



December 19, 2014

Via Electronic Mail

Michael Connor, Deputy Secretary
United States Department of the Interior
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RE: 2014 Release of Prior and Paramount Water to Elephant Butte Reservoir

Dear Deputy Secretary Connor:

I write on behalf of WildEarth Guardians to express our disappointment and concern regarding the deal brokered by the Bureau of Reclamation with respect to the Six Middle Rio Grande Pueblos' (the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia and Isleta) prior and paramount water remaining in El Vado Reservoir at the end of the 2014 irrigation season.

As you may know, the U.S. Department of the Interior ("Interior") stores water in El Vado each year for the benefit of the six Pueblos. During years when Article VII of the Rio Grande Compact imposes restrictions on non-Pueblo storage of native Rio Grande Basin water, any Pueblo water remaining in El Vado Reservoir is routinely released (generally in December) by Interior and allowed to flow downstream to help New Mexico satisfy its Rio Grande Compact water delivery obligations to Texas. Any "relinquishment credits" obtained by New Mexico from such releases and deliveries to Elephant Butte are not credited to the Pueblos, but rather are brokered by the State to other water users—typically the Middle Rio Grande Conservancy District ("District")—to allow the District to store water in subsequent years when Article VII storage restrictions remain in effect. Such winter releases of this water yield little to no ecological benefits to the Rio Grande ecosystem or to the species that depend on the river for their survival. Further, such releases undermine the autonomy of the Pueblos to manage that water in a way that benefits the Pueblos.

In 2013, Reclamation spearheaded a deal with the Albuquerque-Bernalillo County Water Utility Authority ("Water Authority") to exchange and carryover the remaining prior and paramount water to be released to augment the spring peak flow in the Rio Grande in a way that benefitted flows in the river and endangered species. Reclamation released the carryover water in the spring of 2014 to help provide a modest "peak flow" to roughly mimic the river's historic hydrograph, when high flows were present historically.

It is our understanding that Reclamation made an effort to put together a similar arrangement this year, but was not fully successful. Specifically, we understand that the deal brokered by Reclamation this year involves the following:

- The City of Santa Fe has or will exchange 11,412 acre feet of its San Juan-Chama water stored in Elephant Butte with a like amount of prior and paramount water left in El Vado;
- Reclamation has or will receive 3,000 acre feet of the City's exchanged San Juan-Chama water for ESA operations in 2015;
- The City of Santa Fe has agreed to transfer 600 acre feet of its water for use or lease by the Pueblos;
- The exchanged San Juan-Chama water will remain in El Vado Reservoir until such time as a storage agreement is executed between the Albuquerque-Bernalillo County Water Utility Authority and the City of Santa Fe;
- The balance of prior and paramount water not exchanged, 5,800 acre feet, has or will be released to Elephant Butte Reservoir during the month of December 2014.

While this deal appears to be a good one for the City of Santa Fe and Reclamation, it does not recognize the environmental imperatives of the river. First, the 3,000 acre-feet of water secured by Reclamation will only provide 10% of the total amount needed to be stored in upstream reservoirs to provide a spring peak flow to mimic the historic flow patterns. Based on the water Reclamation currently has in storage for environmental purposes, it is not likely that Reclamation will have enough water to generate even a modest peak flow in the spring of 2015. This upcoming spring will be the sixth year without a peak flow in the middle valley pushing endangered species further toward the brink of extinction.

Second, the deal gives away 8,000 acre-feet of water that otherwise would have at least flowed down the river in the Middle Rio Grande in December. Although such winter releases are far from ideal, the negotiated exchange takes credit for past deliveries at the expense of the river in the future. Specifically, the water exchanged with the City of Santa Fe will never flow down the river in the middle valley due to the above-Cochiti diversion point for use of this water. Thus, the 8,000 acre-feet traded away to Santa Fe will provide no ecological benefit to the Rio Grande based on the deal struck by Reclamation.

Finally, the arrangement does not provide the Pueblos with any autonomy over water that was formerly considered theirs (except for 600 acre feet) or provide a benefit proportionate to the total storage conserved by the Pueblos. Thus, in this instance, we do not believe that Interior lived up to its legal obligation to protect flows in the river to support endangered species or to satisfy its trust responsibility to the Pueblos.

As an alternative to these secret end-of-the-irrigation season deals made with the Pueblos' prior and paramount water—deals that are hastily negotiated without the opportunity for meaningful input from the Pueblos, the public, or the environmental community—we propose that a new water management regime be put in place that would provide for carryover

storage of water stored for the Pueblos. Such a change would act as a safety net for endangered species and provide flexibility and security to the most senior user in the Basin, the six Pueblos. There are many advantages of pursuing this policy change, as well as ample legal authority for this change in the status quo.

