

Comment SLG-06

THE SOUTHWESTERN WATER CONSERVATION DISTRICT
A Municipal District Organized Under State Law For Development And Conservation Of The Waters in the
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
IN SOUTHWESTERN COLORADO

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June 22, 2007

Rick Gold, Regional Director
Upper Colorado River Regional Office
128 South State Street, Room 6107
Salt Lake City, Utah 84138-1147

Re: Comments on Draft Navajo-Gallup Water Supply Project PRDEIS

Dear Mr. Gold:

This letter transmits the comments of the Southwestern Water Conservation District (SWCD) concerning the Draft Planning Report and Draft Environmental Impact Statement (PRDEIS) for the Navajo-Gallup Water Supply Project (NGWSP), dated March, 2007. The SWCD, established by the Colorado legislature in 1941, encompasses the entire San Juan River basin in Colorado. The SWCD has been involved in the San Juan River Basin Recovery Implementation Program (SJRIP) since its inception.

SWCD fully supports the need and purpose of the NGWSP. The area to be served by this project is extremely dry and groundwater is inadequate to meet local needs or is non-existent. SWCD believes the NGWSP can be developed without impacting future water use in Colorado with the inclusion of reasonable conditions, some of which are suggested herein, some of which are being negotiated for inclusion in the Draft Biological Opinion ("DBO") referenced in the PRDEIS, and others of which will be suggested for inclusion in the federal legislation authorizing NGWSP.

SWCD has the following specific comments, questions, and recommendations regarding the PRDEIS.

Overview: A statement, pervasive throughout the PRDEIS, is the stated purpose of the flow recommendations within the SJRIP. The flow recommendations are only one component of the SJRIP for the recovery of the two endangered fish in the San Juan River and not the major criterion for allowance or disallowance of the future water depletions. The PRDEIS must be revised to appropriately reflect the overall role of the SJRIP in the recovery of the endangered fish and not just the role of the flow recommendations.

Page S-2: The NGWSP is planned to supply water through the year 2040. It is likely that the facilities to deliver water cannot be constructed until about 2020. How will the water demands

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be met until 2020? What is the anticipated demand beyond 2040? How will this additional supply be provided? This comment applies throughout the PRDEIS.

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Page S-4:

Does 160/gpd/household include outside lawn and garden watering, automobile washing, etc? How will water usage be limited, should the actual demand exceed 160/gpd/household?

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Do the Jicarilla and Navajo Nations and City of Gallup need carriage contracts for use of Navajo Reservoir?

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Alternative Screening Process. Is there sufficient CRSP power available for the NGWSP? How will this be determined?

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For the Preferred Alternative, when will NGWSP costs be determined at the 2007 level?

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Please better define how Navajo Nation use in Arizona will utilize consumptive use apportionments made to Arizona "by compact or decree" (see Introduction: Scope p. 1-3 - same issue re: Tec Nos Pos and Fort Defiance/Window Rock). The Arizona consumptive use should be accounted against Arizona's Upper Basin allocation not its Lower Basin allocation because the diversion for the NGWSP is in the Upper Basin.

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Page S-9: Dilution is not a valid beneficial use of water. What is the identified water quality problem for the endangered fish? It does not appear that an additional 5 cfs is really a benefit, but is only environmentally neutral.

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Page S-10: How will entrainment of endangered species affect their status? What will be the mitigation for entrainment vis-à-vis SJRIP recovery efforts?

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Page S-6: Why was no Colorado entity or representative from the SJRIP included on the Steering Committee when NGWSP potentially affects water users in Colorado?

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Page S-10: Please define what it means that ESA consultation is "ongoing".

