

Comment PWI-04



June 28, 2007

Via e-mail (navgal@uc.usbr.gov) and U.S. Mail

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

Re: Comments of BHP Navajo Coal Company, Arizona Public Service Company and Public Service Company of New Mexico on Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project

Dear Mr. Leach:

BHP Navajo Coal Company (BHP), Arizona Public Service Company (APS) and Public Service Company of New Mexico (PNM) (collectively "the Companies") submit these comments on the March 2007 Draft Environmental Impact Statement (DEIS) for the Navajo-Gallup Water Supply Project (the Project).

BHP is the owner of a significant water right in the San Juan Basin pursuant to New Mexico State Engineer Permit No. 2838 ("Permit 2838"), which provides rights to the use of the surface and groundwater in the Basin. BHP and its affiliate, San Juan Coal Company, own and operate coal mines in the San Juan Basin and utilize Permit 2838 to supply water for their operations, as well as to supply the sole source of water to the Four Corners Power Plant ("Four Corners"), operated by APS, and approximately one third of the supply for the San Juan Generating Station ("SJGS"), operated by PNM. The remainder of the supply for the San Juan Generating Station comes from a long term Navajo Reservoir contract PNM has with the Jicarilla Apache Nation.

The diversion point for the San Juan Generating Station is on the north side of the San Juan River seventeen miles west of Farmington (commonly referred to as the "PNM weir"). This diversion point also serves as the diversion point for BHP's operations at its San Juan Mines which serve the SJGS. The diversion point for Four Corners is on the southside of the river just downstream of the SJGS diversion. The Four Corners diversion, which provides water to Morgan Lake, also serves as the source of supply for BHP's Navajo mine operations which service the Four Corners plant.

The Companies understand the Project is an integral and essential component of the settlement of the San Juan Basin water rights claims of the Navajo Nation as reflected in the

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settlement agreement between the State of New Mexico and the Nation, as well as embodied in recently introduced federal legislation. The Companies have generally supported and continue to support settlement of the Nation's claims as set forth in the settlement agreement, including implementation of the Project. However, implementation of the Project must be done in a way which ensures protection of BHP's, APS's and PNM's existing rights and diversions. The DEIS and analysis contained therein do not adequately analyze the effect on the Companies' rights or ensure protection of such rights vis-à-vis implementation of the Project.

1

The DEIS proposes as the preferred alternative that water for the Project be diverted from the San Juan River just upstream from or utilizing the PNM weir. As set forth above, the PNM weir, owned and operated by PNM, serves as the diversion point for all of the water demands of SJGS, as well as all of the water demands for the San Juan mines (approximately 25,000 acre-feet can be diverted annually). The DEIS and technical memorandum for the Project do not adequately or specifically analyze the potential impacts on PNM's and BHP's diversions and operations if the diversion structure is utilized to divert water for the Project, or if water for the Project is diverted just upstream of the PNM weir. While the DEIS provides some general analysis and generally discusses the feasibility of expanding the PNM weir, no specific or adequate analysis is offered to determine the impacts on PNM and BHP diversions if the weir were modified, or if an upstream diversion were installed in near proximity. Additionally, the analysis is inadequate with respect to effects on PNM and BHP regarding diversions of the additional flows for the Project under differing hydrologic scenarios whether utilizing the PNM weir or diverting upstream. The limited analysis which is included also appears to be outdated as it references plans to build a fish passage at the PNM weir. This project was completed five years ago.

2

Moreover, the DEIS does not address that diversions in the vicinity of or use of the PNM weir would, at a minimum, require an agreement with PNM and BHP to address protection of the Companies' rights as well as operational and management issues. Additionally, the DEIS should discuss more specifically the required New Mexico Office of the State Engineer ("OSE") permit for the diversion of Project water. Although the DEIS appears to acknowledge that an OSE permit is required, any Final Environmental Impact Statement ("FEIS") must acknowledge that the OSE permit be appropriately conditioned to avoid impairment to the PNM and BHP rights and diversions. Moreover, the FEIS must include a requirement for a mutually agreed upon operation and management agreement for the PNM weir for direct use of the weir or as a result of potentially modified operations due to the Project's upstream diversion.

3

Similarly, the DEIS fails to adequately analyze the effects of the preferred alternative diversion on BHP's and APS's exercise of their water rights and diversion downstream to Morgan Lake for Four Corners. Although this diversion point was considered and rejected as the preferred alternative to divert Project water, diversion at the PNM weir just upstream could, if not appropriately conditioned, negatively affect APS and BHP diversions to Morgan Lake. The FEIS should include further specific analysis and also include as a mitigation measure that any OSE permit specifically include conditions to ensure no impairment of APS and BHP Morgan Lake diversions.

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The Companies continue to support the Navajo Nation water rights settlement and the Project. However, additional analysis regarding the impact on the Companies' rights and

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diversions, coordination with the Companies, and explicit recognition of the need for cooperative agreements and OSE permit conditions to ensure appropriate operation and management of Project diversions, is required.

The Companies look forward to working with the Bureau of Reclamation, the Navajo Nation and the Jicarilla Apache Nation to ensure the success of the Project and an adequate Final Environmental Impact Statement which takes into account the comments provided herein.


Very truly yours,

BHP Navajo Coal Company




Evan Jones
Vice President

Arizona Public Service Company



David Saliba
Plant Manager
Four Corners Power Plant

Public Service Company of New Mexico



John Myers
Vice President
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