



March 11, 2010

Scott Franklin, Moffat EIS Project Manager
Corps Denver Regulatory Office
9307 S. Wadsworth Blvd.
Littleton, Co. 80128

RE: Moffat Tunnel DEIS

Dear Mr. Franklin:

General Comments

These comments are being submitted to highlight the concerns and the strong objections of the Town of Grand Lake to the narrow-scope and sorely incomplete analysis done in the DEIS for the Moffat Collection System Project. There are many issues and data of great importance to the Colorado River Basin that were not addressed in the DEIS and should be considered, including: the Colorado River segments considered suitable for Wild and Scenic designation, climate change studies, mountain bark beetle, Colorado Compact call impacts, the Colorado River Availability Study, and water quality impacts on agricultural yields and treatment plants. The DEIS only examines incremental impacts, and provides no evaluation of cumulative impacts on the natural ecosystems as required under NEPA.

The Town of Grand Lake recognizes the need to plan for growth, and respects the fact that Denver Water is attempting to ensure that its users have adequate water supplies in the future. However, the Town believes that there is an avenue to work cooperatively to help ensure that Denver Water meets future water demands, without asking such a sacrifice from the citizens and visitors of Grand Lake and Grand County. The Town understands that Grand County is currently working with Denver Water to discuss past, present and future impacts of trans-mountain diversions, but thus far the specific impacts to the Moffat Project have not been thoroughly addressed.

The Public Hearing on December 2nd in Granby helped to showcase many of the challenges that the citizens of Grand County have with the Moffat Collection System DEIS. The Public Hearings in Boulder, Denver and Summit County also helped to bring to light the legitimate concerns that citizens on both sides of the continental divide share about many of the elements of the DEIS.

Project Impacts and Mitigation

Generally, the applicant alleges that there will not be significant new impacts based upon modeling projections; if this is the case, then any approvals should be conditioned so that any new impacts will be addressed. For example, the DEIS claims that because water will only be diverted during runoff months, there are little to no impacts related to this project. This conclusion fails to consider the long-term benefits of flushing flows to aquatic life and to channel maintenance. The Proposed Action also calls for water to be diverted in wet years following dry years, which would deny the watershed the opportunity to replenish water from the preceding dry year, exacerbating the bad conditions.

Each of these Pollyannaish leaps of faith ignores the very real fact that biology can have cascading effects that take years or decades to unfold, and no one can know for certain what the long-term effects of this project will be for years to come. The impacts could push the river environments over the tipping point, from which it will be difficult if not impossible to recover.

Locking in mitigation, (or lack of mitigation in this case) into the Final EIS and Record of Decision, without some ability to address mistaken assumptions, miss-calculations and anticipated minor or negligible impacts that turn out to be major would be a great mistake. It must be required in the Record of Decision that there is a mechanism in place through which any impacts caused by the project must, can, and will be appropriately addressed. A regular monitoring system and clearly defined terms and conditions that will protect this resource when the unforeseen impacts do occur should be placed directly into the 404 Permit. The watershed is already far too stressed to be able to endure any additional impacts without real mitigation.

The Colorado River Basin Roundtable is currently working with the Colorado Water Conservation Board to develop a Watershed Flow Evaluation Tool. This tool can be used to get an indication of flows and flow regimes that may be needed to maintain a healthy environment for both the Fraser and the upper Colorado, and should be considered by Denver when calculating and estimating the impacts from reduced stream flows.

Additionally, Grand County has spent over \$1 million, working on a scientifically based Stream Flow Management Plan that is nearly complete. Once done, it will outline the necessary stream flows needed for domestic, agricultural, recreational, in-stream and other uses. It is premature to grant any approvals prior to its completion; the Stream Flow Management Plan should be the mitigation for the Moffat Collection System Project.

No-Action Alternative

The comparison of the no-action alternative to the other alternatives is neither a fair nor an accurate comparison due to the fact that the no-action alternative uses the 30,000 acre-foot "strategic water reserve" to meet its demand, while the analysis of the other alternatives did not include using this resource. According to the Purpose and Need of

the DEIS, the reserve “is not included in the total system supply because it is not considered available for meeting the total system demand under normal operating conditions...” This statement is consistent with the long-standing policy of the Denver Water Board to only use this water to respond to catastrophic events, so it is all the more baffling to discover that this reserve was used in the no-action alternative. Including this 30,000 acre-feet of water distorts the environmental impact baseline, resulting in a comparison that is not fair between the alternatives and the no-action alternative.

