

March 16, 2010

Claudia Borchert  
Water Resources Coordinator  
City of Santa Fe  
801 W. San Mateo Rd.  
P.O. Box 909  
Santa Fe, N.M. 87504-0909

**RE: Proposed Upper Santa Fe River Restoration Project near Two-Mile Pond, Santa Fe County**

Dear Ms. Borchert,

In response to your e-mail request for input from OSE (Office of the State Engineer) regarding the subject proposal:

“The question we identified for the OSE is whether the moving or splitting of a river channel to its “original” location requires any OSE involvement. The Nature Conservancy doesn’t have any water rights and are taking the position that they don’t need any because the river is just being returned to where it historically has been.” (*E-mail from Claudia Borchert, City of Santa Fe, 1/22/10*)

Historically, the 1919 Santa Fe River Hydrographic Survey shows the Santa Fe Creek routed thru Two Mile Reservoir. Nichols and McClure did not exist at the time of this survey and therefore are not shown on the maps. Two-Mile Reservoir was known as Santa Fe Water and Light Co. City Reservoir at the time. No valid permit is in effect to store water in the old Two-Mile Reservoir at this time. We understand some water remains in the old reservoir area below the breached dam elevation as a result of baseflow. The dam is not classified as a “jurisdictional dam”, therefore no OSE Dam Safety permitting is required.

The Water Rights Division (WRD) has concluded no permit for a point of diversion is needed in this case because a diversion to appropriate the waters of the state is located on a stream channel. Water diverted from the by-pass channel would be more like a lateral ditch or wasteway/sluiice which do not require permitting. The OSE does not have any statutory authority to dictate channel alignment.

It appears the project does not contemplate the diversion and distribution of water via man-made works and/or the application of water to a beneficial use. The OSE does not foresee any water right issues with the proposed project so long as sufficient water remains available for diversion by acequias to satisfy valid existing surface water rights. The acequias to consider include Acequia Cerro Gordo and Acequia del Llano, diversions 2 and 3 as shown on Mapsheets 15 and 16, of the Santa Fe River Hydrographic Survey, Vol. II (1977). In addition, as a result of this project, no water may be stored in Two Mile Reservoir unless a permit to do so is obtained, as the rights originally associated with the reservoir were transferred by permit to Nichols and McClure Reservoirs located upstream.

The WRD strongly recommends communication between the project sponsors and the Acequia commissions which may be impacted by the project. If further discussion would be helpful, please do not hesitate to contact WRD District 6 in Santa Fe at (505) 827-6120. Thanks in advance for your cooperation in this matter.

Sincerely,

Bruce W. Richardson  
Water Resource Specialist  
WRD District 6  
Santa Fe, N.M.

CC: John Romero – WRAP Director  
Elaine Pacheco – Dam Safety