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SJ-17
Navajo Settlement

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August 3, 2006

Rep. John T. Salazar
1531 Longworth House Office Building
Washington DC 20515-0603

Re: Navajo Settlement Agreement

Dear Rep. Salazar:

This firm represents the Southwestern Water Conservation District ("SWCD") which is statutorily charged with promoting the conservation, use and development of water in the nine-county area in Southwest Colorado served by the San Juan and Dolores Rivers. SWCD has recently been involved in negotiations with the States of New Mexico and Colorado regarding identifying water available to New Mexico under the Colorado River Compact ("CRC") and the Upper Colorado River Compact ("UCRC").

As part of the Navajo Settlement Agreement, it is our understanding that New Mexico will be seeking Congressional approval of the settlement agreement and authorization to construct the Navajo Gallup Water Pipeline ("NGP") which will supply much needed domestic water to the Navajo Nation. The water would come from the San Juan River and Navajo Reservoir. Under P.L. 87-483, the Secretary of the Interior must make a hydrologic determination ("HD") that sufficient water is available from Navajo Reservoir and the San Juan River and its tributaries before New Mexico may enter into any long term contracts for water delivery out of Navajo Reservoir. New Mexico asserts that the water currently identified under the 1988 HD has been fully allocated under existing contracts with New Mexico water users, and therefore has requested that the Secretary approve a new HD, based on the critical period reservoir evaporation calculations rather than the average annual evaporation rates used in the previous HD. This shift in consumptive use from evaporation to human uses and the inclusion of water from additional tributary reservoirs allows for the depletion of additional water from Navajo Reservoir sufficient to meet the needs of the NGP. The current HD indicates that there is approximately 6.0 maf of water available in the upper Colorado River Basin. The new HD indicates that approximately

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6.0 maf remains available for consumptive use during the critical period of record. Under the UCRC, New Mexico is entitled to 11.25 percent of water available. Incorporating the reduction in reservoir evaporation during the critical period allows for an increase in human consumption in the revised HD of which approximately 25,000 af would be available to New Mexico or an amount sufficient to supply the NGP. Even though the amount of water that would be depleted during the critical period of record would not change, on average depletions throughout the entire Upper Colorado River Basin could increase by more than 200,000 af.

The Bureau of Reclamation requested that New Mexico submit its proposal for a new HD to the Upper Colorado River Commission ("Commission") before submitting it to the Secretary. New Mexico began that process by submitting its proposal for a new HD to the Commission's Engineering Committee. Subsequently the Colorado Water Conservation Board ("CWCB") considered the proposed HD in May. SWCD appeared at the CWCB meeting to express its concerns with a new HD. While SWCD supports the Navajo Settlement Agreement, it expressed concern that the increased water available to New Mexico under the new HD for the NGP all comes from the San Juan River Basin in Southwestern Colorado and adversely impacts water development in Colorado.

SWCD recommended the CWCB support the new HD if New Mexico were to provide certain assurances regarding its position on water development in Southwestern Colorado. See attached as Exhibit A, a copy of the May 9, 2006, SWCD letter to CWCB. The CWCB passed a resolution supporting the new HD but instructing its staff to continue negotiations with New Mexico and SWCD to attempt to reach an agreement acceptable to SWCD. Negotiations continued until the meeting of the Commission in Jackson, Wyoming in June. At the Commission meeting, New Mexico provided a draft letter to Scott Balcomb, Colorado's representative on the Commission, and Rod Kuharich, director of the CWCB, responding to SWCD's concerns. The final version of the New Mexico letter is attached as Exhibit B.

SWCD informed the Commission and New Mexico at the June meeting that although the New Mexico letter failed to provide the assurances SWCD had requested, SWCD remained supportive of the Navajo Settlement Agreement. However, SWCD indicated that it may actively pursue language to protect water development in Southwestern Colorado in any legislation approving the Navajo Settlement Agreement.

It is our understanding that Senator Pete Domenici is planning to introduce, in the very near future, legislation to approve the Navajo Settlement Agreement, which would include approval of the new HD, thereby identifying sufficient water supplies for the NGP. At its June 2006 meeting, the SWCD Board of Directors unanimously approved a resolution requesting that you, Sen. Allard and Rep. John Salazar include the following language in the Navajo Settlement legislation protecting water development in Southwestern Colorado:

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Any additional depletions to which New Mexico may be entitled under the hydrologic determination as stated herein shall not injure, impair, or deplete any existing or future beneficial uses of water within the State of Colorado, the use of which is within the apportionment made to the State of Colorado by article III of the Upper Colorado River Basin Compact, as provided by article IX of the Upper Colorado River Basin Compact." The hydrologic determination shall be subject to the completion of a mechanism under the San Juan River Basin Recovery Implementation Program which equitably provides for future water usage among the states within the San Juan River Basin.

The first sentence tracks similar language currently in P.L. 87-483, Section 8(b), for the San Juan-Chama Project and, therefore, should not be deemed surprising or objectionable by New Mexico. The second sentence provides that the San Juan River Recovery Implementation Program will continue to recognize development of water in both New Mexico and Colorado. SWCD believes that such language will help ensure protection for Colorado's use of water under the Compacts, while at the same time allowing for the approval of the Navajo Settlement Agreement and a domestic water supply for the Navajo Nation through the NGP. SWCD further seeks to be assured that the water available to New Mexico under the new HD shall be used only for the NGP and not any other purposes.

If you wish to discuss this further, I can be available, as well as members of the SWCD Board of Directors, and Lynn Herkenhoff, District Manager, and Steve Harris, the District's Consulting Engineer. We look forward to working with you to accomplish these protections for Colorado water.