First, providing carryover storage to the Pueblos provides a water safety net within the Rio Grande Basin. If the Pueblos are allowed to carryover water in El Vado into subsequent years, a supply of water will be available to the Pueblos and potentially for others within the Basin, during periods of drought. For example, the Pueblos could potentially lease and receive compensation for providing its water to benefit flows in the river and support habitat for the listed species in the Basin, or to meet delivery requirements under the Rio Grande Compact.

Second, the Pueblos are not subject to the Rio Grande Compact. The water stored for the Pueblos is not within the scope of the Compact and thus can be stored even water when Article VII of the Compact is in effect. Therefore, providing the Pueblos with carryover storage would allow storage even in years when other water users in the Basin cannot store native Rio Grande water and will help create an incentive to conserve stored water—an incentive that does not exist with a “use it or lose it” policy and practice. Such carryover storage is essential in the southwest where water availability can vary significantly from one year to the next.

Finally, by maintaining the status quo, the United States not only continues policies that threaten the continued existence of imperiled species in the Middle Rio Grande, but also continues to breach its fiduciary duty to the Pueblos to ensure that its water rights are protected. Under the current regime, the Pueblos’ stored water is effectively taken from them, without their consent or compensation, at the end of irrigation season.

As a condition of authorizing future carryover storage, Guardians’ proposes that a portion of the total storage be dedicated to serve environmental purposes. This condition would ensure that water is available not only for additional use in subsequent years, but that the river, the riparian environment and native species would also benefit from these additional flows. For example, if 50% of the water carried over from the previous year was dedicated to creating dynamic peak flows in the spring, that water would serve the dual purpose of creating conditions that support the reproduction of imperiled species and help New Mexico meet its obligation to Texas under the Rio Grande Compact.

This water could be stored in the Environmental Pool in Abiquiu Reservoir (or in other Rio Chama or Rio Grande reservoirs, with the appropriate authorizations) and then released, as necessary, to maintain flows in the Rio Grande. The Environmental Pool would serve to not only replicate the current nonuse of a portion of the Pueblo’s water rights, but hopefully would guarantee greater certainty that the water is available to fish and wildlife and the Compact, and that it is not just made available for further depletion downstream.

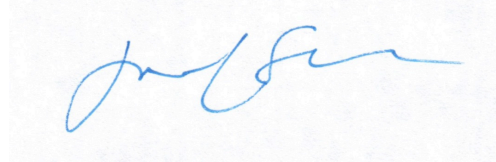
Maintaining flexibility for the Pueblos by providing carryover storage will have numerous benefits to the Pueblos, as well as provide greater security for the available water supply in the Basin. The Pueblos would obtain control and have the ability to lease their water to

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others in the Basin and manage or save for future dry years. This will honor the Pueblos' senior water rights and provide them with the same independence as other users in managing their water resources. Maintaining the status quo not only injures the Pueblos, but injures the river.

We appreciate your consideration of Guardians' proposal and hope that we can discuss it with you and with the six Pueblos in greater detail in the future. Please feel free to contact us if you have any questions or would like to set up a meeting to address these concerns or our proposal.

Sincerely,



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cc: Chairman Stuart Paisano, Coalition of Six Middle Rio Grande Basin Pueblos
Governor E. Paul Torres, Pueblo of Isleta
Governor Joseph H. Suina, Ph.D, Pueblo of Cochiti
Governor Oscar K. Lovato, Pueblo of Santa Domingo
Governor Joseph E. Sandoval, Pueblo of Santa Felipe
Governor George M. Montoya, Pueblo of Santa Ana
Senator Tom Udall (D-NM)
Senator Martin Heinrich (D-NM)
Congressman Ben Ray Lujan (D-NM)
Congresswoman Michelle Lujan Grisham (D-NM)
Jennifer Gimbel, Principal Deputy Assistant Secretary, U.S. Department of the Interior
Dan Ashe, Director, U.S. Fish and Wildlife Service
Gary Frazer, Assistant Director, U.S. Fish and Wildlife Service
Estevan Lopez, Commissioner, U.S. Bureau of Reclamation
Mike Hamman, Albuquerque Area Manager, Bureau of Reclamation
Tom Blaine, State Engineer, State of New Mexico
Amy Haas, Acting Director, N.M. Interstate Stream Commission
Derrick Lente, Chairman, MRGCD Board of Directors
John Stomp, Chief Operating Officer, Albuquerque-Bernalillo Water Utility Authority
Javier Gonzales, Mayor, City of Santa Fe