believe this issue is likely to be

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resolved by negotiations with the water users in the San Juan Basin.

Prior to the actions of the UCRC, the CWCBC discussed the Navajo Settlement and the NGWSP and agreed to support the Navajo Settlement and NGWSP with the inclusion of the conditions discussed by Mr. Spear at the June 2006 UCRC meeting. The CWCBC supports the need for and the purpose of the NGWSP. The area to be served by the NGWSP is extremely dry and many on the Navajo reservation currently do not have running water. We believe the NGWSP can be developed in a manner that minimizes the impact to existing and future water use in Colorado with the inclusion of reasonable conditions as referenced in the comments of the Southwestern Water Conservation District (SWCD) to the UCRC along with suggested language that is currently being negotiated between Reclamation and water interests in the San Juan Basin concerning the depletion guarantee that Reclamation will seek to include in the draft Biological Opinion. Other provisions contained in the letter from New Mexico to Colorado will be suggested as part of the federal legislation approving the Navajo water rights settlement and authorizing the NGWSP.

The specific comments and recommendations of the CWCBC regarding the PR&DEIS are as follows:

In general, the PR&DEIS does not fully recognize the SJRIP and the purpose of the SJRIP. The flow recommendations are only one component of the SJRIP and are not the major criteria for determining whether or not future water use and depletions can occur without adversely impacting the Colorado River endangered fish. The PR&DEIS must be revised to appropriately consider the ability of the SJRIP on whole to recover the endangered fish and not focus solely on the flow recommendation component of the SJRIP, which through the adaptive management process can change..

Page S-4:

- Does 160/gpd/household include outside uses such as lawn and garden watering? If not, does water usage need to be monitored and limited to household uses?
- It should be noted that the Jicarilla, Navajo and City of Gallup will need contracts with Reclamation for the use of Navajo Reservoir water and the general terms and duration of those contracts described.
- Alternative Screening Process: Please define how Navajo Nation water for use in Arizona will utilize consumptive use apportionments made to Arizona. As noted by the actions of the UCRC above it is extremely important to the Upper Basin and the integrity of the Colorado River and Upper Colorado River Compacts that Arizona's consumptive use of San Juan River Basin water be charged to Arizona's Upper Basin apportionment of Colorado River water. Arizona has agreed to this condition previously when development of power plants in 4-corners area was considered and it should not be allowed to change its position on this matter in the PR&DEIS process.

Page S-9: The SJRIP has not identified significant water quality issues in the San Juan River, at least as to endangered fish. Furthermore use of water for dilution purposes is not a valid

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beneficial use of water. An additional 5 cfs for dilution purposes is not necessary nor legally appropriate and should not be a mitigation term or condition of the NGWSP FEIS or ROD.

Page S-10: The SJRIP will address any entrainment of endangered species issues and any mitigation for the entrainment of endangered fish should reference the SJRIP.

Page S-6: Acknowledgement that development of the NGWSP has impacts on water use in Colorado pursuant to terms in the Upper Colorado Compact should be noted and described. Also, reference to the conditions sought by water users in southwest Colorado to minimize those impacts should be included.

Page S-10: Please define what ongoing ESA consultation refers too.

Page S-11: The depletion guarantee described in the January 23, 2007 the draft Biological Opinion (DBO) is summarized in this section and is not acceptable to Colorado because it: (1) may establish precedent for Section 7 consultations that run contrary to the "Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin" (Principles) established by the Coordination Committee for SJRIP and concurred in by the US Fish and Wildlife Service; and (2) the description implies that depletions may be "borrowed" from other water users in the basin that could diminish opportunities for future water development and even perhaps the utilization of existing water rights. These issues are currently being discussed among the San Juan Basin water users and appear to be resolvable but not until after the close of comments on the PR&DEIS. Colorado water interests have requested an extension of time in order to complete negotiations on this matter. While Reclamation has denied the requested extension, in its denial letter it indicated that it would work with water interests to complete that endeavor. Given this understanding with Reclamation, Colorado reserves the right to comment further on this matter if the DBO is not modified to adequately address the concerns.

Page I-3: Further clarification of considerations relative to the Rio Grande Basin is needed. Are those considerations related solely to San Juan-Chama Project?

Page I-3: Proposed Project Authorization. Is authorization required for the Jicarilla Nation part of the NGWSP?

Page I-6: City of Gallup and Navajo Nation. How does the NGWSP work conjunctively with NIIP?

Page I-6: Upper Colorado River Commission: Further clarification is required here to better describe how the actions of the UCRC have been or will be incorporated into the PR&DEIS and the legislation authorizing the NGWSP, in particular the position of the UCRC on water for Arizona from Navajo Reservoir needs to be clear. Please provide additional information on Navajo Nation discussions with Arizona and how this PR&DEIS is limited to New Mexico uses at this time. Use of NGWSP water in Arizona is dependent on the completion of settlement

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negotiations between the Navajo Nation and Arizona before project facilities can be constructed in Arizona.

Page I-9: Jicarilla Apache Tribal Council Resolution. What is the status of Jicarilla/Navajo/City of Gallup discussions? Will there be additional NEPA compliance for the distribution system to the Jicarilla Apache Nation? If so, what if any additional compliance is required?

Page I-11: NIIP is approximately 70% complete. When is NIIP anticipated to be completed? What steps are involved in the completion?

Page I-12: Why aren't the Principles for Section 7 consultation discussed here? The Principles adopted by the SJRIP should be identified here and it should also note that the entire SJRIP should serve as the RPA for water development in the San Juan Basin, not just satisfaction of the flow recommendations.

Page I-12: Again, we note that the flow recommendations are not and should not be the primary criteria for determining the impact of water development on endangered fish recovery as there are other factors such as predation by non-native fish. Furthermore, the documents should reference the SJRIP as the RPA pursuant to the Principles for conducting Section 7 consultations. The PR&DIES should be rewritten to remove the emphasis on the flow recommendations and include the Principles.

Page I-14: Animas-La Plata Project. Please note that the Project is one component of the overall settlement of the federal reserved water rights for the Ute Tribes. Also, please note that depletions are average annual depletions, not maximum annual depletions. ALP construction overall is approximately 50% complete at this time.

Page I-15: Navajo Reservoir Operations. Please note that the flow recommendations to conserve the Colorado River endangered fish in the San Juan Basin are subject to review and will likely change through the adaptive management nature of the SJRIP.

Page I-15: San Juan Chama Project. Note that under the San Juan Chama Project legislation, diversions to New Mexico should not limit current and future beneficial uses in Colorado.

Page III-5: See comment above for Page S-11. The paragraph on this page should be rewritten because the depletion guarantee does not do what is described and will likely change.

Page IV-3: Is NIIP assumed to be completed under the No Action Alternative?

Page IV-23: What is the status of negotiations with Western Area Power Administration for CRSP power?

Page V-15: Item (1) is another example of where the flow recommendations are portrayed as the critical criteria for environmental clearances. This is not correct, the SJRIP provides the RPA and clearance for water development pursuant to the Endangered Species Act, not satisfaction of

Comment SLG-04 – continued

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the flow recommendations.

Page V-17: The last paragraph says the “depletion guarantee to allow full project development while not exceeding the existing depletion baseline and the ESA limitation (table V-3)”. The depletion baseline and the depletions in table V-3 are not ESA limitations. This statement must be modified to correctly describe the Section 7 Consultation Principles.

Page V-20: What is the result of the consultations with the Southern Ute Indian and Ute Mountain Ute Indian Tribes? This must be included in the PRDEIS.

Page V-142: Items (2) and (3) again inappropriately focus on the flow recommendations. The focus should be the overall SJRIP as the RPA and not just on the flow component.

Page V-147: First paragraph under “Operation of Navajo Dam” states the “Flow Recommendations are the centerpiece of a strategy to facilitate recovery of endangered fish ..”. This is not correct. No where in any SJRIP document are the flow recommendations described as the “centerpiece” of recovery. The flow recommendations are but one element of the SJRIP. This paragraph must be removed or modified to correctly describe the SJRIP.

Page VI-2: “Water Uses and Resources Commitments” – See comment above for Page S-11, the depletion guarantee should be used as a last resort and only if the SJRIP should fail to recover the endangered fish. It should not be the primary focus

In closing, we would again like to thank Reclamation for the opportunity to review and comment on the PR&DEIS for the NGWSP.

Sincerely,

D. Randolph Seaholm
Chief, Water Supply Protection

Attachment



20060606 Ltr from
DAntonio to Bakomb-

Cc:
Mr. Rick Gold, Regional Director
Upper Colorado Rive Regional Office
125 South State Street, Room 6107
Salt Lake City, Utah 84138-1147

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Comment SLG-05



PATRICK H. LYONS
COMMISSIONER

State of New Mexico
Commissioner of Public Lands
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www.nmstatelands.org

July 5, 2007


Mr. Rege Leach
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Co 81301

Dear Mr Leach,

The New Mexico State Land Office would like to thank you for sending the Draft EIS on the Navajo-Gallup Water Supply Project. Our office has done a cursory review of ~~the~~ proposed project.

The State Land Office land is held in a federally created trust on behalf of 22 beneficiaries. Some of the beneficiaries include the common schools and our universities throughout the state. If the proposed project crosses the State Land Office (SLO) land, the SLO is legally mandated to request a right of way and charge a fee.

The SLO wanted to ensure that you are familiar with our processes and take that into account in your EIS. If you have any questions, please feel free to contact me, James M Jackson, tel. no. # 505-827-5762.


James M Jackson
Asst Commissioner, Special Projects
PO Box 1148
Santa Fe, NM 87504-1148
Tel # 505-827-5762

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JUL 10 2007

-State Land Office Beneficiaries -

Carrie Tingley Hospital • Charitable Penal & Reform • Common Schools • Eastern NM University • Rio Grande Improvement • Miners' Hospital of NM • NM Boys School • NM Highlands University • NM Institute of Mining & Technology • New Mexico Military Institute • NM School for the Deaf • NM School for the Visually Handicapped • NM State Hospital • New Mexico State University • Northern NM Community College • Penitentiary of New Mexico • Public Buildings at Capital • State Park Commission • University of New Mexico • UNM Saline Lands • Water Reservoirs • Western New Mexico University

Comment SLG-06

THE SOUTHWESTERN WATER CONSERVATION DISTRICT
A Municipal District Organized Under State Law For Development And Conservation Of The Waters in the
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
IN SOUTHWESTERN COLORADO

West Building – 841 Second Avenue
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DURANGO, COLORADO 81302
(970) 247-1302 – Fax (970) 259-8423

June 22, 2007

Rick Gold, Regional Director
Upper Colorado River Regional Office
128 South State Street, Room 6107
Salt Lake City, Utah 84138-1147

Re: Comments on Draft Navajo-Gallup Water Supply Project PRDEIS

Dear Mr. Gold:

This letter transmits the comments of the Southwestern Water Conservation District (SWCD) concerning the Draft Planning Report and Draft Environmental Impact Statement (PRDEIS) for the Navajo-Gallup Water Supply Project (NGWSP), dated March, 2007. The SWCD, established by the Colorado legislature in 1941, encompasses the entire San Juan River basin in Colorado. The SWCD has been involved in the San Juan River Basin Recovery Implementation Program (SJRIP) since its inception.

SWCD fully supports the need and purpose of the NGWSP. The area to be served by this project is extremely dry and groundwater is inadequate to meet local needs or is non-existent. SWCD believes the NGWSP can be developed without impacting future water use in Colorado with the inclusion of reasonable conditions, some of which are suggested herein, some of which are being negotiated for inclusion in the Draft Biological Opinion ("DBO") referenced in the PRDEIS, and others of which will be suggested for inclusion in the federal legislation authorizing NGWSP.

SWCD has the following specific comments, questions, and recommendations regarding the PRDEIS.

Overview: A statement, pervasive throughout the PRDEIS, is the stated purpose of the flow recommendations within the SJRIP. The flow recommendations are only one component of the SJRIP for the recovery of the two endangered fish in the San Juan River and not the major criterion for allowance or disallowance of the future water depletions. The PRDEIS must be revised to appropriately reflect the overall role of the SJRIP in the recovery of the endangered fish and not just the role of the flow recommendations.

Page S-2: The NGWSP is planned to supply water through the year 2040. It is likely that the facilities to deliver water cannot be constructed until about 2020. How will the water demands

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Comment SLG-06 – continued

June 22, 2007
Page 2

be met until 2020? What is the anticipated demand beyond 2040? How will this additional supply be provided? This comment applies throughout the PRDEIS.

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Page S-4:

Does 160/gpd/household include outside lawn and garden watering, automobile washing, etc? How will water usage be limited, should the actual demand exceed 160/gpd/household?

3

Do the Jicarilla and Navajo Nations and City of Gallup need carriage contracts for use of Navajo Reservoir?

4

Alternative Screening Process. Is there sufficient CRSP power available for the NGWSP? How will this be determined?

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For the Preferred Alternative, when will NGWSP costs be determined at the 2007 level?

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Please better define how Navajo Nation use in Arizona will utilize consumptive use apportionments made to Arizona "by compact or decree" (see Introduction: Scope p. I-3 - same issue re: Tec Nos Pos and Fort Defiance/Window Rock). The Arizona consumptive use should be accounted against Arizona's Upper Basin allocation not its Lower Basin allocation because the diversion for the NGWSP is in the Upper Basin.

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Page S-9: Dilution is not a valid beneficial use of water. What is the identified water quality problem for the endangered fish? It does not appear that an additional 5 cfs is really a benefit, but is only environmentally neutral.

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Page S-10: How will entrainment of endangered species affect their status? What will be the mitigation for entrainment vis-à-vis SJRIP recovery efforts?

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Page S-6: Why was no Colorado entity or representative from the SJRIP included on the Steering Committee when NGWSP potentially affects water users in Colorado?

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Page S-10: Please define what it means that ESA consultation is "ongoing".

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Page S-11: The depletion guarantee described in the DBO is summarized in this section. The depletion guarantee, as described in the January 23, 2007, DBO, is not acceptable to SWCD because it: (1) establishes a precedent for future Section 7 consultations by other San Juan River Basin entities; (2) does not conform to the Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin" (Principles) established by the Coordination Committee for SJRIP; and (3) the description implies that depletions are "borrowed" from other water users in the basin. These issues are currently being discussed among the involved parties, including SWCD, and are likely to be resolved, but not until after comments on the PRDEIS are due. If the DBO is modified to adequately address the concerns of

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June 22, 2007
Page 3

SWCD, SWCD will have no further comments on the PRDEIS and DBO. In the unlikely situation that "depletion guarantee" issues are not resolved, SWCD will provide additional comments on the DBO and the depletion guarantee.

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The June 9, 2006 Resolution of the Upper Colorado River Commission ("UCRS"), see PRDEIS Attachment B, addressing the Hydrologic Determination states that:

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Nothing in this Resolution, or resulting from the adoption of this Resolution, shall limit the right or ability of any Upper Basin State to develop the full apportionment made to it under the Colorado River Compact and the Upper Colorado River Basin Compact.

The depletion guarantee has the potential to limit southwest Colorado's ability to develop water under the Compact based on the disregard of the SJRIP Principles. While this issue is likely to be resolved by negotiations among the parties after the comments are due on the PRDIES, this comment is included in the event those negotiations are not successful.

Page I-3: Is involvement of the Rio Grande River related solely to San Juan Chama Project?

14

Page I-3: Proposed Project Authorization. Is authorization required for the Jicarilla Nation part of the NGWSP?

15

Page I-6: City of Gallup and Navajo Nation. How does the NGWSP work conjunctively with NIIP?

16

Page I-6: UCRC. What conditions did the UCRC include in its June, 2006 resolution supporting the NGWSP and a new Hydrologic Determination? How have these conditions been incorporated into the planning for and legislation authorizing the NGWSP? What is the position of the UCRC on whether and how to fulfill water needs in Arizona from Navajo Reservoir? Please provide additional information on Navajo Nation discussions with Arizona.

17

Page I-9: Jicarilla Apache Tribal Council Resolution. What is the status of Jicarilla/Navajo/City of Gallup discussions? Will there be additional NEPA compliance for the distribution system to the Jicarilla Apache Nation? If so, what compliance will be required? If not, why not?

18

Page I-10: Cooperative Agencies . . . Why were not representatives from the SJRIP and the State of Colorado included in the Steering Committee? See listing under "Other Projects and Actions" . . . p.I-11.

19

Page I-11: NIIP is 70% complete. When is NIIP anticipated to be completed? What steps will be involved in its completion?

20

Comment SLG-06 – continued

June 22, 2007
Page 4

Page I-12: Why aren't the SJRIP Principles for Section 7 consultation discussed here? The Principles refer to the entire SJRIP as the RPA for water development in the San Juan River Basin.

21

Page I-12: This is the first of numerous comments herein on inappropriate references in the PRDEIS to the purpose of SJRIP flow recommendations. The flow recommendations are not the primary criterion for endangered fish recovery in the San Juan Basin, but are simply one component of the SJRIP. The Principles describe the appropriate use of the flow recommendations in the recovery of the endangered fish species, the PRDEIS should be rewritten to remove the emphasis on the flow recommendations and, include focus on the Principles.

22

Page I-14: Animas-La Plata Project ("A-LP"). Note that the A-LP settles Ute Tribal reserved water rights. Note also that depletions are average annual depletions, not maximum annual depletions. A-LP construction, as of last fall, was 48% complete.

23

Page I-15: Navajo Reservoir Operations. Note that the flow recommendations to conserve the endangered fish in the San Juan River are subject to adaptive management and will very likely change.

24

Page I-15: San Juan Chama Project. Note that under the San Juan Chama Project legislation, diversions to New Mexico cannot limit current and future beneficial uses in Colorado.

25

Page III-5: See comment above for Page S-11. The paragraph on this page should be rewritten because the depletion guarantee needs to be much better defined to reflect its actual purpose and implementation.

26

Page IV-3: Is NIIP assumed to be completed under the No Action Alternative?

27

Page IV-23: What is the status of negotiations with Western Area Power Administration for CRSP power?

28

Page V-15: Item (1) one is another example of the inappropriate portrayal of the purpose of flow recommendations as the critical criterion for water development environmental clearances. This is not correct. The overall SJRIP provides the endangered fish clearance for water development, not simply the flow recommendations.

29

Page V-17: The last paragraph states that the "depletion guarantee to allow full project development while not exceeding the existing depletion baseline and the ESA limitation (table V-3)". The depletion baseline and the depletions in table V-3 are not ESA limitations. This statement should be modified to correctly describe the Principles.

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Comment SLG-06 – continued

June 22, 2007
Page 5

Page V-20: What is the result of the consultation with the Southern Ute Indian and Ute Mountain Ute Indian Tribes? This must be included in the PRDEIS.

31

Page V-43: The assumption of disturbance within a 500 foot area on both sides of pipelines (1,000 foot wide) is excessive. We know of no example of the construction of a pipeline having impacts 500 feet on either side of the pipeline. The distance should be decreased to 50 – 100 feet of width at the most.

32

Page V-142: Items (2) and (3) again inappropriately focus on the flow recommendations. The focus should be the overall SJRIP and not just one of its components.

33

Page V-147: First paragraph under "Operation of Navajo Dam" states the "Flow Recommendations are the centerpiece of a strategy to facilitate recovery of endangered fish..." This is not correct. Nowhere in any SJRIP document are the flow recommendations described as the "centerpiece" of recovery. This paragraph must be modified, or removed, to correctly describe the SJRIP.

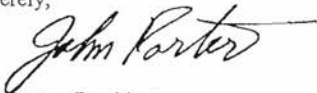
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Page VI-2: "Water Uses and Resources Commitments" – See comment above for Page S-11.

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Please contact Steve Harris, consulting engineer for SWCD (970-259-5322), if you have any questions regarding these comments.

Sincerely,



John Porter, President
Southwestern Water Conservation District

Comment SLG-07



June 27, 2007

Rick Gold, Regional Director
Upper Colorado River Regional Office
125 South State Street, Room 6107
Salt Lake City, UT 84138-1147

Re: Comments on Draft Navajo Gallup Water Supply PRDEIS

Dear Mr. Gold:

The San Juan Water Commission ("SJWC") appreciates the Bureau of Reclamation's ("BOR") significant effort and professionalism demonstrated by the comprehensive March 2007 Planning Report and Draft Environmental Impact Statement ("PRDEIS") for the Navajo-Gallup Water Supply Project ("NGWSP"). SJWC, having not actively participated in the development of the PRDEIS, offers the following comments, each of which concerns potential adverse effects on SJWC's existing rights in the San Juan River Basin.

SJWC is a political subdivision of the State of New Mexico charged with acquiring and protecting untreated water for the use and benefit of all citizens, municipalities, water users associations and other water users in San Juan County, New Mexico. Its member entities include the cities of Aztec, Bloomfield and Farmington, San Juan County and the Rural Water Users Association. To fulfill its charge, SJWC, among other things, has entered into a contract with the BOR to receive water from the Animas-La Plata Project ("ALP Project") and has been involved in the San Juan River Basin Recovery Implementation Program ("SJRIP") since its inception. Although it does not necessarily support all terms of the proposed settlement of the Navajo Nation's *Winters* reserved water rights claims now pending before Congress, SJWC does recognize the importance of both resolving the reserved water rights issue without protracted litigation and providing a water supply to area to be served by the NGWSP. Nevertheless, it is important that the NGWSP, as constructed and operated, not interfere with or in any way impinge SJWC's existing rights.

Understandably, the PRDEIS focuses on the Federal Trust responsibility to the Navajo Nation and the Jicarilla Apache Tribe. However, SJWC is not convinced that the PRDEIS recognizes the extent to which existing laws, projects

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Comment SLG-07 – continued

and contracts constrain the water project it describes. Nor does the PRDEIS adequately recognize or even attempt to analyze potential harm to SJWC and its member entities—particularly the harm that could result if the NGWSP causes harm to endangered species.

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Endangered Species/Biological Opinion Concerns

The BOR has adequately and accurately described both the endangered species concerns in the San Juan River Basin and the SJRIP, the program designed to protect and recover endangered fish while allowing water development to proceed through establishment of San Juan River baseline depletions and flow recommendations. [PRDEIS at I-12, V-142 to -143; March 16, 2001 Technical Memorandum, Appendix A to PRDEIS, at 21] Nevertheless, the BOR's conclusions concerning the NGWSP's negligible adverse impact on endangered fish species because of the Navajo Nation's depletion guarantee are suspect. [See, e.g., PRDEIS at II-5, V-13, V-17, V-31 ("With the Navajo Depletion Guarantee, the proposed project meets the critical elements of the Flow Requirements"), V-145, VI-2 to -3, VI-5] The PRDEIS relies on the January 23, 2007, Draft Biological Opinion for the Navajo-Gallup Water Supply Project ("Biological Opinion") issued by the U.S. Fish and Wildlife Service ("FWS"), which concludes that the NGWSP will "not impact the ability for the San Juan River Flow Recommendations to be met" and thus will neither result in jeopardy nor result in an "adverse modification of critical habitat for pikeminnow or razorback sucker." [PRDEIS at S-11, V-86 to -87, V-89; Biological Opinion, Appendix C Part III to PRDEIS, at 54; Jan. 23, 2007 FWS letter to BOR, at 1] SJWC believes the Biological Opinion contains significant flaws. The Water Development Steering Committee of the SJRIP, of which SJWC is a member, has submitted detailed comments on the Biological Opinion to the FWS. SJWC will not reiterate those comments here. Suffice it to say, there are significant concerns about the FWS methodology, including failure both to define the appropriate environmental depletion baseline for NGWSP and to compare the impacts of the project to that baseline, as required by Section 7 regulations, 50 C.F.R. § 402. Further, in its analysis of depletions and impacts on endangered fish, the FWS has inappropriately offset new NGWSP depletions with as yet unused depletions and also has used old, unverified data concerning the current status of non-Indian depletions. An accurate analysis of the endangered species impacts of the preferred alternative for the NGWSP is critical because any adverse impact and resulting San Juan River flow modifications may potentially interfere with the ability of SJWC and its member entities to receive and use their contracted allotment of ALP Project water. As the BOR has noted, "[i]mplementation of the [SJRIP] is the key element of the reasonable and prudent alternative . . . for section 7 consultation under the ESA that would permit completion of the ALP Project." [PRDEIS at I-14, V-144, V-147 (noting SJRIP flow recommendations are the primary mechanism for attaining ESA compliance for new water development in the Basin), V-149 (stating, with respect to the ALP Project, that the "biological opinion relies on implementation of the Flow

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Comment SLG-07 – continued

Recommendations through re-operation of Navajo Reservoir to avoid jeopardy" to the endangered fish)] Further, the PRDEIS specifically states only that the Colorado Ute and Navajo Indian water uses from the ALP Project will not be adversely impacted by the preferred alternative—it does not directly state a conclusion that SJWC's ALP Project rights will not be adversely impacted. [See PRDEIS at V-17, subsection (4)]

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Other Concerns

To support the conclusion that sufficient water is available to supply the NGWSP, the BOR relies on May 2006 State of New Mexico schedule of anticipated Upper Basin depletions. [PRDEIS at I-6, Table I-1, III-4, TableV-3] As the depletion schedule itself notes (see footnote 4 of Table I-1), it does not tabulate or determine water rights. Significantly, the table fails to include SJWC's right to receive an additional 20,580 AFY of consumptive use water from the ALP Project under BOR Permit No. 2883. Because the ALP Project under construction is much smaller than the ALP Project anticipated under Permit No. 2883, the excess or "released" water under the Permit will be returned to the State of New Mexico by operation of law pursuant to N.M. Stat. Ann. § 72-5-33. Pursuant to section 72-5-33, SJWC filed an application to appropriate the released water more than six years ago. Because the released ALP water to which SJWC has a legal claim is not included in the depletion schedule, the conclusion that water is available for the NGWSP may be in error.

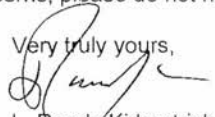
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Finally, the PRDEIS provides no discussion of the authority for NGWSP's use of Colorado River Storage Project ("CRSP") power. Rather, the PRDEIS simply notes that the annual OM&R costs of the preferred alternative are "least costly assuming [CRSP] power rates." [PRDEIS at S-6, Table S-3, IV-29] SJWC recommends that the BOR investigate the potential adverse impacts on other CRSP power users should the NGWSP participate. Participants in existing or approved Reclamation projects already using or approved to use CRSP power should not be impacted, in terms of less availability of CRSP power or higher rates, by a new project. Is the BOR aware of the status of any negotiations with the Western Area Power Administration ("WAPA") for the NGWSP's use of CRSP power or any WAPA concerns about the availability of CRSP power for the project or potential impacts on other CRSP power users?

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Thank you for the opportunity to comment on the PRDEIS. Should you have any questions about SJWC's concerns, please do not hesitate to call me.

Very truly yours,


L. Randy Kirkpatrick
Executive Director

Comment PWI-01



CREDA

Colorado River Energy Distributors Association

June 18, 2007

ARIZONA

Arizona Municipal Power Users Association

Arizona Power Authority

Arizona Power Pooling Association

Irrigation and Electrical Districts Association

Navajo Tribal Utility Authority
(also New Mexico, Utah)

Salt River Project

COLORADO

Colorado Springs Utilities

Intermountain Rural Electric Association

Plate River Power Authority

Tri-State Generation & Transmission
Association, Inc.
(also Nebraska, Wyoming, New Mexico)

Yampa Valley Electric
Association, Inc.

NEVADA

Colorado River Commission
of Nevada

Silver State Power Association

NEW MEXICO

Flemington Electric Utility System

Lincoln County

City of Truth or Consequences

UTAH

City of Provo

South Utah Valley Electric Service District

Utah Associated Municipal Power Systems

Utah Municipal Power Agency

WYOMING

Wyoming Municipal Power Agency

Leslie James

Executive Director

CREDA

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Email: creda@twest.net

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Mr. Rege Leach, Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Via email: navgal@usbr.gov

The Colorado River Energy Distributors Association (CREDA) appreciates the opportunity to provide comments on the on Reclamation's Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project (PR/DEIS), (72 Fed.Reg No. 61, 15159 March 30, 2007). In the event there is an extension of the comment period, CREDA may supplement these comments at an appropriate later date.

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CREDA Background

CREDA's mission is "To preserve and enhance the availability, affordability, and value of Colorado River Storage Project facilities while promoting responsible stewardship of the Colorado River System." CREDA is a non-profit, Colorado corporation, also authorized to do business in Arizona, which was formed in 1978 as an association of non-profit entities who are long-term contractors for resources of the Colorado River Storage Project (CRSP). CREDA represents its members by working with the Bureau and the Western Area Power Administration (WAPA) regarding issues related to the CRSP. CREDA members serve over four million consumers in six states: Arizona, New Mexico, Nevada, Colorado, Utah and Wyoming. CREDA members include joint action agencies, state agencies, political subdivisions, tribal utility authorities, municipalities, rural electric cooperatives and irrigation and electrical districts. CRSP contractors pay all the power costs of the CRSP, which includes construction (with interest), operation, maintenance and replacements, transmission, environmental and approximately 95% of the irrigation costs. CREDA and its members have a direct and specific interest in this process.

It is important to note that according to the Purpose and Need Statement, this project is intended to "provide a long-term (year 2040) supply, treatment, and transmission of M&I water to the Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup, New Mexico." (emphasis added).¹ CREDA understands there is no agricultural irrigation associated with this project. There is no need to make this a CRSP participating project other than to provide authorization for the use of CRSP power for pumping the M&I water. CREDA has no objection to an allocation of an appropriate amount of CRSP power to meet this need.

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1 PR/DEIS, Vol. 1, p. S-2.

Comment PWI-01 – continued

Reg Leach
June 18, 2007

Legislation has been introduced (April 19, 2007), which proposes to make this project a participating project of the CRSP. CREDA strongly opposes that proposal and has endeavored over the past number of years to provide alternative language to such an approach. CREDA also recognizes this issue may be considered to be outside the scope of this PR/DEIS; however, depending on the outcome of the legislative process, there may be impacts to any final EIS/Record of Decision for this project.

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CREDA takes no position on the alternatives as currently drafted, but does have some specific comments on the PR/DEIS for Reclamation's consideration.

Comments on Volume I are as follows:

- 1) Page S-8: Table S-3 – o&m costs for CRSP need to be revised with updated rates. The CRSP power rate was adjusted in October 2005. Table shows 9.5 mills/kWh and \$4.04/kw-mo; the current rates are 10.43 mills/kWh and \$4.43/kw-mo. Also, the most recent rate formula includes the potential "adder", or cost recovery charge (CRC). Consideration should be given to including an uncertainty associated with imposition of a CRC in the economic comparisons.
- 2) Page I-12: I-12 - Description of the San Juan River Basin Recovery Implementation Program fails to mention that CRSP power revenues have funded in excess of \$16,945,436 toward the program.
- 3) Page IV-22: Depending on revised economic analysis, is the SJRPNM Alternative still the low cost option? The current analysis assumes the NIIP Amarillo Alternative to be the low cost option assuming NTUA power rates.
- 4) Page VIII-9: Reference to the CRSP Act should NOT contain "The proposed project has potential to become a participating project of the Colorado River Storage Project (CRSP) Act." This listing should merely cite the legal reference to the Act, and that speculative language should be removed.
- 5) Page F-28 and F-33 (tables F-8 and F-11): see comment 1 above.

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Comments on Volume II are as follows:

- 1) Page 3: "The cost of power transmission lines is assumed to be incorporated in the unit price of the power." See also page 108. Please consider whether this 2001 Technical Memorandum assumption is correct. Depending on the selected power source, the transmission costs may or may not be included in the power rate.
- 2) Page 56: There is reference to a June 30, 1994 letter from Reclamation's Rob Leuthouser that is not included in any of the historical information contained in the PR/DEIS. Please provide a copy of that letter.
- 3) Page 131: There is reference to water coming from Navajo Reservoir, and subject to a CRSPA fee. "The current fee for municipal water is approximately sixty dollars per acre-foot." Yet, page 3 of Appendix C assumes a \$1.00/acre-foot o&m charge by Reclamation. Are these two different applications, or which is correct, and which is utilized in the economic analysis?
- 4) Appendix B-31: Why were costs of power required to convey water from the infiltration caissons to the treatment plant not included in the cost estimates? What are the assumptions associated with the power supply and cost?
- 5) Appendix B-49: Power costs are shown for the year 2040 – see comment 1 above. The example shows 2.767 MW; is this correct? What is the actual estimated power requirement (demand) for the project? As drafted, the federal legislation proposes to provide 26 MW. Is this amount overstated?

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Comment PWI-01 – continued

Reg Leach
June 18, 2007

- 6) Appendix C: Table D-6 – see comment 1) above.
- 7) Appendix D-35: Diverted water from the San Juan River is anticipated to deplete inflow to Lake Powell. This could have a range of impacts on power generation at Glen Canyon Dam. The Upper Basin's obligation to minimum releases from Lake Powell will not be relieved by this project, so releases may not change. However, until the Upper Basin uses its full entitlement and during period of above normal runoff, the Upper Basin may release more than its obligated amount from Lake Powell. In this case, the depletion from this project will cause a reduction in power generation at Glen Canyon Dam. A 2000 Reclamation estimate shows 2.12 MW lost, with 18,563 MWh. At \$53.12/kwh (2004 \$), this present value over the 50 year life is \$17 million, although current market prices are significantly higher than that figure. The estimate should be updated with current market values. Has this potential impact been factored into the economic analysis associated with options assuming the CRSP power rate?

Please continue to provide any future materials to us regarding this project. Thank you for the opportunity to comment on the PR/DEIS.

Sincerely,

/s/ Leslie James

Leslie James
Executive Director

Cc: CREDA Board

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Comment PWI-02

navgal navGAL - Comments on the Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project, 7... Page 1

From: "RSLynch" <rslynch@rslynchaty.com>
To: <navgal@uc.usbr.gov>
Date: Thu, Jun 28, 2007 5:34 PM
Subject: Comments on the Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project, 72 Fed.Reg. 15159-61 (March 30, 2007)

Please see attached comments.

Robert S. Lynch, Esq.

Robert S. Lynch & Associates

340 E. Palm Lane, Suite 140

Phoenix, AZ 85004-4603

Phone: 602-254-5908

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CC: "Bob Johnson" <bjohnson@usbr.gov>, <cslocum@wellton-mohawk.org>, <Dave.Plumb@cityofmesa.org>, <dld@krsaline.com>, <dwmillig@srpnet.com>, <egerak@bwccd.com>, <estory@tonopahid.org>, <frank.mcrae@cityofmesa.org>, "Gary Langford" <glangford@wellton-mohawk.org>, <gjijams@cap-az.com>, <grant@msidd.com>, "Jeff Woner" <jjw@krsaline.com>, <Jim@harcuvarco.com>, <jimoyes@lawms.com>, <jims@mwdaz.com>, <jmeck@bwccd.com>, <krs@krsaline.com>, <ldozier@cap-az.com>, <lgold@lsgrrc.com>, <lhuff@swtransco.coop>, <mmsmitche@srpnet.com>, "N.W. "Bill" Plummer" <nwplummer@ymidd.org>, <noblew@mindspring.com>, "Pedro Serrano" <Pedro.Serrano@cityofmesa.org>, <pledger@ssw.coop>, <plummerNW@aol.com>, <porme@ormeschool.org>, <powerandwater@aol.com>, <rlehman@srpnet.com>, <rgpearce1@MSN.com>, <ron@caidd.com>, <sashby@rooseveltirrigation.org>, <slozier@wellton-mohawk.org>, <ssweeney@rcalaw.com>, <tdavis@ycwua.org>, <thinton@graham.az.gov>, <Tom@ed2.com>, <wbheiden@mindspring.com>, <wferguson@cox.net>, <yid@mindspring.com>

JUN 28 2007

Comment PWI-02 – continued

IRRIGATION & ELECTRICAL DISTRICTS ASSOCIATION OF ARIZONA

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CHARLES W. SLOCUM
SECRETARY-TREASURER

ROBERT S. LYNCH
ASSISTANT SECRETARY-TREASURER

E-MAILED ONLY

June 28, 2007

Mr. Rege Leach
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Re: Comments on the Draft Environmental Impact Statement for the Navajo-Gallup Water
Supply Project, 72 Fed. Reg. 15159-61 (March 30, 2007)

Dear Mr. Leach:

We are pleased to have the opportunity to provide comments on the Draft Environmental Impact Statement for the proposed Navajo-Gallup Water Supply Project. Our Association members and associate members buy power from federal projects including the Colorado River Storage Project and are thus significantly interested in this proposal.

We note from the Federal Register notice that Reclamation intends to update the Planning Report and Draft Environmental Impact Statement (PR/DEIS) through an addendum or potentially the use of errata sheets. We would suggest that the level of inaccuracies and the outdated data contained in the current DEIS argue strongly for redrafting the document. This is especially true for analyzing the projected costs of the preferred alternative and the other alternatives that the current DEIS discusses. Your Federal Register notice acknowledges that the appraisal level cost estimate done in the DEIS does not rise to a feasibility level analysis, which would be the minimum analysis that must be done before Reclamation can consider supporting this project. Since the projected costs of this project are the *sine qua non* for consideration of it, both from a NEPA analysis standpoint and from a legislative proposal standpoint, redoing the document is, to us, essential.

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It is also essential from the standpoint of application of Public Law 109-451, which became law on December 22, 2006. This Act, the "Rural Water Supply Act of 2006", contains a specific provision which sets parameters for analyzing the capability to pay of non-Federal project entities participating in a project. P.L. 109-451, § 106(f). The Act also lays out feasibility factors for feasibility studies and other provisions relevant to the analysis of this proposal. The

SERVING ARIZONA SINCE 1962

Comment PWI-02 – continued

Mr. Rege Leach
June 28, 2007
Page 2

DEIS makes a tangential reference to the bill being in Congress, albeit by the wrong bill number, and notes that the bill did not specify thresholds for these analyses. A reading of the new Public Law agrees with that comment as still being true but there seems to be much more detail in the new law than is discussed in the DEIS, including applicable feasibility factors. It seems to us that it would be easier to redraft the document using the guidelines in this new law than to attempt to amend the discussion and the cost analyses scattered throughout the document that are no longer current.

2

Yet another reason to redo the Draft EIS as the most efficient way to address the legislative proposal is the fact that, in the 110th Congress, two bills have been introduced on this Project (S. 1171 and H.R. 1970). Both bills contain a definition of “draft impact statement” to mean the Draft Environmental Impact Statement subject of the March 30, 2007 Federal Register notice and these comments. As such, the Draft Environmental Impact Statement becomes a document associated with legislation for a project in a specific location. It is therefore governed by the provision of the CEQ regulations on that subject, 40 C.F.R. § 1506.8. Reclamation must decide which of the various paths under that regulation it must follow with this Environmental Impact Statement process. Our reading of the regulation seems to indicate that, because the legislative proposal is for a specific project in a specific location, as are the alternatives, that both draft and final environmental impact statements are required. In any event, Reclamation must address this issue and, we believe, notify the public as to how it will proceed.

3

We realize that the Federal Register notice says otherwise. The Federal Register notice refers to Public Law 92-199, a 1971 Act of Congress that authorized, but did not require, feasibility studies for a number of potential water resource development projects, including this one. 85 Stat. 664-665 (December 15, 1971). Reclamation also cites its general authority to conduct water resource planning under the Reclamation Act of 1902 as amended.

We are intrigued by the idea that Congress, in 1971, authorized a feasibility grade study of this project and that has not happened. The Federal Register notice itself indicates that the “appraisal level cost estimate” contained in the Draft EIS is not a feasibility report with a feasibility level cost estimate. So, on its face, the Draft EIS is not undertaking to execute the authority granted by Congress to study this project in 1971. Moreover, since Reclamation admits that it has no authority to do anything with this project unless and until Congress acts, the Draft EIS on this “contemplation of a project” is not required. Kleppe v. Sierra Club, Inc., 427 U.S. 390 (1976). See also: Trustees for Alaska v. Hodel, 806 F.2d 1378, 1381, fn 5 (9th Cir. 1986).

4

Next, we believe that redoing the Draft EIS is the most efficient way to address some significant gaps in the current document. For instance, there is no analysis of the legislative proposal to make this project a participating project of the Colorado River Storage Project, yet there are significant consequences from Congress amending the CRSP Act for that purpose. There is no analysis of the impacts associated with amending the Navajo Indian Irrigation Project authorization for this purpose as well. The discussion of possible effects on federal water law do not articulate the aberrations from the laws related to the Colorado River (the Law of the River) that this proposal entails. The accounting problems alone need a separate discussion.

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Comment PWI-02 – continued

Mr. Rege Leach
June 28, 2007
Page 3

The proposed legislation reserves power from project use power up to 26 megawatts for this proposed project but there is no analysis in the DEIS of the impacts of that reservation or the reason such project use power is currently available, if it is. This is followed by a cost reallocation provision in the legislation not addressed in the DEIS that has a vague reference to “an entity covered by this title” in terms of a cost reallocation prohibition but does not address all of the costs associated with the project. There is also a provision in the legislation for the generation of hydroelectric power but no provision in the Draft EIS concerning the authority, such as who will develop the power resource, whether it will be CRSP power resource to be allocated, etc. There is an allocation of water in the legislation to the Navajo Nation for communities in Arizona but no discussion in the Draft EIS about how that allocation would affect accounting for that water and what possible impact that allocation would have on the Law of the River or pending litigation.

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Several provisions in the legislation being proposed affect the repayment obligations of the project beneficiaries in ways that differ from the analysis in the current DEIS and are not addressed in the current DEIS.

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We would note also that the Draft EIS anticipates that the right-of-way for this project will be donated and makes a very cursory reference to a wide range of costs should that not be true. These costs are not considered in the evaluation of costs of the project. The legislation authorizes the use of eminent domain but there is no cost evaluation of how that power would be exercised, what time delays would be incurred and additional costs incurred should eminent domain authority have to be used in the project and what resulting impacts on feasibility would occur.

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This lack of detail parallels the cursory evaluation of power costs in the Draft EIS. That evaluation uses data which are outdated and do not project current costs or additional costs that CRSP power will face, such as the repayment of the Animas-La Plata Project. As we understand it, CRSP power becomes obligated for payments in aid of irrigation that are required to make those payments in 2012 through 2017. In 2016, repayment of aid to participating projects begins and lasts through 2036. Thus, even if the DEIS were using current CRSP costs and not analyzing for expected future costs, the analysis would be faulty. Where, as here, the data is stale and doesn’t properly contemplate future costs, the analysis of costs related to power is totally inadequate.

9

In sum, the current document is substantially deficient and needs to be rewritten. It seems to us that the easiest way to accomplish the large task ahead of getting a competent DEIS put together is to redo the document in its entirety, rather than to attempt to fill the gaps or paper the deficiencies over with addenda.

10

Since there have been significant developments since the data in the DEIS was produced, we believe a further public process is required because a competent DEIS will be materially different in its analysis of the proposed project than the current document. We look forward to working with Reclamation to make sure that further processes comply with the National

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Mr. Rege Leach
June 28, 2007
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Environmental Policy Act and CEQ Regulations.

Sincerely,

/s/

Robert S. Lynch
Counsel and Assistant
Secretary/Treasurer

RSL:psr
cc: Robert S. Johnson, Commissioner
IEDA Presidents/Chairmen and Managers

Comment PWI-03

navgal navGAL - Comments on Navajo-Gallup DEIS and Draft BO

Page 1

From: "Tom Pitts" <tpitts@waterconsult.com>
To: "Rege Leach" <RLeach@uc.usbr.gov>, <navgal@uc.usbr.gov>
Date: Thu, Jun 28, 2007 12:46 PM
Subject: Comments on Navajo-Gallup DEIS and Draft BO

WATER CONSULT Engineering and Planning Consultants

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Rege,

Attached are 1) letter to Rick Gold and 2) detailed comments on DEIS and Draft BO 3) Attachment 1 to WWDSC comments: Final Section 7 Principles.

Please contact me if you have any questions.

Thanks,

Tom Pitts

JUN 28 2007

Comment PWI-03 – continued



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June 28, 2007

Mr. Rick Gold, Regional Director
Upper Colorado Region
U.S. Bureau of Reclamation
125 S. State Street, Room 6107
Salt Lake City, UT 84138-1147

SUBJECT: Comments on Draft Navajo-Gallup Water Supply Project
DEIS and Biological Opinion

Dear Rick:

On behalf of the Water Development Steering Committee, San Juan River Basin Recovery Implementation Program (Program), I am submitting these comments on the draft environmental impact statement (DEIS) and biological opinion for the Navajo-Gallup Water Supply Project (NGWSP) dated March 2007.

The Steering Committee does not contest the need for the NGWSP. These comments should not be interpreted or inferred to contest the need for the project. The concerns of the Steering Committee are that 1) the Section 7 Principles adopted by the Program are followed, 2) the flow recommendations not be interpreted as limiting water development in the San Juan basin, and 3) that the consultation be conducted consistent with previous consultations and ESA regulations.

The Steering Committee's general comments are as follows:

1. The San Juan River Basin Recovery Implementation Program (Program) was initiated in 1992 to conserve and recovery populations of two endangered fish species in the San Juan River basin while allowing water development to proceed in compliance with all applicable federal and state laws. It is recognized and agreed that the Program is intended to provide the measures for compliance with the Endangered Species Act for water development and water management activities in the basin. The specific goals of the Program are:

1) To conserve populations of Colorado pikeminnow and razorback sucker in the basin, consistent with the recovery goals established under the Endangered Species Act; and

2) To proceed with water development in the basin in compliance with federal and state laws, interstate compacts, Supreme Court decrees, and federal trust

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responsibilities to the Southern Utes, Ute Mountain Utes, Jicarillas, and the Navajos.
(SJRIIP Program, September 2006)

2. With respect to Section 7 consultations, the Program adopted “Principles for conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Effecting Endangered Fish Species in the San Juan River Basin”. The Section 7 Principles define the procedures that U.S. Fish and Wildlife Service will use in conducting Section 7 consultations on water projects in the San Juan basin and how the Service will consider actions by the Program in determining whether the Program can provide ESA compliance for water projects in the basin.

3. The Recovery Program developed and approved flow recommendations to benefit endangered fish species in the San Juan River basin. It is recognized that these flow recommendations will be modified in the future through adaptive management. Furthermore, it is recognized in the Program document that these flow recommendations are not absolute and are not inviolate. They are recommendations designed to aid in the recovery of endangered fish based on the best available information in 1999. Providing flows for endangered fish is one component of the multifaceted Program that is considered by the Service in Section 7 consultations.

4. Both the DEIS and the draft biological opinion imply and assume that the flow recommendations are inviolate and limit depletions in the San Juan River basin. This assumption and implication is completely incorrect and contradicts the goals of the San Juan River Basin Recovery Implementation Program stated above.

5. Because the DEIS and BO make this assumption, an approach is proposed in the BO that transfers depletions to NGWSP from projects that have already been consulted on, and are in the ESA environmental depletion baseline. The sole purpose of this procedure is to reduce NGWSP calculated impacts on the flow recommendations (Biological Assessment, Reclamation, August 16, 2005). The BA shows that when the total effects of NGWSP are added to the existing environmental baseline, the flow recommendations are not met in all cases.

6. Based on our review of the Section 7 regulations (50 CFR 402), the transfer of depletions from the environmental depletion baseline to projects which are not in the baseline is not consistent with the regulations. According to the regulations, new projects must be added to the environmental baseline and the effects of the project, when added to the baseline, must be considered. Projects in the baseline include all projects that have been previously consulted on.

7. This approach also introduces the use of “unused depletions” in the environmental baseline in the Section 7 process. This approach is inconsistent with all previous consultations in the San Juan River basin and the Section 7 regulations.

8. As stated above, the sole purpose of this exercise is to avoid impacts on the flow recommendations. Section 7 regulations and the Section 7 Principles for the Program do not require compliance with the flow recommendations. The flow recommendations, unlike the

Comment PWI-03 – continued

Mr. Rick Gold
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implication and assumption in the DEIS and draft biological opinion, are not a cap on depletions. Statements and assumptions to that effect are incorrect and need to be eliminated from both the DEIS and the biological opinion.

9. If the Section 7 Principles are applied, compliance with the ESA should be achieved without the depletion guarantee approach based on the accomplishments of the Program toward recovery of the endangered fish species. These accomplishments are identified in the draft biological opinion.

10. In general, the approach in the draft biological opinion 1) does not appear to comply with Section 7 regulations; 2) is inconsistent with the goals of the San Juan River Recovery Implementation Program; 3) does not conform to the principles for conducting Section 7 consultations developed by the Program; 4) is inconsistent with procedures applied in all previous consultations in the basin; and 5) assumes that the flow recommendations are inviolate, contradicting both the Principles, the Program document, and Section 7 regulations.

If this procedure is applied, however, the procedure of the “depletion guarantee” needs to be made available to any and all future water users who may choose to use the procedure. The draft BO appears to restrict application of the depletion guarantee and unused depletions to NGWSP.

We have included in our comments a discussion of alternatives that would be consistent with the Section 7 regulations and the goals of the Program. These include either 1) eliminating the “transfer” of previously used depletions, and consulting on the new depletions in addition to the baseline, recognizing both that the flow recommendations will not be met, and the Program will likely offset those impacts, or 2) reduce depletions on existing projects to reduce the total baseline and then add in the full depletions from NGWSP in order to avoid violating the flow recommendations.

Our detailed comments are attached.

If you have any questions, please contact me at your convenience.

Sincerely,

/s/ Tom Pitts

Tom Pitts
Coordination Committee Representative, Water Development Steering Committee,
San Juan River Basin Recovery Implementation Program

Comment PWI-03 – continued

**Comments on
Draft Environmental Impact Statement
and
Draft Biological Opinion
for the Navajo Gallup Water Supply Project**

Submitted by
Water Development Steering Committee
San Juan River Basin Recovery Implementation Program
Tom Pitts, Coordination Committee Representative *
June 28, 2007

Introduction

The comments are in two parts. Part 1 addresses the draft environmental impact statement (DEIS). Part 2 addresses the draft biological opinion.

Part 1. Comments on the DEIS

P.V-13: “The inability to implement the SJRBRIP was considered to be an impact to the endangered fish. A Navajo Depletion Guarantee is included as a component of both action alternatives to ensure the proposed project depletions do not result in exceeding the depletions allowed under the current Flow Recommendations using all projects currently modeled in the ESA baseline at full development”.

1. Comment: The ability to implement the SJRBRIP is not dependent on adherence to the flow recommendations. The goals of the SJRBRIP are as follows:

- 1) Recover endangered fish species in the San Juan River basin.
- 2) Develop water in the San Juan River basin in accordance with interstate compacts, state water law, and Indian trust responsibilities in compliance with the Endangered Species Act.

The flow recommendations are only one component. In the SJRIP, there is no concept of “exceeding the depletions allowed under the current flow recommendations”. There is no cap on depletions other than the interstate compacts, state water law, and tribal trust responsibilities. The SJRIP Program document (September, 2006) states:

“The flow recommendations are not sacrosanct or inviolate, and are subject to change through adaptive management as new information on habitat and biological response to flows is obtained from the Program’s long-term monitoring activities.”

Throughout the DEIS, there is a misinterpretation of the San Juan River Basin Recovery Implementation Program and compliance with the Endangered Species Act under that Program. Further, there is no mention of the Principles for conducting Section 7 consultations in the San Juan River basin. These Principles are attached. The Principles define the methods by which ESA compliance is achieved. All actions of the Recovery Program contribute to mitigation of

1

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water depletions in the San Juan basin, including not only contributing flows, but also other actions such as nonnative control, habitat development, and construction of fish passages and fish screens.

1

Numerous statements are made in the DEIS that there is a requirement that flow recommendations be met, represent a cap on development, and limit development in the San Juan basin under interstate compacts, state water law, and the United States' trust responsibilities to tribes. These statements mislead the public and should be eliminated from the document.

The approach in the DEIS needs to be modified to reflect the fact that there are no requirement to meet the flow recommendations developed by the SJRBRIP. All statements in the DEIS should be eliminated that imply or infer that the flow recommendations represent a cap on development, imply a development allowance, or limit the ability of NGWSP (or any other project) to comply with the Endangered Species Act. A full and accurate explanation of the SJRBRIP is needed.

2

P.V-15: “(1) Under the No Action Alternative, future uses with valid water rights and environmental clearances would likely continue assuming that the Flow

2. Comment: See comment 1. above. This statement, which attempts to characterize the no action alternative, is erroneous and misleading.

3

P. V-31: “The SJRPNM Alternative would use the remaining depletions available according to the Flow Recommendations.”

3. Comment: See comments above. The flow recommendations do not determine the level of remaining depletions in the San Juan basin. The statement is misleading and should be eliminated or modified.

4

P. V-147: “Operation of Navajo Dam

The operation of Navajo Dam to mimic the natural hydrograph of the San Juan River by implementing the SJRBRIP Flow Recommendations is the centerpiece of a strategy to facilitate recovery of endangered fish species and, therefore, provides, at present, the primary mechanism that supports ESA compliance for water development to continue in the Basin. In 1991, the status of endangered fish in the San Juan River made additional water depletions in the Basin uncertain.”

4. Comment: The underlined portions of this statement misrepresent the elements of the San Juan Recovery Program and the Section 7 Principles adopted by the Program. It should be modified.

5

P.V-148: “Allowance was made in the Flow Recommendations for the San Juan River for development of other operating criteria that may provide for additional water development as long as the Flow Recommendations themselves are met and the nature of the release hydrographs are not altered.”

5. Comment: This statement is not factual. Additional water development is not controlled by the flow recommendations, and there are no statements in the flow recommendations (Holden,

6

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1999) that ‘provide for additional water development as long as the flow recommendations themselves are met and the nature of the release hydrographs are not altered.’

“P. V-148: “The presently defined operating rules and model configuration do not indicate availability for substantial additional depletions in the Basin with the present Flow Recommendations. Furthermore, modification of the operating rules and/or improvement in the simulation of system operation in the San Juan River would be required to demonstrate the possibility of further development within the present Flow Recommendations.”

6. Comment: See comment 1. above. This statement is out of context with the SJRBRIP, the Section 7 Principles, Section 7 regulations, and is erroneous. There is no requirement to demonstrate the possibility of further development in the San Juan basin consistent with the flow recommendations in order to have further water development in the basin.

7

P. VI-3: “If there is a different approach taken to the section 7 consultation that will provide for full development of the proposed project in the absence of the depletion guarantee, or there are other changes in terms of water development or status of listed species, Reclamation may have to re-initiate section 7 consultation. If such re-initiation were to occur, additional measures could be required for the proposed project to be in compliance with the ESA and to avoid jeopardy to the Colorado pikeminnow and razorback sucker.”

7. Comment: This statement implies that the only way to provide for full development of the NGWSP in compliance with the ESA is with a depletion guarantee that assures that the flow recommendations will be met when NGWSP is fully developed. This statement is erroneous. The Section 7 Principles identify the means by which USFWS will consider all components of the SRRBRIP in providing for ESA compliance for water projects. Those procedures have not been applied to NGWSP. In lieu of complying with those procedures, the erroneous assumption has been made that compliance with the ESA means that the flow recommendations define allowable water development in the San Juan basin and must be met by NGWSP and all future water projects. Per the Section 7 Principles, additional measures could be required for the proposed project only if the Service found that the SJRBRIP were not providing those measures. The statement misrepresents ESA compliance under the SJRBRIP.

8

Part 2. Comments on the Draft Biological Opinion

9

A. Key Excerpts from Biological Opinion:

Jicarilla Apache Nation and Gallup Water Supply (P.8): The BO states that of the 8,700 acre-feet baseline depletion of 6,740 acre-feet is already in the baseline depletion for the Jicarilla

“The plans for the Jicarilla Apache Nation Navajo River Water Supply Project Apache Navajo Nation River Water Supply Project, have not been used, and are being transferred to the Navajo Gallup Water Supply Pipeline (NGWSP). The basis for this is: (JANNRWSP) include the allowance to deliver all or part of this water to other uses, including the NGWSP, at a time that it should be needed. The NGWSP

Comment PWI-03 – continued

plans to use 6,570 acre-feet previously committed to JANNRWSP plus 170 acre-feet of other unused JAN water supply, requiring 1,960 acre-feet of new depletion (Table 3).”

The supply is also met by a new depletion of 1,960 acre-feet.

Navajo Nation Supply (P. 8): The Navajo Nation portion of the NGWSP depletion is 27,193 acre-feet per year (Table 3). The Navajo Nation portion of the NGWSP is comprised of 20,782 acre-feet per year of unused depletions currently in the hydrologic baseline and 6,411 acre-feet per year of new depletions (Table 3). Another 3,100 acre-feet will be returned to the San Juan River by return flow from the Navajo Indian Irrigation Project (NIIP) by the time the Navajo nation demands reach the full 27,193 acre-feet. This reduces the net new depletion to 5,271 acre-feet per year.

If at some point in the future the amount of the unused depletions is less than 20,782 acre-feet per year, the Navajo Nation will guarantee the availability of this remaining depletion by reducing their total water use in the basin.

Depletion Guarantee: This section clarifies the conditions of the Depletion Guarantee and describes the commitments necessary to monitor depletions and maintain compliance with the ESA. **The Depletion Guarantee is a commitment by the Navajo Nation that ensures that depletion for the NGWSP will be offset by unused Navajo Nation NIIP depletions in the basin.** That portion of the NGWSP depletion that consists of unused depletions currently in the hydrologic baseline (20,782 acre-feet) is attributed to Navajo Nation uses in New Mexico. Unless the sum of actual depletions from all uses listed in the hydrologic baseline shown in Table 4, plus all NGWSP uses reach the total listed in the baseline (854,371 acre-feet) plus 5,271 acre-feet, the full NGWSP depletion of 35,893 acre-feet will be allowed (Table 3). The depletion for projects that may be added to the hydrologic baseline at a date later than the date of the Biological Opinion for NGWSP will not be counted in this analysis.

If the depletion conditions described in the paragraph above are reached, the Navajo Nation will reduce its total depletion to stay below the allowed total for the basin. This could be accomplished by changes in operation of any of the Navajo projects that deplete water from the San Juan River. The maximum depletion guarantee requirement is 20,782 acre-feet. Changes in the flow recommendation or in species status may result in reduction or removal of this guarantee in the future, based upon reconsultation.

NOTE: Table 4 (page 10) “Baseline and Current Depletion Summary in the San Juan Basin” shows that the Navajo Indian Navigation Project depletions in the “Riverware baseline” of 301,498 acre-feet. The estimated current Navajo depletion is 176,727 acre-feet leaving presently unused 124,771 acre-feet. Table 4 shows that the total unused depletions in the basin are 231,449 acre-feet.

B. Comments:

8. 50 CFR 402 (Section 7 regulations) states in the definitions section (402.02), in part, as follows:

Comment PWI-03 – continued

“Effects of the action refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. . .”(emphasis added)

9. In the discussion of the project depletions, the term “environmental baseline” has been avoided. The discussion is in terms of the ‘hydrologic baseline’ and, in Table 4, the “Riverware baseline.” In all previous consultations in the San Juan basin, the biological opinions have included an ‘environmental depletion baseline’ against which the impacts of the project are compared, in accordance with the Section 7 regulations. The BO needs to 1) include the environmental depletion baseline for NGWSP and 2) compare the impacts of the project to that baseline.

The biological assessment (BA) equates the ‘Riverware baseline’ to the environmental baseline. The BA includes the ‘unused depletions’ in the environmental baseline:

“The environmental baseline depletion in the San Juan basin, including the JANNRWSP, totals about 854,000 acre-feet per year. The current depletion in the San Juan River below Navajo dam is estimated to average about 623,000 acre-feet per year. That leaves an unused depletion of about 231,000 acre-feet per year under current conditions.”

The Riverware baseline is essentially identical to ‘environmental depletion baseline’ used in previous consultations in the San Juan basin. The environmental depletion baseline should include the depletions listed described as the Riverware baseline in Table 4.

10. The Section 7 regulations do not allow offsetting new depletions with unused depletions in the environmental baseline, transferring the impacts of projects that have been consulted on to projects that have not been consulted on, or incorporating the depletions of projects that have not been consulted on into the environmental baseline in order to avoid adding the impacts of those projects to the environmental baseline. The impacts of the project being consulted on must be added to the environmental baseline, regardless of the status of actual implementation of projects that have been previously consulted on. The preamble to the 50 CFR 402 (Federal Register, Vol. 51, No.106, June 3, 1986) states with respect to comments on the ‘effects of the action’:

*“One commenter urged the Service to exclude Federal actions that have completed consultation from the environmental baseline unless it can be shown that the actions are reasonably certain to occur. The Service declines to adopt this suggestion. In issuing its biological opinion on an action, the Service’s finding under section 7(a)(2) entails an assessment of the degree of impact that action will have on listed species. **Once evaluated, that degree of impact is factored into all future section 7 consultations conducted in the area.** These impacts will continue to be considered as part of the environmental baseline **unless the Service receives notice from the Federal agency that the proposed action will not be implemented or unless the***

Comment PWI-03 – continued

biological opinion on the proposed action is no longer valid because reinitiation of consultation is required.” (Emphasis added)

Depletions cannot be removed from the environmental baseline, even if they are ‘unused’ to allow another project to offset its depletions with unused depletions, as proposed for NGWSP, whether or not same party owns the projects.

In the NGWSP, some 20,782 acre-feet of “unused depletions’ depletions have been removed from the baseline and those depletions transferred to NGWSP for 20 to 50 years. Based on the language in the depletion guarantee, the compensation for this transfer, if ever required, will be from NIIP, a project that has been consulted on and is in the baseline. In addition, the BO removes 6,740 acre-feet that is already in the baseline due to the Jicarilla Apache Navajo Nation River Water Supply Project and has not been used, and transfers the depletion to the Navajo Gallup Water Supply Pipeline (NGWSP). It is not clear whether the JAN project has been consulted on; however it is clear that the JAN project is in the baseline. The procedure does not comply with either the intent or letter of the Section 7 regulations.

11. No basis is provided for the assertion that there are, in fact, ‘unused’ depletions totaling 231,449 acre-feet as portrayed in Table 4. There is no definition of ‘unused’ depletions. They are listed for both projects that have been consulted on (ALP, NIIP, Long Hollow), some projects that may not have been consulted on, and areas (Animas River, Upper San Juan, Piedra, etc). The unused depletions appear to be the calculated difference between the ‘Riverware baseline’ and the ‘estimated current’ depletion. The source of the ‘estimated current’ depletions is not stated in the BO or the BA. However the BA, in reference to the ‘current’ depletions provides the following footnote: **“3. The current status of the non-Indian depletions has not been verified by the states and has not been updated since 1995. It is, therefore, approximate.”**

The ‘current depletion’ estimate appears to be a 1995 preliminary estimate of depletions that was never accepted by the states or the Hydrology Committee, and has no role in defining the environmental baseline. Apparently, it is an artifact of development of the San Juan hydrology model that was never incorporated into the model, and has no role in defining the environmental baseline in either Riverware or the Section 7 process. It has not been used in any previous Section 7 consultation in the San Juan basin. It is being used in this consultation to manufacture ‘unused depletions’. The ‘unused depletions are then used to avoid the fundamental requirement of Section 7 regulations to consider the full direct and indirect effects of the NGWSP when “added to the environmental baseline.”

12. The proposed procedure allows the Navajo Nation to fully develop both NIIP and NGWSP as long as there are ‘unused’ depletions in the basin from all other projects listed in the current ‘Riverware’ or “hydrologic” baseline.

“Unless the sum of actual depletions from all uses listed in the hydrologic baseline shown in Table 4, plus all NGWSP uses reach the total listed in the baseline (854,371 acre-feet) plus 5,271 acre-feet, the full NGWSP depletion of 35,893 acre-feet will be allowed (Table 3).”

Both NIIP and NGWSP can be fully developed with no reduction in depletions by NIIP or other Navajo projects in Table 4 until some 20 to 50 years hence. (The biological assessment submitted by Reclamation suggests that it may be 20 to 50 years before any reductions in Navajo

Comment PWI-03 – continued

depletions will occur per the ‘depletion guarantee.’) Based on this language, if the “actual depletions” never reach 854,371 acre-feet, there will be no reduction in Navajo depletions for NIIP, NGWSP, or other Navajo projects.

13. Depletion Guarantee (P. 9): The depletion guarantee approach does not address the effects of the action (35,893 acre-feet per year depletion by NGWSP). It does not take into account the fact that NGWSP effects are unlike those of NIIP and other projects that are already in the baseline (from which these depletions are being transferred) due to differences in demand and impacts on flows in the San Juan basin. The BO assumes that NIIP depletions already in the hydrologic baseline have the same effects as depletions not in the hydrologic baseline (NGWSP), an assumption that cannot be supported. The “effects” of the project are not defined, as required by Section 7 regulations.

14. The BO states that the new depletion is only 6,411 acre-feet per year and that is reduced by 3,100 acre-feet per year that will be returned to the San Juan River by return flow from the Navaho Indian Irrigation project. If the 3,100 acre-feet per year retention is included as a return flow reducing NIIP depletions in the original NIIP biological opinion, it cannot be used to offset NGWSP depletions, as it is already in the environmental baseline, without reconsultation on NIIP.

15. **“Unless the sum of the actual depletions from all uses listed in the hydrologic baseline shown in Table 4, plus all NGWSP uses reach the total listed in the baseline, (854,371 acre-feet) plus 5,271 acre-feet, the full NGWSP depletion of 35,893 acre-feet will be allowed (Table 3).”**

There is no definition of “actual depletions” in the Biological Opinion or in Table 4. If the actual depletions are assumed to be the difference between “estimated current” and “Riverware baseline,” then that is not an accurate definition of “actual depletions” (see comment No. 2) and cannot be used as a measure of actual depletions in the future. The Section 7 regulations do not allow using “actual depletions” as an indicator of impacts, as opposed to depletions in the environmental baseline.

16. **“The maximum depletion guarantee requirement of 20,782 acre-feet. Changes in flow recommendation or in species status may result in reduction or removal of this guarantee in the future, based upon reconsultation.”**

Changes in flow recommendations or species status may also result in increasing the depletion guarantee in the future. The Service cannot commit in this biological opinion to a “maximum depletion guarantee”.

17. **“No specific detailed accounting of depletions will be required unless the sum of NIIP and Animas La Plata Project (ALP) depletion reaches 290,000 acre-feet (Table 4).”**

No basis is provided for this limitation on detailed accounting under this criterion. If the sum of the depletions from these two projects never reach 290,000 acre-feet, there will never be any accounting for environmental baseline depletions.

18. **“If this condition is met, all depletions listed in the baseline for NGWSP will be monitored on a 5-year cycle to coincide with the USBR consumptive use and loss report.**

Comment PWI-03 – continued

Depletions will be reported by categories listed in the hydrologic baseline shown in Table 4 and the total computed.”

It is not clear who is responsible for monitoring “all the depletions listed in the baseline” or reporting those on a 5-year cycle in categories listed in the hydrologic baseline. The BO needs to identify the responsible party (ies).

It is also not clear exactly what depletions are being monitored: depletions in the baseline or the actual depletions? Are actual depletions average annual depletions? If they are average annual depletions, over what time period must they be defined, i.e. 5 year, 10 year running average, etc.? If the Service proceeds with this approach, a definition of ‘actual depletions’ needs to be incorporated into the BO, along with a description of the relationship of ‘actual depletions’ to the environmental depletion baseline, which also needs to be defined and added to the BO.

19. “The SJRRIP Hydrology Committee will be responsible for viewing the accounting of the depletions. The Committee will also implement the San Juan River Basin Hydrology Model (SJRBM) to assure compliance with the flow recommendations as specified in the NGWSP BA for limits identified by the Navajo Nation at the time the completion guarantee is implemented.”

The SJRRIP Hydrology Committee is not an arm of the Service or Reclamation. The Hydrology Committee works under the direction of, and is accountable to, the SJRRIP Coordination Committee. The Coordination Committee appoints members to the Committee and funds their participation. The Service cannot unilaterally direct the Hydrology Committee to perform any function required by the biological opinion, or otherwise. Furthermore, it is not the job of the Hydrology Committee “to assure compliance with the flow recommendations as specified in the NGWSP BA . . .”

These responsibilities need to be assigned to parties other than the Hydrology Committee.

20. “As a result of monitoring, Reclamation will identify the point at which the sum of actual uses for these categories plus the NGWSP reach the totals stated in the hydrologic baseline for NGWSP plus 5,271 acre-feet.”

No statement is made as to who is responsible for “monitoring.” Once again, this statement allocates the entire unused depletion account established by the Service to NGWSP, which is not acceptable. It needs to be available to any project sponsor providing a valid depletion guarantee, including those who chose to re-open consultations based on the new procedure.

21. “The depletion for projects that may be added to the hydrologic baseline at a later date than the date of the Biological Opinion for NGWSP will not be counted in this analysis.”

