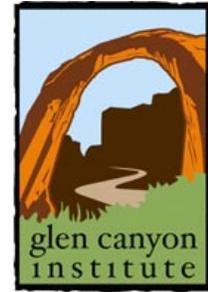




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U.S. Department of Agriculture
Office of Inspector General
Room 117-W Jamie Whitten Bldg
1400 Independence Avenue SW
Washington, DC 20250

Office of the Chief
Natural Resources Conservation Service
U.S. Department of Agriculture
1400 Independence Avenue., SW, Room 6149-S
Washington, DC 20250

January 12, 2020

Honorable Inspector General,

We write today to bring to your attention a disturbing new proposal in Utah called the Cove Reservoir that raises major questions of propriety in regards to the likely violation of Natural Resources Conservation Service (NRCS) funding stipulations as per the Watershed Protection and Flood Prevention Act, PL 83-566. We are requesting an inquiry from your office and a finding of fact regarding the potential role of NRCS staff in advancing this faulty project, the identification of specific parties who brought political or professional pressure to bear upon NRCS staff in Utah to advance this inappropriate proposal, and a full analysis of how a municipally-purposed water development project could be cloaked as an agricultural project to receive generous

federal funding in clear violation of Congress' intent in awarding funds to the U.S. Department of Agriculture as per PL 83-566.

At issue is a new dam and reservoir proposed in the Lower Basin of the Colorado River on the Virgin River in southwest Utah. In November, the NRCS Utah office released a proposed Cove Reservoir Environmental Assessment (EA), which projected that the project would have a construction cost of \$30 million. Of this amount, some \$22 million would be paid by the federal government under the agricultural provisions of the Watershed Protection and Flood Prevention Act, PL 83-566. This federal grant constitutes nearly 75% of the project costs, with the remaining \$8 million to be paid in some undisclosed portion by both the Washington County Water District, a municipal water supplier, and the Kane County Water District, another municipal water supplier.

The NRCS justified this \$22 million in federal funding using the agricultural purpose provisions of PL 83-566 to extend this generous financial award to these two municipal water suppliers. The EA estimated that there are 6,000 acres of agricultural lands with 4900 acres in Washington County and 1100 acres in Kane County to justify the agricultural provisions of the financing terms under PL 83-566.

However, upon further research including through field visits to these agricultural lands, we found NRCS and project sponsor's claims that this project is agriculturally purposed to be a false characterization of the likely use of the proposed reservoir and, by extension, the use of precious federal funding during this pandemic economy.

The "agricultural" lands in Washington County listed in Appendix B of the EA to receive project water are actually municipal in nature, with many subdivisions, schools, churches, and commercial development having already been constructed inside the project lands. The Church of Jesus Christ of Latter Day Saints announced last June that a portion of these lands were selected as the site of their new LDS Temple and that construction has already been initiated.

Less than half the lands shown in Washington County's portion of the Cove Reservoir remain in agricultural activities. Furthermore, the EA lists 4,900 acres of land in Washington County being served by the Cove Reservoir and its agricultural purposes. These lands were georeferenced from Appendix B of the EA, and then integrated into a GIS map overlaid on Google Earth. Field visits were conducted in December 2020 to document further development from what is shown in this satellite imagery.



The “agricultural” lands in Washington County have already been converted to new subdivisions, with only small tracts of residual agricultural lands remaining, which are under tremendous development pressure. Yet the supposed “agricultural” purpose of the proposed Cove Reservoir allows \$22 million in generous project funding to be paid by the federal taxpayer according to the NRCS, which wouldn’t happen if it were classified as a municipally-purposed project.

D = Developed urban land
 A = remaining ag land

This exercise demonstrates that this entire region in Washington County only constitutes 2,000 acres of land, as can be readily observed from the map above. Our analysis indicates that more than half of this region has already been developed into new roads, subdivisions, churches, schools and strip malls. We calculate that there are roughly 900 acres of open land remaining in this Washington County region, which at most represents just 18% of the agricultural acreage claim made in the EA for this area. This assumes these open areas are being cultivated by agriculture, which seems doubtful. Whether these lands will actually remain agricultural in the future, or be irrigated with Cove Reservoir water has been ignored by proponents seeking funding.

