
November 1995

ANIMAS-LA PLATA PROJECT

Status and Legislative Framework





United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-260541

November 17, 1995

The Honorable Bill Bradley
United States Senate

Dear Senator Bradley:

The Department of the Interior's Animas-La Plata project, to be constructed by Interior's Bureau of Reclamation (Bureau), was designed to store water and deliver it to arid areas and communities in southwestern Colorado and northwestern New Mexico, principally by transferring water from the Animas River to the La Plata River basin. Although the project was authorized by the Congress in 1968, more recent impetus for construction came when the project was made the cornerstone of a water rights settlement, which was legislatively implemented by the 1988 Colorado Ute Indian Water Rights Settlement Act. Under this act, the project will store and provide water for the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe; a portion of the project is to be completed by the year 2000, or the settlement could be revisited by the tribes. Before beginning construction of the project, the Bureau was required under the Endangered Species Act of 1973, as amended, to consult with Interior's Fish and Wildlife Service (Service) to determine whether the project would likely jeopardize the continued existence of any endangered species.

As agreed with your office, this report provides information on the history and status of the Animas-La Plata project (see app. I); the legislative framework provided for the project by the 1988 Settlement Act (see app. II) and the Endangered Species Act (see app. III); the consultation between the Bureau and the Service under the Endangered Species Act (see app. IV); and the project's relationship to another congressionally authorized project, the Navajo Indian Irrigation Project (NIIP) (see app. V).

Summary

In May 1990, the Service issued a draft "biological opinion" stating that the project, in depleting water from the Animas River and thereby reducing its flow, would likely jeopardize the endangered Colorado squawfish in the San Juan River, downstream from the project. The Bureau and the Service consulted over the next several months to develop what is termed a "reasonable and prudent alternative" to the project (referred to hereinafter as the "alternative"), which the Service believes would not likely

jeopardize the squawfish. In October 1991, the Service incorporated the Bureau's proposed alternative into its final biological opinion.

The alternative, as adopted in 1991, limited construction of the project to certain facilities; restricted the amount of water that the project could annually deplete from the Animas River; and provided for a 7-year-long study of the needs of the Colorado squawfish and a fish recovery program in the San Juan River, both of which rely on periodic releases of water from the Navajo Dam and Reservoir. The dam and reservoir are located upstream on the San Juan River and store water used by NHP. Under the alternative, no additional construction or water depletions for the project is allowed until the fish study (which began in 1991) is complete and the Service determines that the squawfish would not likely be jeopardized.

A 1992 lawsuit filed by several environmental groups delayed the start of construction. The complaint in the lawsuit contained 11 causes of action, which were based on alleged violations of several statutes. The cause of action based on the Endangered Species Act—which did not involve the Colorado squawfish—was dismissed as premature. In the remaining causes of action, the plaintiffs charged that the Bureau's 1980 environmental impact statement for the project was inadequate because it did not address new circumstances and information, including substantial changes in the project. In responding to the lawsuit, the Bureau began preparing a supplemental environmental impact statement and deferred beginning construction of the project. The Bureau plans to issue its supplemental statement in December 1995.

While the Bureau and the Service developed an alternative intended to allow construction of the project to begin, the following issues could result in construction delays and affect both the practicability of the alternative and the implementation of the 1988 Settlement Act.

- Construction of the project depends upon successful completion and acceptance of the supplemental environmental impact statement. If the supplemental statement is delayed or challenged, project construction could be further delayed. The Bureau estimates that, barring further delays, the first portion of the project will be completed in 2002. Because this is later than the agreed date, the Colorado Ute tribes could revisit the water rights settlement.
- Construction of features beyond those that are permitted under the alternative depends on the outcome of the fish study. If the Service

concludes that the project would likely not jeopardize the Colorado squawfish, further depletions could be allowed and construction could proceed. On the other hand, if the Service cannot reach this conclusion, the Bureau would not be able to undertake further construction under the alternative.

- According to the Service's final biological opinion, the alternative must include guaranteed delivery of water released from the Navajo Dam and Reservoir to provide the improvement in habitat necessary to maintain and increase the squawfish population in the San Juan River. Such guarantees were given by Colorado and New Mexico but not by Utah or the Navajo Nation. This situation may require the agencies to reopen consultation.
- The Bureau's use of water from the Navajo Dam and Reservoir under the alternative is disputed by the Navajo Nation. The Navajo Nation believes that this use threatens the tribe's claim to water in the reservoir under the 1962 congressional authorization of NIP and the tribe's other rights to water in the San Juan River. Depending on how this dispute is resolved, NIP, the Animas-La Plata project, or other water use and development in the San Juan River basin could be adversely affected.

Agency Comments

We requested comments on a draft of this report from the Secretary of the Interior or his designee. On September 20, 1995, we met with officials from the Bureau. We also obtained written comments from the Bureau and the Service. Both agencies provided several technical clarifications to the draft, and the Bureau provided updated information on its plans for issuing the supplemental environmental impact statement (in December 1995) and completing construction of the project's first facilities (no earlier than 2002). We have incorporated these changes into the report as appropriate. The Bureau's and Service's complete comments and our responses are included in appendixes VI and VII, respectively.

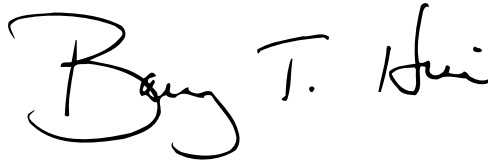
Scope and Methodology

To obtain information on the project, we reviewed the Colorado River Basin Project Act of 1968 (which authorized the Animas-La Plata project); the Endangered Species Act of 1973, as amended, as well as its implementing regulations; and the Colorado Ute Indian Water Rights Settlement Act of 1988. We also reviewed documents concerning the project and the interagency consultation process. We interviewed more than 150 representatives from federal agencies, Indian tribes, state and local agencies, and proponents and opponents of the project. We also visited the project's site near Durango, Colorado. Because of the 1992

lawsuit that led to the Bureau's preparing a supplemental environmental impact statement, the only alternative to the project we reviewed was the alternative adopted in 1991. We performed our review between January 1993 and October 1995 in accordance with generally accepted government auditing standards.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days after the date of this letter. At that time, we will send copies to the Secretary of the Interior and other interested parties and make copies available to others on request. Please call me at (202) 512-8021 if you or your staff have any questions about this report. Major contributors to this report are listed in appendix VIII.

Sincerely yours,

A handwritten signature in black ink that reads "Barry T. Hill". The signature is written in a cursive style with a large, looping initial "B".

