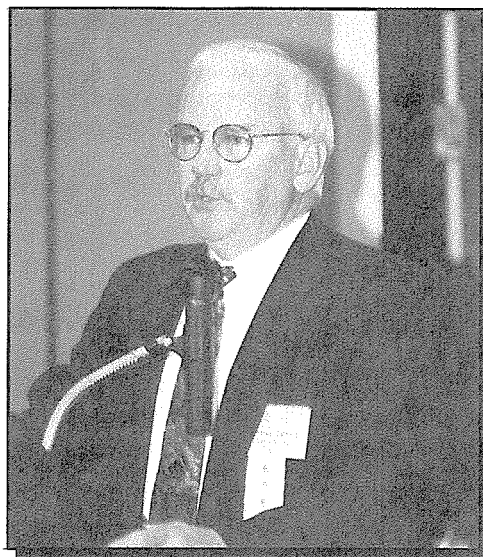


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CURRENT BUREAU OF RECLAMATION POLICIES AFFECTING THE COLORADO RIVER REGION

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Note: Regional Director Calhoun is representing Commissioner Eluid Martinez, who regrets that he is unable to attend the conference and present the keynote address.

Our issue at hand today, *Northwestern New Mexico as a Case Study*, poses for us as vexing a problem as we have collectively addressed in our careers. Already this morning we have heard perspectives of issues and management challenges on the San Juan River that are as diverse as possible. More will follow this afternoon and tomorrow. All are being provided in the spirit of openness and cooperation by good and honest people. . . and sooner or later they well may be on a collision course.

When I think about management of the San Juan River drainage, I think of President Charles de Gaulle of France who once said in exasperation, "How can

you govern a country which has 246 varieties of cheese?" I haven't counted, but I would not be surprised to see that there are 246 views as to the future management of the San Juan River.

So, my task this noon hour is to add my views to the increasing pile of kindling wood so that tomorrow, in his concluding comments, Tom Bahr can either throw the match and start the inferno. . . or get out the fire extinguisher.

I am reminded of the New Mexico Water Conference in Santa Fe I spoke at ten years ago. Then we were focused on how to handle the overabundance of water in the state, primarily by the passage of flood water safely down the Rio Grande. This year, with about a 35 percent of normal spring runoff on the San Juan, and an even smaller percentage on the Rio Grande into Elephant Butte, we have had the other extreme.

As you have heard today, there are a number of volatile and sensitive issues that will stem from the dilemmas in this basin. And, they all either come back to, or revolve around, meeting the needs of the endangered fish and the potential tribal rights that are yet to be quantified. Those future issues must also be considered with the various existing uses in the basin.

This may be jumping ahead in my planned order of topics, but it is a good place to stress the importance that the Bureau of Reclamation places upon the San Juan River Basin Recovery Implementation Program.

The Colorado River Storage Project Act, and subsequent acts that added "participating projects" to the CRSP, allowed for the construction of many large mainstem and tributary impoundments, including Navajo Dam on the San Juan River. While these units were essential for the development of water storage and flood control, their construction and operation altered natural river ecosystems, resulting in altered riverine habitats and migration routes.

From these and other activities, such as the planting of predator nonnative fish, we have the resulting endangerment of native fish species that historically lived in the San Juan, two of which currently inhabit the river—the Colorado squawfish and the razorback sucker.

The Recovery Implementation Program was developed as a cooperative effort by Reclamation; the Fish and Wildlife Service; the Bureau of Indian Affairs; the states of Colorado, New Mexico, and Utah; the Navajo Nation; the Southern Ute and Ute Mountain Ute Indian tribes; and the Jicarilla Apache Indian Tribe. Most of the parties have entered into a cooperative agreement to establish the foundation for a long-term program of research and recovery actions for the endangered fish species.

The purpose of the program is to protect and recover endangered fishes in the San Juan Basin while water development proceeds in compliance with all applicable federal and state laws, including, of course, environmental and endangered species laws and federal trust responsibilities to the tribes. As I said, that plug for the Recovery Program was a bit out of sequence, but it is a critical underpinning to all that we will talk about. It is our principal vehicle to cut through a lot of the "doom and gloom" messages related to the San Juan River.

