

**Zimbra****carrie@durangowater.com**

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**Concerns re: Dolores Project Drought Contingency Plan**

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**From :** Adalyn Schuenemeyer <addiemorp@gmail.com>  
**Subject :** Concerns re: Dolores Project Drought Contingency Plan  
**To :** comments@durangowater.com  
**Cc :** lsuckla@co.montezuma.co.us,  
jlambert@co.montezuma.co.us,  
kertel@co.montezuma.co.us, Dion Hollenbeck  
<hollen@woodsprite.com>

Thu, Jun 22, 2017 11:47 AM

 1 attachment

Harris Water Engineering,

Please see the attached document explaining our concerns and questions regarding the Dolores Project Drought Contingency Plan. Thank you for your time and response.

Respectfully,

Adalyn & Jude Schuenemeyer

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 **Dolores Plan, response.pdf**  
2 MB

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From:  
Adalyn & Jude Schuenemeyer  
McElmo Farm & Orchard Co.  
Montezuma Orchard Restoration Project  
17312 RD G  
Cortez, CO 81321

To:  
Harris Water Engineering, Inc  
Montezuma Valley Irrigation Co.  
Dolores Water Conservancy District  
Ute Mtn. Farm & Ranch Enterprise

**Re: Dolores Project Drought Contingency Plan**

**June 21, 2017**

Dear All Concerned,

We reach out to you as interested parties who live and work at the property located at 17312 County Road G in McElmo Canyon. This property is our home where we raise our children; our farm and orchard enterprise McElmo Farm & Orchard Co; and a rare, genetic fruit bank for the non profit Montezuma Orchard Restoration Project. We write to you to ask, 1) Does the plan you propose reduce flows into McElmo Creek effectively turning McElmo Canyon into desert conditions, 2) will actions taken in the plan negatively effect the water rights of users in McElmo Canyon, and 3) is it true that you did not incorporate representatives of McElmo Canyon or the Lower Wilson Ditch Association as key stakeholders in draft plan development? If your answer to any of these questions is yes, we respectfully ask that you go back to the drawing board with all interested parties at the table. Even if recent accounts are true that the plan does not address interests to McElmo Canyon because members of your coalition say there are no legal obligations to do so; certainly an argument can be made that there is a moral and community responsibility to address those concerns.

We are sure we are speaking to the choir if we take time here to tell you how important McElmo Canyon is to the communities of the Four Corners for its agricultural, cultural landscape, wildlife, tourist, real estate, and quality of life values and heritage. The fruit logos on this letterhead are tied directly to the property where we live and work representing the work of our fruit-growing pioneers over hundred years ago, all the hard work accomplished since, and all our dreams and future plans. We are aware of the inherit risks we take by putting so much of our lives worth into farming and orcharding, but up until now we did not consider planning and deliberate actions by professional members of our community as potentially one of those risks.

Indeed, what we are hearing in regards to the Dolores plan's potential effects to destroy McElmo's quality of life sound so unreal, outrageous, of poor judgement and bad planning that there must be a misunderstanding. Our personal past experiences include growing up in

National Parks, working for public land agencies, and graduating in Natural Resources Management. We believe in conservation; it is our work. We hesitate to argue against a plan that implies water conservation in its title. However, if what we hear is true, a more accurate title would be A Plan to Divide Community bringing negative legal, political, environmental, and economic consequences.

The canyon that is our home attracts people locally and nationally; it is not unusual for it to generate good press. Just last season our peach crop made it from local news to become a community interest story repeatedly reported across the US; the McElmo Gold Medal Orchard has been reported in the news for over 100 years; and the work of the Montezuma Orchard Restoration Project, including the rediscovery of the Colorado Orange apple, is covered often. Please reassure us that your draft plan does not in essence put the story of the place we call home, and depend upon in all we do, at risk.

Sincerely,

Adalyn & Jude Schuenemeyer

MORP: <http://montezumaorchard.org> and

Latest news:

[http://www.9news.com/life/events/rare-apple-getting-second-chance-in-colorado/449934672?utm\\_campaign=trueAnthem%3A+Trending+Content&utm\\_content=5945b59f19d6ba00079bf4ea&utm\\_medium=trueAnthem&utm\\_source=facebook](http://www.9news.com/life/events/rare-apple-getting-second-chance-in-colorado/449934672?utm_campaign=trueAnthem%3A+Trending+Content&utm_content=5945b59f19d6ba00079bf4ea&utm_medium=trueAnthem&utm_source=facebook)

McElmo Farm & Orchard : <https://www.facebook.com/letitgownursery/>

McElmo Peach:

<https://the-journal.com/articles/1057-montezuma-peach-market-fades-but-it-s-not-forgotten>

Colorado Orange Apple: <http://www.npr.org/sections/thesalt/2014/09/10/347386837/colorado-orange-helps-seed-states-new-fruit-economy> and <https://www.slowfoodusa.org/ark-item/colorado-orange-apple>

Gold Medal Orchard: <https://www.youtube.com/watch?v=Gsj-wt3v6iA>

Zimbra

carrie@durangowater.com

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**Re: Requesting comments on the Draft Dolores Project Drought Contingency Plan**

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**From :** Bernard Karwick <karwick@serverbravo.com>

Tue, Jun 06, 2017 12:20 PM

**Subject :** Re: Requesting comments on the Draft Dolores Project  
Drought Contingency Plan**To :** Carrie Lile <carrie@durangowater.com>

Hi Carrie,

Thank you for the email, I will share it around and I will certainly submit written comments prior to the deadline.

I was wondering if there will be anything forthcoming that will describe how NEPA, CWA, ESA and other compliance requirements of the WaterSmart grant are being handled or avoided?

Also, is there any information available on how the comment process and collaboration with stakeholders will work?

For example:

Will we submit comments and then that will be the end of our participation?

Is there a way to submit questions to help us understand?

Who are the ultimate decision makers as to what the plan contains or omits?  
Is there an opportunity to interact with them?

Thank you again!

Bernard Karwick  
12632 Road G  
Cortez, CO 81321  
702-468-0836

> On Jun 6, 2017, at 11:16 AM, Carrie Lile <carrie@durangowater.com> wrote:

>

> Hi Bernard,

> I wanted to reach out to you directly about providing comments on the draft Dolores Project Drought Contingency Plan. I have attached a copy of the Plan for you review. A review from yourself and other McElmo Creek basin water users would be welcomed and appreciated. Comments are due back by the end of the day on June 23rd.

>

> I apologize for the late notice, but we are also holding a public meeting tomorrow to allow for discussion and comments of the Plan. The meeting will start at 7:00 p.m. at the DWCD's Office (60 S. Cactus, Cortez). I understand if that is too short of notice to attend and I'd welcome you to call myself or Steve Harris to discuss the Plan anytime (970-259-533).

>

> As you know, Dolores Water Conservancy District (DWCD) received a Bureau of Reclamation WaterSMART grant to fund the preparation of the Plan. Harris Water Engineering was hired to prepare the Plan with guidance from a Planning Task Force. The task force consisted of members from DWCD, MVIC and Ute Mountain Ute's Farm and Ranch Enterprise, who provided matching and in-kind contributions to the grant. Also Reclamation and Division of Water Resources participated in the task force. The task force met regularly to discuss and develop the content included in the Plan. The Plan provides a comprehensive evaluation of mitigation and response actions to reduce water shortages and provide greater drought resiliency for the Project's water users. As a requirement of the grant, the following six elements were addressed: (1) Drought Monitoring; (2) Vulnerability Assessment; (3) Mitigation Actions; (4) Response Actions; (5) Operational and Administrative Framework; and (6) Plan Update Process.

>

> Please feel free to pass the draft Plan along to others who may be interested. We look forward to hearing from you and thank you in advance for taking the time to reviewing the document.

>

> Carrie Lile

> Professional Engineer

>

> Harris Water Engineering, Inc.

> 954 E. 2nd Ave, Suite 202

> Durango, Colorado 81301

> 970-259-5322

> <Appendix A to Draft Dolores Project Drought Contingency Plan.pdf><Draft Dolores Project Drought Contingency Plan .pdf>

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Zimbra

carrie@durangowater.com

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**Draft Dolores Project Drought Contingency Plan**

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**From :** Bernard Karwick <karwick@serverbravo.com>  
**Subject :** Draft Dolores Project Drought Contingency Plan  
**To :** Carrie Lile <carrie@durangowater.com>

Wed, Jun 07, 2017 08:38 AM

Hello Carrie,

I mentioned that I have some questions that would help me to submit useful comments so let me describe to you the sort of things on my mind and see if you or your colleagues have any thoughts that can help to clarify these things. McElmo residents and water users are in a sort of limbo: Some are located within the DWCD and pay taxes to it but many are not. Very few have any connections with MVI. A few hold MVI stock but very little water from the MVI system reaches McElmo as "first-use" water and that is MVI water released into Trail Canyon, a tributary of McElmo Creek. Yet here we have DWCD and MVI sponsoring a Drought Contingency Plan that may have huge consequences for McElmo and it's hard to know the best way to deal with it or what comments are considered appropriate?

We certainly appreciate the opportunity to comment but we don't know what role our comments might play or what sort of collaboration with "stakeholders" was originally contemplated or might be allowed or required. For example, might it be possible for the Drought Plan to go further and include potential initiatives to specifically mitigate drought in McElmo? That would cause the plan to become extra-territorial beyond the two districts but since the proposals now in the plan will have effects outside of the districts, might a more regional plan be a good thing? Another approach could be for the Drought Plan to contemplate some or all of the land joining DWCD so that they can pursue those initiatives for McElmo? Perhaps the Plan could include a possible project to estimate how much supplemental water might be needed in McElmo during droughts, especially in light of the effects of the DWCD and MVI projects mentioned? Said the other way around, McElmo interests wonder if the effects of the proposals now in the plan on McElmo can be scientifically estimated before they are adopted? Or how much minimum water is needed in McElmo to avoid environmental deterioration? Or an initiative to make supplemental water available in McElmo during droughts by MVI Class C shares, by an expanded Totten program or otherwise? Is the Plan too far along for time to think about these kinds of things? Would it be up to us to propose these additional things for inclusion by way of our comments?

Some people in both districts believe the districts have no obligation to McElmo Creek, its environment, or the adjudicated water users because of law that originated under entirely different circumstances, the foreign water or "use to extinction" body of law. There are others (maybe fewer) that believe it would not be a good idea to dry-up or impair McElmo just because they apparently can. It might be questionable that the concept of "use to extinction" excuses those uses from all of the burdens (side effects) of the activities that they support but that like all fights is best avoided if at all possible. If the purpose of the Drought Contingency Plan is solely to make more water available to irrigators in MVI and DWCD in a

drought and also even when lesser or no drought conditions exist, then am I wasting my time in a preordained charade?

Beyond irrigators, there are people in the tourism business in McElmo and environmentalists. The environmentalists wonder at what point in the Drought Contingency Plan timeline environmental deterioration will begin to be felt by McElmo Creek and how severe those impacts might eventually be? Will the endangered fish (some monitored electronically by the USFWS) decline? To what degree might the Endangered Species Act apply to what is being contemplated? At what time of the year will the biggest reduction in flow occur and below what adjudicated priority might flow cease? Will salinity and nutrient loading from agricultural increase because of drought or because of the Draught Plan's suggested initiatives? For tourism, at what point will the cottonwoods and riparian dependent vegetation start to disappear valley-wide? What kind of studies would answer these questions and might grant money be available now or in the future for it? How will these things ever be addressed if not for this Drought Plan?

I would appreciate any thoughts or suggestions that you, your colleagues or district staff might have on how best to proceed and any answers or reactions to the questions presented above that might be available. As I mentioned I will of course submit written comments within the deadline regardless.

Thank you all for your ongoing effort,

Bernard Karwick  
12632 Road G  
Cortez, CO 81321  
702-468-0836

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*Bernard & Nancy Karwick*  
12632 Road G  
Cortez, CO 81321

July 21, 2017

The Board of Directors  
Montezuma Valley Irrigation Co.  
PO Box 1056  
Cortez, CO 81321

The Board of Directors  
Dolores Water Conservancy District  
PO Box 1150  
Cortez, CO 81321

Gentlemen:

The following are our comments on the Draft Drought Plan. We ask for the opportunity to collaborate on changes to the Draft Drought Plan as well as the opportunity to see and further comment on any forthcoming changes prior to submission of the final Plan to the Bureau of Reclamation.

#### Drought Planning Should Not Create Drought

The Drought Plan manufactures drought for McElmo Canyon without devoting any time, effort or resources to understanding or mitigating those impacts.

#### Environmental Concerns Should be Distinguished From Environmental Damage

The Draft Drought Plan states that one of its purposes is to improve the environment for various species in the Lower Dolores River. However, the Plan will have devastating environmental impacts on the McElmo Canyon riparian corridor which are being entirely overlooked. All impacts need to be considered and quantified so that choices can be made between the mutually exclusive alternatives.

#### Clarity of Intent and Purpose

Both at the initial public meeting and then at subsequent MVI Board meetings there were questions and concerns about the purpose of the Drought Contingency Plan document. At the initial public meeting Ken Curtis essentially said "don't worry about what is in this document because it is merely a collection of ideas, some might be possible and others not and many



(such as the Hartman Draw pump-back) will never happen". MVI shareholder Ed Millard raised concerns about whether MVI shareholder approval was needed for some of the matters included in the Plan that could dilute the water interests per share in that mutual ditch company. Ed was told much the same thing—basically that those bridges should only be crossed if we are ever actually get there since we will never probably get that far.

