

TO: PETER VIACCIORÉ  
N.M. ENVIRONMENT DEPT.  
FAX 505-827-2836

San Juan-3  
ALP

FROM: DIAN CHENEY  
CHAIRMAN NM ISC  
cc/TOM TURNER  
FAX 505-827-6188

PAGES: 3 INC. COVER

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington  
HAI E. ENGLE, Vice-Chairman, Reclams  
THOMAS C. TURNER, P.E., Secretary, Santa Fe  
PALEMON A. MARTINEZ, Valdez  
HOYT PATTERSON, Clovis  
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PHILIP R. GRANT, Albuquerque  
HAROLD HOUQUITAING, Jr., Lake Arthur  
NARENDRA N. GUNAJI, Las Cruces



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April 28, 2000

Peter Maggiore, Secretary  
New Mexico Environment Department  
Post Office Box 26110  
Santa Fe, New Mexico 87502-6110

Dear Mr. Maggiore:

This letter is in response to Paul Ritzma's April 14, 2000, letter to Pat Schumacher transmitting to the Bureau of Reclamation the Environment Department's revised comments on the draft Supplemental Environmental Impact Statement for the Animas La-Plata Project (DSEIS). On the one hand, the subject letter indicates that the project needs further evaluation to determine whether it would violate or meet a state water quality standard related to sedimentation. On the other hand, the subject letter also states conclusively that the project would or will result in increased sedimentation of the river channel bottoms and thus could impair the quality of stream bottoms in violation of the standard related to sedimentation.

I request that you provide to me and the State Engineer a copy of all the physical data and technical analyses that the Environment Department has to support its conclusions in this matter. For example, what engineering analysis has been performed to determine the impacts of changed flow regime in the Animas River on the transport of fine sediments? I also request that you provide us with a copy of the professional qualifications of the technical persons who conducted such analyses, if any. If no data and analyses are available, we would like to know the reasons why the Environment Department asserts unsupported conclusions as stated in the subject letter.

The Interstate Stream Commission's concern here goes well beyond the Animas-La Plata Project. The subject letter appears to assert that any amount of streamflow depletion on any river would cause a decrease in flow energy of sufficient magnitude as to significantly increase river sedimentation and significantly alter the quality or properties of the stream bottom or impair aquatic life. The result of such an assertion, along with the Environment Department's interpretation of the subject water quality standard related to sedimentation, might be that any new water depletion from a stream or connected ground-water aquifer for municipal and industrial water uses would violate

Mr. Peter Maggiore  
April 28, 2000  
Page 2

the standard and New Mexico law. This result then might prohibit further water and economic development in New Mexico, including, for example, development of the much needed San Juan-Chama Project water supply contracted for by the City of Albuquerque. Such a result is not reasonable, nor is it acceptable to New Mexicans.

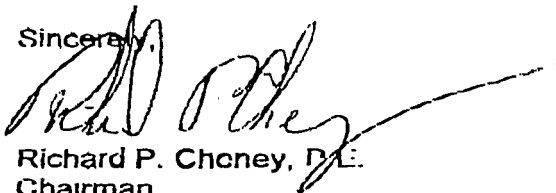
Such a blanket assertion regarding river sedimentation cannot be supported by facts. In this instance, the State Engineer's April 14, 2000, memorandum to you explains some of the positive, beneficial impacts and issues regarding river hydraulics, sediment transport, sedimentation and stream bottom morphology for the San Juan River as these factors relate to connected water management activities in the San Juan Basin. Any conclusions regarding impacts to streams, stream bottoms and stream biota caused by water development and management activities must be based on sound scientific and engineering analyses and evidence that link specific contaminants to stream bottom deposition, thence to significant alteration of the physical and chemical properties of the stream bottom, thence to damage or impairment to aquatic life. The scientific and technical analyses must be based on site-specific data. The subject letter does not provide such analyses for the Animas-La Plata Project.

Also, there are some questions as to the meaning and interpretation of certain phrases contained within the subject water quality standard. Does naturally induced sediment loading into the rivers constitute "water contaminants from other than natural causes"? What type of sediment material comprises "contaminants" and "bottom deposits"? How would a water development project such as the Animas-La Plata Project introduce contaminants into the streams or stream bottoms?

The subject letter appears to be based on assumptions and speculation, not facts. If the Environment Department cannot produce scientific and engineering analyses to support the conclusions stated in the letter, it should immediately rescind both Paul Ritzma's April 14, 2000, letter and Gedi Cibas' March 3, 2000, letter which Mr. Ritzma sought to correct on behalf of the Department.

Your prompt attention to this matter is appreciated. I eagerly await your response.

Sincerely,



Richard P. Cheney, D.E.  
Chairman

copy: Thomas C. Turney  
Norman Gaume  
John J. Whipple

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San Juan-3  
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TO: PETER MAGGIORE  
N.M. ENVIRONMENT DEPT.  
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FROM: Dick Cheney  
CHAIRMAN NM ISC  
cc/TOM TURNER  
FAX 505-827-6188

PAGES: 3 inc. COVER

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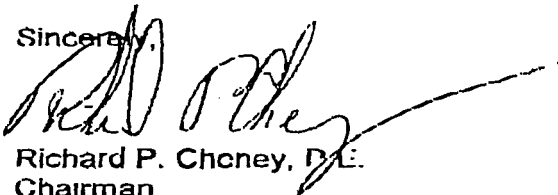
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Richard P. Cheney, D.E.  
Chairman

copy: Thomas C. Turney  
Norman Gaume  
John J. Whipple

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STATE OF COLORADO <sup>ALP</sup>

OFFICE OF THE EXECUTIVE DIRECTOR

Department of Natural Resources  
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*Randy Seaholm* <sup>STW</sup>



DEPARTMENT OF  
NATURAL  
RESOURCES

Bill Owens  
Governor

Greg E. Walcher  
Executive Director

April 17, 2000

Mr. Pat Schumacher  
Four Corners Division Manager  
Western Colorado Area Office  
U.S. Bureau of Reclamation  
835 East Second Avenue, Suite 300  
Durango, Colorado 81301-5475

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Colorado Water  
Conservation Board

Dear Mr. Schumacher:

The State of Colorado thanks you for the opportunity to review and comment on the Bureau of Reclamation's 1999 Animas-La Plata Project Draft Supplemental Environmental Impact Statement (DSEIS). We have coordinated this response among agencies within the Colorado Department of Natural Resources (CDNR) including the Colorado Water Conservation Board (CWCB) and Colorado Division of Water Resources. The CWCB is a state agency whose mission is to promote the protection, conservation and development of Colorado's water resources in order to secure the greatest utilization of those resources for the benefit of present and future generations. The CDNR has reviewed the DSEIS and provides the following comments.

The Animas-La Plata Project (ALP) is desperately needed to complete the implementation of the "Colorado Ute Indian Water Rights Settlement Agreement" executed on December 6, 1986 and ratified by Congress in the "Colorado Ute Indian Water Rights Settlement Act of 1988" (Settlement Act). ALP was originally authorized by Congress as part of the Colorado River Basin Project Act of 1968 and was to be built concurrently with the Central Arizona Project (CAP). CAP is now essentially complete and delivering water to communities throughout Arizona. With ALP, Colorado, New Mexico and the Ute Tribes are simply seeking to complete what has long been promised.

The Colorado Ute Tribes have reserved water rights for their reservations that are senior to most non-Tribal water rights in the region, as noted in the Solicitor's Opinion in Attachment A of the DSEIS. Absent implementation of the "Settlement Act," development of senior Colorado Ute Tribal water right claims could adversely impact non-Colorado Ute Tribal water rights and users, including municipalities, federal agencies and recreational uses in the San Juan River Basin of Colorado, New Mexico and Utah.

Furthermore, the Settlement Act requires delivery of ALP water to the tribes by January 1, 2000, a date now past. If ALP is not approved and implemented by January 1,

2005, the Tribes have the option of commencing litigation or renegotiating their reserved right claims. Thus, further delays in implementing ALP can no longer be tolerated, a fact recognized in the numerous resolutions of support for the Settlement and ALP from the respective states Governors, state legislatures, and state agencies, and the Western States Water Council.

The CDNR has reviewed the DSEIS and firmly believes that it is a complete and fair document particularly when considered along with the previous ALP environmental statements completed in 1980 and 1996. The CDNR endorses the modified structural alternative described as the preferred alternative (Refined Alternative 4). The modified structural alternative is the only alternative in the DSEIS acceptable to the State of Colorado. All other alternatives in the DSEIS we believe contain fatal flaws and fail to meet the objectives stated in the "Purpose and Need," and therefore are unacceptable to Colorado. However, the CDNR can support either the water allocation described in the DSEIS preferred alternative or a small variation to that water allocation as proposed in the pending legislation amending the 1988 Settlement Act.

Colorado is concerned about the purchase and potential loss of agricultural lands under the preferred alternative. However, we recognize the need for the Ute Tribes to acquire the water necessary to fulfill the terms of the Settlement Agreement and respect the terms under which they may do so. The CDNR is of the opinion that the purchase of land and water by the Ute Tribes on a willing seller-willing buyer basis to obtain the remaining 13,000 AF of depletions under the Settlement Agreement is at least reasonable. Possible land and water purchases in the Pine, Animas and La Plata basins would make up between 5 and 10% of the presently irrigated acreage. However, purchases in the Mancos basin would make up about 25% of the presently irrigated acreage.

Under Colorado Law, water rights purchased and transferred from their historic use to new uses are required to maintain the historic flow regime (i.e. return flow, river call situation, etc.) in order to be able to transfer the historic consumptive use. Furthermore, potential transfer water rights should continually be diverted and applied to beneficial uses up to the time of transfer in order to avoid the possibility of others relying on any increase in water availability due to any temporary non-use.

In reviewing the 1996 ALP Final Supplemental Environmental Impact Statement, a number of issues were raised which the 1999 DSEIS should fairly address. We would like to briefly comment on each major issue raised in the 1996 FSEIS and how that issue has been addressed in the 1999 DSEIS.

1. Reduced Cost – The cost of ALP under the preferred alternative in the DSEIS has been cut by approximately 50% from previous project configurations. Under the preferred alternative, ALP will now only supply M&I water. ALP will no longer supply any water for agricultural purposes. Project costs are within the ability of M&I users to repay.
2. Maintains Water Quality – The water quality analysis shows little or no measurable change in any water quality parameter except for sediment loads. Mitigation of the

sediment increases is discussed at some length and mitigation measures are deemed to be reasonable and implementable.

