



IN REPLY REFER TO:

# United States Department of the Interior

## BUREAU OF RECLAMATION

Albuquerque Area Office  
555 Broadway Blvd., NE Suite 100  
Albuquerque, New Mexico 87102-2352

**APR 05 2004**

ALB-155  
ENV-7.00, LND-6.00

Ms. Julie Hall  
Chief, Environmental Resources Section  
Corps of Engineers  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

Subject: Draft Feasibility Report and Environmental Assessment for the Southwest Valley Flood  
Damage Reduction - Albuquerque, Bernalillo County, New Mexico

Dear Ms. Hall:

The Bureau of Reclamation requests that the Corps of Engineers (COE) change all references to the Middle Rio Grande Conservancy District (MRGCD) project features (e.g., MRGCD surface drain facilities) as Features of the Middle Rio Grande Project. This would leave reference to the property as a neutral reference, and skirt implications to the ongoing litigation involving the title question.

The use of project works to carry surface drainage is strictly controlled through compliance with our Regional Policy. The policy letter was provided with Reclamation's original comments to the proposed project (see our letter dated January 24, 2001, in Appendix G of your document). Additionally, a "Guidance for Review and Approval/Disapproval of Applications to Discharge Urban Storm Water Drainage into Existing Reclamation Delivery and Drainage Facilities" is enclosed for your use.

The use of the project facilities will need to conform to licensing through the Middle Rio Grande Conservancy District for changes to the physical structure, such as increases in the capacity of the drains or additional inlets. The authorization to discharge surface drainage into the facility must be provided directly through Reclamation. This authorization will follow our Regional Policy.

It may be beneficial to set up a meeting to go over the issues to make certain the COE is familiar with our policy and the current litigation position.

If you have any questions regarding the implementation of this policy, or would like to further discuss Reclamation's position, please feel free to contact Nancy Umbreit at 505-462-3599.

Sincerely,

*for* A. Jack Garner  
Area Manager

Enclosure -1



# United States Department of the Interior

## BUREAU OF RECLAMATION

Upper Colorado Regional Office  
125 South State Street, Room 6107  
Salt Lake City, Utah 84138-1302

ALBUQUERQUE AREA OFFICE

APR 11 1996

ACTION

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INITIALS

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150

421

IN REPLY REFER TO  
UC-262

LND-6.00, ENV-7.00

APR 8 1996

### MEMORANDUM

To: Area Managers, Albuquerque, Provo  
Attention: 100, 200, 400, 700  
Area Manager (CDeAngelis) (MRassmussen) (DMutz) (SMcCall)  
Western Colorado Area Office - Northern Division  
Manager (PSchumacher) (KQuellette) (RLeach) (EJensen)  
Western Colorado Area Office - Southern Division  
Chief, El Paso Field Division, El Paso TX  
Attention: 100, 200, 400, 700

From: Charles A. Calhoun  
Regional Director

Subject: Upper Colorado Region Standards and Guidance for Review and  
Approval/Disapproval of Applications to Discharge Urban Storm Water  
Drainage into Existing Reclamation Delivery and Drainage Facilities

This memorandum and its attachment provide standards, responsibilities, procedures, background, and guidance for the review and approval or disapproval of applications to discharge urban storm water drainage into existing Reclamation facilities which were authorized, designed, and constructed only for agricultural water delivery and drainage.

#### STANDARDS:

1. Because of serious water quality concerns, discharges of urban storm water into delivery system facilities shall not be authorized.
2. Authorization to discharge urban storm water drainage into Reclamation drainage facilities will be granted only to established local governmental entities, not to individuals or developers.
3. Costs associated with reviewing and processing applications, including the appropriate level of compliance with the National Environmental Policy Act (NEPA), will be borne either by the applicant or the principal beneficiary of the development served by the discharge, not by Reclamation or its managing partners.
4. As a minimum, all applications will be reviewed by specialists in land management, environmental affairs, water quality, hazardous materials, and engineering/operations and maintenance.
5. Applications for discharge into facilities located on Reclamation easements will not be approved until the applicant has obtained his/her own right-of-way from the owner(s) of the underlying land.
6. Reclamation will not approve applications which violate the Clean Water Act. Environmental impacts will be assessed as directed by NEPA.

7. Reclamation will not approve applications for discharges which may load facilities beyond their designed capacity. Plans for facility upgrades associated with urban storm water discharge will be subject to review and approval by Reclamation. Such upgrades will be accomplished by the applicant/beneficiary to Reclamation's standards and at applicant/beneficiary expense.

8. All authorizing documents will be individually reviewed and approved by the field solicitor's office and will contain an approved liability provision.

9. Unlicensed discharges will be investigated and eliminated within staffing and budget constraints.

#### RESPONSIBILITIES AND PROCEDURES:

##### 1. General:

a. Area Managers are hereby delegated authority to sign licensing/permitting documents related to the discharge of urban storm water into Reclamation drainage facilities. Redelegation of this authority will be at the Area Manager's discretion. Other supporting documents will be signed in accordance with existing delegations of authority.

b. The area office will take the lead in accepting and processing applications for urban storm water discharge. The regional office will provide expertise, support, and guidance and will facilitate legal review by the field solicitor's office. The regional office may assume a co-lead role upon request from the area office.

##### 2. Area offices will:

a. Accept applications and assure that they are complete.

b. Determine the scope of Reclamation's interest in the land underlying the facility in question (fee title, easement, or 1890 right-of-way).

c. Determine whether applications are compatible with authorized project purposes and whether the affected Reclamation facility is still needed for authorized project purposes.

d. Attempt, within staffing and budget limitations, to identify and eliminate any existing unlicensed discharges on the facility in question prior to licensing any new discharge.

e. Assign a coordinator to process the application and coordinate with water districts, other area office specialists, the regional office, local governments, other Federal/state agencies, and interested parties.

f. Obtain baseline information and draft all appropriate authorizing documents.

g. Establish a system for tracking and collecting administrative costs and fair market value fees.

h. Forward a complete application and draft documents to the regional office for review by regional office and field solicitor.

I. Work to establish proactive relationships with local governments and Federal, State, and local regulatory agencies.

3. The regional office will:

- a. Provide assistance and expertise as requested by the area office.
- b. Determine the appropriate method of establishing fair market value and review and approve all value estimates and appraisals.
- c. Review all completed applications and authorizing documents prior to signature by the area manager.
- d. Facilitate legal review by the field solicitor.

4. As a minimum, complete applications will contain:

- a. A description of affected lands and facilities.
- b. Complete, detailed plans and specifications for the discharge system, including estimated rate of discharge during maximum probable storm events.
- c. Detailed development plans including the number and type of residential and commercial lots to be developed and the type of sewage disposal system planned for the development.
- d. All information necessary to complete the appropriate level of NEPA compliance and proof of consultation and/or approved permits with all State and Federal agencies claiming jurisdiction under the Clean Water Act.

5. Native American Applicants: Applications received from Native American groups shall be reviewed and analyzed under Secretarial Order No. 3175, dated November 8, 1993, covering Indian Trust Assets. Exceptions may be made as appropriate under the provisions of the Secretarial Order.

Background information and a more detailed discussion of standards and guidance is contained in the attached document.

Questions concerning this memorandum should be directed to Mrs. Mary Cook, telephone (801) 524-5442, extension 3.



Attachment

cc: Director, Program Analysis, Denver CO  
Attention: D-5300 (John Osterberg) (w/attch)

GUIDANCE FOR REVIEW AND APPROVAL/DISAPPROVAL  
OF APPLICATIONS TO DISCHARGE  
URBAN STORM WATER DRAINAGE INTO EXISTING  
RECLAMATION DELIVERY AND DRAINAGE FACILITIES

**BACKGROUND:**

Surface runoff from urbanization of lands surrounding Reclamation's projects is changing the character of Reclamation's delivery and drainage facilities. In many areas, lands surrounding Reclamation projects have already been converted, or are rapidly being converted, from agricultural to urban environments. Most Reclamation facilities were designed to handle 25-year frequency storm runoff from agricultural and undeveloped natural lands. Urban runoff, especially from paved surfaces, may easily exceed these limits, causing several problems:

1. High Peak Flows: The impervious surfaces encountered in urbanized watersheds cause more frequent runoff events and higher peak flows than have historically resulted from agricultural lands. Reclamation's facilities, especially earthen drains, were not designed to handle the higher quantities and velocities of water experienced during urban runoff events.

2. Deterioration of Water Quality: Water quality is a major concern to Reclamation. Urban runoff commonly contains oils and grease from city streets, nutrients from lawn fertilizers, industrial runoff, heavy metals, and pesticides. As Reclamation drains begin to receive water from sources other than irrigated agriculture, these facilities may lose their current exemption from regulation under the Clean Water Act. Some facilities may be required to meet Federal and/or state water quality standards or be assigned maximum levels of pollutant loading.

3. Safety Hazards: Because of steep banks and high flows, Reclamation facilities can pose safety hazards in an urban environment. Some project facilities have already been piped for safety, health, or aesthetic benefits. However, such enclosure is extremely expensive and detrimental to project wetlands and associated habitat. The piping of some drains on the Rio Grande Project in El Paso's Lower Valley to alleviate a serious public health hazard is an excellent example of this. Another option, fencing of facility rights-of-way, is also extremely expensive and may increase Reclamation's liability.

4. Increased Operation and Maintenance (O&M) Costs: Some urban developers have modified Reclamation drains without Reclamation or district knowledge, leading to decreased capacity and reduced accessibility for maintenance. Drains located in an urban environment frequently cost more to operate and maintain because of higher flows, restricted access, aesthetic considerations, and the proximity of high-value improvements susceptible to flood and other damage. Reclamation and its agricultural customers should not have to subsidize the increased cost of urban drains.

Urban surface runoff entering Reclamation project drains is attributable to three primary sources:

1. Passive: Both natural and artificial drainages existed in project areas before Reclamation facilities were constructed. Additionally, urban development changes project hydrography. Storm runoff will seek out natural and artificial drainages. Urban runoff may end up in our facilities even though it was not discharged directly into them.

2. Illegal: Without authorization, developers have, and will likely continue to, intentionally design drainage systems which discharge commercial and residential runoff into Reclamation facilities. Unauthorized discharge into Reclamation facilities is illegal and must be viewed either as trespass if the facility is located on Reclamation fee title land, or as unreasonable interference if the facility is located on Reclamation easement lands.

3. Legal: Political pressure to authorize discharge of urban drainage into existing Reclamation facilities is increasing. Many cities and counties in our region are struggling to cope with staggering rates of growth, and their infrastructure budgets are stretched to the limit. Existing project facilities have become an attractive alternative to constructing expensive new drainage systems. Increasingly, local governments are asking Reclamation to be a "good neighbor" and authorize the use of Reclamation facilities as part of municipal storm drainage systems. A certain amount of such authorization is virtually unavoidable. Reclamation, however, must assure that it does not incur unreasonable burdens or liabilities as a result of such authorization.

#### **AUTHORITY:**

The Reclamation Project Act of 1939, Section 10, authorizes Reclamation to issue rights-of-use on Reclamation lands when such uses are determined to be "compatible" with authorized project purposes. Detailed guidance for issuing such rights-of-use can be found in 43 CFR 429, Reclamation Instructions Part 214.4 (which have not been sunset), and OMB Circular A-25. Applicants for rights-of-use must deposit an up-front administrative charge for review and processing of applications. Each application is considered individually. If the requested use is deemed to be compatible with project purposes and does not unreasonably burden Reclamation, the right-of-use can be authorized. If the requested use is deemed to be incompatible or burdensome, it cannot be authorized. Administrative costs must be carefully tracked, and costs in excess of the initial deposit must be collected. In addition to administrative costs, successful applicants are also required to pay the fair market value of the right-of-use they receive. Fair market value is determined by Reclamation. In a limited number of cases, all or any portion of the costs and fees may be waived if the applicant meets criteria outlined in 43 CFR 429. Standard land management documents, such as License Agreements, Special Use Permits, and Grants of Easement, are used to authorize these rights-of-use.

