STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
SANTA FE

John R. D'Antonio, Jr. P.E.
State Engineer

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December 15, 2005

David Albright
Ground Water Office Manager
US Environmental Protection Agency
75 Hawthorne St. – WTR 9
San Francisco, CA 94105

Dear Mr. Albright:

Attached you will find my comments to the Environmental Protection Agency for Safe Drinking Water Act Determination; Underground Injection Control Program, Determination of Indian County Status for Purposes of Underground Injection Control Program Permitting.

Sincerely,

John R. D'Antonio, Jr., P.E.
New Mexico State Engineer

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STATE OF NEW MEXICO'S STATE ENGINEER COMMENTS TO THE ENVIRONMENTAL PROTECTION AGENCY FOR SAFE DRINKING WATER ACT DETERMINATION; UNDERGROUND INJECTION CONTROL PROGRAM, DETERMINATION OF INDIAN COUNTRY STATUS FOR PURPOSES OF UNDERGROUND INJECTION CONTROL PROGRAM PERMITTING

The New Mexico State Engineer comments on the proposed determination for the Safe Drinking Water Act pending before the Environmental Protection Agency (EPA) that "EPA must determine whether any of the approximately 160 acres of land located in the southeast portion of Section 8, Township 16N, Range 16W, in the State of New Mexico, is part of a dependent Indian community under 18 U.S.C. 1151(b) and, thus, considered to be "Indian Country." The summary of the proposed regulation states that this determination "is necessary in order to establish whether EPA or the New Mexico Environment Department is the appropriate agency to issue a particular underground injection control permit under the Safe Drinking Water Act."

The New Mexico State Engineer comments with respect to potential issues affecting the administration of groundwater within the Gallup Underground Water Basin in the State of New Mexico.

The New Mexico State Engineer has supervision of the measurement appropriation and distribution of all waters of the State of New Mexico. NMSA 1978, Section 72-2-1 (1982). Pursuant to NMSA 1978, Section 72-12-1 *et seq.* (1931), the State Engineer has jurisdiction over the administration and acquisition of new appropriations of

water and over changes and purpose or place of use or point of diversion of existing water rights in all underground water basins, declared by him to have reasonably ascertainable boundaries. The land under consideration overlies the Gallup Underground Water Basin, which was declared by the New Mexico State Engineer on March 5, 1980. Accordingly, all groundwater located under the proposed site falls within the sole and exclusive administrative jurisdiction of the New Mexico State Engineer.

The Navajo Nation Water Rights Settlement Agreement, adopted by both the State of New Mexico and the Navajo Nation after years of negotiation, confirms jurisdiction in the New Mexico State Engineer as Water Master over all waters of the San Juan Basin, including both surface and groundwater. The State Engineer is very concerned that a finding of "Indian Country" for the private land under consideration by the EPA will be used to abrogate or weaken this Water Rights Settlement Agreement, and create confusion and uncertainty, much as existed before the negotiated agreement.

Thank you for your consideration of our concern and comments.