3. Reasonable Alternatives – Alternatives not only to ALP, but to the Settlement, are discussed in the DSEIS and were discussed at length during the Romer-Schoettler process and prior to formal scoping for the 1999 DSEIS. Every effort has been made to identify reasonable alternatives through numerous avenues. The reasonable alternatives have been fully evaluated via the NEPA processes.
4. Compliance with the Biological Opinion – The reasonable and prudent alternative currently limits ALP depletions to 57,100 AF and a project depleting only that much water should be evaluated. The preferred alternative accomplishes this objective.
5. Formal Scoping – In addition to the extensive knowledge that already existed as a result of previous NEPA compliance efforts, additional formal public scoping meetings were held in February, 1999. All reasonable alternatives have been considered through these various processes.
6. Indirect and Cumulative effects of ALP – The indirect and cumulative impacts of ALP have been fully evaluated through this and previous NEPA processes. In addition, the San Juan Recovery Implementation Program for endangered fish species has evaluated the project impacts along with existing and future depletions. Both ALP and the full development of the Navajo Indian Irrigation Project have been included in these evaluations. The evaluations have both concluded that the projects can be implemented and still meet suggested flow recommendations for the recovery of endangered fish in the San Juan basin. Furthermore, the San Juan RIP will continue to monitor and evaluate the situation.
7. Downstream water rights and instream flows – The Durango pumping plant would now have a capacity of 280 cfs (reduced from 430 cfs). It would be limited to a maximum pumping rate of 240 cfs during June to avoid significant impacts to the spring peak (often in excess of 5,000 cfs). Furthermore, it would bypass flows to maintain at least 160 cfs in the river below the Durango pump during October and November; 125 cfs during December, January, February and March; and 225 cfs during the remainder of the year (April through September). Table 2-6 of Technical Appendix 2 clearly illustrates this. Historic hydrology clearly shows that the proposed bypasses exceed the historic low flows observed during dry years. Native fish might even find the more frequent and very slightly warmer water temperatures in the lower reaches of the Animas more habitable. When the minimum bypasses can not be maintained because of dry year hydrology, the pumps will not operate.
8. Uses for ALP water – Much of the ALP water will be used to assure reliable water supplies for rapidly developing areas in the region. Those areas and uses are identified Tables 2-2 and 2-3 of Technical Appendix 2. Given the information concerning growth at present, the needs appear reasonable.
9. Rafting – Concerns 9 and 10 in the 1996 FSEIS both dealt with recreational rafting. Reclamation is committed to pursuing pumping operations that reduce adverse effects to flows and boating opportunities whenever possible. Several mitigation measures are proposed, including increased access to the river and altered pumping regimes during competitive events.
10. Endangered Fish Recovery – The San Juan Recovery Implementation Program has been researching and studying this issue since 1992. Flow recommendations have

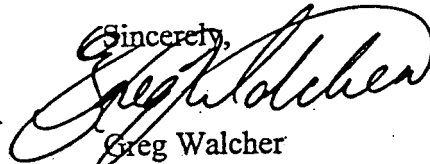
been adopted which Program biologists believe will provide the flows needed for fish recovery. The San Juan Recovery Program, as previously noted, will continue to monitor this effort.

11. Wetland Mitigation – Wetland and riparian areas will be mitigated at a ratio of 1.5:1. Thus, approximately 200 acres of wetlands will be created to replace the 134 acres lost. Over half the amount lost is prior irrigated farmland that is now classified as meadow. Furthermore, wetland mitigation is not restricted to the Animas watershed and thus degraded wetlands in adjacent basins could benefit as well.
12. Elk Habitat Mitigation – An estimated 3,000 acres of suitable wildlife habitat would be replaced through purchase, development and management.
13. Clean Water Act and Section 404 Compliance – Attachment B of the DSEIS contains the 404(b)(1) Evaluation. The 404(b)(1) Evaluation supports Reclamation's intention to seek Clean Water Act compliance through Section 404(r) provisions which would exempt Reclamation from the requirement to obtain a Section 404 permit for construction activities resulting in a discharge of dredged or fill material into waters of the U.S. Judging from the thickness of the evaluation, this is a more rigorous task than getting the standard 404 permit.
14. Purpose and Need Statement – The purpose and need statement is quite clear as noticed in the Federal Register on January 4, 1999 and as described in the DSEIS. Implementing the Settlement Act and assuring the Ute Tribes a long-term water supply is necessary to protect other water users from the Ute Tribes senior water right claims. The Settlement is fundamental to the economic well being of the Ute Tribes and to the southwest region of Colorado and northwest New Mexico.
15. Fisheries – A new fishery will be established in Ridges Basin Reservoir. Furthermore, monitoring of the fisheries, stocking, screening and fish passage will be implemented as appropriate to mitigate adverse impacts. A new fish hatchery could even be part of the mix if impacts are significant. These are major commitments and the mitigation costs reflect that.
16. Mitigation Measures – Mitigation measures are discussed extensively in the DSEIS and the commitments appear clear enough that they can be implemented as described.
17. Ute Tribes' Use of Water – Tables 2-3 and 2-4, as noted above, spell out anticipated uses fairly well. The Ute Tribes' water is part of Colorado entitlement under the Colorado and Upper Colorado River Compacts and fully accounted for in Colorado's depletion tables. As such, the Tribes' water can not be marketed to other states.
18. No Effects on Potential Wild and Scenic River Designation – Potential segments on the Animas are all currently upstream of the proposed project. Navajo Dam operations and other diversions already affect some segments on the San Juan. Efforts to reoperate Navajo Dam through an adaptive management process for endangered fish will have a positive effect and will be considered in the EIS process concerning Navajo Dam re-operations.
19. The DSEIS implies, in Table 2-53, that significant portions of the Ute Tribes' water might be used off the reservation and out-of-state to meet regional water needs. We would like to ask for clarification in the DSEIS on this issue. Pursuant to the December 10, 1986 Colorado Ute Indian Water Rights Final Settlement Agreement, any leasing and off-reservation use of ALP water would be governed by Section V of the Settlement Agreement. In short, Section V states that any off reservation uses

would be governed by state and federal law, including interstate compacts and international treaties. This means that uses of ALP water in New Mexico beyond what is allocated to the San Juan Water Commission and the Navajo Nation is highly unlikely. If the Ute Tribes do not develop uses for their water on their reservations, then off reservation use of ALP water within Colorado is the only logical scenario. We would like Table 2-53 to be revised in the final EIS to more clearly reflect this condition.

In conclusion, we believe the DSEIS is a complete and fair document. The DSEIS we feel completely addresses any perceived shortcomings of previous efforts. It is now time for the promises made to be implemented and to bring this long-standing controversy to closure. The current costs of ALP are far less than the costs potentially involved with a prolonged litigation and the community unrest that will continue if ALP is not constructed. Thank you for considering Colorado's comments on this very important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Greg Walcher".

Greg Walcher  
Executive Director





GARY E. JOHNSON  
GOVERNOR

State of New Mexico  
**ENVIRONMENT DEPARTMENT**  
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1190 St. Francis Drive, P.O. Box 26110  
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PETER MAGGIORE  
SECRETARY

PAUL R. RITZMA  
DEPUTY SECRETARY

April 14, 2000

Pat Schumacher  
Four Corners Division Manager  
Four Corners Division of the Western Colorado Area Office  
835 East Second Avenue, Suite 300  
Durango, Colorado 81301-5475

Dear Mr. Schumacher:

**RE: DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR THE ANIMAS-LA PLATA PROJECT (DSEIS), COLORADO AND NEW MEXICO**

This transmits the New Mexico Environment Department's (NMED) revised comments and corrects the previous comments concerning the above referenced Draft Supplemental Environmental Impact Statement (DSEIS)

**State of New Mexico Listed Streams**

The New Mexico Environment Department Surface Water Quality Bureau (SWQB) has listed portions of the San Juan, the Animas, and the La Plata rivers within New Mexico's borders as impaired under Section 303(d) of the Clean Water Act. In addition to the chemical parameters taken into account during preparation of the Draft Supplemental Environmental Impact Statement (DSEIS), the New Mexico Water Quality Act regulates an important fish habitat parameter, stream bottom deposits. Each listed segment, with the exception of the La Plata, is listed for stream bottom deposits as a specific pollutant or threat to water quality. Other specific pollutants include plant nutrients (La Plata River), turbidity (San Juan River from Cañon Largo to Navajo Dam), and fecal coliform bacteria (San Juan River from the Animas River to Cañon Largo).

Note that three segments of the San Juan River are on New Mexico's Section 303(d) list within the one segment (segment 2401) mentioned in the DSEIS on pages 3-36 and 3-37.

Mercury and selenium were removed as causes of non-support for each assessed segment of the Animas, La Plata, and San Juan Rivers previously listed for these constituents because recent field data collected by the Surface Water Quality Bureau did not detect exceedences (State of New Mexico, 1998).

**Preferred Alternative May Impair Water Quality**

The projected hydrographs presented in Attachment F of the DSEIS indicate that under the preferred alternative the shape of the hydrographs for the affected streams would be preserved but the discharges would be reduced for the Animas and San Juan Rivers (among others in Colorado). These periodic reductions will likely produce a downward shift in the particle size distributions of the stream bottom materials, with the result that a larger proportion of the bed material will be made up of particles small enough to be classed as stream bottom deposits.

The reason for such a shift in particle size distributions is that sediment loading from tributaries within each affected watershed would remain about the same, while less sediment would be transported downstream under the reduced flows. Examples of the physical relationships between discharge and sediment transport are presented by Leopold, *et al.* (1964).

San Juan  
ALP

The potential reduction in flows and the resulting reduction in the transportation of sediment downstream attributable to the preferred alternative could alter the quality of the stream bottoms of the Animas and San Juan River. The New Mexico Standards for Interstate and Intrastate Surface Waters (New Mexico Water Quality Control Commission, 2000) state that "surface waters of the State shall be free of water contaminants from other than natural causes that will settle and damage or impair the normal growth, function, or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom." Since the preferred alternative has been designated as a M&I (municipal and industrial) project it would not qualify for an exemption from sediment standards as allowed for "the reasonable operation of irrigation or flood control facilities." that are not subject to federal or state water pollution control permitting."

For the reasons explained above, preferred alternative (Alternative 4) should be studied more closely to evaluate whether it would meet or violate water quality standards. Regardless of which alternative is chosen, the project must meet New Mexico's water quality standards.

We appreciate the opportunity to comment on this document. Please let us know if you have any questions.

Sincerely,



Paul R. Ritzma  
Deputy Secretary

NMED File No. 1346ER

#### References

- State of New Mexico. 1998. *1998-2000 State of New Mexico Section 303(d) List for Assessed River/Stream Reaches Requiring Total Maximum Daily Loads (TMDL's) Final Record of Decision (ROD) for River/Stream Listings*. New Mexico Environment Department Surface Water Quality Bureau, Santa Fe, New Mexico.
- New Mexico Water Quality Control Commission. 2000. *State of New Mexico Standards for Interstate and Intrastate Surface Waters*. Filed with State Records Center January 24, 2000 as New Mexico Administrative Code (NMAC) Chapter 6.1, Effective February 23, 2000.
- Leopold, L.B., M.G. Wolman, and J.P. Miller. 1964. *Fluvial Processes in Geomorphology*. M.H. Freeman and Company, San Francisco. 522 pp.





San Juan - S  
ALP



STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER

MEMORANDUM

TO: Peter Maggiore  
Secretary, NMED

FROM: Thomas C. Turney *Thomas C. Turney*  
State Engineer

Date: April 14, 2000

SUBJECT: Animas-La Plata Project Draft Supplemental Environmental Impact Statement

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Attached is a copy of the Environment Department's draft letter containing its comments on the Animas-La Plata Project Draft Supplemental Environmental Impact Statement (DSEIS). My suggested edits to the letter are shown directly on the attached. In general, my suggestion is to state concerns about compliance with New Mexico water quality standards in terms of possibilities of non-compliance. Conclusive verbage, such as the Project "will likely", "will" or "would" result in increased river bottom sedimentation in the Animas or San Juan rivers, should be avoided because no site-specific technical analyses of hydraulics, sediment transport and sedimentation has been presented to support such conclusions.

