

Allen M. (Mac) Williams, Palisade Colorado  
mailing address:  
1272 Doric Dr.  
Lafayette, Colorado 80026

March 9, 1994

Mesa County, Colorado, Commission, through John Crouch, Chairman  
Orchard Mesa Sanitation District, through its President  
City of Grand Junction, Colorado, through its legal counsel

### **Demand for Preparation of an Environmental Impact Statement**

Whereas, The Orchard Mesa Sanitation District (OMSD), the County of Mesa, State of Colorado (State) and the City of Grand Junction, Colorado (parties) as owners and managers of the Persigo Wash Waste Water Treatment Facility, have entered into certain loan agreements, grant agreements and contractual obligations to perform in accordance with the Clean Water Act, the Colorado Water Quality Control Act; said agreements entered into with the United States Environmental Protection Agency (EPA) variously dated from 1976 through 1994, and

Whereas, the parties have initiated major federal actions known as; (1) "The Valley Vista Sewer Interceptor", and (2) Amendments to the Persigo Wash Waste Water Treatment Facility, works and plan, (actions) pursuant to section 212 and other parts of the Clean Water Act, and

Whereas, Environmental Impact Assessments (EIA), Environmental Reviews (ER), and Environmental Assessments (EA) dated February 20, 1976 as amended in 1978, 1993 and 1994 have caused the State to issue unreasonable, arbitrary and capricious negative declarations and Findings of No Significant Impact to erroneously conclude that an Environmental Impact Statement (EIS) is not required, and

Whereas, the State and the EPA issued negative declarations from an EIA promulgated by the EPA in February 1976 and then improperly delegated to the State the authority to amend the original EIA culminating in an unreasonable, arbitrary and capricious amended EA and FNSI variously dated 1993 and 1994, and

Whereas, the OMSD and Mesa County (County) have not, as of this date, performed their fiduciary duties to properly prepare an environmental assessment, hold full disclosure public hearings, maintain full disclosure public comment periods, nor have they performed the proper environmental reviews in accordance with the terms and agreements of the Persigo Wash agreements, as amended; specifically not complying with the procedures agreed to and represented by a "40 CFR 6" environmental assessment, required under 40 CFR Part 6, Subpart E, and other applicable laws of the United States and the State of Colorado, and

Whereas, the primary, secondary and cumulative impacts of these actions are harmful to the human environment, and

Whereas, I have an economic interest, among other interests, that will be damaged and irretrievably lost as a result of the impacts from the actions,

I hereby demand that you prepare an Environmental Impact Statement in accordance with 40 CFR Part 6, The Clean Water Act and the terms and conditions of the Persigo Wash Agreements and all applicable State and Federal laws prior to beginning construction activities on the Valley Vista interceptor. In addition, I hereby demand that you notify the Orchard Mesa Sanitation District of their lack of authority to enter into loan agreements or initiate construction without the proper environmental assessments, public disclosure, hearings or appropriate comment periods under these proposed actions.

Improper delegation of authority to amend the EIA of 1976 is evidenced by referring to the requirements in 40 CFR 6.514 (a)(9) and (10). Required procedures for proper amendments to a facility plan can be found in 40 CFR 6.502 et al.

I have reviewed the materials prepared by you or on your behalf and by the State that you have represented as proper EIA's, ER's, EA's, amended EA's and Negative Declarations in connection with the proposed actions referenced above. I have determined that they are inadequate to arrive at a Finding of No Significant Impact (FNSI). Among other impacts, you have failed to adequately identify primary, secondary and cumulative impacts on agricultural lands, prime and unique farmlands, changes in present land use, population and future development of the impacted areas. Adequate reasonable alternatives were not discussed to lessen or mitigate impacts that have been identified relating to agricultural land uses, population and development. In addition, public notices, hearings, meetings and public dialogues that have been held were not in compliance with 40 CFR part 25 and 40 CFR 6.400 as required by NEPA. In particular, the public was not advised of material relevant to a proper EA and ER such as changes in boundaries of service areas, Department of Agriculture information, Fish and Wildlife information, U.S. Army Corps of Engineers information, State Historical Preservation information, among other materials. A partial list of deficient material and inadequacies of the environmental assessments can be found in the EPA Notice of Noncompliance dated January 26, 1994, letter to the Mesa County Commission dated March 2, 1994, and intent to issue a notice of noncompliance dated March 3, 1994. In addition, the public was not provided access to the original EIA of February 20, 1976 as amended in 1978 and erroneously reported as "On file with the EPA Region VIII, Denver" in further violation of public involvement regulations and laws.

