

BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE APPLICATION BY) HU No. 06-027
SAN JUAN WATER COMMISSION, FOR)
PERMIT TO APPROPRIATE PUBLIC SURFACE) OSE File No. 4818
WATERS WITHIN THE SAN JUAN WATER)
BASIN IN THE STATE OF NEW MEXICO)

WATER RIGHTS DIVISION'S RESPONSE ON THE ISSUE
OF THE AVAILABILITY OF UNAPPROPRIATED WATER

The Water Rights Division of the Office of the State Engineer ("WRD"), by and through its attorneys, Daniel Rubin and Uday Joshi, and pursuant to the Hearing Examiner's Order dated September 12, 2006, hereby files this brief in support of its contention that there is no unappropriated water available to satisfy the above-captioned application ("Application") of the San Juan Water Commission ("SJWC"), and in support states as follows:

I. SUMMARY OF ARGUMENT:

The WRD contends that the Hearing Examiner should not order publication of the Application because there is no unappropriated water available to satisfy the Application. The SJWC cannot rely upon any "operation of law" pursuant to NMSA 1978, Section 72-5-33(B) to create water available for appropriation.

Specifically, as set forth in Section IV.B., below, Section 302(a)(1)(C)(ii) of the 2000 Ute Settlement Amendments, at Pub.L. 106-554 ("Amendments") requires the facilities of the Animas-LaPlata Project ("ALP") that were authorized pursuant to Section 302(a)(1)(A) of the Amendments to first be fully built and in operation before the United States' downscaling of the ALP has any legal effect (a copy of the Amendments are attached hereto as *Exhibit A*). As conceded by the SJWC in their brief, only 43% of these facilities have been built, and are not in operation. Thus,

this Application prematurely and inappropriately relies upon Section 72-5-33, and should be denied publication.

In the alternative, as set forth in Section IV.C, below, the priority date of the Application should be limited to the 2001 date it was submitted because Section 72-5-33(B) limits applying the much earlier priority 1956 date of the ALP to the amount of water available under a repayment contract with the United States. As conceded by the SJWC in their brief, its amended repayment contract with the United States limits delivery of water to a maximum of 10,400 acre-feet of depletions per year. Given that the SJWC is already receiving this amount of 10,400 acre feet per year pursuant to existing permits held by the United States, it is not entitled to any further permits at the 1956 ALP priority date, but a priority date reflecting the filing date of the Application in 2001.. Thus, the SJWC needs to satisfy its burden of proving that there is unappropriated water available to satisfy the Application as of 2001.

II. LEGAL STANDARD:

Pursuant to NMSA 1978, Section 72-5-7, the State Engineer shall “reject” publication of an application as follows:

“If, in the opinion of the state engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and rules and regulations. He may also refuse to consider or approve any application or notice of intention to make application or to order the publication of notice of any application if, in his opinion, approval would be contrary to the conservation of water within the state or detrimental to the public welfare of the state.”

In this case, by stipulation of counsel, the parties have briefed the issue of whether there is unappropriated water available, as a threshold issue prior to publication. The parties would present evidence and argument on issues of conservation and public welfare, as well as the issue of impairment to other water users pursuant to NMSA 1978, Section 72-5-6, in the event that the

Hearing Examiner finds that unappropriated waters is available to satisfy the Application and orders its publication.

The WRD is thus surprised by the SJWC's assertion that the State Engineer has "changed his mind" about the grounds for rejecting the Application. *SJWC Brief, at 4*. The WRD still stands behind such reasons, including but not limited to the fact that the Application violates the terms of the Navajo Settlement, and is a blatant attempt to undermine the intent and purposes of the Navajo Settlement despite the fact that the SJWC both agreed to it and benefited by it. Moreover, the WRD strongly disputes the SJWC's notion that the integrity of the Navajo Settlement is not a matter of public welfare. *SJWC Brief, at 3*. The WRD will submit evidence and argument in support of these positions if the Hearing Examiner orders publication of the Application.

72-5-33
(7)
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III. UNDISPUTED FACTS RELIED UPON BY THE WRD:

- A. The facilities of the ALP that were authorized pursuant to Section 302(a)(1)(A) of the Amendments are only 43% built, and are not in operation. *SJWC Brief, at 6*.
- B. The SJWC, pursuant to its amended repayment contract with the United States, is limited to a delivery of water that will result in a maximum of 10,400 acre-feet of depletions per year. *SJWC Brief, at 7, and at Exhibit 12: WRD Exhibit B, attached hereto.*¹

IV. ARGUMENT: THE HEARING EXAMINER SHOULD DENY PUBLICATION OF THE APPLICATION PURSUANT TO NMSA 1978, SECTION 72-5-7 BECAUSE NO UNAPPROPRIATED WATER IS AVAILABLE TO SATISFY THE APPLICATION.

- A. The Application wholly relies upon "operation of law" pursuant to NMSA 1978, Section 72-5-33, and not upon any hydrology, to prove that unappropriated water is available.

Pursuant to NMSA 1978, Section 72-5-33(B), when the United States determines that a planned federal project will not be constructed:

"(1) upon receipt of an application, the state engineer shall give first preference for any appropriation of released water to water users who have contracted to receive

¹ While the SJWC attaches excerpts of its amended repayment contract at Exhibit 12 of its brief, the WRD attaches a complete copy hereto as *Exhibit B*.

such waters under a repayment contract with the United States or its agencies, provided the water users under the repayment contract apply to appropriate the water within one year of being released;
...(3) the appropriation of water under this section by water users under a repayment contract shall bear the priority date of the original notice to appropriate such water.”

In this case, the SJWC wholly relies upon Section 72-5-33(B). As noted by the SJWC, Congress authorized construction of a downsized version of the ALP through Section 302(a)(1)(C)(i) of the Amendments. Section 302(a)(1)(A)(i) specifies the facilities that will constitute this downsized ALP. Section 302(a)(1)(A)(ii) accordingly reduces the amount of water to be delivered by the downsized ALP to a reduced average annual amount of depletions. The Application thus seeks to appropriate the difference between the reduced amount of depletions and the original amount of depletions, citing Section 72-5-33(B) as its sole justification and arguing that such water is available “by operation of law.” *SJWC Brief, at 12.*

B. Pursuant to Section 302(a)(1)(C)(ii) of the 2000 Ute Settlement Amendments, the Application improperly relies upon NMSA 1978, Section 72-5-33(B) because the downscaled ALP has not been completely constructed and is not operational.

As noted by the SJWC (*Brief, at 10-11*), Subsection 302(a)(1)(C)(i) of the 2000 Amendments acts to officially de-authorize the original ALP in favor of the downscaled version. This subsection specifically states that this smaller project will constitute the entire ALP, and that any other portion of the original ALP “shall not be commenced without further express authorization from Congress.”

However, Subsection 302(a)(1)(C)(ii) limits the effect of Subsection 302(a)(1)(C)(i). Specifically, (ii) states as follows:

“If the facilities described in subparagraph (A) are not constructed and operated, clause (i) shall not take effect.”

Thus, unless and until the downscaled ALP is constructed and operational, Subsection 302(a)(1)(C)(i) “shall not take effect.” and Congress has thus not officially downscaled the original

ALP “by operation of law” (as the SJWC puts it) for purposes of Section 72-5-33. The plain meaning of the term “operational” requires not only for the downsized ALP to be complete, but in operation for the legal effects of downsizing to occur.

The Official Senate Report from the Committee on Indian Affairs reflects Congress’ intent regarding the effect of Subsection 302(a)(1)(C)(ii). It states as follows:

“...[T]he proposed changes resolve apparent concern over how completing those parts of the project needed to settle the tribal water rights will affect or prevent a decision on how or whether to complete other parts of the project. It would be quite unfortunate for the Ute tribes, the United States, and other interested parties if this distraction was allowed to prevent the consumation of a freely negotiated Indian water rights settlement. This committee amendment resolves this issue because it requires further, express authorization from Congress before additional ALP components may be constructed. *The project proponents understandably insist that this provision will not take effect until and unless the construction and operation of the facilities described above.*”

deault
question?

SJWC Brief, at Ex. 3, p.6-7 (emphasis added)

As a factual matter, the SJWC does not dispute that the downscaled version of the ALP is 43% complete (*SJWC Brief, at 6*). As such, it is not complete, and certainly not operational, as required by Subsection 302(a)(1)(C)(ii). The Hearing Examiner should therefore deny publication of the Application, because the Application cannot rely upon Section 72-5-33(B) to establish the availability of unappropriated water.

The SJWC attempts to frame the issue before the Hearing Examiner as whether a portion of the originally planned ALP will not be constructed. *Brief, at 7-13*. The SJWC’s brief takes great pains to prove this obvious point, relying on Subsection 302(a)(1)(C)(i), as well on quoted statements from various officials associated with the ALP. Nor does the WRD dispute this point. While construction of only a downscaled version of the ALP may be a forgone conclusion and the original project may never be constructed, the legal effect of this eventuality will only occur after

completion and operation of the downscaled version pursuant to Subsection 302(a)(1)(C)(ii), which has yet to occur.

The SJWC's brief, while relying on Subsection 302(a)(1)(C)(i), omits any mention whatsoever of Subsection 302(a)(1)(C)(ii), which immediately follows it in the text of the 2000 Amendments. The SJWC ignores the above-quoted passage from the Congressional Report, yet otherwise relies on the Report as part of its argument. Despite these omissions by the SJWC, the Hearing Examiner should not and cannot ignore either Subsection 302(a)(1)(C)(ii) or the relevant portions of the Congressional Report. To apply Section 72-5-33 to the portion of the ALP that will not likely be constructed ignores the plain language of Subsection 302(a)(1)(C)(ii), and ignores the clear intent of Congress to protect tribal water rights concerns in the Amendments to the original Ute Settlement Act.