Barry T. Hill
Associate Director, Natural
Resources Management Issues

Contents

Letter	1
Appendix I Background on and Overview of the Animas-La Plata Project	8
Appendix II The Colorado Ute Indian Water Rights Settlement Act	13
Appendix III The Endangered Species Act and the Colorado Squawfish	15
Appendix IV Development of a Reasonable and Prudent Alternative	18
Appendix V The Navajo Indian Irrigation Project and Its Relationship to the Animas-La Plata Project	23

Contents

Appendix VI		25
Comments From the	GAO's Comments	30
Bureau of		
Reclamation		
Appendix VII		32
Comments From the	GAO's Comments	35
Fish and Wildlife		
Service		
Appendix VIII		36
Major Contributors to		
This Report		
Figures	Figure I.1: Area of the Animas-La Plata Project	9
	Figure III.1: Colorado Squawfish	17

Abbreviations

BIA	Bureau of Indian Affairs
GAO	General Accounting Office
NIIP	Navajo Indian Irrigation Project

Background on and Overview of the Animas-La Plata Project

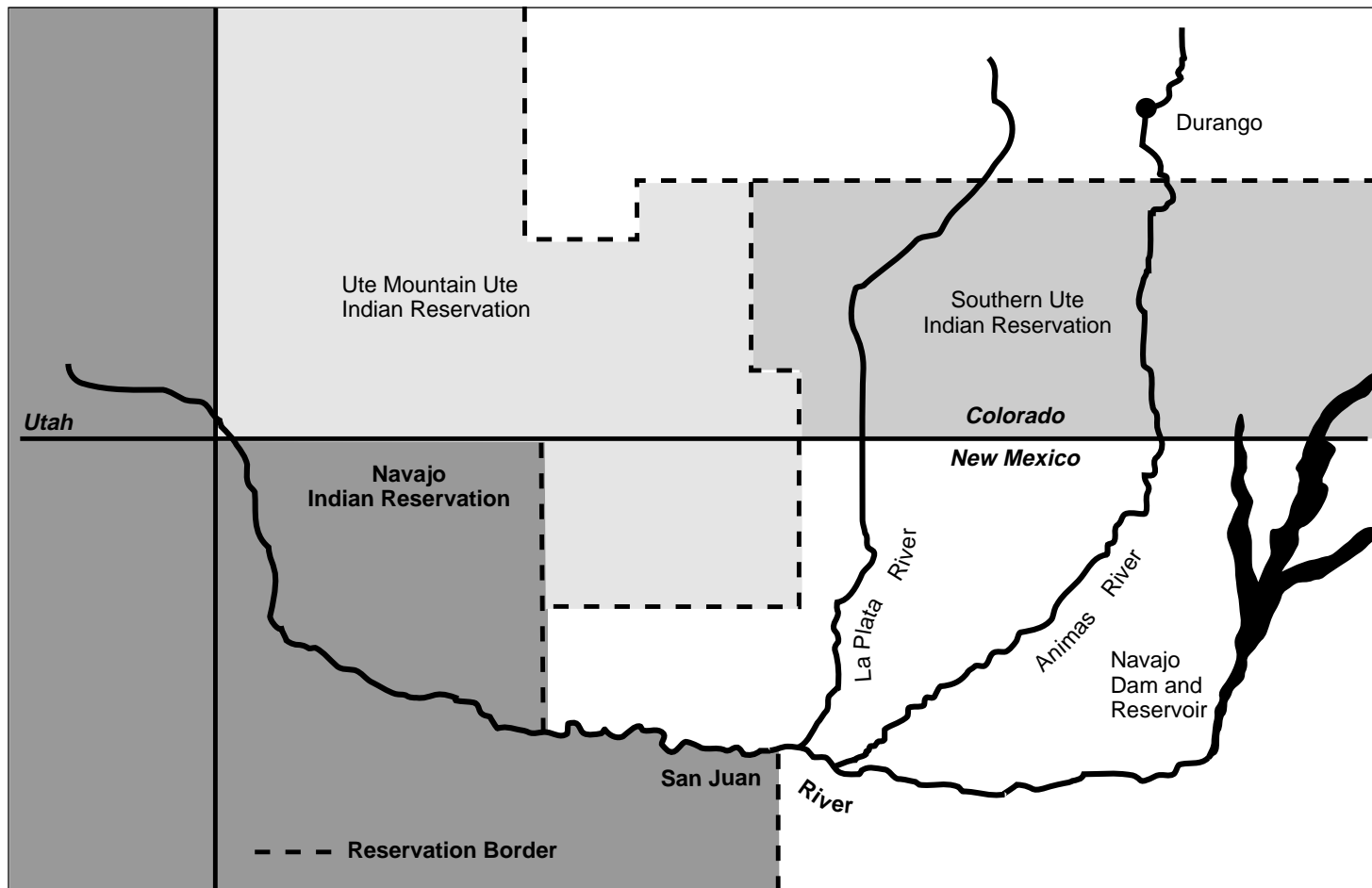
According to the final biological opinion prepared by the Department of the Interior's Fish and Wildlife Service (Service), the completed Animas-La Plata project would annually deplete approximately 155,000 acre-feet¹ of water from the Animas and La Plata rivers, store the water in two reservoirs, and convey it—through a network of pipelines and canals—to communities and irrigators located near the Animas and La Plata rivers in southwestern Colorado and northwestern New Mexico. The project would also provide water to the Southern Ute and Ute Mountain Ute Indian reservations.² Interior's Bureau of Reclamation (Bureau) currently estimates the cost of the completed project at about \$710 million. Figure I.1 shows the area covered by the project.

¹An acre-foot is the volume of water that would cover 1 acre to a depth of 1 foot.

²The project would also provide water to the Navajo Nation, which has not agreed to receive this water.

Appendix I
Background on and Overview of the
Animas-La Plata Project

Figure I.1: Area of the Animas-La Plata Project



Source: GAO's presentation of information from the Bureau.

A water project serving southwestern Colorado and northwestern New Mexico—an area with low precipitation and abundant sunshine—has been contemplated since the early 1900s. The Animas River originates in the snowy San Juan Mountains in Colorado; its annual stream flows are about 13 times larger than the annual flows of the La Plata River lying to the west. Because most of the area's irrigable acreage lies near the less abundant La Plata River, area farmers and municipalities have long searched for ways to divert water from the Animas River.

In 1938, the Bureau began studying the feasibility of transferring water from the Animas River to the La Plata River basin. In 1966, the Bureau prepared a feasibility report for the project, which was subsequently authorized through the Colorado River Basin Project Act of 1968.

In 1976, the United States filed a lawsuit on behalf of the Southern Ute and Ute Mountain Ute Indian tribes to identify and obtain (i.e., “quantify”) their rights to water flowing in several rivers on or near their reservations, including the Animas and La Plata rivers. The State Engineer of Colorado, projecting the impact of the Ute Indians’ claims on non-Indian water users, determined that the tribes’ claims could have a severe impact on these users. For example, he believed that during years of water shortage, the tribes could have rights to virtually all the available water in numerous streams and rivers in the San Juan River basin.