Sincerely,

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP



John Barlow Spear

JBS:sps

cc: Sen. Pete Domenici ^{Utah}
Dennis Strong, ~~New Mexico~~ Commissioner UCRC
John D'Antonio, New Mexico State Engineer
Don Ostler, Executive Director UCRC
Scott Balcomb, Colorado Commissioner UCRC
Rod Kuharich, Director CWCB
Hal Simpson, Colorado State Engineer
SWCD Board of Directors

THE SOUTHWESTERN WATER CONSERVATION DISTRICT

A Municipal District Organized Under State Law For Development And Conservation Of The Waters In The
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
IN SOUTHWESTERN COLORADO

West Building — 841 Second Avenue
Post Office Box 475
DURANGO, COLORADO 81302
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May 9, 2006

Rod Kuharich, Director
Colorado Water Conservation Board
1313 Sherman Street
Denver, Colorado 80203

Re: Upper Colorado River Hydrologic Determination

Dear Rod:

The Southwestern Water Conservation District ("SWCD") submits this letter to the Colorado Water Conservation Board ("CWCB") in response to the State of New Mexico's request for CWCB's support of a new hydrologic determination for the Colorado River ("HD"). SWCD has no objection to CWCB supporting the New Mexico request if certain considerations are accepted by New Mexico in regard to the San Juan River basin.

Increasing the HD for the Upper Basin of the Colorado River would theoretically imply more water is available to all of the Upper Basin states under the Upper Colorado River Compact. If the current hydrologic determination of 6.0 MAF/yr is increased to 6.23 to 6.28 MAF/yr to assist New Mexico in meeting its intrastate water demands, all the Upper Basin states would benefit in water available from the Colorado River on a pro-rata basis under the Upper Colorado River Compact. Therefore, Colorado as a whole, would benefit in that it would "receive" more water under its 51.75 percent share of Upper Basin Colorado River water.

SWCD's concerns, however, arise from the fact that the water which would provide New Mexico its 11.25 percent share of Upper Basin Colorado River water from the increased HD, estimated to be an increase of approximately 29,800 AF, would all come from the San Juan River basin. This could directly impact the water users and water availability in the nine county area served by SWCD. Since the increase in HD is to benefit all Colorado west slope basins, it must not restrict water use in southwest Colorado. Therefore, SWCD requests that the CWCB consider intra-Colorado protection for the San Juan River basin, in the unlikely event of a call on the Colorado River, when it considers approval of an increased HD to benefit New Mexico using water from the San Juan River basin.

In addition, SWCD requests the CWCB ease the impact of an increased HD on the San Juan River basin by supporting the New Mexico request if New Mexico agrees to the following:

1. San Juan River Basin Recovery Implementation Program. It is most important that the CWCB support of the increased HD include protections for Colorado in the San Juan River Basin Recovery Implementation Program ("SJRIP"). SWCD understands that NM may use most, if not all, of its additional Upper Basin Compact allocation under the new HD for the Navajo Gallup Project ("NGP"), which will provide water to Gallup, New Mexico, the Navajo Nation lands in New Mexico and the Jicarilla-Apache Reservation. Although SWCD supports the NGP, the additional depletions from the San Juan River Basin as a result of NGP, when evaluated against the SJRIP Flow Recommendations, may impair Colorado's ability to develop water in the San Juan River basin in Colorado. While the SJRIP was implemented allow development, future recommendations might be used to impair that ability. SWCD, therefore, requests that the CWCB agree to an increase in the HD, only if protections are provided to southwest Colorado water users preventing the Flow Recommendations of the SJRIP from impairing such development.

The SJRIP Hydrologic Model presently indicates that any further depletions in the San Juan River basin will prevent the existing Flow Recommendations from being met. While SJRIP was designed to protect development, meeting the Flow Recommendations is not required to obtain a successful Section 7 Consultation for a new water project: it is one factor in considering whether the SJRIP is making sufficient progress to allow the new depletion. The existing Flow Recommendations are now under review. Preliminary analysis indicates that the amount of allowed depletions under the Flow Recommendation may increase. The Bureau of Reclamation and consultants for the Navajo BIA are developing the new Flow Recommendations for consideration by the Biology and Coordination Committees of the SJRIP. The protections SWCD would suggest in order that Southwest Colorado receive an appropriate share of any increases in the depletions allowed by the Flow Recommendation include:

A. Any additional depletions available under the Flow Recommendations should be divided equally between New Mexico and Colorado. For example, if New Mexico is allowed to deplete its entire increase under the HD within the Flow Recommendations then the same amount of additional depletions should be reserved for future use under Section 7 Consultations for projects in southwest Colorado, and

B. Consistent with the terms of the Upper Colorado River Compact, New Mexico must agree not to impair Colorado's development of additional depletions in the San Juan River Basin under the SJRIP, federal permitting, or in any other manner.

2. La Plata River. New Mexico recently reversed its opposition to the construction of the Long Hollow Reservoir in the La Plata River basin by sending a letter to the U.S. Corps of Engineers supporting the construction of the reservoir. This reversal

is appreciated by SWCD as Long Hollow Reservoir will greatly assist in ensuring deliveries of water to New Mexico required under the La Plata River Compact, while allowing supplemental irrigation use in Colorado by exchange. Further commitment from New Mexico with regard to the La Plata River, however, is vital to Southwest Colorado. In addition to support of the Long Hollow Reservoir, New Mexico must agree that Colorado does not have to deliver water to New Mexico under the La Plata River Compact that will be used to fulfill water demands outside the La Plata River basin.

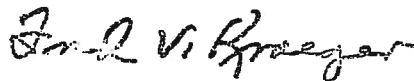
3. San Juan-Chama Project. New Mexico shall support the continuation of diversions under the San-Juan Chama Project as early in the year as practical.

4. Weather Modification. New Mexico shall commit to providing reasonable financial support for weather modification operations in the San Juan River drainage.

SWCD encourages the CWCB to incorporate the above points in any recommendation to the Upper Colorado River Commission and/or the Bureau of Reclamation which endorses New Mexico's request to increase the HD for the Colorado River.

