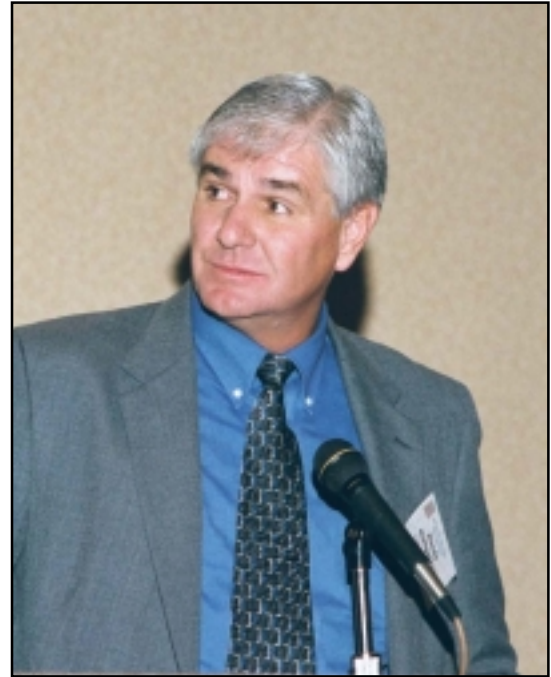


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## THE SAN JUAN RIVER - THE CURRENT CONTROVERSY

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### INTRODUCTION

The New Mexico San Juan River Basin (the Basin) located in northwestern New Mexico represents the classic western conflicts for an available water supply. The controversy in the Basin is the conflict among the historic users, Native American claims and settlements, future growth, and endangered species. The difficulty comes with balancing these demands within New Mexico's allocation from the Upper Colorado River Basin Compact and within the available water supplies of the San Juan, Animas, and La Plata Rivers. To give just one illustration, basin water development began after 1878, while Native American reservations were established in 1868, or earlier. These reservations provide an early priority date compared to the majority of non-Indian rights. However, even these early priorities, are, in effect, being challenged by the Endangered Species

Act (ESA or the Act), and the Indians may not be able to develop their water even though they have early priority dates. The Act intended to protect the Colorado Squawfish (now known as the Pikeminnow) and subsequently the Razorback Sucker, currently limits the water supply for the Animas-La Plata Project (ALP) and may deny water for some additional uses in New Mexico. In effect, the Act holds New Mexico's remaining allocation of Upper Basin Water hostage, including the water with the earliest priority date, which belongs to the Indians.

Contributing to the controversy is evolving opposition to any structural water development; that is, a diversion structure, dam and reservoir. Major environmental organizations have chosen the ALP as their "poster child" project and oppose it at seemingly all costs. A partnership between these environmentalists and fiscal conservatives opposed to large federal projects bodes ill for western water projects.

Local entities nearing the limit of their real wet water supplies are truly challenged to oppose these emotional nay sayers. All this controversy and conflict means that today demands in San Juan County projected under New Mexico's forty-year planning horizon cannot be met with existing or anticipated water supplies.

## **THE ISSUE - HOW MUCH WATER WILL EXISTING USERS LOSE?**

The most controversial issues are the needs of the endangered fish and the Indian claims, which together may use all the available water. When the Navajo Nation and the Jicarilla Apache Tribe complete their planned developments and the endangered fish are satisfied, there is not enough water both to continue existing uses and provide for growth. One possible, but painful, solution may be to take water for growth in the municipal and industrial (M&I) sector from other current users, who most likely will be the agricultural users. While we may accomplish a transition from agricultural to M&I use, it will be very expensive for New Mexico, the Indian Tribes, the local governments, and the federal agencies. Great resistance can be anticipated to the transfer from existing users to the tribal entities and the fish. The controversy, *water for the citizens or for the fish*, is the center of current and future issues in the Basin in New Mexico.

## **BACKGROUND**

### **Location**

The San Juan River Basin is in the Four Corners area of Arizona, Colorado, Utah, and New Mexico. The Basin extends approximately 250 miles east to west and 160 miles north to south. New Mexico encompasses 39 percent of the whole Basin.

The San Juan River Basin drains an area of approximately 25,000 square miles and makes up about one-fourth of the Upper Colorado River Basin. The San Juan River is the second largest tributary to the Colorado River. Its source is on the Continental Divide in Southern Colorado, and it flows about 350-river miles west to its confluence with Lake Powell.

