

X. Individuals

Introduction

Except for suggested editorial revisions or broad expressions of support or nonsupport or approval or disapproval, individuals commenting on the Navajo Reservoir Operations DEIS expressed concern in the general areas summarized below.

Issues Raised

- About one-fourth of respondents commented either about alternatives formulation and selection or about impacts to the trout fishery and associated economic effects.
- One-third of the comments concerned perceived limitations of the Flow Recommendations or endangered fish recovery program; the hydrology model or project-related baselines; water quality impacts analysis; or issues concerning diversions and water rights, the Low Flow Test, or the DEIS itself.
- The remainder of comments covered a broad range, from concern about costs and taxes, to those centering on socioeconomic impacts in general and Indian water rights or claims.

Individuals Included (by Surname)

Bains	Garling	Mills
Bliss	Giovanini	Monroe
Bubala	Hall	Ray
Burkhead	Hanbury	Schuman
Calmus	Hargreaves	Sharpe
Carlson	Haxton	Sherrill
Channer	Haxton	Slade
Cole	Horn	Smith
Cone	Hubert	Sproul
Crawford	Johnson	Thompson
Crawford	Kanouse	Tucker
Dzina	King	
Ellison	Klein	
Engelman	Loud	
Englert	Malenich	
Fitz	McClellan	
Floyd	McNall	
Ford	McNall	

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BRADLEY H. BAINS
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Writer's Direct Fax #: (915) 484-3103
Email: bbains@cbtd.com

December 2, 2002

Bureau of Reclamation
Attn: Mr. Ken Beck
Western Colorado Area Office, Southern Division
835 East Second Ave., Suite 300
Durango, CO 81301

Dear Mr. Beck:

I urge the Bureau of Reclamation to withdraw immediately its plans to re-operate Navajo Dam based on serious flaws in the Draft Environmental Impact Statement in accordance with the National Environmental Protection Act and the Endangered Species Act because:

1. The Bureau promotes the 250/5000 Alternative (preferred alternative) (flow recommendations) throughout the DEIS. Does the DEIS have a predetermined outcome that has already been determined within the NEPA process for the ALP Project? Should the analysis for the modified operation of Navajo Reservoir be included within the EIS for the ALP Project and all the negative impacts be included as costs of the ALP Project, instead of the ALP Project being a benefit of the Navajo Reservoir Operations?
2. The DEIS lacks feasible and reasonable alternatives that are economically and technologically feasible as well as options that are both within and without the jurisdiction of the Federal Agency leading the project. In a comment on the Low Flow Test, there was an alternative put forth by Trout Unlimited that NIIP water be sent down the river and pumped out after the Animas River Confluence. Why wouldn't this alternative be a viable alternative? If a 500/5,000 Alternative was considered viable, then why wasn't a 350 or 450/5000 Alternative, a 250 variable/4,500 Alternative, or a 250-500 (irrigation season)/4,500 Alternative considered? Why doesn't the 250 Variable/5,000 Alternative meet the flow requirements and what is the difference between this alternative and the preferred 250/5,000 Alternative? How can the 250 Variable/ 5,000 Alternative result in insufficient reservoir storage with a variable of 250-500 cfs, while the Preferred Alternative with a variable of 250-900 does not? If the

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IN1-1 Please see the response to General Comment 10.

IN1-2 Please see response to General Comment 5.

Bureau of Reclamation
 Attn: Mr. Ken Beck
 December 2, 2002
 Page 2

Preferred Alternative has a wider range of variability then it would appear that the 250 variable/5,000 alternative would result in more reservoir storage than the preferred alternative. Why was the 250 Variable/ 5,000 Alternative eliminated? Why does the 250 Variable/5,000 Alternative, which was developed to minimize impacts to downstream water users, not do so in the summary table? Why is the 500/5000 Alternative considered a viable alternative if the 250 variable/5,000 Alternative is not considered viable? Are the analysis of the alternatives consistent and reasonable?

2 cont.

3. Flow Recommendations, future water development, NIIP Completion and the ALP Project are used throughout the DEIS. However, does the Bureau really believe this document is easy to understand and does not confuse the reader? Where within the DEIS is the Flow recommendations which are referred to numerous times, defined or mentioned? In the long term, when full water development occurs and there is no flexibility in the 250/5,000 Alternative, how will the target flows of 500 cfs set forth in the Flow Recommendations be met below Farmington? Where are the issues mentioned in the Low Flow Test addressed within this DEIS? Flexibility within the Preferred Alternative 'e' is dependent upon water that is currently not used. What are the expected impacts after this water is fully developed? Who will suffer these impacts and how significant will they be to that individual and the local economy? Will the Preferred Alternative still meet the flow recommendations without flexibility? If not, who will have to forfeit their water rights to meet the target flows and how will this affect the agricultural industry and related economy? How will the ALP Project affect the target flows for the endangered fish? This is not fully explained within the DEIS.

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4. The Bureau's NEPA Handbook says an impact analysis should include at least the following items: the direct effects and their significance; the indirect effects and their significance; quantification of the impact (when possible); mitigation for the impact; the resultant net, or residual, impact. Economic entities have a threshold in which they cannot afford to keep doing business. This threshold was not identified and merits further study to assess the total economic impacts of this federal action. What mitigation measure does the Bureau propose for the damage done to the recreation industry? How does the Bureau justify the assumption that reduction in trout habitat and angler days are linearly related, in the worst-case scenario? With the numerous identified impacts to the fishery, are the assumptions for loss of angler days objectively determined? Was the economic model (IMPLAN-which uses national purchasing coefficients) modified to objectively estimate the impacts to the local economy? What scientific evidence does the Bureau have to show that a limited 7-day summer low flow test is sufficient to determine the total impacts to the fishery? And lastly, it is unclear from the DEIS what possible irreversible and irretrievable resource commitments will be with the implementation of the Preferred Alternative, would the Bureau please identify these commitments and reopen the public comment period? If additional research is needed, as stated in the DEIS, why shouldn't this research be included before committing to the Preferred Alternative? I look forward to your reply.

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- IN1-3 Please see the response to General Comment 1. Also see the biological assessment in Vol II for information on the Flow Recommendations.
- IN1-4 Flexibility as discussed in the FEIS and General Comment 11 will reduce impacts; however, as future water development occurs, this flexibility will diminish. Because of this, the EIS presents long-term impacts which will occur without flexibility.
- IN1-5 Yes, the Preferred Alternative will meet the Flow Recommendations without flexibility. Flows in the Animas River have a direct impact on Navajo Dam releases. The Flow Recommendations state that maintaining low, stable base flows is important in enhancing nursery habitat conditions during summer, fall and winter periods for the Colorado pikeminnow and razorback sucker. San Juan River base flows will be monitored within the designated critical habitat to assure flow levels above 500 cfs. When flows in the Animas River are high, releases from Navajo Dam will be reduced in order to maintain base flows at the desired level. The opposite is true when the Animas River flows are low - Navajo Dam releases will be increased accordingly. Please also see response to General Comment 11.
- IN1-6 Please see the response to General Comment 31.
- IN1-7 Please see the responses to General Comments 2, 29, and 30.
- IN1-8 Please see the response to General Comment 30.
- IN1-9 Please see the response to General Comment 31.
- IN1-10 Please see the response to General Comment 22. Also, irreversible and irretrievable impacts are discussed in the summary at the end of Chapter III.
- IN1-11 Please see the response to General Comment 1a.

INDIVIDUALS - Comments and Responses

Bureau of Reclamation
Attn: Mr. Ken Beck
December 2, 2002
Page 3

Sincerely,


Bradley H. Bains

BHB:rc

INDIVIDUALS - Comments and Responses

December 3, 2002

Mr. Ken Beck
BOR
835 E. Second Avenue #400
Durango, CO 81301

Dear Mr. Beck,

Please do not consider reducing flows in the San Juan River to 250 CFS. This would be devastating to all the businesses and individuals with a huge investment in this wonderful trout fishery admired world-wide.

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IN2-1 Please see the response to General Comment 27.

The agricultural interests would take a huge hit if these low flows were in place during the irrigation season. You could jeopardize the whole San Juan river area. What are you thinking?

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IN2-2 Please see the response to General Comment 31d.

Please maintain the 500/5000 flow minimum/maximum flow presently in place which works fine.

Sincerely,

Barbara Bliss Bruce Bliss

Barbara and Bruce Bliss
120 E. Alameda
Santa Fe, NM 87501

October 6, 2002

Ken Beck
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 400
Durango, CO 81301

RE: Comments about Draft EIS for the Operation of Navajo Reservoir

Mr. Beck,

We share our support of the San Juan Citizens Alliance's analysis of the Draft EIS.

Given the information in the Draft, the 500/5000 flow regime better meets the full range of uses of the resource and produces the most benefits for the full range of users. However, the Draft EIS is not sufficient. It does not adequately assess the environmental, or the economic long-term effects of the proposed action on water quality, non-native fish habitat, the economic effects on the Navajo Indian Irrigation Project, and the economic effects on the rafting industry.

Our specific concerns are:

- * The EIS is seriously flawed in that it does not truly evaluate more than one alternative.
- * The No Action and the 500/5000 alternatives, which are not recommended, are not fully compared to the preferred alternative.
- * Arbitrary assumptions about the operation of the Navajo Indian Irrigation Project preclude a proper comparative economic analysis of the alternatives. The assumption that causes any possible, shortage no matter how small, to this project to be considered a prohibiting delivery to 56,138 acres and a loss to the economy of over \$40 million per year does not make sense.
- * The short duration of the low flow test eliminates any scientific analysis of the effects of long-term flow changes on water quality and habitat. The listing of additional segments on the New Mexico 303(D) list, which might be caused by lower flows, are not considered as they relate to costs that might be incurred by local water treatment facilities or by NPDES permit holders.
- * The assumptions made about supply and demand on the rafting industry eliminate any detailed analysis of impacts on that sector of the economy.

Please update the EIS to recognize these concerns and others raised by the San Juan Citizens Alliance.

Thank you,

Lou Bubala, Jill Strawder-Bubala & Louis Bubala
1728 Columbia St.
Eugene, OR 97403

- IN3-1 Please see the responses to General Comments 3, 23, 31, and 32.
- IN3-2 Please see the response to General Comment 5.
- IN3-3 Please see the responses to General Comments 3 and 7.
- IN3-4 Please see responses to General Comments 1b and c.
- IN3-5 Please see the responses to General Comments 22 and 28 which discuss the low flow test and trout fishery impacts.
- IN3-6 Please see General Comment 23.
- IN3-7 Please see the response to General Comment 32.

From: "Lynn & Charissa Burkhead" <burkhead5@sboglobal.net>
To: <navcomments@uc.usbr.gov>
Date: Tue, Dec 3, 2002 8:56 AM
Subject: Public comment on Navajo Dam and San Juan River flows

December 3, 2002

Bureau of Reclamation
Attn: Mr. Ken Beck
Western Colorado Area Office, Southern Division
835 East Second Avenue, Suite 300
Durango, Colorado 81301
Dear Mr. Beck,

I understand that the deadline for public comment is December 4, 2002. Please carefully consider my comments made on Tuesday, December 3, 2002 concerning this vital issue.

PLEASE leave the flows on the San Juan River as they currently are. The San Juan River in New Mexico is one of the finest tailwater trout fisheries anywhere in the nation! Let's not screw it up. Let me remind you that the 4.25 miles of San Juan River quality water below the Navajo Dam holds more than 80,000 trout. An average San Juan River trout is 17-inches and fish over 20-inches are abundant. Those are world class trout numbers!

Should the flows be lowered, a number of negative effects could take place. I understand that those negative effects will likely include less habitat for all fish, less habitat for wildlife, higher water pollution, higher utility costs, higher water treatment costs, and higher irrigation fees.

There will also likely be fewer tourist dollars being pumped into the area. This year, I made a trip from my North Texas home to the San Juan River to fly fish for trout with a good friend. I plan to make a similar trip or two in 2003. During my recent visit, my fly fishing buddy and I rented a car, paid for two nights lodging, and bought gas to/from the Albuquerque airport. I also purchased a NM fishing license, bought a new landing net, new flies, new leaders, new tippets, and souvenirs for my children. That's in addition to our meals and gratuities.

I understand that the lower flows have the potential to cause the loss of as much as \$3.1 million in economic revenue and the potential loss of up to 80 jobs in the region due to reduced lodging, automobile rentals, eating, and angling recreation.

Mr. Beck, water politics has already destroyed one premiere western tailwater trout fishery, the Dolores River in nearby Colorado. This former blue ribbon trout fishery is virtually non-existent today with water flows below 20 CFS. I join thousands of other anglers from around the country and urge you and your agency not to deal a similar fate to the San Juan River.

Please do the right thing this time and leave the San Juan River flows as they are...or even improve them and help make a great trout fishing resource even better. I am counting on being able to share this magnificent angling resource with my children one day soon and I urge you to keep the San Juan River flows trout friendly!

Thank you for your time and consideration in this matter. May you and those close to you enjoy a very merry Christmas and a prosperous New Year.

Sincerely,

Lynn Burkhead

IN4-1 Please see the response to General Comment 31.

INDIVIDUALS - Comments and Responses

630 S. Hyde Park Ave.
Denison, Texas 75020
(903) 821-5500

CC: "Lynn Burkhead" <lynn@smoutdoors.com>, <drodgers@gradall.com>, <shollens@gunterisd.org>

From: Ed Calmus <ecalmus@du.edu>
To: <kbeck@uc.usbr.gov>
Date: 11/26/02 9:00AM
Subject: San Juan Minimum Flows

Dear Mr. Beck,

Although I have never written the Bureau before, I am writing to implore you to reconsider the option of 250 CFS minimum stream flows for the San Juan tailwater below Navajo Dam. This stream is a national treasure, and it affords a recreational opportunity unique in the US. The Bureau's 250 CFS minimum flow proposal will decrease trout habitat by 34%. With low flows, water quality will also suffer. All of this will have a major negative effect on the area's tourist economy, which benefits greatly from the world-class fishery.

Also, the native warm water fish habitat upstream from Farmington will be negatively affected.

Finally, some of the proposed water developments that you are trying to accommodate may not come on line for years, if ever.

Please come to a compromise that would maintain minimum flows at least in the 400 CFS range. It would be a travesty to sacrifice this world-class fishery, when a compromise could maintain what we have today and still allow us to plan a positive future.

Ed Calmus, Director of Business Services
University of Denver
2467 S. Vine St.
Denver, CO 80208
Ph. 303.871.4200
Fax 303.871.2250

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- IN5-1 Please see response to General Comment 5.
- IN5-2 Reclamation agrees that long-term reduction in usable physical habitat below the Quality Waters section of the San Juan River could adversely impact warm water fish species. Still, these species are much more tolerant of poorer water quality and low flows than are trout, so the effect would not be as severe as it would to trout; however, some adverse impacts are likely to occur.
- IN5-3 Please see the response to General Comment 11.

From: "Rick Carlson" <rjcarlson@animas.net>
To: <kbeck@uc.usbr.gov>
Date: 11/27/02 9:45AM
Subject: Navajo River Operations

Dear Ken:

Subject: Subject: DEIS No. DES-02-35
Navajo Reservoir Operations

I am in total opposition to the preferred alternative as defined by the Draft EIS. I could support the 500/5000 alternative!

1. The socioeconomic impact to LaPlata and Montezuma Counties has been grossly underestimated. Based on information from American Sportfishing Association, NM State Parks and Durango Area Chamber of Commerce, I would expect this to have a negative economic impact to Durango and LaPlata county of between \$4.5 and \$10 million.

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2. Reducing the trout habitat to the 250cfs flow will have the effect of reducing trout populations and concentrating anglers resulting in the substantial decline in the quality of the fishing and fishing experience. This will substantially cut the number of out of state angler/days.

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3. The impact to this world class fishery and the subsequent socioeconomic impacts are grossly under-appreciated.

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This is not a case of the trout versus the endangered fish. It seems that water development trumps all concerns about trout and fisheries.

I would appreciate a reply to this letter.

Sincerely,

Rick Carlson
18 Falcon Way
Durango, CO 81301
970-946-1755

IN6-1 Please see the response to General Comment 31e which discusses economic impacts.

IN6-2 Please see the responses to General Comments 27, 28, and 29.

IN6-3 Please see the responses to General Comments 27 and 29.

From: channer <channer@frontier.net>
To: <navcomments@uc.usbr.gov>
Date: Fri, Nov 29, 2002 6:37 AM
Subject: San Juan flows

Mr. Beck;
I would like to go on record as being against the prosed 250/5000 flow regime being considered for the San Juan River. I don't think the study has taken into account the loss of habitat for the trout which have become a significant part of the economy of the 4 Corners area. Major damage to the fishery below Navajo Dam will have a negative impact on the economy of the whole area and I believe that your department should at least consider moving water down the river channel and removing it at some point downstream at one of the present diversions.
Sincerely
John Channer
Durango,Co.

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IN7-1 Please see the responses to General Comments 27, 28, and 30.

IN7-2 Please see the response to General Comment 8.

From: Jerry Cole <jer3cool@yahoo.com>
To: <kbeck@uc.usbr.gov>
Date: 11/28/02 12:02PM
Subject: San Juan river

Why not just pump all of the water out of the San Juan River!

Who is behind this proposal to increase the water being removed from this river.

Jerry Cole jer3cool@yahoo.com

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IN8-1

The purpose of the EIS is to modify the operations of Navajo Dam and Reservoir to provide sufficient releases of water at time, quantities, and durations necessary to conserve two endangered fish species and their critical habitat below Farmington, New Mexico.

DEC -2 2002

"electors Concerned about Animas Water" -- CAW
A-LP Central
<http://www.angelfire.com/al/alpcentral>
1217 Chaco Avenue
Farmington, NM 87401
505/327-0743
Steve Cone
scone@infoway.lib.nm.us

29 November 2002

COMMENTS ON
DES-02-35
DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)
NAVAJO RESERVOIR OPERATIONS
Navajo Unit - San Juan River
New Mexico, Colorado, Utah
Date Filed with EPA: September 3, 2002

Submitted to Mr. Ken Beck, Bureau of Reclamation

GENERAL COMMENT:

A faithful implementation of the National Environmental Policy Act (NEPA) to enforce the Endangered Species Act (ESA) and recover endangered fish species in the San Juan Basin would require agency managers to identify and state the consequences of the proposed action by objectively and unbiasedly scoping a full range of alternatives and their potential significant environmental impacts within the context of existing and planned federal projects. Unfortunately, this DEIS (contrary to its stated Purpose and Need) is not driven by any commitment to recover the listed species by protecting and augmenting their designated critical habitat. Instead, this DEIS is evidence of the Bureau of Reclamation's (BOR) determination to further promote the profiteering of the BOR's special interest clients who stand to make a killing in speculation and the exportation of the most precious public resource of New Mexico and

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IN9-1 Comment noted.

Colorado.

1 cont.

Given the complex, interwoven relationship of the numerous federal projects within the San Juan Basin, a true cumulative impact analysis (heretofore so steadfastly resisted by the BOR) must now be prepared as a stand-alone statement or fully scoped and incorporated into a redrafted DEIS. Difficult as it may be, the BOR must stand back and take a long hard objective look at the accumulative impacts of over a dozen interrelated federal reclamation projects, or the Basin will be faced with ever worsening environmental degradation. If a comprehensive and convincing statement assessing the synergistic impacts of these interlocking regional projects is not completed immediately, the Four Corners will be further relegated to the status of a National Sacrifice Area.

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IN9-2 Please see the response to General Comment 19.

The San Juan River Basin Recovery Implementation (SJRBRIP) Flow Recommendations which led to the BOR's Preferred Alternative in this DEIS, are rooted in a Hydrologic Model and an Environmental Baseline which are the products of faulty science and unreliable data. Any environmental baseline grounded in competing unadjudicated (potentially illegitimate) claims to limited water supplies in an ostensibly overappropriated river system, such as exists in the San Juan Basin, lacks objectivity and reliability and is bound to be the source of further conflict, litigation, and environmental devastation.

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IN9-3 Comment noted.

Actions and decisions made by federal agencies in the Section 7 ESA consultation process have been, and continue to be, based on data that is insufficient and not credible and will result in irreversible degradation of the environment and detriment to legitimate water right holders. Current water development has diminished flows and impaired water quality to the point that riparian species in the San Juan Basin have clearly slipped into jeopardy, and any failure of the BOR, the FWS, and the BIA to initiate formal, Basin-wide Section 7 consultation precludes any final decision regarding the reoperation of Navajo Dam and Reservoir. In such a formal Basin-wide Section 7 consultation, the FWS should exercise its full discretionary authority to guard against further politically-driven domination by the BOR and its clients, to benefit the endangered species more than it has up to now, and to create a much-needed mechanism for more general public involvement throughout the consultation process.

Failure to rectify these fatal flaws by rescoping and redrafting this DEIS would be tantamount to fraud in that it will perpetrate a western water grab of grandiose proportions under the guise of tribal water settlements, environmental protection, and endangered species recovery.

Without a doubt, this DEIS, as written, is so utterly deficient as to be worse than worthless, totally unacceptable, and worthy of referral to the Council on Environmental Quality by a federal agency worth its salt (if one exists). No action or final decision to implement a Preferred Alternative for the reoperation of Navajo Dam should be made until the BOR sees fit to produce a rescoped and redrafted DEIS.

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IN9-4 Please see the response to General Comment 19.

SPECIFIC COMMENTS:

Note: Bold-faced text quotes BOR verbatim from DEIS.
Commentary appears in plain text.

Improper disassociation of cumulative and interrelated impacts

III-34 Indian Trust Assets Economic Impacts Summary "It was outside the scope of the analysis to discuss future unidentified Tribal water development past the point of acknowledging the importance of such development, as Reclamation is only analyzing those projects that have received all necessary environmental clearance to move forward. The information needed for this analysis, such as the quantification of all water rights and associated settlements and identification of reasonably foreseeable water use plans, is not available. Negotiations on tribal water rights and their quantification are currently underway between Tribal and Federal Governments, with input from State agencies."

While an adopted federal policy setting forth the "Criteria and Procedures for Indian Water Rights Settlements" (55FR9223) [Attachment 1] has been in place for over a decade, it is being only selectively and prejudicially applied in the San Juan Basin -- twisted and riddled with bias in order to advance special interests in tribal water

claims at the expense of the environment, senior water right holders, and the taxpaying public.

We believe that it is wholly inappropriate for the BOR to select a Preferred Alternative for the reoperation of Navajo Dam without a final binding legal resolution of competing water right claims in the form of adjudicated entitlements to water in the San Juan River Basin; without the hard data needed for a reliable assessment of environmental and economic impacts of interrelated projects within the Basin, and without careful analyses of New Mexico Statutes as they relate to public welfare and conservation in the proper administration of water right priorities.

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IN9-5 Please see the response to General Comment 18a.

