



Submitted via FERC's eFiling system

February 29, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**RE: Comments on the Preliminary Licensing Proposal for the Lake Powell Pipeline,
Project No. P-12966-001**

Dear Secretary Bose:

Western Resource Advocates appreciates the opportunity to submit these comments on the Preliminary Licensing Proposal (PLP) for Lake Powell Pipeline Project (LPP), filed with the Federal Energy Regulatory Commission (FERC) on December 1, 2015.

Western Resource Advocates is a nonprofit conservation organization dedicated to protecting the Interior West's land, air, and water. We promote river restoration and water conservation, advocate for a clean and sustainable energy future, and protect public lands for present and future generations. Western Resource Advocates engages with utilities, state and federal government agencies, and irrigators to find solutions to meet growing urban water demands while protecting stream flows for fish, wildlife, and recreation.

FERC should require that the applicants revise the PLP to include a realistic No Action Alternative that properly accounts for current and future water demands, reasonable water conservation, aggressive reuse, and more agricultural water transfers. In addition, the PLP should be revised to include Arizona's Water Export Statute, A.R.S. § 45-292, as one of the required permit approvals for the LPP. Finally, because FERC does not have jurisdiction over the water supply pipeline itself, FERC and the other permitting agencies should appoint a more appropriate agency as the lead agency for developing an environmental impact statement under NEPA.

I. The PLP Fails to Present a Reasonable or Realistic No Action Alternative.

Washington County Water Conservancy District's (WCWCD) No Action Alternative does not adequately or accurately account for future water supply and demands in Washington County. WCWCD's projected current and future water demands appear to be based on flawed assumptions and are greatly overstated by the project applicants. Similarly, the WCWCD significantly understates the potential of alternative water supply strategies. The PLP should be revised to include a realistic and reasonable No Action Alternative.

Western Resource Advocates presents here a realistic No Action Alternative based in part upon our *Local Waters Alternative to the Lake Powell Pipeline*¹ that corrects these flaws, and that would also incur less environmental harm than the applicant's proposed LPP action. Our alternative shows how Washington County can pursue water conservation, water reuse, and conversion of agricultural water to M&I uses to meet future water needs and avoid construction of a costly and environmentally damaging water supply pipeline. Our critique of the LPP is supported by comments from the Office of the Legislative Auditor General, Governor Herbert, and the project applicants themselves. Below we provide in detail the data flaws presented by the project applicants.

In 2013, Western Resource Advocates submitted the *Local Waters Alternative* to FERC as a reasonable and realistic No Action Alternative to the LPP. Although the project applicants have since updated some of their water demand and supply data, the central conclusions of the *Local Waters Alternative* remain unchanged:

- ✓ The *Local Waters Alternative* (or a similar set of approaches) more than meets future water needs in Washington County.
- ✓ Implementation of reasonable new conservation measures would substantially lower future water demand projections.
- ✓ Reuse and agricultural water transfers can provide significant amounts of new water supply to meet projected water needs.
- ✓ The *Local Waters Alternative* costs significantly less than the proposed LPP.