If Reclamation owns the land underlying a facility in fee title, it has sole authority to authorize or deny any right-of-use. If Reclamation owns an easement, only the owner of the underlying land can authorize uses of the land in addition to the interests owned by Reclamation. Therefore, as a general rule on easement lands, Reclamation can only consent to land uses it deems compatible or object to land uses it deems incompatible. Storm water drainage is an exception to this rule in that the fee owner has no authority to allow use of Reclamation facilities by third parties. Thus, permission must be obtained from both the landowner and Reclamation because only the landowner can authorize the use of the land and only Reclamation can authorize the use of the facility.

## DISCUSSION OF STANDARDS AND GUIDANCE:

The following are standards and guidance for use in considering applications to accept urban storm water drainage into an existing Reclamation facility:

1. Discharge into Delivery Facilities: Because of serious water quality concerns, discharges of urban storm water into delivery system facilities (i.e., canals, aqueducts, etc.) shall not be authorized.
2. Applicants: Authorization for urban storm water discharge shall only be granted to established city or county governmental entities because individual developers will be literally "here today and gone tomorrow." Reclamation must deal with entities who are knowledgeable, dependable, and financially solvent, in both the short and long term. As political subdivisions of their state governments, local governments are best suited to these requirements. Proactive partnerships with local governmental entities should be developed and nurtured because such relationships will enable Reclamation to become aware of potential problems and to resolve them before they become trespass. Individual or corporate developers who apply should be advised to seek inclusion of their development within the appropriate local municipal storm drainage system. Reclamation can then do business with the local governmental entity responsible for that system.
3. Costs, Fees, and Waivers: The costs and fees required by 43 CFR 429 may, under certain circumstances be waived. However, while the preferred applicants described in item no. 2 above (i.e., cities and counties) may meet the criteria for waiver, the principal financial beneficiary of an authorization to discharge will usually be a developer. Therefore, before making a decision to waive a portion of or all costs, consideration must be given to who will be the principal beneficiary of the action. If the principal beneficiary is a developer, Reclamation shall charge the local governmental entity the full administrative and fair market value fees, and encourage the governmental entity to pass the charge on to the developer. In order to avoid violating the Antideficiency Act, estimated administrative costs will be collected in advance, before work is performed by Reclamation.
  - a. Administrative Costs: The administrative costs of reviewing and authorizing applications for storm water discharge shall be borne by the entity who receives the benefit (usually the developer). Such expenses include: staff time, paperwork, field reviews, environmental compliance, and appraisal costs. Some administrative costs will be incurred for all applications, even those which are denied. Reclamation will not absorb such costs.
  - b. Fair Market Value Fees: Fair market value represents the actual value of the land and/or facility use being granted, and it must be determined on a case-by-case basis. Reclamation will assess a fair market value fee for use of Reclamation lands and facilities for urban storm water discharge.
  - c. Increased O&M Costs: It is logical to anticipate that O&M costs will increase on Reclamation facilities due to the increased carriage burden of urban storm water drainage. It is not reasonable to expect either Reclamation or its managing partners to absorb increased O&M costs or services. Successful applicants should, therefore, be required to enter into a long-term agreement with Reclamation and its managing partner which provides for cost-sharing, on a pro rata basis, of annual O&M expenses, periodic extraordinary O&M costs, and annual environmental monitoring costs.

4. Interdisciplinary Review: Urban storm water discharge is a complex issue which crosses disciplinary lines. Because discharges will be reviewed and licensed under Reclamation's land management laws and regulations, it is recommended that applications initially be submitted to and coordinated by specialists in land management. As a minimum, additional review of each application shall be obtained from specialists in environmental affairs, water quality, hazardous materials, and engineering/O&M.

5. Review of Authorized Project Purposes:

a. No discharge shall be authorized until it has been determined to be compatible with authorized project purposes. Applications which are deemed incompatible shall be denied.

b. In the event that the facility in question is found to be no longer needed for authorized purposes, the facility should be declared excess and disposal procedures should be initiated. Transfer of title to the local government may be an option. No authority presently exists which would allow transfer of title to facilities located in areas currently in transition from agricultural to urban uses as long as those facilities are still partially used for agricultural drainage.

6. Acquisition of Necessary Right-of-Way: In many cases, Reclamation's drainage facilities are located on lands where Reclamation holds only an easement interest. Easements acquired by Reclamation for these facilities are frequently narrow in scope and limited to use for agricultural or irrigation drainage. Urban storm water drainage would exceed the scope of such easements and would impose an additional burden upon the underlying land. Therefore, any applicant who desires to discharge storm water into facilities where Reclamation owns only an easement interest must first secure his/her own easement for storm water drainage from the owner(s) of the land underlying the portion of the facility he/she plans to use. If either Reclamation or the landowner is unwilling, the application must be denied.

7. Use of Reclamation's 1890 Act Rights-of-Way: Many Reclamation facilities are located on rights-of-way acquired by Reclamation through exercise of patent rights reserved to the United States under the Act of August 30, 1890. By statute, such rights-of-way are for "... ditches and canals constructed by the authority of the United States." Because the statute deals with rights-of-way, these facilities should be treated the same as easement facilities. Solicitor's counsel shall be obtained prior to considering any upgrade of such facilities.

8. Water Quality: Care must be exercised to ensure that Reclamation does not violate the Clean Water Act and become liable for polluting "waters of the United States." Proactive relationships with Federal, state, and local regulatory agencies should be developed and nurtured. However, the applicant, not Reclamation, shall be responsible for contacting all Federal, state, and local agencies claiming jurisdiction (i.e., Army Corps of Engineers, Environmental Protection Agency, state water quality certifications [Section 401 of Clean Water Act], state departments of environmental quality, etc.). The applicant shall also be responsible for obtaining any Federal, state, or local permits required, including all permits required under the Clean Water Act. Applicants must show proof, in writing, that they have contacted all appropriate agencies and complied with their requirements.

Baseline water quality information will be collected prior to accepting any discharge. Applicants/beneficiaries will be required to help fund long-term environmental monitoring programs to assure that water quality within the



facility during and after discharge remains at acceptable levels. The applicant shall be held liable for toxic substances which are introduced into Reclamation's facility by the applicant's water.

9. National Environmental Policy Act (NEPA): The decision to accept urban storm water into Reclamation's facilities constitutes a federal action and is, therefore, subject to NEPA. NEPA compliance will be completed prior to licensing any discharge.

10. Structural Integrity: Reclamation must ensure that its facilities will continue to operate as designed, without fear of periodic overloading. The applicant must provide assurance that anticipated runoff from a maximum probable storm event will not exceed the facility's designed capacity and cause facility failure. In cases where such assurance cannot be provided, the application shall be denied unless the applicant is prepared to upgrade the facility to Reclamation's standard at his/her own expense. Reclamation must have final approval authority over all upgrade design and construction, and the impacts of the contemplated upgrade must be assessed under NEPA.

11. Tort Claims: Liability for the United States is established by Federal statute, particularly the Federal Tort Claims Act. Accepting urban storm water discharge into existing Reclamation facilities may expose Reclamation to the possibility of tort claims. In general, a tort claim is a claim of civil wrong committed against a person or property, independent of any contractual arrangement. Under the Federal Tort Claims Act of 1948, Reclamation can be held liable for:

" . . . money damages . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Reclamation can significantly reduce the threat of successful tort claims through three principal avenues:

a. Careful Review and Selective Authorization: By following the above-listed policy and guidance, Reclamation will screen out and deny most high-risk applications.

b. Hold Harmless Clause: All signatory documents (i.e., licenses, permits, O&M agreements) used to authorize the discharge of urban storm water into existing Reclamation facilities must contain an appropriately worded "hold harmless" provision. For example:

The Licensee hereby agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out the Licensee's activities under this License. [Adapted from 43 CFR 429.9(a)]

c. Legal Review: The licensing of urban storm water discharge is far too complex to be accomplished through use of pre-approved, fill-in-the-

blank documents. Therefore, all legal documents (i.e., licenses, permits, O&M agreements) used to authorize the discharge of urban storm water into existing Reclamation facilities shall be submitted individually for formal legal review and approval by the Field Solicitor's Office.

12. Unlicensed Discharges: Unauthorized discharge into Reclamation facilities is illegal and must be considered either as trespass on fee title lands or as unreasonable interference with Reclamation's right to use and enjoy its easements. Either situation is grounds for legal action, such as seeking injunctive relief and/or filing a lawsuit to recover costs. Due to funding and staffing constraints, identification of trespass/interference situations will probably occur reactively rather than proactively. However, for liability reasons, it is strongly recommended that all Unlicensed discharges on a particular Reclamation facility be resolved before any new discharge into that same facility is authorized. Regardless of the location or source, whenever Unlicensed discharges are discovered, Reclamation should:

- a. Identify the location of trespass or interference.
- b. Identify the scope of Reclamation's land ownership rights.
- c. Seek a remedy. In order to minimize its liability, Reclamation should notify the violator immediately to cease and desist. The violator should be given an opportunity to apply for authorization through a process similar to those who are not already in trespass. Back charges could be assessed if the duration of the trespass/interference can be documented. Reclamation has the right to plug outfalls which are in trespass to force compliance with the standards. Repeat violators should be prosecuted.
- d. When the violator is a private, rather than a public entity (a developer rather than a city), every effort should be made to authorize the discharge through a local governmental entity rather than a private entity with costs and fees being assessed as previously discussed.
- e. Report violators to appropriate Federal/state regulatory agency, and request their assistance. Unless the discharges involve toxic materials, such regulatory agencies may decline to give assistance. Reclamation may have to resolve most of the violations itself, but at least Reclamation will be on record as having notified the proper authorities.

#### EXCEPTIONS:

1. All provisions of this policy are subject to analysis under Secretarial Order No. 3175, dated November 8, 1993, covering Indian Trust Assets. As appropriate under Secretarial Order No. 3175, exceptions to these standards may be granted when processing applications from Native American groups.

2. Other case-specific problems which do not readily fit the standards and guidance provided herein and requests for exceptions to these standards should be referred to the regional office.

Publish this in:

Albuquerque Journal  
PO Drawer J-T  
Albuquerque NM 87103  
POC: [Samantha/legal@abqpubco.com](mailto:Samantha/legal@abqpubco.com)  
FAX 505.823.3994  
Accepts VISA  
Deadline is 2 days before desired date of publishing

### Notice of Availability

The U.S. Army Corps of Engineers, Albuquerque District, has completed the combined Draft Environmental Assessment and Finding of No Significant Impact (DEA/FONSI) and Feasibility Study entitled ***Southwest Valley Flood Damage Reduction, Albuquerque, Bernalillo County, New Mexico***. The proposed project entails utilizing existing easements, widening existing drains, constructing a large storm water detention ponding area, and constructing two new channels. The project covers approximately 21 square miles, including the Southwest Valley and contributing West Mesa areas.

The document is electronically available for viewing and copying at the Albuquerque District website (under "Environmental Assessment and FONSI") at:

<http://www.spa.usace.army.mil>

or a hard copy will be sent upon written request to the following address:

U.S. Army Corps of Engineers  
Albuquerque District  
Environmental Resources Branch  
Attn: CESP-PM-LE (Mr. Ernest Jahnke)  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109-3435

The public review will extend from February 23 through March 23, 2004. Written comments should be sent to the above address and will be accepted until 4:30 PM, March 23, 2004. Alternatively, comments may be sent electronically to [ernest.w.jahnke@usace.army.mil](mailto:ernest.w.jahnke@usace.army.mil).

A public meeting on this proposal will be held at 6:30 PM on March 2, 2004, at the Rio Grande High School Auditorium located at 2300 Arenal SW in Albuquerque, NM.