III-22 Table III-3.-- "Summary of existing and future Tribal uses of San Juan River Basin water"

Of particular concern are the many "holes" in Table III-3 -- the missing data so casually and cavalierly dismissed by the BOR as "not readily available". This missing data, which the federal government, as Tribal trustee, is legally obligated to maintain and safeguard as part of its responsibility to protect Indian Trust Assets, is, in fact, critical to the preparation of a complete and adequate DEIS on the reoperation of Navajo Reservoir & Dam. Without specific information regarding the intended development and usage of water allocations within the Basin, it is impossible for the Public, the Environmental Protection Agency, or ultimately the Decision Maker to determine, with any reasonable level of confidence, the magnitude of diversions necessary to achieve designated depletions and the environmental impacts associated with the proposed action.

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IN9-6 Table III-3 provides the best available information concerning existing and future Tribal uses of the San Juan River Basin water. The values for the existing diversions were left blank because the information was not readily available (lack of diversion records for New Mexico). For the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe and the Jicarilla Apache Nation, diversions and depletions specified in their water rights settlements were used. Numbers for future projects such as the proposed Navajo Gallup Water Supply Project were taken from draft planning reports.

Indeed, it is impossible without this data to take a "hard look" at the scoping and analyses of alternatives required by the NEPA and the President's Council on Environmental Quality. The omission of this crucial information is equivalent to issuing carte blanche to the BOR's water development special interest clients and spurring a wide-open feeding frenzy in water speculation. New Mexico and Colorado State Water Law adhere strictly to the principle of beneficial use and expressly forbid the rampant speculation so openly sanctioned here by the BOR. Federal law, too, prohibits such speculative activities. The BOR's dodge in Table III-3, therefore, simply solicits water speculation by a chosen few, with the full knowledge that many others will be injured in the process.

Water Rights

S-9 "Legal and management factors to be considered by the FWS and affected parties will determine which holders of water rights will be affected by these flow recommendations."

Such broadbrush treatment and callous attitude toward an issue that affects the lifeblood and livelihoods of citizens throughout the San Juan River Basin (not to mention the ecological integrity of the entire region) is indicative of the supreme arrogance and ineptitude of the BOR/DOI! Specify in no uncertain terms the "legal and management factors to be considered", identify all potentially "affected parties", and describe the criteria which FWS presumes to apply in determining which of these water right holders will be adversely "affected" by the proposed Flow Recommendations. The language on S-9 above suggests incorrectly that the Federal Government has jurisdiction and legal authority to adjudicate, regulate, and administer water rights in the sovereign states of New Mexico or Colorado.

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IN9-7 Please see the response to General Comment 18.

Executive Summary S-3 "Additional depletion in the Basin is to increase above the level set in the 1991 ALP Project Biological Opinion."

This statement speaks volumes about the preeminence of further water development in the priorities and purpose of the San Juan River Basin Recovery Implementation Program (SJRBRIP). It is obvious that the proposed action has nothing whatsoever to do with recovery of endangered species. The BOR's Hydrologic Model and Environmental Baseline have been manipulated to place water development interests in the driver's seat and allow the SJRBRIP to be hijacked for use as a convenient vehicle to misallocate and further mismanage San Juan River Basin surface waters. This crisis in water management will only intensify if the FWS cannot see its way clear to use its full discretionary authority and exercise the political clout necessary to fully enforce the Endangered Species Act (ESA), as written, through unbiased, formal Basin-wide consultations, wielding the ultimate hammer of the naked Jeopardy Opinion.

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IN9-8 Comment noted.
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II-11 "Endangered Fish Releases" "Reclamation is exploring whether a memorandum of agreement to protect Navajo Reservoir endangered fish releases from being diverted is necessary between Reclamation, State of New Mexico and FWS. This agreement would provide the mechanism to administer and protect releases of storage water from Navajo Reservoir, past intervening appropriators to and through the endangered species habitat of the San Juan River."

Such a memorandum of agreement would involve the New Mexico State Engineer's administration of the San Juan River to the potential detriment of the public welfare and real harm to senior water rights holders downstream, prior to any decree in the San Juan Adjudication. Importantly, the relative priority dates for the storage water the BOR proposes to release from Navajo Reservoir are unknown and need to be conclusively established. San Juan River water, diverted then stored in its impoundment in Navajo Reservoir, cannot be batched or color-coded as it is released into the natural San Juan River channel -- a public waterway. Any waters released by the BOR from Navajo Reservoir storage into the public stream are subject to downstream appropriation and adjudication for beneficial use. (80 N.M. 515, 458 P.2d 590 State ex rel. S. E. Reynolds v. Luna Irrigation Co., (S. Ct. 1969)) [Attachment 2]

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In addition, there exists no corresponding memorandum of agreement or overall interstate compact between the BOR, the FWS and the states of Colorado and New Mexico to ensure the necessary administration and protection of releases of stored water from the highly controversial Animas-La Plata Project, through either of those states to the ALP Project participants or the San Juan River. Neither the BOR nor Colorado's State Engineer have any plan to protect New Mexico's ALP allocations through Colorado or a significant stretch of Federal Indian Trust Land within the Southern Ute Indian Reservation and on to the New Mexico State Line. The Preferred Alternative/Flow Recommendations contemplate a continuous and precise regulation of flows in the Animas River -- including minimum flows which can in no way be guaranteed to bypass intervening appropriators in Colorado and New Mexico without the legal enforcement of state appointed watermasters. Indeed, the authority for such legal protection may not be afforded through State Water Law (See Attachment 1).

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If it were to become reality, BOR's scheme to exercise Adaptive

Management regimes to regulate ALP Project flows in the Animas River as well as the Navajo Reoperation flows in the San Juan River, would create water administration nightmares for the state engineers in Colorado and New Mexico.

Consultation under Section 7 of the ESA should be reinitiated on the A-LP Project (which is not an all-Indian project) with a requirement that all project beneficiaries demonstrate how their project can be operated consistent with the ESA without injuring senior water rights, including senior Indian water entitlements.

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Word is that the BOR's latest draft of an "Environmental Commitment Plan" (mitigation) for the ALP Project is dead in the water. The Environmental Commitment Plan promised in the Record of Decision for the A-LP Project has not even been formulated yet, despite the fact that construction of the ALP is underway. The BOR's initial proposal to conduct all mitigation in the La Plata drainage was abandoned when the La Plata Water Conservancy District finagled \$15 million more for new water supply development. Significantly, the Colorado Water Conservation Board shuns responsibility for mitigation -- after all, they argue, Federal laws such as NEPA don't apply to Colorado water developers. It is clear that Congressional authorization of the A-LP Project requires a final Environmental Commitment Plan to be in place before construction can begin, but there is currently no plan in place and the A-LP construction has been underway for some time.

III-8 Upper Colorado River Basin Compact (Article XIV)

" . . . subject to satisfaction first, to water uses made at the time the Compact was signed . . ."

As stated previously, there exists no comprehensive interstate compact on the Animas River, and the proposed federal action jeopardizes senior water rights as exercised historically by New Mexico users.

12

In their "Motion to Intervene and Vacate Consent Decree" in Cases Nos. W-1603-76F and W-1603-76J [Attachment 3], Citizens' Progressive Alliance (CPA) have filed a Statement of Opposition in which its New Mexico members are citing their vested water rights, many (if not all) of which are senior to the Colorado River Compact of 1922, Sec. 37-61-101 et seq., C.R.S. (2001). Per Article VIII of the Compact, these rights expressly may not be impaired by the allocation of water made by the

IN9-12 Please see the response to General Comment 18a which discusses water rights.

Compact, including any storage occasioned by virtue of the Animas-La Plata Project. Article VIII states in pertinent part: "Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. . . . All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate."

The Upper Colorado River Compact, §37-62-101 et seq., C.R.S. (2001), reaffirms the protection of Article VIII of the 1922 Compact, stating, "It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto[.]" Art. I(b); and, as to the San Juan River and its tributaries (of which the Animas River is one) specifically, "[a] first and prior right [is] recognized as to: ... [a]ll uses of water made in either state at the time of the signing of this compact." Art. XIV(a)(1). Two United States Supreme Court cases establish that the New Mexico water users are bound neither by the State of New Mexico's participation in any settlement agreement by which water rights have purportedly been granted in this proceeding (and CPA has no knowledge of such participation), or by the interstate allocation of water made by the Colorado River Compact itself: *Bryant v. Yellen*, 447 U.S. 352, 100 S.Ct. 2232, 65 L.Ed.2d 184 (1980) (lands which were already being irrigated through a privately owned irrigation system when the Boulder Canyon Project Act became effective in 1929 were unaffected by that Act's acreage limitations, because they were "presently perfected rights" within the meaning of Art. VIII of the Colorado River Compact of 1922); and see *State of Arizona v. State of California*, 373 U.S. 546, 600, 83 S.Ct. 1468, 1498, 10 L.Ed.2d 542 (1963) (reserved rights of Indian tribes were "present perfected rights" within the meaning of Art. VIII of the Compact).

III-9 "The potential effects on the ability of the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the Navajo Nation, and the Jicarilla Apache Nation to utilize their water rights . . ."

At III-9 and throughout both Volumes of the DEIS inappropriate and presumptuous references are made to Indian water "rights". The fact that litigation is ongoing and neither adjudication nor tribal settlements have been completed underscores the need to reference all pending tribal water interests as simply "claims", and not actual "rights" or

13

IN9-13 Please see the responses to General Comments 18c and e.

"entitlements". Also, it is well understood that neither the BIA nor the BOR, as agencies of the federal government, hold any adjudicated rights to Basin water in either New Mexico or Colorado and must, therefore, defend and prove up claims to water in state court proceedings. The ultimate disposition of these federal and tribal claims is, therefore, unclear and should definitely not be treated as a foregone conclusion.

13 cont.

III-13 (3) "The Flow Recommendations provide flow criteria for the San Juan River below Farmington which, if met, are anticipated under the current status of knowledge to produce and maintain habitat needed to recover the two endangered fish species of the San Juan River."

Here, the BOR is talking through its hat, as it openly admits in its September 23, 2002, letter to New Mexico State Engineer Tom Turney [Attachment 4]. At this point in time, any and all flows released through Navajo Dam by the BOR to satisfy Flow Recommendations for the endangered fish species are in essence unprotected flows susceptible to diversion for beneficial use by a host of senior downstream appropriators.

14

IN9-14 Please see the response to General Comment 18a.

By the same token, allocations of ALP Project water flowing past the proposed Durango Pumping Plant or released from the proposed ALP Project outlet works would be subject to diversions by senior downstream appropriators to the detriment of Indian and/or non-Indian project participants. Fraught as it is with "ifs", "maybes", and "buts", the BOR's Preferred Alternative makes a mockery of both NEPA and the ESA, not to mention State Water Law. This DEIS must be rescoped and redrafted.

15

IN9-15 Please see the response to General Comment 19.

Numerous uncertainties associated with the BOR's Preferred Alternative would jeopardize the recovery and viability of the endangered species and protection of their designated critical habitat, setting the stage for bitter water right disputes and future legal clashes between senior appropriators seeking to perfect their water rights, BOR clients with junior project reserved rights, and others advocating for the integrity of the endangered species and their critical riparian habitat.

16

IN9-16 Comment noted. Please see the responses to General Comment 18h and j.

Since water rights and compact issues in the Basin are largely unknown and unresolved at present, it is not reasonable to assume that San Juan Basin Hydrology Model applications can be effectively reviewed, updated, or revised for utilization in future Section 7 consultations.

III-31 "Future development of up to approximately 38,000 acre-

feet per year direct diversions provided for in the Colorado Ute Settlement Act that are not part of the A-LP Project or Dolores Projects."

Clarify with specific reference to the nature of the rights or claims connected to these "direct diversions", the history of application for diligence on this water, the proposed beneficial use of said 38,000 acre-feet of diversion, the proposed point(s) of diversion, the priority date claimed, and all pertinent history in the application process seeking permission for such diversions. Where in the 2000 Amendments to the Colorado Ute Indian Water Rights Settlement Act has the BOR found authorization for this future development of up to 38,000 acre-feet? This 38,000 acre-feet should be included in a formal, Basin-wide Section 7 consultation.

17

* By the way, there is only one Dolores Project.

18

III-42 "The Ute Mountain Ute Reservation was formed in 1897."

You're getting warmer! The actual priority dates for both Colorado Ute tribes, based on their reservation histories and previous Supreme Court decisions, would be much, much later. The Utes' disputed claims to an early priority date for San Juan River Basin water have yet to be fully settled and/or adjudicated in open and active cases in Colorado and New Mexico.

19

A-7 ". . . 3,000 acre-feet of minor depletions via inter-service ESA consultation . . ."

Please explain what constitutes a "minor" depletion in an admittedly over-appropriated river system and specify the standard procedure for conducting an "inter-service ESA consultation"?

The BOR's unabashed bent and biases toward traditional western water development in the form of special interests make it a poor choice to control Section 7 consultations. In fact, BOR client-led consultation has produced a BOR client-controlled Reasonable and Prudent Alternative and BOR client-controlled Biological Opinions, as the ESA is reduced to a rubber-stamp permitting process with FWS falling further into institutional sclerosis.

20

One BOR client -- the appointed, unelected Southwest Water Conservation District (SWCD) -- via longtime BOR landlord and

IN9-17 The Colorado Ute Indian Water Rights Final Settlement Agreement contains the diversion points and priority dates of their reserved rights. The Colorado Ute Tribes have the responsibility for development and use of these rights, and diligence is not required. Reclamation does not have the authority for future development of these rights other than providing requested technical assistance.

IN9-18 The EIS has been revised to accommodate your concern.

IN9-19 Comment noted.

IN9-20 Minor depletions are those depletions which will eventually total about 3,000 acre-feet and have undergone successful Section 7 consultation by the Fish and Wildlife Service. In addition, please see the response to General Comment 18.

SWCD/SUIT counsel Sam "Frank" Maynes -- has enjoyed direct access and substantial influence (with Maynes acting as Chairman of SJRBRIP's Legal Committee) throughout the entire Section 7 squawfish consultation process (see Natural Resources Journal, Vol. 41, No. 3, Summer 2001, Gosnell, Hannah; "Section 7 of the Endangered Species Act and the Art of Compromise: The Evolution of a Reasonable and Prudent Alternative for the Animas-La Plata Project", pp. 561-626), while other groups have been left out in the cold. Since the SJRBRIP's Legal Committee is no longer in existence, who now acts in official capacity as legal counsel for the SJRBRIP?

21

IN9-21 For information regarding the SJRBRIP, please contact the Program Coordinator, U.S. Fish and Wildlife Service, 2105 Osuna NE, Albuquerque, NM, 87113, (505) 346-2525. The SJRBRIP website is located at: www.fws.gov/southwest/sjrip.

A-7 "[The 'baseline' condition] is called the No Action Alternative and was configured by including all current depletions, depletions which could occur without further federal action (primarily exercise of state water rights not presently being used as identified by Colorado and New Mexico), and all depletions for which favorable biological opinions did not depend on implementing the action."

The fact is that Tribal water settlements are incomplete without "further federal action", and general stream state court adjudication in the form of decrees necessary to establish these water rights and authorize associated depletions, have not been completed in either New Mexico or Colorado. The status and potential outcomes of the San Juan Adjudication in New Mexico and a corresponding General Stream Adjudication in Southwest Colorado must be treated thoroughly and honestly in a rescope and redrafted DEIS.

22

IN9-22 Please see the response to General Comment 19.

Again, it must be made crystal clear that the Colorado Ute Tribes and the federal government have not yet succeeded in securing the prerequisite final A-LP water rights decree (first stipulated in 1991) from the District Court in and of Water Division No. 7, providing for the changes made by the 2000 Amendments to Colorado Ute Indian Water Rights Settlement Act. Consequently, there exists no final settlement of the Colorado Ute tribal claims to water of the Animas or La Plata Rivers, and ongoing efforts by the Department of Justice to renegotiate tribal entitlements are currently the subject of protest and legal action. The fact that the water necessary to operate the billion dollar-plus A-LP Project hangs in a legal limbo, however, has not dissuaded the BOR from plunging headlong into project construction.

Incidentally, litigation under the Freedom of Information Act has prompted United States District Court Judge Leslie C. Smith to review *in camera* an expert Assessment of the Southern Ute Indian Tribe's Animas River reserved water right claims produced by a BIA consultant. Release of this and other documents withheld from Citizens' Progressive Alliance by the BIA would likely deal a deathblow to the A-LP.

Indian Trust Assets (ITAs)

III-19 "An impact is considered to exist for any action that would [A]diversely affect the value, use, or enjoyment of an Indian Trust Asset (ITA)."

The Department of the Interior's failure to enforce established federal policy for the negotiation of Indian Water Rights Settlements [55FR9223] has distorted and continues to misrepresent the true values of the ITAs in question. Truth be known, the Preferred Alternative is not and was never intended to recover the San Juan River endangered species and protect their designated critical habitat. Instead, it is being promoted as a means to prop up the Animas la-Plata Project and maximize diversions from Navajo Reservoir, ostensibly to settle disputed tribal reserved right water claims. In reality, the reoperation of the Navajo Unit to implement the recommended flow regime is designed to placate special interests at the expense of senior appropriators, the environment, and the taxpaying public.

III-19 "An impact is considered to exist for any action that would [D]isregard the government-to-government relationship which exists between the United States and Indian Nations/Tribes."

This "relationship", significant as it may be, does not transcend the federal government's responsibility to faithfully enforce laws and policies enacted to protect both tribal trust assets and the interests of all Americans; i.e., the NEPA, the ESA, the "Principles and Guidelines", and the 1991 Policy for Negotiation of Indian Water Rights Settlements [55FR9223].

III-20 "The proper discharge of the Secretary's trust responsibility requires, without limitation, that the Trustee,

with a high degree of care, skill and loyalty: Protect and preserve Indian Trust Assets from loss, damage, unlawful alienation, waste and depletion."

What a hoot! This is unadulterated claptrap from a Bureau whose Secretary "Trustee" has been convicted of civil contempt by U.S. District Judge Royce C. Lamberth for the callous disregard of her tribal wards. The Judge ruled that "there is no doubt" Norton is unfit to serve as the federal government's trustee for Indians. In all fairness we must concede that Madame Secretary (who has chosen to appeal this verdict) is at least as fit to protect tribal trust assets as her predecessor, Bruce Babbitt.

NOTE: It is important to recognize the failure of the DEIS to acknowledge that the Ute Mountain Ute Tribe (UMUT) intend to press their claim to additional Winters rights to water from the San Juan River for that portion of their reservation within the State of New Mexico. The UMUT water rights in New Mexico have been neither quantified nor settled, and the UMUT claim in New Mexico is to be resolved in the active San Juan Adjudication. A UMUT entitlement to San Juan River water may seriously impair the ability of the federal government to meet the Flow Recommendations and recover the endangered fish with the Preferred Alternative.

23

IN9-23 Please see the response to General Comment 18d.

Table III-3 pp. III-22 through III-24 -- Summary of existing and future tribal uses of San Juan River Basin water

This table illustrates the purely speculative bases for the hypothetical, non-binding water development scenarios which have been blessed by the BOR in the ALP Project, purportedly for the SUI and UMUT. Unsurprisingly, the same laxity is being sanctioned by the BOR with respect to the Navajo Nation and the Jicarilla Apache Nation in the Preferred Alternative for the reoperation of Navajo Reservoir. Many of the so-called "existing and future tribal uses of San Juan River Basin water" are, in fact, not documented as uses at all -- but are, instead, existing or potential sources of water resources.

24

IN9-24 Please see the response to General Comment 18d.

III-24 ". . .the Navajo Nation claims a priority date of no later than 1849 for its water rights, based on the treaty made with the United States in that year (Interior, 2000a), even though the reservation was not established until 1868."

This claim by the Navajo to an 1849 priority date for Basin water, if it were to be upheld through adjudication, would trump all other water rights in the Basin, including those of the other three tribes. In the referenced Colorado Water Conservation Board letter with attached comments of 15 April 2002, [Attachment 6], it is stated in no uncertain terms that the State of Colorado contests this Navajo Nation claim to an 1849 priority date. Specifically, the CWCB comments that the BOR "need to explain how Indian Water Rights are quantified, if not by beneficial use. They are quantified by practicably irrigable acres and domestic needs, which are in fact beneficial uses. They are constrained by interstate compacts as concluded in Arizona v. California. The United States Congress approved this limitation when it consented to the Upper Colorado River Compact. [The BOR] need to note that the states do not necessarily agree with the Navajos claimed priority date. [T]he United States must approve of agreements that would adversely impact an Indian Trust Asset (ITA). We would add again that the United States Congress has consented to both the Colorado River Compact and Upper Colorado River Compact and therefore the Navajo claims must fit within a state's compact apportionment as concluded in Arizona v. California. The Navajo may not pick and chose which laws of the United States they are impacted by. Therefore, while they may want to claim most all waters in the San Juan River, they are not entitled to such. This limitation needs to be included." (Emphasis added)

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IN9-25 Please see the responses to General Comments 18d and e.

Clearly, given the substance and tone of CWCB's comments, a final resolution of this disagreement should be achieved through litigation, not negotiation, especially since federal agencies, states and tribes have become notorious for cutting controversial settlement deals which circumvent public policy, satisfy special interests, degrade the environment, and bleed taxpayers at every level of government. This issue should be resolved before any decision

It should be spelled out in no uncertain terms, in light of the current secret Navajo-San Juan River Federal Indian Water Rights Negotiations, that proponents of proposed or existing water projects in the San Juan River Basin assume the risk that the future development of senior water rights, including unadjudicated Indian claims, may result in a physical or legal shortage of water. And it should be plainly stated that such shortages may be due to the operation of the prior appropriation system under State Water Law or enforcement of the Endangered Species Act.

26

IN9-26 Please see the response to General Comment 18.

III-29 Colorado Ute Tribes "The original Ute Indian reservations were carved out of the historical Ute homelands in 1868."

Correction: Only one (singular) Ute Indian Reservation was established in 1868. More importantly, "The Utes do not have an 1868 reserved water right. The United States Supreme Court has expressly held that the Ute Reservation, created in 1868, was extinguished by the Act of Congress of June 15, 1880 (See United States v. Southern Ute Tribe or Band of Indians, 402 U.S. at 159.) The Court interpreted that Act (which was supported by the Agreement of 1880 between the Utes and the United States government) to extinguish all 'right, title, [and] interest' of the Southern Ute Tribe in the Ute Reservation. Consequently, the Winters right impliedly reserved at the time the reservation was created was also extinguished." [Maynard, Alison, p. 230, University of Denver Water Law Review, Volume 2/ Issue 2/ Spring 1999.]

Suffice it to say that the BOR's discussion of Colorado Ute Tribal history on III-29 & III-30 of the DEIS is glossed over and woefully deceptive. Has this been done purposely, so as to avoid an honest assessment of SUIT/UMUT water entitlements and protect the special interests of the BOR's water establishment clients (more in general at A-LP Central -- www.angelfire.com/al/alpcentral).

27

IN9-27 Please see the response to General Comment 18d.