Because land ownership on the Southern Ute Reservation was mixed, with non-Indians owning and farming land along the La Plata River, these legal proceedings created a great deal of tension between the Southern Utes and local non-Indians. To avoid an expensive and disruptive outcome, the tribes, local communities, non-Indian irrigators, state of Colorado, and federal government negotiated a settlement of the tribes’ claims. In 1988, the Colorado Ute Indian Water Rights Settlement Act (P.L. 100-585) made the Animas-La Plata project the cornerstone of this negotiated settlement of the Utes’ water rights claims.³ (App. II provides information on the 1988 Settlement Act.)

In 1979, the Service had issued a biological opinion concerning the potential effects of the proposed Animas-La Plata project on the endangered Colorado squawfish. (App. III provides information on requirements under the Endangered Species Act and on the Colorado squawfish.) At that time, on the basis of the capture of a single juvenile Colorado squawfish in the San Juan River, the Service concluded because of its “already tenuous hold on survival, its possible loss should have little impact on . . . the species itself.” However, the Service recommended that the Bureau thoroughly survey the native fish populations of the San Juan River and determine the environmental needs of the squawfish. Surveys of fisheries conducted from 1987 to 1989 discovered more Colorado squawfish than had previously been known and revealed potential effects of the project that had not been considered in the Service’s 1979 biological opinion.

³The Ute Mountain Ute Indian Tribe also has the right to receive water from the Dolores Project, another Bureau project in Colorado.

In 1990, the Service issued a draft biological opinion that the Animas-La Plata project, as proposed, would jeopardize the continued existence of the endangered Colorado squawfish. Responding to the 1990 draft opinion, the Bureau and the Service consulted to develop a “reasonable and prudent alternative” for the project (referred to hereinafter as the “alternative”) that allowed construction of certain facilities of the project. (App. IV provides information on the alternative.)

In 1992, several environmental groups filed a lawsuit that delayed the start of the project’s construction by challenging the validity of the Bureau’s 1980 environmental impact statement for the project.⁴ In responding to the lawsuit, the Bureau began preparing a supplemental environmental impact statement and deferred beginning construction of the project. The Bureau expects to issue the supplemental statement in December 1995 and, after the issuance of the Record of Decision, begin construction.

In July 1994, the Department of the Interior’s Inspector General issued a report addressing the Animas-La Plata project.⁵ The Inspector General reported that the project had a negative benefit-cost ratio, in part because the Bureau overstated the anticipated benefits resulting from uses of the water for irrigation. The Inspector General recommended that the Bureau reevaluate the economic costs and benefits of the project; inform the Congress of the results of this reevaluation; and, if warranted, seek congressional approval to reformulate the project (limiting its size and scope). Responding to these recommendations, the Bureau noted that it was updating its economic analysis for the project. The Bureau completed this update in June 1995. The analysis showed that while the project had a positive benefit-cost ratio under the economic evaluation procedures used when it was authorized by the Congress in 1968, it has a negative benefit-cost ratio under contemporary economic evaluation procedures.

Interior had previously recognized that the full project has a negative benefit-cost ratio, noting in October 1987 letters addressed to the Chairman, Senate Committee on Energy and Natural Resources, and to the Chairman, House Committee on Interior and Insular Affairs, that “. . . the Animas-La Plata Project is not economically feasible” At that time, Interior supported going forward with the project because it would settle

⁴Four Corners Action Coalition, et al. v. Dennis Underwood, et al. Civil Action No. 92-Z-341, U.S. District Court for the District of Colorado. Complaint filed April 23, 1992.

⁵Development Status of the Dolores and the Animas-La Plata Projects, Bureau of Reclamation, 94-I-884 (July 1994).

Appendix I
Background on and Overview of the
Animas-La Plata Project

the tribes' claims to water rights and because nonfederal partners were to share in the project's costs.

The Colorado Ute Indian Water Rights Settlement Act

The Colorado Ute Indian Water Rights Settlement Act (P.L. 100-585) provided more recent impetus for constructing the Animas-La Plata project. The act expanded the project's purposes to include the storage and delivery of water for the two Ute tribes. It settled the Ute tribes' claims by guaranteeing them the use of water from the project and providing \$49.5 million in federal funds for tribal development. The act was based on two agreements signed earlier: an agreement on cost-sharing for the Animas-La Plata project and a final settlement agreement on the Colorado Ute Indians' water rights. In effect, these two agreements split the project into two phases.

Under the first phase, the project will store the tribes' water in Ridges Basin Reservoir and will physically convey the water the non-Indian users receive for various purposes. It will be primarily federally financed and is expected to cost about \$550 million. This phase was originally scheduled for completion by 2000; the Bureau now estimates, barring further delays, that the Ridges Basin Dam will be completed in 2002. If certain features of the project's first phase¹ are not built by the year 2000, according to the final settlement agreement,

“then by January 1, 2005, the Tribe,² in consultation with the United States as trustee, must elect either: (a) to retain the project reserved water right; or (b) to commence litigation or renegotiation of its pending reserved water rights claims on the Animas and La Plata Rivers. If the Tribe, in consultation with the United States as trustee, has not elected to commence litigation or renegotiation of its pending claims . . . then: (a) the Tribe shall be deemed to have elected to retain its project reserved water right; (b) the settlement of the Tribe's pending reserved and appropriative water rights claims on the Animas and La Plata Rivers . . . shall become final; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River.”

The second phase, in which the project will physically convey water to the Ute Indian reservations, will be financed by the nonfederal project partners and is expected to cost about \$160 million. It is to be constructed when deemed practicable by one or more of these partners.³ The federal government will pay the Indian tribes' share of the project's costs until the water is first used. Water that the tribes receive for irrigation and for

¹These facilities are the Ridges Basin Dam and Reservoir, the Long Hollow Tunnel, and the Dry Side Canal.

²In this context, the word “Tribe” refers to either the Southern Ute Indian Tribe or the Ute Mountain Ute Indian Tribe.

³The nonfederal parties who signed the cost-share agreement are the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, Colorado, Montezuma County, the Animas-La Plata Water Conservancy District, the New Mexico Interstate Stream Commission, and the San Juan Water Commission.

Appendix II
The Colorado Ute Indian Water Rights
Settlement Act

municipal and industrial use is to be stored in Ridges Basin Reservoir until the project's second phase is completed.

The Endangered Species Act and the Colorado Squawfish

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), was enacted to protect fish, wildlife, and plant species whose survival is in jeopardy. The Secretary of the Interior, through the Fish and Wildlife Service, is responsible for making such designations for land and freshwater species, such as the endangered Colorado squawfish.¹ Under section 7 of the Endangered Species Act, federal agencies—if they determine that their actions may affect any designated species—are required to consult with the Service before beginning construction on proposed projects to determine whether a project would likely “jeopardize the continued existence of” any endangered species.² The act also provides a mechanism for exempting projects from the act’s requirements.