February, 2004

Planning, Project and Program Management  
Planning Branch  
Environmental Resources Section

See distribution list

Enclosed for your review and comment is a copy of the combined Draft Environmental Assessment and Finding of No Significant Impact (DEA/FONSI) and Feasibility Study entitled ***Southwest Valley Flood Damage Reduction, Albuquerque, Bernalillo County, New Mexico.***

You are invited to attend a public meeting on the proposed work at 6:30 PM on March 2, 2004 the Rio Grande High School auditorium located at 2300 Arenal SW in Albuquerque.

The 30-day public review of this document begins February 23, 2004. Please submit your reply **no later than March 23, 2004** so that we can address your comments, incorporate the correspondence into the final document, and complete National Environmental Policy Act compliance. If you have any questions or need additional information please contact Mr. Ernest Jahnke of my staff at telephone (505) 342-3416.

Sincerely,

Julie Hall, Chief  
Environmental Resources  
Section

Enclosure

Distribution list:

Mr. Rosendo Trevino  
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Natural Resource  
Conservation Service  
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Albuquerque, NM 87109

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Regional Director  
BIA SW Region  
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Mr. Gedi Cibas  
New Mexico Environment  
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City of Albuquerque  
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Albuquerque, NM 87103

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Mr. Timothy West, P.E.  
County of Bernalillo  
Public Works Division  
2400 Broadway, SE  
Albuquerque, NM 87102

Ms. Sara Cobb  
c/o Congressman Udall  
3900 Southern Boulevard, SE  
Rio Rancho, NM 87124

New Mexico State Engineer  
New Mexico Interstate Stream  
Commission  
Bataan Memorial Building  
Post Office Box 25102  
Santa Fe, NM 87504-5102



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 JEFFERSON PLAZA NE  
ALBUQUERQUE NM 87109-3435

February 20, 2004

Planning, Project and Program Management  
Planning Branch  
Environmental Resources Section

Ms. Joy Nicholopoulos, Ph.D.  
Field Supervisor  
U.S. Fish and Wildlife Service  
New Mexico Ecological Services Field office  
2105 Osuna, N.E.  
Albuquerque, New Mexico 87113

Dear Ms. Nicholopoulos:

Enclosed for your review and comment is a copy of the combined Draft Environmental Assessment and Finding of No Significant Impact (DEA/FONSI) and Feasibility Study entitled ***Southwest Valley Flood Damage Reduction, Albuquerque, Bernalillo County, New Mexico.***

You are invited to attend a public meeting on the proposed work at 6:30 p.m. on March 2, 2004 in the Rio Grande High School auditorium located at 2300 Arenal, S.W. in Albuquerque.

The 30-day public review of this document begins February 23, 2004. Please submit your reply **no later than March 23, 2004** so that we can address your comments, incorporate the correspondence into the final document, and complete National Environmental Policy Act compliance. If you have any questions, or require additional information, please contact Mr. Ernest Jahnke of my staff at telephone (505) 342-3416.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Hall", is written over a horizontal line.

Julie Hall, Chief  
Environmental Resources Section

Enclosure



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 JEFFERSON PLAZA NE  
ALBUQUERQUE NM 87109-3435

February 20, 2004

Planning, Project and Program Management  
Planning Branch  
Environmental Resources Section

Honorable Alvin Lucero  
Pueblo of Isleta  
Post Office Box 1270  
Isleta, New Mexico 87022

Dear Governor Lucero:

Enclosed for your review and comment is a copy of the combined Draft Environmental Assessment and Finding of No Significant Impact (DEA/FONSI) and Feasibility Study entitled ***Southwest Valley Flood Damage Reduction, Albuquerque, Bernalillo County, New Mexico.***

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The 30-day public review of this document begins February 23, 2004. Please submit your reply **no later than March 23, 2004** so that we can address your comments, incorporate the correspondence into the final document, and complete National Environmental Policy Act compliance. If you have any questions or require additional information, please contact Mr. Ernest Jahnke of my staff at telephone (505) 342-3416.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana R. Hurst", is written over a horizontal line.

Dana R. Hurst  
Lieutenant Colonel, U.S. Army  
District Engineer

Enclosure

MINUTES OF THE ONE THOUSAND EIGHT HUNDRED FOURTEENTH  
MEETING OF THE BOARD OF DIRECTORS OF THE  
MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
September 22, 2003

All members having been duly notified, Chairman Jose U. Otero called the meeting to order at 6:03pm at the MRGCD General Office. The following Directors and staff were present:

**DIRECTORS:**

Hector Gonzales, Director  
Joseph Griego, Director  
Jose U. Otero, Chairman  
James Roberts, Director . . . . . ABSENT  
Gary Perry, Vice Chairman  
Lawrence Troncosa, Director  
Jimmy Wagner, Director

**STAFF:**

Subhas K. Shah, Chief Engineer  
Karen A. Hill, District Secretary  
Dr. Charles Dumars, Legal Counsel  
Sterling Grogan, Biologist/Planner  
Leonard Utter, Asst Engineer  
Yasmeen Najmi, Asst. Planner  
Augusta Meyers, Public Information Officer

The following names of individuals were interested viewers and/or participants:

April Sanders, USACE  
Lisa Robert, APA  
Tom Rojas

Brick Wall, USBIA/SPA  
John Kelly, AMAFCA

**AGENDA ITEM NO. 1 - APPROVAL OF THE AGENDA**

With no additions or deletions to the agenda, Member Perry moved to: **APPROVE THE AGENDA, AS PRESENTED.** Member Gonzales seconded the motion and the motion carried.

**AGENDA ITEM NO. 2 - APPROVAL OF THE BILLS AND PAYROLL**

Member Griego stated that he checked the payment ratification dated September 22, 2003 and found it to be in order. He then moved to: **APPROVE THE BILLS AND PAYROLL PAYMENT RATIFICATION DATED SEPTEMBER 22, 2003, AS PRESENTED.** Member Perry seconded the motion and the motion carried.

**AGENDA ITEM NO. 3 - APPROVAL OF THE MINUTES**

Member Perry stated that he reviewed the Minutes of September 8, 2003 and moved to: **APPROVE THE MINUTES OF SEPTEMBER 8, 2003, AS PRESENTED.** Member Gonzales seconded the motion and the motion carried.

**AGENDA ITEM NO. 4 - WATER FORECAST**

Mr. Shah reported rainfall last week. Last week flows were below 100cfs at Central Avenue and was corrected. Socorro has had good flows. Very large flows were reported on the Rio Puerco with a peak of 3,000cfs. The San Acacia area has reported a lot of mud and silt, however.

24 Hour Mean Daily Diversions		Reservoir Storage	
Cochiti Main Canal	71 cfs	El Vado	40,011 ac ft
Sili Main Canal	43 cfs	Abiquiu	67,475 ac ft
(Cochiti Diversion)	114 cfs	Cochiti	48,447 ac ft
Angostura Diversion	82 cfs		
Isleta Diversion	186 cfs		
San Acacia Diversion	74cfs		
Socorro Main Canal	139cfs		

**AGENDA ITEM NO. 5 - SOUTHERN PUEBLOS AGENCY REPORT**

Mr. Brick Wall, USBIA Designated Engineer, reported that they are continuing to meet the demand in the Cochiti Division. Sometime this week deliveries will be moved to the Albuquerque Main Canal from the Angostura Diversion. A verbal report from the Bureau of Reclamation states that there is 8,500 acre feet in storage at El Vado. The last P&P release from El Vado storage was September 9, 2003 at 80cfs. Rainfall followed which provided ample flows for demand.



**AGENDA ITEM NO. 6 - REPORTS FROM THE BOARD**

MRCOG Water Resources Board	09/10	Griego: Attendees - Griego, Gonzales, Shah. Recommendations were given for the proposed water plan. Mr. Shah's experience as an engineer was invaluable. Shah: Some language was changed in the proposed alternates at request of MRGCD. Meeting held on 09/20 to discuss further. A town hall meeting for the State Water Plan is scheduled Sept. 23-25 at 4pm at the Airport Windham Hotel. Mr. Shah and Mr. Grogan have been invited to participate. Anyone can attend as observers however.
MRGCD Board Project Workshop	09/11	Attendees: Griego, Troncosa, otero, Wagner, Roberts DuMars: Reviewed technical issues of the South Valley Flood Control Project and the Tingley Beach Project. He was instructed to come up with a resolution that reflects the intent of the Board.
MRCOG Exec Board	09/18	Gonzales: Discussion on transportation corridor from Belen to Santa Fe. Briefing by Mike Trujillo on water plan. COG should send every board member a copy of the brief.

**AGENDA ITEM NO. 7 - REPORT OF THE CHIEF ENGINEER****(a) South Valley Flood Control Project**

Mr. Shah stated that the Board had a workshop on September 11<sup>th</sup> to go over the technical issues of the South Valley Flood Control Project. Subsequently, the Board directed staff and legal counsel to draft a resolution that reflected the intention of the Board. The language of the resolution will include the following statement:

**SOUTH VALLEY FLOOD CONTROL PROJECT**

In spirit of cooperation and to provide much needed flood protection to valley lands in South Valley of Bernalillo County, the MRGCD hereby allows use of its Isleta, Los Padillas and Armijo Drain to convey storm water provided that nothing in this approval violates either state or federal law in relating to the functioning of the Conservancy District.

The AMAFCA, Bernalillo County and USACOE must design and construct the project to:

- a) Minimize impact to MRGCD facilities and its constituents;
  - b) Minimize or avoid adverse impacts to Isleta Pueblo lands;
  - c) Provide alternate sources of water to supplement the flows to New Belen Acequia;
  - d) Minimize operation and maintenance costs.
- N The MRGCD will retain its ownership of drains.
  - N The MRGCD will maintain the affected facilities at reimbursable costs which will be adjusted annually based on CPI. Extraordinary maintenance repair or rehab shall be at a negotiated price.
  - N If additional right-of-way is required by the sponsors of the project, the acquired rights-of-way in appropriate forms must be assigned to MRGCD.
  - N The agencies are required to work cooperatively with MRGCD staff during the design, construction and maintenance phases.
  - N Provide periodic reports to MRGCD Board.

Member Troncosa requested that language be amended as follows: ". . .*nothing in this approval violates either state or federal law or tribal law.*" Mr. Shah stated that John Kelly would like to report back to the AMAFCA Board on September 25<sup>th</sup> whether or not the MRGCD Board concurs with the project. Member Gonzales then moved to:

**APPROVE THE SOUTH VALLEY PROJECT AS READ BY THE SECRETARY  
WITH THE ADDITION BY MR. TRONCOSA.**

Member Perry seconded the motion and the motion carried. The resolution will be ratified at the next meeting.

Mr. Kelly thanked the Board and pointed out there are two different projects; the US Army Corps of Engineers has a project north of Rio Bravo and the other at the Black Mesa Pump Station Project near Isleta and Malpais. He noted that they can meet every point stated in the motion. Ms. April Sanders added that the funds are "on track" and are hoping for approval in January or February 2004. Member Griego clarified that the motion was in support of both projects.

### **(b) Irrigation Season Report**

Mr. Shah noted that was a decrease in complaints received regarding water deliveries. The District received 15,000 acre feet from the City when it was needed most and rainfall followed which was an added bonus. In fact, he said, many farmers felt this was a better season than last year. The District has given 3,231 acre feet at no cost to the USBOR for use for the silvery minnow. The District agreed to allow 1,000 acre feet of this water right away and the remaining will be credited back to the District if it is not needed.

### **(c) ESA Update**

Mr. Shah stated that the ESA Workgroup is still working on legislation but is in the final stages. The MRGCD has some concerns on the proposed legislation but it has been worked out. In addition, the Pueblo provided some input. A meeting has been scheduled for this Thursday. Senator Pete Domenici met with District staff and is appropriating \$2 million for improvements to District facilities. Staff has not yet seen the bill, however \$150,000 is earmarked for the design of the syphon.