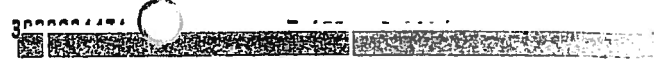
Thank you for your attention to this matter.

Sincerely,



Fred V. Kroeger, President

cc: John D'Antonio
Scott Balcomb
Don Schwindt
Randy Seaholm



NEW MEXICO INTERSTATE ST

EXHIBIT "B"

COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington
J. PHELPS WHITE, III, Vice-Chairman, Roswell
JOHN R. D'ANTONIO, JR., P.E., Secretary, Santa Fe
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June 6, 2006

RECEIVED
JUN 08 2006
Colorado Water Conservation Board

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

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

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

Gentlemen:

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

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

Mr. Balcomb, Mr. Kuharich
May 6, 2006
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~~Division accepted this approach in the draft Hydrologic Determination as technically appropriate and sound.~~

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



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

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

JUNE 2006 DRAFT

**RESOLUTION OF THE
UPPER COLORADO RIVER COMMISSION**

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

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

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

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

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

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

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

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

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

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

WHEREAS, the US Bureau of Reclamation has presented to the Upper Colorado River Commission for its consideration a draft hydrologic determination, dated May 2006, that evaluates the availability of water from the Navajo Reservoir supply through 2060 and shows: (1) at least 5.76 million acre-feet of water is reasonably available annually for use by the Upper Basin, exclusive of reservoir evaporation at Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit reservoirs of the Colorado River Storage Project; and (2) sufficient water is reasonably likely to be available from the Navajo Reservoir supply to fulfill the proposed Settlement Contract for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project, in addition to existing Navajo Reservoir water supply contracts for other uses, under the allocations made to New Mexico in Articles III and XIV of the Upper Colorado River Basin Compact; and

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

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

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

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

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

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

WHEREAS, the Upper Colorado River Commission on June 19, 2003, resolved that: (1) "the States of Colorado, New Mexico, Utah and Wyoming, support and to the extent necessary consent to the diversion of water from the Upper Basin for use in the Lower Basin solely within New Mexico via the proposed Navajo-Gallup Water Supply Project; provided, that any water so diverted by said project to the Lower Basin portion of New Mexico, being a depletion of water at Lee Ferry, shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III (a) of the Upper Colorado River Compact;" and (2) "the Upper Colorado River Commission supports such Congressional action as may be necessary to authorize the Navajo-Gallup Water Supply Project."

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

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

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

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

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

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

CERTIFICATE

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

WITNESS my hand this _____ day of _____ 2006.

DON A. OSTLER
Executive Director and Secretary

Maynes, Bradford, Shipps & Sheftel, LLP
Attorneys at Law

THOMAS H. SHIPPS
JANICE C. SHEFTEL
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August 3, 2006

Sen. Ken Salazar
SH-702 Hart Senate Office Building
Washington DC 20510-0607

Re: Navajo Settlement Agreement

Dear Sen. Salazar:

This firm represents the Southwestern Water Conservation District ("SWCD") which is statutorily charged with promoting the conservation, use and development of water in the nine-county area in Southwest Colorado served by the San Juan and Dolores Rivers. SWCD has recently been involved in negotiations with the States of New Mexico and Colorado regarding identifying water available to New Mexico under the Colorado River Compact ("CRC") and the Upper Colorado River Compact ("UCRC").

As part of the Navajo Settlement Agreement, it is our understanding that New Mexico will be seeking Congressional approval of the settlement agreement and authorization to construct the Navajo Gallup Water Pipeline ("NGP") which will supply much needed domestic water to the Navajo Nation. The water would come from the San Juan River and Navajo Reservoir. Under P.L. 87-483, the Secretary of the Interior must make a hydrologic determination ("HD") that sufficient water is available from Navajo Reservoir and the San Juan River and its tributaries before New Mexico may enter into any long term contracts for water delivery out of Navajo Reservoir. New Mexico asserts that the water currently identified under the 1988 HD has been fully allocated under existing contracts with New Mexico water users, and therefore has requested that the Secretary approve a new HD, based on the critical period reservoir evaporation calculations rather than the average annual evaporation rates used in the previous HD. This shift in consumptive use from evaporation to human uses and the inclusion of water from additional tributary reservoirs allows for the depletion of additional water from Navajo Reservoir sufficient

Sen. Ken Salazar
August 3, 2006
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to meet the needs of the NGP. The current HD indicates that there is approximately 6.0 maf of water available in the upper Colorado River Basin. The new HD indicates that approximately 6.0 maf remains available for consumptive use during the critical period of record. Under the UCRC, New Mexico is entitled to 11.25 percent of water available. Incorporating the reduction in reservoir evaporation during the critical period allows for an increase in human consumption in the revised HD of which approximately 25,000 af would be available to New Mexico or an amount sufficient to supply the NGP. Even though the amount of water that would be depleted during the critical period of record would not change, on average depletions throughout the entire Upper Colorado River Basin could increase by more than 200,000 af.

The Bureau of Reclamation requested that New Mexico submit its proposal for a new HD to the Upper Colorado River Commission ("Commission") before submitting it to the Secretary. New Mexico began that process by submitting its proposal for a new HD to the Commission's Engineering Committee. Subsequently the Colorado Water Conservation Board ("CWCB") considered the proposed HD in May. SWCD appeared at the CWCB meeting to express its concerns with a new HD. While SWCD supports the Navajo Settlement Agreement, it expressed concern that the increased water available to New Mexico under the new HD for the NGP all comes from the San Juan River Basin in Southwestern Colorado and adversely impacts water development in Colorado.

