

Comment SLG-04

navgal navGAL - Navajo-Gallup WSP PR&DEIS comment letter

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From: "Seaholm, Randy" <Randy.Seaholm@state.co.us>
To: <navgal@uc.usbr.gov>
Date: Fri, Jun 29, 2007 10:52 AM
Subject: Navajo-Gallup WSP PR&DEIS comment letter

Please accept the comments of the State of Colorado on the NGWSP. We are sending you a fully signed copy by mail. Thanks for your consideration.

Randy Seaholm
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STATE OF COLORADO

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June 28, 2007

Bill Ritter, Jr.
 Governor

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

Harris D. Sherman
 Executive Director

Rod Kuharich

Re: Comments on Planning Report and Draft EIS for the Navajo-Gallup Water Supply Project

Dear Mr. Leach:

Thank you for the opportunity to comment on the "Planning Report and Draft Environmental Impact Statement, Navajo-Gallup Water Supply Project" (PR&DEIS) released March 30, 2007.

The Colorado Water Conservation Board (CWCB) is the state agency charged with promoting, protecting, conserving and developing Colorado's water resources in order to secure the greatest utilization of those resources for the benefit of present and future generations, and to minimize the risk of flood damage and related economic losses. The CWCB has a long association with activities concerning the Colorado River Compact and the "Law of the River." The Colorado Water Conservation Board, on behalf of the State of Colorado, hereby submits the following comments for consideration in the development of the EIS for the Navajo-Gallup Water Supply Project (NGWSP).

The proposed action by Reclamation to construct the NGWSP, which would divert water from the San Juan River to entities in New Mexico some of which are in the Lower Colorado River Basin, has potential legal, social and environmental implications throughout the San Juan River Basin and possibly the entire Colorado River Basin. Given the substantial investment that Reclamation will make in implementing the Navajo settlement and the NGWSP, impacts should be considered in a manner that recognizes the possible consequences of this project without involving any interpretations of the Colorado River Compact among the seven Colorado River Basin States and related issues associated with the "Law of the River."

We would like to begin our comments by noting the Upper Colorado River Commission (UCRC), which includes the states of Colorado, New Mexico, Utah and Wyoming, has passed two resolutions that helped advance approval of the Navajo Settlement and the construction of the NGWSP. First, the UCRC passed a resolution in June 2003 establishing a process for the approval of projects that would divert water from the Upper Colorado River Basin for use in the

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Lower Colorado River Basin. The substance of the resolution was that water diverted from the Upper Basin would be accounted for as part of that state's Upper Basin apportionment as indicated by the following language contained in the resolution.

NOW, THEREFORE, BE IT RESOLVED by the Upper Colorado River Commission that the States of Colorado, New Mexico, Utah and Wyoming, support and to the extent necessary consent to the diversion of water from the Upper Basin for use in the Lower Basin solely within New Mexico via the proposed Navajo-Gallup Water Supply Project; provided, that any water so diverted by said project to the Lower Basin portion of New Mexico, being a depletion of water at Lee Ferry, shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III (a) of the Upper Colorado River Basin Compact;

The UCRC went on to note that such approvals should be done on a case-by-case basis.

Secondly, the UCRC passed a resolution in support of the 2006 Hydrologic Determination (HD), which support included recognition of the concerns by the Southwestern Water Conservation District (SWCD). The following is taken from the minutes of the UCRC for June 2006.

Barry Spear, General Counsel for Southwestern Water Conservation District, "When this process started for us, we asked New Mexico for a number of assurances to protect the water users in the southern part of the State of Colorado in exchange for our recommendation to the State of Colorado to support the draft HD. We have not received those assurances, and we feel that --we are disappointed in that. However, we have agreed to the language of the letter which Mr. D'Antonio mentioned earlier. We are looking forward to the good-faith compliance of the terms of that letter from New Mexico and working with New Mexico in the future.

I also would like to say that the Southwestern District has had a long history of supporting Indian tribes in their pursuit of water rights and establishing their water rights. We have supported the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, and we have supported the Navajo Nation and the Jicarilla. We continue with that support. We support the Navajo Settlement Agreement. We support the Navajo-Gallup Pipeline. But what we would like to do is, we do reserve our right to lobby our legislators to add language to legislation which would protect water users in Southwestern Colorado.

Subsequently, New Mexico has provided the referenced letter which we have attached hereto.