The Plan should identify and state which of the potential actions are likely or unlikely to occur by clearly describing what it is, what the intent is, and with respect to each item, why it is being included at all. For example, as to the Hartman Draw McElmo pump-back the honest approach might be to say: "We are including this item only because it has been mentioned in the past; we believe that it is infeasible, unaffordable and generally a bad candidate for implementation," if that is the truth.

### Collaboration

The WaterSmart documentation and the plan originally contemplated collaboration with stakeholders. McElmo users are major stakeholders who face major adversity because of the Plan. The opportunity to comment was improved after the first public meeting but it remains unclear whether there will be any meaningful collaboration. The meaning of the words is important and is being ignored: Merriam Webster defines "collaborate" as "to work jointly with others or together especially in an intellectual endeavor." This is something much different than commenting which is defined as "a note explaining, illustrating, or criticizing the meaning of a writing." A "stakeholder" is defined as "one that has a stake in an enterprise" or "one who is involved in or affected by a course of action." McElmo residents are stakeholders because everyone recognizes we are affected by the courses of action outlined in the plan—we would like to work jointly to find reasonable solutions, not merely comment.

### Historical Issues

McElmo Canyon was settled before any trans-basin diversion occurred and the settlers could not have existed waiting for project water without some water from McElmo Creek. Local families report that orchards were established in McElmo as early as 1886. Mitchell Springs on McElmo Creek had been producing water since pre-historic times. The effects of introducing Dolores River water to Montezuma Valley together with the increased population and agricultural activity that followed have not been scientifically documented and remain subject to interpretation. The simplistic historical narrative contained in the draft plan represents opinions as facts and fails to recognize that it represents, at best, a biased view. Why a Drought Contingency Plan should include an historical narrative is not apparent. These matters should either be left out of the plan or noted as one version of local folklore—undetermined at best—rather than represented as a factual summary.

### Review Prior to Implementation

Since the timeline for implementation of the various Plan initiatives is unknown and may be years in the future, the Plan should specifically state that all existing conditions and assumptions will be reviewed immediately prior to implementation.

### Ground Water

The water introduced into the Montezuma Valley by diversions from the Dolores River should not be considered in isolation for drought planning purposes. The substantial waters diverted into the mostly dry Montezuma Valley have changed the valley and its hydrology in many ways and it is likely that there is a relationship with ground water elevations. Less water in unlined ditches and canals and less water wasted from farms might have ground water impacts that have not been investigated or considered.

### DWCD Policy Inconsistencies

Because DWCD is a political subdivision of the State and in light of prior policy statements from DWCD in support of the State Water Quality Control Board's efforts to improve water quality, the plan should address the effects on all surface waters including those returning to the San Juan River.

### McElmo Creek Transit Water Loss Study

The McElmo Creek Transit Water Loss Study is an excellent proposal and it is vitally needed. The proposed study should also consider transit water loss from MVI facilities to McElmo (McElmo tributaries), as well as Totten Reservoir and McElmo Creek so that these options are available for water management in the future.

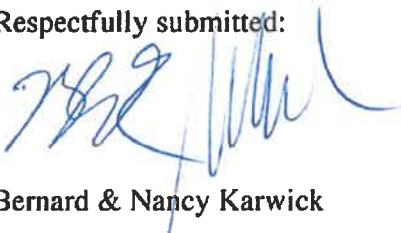
### Hartman Draw Pump-Back

At the public meeting on July 17, 2017, numerous comments were made about the water-rights that would allow the pump-back project to take water from Hartman Draw. The public was led to believe that because the right to take water was a junior water right there was little cause for concern. This may be misleading if there is any possibility that the "foreign waters" doctrine might ever be applied to those waters--because if MVI has dominion and control the priority system is irrelevant.

Additional Drought Mitigation Measures Not Already Included

Projects to supplement irrigation water for McElmo irrigators during times of drought should be included in the Plan. This Plan is the only means available to mitigate this problem as there are no other known sources of water beyond those which form the basis for this Plan. One example would be the possibility of MVI Class C Shares and bringing more McElmo land into DWCD so that it can receive Project water. Another example would be a plan to look at how DWCD can better use Totten Reservoir to offset damage caused by increasing efficiencies elsewhere.

Respectfully submitted:

A handwritten signature in blue ink, appearing to be "Bernard & Nancy Karwick", written over a light blue horizontal line.

Bernard & Nancy Karwick

Cc: Montezuma County Board of Commissioners;  
[comments@durangowater.com](mailto:comments@durangowater.com)

**Zimbra****carrie@durangowater.com**

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**Dolores Project Drought Contingency Plan**

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**From** : Bob Helmer <helmer@frontier.net>

Thu, Jun 22, 2017 05:16 PM

**Subject** : Dolores Project Drought Contingency Plan**To** : comments@durangowater.com

To Harris Water Engineering and all associated parties:

As a McElmo Canyon resident and a board member of the Lower Wilson Ditch Association I request there be a extension of the study period and the inclusion of all water owners within the Dolores Water Conservancy District.

I reference the letter from Chuck Greaves to represent the myriad other details and concerns of myself, our ditch, and fellow residents.

Respectfully,

Bob Helmer  
18435 Road G  
Cortez, CO 81321

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**Zimbra****carrie@durangowater.com**

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**DWCD / Drought Contingency Plan / McElmo Canyon**

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**From :** Bruce Downer <bdowner54@gmail.com>

Fri, Jun 23, 2017 03:23 PM

**Subject :** DWCD / Drought Contingency Plan / McElmo Canyon**To :** comments@durangowater.com

To whom it may concern,

I am a resident, farmer and irrigator who lives in McElmo Canyon.

This mailing is to voice my concern with the DWCD Drought Contingency Plan and the probable negative impact(s) the plan might have on the McElmo Canyon irrigation systems. I have reviewed the draft of the plan and all indications are that any and all impacts on the irrigators who live in McElmo Canyon have been completely ignored. I find these actions to be very, very alarming, unfair and quite possibly illegal.

I am in hopes that DWCD will open up discussions with the residents of McElmo Canyon in an effort to bring equity to all who appear to impacted by Drought Contingency Plan. Anything short of that would be considered a travesty that would surely result in, at the very least, litigation.

Respectfully,

Bruce Downer  
17655 County Road G  
Cortez, CO 81321

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**Zimbra****carrie@durangowater.com**

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**McElmo water rights**

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**From :** Chris Anderson <dirtybikепilot@hotmail.com>

Fri, Jun 23, 2017 02:47 PM

**Subject :** McElmo water rights**To :** comments@durangowater.com

As a property owner in McElmo Canyon, we depend on the the water supply from the Lower Wilson Ditch to maintain the vegetation on our property. We use the water to provide pasture for our livestock and to grow food for our family. The water rights that are bound to our property deed are one of the primary reasons we chose to live here. Taking or diminishing these rights (which are in full use) is a violation of Colorado State Law and is just plain wrong. Our quality of life and our property value would suffer greatly if our access to water is reduced. I agree in full with the comments provided by our association (link below). Please do not reduce our water rights or in any way reduce the quantity or quality of our water. We and many others in McElmo Canyon depend on these rights.

Thank you.

Chris and Kristen Anderson

Association comments:

<http://www.woodsprite.com/DoloresDroughtPlan/LowerWilsonResponse.pdf>

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Lower Wilson Ditch Association, LLC  
17106 Road G  
Cortez, CO 81321

June 19, 2017

Harris Water Engineering, Inc.  
954 East 2<sup>nd</sup> Avenue  
Durango, CO 81301

Dolores Water Conservancy District  
P.O. Box 1150  
Cortez, CO 81321

Montezuma Valley Irrigation Co.  
P.O. Box 1056  
Cortez, CO 81321

Ute Mtn. Farm & Ranch Enterprise  
P.O. Box 53  
Towaoc, CO 81334

Re: Dolores Project Drought Contingency Plan

To All Concerned:

The Lower Wilson Ditch Association, LLC (the “Company”) is a Colorado limited liability company created and operated to improve, manage, and maintain the Lower Wilson Ditch (the “Wilson Ditch”) and to deliver irrigation water via the Wilson Ditch in accordance with the water rights of the Company’s members. The Wilson Ditch runs through eastern McElmo Canyon and services some 50 irrigators, making it the largest such enterprise in the canyon. We write this letter in response to a draft document entitled Dolores Project Drought Contingency Plan (the “Plan”) which purports to constitute “a comprehensive formal evaluation of mitigation and response actions to reduce the water shortages and provide greater drought resiliency for the [Dolores] Project irrigators and the fishery downstream of the McPhee Reservoir” (Plan, page 11.)

We provide our responsive comments in haste, in order to satisfy a June 23, 2017 deadline that was apparently announced at a public meeting held in Cortez on June 6, 2017. We say “apparently” because neither the Company nor any of its members received any notice of that meeting or, for that matter, of the Plan itself, despite the fact that the Company and the other irrigators in McElmo Canyon are the persons and entities most directly and dramatically impacted by the Plan. The comments that follow are, for that reason, preliminary in nature and subject to such further inquiry and amendment as may be appropriate.

Against that backdrop, we respond to the Plan as follows:

Procedural Concerns

No Meaningful Collaboration. The Plan states, at page 30, that a Planning Task Force “identified key stakeholders to be involved in the Plan’s development process.” The requirement for such collaboration can be found in the Reclamation Manual’s Directives and Standards as

they pertain to the Bureau's WaterSMART Grants program which state, at section 6 (A) (4), that grant applicants should "partner with other entities to promote involvement of an array of interested stakeholders in WaterSMART Grant projects." The Bureau's WaterSMART Drought Response Program Framework is even more explicit, stating, at Section II (D) (4):

"Drought contingency plans will be developed through a collaborative process that is inclusive of interested stakeholders within the planning area. Collaboration with multiple stakeholders representing diverse interests in water resources is required . . . The planning lead will develop an outreach and communication plan . . . to provide all interested stakeholders opportunities for input at key stages of the planning process and to keep them informed of progress as the plan is developed."

That none of the McElmo Canyon irrigators – the persons and entities whose homes, farms, ranches, vineyards, orchards, and general environment stand to be devastated by the Plan's implementation – was ever considered or included as a "stakeholder" in either the application or planning processes is nothing short of astonishing. Needless to say, it also appears to violate a central tenet of the WaterSMART program under which the Plan was developed.

No NEPA Compliance. The National Environmental Policy Act ("NEPA") mandates the preparation of an environmental impact statement ("EIS") for certain actions "significantly affecting the quality of the human environment." The EIS requirement of NEPA applies not only to federal projects, but also to projects that receive federal funding. The EIS requirement of NEPA applies as soon as the applicable federal agency is planning development or is presented with a plan for development. Title XVI of P.L. 102-575, under which the Bureau's WaterSMART program is promulgated, states:

"The Secretary shall undertake appraisal investigations to identify opportunities for water reclamation and reuse. Each such investigation shall take into account environmental considerations as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and regulations issued to implement the provisions thereof."

In addition, Title II of P.L. 102-250, under which the Plan was specifically funded, states:

"The contingency plans and plan elements shall comply with all requirements of applicable Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321), section 715(a) of the Water Resource Act of 1986 (33 U.S.C. 2265(a), and the Fish and Wildlife Coordination Act, and shall be in accordance with applicable State law."

Furthermore, issuance of a permit under section 404 of the Clean Water Act constitutes a federal action subject to the requirements of NEPA if, as here, the environmental effects of the permit's issuance are significant. Several of the various mitigation measures described in the Plan will



require issuance of a 404 permit from the Army Corps of Engineers, providing yet another mandate for NEPA compliance.

Despite clear applicability of NEPA to the Plan and despite the Plan's significant environmental impacts on McElmo Canyon, no environmental assessment appears to be contemplated and no EIS process has been initiated. Indeed, the Plan seems to ignore its obligations under NEPA altogether.

### Substantive Concerns

The Plan describes a number of "mitigation and response actions," the effects of which would be to abate Dolores Project return flows into the Montezuma Valley, diminish McElmo Creek, reduce water available to the McElmo irrigators, and lessen the quality of that water. The Plan even includes, at page 68, a proposal that would effectively turn all of McElmo Canyon into a desert:

"McElmo Creek flows out of Colorado west of Cortez with an average annual volume of 30,000 AF leaving the state. Most of this water is return flow from MVIC irrigation. Reuse of a portion of this water might be achieved through a pump and pipeline from McElmo Creek downstream of Hartman Draw, west of Cortez. This plan is called the McElmo Pumpback and would increase the inflow into Totten by 4,500 AF per year. The increased reservoir yield would be pumped again into the THC to increase the water supply to Project users."

The consequences of these proposals would be disastrous to McElmo Canyon, its residents and businesses, its wildlife, and its general environment. Our concerns in these regards include, but are not limited to, the following:

Senior Water Rights. As you acknowledge at page 20 of the Plan, water rights of the McElmo irrigators, including those of the Company and its members, date to 1888, and therefore predate formation of DWCD, MVIC (and its predecessors) and FRE. Moreover, our December 12, 1962 adjudication of those rights predates the Dolores Project. For these and other reasons, once return flow trans-basin diversion water from the Dolores Project enters a natural watercourse in the Montezuma Valley it is subject to the senior water rights of the McElmo irrigators (*Public Service Company of Colorado v. Federal Energy Regulatory Commission*, 754 F.2d 1555 (10<sup>th</sup> Cir. 1985)), rendering various provisions of the Plan, including that quoted above, unlawful. Its failure to properly account for the senior water rights of the McElmo irrigators represents a major Plan defect.