Sterling Grogan, MRGCD Biologist, reported that about four months ago the Senate subcommittee on Appropriations for Energy and Water issued a committee report in which they discussed the ESA Collaborative Program for the Middle Rio Grande. One report was extremely critical on two issues. They claimed that the ESACP has not completed many of the programs that Congress has already funded. They also complained about the *"inefficiency of the Collaborative Program."* Mr. Grogan noted the slow process to expedite funds through the Bureau of Reclamation which has been frustrating. It has taken over a year to receive funds that was authorized for FY2003. Congress recommended that an executive committee be appointed with five members to run the ESA Collaborative Program. However, there is no plan to have a representative of the MRGCD on this Executive Committee nor any entity representing irrigation or agricultural interests. If the rider passes in its current form, the MRGCD will no longer have a voice in managing the ESA Collaborative Program. Dr. DuMars has drafted language for a resolution that will be sent to every member on the committee as follows:

*"WHEREAS, as was the case in the Klamath Reservoir in Oregon, thousands of Middle Rio Grande irrigators, are the persons most affected by the working group plans for protection of the endangered species, including the Rio Grande silvery minnow, and;*

*WHEREAS the current Rider legislation provides a place on the Executive Committee environmental groups, municipalities, State and Federal agencies, but no such place is provided for the Middle Rio Grande Conservancy District and it is not currently possible for it to be on the Executive Committee.*

*NOW THEREFORE the Middle Rio Grande Conservancy District Board recommends that the Rider be modified in committee to allow the Middle Rio Grande Conservancy District, as representative of thousands of irrigators, to be placed on the new Executive Committee."*

Member Perry moved to:

### **ADOPT THIS RESOLUTION AS READ BY MR. DUMARS.**

Member Wagner seconded the motion. Member Troncosa asked if there was a position on the Executive Committee for Tribal interests. Dr. DuMars stated that there is not. Member Griego suggested that language be added to reflect the interests of the Pueblos. Dr. DuMars noted that the Pueblos have chosen to be observers. It might be difficult to have them added to the Executive Committee if they chose not to participate, however the language could be added. The Chairman proceeded with the vote noting the addition of the reference to the Pueblo interests in the resolution and the motion carried. The resolution will be ratified at the next meeting.

### **(d) Bosque Fuel Reduction Contract**

Mr. Shah presented a bid abstract of award for a **Bosque Fuel Reduction Contract**. The work includes cutting non-native trees and treating with an approved herbicide, chipping slash, piling and moving firewood to levees or designated roads for removal by the public. Funding for this work was derived from five grants awarded to the District by various agencies. Total funds collected is \$450,976.00 with \$35,000 encumbered in the MRGCD fiscal year budget to match federal grant funds. The projects will cover (147) acres in Bernalillo County and (81) acres in Valencia County. Due to insufficient funding to treat all six sites

proposed, staff recommended award based on five of the sites. Five vendors submitted bids as follows:

Company	Total Price for 6 Sites	Price based on 5 Sites
C&R Forestry Inc.	\$524,156.16	\$378,497.98
SWEAT, Inc.	\$731,475.00	\$570,258.00
Baca's Trees	Total not provided	
Restoration Solutions	\$722,321.00	\$548,406.00
Desert Gardens	Total not provided	

A team comprised of representatives from the MRGCD, State Forestry, City of Albuquerque, US Forest Service and the Valencia Soil and Water Conservation District evaluated the proposals based on a point system. They considered price, technical approach, experience and budget summaries. Yasmeen Najmi, Assistant Planner for the MRGCD, will be the Project Manager. After short discussion, Member Wagner moved to:

**GRANT C&R FORESTRY THE AWARD (BOSQUE FUELS REDUCTION CONTRACT)  
IN THE AMOUNT OF \$378,497.98.**

Member Perry seconded the motion and the motion carried unanimously.

Member Wagner asked for an update on the "goat project." Sterling Grogan reported that there is a targeted start date of November 1<sup>st</sup> in Socorro County. Funding has been supported. Additional funds have been appropriated from the State Legislature. The District will be working with the City of Albuquerque Open Space Division to identify places in Bernalillo County on a pilot project.

**(c) Public Information Officer Report**

Mr. Shah introduced Mr. Tom Rojas, Technical Race Director for this year's *Bosque Boogie*. Mr. Rojas commended the Board for sponsoring such a productive P/R event. \$15,000 has been spent in entry forms that targeted 9,000 individuals that raced last year. In addition, a mailout of 6,500 has been sent out to sporting and related facilities. Ms. Augusta Meyers is working with District volunteers to help with activities for the races. He displayed this year's poster for the Board and invited them to participate. The race includes a 10K Run, a 5K Run, a 5K Fitness Walk and a 1K Kid's Run. Dr. DuMars stated that materials for the five District promotional brochures have been given to Ms. Meyers for formatting and finishing.

**(f) Followup Report**

Mr. Shah reported that irrigation problems encountered by Mr. Madrid and Mr. Marquez have been resolved. They received water immediately and were able to water two times.

**(g) South Valley Gate Funding**

Mr. Shah reported that last meeting Mr. Miguel Garcia submitted a request for gates to the Board. The District had received funding from the State Legislature for FY 2002/03, however the District has not received the funds. Last week, he traveled to Santa Fe with Lobbyist John Lee Thompson and inquired about the funds. The District will receive \$40K for gates from Senator Romero, \$7,300 from Senator Sanchez, \$10,500 from Rep. Miguel Garcia, and \$10,000 from Rep. James Taylor for a total of \$67,800. A contract will be expedited shortly so that the District can begin receiving funds. Over (40) gates have already been installed by the District so far, spending \$58-60,000 for the projects. The funds from the state will reimburse the District. If there are additional requests from legislators, the District will ask them to sponsor a request for funding on behalf of the District.

**AGENDA ITEM NO. 8 - REPORT OF THE ATTORNEY**

Dr. Charles DuMars stated that they have been meeting with the Office of the State Engineer regarding a **supplemental well policy**. Meetings included Mr. Paul Saavedra, Water Rights Division Manager, and the NM Water Rights Association represented by Mr. Mike Mechenbier. The proposal states that currently, farmers that want to use an irrigation well are at a disadvantage as compared to a municipality. A municipality is able to purchase a pre-1907 water right at any time and use it 100% of the time. However, if you are an irrigation farmer with a pre-1907 right or

wish to buy/lease a pre-1907 water right, under current policy the SEO will deny the request because the farmer has a "surface right" for use on the property. This is discrimination against farmers. Both the State Engineer and Mr. Saavedra agreed with the District that this would be a fair policy.. Legal counsel has confirmed this meeting with a letter. In times of drought, people would be able to submit applications to move water from their pre-1907 water rights into supplemental wells so that they can continue to farm.

**AGENDA ITEM NO. 9 - ITEMS FROM THE FLOOR - NO ISSUES**

Mr. Shah reported that the Albuquerque Metropolitan Arroyo Flood Control Authority will be hosting a 40<sup>th</sup> Anniversary party on Thursday, September 25, 2003 at their location, 2600 Prospect Ave NE, in Albuquerque.

With no further business before the Board, Member Wagner moved to:

**ADJOURN THE MEETING.**

Member Perry seconded the motion and the motion carried. The meeting was adjourned at 7:04pm.

Approved to be the correct Minutes of the Board of Directors of September 22, 2003.

/s/ Karen A. Hill  
Secretary of the Board of Directors

/s/ José U. Otero  
Chairman

MINUTES OF THE ONE THOUSAND EIGHT HUNDRED FIFTEENTH  
MEETING OF THE BOARD OF DIRECTORS OF THE  
MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
October 13, 2003

All members having been duly notified, Vice Chairman Gary Perry assumed the Chair and called the meeting to order at 6:00pm at the MRGCD General Office. The following Directors and staff were present:

**DIRECTORS:**

Hector Gonzales, Director  
Joseph Griego, Director  
Jose U. Otero, Chairman . . . . . arrived 6:25  
James Roberts, Director . . . . . ABSENT  
Gary Perry, Vice Chairman  
Lawrence Troncosa, Director  
Jimmy Wagner, Director

**STAFF:**

Subhas K. Shah, Chief Engineer  
Karen A. Hill, District Secretary  
Jesse McCarty, Accountant  
Richard Cole, Legal Counsel

The following names of individuals were interested viewers and/or participants:

Mike Mechenbier  
Tom Tinnin  
Jerry Lovato, AMAFCA

**AGENDA ITEM NO. 1 - APPROVAL OF THE AGENDA**

With no additions or deletions to the agenda, Member Gonzales moved to: **APPROVE THE AGENDA, AS PRESENTED.** Member Wagner seconded the motion and the motion carried.

**AGENDA ITEM NO. 2 - APPROVAL OF THE BILLS AND PAYROLL**

Member Griego stated that he checked the payment ratification dated October 13, 2003 and found it to be in order. He also noted that the format concerns previously mentioned had been corrected. He then moved to: **APPROVE THE BILLS AND PAYROLL PAYMENT RATIFICATION DATED OCTOBER 13, 2003, AS PRESENTED.** Member Gonzales seconded the motion. Member Troncosa inquired about voucher No. 72997 paid to Wayne Hargrave in the amount of \$990 for gopher tails reimbursement. Mr. Shah confirmed the payment stating that the Board had increased the compensation to \$3 per gopher tail. Division employees count all tails brought in. This was a bag of 330 tails brought in at one time. There is no way to confirm where the gophers were killed. Chairman Perry noted that if one ditchbreak is avoided, the cost is minimal. He proceeded with the vote and the motion carried. Member Troncosa asked staff to develop better criteria.

**AGENDA ITEM NO. 3 - APPROVAL OF THE MINUTES**

Member Griego stated that he reviewed the Minutes of September 22, 2003 and moved to: **APPROVE THE MINUTES OF SEPTEMBER 22, 2003, AS PRESENTED.** Member Gonzales seconded the motion and the motion carried.

**AGENDA ITEM NO. 4 - WATER FORECAST**

Mr. Shah reported that recently the Cochiti Division was receiving minimal flows but was raised to 135cfs because of P&P demand. Angostura was shut off but there is still some water coming down. Belen Division was reduced because of recent rainfall. District crews are attempting to divert water from the east side of the river to the west side where there are some farmer requests. Socorro Division is doing very well and is not taking in any water from the river.

24 Hour Mean Daily Diversions		Reservoir Storage	
Cochiti Main Canal	90 cfs	El Vado	37,000 ac ft +
Sili Main Canal	45 cfs		
(Cochiti Diversion)	135 cfs	Abiquiu	65,563 ac ft
Angostura Diversion	0 cfs		
Isleta Diversion	212 cfs		
San Acacia Diversion	9 cfs		
Socorro Main Canal	93cfs		

Mr. Shah continued that there is still about 19,000 acre feet of the “*emergency credit water*” stored at El Vado for the silvery minnow. There is also a small amount of water stored in Abiquiu. Because of the surplus, the District may see a return of about 2,000 acre feet that the USBOR borrowed. If this occurs before December, the District will use it to pay back the City of Albuquerque some of the borrowed 15k acre feet.

**AGENDA ITEM NO. 5 - SOUTHERN PUEBLOS AGENCY REPORT - NO REPORT**

**AGENDA ITEM NO. 6 - REQUEST FOR BOSQUE FENCING - TOM TINNIN**

Mr. Tom Tinnin, a landholder of property in Bernardo, addressed the Board and submitted a letter with two requests: (1) cost share in replacing a common border fence that was destroyed by a bosque fire and (2) secure access to District property on the north side of Hwy 60 to protect the bosque. He referred to property that lies west of the Rio Grande, north of Hwy 60 and east of the Bernardo Game Refuge. Between the Bernardo Refuge and the MRGCD is an area of approximately (160) acres that is part of his property. The fences on all of the borders of this property were destroyed by a bosque fire earlier this year. He requested the District's assistance in rebuilding the (1.3) miles of 5-strand, barbed wire fencing on the common border which was consistent with other agencies with common fence situations.

