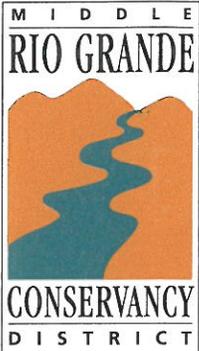


October 25, 2011



Honorable Phil Griego  
Chairman  
Water & Natural Resources Committee  
NM State Legislature  
State Capital  
Santa Fe, New Mexico 87501

VIA FIRST CLASS MAIL

**RE: RESPONSE TO QUESTIONS RAISED BY THE INTERIM COMMITTEE**

Dear Chairman Griego:

Thank you for allowing us to appear before your committee on October 11, 2011 and provide testimony regarding the progress being made to protect the thousands of residents within the Rio Grande flood plain from possible flooding and from the obligation to buy expensive flood insurance as a prerequisite to acquisition of and financing of homes within the flood plain. As you know, the levees along the Rio Grande play a critical role in both areas.

At the request of the Water and Natural Resources Committee ("W&NRC"), through Chairman Phil Griego and House Speak Ben Lujan the MRGCD provides the following information:

**1. What is the operating budget of the MRGCD and what are its revenue sources and balance reserves?**

MRGCD 2011/2012 Operating Budget is:	\$18,730,478	(Exhibit 1, Page 3)
MRGCD Total Revenue Sources Are:	\$15,481,059	(Exhibit 1, Page 1)
MRGCD Reserve Balances Are:	\$19,660,424	(Exhibit 2, Page 1)
MRGCD Restricted Funds to Balance Budget Were:	\$3,249,419	(Exhibit 2, Page 1)
MRGCD Other Reserve Contingency Funds are:	\$65,347	(Exhibit 2, Page 1)
Total Cash Available	\$16,345,659	(Exhibit 2, Page 1)

**2. What are the cost share requirements for Phase I of the levee project and other projects?**

The Phase I San Acacia Levee project to be constructed in 2012 to protect the City of Socorro and other multiple beneficiaries requires \$2,100,000 as local cost sharing. The Federal Government will provide \$10,000,000. The Federal/non-Federal cost sharing just for this project is 83%/17%. The cost sharing for other levee projects are not known at this time. It has been in the range of 25% to possibly 45% local non-federal share and federal share could be in the range of 75% to 55% depending on the US Congress.

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### **3. Is the MRGCD providing local matching funds?**

The MRGCD Board of Directors (Board) has decided to match \$300,000 similar to NM Interstate Stream Commission (NMISC) and seek other funds from other sources. The Board may consider additional funds from its reserves to complete the project.

In 2009, the MRGCD constructed the Albuquerque West Levee project (3.2 miles long) in the South Valley of Albuquerque at a cost of \$6,500,000. The MRGCD utilized \$4,500,000 of its reserve funds with \$2,000,000 cost shared by other local agencies. We are hoping that the Federal government may reimburse 75% of the project funds in future.

### **4. Does the MRGCD receive any State or Federal funds?**

The MRGCD does not receive any State or Federal funds for its budget. Occasionally State and Federal funds are available for special projects under a cost sharing requirements.

## **BENEFICIARIES OF THE LEVY PROJECTS**

As discussed more fully below, the estimated cost for the entire project is \$166 Million. The project will provide flood protection to only a very small number of MRGCD constituents. By contrast, 100% (approximately 37,800 acres) of the San Acacia Levee project provides incidental benefits such as ESA Compliance, Rio Grande Compact Compliance and protection of Low Flow Conveyance Channel to the State of New Mexico, Socorro County and the Federal Government. Approximately 26% (10,200 acres) provides flood protection to the Bosque Del Apache National Wildlife refuge, while approximately 10% (3,700 acres) of the project benefits the City of Socorro. All land within flood plain in the Socorro Division totals approximately 41% (15,800 Acres) of the project.

