



WESTERN GOVERNORS' ASSOCIATION

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May 25, 2012

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave. S.W.
Washington, DC 20250

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street, N.W., Room 6151
Washington, DC 20240

Dear Secretaries Vilsack and Salazar:

The Governors have asked me to express their concern that Federal Trustees representing your departments have asserted claims for damages to groundwater in a natural resource damage case in New Mexico involving Chevron/Molycorp Section 311(f)(4) & (5) of the Clean Water Act, 33 U.S.C. §1321 (f) (4) & (5) and Section 107 (f)(1)&(2) of CERCLA, 42 U.S.C. Section 9607(f)(1)&(2). Claims by Federal Trustees of this nature are unprecedented and are of great concern to the Western States.

While the impetus for this letter is the ramifications of the Federal Trustees claims on natural resource damage cases involving damages to water resources, the ramifications of such legal position extend to the very heart of the Western States exclusive ownership and/or management and control of the groundwater resources within their respective boundaries.

Current law clearly establishes western states' ownership and control of waters within their boundaries. The Desert Land Act of 1877 established and the United States Supreme Court upheld that "following the act of 1877 if not before, all non-navigable waters then a part of the public domain became *publici juris*, subject to the plenary control of the designated states, including those since created out of the territories named." See *California Oregon Power Co. v. Beaver Portland Cement Co.*; 295 U.S. 142 (1935).

Western Governors believe the consequences of the Federal Trustees' claims in New Mexico's natural resource damage case will damage the working relationship between the Western States and the federal agencies that has taken more than a century to establish. I understand that since the early 1990s New Mexico and the Federal Trustees have worked cooperatively and effectively to resolve natural resource damage cases. However the claims of the Federal Trustees for damages to New Mexico's groundwater have delayed the filing of a natural resource damage settlement reached several years ago.

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On behalf of the Governors, I respectfully request your views on the legal basis in support of the Federal Trustees claims in this case.

Sincerely,

A handwritten signature in black ink, reading "Pam O. Inmann". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Pam O. Inmann
Executive Director