### **Climate**

The climate of the San Juan River Basin varies from alpine to desert. The higher part of the Basin is in Colorado with more than 30 peaks of the San Juan Mountains ranging from 12,000 to more than 14,000 feet in elevation. The lowest elevation of the Basin is at the confluence of the San Juan River with Lake Powell, about 3,700 feet above sea level. The areas above 10,000 feet have more precipitation and lower winter and summer temperatures. The areas less than 7,000 feet have relatively mild winters, hot summers, and low precipitation.

The wide range of Basin climatic conditions has resulted in a diversified agriculture, ranging from alfalfa, grass, hay, and pasture at locations of short growing seasons and cooler temperatures; to corn, small grain, dry beans, truck gardens, orchards and melons in the lower elevations.

The San Juan River Basin has several developed recreation areas, including national forest lands, national parks and monuments, historical and scenic locations, and private recreation sites and developments. Tribal units have developed gambling and other recreational facilities to tap the growing demand. The tourist and recreational industry is economically crucial to the San Juan River Basin.

### **Minerals**

Natural gas, crude oil, uranium, vanadium, zinc, lead, sand and gravel, and coal are the more important minerals produced in the San Juan River Basin. Petroleum products, including helium as well as natural gas and crude oil, account for the largest percentage of this production. The total natural gas resources of the San Juan River Basin have been estimated at about 12 trillion cubic feet. The associated helium resources have been estimated at about 13 billion cubic feet.

The coal resources (mineable) are located mainly in the Mesa Verde group of Upper Cretaceous Age, which is to or within 3,000 feet of the surface around the margins of the San Juan structural basin in Colorado and New Mexico. An estimated 4 billion tons of bituminous coal and 28 billion tons of sub-bituminous coal were originally present in New Mexico. At present, coal production is relatively low.

### **Land Ownership and Use**

The New Mexico San Juan Basin has three Indian reservations, which are prominent in the land ownership pattern of the Basin. The lands of the Navajo Nation in the Basin include 11,500 square miles, and include the majority of the New Mexico San Juan Basin. The Ute Mountain Ute land is composed of 890 square miles in Colorado and New Mexico, with a relatively small amount in New Mexico. The Jicarilla Apache land area occupies about 1400 square miles in New Mexico, with the majority of that located in the San Juan River Basin. Indian holdings represent approximately 60 percent of the San Juan River Basin. The private non-Indian land is 13.1 percent of the San Juan River Basin and is in all states except Arizona. Of the total land in the San Juan River Basin, 2.9 percent is state and local government land, with the majority of that being State land.

The Bureau of Land Management, the Forest Service, and the National Park Service administer Federal land. Forest Service land includes a large part of the San Juan National Forest in Colorado, portions of the Carson and Santa Fe National Forests in New Mexico, and a portion of Manti-La Sal National Forest in Utah.

National Park land comprises of Mesa Verde National Park, Yucca House National Monument, and a portion of Hovenweep National Monument in Colorado. In New Mexico, the National Park Service has Aztec Ruins and Chaco Canyon National Monuments. In Arizona, National Park Service areas include a portion of Navajo National Monument, and all of Canyon de Chelly National Monument. However, the Canyon de Chelly land area is considered in Navajo Indian ownership. In Utah, a small number of acres of Natural Bridges and Hovenweep National Monuments are in the San Juan River Basin.

### **The Natural Water Supply**

Annual precipitation varies considerably with elevation. Average values range from 50 inches in the high San Juan Mountains to 6 inches near Mexican Hat at the confluence of the San Juan and Colorado Rivers. The San Juan and its principal tributaries, the Navajo, Piedra, Mancos, Los Pinos (Pine), Animas, and La Plata Rivers originate in the high San Juan Mountain slopes. Several other tributaries drain large areas but contribute little to

sustained stream flow. Less than 20 percent of the San Juan River Basin area produces more than 90 percent of the water supply.

Sixty-five percent of the stream discharge of the Basin is produced from April through June, the high spring runoff months. This results from melting winter snow from October to April. These surface flows account for 98 percent of water used, and they represent 63 percent of New Mexico's entire surface water annually.

