

December 15, 2012

To: Matt Montgomery
US Army Corps of Engineers
Denver Regulatory Office
9307 South Wadsworth Blvd
Littleton, CO 80128-6901

From: Save The Poudre: Poudre Waterkeeper

RE: The USFWS Biological Opinion for the Preble's Meadow Jumping Mouse for the City of Greeley's Bellvue Pipeline Northern Segment (Application No. 200380399)

Hello Mr. Montgomery,

On Dec. 5, 2012, you sent Save the Poudre: Poudre Waterkeeper the "Biological Opinion" (dated Mar 5, 2012) from the U.S. Fish and Wildlife Service about the Preble's Meadow Jumping Mouse with regards to the City of Greeley's Bellvue Pipeline Northern Segment (<http://savethepoudre.org/documents/Bellvue-BO-Mar2012.pdf>). After reviewing that opinion, we question its conclusion and we strongly encourage you to require that the USFWS do further analysis for this Opinion based on the information below.

The Opinion states that the pipeline is "likely to adversely affect the Preble's" (page 1) based on impacts to Preble's habitat and reduced flow levels in adjoining sections of the Cache la Poudre River. In addition, the Opinion states:

"Impacts from possible future upstream development, water diversion, or augmentation within or outside of Preble's habitat could affect Preble's on the project site by altering flow regimes in the Cache la Poudre River. Some future projects that adversely affect Preble's and its habitat will have a Federal nexus, including those that require a section 10 permit under the ESA, and a section 7 regulations would apply. At this time, the Service has not identified any specific project that meets the "cumulative effects" criteria as described above." (underline added, Pages 16-17)

Further, 50 C.F.R. 402.02 of the Endangered Species Act (ESA) states: "Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation."

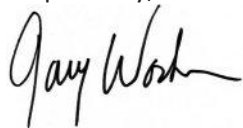
Therefore the USFWS Opinion argues that there are no cumulative effects that should be considered in evaluating the impact of the Northern Segment of the Pipeline on the PMJM ESA listing. We question that conclusion and request further analysis based on:

1. Over the past few decades, the amount of water released from the C-BT project's Hansen Canal into the Cache la Poudre River has decreased at a rate of about 657 acre-feet per year, and the decrease is expected to continue into the future as cities buy C-BT water and transfer it out of the Poudre River. This future decrease in Poudre River flow would impact the section of the river in question. Additionally, this action is non-federal and is reasonably certain to occur. This action and decrease in flow in the Poudre River is discussed here: <http://savethepoudre.org/stp-correspondence/2011-11-30-stp-letter-corps-re-cbt-trend.pdf>
2. The City of Fort Collins is currently pursuing a "change case" in water court, attempting to move a point of diversion for their water rights upstream from its current diversion point, likely diminishing flows in the Poudre River by at least 2,600 acre feet. This case may impact the section of the river in question, is non-federal, and is reasonably certain to occur. This case is discussed further here: http://savethepoudre.org/documents/STP_letter-to-Corps-Cumulative-Impacts-Fort-Collins-2-13-2012.pdf
3. As you know from the Bellvue Pipeline permitting process, the Corps has not currently allowed the City of Greeley itself to place additional water in the pipeline beyond what Greeley's current smaller pipelines carry. However, if the Corps eventually allows Greeley to place more water into the pipeline, that diversion would also diminish flows in the Poudre River in the section of the river in question.
4. We routinely hear about Front Range cities' interests in buying or changing water rights in ditches along the Poudre River. Recently, we've heard that United Water And Sanitation District, Castle Rock, South Metro Water Supply Authority, East Cherry Creek Water District, Greeley, Fort Collins Loveland Water District, and Thornton, have bought or changed, or may be interested in or intending to buy or change, water rights in Poudre River ditches, which may cause a change in diversion point or diversion amount, which may impact the section of the river in question. We strongly encourage you and USFWS to investigate these potential flow decreases further.

Again, we strongly encourage you to require that the USFWS do further analysis for this Opinion based on the information above. We look forward to a response to our request.

Please acknowledge receipt of this letter and request.

Respectfully,



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Gary Wockner, PhD, Director
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