

Bureau of Reclamation
Attn: Ed Warner, Area Manager
445 West Gunnison Ave, Suite 221
Grand Junction, CO 81501

Letter sent via email to: paradoxeis@usbr.gov

Re: Paradox Valley Unit Draft EIS

Dear Mr. Warner,

Please accept the following comments submitted by the Colorado Wildlands Project (CWP). The CWP is a new advocacy project focused on the protection of wilderness quality public lands under the administration of the Bureau of Land Management (BLM) in Colorado. We are particularly interested in decisions that could impact Conservation Lands such as Wilderness Study Areas (WSAs) as well as lands with wilderness characteristics (LWCs).

Our recommendation is that the Bureau of Reclamation (BOR) choose Alternative A, the No Action Alternative because of several significant deficiencies with the DEIS outlined below. In particular, we oppose Alternative B because it is incompatible with the non-impairment standard required for management of the adjoining BLM lands in the Dolores River Canyon WSA. The other alternatives, C and D, also have significant potential detrimental impacts on the environment and nearby communities. We recommend that BOR complete a more holistic analysis of the costs and benefits associated with the entire Colorado River Salinity Control Program and weigh the overall need of the Paradox Valley Unit (PVU) in that context and developing a different range of alternatives before making a final decision (beyond Alt A) on the future of the PVU.

Purpose and Need

The need for the action alternatives in the DEIS is to “control salinity in the Colorado River contributed by sources in the Paradox Valley to decrease the adverse effects of high salt concentrations in the Lower Colorado Basin.”¹ However, the DEIS fails to quantify the impact of the existing PVU operations since 1996:

because of the many variables associated with quantifying the effect of pumping on the river’s salinity (such as base salt load conditions, river flows, irrigation practices, and groundwater flow into the river), the change in TDS levels between the two U.S. Geological Survey (USGS) stations at Paradox

¹ DEIS at 1.3

Valley (09169500 and 09171100) does not exactly correlate with the volume of brine pumped from the brine production wells.

However, no complete models of salt control in the Paradox Valley exist with which to determine the salinity control effect of PVU operations; therefore, based on best available scientific information, Reclamation is continuing to estimate salt control in the Paradox Valley based on its historical determination.²

The lack of solid data demonstrating the effectiveness of the PVU makes it impossible for the public to assess whether the project meets the purpose and need, as well as whether it is a wise investment in these costly action alternatives, both to taxpayers as well as to the surrounding environment.

Though the Colorado River Basin Salinity Control Act of 1974 authorizes the PVU, it does not mandate a particular kind of operation at Paradox Valley, or direct BOR that it must engage in a particular type of operation at Paradox Valley.³ Indeed, other locations are listed where there are no significant operations, such as at Crystal Geysers in Utah.

Recommendation: The BOR should not decide on one of the action alternatives unless it can demonstrate to the public that it meets the purpose and need.

Range of Reasonable Alternatives

NEPA requires that an actual "range" of alternatives be considered, so as to "preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative."⁴ This requirement prevents the DEIS from becoming "a foreordained formality."⁵ In addition, the "evaluation of alternatives mandated by [NEPA] is to be an evaluation of alternative means to accomplish the general goals of an action; it is not an

² DEIS at 2.1.1

³ 43 U.S. Code §1592

⁴ Col. Env'tl. Coal. v. Dombek, 185 F.3d 1162, 1174 (10th Cir. 1999) (citing Simmons v. U.S. Corps of Eng'rs, 120 F.3d 664, 669 (7th Cir.1997))

⁵ City of New York v. Dep't of Transp., 715 F.2d 732, 743 (2d Cir. 1983). See also Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002)

evaluation of the alternative means by which a particular applicant can reach his goals.”⁶

BOR must also develop alternatives that are consistent with the mitigation hierarchy. NEPA and associated Council on Environmental Quality (CEQ) regulations require federal agencies to analyze potential impacts and consider ways to avoid, minimize and mitigate impacts – in accordance with the mitigation hierarchy.⁷ The mitigation hierarchy aims to minimize environmental harms associated with agency actions. First and foremost, BOR must seek to avoid impacts; then minimize impacts (e.g., through project modifications, permit conditions, interim and final reclamation, etc.); and, generally, only if those approaches are insufficient to fully mitigate the impacts, seek to require compensation for some or all of the remaining impacts (i.e., residual effects). BOR must apply the mitigation hierarchy to evaluation of the proposed Project.