III-30 Methodology "Much of the ITA analysis was based on a review of documents concerning potentially impacted ITAs with a focus on water rights. These documents included . . . various Interior and Reclamation guidelines and procedures . . ."

The Public is not well-served by such vagueness. Please specify the "various. . . guidelines and procedures" reviewed by Interior and the BOR for analysis of the ITAs. Has the BOR reviewed and is the United States prepared to act in full compliance with established Policy for federal settlement negotiations of Indian water rights claims as prescribed in 55FR9223? Has the BOR reviewed and is the United States in full compliance with the "Principles & Guidelines", those federal regulations governing the planning of federally financed water projects?

28

IN9-28 The specific guidelines and procedures are cited in Chapter I, section 6, and in documents listed in the bibliography. Also, please see the response to General Comment 18.

Figure 2. "Schematic of the configuration of ALP modified to eliminate interstate leasing or marketing of water."

Clarify and explain just how and by whom the "ALP Demand Mode" and "Reconfigured ALP Demand Mode" in the referenced "schematic" were developed, modified, and/or reconfigured, and how the two modes differ in terms of expected points of diversion, quantities of water diverted, consumptive usage/depletions, and return flows to the Animas, the La Plata and the San Juan rivers.

29

CENTER FOR ADVANCED DECISION SUPPORT FOR WATER ENVIRONMENTAL SYSTEMS (CADSWES) -- Riverware

The BOR has failed miserably to make the case that its CADSWES Riverware hydrologic modeling has reliably factored in parameters necessary to reflect the severe historic-record drought conditions recently experienced throughout the San Juan River Basin. Drought in the Summer of 2002 was a real eye-opener, exposing inherent, fatal flaws in the BOR's Riverware model. Without establishing any triggers to avoid jeopardy, the SJRBRIP declared an "emergency", allowing for special consideration in extreme conditions as determined by the BOR. Using the pretense of a need for data collection in an adaptive management context, the SJRBRIP modified and violated the criteria and commitments of its own Flow Recommendations, decreasing base flows [Attachment 7] and jeopardizing the native fish community by manipulating gauging techniques throughout the designated critical habitat range. The Bureau of Indian Affairs (BIA) biological assessment for the completion of NIIP includes a commitment by the BIA for the BOR to operate Navajo Dam to meet the Flow Recommendations. This commitment has not been fulfilled [Attachment 8], and there is no reason to believe that the BOR, the FWS, the BIA or the SJRBRIP intend to honor commitments to act to recover the listed fish species in the future.

30

In addition, the BOR's Riverware modeling currently lacks the scope necessary to adequately account for significant water rights issues unique to the ongoing Basin-wide adjudications in both New Mexico and Colorado. Ever since the BIA used a little-known statistical model to generate the SJRBRIP's Flow Recommendations, the BOR's CADSWES Riverware Hydrologic Model has been used to create the illusion of a "resource cushion" in order to spur and support further speculative water development. Furthermore, not enough is known for sure yet about the usage of water within the San Juan Basin in terms of actual depletions,

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IN9-29 The Draft Supplemental Environmental Impact Statement for the ALP Project contemplated depletions in New Mexico of Colorado Ute Tribal water from the settlement via interstate leasing or marketing from the Tribes to communities in New Mexico. The hydrology model was originally configured to model this interstate leasing. However, any use of Colorado Ute Indian Settlement water in New Mexico or outside of Colorado would require changes to interstate compacts and/or state water regulations. Because of these regulations, Reclamation reconfigured the model to have all Colorado Ute Water be consumed in Colorado with the return flows returning to basin rivers in Colorado. Documentation on the development of the model is available.

IN9-30 The Riverware model used historic hydrology (1929-1993) to model existing and future water uses. The drought of 2002 was the worst on record and that data was not available for input into the model. Reclamation is still committed to honoring its commitment to help in the recovery of the endangered fish in the San Juan River while still trying to meet the water needs of the basin. In 2002, Reclamation managed releases from the reservoir to maintain a target base flow of 500 cfs through the critical habitat area for the first part of the year, as measured as the weekly average of two of the four streamflow gages on the San Juan River (as described in the Flow Recommendations). Later in the year, Reclamation and the Service agreed to lower base flows to 350 cfs. A section on drought conditions has been added to the EIS. Reclamation has formally requested the State Engineer of New Mexico to administer the river, which will protect releases made for Navajo Unit contractors and endangered fish.

IN9-31 Please see the response to General Comment 21a.

and at this point water management and administration are haphazard at best on this over-appropriated stream system. || 31 cont.

The BOR should know enough to realize that shooting in the dark and fudging on the data is not the way to approach critical water management problems in the San Juan River Basin.

III-3 (2) "Future uses with valid water rights and environmental clearances, when necessary, were handled in the same manner as existing active water uses, using the same impact indicators."

This approach, in and of itself, taints the CADSWES Riverware hydrologic modeling data and discredits all conclusions based on that data. Claims to water (not "valid water rights") associated with the ALP Project have not been adjudicated and are currently the subject of litigation in Colorado's LaPlata County District Water Court No. 7, and the State of New Mexico, County of San Juan, Eleventh Judicial District Court. None of the required environmental assessments and clearances necessitated by the various non-binding hypothetical water use scenarios, so prevalent in the ALP Project, have been initiated or secured, and the impacts of those scenarios are, therefore, unknown. || 32

II-10 The BOR provides "substantial technical support in the development, refinement, ongoing maintenance and use of a comprehensive hydrology model for the Basin to allow realistic, supportable projections of future hydrologic conditions under various water development scenarios."

The deplorable history of the BOR and the potential consequences of the proposed action call into question the competence of Reclamation to dispassionately develop, implement, or interpret any hydrology model, let alone one that has been developed in-house. This "scenario" work done by the BOR for its water development clients is a monumental vulgarity of misapplied science -- a frontal assault on the environment and the Public Trust which must be fully exposed and utterly rejected.

II-13 Footnote 6 ". . .substantial revisions to the current model are being evaluated and tested by the SJRBRIP Hydrology Committee. Reclamation does not expect that revisions to the model would affect its selection of a Preferred Alternative. . ."

IN9-32 The consent (Colorado Ute Indians water rights) being referenced here was finalized in 1991. Amendments to that decree to comply with the Colorado Ute Water Rights Settlement Act Amendments of 2000 have been entered into the court. As committed to in the ALP Project Final Supplemental Environmental Impact Statement (FSEIS), if non-binding hypothetical water use scenarios are developed, NEPA compliance will be completed on the development.

Skepticism is the watchword here. BOR's expectations regarding the results of these "substantial revisions" do not provide sufficient grounds to support a conclusive statement of environmental impacts in the reoperation of Navajo Dam. Such sweeping assumptions by the BOR are reckless and unconvincing. Provide data -- not guesswork -- in a rescoped and redrafted DEIS.

II-13 "Determining viable alternatives for operating the dam to meet Flow Recommendations criteria required modeling complex relationships, including fluctuating tributary inflow and flow depletions associated with multiple diversion and return flow points."

Oh my, but this all sounds so complex and incredibly technical. Should the Public just have blind faith and leave everything to the BOR staff's best scientific mirrors and smokescreens?

II-6/7 Table II-1 Footnote 1 "The SJRBRIP Hydrology Committee uses a hydrology model disclaimer that reads in part, 'The model data methodologies and assumptions do not under any circumstances constitute evidence of actual water use, water rights, or water availability under Compact apportionments and should not be construed as binding on any party.'"

This disclaimer stands as the ultimate indictment of the objectives and purposes of the SJRBRIP and only serves to impugn the reliability of the BOR's CADSWES Riverware tool.

Any data provided by New Mexico's State Engineer or Interstate Stream Commission utilized in the BOR's hydrologic modeling should be viewed as unreliable because the two agencies have contradictory views and data, and a required Hydrographic Survey has yet to be completed by the NM State Engineer's Office.

III-43 "A more detailed model is being developed that can be used to assess the Flow Recommendations as more information is being learned about the San Juan River and the endangered fish."

This should be made to read, "We're not sure what we've done, and we don't know what we're doing, but we'll use whatever else we must to

33

IN9-33 Please see response to General Comment 19.

satisfy the interests of our water development clients." The processing and reprocessing of additional flawed data with an incomplete and faulty modeling tool such as Riverware is not likely to produce a dependable assessment of Basin water supplies or the health of the endangered fish and their critical habitat.

More specifically, in attempts to comply with the Reasonable and Prudent Alternative, protect clients' vested interests and justify a growing staff and budget, the BOR is continually scrambling to generate "new hydrologic information" and "updated hydrologic modeling". The modeling variations used by the BOR have been and continue to be highly susceptible to manipulation through changes in assumptions and driven by desired outcomes. There appears to be no end to the BOR's commitment to satisfy their clients' predilection for rampant, unsustainable growth.

34

IN9-34 Please see the response to General Comment 21 which discusses hydrology modeling.

III-182 (all)

The BOR has not demonstrated, through either its data base or its Riverware hydrologic modeling, an ability to reasonably foresee the cumulative effects of diversions and depletions of "new" or existing water uses. Neither has the BOR provided sufficiently compelling evidence that the proposed reoperation of Navajo Dam to support Flow Recommendations for the endangered species and their critical habitat is compatible with uncompleted and existent projects.

35

IN9-35 Hydrology studies included existing water uses as well as future uses that have completed ESA compliance. In this way, cumulative effects are taken into account.

S-9 "The Flow Recommendations and the use of the operating rules will provide flows in the San Juan River that will promote the recovery of the two endangered fish."

This statement is simply an opinion stating the view of the BOR and presumably the SJRBRIP -- in reality it may amount to no more than wishful thinking, and the Flow Recommendations may wreak even greater havoc on the Basin. It is no secret that the listed species' historic range has been severely and systematically truncated by the BOR. Thus, "recovery" of the two listed species through an implementation of the Flow Recommendations under the Preferred Alternative, may amount to nothing more than close and artificial confinement of those species in a pricey backwater zoo.

A-1 "There are several best-science river basin simulation

models available, any one of which would be appropriate for developing San Juan river flow recommendations."

But the BOR has chosen to utilize its own CADSWES Riverware Hydrology Model. Since a variety of other "best-science" river basin simulation models are purportedly available, integrity and common sense would dictate that one of the other, non-BOR "best-science" modeling tools be utilized by non-BOR personnel for purposes of validation and peer review.

36

A-1 Only three of four solution techniques envisioned within the Riverware system have been employed to solve the San Juan River Basin network. "A fourth controller for water ownership and accounting is currently being developed."

Any reliance on Riverware model runs prior to development, validation and utilization of this fourth CADSWES solution controller addressing water rights and accounting is unwarranted and unwise. Water rights and accounting, after all, are the most critical and indispensable elements in any serious effort to meet the challenge of the endangered species issue within the framework of State Water Law.

37

Since the design and marketing of the CADSWES Riverware is being driven by traditional water development interests supported by the BOR, the Tennessee Valley Authority, and the University of Colorado, the likelihood of bias and inherent unreliability in this tool's application should be acknowledged and independently examined.

A-6 "The ALP Project impacts were simulated in Riverware by explicitly entering the various project features and defining their operation within the system."

This statement defies logic! It is not within the realm of scientific possibility (let alone the safe harbor of "common sense") to explicitly calculate diversion--depletion ratios or quantify return flows based on the loose set of hypothetical non-binding use scenarios which are the hallmark of the ALP Project.

A-6 "Further modification of the operating rules and/or improvement in the simulation of system operation in the San Juan River would be required to demonstrate the possibility of further development within the limits of the present flow

IN9-36 The Riverware model was chosen because it is one of the "best-science" river basin models available and had the support of Reclamation. During the development and refinement of the San Juan Basin Hydrology Model there has been continued peer review by the SJRBRIP Hydrology Committee. Also, please see the response to General Comment 21.

IN9-37 The RiverWare model has an application for tracking interstream or interstate movement of water, such as tracking the mix of San Juan and Rio Grande River waters in New Mexico. Please see the response to General Comment 21.

recommendations."

It is at least as likely that any such modifications or so-called "improvements" may demonstrate that no further development is possible; or, for that matter, that even the existing development sanctioned in the 250/5000 Preferred Alternative is infeasible. Explain which "operating rules" have been modified in connection with the ESA -- when, by whom, and to what extent. During the 2002 summer drought the SJRBRIP and the BOR acted at the beck and call of the Program's water development and tribal interests to abandon the flow criteria commitments and jeopardize the well-being of the endangered fish species. Identify all of the SJRBRIP's "water development interests" including those represented by Water Consult Tom Pitts. [Attachment 9]

38

IN9-38 Documentation on the development of the model, including operating rules, is available. SJRBRIP members are listed in Chapter 1 of the EIS. Additional information is available on the program's website at: www.fws.gov/southwest/sjrip/.

Adaptive Management

In the DEIS Adaptive Management emerges as a shadowy art form akin to alchemy. While it may lend itself easily to sleight of hand, Adaptive Management falls far short of anything close to a pure science. Adaptive Management of our San Juan River Basin is certainly not a process the Public would willingly entrust to the very interests and agencies who have historically been most adept at mismanaging our rivers.

39

IN9-39 As explained in the EIS, progress of the recovery program will be reviewed at the Navajo Reservoir Operation meetings held three times annually which are open to the public.

Rather than a secure safety net, the Adaptive Management approach may be best understood as a sure-fire recipe for the demise of endangered San Juan Basin fish and their critical riverine habitat. Adaptive Management as proposed for the San Juan and Animas rivers appears to be a preordained, lockstep process designed to satisfy insatiable appetites of the SJRBRIP's growth-for-growth's sake water development interests. Particularly telling is the fact that no taxpayer, environmental or government-watchdog groups are participating in the SJRBRIP, and none have participated in the development of the Adaptive Management Plan proposed for the Animas and San Juan rivers.

S-3 Executive Summary "[Flow Recommendations] include a recommendation for an adaptive management process based on new information as it becomes available."

Assuming that the SJRBRIP (God forbid!) will coordinate the Adaptive Management process, it is not clear that members of the Program's Biology, Hydrology or Coordination committees have sufficient

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IN9-40 Please see response to General Comment 17.

background and experience in the process to be considered authorities in this field. Members of the SJRBRIP with credentials and expertise in the techniques of Adaptive Management should be identified.

How will the majority of the SJRBRIP's members' inherent bias toward continued overappropriation and additional water impoundment be controlled for in the Program's Adaptive Management of rivers in the San Juan River Basin?

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I-8 "The Flow Recommendations are based on knowledge available as of 1998. They indicate a recommendation for an adaptive management process based on new information as it becomes available."

Data from the years leading up to and including the 2002 historic drought levels must be integrated into the pre-1998 database, and the impact of the worsening Four Corners drought must be factored into SJRBRIP's Flow Recommendations. Define "extreme drought" and "emergency" conditions as understood by the BOR and the SJRBRIP. Identify the authority and method for administering the requirement of "shared shortages".

41

III-37 "There is additional potential, when endangered fish are recovered, for economic development."

You are likely referring to water development, not "economic development". If it can be measured by the number of taxpayer dollars expended, the SJRBRIP has already generated a good deal of "economic development". Whatever this "additional potential" may be for water development (and please do specify), it only exists if the endangered fish are, in fact, "recovered". What is it, precisely, that would constitute "recovery" of the endangered species in the San Juan? What would constitute adequate protection of the natural riverine environment -- the endangered fishes' designated critical habitat? How much additional development is envisioned as "recovery" is in progress? . . . how much if the "recovery" goal is achieved?

42

Incidentally, it comes as no surprise that the SJRBRIP is a real cash cow for certain federal and tribal agencies (not to mention the indispensable consultants). The Navajo Nation, for example, has obtained a \$405,000 federal contract to provide NIIP/NAPI land and San Juan-Chama Project agricultural water in the maintenance of nine (9) grow out

IN9-41 For purposes of this EIS, Reclamation believes that the historic data from 1929 -1993 is sufficient to accurately project impacts regarding alternative analysis. Reclamation agrees that the 2002 drought is the most severe drought on record. It is reasonable to assume that there will always be other extreme events that were not captured by the use of a historic data set. However, the period of record used contains significant drought periods (i.e., 1977). A section on extreme hydrologic conditions has been added to Chapter II of the EIS. Reclamation is working with the Service, the NM State Engineer, the Interstate Stream Commission, and major water users along the San Juan River to reduce water usage and to share in shortages should the water supply be less than the normal demand. The basis for this shortage sharing concept is Section 11 of the Act of June 13, 1962, Public Law 87-483, 76 Stat. 96, the act that authorized the construction, operation, and maintenance of the Navajo Indian Irrigation and San Juan-Chama Projects.

IN9-42 The future water development section of Chapter II discusses future water development in relation to endangered fish recovery. In addition, recovery goals have been developed by the SJRBRIP to determine endangered fish recovery status.

For additional information, please contact the SJRBRIP at the address identified in the response to Comment IN9-38.

ponds for endangered razorback suckers.

III-38 2nd & 3rd full paragraphs

The information in these paragraphs portrays the SJRBRIP's Adaptive Management Plan as nothing more than a convenient ruse designed primarily to benefit the various water development interests dominating the SJRBRIP and secure a long-term funding mechanism for federal bureaucracies.

IV-1 "Some flexibility in reservoir releases exist because water committed for present or future development is not currently used. This may be a significant amount of water in any given year and would be released downstream until used for development."

Who has legal authority to "release" this "committed" water, and what "commitments" were made in the first place? Who will determine how much "committed" water may be released from year to year, and how is that determination to be made? Will such "flexibility" require strict adherence to the rules for Section 7 consultation under the ESA? The BOR currently holds no adjudicated water rights for the water in Navajo Reservoir, and the BOR lacks administrative authority to protect any releases of stored water from users downstream on the San Juan River -- a public water course. If A-LP Project water enters into this "flexibility" formula, the BOR should state openly that water rights essential to the A-LP Project are currently stuck in a legal limbo -- contested in Colorado District Water Court No. 7 and unadjudicated. (See comment of Ms. Jeanne Englert).

43

Biological Assessment -- Navajo Reservoir Operations, Colorado River Storage Project Colorado-New Mexico-Utah

Page 6 "The opinion concluded that a total depletion of 57,100 AFY could not be exceeded in any one year until all the elements of the [Reasonable and Prudent Alternative] were completed and/or implemented. This limitation was modified in case Reclamation lowered winter releases from Navajo Dam to 300 cfs to provide extra flexibility in releases. If that condition

IN9-43 The commitment and release of water will be determined at the Navajo Reservoir Operations meetings which are held three times yearly and which are open to the public. Please see the response to General Comment 11 which discusses flexibility.

existed, then the A-LP Project could maintain an average annual depletion of 57,100 AFY."

The staggering implications of "an average annual depletion of 57,100 AFY", given the lack of statistical outliers, simply confirm Benjamin Disraeli's astute observation that, "There are lies, damn lies -- and statistics". The concept of "average annual depletion" carries with it the very real potential (no doubt by design) for devastating adverse environmental impacts and administrative chaos.

Page 6 ". . . enabling future water development to proceed in compliance with Federal and State laws. . ."

Neither Federal law nor statutes in Colorado or New Mexico allow for speculation in water, but both the irrational formulation of the Environmental Baseline and the frenetic manipulation of the Hydrologic Model invite and support just such speculation and disregard the need for a demonstration of beneficial usage.

Page 7 "The Service issued a final biological opinion for the ALP Project in 1991 with a reasonable and prudent alternative that included. . . legal protection for the reservoir releases to and through the endangered fish habitat to Lake Powell . . ."

Neither the FWS nor other federal agencies possess authority to guarantee "legal protection for the reservoir releases to and through endangered fish habitat to Lake Powell". No agency of the federal government is empowered to administer water belonging to citizens of the sovereign states of New Mexico or Colorado. The DEIS must be rescoped and redrafted to allow the general public ample opportunity to comment on any specific arrangements or memoranda proposed or contemplated between the United States, the State of New Mexico and/or the State of Colorado. What is the likelihood that legal challenges to the exercise/administration of water rights necessary to support the Preferred Alternative and sustain the endangered fish will be upheld in court? How much will the referenced "legal protection" cost, and who will be paying?

P-12 "The second area of flexibility exists as full water development occurs. Minimum releases would be no lower than 250 cfs, but existing flexibility within the endangered fish flow recommendations could occasionally allow minimum summer

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IN9-44 Please see the response to General Comment 19. The 2000 Biological Opinion on the ALP Project superceded previous opinions.

releases to be above 250 cfs. During the Navajo Reservoir Operations Meetings and in discussions with the Service, an operation plan to meet endangered fish flows, authorized project purposes, and water development needs will be prepared. Unutilized or unaccounted for water, resulting from the aforementioned variables, would be identified and used to increase summer releases or for other uses."

This kind of loosey-goosey proposal for dam reoperation is nothing more than dangerous mumbo-jumbo. How could "unaccounted for water" be "identified and used to increase summer releases or for other uses" when the water in question cannot be accounted for? Describe in detail the decision-making and review processes for the "meetings" and "discussions" referenced above.

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IN9-45 Please see General Comment 11. The Navajo Reservoir operation meetings referred to have a format that includes reviewing operations over the past 4 months, presenting an estimation of reservoir inflows for future months, determining endangered fish releases, and proposing operations for the upcoming months.

P-12 footnote #5 "In extremely dry years, the 500 cfs minimum may be difficult to meet; cooperation to protect storage releases from diversion would be needed to consistently meet the 500 cfs minimum in unusually dry years such as the summer of 2002."

It is naive and irresponsible (not to mention presumptuous) of the BOR to assume that such "cooperation" is likely to be voluntarily forthcoming in "unusually dry years" such as the Summer of 2002. In fact, the above statement is an admission that federal agencies (DOI, FWS, BIA, BOR) are powerless to provide even a modicum of legal protection for minimum flow releases from Navajo Dam (or Ridges Basin) to and through the two species' critical habitat. In response to a question at a meeting of the Navajo Unit Operations Coordination Committee on August 15, 2002, the BOR referred to "a current court decree which does not allow releases below 500 cfs" from Navajo Dam. Cite the specific conditions of the decree referenced in the BOR's statement, and document all instances and circumstances to date in which the BOR has operated the Navajo Unit in violation of this decree by releasing less than 500 cfs. Was the July 9 through July 15, 2001 5-day Summer Low Flow Test conducted in compliance with or as an exception to the referenced decree?

46

IN9-46 Under the Settlement Agreement (reached in the case San Juan Fly Fishing Federation v. USA), the San Juan Fly Fishing Federation (Federation) had to give its permission before flows could be reduced below 500 cfs for purposes of a low flow study. Written permission was received from the Federation's attorney via email dated 1/26/01. In addition, this permission was restated in a follow-up letter from their attorney dated 6/27/01.

P--16 "Under actual flow conditions, flows may be less or

greater than these amounts."

Establish some specific parameters by identifying just how much "less or greater". Failure to do so jeopardizes the recovery and designated critical habitat of endangered species. Make a definite commitment, instead of leaving it to guesswork and the whims of your clients.

