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November 2, 2018

Via electronic and first class mail

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Re: Green River Block Water Exchange Contract Draft Environmental Assessment; PRO-EA-16-020

Mr. Baxter:

American Rivers provides these comments in response to the Bureau of Reclamation's (Reclamation) "Green River Block Water Exchange Contract Draft Environmental Assessment" (PRO-EA-16-020; September 2018) (DEA).

DESCRIPTION OF AMERICAN RIVERS

American Rivers is a national, non-profit, 501(c)(3) conservation organization with offices nationwide, including one in Denver, Colorado and headquarters in Washington, D.C. It serves more than 275,000 members and supporters nationwide, and over 30,000 members in the seven-state Colorado River Basin region.

Throughout the Colorado River Basin, American Rivers is actively engaged in efforts to support system conservation and water demand reduction solutions to maintain water levels in Lake Powell and Lake Mead, to increase water supply reliability and security for people and

farms, to protect water quality and instream uses like fish and recreation, and to promote low-impact hydropower generation. The goal of these efforts is to ensure the Colorado River can continue to provide water for human and environmental needs in the face of drought, long-term climate change, and population growth.

American Rivers is also a party to the licensing proceeding pending before the Federal Energy Regulatory Commission (FERC) for the Utah Board of Water Resources' Lake Powell Pipeline (LPP) Project, which proposes to divert up to 100,000 acre feet (AF) of water annually from Reclamation's Lake Powell through a buried 69-inch diameter pipeline to southern Utah. We have stated opposition to the LPP Project as currently proposed due to concerns that it would undermine basin-wide efforts for sustainable water resource management.

COMMENTS

As we understand it, the proposed action would modify how Utah exercises its water apportionment under the Upper Colorado River Basin Compact. Rather than take water from the Green River and tributaries, Utah would allow its allotment to remain in Reaches 1 and 2 of the Green River. Allowing this water to remain in Reaches 1 and 2 would assist Reclamation in meeting its obligations under the Endangered Species Act for the recovery of endangered fish species in the Green River, as established in the 2006 Record of Decision on the 2005 Operation of Flaming Gorge Dam Final Environmental Impact Statement. In exchange, Utah would take its allotment below Reaches 1 and 2, from Flaming Gorge releases. "On an annual basis, the direct flows that would be left in the river and used to meet ESA requirements would equal the

FG [Flaming Gorge] project releases used for depletion by the State under the Contract Entitlement right.”¹

The DEA focuses on the effects of Utah taking water from Flaming Gorge releases rather than direct diversion from the Green River. As discussed below, we are concerned that this scope is too narrow and that the analysis does not adequately address the direct, indirect, and cumulative effects of the additional depletion of surface water flow from the Colorado River Basin.

American Rivers requests that Reclamation revise its environmental analysis to address the effects of the additional depletion of water from the Colorado River Basin in the context of climate change and other connected, similar, and cumulative actions occurring with the basin. Reclamation must disclose the impacts of the proposed action in the context of other demands on this river system, which already is under tremendous strain.

We provide more specific comments below, organized according to the headings in the DEA.

Section 1.4 Purpose of and Need for Proposed Action

The DEA states that the proposed action is responding to a request from the State of Utah for two water contracts that would facilitate use of its “assigned water right”² of 158,890 acre feet:

“One contract represents 86,249 AF depletion to be used for the LPP [Project] proposed to be constructed by the State; the second contract, called the Green River Block, or simply GRB, represents the remaining amount of the assigned water right (72,641 AF depletion) to be used for development along the Green River. The purpose of the

¹ DEA, p. 9.

² The draft contract defines “assigned water right” to mean: “an interest in Application to Appropriate number A30414d (as numbered by the Utah State Engineer) for the diversion of 447,500 acre-feet with 158,800 acre-feet of depletion or segregated pieces of water right from it including change applications which have or will be filed based on that application....” Contract No. 17-WC-40-655, Technical Draft 10/05/2017, p. 3.