The meaning of this statement is unclear. Furthermore, those future projects may, like NGWSP, choose to use “unused depletions” to offset their depletions to some uncertain future time, as has NGWSP. In that case, they must be counted, as those projects will be using the ‘unused’ depletions for offsets.

If the Service finds that this approach is valid, depletions by a project which span a period of only 20 years, for example, could be considered to have no effect on the fish since they can also

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be using “unused depletions” in the baseline, and the effects would be completed long before the ‘unused depletions’ in the basin are consumed.

22. Either of the following approaches should be considered in order to ensure compliance with Section 7 regulations and the Section 7 Principles adopted by the Program:

- A. Revise the baseline and then add the effects of NGWSP.
- B. Assess the impacts of NGWSP when added to the current baseline.

These approaches are discussed below.

A. Revise the baseline and then add the effects of NGWSP:

1) Remove 20,782 acre-feet per year from the NIIP project biological opinion and the 6,740 acre-feet for the JANNRWSP from the environmental depletion baseline. (This will likely require reopening the NIIP biological opinion, redefining the project with 20,782 acre-feet less depletions. It is not clear whether the JANNRWSP has been consulted on and needs to be reopened, or the depletions simply need to be removed from the baseline.)

2) Run the Riverware model to determine the effects of the reduced NIIP and JANNRWSP depletions, define the new environmental baseline.

3) Add the effects (35,783 acre-feet of depletions) of NGWSP to the revised baseline as required by the Section 7 regulations and define the impacts of the new depletions.

B. Assess the impacts of NGWSP when added to the current baseline.

The sole purpose of the depletion guarantee and transfer of ‘unused depletions’ is to avoid adverse impacts on the flow recommendations for endangered fish species. The BA states:

3.2.2.1 Full NGWSP Development plus Baseline Depletion

The full NGWSP depletion of 35,893 acre-feet per year was included in the model with the baseline depletions described in Section 3.2.1. The summary of flow statistics resulting from this configuration appears in Table 3.5. Thirteen of the flow statistics required under the SJRIP flow recommendations (see Table 3.1) cannot be met, including the maximum duration between meeting the 10,000, 8,000 and 2,500 cfs criteria. Two of the 8,000 cfs statistical criteria are also missed.

Another option is simply to run the model with the 35,893 acre-feet of depletions added to the existing baseline, as was done for the BA, and accept the fact that the flow recommendations will not be met. The Section 7 Principles, San Juan Recovery Program document, and Section 7 regulations do not require that the flow recommendations be met. They are but one indicator of project impacts on the status of the endangered fish.

The goals of the Program are 1) recovering endangered fish and 2) develop water in compliance with State water law, interstate compacts, and Indian trust responsibilities to the tribes. The San

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Juan Recovery Program was designed to allow both goals to be achieved by taking actions to recover the fish while water development proceeds.

As unequivocally stated by the Service in the BO, the Program is making progress towards recovery. That is what allows depletions from all projects that have been consulted on under the Program to continue in compliance with ESA in the San Juan River Basin. Given the accomplishments of the Program, there is no reason to expect that the full NGWSP depletion would not comply simply because flow recommendations are not always met.

23. Under the NGWSP BO, NIIP and NGWSP, and only these projects, get the benefit of the ‘unused depletions’ calculated in Table 4 from both Navajo and non-Navajo projects (“Unless the sum of actual depletions from all uses listed in the hydrologic baseline shown in Table 4...”). The BO is, therefore, prohibiting other project sponsors from utilizing the ‘unused depletions’ in the environmental depletion baseline in future Section 7 consultations. If the “unused depletion” account being established for Section 7 purposes is available to NGWSP, it should be likewise available to any project sponsors choosing to use it in a similar manner. The language in the BO needs to be modified to ensure that the ‘unused depletions’ are available to all project sponsors. All project sponsors should be allowed to provide a valid ‘depletion guarantee’ that provides for offsetting project depletions when – but only if -- all unused depletions in the environmental depletion baseline are exhausted, per the NGWSP BO. The Section 7 Principles for the San Juan Recovery Program should be modified to incorporate this approach.

24. Should the biological opinion be issued in its current form, the procedures applied will very likely become common in the San Juan basin. The following questions need to be addressed, among others:

What is the environmental depletion baseline for future Section 7 consultations on projects that provide a ‘depletion guarantee’? How will the ‘unused depletion’ account being established in the NGWSP BO be allocated to projects and accounted for?

What is the baseline for future Section 7 consultations on projects which do not provide a ‘depletion guarantee’?

Some options for addressing these questions are provided below:

If the Riverware baseline (Table 4) is not the environmental depletion baseline to which the impacts of new projects using the ‘unused depletion’ account and providing a depletion guarantee must be added, then the environmental baseline must be redefined both for NGWSP and for future projects. The environmental baseline would be adjusted to incorporate the (1995) ‘current depletions’, rather than the full depletions for those projects presently included in the environmental depletion baseline, given that the current depletions from these sources that are used in the NGWSP apparently represent the best available information regarding impacts of those projects. The ‘unused depletions’ would be calculated and made available to all project sponsors providing a depletion guarantee. The depletion guarantees could take many forms, including curtailing depletions of the project under consultation, a promise to implement agreements with other water users to extinguish depletions, etc. Future consultations on projects providing a depletion guarantee would avoid having to conduct a flow impact analysis, given that the impact is already considered in the baseline. Depletions covered by a guarantee and ‘unused depletions’ would be assumed to have no impact on flows or flow recommendations.

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Depletion guarantees would be called on only if all ‘unused depletions’ in the account (currently 231,449 acre-feet) are used up, per the procedures defined in the NGWSP BO. The baseline could be adjusted periodically to incorporate the total depletions and ‘actual depletions’ from new projects consulted on and actual depletions from any projects not consulted on, per the procedures defined in the draft NGWSP BO. This would allow subtraction of depletions in the account that are used up, but addition of ‘unused depletions’ from new projects that have been consulted on, but are not fully using the depletions consulted on. The unused depletion account could continue to grow, depending on the rate of use of actual depletions vs. new consultations.

Consultations on projects that do not provide such a depletion guarantee would have impacts measured against the present environmental depletion baseline, plus any new projects not providing a depletion guarantee. Only projects that do not provide a depletion guarantee would be added to this baseline. The depletions from projects providing a depletion guarantee would not be added to this baseline due to the fact that those projects would be using ‘unused depletions’ already in the baseline, consistent the NGWSP BO. Only new projects not providing a depletion guarantee would be incorporated into Riverware for the purpose of evaluating the impact of new projects on flows and the flow recommendations.

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PRINCIPLES FOR CONDUCTING ENDANGERED SPECIES ACT

SECTION 7 CONSULTATIONS ON WATER DEVELOPMENT

AND WATER MANAGEMENT ACTIVITIES AFFECTING

ENDANGERED FISH SPECIES IN THE SAN JUAN RIVER BASIN *

1.0 Endangered Species Act Compliance

The San Juan River Basin Recovery Implementation Program (Program) was established in 1991. The goals of the Program are:

1. To conserve populations of Colorado pikeminnow and razorback sucker in the Basin consistent with the recovery goals established under the Endangered Species Act.
2. To proceed with water development in the Basin in compliance with federal and state laws, interstate compacts, Supreme Court decrees, and federal trust responsibilities to the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Jicarilla Apache Tribe, and the Navajo Nation.

The Program is intended to provide measures for compliance with the Endangered Species Act (16 U.S.C. 1531 et seq) (ESA) for water development and water management activities in the Basin.

These principles for conducting ESA section 7 consultations have been adopted by the Program's Coordination Committee. The principles have been reviewed by the U.S. Fish and Wildlife Service (Service) and found to be consistent with the ESA and its implementing regulations (50 CFR Part 402). These principles will be used as a guide to define how Program actions will be used to provide ESA compliance for impacts to listed fish species in the Basin from water development and water management activities.

2.0 Indian Trust Responsibilities

On June 5, 1997, the Secretaries of Commerce and the Interior signed Secretarial Order 3206. That Secretarial Order directed both Departments to carry out their responsibilities under the ESA in a manner that harmonizes the federal trust responsibility to the tribes, tribal sovereignty, and statutory missions of the Departments, and that strives to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation. In recognition of the vital role of the sovereign tribes in both water development and water management activities and endangered species conservation in the Basin, the Coordination Committee supports the Service in its commitment to notify the tribes when it receives any request for consultation that might affect tribal assets. Additionally the

* Adopted by the Coordination Committee, San Juan River Basin Recovery Implementation Program, June 19, 2002.

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Coordination Committee urges the Service, consistent with the applicable regulations and policies, to address the section 7 consultation needs of the tribes. Moreover, the Coordination Committee recognizes that the Department of the Interior intends to use its authority to the fullest extent possible to preserve and protect the water resources of the tribes in the Basin.

3.0 Long Range Plan

The Program's initial Long Range Plan (LRP) was necessarily focused on the approximate seven-year research period as defined in the Service's October 25, 1991 Animas-La Plata biological opinion issued to the Bureau of Reclamation. The LRP defined the principal Program actions scheduled for completion through 1997. The efforts during the research period did not include implementation of specific, on-the-ground recovery actions that would directly benefit endangered fish or their habitat. Now that the initial research period has concluded, the Program's Biology Committee is in the process of identifying and prioritizing all foreseeable actions determined to be necessary to achieve recovery of endangered fish and their habitats in the Basin, including projects requiring capital construction funds, and is developing an updated LRP. The Coordination Committee will review the recommendations of the Biology Committee and adopt an updated LRP, incorporating capital, monitoring, and research projects as appropriate. The LRP, as amended and updated annually, will be the basis for formulating annual budgets, making funding requests to Congress and state legislatures for the Program, and provision of funding by Western Area Power Administration from power revenues pursuant to P.L. 106-392. The LRP will be reviewed annually by the Program and modified as needed to reflect new information and actions needed to achieve recovery while continuing with water development. Additionally, amendments to the LRP will reflect available funding and changes in priorities for implementation of recovery actions. Any actions proposed in the LRP will be in compliance with the ESA.

4.0 Incidental Take

Section 9 of the ESA and federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened fish and wildlife species, without a special exemption. Take of listed fish and wildlife species is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to these species by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to these species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to breeding, feeding or sheltering. Incidental take is defined as take that results from, but is not the purpose of, carrying out an otherwise lawful activity.

Incidental take statements contained in biological opinions exempt federal action agencies and sponsors of water development and water management activities (project sponsors) from the ESA's section 9 prohibitions so long as they are in compliance with any reasonable and prudent measures and implementing terms and conditions that minimize take. The Service will include incidental take statements in all biological opinions for activities in the Basin, even when no take is

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anticipated. As stated in 50 CFR 402.14(i)(2) "reasonable and prudent measures along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes."

The reasonable and prudent measures provided in an incidental take statement are nondiscretionary, and must be undertaken so that they become binding conditions of any federal discretionary activity, for the exemption in section 7(o)(2) to apply. The federal agency has a continuing duty to regulate the activity covered by an incidental take statement included in a biological opinion. If the federal agency (1) fails to assume and implement the terms and conditions or (2) fails to retain oversight to ensure compliance with the terms and conditions, the protective coverage of section 7(o)(2) may lapse.

5.0 Section 7 Consultations

The Program is intended to identify and implement actions that assist in the recovery of the species and provide compliance with sections 7 and 9 of the ESA for water development and water management activities in the Basin. It is recognized that federal agencies and/or project sponsors may wish to carry out actions that provide ESA compliance for their activities independently of the Program, and not rely on the Program to provide actions for ESA compliance. In addition, federal agencies and/or project sponsors may modify their activities to eliminate or minimize adverse effects, avoid jeopardy, and/or avoid adverse modification of critical habitat, and by so doing, remove the need for actions by the Program to provide ESA compliance.

5.1 Consultations on New and Existing Water Development and Water Management Activities in the Basin

- A. For the purposes of the Program and section 7 consultations, it is assumed that: (1) the Program will produce a list of actions defined in the LRP that can be implemented to assist in the recovery of the species, (2) the funding will be available to implement the LRP, (3) participants will take appropriate steps to implement those actions, and (4) actions will be implemented in accordance with the schedule in the LRP, as periodically amended.
- B. Actions and accomplishments under the Program, as defined in the LRP, are intended to assist in the recovery of the species and provide the reasonable and prudent alternatives that avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat from water development and water management activities in the Basin. Program actions are also intended to provide the reasonable and prudent measures needed to minimize take of listed fish.
- C. When Section 7 consultation is initiated, the Service will determine if progress toward recovery has been sufficient for the Program to serve as a reasonable and prudent alternative or measure. The Service will also consider whether the probable success of the Program is compromised as a result of a specific water depletion or the cumulative effect of depletions. The Service will consider Program and non-Program actions throughout the Basin in evaluating the sufficiency of the Program to serve as a reasonable and prudent alternative or

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measure. The Service will make its assessment based on the best available scientific and commercial data as required by the ESA. The Service will assess the sufficiency of Program actions in proportion to the potential impacts of a proposed federal action. That is, the smaller the impact of a federal action, the lower the level of actions by the Program or others needed to avoid jeopardy and/or destruction or adverse modification of critical habitat.

The Service will determine whether progress by the Program is sufficient to provide a reasonable and prudent alternative or measure based on the following factors:

1. Actions that will result in a measurable positive population response, a measurable improvement in habitat for the fishes, legal protection of flows needed for recovery, or a reduction in the threat of immediate extinction.
 2. Status of fish populations.
 3. Adequacy of flows.
 4. Magnitude of the impact of the activity (including, but not limited to, contaminant and fish migration impacts).
- D. If the Service finds during a Section 7 consultation that Program and non-Program accomplishments are sufficient as defined under C above, the biological opinions will identify the actions and accomplishments of the Program that support the Program serving as a reasonable and prudent alternative or measure.
- E. If the Service finds that progress of the Program is not sufficient at the time of the consultation, biological opinions in the Basin will be written to identify which action(s) in the LRP must be completed to provide the reasonable and prudent alternative or minimize take.
1. For existing activities, these actions will serve as the reasonable and prudent alternative or measure if they are completed according to the schedule identified in the LRP, as amended.
 2. For new activities, these actions will serve as a reasonable and prudent alternative or measure so long as they are completed before the impact from the activity occurs.
- F. The Service may conclude that some action not listed in the LRP is necessary to serve as a reasonable and prudent alternative or to minimize take for an activity under consultation. If this occurs, the Service will notify the Coordination Committee in writing, identify the additional action needed, and provide Committee members an opportunity to review the action, and incorporate the action into the LRP. Coordination with the Coordination Committee will not alter the time frame for consultation. Incorporation of new actions into the LRP under this paragraph is expected to be a rare event. If the reasonable and prudent alternative or measure is not incorporated into the LRP by the Coordination Committee, the Service will work with the federal agency and sponsor to ensure compliance with section 7.

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- G. The Service will work with the federal action agency(ies) and project sponsors during consultation to attempt to identify mutually agreeable opportunities to minimize impacts. It is also recognized that: (1) it is the responsibility of the federal action agency(ies) to make the final determination of the definition of the activity brought to consultation, and (2) it is the Service's responsibility to make the determination as to whether jeopardy to any species and/or destruction or adverse modification of critical habitat will occur and to identify reasonable and prudent alternatives and measures for the activity.
- H. The Service has ultimate authority and responsibility for determining whether the Program has provided or can provide a reasonable and prudent alternative or measure. Final authority over what constitutes a reasonable and prudent alternative lies with Service. It is recognized that the Service retains the authority for determining section 7 compliance under the ESA.
- I. Section 7(a)(1) of the ESA directs federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of listed species. Conservation recommendations provided by the Service in a biological opinion are discretionary agency activities to further minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The Program may be used to fulfill conservation recommendations provided by the Service to a federal action agency. However, compliance with section 7(a)(1) is the responsibility of federal agencies.
- J. The Program will be responsible for monitoring implementation of all Program actions, including those Program actions identified as reasonable and prudent alternatives and measures in biological opinions, and reporting results to the Service on an annual basis.

5.2 Service Review and Assessment of Program

Revisions to the LRP, including insertion of actions needed to achieve recovery, will normally occur in the annual review and update of the LRP, and all parties to the Program, including the Service, will make recommendations to update the LRP. If the Service concludes, at any time and independent of any consultation, that the Program is not implementing actions on schedule, and that this may impact the ability of the Program to provide reasonable and prudent alternatives or measures, the Service will provide a written assessment to the Coordination Committee. The assessment will include the Service's recommendations for corrective actions. The Coordination Committee, in cooperation with the Biology Committee, will have an opportunity to modify timing, funding, and/or priorities in the LRP to ensure that the Service can rely on the Program to provide reasonable and prudent alternatives and measures.

6.0 Minor Depletion Allowance

In 1992, the Service instituted a minor depletions account. Between March, 1992 and December, 1998, the Service consulted individually on approximately 58 proposed "minor depletions" that ranged in quantity from 0.02 acre-feet/year (AF/yr) to 500 AF/yr, lasting from a few weeks to

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perpetuity. No biological opinions were issued under this initial minor depletion account after December, 1998, and the account is now closed to new depletions. On September 21, 1999, the Service issued an “Intra-Service Section 7 Consultation for Minor Depletions of 100 Acre-feet or Less from the San Juan River Basin.” This opinion provides for a cumulative total of 3,000 AF/yr of new minor depletions in the Basin. The minor depletion allowance increases the efficiency of and streamlines the section 7 process, benefitting water development and water management activities included in the biological opinions on minor depletions, while protecting the endangered and native fish community.

The following guidelines will be used by the Service in conducting section 7 consultation on new minor depletions under the September 21, 1999 biological opinion:

1. A minor depletion is defined as a depletion of 100 AF/yr or less. However, the Service may use its discretion to allow larger depletions to be included in the minor depletion account based on impacts to listed species and critical habitat.
2. In rendering biological opinions on federal actions resulting in minor depletions, the Service will consider all new information concerning impacts and the status of the listed species and their habitats, and good faith implementation of the Program in determining if the Program can avoid the likelihood of jeopardy and/or destruction or adverse modification or minimize impacts of any incidental take.
3. The Service will maintain a minor depletions account wherein the aggregate of all new minor depletions allowed by the Service through section 7 consultation and under the September 21, 1999 opinion may result in a total annual depletion of not more than 3,000 AF/yr.
4. The Service will review each proposed federal action for consideration under the September 21, 1999 biological opinion and utilize that biological opinion to facilitate consultation so long as a proposed depletion fits within the 3,000 AF/yr ceiling and does not compromise the purposes for which the minor depletion opinion was issued.
5. Once the 3,000 AF/yr limit is reached for new depletions under the September 21, 1999 biological opinion, the Service will assess the effects of further minor depletions on listed species and issue an opinion to cover further minor depletions, if appropriate.
6. Depletions that were in existence as of October 25, 1991, the date of the Animas-La Plata Project biological opinion, are included in the environmental baseline for that opinion and will not be counted against any minor depletions account. The minor depletion accounts are only for new depletions. ESA consultation may still be required for historic depletions occurring prior to October 25, 1991, if those depletions have a federal nexus.

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7.0 Reinitiation of Consultation

A. This section describes the process of reinitiation of consultation on water development and water management activities for which the Program is providing the reasonable and prudent alternative or measure.

B. As provided in 50 CFR 402.16, reinitiation of consultation is required where discretionary federal agency involvement or control over the action has been retained (or is authorized by law) and one of the following occur:

1. The amount or extent of taking specified in the incidental take statement is exceeded.
2. New information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered.
3. The identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion.
4. A new species is listed or critical habitat designated that may be affected by the identified action.

C. If it is determined that reinitiation of consultation may be necessary, the Service will provide such information to the Coordination Committee. Program participants will attempt to identify actions that can be implemented to ensure that, in the reinitiated consultation, the Program continues to serve as the reasonable and prudent alternative and measure. If the Program cannot implement actions to serve as the reasonable and prudent alternative and measure, the federal action agency(ies) and/or project sponsor will work with the Service independently of the Program to resolve ESA issues. Compliance with the ESA is ultimately the responsibility of the federal action agency(ies).

D. If reinitiation is necessary, the following courses of action will be taken, so long as they do not slow or delay reinitiation of consultation:

1. If the amount or extent of taking specified in the incidental take statement is exceeded. The assessment and determination of whether incidental take has been exceeded is a matter of review and discussion between the action agency(ies) and the Service. If additional reasonable and prudent alternatives or measures are needed, the Service will identify the actions needed, and provide the Program with the opportunity to incorporate those actions into the LRP and implement those actions.
2. If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered. In certain situations, recovery actions in the LRP that were utilized as a reasonable and prudent alternative or measure may no longer be effective or appropriate. These situations may include, but are not limited to:

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- a. critical deadlines for specified recovery actions are missed;
- b. specified recovery actions are determined to be infeasible; and/or
- c. significant new information about the needs or population status of the fishes becomes available.

The Service will notify the Coordination Committee when such a situation is foreseeable or actually occurs. If the Coordination Committee becomes aware of such a situation before the Service, they will notify the Service. The Coordination Committee will work with the Service to evaluate the situation and develop the most appropriate response to restore the Program as a reasonable and prudent alternative or measure, such as adjusting the LRP so the action can be achieved, developing a supplemental recovery action for incorporation into the LRP, shortening the time frame on other recovery actions, etc. The determination of the amount and extent of impact to a species and/or critical habitat is strictly a Service responsibility.

If the Program can no longer serve as a reasonable and prudent alternative or measure, the Service will develop a reasonable and prudent alternative or measure, if available, with the federal action agency(ies) and the project sponsor. In this situation, the reasonable and prudent alternative or measure will be consistent with the intended purpose of the action, within the federal agency's legal authority and jurisdiction to implement, and will be economically and technologically feasible.

- 3. If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion. If an activity is modified in such a manner so as to require reinitiation of consultation, the Service will identify additional or different action items from the LRP to serve as reasonable and prudent alternatives or measures for the activity where possible.
- 4. If a new species is listed or critical habitat designated that may be affected by the identified action. The Service will make recommendations to the Coordination Committee for amendments to the Program and LRP to avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat, or to minimize take for any new fish species listed as threatened or endangered. The Program participants will then decide whether to make the amendments. If the amendments are made, the Service will use the amended LRP action items as reasonable and prudent alternatives or measures. If the Program cannot be amended, then consultation will be reinitiated and reasonable and prudent alternatives or measures will be developed with the federal action agency(ies) and project sponsors.

E. All biological opinions issued will contain language requesting the applicable federal agency(ies) to retain discretion to reinitiate consultation should reinitiation become necessary.

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8.0 Modification of Principles

These principles have been adopted by the Coordination Committee. The principles have been reviewed by the Service and found to be consistent with the ESA and applicable regulations and policies. Experience may dictate a need to modify these principles in the future.

A review of these principles may be initiated by any voting member of the Coordination Committee. These principles may be modified or amended by vote of the Program participants, pursuant to normal voting procedures as defined in the “San Juan River Basin Recovery Implementation Program” (Service, 1992), as amended. However, modifications to the principles will be subject to review by the Service to assure continued compliance with the ESA and applicable regulations in conducting section 7 consultations on water development and water management activities in the Basin. Should the Service find that proposed modifications or modifications to these principles are inconsistent with the ESA or applicable regulations or policies, the Service will notify the Coordination Committee in writing, with recommendations for bringing the principles into compliance with the ESA.

Comment PWI-04



June 28, 2007

Via e-mail (navgal@uc.usbr.gov) and U.S. Mail

Mr. Rege Leach
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Re: Comments of BHP Navajo Coal Company, Arizona Public Service Company and Public Service Company of New Mexico on Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project

Dear Mr. Leach:

BHP Navajo Coal Company (BHP), Arizona Public Service Company (APS) and Public Service Company of New Mexico (PNM) (collectively "the Companies") submit these comments on the March 2007 Draft Environmental Impact Statement (DEIS) for the Navajo-Gallup Water Supply Project (the Project).

BHP is the owner of a significant water right in the San Juan Basin pursuant to New Mexico State Engineer Permit No. 2838 ("Permit 2838"), which provides rights to the use of the surface and groundwater in the Basin. BHP and its affiliate, San Juan Coal Company, own and operate coal mines in the San Juan Basin and utilize Permit 2838 to supply water for their operations, as well as to supply the sole source of water to the Four Corners Power Plant ("Four Corners"), operated by APS, and approximately one third of the supply for the San Juan Generating Station ("SJGS"), operated by PNM. The remainder of the supply for the San Juan Generating Station comes from a long term Navajo Reservoir contract PNM has with the Jicarilla Apache Nation.

The diversion point for the San Juan Generating Station is on the north side of the San Juan River seventeen miles west of Farmington (commonly referred to as the "PNM weir"). This diversion point also serves as the diversion point for BHP's operations at its San Juan Mines which serve the SJGS. The diversion point for Four Corners is on the southside of the river just downstream of the SJGS diversion. The Four Corners diversion, which provides water to Morgan Lake, also serves as the source of supply for BHP's Navajo mine operations which service the Four Corners plant.

The Companies understand the Project is an integral and essential component of the settlement of the San Juan Basin water rights claims of the Navajo Nation as reflected in the

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settlement agreement between the State of New Mexico and the Nation, as well as embodied in recently introduced federal legislation. The Companies have generally supported and continue to support settlement of the Nation's claims as set forth in the settlement agreement, including implementation of the Project. However, implementation of the Project must be done in a way which ensures protection of BHP's, APS's and PNM's existing rights and diversions. The DEIS and analysis contained therein do not adequately analyze the effect on the Companies' rights or ensure protection of such rights vis-à-vis implementation of the Project.

1

The DEIS proposes as the preferred alternative that water for the Project be diverted from the San Juan River just upstream from or utilizing the PNM weir. As set forth above, the PNM weir, owned and operated by PNM, serves as the diversion point for all of the water demands of SJGS, as well as all of the water demands for the San Juan mines (approximately 25,000 acre-feet can be diverted annually). The DEIS and technical memorandum for the Project do not adequately or specifically analyze the potential impacts on PNM's and BHP's diversions and operations if the diversion structure is utilized to divert water for the Project, or if water for the Project is diverted just upstream of the PNM weir. While the DEIS provides some general analysis and generally discusses the feasibility of expanding the PNM weir, no specific or adequate analysis is offered to determine the impacts on PNM and BHP diversions if the weir were modified, or if an upstream diversion were installed in near proximity. Additionally, the analysis is inadequate with respect to effects on PNM and BHP regarding diversions of the additional flows for the Project under differing hydrologic scenarios whether utilizing the PNM weir or diverting upstream. The limited analysis which is included also appears to be outdated as it references plans to build a fish passage at the PNM weir. This project was completed five years ago.

2

Moreover, the DEIS does not address that diversions in the vicinity of or use of the PNM weir would, at a minimum, require an agreement with PNM and BHP to address protection of the Companies' rights as well as operational and management issues. Additionally, the DEIS should discuss more specifically the required New Mexico Office of the State Engineer ("OSE") permit for the diversion of Project water. Although the DEIS appears to acknowledge that an OSE permit is required, any Final Environmental Impact Statement ("FEIS") must acknowledge that the OSE permit be appropriately conditioned to avoid impairment to the PNM and BHP rights and diversions. Moreover, the FEIS must include a requirement for a mutually agreed upon operation and management agreement for the PNM weir for direct use of the weir or as a result of potentially modified operations due to the Project's upstream diversion.

3

Similarly, the DEIS fails to adequately analyze the effects of the preferred alternative diversion on BHP's and APS's exercise of their water rights and diversion downstream to Morgan Lake for Four Corners. Although this diversion point was considered and rejected as the preferred alternative to divert Project water, diversion at the PNM weir just upstream could, if not appropriately conditioned, negatively affect APS and BHP diversions to Morgan Lake. The FEIS should include further specific analysis and also include as a mitigation measure that any OSE permit specifically include conditions to ensure no impairment of APS and BHP Morgan Lake diversions.

4

The Companies continue to support the Navajo Nation water rights settlement and the Project. However, additional analysis regarding the impact on the Companies' rights and

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diversions, coordination with the Companies, and explicit recognition of the need for cooperative agreements and OSE permit conditions to ensure appropriate operation and management of Project diversions, is required.

The Companies look forward to working with the Bureau of Reclamation, the Navajo Nation and the Jicarilla Apache Nation to ensure the success of the Project and an adequate Final Environmental Impact Statement which takes into account the comments provided herein.


Very truly yours,

BHP Navajo Coal Company



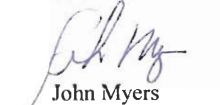
Evan Jones
Vice President

Arizona Public Service Company



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Four Corners Power Plant

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Vice President
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Comment OO-01

ATTENTION:

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CITIZENS PROGRESSIVE ALLIANCE

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COMMENT 28 June 2007**

RE:

**NAVAJO-GALLUP WATER SUPPLY PROJECT
Draft Environmental Impact Statement [PROJECT]
and
PROPOSED SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO
WATER RIGHTS SETTLEMENT AGREEMENT ["PROPOSED
SETTLEMENT"]
and
THE NORTHWEST NEW MEXICO RURAL WATER PROJECTS ACT
[S1171]**

New Mexico Senators Domenici and Bingaman, Navajo Nation President Joe Shirley, Governor Bill Richardson, and the City of Gallup are all in a helluva hurry to get their hands on billions of Federal tax dollars! They warn that if the Navajo Nation's claims to San Juan River water in New Mexico are not resolved quickly existing non-Navajo water users in the San Juan Basin could be displaced or have their economic well-being seriously impaired. Use of the fear factor has worked wonders to secure other Indian water rights settlements, and they are betting it will be the ticket again here, too. But, issues related to the three documents cited

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above must be closely examined and resolved before any further action is taken.

HYDROLOGIC DETERMINATION

After decades of data collection and interpretation, including tree ring studies by the University of Arizona and the U.S. Geological Survey, it is well understood that when the Colorado River was first divvied-up, overly generous allocations to the seven Colorado River Basin States were based on erroneous predictions. Now rather than conducting a more objective, honest analysis of water availability, the Bureau's water experts are tempting fate by repeating the same mistake with a logic so twisted as to defy reason. On June 8th Secretary of the Interior Dirk Kempthorne, presumably after due and sober consideration, concurred with the Bureau of Reclamation's ["Bureau"] new Hydrologic Determination ["Determination"] that the amount of water needed for the Navajo-Gallup Water Supply Project - centerpiece of the proposed Navajo Nation water rights settlement on the San Juan - is now available --- has been found, magically as it were, by factoring in reduced evaporation rates due to our most recent drought. So, abracadabra, presto-chango - we have new water! Since less water is evaporating, the logic goes, more water must be available. Eureka! Less is more!

Just stop to think for a minute about the unmitigated gall of Bureau hydrologists and New Mexico water managers demanding the Public take seriously such an argument. How in the world could reduced evaporation rates from reservoirs at historically low levels constitute proof that there is additional, "new water" in the already over-allocated Colorado River system. This magical math in the Bureau's new Determination is most suspect, as it has all the earmarks of a preordained outcome designed primarily to satisfy the appetites of developers for rampant, unsustainable growth. If true, indictments would be in order.

Smoke and mirrors may work wonders to tilt the playing field toward the profits of vested interests, but at the end of the day, the

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public cannot drink fuzzy math or the cost of political favors. This revamped Determination is essential for further water development of the San Juan River because New Mexico has bumped up against the ceiling of its share of Colorado River Compact Allocations. Based on numerous controversial assumptions, the Determination represents a boon to development interests, as it invites New Mexico to further deplete and effectively desiccate the San Juan River, jeopardizing the hydrologic future of the San Juan Basin and portending catastrophe for the Colorado River system. This new Determination is an assault on common sense and represents the Bureau's latest scheme to be foisted on the unwitting taxpayers of this country. As such, we believe it is only prudent for the National Academy of Sciences to review the modeling and analysis which led to the Bureau's Determination.

1

NAVAJO WATER RIGHTS CLAIMS

The Proposed Settlement shows total diversions for Navajo water projects at 626,470 acre feet and total depletions at 322,190 acre feet annually. This massive allocation of New Mexico's surface waters has yet to be justified to the Public from a technical standpoint. The citizens of New Mexico have a legal right to know the technical bases for the tribal entitlements proposed in a Navajo settlement, and officials have an obligation to provide this information. This should not be required as an article of faith. The technical component of any settlement entails scientific questions, such as, "How much water is needed by the Tribe?" and, "What are the bases for quantification of the Tribe's entitlement to water?"

No one -- not the New Mexico State Engineer, not the Navajo Nation, not Bureau hydrologists -- has the means of accurately measuring or verifying quantities of water depleted from a stream system. Only diversion quantities can be reliably calculated. The New Mexico State Engineer's Office does not possess the methodology or technology necessary to calculate consumptive usage, just as it is unable to determine the magnitude or source of return flows to a system. The 10-year averaging of diversions/depletions provided for in the

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proposed settlement involves a carry-over allowance which is contrary to State law and the public interest.

On October 24, 1995, former Navajo Nation President Albert Hale opined that, "[t]he Navajo Nation possesses sufficient "practicably irrigable acreage" ["PIA"] within the San Juan River Basin to fully utilize the entire flow of the San Juan River." What is the State Engineer's assessment of the Navajo Nation's PIA in the San Juan Basin? What is the Bureau's assessment of the Navajo Nation's PIA in the San Juan Basin? It is no secret that the Navajo Indian Irrigation Project ["NIIP"] is a recurring fiscal nightmare. Recently the Navajo Nation was forced to allocate \$10 million to offset operating deficits associated with NIIP. NIIP and the Navajo Agricultural Products Industry's ["NAPI"] audits reveal losses of millions of dollars annually on the operation of farm Blocks 1-8. The Navajo Nation is already the fifteenth largest recipient of Federal crop subsidies nationally. Given the regularity of these losses, it seems only reasonable to predict that the irrigation of additional acreage in NAPI Blocks 9-11 would be similarly unprofitable, resulting in even greater losses. So, increasing irrigation on the NAPI/NIIP will only add to the staggering Public costs.

Navajo PIA along with Navajo demographics in the San Juan Basin should be carefully evaluated in the determination of Navajo water entitlements in any realistic settlement agreement. While the arability of significant portions of Navajo reservation land within the San Juan Basin is indisputable, the actual "practicability" of irrigating much of that land remains highly debatable. This issue of "practicability" is not only pertinent to tracts checkered within the San Juan Basin. It is pertinent to the NAPI farm blocks themselves -- both those in production and those to come.

According to the Winters doctrine, as upheld in *Arizona v. California* by the Supreme Court, a Tribe shall have right to water sufficient to irrigate all of the practicably irrigable acreage ["PIA"] within the borders of its reservation. The Supreme Court in *Arizona v. California* ruled that application of the PIA standard is the only "feasible and fair way" by which reserved water rights for a Tribe can be measured. Clearly, the only "feasible and fair" way to

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quantify the Navajo right on the San Juan - and the first and foremost task - is to measure the PIA of the Navajo reservation lands in the San Juan Basin. This must be done as a matter of fairness and accuracy in order to determine the Navajo tribal water right, but to date requisite technical studies for assessing Navajo PIA in the San Juan River Basin do not even exist, and the basis for the Project and Proposed Settlement is anybody's guess. Fear tactics by Project promoters regarding the possible outcome of prolonged and contentious litigation has become an old saw similar to the color-coded Terror Alerts of Homeland Security. A PIA analysis is pivotal as a basis for the negotiation of any settlement.

NAVAJO INDIAN IRRIGATION PROJECT [NIIP]

The Navajo-Gallup Water Supply Project, which would cost as much as three billion dollars if typical Bureau cost overruns materialize, is designed to settle the Navajo Nation's claims to the San Juan River in New Mexico. But it is hardly a secret that the Navajo Indian Irrigation Project [NIIP], the biggest straw in the San Juan River, habitually drowns in red ink. NIIP has lost millions of dollars annually, despite the fact that all capital costs and much of the operational budget, continue to be borne by Federal taxpayers.

An independent review of the Navajo Indian Irrigation Project must be conducted before any more public money is squandered on it. All indications are that the NIIP is a failure, that it is propped up every year by millions of Federal tax dollars so as to protect the guilty and postpone a long overdue review. The project may benefit a few Federal and Navajo bureaucrats, but it leaves little if anything for the average Navajo. We steadfastly think Federal assistance should be tailored to benefit the people of the Navajo Nation, not designed to aggrandize worn out Federal bureaucracies such as the Bureau of Reclamation and the Bureau of Indian Affairs.

NIIP is by any reasonable measurement an endless bundle of subsidies, one piled on top the other in almost endless succession. For example, the American people still pay the annual operating costs of NIIP even though the project is several decades old and

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Interior policy expressly forbids it. In a letter to then Secretary Gail Norton, Navajo President Joe Shirley asserted those costs come to about \$6 million annually and that they must continue indefinitely. We also know that while the Navajo lease NIIP irrigation land for farming by non-Navajo, they have received well over \$15 million in Federal farm subsidy payments in the last few years. Even so, the Navajo Nation, as poor as it is, recently had to come up with over \$10 million in bailout funds for the tribal farming enterprise. Does this look like the kind of operation worth an investment of hundreds of millions, if not billions, of dollars more? What does this say about the practicality of irrigating the Navajo Reservation lands high above the San Juan River and the real extent of their water right under the Winters doctrine? Will the Navajo become accustomed to more and even greater losses? This would be a logical presumption knowing what we do about the history of this operation.

THE NORTHWEST NEW MEXICO RURAL WATER PROJECTS ACT [S1171]

The Northwestern New Mexico Rural Water Projects Act [S1171] seeks to couple the Proposed Settlement of Navajo claims to water on the San Juan River with a free ride for those seeking to repair deteriorating rural water systems in northwest New Mexico. In S1171, Section 201, Reclamation Water Settlement Fund [“Fund”], seems to be written to buy supportive silence for the Project and Settlement by providing funds to rehabilitate old facilities. This may be an effective means of squelching opposition, but what is the rationale for provisions in S1171 directing the Bureau to administer subsidies for the repair of such rural water systems, when this mission is clearly within the purview of the Department of Agriculture, which has historically been charged with these responsibilities for Rural Development?

Implementation of S1171 is in no way feasible if the referenced Fund cannot be shown to be reliably flush. The Public must be provided with certification from OMB or others competent in principles of accounting that the Fund is, in fact, solvent, with

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adequate liquidity to withstand the significant, longterm drawdown envisioned in S1171. If the Fund is siphoned as foreseen in S1171, the nature of the impacts on other social programs currently dependent on the Fund must be fully assessed and mitigated.

ARIZONA ISSUES

The State of Arizona opposes S1171. The failure of Interior to implement the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims in the Proposed Settlement undermines the State of Arizona's attempt to reach a settlement with the Navajo Nation. Window Rock, Arizona and Gallup, New Mexico are located in the Lower Basin. Inclusion of these locales within the Project service area is at odds with the 1922 Colorado River Compact and an unprecedented departure from the traditional interpretation of the Law of the River. Window Rock is eligible for water from the Central Arizona Project. Since it is unclear how allocations will be made, we request a full accounting of the water involved in the Project. What portion comes from New Mexico's Compact allocation? What portion comes from Colorado's Compact allocation? What portion comes from Arizona's Compact allocation?

3

CITY OF GALLUP

Apparently, New Mexico state representative Patti Lundstrom, who testified to Congress this week, expects American taxpayers to join hands and march lockstep to ante-up at least seventy-five percent of the Project costs for the City of Gallup. This is most presumptuous and highly objectionable, as it involves a complete breach of longstanding Reclamation law requiring all municipal & industrial water costs to be paid with interest by project beneficiaries.

How are the interests of the City of Gallup pertinent to the settlement of Navajo claims on the San Juan River? Claims by the Navajo Nation to the San Juan River have absolutely nothing to do

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with the City of Gallup. So, why is Gallup being shoehorned into this project and the proposed Settlement? They can't afford it, and they are not eligible for or entitled to the massive federal government subsidies (pork) this multi-billion dollar Project would require. Yes, billions! Remember we are talking about the Bureau after all (think Animas-La Plata Project). If the Navajo Nation wants to send its NIIP irrigation water to Gallup, so be it, but if the Federal Government is to be an honest broker, American taxpayers should not be required to support any part of the Navajo-Gallup Water Supply Project that is unworkable or uneconomic.

4

ANTICIPATED COST OF THE PROJECT

No one is being told how much this Project could cost. In order to protect any Federal taxpayer investment, a sensitivity analysis of cost estimates for this multi-billion dollar Project must be completed. The record should reflect that the Bureau refused our request for such a sensitivity analysis of the Animas-La Plata Project ["ALP"], and then within months revealed that their cost estimates were off by fifty percent -- this before construction had even begun. It is our understanding, with no users for most of ALP water and absolutely no way to deliver the water to these make-believe users, that the costs (even without the interest calculation) already exceed by 100 percent the original cost estimate. Further, all of the recent big Bureau projects surpassed by at least 300 percent their original cost estimates. We refer to the Dallas Creek Project, the Dolores Project, and Central Arizona Project. Given the dismal state of the Federal budget, adequate assurances are necessary to insure the cost estimates given to Congress are not grossly underestimated. Independent Peer Review is a crucial component in this process. In this regard, publication of the interest on this debt over the 100 year life of the project should also be documented and made available to the Public

5

NAVAJO DEPLETION GUARANTEE

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Describe the Navajo Depletion Guarantee in detail, and explain how it could affect the operation of the Project.

6

PIPELINE LATERAL SYSTEM

Who will pay for the network of pipeline laterals to the Navajo Chapters intended to be served by the Project?

7

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The Senate Committee on Energy and Natural Resources held a hearing on June 28th on Senate Bill 1171, the Northwestern New Mexico Rural Water Projects Act. Ranking member Senator Pete Domenici, in his best "Iglesias" form, threatened Bureau Commissioner Robert Johnson ("I'm ready to proceed, and we'll see if you're needed."), whined about reasonable objections about the Project's high costs by the Office of Management & Budget, and could be heard muttering off-mike that he ought to ask the Army Corps of Engineers to do what the Department of Interior would not. The Domenici/Bingaman bill seeks to raid the Reclamation Fund at a time when the balance of that account is extremely low due to reduced power revenues. CRSP power users will, no doubt, be less than thrilled with this arrangement.

THE CRITERIA AND PROCEDURES FOR THE FEDERAL GOVERNMENT'S PARTICIPATION IN THE NEGOTIATION OF INDIAN WATER RIGHTS SETTLEMENTS [55FR9223/POLICY] Federal Register, Vol.55, No.48, 9223 et seq

Both the Navajo Nation and the State of New Mexico are well-aware of the Department of the Interior's Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims. Documents from former State Engineer Tom Turney's negotiation notebook, obtained through "New Mexico Inspection of Public Records Act" requests, provide a detailed description of these "Federal Negotiating

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Guidelines". Likewise, the Navajo Nation recognizes the overriding authority of these Criteria and Procedures, stating, "The projected costs of these [wet water] projects is substantial and the primary source of funding will invariably come from the federal government. However, the Department of the Interior's Criteria for Settlement of Indian Water Rights requires a substantial state and local contribution. The Navajo team understands that this settlement will require creative innovation, and that it may require a combination of Federal and State programmatic funding sources."

Federal employees assigned to a formal Negotiating Team are expected to adhere to and comply with the DOI's "Working Group in Indian Water Settlements; Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims", Federal Register, Vol.55, No.48, 9223 et seq [see attached "Policy 55FR9223"], as prescribed in a formal executive "Policy Statement" March 12, 1990 ["Policy"]. The DOI Policy holds that, in settling Indian water rights claims, the Federal government shall ensure that Indians receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement. The United States has pervasive Endangered Species Act and Tribal commitments and trust responsibilities within the San Juan River Basin -- these are overlapping and interconnected concerns which have not been adequately addressed or accommodated in negotiation of the proposed Navajo settlement.

The Office of Management and Budget ["OMB"] is assigned a definite and indispensable role in the proper execution of the Federal Policy, but federal FOIA requests have failed to produce any records showing OMB has been involved as necessary in the Proposed Settlement. The Government's Policy at 55FR9223, criterion no. 6, states:

"Settlements should include non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties."

Language in the proposed Bill authorizing the Navajo-Gallup Water Supply Project allows for Federal subsidies of up to 75 percent to both the City of Gallup and the Jicarilla Apache Tribe, requiring as little as 25 percent cost-share for the substantial benefits those non-

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Federal parties are to receive through construction of the Project. In fact, Gallup city officials have been to Washington to persuade Congress to pay for almost all of the proposed Navajo-Gallup Water Supply Project, claiming that even a 25 percent repayment obligation would be too rich for the City's blood.

Four years ago, the Secretary of the Department of the Interior established the "Navajo-San Juan River Federal Indian Water Rights Negotiation Team" ["Team"] for the purpose of negotiating a settlement of the claims of The Navajo Nation to waters within the San Juan River Basin of Northwest New Mexico. The Team, headed initially by DOI Solicitor Michael Schoessler (and subsequently by the Bureau of Reclamation's ["BOR"] Brian Parry), in concert with Joy Nicholopoulos (Fish & Wildlife Service), Brad Bridgewater (Department of Justice) and the Bureau of Indian Affairs' John Cawley, have imposed absolute secrecy while conducting a series of closed-door meetings with the Nation and the State of New Mexico in the "Navajo-San Juan River Federal Indian Water Rights Negotiation". As a direct result of the Team's covert activity, many legitimate stakeholders, the Public, and representatives of the media have been arbitrarily excluded and denied due process rights -- being barred, as they have been, from proceedings which may ultimately involve the expenditure of billions of State and Federal dollars and undermine the value of certain personal property holdings.

The binding DOI Policy for negotiating settlements of tribal water claims has been in force and preserved intact for some fourteen years -- not once having been the subject of amendment, modification, supercession or revocation. Sadly, DOI has a dismal history of haphazard and selective enforcement of its Policy, resulting in repeated, irreversible betrayal of the Public Trust. Although the Policy requires an integrated and concurrent examination of competing claims in the San Juan River system because four Indian Tribes having pending reserved rights claims to a severely restricted water supply, the DOI has grossly and methodically misapplied its own Criteria & Procedures by negotiating in piecemeal fashion with the Jicarilla Apache, the Ute Mountain Ute and the Southern Ute Indian Tribes. Now, apparently,

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this deliberate failure with respect to Policy execution is about to be repeated by the DOI Team with The Navajo Nation and the State of New Mexico in the ongoing settlement negotiations.

In October 2003 the Western States Water Council and the Native American Rights Foundation held their biennial "Indian Water Rights Settlement Symposium" in Durango, Colorado. Timothy Glidden, author of the Federal Government's long-standing Policy Statement on the negotiation of Indian water rights claims, stated that it would be impossible to make progress in tribal settlement if a variety of interest groups and stakeholders were made formal members of a Negotiation Team. In other words, Mr. Glidden (former Chairman, Working Group on Indian Water Rights Settlements, and now Contractor to the U.S. Department of the Interior, Secretary's Office of Indian Water Rights) contends that the political, technical and financial momentum for securing a settlement is generated, by-and-large, through the intentional exclusion of various parties with legal standing in the ultimate resolution and disposition of the tribal water claims. Glidden's pronouncement is at odds with the fact that nothing in the Policy's Criteria & Procedures direct the Interior Department to exclude any interested party from participation in the process of negotiating the settlement of Indian water claims. As stated above, direct requests by the Public over a year ago to participate in the settlement discussions were not granted. [see attached "12/09/02 letter to Michael Schoessler"]

Numerous Freedom of Information Act [FOIA] requests have confirmed that Federal Policy has not, in fact, been followed in the Navajo settlement negotiations, just as it was not followed in the settlement negotiations with the Jicarilla Apache, the Ute Mountain Ute, or the Southern Ute tribes. So, while an adopted federal policy setting forth the "Criteria and Procedures for Indian Water Rights Settlements" has been in place and binding for over a decade, it has been wantonly abandoned in tribal negotiations in the San Juan Basin -- twisted and riddled with bias in order to advance special interests in Indian water claims at the expense of the environment, senior water right holders, and the taxpaying public. It has become increasingly obvious that the State and the Federal Government are allowing non-Indian water developers to successfully use the pretext

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of Indian water rights settlement negotiations as leverage to engage in water speculation, further strangling western rivers and crippling the taxpaying public.

Any settlement worth its salt must follow the guidelines established by the Department of Interior as set forth in its published policy for negotiating and settling Indian water rights, The Criteria and Procedures, 55FR9223, published in the Federal Register of March 12, 1990. Among other things this policy establishes that Indian settlements involving a single river system, in this case the San Juan, must be done so as to simultaneously evaluate and negotiate all Indian claims on that river system. Obviously, the clear intent is to avoid the dreaded unintended effect through piecemeal negotiations, awards, and settlements and secondary taxpayer costs of undoing what was mistakenly done through ignorance and bureaucratic imperiousness.

We cited 55FR9223 with regard to both the Animas-La Plata Project and the Navajo Reoperation EIS. We were ignored. In fact, one of the attorneys for Interior, Michael Connors, Esq., now a trusted aid to Senator Bingamon and presumed author of much of S1171, told us that, while the policy still stood, it only had to be observed when the Department of Interior found it convenient to do so. It is past time, whether convenient or not, for 55FR9223 to be taken seriously.

55FR9223 reads as noticed as follows:

Federal Register / Vol. 55, No. 48 / Monday, March 12, 1990 /
Notices page 9223

DEPARTMENT OF THE INTERIOR

Working Group in Indian Water Settlements; Criteria and Procedures
for the Participation of the Federal Government in the Negotiations
for the Settlement of Indian Water Rights Claims

AGENCY: Department of the Interior

ACTION: Policy Statement

SUMMARY: It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through

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negotiated settlements rather than litigation. Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlement of claims concerning Indian water resources.

EFFECTIVE DATE: March 12, 1990.

ADDRESSES: Comments may be addressed to: Mr. Tim Glidden, Department of the Interior, MS6217-MIB, 18th and C Streets, NW., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: Mr. Tim Glidden, Chairman, Working Group on Indian Water Settlements, 202-343-7351

SUPPLEMENTAL INFORMATION: These criteria and procedures were developed by the Working Group on Indian Water Settlements from the Department of the Interior.

These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Dated: March 6, 1990

Timothy Glidden

Chairman, Working Group on Indian Water Settlements.

Criteria and Procedures for Indian Water Rights Settlements

Preamble

Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians.

It is the policy of this administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R.932, the

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1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation.

Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlements of claims concerning Indian water resources. These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Criteria

1. These criteria are applicable to all negotiations involving Indian water rights claims settlements in which the Federal Government participates. Claims to be settled through negotiations may include, but are not limited to, claims:
 - (a) By tribes and U.S. Government to quantify reserved Indian water rights.
 - (b) By tribes against the U.S. Government.
 - (c) By tribes and the U.S. Government against third parties.
2. The Department of the Interior will support legislation authorizing those agreements to which it is a signatory party.
3. Settlements should be completed in such a way that all outstanding water claims are resolved and finality is achieved.
4. The total cost of the settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government.
5. Federal contributions to a settlement should not exceed the sum of the following two elements:
 - a. First, calculable legal exposure--litigation costs and judgment obligations if the case is lost: Federal and non-Federal exposure

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should be calculated on a present value basis taking into account the size of the claim, value of the water, timing of the award, and likelihood of loss.

b. Second, additional costs related to Federal trust or programmatic responsibilities (assuming the U.S. obligation as trustee can be compared to existing precedence.)--Federal contributions relating to programmatic responsibilities should be justified as to why such contributions cannot be funded through the normal budget process.

6. Settlements should include non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties.

7. Settlements should be structured to promote economic efficiency on reservations and tribal self-sufficiency.

8. Operating capabilities and various resources of the Federal and non-Federal parties to the claims negotiations should be considered in structuring a settlement (e.g. operating criteria and water conservation in Federal and non-Federal projects).

9. If Federal cash contributions are part of a settlement and once such contributions are certified as deposited in the appropriate tribal treasury, the U.S. shall not bear any obligation or liability regarding the investment, management or use of such funds.

10. Federal participation in Indian water rights negotiations should be conducive to long-term harmony and cooperation among all interested parties through respect for the sovereignty of the States and tribes in their respective jurisdiction.

11. Settlements should generally not include:

a. Local contributions derived from issuing bonds backed by or guaranteed by the Federal Government

b. Crediting to the non-Federal share normal project revenues that would be received in absence of a cost-share agreement.

c. Crediting non-Federal operation maintenance, and rehabilitation (OM&R) payments to non-Federal construction cost obligations.

d. Imposition by the Federal Government of fees or charges requiring authorization in order to finance the non-Federal share.

e. Federal subsidy of OM&R costs of Indian and non-Indian parties.

f. U.S. participation in an economically unjustified irrigation investment; however, investments for delivery of water for households, gardens, or domestic livestock may be exempted from this criterion.

g. Per capita distribution of trust funds.

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- h. Crediting to the Federal share existing annual program funding to tribes.
- i. Penalties for failure to meet a construction schedule. Interest should not accrue unless the settlement does not get budgeted for as specified in item 15 below.
- j. Exemptions from Reclamation law.
- 12. All tangible and intangible costs to the Federal Government and to non-Federal parties, including the forgiveness of non-Federal reimbursement requirements to the Federal Government and items contributed per item 8 above should be included in calculating their respective contributions to the settlement.
- 13. All financial calculations shall use a discount rate equivalent to the current water resources planning discount rate as published annually in the Federal Register.
- 14. All contractual and statutory responsibilities of the Secretary that affect or could be affected by a specific negotiation will be reviewed.
- 15. Settlement agreements should include the following standard language: Federal financial contributions to a settlement will normally be budgeted for, subject to the availability of funds, by October 1 of the year following the year of enactment of the authorizing legislation (e.g., for a settlement enacted into law in August 1990, funding to implement it would normally be contained in the FY 1992 Budget request and, if appropriated, be available for obligation on October 1, 1991).
- 16. Settlements requiring payment of a substantial Federal contribution should include standard language providing for the costs to be spread-out over more than one year.

Procedures

Phase I-- Fact Finding

- 1. The Department of the Interior (Department) will consider initiation of formal claims settlement negotiations when the Indian tribe and non-Federal parties involved have formally requested negotiations of the Secretary of the Interior (Secretary).
- 2. The Department will consult with the Department of Justice (Justice) concerning the legal considerations in forming a negotiating team. If Department decides to establish a team, the Office of Management and Budget (OMB) and Justice shall be

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notified, in writing. Justice should generally be a member of any negotiating team.

a. The Department's notification should include the rationale for potential negotiations, i.e., pending litigation and other background information about the claim already available, makeup of the team (reason that Justice is not a member of a team, if applicable), and non-Federal participants in the settlement process.

b. The date of the notification marks the beginning of the fact-finding period.

3. Not later than nine months after notification, a fact-finding report outlining the current status of litigation and other pertinent matters will be submitted by the team to the Department, OMB, and Justice. The fact-finding report should contain information that profiles the claim and potential negotiations. The report should include:

a. A list of all involved parties and their positions.

b. The legal history, if any, of the claim, including such relevant matters as prior or potential litigation or court decisions, or rulings by the Indian Claims Commission.

c. A summary and evaluation of the claims asserted for the Indians.

d. Relevant information on the non-Federal parties and their positions to the claim.

e. A geographical description of the reservation and drainage basin involved, including maps and diagrams.

f. A review and analysis of pertinent existing contracts, statutes, regulations, and legal precedent that may have an impact on the settlement.

g. A description and analysis of the history of the United States' trust activities on the Indian reservation.

4. During Phase I, II, and III, the Government (through negotiating team or otherwise) will not concede or make representatives on likely U.S. positions or considerations.

Phase II-Assessment and Recommendations

1. As soon as possible, the negotiating team, in concert with Justice, will conduct and present to the Department an assessment of the positions of all parties and a recommended negotiating position. The purpose of the assessment is to (1) measure all costs presuming no settlement, and, (2) measure complete settlement costs to all the parties. The assessment should include:

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- a. Costs presuming no settlement-- Estimates for quantifying costs associated with all pending or potential litigation in question, including claims against the United States and claims against other non-Federal parties together with an assessment of the risk to all parties from any aspect of the claim and all pending litigation without a settlement. A best/worst/most likely probability analysis of the litigation outcome should be developed.
- b. An analysis of the value of the water claim for the Indians.
- c. Costs Presuming Settlement-- quantification of alternative settlement costs to all parties. This includes an analysis showing how contributions, other than those strictly associated with litigation, could lead to settlement (e.g., facilities to use water, alternative uses of water, and alternative financial considerations). _
- 2. All analysis in the settlement should be presented in present value terms using the planning rate used for evaluating Federal water resource projects.

Phase III--Briefings and Negotiating Position

- 1. The Working Group on Indian Water Settlements will present to the Secretary a recommended negotiating position. It should contain:
 - a. The recommended negotiating position and contribution by the Federal Government. _
 - b. A strategy for funding the Federal contribution to the settlement.
 - c. Any legal or financial views of Justice or OMB.
 - d. Tentative position on major issues expected to arise.
- 2. Following the Secretary's approval of the Government's negotiating position, Justice and OMB will be notified before negotiations commence.

Phase IV--Negotiations Toward Settlement

- 1. OMB and Justice will be updated periodically on the status of negotiations.
- 2. If the proposed cost to the U.S. of settlement increases beyond the amount decided in Phase III, if the negotiations are going to exceed the estimated time (or break down), or if Interior proposes to make significant changes in the Government negotiating position or in the U.S. contribution to the settlement, the original

Comment OO-01 – continued

recommendation and negotiating position will be revised using the procedures identified above.

3. Briefings may be given to the Congressional delegations and the Committees consistent with the Government's negotiating position.

[FR Doc.90-5532 Filed 3-9-90:8:45 am] BILLING CODE 4310-RP-M

The general Public, interested parties and legitimate stakeholders tried desperately for years to gain access to negotiations leading to the Proposed Settlement, the Project, and S1171, to no avail.

Witness this letter to Michael Schoessler, DOI Team Leader Navajo-San Juan River Federal Indian Water Rights Negotiation Team:

9 December 2002

electors Concerned about Animas Water -- CAW

1217 Chaco Avenue _Farmington, NM 87401

(505) 327-0743

Michael Schoessler, Team Leader

Navajo-San Juan River Federal Indian Water Rights Negotiation Team

U.S. Department of the Interior

Office of the Solicitor

505 Marquette Ave. NW Suite 1800

Albuquerque, NM 87102

**SUBJECT: Navajo-San Juan River Federal Indian Water Rights
Negotiation (Negotiation)**

Dear Michael:

Thank you for responding in advance of this week's meeting of your Navajo-San Juan River Federal Indian Water Rights Negotiation Team (Team). As you know, CAW has expressed an interest in the subject Negotiation, particularly regarding the Department of the Interior's (DOI) application of its policy for the negotiation and settlements of claims concerning Indian water resources, 55FR9223 (Policy). Your observation that this Policy has been inconsistently or haphazardly applied over the past decade confirms our worst fears.

Comment OO-01 – continued

At the same time, we are encouraged by your expressed intention to strictly adhere to the Policy as established in the "Criteria & Procedures" during your Team's ongoing two-year effort with the subject Negotiation. I suppose it would be reasonable to assume that, initially anyway, DOI personnel assigned to other negotiation teams had similar intentions of enforcing the required "Criteria & Procedures", but then, for one reason or another, found it more convenient, advantageous, or politically expedient to abandon their responsibility to uphold that Policy.

In our opinion, only a full and careful implementation of the Policy in the subject Negotiation will fulfill the Secretary's obligation under the federal Indian trust responsibility. Indian Trust Assets (ITAs) in connection with Navajo Nation water rights claims to the San Juan River cannot be accurately assessed and adequately protected if the DOI's slipshod approach to Policy enforcement resurfaces in the subject Negotiation. Certainly the American people will be ill-served by any perpetuation of this willy-nilly system which leaves so much to chance, if not outright subterfuge.

We sincerely appreciate your willingness to present the requests in CAW's October 22nd letter to the non-Federal parties for consideration and action at this week's negotiation session. However, your view that the Team has no independent ability or authority to provide for the involvement of additional non-Federal parties in the subject Negotiation seems to be incompatible with the "Criteria & Procedures" of the Policy.

In fact, the Policy does not make allowance for the arbitrary exclusion of individual stakeholders or entities with competing claims and interests as a prerequisite to the subject Negotiation. Neither does the Policy support your determination that the current negotiations shall be closed to the public and conducted in absolute secrecy.

If the subject Negotiation is to be kept free of bias and prejudice, the Team must act swiftly with authority to allow for the participation of additional interested parties, including legitimate stakeholders.

Comment OO-01 – continued

Once again, we appreciate your time and consideration in this matter.

Sincerely,

Steve Cone and Verna Forbes Willson for
Electors Concerned about Animas Water -- CAW
cc: Brian Parry
John Cawley
Tom Turney
John Whipple
Stanley Pollack
Ernie Coriz

THE STARK CONCLUSION TO ALL OF THIS IS AS FOLLOWS:
IF THE ADOPTED POLICY OF THE UNITED STATES GOVERNMENT
FOR PARTICIPATION IN THE NEGOTIATION OF INDIAN WATER
RIGHTS SETTLEMENTS, 55FR9223, IS NOT TO BE FAITHFULLY
AND THOROUGHLY IMPLEMENTED TO REACH A JUST
SETTLEMENT, THEN LITIGATION IS MUCH PREFERRABLE TO THE
SECRECY AND SUBTERFUGE WHICH HAVE BECOME THE RULE.

LONG HOLLOW RESERVOIR PROJECT

How will the intent to expand water use on the La Plata River in Colorado be reconciled with and integrated into the Proposed Settlement and S1171? Is it the opinion of the Bureau that increased diversion and storage on the La Plata in the proposed Long Hollow Reservoir will also increase flows to the Colorado mainstem?

8

ALTERNATIVES

The Department of the Interior conceded this week in Senate testimony that the process for selecting the various alternatives

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Comment OO-01 – continued

identified and analyzed in the Project DEIS was inadequate. A new DEIS must be prepared based on the revelation that the Bureau will not support **any** of the Project alternatives examined in its own DEIS. Despite the New Mexico senators' attempts to fast-track S1171, The Criteria & Procedures of 55FR9223 must be implemented in coordination with the Department of Justice and the Office of Management and Budget, in order to ensure that Federal Trust responsibilities are honored. The 55FR9223 Policy includes provisions for an economic evaluation with a high level of assurance that the Public's money is being well spent. The Criteria & Procedures of 55FR9223 represent a safeguard against fiscal waste and promote the negotiation of a just settlement for all parties.

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Comment IND-01

Navajo-Gallup Water Supply Project Planning Report and Draft Environmental Impact Statement Public Hearing

This is one way you can provide comments on the Planning Report and Draft Environmental Impact Statement. They can be 1) sent in the envelope provided, 2) faxed to 970.385.6539, or 3) sent to: Mr. Rege Leach, Bureau of Reclamation, Western Colorado Area Office, 835 East 2nd Avenue, Durango CO 81301

Your Name: Dale Boser Jr
Representing: Self
Address: 601 Michlee Dr Gallup NM 87301
Phone: 505 722-9029
E-Mail: dboser@farmersagent.com

COMMENTS:

I support the project 100%.
In order for Gallup to survive
we must have water.

Thank you
Dale Boser

Comment IND-02

J. Tonny Bowman
P.O.Box 3582
Yahtahey, New Mexico 87375
June 28, 2007

Mr. Rege Leach
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Co. 81301

Dear Mr. Leach:

At the outset, my primary language is Navajo. I am still attempting to speak and write in a foreign language: English.

I attended a short meeting in Shiprock Chapter House, Shiprock, New Mexico on June 5, 2007. The meeting was from 6pm to 9pm. There were perhaps 25 people. Certain people were informed that the meeting on San Juan River Project was canceled. I was one of those who was told that the meeting was canceled. And the only meeting was in Farmington, New Mexico. However, I attended to some businesses in Farmington, New Mexico, and I was on my way home to Twin Lakes, New Mexico in the evening when I saw some vehicles parked at the Chapter House, so I stopped at Shiprock Chapter by accident. I believe I was the only person who stopped at Shiprock Chapter House, after being told that San Juan River — Gallup Water Supply Project meeting was canceled.

First of all, Navajo Reservation is not one whole country, agreeing on everything with one strong leader, one interest, and so on.

I live in Twin Lakes, New Mexico. As a matter of fact, my ancestors lived here forever, way long ago, even before the birth of God, the birth of Jesus Christ. My ancestors observed Nakai. Which means "wanders". They were Spanish explorers back in 1500's. My ancestors also had observed and named "Nakai Le'Jhe'Ni". Which means 'Black Wanders'. The black wanders were apparently black slaves who traveled with the Spaniards.

So, my ancestors and myself had lived in Twin Lakes valley for several centuries. My grandfather was imprisoned as a child in U.S. Death Camp in Fort Sumner, New Mexico. My great grandmother as a child was imprisoned in U.S. Government Concentration Camp in Fort Sumner from 1860 to 1868. Her mother, father, brothers and sisters died in the U.S. Death Camp, or were taken as slaves by the whites, Spanish and Mexicans. My grandmother was born in 1869, and she told me that the "people were bones, nothing but bones." I had no idea what she meant, until I went to Holocaust Museum in Washington, D.C. and saw photographs of skeletons of Jewish inmates of Nazi Prisons, or Concentration Camps, at Dachau, fitting the very descriptions of "U.S. Concentration Camp or Camps in Fort Sumner, New Mexico" by the U.S. Government of my grandparents. Navajos were not allowed to vote in both the State of New Mexico and General Election truly until 1965, for various reason, racial and U.S. Constitution. My older brothers were drafted into U.S. Army by the Mexicans and White Draft Board of McKinley

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Comment IND-02 – continued

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County, even though they were not allowed to vote. One of my older brothers was shot in Germany in March of 1945 and was seriously wounded. After World War II, I was stationed in Munich, Germany at MacGraw Kaserne with Rainbow Division, the U.S. Army Division that freed Dachau Concentration Camp on April 29, 1945. Exhibit 1.

Note: General Dwight D. Eisenhower, ordered that photographs be made of all Concentration Camps to guard against claims that Americans and Allies are making false claims by the German population. On the other hand, Excavation of U.S. Concentration Camp in Fort Sumner, New Mexico should be made for the remains of Navajo dead at the U.S. Death and Concentration Camp.

How do I know that Navajos were taken as slaves? I read the treaty. During Peace Treaty discussion, the subject came out. U.S. Treaty with the Navajo, 15 Stat. L. 667, June 1, 1868. And U.S. General William T. Sherman said, "we just had a great war. There will be no more slaves. Don't go over there, we will take care of that." General Sherman apparently did not want confrontations between slave holding and owning white settlers, Mexican and Spanish Settlers and the Navajo relatives of the Navajo slaves. General Sherman did not want the Navajo to rescue their relatives which might inflame further war. There were no further discussions after that.

In the U.S. Treaty with the Navajo as above cited contain certain important agreements and they were entered into Articles and made permanent parts thereof. At that Peace Treaty, the Navajo people expressed that they have homes, cultivated land, sweat houses, hogans, and there were no other tribes in the area. The Gods of the Navajo People have created the land for them between the Four Sacred Mountains. In Twin Lakes, my grandmother expressed to me, "our ancestors have died and are buried between rock crevices on these mountains." She is right again, as a shepherd, I saw where my ancestors are buried on our land in Twin Lakes valley. Land was discussed and agreed to as:

Article V. of the U.S. Treaty with the Navajo, 15 Stat. L. 667, June 1, 1868 expressed:

"If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land book" as herein described, shall cease to be in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

"Any person over eighteen years of age, not being the head of the family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed."

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Comment IND-02 – continued

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The Navajo people living on the Navajo Reservation in Northwestern New Mexico have fulfilled all the requirements of the Treaty of 1868, and at the present time all of the land is occupied and used.

I believe, I have an established the right to express my view on this San Juan – Gallup Water Project.

I read in the books of Navajo -- Gallup Water Supply Project that Ed T. Begay had signed a letter. Mr. Begay was one of the Bank Commissioner of American Indian National Bank in Washington, D.C., it's sponsor was Regis National Bank, now non-existent. The American Indian National Bank cease to exist, sometime in 1980's. And what happened to all the money that the Navajos deposited in the Bank? The Navajo people were never told about the disappearance of the American Indian National Bank. Mr. Begay lives in the City of Gallup, New Mexico, he is an outsider to the Northern New Mexico Navajo Reservation. The Northern New Mexico Navajo Reservation fits the descriptions of the "Winter Rights Doctrine" where an established Indian Reservation was involved in the litigation.

