



November 7, 2014

To: Lois Peterson, Will Tully, Lucy Maldonado, Kara Lamb (delivered to all via email)

**U.S. Bureau of Reclamation
11056 West County Rd. 18E
Loveland, CO 80537-9711**

Cc: U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Colorado Department of Natural Resources, U.S. Senators Michael Bennet and Mark Udall, U.S. Representative Jared Polis

From: Gary Wockner, Executive Director, Save The Colorado

Save The Colorado is pleased to offer the following comments on the U.S. Bureau of Reclamation's proposed Senate Document 80 Determination and 2014 Carriage Contract for the extremely controversial Windy Gap Firing Project.

Reclamation's proposed Senate Document 80 Determination and 2014 Carriage Contract are both flawed and contrary to law. As a result, Save The Colorado urges Reclamation to withdraw its determination that the Windy Gap Firing Project complies with Senate Document 80. In addition, Reclamation should not enter into the 2014 Carriage Contract with the Northern Colorado Water Conservancy District (Northern Water) and its Municipal Subdistrict (collectively, "Northern Water"). Finally, Reclamation should not issue a Record of Decision (ROD) approving the Windy Gap Firing Project because the Final Environmental Impact Statement (FEIS) for the Project violates the National Environmental Policy Act (NEPA) and is fatally flawed.

Senate Document 80 Determination

Senate Document 80 authorized construction of the Colorado-Big Thompson (C-BT) Project and describes how the project is operated. Senate Document 80 has "the force of a statute," and it represents the "compromise between the respective water interests of Colorado's Eastern and Western Slopes" that led Congress to approve the C-BT Project in 1937. *Pub. Serv. Co. of Colo. v. FERC*, 754 F.2d 1555, 1560–61 (10th Cir. 1985).

Senate Document 80 lists five "primary purposes" for the C-BT project and states that the project "must be operated in such a manner as to most nearly effect [those] primary purposes."¹ One of those

¹ Senate Document 80 at page 3.

primary purposes is “[t]o preserve the fishing and recreational facilities and the scenic attractions of Grand Lake, the Colorado River, and the Rocky Mountain National Park.”²

The Windy Gap Firming Project directly interferes with this primary purpose of the C-BT project because it would take an additional 33,000 firm acre feet of water out of the Colorado River. The Upper Colorado River is already an over-depleted and stressed aquatic ecosystem, and diverting additional water from the river would further harm it. Scores of plants, fish, and other wildlife—in addition to a growing and diverse recreational economy—depend on a healthy Colorado River to survive and thrive. Save The Colorado is vitally concerned about the impacts of additional transbasin diversions of the remaining native flows of the headwaters of the Colorado River. A century of wanton depletion of this prized waterway has pushed it to the brink of irreversible loss, and purported mitigation and restoration efforts offered to offset the draining of the Colorado River headwaters have failed to protect critical resource values. The Windy Gap Firming Project continues this unfortunate history by failing to adequately consider and mitigate the impact of driving the river beyond a sustainable flow threshold. In short, the Windy Gap Firming Project would push the Upper Colorado River over the brink.

Accordingly, rather than “preserv[ing]” the “fishing and recreational facilities and the scenic attractions of Grand Lake, the Colorado River, and the Rocky Mountain National Park” as Senate Document 80 requires, the Windy Gap Firming Project would irreversibly harm these iconic waters and lands. As a result, Reclamation should withdraw its proposed determination that the 2014 Carriage Contract for Windy Gap Firming Project is consistent with Senate Document 80.

2014 Carriage Contract

The proposed 2014 Carriage Contract would allow Northern Water to use excess capacity in Reclamation’s C-BT facilities to store, convey, exchange, substitute, and deliver additional Windy Gap water from the Upper Colorado River to the Front Range.³

Directives and Standards Manual WTR 04-01 details Reclamation’s policy for executing and amending carriage contracts. Manual WTR 04-01 includes a subsection on “Environmental Compliance,” which states that “Reclamation will use the NEPA process to identify the environmental and socio-economic impacts, if any, which the proposed use of excess capacity would have, and to identify, as appropriate, reasonable alternatives to the requesting party’s proposed use of the excess capacity.”⁴ Manual WTR 04-01 also states that Reclamation may enter into carriage contracts “only after considering whether and how adverse effects could be avoided and whether such effects should be mitigated.”⁵

As summarized below, Reclamation’s FEIS for the Windy Gap Firming Project does not comply with NEPA for numerous reasons. Accordingly, Reclamation cannot rely on the inadequate FEIS to identify the environmental and socio-economic impacts of the Windy Gap Firming Project and the proposed 2014

² *Id.*

³ See Press Release, U.S. Bureau of Reclamation, *Reclamation, Northern Water Reach Tentative Agreement on Windy Gap Firming Project* (Oct. 9, 2014), available at <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=47994>.

