

San Juan - ?
ALP

MEMORANDUM
April 7, 2000

To: Thomas C. Turney, State Engineer
From: John Whipple, Staff Engineer, ISC
Copy: Richard Cheney, Chairman, Interstate Stream Commission
Norman Gaume, Interstate Stream Engineer
Philip Mutz, Upper Colorado River Commissioner for New Mexico
Subject: Notes on Meeting with Environment Department Staff regarding its March 3, 2000, Letter of Comments on the Animás-La Plata Project DSEIS (attached)

The Lieutenant Governor yesterday requested the Environment Department Secretary to contact you to discuss the subject letter with the aim of resolving concerns expressed by the Chairman of the Interstate Stream Commission. You informed me of the Letter of Understanding signed by you and the Environment Department Secretary which provided for communication and cooperation between the Office of the State Engineer/Interstate Stream Commission and the Environment Department. At the invitation of the Environment Department Secretary, and with your concurrence, I today met with Department staff to discuss the subject letter, our concerns about the letter, and the activities in the San Juan River Basin related to the Animas-La Plata Project. At issue in the meeting were two statements made in the subject letter at page 2. My responses to each sentence are as follows:

- (1) "Only the non-structural alternatives (Alternatives 6 and 9) avoid this legal limitation."

The Environment Department asserts that the "legal limitation" refers to the inability for municipal and industrial projects to be exempted from the water quality standard related to sedimentation and described in the letter. If so, the statement in the letter is not correct. Both the structural and non-structural alternatives meet future municipal and industrial water demands. None of these alternatives would be eligible for an exemption from the standard.

I assert that the way the paragraph is written, "legal limitation" necessarily refers to the water quality standard itself. It is the standard, and not an exemption, that is a limitation. If so, my response is as described below.

- (2) "For the reasons explained above, implementation of the preferred alternative (Alternative 4) would probably violate New Mexico State law."

Any Animas-La Plata Project alternative, whether structural or non-structural, must meet state laws, including water quality standards, if it is to be implemented. The Bureau of Reclamation needs to evaluate whether the preferred alternative, or other alternatives, meet the standard related to sedimentation and described in the letter. The DSEIS does not present a sufficient site-specific technical analysis or discussion to conclude whether any alternative would or probably would violate the standard. Neither has the Environment Department prepared such analysis.

The Environment Department was to meet with you later today to discuss the possibility of submitting another letter to Reclamation on the Animas-La Plata Project DSEIS with only minor revisions. If the Environment Department is amenable to submitting a revised letter, the letter should bring to Reclamation's attention the water quality standard related to sedimentation and request that Reclamation evaluate alternatives for whether they meet the standard. The letter should make no conclusions regarding whether the preferred alternative or non-structural alternatives would, probably would or might violate the standard.

Environment Department staff appeared defensive of the subject letter and their conclusions that non-structural alternatives avoid a "legal limitation" and that the preferred alternative "would probably violate" the standard related to sedimentation. The Chief of the Surface Water Quality Bureau expressed dissatisfaction with me trying to influence the Environment Department's comments on the DSEIS, indicating that the proper process would be for Reclamation or the ISC to respond to the Department's comments after the public comment period for the DSEIS closes. He further stated that water quantity and quality are linked, inferring that new depletions necessarily result in declines in water quality, and that it is time that this needs to be incorporated into the decision-making process.

Environment Department staff would not discuss the ISC's concern that the comments and conclusions stated in the letter infer that no further municipal and industrial water uses could be developed in surface-water basins throughout the state. This inference results from the fact that such water development in these basins will increase or alter streamflow depletions, and consequently, in theory, sedimentation also. This is the letter's sole argument. However, sight-specific data and analyses are needed to determine whether the impacts of water development on sedimentation would result in "significant" alterations to the physical quality and biological productivity of the stream bottom. I suggested that this issue is one that may have to be dealt with between the State Engineer, the Environment Department Secretary and the Water Quality Control Commission, especially with respect to the intent of the standard and its possible impacts on the welfare of the State of New Mexico. Staff seemed to suggest that sedimentation theory alone might be sufficient to conclude that no further municipal and industrial water development might be appropriate. I suggest that any revised letter must recognize the need to conduct credible technical analyses before making conclusions regarding a water project's potential, probable or actual violations of water quality standards.