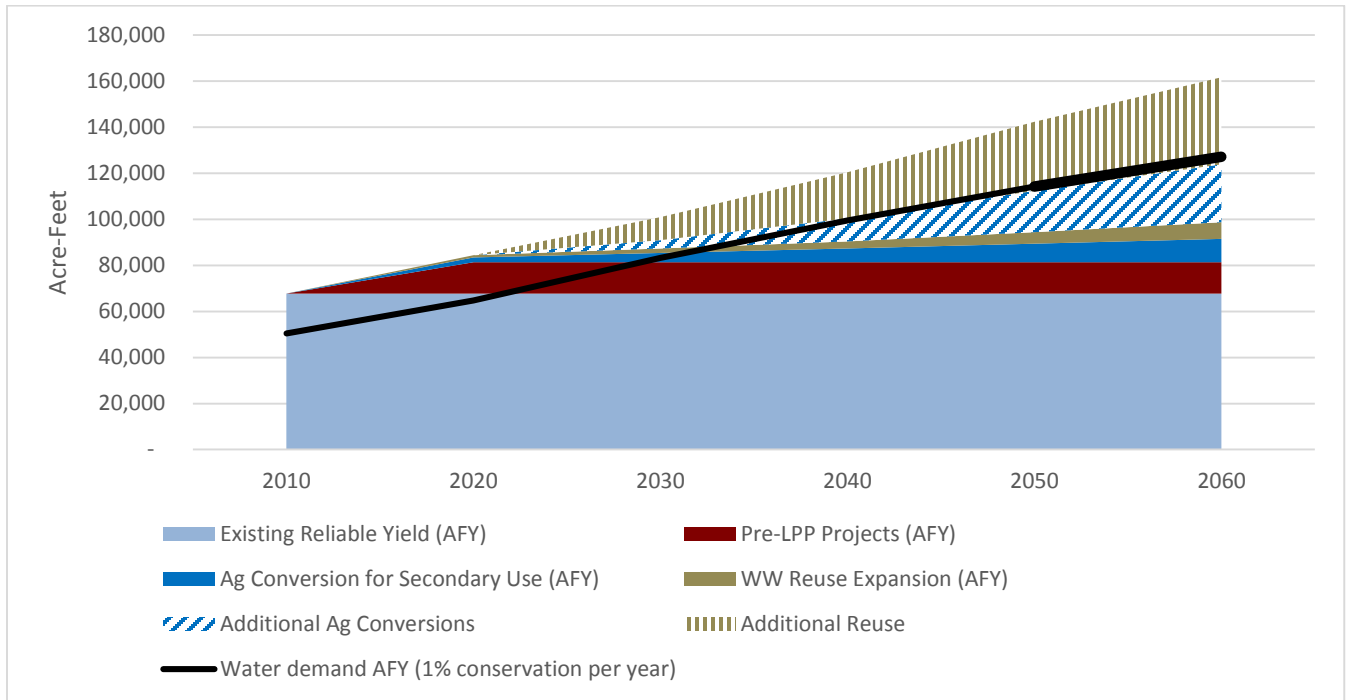
For this comment letter, we revised parts of the *Local Waters Alternative* to reflect updated data from the project applicants² and to illustrate that our solutions remain viable. Figure 1 (below) shows updated data for Western Resource Advocates' No Action Alternative. We use many of the same water supplies as reported by WCWCD in Figure ES-2 of the 2015 Water Needs Assessment (2015 WNA): existing reliable yield, pre-LPP projects, agricultural conservation for secondary use, and the wastewater reuse expansion water. However, we do not include potable or secondary water from the LPP. In addition, we add in extra water resources from expanded reuse and expanded agricultural water conversions, as described below. Our population projection also matches the ones used in the 2015 WNA.

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¹ Attached as Exhibit 1.

² Our use of the applicants' data should not be construed as an endorsement of their analysis. Indeed, we remain skeptical of the validity of the applicants' claimed water supply and demand projections.

Figure 1. WCWCD’s Supply and demand projections under Western Resource Advocates’ revised No Action Alternative



a. The PLP Greatly Exaggerates Current and Future Water Demands.

Energy generation is not the LPP’s primary purpose. The LPP is primarily intended as a water supply project. It is therefore essential to look closely and evaluate the validity and reliability of the claim that LPP water is “needed” by the project applicants during the planning horizon covered.

The PLP’s current and future water use projections come from the Utah Division of Water Resources’ (Division) “Kanab/Virgin River Basin GPCD Projections and Use to 2060.”³ However, this data sheet does not appear to be accessible to the public on the Division’s website (we obtained it by directly requesting it from Division staff). There is no explanation of the methodology used to derive these water use data, nor any explanation of why they differ considerably from data presented in the 2011 version of the Water Needs Assessment (2011 WNA).⁴

For example, in the 2011 WNA, the 2010 figure for baseline water use per person – which has a significant effect on future water demand projections – was 294 gallons per capita per day

³ PLP at 3-127.