In addition, you have failed to consider alternatives which would mitigate or lessen the impacts specifically identified in the EIA of 1976 relating to agricultural and orchard land uses. Your "amended EA" of 1993 specifically refers to the impacts identified in the 1976 document and then fails to consider them in your improperly prepared FNSI of 1993 and 1994 by not considering adequate alternatives or mitigation measures.

In addition, ex parte communications have been ongoing between the County, OMSD, the

State and certain interested parties without the public being an integral part of the discussion as required by NEPA, Colorado Water Quality Control Act, 40 CFR, and other acts and regulations whose applicability I may not as yet be aware.

In addition, I have been denied documentation required by 40 CFR 35.3140 (b)(1)(ii) "The legal remedies available to the public to challenge environmental review determinations and enforcement actions" though I have requested this documentation from the State and your agent the Colorado Water Quality Control Division (CWQCD) (Debbie English 2/22/94 and from Linda Preslan, Colorado Attorney General's office, Natural Resources 2/17/94). Your refusal to provide this information has obstructed my efforts to pursue proper and timely challenges to your assessments, reviews and actions.

In addition, an agreement was made between the EPA Regional Administrator, Dave Holm, CWQCD, myself and other members of the public on February 2, 1994 to have the CWQCD provide the Department of Agriculture Soil Conservation Service with a form AD 1006 for their completion in accordance with 7 CFR 657 and 658 and EPA Policy dated September 8, 1978 (dealing with prime and unique farmlands, present agricultural land uses and potential impacts of federal actions). This agreement has not been honored by the CWQCD acting as your agent during 1993 and 1994.

I further demand that you cease and desist all construction activity until such time as a proper Environmental Impact Statement has been prepared.

I refer you to specific sections of the EIA prepared by the EPA and dated February 20, 1976:

Page 4, j. and Page 2, 5. "Measures to mitigate Environmental Impacts: Agricultural and natural areas will be protected by this plan" (by excluding agricultural areas from the service area for the WWT facility - specifically areas that lie east of the planning area - east orchard mesa on the site of the valley vista interceptor). Page 6 and 7, 4. "Loss of agriculturally valuable land:" b. "if most of the new population is encouraged to be within the planning area (of 1976) then the remaining good farm land east and west of the planning area (the proposed 1994 interceptor impacted area and proposed amended service area) can be retained." d. "There are no orchards that will be disturbed by this project now or in the future" "There are orchards that are presently adjacent to the planning area, however they are outside the limits of the planning area, and they will not be eliminated by the phased construction of this project."

One of the cumulative impacts of these actions will be to influence zoning favorable to elimination of the agricultural land use which is in direct violation of EPA Policy dated September 1978 referenced in 40 CFR. Indeed, zoning discussions and future land use plans have been ongoing for at least one year that are heavily skewed by the knowledge of the pending interceptor. In addition, the EPA has pointed to your flagrant violation of proper environmental assessments and reviews by your arrogant insistence on an interceptor route that would maximize future taps (800 taps) to the sewer line and Persigo Wash facility.

Your refusal to cease construction activity will be unequivocal evidence that you refuse to begin the proper Environmental Impact Statement process.

These demands are made upon the Orchard Mesa Sanitation District through its President, Mesa County Commission, through its Chairman and the City of Grand Junction through its legal counsel this 10th day of March, 1994 by the undersigned.



Allen M. (Mac) Williams, March 9, 1994

Witness my signature that I have personally provided an original copy of these demands to the parties first named above this 11<sup>th</sup> day of March, 1994.