At its confluence with Lake Powell, the San Juan River produces an average of about 2 million acre-feet (AF) of natural flow annually. Navajo Dam controls about half of this amount upstream. While this is a relatively small part of the 15 million AF of Upper Basin flow at Lee's Ferry, the San Juan is the sole source of all New Mexico's Upper Basin Colorado River water.

### **Navajo Dam and Reservoir**

The primary San Juan River storage facility in New Mexico is Navajo Dam and Reservoir. This facility was authorized as one of the initial units of the Colorado River Storage Project in 1956. The dam is 402 feet high, 2,566 feet long and has a total storage capacity of 1,708,600 AF. Construction was completed in 1963 and the facility is truly the management cornerstone for the San Juan River Basin. Navajo Dam plays the critical role in providing river regulation, an assured water supply for the Navajo Indian Irrigation Project, other contractors, and flow regulation for the seven-year endangered fish research period. This stable water supply has allowed contracting for municipal and industrial water.

However, while the Navajo Dam construction was essential for New Mexico water development, that construction and operation altered the natural river, its ecosystem and character. Natural events and riverine habitats were altered and migration routes were blocked. These physical and biological changes contributed, among other factors, to the decline of some fish species in the San Juan River and the listing of two as endangered, the Colorado Pikeminnow and the Razorback Sucker.

### **The Compacts and Current Use**

Water users such as the NIIP, the San Juan-Chama Project, the ALP, and M&I uses along the

river all depend on both the natural runoff and on the regulation of Navajo Reservoir. Their use is constrained by historical compacts and statutes, primarily the Colorado River Compact (NMSA 1978 § 72-15-2) and the Upper Colorado River Basin Compact (NMSA 1978 § 2-15-26). The former allocated the flow at Lee's Ferry between the Upper and Lower Basins while the latter divided the Upper Basin allocation.

The 1948 Upper Colorado Basin Compact allocates to the State of Arizona 50,000 AF. From the remainder available to the Upper Basin, the State of Colorado receives 51.75 percent, Utah 23 percent, Wyoming 14 percent, and New Mexico 11.25 percent. New Mexico's share is approximately 727,000 AF per year.

Current New Mexico development represents about 450,000 AF per year (AFY) of depletions. This is comprised of all the identified historic private development, plus developed state, federal and tribal projects. It includes contracts for municipal and industrial use and reservoir evaporation. The 110,000 AFY transbasin delivery to the San Juan-Chama project represents a substantial part. However, NIIP is incomplete and only about 133,000 AFY of the project's approximated 267,000 AFY of depletions is included in New Mexico's current depletion of approximately 450,000AFY.

## **NATIVE AMERICAN RIGHTS**

### **Navajo Nation**

For most of its path from Navajo Dam to Lake Powell, the San Juan River either flows through or forms the northern boundary of the Navajo Nation. The San Juan River and the NIIP represent critical Navajo Nation resources.

Congress authorized the Navajo Nation to divert 508,000 AFY for NIIP for irrigation of 110,630 acres with flood irrigation techniques, but the currently planned irrigation will require only about 330,000 AFY of diversions. This lower diversion number is due to NIIP being redesigned for pivot sprinklers. NIIP is currently diverting approximately 200,000 AFY for irrigating the currently developed lands.

The Navajo Nation asserts that any large-scale water development in the Basin could adversely affect their ability to fully develop their water

resources. The Navajo Nation supports the ability of the Colorado Ute Tribes to fully exercise their Colorado Ute Indian Water Rights Settlement Act of 1988. Although the Navajo Nation has never officially supported the ALP, it fully supports and encourages the implementation of the Settlement Act, as promised by the United States.

Until the Navajo Nation's water rights are quantified, development and use of available water will continue. The Navajo Nation and the State of New Mexico have begun discussions, but no agreement on the quantification of the water right has been reached. However, if and when quantification happens, the Nation most likely will hold the most senior priority date on the river. If that date is the date establishing the reservation, 1868, all users would be junior, which could jeopardize a dependable water supply for junior rights.

### **Colorado Ute Tribes**

In June 1986, the United States, the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and certain Colorado non-Indian water users were successful in reaching an Agreement in Principle concerning the Colorado Ute Indian Water Rights Settlement. A Binding Agreement for Animas-La Plata Cost-Sharing (Cost-Sharing Agreement) included the parties listed above and New Mexico entities. Continued negotiations by the United States and Colorado interests led to the December 10, 1986, Colorado Ute Indian Water Rights Final Settlement Agreement (Settlement Agreement). The Ute Mountain Ute and Southern Ute Tribes, by resolution of their respective Tribal councils, approved the Settlement Agreement and sought Federal implementation of its terms. Special legislation, the Colorado Ute Indian Water Rights Settlement Act (Settlement Act), Public Law 100-585, implementing the Settlement Agreement, was enacted by the U.S. Congress on November 3, 1988.

