

3-9-2011

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Recommended Citation

Navarro, Carlos. "Federal Court Suspends Work on Dam in Jalisco State Pending New Hearings in Local Communities." (2011). <https://digitalrepository.unm.edu/sourcemex/5475>

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Federal Court Suspends Work on Dam in Jalisco State Pending New Hearings in Local Communities

by Carlos Navarro

Category/Department: Environment and Sust

Published: Wednesday, March 9, 2011

In early February, a federal district judge ordered the federal government to halt construction of the controversial El Zapotillo dam on the Rio Verde in Los Altos region of Jalisco state and ordered the government to conduct new hearings with the affected parties. The ruling was a temporary victory for residents of Temacapulín, Acasico, and Palmarejo, who would have been displaced by the project. For now, the government is prevented from proceeding with dam construction, but the Comisión Nacional del Agua (CONAGUA) plans to file an appeal via the Organismo de Cuenca Lerma Santiago Pacífico (OCLSP), which is officially in charge of the project.

El Zapotillo was one of two dams that authorities had planned to supplement water supplies in Guadalajara in Jalisco state and other nearby communities, including the city of León in Guanajuato state. Construction of the Arcediano dam was postponed indefinitely because of much-higher-than-expected cost estimates, but work on El Zapotillo was moving ahead before the ruling. CONAGUA and other agencies involved in the project, including the Jalisco water commission (Comisión Estatal del Agua, CEA), had completed about one-fourth of the preliminary work on the dam wall before the federal court (Juzgado Segundo de Distrito en Materia Administrativa) handed down its decision.

The affected communities have been fighting a legal battle with the federal government for about five years to halt construction of El Zapotillo. They joined forces with land-rights advocates and environmental organizations, including the Centro Mexicano de Derecho Ambiental (CEMDA), to form the Comité Salvemos Temacapulín, Acasico y Palmarejo. The committee had taken legal action to stop CONAGUA from moving ahead with the project ([SourceMex, Nov. 18, 2009](#)).

Project violates local residents' basic rights

In its decision, the court ruled that there was evidence that the dam construction had violated basic guarantees for inhabitants of the three communities, as spelled out in Articles 14, 16, 27, and 133 of the Mexican Constitution. "It is evident that the [decisions related to the dam construction] violate the guarantees of legality, legal certainty, the right to an audience, the right of private property, the right to receive complete and timely information," said the court.

As a result, the court ordered the government to immediately halt all further work on the dam and set up a mechanism for residents to fully present their concerns.

The court decision also offers legal protection to local residents Consuelo Carvajal Espinoza from Temacapulín and Luis Villegas Ruiz from Acasico, who led the effort to file the lawsuit.

There are other strikes against the government. For example, the Mexico City weekly news magazine Proceso reports that CONAGUA has not obtained the required environmental permits from the Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT). The project coordinators, which include the Jalisco state government, also failed to obtain the go-ahead from the

Instituto Nacional de Antropología e Historia (INAH), which determines whether a site has cultural or historical significance.

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Furthermore, said , project opponents have gained international support, with Temacapulín hosting the third-annual international conference of dam-affected people and their allies (Encuentro Internacional de Afectados por Represas y sus Aliados). The international organization Rivers for Life sponsored that conference, held in October 2010. Sixty-two organizations from around the world attended the gathering, which included a large protest in Guadalajara against the Jalisco state government.

"The whole village of Temacapulín is against El Zapotillo dam. We have tried many ways to stop the dam but the government is completely deaf to our voices," said Marco von Borstel, a representative from the Instituto Mexicano para el Desarrollo Comunitario (IMDEC). "We need to get water and energy without killing rivers and flooding historic towns like Temacapulín."

Other observers agree that the process has been undemocratic. Alfonso Hernández Barrón, an official with the Jalisco human rights commission (Comisión Estatal de Derechos Humanos de Jalisco, CEDHJ), wrote in a report released in January that the project had to be suspended because it violated the basic human rights of the citizens of the three communities.

"If we pay attention to the basic rules of democracy, which say that the government must do what the people want, then El Zapotillo must not be constructed," columnist Francisco Guzmán Villela wrote in the Guadalajara daily newspaper . "All the residents of Palmarejo, Acasico, and Temacapulín, and even those residents of the state who have seen the arbitrary decisions of the CEA, oppose this project."

Government says project important for region

Despite the court's ruling to halt all activity on the dam, the project coordinators are seeking ways to continue work on El Zapotillo.

"It was not CONAGUA's intention to violate the rights of the people who presented the complaints. Residents of the region were informed in an open and public forum about the project," the federal water agency said in a response to the court ruling.

CONAGUA said another round of hearings would be scheduled, but no date has been announced. Until such hearings take place, and in a manner that is satisfactory to the court, construction of El Zapotillo will not proceed.

CONAGUA officials noted that the delay is having a negative effect on a larger segment of the population. "This delay harms the collective interests of about 2.3 million people and puts at risk our plan to meet our requirement to provide the populations of Los Altos de Jalisco, the Guadalajara

metropolitan area, and the city of León in Guanajuato with a safe and reliable supply of drinking water."

There are also financial considerations. At a hearing in late January, federal Deputy Óscar Lara Aréchiga, who chairs the water resources committee (Comisión de Recursos Hidráulicos) in the lower house, noted that the federal government had committed 1.9 billion pesos (US\$159 million) for water projects in Jalisco state in the near term. Of that total, about 1.4 billion pesos (US\$117 million) was intended for El Zapotillo.

The funding for Jalisco is part of a broader plan to expand water supplies for communities in the Lerma-Santiago-Pacífico basin, which includes the states of Jalisco, Colima, Aguascalientes, Guanajuato, and Michoacán. About 4.4 billion pesos (US\$368 million) was allocated this year for the region, said Lara.

A separate report from the Chamber of Deputies criticized President Felipe Calderón's administration for missteps in completing infrastructure projects like port facilities, highways, and reservoirs. The report listed construction and bidding delays, underuse of financing mechanisms, and poor planning among the problems. The report, released in December 2010, made a specific mention of El Zapotillo but did not recommend explicit action that Calderón should have taken to resolve the conflict with local residents.

The government has promised that El Zapotillo could reduce the need to draw water from nearby Lake Chapala to meet the needs of the Guadalajara metropolitan area. Water levels for Lake Chapala tend to fluctuate greatly and at times have fallen to dangerously low levels because of drought ([SourceMex, June 27, 2001](#)) and ([Oct. 23, 2003](#)).

Even if the government is able eventually to construct El Zapotillo, there are plans to expand water extraction from Lake Chapala by constructing a second aqueduct that would allow extraction of 60 million cubic feet of water per year from the lake. The proposed waterway would supplement an existing aqueduct, which extracts about 180 million cubic feet of water per year from the lake. Under federal guidelines, authorities can take only up to 240 million cubic feet of water from Lake Chapala.

CONAGUA director José Luis Luege Tamargo told the Guadalajara daily newspaper *El Occidental* that the aqueduct is necessary to bring stability to state water supplies and provide federal and local authorities with more flexibility.

"What happens if the first aqueduct breaks down?" asked Luege, also pointing out that a second waterway would better enable authorities to conduct maintenance operations.

"It may be that we are extracting more water, but we will make sure that we do not surpass the cap of 240 million cubic feet," said Luege.

There were plans for construction of the second aqueduct to begin in early 2011, but *El Occidental* said the federal government had yet to conduct important studies, including social impact and economic viability assessment. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on March 9, reported at 11.93 pesos per US\$1.00]

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