SWCD recommended the CWCB support the new HD if New Mexico were to provide certain assurances regarding its position on water development in Southwestern Colorado. See attached as Exhibit A, a copy of the May 9, 2006, SWCD letter to CWCB. The CWCB passed a resolution supporting the new HD but instructing its staff to continue negotiations with New Mexico and SWCD to attempt to reach an agreement acceptable to SWCD. Negotiations continued until the meeting of the Commission in Jackson, Wyoming in June. At the Commission meeting, New Mexico provided a draft letter to Scott Balcomb, Colorado's representative on the Commission, and Rod Kuharich, director of the CWCB, responding to SWCD's concerns. The final version of the New Mexico letter is attached as Exhibit B.

SWCD informed the Commission and New Mexico at the June meeting that although the New Mexico letter failed to provide the assurances SWCD had requested, SWCD remained supportive of the Navajo Settlement Agreement. However, SWCD indicated that it may actively pursue language to protect water development in Southwestern Colorado in any legislation approving the Navajo Settlement Agreement.

It is our understanding that Senator Pete Domenici is planning to introduce, in the very near future, legislation to approve the Navajo Settlement Agreement, which would include approval of the new HD, thereby identifying sufficient water supplies for the NGP. At its June 2006 meeting, the SWCD Board of Directors unanimously approved a resolution requesting that you, Sen. Allard and Rep. John Salazar include the following language in the Navajo Settlement legislation protecting water development in Southwestern Colorado:

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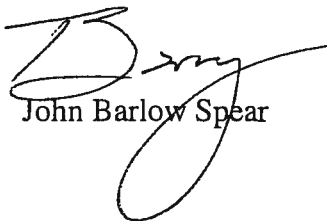
Any additional depletions to which New Mexico may be entitled under the hydrologic determination as stated herein shall not injure, impair, or deplete any existing or future beneficial uses of water within the State of Colorado, the use of which is within the apportionment made to the State of Colorado by article III of the Upper Colorado River Basin Compact, as provided by article IX of the Upper Colorado River Basin Compact." The hydrologic determination shall be subject to the completion of a mechanism under the San Juan River Basin Recovery Implementation Program which equitably provides for future water usage among the states within the San Juan River Basin.

The first sentence tracks similar language currently in P.L. 87-483, Section 8(b), for the San Juan-Chama Project and, therefore, should not be deemed surprising or objectionable by New Mexico. The second sentence provides that the San Juan River Recovery Implementation Program will continue to recognize development of water in both New Mexico and Colorado. SWCD believes that such language will help ensure protection for Colorado's use of water under the Compacts, while at the same time allowing for the approval of the Navajo Settlement Agreement and a domestic water supply for the Navajo Nation through the NGP. SWCD further seeks to be assured that the water available to New Mexico under the new HD shall be used only for the NGP and not any other purposes.

If you wish to discuss this further, I can be available, as well as members of the SWCD Board of Directors, and Lynn Herkenhoff, District Manager, and Steve Harris, the District's Consulting Engineer. We look forward to working with you to accomplish these protections for Colorado water.

Sincerely,

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP



John Barlow Spear

JBS:sps

cc: Sen. Pete Domenici
Dennis Strong, New Mexico Commissioner UCRC
John D'Antonio, New Mexico State Engineer
Don Ostler, Executive Director UCRC
Scott Balcomb, Colorado Commissioner UCRC
Rod Kuharich, Director CWCB
Hal Simpson, Colorado State Engineer
SWCD Board of Directors

THE SOUTHWESTERN WATER CONSERVATION DISTRICT

A Municipal District Organized Under State Law For Development And Conservation Of The Waters In The
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES

IN SOUTHWESTERN COLORADO

West Building — 841 Second Avenue

Post Office Box 475

DURANGO, COLORADO 81302

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May 9, 2006

Rod Kuharich, Director
Colorado Water Conservation Board
1313 Sherman Street
Denver, Colorado 80203

Re: Upper Colorado River Hydrologic Determination

Dear Rod:

The Southwestern Water Conservation District ("SWCD") submits this letter to the Colorado Water Conservation Board ("CWCB") in response to the State of New Mexico's request for CWCB's support of a new hydrologic determination for the Colorado River ("HD"). SWCD has no objection to CWCB supporting the New Mexico request if certain considerations are accepted by New Mexico in regard to the San Juan River basin.

Increasing the HD for the Upper Basin of the Colorado River would theoretically imply more water is available to all of the Upper Basin states under the Upper Colorado River Compact. If the current hydrologic determination of 6.0 MAF/yr is increased to 6.23 to 6.28 MAF/yr to assist New Mexico in meeting its intrastate water demands, all the Upper Basin states would benefit in water available from the Colorado River on a pro-rata basis under the Upper Colorado River Compact. Therefore, Colorado as a whole, would benefit in that it would "receive" more water under its 51.75 percent share of Upper Basin Colorado River water.

SWCD's concerns, however, arise from the fact that the water which would provide New Mexico its 11.25 percent share of Upper Basin Colorado River water from the increased HD, estimated to be an increase of approximately 29,800 AF, would all come from the San Juan River basin. This could directly impact the water users and water availability in the nine county area served by SWCD. Since the increase in HD is to benefit all Colorado west slope basins, it must not restrict water use in southwest Colorado. Therefore, SWCD requests that the CWCB consider intra-Colorado protection for the San Juan River basin, in the unlikely event of a call on the Colorado River, when it considers approval of an increased HD to benefit New Mexico using water from the San Juan River basin.