I remember, the statements made by two Navajo individuals. One was by Loranzo Bates, a Navajo Tribal Councilman from Upperfruitland, New Mexico. Another was the President of Huerfano Chapter, Mr. Casuse. Mr. Bates and Mr. Casuse are relatives. Names are spelled differently, Hesuse, Casuse, Jesus, etc. Their great grandfather was a Mexican, Jesus Arviso. Mr. Bates misconstrued the "Winter Rights Doctrine." And, I replied, that I am only talking about the Navajo Reservation in Northwestern New Mexico. Not about Navajo Reservation in Utah. Not about Navajo Reservation in Arizona, not about Navajo allotments, or anywhere else. Winters v. U.S., 207 U.S. 564 (1908). Please, see Exhibit 2.

Mr. Loranzo Bates lives outside the Northwestern New Mexico Navajo Reservation boundary. Upon information, he lives on a private Navajo Allotted land in Upper Fruitland, New Mexico and he is surrounded by water of San Juan River. And further, upon information and belief, he did not grow up on the Navajo Reservation, but instead he grew up in Flagstaff, Arizona.

Mr. Kelsey Begay was the President of the Navajo Nation for only one term. He was never an effective President. He was like a sheep tied-up by the Navajo Tribal Council in two years, and for the rest of his last two years, he was a lame sheep, a lame duck and ineffective. For some strange reason he wrote a letter to Gallup. And Mr. Kelsey Begay lives 20 miles Southeast of Page, Arizona in a small community of Kaibetoh, Arizona. Which is approximately 150 miles west of San Juan River and Shiprock, New Mexico.

Kelsey Begay's signing and writing letters is a scheme that would be similar to if one of the distant relatives of the President of the United States, George W. Bush, from Scotland signing his name to the Nuclear Peace Treaty with North Korea. People would be screaming that the agreement is bad and it should be declared null and void. Well, so are the signatures of Mr. Edward T. Begay and Mr. Kelsey Begay agreeing or supporting the San Juan – Gallup Water

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Comment IND-02 – continued

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Project when they don't even live in the area. The Navajo people who must be involved in the discussions on San Juan --- Gallup Water Project are the current residences of the Northwest New Mexico— Navajo Reservation.

1. There are huge U.S. Congressional created legal barriers for development in the Northwest New Mexico Navajo Reservation. The barriers are in addition to the natural barrier to individual ambition to develop a plan and built a house, for instance.

A. The number one obstacle is "Historical Preservation Act". On the Navajo Reservation no one can construct or develop a structure without a survey. The cost of survey is in hundreds of U.S. Dollars per acre to complete and have it approved by responsible federal agency.

Public Law 89- 470 et seq, October 16, 1966. 16 U.S.C. 470, National Historic Preservation Act, or Anasazi.

2. United States Public Health Service, or Indian Health Services, Title 42 U. S.C. A. Section 2001, et seq. More particularly water development and sanitation. Years ago, United States Congress mandated and expressed that:

Indians live in rural areas, and they get their water from local streams, rain water, standing water and largely polluted and unsanitary. The Indians bring polluted and unsanitary water home, and they drink the water, and their children drink the water, and they get sick. They are treated at the P.H.S. hospital and are released, and they repeat the process all over again. United States Congress determined that it would be cheaper if running sanitary water is developed for the Indians and brought into their homes. But today, there are few houses, but lots of mobile homes, and shacks without indoor plumbing and no sanitary running water. And, today, more particularly, most of the Navajo people in Northwestern New Mexico do not have running sanitary water to their residences. Some Navajo people have vehicles, and they haul water from a distance. I am one of the water haulers. See Exhibit 3. Others, who do not have vehicles, continued to practice the old way of bringing unsanitary water to their homes, in buckets. Surgeon General – Indian Sanitation Facilities, Public Law 86-121, 73 Stat. 267 (July 31, 1959).

3. There are statements made that the Northwestern New Mexico Navajo Reservation belongs to all the Navajo people. Again, no matter how bad the "Death Camp" in Fort Sumner, New Mexico was, the agreement was that the Navajo people were going to return to their homes that they left in 1860. Navajos traditionally did not live in villages. Navajo is a Matrilineal Society. They live in family units separated from their neighbors. So, Navajos returned to their old homes in 1868. Now, there are many Navajo families who lived in the same geographical area for generations and for hundreds of years.

This brings up the point, in Indians – Hopi and Navajo Tribes — Lands, Public Law, 93-531; 88 Stat. 1712. December 22, 1974. The late U.S. President Gerald Ford signed the above ACT into law. The land in question was already awarded to the Hopi Tribe, but the Navajo families lived

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Comment IND-02 – continued

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on the Hopi land, perhaps, their misunderstanding of the Treaty of 1868 and they returned home, and land was awarded to the Hopi.

However, read carefully, Section 5. (a)(4) of the above ACT, “to recommend, in exceptional cases where necessary to prevent personal hardship, a limited tenure for residential use, not exceeding a life estate, and a phased relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area.” The above law solved one of hardest refugee problems of at least 15,000 Navajos, but only because the Navajo people were declared to have “Life estate” of the land they occupied. The Government bought them out and they left without much fusses. There were very serious negotiations for peaceful resolutions of critical issues with dignity. The same serious endeavor and professional attitude and approach should be utilized in the Northwestern New Mexico Navajo Reservation on the Navajo–Gallup Water Supply Project. If the Navajo people in joint use area were perhaps trespassers, but they received a life estate to land they lived on, then the Navajo people who now live in the Northwestern New Mexico Navajo Reservation definitely have more than a life estate, perhaps they should now receive allotments that is only to prevent further raids on their land by the outside Navajo Tribal Council. The late Wayne Owens, a Congressman from Salt Lake City, Utah introduced the bill above on life estate.

The Navajo people who claim that the entire Navajo Reservation belong to all the Navajo people are mistaken and they live in Arizona, Utah, or on allotted lands in checker-board areas. The Navajo people have lived in the area for thousands upon thousands of years, that’s indisputable fact. Their presence is legitimate since time immemorial. Everybody knows the whites are illegal aliens, so were the Mexicans. Our Black brothers and sisters are descendants of their ancestors who were brought to Western Hemisphere in chains, to do work which the whites and Mexicans didn’t want to do.

4. The City of Gallup, New Mexico is sitting at the junction of Interstate Highway 40 and Highway 491. It is also a border town outside the Navajo Reservation. Hundreds of motels, hotels, shopping centers, cafes, restaurants, bars, gas stations, truck stops, trailer parks, Walmart, Home Depot, supermarkets, etc were built, are being built and are in plans in Gallup. The investors in these businesses have money, and make and have made monetary political contributions to the United States Senators, Congressional Delegates, and local politicians. These politicians have also invested their money in these businesses and enterprises. So, they have personal financial interests in obtaining water for Gallup. There is a huge land speculations going on in and around Gallup, New Mexico. As soon as there is water, the price of undeveloped land is going to sky rocket. But, without water Gallup will blow away.

But, racism exist in Gallup. The present Mayor Harry Mendoza, who is a Mexican, has publicly made racist statements about Navajos. Gallup High School students, Mexicans, made racist remarks against Navajo students, and about the Navajo Reservation. A Doctor who is a Mexican working as Indian Health Services Psychiatrist, made racist remarks about Navajos, but the question remains about his medical treatments of Navajo patients. There are studies and reports

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made about “race hatreds” in border towns against Navajo people by Navajo Tribal Council.

Full blood Indians and Afro-Americans are the most hated racial groups in these United States by whites and Hispanics. Dred Scott v. Sanford, Opinion of the Court, p. 490. “Congress might, as we before said, authorized the naturalization of Indians, because they were aliens and foreigners. But, in their then untutored and savage state, no one would have thought of admitting them as citizens in a civilized community.” If perpetuation of racism continues against full blood Indians and Navajos, who needs Gallup? Built a wall around Gallup but the Navajos have been in Western Hemisphere for thousands of years and they will continue to exist. See also, Elk v. Wilkins, 112 U.S. 94 (1884).

5. Joint Ventures. If San Juan - Gallup water is to be build, there also must be joint ventures. Joint Ventures, contractors with Navajo and non-Indian contractors. Otherwise, the San Juan River will continue to flow west into the Colorado River and into Pacific Ocean. Similar statements were made by the late Black Mayor, Maynard Jackson, of Atlanta, Georgia, after Voting Rights Act was signed into law by the late U.S. President Lyndon Baines Johnson in 1965 and after Maynard became the Mayor of Atlanta, Georgia. He made the statement to white contractors who were going to bid on Atlanta Georgia International Airport in Atlanta, Georgia. Mayor Jackson said, “I want Black and White Joint Ventures, otherwise, that land will grow over with grass.” There were joint ventures and many Black contractors became successful through that joint ventures.

1

I want Navajo joint ventures in building Navajo-Gallup Water Supply Project, in every aspect of the construction, supplies, operations, workers and more.

6. Suspend the Historical Preservation Act for at least 30 years to encourage development on the Navajo land on and off the Navajo Reservation, especially in the Northwestern New Mexico Navajo Reservation.

2

7. The Navajo Tribal Government of Window Rock, Arizona has become dysfunctional and lost reality and touch with the Navajo People of Northwestern New Mexico Reservation. Many Navajo People have expressed that there will never be a Navajo Nation President from Northwestern New Mexico because the population is too small. But, there is already existing laws under 25 U.S.C.A. § 476. Organization of Indian Tribes; constitution and by-laws; special election which provide for self-determination for common welfare. The law expresses in selected parts:

“Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to

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Comment IND-02 – continued

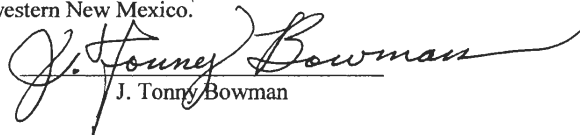
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the same voters and conducted in the same manner as hereinabove provided.
Amendments to the constitution and bylaws may be ratified and approved by the
Secretary in the same manner as the original constitution and bylaws.” See EXHIBIT 4.

The Northwestern New Mexico Navajo Reservation be set apart from the Arizona, Utah and Checkerboard allotment lands to determine their own government and development. All we need is support by our New Mexico Congressional support. And support by our local elected officials to the New Mexico legislation. And rename the Northwestern New Mexico Navajo Reservation as Navajo County, New Mexico. Exhibit 5.

Navajo — Gallup Water Supply Project while it sounds “innocent” will have a “final solution” of the Navajo problems. Germany, Italy and Japan were allies during World War Two. Senator Pete V. Domenici tearfully told a story about his mother getting arrested in Albuquerque, New Mexico because “she was an enemy illegal alien.” Many people remember what Italy did to a poor African country — Ethiopia. It slaughtered poverty stricken civilians and poorly armed soldiers of Ethiopia. That was the Axis first attempt in their Conquest of the world and attempted to commit Genocide of the whole race of poor people. What about the ruff, tuff, rooting and tooting cowboy from El Paso, Texas, Senator Jeff Bingaman? What are the Senators attempting to do with the poverty stricken Navajos? Are the Colonialism, imperialism and Genocide still their answers in the United States against the poverty stricken Navajos of Northwestern New Mexico? Please see Exhibit 6.

This concludes my statements on Navajo – Gallup Water Supply Project, and I believe substantial and more in-depth discussions with the local Navajo residents need to implemented and completed. Don’t get consultations only from Joe Shirley because he has no knowledge of San Juan River and Northwestern New Mexico.


J. Tonny Bowman

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Comment IND-02 – continued

WINTERS v. U. S., 207 U.S. 564 (1908) -- US Supreme Court Cases from Justia & Oyez

EXHIBIT: 2

US Supreme Court Center> US Supreme Court Cases & Opinions> Volume 207 > WINTERS v. U. S., 207 U.S. 564 (1908)

WINTERS v. U. S., 207 U.S. 564 (1908)

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U.S. Supreme Court

WINTERS v. U. S., 207 U.S. 564 (1908)

207 U.S. 564

HENRY WINTERS, John W. Acker, Chris Cruse, Agnes Downs, et al., Appts.,
v.
UNITED STATES.
No. 158.

Argued October 24, 1907.

Decided January 6, 1908.

Page 207 U.S. 564, 565

This suit was brought by the United States to restrain appellants and others from constructing or maintaining dams or reservoirs on the Milk river in the state of Montana, or in any manner preventing the water of the river or its tributaries from flowing to the Fort Belknap Indian Reservation.

An interlocutory order was granted, enjoining the defendants in the suit from interfering in any manner with the use by the reservation of 5,000 inches of the water of the river. The order was affirmed by the circuit court of appeals. 74 C. C. A. 666, 143, Fed. 740. Upon the return of the case to the circuit court, an order was taken pro confesso against five of the defendants. The appellants filed a joint and several answer, upon which and the bill a decree was entered making the preliminary injunction permanent. The decree was affirmed by the circuit court of appeals. 78 C. C. A. 546, 148 Fed. 684.

The allegations of the bill, so far as necessary to state them, are as follows: On the 1st day of May 1888, a tract of land, the property of the United States, was reserved and set apart 'as an Indian reservation as and for a permanent home and abiding place of the Gros Ventre and Assiniboing bands or tribes of Indians in the state (then territory) of Montana, designated and known as the Fort Belknap Indian Reservation.' The tract has ever since been used as an Indian reservation and as the home and abiding place of the Indians. Its boundaries were fixed and defined as follows:

'Beginning at a point in the middle of the main channel of Milk river, opposite the mouth of Snake creek; thence due south to a point due west of the western extremity of the Little Rocky mountains; thence due east to the crest of said mountains at their western extremity, and thence following the southern crest of said mountains to the eastern extremity thereof; thence in a northerly direction in a direct line to a point in the middle of the main channel of Milk river opposite the mouth of People's creek; thence up Milk river, in the middle of the main channel thereof, to the place of beginning.'

Milk river, designated as the northern boundary of the

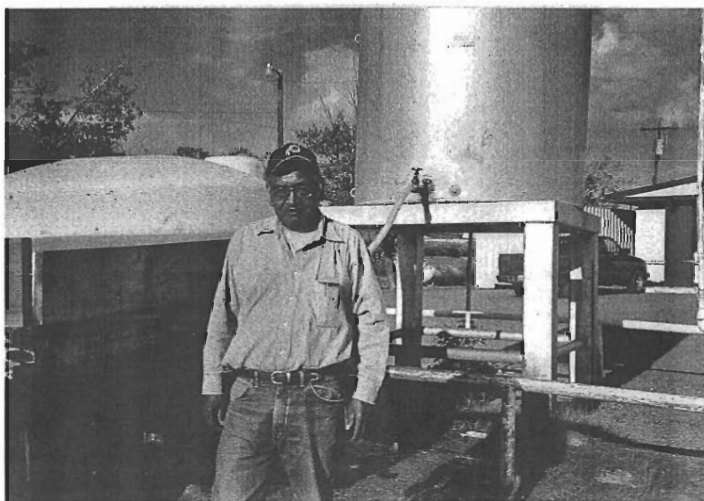
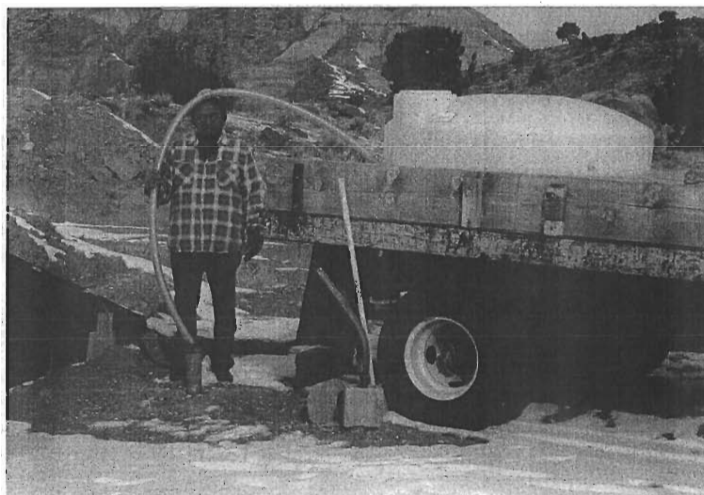
JUL 03 2007

<http://supreme.justia.com/us/207/564/case.html>

6/1/2007

Comment IND-02 – continued

EXHIBIT: 3



JUL 03 2007

Comment IND-02 – continued

§ 476. Organization of Indian tribes; constitution and by-laws; special election

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress. June 18, 1934, c. 576, § 16, 48 Stat. 987.

Cross References

Certain tribes, application to, see sections 473, 473a and 478 of this title.
Right-of-way grant, consent of tribal officials, see section 82a of this title.

Notes of Decisions

- | | |
|------------------------|--|
| Civil actions 6 | mented by Act June 18, 1934 of taxation. |
| Membership 2 | 1d. |
| Sale of tribal lands 3 | |
| Sovereignty 1 | Full powers of internal sovereignty |
| State courts 4 | are vested in an Indian tribe as duly |
| Tribal courts 5 | constituted organs of government sub- |
| | ject only to limitation by treaty or ex- |
| | press legislation by Congress. <i>Barnes</i> |
| | <i>v. U. S.</i> , D.C.Mont.1982, 295 F.Supp. 97. |
- Library references**
- Indians § 2, 32.
C.I.S. Indians §§ 9 et seq., 11, 67 et seq.
- 1. Sovereignty**
- Indian tribes such as Oglala Sioux Tribe or Pine Ridge Reservation possess inherent sovereignty except only where it has been specifically taken away from them, either by treaty or by congressional act. *Iron Crow v. Oglala Sioux Tribe of Pine Ridge Reservation*, S. D., C.A. S.D.1936, 231 P.2d 89.
- The power to levy taxes is an inherent attribute of tribal sovereignty continuing until withdrawn or limited by treaty or act of Congress, and inasmuch as power has never been taken from it, Oglala Sioux Tribe possesses power, as imple-
- 2. Membership**
- In absence of express legislation by Congress to the contrary, an Indian tribe has complete authority to determine all questions of its own membership, as a political entity, except where question involved is distribution of tribal funds and other property under supervision and control of federal government. *Martinez v. Southern Ute Tribe of Southern Ute Reservation*, C.A.Colo.1957, 249 F.2d 913, certiorari denied 78 S.Ct. 993, 350 U. S. 930, 2 L.Ed.2d 1067, rehearing denied 78 S.Ct. 1374, 357 U.S. 924, 2 L.Ed.2d 1376.
- For purposes of which Indian tribe has complete control, the tribe conclusively determines membership in Indian corporation, but where departmental action is authorized, the Department of Interior

EXHIBIT: 4

JUL 03 2007

Comment IND-02 – continued

EXHIBIT: 5

State of New Mexico
U. S. Congressional Delegate
Mr. Tom Udall

February 22, 2007

JUL 03 2007

Comment IND-02 – continued

Northwestern New Mexico Navajo Indian Reservation

One of the largest New Mexico Navajo Indian Reservations is located in Northwestern New Mexico. The Northwestern Navajo Reservation begins from Twin Lakes, New Mexico to the Southwestern border of the State of Colorado, or to Southwestern area of the Ute Mountain Reservation.

1. The size of the Navajo Reservation of Northwestern New Mexico is approximately 110 miles long and approximately 50 miles wide, in a rectangle shape.
2. In the year 2007, there are at least two New Mexico counties in this Western New Mexico Navajo Reservation, they are McKinley County and San Juan County.
3. The Navajo population in this area is not well known but it is in tens of thousands with the city of Shiprock, New Mexico as the largest Navajo community. Other Navajo communities are: 1. Twin Lakes, 2. Mexican Springs, 3. Tohatchi, 4. Coyote Canyon, 5. Standing Rock, 6. Navajo, 7. Crystal, 8. Naschitti, 9. Sheep Springs, 10. Toadlena, 11. Two Grey Hills, 12. Newcomb, 13. Burnham, 14. Sanostee, 15. Tocito, 16. Little Water, 17. Biclabito, 18. Hog Back, and other communities that are currently unidentified.
4. The areas outside the Northwestern Navajo Reservation but which have common boundaries with the Northwestern Navajo Reservation are: (1) on the eastern side are the City of Farmington, private lands and Navajo Indian allotments which are referred to as the "Checkerboard Area". (2) On the southern section consists of Villiage of Yahatayhey, private lands and Navajo Indian allotments. (3) On the western section lies the border of the Great State of Arizona, and towns of Window Rock, Fort Defiance, St. Michael, Arizona and Arizona Navajo Reservation. (4) On the northern section lies the Great State of Colorado, and the Great Ute Mountain Reservation. The Northwestern side is the Great State of Utah which does not share a boundary with the Northwestern New Mexico Navajo Indian Reservation. The Four Corners Area is known and referred to as "Indian Country, USA".
5. The western part of the Northwest New Mexico Navajo Indian Reservation consists of the Great Chuskai Mountain Range, the Navajo Alps, which stretches from Twin Lakes, New Mexico to Teecs Nos Pos, Arizona which is about four miles from the Four Corners of the States of Colorado, New Mexico, Arizona and Utah.
6. There is tremendous amount of water run offs, during the winter melts, and during the "monsoon season" in the summer when rain water flows into San Juan River from Chuskai Mountain range. And in addition, the winter and summer rain water replenishes Navajo aquifers inside the Northwestern Navajo Indian Reservation. The important fact is that the great San Juan River does not flow into the State of Arizona, or into Arizona Navajo Reservation. The San Juan River never touches the State of Arizona, or the Arizona Navajo Indian Reservation. The San Juan River flows west from the Continental Divide and flows into Farmington, Shiprock and into the Ute Mountain Reservation in Colorado, and then the San Juan River flows directly into the State of Utah and then into the Colorado River.

JUL 03 2007

Comment IND-02 – continued

2.

2. There are various and numerous natural resources on this valuable land, including forests, water, oil, natural gas, various minerals, sand, gravel, and water, the San Juan River.

3. The more famous land marks are: 1. Shiprock, rock formation, 2. Chuskai Peak, 3. San Juan River, 4. Bear Ears, 5. Narbona Pass, and other less known land marks.

4. There are several thousands Navajo living in this western New Mexico Navajo Reservation in at 19 identified Navajo Chapter Houses.

5. There are Navajo Tribal Council Delegates from this area. However, their numbers are so tiny, and small, that they are completely insignificant than the combined numbers of Navajo Council Delegates from Utah, Arizona and Eastern Navajo. Our Council Delegates are so outnumbered, they feel as the Democrats felt until the last National Election of 2006.

6. Eastern Navajos are Navajos who are individual land owners or who have allotted lands. Their Capital City is Crownpoint, New Mexico where they can individually control their own government. In addition they manage their own land and property, whereas the Navajo people in the Western New Mexico Navajo Indian Reservation are restricted from managing and controlling their own land and property.

Primary Problems.

1. Recently, the Navajo Tribal Council of Window Rock, Arizona is alleged to have agreed to establish Desert Rock Power Plant, in Burnham, New Mexico, right in the middle of the Northwestern New Mexico Navajo Reservation. The alleged agreement was made by people who are outsiders to the vital region, or are foreigners from Arizona. These Navajo Tribal Council delegates do not know the people of the Western New Mexico Navajo Reservation, nor did they sought agreements from the people from this vital area.

2. The Northwestern New Mexico Navajo desire to have control over their land, water, lives and in all activities of their lives in their own home land, rather than have some people dictating to them and controlling their lives from Window Rock, Arizona.

3. The Northwestern New Mexico Navajo Tribe may choose to exercise its Indian Self-determination under the existing authority of 25 U.S. C. § 476 and § 477, as expressed in: U.S. C. § 476. Organization of Indian tribes; constitution and by-laws; special election.

The above sections express clearly that: "Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe."

JUL 03 2007

Comment IND-02 – continued

3.

Pursuant to the authority above, the Northwestern New Mexico Navajo people have the right to organize for its own common welfare as described under the U.S.C. § 476 and 477.

This is a plea for assistances from the U.S. Congressional Delegation, Mr. Tom Udall, to assist the Navajo people of Northwestern New Mexico Navajo Indian Reservation, his constituents, to assist them to organize for its own common welfare, and to become independent from the dominant and overpowering Arizona Navajo Tribe, in every way he can, including securing adequate funding for initial feasibility study from the Secretary of the U.S. Department of the Interior, Mr. Dirk Kempthorne. This is the initial proposition for organization for common welfare under sections of U.S.C. § 476 and § 477 for the Northwestern New Mexico Navajo People. The Navajo Nation of Arizona is caught up in disarray for years, now. There is little hope for positive solution any time soon.

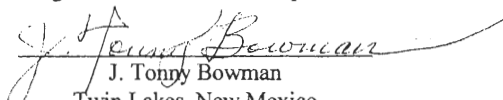
The Navajo People from Northwestern New Mexico Navajo Reservation desire to move forward to 21st Century, and improve its (1) judicial system, (2) interstate highway 491, (3) roads, (4) housing, (5) education, (6) health, and a well run (7) government, with its (8) headquarters in Northwestern New Mexico, in Sheep Springs.

United States Congress dealt with Native American land issues in the past. One of cases is the Navajo-Hopi Land Dispute, Pub. L. 93-531, 88 Stat. 1712, December 22, 1974. The act provided for final settlement of the conflicting rights and interests of the Hopi and Navajo Tribes to and in lands lying within the joint use area of the reservation established by the Executive order of December 16, 1882, and lands lying within the reservation created by the Act of June 14, 1934, and for other purposes. The late President Gerald R. Ford signed the Act. He saved countless hardships and griefs.

The Act expresses under Section 5 (a)(4) as:

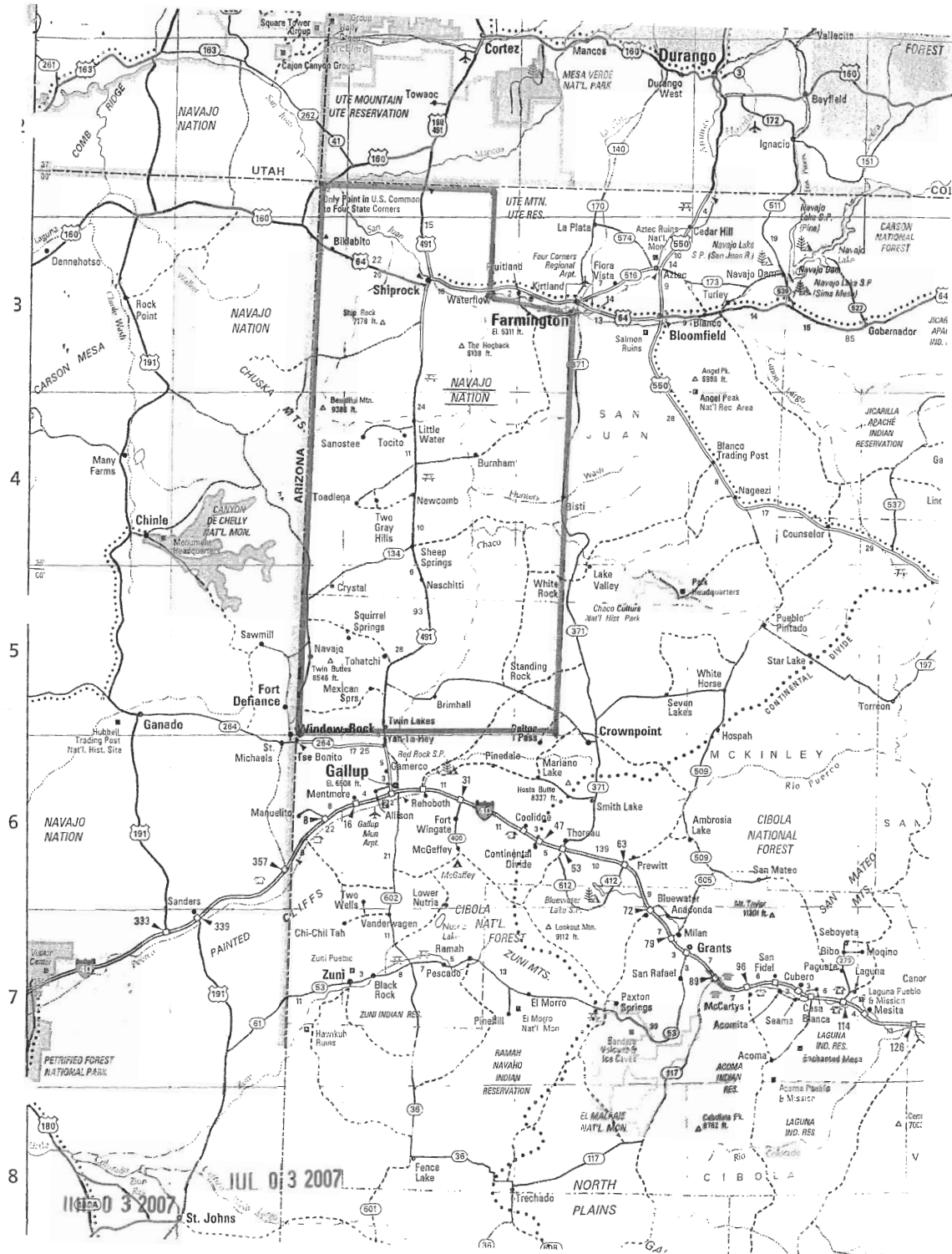
to recommend, in exceptional cases where necessary to prevent personal hardship, a limited tenure for residential use, not exceeding a life estate, and a phased relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area...

In the cases of (1) Desert Rock Power Plant, and (2) San Juan River Diversion projects many Navajo residents will be adversely and seriously impacted in the Northwestern New Mexico Navajo Indian Reservation. These Navajo people have more than a life estate in their land. There needs to be more in-depth and comprehensive plan then what the Arizona and Checker Board Navajo Tribal Council are offering. Please see attached Map of the land in issue.


J. Tommy Bowman
Twin Lakes, New Mexico
P. O. Box 3582
Yahatayhey, New Mexico 87375
(505)735-2485

JUL 03 2007

Comment IND-02 – continued



Comment IND-02 – continued

§ 1081

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

Page 340

EXHIBIT: 6

CHAPTER 50A—GENOCIDE

Sec.	
1091.	Genocide.
1092.	Exclusive remedies.
1093.	Definitions.

§ 1091. Genocide

(a) **BASIC OFFENSE.**—Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

- (1) kills members of that group;
- (2) causes serious bodily injury to members of that group;
- (3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
- (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
- (5) imposes measures intended to prevent births within the group; or
- (6) transfers by force children of the group to another group;

or attempts to do so, shall be punished as provided in subsection (b).

(b) **PUNISHMENT FOR BASIC OFFENSE.**—The punishment for an offense under subsection (a) is—

- (1) in the case of an offense under subsection (a)(1), a fine of not more than \$1,000,000 and imprisonment for life; and
- (2) a fine of not more than \$1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c) **INCITEMENT OFFENSE.**—Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than \$500,000 or imprisoned not more than five years, or both.

(d) **REQUIRED CIRCUMSTANCE FOR OFFENSES.**—The circumstance referred to in subsections (a) and (c) is that—

- (1) the offense is committed within the United States; or
- (2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

Page 341

(e) **NONAPPLICABILITY OF CERTAIN LIMITATIONS.**—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or information instituted, at any time without limitation.

(Added Pub. L. 100-606, § 2(a), Nov. 4, 1988, 102 Stat. 3045.)

SHORT TITLE

Section 1 of Pub. L. 100-606 provided that: "This Act [enacting this chapter] may be cited as the 'Genocide Convention Implementation Act of 1987 (the Proxmire Act)'."

§ 1092. Exclusive remedies

Nothing in this chapter shall be construed as precluding the application of State or local laws to the conduct proscribed by this chapter, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

(Added Pub. L. 100-606, § 2(a), Nov. 4, 1988, 102 Stat. 3046.)

§ 1093. Definitions

As used in this chapter—

(1) the term "children" means the plural and means individuals who have not attained the age of eighteen years;

(2) the term "ethnic group" means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

(3) the term "incites" means urges another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

(4) the term "members" means the plural;

(5) the term "national group" means a set of individuals whose identity as such is distinctive in terms of nationality or national origins;

(6) the term "racial group" means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

(7) the term "religious group" means a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

(8) the term "substantial part" means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.

(Added Pub. L. 100-606, § 2(a), Nov. 4, 1988, 102 Stat. 3046.)

JUL 03 2007

Comment IND-03

navgal navGAL - Navajo-Gallup DEIS Comments

Page 1

From: "Taylor McKinnon" <taylor.mckinnon@gmail.com>
To: <navgal@uc.usbr.gov>
Date: Wed, Jun 27, 2007 5:42 PM
Subject: Navajo-Gallup DEIS Comments

Dear Rege,

Please find attached my comments on the Bureau's Navajo-Gallup Water Project DEIS. Please email me a quick reply verifying that you received this email and the attached comments.

Thanks.

--

Taylor W. McKinnon
Post Office Box 118 / 101 Main Street
Bluff, Utah 84512
435.672.2200
Taylor.McKinnon@gmail.com

JUN 27 2007

Comment IND-03 – continued

Taylor W. McKinnon
PO BOX 118
Bluff, Utah 84512

27 June 2007

Mr. Rege Leach
Bureau of Reclamation, Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Colorado 81301

RE: COMMENTS ON NAVAJO-GALLUP WATER SUPPLY PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT

BY ELECTRONIC MAIL

Dear Mr. Leach:

Thank you for the opportunity to comment on the Navajo-Gallup Water Supply Project (Project) Draft Environmental Impact Statement (DEIS). My name is Taylor McKinnon. I am a commercial boatman for and a co-owner of Wild Rivers Expeditions on the lower San Juan River in Bluff, Utah. Wild Rivers Expeditions has been running commercial river trips on the lower San Juan River since 1957. Though I've detailed below issues and concerns with the Bureau of Reclamation's (Bureau) DEIS, I'm primarily concerned that there simply isn't enough water for this project to proceed without having severe and unmitigated impacts on ecological, economic and social values of the lower San Juan River.

1. Ensuring scientific integrity of NEPA analysis warrants independent peer review of the DOI Hydrologic Determination by NAS.

The proposed action's predicted viability relies centrally on Department of Interior's Hydrologic Determination (Determination)-which concludes that because less water evaporates from low reservoir pools during droughts, more water is in fact available than stated in the 1988 Determination, which used higher evaporation estimates. In effect, the Determination counter-intuitively concludes that droughts increase water availability. In order to insure compliance with the professional and scientific integrity requirements of the National Environmental Policy Act and Endangered Species Act, the Bureau should commission and in a subsequent DEIS analyze and discuss a peer review of the Determination by the National Academy of Sciences.

1

2. The DEIS must, but does not, include a complete and accurate assessment of project costs and benefits.

Also of concern are the incompleteness¹ and high estimated cost of the project to the public (already approaching \$1 billion and sure to escalate), and, relatedly, the lack of a comprehensive economic evaluation of the project's costs and benefits. In order to facilitate a legally defensible comparison of alternatives, and in order for a Decision to comply with the Reclamation Reform Act and other relevant Acts, the DEIS must include a complete and accurate assessment of total project and construction costs, non-reimbursable costs, reimbursement responsibilities and terms and beneficiaries. The lack of a complete and accurate assessment of project costs renders impossible the Bureau's and public's ability to assess the relative costs and benefits of different project alternatives in the

2

¹ Estimated costs do not include accompanying distribution systems to more than 43 Navajo chapters, the communities of Fort Defiance, Window Rock, Gallup and the Teepee Junction area of the Jicarilla Apache Nation.

Comment IND-03 – continued

DEIS. A complete economic analysis must also include impacts to river recreation on the lower San Juan River that would result from river flows falling below minimum flow requirements for the use of normal rafts. Given suspect results of DOI's Hydrologic Determination, an accurate assessment of the frequency and magnitude of such conditions will require an analysis and discussion of an independent peer-review of the Determination. Our concern, which is not discussed in the DEIS, is that low flows resulting from the cumulative impacts of ALP, Chama-San Juan, and now Navajo-Gallup, will cause sufficiently frequent and low river flows in the lower San Juan to prevent us (and other outfitters and members of the public) from running river trips on a reliable basis.

3

3. Section 7 consultation is required for the Navajo-Gallup Water Project

The Endangered Species Act requires that the Bureau shall, in consultation with and with the assistance of the Secretary, insure that the proposed action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical. In fulfilling these requirements each agency shall use the best scientific and commercial data available. The DEIS does not indicate that the Bureau has or intends to initiate consultation, though consultation is required for several species found in and around San Juan River environs likely to be affected by the project alternatives. Consultation must not rely on the questionable analytical methods employed in the Determination; it should instead rely on the results of the independent peer review mentioned in section one above.

4

4. The Bureau should issue a new DEIS with new alternatives based on above and other public comments

5

In summary, a new DEIS should be issued that includes the following changes and analyses:

- A National Academy of Sciences peer review of the Hydrologic Determination.
- A complete and accurate assessment of total project and construction costs, non-reimbursable costs, reimbursement responsibilities and terms and beneficiaries.
- A complete economic analysis of impacts to river recreation on the lower San Juan River that would result from river flows falling below minimum flow requirements for the use of rafts.
- Pursuant to ESA and NEPA, a complete analysis of impacts to federally protected and other species in the river corridor, including and especially impacts to endangered fishes resulting from further altered flow regimes and reduced flexibility in Navajo Dam and river flow management resulting from various alternatives.

Thank you in advance for your time and consideration.

Sincerely,

/s/

Taylor W. McKinnon

Comment IND-04

*copy of classified legal,
discussed herein, enclosed

Page 1 of 4
copy retained

May 22, 2007
135 Rincon Valverde
Ponderosa, NM
87044

Rege Leach/Responsible Person
RE: Draft Environmental Impact Statement
For The Proposed Navajo- Gallup Water
Supply Project
Bureau of Reclamation
555 Broadway NE, Suite 100
Albuquerque, NM
87102

Dear Rege Leach/Responsible Person,

I am responding to an Albuquerque
Journal classified legal of May 22, 2007,
"Reclamation to Host Public Meeting
on the Navajo- Gallup Water Supply
Project". I would like to state that
there was an initial posting on this
matter in the Albuquerque Journal
documented in this May 22, 2007
classified legal, but I did not see
it. However, I appreciate Bureau of
Reclamation posting these informative
legals at all and would like to prepare
for attending, and presenting comment,
at the meeting scheduled at San Juan
College on June 6, 2007.

MAY 28 2007

USPSCAR 7006 0100 0003 0064 0601
sent to Rege Leach or Responsible Person 5-23-07
RE: Draft Environmental Impact Statement For The Proposed Navajo- Gallup Water Supply Project
Debra M. "Joey" Harris

Comment IND-04 – continued

Page 2 of 4
copy retained

May 22, 2007

Please surface-mail a copy of the Draft Environmental Impact Statement for the Proposed Navajo-Gallup Water Supply Project to me, and I ask this with all due respect to you and your position, immediately, so that I may prepare substantive input when I have my opportunity to do so, on June 6, 2007. Send it to:

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

I realize that I am making a comment without reviewing in what is to follow. I also realize that there are probably only approximately 17 days left to comment on this matter. As soon as I receive and review requested Draft, I will amend my non-technical, written version, oral public comment to reflect the information I have received. If necessary, I will hand-deliver amended copy on June 6, 2007 at San Juan College.

USPSCMR 7006 0100 000 3 0064 0601
sent to Rega Leach or Responsible Person 5-23-07
RE: Draft Environmental Impact Statement For The Proposed Navajo - Gallup Water Supply Project
Rebecca G. "Gert" Perry-Piper

7005 8 5 YAM

Comment IND-04 – continued

Page 3 of 4
copy retained

May 22, 2007

At this time, my non-technical, written version, oral public comment; that I intend to appear and present on June 6, 2007, between 6 to 9 P.M. at San Juan College, IT Building, Room 7103, 5001 College Blvd, Farmington, New Mexico; is as follows:

-beginning-

" Thank you for letting me speak concerning the proposed path of the Navajo-Gallup Water Supply Project. This project's path must not be run through Ojito Wilderness, La Loma Wilderness Study Area/s, De-Na-Zin Wilderness or Bisti Wilderness. The proposed path of the Navajo-Gallup Water Supply Project must not be dependent upon construction of other projects through Chama River Canyon Wilderness or San Pedro Wilderness. The proposed path of the Navajo-Gallup Water Supply Project must not be dependent upon the diversion of headwaters; located in the Jemez/San Pedro Mountains and the one-time collapsed crater, and its long-ago rim, of the Valle Caldera/Valle Caldera National Preserve; of the

USPSMR 7006 0100 6003 0064 0601
sent to Reg. bench or Responsible Person
RE: Draft Environmental Impact Statement For The Proposed Navajo-Gallup Water Supply Project
"Paper by" "at" Perry, H. T.

1

Comment IND-04 – continued

Page 4 of 4
copy retained

USPSCMR 7006 0100 0003 0064 0601
sent to Reg. Leach or Responsible Person 5-23-07
RE: Draft Environmental Impact Statement For The Proposed Navajo-Gallup Water Supply Project
Rebecca G. "Gert" Perry-Piper

May 22, 2007
Jemez River System from the Main Stem of the Jemez River System. The proposed path of the Navajo-Gallup Water Supply Project must not be dependent upon the diversion of headwaters, located in the San Pedro/Nacimiento/Jemez Mountains; of the Río Puerco System from the Main Stem of the Río Puerco System. And, most important of all to me, personally, the proposed path of the Navajo-Gallup Water Supply Project must not be dependent upon the construction of other projects that will divert aquifer seepage from the wetlands of La Jara Creek through El Cajete and Rabbit Mountain via the South Mountain Rhyolite Formation down Paliza Canyon to the Paliza Filtration Galleries of the Ponderosa Mutual Domestic Water Consumers Association."

- end -

Rebecca G. "Gert" Perry-Piper

Responsible Person Leach, I await input.

Thanks,

Rebecca G. "Gert" Perry-Piper
Rebecca G. "Gert" Perry-Piper

Comment IND-04 – continued

**Reclamation to Host
Public Meetings on the
Navajo-Gallup
Water Supply Project**

Public meeting dates have been set to obtain comments on the Planning Report and Draft Environmental Impact Statement for the proposed Navajo-Gallup Water Supply Project. The Project is a key element in the proposed settlement of the Navajo Nation water rights claims on the San Juan River in New Mexico. The Navajo Nation communities and the city of Gallup rely on a rapidly depleting ground water supply. The proposed Project will provide current and future domestic water needs for the Navajo Nation, Jicarilla Apache Nation, and the city of Gallup.

All of the public meetings will be held from 6 to 9 p.m. The meeting schedule is as follows:

- **Tuesday, May 22**, University of New Mexico, Calvin Hall Room 248, 200 College Drive, Gallup, NM.
- **Wednesday, May 23**, Crownpoint Chapter House, Building CO23-001, East Crownpoint Rd., Crownpoint, NM.
- **Thursday, May 24**, St. Michael's Chapter House, St. Michaels, AZ.
- **Tuesday, June 5**, Shiprock Chapter House, Hwy 61, Shiprock, NM.
- **Wednesday, June 6**, San Juan College, IT Building, Room 7103, 5001 College Blvd, Farmington, NM.

For more information contact Regé Leach at (970) 385-6553.
Journal: May 8, 13, 20, 22, 23, 24, June 5, 6, 2007
Tribune: May 8, 22, 23, 24, June 5, 6, 2007

USPSCMR 7006 0100 0003 0064 0601
sent to Regé Leach or Responsible Person 05-23-07
RE: Draft Environmental Impact Statement For The Proposed Navajo-Gallup Water Supply Project
Robert M. "Bud" Perry, Regm

Comment IND-05

2504 Baldy Loop NE
Rio Rancho, NM 87144-6743
thundermesa@peoplepc.net

Mr. Rick Gold, Regional Director
U. S. Bureau of Reclamation
Upper Colorado River Regional Office
125 South State Street, Room 6107
Salt Lake City, UT 84138-1147

June 27, 2007

Dear Mr. Gold:

I have read—or attempted to—most of the five pounds of the Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project and wish to comment.

But first, while it is not particularly relevant to the issue at hand, I would like to say—just for the record—that if anyone in anyway believes the environmental-input process is anything about involving the public, they are either being disingenuous or simply don't care about the public. I have been involved in and worked on water issues, as a citizen and as a journalist, for 30 years. I remain firm in my belief that there is something fatally flawed with a process this complicated, predicated on bad decisions made earlier and so appallingly stilted toward full-time attorneys, politicians, lobbyists, environmental scientists, engineers and bureaucrats that, short of giving up their day jobs, most of the public have little hope of giving informed input, albeit input, by appearances, that is nothing more than a *pro forma* process anyway. But then, perhaps I have been reading too much of Lou Dobb's *WAR ON THE MIDDLE CLASS* and Lee Iacocca's *WHERE HAVE ALL THE LEADERS GONE?* After 30 years of conflict, dispute, anger and public outrage over the Animas-La Plata project at Durango, Colorado, it appears that no one has learned anything from one of the largest water controversies in American history or worked to change the procedural, planning, design and practicality flaws that so haunted that project and, unless the system is refined, will haunt others, including this one.

Again, simply for the record, and that based on my experience as a founder of Taxpayers for the Animas River against the Animas-La Plata project, I want it understood that I only reluctantly participate in a process that says, "Here are the alternatives—most of them absolutely awful, disconnected from down-to-earth practicalities or the realities of a likely drought-plagued new century or even what is best for our country—tell us which of these absolutely awful alternatives you like

Comment IND-05 – continued

best.” Most alternatives proposed (sprawling, centralized, high-tech, resource-intensive, overpriced) are, from my view, unacceptable in an era of rising energy costs, likely energy shortages, the looming threat (according to, among others, scientists at Los Alamos National Laboratory) of global warming and the need for innovation and creativity from engineers, no evidence of which can be found in the alternatives proposed. But conversely, I think if the Bureau were creative, it could do better—at least to some extent for EXISTING POPULATION—than a “no action” alternative, by using cutting-edge, decentralized, on-site approaches.

My input, with specifics to follow, is that we do not need another 1950s-era, high-tech, centralized water project for the arid San Juan Basin. We need a decentralized, innovative project designed with a global-warming-generated water crisis and the problems of an over-allocated Colorado River in mind. **Manhattan Project scientist and quantum-theory father Niels Bohr’s warned against using yesterday’s solutions for today’s problems, exactly what the presented alternatives are: outdated before they even leave the drawing boards.**

I do not particularly believe there are any good answers—from an engineering standpoint—for the City of Gallup. Gallup—and virtually every other town and city in the state—needs to understand that engineering and science cannot endlessly substitute for the need for courageous leadership and society-wide focus on unfettered growth. (Population Summit of the World’s Scientific Academies (58 nations) 1994) It needs to understand that Third World-like growth rates, in ranges of 2 percent (doublings in less than 38 years), are not sustainable in a region as arid as the San Juan Basin. Cities and towns in this region cannot continue to expect the American taxpayer to engineer short-term “techno fixes” at exorbitant costs—financially, socially and environmentally—to try, in vain, to circumvent that stark carrying-capacity reality. As the old television commercial use to say, “It’s not nice to fool Mother Nature.” Perhaps more apropos would be, “You can fool Mother Nature for a while, but then she’s going to insist that you pay the piper big time, and she’ll get really nasty while insisting.” Los Alamos, with its Cerro Grande fire, and New Orleans, with Hurricane Katrina, saw that.

Similarly, the Navajo and Jicarilla tribes needs to understand that their high growth rates (nor anyone else’s **in the fourth fastest growing nation on earth, one of the fastest growing regions in the world, and one of 8 nations contributing half of all the planet’s growth to 2050**) is not sustainable, even with short-term “fixes” like the proposed Navajo-Gallup Water Supply Project, although I would hope—in the best of all possible worlds—we would have a U. S. Bureau of Reclamation that is

1

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Comment IND-05 – continued

cutting-edge enough and visionary enough to look to on-site water reuse technologies, long used at remote homes in the Colorado mountains, for individual homes on both reservations and/or chapter houses on the Navajo reservation. (Heck, the government could more cheaply pay the tribes to truck bottled water to residences than build this project.) That is if the real purpose of this project is really anything about bringing water to people on remote parts of reservations. (The Animas-La Plata was depicted as about “helping the Utes,” when it became vividly clear very quickly that the real purpose was water for land speculation and energy development, as well as “make work” for major national contractors like Halliburton.) I would also hope that the Bureau of Reclamation would try to look for innovative proximity-solutions via wells or trucking water to regional lined ponds, rather than pumping huge amounts of water across hundreds of miles of desert, to provide water for livestock belonging to Navajos and Jicarilla Apaches, although again, it is time for both to take a hard look at the desert’s carrying capacity and whether grazing is sustainable, especially if global warming increases the extent and severity of desert conditions on the reservation. From what I have seen of erosion and desertification expanding across the reservations (both size and intensity) from the San Juan Basin to Monument Valley, I submit that livestock grazing is not at sustainable levels, nor has it been for 100 years. I ponder why the Navajos and Jicarilla Apache would ask taxpayer to invest in an exorbitantly expensive project to provide water for more livestock or even existing livestock in an area where they should not be **any** livestock unless in feedlots or carefully chosen, managed and maintained areas. I ponder a United States government that, on one hand, finances soil-conservation districts while, on the other, financing water projects to increase livestock loads in the desert.

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4

This proposal—diverting an already diversion-depleted San Juan River, a major tributary of a Colorado River, also in crisis due to drought, over-allocation and population growth—offers no real water solutions for a region confronting severe, prolonged drought. Lake Powell, as the Bureau has recently admitted, is more than half empty and likely can never be refilled at today’s far higher population than in the 1960s and 1970s. There are serious concerns that Lake Mead, within 10 years, unless weather trends improve sharply, could be empty. In such a reality, politically, water is not going to go to Gallup or the reservations—no matter water rights on paper—when Los Angeles and Las Vegas need that water for millions. Meanwhile, experts say global warming will mean a new norm of at least 10 to 20 percent less precipitation by mid-century (Source: NOAA). So, where is the rationale, the wisdom of yet another project diverting water from the San Juan and Colorado rivers, especially for the marginal purposes described in the DEIS: to provide water to a small town in New Mexico and reservations? Traditional

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Comment IND-05 – continued

Navajos are warning that this project will sound the death knell to the San Juan River. They are absolutely correct and should be respectfully listened to by this state's leaders. Nor do I see anything in the DEIS defining what actions the involved communities, New Mexico state leaders or Navajo tribal leaders will be expected to take toward living within the region's water means in return for an absolutely enormous taxpayer investment for this project.

5

The Bureau depicts this project as a "solution" to the water woes of Gallup, the Navajos and the Jicarilla Apaches. Assuming the project is built, what solutions if it simply encourages the arrival of however many additional tens of thousands by mid-century? Where do the Bureau, politicians, boom boosters and tribal leaders propose the area turn for water in 2040 or 2050, at the-then far higher population, likely in drought, likely enduring global warming in a region, even at today's far lower numbers, seriously strapped for water? (If some bureaucrat reading my comments is preparing to label that comment as not within the purview of this document, it had better darned well start being, because that is the bottom line: one of the fastest growing regions in the world is running out of water and it is time for government and politicians (including presidential candidates) to find their backbones and a little moral courage. They need to stop focusing on the "supply side" of the equation and start considering "demand side," or our nation's Third World-like growth rate churning us to a China-like one billion late century, while other developed nations have stopped growing!

6

On the topic of likely cost "overruns" on this project, I suggest that we need firm and clear understanding **up front** of what the Navajo-Gallup project will cost, **and** we need guarantees and structuring to assure that its price is not being "low balled." **Considering that every water project constructed by the U. S. Bureau of Reclamation in the Four Corners area in the last 30 years has come in at 200 to 300 percent over budget, the American taxpayer has every right to expect the Bureau and politicians to make darned sure that the estimated costs of this project are not low balled. Cost projections in engineering, while involving some unknowns and fluctuations, are not rocket science; the Bureau owes citizens and this nation better than future 200 percent-to-300 percent "oops" experiences. Give us a cost projection and give us a project within reasonable range of that projection, on time and within budget! And, please clarify, what will be the per-person cost of this project at today's population at the**

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Comment IND-05 – continued

estimated cost of the project today? (The numbers I come up with are staggering and reflect, like the Animas-La Plata project before it, another Rolls Royce solution to a used-Chevy problem!) From my read of the numbers, it would be far cheaper to send the entire population of the project area to live on the Riviera than to build this project and that based on construction costs alone!

I also assume—but perhaps I am wrong—that Bureau engineers are providing designs with the lowest possible energy consumption and carbon footprint for the 21st and 22nd century. What methods of pumping? What energy-conservation approaches? What alternatives to fossil fuels for pumping have been considered? What will the annual operational carbon footprint of this project, under the alternatives suggested, be or does our non-global-warming, non-reality-based government have a clue?

8

In conclusion, I am baffled as to the rationale or the wisdom of the Bureau designing yet another sprawling, centralized water diversion project to provide water to the Navajo Nation, the Jicarillas and to Gallup. It would seem that that is the antithesis of the kind of project that should be designed for the, what, 35,000 square mile project area? You are not, after all, designing for high density Brooklyn, but the sprawling Navajo Nation and a distant Gallup. Therefore a lot of smaller solutions would be more suitable than one big, centralized solution. Barring that, the only reasonable alternative, considering drought and the area's uncertain water future is the no-action alternative, although I'll hasten to add that I think the Bureau misleads by focusing on a centralized municipal water reuse system in its definition of "conservation." Like solar energy, the technology works better on a smaller scale, with applications at per-household or per-business, rather than a municipal system.

9

Finally, as I look at maps of all those dozens of miles of pipeline scattered across the reservation and as one relatively familiar with the "urban" development on the reservation, where is the water-delivery system to individual homes and communities? If such a system is not part of the project, what use the project? If that is to be part of the federally funded project, what will the price be or is this another attempt at low balling? Will the water-delivery be another, "Oh by the way, there's one other cost" later on? Is this project not looking suspiciously like other projects (Navajo Dam and Animas-La Plata) pitched to Congress to "help the Indians," yet appallingly devoid of infrastructure to accomplish that, if that, rather than water for land speculation and urban development and perhaps for energy development are not the real reason—that is, beyond the expedient of politics to resolve Indian water rights. Those expedients,

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Comment IND-05 – continued

I'll add, will make for disastrous water future for our region. Governor Richardson, Albuquerque Mayor Martin Chavez and others should be ashamed if the "build" alternatives for this project are their idea of good water planning or a "sustainable" water future.

Thank you for the opportunity to comment on this absolutely outrageous proposal. While I have little reason to believe the Bureau will pick a no-action alternative, it is nice to have the opportunity to go on record in advance to point out an appallingly flawed proposal.

Sincerely,

Kathleene Parker

Comment PH-01

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NAVAJO-GALLUP WATER SUPPLY PROJECT

5

PLANNING REPORT

6

AND

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DRAFT ENVIRONMENTAL IMPACT STATEMENT

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PUBLIC HEARING

12

May 22, 2007

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University of New Mexico, Gallup Campus
Calvin Hall, Room 248
200 College Drive
Gallup, New Mexico

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23 REPORTED BY:

24

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Comment PH-01 – continued

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1 MEMBERS OF THE PANEL

2

3 Susannah Thomas, Hearing Officer, United States
4 Department of the Interior, Office of the Field
5 Solicitor, Salt Lake City, Utah

6

7 Rege Leach, Bureau of Reclamation Project Team Leader,
8 Western Colorado Area Office, Durango, Colorado

9

10 Carol DeAngelis, Bureau of Reclamation Area Manager,
11 Western Colorado Area Office, Grand Junction,
12 Colorado

13

14 John Cawley, Supervisory Engineer, BIA Western Water
15 Rights Office, Albuquerque, New Mexico

16

17 Michael Benson, Navajo Nation, Department of Water
18 Resources

19

20 Joanna Austin-Manygoats, Interpreter

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Comment PH-01 – continued

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Comment PH-01 – continued

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1 TUESDAY, MAY 22, 2007, 6:15 P.M.

2 MS. LUNDSTROM: Good evening. I think we're
3 going to go ahead and start this evening, and I'd like to
4 welcome everyone here to our meeting. I'll introduce
5 myself quickly. I'm Patty Lundstrom, and I am executive
6 director of the Northwest New Mexico Council of
7 Governments.

8 I also serve as a member of the New Mexico House.
9 I represent House District 9; and in the last, gosh, I'd
10 say 10 to 12 years, I've served as the steering committee
11 chair for the Navajo-Gallup Water Supply Project that
12 we're all here to talk about this evening.

13 So it's a special privilege to have all of you
14 here and to have -- I think, Jeff, isn't this our second
15 round of public meetings we've had in the last five, six
16 years, where we go to various communities and we talk
17 about the project and we receive input on the project.

18 But we have some special folks here I would like
19 to take just a moment to introduce to you. I don't want
20 to stand right in front of them. I'd like to introduce
21 first Carol DeAngelis. Carol is from the Western Colorado
22 Area Office. She is the area manager. And that office is
23 actually located in Salt Lake City -- Grand Junction?

24 Jeff, you told me it was Salt Lake, and I wrote
25 it down that way. So, I apologize, Carol. But Grand

Comment PH-01 – continued

5

1 Junction. Thank you for being here this evening and
2 spending the evening with us here in Gallup.

3 And Rege Leach is our project team leader also
4 with the same office, except he's out of Durango; and I
5 know that for sure because I've been in his office in
6 Durango.

7 And our hearing officer this evening is Susannah
8 Thomas. She's with our regional solicitor's office. And
9 John Cawley, supervisory engineer for BIA Western Water
10 Rights Office in Albuquerque. Thank you very much for
11 being here this evening with us.

12 Couple of people I'd like to introduce in the
13 audience because it's just my honor to know them and to
14 work with them for such a long time and they are very good
15 friends of mine.

16 And I'm glad he's here this evening, and that's
17 Vice President of the Navajo Nation, Ben Shelly. And I
18 want everybody to recognize Mr. Shelly. We go way back.
19 He served on our Council of Governments Board for a number
20 of years and served in the county commission and is doing
21 a good job in his new position there with Navajo. And
22 we're glad to have you here.

23 We also have a couple of members of the Navajo
24 Water Rights committee. We have the chairman, Ray
25 Gilmore, Judge Gilmore. And in the back we have Ben

Comment PH-01 – continued

6

1 Cowboy, Mr. Cowboy. And I don't know that we have any of
2 the other water rights -- oh. Stanley, are you officially
3 on that committee also? Okay. He's shaking his head.
4 He's not on that committee, so.

5 I'm looking for other elected officials here and
6 don't see any at this point, but that doesn't mean we
7 won't have more come in this evening.

8 Again, I'd like to welcome you all to our project
9 briefing. The Bureau of Reclamation has developed this
10 Planning Report and Draft Environmental Statement. I hope
11 everybody has picked up a summary copy out there when you
12 signed in this evening. We'll have the solicitor give us
13 our rules of engagement this evening.

14 And Mike is our timekeeper, I understand. Mike,
15 show them the sign for negative comments and the sign for
16 positive comments. No, not really. No. We really want
17 to hear what you think this evening about the project.

18 And, again, I want to thank all of you for being
19 here this evening. I understand we also have about a
20 30-day window of opportunity for written comments, so it's
21 not over. And, again, thank you. And I turn it over to
22 you, Susannah. Thanks.

23 THE HEARING OFFICER: Again, we'd like to welcome
24 you to this open house. This is a meeting on the proposed
25 Navajo-Gallup Water Supply Project and the Draft

Comment PH-01 – continued

7

1 Environmental Impact Statement, which we refer to as the
2 DEIS.

3 If you haven't signed in, there's a sign-in sheet
4 out there. Please be sure to do that before you leave so
5 that you can receive e-mails and other notices.

6 This public meeting and open house is being
7 conducted pursuant to the National Environmental Policy
8 Act. And the purpose of this open house is to hear your
9 comments, thoughts, and views on the proposed project.

10 The representatives of the federal government
11 here today are prepared to take your comments and thoughts
12 back to the decision-makers for this project. And while
13 we are prepared to answer your questions with regard to
14 factual matters, we are not here to engage in discussions
15 about the relative merits of this project or its
16 alternatives as discussed in the NEPA documents.

17 Simply put: We are here to listen.

18 Whether you choose to make your comments orally
19 or provide us your comments in writing, they will both be
20 considered equally. We will address all comments as part
21 of the Final Environmental Impact Statement process, the
22 FEIS.

23 We are aware that there is a connection between
24 the project that is the subject of tonight's meeting and
25 the overall settlement of the Navajo Nation's water rights

Comment PH-01 – continued

8

1 claims on the San Juan River.

2 We are also aware that there has been legislation
3 introduced by Senators Bingaman and Domenici that would
4 resolve the water rights settlement in part by authorizing
5 the construction of this project. But at this time, the
6 administration has taken no position with regard to the
7 settlement.

8 And because this open house is about this project
9 and not about the settlement, we ask that you direct any
10 comments or concerns you may have about the overall
11 settlement to your elected officials.

12 We have a person here, Joanna Austin-Manygoats,
13 and she's going to be available to interpret in Navajo for
14 those of you who do not understand English or for those of
15 you who prefer to speak in Navajo. Please let us know now
16 so we can make arrangements. Anybody? Okay. Well, one.
17 We'll be sure to take care of that, then.

18 This meeting we would like to end around
19 9:00 p.m. tonight to get everybody home at a reasonable
20 hour. In order to do that, we ask that you limit your
21 presentation to about 10 minutes. And we have a
22 timekeeper, which has been pointed out to you over here.
23 So we ask that you please observe his time notices.

24 So at this time we would like to proceed in the
25 order of those who signed up on the sign-in sheet to

Comment PH-01 – continued

9

1 speak. And we will first hear from elected officials and
2 representatives and then we'll proceed in the order of the
3 people on the list.

4 And before you begin your presentation, if you
5 could please state your name, we would appreciate that.
6 After we hear from comments from those on the list, if
7 time permits, we invite anyone else who would like to come
8 up and present any comments to do so. Also, if you could
9 just come up and state your name, we'd appreciate that.

10 So we will start with Mr. Ben Shelly.

11 STATEMENT BY VICE PRESIDENT BEN SHELLY

01-01

12 MR. SHELLY: Okay. Thank you very much for
13 allowing me to say a few words. Navajo? No. I was just
14 kidding you.

15 I'd just like to get started with my name is Ben
16 Shelly. I am the Vice President of the Navajo Nation, and
17 I'll be representing the President and Vice President of
18 the Offices of the Executive Branch of the Navajo Nation.
19 And my delivery to you would be to partition out the
20 Navajo Nation itself.

21 And I would like to go to that and then after
22 that, if we have the experts on the other matters;
23 anything else we have the attorneys here. We have the
24 water commissioner here that will probably be testifying
25 too.

Comment PH-01 – continued

10

1 To establish a position of the Navajo Nation, we
2 have a memorandum that was issued back in April 9th, 2007
3 by the President of the Navajo Nation. I would just like
4 to go ahead and put it in the record that we are in
5 support.

6 It says here that the steps in the Navajo
7 Nation -- the Navajo-Gallup Water Supply Project's
8 Planning Report and Draft Environmental Impact Statement,
9 or Draft EIS for short -- the Draft EIS that was released
10 by the Bureau of Reclamation on March 30th, 2007 allows
11 for 90-day public review. It ends June 28th, 2007.

12 And during this period, we're encouraging all the
13 people that are involved that has any concern about the
14 EIS to express their concern. And the bottom line to that
15 is that we are all hoping that all will express their
16 concern and then their support, support the Navajo-Gallup
17 Water Supply Project.

18 The Navajo-Gallup Water Supply Project has a long
19 history dated back to 1970. At that time, it was a one
20 pipeline discussion. Now, we have two. San Juan Lateral
21 is one now, which is the one that's going to be coming out
22 of Nenahnezad Chapter and it will be coming through 491
23 all the way down to Gallup.

24 The other one is Cutter Lateral, which is up
25 there in the north side of the reservation in San Juan

Comment PH-01 – continued

11

1 area, which will be coming out of -- out of the reservoir
2 out of Farmington, the Navajo Dam. It will be going in
3 that direction. So now you have two pipelines that's
4 being under -- in discussion.

5 And, you know, the problem with the water thing
6 is we're all in need of water. And I know the Navajo
7 Nation, the majority of them, are hauling water at this
8 point in time. And that is a big concern to the Navajo
9 Nation itself. And I know Gallup, city of Gallup is also
10 in need of water. We're kind of like a neighboring -- a
11 neighbor -- a neighbor town in the nation, Gallup and also
12 the nation of the Navajo Nation.

13 And we'd just like to say that to completely back
14 up the memorandum by saying that we are in full support.
15 And we're asking everybody to be -- to be stating their
16 concern and then -- and then in the end should be
17 supporting it.

18 It's very important that we do talk about the EIS
19 overall because it really puts a decision -- the
20 decision-makings are made by people like Pete Domenici and
21 others that are out there; and they look up to this
22 report. If it's favorable, they will go ahead and move on
23 that. Those are the way that the system is.

24 So it really comes back down to the people when
25 they express their concern about the EIS. And I'm hoping

Comment PH-01 – continued

12

1 that we do well here; that we continue to move the plan
2 forward and the funding forward to make the reality of
3 bringing the water down to Navajo and Gallup, the water
4 supply, and bringing it to the community where it's
5 needed. And the benefit would be to the people that lives
6 around that pipeline.

7 And water is a way of -- it's life. And I
8 believe that by delivering that water, it will benefit a
9 lot of people in the area, the economic development and
10 social life and healthwise. And I believe that that will
11 happen.

12 And I'm hoping to ask everyone in attendance here
13 to support -- support the Navajo Nations. And I'm pretty
14 sure here in Gallup, they too are in favor of this. And
15 I'm hoping that we come out with a positive -- positive
16 move here to proceed on with -- with public hearing in a
17 positive matter in favor of water coming to Gallup and to
18 Navajo. Thank you.

19 THE HEARING OFFICER: Thank you, Mr. Shelly.

20 Next -- and I'm sorry if I say your names wrong;
21 another good reason to have you state your names. We'd
22 next like to hear from Mr. Frank Mraz.

23 STATEMENT BY FRANK MRAZ

01-02

24 MR. MRAZ: Thank you. My name is Frank Mraz, and
25 I work for the Gamerco Associates. The Gamerco Associates

Comment PH-01 – continued

13

1 own 27,000 acres in and around Gallup. I appreciate the
2 opportunity to speak to you folks tonight. You know, it's
3 great to be able to talk about a win-win situation with
4 this water project.

5 We've got 43 chapters on the Navajo Reservation.
6 Fort Defiance, Saint Michaels, Window Rock, the entire
7 Jicarilla Reservation, and Gallup will all become instant
8 winners with this pipeline project. This is probably one
9 of the greatest partnerships that will ever happen in this
10 area.

11 V22, which is Gallup's new well system, it's
12 going to be a temporary fix. But a combination of water
13 from the San Juan, Twin Lakes, G22, and what's left in the
14 Gallup sandstone will protect us all for generations to
15 come.

16 I've lived in Gallup for 60 years. I can
17 remember this pipeline talk back 45 years ago. That's too
18 long. Please, let us all partner together to make water
19 flow across northwest New Mexico and Arizona. It's not
20 who's right, but it's what's right.

21 Without water, we can't have economic
22 development. If you look at the statistics for Gallup and
23 McKinley County the last four years, the population has
24 decreased. We have had economic development projects
25 because we cannot guarantee a long-term water supply pass

Comment PH-01 – continued

14

1 us by for other areas of the state and other areas of the
2 country. I think we all need to look at what the economic
3 development of this project alone means to the entire
4 area.

5 Now, I've been involved in the water talks and
6 town hall meetings. We all get excited. But like our
7 wells, our enthusiasm seems to dry up. We cannot wait
8 until we're backed into a corner. Without this lifeline,
9 the area will go the way of the ancient ones.

10 I hope to see this project completed during my
11 lifetime. It's not can we afford to do this project, but
12 can we afford not to do this project.

13 Thank you all very much.

14 THE HEARING OFFICER: Thank you, Mr. Mraz. The
15 next person we'd like to hear from is Dr. Ron Berg.

16 STATEMENT BY RON BERG

01-03

17 MR. BURKE: Thank you. My name is Ron Berg, and
18 I've been a resident of Gallup for approximately 25
19 years. Business owner here. I'm a chiropractor for the
20 past 20 years. I have a number of children involved in
21 city soccer. And I reflect on that in the water
22 circumstance we find ourselves in. Water is very
23 important to soccer.

24 I would like to speak just briefly as to what I
25 feel the City has done. And I'm not an expert on that,

Comment PH-01 – continued

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1 but I know that there have been conservation efforts and
2 that the cost of water has been raised. There have been
3 programs for rebates for such things as low-flush toilets
4 and so on.

5 They even -- and I've drank some of it, the water
6 that -- they had a program that they will use, as I
7 understand it, if necessary, to treat waste water. And,
8 gee, I've sampled that and it tastes great. But even that
9 alone, my understanding is that the water, that would not
10 be a source sufficient to allow Gallup to continue to
11 exist.

