



COMMISSION EUROPÉENNE

SECRETARIAT GÉNÉRAL

Bruxelles, le 7 mai 2004

F-D-E ES

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NOTE POUR LES MEMBRES DE LA COMMISSION

E/1105/2004

NORMALE

Délai:

VENDREDI 14 MAI 2004 - 11 H

Observations éventuelles : service des procédures écrites SG-A-2
Fax : 64316 - Tél.: 52362 / 52363

Objet : "Habitats"
- La Breña II (Espagne)

Proposition de Mme WALLSTRÖM


Décision proposée :

- approuver le projet d'avis de la Commission, émis conformément à l'article 6, paragraphe 4, deuxième alinéa, de la directive 92/43/CEE du Conseil du 21 mai 1992 sur la conservation des habitats naturels et de la faune et de la flore sauvages, concernant la demande déposée par le Royaume d'Espagne relative au projet de réservoir de La Breña II";
- le texte en langue espagnole est le seul faisant foi ;
- ne pas publier au JO.

Commentaire :

Ce projet vise à émettre un avis favorable.

Selon le service responsable, ce projet ne comporte pas d'incidences financières sur le budget communautaire.


Patricia BUGNOT
Directeur du Greffe

Destinataires : Mme DAY, MM. LAMOUREUX, SILVA RODRIGUEZ, MEADOWS, PETITE

NOTE DU SECRETARIAT GENERAL

PREPARATION DU DOCUMENT

Direction générale responsable

ENV Environnement

Services Associés

pour accord

SG	Secrétariat général	: Accord
TREN	Energie et Transports	: Accord
AGRI	Agriculture	: Accord
REGIO	Politique régionale	: Accord

pour avis

SJ	Service juridique	: Avis favorable
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Langue originale : EN

Dossier traité par Odile FOUBET - BREY 13/18 - 58297

Info-point NOTIFICATION : Valérie GALLOO (tél. 69522)

Info-point PUBLICATION : Jean-François DUBOIS (tél. 59658)

MEMO FROM MRS MARGOT WALLSTRÖM TO THE COMMISSION

Subject: Opinion according to Art. 6 (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of the natural habitats as well as the wild animals and plants^[1], delivered upon request of the Kingdom of Spain

Natura 2000 is a Community-wide network of nature protection areas established under the 1992 Directive 92/43/EEC on the conservation of the natural habitats as well as the wild animals and plants (the 'Habitats directive'). It aims to promote the maintenance of biodiversity by assuring the long-term survival of Europe's most valuable and threatened species and habitats. The network is composed by sites that have been classified by Member States as Special Protection Areas (SPAs) according to the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds^[2] (the 'Birds directive') or proposed as Sites of Community Importance according to the Habitats Directive.

Natura 2000 sites are subject to the protection regime laid down in article 6 (3) and (4) of the Habitats directive: Any plan or a project having a significant negative effect on a site may only be authorised, if there is no alternative solution and if it is justified for imperative reasons of overriding public interest, including those of a social or economic nature. In this case the Member States shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. If the site hosts a priority natural habitat type and/or a priority species, and if considerations relating to human health, public safety or beneficial consequences of primary importance for the environment cannot be invoked, **the project must be justified by other imperative reasons of overriding public interest, further to an opinion from the Commission.**

The subject of this decision is to adopt an opinion relating to a Spanish project, according to article 6 of the Habitats directive. Corresponding request was submitted to the Commission by the Kingdom of Spain. In the following, a short summary of the opinion is given.

The Commission is hereby invited to adopt the above mentioned opinion and approve the notification to the Kingdom of Spain.

Short summary of the proposed opinion

1. The construction of the La Breña II dam, Andalucia, Spain:

It is proposed to the Commission to adopt a **positive opinion**: The adverse effects of the project on the affected proposed Site of Community Importance are justified by imperative reasons of overriding public interest. This opinion mainly results from the considerations that there exist no feasible alternatives to the project, that River Guadalquivir basin cannot provide enough water for existing human use (water consumption and industrial uses) and agriculture activities.

Therefore the project will have significant social and economic effects at the local and regional level. The proposed compensatory measures are appropriate to protect the overall coherence of Natura 2000. The opinion is subject to the condition that the compensatory measures will be implemented and monitored as foreseen and that the Commission will be informed on a regular basis on these measures.