In addition, SWCD requests the CWCB ease the impact of an increased HD on the San Juan River basin by supporting the New Mexico request if New Mexico agrees to the following:

1. San Juan River Basin Recovery Implementation Program. It is most important that the CWCB support of the increased HD include protections for Colorado in the San Juan River Basin Recovery Implementation Program ("SJRIP"). SWCD understands that NM may use most, if not all, of its additional Upper Basin Compact allocation under the new HD for the Navajo Gallup Project ("NGP"), which will provide water to Gallup, New Mexico, the Navajo Nation lands in New Mexico and the Jicarilla-Apache Reservation. Although SWCD supports the NGP, the additional depletions from the San Juan River Basin as a result of NGP, when evaluated against the SJRIP Flow Recommendations, may impair Colorado's ability to develop water in the San Juan River basin in Colorado. While the SJRIP was implemented allow development, future recommendations might be used to impair that ability. SWCD, therefore, requests that the CWCB agree to an increase in the HD, only if protections are provided to southwest Colorado water users preventing the Flow Recommendations of the SJRIP from impairing such development.

The SJRIP Hydrologic Model presently indicates that any further depletions in the San Juan River basin will prevent the existing Flow Recommendations from being met. While SJRIP was designed to protect development, meeting the Flow Recommendations is not required to obtain a successful Section 7 Consultation for a new water project: it is one factor in considering whether the SJRIP is making sufficient progress to allow the new depletion. The existing Flow Recommendations are now under review. Preliminary analysis indicates that the amount of allowed depletions under the Flow Recommendation may increase. The Bureau of Reclamation and consultants for the Navajo BIA are developing the new Flow Recommendations for consideration by the Biology and Coordination Committees of the SJRIP. The protections SWCD would suggest in order that Southwest Colorado receive an appropriate share of any increases in the depletions allowed by the Flow Recommendation include:

A. Any additional depletions available under the Flow Recommendations should be divided equally between New Mexico and Colorado. For example, if New Mexico is allowed to deplete its entire increase under the HD within the Flow Recommendations then the same amount of additional depletions should be reserved for future use under Section 7 Consultations for projects in southwest Colorado, and

B. Consistent with the terms of the Upper Colorado River Compact, New Mexico must agree not to impair Colorado's development of additional depletions in the San Juan River Basin under the SJRIP, federal permitting, or in any other manner.

2. La Plata River. New Mexico recently reversed its opposition to the construction of the Long Hollow Reservoir in the La Plata River basin by sending a letter to the U.S. Corps of Engineers supporting the construction of the reservoir. This reversal

is appreciated by SWCD as Long Hollow Reservoir will greatly assist in ensuring deliveries of water to New Mexico required under the La Plata River Compact, while allowing supplemental irrigation use in Colorado by exchange. Further commitment from New Mexico with regard to the La Plata River, however, is vital to Southwest Colorado. In addition to support of the Long Hollow Reservoir, New Mexico must agree that Colorado does not have to deliver water to New Mexico under the La Plata River Compact that will be used to fulfill water demands outside the La Plata River basin.

3. San Juan-Chama Project. New Mexico shall support the continuation of diversions under the San-Juan Chama Project as early in the year as practical.

4. Weather Modification. New Mexico shall commit to providing reasonable financial support for weather modification operations in the San Juan River drainage.

SWCD encourages the CWCB to incorporate the above points in any recommendation to the Upper Colorado River Commission and/or the Bureau of Reclamation which endorses New Mexico's request to increase the HD for the Colorado River.

Thank you for your attention to this matter.

Sincerely,



Fred V. Kroeger, President

cc: John D'Antonio
Scott Balcomb
Don Schwindt
Randy Seaholm

EXHIBIT "B"

NEW MEXICO INTERSTATE ST

COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington
J. PHELPS WHITE, III, Vice-Chairman, Roswell
JOHN R. D'ANTONIO, JR., P.E., Secretary, Santa Fe
BUFORD HARRIS, Mesilla
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June 6, 2006

RECEIVED
JUN 08 2006
Colorado Water Conservation Board

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

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

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

Gentlemen:

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

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

Mr. Balcomb, Mr. Kuharich
May 6, 2006
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~~Division accepted this approach in the draft Hydrologic Determination as technically appropriate and sound.~~

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

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

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

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

Mr. Balcomb, Mr. Kuharich
May 6, 2006
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that the Program provides a reasonable and prudent alternative for Endangered Species Act compliance. Section 7 consultations rely on the Recovery Implementation Program for Endangered Species Act compliance by utilizing, among other things, the Program as the reasonable and prudent alternative. Water development projects in the San Juan River Basin in Colorado and New Mexico, while perhaps hindered by, have not been stopped, because of the Recovery Implementation Program's flow recommendations, or a project's inability to utilize the Recovery Implementation Program as a reasonable and prudent alternative for Endangered Species Act compliance. The Recovery Implementation Program, in total, is intended to provide the reasonable and prudent alternative to offset the depletion and other impacts of water development in the San Juan River Basin. New Mexico supports the continuation of the Recovery Implementation Program as a reasonable and prudent alternative to offset the impacts of water development in the basin in accordance with the program documents, including in particular the Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin adopted by the program on June 19, 2002. The Principles document also describes how the Recovery Implementation Program addresses and provides compliance for the "take" provisions of Section 9 of the Endangered Species Act. New Mexico further agrees that it will not use the Recovery Implementation Program, including the flow recommendations, to hinder or impair any future water development in the Colorado portion of the San Juan River Basin.

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

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

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


Mr. Balcomb, Mr. Kuharich
May 6, 2006
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Reclamation and the project contractors, so long as the San Juan-Chama Project yield is not adversely affected.

