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March 15, 2011

SENT VIA EMAIL: sfarris@ago.state.nm.us

Stephen R. Farris, Assistant Attorney General
Director of Water, Environment & Utilities Division
Office of the Attorney General
Post Office Drawer 1508
Santa Fe, NM 87504

RE: Interstate Stream Commission Annual Prioritization for the Strategic Water Reserve

Dear Mr. Farris:

The statute and regulations governing the Strategic Water Reserve require the Interstate Stream Commission (ISC) to annually determine river reach or ground water basin priorities after consultation with the State Engineer, the Attorney General and New Mexico's Interstate Compact Commissioners. § 72-14-3.3 (C); NMAC 19.25.14.9(A). As you recall, last year the Commission designated the Middle Rio Grande Basin, the Lower Rio Grande Basin and the Pecos River basin as priority river reaches for the Reserve. The purpose of this letter is to consult with you once again regarding recommended river reach priorities, and to provide an update of work accomplished during 2010. The river reach priorities will be presented to the Interstate Stream Commission at its March 23, 2011, meeting.

This year, agency staff will recommend that the ISC re-designate the Middle Rio Grande and the Pecos River Basins as priority basins for 2011. In addition, we will recommend designating the Canadian River Basin as a priority for 2011.

Middle Rio Grande Basin

The Middle Rio Grande Basin has been a priority basin each of the six years since passage of the Strategic Water Act in 2005, and the basin continues to be of critical importance to the ISC in its implementation of the Reserve. In 2010, the ISC focused its Reserve efforts on the following: negotiating a water rights Agreement with Intel Corporation; acquiring water rights to offset depletions related to habitat restoration; and, negotiating a water rights lease agreement with the Village of Los Lunas.

In 2010, the Middle Rio Grande Bureau devoted significant staff time and resources on two significant water rights acquisitions for the Reserve. The first proposed acquisition was between the ISC and Intel Corporation (Intel). The agreement, in relevant part, proposed that Intel transfer to the ISC 740.9 acre-feet per year of senior surface water rights and \$10 million dollars for use for the Middle Rio Grande Reserve. Unfortunately, the agreement was not consummated.

The second water rights acquisition involves a water rights lease agreement between the ISC and the Village of Los Lunas (Village). This agreement provides for the ISC to lease from the Village 1,000 acre-feet of pre-1907 Rio Grande surface water rights that had previously been transferred to the Village but are not needed by it in the near future. The ISC will make initial payment to the Village of \$80.00 per acre-foot for use of that portion of the water rights accepted by the State Engineer for transfer. The initial term of the agreement is ten years with the option to extend for two additional ten year terms subject to certain conditions. The transfer of these rights into the Reserve is expressly conditioned upon New Mexico State Engineer approval.

In addition, in 2010, the ISC attempted to initiate a program for leasing of pre-1907 agricultural water rights in the Middle Rio Grande from individual farmers. However, due to the complexity of the issue and the reduction in ISC staff, the agency has postponed the effort until staffing levels rise.

The ISC will continue to use water rights it has acquired for the Reserve for projects within the Middle Rio Grande. For example, the State Engineer has approved the transfer of water rights previously leased from the General Services Department to the ISC into the Reserve to offset depletions associated with its Atrisco Habitat Restoration Project and for other Strategic Water reserve initiatives in the Middle Rio Grande. This was the first State Engineer application filed by the ISC to transfer water rights into the Middle Rio Grande Reserve.

While the ISC made significant progress on its Middle Rio Grande Strategic Water Reserve last year, there continues to be a great need for the Reserve in the basin. Consequently, we believe it is essential to re-designate the Middle Rio Grande basin as a 2011 Strategic Water Reserve priority basin.

Lower Rio Grande

The ISC did not pursue water rights acquisitions in the Lower Rio Grande Basin in 2010 due to staffing reductions. However, the ISC continues to work with New Mexico State Parks and others at Broad Canyon Ranch to construct habitat for the endangered Southwestern Willow flycatcher and to ultimately acquire water rights, transfer them to the Reserve and use them on State Parks land for Strategic Water Reserve purposes. Currently, however, we do not have sufficient staff to pursue Lower Rio Grande Basin Strategic Water Reserve efforts in 2011. Therefore, the ISC is not requesting that the Lower Rio Grande Basin be designated as a priority basin in 2011 for the Strategic Water Reserve.

Pecos River Basin

As with the Rio Grande, the Pecos River Basin has also been a priority each year since the passage of the Act. The many issues supporting its continued designation remain of critical importance to the ISC in its implementation of the Strategic Water Reserve. In particular, the ISC continues to be very active in the search for long term solutions that support the Pecos River Compact, Amended United States Supreme Court Decree, the 2003 Pecos Settlement Agreement and Endangered Species Act compliance.

