



March 13, 2012

Tim Carey
Denver Regulatory Office
U.S. Army Corps of Engineers
Littleton, Colorado 80128

Dear Mr. Carey,

Save the Poudre: Poudre Waterkeeper has recently had the opportunity to review the comments sent to you by the U.S. Environmental Protection Agency (EPA) regarding the FEIS for the Windy Gap Firming Project (WGFP). This project intersects with our mission to protect and restore the Cache la Poudre River for several reasons including:

- a) The alternative analysis in the FEIS for WGFP could set a precedent for future proposed projects in our basin.
- b) The Purpose and Need in the FEIS for WGFP could set a precedent for future proposed projects in our basin.
- c) The proposed Northern Integrated Supply Project (NISP) proposes to use WGFP water for the initial filling and ongoing operation of NISP.
- d) The climate change analysis in the WGFP FEIS may be flawed thus requiring additional future impacts on the Poudre River by WGFP participating communities.
- e) WGFP communities are selling water for fracking, a significant new industrial use of water in the Cache la Poudre watershed.

We take this opportunity to write to you for three reasons:

1. We request that your office address the issues raised by EPA's FEIS comments. EPA's comments highlight the fact that the data underlying the WGFP FEIS is flawed and the FEIS must be supplemented. For example, in EPA's separate comments to the Bureau of Reclamation (BOR) on the WGFP EIS, EPA informed BOR that there are "issues with the data, methodologies and conclusions" in the FEIS, and some conclusions in the FEIS "are inconsistent with existing data." EPA Letter to BOR at 2. Moreover, EPA expressed concern that the FEIS did not account for important new information from the Colorado Division of Wildlife concluding that the current condition of aquatic life immediately downstream of the original Windy Gap

diversion is far worse than the FEIS assumes. Id. at 2, 13. Because of these flaws in the FEIS, EPA cautioned the Corps that “additional data collection and analysis” will be “necessary” in order to comply with the Clean Water Act Section 404(b)(1) Guidelines. EPA Letter to Corps at 1. Further, EPA warned that if the Corps intends to rely on the FEIS to meet its legal obligations under the Section 404(b)(1) Guidelines, “the FEIS need[s] to be supplemented.” Id. at 2.

Save the Poudre agrees with the EPA with regard to these concerns, and we ask that your office, at a minimum, supplement the FEIS and conduct additional data collection and analysis, as requested by EPA. It is “essential” that the FEIS for the WGFP contain “high quality” and “accurate scientific analysis.” 40 C.F.R. §1500.1(b); see also id. §1502.24 (“Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses” in an EIS.). An FEIS must be supplemented if there are “significant new circumstances or information” relevant to a project. Id. § 1502.9(c)(1)(ii). Moreover, the Section 404(b)(1) Guidelines recognize that there may be cases when the Corps must supplement NEPA documents in order to meet the requirements of section 404. Id. § 230.10(a)(4). Because the FEIS for the WGFP does not include the up-to-date and accurate analysis required by NEPA and Section 404, the Corps must collect additional data and supplement the FEIS.

2. We believe that the EPA’s comments contain significant omissions concerning topics that impact our watershed and were raised in the EPA’s comments on the DEIS but were omitted in the EPA’s comments on the FEIS. In the DEIS, the EPA also raised concerns about:

- Purpose and Need
- Sustainability and Conservation
- Alternatives
- Indirect Impacts
- Cumulative Impacts
- Compliance with the CWA Section 404(b)(1) Guidelines (based on narrow scope of Purpose and Need)

Although EPA inexplicably omitted the above comments in reference to the FEIS, we can assure you that these concerns are still very important to us and critical in our evaluation of the future of this project. (EPA’s DEIS comments are here:

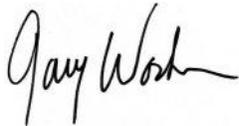
[http://yosemite.epa.gov/oeca/webeis.nsf/\(PDFView\)/20080333/\\$file/20080333.PDF?OpenElement](http://yosemite.epa.gov/oeca/webeis.nsf/(PDFView)/20080333/$file/20080333.PDF?OpenElement))

3. Even if the Corps fails to supplement the FEIS, we request that the Corps open up its review of the FEIS for WGFP to a new public comment period. EPA recommended that the Corps make all supplemental information available for public comment, and Save the Poudre

agrees with EPA. EPA Letter to Corps at 2. Because the FEIS contains significant new information, and because the WGFP is extremely controversial, we believe opening up a new public comment period would be in the public's interest and in accordance with the Clean Water Act. See 40 C.F.R. § 1500.1(b) ("Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."); 33 C.F.R. § 325.2(d) (Corps may extend public comment period for Section 404 permits).

Thank you for considering our concerns.

Respectfully,

A handwritten signature in black ink that reads "Gary Wockner". The signature is written in a cursive, flowing style.

Gary Wockner, PhD, Director
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