- C. Because the water sought for appropriation in the Application is not subject to a repayment contract, the Application is not entitled to the 1956 priority date of the ALP, and the SJWC must satisfy its evidentiary burden of proving sufficient unappropriated water in 2001 before the Hearing Examiner should order publication of the Application.**

As cited in A, above, pursuant to NMSA 72-5-33(B), an application to appropriate water released from a federal project "shall bear the priority date of the original notice to appropriate such water," but only with respect to water subject to a repayment contract with the United States. The Legislature intended Section 72-5-33(B) to provide some level of guarantee to federal project beneficiaries that they will receive the benefits expected by virtue of their federal contracts.

argues for 15H of orig. contract.
or orig.?

In this case, the SJWC's Application claims the right to the priority date of the ALP, namely 1956. It does so by relying on its amended repayment contract with the United States. *Brief, at 7.* However, as the SJWC concedes, this contract only entitles the SJWC to delivery of water totaling 10,400 acre-feet per year in depletions. *Brief, at 7; Exhibit B, attached hereto.* As the SJWC acknowledges, it will receive this amount through the downscaled ALP project pursuant to Section

302(a)(1)(A)(ii). *Brief, at 7.* Thus, all of the water that the SJWC can claim subject to a repayment contract with the United States it will already receive as part of the downscaled ALP. The SJWC lacks any claim to any additional water under the repayment contract that it can assert entitlement to pursuant to Section 72-5-33(B). Presently, the SJWC will receive the benefits expected under its contract, namely, 10,400 acre-feet per year in depletions with a priority date of 1956. Section 72-5-33 does not give it a right to any windfall above and beyond its entitlements under the downsized ALP at a priority date of 1956.

The SJWC cannot ignore this limitation in Section 72-5-33(B), as it attempts to do by submitting this application for a new appropriation of an additional 20,580 acre-feet per year with a priority date of 1956.² Rather, the Hearing Examiner should consider the Application, and whether there is unappropriated water available to satisfy it, in light of a proper priority date of the filing of the Application, namely, January 2001.³

The WRD asserts, and can prove, that the waters of the Animas, La Plata and San Juan Rivers have been fully appropriated as of January, 2001. However, the SJWC, as Applicant, bears the burden of proving that as of January, 2001, such waters have not been fully appropriated. To the extent they can submit evidence to satisfy their initial burden, the WRD will submit evidence to the contrary. Unless and until the SJWC satisfies this burden, the Hearing Examiner should deny publication of the Application.

Moreover, as set forth in Section B, above, the United States has not yet released any water from the ALP, pursuant to Section 302(a)(1)(C)(ii). At such time as the downscaled ALP is constructed and operational and such waters are released, the depletion amount under contract

² The SJWC calculates this amount of 20,580 as all of the water available as a result of the downscaling of the ALP. *Brief, at 13.* The SJWC thus seeks to deplete a grand total of 30,980 (20,580 + 10,400) acre-feet of water per year from the Animas, La Plata and San Juan Rivers, all with a 1956 priority date. *The SJWC only repayment contract was*

³ The SJWC amended the Application in its brief to seek an additional 5,500 acre-feet of depletions per year. This *to provide* additional amount, if permitted, would have a priority date of 2006. *for 15,400 AF/yr of depletion.*

*Released after
repay contract amended
not before operation
of 72-5-33 only at
time of release.*

between the United States and the SJWC will likely remain at 10,400 acre-feet per year. As such, the Hearing Examiner should reject publication of any future application by the SJWC for a new appropriation of water pursuant to Section 72-5-33 unless the SJWC can somehow first obtain a contract with the United States for an additional amount above the 10,400 acre-feet per year it contracted for and will receive as part of the downscaled ALP.

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V. CONCLUSION:

Based on the forgoing, the Hearing Examiner should deny publication of the Application. The SJWC cannot rely on NMSA 1978, Section 72-5-33 to create unappropriated water by "operation of law" unless and until the downscaled ALP is complete and operational. Furthermore, because the water sought for appropriation in the Application is not subject to ~~a~~ ^{an existing} repayment contract with the United States, the Hearing Examiner should deny publication of the Application unless and until the SJWC proves that there is unappropriated water to satisfy the Application as of the date it was filed, namely, January, 2001.

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Respectfully submitted,

Daniel Rubin, Esq.
Uday V. Joshi, Esq.
Administrative Litigation Unit
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6123; 827-6181
(505) 827-3520 (Fax)

*72-5-33 -
Refers to project not
being constructed,
not to project
signing/design
changes*

Whipple, John J., OSE

From: Dantonio, John, OSE **Sent:** Fri 8/7/2009 8:49 AM
To: Lopez, Estevan, OSE; Whipple, John J., OSE
Cc: Sanders, D L., OSE
Subject: FW: ALP operations.
Attachments:

All,

Let's discuss this issue so we can be ready for BOR's call.

Thanks,

John D.

FYI.

John R. D'Antonio Jr., P.E.

New Mexico State Engineer

Secretary NM Interstate Stream Commission

(505) 827-6091

(505) 827-3806 (fax)

P.O. Box 25102

Santa Fe, NM 87504-5102

john.dantonio@state.nm.us

From: Genualdi, Robert B., OSE
Sent: Wednesday, August 05, 2009 4:44 PM
To: Dantonio, John, OSE
Cc: Sizemore, Jim L., OSE

OSE-1451

Subject: ALP operations.

Hi John,

Earlier today I had a conference call with BOR representatives from Durango and Grand Junction. BOR had requested the meeting to discuss issues related to Animas-La Plata applications/permits, and something we had brought up regarding the Ridges Basin Reservoir first fill operations. A couple weeks ago our Water Master mentioned to Pat Page (BOR Durango) that Animas River ditches in NM start to have trouble getting water when state line flows drop below 250 cfs. BOR is only required to bypass 225 cfs per the A-LP EIS. We had a very productive discussion, and they asked who from NM would be best to talk to about A-LP first fill operations and continuing operations. I told them that we do not deal with interstate matters from the Aztec office, and that you and/or the ISC do. Carol DeAngelis (who runs the BOR Grand Junction office) said she may be giving you a call to open the lines of communication.

Please let me know if more explanation would be useful.

Robert Genualdi

OSE-1452

Whipple, John J., OSE

From: Pat Page [PPage@uc.usbr.gov] **Sent:** Mon 3/16/2009 8:36 AM
To: Whipple, John J., OSE
Cc: Trujillo, Tanya, OSE
Subject: RE: Draft ALP O&M Contract
Attachments:

John,

I received your comments on the IGA and have forwarded them onto the NM ALP sponsors (SJWC, Navajo Nation, and LPCD). We will work with them (and the other sponsors) to get answers to your questions. As a reminder, the IGA was developed and negotiated by the ALP sponsors (not Reclamation). I had previously (last year?) informed SJWC of your concerns regarding reservoir storage and evaporation allocation but apparently SJWC did not get in touch with you regarding your concerns. It might behouve the State to contact the NM sponsors directly to relay your concerns/issues. In the mean time, I'll try to work with them to help address your comments.

Pat

>>> "Whipple, John J., OSE" <john.whipple@state.nm.us> 3/12/2009 10:13:57 AM >>>
 Pat:

If the ALP and Ridges Basin Reservoir are operated as now proposed by the project participants:

1. What is the surface area and evaporation loss associated with the recreation pool?
2. What is the incremental surface area and evaporation loss associated with storage of water in the pool designated for Durango use, assuming this pool is on top of the recreation pool?
3. What is the average total surface area and evaporation loss associated with the reservoir, and the incremental surface area and evaporation loss associated with the joint pool, assuming the joint pool is on top of the Durango and recreation pools? What is the answer if Durango agrees to participate in a joint pool rather than to have its own designated pool?
4. Based on the historic hydrology and proposed project operations, how often and how much water is withdrawn from the joint pool to meet water demands of NM participants? How much water is pumped to the reservoir to replace water released for downstream delivery in NM versus how much water is pumped to replace water withdrawn or released from the reservoir for uses in CO or to replace reservoir evaporation losses? Does the answer change much if the assumptions regarding use of tribal allocations in CO remain the same as the assumptions used in the ALP FSEIS?

The operational concepts now proposed by the project participants differ from those in the ALP FSEIS modeling. I was previously informed by Reclamation that an average of about 140 acre-feet per year of evaporation loss from the reservoir might be allocable to water stored in designated pool capacity for the NM participants based on the FSEIS

OSE-1453

modeling of the historic hydrology and assumed operation of storage for each participant within their respective designated pools. Has or can Reclamation model the operation proposed by the project participants to answer the above questions?

John W.

From: Pat Page [mailto:PPage@uc.usbr.gov]
Sent: Thu 3/12/2009 8:58 AM
To: Whipple, John J., OSE
Subject: Draft ALP O&M Contract

John,

Here's the draft contract.

Pat

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OSE-1454

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Whipple, John J., OSE

From: Page, Patrick J [PPage@usbr.gov] **Sent:** Wed 7/22/2009 7:20 AM
To: Whipple, John J., OSE
Cc: Thomas, Susannah; Warner, Ed
Subject: Letter to SJWC - re: Permit 2883
Attachments:  Ltr to SJWC - 2883_revised.doc(46KB)

John,

As I briefly mentioned a few weeks ago in Albuquerque, our solicitor has suggested we write a letter to the San Juan Water Commission in light of their appeal on the State Engineer's rejection of their application for "excess" water under Permit 2883, coupled with the passage of PL 111-11 and the language regarding Permit No. 2883. We feel that, procedurally, we need to do this to protect our water right (since we are not a party in the case) and to convey to SJWC that a federal statute now governs in this case. So, we plan to send the letter to them but wanted to give you an opportunity to comment on it before we send it.

I know you mentioned a couple of concerns regarding this letter and I'll try to address those here:

1) Concern: Making a final determination on the quantity of water needed under 2883 prior to the reservoir being completely filled and the Project being transferred from construction to O&M status.

Response: The Project is substantially complete and all features have been designed and sized and, with the exception of NNMP, have been constructed. The 2000 Amendments locked in the allocation to the individual sponsors. For NM entities, the allocations in the 2000 Amendments is what will be used out of Permit No. 2883.

