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Known Litigation Against Water Projects Selected as Case Studies for PAD 97180 (File B-114885)

In your review of Federal water projects, you learned that several of the projects selected as case studies are or have been the subject of litigation. These are the North Loup Division (Upper Mississippi Region), the Fryingpan-Arkansas Project, and the Auburn-Folsom South Unit (Mid-Pacific Region). You asked us whether the litigation would preclude your covering these projects in your report in view of the office policy against reporting on matters at issue in litigation.

You may include these three projects in your report since the lawsuits concerning two of them have been concluded; the litigation over the third project raises issues different from the aspects your report will address. This conclusion is based upon our review of pleadings in the several lawsuits that you obtained for us, and upon our understanding that your study addresses the economic effects of decreasing or eliminating Federal subsidies for irrigation. The merits of the lawsuits look to entirely different issues.

In Board of County Commissioners v. Andrus, Civil No. 75-M-1268, related to the "Fryingpan-Arkansas Project," plaintiffs alleged that the National Environmental Policy Act (NEPA) had not been adequately complied with, and requested a declaratory judgment that contracts made for construction of the project were unlawful. Judgment dismissing the complaint was entered on April 19, 1977.

National Resources Defense Council v. Stamm, Civil No. S-2663, involving the Auburn-Folsom South Unit, was decided on April 15, 1974. The court held that the Bureau of Reclamation had not complied with the Environmental Impact Statement (EIS) requirements of NEPA and ordered that the EIS be amended. Jurisdiction was retained solely for consideration of the sufficiency of the amended EIS and of Bureau compliance with a decision of the California State Water Resources Control Board.

Memo

B-114885

In Geweke v. Twin Loups Reclamation District, Civil No. 76-L-170 and 76-L-189, concerned with the North Loup Division, Upper Missouri Region, the plaintiffs allege that the Bureau's EIS is inadequate and erroneous and that subcontracts obtained by the Bureau are voidable, leaving the plaintiffs in a precarious position. The plaintiffs essentially seek to enjoin construction of the irrigation project until resolution of these issues. Our most recent information shows this litigation is still pending.

In summary, we do not see any reason for GAO to terminate its work on irrigation subsidies solely because of the lawsuits, since several have terminated and all involve issues unrelated to the subject of the report.

cc: Mr. Havens, PAD
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