Furthermore, the June 9, 2006 Resolution of the Upper Colorado River Commission (PR&DEIS Attachment B) addressing the HD states: "that nothing in this Resolution, or resulting from the adoption of this Resolution, shall limit the right or ability of any Upper Basin State to develop the full apportionment made to it under the Colorado River Compact and the Upper Colorado River Basin Compact." However, we would note that the depletion guarantee contained in the NGWSP draft Biological Opinion has the potential to limit southwest Colorado's ability to develop under the Compacts because it fails to fully consider the benefits of the San Juan Recovery Implementation Program (SJRIP). However, we believe this issue is likely to be

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resolved by negotiations with the water users in the San Juan Basin.

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Prior to the actions of the UCRC, the CWCB discussed the Navajo Settlement and the NGWSP and agreed to support the Navajo Settlement and NGWSP with the inclusion of the conditions discussed by Mr. Spear at the June 2006 UCRC meeting. The CWCB supports the need for and the purpose of the NGWSP. The area to be served by the NGWSP is extremely dry and many on the Navajo reservation currently do not have running water. We believe the NGWSP can be developed in a manner that minimizes the impact to existing and future water use in Colorado with the inclusion of reasonable conditions as referenced in the comments of the Southwestern Water Conservation District (SWCD) to the UCRC along with suggested language that is currently being negotiated between Reclamation and water interests in the San Juan Basin concerning the depletion guarantee that Reclamation will seek to include in the draft Biological Opinion. Other provisions contained in the letter from New Mexico to Colorado will be suggested as part of the federal legislation approving the Navajo water rights settlement and authorizing the NGWSP.

The specific comments and recommendations of the CWCB regarding the PR&DEIS are as follows:

In general, the PR&DEIS does not fully recognize the SJRIP and the purpose of the SJRIP. The flow recommendations are only one component of the SJRIP and are not the major criteria for determining whether or not future water use and depletions can occur without adversely impacting the Colorado River endangered fish. The PR&DEIS must be revised to appropriately consider the ability of the SJRIP on whole to recover the endangered fish and not focus solely on the flow recommendation component of the SJRIP, which through the adaptive management process can change..

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Page S-4:

- Does 160/gpd/household include outside uses such as lawn and garden watering? If not, does water usage need to be monitored and limited to household uses?
- It should be noted that the Jicarilla, Navajo and City of Gallup will need contracts with Reclamation for the use of Navajo Reservoir water and the general terms and duration of those contracts described.
- Alternative Screening Process: Please define how Navajo Nation water for use in Arizona will utilize consumptive use apportionments made to Arizona. As noted by the actions of the UCRC above it is extremely important to the Upper Basin and the integrity of the Colorado River and Upper Colorado River Compacts that Arizona's consumptive use of San Juan River Basin water be charged to Arizona's Upper Basin apportionment of Colorado River water. Arizona has agreed to this condition previously when development of power plants in 4-corners area was considered and it should not be allowed to change its position on this matter in the PR&DEIS process.

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Page S-9: The SJRIP has not identified significant water quality issues in the San Juan River, at least as to endangered fish. Furthermore use of water for dilution purposes is not a valid

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beneficial use of water. An additional 5 cfs for dilution purposes is not necessary nor legally appropriate and should not be a mitigation term or condition of the NGWSP FEIS or ROD.

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Page S-10: The SJRIP will address any entrainment of endangered species issues and any mitigation for the entrainment of endangered fish should reference the SJRIP.

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Page S-6: Acknowledgement that development of the NGWSP has impacts on water use in Colorado pursuant to terms in the Upper Colorado Compact should be noted and described. Also, reference to the conditions sought by water users in southwest Colorado to minimize those impacts should be included.

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Page S-10: Please define what ongoing ESA consultation refers too.

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Page S-11: The depletion guarantee described in the January 23, 2007 the draft Biological Opinion (DBO) is summarized in this section and is not acceptable to Colorado because it: (1) may establish precedent for Section 7 consultations that run contrary to the “Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin” (Principles) established by the Coordination Committee for SJRIP and concurred in by the US Fish and Wildlife Service; and (2) the description implies that depletions may be “borrowed” from other water users in the basin that could diminish opportunities for future water development and even perhaps the utilization of existing water rights. These issues are currently being discussed among the San Juan Basin water users and appear to be resolvable but not until after the close of comments on the PR&DEIS. Colorado water interests have requested an extension of time in order to complete negotiations on this matter. While Reclamation has denied the requested extension, in its denial letter it indicated that it would work with water interests to complete that endeavor. Given this understanding with Reclamation, Colorado reserves the right to comment further on this matter if the DBO is not modified to adequately address the concerns.