2) Concern: Need to include the NM interests' portion of reservoir evaporation in Permit No. 2883.

Response: I couldn't find anywhere in Permit No. 2883 where reservoir evaporation had been identified therefore I'm concluding that an earmark in 2883 for evap does not need to be included now. I recognize that quantification of NM's portion of Lake Nighthorse evap will eventually be needed as it counts towards NM's Colo River apportionment, but I'm thinking the physical water right covering this evaporation comes out of Southwestern Water Conservation District's Project water right in Colorado.

Please note that we didn't address the issue of priority date of the "excess water" that I believe you are trying to clarify in the Settlement Agreement. We don't feel we need to address this because it's not our issue.

If there are any other concerns you have, please let me know. Also, since we do plan on sending the letter, please feel free to provide edits to the letter that might diffuse any concerns the State may have with us sending the letter.

Thanks,

OSE-1455

Pat

This inbound email has been scanned by the MessageLabs Email Security System.

OSE-1456

<https://webmail.state.nm.us/exchange/john.whipple/Inbox/Letter%20to%20SJC%20-%2...> 7/22/2009

DRAFT 7/21/2009

Mark Duncan, Chairman
San Juan Water Commission
7450 East Main Street - Suite B
Farmington, NM 87402

Subject: New Mexico State Engineer Permit No. 2883, Animas-La Plata Project,
Colorado and New Mexico

Dear Mr. Duncan:

The purpose of this letter to is address the issue regarding transferring the water allocation from Permit No. 2883 that is in addition to the water allocations to users in New Mexico made by Section 302 of the Colorado Ute Settlement Act Amendments of 2000 (2000 Amendments). In 2001, the San Juan Water Commission (Commission) submitted an application to appropriate this additional water in the amount of 15,080 acre-feet per year of consumptive use. The New Mexico State Engineer rejected the application, noting that the United States had not made a decision regarding the construction of the remaining features of the Project that were not included in the 2000 Amendments. On October 31, 2008, the Commission filed a Notice of Appeal in the state district court for de novo review of the State Engineer's decision.

The filing of the appeal noted above has compelled us to offer the following information that may be relevant to this case:

- Permit No. 2883, was assigned to the Bureau of Reclamation by the State Engineer on April 6, 1959, to develop and use up to 49,510 acre-feet per year of surface water from the Animas and La Plata Rivers.
- The Project features necessary to divert, store, and deliver the non-Navajo portion of the New Mexico allocation have been determined to be substantially completed. The Navajo Nation Municipal Pipeline, the feature necessary to deliver the Navajo Nation's allocation from Farmington to Shiprock has been designed and is being constructed. Therefore, with the current status of the Project, Reclamation has determined that the Project has reached its ultimate size for New Mexico in terms of water allocations.
- The 2000 Amendments allocated 13,520 af per year of depletion to New Mexico users (the Commission, the Navajo Nation, and the La Plata Conservancy District). With the assumption that was used in the July 2000 Final Supplement to the Environmental Impact Statement (FSEIS) that the Project water supply allocations will result in 50% depletion, the water supply allocated to the New Mexico users is calculated as 27,040 afy. That means of

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the total water supply associated with File No. 2883 (49,510 afy) 22,470 could be considered "additional" and available for reallocation to New Mexico.

- The San Juan Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Settlement Agreement) was recently approved, ratified, and confirmed by Congress with the passage of Public Law 111-11. Section 8.1 of the Settlement Agreement states that the water supply associated with New Mexico State Engineer File No. 2883 that is in addition to the water allocations to users in New Mexico made by Section 302 of the 2000 Amendments may be allocated to New Mexico water users if the allocation can be made without impairment to existing water rights in New Mexico. Thus, the State Engineer must first determine if such an allocation could be made without impairing existing water rights, but assuming he finds no impairment. Section 8.1 of the Settlement Agreement then describes how such an allocation would be made. Specifically, 50% of the additional water would go to the Navajo Nation and the remaining would be reserved for uses of water by member entities of the Commission, subject to approval by the State of New Mexico.
- Based upon the percentages identified in Section 8.1 of the Settlement Agreement, coupled with the water allocation Reclamation has concluded to be "additional" (22,470 afy), we have determined that 11,235 afy is available to be allocated to the Commission, subject to the approval of the State of New Mexico, acting through the Interstate Stream Commission.

While we recognize that the water supply under File No. 2883 was appropriated pursuant to New Mexico state law, we believe that the state statute has been pre-empted by the more recent federal statute (P.L. 11-111), which specifically governs the use and allocation of this water. Therefore, given that 1) this is a Reclamation water right, 2) the state court has no jurisdiction at this time over Reclamation, and 3) a federal statute now governs the use and allocation of this particular water right, we feel that your application to appropriate this water must be governed by the terms of the Settlement Agreement.

Consequently, Reclamation has initiated discussions with the State Engineer's Office and the New Mexico Interstate Stream Commission regarding this issue and will continue to work with them as well as you and your staff to bring closure to this issue. If you have any questions, please contact _____.

Sincerely,

?????

cc: Randy Kirkpatrick, Executive Director
San Juan Water Commission

bc: FCCD-100, FCCD-110, WCG-CDeAngelis; WCG-EWarner; WCD-PPage

RRP

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RFP 6

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THE SECRETARY OF THE INTERIOR
WASHINGTON

JUN 08 2007

Honorable Bill Richardson
Governor of New Mexico
Santa Fe, New Mexico 87501

Dear Governor Richardson:

I am writing this letter to inform you that I have approved and signed the 2007 Hydrologic Determination (Determination) for a proposed contract from Navajo Reservoir to support the Navajo-Gallup Water Supply Project (Project). The Project, if authorized through legislation, has been proposed to settle the water rights claims of the Navajo Nation in the San Juan River Basin of New Mexico.

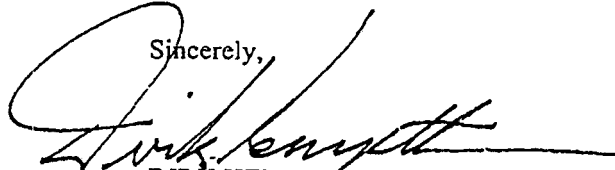
Each of the Colorado River Basin States has a vital interest in the Colorado River, and I wanted to personally inform you of the completion of the Determination in light of the importance of having direct and open communication on this valuable resource. A Determination for all proposed long-term contracts for water from Navajo Reservoir is mandated by Public Law 87-483, which requires the Secretary of the Interior to undertake an investigation of whether there is sufficient water within New Mexico's Compact apportionment to support any such long-term contract for water from Navajo Reservoir. That law further requires the Determination and the proposed contract be forwarded to Congress for its approval. Because the United States has not negotiated a contract with the Navajo Nation, the City of Gallup, or any other potential water users of the Project as of this time, it is premature to forward the Determination to Congress. As soon as such a contract(s) is(are) negotiated, we will forward them and the Determination to Congress.

The finding in the Determination that there is likely to be sufficient water to support the proposed contract removes any Department of the Interior concerns about potential limitations on water supply. This is in keeping with my commitment to the New Mexico Congressional delegation that we will attempt to resolve all procedural requirements in order to facilitate a fair and open debate on the merits of the proposed settlement, even though the Administration has no position on the settlement at this time.

In developing the Determination, the Bureau of Reclamation has worked closely with all of the Colorado River Basin States in a manner keeping with the spirit of cooperation the Basin is currently enjoying and is in compliance with the Colorado River Compact and the Law of the River. I am personally thankful for the assistance of all the Basin States in finding a way to allow the Determination to move forward.

Please contact me if you have any questions or concerns in this matter.

Sincerely,



DIRK KEMPTHORNE

Enclosure

OSE-1460

Honorable Bill Richardson

2

Identical Letters Sent To:

Honorable Dave Freudenthal
Governor of Wyoming
Cheyenne, Wyoming 82002

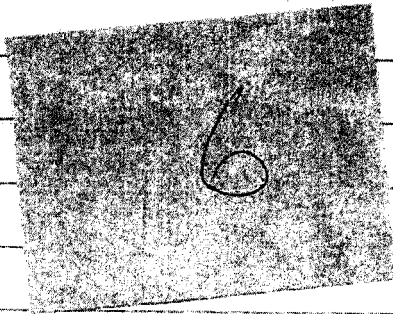
Honorable Jim Gibbons
Governor of Nevada
Carson City, Nevada 89701

Honorable Jon Huntsman, Jr.
Governor of Utah
Salt Lake City, Utah 84114-2220

Honorable Janet Napolitano
Governor of Arizona
Phoenix, Arizona 85007

Honorable Bill Ritter
Governor of Colorado
Denver, Colorado 80203

Honorable Arnold Schwarzenegger
Governor of California
Sacramento, California 95814



DRAFT MEMORANDUM
August 28, 2007

To: File
From: John Whipple, Staff, Interstate Stream Commission
Subject: Upper Basin Yield Available for Development

The Bureau of Reclamation's 1988 Hydrologic Determination found that the critical-period yield available at Lee Ferry for use by the Upper Basin is at least 6.00 maf/yr, including shared Colorado River Storage Project (CRSP) reservoir evaporation, assuming a tolerable shortage averaging 6 percent for the period 1953-1977. The Bureau of Reclamation's 2007 Hydrologic Determination, signed by the Secretary of the Interior in May 2007, found that the yield available at Lee Ferry for use by the Upper Basin for the period 1953-1977 is at least 6.04 maf/yr, including shared CRSP reservoir evaporation, assuming a tolerable shortage averaging about 6 percent for the period 1953-1977, or at least 6.01 maf/yr assuming a shortage averaging about 5 percent for the period. The difference between determinations is due to adjustments to the natural flow data for 1971-1980 to reflect consistent application of the modified Blaney-Criddle method to compute historic Upper Basin irrigation depletions prior to and after 1980.