^[1] O.J. No. L206 of 22.7.1992, p. 7

^[2] O.J. No. L103 of 25.04.1979, p. 1. Directive as last amended by Directive 91/244/EEC, O.J. L115 of 08.05.1991, p. 41



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, [...]
C (...)] [...] final

[...]/[...] COD

OPINION OF THE COMMISSION

pursuant to Article 6.4 § 2 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, concerning the

concerning the “Request by the Kingdom of Spain in relation to the La Breña II Reservoir Project”

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I. The legal framework

Article 6(3) of Directive 92/43/EEC states that any plan or project not directly connected with or necessary to the management of a Natura 2000 site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, should be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of its implications for the site and subject to the provisions of paragraph 4, the competent national authorities may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

According to Article 6(4) of Directive 92/43/EEC, a plan or a project may be carried out in spite of a negative assessment of the implications for a Natura 2000 site, in the absence of alternative solutions, if it is justified for imperative reasons of overriding public interest, including those of a social or economic nature. In this case the Member States shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected and it shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, and if considerations relating to human health, public safety or beneficial consequences of primary importance for the environment cannot be invoked, the project can be justified, further to an opinion from the Commission,¹ by other imperative reasons of overriding public interest.

II. The Spanish request

On 3 January 2002 the Spanish authority - the Environment Ministry's Office of the State Secretary for Water and the Coast - asked the Commission for an opinion pursuant to Article 6.4 of the Habitat Directive regarding the absence of alternative solutions and imperative reasons of overriding public interest, including those of a social or economic nature.

On 11 December 2002 DG Environment asked the Spanish Government to submit a report clarifying water management objectives in the River Guadalquivir basin.

On 10 February 2003 the Spanish government sent that information to DG Environment.

III. The project

¹Different language versions of Art. 6.4 of the Habitats Directive use different terms for “opinion” : the Dutch text has “advies”, the French “avis”, the German “Stellungnahme”, the Spanish “consulta” and the Italian “parere”. The term “opinion” will be maintained throughout this document.

The opinion requested from the Commission was on a proposal to construct a new dam “La Breña II”. This new dam is to be built on the River Guadiato, close to the River Guadalquivir. The dam will be built 120 metres from the “La Breña I” dam.

Part of the present “La Breña I” reservoir is within the Natura 2000 site “Sierra de Hornachuelos”. The “La Breña II” reservoir will completely flood the “La Breña I” reservoir. The new reservoir will occupy 626 hectares of the Natura 2000 site, which is 1.05 % of its surface area.

The dam is a gravity dam with a total storage capacity of 800 cubic hectometres. The main objective of the project is to manage the flow of the River Guadalquivir in its middle section in order to reduce the shortage of water in the Guadalquivir basin. The main goal is to increase the flow by 258 cubic hectometres.

IV. The Natura 2000 site

The Natura 2000 site directly involved is “Sierra de Hornachuelos”. The site was designated by the Spanish authorities as a special protection area (SPA) for the conservation of birds in 1989 and also proposed as a site of Community importance (SCI) in 1997.

V. Description and assessment of the effects of building the La Breña II dam on Natura 2000 sites

The expected effects of building the La Breña II dam were described in detail in the environmental impact assessment carried out by the Spanish authorities. The Impact Assessment Statement was published in the Spanish Official Gazette on 3 April 1998. The original EIA was carried out from 1993 to 1997.

As already mentioned, the new reservoir will occupy 626 hectares of the Natura 2000 site designated SPA in 1988 and proposed as site of Community importance in 1997. The project will have some effects on habitats and habitats of species included in Annexes I and II of the Habitats Directive and on species of birds included in Annex I of the Birds Directive. The reservoir will overlap 1.05 % of the Natura 2000 site surface.

The most significant impact will be destruction of areas of habitat of the Iberian lynx, a priority species under Directive 92/43/EEC. This species is recognised by the Spanish authority as being in danger of extinction and the reservoir project will result in the loss and fragmentation of areas of its habitats and of the species it preys upon.

Additionally the new reservoir will result in loss of habitat for several bird species in Annex I to the Birds Directive, such as the Spanish imperial eagle.

The EIA is an appropriate assessment that covers all these environmental aspects.

In 1996 the competent Spanish Authority launched the public participation procedure on the project.

The Commission holds the view that the environmental impact assessment carried out by the Spanish Authority can be considered appropriate within the meaning of Article 6 (3) of Directive 92/43/EEC.

VI. Alternative solutions

It can be concluded from the environmental assessment that the project is likely to have a significant impact on the Iberian lynx habitat. Consequently the project has examined and compared alternative solutions.

The project studied several alternatives including alternative locations for the new reservoir. One option was not to build the dam at all (the “zero-option”), or to build other dams in other River Guadalquivir tributaries. The possibility of establishing and managing a network of dams in the tributaries was also investigated.

The conclusion was that none of these alternatives would fulfil the objectives of increasing the flow of the River Guadalquivir. In view of the absence of alternatives the authorities has examined the existence of imperative reasons of overriding public interest.

The Commission recognises that the Spanish authorities adequately considered alternatives by identifying and assessing a number of options.