San Juan - 3
ALP



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
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Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
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PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

March 3, 2000

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

Dear Mr. Schumacher:

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

This transmits New Mexico Environment Department (NMED) staff comments concerning the above-referenced Draft Supplemental Environmental Impact Statement (DSEIS).

State of New Mexico Listed Streams

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

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

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

Pat Schumacher

March 3, 2000

Page 2

Preferred Alternative May Violate New Mexico State Law

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

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

The New Mexico Standards for Interstate and Intrastate Surface Waters (New Mexico Water Quality Control Commission, 2000) state that "surface waters of the State shall be free of water contaminants from other than natural causes that will settle and damage or impair the normal growth, function, or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom." This standard is exempt when the sediment is attributed to "the reasonable operation of irrigation or flood control facilities that are not subject to federal or state water pollution control permitting." This exemption may not apply to the preferred alternative because, as stated on page 1-11 of the DSEIS (section 1.4.3: Future Water Uses), "the proposed allocation of ALP Project water that the entities would obtain from the structural portion of the project would be restricted to M&I [municipal and industrial] applications." All but two alternatives would allocate Project water only to M&I uses (DSEIS Table 2-5: Summary of Alternatives). Only the non-structural alternatives (Alternatives 6 and 9) avoid this legal limitation.

For the reasons explained above, implementation of the preferred alternative (Alternative 4) would probably violate New Mexico State law.

References

State of New Mexico. 1998. *1998-2000 State of New Mexico Section 303(d) List for Assessed River/Stream Reaches Requiring Total Maximum Daily Loads (TMDL's) Final Record of Decision (ROD) for River/Stream Listings*. New Mexico Environment Department Surface Water Quality Bureau, Santa Fe, New Mexico.

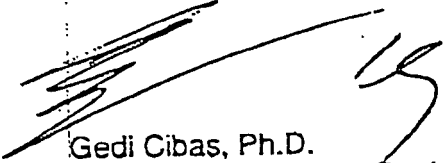
New Mexico Water Quality Control Commission. 2000. *State of New Mexico Standards for Interstate and Intrastate Surface Waters*. Filed with State Records Center January 24, 2000 as New Mexico Administrative Code (NMAC) Chapter 6.1, Effective February 23, 2000.

Leopold, L.B., M.G. Wolman, and J.P. Miller. 1964. *Fluvial Processes in Geomorphology*. M.H. Freeman and Company, San Francisco. 522 pp.

Pat Schumacher
March 3, 2000
Page 3

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

Sincerely,



Gedi Cibas, Ph.D.
Environmental Impact Review Coordinator

NMED File No. 1346ER

STATE OF COLORADO

Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
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*San Juan-6
RIP
copy:
San Juan-3
ALP*

Bill Owens
Governor

Greg E. Walcher
Executive Director

Peter H. Evans
CWC3 Director

Dan McAuliffe
Deputy Director

FAX COVER SHEET

To: *John Wipple*
Renne Lohoe Fener
Tom Pitts
Agency: *USF&WS*

Date: *4/3/2000*
505-827-6188
Fax #: *505-248-6460* ✓
970-667-8692 ✓

From: *Randy Seabolt*

Fax#: (303) 866-4474
Phone: (303) 866-3441

3 Pages transmitted, including this cover sheet

Renne,

Attached is the comment letter on ALP
from the Biology Committee. It was
inappropriate for the BC to send this without
concurrence of the Coordination Committee
which it clearly did not have. The BC
should send a letter retracting these
comments before the April 17th deadline.
Thank for your help on this.

