

**Save The Poudre Coalition**  
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## **Comments on NISP DEIS Treatment of Threatened Plant Species**

**Summary** We find that the NISP Draft Environmental Impact Statement (DEIS) is grossly deficient in its treatment of two federally-listed threatened plant species: the Colorado Butterfly Plant and the Ute Ladies' Tresses Orchid. Sufficient search for these plants in the proposed Glade Reservoir area, in proposed pipeline corridors and in other potential construction sites has not occurred. Furthermore, project consultants have failed to search at all for these two plants on land along the Cache la Poudre River south of Laporte, even though (as the DEIS acknowledges) habitat suitable for them may be found in Fort Collins natural areas and other areas along the river; and even though that habitat will likely be degraded by the dewatering of the river envisioned by NISP.

The DEIS' consideration of these two plant species ignores the likely damage to the riparian corridor that will be caused by NISP. This is a fatal flaw throughout the DEIS, also found in the DEIS' treatment of Preble's Meadow Jumping Mouse and in its treatment of impacts on fish, birds and wildlife in general.

In the case of these two threatened plant species, the NISP DEIS manifestly fails to meet NISP proponents' legal obligations to sufficiently analyze and consider potential impacts to threatened and endangered species, under NEPA and the Endangered Species Act.

Accordingly, we ask that the Army Corps of Engineers provide, or require the project proponents to provide, proper and complete censuses for the Colorado Butterfly Plant and the Ute Ladies' Tresses Orchid, both at the Glade Reservoir site, pipeline construction sites and other potential construction areas; and along the Poudre River corridor, from Laporte to the Poudre's confluence with the South Platte River.

We further request the preparation of a supplemental DEIS incorporating the additional findings of these census efforts and a full and honest consideration of the likely impacts of dewatering the Cache la Poudre River on these two species and their habitats along the river corridor.

### **Colorado Butterfly Plant**

As stated in the NISP DEIS:

The Colorado Butterfly Plant [CBP] is a short-lived perennial herb found in moist areas of floodplains. It occurs on subirrigated, alluvial soils on level or slightly sloping floodplains and drainage bottoms at elevations of 5,000 to 6,400 feet. Colonies are often found in low depressions or along bends in wide, active, meandering stream channels that are periodically disturbed. Historically, the main cause of disturbance was probably flooding (USFWS 2004) . . . Historically, the

CBP occurred along streams where natural flooding periodically scoured the riparian vegetation to create vegetation patterns suitable for the plant (USFWS 2004). (p. 3-79, section 3.16.2.1.4)

This description of CBP habitat matches habitat that would be destroyed or degraded both at the site of the proposed Glade Reservoir and other NISP construction areas, and along the Poudre River corridor below Laporte. The description also calls attention to the importance of periodic flooding to maintain this habitat—flooding that would largely be done away with if NISP is built.

As the NISP “Biological Assessment” notes: “Potential habitat for the CBP occurs along the western, eastern, and lower (mainstem) drainages of the Glade Reservoir study area where there is evidence of an active floodplain in the past (“Appendix B, NISP Biological Assessment,” p. 21). Based on a few cursory surveys, the Assessment goes on to state that CBP could potentially occur there, but is unlikely (pg 22).

However, because the Glade site includes what looks like good potential habitat for the CBP (Culver 2008); because this plant does not flower every year, thus making it easy to miss in surveys (Spackman et al. 1997); and because only a few cursory, limited surveys were conducted; we strongly advise that additionally surveys for CBP take place at the Glade Reservoir site, at the pipeline study sites mentioned in the DEIS, and at other potential NISP construction sites.

These surveys should take place in late summer (August-September), the prime flowering time for the CBP (Spackman et al. 1997). As Allan Pfister of USFWS notes, in his letter dated January 9, 2007: “suitable habitat should be surveyed for the two plants during the Fort Collins blooming period . . .” (Appendix C to Appendix B of the DEIS, “Biological Assessment”).

In addition, surveys should be undertaken for CBP along the Cache la Poudre River, below Laporte to its confluence with the South Platte River, particularly in protected natural areas where good habitat may still be preserved. No surveys for CBP along the river corridor have been undertaken, a gross failure in the NISP DEIS.

The DEIS attempts to argue away the need for surveys along the river corridor, stating: “Potential habitat for CBP may occur within the active floodplain of the Cache la Poudre and South Platte rivers. However, no populations of the CBP are known in these corridors” (section 3.16.11.1.3). However, the CBP is a relatively inconspicuous plant and no one has searched for it specifically along the river corridor. Unidentified populations of CBP may well exist along the river corridor (Culver 2008).

In the NISP technical report, “Species of Special Concern,” it is admitted: “Some areas along the Cache la Poudre with Fort Collins Natural Areas appear to have maintained links to the dynamics of river flows and shallow alluvial ground water levels. These areas may have potential habitat for the Colorado butterfly plant” (ERO Resources 2008, p.33).

If this is the case, however, it is gross negligence not to bother to look for them.