The no-action alternative does not realistically depict the impacts of Denver’s operations on the Blue River and Dillon Reservoir that would occur after 2016 if the Moffat Project is not permitted. It is unrealistic to assume that Denver wouldn’t take some other action to increase the supply to its system if the Moffat Project was not permitted. For example, the 2002 Integrated Resource Plan called for incentives to create 39,000 acre feet of demand reduction by 2045 from “natural replacement” of more efficient fixtures—it is reasonable to assume that this plan would be accelerated to realize these water savings sooner if the Moffat Project were not approved.

The DEIS should also include other water conservation methods in the no-action alternative, or at least incorporate the Water Board’s current commitment to achieving 29,000 acre feet of conservation savings by 2016, which is not mentioned, leading to an overstatement of demand by 13,000 acre feet. This analysis also includes and overstates the demand by an additional 3,000 acre-feet for the City of Arvada, which Denver Water would not be legally obligated to provide if the Moffat Project wasn’t built as this requirement is only triggered if Denver Water is able to develop additional firm yield for its Northern System.

Cumulative Impacts

The DEIS simply does not consider cumulative effects or impacts in any reasonable or required manner whatsoever, not even considering the impacts of the original Moffat diversions as a “past action”. The Cumulative Effects analysis uses 2006 flows and conditions as a “current” baseline, implying that these flow rates are somehow indicative of native base flows. It then projects 2016 conditions as the baseline for impacts caused by the proposed action—this is a direct violation of NEPA requirements.

This analysis completely ignores the impacts of diversions that have systematically and cumulatively diverted as much as 65% of the native flows from the Fraser and upper Colorado River from the existing Moffat diversions, Colorado-Big Thompson project, Windy Gap and Grand Ditch diversions. The impacts from the various in-basin diversions should also be considered in this analysis. This DEIS also ignores the depletions from native flows by the existing Windy Gap, Colorado-Big Thompson, their own Moffat diversions and even the Grand Ditch. A supplemental DEIS should be required to correct this inept analysis. To assume that any past actions and environmental consequences are not valid is simply an attempt to side step the intent and required analysis by NEPA.

Despite the fact that there is another major trans-mountain diversion project occurring simultaneously with this project, the Windy Gap Firming Project (WGFP), the applicant only mentions it once in the entire report under the "Future Water-Based Actions" and does not consider it as a contributing event to this DEIS. If these two projects were to go online as proposed, total diversions from the upper Colorado River to the Front Range would reach approximately 75% of native flows, if not more. Ignoring the Windy Gap Firming Project doesn't change the fact that 30,000 a.f. of additional water is proposed to be diverted out of Grand County annually, and the combined impacts of both projects should be thoughtfully and deliberately considered under a combined Corps of Engineers and Bureau of Reclamation EIS.

Clean Water Act Compliance

The Corps of Engineers needs to comply with the requirements of the Clean Water Act (CWA). The CWA has a substantive requirement that impacts must be avoided, minimized or adequately mitigated. Because the cumulative impacts aren't being considered in this DEIS, there is no opportunity to avoid, minimize or to mitigate those impacts. By failing to acknowledge and consider the environmental damage that has already been caused by the Moffat Tunnel project, and by the many other trans-mountain diversion projects throughout the 20TH century, this DEIS is sorely out of compliance with the CWA. The challenges with this project and those that preceded it should be honestly identified, so real avoidance, minimization and mitigation can be considered and implemented.

Grand Lake

The Moffat Collection System Project DEIS also fails to consider the impacts to Grand Lake, even though the heavier phosphorus laden sediment water will end up in Windy Gap and then will be pumped into Grand Lake, which has been plagued with water quality issues that are unmistakably traceable to the Colorado Big-Thompson (CBT) project. To wit, the time that Denver Water proposes to pump (May-July), are the same months that Windy Gap is pumping into the CBT project. All-the-while, six wastewater treatment plants on the Fraser River have high discharge due to infiltration, and agricultural lands are flushing a years worth of nutrients from cattle into the river.

Thus, when these two projects are considered together, it is apparent that Northern Water is proposing to increase pumping, while Denver Water will be leaving Northern with even more phosphorus-laden water than it has previously. Current CBT operations have had disastrous effects on Grand Lake, and these two projects promise a one-two punch that will only serve to exacerbate a true environmental disaster.

Socioeconomic Impacts

The financial implications of this project have been severely ignored or at best underscored. No consideration is given to tourists that come to Grand County to hike, ice-fish, site-see, bike or to kayak. While there is a brief qualitative mention of some

public access locations and observation of number of anglers visible at one time, there is no baseline data on fishing.