In 2010, the ISC continued its third year of operation of the Vaughan Conservation Pipeline Project in accordance with the Strategic Water Reserve Act for the purpose of augmenting Pecos River flows for the benefit of the threatened Pecos bluntnose shiner (shiner), while also protecting existing water rights owners. The Conservation Pipeline is capable of delivering approximately 1, 500 acre-feet of water to the Pecos River just above the "critical habitat" for the shiner. This water is made available by the ISC to the Bureau of Reclamation (Reclamation) pursuant to a supply contract. In 2008 and 2009, Reclamation purchased as much water as NMISC could pump; however, in 2010, due primarily to the availability of stored water at Sumner Reservoir (about 2,700 ac-ft), Reclamation decided to forgo using Vaughan water in order to avoid maintenance and utility costs. Thus, a total of only 24 acre-feet of Vaughan water was delivered to the Pecos River in 2010. The ISC will receive payment of \$174,260 from Reclamation for project operations in 2010 related to water that was set aside for Strategic Water Reserve purposes pursuant to §72-14-3.3(E).

Also in 2010, two projects were initiated to benefit Reserve objectives in the basin. First, an effort began to transfer to the Reserve 1,097 acres of water rights associated with the Bitter Lake National Wildlife Refuge. The United States Fish and Wildlife Service and the ISC have negotiated an agreement for use of those rights in the Strategic Water Reserve. The ISC anticipates execution of the agreement by spring 2011. Second, a water right owner on the Black River approached the ISC with a water rights lease proposal that would help prevent additional listings of threatened and endangered species and provide additional water to the state line to assist in Pecos Compact delivery obligations. The ISC is currently conducting preliminary due diligence on this proposed lease agreement.

While the ISC no longer has funding to purchase additional water rights in the Pecos River Basin, the Basin remains a priority for the Strategic Water Reserve both in terms of addressing endangered species issues and in implementing the Pecos River Settlement Agreement.

Canadian River Basin

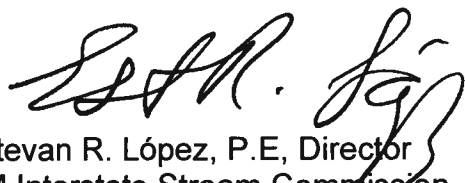
The ISC recommends that the Canadian River Basin be designated as a priority for the Strategic Water Reserve so that the State can more readily comply with endangered species obligations along the Canadian River, particularly below Ute Dam.

The ISC and OSE administer and manage surface water in the Canadian River Basin according to the Canadian River Compact and a State Engineer surface water permit that authorizes the ISC, in relevant part, to administer Ute Reservoir. In addition to these legal authorities, the ISC is charged with administering the State's obligations under the federal *Arkansas River Shiner Management Plan for the Canadian River from U.S. Highway 54 at Logan, NM to Lake Meredith, TX* (Arkansas Shiner Management Plan) a plan preserving habitat for the federal and state-listed endangered Arkansas River Shiner along a stretch of the Canadian River. During 2009 and 2010, the ISC restated and clarified the State's obligations under the Arkansas River Shiner Management Plan in accordance with Reclamation's environmental compliance activities associated with the Eastern New Mexico Rural Water System Project ("ENMRWSP"). According to the Arkansas River Shiner Management Plan and as restated in communications with Reclamation, the State's obligations along the Canadian River, immediately south of Ute Dam, include: (1) maintaining stream flows on the Canadian River below Ute Dam at existing levels, and (2) monitoring the fish population below Ute Dam to the State Line to guard against possible adverse impacts resulting from the ENMRWSP.

With the 2009 federal authorization of the ENMRWSP and anticipated construction of the ENMRWSP intake structure commencing in 2011 and concluding in 2013, the ISC recommends designating the Canadian River's reach below Ute Dam to the State Line as a priority basin in 2011 for the Strategic Water Reserve. By designating this stretch of river as a priority, the State signifies its continued commitment to the United States, Texas, and Oklahoma to protect Arkansas River Shiner habitat below Ute Dam, particularly as construction of the ENMRWSP intake commences and water begins to be withdrawn from Ute Reservoir. The designation also enables the State to take necessary actions to meet the obligations under the *Arkansas River Shiner Management Plan* and as stated in various federal documents on the ENMRWSP.

Thank you for your consideration of our recommendations regarding priority river reaches for the Strategic Water Reserve for 2011. Should you have any additional thoughts regarding prioritization, or the Reserve generally, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "E. R. Lopez".

Estevan R. López, P.E, Director
NM Interstate Stream Commission

ERL/Imt