



Jeremiah W. (Jay) Nixon, Governor • Kip A. Stetzler, Acting Director

## DEPARTMENT OF NATURAL RESOURCES

[www.dnr.mo.gov](http://www.dnr.mo.gov)

October 8, 2010

Bureau of Reclamation  
Dakotas Area Office  
Attention: Alicia Waters  
P. O. Box 1017  
Bismarck, ND 58502-1017

Dear Ms. Waters:

I am writing to submit comments from the Missouri Department of Natural Resources (department) on scoping for the Northwest Area Water Supply Project (NAWS) Supplemental Environmental Impact Statement (SEIS).

The U. S. Bureau of Reclamation (Bureau) has received clear direction from the court to prepare a full analysis of the cumulative impacts of water withdrawals from the Missouri River basin before proceeding with the NAWS project. The required scope of this analysis can not be met by merely pasting together pieces of previous work or by the quick addition of known projects, but must include a full and honest accounting of the existing, proposed and contemplated projects. Only by assessing the Missouri River basin in a comprehensive manner can the Bureau effectively judge the costs and impacts of an in-basin solution against those resulting from the proposed use of Missouri River water. Both the court and the Office of Management and Budget have made their expectations of a more comprehensive analysis clear.

The Bureau must include all projects that it and other agencies have completed, are planning or anticipate submitting for consideration for funding. Consultation with states, tribes and other federal agencies will be necessary in order to compile and assess a complete list of projects. Out-of-basin diversions are particularly impactful as these are entirely consumptive uses of Missouri River water.

There is no current, comprehensive depletion analysis for the Missouri River basin. However, such an analysis is critical to understanding the impacts of projects, such as NAWS, on those living in the Missouri River basin. The most recent study released by the Bureau in 2005 (*A Study to Determine the Historic and Present-Level Streamflow Depletions in the Missouri River Basin for the Period 1929 to 2002*) was very limited and repeatedly describes the limitations of the analysis due to time and financial constraints. There have been new depletions since this report, such as oil development in North Dakota. The SEIS should include an updated depletion estimate, addressing new and projected depletions, and the deficiencies cited in the 2005 report. The U.S Army Corps of Engineers' (Corps) impact models developed as part of its Missouri River Master Manual Review and Update Study were based on conditions in the late 1980s and early 1990s. Since these analyses are outdated and contained significant flaws, the Bureau should not use these models to analyze impacts to the Missouri River.



Recycled Paper

While tribal claims to water from the Missouri River may not be resolved for years or decades, these claims must be considered in a full assessment of demands on the river. These claims are reasonably foreseeable. In numerous public forums over the course of the past year or so, several tribes have made clear their intention to begin quantifying their tribal water rights. These intentions have been made clear to both the Corps and the Bureau. At the volume of water withdrawals discussed, this effort could result in substantial future depletions with the potential to significantly impact all other uses.

A further impact to available water in the Missouri River basin, beyond withdrawals, is sedimentation in the reservoirs. The Master Manual estimates that approximately 90,000 ac-ft of storage is lost yearly to sedimentation, and the Missouri River reservoir system is approaching a 5% loss in capacity. Continuing sedimentation must be accounted for, as well as any anticipated modifications to the reservoir system completed by either the Corps or the Bureau to mitigate sediment trapping behind the reservoirs.

We strongly encourage the Bureau to work closely with the Corps to examine current uses of the Missouri River and those uses that can be reasonably expected given recent developments. It is in everyone's interest that these two agencies create a comprehensive view of water demands that is consistent with all that is known about the current state of the Missouri River. In addition, a full list of existing and proposed demands on the river can not be completed in isolation. The assessment of Missouri River impacts can not be credible unless the Bureau coordinates this effort with the Missouri River Authorized Purposes Study and the examination of reallocation of waters within the mainstem reservoirs of the Missouri River. In fact, it may well be impossible for the Bureau to even complete scoping before the results of these two studies are known.

The Bureau should work closely with the U. S. Geological Survey (USGS) and state agencies that oversee oil and gas extraction to assure that it creates a defensible projection of current and future use of water for oil and gas well drilling, hydro-fracturing of reservoirs and well operations. Recent, rapid expansion of the use of water to extract energy resources in western North Dakota and other parts of the Missouri River basin threatens to significantly affect Missouri River operations of the Corps and to impact everyone living in the basin, particularly downstream water users. The USGS is developing a greater understanding of the energy resources available in and near the Missouri River basin and the water anticipated to be used in extracting those resources.

The State of Missouri notes that energy extraction was not among the purposes of the proposed project. If the Bureau intends to revise the intended use of the water proposed to be transferred by this project, it must include such a change in a Supplemental EIS and offer interested parties the opportunity to comment on the proposed changes.

The State of Missouri disagrees with the Bureau's decision to limit the geographic scope of its SEIS to the Missouri River's confluence with the Mississippi River. Flows from the Missouri River are critical to the support of uses on the Mississippi River and the impacts of increased depletions from the Missouri River may significantly impact economic activity on the Mississippi River.

Finally, the Bureau must examine the conditions under which water will no longer be removed from the Missouri River basin because the project purposes of the Corps' Missouri River management can no longer be met. While Section 6 of the 1944 Flood Control Act authorizes the Corps to enter into contracts for surplus water, "no contracts for such water shall adversely affect then existing lawful uses of such water." All contracts for water require a determination by the Corps of surplus water in the reservoir. The SEIS must describe the Corps' determination of surplus water for the NAWS project as well as explain how this project, in light of its cumulative impact with other foreseeable depletions, will not adversely affect other lawful uses of Missouri River water now or in the future. In addition, Section 6 allows for only short term use of the water with agreements normally being five years with an extension of five years being possible. If NAWS is intended to be a permanent withdrawal of water from Lake Sakakawea, a permanent storage reallocation would be required in accordance with the Water Supply Act of 1958, and other relevant laws.

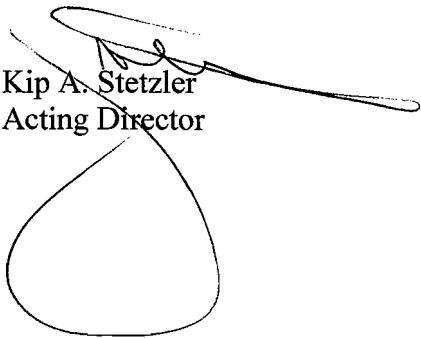
The State of Missouri formally requests that it be included on all communications associated with this SEIS and be informed of and invited to all meetings between the Bureau and other agencies and the public meetings. We have noted the scheduled public meetings that were listed in the Federal Register (volume 75; #155, page 48987).

Please contact Dr. Joe Engeln of the Department of Natural Resources should any questions arise. He can be reached at (573) 751-9813 or at [joe.engeln@dnr.mo.gov](mailto:joe.engeln@dnr.mo.gov).

Sincerely,

DEPARTMENT OF NATURAL RESOURCES

Kip A. Stetzler  
Acting Director

A handwritten signature in black ink, appearing to read "Kip A. Stetzler", is written over the typed name. Below the signature is a large, loopy, teardrop-shaped flourish.