Both the 1988 Hydrologic Determination and the 2007 Hydrologic Determination included a delivery to the Lower Basin of up to 8.25 maf/yr at Lee Ferry, and protection of the inactive pool at Navajo Reservoir and of the minimum power pools at the other CRSP reservoir units. If the CRSP reservoir minimum pools are used to meet Lower Basin delivery demands, then the 1988 Hydrologic Determination indicates an Upper Basin yield of 6.09 maf/yr and the 2007 Hydrologic Determination indicates an Upper Basin yield of 6.11 maf/yr, both including shared CRSP reservoir evaporation, assuming a 6 percent average shortage for the period 1953-1977.

Interstate Stream Commission staff recently obtained a copy of the Bureau of Reclamation's Colorado River Basin natural flow data base that was updated in June 2007 for revised natural flow computations from 1971 to present. Comparison of the Lee Ferry natural flows obtained from the updated data base and the Lee Ferry natural flows used in the 2007 Hydrologic Determination indicates that the 2007 Hydrologic Determination apparently used natural flows at the Lee Ferry gaging station on the Colorado River that exclude Paria River inflows in the reach between the gage and Lee Ferry. Consequently, the natural flow at Lee Ferry is understated in the 2007 Hydrologic Determination by the amount of Paria River inflow, or by an average of about 21,120 af/yr for the period of record and 18,430 af/yr for the period 1953-1977. Also, updating the natural flows after 1970 resulted in revised flows in several of the earlier years due to the effects of data revisions on stream flow correlations.

Using the Bureau of Reclamation's natural flows at Lee Ferry through 2005 that were updated in June 2007 and Reclamation's unofficial preliminary estimates of natural flows at Lee Ferry for 2006 and 2007, Interstate Stream Commission staff prepared an annual mass balance yield and shortage analysis for the Upper Basin similar to the mass balance analyses used in the 2007 Hydrologic Determination. The yield and shortage analysis assumed: (1) the June 2007 updated natural flows at Lee Ferry, including Paria River inflows; (2) an annual Upper Basin consumptive use demand of 5.76 maf, exclusive of shared CRSP reservoir evaporation, which is the minimum annual yield available for use by

the Upper Basin in accordance with the Resolution of the Upper Colorado River Commission adopted June 5, 2006; (3) an annual Lower Basin delivery at Lee Ferry of 8.25 maf; (4) maintenance of the inactive pool at Navajo Reservoir of the minimum power pools at the other CRSP reservoir units; (5) reduction in reservoir capacity at Lake Powell for sediment deposition through 2060; and (6) use of all non-CRSP reservoir storage in the Upper Basin to meet water demands, including the addition of Ridges Basin Reservoir active capacity. The results of the analysis are attached, and indicate that the total depletion at Lee Ferry by the Upper Basin for the period 1953-1977 is 6.02 maf/yr, including shared CRSP reservoir evaporation, with a shortage averaging less than 5 percent for the period 1953-1977.

A second mass balance yield and shortage analysis for the Upper Basin was prepared for a scenario wherein the CRSP reservoir minimum power pools might be used to meet Lower Basin delivery demands. For this scenario, the amount of storage in Lake Powell available for release to the Lower Basin from the minimum power pool was limited to the estimated storage above elevation 3440 feet because physical limitations on the outlet tubes at Glen Canyon Dam restrict the release capability to less than 8.23 maf/yr once the head falls below this elevation (see the attached report on River Outlet Works at Glen Canyon Dam). To estimate the available storage above elevation 3440 feet in Lake Powell, it was assumed that half of the estimated sedimentation rate for the inactive storage pool in Lake Powell would be deposited above elevation 3440 feet. Also, the inactive storage in Navajo Reservoir below the Navajo Indian Irrigation Project intake was not considered available for release to meet Lower Basin deliveries or Upper Basin demands. Maintenance of the inactive pool at Navajo Reservoir is required to support about ¾ of the State of New Mexico's Upper Basin consumptive uses, which are serviced from the Navajo Reservoir water supply either directly or by exchange, and therefore has priority over maintenance of the minimum pools established at other CRSP unit reservoirs for the generation of hydroelectric power. These restrictions on the availability of live storage from CRSP reservoirs were not included in the 2007 Hydrologic Determination's evaluations of yield using CRSP live storage.

The results of the analysis for the scenario wherein the CRSP reservoir minimum power pools might be used to meet Lower Basin delivery demands are attached, and indicate that under this scenario the total depletion at Lee Ferry by the Upper Basin for the period 1953-1977 would average about 5.97 maf/yr, including shared CRSP reservoir evaporation, with a shortage averaging about 2 percent for the period 1953-1977. The lesser total Upper Basin depletion under this scenario of using the CRSP minimum power pools, as compared to the total Upper Basin depletion of 6.02 maf/yr when the CRSP minimum power pools are maintained, is due to reduced shared CRSP reservoir evaporation as a result of CRSP reservoirs being drawn down to lower levels. To compute shared CRSP reservoir evaporation, the analyses attached hereto used the relationships of shared CRSP reservoir evaporation to CRSP active storage and CRSP live storage, respectively, from the 2007 Hydrologic Determination.

Also, Tom Ryan of the Bureau of Reclamation's Upper Colorado Regional Office recently informed me that Lake Powell net evaporation estimates historically have been underestimated by approximately 30,000 af/yr due to the calculation of salvage using channel cross-section data downstream from Lake Powell that were off by a factor of ten. The error in computed historic Lake Powell net evaporation losses is embedded both in the natural flows estimated using the computed evaporation losses and in the regressions for estimating shared CRSP reservoir evaporation from CRSP storage contents. Therefore, the natural flows at Lee Ferry after 1963 may be understated by up to about 0.03 maf/yr, and the

estimated CRSP shared evaporation also may be understated by up to about 0.03 maf/yr in the 2007 Hydrologic Determination and in the attached analyses.

It will be another year or so before Reclamation revises its natural flow data base to reflect revised Lake Powell historic net evaporation calculations. In the meantime, the effect of the errors in computed Lake Powell evaporation on the Upper Basin yield can be estimated as follows. The errors in shared CRSP reservoir evaporation and the errors in Lee Ferry natural flows will tend to balance out beginning 1964, but the error in computed Lake Powell net evaporation losses that is embedded in the evaporation regression equations is not offset by corresponding errors in natural flows prior to 1964. Thus, the error could affect the water balance analysis for 1953-1963, or for about 44 percent of the period 1953-1977. Consequently, the total depletion at Lee Ferry averaged for the period 1953-1977 may be understated by an amount up to about 0.015 maf/yr on account of erroneous net evaporation calculations at Lake Powell. Increasing the total Upper Basin depletions by an average of 0.015 maf/yr for the period 1953-1977 would not result in an increase in average Upper Basin shortages for the period above 5 percent or above about 2 percent for the two scenarios analyzed herein, respectively.

In conclusion, the described changes to the natural flow hydrology at Lee Ferry and correction of the historic Lake Powell net evaporation losses have no net affect on the yield available for development in the Upper Basin as determined by the 2007 Hydrologic Determination and the June 2006 Resolution of the Upper Colorado River Commission. The assumptions used in each analysis described herein should not be construed as agreement of the State of New Mexico or the Upper Colorado River Commission to the assumptions used in the 2007 Hydrologic Determination, including regarding annual deliveries to the Lower Basin at Lee Ferry. Also, computed shortages in each analysis do not necessarily equate to administrative calls to curtail Upper Basin uses because they do not reflect all relevant factors, including determinations of the Upper Basin obligations under Article III(c) of the Colorado River Compact and the occurrences of physical water supply shortages in the Upper Basin.

Upper Basin Yield Under 2060 Storage Sedimentation Conditions

Protect Minimum Power Pools at Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit Reservoirs, and Protect the NIP Intake at Navajo Reservoir

