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March 12, 2012

**Via Mail and FAX**

Office of the State Engineer  
100 Gossett Drive, Suite A  
Aztec, NM 87410

Re: **OBJECTION AND PROTEST TO APPLICATION SP-3215-T**

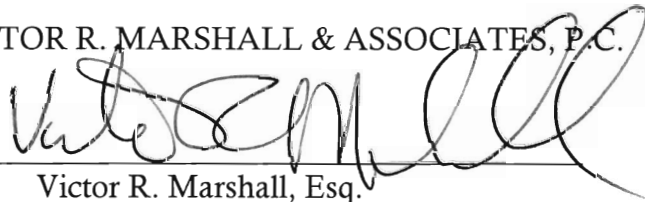
Dear Sirs:

Enclosed and transmitted herewith by FAX is an Objection and Protest to Application SP-3215-T (U.S. Bureau of Reclamation). If you have any questions, please do not hesitate to contact us.

Yours very truly,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By

A handwritten signature in black ink, appearing to read "Victor R. Marshall", written over a horizontal line.

Victor R. Marshall, Esq.

/VRM  
Attachment

To: Office of the New Mexico State Engineer

## OBJECTION AND PROTEST TO APPLICATION SP-3215-T

The persons listed below object to and protest Application SP-3215-T, filed by the U.S. Bureau of Reclamation, 2200 Bloomfield Highway, Farmington, NM 87401 on or about August 16, 2011. The grounds for this objection and protest include, but are not limited to, the following:

- The application is not based on any approved permit, or approved application. Upon information and belief, Application 3215 was "endorsed" by the State Engineer, whatever that might mean, on December 17, 1968, the day after it was filed, but the application was never approved, and no permit has been issued. If a permit was issued, it is invalid.

- Upon information and belief, Application 3215 requests an excessive amount of water - 500cfs - including seepage and return flows, without any factual or scientific basis for that claim.

- Application 3215 and the temporary application are not supported by a bona fide hydrographic survey as required by New Mexico law.

- The temporary application is for the proposed Navajo-Gallup Water Supply Project, which has not received the legally necessary approvals, and which is unlikely to be fully funded and completed.

- The proposed project and the supposed water rights to be used for the project are not in compliance with applicable state and federal laws.

- The 2012 New Mexico Legislature conducted several hearings on the proposed "Navajo Settlement," including the proposed Water Supply Project. After those hearings, the Legislature refused to provide any further funding for this project. The OSE and the ISC had requested \$15.2 million in new funding for Indian water rights settlements, including the proposed "Navajo Settlement." The interim legislative committee had suggested \$15.0 million. After the hearings, the full Legislature eliminated any funding whatsoever, reducing the request to zero. The Legislature has grave concerns as to whether the settlement and the project would be a detriment to the public interest and water rights of New Mexico. It also has many unanswered questions about the prudence, viability and legality of the settlement and the project. Therefore, it would be inappropriate to expend any state (or federal) funds on this proposed project, because the money may end up being wasted on a project which does not happen.

- The temporary application is an improper attempt to create a *fait accompli* by spending money on a project, and then arguing that the project must go forward because money has already been spent. This illegitimate tactic is known as the "sunk cost fallacy," and it is common in government procurement. See Additional Memorandum on Legal Standards and Burden of Proof," filed January 3, 2012 in Case No. CV 75-184, Subfile AB-07-1 (N.M. 11th Jud. Dist. Ct.), at pages 9-10.

- There is not enough water in the San Juan-Colorado River system to support the project.

- Granting the application would be detrimental to the water rights of objectors, who use water from the San Juan River.

- Granting the application would be contrary to the public welfare of the State.

- Granting the application would be contrary to the conservation and beneficial use of water within the State.

- Upon information and belief, the OSE has prejudged key issues in favor of the applicants, and cannot act with impartiality and independence in this matter.

- Upon information and belief, there are other legal, factual, and procedural defects in the applications which will be revealed by discovery.

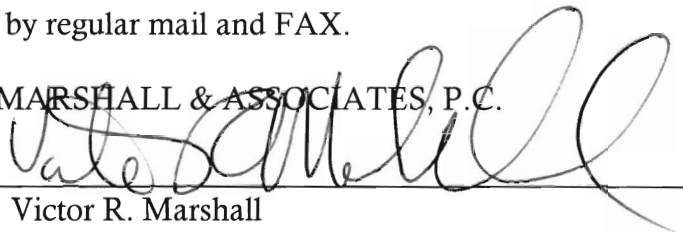
Objectors reserve their rights to *de novo* judicial determination of all factual and legal issues in this matter.