Mr. Tinnin continued that cattle trespass the bosque lands owned by the MRGCD and invade his property, damage fences and consume the vegetation. He offered to disclose the known owner of the wandering cattle to help the District resolve that issue. Since the fire, this problem has increased. Securing the access to District property on the north side of Hwy 60 with new fencing would assist in protecting the bosque from any of his own animals and prevent the wandering cattle from the bosque side from entering his private property.

Member Perry recalled that New Mexico law allows landholders to round up the invading animals and impound them. Then the owner has to reimburse the owner of the cost. Mr. Tinnin stated that this has been attempted and failed to be effective because the owner does not care about occasional strays.

Mr. Shah stated that the Socorro Division Manager has done an inspection of the area. The District offered to clean up the border areas on the District property so that access was open to the Tinnin lands. Mr. Tinnin noted that the fire had cleared out the salt cedar and subsequently preparation to install fencing would be easier. Mr. Shah did not recall such a cost-share arrangement made with any previous landholders. He was concerned that by granting this request, the District would have to accommodate all constituents with property adjacent to the bosque that wanted a fence. Member Perry concurred and stated that he would support the request if staff could locate records showing that the District had done similar repairs before. Mr. Tinnin countered that this was a unique situation because of the damage done by the fire. He added that he had always maintained the common fence and made any repairs needed prior to the fire. The US Fish & Wildlife Service has replaced the fencing common to their properties.

Mr. Richard Cole, legal counsel, reviewed the request and referred to the Anti-donation Act provision where the agency cannot donate or favor an individual. He suggested that this statute be researched as it relates to this request. Member Troncosa felt this was not necessary because the District could do projects at any time in order to protect its own lands (bosque). Member Griego concurred. Member Wagner suggested that research be done to find out what entity originally constructed the fence. Directors Otero and Gonzales felt the request was reasonable because the fire was on Conservancy property.

Member Griego stated that he strongly believed the District was not in violation of the Anti-donation Clause and moved to:

**APPROVE THE PARTICIPATION ON A COST-SHARE BASIS FOR THE  
RECONSTRUCTION OF THE COMMON PROPERTY LINE FENCE.  
ALSO HAVE STAFF LOOK INTO THE UNAUTHORIZED  
ACCESS AND THE UNAUTHORIZED GRAZING OF CATTLE  
ON THE CONSERVANCY DISTRICT BOSQUE.**

Member Gonzales seconded the motion and the motion carried.

**AGENDA ITEM NO. 7 - REPORTS FROM THE BOARD - COMMITTEE RATIFICATION**

09/23-09/25	State Water Plan Forum	Troncosa Gonzales	Gonzales: People that have no claim to water are making decisions on what to do with water that other people Troncosa: Attended as observer. Gov. Richardson wants State Water Plan completed by end of year which does not seem possible or may not work. Pueblos were represented but not participating. Perry: Draft report from Socorro/Sierra Water Plan reflects the lack of knowledge of the area. Those informed should definitely provide input.
09/23	City of Alb Citizens Advisory Bd	Gonzales	Bernalillo County will be taking over the water system for the City of Albuquerque. Discussion on County/City merger.
09/25	MRCOG Transportn Bd	Gonzales	Funds (\$600,000) for the Corrales Scenic Road and the Journal Center Trail will be moved from this year's expenditure budget to next year's.
10/06	Western States Indian Water Rights Conference	Troncosa	Movement in western states for Tribes to settle rights. Montana in the settlement process. Arizona's already approved through Congress. However, Federal Government does not want to fund projects because of the vast amount of technical and legal work to be done to get rights perfected. Similar situation in New Mexico (lack of funds). Most Tribes across West prefer and support settlement process. Dr. DuMars was on agenda and Sterling Grogan made a presentation
10/08	Water Resources Board	Griego Gonzales	<u>Griego</u> : Member Gonzales and Mr. Shah were present. They took action to approve the principles and concepts in the Water Plan draft. Copies of the MRG Regional Water Plan 2000-2050 was presented to members for review. MRCOG willing to meet with MRGCD Board through a workshop to talk about MRGCD concerns. Any action taken on the plan has to be approved jointly by the WRB and the Water Assembly by December 3rd. Discussions have been sluggish, and now the plan must go forward quickly. There is a perception at the Water Resources Board that any water conserved or preserved (rainwater, water in main stem of river) can be put in a water bank and be used anywhere. The MRGCD must relay that the water is already appropriated to the farmers in the middle valley. The MRGCD Board does not have to approve the plan. <u>Gonzales</u> : Time getting tight and MRGCD Board must have workshop to get familiar with the plan. <u>Shah</u> : The water plan will affect the MRGCD every time there is a change, mostly in a negative manner. The plan is all about using water now used for farmland/agricultural usage. When the plan needs to be implemented, they will come back to the local agencies (MRGCD). New legislation could also affect the District. Board should direct Member Gonzales to warn the WRB now that the MRGCD may not accept the plan. <u>Chairman</u> : Legal staff and Mr. Shah should contact MRCOG to attend workshop. <u>Consensus</u> : <b>WORKSHOP SCHEDULED WEDNESDAY, OCTOBER 22, 2003 6:00PM</b>

**AGENDA ITEM NO. 8 - REPORT OF THE CHIEF ENGINEER****(a) Ratification of Resolutions**

Mr. Shah presented the following resolution for ratification as discussed and approved by the Board at the last meeting held September 22, 2003:

RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
**SOUTH VALLEY FLOOD CONTROL PROJECT**

**M-09-22-03-85**

WHEREAS, in the spirit of cooperation and to provide much needed flood protection to valley lands in the South Valley of Bernalillo County, the MRGCD agrees to work with the Albuquerque Metropolitan Arroyo Flood Control Authority, the County of Bernalillo and the U.S. Army Corps of Engineers as sponsors of the South Valley Flood Control Project under the following conditions:

WHEREAS, the AMAFCA, Bernalillo County and USACOE must design and construct the project to:

- a) Minimize impact to MRGCD facilities and its constituents;
- b) Minimize or avoid adverse impacts to Isleta Pueblo lands;
- c) Provide alternate sources of water to supplement the flows to New Belen Acequia;
- d) Minimize operation and maintenance costs; and

WHEREAS, the MRGCD will retain its ownership of drains; and

WHEREAS, the MRGCD will maintain the affected facilities at reimbursable costs which will be adjusted annually based on CPI. Extraordinary maintenance repair or rehab shall be at a negotiated price; and

WHEREAS, if additional right-of-way is required by the sponsors of the project, the acquired rights-of-way in appropriate forms must be assigned to MRGCD; and

WHEREAS, the agencies are required to work cooperatively with MRGCD staff during the design, construction and maintenance phases; and

WHEREAS, the sponsors must provide periodic reports to MRGCD Board.

NOW THEREFORE LET IT BE RESOLVED THAT the MRGCD hereby allows use of its Isleta, Los Padillas and Armijo Drain to convey storm water provided that nothing in this approval violates either state, federal or tribal law in relating to the functioning of the Conservancy District.

DATED AND RESOLVED THIS 22nd day of September, 2003.

ATTEST:  
/s/ Karen A. Hill, Secretary

MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
/s/ José U. Otero, Chairman

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Member Otero moved to:

**APPROVE RESOLUTION NO. M-09-22-03-85 FOR THE  
SOUTH VALLEY FLOOD CONTROL PROJECT.**

Member Gonzales seconded the motion and the motion carried. Mr. Shah presented the following resolution for ratification as discussed and approved by the Board at the last meeting held September 22, 2003:

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
EXECUTIVE COMMITTEE OF THE ESA COLLABORATIVE WORK GROUP      No. M-09-22-03-86**

---

WHEREAS, as was the case in the Klamath River in Oregon, thousands of Middle Rio Grande irrigators, including members of six Middle Rio Grande Native American Pueblos, are the persons most affected by the ESA Collaborative Work Group plans for protection of endangered species, including the Rio Grande silvery minnow, and;

WHEREAS the language of the rider on S.1424, The Energy and Water Development Appropriations Act of 2004, provides a place on the proposed new Executive Committee of the ESA Collaborative Work Group for environmental groups, municipalities, State and Federal agencies, but no such place is provided for the Middle Rio Grande Conservancy District or other agricultural representative, and it is not currently possible for the Executive Committee to include such representatives, even though new habitat and water management strategies contemplated by the ESA Collaborative Work Group will be impossible to implement without the active participation of the Middle Rio Grande Conservancy District;

NOW THEREFORE the Middle Rio Grande Conservancy District Board of Directors recommends that the language of the rider be modified in committee to allow the Middle Rio Grande Conservancy District, as the representative of thousands of irrigators, to be placed on the new Executive Committee.

DATED AND RESOLVED THIS 22nd day of September, 2003.

ATTEST:  
/s/ Karen A. Hill, Secretary

MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
/s/ José U. Otero, Chairman

---

Member Griego moved to:

**APPROVE RESOLUTION NO. M-09-22-03-86 FOR THE EXECUTIVE  
COMMITTEE OF THE ESA COLLABORATIVE WORKGROUP AS PRESENTED.**

Member Otero seconded the motion and the motion carried. Mr. Shah stated that the resolution was sent by facsimile to all of the members of the Congressional Committee in Washington DC. There has not been a formal response. The intention is for Senator Domenici to include a representative from the MRGCD on the Executive Committee in order to have a vote on decisions that affect the middle Rio Grande valley.

**(b) Irrigation Season Report**

Mr. Shah stated that every year, the Pueblos have written a letter of request to extend the irrigation season, however there has not been an official letter this year. Last year the Board determined that the MRGCD would not continue the delivery of the P&P water after October 31<sup>st</sup>. The District provided the Pueblos with a schedule and cost to continue running the water through November 15<sup>th</sup>. At that time, the Pueblos decided not to extend beyond October 31<sup>st</sup>. Mr. Shah asked the Board for direction for this year.



Member Troncosa suggested that the District contact the Pueblos. Mr. Shah stated that the District normally receives a request from the Six Middle Rio Grande Coalition of Pueblos. Chairman Perry stated that if the Pueblos want extended service they should send a letter of request to the District and the MRGCD will respond accordingly. Member Griego stated that the new Coalition Chairman, Ernest Coriz may not know the procedure and made a motion that:

**MR. SHAH WRITE A LETTER TO THE CHAIRMAN OF THE COALITION (OF PUEBLOS)  
AND ADVISE HIM OF THE SITUATION IN THE PAST AND THE BOARD'S DECISION LAST YEAR.**

Member Troncosa seconded the motion. Chairman Perry clarified that the letter should include that the water will be shut down on October 31<sup>st</sup> unless the Pueblos contact staff or send a letter indicating that they wish to extend this time through November 15<sup>th</sup>. They will incur the cost of running the system beyond the October 31<sup>st</sup> date. The Chairman proceeded with the vote and the motion carried.

**(c) ESA Update - No Report**

**(d) Public Information Officer's Report**

Mr. Shah reported that there were more than (700) participants in the Bosque Boogie Run yesterday. Ms. Augusta Meyers will give a full report at the next meeting.

**(e) Board Meeting Time Change**

Mr. Shah announced that the Board meeting time will change to 4:00pm after the irrigation season closes until the end of February 2004 by resolution of the Board. After short discussion, the Board did not see the necessity of the change and Member Troncosa moved to:

**RESCIND THE PREVIOUS RESOLUTION (AMENDMENT BD-12-09-0226.1)  
FOR BOARD MEETING TIMES FOR THE MONTHS OF NOV-FEB AND  
CONTINUE WITH THE REGULARLY SCHEDULED TIME OF 6:00PM.**

Member Griego seconded the motion and the motion carried.