The Animas-La Plata Project is related to, and contingent upon, the reoperation of Navajo Dam to provide flows in the San Juan River below its confluence with the Animas River that will create and maintain habitat considered necessary for recovery of endangered fish. Navajo Dam in the past has been operated to maintain steady releases, with peak releases of between 2,000 and 3,000 cfs in general. Navajo Dam is expected to be reoperated so as to increase its peak releases to 5,000 cfs, with peak springtime releases timed to correspond to peak Animas River flows so as to maximize the energy of river flows downstream of Farmington. These combined peak releases will mimic a natural hydrograph and increase the amount of sediment flushing down the San Juan River as compared to past river operations. Increased sediment flushing is required to clean cobble bars for spawning of Colorado pikeminnow and razorback sucker and to clean backwater habitats considered important for rearing of larval and young-of-year fish. In addition, if flood control releases from

Navajo Dam are made during the fall or winter months, the reoperation criteria may provide peak releases to flush sediment from the river that may have been contributed by summer thunderstorms on tributary drainages. The expectation that beneficial river bottom conditions will result from future river management is supported by hydraulic, sediment transport and sedimentation technical analyses and seven years of test flows and channel sediment monitoring that are described in the May 1999 report on Flow Recommendations for the San Juan River, prepared by the Biology Committee of the San Juan River Basin Recovery Implementation Program (SJRBRIP). New Mexico participates in the SJRBRIP.

I am not aware of any technical sediment transport and sedimentation studies that may have been done for the Animas River. However, it is quite possible that no increased sedimentation would occur in the Animas River as a result of the Animas-La Plata Project for the following reasons: the Animas River does not receive nearly the amount of sediment loading that the San Juan River receives; the Animas River has a relatively steep gradient; and Project pumping from the Animas River under the preferred alternative would be limited to about 280 cfs, which is a very small percentage of the flow in the river during the spring runoff when much of the diversion takes place. It is not a given that velocities and energy of the flow of the Animas River will be reduced to the point that springtime flushing and scouring of the river channel would be affected. Also, pumping of the Animas River in Colorado will reduce sediment loads entering New Mexico as some sediment would be removed by storage in Ridges Basin Reservoir. During low-flow periods, flows in the Animas River in New Mexico would be enhanced by releases from the reservoir under the preferred alternative, thus possibly increasing sediment transport out of the Animas River during these periods.

Based on the above information, I suggest that the subject letter simply request the Bureau of Reclamation to evaluate whether the sedimentation standard would be met or violated by the preferred alternative. My suggested edits to the letter reflect this viewpoint. Also, several of the hydrographs presented in Attachment F to the DSEIS are inaccurate and do not reflect the modeled flow conditions.

Colorado). This reduction <sup>would possibly</sup> ~~will likely~~ produce a downward shift in the particle size distributions of the stream bottom materials, with the result that a larger proportion of the bed material ~~will be~~ <sup>might</sup> made up of particles small enough to be classed as stream bottom deposits.

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For the reasons explained above, <sup>the</sup> preferred alternative (Alternative 4) should be studied more closely to ~~insure that, if implemented, water quality standards can be met.~~

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San Juan - 3  
ALP

MEMORANDUM

April 14, 2000

To: Paul Ritzma, Environment Department  
Through: Norman Gaume, Interstate Stream Engineer  
From: John Whipple, Staff Engineer, Interstate Stream Commission  
Copy: Thomas Turney, State Engineer

Subject: Animas-La Plata Project Draft Supplemental Environmental Impact Statement

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Attached is a copy of the Environment Department's draft letter containing its comments on the Animas-La Plata Project Draft Supplemental Environmental Impact Statement (DSEIS). My suggested edits to the letter are shown directly on the attached. In general, my suggestion is to state concerns about compliance with New Mexico water quality standards in terms of possibilities of non-compliance. Conclusive verbiage, such as the Project "will likely", "will" or "would" result in increased river bottom sedimentation in the Animas or San Juan rivers, should be avoided because no site-specific technical analyses of hydraulics, sediment transport and sedimentation has been presented to support such conclusions.

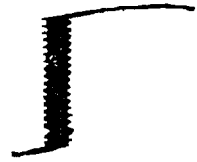
The Animas-La Plata Project is related to, and contingent upon, the reoperation of Navajo Dam to provide flows in the San Juan River below its confluence with the Animas River that will create and maintain habitat considered necessary for recovery of endangered fish. Navajo Dam in the past has been operated to maintain steady releases, with peak releases of between 2,000 and 3,000 cfs in general. Navajo Dam is expected to be reoperated so as to increase its peak releases to 5,000 cfs, with peak springtime releases timed to correspond to peak Animas River flows so as to maximize the energy of river flows downstream of Farmington. These combined peak releases will mimic a natural hydrograph and increase the amount of sediment flushing down the San Juan River as compared to past river operations. Increased sediment flushing is required to clean cobble bars for spawning of Colorado pikeminnow and razorback sucker and to clean backwater habitats considered important for rearing of larval and young-of-year fish. In addition, if flood control releases from Navajo Dam are made during the fall or winter months, the reoperation criteria may provide peak releases to flush sediment from the river that may have been contributed by summer thunderstorms on tributary drainages. The expectation that beneficial river bottom conditions will result from future river management is supported by hydraulic, sediment transport and sedimentation technical analyses and seven years of test flows and channel sediment monitoring that are described in the May 1999 report on Flow Recommendations for the San Juan River, prepared by the Biology Committee of the San Juan River Basin Recovery Implementation Program (SJRBRIP). New Mexico participates in the SJRBRIP.

I am not aware of any technical sediment transport and sedimentation studies that may have been done for the Animas River. However, it is quite possible that no increased sedimentation would occur in the Animas River as a result of the Animas-La Plata Project for the following reasons: the Animas River does not receive nearly the amount of sediment loading that the San Juan

River receives; the Animas River has a relatively steep gradient; and Project pumping from the Animas River under the preferred alternative would be limited to about 280 cfs, which is a very small percentage of the flow in the river during the spring runoff when much of the diversion takes place. It is not a given that velocities and energy of the flow of the Animas River will be reduced to the point that springtime flushing and scouring of the river channel would be affected. Also, pumping of the Animas River in Colorado will reduce sediment loads entering New Mexico as some sediment would be removed by storage in Ridges Basin Reservoir. During low-flow periods, flows in the Animas River in New Mexico would be enhanced by releases from the reservoir under the preferred alternative, thus possibly increasing sediment transport out of the Animas River during these periods.

Based on the above information, I suggest that the subject letter simply request the Bureau of Reclamation to evaluate whether the sedimentation standard would be met or violated by the preferred alternative. My suggested edits to the letter reflect this viewpoint. Also, several of the hydrographs presented in Attachment F to the DSEIS are inaccurate and do not reflect the modeled flow conditions.

FAX



TO: TOM TURNEY — 827-3806  
FROM: PAUL RITZMA

SUBJECT: NEW LETTER FROM NMED re: ANIMAS/LA PLATA  
PROJECT.

Tom,

PLEASE REVIEW AND COMMENT!

Paul

DRAFT

This transmits the New Mexico Environment Department's (NMED) revised comments and corrects the previous comments concerning the above referenced Draft Supplemental Environmental Impact Statement (DSEIS)

#### State of New Mexico Listed Streams

The New Mexico Environment Department Surface Water Quality Bureau (SWQB) has listed portions of the San Juan, the Animas, and the La Plata rivers within New Mexico's borders as impaired under Section 303(d) of the Clean Water Act. In addition to the chemical parameters taken into account during preparation of the Draft Supplemental Environmental Impact Statement (DSEIS), the New Mexico Water Quality Act regulates an important fish habitat parameter, stream bottom deposits. Each listed segment, with the exception of the La Plata, is listed for stream bottom deposits as a specific pollutant or threat to water quality. Other specific pollutants include plant nutrients (La Plata River), turbidity (San Juan River from Cañon Largo to Navajo Dam), and fecal coliform bacteria (San Juan River from the Animas River to Cañon Largo).

Note that three segments of the San Juan River are on New Mexico's Section 303(d) list within the one segment (segment 2401) mentioned in the DSEIS on pages 3-36 and 3-37.

Mercury and selenium were removed as causes of non-support for each assessed segment of the Animas, La Plata, and San Juan Rivers previously listed for these constituents because recent field data collected by the Surface Water Quality Bureau did not detect exceedences (State of New Mexico, 1998).

#### Preferred Alternative May Impair Water Quality

The projected hydrographs presented in Attachment F of the DSEIS indicate that under the preferred alternative the shape of the hydrographs for the affected streams would be preserved but the discharges would be reduced for the Animas and San Juan Rivers (among others in

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San Juan 5  
ALP



STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER

MEMORANDUM

TO: Peter Maggiore  
Secretary, NMED

FROM: Thomas C. Turney *Thomas C. Turney*  
State Engineer

Date: April 14, 2000

SUBJECT: Animas-La Plata Project Draft Supplemental Environmental Impact Statement

---

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*San Juan - 9  
ALP*

## NEW MEXICO INTERSTATE STREAM COMMISSION

### COMMISSION MEMBERS

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(505)827-6160  
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April 10, 2000

Mr. Pat Schumacher  
Four Corners Division Manager  
Four Corners Division of the Western Colorado Area Office  
835 East Second Avenue, Suite 300  
Durango, Colorado 81301-5475

Dear Mr. Schumacher:

The New Mexico Interstate Stream Commission submits the following specific comments for your consideration on the Draft Supplemental Environmental Impact Statement for the Animas-La Plata Project (DSEIS), Colorado and New Mexico, prepared by the Bureau of Reclamation and transmitted for review and comment via memorandum from the Commissioner of Reclamation dated January 14, 2000. General comments on the DSEIS were provided by New Mexico to Reclamation at the public hearing on the DSEIS held in Farmington, New Mexico, on February 16, 2000. A copy of New Mexico's general comments on the DSEIS is enclosed for your reference.

The Interstate Stream Commission supports Refined Alternative 4 described in the DSEIS except for the concept of a regional water supply that is included. In this instance the concept of a regional water supply involves inter-state leasing of water. New Mexico cannot at this time embrace either inter-state leasing or marketing of water.

New Mexico also supports an allocation of 10,400 acre-feet to the San Juan Water Commission and 2340 acre-feet to the Navajo Nation as described in the DSEIS. We requested that an additional 780 acre-feet of depletion be provided for domestic, municipal and industrial use in the area of the La Plata Conservancy District in New Mexico, which was not included in DSEIS. We suggest that the Record of Decision to be made on the DSEIS could allocate the 780 acre-feet to the San Juan Water Commission which would increase the Commission's allocation to 11,180 acre-feet.

Our review of the DSEIS is limited primarily to the discussions of the Animas-La Plata (ALP) Project Refined Alternative 4 and Refined Alternative 6 because other alternatives were dismissed from detailed analysis by the DSEIS. We also do not provide specific comments on the Summary of the DSEIS. We intend that our comments apply to sections of the Summary document. Many of our comments apply



Mr. Pat Schumacher

April 10, 2000

Page 2

to multiple portions of the DSEIS, Attachments and Technical Appendices, not all identified herein, because much discussion is repeated throughout the documents.

Page ES-2, third sentence. The DSEIS contemplates the Colorado Ute Tribes leasing water under their water rights settlement with Colorado to the San Juan Water Commission in New Mexico. Such interstate leasing or marketing of water is described by the DSEIS as non-binding on the project proponents, including the Colorado Ute Tribes. We do not understand how such interstate leasing or marketing of water can be accomplished within existing compacts and federal and state law. The DSEIS itself recognizes that the current legal constraints limit the area to which the tribes may lease their water as being southwestern Colorado (see Technical Appendix 1, page 8, third paragraph). Nor do we understand why, if non-Indian water demand in New Mexico is sufficient to create a market for the lease of water in the future, the DSEIS assumes that communities in New Mexico would lease water marketed by the Colorado Ute Tribes and not the Navajo Nation, the Jicarilla Apache Tribe or non-Indian water right owners in New Mexico.

