ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

OFFICIAL FILE COPY
RECEIVED
MAR 17 2008
REPLY: YES NO
INFO. COPY TO:
DATE | INITIAL | TO
Alicia
CLASSIFICATION
PROJECT
CONTROL NO.
FOLDER I.D.

March 13, 2008

Alicia Waters
Bureau of Reclamation
Dakotas Area Office
U.S. Bureau of Reclamation
P.O. Box 1017
Bismarck, North Dakota 58502-1017

Re: Comments on the Draft Environmental Impact Statement for the Northwest Area Water Supply Project

Dear Ms. Waters:

I am writing to comment on the Draft Environmental Impact Statement for the Northwest Area Water Supply Project ("DEIS").

The DEIS completely fails to comply with the requirements of the National Environmental Policy Act ("NEPA"). NEPA requires preparation of an Environmental Impact Statement ("EIS") for "any major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). There can be little doubt that the first intentional transfer of water from the Missouri River Basin to the Hudson Bay Basin at a cost approaching $200 million is a major federal action. And, although the Bureau originally claimed that this action would not significantly affect the human environment, a United States District Court concluded that the Bureau had failed to fully consider the environmental consequences of the proposed action. The Bureau dismissed its appeal of the court's decision and prepared the DEIS, thereby conceding that an EIS was required in this case.

The DEIS, however, does not address the major federal action at issue - the inter-basin transfer of water from the Missouri River. Instead, the Bureau took a myopic view of its obligations under NEPA and addressed only various treatment options for the water, assuming that an inter-basin transfer was a given. The most obvious alternative to the action - using an in-basin alternative - was not even mentioned in the DEIS.

In preparing an EIS, an agency must present "alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." 40 CFR § 1502.14. Furthermore, the agency must "[r]igorously explore and objectively evaluate *all reasonable alternatives*," and "devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." *Id.* § 1502.14(a), (b) (emphasis added).

The Environmental Assessment ("EA") prepared in connection with this project acknowledged that there was sufficient groundwater in the basin to achieve the goals of the project without an inter-basin transfer. *Northwest Area Water Supply Project, Final Environmental Assessment, dated April 2001* ("EA") at 13. The only stated rationale for preferring an alternative involving an inter-basin transfer was that it would be "less expensive for most contract users" than the in-basin alternative studied. *Id.* at 24. The EA indicates that the use of groundwater in the basin would cost approximately $27 million more than the preferred inter-basin alternative. *Id.* Table 1.

The preferred alternative from the EA is treated as the no-action alternative in the DEIS. Although the Bureau concluded in the EA that this alternative was cheaper than an in-basin alternative, the DEIS makes clear that this alternative does not adequately protect the environment. *See, e.g.,* DEIS at 2-15 & Table 2.6.

The most economical of the other three alternatives considered in the DEIS is approximately $60 million more than the preferred (no-action) alternative considered. *Compare id.* Table 2.1 ($8.1 million) *with* Table 2.2 ($68 million), Table 2.3 ($73 million) & Table 2.4 ($90 million). Thus, adopting an alternative involving an inter-basin transfer with protection against the very real risk of inter-basin biota transfer would cost a minimum of $33 million more than the in-basin alternative. Moreover, the Bureau acknowledges that the in-basin alternative has the fewest impacts on the environment. *See* EA Table 2.

The in-basin alternative costs less than any alternative containing even a modicum of protection against inter-basin biota transfer. It has fewer environmental impacts. But it was not considered in the DEIS. The only reasonable conclusion is that it was not included because the Bureau knew that if it presented a fair analysis of all the alternatives it could never justify an inter-basin transfer.

NEPA requires the Bureau to issue a new draft EIS considering all reasonable alternatives to the proposed federal action, including one or more in-basin alternatives. More importantly, it requires the Bureau to take a hard look at all the alternatives, setting aside its bias for an inter-basin transfer. I am confident that if the Bureau complies with

NEPA, any reasonable observer, including a court, will recognize that an inter-basin transfer cannot be justified for this project.

Thank you for your attention.

Sincerely yours,

JEREMIAH W. (JAY) NIXON
Attorney General

JOSEPH P. BINDBEUTEL
Senior Chief Counsel
Agriculture and Environment Division
(573) 751-8370

JPB:ka