⁴ Bureau of Reclamation, *Directives and Standards Manual WTR 04-01*, at 1 (2000), available at <http://www.usbr.gov/recman/DandS.html>.

⁵ *Id.* at 3.

Carriage Contract, as Manual WTR 04-01 requires. In addition, Reclamation cannot rely on the flawed FEIS to identify reasonable alternatives to the Windy Gap Firing Project, or to consider whether its adverse effects could be mitigated. Because the Windy Gap Firing Project FEIS is fatally flawed, Reclamation cannot enter into the 2014 Carriage Contract with Northern Water based on the FEIS.

Specifically, the 2014 Carriage Contract and the FEIS for the Windy Gap Firing Project are flawed for the following reasons:

1. The “Purpose and Need” described in the FEIS is flawed and too narrow to satisfy the statutory requirements of the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, and Council for Environmental Quality regulations.⁶
2. The 2014 Carriage Contract and FEIS fail to adequately analyze and address water conservation and efficiency alternatives.⁷
3. The 2014 Carriage Contract and FEIS fail to adequately analyze and address cumulative, direct, indirect, and connected impacts.⁸
4. The 2014 Carriage Contract and FEIS fail to adequately analyze and address construction costs.⁹
5. The 2014 Carriage Contract and FEIS fail to adequately analyze and address the impacts to hydrology, water quality, and stream morphology.¹⁰
6. The 2014 Carriage Contract and FEIS fail to adequately consider and analyze a full range of alternatives.¹¹
7. The 2014 Carriage Contract and FEIS fail to adequately analyze and address aquatic and environmental impacts.¹²

⁶ See “Letter #1138,” and “Letter #883”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1075”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_cooperating_agencies.pdf and “Letter 1062”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf and “Letter 1141”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf.

⁷ See “Letter #1138,” and “Letter #883”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1062”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf and “Letter 1141”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf.

⁸ “Letter #1138” and “Letter #1059 and “Letter #1060 and “Letter #883” and “Letter #1126”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1075”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_cooperating_agencies.pdf and “Letter 1141”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf.

⁹ See “Letter #1138”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf.

¹⁰ See “Letter #1138” and “Letter #1126”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and see “Letter 1075” http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_cooperating_agencies.pdf and “Letter 1141”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf.

¹¹ See “Letter #1138” and “Letter #1059”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1141”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf.

¹² See “Letter #1138” and “Letter #1060” and “Letter #883” and “Letter #1110”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1141”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf.

8. The 2014 Carriage Contract and FEIS fail to adequately analyze and address impacts to the recreational economy of Grand Lake, the Colorado River, and tributary streams of the Colorado River in Grand County.¹³
9. The 2014 Carriage Contract and FEIS fail to adequately analyze and address the likely environmental impact of the preferred alternative in light of the most recent period of record.¹⁴
10. The 2014 Carriage Contract and FEIS fail to adequately analyze and address the likely environmental impacts of the alternatives in light of the best-available science on climate change.¹⁵
11. The 2014 Carriage Contract and FEIS fail to adequately analyze and address the environmental impacts to Grand Lake.¹⁶
12. The 2014 Carriage Contract and FEIS fail to adequately analyze and address stream temperature impacts to the Colorado River and streams in Grand County that are tributaries to the Colorado River.¹⁷
13. The 2014 Carriage Contract and FEIS fail to adequately analyze and address impacts to federally listed Endangered Species under the Endangered Species Act.¹⁸
14. The 2014 Carriage Contract and FEIS fails to adequately analyze and address cumulative impacts with the proposed Northern Integrated Supply Project.^{19,20}
15. The “No Action Alternative” in the FEIS is misleading, speculative, and does not represent a true “no action” alternative.²¹

¹³ See “Letter #1052”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1075”: http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_cooperating_agencies.pdf and “Letter 1141”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf.