The DEIS fails to present a reasonable range of alternatives, including alternatives to mitigate impacts. The three action alternatives each present troubling environmental and community impacts, yet it fails to contemplate alternatives that might also reduce salinity intrusion at Paradox Valley such as managing river flows at existing BOR facilities in the Dolores River (such as at McPhee Dam) to increase flows and thus reduce salinity.

The action alternatives present the public with significant negative impacts to the environment and the community:

- Alternative B - impacts to the Dolores River and its canyons that may impair the wilderness study area, impair the suitability of a wild and scenic river, permanently diminish recreational values, destroy habitat for desert bighorn sheep and the Gunnison sage grouse, and ultimately create additional earthquakes in the region.
- Alternative C - evaporation ponds could harm migratory birds and would damage the scenic and rural nature of the Paradox Valley
- Alternative D - more industrial development would damage the scenic and rural nature of the Paradox Valley and burning fossil fuels to power the crystallizers would require a pipeline to bring natural gas as well as create a new source of greenhouse gas use contributing to climate change.

⁶ Colo. Evtl. Coal. v. Dombeck, 185 F.3d 1162, 1174 (10th Cir. 1999)

⁷ 40 C.F.R. §§ 1508.8, 1502.14, 1502.16.

Recommendation: the BOR should develop a more reasonable range of alternatives that consider actions that have less harmful impacts to the environment and nearby communities, including alternatives to mitigate impacts.

Wilderness Study Area Impairment

Consistent with its obligations under FLPMA and implementing regulations, BLM must manage and protect Wilderness Study Areas (WSAs) to preserve wilderness characteristics so as not to impair the suitability of such areas for designation by Congress as a Wilderness. Alternative B in the DEIS does not meet these obligations.

In July 2012, the Department of the Interior released updated guidance on BLM management of WSAs.⁸ Manual 6330 provides “general policies for the administration and management of [WSAs]” and “outlines procedures to ensure the Congressional mandate to manage” WSAs to a non-impairment standard is met. As a general policy, BLM must “protect the wilderness characteristics of all WSAs in the same or better condition than they were on October 21, 1976, until Congress determines whether or not they should be designated as wilderness.”⁹ Further, when “managers are in doubt as to a course of action in a WSA, this [policy] should serve as a guiding principle.”¹⁰ “The benchmark for the non-impairment standard is the condition in 1976 or current condition of the WSA, whichever is the better condition of wilderness characteristics.”¹¹

The Dolores River Canyons WSA is a 30,000 acre area of slickrock canyons surrounding the Dolores River, recommended by the BLM to be designated wilderness by Congress.¹² The WSA and the “Slickrock Section” of the Dolores River that winds through the WSA is a popular and sought after recreational resource when flows are sufficient to float the stretch. The WSA “includes all surface *and subsurface* features under the jurisdiction of the BLM [*italics added for emphasis*].”¹³

⁸ BLM Manual 6330- Management of Wilderness Study Areas (Public) (July 13, 2012)

⁹ Manual 6330 § 1.6.B.

¹⁰ Id.

¹¹ Id. at 1.6.B.6

¹² BLM Colorado Wilderness Study Report ROD, October 1991

¹³ Manual 6330 § 1.4.C

The non-impairment standard requires a two part test for proposed actions. One is if the action is temporary and the second is whether the action creates a surface disturbance.¹⁴ Alternative B1 would be a permanent action within the WSA, even though it is subsurface, so it fails the non-impairment standard test.

BLM Manual 6330 does make limited exceptions to application of the non-impairment standard, and the DEIS seems to excuse impacts from Alternative B by claiming that since "PVU is authorized by Congress under Title II, Section 202(a) (1), of the Colorado River Basin Salinity Control Act (PL 93-320, as amended)" then that is a qualifying exception.¹⁵

However, although Manual 6330 does allow that "other obligations may be created by Congress,"¹⁶ it is not plausible to read that Title II, Section 202(a)(1), of the Colorado River Basin Salinity Control Act would be a qualifying act of Congress because the Colorado River Basin Salinity Control Act never mentions, much less authorizes, activities specifically in a location that is now within the Dolores River Canyon WSA (the WSA did not exist in 1974). So since Congress was not specific in location or name, it creates no congressionally-mandated exception, or other valid existing right, that would satisfy the exception requirements to the non-impairment standard. And since there is no current, existing PVU-related use within the WSA and existing facilities only were established in 1996, it eliminates any exception for grandfathered uses prior to the 1976 effective designation date of the WSA.

