



30.05.2012

## NOTICE TO MEMBERS

**Subject:** Petition 0338/2010 by T.F.T (Spanish), on behalf of the ‘Plataforma por la defensa de los valles verdes’, on water catchment facilities and the sinking of wells in the ‘Sierra de Cazorla’, wildlife park in Segura y las Villas, Jaén

### 1. Summary of petition

The petitioners expressed concern at the unfavourable impact on groundwater in the Sierra de Cazorla natural park resulting from the sinking of wells as part of the large-scale private profit-making irrigation project for 654 hectares of olive groves being planned by the Beas del Segura irrigation association. The wells are being sunk in a location declared a protected wildlife area by the Andalusian Government in 1986 and designated as a biosphere reserve by UNESCO. The petitioners maintain that Community legislation is being infringed, including the Habitats Directive (the location being SCI ES 0000035 forming part of the Natura 2000 network) and Directive 79/409/EEC (since the area is special bird protection area), together with national legislation including the Guadalquivir Hydrological Plan and the Sierra de Cazorla wildlife park management plan.

### 2. Admissibility

Declared admissible on 1 July 2010. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 13 January 2011.

The petition concerns the approval of the 645 ha irrigation project in the province of Jaén with water taken from the Natural Park of Sierras de Cazorla, Segura y las Villas. According to the petitioners, the impact of the catchment on the hydraulic resources of the Natural Park, which is also a Natura 2000 site has not been adequately assessed. The impact of the other accompanying facilities that will have to be built within the borders of the site (aerial power

line) has also not been properly assessed. The petitioners claim that the provisions of environmental European legislation: the Habitats Directive 92/43/ECC<sup>1</sup>, the Birds Directive 2009/147/EC<sup>2</sup> and the Water Framework Directive 2000/60/EC<sup>3</sup> have not been respected.

The site ES0000035, "Sierras de Cazorla Segura y las Villas", has been designated as a site of Community importance under the provisions of the Habitats Directive and as a special protection area under the provisions of the Birds Directive. The Habitats Directive requires (articles 6.3 and 6.4) that any project likely to have a negative effect upon such sites is subject to an assessment. In the light of the conclusions of the assessment, the competent authorities shall agree to such a plan only after having ascertained that it will not adversely affect the integrity of the site. The provisions contained in article 6 (4) of the Habitats Directive 92/43/EEC constitute a form of derogation regime, setting out the circumstances within which plans and projects with negative effects may or may not be allowed.

According to the information available, the environmental impact statement of this project (DIA) does not show that an adequate assessment of its impact on the ecological values that motivated the designation of this site has been conducted.

#### Conclusions

The Commission will, therefore, contact the Spanish authorities in order to assess whether or not the provisions of the Habitat and Water Framework Directives were respected.

#### **4. Commission reply (REV), received on 6 September 2011.**

The Commission asked the Spanish authorities for detailed information about the evaluation of the impact of the catchment on the water resources as well as about the impact of the accompanying facilities (to be built within the borders of the site, as an aerial power line).

The examination of the reply received from Spain has, however, prompted new questions and the need for further information as regards the conformity of the assessment performed with the provisions of the Habitats Directive.

Consequently, the Commission has requested further detailed information from the Spanish authorities.

#### **5. Commission reply (REV II), received on 27 January 2012.**

The Commission asked the Spanish authorities twice for detailed information about the evaluation of the impacts of the catchment on the hydraulic resources of the site of Community importance (SCI) and the special protection area (SPA) ES0000035 "Sierras de

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<sup>1</sup> OJ L 206, 22.7.1992.

<sup>2</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. OJ L 20/7, 26.1.2010.

<sup>3</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. OJ L 327, 22.12.2000.

Cazorla Segura y las Villas". Regarding the provisions of the Directive 92/43/EEC<sup>1</sup> (Habitats Directive) the information received did not answer certain points and the Commission has, once again, asked the Spanish authorities to provide a reply.

Regarding the application of the Environmental Impact Assessment (EIA) Directive<sup>2</sup>, it should be noted that this project has been the subject of an EIA procedure. The Commission services have examined the additional information provided by the petitioner on this matter and also requested some clarifications from the Spanish authorities in this respect.

The information provided by the Spanish authorities has proved that a deterioration of the aquifer status is not expected. In this regard, the most relevant report that was issued by the Planning Office of the Guadalquivir Basin Authority states that the authorised extraction for the three wells (450.000 m<sup>3</sup>/year) is very little compared with the available resource (70 Hm<sup>3</sup>/year). The yearly extraction of water is estimated at 22.7 Hm<sup>3</sup>/year. According to the information provided by the regional minister of environment, the hydrological resources are being monitored following the recommendations of the Spanish Geological and Mining Institute.

As regards the alleged infringement of EU law on environmental liability<sup>3</sup>, pursuant to Article 12 of the Environmental Liability Directive, a natural or legal person having a sufficient interest in environmental decision-making relating to the damage [including non-governmental organisations working on environmental protection and meeting the requirements of the legislation] may submit to the competent authority<sup>4</sup> any observations relating to instances of environmental damage or imminent threat of such damage of which they are aware and may request the competent authority to take action under this directive.

In addition, the said directive states that Member States shall determine what constitutes sufficient interest and impairment of a right.

The request for action shall include all relevant information and data supporting the observations submitted in relation to the environmental damage in question, showing persuasively that environmental damage exists. The competent authority can consider such comments and requests for action, granting to the concerned operator the opportunity to make known their views on the request for action and the accompanying observations. The competent authority must subsequently inform the concerned persons of its decision to accede to or refuse the request, and the reasons behind it.

It is worth noting that, under Article 13 of the directive, the concerned persons have access to a court or another independent and impartial public body competent to review the procedural

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<sup>1</sup> Council Directive 92/43/EEC, of 21 May 1992, on the protection of natural habitats and wild fauna and flora. O.J. L 206 of 22.07.1992.

<sup>2</sup> Directive 85/337/EEC (OJ L 175, 05.07.1985) as amended by Directive 97/11/EC (OJ L 073, 14.03.1997), Directive 2003/35/EC (OJ L 156, 25.06.2003) and Directive 2009/31/EC (OJ L 140, 05.06.2009).

<sup>3</sup> Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. Official Journal L 143 , 30/04/2004 P. 0056 - 0075.

<sup>4</sup> Under Article 11.1 of Directive 2004/35/EC, "*Member States shall designate the competent authority(ies) responsible for fulfilling the duties provided for in this Directive.*".

and substantive legality of the decisions, acts or failure to act of the competent authority under this directive. All this, without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

However, the additional information provided by the petitioner in September 2011 has not explained how he has used the mechanisms provided for this purpose by the Directive 2004/35/EC. Under these circumstances, the Commission is not able to pursue any further the subject of his request as regards the alleged breach of the directive on environmental liability

#### **6. REV Commission reply, received on 30 May 2012**

On three occasions information has been requested from the competent authorities in relation to the assessment of the potential impact the project may cause in the site of Community importance (SCI) and a special protection area (SPA) ES0000035 "Sierras de Cazorla Segura y las Villas and concerning the identification of the impact of the water catchments on the aquifers of the SCI.

The answers given by the Spanish authorities have failed to clarify the existing concerns about the lack of an appropriate assessment of the negative effects of the project on the Natura 2000 network. In addition, the information provided by the Spanish authorities seems to admit that the catchment has already caused some negative effects in the SCI and SPA. The Commission also maintains its concerns regarding the requirements of the environmental impact statement which might not have been properly implemented and monitored.

Therefore, the Commission is considering opening an infringement case as regards the impact of the project on the Natura 2000 network.