A copy of the legal notice is attached and incorporated, along with a list of some of the objectors. Other objectors may be added later.

This objection is being filed by regular mail and FAX.

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By

A handwritten signature in black ink, appearing to read "Victor R. Marshall", is written over a horizontal line. The signature is cursive and somewhat stylized.

Victor R. Marshall

Attorneys for San Juan Agricultural Water Users Association; Hammond Conservancy District; Bloomfield Irrigation District; various ditches; and various members thereof.

12509 Oakland NE

Albuquerque, NM 87122

505-332-9400 / 505-332-3793 FAX

LIST OF OBJECTORS:

San Juan Agricultural Water Users Association  
Aztec Ditch Company  
Bloomfield Irrigation District  
Cedar Ditch  
East Ralston Ditch  
Farmers Irrigation District  
Farmers Mutual Ditch Company  
Farmington Echo Ditch Co.  
Graves Atterbury  
Halford Community Ditch  
Hammond Conservancy District  
Independent Ditch  
Jaquez Ditch  
Jewett Valley Water Users  
Kello-Blancett Water Users  
Acequia de la Pampa  
Lower Animas Community Ditch  
North Farmington Ditch  
Ranchmans Ditch  
Sargent Ditch  
Stacey Ditch Company  
Turley Manzanares Acequia  
Twin Rocks  
Wright Leggett Ditch  
Southside Mutual Domestic Water Association  
Raymond Kysar  
David Garde  
Patricia Sills

## LEGAL NOTICE FROM FARMINGTON DAILY TIMES

NOTICE is hereby given that on August 16, 2011 the U.S. Bureau of Reclamation, 2200 Bloomfield Highway, Farmington, NM 87401 filed Application SP-3215-T with the OFFICE OF THE STATE ENGINEER to Designate a Temporary Point of Diversion of Surface Waters, for diversion of 160-188 acre-feet, and approximately no consumptive use, for a 6.5 month test period of February 15, 2012 through August 31, 2012, with a priority date of December 16, 1968. Emergency Authorization was requested on October 25, 2011. The application proposes to divert water from the San Juan River in SW/4 SW/4 SW/4 of Section 3, Township 29 North, Range 15 West, N.M.P.M., which is southwest of the western intersection of CR 6100 and US Hwy 64, west of Kirtland, NM, on land owned by the Public Service Company of New Mexico (PNM). The water will be pumped from the pool created by PNM's San Juan Generating Station Diversion Dam. The place of use is 1.3 acres in the SW/4 SW/4 SW/4 of Section 3, Township 29, North, Range 15 West, N.M.P.M. on land owned by PNM. The proposed purpose of use will be a temporary pilot scale water treatment plant project in association with the Navajo-Gallup Water Supply Project. The maximum diversion rate will be 200 gpm (0.446 cfs). "The treated water and the liquid portion of back wash stream from the filters will be returned to the river immediately below the diversion dam." This application will designate a temporary point from which to divert water under File number 3215. Application No. 3215 was filed by the United States of America, Department of Interior, Bureau of reclamation, on Dec. 16, 1968. The State Engineer endorsed the application December 17, 1968, and acknowledged it was for the diversion and beneficial use of 500 cfs of water from the natural flow of the San Juan River and its tributaries downstream from Navajo Reservoir, including seepage and return flows. The proposed point of diversion and place of use are within San Juan County.

Any person, or other entity shall have standing to file an objection or protest if they object that the granting of the application will: 1) be detrimental to the objector's water right; or 2) be contrary to the conservation of water within the state or detrimental to the public welfare of the state, provided that objectors show how they will be substantially and specifically affected by the granting of the application. A valid objection or protest shall set forth the grounds for asserting standing and shall be legible, signed, and include the complete mailing address of the objector. An objection or protest must be filed with the State Engineer not later than 10 calendar days after the date of the last publication of this notice. An objection or protest may be mailed to the Office of the State Engineer, 100 Gossett Drive, Suite A, Aztec, NM 87410, or faxed to 505-334-4575 provided the original is hand-delivered or postmarked within 24 hours after transmission of the fax. The State Engineer will take the application up for consideration in the most appropriate and timely manner practical.

Legal No. 67273 published in The Daily Times on Feb. 18, 20, 27 & Mar. 5, 2012.