The DEIS then goes on to claim:

*The permanent subsurface facilities would not affect the wilderness characteristics; therefore, they would not impair the area's suitability for preservation as wilderness.*¹⁷

This statement is entirely subjective and attempts to presuppose the judgement of Congress. In fact, Congress has been extremely reluctant to designate wilderness where there are ROWs and subsurface infrastructure, so it is not credible to claim that a pipeline would not impair the area's suitability. Congressionally-designated wilderness is managed to a different standard: to wit there is no non-impairment standard in wilderness, there are only degradations to naturalness and non-

¹⁴ Id. at 1.6.C.1

¹⁵ DEIS at 3.13.2.2

¹⁶ Manual 6330 § 1.6.C.2.g

¹⁷ DEIS at 3.13.2.2

conforming uses (like pipelines) that would likely create impediment to wilderness designation for this portion of the WSA.

Finally, BLM Manual 6330 states:

If an impairing proposed project—even one that meets an exception—can be implemented outside of a WSA and accomplish the objectives identified in the purpose and need statement prepared under NEPA, the BLM should endeavor to ensure that the project is implemented outside the WSA.¹⁸

Since there are other alternatives that would not impair the WSA, and since Alternative B falls short of a qualifying exception to the non-impairment standard, then BOR should eliminate Alternative B as an alternative, or at least amend it to entirely avoid the surface *and subsurface* of the WSA.

Recommendation: BOR should eliminate or rework Alternative B to entirely avoid the Dolores River Canyon WSA. BOR cannot adopt Alternative B as proposed in the DEIS because it would violate the non-impairment standard, the PVU is not a qualifying exception to the non-impairment standard, and there are other alternatives available that would not impair a WSA.

Hard Look at Potential Impacts

The fundamental objective of NEPA is to ensure that an “agency will not act on incomplete information, only to regret its decision after it is too late to correct.”¹⁹ NEPA dictates that agencies take a “hard look” at the environmental consequences of a proposed action, and the requisite environmental analysis “must be appropriate to the action in question.”²⁰ In order to take the “hard look” required by NEPA, BLM must assess impacts and effects, including: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.”²¹

BOR must revise or supplement the DEIS to take a hard look at the following resources, which are either omitted or inadequately analyzed in the DEIS:

¹⁸ Manual 6330 § 1.6.C.2

¹⁹ Marsh v. Or. Natural Res. Council, 490 U.S. 360, 371 (1989)

²⁰ Metcalf v. Daley, 214 F.3d 1135, 1151 (9th Cir. 2000).

²¹ 40 C.F.R. § 1508.8

- Impacts to river recreation, such as new bridges and other infrastructure over the Dolores River within a popular boating section, creating new public hazards.
- Impacts to scenic and aesthetic qualities of community and area. Paradox Valley is a rural, residential and agricultural community. Building significant industrial infrastructure could harm these qualities, and depress already low property values.
- Impacts to economy and efforts at just transition. The West End of Montrose County is working to recover from the boom and bust cycles of the uranium mining era and still reeling from the job losses resulting from the closure of the Tri-State power plant and mine at Nucla. There have been significant efforts to reinvent the local economy around outdoor recreation. New trails have been built, and efforts are being made to promote existing resources like boating on the Dolores River or hiking in the WSA. The DEIS fails to analyze the effects that any of the alternatives would have on the economic revitalization efforts of the area.
- Impacts to wildlife. The DEIS acknowledges the impacts that Alternative B would have on potential Gunnison sage grouse habitat, however the DEIS incorrectly states that there is low public interest or no economic or recreational concerns in bighorn sheep species in the project area.²² On the contrary, the public and Colorado Parks and Wildlife have had significant interest in the health and recovery of the herd in the Dolores River canyons.²³

Recommendation: BOR should go back and further analyze impacts to recreation, local economy and wildlife in the DEIS.

Thank you for your consideration of Colorado Wildland Project's comments on the DEIS for the Paradox Valley Unit. We have significant concerns about this project and intend to remain involved in all future stages of the planning process. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Scott Braden
Director
Colorado Wildlands Project
587 21 1/8 Rd

²² DEIS at 3.11

²³ <https://durangoherald.com/articles/305780>

Grand Junction, CO 81507
lodoreconsult@gmail.com
(720) 530-7473