Consultation Under the Endangered Species Act

The act’s requirement to consult concerns actions taken by federal agencies that “reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” Section 7 of the act represents a congressional design to give endangered species priority over the primary missions of federal agencies.³

When proposing a project, the consulting agency bears the burden of proof to demonstrate that its actions would not likely jeopardize the species and must determine whether its actions may affect the species; if so, it must request consultation with the Service. The Service, after reviewing the proposal’s potential effects on the species, documents its determination in a “biological opinion.” If the Service finds that the proposed project would likely jeopardize an endangered species, it issues a “jeopardy” biological opinion. The consulting agency can then either abandon the project or develop, with the Service’s concurrence, a “reasonable and prudent alternative” (called hereinafter the “alternative”) that modifies the proposed project to avoid jeopardizing the endangered species. The biological opinion and the alternative, as well as the agencies’ decisions, must be based on the best scientific and commercial information that is available.⁴ Under the Endangered Species Act’s implementing regulations,

¹For a species to be designated as endangered, it must be in danger of extinction throughout all or a significant portion of its range (the area where the species naturally occurs).

²This requirement applies to projects whose construction began after November 10, 1978.

³*TVA v. Hill*, 437 U.S. 153, 185 (1978).

⁴In this context, the word “commercial” refers specifically to trade information (e.g., salmon harvests), not to nonscientific information in general.

Appendix III
The Endangered Species Act and the
Colorado Squawfish

a reasonable and prudent alternative must be within the consulting agency's authority to implement, consistent with the project's intended purpose, and economically and technologically feasible.

Exemptions Under the
Endangered Species Act

The consulting agency can seek an exemption from the act's protective provisions from the Endangered Species Committee.⁵ If such an exemption is granted, the agency can proceed with the proposed project despite any jeopardy it may pose to an endangered species. In deciding whether to grant an exemption, the Endangered Species Committee is authorized to consider information unrelated to the jeopardy of a species. This information may include the benefits of a project, its regional and national importance, and the public interest. The Committee weighs this information against the continued viability of the species and may determine, for example, that the public benefits of a proposed project, such as a dam, outweigh the risks it poses to an endangered species.

The Colorado Squawfish

The Service has determined that the Colorado squawfish (*Ptychocheilus lucius*) is an endangered species. In the past, individuals in the species have been known to grow to nearly 6 feet in length and weigh more than 80 pounds. It evolved as the main predator in the Colorado River system, of which the San Juan River is a part. Figure III.1 shows a Colorado squawfish.

⁵Members of this Committee are the Secretaries of the Interior, the Army, and Agriculture; the Chairman of the Council of Economic Advisors; the administrators of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration; and a representative from each affected state.

Appendix III
The Endangered Species Act and the
Colorado Squawfish

Figure III.1: Colorado Squawfish



This 38-inch Colorado squawfish was taken from the Colorado River for research purposes. After the fish—the largest one found in the last 10 years—was weighed and measured, it was released unharmed back into the river.

Source: Utah Division of Wildlife.

The Colorado squawfish was once found throughout the warm-water reaches of the entire Colorado River system, including areas of the upper San Juan River and possibly its tributaries. The Service estimates that the Colorado squawfish now occupies only 25 percent of its original range and that there may be as few as 10,000 adult fish throughout the river system. According to biological studies, the decline in the population of the Colorado squawfish is closely correlated with the construction of dams and reservoirs and with the accompanying depletion of water from the river system, among other things. The Colorado squawfish best survives in rivers that have great variations in seasonal flow, and much of the seasonal variation is lessened when rivers are dammed to store the heavy spring runoff to use during the summer. Biologists believe the Animas River—the largest undammed and perennial tributary to the San Juan River—has helped the Colorado squawfish population survive in the San Juan River.

Development of a Reasonable and Prudent Alternative

In 1979, the Department of the Interior's Bureau of Reclamation published a plan for the Animas-La Plata project. At that time, Interior's Fish and Wildlife Service consulted with the Bureau concerning the potential effects of the project on the endangered Colorado squawfish. On December 28, 1979, on the basis of the capture of a single juvenile squawfish in the San Juan River, the Service issued a biological opinion that the project was unlikely to jeopardize the continued existence of the Colorado squawfish.

Surveys of fisheries conducted by federal and state researchers from 1987 through 1989 documented a reproducing population of adult squawfish in the San Juan River. As a result of this new information, in February 1990 the Bureau resumed consulting with the Service on the Animas-La Plata project. In May 1990, the Service issued a draft "jeopardy" biological opinion, asserting that the project would likely jeopardize the continued existence of the endangered Colorado squawfish and concluding that no "reasonable and prudent alternative" to the project (referred to hereinafter as the "alternative") existed.

In its 1990 draft biological opinion, the Service concluded that because major water projects on the San Juan River and its tributaries had already reduced stream flows to a critical level for the fish, depleting any water from the Animas River would pose an unacceptable risk to the squawfish's survival in the San Juan River. The Service's draft biological opinion contained the following statement:

"Since the Service believes that in most years the river is already at or below the threshold for minimum flows whereby the fish could survive in the river, any further depletions to the river system could render the San Juan River unuseable by the Colorado squawfish."

For this reason, the Service, in developing its draft opinion, had considered but rejected each of three proposed alternatives to the project as not biologically defensible. These alternatives were (1) changing the design of the Animas-La Plata project to allow stored water to be released for the benefit of the Colorado squawfish; (2) initially limiting and then increasing the amount of water depleted from the Animas River for the project over time to coincide with the construction schedule, and performing scientific studies concurrently with the project's construction; or (3) offsetting the anticipated depletions of water from the Animas River

by releasing additional water from the Navajo Dam and Reservoir¹ for the squawfish.

Development of an
Acceptable Alternative

During July 1990, the Bureau and the Service informally discussed the possibility of formulating an alternative that would allow construction of the project to proceed, according to a briefing statement subsequently prepared by the Service. The Bureau proposed a fourth alternative that combined elements of the three previously rejected alternatives. This alternative included a fish management plan on the San Juan River, a 5-year study to identify and evaluate the needs of the Colorado squawfish, water releases of up to 300,000 acre-feet (in 2 of the 5 years) from the Navajo Dam and Reservoir, and construction of the Animas-La Plata project concurrently with the study. The Service rejected this proposed alternative as being essentially the same as those already rejected, maintaining that the best available scientific data led to the conclusion that (1) any further reductions in flow in the San Juan River would likely jeopardize the endangered fish and (2) field studies were needed to provide better information.

The Service then offered to explore an alternative allowing the first phase of the project to be constructed and 50,000 acre-feet of water to be annually depleted from the Animas River to allow the Colorado Ute Indians' water settlement to proceed. An Assistant Regional Director for the Bureau told us that the Bureau and the Service began to develop the alternative at the request of the Secretary of the Interior. According to this official, the agencies held a series of meetings looking for middle ground between the need to preserve the endangered species and the need to comply with the 1988 Settlement Act's mandate to build the project. Regional hydrologists for the Service told us they believed that the Bureau wanted to start construction on the project before the fish studies were complete because of the settlement's deadline for constructing the first phase of the project.