12 When I think of the water situation here in
13 Gallup, I tend -- I'm a real people person; and I tend to
14 think of the people that I know, be they from on the Rez
15 or from here in town. And I'm really proud of Gallup for
16 being the kind of community that not only has a rich
17 history -- and I love history. But it's a town where you
18 don't find jokes about people's race like you do in a lot
19 of places.

20 It's because the moment you say something like
21 that, you're offending that person because inevitably they
22 themselves are married to or have family that are married
23 to an Anglo or a Hispanic or a Navajo or a Zuni. And it's
24 made for a very unique circumstance in my life, at least
25 my experience. And I'm very proud of that.

Comment PH-01 – continued

16

1 So, I definitely stand in favor of it. And I
2 hope for my family, the community's sake, and for Gallup
3 and the Reservation here that the tradition will continue
4 and that Gallup will yet be here for the rest of the
5 country and for those of us who live here.

6 Thank you very much.

7 THE HEARING OFFICER: Thank you, Dr. Berg. We'd
8 next like to hear from Mr. Evan Williams.

9 MR. WILLIAMS: I think I signed the wrong sheet.

10 THE HEARING OFFICER: Oh. You can come speak if
11 you'd like.

12 MR. WILLIAMS: I work for the Council of
13 Governments, so you know where I stand.

14 THE HEARING OFFICER: Okay. Then we will move on
15 to Mr. Paul Spruhan.

16 STATEMENT BY PAUL SPRUHAN

01-04

17 MR. SPRUHAN: Thank you very much for this
18 opportunity. My name is Paul Spruhan, and I'm a citizen,
19 a resident of Gallup for actually relatively less period
20 of time, about five years. I'm also -- my wife and my son
21 are enrolled members of the Navajo Nation. I also work in
22 Window Rock, though not having anything to do with the
23 particular issue here.

24 So I think I've got a unique perspective on both
25 sides of the issue, both the City of Gallup and living,

Comment PH-01 – continued

17

1 working, and being related to people in the Navajo
2 Nation. And I personally support the project
3 wholeheartedly.

4 I think it's key to the continued economic
5 viability of the city of Gallup and I think key to the
6 economic viability of the Navajo Nation. And I think
7 those are two distinguishable situations because, of
8 course, the city of Gallup has a lot of businesses, a lot
9 of successful businesses; the Reservation less so.

10 And I think there's a perception out there among
11 people -- it may be anecdotal, but it's there -- that
12 we're an area of the very old and the very young and
13 nothing really in-between.

14 And the reason for that, at least the perception
15 of the reason for that, is that there's nothing here for
16 people, for young people who graduate from high school and
17 college. They'd rather be someplace else, a larger
18 community, a community with a better economy, Albuquerque,
19 Phoenix, Durango.

20 And I don't think there's a coincidence that the
21 communities that people seem to go to are the ones that
22 have viable water sources to continue to expand and
23 develop. People who go to Las Vegas, I don't think
24 there's any denial of the ability of them to have
25 sustainable jobs. And the economy of Las Vegas and

Comment PH-01 – continued

18

1 Albuquerque and Phoenix are due to water projects that
2 support in the development in those areas.

3 So I think it's important for this project to
4 create a sustainable and predictable water source instead
5 of relying on aquifers and instead of relying on pickup
6 trucks with large water tanks driving long periods of time
7 with high gas prices just to survive.

8 So I'm reminded of another anecdote. I was in
9 Durango a couple years ago with my wife before our child,
10 who you'll see running around occasionally here. It was a
11 person who clearly, obviously had driven up from Phoenix.
12 And, of course, to get from Phoenix to Durango, the
13 easiest way is to go straight through the Reservation.

14 And he was talking to the bartender at a
15 particular business in Durango. And he said, "Oh, yeah,
16 the Reservation is beautiful, but it's so dry." The
17 perception was there's nothing there. It's just a big
18 nothing in-between two towns with successful economies
19 with supportable water sources.

20 So with that in mind, I again support the idea
21 and the concept and the follow-through. I will say that
22 the city of Gallup is something that, again, will sustain
23 a continuing economic viability. For the Reservation, I
24 think not only will it support the economy, but I think
25 it's also consistent with the federal government's

Comment PH-01 – continued

19

1 responsibility to promote the self-government and
2 viability of the Reservation.

3 I think there's a perception out there that
4 living on the Reservation is a choice; that, "Well, you
5 could live anyplace else, so why don't you? It's not
6 really our problem if you don't have water. That's just
7 the way things are. Go to Albuquerque. Go to Phoenix."

8 And I think it's very shortsighted because I
9 think some people can and will tell you there's a strong,
10 spiritual connection to the land and to that society that
11 needs to be recognized if as important and valuable as any
12 other communities, beliefs, and situation.

13 So with that in mind, I again thank you for the
14 opportunity and ask you and the people here and everybody
15 in the community to fully support the project. Thank you.

16 THE HEARING OFFICER: Thank you, Mr. Spruhan.
17 We'd next like to hear from Mr. Mike Daly.

18 STATEMENT BY MIKE DALY

01-05

19 MR. DALY: Good evening, Hearing Officers, Ladies
20 and Gentlemen. I'm a resident of Gallup. I operate a
21 small water system near Gallup. We have -- our water has
22 the salinity of about 12 percent of sea water. And for 30
23 years the people were drinking that.

24 Pretty impoverished community. The average
25 income is about \$14,000 a year per family. And they

Comment PH-01 – continued

20

1 weren't buying bottled water because they thought it was
2 stylish. Fortunately, we're using reverse osmosis now,
3 okay. But that's kind of the state of the native water.
4 It's tough.

5 Probably due to a genetic inability to say no,
6 I'm on the city water board and the county water board.
7 They haven't figured me out yet or run me off. I grew up
8 in Los Angeles. And there's a real dreamer out there a
9 century ago. Another engineer, Mulholland. Run a little
10 pipeline, you know, in this valley.

11 Now, people in the valley tell you how terrible
12 it is, but Los Angeles couldn't have run without it. He
13 was sharp enough. The first -- his pipe brought the water
14 down with gravity flow. A decade or two ago, the
15 Department of Water and Power tripled the capacity out of
16 new pipes, and they are pumping their water, okay.

17 But it seemed like a pipe dream a century ago and
18 so necessary. First Los Angeles. Now the Eastern Sierras
19 and the Western Sierras. Now they are looking more
20 hungrily at the Colorado River, okay? But this isn't a
21 pipe dream. This is a reality.

22 Listen, there's a city named Cloudcroft in
23 southern New Mexico which is working to have pretty much
24 direct reuse of wastewater. They just don't have any
25 choice. The City of Gallup's working on the same thing

Comment PH-01 – continued

21

1 because we don't really have much of a choice.

2 But with the direct reuse. We're still only
3 going to be able to reuse -- assuming we can do that -- 60
4 percent. The peak demand water supply is supposed to be
5 curtailed in four or five years in the city of Gallup
6 without new sources. I mean, there are some sources, but
7 the people in the neighborhoods where the water is getting
8 drilled aren't necessary really enthused about that,
9 okay?

10 We look at Arizona, the growth that's going
11 there. The growth that's going in Texas. I know there's
12 some people opposing in this project. There are some
13 interests that have valid concerns, and they are not to be
14 ignored. But I think if we look broadly, we see that the
15 Upper Basin Commission supports this project and should be
16 pretty representative of a larger group of people.

17 And I think more important -- well, I don't know
18 more important, but. An extremely important point is we
19 have just 30 percent of a large group of people have to
20 haul their water everyday. They have the privilege of
21 getting 10 to 15 gallons of water a day per person.

22 How would our lives be, how would your life be at
23 15 gallons a day? How would your life be with such
24 inefficiency that you have to go to town to get the
25 water? You wouldn't be as productive. I'm too busy going

Comment PH-01 – continued

22

1 to get water to do something else. A horrible waste. And
2 for a whole people.

3 You know, it was U.S. policy until the '50s not
4 even to build roads on the Reservation. So look at the
5 capital cost of this. And I'm going to throw numbers that
6 probably aren't really, but if we assume \$900 million for
7 the cost of this project and a population of about a
8 quarter million people being served, we're getting
9 something like \$12,000 a household for water
10 infrastructure.

11 When you put it in those perspective, that's not
12 a lot of money per family. It is all at once. But, I
13 mean, I would say it is a lot of money on a per capita
14 basis.

15 And I'd like to go a little bit about the cost,
16 and then somebody's got probably something better to say
17 or to talk about. But the cost is I think a quarter -- or
18 three-quarters of a million dollars and looking maybe to
19 be an increase. But designs can be impacted.

20 And we can design it with or without a
21 bureaucracy. We can design it most efficiently, or we can
22 design it most safely. There's a lot of different ways to
23 design. The Bureau of Reclamation, which has worked
24 really hard on this project -- and I don't even want to
25 make a hint at criticism of the Bureau, but they estimated

01-05-01

Comment PH-01 – continued

23

1 that the Cutter Lateral is going to cost \$100 million.

2 The Indian Health Service has estimated that same
3 project at \$50 million because they went through value
4 engineering and made some changes. And they are actually
5 constructing a third of that with state moneys for \$17
6 million.

7 I would hope that in looking at this project, we
8 don't just look yes or no, but let's look at a nice,
9 sufficient, cost-effective way to make it work. It isn't
10 free money authorized and having printed in Washington as
11 a free service and delivered to the States. It's real
12 money.

13 But it doesn't -- I don't think it has to cost
14 that much. I think we need to really do the value
15 engineering. We need to look at alternatives and be
16 careful with the construction of things. And, thank you.

17 THE HEARING OFFICER: Thank you, Mr. Daly. Next,
18 we would like to hear from Ms. Gloria Skeet de Cruz.

19 STATEMENT BY GLORIA SKEET DE CRUZ

20 MS. CRUZ: Good evening. My name is Gloria Skeet
21 de Cruz. I'm here representing my chapter community,
22 which is Baáhháalí Chapter, which is south of Gallup. We
23 just recently changed our name to Baáhháalí, which was --
24 formerly used to be Breadsprings.

25 And I've also noticed in the audience -- I don't

01-05-02**01-06**

Comment PH-01 – continued

24

1 see my counterparts from Red Rock or from Chichiltah
2 Chapters. And so all I want to say -- I'm going to keep
3 my comments very brief and very simple -- is that from the
4 Breadsprings community, we really strongly support the
5 Gallup-Navajo Water Project.

6 I think it's really, really important for us to
7 put aside our distrust and our animosity, you know, as
8 Navajo communities who have been dealing with border towns
9 to put that aside and go into one of the greatest
10 partnerships which is addressing this whole water issue
11 not just for the city of Gallup, but for chapter
12 communities.

13 I think that I remember when I first heard about
14 this project, which was probably about eight years ago, a
15 lot of people thought it was just a Gallup project.
16 Because I think there was a lot of emphasis that Gallup
17 was running out of water. And it's only until recent that
18 I heard that chapter communities that surround the Gallup
19 area and in fact this whole region are part of this water
20 project.

21 And I'm very, very pleased to hear that. As a
22 Navajo growing up south of Gallup, I never had running
23 water. As a matter of fact, in my home I just got running
24 water a couple of years ago.

25 And out at the Breadsprings community, and I can

Comment PH-01 – continued

25

1 probably speak for Chichiltah and Red Rock, we have a lot
2 of community members who to this day do not have running
3 water. They don't have the basic infrastructure that a
4 lot of people who live in small towns like Gallup have; no
5 electricity, no running water.

6 And so it is our hope that eventually we do know
7 that the Breadsprings, Chichiltah, and Red Rock
8 communities are also part of this plan. And I just want
9 to reassure that, you know, that we do support this and
10 that we want to see those three communities south of
11 Gallup involved with this water partnership.

12 And then just one more thing. You know, water is
13 so, so important. And I just want to echo again what two
14 other speakers said before me, is that we have a lot of
15 our community members hauling water. And these people
16 live below poverty line, and they are paying the highest
17 water bill, paying a lot of money. And then it's
18 compounded with the gas being so expensive.

19 And so our families are really facing a lot of
20 financial hardships. A lot of people are starting to look
21 at how they need to reduce their livestock because they
22 can't afford to be hauling as much water as they used to.

23 So water is very, very important. And I am aware
24 of some of the opponents against this -- this water
25 partnership with Gallup and the Navajo Nation and

Comment PH-01 – continued

26

1 Jicarilla. And as I sit here before you, it's okay to be
2 against it, but I think it's also really, really important
3 to know that people here in this community, we need the
4 water. Thank you.

5 THE HEARING OFFICER: Thank you, Ms. Cruz. We'd
6 next like to hear from Mr. Julius Elwood. Is Mr. Elwood
7 here?

8 STATEMENT BY JULIUS ELWOOD

01-07

9 MR. ELWOOD: Good evening, Ladies and Gentlemen.
10 My name is Julius Elwood. I am a resident of the Eastern
11 Agency, specifically the Standing Rock Chapter, which is
12 about 50 miles northeast of Gallup, New Mexico.

13 Recently, I have learned about this project
14 myself, reading about it in the newspaper, et cetera. And
15 last night we were finally -- anyway, this is the first
16 time I've seen this project brought to the chapter, my
17 chapter, specifically.

18 And we were asked to vote on -- on a resolution
19 supporting the Draft EIS. However, when I asked how many
20 of the residents there at the chapter meeting were
21 familiar with the EIS, how many have read the EIS
22 statement, only two members out of approximately 30 that
23 were there actually read and know something about this
24 project.

25 Me, myself, I am in support of water coming to

Comment PH-01 – continued

27

1 the Navajo Nation. I have mixed feelings about it,
2 though. I have lived in this area all of my life. When I
3 was young, we hauled water all the way up until I believe
4 my senior year in high school, which was about '89, '90;
5 we finally received runner water. So I have experience
6 both having running water and not having running water.

7 And last night my chapter did express support.
8 The only thing that a lot of the members did not support
9 was why Gallup was a part of this project. A lot of
10 community members felt like what has Gallup ever done for
11 the Navajo Nation, except make a lot of millionaires out
12 of a lot of people that have businesses here in Gallup,
13 New Mexico.

14 As with a lot of border towns, many Navajos go to
15 these border towns and spend their money; and there's no
16 economic -- or very little economic development on the
17 Navajo Nation. And it's kind of ironic when people talk
18 about economic development.

19 For one reason or another, mostly what I hear
20 from what I understand is the reason there's not a lot of
21 economic development on the Reservation is there's so much
22 red tape, like with the BIA, et cetera. And ever since I
23 was young, and throughout my education, I understand the
24 government has made it very difficult for native people to
25 be successful, as far as having businesses and having

Comment PH-01 – continued

28

1 economic development and economic success.

2 But border towns seem to be doing very well.

3 Gallup I know has been doing extremely well. Now they are
4 in a crisis and they look to the Navajo Nation for support
5 or for help.

6 And a lot of the older people, younger people
7 like me, we wonder why Gallup's name is in the title and
8 how much of the \$720 million is Gallup going to pay for
9 this project, how much are we going to sell the water to
10 Gallup for?

11 You know, as a Native American, Navajos, you
12 know, I -- I -- you know, it bothers me. The only thing
13 Gallup has ever done is provide alcohol a lot of times,
14 and there's alcohol and a lot of social problems that have
15 been around the city. Very little has been done about
16 it. And they kind of look away and continue to give out
17 liquor licenses.

18 You know, and now it bothers me when people say,
19 "Let's forget about the past, create this beautiful
20 partnership, look toward the future." But, you know,
21 history is very important to me. And the way my people
22 are being treated, have been treated, it bugs me. You
23 know, it's not very easy for me to -- and a lot of
24 Navajos -- to just forgive and forget.

25 A perfect example is the people that live right

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29

1 across Boardman down here who have been hauling water for
2 years and years and years, the City of Gallup didn't want
3 to give them water because they live on an allotment.
4 Finally, last week -- or a couple weeks ago, they decided
5 to run a water lines over there to help out these Navajos
6 that have been hauling water, you know, right next to the
7 golf course.

8 Why did they finally do that? Because they
9 finally said, "Hey, these Navajos could give us some
10 water. Let's do something good for them." Some public
11 relations kind of stuff. And to me, you know, that -- you
12 know, that just makes me upset.

13 Why didn't they do it before? Just to be, you
14 know -- to be human, you know. To be if somebody's
15 struggling you want to help them somehow. You don't just
16 want to stand there and watch them.

17 So, I have mixed feelings about this. Also, when
18 you talk about economic development, you're talking about
19 Gallup specifically. And I don't know if I support more
20 economic development for Gallup. What that would mean is
21 Gallup will grow and expand and everybody knows what
22 happens when cities get big is they create pollution, they
23 create a lot of waste products, and a lot of other
24 problems arise.

25 And as Navajo Native Americans, we see water as

01-07-02

Comment PH-01 – continued

30

1 something that is holy, that we pray to -- pray for, and
2 we hold very dear to our hearts. And just like Mother
3 Earth, we talk about Mother Earth and we pray to Mother
4 Earth and we thank her for providing for us. And for me I
5 don't appreciate my Navajo leaders, et cetera, selling
6 natural resources and creating pollution, creating
7 by-products.

8 As we -- as we all know, people that live around
9 here, we've had a very negative experience with the
10 uranium companies. And we're still dealing with it. This
11 past week in the newspaper, you know, I read about some
12 family that have their -- the soil finally removed from
13 around their houses and within their houses because it's
14 contaminated with radiation.

15 Heck, they've been living in those houses for
16 30-plus years, and now they are finally doing something
17 about it. These people are getting sick, dying left and
18 right. All I see all across the Reservation are dialysis
19 building -- people are going to dialysis. For what?
20 Kidney failure. And the only logical explanation is
21 radiation.

22 My people have been murdered for energy because
23 of what's in Mother Earth, and I don't understand why we
24 still continue to sell our coal and our natural resources
25 for money. And we don't really get paid good market

Comment PH-01 – continued

31

1 value. You know, we always make deals and sell our
2 natural resources for a small amount.

3 And I'm afraid that's what's going to happen with
4 this water again, when we're going to sell water to Gallup
5 for probably pennies a gallon. Right now they sell the
6 water right down the road here. My uncle has to haul
7 water everyday. He has to pay like \$5 for a full barrel.

8 Are we going to sell Gallup -- our water for that
9 same amount, or are we going to give them a good deal
10 again? These are the things that a lot of us Navajos
11 living around here are concerned about. And I think we
12 need to be better informed about these projects.

13 And the settlement, what are we settling? I
14 mean, a settlement means you -- you settle something. I
15 mean, what was the original -- what was the original -- if
16 we won the case and without the settlement, what would we
17 get. You know, the details of the settlement nobody seems
18 to know. And we're not informed.

19 All we've been hearing is how Gallup is going to
20 benefit from this project. And to make it look good they
21 throw in Navajo in there as well. And I'd like to know
22 how much Gallup is going to pay for this. I know Navajo
23 Nation is going to pay 570 million, around there. What
24 about Gallup? Thank you.

25 THE HEARING OFFICER: Thank you, Mr. Elwood.

01-07-03

Comment PH-01 – continued

32

1 We'd next like to hear from Mr. Larry Winn.

2 STATEMENT BY LARRY WINN

01-08

3 MR. WINN: Good evening, everyone. I'm speaking
4 tonight not as an individual but for the Gallup Water
5 Board.

6 When the previous mayor was elected four years
7 ago, he put an emphasis on water and appointed some task
8 forces to come up with some innovative ideas on what to do
9 on various topics, one of which was water. The task force
10 decided that we would have a town hall, a New Mexico first
11 mediated town hall.

12 We did that. It was a rousing success, I
13 believe. We had lots of Gallup people. We had lots of
14 Navajo Nation people. We had lots of technical people.
15 What we came forward with in essence was a call for a
16 cooperative set of ventures, to come up with a truly
17 regional and sustainable solution.

18 After that we went to the city council, asked
19 that city council if they would essentially sign on in
20 general terms to the conclusions of the town hall. They
21 did so and appointed a water board whose function it would
22 be to see to the implementation of the recommendations in
23 that town hall.

24 I was appointed as the chair of that group. And
25 I'm still the chair of that group. As you might imagine,

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33

1 we have discussed the Navajo-Gallup Water Supply Project
2 in significant detail. And I'm here tonight to -- to
3 share with you the water board's concerns and support.

4 My comments will be along the lines of four
5 general points, the first of which is the importance, like
6 I said earlier, of regional cooperation. We know that we
7 are a region. We know that we cannot go forward
8 successfully without the surrounding area benefiting. We
9 have no desire to go forward without the surrounding area
10 benefiting.

11 And so we really want to be as cooperative as we
12 can be. I think all parties that are knowledgeably
13 related to the planning project would agree that there has
14 been a cooperative process and continues to be. We know
15 that we need a regional solution, and we support a
16 regional solution.

17 An example of what a regional solution could be
18 is something that is part of the Navajo-Gallup Water
19 Supply Project, which is -- I believe the current name
20 is -- correct me. Well, you don't do that. But I say out
21 to the ethers, "Correct me if I am incorrect in the
22 current name," but I believe it is the Gallup Rural Navajo
23 Regional System, but essentially the distribution system
24 for the south end of the pipeline. There has been
25 significant, ongoing cooperation concerning implementing

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34

1 that and moving forward with, say, government to afford
2 that.

3 We have -- we -- all of us have maximized other
4 people's money, which is something that I think we are all
5 charged with doing in the political sphere. And to date
6 that money continues to come in actually as fast as we can
7 spend it.

8 And that is an example of the kind of thing that
9 we can do if we continue to work together. The Gallup
10 Water Board's -- one way of look at the Gallup Water
11 Board's charge from city council, because we were created
12 as an advisory board to city council, is to come up with
13 actual wet water as a solution for the city.

14 Therefore, our deliberations have often focused
15 on the likelihood or nonlikelihood of any given solution
16 being actual. We more or less never quit thinking about
17 and debating that.

18 I, as the board chairman, hold that as the
19 essence of my charge. My charge is for the day to never
20 come when a tap in Gallup leads to simply the sound of
21 rushing air, a sound that we all expect to happen unless
22 really good things occur here in the next few years.

23 We have every reason to believe that this is what
24 will happen if good solutions are not found. My job as a
25 volunteer citizen, as the chair of the water board is to

Comment PH-01 – continued

35

1 do everything that I can realistically to minimize the
2 chances of that day ever coming and, therefore, to
3 maximize the chances of actual wet water solutions being
4 found.

5 And so constantly in our deliberations I have
6 emphasized the primacy of making bets, essentially, on
7 what will bring wet water here, by what time, at what
8 cost, et cetera. If water is to come to the Gallup
9 area -- or shall I say Gallup and the surrounding area, it
10 has to be afforded.

11 If Gallup cannot afford its share of the project,
12 no matter how that share is defined or conceptualized,
13 then it is unlikely that there will be a project. All of
14 the people who work significantly on this project know
15 that to be true. Certainly, the senators have reiterated
16 that repeatedly.

17 Therefore, Gallup's ability to afford its share
18 of the cost is an overwhelmingly important factor. The
19 new mayor and council, which were just elected two months
20 ago, have begun their term under the mayor's leadership
21 emphasizing a pay-as-you-go approach that is rather
22 ruthless. And I don't mean that in a bad sense. I just
23 mean that in a sense of, you know, as a no prisoners kind
24 of a situation, frankly.

25 And there are many enhancement projects that

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36

1 people would prefer to see around the city that are
2 essentially waiting for more money. There's really
3 nothing wrong with that. I kind of like that way of doing
4 things, actually.

5 But I just mention that because it's -- it
6 emphasizes the importance of Gallup being able to find the
7 money to afford the project. And if that cannot be done,
8 then it's unlikely that Gallup can be in the project
9 because we have to pay our share. We're seeking ways to
10 do that.

11 Concerning the EIS itself, this comment can be
12 rather brief. EIS is -- are things that are not discussed
13 much here tonight. Typically, there is a concern for
14 preferred alternatives. And preferred alternatives are
15 looked at through a number of lenses, one of which is data
16 financial analysis or differential financial analysis, a
17 point which the executive summary essentially points out
18 as a weakness of itself.

19 We would like to see better figures there. We
20 understand that some of that has to do with lack of
21 political consensus with the administration, et cetera, et
22 cetera. But, nonetheless, we would like to see that.

23 Nonetheless, this is not primarily, evidently, a
24 hearing where people feel called upon to discuss EIS's but
25 to reiterate their support for something that is terribly

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Comment PH-01 – continued

37

1 needed in our area by everyone.

2 The Gallup Water Board shares that concern and
3 shares that prioritization. And so we are in full support
4 of the Navajo-Gallup Water Supply Project. And we hope
5 that no stone will be left unturned in attempting to find
6 a successful way to do this politically and financially.
7 Thank you.

8 THE HEARING OFFICER: Thank you, Mr. Winn. We'd
9 next like to hear from Ms. Tanya Trujillo.

10 STATEMENT BY TANYA TRUJILLO

01-09

11 MS. TRUJILLO: Thank you. My name is Tanya
12 Trujillo. I am from the New Mexico Interstate Stream
13 Commission. The State strongly supports the project and
14 very much appreciates the work that went into issuing the
15 Draft EIS.

16 We will be submitting written comments on the
17 Draft EIS. We do support the Preferred Alternative. And
18 we look forward to working with you as this project
19 progresses. Thank you.

20 THE HEARING OFFICER: Thank you, Ms. Trujillo.

21 Well, we have some time, so if there's anyone
22 else who would like to come up and give us some comments
23 on the Draft EIS, we'd like you to do that.

24 Again, if you could please limit your
25 presentation to 10 minutes and please state your name.

Comment PH-01 – continued

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01-10

1 STATEMENT BY LANCE ALLGOOD

2 MR. ALLGOOD: Good evening. My name is Lance
3 Allgood. I believe I was on the wrong list, as Evan put
4 his name in my spot.

5 I'm the director of the City of Gallup's Joint
6 Utility Division. I would like to apologize for our mayor
7 and council and other members of the city government.
8 Tonight's meeting happens to coincide with our regular
9 city council meeting. So I'll be speaking on behalf of
10 the City of Gallup.

11 First off, the City of Gallup fully supports the
12 project, as probably the -- not probably, but as the only
13 real viable renewable water supply for Gallup and the
14 region. We support the EIS.

15 We worked very diligently with the State
16 Engineer's Office, the Navajo Nation staff, and the Bureau
17 of Reclamation and Patty Lundstrom and the chair of the
18 steering committee for the project to see this thing
19 through and get to that point.

20 We'd like to say we do support the project. We
21 support the Environmental Impact Statement and believe it
22 fulfills the intent of the law. So with that, we thank
23 you again.

24 THE HEARING OFFICER: Thank you, Mr. Allgood.
25 Any other comments?

Comment PH-01 – continued

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01-11

1 STATEMENT BY RAY GILMORE

2 MR. GILMORE: Good evening. Thank you for this
3 opportunity. My name is Ray Gilmore, Chairperson, Navajo
4 Nation Water Rights Commission. Very, very brief. A few
5 words. I will reserve my comment until we're actually in
6 Farmington, New Mexico. Okay. Thank you.

7 THE HEARING OFFICER: Well, given that we don't
8 have any other comments, I want to thank all of you for
9 attending this meeting tonight. Again, you do have the
10 opportunity to submit written comments. That's open to
11 you.

12 And if you haven't signed up on the sign-up sheet
13 outside, please do that so you can receive information
14 through the mail or e-mail.

15 On behalf of all of us here, thanks to our
16 reporters and interpreters.

17 We thank you for coming. So I hope you have a
18 safe journey home.

19 (The hearing adjourned at 7:15 p.m.)

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Comment PH-01 – continued

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1 C E R T I F I C A T E

2

3 I, Tanya M. Nims, a Certified Court Reporter, do
4 hereby certify that the Proceedings of the above-entitled
5 project were reported by me stenographically on May 22,
6 2007, and that the within transcript is a true and
7 accurate transcription of my shorthand notes.

8 I further certify that I am neither an attorney
9 nor counsel for, nor related to or employed by any of the
10 parties to the project, and that I am not a relative or
11 employee or any attorney or counsel employed by the
12 project hereto, or financially interested in the project.

13

14

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18 _____
19 TANYA M. NIMS, RPR
20 Certified Court Reporter #168
21 License Expires: December 31, 2007

22

23

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Comment PH-02

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4

NAVAJO-GALLUP WATER SUPPLY PROJECT

5

PLANNING REPORT

6

AND

7

DRAFT ENVIRONMENTAL IMPACT STATEMENT

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11

PUBLIC HEARING

12

May 23, 2007

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Crownpoint Chapter House

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Crownpoint, New Mexico

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23 REPORTED BY:

24

Tanya M. Nims, CCR #168

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Albuquerque, New Mexico 87110

Comment PH-02 – continued

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1 MEMBERS OF THE PANEL

2

3 Susannah Thomas, Hearing Officer, United States
4 Department of the Interior, Office of the Field
5 Solicitor, Salt Lake City, Utah

6

7 Rege Leach, Bureau of Reclamation Project Team Leader,
8 Western Colorado Area Office, Durango, Colorado

9

10 Carol DeAngelis, Bureau of Reclamation Area Manager,
11 Western Colorado Area Office, Grand Junction,
12 Colorado

13

14 Bernadette Tsosie, Regional Hydrologist, Bureau of
15 Indian Affairs, Navajo Area Office, Gallup, New
16 Mexico

17

18 Michael Benson, Navajo Nation, Department of Water
19 Resources

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21 Joanna Austin-Manygoats, Interpreter

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PLEASE NOTE THAT LEO MARTIN WAS SPEAKER 2 PH 11 (PG 43)

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1 WEDNESDAY, MAY 23, 2007, 6:16 P.M.

2 MR. BENSON: We're going to begin right now. We
3 have a number of people that want to speak, and there may
4 have to be full interpretation. We'll see right now.

5 My name is Michael Benson. I'm just going to
6 give a short introductory statement as to what will take
7 place here; and then you'll hear from the hearing officer
8 the rules for tonight.

9 But first I'd like to ask who -- is there
10 somebody here that wants the whole proceedings
11 interpreted?

12 (At this time, Mr. Benson spoke in Navajo.)

13 MR. BENSON: So the whole proceedings will be in
14 Navajo and English.

15 Thank you very much, Ladies and Gentlemen, for
16 being here. We're here tonight to talk about the
17 Environmental -- Draft Environmental Impact Statement for
18 the Navajo-Gallup Water Supply Project.

19 As many of you know, the Navajo-Gallup Water
20 Supply Project involves two pipelines. And the reason for
21 the project is that we found through Gallup's experience
22 that if you rely on groundwater, you won't have water to
23 last you forever. Right now some of Gallup's wells are
24 the deepest in the USA, over one mile down.

25 And it's the same for the rest of us in New

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5

1 Mexico, the Navajo communities as well. If we depend on
2 groundwater, that is going to be depleted sooner or
3 later. So we need renewable surface water from the San
4 Juan River.

5 So we're -- and the project involves two
6 pipelines, one from Cutter Reservoir near Navajo Dam,
7 which would take water on the east -- of the eastern edge
8 of the Navajo Reservation from Huerfano, Nageezi to
9 Torreon, Ojo Encino, Pueblo Pintado to Whitehorse Lake.

10 And there can be spurs off of that later on if
11 needed to for Lake Valley and other chapters in the
12 center, as well as from the other pipeline, which would
13 run between Shiprock and Gallup and -- which would have a
14 major lateral going off at Twin Lakes to Window Rock and
15 then also to Dalton Pass.

16 And the reason why it doesn't go to Crownpoint is
17 because there's already NTUA lines that go to Dalton Pass
18 to Crownpoint. So from there on, the water could be put
19 in the system; and it goes to this regional system that
20 includes right now Crownpoint, Littlewater, and eventually
21 Becenti and Standing Rock.

22 The Environmental Impact Statement, whenever the
23 federal government is going to commit funds to a project,
24 by law there has to be an Environmental Impact Statement
25 to examine the impacts on all living things, on the land,

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6

1 the water, the air; and to discuss people's concerns.

2 And it starts off with scoping meetings. And
3 these were held for this project in 2001. There was a
4 meeting here back then to talk about this project. And
5 now the environmental -- the Draft Environmental Impact
6 Statement has been completed. And by law that has to be
7 put forth to the people again to comment on it.

8 So tonight you're going to be commenting on the
9 Draft Environmental Impact Statement. And it's not a
10 question and answer thing, as will be explained to you
11 shortly from the panel here. Mainly, the panel up here is
12 going to listen to your comments. But there isn't an
13 opportunity to answer questions.

14 We have staff here that you can talk to after the
15 formal hearing that you can ask questions of, from Navajo
16 Nation Water Management and also from Bureau of
17 Reclamation.

18 (At this time, Mr. Benson spoke in Navajo.)

19 MR. BENSON: Did I forget anything? I believe
20 that's it. I'd like to now go to introductions of some of
21 our notable officials that are here. Ray Gilmore, Chair
22 of the Navajo Nation Water Rights Commission is here.
23 Katie Gilbert, a member of the Navajo Nation Water Rights
24 Commission.

25 Benjamin Cowboy, the Eastern Agency

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7

1 representative to the Navajo Nation Water Rights
2 Commission is here. Wally Toledo, Chapter Coordinator
3 from Torreon Chapter is here. Leo Charlie, the Vice
4 President from Torreon Chapter is here.

5 Frank Chee Willetto, the President from Pueblo
6 Pintado Chapter is here. Chee Smith, Jr., past President
7 of Whitehorse Lake Chapter is here. And also we have
8 Lloyd Ayliffe, a former member of the San Juan Water
9 Commission and currently working for the cities of
10 Bloomfield and Aztec; and he also oversees the Lybrook
11 water system -- is also with us.

12 We have former New Mexico State Senator Leonard
13 Tsosie, who is currently the Council Delegate for Pueblo
14 Pintado, Whitehorse, and Torreon Chapters is also with
15 us.

16 Jeff Kiely, Deputy Director for the Northwest
17 McKinley -- Northwest New Mexico Council of Governments.

18 And, sorry, Patty. I should have put you first.
19 Patty Lundstrom is Chair of the Steering Committee for
20 this project for about 15 years now?

21 MS. LUNDSTROM: 15 years.

22 MR. BENSON: 15 years. And as you know also
23 State Representative, the state of New Mexico,
24 representing part of Gallup and also the Navajo chapters.
25 Most of her constituents are Navajos.

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8

1 We have Harrilene Yazee, who is the BIA Regional
2 NEPA Coordinator.

3 And please inform me if any more of our
4 dignitaries and officials come.

5 Roger Toledo, Vice President of Ojo Encino
6 Chapter we are honored to have here as well -- Torreon.
7 Sorry. Torreon Chapter.

8 And most importantly I'd like to introduce to you
9 the people that are going to be hearing your comments
10 tonight. First of all, Carol DeAngelis, Area Manager for
11 the Bureau of Reclamation. Rege Leach, the Planning Team
12 Leader for the Bureau of Reclamation.

13 Susannah Thomas is the regional -- from the
14 Regional Solicitor's Office; and she's the Hearing
15 Officer. In a little while she'll tell you the rules that
16 we have to follow for this hearing. We have Joanna
17 Austin-Manygoats, who is our interpreter tonight.

18 And I'm going to be the timekeeper. How many
19 minutes are we giving them?

20 THE HEARING OFFICER: I'll let them know.

21 MR. BENSON: But when your time is coming close,
22 I might use this one. I will show you two minutes. And
23 then when you have one minute left, I'll show you this.
24 And then last night I didn't have to use this, so please
25 don't make me use it. Thank you very much.

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9

1 THE HEARING OFFICER: Thank you. Good evening
2 and welcome to this meeting. This public meeting is being
3 conducted pursuant to the National Environmental Policy
4 Act, which is referred to as NEPA. And the purpose of
5 this open house is to hear your comments, thoughts, and
6 views on the proposed project.

7 The representatives of the federal government
8 here today are prepared to take your comments and thoughts
9 back to the decision-makers for this project.

10 And while we are prepared to answer your
11 questions with regard to factual matters, we are not here
12 to engage in discussions about the relative merits of this
13 project or its alternatives as discussed in the NEPA
14 documents. Simply put: We're here to listen.

15 Whether you choose to make your comments orally
16 or provide us your comments in writing, they will both be
17 considered equally. We will address all comments as part
18 of the Final Environmental Impact Statement process, or
19 what we refer to as the FEIS.

20 We are aware that there is a connection between
21 the project that is the subject of tonight's meeting and
22 the overall settlement of the Nation's water rights claims
23 on the San Juan River. We are also aware that there has
24 been legislation introduced by Senators Bingaman and
25 Domenici that would resolve the water rights settlement in

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10

1 part by authorizing the construction of this project.

2 But as of this time, the administration has taken
3 no position with regard to the settlement. And because
4 this meeting is about the project and not about the
5 settlement, we ask that you direct any comments or
6 concerns you may have about the overall settlement to your
7 elected officials.

8 The meeting will end around 9 o'clock tonight to
9 get everybody home at a reasonable hour. In order to do
10 that, we ask that you limit your presentation to 10
11 minutes. We have a timekeeper, Mr. Benson, to keep us on
12 time and we ask that you please observe his time notices
13 as he holds them up.

14 We will now proceed in the order of the names on
15 the speaker sign-in list. Before you begin your comments,
16 we'd appreciate it if you can please state your name so
17 our court reporter can put it in there, and I'll read your
18 name to have you come up. And I will apologize if I say
19 them wrong, so.

20 And then after we hear comments from those on the
21 list, if time permits we invite anyone else who would like
22 to come and give us your comments. And, again, if you'll
23 please give us your name and be sure to keep your comments
24 to 10 minutes. Thank you.

25 Okay. We'd like to first hear from --

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11

1 MR. TSOSIE: Could I ask that you give additional
2 time to our elders that are going to speak in Navajo? And
3 it's also not too polite to cut them off. So if you could
4 take that into account also because they have a lot to say
5 about this.

6 THE HEARING OFFICER: Thank you.

7 MR. TSOSIE: Thanks.

8 THE HEARING OFFICER: We'd like to begin with
9 Mr. Andrew Robertson. And we have a chair here for you to
10 come sit in, and we'd like you to use your microphone.

11 STATEMENT BY ANDREW ROBERTSON

02-01

12 MR. ROBERTSON: It's tough signing up first, I
13 guess. My name is Andrew Robertson. I'm a civil engineer
14 with Souder, Miller & Associates. And I live in
15 Albuquerque.

16 And the reason I'm here is that as an engineer
17 I've been working on water projects in various chapters
18 throughout Eastern Navajo Agency for the last seven years,
19 so even though I don't live in this area I've had a chance
20 to see firsthand the need for water.

21 It is very real. It is very dire, and it is very
22 urgent. I visited a friend in the hospital a few years
23 ago who was hospitalized. I don't want to get into too
24 much of the details, but she was at the UNM Hospital for
25 about three or four days and had to have surgery. And the

Comment PH-02 – continued

12

1 doctor said it was a direct result of not having enough
2 water. And it was sustained dehydration -- or chronic
3 dehydration over a period of years.

4 Another friend of mine, his father had his leg
5 amputated below the knee because he is diabetic and he did
6 not have water to wash his pressure sores. This is
7 because he did not have water.

8 Now, we all know that no project is a panacea.
9 No one water project is going to solve all the water needs
10 on the Navajo Nation or northwest New Mexico at once.
11 However, this project will go a long way. In this area, a
12 lot of these wells are dropping rapidly in the Torreon
13 Chapter.

14 The State of New Mexico Environmental Department
15 has issued an emergency certificate because of the
16 drawdown in the -- of the chapter's wells. And there are
17 schools in this area that have -- either are not able to
18 be built or in some cases buildings that actually are
19 going to have to be abandoned because there's not adequate
20 water supply to feed the schools. And I'm sure there are
21 others here who can speak to that and more in depth.

22 There are housing developments, businesses,
23 economic development that have been denied because they
24 can't get a commercial water hookup. So it's a really
25 serious problem.

Comment PH-02 – continued

13

1 Most of the projects that I've been working on
2 have been in coordination with NTUA and Indian Health
3 Service. And I can say that there are at least four IHS
4 projects that I know of in the Torreon and Ojo Encino area
5 alone which would serve probably about 8 or 9 hundred
6 people that are not being built at this time because
7 there's not -- even though there's funding available to
8 extend the water lines, there is not enough water to fill
9 the pipes. The pipes would be full of air. And that
10 problem will not go away until a water supply is made
11 available to those chapters.

12 Now, having addressed the need, then the question
13 is, is this project the most efficient way to solve that
14 problem? Again, as a civil engineer having looked at this
15 for a number of years, I believe that it is.

16 I've looked -- I won't say that I've studied the
17 EIS to the same level of depth that you all have, but from
18 what I do know about it, I would say that the Preferred
19 Alternative is the way to go.

20 I would certainly encourage as much value
21 engineering as possible to make sure that the costs are
22 reasonable and this project remains economically
23 feasible. As the saying goes, "The slightly smaller
24 project you build is better than the bigger project you
25 don't build." So I would certainly encourage that.

02-01-01

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14

1 But on the whole, I strongly support this project
2 because it is necessary, it is the most efficient way to
3 bring people water, and the benefit is incalculable.
4 There are plenty of analyses that do quantify the benefits
5 in terms of how many people are not going to require as
6 many medical services because of the public health would
7 be better, how many jobs it will create, how many schools
8 it will allow, how many housing developments it would
9 provide, how it's going to help the population; people
10 stay at home rather than having to move to the cities
11 because there's no water.

12 All of that can be quantified, but really the
13 human benefit of this is incalculable and invaluable, in
14 my opinion. Finally, I would like to also say that as an
15 Albuquerque resident -- obviously, I don't speak on behalf
16 of the City of Albuquerque. I'm not the mayor. I can
17 maybe speak on behalf of my street or something. This
18 project will not directly affect the city of Albuquerque;
19 however, again, in my personal opinion, the overall
20 settlement will benefit the city.

21 I realize this is not about the settlement, it's
22 about the project. I just wanted to throw that in.
23 Again, I strongly support this project, and I urge that it
24 would be built as quickly as possible. Thank you.

25 THE HEARING OFFICER: Thank you, Mr. Robertson.

Comment PH-02 – continued

15

1 We'd next to like to hear from Mr. Chee Smith.

2 STATEMENT BY CHEE SMITH, JR.

02-02

3 MR. SMITH: My name is Chee Smith, Jr., former
4 chapter President for Whitehorse Lake. My clans are
5 Naakai, Tx'áásh Chí'í, Ta'neeszahnii, and Bit'ahnii. I
6 basically have a couple of questions and two concerns.

7 The reason why I came to this public hearing is
8 reading in the papers about this public hearing, I didn't
9 see Whitehorse Lake on there. The line just goes as far
10 as Pueblo Pintado. So I was wondering why Whitehorse Lake
11 is not in the picture. That will be my main question.

02-02-01

12 Whitehouse Lake is 35 miles east of here. And
13 our people, that's -- really need water like anybody
14 else. Our people from Whitehorse Lake, they travel daily
15 to haul water from Crownpoint. It takes a beating on
16 their vehicles, and they haul barrels back and forth
17 for -- to cook, to do laundry, order livestock.

18 And imagine people having to travel long distance
19 everyday just for water, even for just drinking. So I
20 think this project would be worthwhile for our people, for
21 these Navajo Chapters -- of the Navajo Chapters.

22 The other area is that we have a canyon between
23 Pueblo Pintado and Whitehorse Lake. I think it's seven
24 miles that's kind of hilly. So if there's a way we can
25 cut through that to run the pipes through the canyon, that

Comment PH-02 – continued

16

1 would be good.

2 Due to no water, Whitehorse cannot get housing.

3 That's one of the requirements that NHA requires. And

4 when there's no water, there's no developments. So we're

5 kind of still like in the -- kind of like a third-world

6 nation. So we don't have a lot of these things that

7 people have.

8 And just like Mr. Robertson said, that's why I

9 think people end up having to move to the city. So we

10 need your support on this water, getting it down to

11 Whitehorse Lake.

12 Then my last comment. Reading in The Independent

13 it said that the city of Gallup is going to run out of

14 water in 10 years. And I was thinking, why does the city

15 build a laundromat and a car wash almost like every

16 month?

17 And our people go -- a lot of our Navajo people,

18 they go to Gallup and they spend a lot of their moneys

19 into these border towns, and they don't really get

20 anything back from the city.

21 So I think if the city, the border towns, and the

22 tribe could work together to help our Navajos, that would

23 also be appreciated. I think it's a very worthwhile

24 project. And we desperately are in need of good drinking

25 water for years to come. Thank you very much.

Comment PH-02 – continued

17

1 THE HEARING OFFICER: Thank you, Mr. Smith.
2 We're going to turn the time over to Mr. Rege Leach for a
3 moment. He's going to address one of the factual issues
4 on the Draft EIS that Mr. Smith asked about.

5 STATEMENT BY REGE LEACH

02-03

6 MR. LEACH: I'd like to just answer this. I have
7 one minute. I'm going to be flagged out here. I won't
8 take too much time.

9 The question on water for Pueblo Pintado and
10 Whitehorse Lake, the project is designed for a future
11 water supply projected out 40 years, a 40-year water
12 supply for Pueblo Pintado and Whitehorse Lake. The water
13 treatment plant, the pumping plants, and the pipeline is
14 designed to carry that quantity of the water. And today
15 what we have is that water being delivered at Counselor.

16 Now, if it is more appropriate depending on what
17 the development of the specific pipelines to Pueblo
18 Pintado or Whitehorse Lake might look like, it may be --
19 if it's more efficient to come from Crownpoint, it could
20 come from that point as well.

21 So my point is there is water available in the
22 design and the cost estimates for this pipeline for Pueblo
23 Pintado and Whitehorse Lake.

24 Now, the project only takes water -- this project
25 is a main distribution -- or main transmission system for

Comment PH-02 – continued

18

1 treated water to common points, which what we see in this
2 map are the -- it's these blue circles which are storage
3 tanks. And so this project would end at that point.

4 Now, pipelines that the chapters would build,
5 that IHS would build, that NTUA would eventually take over
6 operation, maintenance, those would be beyond the scope of
7 what we're talking about in this project. This project is
8 just treating the water, taking it to common points where
9 it's picked up and delivered to the homes.

10 Does that answer your question?

11 MR. SMITH: Yes.

12 THE HEARING OFFICER: Before we move on to the
13 next speaker, a few more people who need to be introduced
14 have come in. So I'm going to let Mr. Benson do that.

15 MR. BENSON: Mitchell Capitan, Crownpoint Chapter
16 President. BIA Superintendent Duane Bird Bear. Thank you
17 for being here.

18 THE HEARING OFFICER: We'd next like to hear from
19 Mr. Tom Becenti. Mr. Becenti.

20 STATEMENT BY TOM BECENTI

02-04

21 MR. BECENTI: Thank you. You all Navajo or you
22 understand Navajo? Not really. I don't know which way to
23 try, Navajo or English. But I think I prefer go ahead
24 Navajo. They can listen and they can get an idea.

25 My name is Tom B. Becenti. Retired Chief Becenti

Comment PH-02 – continued

19

1 of the courts of the Navajo Nation. And I also chapter
2 official for 13 years. McKinley County in education
3 committee for 14 years. And other various committees.
4 And that now as a rancher. I'll go ahead express myself
5 in Navajo.

6 (Through the Interpreter) Mr. Tom Becenti, he
7 spoke about his work and his experience in the world. At
8 the present time, he's a rancher. And he wanted to thank
9 everybody for coming to this public meeting. And he
10 disagreed and disapproved of the five-minute time line.
11 He says that you can't get anything done within the time
12 line of five minutes.

13 And he spoke directly to the Gallup-McKinley,
14 Navajo, and Jicarilla two pipelines. He's thinking that
15 there's two proposals. He prefers the proposal from the
16 Shiprock to Gallup, an alternative that would be
17 beneficial to this proposal.

18 However, he thinks that the Jicarilla pipeline is
19 a little more difficult just because there are the
20 jurisdictional issues and the right-of-way problems that
21 the people will face in the future.

22 He says that if we are all thinking in the -- if
23 we're all on the same page, we're all doing this for the
24 survival of our people, for the survival of our
25 grandchildren.

Comment PH-02 – continued

20

1 I prefer the Gallup-Shiprock route, which is most
2 suitable. Even though there's homes in the area, you can
3 go around these homes to make the route a little more
4 accessible. I'm very supportive. There's enough -- if
5 there's enough support for this project, it will benefit a
6 lot of people.

7 So if we cooperate and work together, be
8 informed -- keep us informed, the challenge will be a lot
9 smoother. And we are all aware that there are people
10 among us that will misconceive the water supply proposal.
11 Many of us will get defensive because we're thinking that,
12 "Oh, here comes somebody else trying to take our land away
13 or trying to maneuver their way through our Reservation."

14 I think the cost of the project should be
15 economical; that way it's easier to implement. I really
16 appreciate the fact that you're planning within the
17 40-year foresight for our grandchildren to use the water
18 in the future. Our population is increasing. And it
19 really is beneficial if we all work together.

20 We'd like to see a big -- a large size pipeline.
21 Don't give us these small pipelines to connect to our
22 residence. Again, I want to say that we need to cooperate
23 with each other. And I appreciate you all working on this
24 project to attain the goal.

25 And he goes on to say that we respect -- we

Comment PH-02 – continued

21

1 should respect each other regardless of who we are. We're
2 all people. We all have the same needs, and we need to
3 work together. And I want this to go on record. That's
4 why I'm asking that we respect each other.

5 I know that there's a time limit, and I must say
6 this. There were people that have brought and built the
7 Navajo Dam, and it is built. It was a huge undertaking.
8 Clint Anderson, Mr. Montoya, and Stewart Udall were the
9 lead persons on this project. And Paul Jones was at the
10 time the Navajo Nation President who signed the document.

11 Again, thank you for being here. And I'm in
12 support of this project.

13 THE HEARING OFFICER: Thank you, Mr. Becenti.
14 We'd next like to hear from Ms. Dorothy Becenti.

15 STATEMENT BY DOROTHY BECENTI

02-05

16 MS. BECENTI: (Through the Interpreter) Dorothy
17 Becenti. Thank you, my children, for being here and those
18 of you among us in the audience. There are -- we were one
19 people at one time, and now we are all different people.
20 But we must work together to make our dreams happen.

21 I think this proposal is excellent. It's very
22 good. Many times over we -- we live in the community of
23 Becenti. I represent several committees. I sit on
24 several committees, but my point will be specific to the
25 Crownpoint Hospital. I want to ask why are doctors always

Comment PH-02 – continued

22

1 leaving the area? Well, my husband's theory is that's
2 because we don't have any water. They don't have a place
3 to swim. They don't have golf courses to relax. That's
4 their lifestyle, he keeps telling me.

5 And I believe that's a fact because our children
6 have that type of lifestyle. What are they going to do
7 many years down the road? We elders have hauled our water
8 for 30 years now. From where we used to live it was 18
9 miles round trip to Crownpoint. Now we live 20 miles
10 round trip hauling our water.

11 But we need water. And many of us elders would
12 like to have water in their homes. When we move back to
13 Crownpoint at one time when we were younger, there was
14 convenient stores. There was even a hotel here and a shoe
15 shop. That was during the uranium mining activities.

16 Now all those places are closed. The waters were
17 capped. But I am -- but I am a hundred percent supportive
18 of this project. I want to thank you again for giving me
19 the time to submit my comments orally. Thank you.

20 THE HEARING OFFICER: Thank you, Ms. Becenti.
21 We'd next like to hear from Mr. Leonard Tsosie.

22 STATEMENT BY LEONARD TSOSIE

02-06

23 (At this time, Mr. Tsosie spoke briefly in
24 Navajo.)

25 MR. TSOSIE: My name is Leonard Tsosie. I'm a

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23

1 Council Delegate with Navajo Nation Council. I used to be
2 a former State Senator with the State of New Mexico. And
3 I was just elected last November and took office in
4 January. This is a legislature within the Navajo Nation
5 government. I represent Whitehorse Lake, Pueblo Pintado,
6 and Torreon Chapters, right in the heart of this project.

7 And so I just want to say that the communities
8 regard the water project as a priority. It's a priority.
9 And they've been waiting a lifetime for this. When I was
10 in the state legislature, only one water line was
11 proposed; and that was along the route between Shiprock
12 and Gallup.

13 And at that time I strenuously opposed it because
14 the people in this area need water too. And then later on
15 it was changed, and it has a two-prong process now. And
16 we appreciate that now because it benefits people on both
17 sides, and it helps more of the Navajo people that I
18 represent.

19 On the way over I saw a rainbow over Crownpoint,
20 and it was a good sign. And so I just want to mention
21 that. And I think it's a blessing. And also rain. I saw
22 raindrops. So that's a blessing. It's a blessing because
23 this is a matter of survival for our people and for the
24 communities.

25 You already heard about the brain drain and the

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24

1 people drain. And that's going to continue to happen if
2 this project is not built. No water, no socioeconomic
3 development. Whitehorse Lake Chapter, I'm aware of, has
4 applied many times for housing to HUD, Housing and Urban
5 Development. They have been denied every time because
6 there is no water.

7 Pueblo Pintado Chapter has no housing. Again,
8 they have been denied. Many communities in these areas
9 have been denied because there's no water. And so a
10 denial of this project would only cause more hardships.

11 The other thing that this does too is this
12 benefits First Americans directly, and that's the Native
13 Americans living in this area. The U.S. Government
14 through a treaty made itself the trustee for these
15 citizens. And so it would be a dishonorable thing now for
16 the U.S. to deny this project if in any way, you know,
17 denies it.

18 The other thing too is the cost is too much for
19 the residence to haul water for their families and
20 livestock because this is an agrarian type of community.
21 People raise livestock and participate in agricultural
22 practices.

23 I thank Judge Becenti and his wife for
24 testifying. They give us the facts that they've hauled
25 water for 30 years. People who haul water at least 2

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25

1 times a week, and you multiply that by 30 years, they have
2 hauled water to my calculation 57,600 times.

3 So all of those that are here and the Hearing
4 Officer, imagine that yourself. And then you multiply it
5 by the more than 9,000 people that this project will
6 benefit, 9,000 families, for that same number of years, I
7 count that they have hauled water more than 500 million
8 times, you know, during that 30 years. And so a denial of
9 this project will only continue that hardship.

10 The other thing too is that the cost is now more
11 than \$120 per 110 gallons. There are 55 gallons that
12 people use, barrels to haul water. At the average it's
13 two gallons -- or two barrels, 110 gallons. And so -- and
14 then it costs about \$120 in gas to go one way and back.

15 So you compare that to \$3.30 per thousand gallons
16 in Albuquerque. And I don't know how much you pay, Madame
17 Hearing Officer, but you can calculate that yourself too.
18 And so the people that -- the Navajo people that you see
19 in the audience tonight pays the highest in the United
20 States for hauling water in this area.

21 This project promotes intercommunity and
22 interethnic cooperation. Thanks to Governor Richardson,
23 this project became a priority in this past legislative
24 session. And it passed on to the state legislature, which
25 funded it. If this project is denied, it will turn back

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26

1 this cooperation.

2 So this project not only will deny the physical
3 part of it, but it will also cause lack of cooperation
4 again. People are finally coming together to cooperate
5 not only for this project, but also for the settlement and
6 would represent a travesty if this project is denied.

7 And then the other is that the intercooperation
8 on this is now moving the water rights settlement forward,
9 and this helps in resolving Navajo and other tribal water
10 rights issues. Again, denial of this project will only
11 encourage litigation and bitter feelings again. And this
12 is what it will cause if this project is denied.

13 The other interesting thing too is that
14 Albuquerque is already receiving San Juan water through
15 the San Juan Diversion Project. This somewhat I think is
16 unjust because the Navajo people and the native people
17 living in this area have prior rights to this water, but
18 Albuquerque got it first.

19 And you see the economic -- socioeconomic
20 development in the Rio Grande Valley now in the
21 Albuquerque area because of this water going over there.
22 And we don't see it in the Chaco Basin area because the
23 water is not there.

24 The water is of poor quality as you get further
25 away from the San Juan River. And so when you have water

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1 coming from the San Juan River, it leads to increase in
2 water quality.

3 Navajo Nation Council has approved the settlement
4 and also this project. And so New Mexico has also done
5 so. And it's been moved on to Washington. Much cost and
6 energy has already been invested and expended. And,
7 again, the denial of this project will dishonor these
8 approvals and the people's efforts.

9 With this project, we cannot go elsewhere. This
10 interconnection is the best alternative. Some of these
11 interconnections have already been built, and it
12 represents a less disturbance to the people living in the
13 area and also the environment.

14 I would encourage that the Congress and also the
15 environmental and whatever U.S. departments prioritize the
16 building of this project. And I would encourage Congress
17 to fund this project in the same amount that it is sending
18 to Iraq. There's a little travesty there when we see how
19 much money we're sending over, and we see people still
20 asking for these moneys.

21 Finally, I would ask that these presentations,
22 the video presentations of the EIS, needs to also be done
23 in Navajo. And so I would encourage because I think it's
24 a denial of the rights of the elders here that, you know,
25 if you don't do a video presentation in it.

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28

1 Also, because of the less time that Judge Becenti
2 talked about, we have very little time to try to express
3 this. So thank you very much. And I would encourage that
4 you also honor these procedural rights of the Navajo
5 people. Thank you again.

6 THE HEARING OFFICER: Thank you, Mr. Tsosie.
7 Next we'd like to hear from Mr. Frank Willetto.

8 STATEMENT BY FRANK WILLETTO

02-07

9 MR. WILLETTO: I would like to stand and talk.
10 (At this time, Mr. Willetto spoke briefly in
11 Navajo.)

12 MR. WILLETTO: I'd like to use a language which
13 I've learned. I understand it's a foreign language, which
14 is English. This evening, we're talking, saying, "public
15 hearing, see what the public." And I understand these
16 folks here supposed to just listen to the public.

17 And right now all I know is the Navajos were here
18 before Farmington ever start to grow. The water, it was
19 all there. But the Navajos were there. Dinétah, that's
20 where the Navajos were.

21 I'd like to speak a little about Gallup and
22 Navajo water line. We have some people here that we were
23 talking about Gallup and Navajo water line some, some
24 years ago. It was a different route at that time.

25 I just so happen to have been in the council at

Comment PH-02 – continued

29

1 that time, Navajo Tribal Council. It was supposed to come
2 on 371 and catch in most of the chapters. And then it was
3 supposed to fork off back that way and run back that way
4 (indicating).

5 I was very happy at that time because Crownpoint
6 was going to get their water. And then from Crownpoint,
7 Whitehorse Lake, Pintado, Ojo, Torreon, Rincon Marquez,
8 all were supposed to get their water. But, you know, when
9 you get people elected every four years, things change.

10 So today the water line that was proposed many
11 years ago went west along 491 Highway. And that left the
12 eastern part dry. And I was so happy to hear about the
13 Cutter Lateral. I completely 110 percent support that.

14 And my chapter, some people wanted to come. They
15 thought the hearing was going to be during the day. But
16 it's going to be at night from 6:00 to 9:00. That's what
17 I was told. And they kind of back off. And they say,
18 "You go and say what you can say."

19 For Cutter Lateral, we have seven chapter at this
20 point. And each chapter has over a thousand-plus members
21 at their chapter. Pueblo Pintado, I want to speak on that
22 because I'm the Chapter President at this time there.

23 Pueblo Pintado is 70 miles from Farmington.
24 Pueblo Pintado is 48 miles from Crownpoint. Pueblo
25 Pintado is a hundred miles from Gallup. So we're out

Comment PH-02 – continued

30

1 there. A lot of people say "nowhere," but we know where
2 we are.

3 Pueblo Pintado has a public high school, grade
4 from 9 to the 12th. Pueblo Pintado has a BIA boarding
5 school, K through the 8th grade. Pueblo Pintado has an
6 IHS clinic that serves practically the five chapters in
7 that area.

8 Pueblo Pintado has a senior center, which
9 operates five days a week. Pueblo Pintado is getting a
10 new replacement BIA school. Pueblo Pintado is getting a
11 bigger IHS clinic. And Pueblo Pintado has a store for its
12 community.

13 And Pueblo Pintado sometime soon, the chapter
14 will hopefully build offices for people that run from
15 Window Rock to spend two hours out there, most of their
16 time is going back there. We want to leave -- or get them
17 to stay at Pintado, which means a building for an office
18 space.

19 And above all, we are trying -- the chapter is
20 trying to get water to each hogan or house or trailer
21 house in that area. I'm talking about only one chapter.
22 And not even half of the community have water now.

23 We just barely got the high school going because
24 they said, "We don't have water for the high school." And
25 when you don't do things for your community, that means

Comment PH-02 – continued

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1 you are doing bad things for that community. And water is
2 No. 1 that we need.

3 Just for an example -- yes, I've been over in
4 Pueblo Pintado 50 years now. But I have a family that
5 lives two miles from here, right next to the Becentis. We
6 also hauled water. Two miles from Crownpoint, where you
7 would think everything is there. And we don't even have
8 running water.

9 I, myself, have to haul water by a trailer, a
10 water truck, just to try to keep up with the rest of the
11 Smiths and Johns of the other places.

12 And I just want to say one less, is that we --
13 the people out here, we want a swimming pool like all the
14 cities. We want car washes for our cars. We want to be
15 up-to-date with everybody else. And we want green lawn
16 around our hogans.

17 So I want to thank you for listening to me. Of
18 course, I'm speaking a foreign language. I do better in
19 Navajo. And that's why they happen to -- got me to serve
20 three years in the Marine Corps as a Navajo Code Talker.
21 Thank you.

22 THE HEARING OFFICER: Okay. Thank you,
23 Mr. Willetto. We'd next like to hear from Mr. Roger
24 Toledo. Did I say that right?

25 MR. TOLEDO: Yes.

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32

1 THE HEARING OFFICER: Okay.

2 STATEMENT BY ROGER TOLEDO

02-08

3 MR. TOLEDO: Thank you. Thank you for giving me
4 this opportunity. At this point I guess it's a little
5 hard to bring something new to the table. What needs to
6 be said has already been said. You just say what they
7 said.

8 I'm supporting this project as the public
9 official from the Ojo Encino Chapter. My name is Roger
10 Toledo. I'm the Chapter Vice President. I'm on the
11 school board of a BIA school also. And I'm also a
12 Community Land Use Planner for the Ojo Encino community.

13 Ojo Encino is one of the first communities to get
14 water hooked up to individual homes because of the
15 availability of water in the area at the time. We have
16 three wells that are -- that support several water lines
17 in the area, Torreon, Rincon Marquez.

18 They were the first -- one of the first ones --
19 we were the first communities to get water. And with that
20 being, the water table is -- I'm one of the -- I'm well
21 aware of the water depletion in the area. I used to drill
22 water wells years ago, and so I replace some of the
23 individual pumps for ranchers and churches in the area.

24 And as such, I'm aware of some of the pumps that
25 have burned up because of the depleting water table of the

Comment PH-02 – continued

33

1 NTUA water system. It has an impact on ranchers,
2 individual private wells, as well as churches in the
3 area.

4 And as a school board member, I'm aware of some
5 of the things that we can't have in our schools because of
6 the lack of water or what little there is of the water.

7 Fire hydrants, we've had to -- quite a few
8 households have burnt down because of low water pressure.
9 And I don't think we have water -- fire hydrants at our
10 school, but it doesn't have enough water pressure behind
11 it to really do much good.

12 And as a Community Land Use Planner, it's a
13 little hard to plan for the future, you know, 40 years
14 down the road when you're not -- when the water
15 availability is uncertain. And we are bringing new
16 developments in the area.

17 And it's a little hard to plan 40 years down the
18 road when you're not sure you're going to have the water
19 that's -- you know, that's going to be available then 40
20 years down the road.

21 And I think the longer we wait, the more
22 expensive it's going to be. If we had done this project,
23 say, 20 years ago, it wouldn't have cost the government
24 this much. The longer we wait, the more expensive it's
25 going to be.

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1 And I, myself, used to draw water from a water
2 well and haul water in buckets as a child. I remember
3 that, when we didn't have water. But it's -- I get
4 emotional when I talk about things like this, but it's
5 very -- it's hard to fathom this when you have elders, you
6 know, that have to haul water in their pickup trucks.

7 Some can't even drive anymore, so they depend on
8 the younger generation to do that. And that's even
9 tougher when the kids are leaving the Reservation because
10 you don't have jobs or, you know, things that you have in
11 the city.

12 I think this project will probably bring dollar
13 to the Reservation also, which means jobs and bringing
14 people -- some of the kids that are -- that have to work
15 in the city home, hopefully. I know I spent the majority
16 of my lifetime living in the city and finally came home a
17 few years back.

18 But I had to wait four years to get water to
19 my -- into my house. That's still something that we're
20 still working on. It takes -- takes that long to get
21 water to an individual home from the date of application.
22 And that's still going on. And it will -- hopefully we
23 can cut some of that time down.

24 I know my mom just had a house built last month.
25 And she's living in a house that's -- that's kind of run

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1 down, and she can't negotiate the steps like she used to.

2 But we can't even move into the new house because
3 the water isn't hooked up yet, and it's going to be
4 another three years before that will get done if we go
5 through the IHS or -- you know. If we do it ourselves, it
6 would be less time.

7 But these are some of the things that -- some of
8 the hardships that we encounter out here. And I just
9 wanted to bring that to your attention.

10 Again, thank you.

11 THE HEARING OFFICER: Thank you, Mr. Toledo.
12 We'd next like to hear from Mr. Jerry Silago.

13 STATEMENT BY JERRY SILAGO

02-09

14 (At this time, Mr. Silago spoke briefly in
15 Navajo.)

16 MR. SILAGO: Good evening. My name is Jerry
17 Silago. And I presently work for Navajo Tribal Utility
18 Authority. And I've been with the water utility for
19 20-plus years. And through that experience and operating
20 and maintaining a system, I'd like to bring my concerns
21 and issues to this hearing.

22 We have existing water systems located in Ojo
23 Encino. And we have an existing water system located in
24 Torreon. And we have an existing water system tied into
25 Pueblo Pintado. And we also have a small system in the

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1 Whitehorse Chapter area.

2 And as you all know, water is life. And without
3 water, you can't survive. She is sitting for only a
4 couple hours and already drinking water. Same here. Two
5 hours. So water is needed by anybody, especially the
6 Navajo people that we serve, that we try to serve.

7 I have three issues. A lot of them are already
8 covered, but it won't hurt to cover it again from my
9 point. The three items that I wanted to stress is water
10 quality, the water quantity, and the demand. Okay.

11 We have -- like Mr. Toledo said, we have a couple
12 wells in Ojo Encino. And combining those two wells, it
13 produces approximately 150 gallons a minute. And that
14 source serves over 500 to 600 water connection. And it
15 serves commercial building that Mr. Willetto mentioned in
16 Pueblo Pintado.

17 And these pumps and wells, some of them average
18 about 14 hours per day pumping time just to keep up with
19 the demand. And it also affect development, like
20 Mr. Willetto mentioned. The new high school that was
21 built was barely built. It was borderline to being
22 rejected because there was no -- not enough water.

23 One thing that helped them was to refurbish, redo
24 the well where it can produce up to that maximum 150
25 gallons.

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02-09-01

1 And the water quality in Whitehorse Lake is kind
2 of bad, and it has high doses of sodium chloride. And as
3 you all know, that's a health effect on newborns and also
4 health effect on elderlies.

5 And we do have a well in Whitehorse Lake, but the
6 maximum output is 15 gallons a minute. And we have about
7 almost 150 connection in that area. And pumping at 15
8 gallons a minute, sometimes we have to pump the pump.

9 About 24 hours a day, that's maximum, 24 hours in
10 one whole day, to try to keep the water level within the
11 capacity of our tank. And like I said, the demand raise
12 it down and the pump huffs and puffs for another 24
13 hours.

14 There's another source that was developed so I
15 suggested to drill another well. Then again the water
16 quality is another issue. So in order to use that water
17 that was drilled, they would have to blend that existing,
18 run an extra line to the tank and mix the existing well
19 with the new well to blend it so the water quality will be
20 a lot better from the second well.

21 And Torreon is also another issue. There's four
22 wells up there. And, again, they huff and puff about 14
23 hours a day.

24 And I'm 100 percent for this project. It will
25 help all the connection that's proposed from Cutter

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38

1 Lateral to Counselor to Ojo Encino to Torreon, and it's
2 also proposed to go from Pintado to Whitehorse Lake. And
3 if that goes through, I'm sure it's going to go through
4 with the support of you four or five that's sitting right
5 here.

6 It will benefit all the people that's in there.
7 It will benefit a new development. Pintado will get the
8 hospital. Pintado will get their new BIA school. Pintado
9 will get a commercial building.