CY	CR Natural Flow at Lee Ferry (plus)	Total Carry-Over Storage (plus)	CRSP Carry-Over Storage	Lower Basin Delivery (minus)	Upper Basin Use (minus)	Shared CRSP Evap (minus)	Net Available to Store (subtotal)	Equalize or Spill to LG (minus)	Shortage (plus)	UC Basin Year-end Storage (equals)	CRSP Year-end Storage	Variables	
1906	18,746,193	29,598,367	24,822,440	8,250,000	5,760,000	748,663	33,585,956	3,987,530	0	29,598,367	24,822,440	Power Total Storage	24,322,000 af
1907	20,910,016	29,598,367	24,822,440	8,250,000	5,760,000	748,663	35,749,719	6,151,553	0	29,598,367	24,822,440	Power Active Storage	20,309,919 af
1908	11,733,558	29,598,367	24,822,440	8,250,000	5,760,000	717,519	26,604,406	0	0	26,604,406	22,311,578	CRSP Active Storage	25,665,339 af
1909	22,217,876	26,604,406	22,311,578	8,250,000	5,760,000	717,519	34,094,764	4,496,356	0	29,598,367	24,822,440	CRSP Active+Other Storage	30,257,676 af
1910	14,616,679	29,598,367	24,822,440	8,250,000	5,760,000	747,202	29,457,844	0	0	26,457,844	24,704,592	Power Sediment Rate	24,262 af/yr
1911	15,877,701	29,457,844	24,822,440	8,250,000	5,760,000	747,202	30,376,343	779,977	0	29,598,367	24,822,440	Bank Storage	4%
1912	18,654,328	29,598,367	24,822,440	8,250,000	5,760,000	748,663	33,494,031	3,895,665	0	29,598,367	24,822,440	Adj. CRSP Active Storage	24,822,440 af
1913	14,566,339	29,598,367	24,822,440	8,250,000	5,760,000	748,663	29,398,125	0	0	29,598,367	24,822,440	Adj. CRSP Active+Other Stor.	29,598,367 af
1914	21,372,378	26,398,125	24,822,440	8,250,000	5,760,000	746,680	28,994,509	0	0	28,492,061	23,894,646	UB Demand Level	5,760,000 af/yr
1915	13,640,850	29,598,367	24,822,440	8,250,000	5,760,000	746,680	30,013,923	6,415,656	0	29,598,367	24,822,440	LB Delivery	8,250,000 af/yr
1916	20,186,111	28,492,061	24,822,440	8,250,000	5,760,000	737,155	28,492,061	0	0	28,492,061	23,894,646		
1917	22,960,008	29,598,367	24,822,440	8,250,000	5,760,000	737,155	33,991,919	4,332,633	0	29,598,367	24,822,440		
1918	15,889,506	29,598,367	24,822,440	8,250,000	5,760,000	748,663	37,799,711	8,201,345	0	29,598,367	24,822,440		
1919	12,675,801	29,598,367	24,822,440	8,250,000	5,760,000	748,663	30,729,209	1,130,843	0	29,598,367	24,822,440		
1920	22,316,053	27,536,648	24,822,440	8,250,000	5,760,000	727,220	27,536,648	0	0	27,536,648	23,093,647		
1921	22,558,254	29,598,367	24,822,440	8,250,000	5,760,000	727,220	35,115,981	5,517,414	0	29,598,367	24,822,440	Total Upper Basin depletion, inc. CRSP evap:	
1922	18,470,589	29,598,367	24,822,440	8,250,000	5,760,000	748,663	37,387,957	7,795,991	0	29,598,367	24,822,440	1953-1977	8,020,207 af/yr
1923	19,040,878	29,598,367	24,822,440	8,250,000	5,760,000	748,663	33,910,922	3,711,726	0	29,598,367	24,822,440	1931-1977	6,131,283 af/yr
1924	13,895,625	29,598,367	24,822,440	8,250,000	5,760,000	748,663	33,880,679	4,262,313	0	29,598,367	24,822,440	1908-2005	6,263,938 af/yr
1925	14,478,892	28,744,213	24,106,111	8,250,000	5,760,000	735,778	28,744,213	0	0	28,744,213	24,106,111	1906-2007	6,249,443 af/yr
1926	15,230,057	28,482,930	24,822,440	8,250,000	5,760,000	735,479	28,482,930	0	0	28,482,930	23,886,988		
1927	19,584,419	28,972,438	24,297,510	8,250,000	5,760,000	742,162	33,804,696	4,206,329	0	29,598,367	24,822,440		
1928	18,989,981	29,598,367	24,822,440	8,250,000	5,760,000	746,663	31,809,664	2,211,298	0	29,598,367	24,822,440		
1929	21,863,608	29,598,367	24,822,440	8,250,000	5,760,000	748,663	36,703,211	7,104,545	0	29,598,367	24,822,440		
1930	14,641,832	29,598,367	24,822,440	8,250,000	5,760,000	747,461	29,482,758	0	0	29,482,758	24,725,486		
1931	8,484,422	29,482,758	24,725,486	8,250,000	5,760,000	621,688	23,275,492	0	0	23,275,492	19,519,811		
1932	17,460,272	23,275,492	19,519,811	8,250,000	5,760,000	646,266	26,079,478	0	0	26,079,478	21,871,352		
1933	12,201,254	26,079,478	21,871,352	8,250,000	5,760,000	649,878	23,620,954	0	0	23,620,954	19,809,446		
1934	6,196,076	23,620,954	19,809,446	8,250,000	5,760,000	537,429	16,269,502	0	0	16,269,502	12,955,649		
1935	12,847,629	15,269,602	12,847,629	8,250,000	5,760,000	431,890	15,475,241	0	0	15,475,241	11,300,906		
1936	14,886,739	13,475,241	11,300,906	8,250,000	5,760,000	415,923	13,735,052	0	0	13,735,052	11,218,784		
1937	14,332,258	13,735,052	11,218,784	8,250,000	5,760,000	417,639	13,639,371	0	0	13,639,371	11,439,804		
1938	16,173,884	13,639,371	11,439,804	8,250,000	5,760,000	455,265	17,348,330	0	0	17,348,330	14,549,042		
1939	11,197,462	17,348,330	14,549,042	8,250,000	5,760,000	489,764	14,076,027	0	0	14,076,027	11,604,751		
1940	9,659,914	14,076,027	11,604,751	8,250,000	5,760,000	379,645	9,646,297	0	0	9,646,297	8,085,792		
1941	20,148,522	9,646,297	8,085,792	8,250,000	5,760,000	353,329	15,391,490	0	0	15,391,490	12,907,353		
1942	17,239,674	15,391,490	12,907,353	8,250,000	5,760,000	481,678	18,103,485	0	0	18,139,495	15,212,535		
1943	13,753,225	18,139,485	15,212,535	8,250,000	5,760,000	502,367	17,330,343	0	0	17,360,343	14,575,890		
1944	15,389,712	17,360,343	14,575,890	8,250,000	5,760,000	503,422	18,250,633	0	0	18,250,633	15,305,668		
1945	14,161,561	18,250,633	15,305,668	8,250,000	5,760,000	508,853	17,863,237	0	0	17,893,237	15,006,024		
1946	11,117,876	17,893,237	15,006,024	8,250,000	5,760,000	470,165	14,530,548	0	0	14,530,548	12,156,266		
1947	16,462,164	14,530,548	12,156,266	8,250,000	5,760,000	455,954	16,527,157	0	0	16,527,157	13,880,372		
1948	15,155,534	16,527,157	13,880,372	8,250,000	5,760,000	483,603	17,189,696	0	0	17,189,696	14,415,493		
1949	16,953,305	17,189,696	14,415,493	8,250,000	5,760,000	516,744	19,616,647	0	0	19,616,647	16,451,349		
1950	13,153,218	19,616,647	16,451,349	8,250,000	5,760,000	526,605	18,233,260	0	0	18,233,260	15,291,181		
1951	12,521,127	18,233,260	15,291,181	8,250,000	5,760,000	491,613	16,252,773	0	0	16,252,773	13,630,262		
1952	20,822,910	16,252,773	13,630,262	8,250,000	5,760,000	536,304	22,526,380	0	0	22,526,380	18,894,090		
1953	11,183,540	22,526,380	18,894,090	8,250,000	5,760,000	565,302	19,136,616	0	0	19,136,616	16,048,776		
1954	8,514,569	19,136,616	16,048,776	8,250,000	5,760,000	488,965	13,172,222	0	0	13,172,222	11,046,782		
1955	9,428,775	13,172,222	11,046,782	8,250,000	5,760,000	355,567	8,235,431	0	0	8,235,431	6,806,580		
1956	11,430,054	8,235,431	6,806,580	8,250,000	5,760,000	274,581	5,386,504	0	0	5,386,504	4,517,685		
1957	21,529,593	5,386,504	4,517,685	8,250,000	5,760,000	319,844	12,586,653	0	0	12,586,653	10,555,609		
1958	15,890,102	12,586,653	10,555,609	8,250,000	5,760,000	410,031	14,056,724	0	0	14,056,724	11,788,582		
1959	9,612,332	14,056,724	11,788,582	8,250,000	5,760,000	375,669	9,283,387	0	0	9,283,387	7,785,441		
1960	11,538,468	9,283,387	7,785,441	8,250,000	5,760,000	297,213	6,514,842	0	0	6,514,842	5,483,454		
1961	10,036,780	6,514,842	5,483,454	8,250,000	5,760,000	224,743	2,316,679	0	0	2,316,679	1,942,865		
1962	17,393,676	2,316,679	1,942,865	8,250,000	5,760,000	214,048	5,486,309	0	0	5,486,309	4,601,051		
1963	8,861,023	5,486,309	4,601,051	8,250,000	5,760,000	191,164	145,868	0	0	145,868	122,331		
1964	10,876,758	145,868	122,331	8,250,000	5,760,000	134,393	-3,121,787	0	3,121,767	0	0		
1965	18,894,878	0	0	8,250,000	5,760,000	192,092	5,692,586	0	0	5,692,586	4,774,043		
1966	10,894,529	5,692,586	4,774,043	8,250,000	5,760,000	214,588	2,152,527	0	0	2,162,527	1,813,586		
1967	11,693,781	2,162,527	1,813,586	8,250,000	5,760,000	155,371	-309,084	0	309,084	0	0		
1968	13,763,269	0	0	8,250,000	5,760,000	132,876	-378,607	0	379,507	0	0		
1969	15,300,556	0	0	8,250,000	5,760,000	144,795	1,145,751	0	0	1,145,751	960,884		
1970	15,358,765	1,145,751	960,884	8,250,000	5,760,000	189,684	2,326,541	0	0	2,325,541	1,850,296		
1971	16,475,385	2,325,541	1,850,296	8,250,000	5,760,000	154,479	1,999,487	0	0	3,596,457	3,016,140		
1972	13,219,484	3,596,457	3,016,140	8,250,000	5,760,000	107,422	2,808,498	0	0	2,808,498	2,187,597		
1973	18,651,725	2,808,498	2,187,597	8,250,000	5,760,000	233,306	7,017,217	0	0	7,017,217	5,884,534		
1974	13,378,356	7,017,217	5,884,534	8,250,000	5,760,000	269,494	6,118,075	0	0	6,118,075	5,129,202		
1975	17,061,631	6,118,075	5,129,202	8,250,000	5,760,000	259,360	8,878,513	0	0	8,878,513	7,446,229		
1976	11,296,126	8,878,513	7,446,229	8,250,000	5,760,000	236,360	8,877,656	0	0	8,877,656	4,929,290		
1977	5,520,711	5,477,656	4,929,290	8,250,000	5,760,000	194,018	-2,808,383	0	2,805,651	0	0		
1978	15,591,797	0	0	8,250,000	5,760,000	145,7							

Upper Basin Yield Under 2060 Storage Sedimentation Conditions

Protect the NHP Intake at Navajo Reservoir, and Do Not Protect Minimum Power Pools at Other CRSP Reservoir Units