**(f) Upcoming Conferences**

Mr. Shah announced that the annual conference of the **National Water Resources Association (NWRA)** will be held in **Long Beach, California** on November 11-14, 2003. US Bureau of Reclamation Commissioner John Keys will be attending and there will be an opportunity for the District to meet with him. Chairman Perry suggested that staff prepare an agenda of discussion so that Board members that attend will be prepared. Mr. Shah asked that Board members planning to attend should contact staff.

Mr. Shah continued that the **New Mexico Water Planning conference** sponsored by the Water Resources Research Institute will be held at the **Santa Ana Pueblo** on November 5-6, 2003.

**(g) Editorial Workshop**

Mr. Shah reminded the Board that an Editorial Workshop for the Board is scheduled this Wednesday, October 15, 2003 at 6:00pm. The Board will decide on topics of discussion to be covered with a media session. Member Troncosa requested that the attorney, Dr. DuMars and the public relations officer, Ms. Augusta Meyers attend and have an agenda prepared for the workshop discussion.

Member Gonzales announced that Mr. Johnny Losack a long time friend of the District from Corrales, had departed. A rosary is planned for tomorrow night with the funeral scheduled for Wednesday morning. He was very involved in water issues.

Mr. Shah stated that directly prior to the meeting tonight, he and several Board members visited the City Council meeting in session and presented red chili ristras, apples and pumpkins to the council members in a good-will gesture. Farmers Mike Mechenbier and Paula and Chris Sichler also joined the party to thank the council members for their support.

**AGENDA ITEM NO. 9 - REPORT OF THE ATTORNEY**

Mr. Richard Cole, legal counsel, made a report on the **Adolph Sanchez** lawsuit. The neighbor, Mr. Damian Gutierrez, intervened and the sale process is on hold. The case will move forward under the direction of Judge Brown in Bernalillo County.

Regarding to the District ***Title question*** with the federal government, Mr. Cole stated that the federal Brief is due November 15, 2003. The MRGCD will have twenty days to respond to the Brief.

Mr. Cole stated that the dispute with the **Bernalillo County Treasurer** is continuing. There has been no response from the county to produce a report detailing justification for withholding \$1.3 million from the District. The District advised county counsel that if the MRGCD does not receive the report soon, a lawsuit could be filed asking for the accounting. Legal counsel will request approval of the Board before filing.

The 10<sup>th</sup> Circuit Court of Appeals has asked the District to respond with an opinion on whether or not the case ruled by Judge Parker is moot because of a new Biological Opinion. Legal Counsel will respond before the deadline on October 21st.

**AGENDA ITEM NO. 10- ITEMS FROM THE FLOOR**

Mr. Jerry Lovato of AMAFCA thanked the Board for its support of the South Valley Flood Control Project.

## Followup Reports

Member Griego requested followup reports from staff on the following and Mr. Shah responded:

**! Ditchrider Forum**

Not scheduled yet. This instruction will come from the Division Managers.

### **Hiring of Water Consultant**

A Request for Proposal for a Water Consultant to handle forbearance issues was advertised and proposals received were evaluated.

### **Hiring of Manager to Assist CEO**

A Human Resources Manager and an Accounts Payable person has been hired recently. Member Griego clarified that a manager is needed to help the Chief Engineer directly.

With no further business before the Board, Member Otero moved to:

**ADJOURN THE MEETING.**

Member Wagner seconded the motion and the motion carried. The meeting was adjourned at 7:47pm.

Approved to be the correct Minutes of the Board of Directors of October 13, 2003.

/s/ Karen A. Hill  
Secretary of the Board of Directors

\_\_\_\_\_  
/s/ *José U. Otero*  
Chairman

RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT

**SOUTH VALLEY FLOOD CONTROL PROJECT**

M-09-22-03-85

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WHEREAS, in the spirit of cooperation and to provide much needed flood protection to valley lands in the South Valley of Bernalillo County, the MRGCD agrees to work with the Albuquerque Metropolitan Arroyo Flood Control Authority, the County of Bernalillo and the U.S. Army Corps of Engineers as sponsors of the South Valley Flood Control Project under the following conditions:

WHEREAS, the AMAFCA, Bernalillo County and USACOE must design and construct the project to:

- a) Minimize impact to MRGCD facilities and its constituents;
- b) Minimize or avoid adverse impacts to Isleta Pueblo lands;
- c) Provide alternate sources of water to supplement the flows to New Belen Acequia;
- d) Minimize operation and maintenance costs; and

WHEREAS, the MRGCD will retain its ownership of drains; and

WHEREAS, the MRGCD will maintain the affected facilities at reimbursable costs which will be adjusted annually based on CPI. Extraordinary maintenance repair or rehab shall be at a negotiated price; and

WHEREAS, if additional right-of-way is required by the sponsors of the project, the acquired rights-of-way in appropriate forms must be assigned to MRGCD; and

WHEREAS, the agencies are required to work cooperatively with MRGCD staff during the design, construction and maintenance phases; and

WHEREAS, the sponsors must provide periodic reports to MRGCD Board.

NOW THEREFORE LET IT BE RESOLVED THAT the MRGCD hereby allows use of its Isleta, Los Padillas and Armijo Drain to convey storm water provided that nothing in this approval violates either state, federal or tribal law in relating to the functioning of the Conservancy District.

DATED AND RESOLVED THIS 22nd day of September, 2003.

/s/ Karen A. Hill  
Secretary of the Board of Directors

/s/ José U. Otero  
Chairman

MEMORANDUM FOR RECORD

3/22/2004

The South Pacific Division allowed the Independent Technical Review for the Southwest Valley Flood Damage Reduction Feasibility Report to be completed within the Albuquerque District. The ITR team is listed below.

Name	Role	Resource Section
Anthony J. Apodaca III, PE	ITR Team leader/Plan Formulation	Plan Formulation
Don Satz	Real Estate	Real Estate
Champe Green	Environmental/NEPA	Environmental
Gary Rutherford	Economist	Project Management
Michael Guerin	Civil Design	General Engineering
Carolyn Brumfield	Hydrology & Hydraulics	Hydrology & Hydraulics
Denise Wallace	Legal Review	Legal

Technical Review comments and responses are attached to this memo. Additional comments or clarification required in the back check of IRT comments are inserted below. Technical Review comments have been addressed and ITR completed for subject document.

**Anthony J. Adodaca III, PE**  
**ITR Team Leader**  
**Plan Formulation**

## **Responses to Southwest Valley Flood Reduction Project Independent Technical Review Comments (including back check comments)**

### **Environmental**

1. Pages 54-58 are preceded by “5...”. Why?

Response: Concur. Document clean-up had not been completed when submitted for ITR review. Pagination has been corrected for draft.

2. Page 54. Geology citations are absent.

Response: Concur. Citations added.

3. Page 57. Climate citations are lacking.

Response: Concur. Citations added.

4. Page 59: Hydrology. “Summer” does not include month of May.

Response: Noted.

5. Page 61. Water quality. Reference to Table 5.2 should be Table 6.2.

Response: Concur. Document corrected.

6. Page 63. Water quality. Assimilative load limit exponent differs (11 vs 12). Why?

Response: Corrected.

7. Page 65. Biological resources. First sentence reads awkward.

Response: Concur. Sentence now reads, “Construction activities within the riparian area of the west bank of the Rio Grande would be confined to the maintained power line ROW (near Metzger Road).”

8. Page 66. Second paragraph under “Birds” needs citation.

Response: The paragraph has been removed from the document as incorrect and unnecessary to the discussion.

9. Page 67. Acknowledge discrepancy in number of species observed between Hink and Ohmart (1984) and Hubbard (1987) bird studies.

Response: These are separate studies. The difference in the order of magnitude between the studies is not significant. No change needed.

10. Page 67. Should BISON-M be the most up-to-date source of info for fish, reptiles, amphibians, and small animals?

Response: These sections completed by prior author no longer with Environmental Resources Section. While not necessarily the most up-to-date sources are cited, they are still valid.

11. Section 6.5. In general, no mention is made of a FWS CAR.

Response: Concur. Reference to preparation of CAR added to document under Section 6.5, Biological Resources, Surveys.

12. Page 69. SWFL info less detailed than that for Bald Eagle and RGSM. Why?

Critical habitat does not exist for SWFL as it was struck down by courts.

Response: Info on SWFL was abbreviated as no potential habitat is within project area. Finding is a no affect based on absence of suitable or potential habitat. No additional documentation needed. Info on court decision striking down critical habitat designation added.

13. Page 71. No discussion on cultural resources.

Response: This has been added to the draft report.

14. Page 71. Section 6.8. No discussion on noise levels. Concur.

Response: Discussion on noise levels added.

15. Page 71. Section 6.8, 2<sup>nd</sup> paragraph. Why is this relevant?

Response: This discussion has been removed from the text as it is unnecessary.

16. Page 72. Sec. 6.9. Socioeconomics seems very sketchy. No discussion of ethnicities, poverty levels of SW Valley, environmental justice issues, etc.

Response: Concur. Section has been modified to include more detail.

17. Page 72. How about NPS lands – Sec. 6.10?

Response: Department of Interior added as Federal landowner.

18. In general – under Section 6, Existing Conditions, pp.54-73, some subsection discuss effects of proposed action, some don't. Discussion of effects should be addressed in Section 7 only. For example, see page 59, Section 404 discussion, also page 65, 2<sup>nd</sup> full paragraph, 3<sup>rd</sup> full paragraph, page 66, first partial paragraph, and 2<sup>nd</sup> paragraph on page 68, first partial paragraph on page 73; section 6.12 first paragraph page 73.

Response: Concur. All "effects" discussions have been removed from Section 6. Section 7 effects discussion has been filled out for all specific resources discussed in 6. (Note: Section 7 was not completed when submitted for ITR. The completed discussion will be presented for review.)

19. Section 7.01 (7) incomplete.

Response: Concur. ITR reviewer given draft with the discussion in this section not completed. Completed section will be presented for review and comment.

20. Section 7.01 (7.1.1). More discussion on conclusion of no significant impact would seem warranted.

Response: Concur. Discussion added to justify this finding for the resources addressed.

21. Section 7.04 p 74. Believe a more convincing case for 2<sup>nd</sup> sentence of first paragraph would be made if NMNPS or NMFO websites were cited.

Response: Website for New Mexico Rare Plants cited.

22. Section 7.06 page 74. Should be “0.25 miles” instead of “0,5 miles. Same comment on first partial paragraph of page 75.

Response: Concur. Document changed per comment.

23. Page 75. SWFL Should mention suitable as well as potential habitat.

Response: Concur. Document changed per comment.

24. Page 75. RGSM –was Platania’s research and monitoring consulted. Numbers of RGSM captured and reported don’t seem to jive as stated.

Response: Concur. First sentence of this paragraph removed because reference to one October sampling effort not sufficient to support findings.

25. Page 75. First paragraph under RGSM, life history of red shiner is very different than RGSM, not pelagic spawner dependent on flow spikes.

Response: Concur. Sentence changed to state that the “water quality needs” of the red shiner, fathead minnow, and RGSM are similar. Any reference to “similar life histories” with respect to the red shiner and RGSM have been removed.

26. Section 7.07 (7.1.5). No discussion on effects of noise.

Response: Concur. Effects discussion has been added.

27. Section 9. Incomplete.

Response: Section 9 – Plan Implementation and Recommendations; has been updated and completed prior to the release of the Draft Report.

28. No list of preparers.

Response: Preparer list has been added to document.

29. No draft FONSI included.

Response: Draft FONSI not needed for Division review of Draft DPR but has been included in public draft report.

30. Sections required by NEPA in the integrated report should be noted with an asterisk.

Response: This is no longer necessary.

### **Plan Formulation**

The report is generally considered to be a highly professional document. My comments are limited to the following:

1. Consider adding short paragraph at end of your Project Summary explaining what has transpired since August 2002.

Response: Concur. Changes and additions made to the Draft Report prior to public release.

2. In the Future Without Project chapter, was the Adobe Acres, Phase III project completed in 2001? Please update description.

Response: Concur. Description updated.