Here (and throughout the NISP DEIS), proponents speak as if the impacts of dewatering the river corridor are of no biological importance (see, for example, the DEIS discussions of impacts to Preble's Meadow Jumping Mouse and to birds in the riparian forest, and our comments on likely impacts to these species.). This is manifestly false. The DEIS and accompanying documents speak of several "study areas" where they looked for CBP, but conveniently leave out the river corridor itself as the most important "study area" that they needed to consider.

In their "Biological Opinion" dated October 5, 2007, the U.S. Fish and Wildlife Service clearly states that the "action area" for the NISP project includes the river and the river corridor, not just the dam and pipeline areas (page 5).

Even earlier, in an undated letter from Susan Linner to Chandler Peter, received October 19, 2004, (appendix A in appendix B to the NISP DEIS ["Biological Assessment"]), the USFWS states the following:

In addition to the environmental resources and issues mentioned in your September 2004 NISP EIS Scoping Announcement, we would like to emphasize that you evaluate the following: . . . Impacts to terrestrial wildlife, especially migratory birds, and wildlife habitat from changes in current flow regimes, including fluctuations in the Cache la Poudre River flows . . .

In his letter dated January 9, 2007, Allan Pfister, Western Colorado supervisor for USFWS, writes: "In addition to the areas included in this report, all areas where habitat disturbance is proposed by the project should be surveyed to identify potential habitat for the orchid and the butterfly plant" (Appendix C to Appendix B of the DEIS, "Biological Assessment").

USFWS presumably made a point of stating, repeatedly, the need to consider impacts to the river corridor to NISP proponents, because proponents previous analyses had ignored impacts to the river corridor. But the DEIS continues to do so. Such negligence should not be allowed to stand.

### **Ute Ladies' Tresses Orchid**

As stated in the NISP DEIS:

The Ute Ladies' Tresses Orchid [ULTO] is federally listed as threatened. This orchid occurs at elevations below 6,500 feet in moist to wet alluvial meadows, floodplains of perennial streams, and around springs and lakes where the soil is seasonally saturated within 18 inches of the surface. (p. 3-80, section 3.16.2.1.5)

This description suggests that NISP could degrade potential habitat for this plant. The DEIS continues:

Generally, the species occurs where the vegetative cover is relatively open and not overly dense or overgrazed. Once thought to be fairly common in low elevation riparian areas in the interior western United States, ULTO is now rare (USFWS 1992b). This species' decline appears to be related to drastic modification of riparian habitat by urbanization and stream channelization. (ibid.)

Of course, if built, NISP would also result in "drastic modification of this species riparian habitat," of just the kind that has reduced this once common species to a small remnant and placed it on the endangered species list (USFWS 1992a).

"Because of this decline," the DEIS continues: the Service listed this species as threatened under the ESA in 1992 (Service 1992a) . . . According to the Service (1992b), ULTO surveys must be conducted in appropriate sites below 6,500 feet in elevation and on perennial tributaries of the South Platte River."

However, proponents of NISP have not conducted any surveys for ULTO along the Cache la Poudre River corridor, in direct contradiction of this legal mandate.

As with the Colorado Butterfly Plant, the DEIS attempts to explain away this failure, stating: "Potential habitat for ULTO may occur within the wetlands and riparian areas in the Poudre-South Platte River corridor study area. However, no populations of the ULTO are known in these corridors" (section 3.16.11.1.4 ).

But once again, such assurances are largely meaningless, since people have not seriously looked for this plant along the river corridor (Culver 2008).

Similarly, in discussing "Effects of the Proposed Project," the NISP Biological Assessment states that "No known populations of ULTO occur in any of the study areas" (DEIS Appendix B, Biological Assessment, p.24).

The "study areas," of course, don't include any land along the river corridor. Since they haven't been looking for ULTO along the river corridor, they haven't found any.

Once again: According to the Service (1992b), "ULTO surveys must be conducted in appropriate sites below 6,500 feet in elevation and on perennial tributaries of the South Platte River."

As with the CBP, surveys for ULTO have been paltry in the areas directly destroyed by construction of NISP (such as the Glade Reservoir site, pipeline sites and other construction sites) and nonexistent along the Poudre River corridor, which would bear the brunt of the impacts of the NISP project.

## **Conclusion**

The NISP DEIS claims “no distinguishing effects” between the different alternatives it considers regarding “migratory birds and raptors, amphibians and reptiles, and other wildlife”; on “fish and other aquatic life”; and on the “CO Butterfly plant and Ute orchid” (DEIS, p. 4-16, table 4-16). But as we have seen, this DEIS has not provided the data or the analyses necessary to back up this statement. Hence it is worthless as a guide to decision-making.

The sorts of failures documented in these comments mock the protections the ESA is supposed to accord threatened and endangered species, and the careful environmental analysis and consideration of alternatives that is supposed to be at the heart of environmental impact statements under NEPA.

We suggest preparation of a supplemental EIS, utilizing another independent consultant. Such an EIS must undertake the necessary surveys to generate accurate data on the presence of CBP and ULTO populations and habitat in the area to be harmed by NISP (including the Poudre River corridor). It must also fully and honestly analyze the likely impacts of dewatering the river corridor on CBP and ULTO. That’s the law.

## **References**

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