Agriculture. McElmo Canyon, thanks to its temperate climate, is one of Colorado's historic breadbaskets. Fruit from the canyon's Gold Medal Orchard took first place at the St. Louis World's Fair in 1904. Today the canyon hosts not only individual farmers and ranchers but also a variety of commercial enterprises including vineyards, orchards, and wineries. All are

naturally dependent on a secure and consistent source of irrigation water. The mitigation and response measures described in the Plan threaten to disrupt that supply and would, if fully implemented, turn the canyon dry for most of the year and service only the highest-priority irrigators during the remainder. The resulting effect on agriculture in McElmo Canyon would be catastrophic. None of these impacts is addressed in the Plan.

Threatened and Endangered Species. A list of rare, threatened, and endangered plant species in McElmo Canyon is available from the Colorado Natural Heritage Program, and is extensive. Moreover, the canyon is a known habitat of the Southwestern Willow Flycatcher (*Empidonax traillii extimus*), an avian subspecies currently under Endangered Species Act protection that depends for its survival on McElmo Creek water flow. No impacts on threatened or endangered species are addressed in the Plan.

Wildlife. McElmo Canyon is home to various fauna that depend on McElmo Creek water, including deer, elk, bear, bobcats, and mountain lions. The canyon's ponds and ditches provide critical habitat for migratory birds. The cottonwood trees that currently thrive in the canyon provide habitat for any number of birds and animals. To the extent that the Plan seeks to preserve or increase water flow to the lower Dolores River for the sake of fish or other wildlife, it strikes a curious bargain in which an incremental benefit on the Dolores will result in a catastrophic impact on McElmo. That tradeoff is not addressed in the Plan.

Homeowners. Property values in McElmo Canyon will be severely impacted by the Plan, particularly if groundwater levels or quality are diminished by the Plan's conservation measures. The vast majority of McElmo homeowners depend on well water for domestic use. Whether such impacts would constitute a "taking" that entitle affected homeowners to "just compensation" under the eminent domain provisions of both the U.S. and Colorado Constitutions will be a matter for judicial determination. These impacts are not addressed in the Plan.

Tourism. As Montezuma County transitions away from a fossil fuel economy, tourism and outdoor recreation will play an increasingly important role in the county's economic wellbeing. Situated as it is on the southern border of the Canyons of the Ancients National Monument, McElmo Canyon is and will continue to be an essential component of the county's overall tourism strategy. The canyon is home to one of the highest quality and fastest-growing wine regions in all of Colorado. It is home to the Sand Canyon system of hiking and biking trails. It is home to any number of bed and breakfast inns and other rental accommodations that take advantage of its strategic location between Mesa Verde National Park and Hovenweep National Monument. All of these enterprises will be impacted by the Plan, and yet the Plan addresses none of them.

### Conclusion

Water conservation, while an important and admirable goal, is best undertaken with an ethos akin to the Hippocratic admonition "first, do no harm." The Plan, fully implemented, would visit

substantial harm on the residents, irrigators, and wildlife of McElmo Canyon. That the McElmo irrigators were never consulted in the Plan's preparation is unfortunate in that the concerns herein raised are but some of the issues that might have been addressed had such consultation occurred. We trust that, having now been raised, they will be addressed going forward.

We nurture an additional hope. The rights and interests of the McElmo irrigators and those of the Dolores Project's water users are intertwined and delicate, but need not be adversarial. Our hope, therefore, is that DWCD, MVIC, and FRE might embrace this opportunity to begin a dialogue to bring the Company, its 50-odd members, and such other McElmo irrigators who might be interested into partnership with a view toward aligning all of our interests in guaranteeing water availability, conserving water resources, and protecting the environment.

Be assured that we are open to such a discussion.

Sincerely,

Chuck Greaves

[chuck@chuckgreaves.com](mailto:chuck@chuckgreaves.com)

On behalf of the Lower Wilson Ditch Ass'n, LLC

cc: Bureau of Reclamation  
Department of the Interior, Fish & Wildlife Services  
Colorado Division of Water Resources  
Colorado Parks and Wildlife  
Rep. Scott Tipton  
Montezuma County Commission  
The Nature Conservancy

**Zimbra****carrie@durangowater.com**

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**Public Comment on Drought Contingency Plan**

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**From :** Chuck Greaves <cjgreaves@msn.com>  
**Subject :** Public Comment on Drought Contingency Plan  
**To :** comments@durangowater.com

Mon, Jun 19, 2017 12:24 PM

 1 attachment

To Harris Water Engineering, Inc.:

Attached are the public comments of the Lower Wilson Ditch Association, LLC to your Dolores Project Drought Contingency Plan.

Thank you in advance for your consideration of the attached.

Chuck Greaves

Visit [www.chuckgreaves.com](http://www.chuckgreaves.com)

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 **Lower Wilson Ditch Association Letter.docx**  
 29 KB

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Lower Wilson Ditch Association, LLC  
17106 Road G  
Cortez, CO 81321

June 19, 2017

Harris Water Engineering, Inc.  
954 East 2<sup>nd</sup> Avenue  
Durango, CO 81301

Dolores Water Conservancy District  
P.O. Box 1150  
Cortez, CO 81321

Montezuma Valley Irrigation Co.  
P.O. Box 1056  
Cortez, CO 81321

Ute Mtn. Farm & Ranch Enterprise  
P.O. Box 53  
Towaoc, CO 81334

Re: Dolores Project Drought Contingency Plan

To All Concerned:

The Lower Wilson Ditch Association, LLC (the “Company”) is a Colorado limited liability company created and operated to improve, manage, and maintain the Lower Wilson Ditch (the “Wilson Ditch”) and to deliver irrigation water via the Wilson Ditch in accordance with the water rights of the Company’s members. The Wilson Ditch runs through eastern McElmo Canyon and services some 50 irrigators, making it the largest such enterprise in the canyon. We write this letter in response to a draft document entitled Dolores Project Drought Contingency Plan (the “Plan”) which purports to constitute “a comprehensive formal evaluation of mitigation and response actions to reduce the water shortages and provide greater drought resiliency for the [Dolores] Project irrigators and the fishery downstream of the McPhee Reservoir” (Plan, page 11.)

We provide our responsive comments in haste, in order to satisfy a June 23, 2017 deadline that was apparently announced at a public meeting held in Cortez on June 6, 2017. We say “apparently” because neither the Company nor any of its members received any notice of that meeting or, for that matter, of the Plan itself, despite the fact that the Company and the other irrigators in McElmo Canyon are the persons and entities most directly and dramatically impacted by the Plan. The comments that follow are, for that reason, preliminary in nature and subject to such further inquiry and amendment as may be appropriate.

Against that backdrop, we respond to the Plan as follows:

Procedural Concerns

No Meaningful Collaboration. The Plan states, at page 30, that a Planning Task Force “identified key stakeholders to be involved in the Plan’s development process.” The requirement for such collaboration can be found in the Reclamation Manual’s Directives and Standards as

they pertain to the Bureau's WaterSMART Grants program which state, at section 6 (A) (4), that grant applicants should "partner with other entities to promote involvement of an array of interested stakeholders in WaterSMART Grant projects." The Bureau's WaterSMART Drought Response Program Framework is even more explicit, stating, at Section II (D) (4):

"Drought contingency plans will be developed through a collaborative process that is inclusive of interested stakeholders within the planning area. Collaboration with multiple stakeholders representing diverse interests in water resources is required . . . The planning lead will develop an outreach and communication plan . . . to provide all interested stakeholders opportunities for input at key stages of the planning process and to keep them informed of progress as the plan is developed."

That none of the McElmo Canyon irrigators – the persons and entities whose homes, farms, ranches, vineyards, orchards, and general environment stand to be devastated by the Plan's implementation – was ever considered or included as a "stakeholder" in either the application or planning processes is nothing short of astonishing. Needless to say, it also appears to violate a central tenet of the WaterSMART program under which the Plan was developed.

No NEPA Compliance. The National Environmental Policy Act ("NEPA") mandates the preparation of an environmental impact statement ("EIS") for certain actions "significantly affecting the quality of the human environment." The EIS requirement of NEPA applies not only to federal projects, but also to projects that receive federal funding. The EIS requirement of NEPA applies as soon as the applicable federal agency is planning development or is presented with a plan for development. Title XVI of P.L. 102-575, under which the Bureau's WaterSMART program is promulgated, states:

"The Secretary shall undertake appraisal investigations to identify opportunities for water reclamation and reuse. Each such investigation shall take into account environmental considerations as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and regulations issued to implement the provisions thereof."

In addition, Title II of P.L. 102-250, under which the Plan was specifically funded, states:

"The contingency plans and plan elements shall comply with all requirements of applicable Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321), section 715(a) of the Water Resource Act of 1986 (33 U.S.C. 2265(a), and the Fish and Wildlife Coordination Act, and shall be in accordance with applicable State law."

Furthermore, issuance of a permit under section 404 of the Clean Water Act constitutes a federal action subject to the requirements of NEPA if, as here, the environmental effects of the permit's issuance are significant. Several of the various mitigation measures described in the Plan will

require issuance of a 404 permit from the Army Corps of Engineers, providing yet another mandate for NEPA compliance.

Despite clear applicability of NEPA to the Plan and despite the Plan's significant environmental impacts on McElmo Canyon, no environmental assessment appears to be contemplated and no EIS process has been initiated. Indeed, the Plan seems to ignore its obligations under NEPA altogether.

### Substantive Concerns

The Plan describes a number of "mitigation and response actions," the effects of which would be to abate Dolores Project return flows into the Montezuma Valley, diminish McElmo Creek, reduce water available to the McElmo irrigators, and lessen the quality of that water. The Plan even includes, at page 68, a proposal that would effectively turn all of McElmo Canyon into a desert:

"McElmo Creek flows out of Colorado west of Cortez with an average annual volume of 30,000 AF leaving the state. Most of this water is return flow from MVIC irrigation. Reuse of a portion of this water might be achieved through a pump and pipeline from McElmo Creek downstream of Hartman Draw, west of Cortez. This plan is called the McElmo Pumpback and would increase the inflow into Totten by 4,500 AF per year. The increased reservoir yield would be pumped again into the THC to increase the water supply to Project users."

The consequences of these proposals would be disastrous to McElmo Canyon, its residents and businesses, its wildlife, and its general environment. Our concerns in these regards include, but are not limited to, the following:

Senior Water Rights. As you acknowledge at page 20 of the Plan, water rights of the McElmo irrigators, including those of the Company and its members, date to 1888, and therefore predate formation of DWCD, MVIC (and its predecessors) and FRE. Moreover, our December 12, 1962 adjudication of those rights predates the Dolores Project. For these and other reasons, once return flow trans-basin diversion water from the Dolores Project enters a natural watercourse in the Montezuma Valley it is subject to the senior water rights of the McElmo irrigators (*Public Service Company of Colorado v. Federal Energy Regulatory Commission*, 754 F.2d 1555 (10<sup>th</sup> Cir. 1985)), rendering various provisions of the Plan, including that quoted above, unlawful. Its failure to properly account for the senior water rights of the McElmo irrigators represents a major Plan defect.

Agriculture. McElmo Canyon, thanks to its temperate climate, is one of Colorado's historic breadbaskets. Fruit from the canyon's Gold Medal Orchard took first place at the St. Louis World's Fair in 1904. Today the canyon hosts not only individual farmers and ranchers but also a variety of commercial enterprises including vineyards, orchards, and wineries. All are

naturally dependent on a secure and consistent source of irrigation water. The mitigation and response measures described in the Plan threaten to disrupt that supply and would, if fully implemented, turn the canyon dry for most of the year and service only the highest-priority irrigators during the remainder. The resulting effect on agriculture in McElmo Canyon would be catastrophic. None of these impacts is addressed in the Plan.

Threatened and Endangered Species. A list of rare, threatened, and endangered plant species in McElmo Canyon is available from the Colorado Natural Heritage Program, and is extensive. Moreover, the canyon is a known habitat of the Southwestern Willow Flycatcher (*Empidonax traillii extimus*), an avian subspecies currently under Endangered Species Act protection that depends for its survival on McElmo Creek water flow. No impacts on threatened or endangered species are addressed in the Plan.

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Tourism. As Montezuma County transitions away from a fossil fuel economy, tourism and outdoor recreation will play an increasingly important role in the county's economic wellbeing. Situated as it is on the southern border of the Canyons of the Ancients National Monument, McElmo Canyon is and will continue to be an essential component of the county's overall tourism strategy. The canyon is home to one of the highest quality and fastest-growing wine regions in all of Colorado. It is home to the Sand Canyon system of hiking and biking trails. It is home to any number of bed and breakfast inns and other rental accommodations that take advantage of its strategic location between Mesa Verde National Park and Hovenweep National Monument. All of these enterprises will be impacted by the Plan, and yet the Plan addresses none of them.

