

# Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-4037



March 26, 2008

Dennis Breitzman  
Dakota Areas Office, Bureau of Reclamation  
P.O. Box 1017  
Bismarck, North Dakota 58502

RE: Minnesota Department of Natural Resource's comments on draft EIS, Northwest Area Water Supply Project (NAWS)

Dear Mr. Breitzman:

Thank you for the opportunity for the Minnesota Department of Natural Resources (MDNR) to provide comments on the draft Environmental Impact Statement for this project, hereinafter referred to as the DEIS. We have the following comments:

**Comments on the significance of this project to Minnesota.** Our previous comments on this project have pointed out that we are most concerned with the issue of transferring invasive biota from the Missouri River basin to the Hudson Bay drainage, a portion of which is in Minnesota. (See August 9, 2001 letter to you from Larry Kramka, MDNR Regional Hydrologist, and my May 4, 2006 letter to you providing scoping comments for the DEIS.) Our specific interests are in potential impacts to Minnesota from any biota transfer, and in proposed methods of mitigating any such impacts.

We are restricting our comments to the biota transfer issue, and have not formed any opinions on whether the DEIS meets the requirements of an EIS with respect to alternatives or other standard EIS content (except related to biota treatment alternatives.)

We believe the DEIS should be judged as to how it addresses the potential impacts to natural resources of Minnesota. Our specific comments are based on these points.

*Relationship of the NAWS project EIS to the EIS and associated studies of the Red River Valley Water Needs Assessment (RRVWNA).* Both the NAWS and RRVWNA projects are bulk water transfers across the Continental Divide between the Missouri River/Mississippi basins and the Hudson Bay basin. Therefore, the topic of biota transfer is being studied for both projects. The study results from the RRVWNA project, which is further along, are relevant to the NAWS project and MDNR comments on the RRVWNA project relating to biota transfer are also relevant to the NAWS project. As noted in our scoping letter, we do recognize that the risk to the Minnesota portion of the basin is lower, since the distance to Minnesota waters is longer. However, once established, it has been shown that invasive species can spread rapidly over a wide geographic area.

*Mitigation of potential impacts of biota transfer.* Mitigation for potential impacts of biota transfer of this bulk water transfer is proposed to include a number of treatment



options. MDNR has already commented extensively on this issue on the RRVWNA, and those comments are also applicable to NAWS.

*Methods of forecasting biota transfer impacts, risk assessment methodology, and reliability of biota containment methods and monitoring techniques.* As the RRVWNA project and its associated studies have clearly demonstrated, the issue of biota transfer from bulk water transfers is an emerging issue, and the methods of study and of reaching reliable conclusions are also emerging issues. This is noted on page 3-4 & 5 of the DEIS. MDNR has already commented extensively on methodology regarding these three topics on the RRVWNA, and has indicated in scoping comments on NAWS that these topics need to be carefully addressed.

### **Specific comments on the DEIS**

*The DEIS failed to address impacts of biota transfer in Minnesota.* Our 5/4/2006 letter indicated that impacts to Minnesota from invasive biota should be addressed in the DEIS. This has not been done, and it makes the DEIS analysis too limited. Page 3-1 of the DEIS indicates the geographic scope of the impact assessment is limited to the 41 acres around the biota treatment facilities near Max, North Dakota. Note that our 5/4/2006 scoping letter referenced the relevancy of the RRVWNA project to this issue, indicated that Attachment III of a MDNR letter on that project was relevant to the NAWS project. (See "Comments on the Potential Impacts of Biota Transfer from Missouri River Basin to the Hudson Bay Drainage," Attachment III in April 12, 2006 letter from Kent Lokkesmoe, Director, Division of Waters, MDNR to Dennis Breitzman, Area Manager, Bureau of Reclamation.) The 5/4/2006 letter indicated that the DEIS needed to specifically address issues raised in Attachment III, which has not been done.