New Mexico does not, at this time, support interstate leasing or marketing of water. However, should future demand for water in the region develop which suggests interstate leasing or marketing needs to be considered, New Mexico could evaluate any specific proposals for such in light of conditions at that time. These remarks apply to many instances in the DSEIS where interstate leasing or marketing of water is hypothesized as a future use of ALP Project water. These remarks should be considered in evaluating the practicability of Alternative 6 (for example, at page 2-83, table 2-49).

Page ES-2, third and last incomplete paragraphs. Refined Alternative 4 would provide storage needed to meet planned future municipal, industrial and domestic water demands, and it would provide storage for projected future Colorado Ute Tribe uses to implement the Colorado Ute water rights settlement. Such settlement is a political settlement necessary to legally protect existing water uses in both Colorado and New Mexico, which is of great value. The economic and social impacts of the No Action Alternative, which would negate such settlement, are not evaluated by the DSEIS.

Page ES-5, first complete paragraph, second sentence. The hydrologic baseline condition modeled for evaluating ALP Project operations does not provide for meeting all currently unexercised water rights. Rather, this condition for New Mexico generally is based upon an aggregate level of development historically achieved in areas of the San Juan River Basin, with the exception of inclusion of the full development of the Navajo Indian Irrigation Project (NIIP), the Hammond Project and the Jicarilla Apache Tribe's adjudicated historic use rights (see Technical Appendix 2, page 2-9, table 2-2). Further, the subject sentence is not clear in that the San Juan Water Commission members are not obliged to acquire and develop water rights that are not now used for municipal and industrial purposes. The parenthetical in this sentence should be changed to read: "(water rights identified by Colorado and New Mexico)". These remarks apply also to

page 2-94, first complete paragraph, second sentence, and Technical Appendix (TA) 2, page 2-6, first sentence. The DSEIS at TA 2, page 2-42, table 2-14, appears to infer that all water rights would be exercised under the baseline without Project condition, which, if so, should be clarified. It is our understanding that the baseline condition does not include fully exercised state permitted or adjudicated water rights.

Page ES-5. The DSEIS proposes that irrigated land be purchased for or by the Colorado Ute Tribes and the water be left on the land in order to complete fulfillment of the Tribes water rights settlement. It is not clear whether members of the Ute Tribes would farm the lands acquired, or whether water would be leased back to non-Indians to farm. In addition, the DSEIS does not indicate who would administer the associated water rights. We assume that the water rights would retain their appropriation right characteristics and would continue to be administered by the State of Colorado. The full extent of impacts is not evaluated by the DSEIS if the lands purchased are to be transferred into trust land or if the water rights are to become Winters rights or trust assets (see page 2-31, socioeconomic (non-structural) impacts, and page 4-22, second complete paragraph). We do not believe that the DSEIS' promotion of compacts between the Colorado Ute Tribes and local counties to provide for payments on lands converted to Indian Trust is a sufficient measure to protect the water users and interests of the States of New Mexico and Colorado (see page 3-207, first paragraph).

The non-structural portion of Refined Alternative 4 would include the purchase of 2,400 acres in the La Plata River Basin in Colorado (see page 2-94, table 2-52), and Refined Alternative 6 would include the purchase and transfer of irrigation water rights from 785 acres of irrigated land in the Basin and 200 acre-feet of storage in Red Mesa Reservoir (see page 2-140, table 2-66). It is important that the State of Colorado retain administration of any acquired rights in the La Plata River Basin and any transfer of such rights. Flows of the La Plata River are chronically short for meeting irrigation demands in the Basin during the summer and fall months (see page 3-17, fourth and fifth paragraphs). During these seasons, the State of Colorado frequently administers priorities to enable it to be able to meet its La Plata River Compact delivery obligation to New Mexico at the stateline. Nowhere does the DSEIS mention the La Plata River Compact, which is noticeably absent from the list of laws and agreements that may apply to the ALP Project given at page 7-9, table 7-2. The DSEIS does, however, recognize that the timing and amounts of flow in the La Plata River at the stateline would be altered by Refined Alternative 6 (see page 3-31, second paragraph). Any impacts of alternatives on the ability of Colorado to meet its Compact delivery obligations must be addressed by the DSEIS.

Page ES-6, first complete paragraph, first bullet statement. This statement says that under Refined Alternative 6, 10,000 acres of irrigated land would be retired in the Pine River Basin in Colorado, resulting in an increase in Pine River flows and Navajo Reservoir inflows of about 15,100 acre-feet per year. This appears inconsistent with the depletion factor of 1.4 acre-feet per acre per year for the Pine River Basin in Colorado given at page 2-27, table 2-7. There may be no inconsistency if the depletion factor

represents crop consumptive use only and if the increase in river flows includes both crop use and incidental depletions. However, then a conflict is created with other portions of the DSEIS which suggest that water would continue to be provided to maintain wetlands now supported by incidental depletions (see page 2-147, second and third paragraphs, and page 3-32, third paragraph, last sentence). Also, it is not clear whether it is valid to assume that no losses would occur on the increased river flows between the location of retired lands in the Pine River Basin and Navajo Reservoir.

Further, we are concerned that storage of "ALP Project" water in Navajo Reservoir is inconsistent with the use and administration of the Navajo Reservoir Supply as defined in the settlement contract between the United States and the Jicarilla Apache Tribe, and that it would reduce the storage capacity available to satisfy Indian trust issues and other demands on Navajo Reservoir in New Mexico. Our concerns regarding the contemplation of interstate leasing or marketing inferred by this alternative are as provided above. In addition, the indicated 15,100 acre-feet of water, less reservoir evaporation losses, then available from Navajo Reservoir as a result of acquiring rights in the Pine River Basin would provide very little of the 100,000 acre-feet per year diversion demand and 50,000 acre-feet per year depletion demand projected from the San Juan River in New Mexico (see pages 2-141 through 2-143, table 2-67). The remainder of the demand might have to be met from the Navajo Reservoir Supply to the detriment of certain existing water users and Indian tribes in New Mexico. In fact, the DSEIS at page 3-30, last paragraph, indicates that under Refined Alternative 6, no storage in Navajo Reservoir would be left to meet the water demands of the Navajo Nation and the Jicarilla Apache Tribe.

The acquisition and transfer of an additional 5,333 acres of water rights from the Pine River Basin in Colorado to provide partial mitigation for the detrimental impacts on the Navajo Reservoir Supply is mentioned in the DSEIS (see page 3-31, first paragraph). But, the evaluation of full mitigation and consequent impacts and costs is not included in the DSEIS. For example, the DSEIS does not discuss the impacts to the Jicarilla Apache Tribe or others if they are unable to fully utilize the Navajo Reservoir Supply pursuant to the water supply contracts. These remarks apply also to page 2-143, last paragraph. It is inconsistent for the DSEIS to not explore full water supply mitigation costs on the one hand and to evaluate full wetlands mitigation costs on the other hand (see, for example, pages 3-74, third paragraph, and page 3-75, first incomplete paragraph). In any event, as alluded to elsewhere in these comments, New Mexico cannot support mitigation measures that would require the interstate transfer of water rights in Colorado to uses in New Mexico such as the Navajo-Gallup Water Supply Project (see page 4-25, Refined Alternative 6 impact 2).

Refined Alternative 6 would provide water from Navajo Reservoir to communities in New Mexico, including Farmington and Aztec (see, for example, page 2-142, table 2-67, and page 3-28, fifth paragraph, first sentence). However, the DSEIS does not include diversion facilities to deliver water from the San Juan River to Farmington and Aztec, which currently divert water from the Animas River. Nor does the DSEIS evaluate the

costs and environmental impacts of such facilities and any improvements needed to water treatment plants due to changing sources of water (see page 2-154, second paragraph, and TA 2, page 2-16, second paragraph, fifth sentence). This is inconsistent with the DSEIS evaluating costs and impacts of diversion facilities under Refined Alternative 6 for such hypothesized Colorado Ute Tribes' end uses as the coal-fired and gas-fired power plants (see page 2-151, map 2-10).

Page 1-10, second complete paragraph. If the impacts of possible future end uses to which ALP Project water may be put are to be evaluated, the assumptions regarding water use at the identified facilities must be consistent with the hypothesized use. For example, the impacts analysis in the DSEIS assumes that the Southern Ute coal-fired power plant, livestock and wildlife uses, and golf courses all deplete 50 percent of their diversions and return to the streams the remaining 50 percent of the diversions (see, for example, page 2-9, table 2-2). Reasonable assumptions consistent with the hypothesized end uses would be that the coal-fired power plant and livestock and wildlife uses deplete 100 percent of their diversions with no return flows and golf courses deplete more than 50 percent of their diversions (see TA 2, page 2-11, first paragraph). The assumption of 50 percent return flow from all municipal and industrial uses is not realistic and results in a substantial over-estimate of the diversions required for the specified end uses (compare in TA 2 table 2-3 at page 2-12 with table 2-4 at page 2-13).

In addition, consistent diversion and return flow assumptions should be used throughout the DSEIS analysis. The DSEIS uses different diversion and return flow assumptions for Alternative 6b than are used for Alternative 4 and the refinements to these alternatives (compare page 2-45, table 2-27, to pages 2-95, table 2-53, and 2-141, table 2-67). The assumptions for Alternative 6b as given in table 2-27 would indicate return flows of substantially less than 50 percent for the Colorado Ute Tribes' future municipal and industrial uses of ALP Project water.

Page 1-12, last complete paragraph. The DSEIS states that development of the ALP Project would require various contracts and agreements to be negotiated with several entities and various permits and licenses would be needed from government regulatory agencies. The existing ALP Project repayment contract number 0-07-40-R1080 between the United States and the San Juan Water Commission (SJWC) provides a perpetual water allocation from the ALP Project for the SJWC. The terms of the existing SJWC contract must be continued so that the SJWC can meet its future municipal and industrial water demands. Diversion permits issued by the State of New Mexico to members of the SJWC are based on the existing SJWC contract.

Page 2-2, last two sentences. How would a change in the cost allocation affect the costs allocated to the San Juan Water Commission and their ability to pay for their share of the ALP Project?

Page 2-3, last complete paragraph, fifth sentence. The DSEIS states that water could be stored in Navajo Reservoir for the San Juan Water Commission's uses. We understand that under the ALP Project, only the water diverted for Bloomfield and the West Hammond and Lee Acres Mutual Domestic Water Users would be supplied directly from the Navajo Reservoir Supply and the resulting depletions would be replaced by the ALP Project water supply.

Page 2-26, last paragraph, parenthetical following first sentence. It is suggested that the language in the parenthetical be replaced with the following language if this is what is intended: "The term depletion relates to the sum of the consumptive use of water by crops, or the consumptive irrigation requirement, plus incidental depletions which result from the process of diverting and applying water to the farms, and it represents water that, once diverted, does not reappear in the streams as return flow." This explanation would appear consistent with many other portions of the DSEIS where depletions denote river depletions, thus avoiding confusion.