### Conclusion

Water conservation, while an important and admirable goal, is best undertaken with an ethos akin to the Hippocratic admonition "first, do no harm." The Plan, fully implemented, would visit



substantial harm on the residents, irrigators, and wildlife of McElmo Canyon. That the McElmo irrigators were never consulted in the Plan's preparation is unfortunate in that the concerns herein raised are but some of the issues that might have been addressed had such consultation occurred. We trust that, having now been raised, they will be addressed going forward.

We nurture an additional hope. The rights and interests of the McElmo irrigators and those of the Dolores Project's water users are intertwined and delicate, but need not be adversarial. Our hope, therefore, is that DWCD, MVIC, and FRE might embrace this opportunity to begin a dialogue to bring the Company, its 50-odd members, and such other McElmo irrigators who might be interested into partnership with a view toward aligning all of our interests in guaranteeing water availability, conserving water resources, and protecting the environment.

Be assured that we are open to such a discussion.

Sincerely,

Chuck Greaves

[chuck@chuckgreaves.com](mailto:chuck@chuckgreaves.com)

On behalf of the Lower Wilson Ditch Ass'n, LLC

cc: Bureau of Reclamation  
Department of the Interior, Fish & Wildlife Services  
Colorado Division of Water Resources  
Colorado Parks and Wildlife  
Rep. Scott Tipton  
Montezuma County Commission  
The Nature Conservancy

**Zimbra****carrie@durangowater.com**

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**Dolores Drought Project / McElmo Canyon Water**

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**From :** DavidCarol Grenoble <dcgren99@gmail.com>

Tue, Jun 20, 2017 03:01 PM

**Subject :** Dolores Drought Project / McElmo Canyon Water**To :** comments@durangowater.com**Dear Gentlepeople,**

**I farm property at 18261 Rd G, otherwise known as McElmo Canyon, Cortez,CO 81321. I am a commercial hay and grape grower. Through the Lower Wilson Ditch Association (LWDA) I have just become aware of the Dolores Project Drought Contingency Plan. I have received no previous notifications or invitations to any input sessions about this plan.**

**I am concerned that, should some of the provisions of the Dolores Project Drought Contingency Plan be enacted, I and other users of the LWDA would be left with inadequate water. I am especially concerned with the proposal to collect MVI tail water & re-pump it into storage facilities. The LWDA has been using water since 1888, and historically much of the water has been from MVI tail water.**

**I am concerned not only with the quantity of water, but also it's timing. Vineyards are less tolerant of drought than hayfields. Importantly, they use much less water to produce a high value crop than hayfields. They need water as early in Spring as possible in order to flower & begin the required number of grape growing days. Vineyards and wineries are an important present, and growing future, source of agricultural income to the Montezuma County area. CSU has identified us as having higher vineyard growth potential than most of the state.**

**I hope you can take these important facts into consideration for the Drought Plan.**

**Sincerely,**

**David Grenoble**  
**email: [dcgren99@gmail.com](mailto:dcgren99@gmail.com)**  
**phone: 970-946-5539**

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Zimbra

carrie@durangowater.com

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**Dolores Drought Plan Comments**

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**From :** Dion Hollenbeck <hollen@woodsprite.com>

Mon, Jun 19, 2017 01:17 PM

**Subject :** Dolores Drought Plan Comments**To :** comments@durangowater.com

Having read the plan and it's appendix, I am very concerned about the fact that one area which will be greatly affected by it is McElmo Canyon, of which I am a resident. The Wilson Ditch, from which I get my irrigation water is already at risk of MVI reducing the amount of water we get, due to Wilson Ditch water being adjudicated, and is essentially MVI tailwater. We have already seen a huge reduction of the water available to us over the last 5 years.

I have an orchard of 40 fruit trees which depend on irrigation water from Hartman Draw, where Wilson Ditch begins. If the measures which are in the "plan" are put into effect, it will effectively kill any water to Wilson Ditch, and cause many years and much money to be wasted in getting my orchard going.

What is objectionable is:

- McElmo residents, being potentially affected, were never consulted beforehand.
- The public meeting which was held only a little over a week ago was never properly advertised to the residents of McElmo Canyon. The only way most of us found out about the meeting was AFTER THE FACT, when the "plan" was posted to the Email list for Canyon residents to see. Then, we had only a few days to meet the deadline for submitting comments.
- No environmental impact study has been done. Implementation of the "plan" could cause irreparable harm to small agriculture in the Canyon, when over the last decade, the residents have put a huge amount of money and labor into reviving small agriculture that once took medals at the World Fair for our fruit. It will also effectively kill the riparian habitat surrounding McElmo Creek all down the Canyon due to lack of water.

Please include notification to all McElmo residents as this process continues. Right now, it looks like "big agriculture" and MVI are being preferred over small agriculture, and that small agriculture will be killed if it is implemented as proposed.

Respectfully,  
Dion Hollenbeck

7/5/2017

Zimbra

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Dion Hollenbeck

Email: [hollen@woodsprite.com](mailto:hollen@woodsprite.com)

Home Page: <http://www.woodsprite.com>

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**Zimbra****carrie@durangowater.com**

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**More Dolores Drought Plan Comments**

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**From :** Dion Hollenbeck <hollen@woodsprite.com>

Tue, Jul 18, 2017 06:08 AM

**Subject :** More Dolores Drought Plan Comments**To :** comments@durangowater.com

Having already made some comments, and then being at the meeting last night, I have one more. This one should probably be directed to MVI, but mention of their attitude and it's detriment to McElmo Creek and Wilson Ditch should be included in the Drought Plan, as it can affect Wilson Ditch and McElmo greatly.

Almost at the end of the meeting, one of the MVI Board members standing by the door made the comment that McElmo irrigators should have complained long ago that MVI is reducing the amount of water in McElmo.

I had an appointment with the President of MVI close to 10 years ago, and voiced the opinion that MVI's "conservation" measures as well as "on-farm" measures were slowly drying up the water coming down Hartman Draw to Wilson Ditch. The response I got was that he basically thumbed his nose at me, and told me that MVI had no obligation to maintain water in Hartman Draw for Wilson Ditch. While the "letter of the water law" may hold this to be true, this attitude is reprehensible because we all are neighbors in Montezuma County and this seems to be an attitude that some of us are not important enough to bother with maintaining our way of life.

I have been the person responsible for monitoring and adjusting the Wilson Ditch head gate for the majority of the last 10 years. At the beginning, we were spilling back into McElmo at least 50% of the water coming down Hartman Draw and only taking our adjudicated water. Wilson Ditch water owners collectively own about 24 cfs. For the past 3 years, without any call on water or drought, Hartman has been running so low that we have completely closed off the spill of water back to McElmo (except for some gate seepage which we cannot stop), and are taking all of the water coming down Hartman Draw into Wilson Ditch and still can only pull about 13 cfs. This is not only detrimental to Wilson Ditch, but it also reduces the flow of McElmo Creek.

Respectfully,  
Dion Hollenbeck

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Dion Hollenbeck

Email: hollen@woodsprite.com

Home Page: <http://www.woodsprite.com>

**Zimbra****carrie@durangowater.com**

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**Comments on the Draft Drought Contingency Plan**

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**From :** Lindgren, Eric <erlindg@sandia.gov>

Fri, Jul 21, 2017 04:52 PM

**Subject :** Comments on the Draft Drought Contingency Plan**To :** comments@durangowater.com**Cc :** Kim <lindgren@fone.net>, Steve Fusco  
<SMFusco@gmail.com>, Rodney Carriker  
<rodney.b.carriker@langecontainment.com>

Many aspects of this plan directly impact us in a very negative way. We hold senior water rights in McElmo canyon and any plan that decreases the flow in McElmo creek obviously impacts us.

We have a number of comments on this plan:

Please explain on what federal agency authority it was permissible for you to use federal tax dollars (my tax dollars) to write a plan without involving all the stakeholders impacted by the plan.

Concerning section 5.1.4.2 Increase Totten Reservoir Inflow

Please include in your plan a summary of the permits and water rights associated with Totten Reservoir. I think any natural runoff or seepage from MVIC irrigators that is captured by Totten is subject to the senior water rights in the McElmo drainage. Please address this issue in your plan.

Similarly, any natural flows due to runoff or seepage in Simon and Ritter draws are also subject to the senior water rights in the McElmo drainage. Please address this in your plan along with the proposed diversion flow rate or range of diversion flow rates. By what water right would this water be diverted?

Concerning the McElmo Pumpback: are you asserting ownership of this water because it is return flow from MVIC? I think the return seepage flow is subject to the senior water rights in the McElmo drainage. Please address in your plan along with the proposed diversion flow rate or range of diversion flow rates. By what water right would this water be diverted?

A claim is made that the DWCD has a water right to divert flows in upper Hartman Draw. Please provide details of this water right. What is the water right priority and flow rate?

Thank you for addressing these comment.

Eric and Kim Lindgren  
14567 road G

7/23/2017

Zimbra

Cortez CO. 81321  
980/564-9849  
Erlindg@sandia.gov  
Lindgren@fone.net

Sent from my iPhone

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**Zimbra****carrie@durangowater.com**

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**Comment on Dolores Water Conservancy Drought Contingency Plan**

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**From :** GARY KYLE <gskyle@msn.com>

Thu, Jun 22, 2017 03:30 PM

**Subject :** Comment on Dolores Water Conservancy Drought Contingency Plan**To :** comments@durangowater.com

I am writing to express concern that the draft Drought Contingency Plan does not include the needs of farmers and ranchers in McElmo Canyon or Montezuma Valley in general. These people have some of the most senior water rights in the region for enterprises dating back more than 100 years. As I understand it, the plan would take water from McElmo and give it to other, less senior entities in times of drought and possibly on a permanent basis. Without guarantees that some of the most senior water rights in the region are respected, this plan can only be called unbalanced and incomplete. These are small farmers whose livelihood and way of life depends on historical water flows, not the large government subsidized commercial entities favored by this plan.

I encourage the planners to re-think this plan to explicitly provide for the needs of the small farmers and ranchers in McElmo Canyon, and not just produce a plan intended to make some fat cats richer.

Although we do not have water rights, our way of life is directly affected by the health of farming and ranching in the Canyon. These are our valued friends and neighbors. We provide grazing for their livestock. We benefit directly from the ecosystem which depends on maintaining historic water flows.

Sincerely,  
Gary and Susan Kyle

---





**Canyon of the Ancients Guest Ranch**  
7950 Road G, Cortez, CO 81321  
970-565-4288  
reservations@canyonoftheancients.com  
www.canyonoftheancients.com

July 20, 2017

Harris Water Engineering, Inc.  
954 East 2<sup>nd</sup> Avenue  
Durango, CO 81301

Dolores Water Conservancy District  
P.O. Box 1150  
Cortez, CO 81321

Montezuma Valley Irrigation Co.  
P.O. Box 1056  
Cortez, CO 81321

Ute Mtn. Farm & Ranch Enterprise  
P.O. Box 53  
Towaoc, CO 81334

To all concerned:

This is Garry and Ming Adams from 7950 Road G in McElmo Canyon and we are on the Hamilton and Murray-Zwicker-Tozer ditches. We are strongly concerned the current Drought Plan that could have dire consequences for not only McElmo residents but for the community in the region, as tourism will most certainly be affected. It is hard to imagine that the state of Colorado would allow one of it's most beautiful canyons, which is part of Trail of the Ancients Scenic Byway, to be affected by a drought plan that in itself creates a drought in McElmo Canyon.

During the recent meeting, it was mentioned that McElmo hardly had any water before MVI delivered water from the Delores river to the Montezuma Valley, yet old families whom we have spoken with say that is not so. Some families in the Canyon have been here for more than 100 years, there was water here when they first settled and then wastewater got added after the Dolores Project.

Even an archeologist I have spoken with said that McElmo a thousand years ago had many series of check dams for their agricultural farming. Jim Collers mentioned that there was a massive dam with some remaining walls of 5 feet thick at Castlerock in McElmo. On our guest ranch, there is evidence of enough ruin sites that could have housed a hundred people or more. When you combine all the other 30 miles of property with ruin sites, it is easy to see that in the past it would have had a much larger population in the canyon than we have today. With 70% of their diet being corn, they must have had a lot of water for irrigation to farm and to survive. Water is our lifeline here in the Canyon, more so than the other part of Montezuma County, we do not get as much rainfall as the other areas north of us, therefore, making it detrimental for McElmo to impose such drought plan.

As you all being a plan committee, you should be able to tell us just how much less water there will be in McElmo and Federal government money should not be spent to stop water from flowing to people, plants, trees, fish and wildlife that need it to live.

We strongly believe that this plan lacks thorough consideration of the potential impact to the ecosystem, wildlife, such as the endangered fly catcher; the environment, water quality (surface/ground), agricultural heritage (hay production, orchard/vineyards, vegetable/flower gardens) as well as agritourism which has been the priority for Colorado Tourism. The real estate values will be hugely reduced without the pristine environment that the water helps create. Montezuma County is probably the poorest county in CO, it will definitely impact the tax revenue for the County and the job situation.

McElmo Canyon is a special place we all call home and it is a gem in Montezuma County with Canyons of the Ancients National Monument, two renowned vineyards, and several grape growers and historical ranching & farming families. It has its own special recreational purpose; we should protect it than to destroy such a thriving and diversified community.

Sincerely,

Garry & Ming Adams  
Canyon of the Ancients Guest Ranch  
[www.canyonoftheancients.com](http://www.canyonoftheancients.com)  
7950 Road G, Cortez, CO 81321  
970-565-4288

Enclose is the slideshow about our concerns.

