



NAWS LEGAL CHALLENGES SUMMARY

Northwest Area Water Supply (NAWS) has undergone numerous studies and assessments to examine water quality and quantity, project characteristics, risk assessment, and other project aspects aimed at meeting National Environmental Policy Act (NEPA) and Boundary Waters Treaty Act compliance. Nevertheless, the NAWS project still faced a wide array of legal challenges throughout its construction. The following is a summary of the 17 years of legal challenges that transpired after construction began in the spring of 2002.

In October 2002, a legal challenge was filed by the Province of Manitoba, Canada to stop the construction of NAWS, claiming that the Environmental Assessment (EA) conducted for the project was inadequate under NEPA.

In 2005, a court order was issued which required the Bureau of Reclamation to complete additional environmental analysis related to water treatment for potential biological organisms. A second court order issued that year allowed construction to proceed on those project features that would not predetermine a future decision on water treatment to reduce the risk of transferring invasive species.

In 2006, the Bureau of Reclamation initiated an Environmental Impact Statement (EIS), analyzing different water treatment methods to address invasive species concerns. The Final EIS was published in December 2008.

In February 2009, the final EIS and Record of Decision (ROD) were completed. Shortly thereafter, the Province of Manitoba filed a supplemental complaint contending that the Final EIS was insufficient. Additionally, the State of Missouri filed a complaint against the Department of the Interior and the U.S. Army Corps of Engineers (Corps) in the same U.S. District Court. The State of Missouri alleged that the Bureau of Reclamation's Final EIS was insufficient, and that the Corps had failed to complete a separate NEPA analysis for NAWS. The court then consolidated the Missouri suit with the Manitoba suit. Manitoba's main opposition to NAWS was based on interbasin water transfers in North Dakota. The State of Missouri's main opposition was related to depletions of the Missouri River System.

In March 2010, the court issued an order that the Bureau of Reclamation conduct further environmental review with respect to two specific issues: (1) the cumulative impacts of water withdrawals on Lake Sakakawea and the Missouri River; and (2) consequences of transferring potentially invasive species into the Hudson Bay basin. The court modified the 2005 injunction in 2013, halting further construction – pending the completion of further NEPA review.

A draft supplemental EIS (SEIS) was issued in June 2014 and the final SEIS was issued in April 2015. The SEIS was approached as a stand-alone document with updated needs analysis and considered all viable alternatives, in addition to addressing court-ordered concerns. The ROD was signed in August 2015 with the conventional treatment option for the biota water treatment plant prior to crossing the basin divide as the preferred alternative.

In August 2017, the District of Columbia District Court ruled on the case in favor of the United States Bureau of Reclamation and the State of North Dakota. The District Court approved the Bureau of Reclamation (U.S. Department of the Interior) and State of North Dakota's motions for summary judgment, vacated the injunction, and rejected Manitoba's motion for summary judgment. The court also dismissed Missouri's complaint for a lack of standing in the case.



Both Manitoba and Missouri appealed the case to the United States Court of Appeals District of Columbia Circuit (Circuit Court). The briefing was suspended while the Department of the Interior and Manitoba held settlement negotiations. Manitoba subsequently withdrew their appeal and the case proceeded with the State of Missouri. The Circuit Court upheld the District Court's decision in the spring of 2019. Missouri chose not to appeal the case to the Supreme Court – ending 17 years of litigation.

Progress on NAWS has resumed, and it will ultimately serve 81,000 people. Project completion is expected by 2029.