The attached map (Exhibit 3) illustrates the extent and scope of the benefits that would inure to the State of New Mexico, US Bureau of Reclamation, the Bosque del Apache National Wildlife Refuge, the City of Socorro, the County of Socorro, the New Mexico environmental community and the MRGCD water users. The entire protected acreage under the project is approximately 37,800 acres. The levees, once in place, would provide extensive protection of the low flow conveyance channel and the ditches and laterals that move water steadily toward Elephant Butte Reservoir. The movement of this water avoids extensive evapo-transpiration losses, all of which would be borne by the middle basin. An extensive flood would modify in the extreme the delivery of water under the Rio Grande Compact, increase evapo-transpiration and place New Mexico in a deficit under the Compact. The levees serve to avoid this result.

The reach from San Acacia to San Marcial is part of the habitat for the endangered Rio Grande Silvery Minnow and the Southwest Willow Fly Catcher. All Biological Opinions relating to the Rio Grande Silvery Minnow have concluded that managing water supplies at particular times in this reach is vital to protect the species and the flood protection provided by the levees will augment that management greatly. All of these benefits occur throughout 100% of the 37,800 acres and run to the State of New Mexico.

The County of Socorro depends heavily upon the primary and secondary benefits of agriculture as well as the income produced by residents of the City of Socorro, thus 100% of the flood protection benefits for the 37,800 acres also run to the County of Socorro.

The Middle Rio Grande Conservancy District provides benefits to 15,800 acres of lands within the flood plain. This makes up 41% of the floodplain protected area. The benefits from the levees include protection and perpetuation of the miles of laterals, drains, and canals that sustain the vibrant farming operations within the MRGCD, as well as sustenance and management of the recreational benefits to the region.

The Bosque del Apache National Wildlife Refuge, is a carefully managed wetland sustained by diversions from the MRGCD tail water, as well as from the low flow conveyance channel. The flood plains provide parameters for the wetlands and allow the management of this invaluable resource. It is the winter home for thousands of ducks and geese as well as the part of the flyway for the sand hill cranes, and is the most significant wetland within a 450 mile radius of its location. It is composed of 10,200 acres of lakes, wetlands and wildlife feed production areas within the 37,800 acres of floodplain.

Finally, the City of Socorro sits on 3,700 acres of the total 37,800 acres of flood plain. Since much of the city is covered by the floodplain, the benefits of levees include, but are not limited to the fact that these individuals will not be required to purchase flood insurance once the levees are certified as safe.

In short, there are numerous benefits to the region from the project, but as noted above, the principle beneficiaries include, the Federal Government, the State of New Mexico and the local political subdivisions and the Middle Rio Grande Conservancy District, the latter of which contribute substantially to the State's tax base.

#### **FUTURE USES FOR MRGCD RESERVES**

The history of the project begins years ago when, at the request of State of New Mexico, the MRGCD board offered to be a local sponsor of the project, provided that certain agreements are worked out. The local sponsor is responsible for operating and maintaining the project for the life of the project. The local sponsor must have sufficient funds available to pay for annual project operation and maintenance. We are hopeful that the above discussion explains that there are multiple project beneficiaries including the State of New Mexico.

The committee, in addition to asking how the project would benefit the State as a whole, asked another question. If I may paraphrase, the question was simple: "If the MRGCD has \$20,000,000.00 in cash reserves, on what basis can it come to the legislature and ask for any amount of matching funds?" The question arose after the MRGCD indicated that given the scope of State benefits, it might be prudent for the State to contribute to the local match required to obtain the federal funds. A local match of approximately \$2.1 Million is required to complete the first phase of San Acacia Levee in exchange for commitments from the United States Army Corps of Engineers. The Committee may have been under the impression that the MRGCD holds "surplus funds" of \$20,000,000.00 for which it has no current use.

