

March 17, 2010



Scott Franklin
Denver Regulatory Office
U.S. Army Corps of Engineers
9307 South Wadsworth Blvd.
Littleton, CO 80128-6901
VIA EMAIL: <https://www.nwo.usace.army.mil/html/od-tl/eis/moffat-eis.html>

**Re: Moffat Collection System Project - NWO-2002-80762-DEN
Comments on CWA § 404 Permit Application and NEPA Analysis**

Dear Mr. Franklin,

Trout Unlimited, Colorado Trout Unlimited, and the Headwaters Chapter of Trout Unlimited (jointly referred to as "Trout Unlimited") respectfully submit the attached comments on the proposed Moffat Collection System Project ("Moffat Project") for consideration by the U.S. Army Corps of Engineers ("USACE"). Trout Unlimited is a non-profit conservation organization with approximately 150,000 members nationally, 10,000 in Colorado. Our Headwaters Chapter, based in Grand County, counts with 100 very active members. Our mission is to conserve, protect and restore coldwater fisheries and their habitat.

Denver Water is seeking a CWA §404 permit to enlarge Gross Reservoir to triple its current storage capacity. Most of the water to be stored in the enlarged reservoir will be imported from the Fraser and Williams Fork river basins and will cause further depletions to the upper Colorado River, of which streams within those basins are tributary.

Trout Unlimited is extremely concerned about the impacts these additional diversions will have on trout fisheries in stream systems that have already lost the majority of their native flows to transmountain diversions. Available information shows degradation already occurring. Elevated stream temperatures, excess sediment and the spread of invasive species are known problems. According to a study by the Colorado Division of Wildlife, once abundant stonefly and native suculpin populations in the upper Colorado River downstream of Windy Gap reservoir have dramatically declined and, in some places, have been eliminated since Windy Gap, the latest transmountain diversion project, came on line. Trout biomass has been significantly reduced.

We are concerned that some of these streams, including the Fraser and upper Colorado rivers, may be reaching a “tipping” point - where incremental diversions will not only exacerbate degraded conditions, but will push the streams to a point where they can no longer sustain healthy trout fisheries. The USACE recognizes the potential for such non-linear, dramatic response but declines to further evaluate it due to the difficulty of the analysis and need for additional data. No monitoring or other term or condition is currently being proposed to prevent or address such potential catastrophic response.

The USACE’s analysis, while lengthy and complex, fails to answer this and other critical questions necessary to understand the effects the Moffat Project’s incremental depletions will have on these popular trout fisheries.

Given the magnitude of depletions already experienced by the affected stream systems, obvious signs of degradation, significant additional depletions expected, and value of recreational fisheries, issuance of a CWA § 404 permit would violate NEPA and CWA, absent (1) additional, adequate evaluation of the potential for linear and non-linear responses, or (2) imposition of terms and conditions that require monitoring for and addressing any such responses.

Attached, you will find two sets of comments that further detail the basis of our concerns. The first set of comments (Attachment A) addresses the USACE’s evaluation of the proposed Moffat Project’s compliance with CWA section 404(b)(1) Guidelines. The second set of comments (Attachment B) identifies significant deficiencies in the Draft Environmental Impacts Statement (DEIS) for the Moffat Project, which render the document incapable of informing the USACE’s decision whether to issue a CWA §404 permit. Terms and conditions that we believe are the minimum necessary, should the USACE consider issuance of a permit, to protect the trout fisheries is included in the Joint Rebuttal Report.

In addition to these comments, Trout Unlimited is a signatory of, and incorporates as part of its comments, the Moffat Collection System Project Joint Rebuttal Report prepared in collaboration with Grand County, Summit County, the Colorado River Water Conservation District, land owners, and others equally concerned with the impacts the proposed Moffat Project will have on the Fraser and Williams Fork river basins and on the upper Colorado River. Many of the comments provided in this letter simply summarize matters more fully discussed in that document. Trout Unlimited also joins in separate comments prepared by Western Resource Advocates, Summit County, and Grand County.

We hope the USACE will carefully consider these comments and be guided by them as it decides whether to issue a CWA § 404 permit for the Moffat Project and, if so, under what terms and conditions. The continued viability of valuable recreational fisheries in the Fraser and Williams Fork river basins and in the upper Colorado River depends on it.

Do not hesitate to contact me if you have any questions or wish to discuss these matters further.

Sincerely,

s/ Amelia S. Whiting

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Colorado Division of Wildlife
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Colorado Water Conservation Board
Colorado Department of Public Health & Environment
U.S. Senator Udall
U.S. Senator Bennet
U.S. Representative Salazar
U.S. Representative Polis