CY	CR Natural Flow at Lee Ferry (plus)	Total Carry-Over Storage (plus)	CRSP Carry-Over Storage	Lower Basin Delivery (minus)	Upper Basin Use (minus)	Shared CRSP Evap (minus)	Net Available to Storage (subtotal)	Equalize or Split to LC (minus)	Storage (plus)	UC Basin Year-end Storage (equals)	CRSP Year-end Storage	Variables
1906	18,746,193	33,919,910	29,112,783	8,250,000	5,760,000	724,439	37,931,664	4,011,754	0	33,919,910	29,112,783	Power Total Storage
1907	20,910,018	33,919,910	29,112,783	8,250,000	5,760,000	724,439	40,699,487	6,178,577	0	33,919,910	29,112,783	CRSP Live-Storage
1908	11,733,558	33,919,910	29,112,783	8,250,000	5,760,000	692,940	36,950,519	0	0	33,919,910	29,112,783	CRSP Live+Other Storage
1909	22,217,876	33,919,910	29,112,783	8,250,000	5,760,000	692,940	38,465,448	5,454,536	0	33,919,910	29,112,783	Power Segment Rate
1910	14,616,679	33,919,910	29,112,783	8,250,000	5,760,000	723,203	33,803,386	0	0	33,919,910	29,112,783	Bank Storage
1911	15,877,701	33,919,910	29,112,783	8,250,000	5,760,000	723,203	34,747,884	827,974	0	33,919,910	29,112,783	Adj. CRSP Live-Storage
1912	18,564,328	33,919,910	29,112,783	8,250,000	5,760,000	724,439	37,839,759	3,919,869	0	33,919,910	29,112,783	Adj. CRSP Live+Other Stor.
1913	14,556,339	33,919,910	29,112,783	8,250,000	5,760,000	722,570	35,743,676	0	0	33,919,910	29,112,783	Power Storage Unavailable
1914	21,372,378	33,919,910	29,112,783	8,250,000	5,760,000	722,570	40,383,467	6,463,577	0	33,919,910	29,112,783	Navajo Storage Unavailable
1915	13,640,850	33,919,910	29,112,783	8,250,000	5,760,000	712,563	32,837,757	0	0	33,919,910	29,112,783	CRSP Storage Unavailable
1916	20,186,113	32,837,787	28,164,027	8,250,000	5,760,000	712,963	38,303,647	4,381,037	0	33,919,910	29,112,783	CRSP Storage Unavailable
1917	22,960,008	33,919,910	29,112,783	8,250,000	5,760,000	724,439	42,145,479	8,225,569	0	33,919,910	29,112,783	CRSP Storage Unavailable
1918	15,889,506	33,919,910	29,112,783	8,250,000	5,760,000	724,439	35,074,877	1,155,097	0	33,919,910	29,112,783	UB Demand Level
1919	12,675,801	33,919,910	29,112,783	8,250,000	5,760,000	730,836	31,682,874	0	0	33,919,910	29,112,783	LB Delivery
1920	22,316,053	31,862,874	27,364,436	8,250,000	5,760,000	732,834	36,486,096	5,566,161	0	31,862,874	27,364,436	CRSP evap:
1921	22,558,254	33,919,910	29,112,783	8,250,000	5,760,000	734,439	41,743,725	7,828,415	0	33,919,910	29,112,783	1953-1977
1922	18,470,389	33,919,910	29,112,783	8,250,000	5,760,000	724,439	37,655,860	3,735,950	0	33,919,910	29,112,783	1931-1977
1923	19,040,976	33,919,910	29,112,783	8,250,000	5,760,000	724,439	38,226,447	4,306,537	0	33,919,910	29,112,783	1906-2005
1924	13,895,625	33,919,910	29,112,783	8,250,000	5,760,000	715,837	33,059,899	0	0	33,919,910	29,112,783	1906-2007
1925	14,476,892	33,919,910	29,112,783	8,250,000	5,760,000	704,317	32,852,224	0	0	33,919,910	29,112,783	1953-1977
1926	15,230,057	32,852,474	28,196,624	8,250,000	5,760,000	707,237	33,585,293	0	0	32,852,474	28,196,624	1931-1977
1927	19,560,410	33,919,910	29,112,783	8,250,000	5,760,000	718,557	38,221,146	4,301,236	0	33,919,910	29,112,783	1906-2005
1928	16,669,981	33,919,910	29,112,783	8,250,000	5,760,000	724,439	36,156,432	7,129,169	0	33,919,910	29,112,783	1906-2007
1929	21,863,508	33,919,910	29,112,783	8,250,000	5,760,000	724,439	41,045,079	0	0	33,919,910	29,112,783	
1930	14,841,852	33,919,910	29,112,783	8,250,000	5,760,000	723,467	33,828,295	0	0	33,919,910	29,112,783	
1931	8,484,422	33,828,295	29,034,152	8,250,000	5,760,000	656,632	27,645,729	0	0	33,828,295	29,034,152	
1932	17,460,272	27,645,729	23,727,827	8,250,000	5,760,000	821,368	30,474,689	0	0	27,645,729	23,727,827	
1933	12,201,254	30,474,689	26,155,819	8,250,000	5,760,000	825,552	28,040,591	0	0	30,474,689	26,155,819	
1934	6,196,076	28,040,591	24,066,509	8,250,000	5,760,000	811,449	19,715,017	0	0	28,040,591	24,066,509	
1935	12,647,829	19,715,017	18,621,007	8,250,000	5,760,000	404,424	17,548,222	0	0	19,715,017	18,621,007	
1936	14,685,739	17,548,222	15,404,601	8,250,000	5,760,000	388,732	18,235,229	0	0	17,548,222	15,404,601	
1937	14,332,258	18,235,229	15,650,934	8,250,000	5,760,000	391,644	18,066,440	0	0	18,235,229	15,650,934	
1938	18,173,884	18,166,440	15,591,894	8,250,000	5,760,000	429,914	21,006,410	0	0	18,166,440	15,591,894	
1939	11,197,462	21,000,410	18,796,686	8,250,000	5,760,000	435,977	18,652,800	0	0	21,000,410	18,796,686	
1940	9,959,914	18,652,800	16,009,327	8,250,000	5,760,000	553,926	14,248,785	0	0	18,652,800	16,009,327	
1941	20,148,522	14,248,785	12,225,449	8,250,000	5,760,000	348,416	20,018,991	0	0	14,248,785	12,225,449	
1942	17,239,874	20,018,991	17,181,816	8,250,000	5,760,000	458,888	22,789,577	0	0	20,018,991	17,181,816	
1943	13,753,225	22,789,577	19,559,840	8,250,000	5,760,000	480,552	22,052,250	0	0	22,789,577	19,559,840	
1944	15,383,712	22,052,250	18,927,007	8,250,000	5,760,000	492,187	22,943,776	0	0	22,052,250	18,927,007	
1945	14,161,561	22,943,776	19,692,185	8,250,000	5,760,000	488,373	22,607,264	0	0	22,943,776	19,692,185	
1946	11,117,876	22,607,264	19,403,356	8,250,000	5,760,000	449,072	19,266,068	0	0	22,607,264	19,403,356	
1947	16,462,164	19,266,068	16,535,693	8,250,000	5,760,000	435,030	21,293,202	0	0	19,266,068	16,535,693	
1948	15,155,534	21,293,202	18,264,849	8,250,000	5,760,000	493,853	21,965,084	0	0	21,293,202	18,264,849	
1949	18,963,305	21,965,084	18,852,194	8,250,000	5,760,000	496,228	24,411,561	0	0	21,965,084	18,852,194	
1950	13,153,216	24,411,561	20,951,667	8,250,000	5,760,000	508,296	23,046,493	0	0	24,411,561	20,951,667	
1951	12,521,127	23,046,493	19,780,337	8,250,000	5,760,000	473,014	21,064,595	0	0	23,046,493	19,780,337	
1952	20,822,910	21,064,595	18,056,489	8,250,000	5,760,000	518,956	27,378,551	0	0	21,064,595	18,056,489	
1953	11,183,540	27,378,551	23,498,466	8,250,000	5,760,000	549,895	24,002,196	0	0	27,378,551	23,498,466	
1954	8,514,569	24,002,196	20,600,507	8,250,000	5,760,000	451,029	18,055,738	0	0	24,002,196	20,600,507	
1955	6,428,775	18,055,738	15,456,378	8,250,000	5,760,000	335,926	13,138,688	0	0	18,055,738	15,456,378	
1956	11,436,054	13,138,688	11,276,673	8,250,000	5,760,000	233,695	10,311,045	0	0	13,138,688	11,276,673	
1957	21,529,563	10,311,045	8,849,765	8,250,000	5,760,000	300,207	17,530,371	0	0	10,311,045	8,849,765	
1958	15,860,102	17,530,371	15,045,969	8,250,000	5,760,000	392,601	19,017,873	0	0	17,530,371	15,045,969	
1959	9,812,332	15,017,873	16,322,661	8,250,000	5,760,000	357,943	14,262,261	0	0	15,017,873	16,322,661	
1960	11,538,468	14,262,261	12,241,015	8,250,000	5,760,000	278,350	11,512,380	0	0	14,262,261	12,241,015	
1961	10,038,780	11,512,380	9,880,846	8,250,000	5,760,000	204,880	7,334,279	0	0	11,512,380	9,880,846	
1962	17,393,676	7,334,279	6,294,666	8,250,000	5,760,000	194,394	10,828,561	0	0	7,334,279	6,294,666	
1963	8,861,023	10,828,561	9,032,163	8,250,000	5,760,000	171,790	5,202,794	0	0	10,828,561	9,032,163	
1964	10,876,758	5,202,794	4,485,454	8,250,000	5,760,000	86,746	1,982,606	0	521.217	5,202,794	4,485,454	
1965	18,964,678	2,504,023	2,149,153	8,250,000	5,760,000	119,266	8,269,434	0	0	2,504,023	2,149,153	
1966	10,694,525	8,269,434	7,087,491	8,250,000	5,760,000	143,723	4,810,240	0	0	8,269,434	7,087,491	
1967	11,893,781	4,810,240	4,126,333	8,250,000	5,760,000	82,563	2,411,419	0	0	4,810,240	4,126,333	
1968	13,783,269	2,504,023	2,149,153	8,250,000	5,760,000	88,126	2,199,166	0	0	2,504,023	2,149,153	
1969	15,900,596	2,504,023	2,149,153	8,250,000	5,760,000	71,058	3,723,521	0	0	2,504,023	2,149,153	
1970	15,358,765	3,723,521	3,195,824	8,250,000	5,760,000	97,263	4,975,023	0	0	3,723,521	3,195,824	
1971	15,475,395	4,975,023	4,269,963	8,250,000	5,760,000	124,751	6,315,667	0	0	4,975,023	4,269,963	
1972	13,219,484	6,315,667	5,420,811	8,250,000	5,760,000	129,215	5,395,916	0	0	6,315,667	5,420,811	
1973	19,651,725	5,395,916	4,831,207	8,250,000	5,760,000	166,915	9,870,725	0	0	5,395,916	4,831,207	
1974	13,378,356	9,870,725	8,471,847	8,250,000	5,760,000	205,492	9,033,569	0	0	9,870,725	8,471,847	
1975	17,061,691	9,033,569	7,753,350	8,250,000	5,760,000	226,574	11,858,707	0	0	9,033,569	7,753,350	
1976	11,295,125	11,858,707	10,178,092	8,250,000	5,760,000	225,353	9,918,479	0	0	11,858,707	10,178,092	
1977	5,520,711	8,918,479	7,654,553	8,250,000	5,760,000	126,145	303,040	0	2,200.982	8,918,479	7,654,553	
1978	15,391,757	2,504,023	2,149,153	8,250,000	5,760,000	72,016	3,813,804	0	0	2,504,023	2,149,153	
1979	17,969,160	3,813,804	3,273,312	8,250,000	5,760,000	126,549	7,646,415	0	0	3,813,804	3,273,312	
1980	17,925,630	7,646,415										