The Settlement Act was the culminating event of years of effort, negotiation, and compromise by the Tribes and Colorado non-Indians to remove the cloud and settle the outstanding water rights in southwestern Colorado. The Settlement Act also serves to clear a cloud over New Mexico water rights in the Animas and La Plata rivers. Important is that the Settlement involved the rights of both Indians and non-Indians, a fact the opponents of the ALP and other parties to the controversy often overlook. Thus,

delivery of water to only the Indians—or non-Indians—will not complete the implementation of the settlement. Both groups have a stake in the settlement, and any reworking of the settlement must therefore consider the water needs of both groups. The Colorado Ute Indian Reservation was created in 1868, and as such, the Tribes have a priority date for their water rights that precedes the priority date for most, if not all, of the non-Indian water users. The Settlement Act effectively changes that priority to 1938. In the absence of the Settlement Act, development of senior Tribal water rights claims could disrupt non-Indian water rights on both the Animas and La Plata Rivers in New Mexico. The water rights supporting the cities, rural communities and industry could be endangered.

That part of the Settlement Act related to the ALP mandates Animas-La Plata Project water be delivered to the Tribes by January 1, 2000, to avoid future litigation or renegotiation of Tribal water rights claims. Final settlement of the Tribes' reserved water rights claims on the Animas and La Plata Rivers, which is critical to New Mexico, was subject to the following Settlement Act conditions:

- Ridges Basin Reservoir, Long Hollow Tunnel, and the Dry Side Canal to the turnout to Dry Side Lateral are to be completed to enable delivery of water to the Tribes on or before January 1, 2000. This is accomplished by completion of Phase I of the ALP.
- If Phase I was not completed by January 1, 2000, then by January 1, 2005, the Tribes must elect to either retain the Project water rights or commence litigation or renegotiate their pending reserved water rights claims.

The provisions of the Settlement Act satisfy the water rights claims of both tribes and provide for a stable water supply in Southwestern Colorado. As an example, a portion of the Ute Mountain Ute water rights claim is settled by development of waters in McPhee Reservoir and the construction of the Towaoc-Highline Canal, features of the Dolores Project. There are numerous other actions unrelated to ALP and integral to the Settlement Act that have been taken toward completion of the Settlement Act, including the payment for a \$60 million economic development fund.

Final consent decrees, which implement certain provisions of the Settlement Agreement and the Settlement Act, were signed in U.S. Court for Water

Division No. 7, State of Colorado, on December 19, 1991. With the consent decrees in place, the Tribes waive any and all claims to water rights in the State of Colorado not expressly identified in the decrees after certain requirements are completed. Decrees addressing the Tribes' water rights settlement on the Animas and La Plata Rivers have yet to be entered. These are pending completion of certain portions of the ALP (see above).

Currently, the battle over the Animas-La Plata Project has shifted from its authorization to its funding for construction, which is supposed to take only the next seven years.

President Clinton signed the scaled-back Animas-La Plata Project into law as part of a massive \$450 billion spending bill on December 21, 2000. The House had approved the measure 292-60 on December 15. The Senate, which had approved the ALP in a separate bill in October, passed it again in the House appropriations bill by a voice vote.

The project, estimated to cost around \$300 million, would pump water during high flows from the Animas River near Durango, Co., into Ridges Basin Reservoir, a off-stream reservoir, for later release back into the Animas. Depletions from the project are capped at 57,100 acre feet per year, only about a third of the depletions authorized in the original ALP. Two Colorado Indian tribes, the Southern Utes and the Ute Mountain Utes, will receive about two-thirds of the depletions. The remaining depletions will go to non-Indian water districts in New Mexico and Colorado and the Navajo Nation.

The legislation sets out an ambitious seven-year schedule for construction, authorizing the necessary appropriations over the next five fiscal years, beginning with FY 2002. The current request from the Bureau of Reclamation, however, for FY 2002 is only \$2 million. When the budget was written last Fall, the Bureau could not ask for a larger appropriation because the project had not yet been authorized, and the environmental compliance was not complete. Both of these milestones have been reached, and now the Bureau says it needs about \$28 million for the next fiscal year to meet the aggressive construction schedule.