⁴ See 2011 WNA (Draft Study 19).

(GPCD).⁵ By contrast, in the 2015 WNA the 2010 baseline figure jumps to 325 GPCD.⁶ This change represents an 11% increase from the original data, and the PLP fails to explain why such a dramatic change in this historic estimate has occurred.

In addition, based on the 2011 WNA, Kane County Water Conservancy District (KCWCD) did not have an explicit need for the water that would be obtained from the LPP. The 2011 WNA states: “For all four subbasins, a combination of existing and new ground water supplies is sufficient to meet all future needs within the planning horizon. Thus based strictly on water need, LPP supplies are not needed in the KCWCD service area within the 2060 planning horizon.”⁷

However, the 2015 WNA now claims that Kane County cannot survive past 2035 without the LPP. The way the data are presented and calculated in the 2015 WNA is opaque and makes it difficult to understand what caused this change. This must be explained by the project applicants.⁸

The failings of the 2015 WNA reflect a statewide trend in insufficient water supply and demand analyses from the Division. A May 2015 performance audit from the Office of the Legislative Auditor General thoroughly documents that water needs data coming from the Division is frequently unreliable and inaccurate. A formal report entitled, “A Performance Audit of Projections of Utah’s Water Needs,” (Audit) (i) determines the reliability of the division’s data; (ii) assesses the accuracy of the division’s projections of water demand and supply; and (iii) reviews options for extending Utah’s currently developed water supply.⁹ While this audit looks at state-wide data, the audit’s conclusions and recommendations apply to individual parts of the state, including Washington County, and the overall findings are consistent with Western Resource Advocates’ past critiques of the Division’s water data and analysis.

Specifically, the Audit of the Office of the Legislative Auditor General made the following conclusions on the Division’s projections of Utah’s water needs:

- The Division does not have reliable local water use data.¹⁰
- The Division needs an improved process for ensuring that water data is reliable.¹¹

⁵ 2011 WNA at ES § 2.2.

⁶ 2015 WNA at § 3.2.1.

⁷ 2011 WNA at § ES 4.3 (emphasis added).

⁸ Given the comparatively small amount of water that Kane County would receive (4,000 AFY) from the LPP, our comments remain focused on the data presented by Washington County since they propose to use the vast majority of water from the LPP (more than 82,000 AFY). However, the applicants’ failure to justify this claimed demand is typical and illustrative of the PLP’s inadequacies.

⁹ OFFICE OF THE LEGISLATIVE AUDITOR GENERAL, STATE OF UTAH, A PERFORMANCE AUDIT OF PROJECTIONS OF UTAH’S WATER NEEDS, REPORT TO THE UTAH LEGISLATURE NO. 2015-01 (May 2015), *attached as Exhibit 2*.

¹⁰ *Id.* at ii.

¹¹ *Id.*

- The reliability of the Division’s Baseline Water Use Study is questionable, and the source data and methods used to prepare the Baseline Study are poorly documented.¹²
- The accuracy of the Division’s water demand projections is uncertain.¹³
- Local water providers, including those located in St. George, have the ability to expand their own sources of water supply.¹⁴

Of note, the Utah Department of Natural Resources (DNR) – including the Division itself – is on the record supporting the findings of the Audit:

We believe the audit results will strengthen our processes. We agree with many of these results and look forward to improving the processes used to determine Utah’s current and future water use and supply data.¹⁵

In their official agency response letter, the DNR and the Division also agree with all 3 of the Audit’s recommendations related to improving the reliability of the Division’s water use data.¹⁶ The PLP should be revised accordingly after improvements in data quality are carried out by the Division.

b. The PLP Significantly Underestimates the Potential of Conservation to Reduce Future Water Demands.

