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From: "RSlynych" <rslynch@rslynchaty.com>
To: <navgal@uc.usbr.gov>
Date: Thu, Jun 28, 2007 5:34 PM
Subject: Comments on the Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project, 72 Fed.Reg. 15159-61 (March 30, 2007)

Please see attached comments.

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June 28, 2007

Mr. Rege Leach
Bureau of Reclamation
Western Colorado Area Office
835 East Second Avenue, Suite 300
Durango, Colorado 81301

Re: Comments on the Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project, 72 Fed. Reg. 15159-61 (March 30, 2007)

Dear Mr. Leach:

We are pleased to have the opportunity to provide comments on the Draft Environmental Impact Statement for the proposed Navajo-Gallup Water Supply Project. Our Association members and associate members buy power from federal projects including the Colorado River Storage Project and are thus significantly interested in this proposal.

We note from the Federal Register notice that Reclamation intends to update the Planning Report and Draft Environmental Impact Statement (PR/DEIS) through an addendum or potentially the use of errata sheets. We would suggest that the level of inaccuracies and the outdated data contained in the current DEIS argue strongly for redrafting the document. This is especially true for analyzing the projected costs of the preferred alternative and the other alternatives that the current DEIS discusses. Your Federal Register notice acknowledges that the appraisal level cost estimate done in the DEIS does not rise to a feasibility level analysis, which would be the minimum analysis that must be done before Reclamation can consider supporting this project. Since the projected costs of this project are the *sine qua non* for consideration of it, both from a NEPA analysis standpoint and from a legislative proposal standpoint, redoing the document is, to us, essential.

1

It is also essential from the standpoint of application of Public Law 109-451, which became law on December 22, 2006. This Act, the "Rural Water Supply Act of 2006", contains a specific provision which sets parameters for analyzing the capability to pay of non-Federal project entities participating in a project. P.L. 109-451, § 106(f). The Act also lays out feasibility factors for feasibility studies and other provisions relevant to the analysis of this proposal. The

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DEIS makes a tangential reference to the bill being in Congress, albeit by the wrong bill number, and notes that the bill did not specify thresholds for these analyses. A reading of the new Public Law agrees with that comment as still being true but there seems to be much more detail in the new law than is discussed in the DEIS, including applicable feasibility factors. It seems to us that it would be easier to redraft the document using the guidelines in this new law than to attempt to amend the discussion and the cost analyses scattered throughout the document that are no longer current.

2

Yet another reason to redo the Draft EIS as the most efficient way to address the legislative proposal is the fact that, in the 110th Congress, two bills have been introduced on this Project (S. 1171 and H.R. 1970). Both bills contain a definition of “draft impact statement” to mean the Draft Environmental Impact Statement subject of the March 30, 2007 Federal Register notice and these comments. As such, the Draft Environmental Impact Statement becomes a document associated with legislation for a project in a specific location. It is therefore governed by the provision of the CEQ regulations on that subject, 40 C.F.R. § 1506.8. Reclamation must decide which of the various paths under that regulation it must follow with this Environmental Impact Statement process. Our reading of the regulation seems to indicate that, because the legislative proposal is for a specific project in a specific location, as are the alternatives, that both draft and final environmental impact statements are required. In any event, Reclamation must address this issue and, we believe, notify the public as to how it will proceed.

3

We realize that the Federal Register notice says otherwise. The Federal Register notice refers to Public Law 92-199, a 1971 Act of Congress that authorized, but did not require, feasibility studies for a number of potential water resource development projects, including this one. 85 Stat. 664-665 (December 15, 1971). Reclamation also cites its general authority to conduct water resource planning under the Reclamation Act of 1902 as amended.

We are intrigued by the idea that Congress, in 1971, authorized a feasibility grade study of this project and that has not happened. The Federal Register notice itself indicates that the “appraisal level cost estimate” contained in the Draft EIS is not a feasibility report with a feasibility level cost estimate. So, on its face, the Draft EIS is not undertaking to execute the authority granted by Congress to study this project in 1971. Moreover, since Reclamation admits that it has no authority to do anything with this project unless and until Congress acts, the Draft EIS on this “contemplation of a project” is not required. Kleppe v. Sierra Club, Inc., 427 U.S. 390 (1976). See also: Trustees for Alaska v. Hodel, 806 F.2d 1378, 1381, fn 5 (9th Cir. 1986).

4

Next, we believe that redoing the Draft EIS is the most efficient way to address some significant gaps in the current document. For instance, there is no analysis of the legislative proposal to make this project a participating project of the Colorado River Storage Project, yet there are significant consequences from Congress amending the CRSP Act for that purpose. There is no analysis of the impacts associated with amending the Navajo Indian Irrigation Project authorization for this purpose as well. The discussion of possible effects on federal water law do not articulate the aberrations from the laws related to the Colorado River (the Law of the River) that this proposal entails. The accounting problems alone need a separate discussion.

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The proposed legislation reserves power from project use power up to 26 megawatts for this proposed project but there is no analysis in the DEIS of the impacts of that reservation or the reason such project use power is currently available, if it is. This is followed by a cost reallocation provision in the legislation not addressed in the DEIS that has a vague reference to “an entity covered by this title” in terms of a cost reallocation prohibition but does not address all of the costs associated with the project. There is also a provision in the legislation for the generation of hydroelectric power but no provision in the Draft EIS concerning the authority, such as who will develop the power resource, whether it will be CRSP power resource to be allocated, etc. There is an allocation of water in the legislation to the Navajo Nation for communities in Arizona but no discussion in the Draft EIS about how that allocation would affect accounting for that water and what possible impact that allocation would have on the Law of the River or pending litigation.

6

Several provisions in the legislation being proposed affect the repayment obligations of the project beneficiaries in ways that differ from the analysis in the current DEIS and are not addressed in the current DEIS.

7

We would note also that the Draft EIS anticipates that the right-of-way for this project will be donated and makes a very cursory reference to a wide range of costs should that not be true. These costs are not considered in the evaluation of costs of the project. The legislation authorizes the use of eminent domain but there is no cost evaluation of how that power would be exercised, what time delays would be incurred and additional costs incurred should eminent domain authority have to be used in the project and what resulting impacts on feasibility would occur.

8

This lack of detail parallels the cursory evaluation of power costs in the Draft EIS. That evaluation uses data which are outdated and do not project current costs or additional costs that CRSP power will face, such as the repayment of the Animas-La Plata Project. As we understand it, CRSP power becomes obligated for payments in aid of irrigation that are required to make those payments in 2012 through 2017. In 2016, repayment of aid to participating projects begins and lasts through 2036. Thus, even if the DEIS were using current CRSP costs and not analyzing for expected future costs, the analysis would be faulty. Where, as here, the data is stale and doesn't properly contemplate future costs, the analysis of costs related to power is totally inadequate.

9

In sum, the current document is substantially deficient and needs to be rewritten. It seems to us that the easiest way to accomplish the large task ahead of getting a competent DEIS put together is to redo the document in its entirety, rather than to attempt to fill the gaps or paper the deficiencies over with addenda.

10

Since there have been significant developments since the data in the DEIS was produced, we believe a further public process is required because a competent DEIS will be materially different in its analysis of the proposed project than the current document. We look forward to working with Reclamation to make sure that further processes comply with the National

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Environmental Policy Act and CEQ Regulations.

Sincerely,

/s/

Robert S. Lynch
Counsel and Assistant
Secretary/Treasurer

RSL:psr
cc: Robert S. Johnson, Commissioner
IEDA Presidents/Chairmen and Managers