10 And in one sec we'll have the water. That's a
11 big issue. And no water issue is usually geared to NTUA.
12 You guys should be the provider, make sure you have enough
13 water to accommodate our request, a proposal to upgrade
14 economic development. But there's no way it can be done
15 unless we have another source, a backup source.

16 And that backup source I see as Cutter Lateral,
17 which will benefit every new development, every new
18 connection to customers and limit all the water hauling
19 that's going to be ended -- like Mr. Becenti and other
20 elderlies -- all they just go in there and turn the water
21 on right there instead of hauling water and all the wear
22 and tear on their vehicles.

23 And I appreciate you taking all this back with
24 you and approve what's still holding up the project and
25 make it easy on the part right away. And I'd like to

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39

1 thank Mr. Robertson, Andrew Robertson, who was kind of
2 spearheading this whole project.

3 I'm surprised. I heard of this a couple years
4 ago versus that route, Gallup-Navajo Project that still
5 did not work. It's all political stuff, but with the help
6 of Mr. Anderson (sic), that thing is going -- it's going
7 pretty good.

8 And I'd like to see this get up, get going before
9 I retire from the company, and it's pretty near. And I
10 was just teasing Andrew. Once you get that thing built,
11 I'll be retired, but you can hire me over there. Anyway,
12 okay. Thank you.

13 THE HEARING OFFICER: Thank you, Mr. Silago.
14 We'd next like to hear from Mr. Mitchell Capitan.

15 STATEMENT BY MITCHELL CAPITAN

02-10

16 MR. CAPITAN: Good evening.

17 (At this time, Mr. Capitan spoke briefly in
18 Navajo.)

19 MR. CAPITAN: Is it kind of cold in here? I was
20 looking at that heater. Hopefully it will come on. But I
21 guess it's summer, so this is probably the last moment we
22 can be cool.

23 My name is Mitchell Capitan. I've lived here in
24 Crownpoint for the past 35 years. I've been a past
25 Chapter President here in Crownpoint. I remember in 19 --

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1 or 2001 we supported this project when it was being
2 planned first, so most of the people here at my chapter
3 support the plan at the time it was brought to us.

4 And also I work with Mr. Jerry Silago that spoke
5 here just recently. It's well said, Jerry, of what you
6 have brought up here about the water supply that we see in
7 Torreon, Pueblo Pintado, and Whitehorse Lake area.

8 It's very true that demand is very little. And I
9 think what this Cutter Lateral water supply will really
10 help the community of the area because I know they need
11 growth, they need economic development.

12 And also I am an outspoken individual. I'm not
13 an activist. I'm not a tree hugger. I'm just trying to
14 protect my community here in Crownpoint. I'm a founder of
15 an organization called ENDAUM, Eastern Navajo Diné Against
16 Uranium Mining, which I'm sure you have heard.

17 I have spoken at the United Nations before and
18 it's been all over. So we've been fighting a mining
19 company for the past 12 years, and I will also bring
20 something up to that effect.

21 First of all, as you know, Crownpoint, we really
22 are about to outgrow our water supplies. You know, we
23 share water with other chapters here in Crownpoint.
24 Becenti Chapter, Nahodishgish Chapter, Littlewater
25 Chapter. We have a total amount of people at least about

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1 15,00 people in this area that use this water supply here
2 in Crownpoint.

3 And we get our water at least about 2,000 feet
4 deep. There's two wells that we feed off here with NTUA.
5 And for the past 10 years, you know, we had a water
6 restriction because of the drought. And we were very much
7 concerned, you know, how this water supply will really go
8 down as the communities start to grow more and more and
9 people will start to move back here in our communities.
10 And we have to serve other chapters in our surrounding
11 areas. So that was a concern for us.

12 Another concern was there's a proposed mining
13 that's coming to our community. And they call this new
14 technology, the new mining technique called in-situ leach
15 mining, which they will use our aquifer to mine uranium.
16 And this was a very grave concern for us that this mining
17 company will contaminate our water. So these are the
18 concerns that we have.

19 And now we hear of this alternative water supply
20 that will be coming into our community from the west, from
21 Coyote Canyon on to Dalton Pass and down to here to
22 Crownpoint. I think this is very good. I support it
23 myself.

24 But there's a concern about this, that I feel
25 that this mining company will -- hopefully will not take

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1 advantage, thinking that "Crownpoint is going to get
2 another alternative water supply, so we can go ahead and
3 contaminate their water. They've got their water now. We
4 can play with their water that they've been using."

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5 Hopefully that doesn't happen. I have talked
6 with Mr. Robertson about this issue before and some other
7 individual about this issue. And what I was told was
8 that, "The water supply that we have, you guys will still
9 have. With this other alternative water, it will help you
10 more. It will develop -- it will create and help your
11 economic growth," because our community is growing.

12 So it kind of eased me up on that. And
13 hopefully, you know, in the text of this water supply
14 that's going to be fed to us, there should be a
15 restriction on the mining companies.

16 And another grave concern that I have on this is
17 the right-of-way. The agreement that they could have, you
18 know, when they go run this water line through the areas,
19 I know there's a lot of different land issue in this
20 area. And I myself worked for NTUA as a customer service
21 supervisor. I run into right-of-way problems, especially
22 when we run the electric power lines.

23 And I hope all the right-of-way issue will be
24 taken care of because once NTUA goes to oversee the
25 system, hopefully we don't run into right-of-way

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1 problems. And I know right-of-way issue is going to take
2 a long, quite some time to resolve. And I hope this will
3 not delay the project.

4 So I have the support for this project,
5 especially with the community of Whitehorse Lake. I know
6 their water supply is real bad. And they are in dire need
7 of that.

8 And another community that I'd like to mention,
9 which is not really on the project, is the Casamera Lake
10 community and Smith Lake community. This two community,
11 they need good adequate water. Their water supply,
12 especially through Casamera Lake community, they have some
13 trace of uranium in there. So they have to shut down
14 their water supplies, their well supply.

15 Now they are feeding off Smith Lake. Smith Lake
16 doesn't have a good water. So hopefully somehow with this
17 planning those two community will get involved to receive
18 these waters. That way I'm sure that they will be much --
19 much safer, you know; that the community will be healthier
20 than what it is now. So with this, thank you very much.

21 THE HEARING OFFICER: Thank you, Mr. Capitan.
22 We'd next like to hear from Mr. Leo Martin.

23 STATEMENT FROM LEO MARTIN

24 MR. MARTIN: It's against my religion to turn my
25 back on the people, but they already made their statement

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1 and I'm talking to you, so.

2 My name is Leo Martin. I'm from Becenti
3 Chapter. I was a member of this chapter here. When they
4 start selling the water, I left.

5 I believe the reason why you're here is you
6 wanted to get the facts from the rural area people to
7 compare with the facts that you've been getting from the
8 city slickers, Gallup and other area, where the people are
9 not really as hard up for water as we are.

10 And also why the two public hearing that we have
11 here, I think this is the only town we have more. We had
12 some public hearing here. And the people wasn't
13 interested in because they were misled.

14 At the first they were told they can use the
15 water, one is coming in to feed their livestock, also used
16 as an irrigation system, used on the lawns and stuff like
17 that, but later on they were told, "No, it's just for
18 human consumption only, just for drinking."

19 So a lot of them start -- don't want to come in
20 here. So that's why you don't have a full house here.
21 There's more people out there that's really concerned
22 about it if they are actually told the truth about what's
23 going on and what the project is all about.

24 And also right now at that first hearing that we
25 had was a little bit over \$500 million was the cost of

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45

1 it. Now as I see it, it's over \$700 million. By the time
2 you get this project implemented, it will be over 200 -- I
3 mean, probably 900 million or so.

4 So I think it's best thing to do is try to get it
5 going instead of just kicking it around, taking it here
6 and there to try to prove if it's needed. And as far as I
7 know, this -- the two route that you already implemented
8 here around 491 and also on Highway 44 and that northern
9 area, that should be good enough.

10 And let's face it, the people is not -- is not
11 going to stop hauling the water. They are still going to
12 haul the water because the water pool will be either here
13 at the chapter house. They are not going to run to the
14 hogans.

15 It's going to be next 28 years before NTUA or
16 another project comes through here to provide us to a
17 water line to the hogans. So that's one of the things
18 they need to remember. They think they are going to stop
19 hauling the water tomorrow or next year. We're talking
20 about around 10 years from now.

21 So I don't believe it should be this kick around
22 for that long. And I hope you all take really serious
23 action on this one, what we're trying to ask for, what you
24 want from us to verify the need.

25 Now, somehow I've been thinking what we've been

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1 trying to prove, what we're saying is the people that's
2 nonwater user, otherwise it's such a common sense why the
3 water is important. Why do you have to ask people, "Why
4 do you need water?" You know why you need water.

5 The people up in the leadership position should
6 know. I don't believe none of them is not a water user.
7 So they should just come out of here and face the facts
8 and get a right-of-way approval and start working on it.
9 So that's what I think.

10 And another thing is this water is not going to
11 change much of our environmental impact. It's not going
12 to change that much. But it's going to be really helpful.
13 It's one of the most helpful thing that everybody ever
14 thought of for us to be part of our survival, especially
15 for the Navajo people out here.

16 And I think what you here for this evening, you
17 heard what these people make a comment on before. I think
18 the gentleman here on his record everything that was said,
19 to me they are just repeating what was said before in two
20 public hearings.

21 I thought I was going to hear something
22 different, but I haven't. Because I attend all the public
23 meetings that they have here. And that I was saying that
24 one of the suggestions that was made, if it's going to
25 cost that much to run two lines, why can't they develop a

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1 deep water system in the -- around the chapter close by or
2 in the area more where you can't reach between the 491 and
3 also Highway 44, around 371.

4 That might be cheaper by doing that than trying
5 to get that water going from different area, from Becenti
6 Chapter we're only going to get water depending on how
7 much action, how fast the NTUA can work to include the
8 line through Becenti Chapter.

9 And most of the people are in this town now, not
10 because there's no water, because the lifestyles have had
11 changed or what they have been depending on, livestock, is
12 all gone because of the rules and regulations that is
13 coming out from all directions to attack us. So you don't
14 need it. That's why we are in this position. Now we only
15 ask for survival for our human consumption of good water.

16 And like my son, Mr. Capitan, said, somebody will
17 try to help me good and somebody else will come around and
18 work under the table and take what you've been working
19 against.

20 And if somebody -- we don't want nobody to be
21 messing around with the basin water level down underneath
22 basin water pool trying to get -- make some money for
23 themselves. We want that water to go back up so we can go
24 back to it instead of depending on the San Juan River.

25 What guarantee do we have 40 years from now that

Comment PH-02 – continued

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1 river will still be running. We don't have no guarantee.
2 So we have to have some sort of an ultimate -- something
3 alternate, something that we can fall back on, which will
4 be the basin. And that's the way I see it and that's the
5 only statement I would like to make.

6 And I'm supporting 100 percent in trying to get
7 the people to vote in for the two systems, that the
8 drawing that we have on the board, instead of just kicking
9 it around and going into more time trying to come up with
10 something. Pretty soon you won't be able to pay for it.

11 And that's the only thing I've got to say. And I
12 want to thank each and every one of you who come out here
13 to listen to us, from the rural people. And thank you
14 again.

15 THE HEARING OFFICER: Thank you, Mr. Martin.
16 We'd next like to hear from Mr. Bobby Willie.

17 STATEMENT BY BOBBY WILLIE

02-12

18 MR. WILLIE: Good evening, everyone and those
19 that made a statement here. My name is Bobby Willie. I'm
20 from the Smith Lake, Chapter President. I'm at the bottom
21 of the list on these two water line projects, but we have
22 hope; that we need the water because our population is
23 growing and they have to have water somewhere.

24 Currently Smith Lake has a bad water, which was
25 ruined by the mining. There was about four or five mines

02-12-01

Comment PH-02 – continued

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02-12-01

1 that was done. Uranium mining. There was a good water
2 source right in the chapter compound, but right now it's
3 capped off because it's highly contaminated with uranium.

4 So we have another well that was dug, but right
5 now it's very corrosive. And the people, they don't use
6 it for human consumption. They can wash or just
7 cleaning. Because every year they buy a water heater or a
8 new appliance to replace them because that water is very
9 corrosive.

10 And recently we got some allocation -- and thank
11 you, Mr. Benson, for helping us with that allocation to
12 try to get that two new wells. And then the Souder,
13 Miller & Associates, they come up with some ideas. And we
14 really appreciate those two wells. That's going to be
15 sometime this summer. And thank you, Mr. Robertson, for
16 helping us out. We really appreciate it.

17 So we should get some new wells. But to me this
18 is like a Band-Aid job because in the long runs, one of
19 these days because of the drought we're going to run out
20 of water.

21 And right now there's a lot of litigation going
22 on to do some leach mining for uranium. We're not too
23 sure what's going to happen, but I'm sure it's going to
24 contaminate the water somewhere because it's going to seep
25 into the water system. And we're going to need this water

Comment PH-02 – continued

50

1 for our future generations because they are going to need
2 it.

3 Currently, a lot of the young people are going to
4 the border town. They live out there because they need
5 running water. And then our elderlies too, they are being
6 placed in elderly care off the Reservation in border town
7 because they don't have the running water that is needed
8 because they have to have inside bathroom to try to keep
9 them going.

10 But we don't -- since we don't have that within
11 the communities, a lot of them, they just end up in the
12 elderly care. And that's where they passed on and very
13 heart broken because they leave their land and their
14 birthrights, their birthplace.

15 And right now I'm sure, because I was reading
16 this, that the Bureau of Reclamations have no indications
17 that they don't have the authorization to do this thing.
18 I believe if our nation can put a man on the moon and make
19 a sample up there and our nation can foot out about over a
20 \$100 billion to run a war in Iraq, I'm sure we can come up
21 with some fundings here to get our water to our
22 communities.

23 And we really appreciate it for letting us
24 expressing our concerns here because to develop --
25 economic develop, we need water. And then we need other

Comment PH-02 – continued

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1 things to do, but we need water. And then the -- around
2 the states like Albuquerque, as former Senator Tsosie
3 stated -- that Albuquerque is already getting the water.
4 And our name is up there, Navajo Reservoir.

5 If we can't get the water, they should change it
6 to some other name. And the water is running through the
7 Reservation around Shiprock. We should just take the
8 whole thing right there.

9 Anyway, I'd just like to express this concern for
10 our Smith Lake Community. I know we're at the bottom of
11 the list, but we're looking to the future for about 15 to
12 20 years so our future generation can benefit from it. We
13 might not see it right now, but we would like to see
14 something happen for them. Thank you very much.

15 THE HEARING OFFICER: Thank you, Mr. Willie.
16 Next, we'd like to hear from Mr. Jackson Gibson.

17 STATEMENT BY JACKSON GIBSON

02-13

18 MR. GIBSON: Good evening. My name is Jackson
19 Gibson. I live in Thoreau, New Mexico, about a mile and a
20 half north of Thoreau Chapter House against the red mesas
21 there. Like Mr. Martin said, it's against my religion,
22 but I'm going to turn my back on my relatives just for a
23 little while.

24 (At this time, Mr. Gibson spoke briefly in
25 Navajo.)

Comment PH-02 – continued

52

1 MR. GIBSON: I agree and I support all the
2 comments that I heard this evening. This past January, on
3 January 11, I turned 60. I was born and raised right
4 where I live. And at a very young age, I herd sheep right
5 there in my community.

6 North of my house, it was all open space. Very,
7 very few houses in that area. I came -- I joined the
8 military. I came back. When I went riding a horse north
9 of where I lived where I used to herd sheep, I saw a lot
10 of mobile homes. There's another housing development in
11 that area that has increased since I was a young boy.

12 Now, in front of my house, there's a county
13 road. It's almost like Highway 371. There are a lot of
14 people that live up north. So it's just to let you know
15 that growth is there. A lot of people have moved into the
16 area.

17 I used to walk a mile to unimproved 371 -- at
18 that time it was a gravel road -- to catch the bus to go
19 to school. But now McKinley County bus goes up that
20 county road. The BIA bus goes up that road. A whole
21 bunch of buses go up there to pick up kids.

22 So, again, this is just to show you the growth.
23 What does that mean? That means that people are going to
24 use water. So I need you to understand it; that a lot of
25 our folks are still hauling water from Transwestern

Comment PH-02 – continued

53

1 Pipeline Company. They haul water from Crownpoint, as
2 Mr. Leo Martin objected to. But people are still hauling
3 the water.

4 I worked at Smith Lake Chapter for 10 years. I
5 left there this past December. I appreciate what
6 Mr. Mitchell has said about the community of Smith Lake.
7 The water quality is very, very poor. You could smell --
8 I sat in my office about 40 yards from the bathroom. You
9 could smell the water. It smells bad. It's very
10 corrosive, like Mr. Willie mentioned. So those people are
11 in dire need of good water.

12 And this is all because of the past mining
13 activities. If you go into Smith Lake, you go into the
14 remote area at Smith Lake, the mine shafts that they had
15 underground, some of the places are caving in right now.
16 And, you know, it's just a situation that -- that where
17 the water is desperately needed in that community.

18 I'm a Vietnam veteran. You know, the U.S.
19 Government, as Senator Tsosie said -- we've been denied.
20 The government denies the VA benefits to us. In
21 education, they deny us. To say, for example, Impact Aid
22 Program, McKinley County Schools, there's about 11,000
23 kids that are going to the school district. 85 percent of
24 them are natives.

25 They generate impact aid money, but it's not kept

02-13-01

Comment PH-02 – continued

54

1 in the district. It's spread out to across the state. So
2 they are denying us that too. Don't let the government
3 deny us water, like what former Senator Tsosie said.

4 I want to mention here that we would have had a
5 packed house. But we don't have a packed house because
6 some of those people cannot afford the price of gas to get
7 here. They've probably been out there hauling water and
8 saving whatever gas they have for tomorrow. That's why
9 they are not here.

10 You guys are going to be holding another hearing
11 in Farmington on June 6th. You're going to have a lot of
12 people there that are opposing what we support out here.
13 That's the last hearing you're going to have. Those are
14 the last people you're going to hear from, and that's
15 going to be fresh in your own mind. But don't forget what
16 was said here this evening. Don't forget what these
17 people here said.

18 I want to thank you for coming out here. And I'm
19 requesting that you go back to your superiors and tell
20 them, "Let's give water to Eastern Navajos." Thank you.

21 THE HEARING OFFICER: Thank you, Mr. Gibson. And
22 that's our last speaker tonight. We want to thank all of
23 you for being here tonight. We really appreciate your
24 comments and the time you took to come here.

25 We do have a sign-up sheet for attendance in the

Comment PH-02 – continued

55

1 back. If you did not sign that, we would appreciate it if
2 you would so that you can get information by mail.

3 And thanks again for coming, and we wish you all
4 a safe journey home.

5 (The hearing adjourned at 9:04 p.m.)

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Comment PH-02 – continued

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1 C E R T I F I C A T E

2

3 I, Tanya M. Nims, a Certified Court Reporter, do
4 hereby certify that the Proceedings of the above-entitled
5 project were reported by me stenographically on May 23,
6 2007, and that the within transcript is a true and
7 accurate transcription of my shorthand notes.

8 I further certify that I am neither an attorney
9 nor counsel for, nor related to or employed by any of the
10 parties to the project, and that I am not a relative or
11 employee or any attorney or counsel employed by the
12 project hereto, or financially interested in the project.

13

14

15

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17

18 TANYA M. NIMS, RPR
19 Certified Court Reporter #168
License Expires: December 31, 2007

20

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22

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Comment PH-03

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NAVAJO-GALLUP WATER SUPPLY PROJECT

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PLANNING REPORT

6

AND

7

DRAFT ENVIRONMENTAL IMPACT STATEMENT

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11

PUBLIC HEARING

12

May 24, 2007

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St. Michaels Chapter
St. Michaels, Arizona

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23 REPORTED BY:

24

Tanya M. Nims, CCR #168
TRATTEL COURT REPORTING & VIDEOGRAPHY
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Albuquerque, New Mexico 87110

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Comment PH-03 – continued

2

1 MEMBERS OF THE PANEL

2

3 Susannah Thomas, Hearing Officer, United States
4 Department of the Interior, Office of the Field
5 Solicitor, Salt Lake City, Utah

6

7 Rege Leach, Bureau of Reclamation Project Team Leader,
8 Western Colorado Area Office, Durango, Colorado

9

10 Carol DeAngelis, Bureau of Reclamation Area Manager,
11 Western Colorado Area Office, Grand Junction,
12 Colorado

13

14 Bernadette Tsosie, Regional Hydrologist, Bureau of
15 Indian Affairs, Navajo Area Office, Gallup, New
16 Mexico

17

18 Michael Benson, Navajo Nation, Department of Water
19 Resources

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21 Joanna Austin-Manygoats, Interpreter

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Comment PH-03 – continued

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Comment PH-03 – continued

4

1 THURSDAY, MAY 24th, 2007, 6:20 P.M.

2 MR. BENSON: Thank you very much for being here
3 tonight. We're here tonight to hear your comments on the
4 Navajo-Gallup Water Supply Environmental Impact Statement,
5 Draft Environmental Impact Statement.

6 In 2001 there were scoping meetings that were
7 held here as part of the Environmental Impact Statement
8 process. Whenever the federal government is going to
9 commit money to a project, by law there has to be an
10 Environmental Impact Statement. And it's associated with
11 a process where the public has an opportunity for input.

12 And the Environmental Impact Statement addresses
13 the impacts on the environment, water, land, air, the
14 people. And we had a meeting here back in 2001. And now
15 that the Draft Environmental Impact Statement has been
16 completed, we're here to hear comments from the public on
17 that Draft Environmental Impact Statement.

18 I'd like to ask right now if we can just continue
19 in English? Is that all right? Okay. We'll continue in
20 English, but if anybody should come in and they need an
21 interpreter, we have an interpreter here.

22 I'd like to begin by introducing some of the
23 officials, elected officials that we have here with us
24 tonight. Ray Berchman, Navajo Nation Council Delegate
25 from Saint Michaels and Oak Springs. Perry Wilson,

Comment PH-03 – continued

5

1 President of Crystal Chapter. Jeff Kiely, Deputy
2 Director, Northwest New Mexico Council of Governments.
3 Katie Gilbert, Commissioner, Navajo Nation Water
4 Rights Commission. Lena Fowler, Navajo Nation Water
5 Rights Commission. Stanley Pollack, Navajo Nation Water
6 Rights Attorney. Jason John, hydrologist, Navajo Nation
7 Water Management Branch. Teresa Showe, hydrologist,
8 Navajo Nation, Water Management Branch. Brenna Clani,
9 Navajo Nation, Department of Justice.

10 And if more people come in that need to be
11 introduced that are officials, we will introduce them.

12 Now, I'd like to introduce the panel here that
13 you will be addressing your comments to.

14 And the Environmental Impact Statement concerns
15 the Navajo-Gallup Water Supply Project. It's a project
16 that is meant to bring San Juan River water to the Navajo
17 Nation in the state of New Mexico.

18 There are two pipelines in this one project. One
19 pipeline runs between Shiprock and Gallup with laterals
20 coming to Window Rock, which would serve the water system
21 in this area, including Saint Michaels, Fort Defiance. I
22 believe the water system goes to Navajo to Oak Springs as
23 well.

24 And off the main trunk line coming from Shiprock
25 there will be a lateral going to Dalton Pass. And there's

Comment PH-03 – continued

6

1 already a water line from Crownpoint to Dalton Pass, so
2 the water will continue to communities around Crownpoint
3 through that lateral.

4 The Cutter Lateral runs along the eastern edge of
5 the Navajo Nation. The water will be taken out of Cutter
6 Reservoir, which is a small reservoir built for the Navajo
7 Indian Irrigation Project. And the pipeline will run from
8 Huerfano, Nageezi, Torreon, Ojo Encino, Pueblo Pintado to
9 Whitehorse Lake.

10 The project also involves groundwater as well.
11 And there will be groundwater development in the area
12 between these two pipelines.

13 The people up here that you'll be addressing your
14 comments to are Carol DeAngelis, Area Manager, Western
15 Colorado Area Office of the Bureau of Reclamation in Grand
16 Junction. Susannah Thomas is the Hearing Officer, and
17 she's with the Regional Solicitor, Salt Lake City.

18 Bernadette Tsosie, regional hydrologist, Navajo
19 area, Bureau of Indian Affairs. Rege Leach, he's the
20 Project Team Leader, Bureau of Reclamation, Western
21 Colorado Area office, Durango. Tanya Nims is the court
22 reporter taking down your comments. And Joanna Austin-
23 Manygoats is our interpreter.

24 And right now Susannah Thomas, the Hearing
25 Officer, will tell you the rules that we'll follow this

Comment PH-03 – continued

7

1 evening.

2 THE HEARING OFFICER: Good evening, and thank you
3 for coming to this meeting tonight on this project. A
4 public meeting is being conducted pursuant to the National
5 Environmental Policy Act, which we refer to as NEPA. And
6 the purpose of this meeting is to hear your comments,
7 thoughts, and views on the proposed project.

8 The representatives of the federal government
9 here today are prepared to take your comments and thoughts
10 back to the decision-makers for this project. And while
11 we are prepared to take your questions with regard to
12 factual matters, we are not here to engage in discussions
13 about the relative merits of this project or its
14 alternatives as discussed in any of the discussions.

15 Simply put: We are here to listen.

16 Whether you choose to make your comments orally
17 or provide us your comments in writing, they will both be
18 considered equally. We will address all comments as part
19 of the Final Environmental Impact Statement process.

20 We are aware that there is a connection between
21 the project that is the subject of tonight's meeting and
22 the overall settlement of the Nation's water rights claims
23 on the San Juan River. We are also aware that there has
24 been legislation introduced by Senators Bingaman and
25 Domenici that would resolve the water rights settlement in

Comment PH-03 – continued

8

1 part by authorizing the construction of this project.

2 But as of this time, the administration has taken
3 no official position with regard to the settlement. And
4 because this meeting is about the project and not about
5 the settlement, we ask that you direct any comments and
6 concerns you have about the overall settlement to your
7 elected officials.

8 We have, as mentioned, Joanna Austin-Manygoats
9 here to interpret in Navajo for those who do not
10 understand English or for those who prefer to speak in
11 Navajo. So if you come up if you could let us know if
12 you'd like that service, she'll be happy to help you out
13 with that.

14 This meeting will end around 9 o'clock tonight so
15 that everyone can get home at a reasonable hour. In order
16 to do that, we ask that you limit your presentation to
17 about 10 minutes. And we have Mr. Benson here to be our
18 timekeeper, so if you could please observe his time
19 notices, we would appreciate that.

20 What we will do tonight is we will hear from
21 people in order of the list as they have signed in to
22 speak. And before you begin your comments, we'd
23 appreciate it if you could please come up here and use the
24 mike so that our court reporter can hear you and that we
25 can be sure to hear you too. And if you could state your

Comment PH-03 – continued

9

1 name.

2 And then after we hear the comments from
3 everybody on the list, if time permits we will then
4 provide an opportunity for anyone else who may have
5 comments to come up. And, again, just state your name and
6 observe our timekeeper.

7 So without any further adieu, we will begin. Let
8 me get my list here. We will begin with Mr. Kee Ike
9 Yazzie.

10 STATEMENT BY KEE IKE YAZZIE

03-01

11 MR. YAZZIE: Good evening, Honored Panel, Council
12 Delegates, Chapter Officials and the community of Saint
13 Michaels and other residents of the Navajo Nation.

14 My name is Kee Ike Yazzie. I'm the
15 Administrative Services Officer for the Navajo Department
16 of Diné Education. And I'm here on behalf of Dr. Tommy
17 Lewis. I have a prepared statement which regards schools,
18 dormitories, and children.

19 The Department of Education strongly supports the
20 proposed Navajo-Gallup Water Supply Project because it
21 will benefit 165 schools, public schools, BIA-funded
22 schools, church schools, private schools located at
23 Shiprock, Crownpoint, Gallup, Window Rock, and Saint
24 Michaels area.

25 And the growth rates are as follows. Currently

Comment PH-03 – continued

10

1 we have 65,789 students in this region in grades K through
2 12. And the number will reach approximately 88,550
3 students over a 10-year period at the growth rate of 3
4 percent per year. Enrollment will reach 174,700 students
5 by the year 2040 at the current growth rate of 3 percent
6 per year.

7 We anticipate 15 new schools over the next
8 10-year period to accommodate the current growth rate that
9 will bring the total number of schools to 185. We
10 anticipate 45 new schools by the year 2040 to accommodate
11 the current growth rate. It will bring the total number
12 of schools to 210.

13 These schools are heavily dependent on water
14 supply in order to offer a safe and clean learning
15 environment. These schools cannot operate without water
16 supply; therefore, alternative water sources are very
17 critical and important for the benefit of our children and
18 the future generation. Thank you.

19 I'll submit this written statement to you now.

20 THE HEARING OFFICER: Thank you, Mr. Yazzie.

21 Next, we'd like to hear from Mr. Ray Berchman.

22 STATEMENT BY RAY BERCHMAN

23 MR. BERCHMAN: Good afternoon and good evening.

24 For the record my name is Ray Berchman. I'm a member of
25 the Navajo Nation Council serving Oak Springs and Saint

03-01-01

03-02

Comment PH-03 – continued

11

1 Michaels Chapter.

2 Before I go any further, one of our chapter
3 officials from here, Saint Michaels Chapter, is here with
4 us. She wasn't introduced. I guess she'd get mad if we
5 don't introduce her, Effie Ashley.

6 I'd like to thank everybody from Water Commission
7 and also the panel here. I don't know how your policy
8 goes regarding your public hearing. Navajo Nation usually
9 does it different. They invite all the chapter -- public
10 for their opinions, questions, and everything. It seems
11 like this public hearing is just to give the comment.

12 Recently, in our last chapter meeting, the people
13 were having -- kind of questioning this public hearing
14 that would be here this evening. And at the same time the
15 public not here because of the kids' graduation this
16 evening in Window Rock. The majority of the people from
17 here, their kids goes to Window Rock High School.

18 So according to the last meeting that we had, we
19 kind of discussed the public hearing, what is it about,
20 and mostly the proposed project, the Navajo-Gallup Water
21 Supply Project. And I think Mr. Michael Benson mentioned
22 that to try to keep us separated with the Navajo water
23 settlement. And I believe the Navajo Nation Council
24 already approved that.

25 So the question we have is that we understand

Comment PH-03 – continued

12

1 we're in a water crisis. At this time we're being served
2 by NTUA. And I believe we have 18 wells here in Window
3 Rock, Coal Mine, and Navajo area, combined to a total of
4 26 -- I believe 26 wells. So the community is in need of
5 water at this time.

6 And the report from NTUA is that their water
7 supplies is declining at this time due to the H, the well
8 that was drilled in Coal Mine area back in 1950's. So
9 some of those wells has collapsed and is pretty
10 expensive.

11 And they are pumping into Window Rock Reservoir
12 here. And we have -- we're being supported by two areas,
13 I believe, from Navajo, View Point, Water Well, which is
14 alluvium. And I believe its water level is declining
15 also.

16 The main producer we have is down in Hunters
17 Point. The people try to keep that separate from Window
18 Rock. And then in-house it was decided to run and hook up
19 with Window Rock. So we're pumping our water from Hunters
20 Point and the people wants to keep their port and at the
21 same time Window Rock wells are drying up.

22 So these are some of the things at least to be
23 mentioned to the people which we need to have water supply
24 come in from Gallup to feed Window Rock, Fort Defiance,
25 and Navajo and towards the switch of Hunters Point and Oak

Comment PH-03 – continued

13

1 Springs. Oak Springs and Hunters Point are now separate,
2 but the plan is to intertie one area to feed the valley.

3 And another connection where the chapter is
4 working on is to -- to run the water line to some people
5 up the road on the Highway 264 up in the mountains, at
6 which we can't because of the elevation and the -- and the
7 plan, we're lacking some fundings for that part, so.

8 I believe all the community is known that --
9 about a water shortage, so the chapter is supporting the
10 Gallup water supply for the area of Saint Michaels and
11 Hunters Point, Oak Springs, which we represent. Those are
12 some of the comments that I like to share with you and
13 also from of the people.

14 But the questions -- some of the questions
15 remains unanswered, is the settlement part, which I don't
16 think we would get into that at this time, the question
17 from the constituents from Saint Michaels. That's all I
18 want to share with you. Thank you.

19 THE HEARING OFFICER: Thank you, Mr. Berchman.
20 As of this time we don't have anyone else signed up, so if
21 anybody would like to come and address our panel here,
22 we'd be happy to hear from you.

23 And we're just going to be here for a while
24 sitting here, so you're welcome to come up and talk to us.

25

Comment PH-03 – continued

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03-03

1 STATEMENT BY STANLEY POLLACK

2 MR. POLLACK: Good evening and welcome to Saint
3 Michaels Chapter. My name is Stanley Pollack,
4 P-O-L-L-A-C-K. I am an attorney with the Navajo Nation.
5 I work on water rights matters. I'm also a resident of
6 Window Rock, Arizona. I've lived here for almost 22
7 years.

8 Window Rock has a declining water supply that, as
9 Mr. Berchman pointed out, we are in desperate need of
10 getting a renewable, reliable, sustainable source and
11 supply of water for this area.

12 The San Juan Lateral -- excuse me. The PNM
13 Diversion Alternative that's identified in the Draft
14 Environmental Impact Statement for this project is the
15 preferred alternative of the Navajo Nation. It's an
16 alternative that I urge the secretary to issue a record of
17 decision for.

18 Whether or not there is a New Mexico settlement
19 of the Navajo Nation's water rights claims, the pipeline
20 should be built. The Treaty of 1868 promised the Navajo
21 people a permanent homeland on these lands here. Without
22 a reliable supply of water, a permanent homeland will not
23 be possible.

24 Whether or not the settlement goes through, I
25 believe it's the federal government's obligation to

Comment PH-03 – continued

15

1 provide such a water supply to the people on the Navajo
2 Reservation.

3 With that, I just want to thank the Bureau of
4 Reclamation and the Department of the Interior for holding
5 the hearing. I also want to thank especially the team
6 that put together the Draft Environmental Impact
7 Statement. I know it was a colossal undertaking. I know
8 it's a very complicated document. There are a lot of
9 different components that needed to be put in.

10 We were concerned that it might not be published
11 on time. We received a commitment from the Department of
12 the Interior that it would be published on March 30th.
13 And it was published on March 30th. So I really want to
14 express my appreciation to the Department for all their
15 hard work in getting this out.

16 THE HEARING OFFICER: Thank you, Mr. Pollack. We
17 appreciate that. We've had a few more people come in, so
18 I'm going to turn it back over to Mr. Benson.

19 MR. BENSON: Mr. Raymond Maxx, Navajo Nation
20 Council delegate from Tuba City. We're honored to have
21 you here.

22 Are there any other elected officials here that
23 we'd like to recognize, please introduce yourselves.
24 Thank you.

25

Comment PH-03 – continued

16

03-04

1 STATEMENT BY BRENNNA CLANI

2 MS. CLANI: I'll just say a few words. My name
3 is Brenna Clani, B-R-E-N-N-A, C-L-A-N-I. I'll speak in my
4 individual capacity. I work for the Navajo Nation, but
5 I'll be speaking just from my own experiences.

6 I'm actually a graduate of Gallup High School. I
7 graduated from Gallup High in 1994, and I grew up in
8 Gallup. My dad had started working with the Bureau of
9 Reclamation. I'm originally from Upper Fruitland. My
10 family are farmers along the San Juan River. My mom
11 currently farms about eight acres of land from using water
12 from the San Juan River.

13 Having grown up in both areas, the need for
14 water -- the need for water is just so important. Growing
15 up in Gallup, I just saw so many things that made me
16 wonder why -- why there was not an emphasis on water
17 infrastructure on the Reservation.

18 In public rest rooms, at the places that I
19 shopped, and gas stations, I would see people washing
20 their hair, washing their babies. It was just a really
21 sad sight to see on the weekends in Gallup people bathing
22 themselves.

23 And I think as a result of that you had a lot of
24 the chapter houses build showers so that people can bathe
25 there. I've seen people and kids take showers in chapter

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17

1 houses because they don't have running water in their
2 homes. And I just think it's just such a shame to see
3 that.

4 I've seen that growing up all my life. And I
5 think that's the reason why I'm currently working in the
6 field that I'm working in, which is water rights, to bring
7 water to people. The reality of, you know, it's just hard
8 to see some of these things when you're not living here on
9 a daily basis.

10 But, you know, you always hear about people
11 hauling water, but there's also people washing their hair
12 and washing their clothes in these public rest rooms. And
13 when you go to Gallup you always see signs in the
14 bathrooms that the rest rooms are for customers only or
15 that the toilets are closed because they're broken.

16 And I think that's because of the people needing
17 to just wash their hands and become clean. But I just had
18 to share that experience. I was thinking about this at
19 the Gallup hearing. I remembered that.

20 And one of the other things that I remember too
21 is I've gone to public school in both Gallup and I went
22 one year here in Window Rock and I went back to the
23 schools in Gallup. But I remember the taking all the
24 Navajo kids out of the classroom checking for lice. And I
25 had never experienced that before prior to that.

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18

1 But I guess they were checking -- they would
2 check my hair, both me and my sister and all the other
3 kids in the classroom. They would have these combs and
4 check your teeth and check your feet.

5 And I couldn't figure out why. And I told my
6 mom. I said, "They were checking our hair for bugs." But
7 I guess it was for health reasons. I think a lot of the
8 kids there they were worried they couldn't clean
9 themselves or they just didn't have the water there to
10 bathe themselves.

11 But I support this project, and I think it's just
12 really important. And I just wanted to share that
13 experience with you. That it is a reality; that these
14 things do happen. That people are not very conscientious
15 because a lot of times in the press they are just talking
16 about hauling water. But there's other things out there
17 that people don't necessarily see in which I've
18 experienced firsthand and which is why I think this
19 project needs to be built.

20 THE HEARING OFFICER: Thank you, Ms. Clani. Is
21 there anyone else at this time?

22 STATEMENT BY RAYMOND MAXX

03-05

23 MR. MAXX: I don't have a loud voice, so let me
24 go ahead and try this microphone. It's sensitive.
25 There's a short somewhere.

Comment PH-03 – continued

19

1 I was introduced earlier, Raymond Maxx from Tuba
2 City. It's way on the western side of the Navajo Nation.
3 I represent Tuba City, Coal Mine Canyon as a Council
4 Delegate. And I thank the Bureau for coming out and
5 holding hearings in Navajo and taking comments and
6 statements on the project.

7 I know this project that we have, you know,
8 supported and approved, the settlement being of the
9 governments, would benefit a lot of people. And, you
10 know, we supported it with legislation. So that should
11 send a message that, you know, this needs to be done.

12 And we had a long debate and discussion on
13 certain details and interests and concerns. And even
14 though there's pros and cons, about the same, we supported
15 it. So, you know, you can take that message back. And it
16 should be approved, you know, all the way signed by the
17 President.

18 And I don't want to see this project derailed
19 through this legislative process by other entities from
20 other states, other parties. This is a concern that we
21 have.

22 And when we talk about water, there's a lot of,
23 you know, interest in the water. Because, you know, out
24 there in main stream people talk about water as gold, as
25 being valuable. To us, you know, we don't think about

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20

1 water like that. This is basically life. That's what it
2 is.

3 And, you know, we consider everything equal. You
4 know, water, sky, the air, and the fire as something that
5 will give life. The plants, the animals, and Mother
6 Earth. So we don't really have, you know, a hierarchy
7 where there's one supreme being. Everything is equal.

8 And, you know, we have ceremonies that would, you
9 know, correct the harm or the violation of the, you know,
10 laws that pertain to a concern like water. So if you
11 violate the spirit or the laws of the water, we have
12 ceremonies to address those.

13 And that just shows you how we think about water
14 and how we consider it life. And a lot of our elders kind
15 of get after us sometimes. We treat water as a
16 negotiating tool sometimes. And they don't like to see us
17 talk about it as something to say like a commodity, a
18 resource.

19 So we have to kind of overcome these obstacles to
20 get to where we are. So it's really, you know, nothing
21 that -- that we did, you know, with just going into it
22 just like free will. We have to consider a lot and
23 address a lot to get to where we are right now.

24 So even with all those concerns by our
25 traditional folks, this water will, you know, give life to

Comment PH-03 – continued

21

1 the Navajo land. And as you have heard, you know, our
2 people haul water to survive right now, to make a home a
3 home. And we don't have the luxury to shower everyday
4 and, you know, waste water.

5 That's like it was expressed earlier, a lot of
6 our -- for myself, I didn't know what a shower was until I
7 went to boarding school. And that's probably the first
8 time I ever took a bath or a shower.

9 And before that, we were brought up to conserve
10 everything, even a tin can. It couldn't go to waste.
11 And, you know, we could make a barrel of -- a 50-gallon
12 barrel of water last three weeks, even a month, that was
13 provided for like a family of six or seven.

14 So, you know, we try to encourage, you know, our
15 elders when they get modern plumbing -- like in our case,
16 in my area we have the relocation. And when some of our
17 elders are moved and they get housing benefits and they
18 get their modern homes, they don't know -- it's kind of
19 funny when you look at them. They don't want to turn on
20 the faucet because it's going to go down and to them it
21 goes to waste.

22 And so even then we try to encourage them to use
23 the modern facility and enjoy what you have. They didn't
24 have these before. So it takes them a long time to, you
25 know, adjust.

Comment PH-03 – continued

22

1 So hopefully, you know, the remote areas will get
2 water, and they can stop hauling the water. With the gas
3 prices these days, boy, it's tough on hauling the water.

4 So, you know, with the spirit of the agreement,
5 take it. You know, don't let anybody derail it. I
6 understand there's some parties out there that are trying
7 to do that already. You know, take a strong message to
8 the powers to be, people that would consider it, and
9 hopefully they'll approve it right away the
10 recommendations that we're giving.

11 So, thank you. And I notice a lot of people to
12 thank, you know, this settlement and the work that was
13 done. A lot of thanks goes to a lot of people. And when
14 it's finally done and we get water and actually see wet
15 water, then we'll show our gratitude then. Thank you.

16 THE HEARING OFFICER: Thank you, Mr. Maxx. We
17 appreciate that. Is there anyone else here at this time
18 who would like to make any comments? Mr. Barney.

19 STATEMENT BY ALFRED BARNEY

03-06

20 MR. BARNEY: My name is Alfred Barney. I'm
21 from -- represent Red Lake Chapter, just up the road 15
22 miles from here. And I also represent Sawmill Chapter,
23 which is another 15 miles west of here.

24 (At this time, Mr. Barney spoke briefly in
25 Navajo.)

Comment PH-03 – continued

23

1 MR. BARNEY: I appreciate being here. I
2 apologize for being late. And, you know, like everybody
3 else, I'm on the road most of the time. So I know the
4 meeting was going on today. And my issue is that as a
5 delegate and a representative of these chapters, I support
6 the water line project and -- which means that it's going
7 to give us what we need in the long run.

8 But I also have a concern on your drawing. Where
9 the main pipeline is just going up to Saint Michaels, ends
10 here. And I would like to recommend if there was a way
11 that we can take it back up north, just a little bit
12 further up, by Sawmill, which is only supplied by one
13 well.

14 And it was up on the mountain where most of the
15 region is mainly rock area. And they told us that they
16 couldn't really dig any more wells because of all of the
17 rocks or something, platform. And so we got Red Lake and
18 Crystal up on -- in 12.

19 So I think as well as said before, water is
20 life. And we'd like to sustain that water as much as we
21 can to give us a better living. And I guess everybody
22 said that the Navajo Nation is in need of water, where
23 most of the families are still without water.

24 And with that I would like to see this project go
25 through. And I know this is just an Environmental Impact

03-06-01

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24

1 Statement but, you know, the concern that we have is our
2 concern; and we would like to make this an issue, things
3 that we can work with.

4 So with that, as a leader, I support the water
5 line project. And I hope that it goes through soon and
6 people can start utilizing this benefit. So with that, I
7 would like to see if you can do a study where we can bring
8 it a little bit closer to Red Lake, Crystal, and Sawmill.

9 And I know there's an infrastructure already
10 between here and Crystal where you might just backfeed
11 through those lines. But up in Sawmill there's no other
12 line coming in. It's a small community where we're trying
13 to be self-sustainable.

14 So that is my issue. And I know that the
15 community people wanted me to come here and try to say
16 something for them so they can get some benefits for this
17 water line project.

18 THE HEARING OFFICER: Thank you, Mr. Barney.
19 Anyone else?

20 STATEMENT BY LENA FOWLER

03-07

21 MS. FOWLER: I'm Lena Fowler. I'm the Vice Chair
22 of the Navajo Nation Water Rights Commission. And thank
23 you for coming. You have all come from different
24 directions, and you're making visits to various
25 communities just to hear the -- to be patient and sit

Comment PH-03 – continued

25

1 there for -- from 6:00 to 9:00. That's a lot of patience
2 for five minutes.

3 I thank you for your time and thank you. Thank
4 you from the community and our leaders from various
5 communities. I'm very happy that for they are all here.

6 We need -- we need water today. We need water in
7 our communities, not only in this area, but throughout
8 Navajo. But we do need water. This Navajo-Gallup Water
9 Supply Project will really help us and the Cutter Lateral
10 on the Eastern Navajo.

11 We have a drought as you know that's going on.
12 We have been dealing with this for many years now. We
13 have the water quality issues in these areas also. The
14 water we need, we don't have treatment centers that -- so
15 we need to make sure that we have quality water that comes
16 to the communities.

17 Currently, we mine water. NTUA and some BIA
18 wells that provide water to communities, they are mining
19 water; and so, therefore, we're reducing water. We haul
20 water. I have been making chapter visits and meeting with
21 various organizations in this region. And people are
22 hauling water.

23 We visit the Gallup water point and people by the
24 truckloads -- I mean, trucks of water are being hauled out
25 of there everyday. And which means that they have to buy

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1 gas. Gas price is high. They have to buy new vehicles.

2 And so for people it becomes a family financial
3 issue. And so a lot of times what happens is that since
4 Navajos need vehicles, we're taken advantage of when we do
5 buy vehicles with the high interest rates and everything
6 else. So it just really becomes a bigger issue than just
7 water. Just it's like a snowball effect.

8 We haul water for our families. We haul water
9 for our livestock. So to sustain ourselves and our
10 livestock is to feed ourselves. So we need the water for
11 our family, so that we can stay healthy. It becomes a
12 health issues.

13 We visit families that have -- that are supposed
14 to have water to -- because they have a major health
15 issue, but they can't have that, the water that is
16 supposed to be required to take care of themselves, take
17 care of their health issues.

18 So they end up having to go to the hospital even
19 more so; therefore, the hospital care costs goes up. And
20 we're supposed to be drinking eight cups of water a day,
21 and we can't have eight cups of water a day in certain
22 aspects.

23 We're supposed to be able to grow our own food so
24 we can have -- eat healthy and not have all the pesticides
25 and everything else that is out there. So that becomes an

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27

1 issue. And we don't have the water to farm or even have a
2 garden so, therefore, it's just -- it becomes a social
3 issue that we're facing here.

4 We have our children that -- that go to school.
5 Some of the schools do not have the water. They don't
6 have enough water. So that becomes an issue at the
7 schools.

8 We have economic development. Every politician
9 campaigns every campaign season on creating jobs and
10 economic development. Well, there is an issue there
11 because we don't have the infrastructure. And we don't
12 have the water to run through the infrastructure, even if
13 we put all kinds of pipelines everywhere so -- and
14 everyone mining water.

15 And NTUA in some certain communities, they are up
16 to capacity. So it's just like you turn this way, you
17 turn that way, and it's just we're all caught in a trap.

18 We support this. I support this project because
19 it provides sustainable water supply, a safe water
20 supply. And I believe that it will better the lives of
21 the Navajo people, and it will reduce healthcare costs.

22 And it will also -- it's also -- the other aspect
23 of this is that it has created partnerships between the
24 city of Gallup, the state of New Mexico, and other
25 nonNavajo communities and families.

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1 And this is not just for Navajo Nation, but it
2 will provide water to communities off Navajo. So we have
3 the San Juan and we have the Cutter Lateral.

4 I've traveled to various countries throughout the
5 world. And what we have here I've seen in other
6 countries. You go to villages in Peru and Russia and
7 these places. They are in the same situation that we're
8 in. But we are in the United States.

9 But we are not in Phoenix. We're not in Tucson
10 or some rural community outside of Indian country. We're
11 in Indian country, and we don't have the water. And we
12 are a lot like -- living a lot like indigenous people of
13 the world that are in need of water and just basic needs
14 to take care of themselves and the family.

15 So I'd like to see that change. And I think this
16 will bring us just the well-being of the Navajo Nation.
17 It will uplift the Navajo Nation because it's good for all
18 Navajos. I'm from Tuba City, Arizona. I'm not from this
19 area. From Tuba City, so. But I see a lot of the same
20 needs there as we do here, and here water pipelines are
21 going to be coming through. Thank you.

22 THE HEARING OFFICER: Thank you, Ms. Fowler.

23 STATEMENT BY PERRY WILSON

03-08

24 MR. WILSON: Good evening to the Gallup Water
25 Project Panel here this evening and then also to the

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29

1 visiting staff here at the community of Saint Michaels.

2 (At this time, Mr. Wilson spoke briefly in
3 Navajo.)

4 MR. WILSON: I came here to get my concern and
5 also the support from my community in reference to the
6 water settlement that we have a panel for a public hearing
7 this evening. The concern we have is water is life for
8 all the human beings that we have we are considered as a
9 Navajo Nation and for community members here for the
10 Navajos.

11 So on behalf of my community we are concerned
12 about and support an effort for the water settlement for
13 getting the water to the Navajo Nation. The San Juan
14 River Basin has support in other communities throughout
15 the state of Arizona, California for the past many
16 centuries, so we need to have this water being utilized
17 with the Navajo people, which have every right to have
18 that respect for the Navajo people to utilize the water
19 here on the nation.

20 The reason behind it is there's a lot of it, even
21 for many years, but 10-plus years we have a -- the
22 national drought in our southwest here. It does have a
23 big dictation over what we have a need for this water
24 situation here and reason being for our livelihood as a
25 Navajo Nation.

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30

1 Healthwise, educationalwise we need this water to
2 support it in effort to our livelihood, that we have the
3 betterment of our lives here in our Navajo Nation, for our
4 growing vast Navajo people here. So it starts with the
5 infants up to the elderly. And now at this present time
6 we're a growing nation everyday. We have newborns as
7 well, so.

8 As well as for our farming efforts too, we have
9 sort of dwindled down in farming, create our own small
10 gardens for our own self and family. We haven't done it
11 because of lack of moisture in our area.

12 In the wintertime we don't have the abundance of
13 snow that we used to have snowfall annually, as well as
14 the rainfall here in the summertime. So these are the
15 things I see and probably people can testify to that
16 behalf.

17 As well as some of the comments I hear and sit
18 and listen to as the way we have lived in our lives. As I
19 have seen a lot of these things in life, we don't have
20 that abundance of rain to get a necessity to have running
21 water in our each home, our hogans.

22 So now we see some of those things begin to
23 prosper throughout our -- the way we live. And now we
24 need to upgrade our things and put back the trust
25 responsibility to the government themselves saying, "Hey,

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1 you were supposed to provide us our education, health, and
2 healthcare -- provide us for these water situations that
3 we have."

4 So the support of this water issue is bringing
5 water to the Reservation is a must for all of us right
6 now. So these are the concerns I have. And so that's why
7 I'm saying in our community we need to be included as like
8 some of their constituents that have spoken here, Crystal,
9 Sawmill, and Navajo and even down here in Saint Michaels
10 area. We do have the water here.

11 These are the issues that I have. I'd like to
12 thank you for the process you folks have made as well as
13 the Navajo Nation and going forth with this project. I
14 hope the sooner we get some of these resolved here and get
15 this thing through the Senate and to the President of the
16 United States to sign it back into our hands, we can try
17 to get forward to do these settlement with our water needs
18 on the Reservation.

19 So I thank you very much this evening.

20 THE HEARING OFFICER: Thank you, Mr. Wilson.

21 STATEMENT BY JEFF KIELY

03-09

22 MR. KIELY: I'm Jeff Kiely. I live in Gallup.
23 And I've been inspired by some of my friends and
24 colleagues this week to speak at one of these hearings,
25 and this seems to be a good time for me.

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1 I have just been reflecting that for the 30 years
2 that I've been working with the Navajo people in this area
3 and with the other peoples of this region, half of that
4 time, 15 years, have been spent working on this project
5 with some of the best people I have ever met in the
6 world.

7 These are technical people, legal people, public
8 policy officials. They have been Navajos, Jicarilla
9 Apaches, and people from many other walks of life. It is
10 probably the most complex project I have ever witnessed or
11 been a part of. I've been a part of a lot of them.

12 I am an inlaw to the Navajos. And so I have --
13 in that capacity, I have been called upon to haul water
14 for my mother-in-law. And I have visited virtually every
15 one of the 110 chapters of the Navajo Nation. I have
16 worked in many of them providing community development
17 technical assistance.

18 And it has begun to occur to -- it has become
19 clearer and clearer to me that this project represents an
20 equity issue. I'd like to give you an anecdote. Sometime
21 back I was running an operation on a rural Navajo property
22 that didn't have running water and most of the area
23 residents did not have running water.

24 And I had a visitor, and the visitor was a water
25 operator from the City of Albuquerque. He's a water

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1 engineer. And he was used to with a flick of the switch
2 moving millions of gallons from one channel to another.

3 And so I asked him, I said, "Would you like a cup
4 of water?"

5 And he said, "Sure."

6 And I said, "Get in." And we got in the truck.
7 Had a bunch of 5-gallon drums in the back, a 55-gallon
8 drum in the back of the truck. We drove three and a half
9 miles to the well, the local well.

10 And I asked him to stand by the pump and start
11 pumping the water. And I got the 5-gallon drums and the
12 55-gallon drums out. He pumped the water into them. We
13 put them back in the truck, drove back to the campus.

14 I got a cup, and I poured a little bit of water
15 from one of the drums into the cup. And I said, "Here.
16 Here's your cup of water." I said, "That's the level of
17 effort it takes for people in these lands to get a cup of
18 water. And you live in a circumstance that is as
19 different from that as possible."

20 I also recently had occasion to take a trip south
21 of the border into Mexico to Rocky Point area. And a lot
22 of connections started to happen in my mind. We heard
23 last night in Crownpoint that some of the local residents
24 there talked about we can't keep good professional people
25 from outside because they want facilities that have water

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34

1 like swimming pools, things like that.

2 And it occurred to me -- and we heard many other
3 comments in which you heard about people coming to Gallup
4 because that's where stuff happens, that's where
5 infrastructure is, that's where water is. And down in
6 Rocky Point, Mexico I saw the same thing. They are
7 putting up resorts there, multimillion dollar resorts
8 there.

9 And the Mexican people are watching all these
10 people come in from North American, park their cars, and
11 go into this exclusive area and play in water and have
12 showers whenever they want to and everything. And yet the
13 lives of these people have remained totally unchanged.

14 And then I come back here to northwest New
15 Mexico, and it just hit me that we're experiencing a very
16 similar thing. The rural Navajo people are seeing people
17 flock into Gallup and play with water and leave and so
18 on. But the water is still not coming to those
19 communities. So they are not experiencing that kind of
20 opportunity.

21 Over the years I have really felt a sense of
22 grief over the loss of self-sustaining agriculture among
23 many Navajo families. Out of the six or seven or eight
24 families that I'm directly related to, now there is only
25 one of them that is maintaining any level of self-

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1 sustaining agricultural activity.

2 And whereas the Navajo-Gallup Water Supply
3 Project is primarily municipal/industrial, it's still an
4 issue of water is life for the people of that area. And
5 it occurred to me also because I am a champion of rural
6 America that this is a precious rural population in this
7 part of the world.

8 And, you know, as reflecting on former Senator
9 Leonard Tsosie's comments last night about what would
10 happen if the United States Government denied this
11 project? What else would it deny in the lives of these
12 people?

13 And it seems to me that we would not only be
14 depriving the people of the Navajo Nation and city of
15 Gallup and all of the neighboring communities, we would be
16 denying America of this precious culture, of this precious
17 people who live in these lands.

18 Because we're seeing an out migration of our
19 young people. My two kids who are enrolled members of the
20 Navajo Nation are not thinking of staying home because the
21 opportunities are elsewhere. I would like to see America
22 commit to preserving the opportunity to have culture and
23 economy and opportunity and prosperity in this part of the
24 world. And water is central to that.

25 I had a couple of things, sort of themes that

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1 I've noticed that I wanted to reflect on. And one is that
2 in the past there has been a lot of mistrust and
3 resentment between peoples in this area, prejudices,
4 mistreatment of people in-between communities, racism,
5 institutional racism, economic racism. We've seen lot of
6 that.

7 I have sensed a shift. And I'm very sensitive to
8 these issues myself being married to a woman within the
9 Navajo community, being very active in all cultures in
10 this area. I've sensed a shift. And I think this
11 project, the Navajo-Gallup Water Supply Project, has been
12 as important as any other thing I've seen to begin to
13 build bridges and to heal relationships.

14 And we are now beginning to speak about a thing
15 called the water commons. The water commons. This is
16 water; it's life to all people regardless of their
17 background, their color, their culture, their heritage.
18 We're beginning to speak of the water commons.

19 The Gallup regional water system is being
20 developed now as a service to the water commons, not just
21 to the people of Gallup, which in the next couple of
22 decades will be 50 percent Navajo people anyway. But
23 we're beginning to speak about serving all people in that
24 area.

25 So the Navajo-Gallup Water Supply Project when

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1 it's built is going to have an infrastructure in the
2 Gallup area that will move water through its wonderful
3 system and move it out to Navajo communities. Unheard of
4 5 years ago, 10 years ago, 20 years ago. Unheard of.

5 We have broken ground, laid pipe, and are looking
6 forward this summer to water actually flowing in the homes
7 of people living along Boardman Avenue in Gallup, just
8 right on the edge of the city limits in Gallup. Gallup
9 didn't have to do that, but now they want to do it as part
10 of this partnership.

11 I think that on our steering committee for the
12 Navajo-Gallup Water Supply Project, we've seen agencies,
13 entities, state governments, tribal governments, city
14 governments, bureaucracies. We've seen everybody come
15 together. It's one of the most unified groups I have
16 seen.

17 So I think that it's imperative that we advise
18 our elected officials and our administrative officials in
19 the United States Government, "Do not fail in this
20 endeavor. Not here. Not now. And not on our watch."

21 Thank you.

22 THE HEARING OFFICER: Thank you, Mr. Kiely.

23 STATEMENT BY RAY GILMORE

03-10

24 MR. GILMORE: Good evening from the Navajo
25 Nation. I decided to talk, not wait until Farmington.

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38

1 Sometimes I think about why people from Mexico
2 come to America. Because of the opportunities. They are
3 looking for jobs. Probably looking for a good place to
4 live. And America is supposed to be the world of
5 opportunity. Pursue your dream. Democracy. The world's
6 greatest nation.

7 But here in America, in Arizona here, sometimes
8 San Jose, Saint Michaels, Arizona -- I started saying
9 Saint Michaels, Navajo Nation to express sovereignty.

10 So also I have in my mind as I'm sitting back
11 there listening to comments being made, as well as in
12 Gallup and Crownpoint, there are graduations going on
13 within the Navajo Nation and outside the Navajo Nation,
14 Gallup, Crownpoint, Farmington. We have our Navajo
15 children going there and graduating.

16 Where are they going? Well, there's two
17 graduations here close to Window Rock. One is Window Rock
18 High School, Window Rock Junior High, and then down the
19 road, Sanders. Just there's an area known as New Land.
20 Graduation going on. Navajo students graduating by the
21 thousands. Where are they going?

22 Well, they may have a problem finding a job
23 here. The opportunities are not all that like the rest of
24 the world. They may not find a home because home for
25 them -- like testimony given over in Crownpoint last

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1 night, some houses were denied by HUD because there's no
2 water available. This is no different here.

3 So that's what's going through my mind this
4 evening as I'm sitting here. I welcome you to Saint
5 Michaels, Navajo Nation.

6 This land was set aside as Reservation for the
7 Navajo people in 1868. As part of the Treaty of 1868,
8 when the Indian Reservations were set aside, enough water,
9 sufficient amount of water to make the Reservation livable
10 for permanent homeland for them, for the Indian people,
11 was considered. Whether they are explicit or implicit in
12 the treaty, they are there, reading between the lines.

13 In order to have a permanent homeland -- and this
14 Saint Michaels, Window Rock, Oak Springs, Sawmill, Fort
15 Defiance, Red Lake, and other communities, includes the
16 Window Rock area, also like Crownpoint and Lake Valley,
17 Shiprock, and other communities in the New Mexico portion
18 of the Navajo Nation, that is Navajo homeland. And then
19 all this way to the west.

20 Two speakers you heard this evening, one is
21 Council Delegate from Tuba City, my brother Raymond Maxx,
22 and also my paternal relative Lena Fowler serving as
23 representative from Tuba City Agency. And I'm the
24 Chairperson of the Navajo Nation Water Rights Commission.

25 In order to have this homeland on our

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1 Reservation, we need a sustainable supply of water,
2 quality of water. The Navajo-Gallup project provides the
3 best hope to provide a long-term water supply for the
4 Navajos in New Mexico and in the Window Rock area.

5 You're welcome to go see Window Rock just across
6 the valley. It will take you about maybe 10 to 12 minutes
7 to drive there. If you haven't been there, take a look.
8 That's the headquarter.

9 We have two council members here. Mr. Berchman,
10 he said something and he left. And Mr. Raymond Maxx. We
11 have 108 chapters -- or 110 chapters and council delegates
12 representing those chapters on the Navajo Nation.

13 The Navajo Nation Water Rights Commission is
14 authorized -- or rather, given mandate to pursue the water
15 rights on behalf of the Navajo Nation aggressively within
16 the three states, New Mexico, Arizona, and Utah. And
17 we're doing it.

18 This is one important piece of the settlement in
19 New Mexico. And as I said, it is the best hope not only
20 for Navajo and for Jicarilla Apache Nation and Gallup,
21 there are other nonNavajo people. Their interests are
22 protected in the settlement agreement.

23 So the Water Rights Commission supports the
24 project as an important component of the overall Navajo
25 Nation water development plan. We encourage each chapter,

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1 110 chapters, on the Navajo Nation to begin -- or some of
2 them already did -- thinking and planning and putting a
3 chapter water development plan together.

4 I believe I said this one time in Gallup that
5 some families along the Boardman Road to the university
6 where we were a couple evenings ago -- and this is the
7 quotation coming from my younger brother Mike Benson. He
8 heard a comment by a young lady there living in a trailer
9 that she bought a washing machine hoping that the water is
10 coming soon.

11 And all these years her kids were going
12 somewhere. Right in Gallup going to school. But water
13 has to come from somewhere within city limit. Rain, snow,
14 windy, hot. They had to haul water to bring it into the
15 trailer.

16 The Navajo Nation Water Rights Commission is
17 committed to working collaboratively with our neighbors.
18 I believe our neighbor is the city of Gallup, Jicarilla
19 Apache Nation. We're neighbors to each other here on the
20 Navajo Nation.

21 We may be seeing or heard about the boundaries
22 between us, state lines, chapter boundaries, BIA boundary
23 lines, but I have trouble recognizing it. What are they
24 for? I think some of those lines just hinders our effort,
25 laws, and policies.

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1 Those neighbors in New Mexico along the San Juan
2 River, city of Farmington, Bloomfield, we consider them as
3 our neighbors; and their interests are protected. And we
4 need their support, just like we are supporting them. And
5 through the settlement agreement, I think it's fair.

6 I think it's -- it's in the best interest of
7 mankind out here. Just a human thing to do, to help each
8 other, respect each other, work together, and make
9 something happen.

10 The Jicarilla Apache Nation also wants to develop
11 a regional water supply for the region in the northwest
12 New Mexico and Navajo Nation. So we're speaking for --
13 I'm speaking on behalf of the Navajo Nation as chairperson
14 and the chapters out here.

15 I've been to several chapters out here in Arizona
16 and New Mexico with Chairperson of the Navajo Nation Water
17 Rights Commission, other Water Rights Commission members,
18 Water Management Branch, Mr. Benson, when the settlement
19 was being put together. The documents were made public.
20 My sister also, Bernadette, I accompanied her.

21 I pick up a lot and I learned a lot. And I begin
22 to understand that these -- we are in a situation that we
23 are in dire need for water because in the next few years
24 or decade, the prediction is that the amount of moisture
25 we get from above, or the snow or the rain, may be less

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1 than drought, what happens to us in the southwest to our
2 water, our food, fresh water.

3 So we're thinking that far ahead with others and
4 coming together and make this project to happen. We
5 support that. We welcome you to Saint Michaels. Thank
6 you for your time.

7 THE HEARING OFFICER: Thank you, Mr. Gilmore. Is
8 there anyone else? Please.

9 STATEMENT BY KATIE GILBERT

03-11

10 MS. GILBERT: Hello. My name is Katie Gilbert.
11 I am also a member of the Water Rights Commission for the
12 tribe. There are seven commissioners. I'm one of them.
13 There's a couple others here that you heard from. I just
14 would like to say -- I would like to first of all start
15 out by reiterating some of the comments that were made
16 last night at the Crownpoint Chapter House.

17 We did have a public hearing there. And in that
18 same spirit there was a lot of Navajo individuals,
19 elderlies. There was a lot of community residents from
20 throughout the Crownpoint area, the Smith Lake area, the
21 Casamera.

22 Some of those individuals will benefit directly
23 from the water pipeline. And some of those individuals
24 are -- live kind of aways from the main watering centers
25 that will take place. But those community members that

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1 won't directly benefit will still indirectly benefit. And
2 their spirits as far as support for this project was
3 really positive. So in that same spirit.

4 I am from Sanders, Arizona. I actually grew up
5 pretty close to I-40. Sanders is about 20 minutes south
6 of here and right alongside the I-40, which runs from I
7 guess east to west. I did grow up like 15 minutes away
8 from I-40. But just 15 minutes from I-40, we did have to
9 haul water.

10 I grew up in the Sanders community. The Navajo
11 community is Burnt Water, Arizona, the Wide Ruins, Ganado.
12 You might have toured some of those places just within the
13 last week. I grew up in those communities. And my
14 parents raised us -- my family there in the community of
15 Burnt Water, Wide Ruins, just kind of in that neck of
16 woods. Can't really -- there's not a word for where I
17 grew up. We just kind of grew up in Burnt Water, in that
18 area. But we did have to haul water.

19 I grew up watching my grandparents haul water. I
20 grew up watching my uncles, my aunts, and my relatives --
21 everybody hauled water. So I guess I have observed that
22 firsthand. I probably have wrestled a 55-gallon drum
23 myself in one of those times. But I just want to say that
24 that's where I'm from.

25 And according to this project, you know, there's

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1 two main lines, regional preferred alternatives, for this
2 pipeline project. Even though my community is away from
3 that, I still have -- I'm very supportive of this
4 project.

5 I think that this project will, you know, create
6 infrastructure from that. Because the project is so close
7 to us, we will see the benefits of the project and we will
8 also get, you know, the benefits of some of that project.
9 So, that's where I'm from.

10 I just want to also add that that was my
11 experience growing up. And then, of course, I moved away
12 from home after graduating from high school. As our chair
13 said, we see a lot of our young people graduating
14 tonight. They will also leave.

15 But I grew up on the Reservation and then moved
16 off the Reservation, got my college degree. And I really
17 find it hard to move home because there's no water
18 distribution system at my -- near my home. I would have
19 to probably haul water again.

20 And I probably could afford to, but I'm a school
21 teacher by profession; and school teachers don't make a
22 lot of money. So I would probably end up spending a
23 disproportionate amount of my income on hauling water and
24 that -- my desire is not to do that.

25 You know, my desire is to be able to live off the

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1 Reservation. And I don't encourage that, but I just feel
2 like I had to make that hard choice of living off the
3 Reservation and living in a border town where I feel like
4 I can, you know, develop, build a life and build a family
5 and whatnot.

6 So I just want to just kind of reiterate some of
7 those points that I heard from other elderlies that kind
8 of share a similar story to my story. So that's my
9 experience and my background as far as hauling water.
10 Like I said, I'm a water commissioner and by profession
11 I'm a high school teacher. So I work with high school
12 students, and I've been a teacher for many, many years.

13 And I guess that's where my biggest concern is.
14 I watch a lot of young people. I hear from a lot of young
15 people. And their first desire is to not go back to the
16 Reservation. And so my concern is the migration rate, the
17 high migration of our young people.

18 I would like to say that I know it is -- I know
19 it's a heartfelt desire on the parts of our young people,
20 our young community to return to the Reservation and offer
21 their resources after they leave the Reservation.