However, the DSEIS also refers to "the historical consumptive use (or depletions) of existing irrigation rights" and the transferability of water rights and historical depletions (see page 2-43, first paragraph). The consumptive use of existing irrigation differs from river depletion associated with the rights by the amount of incidental depletions. Rights are vested in the crop consumptive use, and exclude depletions that are incidental to the development of the consumptive use. Only the consumptive use, and not water "saved" by reductions in incidental depletions, may be transferred under state appropriation law. These remarks apply also to page 2-48, first two paragraphs, and page 2-52, page 2-29, assuming the DSEIS contemplates transfers of incidental depletions to the ALP Project, and to the discussion for mitigating wetlands impacts at pages 2-147 and 2-148, section 2.5.2.4.2, regarding Refined Alternative 6. The DSEIS does not identify the acreage or cost of irrigation water rights that would have to be acquired and transferred to wetlands or wildlife purposes to mitigate wetland impacts. Despite the inference to the contrary by the DSEIS at other locations, incidental depletions or water over and above "irrigation depletions" cannot simply be left untransferred and in place to support wetlands associated with the irrigated lands from which the crop consumptive use is transferred (see page 3-32, third paragraph, last sentence, and TA 2, page 2-33, fourth paragraph, last sentence). Again, the term "depletion" as used here is confusing if not misleading as the common practice is to include all water use associated with irrigation in the term "irrigation depletion."

Pages 2-27 and 2-28. Tables 2-8 and 2-9 indicate that there are potentially 20,000 acres of irrigated land available for purchase in New Mexico apparently for the benefit of the Colorado Ute Tribes as a part of the Colorado Ute Tribes' 1988 water rights settlement. This settlement was between the Tribes, the United States and the State of Colorado. The State of New Mexico is not a party to the settlement. We do not understand the rationale for listing lands in New Mexico as being potentially available to meet the settlement, and New Mexico objects to such being included in the DSEIS. These remarks also apply to page 2-46, table 2-28.

The DSEIS also speculates as to the development in New Mexico of a gas-fired power plant by the Ute Mountain Ute Tribe which would provide, via diversions from the San Juan River in New Mexico, depletions to the Tribe under its water rights settlement with the State of Colorado (see page 2-44, item 9, and elsewhere). In addition, the DSEIS contemplates depletions in New Mexico of Colorado Ute Tribes' water from the settlement via interstate leasing or marketing of water from the Tribes to communities in New Mexico. Again, New Mexico is not a party to the settlement. Further, a major concern is the accounting of water under provisions of the Upper Colorado River Basin Compact. Under the Compact, the uses would be charged to the State of New Mexico's Compact apportionment because of where the use would be made. Consequently, less water would be available from New Mexico's apportionment to satisfy water demands of the Navajo Nation and Jicarilla Apache Tribe as well as non-Indian uses in New Mexico.

Page 2-37, Table 2-19. This table indicates that Alternative 4 would negatively impact flow regime in the Animas and San Juan rivers, and it would have a positive benefit to endangered fish in the San Juan River. These two impacts as described do not appear consistent or compatible. Also, it is arguable as to whether the impacts on river flows would be negative when low flows during much of the year would be augmented by releases of water from Ridges Basin Reservoir and ALP Project return flows. The DSEIS also indicates that Alternative 4 would not affect meeting the San Juan River flow recommendations of the San Juan River Basin Recovery Implementation Program (SJRBRIP) (see page 2-38, table 2-20, practicability impacts). It is not clear whether this is a positive or neutral benefit statement regarding endangered fish.

Pages 2-42 through 2-59, Section 2.3.2.6. This section evaluates Alternative 6. Any version of Alternative 6 poses many concerns for New Mexico, including no water supply for the San Juan Water Commission and the Navajo Nation, routing water from lands purchased in the Pine River Basin in Colorado through Navajo Reservoir and downstream in New Mexico to serve municipal and industrial demands, providing water from storage in Navajo Reservoir and issues arising out of existing institutional constraints. New Mexico would object to any version of Alternative 6.

Page 2-75, Section 2.3.3.4, seventh bullet. This statement suggests that Indian tribes in New Mexico may develop some water from the San Juan River if the structural alternative for the ALP Project is implemented. Future development of water from the San Juan River by the Jicarilla Apache Tribe and the Navajo Nation can occur without the ALP Project (for example, completion of NIIP and other water projects).

Page 2-104, first paragraph. The DSEIS is unclear or confusing as to reservoir storage allocations for Ridges Basin Reservoir. The minimum and inactive capacities are listed as 30,000 acre-feet. The DSEIS elsewhere describes reservoir operations under Refined Alternative 4 that would allow for drawdown below this minimum pool during dry years to as low as 20,800 acre-feet (see page 2-117, first paragraph, and page 3-25, first incomplete paragraph). Without consideration of Indian Trust assets in New

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Mexico, the reservoir would be operated with drawdown to a minimum of about 40,000 acre-feet of storage; but, with operations to mitigate impacts to Indian Trust assets, the reservoir would be operated with drawdown to a minimum of approximately 20,000 acre-feet of storage (see TA 2, page 2-30, first two paragraphs, and TA 2, page 2-43, table 2-14). It appears that the operations are actually designed for an inactive pool of 20,000 acre-feet and an active pool of 100,000 acre-feet.

Page 2-111. Alternative NNMP-3, which is not the preferred alternative, would provide the water supply for the Navajo Nation Municipal Pipeline from Navajo Reservoir, which would reduce the ability of the reservoir to supply water for other potential purposes. New Mexico would object to NNMP-3 and recommends the preferred alternative, NNMP-1, be selected.

New Mexico fully supports authorization of construction of the pipeline described as alternative NNMP-1 as a non-reimbursable feature. Our support of the Navajo Nation municipal pipeline assumes that the Navajo Nation will not file additional claims against the New Mexico non-Indian beneficiaries of the project.

Page 2-124, last paragraph. The DSEIS indicates that the purchase of the irrigated lands would leave water on the land. However, the discussion also states that the cost of acquiring the land includes the cost of transferring water rights, which seems to be in conflict with leaving the water on the land.

Page 2-140, Table 2-66, and page 2-144, fifth through last paragraphs. The DSEIS indicates that coordinated operation of Navajo Reservoir for more efficient utilization of water supplies could make 36,891 acre-feet of water available under Refined Alternative 6. The DSEIS does not explain how the Navajo Reservoir Supply is handled, nor how ALP Project water derived from coordination of reservoir operations may be regulated by Navajo Dam. Further, it is not clear how the DSEIS is able to find 36,891 acre-feet of depletion per year available from the Navajo Reservoir Supply and other streamflow sources for future water uses under Refined Alternative 6 when the DSEIS finds elsewhere that without an ALP Project, only 20,000 acre-feet per year of supply can be provided for future Indian water development in New Mexico, including the Hogback Irrigation and Navajo-Gallup Water Supply projects (see page 3-23, last paragraph, second sentence, and page 3-16, first four paragraphs). Additional explanation of sources of water considered in meeting future water development would be helpful for Refined Alternative 6 and the no action alternative, or baseline condition. In any event, this assessment of the use of Navajo Reservoir storage completely disregards the purpose of Navajo Reservoir. New Mexico has developed its plan for use of the state's Upper Colorado River Basin Compact apportionment using the yield of Navajo Reservoir, which plan includes future water development by the Navajo Nation and the Jicarilla Apache Tribe. Refined Alternative 6 would use all the remaining reservoir supply for ALP Project uses, leaving no storage left for meeting Indian water development needs in New Mexico such as a Jicarilla water development, the Navajo-Gallup Water Supply Project and the Hogback Irrigation Project (see page 5-7, fourth

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bullet, and TA 2, page 2-39, last paragraph, first two sentences). As indicated previously, New Mexico objects to any version of Alternative 6.

Chapter 3. Section 1105.A. of the State of New Mexico Standards for Interstate and Intrastate Surface Waters, effective February 23, 2000, states: "Surface waters of the state shall be free of water contaminants from other than natural causes that will settle and damage or impair the normal growth, function, or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom." Reclamation should evaluate whether the preferred alternative meets this standard. The DSEIS does not appear to present sufficient site-specific technical analysis or discussion to conclude whether any alternative described would violate the standard. Because the ALP Project is related to the reoperation of Navajo Dam, some of the hydraulic, sediment transport and sedimentation analyses for the San Juan River presented in the May 1999 report on Flow Recommendations for the San Juan River, prepared by the Biology Committee of the San Juan River Basin Recovery Implementation Program, may be applicable. We are not aware of any technical analysis of sediment transport or sedimentation for the Animas River or La Plata River that might have been done previously for the ALP Project.

Page 3-4, last paragraph, and page 3-5, first paragraph. New Mexico does not agree with many of the data and assumptions used in the RiverWare model of the San Juan River Basin. We previously submitted comments on the model to the Bureau of Reclamation, the Bureau of Indian Affairs and the SJRBRIP's Biology Committee, and while some of the problems and concerns we have identified have been reconciled, others have not. Our disagreement with model data has been reiterated before the Coordination Committee of the SJRBRIP on several occasions. We have not had opportunity to review the details of revisions to the model which have been made since June 1999 to incorporate modeling of the ALP Project for development of the DSEIS and for use in the NIIP Section 7 consultation. While the model may prove to be adequate for analyzing water availability for meeting the SJRBRIP flow recommendations, New Mexico objects to the use of the model, its data or its assumptions for other purposes, including for determining water uses, water rights and water availability under compact apportionments. These remarks apply also to TA 2, pages 2-3 through 2-5, Section entitled "RiverWare Model of the San Juan River".

Further, the DSEIS may give the impression that the RiverWare model for the Basin is one embraced by the SJRBRIP and its participants. The model is a product of the Bureau of Reclamation and the Bureau of Indian Affairs. Neither the State of Colorado nor the State of New Mexico, nor the water development interests, have agreed with the model data and assumptions. Other participants in the SJRBRIP have not participated in detailed model reviews. The Bureau of Indian Affairs and Reclamation have modified, and continue to modify, the model for Endangered Species Act (ESA) Section 7 consultations and National Environmental Policy Act (NEPA) environmental assessments for such projects as completion of the NIIP, the ALP Project, reoperation of Navajo Dam and the Navajo-Gallup Water Supply Project (NGWSP). The use of the



model, and definitions of depletions in it, have been determined by the two federal agencies acting on their own behalf.

The baseline depletions given at page 3-6, table 3.2-1, and at TA 2, pages 2-9 and 2-10, table 2-2, do not reflect the baseline depletions previously provided by the New Mexico Interstate Stream Commission to the Bureau of Reclamation's modeling team for use in the San Juan River Basin RiverWare Model. New Mexico's recommended baseline depletions for irrigation uses in the state are less than those included in the DSEIS, especially for the La Plata River Basin where the model does not take into account the chronic, substantial water supply shortages that recur each year. Further, of the minor depletions in New Mexico approved by the Fish and Wildlife Service from 1992-1998, all but the Navajo french fry factory depletion and a portion of the San Juan Basin Water Haulers' depletion are continuations of uses included in the baseline depletions of the October 1991 Biological Opinion on the ALP Project (see also TA 2, page 2-7, table 2-1). It is not clear why the DSEIS assumes that all future minor depletions to be approved beginning in the year 2000 will be in New Mexico and none in Colorado. Also, it is not clear why the baseline depletions differ from the depletion base used in the SJRBRIP Flow Recommendations report (compare, for example, table 3.2-1 to pages C-5 and C-6, table 1-3).