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P-16 ". . . where water quality does not meet intended uses."

Shouldn't this read "does not meet established standards"?

48

P-38 Biological Assessment Table II-1 footnote 8 "The SJRBRIP Hydrology Committee uses a hydrology model disclaimer that reads in part 'The model data methodologies and assumptions do not under any circumstances constitute evidence of actual water use, water rights, or water availability under Compact apportionments and should not be construed as binding on any party.'"

Is this some kind of joke? These are the kinds of waffling weasel words only a government or corporate lawyer could love. When the United States, the State of New Mexico, and the State of Colorado can't see eye-to-eye on how best to suck even more water from the already over-appropriated San Juan River System, it's time to find out what's what legally, and arrest those who profit playing "Let's Make a Deal" with the Public's most valuable and important resource. This SJRBRIP Hydrology Committee 'Disclaimer' is tantamount to fraud, and anyone with real property at stake in this charade has reason to be up in arms -- literally.

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Actually, the "Final Document San Juan River Basin Recovery Implementation Program Recommendation for Hydrology Committee" of 20 June 2001 contains a more sweeping disclaimer as follows:

"San Juan Basin Model Disclaimer

While every effort will be made to incorporate the best data and modeling available into the San Juan Basin Model, use of the hydrologic model in the work of this Committee and this Implementation Program does not necessarily constitute agreement or approval by individual program participants with the Model data, methodologies or assumptions. The model data, methodologies and assumptions do not under any circumstances constitute evidence of actual water use, water rights or water availability under compact apportionment's and

IN9-47 The summer low flow test lasted one week. What is presented are the best estimates based on the available data. What actual flows will be in the future during low flow conditions will depend upon a number of factors such as time of year, climatic conditions, how much water each diversion is taking, etc. It would be impossible to calculate precisely how much less or more the flows will be. The statement applies to river reaches upstream of critical habitat.

IN9-48 The EIS has been revised to accommodate your concern.

IN9-49 Comment noted.

should not be construed as binding on any party. Furthermore, use of the model, model data, methodologies and assumptions does not change the responsibilities of the respective states to maintain records of water rights and water use. Official records of water rights and water use are maintained by the State agencies statutorily charged with that responsibility."

Again, the SJRBRIP members' "Disclaimer" constitutes a faithless, cut-and-run approach to enforcement of the ESA which belies a deep-seated distrust of each other and of the very methodology and tools they have utilized to develop Flow Recommendations in fulfillment of the Reasonable and Prudent Alternative for the ALP Project. This fiasco is, in large part, the result of the FWS shirking its responsibilities under the ESA and being cowed by those water development interests which dominate and steer the BOR.

P-38 Biological Assessment Table II-1 footnote 9 "The New Mexico Interstate Stream Commission (NMISC) and the San Juan Water Commission (SJWC) believe there are inconsistencies in depletion calculations (communications from NMISC and SJWC dated April 8 and March 21, 2002, respectively)."

It seems entirely possible that the United States, the NMISC and the SJWC are all mistaken in their calculations of water depletions from the San Juan River Basin. Be that as it may, it is incumbent upon the BOR, as action agency, to fully evaluate and resolve with certitude any such inconsistencies. For the Public's benefit and protection the BOR must rescope and redraft the DEIS to compare and contrast the Federal Government's analyses of San Juan River Basin depletions with those of each of the objecting New Mexico agencies and the State of Colorado. Significantly, the State of Colorado has recently expressed alarm at New Mexico's inability or unwillingness to administer water in the San Juan Basin.

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IN9-50 Please see the response to General Comment 19.

BOR New Mexico State Engineer Permits File Nos. 2847, 2849, 2873, 2917

III-3 Footnote #1 "[Senior water rights] are senior to Navajo Reservoir storage permits."

Authority for any such "seniority" is based solely on a partial

adjudication commonly known as the 1948 Echo Ditch Decree, and in the pending San Juan Adjudication all water claims are to be adjudicated with finality -- de novo.

In the 1950s the BOR filed various Notices of Intent which then New Mexico State Engineer Steve Reynolds endorsed but did not approve as permits. The most reasonable explanation for this lack of approval is that Mr. Reynolds did not recognize the BOR as beneficial user, status an applicant must demonstrate before being issued a permit under New Mexico State Water Law. In the current San Juan Adjudication the BOR's claims permits associated with the Navajo unit may not be upheld. One line of argument would be that the BOR does not possess the legal permits necessary to store water or release water from Navajo Reservoir. Many are contending that current State Engineer Tom Turney is failing to properly administer the State of New Mexico's water in the San Juan River Basin. Given the multiple San Juan Chama Project diversion points in the State of Colorado, he may actually lack jurisdiction to do so.

51

IN9-51 Please see the response to General Comment 18i which discusses Reclamation's permits.

III-9 "Reclamation filed an Application for Permit on File Nos. 2847, 2849, 2873, and 2917, which were treated as one combined filing on March 6, 1958."

These never existed as separate permits -- but only as intent to appropriate file numbers. The BOR made one combined filing on March 6, 1958 involving these notices for a permit to appropriate. Therefore, these have never existed as individually valid permits, and the relative priority dates of the associated water await strict legal interpretation. The four file numbers in question may well share the combined permit priority date of March 6, 1958. Priority dates of all the users and uses within this combined filing must be firmly established and clarified with respect to a number of other associated permits the BOR claims to hold for a variety of other water diversion and impoundment projects in the San Juan River Basin.

52

IN9-52 Please see the response to General Comment 18i.

III-10 Table III-1 "New Mexico Permits Held by Reclamation"

When New Mexico File Nos. 2847, 2849, 2873 and 2917 were combined on March 6, 1958, no purpose was listed by the New Mexico State Engineer. The failure to designate and/or require designation of specific uses or specific relative priorities in this combination filing calls into question the BOR's right, under New Mexico Statute, to divert, store

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IN9-53 Please see the response to General Comment 18i.

or allocate quantities of water from San Juan Basin rivers for existing or planned federal projects, including the 250/5000 Preferred Alternative proposed flow releases for the reoperation of Navajo Dam.

53 cont.

Table III-1 -- New Mexico permits held by Reclamation.
footnote #1 "The diversion numbers reflect only diversion values in the permits and do not reflect diversions that are actually taking place under the permits. Diversions under some of the permits are currently taking place, some permits are partially being used, and some permits are not presently being used."

This information is extremely important and must be fully fleshed out and addressed with specificity -- not minimized and soft-soaped. What beneficial uses does Reclamation claim for the diversions in any existing and/or anticipated contracts -- assignments of water the BOR claims to have reserved through State of New Mexico permits applicable to the San Juan Basin?

What is New Mexico's share of Colorado River Storage Project reservoir evaporation loss from Lake Powell in Utah and Arizona? How has that evaporative depletion been factored into the "Environmental Baseline"? Which NM File No. accounts for this out-of-state evaporative diversion and depletion? What is the recognized priority date for that diversion, and, if the evaporative loss is accounted for in the combined permit, what is the relative priority of that usage?

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III-54 footnote #24 "Letter to Reclamation from NMISC dated March 13, 2002. (Note: Information provided by NMISC and New Mexico State Engineer (table III-2) vary slightly regarding diversion rights.)"

These clearcut discrepancies between information provided by the New Mexico Interstate Stream Commission and the records of the New Mexico State Engineer's Office in Table III-1 on page III-10 leave little doubt that the State has not authoritatively determined where its Basin waters are being diverted, how much Basin water is being diverted, who is diverting it, who is entitled to the water, how much of the water is being put to beneficial use and what those uses are, and the magnitude of consumptive use based on any credited return flows.

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Furthermore, it is not at all clear that any federal or state agencies

IN9-54 The functions pertaining to the various authorities under which the Navajo Unit was constructed and is operated include flood control, irrigation, industrial, domestic, power, fish and wildlife, and recreation. The mainstem reservoirs' (Flaming Gorge, Blue Mesa, Lake Powell, and Morrow Point) evaporation is divided by the Upper Basin states (which do not include Arizona) in the same percentage as the Upper Basin supply is divided by the Upper Basin states. New Mexico must account for 11.25 percent (58,000 acre-feet per year). The evaporation depletion is not required to be in the environmental baseline. The evaporative depletion does not require a New Mexico file number and it does not have a priority date; evaporation is not accounted for in the combination permit.

IN9-55 Comment noted.

have determined conclusively the magnitude of New Mexico's existing depletions or New Mexico's allowable depletion limit based on the 1922 Colorado River Compact.

55 cont.

BOR New Mexico State Engineer Permits File Nos. 2883, 2917 and 3215.

All New Mexico State Engineer Permit File Numbers involving the San Juan Basin to which the BOR claims an interest must be thoroughly examined in a rescoped and redrafted DEIS. For example, do the acre-feet/annum quantities related to the BOR Permit File Nos. refer to diversion or depletion amounts?

56

With what project is Permit File No. 2917 associated, and are plans and specifications for water use on file? The New Mexico State Engineer is obligated to demand that the BOR declare this water is no longer reserved, since it does not comply with NMSA 72-5-33.

57

Please review the history of Permit File No. 3215, including all plans and specifications for the use of 362,080 acre-feet of water identified in this Permit. This water was reserved as return flow and seepage from all BOR projects. Once this water leaves the BOR's possession, it is available for other users. No one, including the BOR, can develop a separate water right from this type of water because, under NMSA 72-5-27, it is "artificial water".

58

Public Law 106-554 -- Appendix D, 114 Stat. 2763A-263 states at "SEC.15. New Mexico and Navajo Nation Matters.", "(a) ASSIGNMENT OF WATER PERMIT. -- Upon the request of the State Engineer of the State of New Mexico, the Secretary shall, as soon as practicable, in a manner consistent with applicable law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or to the New Mexico Interstate Stream Commission in accordance with the request of the State Engineer, the Department of the Interior's interest in New Mexico State Engineer Permit Number 2883, dated May 1, 1956, in order to fulfill the New Mexico non-Navajo purposes of the Animas-La Plata Project, so long as the permit assignment does not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water involved." The BOR's failure to reference New Mexico State Engineer Permit Number 2883 in the DEIS is a matter of great concern. How might the ultimate disposition of Permit Number 2883 affect the

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- IN9-56 Please see the response to General Comment 19. The information on the permits is public information and that information has been available to the public during the preparation of the EIS. The quantities listed on the permits are for diversions unless specifically stated depletion only.
- IN9-57 Comment noted.
- IN9-58 Comment noted.
- IN9-59 New Mexico State Engineer Permit Number 2883 is referenced in Table III-1. In the hydrologic modeling for this EIS only the amount of water that has been allocated to New Mexico water use was incorporated into the model. The hydrology was modeled as if the water that is not going to be used by the ALP Project in New Mexico under Permit File No. 2883 is in the system for other uses.

proposed reoperation of Navajo Dam, the negotiation of the Navajo Nation's claims to San Juan River water right entitlements, operation of the San Juan-Chama Project, authorization of the Navajo-Gallup Water Supply Project, the San Juan Adjudication, etc.? The wide implications of this issue should be treated in detail in a BOR-redrafted DEIS.

59 cont.

A full and frank discussion of New Mexico State Engineer Permit Number 2883 should include an examination of the history and current status of Permit 2883, any priority date(s) involved, the question of the validity of the Permit, any stated beneficial usage(s), and all identified diversion points. Apart from the ALP Project -- as currently configured -- how much water connected with Permit File No. 2883 remains to be returned to fulfill the "New Mexico non-Navajo purposes of the Animas-La Plata Project"? How is the water in Permit File No. 2883 connected to Navajo Nation Indian Trust Assets and the current Navajo-San Juan River Federal Indian Water Rights Negotiation? Does the BOR consider the water in this permit to be consumptive use, depletion or diversion allowance?

60

IN9-60 Comment noted. through 63

The ALP Project has not been deauthorized. Has the New Mexico State Engineer formally requested assignment of Permit 2883 by the DOI Secretary? Would the assignment of New Mexico Permit File No. 2883 by the Secretary, prior to the deauthorization of the ALP Project, be contrary to NMSA§72-5-33(A)(2)?

61

The stated purpose of use for the 49,510 acre-feet of water from the Animas and LaPlata rivers said to be authorized in Permit File No. 2883 is evidently the agricultural-irrigation of 20,600 acres of land. Municipal and industrial use of the water said to be in this Permit would be inconsistent with the stated purpose of Permit File No. 2883. If the ALP Project is not deauthorized, how does the BOR propose to arrange for the beneficial use of the balance of water in the Permit for agricultural-irrigation? Or does the BOR intend to abandon its claim to the remaining water in this Permit?

62

The "excess" water in Permit File No. 2883 is being eyed by the Navajo Nation as a prime potential source for settlement in negotiating a resolution of the Navajos' claims to San Juan River water. Is it the Federal Government's intention to use the balance of this Permit 2883 for water diversions from the Animas River to negotiate a settlement in satisfaction of Navajo claims to water in the San Juan River? Is NMSA§72-5-33(B)(3) incompatible with the equal protection provisions of Article XIV of the United States Constitution and Article II, §18 of the Constitution of New

63

Mexico?

Has the "excess" water in New Mexico Permit File No. 2883 been the subject of any formal or informal consultation under Section 7 of the ESA?

63 cont.

General Stream Adjudications: Colorado and New Mexico San Juan River Adjudication, New Mexico Case No. D-116-cv-7500184

A thorough and frank discussion of the status and potential outcomes of the adjudications of Basin water claims in New Mexico and Colorado must be included in a rescoped and redrafted DEIS. It is important to note that the United States and a number of its tribal dependents are currently defendants in Case No. 75-184-1 in the Eleventh Judicial District Court, County of San Juan, State of New Mexico. Any action by the United States to exercise water rights claims for unadjudicated, unprioritized water to which the Federal Government has no proven entitlement, may be interpreted as interference with the New Mexico State Engineer's clear statutory mandate to enforce State Water Law.

64

IN9-64 Please see the responses to General Comments 18 and 19.

III-8 "State courts have primary responsibility with respect to quantifying water rights when there is a general stream adjudication."

True! and you need to proceed accordingly. The fact is that general stream adjudications to quantify San Juan River Basin water rights in both New Mexico and Colorado are currently open, active, and as yet unresolved, and that any intrusion by agencies of the Federal Government on the sovereign powers of the States to lawfully and independently resolve these matters is unconstitutional by virtue of the McCarren Act.

III-8 "The Basin has not been fully adjudicated"

According to Sen. Jeff Bingaman, D-N.M., a Navajo-San Juan River Federal Indian Water Rights Negotiation Team headed by Michael Schoessler has recently been appointed by the DOI to help the Navajo Nation, the State of New Mexico, and "other interested parties" in resolving Navajo claims to reserved water rights in the San Juan River Basin. Is it true that these negotiations are closed to the public? What are the identities of the "other interested parties" involved in these negotiations? Are these federal settlement negotiations with the Navajo Nation and the State of New Mexico being conducted in concert with

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IN9-65 For information pertaining to the Navajo-San Juan River Federal Indian Water Rights Negotiation Team, please contact Ms. Sue Umshler at (505) 248-5600. Ms. Umshler is the U.S. Solicitor's Office representative on the team and she is located in Albuquerque, New Mexico.

established federal policy for the negotiation of settlements of Indian water claims, or is that Policy -- 55FR9223 -- being breached, as it was in the Colorado Ute, the Jicarilla Apache, and other tribal settlements? [Attachment 10] In certain circles it has become painfully obvious that non-Indian water developers have successfully used the pretext of Indian water rights settlement negotiations as leverage to engage in water speculation, strangle western rivers and abusing the taxpaying public. What evidence can you offer that such perversions of Public Policy are not at play again in the Navajo-San Juan River Federal Indian Water Rights Negotiation?

65 cont.

The Office of the NM State Engineer has not completed the necessary Hydrographic Survey of the San Juan River Basin in New Mexico. This Survey is a legal prerequisite to full and final adjudication of the San Juan River System. Data from that Hydrographic Survey is indispensable to the application of an effective hydrologic modeling tool and proper administration of the State's water resources. Modeling completed without this data lacks credibility, or, worse, involves the BOR's misrepresentation and mishandling of New Mexico's water supply within the Law of the River.

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IN9-66 See the response to Comment IN9-65.

67

IN9-67 Please see the response to General Comment 21a.

San Juan River Basin Recovery Implementation Program

The San Juan River Basin Recovery Implementation Program's development of "Principles" for conducting ESA consultations deserves close and critical scrutiny. Adoption of the "Principles" by the SJRBRIP Coordination Committee appears to undermine important safeguards in the ESA by subjugating the authority of the FWS and allowing western water development interests to run roughshod over the entire process for determining when and how much additional water development may occur.

Goal No. 2 of the San Juan River Basin Recovery Implementation Program reads as follows:
 "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 SUIT, UMUIT, Jicarilla Apaches and the Navajos."

The SJRBRIP's Goal No. 2 contains premises which are mutually exclusive. Proceeding with the water development recognized in the Environmental

Baseline for the Reasonable and Prudent Alternative is incompatible with strict adherence to federal and state laws, interstate compact conditions, and federal tribal trust responsibilities. The existing Environmental Baseline is inequitable [Attachment 11] and must be reformulated to conform to all applicable policy and law.

iii-38 "The SJRBRIP is key to facilitating additional water development by the Tribes and others in the Basin."

Indeed, because of the FWS's susceptibility to undue influence and political pressure from the BOR and its clients, this has been, is, and, no doubt, will continue to be the primary focus and defining role of the SJRBRIP. The SJRBRIP was born of the BOR's continuing legacy of speculative and wasteful water impoundment projects. Sadly, the FWS has not exercised the institutional strength to stand up to the BOR, resist further political pressure, fully implement Section 7 of the ESA as it is written, and most importantly -- with no compromise or concession -- protect and recover the endangered fish and their critical habitat according to the letter of federal statute.

II-27 "The Service will also consider whether the probable success of the SJRBRIP is compromised as a result of a specified depletions or the cumulative effects of depletions, the Service will assess the effects of program actions in proportion to potential impacts . . ."

It should be noted that the failure of the SJRBRIP to address contemplated or pending legal actions related to water rights issues has already compromised the probable success of the SJRBRIP. The Service and the BOR have already jeopardized the listed species' designated critical habitat by allowing the SJRBRIP to employ a faulty Hydrology Model, implement a controversial Adaptive Management Plan, engage inappropriately in informal consultations, and deviate drastically from its own Flow Recommendations. By making it up as they go along, the BOR, the BIA, the FWS and the SJRBRIP play the roles of faithful lapdogs for their water development masters.

IV-2 "The Preferred Alternative is designed to help preserve endangered fish species and their habitat and has an overall

effect of creating a more natural ecosystem."

In fact, the BOR has no direct knowledge of the "overall effect" of implementation of the Preferred Alternative, as it has not ever been implemented. The phrase "more natural ecosystem" should be made to read "less unnatural ecosystem".

68

Navajo Indian Irrigation Project (NIIP)/ Navajo Agricultural Products Industry (NAPI)

NIIP/NAPI is well-known as an all-time loser, perpetually drowning in red ink, with millions of dollars of losses annually. Due to inefficiency, poor management and proven impracticality, the Navajo Indian Irrigation Project receives annual average subsidies of \$1.5 million -- subsidization which could only be expected to increase with an expansion of NIIP/NAPI.

The question of entitlement in relation to the Navajo Nation's reserved water rights claim within the Basin has not been resolved. It would appear that the BOR lacks legal authority to commit water from the Navajo Reservoir which the Navajos claim is needed to complete NIIP as authorized concurrent with the San Juan-Chama Project in 1962 (P.L. 87-483).

69

There has been no formal Section 7 consultation with the Bureau of Indian Affairs (BIA) for Navajo Nation on completion of Blocks 9-11 of NIIP. On July 14, 1999, the FWS informally concurred with the BIA's determination that flows recommended for the recovery of the endangered fish species were compatible with full completion of the NIIP. The FWS went on to agree that the full NIIP "may affect, but is not likely to adversely affect the southwestern willow flycatcher, Colorado pikeminnow, or razorback sucker."

Not long afterwards, in the Summer of 2002, the SJRBRIP, with the blessing of the BOR, the BIA and the FWS, forsook their own Flow Recommendations, declaring that an emergency modification reducing flows to 350 cfs through designated critical habitat was justified due to extreme conditions. In a 30 July 2002 Memorandum to the BOR, SJRBRIP advised that its Biology Committee was "uncertain what effect the decreased base flows will have on the fish community". [Attachment 12] Given this breach of the base flow regime guaranteed in the Flow

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IN9-68 Reclamation has gathered and reviewed enough data to realistically analyze impacts for the EIS. In addition, numerous specialists from state agencies and Tribes/Nations were consulted regarding the long-term impacts of low flows on various resources. When it was not possible to fully measure impacts, hydrology and physical habitat (trout) simulation models were developed to estimate impacts from reservoir fluctuations and downstream flow changes, respectively. As a result of this analysis, Reclamation believes that the Preferred Alternative will have an overall effect of creating a more natural ecosystem for the endangered fish species.

IN9-69 Please see the response to General Comment 18c.

IN9-70 Reclamation and the Service were in the process of consulting during preparation of the DEIS. The EIS and the Biological Opinion address operations during droughts when many water uses will not have a full water supply.

Recommendations for the recovery of the endangered fish species, reinitiation of formal consultation under Section 7 of the ESA on completion the NIIP must occur before any further decision can be made regarding changes in the operation rules for Navajo Dam.

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Quite recently, the Jicarilla Apache Tribe expressed concerns that if NIIP were to utilize all of an additional 122,000 af/y identified by the SJRBRIP as available within the Flow Recommendations, the Jicarilla's exercise of their settlement water rights out of Navajo Reservoir would be effectively foreclosed. The two Tribes have met to discuss options for Jicarilla Apache use of water stored in Navajo Reservoir, and the substance and potential impacts of those discussions must be included in a rescope and redrafted DEIS.

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IN9-71 Please see the response to General Comment 19.

III-1 "The action alternative impact analyses present long-term effects on resources. This assumes that the Animas-La Plata Project (ALP Project) is in operation and the Navajo Indian Irrigation Project (NIIP) is at full delivery."

The BOR's analyses of action alternative impacts are at odds with the view of the Navajo Nation and Congress, based on the 1962 Project Act, that the Navajos are entitled to a "full delivery" of 508,000 acre-feet/year of NIIP water. The formulation of the Environmental Baseline by the BOR and the FWS included only the Navajo Nation's water depletions attributable to Blocks 1-6 of NIP, namely 132,980 af/y -- not the full 508,000 af/y authorized by Congress.

72

IN9-72 Please see the response to General Comment 21b.