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

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

Sincerely,


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

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

JUNE 2006 DRAFT

RESOLUTION OF THE
~~UPPER COLORADO RIVER COMMISSION~~

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

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

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

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

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

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

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

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

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

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

WHEREAS, the US Bureau of Reclamation has presented to the Upper Colorado River Commission for its consideration a draft hydrologic determination, dated May 2006, that evaluates the availability of water from the Navajo Reservoir supply through 2060 and shows: (1) at least 5.76 million acre-feet of water is reasonably available annually for use by the Upper Basin, exclusive of reservoir evaporation at Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit reservoirs of the Colorado River Storage Project; and (2) sufficient water is reasonably likely to be available from the Navajo Reservoir supply to fulfill the proposed Settlement Contract for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project, in addition to existing Navajo Reservoir water supply contracts for other uses, under the allocations made to New Mexico in Articles III and XIV of the Upper Colorado River Basin Compact; and

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

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

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

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

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

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

WHEREAS, the Upper Colorado River Commission on June 19, 2003, resolved that: (1) "the States of Colorado, New Mexico, Utah and Wyoming, support and to the extent necessary consent to the diversion of water from the Upper Basin for use in the Lower Basin solely within New Mexico via the proposed Navajo-Gallup Water Supply Project; provided, that any water so diverted by said project to the Lower Basin portion of New Mexico, being a depletion of water at Lee Ferry, shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III (a) of the Upper Colorado River Compact;" and (2) "the Upper Colorado River Commission supports such Congressional action as may be necessary to authorize the Navajo-Gallup Water Supply Project."

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

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

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

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

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

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

CERTIFICATE

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

WITNESS my hand this _____ day of _____ 2006.

DON A. OSTLER
Executive Director and Secretary

Maynes, Bradford, Shipp & Sheftel, LLP
Attorneys at Law

THOMAS H. SHIPPS
JANICE C. SHEFTEL
PATRICIA A. HALL[†]
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CHARLES C. SPENCE[†]

BYRON V. BRADFORD (1907-1985)
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August 3, 2006

Sen. Wayne Allard
SD-521 Dirksen Senate Office Building
Washington DC 20510-0606

Re: Navajo Settlement Agreement

Dear Sen. Allard:

This firm represents the Southwestern Water Conservation District ("SWCD") which is statutorily charged with promoting the conservation, use and development of water in the nine-county area in Southwest Colorado served by the San Juan and Dolores Rivers. SWCD has recently been involved in negotiations with the States of New Mexico and Colorado regarding identifying water available to New Mexico under the Colorado River Compact ("CRC") and the Upper Colorado River Compact ("UCRC").

As part of the Navajo Settlement Agreement, it is our understanding that New Mexico will be seeking Congressional approval of the settlement agreement and authorization to construct the Navajo Gallup Water Pipeline ("NGP") which will supply much needed domestic water to the Navajo Nation. The water would come from the San Juan River and Navajo Reservoir. Under P.L. 87-483, the Secretary of the Interior must make a hydrologic determination ("HD") that sufficient water is available from Navajo Reservoir and the San Juan River and its tributaries before New Mexico may enter into any long term contracts for water delivery out of Navajo Reservoir. New Mexico asserts that the water currently identified under the 1988 HD has been fully allocated under existing contracts with New Mexico water users, and therefore has requested that the Secretary approve a new HD, based on the critical period reservoir evaporation calculations rather than the average annual evaporation rates used in the previous HD. This shift in consumptive use from evaporation to human uses and the inclusion of water from additional tributary reservoirs allows for the depletion of additional water from Navajo Reservoir sufficient

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to meet the needs of the NGP. The current HD indicates that there is approximately 6.0 maf of water available in the upper Colorado River Basin. The new HD indicates that approximately 6.0 maf remains available for consumptive use during the critical period of record. Under the UCRC, New Mexico is entitled to 11.25 percent of water available. Incorporating the reduction in reservoir evaporation during the critical period allows for an increase in human consumption in the revised HD of which approximately 25,000 af would be available to New Mexico or an amount sufficient to supply the NGP. Even though the amount of water that would be depleted during the critical period of record would not change, on average depletions throughout the entire Upper Colorado River Basin could increase by more than 200,000 af.

The Bureau of Reclamation requested that New Mexico submit its proposal for a new HD to the Upper Colorado River Commission ("Commission") before submitting it to the Secretary. New Mexico began that process by submitting its proposal for a new HD to the Commission's Engineering Committee. Subsequently the Colorado Water Conservation Board ("CWCB") considered the proposed HD in May. SWCD appeared at the CWCB meeting to express its concerns with a new HD. While SWCD supports the Navajo Settlement Agreement, it expressed concern that the increased water available to New Mexico under the new HD for the NGP all comes from the San Juan River Basin in Southwestern Colorado and adversely impacts water development in Colorado.

SWCD recommended the CWCB support the new HD if New Mexico were to provide certain assurances regarding its position on water development in Southwestern Colorado. See attached as Exhibit A, a copy of the May 9, 2006, SWCD letter to CWCB. The CWCB passed a resolution supporting the new HD but instructing its staff to continue negotiations with New Mexico and SWCD to attempt to reach an agreement acceptable to SWCD. Negotiations continued until the meeting of the Commission in Jackson, Wyoming in June. At the Commission meeting, New Mexico provided a draft letter to Scott Balcomb, Colorado's representative on the Commission, and Rod Kuharich, director of the CWCB, responding to SWCD's concerns. The final version of the New Mexico letter is attached as Exhibit B.

SWCD informed the Commission and New Mexico at the June meeting that although the New Mexico letter failed to provide the assurances SWCD had requested, SWCD remained supportive of the Navajo Settlement Agreement. However, SWCD indicated that it may actively pursue language to protect water development in Southwestern Colorado in any legislation approving the Navajo Settlement Agreement.