Randy

Sending Operator

Original Mailed Yes No

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MAR 17 2000

CLASS _____

ORDER _____

PROJECT _____

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INDEXED _____

FILED _____

By: *B. Schumacher*

E. Johnson

R. Wald

K. Beck

K. Ash



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Mexico Fishery Resources Office
2105 Ocoma NE

Albuquerque, New Mexico 87113

Phone: 505/346-2538

Fax: 505/346-2537

17 March 2000

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

Dear Mr. Schumacher:

The Biology Committee of the San Juan River Recovery Implementation Program discussed issues regarding nonnative fishes reviewed in the Draft Supplemental Environmental Impact Statement, Volume 1 for the Animas - La Plata Project. While there was not consensus within the Committee regarding specific nonnative fish comments and the proposed mitigation, it is nonetheless important to inform the U.S. Bureau of Reclamation of the concerns discussed by the Biology Committee. The purpose of this correspondence is to provide you with comments and recommendations regarding information provided in Chapter 3, Affected Environment and Environmental Consequences, pages 3-98 through 3-101.

Statements in the last paragraph on page 3-98 and in the first full paragraph on page 3-99 indicate that mitigation of Animas River pumping into Ridges Basin Reservoir is either difficult (3-98) or cannot be done (3-99). It is then recommended that mitigation be applied elsewhere, e.g. the La Plata River. Reasons for the stated inability to mitigate impacts in the Animas River are not explained or substantiated. We fail to understand the rationale behind mitigation for impacts on native species in any stream other than where the impacts will occur. In this case, it does not seem reasonable to decrease flows in the Animas, negatively impacting native fish species and subsequently increase flows in the La Plata River for the benefit of native fishes. The Biology Committee is also concerned about the potential impact of nonnative fish as part of the proposed transfer of water from Ridges Basin Reservoir into the La Plata River. This transfer as part of the mitigation proposed for the Animas La Plata Project has the potential to carry nonnative fish from Ridges Basin Reservoir into the La Plata drainage.

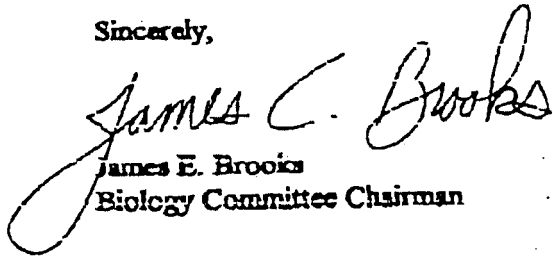
In the section, Refined Alternative 4 Aquatic Resources Impact 5, it is stated in the last paragraph on page 3-99 and top of page 3-100 that Reclamation does not believe that the entrainment of young

of year native fishes will be minor. This is based upon Reclamation's belief that successful reproduction by native fishes occurs primarily downstream of the proposed pumping plant site. Unlike Reclamation, several members of the Biology Committee believe this observation to be incorrect and it is not substantiated within this section. Native fishes are distributed throughout the Animas River upstream of the proposed pumping plant site. Thus, the impact will be more significant than indicated and should be addressed in mitigative measures (active and passive techniques for avoidance or minimization of entrainment).

The proposed establishment of a nonnative trout fishery in the proposed Ridges Basin Reservoir, as pointed out in the Draft Supplemental EIS, will likely result in the establishment of other nonnative fishes may also become established and threaten native fish communities in the Animas and San Juan rivers. It is proposed that screening to prevent escapement of nonnative fishes will be employed. The Biology Committee proposes that, rather than accept the inevitable establishment of non-target nonnative fishes in a recreation pool, Reclamation not deplete additional water from the Animas River for the purpose of maintaining a recreational pool in Ridges Basin Reservoir. The nonnative trout fishery that is proposed will be supported solely by hatchery stockings, is replaceable and does not require minimum pool considerations. Finally, the water not pumped from the Animas River can be used in the Animas River to mitigate for other impacts related to pumping.

