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RON CURRY
Secretary

CINDY PADILLA
Deputy Secretary

February 13, 2008

Mayor Martin Chavez
Office of the Mayor
PO Box 1293
Albuquerque, NM 87102

Dear Mayor Chavez:

The purpose of this letter is to urge you, in your role as co-chair of the Mayors' Water Council of the U.S. Conference of Mayors, to support passage of the Clean Water Restoration Act (*CWRA*). The *CWRA* is necessary to ensure long-term protection of New Mexico and the nation's surface water resources under the federal Clean Water Act.

The Clean Water Act has been our nation's main tool in ensuring the continued protection of the water we consume, rely upon for agricultural and industrial productivity, enjoy for recreation, and that aquatic and terrestrial wildlife communities rely upon. Unfortunately, the effectiveness of this tool has been blunted by recent Supreme Court decisions which have the potential to severely limit the waters that receive protection of the Clean Water Act. This is especially troubling in New Mexico, an arid state that relies on the Clean Water Act as the primary mechanism to protect our limited and precious surface water resources.

Prior to the Supreme Court's 2001 ruling in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001) (SWANCC)* and its 2006 ruling in *Rapanos v. United States, 547 U.S., 126 S.Ct. 2208 (Rapanos)*, EPA and the U.S. Corps of Engineers construed the term "waters of the United States" to include all waters that have been used, or are susceptible to use in interstate or foreign commerce, all interstate waters, including interstate wetlands; all waters the degradation of which could affect interstate commerce; tributaries of all such waters; and wetlands adjacent to all such waters.

This broad interpretation of the Clean Water Act benefited the nation and New Mexico, helping to improve our quality of life (from both public health and economic perspectives) as well as providing for the sustainability of aquatic species and dependent wildlife and livestock. Unfortunately, *SWANCC* and *Rapanos* have been used to undermine more than thirty years of progress under the Clean Water Act by creating

confusion and bureaucratic gridlock regarding which waters will be protected. In *Rapanos*, determinations regarding which waters will be protected are to be made based on navigability, a term that has in the past applied to only one New Mexico surface water body, Navajo Reservoir.

As you are aware, Southwestern states simply do not have any water to waste, and therefore the water we do have – and its quality – is of utmost importance to the continued health of our citizens and the future economic development of our region. If the protections previously afforded by the Clean Water Act are not restored, through the *CWRA*, then New Mexico could lose protection for more than 90% of our waters, including closed basin waters, playa lakes, wetlands and non-perennial waters. Closed basins cover up to one-fifth of New Mexico and include perennial and non-perennial streams that provide water for municipal, industrial, agricultural (irrigation and livestock watering), recreation, and wildlife uses. The water beneath just one of the state's closed basins – the Salt – has been estimated by the U.S. Geologic Survey to contain as much as 57 million acre feet of water, including 15 million that is potable. This could prove to be a vital, and needed, future water supply for the rapidly growing City of Las Cruces in southern New Mexico. However, if this aquifer is allowed to be polluted by surface dumping, its benefits for future New Mexicans will be severely curtailed. *SWANCC* and *Rapanos* also put at risk thousands of playa lakes, headwaters, springs, cienegas and wetlands.

Also jeopardized are thousands of miles of non-perrenial streams in New Mexico. As just one example, non-perennial streams that receive stormwater and wastewater discharges from the Los Alamos National Laboratory could be determined to fall outside of Clean Water Act jurisdiction under *SWANCC* and *Rapanos*. The laboratory encompasses thousands of sites contaminated by cold war legacy pollutants. If these streams lose protection, they could become even more inundated with contaminated runoff from the laboratory's industrial facilities and process wastewater. Albuquerque and Santa Fe's multimillion dollar facilities to directly access the surface water resources of the Rio Grande for drinking water supplies could be jeopardized if discharges to tributary waters cannot be controlled. In your role as Mayor of Albuquerque it is imperative that you take action to ensure the continued viability of the Rio Grande as a clean source of water for the city's growing population. The *CWRA* will help ensure that non-perennial tributaries to the Rio Grande are protected from discharges of contaminants.

Municipalities within New Mexico also have another important reason to support the *CWRA*, and that is money. For the past three decades the U.S. Environmental Protection Agency (*EPA*) has administered the National Pollutant Discharge Elimination System (*NPDES*) program in New Mexico at little cost to the state, and this would continue under the *CWRA*. However, if the *CWRA* is not implemented and the state must step in to develop its own surface water quality protection program, implementation costs have been estimated at $1.9 million in state dollars. A large percentage of these costs could end up being passed on to municipal NPDES permit holders if EPA is no longer invested in protecting the state's waters.

Opponents to the *CWRA* have a vested interest in reducing the scope of the Clean Water Act and are doing their best to distort the scope and impacts of this bipartisan proposal. However, if you read the actual language of the *CWRA* it clearly states that its purposes are "to reaffirm the original intent of Congress in enacting the Federal Water Pollution Control Act Amendments of 1972 … to restore and maintain the chemical, physical, and biological integrity of the waters of the United States." The proposed legislation also directly affirms each state's responsibility and right to prevent, reduce, and eliminate pollution of waters, and preserves the ability of states to manage programs to prevent, reduce, and eliminate pollution and to establish water quality standards. Most importantly, the proposal delinks water quality protection from navigability, an important issue for New Mexico. Regardless of what opponents say, the *CWRA* simply restores protections that have been in place for three decades during which time the quality of America's rivers, lakes, wetlands and streams improved dramatically.

We urge you to look beyond the rhetoric of *CWRA* opponents and do what is best for New Mexico and its vulnerable surface waters. If you would like to discuss this further, please contact Jon Goldstein, Deputy Secretary at (505) 827-2855 or Marcy Leavitt, Chief of the Surface Water Quality Bureau at (505) 827-2795.

Sincerely,

Ron Curry
Cabinet Secretary