It is our understanding that Senator Pete Domenici is planning to introduce, in the very near future, legislation to approve the Navajo Settlement Agreement, which would include approval of the new HD, thereby identifying sufficient water supplies for the NGP. At its June 2006 meeting, the SWCD Board of Directors unanimously approved a resolution requesting that you, Sen. Allard and Rep. John Salazar include the following language in the Navajo Settlement legislation protecting water development in Southwestern Colorado:

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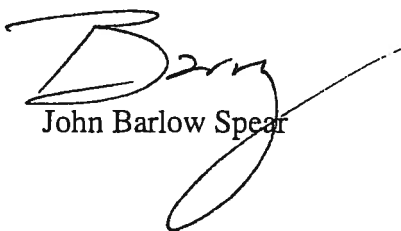
Any additional depletions to which New Mexico may be entitled under the hydrologic determination as stated herein shall not injure, impair, or deplete any existing or future beneficial uses of water within the State of Colorado, the use of which is within the apportionment made to the State of Colorado by article III of the Upper Colorado River Basin Compact, as provided by article IX of the Upper Colorado River Basin Compact." The hydrologic determination shall be subject to the completion of a mechanism under the San Juan River Basin Recovery Implementation Program which equitably provides for future water usage among the states within the San Juan River Basin.

The first sentence tracks similar language currently in P.L. 87-483, Section 8(b), for the San Juan-Chama Project and, therefore, should not be deemed surprising or objectionable by New Mexico. The second sentence provides that the San Juan River Recovery Implementation Program will continue to recognize development of water in both New Mexico and Colorado. SWCD believes that such language will help ensure protection for Colorado's use of water under the Compacts, while at the same time allowing for the approval of the Navajo Settlement Agreement and a domestic water supply for the Navajo Nation through the NGP. SWCD further seeks to be assured that the water available to New Mexico under the new HD shall be used only for the NGP and not any other purposes.

If you wish to discuss this further, I can be available, as well as members of the SWCD Board of Directors, and Lynn Herkenhoff, District Manager, and Steve Harris, the District's Consulting Engineer. We look forward to working with you to accomplish these protections for Colorado water.

Sincerely,

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP



John Barlow Spear

JBS:sps

cc: Sen. Pete Domenici
Dennis Strong, New Mexico Commissioner UCRC
John D'Antonio, New Mexico State Engineer
Don Ostler, Executive Director UCRC
Scott Balcomb, Colorado Commissioner UCRC
Rod Kuharich, Director CWCB
Hal Simpson, Colorado State Engineer
SWCD Board of Directors

THE SOUTHWESTERN WATER CONSERVATION DISTRICT

A Municipal District Organized Under State Law For Development And Conservation Of The Waters In The
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES

IN SOUTHWESTERN COLORADO

West Building — 841 Second Avenue

Post Office Box 475

DURANGO, COLORADO 81302

(970) 247-1302 • Fax (970) 259-8423

May 9, 2006

Rod Kuharich, Director
Colorado Water Conservation Board
1313 Sherman Street
Denver, Colorado 80203

Re: Upper Colorado River Hydrologic Determination

Dear Rod:

The Southwestern Water Conservation District ("SWCD") submits this letter to the Colorado Water Conservation Board ("CWCB") in response to the State of New Mexico's request for CWCB's support of a new hydrologic determination for the Colorado River ("HD"). SWCD has no objection to CWCB supporting the New Mexico request if certain considerations are accepted by New Mexico in regard to the San Juan River basin.

Increasing the HD for the Upper Basin of the Colorado River would theoretically imply more water is available to all of the Upper Basin states under the Upper Colorado River Compact. If the current hydrologic determination of 6.0 MAF/yr is increased to 6.23 to 6.28 MAF/yr to assist New Mexico in meeting its intrastate water demands, all the Upper Basin states would benefit in water available from the Colorado River on a pro-rata basis under the Upper Colorado River Compact. Therefore, Colorado as a whole, would benefit in that it would "receive" more water under its 51.75 percent share of Upper Basin Colorado River water.

SWCD's concerns, however, arise from the fact that the water which would provide New Mexico its 11.25 percent share of Upper Basin Colorado River water from the increased HD, estimated to be an increase of approximately 29,800 AF, would all come from the San Juan River basin. This could directly impact the water users and water availability in the nine county area served by SWCD. Since the increase in HD is to benefit all Colorado west slope basins, it must not restrict water use in southwest Colorado. Therefore, SWCD requests that the CWCB consider intra-Colorado protection for the San Juan River basin, in the unlikely event of a call on the Colorado River, when it considers approval of an increased HD to benefit New Mexico using water from the San Juan River basin.

In addition, SWCD requests the CWCB ease the impact of an increased HD on the San Juan River basin by supporting the New Mexico request if New Mexico agrees to the following:

1. San Juan River Basin Recovery Implementation Program. It is most important that the CWCB support of the increased HD include protections for Colorado in the San Juan River Basin Recovery Implementation Program ("SJRIP"). SWCD understands that NM may use most, if not all, of its additional Upper Basin Compact allocation under the new HD for the Navajo Gallup Project ("NGP"), which will provide water to Gallup, New Mexico, the Navajo Nation lands in New Mexico and the Jicarilla-Apache Reservation. Although SWCD supports the NGP, the additional depletions from the San Juan River Basin as a result of NGP, when evaluated against the SJRIP Flow Recommendations, may impair Colorado's ability to develop water in the San Juan River basin in Colorado. While the SJRIP was implemented allow development, future recommendations might be used to impair that ability. SWCD, therefore, requests that the CWCB agree to an increase in the HD, only if protections are provided to southwest Colorado water users preventing the Flow Recommendations of the SJRIP from impairing such development.

