

Comment SLG-07



June 27, 2007

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

Re: Comments on Draft Navajo Gallup Water Supply PRDEIS

Dear Mr. Gold:

The San Juan Water Commission ("SJWC") appreciates the Bureau of Reclamation's ("BOR") significant effort and professionalism demonstrated by the comprehensive March 2007 Planning Report and Draft Environmental Impact Statement ("PRDEIS") for the Navajo-Gallup Water Supply Project ("NGWSP"). SJWC, having not actively participated in the development of the PRDEIS, offers the following comments, each of which concerns potential adverse effects on SJWC's existing rights in the San Juan River Basin.

SJWC is a political subdivision of the State of New Mexico charged with acquiring and protecting untreated water for the use and benefit of all citizens, municipalities, water users associations and other water users in San Juan County, New Mexico. Its member entities include the cities of Aztec, Bloomfield and Farmington, San Juan County and the Rural Water Users Association. To fulfill its charge, SJWC, among other things, has entered into a contract with the BOR to receive water from the Animas-La Plata Project ("ALP Project") and has been involved in the San Juan River Basin Recovery Implementation Program ("SJRIP") since its inception. Although it does not necessarily support all terms of the proposed settlement of the Navajo Nation's *Winters* reserved water rights claims now pending before Congress, SJWC does recognize the importance of both resolving the reserved water rights issue without protracted litigation and providing a water supply to area to be served by the NGWSP. Nevertheless, it is important that the NGWSP, as constructed and operated, not interfere with or in any way impinge SJWC's existing rights.

Understandably, the PRDEIS focuses on the Federal Trust responsibility to the Navajo Nation and the Jicarilla Apache Tribe. However, SJWC is not convinced that the PRDEIS recognizes the extent to which existing laws, projects

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and contracts constrain the water project it describes. Nor does the PRDEIS adequately recognize or even attempt to analyze potential harm to SJWC and its member entities—particularly the harm that could result if the NGWSP causes harm to endangered species.

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Endangered Species/Biological Opinion Concerns

The BOR has adequately and accurately described both the endangered species concerns in the San Juan River Basin and the SJRIP, the program designed to protect and recover endangered fish while allowing water development to proceed through establishment of San Juan River baseline depletions and flow recommendations. [PRDEIS at I-12, V-142 to -143; March 16, 2001 Technical Memorandum, Appendix A to PRDEIS, at 21] Nevertheless, the BOR's conclusions concerning the NGWSP's negligible adverse impact on endangered fish species because of the Navajo Nation's depletion guarantee are suspect. [See, e.g., PRDEIS at II-5, V-13, V-17, V-31 ("With the Navajo Depletion Guarantee, the proposed project meets the critical elements of the Flow Requirements"), V-145, VI-2 to -3, VI-5] The PRDEIS relies on the January 23, 2007, Draft Biological Opinion for the Navajo-Gallup Water Supply Project ("Biological Opinion") issued by the U.S. Fish and Wildlife Service ("FWS"), which concludes that the NGWSP will "not impact the ability for the San Juan River Flow Recommendations to be met" and thus will neither result in jeopardy nor result in an "adverse modification of critical habitat for pikeminnow or razorback sucker." [PRDEIS at S-11, V-86 to -87, V-89; Biological Opinion, Appendix C Part III to PRDEIS, at 54; Jan. 23, 2007 FWS letter to BOR, at 1] SJWC believes the Biological Opinion contains significant flaws. The Water Development Steering Committee of the SJRIP, of which SJWC is a member, has submitted detailed comments on the Biological Opinion to the FWS. SJWC will not reiterate those comments here. Suffice it to say, there are significant concerns about the FWS methodology, including failure both to define the appropriate environmental depletion baseline for NGWSP and to compare the impacts of the project to that baseline, as required by Section 7 regulations, 50 C.F.R. § 402. Further, in its analysis of depletions and impacts on endangered fish, the FWS has inappropriately offset new NGWSP depletions with as yet unused depletions and also has used old, unverified data concerning the current status of non-Indian depletions. An accurate analysis of the endangered species impacts of the preferred alternative for the NGWSP is critical because any adverse impact and resulting San Juan River flow modifications may potentially interfere with the ability of SJWC and its member entities to receive and use their contracted allotment of ALP Project water. As the BOR has noted, "[i]mplementation of the [SJRIP] is the key element of the reasonable and prudent alternative . . . for section 7 consultation under the ESA that would permit completion of the ALP Project." [PRDEIS at I-14, V-144, V-147 (noting SJRIP flow recommendations are the primary mechanism for attaining ESA compliance for new water development in the Basin), V-149 (stating, with respect to the ALP Project, that the "biological opinion relies on implementation of the Flow

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Recommendations through re-operation of Navajo Reservoir to avoid jeopardy" to the endangered fish)] Further, the PRDEIS specifically states only that the Colorado Ute and Navajo Indian water uses from the ALP Project will not be adversely impacted by the preferred alternative—it does not directly state a conclusion that SJWC's ALP Project rights will not be adversely impacted. [See PRDEIS at V-17, subsection (4)]

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Other Concerns

To support the conclusion that sufficient water is available to supply the NGWSP, the BOR relies on May 2006 State of New Mexico schedule of anticipated Upper Basin depletions. [PRDEIS at I-6, Table I-1, III-4, TableV-3] As the depletion schedule itself notes (see footnote 4 of Table I-1), it does not tabulate or determine water rights. Significantly, the table fails to include SJWC's right to receive an additional 20,580 AFY of consumptive use water from the ALP Project under BOR Permit No. 2883. Because the ALP Project under construction is much smaller than the ALP Project anticipated under Permit No. 2883, the excess or "released" water under the Permit will be returned to the State of New Mexico by operation of law pursuant to N.M. Stat. Ann. § 72-5-33. Pursuant to section 72-5-33, SJWC filed an application to appropriate the released water more than six years ago. Because the released ALP water to which SJWC has a legal claim is not included in the depletion schedule, the conclusion that water is available for the NGWSP may be in error.

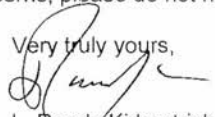
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Finally, the PRDEIS provides no discussion of the authority for NGWSP's use of Colorado River Storage Project ("CRSP") power. Rather, the PRDEIS simply notes that the annual OM&R costs of the preferred alternative are "least costly assuming [CRSP] power rates." [PRDEIS at S-6, Table S-3, IV-29] SJWC recommends that the BOR investigate the potential adverse impacts on other CRSP power users should the NGWSP participate. Participants in existing or approved Reclamation projects already using or approved to use CRSP power should not be impacted, in terms of less availability of CRSP power or higher rates, by a new project. Is the BOR aware of the status of any negotiations with the Western Area Power Administration ("WAPA") for the NGWSP's use of CRSP power or any WAPA concerns about the availability of CRSP power for the project or potential impacts on other CRSP power users?

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Thank you for the opportunity to comment on the PRDEIS. Should you have any questions about SJWC's concerns, please do not hesitate to call me.

Very truly yours,


L. Randy Kirkpatrick
Executive Director