My task with you today is not to define all of the issues, since that is what the multitude of speakers today and tomorrow are doing, but to offer a federal perspective. To be candid, some federal positions or roles relative to the issues are still being worked out. Unlike the Lower Basin of the Colorado River, the Secretary of the Interior, and thus the federal government, is not the water master (and, I should quickly add, we do not want to be the water master of the Upper Basin.) So in many cases, we, like you, must respond to issues and potential resolutions placed before us by other parties.

A lot of the tension surrounding the San Juan River is analogous to what it must be like to live in a coastal state and wait for the offshore hurricane to finally make its move inland. And, I think that move has now started.

Last week I read the September 9, 1996 letter by President Albert Hale of the Navajo Nation to Governor Gary Johnson. We also heard the Navajo Nation's message first thing this morning from President Hale. In his forthright letter, President Hale told the Governor that the Navajo Nation is ready to address issues of mutual concern and explore the possibility of negotiated resolution of their San Juan River water rights. That single letter, I think, is the starting signal for events that will follow for years to come. We also appreciate State Engineer Tom Turney's positive remarks on this matter in his address today.

As you have already heard, the Navajo Nation is well aware that their unquantified water rights have created a cloud over development in the basin. I commend President Hale for his willingness to enter into dialogue in an attempt to avoid litigation that would be costly, drawn out, pitting neighbor against neighbor, and place resolution into a "winner and loser" category rather than some sort of "win-win" environment.

I agree with President Hale that negotiation would be difficult if both parties brought their polarized positions to the table. For the Navajos to argue that every drop of water in the river is theirs, and for the State of New Mexico to argue that the Navajo rights have already been completely quantified, would make finding an agreement nearly impossible.

It is easy to focus upon the Navajo water rights simply because the potential numbers are so big. But,

there are several other important tribal issues to keep in mind. First, the Jicarilla Apache water rights claims were negotiated over nearly eight years and culminated in Congressional approval of a settlement in 1992. That settlement includes a total divertable supply of 40,000 acre-feet and a total depletion of 32,000 acre-feet.

And, of course, there is the Colorado Ute Indian Water Rights Settlement Act of 1988, which is the linchpin of the Animas-La Plata Project. Just as the Navajos would have a priority date that precedes most non-Indian development in the San Juan River, the Ute Mountain Utes and the Southern Utes also have a priority date that precedes virtually all the non-Indian rights on the Animas and La Plata rivers. The Animas-La Plata and Dolores projects, as defined in the Settlement Act and Agreement, resolve the claims of the Colorado Ute tribes. The Bureau of Reclamation believes that resolution is the clear intent of Congress and the tribes, and therefore the Animas-La Plata Project must continue to move to construction.

Changing gears a little bit, I think we need to focus upon the fact that the basic issue on the San Juan at this point is that it does not appear that sufficient water is available within the basin to allow current and planned depletions to take place and still protect the two endangered fish and their critical habitat. This dilemma also does not address the potential need for additional water supplies to sustain any additional growth anticipated by the states or tribes. This is a problem at the center of many current and future issues in the basin.

We also need to lay the endangered species issue squarely on the table. There is a growing sense among some that the Endangered Species Act consultations are creating a de facto priority system on the San Juan River. Reclamation believes that this assumption is technically incorrect and that the Department of the Interior and the Fish and Wildlife Service will need to change that perception. We believe that allocations have been, and will continue to be, apportioned per state water law and process. If the tribes have superior rights, and if those rights and the needs related to endangered species law require a change in allocations, then those changes should be administered by the state engineer and not the federal government.

Recent events have seen the Fish and Wildlife Service declare that few additional depletions are possible, and that has changed the rules for most of you. If the endangered fish are determined to need essentially the remaining flow of the San Juan River, then all those who envisioned completion of some ongoing planning, construction, or contracting processes will now view those possibilities with considerable skepticism. There are as many viewpoints and solutions offered up as there are players in the game.

The cornerstone in the system is Navajo Dam. It is important to recognize that of the roughly two million acre-feet annual average runoff into the San Juan, about 25 percent is consumed. Therefore, Navajo Dam's regulation of the San Juan River allows for better consumptive use utilization of the water supply. That, of course, is in addition to the primary purpose for which it was built—to provide the needed water supply for the Navajo Indian Irrigation Project (NIIP) and other basin developments.

