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Central North Dakota Water Supply Project: Missouri Files Federal District Court Action Alleging Administrative Procedure Act/National Environmental Policy Act Violations

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The Missouri Attorney General and Missouri Department of Natural Resources (collectively, “Missouri”) filed a Complaint in the United States District Court for the Western District of Missouri on February 5th against:

- United States Department of the Interior–Bureau of Reclamation
- United States Army Corps of Engineers
- North Dakota Garrison Diversion Conservancy District

The Complaint asks that the permitting and construction of the Central North Dakota Water Supply Project (“Project”) be enjoined because of alleged violations of the Administrative Procedure Act and National Environmental Policy Act (“NEPA”).

The Project is described as a proposed water service contract between the North Dakota Garrison Diversion Conservancy District and the Bureau of Reclamation. The contract is stated to be reliant upon the construction of a six-mile pipeline that would deliver water from the McClusky Canal to the Red River Valley Water Supply Project. The waters that run through the McClusky Canal are stated to originate from Lake Audubon.

This lake is connected to and comprised of Missouri River water. An intake is described as diverting 15,000 acre-feet per year of water from the Missouri River. The Missouri River is alleged to be currently depleted by an average of 5.05 million acre-feet per year by the Garrison Dam. The dam is described as being located just downstream of the proposed project.

NEPA requires federal agencies to include environmental values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions. The statute requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to produce this document is only triggered in the event of a major federal action that will significantly affect the environment.

NEPA differs from action enforcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an EIS in certain defined instances. As a result, NEPA does not require a certain alternative or meet a particular standard. However, a federal court has the authority to enjoin the federal action if there is noncompliance with NEPA procedural requirements.

The federal agencies are alleged to have violated NEPA by publishing a Final Environmental Assessment and Finding of No Significant Impact (“FONSI”) for the Project. Missouri alleges a NEPA EIS should have been prepared.

The FONSI is described as:

. . . flawed because it focused exclusively on the Central ND Project without considering the cumulative adverse impacts on Missouri when the Central ND Project is considered in combination with the Red River Valley Water Supply Project and other foreseeable water diversion projects.

Missouri also alleges that the federal agencies failed to consider whether there are viable mitigation measures or alternatives to the Project that would prevent adverse effects on Missouri.

A copy of the Complaint can be downloaded [here](#).