In summary, the Biology Committee believes that there are an array of mitigation activities that can be accomplished within the Animas River to reduce impacts to the native fish community. Mitigation of Animas River impacts in other streams is not appropriate and does not address the potential impacts of pumping water from the Animas River.

Sincerely,



James E. Brooks
Biology Committee Chairman

cc: SJRIP Biology Committee members
SJRIP Coordination Committee members
SJRIP Coordinator

43
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San Juan - 3
ALP

TO: Chief of Staff John Podesta
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

RECEIVED March 22, 2000

'00 MAR 27 AM 11 06

FROM: Steve Cone and Verna Forbes Willson
P.O. Box 2778
Farmington, NM 87499-2778

SUBJECT: A-LP FREEDOM OF INFORMATION ACT
PIPELINE PROJECT - INDIAN WATER
RIGHTS. DISPARITIES CONCERNING

Dear Sir:

The Colorado Ute Indian Water Rights Settlement Act of 1988 piggybacked the Utes' 1986 Water Rights Final Agreement onto three participating projects authorized under the 1956 Colorado River Storage Act: the Florida Project, Dolores Project and Animas-La Plata Project (A-LP). That Agreement was stipulated - not adjudicated -- by a 1991 Colorado Water Court decree for project reserved rights with a 1938 priority date.

Entitlements of the Colorado Ute Tribes to vast amounts of water with senior water rights on the Animas and La Plata Rivers have never been established. The Department of the Interior (DOI), recently denied two Freedom of Information Act appeals (FOIA's 2000-09 and 2000-010) for documentation requested in October 1999 from the Bureau of Indian Affairs. The Keller-Bliesner Report contains factual and technical information prepared to assess the Ute Tribes' reserved doctrine rights pertinent to their 1986 Final Settlement Agreement. While DOI has provided no explanation of how those original Settlement quantities were "fixed", Interior officials have arranged to secretly and selectively amend that Agreement to the exclusion of bonafide stake holders (Earthjustice Legal Defense Fund FOIA 1998-C-026). A-LP is not an Indian-only Project; and Interior's actions only serve to confirm the absolute necessity for a legal finding of fact as to the priority and extent of the Utes legitimate water rights.

In approving the Settlement Act, Congress okayed the Ute Tribes' claims to reserved rights to water from McPhee and Vallecito Reservoirs, from the Mancos, Dolores, Piedra, San Juan and Florida Rivers; from Stollsteimer, Devil, Round Meadow and Cat Creeks, and from certain ground water sources. This water is currently available to the Utes and totals upwards of 150,000 acre feet per year (afy). Any water the Utes may realize from A-LP would be in addition to that amount.

A-LP's current DSEIS specifically states in its "preferred" alternative that insufficient water will be available for completion of the participating Navajo Nation's long-awaited and sorely-needed Navajo-Gallup Pipeline Project. The Navajos can prove beneficial use for water quantified in that project. The promised water would supply twenty of their neediest reservation communities, and also provide for numerous low-income minority families in the City of Gallup.

The Winters Doctrine holds that water rights in sufficient quantity to fulfill the purposes of a reservation are impliedly reserved for the benefit of Indians at the time the reservation is created. However, the Upper Colorado River Basin Compact of 1948 states, in Article III (b)(2) that "beneficial use is the basis, the measure and the limit of the right to use (water)". Therefore, it is apparent that water from any source within that Basin cannot be allocated to anyone, including the Tribes, until it has been qualified and quantified, proved to be of beneficial use, and adjudicated in a State Court of competent jurisdiction. Significantly, speculation in water and holding water for speculation is illegal in Colorado.

The Colorado Ute Tribes continue to fail in any public process to accurately quantify or demonstrate an ability to beneficially use all of their A-LP reserved water rights under the Settlement Act. In A-LP's current DSEIS, their hypothetical non-binding use scenarios evidence purely speculative intentions.