The lion's share of Jicarilla Apache settlement water, some 25,400 af/y, has not been included in the Environmental Baseline. The 35,993 af/y in the Navajo Gallup Water Supply Project has not undergone ESA consultation. The 16,400 af/y associated with the Hogback Project has not undergone ESA consultation. An undetermined quantity of water, depending on Navajo Nation water rights claims negotiations or litigation would be subject to ESA consultation. Additionally, an undetermined quantity of water, dependent on Ute Mountain Ute Indian Tribe reserved water rights claims negotiations or litigation in New Mexico, would be subject to ESA consultation under Section 7.

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IN9-73 Please see the response to General Comment 21b.

Unfortunately, the Environmental Baseline for water use in San Juan Basin has not been based on uniform, equitable standards. The Environmental Baseline recognizes and includes many unexercised and

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IN9-74 Comment noted.

currently unused, unadjudicated, non-Indian water rights claims. By building significant speculation into the Environmental Baseline, the BOR has harmed legitimate water rights holders, jeopardized recovery of the listed fish species, discredited their Hydrologic Model, and opened itself up to charges of fraud.

74 cont.

III-36 “. . . projected annual crop revenues from completion of NIIP would exceed \$40 million.”

This projection flies in the face of the NIIP/NAPI books, which reveal losses of millions of dollars annually on the operation of Blocks 1-8. A reasonable conclusion is that the irrigation of additional acreage in Blocks 9-11 will also be comparably unprofitable, resulting in even greater losses.

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IN9-75 It is beyond the scope of the EIS to identify agricultural economic losses that may or may not be occurring on the NIIP. Often the overarching philosophical goals related to tribal agricultural enterprises are the intangible benefits of employment and training with the motive of "turning a profit" being of secondary concern. Please also see the response to General Comment 31a.

While the arability of significant areas of Navajo land within the Basin is indisputable, the "practicability" of irrigating much of that land is highly debatable. This is not just true of the remote irrigation tracts scattered Basin-wide throughout the Navajo Indian Reservation. It is true of the NAPI Blocks -- both those in production and those to come.

Regarding current federal negotiations to settle the Navajo Nation's San Juan River reserved water claims, any decision to reoperate Navajo Reservoir as a means of pumping even more water to enlarge the NAPI should be based on reliable Hydrographic Survey results analyzing the economic feasibility of such an enterprise. The "practicably irrigable acreage" (PIA) standard applied in the U.S. Supreme court case of Arizona v. California requires that tribal water entitlements be based on the practicality/profitability of the proposed agricultural enterprise. The Navajo claims to the San Juan River have not been settled, and any sound decision-making regarding the need to reoperate Navajo Reservoir in order to satisfy those claims must turn, at least in part, on the Federal Government's current PIA analysis, the State of New Mexico's required (but non-existent) Hydrographic Survey, and a final decree in the ongoing San Juan Adjudication. In addition, the history of the Navajo Nation's acquisition of "Checkerboard" land tracts as well as Block 1-11 NIIP lands must be fully examined within the context of the Navajo-San Juan River Federal Indian Water Rights Negotiation, and treated in a rescoped and redrafted DEIS.

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IN9-76 Please see the response to General Comment 18.

Protest of City of Albuquerque's application New Mexico State Engineer Office File No. 4830 for diversion of San Juan-Chama Project water

III-32 "Also at possible risk are existing Federal projects in New Mexico which have not yet undergone ESA consultation, including the San Juan-Chama Project. The Jicarilla Apache Nation has a contract allocation for water from the San Juan-Chama Project."

Significant components of the San Juan-Chama Project works are located in Colorado where those transmountain, transbasin, interstate diversions occur. The San Juan-Chama Project is not required to undergo consultation under Section 7 of the Endangered Species Act, and this must be completed before any decision is made on the reoperation of Navajo Dam. The priority of the San Juan-Chama Project water has recently been challenged in a protest of the City of Albuquerque's application to divert water from the Rio Grande River -- a protest which, if upheld, will dramatically affect the future of water administration in both New Mexico and Colorado. As long as the BOR continues to sidestep the preparation of a comprehensive, overall statement including full analyses of the cumulative economic and environmental impacts of all interrelated federal projects, the NEPA and the ESA will be mere window-dressing, and high-stakes, speculative water development will continue to fuel unsustainable growth in New Mexico and Colorado.

Based in part on its failure to establish a conclusive, commanding priority date, protests of the City of Albuquerque's application in New Mexico State Engineer Office File No. 4830 to divert San Juan-Chama Project water from the Rio Grande will be the subject of Hearing No. 02-17 scheduled in December. The outcome of this hearing must be included in a rescope, redrafted DEIS. Central issues which must be addressed are: Since all five (5) diversion points for the San Juan-Chama Project are located in Colorado, what (if any) jurisdiction does the New Mexico State Engineer have to administer the diversion and flow of San Juan-Chama Project water in and through the State of Colorado? Are the diversions for the San Juan-Chama Project charged against Colorado's or New Mexico's compact allocations, and specifically, how are those diversions protected through Colorado and to and through New Mexico? In other words, what authority does the Colorado State Engineer have to administer water

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IN9-77 Comment noted.

allocated to New Mexico within the State of Colorado? And conversely, what authority does the New Mexico State Engineer have to regulate New Mexico's water allocations within the State of Colorado?

77 cont.

In reality, both the BOR and the City of Albuquerque know full well that the diversion of more than 100,000 acre-feet/annum from the headwaters of the San Juan Basin, with no determination of any priority whatsoever, clearly adversely impacts all other water users in San Juan Basin, and undermines efforts to recover the native fish. Diversion and use of San Juan-Chama Project water without the proper determination of a water right and priority date associated with such right, would deal devastating consequences to all water users in the San Juan Basin, violating the public welfare and conservation requirements of New Mexico State Water Law.

78

Water Quality & Temperature

The Preferred Alternative will only succeed in exacerbating the already acute problem of exceedances of State of NM water quality standards in the San Juan and Animas rivers. An intense concentration of pollutants associated with the 250/5000 Preferred Alternative portends a critical habitat of toxic sludge as the BOR's chosen medium of recovery for the endangered fishes. The Animas River would fare no better under the BOR/FWS plan for Adaptive Management for the ALP Project. Further studies with multiple hydrologic models and data bases of proven reliability are necessary to determine the potential significant adverse impacts of pollutants on the two endangered fish species.

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The DEIS must be redrafted because the 250/5000 Preferred alternative will degrade water quality, promoting algal growth, depleting oxygen necessary for viable native San Juan fish habitat, habitat which does not currently exist because Navajo Dam and Glen Canyon Dam cause the inundation of critical breeding grounds and block the natural migratory route of the endangered fish.

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Allowable contaminant levels tied to existing water development in the San Juan Basin have not been identified or evaluated for the endangered species. Obviously, further water development, sanctioned through the SJRBRIP Adaptive Management Plan could involve additional significant adverse impacts to the endangered fish and their designated

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IN9-78 Comment noted.

IN9-79 Please see the response to General Comment 17 which discusses adaptive management.

IN9-80 Please see the responses to General Comments 19 and 23. From the Hammond Diversion to the Animas River, water quality changes associated with reduced flows probably would not impact the native fishes present since native fishes are more tolerant of higher water temperatures and lower levels of dissolved oxygen. Reduced flows and associated physical habitat loss would likely reduce native fish populations and may also impede these fishes' ability to move freely within this section of river. For native fish populations within this reach, the only effective way to reduce impacts associated with reduced flow would be to increase flow. In the short term, Reclamation believes the ability to increase flow may exist through flexibility as described in the response to General Comment 11.

IN9-81 Please see the response to General Comment 20.

critical habitat. *

As it stands, the DEIS must be rescoped and redrafted to include environmental commitments to offset the significant adverse impacts to endangered fish habitat from further concentration of pollutants currently found in Basin rivers, i.e. selenium, PAHs, PCBs, DDT, mercury, chlorine and chlordane.

What has been done to identify, analyze and resolve the temperature issue related to Navajo Dam releases and the endangered fish? Specifically, how does the BOR propose to mitigate for water temperature impacts associated with the reoperation of Navajo Dam to meet the flow criteria of its Preferred Alternative?

The question of long term risk caused by the potential of NIIP Project return flows to increase levels of selenium in the San Juan River and on-project fish rearing ponds, and the effects of such exposure on the endangered fish species, is a matter of debate among scientific experts. As a part of a 1999 informal consultation with FWS on completion of the NIIP, the Bureau of Indian Affairs committed to a three part selenium monitoring program to track chronic toxicity in the endangered fish species. (see Attachment 10). Specific results from this BIA monitoring program should be included in a rescoped, redrafted DEIS. The drilling of as many as 100 groundwater observation wells and the installation of subsurface drains are planned for NIIP Blocks 1-11. How will such structures alter the quality and quantity of available groundwater supplies? What are the overall environmental impacts of such an extensive drilling and draining effort? The cumulative and anticipated costs and funding mechanism envisioned for this program should be fully documented. How are the significant levels of pesticides and nutrients in NIIP return flows to the San Juan River being monitored and by whom?

P-18 3rd paragraph “. . . but the lower flows during the rest of the year will provide less dilution and may impact the water quality of the San Juan River.”

Assuming for the sake of argument that “dilution is the solution to pollution”, concentrations of targeted pollutants represent increasingly significant negative impacts to water quality in the San Juan River at the 250/5000 Preferred Alternative flow levels, potentially affecting the viability of the recovery effort for the two endangered species, not to mention the drinking water supplies of communities within the Basin.

81 cont.

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- IN9-82 Please see the response to General Comment 20 (f).
- IN9-83 Please see the response to General Comment 2 which discusses mitigation.
- IN9-84 The SJRBRIP continues to monitor and study the effects of pollutants on the recovery of the endangered fish. At the present time the studies do not indicate that contaminants would limit the recovery of the two endangered fish species (SJRBRIP Program Evaluation Report, 2000). The Bureau of Indian Affairs monitoring program continues to monitor irrigation return flows and the San Juan River.

III-97 "Short-duration low flow tests indicate some parameters exceeded the State's standards from Navajo Dam to the Animas River confluence. Long-term summer low flows may cause exceedances of the water quality standards or an increase in bioaccumulation of some trace elements."

The Preferred Alternative is expected to reduce wetlands and significantly degrade water quality to the detriment of wildlife and downstream users. Associated bioaccumulations of selenium, mercury and a host of other heavy metals are expected to have devastating effects on fish and other wildlife in the Basin ecosystems. The "short-duration low flow tests" were misleading, inadequate, and inconclusive as to their perceived relative benefits and disadvantages in any effort to recover the endangered fish species.

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IN9-85 Please see the response to General Comment No. 22 which discusses the low flow tests.

Waterfowl Mitigation Area (WMA)

V-7 "A Fish and Wildlife Coordination Act report will be prepared and included in Volume II of the final environmental impact statement (FEIS)."

In the 1980s BUREC had mismanaged and neglected the only Waterfowl Mitigation Area (WMA) at Miller Mesa for the Navajo Dam Project to the point that it was abandoned, and the designated WMA was moved to the San Juan River area immediately below the dam despite the high level of human intrusion for fishing and recreation. No acknowledgment of legal responsibility for the WMA or impacts associated with the Preferred Alternative/Flow Recommendations have been included in the DEIS. Potential significant negative impacts will run afoul of the Migratory Bird Conservation Act and the wetlands mitigation obligations of the original Navajo Dam Project EIS. The fact that the original commitments and obligations have been shunted and are now being abandoned should be acknowledged and addressed in a rescoped and redrafted DEIS

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IN9-86 The Miller Mesa Waterfowl Area was redesignated by the Service as a multiple use recreation area in the mid 1980's. At that time, the Service concluded that there had been sufficient enhancement of waterfowl habitat below the dam that offset the loss of the Miller Mesa Wildlife Area being specifically managed as such. Your reference to the Migratory Bird Conservation Act should more correctly be identified as the Migratory Bird Treaty Act. Reclamation has completed mitigation for the construction and operation of Navajo Dam and Reservoir.

ATTACHMENTS

Attachment 1 : Federal Register / Vol. 55, No. 48 / Monday, March 12, 1990 / Notices page 9223 -- "Criteria and Procedures for Indian Water Rights Settlements", 55FR9223.

Attachment 2 : 80 N.M. 515, 458 P.2d 590 State ex rel. S. E. Reynolds v. Luna Irrigation Co., (S. Ct. 1969).

Attachment 3 : CASE NO.: W-1603-76F: IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA (BUREAU OF INDIAN AFFAIRS, SOUTHERN UTE AND UTE MOUNTAIN UTE INDIAN TRIBES) FOR CLAIMS TO THE LA PLATA RIVER IN DIVISION NO. 7, COLORADO; MOTION TO INTERVENE AND VACATE CONSENT DECREE, CITIZENS PROGRESSIVE ALLIANCE, 30 MAY 2002.

Attachment 4 : BOR letter of 23 September 2002 to New Mexico State Engineer Tom Turney, re: Administration of Water Rights, San Juan River, New Mexico.

Attachment 5 : U.S. District Court for the District of New Mexico, Case No. CIV 01-1044 LCS/DJS, Citizens Progressive Alliance & Steve Cone v. United State Bureau of Indian Affairs, et al., 18 October 2002.

Attachment 6 : Colorado Water Conservation Board letter and comment of 15 April 2002 to Mr. Ken Beck, U.S. Bureau of Reclamation, re: Advanced Draft Environmental Impact Statement for the Re-operation of Navajo Dam (ADEIS).

Attachment 7 : San Juan River Basin Recovery Implementation Program (SJRBRIP) Biology Committee Memorandum of 16 July 2002, to Mr. Ed Warner, Bureau of Reclamation, re: San Juan River Base Flow-Guidance for Navajo Reservoir Operation.

Attachment 8 : Fish and Wildlife Service letter of 14 July 1999, to BIA, re: Biological Assessment for Completion of the Navajo Indian Irrigation Project.

Attachment 9 : San Juan Recovery Program-Combined List e-mails re:

identities of San Juan River Basin Recovery Implementation Program's "Water Development Interests" and clients of Water Consult Tom Pitts.

Attachment 10 : "electors Concerned about Animas Water" -- CAW letter of 22 October 2002, to Michael Schoessler, Team Leader, Navajo San Juan River Indian Water Rights Negotiating Team, re: Navajo San Juan River Indian Water Rights Negotiation.

Attachment 11 : excerpt from Report of the Working Group on the Endangered Species Act and Indian Water Rights, pp.18-24, and pp.15-17 of the Working Group's Case Study on the Upper Colorado River Basin.

Attachment 12 : San Juan River Basin Recovery Implementation Program (SJRBRIP) Biology Committee Memorandum of 30 July 2002, to Mr. Ed Warner, Bureau of Reclamation, re: Biology Committee Recommendations for Dealing with 2002 Low Flow Conditions.

Attachment 13 : Suckers--Squawfish Can of Worms Cartoon, November 2002.

From: <jw Crawford@juno.com>
To: <navcomments@uc.usbr.gov>
Date: Tue, Dec 3, 2002 11:09 AM
Subject: Navajo Dam DEIS

December 3, 2002

Mr. Ken Beck
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 400
Durango, CO 81301

Dear Mr. Beck:

I am writing to urge the Bureau of Reclamation not to approve the 250/5000 cfs Preferred Alternative for Navajo Dam water releases as proposed in its recent Draft Environmental Impact Statement. I believe the Bureau needs to do a better job of crafting options that will preserve endangered fish species while protecting the world-class tailwater fishery of the San Juan River. I therefore urge the Bureau to support alternatives that will assure minimum flows of 500 cfs in the San Juan, or at least come closer to that target than the Bureau's Preferred Alternative.

1

IN10-1 Please see the response to General Comment 5 .

Under current operations, a minimum release threshold of 500 cfs has helped to foster development of the San Juan River as a world-class trout fishery. With flows reduced to 250 cfs, the "quality waters" directly below Navajo Dam would suffer a 34% reduction in habitat. Dropping flows to 250 cfs during the irrigation season would be especially damaging for the river downstream from the special regulations section, as agricultural diversions could reduce the river to little more than a trickle. Low flows during the hot summer months would also lead to high water temperatures, creating more troubles for trout. The reduced flows would also reduce the dilution of pollutants in the San Juan River, meaning poorer water quality for fish and people alike.

I commend the Bureau for seeking measures to provide water to preserve endangered species, in the form of higher springtime releases. But the Bureau appears ready to adopt a solution in disregard of a number of reasonable options for protecting the species which do not require drastically reduced summer and winter dam releases. For example, the Bureau in its DEIS did not consider any minimum flow options between 250 cfs and 500 cfs, nor did BOR consider limiting 250 cfs releases to the winter months, when irrigation diversions wouldn't exacerbate low flow conditions.

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IN10-2 Please see the response to General Comment 5.

Likewise, the DEIS appears to regard as a "given" the eventual full development of a number of water projects, including Animas-La Plata and the Navajo Indian Irrigation Project, and did not even consider any alternatives that would maintain a 500 cfs minimum flow for the indefinite time period before those prospective water uses are actually developed. These proposed water developments may not come on line for years, if ever. It would be unreasonable and irresponsible for the Bureau of Reclamation to sacrifice a world-class fishery for the mere possibility of those developments in the future.

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IN10-3 Please the responses to General Comments 5 and 11.

INDIVIDUALS - Comments and Responses

372

For these reasons, I urge the Bureau to return to the drawing board, so as to address the merits of reasonable, and less impactful, streamflow alternatives to which the DEIS gave scant or no consideration.

Thank you for your attention.

Very truly yours,

James W. Crawford, Jr.
7383 South Fillmore Circle
Centennial CO 80122-1942

From: Jan Crawford <jdcchda@swcp.com>
 To: <kbeck@uc.usbr.gov>
 Date: 12/4/02 12:08PM
 Subject: DEIS comments, Navajo dam operaton

Mr. Ken Beck
 U.S. Bureau of Reclamation
 Western Colorado Area Office
 835 East Second Avenue, Suite 400
 Durango, CO 81301
 Via email: kbeck@uc.usbr.gov

Re: Draft Environmental Impact Statement Navajo Reservoir Operations

Dear Mr. Beck:

I believe it is possible to manage Navajo Dam in a way that preserves the world-famous trout fishery while also providing for recovery of endangered species downstream and meeting federal commitments to Native American tribes. The economic and recreational value of the trout fishery below the dam is too great to risk in favor of absolute maximization of future water development potential of unknown time frame and economic value. The continued health of the trout fishery is not inconsistent with the recovery of native fishes downstream and with current water commitments.

The BOR's preferred alternative, 250-5000cfs, is not significantly better than the less extreme 500-5000cfs in terms of native fish recovery nor in terms of future water development potential. It does, however, put the world class trout fishery and its associated economic contribution at great risk. It seems optimistic to say the loss of guided float trips would result in only \$750,000 annually, given the associated spending for food, lodging, transportation and supplies directly associated with fishing, plus other spending if anglers also stay to enjoy other New Mexico visitor attractions. What documented economic return can be shown for the small additional water gained over the 500-5000cfs alternative?

The extremely narrow set of alternatives in the Draft EIS ignores other less damaging operating options, for example, variable low flows depending on season, water availability, or any interim operation with higher minimum flows prior to full delivery of committed water allocations. A more farsighted alternative might include construction to allow withdrawals downstream of the reservoir to meet existing Native American and future commitments. This protects the existing trout fishery and circumvents the drought-induced problem of reservoir levels dropping too low to support current withdrawal capability at the dam. Downstream withdrawal capability also gives greater flexibility in adjusting downstream flows to meet endangered species needs. The exceedingly narrow range of alternatives in the DEIS demonstrate a lack of will to find the best solution.

Given the clear recognition that either the 500-5000cfs or 250-5000cfs alternative damages the trout fishery, why is there no commitment to mitigation measures? If BOR has jurisdiction for managing flows, they are the appropriate party to be responsible for mitigation. Lack of commitment on the part of BOR is not only a de facto guarantee that mitigation will not happen, but a public statement that Federal agencies are not

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IN11-1 Please see the responses to General Comments 3 and 31.

2

IN11-2 Please see the responses to General Comments 5 and 8.

3

IN11-3 Please see the response to General Comment 2.

accountable for mitigation at all. Neither is acceptable.

In summary, three main issues need resolution in this EIS process:

- 1) Economic impacts must be more clearly and accurately depicted.
- 2) The differential between 250-5000cfs and 500-5000cfs must be more closely examined in both economic and endangered species contexts to be sure we don't give away a lot for negligible or undemonstrated gain.
- 3) Mitigation measures must be more conscientiously addressed.

|| 4
|| 5
|| 6

With so much national attention on the San Juan trout fishery, I recognize the challenge to BOR to find a reasoned solution. I appreciate the opportunity to participate in this important process. If we take longer but gain a better result, it's worth the effort. Thanks for being a leader in finding the best answer.

Jan Crawford
Santa Fe, NM
jdchda@swcp.com
Jan Crawford
1996 Siringo Road
Santa Fe, NM 87505

- IN11-4 Please see the responses to General Comments 3 and 31.
- IN11-5 Please see the response to General Comment 5.
- IN11-6 Please see the response to General Comment 2 concerning mitigation.

December 3, 2002

Comment on DES-02-35, filed with EPA Sept. 3, 2002
sent by e-mail to navcomments@uc.usbr.gov
to be received by

Ken Beck
Bureau of Reclamation
W. CO Area Office
835 E. 2nd Ave. #400
Durango, CO 81301

**PLEASE WITHHOLD MY NAME AND ADDRESS FROM PUBLIC
DISCLOSURE**

Here we go again.

"Torture the numbers long enough, and they tell you anything you want to hear."¹

How dare the Bureau attempt to screw the environment (not to mention the public) under the auspices of endangered species recovery! You say: "The purpose of modifying the operations of Navajo Dam and Reservoir is to provide sufficient releases of water at times, quantities, and durations necessary to conserve the two endangered fish species and their designated critical habitat."

I say: HOGWASH!

How about, "The purpose of modifying the operations of Navajo Dam and Reservoir is to provide sufficient releases of water at times, quantities, and durations necessary to benefit the interests of water development and preferred pocket\$."

How about, "Let the Navajo Nation continue to lose money on the deal. Let taxpayers continue to foot the bill for us to run amok, and make sure the river never does again."² Let fishing, boating, and tourism go down the tubes to the tune of millions of dollars, hundreds of jobs, and who-knows-how-many shut-

¹ Anonymous Statistician

² See the Dolores River, for example

IN12-1 Comment noted.

down businesses."³

Nah, you couldn't say that. How could you get anything done if you told the truth? You gotta make yourselves look GOOD! Make what you're up to seem LEGIT!

So here I am, stuck with more than 700 pages of clearly skewed information, and probably flawed information, crammed into my head in 90 days by an agency that dismissed more than 50% of the possible alternatives before it even began!

Apparently, I am opposed to the 250/5000 Alternative flow recommendations. Furthermore, I object to the fact that the DEIS appears to be little more than a hoop through which the Bureau jumped in order to go forward with whatever "best accomplishes future water development."⁴

I'll put it to you like this: I call it the Supply-Side Bureaucrats' VooDoo Environmental Impact Statement. It can sound good!⁵ It can promise to benefit "purpose" and "need." Magically, by increasing investment up top, and lowering flows down below, favorable returns will follow!

