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Navajo Settlement

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June 26, 2007

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

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