Page 3-10, Figure 3.2-1. This figure indicates that the stateline gage on the La Plata River is not included in the model for Refined Alternative 4, and that the model includes two return flow locations to the San Juan River for the Ojo Amarillo. These items should be checked for accuracy. The "Jicarilla Project" should be defined. These remarks apply also to TA 2, page 2-14, figure 2-1.

Page 3-12, last two paragraphs. It is not clear that existing and future Indian water uses are treated the same as existing non-Indian water uses. For example, the baseline depletions include non-Indian irrigation depletions in New Mexico which correspond to an aggregate level of historic, contemporary irrigated acreage by geographic area which is less than the full water right acreage for such area. In comparison, the baseline depletions given at page 3-8, table 3.2-2, include a Jicarilla Apache Tribe irrigation depletion which corresponds to the Tribe's full water rights adjudicated for historic and existing uses and include a depletion corresponding to the full authorized project acreage for the NIIP, assuming in both instances zero fallow, idle or abandoned acreage. Consequently, impacts to the baseline depletions are not equal.

Page 3-16, second through fourth paragraphs. The 28,000 acre-feet of depletion for the Navajo Nation's portion of the NGWSP is for project planning purposes and does not at this time constitute a Navajo Nation water right. Also, the 16,420 acre-feet of depletion transferred from the Hogback and Fruitland projects to the NIIP for ESA Section 7 consultation purposes reflects depletions associated with project acreage which had not been developed or was not irrigated under current conditions. Historically, the Hogback Irrigation Project, including the Hogback Extension, was not fully utilized to the

authorized or planned acreage. Water rights claims of the Navajo Nation for the Hogback and Fruitland projects have not been adjudicated.

The DSEIS appears to downplay the potential practical and legal impacts to non-Indian water users in New Mexico if the Jicarilla Apache Tribe and the Navajo Nation are not able to fully develop their future water uses due to the operation of Navajo Reservoir for the ALP Project or the SRJBRIP flow recommendations. Impacts to Indian Trust assets and to plans for future Indian water development in New Mexico should be considered as significant as impacts to existing water uses. The existing uses might be threatened by curtailment in order to permit the Indians opportunity to develop wet water under their senior water rights.

Page 3-16, sixth paragraph. The DSEIS states that the depletions, enhancements and streamflow modifications of Refined Alternative 4 and Refined Alternative 6 would affect the water resources of the region and that these changes would be conducted within existing interstate water agreements and state water laws and regulations. We do not understand how the interstate leasing or marketing of water, the operation of Navajo Reservoir and the administration of diversions in New Mexico as is contemplated could be accomplished within existing constraints and regulations of interstate compacts, federal legislation and state law.

Page 3-20, first three paragraphs. We are not able to track how most of the impacts on streamflows are computed. This remark applies also to TA 2, page 2-19, last three paragraphs, and TA 2, page 2-26, second paragraph.

Page 3-23, last paragraph. We are not able to determine how 20,000 acre-feet of depletion for the baseline condition was determined to be available for Indian Trust water development in New Mexico. Water available below Navajo Dam also is potentially available to water development such as rehabilitation of the Hogback Irrigation Project.

Page 3-25, first two complete paragraphs. Under Refined Alternative 4, the flow of the La Plata River at the stateline might increase by about 15,500 acre-feet per year. This is the amount of ALP Project return flows estimated primarily from non-binding Colorado Ute Tribes' future end uses (see pages 3-8 and 3-9, table 3.2-2). However, with reasonable return flow assumptions for such non-binding uses as the coal-fired and gas-fired power plants, as discussed above, the increase in annual La Plata River flows would amount to only about 1,400 acre-feet per year or less than 2 cfs at the location of return in Colorado (see page 3-25, last paragraph). The DSEIS elsewhere states that return flows from non-binding uses cannot be guaranteed, and therefore, that 13,500 acre-feet of return flow from the hypothesized Southern Ute Tribe's coal-fired powerplant is determined to cause insignificant impacts simply because the return flow cannot be assured (see TA 2, page 2-38, last paragraph, first three sentences). The DSEIS is inconsistent in characterizing the assumed impacts of ALP Project alternatives.

Further, the DSEIS assumes that the full amount of return flow would reach the river and flow downstream both undiverted and without loss to the stateline and eventually to the San Juan River (see pages 3-14 and 3-15, table 3.2-3, and page 3-26, table 3.2-7). Such an assumption ignores the hydrology of the La Plata River. The La Plata River goes dry within New Mexico during much of the irrigation season, and much of this small amount of additional flow at the stateline would be lost to infiltration and evaporation and never reach the mouth of the La Plata River (see page 3-17, fifth paragraph, second and third sentences). Also, irrigators in the La Plata River Basin in both Colorado and New Mexico annually suffer substantial water supply shortages from the La Plata River under current conditions. Any additional small amount of flow in the system would most often be diverted for irrigation, if not be lost in the river channel. The San Juan River Basin RiverWare Model ignores these facts by placing return flows to the La Plata River below any diversions so that none of the return flows are depleted by the model (see TA 2, page 2-11, second paragraph, first two sentences).

The DSEIS would place a burden on the State of New Mexico of protecting the return flows from the stateline to the confluence with the San Juan River (see page 3-27, first paragraph). Such protection is not possible or practical due to the small quantity of return flow and due to natural channel losses. New Mexico cannot commit to protect such return flows based on the information included in the DSEIS. These remarks also apply to TA 2, page 2-21, last five paragraphs; TA 2, page 2-38, last three paragraphs; and TA 3, page 3-67, third and fourth complete paragraphs.

At page 3-27, first paragraph, last three sentences, the DSEIS implies that ALP Project return flows to the La Plata River likely cannot be protected, and that ALP Project water uses would be reduced by the amount of depletion of such return flows. It is assumed that in such event the depletion of return flow would be charged to the depletion by the power plant or whatever the use might be in Colorado. New Mexico would strongly object if an attempt is made to charge incidental depletions of return flows resulting from water uses in Colorado against New Mexico's compact apportionment, or if any attempt is made to reduce ALP Project water allocations to the San Juan Water Commission and Navajo Nation in New Mexico as a result of such depletion of return flows. The San Juan Water Commission and other non-Indian ALP Project contractors are paying for a firm and specific yield from the project. The DSEIS does not specify which project uses would be reduced by the amount of incidental return flow depletion in order to keep ALP Project total annual depletions to no more than 57,100 acre-feet, or which project contractor would be responsible for paying for this portion of the project yield. All these remarks regarding La Plata River flows and administration also apply to page B-62, first three complete paragraphs.

Page 3-31, third and fourth paragraphs. Hydrology impact 3 for Refined Alternative 6 suggests that because the diversion for the non-binding Colorado Ute Tribes' uses is downstream of the mouth of the La Plata River, the return flow from the diversion, which would be to the La Plata River, is "Project" water and would be subject to protection as

such in New Mexico. We do not understand such rationale. Sufficient water has to be at the diversion to enable the diversion to be made in the first place. The return flow cannot result until after the diversion is made. Further, Colorado's "Project" water, if allowed to flow down the La Plata River for diversion in New Mexico, would not be water appropriated under New Mexico law, and therefore, may not be subject to administration by New Mexico.

Page 3-32, first paragraph. Hydrology impact 5 is listed as "less than significant." However, the indicated minimum Navajo Reservoir content would drop from 684,600 acre-feet to 642,900 acre-feet, which content is below the elevation at which the Navajo Indian Irrigation Project canal can divert sufficient water to meet demands. How can this impact be listed as less than significant?

Page 3-69. The DSEIS proposes the creation and enhancement of wetlands along the La Plata River in Colorado as a means of mitigating the loss of wetlands due to implementation of the structural components of Refined Alternative 4 (see also page 3-79, map 3-1). Decreases in streamflow that might be caused by such mitigation must not be allowed to cause the State of Colorado to be unable to meet its water delivery obligations to New Mexico under the La Plata River Compact. While water rights for wetlands and wildlife purposes might be obtained, Colorado must be able to curtail wetland depletions under the priority system as it currently and regularly does irrigation depletions. Otherwise, Colorado would have to curtail irrigation depletions out of priority as against the priority of depletions for wetlands.

The DSEIS also proposes increasing and protecting summer and fall base flows in the La Plata River in Colorado and New Mexico to provide for mitigation of impacts of Refined Alternative 4 on the native fish community in the Animas River (see page 3-99, first four complete paragraphs). Again, the administrative authorities and costs for implementing such mitigation has not been properly evaluated by the DSEIS; see our previous comments. In addition, if protection of flows in the La Plata River in New Mexico is viable, accounting mechanisms would need to be negotiated between the states to ensure that any deliveries of water on the La Plata River at the stateline which would not be available for diversion and use in New Mexico would not be counted towards meeting Colorado's La Plata River Compact delivery obligations.

Page 3-104, first complete paragraph. Extensive La Plata River irrigation has occurred for almost a century and a half, and administration of streamflow under the La Plata River Compact has occurred for nearly eighty years. A healthy population of roundtail chub still exists in the river. Also, Compact administration and priority administration by Colorado provide some protection of flows in order for Colorado to meet its delivery obligation. The DSEIS provides no basis for the claim that formal legal protection of instream flows and stream habitats in the La Plata River is necessary to prevent extinction of the native fishery in the river. In fact, maintenance of increased flows in the La Plata River from its confluence with Cherry Creek to its mouth might very well create an avenue for non-native fish species to travel to the reach of river now populated with

roundtail chub, with potential negative impacts to the native fish community in the river resulting from predation and competition.

Page 3-113, first two complete paragraphs. The DSEIS states that Reclamation has completed, or is complying with, most of the elements of the 1996 reasonable and prudent alternative (RPA) for the ALP Project. One of the elements of the 1996 RPA is legal protection for Navajo Reservoir releases through the endangered fish habitat to Lake Powell. It is assumed that this element is not being handled by Reclamation. Further, modeling water depletion projects and Navajo Reservoir operations during the Section 7 consultation process to ensure meeting San Juan River flow recommendations of the SJRBRIP at Four Corners provides a measure of protection that the flow recommendations are met while existing uses continue in New Mexico and the other states.

Pages 3-152, last paragraph, and 3-153, first paragraph. The irrigated acreage figures for San Juan County are not equivalent to acreages used in the San Juan River Basin RiverWare Model for evaluating ALP Project impacts on hydrology and water supply. It would be helpful for the DSEIS to provide more thorough descriptions of the sources of irrigated acreage data.

Pages 3-164 and 3-165, Section 3.10.4.3. This section describes the impact of the No Action Alternative. The DSEIS states that the Colorado Ute Tribes "will" use their ALP Project water supply to meet municipal and industrial water demands both on and off their reservations (see page ES-2, third sentence). This assumption is presented throughout the DSEIS. Because the proposed alternatives for the ALP Project do not include water for irrigation, the impact described for tribal agriculture would not be present.

Page 4-2, fourth paragraph, last sentence. The DSEIS states that since original authorization of the Navajo Unit, Congress has authorized or approved other purposes of the Navajo Unit such as the Jicarilla Apache Tribe Water Rights Settlement. The Jicarilla Settlement included approval by Congress of the contract for the Navajo Reservoir Supply, which approval is required by Public Law 87-483. Such approval is not for "other purposes." The original authorization of the Navajo Unit, Public Law 84-485, provides for supplying water for purposes such as the Jicarilla Settlement contract. We are not aware of any additional authorized purposes for the Navajo Unit.