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Page S-11: The depletion guarantee described in the DBO is summarized in this section. The depletion guarantee, as described in the January 23, 2007, DBO, is not acceptable to SWCD because it: (1) establishes a precedent for future Section 7 consultations by other San Juan River Basin entities; (2) does not conform 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 (3) the description implies that depletions are "borrowed" from other water users in the basin. These issues are currently being discussed among the involved parties, including SWCD, and are likely to be resolved, but not until after comments on the PRDEIS are due. If the DBO is modified to adequately address the concerns of

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SWCD, SWCD will have no further comments on the PRDEIS and DBO. In the unlikely situation that "depletion guarantee" issues are not resolved, SWCD will provide additional comments on the DBO and the depletion guarantee.

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The June 9, 2006 Resolution of the Upper Colorado River Commission ("UCRS"), see PRDEIS Attachment B, addressing the Hydrologic Determination states that:

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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.

The depletion guarantee has the potential to limit southwest Colorado's ability to develop water under the Compact based on the disregard of the SJRIP Principles. While this issue is likely to be resolved by negotiations among the parties after the comments are due on the PRDIES, this comment is included in the event those negotiations are not successful.

Page I-3: Is involvement of the Rio Grande River 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: UCRC What conditions did the UCRC include in its June, 2006 resolution supporting the NGWSP and a new Hydrologic Determination? How have these conditions been incorporated into the planning for and legislation authorizing the NGWSP? What is the position of the UCRC on whether and how to fulfill water needs in Arizona from Navajo Reservoir? Please provide additional information on Navajo Nation discussions with 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 compliance will be required? If not, why not?

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Page I-10: Cooperative Agencies . . . Why were not representatives from the SJRIP and the State of Colorado included in the Steering Committee? See listing under "Other Projects and Actions . . . p.I-11.

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

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Page I-12: Why aren't the SJRIP Principles for Section 7 consultation discussed here? The Principles refer to the entire SJRIP as the RPA for water development in the San Juan River Basin.

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Page I-12: This is the first of numerous comments herein on inappropriate references in the PRDEIS to the purpose of SJRIP flow recommendations. The flow recommendations are not the primary criterion for endangered fish recovery in the San Juan Basin, but are simply one component of the SJRIP. The Principles describe the appropriate use of the flow recommendations in the recovery of the endangered fish species, the PRDEIS should be rewritten to remove the emphasis on the flow recommendations and, include focus on the Principles.

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Page I-14: Animas-La Plata Project ("A-LP"). Note that the A-LP settles Ute Tribal reserved water rights. Note also that depletions are average annual depletions, not maximum annual depletions. A-LP construction, as of last fall, was 48% complete.

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Page I-15: Navajo Reservoir Operations..... Note that the flow recommendations to conserve the endangered fish in the San Juan River are subject to adaptive management and will very likely change.

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Page I-15: San Juan Chama Project. Note that under the San Juan Chama Project legislation, diversions to New Mexico cannot 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 needs to be much better defined to reflect its actual purpose and implementation.

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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) one is another example of the inappropriate portrayal of the purpose of flow recommendations as the critical criterion for water development environmental clearances. This is not correct. The overall SJRIP provides the endangered fish clearance for water development, not simply the flow recommendations.

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Page V-17: The last paragraph states that 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 should be modified to correctly describe the Principles.

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

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Page V-43: The assumption of disturbance within a 500 foot area on both sides of pipelines (1,000 foot wide) is excessive. We know of no example of the construction of a pipeline having impacts 500 feet on either side of the pipeline. The distance should be decreased to 50 – 100 feet of width at the most.

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Page V-142: Items (2) and (3) again inappropriately focus on the flow recommendations. The focus should be the overall SJRIP and not just one of its components.

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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. Nowhere in any SJRIP document are the flow recommendations described as the “centerpiece” of recovery. This paragraph must be modified, or removed, to correctly describe the SJRIP.

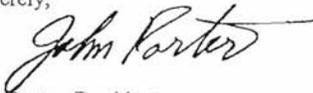
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Page VI-2: “Water Uses and Resources Commitments” – See comment above for Page S-11.

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Please contact Steve Harris, consulting engineer for SWCD (970-259-5322), if you have any questions regarding these comments.

Sincerely,



John Porter, President
Southwestern Water Conservation District