Exchange Contract is to facilitate a water exchange of 72,641 AF of depletions annually under the 1996 Assignment, which was previously included as part of a CRSP [Colorado River Storage Project] participating project water right. This contract is needed to resolve a long standing disagreement between Reclamation and the State regarding use of the water right assigned in 1996.”³

American Rivers is concerned that the scope of analysis for the DEA, which is limited to the Green River Block contract, is narrower than the purpose and need statement, which addresses Utah’s development of its “assigned water right” of 158,890 AF. The DEA does not explain how limiting the scope to just one of the contracts that will be needed to develop Utah’s “assigned water right” is consistent with NEPA regulations requiring that connected and similar actions be analyzed in the same document, as discussed below.

Section 1.8 Scope of Analysis

The DEA states the geographic scope of analysis excludes Lake Powell: “[a]nalysis in the EA includes impacts from depletions of water along the Green River, from FG Dam down to, but not including, Lake Powell.”⁴ This geographic scope seems too limited given that the Green River is hydrologically connected to Lake Powell, and there are other actions related to management of Lake Powell that currently are pending before Reclamation.

The DEA refers to the LPP Project as a related project, but does not analyze it as a “connected action”:

“[FERC] is the lead agency in preparing an EIS [Environmental Impact Statement] for the [LPP Project]. The project would bring water to residents in southern Utah by building a 139 miles long, 69-inch-diameter pipeline from Lake Powell to Kane and Washington [C]ounties, Utah. Water delivered by the project will be based on the established water right.”⁵

³ DEA, pp. 5-6.

⁴ *Id.* at 8.

⁵ *Id.* at 7.

The DEA does not address Reclamation's role in authorizing the LPP Project. However, in its comments on the Utah Board of Water Resources' Draft Preliminary Licensing Proposal, Reclamation described its role in the LPP Project as deciding:

“(1) whether to approve a water service contract for water diversion from Flaming Gorge. Water stored in Flaming Gorge would be delivered down the Green River, providing in-stream benefits, and from Lake Powell it would be diverted into the pipeline; and (2) whether to approve a ROW [right-of-way] license agreement for constructing and operating the pipeline and other LPP facilities within the Reclamation Primary Jurisdiction Area near Glen Canyon.”⁶

Under regulations implementing NEPA, the scope of an agency's review must include connected, cumulative, and similar actions:

“(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”⁷

⁶ “Comments from the Bureau of Reclamation Lake Powell Pipeline Project Preliminary Draft Preliminary Licensing Proposal November 2015,” eLibrary no. 20160316-5117 (Mar. 16, 2016).

⁷ 40 C.F.R. § 1508.25(a).

NEPA disfavors “segmenting” the analysis of connected, cumulative, or similar actions into different environmental documents:

“An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration. The Supreme Court has held that, under NEPA, ‘proposals for ... actions that will have cumulative or synergistic environmental impact upon a region ... pending concurrently before an agency ... must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.’”⁸

American Rivers is concerned that the DEA improperly segments review of the Green River Block water exchange contract from other connected, cumulative, and similar actions related to development of water in the Colorado River Basin, notably the LPP water exchange contract and the right-of-way license agreement for construction of the LPP Project, both of which are pending before Reclamation. The purpose statement explicitly refers to Utah’s desire to develop its “assigned water right,” yet the DEA does not explain why the two contracts necessary to develop the assigned water right would be reviewed separately under NEPA.

Further, the DEA does not address the development of a Drought Contingency Management Plans for the Upper and Lower Colorado River Basin. The draft “Agreement Concerning Colorado River Drought Contingency Management and Operations”⁹ was published in October 2018. The draft Agreement calls for an Upper Basin Demand Management Program that will, in part, coordinate operations of the Colorado River Storage Project Act Initial Units, including Flaming Gorge, to help minimize the risk of Lake Powell declining below minimum power pool and maintain the Upper Basin States’ compliance with the Colorado River

⁸ *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)).

⁹ Available at https://www.usbr.gov/dcp/docs/DCP_Agreements_Final_Review_Draft.pdf.

