

## PRESENTATION TO INTERIM COMMITTEE/JULY 30, 2012

Chairmen Cervantes, members of the Committee, I appreciate the opportunity to address the Committee today on groundwater issues – specifically claims by the United States for groundwater and how that impacts water usage by the City of Las Cruces. The Committee’s hearing on this issue is timely as that question will be argued before the Water Court on Wednesday morning.

I shall also address the issue of federal claims to groundwater they affect the City of Espanola. Our law firm, Stein and Brockmann, P.A., represents both cities in adjudications where federal claims to groundwater are at issue.

### *The City of Las Cruces*

The City of Las Cruces is one of the fastest growing cities in the western United States and has frequently appeared on lists of the ten fastest growing cities in the West. Historically, the City has relied on groundwater for its water supply. The City has three well fields; the “valley” well field designated as LRG-430 *et al.* with 21,869 acre-feet per year of water; the East Mesa well field with 10,200 acre-feet per year of water and the West Mesa well field with 8,000 acre-feet of water per year.

The principal goal of the city of Las Cruces’ water planning and water management is **sustainability**. The City wishes to use the water resource in a manner that saves and preserves the depletable groundwater for future generations. To this end the City has engaged in planning for over ten years to implement an “Ag/M&I” process to transfer renewable surface water within Elephant Butte Irrigation District (“EBID”) from agricultural use to M&I use in the City. Accordingly, the principle of sustainability, **of conserving the resource**, is a major goal of the City of Las Cruces together with those of other cities in the state. This program was initiated some ten years ago with the enactment of statutes in the irrigation district code that would enable the City to be listed on the assessment rolls of Elephant Butte Irrigation District as an assessment payer capable of receiving annual assessments of Project water and transferring them from agricultural use to municipal and industrial use within the City of Las Cruces. To date, the City has acquired some 1,350 acres of water righted land for this purpose. The City had planned to pursue this process although its implementation has been rendered uncertain by the Operating Agreement among EBID and EP No. 1 and the United States which has created serious questions as to the availability of surface for the City.

The Operating Agreement has created additional stress on water in storage in the aquifer in two respects: (i) there is now a very concerted effort on the part of irrigators within EBID to regain the amount of surface water foregone to EP No.1 by the Operating Agreement by drilling wells; and (ii) there is a need for the City of Las Cruces to reassess the future water supply for the City.

We are still attempting to determine the exact effects of the Operating Agreement on the aquifer. To this end, the City of Las Cruces has been granted intervener status in a law suit brought by the Attorney General in which we are participating to obtain a complete Environmental Impact Statement (EIS) to understand the effects on the aquifer of the Operating Agreement over the 50 year life of the Operating Agreement to and understand the viability or feasibility of the Ag/M&I program.

It is against this backdrop that the United States' claims to groundwater have to be seen. In the pending water rights adjudication in state district court here in Las Cruces, the court has turned to the United States' claims. Foremost among these is the issue of the United States' claims to "groundwater" or to "Project water in the ground," as they have termed it. These claims are not supported by any actual beneficial use of groundwater. Nor are they supported by state law which governs proceedings in the adjudication. These water claims are unquantified but potentially could amount to hundreds of thousands of acre-feet per year. The City of Las Cruces believes that the concentration of the pumpage for this amount may have the effect of dewatering parts of the aquifer. The United States' claim is made without regard for the impacts on any other groundwater users or for the sustainability of the resource for future generations. They represent a practical obstacle to the City's ability to provide a long-term and sustainable supply of water.

The City is opposing that claim in the adjudication.

### *The City of Espanola*

Turning to the City of Espanola. The City of Espanola also derives its water supply from groundwater – from its RG-3067 permits which provide nearly 3,000 acre-feet per year of water. The City of Espanola is a party to a general stream system adjudication that is presently pending in northern New Mexico on the Rio Truchas and Rio Santa Cruz entitled *State Engineer v. Abbott*. In this case the United States has made claims totaling some 6,000 acre-feet of surface water on behalf of the Pueblo of Ohkay Owingeh, previously known as the Pueblo of San Juan. Those claims are from surface water in those two streams.

However, contained within the United States' Complaint, is the assertion that when that surface water is not available, due to drought or some other reason, the United States has the right to simply drill wells into the aquifer without having proceeded before the State Engineer's permitting process which provides a legal forum for others with groundwater rights to protest and appear so as to prevent impairment to their water rights. The City of Espanola is concerned that the unrestricted drilling of wells by the United States or by the Pueblo, in close proximity to the City's wells, could cause drawdown to the City's wells.

Moreover, the City of Espanola wells are subject to encroachment from fluoride and nitrates. There is concern that unrestricted pumpage by the United States or by the Pueblo could

have the effect of inducing the encroachment of contaminants into the City's wells, rendering the water from these wells either unusable or creating a significant treatment cost.

The City of Espanola has filed a motion to require the United States to obtain any groundwater rights it claims through the State permitting process.

Under state law, large water users such as cities are held to strict standards. Cities must prove that the water they use is offset in part by strict conservation measures. The cities know that depletable water resources must be conserved for the future and have implemented programs to sustain the resource. The federal claims give no indication that these considerations from any part of the United States' strategy.

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