Page 4-6, second complete paragraph, first sentence. The subject sentence is not clear. It is suggested that it be revised in part to read: "... the water required for this project could be supplied under contract with Reclamation from the Navajo Reservoir Supply, by lease or acquisition and transfer of existing valid rights, or by subcontract with the Jicarilla Apache Tribe for use of its Navajo Reservoir Supply, or by a combination from these potential sources."

Page 4-6, last incomplete paragraph, first sentence. This sentence states that Wolf Creek Pass is west of Durango. The commonly known Wolf Creek Pass is east of Durango.

Page 4-7, fourth complete paragraph, first sentence. The DSEIS states that completion of the NIIP will increase San Juan River depletions by about 120,580 acre-feet per year under equilibrium conditions and 137,580 acre-feet per year until return flows reach equilibrium, the difference between conditions being 17,000 acre-feet per year. The DSEIS at other locations reports that completion of the NIIP will increase river depletions for the entire project to a total of about 270,000 acre-feet per year under equilibrium conditions and to 280,600 acre-feet per year until returns reach equilibrium, the difference between conditions being 10,600 acre-feet per year (see, for example, page 4-4, last paragraph). Such discrepancies need to be explained.

Page 4-10, third complete paragraph, last three sentences. These sentences as written seem to present a conflict. If the decision made to end the diversion of water to a particular use is a reversible action, it appears that the resource, water, should be retrievable. See also the first sentence of the subject paragraph.

Page 4-15, last incomplete paragraph, fourth sentence. The DSEIS states that water rights in the San Juan River Basin have been adjudicated. The statement should be modified to state that in New Mexico, all existing non-Indian, non-Federal water rights were adjudicated in the 1948 Echo Ditch Decree, and subsequently, the Jicarilla Apache Tribe water rights were adjudicated by the partial decree entered February 1999.

Page 7-7, Table 7-1. Table 7-1 should include, under New Mexico permit requirements, the Office of the State Engineer, the agency from which water users must obtain diversion and water use permits.

Page 7-9, Table 7-2. Table 7-2 incorrectly states the purpose of the Upper Colorado River Basin Compact. The Compact does not allocate or provide for management of water among water users. The Compact apportions waters of the Upper Basin to the States of Arizona, Colorado, New Mexico, Utah and Wyoming and establishes certain obligations for the States of the Upper Division.

Table 7-2 also incorrectly identifies "Navajo Project Water Agreement" and the stated purpose requires clarification. The entire entry should be deleted and under the entry for NIIP, add under Purpose: "The Navajo Nation has entered an agreement with the United States for the delivery of water to NIIP for the principal purpose of furnishing irrigation water to 110,630 acres of land and to have an average annual diversion of up to 508,000 acre-feet in satisfaction of this purpose." In addition, to avoid misrepresentation of potential water rights of the Navajo Nation for the NIIP, some clarification of diversion demands for the NIIP would be helpful. Public Law 87-483 authorized the diversion of up to 508,000 acre-feet of water per year from Navajo Dam if

needed to irrigate the NIIP acreage based on the project design in the NIIP feasibility report. However, redesign of the NIIP to include sprinkler irrigation reduced the diversion amount required to irrigate the full NIIP acreage to about 337,500 acre-feet per year, which should provide, on the average, sufficient water to irrigate successfully 110,630 acres with the current project design. For this reason, it would be meaningless to model and analyze a baseline condition that includes an average diversion demand for NIIP of 508,000 acre-feet per year (see page C-15, first two paragraphs). It is in large part due to the redesign of NIIP that operational flexibility exists for Navajo Reservoir to meet the streamflow needs of endangered fish in the San Juan River (see page 4-3, third complete paragraph, third through fifth sentences).

Further, in the entry for NIIP under Purpose, delete "1956 (the Colorado River Storage Act, 70 Stat. 105)." This Act only provides priority for planning for NIIP and did not authorize construction. Also, in the entry for NIIP under Purpose, delete "1977 (91 Stat. 565)" because the statute has no application to NIIP.

Table 7-2 should include the La Plata River Compact because Refined Alternative 4 is described as affecting La Plata River flows. Table 7-2 further should include the Echo Ditch Decree because a watermaster will be needed to administer diversions in accordance with the decree to protect ALP Project water being conveyed in New Mexico streams under Refined Alternative 4.

Page B-41, fourth paragraph. The DSEIS states that when water is transferred off irrigated land, the water supply that supports wetlands and riparian vegetation is lost. At other sections of the DSEIS, the discussion indicates that water to support the wetlands would be continued (see, for example, page 3-74, third paragraph).

Page B-45, second paragraph, first two sentences. The DSEIS states that several communities, including Aztec, Farmington and Bloomfield, supply water for municipal use from groundwater. We are not aware of any major ground-water use for municipal purposes by these communities. Also, the DSEIS does not mention the several mutual domestic water supply associations that provide domestic water supplies in New Mexico.

Page B-46, second complete paragraph, second sentence. The DSEIS lists a depletion of 53,500 acre-feet per year for future Indian trust water development in New Mexico from the San Juan River. At other sections of the DSEIS, the depletion is listed at 69,920 acre-feet per year (see, for example, page 3-23, last paragraph, second sentence, and page B-61, last complete paragraph, first sentence) or 69,800 acre-feet per year (see page B-68, last incomplete paragraph, second sentence). These discrepancies should be explained.

Page C-7, second paragraph, fourth sentence. The DSEIS states incorrectly that Navajo Reservoir stores water for historic downstream uses. Downstream use of Navajo Reservoir storage requires a contract with the Secretary of the Interior. The only

downstream uses that are served by Navajo Reservoir storage are the Hammond Project, the San Juan Power Plant and several small industrial users. The other downstream uses receive only the direct streamflow supply.

Page C-13, third paragraph. This paragraph states that the San Juan-Chama Project demand averages about 110,000 acre-feet per year; but, the DSEIS at page 3-6, table 3.2-1, indicates an average annual diversion and depletion by the Project of about 107,500 acre-feet (see also page C-5, table 1-3). Also, the water demands listed for the NIIP and the Navajo-Gallup Water Supply Project are diversion demands, not depletions; whereas, the demand listed for the Jicarilla Apache Tribe is depletions. These discrepancies should be explained.

Page C-15, Figure 3-3. The dates on the plot of Navajo Reservoir water surface elevation over time are non-sensical and need correction.

Page C-22, fourth complete paragraph, first sentence. This sentence requires correcting for the discussion of which operation is increased and which is reduced.

Page C-25, first complete paragraph. The No Action Alternative should be defined the same as the baseline condition for purposes of hydrologic analysis and modeling of Navajo Reservoir operations. The implementation of revised Navajo Reservoir operations to meet flow recommendations will be addressed through the NEPA process regardless of whether the ALP Project occurs or not. That is, changes to the Navajo Reservoir operation from that described in the 1975 EIS for NIIP will likely occur and are not dependent on implementation of the ALP Project.

Pages D-2 through D-7. Attachment D discusses water rights considerations and constraints. The discussion is very brief and does not include details of the constraints of interstate transfer and use of water, accounting of water pursuant to interstate compacts, or administration of the rights transferred interstate, although the DSEIS does make mention of these major issues. We do not know how such transfers could be implemented pursuant to existing law. The DSEIS does suggest that it may be possible for New Mexico to protect against diversion by existing water rights water that is "Project" water controllable by the ALP Project. Such water that is Colorado's "Project" water released downstream for diversion in New Mexico would not be water appropriated under New Mexico law and thereby may not be subject to administration by New Mexico. In summary, it appears that much additional consideration must be given to any proposed interstate transfer and use of water and to any proposals for the change in place and purpose of a use in Colorado that would involve "wheeling" the transferred water through the stream systems and reservoirs in New Mexico.

Pages F-2 and F-5. It is not clear how the Preferred Alternative could impact the flow of the Animas River at Farmington under 1951 hydrology by nearly 1,000 cfs at the peak of the spring snowmelt runoff, while at the same time having little, if any, impact on the flow of the Animas River at Durango. Similarly, it is not clear how the Preferred



Alternative could reduce flow in the San Juan River at Four Corners by 2,000 cfs during the snowmelt runoff under 1945 average-year hydrology (see page F-12). The pump capacity of the Durango Pumping Plant for the Preferred Alternative is only 280 cfs. The hydrology modeling and modeling results need to be checked for accuracy.

Pages F-2 through F-7. One might expect that Animas River flows at and above Farmington during periods of low flow (for example, outside the snowmelt runoff season) should be greater with the Preferred Alternative than without the ALP Project due to the augmentation of low-flows with releases from Ridges Basin Reservoir. The return flows from the subsequent diversion and use of the releases for municipal and industrial uses at Aztec and Farmington would return to the Animas River. The hydrographs of Animas River flows at the Durango and Farmington gages as presented in the DSEIS do not reflect flow impacts throughout the reach between the two gages.

Pages F-8 through F-10. It is not clear how the Preferred Alternative could cause La Plata River flows to be decreased from the without project condition under 1942 hydrology. Under the Preferred Alternative, no new depletions are made of native La Plata River flows; only new return flows to the La Plata River occur as a result of uses of imported Animas River water. The modeling results need to be checked for accuracy. These remarks apply also to Technical Appendix 2, page 2-25.

TA 2, page 2-5, second complete paragraph, last two sentences. Was the release amount assumed for Heron Dam equal to the current contracted amount of 91,200 acre-feet per year, equal to the firm yield to be contracted in the future of 96,200 acre-feet per year, or to some other amount?

TA 2, page 2-5, fifth complete paragraph, third and fourth sentences. Rules for simulating Type 1 shortages were not developed or applied to irrigated lands in the La Plata Basin in New Mexico.

TA 2, page 2-6, first paragraph, third sentence. The DSEIS at TA 2, pages 2-7 and 2-8, table 2-1, presents estimates of current depletions in the San Juan River Basin as prepared by the Bureau of Reclamation or the Bureau of Indian Affairs for the San Juan RiverWare Model. Reclamation has in the past prepared for its five-year Colorado River System Consumptive Uses and Losses Reports estimates of consumptive uses and losses in the basin which differ from the estimates of depletions included in the model. For the portion of the basin in New Mexico, New Mexico supplied much of the data for the Consumptive Uses and Losses Reports. The computational bases for estimating depletions are different for the model as compared to the Consumptive Uses and Losses Reports. New Mexico has not agreed that the depletion estimates used in the model for current, baseline or future conditions are the "best estimates." The DSEIS should clarify that the estimates of current depletions in table 2-1 are the estimates of Reclamation or the Bureau of Indian Affairs. Also, the model depletion estimates do not take into account the chronic water supply shortages that occur in the La Plata River Basin in New Mexico.

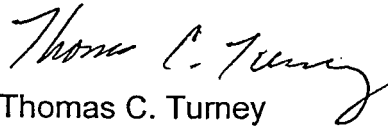
Mr. Pat Schumacher  
April 10, 2000  
Page 19

TA 2, page 2-38, third paragraph, first sentence. It is not clear how the transfer of irrigation water rights in Colorado to municipal and industrial uses would result in an increase in depletions of La Plata River flows at the state line. Only the historic irrigation crop consumptive use, exclusive of incidental depletions, is transferable under state law. Further explanation would be helpful.

Thank you for the opportunity to comment on the DSEIS. I am enclosing for your additional consideration a copy of my March 24, 2000, letter to Senator Domenici of New Mexico indicating the State of New Mexico's support for H.R. 3112, which would authorize implementation of an ALP Project that is very similar to Refined Alternative 4 identified in the DSEIS. The final SEIS should encompass the authorization being proposed by the Congress.