A conservation goal of 1% reduction in per capita water use per year (including passive and active conservation) is proper and reasonable. In 2008, St. George anticipated that their per capita water use would decline by 1.5 to 2% per year in the years going forward as a result of their conservation program efforts.¹⁷ Yet for the purposes of the PLP, WCWCD’s plan is to achieve a 9% reduction in per capita water use over 50 years. This equals a proposed conservation rate of 0.19% annual reduction in per capita water use. This rate is considerably less than the approximately 0.30% annual reduction in per capita water use that one is justified to assume would occur from passive conservation alone over the same time frame (*i.e.*, the water use reductions that will occur naturally as the result of replacing indoor water appliances with new, more water efficient ones).

¹² *Id.*

¹³ *Id.* at 25.

¹⁴ *Id.* at 50.

¹⁵ *Id.* at 67 (DNR response).

¹⁶ *Id.* (DNR agreed with the Legislative Auditor General’s recommendations that the Division should: (i) review water use data annually to perform trend analysis; (ii) work with state water agencies to develop an efficient and effective system of collecting accurate water use data from public water providers; and (iii) get statutory authority from the legislature to validate the annual water use reported by public water providers.).

¹⁷ City of St. George, Water Conservation Plan Update (2008).

This WCWCD's *de minimis* goal is far less than its past conservation gains. WCWCD reports achieving a 26% reduction in per capita water use in just ten years, from 2000 to 2010. Such a dramatic shift must be explained and justified; yet, it is not. It simply appears that the 9% figure is adopted without analysis from the Division's statewide conservation target.¹⁸

A reasonable No Action Alternative would include, as a meaningful conservation rate for planning purposes, at least a 1% annual reduction in per capita water use, based on each previous year's rate of water use. Over a 50 year timeframe, this level of conservation would result in a nearly 40% reduction in per capita use from 2010 levels. We assume that about one third of these water demand reductions would be achieved by passive conservation, and the rest through proactive investment in water efficiency techniques, practices, and technologies.

A 1% annual reduction in per capita water use includes a 0.30% reduction attributable to passive conservation, and is the same "high" passive conservation scenario adopted by the state of Colorado in its state-wide water supply planning process. This passive savings rate is based upon existing regional and national passive conservation studies, regional M&I water demand reports, and water conservation plans on file with the state of Colorado. This level of water use reduction is estimated to occur as a result of retrofitting housing stock and businesses that exist prior to 2016 with high-efficiency fixtures and appliances. It takes into account the 1992 National Energy Policy Act, the 2002 California Energy Commission (CEC) Water Efficiency Standards, and the 2007 California Assembly Bill 715. It assumes that (1) water and energy savings will become increasingly important to water customers as water and fuel costs rise; (2) high efficiency fixtures and appliances will become increasingly efficient as technology improves and customers strive to reduce their variable costs related to water and energy; and (3) due to the size and power of California's economy, products compliant with California efficiency standards will dominate the stream of commerce in the Western U.S., including Utah. The factors affecting passive water savings in Colorado are identical to those in Utah, suggesting this passive savings rate is equally applicable for the LPP service area.

Numerous studies indicate that a 1% annual reduction in per capita water use is the business-as-usual conservation rate of many utilities in the Mountain West region. The 2015 Strategic Plan of the Colorado Department of Natural Resources notes that on average, Colorado water providers have set goals to reduce demand from water conservation plan implementation by approximately 1% to 2% annually.¹⁹ A survey of 100 cities and water agencies in the Colorado River Basin found that "the majority of people receiving water from the Colorado River basin live in areas where per capita deliveries dropped an average of at least one percent per year from 1990 to 2008."²⁰ The fact that the system-wide per capita water use of these areas is much lower than that of Washington County and St. George suggests that the unrealized water conservation opportunities in the LPP

¹⁸ See Audit at 25.

¹⁹ COLORADO DEPARTMENT OF NATURAL RESOURCES, PERFORMANCE PLAN FOR FISCAL YEAR 2015-16 at 131 (November 23, 2014).