The proposed alternative was discussed during an August 1990 meeting of the then-Assistant Commissioner of the Bureau, the head of the Bureau's Durango Projects Office, an Assistant Regional Director for the Service, and other staff from both agencies. The former Assistant Commissioner told us his efforts at this meeting were based on satisfying two commitments: (1) protecting the Colorado squawfish and (2) meeting the

¹The Navajo Dam and Reservoir stores water used by the Navajo Indian Irrigation Project (NIIP), a congressionally authorized project on the San Juan River that has been partially constructed. App. V provides additional information on NIIP.

construction deadline imposed by the 1988 Settlement Act. He described his role at this meeting as one of bringing the Service and the Bureau together to develop a final biological opinion that would include an acceptable alternative. He characterized the development of the alternative as a compromise based on assumptions that a biological study would be conducted to collect information on the Colorado squawfish, that releases from the Navajo Dam and Reservoir would be used to mimic the natural flows of the San Juan River, and that some of the project's facilities would be constructed.

Participants in the August 1990 meeting told us that the officials agreed that approximately 50,000 acre-feet of water would have to be depleted from the river annually to meet the needs of municipal, agricultural, industrial, and Indian water users. Of this amount, 40,100 acre-feet would be reserved for Indian users. The participants at the meeting also decided that the Service would incorporate these water depletions into an alternative to be included in its final biological opinion. According to notes from the meeting, the participants agreed that an interagency group could work out details of the alternative within 60 days.

In October 1990, the Bureau formed three teams to develop a final alternative that would allow construction of some of the project's facilities. The teams subsequently provided the Bureau with additional data and opinions on the development of the final proposed alternative. For example, the hydrology team increased the minimum anticipated depletions of water from the Animas River from 50,000 acre-feet to 57,100 acre-feet to account for potential evaporation. The Bureau forwarded the final proposed alternative to the Service in March 1991, and the Service incorporated the alternative into its final biological opinion in October 1991.

Elements of the Accepted Alternative

The 1991 alternative contained several elements, and according to the Service's final biological opinion, all these elements must be implemented to avoid jeopardizing the squawfish. Under the alternative, construction was limited to some, but not all, of the facilities planned for the first phase of the project: a pumping station to pump water from the Animas River, a conduit to carry water from the river, and the Ridges Basin Dam and Reservoir to store the water. In addition, the alternative limited the amount of water that can be annually depleted from the Animas River to 57,100 acre-feet. The alternative also required a 7-year-long study of the needs of the Colorado squawfish and provided for a fish recovery program

in the San Juan River. The final biological opinion required that, as part of the fish study and recovery program, approximately 300,000 acre-feet of water annually be periodically released from the Navajo Dam and Reservoir located upstream on the San Juan River and that these water releases be protected through the squawfish's habitat. According to the final biological opinion, none of the project's additional facilities can be constructed and no additional water can be depleted from the Animas River for the project until the study is completed and the Service determines that the squawfish would not likely be jeopardized.

Construction of the Project

Bureau officials told us that the alternative is a means of starting construction on the full Animas-La Plata project—in other words, it is an incremental step toward completing the full project. Whereas the full project will annually deplete approximately 155,000 acre-feet of water from the river and physically convey it to the areas where it will be used, the alternative annually depletes roughly one-third of this amount of water and does not include facilities to physically convey the water from the Ridges Basin Reservoir to the areas where it will be used. A memorandum of understanding attached to the Service's final biological opinion formally recognizes the Bureau's position on the alternative: "The Service is preparing a biological opinion for the Animas-La Plata Project that contains a reasonable and prudent alternative which provides for construction of an initial portion of the project."

The importance of the alternative as a means of starting construction was emphasized by the Solicitor for Interior's Southwest Region in a December 1990 briefing paper:

"... construction of a portion of [the Animas-La Plata project] represents a gamble that more may be built later. This is important because that is the only way the Ute Tribes will benefit and their water rights claims will finally be settled under the 1988 water rights legislation."

Water Protection

The Service's final biological opinion states: "It is not enough to only release water from the Navajo Dam. There also must be guaranteed delivery of the water so that it provides the habitat improvement necessary to maintain and increase the endangered fish population in the San Juan River." Such protection, according to the final biological opinion, the memorandum of understanding, and Interior officials, is under the legal jurisdiction of the Navajo Nation and the states of Colorado, New Mexico, and Utah.

**Appendix IV
Development of a Reasonable and Prudent
Alternative**

Whereas Colorado and New Mexico have agreed to ensure that the released water will reach the Colorado squawfish's habitat, neither the Navajo Nation nor Utah has provided such guarantees to the Service. According to the Service's draft proposal outlining the San Juan River's fish recovery program—which relies on the use of this water—this situation may require that consultation between the Service and the Bureau on the alternative be reopened.

The Navajo Indian Irrigation Project and Its Relationship to the Animas-La Plata Project

Both the Animas-La Plata project and the Navajo Indian Irrigation Project (NIIP) are located in the San Juan River basin and affect the same population of endangered Colorado squawfish in the San Juan River. One of the elements of the “reasonable and prudent alternative” for the Animas-La Plata project (referred to hereinafter as the “alternative”) involves annual releases of water from the Navajo Dam and Reservoir, which stores water used by NIIP. However, the Navajo Nation disputes this use of reservoir water because it may jeopardize the completion of NIIP and the Navajo tribe’s rights to use the water.

Authorization and Construction of NIIP

The Congress authorized NIIP and another project—the San Juan-Chama project¹—in 1962 (P.L. 87-483). The authorization for NIIP included an annual water supply of 508,000 acre-feet to irrigate over 110,000 acres of land on the Navajo Indian Reservation; water for the project would be stored behind the Navajo Dam, in the Navajo Reservoir, on the San Juan River.

The Bureau of Reclamation completed construction of the Navajo Dam in 1963. The Bureau began constructing facilities to deliver water for NIIP in 1964 and initially planned to complete construction by 1979. However, the construction of these facilities was subsequently delayed by a conflict between the Bureau and Interior’s Bureau of Indian Affairs (BIA), the project’s sponsor. The Bureau and BIA eventually agreed that NIIP would be constructed in 11 units, each encompassing 10,000 acres. By August 1995, the Bureau had completed construction of seven units and was constructing the eighth.

Consultation on NIIP and Its Relationship to the Animas-La Plata Project

BIA initiated consultation with the Fish and Wildlife Service on the first eight units of NIIP in July 1991. On October 28, 1991, the Service issued its biological opinion on NIIP, which allowed existing depletions from the San Juan River for NIIP to continue. However, the Service disallowed additional depletions of about 56,900 acre-feet, which had been requested by BIA to fully develop the seventh and eighth units. In its biological opinion on NIIP, the Service noted that the additional depletions requested by BIA were “. . . beyond the point of jeopardy delineated in the . . . Animas-La Plata biological opinion . . .” The Service also wrote that “. . . any further depletions considered necessary for the operation of NIIP, will be evaluated

¹Construction of the San Juan-Chama project was completed in 1971. This project diverts water from the San Juan River and provides it to Albuquerque and to the Jicarilla Apache Indian Reservation. In exchange for New Mexico’s support for NIIP, the Navajo Nation did not oppose the use of water for the San Juan-Chama project.