What the Congressionally-sanctioned Settlement Act fails to do and what Congress itself is powerless to accomplish, is an adjudication of Ute water right claims. Adjudication is a legal action requiring an applicant

to gain a right by proving to the court a beneficial use for the requested or claimed water. A number of Twentieth Century court cases set this precedent, i.e.:

"Determination of beneficial use is a question of fact"; "No matter how early a person's priority of appropriation may be, he is not entitled to receive more water than is necessary for his actual use," (Both from Jicarilla Apache Tribe v. United States, 1981) Also, "...the measure of a reserved water right is only the 'practicably irrigable acreage' of the reservation in accordance with the stated purpose of the law or executive order which created the reservation." (Arizona v. California, 1963)

The Colorado Ute Tribes claim 2,105 square miles of reservation land on which live their 3,376 members (675 average families). Yet Congress has already allowed them to exercise reserved rights to some 150,000 afy of water without requiring a public delineation of its beneficial use.

Contrast that overabundance of water to the arid situation of the Utes' Navajo Nation neighbors. The Navajos have a population estimated in 1997 at 170,259 individuals (about 34,000 average families) living on their 26,897 square mile reservation. The Navajos can present concrete proof of the beneficial use to which twenty of their communities could put the water long promised them from the Navajo-Gallup Pipeline Project. But A-LP's currently fashionable "preferred" alternative version denies sufficient water for that project. Thus, the Navajos' Trust Asset reserved rights to water for the Navajo-Gallup Pipeline Project would be subverted by this A-LP configuration. In fact, the DOI with the Utes as co-lead are misusing the NEPA process to betray the Navajo Trust by denying these A-LP participants equal justice and opportunity to benefit from their legitimate claims.

It should be noted that the Navajo Nation's treaty dates to 1868, just as does that of the Utes. An obvious difference between these treaties is that the Navajos' historic right to water, with that priority date and in accordance with the Winters Doctrine, has never been the subject of controversy, whereas that of the Utes is insupportable. It is the Supreme Court's *res judicata* ruling against the Southern Utes in 1971 which absolutely bars them from winning an 1868 early-priority date in an adjudication.

The basic human rights of Navajo people are jeopardized by terms of the latest A-LP version and by Colorado Congressman Scott McInnis' HR3112. That Bill does mirror some of the Administration's "preferred" alternative in that both fail to include a required cost-benefit analysis. But HR3112 also threatens to heavily impact future Federal budgets because it involves an unprecedented abrogation of Reclamation law by fully subsidizing mandatory repayment obligations for M&I project water.

It is the Executive's primary responsibility, Mr. Podesta, to make certain that such grave injustice and brazen efforts to flout Federal statutes are fully exposed and roundly rejected. Now is the time to return A-LP and HR3112 to their authors with the unequivocal message that no Federal funds are to be expended on any Project alternative which treats and creates a special class of people exempt from State and Federal laws.

Respectfully,

Verna Forbes Willson
Verna Forbes Willson and

Judy Johnson
Wizacete Kaime

Helen Robinson

Allen H. Utton

Joy Munkres

Steven E. Cone

Steve Cone (members, Four Corners Action Coalition)

William A. Utton James Dale
Rocky Mtn Chapter
SIERRA CLUB

Bob M. Brown

Jason Utton
Jake Utton

Leo Epstein

James C. Jacques - CITIZEN'S ACTIONING ALLIANCE
Derek Epstein

copies to:

Carol Browner, Environmental Protection Agency
George T. Frampton, Acting Chair, Council on Environmental Quality
Kelsey A. Begaye, President of The Navajo Nation
Loretta Tuell, Director of the Office of the American Indian Trust
Mary Settle, U.S. EPA Office of Environmental Justice
Kevin Gover, Assistant Secretary, Bureau of Indian Affairs
Eloise Chicharello, Regional Director, Eastern Navajo Agency, BIA
Bruce Babbitt, Secretary of the Department of the Interior
John Leshy, Interior Solicitor
Eluid Martinez, Director, Bureau of Reclamation
Senator Pete Domenici
Senator Jeff Bingaman
Representative Tom Udall
Representative Heather Wilson
Senator Ben Nighthorse Campbell
Senator Wayne Allard
Representative Diana DeGette
Representative Mark Udall
Representative Scott McInnis
Representative Bob Schaffer
Representative Joel Hefley
Representative Thomas Tancredo
Ken Salazar, Colorado Attorney General
Tom Turney, State Engineer, New Mexico
Earthjustice Legal Defense Fund
Taxpayers for the Animas River
Friends of the Earth
Taxpayers for Common Sense
Citizens' Progressive Alliance
The Sierra Club
The Navajo Times
The Gallup Independent
The Albuquerque Journal
Counter Punch Magazine
Roll Call Magazine
Larry Di Giovanni
Farmington Daily Times
Durango Herald
Rocky Mountain news
Denver Post
Westword

contact: (505) 326-2417
www.angelfire.com/al/alpcentral

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
INDIAN WATER RIGHTS SETTLEMENTS,
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT,
and construction of
THE ANIMAS-LA PLATA PROJECT
Washington, D.C.
March 14, 2000

WHEREAS, the Western States Water Council has consistently supported negotiated settlement of Indian water rights disputes; and

WHEREAS, the public interest and sound public policy require the resolution of Indian water rights claims in a manner that is least disruptive to existing uses of water; and

WHEREAS, negotiated quantification of Indian water rights claims is a highly desirable process which can achieve quantifications fairly, efficiently, and with the least cost; and

WHEREAS, the advantages of negotiated settlements include: (i) the ability to be flexible and to tailor solutions to the unique circumstances of each situation; (ii) the ability to promote conservation and sound water management practices; and (iii) the ability to establish the basis for cooperative partnerships between Indian and non-Indian communities; and

WHEREAS, the successful resolution of certain claims may require "physical solutions," such as development of federal water projects and improved water delivery and application techniques; and

WHEREAS, the United States has developed many major water projects that compete for use of waters claimed by Indians and non-Indians, and has a responsibility to both to assist in resolving such conflicts; and

WHEREAS, Congress recently approved and the President signed the Rocky Boys Settlement in Montana; and

WHEREAS, the Colorado Ute Indian Water Rights Final Settlement Agreement (Settlement Agreement), executed on December 10, 1986, resolved all of the reserved water rights claims of the two Colorado Ute Indian Tribes in a way that produced comity and cooperation; and

WHEREAS, the Animas-La Plata Project (ALP) and the allocation of a significant portion of the project's water supply to the two Tribes are essential features of the Settlement Agreement; and

WHEREAS, the U.S. Congress authorized ALP construction in 1968 as an integral part of the Colorado River Storage Project, and again renewed support for the project when it ratified the Settlement Agreement by passage of the Colorado Ute Indian Water Rights Settlement Act of 1988; and

WHEREAS, HR 3112 has been introduced to authorize construction of a modified ALP and to revise the terms of the Settlement Act of 1988; and

WHEREAS, the State of Colorado, the two Colorado Ute Indian Tribes and their non-Indian neighbors have endorsed a modified ALP proposal; and

WHEREAS, the U.S. Fish and Wildlife Service has favorably completed its consultation under the Endangered Species Act on the modified ALP and the Bureau of Reclamation has completed two supplemental EIS's which evaluated the impacts of ALP construction and both have supported a structural alternative.

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council reiterates its support for the policy of encouraging negotiated settlements of Indian water rights disputes as the best solution to a critical problem that affects almost all of the Western States; and

BE IT FURTHER RESOLVED, that in light of the fact that HR 3112, which authorizes the modified ALP, is before the Congress, and other settlements are in the process of being finalized, the Western States Water Council calls upon the Congress, the President, and the Secretary of the Interior to promote and encourage negotiated settlements of Indian water rights disputes and assist in their implementation as appropriate.