3. The Future Without Project Zoning paragraph describes the West Mesa area west of Coors and south of Central as being largely undeveloped. There are several new subdivisions in this area, as well as older ones such as Westgate. Considering describing the area as lightly developed, or largely undeveloped but with several, sporadic, moderately sized subdivisions.

Response: Concur. Description updated.

4. Future Without Project Economic Analysis write up regarding vacant land on page 47, states vacant land north of Rio Bravo is 37% of vacant land. I believe this should be of total land.

Response: Concur. Changes made.

5. Economic write-up states that economics were conducted using November 2000 price levels. Is this a typo? If not, is this acceptable?

Response: Economics have been updated to today's prices.

6. In the Recommendations paragraph, it should refer to the National Economic Development plan, not Nation Economic Development plan.

Response: Concur. Change made.

7. Also in the Recommendations paragraph, it refers to the Damage Reduction Project in the city of Albuquerque. Is it indeed all contained within the city?

Response: Concur. The project falls outside of the city limits, changes made.

8. Last paragraph in Recommendations states the conclusions reached are based on latest policies for restoration projects. Should this not be for flood damage reduction projects?

Response: Concur. Changes made.

### **Hydrology and Hydraulics**

Review comments and the explanation of the resolution are as follows:

I have reviewed *Appendix D - Southwest Valley Flood Damage Reduction Study H&H Report Future Conditions With Project, Volume III*.

I do not have substantive comments. Overall, I am impressed with the highly professional analysis that was done.

Comments are as follows:



1. There are editorial comments in the copy of the report that I received from Steve Boberg, made by Steve. I concur with these comments. I added some additional editorial comments and flagged them in the same way.

Response: The editorial comments will be incorporated with the necessary corrections made to the text.

2. Section 18.04. I questioned the concept of the ponds without outlets.

Response: The concept of ponds without outlets will not be included for consideration in the Federal Project.

3. Section 19.02. Pond 730 is not described.

Response: Pond 730 will be described, however, it will not be included for consideration in the Federal Project.

As noted above, all concerns resulting from the quality assurance review of the project have been considered.

Significant concerns and the explanation of the resolution are as follows for Southwestern Valley Flood Damage Reduction Plan:

- 1) Development densities that should be used for future conditions in various area of the drainage basin.
- 2) Direction for integrating new sub-basins into the existing model based on the revised assumptions outlined in the position paper.
- 3) How best to handle storm water breeches for the Arenal Canal (failure due to overtopping rather than freeboard encroachment).
- 4) How and where to properly introduce irrigation flows into the Isleta Drain due to failure of the Arenal Canal.
- 5) Routing techniques and locations for major flow paths.

Response from A/E Firm RTI, Inc. :

Dear Mr. Boberg,

In our effort to produce the future hydrologic condition “without” and “with project” flood plain maps for the Southwest Valley, Resource Technology, Inc. has modified the AHYMO and K-ROUTE models and flood plain mapping for the federal interest project area. With regard to Sections 13, 22, and 23 of volume III of the Plan, which are specific to the Federal Plan, our internal QA/QC procedures are detailed below.

The AHYMO model revisions to account for the revised land development densities were completed by Mr. Gordon Mossberg, P.E. The results of these runs were reviewed by Mr. Elvidio Diniz, P.E. Mr. Mossberg and Ms. Trisha Korbas, E.I., modified the input data to the K-ROUTE models and Ms. Korbas subsequently ran the revised K-ROUTE models. The K-ROUTE results were reviewed by Mr. Michael Smith, P.E. and Mr. Diniz. The corresponding floodplain extent was mapped by Mr. Richard Waters, and reviewed by Mr. Diniz.

Primary K-ROUTE modeling for “with project” condition was performed by Ms. Susan Lime, E.I. with input, supervision, and preliminary quality control checks by Mr. Michael Smith, P.E. This iterative modeling process was performed multiple times until all the project conditions and flood frequencies for a particular model were fulfilled. At this point, Mr. Elvidio Diniz, P.E. performed a final quality control check of the K-ROUTE modeling results.

The “with project” flood plain extent mapping was also performed by Mr. Richard Waters. The primary mapping duties for the entire Southwest Valley project from inception have been performed by him or under his direct supervision. Preliminary quality control checks were performed by Mr. Smith, and the final in-house quality control checks were performed by Mr. Diniz.

After the completion of each major iteration (four in all), a meeting was scheduled with the Technical Advisory Committee (TAC) to discuss the results. These meetings provided an opportunity for an informal, external cursory review of the results during the discussions for each iteration.

Note: Resolution of issues was accomplished via a seamless review process involving numerous telephone consultations and in depth review/consultation meetings between the A/E, Albuquerque District, and non-Federal sponsors to the satisfaction of all involved.

As noted above, all concerns resulting from the quality assurance review of the project have been considered.

Resource Technology, Inc. has completed the analysis in support of the Southwest Valley Feasibility Study located in Bernalillo County, New Mexico. Notice is hereby given that all quality control activities, appropriate to the level of risk and complexity inherent in the project, as defined in the Quality Control Plan have been completed. Compliance with established policy, principles, and procedures utilizing justified and valid assumptions, was verified. This included review assumptions; methods, procedures, and material used in analysis; alternatives evaluated; the appropriateness of data used and level of data attained; and reasonableness of the results, including whether the product meets the customer’s needs consistent with law and existing Corps policy. The analysis was accomplished by Resource Technology, Inc. and the independent technical review was accomplished by Resource Technology, Inc. Their quality control certification is attached. The district has completed a quality assurance review and the subject project is in compliance with the contract requirements. The undersigned recommends certification of the quality assurance process for this product.

### **Legal**

The Position Paper – Flow criteria documentation for the Southwest Valley Flood Damage Reduction Feasibility Study, Albuquerque, New Mexico has been reviewed by the U.S. Army Corps of Engineers, Albuquerque District, Office of Counsel, and is

deemed legally sufficient. Dated this 6<sup>th</sup> day of May, 2002 (Signed Dennis Wallace, District Council.

#### **CERTIFICATION OF LEGAL REVIEW**

As District Counsel, I have reviewed the Draft Feasibility Report and Environmental Assessment for the Southwest Valley Flood Damage Reduction Project, Albuquerque, Bernalillo County, New Mexico. I concur with the conclusions and recommendations contained in the Draft Feasibility Report and EA. In my opinion, the conclusions and recommendations are consistent with Corps policies and legal authorities. Dated 23 February, 2004 by Darrell R. Riekenberg, District Council – Albuquerque District.

#### **General Engineering**

##### **Certification of Quality Control Review, Southwest Valley Feasibility Study**

1. The subject document has been reviewed. A marked-up copy of the study with my review comments was provided. Comments were not provided in electronic format due to time constraints, as we did not have an assembled document to review until 7 November. In order to expedite future reviews, please provide us with a complete, bound document and set up the project in Dr. Checks.

Response: Draft report provided in full. Dr. Checks will be available for comments during the Plans and Specifications phase.

2. Please ensure that the comments are incorporated into the document. Please annotate any comments that you do not concur with, or take exception to, and provide them to me.

Response: Comments incorporated prior to release of the Draft Report.

3. Earthwork quantities for proposed improvements to the Isleta Drain have been computed and independently checked.

Response: Concur. No action taken on quantities.

#### **Economics**

##### **CERTIFICATION OF QUALITY ASSURANCE REVIEW**

Review comments and the explanation of the resolution are as follows:

I have reviewed the Southwest Valley Flood Damage Reduction Study economic appendix and portions of main report.

I do not have substantive comments.

My comments are as follows:

1. I made minor editorial comments regarding the write-up and tables that were submitted on a paper copy.

Response: Comments incorporated prior to release of the Draft Report.

2. Overall, the naming of the alternatives by level of protection is not appropriate. In fact, the benefits would indicate them to be at a greater level of protection than nomenclature.

Response: Concur, changed alternatives to appropriately fit the project.

3. The cost breakdowns do not include costs for Plans and Specifications.

Response: Concur, will include in cost breakdown of project.

4. Pg. 13 indicates a list of assumptions of dams not built, operations of dams, assumptions regarding future conditions that differ from the previous district reports. It then indicates specific HQ approval to all these assumptions, followed by a paragraph that some of the assumptions are from the sponsor. Indicate which are which, is HQ telling us to use all the assumptions indicated. If not, explain why we are assuming each one.

Response: Concur, noted in the report.

5. The smallest project has greater benefits than the other two. Needs an explanation as to why this would be –doesn't make intuitive sense.

Response: Concur, see section 5.4.

6. Optimizing the smallest alternative indicates that a smaller alternative may actually be the optimal. Why were none examined?

Response: Concur, see section 5.4.

7. The nature of the hydrology and hydraulics analysis does not lend itself to a valid measurement of project performance. Suggest these tables be dropped.

Response: Concur, tables have been modified to show project performance.

As noted above, all concerns resulting from the quality assurance review of the project have been considered.

### **Real Estate**

## **CERTIFICATION OF QUALITY ASSURANCE REVIEW SOUTHWEST VALLEY FEASIBILITY STUDY**

Review comments and the explanation of the resolution are as follows:

I have review the Southwest Valley Flood Damage Reduction Study Real Estate Gross Appraisal.

I do not have substantive comments. The work product more than adequately met the requirements of ER 405-1-12, Chapter 4.

My comments are as follows:

1. The general real estate footprint of the project was reduced after completion of the Gross Appraisal. However, the unit values (value per square foot, value of improved property, etc.) were still appropriate for the level of study and remaining areas.

Response: I was readily able to use the information within the report to complete the Real Estate Plan without further modification of the original document prepared by the non-Federal Sponsor.

As noted above, all concerns resulting from the quality assurance review of the project have been considered.

### **Summary of Public Scoping Comments**

#### **SOUTHWEST VALLEY FLOOD REDUCTION FEASIBILITY PROJECT COE PUBLIC HEARING – SUMMARY OF COMMENTS March 2,2004**

#### **Public Comments:**

#### **Cost:**

1. The overall plan (Drainage Management Plan) is too expensive. Plans should be considered that are more economical.

Response: The plan formulation process considered a wide range of alternatives. The selected plan was determined to be the most economical.

2. What is the cost share for the Federal Project?

Response: 65% Federal, 35% Sponsor.

#### **Existing Infrastructure:**

1. Fix what needs to be fixed first, then do this project.

Response: Sponsors are currently working on this issue independently of this project.

2. What is the reason for focusing on the chosen project area (Federal criteria)?

Response: Due to US Army Corps of Engineers criteria, the final area considered met all these criteria such as minimum flows and benefit base.

3. What is the current carrying capacity of the ditches? – Mr. Lopez

Response: Very low (less than 20 cubic feet per second) due to undersized road crossings.

4. Do concrete lined ditches reduce seepage to the aquifer?

Response: Ditches used to collect ground water to drain the surrounding land for farming and homes, need to keep them unlined for function.

5. Can we lower the Rio Grande flow?

Response: Due to flow requirements for the State Engineer and environmental concerns, this is not an option.

6. What is the side seepage in the ditches?

Response: The drains will maintain their function as collectors of ground water from surrounding fields. During a flood event, the water will be moved out of the drains quick enough so that side seepage will not be a problem.

7. Some houses in the area are already elevated above the 100-year flood elevation.

Response: Concur.

8. Aren't the drains big enough to carry the flood flows already? Why make them bigger?

Response: No. Due to undersized road crossing and high water elevations during irrigation season. The current capacity of the drains cannot hold floodwaters above 20 cubic feet per second.

### **Neighborhood Impacts:**

Can't the floodwater be contained for our own use? – Jerry Parish

Credit the irrigators for drainage water discharged into the river via this project.

Can the water be injected into the aquifer rather than discharged into river? A. High groundwater tables prohibit this approach and the MRGCD drains are already recognized as a major source for aquifer recharge.

What will happen without this project? A. Flooding and public safety.

