



January 6, 2016

Via Electronic Mail

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
Secretary_jewell@ios.doi.gov

RE: 2015 Release of Prior and Paramount Water to Elephant Butte Reservoir

Dear Secretary Jewell:

I write again this year to express our concern and frustration regarding the U.S. Department of the Interior's role in releasing 21,200 acre feet of prior and paramount water stored in El Vado Reservoir in the past two months as a way to help the State of New Mexico meet its delivery obligation to Texas under the Rio Grande Compact. In so doing, Interior has violated its trust obligation to the six middle Rio Grande Pueblos and its duty to ensure a living Rio Grande that supports endangered fish and wildlife. The 2015 action continues a practice from previous years that now appears to have become the new standard in Rio Grande water management policy. These annual releases come at the expense of the health of the Rio Grande. Last year, we sent a similar letter to Deputy Secretary Connor regarding the 2014 release of prior and paramount water to Elephant Butte Reservoir and the deal brokered with the City of Santa Fe. That letter is attached for your reference.

As you know, the Rio Grande Compact is a powerful driving force for water management in the Basin. This "sacrosanct" agreement, however, also serves as a large shield for both state and federal agencies to hide behind and use as an excuse to maintain the existing policies and practices in the region. Interior is not a party to the Rio Grande Compact and does not have an obligation under it to deliver water to Texas. New Mexico bears that burden alone. Despite this clear delineation in the Compact, Interior continues again and again to act to aid New Mexico in fulfilling the State's obligation to deliver water under the Compact, which is often at the expense of its other duties under the law including: (1) its trust responsibility to the six Middle Rio Grande Pueblos (the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia and Isleta); (2) its obligation under the Endangered Species Act to conserve endangered species in the valley; and 3) its obligations to ensure senior water rights held by the Bosque del Apache National Wildlife Refuge are protected. Further, Interior's annual bail out of New Mexico—by providing roughly 30,000 acre feet of water each December—only encourages the State to continue its policy of not administering water rights in the Basin or providing any measure of accountability to ensure that the non-Indian water users themselves (especially those with junior

priorities) ensure compliance with the Compact. We urge you to reconsider this policy of annually releasing the Pueblos' prior and paramount water and evaluate more ecologically sound and equitable options for use of this water.

- A. *Interior is compromising its trust obligation to the Pueblos and perpetuating the lack of accountability in the Basin by consenting to the release of the Pueblos' prior and paramount water to meet the State of New Mexico's delivery obligation under the Rio Grande Compact.*

Release of the prior and paramount water stored in El Vado Reservoir to satisfy New Mexico's obligation under the Rio Grande Compact is contrary to Interior's trust responsibility to the six Pueblos. As Article XVI of the Rio Grande Compact makes clear "[n]othing in this Compact shall be construed as affecting the obligations of the United States . . . to the Indian Tribes, or as impairing the rights of the Indian Tribes." The release of the water stored for the Pueblos currently serves as an insurance policy for the State rather than an asset of the Pueblos to manage. Further, at a minimum, the Pueblos should be consulted in a timely fashion regarding the fate of this stored water in a way that provides the Pueblos with a meaningful role in the decision about the allocation of the water. Ultimately, the fundamental inequity of these releases and the lack of transparency around this policy need to be reexamined and reconsidered if Interior is to meet its trust responsibility to the Pueblos.

Continuing to use the water stored on behalf of the Pueblos as a means for meeting New Mexico's Compact obligation perpetuates the lack of accountability that already plagues the Basin. In 2015, the Basin benefitted from steady and substantial precipitation in the spring that helped bolster flows in the river despite marginal snow melt runoff. The State is well aware that the more water that flows in the Rio Grande past the Otowi gauge, the more significant the State's delivery obligation to Texas is under the Compact. Despite this knowledge, New Mexico did not attempt to limit use by even the most junior water users in the Basin—the water bank operated by the Middle Rio Grande Conservancy District ("District")—and continued to deliver water to meet all agricultural water demands. When the irrigation season ended and the State realized it still needed to deliver a significant amount of water to Elephant Butte, or it would be in a debit situation under the Compact, the State immediately turned its attention to the water stored for the Pueblos based on Interior's continued acquiescence to such releases of prior and paramount water. Only after the Pueblo's water was released to Elephant Butte was any water in storage for the District considered for release.