Below Navajo Dam, a Blue Ribbon trout fishery has developed which is highly valued by the State of New Mexico, trout fishers, and the environmental community. Juxtapositioned to the trout are the Colorado squawfish and the razorback sucker, two endangered fish that have historically inhabited the San Juan River. Significant time and expenditures over the last few years have gone into their recovery efforts.

In 1990 and 1991, two major consultations under Section 7 of the Endangered Species Act were ongoing. They were for the Animas-La Plata Project and blocks one through eight of the NIIP. The resulting Biological Opinions and Reasonable and Prudent Alternatives to avoid jeopardy allowed a portion of the full-water depletions for these projects, but left the remaining depletions and other potential projects to await completion of the seven-year research program. Until the research is completed in 1997, we will be living with a certain amount of confusion about the future of water use in the basin.

Please recall our discussion a few minutes ago concerning the San Juan River Basin Recovery Implementation Program. This fifteen-year research and recovery program began in 1991. The long-range plan provides for the formulation of annual work plans for the satisfaction of identified information needs; the timely evaluation of the success of actions

implemented; and the short-term, intermediate, and ultimate actions necessary to attain recovery while allowing compatible development of the basin's resources.

There are six key objectives of which I think you should be aware, including:

- 1) develop quantifiable measures of achievement of recovery of the native fish community;
- 2) identify, protect, and restore habitats;
- 3) identify and manage the native fish community to restore the endangered fish species;
- 4) determine roles of nonnative fish species in the decline of native species and implement corrective actions;
- 5) determine the occurrence, extent, and roles of water quality degradation and contaminants in the decline of native fish species and identify and implement corrective actions; and,
- 6) develop, implement, and maintain an adaptive management program approach to ensure conduct of appropriate research and management activities to attain and maintain recovery of endangered and other native fish species.

The activities conducted under this recovery program are being closely coordinated with the ongoing similar recovery program in the Upper Colorado River Basin. That program deals primarily with the Green River and Colorado River sub-basins above Glen Canyon Dam. Also, recovery efforts are underway in the Lower Colorado River Basin. In all cases, we are working to share data, coordinate objectives, reduce overlap and duplication, and improve the effectiveness of all three recovery efforts.

From a federal perspective, there are ongoing planning, construction, and contracting activities deeply tied into the dilemmas of the San Juan River. Among the most prominent are: completion of the NIIP; the initiation of construction of the Animas-La Plata Project; the Navajo Nation's San Juan irrigation projects; the water contract extension for the Public Service Company of New Mexico; the implementation of the Jicarilla Apache Settlement; the potential for a Navajo-Gallup Pipeline Project; the potential reauthorization of the Endangered Species Act; and the successful implementation of the San Juan River Basin Recovery Implementation Program for the endangered fish.

Within each of these activities lies the potential catalyst to force major action to resolve the issues of the San Juan River. While the issues are separate, they share linkage to resolution of the Navajo Nation's water rights issue. They share a common bond with allocation issues that could be linked to endangered species recovery actions. They share linkage to the willingness of Congress and the Administration to commit funds toward resolution.

In other words, no significant action within the basin stands alone. In our view, no single item can be broken out and solved on its own merits without a second, third, or larger number of issues tagging along.

The role of the Bureau of Reclamation is that of facilitator, partner, and participant. We are not in a position to resolve unilaterally the key issues of Indian water rights settlements. We are not in a position to resolve by ourselves the endangered species issues.

Former Reclamation Deputy Commissioner Joe Hall used to say that Reclamation should be the "honest broker" in the emerging western water debate. This was in recognition that our traditional role of federal planner and constructor of projects had largely passed. I think Reclamation can assist in getting the varied parties to the negotiation table and we have information, resources, some funding, and some potential actions to place into the mix. However, we cannot do it for you, nor would any of you probably want us to solve the river basin's problems. All of this must be done consistent with applicable state laws and within the recognition of the government-to-government relationship that exists with the tribes and the United States.

There are several significant actions upcoming in which Reclamation has both involvement and concern. First is the Low Winter Flow Release Testing on the San Juan from Navajo Reservoir, scheduled to begin this coming November.