Backers and opponents expect appropriations will be the battleground for the ALP in the Congress. Even though the project and the appropriations are

now authorized, the actual appropriations will take a separate act of Congress each year. The legislation allows, but does not mandate, the money be spent on the project. Thus, the project could be stalled or even stopped if Congress fails to appropriate the money to fund it. Legal challenges also are possible, but no lawsuits had been filed by mid-January.

The Bush Administration includes a strong supporter of the project in Gale Norton, Interior Secretary. Ms. Norton, former attorney general for Colorado, is an avid supporter of the ALP legislation. She personally attended all of the meetings facilitated by Colorado Gov. Romer between proponents and opponents of the project to try to reach consensus over the project. When no consensus could be reached, Ms. Norton concluded that the scaled-back version of the ALP proposed by the project sponsors was necessary to produce a settlement of water claims acceptable to the Ute tribes. She wrote several letters supporting the "ALP Lite" proposal and lobbied for it in Congress.

The San Juan Water Commission, a water agency for municipal users in Northwest New Mexico, has started the process to obtain its part of the New Mexico water permit for the ALP now held by the Interior Department, as provided in the legislation. The Commission is seeking the permit because its neighboring water districts in Colorado hold their state permits directly.

Shortly after President Clinton signed the legislation, the Commission asked New Mexico State Engineer Tom Turney to request the Secretary of Interior to assign the Commission's portion of the state water permit back to the Commission. The Senate Indian Affairs Committee report on the legislation notes that the return of the permit is "proper and necessary to equalize the positions of the two states." The Commission anticipates the State Engineer will make the request and help the Commission regain control over its water permit.

### **Jicarilla Apache**

The settlement of the Jicarilla Apache water rights claims was negotiated over a period of about eight years and culminated in congressional approval of the settlement pursuant to the Jicarilla Apache Water Rights Settlement Act of October 23, 1992 (106 Stat. 2237). This act included a contractual arrangement with the Tribe for the diversion and depletion of 6,500 AFY of San Juan-Chama Project

water from Heron Reservoir, and the diversion of 33,500 AFY of Navajo River water of which 25,500 AFY will be depleted, for a total divertible supply of 40,000 AFY and a total depletion of 32,000 AFY. The Tribe has the ability to market this water through third-party contracts, with the approval of the Secretary of Interior.

Although the Tribe obtained state court decrees for its water rights in 1998 and 1999, which allow it to use the water under New Mexico law, no water can be depleted yet because of the Endangered Species Act. The Act has limited the amount of depletions in the San Juan River Basin, and none of the Jicarilla water has been included in the allowable depletions. Thus, at present, the Jicarilla Tribe has quantified "paper" water rights, but no "wet" water. Understandably, the Tribe is working to assert its claims into any additional allocations of depletions in the Basin, which will create conflicts with other potential users of that water.

### **KEY ISSUES OF THE CONTROVERSY**

As outlined above, many parties have claims to the water. Casting doubt on the claims are the Federal claims on behalf of the endangered fish, which often set all the other interests against each other.

Endangered fish demands have increased controversy in the San Juan River Basin and jeopardized the water supply. Hypotheses that the fish require large "plug" releases of water have led to proposals to release large amounts of water into the spring from Navajo Reservoir, reducing the water available for delivery for other purposes. These high releases, coupled with existing demands and the Navajo expectation of further development, resulted in concern by current users including recreational fishermen, who enjoy a world-class trout fishery below Navajo Reservoir. Other downstream residents have been threatened by flooding and water shortage as well. Instream flow requirements to benefit the fish, even though they are not recognized as "beneficial uses" under New Mexico law, may reduce the allowable consumptive use in New Mexico, and may also lead to forced compromise about how to meet the Basin needs. Fish needs are based on limited scientific basis and a host of scientific hypotheses, with admitted low chance for success for recovery of the fish. Clearly, users

who depend on Navajo Reservoir are at risk due to the endangered fish instream flow requirements.