Appendix V
The Navajo Indian Irrigation Project and Its
Relationship to the Animas-La Plata Project

based on the results of the 7-year research program as stipulated in the . . . Animas-La Plata Biological Opinion.” Interior officials told us that the Service allowed water depletions under the 1991 alternative to the Animas-La Plata project, rather than allowing them for NIIP, because the Bureau’s consultation on the Animas-La Plata project was begun and completed earlier than BIA’s consultation on NIIP.²

In December 1990, when the Bureau was consulting with the Service on the Animas-La Plata project, the Solicitor for Interior’s Southwest Region stated in a briefing paper that a decision to allow water depletions for the Animas-La Plata project, rather than NIIP, jeopardized the future of NIIP. Similarly, in a December 1990 memorandum to the Secretary of the Interior, the then-Assistant Secretary for Indian Affairs questioned whether the rights of the Navajo Nation were being adequately considered. In January 1994, the then-President of the Navajo Nation and a tribal attorney told us that the tribe’s position was that the Bureau’s use of water from the Navajo Reservoir for the alternative to the Animas-La Plata project threatened the tribe’s claim to water in the reservoir under the 1962 congressional authorization of NIIP and the tribe’s other rights to water in the San Juan River.

²Consultation on the Animas-La Plata project was most-recently initiated in February 1990 and completed when the Service issued its final biological opinion on October 25, 1991.

Comments From the Bureau of Reclamation

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

SEP 21 1995

Mr. James Duffus, III
Director, Natural Resources
Management Issues
General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Duffus:

Enclosed are comments on the draft General Accounting Office report entitled "Animas-La Plata Project: Status and Legislative Framework," (GAO/RCED-95-110). We appreciate the opportunity to be able to review the draft report and to comment on the subject matter. The comments provided by the Bureau of Reclamation are intended to clarify and improve the factual basis of the descriptions in the report.

Sincerely,

for
Patricia J. Beneke
Deputy Assistant Secretary
for Water and Science

Enclosures

Appendix VI
Comments From the Bureau of Reclamation

Bureau of Reclamation Comments

"Animas-La Plata Project:
Status and Legislative Framework"

See comment 1.

Page 1, first paragraph, first sentence: Change to read ". . . Animas-La Plata project, congressionally authorized to be constructed . . . deliver water for arid areas, Native American Tribes and communities . . ."

See comment 2.

Page 1, first paragraph, second sentence: Change to read ". . . the Congress in 1968, the additional impetus for . . ."

See comment 2.

Page 1, first paragraph, third sentence: Change to read ". . . or the settlement could be overturned revisited by the Tribes."

Now on p. 1.
See comment 3.

Page 2, first full paragraph, second sentence: Change to read ". . . "reasonable and prudent alternative" (RPA) to the . . ."

See comment 3.

Page 2, first full paragraph, third sentence: Change to read ". . . incorporated the Bureau's proposed alternative RPA into its . . ."

See comments 3 and 4.

Page 2, second full paragraph, first sentence: Change to read "The alternative RPA limits . . . needs of the Colorado Squawfish and razorback sucker and a fish . . ."

See comments 3 and 4.

Page 2, second full paragraph, second sentence: Change to read "Under the alternative RPA, no additional . . . and the Service determines that the Squawfish endangered species would not likely be jeopardized."

Now on p. 2.
See comment 2.

Page 3, first paragraph, fifth sentence: Change to read "The court ordered the Bureau to prepare is preparing a supplemental . . ."

Now on p. 2.
See comment 5.

Page 3, first paragraph, sixth sentence: Change to read ". . . plans to issue its supplemental statement in October December 1995."

Now on p. 2.
See comments 2 and 5.

Page 3, third paragraph, third sentence: Change to read, "Further delay in beginning construction could prevent completion of a portion of the project by 2000, which could threaten the water settlement with the Colorado Ute tribes. Currently Reclamation estimates that, barring further delays, the first portion of the project will be completed in 2002; therefore, the Colorado Utes could exercise their prerogative pursuant to the Settlement Act to revisit the water rights settlement."

Now on p. 3.
See comments 2 and 4.

Page 4, (continued from page 3), second sentence: Change to read ". . . jeopardize the Colorado Squawfish endangered species, further depletions could be allowed, therefore, construction could proceed."

Appendix VI
Comments From the Bureau of Reclamation

Now on p. 3.
See comment 4.
Now on p. 3.
See comment 2.

Now on p. 3.
See comment 3.

Now on p. 3.
See comment 2.

Now on p. 8.
See comment 6.

See comment 2.

Now on p. 10.
See comment 7.
Now on p. 10.
See comment 2.

Now on p. 11.
See comment 2.

Now on p. 10.
See comment 2.

Now on p. 11.
See comment 2.

Now on p. 11.
See comments 2 and 5.

Now on p. 11.
See comment 2.

Page 4, first full paragraph, first sentence: Change to read ". . . increase the Squawfish endangered fish population . . ."

Page 4, first full paragraph, third sentence: Change to read ". . . may require the agencies to reinstate consultation. ~~on the alternative.~~"

Page 4, second full paragraph, first sentence: Change to read ". . . Navajo Dam and Reservoir under the ~~alternative RPA~~ is disputed . . ."

Page 4, second full paragraph, third sentence: Change to read ". . . ~~either NIIP or the Animas-La Plata project~~ water use and development in the San Juan Basin could be adversely affected."

Appendices

Page 7, first paragraph: Change to read ". . . would annually withdraw approximately 155,000 191,230 acre-feet of water out of the Animas, La Plata, and San Juan Rivers, . . . The average annual project depletion would equal 149,220 acre-feet. ~~The project would also provide water to the Southern Ute and Ute Mountain Ute Indian reservations. The Southern Ute and Ute Mountain Ute Indian Tribes will receive project water; additionally, the Navajo Nation may receive a small portion of project water.~~"

Page 9, first continued sentence: Change to read ". . . a settlement of the tribes' claims ~~and a cost-sharing agreement for the costs of construction.~~"

Page 9, first full paragraph, second sentence: Change to read "At that time, based on the capture of a single juvenile Squawfish in the San Juan River, ~~only one Colorado Squawfish was known to exist in the lower San Juan River, the Service . . .~~"

Page 9, last paragraph, first sentence: Change to read ". . . the Animas-La Plata project, ~~as proposed, would jeopardized the continued . . .~~"

Page 9, (footnote): Note that only the Ute Mountain Ute Tribe receives water from the Dolores Project.