As part of the endangered species consultation for the Animas-La Plata Project, a seven-year research program was required to assess the effects of a range of flows in the San Juan River. An updated 1996 Biological Opinion from the Fish and Wildlife Service included requirements to conduct a two-week and four-month winter test flow at Navajo Dam.

This requirement is based upon the recognition that the long-term operation of Navajo Dam may include lower winter flows. The additional storage of water in the reservoir would provide the latitude of higher releases during the springtime to benefit downstream populations of endangered fish, or could provide for some additional depletions in concert with endangered fish needs. The two-week test flow was conducted last January to assess the effects of reduced winter flows on a variety of downstream resources and the human environment. The information obtained is being used to plan the four-month test.

Many of you know that Reclamation and the Fish and Wildlife Service were sued by the San Juan Fly Fishing Federation on the basis that we allegedly failed to comply with the National Environmental Policy Act (NEPA). The Federation believes we have not considered the data collected, that significant impacts will likely occur, and that we must do NEPA compliance prior to the four-month test. Reclamation believes that the low-flow testing is within the scope of authorized reservoir operations as described in the project legislation, and that under existing case law, NEPA compliance is therefore not required.

We are committed to providing the test flows requested by the Reasonable and Prudent Alternative, and we believe that delays in completing the tests will delay completion of both the Animas-La Plata Project and the NIIP. The flows will include winter releases at Navajo Dam of approximately 300 cubic feet per second with a target of 600 to 650 cfs downstream at Shiprock.

Interestingly, the low-flow test probably will not be much different than the historic winter flow through the basin, or for that matter the current flow. Looking at this month's inflow through Tuesday, September 17, the range was from a low inflow of 212 cfs on September 9 to a high inflow of 1,425 on September 14 following some fall storms. I think Stanley Pollack captured this point very effectively in his talk right before lunch today.

The potential for a construction start on the Animas-La Plata Project is the next benchmark action I would like to highlight. Reclamation believes it has essentially completed the prerequisites to a construction start. We completed the Final Supplement to the Final Environmental Statement and filed the docu-

ment with the Environmental Protection Agency on April 26, 1996. That document is still awaiting EPA action. Two extensions have been granted to EPA for their review. As part of that effort, we are working on resolving EPA's outstanding water quality concerns for New Mexico that could result from project development. Central to that is an effort to develop a mediation process for all parties. Meanwhile, the project's sponsors have filed a lawsuit against EPA for obstructing project construction.

There are five outstanding issues besides resolving EPA's concerns that we must deal with prior to construction. They include: obtaining a 404(r) exemption from Congress, amendments to cost-sharing agreements, execution of Indian contracts, obtaining a relocation certificate from the Federal Energy Regulatory Commission for natural gas lines, and acquiring additional land needed for project construction.

Reclamation is continuing with development of the NIIP. Currently blocks 1 through 7 are producing high-value crops, including potatoes, wheat, corn, and beans, on approximately 65,000 acres of land. At full development, NIIP will consist of 11 blocks having a total of 110,630 acres of irrigated lands.

We have in place a reasonable and prudent alternative to avoid jeopardy under Section 7 of the Endangered Species Act for blocks 1 through 8. However, the Bureau of Indian Affairs (BIA) is now requesting consultation with the Fish and Wildlife Service on blocks 9 through 11. The BIA is now performing studies and gathering data to obtain the necessary clearances for those blocks. Either a finding of no-jeopardy or a reasonable and prudent alternative is needed before construction, scheduled for 1999, can begin on block 9.

However, clearances are being held pending completion of the Recovery Program studies, with the issues of elevated selenium levels in return flows and the annual depletion of approximately 270,000 acre-feet as prime concerns. Again, we are back to the interrelatedness of San Juan River issues.

The Navajos believe that implementation of the Endangered Species Act is superseding the Nation's 1976 water delivery contract for diversion of up to 508,000 acre-feet annually from Navajo Reservoir. In exchange for construction of NIIP, the Navajos agreed to an annual diversion of 110,000 acre-feet by

the San Juan-Chama Project and to share shortages of the water supply with other users from Navajo Reservoir. Not only is NIIP not yet complete, but through implementation of the Endangered Species Act, the Navajos believe that they have been denied their full share of the available water, while other users have not suffered from the shortage caused by potential endangered fish needs—again, interrelated issues in the basin.