Why don't you consider Anderson Farms as a retention basin? A. Flood waters considered part of the States water to be delivered under the R.G. Compact within 96-hours. Will look into a waiver by the State Engineer to use floodwaters for irrigation during Plans and Specs.

Clarify what is meant by removing floodplains. What is allowed to happen on the land that is out of floodplains, development?

There are flooding problems outside of the project area, what is going to be done in those areas? – Abe Sandoval

### **Miscellaneous:**

Concern for lack of public notification of this public meeting.

Blocking access to private property near Powers Way (E. Sanchez property). – Jerry Barry

Can comments be made on the website? He wants an individual meeting with the County. – Dr. Larry Scott

Have only one local agency own the land. – Mr. Lopez

Another meeting is needed to allow people of the Southvalley to participate in the public process.

Have a meeting recorder at the next meeting to ensure that all comments are captured.

Have a Spanish speaking interpreter to ensure that all public participants understand the presentation.

There is a high amount of suspicion on this project.

Keep the flood waters in puddles rather than give it to Texas.

Gravel pit next to Pajarito Dam near an arroyo is now assigned as part of the arroyo. A DMP is now required to operate the gravel pit and his special-use permit is no longer valid. Plea for help to get this issue resolved, his land value is decreasing. – Jerry Perry

Summary:

It was agreed by the Corps and Sponsors that another public meeting was needed based on public input. This meeting has been scheduled for March 16, 2004 at 6 pm to be held at the Adobe Acres Elementary School. Based on feedback from the team, there was concern that the PowerPoint presentation was too detailed and technical, that the presentation should include more flood pictures and have the Sponsors give more of an oral presentation. A facilitator is critical to control the crowd and keep the questions focused on the project rather than any issue or concern they may have outside of what is being presented. The Sponsors will be giving the presentation on March 16. The Corps will be present to answer questions.

Overall, the questions generated from the meeting did not show opposition to the project, rather clarification and a desire to be included in the process.

**SOUTHWEST VALLEY FLOOD REDUCTION FEASIBILITY PROJECT**  
**COE PUBLIC HEARING – SUMMARY OF COMMENTS**  
March 16,2004

**OVERVIEW AND AGENDA**

On March 16, 2004, the Corps of Engineers sponsored a public meeting at the Adobe Acres Elementary School about the proposed Southwest Valley Flood Reduction Feasibility Project. The proposal is to use federal funds to drain a three-square mile area in the South Valley that often floods. Under an agreement with the Conservancy District, existing drains would be used to transport water first to several pump stations and then to the Rio Grande. The project would necessitate construction of pump lines to pump the water. The lines would be embedded in roads, and then the roads would be repaved.

Roger Paul (Bernalillo County, Technical Services Department) opened the meeting and introduced several public officials and technical experts. Then Lt. Col. Dana Hurst (Corps of Engineers) welcomed the audience. Next, Jerry Lovato (Albuquerque Metropolitan Arroyo Engineers) and Roger Paul gave a short presentation describing the proposal project. At that point, members of the audience asked questions and gave their comments and reactions to the proposed project. After the meeting organizers described how to submit written comments after the meeting, and then Roger closed the meeting.

### **COMMENTS AND RESPONSES**

Some of the speakers supported the project, and some opposed it. Examples of comments in support of the project include:

“The residents near Adobe Acres like the proposed project.”

“If we don’t get this federal money, someone else will. This is a good project with a few things to work out, and we should get behind it!”

Examples of comments in opposition to the project include:

“I think there is a better use of taxpayer money.”

“A 50-foot drainage pond seems like overkill.”

Comments by the audience related to six themes, which included: a) cost, b) existing infrastructure, c) project design issues, d) road conditions, e) neighborhood impacts, and f) local retention of water to expand supply. Organized by theme, the following bullets summarize the comments and questions made by speakers from the audience along with responses from the technical team.

### **Cost**

1. What property taxes are involved in the project? I think there is a better use for taxpayer money.

**Response:** The federal government would invest \$10 million in this project, and \$84 million would be paid from local sources. The federal funds would pay for the trunk lines.

2. When will the storm sewers be financed?

**Response:** Recently the Conservancy District agreed to allow use of its drainage system for this purpose, and it will necessitate rebuilding the roads after putting in the drainage pipes. Other solutions are more expensive.

### **Existing Infrastructure**

1. What is the present carrying capacity of the drainage system?

**Response:** The capacity is low due to the culvert passages. The project would increase the capacity of water storage by widening the drains.



2. Why doesn't the project design make use of the State-installed storm drain system that borders Isleta Boulevard?

Response: It required major public Investment. There is not enough capacity in that system to include flooding in the area. However, that drainage system would be used as part of this project.

### Project Design Issues

1. A 50-foot drainage pond seems like overkill. What are the design criteria for a 100-year storm?

Response: The Flood Emergency Management Administration (FEMA) defines a 100-year flood as a storm that has a 1% chance of occurring in any given year. It would require 2 ½ inches of rain fall over the project area over a six-hour period with the majority of the rain falling in a two-hour period. That volume of water would cover the area from Rio Puerco Divide to I-40 to Rio Bravo.

2. What will prevent river water from spilling into the Valley if the project is built?

Response: Floodgates will be installed at the river outfall for that purpose. The elevations show that it is feasible to get the flood water out of the valley and into the river via checking up the drains and allowing the flood waters in the upper part of the drain to the river.

3. You said that the gates to gain entry to the maintenance road running parallel to the drains would be 16 feet wide. How is that possible on a 11-foot road?

Response: Those logistics are not decided yet. However, citizens needing access to those maintenance roads to gain access to property will be given a key to get through the gates.

4. What is the schedule for the project?

Response: It is anticipated that Plans and Specifications will start in May 2004 pending Corps of Engineers approval.

5. Will Isleta Boulevard be drained to the west in future efforts, and will there be retention ponds?

Response: The Sponsors will continue to work on flooding that will fall outside of the Federal project. Yes, and there will be retention ponds.

6. What will happen to the Atrisco Riverside Drain?

Response: This drain falls outside of the project boundary and is not part of this project.

### Road Conditions

1. Right now water floods the streets. How would the water get to the drains?

Response: Pipes would be installed in the roads, and there would be inlets to drain the streets. The pipes will be able to pick up adjoining water along the roads and transport it to the drains.

2. Would the roads be ripped up and repaved, or would the pipes border the roads?

Response: The Sponsors will develop a master drainage plan that will determine design details based on a balance of cost and drainage feasibility.

3. I am concerned about the condition of the roads after the project is completed.

Response: The roads would be repaved after the drainage pipes are installed in the roadbed.

### **Neighborhood Impacts**

1. You have stated that about 500 homes and businesses will be affected immediately.

Please clarify that statement.

Response: After flood plain maps have been completed with the this project and additional work in place and FEMA has approved, it will change the flood insurance requirements for those residences and business establishments taken out of the 100-year flood plain..

2. There is illegal dumping in the area. What will be done about enforcement?

Response: We will fence off the drainage system to prevent dumping; the fences will have gates to permit tractor access. The project will also address oil and floatables.

3. How will the arroyo near Adobe Acres be affected by the project?

Response: We are evaluating the possibility of using the existing substation facility as part of the project.

4. Where will the dirt be dumped that has to be moved, and have the neighbors agreed to having a pile of earth there?

Response: That decision has to be worked out and will be based on an environmental assessment.

### **Local Retention of Water to Expand Supply**

- How would you deal with injector wells? I recommend keeping the water here to replenish the aquifer rather than letting it go down the river to Texas.

Response: That is a Rio Grande compact issue decided by the U.S. Supreme Court.

- Can we inject water into the ground for immediate use? Once the water runs off, it is the property of the State Engineer's Office.

Response: We are looking into the issues that would have to be resolved and hope to build injection into the eventual agreement that will guide the project.

- What issues need to be resolved with the State Engineer's Office?

Response: Our agencies (COE, Bernalillo County and AMAFCA) don't own the water; our business is flood control. By law the water has to be released within four days. Beyond that, the water rights would have to be purchased.

Notice of Availability

The U.S. Army Corps of Engineers, Albuquerque District, has completed the combined Draft Environmental Assessment and Finding of No Significant Impact (DEA/FONSI) and Feasibility Study entitled Southwest Valley Flood Damage Reduction, Albuquerque, Bernalillo County, New Mexico. The proposed project entails utilizing existing easements, widening existing drains, constructing a large storm water detention ponding area, and constructing two new channels. The project covers approximately 21 square miles, including the Southwest Valley and surrounding West Mesa areas.

The document is electronically available for viewing and copying at the Albuquerque District website (under "Environmental Assessment and FONSI") at:

<http://www.spa.usace.army.mil>

or a hard copy will be sent upon written request to the following address:

U.S. Army Corps of Engineers  
Albuquerque District  
Environmental Resources  
Branch  
Attn: CSPA-PM-LE (Mr.  
Ernest Jahnke)  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

The public review will extend from February 23 through March 23, 2004. Written comments should be sent to the above address and will be accepted until 4:30 PM, March 23, 2004. Alternatively, comments may be sent electronically to [ernest.w.jahnke@usace.army.mil](mailto:ernest.w.jahnke@usace.army.mil).

A public meeting on this proposal will be held at 2:30 PM on March 2, 2004, at the Rio Grande High School Auditorium located at 2300 Arenal SW in Albuquerque, NM.  
Journal: February 27, 2004

STATE OF NEW MEXICO  
County of Bernalillo SS

Bill Tafoya, being duly sworn, declares and says that he is Classified Advertising Manager of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times, the first publication being on the 27 day of Feb, 2004, and the subsequent consecutive publications on \_\_\_\_\_, 20\_\_\_\_.

Sworn and subscribed to before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 27 day of Feb of 2004.

PRICE 27.93

Statement to come at end of month.

ACCOUNT NUMBER C88413

CLA-22-A (R-1/93)





DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 JEFFERSON PLAZA NE  
ALBUQUERQUE NM 87109-3435

April 15, 2004

Planning, Project and Program Management  
Planning Branch  
Environmental Resources Section

Mr. A. Jack Garner  
Area Manager  
United States Department of the Interior  
Bureau of Reclamation  
Albuquerque Area Office  
555 Broadway Boulevard, NE, Suite 100  
Albuquerque, New Mexico 87102-2352

Dear Mr. Garner:

This responds to your April 5, 2004 letter commenting on the Albuquerque District Corps of Engineers (Corps) Draft Feasibility Report and Environmental Assessment for *Southwest Valley Flood Damage Reduction, Albuquerque, Bernalillo County, New Mexico*. The purpose of the study is to identify the best plan that meets the current and future flood reduction needs for the Southwest Valley and to identify both the plan that is economically feasible and in the Federal interest of flood control. The Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) and Bernalillo County are the non-Federal sponsors of this project.

You have requested that the Corps refer to "features of the Middle Rio Grande Project" instead of "the Middle Rio Grande Conservancy District (MRGCD) project features." On this basis, the suggested wording will be substituted in the report where appropriate.

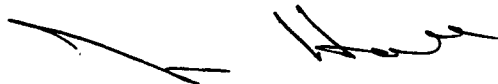
Your letter further stated that the use of project facilities will need to conform to licensing through the Middle Rio Grande Conservancy District for changes to the physical structure. This compliance will be accomplished during the preparation of the project plans and specifications and prior to awarding a contract.

The Corps is reviewing the Bureau of Reclamation (BOR) "Guidance for Review and Approval/Disapproval of Applications to Discharge Urban Storm Water Drainage into Existing Reclamation

Delivery and Drainage Facilities". The Corps is also analyzing BOR Regional Policy to determine its potential impact on our planning process.

Thank you for your comments. If you have any further questions or concerns about the proposed project, please contact Mr. Ernest Jahnke, Environmental Resources Section, at (505) 342-3416, or Ms. April Sanders, Planning Branch, at (505) 342-3443.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie Hall', is written over a horizontal line.

Julie Hall, Chief  
Environmental Resources Section