But who painlessly reaps and who suffers to pay?

Like Bartleby,⁶ "I prefer not to" find out "when it's too late."⁷

³ *Ibid*

⁴ *DEIS*

⁵ Endangered Species Recovery! Endangered Species Recovery!

⁶ passive, ineffectual Melville character

⁷ "Torture the public long enough with bureaucracy, and it'll quit trying to tell you anything."⁸

⁸ *How to Bullshit People and Get What You Want*, hereafter *HBPQWTF*

IN12-1 (con't) Comment noted.

November 29, 2002

Bureau of Reclamation
Western Colorado Area Office, Southern Division
835 East Second Avenue, Suite 300
Durango, Colorado 81301

ATTN: Mr. Ken Beck

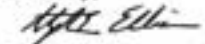
Dear Bureau of Reclamation:

I have two basic comments on the DEIS for the plan to re-operate Navajo Dam:

- 1. I do not believe there is yet enough valid scientific proof that the 250/5,000 cfs option is necessary to maintain endangered fish species. I am also concerned about the possible degradation to trout habitat in the Quality Waters that, to my knowledge, has not been scientifically addressed in the DEIS. Would a 500/4,000 option be sufficient to protect endangered fish while still maintaining the Quality Waters? I believe more research needs to be done to address these other alternatives. || 1
- 2. I am also concerned that the DEIS does not sufficiently address other economic and environmental impacts of the 250/5,000 option such as the result of the City of Bloomfield's wastewater discharge into a 250 cfs river, the effects on the City of Farmington's Hydro plant and the loss of tourist dollars. || 2
- 3. || 3
- 4. || 4
- 5. || 5

In summary, I strongly disagree with the "preferred alternative" when there is no scientific reason why a 500/4,000 alternative would not be "preferable". I also fully support the "official" response by the City of Farmington City Council.

Sincerely,



Steve Ellison
P.O. Box 1242
Farmington, NM 87499
stevee@cyberport.com

- IN13-1 Please see the responses to General Comments 27 and 28.
- IN13-2 In the Flow Recommendations the SJRBRIP's Biology Committee determined that peak releases of 5,000 cubic feet per second are needed to meet part of the flows recommended as necessary for endangered fish recovery. Please see response to General Comment 5.
- IN13-3 During the summer low flow tests, the discharge from the waste water treatment plant did not have a significant effect on the water quality parameters sampled downstream from the discharge. Please see the response to General Comment 23.
- IN13-4 Please see the responses to General Comments 23, 26, 29, and 31.
- IN13-5 Please see the responses to General Comments 26 and 31.

PRODOR CONSTRUCTION

26 CR. 4380, Blanco, NM 87412
 (505) 634-0418
 License NO. 83881

ROBERT A ENGELMAN
 DEC 2, 2002

RE: NAVAJO DAM DEIS

DEAR MR DECK,

I OWN TWO LOTS ON THE SAN JUAN RIVER IN THE LAS VEGAS DE SAN JUAN SUB-DIVISION. AS A CONCERNED PROPERTY OWNER AND FLY-FISHERMAN, I WOULD ASK THAT YOUR DEPARTMENT RE-CONSIDER THE DEIS 250/5000 ALTERNATIVE IN FAVOR OF A 500/3000 RELEASE. I WATCHED THE FISH AND OTHER WILDLIFE DISTURBED BY THE 250 LOW FLOW TEST LAST YEAR, AND WATCHED THE BANK OF MY PROPERTY BEING WASHED AWAY BY THE "SPRING" FLOODS IN PREVIOUS YEARS. NAVAJO DAM CREATED AN ARTIFICIAL ENVIRONMENT, I KNOW, BUT I SEE NO NEED TO DESTROY IT, WHICH I BELIEVE THE LOW FLOWS WILL DO. RE-ESTABLISHING ENDANGERED SPECIES IS A WORTHY GOAL, BUT UNREALISTIC IN THE FACE OF SUCH AN EXTREME ENVIRONMENTAL CHANGE FROM THE BUILDING OF A DAM.

PLEASE CONSIDER SAVING WHAT WE HAVE NOW. D.A. + G. Engel

IN14-1 Historically, pre-dam flows in the San Juan River at the Navajo Dam site ranged from near 0 cfs to nearly 20,000 cfs. In areas where the larger tributaries flow into the river, inflows above 1,000 cfs have been noted since the construction of Navajo Dam. On the San Juan River system, such flows can and should be expected. The drainage areas for some of the tributaries are large enough to supply flows of over 5000 cfs. During these periods of high flows, bank, and channel erosion, as well as deposition, can and will occur. The maximum releases adopted by this EIS will not exceed what has happened historically and should not cause additional damage to landowners above that which has previously occurred since the construction of Navajo Dam.

From: Jeanne W. Englert <trex@ix.netcom.com>
 To: <navcomments@uc.usbr.gov>
 Subject: Navajo Reservoir Operations DEIS, comments

The following comments made by Jeanne W. Englert, 1840 Centaur Village Drive, Lafayette, CO 80026 (303) 665-2582 address statements made about the two Colorado Ute tribes in Chapter III - Affected Environment/Environmental Consequences.

III-29. Under the heading, Colorado Ute Tribes, the following statement occurs. "The original Ute Indian reservations were carved out of the historical Ute homelands in 1868."

That statement makes no sense. Do you mean this? "The original Ute Indian reservations were carved out of the historical Ute homelands in 1849 (the Calhoun Treaty ratified by the United States Senate September 9, 1850), the treaty signed by President Lincoln, December 14, 1864, and the new Ute treaty of 1868 signed November 6, 1868."?

I don't think so. Is the DEIS referring to formation of the contemporary Ute Mountain Ute and Southern Ute Indian reservations? It would seem so, considering the heading. In which case, the DEIS statement above should be rewritten to say that the Ute Mountain Ute and Southern Ute Indian reservations were created under the Wheeler-Howard (Indian Reorganization) Act of 1934. The precise dates of both enabling Acts should be included. The Southern Ute reservation was founded Sept. 14, 1938.

The utmost of precision would be reached by referring to the two Colorado Ute reservations as having been carved out of the southern portion of the Confederated Ute reservation of 1868, which was extinguished June 15, 1880 (Congressional Record, Vol X. op. cit., pp. 1538, 1768.) (See also Act of Congress of June 15, 1880, ch. 21 Stat.199)

Precision here is important because on III-42, Ute Mountain Ute Tribe, the DEIS says, "The Ute Mountain Ute Reservation was formed in 1897." That statement is incorrect. A few adobe buildings at the Navajo Springs (just south of present-day Towaoc) BIA Agency built between 1897 and 1899 do not a reservation make. (See Report of the Secretary of Interior, 1896, op. cit., pp. 13234.)

Under the Hunter Act of 1895, Ute lands in the southern portion of the former reservation were divided into two categories. The Mouache and Capote bands agreed to accept lands in severalty-- allotments--most along the Pine River. The Weminuche band was allowed to settle on lands held in common on the west forty miles of the old (extinguished) reservation. (See "Ute Agreement, 1895." Special Case No. 112, National Archives, Indian Records, Record Group 75. Washington, D.C.)

The above is not mere historical nitpicking. References are

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IN15-1 Although several actions have occurred since the establishment of the reservation that have affected both Tribes and the reservation, 1868 has been established as the official date that the reservation was created. The book *THE SOUTHERN UTES, A Tribal History* gives a good account of the creation of the reservation.

IN15-2 The EIS has been revised to accommodate your concern.

made in the DEIS to the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986, and to the legislation that flows from it, Public Law 100-585, the Colorado Ute Indian Water Rights Settlement Act of 1988.

Sec. 13. EFFECTIVE DATE of the act refers to a final consent decree contemplated by the Agreement, such decree to be entered by the District Court, Water Division No. 7, State of Colorado. That final consent decree has not been entered yet.

Thus, wherever appropriate, the DEIS must explain that on May 30, 2002, the Citizens Progressive Alliance filed a Motion to Intervene and Vacate the Consent Decree and concomitant Statements of Opposition. The two cases at issue here are W-1603-76J (aka the La Plata River case) and W-1603-76F (aka the Animas River case).

The outcome of this court action has direct bearing on everything pertaining to flows of the Animas and La Plata Rivers as they affect the San Juan. (Certainly this action affects the 66,100 acre-feet allocated to the Colorado Ute tribes in the Animas-La Plata project.)

Thus it is imperative that these two cases be entered into the record. Furthermore, no action about operation of Navajo Reservoir should be taken until these water rights are properly adjudicated in Division #7.

To continue with comments on Chapter III - Affected Environment/Environmental Consequences. On pages-42-43, the DEIS rightly points out that the two Colorado Ute Tribes provide employment for over 1900 people, and that both tribes are major and significant contributors to the regional economies.

Apparently there is a sufficiently dependable water supply available to each Colorado Ute tribe to be meeting their uses and tribal development needs. The Wall Street Journal described the Southern Ute Indian Tribe as "the richest Indian tribe in the country."

The Ute Mountain Ute Tribe is a major beneficiary of the \$800-million Dolores reclamation project. The Southern Ute Tribe receives water from both the Pine River and Florida reclamation projects. Those facts should be included in this DEIS.

The DEIS statement about the Ute Mountain Ute unemployment rate of 39% is irrelevant since obviously there are sufficient jobs available on the Ute Mountain Ute reservation--over 900 jobs--to employ all 813 of those employable. The fact that not all of those are employed is an internal problem of the Ute Mountain Ute Tribe.

On III-42, paragraph 1, the DEIS mentions that the existing municipal water system for the Town of Dulce on the Jicarilla Apache reservation is outdated and dilapidated, and it cannot adequately and safely serve the existing and future needs of the

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IN15-3 Please see the response to General Comment 18d.

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IN15-4 The Ute Mountain Ute Tribe receives water from the Dolores Project, as noted in table III-3 and information presented in the Colorado Ute Tribes section, Affected Environment, ITA/EJ section. Table III-3 also shows that the Southern Ute Indian Tribe receives water from the Florida and Pine River Projects.

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IN15-5 Comment noted.

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IN15-6 It is Reclamation's opinion that providing information on the social conditions of a Tribe in the Affected Environment section of the document is relevant.

Jicarilla nation. It has failed to meet federal safe drinking water standards, says the DEIS. The DEIS concludes that this lack of a reliable potable water supply impedes economic development.

Do you mean that gambler/tourists who go into the Jicarilla Apache Tribe's casino at Dulce are getting sick from drinking contaminated water? If so, this is a serious problem, which must be immediately addressed. Has the State of New Mexico Health Department shut down this casino? What does the Indian Health Service of the U.S. Public Health Service (IHS-USPHS) say?

6 cont.

This dreadful condition, if true, is not, however, within the scope of the Navajo Reservoir EIS. Replacing dilapidated water lines in Dulce does not affect the operation of Navajo reservoir.

Under **Impacts Analysis - Environmental Justice**, the DEIS forms conclusions unwarranted by the facts provided in this document. It states unproven premises that remind me of the false deductive reasoning I was taught to analyze in high school. It is fallacious reasoning. You did not prove in these pages I am referring to that economic development is critical on these reservations to maintain their cultures. You said that a safe and reliable water supply is critical yet you said nothing about whether or not either the Southern Ute and/or Ute Mountain Ute tribes lacked one.

Is it not true that the State of Colorado built a pipeline from Cortez to Towaoc to deliver treated water there? Is something wrong with that water that nobody's heard about? The Southern Ute Indian Tribe, when I worked there, had a brand-new water treatment plant and sewer lagoon that also served Ignacio. Granted both the Tribe and the Town of Bayfield had to shut down their water systems last fall because of the Missionary Ridge fire mudflows, but, again, that has nothing to do with the scope of this DEIS.

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IN15-7 The EIS has been revised to accommodate your concern.

My comment is that everything in Chapter II-39, starting with **Affected Environment** must be totally rewritten because most everything in it is does not logically follow. Go figure. The Southern Ute Indian tribe is a low-income tribe? The Ute Mountain Ute Tribe? Huh? On III-39 you say they are, then contradict yourselves on pages 42-43.

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IN15-8 Comment noted.

My remaining comments on Chapter III - **Affected Environment/Environmental Consequences** have to do with **Future Uses** of the Colorado Ute Indian Tribes. I refer you to the references made to (see Table 1-1, ALP FSEIS' for details on Colorado Ute Settlement) in regard to the **Future Uses** for each Colorado Ute Tribe. (Page III - 23 in NavOp DEIS.)

The only way either of these references can make any sense is if EIS reviewers have the full Colorado Ute Indian Settlement Agreement in place and at hand. That document must be added to this EIS because it is impossible to refer to Table three, etc. without the entire document appended to this DEIS unless one happens to have lying around the ALP FSEIS or a copy of this

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IN15-9 The full Colorado Ute Indian Water Rights Final Settlement Agreement contains 87 pages. It was included in the ALP Project FSEIS and other documents. Because the agreement has been provided in other available published documents, Reclamation chose not to include the agreement in this document. A copy can be obtained from Reclamation.

document itself.

9 cont.

(I am working from a copy of the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986, I received from the Colorado Water Conservation Board that has a "received" stamp of December 18, 1986, on it.)

I refer now to page 42 of that document regarding the Piedra River. It's clear enough what the Southern Ute Tribe was awarded on its four irrigable parcels on the Piedra, but has the Southern Ute Tribe developed any concrete plans for diversions for parcels, 2, 3, and 4? Apparently only one-quarter of parcel one is currently being irrigated. Unless the Southern Ute Tribe has put forth a concrete plan for full development of its awarded rights on the Piedra, the number of acre-feet mentioned in this DEIS is meaningless.

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Regarding Future Uses - Ute Mountain Ute Tribe (Table II-23 of Chapter III - Affected Environment/Environmental Consequences, I note the Mancos River diversion rights for 7,200 acres--21,000 acre-feet--priority date subordinated to 1985. That is correct, according to my copy of the 1986 Ute Settlement Agreement.

But is this practical? Are the Ute Mountains Utes going to build gauging stations, as per the 1986 agreement? Are they going to develop this Mancos River water? Have they set forth a specific plan of development for that 21,000 acre-feet of water?

11

Plus, what effect did the 1991 stipulation the Ute Mountain Ute Tribe agree to in Water Division #7 have on this provision in that 1986 settlement? My understanding is that the Ute Mountain Ute Tribe agreed in that stipulation that completion of the Dolores project would fully settle all their claims on the Mancos River once the Towaoc-Highline Canal was completed. That is what then-Division #7 engineer Chuck Lyle told me. This stipulation of 1991 is also referenced in one or two ALP EISEs back. (Hard to keep track of which one, but it's there in one of them.)

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The 1991 stipulation in Water Division #7 should also be appended to this DEIS.

13

And what is the value of a 1985 junior water right on the Mancos River since the early priority rights on that river date back to the 1873-74 Brunot Agreement? (Or San Juan Cession, as it came to be called.)

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Just in scrutinizing these few pages of this DEIS, I cannot recommend any of the alternatives in it. I say, do it over again.

- IN15-10 The EIS has been revised to accommodate your concern. The information in Table III-3 lists the water rights of the Colorado Ute Tribes. Both Tribes have water rights that they have not put to use.
- IN15-11 The Ute Mountain Ute Tribe received a water right of 21,000 acre-feet for the irrigation of 7,200 acres. Information on how the Ute Mountain Ute Tribe will develop their Mancos River water rights is beyond the scope of this document.
- IN15-12 In the December 19, 1991 consent decree, the Colorado Ute tribes agreed to waive any and all claims to water rights in the State of Colorado not expressly identified in the decree after certain requirements were completed. One of these requirements for the Ute Mountain Ute Tribe was the completion of the Dolores Project, the Towaoc Canal being a feature of the Dolores Project. With the completion of the Dolores Project and with the rights given to them in the decree in the Mancos River, the Ute Mountain Ute Tribe's claims on the Mancos River have been fully settled.
- IN15-13 Adding the stipulations in the 1991 consent decree is beyond the scope of this document.
- IN15-14 Putting a value on the Ute Mountain Ute Tribe's claims in the Mancos River is beyond the scope of this document.

November 28, 2002

Bureau of Reclamation
835 East Second Ave., Suite 300
Durango, CO 81301

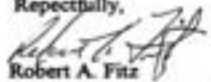
Gentlemen,

I am writing concerning the proposed low flows for the San Juan River. I have followed the debate and attended a few of the meetings. I won't bore you with arguments that have already been put forward.

I do have some questions based on my observations as one who lives near the San Juan (approximately 1/2 mile upstream from the confluence of the La Plata River). I observed the narrowing of the San Juan and the thickening of the water during the low flow test. The San Juan became pungent in its smell and unsightly. Will the San Juan be safe for my Grandchildren play around? Has your testing determined what concentrations of feces and chemicals will be present that may effect the health of the children playing in the stream? I can assure you children will be playing in the river to a much greater extent with the flows being that low.

I have the impression that the formula used for the re-introduction is based on a model that is supposed to help the fish reproduce. Is that model so concise it can not be implemented in stages to determine at what level of high flows and low flows can be reached to reach the desired results? If the San Juan does reach a point of toxicity that is dangerous to wildlife and people would this not also have a negative effect on the very fish you are trying to re-introduce? Will flows be adjusted to keep this from happening?

I would appreciate your response to my concerns.

Respectfully,

Robert A. Fitz
305 La Cuesta
Farmington, NM 87401

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IN16-1 Please see the responses to General Comments 20f and 23.

IN16-2 Please see the responses to General Comments 20a and f.

INDIVIDUALS - Comments and Responses

384

From: "Floyd, Ric" <Ric.Floyd@pegs.com>
To: "navcomments@uc.usbr.gov" <navcomments@uc.usbr.gov>
Date: Tue, Dec 3, 2002 1:43 PM
Subject: San Juan River

I am a strong conservationist but what you are proposing for the San Juan River is myopic. The effect on all other wildlife in and around the river will be adversely effected much more than a single fish. Please don't do it.

Ric L. Floyd
EVP - General Counsel
Pegasus Solutions, Inc.
Campbell Centre I
8350 North Central Expressway, Suite 1900
Dallas, Texas 75206
(214) 234-4199 Direct Number
(214) 234-4054 Facsimile
ric.floyd@pegs.com

IN17-1 Comment noted.

Kent Ford

880 Riverbend - Durango, CO, 81301 - USA
Phone (970)389-1361 - Fax (970)389-4148 - Email kentford@troutnet.net

October 28, 2002

Ken Beck
Bureau of Reclamation
Western Colorado Area Office
836 East Second Avenue, Suite 400
Durango, CO 81301

Navajo Re-operations Draft EIS comments

Dear Sirs,

I have several comments on the Draft EIS for Navajo Reservoir.

First, New Mexico water administration is insufficient, some say completely lacking in the area below Navajo reservoir. Water administration in that area should be mandated, to insure adequate water is going downstream.

Second, Footnote #8 indicates that the water will be measured through a complex average of 4 gages. In effect, this allows withdrawals upstream to continue to dewater the lower river basin. Also, this 4 gage system would not allow for full disclosure and understanding by the public of water management and operations of the reservoir. If this system is maintained, where will the average be maintained for public examination (ie online).

Third, the effect on recreation on the Goosenecks (Mexican Hat to Clay Hills section of the San Juan river) was not addressed in adequate detail. The final EIS should establish mitigation for the impending loss of rafting days for 15,000 annually, or list the loss of the recreation below Mexican Hat as a possible outcome of re-operation plans for Navajo. I have appended a report on threat caused by sedimentation not cleared by Navajo releases is available at: http://www.gcpba.org/pubs/raftingat/2001_Sediment_V5_1_1-6.pdf.

Fourth, more calculations are needed to fully address and mitigate the effects on commercial and non-commercial rafting, canoeing, and kayaking. The draft EIS erroneously dismissed the value of the river, stating that even at low flows the river still had a completely utilized permit system. Comparisons between low flow years such as 2002 and normal flows years, as well as qualitative evaluation of the river at various flows, should be made to completely address the concerns of this industry.

Thank you for the opportunity to comment.


Kent Ford

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- IN18-1 Please see the response to General Comment 18a which discusses measurement and administration of water rights within New Mexico.
- IN18-2 Please see the response to General Comment 15 which discusses monitoring of base flows. Gage data is available through the USGS website.
- IN18-3 Please see the response to General Comment 32 and Table II -7 in the EIS.

December 3, 2002

Bureau of Reclamation
Attn: Ken Beck
835 E. Second Ave.
Suite 300
Durango, Colorado 81301

Dear Mr. Beck,

RE: EIS DRAFT- SAN JUAN RIVER

I am writing this letter to convey my thoughts in regards to the EIS Draft, which adversely affects the present philosophy of the management of the San Juan River. The primary points of concern are:

- The effect on local property values
- The effect on property taxes
- The effect on gross receipt taxes
- The effect on cash flow that businesses rely on to pay back bank loans
- The effect on the local unemployment rate
- The effect on the hydroelectric plant that provides power for the municipalities.
- The effect on the waste treatment facilities that operate in Bloomfield and Farmington
- The effect on the various Water Users Associations
- The effect on the World Class Quality Waters below Navajo Lake
- The effect on the wetlands, waterfowl habitat, indigenous species, such as the Southwestern Willow Flycatcher and the Leopard Frog
- The effect on the insect life
- The lack of alternative water flows that would satisfy the needs of all users

I request that you respond to my concerns as soon as possible and that the Bureau of Reclamation withdraw its plans to re-operate Navajo Dam as stated by its recommended alternative in the DEIS plan as presented to the public in October 2002.

Sincerely,

Karl S. Garling

Karl Garling
4732 S. Dulane Rd
Farmington, New Mexico
87401

IN19-1 It is recognized that recreation type property values may decrease initially but it is anticipated that they should stabilize in the long term to yield insignificant impacts to property values and property tax revenues. Also, please see responses to General Comments 26, 27, 28, 29, and 31.

IN19-2 The southwestern willow flycatcher is being addressed in an Endangered Species Consultation with the Fish and Wildlife Service. The Biological Assessment and Opinion can be found in Volume II of this EIS. The leopard frog is addressed in the Vegetation and Wildlife section of Chapter III of the EIS. While acknowledging that impacts would occur to bottom fauna due to reduced wetted areas associated with lower flows, it was concluded there would be sufficient numbers of them remaining to sustain the trout fishery.

IN19-3 Please see the response to General Comment 5.