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Page I-3: Further clarification of considerations relative to the Rio Grande Basin is needed. Are those considerations related solely to San Juan-Chama Project?

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Page I-3: Proposed Project Authorization. Is authorization required for the Jicarilla Nation part of the NGWSP?

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Page I-6: City of Gallup and Navajo Nation. How does the NGWSP work conjunctively with NIIP?

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Page I-6: Upper Colorado River Commission: Further clarification is required here to better describe how the actions of the UCRC have been or will be incorporated into the PR&DEIS and the legislation authorizing the NGWSP, in particular the position of the UCRC on water for Arizona from Navajo Reservoir needs to be clear. Please provide additional information on Navajo Nation discussions with Arizona and how this PR&DEIS is limited to New Mexico uses at this time. Use of NGWSP water in Arizona is dependent on the completion of settlement

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negotiations between the Navajo Nation and Arizona before project facilities can be constructed in Arizona.

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Page I-9: Jicarilla Apache Tribal Council Resolution. What is the status of Jicarilla/Navajo/City of Gallup discussions? Will there be additional NEPA compliance for the distribution system to the Jicarilla Apache Nation? If so, what if any additional compliance is required?

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Page I-11: NIIP is approximately 70% complete. When is NIIP anticipated to be completed? What steps are involved in the completion?

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Page I-12: Why aren't the Principles for Section 7 consultation discussed here? The Principles adopted by the SJRIP should be identified here and it should also note that the entire SJRIP should serve as the RPA for water development in the San Juan Basin, not just satisfaction of the flow recommendations.

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Page I-12: Again, we note that the flow recommendations are not and should not be the primary criteria for determining the impact of water development on endangered fish recovery as there are other factors such as predation by non-native fish. Furthermore, the documents should reference the SJRIP as the RPA pursuant to the Principles for conducting Section 7 consultations. The PR&DIES should be rewritten to remove the emphasis on the flow recommendations and include the Principles.

Page I-14: Animas-La Plata Project. Please note that the Project is one component of the overall settlement of the federal reserved water rights for the Ute Tribes. Also, please note that depletions are average annual depletions, not maximum annual depletions. ALP construction overall is approximately 50% complete at this time.

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Page I-15: Navajo Reservoir Operations: Please note that the flow recommendations to conserve the Colorado River endangered fish in the San Juan Basin are subject to review and will likely change through the adaptive management nature of the SJRIP.

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Page I-15: San Juan Chama Project. Note that under the San Juan Chama Project legislation, diversions to New Mexico should not limit current and future beneficial uses in Colorado.

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Page III-5: See comment above for Page S-11. The paragraph on this page should be rewritten because the depletion guarantee does not do what is described and will likely change.

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Page IV-3: Is NIIP assumed to be completed under the No Action Alternative?

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Page IV-23: What is the status of negotiations with Western Area Power Administration for CRSP power?

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Page V-15: Item (1) is another example of where the flow recommendations are portrayed as the critical criteria for environmental clearances. This is not correct, the SJRIP provides the RPA and clearance for water development pursuant to the Endangered Species Act, not satisfaction of

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the flow recommendations.

Page V-17: The last paragraph says the “depletion guarantee to allow full project development while not exceeding the existing depletion baseline and the ESA limitation (table V-3)”. The depletion baseline and the depletions in table V-3 are not ESA limitations. This statement must be modified to correctly describe the Section 7 Consultation Principles.

Page V-20: What is the result of the consultations with the Southern Ute Indian and Ute Mountain Ute Indian Tribes? This must be included in the PRDEIS.

Page V-142: Items (2) and (3) again inappropriately focus on the flow recommendations. The focus should be the overall SJRIP as the RPA and not just on the flow component.

Page V-147: First paragraph under “Operation of Navajo Dam” states the “Flow Recommendations are the centerpiece of a strategy to facilitate recovery of endangered fish ..”. This is not correct. No where in any SJRIP document are the flow recommendations described as the “centerpiece” of recovery. The flow recommendations are but one element of the SJRIP. This paragraph must be removed or modified to correctly describe the SJRIP.

Page VI-2: “Water Uses and Resources Commitments” – See comment above for Page S-11, the depletion guarantee should be used as a last resort and only if the SJRIP should fail to recover the endangered fish. It should not be the primary focus

In closing, we would again like to thank Reclamation for the opportunity to review and comment on the PR&DEIS for the NGWSP.

Sincerely,

D. Randolph Seaholm
Chief, Water Supply Protection

Attachment



20060606 Ltr from
DAntonio to Bakcomb-

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