*The DEIS methodology is flawed because it relies on numerical risk assessment and conclusions that existing pathways will result in more or equivalent invasive biota transfer, that regulation of invasive micro-organisms is largely non-existent, and that a water treatment plant technology is completely transferable to mitigate impacts from these organisms.* The DEIS focused on these issues, and concluded that no impact assessment of transfer of invasive micro-organisms was needed because the risk from natural pathways was much higher than from the project. The DEIS does have a discussion of invasive biota, and does rely on some information from studies done for the RRVWNA on this topic, including discussions of specific species of concern. However, the DEIS gives prominence to their being few or no regulatory controls of invasive microorganisms (except human pathogens), that there are numerous natural pathways that have high probability of invasive biota transfer, and that risk from the project was lower than from these pathways.

MDNR submitted major and extensive objections to reliance on the numerical risk assessment approach that was being used on the RRVWNA assessment, including obtaining a review by Dr. John Drake, a national expert on risk assessment of invasive micro-organisms, as explained in Attachment III. The DEIS on NAWS relies even more

on the numerical risk assessment, since it contains no discussion at all of potential impacts within the Hudson Bay basin.

Subsequent to the scoping process for NAWS, MDNR has commented directly on these same topics in comments on the RRVWNA Supplemental and Final EIS. We would incorporate our comment letter on the Final EIS on the RRWNA (January 25, 2008 letter from Larry R. Kramka, MDNR Assistant Commissioner, to Dennis Breitzman, Area Manager, Bureau of Reclamation.) The section in this letter on Biota Transfer (pp 3-4) provides appropriate detail relevant to the NAWS project.

*Biota containment proposals.* The DEIS looked at four different biota treatment processes. The range of technologies appears to be similar to those proposed for the RRWNA; however, the biota treatment plant on NAWS is within the Hudson Bay drainage. As noted in our 1/25/2008 RRVWNA comment letter, we believe bulk water transfers should meet a "high bar" for both treatment and need, and the decisions are inseparable. We also indicate a "biota containment" approach is appropriate for mitigation, rather than a water treatment plant conceptual design, and that the details of such a design greatly matter with respect to risk of biota transfer.

If you have any questions regarding these comments, please contact Steven Colvin at (651) 259-5082.

Sincerely,



Kent Lokkesmoe, Director  
Division of Waters

**Attachment**

c: Larry Kramka, Commissioner of Operations  
Mike Carroll, Regional Director  
Steve Hirsch, Acting Director Eco Services  
Steve Colvin, Environmental Review Unit Supervisor

# Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-4037



January 25, 2008

Mr. Dennis Breitzman  
U.S. Bureau of Reclamation  
Dakota Areas Office  
P.O. Box 1017  
Bismarck, North Dakota 58502-1017  
FAX: 701-250-4326

## **RE: Minnesota Department of Natural Resources comments on Final EIS, Red River Valley Water Supply Project**

Dear Mr. Breitzman:

We appreciate the opportunity to provide comments on the Final Environmental Impact Statement (FEIS) for the Red River Valley Water Supply Project. The Minnesota Department of Natural Resources (MDNR) has been involved in reviewing the project since 1998, when the United States Bureau of Reclamation (USBR) began feasibility studies. We continue to be deeply concerned about proposals to move Missouri River water into the Hudson Bay drainage of Minnesota.

During the course of the study, MDNR has taken a cooperative approach to addressing real potential for water shortages in the Red River Basin during severe droughts. MDNR participated as a cooperating agency in the various teams and review processes created for this project. During this review, we have provided many comments and concerns about potential environmental impacts of the proposed project.

While much good information on technical issues has been developed from the studies leading to the EIS, we continue to have major objections to certain parts of the FEIS. MDNR has raised escalating concerns with portions of the study affecting Minnesota since commencement of EIS studies in 2000. The USBR and Garrison Conservancy District, as joint lead agencies, have been dismissive of Minnesota concerns about invasive species and the alternatives analysis at every point in the FEIS. In addition, in-basin alternatives, including how Minnesota water supplies could assist in addressing North Dakota and Minnesota Red River community needs, have been mischaracterized and inadequately explored, and the obstacles to it inflated.