Please contact Mr. John Whipple of the Interstate Stream Commission staff if discussion of these comments would be helpful.

Sincerely,



Thomas C. Turney  
Secretary

TCT:JJW:rav

enclosures

copy: Walter Bradley  
Randy Kirkpatrick  
Stanley Pollack

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Animas-La Plata Project  
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT  
STATEMENT

Prepared by:

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
UPPER COLORADO REGION

COMMENTS OF THE NEW MEXICO STATE ENGINEER

PUBLIC HEARING  
FEBRUARY 16, 2000  
Farmington, New Mexico

The State of New Mexico has supported for many years an Animas-La Plata Project that would provide storage of Animas River flows to meet the needs of water users in New Mexico. The state of New Mexico has further supported implementation of the Colorado Ute Indian Water Rights Settlement Act of 1988.

The Draft Supplemental EIS for the Animas La Plata Project, released last month, envisions a regional water supply concept under which water could be provided from structural and non-structural components for what the EIS has called Refined Alternative 4 and Refined Alternative 6. The regional demands do not specifically identify a water use or a timeline for the use. Examples of potential water demands and uses are included that could develop within a period of 30 years or more.

This concept of a regional water supply involves interstate leasing of water. The State of New Mexico cannot at this time embrace either interstate leasing or marketing of water.

However, we do not view our position as an obstacle to proceeding with implementation of Refined alternative 4, the preferred alternative identified in the Draft Supplemental EIS. There is a substantial need for water for future M & I needs in the area that can be supplied from the San Juan River system water supply. Storage of available Animas River flows is necessary to maximize the supply that can be made available from the San Juan River system to meet future needs.

Refined Alternative 4 appears to provide for implementation of the Colorado Ute Indian Water Rights Settlement. This alternative also provides water for New Mexico Communities in San Juan County.

Also, it would include as we previously requested, a new pipeline to serve the Navajo Indian communities from Farmington to Shiprock with high quality water from the Animas River. We appreciate the inclusion of this replacement pipeline as a structural component of Refined Alternative 4.

We are concerned, however, that no allocation of water is included in Refined Alternative 4 for the La Plata Conservancy District in New Mexico. In our February 3, 1999 comments on the Notice of Intent to

prepare this Draft Supplemental EIS, we requested that 780 acre-feet of depletion be considered for a future M & I water supply in this area.

The State of New Mexico urges that the Record of Decision select Refined Alternative 4, even though we have reservations concerning the very generalized, but non-binding uses of water in the State of New Mexico. If the future demand for water should mandate a concept of regional water supply that would suggest interstate leasing or marketing, the state could evaluate the specifics of a proposal in light of the conditions at that time.

The State of New Mexico cannot support Refined Alternative 6. This alternative has many objectionable concepts including minimizing the storage available from Navajo Reservoir to meet future Indian and non-Indian demands in New Mexico. We are concerned about the effect on the operation of Navajo Reservoir set forth in Public Law 87-483 as a result of a block of water that would flow into the reservoir from the acquisition and transfer of existing irrigation uses in the Pine River basin in Colorado.

The Draft Environmental EIS discussion of institutional constraints including state water law, interstate compacts, and federal legislation is, to put it gently and kindly, noticeably deficient. Only in Attachment D, Volume 2, is there any discussion of issues that would need to be addressed under the Upper Colorado River Basin Compact and the discussion made here is very brief. The constraints of the La Plata River Interstate Compact are not mentioned.

These general comments I have made this evening will be supplemented by more detailed comments on specific items of the Draft Supplemental EIS which the New Mexico Interstate Stream Commission will submit at a later date. We will also be addressing in more detail our concerns regarding the technical analysis performed for the Draft Supplemental EIS.

Thank you for letting me testify this evening.

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

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March 24, 2000

The Honorable Pete V. Domenici  
United States Senator  
SH-328 Hart Senate Office Building  
Washington, D.C. 20510-3101

Dear Senator Domenici:

This letter is to set forth the position of the State of New Mexico on the pending proposal to amend the Colorado Ute Indian Water Rights Settlement Act of 1988 to provide for a final settlement of the claims of the Colorado Ute Tribes, and for other purposes.

The Bureau of Reclamation recently released a Draft Supplemental EIS (DSEIS) for the Animas-La Plata Project for public comment. Public hearings have been held and I provided general comments at the public hearing held in Farmington, New Mexico on February 20, 2000, copy enclosed for your reference. We also will provide additional, detailed comments to the Bureau of Reclamation. We support Refined Alternative 4 described in the DSEIS except for the concept of a regional water supply that is included. In this instance the concept of a regional water supply involves inter-state leasing of water. New Mexico cannot at this time embrace either inter-state leasing or marketing of water.

We do not view our position on inter-state leasing of water as being an obstacle to proceeding with implementation of Refined Alternative 4, the preferred alternative identified in the DSEIS. There is a substantial need for water for future domestic municipal and industrial purposes in the area that can be supplied from the San Juan River system water supply. If the future demand for water mandates a concept of regional water supply that would suggest inter-state leasing or marketing, New Mexico could evaluate the specifics of the proposal in light of conditions at that time.

The Refined Alternative 4 appears to provide for implementation of the Colorado Ute Indian Water Rights Settlement which we fully support, as well as construction of Ridges Basin Reservoir, a pumping plant, a reservoir inlet conduit and appurtenant facilities to divert and store Animas River flows to provide an average annual depletion of 57,100 acre-feet of water to be used for municipal and industrial water supplies. Of

the 57,100 acre-feet of depletion that would be provided, New Mexico supports an allocation of 10,400 acre-feet to the San Juan Water Commission and 2340 acre-feet to the Navajo Nation as described in the DSEIS. We requested that an additional 780 acre-feet of depletion be provided for domestic, municipal and industrial use in the area of the La Plata Conservancy District in New Mexico, which was not included in DSEIS. We suggest that the Record of Decision to be made on the DSEIS could allocate the 780 acre-feet to the San Juan Water Commission which would increase the Commission's allocation to 11,180 acre-feet.

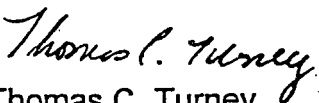
Refined Alternative 4 would include a new pipeline to convey municipal and industrial water to the Navajo Nation at Shiprock, New Mexico. New Mexico fully supports authorization of construction of such pipeline as a non-reimbursable feature. Our support of the Navajo Nation municipal pipeline assumes that the Navajo Nation will not file additional claims against the New Mexico non-Indian beneficiaries of the project.

It is very important, not only to New Mexico water users, but to all water users of the San Juan River system, that storage of Animas River flows be implemented in order to make the water supply available from the San Juan River system usable for development of the water supply apportioned to the States of Colorado and New Mexico by the Upper Colorado River Basin Compact. Further, storage and regulation of Animas River flows in concert with the regulation afforded by Navajo Reservoir can enhance the success of the San Juan River Recovery Implementation Program to achieve its goals to conserve endangered fish species and to proceed with water development in the basin. The Navajo-Gallup Municipal Water Supply Project, currently under study, is a requisite to provide a much needed domestic water supply to Navajo Nation communities and to provide a supplemental source of municipal water to the City of Gallup.

I understand that H.R. 3112, 106 Congress, 1<sup>st</sup> Session is pending in the House of Representatives and would amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes. The project described in the bill is very similar to Refined Alternative 4 identified in the DSEIS. It is imperative that the environmental analysis of the DSEIS encompass the authorization being proposed by the Congress.

Please let me know if additional information would be helpful.

Sincerely,

  
Thomas C. Turney  
Secretary

TCT:PBM:rav

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San Juan - 3  
ALP  
JSW



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Mexico Fishery Resources Office  
2105 Osuna NE  
Albuquerque, New Mexico 87113  
Phone: 505/346-2538  
Fax: 505/346-2537

10 April 2000

Mr. Pat Schumacher  
Durango Projects Office  
Bureau of Reclamation  
835 East 2<sup>nd</sup> Street  
Suite 300  
Durango, Colorado 81301-5475

Dear Mr. Schumacher,

A letter signed by me as the Chairman of the San Juan River Basin Recovery Implementation Program Biology Committee was sent to you by FAX on 17 March 2000. The letter commented on nonnative fish species mitigation proposals in the Draft Supplemental Environmental Impact Statement (DSEIS) as was discussed by the Biology Committee at the last meeting, 15-16 February 2000. This letter was not formally agreed to by the Biology Committee and should have undergone further review and approval prior to transmission as a statement of the Biology Committee. The Biology Committee will discuss this issue at the upcoming meeting on 12 April 2000 in Farmington, New Mexico to determine what course of action should be taken in regards to responding to the subject letter. Thus, the letter sent to you does not represent the collective view of the Biology Committee. Rather, the letter lists concerns that were discussed at the Biology Committee meeting and additionally my own after reviewing the Draft Supplemental Environmental Impact Statement.

At this time, I request that you disregard the subject letter as a statement by the Biology Committee. The Biology Committee will be considering its concerns regarding the DSEIS and the format that these concerns may be offered to the Bureau of Reclamation by the San Juan River Basin Recovery Implementation Program.

Sincerely,

James E. Brooks  
Project Leader

cc: SJR Biology Committee  
SJR Coordination Committee

San Juan ALP P.01

file



Ernest House, Sr.  
Chairman  
Ute Mountain Ute Tribe

OFFICE OF THE CHAIRMAN

P.O. Box JJ  
Towaoc, CO 81434  
(970) 364-3601  
(970) 644-5813 Fax  
www.utemountain.org

**FAX MEMO**  
# PAGES 1 DATE 5/2 FAX# 580-480-9506  
TO DAN ISREAL  
FROM CHAIRMAN HOUSE  
CO. 1701  
PH# 565 3251 FAX# 565 3213

April 10, 2000

Pat Schumacher  
Bureau of Reclamation  
P.O. Box 640  
Durango, CO 81301

FAX: 970-385-6539

Re: ALP Draft SEIS

Dear Mr. Schumacher:

We submit the following comments as they relate to the draft ALP EIS.

1. Under the non-binding discussion of potential Colorado Ute Tribe M&I uses, the draft suggests that a power plant would be located on the New Mexico portion of the Ute Mountain Ute Reservation and utilize water supplies from Ridges Basin. Under current law, that use would not be possible. The draft should be corrected to reflect that.
2. On pages 2-27 and 2-28, and perhaps elsewhere, there are charts which indicate that under the Clinton Administration proposal some of the 13,000 of of water to be acquired from willing sellers could be obtained in New Mexico. That is erroneous. Because the acquisition of existing supplies is an attempt to implement a Colorado Ute water settlement, those acquisitions as a matter of course can only occur in Colorado.
3. On pages 2-14, 25, 29, 96, 132, 133, 142, and perhaps elsewhere, there are tables which suggest that the Colorado Utes under a non-binding scenario might lease some of their water to New Mexico communities. As noted above, such a transaction is not permitted under current law. What the documentation should show is that there exists a long-term regional water supply requirement which includes needs in both Colorado and New Mexico. The Tribes have set forth a non-binding statement of how they might provide some of the regional water, but under current law any water they were to provide would be restricted to Colorado.

We thank you for your work on this project and look forward to reading the final.

Very truly yours,

*Ernest House, Sr.*  
Ernest House, Sr., Chairman  
Ute Mountain Ute Tribe

OPTIONAL FORM 99 (7-99)

FAX TRANSMITTAL

# of pages >

To

*[Signature]*

From

*Dan Isreal*