The SJRIP Hydrologic Model presently indicates that any further depletions in the San Juan River basin will prevent the existing Flow Recommendations from being met. While SJRIP was designed to protect development, meeting the Flow Recommendations is not required to obtain a successful Section 7 Consultation for a new water project: it is one factor in considering whether the SJRIP is making sufficient progress to allow the new depletion. The existing Flow Recommendations are now under review. Preliminary analysis indicates that the amount of allowed depletions under the Flow Recommendation may increase. The Bureau of Reclamation and consultants for the Navajo BIA are developing the new Flow Recommendations for consideration by the Biology and Coordination Committees of the SJRIP. The protections SWCD would suggest in order that Southwest Colorado receive an appropriate share of any increases in the depletions allowed by the Flow Recommendation include:

A. Any additional depletions available under the Flow Recommendations should be divided equally between New Mexico and Colorado. For example, if New Mexico is allowed to deplete its entire increase under the HD within the Flow Recommendations then the same amount of additional depletions should be reserved for future use under Section 7 Consultations for projects in southwest Colorado, and

B. Consistent with the terms of the Upper Colorado River Compact, New Mexico must agree not to impair Colorado's development of additional depletions in the San Juan River Basin under the SJRIP, federal permitting, or in any other manner.

2. La Plata River. New Mexico recently reversed its opposition to the construction of the Long Hollow Reservoir in the La Plata River basin by sending a letter to the U.S. Corps of Engineers supporting the construction of the reservoir. This reversal

is appreciated by SWCD as Long Hollow Reservoir will greatly assist in ensuring deliveries of water to New Mexico required under the La Plata River Compact, while allowing supplemental irrigation use in Colorado by exchange. Further commitment from New Mexico with regard to the La Plata River, however, is vital to Southwest Colorado. In addition to support of the Long Hollow Reservoir, New Mexico must agree that Colorado does not have to deliver water to New Mexico under the La Plata River Compact that will be used to fulfill water demands outside the La Plata River basin.

3. San Juan-Chama Project. New Mexico shall support the continuation of diversions under the San-Juan Chama Project as early in the year as practical.

4. Weather Modification. New Mexico shall commit to providing reasonable financial support for weather modification operations in the San Juan River drainage.

SWCD encourages the CWCB to incorporate the above points in any recommendation to the Upper Colorado River Commission and/or the Bureau of Reclamation which endorses New Mexico's request to increase the HD for the Colorado River.

Thank you for your attention to this matter.

Sincerely,



Fred V. Kroeger, President

cc: John D'Antonio
Scott Balcomb
Don Schwindt
Randy Seaholm

EXHIBIT "B"

NEW MEXICO INTERSTATE ST

COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington
J. PHELPS WHITE, III, Vice-Chairman, Roswell
JOHN R. D'ANTONIO, JR., P.E., Secretary, Santa Fe
BUFORD HARRIS, Mesilla
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JAMES WILCOX, Carlsbad



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SANTA FE, NEW MEXICO 87504-5102

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June 6, 2006

RECEIVED
JUN 08 2006
Colorado Water Conservation Board

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

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

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

Gentlemen:

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

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

Mr. Balcomb, Mr. Kuharich
May 6, 2006
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~~Division accepted this approach in the draft Hydrologic Determination as technically appropriate and sound.~~

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

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

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

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

Mr. Balcomb, Mr. Kuharich
May 6, 2006
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that the Program provides a reasonable and prudent alternative for Endangered Species Act compliance. Section 7 consultations rely on the Recovery Implementation Program for Endangered Species Act compliance by utilizing, among other things, the Program as the reasonable and prudent alternative. Water development projects in the San Juan River Basin in Colorado and New Mexico, while perhaps hindered by, have not been stopped, because of the Recovery Implementation Program's flow recommendations, or a project's inability to utilize the Recovery Implementation Program as a reasonable and prudent alternative for Endangered Species Act compliance. The Recovery Implementation Program, in total, is intended to provide the reasonable and prudent alternative to offset the depletion and other impacts of water development in the San Juan River Basin. New Mexico supports the continuation of the Recovery Implementation Program as a reasonable and prudent alternative to offset the impacts of water development in the basin in accordance with the program documents, including in particular the Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin adopted by the program on June 19, 2002. The Principles document also describes how the Recovery Implementation Program addresses and provides compliance for the "take" provisions of Section 9 of the Endangered Species Act. New Mexico further agrees that it will not use the Recovery Implementation Program, including the flow recommendations, to hinder or impair any future water development in the Colorado portion of the San Juan River Basin.

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

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

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

Mr. Balcomb, Mr. Kuharich
May 6, 2006
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Reclamation and the project contractors, so long as the San Juan-Chama Project yield is not adversely affected.

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

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

Sincerely,



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

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

JUNE 2006 DRAFT

**RESOLUTION OF THE
UPPER COLORADO RIVER COMMISSION**

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

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

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

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

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

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

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

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

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

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

WHEREAS, the US Bureau of Reclamation has presented to the Upper Colorado River Commission for its consideration a draft hydrologic determination, dated May 2006, that evaluates the availability of water from the Navajo Reservoir supply through 2060 and shows: (1) at least 5.76 million acre-feet of water is reasonably available annually for use by the Upper Basin, exclusive of reservoir evaporation at Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit reservoirs of the Colorado River Storage Project; and (2) sufficient water is reasonably likely to be available from the Navajo Reservoir supply to fulfill the proposed Settlement Contract for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project, in addition to existing Navajo Reservoir water supply contracts for other uses, under the allocations made to New Mexico in Articles III and XIV of the Upper Colorado River Basin Compact; and

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

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

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

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

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

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

WHEREAS, the Upper Colorado River Commission on June 19, 2003, resolved that: (1) "the States of Colorado, New Mexico, Utah and Wyoming, support and to the extent necessary consent to the diversion of water from the Upper Basin for use in the Lower Basin solely within New Mexico via the proposed Navajo-Gallup Water Supply Project; provided, that any water so diverted by said project to the Lower Basin portion of New Mexico, being a depletion of water at Lee Ferry, shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III (a) of the Upper Colorado River Compact;" and (2) "the Upper Colorado River Commission supports such Congressional action as may be necessary to authorize the Navajo-Gallup Water Supply Project."

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

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

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

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

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

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

CERTIFICATE

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

WITNESS my hand this _____ day of _____ 2006.

DON A. OSTLER
Executive Director and Secretary