Further, the water users in the middle valley do not have equal priority despite the longstanding operation of the District to share shortages in the system. The most senior water users in the Basin are the six middle Rio Grande Pueblos followed by the pre-1907 water rights holders, the Bosque del Apache National Wildlife Refuge ("Refuge"), and then the District itself. However, water users are not targeted from junior to senior priority when the State looks to ensure Compact compliance. Instead of ensuring compliance throughout the year by curtailing diversions or releasing water from storage, the State typically waits until the eleventh hour (once the irrigation season has ended) to scramble to find enough water remaining in the system to come up even. Typically, the State depends on Interior's release of the Pueblos' prior and

paramount water to Elephant Butte as well as the Refuge's forbearance of full diversions under its rights in order to allow more water to flow to Elephant Butte. Both these sources of water are senior to the claims of water by the District. In fact, the State has not even issued a license confirming use under the District's permits and affirming that the District owns any water rights at all. For over 80 years the District has failed to provide an accounting of its water use and demonstrate that it has acquired water rights in the system as required in order to obtain a license from the State. Yet, the unperfected water use by the District is consistently protected by the State and the Interior Department even though it is against the interest of the Pueblos and the Refuge. Interior is compromising its trust responsibility to the Pueblos and its responsibility to the Refuge by continuing to submit to the requests of the State. Interior must address these inequities by reevaluating its policy of relinquishing the Pueblos' rights to the State each year and compromising the ability of the Refuge to carry out its duties to fish and wildlife in order to help the State satisfy an obligation that is its alone under the Compact.

In addition to encouraging administration of water by priority in New Mexico, Interior's implementation of a robust water acquisition and leasing program in the middle valley could also help make additional water available to meet the State's obligation under the Rio Grande Compact in a more equitable manner. In 2014, Interior received funding and appears to have started developing such a program for the benefit of threatened and endangered species in the Basin. Such a program, could also serve as a means of ensuring that New Mexico does not fall into debit status under the Compact. We urge Interior to follow through on this commitment.

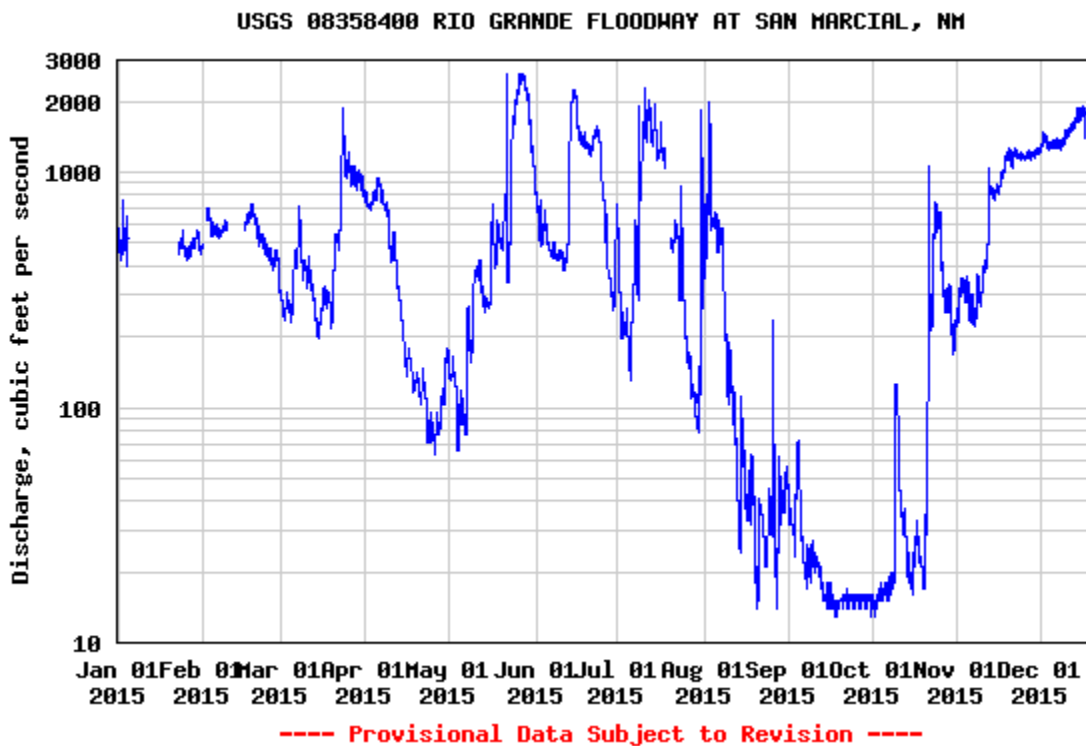
B. *Interior is compromising its ability to meet its obligations under the Endangered Species Act by overlooking opportunities for more ecologically sound water management to maintain the status quo in the Basin.*

In addition to Interior's trust responsibility to the six Pueblos, it also has a statutory mandate to conserve and protect endangered species in the Basin. While Interior is making a Herculean effort to ensure the Compact is satisfied and that water is available in subsequent years for water users in New Mexico, a similar effort is not underway to ensure the long-term survival and recovery of imperiled species in the Basin. The needs of endangered species are quite clear. For example, the Rio Grande silvery minnow needs a peak flow in the spring to cue reproduction and needs the river to remain flowing in the late summer to ensure recruitment of individuals for reproduction the following year. These conditions cannot be met, especially in dry years, without creative management and reregulation of flows.

