

DEMING SOIL AND WATER CONSERVATION DISTRICT
405 E. FLORIDA ST.
DEMING, NM 88030

RESOLUTION #: 2019-11
IN OPPOSITION TO THE DESIGNATION OF THE GILA AND SAN FRANCISCO RIVERS AS
NATIONAL WILD & SCENIC RIVERS RESOLUTION

WHEREAS, Wild and Scenic Rivers designation is being proposed for the Gila River and the San Francisco River stems. The Wild and Scenic Rivers Act of 1968 was created to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations.; and,

WHEREAS, the designated boundaries of this designation generally average one-quarter mile on either bank and one-half mile on rivers, curtailing river management and obstructing private property rights of landowners within the boundaries and on prime farmlands. Additional anticipated significant negative impacts are presented in attached Exhibit: Potential Problems with Wild & Scenic Rivers Designations; and,

WHEREAS, the designation of the Gila and San Francisco rivers, or portions thereof, will mean that flood control for public safety, irrigation for farms, recreation, and water supplies for the communities downstream would all become secondary uses, a lower priority; and therefore, subject to restriction if they are in conflict with the nonexistent "natural and free flowing" character of the rivers; if these are natural areas untrammelled by humans or demonstrate free flowing; and,

WHEREAS, pursuant to the Colorado River Basin Project Act of 1968 and the Arizona Water Settlements Act of 2004, Pub. L. 108-451, 118 Stat. 3478 ("AWSA"), an annual average of 14,000 acre-feet per year of AWSA water is allocated to New Mexico for beneficial use in New Mexico ("AWSA water"). The Secretary of the Interior shall divert water and exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement ("CUFA") solely for the benefit of the New Mexico CAP Entity and for no other purpose; and,

WHEREAS, it is the position of the Deming Soil and Water Conservation District Board of supervisors, duly elected public officials, that once diverted or stored, the AWSA water should be managed solely for the benefit of the New Mexico CAP Entity, to include but not limited to agricultural food production, municipal public water works; and,

WHEREAS, the Deming SWCD, along with neighboring soil and water conservation districts, through the CAP entity, desire to obtain all benefits from (1) the diversion and beneficial use of the AWSA water (2) the development of other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico, and (3) the

exercise of rights and authorities by the Secretary of the Interior pursuant to Section 212(c) (4) of the AWSA, Pub. L. 108-451, 118 Stat. at 3528; and,

WHEREAS, the wild and scenic designation of the rivers would prevent the CAP entity from securing our rightful entitlement to the Arizona CAP waters, taken from the Gila Valley, New Mexico in 1964. It would also prevent the development water rights, promised under the law; and,

WHEREAS, New Mexico Soil and Water Conservation Districts have statutory responsibilities to conserve and develop the natural resources of the state, provide for flood control, preserve wildlife, protect the tax base and promote the health, safety and general welfare of the people of New Mexico, coordinate natural resource planning and management, establish and implement programs to improve natural resources, and foster land and water stewardship with the people and communities that we serve. (Chapter 73 Article 20, Sections 25 through 49, New Mexico Statutes 1978, Annotated, 73-20-26. Legislative determination; purpose of act); and,

NOW, THEREFORE, BE IT RESOLVED, by the Deming Soil and Water Conservation District opposes the designation of the Gila & San Francisco Rivers, or portions thereof, as wild or scenic rivers.

BE IT FURTHER RESOLVED, that this Board calls upon its Congressional delegation to oppose any such designation and to work to find more effective and less restrictive means to protect our natural resources while also protecting the rights of the people.

Done in session this 16th day of October, 2019 by the Governing Body of the Deming Soil and Water Conservation District, New Mexico

DEMING SOIL AND WATER
CONSERVATION DISTRICT

By: 
Rick Holdridge, Chairman

Exhibit Potential Problems with Wild & Scenic Rivers Designations

Designations for either the Gila or the San Francisco Rivers will create no more actual protections than they currently enjoy.

1. Any segment proposed for the Gila River within the wilderness boundary will not gain any additional protections;
2. The Gila River between the bird sanctuary below Riverside and Red Rock are almost inaccessible other than by raft, canoe, kayak, foot or horseback. This segment is on Forest Service and BLM lands and previous suggestions for designation met with strong objections from local governments and property owners;
3. There are no suitable segments of the San Francisco between the Arizona state line on the north and the confluence with Big Dry Creek south of Pleasanton. This segment is checker boarded with private properties, grazing allotments and customary and cultural use areas;
4. The San Francisco River below the confluence with Big Dry Creek to the Arizona state line on the south has a Roadless designation that is by Forest Service management de-facto wilderness. Again, no additional protection would be gained with a designation;
5. Both the Gila and San Francisco Rivers have critical habitat designations for listed threatened and endangered species. Wild and scenic designations will not increase protections beyond these designations.

The legal, procedural and enforcement hurdles imposed by wild & scenic designations are the most problematic aspects.

1. Existing adjudicated water rights above a Gila or San Francisco River designation could and likely would, given litigation history, result in claims of adversely impacting flows that detract from the designated purposes;
2. Both the Gila and San Francisco Rivers are not in proper ecological functioning conditions. A further layering of management restrictions only guaranties they will remain in degraded condition and likely continue the trend downward. Hands off does not guarantee proper ecological function;
3. Permitting for applications for new water via the 68 Lower Colorado Basin Project Act and the AWSA amendment would face additional obstacles. They are:
 - o An applicant for a permit to the NM State Engineer could face formal protest of the application by persons advocating protection for the designation. These protests and potential court appeals through the state procedure and courts all the way to federal courts would be very expensive and time consuming and would likely result in few if any AWSA new water use or storage reservoirs being permitted;
 - o When presented with an application for a new permit the New Mexico State Engineer (NM State Engineer) must consider three questions: 1. will it impair existing adjudicated rights; 2. will it contribute to the public welfare; 3. will it promote the conservation of water? A NM State Engineer could be called into litigation in federal court if he grants a permit application above a designated segment;
4. Designated segments on lands managed by federal agencies would have to convert management of those lands from multiple-use to enforcement of the designation's protected values. Given the remoteness of the potential segments enforcement would

have to be done by floating down the rivers, walking or by horseback. The efficiency of enforcement would be compromised and expensive;

5. Every federal land management agency and every private property owner above and surrounding a designation under the Act are required to manage their lands to prevent any adverse impact to the segment lands proper or the quantity or quality of water flowing through the segment. This has implications for timber harvesting, livestock grazing, road maintenance, recreation uses, mineral extraction and reservoir construction, etc.;
6. Mineral entry withdrawals are almost guaranteed for designated segments;
7. The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 1274 of this title as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. (16 U.S. Code § 1278 (a))

Conclusion:

The designation of wild and scenic or any of the other variable options does little to increase any protections. It does open the use of state water permitting procedures and federal court to exponentially increase the ability of opponents stall or prohibit economic development or water use above those segments.

Designations open standing through the Administrative Procedures Act to delay or prohibit federal agency permitting or actions that have even the remotest impacts on the protected values of a segment. Going beyond considering the use of the Act to restrict or prohibit actions upstream is the admonition of former Secretary of Interior Bruce Babbitt to Arizona Law School students to consider how the Act could be used for downstream enforcement actions.

There are already multiple layers of management and use restrictions without adding another that only benefits professional litigants.