### **ESA Limitations on Development**

Even though the ALP and other potential users have valid State water rights for the development and use of water, the ESA has placed limitations on project development and restricted water use levels significantly below the limit of the State water rights. This situation has led some to the belief that restrictions stipulated in ESA opinions written by the Fish and Wildlife (F&W) Service now supersede the priority and administration of valid State water rights. The F&W Service points out that their opinions deal with biological and hydrologic information and should in no way be viewed as affecting State water rights. However, it is clear that water rights holders are prevented from exercising their water rights through development of Federal Projects, or use of Federal Public Lands, or issuance of Federal permits because of ESA opinion restrictions; thus, their water rights are impaired.

When fully developed, the NIIP will deplete about 254,000 AFY. The ALP could deplete 149,220 AFY (34,000 AFY in New Mexico) in the San Juan Basin. The current Biological Opinion limits the ALP to depletions of 57,100 AFY (about 14,000 AFY in New Mexico). These depletions, including San Juan Water Commission (SJWC) use, for ALP are allowed only because of “reason-able and prudent alternative” elements in the ALP Biological Opinion, that the F&W Service determined is likely to avoid jeopardy to endangered species. The allowable ALP depletion is about one-third of the anticipated depletions for the full project, which has created severe problems for ALP participants. Some additional depletions have become available through the San Juan River Basin Recovery Implementation Program (discussed below), but they have been claimed by the Navajo Nation for NIIP, so they are not available for other users, including the Jicarilla Apache Tribe. Additionally, the Navajo Nation hopes for additional water development (e.g., the Navajo-Gallup Pipeline) and is concerned about administration of the ESA. It believes that much of the non-Indian Basin development has occurred, but Tribal water adjudication’s and Tribal water development are lagging and will now be prevented because of ESA restrictions.

### **San Juan River Basin Recovery Implementation Program**

The San Juan River Basin Recovery Implementation Program was established with two goals: 1) to research the needs of the fish and recover their populations and 2) to proceed with water development consistent with applicable law. Tribal entities and water users recognize that the ESA opinions of the F&W Service decisions severely hamper the exercise of New Mexico water rights.

Water rights and the priority of those rights are not the determining factor in depletion amounts allowed in the Biological Opinions rendered by the F&W Service. For example, the water right for a Federal (or Tribal) project (e.g., ALP in New Mexico, 1956) may have seniority over rights that were filed and perfected since the Federal application. Thus, the long time frame required for developing the Federal permit may create a situation where the senior Federal right is not included in the accounting of the “baseline” and junior rights that have been perfected are in the baseline. Further, a Biological Opinion on the proposed Federal project has determined that the proposed, but senior, Federal depletions would create jeopardy to endangered species and is not allowed. This scenario is the reality—not hypothetical—in the San Juan Basin and is the source of frustration and possible lawsuits from water users and Tribes.

### **Last Chance to Use New Mexico’s Allocation of Colorado River Water**

Non-Indian New Mexico water users are concerned the planned developments are the last chance to use our Colorado River water. In the 1955-1968 period, State Engineer Steve Reynolds issued permits to the Department of Interior for all the then-unappropriated water in the San Juan, and the intended use for the water was the Federal projects then planned, including NIIP, the ALP and others. No permits were issued for the full quantification of the tribal water rights that are now being asserted.

However, even if that water becomes available, it will not be enough. An engineering report, prepared in January 1995 for the SJWC state water permit applications, estimated that the San Juan County’s M&I supply, including the ALP, will be exhausted by

2011 or sooner. It will be, **much** sooner, if the ALP is not built, and if the ESA precludes access to this water. In that case, M&I water suppliers must look to existing agricultural water supplies to meet their needs with the unhappy prospect of forcing agricultural users to sell their water rights.

