

Comment SLG-03

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R Leach			
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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.

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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

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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.

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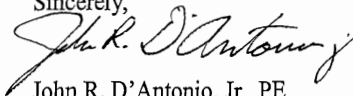
Navajo Nation Existing and Future Uses (Pages V-21 to V-26)

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

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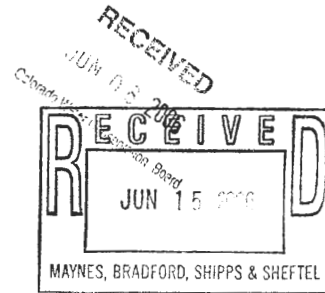
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June 6, 2006

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

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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

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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
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