Had the MRGCD created an artificially padded surplus by collecting excess assessments and charges from its constituents, over some period of time, and was simply hoarding its resources, a legitimate question would exist as to its need for matching funds. However, this is not the case. In fact, the attached chart (Exhibit 4) demonstrates that the MRGCD assessments have not been increased by the MRGCD over the past five years. Unlike most local political subdivisions, the MRGCD raised its reserve funds without any additional burden on the assessment payers of the District. The surplus is the result of past 30 years of wise management, land sales, wise investments, water use contracts, negotiations and fees for the use of the MRGCD's assets. These funds are held in trust to carry out the purposes of the District.

The MRGCD was formed in 1925 and extends from Cochiti Dam south for approximately 150 miles to the Bosque del Apache National Wildlife Refuge. The Conservancy encompasses approximately 278,000 acres in four counties of which 128,787 acres are irrigable lands. At present, approximately 70,000 acres are using irrigation water. Within the District's boundaries are thousands of property owners and many towns and villages, six Indian pueblos, and much of the City of Albuquerque. Over one quarter of the population of New Mexico resides within the Conservancy District, much of it in some of the most rapidly urbanizing areas in the State. The Conservancy maintains and manages 4 diversion dams and a storage dam /reservoir at El Vado near Chama. It employs over 200 employees and average employee tenure is 16 years. The current average annual budget is \$18,730,478.

The MRGCD provides essential agricultural water distribution functions, drainage (over 1,200 miles of ditches, canals and drains), flood protection (over 250 miles of engineered and non-engineered levees), and recreational and related functions for the benefit of its constituents. Every year the MRGCD prepares a budget based upon future needs to carry out the functions described above, and based upon that budget a mill rate is determined. It uses interest from investments and a certain percentage of cash reserves to defray the assessments to taxpayers. The MRGCD also collects Water Service Charges from irrigators who use water from the works of the district.

The \$20,000,000.00 in cash reserves discussed above is held in a special reserve trust account and can be expended for numerous essential purposes. Examples of uses of funds or actual expenditures from the fund include the following:

- 1) Reduction of Assessments: In the past four years, the MRGCD has withdrawn money from the reserve trust account to the degree it is feasible without endangering other funding needs and used it to offset the need for increased assessments. For example, in 2011, the MRGCD Board transferred \$3.25 Million from surplus funds and applied it to cover a budget deficit which would have otherwise resulted in higher assessments for rate payers.
- 2) Backup Funding for Retiree Health Care Benefits: Perhaps one of the most controversial and difficult issues faced by political subdivisions and states is ensuring that enough money is available to keep the promises of benefits made to retirees. These retired employees devoted their lives to government service and now often face draconian cuts in their sole source of income as a result of a shortfall in government revenues. The MRGCD provides retirement benefits to its employees as a part of their compensation packages. The MRGCD's obligation to pay future retirement benefits is significant. At a minimum, the District's obligation for retirement benefits is \$175,000 per year, and this amount could certainly rise. The Reserve Fund is designed to provide a backup funding source to ensure the MRGCD never defaults on this important obligation. To provide a sense of scale, the MRGCD plans to set aside \$6.5 Million to cover its unfunded liabilities for future retiree obligations. The MRGCD is not eligible to join the New Mexico Retiree Health Care Authority.
- 3) Replacement of Infrastructure: As you are aware, the MRGCD consists of 1,200 miles of gravity flow ditches, distributing water to around 70,000 acres of land, including substantial Pueblo Indian Lands. The MRGCD has a duty to its constituents to replace aging infrastructure and to the public at large to conserve water. It has reduced diversions from upwards of 9 acre feet per acre to 5 acre feet per acre through implementation of expensive water conservation measuring/metering devices and automatic head gates. The obligation to continue this effort will only increase. MRGCD

considers a portion of the reserve funds to be pledged to support these efforts and defray costs to assessment payers.