River Outlet Works at Glen Canyon Dam.

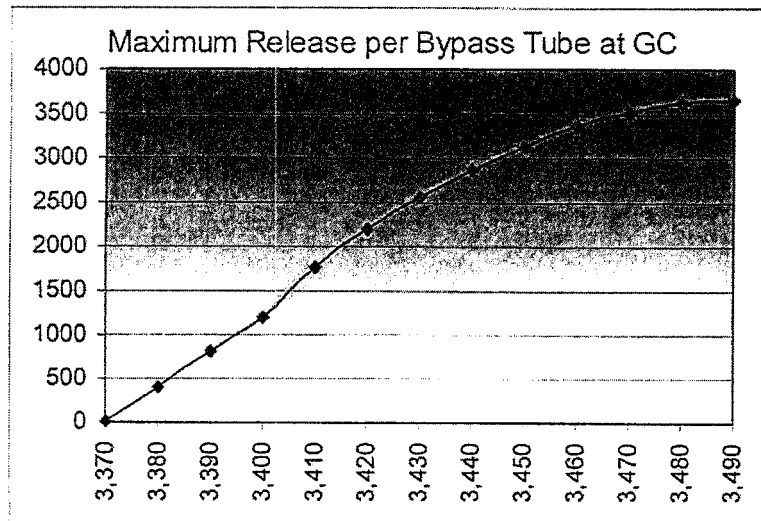
In the majority of the modeling Reclamation performed for the Colorado Basin States the past two years, minimum power pool (elevation 3,490 feet) was not absolutely protected. In very dry hydrologic traces, the model showed the elevation of Lake Powell going below 3,490 feet. In modeling these dry traces for the states, annual releases of 8.23 million acre-feet (maf) continued to be met through use of the river outlet works.

The question has been raised whether the river outlets can deliver 8.23 maf annually when Lake Powell is below 3,490 feet, whether the extended operation of the outlets is safe, and what maintenance issues can be anticipated with extended use of the outlet works.

There are four river outlets at Glen Canyon Dam (96" diameter steel pipes with hollow-jet valves for regulation), each with a capacity of 3,750 cfs. The release rate is controlled by the hollow-jet valves from elevation 3,500 feet to 3,700 feet. At elevation 3,700 feet a hollow-jet valve opening of 79% produces the 3,750 cfs. At elevation 3,500 feet, the hollow-jet valve must be fully opened to achieve 3,750 cfs.

At elevations below 3,500 feet with the hollow-jet valve fully opened, the flow is reduced below 3,750 cfs as the head is lowered. At elevation 3,490 feet, for instance, one river outlet with the hollow-jet valve fully opened will release about 3,660 cfs. At elevation 3,460 feet one river outlet will release about 3,380 cfs.¹

The following plot shows the maximum release in cfs from one hollow jet tube between elevations 3,370 feet (top of dead pool) and 3,490 feet (minimum power pool).

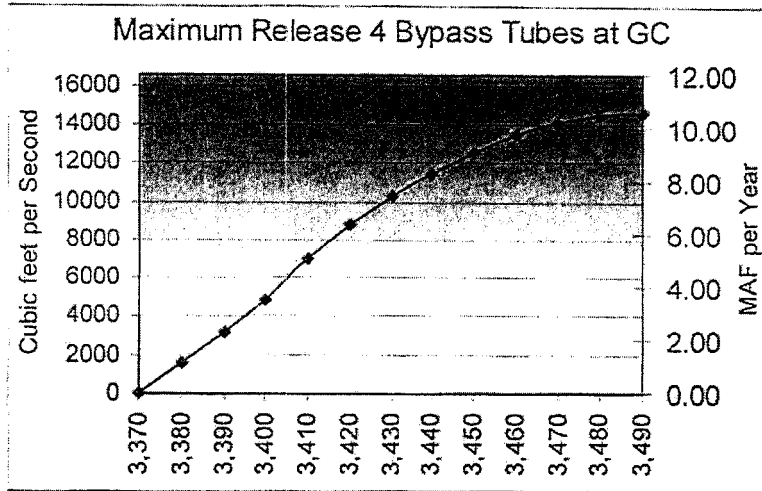


¹ Data taken from "Glen Canyon Dam and Power Plant Technical Record of Design and Construction," Page 164

Draft – May 7, 2005

An annual release of 8.23 maf requires a continuous release of 11,368 cfs. With all four river outlets in service, this release can be achieved down to elevation 3,440 feet. At this elevation the release capacity from the four river outlets is approximately 11,440 cfs (2,860 cfs per unit).

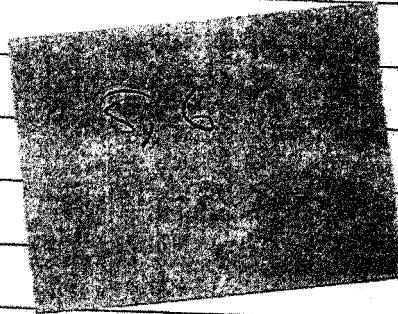
The subsequent plot shows the maximum release from 4 hollow jet tubes between elevations 3,370 feet (top of dead pool) and 3,490 feet (minimum power pool). The dual y axis depicts the maximum flow in cfs and the maximum water year release volume in maf (assuming a constant water surface elevation).



Maintenance of the river outlet works is also an important consideration. The outlet works would need to be periodically de-watered and inspected for cavitation or damage from fatigue.

Reclamation is updating the CRSS model to reflect the physical limitations of the river outlets. Maximum release rules will be added to the model to limit the volume of release below 3,490 feet to be consistent with the graphs displayed above. It will be assumed in the CRSS model that all 4 of the bypass tubes will always be available for delivery of water.

Tom Ryan
May 7, 2006



SJ-7
NGWSP

RESOLUTION OF THE
UPPER COLORADO RIVER COMMISSION

Regarding the Use and Accounting of Upper Basin Water Supplied to the Lower Basin in
New Mexico by the Proposed Navajo-Gallup Water Supply Project

WHEREAS, part of the State of New Mexico is within the Upper Basin and part is within the Lower Basin as defined in Article II of the Colorado River Compact (45 Stat. 1057); and

WHEREAS, New Mexico has proposed the Navajo-Gallup Water Supply Project to divert water from the Upper Basin to serve communities located within the Lower Basin in New Mexico; and

WHEREAS, New Mexico needs to provide a water supply for municipal, industrial, commercial and domestic purposes to Navajo and non-Indian communities located within the Lower Basin in New Mexico that do not have an adequate Lower Basin source of water; and

WHEREAS, Subsection 303(d) of Public Law 90-537, the Colorado River Basin Project Act, authorized a thermal generating plant to be located within the State of Arizona and provided that if the plant was served by water diverted from the drainage area of the Colorado River system above Lee Ferry such consumptive use of water would be a part of the consumptive use apportioned to the State of Arizona by Article III (a) of the Upper Colorado River Basin Compact (63 Stat. 31) regardless of whether the plant was located in the Upper Basin or the Lower Basin; and

WHEREAS, the states of Colorado, New Mexico, Utah and Wyoming all support the proposed Navajo-Gallup Water Supply Project, but the states are not in agreement as to whether, under the Law of the River, New Mexico may use a part of its Upper Basin apportionment to serve uses in the Lower Basin portion of New Mexico, without obtaining the consent of the other states. However, in the spirit of comity, and without prejudice to the position of any state regarding these unresolved issues, all the states support and to the extent necessary consent to the Navajo-Gallup Water Supply Project in New Mexico.

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; and

BE IT FURTHER RESOLVED, that the use of any return flows which result from use of water through the Navajo-Gallup Water Supply Project within the Lower Basin shall be subject to applicable laws; and

BE IT FURTHER RESOLVED, that nothing resulting from the implementation 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; and,

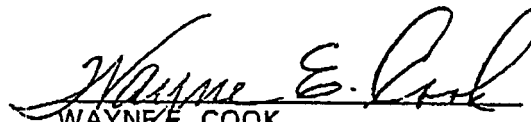
BE IT FURTHER RESOLVED, that the construction and operation of, and use of water through, the Navajo-Gallup Water Supply Project shall be subject to all other applicable provisions of law; and,

BE IT FURTHER RESOLVED, that the Upper Colorado River Commission supports such Congressional action as may be necessary to authorize the Navajo-Gallup Water Supply Project.