We did not expect all of our concerns to be implemented; however, we cannot be silent about the manner in which they are portrayed in the FEIS. The FEIS silence about our objections is unacceptable to the MDNR, given our extensive participation and potentially affected natural resources. Page 1-22 of the FEIS notes that "*...significant comments received and issues raised in the FEIS will be identified...*" in the Record of Decision. As a downstream state that would be affected by this major bulk water diversion, we believe the Record of Decision (ROD) must accurately summarize our objections. We also expect that the Report to Congress will convey these objections in a fair manner.

The remainder of this letter identifies our specific comments on the FEIS and summarizes our continuing concerns. We are not including point-by-point comments on the USBR responses to

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In fact, there was a follow-up to the 12/17/2001 letter since we were concerned that the letter might be misread (See enclosed letter from Kent Lokkesmoe, Director, Division of Waters, MDNR, to Bob Harms, North Dakota Governor's Office, January 23, 2002.) It states, "*You will note that one point made in the (12/17/2001) letter is that we advocate studying the possibility of providing Minnesota water to North Dakota municipalities during severe droughts, and that we mention some conditions to this as being part of the study. These provisions are the typical provisions that we would have Minnesota cities and towns along the river evaluate. I've heard some concerns that these conditions may raise issues with your state and I want to assure you that we are trying to be part of the solution not just part of the problem.*"

Furthermore, Minnesota Governor Tim Pawlenty has recently affirmed that Minnesota is willing to contribute to water shortage solutions for the basin during severe droughts, including if there is not a sufficient and sustainable groundwater supply in North Dakota (See enclosed letter to Dirk Kempthorn, Secretary of the U.S. Department of Interior, jointly signed by Governor Tim Pawlenty and Governor Matt Blunt of Missouri, December 7, 2007.)

This example also illustrates the problem of the late response to MDNR comments. If we had known that the list of disadvantages on page 25 of the Red River Basin alternative was based on an old and somewhat outdated letter, we could have cleared up the misunderstandings earlier.

We realize that there would be a number of important issues to address about Minnesota water supplies and they would need to be carefully worked out in relation to Minnesota interests and policies. This is not insurmountable. Faced with severe water shortages, which perhaps may affect our North Dakota neighbors more severely because of smaller water supplies, we doubt that Minnesota citizens would be unsympathetic. Minnesota has very close ties with North Dakota, and especially eastern North Dakota.

#### **Biota Transfer**

Invasive species transfer is an important issue for Minnesota. There are essentially 3 areas of concern to us connected with a Missouri River bulk water transfer.

*1. USBR/Garrison Diversion Unit decision to not address Impacts of invasive species is flawed. The EIS does not attempt to assess potential invasive species impacts that would result if a biota transfer occurred due to the project. Page M.1-134 states that no impact assessment was done because the probability of invasion is very low and therefore such an assessment is not necessary. In fact, the FEIS asserts that with treatment, the probability of invasion is much higher through non-project pathways (same page). Additionally, "The risk characterization (of the USGS risk study) ...assumed that (control systems) would operate 'as expected' based on industry standards. That assumption became the basis of the failure analysis...The fundamental conclusion of the failure analysis is that control system failures resulting in biological invasions would be very unlikely to occur..." (page M.1-138) It is clear that the conclusion about very low risk is based on an assumption that industry standards for low failure rates are met. This is a circular argument. Furthermore, it ignores the fact that standard water treatment plant failure detection systems are not necessarily adequate to detect failure of biota containment.*

2. *Sole reliance on the USGS study and methods is problematic for several reasons.* The methodology for any given impact should be based on the magnitude of the decisions being made and the potential consequences if the method supporting the decision fails. Sometimes, some redundancy in methods is appropriate if the decision is of high magnitude. That is the case with this topic, as noted in the list of major policy issues at the end of our April 18, 2007 comments. Such redundancy would be obtained if an actual impact assessment would be done. As noted in MDNR comments on the SDEIS, MDNR called upon a national expert in invasive pathogens and risk assessment to augment our comments. We included his review as our comment (Dr. John Drake.) The point of our comments was to question whether the USGS methodology was a proper tool *taken by itself*. Instead, the FEIS response to our comments is a rather emotional defense of the USGS scientific ability and of risk assessment. That was not the point of our comments, in fact, as Dr. Drake points out, the USGS study was a rather admirable attempt. But, given the scope of the problem, uncertainties, and magnitude of the decision, in our view, it is a failure if only used by itself and in isolation of the realities of decisions affecting so many people, policies, and geographic scope.