### **Water Quality Also Could Limit the Water Supply**

New Mexico faces several emerging water quality issues. Significant oil and gas activities potentially could result in hydrocarbon contamination. New Mexico's adoption of strict selenium standards in 1995 created major quality concerns, because the natural background river concentration often exceeds these standards. That strict selenium standard, adopted through an excess of caution, could have led to even lower water supplies. Following the two-year effort by the San Juan Water Commission, the standard was returned to the less stringent Federal standard in 1999. On another front, while no evidence to date has arisen, biologists hint that water quality may be impacting the potential for endangered species' reproduction and recruitment. In that case, if more water must be left in the river to dilute toxins and improve water quality, less will be available for use by water rights holders. The process for reviewing and changing the quality standards for surface water is in serious disrepair. If the process cannot be improved through new procedural rules that will be proposed, changes may be needed in New Mexico's statutes. The Federal Clean Water Act requires that State standards be reviewed every three years in a "triennial review" process. The last two triennial reviews in New Mexico have not been completed in that time frame, and the process has been painful and expensive for the parties involved. In each review, the first report to the Water Quality Control Commission had to be discarded, and a new hearing officer had to be appointed to compile a new report and recommendations to the Commission. Obviously, this wasted a lot of effort, and it shows that the process needs significant improvement. The San Juan Water Commission is working with several other parties involved in the last triennial review to propose changes to the hearing process to make it more efficient, timely, and fair.

## **WHAT NOW?**

### **Completion of NIIP Development**

Completion of NIIP is essential to provide the Navajo Nation water. Funding is the culprit preventing completion now. The President's fiscal 2000 budget included millions for the continued design and construction of the Project. NIIP is being developed in irrigatable land blocks of 10,000 acres each. Block 8 facilities construction was started in 1992.

Currently, Blocks 1 through 7 are producing high value crops (including potatoes, wheat, corn, and beans) on approximately 65,000 acres and providing Navajo people opportunities. At full development, NIIP will consist of 11 blocks totaling 110,630 acres. In July 1999, the F&W Service consented to an informal consultation that allocates enough water to NIIP to allow the completion of Blocks 9 through 11. Blocks 1 through 8 had already been allowed by a F&W Service Opinion in 1991.

### **Future of the Animas-La Plata Project**

As described above, the authorized ALP cannot be built under existing ESA restrictions, because only about one-third of the needed depletions are available. The ALP participants, including the San Juan Water Commission, have proposed a vastly scaled-down version of the ALP that would meet the ESA restrictions. Environmentalists, however, continue to oppose the Project, seemingly no matter how much the participants agree to change it. The Clinton Administration, in August 1998, proposed an even smaller ALP, which included \$40 million for the two Ute Tribes to buy additional water rights, and a water supply pipeline needed by the Navajo Nation's Shiprock community. The proponents have conceptually agreed to most of the Administration proposal, and some final details of the plan, including the size of reservoir, will depend on studies of what the endangered fish need. The ALP participants' proposal, which should be acceptable to the Administration, was introduced this fall in the House of Representatives by Congressman Scott McInnis, R-Colo. (H.R. 3112.) Given the late introduction date, it is unlikely the legislation will pass in 1999, but it will probably be re-introduced in early 2000.

### **Public Service Company of New Mexico Contract Concerns**

The Public Service Company of New Mexico (PNM) has requested the U.S. Bureau of Reclamation (BOR) to renew, and extend through 2025, the San Juan Generating Station water service contract. The San Juan Generating Station operations require a dependable water supply through July 1, 2022; post-project decommissioning would require the water until 2025. The current contract allows PNM to withdraw and consume 16,200 AFY through December 31, 2005. The 16,200 AFY is included in the San Juan River Basin Recovery Implementation Plan baseline. PNM's long-range investment-driven decisions require long-term, reliable water sources.

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 satisfactorily addressed.

During the NEPA process, required for contract renewal, all tribes with water interests in the San Juan Basin raised issues with the BOR about potential impacts to Indian water rights and associated projects. Before it received clearance in July 1999 to develop the remainder of NIIP, the Navajo Nation had opposed issuing any more San Juan River water contracts, because the Nation is concerned there will not be sufficient water for NIIP. The Nation asserts paramount water rights to San Juan River water. The Southern Ute Indian and Ute Mountain Ute Tribes oppose PNM Contract renewal as it may interfere with ALP completion, thereby preventing them from securing the water to which they are entitled, and affecting their Indian Trust Assets. Both Tribes assert that all such depletion contracts have the same effect. It is anticipated the three Tribes will continue to voice objections to any other non-Indian water development. Due to tribal opposition, PNM has initiated parallel discussions with the Jicarilla Apache Tribe for a subcontract of the Navajo Reservoir water owned by the Tribe as a result of its settlement of water rights with the United States.

### **Jicarilla Apache Contract**

As described above, the Jicarilla Apache Tribe has secured a settlement of its water rights, but no water as of yet. It has "paper" water rights through a contract with the federal government and state

court decisions, but the water is not available due to the restrictions of the Endangered Species Act. The Tribe is working to secure a wet water supply, but it will be difficult given the restrictions on depletions under the Endangered Species Act.