**Zimbra****carrie@durangowater.com**

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**comments on drought plan draft**

---

**From :** john kelley <johnkelley49@gmail.com>

Mon, Jul 10, 2017 09:46 AM

**Subject :** comments on drought plan draft**To :** comments@durangowater.com

I read the draft and I think there is a lot of good information in there.

In my case, I have 1/2 CFS of adjudicated water rights established in 1980. These were established to take advantage of the opening of McPhee just prior. I bought the 25 acre property in 1999 and immediately began improving on the existing dirt ditch arrangement.

I have spent approx. \$30,000 re-doing the system. This includes 6" gated pipe and a pond with a full liner, etc. All this was done to provide an efficient delivery system based on the ups and downs of water availability at my point of diversion. Remember, this was all implemented in the teeth of the 2002 drought.

I actually irrigate about 12 of the 25 acres which is in high-quality grass hay. The property is split down the middle by an "unnamed tributary of Alkali Creek" running NW to SE. This a year round live water feature. The point of diversion is at Cty. Rd. 21 about 6/10th mile N. of Cty. Rd. P....it is called the Anderson Ditch. The free flowing water from above me to the west enters a culvert crossing Rd. 21 and into a steel casing into which a 6" plastic pipe has been inserted. The plastic pipe "Ts" off in to 4" pipe buried which runs to the N. and S. providing water to each side of the property. It is purely gravity fed. The drop from the point of diversion at the Cty. road to the stream bed at the low point of the property is probably 30 feet or so.

There is no MVI water available at this location at the present time. The topography would seem to preclude any kind of sprinkler system even if pressurized water were available. I am the last user of water coming into my property....there are no users below me until somewhere south of the stream crossing on Rd. P to the SE. Whatever tail water I create reenters the stream as it flows SE into a large wetlands area N. of Rd. P.

I believe the major lateral W. of me has been piped in as of several years ago. I don't know if it is related or not but for the last 3 springs there has been little water available to me until the end of June. At that time the inflow to my point of diversion increases way beyond what I can use. The flow has remained at this high level until almost Nov. 1st the last 2 years. It would seem that it could be reduced several weeks in advance of that. I don't think anybody above me to the west is growing anything that would require water much after October 1st.

While the draft plan didn't directly address my general location I would like to express my concern that adjudicated rights not be lost in the shuffle. I found this area by flying over it and recognized the beauty and unique nature of the multiple "finger" valleys with water running between the hills and mesas. The associated wetlands created by the historic flow of water courses is rich in wildlife and bird populations. I can't see a justification for drying up

what has managed to thrive over the years. Clearly, we bought into the environment with the expectation that it is what it was.

That said, I'm willing to do anything I can to improve the overall situation regarding water conservation and insure it's best usage.

Respectfully,

John Kelley  
14582 Road 21  
Cortez, Co. 81321

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**Zimbra****carrie@durangowater.com**

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**Comments from K. King : 18032 Rd G Cortez CO 81321**

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**From :** Karmen King <kking@aquatox.us> Wed, Jun 21, 2017 03:27 PM  
**Subject :** Comments from K. King : 18032 Rd G Cortez CO 81321 📎 1 attachment  
**To :** comments@durangowater.com

Hello!

My comments pertaining to the Dolores Project Drought Contingency Plan are attached. I appreciate your time and willingness to review these. Please contact me with any questions you may have!

Karmen King

**Karmen King**  
Aquatic Toxicologist/Grayling - Proprietor  
18050 Rd G  
Cortez, CO 81321

Phone and FAX: (970) 565-0278  
Cell: (970) 409-9591

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 **K. King Comments Drought Plan.docx**  
31 KB

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**Attn. Harris Water Engineering, Inc.,  
Dolores Water Conservancy District,  
Montezuma Valley Irrigation Co., and  
Ute Mtn. Farm and Ranch Enterprise.**

**June 21, 2017**

**Regarding: Comments on the ‘Dolores Project Drought Contingency Plan’.**

To all parties referenced above;

This letter is being provided in order to document my concerns regarding the ‘Dolores Project Drought Contingency Plan’. I appreciate your time and willingness to review these comments.

**Background**

I am a home owner in McElmo Canyon (address: 18032 Road G). My property encompasses approximately seven acres with the Lower Wilson Ditch bisecting the upper portion. I own four shares on the ditch and rely on the water for two orchards comprised of cherry (3 trees), apple (2), apricot (2), peach (32), peach cot (2) and pear trees (4). In addition, I’ve landscaped my backyard to contain a ‘three tiered garden’ that is also reliant on the ditch. We have installed a ‘settling tank’ and pump system that feeds the ditch water to all these features.

We moved to our McElmo home in 2003 and immediately set about landscaping the property with the creation of the orchards and garden mentioned above. The amount of labor and cost associated with these efforts is substantial. In absence of being able to rely on the ditch water, we would have to install a potable supply irrigation system. The cost of installation and the cost of the potable water itself would be prohibitive for us. We would not be able to sustain the trees and gardens.

The loss of these features would be devastating to us given the amount of effort we have put forward, and the amount of enjoyment and return we have grown accustomed to over the years. These features are now mature and produce annually for us. In addition, these features have added value to the property itself. The property occurs on a ‘landslide slope’ and helps to anchor the migrating formations.

**Comments**

1. We have read and agree with the comments provided by Chuck Greaves/Lower Wilson Ditch Association in his letter dated June 19, 2017. We will not belabor those same concerns herein.
2. The loss of ditch water would devastate our orchards and gardens. Roughly four acres of our seven acre parcel would be rendered useless. We would lose our investment and need to re-landscape our property to accommodate the loss of water. This represents a significant investment and future cost (of purchased water) that we likely cannot afford.

3. The loss of ditch water would create secondary impacts to the visual and aesthetic resources of McElmo Canyon as a whole. The ditches create a 'ribbon of life' that adds an aesthetic resource to the canyon that is enjoyed by the residents and tourists who frequently travel the length of the Canyon in route to Hovenweep, Sand Canyon, and Utah.
4. Finally, I must emphasize Mr. Greave's concerns surrounding the 'lack of corroboration'. The McElmo land owners were made aware of this plan through an email system developed amongst the canyon residents. I was fortunate in that HWE informed me of this plan, and its availability for review. It seems prudent that all landowners affected by this plan should have been given notification either by mail or public notice.

#### **Question**

I have recently been working with Montezuma County regarding the taxable valuation of my property. Most of the McElmo Canyon parcels have designated 'agricultural potential' given our altitude, soil conditions and access to water. Given the lack of 'water', I'm curious how the County valuation and subsequent tax values would be affected. Was the County given an opportunity to review this plan? Do they realize the potential impact to the applied land use designation?

Again, thank you for your time and consideration of these comments. If you have any questions or require further information, do not hesitate to contact me at your convenience.

**Karmen King/Aquatic Toxicologist/Grayling LLC  
18032 Rd G, Cortez CO. 81321  
(970) 565-0278 or (970) 409-9591  
kking@aquatox.us**

**Zimbra****carrie@durangowater.com**

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**Public comment re Dolores Project Drought Plan**

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**From** : Lynda Larsen <elevenhorses@gmail.com>

Fri, Jul 21, 2017 08:11 AM

**Subject** : Public comment re Dolores Project Drought Plan**To** : comments@durangowater.com

Gentlemen:

I am a homeowner and irrigator in McElmo Canyon and a member of the Lower Wilson Ditch Association, LLC ("LWDA.")

One fact that your proposed Plan fails to acknowledge is that the entire Wilson Ditch is within the DWCD boundaries, and that every member of the LWDA pays line-item property taxes to fund the DWCD. This means that all of the DWCD's activities detailed at section 1.3.6 of the Plan and elsewhere have been funded in part by us.

Your Plan speaks in broad generalities as to all the wonderful benefits that will accrue to the Dolores Project irrigators from the Plan's proposed mitigation measures, but the fact is that no such benefits will accrue to us. Indeed, you might as well insert the qualifying phrase "except for those on the Wilson Ditch" throughout the Plan document.

Although we've become inured to receiving no benefit from our membership in DWCD, we never anticipated the day when the management of DWCD would propose measures that would actually harm us. That day has now, alas, arrived.

The simple fact is that DWCD's participation in the planning task force has ignored the Wilson Ditch, the LWDA, and its members. It has failed to identify us as stakeholders, or to consider our interests. It has, ultimately, thrown us under the bus.

That said, here is what I would like to see happen in order to benefit the Wilson Ditch and to provide some return on the 50+ years we've been investing in DWCD:

1. Acknowledge our status as DWCD members in the Plan in a way that distinguishes us from the rest of the McElmo Canyon irrigators;
2. Include in the Plan some provision in times of drought to guarantee water delivery to the Wilson Ditch via Hartman Draw;
3. Measure the water so delivered such that it will not be subject to the senior priorities of the downstream McElmo irrigators who are not DWCD members and who pay no taxes to DWCD.

Thank you for your consideration of the foregoing.



Lynda Larsen  
17374 Road G  
[Cortez, CO 81321](#)

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Zimbra

carrie@durangowater.com

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**McElmo Canyon is an Montezuma County resident too!**

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**From :** Marc <marc@kellyplace.com> Tue, Jun 20, 2017 12:02 PM  
**Subject :** McElmo Canyon is an Montezuma County resident too! 1 attachment  
**Cc :** comments@durangowater.com,  
kertel@co.montezuma.co.us,  
jlambert@co.montezuma.co.us,  
lsuckla@co.montezuma.co.us, darlene marcus  
<darlene.marcus@mail.house.gov>,  
info@doloreswater.com

**To Dolores Water Conservancy District and Montezuma Valley Irrigation Co. and all concerned:**

(CC to: Montezuma County Commissioners, Scott Tipton and DWCD)

Attached please find our comments and response to your Draft Plan covering possible future drought conditions which may worsen here in Southwestern Colorado and has a damaging affect on the McElmo Canyon residents by taking away discharge water from the upper valley.

Thank you for extending the comment period to June 23rd so the residents of McElmo Canyon have time to prepare their comments and forward them to your committee.

**Our letter is repeated here in the case you can't open the nicer looking PDF file:**

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My feeling is since MVI has been letting their overflow come down here for more than 100 years and not saying much or anything about it would imply that McElmo users are "established users" and thus grand-fathered in with MVI as part of our seasonal supply. MVI could have and should have informed and asked residents down here for membership and use fees for all these years, but didn't. This doesn't change the history that we were included in the water system gratis for decades and decades. Clear provision and use has been established of that water as well as allowed for over the decades. MVI has always planned for and allowed this overage to exist which insures there was enough flow to carry away debris from their ditches and canals.

MVI could have regulated that excess waters all those years rather than let it continue downhill through our creek. But they elected to do the easy thing and send more than their

members needed while knowing they couldn't get it back or store it (in another reservoir). This establishes use of the waters.

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At the very least MVI should consider all of us down here as "defacto members" of it's group since we have been so via. demonstrable supply and usage for so long. These are great points and good "meat" for lawyers to pursue in a class action against you on this issue for McElmo Canyon users. How can MVI be so arrogant as to make a case to exclude this canyon from the general waters management being we are all in the same Dolores Water Conservancy District. I see no borders for that district, why do you want to lop us off? Just because you haven't charged us, now excludes us?

Your plan has a proposed project to catch all the over flow at the head of the creek somewhere up by Drew's winery and pump it back up to the valley at a cost of over \$15 Million to install, not counting the yearly cost to run. Your intent to get grant money for that, public money to satisfy your exclusive club whilst ignoring a Montezuma County agricultural area in the process is insane. We pay the same tax dollars as MVI members!

Your project spending over \$15M for approximately 15cfs of water (the creek must be around 10cfs baseline we would get to keep, and 15cfs to 25cfs of overflow from May to Nov each year), so for that fairly small amount of water a boat load of public monies would be spent. All in the name to help the "poor farmers" up there in the valley farming region whilst short change us who elected to live down here where we have a creek to use for our farming. Your add flow is nice and we would like to keep it.

A side note, if MVI had a mini-dam and pumping station who would watch them making sure they do not take below the baseline of McElmo water? All of the City of Cortez land drainage comes down here as well as the final process water from the sewer plant, do you plan to steal that too? This contributes to a baseline of several CFS of unowned waters (not owned by MVI at least). How would MVI know what their over flow is exactly? Has DWCD/MVI done a study, have plenty of supporting data ready to publish on what they believe is theirs?

My bet is if MVI got this project funded and built, they would steal as much of McElmo baseline as they could get because they too see the sewer water Cortez is dumping into the creek baseline as a plus to their plan. I suspect MVI would love to have that water to sell to their members too.

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Have you informed Utah for an opinion? This flow adds to the San Juan River, have you announced your plans to the Federal govt. about taking McElmo's average 25 to 50 CFS state line flow away?

This flow excess has been established for one hundred years or more, feeds Lake Powell, Lake Mead and the great state of California! What do you think Calif. will want to do to your plan which takes water away from them in a severe drought for your gardening uses? Don't down stream demands rule the roost by using the Federal Water Shed Act as cover to lock up waters west of the continental divide? Isn't there a general use and return excess to the watershed rather than your "use to extinction" statements in the meeting notes?

