



Mr. Dennis E. Breitzman
Area Manager
Dakotas Area Office
US Bureau of Reclamation
P.O. Box 1017
Bismarck, ND 58502-1017
USA

Dear Mr. Breitzman:

The following comments are submitted on behalf of the Government of Canada in response to the draft environmental impact statement (DEIS) for the Northwest Area Water Supply (NAWS) Project. These views supplement concerns raised by the Government of Canada through the Garrison Joint Technical Committee in the 1990s and subsequently in comments provided in 2005 pertaining to the scope of the environmental impact statement.

We would take this opportunity to clarify the Government of Canada's position regarding major inter-basin diversions, such as the NAWS Project. Canada remains concerned about threats associated with such projects including biota transfer as well as the poorly understood consequences and values of such projects. Specifically, the Government of Canada advocates exercising caution in considering the need for inter-basin transfers and endorses other less disruptive alternatives such as demand management and water conservation to satisfy societal need.

In recognition of this risk for invasive species transfer, the Government of Canada appreciates that USBR is contemplating treatment goals recommended by the province of Manitoba which involve the need for filtration within the Missouri River basin as well as other treatment options characterized as "microfiltration" in the DEIS. As you are aware, the potential for invasive species transfer is a key concern for Canada, and in this respect we would note that the analysis does not take into consideration the possible transboundary impacts.

Nonetheless, in its July 1997 memorandum to federal agencies, the White House Council on Environmental Quality (CEQ) noted, among other things, that "based on legal and policy considerations, CEQ has determined that agencies must include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States." For further

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clarity, CEQ added that US federal agencies "should be particularly alert to actions that may affect migratory species, air quality, watersheds, and other components of the natural ecosystem that cross borders, as well as interrelated social and economic effects." Consideration of such transboundary effects will be important in determining compliance with the *Boundary Waters Treaty*.

While the DEIS refers to the legal decision regarding the insufficiency of the earlier environmental assessment of the NAWs Project, the Government of Canada wishes to ensure that the NAWs Project takes into account and fully complies with the views and decisions expressed by the U.S. District Court in *The Government of Manitoba v. Norton et al.*, --civil action no. 02-cv-2057 (RMC).

More broadly, as you are aware, the Government of Canada is concerned about the application of the *Boundary Waters Treaty* to the various projects underway in North Dakota that pose some risk of transboundary harm to Canada. We recognize that Article IV of the *Boundary Waters Treaty* does not equate to a "zero-risk" requirement regarding water projects with transboundary implications. Nevertheless, consistent with available guidance from the International Joint Commission on the application of this Article, project selection should be based on a low risk approach that is mutually acceptable to both governments.

We would further observe that the question of transboundary risk to Canada is best understood and addressed in terms of the cumulative risks posed by a number of water projects currently in progress in North Dakota. In this respect, we note that the DEIS identifies no other federal, state or local government actions that would cumulatively lead to an increased risk of transferring invasive species into Canada. However, the matter of transboundary risk and compliance with the *Boundary Waters Treaty* for the Red River Valley Water Supply Project remains before our two governments.

In addition, the Devils Lake outlet poses an unknown degree of risk to Canada. Given this concern, the Governments of Canada and the United States have sought the International Joint Commission's assistance in overseeing analysis regarding pathogens and parasites to better understand the potential risks associated with operating the Devils Lake outlet. This biota survey and the accompanying risk assessment are yet to be completed, and so the matter of the Devils Lake outlet also remains an outstanding issue for resolution between the Governments of Canada and the United States.

The pressing issue of biota transfer into Canadian waters on all of these projects raises the prospect of significant and irreversible harm to Canada. For

this reason the Government of Canada hopes that it will be possible to find mutually satisfactory solutions with the United States to all of these outstanding projects that expose Canada to some degree of transboundary risk.

We hope that you find these comments helpful in taking steps to address the international issues associated with the NAWs Project and the full suite of North Dakota water challenges.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kim Perry Butler', with a stylized flourish at the end.

Kim Perry Butler
Director General, North America Bureau

cc: Terry Breyman, White House Council on Environmental Quality
Benjamin Grumbles, US Environmental Protection Agency
Alex Lee, US Department of State