Speaking of the San Juan-Chama Project, there are “hot-spot” concerns here too. The project makes possible the diversion of water from upper tributaries of the San Juan River in the Colorado River Basin. The water is conveyed across the Continental Divide and into the Rio Grande Basin. The imported water is stored and held for release in Heron Reservoir. The estimated firm yield is 96,200 acre-feet per year. Of that, all but 4,990 acre-feet is allocated, with slightly over half the water going to the City of Albuquerque (48,200 acre-feet). The next largest amount (20,900 acre-feet) goes to the Middle Rio Grande Conservancy District. There are 11 other entities sharing in the remaining water. Also included, under separate legislation, is a minimum pool for fish and wildlife and recreation purposes at Cochiti Lake, which is a Corps of Engineers facility.

If limits other than those imposed by the authorizing legislation are placed upon the project operations, several impacts may result. A reduction in diversions would likely require a re-evaluation of the project’s firm yield which may be reduced from the current level of 96,200 acre-feet per year.

A reduction in the firm yield may impact the amount of project water Reclamation is willing to contract for. As I said, we currently have contracts for 91,210 acre-feet. If restrictions were placed on the remaining 4,990 acre-feet, that would impact negatively the San Juan Pueblo and Taos Pueblo/area to whom the water has been allocated but remains uncontracted.

If the firm yield were reduced even further, impacts to current signed contracts would result, possibly leading to shortages to municipalities, irrigation districts, and recreation interests.

In broad terms, if the San Juan-Chama water imports to the Rio Grande Basin were reduced for whatever reason, there would be less water in the Rio Chama and Rio Grande mainstems, there would be

smaller reservoir pools impacting recreation and fisheries, and there would be reduced water management opportunities to conjunctively use San Juan-Chama water for brown trout fisheries on the Rio Chama, recreational rafting and boating on the Rio Chama, and environmental uses on the Rio Grande.

The bottom line here is, less San Juan-Chama water in the Rio Grande Basin would not be good, and we could be facing legal problems related to contracts. So, now the interrelated San Juan River Basin problems are potentially spilling over the Continental Divide into another basin.

Finally, an upcoming benchmark issue for Reclamation relates to the request of Public Service Company of New Mexico to renew and extend through the year 2025 the water service contract for the San Juan Generating Station.

A Draft Environmental Assessment (EA) for the contract renewal has been prepared and distributed for public review. The EA cannot be finalized until agreements can be obtained and Indian trust assets are satisfactorily addressed.

The Navajo Nation has concerns over the issuance of contracts for waters from the San Juan River if there will not be sufficient water for the NIIP. The Nation asserts its paramount water right to waters of the San Juan River, although, as noted at the outset of our discussion, those rights are not yet adjudicated.

The Southern Ute and Ute Mountain Ute tribes have concerns about the proposed action because it may interfere with the completion of the Animas-La Plata Project by preventing them from securing the balance of water they are entitled to, and thereby affecting their Indian trust assets. They assert that all such depletion contracts from the San Juan River, of which there are seven, have the same effect.

We have been engaged in Section 7 consultation with a second draft Biological Opinion issued last July. We are considering language that could be included in the final Biological Opinion and Environmental Assessment that would satisfy the Indian trust concerns of the three tribes.

As you can see from our discussion the past half-hour, competition for the limited San Juan River water is and will continue to be very intense. The demand for consumptive uses continues, the demand for water for endangered species continues, as does the demand for water for sport fisheries. The Navajo Na-

tion has water rights that must be adjudicated and then allocated within the existing hydrology, while the Jicarilla Apache, Southern Ute, and Ute Mountain Ute tribes have water right settlements that must be honored and implemented, also within existing hydrology. The stress spills into adjoining river basins, impacting those holding water contracts from the San Juan River Basin.

With that and a whole lot more in mind that I have not had the time to discuss, I hope that you all can digest your lunch without too much distress. The challenge that lies before us at sessions such as this is to really come to grips with the challenges, obligations, and realities of the San Juan River, and begin to seek negotiated and lasting resolution to our collective problems.