My final point is rather than attempt to change history with your plan, why haven't you included McElmo Canyon owners in the fold so to speak. All these decades we have produced many fruits and crops which have added to the Counties productive yield. Some water is used for grapes, fruits, horse feed hay and recreational land improvements. Many residents farm and offer their products next to your member's at the county farmers market.

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We are willing to have paid something towards our water usages since we have been here, please ask the owners of McElmo Canyon rather that exclude and ignore them as you have indicated in your current drought plan. Save \$15M and simply keep doing what you always have for 100 years!

Thank you for your time and consideration, and water,  
Marc Yaxley, Kelly Place B&B, Land Owner, growing fruit trees, grapes, grasses, recreational comforts.

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Web: <http://www.kellyplace.com> 970-565-3125 14537 Rd. G Cortez, CO 81321

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 **Letter to DWCD Drought Plan.pdf**  
54 KB

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**To Dolores Water Conservancy District and Montezuma Valley Irrigation Co. and all concerned:**

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Marc Yaxley, Land Owner, growing fruit trees, grapes, grasses, recreational comforts.

Zimbra

carrie@durangowater.com

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**McElmo Canyon is an Montezuma County resident too! Water issues for this part of the state.**

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**From :** Marc <marc@kellyplace.com>

Tue, Jun 20, 2017 09:37 PM

**Subject :** McElmo Canyon is an Montezuma County resident too!  
Water issues for this part of the state.

📎 1 attachment

**To :** don coram senate <don.coram.senate@state.co.us>,  
marc catlin house <marc.catlin.house@state.co.us>,  
comments@durangowater.com

To Representative Marc Catlin, Senator Don Coram;

I realized I should also send this note and comment to our state political leaders for our region as well as Scott Tipton and the Montezuma County commissioners.

Please find the attached letter/file which we have sent to all local agencies here in Montezuma County pertaining to the Drought Water Plan the these two groups have come up with which does not fairly consider a long time user: McElmo Canyon land owners. These owners will/would suffer major loses of their water were to be cut off in favor of it being sent to others with no regard for the down stream users.

Thank you for your time and help out on this issue anywhere you feel you can!

Best regards,  
Marc Yaxley

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**From:** Marc**Sent:** Tuesday, Jun 20, 2017 12:02 PM MDT**To:** [comments@durangowater.com](mailto:comments@durangowater.com), [kertel@co.montezuma.co.us](mailto:kertel@co.montezuma.co.us), [jlambert@co.montezuma.co.us](mailto:jlambert@co.montezuma.co.us), [lsuckla@co.montezuma.co.us](mailto:lsuckla@co.montezuma.co.us), [darlene.marcus@mail.house.gov](mailto:darlene.marcus@mail.house.gov), [info@doloreswater.com](mailto:info@doloreswater.com)  
**Cc:** [comments@durangowater.com](mailto:comments@durangowater.com), [kertel@co.montezuma.co.us](mailto:kertel@co.montezuma.co.us), [jlambert@co.montezuma.co.us](mailto:jlambert@co.montezuma.co.us), [lsuckla@co.montezuma.co.us](mailto:lsuckla@co.montezuma.co.us), [darlene.marcus@mail.house.gov](mailto:darlene.marcus@mail.house.gov), [info@doloreswater.com](mailto:info@doloreswater.com)**Subject:** McElmo Canyon is an Montezuma County resident too!**To Dolores Water Conservancy District and Montezuma Valley Irrigation Co. and all concerned:**

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We are willing to have paid something towards our water usages since we have been here, please ask the owners of McElmo Canyon rather that exclude and ignore them as you have indicated in your current drought plan. Save \$15M and simply keep doing what you always have for 100 years!

Thank you for your time and consideration, and water,  
Marc Yaxley, Kelly Place B&B, Land Owner, growing fruit trees, grapes, grasses, recreational comforts.

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Web: <http://www.kellyplace.com> 970-565-3125 14537 Rd. G Cortez, CO 81321

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 **Letter to DWCD Drought Plan.pdf**  
54 KB

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Zimbra

carrie@durangowater.com

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**Re: McElmo Canyon is an Montezuma County resident too!**

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**From :** Marc <marc@kellyplace.com>

Wed, Jul 19, 2017 07:14 PM

**Subject :** Re: McElmo Canyon is an Montezuma County resident too!**To :** Carrie Lile <carrie@durangowater.com>**Cc :** kertel@co.montezuma.co.us,  
jlambert@co.montezuma.co.us,  
lsuckla@co.montezuma.co.us

Hi Carrie, and MVI/DWCD board, county commissioners, et. al.,

**I attended the meeting and learned quite a bit about how "things" work in this area dealing with the water issues. Many of my questions were answered in the meeting during the general discussions that took place.**

**I would like to add to my previous comment email/letter the following:**

After learning what MVI and DWCD are planning and their reasons I really felt the 70 or 80 of us from McElmo Canyon really are the "odd people on the outside" of water supply and usage here in Montezuma county. Of course those that have been on the MVI supply line for years are happy as can be with what they are using and taking action to save losses by upgrading their in field equipment. This is the main cause of the decrease of water added to McElmo Creek by MVI over the last few years. That is great as we all want to conserve water rather than see it wasted.

I also heard that a "Mr. Wilson" had been a large land owner and turned town MVI around 1920 (not sure of the year exactly, someone told this story) and rather going it alone on his own ditch and supply from the creek. That was that and his ditch is still there and supplies many people as the land was divided up to what it is today. It is sad that this Wilson determined with a one time answer to MVI that there would be no one further down the creek that would be interested in securing a part of the larger supply that would be eventually brought over from the Delores river via. that tunnel and pipelines.

I wish to state that it should be a consideration for MVI to open up share sales for additional

water that we need down here in light of the fact they have been stocking our creek over the years with it. I do not mind paying something for water we use above and beyond our existing senior water right (0.25cfs direct draw/pump on McElmo) and think I heard others in the meeting with the same feeling. There was discussion of class C shares and one farmer did some barking over "protecting his class A share people", must have been a board member (his statements demonstrated something, didn't it?)

I wish that farmer to know that the water he is using, and all of us, comes to us free and belongs to him only in token of paying something to MVI every year for exercising use of those shares which move the water from one water shed to the upper valley. The water is taken for free from the Delores River being that it comes from the greater western water shed between Cortez and Durango. Just because he bought land that has MVI shares attached to it doesn't mean it is decent or proper for him to "dry you out" as he was boasting to someone just down stream from his land near the Cortez airport. As a company I would think MVI would want to service more clients as things progress, growing as a company as it goes.

I can't go and get water out of the Delores river and get it here, that takes a planned effort by people that organize as a "company" such as MVI. Some of that water should be available to us down here to buy just like that farmer does after all. MVI is getting water from an allocation to people that I would think have NO water rights on the Delores river, rather an amount allocated by the state or federal govt. which is to supply a need for a down stream region and it's peoples because of it's abundance. Transporting water is the real issue for us down here, even though we have a creek on our properties.

I would ask the board of MVI and DWCD (not sure how each of these play into the situation) to consider opening up enrollment in shares for the people on this road and creek. It makes sense and brings together all of Montezuma County under the same "company" for irrigation waters. Of course MVI would only do so with a lower privileged share level than what they have, protecting their share seniority. However the water they saved from their class A shares still has the value of a class A share, and could be sold elsewhere as that rather than devalued to B or C levels (I'm assuming this is how class shares work?).

I also learned about "in field water saving" that this does make more water available that MVI could open up and sell shares for usage of. This is good as nothing really needs to be added to the system to facilitate this. I am in question as to how this would work in parallel with our existing water right and would like to see this as a supplement to that right so we would be guaranteed water in the dryer seasons which are coming.

Additionally, I heard about the 30,000 acre feet that leaves the state and is lost (well it's not lost as someone down stream is counting on it being there) and a dam and pump back configuration might be a solution. This sounds great and does give County residents a chance to reuse/recapture the water before being lost to Utah. Of course a major expense to do this and the fact that it would require major construction in the canyon would only be accepted by canyon residents if we were included as stake holders in such a plan. There would need to be rights of way, easements and the like that would be easier to obtain if MVI were on the same side of the fence with the canyon residents.

Thank you all for taking the time to read our comments and hold the meeting to educate some of us as to how all this came about in our county. I moved here in 2004 to get away from a big city and to be among a smaller tighter knit community of rural Colorado. I used Colorado water for 35 years in San Diego and always thought that was a "brand" of water, not knowing at the time I would move to the head waters of those mighty rivers that make the whole west coast possible. Let's all use that water here in our state first by dirtying it up before we send it to California!

Regards,  
Marc Yaxley, Jerene Waite, owners Kelly Place B&B, 14537 Road G.

***Original Email Comment Below:***

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**From:** Carrie Life  
**Sent:** Wednesday, Jul 5, 2017 3:11 PM MDT  
**To:** Marc  
**Cc:** [kertel@co.montezuma.co.us](mailto:kertel@co.montezuma.co.us), [jlambert@co.montezuma.co.us](mailto:jlambert@co.montezuma.co.us),  
[lsuckla@co.montezuma.co.us](mailto:lsuckla@co.montezuma.co.us), darlene marcus  
**Subject:** McElmo Canyon is an Montezuma County resident too!

Dear Marc,  
Your comments were received. Thank you for taking the time to review the document and emailing us with your feedback.

**Zimbra****carrie@durangowater.com**

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**McElmo Canyon**

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**From :** marilyn.whitaker <marilyn.whitaker@q.com>

Sat, Jul 15, 2017 06:08 PM

**Subject :** McElmo Canyon**To :** comments@durangowater.com

I am writing this in regards to the Dolores Drought Plan. We own a home on 10 acres in McElmo Canyon. We have 20 shares of Lower Wilson Ditch water rights. We have irrigated pastures (approximately 4 acres) on which we pasture sheep or steers, an orchard with 15 fruit trees as well as 3 additional fruit trees and 2 vegetable gardens, all of which we could not sustain without irrigation. Our property values would decrease substantially without the ability to irrigate. I sincerely hope you will reconsider the effect your plans will have on the residents of McElmo Canyon, many of whom have farmed and ranches here for generations.

Have you been down our canyon and seen the hay fields, pastures and vineyards? Do you buy produce at the Cortez Farmer's Market or hay for your livestock? You will destroy a whole part of what makes Cortez such a great place to live and raise a family!

Thank you for taking the time to read this ~

Marilyn Dedrick  
19766 Rd G  
Cortez, CO 81321  
970-565-3532

Sent from my Verizon, Samsung Galaxy Tablet

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Normand Birtcher  
14686 CR 26  
Dolores, CO 81323

July 20, 2017

Harris Water Engineering, Inc.  
954 East 2<sup>nd</sup> Avenue  
Durango, CO 81301

Dolores Water Conservancy District  
P.O. Box 1150  
Cortez, CO 81321

Montezuma Valley Irrigation Co.  
P.O. box 1056  
Cortez, CO 81321

Ute Mtn. Farm & Ranch Enterprise  
P.O. Box 53  
Towoac, CO 81334

RE: DOLORES PROJECT DROUGHT CONTINGENCY PLAN

To All Concerned:

My name is Normand Birtcher. I have resided in the Four Corners Area much of my life and have kept bees on a commercial scale in Montezuma County for nearly two decades. You have probably seen my raw local honey for sale in many area markets under the Mesa Verde Honey brand. We are also a major producer of comb honey for the Honeyville store located north of Durango. A significant portion of my annual income is derived from beekeeping, rental of bees for crop pollination, and the sale of honey.

I have maintained several apiaries in McElmo Canyon continuously for the past seventeen (17) years. McElmo Canyon is a good source of nectar and pollen for my bees simply because it is sheltered from the elements and because of the reliable irrigation water the area receives out of McElmo Creek. The combination of lower elevation, increased number of frost free days and irrigated fields allows for reliable honey crops even in drought years. The area is also excellent for wintering my bees so they can be ready to move into West Slope fruit orchards in early spring to pollinate apples, cherries, pears and peaches.

Your plan to divert significant quantities of McElmo Creek water into Toten Lake will certainly reduce the water table in the riparian areas and dry up many of the irrigated alfalfa fields up and down the Canyon. Without a doubt it will make the area uneconomically viable for me to continue to manage honeybee colonies down there.

The National Environmental Policy Act requires you to produce an Environmental Impact Statement, or at least an Environmental Assessment, of the effects of your proposed action – including economic – such as the negative impacts to my beekeeping operation. It should also include the negative effects on the vineyards and commercial orchards that rely upon my bees to pollinate their crops.

I urge you to find a way to cooperate with local landowners and irrigators to continue to provide consistent streamflows in McElmo Creek so as not to put me out of business.

Sincerely,

A handwritten signature in black ink, appearing to read 'Normand Birtcher', written in a cursive style with a long horizontal flourish extending to the right.

Normand Birtcher




PETITION AGAINST BAD DROUGHT PLAN

*run bees*

We <sup>live</sup> in McElmo Canyon. Some families have been here for more than 100 years. There was water here when it was first settled then waste water got added after the Dolores Project. Many have worked all their lives here to build something up. Our families, animals, crops and land need the water from McElmo to survive. If there isn't water everything we have worked for will be gone.

You should be able to tell us just how much less water there will be in McElmo because of the different ideas in your plan. Especially in drought.

Federal government money should not be spent to stop water from flowing to people, plants, trees, fish and wildlife that need it to live.