22 So though the migration rate is rising and
23 increasing, I still believe that our young people will
24 return home to build a life and build a home and have
25 families here. Because I'm like that myself. I'll

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1 probably return to a hogan near where I grew up when I'm
2 all old and gray, even though I'm already there. But a
3 little bit older and gray.

4 But I just -- well, I guess I just observe a lot
5 of young people having the desire to leave the
6 Reservation. And I think that the building of this
7 pipeline is very timely. The building of this pipeline
8 will make it to where our young people will be able to see
9 that there is a pipeline and see that there is, you know,
10 some infrastructure being -- taking place. And I think
11 that our young people will, you know, when they see that,
12 they'll be motivated. And they'll be able to return
13 home.

14 And which their desire to come home and benefit
15 from the pipeline will -- and then, you know, it will --
16 subsequently, it will increase the growth of our nation.
17 It will boost our economic development because our young
18 people will come home and use their resources and their
19 education here on their homelands.

20 And having our resources and having an increased
21 capital of our young people will also catapult other
22 things like economic development growth in this area. So
23 that's my concern is just migration rate.

24 So I just would really like to -- from my
25 observation, from my perspective I feel like this

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1 pipeline, these major pipelines will -- will kind of
2 reverse our migration rate. You know, it will kind of
3 slow it down because I know it's in the heart of the young
4 people to, you know, to be home and to be here, to have
5 their families here.

6 Another concern is -- I'm a math teacher and I've
7 taught math for many years. But I also have -- have to
8 supplement my lesson planning with water education. So I
9 take my students whenever I get a chance to the river, the
10 San Juan River. I teach in Kirtland, New Mexico, which is
11 two hours north of here.

12 But where our school is situated like 10, 15
13 miles from -- or I'm sorry, 10-, 15-minute walk from the
14 river. And so I take my students to the river, and we do
15 water quality testing. We test for chemical parameters.
16 And that's to expose the students to the water quality and
17 the education in water quality and whatnot.

18 And when I take my students to the river, you
19 know, that exposure, the students begin to understand
20 that, hey, the water quality is poor here. The water
21 quality is -- is poor. And that along with our elders
22 recognizing that from last night our -- just listening to
23 the elders at Crownpoint last night, many of those elders
24 are also aware that the water quality is bad.

25 So the young people understand water quality with

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1 the education that I give them and also our elderlies
2 understand the water quality is really bad. We have an
3 increased awareness of the fact that our water quality
4 isn't all that good.

5 So we need to supplement it with the surface
6 water. Our groundwaters in this area we understand from
7 our own education and our own awareness as well as
8 education of our water resources people -- we have a lot
9 of water resources folks here that have informed us and
10 given us technical knowledges on the poor water quality.

11 So, you know, understanding all that, I think
12 that, you know, we all understand the importance of
13 bringing surface water because our groundwaters are
14 contaminated.

15 And since we're dependent on our groundwater, we
16 are glad that we -- anticipate the coming of this water
17 pipeline, this surface water. So because of that reason
18 too we're in support of it.

19 I also want to say that I know that just kind of
20 being on the Water Commission for over several years, I've
21 learned that there's major pipelines, like there's a --
22 the Utah state has a proposal to build a pipeline from
23 Lake Powell to the southern -- along the southern part of
24 the state to communities like Saint George. That's a
25 major pipeline that's being built to give water to rural

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1 residents from the Colorado River.

2 And then there's other pipelines that take water
3 from the Colorado River to -- well, there's the one
4 biggest pipeline project in Arizona is the water that goes
5 from -- is it Lake Meade or Lake Powell? I think it's
6 Lake Meade. It goes to the Phoenix area to build those
7 big, huge urban centers, metropolitan centers, you know?
8 Those people have the benefits of this water pipeline.

9 So I think it's only timely and I think it's only
10 right. I think it's, you know, opportunistic for us to
11 have our pipeline from the San Juan River being piped down
12 to Gallup.

13 So just seeing all these major pipeline proposals
14 for other states -- and in other states, I think that, you
15 know, as far as some of these -- somebody said something
16 about equity issues. This pipeline will, you know, we can
17 benefit from this pipeline. It will increase our
18 population. It will increase our economic growth.

19 So I know my thoughts are kind of scattered. I
20 was also ready to speak up in Farmington. But my thoughts
21 are kind of scattered, but I hope I brought out a couple
22 of points, those points being that our -- it will stop the
23 migration rate of our young people off the Reservation.

24 Because the pipeline is, you know, it's just
25 great timing that it's happening now. Also the water

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1 quality of our groundwater is bad and we need to
2 supplement it with surface water.

3 And then also that this is an opportunity for us
4 to have this pipeline so that we can build our communities
5 and build our homes and build our permanent homes here
6 and, you know, and be able to stay home and be home.
7 That's -- that's what I'd like to share.

8 And like I said, my thoughts are kind of
9 scattered, but I hope that -- I hope that I put across a
10 couple of points that I have wanted to share with you
11 folks.

12 So my last word is just that this pipeline will
13 empower us, and I think we can empower ourselves. Thanks
14 for your time. Thanks for coming out. And you've seen
15 firsthand the stories of our elders. You've seen
16 firsthand some of the small water projects. And I'm
17 really thankful. Thank you.

18 THE HEARING OFFICER: Thank you, Ms. Gilbert.

19 STATEMENT BY KENNETH BEGAY

03-12

20 MR. BEGAY: I too decided to go ahead and speak
21 here because I feel it's appropriate to do so here. My
22 name is Kenneth Begay. I'm 100 percent Navajo. A gut
23 eater, I guess you can say. I told a friend one time in
24 Colorado that Navajos, they consume the entire sheep. He
25 looked at me. He said, "Everything?"

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1 "Yeah. Everything that I can cook and digest,
2 yes." So, anyway.

3 I guess I am speaking as a Navajo citizen, tribal
4 member, and also as an employee of the Navajo Tribal
5 Utility Board. I came about in the Four Corners area
6 around Tees Nos Pos. And I've lived here, schooled here,
7 worked here all my 50-plus years on Navajo. I'm very
8 happy to be here on Navajo.

9 And I myself as a child had to carry buckets of
10 water so we can fill our water barrel up in the Four
11 Corner area when I was young. And just imagine the hot
12 weather and the cold weather that we had to carry buckets
13 of water two miles from the well back to the house.

14 I was about 22 years old before my dear mother
15 was able to enjoy the convenient of running water in her
16 house. And then basically the question, why is this? And
17 there's probably people along your project, this project
18 here, that still years and years without running water at
19 their home. And, basically, why the hardship for our
20 people?

21 And basically we call the United States the land
22 of opportunity, and yet we don't have this convenient for
23 some of our Navajo people. I was somewhat a inlaw in
24 Burnham one time, and I remember we used to have a -- we
25 had a water line there. And it was ran by a chapter there

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1 up on the hill there.

2 I remember that water was really bitter. I guess
3 it had a lot of sodium in it or something. And basically
4 we would consume it because it was there. And one time I
5 was over visiting my doctor and he asked me, "Why do you
6 have this scar here?"

7 "Well, I took my gallstone out."

8 And he says, "How old were you?"

9 And I says, "I was about 22."

10 And he said, "Gosh, that's really young, too
11 young to have a gallstone removed."

12 I kind of speak back -- back to those times.
13 Right now I'm being treated for high blood pressure. And
14 I don't mean to speak of my illness on everyone, but
15 perhaps these are causes of our illness and health issues
16 because of the quality of the water we don't have.

17 In my young days, I remember water was pretty
18 plentiful. I remember a time when we went planting this
19 time of the year while -- the harvest time. It was a
20 joyful time, a time when I used to herd sheep in Red Mesa
21 area. Basically, we had the livestock dams were
22 overflowing after a very hard rain. And to this day we
23 just don't have those no more. And you can see the need
24 for water. Water is life.

25 I've been down around Phoenix and part of the

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1 Colorado -- not Colorado, either way along the Colorado
2 River that -- between Arizona and California. And every
3 time we drive by there you see the agriculture down there
4 as far as abundance, I guess.

5 And yet some of this water is coming off the
6 Navajo. And yet when we come back here, we don't have
7 that water. And I think this nation, at least the Navajo
8 Nation, and I speak for Gallup because, you know, Gallup
9 helped me to live a life. And I appreciate that. And I
10 think it's deserving to bring the project in.

11 Of course as an employee of the NTUA, I guess I
12 speak as an employee, maybe for my employees, and perhaps
13 for my customers. I don't know if you've ever seen the
14 movie The Good, the Bad, and the Ugly where the movie
15 started with a kid on a donkey going around in circles,
16 you know, trying to get water to come out of the well and
17 move to I guess a pipeline.

18 Last night I was coming back from Crownpoint and
19 I says, "How would I tell what our system looks like."
20 And I says, "Gosh, this is how it is." And then, "It's
21 not fair. I really don't think that's fair." I'd sure
22 like to get rid of that donkey and put a big motor on it
23 and move the water; that's what I'd like to see. I think
24 our customer would appreciate that.

25 You know, the other district up in Shiprock area,

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1 they are very fortunate because they buy water from City
2 of Farmington. And I'd like to serve my people up here in
3 the same -- in the same way. Good quality water. And I
4 think in my opinion the project is certainly bringing a
5 lot of opportunity for everybody, not only the Navajo
6 Nation but everybody that's surrounding the Navajo Nation,
7 at least on this side.

8 So I really encourage you to keep on top of this
9 and keep the project moving forward.

10 One other issue that sort of bothers me a lot is
11 a lot of our wells are shutting down because either we're
12 at that point in the water level where we're beginning to
13 see some contaminates in our water system. And basically
14 that's -- that's a big concern.

15 And we have to spend more money just to filter
16 them out or we just have to shut them down and have work
17 one or two of our wells as far as maybe 24 hours a day, 7
18 days a week, you know. So these are some of the issues
19 that I'd like to at least present here.

20 I can go on and on, but I think you've heard
21 quite a bit the last two evenings and of course this
22 evening. You know, I don't think elders should suffer
23 having to haul water. Period.

24 You know, just looking back at my mom, you know,
25 she was probably getting into her 50's before she had even

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1 enjoyed a convenient of running water. And, again, it's
2 just probably sooner along with the project.

3 And I think one gentleman also indicated last
4 night that we would like to enjoy the convenience as
5 people do off Navajo. The green lawn, I think that's sort
6 of what we relate to. I'd like to see that.

7 A guy says, "I live two miles from Crownpoint,
8 and I don't even have a connected water system -- or
9 connected to a water system." And a lot of economic
10 development can be happening also.

11 But yet we have to tell either the Nation or the
12 project sponsor that we don't have enough to serve your
13 project, it shouldn't be. It shouldn't be. We need to
14 progress as a nation, the whole nation and surrounding
15 neighbors.

16 Contamination, it's happening. We've got so many
17 regulations hitting us left and right. And we struggle to
18 maintain within those limits. But if you -- if your water
19 is down to the level where there's no way you can filter
20 those contaminates, we have no choice but to shut it
21 down.

22 So this project hopefully can replace some of
23 those wells. Maybe we can start using those wells to
24 start doing our planning for our livestock, and then
25 that's an idea.

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1 Last, I want to speak -- I'd like to say that I
2 think a majority of the people that came up here spoke
3 from the heart. You know, this is what we struggle with.
4 We need to be treated as people too.

5 You know, the United States Government promises.
6 And sometimes we kind of I guess in a way have ill
7 feelings when Native Americans sort of speak the fact
8 that, "Here's the treaty. Please honor as you promised."
9 I feel the same too. And, again, in the land of
10 opportunity, why is our Navajo people suffering in this
11 manner?

12 And last, as I was saying, we spoke from the
13 heart. Please, deliver our message and our concern from
14 your heart to the United States Government. Thank you.

15 THE HEARING OFFICER: Thank you, Mr. Begay.

16 STATEMENT BY TERESA SHOWE

03-13

17 MS. SHOWE: My name is Teresa Showe, and I work
18 for the Navajo Department of Water Resources. And I guess
19 I'd like to tell you about my experiences living here in
20 the Navajo Nation.

21 Actually, I grew up with a faucet. I grew up in
22 Los Angeles, California. My parents relocated from the
23 Navajo Reservation in the '50s to Los Angeles. I came
24 back as a teenager to the Navajo Reservation in Ganado,
25 Arizona.

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1 But now I haul water. I've been hauling water
2 because we moved to a location in Fort Defiance where my
3 husband lives. And I just promised us a water line ever
4 since we moved there. The water line is in, but the water
5 is not in the pipe yet.

6 I tell my kids many, many times we live in the
7 best place in the world. We have no tornados. We have no
8 tsunamis. We don't have major floods. But we just don't
9 have no water. We don't even have smog here.

10 My dad and -- I've met many retirees. They like
11 to come home. But there's no infrastructure. There's no
12 water for them. So, you know, I think the water line will
13 benefit many, many Navajo people. You know, I haul water
14 for many years.

15 I have relatives who are poor because maybe of
16 alcoholism or other circumstances. You know, so they
17 don't get their water from a tap. They get it to the
18 nearest livestock well. And on those livestock wells it
19 says, "Do not haul water for domestic purposes."

20 But they are poor. And with the price of
21 gasoline nowadays, they have to go to the nearest source.
22 So we may see an increase in health problems.

23 One of my friends and I are farmers down in
24 Ganado. We have a -- we used to have a harvest festival
25 there, and it was pretty wholesome. And, you know, it

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1 concluded a couple years ago. But he and I -- we invested
2 in a water dunker.

3 We haven't brought it out of the shed because
4 people -- it's been a drought year; people say, "You're
5 going to waste water." So we can't even bring that water
6 dunker out. I mean, it's a fun time of the year during
7 harvest, but it's just parked in the garage there.

8 I think, you know, for -- there's not many of us
9 urban Indians, so to speak, that come home; but there are
10 a few of us. And we do live with different hardships
11 because we did not grow up here like our relatives did.

12 And we aren't looked upon differently in some
13 cases. Some cases they think we're more educated. But we
14 share just the same hardship as they do at a different
15 time frame.

16 As a farmer, you know, I just do it because I
17 can't speak the language. So one of my -- I guess my
18 contributions to the Navajo Nation is growing corn,
19 traditional corn. So it's not that, you know -- so
20 because corn is very important to the culture along with
21 the other crops. You see it on the Navajo Nation flag and
22 other areas. So that's my contribution.

23 And, of course, the corn here doesn't use as much
24 water but it does need water. And, you know, I try to
25 continue proliferating that particular piece of the

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1 culture. It's not a hobby. You know, I think it's part
2 of us. It's who we are.

3 And I think this water line I know, as Mr. Kiely
4 has said, it's not for agriculture. But I think a lot of
5 small gardens, home gardens will be sprouting up behind
6 people's yards just to keep the culture alive. Thank you.

7 THE HEARING OFFICER: Thank you, Ms. Showe.
8 Anyone else that would like to speak? Yes, please come.

9 FURTHER STATEMENT BY ALFRED BARNEY

10 MR. BARNEY: Thank you for giving me the
11 privilege again. Like I said before, my name is Alfred
12 Barney. And since this is a public hearing on the
13 Environmental Draft Impact Statement, I would like to -- I
14 was going through your book here. And I had a concern on
15 it. And the thing is like I said before, I'll support the
16 project.

17 And when these two are completed in 2040, where
18 it says it's going to serve 250,000 people along the
19 pipeline, and with the way your estimate cost is, there's
20 always a good and a bad to everything. And most of the
21 things you see here is the good side.

22 I would like to see something on the negative
23 side. All it says it will impact the habitats, the
24 wildlife and the plants. But looking through your --
25 looking at the project costs and constructionwise, all it

03-13-01

03-14

Comment PH-03 – continued

61

1 says is the treatment plant and so many miles of
2 pipeline. And it doesn't say if it's going to be
3 underground or above ground, in the air, you know.

4 And I would like to stress that more safety
5 precautions are put into the planning. See, you're going
6 to be serving 250,000 maybe up to 300,000 people. And if
7 this water line, the pipeline, isn't secure or safety
8 precaution from the bad people, you're going to close
9 300,000 people.

10 So we'd like to see all the safety devices that
11 can be implanted into this system. And we don't know what
12 size the pipeline is going to be and regulators going to
13 be installed. Or maybe you might have some substation in
14 it.

15 But, you know, I would like to stress that more
16 safety elements are put into the system to protect
17 everyone that's going to be utilizing the system. And as
18 the Hearing Officer, Commissioners, I would like to
19 appreciate and express, you know -- request to the
20 Department of the Interior Secretary to push on this
21 project, support our projects.

22 And I think it would be better -- it would help
23 too if our Water Commissioners from here can do a petition
24 drive where we can send it to our leaders, governors or
25 legislatures, senators, and everything. So that will be

03-14-01

Comment PH-03 – continued

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1 to get more support on this project.

2 (Mr. Barney spoke briefly in Navajo at this
3 time.)

4 THE HEARING OFFICER: Thank you, Mr. Barney.
5 Would anyone else like an opportunity to give us their
6 comments? We'll turn the time back to Mr. Benson for a
7 moment.

8 MR. BENSON: No. I would like to say something.

9 THE HEARING OFFICER: Oh, you'd like to speak.
10 So, I'm going to give Mr. Benson the floor to speak, then.

11 STATEMENT BY MICHAEL BENSON

03-15

12 MR. BENSON: I'm going to give myself all the
13 time I need.

14 Michael Benson is my name. I am a voter at Two
15 Grey Hills Chapter, one of the chapters to be served by
16 this project. And I fully agree that this project is
17 needed. But I wanted to take this opportunity to practice
18 answering some of the racist ideas that will come up in
19 the Farmington area.

20 One of the things that those people will say and
21 that they are saying is that even if we build those large
22 pipelines, it won't do much good for the Navajos because
23 there's no local water lines to take water to the homes.

24 I guess if you're a racist, you don't think
25 rationally. What do they think? Do they think that when

Comment PH-03 – continued

63

1 those pipelines come, the Navajos are just going to sit
2 there and look at them? No. We're going to use water
3 like everybody else does. When they see water, when water
4 is available, we'll use it.

5 You heard at the hearings last night at
6 Crownpoint, people from, oh, three, four chapters saying
7 that if there was a water supply, they would get a housing
8 project from HUD. That tells you that if the water was
9 there, there would be homes built with plumbing and water
10 coming out of faucets to keep people healthy, to live in a
11 modern way.

12 And the Navajo people want to live that way.
13 They like living rurally, but then you heard them say they
14 want these housing projects. Maybe they'll have their
15 ranches, but they'll have these houses with modern
16 conveniences that they'll live in as well.

17 There's a project that was built right across the
18 road called Karigan Estates, and I understand that it
19 filled up right away. And now there's a waiting list. So
20 Navajos will come from their rural areas. And they don't
21 mind living close to each other where there's water
22 systems.

23 So if the pipe -- the big pipelines are built,
24 there will be more housing projects built by HUD. And
25 Navajos are smart. They'll do things with that water.

Comment PH-03 – continued

64

1 The Navajo Nation is using its own money to build water
2 lines now.

3 Recently, the Navajo Nation Council funded a long
4 water line to Navajo Mountain in Arizona and Utah. And
5 that's going to cost \$1.5 million. That shows the resolve
6 of the Navajo Government, to take water to where Navajos
7 live.

8 So if these big pipelines full of water come,
9 we'll know what to do with it. And if these people around
10 Farmington weren't racists, they would see that we're just
11 like them. We think. We can do things. And when this
12 water comes, we'll use it. We'll build our economy.
13 We'll build homes with running water. And our people will
14 be healthier.

15 I've been asking people that I work with, I say,
16 "We need to sit down and talk back -- figure out a way to
17 talk back to these people that are saying that we don't
18 need these water lines." And we haven't done it. And
19 just tonight I came up with some of these thoughts.

20 And it's racism. You know, what do they think?
21 They think we are not like them. They think that if
22 there's water in a big pipeline we won't know what to do
23 with it.

24 Yet you've been hearing all these NTUA
25 personnel. Last night, you heard like three or four of

Comment PH-03 – continued

65

1 them. You notice how technical they were. They know what
2 to do with water. So don't believe those racists in
3 Farmington.

4 THE HEARING OFFICER: Thank you, Mr. Benson.
5 Well, it appears we've heard from everybody here who would
6 like to speak, but is there anybody else? Please come up.

7 STATEMENT BY EFFIE ASHLEY

03-16

8 MS. ASHLEY: Good evening, Panel. Thank you for
9 coming here. My name is Effie Ashley. I'm a
10 representative of this chapter, Secretary/Treasurer. And
11 I'm thankful that you all came here tonight for this
12 public hearing regarding the water line. And we'll be
13 appreciative if you could help us bring the water line to
14 here and first of my brother's place, Alfred Barney.

15 And I have great concern for the other
16 communities if they can't get the water line as well as we
17 do. So I'm in support -- what I'm saying is I'm just in
18 support of this project. So on behalf of my people, I've
19 been thanking you for making the connection with whoever
20 that will be working on this, so -- worked very hard.

21 And then it's been going on -- I hear about this
22 topic for some time. It's on again, on again, you know.
23 And so I was kind of concerned about it, but I was very
24 happy the fact that you came here and you've come here,
25 so.

Comment PH-03 – continued

66

1 I just want to tell you about my background, my
2 story as a young girl, how hard a hardship it was to have
3 to haul water, even just to do laundry. Where a young
4 girl, we -- my cousins and I, we -- they are on the
5 southwest of -- at Navajo Nation fairgrounds. That's
6 where my mother's homestead is and my grandfather and my
7 other relatives.

8 And so my cousin and I used to build a fire
9 and -- right along the wash and then after the rain, we
10 would get the water from the wash and beat it up and then
11 boil water and then do our laundry there and put our
12 clothes there on the -- on the fence and then to dry. So
13 I remember this very well.

14 And at the time I was -- I didn't consider it as
15 a hardship because I was a young girl, and I enjoyed being
16 with my relatives and sharing chores at that time.

17 As I got older, it was such a hardship how my
18 grandfather and I had to get on the wagon to go a long
19 ways from -- it's about two or three miles through Saint
20 Michaels over here, mission. There is an old windmill --
21 or where we used to get water there, just my grandfather
22 and I.

23 So I remembered those times that I spent with my
24 grandfather, which was a joyous time but then at the same
25 time as a hardship though.

Comment PH-03 – continued

67

1 And I went off the Reservation to a boarding
2 school up in Utah and -- where -- where I took showers and
3 slept in a warm bed. That was a -- really a treat, and
4 that was life. So, I stayed there. Well, I went there,
5 completed my primary program is what they called it in
6 Utah at the time.

7 And I got married there and start having
8 children. I have six kids now, but they are all grown
9 now. I have grandchildren, great grandchildren, so. And
10 when my six children left, they were older. I decided to
11 come back. My intention was always to come back because
12 my Mabel was buried here.

13 And my ex-husband didn't want to come and move
14 back here because he said there was nothing. No water, no
15 jobs, no nothing. But my desire was to come back. Like I
16 said, my Mabel was buried here, and I'm from here. Even
17 though there was nothing here. Just nothing but dirt and
18 weeds and no water. Nothing here. I still wanted to come
19 back, so I did.

20 After 25 years, I came back here and got a job in
21 Fort Defiance and went there and worked for General
22 Dynamic for several years. 1998 there was a big layoff,
23 so I was one of them and by that time I got my homesite
24 there, my late father's homestead.

25 So, my spouse and I build a hogan. And we had to

Comment PH-03 – continued

68

1 haul water from over here in the mission from the well.
2 We didn't mind. That was life for me. I didn't have to
3 mind hauling water but because only I didn't have to do
4 it; he had to do it. He didn't mind. He didn't
5 complain.

6 And but we wanted to build a house, and so we
7 could have running water. So which we did. And then of
8 course to build this house it took us a long time, just
9 when money was available to buy materials to buy things
10 for the house and finish building it.

11 After 10 years maybe we finally got it completed,
12 but right along after we got our hogan built, we -- I
13 started working with IHS. I keep -- I keep going over
14 there and trying to move fast and bring the water line to
15 us. But they said that we had to have a house. So which
16 we had to work on it, you know, to start building.

17 Finally, at two years ago, they brought the water
18 line to us. So we completed the house recently and then
19 about a year ago, but since then, we haven't actually
20 moved in there because the winter was still here and it
21 was cold. And we just stayed in the hogan.

22 But whenever I go into the house, take a shower,
23 you know how you first turn on the water, the water is
24 cold? So I try to preserve that cold running water first
25 until the hot water comes on, and I save that water.

Comment PH-03 – continued

69

1 That's how conservative I am. Water is so precious to
2 me.

3 And as far as for the hogan, he's there, goes and
4 get the water from the well. And then there's, of course,
5 there's the price issue with the NTUA where they cost so
6 much where it's just cheaper to get the water from the
7 well. So we still haul water.

8 And then -- but now there's the gas issue, the
9 price of it. So but we still haul water, you know, to
10 water our trees and stuff like that. But we won't dare
11 and waste our house water on such thing. We even put a
12 washing machine in the house, but I have never turned it
13 on. I still take my laundry to the laundromat.

14 So I'm just making a point of how precious water
15 is here. So, just grateful for that. It's now finally
16 going to become a reality that you actually will bring it
17 to Saint Michaels here. So I'm very proud. And then
18 hopefully that we'll be able to share with other
19 communities from there.

20 And this is that I just share my life stories of
21 this hardship of having -- not having any water. Of
22 course, my children -- I have five still living in Ogden,
23 Utah. And then one in Fort Pierce, Florida, where there's
24 a lot of water right next door, the beach.

25 And then every time I go to Utah to visit my

Comment PH-03 – continued

70

1 children, my grandchildren will be playing on the lawn or
2 spraying water on each other; and I kind of kidded
3 jokingly and say to them, "Don't waste water. You waste
4 water here and I don't get any down in Arizona." So they
5 just laugh.

6 And I'm just trying to make the point that my
7 people will appreciate it. You know, they all have a hard
8 time. Some people don't even have a bathroom addition.
9 That is another problem here with our communities.
10 Because there's no bathroom addition, then you can't bring
11 the water line to their homes. So there's one thing after
12 another.

13 They are talking about infrastructures, the water
14 line, and stuff like that, but we have to get the fundings
15 first. If there's no funding, we can't work on these
16 projects.

17 (At this time, Ms. Ashley spoke in Navajo.)

18 MS. ASHLEY: This is all I wanted to share with
19 you, my short story on my life as a young girl hauling
20 water. Water is very precious for us. It's going to be a
21 reality. And I thank you again tonight.

22 THE HEARING OFFICER: Thank you, Ms. Ashley.
23 Anyone else who would like to speak?

24 FURTHER STATEMENT BY KEE IKE YAZZIE

03-17

25 MR. YAZZIE: Again, my name is Kee Ike Yazzie.

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1 I'm a member of this chapter. And I went to school here
2 at Saint Michaels Catholic School. I live here and I work
3 here. And I'm over 50 years old.

4 And I would like to say ditto to everything that
5 the people said. Two gentleman alluded to the Treaty of
6 1868. To me, that 1868 is a reality today. It's still a
7 reality, even though the Treaty of 1868 was signed between
8 the Navajo Nation and the government, 140 years almost.
9 It will be 2008 next year.

10 As a college-educated person, as a professional
11 person, that's still a reality today. I have relatives
12 that still haul water, that still live in a rural area.
13 When the census takers came to take a census -- if you
14 look at a census paper, it said in there, do you have
15 indoor plumbing; do you have a rest room; do you have a
16 garage; do you have a cell phone; do you have a computer?

17 They use those concepts to say that we were
18 living in poverty. We weren't up to standards. My
19 grandmother, my relatives to this day, if you go to their
20 hogan with the earth and floor, built out of logs with a
21 dirt roof, with a wood stove, her house is clean.

22 Her dishes are clean. Her bedding in the west
23 side is clean. Her blankets are clean. She doesn't have
24 mice infestations. She doesn't have bugs. We have people
25 still living in that condition, but we are not poverty

Comment PH-03 – continued

72

1 stricken.

2 But the reality of 1868 within our own country
3 still prevails. All what the people have said tonight,
4 it's a reality. And yet this power line goes down to
5 Tucson, Phoenix, to California, Nevada, Las Vegas. Now
6 the people of Texas want our water.

7 They have a water commission within the state of
8 Arizona -- I don't think the Navajo Nation is a part of
9 that commission -- to sell the San Juan, the Colorado
10 River water to all these states.

11 The Treaty of 1868 is still a reality today. We
12 do not have roads. We do not have a infrastructure. We
13 want to build our own Navajo Nation, but we can't because
14 the infrastructure is missing.

15 We do not have roads for the bus transportation
16 for our children. They miss school. They miss out on
17 homework. They miss out on the opportunities of
18 education. Yet they say our children are ignorant.

19 We just do not have the opportunities that the
20 outside society have. They have access to libraries, to
21 water, to parks, to restaurants, swimming pools,
22 libraries. That's the reality of the Navajo Nation. But
23 we still live it today.

24 Water is a luxury to us. In the wintertime we
25 used to melt the snow to heat it, to bathe ourselves, to

Comment PH-03 – continued

73

1 wash our dishes. Haul the water to drink. We still do
2 that today.

3 When the thunderstorms come in the summertime, we
4 get the shampoo, the soap, and the wash rag; and we would
5 shower under the thunderstorms outside on the porch.
6 That's how we live. But yet I believe that our culture
7 has sustained us.

8 The prayers and songs of our people who went to
9 Ft. Sumner in 1864 to 1868, marched a 300-mile trek, a
10 forced march by United States Government to our people.
11 We said our prayers and our songs. Even our headman went
12 to Washington, D.C. He said, "Do not take us anywhere
13 else, like the Indians of Oklahoma and Florida." With
14 that, we were given back our homeland.

15 So it is very, very important that the non-Indian
16 people understand that. We're not different. You cut
17 your hand. I cut my hand. My blood is red. I use the
18 rest room. I eat. I need to nourish myself. We're just
19 unique as Indian people, and we didn't ask to be that
20 way. We didn't ask to be put on Reservations.

21 We were asked to fight for everything we have.
22 And we're still fighting to this day. We have to sue the
23 BIA because they were doing restructuring. They wanted to
24 move the offices to the border towns. We have the most
25 schools run by the BIA on the Navajo Nation.

Comment PH-03 – continued

74

1 The Yankton Sioux Tribe, the Pueblos of New
2 Mexico sued the BIA because they did not consult the
3 people, and that's in the Treaty of 1868. They promise a
4 teacher for every 30 students. They promise us
5 livestock. They promise us water.

6 To this day we are still fighting for the basic
7 needs that the non-Indian people enjoy today, and that's
8 the reality. And I believe this water project, it is a
9 partnership, for we share that water with non-Indian
10 people.

11 And I believe Mr. Benson alluded to that racism.
12 We have our professionals. We have teachers and lawyers,
13 scientists, and electricians. We have NTUA people. We
14 know what to do. All we ask is for that opportunity. The
15 government wrote the laws, the policies, the regulations.
16 They have the court system. They interpret the law, the
17 rules the way they want to.

18 Yet we have to get the money that could go for
19 helping our people in education, social services, the law
20 enforcement. Yet we have to pay for lawyers to fight for
21 what is rightfully ours as Navajo people. We are still
22 fighting to this day. And that's the reality.

23 The Treaty of 1868, yes, it was 130 years ago,
24 but it's still a reality today. And I want you folks to
25 understand that. We need this water project. We need

Comment PH-03 – continued

75

1 each other. We're all human beings who want to enjoy the
2 fruits of what America has to offer. And we are still
3 fighting to this day. Thank you.

4 THE HEARING OFFICER: Thank you, Mr. Yazzie.

5 Is there anyone else who would like to make any
6 comments here? Okay. We'll stick around for a little bit
7 longer. We have a lot of information in the back, if you
8 haven't seen that yet, and probably still some
9 refreshments back there.

10 We appreciate you very much for coming tonight
11 and giving us your comments. We're really grateful to
12 have had this opportunity to be here and we wish you all a
13 safe journey home. Thanks.

14 (The hearing adjourned at 8:37 p.m.)

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Comment PH-03 – continued

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1 C E R T I F I C A T E

2

3 I, Tanya M. Nims, a Certified Court Reporter, do
4 hereby certify that the Proceedings of the above-entitled
5 project were reported by me stenographically on May 24,
6 2007, and that the within transcript is a true and
7 accurate transcription of my shorthand notes.

8 I further certify that I am neither an attorney
9 nor counsel for, nor related to or employed by any of the
10 parties to the project, and that I am not a relative or
11 employee or any attorney or counsel employed by the
12 project hereto, or financially interested in the project.

13

14

15

16

17

18 TANYA M. NIMS, RPR
19 Certified Court Reporter #168
License Expires: December 31, 2007

20

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22

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24

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Comment PH-04

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NAVAJO-GALLUP WATER SUPPLY PROJECT

5

PLANNING REPORT

6

AND

7

DRAFT ENVIRONMENTAL IMPACT STATEMENT

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11

PUBLIC HEARING

12

June 5, 2007

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Shiprock Chapter House
Shiprock, New Mexico

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23 REPORTED BY:

24

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25

4PH

Comment PH-04 – continued

2

1 MEMBERS OF THE PANEL

2

3 John Bezdek, Hearing Officer, Deputy Director and
4 Chief Counsel, Secretary of the Interior, Indian
5 Water Rights Office, Washington, D.C.

6

7 Rege Leach, Bureau of Reclamation Project Team Leader,
8 Western Colorado Area Office, Durango, Colorado

9

10 Carol DeAngelis, Bureau of Reclamation Area Manager,
11 Western Colorado Area Office, Grand Junction,
12 Colorado

13

14 Bernadette Tsosie, Regional Hydrologist, Bureau of
15 Indian Affairs, Navajo Area Office, Gallup, New
16 Mexico

17

18 Michael Benson, Navajo Nation, Department of Water
19 Resources

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21 Joanna Austin-Manygoats, Interpreter

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Comment PH-04 – continued

4

1 TUESDAY, JUNE 5, 2007, 6:30 P.M.

2 (At this time, Mr. Benson gave an introduction in
3 Navajo and proceeded as follows in English:)

4 MR. BENSON: I briefly talked about the reason
5 for the meeting here tonight.

6 There were scoping meetings on the Navajo-Gallup
7 Water Supply Project back in 2001. So then at that point
8 began a study of how water might be brought to this area
9 in blue, the Navajo Nation chapters in the New Mexico
10 area.

11 And there was a Draft Environmental Impact
12 Statement that is completed. And tonight's meeting is to
13 give you an opportunity to comment on that if you've read
14 it, or if you just want to comment based on what you know
15 about the -- about what you've heard about the project.
16 That's fine.

17 The Navajo-Gallup Water Supply Project. This is
18 the Preferred Alternative. There were 12 different
19 alternatives that were examined for costs, all kinds of
20 feasibility. And this was determined to be the best, the
21 preferred.

22 And there's two pipelines, all part of one
23 project. There's one pipeline, as I told you, taking
24 water from the PNM intake at Kirtland, and that pipeline
25 would run along the river towards Shiprock and then it

Comment PH-04 – continued

5

1 would go along Highway 491 to Gallup. There will be a
2 major lateral to Nahodishgish.

3 And the reason it's to Nahodishgish is that
4 there's already a water line that goes to Crownpoint. So
5 there's already a pipeline that goes from Crownpoint to
6 Nahodishgish, and that's why the pipeline goes to
7 Nahodishgish. There's already a regional system right
8 now. Littlewater, Crownpoint, Nahodishgish, Becenti,
9 Standing Rock, that's all going to be one regional
10 system.

11 And there will be a spear to Gallup, and through
12 Gallup there's right now construction of lines to take
13 water through Gallup to the chapters surrounding Gallup.
14 And this project won't deliver water until 2022, but
15 there's other plans to meet people's needs in the
16 interim.

17 For example, the Cutter Lateral is already being
18 built. The State of New Mexico gave us \$17 million this
19 year to connect the systems from Huerfano to Nageezi,
20 Counselor, Ojo Encino, Pueblo Pintado to Whitehorse Lake.

21 And there's a lot of water at Huerfano and
22 Nageezi, so we can take that water and put it into the
23 system here. And it will deliver water to Whitehorse
24 Lake, Pueblo Pintado, Torreon.

25 There was recently a high school built at Pueblo

Comment PH-04 – continued

6

1 Pintado, and there wasn't enough water for it. There's
2 problems with water pressure and all of that. But they
3 will be solved once the 17 million is spent on connecting
4 all these water systems and drilling more wells here to
5 put in there for the interim.

6 In the Gallup area, we can't wait until 2022.
7 Manuelito is out of water. We've gotten 6 million from
8 the State of New Mexico to build an interchange through
9 Gallup.

10 Within a year we hope to begin delivering water
11 from Twin Lakes to Manuelito and eventually to other
12 chapters, Red Rock, Breadsprings, Chichiltah, Iyanbito,
13 Church Rock -- well, within a year, it will be possible to
14 take water to Church Rock as well.

15 In the Shiprock area, what do you do before
16 2022? The Animas-La Plata Project made available 4600
17 acre-feet of water. And it included the construction of a
18 bigger pipeline from Farmington to Shiprock.

19 Some of you may already note there's already a
20 small pipeline that was built I believe in the early '70s
21 from Farmington to Shiprock. And that pipeline is being
22 enlarged. And they'll serve the communities along the
23 river and Shiprock while we're waiting for this project to
24 happen.

25 With that introduction, I'll turn it over to

Comment PH-04 – continued

7

1 Mr. Bezdek to tell you the rules of the hearing here.

2 THE HEARING OFFICER: Good evening and welcome to
3 the open house and public meeting on the proposed Navajo-
4 Gallup Water Supply Project.

5 Actually, I'm going to turn that off. Can
6 everybody hear me?

7 Thank you for allowing us to be here. As Michael
8 has said, we do have somebody here to interpret in
9 Navajo. And so I'm going to talk a little bit and stop
10 and let her interpret kind of what we said. So when
11 speakers come up, I would ask that they do the same thing.

12 This public meeting and the open house that we're
13 having here tonight is being conducted pursuant to the
14 National Environmental Policy Act, which Michael talked
15 about earlier. The purpose of this open house is to hear
16 your comments, thoughts, and views on the proposed
17 project.

18 Representatives of the federal government here
19 today are prepared to take your comments and thoughts back
20 to the decision-makers of this project. And while we're
21 prepared to answer your questions with regards to factual
22 matters, because no decisions have been made, we are not
23 here to engage in discussions about the relative merits of
24 this project or its alternatives that have been discussed
25 in the NEPA documents.

Comment PH-04 – continued

8

1 We are here to listen to you. Whether you choose
2 to make your comments orally or you provide your comments
3 in writing, they will both be considered equally. We will
4 address all comments as part of the Final Environmental
5 Impact Statement process.

6 We are all aware that there is a connection
7 between the project that is the subject of this
8 Environmental Impact Statement and the overall settlement
9 of the Nation's water rights claims on the San Juan
10 River. We are also aware that there has been legislation
11 introduced in the congress by Senators Bingaman and
12 Domenici that would resolve the water rights settlement of
13 the Navajo Nation on the San Juan River in part by
14 authorizing the construction of this project.

15 As of this time, the administration has taken no
16 position with regards to the settlement. Because this is
17 an open house about the project and not about the
18 settlement, we please ask that you direct your comments
19 and concerns about the overall settlement to your elected
20 officials. We are here tonight to talk about the EIS
21 project.

22 We have scheduled the meeting to end around 9
23 o'clock this evening in order to allow folks to get home
24 at a reasonable hour. Right now we have four individuals
25 who have signed up to speak. And for the time being,

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9

1 we'll ask you to limit your presentation at 10 minutes if
2 at all possible.

3 After we go through the list, if anybody else
4 would like to stand up and make any statements, we would
5 welcome them. Or those of you who are in the original
6 four have any additional thoughts to say, we would ask
7 that you go back and finish up your thoughts.

8 We have a timekeeper, Michael, to help us keep on
9 track. We don't have too many folks here tonight, but we
10 would like to the extent possible to try and keep on track
11 with our time.

12 The first person to sign up to speak tonight is
13 Mr. J.C. Begay, please.

14 STATEMENT BY J.C. BEGAY

04-01

15 MR. BEGAY: (Through the Interpreter) Thank you
16 for giving me the floor. And where are all the
17 communities from this chapter and this part of the Navajo
18 Reservation, the Northern Agency? Many of the supporters
19 of the water rights issues are here. But I do appreciate
20 me coming up before you to speak.

21 I'm from the Red Valley area. I'm the Chapter
22 President. My main concern is the proposed water pipeline
23 from the Shiprock to Gallup area. It seems like the
24 emphasis is on Gallup. I know that the people from the
25 Gallup area are voters, and they vote for the senators

Comment PH-04 – continued

10

1 that are doing their jobs regarding the water rights
2 issues.

3 On the map you can see that my chapter is
4 excluded because we sit on the borderlines of Arizona and
5 New Mexico state lines. I think that equity of the
6 distribution of water should be a fair allocation to the
7 communities.

8 I had spoken at the Farmington and the Bloomfield
9 public hearing in the past. It seems like there's nothing
10 that I've said that was included in the Draft EIS. I
11 don't think it's fair. My main reasons for stating this
12 is because our water has been contaminated by the uranium
13 mining activities. Our groundwater is contaminated.

14 We need the pipeline to be extended to the Red
15 Valley area as well as to the Cove area. If you're going
16 to be serving the Window Rock/Saint Michaels area, why not
17 also serve our community as well, and not so much emphasis
18 on the Gallup community.

19 We are the Navajo people that need the water, and
20 it's not fair to all the chapters not to be included.
21 We'll have a written comment forthcoming from our chapter,
22 and I'll want to come back up to speak a little more about
23 this project.

24 MR. BENSON: Lena Fowler, Navajo Nation Water
25 Right Commissioner, Tuba City. Katie Gilbert, Navajo

04-01-01

Comment PH-04 – continued

11

1 Nation Water Rights Commissioner, Fort Defiance Agency.
2 Ray Benally, Director of the Navajo Nation Department of
3 Water Resources. Peter Desmond, Chapter Coordinator,
4 Shiprock Chapter. Jeff Kiely, Northwest New Mexico
5 Council of Governments, Deputy Director.

6 THE HEARING OFFICER: Our next speaker this
7 evening will be Charley P. Joe.

8 STATEMENT BY CHARLEY P. JOE

04-02

9 MR. JOE: (Through the Interpreter) Did I use up
10 my 10 minutes already? Hello to the Panel, to the water
11 resource staff. Welcome everybody here. Our leaders, our
12 Chapter Officials, Water Rights Committee, good evening.
13 This is what we call the respectful way of addressing our
14 people in the Navajo lifestyle. I don't see this
15 happening with the Anglos.

16 Water is sacred. It has a name. It has a sacred
17 name in the Navajo way. And to speak to the issue of
18 water to this sacred element is very difficult and
19 complex. To take this water from these routes, the
20 intention is actually for our children.

21 I have three grandchildren. By the time the
22 water is implemented or installed, they would be 18, 16,
23 and 15 years old. And I like the idea because it will be
24 distributed among our community people.

25 This proposal is not for our use. It is for our

Comment PH-04 – continued

12

1 future generations, for our livestock, and our land and
2 anybody else that use the land and the water. Our
3 grandchildren will need the water in the future, so we
4 will not as member of the Navajo tribe have that much use
5 in the future because it is mainly for our grandchildren.
6 And that is why I really support this project.

7 The two routes will determine the amount of water
8 that will go to our communities and how we use the water
9 will also be established by the federal government as to
10 the amount of water we use.

11 The native people have first priority to the
12 water. I, myself, would like to support that, to support
13 the proposal, since it is for the future generation of our
14 relatives. We are all related. That's what we call
15 stability and unity. Our relatives will be able to use
16 the water in the future. And that is my comment. I am in
17 support of this proposal.

18 THE HEARING OFFICER: Our next speaker this
19 evening is Tonny Bowman.

20 STATEMENT BY TONNY BOWMAN

04-03

21 MR. BOWMAN: (At this time, Mr. Bowman spoke
22 briefly in Navajo.)

23 What I have is what I've heard. At other times,
24 that the -- you should speak to the issues that have been
25 presented to you or those issues that are already

Comment PH-04 – continued

13

1 published. But many of us haven't been to all the
2 meetings.

3 Someone mentions here that we're going stop this
4 meeting by 9:00 because we have different places to go
5 to. And I just came from Twin Lakes, New Mexico, which is
6 about 113 miles one way. And I understood there was going
7 to be a meeting this morning here. So I understood that
8 it was going to be in Farmington. So I went to
9 Farmington. And that was on my way home when I found out
10 you were having a meeting here. So I stopped by.

11 Mainly, it seems like there are two issues here.
12 One issue is the San Juan River to go to Gallup, New
13 Mexico. The last time -- I'm not exactly sure when it was
14 in, I think 2002, that I attended a Gallup meeting and
15 they mentioned they only had about 15 years of water left
16 underground. And I wonder about that time.

17 Why would such intelligent people who have Ph.D.s
18 and law degrees and so on and so forth want to build a
19 city in the desert? And they have to get water from
20 somewhere else. Why don't they move closer to Gallup -- I
21 mean, closer to where there's water.

22 I understand that because of global warming some
23 of the places are going to be flooded, maybe Los Angeles
24 and so on and so forth. That you don't have to get water
25 by the way it is now.

Comment PH-04 – continued

14

1 The reason why the other one that I've heard was
2 that Twin Lakes underground water and that Mr. -- Michael
3 mentioned that the water from Twin Lakes is going to be
4 pumped out and is going to be pumped to -- or to
5 Manuelito, New Mexico. That sounds odd to me.

6 And if people are talking about it being for our
7 future, it's not for us. And if it's going to be for the
8 future, why are you talking about it now? It's not going
9 to be a concern to you.

10 I'm saying it concerns me because I live in Twin
11 Lakes. I don't have running water. I have no access to
12 the roads. I have power, but it's what I have now. And
13 that has been coming for a long, long time now.

14 My great grandmother was in a concentration camp
15 in Ft. Sumner. And many of the people were held as slaves
16 by the Mexicans under New Mexico 1990 Section, state
17 statute. And the process was to eliminate all the Indians
18 in the United States. And that was very similar to what
19 the Nazis did in Europe.

20 I know this because I'm an ex-GI. I served in
21 the Far East and I served in Munich, Germany. So if
22 anyone can speak in Deutsche.... I can translate into
23 Deutsche, too. But that's besides the point.

24 And so, therefore, we're not really -- I guess I
25 should have been living the life of a good life with good

Comment PH-04 – continued

15

1 houses, with running water. My kids would be educated,
2 and they would be doctors or teachers or engineers and so
3 on, so forth.

4 How many of your kids are going to school like
5 that? How many of your kids are getting the best
6 education and so on and so forth? I would say none or
7 zero.

8 And so we're talking about water, which is
9 necessary, a necessity of life. And that's why Gallup
10 wants it. And Domenici wants to, as all politicians do,
11 the senators and so on, so forth -- all those guys, they
12 want to pay off their constituents -- their donators. And
13 I think that's what has been going on.

14 But all I'm saying is instead of getting written
15 papers to the people say, "Please respond to this," we
16 don't have any access to those materials. And that's my
17 concern. And I wish, you know, that you don't combine
18 Twin Lakes aquifer with the San Juan and Gallup water
19 line. That should be a separate issue. That should be
20 fully discussed.

21 And I'm the one from -- who lives in Twin Lakes.
22 I should be the first one you should contact. Don't
23 get -- contact people from Arizona to agree to what goes
24 on in Twin Lakes. And like people -- a lot of people who
25 are all on Navajo water lines and making decisions are

04-03-01

Comment PH-04 – continued

16

1 from Arizona. It doesn't affect them. They can make any
2 kind of decision they want because they don't get hurt.

3 I'm the one, my kids are the one who is going to
4 get hurt, if there are going to be injury. If there's
5 going to be benefit, let the benefit -- not let any money
6 that's going to go somewhere go to Window Rock and where
7 the people can go to Las Vegas and watch the show girls.
8 Thank you.

9 MR. BENSON: I have two more introductions. Our
10 host tonight, the Chapter President from Shiprock Chapter
11 Chili Yazzie. The Honorable Chapter Vice President Donald
12 Benally from Shiprock Chapter.

13 THE HEARING OFFICER: Our next speaker this
14 evening is Wilson Ray.

15 STATEMENT BY WILSON RAY

04-04

16 MR. RAY: (Through the Interpreter) This is
17 Wilson Ray, President, Huerfano Chapter. Greetings to all
18 my people here, the distinguished leaders, chapters,
19 distinguished individuals from Gallup. I welcome you to
20 the public hearing. The main reason that we are here I
21 think is that there's a main issue that we need to talk
22 about at this setting.

23 We talk about the past and we bring other
24 elements into the public hearing. We need to talk about
25 the main issue of water as it is with us today. The

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17

1 federal government has prepared the draft environmental
2 protection and asking us to give our input, to state our
3 opinions, to state our views.

4 We are talking specifically to the construction
5 of the water line, the two routes that are proposed.
6 We're not talking about the issues on the legislative
7 water rights issues. This issue has been going on for a
8 very long time. It seems to me that we're just sabotaging
9 our opportunity to have the water brought to us and our
10 community.

11 We are speaking specifically to the reality of
12 life, to our survival, to the uses, the many uses of
13 water. I'm not being argumentative. I'm just looking at it
14 in terms of an organized, well-prepared plan. We need to
15 be able to rally together all the chapters on these
16 routes.

17 We can attain our dreams, our goals. For
18 example, the water line from Shiprock to Gallup, those
19 chapters need to rally together to determine how to use
20 these waters, how to make use of these waters in terms of
21 recreation, farming, agricultural activities.

22 Same with the Eastern Navajo Agency. There's no
23 water out there. The main issue here is to talk about how
24 to distribute the water line from the existing lines and
25 tap into the large pipeline that's being proposed.

Comment PH-04 – continued

18

1 Certainly, it is for our children, for their use.

2 I'm from Huerfano. I'm very determined to attain
3 the goals that I ever pursue. Any goal that I pursue is
4 through the reality of my people, through the life that
5 they -- that they have an opportunity to benefit from.
6 These are real issues, as I stated before.

7 We have a real need for water, our livelihood.
8 We need to use the water in a way that is beneficial to
9 our people to consume the water. Look at the people down
10 in the California. I realize that the groundwater levels
11 are dropping. There's not enough snow melt that's going
12 into the Navajo Dam these days.

13 I took a flight out to Las Vegas one time. I saw
14 Hoover Dam. There are so many uses of Hoover Dam water
15 that just bypasses us. Phoenix has the full use of it,
16 California, and other places. And I'm very sincere about
17 how we should approach this to attain the goal that we're
18 looking at, our dreams. Thank you.

19 THE HEARING OFFICER: John Casuse.

20 STATEMENT BY JOHN CASUSE

04-05

21 MR. CASUSE: (Through the Interpreter) John
22 Casuse from Standing Rock Chapter. Welcome everybody here
23 at the public meeting. The main concern is in the area of
24 the -- the medium between the two pipeline routes is what
25 I'm going to be speaking to.

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19

1 If there were long-range planning that took place
2 in the past to be prepared for this construction of the
3 pipeline, we would have been able to better receive the
4 water. For example, Whitehorse Lake out of nowhere just
5 planned to build a high school, and it's built now. And
6 it needs water.

7 We need to start developing the infrastructure
8 that will enable the water to be used in such a way that
9 is beneficial to our people. For example, the chapters
10 that are in-between the two pipelines have to get together
11 to develop the supportive organized effort for the
12 distribution of water to their chapters. That's my main
13 concern about this construction of the pipelines.

14 People tend to build homes in isolated areas
15 where there is no water. This is an example, a good
16 example of why we need to be prepared and to do better
17 planning. There are many people in the area that seem to
18 be left out of the whole system between the pipelines.

19 For example, the Becenti Chapter lies here.

20 And he pointed that out on the map.

21 And the rest is a large Reservation of trust
22 land. I think that's all I want to say right now.

23 THE HEARING OFFICER: Our next speaker is Stanley
24 Hardy.

25

04-05-01

Comment PH-04 – continued

20

1 STATEMENT BY STANLEY HARDY

04-06

2 MR. HARDY: (Through the Interpreter) Greetings,
3 my relatives, all those present at this public hearing.
4 Water is a spiritual element as we know it to be. They
5 are the leaders. They are the elements that provide the
6 moisture to our souls and to our land.

7 The pipeline constructions to Gallup has been
8 ongoing for many years, many years in coming. I'm the
9 president of Two Grey Hills Chapter, and my suggestion, my
10 observation, my opinion, the Shiprock-Gallup water line,
11 I'm hearing that there's going to be a pump station near
12 the Gallup vicinity.

13 I'm wondering how much of that water Gallup will
14 siphon off of the distribution that are being installed.
15 And these insulation of distribution system will be costly
16 as well if it is brought, if they are installed.

17 And I am told that this water is mainly for human
18 consumption, not for livestock use or for agricultural
19 irrigation. It's largely for the human consumption.

04-06-01

20 And I'm not clear, people are not explaining it
21 clear enough to us. So I'm not sure. The NTUA
22 distribution installation will cost more. Our costs will
23 increase.

24 We hear about groundwater levels dropping. Who
25 knows? Who really knows that these water levels are

Comment PH-04 – continued

21

1 dropping. We hear about the glacial melting from the
2 Alaska to the coastline and then we hear the water --
3 water rising along the coastline. I'm not sure who to
4 believe.

5 But in the checkerboard areas, there's always an
6 obstacle regarding routes. If you were just to put the
7 pipeline route along the 371 Highway, I think that's the
8 most feasible. And there are a lot of people within the
9 Eastern Navajo Agency, many communities that will have
10 direct uses of the water.

11 And then somebody came up here and said there are
12 ways of doing things, the ways of planning. The person
13 from Huerfano versus the person from Red Valley. We all
14 are different. We have different levels of thinking. We
15 differ in the way we plan.

16 And my observation is none of us will really --
17 some of the communities will not support the project and
18 there will be other communities that are going to be
19 supportive of the project. That is one example of being
20 different. Our religious preferences are examples of
21 being varied in the way we think about certain elements,
22 certain factors in our lives. So I kind of disagree with
23 that.

24 The proposed construction of pipeline is ready to
25 go. Who's going to take the responsibility for the

04-06-02

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22

1 maintenance and repairs of the pipeline? And the
2 vandalism. Who's going to take charge of those types of
3 things?

04-06-03

4 We are being told that the water will be
5 treated. This will be good quality water for our
6 community to consume. Another thing is we kept bringing
7 up Shiprock. It's not going to come from Shiprock. It's
8 going to start where -- and he pointed to the map up
9 there -- and bypass Shiprock down to Gallup. And it's
10 going to go through Gallup to the Navajo homes on the
11 other side of Gallup.

12 So we're forgetting people in some of these areas
13 in my perspective, in my observation. So I believe that
14 people that have water that are contaminated should also
15 be considered in this proposal. And some of us believe
16 that we will see the pipeline. We will make use of some
17 of the waters that are being proposed. That's about the
18 size of it.

19 THE HEARING OFFICER: Our next speaker this
20 evening is Lorenzo Bates, the Navajo Nation Delegate from
21 the Upper Fruitland Chapter.

22 STATEMENT BY LORENZO BATES

04-07

23 MR. BATES: Good evening. I'm Lorenzo Bates from
24 Upper Fruitland. And as you all probably realized, I was
25 a very strong supporter in the water settlement as it

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23

1 moved through the process. So I'm still a very strong
2 supporter of what's being proposed here.

3 Given what I know thus far starting, including
4 Shiprock and the Eastern Agencies down that way, water is
5 very much of a concern in terms of a reliable source. A
6 reliable source of water. Of quality water is a concern.

7 Right now those areas don't have a reliable
8 source. A lot of it is wells, okay? So with what this
9 water line -- proposed water line will do, it will provide
10 a reliable source of water to those communities.

11 Within these areas down here (indicating), NTUA
12 has existing lines. So this water will not -- will go
13 into those existing lines, which means in the long run
14 they will preserve those wells that exist today. It will
15 be NTUA, the Navajo Nation's responsibility to extend off
16 of those lines to those individuals that don't have
17 water.

18 The reason it's not done now is, again, because
19 there is not a reliable source of water. If they were to
20 extend on what water is available, there's no guarantee
21 that those individuals that don't have water will continue
22 to have water, which goes back to what I said earlier, a
23 reliable source of water.

24 The misconception out there is that it's going to
25 use -- that Gallup is going to use Navajo water. When you

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24

1 look at those surrounding communities that are Navajo --
2 an article came up just recently where a family that was
3 within eyeshot of Gallup, within hearing of Gallup weren't
4 able to get water. Again, Gallup doesn't have the
5 available water too.

6 So we'd be using their existing lines to get
7 water out to those communities surrounding Gallup. So I
8 support this initiative. And it's a long time coming
9 now. What's the possibility of it? Well, if you as
10 community members that support this stand up and say, "We
11 want this."

12 This funding request that totals into the
13 millions of dollars can be achieved because you're talking
14 a lot of dollars. But it's important for you as community
15 members to stand up and say, "This is what we want." I
16 guarantee you tomorrow in the public hearing that's going
17 to be held in Farmington, there will be opposition to
18 doing this. There was opposition to the settlement.
19 There will be opposition to this.

20 So I support this, okay? And I'll continue to
21 support it simply because it is a long time coming. And
22 it's something that we as the Navajo Nation need in terms
23 of the fact that can we say today what the Nation actually
24 owns? The land, we don't. Government holds that.
25 Anything that has to do with what we want to do in terms

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25

1 of a residence or business, we still have to go through
2 the government, the governmental process.

3 The water, we don't own. We may have -- we have
4 a right to it, but we don't own it. So with the water
5 settlement we can say now that it's ours. And we can move
6 on this initiative.

7 So with that, folks, you need to support this
8 wholeheartedly all the way because there will be
9 opposition every step in the way in moving on this. So
10 thank you very much.

11 THE HEARING OFFICER: Mr. Ken Atcitty, the Navajo
12 Nation Council Delegate of Shiprock has joined us as
13 well.

14 We've reached the end of folks who have signed up
15 to come and provide us their views and comments. And so I
16 want to ask if there is anybody else who hasn't signed up?

17 Yes, sir, I know that you want to come back up
18 and finish. Thank you.

19 FURTHER STATEMENT BY J.C. BEGAY

04-08

20 MR. BEGAY: It's very clear the route that the
21 Gallup -- the Shiprock-Gallup line is very clear. I just
22 need to say that we are excluded from that route.

23 If we could all get together, Sanostee, Two Grey
24 Hills, Burnham, and other chapters that have been excluded
25 along these routes -- we need to get together and really

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1 plan to install the distribution system to the other
2 chapters that have been excluded. Then I will support
3 it.

4 And for that reason I'm not really in support of
5 the project. But if we get together to extend those water
6 lines, I am supportive of it.

7 STATEMENT BY MEL R. BEGAY

04-09

8 MR. BEGAY: Good evening, community of Shiprock,
9 New Mexico and also the leaders that have come to be
10 participants of this water rights discussion for the water
11 line project. Leaders of the Navajo Nation, good
12 evening.

13 I know the community members are very thankful
14 for your presence and making your contributions and in a
15 way of how you're thinking about this water line project.
16 Also the panel that is here in our midst in observing the
17 discussions where the thoughts of the Navajo Nation is
18 being shared here.

19 My name is Mel R. Begay. I am from Coyote
20 Canyon. I represent that community as a Council Delegate,
21 also with the Mexican Springs community. And I am also
22 serving on the NTUA board.

23 What we're witnessing here tonight is very
24 important to me. And the reason that I say it is
25 important to me is because of my people of that -- of

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1 those two communities have said so.

2 And in some of these words that are being uttered
3 of how the water is important to the Navajos, there's a
4 fact, there's a truth to it because my people back home
5 speak those -- those words. In addition to those and
6 through the lives and through the life that they walk
7 through in those communities, they understand that there
8 is a need.

9 And they also understand that the potential of
10 what the water can do for the community and not only of
11 those two communities. I think the potential is there if
12 we bring water to the community of the Navajo Nation. I
13 envision that this will bring prosperity for the nation
14 through economic development, also through the community
15 development.

16 As we see and as we notice of our surroundings,
17 we don't have much. And I hope you as a panel as you make
18 a report, I would like for you to make a contribution
19 through your observation in what community that we live
20 in. We are in a poverty. We are in a poverty where our
21 job is lacking, where our families have to depend on the
22 communities such as Gallup, such as Farmington to make a
23 decent living.

24 We have people that have to travel miles to
25 endure those things, but we have some disadvantaged

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28

1 families that are not able to go there to benefit from
2 these. And I think those are the opportunities that we
3 can come about through this venture here.

4 And through your eyes I would like for you to see
5 that. How many of our people are longing to see this
6 opportunity? Especially our young ones. Through this
7 past year and through this school season, we have close
8 to -- I wouldn't even put a number on it; thousands --
9 thousands of school that have released students with a
10 high school diploma; and we don't have jobs for them.

11 We don't have that opportunity for them. And we
12 have witnessed in the past that these school has released
13 these students two, three years down the road. We have
14 people that are very affected by alcoholism. Our death
15 rate is high through suicide, through alcoholism, liver
16 disease, and anything and everything that comes along with
17 poverty. And there are statistics that are out there that
18 I'd like for you to incorporate into this report.

19 And so I think it's something that we need to
20 look forward. Certainly, we don't know and -- we're aware
21 that it's not going to change this -- our society over
22 night; but in the long term, we'd like to see that
23 change. We'd like to see those changes.

24 So I think it's important. I support this
25 because of the life that I live, is the people that are

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1 living it, that life here within the Nation. We'd like to
2 have those opportunities within the midst of our community
3 where the economic development would be initiated and
4 implemented.

5 So as we grow, we'd like to plan for it. We'd
6 like to see more of it. Certainly other communities, as
7 we hear tonight, "Oh, it's not going to benefit," but in
8 the initial -- in the initials, that benefit is not going
9 to be there. But as we plan, as we grow, that is going to
10 be there.

11 That is going to be there, that growth. And the
12 other community members that are not going to benefit from
13 the onset, they are going to be -- in the future they are
14 going to be part of it. That's the way I see it.

15 So, like Mr. Bates says, this is important to
16 us. This is important to the nation. So I support it as
17 my community has asked me to support this initiative
18 because it's going to bring us the dream and the
19 prosperity that we owe to our children and to ourselves.

20 And so I think that's the way that we should look
21 at it and the way what water is. Certainly, water is
22 life. So that is my interpretation of the water. And so
23 I thank you for the people that have coordinated this
24 meeting tonight and for the panel to witness our interests
25 and how much we support this initiative.

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30

1 So that's just the short statement I want to
2 share with you this evening. And I thank you for this
3 opportunity.

4 THE HEARING OFFICER: Our next speaker will be
5 Lena Fowler of the Navajo Nation Water Rights Commission
6 and will be followed then by Tony Bowman.

7 STATEMENT BY LENA FOWLER

04-10

8 MS. FOWLER: Thank you. Thank you, Panel, for
9 your presence here, listening to us again. And you had
10 several of these meetings and you've been very patient. I
11 appreciate that. Thank you.

12 (At this time, Ms. Fowler spoke briefly in
13 Navajo.)

14 MS. FOWLER: So, thank you. This Navajo-Gallup
15 Water Supply Project, we have two pipelines. It will
16 greatly benefit the Navajo Nation. It will secure the
17 Navajo homeland in accordance with the 1868 Treaty.

18 I tend to go back and forth between Navajo and
19 English. So, anyway, 1868 Treaty. In that treaty, with
20 that treaty as our foundation, we have a right to the San
21 Juan River. And most of the water has already, as you all
22 know, already been distributed and allocated throughout
23 the western states.

24 Navajo Nation and other Indian tribes are just
25 barely trying to get their share of the water. And we

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1 have a great political battle that is before us. And this
2 water pipeline will really enhance our lives. It will
3 bring reliable water to our communities.

4 Each region today throughout Navajo Nation and
5 Shiprock and this region, we haul water. Navajo people
6 haul water. The other day I met a man who was putting
7 groceries in his truck in Window Rock. And I asked him
8 what happened. They were elderly couple.

9 He said he was hauling water and he slipped and
10 he fell. Now he just watches his wife do all the work.
11 And so he has a hard time. His children have graduated.
12 And he has -- and they are no longer at home. So they are
13 taking care of themselves.

14 Their children are not at home because they need
15 jobs. One has a doctorate degree, can't come home and
16 hold a professional position. So we have a brain drain
17 that is happening here because we don't have the economic
18 development that we need.

19 Water will -- we don't have economic development
20 because we don't have the infrastructure. We can talk
21 about jobs all we want, but if we don't have water in our
22 communities it's not going to happen.

23 Forty-three communities will benefit. Over 100
24 schools will benefit. Yes, NTUA delivers water to
25 communities today, but we're mining water. Some of those

Comment PH-04 – continued

32

1 NTUA wells are drying up now. The other portion that NTUA
2 that struggles with -- what they struggle with is with the
3 quality of water.

4 We have -- through our -- we're challenged in
5 every way. Throughout history, we've always had a lot of
6 traumas and in our history in our dealings with the
7 federal government. And so this will be a way to help us
8 help ourselves.

9 We're in a state -- because of these traumas that
10 we have gone through with our relationship with the
11 federal government, we're basically in a state of
12 helplessness, and water will help us to climb out of our
13 situation because it will help us -- it will bring
14 sustainable, reliable water. It will bring economic
15 development. It will better our health care.

16 We have major healthcare illness. And a lot of
17 it has to do with just a simple thing as getting water and
18 keeping ourselves clean. And it also really does impact
19 our religion because our Navajo way of life, we use corn
20 pollen. We grow corn. And this in a lot of sense with
21 the drought that is going on, we don't -- we can't even
22 collect our corn pollen. And certain years, sometimes
23 it's scarce.

24 So in all fashions, in all ways of life, when it
25 comes to Navajo, water is essential to us. And this water

Comment PH-04 – continued

33

1 project will really enhance and really bring better
2 quality of life to the Navajo Nation. I appreciate you
3 being here, listening to me, and your patience.

4 THE HEARING OFFICER: Mr. Bowman.

5 FURTHER STATEMENT BY TONNY BOWMAN

04-11

6 (At this time, Mr. Bowman spoke in Navajo.)

7 MR. BOWMAN: You've given me the opportunity to
8 say my peace and you've given the people an opportunity to
9 say their peaces.

10 (At this time, Mr. Bowman resumed speaking in
11 Navajo.)

12 MR. BOWMAN: I don't like to be pressured,
13 whether it is from -- I spent my time in military service
14 where I used to say, "Yes, sir." Says, "Private Bowman."
15 "Yes, sir." "Move out." "Yes, sir. Yes, sir. Yes,
16 sir." By the time that we are through this "yes, sir"
17 stuff --

18 (At this time, Mr. Bowman resumed speaking in
19 Navajo.)

20 MR. BOWMAN: There are certain things. Land
21 status. Land status is important. That's the reason why
22 I'm saying Twin Lakes, New Mexico.

23 And Mr. -- I forget his name from the Red
24 Valley. He's talking about land status there. And a
25 person from Two Grey Hills talking about these are Navajo

Comment PH-04 – continued

34

1 Reservation, solid Navajo Reservation. No allotments.

2 That's where I'm from.

3 Now, does the individual allotted land, are they
4 entitled to winter rights water status. Is it? I have
5 two questions about that. That's why Twin Lakes is Navajo
6 Reservation; we don't have individual allotment. That's
7 where the problem is.

8 I know that if any individual allotment, if they
9 get oil wells or whatever it is, it belongs to them. They
10 don't give me even a penny to say, "Hey, Mr. Bowman, go
11 get yourself a sucker," or something like that. It
12 belongs to them. Don't you think if this water belongs to
13 the Reservation, it should only go for Reservation land?

14 That's why I'm being pressured. We're being
15 pressured by people who live in checkerboard area who say,
16 "I will support you. I will support this because this is
17 the best thing." Yeah, it's maybe the best thing for
18 them, but they are forgetting about us who live on solid
19 Navajo Reservation.

20 The people in Arizona, they have their own
21 responsibilities over there too. Why are they coming over
22 and say, "You do this. You do this. We're going to agree
23 with the other people." This is a repeat of Manhattan \$24
24 trinkets. The people who were -- that sold Manhattan
25 Island were only visitors.

04-11-01

Comment PH-04 – continued

35

1 And the Dutch merchants, you know, bought that
2 and gave them glasses and say, "Hey, see how you cheated
3 them." But the people who are cheating are the people who
4 own that land. I believe I am one of those people who has
5 lived on the Reservation, and the people who live off the
6 Reservation are trying to sell us stuff.