²⁰ M.J. COHEN, MUNICIPAL DELIVERIES OF COLORADO RIVER BASIN WATER at iii (Pacific Institute 2011).

service area remain significant, and that a conservation target equivalent to 1% annual reduction in per capita water use in the next 40-50 years is modest and reasonably attainable.

The state Audit also shows how Utah's water conservation efforts can and should significantly exceed an annual per capita reduction of only 0.19%. Washington County projects that per capita water use will decline from 325 GPCD (in 2010) to 285 GPCD in 2060. This 2060 projected water use is significantly higher than the Division's statewide projected per capita water use of 220 GPCD in 2060. The Audit found that even the 220 GPCD projection to be too high based on likely water use patterns in Utah, and other Western States.²¹ The Audit specifically compared water use rates in the Washington County region to those in Las Vegas, saying: "The Southern Nevada Water Authority, which serves the Las Vegas region, has a goal to reduce water use to 199 by 2035. In contrast, the communities in Southwestern Utah, which have a climate that similar to that of Southern Nevada, have a goal to reduce water use to 292 gpcd by the year 2060."²² In their official agency response letter, the DNR and the Division agree – point by point – with all of the Audit's recommendations for reducing demand for water through conservation and policy choices.²³

Other arid states, like Texas and Colorado, have also passed water conservation goals similar to 1% per year. The State of Texas convened a Task Force in 2004, which ultimately recommended a 1% per capita water use reduction goal, driving their system-wide water use down to 140 GPCD.^{24,25} Already, dozens of utilities in Texas have met this goal, and as a result of their success they have set new, lower goals. The State of Colorado recently adopted "Colorado's Water Plan," which set a state water conservation goal of 400,000 acre-feet of municipal and industrial water use by 2050.²⁶ This translates to almost a 1% reduction in GPCD per year, without even including passive water savings.

WCWCD's proposed future conservation programs appear tailored to fit the PLP's less-than *de minimis* 9% target, rather than exploring how conservation programs could more robustly reduce per capita water use. The proposed conservation programs focus on residential water use primarily, and outdoor residential water use in particular.²⁷ While this is an important part of the

²¹ Audit at ii.

²² *Id.* at 29.

²³ The four water planning and conservation recommendations of the Legislative Auditor General supported by the DNR and DWRe are: (i) DWRe should work with local water providers to create conservation goals for each river basin that reflect each basin's individual capacity to conserve; (ii) DWRe should regularly update its projections of future demand as new information becomes available, and provide a range of options that includes investment, conservation, or supply development under a range of demand scenarios; and the legislature should consider (iii) requirements to phasing in universal metering, and (iv) adoption of pricing policies that encourage efficient water use. *Id.* at 44-45.

²⁴ S.B. 1094, 78th Leg., Reg. Sess. (Tex. 2003).

²⁵ WATER CONSERVATION IMPLEMENTATION TASK FORCE, TEXAS WATER DEVELOPMENT BOARD SPECIAL REPORT, REPORT TO THE 79TH LEGISLATURE, at 5-6 (2004), *available at* http://www.conservewatergeorgia.net/resources/TX_Conservation_Task_Force_Recs.pdf

²⁶ COLORADO WATER CONSERVATION BOARD, COLORADO'S WATER PLAN at ES-14 (2015).

²⁷ MADDAUS WATER MANAGEMENT, FINAL TECHNICAL MEMORANDUM PREPARED FOR THE UTAH DIVISION OF WATER RESOURCES AND WASHINGTON COUNTY WATER CONSERVANCY DISTRICT at 35 (2015).

water use equation to address, this sector represents less than half of water use in the county, the rest is in the CII sector (commercial, industrial and institutional sector).²⁸ Not much explanation is given about why CII water use is so high, how it is likely to change over time, or what conservation measures would be effective in that sector.