Page 10, first full paragraph, second sentence: Change to read ". . . The court subsequently ~~ordered the Bureau is preparing to complete~~ a supplemental . . ."

Page 10, first full paragraph, third sentence: Change to read ". . . ~~complete file the supplemental statement in October~~ December 1995 and begin construction after the Record of Decision (ROD) is signed which can occur no sooner than 30 days after filing. ~~is expected shortly thereafter.~~"

Page 10, last sentence (continued on page 11): Change to read "The analysis showed that ~~the project's positive benefit-cost ratio stemmed from the crediting benefits allowed under the less rigorous evaluation procedures in place in 1968, current, more conservative Federal evaluation procedures resulted in a benefit-cost ratio significantly below unity.~~"

Appendix VI
Comments From the Bureau of Reclamation

Now on p. 12.
See comment 1.

Page 11, first paragraph, last sentence: Change to read ". . . tribe's claims to water rights without a major disruption to existing water supplies to municipalities and individuals in southwest Colorado and because. . ."

Now on p. 13.
See comment 2.

Page 12, first paragraph, first sentence: Change to read, ". . . Settlement Act (P.L. 100-585) provided provides the current impetus for constructing to construct the Animas-La Plata project."

Now on p. 13.
See comments 1 and 8.

Page 12, second paragraph: Replace the first sentence with "Phase I of the Project would provide all of the Project M&I water for Indians and non-Indians. It would also include 89,610 acre-feet of project irrigation water, which includes the Southern Ute Indian Tribe receiving approximately 78% of their irrigation water in Phase I. All of the remaining irrigation and M&I water for the two Ute tribes would be stored and available in Ridges Basin Reservoir under Phase I."

Now on p. 13.
See comment 5.

Page 12, second paragraph, third sentence: Change to read ". . . It is was originally scheduled for completion by the year 2000, but Reclamation now estimates, barring further delays, a 2002 completion date for the Ridges Basin Dam."

Now on pp. 13-14.
See comments 1 and 8.

Page 13, last sentence, second paragraph: Delete and replace with "The Southern Ute Indian Tribe would receive a large portion of their irrigation water under Phase I (see above comment). Phase II, when funded, would provide the necessary facilities to deliver the Southern Ute's remaining irrigation water on their reservation and deliver water to the Ute Mountain Ute Reservation."

See comment 4.

Page 16, first heading: Change to read "The Colorado Squawfish and Razorback Sucker" and add text on the razorback sucker to parallel squawfish discussions.

Now on p. 17.
See comment 2.

Page 18, first full sentence: Note that purposes other than just irrigation (such as M&I, fish and wildlife, and river recreation) should be mentioned as uses of water stored when rivers are dammed to store heavy spring runoff.

Now on p. 18.
See comment 2.

Page 19, first paragraph, third sentence: Change to read ". . . continued existence of the Colorado Squawfish, because only a single Squawfish was known to exist in the San Juan River at that time based on the capture of a single juvenile Squawfish in the San Juan River."

Now on p. 18.
See comment 6.

Page 20, second paragraph, second sentence: Change to read ". . . and then increasing the amount of water withdrawn from the Animas River for depletions from the San Juan River for to the project over time to coincide with the construction schedule, and performing scientific studies concurrently with the project's construction; or (3) offsetting anticipated withdrawals depletions of water from the Animas San Juan River . . ."

Now on p. 19.
See comment 6.

Page 21, second paragraph, first sentence: Change to read ". . . withdrawn annually from the Animas River to allow the Colorado Ute Indians' the first phase of the project to be constructed and 50,000 acre-feet of water to be withdrawn annually from the Animas River depleted on an average annual basis from the San Juan River to allow . . ."

Now on p. 20.
See comment 1.

Page 22, continued paragraph, last sentence: Change to read ". . . used to mimic the natural

Appendix VI
Comments From the Bureau of Reclamation

Now on p. 20.
See comment 6.

Page 22, first full paragraph, first sentence: Change to read ". . . water would have to be ~~withdrawn from the river annually depleted from the San Juan River annually . . .~~"

Now on p. 20.
See comment 6.

Page 22, second full paragraph, third sentence: Change to read "For example, the hydrology team increased the minimum anticipated ~~withdrawals of water from the Animas River average annual depletion of water from the San Juan River . . .~~"

Now on p. 20.
See comment 8.

Page 23, first paragraph, second sentence: Change to read ". . . to store the water and ~~facilities necessary to deliver the water.~~"

Now on p. 20.
See comment 6.

Page 23, first paragraph, third sentence: Change to read ". . . the alternative limits the ~~average annual amount of water that can be annually withdrawn depleted from the Animas San Juan River to the 57,100 acre-feet (average annual diversion of 80,100 acre-feet).~~"

Now on p. 21.
See comments 1 and 4.

Page 23, first paragraph, seventh sentence: Change to read ". . . until the study is completed ~~in 1998 and the Service determines that the Squawfish endangered species would not likely be jeopardized.~~"

Now on p. 21.
See comment 1.

Page 23, second paragraph, first sentence: Change to read ". . . step toward ~~possibly completing the full . . .~~"

Now on p. 21.
See comments 6 and 8.

Page 23, second paragraph, second sentence: Change to read ". . . the full project will ~~annually withdraw deplete approximately 155,000 149,220 acre-feet of water from the three rivers and convey it to the areas where it will be used for agricultural and M&I purposes, the alternative alternative depletes annually withdraws roughly approximately one-third this amount of water and includes some of the facilities to convey water . . .~~"

GAO's Comments

The following are GAO's comments on the Bureau of Reclamation's comments enclosed in a letter dated September 21, 1995.

1. We have not revised the report because we believe this suggested change adds nonessential detail.
2. We have clarified the sentence.
3. To minimize the use of acronyms in the report, we have used the term "alternative" rather than "RPA" to refer to the "reasonable and prudent alternative." We have clarified our usage of this term throughout the report.
4. We disagree with this suggested addition. Only the Colorado squawfish was specifically identified in the draft and final biological opinions issued by the Fish and Wildlife Service for the Animas-La Plata project. The Service subsequently addressed the potential impact of the project on the razorback sucker in a conference opinion. In 1992, the Service stated that the conference opinion should be incorporated into the previous opinions concerning the Animas-La Plata project and noted that implementation of all elements of the alternative for the Animas-La Plata project would likely avoid jeopardizing the razorback sucker. Because the Service's biological opinions on the Animas-La Plata project did not address the razorback sucker and because the alternative to the Animas-La Plata project was not subsequently modified to address the razorback sucker, our report refers only to the Colorado squawfish.
5. We have changed the date.
6. We have substituted the term "deplete" for "withdraw" to reflect the Bureau's use of the term. We have also clarified that the figures for acre-feet of depleted water used in the report were taken from the Service's draft and final biological opinions. In both the Animas-La Plata project and the alternative, water is physically taken only from the Animas and La Plata rivers—although these depletions ultimately affect the amount of water flowing downstream in the San Juan River—and we have retained this usage in our report.
7. We disagree with the suggested change because the cost-sharing agreement was negotiated separately from the settlement of the Ute tribes' water claims.