NEW MEXICO INTERSTATE STREAM COMMISSION

*San Juan - 1
Gla. Comp.*

COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington
HAL E. ENGLE, Vice-Chairman, Rociada
THOMAS C. TURNEY, PE, Secretary, Santa Fe
PALEMÓN A. MARTÍNEZ, Valdez
HOYT PATTISON, Clovis
JOHN S. BULSTERBAUM, Deming
PHILIP R. GRANT, Albuquerque
HAROLD HOUGHTALING, Jr., Lake Arthur
NARENDRA N. GUNAJI, Las Cruces



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April 5, 2000

Mr. Curtis Schrader, Planner
Northwest New Mexico Council of Governments
224 West Coal Avenue
Gallup, New Mexico 87301

Dear Mr. Schrader:

This letter is in response to Patricia Lundstrom's undated letter to me requesting information on the San Juan-Chama Project and the Colorado River Compact for use in water planning for the City of Farmington.

The San Juan-Chama Project is essentially complete. The Project diverts water from tributaries to the San Juan River in Colorado and transports it to Heron Reservoir in the Rio Grande Basin. The annual yield of the Project at Heron Dam after losses and evaporation is 96,200 acre-feet, of which all but 4,990 acre-feet is contracted. Annual diversions from the San Juan River Basin by the Project will average up to 110,000 acre-feet per year in the long term, though Project diversions in any given year will fluctuate substantially above and below the average.

It is not appropriate at this time for the Interstate Stream Commission to speculate on the outcome and impacts of current litigation regarding the Bureau of Reclamation's operation of Heron Dam. Nor is it appropriate to speculate about possible future litigation on the San Juan-Chama Project, the Colorado River Compact or the Upper Colorado River Basin Compact. The Commission anticipates, however, that further water development in the San Juan River Basin by completion of the Navajo Indian Irrigation Project, the Navajo-Gallup Water Supply Project, the Animas-La Plata Project and use by the Jicarilla Apache Tribe will utilize much, if not all, of the remaining amount of New Mexico's Compact apportionment that is now unused.

Please feel free to call me if you have any questions regarding these matters.

Sincerely,

John Whipple
Staff Engineer

jrb/sanjuan/curtisschrader.f00

OSE-2041

San Juan -
ALP



PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

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Fax: (505) 827-2836



GARY E. JOHNSON
GOVERNOR

March 3, 2000

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

Dear Mr. Schumacher:

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

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

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Preferred Alternative May Violate New Mexico State Law

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

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

The New Mexico Standards for Interstate and Intrastate Surface Waters (New Mexico Water Quality Control Commission, 2000) state that "surface waters of the State shall be free of water contaminants from other than natural causes that will settle and damage or impair the normal growth, function, or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom." This standard is exempt when the sediment is attributed to "the reasonable operation of irrigation or flood control facilities that are not subject to federal or state water pollution control permitting." This exemption may not apply to the preferred alternative because, as stated on page 1-11 of the DSEIS (section 1.4.3: Future Water Uses), "the proposed allocation of ALP Project water that the entities would obtain from the structural portion of the project would be restricted to M&I [municipal and industrial] applications." All but two alternatives would allocate Project water only to M&I uses (DSEIS Table 2-5: Summary of Alternatives). Only the non-structural alternatives (Alternatives 6 and 9) avoid this legal limitation.

For the reasons explained above, implementation of the preferred alternative (Alternative 4) would probably violate New Mexico State law.

References

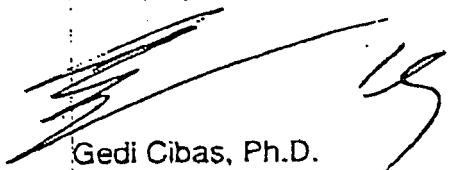
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We appreciate the opportunity to comment on this document. Please let us know if you have any questions on the above.

Sincerely,



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NMED File No. 1346ER