### **Navajo-Gallup Pipeline**

Likewise, the Navajo Tribe's hope for a pipeline to serve the Nation down to the Gallup area is lacking "wet" water, as well as a state water permit. It is anticipated that the water for the pipeline may be part of an overall settlement of the Navajo Nations water rights, but that is still in very preliminary stages.

### **Regional Water Planning**

The need for the separate interests to work together is critical. One forum for that cooperation is regional water planning. The San Juan Water Commission was an integral part of an earlier regional water planning effort, but a new regional process is needed. The Commission is willing to help begin the process again, but support from the State in the form of funding is needed. Through regional planning, the various interests can discuss their needs, and work toward finding solutions that will cause the least disruption and create the most benefit for the Region. One of the stumbling blocks, as this brief paper demonstrates, is that the problems themselves are complex and inter-connected. Regional planning offers a forum for the people and decision-makers of the Region to understand the complexities and relationships, and to begin to take a broader view of what needs to be done. The Interstate Stream Commission supports regional planning throughout the State, but the San Juan River Basin may be the one place it is needed most.

### **Endangered Fish Species, Long Range Funding**

The New Mexico San Juan Basin, Colorado River water supply is threatened by the failure to recover the Colorado Pikeminnow and Razorback Sucker. Of the fourteen native fish species in the Upper Colorado River Basin and the San Juan River Basin, three are declining and two are endangered. If we do not protect the declining fish and fail to recover the endangered fish, serious impacts to both existing uses and the full development of New Mexico's compact water will be felt. The San Juan Chama, Navajo Indian Irrigation Project, the Jicarilla

Apache Tribe settlement, and the water contractors, including PNM, from Navajo Reservoir, must share shortages, including those caused by the demands made by the fish.

Between 1990 and 1992 water users and the State of New Mexico entered into a cooperative program, which took advantage of the fact that much of the water originating in the Basin is allocated for use in the Lower Basin. Under the guise of being environmentalists, local anti-development activists have prevented the environmental element from participating to date. In Colorado and New Mexico, the recovery program has protected current uses and may allow for an additional 136,000 AF of depletions in New Mexico (14,000 AF for ALP and 122,000 AF for NIIP). To support the continuation of existing uses and the increased uses of the future, certain capital projects have been identified. Federal legislation has been introduced to fund these projects, \$18 million in New Mexico. The legislation requires the participating states to contribute to the funding. New Mexico's share would be \$2.75 million. Without this program, New Mexico and our neighboring states may be precluded from developing our full Colorado River compact supplies.

## PROPOSED LEGISLATION

### Cost of Program

Construction Program	\$ 80 million
Replacement Power	\$ 15 million*
Water Rights/Reservoir Storage	<u>\$ 5 million*</u>
Total	\$100 million

### Sources of Revenue

Cost Sharing:

Federal	\$ 46 million
Non-federal (local)	<u>\$ 54 million</u>
Total	\$100 million

### Breakdown of Local (Non-Federal) Cost Sharing

CREDA (Power)	\$ 17 million
States (New Mexico's share \$2.75 million)	\$ 17 million
Power/Water (Ongoing)	<u>\$ 20 million*</u>
Total	\$ 54 million

\* New Mexico is more likely to be the first to benefit and must participate; the other states have their funding share in place. The legislation is timely, allowing for the recovery of the fish while we develop our compact allocations to the benefit of our State. The facilities are technically supported and are essential for the socioeconomic well being of the Basin and the four states of Colorado, Utah, Wyoming, and New Mexico.

## SUMMARY

Before the controversy generated by the demand for more water for endangered species, the San Juan River essentially was a known quantity. The major Indian water rights settlement issues of how much and where, were future issues but, the principles for reaching compromise were in place. The F&W Service declaration that "few additional depletions are allowed" has changed the plan. If the endangered fish are to have the remaining New Mexico San Juan River flow for their recovery, then all those who envisioned and planned must view the future with skepticism. Potential solutions might exist under the Recovery Program; to purchase existing water rights, to expand ESA Section 7 Consultations and enlarge participation in the solution, and to modify endangered species water demands, which could result in additional water for development. However, consideration of any one solution affects all the other interests and concerns, opening yet another box of issues.