Compact.¹⁰ Reclamation Commissioner Burman has, “emphasized the need for prompt action following another year of low runoff in the ongoing drought and called on the states to complete their drought planning by December of 2018.”¹¹ The DEA does not explain why this drought planning effort was not considered. This oversight is striking given that Reclamation has designated the planning effort as high priority and played a significant role in the negotiations.

Reclamation’s segmented environmental analysis may prevent full disclosure of the impacts of these several actions, which could be substantial when considered together. Segmentation may also interfere with identification of effective measures to mitigate cumulative effects on a basin-wide scale.

American Rivers requests that Reclamation revise its environmental analysis to address connected, cumulative, and similar actions as required by NEPA and implementing regulations. One option for accomplishing this would be to cooperate with FERC in jointly preparing a comprehensive Environmental Impact Statement (EIS) that at least addresses both water exchanges and the LPP Project.¹² Reclamation’s expanded role in preparing the EIS for the LPP Project would be consistent with FERC’s finding that the project “is, first and foremost, a large water conveyance system, whose primary purpose is not hydropower development but delivery of water from Lake Powell In Arizona 140 miles to southwestern Utah for municipal and industrial use.”¹³ Reclamation has greater expertise and experience than FERC in the hydrologic modeling and analysis that will be necessary to evaluate the LPP Project’s impacts on water

¹⁰ *See id.*

¹¹ Reclamation, “Colorado River Drought Conservation Plans” (Oct. 18, 2018) *available at* <https://www.usbr.gov/newsroom/newsletter/2018/2018-10-19newsletter.html>.

¹² 40 C.F.R. § 1501.5(b) (“Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).”).

¹³ FERC, “Order Denying Petition for Declaratory Order on Jurisdiction,” eLibrary no. 20180920-3043 (Sept. 20, 2018), p. 26.

resources, including but not limited to, “[e]ffects of project proposal on water availability and water use, *including water availability during droughts or under other adverse hydrologic conditions.*”¹⁴

3.3.1.2.2 Future Inflow Scenarios

The DEA states that it analyzed future inflow hydrology scenarios. The DEA describes Reclamation’s methodology for determining the “Direct Natural Flow” for future inflow, in part, as follows:

“Natural flow is the observed flow adjusted for the effects of diversions and the operation of reservoirs upstream of the flow gage. This natural flow record was developed by Reclamation and is used extensively in their hydrologic modeling and Environmental Impact Statements. In this inflow scenario, the existing historical record of natural flows was used to create a number of different future hydrologic sequences using a resampling technique known as the Index Sequential Method (ISM). The ISM provides the basis for quantification of the uncertainty and an assessment of the risk with respect to future inflows and is based upon the best available measured data.”¹⁵

American Rivers is concerned that this methodology does not appear to consider the impacts of climate change on inflow. Based on our review, the DEA does not address the effects of climate change on the hydrology of the Colorado River and tributaries at all. This is inconsistent with NEPA’s directive to describe the affected environment, and the cumulative effects of a proposed action in light of other reasonably foreseeable changes to the affected environment.¹⁶ It is inconsistent with scientific data showing that:

¹⁴ FERC, “Scoping Document 2 for the Lake Powell Pipeline Project,” eLibrary no. 20080821-3005 (Aug. 21, 2008), p. 27 (emphasis in original).

¹⁵ DEA, p. 14.

¹⁶ 40 C.F.R. §§1502.15, 1502.16. “The current and projected future state of the environment within the proposed action (i.e., the no action alternative) represents the reasonably foreseeable affected environment, and this should be described based on authoritative climate change reports....” Council on Environmental Quality, “Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews” (Aug. 1, 2016) (CEQ Climate Change Guidance), pp. 20-21 (subsequently withdrawn for further consideration pursuant to Executive Order 13783, “Promoting Energy Independence and Economic Growth” (Mar. 28, 2017)).