It likewise appears the amount of agricultural lands in Kane County have been inflated since many of these lands are upstream of the proposed reservoir and cannot be irrigated with reservoir water. This is further evidenced by a recent news story citing the Kane County Water District’s executive director,¹ who noted that the Washington County Water District owns 75% of the water in the reservoir. This raises major questions as to why the WCWD is not the lead sponsor for this project and further

¹ Maffly, Brian. “Utah’s Cove Reservoir was proposed under false pretenses to win federal subsidy, critics allege.” (Jan. 7, 2021). <https://www.sltrib.com/news/environment/2021/01/07/utahs-cove-reservoir-was/>

creates the appearance their heavy involvement has been cloaked behind a more rural water supplier to receive generous agricultural financing provisions from taxpayers. It is also not clear how Kane County water rights holders could generate the agricultural benefits calculated in the EA with just 25% of the water rights.

Because the Washington and Kane County water districts have spent the last 15 years seeking to convince state and federal decision makers that urban population growth warrants the approval of the proposed Lake Powell Pipeline, we find it extremely implausible that these two water districts or the NRCS staff were unaware of the population growth and municipal development occurring on these lands. In fact, it appears these water districts with help from NRCS staff sought to acquire \$22 million in federal funds by cloaking the true purpose of the Cove Reservoir municipal water project in the sheep's clothing of an agricultural project.

The leadership of both water districts openly defended the municipal water use of Cove Reservoir water, even though it may violate federal law. The Kane County Water District executive director conceded that this agricultural water could be converted readily to municipal uses at anytime in the future in the same news story when he said:

“If there’s uses needed in the future, there’s a higher and better use, that water would be used by people to build homes and to use water in another way.”

The general manager of the Washington County Water District was quoted in a similarly cavalier tone about using agriculturally-purposed federal funds for a municipal water project:

“The question is, should those irrigators never be able to do anything with their land or does this lock them in forever and ever? My answer to that is no...” He also noted *“I don’t look at it as a bait and switch because it’s not putting a moratorium on farmers to choose what they do with their land.”*

The EA raises major questions about the conduct of NRCS officials in entertaining this project as a municipally-purposed reservoir. As demonstrated in the map above, basic google searches and on-the-ground field work prove that many of the claims made regarding the acreage and state of agricultural lands that would be served by the proposed project were grossly inaccurate. The accompanying 84 pages document details of our sources and methodologies.

This raises troubling questions about the NRCS’s failure to verify even the most basic of claims made in the EA. This failure to oversee the purpose of the projects has allowed this project to be considered for a disproportionately large amount of federal funding in violation of PL 83-566 and a series of other federal laws, including the National Environmental Policy Act, the Wild and Scenic Rivers Act, the Endangered Species Act, and other federal guidelines in regards to preparing a land use proposal falling under

the test of being a major federal action. Not only does this proposal violate a series of federal statutes, it robs precious funding from other worthy applications seeking to protect America's agricultural heritage by draining funds from USDA coffers.

We therefore respectfully request that your office initiate an inquiry into the role these local water districts and Trump Administration staff members may have played in pressuring NRCS employees inside Utah to advance this project in violation of federal law. We would like to know if NRCS employees, U.S. Department of Agriculture employees, or Trump Administration staff pressured Utah NRCS offices into falsely portraying this project as being agricultural, thereby violating the financing limitations of the Watershed Protection and Flood Prevention Act.

As you are aware, there are a number of other federal statutes that could apply regarding the inappropriate and potentially illegal nature of the presentation of false information to a federal agency, particularly in regards to requesting federal funding. However, in the interest of brevity, we would like to present our concerns during a subsequent investigation by your office in the future. In the meantime, we have attached 84 pages of supporting material that detail our concerns that are also being shared with members of the incoming Biden Administration.

Thank you in advance for considering our request and for safeguarding USDA funding to protect America's vital agricultural heritage. We look forward to hearing back from your office.

Sincerely,

Zachary Frankel
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Douglas W. Wolf
Senior Attorney
Center for Biological Diversity

Jen Pelz
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Kyle Roerink
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Eric Balken
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