CERTIFICATE

I, WAYNE E. COOK, Executive Director and Secretary of the Upper Colorado River Commission, do hereby certify that the above Resolution was adopted by the Upper Colorado River Commission at its Meeting held at the Half Moon Lake Resort near Pinedale, Wyoming on June 17, 2003.

WITNESS my hand this 19th day of June, 2003.


WAYNE E. COOK
Executive Director and Secretary

You forwarded this message on 6/1/2006 7:31 PM.
Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

Whipple, John J., OSE

From: Whipple, John J., OSE **Sent:** Thu 6/1/2006 7:30 PM
To: dtrueman@uc.usbr.gov; dostler@uc.usbr.gov; randy.seaholm@state.co.us; robertking@utah.gov; jshiel@seo.wyo.gov
Cc: Lopez, Estevan, OSE
Subject: hydro determination update
Attachments: [Navset.hydrodeter.brdoc7.doc\(49KB\)](#) [Navset.hydrodeter.brdoc.app.doc\(20KB\)](#) [Navset.hydrodeter.yieldstudy4.xls\(989KB\)](#)
[Navset.hydrodeter.depsched6.xlw\(26KB\)](#) [Navset.hydrodeter.ucrcres7.doc\(34KB\)](#)

All:

The draft hydrologic determination agreed to in our conference call today is attached. The first file (brdoc7) is the report text edited today. The second file (brdoc.app) contains the Appendix cover sheets (unchanged). The third file (yieldstudy4) is the contents of Appendix A and is unchanged (note: you may need to adjust the printing on the first yield spreadsheet and the CRSP evaporation regression worksheet in the file, and do not include in Appendix A the last worksheet of the file showing historic annual CRSP storage and evaporation data). The fourth file (depsched6) is the contents of Appendix B (New Mexico's depletion schedule unchanged with "Preliminary" added).

The draft UCRC resolution agreed to in our conference call today also is attached (ucrcres7).

Please notify me asap if I have missed anything or you have any questions. Please also distribute the draft documents to your commissioners and other advisers as appropriate. Thank you for your attention and assistance on this matter.

John Whipple

OSE-1473

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
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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

Mr. Balcomb, Mr. Kuharich
May 6, 2006
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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

Mr. Balcomb, Mr. Kuharich
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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
Steve Farris, Office of the New Mexico Attorney General
Bill Hume, Office of Governor Bill Richardson

JUNE 2006 DRAFT

RESOLUTION OF THE
UPPER COLORADO RIVER COMMISSION

Regarding the Availability of Water from Navajo Reservoir for Navajo Nation Uses
within the State of New Mexico

WHEREAS, the State of New Mexico has proposed the Navajo-Gallup Water Supply Project to provide a needed renewable water supply from the San Juan River for municipal and domestic uses for Indian and non-Indian communities located within New Mexico in both the Upper Basin and the Lower Basin; and

WHEREAS, the State of New Mexico and the Navajo Nation on April 19, 2005, executed the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (the "Settlement Agreement"), which is conditioned upon, among other things, the implementation of the Navajo Nation components of the Navajo-Gallup Water Supply Project within New Mexico; and

WHEREAS, the source of water supply for the proposed Navajo-Gallup Water Supply Project would be Navajo Reservoir and the San Juan River in New Mexico; and

WHEREAS, water from Navajo Reservoir and the San Juan River would be delivered to the proposed Navajo-Gallup Water Supply Project to meet the water demands of Navajo Nation communities in New Mexico through a proposed Settlement Contract between the United States, acting through the Secretary of the Interior, and the Navajo Nation (Appendix 4 to the Settlement Agreement); and

WHEREAS, Public Law 87-483 at section 11(a) requires that no new long-term contracts "... shall be entered into for the delivery of water stored in Navajo Reservoir or any other waters of the San Juan River and its tributaries, as aforesaid, until the Secretary has determined by hydrologic investigations that sufficient water to fulfill said contract is reasonably likely to be available for use in the State of New Mexico during the term thereof under the allocations made in articles III and XIV of the Upper Colorado River Basin compact, and has submitted such determination to the Congress of the United States and the Congress has approved such contracts"; and

WHEREAS, pursuant to Public Law 87-483, and in furtherance of the Jicarilla Apache Tribe Water Rights Settlement Act of 1992 and the Navajo Reservoir water supply contract approved by said Act, the Secretary of the Interior on February 2, 1989, approved the report on "Hydrologic Determination, 1988, Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico" (the "1988 Hydrologic Determination"); and

WHEREAS, the 1988 Hydrologic Determination evaluated the availability of water from the Navajo Reservoir supply for uses in New Mexico through the 2040 planning horizon; and

WHEREAS, an update and extension to the 1988 Hydrologic Determination is needed to evaluate the availability of water from the Navajo Reservoir supply through a 2060 planning horizon under the allocation of water made to the State of New Mexico by the Upper Colorado River Basin Compact for the purpose of furthering Congressional legislative approval of the Settlement Agreement, the authorization of the proposed Navajo-Gallup Water Supply Project, and the legislative approval of the proposed Settlement Contract for the Navajo Nation's project uses in New Mexico; and

WHEREAS, the proposed Settlement Contract between the United States and the Navajo Nation would provide water supplies for Navajo Nation uses in New Mexico under both the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project which was authorized by Public Law 87-483, and would supersede the existing Navajo Reservoir water supply contract for the Navajo Indian Irrigation Project; and

WHEREAS, the US Bureau of Reclamation has presented to the Upper Colorado River Commission for its consideration a draft hydrologic determination, dated May 2006, that evaluates the availability of water from the Navajo Reservoir supply through 2060 and shows: (1) at least 5.75 million acre-feet of water is reasonably available annually for use by the Upper Basin, exclusive of reservoir evaporation at Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit reservoirs of the Colorado River Storage Project; and (2) sufficient water is reasonably likely to be available from the Navajo Reservoir supply to fulfill the proposed Settlement Contract for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project, in addition to existing Navajo Reservoir water supply contracts for other uses, under the allocations made to New Mexico in Articles III and XIV of the Upper Colorado River Basin Compact; and

WHEREAS, the Settlement Agreement would provide at subparagraph 9.3.1: "The Navajo Nation and the United States agree that the State of New Mexico may administer in priority water rights in the San Juan River Basin in New Mexico, including rights of the Navajo Nation, as may be necessary for New Mexico to comply with its obligations under interstate compacts and other applicable law"; and

WHEREAS, the Upper Colorado River Commission supports water resource development in the Upper Colorado River Basin to enable the Upper Division States to fully develop their compact apportionments of Colorado River water while meeting compact obligations relating to the flow of the Colorado River at Lee Ferry; and

WHEREAS, it is the position of the Upper Colorado River Commission and the Upper Division States that, with the delivery at Lee Ferry of 75 million acre-feet of water in each period of ten consecutive years, the water supply available in the Colorado River

System below Lee Ferry is sufficient to meet the apportionments to the Lower Basin provided for in Articles III(a) and III(b) of the Colorado River Compact; and

WHEREAS, it is the position of the Upper Colorado River Commission and the Upper Division States that the obligation of the Upper Basin under Article III(c) of the Colorado River Compact to deliver water toward the Mexican Treaty obligation does not require the delivery at Lee Ferry of 0.75 million acre-feet of water annually; and

WHEREAS, the Upper Colorado River Commission anticipates that the Upper Division States will take all actions necessary to ensure that all Upper Basin States have access to their respective apportionments as specified in the Upper Colorado River Basin Compact; and

WHEREAS, the Upper Colorado River Commission on June 19, 2003, resolved that: (1) "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 Compact;" and (2) "the Upper Colorado River Commission supports such Congressional action as may be necessary to authorize the Navajo-Gallup Water Supply Project."

NOW, THEREFORE, BE IT RESOLVED by the Upper Colorado River Commission, that the Commission supports Congressional action to: (1) approve the Settlement Agreement; (2) authorize the proposed Navajo-Gallup Water Supply Project; and (3) approve the proposed Settlement Contract for the Navajo Nation's uses in New Mexico from the Navajo Reservoir supply under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project.

BE IT FURTHER RESOLVED, that while the Upper Colorado River Commission does not endorse all of the study assumptions used by the Bureau of Reclamation in its May 2006 draft hydrologic determination, including an assumption of a 6 percent allowable overall shortage, and specifically disagrees with the modeling assumption of a minimum Upper Basin delivery of 8.25 million acre-feet annually at Lee Ferry, the Commission supports a determination by the Secretary of the Interior that at least 5.76 million acre-feet of water is available annually for use by the Upper Basin, exclusive of reservoir evaporation at Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit reservoirs of the Colorado River Storage Project.

BE IT FURTHER RESOLVED, that the Upper Colorado River Commission supports a determination by the Secretary of the Interior that sufficient water is reasonably likely to be available to fulfill the proposed Settlement Contract for the Navajo Nation's uses in New Mexico from the Navajo Reservoir supply under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project, in addition

to existing Navajo Reservoir water supply contracts for other uses, under the allocations made to New Mexico in Articles III and XIV of the Upper Colorado River Basin Compact.

BE IT FURTHER RESOLVED, 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.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the Regional Director, Upper Colorado Region, Bureau of Reclamation, Salt Lake City, Utah.

CERTIFICATE

I, Don A. Ostler, Executive Director and Secretary of the Upper Colorado River Commission, do hereby certify that the Upper Colorado River Commission adopted the above Resolution at its regular meeting held in Jackson Hole, Wyoming, on June 5, 2006.

WITNESS my hand this _____ day of _____ 2006.

DON A. OSTLER
Executive Director and Secretary