VII. Imperative reasons of overriding public interest

The authorities state that the River Guadalquivir basin cannot provide enough water for present requirements: human consumption, industrial uses and agriculture.

The authorities have demonstrated that these deficits cannot be covered, even though according to the Spanish Hydrological Plan several irrigation facilities will be improved in order to save water.

This project is based on the water demand identified in the 1999 Spanish Hydrological Plan of 3.600 cubic hectometres. The managed water resources amounted to 3.100 cubic hectometres, which left a deficit of 500 cubic hectometres.

The main goal of the La Breña II dam is to increase flow by 258 cubic hectometres so as to reduce the deficit to 242 cubic hectometres.

On the subject of irrigated land, the Spanish Hydrological Plan approved by Law 10/2001 of 5 July 2001 stated in the chapter on the River Guadalquivir basin in its Annex “Análisis de los Sistemas Hidráulicos”, that it starts from the premise (point 7.2.2) “*of guarantee for the current and future demands, of elimination of the infra-recharge and over-exploitation of the aquifer, and no increase in the irrigated areas*”. This is a guarantee that the Spanish authorities will not establish new irrigated areas in the Guadalquivir basin.

The arguments of the authorities supporting implementation of this project on socio-economic grounds are supported by the Commission Directorates-General for Agriculture (on condition that the protected areas affected are completely compensate by new areas and that any eventually increase in agricultural production correspond to a real market need) and Regional Affairs.

The Commission estimates that these arguments can be considered as imperative reasons of overriding interest that may justify the execution of the project, where appropriate compensatory measures are provided for.

VIII. Proposed compensation measures

To compensate for the expected effects of the reservoir on the priority species of Community interest and on the Natura 2000 site “Sierra de Hornachuelos” a set of compensatory measures have been worked out expected to cost €28.288.407.

In general the compensatory measures planned focus on the Iberian lynx and its habitat and on bird species in Annex I to the Birds Directive.

The compensation package has received the approval of the Doñana Biological Research Station (Estación Biológica de Doñana; Spanish Ministry of Science and Technology); Department of Ecology of the University of Córdoba; Regional Environmental competent authority (Junta de Andalucía) and the Iberian Lynx Working Group (Spanish Ministry of Environment)

The following measures are planned:

- Compensation for the lost of Iberian lynx habitat
 - It is proposed to expropriate a total area of 2 134 hectares which will affect 15 estates. Activities designed to improve the quality of the habitat and food resources for the Iberian lynx will be carried out in these estates.
- Compensation for the effects on the Iberian lynx
 - Increase of prey species.
 - Habitat restoration and reforestation activities.
 - Restoration of groves.
 - Construction of Iberian lynx refuges.
 - Monitoring.
- Compensation for the effects on bird species in Annex I to the Birds Directive
 - The compensatory measures focus on the following species, black vulture, Bonelli’s eagle and black stork.
 - Increase of prey species.
 - Habitat restoration.
 - Modification of dangerous power lines
- Other compensatory measures
 - Actions in relation to chiropteran habitats.
 - Studies related to invertebrates.

The compensatory measures project was the subject of a favourable statement by the Regional Ministry of the Environment of Andalusia and the Spanish Ministry of the Environment. These compensatory measures were described in considerable detail in the project.

The Commission considers that given the expected effects of the construction of the La Breña II reservoir on the priority species Iberian lynx and the species in Annex I to the Birds Directive, and the expected results from the planned compensatory measures contained in the Compensatory Measures Project prepared by the competent authority, it can be concluded that in the long term the overall coherence of the Natura 2000 network will not be significantly affected.

The Commission considers that the proposed compensatory measures described in the project are adequate if they are executed in a timely manner. It is important that all these activities should be well co-ordinated with other initiatives launched by the Spanish authorities, such as the Iberian lynx LIFE project. The Spanish authorities are asked to indicate subsequently what actions they will take to ensure general co-ordination with other initiatives.

The Commission advises the Government of the Kingdom of Spain to send yearly reports on the implementation of the project.

IX. Opinion of the Commission

On the basis of the arguments set out above, the Commission holds the view that the La Breña II reservoir project, as described in documentation sent by the Spanish Environment Ministry's Office of the State Secretary for Water and the Coast, can be executed for reasons of overriding public interest on the condition that all necessary compensatory measures to ensure overall protection of the coherence of Natura 2000 be taken in good time.

With regard to the opinion expressed in this document the Commission notes the following:

- this opinion is valid for this particular project, as described in the documents submitted to the Commission by the Spanish authorities and cannot be considered as applicable to any other similar kind of development in a Natura 2000 site.
- this opinion presumes that the results of accompanying monitoring programmes regarding Natura 2000 will be taken into account in that they may, if need be, lead to appropriate rectifications to project design or to additional compensation and mitigation measures.