Furthermore, there is no attempt to measure tourist spending on lodging, restaurants, entertainment, shopping or fuel. Finally, there is no measurement attempt for the possible impacts to the housing industry, even though 2/3 of the homes in Grand County are second homes. Grand County is a tourist-driven economy, followed in short order by the housing industry, so the true financial impacts of this project should include these two major economic drivers.

Mountain Bark Beetle Epidemic

The whole of Grand County has been overrun by the Mountain Pine Beetle epidemic, and the Fraser Valley has experienced nearly complete Lodgepole Pine mortality in its mature tree stands due to this tiny yet persistent bug. There was no attempt to analyze what the effects will be on an already overly stressed forest when even more water is taken from this watershed. Will there be losses in the Spruce and Aspen when the water table drops? Will this area have a higher fire danger? When a fire does go through the Fraser Valley, will it take longer to recover with even less flushing flows to address the Haymen-like conditions? The DEIS is sorely, and possibly gravely incomplete in this analysis.

Conservation

While it is positive that Denver Water is proposing to meet part of its 2030 water shortfall by conserving 16,000 a.f. of water per year, the conservation plan is far too meek, equaling only 4.4% out of the 363,000 a.f. of projected 2030 demand. By ignoring outdoor lawn watering, Denver Water fails to consider nearly half of its current demand. Contrast this effort with that of the Southern Nevada Water Authority, which pays customers to remove Kentucky bluegrass, and has dropped its usage by 30%. A far less aggressive conservation plan by Denver Water could reap the 34,000 a.f. of their forecasted "shortage" and much more, without taking another drop of water from Grand County and what was once referred to as mighty upper Colorado River. Taking more water out of the Colorado River basin prior to exhausting more aggressive conservation measures is unfair to Grand County.

Conclusion

In its current draft, the DEIS doesn't consider issues and data of great importance. The Moffat Project DEIS is insufficient in its scope; the Corps should hold the applicant to a high standard since the ramifications of implementation of this project are far reaching and could be extremely detrimental to a premier watershed and the communities that host it.

The DEIS concludes that there will be little to no impacts caused by the Moffat Collection System Project. If the same conclusions are drawn in the Final EIS, then monitoring system should be put in place to ensure there are no impacts occurring – and

when and if they do the Corps should include enforceable mitigation in the Record of Decision.

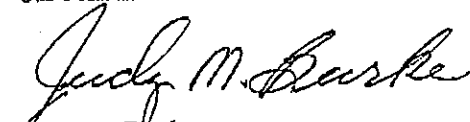
The Stream Flow Management Plan should be the mitigation for this project. Grand County has spent over \$1 million working on this plan that will outline the necessary stream flows needed for domestic, agricultural, recreational, in-stream and other uses. It is premature to grant any approvals prior to its completion; the Stream Flow Management Plan should be the mitigation for the Moffat Collection System Project

The No-Action alternative relies upon unfair and inaccurate information, which distorts the environmental impact baseline and results in a comparison between it and other alternatives that is neither fair nor accurate. A supplemental analysis needs to examine the cumulative impacts on the natural ecosystems as compared to a fair and accurate no-action alternative, which will also bring this project into compliance with the Clean Water Act.

The impacts of this project to the West Slope have not been adequately analyzed in the DEIS, and conclusions were drawn based on questionable modeling. The Town of Grand Lake requests the Corps to issue a supplemental DEIS to address all of the impacts and include permit conditions such that any impact is fully mitigated. Given the timing of the Windy Gap DEIS, this DEIS should be the combined effort of the Corps and the Bureau of Reclamation to insure that the cumulative effect of both projects are fully vetted and considered. As proposed, this project falls well short of being in the public interest as required under Section 404 of the Clean Water Act, and the Corps should not issue a 404 permit until the DEIS can support that determination.

I appreciate the possibility to comment on this project, and look forward to working with the Corps of Engineers and Denver Water in the future towards a result that benefits everyone.

On behalf of the Town and its Lake,


Judy M. Burke
Mayor

cc: The Honorable Michael Bennet, U.S. Senator
The Honorable Mark Udall, U.S. Senator
The Honorable Jared Polis, U.S. Congressman
The Honorable Bill Ritter, Governor
The Honorable Dan Gibbs, Senator
The Honorable Randy Baumgardner, Representative
The Honorable James Newberry, Grand County BOCC Chair
Mr. Larry Svoboda, Director; NEPA Compliance and Review, U.S. EPA

The Town of Winter Park
The Town of Fraser
The Town of Granby
The Town of Kremmling
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