8. We disagree with this comment. Facilities to physically convey water to the Colorado Ute tribes are planned to be constructed only in the second phase of the Animas-La Plata project. While the Ute tribes receive ownership of water in the first phase of the project, the tribes' water will be stored in the Ridges Basin Reservoir until the project's second phase is constructed. We have substituted the phrase "physically convey" for "deliver" for more specificity throughout our report.

Comments From the Fish and Wildlife Service

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



ADDRESS ONLY THE DIRECTOR
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Reply Refer To:
FWS/TE

SEP 21 1995

Memorandum

To: Department of the Interior, Office of Financial Management
(Attention: Deborah Williams)

From: ^{Acting} Director, Fish and Wildlife Service

Subject: Review of the Draft General Accounting Office report, "Animas-La Plata Project" (GAO/RCED-95-110)

This transmits the Fish and Wildlife Service's comments on the subject document. These comments amend and supersede comments transmitted to you previously via memorandum dated September 13, 1995, signed by the Acting Assistant Director - Ecological Services. The comments included below combine comments from the Division of Habitat Conservation, Division of Endangered Species, Regions 2 and 6.

The Divisions and Regions have reviewed the draft report for its accuracy in portraying the history, status, and legislative framework of the project, section 7 consultation between the Service and the Bureau of Reclamation, and the project's relationship to other irrigation projects. Errors in the draft report and in the transmittal letter to Senator Bradley are noted below.

Transmittal Letter to Senator Bradley (Letter), page 1, first paragraph, third sentence: "Under this act, the project will store (in the first phase) and provide water (in the second phase) for the Southern Ute Indian tribe and the Ute Mountain Ute Indian tribe..."

Letter, page 2, second paragraph, first sentence: Navajo Dam and Reservoir are **NOT** part of the Navajo Indian Irrigation Project. These facilities were authorized by the Colorado River Basin Project Act of September 30, 1968, as the Navajo Unit.

Letter, page 2, second paragraph, last sentence: The statement that, under the reasonable and prudent alternative agreed to by the Bureau of Reclamation, "no additional construction or water withdrawal is allowed until the seven-year fish study is complete and the Service

See comment 1.

See comment 2.

See comment 3.

Appendix VII
Comments From the Fish and Wildlife
Service

2

determines that the Squawfish (sic) would not likely be jeopardized" is totally incorrect. Under the San Juan River Basin Recovery Implementation Program, there are two equal goals: the recovery of the fish, and the development of the water resources in the basin. As long as the Program is making sufficient progress toward the recovery of the listed species, there is no prohibition against construction or water withdrawals. The very purpose of the Program is to provide the infrastructure in which reasonable and prudent alternatives to not only Animas-La Plata, but other projects, may be developed. This statement is erroneous and should be corrected or totally omitted.

Now on p. 2.
See comment 4.

Letter, page 3, first bullet statement, second sentence: This sentence should be amended to include the phrase "or if the document is found to be inadequate."

Now on p. 3.
See comment 4.

Letter, page 4, second complete sentence: This sentence should be corrected to state that if jeopardy is found, a reasonable and prudent alternative must be agreed upon to remove that jeopardy or an exclusion granted for the project.

Now on p. 15.
See comment 4.

Appendix III, page 14, first paragraph, third sentence: This should be corrected to read "Under section 7 of the Endangered Species Act, Federal agencies are required to determine if actions they fund, carry out, or authorize, may affect species listed under the Act. If the agencies make that determination, they are required to consult with the Service before beginning construction on proposed projects...."

See comment 4.

Appendix III, page 15, first paragraph, first sentence: This should be omitted and replaced with the following: "When proposing a project, the consulting agency must first determine if the action may affect endangered or threatened species. If a "may affect" determination is made by the agency, it must request consultation with the Service.

Now on p. 21.
See comment 3.

Appendix IV, first paragraph, last sentence: As previously stated, this sentence is entirely incorrect and should be deleted.

See comment 2.

Appendix V, first paragraph, second sentence: Navajo Dam and Reservoir are NOT part of the Navajo Indian Irrigation Project (NIIP); please delete this error.

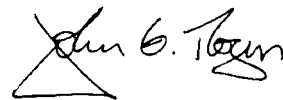
Now on p. 24.
See comment 5.

Appendix V, first complete paragraph, add after last sentence: The concern of the Navajo Tribe stems from the perception that any reasonable and prudent alternatives needed to avoid jeopardy to listed species would involve further water depletions from the system. However, all necessary water for completion of the NIIP's eight blocks evaluated under section 7 of the Endangered Species Act has been provided for without new depletions. At the time the Service conducted the Animas-La Plata consultation, the Bureau of Indian Affairs had not yet requested consultation for NIIP. However, all NIIP blocks evaluated under section 7 were approved by using existing, unused water rights held by the Navajo Nation for other, idle projects in the basin.

**Appendix VII
Comments From the Fish and Wildlife
Service**

3

We appreciate the opportunity to review and provide input on this draft document. If you have any questions or need additional information, please contact E. LaVerne Smith, Division of Endangered Species at (703) 358-2106.

A handwritten signature in black ink that reads "John B. Tegen". The signature is written in a cursive style and is positioned to the right of a large, empty triangular box.

GAO's Comments

The following are GAO's comments on the Fish and Wildlife Service's memorandum dated September 21, 1995.

1. We have not revised the report because we believe the suggested change adds nonessential detail.
2. The Navajo Dam and Reservoir and the Navajo Indian Irrigation Project (NIIP) were separately authorized as participating units of the Colorado River Storage Project. We have clarified the sentence to state that the Navajo Dam and Reservoir stores the water used by NIIP.
3. We disagree that our statement is incorrect. The 1991 final biological opinion issued by the Fish and Wildlife Service explicitly restricts construction of and water depletions for the Animas-La Plata project under the accepted alternative pending the outcome of the fish study (which the Service agreed would require at least 7 years to complete). We have clarified the sentence to specify that these restrictions apply only to the alternative (not to other water-development projects).
4. We have clarified the sentence.
5. We disagree with the Service's characterization of the Navajo Nation's concerns. The Navajo Nation is concerned about the alternative to the Animas-La Plata project because the Service, in effect, allowed depletions for the alternative at NIIP's expense, and because the Service allowed annual releases of water for the alternative from the Navajo Dam and Reservoir, which stores water for NIIP. At the time of the consultations, representatives from the Navajo Nation expressed their concerns about this use of water to which the Navajo Nation has legal claim, but the Service did not respond to their concerns. We have clarified this paragraph to more specifically describe this situation.

Major Contributors to This Report

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