7 Thank you.

8 THE HEARING OFFICER: Our next speaker will be
9 Chili Yazzie, the Shiprock Chapter President.

10 STATEMENT BY CHILI YAZZIE

04-12

11 (At this time, Mr. Yazzie spoke in Navajo.)

12 MR. YAZZIE: I'd like to restate what I stated in
13 my second language. Ms. Joanna is doing a wonderful job
14 up here. If I let her interpret, she might make me sound
15 too good, so. I'll take a shot at it myself.

16 Greetings. Good evening, Ladies and Gentlemen
17 that are conducting these public hearings, all of the
18 officials that were here this evening, and community
19 members.

20 I want to reiterate some of the -- what are
21 profound realities that we are confronted with as the
22 Navajo people, as five-fingered human beings in general.
23 And some of these issues that I touched on is that -- not
24 to re-emphasize some of the good statements that have been
25 made here in terms of our native affinity of water, how we

Comment PH-04 – continued

36

1 regard water, the sanctity of it, the sacredness of it.
2 That has been reiterated here quite adequately already, so
3 I need not touch on those areas.

4 Some of the concern that we have that I expressed
5 here is -- you know, we look at the world, the world
6 population -- and some time ago, some months ago, I
7 clipped out an article from the newspaper that stated
8 that -- I forget what the percentage was of the world's
9 people who are already experiencing water shortage for
10 basic life necessity.

11 The reality of when a time will come that the --
12 the human need for water for very life sustenance outpaces
13 the availability of good water. Is that time going to
14 come when? It seems with the picture that we have today,
15 it seems like that is inevitable.

16 And that would be such a terrible day when we
17 realize that our human need for water outpaces what is
18 available.

19 Then I go on to talk about global warming, the
20 fact that the polar caps are melting and what appears to
21 be part of the water that's draining into the oceans.
22 Again, the reality of when in the future will the melting
23 of the polar be complete. Can we reverse this global
24 warming? Those are thoughts that we have.

25 We wonder if these are indeed the last days as

Comment PH-04 – continued

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04-12-01

1 predicted by our elders of old. And that leads me to
2 wonder with the supposed greatness and the indisputable
3 nature of science and technology, that why -- why cannot
4 technology find a way to expedite that desalination
5 process?

6 We have incredible bodies of water throughout the
7 world. If science is so great and technology is -- is
8 what it's supposed to be, why can't that happen? I talk
9 about these things as just for my own personal point of
10 reference, things that are, as I said, profound, things
11 that we are individually powerless to do anything about.
12 But, nevertheless, in the context of what we talk about
13 here, I offer those thoughts.

14 And the final end, I suggest that -- that the
15 agreements for this proposed Gallup pipeline have been
16 made years and years and years ago. And it seems almost
17 laughable or disrespectful that we would be asked what is
18 our opinion at this point, when the power-that-be know
19 already that these things are going to happen. We have
20 a -- an issue with that.

21 Senator Domenici in his magnanimity in wanting to
22 supply Gallup with water is -- a man must do what we needs
23 to do. I understand that Gallup's water source is
24 depleting. I understand the need to get them water.

25 And I suggest further that the Navajo people, the

Comment PH-04 – continued

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1 communities, Navajo communities that lie between here and
2 Gallup, perhaps as a matter of convenience, as a matter of
3 political expediency, as a matter of getting this project
4 from Point A to Point B, that Navajo communities are being
5 given these promises of water. That's my -- my comment in
6 the extreme critical end of the spectrum.

7 But, nevertheless, in the final end, we -- we
8 have to make a choice here as Navajo people that do we
9 want the water to just continue down river and supply the
10 fancy fountains of Las Vegas, the swimming pools of
11 Phoenix? Do we choose that or do we come to the
12 realization that we must share this water.

13 And I think that at least for myself I see that
14 we must share the water. So that is my thought. One
15 other thought that I didn't mention in my translation here
16 is the concern that -- that the -- we have with regard to
17 the water settlement. I don't know -- I cannot say for
18 certain that it's a settlement that is in our best
19 interest as we have been told.

20 There's no way for me to evaluate that. All I
21 can say on behalf of my constituents is that we put our
22 regard and confidence in the likes of Mr. Benson, the
23 Water Commission, other tribal leaders, notably Vice
24 President Dayish, who made deliberate effort to come to
25 some terms on the water settlement. That their effort

Comment PH-04 – continued

39

1 does indeed speak to what we are told that it is done in
2 our best interests. That's all we can give our confidence
3 to.

4 I hope that it is in the best interest of our
5 people. But we're here and we just go forward. So all in
6 all, Ladies and Gentlemen, given all of these
7 consideration and realities, I must stand and say at least
8 51 percent of me says, "I support the Gallup water
9 project." Thank you.

10 THE HEARING OFFICER: We have two speakers left
11 this evening. Fannie Atcitty.

12 STATEMENT BY FANNIE ATCITY

04-13

13 MS. ATCITY: We were doing our yard work and
14 everything else, and we remembered about the hearing this
15 evening. So thank you members that are present here
16 working, allowing us to speak our thoughts in Navajo.

17 Mr. Yazzie, Chapter President, he explained
18 everything that I was going to say, so -- which was good.
19 Thank you, Mr. Yazzie.

20 Except there's just a thought. I was just
21 thinking about the city of Gallup, the town of Gallup. I
22 don't know how long ago that came into existence.
23 Therefore, through all those years, they have many, many
24 leaders that they were elected as mayor, city council
25 people; that they have the community -- our Navajo

Comment PH-04 – continued

40

1 community leaders, such as council delegates, chapter
2 officials. And then now we have many -- we have some of
3 our Navajo people that serve in the -- in various capacity
4 at the City of Gallup.

5 My thinking was if they knew -- they knew that
6 water is so important to every human being -- every living
7 being, rather, why didn't they think whatever, maybe 100
8 years ago, why didn't they start planning? And the Gallup
9 area, they are higher elevation than we are. They get
10 more snow. They get more rain than we do. Why didn't
11 they build a reservoir or reservoirs for their people?

12 That way that should have been in place many
13 years ago. And here we are in 2007 we're talking about
14 extending the water line to Gallup. And I agree with
15 Mr. Yazzie. We need to think about our Navajo people
16 first. And I do have question about the water rights
17 settlement. Is it really in the best interest of our
18 Navajo people?

19 Yes, I do agree with Mr. Yazzie, too. Many of
20 these agreements that we're talking about tonight, I'm
21 sure they've been already agreed upon many years ago.
22 We're just -- it's just a formality. Many times I look at
23 things like this is as a formality. Just like, "Okay.
24 May 6th, 2007, there's a hearing in Shiprock."

25 Plus many of the past hearings that we've had, I

Comment PH-04 – continued

41

1 see those to be formalities. We speak, but agreements
2 have already been made. Then, again, within our own
3 Navajo Nation, look at the water, the winter snow they
4 melt, the rain that we get. We've been having a lot of
5 rain for a while. It's just being flowing back into the
6 San Juan River.

7 We have many communities and all this water just
8 drains back into the river and many of our neighbors south
9 and to the west, they use that. Why can't we build dams
10 too?

11 And always -- and I believe that there's going to
12 come a time when -- we depend on Farmington for our
13 drinking water. There's going to come a time when the
14 City of Farmington, they are going to say, "No more,
15 Shiprock. We won't allow you to have any more drinking
16 water."

17 So we have to be prepared. We have to start
18 planning for many of those things. Those should have
19 already been in place. Why are we planning for it, now,
20 2007?

21 I have four grandchildren. They are little
22 ones. The oldest is 12 years old. I wonder what their
23 life is going to be like. And many of you that are here,
24 some of you have great grandchildren or great, great
25 grandchildren. Why are we just now talking about water

04-13-01

Comment PH-04 – continued

42

1 lines being extended to Gallup?

2 Also another thing is, many -- we have a high
3 Navajo unemployment rate, 65 percent. If our Navajo
4 people get these water lines -- I don't know when it will
5 happen -- but where do they get their money to pay NTUA
6 for the usage of this quality water? It's expensive.

7 My relatives are always asking me, "May we borrow
8 some money from you so I can pay my utility bills?" I'm
9 sure many of you in the audience, you're always asked for
10 assistance from your family members. So I'm looking at
11 the cost of that water use. It's not free.

12 My mom understood that. My mom is a traditional
13 woman. She lives just south of here at Table Mesa. She
14 couldn't believe she was told, "Get electricity in your
15 home. Get running water in your home."

16 Boy, she says today, "I wish I never had that. I
17 used to live a very simple life." But now she can't
18 afford the utilities. She can't afford the water bills.
19 So there are those who have to consider that. How many of
20 our people are making -- do they have the money for that?

21 So I think we need to really consider many of the
22 problems that we face within our nation. So I -- overall
23 I agree with many of the things that Mr. Yazzie had
24 mentioned.

25 Also another thing with this water line. I think

04-13-02

Comment PH-04 – continued

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1 back in 2006, 2005, somewhere around there, it was
2 \$600,000 per mile to extend that water line. Just one
3 pipe for one mile. I wonder what it will cost us today.
4 And if so, I don't think it should be the Navajo Nation to
5 pay for such.

6 It should be the United States Government.
7 Because, you know, they -- according to the Treaty of
8 1868, they have many of the responsibilities that they
9 still have not only for the present, but also for our
10 children and the future. So, thank you.

11 THE HEARING OFFICER: Our last speaker of the
12 evening is Donald Benally.

13 STATEMENT BY DONALD BENALLY

04-14

14 MR. BENALLY: For the essence of time, I would
15 request the interpreter to perhaps summarize my short
16 statements that I want to try to make here.

17 (At this time, Mr. Benally spoke in Navajo.)

18 MR. BENALLY: (Through the Interpreter) Thank
19 you for all the people that are still in the audience.
20 Thank you for coming out to the meeting. Thank you,
21 Mr. Benson and the panel up here, distinguished guests
22 from the federal government, and those people that are
23 here observing and listening. I want to say my comment in
24 the Navajo language and have it interpreted into the
25 English language.

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1 This is a very complex and enormous issue that
2 we're undertaking this evening and many more years to
3 come. The council delegates have voted many years ago to
4 move forward with this issue as far as I can remember.

5 It was before us when I was in council 20 years
6 ago. Our elders, our leaders at that time had a
7 different -- were in a different position as they are
8 now. They wanted all the water. They wanted all the
9 quality water.

10 At the time, Mr. Peterson Zah, Chairman of the
11 Navajo Nation, it came before him, the City of Gallup came
12 to Mr. Zah asking for water. Even the attorneys at that
13 time had a different stance. Thereafter Mr. McDonald, he
14 had a different stance similar to what Mr. Souder and the
15 attorneys had.

16 Gallup at that time along with Mr. Domenici were
17 asking for this water. I remember this very well and what
18 happened thereafter. I thought, "Oh, my gosh, all these
19 people that used to have a lot of contribution, a lot of
20 decisions that were made."

21 Now at this time we're basically talking about
22 the same water, the same issues but in a different light.
23 Our elders in the past have always taken San Juan River to
24 heart. That's part of our -- our historical legend, our
25 traditional prayers and our songs. It's the male river of

Comment PH-04 – continued

45

1 the Navajo Nation. It is considered a male.

2 Washington -- one of the leaders here said that
3 we should not consider the land and the water as our own.
4 Our elders held the land and the water close to their
5 traditions and their prayers. I ask myself, "Why are our
6 leaders saying that these days? Why do they want to
7 relinquish the water and the land to the federal
8 government?"

9 Our people have always held this very dear to
10 their hearts. The pipeline that you all are talking
11 about, this area here around the Hogback, the Cudei, the
12 upper part of the map he said was called Toohnii, which
13 means the Valley of the River People.

14 They have the instrument. They are the essence
15 of this valley. They are the essence of this water. And
16 they know the stories. My grandfather told me to never
17 talk about the river if I didn't know the stories or the
18 songs to discuss the indepth of how the water should be
19 used or who it should belong to.

20 Twenty years ago this place called the Hanging
21 Sheep Skin -- twenty years ago 18 members of our council
22 delegate brought this same issue before us. At that time
23 we agreed. We said if people do really need the water, we
24 will decide how the waters will be used.

25 But we said that it should be extended among all

Comment PH-04 – continued

46

1 the communities in the area. I'm not talking about the
2 communities where the route lines now. I mean the people
3 within the Arizona portion and have them benefit from the
4 extension of the water as well.

5 This is all past history of what had happened and
6 what we had done in talking about the Navajo-Gallup Water
7 Supply.

8 It's costly as well. If the chapters do really
9 need the water, if Gallup really needs the water, and if
10 they are willing to share this water with the chapters,
11 and the chapters that are saying that they are excluded
12 from the route, it's going to be costly. They are going
13 to have to contribute something. Who's going to pay for
14 it. I think we should all contribute to pay for the water
15 line.

16 This Shiprock Chapter has not really taken an
17 official position on it yet, but it's a vital issue. It
18 is a real concern. And I'm thinking back to what my
19 elders have said, the water is the essence of a
20 community. We're excluding people up in the Aneth area.
21 There's people up there as well. We can't just hasten to
22 take the water out to the Gallup community.

23 We should reevaluate our position and decide what
24 our official position will be from these chapter areas
25 that I just mentioned. Thank you.

04-14-01

Comment PH-04 – continued

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1 THE HEARING OFFICER: I think that's all of our
2 speakers this evening. We have one more public meeting
3 tomorrow night at 6 o'clock. Yes, sir?

4 MR. BEGAY: I'd like to say something before
5 closing.

6 THE HEARING OFFICER: Sure.

7 FURTHER STATEMENT BY J.C. BEGAY

04-15

8 MR. BEGAY: (Through the Interpreter) I would
9 like to enter this comment on record. I know that the
10 Draft EIS according to the federal government is published
11 in the federal registry. After that 90 days is set aside
12 for a comment period and meetings where the comments are
13 compiled and entered into the Final EIS, I know this for a
14 fact.

15 The Red Valley community this year built a new
16 high school. But there's a water issue. We have an
17 elementary school at the Red Valley community, as well as
18 10 miles up Cove community has an elementary school.
19 There's a dire need for water. And I plead with you that
20 you consider our situation as well.

04-15-01

21 Also in accordance to what Mr. Donald Benally
22 said surrounding the elders, my grandfather Lee Tom was a
23 Council Delegate from the Red Valley/Cove area. He held
24 leadership positions in many variety of -- he held
25 leadership positions within the community. He was a

Comment PH-04 – continued

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1 revered elder.

2 He said to me when I was a youth, "One of the
3 these days when you are leader, I want you to carry on my
4 dreams to bring the water to the community." And for that
5 reason I'm asking this comment to be placed in and on the
6 record. I plead with you and I appeal to you to consider
7 my requests and my concern for the community of Red
8 Valley.

9 THE HEARING OFFICER: I think with that we're
10 going to call this evening to a close. We have one last
11 meeting tomorrow night in Farmington at San Juan College
12 from 6:00 to 9:00 in the IT Building, Room 7103.

13 And once again thank you for coming and thank you
14 for allowing us to come here and meet with you and also
15 thank you to Joanna for doing a lot of work tonight.
16 Thank you and good night. Drive safely.

17 (The hearing adjourned at 9:36 p.m.)

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Comment PH-04 – continued

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1 C E R T I F I C A T E

2

3 I, Tanya M. Nims, a Certified Court Reporter, do
4 hereby certify that the Proceedings of the above-entitled
5 project were reported by me stenographically on June 5,
6 2007, and that the within transcript is a true and
7 accurate transcription of my shorthand notes.

8 I further certify that I am neither an attorney
9 nor counsel for, nor related to or employed by any of the
10 parties to the project, and that I am not a relative or
11 employee or any attorney or counsel employed by the
12 project hereto, or financially interested in the project.

13

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16

17

18 TANYA M. NIMS, RPR
19 Certified Court Reporter #168
License Expires: 12/31/07

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Comment PH-05

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NAVAJO-GALLUP WATER SUPPLY PROJECT

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PLANNING REPORT

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AND

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DRAFT ENVIRONMENTAL IMPACT STATEMENT

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11

PUBLIC HEARING

12

June 6, 2007

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San Juan College
IT Building, Room 7103
5001 College Boulevard
Farmington, New Mexico

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5PH

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23 REPORTED BY:

24

Tanya M. Nims, CCR #168
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Albuquerque, New Mexico 87110

25

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1 MEMBERS OF THE PANEL

2

3 John Bezdek, Hearing Officer, Deputy Director and
4 Chief Counsel, Secretary of the Interior, Indian
5 Water Rights Office, Washington, D.C.

6

7 Rege Leach, Bureau of Reclamation Project Team Leader,
8 Western Colorado Area Office, Durango, Colorado

9

10 Carol DeAngelis, Bureau of Reclamation Area Manager,
11 Western Colorado Area Office, Grand Junction,
12 Colorado

13

14 Bernadette Tsosie, Regional Hydrologist, Bureau of
15 Indian Affairs, Navajo Area Office, Gallup, New
16 Mexico

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18 Michael Benson, Navajo Nation, Department of Water
19 Resources

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21 Joanna Austin-Manygoats, Interpreter

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Comment PH-05 – continued

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1 WEDNESDAY, JUNE 6, 2007, 6:15 P.M.

2 MR. BENSON: Good evening, Ladies and Gentlemen.

3 Thank you for being here tonight at this, the public
4 hearings on the Draft Environmental Impact Statement on
5 the Navajo-Gallup Water Supply Project.

6 My name is Michael Benson. I work with the
7 Navajo Nation Department of Water Resources. And I have a
8 very tiny part in these hearings. I do the introduction
9 and I'm the one that will hold up the cards when you're
10 running out of time. And that process will be explained
11 to you shortly by the hearing officer.

12 These hearings are required by law. Whenever
13 there is a commitment of federal funds, an Environmental
14 Impact Statement is required. And the process for
15 developing the Environmental Impact Statement on the
16 Gallup water supply project began in 2001.

17 There were scoping meetings held in this room.
18 And some of you may have been here. And the public was
19 invited then to make comments and to have their input.
20 And now that there is a Draft Environmental Impact
21 Statement, your comments and your views are again being
22 solicited tonight.

23 In a few minutes the process, the procedure for
24 hearings will be explained to you. I'd like to introduce
25 to you the hearing panel. Carol DeAngelis, Bureau of

Comment PH-05 – continued

6

1 Reclamation, Area Manager of the Western Colorado Area
2 Office, Grand Junction, Colorado. Rege Leach, Bureau of
3 Reclamation, Team Leader, Western Colorado Area Office,
4 Durango, Colorado. Bernadette Tsosie, regional
5 hydrologist with the Bureau of Indian Affairs, Navajo Area
6 Office, Gallup, New Mexico.

7 And the Hearing Officer is John Bezdek, Deputy
8 Director and Chief Counsel with the Secretary of the
9 Interior, Indian Water Rights Office, Washington, D.C.
10 The interpreter -- there will be interpretation tonight
11 into Navajo and back and forth. The interpreter is Joanna
12 Manygoats. Our court reporter tonight is Tanya Nims.

13 (At this time, Mr. Benson spoke in Navajo.)

14 THE HEARING OFFICER: Good evening and welcome to
15 the open house and public meeting on the proposed Navajo-
16 Gallup Water Supply Project and the Draft Environmental
17 Impact Statement. I would also like to have a very
18 special welcome to President Shirley. Thank you very much
19 for joining us here this evening.

20 We have a person available to interpret in Navajo
21 for those of you who do not understand English, and I
22 think it's my sense that we do want her to translate
23 everything this evening. In light of that, we're going to
24 seek and ask you to limit your comments to five minutes.

25 We had an open house last night and some speakers

Comment PH-05 – continued

7

1 went beyond 10 minutes and it made it very difficult for
2 Joanna. So that everybody can speak and so that everybody
3 can understand exactly what is going on, we ask that you
4 limit your comments to five minutes this evening.

5 The public meeting and open house is being
6 conducted pursuant to National Environmental Policy Act.
7 The purpose of this open house is to hear your comments,
8 thoughts, and views on the proposed project.

9 The representatives of the federal government
10 here today are prepared to take your comments and thoughts
11 back to the decision-makers for this project. And while
12 we're prepared to answer your questions with regards to
13 factual matters, we are here to listen. We are not here
14 to engage in discussions about the relative merits of this
15 project or its alternatives as discussed in the NEPA
16 documents.

17 Whether you choose to make your comments orally
18 or provide us your comments in writing, they will both be
19 considered equally. We will address all comments as part
20 of the Final Environment Impact Statement process.

21 We are aware that there is a connection between
22 the project that is the subject of tonight's meeting and
23 the overall settlement of the Nation's water rights claims
24 on the San Juan River. We are also aware that there has
25 been legislation introduced by Senators Bingaman and

Comment PH-05 – continued

8

1 Domenici that would resolve the water rights settlement in
2 part by authorizing the construction of this project.

3 As of this time, the administration has not taken
4 a position with regards to the overall settlement.
5 Because this open house is about the project and not about
6 the settlement, we do ask that keep your comments to the
7 project.

8 If you have concerns or thoughts about the
9 overall settlement, we think the most appropriate place to
10 raise those comments is with your elected officials.

11 For the last several weeks we've been trying to
12 end the meetings around 9 o'clock to allow folks to get
13 home at a reasonable hour, but we will stay here as long
14 as it takes to allow everybody to have a say.

15 As I said earlier, please try to keep your
16 comments to five minutes so that our interpreter can have
17 a chance to translate everything so everybody can
18 understand what's going on.

19 So thank you very much and welcome.

20 THE HEARING OFFICER: Our first speaker this
21 evening will be President Shirley.

22 STATEMENT BY DR. JOE SHIRLEY, JR.

05-01

23 DR. SHIRLEY, JR.: Thank you very much.

24 The Honorable Representatives of the U.S.
25 Government, Mr. Bezdek, Ms. DeAngelis, Mr. Leach, and

Comment PH-05 – continued

9

1 others, relatives and friends, yá'át'ée'h.

2 I'm Dr. Joe Shirley, Jr., President of the Navajo
3 Nation.

4 First, let me say that I'm in support of the
5 Navajo-Gallup Water Supply Project. And I am very
6 thankful and appreciative of all the hard work that you've
7 already done on the project. I'm looking forward to more
8 work on the positive side on the project.

9 The Navajo people have long needed the more
10 reliable water supply. The project won't bring instant
11 relief, but it's an important first step towards solving
12 the drinking water supply problem of the Navajo Nation.
13 The Navajo Nation and I, as President, strongly support
14 the San Juan River PNM Alternative.

15 The Navajo people of the Eastern Navajo Agency
16 have waited decades for the promise of a reliable water
17 supply to be fulfilled.

18 Regarding the agreement: The Navajo Nation has
19 reached a historic agreement with the State of New
20 Mexico. And Governor Bill Richardson supports it. The
21 City of Gallup supports it. The Jicarilla Apache Nation
22 supports it. And now we seek the support of the U.S.
23 Congress.

24 The project is a component of the Northwest New
25 Mexico Rural Water Projects Act. This act was

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10

1 reintroduced into Congress less than two months ago on
2 April 18, 2007. The act would authorize and secure the
3 funding needed for the construction of this much needed
4 project.

5 The act would approve the historic Settlement
6 Agreement as secured by the Navajo Nation and the State of
7 New Mexico in April 2005. The Navajo Nation has agreed to
8 limit its water rights to the San Juan River in exchange
9 for construction of the proposed project.

10 The Navajo Nation has worked in cooperation with
11 the City of Gallup and the Jicarilla Apache Nation to
12 investigate all of the viable alternative project
13 configurations. We have worked together to resolve
14 short-term and long-term issues affecting the
15 implementation of this proposed project.

16 Regarding the preferred alternative: It is not
17 surprising that the San Juan River PNM Alternative is the
18 preferred alternative. The San Juan River PNM Alternative
19 will provide a long-term supply of water, water treatment
20 facilities, and the transmission of municipal and
21 industrial water. Water will be delivered to the eastern
22 part of the Navajo Nation, to the Jicarilla Apache Nation,
23 and to the city of Gallup.

24 Regarding the need for the project: The Navajo
25 Nation population is approximately over 250,000 and is

Comment PH-05 – continued

11

1 expected to increase to nearly 500,000 by the year 2040.
2 There are about 80,000 Navajo men, women, and children who
3 live in the project area today.

4 The population of the service area for the
5 Navajo-Gallup Water Supply Project is projected to be
6 250,000 in 2040. The project is important to the Navajo
7 Nation and the people in the area. Many still have to
8 haul water for drinking and cooking. The cost of hauling
9 water in pickup trucks can exceed \$20,000 acre-foot. The
10 cost of hauling water will rise with the rise in gas
11 prices.

12 Although construction of the project will not
13 necessarily eliminate all water hauling on the Navajo
14 Nation, the project will allow the Indian Health Service
15 to expand distribution systems to provide potable water
16 delivery to our homes.

17 Regarding economic development: The project will
18 create growth forwards for the Navajo Nation, for our
19 future communities can be built with ready access to
20 roads, electricity, and potable water. The stagnation of
21 economic development and the lack of water infrastructure
22 in Navajo country has forced many Navajo families to move
23 to far away cities to find their livelihood.

24 Regarding the cost of the project: As of May
25 2005, the project has an appraisal net worth cost of

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12

1 \$720 million. The Navajo Nation's share of the cost is
2 estimated to be \$567 million of the \$720 million. The
3 feasibility of those costs will be produced in the Final
4 Environmental Impact Statement.

5 The cost is a huge investment by any standard,
6 but it must be compared with the returns. The economic
7 development will improve the per capita income gap between
8 the Navajo Nation and the United States. Closing the
9 average per capita income gap between the Navajo Nation
10 and the United States by only 1 percent would over 40
11 years generate \$800 million in direct benefits to the
12 Navajo Nation and indirect benefits to the federal
13 government.

14 In conclusion, the project is critical to
15 providing a secure and permanent homeland for the Navajo
16 people. Without the project, Navajo families will
17 continue to haul water and economic growth will be
18 discouraged. With the project, most Navajo families will
19 finally have potable drinking water in their homes in the
20 Eastern Navajo Agency.

21 Again, Ladies and Gentlemen, the Navajo Nation
22 and I, as its President, are in support of the
23 Navajo-Gallup Water Supply Project. And thank you for
24 listening. Ahéhee'.

25 THE HEARING OFFICER: Our next speaker this

05-01-01

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13

1 evening will be Mr. Jay Burnham, representing the City of
2 Farmington.

3 STATEMENT BY JAY BURNHAM

05-02

4 MR. BURNHAM: On behalf of the City of
5 Farmington, my name is Jay Burnham, the City's attorney.
6 And I want to welcome everyone who has traveled from their
7 homes to Farmington to purchase gas and food and help our
8 gross receipts tax.

9 Welcome to representatives from the Bureau of
10 Reclamation, Mr. Bezdek, Ms. DeAngelis, Mr. Leach, and
11 other representatives of the Bureau. Welcome to the
12 members of the Navajo Nation, President Shirley. Welcome
13 to members of the Interstate Streams Commission staff and
14 State Engineers's Office.

15 I'm going to make a very brief statement. The
16 purpose of this statement is to enter into the record a
17 resolution adopted by the City of Farmington. The
18 resolution supports the Navajo water rights settlement.

19 And I do not know enough to speak as to specific
20 alternatives being considered by this Environmental Impact
21 Statement, but I do know that the City of Farmington
22 supports the settlement and that this Navajo-Gallup Water
23 Supply Project is a key element to the Navajo water rights
24 settlement, which the City of Farmington has endorsed.

25 I want to present to the Hearing Officer a

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14

1 certified copy of Resolution No. 20051132 adopted by the
2 City of Farmington City Council on February 8th of 2005.

3 The resolution -- I won't read all the whereas
4 paragraphs, but the "now therefore" paragraph says, "Now
5 therefore be it resolved by the City of Farmington that
6 the City endorses and supports the proposed settlement
7 between the state of New Mexico and the Navajo Nation
8 concerning the Navajo Nation's claims to water rights in
9 the San Juan River Basin in New Mexico as set forth in
10 documents issued by the Office of the State Engineer and
11 the Interstate Stream Commission on December 10, 2004.

12 "Be it further resolved that the City staff is
13 directed to distribute copies of this resolution to the
14 appropriate officials from the State and the Navajo Nation
15 and to all members of New Mexico's congressional
16 delegation. Passed, approved, signed, and adopted this
17 8th day of February 2005."

18 That concludes my remarks, Mr. Hearing Officer.

19 THE HEARING OFFICER: Thank you. Our next
20 speaker this evening is Chee Smith.

21 And we'd also ask when you make your statement if
22 you're representing a community or a chapter house to
23 please put that into the record as well. Thank you.

24 STATEMENT BY CHEE SMITH, JR.

05-03

25 MR. SMITH: Good evening. Ladies and gentlemen,

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15

1 guests, and our Honorable President Dr. Joe Shirley, Jr.
2 My name is Chee Smith, Jr. I introduce myself by clan,
3 Naakai, Tx'áásh Chí'í, Ta'neeszahnii, and Bit'ahnii. I'm
4 a former chapter President for Whitehorse Lake chapter,
5 served in that capacity for six years.

6 And this evening we travel a long ways because we
7 need the water and we want the water. We brought a load
8 of senior citizens to this meeting. Our senior center
9 manager is up there, Roberta Tilly, and also our elderlies
10 because they want to see this project go through.

11 As you know Whitehorse Lake is about 95 miles
12 northeast -- south of here. And so we have a long drive
13 back after this public hearing. And even though we have
14 "Lake" in our chapter name, we don't have no water. Our
15 people have to travel 35 miles one way to haul water from
16 Crownpoint. It takes a toll on vehicles and money.

17 Our people haul water everyday for cooking food,
18 for doing their laundry, and for their livestock. We
19 still feel that we're -- we're part as a third-world
20 country. With no water, we have no economic development.
21 We don't even have a store in the community.

22 We don't have -- we can't get housing to our
23 people. We don't have access to hospitals or clinics. We
24 don't have access to police. When a crime occurs, it
25 takes the police well over two hours or more for them to

Comment PH-05 – continued

16

1 come out. Or sometimes they don't come out at all.

2 When a person gets injured, to call for an
3 ambulance, it takes that long also. And most of the time
4 our people don't make it. So we're kind of opposite from
5 what you city folks enjoy here.

6 So, I testified at the May 23rd public hearing at
7 Crownpoint Chapter. And at that time I was concerned
8 because looking at the brochures, the media, that
9 Whitehorse Lake wasn't -- I didn't see the chapter name on
10 the plan; that's why I came to the public hearing to make
11 sure Whitehorse gets the water.

05-03-01

12 The only place that will need technical help will
13 be down to Tucker Cat, the canyon down between Pueblo
14 Pintado and Whitehorse Lake. When you get water to us, we
15 will be able to wash our cars, maybe put up a golf course
16 or even a swimming pool. So we're 100 percent behind this
17 project, and we thank you very much.

18 THE HEARING OFFICER: Our next speaker this
19 evening is George Whitehorse.

20 STATEMENT BY GEORGE WHITEHORSE, SR.

05-04

21 MR. WHITEHORSE: (Through the Interpreter)
22 Hello. My name is George Whitehorse, Sr. Welcome. I'd
23 like to welcome everybody that's here. We came on the bus
24 with Chee Smith from Pueblo Pintado and Whitehorse Lake to
25 the gathering here in Farmington. I've read about the

Comment PH-05 – continued

17

1 public hearing here in the paper. And the issue is very
2 complex and very needed.

3 Some of my grandchildren live here in town in
4 Farmington. I just wanted to thank you. And I wanted to
5 thank you, Mr. Shirley, for coming out tonight. He is
6 remembering his people living at the edge of the
7 Reservation on the eastern portion of the Navajo Nation.

8 We are in need of water. I am 76 years old.
9 When I was younger, I was able to do anything, but the age
10 has taken a toll on me. It's harder on me to do a lot of
11 work, a lot of heavy-duty work. I can't even lift 10
12 pounds.

13 But I continue to care for myself because my
14 children are at work, and they only come back to my house
15 on weekends. My livestock are in need of water and care,
16 so I do these types of chores.

17 I want to thank the panel up here for considering
18 our people and I really appreciate people that are
19 involved from the State of New Mexico and Washington. And
20 the federal agencies that are helping us to bring forth
21 this water project to the reservation. Thank you again.
22 I know it will happen.

23 Will you all remember me, this pitiful little
24 human soul that came before you that asked for your
25 assistance in bringing the water? I want to thank the

Comment PH-05 – continued

18

1 Jicarilla Apache for their participation in bringing this
2 most precious water to our Reservation.

3 Yes, we have water but they are of poor quality.
4 Crownpoint is probably the center pivot for water, the
5 much needed water that is taken out to our homes. I'm
6 very most thankful to the leadership that are involved in
7 this water project. Thank you.

8 THE HEARING OFFICER: Our next speaker this
9 evening is Mrs. Charlie.

10 STATEMENT BY MARTHA CHARLIE

05-05

11 BY MS. CHARLIE: Thank you. It's nice to see
12 everybody and I really do feel like home because I noticed
13 there's two people that are from Colorado. And I used to
14 live in Colorado, and that is a beautiful country. And,
15 you know, why I'm back over here I have no idea. And I
16 guess it was my husband's big idea to return. And here I
17 am hauling water, so.

18 But my name is Martha Charlie, and I live in
19 Rincon Marquez. And I'm on the health board that
20 represents Whitehorse Lake. And Whitehorse Chapter is a
21 chapter that also represent Sand Springs. And that's
22 where George is from and some of the people that are here.
23 And also Rincon is about 30 miles east of there. And
24 there's some Rincon that are here also.

25 And yesterday we were -- we had a health board

Comment PH-05 – continued

19

1 meeting, and there we passed a resolution so I do have
2 that for you to give you. And the health board totally
3 support this water project because it is really needed.
4 And there's a lot of health problems due to unsafe water
5 and, therefore, a lot of people do have to, you know,
6 travel a long ways to just to get drinking water.

7 And then -- and then some of us still do go to
8 like a windmill or a pond or collect rainwater for other
9 uses because water is really, really a necessity out
10 there. So with this water project, wow, it's going to be
11 wonderful. We will be able to, you know, load up our
12 dishes. We don't have to do dishes even by hands
13 anymore. I think that's what I miss.

14 And be able to load up your washing machines out
15 here. In order to do your laundry, you have to load up
16 all this laundry, and it's an all-day affair. And it's
17 not very nice. And able to take a shower, wow.

18 So, I really think we do need this water and
19 thank you for allowing me to talk to you and thank you for
20 everyone coming.

21 HEARING OFFICER: Our next speaker this evening
22 is Sam Sage.

23 STATEMENT BY SAM SAGE

05-06

24 MR. SAGE: Good evening, Ladies and Gentlemen of
25 our panel. My name is Sam Sage. I'm the Chapter

Comment PH-05 – continued

20

1 President for Counselor Chapter, Counselor, New Mexico,
2 which is approximately 70 miles southeast from here on
3 Highway 550. Counselor Chapter, the community, fully
4 supports the Navajo-Gallup Water Supply Project because it
5 will have a great impact on my community members.

6 My community consists of approximately a
7 thousand-plus community members. It fluctuates during
8 different seasons because a lot of my community members
9 leave for seasonal jobs and then they return again.

10 Out of the thousand, approximately one-third of
11 my community members still do haul water. We have four to
12 five natural springs. During rainy season, there's plenty
13 of water. When it's dry, maybe one or two of those
14 springs will have enough water. We had one windmill, but
15 that's broken. And it's going to take quite a long time
16 for it to be repaired.

17 So sometimes my community members have to go to
18 other communities to try to get drinking water and haul
19 water. They are not always welcomed during those times
20 because we're intruding on their water too.

21 My community members at times have to travel 5 to
22 28 miles one way to haul water. They have containers,
23 5-gallon containers to 55-gallon drums. They do this at
24 least two to three times a week. And it isn't just for
25 cooking and drinking water, for human consumption.

Comment PH-05 – continued

21

1 With the Navajo-Gallup Water Supply Project being
2 completed and when the water project is completed in our
3 community, this will greatly improve the quality of life
4 and health for my community members, especially young
5 children.

6 Because some of these springs, they are not
7 treated. It's natural water. And so we're not really
8 sure how clean they are. There are other springs but they
9 are pretty much at times contaminated because we do have a
10 lot of drilling, gas drilling in the area too.

11 And, again, I'd like to say that my community --
12 Counselor Chapter, my community members fully support this
13 Navajo-Gallup Water Supply Project. Thank you.

14 THE HEARING OFFICER: Our next speaker this
15 evening will be Mr. Arvin Trujillo.

16 STATEMENT BY ARVIN TRUJILLO

05-07

17 MR. TRUJILLO: Good evening. My name is Arvin
18 Trujillo. I'm the Executive Director for the Division of
19 Natural Resources for the Navajo Nation. To begin my
20 statement, I'd like to say that in my capacity as the
21 Executive Director, I am in full support of the Preferred
22 Alternative of the Draft EIS.

23 Currently the Navajo Nation is in need of a
24 reliable water supply system to provide municipal and
25 industrial water to communities along the front range of

Comment PH-05 – continued

22

1 Chuska Mountains and in our Eastern Agency.

2 Water is a building component for both community
3 as well as economic development that will be -- include
4 housing development, business development, medical and
5 educational facility support, government support
6 facilities and in other areas.

7 Right now the division is focused on promoting
8 worthwhile development through its ability to provide
9 land, water, power and by doing so encouraging and
10 improving the quality of life of our communities and of
11 members within those communities.

12 Again, this project will greatly affect the
13 eastern and northeastern portions of the Reservation.
14 We're looking at positive aspects for both Northern
15 Agency, Fort Defiance Agency, as well as the Eastern
16 Agency of our Reservation.

17 Also we're looking at those communities of the
18 Eastern Agency and Fort Defiance which are south of
19 Gallup: Manuelito, Breadsprings, Red Rock, Chichiltah.
20 So, again, this whole aspect has been a partnership
21 looking at a regional system that would begin to bring
22 water to areas that hunger for development.

23 We are beginning to develop those stages within
24 our nation in order to address that needed development,
25 not just an economic -- on an economic basis, but also on

Comment PH-05 – continued

23

1 a community basis. Because, again, looking at a long-
2 range goal looking at water, we're looking at that
3 possibility of finding ways to bring our young people back
4 onto the Reservation.

5 And so, again, the Preferred Alternative answers
6 many of those questions. The staff who were involved in
7 the development of that impact statement have looked at
8 those alternatives, have weighed the options, have looked
9 at ways to mitigate impacts. And, again, answers have
10 been found.

11 I've been a part of this process since 1999. And
12 when we begin to develop that -- this process, one
13 question came up: "Where are you going to get the
14 water?" That -- the answer to that question has -- is now
15 available from the San Juan River.

16 We have a settlement agreement that we are in
17 agreement with the State of New Mexico. It is now before
18 Congress, and it has been introduced this past April. So
19 those wheels are moving. And so the aspects of looking at
20 the Draft EIS and how it will affect our communities and
21 how this major infrastructure project will develop itself
22 over the next years in order to be able to provide water
23 into the year 2040 is very important to us.

24 So this is but the first stage. And so, again, I
25 put my full support behind the project noted in the EIS.

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24

1 And with that, would ask for your support too, so that we
2 may continue in the development both of our communities,
3 our economy and -- as was spoken earlier -- for the
4 improvement of the quality of life for both our community
5 people and our communities as a whole. Thank you very
6 much.

7 THE HEARING OFFICER: Our next speaker this
8 evening is Frank Willetto.

9 STATEMENT BY FRANK WILLETTO

05-08

10 MR. WILLETTO: (Through the Interpreter) I want
11 to thank all of you for coming out tonight. You must have
12 great concerns about the water issue. I'm very thankful
13 that you are all gathered here tonight.

14 And then he goes into his traditional clans,
15 which I will not talk about right now.

16 I just have a brief statement to make, and I want
17 my comments to reflect that I am a Navajo Code Talker of
18 the United States Marine Corps. My language was a
19 language used that won the war. I'm one of the Navajo
20 Code Talkers.

21 I'm from the Pueblo Pintado community, which is
22 71 miles southeast from here. The reason I'm here is
23 there's a great need for water in my community and in the
24 Eastern Navajo Agency.

25 I want to let you know and share some information

Comment PH-05 – continued

25

1 with you about Pueblo Pintado. We have a high school
2 there. We have a Bureau of Indian Affairs K-8 school
3 there. We have a chapter house. We have a senior
4 citizens center, a headstart school, a small clinic that
5 operates during the day. And we have a small convenient
6 store.

7 There is a lot of development that are needed at
8 Pueblo Pintado, but we strive through many hardships
9 because we do not have any water. That's why we're in
10 support of the water -- of the Navajo-Gallup Water Supply
11 Project. It is the infrastructure that we want to develop
12 once we receive the water in the Pueblo Pintado area.

13 Many of us elderlies still haul water. What
14 would happen if our driver's license expire because of our
15 age, would we be restricted? Who would then haul the
16 water for us?

17 Water is life. We cannot live without water. We
18 have to receive the water within that community and within
19 the Eastern Navajo Agency to better our health, to provide
20 indoor plumbing for our youth, for our elderlies. These
21 are my great concerns for my people. We want these areas
22 to be developed.

23 We just have enough water for a few structures.
24 Many of us, like I said, do not have indoor plumbing.
25 There are a few homes that have electricity, a few homes

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26

1 that have running water. We are way behind in the
2 development.

3 I want to thank the federal representatives from
4 here and the legislatures in Washington. I want to thank
5 these leadership for their funding, for thinking of us
6 down here, for giving us consideration in the great state
7 of New Mexico. They've given us funding assistance for
8 many years. For that reason, I want to be able to support
9 the project at a regional level.

10 My people tell me to come to these meetings and
11 speak on their behalf about the Cutter Lateral pipeline
12 construction to bring water to Eastern Navajo Agency.
13 Again, I want to thank you. And I also want to thank the
14 interpreter for the interpretation tonight. Thank you.

15 THE HEARING OFFICER: Our next speaker this
16 evening will be Ray Gilmore.

17 STATEMENT BY RAY GILMORE

05-09

18 MR. GILMORE: Good evening. A few words. A few
19 weeks ago you were in Gallup, New Mexico, Saint Michaels,
20 Arizona. We welcomed you there. We also welcome you
21 here. My name is Ray Gilmore, Chairman, Navajo Nation
22 Water Rights Commission. I want to speak with you about
23 the health effects that we face due to the limited
24 availability of potable water on the Navajo Nation.

25 As you know by now there was a study that came

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27

1 from different parts of the United States -- branch of the
2 United States Government. Many homes on the Navajo Nation
3 lack indoor plumbing. More than 50 percent of the Navajo
4 Nation homes lack a complete kitchen. And between 30 and
5 40 percent of the Navajo households rely solely on water
6 hauling to meet daily water needs.

7 Safe water, safe drinking water is necessary for
8 health promotion and disease prevention. The lack of
9 clean, safe water results in the higher incidence of
10 disease, poor health, and reduced fire protection.

11 In 1996, President Bill Clinton noted that a
12 number of health problems in the developing world is the
13 absence of clean, safe water. Without access to safe
14 drinking water, people are faced through a revolving door
15 of expensive medical treatment and unhealthy conditions.

16 In a report to Congress it was noted that 75
17 percent of families seeking Indian Health Service care,
18 healthcare came from homes with unsatisfactory
19 environmental conditions. Biological contaminants can
20 only be controlled by proper water source protection,
21 treatment, and distribution systems.

22 Our children and our elders who are living in
23 homes without access to safe, affordable, and dependable
24 drinking water are especially vulnerable.

25 So, ladies and gentlemen of the panel, we ask

05-09-01

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28

1 speaking on behalf of the Navajo Nation Water Rights
2 Commission and the Navajo Nation, supporting what our
3 President said and also in addition to -- I have three
4 other Navajo Nation Water Rights Commission members
5 present supporting this project. Two happen to be
6 representing the Northern Navajo and Eastern Navajo. They
7 are here. And also from Fort Defiance Agency, went from
8 way the other end of Western Navajo Agency, Tuba City,
9 Arizona.

10 This project is about the future of the Navajo
11 Nation. This project will help the basic health standards
12 of the Navajo people improve. This is on top of all other
13 benefits that the Navajo people will enjoy from the
14 project.

15 Thank you very much for holding these hearings
16 and visiting us again, the Navajo Nation and the city of
17 Farmington. Have a good evening.

18 THE HEARING OFFICER: Our next speaker this
19 evening is Jackson Gibson.

20 STATEMENT BY JACKSON GIBSON

05-10

21 MR. GIBSON: Good evening.

22 (At this time, Mr. Gibson spoke briefly in
23 Navajo.)

24 MR. GIBSON: My name is Jackson Gibson. I reside
25 in Thoreau, New Mexico, a mile and a half north of the

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1 chapter, against the red mesas. I'm a retired person.
2 During my retirement since December, I had a chance to
3 visit a lot of my Navajo relatives in the Baca, Mariano
4 Lake, and Smith Lake communities.

5 And during these visits, I witnessed their
6 situation. I had the opportunity to talk to a lot of
7 these elderly folks. I know that water is their No. 1
8 need. They talk about this. The other topic that they
9 bring up all the time is the price of gasoline and food.

10 Many of these elderly people are under medical
11 care that requires running water. And what I've seen
12 during these visits, it saddens me how they live. A lot
13 of these folks, these elderly people, when they wash their
14 hands in a washpan, they don't dump it out right there.
15 They reuse it again because of the problems associated
16 with hauling it to their homes.

17 The last two days I was involved in hauling
18 water. I don't like that job. It's very, very hard on
19 these folks. I participated in water hauling these past
20 two days and it's not what I want to do. And these are
21 elderly people that are hauling water.

22 At the beginning of this meeting, I heard the
23 word "equal." I guess they were talking about equal
24 time. You know, I want to say, "Please, treat us
25 equally." Although I'm a very proud and patriotic

Comment PH-05 – continued

30

1 American, I see the federal government has not treated the
2 Navajo people equally as they have treated our neighboring
3 water town population.

4 I served two tours of duty in Vietnam beginning
5 in July of 1966. My oldest son served with the 17th
6 Infantry Division when they invaded Panama and also during
7 Operation Iraqi Freedom. My youngest son, 20 years old,
8 is in Iraq right now, one hour north of Baghdad with the
9 82nd Airborne.

10 When I say "getting equal treatment," our BA
11 benefits, we can't use it. When we try to get a home
12 loan, one of the requirements is that we have a fire
13 hydrant nearby. My dad was a World War II veteran. He
14 passed on. He didn't use any of his benefits. We have
15 many Code Talkers besides what Mr. Frank Willetto said.
16 We have many of our Navajo men and women who volunteered
17 to serve in the military.

18 Because of our -- the federal regulations, I know
19 that they will not be able to purchase a home or get a
20 home loan on the Navajo because of water issues. We need
21 this water for many reasons. And I would appreciate it if
22 this panel would go back to the superior supervisors and
23 say that this is the what the Navajo people are saying.

24 And I also want to make this comment, that shame
25 on those people what would oppose this very important

Comment PH-05 – continued

31

1 project. It will benefit the Navajo people.

2 I thank you for listening to my comments.

3 THE HEARING OFFICER: I think we're going to take
4 a five-minute break to allow Joanna, our interpreter, a
5 chance to rest her voice. And we will -- it's almost 8
6 o'clock. We'll come back at about five after. Thank you.

7 (Break held from 7:59 until 8:12 p.m.)

8 THE HEARING OFFICER: Ladies and gentlemen, can
9 we come back into session, please? We still have a number
10 of folks who have signed up to speak, and we definitely
11 want to hear everybody. And so can we come back and
12 work?

13 The only other comment is I'd also ask -- I'm
14 concerned about Joanna. She's doing a very difficult task
15 up here, and I do want everybody to have an opportunity to
16 speak. So to the extent possible, I know we've asked for
17 five minutes; but if you can keep your comments shorter
18 than that so we that don't wear her out, that would be
19 great. Thanks.

20 The next person up to speak is Rachel Billy.

21 STATEMENT BY RACHEL BILLY

05-11

22 BY MS. BILLY: Good evening.

23 (At this time, Ms. Billy spoke briefly in
24 Navajo.)

25 BY MS. BILLY: First, I want to thank you for

Comment PH-05 – continued

32

1 allowing me to make my comments. My name is Rachel
2 Billy. I am a mother of a 11-year-old child. I work at
3 Smith Lake Chapter 100 miles south of here. I reside in
4 Standing Rock community.

5 As you might have heard in previous hearings,
6 water is life. This is very true in the Standing Rock and
7 Smith Lake communities. Everyday I see Navajo people
8 hauling water for home use to cook, to bathe, and other
9 home use. This is especially true in Smith Lake where our
10 water has been ruined by uranium mining companies.

11 Our water at Smith Lake has -- is very bad water
12 and is very corrosive to fixtures. What you have heard at
13 these public meetings from our Navajo people about their
14 need for water for our future generation is very true. I
15 agree and support their comments.

16 Please make every effort to let our leaders at
17 the national level hear about our need for water. Thank
18 you very much.

19 THE HEARING OFFICER: Our next speaker this
20 evening is Laverna Ahkeah.

21 STATEMENT BY LAVERNA AHKEAH

05-12

22 BY MS. AHKEAH: My name is Laverna Ahkeah. I'm
23 Shiprock -- well, west of Shiprock and near the four
24 corners area.

25 (At this time, Ms. Ahkeah spoke in Navajo.)

Comment PH-05 – continued

33

1 BY MS. AHKEAH: I'm very much in favor of it. It
2 goes way back in my family -- well, it's my husband Robert
3 Ahkeah's family. His father, Sam Ahkeah, if you all
4 remember, was one of the leaders. And he -- with the
5 Navajo Lawyer Counsel Norman Littell, the two worked very
6 hard to get during Mr. Ahkeah's chairman -- chairman days
7 worked very hard to get the Navajo Dam Lake constructed.

8 And along with it, this was in the '40s, early
9 '40s, he wanted -- Mr. Ahkeah wanted the Navajos along
10 highway at that time 666, now it's 491. All those Navajos
11 in that -- with their chapters, he wanted those all under
12 agriculture. And he wanted the people down in around
13 Gallup, the Navajo chapters to have water from the San
14 Juan River when the Navajo Dam was constructed. He wanted
15 that river water put there.

16 So that's the reason why I'm very much in support
17 of this. And it says that the -- at this time it's
18 talking about municipal and industrial use. I'm hoping
19 that industrial means -- includes agriculture because the
20 late Mr. Ahkeah had -- his interest was that the Navajos
21 would all be in agriculture. They can have farms and they
22 would be self-sustaining again instead of being dependant
23 on the federal government for a handout. He knew that the
24 Navajo is a very independent person.

25 So, with that -- also I see that this project,

05-12-01

Comment PH-05 – continued

34

1 Gallup project, would not materialize where we could
2 actually see the results. It's not going to be until the
3 year 2040. Right now we're in 2007. And this is --
4 Mr. Ahkeah was talking about this back in 1930, '40s --
5 1940's. So it's going to be nearly a hundred years since
6 he started to visualize what he wanted for his Navajo
7 people in New Mexico.

8 And I see that Bureau of Reclamation, that's the
9 federal government, is study -- making a study of this
10 water for Gallup and surrounding areas since under Public
11 Law 92199 and also Reclamation Act of 1902. So, I'm very
12 thankful for those laws making it possible, moneys from
13 that to make a study of this magnitude surrounding our San
14 Juan River in New Mexico. And this is a lot of work
15 involved here over the years, a hundred years.

16 And it's -- I know that the Navajo Reservation is
17 a wide area, probably 60 to 70 percent, you know, probably
18 80 percent is in the State of Arizona. So there's a lot
19 of Navajos back there that are also in need of water.

20 But we need leaders like Mr. Ahkeah back from the
21 past who can harness water for their Indian people, Navajo
22 people in Arizona, water that's like the Green River
23 that's made into Lake Powell and -- for the Navajos, that
24 they can easier have the agriculture and domestic water
25 also. And so it's just -- so that it's just not New

Comment PH-05 – continued

35

1 Mexico Navajos, but also the rest of them. I thank you
2 very much.

3 THE HEARING OFFICER: Our next speaker this
4 evening is Isabel Betoni.

5 STATEMENT BY ISABEL BETONI

05-13

6 BY MS. BETONI: (Through the Interpreter) This
7 is for Isabel Betoni spoke to you. She said hello, thank
8 you for the interpretation. It's good for our people that
9 need this interpretation. I am from Whitehorse Lake where
10 we need water. And I want to say thank you for this
11 project.

12 And I want to -- I'm thankful that our children
13 help to work on this project. I agree with the statements
14 that have been made here. I'm from the Sand Springs area
15 of Whitehorse Lake Chapter on the eastern edge of the
16 Navajo Nation.

17 We need water. And I'm thankful for the plans
18 that are being made. And I'm thankful for our leaders who
19 are here. Water hauling is hard work. And you can injure
20 yourself hauling water. Our leaders that have spoken here
21 have traveled here and spent money on gas to be here.

22 Our President was here to speak up for us also,
23 and I'm thankful to him. We need water for -- to build
24 housing projects, housing projects built by the Navajo
25 Housing Authority and HUD. We don't have a housing

Comment PH-05 – continued

36

1 project at Whitehorse Lake because there's no water
2 supply.

3 Our kids need housing so they can come back. And
4 there's no jobs because there's not enough water. I want
5 to end by saying God Bless you and travel safely back to
6 Washington and take our message back to Washington. All
7 Navajos need water throughout the Navajo Nation. And
8 Navajos need to speak up and not just depend on their
9 leaders. Thank you.

10 THE HEARING OFFICER: Our next speaker this
11 evening is Tony Padilla.

12 STATEMENT BY TONY PADILLA

05-14

13 BY MR. PADILLA: Good evening. I'd like to say
14 good evening to the panel that are here with us tonight
15 and also the audience.

16 (At this time, Mr. Padilla spoke briefly in
17 Navajo.)

18 MR. PADILLA: First of all, I'd like to say my
19 community from Lake Valley and -- we're all supportive of
20 this project. And also I'm going to have the resolution
21 here to present to you and some pictures that was made by
22 the school -- from the school. Here are some of the
23 pictures that was given to me from the school, the Lake
24 Valley school. I sure hope that you give Mr. President
25 Bush so he can understand that we're still hauling water.

Comment PH-05 – continued

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1 I just want to read the first heading on this
2 resolution. It says, "Lake Valley Supporting the San Juan
3 PNM Alternative of the Navajo-Gallup Water Projects
4 Planning Report and Draft Environmental Statement."

5 And also I want to put a little bit of what I
6 went through from my early age. Like I said, I used to
7 live out in Lake Valley right in the middle, right there
8 where all the water is going on, the water projects.

9 And out there I used to herd sheep many years ago
10 and some of them when I was 9 years old. We used to have
11 a lot of earth dams with waters. Nowadays there's no
12 water in the earth dams. We have no rain.

13 We used to have a lot of rain back in the early
14 '50s and the '60s. And I don't know what's going on.
15 Maybe it's because of the ozone layer going on that we
16 don't have no rains out there no more. All we've got is
17 wind. I'm sure you guys noticed that today. There's a
18 lot of wind blowing across New Mexico, so.

19 And when I used to herd sheep out there, I used
20 to drink that water from the earth dam when I was about
21 12, 13 years old. And I'm lucky I'm still alive, so.
22 Like I said, I lived there for about 18 years. Then I
23 went on to the service, and then I came in to a job out
24 here in the Four Corners area. And I live in luxury. I
25 had showers, everything else that was there for me.

Comment PH-05 – continued

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1 But the people look upon me and they said, "Come
2 on home. Help us. Maybe you can help us out there." I
3 didn't realize that there was no water out there. And it
4 is a real tough issue, and it's a hard task to fight out
5 there.

6 And we have no water, no -- no water lines. They
7 are gone. And we don't have no power line. Our roads are
8 all washboarded out, and there's a lot of issues that is
9 going on out there.

10 So I hope this will open some people's eyes out
11 there to where other projects can move on faster too. And
12 this is what I want to bring here today.

13 And I have some of my Lake Valley community
14 members here. The elderlies, they are here. They still
15 haul water here, there, and -- like everything else says,
16 our gas is getting really high and we don't know what's
17 going to happen here in the next 15 or maybe 5 years
18 even.

19 We might not even have no vehicles around here.
20 We'd have to go back to horse and wagon, so. And this is
21 all I want to say. And I hope that you people on the
22 panel take this back to the federal government and really
23 hustle for us out there to where we can have some water.
24 Thank you.

25 THE HEARING OFFICER: Our next speaker this

Comment PH-05 – continued

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1 evening is Lorenzo Bates.

2 STATEMENT BY LORENZO BATES

05-15

3 MR. BATES: Good evening, members of the hearing
4 body and folks out in the gallery here. My name is
5 Lorenzo Bates. I'm a community member from Upper
6 Fruitland Chapter. I also am a Navajo Nation Council
7 Delegate representing that chapter.

8 This project as we have been talking about is
9 about the past, the present, and the future. And when I
10 reference the past, talking of decades of water flowing
11 past the Navajo Nation into Lake Powell and being able to
12 supply water to the folks, our neighbors to the west of
13 us.

14 As we look to that, it is obvious that those
15 folks would be opponents. They would not support the
16 project because of that, of taking for granted that this
17 water that flows in the San Juan comes from the western
18 slope will be there for the taking forever.

19 It's also about the present in terms of the
20 Navajo Nation realizing that the Nation as a people is
21 growing. And given the situation as it exists on Navajo,
22 given that water is a source for economic development and
23 growth, the Nation move forward with a water settlement.
24 But it also realize that even though the Nation would have
25 preferred to take all the water, reality is that we had to

Comment PH-05 – continued

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1 make a compromise. And that compromise allowed the water
2 settlement to move forward in Congress as it is today.

3 It's about the future. That future is the growth
4 of the Navajo Nation. But in doing that, in moving
5 forward for the future, it also required certain things to
6 take place.

7 And one of those that in 2000 -- the year 2000,
8 the commissioner of the Bureau of Reclamation listed
9 several issues that needed to be undertaken: the
10 hydraulic determination of the water availability, the
11 Endangered Species Act compliance for the water contracts
12 for the Navajo Reservoir, resolution at the county water
13 board to Arizona and New Mexico, and congressional
14 approval authorizing the construction of long-term water
15 contracts. Those issues that were presented and to be
16 fulfilled is what the Navajo Nation is doing today.

17 So included in that compromise is the fact that
18 the Nation is addressing these concerns. That's how
19 serious the Nation is about getting this project
20 fulfilled. And so I ask how much of the issues have been
21 contributed by our opponents? I would say none at this
22 point. It's Navajo Nation that has moved on this
23 project.

24 It's also about a reliable source of water. As
25 you probably are well aware, the community members out

Comment PH-05 – continued

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1 there, is that all of this area that we are talking, the
2 Eastern -- particularly the Eastern Agency depends
3 entirely on groundwater, a reliable source of water. And
4 that groundwater is not guaranteed to be a renewable
5 source of water.

6 So that limits the growth not only in those
7 areas, but for the nation, the chapters that rely on
8 groundwater. So this project brings forth that reliable
9 water, that quality of water that the people need.

10 So with that I close. And I thank you very much
11 for allowing me to talk in support of this project. Thank
12 you.

13 THE HEARING OFFICER: Thank you. Our next
14 speaker is former Senator Leonard Tsosie.

15 STATEMENT BY LEONARD TSOSIE

05-16

16 MR. TSOSIE: Thank you, Hearing Officer and
17 members of the panel, members of the audience. First, I
18 want to thank the audience member for their eloquent talk
19 to all of you about their plights in having to deal with
20 water.

21 (At this time, Mr. Tsosie spoke briefly in
22 Navajo.)

23 MR. TSOSIE: I agree that water is a priority.
24 Many of us -- in fact, I would venture to say that all of
25 us have waited a lifetime for a project like this. And so

Comment PH-05 – continued

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1 many of the elders have gone before us without having to
2 see quality water development to their homes, but we've
3 waited a lifetime. And we are glad for the current plans,
4 especially the Cutter Lateral diversion.

5 When I was coming in, I saw grass and flowers,
6 cut grass and flowers outside. We never are able to
7 afford those amenities near our homes because of the lack
8 of water. And then also, as mentioned in other
9 testimonies, that we do not even have a single swimming
10 pool in the Chaco Basin area. And this is all because of
11 the lack of water.

12 And so, Mr. Hearing Officer, as you and your
13 workers begin to put this together, imagine and think
14 about our Navajo people that have no running water and
15 that have to have haul water. Ms. Betoni said that not
16 only do you haul water, but she also said you hurt
17 yourself from it, just from having to carry the bucket of
18 water inside.

19 But, nonetheless, this is a matter of survival
20 for our people and our community. If you look at the
21 Chaco Canyon history, the Anasazis left. It is not our
22 intention to leave. And instead our intent is to develop
23 water so that we will have a sustainable community into
24 the future.

25 Without water, there's no socioeconomic

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1 development. When we built the high school over at Pueblo
2 Pintado that Mr. Willetto talked about, we barely got
3 approval for this. And it was on the verge of being
4 denied because of the lack of water. Now, there's an
5 elementary school being planned and a clinic being
6 planned. And these are also in trouble because of the
7 lack of water.

8 Denial of this project, therefore, goes beyond
9 the water issue. It impacts socioeconomic development,
10 which means jobs. Jobs mean less attrition from our
11 community and a return to our communities from our young
12 ones. Even the roads need water out there. Without water
13 we cannot develop roads out there. Hence, you heard
14 testimony about the rutted roads.

15 This project also signifies a benefit to the
16 first Americans in a direct way, that is Native
17 Americans. If you look at the history of the United
18 States, you will see that Native Americans were removed
19 from the rivers and the watershed areas. And this is no
20 example -- and this is no exception in the northwest New
21 Mexico area. And historically this is wrong. But this is
22 also a way to make amends for the historical wrongs that
23 occurred.

24 And the U.S. is the trustee -- the federal
25 government is the trustee of the Native American citizens

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1 now. And it would help tremendously in their efforts to
2 support and fund this project. And it would be a
3 dishonorable thing for the federal government and those
4 who are opposing to deny this project.

5 We talked about the cost of hauling water. Judge
6 Becenti, Tom Becenti, a Navajo judge, testified at one of
7 the hearings that he had been hauling water for 30 years.
8 If you multiply hauling water for 30 years, 2 times a week
9 for that length of time, you would have hauled water
10 57,600 times. And that's how many times Judge Becenti and
11 his family haul water. That's just one family.

12 So you multiply that by 5,000 families and you go
13 into the millions of times that these people have hauled
14 water. You compare the costs of water \$120 per 110
15 gallons. Ms. Betoni testified that they use 55 gallons.
16 So you compare this to \$3.30 per 1,000 gallons in
17 Albuquerque and similarly in Farmington.

18 So here what you heard from people today is that
19 they pay the highest water bill in the United States, this
20 area of the Chaco Basin area and other Navajo community
21 areas.

22 This is also a grazing and a farming community in
23 areas, and their livestock need water. Many of these
24 Navajo families are inseparable from their livestock and
25 so their life depends on their livestock. And so they

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45

1 need water too and that's what they haul water for. And
2 hence it's just not two times a week, but sometimes two
3 times a day that these people haul water because they have
4 to have their livestock survive.

5 One thing that this has done also is that this
6 project has promoted intercommunity and interethnic
7 cooperation. Thanks to Governor Richardson and the state
8 legislature, this project became a priority. And it's
9 also a priority for the Navajo Nation as President Shirley
10 attested to.

11 If this project is denied, it will be a travesty
12 and it will also push back this intercooperation. We've
13 worked too hard to let that happen. Intercooperation of
14 this is a move -- is causing this project to move fast.
15 And there are now water rights settlement talks between
16 New Mexico, Navajo Nation, U.S., and Gallup. This will
17 help in resolving the water rights issue that Council
18 Delegate Bates talked about.

19 Again, denial of this project will only encourage
20 litigation and bitter feelings again. And so this is just
21 not water. This is also how people live out here and how
22 we get along.

23 We are here -- Native Americans were here before
24 Albuquerque. And Albuquerque is already receiving San
25 Juan water. Despite the unfairness of that, we appreciate

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1 the planning for this project because it will make amends
2 for the historical wrongs.

3 Much cost and energy has been invested in this
4 project. People are cooperating. We are already working
5 on this project. We are already gathering moneys for it.
6 And the reason why is we have faith. We have faith that
7 this will be approved because we believe in democracy.

8 More than a majority of the people have expressed
9 their need. And I'm hoping that the federal government,
10 the state government, and others will listen. What you
11 heard tonight too is people are happy. That happiness is
12 written in our Declaration of Independence, the pursuit of
13 happiness. This water represents that.

14 As I've indicated earlier, we cannot go
15 elsewhere. We will be here. And we hope you will support
16 this project. And we ask also that you recommend the
17 removal of bureaucratic and unnecessary barriers to this
18 project in your report and to prioritize the building of
19 the Navajo portion. Thank you very much.

20 THE HEARING OFFICER: Our next speaker this
21 evening is Andrew Robertson.

22 STATEMENT BY ANDREW ROBERTSON

05-17

23 MR. ROBERTSON: I'm a civil engineer, and I've
24 been working on water projects with various chapters in
25 the Eastern Navajo Agency for about seven years. And so

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1 I've seen a lot of the needs up close. You've heard from
2 many of the people here who experience the burden of
3 hauling water firsthand, so there's no need for me repeat
4 their stories.

5 I would just like to say briefly, in the interest
6 of time, that this need is urgent. It is very real, and
7 it's widespread. There are chapters especially in Eastern
8 along the Cutter Lateral alignment but throughout the
9 project area where the wells are dropping. The water
10 quality is unacceptable. The State of New Mexico has
11 declared public health emergencies because of the failing
12 water wells.

13 There are schools that have been denied in Pueblo
14 Pintado -- there is a -- as Mr. Willetto pointed out and
15 Councilman Tsosie, that there's a new school that's been
16 built, but they had to abandon an older school because
17 there's not enough water for both. So they have this very
18 nice school facility that they wanted to use for other
19 educational uses, and they had to abandon it because
20 there's not enough water.

21 There are housing developments that have been
22 denied, businesses that have been denied -- that means
23 jobs and economic development -- as a result of the lack
24 of water.

25 The Indian Health Service has got numerous

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1 projects on their sanitary deficiency system list that
2 would serve literally thousands of people. However, these
3 water line extensions cannot be built because there's not
4 enough water to build the pipes. If they built them, the
5 pipes would be filled with air instead of water.

6 So these are the problems that we've been working
7 with in Eastern for, in my experience, seven -- only seven
8 years; but there are people who have been working on this
9 for decades. And we've always, you know -- the problem
10 has always come back to adequate water supply.

11 Having looked at the -- done some analysis on
12 this, I can tell you that from my perspective as the
13 third-party engineer, this alignment, this alternative
14 that's being proposed is the best way -- in fact, I would
15 go so far as to say the only way to solve the water
16 problems facing Eastern Navajo chapters in any sort of
17 long-term, sustainable way.

18 Finally, I'd like to close by saying -- also
19 mention support on behalf of Torreon Chapter. Joe
20 Calpodito, the Chapter President was here earlier. He had
21 to leave early because of family commitments.

22 And also Council Delegate Dave Rico from Torreon,
23 representing Torreon, Pueblo Pintado, Whitehorse, he
24 wanted to express his support. He had a family emergency
25 and was not able to attend, but they did ask me to convey

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1 Torreon Chapter's wholehearted support for this project
2 and my own support as well.

3 THE HEARING OFFICER: Our next speaker is Dale
4 Buser.

5 STATEMENT BY DALE BUSER

05-18

6 BY MR. BUSER: Good evening. I'm Dale Buser.
7 And I'm representing myself personally, not really
8 representing any organization. I'm from Gallup, New
9 Mexico. And I just drove all the way up here this evening
10 to show my support. And I knew -- I do know -- I am a
11 small business owner in Gallup, so I'm very concerned
12 about the issue.

13 You start at a young age to invest for your
14 future, invest for your retirement, and -- which I have
15 done in Gallup. I've been there over eight years now. I
16 actually came from this community, Farmington.

17 And I have a young family. And I would hate to
18 see everything that I've invested in be relinquished due
19 to an issue that is very needed on the Reservation by many
20 of my clients, as well as the community of Gallup.

21 And I just want to express that to all of you,
22 you do have a partner in the community of Gallup. I have
23 not ever talked to one person in the community of Gallup
24 that did not support this project.

25 And in the essence of time, as you can see, I'm

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1 in support of the project. So thank you very much.

2 THE HEARING OFFICER: Our next speaker is Jay
3 McCollum.

4 STATEMENT BY JAY MCCOLLUM

05-19

5 BY MR. MCCOLLUM: I'm Jay McCollum, and I live in
6 Gallup, New Mexico. And something I viewed has always
7 stuck in my mind concerning how government can help its
8 people. In the former Soviet Union, there were massive
9 semitrucks stuck in the muddy road with food stuffs in its
10 -- on its cargo base not able to get to market because the
11 roads were not available to them to be able to get their
12 food to the market.