Corroborating this, the Audit specifically mentions the high CII water use in the Kanab/Virgin River Basin, in which Washington County is located, saying “Ideally, the division’s projection for the demand in the Kanab/Virgin River Basin should reflect a separate analysis of the likely growth in the CII category, rather than just assuming it will be proportionate to the growth in the permanent residential population.”²⁹

Finally, WCWCD’s assertion that the No Action Alternative to the Lake Powell Pipeline would require the elimination of all outdoor watering is not only entirely false, it reveals a lamentable lack of effort and rigorous analysis in crafting the PLP’s No Action Alternative. Communities across the West are using significantly less water than those in the LPP service area, while still using 30-50% of residential water outdoors. These other communities, including Denver, Tucson, and Santa Fe, have achieved large reductions in water use without sacrificing quality of life for their customers through efficiency programs and educational efforts. Importantly, societal norms have changed in these communities about what represents a modern “American yard” in the arid West. Both of these forces, physical reductions in use and changing norms, will enable outdoor water use to continue in the LPP service area while resulting in significant water savings.

Several proven conservation strategies can be effective in achieving a 1% reduction in GPCD. These strategies are explained in detail in our *Local Waters Alternative*, are in line with the Audit’s recommended conservation measures. They include, but are not limited to:

- Revised conservation goals that reflect each region’s capacity to conserve
- Universal metering of potable and secondary water usage
- Use of conservation water pricing structures³⁰

Utah Governor Herbert’s budget recommendations state that sub-standard water conservation targets are not acceptable in arid areas of Utah where billion-dollar water supply projects are planned.³¹ The PLP should be revised to reflect the reasonable and realistic water conservation potential in Washington County.

²⁸ 2015 WNA at 3-2 (2015) (Fig. 3-1).

²⁹ Audit at 34.

³⁰ *Id.* at 44, 45.

³¹ Governor Gary R. Herbert, *Investing in the Future of Utah: Budget Recommendations, Fiscal Year 2017–Fiscal Year 2016 Supplementals* (Updated December 10, 2015), attached as Exhibit 3.

c. The PLP Uses Conflicting and Ambiguous Data to Describe Current and Future Water Supplies.

Current and future water supplies are not adequately justified in the PLP. The lack of clarity in the presentation of current and future water supplies in Washington County plagued the Draft Study Water Needs Assessment in 2011, and unfortunately this same issue persists in the 2015 version. Conflicting and ambiguous data are reported throughout the 2015 WNA and PLP.

For example, the PLP, states:

The 2028 potable water supply [would be] about 72,362 acre-feet per year and secondary water supply of 8,505 acre-feet per yearThe No Action Alternative would not provide adequate water supply to meet projected water demands from 2028 through 2060.³²

However, the PLP later claims:

the 2025 Washington County potable water supply of 72,362 acre-feet per year, would be completely used by 2052, and the total potable water demand would be 130,245 acre-feet per year in 2052... Therefore, the 2052 M&I water supply deficit would be 57,883 acre-feet per year.³³

Thus, the same projected potable water supply is associated with two different times, three years apart, leaving the reader uncertain about how long these current supplies are useful.

In addition, there are major discrepancies in the reported volumes of secondary water available in the future. The PLP Ch 3 vol 5, section 3.2.1 (pdf pg 61) states that:

The 2028 potable water supply of about 72,362 acre-feet per year and secondary water supply of 8,505 acre-feet per year would include existing supplies, planned WCWCD water supply projects, wastewater reuse, and future agricultural water conversion resulting from urban development of currently irrigated land.

However, a careful reading of Table ES-1, Figure ES-2 and various portions of the text in the 2015 WNA, it appears that total, future secondary water resources total over 25,000 AFY. See Table 1 for documentation of these resources.

³² PLP at § 3.2.1.

³³ PLP at § 3.5.1.1.

Table 1. Washington County Water Supplies as reported in the WNA show conflicting data compared with their statements in the PLP.