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Bureau of Reclamation
 Western Liaison Office
 935 E. 1st Ave.
 Durango, Colo.
 Attn: Ken Becht

I have written before regarding flows from Navajo Dam. I have experienced very much damage with flows of 5000 cfm - you not taking into consideration 2 miles west of Blomfield that we do have cloud burst rain w/ some 5 of arrays running into the river also!! -

This brought down large trees + lodged directly South of my farm. Subsequently they created a dam + now the river has made a 90° turn into my farm + has flooded acres of my grass field - connecting costs 5000 to 10000. ESA needs to be revised - the fish lived well before the dam in drought + floods. Raise them in hatchery +

SEP 12 2002

IN20-1

Your comment concerning the force and debris moved by the San Juan River and its tributaries is noted and has been recorded in historical events. With the operational criteria for Navajo Dam, releases from the reservoir will be maintained between a minimum flow of 250 cfs and a maximum of 5000 cfs. Historically, prior to the construction of Navajo Dam, the San Juan River has experienced recorded flows below the proposed minimum flows of 250 cfs and significantly above 5000 cfs. Living along such a dynamic river system such as the San Juan River, one can expect the channel and channel characteristics to change with major precipitation events and with the general evolution of the channel system, possibly causing erosional and depositional shoreline changes. These phenomena have been recorded along major river systems throughout the West. Please see the response to General Comment 24.

lets cut out the bureaucratic
job enhancement - after ten years
it was quoted "Not enough time to
evaluate??)" &
gts time for down to earth
operation, one that looks &
understands the whole picture

Respectfully
Burr Swinney
Box 52
Bloomfield N.M. 87413

2 | P.S. There are a large number
of people along the river that have
also sustained damage due to the
water changes -

IN20-2 During 5000 cfs reservoir releases in the past, several residents along the San Juan River reported damage that they felt was incurred to their property during these peak flow events. All damage reports were investigated and documentation was prepared on the reported damages. This information and the Corps of Engineers studies, recommendations and designation for the area below Navajo Dam support the criteria that 5000 cfs is the safe channel capacity in the reach from Navajo Dam to Farmington. Please also see the response to General Comment 24.

960 Pennsylvania St #9
Denver CO 80208

September 28, 2002

Mr. Ken Beck
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 400
Durango, CO 81301

Dear Mr. Beck,

Subject: Draft EIS for the Operation of Navajo Reservoir

I'm a member of San Juan Citizens Alliance, and concur with their opinion about the river flows. The 500/5000 cfs alternative is the best in order to preserve the river habitats fish, wildlife and flora. I also concur with SJCA, for a complete analysis of a range of alternative releases from 250 to 650 cfs at 100-foot increments. Why use assumptions, when a test can offer findings?

The river and its living elements should be of the utmost concern. Even though I love to kayak down the San Juan River, I am not concerned with low flow affects on boating. The fish, wild life and flora matter the most.

Respectfully,



Liz Hall

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IN21-1 Please see the responses to General Comments 3 and 5.

September 26, 2002

Mr. Ken Beck
BOR Western CO Office
835 East 2nd Avenue
Suite 400
Durango, CO 81301

Dear Mr. Beck,

I am writing to express my concerns about the Environmental Impact Statement concerning the San Juan River below Navajo Dam. I strongly oppose the 250/5000 proposal.

I believe the proposal to drop flows to a minimum of 250 cfs will be very detrimental to the fishery as it is today, as well as the communities and individuals who make a living off of this area. I know that the 250 cfs is a minimum limit, however, if and when this limit is attained it will severely hurt the viability of the fishery.

The San Juan River's quality waters section is known around the world as being one of the finest trout fishing areas anywhere. It would be a shame to harm that reputation and the people and fish that thrive because of that reputation.

I doubt very seriously that the razorback sucker and the Colorado pikeminnow will generate the kind of revenue that the trout in the San Juan quality trout water does. I think it is wrong to sacrifice people's livelihoods for a fish that is of no economic value to the state of New Mexico or the United States.

I thank you for your time to read my letter and hope that the BOR will decide against potentially reducing the flows of the San Juan so drastically.

Sincerely,



Mark Hanbury
1309 East 16th Street
Dalhart, Texas 79022

IN22-1 Please see responses to General Comments 3, 27, 28, and 29.

From: Diane Hargreaves <dih@hargreaves.org>
To: <kbeck@uc.usbr.gov>
Date: 12/4/02 7:42AM
Subject: San Juan River Flow

I would like to comment on the proposed water flow change on the San Juan River. The proposed cut from 500 cfs to 250 cfs is in my opinion extreme. The proposed change is detrimental to an established fishery of great value. The reasons for the change such as future water development projects may never occur. I feel the Bureau of Reclamation should review this proposed water flow change further as well as put off any flow change practices until there is clear need to do so. Thank you for the opportunity to comment on this issue.

Sincerely,
Diane Hargreaves
3170 Sentinel Drive
Bozeman, MT 59715
dih@hargreaves.org

IN23-1 Please see the responses to General Comments 5,11, and 27.

Ellen N. Haxton
303 LaBelle Ave
Farmington NM 87401
haxtone10@msn.com

December 3, 2002

Bureau of Reclamation

To Whom It May Concern:

In the recent draft EIS statement there was a recommendation to accept low flows of 250cfs on the San Juan River below Navajo Dam in New Mexico. Upon reading the draft, I was struck by the failure of this statement to adequately address the adverse effects upon the wetlands, waterfowl habitat and indigenous species, such as the Southwestern Willow Flycatcher and the Leopard Frog. The species inhabit the wetlands during periods of low flows suggested as acceptable by the Draft EIS.

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There was a failure of the Draft EIS to include results of impact on insect life and the long term impact of those changes on trout and other fish in the first fifteen miles of river below Navajo Dam. Also I did not see where the statement adequately addressed any benefits that changes in flow that have been made to date have benefited any endangered species and specifically exactly how further changes in flow will benefit such species in the future. There are no specific discussions of the presence of any Colorado Pike Minnows in the river anymore other than those fish that have been planted or introduced.

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I was not able to understand the from the draft EIS alternative flow recommendations, how such flows will be implemented and the differences, if any, between the 250/5000 alternative and 250 variable/5000 alternative.

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I would appreciate a reply.

Sincerely yours,

Ellen Haxton

IN24-1 Reclamation did assess the effects of reduced flows to downstream wetland/riparian habitats and associated wildlife species. The two species you referenced are also subject to an Endangered Species Act consultation. The Biological Assessment and Opinion are included in Volume II of this EIS. Also, please see the response to General Comment 33.

IN24-2 Please see the responses to General Comments 20a, 27, and 28.

IN24-3 Please see the response to General Comment 4. Information pertaining to implementation of the Flow Recommendations can be found in Chapter II.

John H. Haxton
303 LaBelle Ave
Farmington NM 87401

December 4, 2002

Bureau of Reclamation

Dear Sirs:

I have some concerns over your report on the water flow study on San Juan River below Navajo Dam. I read a very confusing report and tried to make sense of it.

One of my concerns deals with fecal coli forms and other concentrated toxins that would adversely impact all water users below Bloomfield, New Mexico. The draft did not address this matter or the one dealing with damage to water users who may not be able to receive their allotted water from ditches during the low flows. The draft did not address the loss of hydroelectric power, or the loss of revenue to guides and outfitters, airports, hotels, restaurants, and other businesses due to the loss of a World Class Fishery.

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Also of great concern is the failure of the draft to explain the termination of summer low flow study because of fears that irreparable damage might occur if the test was allowed to continue, and flows allowed to continue at levels now suggested in the draft EIS statement as being acceptable. This is very confusing to me.

|| 4

Would you please address these concerns? Clarification of the draft statement may help me understand a little better.

Thank you

John Haxton

- IN25-1 Please see the response to General Comment 23 for further details on this process.
- IN25-2 Please see the response to General Comment 31.
- IN25-3 These items are addressed in the EIS. Also, see the responses to General Comments 26 and 29.
- IN25-4 Please see the response to General Comment 22.

November 30, 2002

Attn: Mr. Ken Beck
Western Colorado Area Office, Southern Division
835 East Second Avenue, Suite 300
Durango Colorado 81301

Dear Mr. Beck,

I am writing in regard to the Draft Environmental Impact Statement on Navajo Reservoir Operations. Like many residents of Farmington and San Juan County, I had little understanding and less appreciation for the complexity of water issues in this area before reading about the proposed re-operation of Navajo Dam in our local paper. The more I read, the more confused I became, so I have been trying to "get educated". Unfortunately, I missed the public hearings this past summer, but I have attended several of the Farmington City Council and San Juan Water Commission Meetings. They have been of some help, but I realize that this game has so many players with so many agendas that it will take years to get it straight.

Having been informed that the public cannot disagree with the conclusions of the statement, but only challenge the methods by which the conclusions were reached, I have the following questions and comments:

1. How could data gathered from the Low-Flow Test present an accurate picture of what 250cfs flows will mean to the river? The test itself did not meet its own parameters, since it was not conducted for the full seven days from July 9-15, but only for five days. During the test there was an unusual amount of rainfall in the watershed below the dam and many irrigators had reduced their water use to cut hay. How could anyone base all of these conclusions on one anomalous five-day period? Several longer tests throughout one or two summers must be undertaken before any decisions are made.

2. Will extremely low flows (250cfs) further erode the critical habitat for other endangered species in the San Juan Basin (Bald Eagles, Southwest Willow Flycatchers, Least and Black Terns)? If so, to what degree will they be impacted? Does the status and welfare of one species take precedence over another? These issues must be studied and addressed in the report.

3. Will extremely high flows (5,000cfs) harm the very fish this re-operation is intended to save? There is some evidence (See City of Farmington Comments) that such high releases wash away sediment in which the fish spawn and damage habitat in which the fry develop. Will the high releases wipe out waterfowl nesting areas along the river? The study is not complete without answers to these questions.

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IN26-1 Please see the response to General Comment 22 which discusses the summer low flow test.

IN26-2 As part of the EIS, Reclamation has consulted with the Service on all potentially affected endangered and threatened species. See Volume II of the EIS for the Biological Assessment and Biological Opinion. Chapter III of Volume I contains a summary description of effects on these species.

IN26-3 One of the purposes of the high spring releases is to clean spawning gravels of sediment. This increases the opportunity for pikeminnow to successfully spawn. Also, high spring releases are timed to peak with maximum flow from the Animas River, usually about the first of June. At this time, most waterfowl have already successfully nested along the river. There could be some years when high releases need to be made earlier. In these rare cases, waterfowl nesting could be impacted.

4. Have all downstream entitlements been identified? Will the 250/5,000 re-operation plan meet these legal obligations? The flawed Low-Flow Test could not have provided this information. Without answers to these questions, lawsuits will surely ensue.

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5. What about operations during extreme drought conditions? This issue is never addressed in the report. What if the reservoir becomes an "inactive storage pool"? Will Animas River users be denied water to save the fish? If so, in what order and to what degree? The Animas is hardly mentioned in the mix.

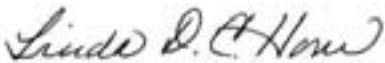
5

6. How can all of this proceed before water negotiations with the Navajo Nation have been concluded? What about commitments to the Animas-La Plata Project? There is no way of predicting the actual pressures on the reservoir until these and all other claims have been settled and issues taken into account.

6

I have many other questions on this issue, but these and the comments from the San Juan Water Commission, the City of Farmington and other interested citizens should be enough to convince you that the current Draft Environmental Impact Statement needs a lot more work. If it is finalized before our concerns are addressed, many will be dissatisfied with both the product and the process. You have the opportunity to convince the people of this area that their voice still matters. Please do not disappoint us.

Sincerely,



Linda D.C. Horn
3600 N. Coronado Avenue
Farmington NM 87401-4121

IN26-4

Please see the response to General Comment 18a.

IN26-5

Due to the historic low inflows to Navajo Reservoir in the summer of 2002, Reclamation informally consulted with the Service regarding the target base flow through the critical habitat area. As a result, the SJRBRIP recommended to the Service that the minimum flow through the critical habitat reach could be reduced to 350 cfs until November 1, 2002, to conserve water and to allow collection of data on habitat and species response to flows lower than 500 cfs. In anticipation of less than average inflow expected in 2003, Reclamation worked with the Service, the New Mexico State Engineer, the Interstate Stream Commission, and major water users along the San Juan River to reduce water usage and to share in shortages. The basis for this shortage sharing concept is Section 11 of the Act of June 13, 1962, Public Law 87-483, 76 Stat. 96, the act that authorized the construction, operation, and maintenance of the Navajo Indian Irrigation and San Juan-Chama Projects. The Animas River water users would be impacted when the New Mexico State Engineer enforces administration of water rights on the San Juan River and its tributaries. Also, see response to General Comment 13.

IN26-6

It is necessary to proceed with this analysis since biological opinions for other water projects depend on the re-operation of Navajo Reservoir- for example, the NIIP, a Public Service of New Mexico water contract with the Jicarilla Apache Nation, Florida and Mancos Rivers water contracts, and 3,000 acre-feet of unspecified minor depletions in the San Juan River Basin. In addition, please see the response to General Comment 18e which discusses unresolved conflicts among treaty/settlement rights.

30 Calle Vallecitos
Tijeras, NM 87059

October 11, 2002

Ken Beck
Bureau of Reclamation
West Colorado Area Office
835 East Second Avenue, Suite 400
Durango, CO 81301

Dear Mr. Beck,

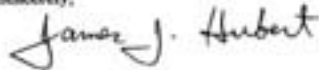
This letter is with regard to your Environmental Impact Statement on the Navajo Reservoir Operations.

Both the Bureau of Reclamation and the Fish and Wildlife Service have given me the run-around in my attempt to get information and a copy of the EIS on the proposal to reduce flows in the San Juan River. Finally, I secured information from one of the many organizations that would be seriously and adversely affected by your proposal.

It would be an economic disaster to do anything to degrade trout habitat in the San Juan. It would also be disastrous for the world-class trout fishery itself. Many thousands of hours of recreational enjoyment are realized every year on the San Juan. I implore you to avoid foaling up such a valuable resource.

Please keep me informed of all ongoing activities in this regard.

Sincerely,



James J. Hubert

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IN27-1 Please see the response to General Comment 34 which discusses the public review/comment period and subsequent extension.

Nov 11, 2002


Ken Beck
Bureau of Reclamation
Western Colorado Area Office
835 East Second Ave, Ste 400
Durango, CO 81301

Dear Mr Beck:

I understand that the Bureau of Reclamation EIS re the operation of Navajo Dam recommends a 250/5000 flow regime. I am very sad to hear about the 250 cfs flow recommendation. I believe that 250 cfs will negatively impact the trout fishery below Navajo Dam. It will reduce habitat for trout and the macroinvertebrates they feed upon. It will place more stress on the fish for a prolonged period of time. I believe it would be much better to limit low flows to 500 cfs.

This trout fishery is world reknowned and contributes highly to Northern New Mexico, Southern Colorado economy. It would be ashame to see it deteriorate by virtue of low flows. Thank you for listening.

Sincerely,


John Johnson
576 Black Bear Rd NE
Albuquerque, NM 87122

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IN28-1 Please see the responses to General Comments 3 and 28.

IN28-2 Comment noted.

October 1, 2002

Mr. Ken Beck
BOR Western CO Office
835 East 2nd Avenue
Suite 400
Durango, CO 81301

Dear Mr. Beck:

I would like to express my concerns about the Environmental Impact Statement concerning the San Juan River below Navajo Dam. I strongly oppose the 250/5000 proposal.

No only would this decision be very detrimental to the fishery as it is today, it would also have a monumental effect on the industries, communities, and individuals who rely on the San Juan River fishery to make a living.

The San Juan River's quality waters section is known literally the world over as being one of the finest trout fishing areas anywhere. It would be an absolute shame to alter the quality of those waters and to take away one of the most desirable environmental and recreation resources from present and future generations.

I doubt very seriously that very many people know about the razorback sucker and the Colorado pikeminnow, nor do they care about their future. On the other hand hundreds of thousands do care about maintaining the quality of the San Juan River.

Nor will the razorback sucker or the Colorado pikeminnow ever in a million years generate the kind of revenue that the trout in the San Juan quality trout water does. I think it is wrong to sacrifice people's livelihoods for a fish that is of no economic value to the state of New Mexico or the United States.

I thank you for your time to read my letter and hope that the BOR will decide against potentially reducing the flows of the San Juan so drastically.

Sincerely,



Thomas J. Kanouse
6016 Camino Alegre Drive
El Paso, TX 79912

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IN29-1 Comment noted.

IN29-2 Comment noted.

DEC -2 2002

November 18, 2002

Mr. Ken Beck
Bureau of Reclamation
Western Colorado Area Office, Southern Division
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Re: BOR Draft Environmental Impact Statement

Dear Mr. Beck,

The following are my comments concerning the Bureau of Reclamation's Draft Environmental Impact Statement to change the rules and regulations it uses to operate Navajo Dam.

I understand that the intent of this change is to assist in conserving the two endangered fish while enabling water developments to proceed in the San Juan River Basin. Your Preferred Alternative, the 250/5000 alternative, however, does not achieve this goal for the following reasons:

- 1. Millions of dollars have been spent since 1991 studying this issue, yet your scientists still only speculate that these flows will conserve the endangered fish. I think the price tag is too great for continued experimentation. || 1
- 2. The impact these rule changes will have on existing basin water users, such as industrial, agricultural and domestic water users, trout fisheries, and Farmington's hydroelectric power plant, is significant. The proposed extreme low and high release rates do not represent a balanced approach to achieving your goals. || 2
- 3. Your impact statement does not address drought years, such as this past summer. How do you plan to provide water both to water rights owners and the endangered fish, without drawing reservoir levels to dangerously low levels as you did this summer? || 3
- 4. By implementing these changes, you are taking a risk that other environmental sensitive areas will be negatively affected, such as current wetlands, other native fish and birds and water quality. Your impact statement insinuates that these endangered fish have priority over all these other areas, including current water users. I challenge the logic of that conclusion. || 4

Based on the above I do not support your choice of the 250/5000 alternative. At worst, the 500/5000 alternative would impact existing users less and still give potential to conserve the fish.

Very truly yours,



Chad King
1907 Hwy 170
La Plata, NM 87418
505-325-4718
adobeking@sima.net

IN30-1 Please see the response to General Comment 20.

IN30-2 Please see the response to General Comment 31.

IN30-3 The Flow Recommendations are designed to protect endangered fish species and water usage. Please see the responses to General Comments 13 and 18a and Comment IN26-5.

IN30-4 The EIS does recognize negative impacts. Please see the responses to General Comments 16 and 33.

INDIVIDUALS - Comments and Responses

400

From: "Brian Magee" <magee@seniorglobe.org>
To: <navcomments@uc.usbr.gov>
Date: Tue, Dec 3, 2002 9:15 PM
Subject: 250/5000 Alternative

December 3, 2002

The 250/5000 Alternative seems to pose more problems than solutions. Possible water pollution from low flows 250cfs could create a multitude of problems for all water users. The 250/5000 Alternative ignores some of the DEIS findings, if the mission of the BOR is to manage, develop, and protect water and related resources in an environmentally and economically sound manner it should consider a broader plan that will not have such a negative impact to those of us who are water users.

Sincerely,
Brian Klein

IN31-1 Please see responses to General Comment 1e and 23.

INDIVIDUALS - Comments and Responses

401

From: "James Loud" <J_Loud@email.msn.com>
To: <kbeck@uc.usbr.gov>
Date: 12/3/02 6:10PM
Subject: San Juan Flows

The projected 250 cfs flow minimums for the San Juan River do not represent the optimum alternative presented in the EIS. Such low flows provide little if any additional remediation to the endangered species down stream but represent an enormous loss in economic and recreational benefit from the world class San Juan cold river fishery. In addition, the 250 flow alternative will result in considerable additional expense to maintain power plant operations and irrigation needs. These cumulative losses appear to far outweigh the potential "development" water losses suggested in the EIS (for alternatives with higher minimum flows). Compensation for these losses to the Navajo nation also appear cheaper than implementing the unnecessarily low minimums.

Please reconsider the currently preferred alternative. The 5000/500 alternative appears far preferable to the suggested 250 cfs minimum. A truly remarkable resource is at stake and we appear headed for a decision that will be regretted for generations.

Jim Loud
1995 Siringo Rd.
Santa Fe, NM 87505

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- IN32-1 Please see responses to General Comments 5 and 20 .
IN32-2 Please see the responses to General Comments 29 and 31.
IN32-3 Please see response to General Comment 31.
IN32-4 Please see response to General Comment 1.
IN32-5 Alternatives with a minimum release of 500 cfs do not meet the Flow Recommendations nor provide protection of existing and future water uses. Please see the response to General Comment 11 concerning flexibility.

From: "John Malenich" <mjy2@qwest.net>
To: <kbeck@uc.usbr.gov>
Date: 12/4/02 11:48AM
Subject: Navajo Dam, Draft Environmental Impact Statement (EIS)

Dear Sir,

The follow are comments on the EIS for the Navao Dam:

- a.. The San Juan River supports one of the nation's finest tailwater trout fisheries, but under the Bureau's proposal trout habitat will be decreased by 34%. With low flows, water quality will also suffer. All of this will have a major negative effect on the area's tourist economy, which benefits greatly from the world-class fishery.
 - b.. Under the Bureau's preferred alternative, not only will trout habitat be reduced but so too will native warmwater fish habitat upstream from Farmington.
 - c.. The Bureau should do a better job of crafting options that preserve endangered species while protecting the world-class tailwater fishery of the San Juan. Urge them to support alternatives that keep minimum flows of 500 cfs in the San Juan, or at least come closer to that target than their "250/5000" option.
 - d.. Remind the Bureau that some of the proposed water developments that they are trying to accommodate may not come on line for years, if ever - and that it would be a travesty to sacrifice a world-class fishery today for the sake of water development projects that may not be built for many years.
- Sincerely,

John R. Malenich, Jr.
Paralegal to Donald T. Goulart, Esq.
(303) 447-3737

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- IN33-1 Please see the responses to General Comments 27 and 29.
- IN33-2 Please see the response to General Comment No. 11 which discusses flexibility. Chapter III of the EIS addresses warm water fish impacts.
- IN33-3 Please see the response to General Comment 5.
- IN33-4 Please see the flexibility discussion in General Comment No. 11.

Roger O. McClellan, DVM, DABT, DABVT
 Advisor, Toxicology and Human Health Risk Analysis
 13701 Quaking Aspen Place N.E.
 Albuquerque, NM 87111-7168
 Tel: 505-296-7083
 E-mail: roger.o.mcclellan@att.net

Nov 10, 2002

Mr Ken Beck
 Bureau of Reclamation
 835 East Second Ave, Suite 400
 Durango, CO 81301
 Re: E15 for Navajo Reservoir
 Dear Mr Beck:

I have recently reviewed the draft E15 and wish to comment on proposed actions as I understand them from the E15 and a presentation by Marc Worthington of the NM Dept of Game and Fish.

I am very concerned at the proposal to institute a base flow of 250 cfs. This low flow will have a devastating impact on the ecology of the San Juan River below the Reservoir. In addition, it will have major impact on the San Juan fishing which in turn will have very negative economic impact on NW NM and SW CO. I urge the BJR to institute a base flow no lower than 500 cfs and strive to hold maximum flow below 3000 cfs unless
 (over)

IN34-1 Please see the responses to General Comments 3 and 5.

greater flow is mandated by
reservoir levels.