“Climate change can make a resource, ecosystem, human community, or structure more susceptible to many types of impacts and lessen its resilience to other environmental impacts apart from climate change. This increase in vulnerability can exacerbate the effects of the proposed action.”¹⁷

Reclamation has identified the Colorado River Basin as already being impacted by climate change, the effects of which are likely to increase and intensify in the coming years. It has described some of these impacts as follows:

- Spring and early summer runoff reductions could translate into less water supply for meeting irrigation demands and adversely impact hydropower operations at reservoirs.
- Warming could also lead to significant reservoir evaporation, increased agricultural water demands and losses during water conveyance and irrigation.
- Growing demands in the Colorado River system, coupled with the potential for reduced supplies due to climate change, may put water users and resources relying on the Colorado River at risk of prolonged water shortages in the future.¹⁸

Reclamation’s “Colorado River Basin Water Supply and Demand Study” also found:

“[I]n the absence of timely action, there is likely to be significant shortfalls between projected water supplies and demands in the basin in coming decades, which is likely to affect each sector (for example, agricultural, municipal, energy, and environmental) dependent on the Colorado River and its tributaries. The Basin Study also confirmed a wide range of solutions are needed to mitigate and adapt to such shortfalls.”¹⁹

American Rivers requests that Reclamation consider the potential impacts of the proposed action and alternatives in light of the basin’s increased vulnerability due to climate change.

¹⁷ CEQ Climate Change Guidance, p. 21.

¹⁸ Reclamation Climate Change Fact Sheet: Colorado Basin, *available at* <https://www.usbr.gov/climate/secure/docs/2016secure/factsheet/ColoradoRiverBasinFactSheet.pdf>, p. 1.

¹⁹ *Id.* at 2.

3.3.1.4 Proposed Action (Hydrology)

In its analysis of effects on hydrology, the DEA states that the proposed action would not have significant adverse impacts:

“The Proposed Action would have minimal impacts on hydrology, with potential effects occurring mostly in moderately dry to dry years (>70 percent exceedance). The model isolates the impacts of the GRB depletion against future depletions on the Green River. The modeling shows impacts of the GRB depletion are insignificant as compared against both the No Action and the Full Depletion scenarios.”

The DEA similarly finds that, “[c]umulatively, there would not be a significant impact to hydrology based on the analysis performed in this EA.”²⁰

As stated above, the DEA does not adequately consider connected, cumulative, and similar actions affecting hydrology within the Colorado River Basin. It also omits climate change, even though Reclamation has found that climate change is having and will continue to have a significant effect on hydrology within the basin. Reclamation must correct these omissions from the hydrologic analysis in order to support findings regarding the proposed action’s effects on hydrology.

3.3.8 Water Rights

The DEA’s discussion of the proposed action’s impacts on water rights focuses on how the proposed action would benefit Reclamation and Utah.²¹ It also finds that,

“Cumulatively, there would not be a significant impact to water rights based on the analysis performed in this EA. Under the No Action Alternative the State would be able to develop the water right that was assigned to them in 1996, but would not be able to rely on the exchange of water between the Yampa and FG reservoir.”²²

²⁰ DEA, p. 17.

²¹ *Id.* at 49.

²² *Id.* at 50.

The analysis does not adequately support the finding that the proposed action, when considered with other actions, would not have significant impacts to water rights. It does not reference or otherwise address Reclamation's previous objection that Central Utah Project water rights could be adversely impacted by Utah's development of its assigned water right: "[i]f all the senior undeveloped water rights in the Green River and San Juan River Basins are developed, Utah would exceed its portion of the Colorado River Compact and the Central Utah Project water rights would be adversely impacted."²³ Reclamation should revise the analysis to address the effects of the proposed action and alternatives on water rights in addition to the other connected, cumulative, and similar actions that are proposed or underway within the Colorado River Basin.

CONCLUSION

Thank you for considering these comments. We look forward to working with Reclamation on sustainable management of the Colorado River Basin going forward.

Dated: November 2, 2018

Respectfully submitted,



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²³ Letter from Bruce C. Barrett to Kent L. Jones, P.E. (Dec. 17, 2009).

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