	AF/yr	Available By Year	Data Source
Existing Potable Supplies	59,172	2010	WNA 2015, Table 4-3 [pdf pg 61]
Future Potable Projects	13,670	2020	WNA 2015, Table ES-1 [pdf pg 13]
Potable TOTAL	72,842		
Existing Secondary Supplies	8,505	2010	WNA 2015, Table 4-4 [pdf pg 61]
Agricultural Transfers	10,080	2060	WNA 2015, Section 4.2.5.3 [pdf pg 68]
Wastewater Reuse Expansion	7,300	2060	Derived from WNA Table ES-1 [pdf pg 13]
Secondary TOTAL	25,885		WNA 2015, Table ES-1 [pdf pg 13]
GRAND TOTAL	98,727		

d. The Applicants Acknowledge that Reuse Could Provide Nearly 55,000 AFY of New Water Supplies.

Strikingly, the PLP describes how the WCWCD could develop a reverse osmosis (RO) advanced water treatment facility under a No Lake Powell Water Alternative, yet this is not reflected in the earlier sections, nor is it explained in any level of detail, despite the fact that it would provide almost 55,000 AFY of new water supply – a very substantial amount of water.³⁴

By contrast, the 2015 WNA mentions future reuse water primarily in the context of fully utilizing the existing St. George wastewater reuse plant, which would result in an additional 7,300 AFY. The 2015 WNA contains only a brief mention of the potential for “49,000 ac-ft per year in 2060” of reuse water that could (in theory) be made available from the construction of a new treatment facility.³⁵ This large volume of water is not further explained, nor is it mentioned in connection with the aforementioned reverse osmosis option. Additionally, demand for reuse is outlined for the cities Hurricane, Ivins, La Verkin, Toquerville, and Washington, but yet there is no information about the source of this reuse water in these regions.³⁶ These substantial amounts of reuse deserve more analysis and properly belong as part of the No Action Alternative, especially in light of the water community’s decisive push over the past several years to move towards greater use of direct and in-direct potable reuse as a viable and safe future water supply.

³⁴ PLP at § 3.5.1.2.

³⁵ 2015 WNA at § 4.2.5.2.1.

³⁶ 2015 WNA at § 4.2.5.2.

In Figure 1 (see these comments at page 3) we assume that 49,000 AFY is the maximum potential for reuse by 2060, as stated by project applicants in the WNA. We assume this figure includes current and future wastewater reuse from the St. George reuse plant – which amounts to 11,200 AFY – thus the additional reuse water depicted in Figure 1 is 37,800 AFY.

e. The Applicants Significantly Understate the Potential for Agricultural Water Transfers.

WCWCD’s analysis of water available from agricultural water transfers is unchanged from the 2011 Draft Study and greatly underestimates the potential for transfers of water from agriculture. The *Local Waters Alternative* explains in detail that the WCWCD significantly understates the potential for agricultural water transfers to meet projected water needs. This analysis, which reconciles both the Water Needs Assessment and the Draft Study Report 6: Land Use, shows that a conservative estimate would result in at least 13,600 AFY by 2060. A plausible maximum amount of up to 35,200 AFY could be made available from agricultural conversions. Our larger estimates result from the amount of water that would be transferred to municipal uses once the land needed to support the growing population is converted from agricultural to municipal uses. Figure 1 shows this additional water from agricultural conversions, minus the 10,080 AFY already assumed by WCWCD.

The Office of Legislative Auditor General recently made a similar critique of the Division’s low agricultural water transfer estimates in a section entitled: “Division’s Agricultural Conversion Estimates Are Understated.”³⁷ While the Auditor General’s analysis cites the Division’s understated Weber Basin projections as an example, the Auditor General’s critique is equally applicable to Washington County’s projections. The Auditor General concludes that “[s]tatewide, there appears to be far more water available for agricultural conversions than anticipated in the division’s water plans.”³⁸

f. The PLP Should be Revised to Include a Realistic and Reasonable No Action Alternative.

Given the recommendations made in the State Audit, the *Local Waters Alternative* and all the documented trends in the West, it is clear that the PLP includes inflated water demands and ignores reasonable alternative water supplies and water conservation measures. Washington County has some of the highest rates of water use in the West and cannot ignore the tried-and-true water conservation strategies utilized by cities across the west, including appropriately comparable neighbors like Las Vegas. The PLP does not represent the best available information to craft alternatives and analysis in an environmental impact statement. Accordingly, the PLP must be revised before the final license application is submitted to FERC.