The USGS study is the only method used in the EIS to address this topic. Thus, the whole of this issue is based on a singular reliance on an exceedingly complex and hard to understand numerical assessment of the risk of such a transfer. To the citizens of Minnesota, this means that access to the reasoning behind the conclusions dismissing this potential impact as inconsequential is unavailable. An examination of the comments of the MDNR all the way back to 1998 reveals an insistence that this topic be addressed in a more appropriate manner. We still hold these views and are unconvinced by the FEIS discussions.

3. *Decisions allowing bulk water transfers between clearly different biotic assemblages need to meet a high bar for not only treatment but for need.* The consistent point of MDNR comments on this topic since the beginning of our involvement was: A) A biota containment approach to prevention of invasive species transfer was needed rather than a water treatment plant approach, and B) The decision to create a large new water connection between two major continental basins and thus risk additional invasive species movement needed to meet a "high bar" for both treatment and need. These decisions are inseparable. As our comments indicate, we think the treatment approach is going in the right direction, though we need to examine the details of the containment. This includes its maintenance and its operational controls for failure detection, which will be different from standard water treatment plants. However, as noted elsewhere, we still believe the need for such a water transfer is not yet demonstrated and therefore the need to accept the risk posed is not acceptable.

#### **Review of Minnesota's role in Consultation and Coordination.**

Chapter 5 of the FEIS notes extensive participation by the MDNR, as a Cooperating Agency and member of the Cooperating Agency and Technical teams. As written, this section of the FEIS is misleading in that it gives the incorrect impression that the methodology and results are approved by the MDNR. On many topics, substantive recommendations of the MDNR have never been accepted. Here is a recap of our participation.

After passage of the Dakota Water Resources Act of 2000 (DWRA), MDNR responded to the invitation by the Bureau of Reclamation to participate in preparation of study work plans.

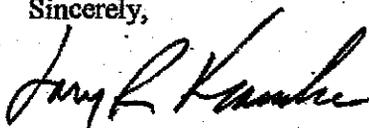
Mr. Breitzman  
January 25, 2008  
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MDNR also became a Cooperating Agency and a member of the Technical Work Team, and sent in written comments at a number of points when we felt it was necessary to raise concerns we felt were not being addressed. We participated in extensive discussion as to the scope and content of the Needs and Options Study because we were concerned that it would constrain and limit the scope of the EIS. We also participated with cooperative approaches in gathering data on specific items in Minnesota, such as groundwater, river flows, and aquatic resources. These efforts were a success. The MDNR record of comments clearly indicates serious concerns about failure to respond to important suggestions as to methodology and other content.

MDNR comments on the DEIS, dated April 12, 2006, incorporated by reference all 18 previous written comments because important points were not being addressed and were not being incorporated into work plans or the alternatives analysis. MDNR comments on the Supplemental DEIS (dated April 18, 2007) continued to incorporate previous comments for the same reason. These comments document a long series of failures to change the study methodology. Another major concern was that we had yet to see explanations as to why many significant comments were not addressed.

This current letter marks the 20th written correspondence of the MDNR on this project since 1998. Although we are concerned about the degree to which our issues have been addressed throughout the process, we remain committed to helping USBR and North Dakota solve water shortage problems in the Red River basin in a manner that also safeguards Minnesota's natural resources. If you have any questions, please contact environmental review supervisor Steven Colvin at 651-259-5082.

Sincerely,



Larry R. Kramka  
Assistant Commissioner

c: Chris Graham, Governor's Office  
Leo Raudys, Minnesota Pollution Control Agency  
John Linc Stine, Minnesota Department of Health  
John Jaschke, Minnesota Board of Water and Soil Resources  
Mark Holsten, Commissioner  
Laurie Martinson, Deputy Commissioner  
Steven Hirsch, Acting Director, Division of Ecological Resources  
Mike Carroll, Director, Northwest Region  
Kent Lokkesmoe, Director, Division of Waters  
Steven Colvin, Environmental Review Supervisor