In coordination with the Pueblos, carryover storage of prior and paramount water could help retime water to create a spring peak flow, mitigate the severe impacts of late summer drying and critically low flows on endangered fish and wildlife, and provide a water safety net in the Basin, and not just a water supply to help the State meet its Compact delivery obligations. Releasing the water stored for the Pueblos in November and December is a missed opportunity to bolster the river conditions necessary to inundate the floodplain in spring for endangered fish and birds or to prolong flows in the late summer to prevent river drying. For example, carryover of water stored for the Pueblos could give Interior flexibility to know it can generate a spring peak flow, especially if Cochiti again becomes available for retiming of such spring flows, even

in years where snow runoff may be minimal. Further, the earlier release of stored water in September or October (consistent with the Pueblos needs), or the release of carryover water from a prior year's storage could help Interior keep the river flowing at critical times for aquatic species.

The following hydrograph shows flows at the Rio Grande at San Marcial, NM in 2015:

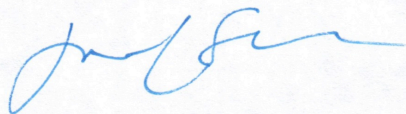


The wet spring in the valley helped create a peak spring flow that allowed for spawning of the minnow and some floodplain inundation in 2015. However, the conditions in the river deteriorated in September leaving the river dry, which significantly reduced the number of Rio Grande silvery minnow that survived into October of 2015. See Dudley and Platania, *Summary of the Rio Grande Silvery Minnow Population Monitoring Program Results*, October 2015. This river drying resulted in a precipitous drop in silvery minnow encountered during population monitoring from 192 in September to 14 in October. This steep decline in population is related to the low flows or drying of the river in these southern reaches. In order to provide the needed flexibility in flows to address the serious challenges facing endangered species and river health, Interior must reconsider its practice of releasing the Pueblos' prior and paramount water each winter at the request of the State and instead consult and develop a long-term strategy with the Pueblos and the environmental community that provides the Pueblos with autonomy over this water, and creates flexibility and opportunities for Interior to meet its responsibilities under the Endangered Species Act.

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January 6, 2016

We understand that the challenges facing the Rio Grande are great and that solutions cannot be implemented overnight. However, as the growing demands of our cities and farms and decreasing supplies due to climate change continue to stress the Rio Grande and push fish and wildlife to the brink of extinction, it is imperative for you to reconsider your policies.

Sincerely,



Jen Pelz
Wild Rivers Program Director
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cc (via email):

Chairman Stuart Paisano, Coalition of Six Middle Rio Grande Basin Pueblos
Governor Leroy Arquero, Pueblo of Cochiti
Governor Daniel Coriz, Pueblo of Santa Domingo
Governor Ronald Tenorio, Pueblo of Santa Felipe
Governor Lawrence Montoya, Pueblo of Santa Ana
Governor Isaac Lujan, Pueblo of Sandia
Governor E. Paul Torres, Pueblo of Isleta
Senator Tom Udall (D-NM)
Senator Martin Heinrich (D-NM)
Congressman Ben Ray Lujan (D-NM)
Congresswoman Michelle Lujan Grisham (D-NM)
Michael Connor, Deputy Secretary, U.S. Department of the Interior
Dan Ashe, Director, U.S. Fish and Wildlife Service
Jennifer Faler, Albuquerque Area Manager, Bureau of Reclamation
Deborah Dixon, Director, N.M. Interstate Stream Commission
Tom Blaine, State Engineer, State of New Mexico
Mike Hamman, CEO/Chief Engineer, Middle Rio Grande Conservancy District



December 19, 2014

Via Electronic Mail

Michael Connor, Deputy Secretary
United States Department of the Interior
michael_connor@ios.doi.gov

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.

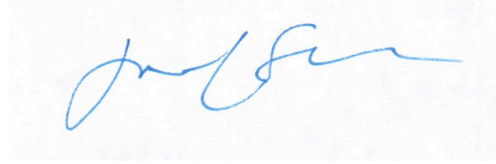
Maintaining flexibility for the Pueblos by providing carryover storage will have numerous benefits to the Pueblos, as well as provide greater security for the available water supply in the Basin. The Pueblos would obtain control and have the ability to lease their water to

Deputy Secretary of the Interior, Michael Connor
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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