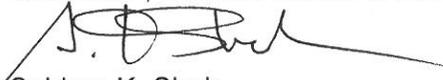
- 4) Adjudication Support: As you are aware, none of the waters of the MRGCD have been adjudicated. The costs of adjudication suits, hydrographic surveys, and negotiation of settlements with the six Indian Pueblos will be immense. The Lower Rio Grande and the Pecos are examples of that cost. The MRGCD considers a portion of the reserve funds to be pledged to support this adjudication effort when it comes into play.
- 5) Endangered Species Act Obligations: The Middle Rio Grande is home to two endangered species—the Southwestern Willow Fly Catcher and the Rio Grande Silvery Minnow. The Endangered Species Act imposes an obligation on the MRGCD to cooperate with other agencies to ensure that these species are not extirpated within the area served by the MRGCD. Litigation ensued in 2000 over the question of whether the federal agencies had the authority to simply take water from irrigators to support the species. Fortunately, after almost 10 years of litigation, the courts have redirected the parties to the path of negotiation and collaboration. Finding a solution that leaves the irrigators' water rights intact while at the same time providing protection for the species will not be an inexpensive endeavor. The MRGCD considers a portion of the reserve funds to be pledged to support this collaborative and scientific effort over the upcoming years. To emphasize the importance of this issue, a new biological opinion will be issued in 2013 that will define in significant ways all the responsibilities of the federal and state parties. The MRGCD is committed to being an active participant in this massive endeavor.
- 6) Recreational Facilities: The MRGCD is working extensively with other government entities to provide improved recreational benefit opportunities throughout the bosque. In the Albuquerque area alone, new federal projects are underway in which the MRGCD is collaborating with the City of Albuquerque and the Village of Corrales and more and more with local community associations to provide public benefits. These efforts will require continued funding and these reserve funds may well be a source of support for isolated projects when other revenues are not available.
- 7) Catastrophic Events: Examples of catastrophic events which could have an impact on the MRGCD are flooding that occurs when water pours off of the mesas and into the valley's alluvial plain or if a major pollutant was to be deposited into the Rio Grande as a result of a chemical spill or other unforeseen activities. The MRGCD has worked hard with other flood control agencies to minimize risks, but risk is present at every turn when a political subdivision is responsible for 300,000 acre feet of water diverted at fairly high velocity through 1,200 miles of ditches. The MRGCD considers a portion of these reserve funds to be a part of the available financial sources in the event of a catastrophic event.
- 8) Levee Projects: Several hundred miles of Levees do not meet current United States Corps of Engineers and FEMA standards. The majority of these levees are non-engineered spoil bank levees which must be rebuilt in order to avoid excessive flood insurance requirements imposed by FEMA. Despite its title disputes with the US Bureau of Reclamation, the MRGCD assumes the responsibility of becoming a local sponsor to major levee projects. Of course, the MRGCD would use a portion of its surplus funds towards the levee projects to provide flood protection to its constituents. The total costs for construction of all engineered levees within the Middle Rio Grande Conservancy District is approximately \$471 million dollars to avoid damages to property of up to 2 million dollars. Obtaining this \$471 million from the Federal Government would require

local cost sharing of \$118 million dollars at 25% local share. This will necessitate a careful apportionment over time of MRGCD assets.

As you can see, the MRGCD has limited "surplus funds". It has operated efficiently to set aside funds without burdening taxpayers. Having established these reserves to defray the above costs, which would dwarf the funds available when occurred, fairness requires that the actions of the MRGCD be considered prudent and wise practices.

Very truly yours,

Derrick J. Lente  
Chairman , MRGCD Board of Directors



Subhas K. Shah  
Chief Engineer/CEO

DJL:SKS/eb

cc: Water & Natural Resources Committee  
MRGCD Board of Directors

Enclosures: Budget Synopsis – Exhibit 1  
Reserve Balance – Exhibit 2  
Benefitted Map – Exhibit 3  
Mill Rates – Exhibit 4  
October 11, 2011 Presentation – Exhibit 5