

PITKIN COUNTY ATTORNEY

John M. Ely
County Attorney

Courthouse Annex Building
530 East Main Street, Suite 302
Aspen, Colorado 81611-1948

Christopher G. Seldin
Assistant County Attorney

Tel: (970) 920-5190
Fax: (970) 920-5198

Carrington Brown
Code Enforcement Officer

Legal Assistants:
Lisa MacDonald
Jane Achey

March 16, 2010

Scott Franklin
Moffat EIS Project Manager
U.S. Army Corps of Engineers
9307 S. Wadsworth Blvd.
Littleton, CO 80128

RE: Moffat Collection System Project EIS

Dear Mr. Franklin:

This letter is being submitted as part of the USACE's request for public comment to the draft Environmental Impact Statement for the Moffat Collection System Project. This letter reflects the position of the Board of County Commissioners of Pitkin County, Colorado.

It is the position of the Pitkin County Board of County Commissioners that the draft Environmental Impact Statement (DEIS) is an incomplete and therefore, inconclusive analysis and review of the effects of the proposed diversion not only for the basin of origin, but in particular for the other headwater communities on the west slope of Colorado as well. Failure to completely analyze the impacts of this diversion have resulted in a study which inadequately explores alternatives to the stated problem, particularly alternatives that do not precipitate the harm to the west slope communities the proposed diversion project would inflict.

Failure to analyze the economic and environmental impacts of the Moffat Collection System Project on other headwater communities is a failure to recognize the hydrological connectivity of the west slope of Colorado. This hydrologic system has shrunk in today's world and taxing the upper Colorado in the Fraser River and its tributaries will force problems to emerge elsewhere. The 18,000 acre-feet represents a resource of the state, not of the front range. It is currently used, reused, stored and released in the Colorado drainage to the benefit of many different communities.

As is too often the case in diversion projects, water conservation as an alternative or at least a mitigation to dampen future demand is too readily dismissed. The Moffat Collection System Project DEIS is no exception particularly in its discussion of Denver's proposed WISE Water Conservation Project. This represents an updated approach which encourages a pattern of

water consumption that cannot be sustained without catastrophic effects in basins of origin and perpetuates the misconception that the state resources are better utilized on the front range than the western slope simply because the presumed value of growth on the front range is a paramount interest of the state.

Of particular concern to Pitkin County is the impact of this diversion on the endangered fish species in the 15-mile Reach of the Colorado River above the confluence with the Gunnison River. According to the current Programmatic Biological Opinion for depletions in the upper Colorado River of the United States Fish and Wildlife Service, the recognized amount of water identified for the survival of these endangered fish populations has been quantified at 10,825 acre feet per year (final Programmatic Biological Opinion (PBO) from Bureau of Reclamation's Operations and Other Depletions, and Funding and Implementation of Recovery Program Actions in the Upper Colorado River Above the Confluence with the Gunnison River, December 1999). The assumptions inherent in this quantification rely upon the current flow conditions of the Colorado River. Currently, this quantified amount is supplied from releases at Wolford and Williams Fork Reservoirs but is anticipated to be made in equal amounts in the future from Granby and Ruedi Reservoirs.

The DEIS assumes no changes in the river system whereby the solution presented in the PBO would have to be modified. Increased diversions, absent compensatory storage, will assuredly lead to a change in conditions not contemplated by the PBO.

Pitkin County has previously furnished comments to the Bureau of Reclamation expressing its concerns that Ruedi not be considered as a source waiting to be tapped for the satisfaction of the PBO without consideration of the impact such releases will have on the economy and environment of Pitkin County in the lower Frying Pan River. These issues have equal relevance here and any resulting record of decision should include:

- How increased diversions in the upper Colorado River will influence demand for releases from Ruedi Reservoir to satisfy the Programmatic Biological Opinion
- How storage levels in Ruedi Reservoir will be affected by the proposed increased diversions and any increased demand for releases from Ruedi Reservoir occasioned by that increased diversion out of the upper Colorado River
- If releases from Ruedi Reservoir are changed in response to the proposed Moffat Tunnel diversion, how will these releases insure the normal, natural hydrography of the lower Frying Pan River
- Provision for releases from other reservoirs to meet any changing need of the endangered fish program and the Programmatic Biological Opinion, particularly Williams Fork Reservoir, should such additional diversions be required by the proposed Moffat Tunnel diversion
- If additional releases are ever needed from Ruedi Reservoir, protection for the environmental and recreational needs of the Frying Pan valley from any potential

additional demands placed upon Ruedi Reservoir occasioned from the Moffat Collection System Project

The DEIS for the Moffat Collection System Project must demonstrate how the proposed diversion will not exacerbate the need for Ruedi releases for the endangered fish program and established PBO.

The most obvious flaw in the projected stream flow analysis within the DEIS is its failure to address the single biggest potential change to the Colorado River; the reduction or elimination of a call at the Xcel Shoshone Power Plant. Recent shutdowns and slowdowns at the power plant present this potentiality as a very real probability. Should the water rights associated with the Shoshone Power Plant not be called, the river conditions will be radically different from that contemplated in the DEIS. This fact alone creates a fatal flaw within the document.

Buried within the DEIS, in a location not readily apparent, in a manner not promoting full discussion and debate, is the description of the action alternatives effect on the west slope. The DEIS must completely discuss the recreational, scenic and ecological importance of the Colorado River to the overall tourist and recreational economies with attention to the impact of the economic sectors on the overall economic health and sustained property values of west slope communities. This discussion to be meaningful, must relate these economic conditions to not only minimum river flows, but such flows needed to sustain a vital west slope economy. Beyond the broad brush and cursory treatment of the DEIS, such a detailed and disclosed examination of the effect of additional diversions out of the upper Colorado on west slope communities is not examined.

Finally, any resulting record of decision relating to the Moffat Tunnel Collection System Project must include protocols for increase mitigation should any of the assumptions in the DEIS prove to be false, such as the failure of the Shoshone call to protect sufficient flows for the endangered fish program, or if the proposed mitigation efforts are found insufficient to maintain the health of the Fraser River system or compliance with the Programmatic Biological Opinion for the 15-mile Reach.

Pitkin County representatives are available to discuss these issues further if it would be helpful.

Sincerely,

PITKIN COUNTY ATTORNEY'S OFFICE



John M. Ely
County Attorney