  
\_\_\_\_\_  
Signature  
Name: *Normand Birtcher*

*7/20/2017*  
\_\_\_\_\_  
Date

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Signature  
Name:

\_\_\_\_\_  
Date

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Date

**Zimbra****carrie@durangowater.com**

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**McElmo Drought Plan Comment**

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**From :** Paul Maddex <pmaddex@gmail.com>

Tue, Jul 18, 2017 10:50 AM

**Subject :** McElmo Drought Plan Comment**To :** comments@durangowater.com

Hello,

Thank you for the meeting last night and for being receptive to the concerns of us McElmo Canyon residents.

I'd like to add a comment about a topic that wasn't mentioned at the meeting. While your response to considering the value of a riparian corridor, or scenic greenbelt seemed dismissive and unconcerned, please take a moment to consider what McElmo Canyon would be without these factors.

Several years ago a Fire Wise team met with McElmo Canyon property owners to offer their observations, thoughts, and suggestions for fire mitigation. A comment they made to me was that the irrigation in the canyon was actually helping reduce the wildfire danger along the housing corridor. The irrigation water is going into the plants, into the fields and into the trees, making them more moist and less likely to burn. The irrigated pastures, fields and trees create fire breaks that would slow and disrupt a fire's ability to travel. And, in the event of fire, the many irrigation systems in the canyon could be put in play in a defensive action.

If the water flow in the irrigation ditches and McElmo Creek were reduced to drastic levels that a drought plan might initiate, then it wouldn't take long for that greenbelt to become a tinder box, just waiting for the next lightning strike. Given the winds that blow regularly through the canyon, a wildfire scenario would have devastating results. It's very likely that the majority of us in McElmo, all those faces at the meeting, would lose buildings and property. And I suspect that some of the people who were in the room may lose their lives as well, either while trying to defend their farms, or because we became trapped and unable to escape an intense, fast moving wildfire.

With this very real potential scenario in mind, I ask that you contemplate what you would consider to be an acceptable loss of property and potentially life, in return for delivering an extra inch or two of water to other locations in Montezuma County.

Thank you for your consideration,

**Paul Maddex**  
17425 Road G, Cortez  
Lower Wilson Ditch member

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**Zimbra****carrie@durangowater.com**

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**Comments on Draft Dolores Project Drought Contingency Plan**

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**From :** Perry Hensley <phensley02@yahoo.com>

Tue, Jun 20, 2017 01:22 AM

**Subject :** Comments on Draft Dolores Project Drought Contingency Plan**To :** comments@durangowater.com**Reply To :** Perry Hensley <phensley02@yahoo.com>

A good portion of the McElmo Canyon irrigators actually take their water from the return flows in Hartman Draw before it enters McElmo Creek. Their water rights for return flows taken from Hartman Draw date from 1888, and have been prioritized for McElmo Canyon and it's tributaries as established by a 1962 District Court adjudication.

On page 68 of the subject plan it is stated that DWCD has a water right to divert water from Hartman Draw into the THC for direct use in the THC or Totten reservoir. The potential diversion volume is stated as 2 cfs. This represents a significant percentage of the total flow in Hartman Draw and has the potential to significantly impact McElmo Canyon water users ability take and convey water from Hartman Draw. This impact could be particularly severe during a drought period when normal return flows in Hartman Draw may be significantly reduced.

The question arises as to the nature of the stated DWCD water right. Is the water right for virgin water that is somehow passed unused from McPhee reservoir through the DWCD project facilities into Hartman Draw? If not, then it would seem that the water right would have to compete in priority with the McElmo Canyon water users for whatever, natural runoff, seepage, and irrigation return flows exist in Hartman Draw.

The plan should be more specific as to the exact nature of the stated DWCD water right to take water from Hartman Draw, including a discussion of it's priority if not for virgin pass through McPhee reservoir water. The potential impact it could have on the McElmo Canyon water users should also be articulated. Particularly, as it would impact those McElmo Canyon water users who take water directly from Hartman Draw before it enters McElmo Creek.

Thank you for this opportunity to provide comments on the draft Plan.

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**Zimbra****carrie@durangowater.com**

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**FW: Dolores River Drought Contingency Plan**

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**From :** Rodney Carriker  
<rodney.b.carriker@langecontainment.com>

Mon, Jun 19, 2017 02:20 PM

**Subject :** FW: Dolores River Drought Contingency Plan

**To :** comments@durangowater.com

**Cc :** mpreston@frontier.net

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**From:** Rodney Carriker  
**Sent:** Monday, June 19, 2017 10:22 AM  
**To:** 'darlene.marcus@mail.house.gov'  
**Subject:** Dolores River Drought Contingency Plan

Hi Scott,

Where federal funds used to build the water systems that want to take our water.  
Where federal funds used to develop the irrigation systems that they use?  
Where federal funds used to build this plan and implement it?  
Will federal funds be used to pump and take our water?

When did the federal govt. start intentionally ruining eco systems, farm land, property values and American's homes.

Please respond with a notice of receipt.

Sincerely,

Rodney and Kristie Carriker  
McElmo Canyon Farmer

To stop receiving emails, reply with REMOVE in the subject line or contact our head office | Para parar de receber e-mails, responda com REMOVER na linha de assunto ou entre em contato com a nossa sede | Para dejar de recibir mensajes de correo electrónico, responda con REMOVER en la línea de asunto o póngase en contacto con nuestra oficina central | Pour cesser de recevoir des courriels, répondez avec SUPPRIMER dans la ligne d'objet ou contactez notre siège social | 370 Wilsey Road, Fredericton, NB E3B 6E9, Canada

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**Zimbra****carrie@durangowater.com**

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**Dolores drought plan**

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**From :** Rodney Carriker  
<rodney.b.carriker@langecontainment.com>

Mon, Jun 19, 2017 02:32 PM

**Subject :** Dolores drought plan

**To :** comments@durangowater.com

My guess that the class action lawsuit brought by every land owner in McElmo canyon for current and future crop losses, current and future land value losses, and the loss of dirt in general when McElmo flash floods due to no plants holding the sand in place will so big, that it will out weight any liability insurance your board members have.

Sincerely,

Rodney Carriker  
McElmo land owner

Please acknowledge receipt.

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July 21, 2017

[comments@Durangowater.com](mailto:comments@Durangowater.com)

In response to the study and preliminary draft Dolores Project Drought Contingency Plan, done by Harris Water Engineering Inc., this study is very misleading in respect to page 68, paragraph 7, stating 30,000 AF. of water leaves the state annually, most of which is MVI return flow. In years of adequate or abundant water this is partially true. In years of drought this is misleading.

We must keep in mind that MVI irrigation season is normally about 5 months. McElmo Creek runs for 12 months.

During drought, which this plan is about, the water leaving Colorado is very minimal other than normal flooding in the McElmo drainage which spikes the flow out of state, which most of the water is not useable.

In times of adequate or abundant water there is no need for MVI or McElmo to seek more water.

Harris Engineering Inc. has access to the same information that I do and should put this in true perspective to the MVI shareholders. To spend 15 to 16 million of tax payers money to pump back less than 18 csf. In times of drought is not feasible.

Other issues to consider are environmental and economical draw back to the county.

Respectfully Submitted,  
McElmo water user  
Sheldon Zwickler

June 26, 2017

Dear Dolores Water Conservancy District, MVIC, and Ute Mountain Ute's Farm & Ranch,

We have reviewed the Draft Dolores Project Drought Contingency Plan. We appreciate your investigation of options to assure water delivery during drought conditions. We also appreciate the plan's recommendation for conservation and cooperation among irrigation districts. We assume this is a draft plan from your consultant that you will modify and ultimately adopt as a final plan.

We live in the McElmo Canyon area and am associated with one of the many irrigation organizations there—specifically the Black Dike Pipeline Company. We formerly were the Black Dike Ditch before we (with the help of the state and federal government) embarked on a \$600,000+ project to put our water into a pipeline to conserve water. The federal and state government gave us \$337,650 in grants for the project—the rest of the project is financed by a 30-year loan that the members of Black Dike Pipeline Company are paying-off.

We appreciate all my neighbors and friends in Montezuma County who depend upon irrigation water to sustain a living. We hope we never come to a point where we are pitting neighbor against neighbor for water. The reason we call this place home is that neighbors here are friendly and help each other. We believe we are better by working together rather than acting alone.

One of the options that the Durango consultant identified as a "low priority" action is to take water that now flows to McElmo Creek and pump it to Totten Reservoir. This would result in a huge loss of water to McElmo Creek and result in degradation of the water quality. Our ranches and farms would be devastated not to mention the fish, wildlife, and vegetation that depends upon the existing flow. We would recommend that this option be eliminated from the draft plan before a final plan is adopted. We can work together to conserve water and act cooperatively to assure all have enough water to survive rather than a portion of our County irrigators surviving on the backs of McElmo Canyon irrigators.

The projects that provide the Dolores District, MVIC, and the Ute Mountain Farm & Ranch with their irrigation water historically have come from projects paid largely by federal, state, and local taxes. Within the County, we have all contributed to those projects. One of the largest projects created recently is the McPhee Reservoir which was largely funded by the federal government. Since 1986 when that project was completed, McElmo Creek received additional water which allowed development of agriculture. This has been the case for 31 years.

The draft plan largely ignores McElmo Canyon. We appreciate that a special meeting will be held on July 17 to begin working with each other. There is an opportunity to expand the plan to add McElmo Canyon into it—to identify everyone's needs and how to best accommodate those needs so that we all survive.

Sincerely,



Steven Fusco

and



Mark Montgomery

15200 Road J; Cortez, CO. 81321

cc. U.S. Bureau of Reclamation; Natural Resources Conservation Service; and Harris Engineers





**Zimbra****carrie@durangowater.com**

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**Concerns on Dolores Project Drought Contingency Plan**

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**From :** Susan Kyle <skyhmcs@hotmail.com>

Thu, Jun 22, 2017 02:34 PM

**Subject :** Concerns on Dolores Project Drought Contingency Plan**To :** comments@durangowater.com**Cc :** tara tozer <tara.tozer@oldcastlematerials.com>

To whom it may concern,

With great disgust I just heard that our historical water rights are in grave danger from people with their own self interests. Our water rights are our lives and it is how we feed our families and make our livings. Our water rights feed our cattle through the winter months, water our fruit orchards, grow produce, hay, and pasture for our livestock. My wife and I produce through our ranching and farming enough food to feed 1300 people a year. How many people does a water engineer (themselves) actually feed a year? Maybe the ideas to take our water from us is to line someones pocket and serve their own interests. After reading some the Dolores Project Drought Contingency plan it appears that the Ute Tribe and fish are more important than food and livelihoods. It appears that the people in McElmo Canyon and our historic water rights are not important and we are a very small minority in this situation so to hell with us. Some people in control of the water seem to only care about grant funding and self interests and not about farmers and ranchers trying to make a living.

My family, the Tozer family, came to this area from Canada and settled in McElmo Canyon. My grandfather, Clyde Tozer, surveyed the ditches himself and built them with teams of mules and man power which was hard work through rough terrain. He worked hard to get irrigation water to his ranch and to make something productive of the land and to provide for his family. Clyde Tozer ran as many as 1500 head of cattle and produced semi-loads of peaches from his property. That is what this water, (our water) has done for many, many years is provide good food for many people. My grandfather, Clyde Tozer, had a forest permit on Ute Mountain until he was forced out and the land was given to the Ute Indians for a reservation. My family has worked hard for four generations farming the land and have worked hard to protect our water rights. It is really unfair that some engineers and water companies are willing to sacrifice the livelihood and way of life of a few in order to give the water to others. Many of the residents of lower McElmo have been there longer than most residents in the Cortez area and McElmo Creek is a historic drainage way with very old adjudicated water rights. It appears that the government subsidized entities like the Ute Tribe are being given priority over the hard working farm and ranch families in McElmo. Our adjudicated water rights are number 12 and 13 in this valley. Please leave our water rights alone so that we can earn a living to pay for this land and be able to pass something of value on to our children and grandchild. My six year old grandchild tried to write a letter because he is worried that he won't have any water to farm the family farm some day. The water in McElmo Creek creates a ribbon of life through the canyon that is so beautiful. Do not interfere with this unique ecosystem, a reduction in water would disrupt and change the entire ecosystem in the canyon.

Our son and daughter-in-law just purchased farm-ranch land in lower McElmo Canyon with #13 adjudicated water rights. They have to have their water in order to live, survive, and pay for their land. This plan would ruin their lives and the home they wanted to spend the rest of their lives on. Water is needed for life, without water there is no life or way to make a living in McElmo for the farming and ranching families. The people in McElmo are just as important as everyone else and their livelihoods are just as important as the people in town who work 8 to 5 jobs.

DWCD seems to be interested in selling water, but don't be taking our water that we own and then selling it to the highest bidder. We have historic water rights which are just as important as everyone else and we have worked hard to maintain these rights. If this plan is implemented it could and will ruin us, break us financially, and take all the value out of our real estate as well as ruin the beauty and charm of McElmo Canyon.