³⁷ Audit at 53-55.

³⁸ *Id.* at 55.

II. The PLP Fails to List Arizona’s Water Export Statute, A.R.S. § 45-292, Among the Required State Permits for the LPP.

The Arizona Water Export Statute expressly prohibits transporting water from Arizona for consumptive use in another state without approval by the Director of the Arizona Department of Water Resources.³⁹ In the proposed LPP, the Utah Division of Water Resources plans to pump stored water from Lake Powell at a point in Arizona and transport that water via pipeline for consumptive use in Utah. Therefore, the plain terms of the Arizona Water Export Statute apply to the current plans for the Lake Powell Pipeline. However, there is no mention of A.R.S. § 45-292 in the relevant section of the PLP.⁴⁰ Under A.R.S. § 45-292, the Director must hold a formal administrative hearing on the application and consider statutory factors in determining whether to grant, condition, or deny the application to move water out of Arizona.⁴¹ The PLP should be revised to include this state statutory permit requirement.

III. FERC’s Limited Jurisdiction Over Only the Hydropower Components Demonstrates That FERC is Not the Proper Lead Agency for this Water Supply Project.

As FERC recently acknowledged, it has jurisdiction over the discrete hydropower components of the Lake Powell Pipeline, but not the Pipeline itself. In *Wyco Power & Water, Inc.*, 139 FERC ¶ 61,124 at pp. 4-5 (May 17, 2012 Order), FERC cites the Lake Powell Pipeline in rejecting Wyco’s arguments that FERC has jurisdiction over entire water supply pipeline projects. Yet most of the concern and controversy surrounding the LPP concerns the pipeline’s potential location, the applicants’ water supply and demand analyses, the potential impacts to the Colorado River, and other issues related to water supply management.

The applicants concede that the LPP will be built primarily as a water supply pipeline and that the hydropower components’ purpose is to “help offset” the pipeline’s energy demands.⁴² It follows that selection of a non-pipeline alternative would likely obviate the applicants’ claimed need for the hydropower facilities considered in the PLP. Therefore, the hydropower components are not the primary consideration of the LPP and alternatives.

FERC and the other permitting federal agencies should appoint a different and more appropriate lead agency to prepare an environmental impact statement for the LPP under NEPA. The federal

³⁹ A.R.S. § 45-292, *attached as Exhibit 4; see also id.* at 45-101(3) (defining the “director” as the Director of the Arizona Department of Water Resources).

⁴⁰ *See* PLP at 2-5 to -6 (Table 2-1).

⁴¹ Article IX(a) of the Upper Colorado River Basin Compact (UCRBC) does not preempt Arizona’s ability to reject an application for the Lake Powell Pipeline. Both Arizona and Utah are signatories to the UCRBC. Article IX(a) only protects the consumptive interstate water projects of a “lower,” *i.e.* downstream, signatory state against the protectionist laws of an “upper,” *i.e.* upstream, signatory state. The Colorado River never re-enters Utah below Lake Powell in Arizona. Therefore, the proposed Lake Powell Pipeline is not protected by Article IX(a) of the UCRBC.

⁴² PLP at 2-1 (“Issuing a FERC license for the LPP Project would enable the UBWR to generate electricity in project facilities to help offset electrical power consumed in pumping the water from Lake Powell to St. George, Utah.”).

agencies with jurisdiction over the pipeline have more comprehensive knowledge of the associated environmental issues and are better suited to being the lead agency for the NEPA process. *See* 40 C.F.R. § 1501.5(c) (factors for determining the lead agency include the agency’s “[e]xpertise concerning the action’s environmental effects”). The lead agency should be one with more experience in water supply projects.

IV. Conclusion

The applicants should be required to revise the PLP consistent with these comments.

Sincerely,



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