As a professional trained
and experienced in the field
of trichology I am disappointed
that the BFR appears to
be focusing on a few species
rather than the overall health
of the San Juan River ecosystem.
A more balanced view of the
San Juan River ecosystem is
well-aligned with maintaining
one of North America's "blue
ribbon" fishing streams.

Sincerely,
Roger D. McCallan

IN34-2 Please see the responses to General Comments 5 and
10.

November 30, 2002

Ken Beck
BOR
Western Colorado Area Office
835 East Second Avenue, Suite 400
Durango, Colorado 81301

Subject: Navajo Reservoir Operations Draft Environmental Impact Statement

Dear Mr. Beck:

The low water level in Navajo Reservoir is alarming!!!!

This area is in a record drought and it is very uncertain how much longer it will last. In my opinion, the BOR was very reckless in the management of the precious water that WAS in the Navajo Reservoir this summer. It was obvious that common sense was not used. I do not believe that the BOR followed it's Mission Statement which is the opening statement in both Volume I and II of the Draft Environmental Impact Statements.

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IN35-1 Please see the responses to General Comments 1e and 13.

"The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American Public."

2

IN35-2 Comment noted.

We are all aware that the BOR drained Navajo Reservoir this summer in spite of the drought. The BOR made no known attempt to conserve water. Water flowed out of the Reservoir wildly and freely. The water was not managed nor was it protected in a prudent manner. It is unknown how long this drought will last. There may or may not be partial replenishment of our area's water next year. The Mission Statement says the BOR will manage and protect water in an environmentally and economically sound manner in the interest of the American Public. That statement was not and is not being adhered to. The BOR has allowed Navajo to drop to a reported "60 percent of capacity". IF and it is a very real possibility, the drought continues, there wont be any water left in Navajo and this area can kiss the environment and economy and endangered fish and wildlife goodbye. The present BOR policies relating to Navajo Reservoir are not in the interest of the American Public.

3

IN35-3 Please see the response to General Comment 13 and the response to Comment IN26-5.

The Bureau of Reclamation should follow it's own Mission Statement.

The BOR must adjust policy to take the reality of drought conditions into consideration.

This is not the first drought this area has endured and it most certainly won't be the last. Common sense must be used. We certainly do not want to have to follow in the footsteps of the Anasasi when they had to abandon this area because their water supply dried up. I am a very worried member of the American Public and lifelong resident of San Juan County, NM. Thank you.


Shirley J. McNail, 900 Sabena, Aztec, NM 87410

INDIVIDUALS - Comments and Responses

Mr. Ken Beck
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 400
Durango, Colorado, 81301

November 30, 2002

Dear Mr. Beck,

I have completed review of the Navajo Reservoir Operations Draft Environmental Impact Statement (DEIS) Vol. 1 and 11 dated September, 2002.

I find the DEIS to be very complex, well presented and containing facts, fiction and fantasy. I would only imagine that meeting the BR's Mission Statement of "The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American Public" is not achievable because of the dynamically opposing environmentally and economic elements of the proposed water release regimens from Navajo Dam. I consider this concept to be an "oxymoron".

Of course water releases premised on the fiction or fantasy of restoring native species as complex as the Colorado pike minnow and razorback sucker will be in direct conflict in managing the releases in an economically sound manner. What is the "economically sound" measurable parameter for our endangered fishes? With the proposed flow releases recommended by BR, many of the current measurable economic values produced by the wild water sports fishery will be negatively and gravely impacted!

There is much fantasy and fiction believing that providing "historic mimicking flow releases" for the pike minnow and razorback sucker will provide the fish management "tool" needed to return this species abundance to pre impoundment status. Several river habitat factors such as increased amounts of pesticides reaching the river may be of greater current importance than cooler and reduced flows. The increased use of pesticides during the pre-Navajo Dam years may have rendered the population of pike minnows and razorback suckers to a minimal number as witnessed when the rotenone plume slipped by the detoxification station in 1961. Very few of these species were present to die. To my belief, this plume did not extend downstream of Bloomfield and into what is now considered critical habitat for these threatened species. They were a rare occurring species in the lower San Juan River. Even the DEIS alludes to the fact that antecedent population data for these two species was not known. So many factors limiting these species abundance are currently in play that will not be affected by any ameliorating form of action, and thusly, will make a mockery out of Navajo Dam flow releases mimicking historic flows.

As a "real" starting point, why not try to establish a viable breeding population of adult pike minnows and razorback suckers from intensive hatchery plants. Then determine if spawning attempts are successful without altering flows now found in the river system. Let the American River flows provide the "mimicking" flow less the San Juan. If a breeding population can be established through generous plants of hatchery reared fish, then accept the fact that other limiting factors are affecting survival of growing and adult fish. If a breeding population of sufficient numbers is established and if no or very limited reproduction is found, then it could

IN36-1 Comment noted.

IN36-2 Meeting the Flow Recommendations is designed to help recover the endangered fish; however, this recovery also allows a degree of protection of present and future water uses which are important economic considerations. Also, see the response to General Comment 10.

IN36-3 Please see the response to General Comments 1e and 20.

IN36-4 Please see the responses to General Comments 27 and 29.

IN36-5 There are no doubt many factors involved in limiting the endangered fish populations. The SJRBRIP is designed to address these factors. One of the factors, river flows, is addressed by the preferred alternative in the EIS. Also, see the response to General Comment 20.

IN36-6 The Flow Recommendations in combination with other measures such as stocking endangered fish are designed to recover the endangered fish. The Flow Recommendations are planned to improve habitat conditions where the stocked endangered fish can survive and reproduce.

Page 2

Page 2

NOV. 30 - 2001

be time to test the mimicking flow theory. There must be a sizeable adult population established first before perennial reproduction and survival can be expected.

The 250/5000 cfs proposed flow regimen will without doubt adversely affect not only the production of tail water sport fishes but will also affect the desirability for anglers to use this "dehydrated" reach of the San Juan River. The popular guide boats used by commercial and private fishermen will find rare times when these craft can be safely used. Angler days will decrease along with sport fish production. The economic impact loss will be measurable and comparable if accurate antecedent facts have already been collected indicating the current economic value of the tail water fishery. I certainly hope that BR funds will be used to measure the economic impacts this proposed flow regimen will have on the local economy.

Lastly, for every day at 5000 cfs, the tail water reach could enjoy 10 days at 500 cfs; the expected normal low flow. Gosh, thirty days of 5000 cfs could produce 300 days of more of normal "current history" flows of 500 cfs. The "economically sound" and proven flow minimum with predictable results is not less than 500 cfs. This flow amount has a proven record for recreation and the rewards that come from this recreation, sport fish for catching.

Considerations of impacts in Navajo Lake created by increased spring reservoir releases will keep reservoir elevations from covering needed spawning habitat (annual weed growth of late summer and fall) and fry cover for warm water sport fishes. Since crappie are the principal prey species in Navajo lake, all predator fish will find slimmer crappie numbers to feed upon.

Thanks for the opportunity to review the DEIS. Only time will disclose the "truth" and I hope this ES is not etched in stone forever as "the" release plan of "only choice".

Sincerely,
Warren J. McNall
Warren J. McNall
900 Sabena
Aztec, NM, 87410

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- IN36-7 Please see the response to General Comment 29.
- IN36-8 Reclamation has acknowledged a loss in usable trout habitat associated with a 250 cfs release; however, it does not have any information indicating trout growth rates would be negatively effected.
- IN36-9 Please see the responses to General Comment 29 and 31b.
- IN36-10 The EIS recognizes the benefits of a minimum release of 500 cfs; however, such a release does not allow Flow Recommendations to be met. Also, see the response to General Comment 3.
- IN36-11 Reclamation has acknowledged that severe drawdowns during game fish spawning periods within Navajo Reservoir could have a significant impact to recruitment. In most years, it is believed the effect would not be severe because controlled spring spill releases would most often be offset by inflow. Please see figure II-3 in the EIS which shows the reservoir elevations for each alternative.

October 21, 2002

Mr. Ken Beck
Bureau of Reclamation
Western Colorado Area Office
835 East Second Ave, Suite 400
Durango, CO 81301

Reference: Bureau of Reclamation's Draft Environmental Impact Statement for
Operation of Navajo Dam

Dear Sir:

I am writing to express my opposition to the Bureau's proposal to cut the normal flow in the San Juan River below Navajo Dam to as low as 250 cfs according to the "250/5000" option. The trout fishery below the dam is one of the top five fishing destinations in the country and attracts thousands of visitors. Over the last forty years, a thriving economy has developed around the fishery. Cutting the normal flows in half will devastate this fishery and the supporting economy.

|| 1

IN37-1 Please see responses to General Comments 27, 28, and 29.

It appears that the main reason for the "250/5000" proposal is to manage flows to accommodate future irrigation projects. Wouldn't it be reasonable to work towards more compatible and positive solutions rather than this "rob Peter to pay Paul" approach? Surely, other ways to help the downstream communities, rather than another taxpayer subsidized "high desert alfalfa farming project" of marginal value, can be found. Further, wouldn't it make sense to work to enhance the fishery, such as acquiring more public access, rather than destroying it. New Mexico deserves more than the "250/5000" option can deliver.

|| 2

IN37-2 Please see the responses to General Comments 3 and 10.

Sincerely,



Laddie Mills
16184 Road 28.2
Dolores, CO 81323

From: John Monroe <jmon@cyberport.com>
To: <navcomments@uc.usbr.gov>
Date: 12/9/02 8:00AM
Subject: Navajo Dam

Bureau of Reclamation,

So far since I have been in this area...
You have managed the land and water for the benefit of Industries: Oil and gas, Water, and Mineral without real (needed) consideration with the local community. You say your managing, but I don't think so. The expansion of Oil sites has not lead to increased production, but to only more destruction of land. I live with the oil wells and see very little actual production, just drilling most new sites are drilled then capped. The land in and around the sites are rutted with 1 and 2 foot deep tire tracks from the construction and maintenance equipment. This affects recreational quality of the land and disturbs the environment. There is no maintenance of roads or repairs to the land; I thought there was an enforced management and care for the roads. So, if the Oil companies through out their trash or destroys the environment. There is NO penalty ???

1

IN38-1 Comment noted.

Now to the use of Water, It is high time that California, Arizona, Nevada should start to find other resources for their water. New Mexico is a dry country and can only provide so much, water rtes are already sold out.... So, how can we give anymore. This past year shows the lack of concern by your management policy. More water should have stayed here and not left our area. There has been little if any real proof in your "Environmental" studies. I think it is a means to an INDUSTRIAL ENDS. It is time for California and Arizona to look to the sea. And start conserving their water. We here in New Mexico already have to. How can you squeeze anything more from this Beautiful Country.

2

IN38-2 Comment noted.

New Mexico has very little industry most of it is based on tourism. If you destroy the land and deplete the water here we have nothing for economic development. What is the government going to do, start paying more Bureaucrats to payoff politicians and make false promises. Basically continue the American Tradition of lying to it's people. Or keep the poor, poor. Let's make your new policies a educated Public vote (tell people in plain English what you want to do then vote let them vote).

3

IN38-3 The Preferred Alternative is seen as the best alternative for States to develop their share of the Colorado River. Also, see the response to General Comment 18h.

This area of the San Juan must be considered as equally important and higher than those in industrialized communities of Arizona, Nevada, or California. The big cities and industries need to find other sources for their water and gas. It's time for them to Stop taking because they have you (Bureau of Reclamation) in their pocket.

Sincerely,
John Monroe

September 23, 2002

Ken Beck
BOR Western CO Office
835 East 2nd Avenue
Suite 400
Durango, CO-81301

Dear Mr. Beck:

I am writing to express my concerns about the Environmental Impact Statement concerning the San Juan River below Navajo Dam. I strongly oppose the 250/5000 proposal.

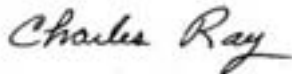
I believe the proposal to drop flows to 250 cfs minimum will be very detrimental to the fishery as it is today as well as the communities and individuals who make a living off of this area. I know that the 250 cfs is a minimum limit, however, when this limit is attained (in a dry area such as this it will), I fear for the viability of the fishery.

The San Juan River's quality waters section is known literally the world over as being one of the finest trout fishing areas anywhere. It would be a shame to harm that reputation and the people and fish that thrive because of that reputation.

I doubt very seriously that the razorback sucker and the Colorado pikeminnow will generate the kind of revenue that the trout in the San Juan quality trout water does. I think it is wrong to sacrifice people's livelihoods for a fish that is of no economic value to the state of New Mexico or the United States.

I thank you for your time to read my letter and hope that the BOR will decide against potentially reducing the flows of the San Juan so drastically.

Sincerely,



IN39-1 Please see the response to General comment 29.

INDIVIDUALS - Comments and Responses

From: "Barry Schuman" <bschuman@snet.net>
To: <navcomments@uc.usbr.gov>
Date: Tue, Dec 3, 2002 10:07 AM
Subject: Navajo Dam Water Releases

December 3, 2002

Mr. Ken Beck
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 400 Durango, Co 81301

Dear Mr. Beck:

I urge the Bureau not to approve the 250/5000cfs Preferred Alternative for Navajo DAM water releases as proposed in its recent Draft EIS. I believe the Bureau can do a better job of crafting options that will preserve endangered fish while protecting this world class tailwater fishery of the San Juan river. The Bureau should support alternatives that will assure minimum flows that come closer to a target of 500 cfs in the San Juan than does the Preferred Alternative.

|| 1

IN40-1 Please see the responses to General Comments 3, 5, and 9.

Dropping flows to 250 cfs during the irrigation season would be especially damaging for the river downstream from the special regulations section, as agricultural diversions could reduce the river to little more than a trickle. Low flows during the hot summer months would also lead to high water temperatures creating serious troubles for trout.

The Bureau is to be commended for seeking to provide water to preserve endangered species, in the form of higher spring time releases. But the Bureau has not looked at a full range of options for protecting the species without resorting to drastically reduced summer and winter dam releases.

|| 2

IN40-2 Please see the responses to General Comments 1 and 5.

The DEIS appears to regard as a given the eventual full development of a number of water projects. Those proposed water developments may not come on line for years, if ever, and it would be terrible to sacrifice a world-class fishery for the mere possibility of those developoments in the future.

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IN40-3 The EIS does assume completion of these water projects. See the response to General Comment 11 for a discussion of flows in the interim.

For these reasons,I urge the Bureau to actively explore the merits of reasonable and less impactful streamflow alternatives which have not yet been given adequate consideration.

Thank you for your attention to these concerns.

Yours truly

Barry R. Schuman
247 Twin Lakes Road
Salisbury, Ct 06068

George F. Sharpe
2400 N. Wagner
Farmington, NM 87401
505-325-4931 (h)
505-327-9801 ext. 114 (w)
sharpe@cyberport.com

November 19, 2002

Mr. Ken Beck
Bureau of Reclamation
Western Colorado Area Office, Southern Division
835 E. Second Ave., Suite 300
Durango, CO 81301

Re: **Comments on Draft Environmental Impact Statement
BOR Re-Operations Plan for Navajo Dam**

Dear Mr. Beck:

The subject BOR document supports the 250/5000 flow alternative because, despite its significant negative economic and environmental impact, it is the only alternative that meets the Flow Recommendations for the endangered fish recovery while conserving enough water to meet future water right needs. I suggest that the Flow Recommendations are just that... recommendations. **I feel that the BOR can operate the dam to meet the intent of the Flow Recommendations without the crippling negative impacts of the extreme operating plan.**

1

IN41-1 Please see the responses to General Comments 5, 6, 9, 11, and 16.

From an economic standpoint, the 250/5000 plan will devastate the fishing and local tourism support industry, cost the City of Farmington millions in the loss of electric generating capacity, and require large capital investments to modify downstream water diversion structures. In addition, there is still some question as to whether it will meet all the downstream legal entitlements. While that may not affect Mother Nature's environment, it will certainly impact the environment of the Four Corners, and should be considered in implementing an operating plan.

2

IN41-2 Please see the responses to General Comments 26, 29, and 31.

Speaking of Mother Nature, there is significant impact there as well. The extreme low flows on an extended basis will result in a loss of wetlands and will result in an associated loss of vegetation and critical habitat for the endangered Bald Eagle, Southwest Willow Flycatcher, and two tern species. It will negatively impact water quality at both the influent and effluent points of downstream communities. Coal will be used to make up for the loss of clean hydropower, which will negatively impact air quality. In addition, the extreme high flows could have devastating effects on the waterfowl nesting areas downstream of the dam.

3

IN41-3 Please see responses to General Comments 2 and 16.

4

IN41-4 Please see the response to General Comment 25.

5

IN41-5 Please see the response to General Comment 33.

Moderating the extremes of the high and low flows could minimize these negative impacts. **In particular, if the 5000 c.f.s., or high end flow range, could be reduced or shortened in**

6

IN41-6 Spring peak flows under 5,000 cfs or for a shorter duration do not meet Flow Recommendations, and consequently impact the ability to recover endangered fish species.

duration, then the continuous 250 c.f.s. low flow wouldn't be required to conserve enough water to meet all the users needs. Conserving water on the high end rather than the low end would allow for low flows to be variable between 250 and 500 such that a flow of 250 c.f.s. would be the exception rather than the norm... to be implemented only for short periods or during very dry years.

In the draft document, the BOR implies that it is handcuffed by the Flow Recommendations to help the recovery of downstream endangered fish. I believe it is incumbent on the BOR to apply the Flow Recommendations with some common sense to mitigate what could be devastating impacts on both the local economy and the environment. I truly hope you will consider such an approach.

||| 7

Sincerely,


George Sharpe

IN41-7 Please see the responses to General Comments 2, 11, and 16.

September 23, 2002

Kan Beck
BOR Western CO Office
835 East 2nd Avenue
Suite 400
Durango, CO 81301

Dear Mr. Beck:

I am writing to express my concerns about the Environmental Impact Statement concerning the San Juan River below Navejo Dam. I strongly oppose the 250/5000 proposal.

I believe the proposal to drop flows to 250 cfs minimum will be very detrimental to the fishery as it is today as well as the communities and individuals who make a living off of this area. I know that the 250 cfs is a minimum limit, however, when this limit is attained (in a dry area such as this it will), I fear for the viability of the fishery.

The San Juan River's quality waters section is known literally the world over as being one of the finest trout fishing areas anywhere. It would be a shame to harm that reputation and the people and fish that thrive because of that reputation.

I doubt very seriously that the razorback sucker and the Colorado pikeminnow will generate the kind of revenue that the trout in the San Juan quality trout water does. I think it is wrong to sacrifice people's livelihoods for a fish that is of no economic value to the state of New Mexico or the United States.

I thank you for your time to read my letter and hope that the BOR will decide against potentially reducing the flows of the San Juan so drastically.

Sincerely,



Randy Sperrill

IN42-1 Please see the response to General Comment 31e.

WARREN T. SLADE

2912 San Pablo Street NE
Albuquerque, New Mexico 87110

November 29, 2002

Mr. Ken Beck
Bureau of Reclamation
Western Colorado Area Office, Southern Division
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Subject: Draft Environmental Impact Statement, Navajo Dam

Dear Mr. Beck:

I wish to comment on the DEIS regarding the operation of outflows from Navajo Dam.

I do not support the recommended flow alternative of 250/5000 cfs because of the potential adverse impacts upon the nationally recognized trout fishery below the dam, the impacts on the Farmington electric power plant and the impacts upon farmers and irrigators in the San Juan valley below the dam.

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IN43-1 Please see the response to General Comment 3.

IN43-2 Please see the responses to General Comments 26 and 31.

The local business economy of the of that portion of the river supported by tourist dollars associated with the excellent trout fishery found immediately below the dam would be adversely affected if the quality of the fishery is degraded due to insufficient flows.

I support the more reasonable alternative flow of 500/5000 cfs. Flows at that level will have less impact on all the parties down stream of the dam that rely on adequate flows to support their activities. Flows of that level have historically shown to have less environmental impact than those admitted to in the DEIS for the recommended 250/5000 cfs.

|| 3

IN43-3 Please see the response to General Comment 3.

Sincerely,



Warren T. Slade

Douglas G. Smith

16 Road 5290 - Farmington, New Mexico 87401 -
Home Phone 505-632-7254 - Email dsmith@infoway.lib.nm.us

November 17, 2002

Bureau of Reclamation
Mr Ken Beck
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Dear Mr Beck,

I am an affected user of water for both domestic use and for irrigation from the Bloomfield Irrigation District.

I request that the BOR withdraw the DEIS to reoperate the Navajo Dam because of the following reasons:

The proposed alternation has negative impacts and cost that are not fully explained or displayed.

The draft was confusing and not easy to understand in non technical terms.

It is not clear to me that the preferred alternative protects the agricultural industry nor does it protect existing water rights. Increased costs to the diversions should be a cost of any alternative that affect existing diversions.

Sincerely,



Douglas G. Smith

|| 1
|| 2

- IN44-1 Please see the response to General Comment 18a.
- IN44-2 Please see the response to General Comment 31d.

Navajo Comments - Follow up Comments/ Navajo Dam

From: "David Sproul" <hatchmaster@hotmail.com>
To: <navcomments@uc.usbr.gov>
Date: 12/2/2002 2:37 PM
Subject: Follow up Comments/ Navajo Dam

Mr. Beck,

As a follow up to my previous letter let me again implore you not to make this change so hastily!

My wife and I absolutely love the San Juan as it is and are preparing to move to your area within the next five years when we become "empty nesters". We do not believe it is in the best interest of the area or it's community. Common sense would seem to dictate a different course of action.

Sincerely,

David Sproul

MSN 8 helps ELIMINATE E-MAIL VIRUSES. Get 2 months FREE*.

1

IN45-1 Comment noted.

INDIVIDUALS - Comments and Responses

418

From: "Tommy Thompson" <tommy@obli.net>
To: <navcomments@uc.usbr.gov>
Date: Mon, Dec 2, 2002 4:58 PM
Subject: SanJuan River flow

I don't agree with the way the b.o.r. wants to run things, it seems to me that we ought to think of us little people who's lively hood is tied up on the river and we need proper steady flows to exist where weve made our homes and work.

tommy thompson
#13 cr 4381
Blanco, nm. 87412

p.s. would it help if my title was, " Newmexico's Ambassador to the San Juan River" can i get a flow now?

1

IN46-1 Comment noted.

From: <Bbbtucker@aol.com>
To: <kbeck@uc.usbr.gov>, <hchall@ix.netcom>
Date: 11/26/02 9:36AM
Subject: San Juan River flow

Please do not take the drastic move of reducing flow of the San Juan River based on the insufficient information collected to date. Surely more study should be undertaken regarding San Juan River future needs and no action to reduce flow should be taken before the need is clearly and immediately needed.

Please forward this letter to any and all decision makers in this matter.

Robert E. Tucker
0369 Stagecoach Lane
Carbondale, CO 81623

IN47-1 Please see the response to General Comment 1a.