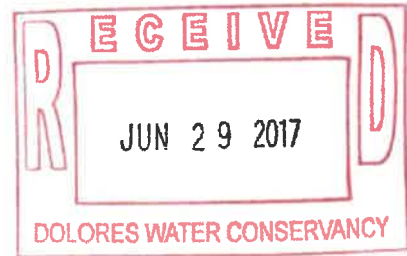
Sincerely,  
Bruce and Lisa Tozer  
Sandy and Tara Tozer  
Alesha Tozer

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VINCENT R. LEE ARCHITECT

Montezuma Valley Irrigation Company  
P.O. Box 1056  
Cortez, CO. 81321

Dolores Water Conservancy District  
P.O. Box 1150  
Cortez, CO. 81321



26 June 2017

Ladies and gentlemen,

My name is Vincent R. Lee and my wife Nancy and I live at 14573 County Road G, Cortez. Beginning in 1998, we have acquired three parcels totaling about 50 acres in McElmo Canyon, including 1/2 CFS in the old Black Dike Ditch, that since 2009 has been the Black Dike Pipeline. The current pipeline was installed at the total cost of approximately \$603,980, \$337,649 of which was a federal grant through NRCS and the remaining \$266,331 via a long-term, low-interest loan from state CWCB funds. To date, the eleven families in the Pipeline Company have met all requirements of and made all payments against the above loan, although it will be another twenty years before the loan is paid in full.

We now learn that your two organizations have drafted a long-term contingency plan with the potential to negate this entire expenditure of public money, as well as destroy the agricultural livelihoods of all eleven families, our neighbors and an entire riparian ecosystem rich in wildlife, one of only three in this desert county. Worse, the 36-page plan pays scant lip service to these consequences in one brief paragraph:

**MVIC and DWCD's importation of water to the Montezuma Valley is intertwined with the use of MVIC return flows by farmers on McElmo Creek and its tributaries. Farmers along McElmo Creek and its tributaries early on anticipated making use of return flows of imported Dolores River water. The first McElmo water rights filings were made in 1888, within a few years after construction of the tunnel and Great Cut began. Today, some farmers have adjudicated water rights dependent on those return flows. Further, some landowners within the MVIC service area hold both shares in MVIC and separate individual water rights.**

The plan then goes on to estimate the cost of your proposal with absolutely no mention of or consideration for the cost of implementation to those of us affected here in McElmo Canyon:

McElmo Creek flows out of Colorado west of Cortez with an average annual volume of 30,000 AF leaving the state. Most of this water is return flow from MVIC irrigation. Reuse of a portion of this water might be achieved through a pump and pipeline from McElmo Creek downstream of Hartman Draw, west of Cortez. This plan is called the McElmo Pumpback and would increase the inflow into Totten by 4,500 AF per year. The increased reservoir yield would be pumped again into the THC to increase the water supply to Project users. The cost of the McElmo pump and pipeline and the pump and pipeline THC is in the range of \$15 to \$16 million.

Does the above quoted estimate mean that 25,500 AF would continue to flow through McElmo annually even if the "pumpback" scheme was implemented? Assuming so, have studies been conducted to determine the effect of the loss of the 4500 AF during the four-month irrigation season for the several McElmo irrigation groups currently depending on that water? Apparently not.

In response to citizen input at your June 7th "Outreach Meeting," it was stated that your respective organizations had "no obligation" to consider impacts outside your respective districts. Those of us whose entire property values, neighborhood culture, physical environments and in some cases livelihoods could effectively be downgraded or disappear upon implementation of this pumpback scheme, beg to differ. Your plan constitutes a potential "taking" without proper representation, recourse, evaluation or mitigation and would almost surely face a court challenge if adopted in its present form.

We understand the need for far-reaching contingency plans in the face of the threat of long-term drought conditions. We also understand that some of the water we use here in McElmo is technically your water, but it is also true that our rights to use that water have long been recognized by the state and are at least as old as yours. A plan for the management of the resource is entirely appropriate, but we believe that ALL affected parties should be involved and ALL costs of any changes proposed should be considered prior to any implementation, and mitigation of those costs undertaken wherever possible.

Thank you for consideration of our views,

  
Vince and Nancy Lee

cc: Harris Water Engineering, Inc.  
Colorado Water Conservation  
U. S. Bureau of Reclamation  
Natural Resources Conservation Service  
U. S. Congressman Scott Tipton  
Ute Mountain Ute Tribal Farm & Ranch Enterprise  
Black Dike Pipeline members

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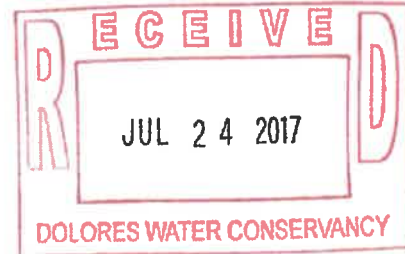
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VINCENT R. LEE ARCHITECT

Montezuma Valley Irrigation Company  
P.O. Box 1056  
Cortez, CO. 81321

Dolores Water Conservancy District  
P.O. Box 1150  
Cortez, CO. 81321



22 July 2017

Ladies and gentlemen,

This will follow up on comments I submitted at the McElmo Canyon input meeting in Cortez on Monday, July 17<sup>th</sup>. In those comments, I made reference to a recent Strategic Plan developed by the Montezuma Land Conservancy (MLC). Although I was an MLC board member at the time it was completed, I am not now and am not thus representing that organization in this matter. I do, however, have MLC's permission to offer the contents of the above Plan in support of your deliberations.

The 60 page Plan inventories the public values existing in MLC's two-county area of interest, Montezuma and Dolores, and thus includes McElmo Canyon. The values documented include scenic, historic, agricultural, ecological and other public resources that their 401 (c) (3) tax status authorizes them to protect. Unfortunately, the specific references to McElmo Canyon are scattered throughout the document, not gathered in a single, convenient section.

For this reason, I am not appending the entire Plan, but notifying you of its availability from MLC if or when the issues contained therein become germane to your process. Suffice it to say, however, that the Plan documents very significant public values in all categories within the McElmo Canyon riparian corridor, most of which are partly or entirely water dependent.

Thank you for consideration of my views,

Vince Lee

A handwritten signature in black ink that reads "Vince Lee". The signature is written in a cursive style.

cc: Harris Water Engineering, Inc.  
Jon Libowitz  
Steve Fusco

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July 21, 2017

Mr. Steve Harris  
Harris Water Engineering, Inc.  
954 East 2nd Avenue, Suite 202  
Durango, CO 81301

Via Email Only: [steve@durangowater.com](mailto:steve@durangowater.com)

Mr. Michael Preston, General Manager  
Dolores Water Conservancy District  
P.O. Box 1150  
Cortez, CO 81321

Via Email Only: [mpreston@frontier.net](mailto:mpreston@frontier.net)

RE: DWCD Draft Drought Contingency Plan

Dear Mr. Harris and Mr. Preston:

Our office represents Lizard Land, LP, the owner of property located in McElmo Canyon at 12318 Road G, and commonly known as the Sutcliffe Vineyards. Lizard Land, LP also is the owner of:

“all water rights, water storage rights, ditch stock and ditch rights (including but not limited to Grantor’s rights to water, if any, as decreed in Appropriation Priority # 62-1, Ditch 1, Rock Creek Ditch), geothermal rights, whether adjudicated or unadjudicated, any and all entitlements to water, whether contractual, by permit, or otherwise, and any and all groundwater rights, whether tributary or non-tributary, and whether adjudicated or not, and any and all water rights historically used upon and /or appurtenant to the real property described as:

Lot 2, Lutken Subdivision, a 2 Lot Minor Subdivision, Located in Section 34, Township 36 North, Range 18 West, N.M.P.M., according to the Plat recorded November 29th, 2010 under Reception No. 574073 in Plat Book 17 at page 75, in the office of the County Clerk and Recorder of Montezuma County, State of Colorado,

along with and including all permits, easements, structures, ditches, pipelines, headgates, wells, springs, pumps, measuring devices, and other facilities necessary for or used in connection with the exercise of such rights and entitlements.

This Rock Creek Ditch water and occasionally water purchased from Totten Reservoir has historically been used to irrigate hay and vineyards and gardens on the Sutcliffe Vineyards. Lizard Land, LP and its lessee, John Sutcliffe, have a strong interest in maintaining the historic water regime and riparian habitat within McElmo Canyon and its tributaries, and welcome the opportunity to comment on the Dolores Water Conservancy District's (DWCD) Draft Water Contingency Plan (Plan).

We applaud DWCD and related parties for undertaking this important planning task in accordance with the WaterSmart Drought Response Planning Framework encouraged by the BuRec. Unfortunately, the planning process was flawed from the outset in that McElmo Canyon irrigators and residents are significant stakeholders who should have participated in the Plan formulation and scope but were not consulted by DWCD. Section 2 of the Plan should specifically identify McElmo Canyon ditch companies and irrigators generally as "stakeholders".

While the opportunity for "comment" on the Draft Plan by McElmo Canyon irrigators and residents at the DWCD meeting on July 17 was helpful, the Plan has deficiencies that will require additional research and analysis. After the Draft Plan is revised, additional opportunity for comment on it should be afforded to the McElmo Canyon irrigators and residents and the general public.

1. Here's a bit of historical background as provided to us by John Sutcliffe:

Historically the water flowing into McElmo was perceived as almost limitless and of the highest priority. The farming population of Cortez and the surrounding area was jealous of the situation in the Canyon and never questioned the ancient water rights that established this enviable situation. The white settlers arriving in McElmo in the 1890's were substantial families replete with livestock, expertise and sufficient resources, and chose the Canyon for its' milder climate, fertile land and water. Water that had supported a large native population through millennia. Isolated and distinct McElmo exerted considerable influence as the families soon supplemented their Canyon farms with substantial other holdings both deeded and leased from the Federal Government, desert and mountain. So accepted were the water rights that aided this expansion and prosperity that they were neither contested nor adequately recorded. The general, historical acceptance of them led to McElmo's role as the bread basket of the area. Feeding all the surrounding mining towns as well as their neighbors around Cortez, Mancos, Dolores, Durango and the native villages. Peaches, apricots, apples, pears, cherries, plums, melons, chilies, asparagus and tomatoes, stock wintered, hay cut 4 times a year, labor for neighboring native villages, Ute and Navaho.... the contributions of this iconic canyon are legend.

Following are specific comments on the Plan:



2. The planning area is not well defined. Section 1.2 at page 11 refers to Figure 1, which delineates the Dolores Project area but does not appear to have a “planning area” boundary. No planning area is precisely defined. To the extent that McElmo Canyon irrigators rely to some extent on return flows from Montezuma Valley Irrigation Company irrigators as well as releases from Totten Reservoir, the Planning Area should specifically include McElmo Canyon as well as upper Montezuma Valley.
3. The discussion in section 1.31 briefly touches on historical McElmo Canyon water use. This or another section should be greatly expanded to discuss the existing and anticipated amount, timing, and types of water use and hydrology of McElmo Canyon. McElmo Canyon’s riparian habitat is unique in this area and should be recognized as such.
4. Section 4 should include a separate sub-section on McElmo Canyon in the drought vulnerability assessment.
5. Section 5.1.2.5 of the Draft Plan should be expanded to identify or predict the potential reductions of return flows from the on-going on-farm efficiency improvements by MVIC irrigators expected over the next several decades, as well as potential impacts to McElmo Canyon water flows and water quality from various Plan options.
6. Section 5.1.4.2, Increase Totten Reservoir Inflow, should add a discussion as to the junior nature of the DWCD water right for the Hartman pump-back option and explicitly recognize that this right is junior to the more senior water rights of the McElmo Canyon irrigators. Also, the discussion of 30,000 AF leaving the state annually from McElmo Canyon implies this is lost water, with no analysis. As commented at the recent meeting, much of this flow is from flash floods and is unlikely to be captured for use in the planning area. These flows should not be a justification for drying up McElmo Canyon further upstream through other Plan project options. We question whether the McElmo Pumpback is likely to yield 4,500 AF due to the junior nature of the DWCD water right and the loss of dominion and control of the return flows. This option should be analyzed in greater detail and its feasibility described as low.
7. We encourage adding an analysis of restoring or adding additional capacity to Totten Reservoir and potential releases to avoid drought in McElmo Canyon. This could be the single-most effective way of ensuring that McElmo Creek flows will continue.
8. We support the analysis of adding capacity to Groundhog Reservoir. The Plan overall seeks to mitigate drought as well as add extra flows in the Dolores River, at the expense of the McElmo Creek and the San Juan River. Groundhog expansion would be an exception to such duality and this should be acknowledged. Methods to mitigate drought in McElmo Canyon should be more explicitly addressed and prioritized.
9. Section 5.2.1.2, Drought Reserve using Totten Reservoir, should also reference possible future conveyance for use in McElmo Canyon and not just the THC.

10. Section 5.2.6 McElmo Transit Water Loss Study, described a field study to better estimate the transit water loss to better manage water flows in McElmo Creek. We encourage the completion of this study. The section states that “Any excess in releases from Totten flow out of Colorado and cannot be recovered.” Without a transit water loss study and a definition of excess in releases and discussion of timing of releases, this statement cannot be substantiated and should be modified.
11. There should be a discussion of the need for planning grants to assist McElmo Canyon water users to organize themselves to address issues such as becoming MVIC shareholders, annexing their property into the DWCD, and address issues common to the entire McElmo Creek drainage. Such a discussion would help support future grant applications.

Finally, we endorse the comments of the Lower Wilson Creek Ditch Association in their letter dated July 19, 2017 and comments by Bernard Karwick in his July 21, 2017 letter.

Sincerely,



Stephen B. Johnson Law Firm, P.C.

c. J. Sutcliffe, B. Karwick