13 We're at that same kind of crossroads in this
14 geographical region of the country where there is a water
15 source that needs to be brought to the people. And if
16 government could help us with the money and resources
17 needed to bring water to its people, that would be a great
18 assistance for all of us.

19 I'm pastor of the First Baptist Church in Gallup,
20 New Mexico. We have 1,058 members. And we're in support
21 of this water project because it allows people to exist in
22 their life and their livelihood. If you deny water to its
23 people, you deny their right to exist.

24 And I would hope that the people of this country
25 would see the great need that this geographical region

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1 needs; and that's water, which is a source of life. Thank
2 you for your patience and listening to us this evening.

3 THE HEARING OFFICER: Thank you. Next speaker is
4 Michael House.

5 MR. HOUSE: I thought it was a sign-in sheet.

6 THE HEARING OFFICER: Do you have anything to
7 say?

8 MR. HOUSE: No.

9 THE HEARING OFFICER: Our next speaker is
10 J.C. Begay.

11 STATEMENT BY J.C. BEGAY

05-20

12 BY MR. BEGAY: (Through the Interpreter)
13 Mr. J.C. Begay, Red Valley, Arizona. Greetings, people in
14 the audience, panel. I would like to have my comment
15 interpreted.

16 Many times over I've attended several public
17 hearings, and we had several resolutions that came in; but
18 I never saw my comment or my resolution in the comment
19 part of the EIS.

20 According to the map, Red Valley Chapter is not
21 within the boundaries of the proposed pipeline. I'm
22 representing the people from Red Valley. I'm the Chapter
23 President.

24 There are a lot of people that vote in New Mexico
25 from my area. And since our chapter borders the state

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1 line, we feel that we've been excluded from the proposed
2 pipeline. And I plead with you to consider my people up
3 in the Red Valley, Cove area.

4 I know that there's a 90-days EIS federal
5 registry publication when there's a public hearing. And
6 there's another period for comments. And we want to have
7 our comments included in the proposed route. Why is Saint
8 Michaels and Window Rock, who's in the state of Arizona,
9 included in the proposed pipeline and the Red Valley
10 Chapter not included in the pipeline proposal?

11 We will continue to plan towards being included.
12 We have a high school built in the community, which will
13 open in the school year '08, that needs water. Our
14 water -- our groundwaters were contaminated by the uranium
15 mining in the '50s. We have poor quality groundwater;
16 therefore, we really need the quality water that's being
17 piped through 491.

18 And we will have other resolution coming in as
19 written comments. My purpose for saying this is that we
20 have our young generation upcoming. We won't see this in
21 our lifetime, but our young generation is what would be at
22 stake in getting the reliable water sources to them.
23 Thank you.

24 THE HEARING OFFICER: Wilson Ray is next.

25 STATEMENT BY WILSON RAY

05-20-01

05-21

Comment PH-05 – continued

53

1 BY MR. RAY: (Through the Interpreter) This is
2 Mr. Wilson Ray from Huerfano Chapter. He's greeting all
3 of you here that are attending the public hearing. He
4 says there are many comments that have been made thus far
5 in the public hearing. I will not reiterate many of the
6 things that I was hoping to say.

7 The main point is that there is going to be a
8 construction of the San Juan River -- from the San Juan
9 River to many of the communities in the area along the 491
10 and the Cutter Lateral, which I'm very thankful for. We
11 should also be thankful for the Creator who made the
12 water, who made the moisture.

13 The only thing that causes conflict is
14 regulations and laws. It causes conflicts among different
15 ethnic groups, different groups, but the basic need is the
16 same. The needs will remain the same no matter whether
17 we're in support of it or opposing the proposal. That's
18 why we're here talking about it, water uses, developments,
19 and plans.

20 I'm from the Huerfano Chapter. I'm the President
21 of that chapter, and we're very supportive of the
22 proposal. There are approximately nine chapters that
23 support this proposal, the proposal to construct the
24 pipeline.

25 Thank you. And I'm very thankful for you -- for

Comment PH-05 – continued

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1 the panel to accept our comments as worthy and having
2 merits.

3 THE HEARING OFFICER: The next speaker this
4 evening is Gilbert Roger.

5 STATEMENT BY GILBERT ROGER

05-22

6 BY MR. ROGER: (Through the Interpreter) This is
7 Gilbert Roger from White Rock Chapter House. He's
8 greeting everybody in the audience. He wants to speak the
9 Navajo language to make his comment. He will be
10 submitting a resolution illustrating the position of the
11 chapter that he's working with.

12 He's in support of the public -- the pipeline,
13 San Juan and Cutter Lateral as it is indicated on the
14 map. He knows that his chapter has been excluded in the
15 route from the Cutter Lateral, but he is in support of the
16 project.

17 In the laws -- he says that in the laws we know
18 that we have been included in some respect based on our
19 position. Our water wells have been dropping for many
20 years, and we are proposing to drill a deep well. And we
21 have the proposal in requesting funding for this project.

22 This will parallel the project from the Cutter
23 Lateral, as well as the San Juan route. Due to the
24 salinity of the water, many of my people haul water 30 and
25 60 miles round trip from Farmington and Crownpoint. We

Comment PH-05 – continued

55

1 know the hardship of hauling water; therefore, we are in
2 support of the proposed project of the Navajo-Gallup Water
3 Supply Project.

4 I am a chapter administrator. I'm the manager,
5 and I will be submitting a resolution on behalf of my
6 chapter. Thank you.

7 THE HEARING OFFICER: Our next speaker this
8 evening is Dorothy Redhorse.

9 STATEMENT BY DOROTHY REDHORSE

05-23

10 BY MS. REDHORSE: Good evening, everyone,
11 audience, and the panel. My name is Dorothy Redhorse, and
12 I'm a resident of Littlewater, New Mexico. And also I am
13 the chapter Vice President for the Sanostee Chapter.

14 And water has been one topic that's been very
15 important to all of the community members. Anyhow, our
16 community has been impacted by industrial development in
17 which we lost one well that supplies our drinking water
18 supply. And we have about half a dozen wells that supply
19 our drinking water for our community. And there are
20 several thousand community members.

21 So we see that the water supply is really
22 important. And it's been discussed at numerous meetings
23 the past three or four years, simply because Desert Rock
24 Proposed Project, which is a coal fire power plant that's
25 been proposed, and they -- the developer initially had

Comment PH-05 – continued

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1 approached our community to withdraw 4500 acre-feet of the
2 groundwater supply for the plant, but our community
3 opposed it.

4 And so far we have been discussing our
5 groundwater supply. And based on the discussions that
6 were made and the resolutions that were sent out, the
7 project has been moved further to the east. But yet this
8 power plant will also be drawing water from the same
9 aquifer that we're using for our community drinking water
10 supply, which is the Morrison Formation. So it is
11 important.

05-23-01

12 And one of the position we had as a community is
13 that the -- if this project goes forth, that our community
14 would be one of those to receive the water, as the map
15 shows, that Sanostee is one of the communities along the
16 line. So, therefore, there is support for this Navajo-
17 Gallup Water Supply Project.

18 Then personally speaking, the -- our current
19 water supply of about over 90 percent of our community
20 members do have a domestic -- or a drinking water supply
21 supplied by a utility company. However, we're limited to
22 as the amount that we use. It's restricted to domestic.

23 So what I'd like to see is that some of the pipe
24 water to be allocated for agricultural purposes. I'd like
25 to have a small garden in my backyard.

05-23-02

Comment PH-05 – continued

57

1 At this time or this day and age, it's very
2 difficult to do dry land farming in my community, despite
3 that we live at the foot of the mountain because the
4 snowmelt runoff from the Chuska Mountains ceases around
5 late February or early March. So there is interest in
6 having a small garden that has been expressed by community
7 members, but personally I would like to be able to do
8 that.

9 The other part is that one of -- like I said, one
10 of our wells has been impacted by oil and gas extractions,
11 so that's no longer in use. So the -- so we know that
12 the -- being we're in competition for our water supply
13 with the proposed power plant, so we've been addressing
14 different ways to keep our community, maintain its water
15 supply.

16 And also we're aware of the fact that one acre-
17 foot of water is enough for one family of four to use the
18 water for one year. And for that reason we're trying to
19 plan for our community, its future needs for our drinking
20 water supply. And I know that our community are far more
21 conservative, as far as consuming the water. The ratio is
22 much less than what an average user, which is 2,000
23 gallons per month. So we would be much less than that.

24 And in addition -- and finally, water is life.
25 Water is precious. And the human body is made up of 75

Comment PH-05 – continued

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1 percent of water. Therefore, this is really an important
2 project and, therefore, our communities supports this
3 project. Thank you.

4 THE HEARING OFFICER: Our next speaker is Lucy
5 Cayatineto.

6 STATEMENT BY LUCY CAYATINETO

05-24

7 BY MS. CAYATINETO: Good evening, everyone. I
8 know we're all tired. We have a three-hour drive home.
9 So first of all, my name is Lucy Cayatineto. I work with
10 the Navajo Tribal Utility Authority, and I fully support
11 this Cutter Lateral program. We have many chapters out
12 there that I go visit, and the people out there are asking
13 for help. They are asking for water. A lot of them are
14 hauling the water.

15 Right now we have a couple of watering points.
16 We have three, actually, total on our side where they were
17 hauling about 300,000 gallons a month. Now, they are down
18 to 80,000. And that's a lot of water for these people to
19 haul. And the trucks are breaking down. The roads are
20 bad. There's muddy -- I mean, the area where we have it
21 is just, you know, outrageous.

22 And for the last four years, we've been in a
23 drought -- or more than four years, actually. But we've
24 been in a drought. So what's happening is in the area of
25 Pueblo Pintado we had to deny a clinic because we have no

Comment PH-05 – continued

59

1 water in that area.

2 A lot of people are getting ill due to the water
3 shortages in that area. There's a lot of diabetes, a lot
4 of kidney problems. And these people have to drive about
5 a hundred miles to get water -- or to the hospital. I'm
6 sorry. But they go round trip about a hundred miles each
7 time.

8 We have new businesses that were denied due to no
9 water. And like they were saying, there's a school that's
10 kindergarten through eighth grade that we told them they
11 have to be replaced by another school in order for the new
12 school to be open. The new high school was almost denied
13 because we didn't have enough in that area.

14 In Ojo Encino we have two wells. And the wells
15 are running 14 hours a day on overload most of the time.
16 And what's happening is it's only giving us 150 gallons
17 per minute. Whitehorse Lake is giving us 15 gallons per
18 minute. It takes us 24 hours to refill that tank. And
19 when we have a water outage there, it is horrible.

20 We have four wells serving the Torreon area. But
21 all four wells total is just 150 gallons per minute with
22 all the people that live there. This is really needed.

23 A lot of people are saying NTUA is giving us bad
24 water, but it's not that. What it is is the groundwater
25 is getting contaminated. We have a school in the Borrego

Comment PH-05 – continued

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1 Pass area by Smith Lake where the water is so bad that the
2 high sulfur content is given to these kids. And we're
3 trying to treat it as much as possible, but it's not
4 working. I mean, we're trying to treat it to keep it at
5 EPA level.

6 We say children are our future. How are we doing
7 this to our children when, you know, they are supposed to
8 be our future? They say water is life and without water
9 we're nothing. I've seen everyone here drinking water
10 tonight. I see everybody else drinking water up here.
11 And we really need to support this program.

12 So please I ask you on behalf of NTUA to help us
13 with our water lines out there, to support, to get better
14 gallons per minute, to have better water pressure, and to
15 have better water to serve to our people. Thank you.

16 THE HEARING OFFICER: Our next speaker this
17 evening is Steve Cone.

18 STATEMENT BY STEVE CONE

05-25

19 BY MR. CONE: Well, now, I must ask you, what's a
20 picnic without a skunk or two? But then again I believe
21 it was that distinguished man of honor and integrity Colin
22 Powell who once said, "If everyone is thinking the same,
23 somebody is not thinking."

24 Hydrologic determination. Last June the Upper
25 Colorado River Commission passed a resolution in support

Comment PH-05 – continued

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1 of the Bureau's proposed draft, hydrologic determination;
2 that the amount of water needed for the Navajo-Gallup
3 Water Supply Project, the centerpiece of the proposed
4 Navajo water rights settlement on the San Juan, is now
5 available, has been found, as it were, by factoring in
6 reduced evaporation rates due to our most recent drought.

7 Since less water is evaporating, the logic goes,
8 more must be available. No. It does not take a rocket
9 scientist, as the Bureau folks and their customers know,
10 to recognize that less is more. So presto, chango,
11 abracadabra, we have new water. And the Secretary of the
12 Interior must duly consider these magical numbers.

13 I must say that he would have to have his head
14 examined if he were to concur with his Bureau's proposed
15 hydrologic determination because while smoke and mirrors
16 may work in the short run, at the end of the day, you
17 can't drink them.

18 Water rights. According to the Winters Doctrine,
19 as upheld in the Arizona v. California case by the Supreme
20 Court, a tribe has a right to enough water to irrigate all
21 of the practicably irrigatable acreage, the PIA, on its
22 Reservation lands.

23 The Supreme Court in Arizona v. California ruled
24 that using the PIA standard is the only, quote, feasible
25 and fair way by which reserved water rights for a tribe

Comment PH-05 – continued

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1 can be measured.

2 So the only feasible and fair way to quantify the
3 Navajo right on the San Juan and the first and foremost
4 task is to measure the PIA of the Navajo Reservation lands
5 in the San Juan Basin. This must be done as a matter of
6 fairness and accuracy to determine the Navajo tribal water
7 right.

8 In this process certain issues must be addressed
9 and certain questions answered. Is NIIP, the Navajo
10 Indian Irrigation Project, economically feasible? Do the
11 economic benefits of irrigation exceed the costs of
12 irrigation? How could it be so, given NIIP has eventually
13 lost millions upon millions of dollars each year?

14 City of Gallup. How are the city of Gallup's
15 interests pertinent to the settlement of Navajo claims on
16 the San Juan? The Navajo claims have nothing to do with
17 the city of Gallup. Why is Gallup being shoe horned into
18 this project and the settlement? They can't afford it.

19 And they are not entitled or eligible for the
20 massive federal government subsidies this multibillion
21 dollar project would require. Yes, billions. We are
22 talking about the Bureau after all.

23 We know the cost overruns for the Bureau projects
24 typically run two and three times what the initial
25 estimates have been. And we also know that we have not

Comment PH-05 – continued

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1 been told in this EIS or this planning document what the
2 cost of the project will be. And we are being asked to
3 comment on it without knowing what the costs may be.

4 So if the Navajo Nation wants to send its NIIP
5 irrigation water to Gallup, so be it. But if we are to
6 deal honestly, federal tax payers should not be required
7 to support any part of the Navajo-Gallup Water Supply
8 Project that is unworkable or uneconomic.

9 THE HEARING OFFICER: Our next speaker this
10 evening is Shirlee Manuelito.

11 STATEMENT BY SHIRLEE MANUELITO

05-26

12 MS. MANUELITO: I just wanted to say a few words
13 here. I'm a full-time mom, wife. I help care for my
14 parents. The little two-year-old running around in her
15 terrible 2's is mine. My father, he is disabled veteran
16 who served his country for 24 years.

17 We have a hogan where we live, and it's located
18 in the Lake Valley area along 371 Highway, 56 miles south
19 of Farmington. I was married in this hogan in a
20 traditional Navajo wedding several years ago.

21 And before my little one was born, we had a
22 blessing way ceremony in this hogan, so that she could be
23 born healthy and safely; and that when I had my daughter
24 that I would be safe.

25 My family and our heart is tied to this area and

Comment PH-05 – continued

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1 to this land. Long ago the federal government allocated
2 land to my grandfather when he was 19 years old.

3 When you look through our eyes, it is easy to see
4 the need for water in our communities. For my family, we
5 live in a hogan; and it's difficult at times, especially
6 during the winter and difficult weather it's hard to haul
7 water.

8 My family wants the pleasure of turning the
9 faucet on to shower before work, to bathe my daughter, to
10 cook our meals freely without having to worry that the
11 water is getting too low.

12 I'm a master's student at New Mexico Highlands
13 University in social work. My husband is working on his
14 master's degree in special education. My daughter, my
15 little one, Madison, she's two; and pretty soon she'll be
16 entering kindergarten.

17 And some day, you know, we hope to build a bigger
18 house in this area. These experiences that I'm speaking
19 of are similar to the community members -- are similar to
20 my community members. I don't want another generation to
21 go without water again. I'm 28 years old. And I hope by
22 the time I'm 50 I can see water coming out of our sink in
23 our hogan.

24 I wanted to say thank you to the panel for
25 listening and coming. And to thank all for speaking for

Comment PH-05 – continued

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1 the Navajo people, especially the children who want clean
2 water. Thank you.

3 THE HEARING OFFICER: Our next speaker is Alice
4 Benally.

5 (At this time, Alice Benally did not appear.)

6 THE HEARING OFFICER: Mr. Manuelito, you're up
7 next, sir.

8 STATEMENT BY STERLING MANUELITO

05-27

9 BY MR. MANUELITO: (Through the Interpreter)
10 Greetings to the panel and the audience. Thank you for
11 coming. Mr. Sterling Manuelito. He is representing the
12 people, the two-legged, like the animals, the insects, the
13 four-legged mammals and reptile. On their behalf, I want
14 to speak here at this public hearing.

15 I also want to acknowledge that 63 years to date
16 people of different races, partnership -- I believe that
17 was a war, England -- and he said some other country.

18 He was one year old -- one year and four months
19 old when this was happening in the South Pacific. And the
20 Code Talkers were there, and they were in partnership with
21 other -- other people, other military personnel.

22 Let's not take this issue as something to use as
23 greed, not to overindulge because we have education, not
24 to say, "I conquered you, therefore, you have to buy back
25 the spoils from me."

Comment PH-05 – continued

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1 Water is a sacred element. This is a sacred
2 element that we're talking about here today. "It's our
3 water." We can't say it's our water.

4 The cost is very high. We need to volunteer. We
5 need to work on the cost to help each other, to make
6 meaningful contribution to the society. For example,
7 during the horse and wagon days -- and that's when the
8 sign fell down. He said that the holy people were angry
9 because we were talking about such sacred element here.

10 During the horse and wagon days, we used to take
11 the wooden barrels to standing water. And take our Blue
12 Bird flour bags and filter the waters. We can't do that
13 today. We find raw sewage in our water. We can't eat the
14 fish because they are contaminated with elements.

15 I think we should partner together and not let
16 this story about the coyote overwhelm us and cause us to
17 lose sight of this pipeline construction. We need each
18 other to strive to obtain the water for our children.

19 Whoever is in opposition has the same basic
20 needs. Therefore, it is better to have the partnership in
21 place in getting the much-needed water to our children.

22 We want to see the pipeline constructed. And
23 somebody said that there was a -- he believes that there's
24 80 percent of water in the earth, but somebody else said
25 there was 75 percent of water in a human body.

Comment PH-05 – continued

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1 For example, he says that the river represents
2 our vein in our bodies. And if we tap into the water from
3 the San Juan River to the outskirts of the community here,
4 we are actually sharing water transfusion style to the
5 people of Gallup where they will need of the much needed
6 water.

7 Again, he says do not use the term, "I conquer
8 you and therefore you have to buy the spoils back from
9 me." The Creator made the water.

10 So he wants us to share the water and to be in
11 support of the proposed project, both the Navajo-Gallup
12 and the Cutter Lateral. Sometime in the future, it will
13 be looped together somewhere along the way. This is for
14 our children and for our people. Thank you.

15 THE HEARING OFFICER: Our last speaker this
16 evening is Tommy McDonald.

17 STATEMENT BY TOMMY MCDONALD

05-28

18 MR. MCDONALD: Good evening, everyone, to the
19 panelists here, also to the audience. Let me introduce
20 myself. My name is Tom McDonald. I represent Crownpoint,
21 New Mexico. We have an organization out there that we're
22 comprised of dealing with health issues. We have an
23 organization that's named Eastern Navajo Health Board.

24 This organization is comprised of 16 chapters out
25 there in the region of Crownpoint. And normally

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1 Crownpoint has more or less been identified with Navajo
2 communities that's been working with the federal
3 governments and also the state and the county. That's
4 where it's needed, mostly heavily populated by Native
5 Americans, Navajos; that has identified communities up
6 there.

7 And what this Navajo -- Eastern Navajo Health
8 Board does is to advocate and promote a lot of the health
9 issues that as either to prevent and advocate for the
10 wellness of all of our folks, whether they are young or
11 either they are old.

12 So I just wanted to just recite some of the
13 resolutions that we had presented to the -- that was
14 presented to our organization there in Crownpoint when we
15 had our meeting.

16 So I want this read into the record. And so then
17 we'll move on. The resolution states is that it does
18 support this projects of the Navajo-Gallup Water Supply
19 Project and also this Cutter Lateral Project here. So
20 I'll just go ahead and briefly read over what the
21 resolution is stating.

22 This here is a resolution of Eastern Navajo
23 Health Board. Whereas, number one, Eastern Navajo Health
24 Board was established by Navajo Health -- Indian Health
25 Service to promote the involvement, participation, and

Comment PH-05 – continued

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1 consultation in the Indian Health Service by the Indian
2 people in partnership to promote the advancement of health
3 and welfare of Native Americans on the Navajo
4 Reservation.

5 And, two, the most urgent and serious public
6 health problems facing our communities are due in large
7 part to lack of clean, safe, water supply and adequate
8 sanitation.

9 And, three, many of our community members suffer
10 from various health afflicted by illnesses, which require
11 health promotion and prevention.

12 And item number four, the Indian Health Service
13 and the Office of Environmental Health has a proposed
14 water line extension project to serve thousands of people
15 in various chapters where running water is lacking.

16 And due to the short supply of adequate water,
17 these projects cannot be built to service the needy
18 families and prevent major problems, thus forcing
19 community members to travel over a hundred miles round
20 trip to Crownpoint Indian Health Service facilities to
21 receive healthcare services.

22 And here it says, now, therefore be resolved
23 that, one, the Eastern Navajo Agency Health Board approves
24 the Preferred Alternative of the Navajo-Gallup Water
25 Supply/Cutter Lateral request, which will really improve

Comment PH-05 – continued

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1 the public health of our communities by helping to prevent
2 health problems in part due to safe and healthy water
3 supply.

4 Two, the Eastern Navajo Agency Health Board
5 further finds that the adequate water supply provided by
6 the Navajo-Gallup Water Supply/Cutter Lateral Project is a
7 necessary prerequisite in order for new kinds of
8 healthcare facilities can be constructed in Eastern Navajo
9 Agency communities.

10 Three, Eastern Navajo Agency approves -- Eastern
11 Navajo Health Board approves the Navajo-Gallup Water
12 Supply/Cutter Lateral Project and requests that this
13 project be completed as soon as possible.

14 And this is certified as of June the 5th, 2007,
15 at a duly called meeting. There was 13 favors, zero
16 opposed, and one extension, which was our chairperson in
17 case of a tie. That's always parliamentary procedure, and
18 that's when the chair does cast a vote.

19 So I present you this resolution. And hopefully
20 this will be one of the documents that will actually be
21 brought forth as one of the items in support of this
22 projects. Thank you.

23 THE HEARING OFFICER: Our public hearing is
24 closed. Thank you for coming. Please drive home safely.

25 (The hearing adjourned at 10:52 p.m.)

Comment PH-05 – continued

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1 C E R T I F I C A T E

2

3 I, Tanya M. Nims, a Certified Court Reporter, do
4 hereby certify that the Proceedings of the above-entitled
5 project were reported by me stenographically on June 6,
6 2007, and that the within transcript is a true and
7 accurate transcription of my shorthand notes.

8 I further certify that I am neither an attorney
9 nor counsel for, nor related to or employed by any of the
10 parties to the project, and that I am not a relative or
11 employee or any attorney or counsel employed by the
12 project hereto, or financially interested in the project.

13

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17

18 TANYA M. NIMS, RPR
19 Certified Court Reporter #168
License Expires: 12/31/07

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Table 2—List of comment designations with corresponding responses¹

Federal Government Agencies (FG)	
FG-01	No response required.
FG-02	No response required.
FG-03	No response required.
Tribal Governments (TG)	
TG-01-01	A draft programmatic agreement (PA) will be prepared and transmitted to the Navajo Nation, Hopi Tribe, State of New Mexico, Bureau of Land Management, Bureau of Indian Affairs, city of Gallup, and the Advisory Council on Historic Preservation for review. A traditional cultural property study will be included as part of a cultural resources inventory once a corridor is identified on the ground. A draft Native American Graves Protection and Repatriation Act Plan of Action will be prepared as an attachment to the draft PA and transmitted for Hopi Tribe review. Both PAs will be finalized and executed prior to construction.
TG-02-01	The Navajo-Gallup Water Supply Project's (proposed project) purpose is to identify water supply alternatives for a projected water demand for the year 2040. Population growth and per capita water demand are the two factors to determine water demand. Both of these factors are based on conservative estimates for this area of the Southwest. Population growth is continuing throughout the proposed project area as evidenced by the growth of the student body in the schools throughout the Navajo Nation and that the existing groundwater supplies are not able to meet the even limited demand.
TG-03-01	The San Juan River Public Service Company of New Mexico (SJRPNM) Alternative was selected as the preferred alternative for meeting the established purpose and need. This alternative was selected as a result of a rigorous screening process, including factors from the National Environmental Policy Act and the <i>Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies</i> . The SJRPNM Alternative ranked highest (or most preferable) in the overall combined analysis. This screening process is described in chapter V and attachment J of volume I.
TG-03-02	<p>The Bureau of Reclamation (Reclamation) updated cost estimates to 2007 levels and made this information available to all interested parties. Updated costs did not change project impacts. Changes to cost estimates and economic analyses were incorporated into the final document. Peer review of the design and cost estimate was also completed by an independent engineering consultant.</p> <p>The Indian Health Service and State of New Mexico are members of the steering committee and participated actively in the design of the project.</p> <p>Budget constraints limited Reclamation to conducting only appraisal-level design and cost estimates.</p>

¹ The terms document, volume I, and PR/FEIS all refer to the same document: **volume I** of the PR/FEIS.

Tribal Governments (TG)

TG-03-02 (continued)	<p>In the cost estimate, Reclamation included 22.5 percent in contingencies to cover minor differences in actual and estimated quantities, difficulties unforeseeable at the site, possible minor changes in plans, and other uncertainties.</p> <p>Reclamation estimates that between \$5 and 10 million may be needed to collect additional design data, develop detail designs, and refine the cost estimate.</p>
TG-03-03	See response to comment TG-03-02.
TG-03-04	Value engineering is a step undertaken as part of the final design and prior to preparing construction specifications. The result of value engineering should be the most long-term, cost-efficient alternative to provide the specific desired benefits.
TG-03-05	This comment was considered, but no changes were made to the document.
TG-03-06	See response to comment TG-03-02.
TG-03-07	The Navajo Indian Irrigation Project (NIIP) is one of the Navajo Nation's sources to implement the Navajo Depletion Guarantee and would share facilities with the Navajo-Gallup Water Supply Project. Completion of NIIP is dependent on congressional appropriations, and it is assumed that NIIP is fully developed under all alternatives. Additional language was added to the description of NIIP in chapter I and tables in chapter II.
TG-03-08	Document text was revised to reflect the current status of the Animas-La Plata Project and average annual depletions.
TG-03-09	In volume I, page I-17, footnote 8: the wording has been changed from "firmly believes that" to "interprets."
TG-03-10	Navajo Nation Resource Committee and Navajo chapter resolutions are included in volume I as attachments C and D.
TG-03-11	Changes were made to reflect that the 90,000 estimate is based on 2000 census data.
TG-03-12	Changes were made in the document to address the comment.
TG-03-13	The Secretary of the Interior (Secretary) is delegated the responsibility for development of the hydrologic determination. In fulfilling this responsibility, the Secretary consulted with and received concurrence from the Upper Basin States in completing the hydrologic determination. The Secretary's hydrologic determination and Upper Colorado Basin resolution supporting the determination and use of Upper Basin water in the Lower Basin in New Mexico are included in volume I, attachment N.
TG-03-14	Changes were made in the document to address the comment.
TG-03-15	Comment noted.
TG-03-16	This comment is addressed in the "Socioeconomics" section of chapter V (volume I).
TG-03-17	Figures IV-1 through IV-6 were updated in chapter IV (volume I) to include the current Navajo Tribal Utility Authority public water system overages.
TG-03-18	Additional discussion of Navajo mineral ownership was added to the "Indian Trust Assets" section of chapter V (volume I). However, additional development of these resources is beyond the scope of this document.

Tribal Governments (TG)

TG-04-01	<p>The Navajo-Gallup Water Supply Project (proposed project) is to be implemented and operated to reduce the impact on use of existing water rights on the San Juan River in New Mexico and Colorado. Without specific details on how a water right would be developed or impacted, it is not possible to address concerns.</p> <p>New Mexico is limited by its Colorado River Compact (Compact) allocation in the water depletion it can take from the San Juan River. Implementation of the proposed project prior to putting other water rights to use may impact those water rights. The States will be responsible for administering the water rights to ensure compliance with State water law and the Compact.</p>
TG-04-02	<p>The planning report and draft environmental impact statement tables V-3 and V-5 did not incorporate the San Juan River Basin (Basin) in New Mexico Navajo Nation Water Rights Settlement Agreement. At the time, legislation was introduced in the Congress, but the settlement had not been passed. With the passage of Public Law (P.L.) 111-11, the Secretary of the Interior shall execute an agreement consistent with the provisions of P.L. 111-11 by December 31, 2010. The planning report and final environmental impact statement (PR/FEIS) does not analyze the Navajo Settlement Agreement (volume I, attachment P). Table V-5 is a summary of major existing and future Tribal uses of Basin water previously used in the final environmental impact statement - <i>Navajo Reservoir Operations</i> - dated April 2006.</p> <p>Changes to table V-5 in the PR/FEIS included moving the Jicarilla Apache Nation's Public Service Company of New Mexico Third- Party Water Service Contract from the "future use" category to "existing uses," correcting the 563 acre-feet per year (AFY) of Southern Ute Indian Tribe future use from the Florida Project to show that its is included in the environmental baseline for recent Endangered Species Act (ESA) consultations, and correcting the 1,090 AFY direct diversion right of the Southern Ute Indian Tribe future use to show that is has not been included in the environmental baseline for recent ESA consultations. Additional detail to water rights descriptions shown in the future uses - Southern Ute Indian Tribe - was added as requested by the Tribe.</p> <p>The inclusion of all Southern Ute Indian Tribe and Jicarilla Apache Nation settlement water in the existing environmental baseline continues to be questioned by the two Tribes. Historic and current depletions are included in the existing baseline; however, the Bureau of Reclamation (Reclamation) has been unable to find ESA section 7 consultations that include Tribal future use water (with exception of the Animas-La Plata Project, Navajo Indian Irrigation Project, Florida Project, San Juan-Chama Project, Stollsteimer Creek, and the Jicarilla Apache Nation Navajo River Water Supply Project).</p> <p>Reclamation held additional discussions with the Southern Ute Tribe and the State of Colorado regarding the Tribe's unused water settlement right within the existing baseline. Table V-5 appears consistent with existing information, and it appears that not all of the Tribe's water rights may be included within the environmental baseline. With or without the Navajo-Gallup Water Supply project, future Tribal water development projects with a Federal nexus would likely require additional section 7 consultation to determine effects to endangered species if not included in previous consultations.</p> <p>The San Juan Basin Recovery Implementation Program serves to allow for future development of water rights. The specific goals of the recovery program are to:</p> <ol style="list-style-type: none"> 1) Conserve populations of the Colorado pikeminnow and razorback sucker in the Basin consistent with recovery goals established under the ESA, 16 U.S.C. 1531 et seq. 2) Proceed with water development in the Basin in compliance with Federal and State laws, interstate compacts, Supreme Court decrees, and Federal trust responsibilities to the Southern Utes, Ute Mountain Utes, Jicarillas, and the Navajos.

Tribal Governments (TG)

TG-04-03	Additional consultation with the Southern Ute Indian Tribe addressed this issue, which is discussed in the “Indian Trust Assets” section of chapter V (volume I) and in the response to comment TG-04-03.
TG-04-04	Additional detail was added to the description of the Navajo Depletion Guarantee (depletion guarantee) developed by the Navajo Nation. Additional detail was also added to include what would trigger implementation of the depletion guarantee. Changes in the depletion guarantee language reflect additional discussions between the Navajo Nation, Bureau of Reclamation, U.S. Fish and Wildlife Service, the States of Colorado and New Mexico, and other interested parties. See Chapter VI for the description of the Navajo Depletion Guarantee and response to comment SLG-03-07 and SLG-03-05.
TG-04-05	This section was modified to address the comments to more fully recognize the San Juan River Basin Recovery Implementation Program and its purpose. Also see responses to comments SLG-03-05 and SLG-03-07.
TG-04-06	See response to comment TG-04-04.
TG-04-07	Duly noted.
TG-04-08	There is no requirement to include the biological assessment or other technical reports in the planning report and draft environmental impact statement or the planning report and final environmental impact statement (PR/FEIS). The Bureau of Reclamation determined that to reduce the bulk of the PR/FEIS, the biological assessment and some technical reports cited in the analysis would not be included in the appendices. These are large documents and are available upon request.
TG-04-09	Changes were made to the document, chapter V, “Aquatic Resources” section to address the comment.
TG-04-10	Edits were made.
TG-04-11	<p>The biological opinion (BO) determined that the level of anticipated take is not likely to result in jeopardy to the razorback sucker and Colorado pikeminnow or result in the destruction or adverse modification of their critical habitat. Reasonable and prudent measures are included in the final BO.</p> <p>Estimates of native fish entrainment were based on each species’ distribution and the fraction of flows diverted during the time of peak drift. Impacts were analyzed in the report entitled, <i>Navajo-Gallup Water Supply Project - Aquatic Disturbance</i> prepared by Ecosystems Research Institute, dated November 2003. Reference to this report was added to the planning report and final environmental impact statement.</p>
TG-04-12	This section compares the No Action Alternative to the NIIP-Amarillo Alternative. No additional impacts on the native fish community or trout community below Navajo Reservoir result when comparing base flows.
TG-04-13	This section was revised to state that no mitigation measures are proposed. Screening the Public Service Company of New Mexico intake pump and implementation of Best Management Practices as described in the “Water Quality” section of chapter V (volume I) would minimize impacts to aquatic resources.
TG-04-14	The final biological opinion has been added to the appendices. The biological assessment is available upon request.
TG-04-15	See response to TG-04-11.

Tribal Governments (TG)

TG-04-16	Conservation measures for endangered fish are sufficient to reduce potential impacts to native fish by the Navajo-Gallup Water Supply Project.
TG-05-01	The document was changed to incorporate comments on Tribal water quality standards.
TG-06-01	Footnote added.
TG-06-02	Changes were made to the document to reflect the Jicarilla Apache Nation's comment regarding their settlement and contracts with the city of Gallup and other entities.
TG-06-03	See response to comment TG-06-02.
TG-06-04	See response to comment TG-06-02.
TG-06-05	See response to comment TG-04-02.
TG-06-06	<p>Sections of the document were modified to more accurately describe implementation of the Flow Recommendations as one component of the San Juan River Basin Recovery Implementation Program (SJRBRIP). In the Animas-La Plata (ALP) section 7 consultation, the Bureau of Reclamation's conservation measure commitment to re-operate Navajo Reservoir to mimic a more natural hydrograph to benefit endangered fishes and their critical habitat serves as the reasonable and prudent alternative.</p> <p>Regarding Flow Recommendations, the ALP biological opinion (U.S. Fish and Wildlife Service [Service], 2000) states:</p> <p><i>"Because Reclamation has committed to operate Navajo Reservoir to benefit endangered fishes as a conservation measure, the Service would consider the inability to meet the flow recommendations as a significant modification of the conservation measure that would affect the Colorado pikeminnow and razorback sucker and their designated critical habitat on the San Juan River. Therefore, upon completion of the Navajo Reservoir EIS, the Service in coordination with Reclamation will determine if the San Juan River flow recommendations can be met. If it is determined that the flow recommendations cannot be met, Reclamation is required to reinitiate section 7 consultation on the Animas-La Plata Project.</i></p> <p><i>Following the San Juan River flow recommendations is expected to result in a positive population response for the Colorado pikeminnow and razorback sucker in the San Juan River. If a positive population response for both species is not realized as measured by criteria developed by Reclamation with the next year, this would be considered new information that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion. Therefore, if the flow recommendations do not result in a positive population response, Reclamation will be required to reinitiate section 7 consultations."</i></p> <p>Also regarding Flow Recommendations, the Service's concurrence letter dated July 14, 1999, regarding completion of the Navajo Indian Irrigation Project (Service, 1999) states:</p>

Tribal Governments (TG)

TG-06-06
(continued)

"Colorado pikeminnow and razorback sucker. May affect, not likely to adversely affect. The Service concurs, based on the following components of the proposed action, the capability of the river to achieve the flows recommended for the endangered fish species over and above the depletions caused by the proposed action, and on the commitments made by the Bureau of Indian Affairs and the Navajo Nation to the San Juan River Recovery Implementation Program.

Reoperation of Navajo Dam to mimic a natural hydrograph of the San Juan River and to meet the flow recommendations for recovery of the endangered Colorado pikeminnow and razorback sucker. The information present in the biological assessment reflects the findings of the San Juan River Recovery Implementation Program's Flow Recommendations Report (1999) – that the depletion of water from the San Juan River necessary to support the proposed project would still allow the flow recommendations formulated for the recovery of the two endangered fish species to be met through the reoperation of Navajo Dam."

In the Navajo Reservoir Operations biological opinion (Service, 2006), regarding population response to SJRBRIP actions, the opinion states:

"...From these data, we conclude that the razorback sucker and pikeminnow populations in the San Juan River are more secure today than they were through the 1980s and 1990s and that the threat of extinction has been reduced. Of the two species, razorback sucker populations currently appear to be benefiting more from management efforts. The number of razorback sucker larval fish caught appears to be increasing (Brandenburg et al, 2003) and in 2003, two juvenile razorback sucker (249 and 274 mm TL) were collected in the lower San Juan River (at RM 35.7 and 4.8, respectively)...While it is still too early to determine if these fish will survive to the adult stage and reproduce, the trend is encouraging. Because the effective riverine habitat in the San Juan River has been shortened by 87 km (54 mi) by inundation of Lake Powell and 150 km (93 mi) by cold water releases from Navajo Dam, it is unclear if truly self-sustaining populations of pikeminnow can be established without the presence of warmer water so that spawning can occur further upstream. However, with continued management (e.g., adherence to the flow recommendations, removal of fish passage barriers,) and stocking/augmentation, it is expected that population numbers will increase and be maintained. . ."

The magnitude of the proposed action is large since it affects the full length of San Juan River occupied by the two endangered fish and extends in perpetuity. Because of the large magnitude, it is essential that the SJRBRIP continue with at least the same level of agency commitment, intensity, and funding to be able to monitor and counteract the effects of this proposed action and all the projects that are linked to it (e.g., Animas-La Plata Project, Navajo Indian Irrigation Project, and numerous smaller projects). As full implementation of projects increases in the basin, leading to greater depletions, the SJRBRIP will need to determine if, and when, conditions which currently are not detrimental to the endangered fishes (e.g., water quality) become more severe with additional depletions. Continued long-term monitoring is essential, and initiating new studies may also be needed. . ."

The SJRBRIP has been instrumental in the development and implementation of the Flow Recommendations. The benefits of implementing the Flow Recommendations outweigh impacts from depletions, cold water releases, changes in channel morphology associated with the action; and are expected to lead to the conservation and recovery of the species."

Tribal Governments (TG)

TG-06-07	See response to comment TG-06-02.
TG-06-08	See response to comment TG-06-02.
TG-07-01	The settlement agreement is outside the scope of this document.

State and Local Government Agencies (SLG)

SLG-01	Duly noted.
SLG-02-01	Duly noted.
SLG-02-02	Cost allocation breakdowns are provided in volume II, appendix D, part II.
SLG-03-01	See response to comment TG-03-13.
SLG-03-02	The use of Arizona's upper or lower compact allocation could potentially be used to meet Navajo-Gallup Water Supply Project demands. The State of Arizona and the Navajo Nation will make this determination in consultation with the Basin States consistent with the laws of the Colorado River. Dependent on the outcome of the accounting of the Arizona depletions, additional National Environmental Policy Act review may be needed. Upper Basin depletions are listed in table V-3.
SLG-03-03	<p>The differences between the two tables are a result of different methods of calculating evapotranspiration (consumptive use) in New Mexico. These differences are being addressed by the San Juan River Basin Recovery Implementation Program. Additional details concerning the Navajo Depletion Guarantee have been incorporated into chapter VI.</p> <p>Table V-3 (table IV in the biological assessment) in volume I has been updated to incorporate footnotes included in the San Juan River Basin Recovery Implementation Program's final program report.</p>
SLG-03-04	See response to comment TG-04-04.
SLG-03-05	<p>The Navajo Nation developed the Navajo Depletion Guarantee (depletion guarantee) language to obtain successful section 7 consultation on the Navajo Gallup Water Supply Project (proposed project). The section 7 consultation process has been consistent with the section 7 principles developed by the San Juan River Basin Recovery Implementation Program (SJRBRIP). Additional discussion of the section 7 principles was added in the description of the SJRBRIP.</p> <p>The section 7 principles specifically state:</p> <p><i>"5.0 Section 7 Consultations</i> <i>The Program is intended to identify and implement actions that assist in the recovery of the species and provide compliance with sections 7 and 9 of the ESA for water development and water management activities in the Basin. It is recognized that federal agencies and/or project sponsors may wish to carry out actions that provide ESA compliance for their activities independently of the Program, and not rely on the Program to provide actions for ESA compliance. In addition, federal agencies and/or project sponsors may modify their activities to eliminate or minimize adverse effects, avoid jeopardy, and/or avoid adverse modification of critical habitat, and by so doing, remove the need for actions by the Program to provide ESA compliance."</i></p> <p>During informal consultation, the U.S. Fish and Wildlife Service (Service) stated that the SJRBRIP was still in its infancy and had not made enough progress to serve as the reasonable and prudent alternative for the additional depletions associated with the proposed project. At that time, the Service could not identify additional recovery implementation</p>

State and Local Government Agencies (SLG)

SLG-03-05 (continued)	program recovery action plan items to be added to the Long Range Plan that would offset new project depletions. The depletion guarantee language is intended to allow the proposed project to move forward without jeopardizing the endangered fishes. The depletion guarantee encumbers only the Navajo Nation. Changes in the SJRBIP Flow Recommendations or change in the status of listed species may result in reduction or removal of the depletion guarantee in the future based upon re-consultation, as described in the final biological opinion.
SLG-03-06	See response to comment TG-04-04.
SLG-03-07	Because the biological opinion is a U.S. Fish and Wildlife Service (Service) document, comments on the draft biological opinion included with the planning report and draft environmental impact statement were forwarded to the Service for consideration. A final biological opinion for the Navajo-Gallup Water Supply Project is included in volume II, appendix C, part III.
SLG-03-08	See response to comment TG-07-01.
SLG-03-09	See response to comment TG-04-02.
SLG-04-01	See response to comment TG-04-04.
SLG-04-02	See response to comment TG-04-05.
SLG-04-03	The planning water use rate of 160 gallons per capita per day includes a community use of water, which includes household use, outside residential watering, and commercial use in a community such as laundromats, hotels, car washes, schools etc.
SLG-04-04	<p>The \$1.00 per acre-foot charge is the annual operation and maintenance fee, and the \$60.00 per acre-foot is the water service cost, both of which were included in the economic analysis.</p> <p>The Bureau of Reclamation will enter into water service contracts with all applicable entities, and carriage contracts for the use of Navajo Indian Irrigation Project facilities may be required depending on authorizing legislation.</p>
SLG-04-05	<p>It is acknowledged that depletion of water from the San Juan River by the Navajo-Gallup Water Supply Project (proposed project) may impact the success of consultations under the Endangered Species Act for proposed future water development.</p> <p>The proposed project water depletions associated with the Window Rock area in Arizona are estimated to be 6,400 acre-feet annually at full project development. The accounting for this water depletion would come from Arizona's apportionments of water from either the upper or lower basins. There appears to be water available in both Arizona's upper and lower apportionments to meet this demand. Arizona and the Navajo Nation will have to resolve the accounting and Colorado River Compact issues with the Upper Basin River Commission, the Lower Basin States, and the Secretary of the Interior.</p>
SLG-04-06	In the final environmental impact statement analysis, it is estimated that San Juan River flows would increase by approximately 5 cubic feet per second (cfs) from additional releases from Navajo Reservoir to meet Navajo-Gallup Water Supply Project (proposed project) demands. At times, dependent on natural flows, up to 40 cfs of additional releases from Navajo Reservoir may be needed to meet proposed project demand. This increase is not provided for dilution or aquatic habitat, but may occur during low flow periods between Navajo Reservoir and the Public Service Company of New Mexico diversion. The increase to meet proposed project demand is predicted to improve water quality and aquatic habitat benefit. Providing an additional 40 cfs flow to the 250 cfs minimum flows described in the Navajo Operations environmental impact statement is a 16-percent increase.
SLG-04-07	See response to comment TG-04-11.

State and Local Government Agencies (SLG)

SLG-04-08	See response to comment SLG-04-05.
SLG-04-09	See response to comment SLG-03-05.
SLG-04-10	"Ongoing" consultation was used to reflect that additional discussions with the U.S. Fish and Wildlife Service were occurring and that a final biological opinion had not been issued.
SLG-04-11	An eastern portion of the Navajo Nation to be provided water from the Navajo-Gallup Water Supply Project lies within the Rio Grande Basin. This proposed 1,119 acre-foot water depletion in the Rio Grande Basin will be accounted for as part of New Mexico's upper Colorado River water allocation.
SLG-04-12	Project authorization is required for all Navajo-Gallup Water Supply Project features. Public Law 111-11 has provided that authorization.
SLG-04-13	See response to comment TG-03-07 and TG-04-04.
SLG-04-14	See response to comment SLG-03-02.
SLG-04-15	Additional National Environmental Policy Act (NEPA) compliance may be needed for construction of a Jicarilla Apache Nation distribution system from the Cutter Lateral if there is a Federal nexus. The Federal agency (i.e., Indian Health Services, Bureau of Indian Affairs, etc.) that has the nexus would be responsible for any additional NEPA compliance.
SLG-04-16	See response to comment TG-03-07.
SLG-04-17	See response to comments SLG-03-05 and TG-04-05.
SLG-04-18	See response to comment TG-03-08.
SLG-04-19	See response to comment TG-06-06.
SLG-04-20	It is noted that under the San Juan-Chama Project authorizing legislation, diversions to New Mexico should not limit current and future beneficial uses in Colorado.
SLG-04-21	See response to comment TG-04-04.
SLG-04-22	See response to comment TG-03-07.
SLG-04-23	The analysis in this report did not assume that the project would be a Colorado River Storage Project (CRSP) participating project or use CRSP power. The 2007 project cost updates included current CRSP power rates for comparative purposes only. The benefit/cost evaluation uses local commercial power rates. However, the recently enacted Public Law 111-11 states "The Secretary shall reserve, from existing reservations of Colorado River Storage Project power for Bureau of Reclamation projects, up to 26 megawatts of power for use by the project."
SLG-04-24	See response to comment TG-06-06.
SLG-04-25	Text was changed to "while not exceeding the existing depletion baseline (table V-3) or limiting the implementation of the SJRBIP."
SLG-04-26	This section was updated to reflect the consultations.
SLG-04-27	See response to comment TG-06-06.
SLG-04-28	See response to comment TG-06-06.
SLG-04-29	See response to comment TG-04-04.
SLG-05-01	This information was added to the "Land Use" section of chapter V (volume I) of the planning report and final environmental impact statement.
SLG-06-01	See response to comment TG-06-06.

State and Local Government Agencies (SLG)

SLG-06-02	<p>The water demand assumption was 160 gallons per capita per day per person, which represents water uses in a typical southwestern community including residences, businesses, hospitals, schools, etc. Uses include personal water use and outside residential use.</p> <p>The Navajo-Gallup Water Supply Project (proposed project) is not intended to provide large amounts of water for agricultural or livestock use. Some individuals may choose to water small numbers of livestock or develop gardens; however, the cost of water would be a limiting factor for large-scale agriculture.</p> <p>Existing water resources will continue to be used until the proposed project is completed. The planning horizon for this project is 2040. Water demand and supply beyond 2040 is outside the scope of this analysis.</p>
SLG-06-03	See response to comment SLG-06-02.
SLG-06-04	See response to comment SLG-04-04
SLG-06-05	See response to comment SLG-04-23.
SLG-06-06	See response to comment TG-03-02.
SLG-06-07	See response to comment SLG-03-02.
SLG-06-08	See response to comment SLG-04-06.
SLG-06-09	See response to comment TG-04-11.
SLG-06-10	<p>The project steering committee includes the public entities that would be provided water supplies by the project and entities that would be responsible for overseeing any proposal's implementation and funding. The project steering committee has been in existence for over 2 decades, directing and promoting the various surges in project planning. The San Juan Recovery Implementation Program was represented by the Bureau of Reclamation, State of New Mexico, the Navajo Nation, and the Jicarilla Apache Nation on the steering committee. The State of Colorado was not part of the steering committee because the proposed project was not providing a water supply to areas within Colorado.</p>
SLG-06-11	See response to comment SLG-04-10.
SLG-06-12	See response to comment TG-04-04.
SLG-06-13	See response to comment TG-04-04.
SLG-06-14	See response to comment SLG-04-11.
SLG-06-15	See response to comment SLG-04-12.
SLG-06-16	See response to comment TG-03-07.
SLG-06-17	See response to comments TG-03-13 and SLG-03-02.
SLG-06-18	See response to comment SLG-04-15.
SLG-06-19	See response to comment SLG-06-10.
SLG-06-20	See response to comment TG-03-07.
SLG-06-21	See response to comment SLG-03-05.
SLG-06-22	See response to comment TG-04-10.
SLG-06-23	See response to comment TG-03-08.
SLG-06-24	See response to comment TG-06-06.

State and Local Government Agencies (SLG)

SLG-06-25	See response to comment SLG-04-20
SLG-06-26	See response to comment TG-04-04.
SLG-06-27	See response to comment TG-03-07.
SLG-06-28	See response to comment SLG-04-23.
SLG-06-29	See response to comment TG-06-06.
SLG-06-30	See response to comment TG-04-04 and/or TG-06-06.
SLG-06-31	See response to comment TG-04-03 and SLG-04-25.
SLG-06-32	The following was added for clarification. <i>"Actual pipeline disturbance may be 50 to 100 feet on either side of the pipeline. Because the level of detail included in final designs is not available, 500 feet was used as a conservative estimate to capture the various habitat types along the proposed pipeline alignments."</i>
SLG-06-33	See response to comment TG-06-06.
SLG-06-34	See response to comment TG-06-06.
SLG-06-35	See response to comment TG-04-04.
SLG-07-01	See response to comment TG-04-01.
SLG-07-02	The Bureau of Reclamation has consulted with the U.S. Fish and Wildlife Service and the State of New Mexico to address impacts to endangered species and existing water users.
SLG-07-03	See response to comment SLG-03-05.
SLG-07-04	See response to comment SLG-03-07.
SLG-07-05	See response to comment SLG-03-07.
SLG-07-06	See response to comment TG-04-01.
SLG-07-07	See response to comment TG-04-01.
SLG-07-08	See response to comment SLG-04-23.

Power and Water Interests (PWI)

PWI-01-01	See response to comment SLG-04-23.
PWI-01-02	See response to comment SLG-04-23.
PWI-01-03	Changes were incorporated.
PWI-01-04	This comment was considered, but no changes were made to the document.
PWI-01-05	The NIIP-Amarillo Alternative was the least cost alternative; however, other factors were also included in the selection of the preferred alternative. See volume I, attachment J.
PWI-01-06	See response to comment PWI-01-04.
PWI-01-07	See response to comment PWI-01-03.

Power and Water Interests (PWI)

PWI-01-08	<p>The power transmission facilities needed to connect the existing facilities to the proposed Navajo-Gallup Water Supply Project (proposed project) power demands have been estimated based on the facilities in place when this planning was done. These facilities and their estimated construction and maintenance costs were included as project costs and in the economic analysis.</p> <p>For this analysis, it has been assumed that the local available commercial power would be used and the local cost of power was used in the economic analysis. If any other source of power were to be made available, such as Colorado River Storage Project power, the associated costs to get that power to the point of proposed project use would need to be evaluated. A comparison of potential alternative power sources would be needed to determine specific details at the time the project was ready for the next level of study.</p> <p>The June 30, 1994, letter from the Bureau of Reclamation's Rob Leuthouser, which was referenced in the Technical Memorandum, March 16, 2001, by the Navajo Nation Department of Water Resources, has not been found.</p> <p>The cost of using water from Navajo Reservoir includes two elements. The cost to help offset the capital cost of constructing the reservoir is estimated to be \$60 per acre-foot, and the associated operation and maintenance cost to deliver the water from the outlet of the reservoir is estimated to be \$1 per acre-foot. Both of these costs were used in the economic analysis of the proposed project.</p> <p>The San Juan River Infiltration Alternative included collecting water in caissons adjacent to the river then pumping the water to the water treatment plant. The power and cost of pumping this water to the treatment plant was not included as a treatment plant cost, but was included as a pumping plant power demand and cost.</p> <p>The estimated year 2040 power demand is 21,276 kilowatts based of the San Juan Public Service Company of New Mexico 2040 alternative.</p> <p>The project economic analysis has considered the foregone cost of power generation by the depletions of this project from the Colorado River System. The analysis considers only the cost of local sources of commercial power. Until authority is given to do otherwise, it cannot be presumed.</p>
PWI-01-09	See response to comment PWI-01-08.
PWI-01-10	See responses to comments SLG-04-04 and PWI-01-08.
PWI-01-11	See response to comment PWI-01-08.
PWI-01-12	See response to comment PWI-01-08.
PWI-01-13	See response to comment PWI-01-08.
PWI-01-14	See response to comment PWI-01-08.
PWI-02-01	See response to comment TG-03-02.
PWI-02-02	Public Law 109-451 cited as the "Rural Water Supply Act of 2006" has specific provisions relating to projects to be authorized using that act that do not pertain to Public Law 92-199 of 1971, which authorized the Bureau of Reclamation to conduct this study.

Power and Water Interests (PWI)

PWI-02-03	40 Code of Federal Regulations (CFR) defines legislation as follows: “Legislation includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has the primary responsibility or the subject matter involved will prepare a legislative environmental impact statement.
PWI-02-04	See response to comment TG-03-02.
PWI-02-05	See response to comment SLG-03-02.
PWI-02-06	See response to comment SLG-04-12.
PWI-02-07	See response to comment SLG-04-23.
PWI-02-08	<p>All rights-of-way acquired for the Navajo-Gallup Water Supply Project (proposed project) will include access for long-term operation and maintenance activities of the proposed project. The proposed project will not include obtaining additional rights-of-way for new Navajo Tribal Utility Authority or other delivery pipelines.</p> <p>As stated in the document, all rights-of-way for Navajo Nation and public land are assumed to be at no cost except for identification, processing, and recording. Only 13 percent of the pipeline alignment is proposed to cross private lands, and proposed legislation authorizing eminent domain is outside the scope of the analysis. Public Law 111-11 establishes as a condition of construction of the proposed project facilities, the project participants shall provide all land and interest in land, as appropriate, that the Secretary of the Interior (Secretary) identifies as necessary for acquisition at no cost to the Secretary.</p>
PWI-02-09	See response to comment SLG-04-23.
PWI-02-10	See response to comment PWI-01-04.
PWI-03-01	See response to comment SLG-03-05.
PWI-03-02	See response to comment TG-06-06.
PWI-03-03	This section was reworded to state: “ <i>Future water uses with valid water rights and environmental clearances (NEPA and ESA) would likely continue assuming that the SJRBRIP continues to function and serves as the reasonable and prudent measure (RPM) and/or reasonable and prudent alternative (RPA) for adverse impacts to listed species.</i> ”
PWI-03-04	See response to comment TG-06-06.
PWI-03-05	See response to comment TG-04-05 and SLG-03-05.
PWI-03-06	This section was rewritten.
PWI-03-07	See response to comment TG-06-06.
PWI-03-08	See response to comment SLG-03-05.
PWI-03-09	See response to comment SLG-03-07.
PWI-04-01	See response to comment TG-04-01.
PWI-04-02	Public Service Company of New Mexico (PNM) will be consulted in the development of detailed designs of the San Juan PNM diversion to ensure that adverse impacts are avoided. Agreements, permits, or other required documents will be obtained from all parties prior to construction to protect existing rights and uses.
PWI-04-03	See response to comment PWI-04-02.
PWI-04-04	See response to comment PWI-04-02.

Other Organizations (OO)

OO-01-01	See response to comment TG-03-13.
OO-01-02	Settlement issues are outside the scope of the document.
OO-01-03	See response to comment SLG-03-02.
OO-01-04	The Congress directed the Bureau of Reclamation to include the city of Gallup in the authorization for the feasibility study for the project.
OO-01-05	See response to comment IND-03-02.
OO-01-06	See response to comment TG-04-04.
OO-01-07	Additional service infrastructure would be constructed by Navajo Tribal Utility Authority and/or Indian Health Services to deliver water from the Navajo-Gallup Water Supply Pipeline to individual communities and residences.
OO-01-08	This is outside the scope of the Navajo-Gallup Water Supply Project. However, the Long Hollow depletions are included in the hydrologic analysis.
OO-01-09	The Bureau of Reclamation (Reclamation) prepared and distributed the <i>Cost and Economic Update to 2007 Prices of the Planning Report and Draft Environmental Impact Statement (Includes Appraisal-Level Designs and Cost Estimates)</i> , Navajo-Gallup Water Supply Project on November 13, 2007. Reclamation mailed 483 update request cards to agencies, groups, and individuals who were on the Navajo-Gallup Water Supply Project planning report and draft environmental impact statement mailing list. Twenty-eight percent (137) of the response cards were completed and returned to Reclamation. Updated costs were also posted on Reclamation's Web site.
OO-01-10	See response to comment TG-07-01.

Individuals (IND)

IND-01	No response required.
IND-02-01	This is beyond the scope of the document. However, Public Law 111-11 states “. . .the Indian Self Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall not apply to design, construction, operation, maintenance, or replacement of the project.”
IND-02-02	The Congress is the only entity with authority to suspend the Historic Preservation Act, and it is beyond the scope of this document.
IND-02-03	The Navajo Nation Department of Water Resources has consulted with the chapters within the project area, and resolutions of support are included in the attachments of volume I.
IND-03-01	See response to comment TG-03-13.
IND-03-02	See response to comment TG-03-02.
IND-03-03	The impact analysis for the Navajo Reservoir Operations environmental impact statement for implementation of the Flow Recommendations was used to evaluate the effects of the Navajo-Gallup Water Supply Project. When compared to the No Action Alternative, which includes operating Navajo Reservoir to meet the Flow Recommendations, the preferred alternative resulted in no significant changes in the number of days of flows below 500 cubic feet per second (minimum raft-able flow).
IND-03-04	See response to comment TG-04-04.
IND-03-05	Cost updates did not change the results of the analysis presented in the draft planning report and draft environmental impact statement. See responses to comments TG-03-13 and TG-03-02.

Individuals (IND)

IND-04-01	The proposed project alignment does not cross designated wilderness or wildlife study areas or any of the drainages described in the comment.
IND-05-01	Existing and future water demands cannot be sustainably met from local water supplies (primarily groundwater). The existing groundwater supplies are being used at a rate greater than groundwater recharge. The San Juan River was the only practical identified source of water able to meet current and future water demands.
IND-05-02	Noted.
IND-05-03	The use of existing localized water sources will be required to meet the future projected 2040 water demand along with surface water from the San Juan River. Water reuse by the city of Gallup is part of the overall plan to meet its demand. Water reuse in other parts of the Navajo-Gallup Water Supply Project area will be needed to reduce water demand on the proposed project and to reduce costs. As with all decisions and timing, it will be guided by economics. Overall water reuse, water conservation, and surface water from the San Juan River will all be required to meet the projected project area water demand.
IND-05-04	See response to comment TG-03-11.
IND-05-05	See response to comment SLG-06-02.
IND-05-06	See response to comment TG-02-01.
IND-05-07	See response to comment TG-03-02.
IND-05-08	This type of analysis is beyond the scope of the Navajo-Gallup Water Supply Project (proposed project); however, impacts to listed species in the biological assessment as a result of this proposed project with climate change were evaluated.
IND-05-09	See response to comment IND-05-03.
IND-05-10	See response to comment OO-01-07.

Public Hearing 1 (PH)

PH-01-01	No response required.
PH-01-02	No response required.
PH-01-03	No response required.
PH-01-04	No response required.
PH-01-05-01	See response to comment TG-03-02.
PH-01-05-02	See response to comment TG-03-04.
PH-01-06	No response required.
PH-01-07-01	See response to comment OO-01-04 and SLG-02-02.
PH-01-07-02	Comment noted.
PH-01-07-03	See response to comment SLG-02-02.
PH-01-08-01	See response to comment TG-03-02.
PH-01-09	No response required.
PH-01-10	No response required.
PH-01-11	No response required.

Public Hearing 2 (PH)

PH-02-01-01	See response to comment TG-03-04.
PH-02-02-01	The scope of the project area was developed with input from representatives of the Navajo Nation Department of Water Resources. This area, population, water availability, and water demand were provided in the March 16, 2001, Technical Memorandum by the Navajo Nation Department of Water Resources. Water availability and water needs for all chapters of the Navajo Nation have been assessed and plans for providing water are being developed for all chapters, not all of which are to be supplied water from this proposed project.
PH-02-03	No response required.
PH-02-04	No response required.
PH-02-05	No response required.
PH-02-06-01	The Bureau of Reclamation provided Navajo interpreters during both the scoping meetings and public hearings on the planning report and draft environmental impact statement. In addition, the Navajo Nation Department of Water Resources held numerous meetings at the local chapter houses where discussions regarding the Navajo-Gallup Water Supply Project were primarily held using the native Navajo language.
PH-02-07	No response required.
PH-02-08-01	See response to comment TG-03-02.
PH-02-09-01	Supplementing or replacing the limited and poor quality of the available groundwater through the Navajo-Gallup Water Supply Project (proposed project) area is the primary purpose for this proposed project.
PH-02-10-01	The scope of this project does not include development of additional groundwater. The assumption has been made that available groundwater will be used in addition to surface water from this project to meet future water demands. However, section 10606 of Public Law 111-11 allows the Secretary of the Interior (Secretary), subject to a Conjunctive Groundwater Development Plan to be developed by the Navajo Nation, to construct or rehabilitate wells and pipeline facilities to provide for the diversion and delivery of not more than (1) 1,670 acre-feet of groundwater in the San Juan Basin in New Mexico, (2) 680 acre-feet of groundwater in the Little Colorado River Basin in New Mexico, (3) 80 acre-feet of groundwater in the Rio Grande Basin in New Mexico, and (4) 770 acre-feet of groundwater in the Little Colorado River Basin in Colorado for municipal and domestic uses.
PH-02-10-02	See response to comment PWI-02-08.
PH-02-10-03	See response to comment PH-02-02-01.
PH-02-11-01	See response to comment SLG-04-03.
PH-02-11-02	It is not anticipated that the hauling of water will stop completely, but there will be more people who will have access to water in their communities, and those that haul water will have to drive less of a distance to get clean plentiful water.
PH-02-11-03	See response to comment PH-02-02-01.
PH-02-12-01	See response to comment PH-02-02-01.
PH-02-13-01	See response to comment PH-02-02-01.

Public Hearing 3 (PH)

PH-03-01-01	Water usage in schools is part of the 160 gallons per capita per day water demand. Population growth is projected to continue as it has over the last 20 years throughout the Navajo-Gallup Water Supply Project (proposed project) water service area. These two factors were used to determine the projected water demand in 2040, which is the proposed project design horizon.
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Public Hearing 3 (PH)

PH-03-02	No response required.
PH-03-03	No response required.
PH-03-04	No response required.
PH-03-05	No response required.
PH-03-06-01	See response to comment PH-02-02-01.
PH-03-07	No response required.
PH-03-08	No response required.
PH-03-09	No response required.
PH-03-10	No response required.
PH-03-11	No response required.
PH-03-12	No response required.
PH-03-13-01	See response to comment SLG-06-02.
PH-03-14-01	Safety and security are elements of the design and operation of public water supply facilities. These will be taken into consideration during the facilities design, operation, and maintenance.
PH-03-15	No response required.
PH-03-16	No response required.
PH-03-17	No response required.

Public Hearing 4 (PH)

PH-04-01	See response to comment PH-02-02-01.
PH-04-02	No response required.
PH-04-03-01	The scope of the Navajo-Gallup Water Supply Project (proposed project) does not include development of additional groundwater. The assumption has been made that available groundwater will be used in addition to surface water from this proposed project to meet future water demands.
PH-04-04	No response required.
PH-04-05-01	See response to comment IND-05-10.
PH-04-06-01	See response to comment SLG-06-02.
PH-04-06-02	This pipeline route was considered initially, but water could not be provided throughout the entire Navajo-Gallup Water Supply Project service area.
PH-04-06-03	Until facilities are transferred from the Bureau of Reclamation (Reclamation), project operation, maintenance, and replacement (OM&R) would be the responsibility of Reclamation through contract with the Navajo Tribal Utility Authority (NTUA) and the city of Gallup. The costs of OM&R would be paid by NTUA, the city, and the Jicarilla Apache Nation. The arrangement would be detailed in an agreement among the entities. Additional detail is included in attachment I of volume I.
PH-04-07	No response required.
PH-04-08	No response required.

Public Hearing 4 (PH)

PH-04-09	No response required.
PH-04-10	No response required.
PH-04-11-01	<p>Regarding water rights on allotted lands, Section 3.3 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement dated April 19, 2005, signed by the Navajo Nation and the State of New Mexico also states:</p> <p>“Allottees, or the United State as trustee for Allottees, are not bound by the Partial Final Decree from making claims to water rights in the San Juan River Basin in New Mexico. Allottees, or the United States as trustee for Allottees, may make claims to, and may be adjudicated, individual water rights in the Basin. Notwithstanding the forgoing, the Agreement shall not diminish the Navajo Nation’s authority to administer the use of water on lands held in trust by the United States for Allottees.”</p> <p>Under the Navajo-Gallup Water Supply Project, domestic water services would continue to be available to Tribal, allotted, and private lands via Navajo Tribal Utility Authority and the Gallup Regional System.</p>
PH-04-12-01	Water of any quality is not available to sustainably meet Navajo-Gallup Water Supply Project demands.
PH-04-13-01	Surface water within the Navajo-Gallup Water Supply Project area is inadequate to meet municipal water demands.
PH-04-13-02	The “willingness to pay” analysis for the Navajo Nation is included in volume II, appendix D, part II. The estimated cost of hauling water is \$113 per thousand gallons in 2005 dollars.
PH-04-14-01	See response to comment SLG-02-02.
PH-04-15-01	See response to comment PH-02-02-01.

Public Hearing 5 (PH)

PH-05-01-01	Duly noted.
PH-05-02	No response required.
PH-05-03-01	See response to comment PH-02-02-01.
PH-05-04	No response required.
PH-05-05	No response required.
PH-05-06	No response required.
PH-05-07	No response required.
PH-05-08	No response required.
PH-05-09-01	Noted.
PH-05-10	No response required.
PH-05-11	No response required.
PH-05-12-01	See response to comment SLG-06-02.
PH-05-13	No response required.
PH-05-14	No response required.
PH-05-15	No response required.

Public Hearing 5 (PH)

PH-05-16-01	The cost of hauling water today is considerably more expensive than the currently estimated cost of water from the Navajo-Gallup Water Supply Project. Refer to volume II, appendix D, for more details on costs of water and the comparative alternatives, benefits, and social impacts.
PH-05-17-01	See response to comment PH-02-09-01.
PH-05-18	No response required.
PH-05-19	No response required.
PH-05-20-01	See response to comment PH-02-02-01.
PH-05-21	No response required.
PH-05-22	No response required.
PH-05-23-01	See response to comment PH-04-03-01.
PH-05-23-02	See response to comment SLG-06-02.
PH-05-24	No response required.
PH-05-25	See response to comments OO-01-01 through OO-01-10.
PH-05-26	No response required.
PH-05-27	No response required.
PH-05-28	No response required.