¹⁴ See “Letter #1059”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1062”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf and “Letter 1141”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf

¹⁵ See “Letter #1059” and “Letter #1126”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1141”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf

¹⁶ See “Letter #58” and “Letter #1103”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1141”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf

¹⁷ See “Letter #1126”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1141”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf

¹⁸ See “Letter 1126”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1141”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf

¹⁹ See “Letter 1126,” and “Letter #1117”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf

²⁰ See Save The Poudre letter, April 10, 2011:

http://poudreriver.home.comcast.net/~poudreriver/STP_letter_to_Corps_Bureau_EPA_NISP-Impacts-On-Colorado-River-4-10-2001.pdf

²¹ See “Letter 1126”:

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf and “Letter 1075”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_cooperating_agencies.pdf and “Letter 1141”:
http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf

16. The 2014 Carriage Contract and FEIS fail to analyze the capability of individual Windy Gap Firming Project (WGFP) participants, including but not limited to the Platte River Power Authority, to meet their water needs by other means.²²
17. The 2014 Carriage Contract and FEIS fail to address the impacts of climate change from providing water to the coal-fired power plant at the Platte River Power Authority.²³
18. The 2014 Carriage Contract and FEIS fail to analyze and address the water used for fracking in the Purpose and Need.²⁴
19. The 2014 Carriage Contract and FEIS fail to analyze and address the climate change impacts of using and/or leasing or selling WGFP water for fracking of oil and gas in Colorado by WGFP participants, including but not limited to the City of Greeley and the Platte River Power Authority.²⁵
20. The 2014 Carriage Contract and FEIS fail to adequately analyze and address the impact of climate change on water supplies proposed to be used by the WGFP.²⁶
21. The 2014 Carriage Contract and FEIS fail to address the impacts of climate change resulting from oil and gas development and consumption that is made possible or supported by WGFP water. It is known that the process of extraction and distribution of oil and gas includes significant methane leaks which significantly contribute to climate change.²⁷

Reclamation should not approve the 2014 Carriage Contract, but if it does we urge the agency to employ accurate, stringent, and reliable accounting measures to track Windy Gap water through the C-BT system, and to make this data publicly available. Such measures should ensure that the public and stakeholders can clearly distinguish between Windy Gap and C-BT water as it is diverted from the Upper Colorado River and then transferred and pre-positioned throughout the C-BT system.

Reclamation's Flawed FEIS and Its Upcoming ROD

Because the Windy Gap Firming Project FEIS is flawed for the reasons summarized above, Reclamation should not issue a Record of Decision (ROD) under NEPA approving the Windy Gap Firming Project.

Save The Colorado is a non-profit corporation in the state of Colorado. Save The Colorado's mission is to protect and restore the Colorado River and its tributaries from the source to the sea. One of the keystones of our advocacy is fighting damaging and irresponsible water projects like the Windy Gap Firming Project. We operate in Colorado and run programs throughout the Colorado River basin in the

²² See Save The Poudre letter, April 19, 2012: <http://poudreiver.home.comcast.net/~poudreiver/STP-letter-to-BOR-ACE-PRPA-WGFP-FEIS-4-19-2012.pdf> and "Letter 1141":

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf

²³ <http://www.nwf.org/pdf/Global-Warming/ghg%20co%20fact%20sheet.pdf>.

²⁴ See Save The Poudre letter, October 4, 2011: http://poudreiver.home.comcast.net/~poudreiver/STP_letter-to-BuRec-WGFP-Water-For-Fracking-10-4-2011.pdf.

²⁵ See Save The Poudre letter, April 19, 2012: <http://poudreiver.home.comcast.net/~poudreiver/STP-letter-to-BOR-ACE-PRPA-WGFP-FEIS-4-19-2012.pdf>.

²⁶ See Save The Poudre letter, March 13, 2012: <http://poudreiver.home.comcast.net/~poudreiver/STP-letter-to-ACE-WGFP-FEIS-3-13-2012.pdf> and "Letter 1141":

http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf.

²⁷ <http://www.pnas.org/content/111/17/6237.abstract> and see the studies linked to in this news report:

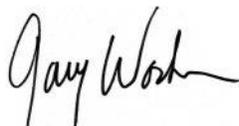
<http://www.climatecentral.org/news/huge-methane-leaks-add-doubt-on-natural-gas-as-a-bridge-fuel-17309>.

western U.S. We have thousands of supporters and followers in Colorado and the western U.S. and are very active and highly visible champions for the river. Save The Colorado has been active since 2010; as such, we were unable to submit earlier comments on Reclamation's August 2008 WGFP Draft EIS.

Save The Colorado thus wishes to officially comment on the Windy Gap Firing Project FEIS by incorporating the comments that have been raised by other commenters and that are summarized above in numbers 1-21. *See supra* at 3-5. Save The Colorado would also like to adopt the comments, letters, reports, and memos regarding the Windy Gap Firing Project FEIS in the footnotes for numbers 1-21 above. In addition, Save The Colorado requests that this comment letter on the FEIS's flaws be placed into the public record for the Windy Gap Firing Project FEIS.

Save The Colorado would like to thank Reclamation for considering these comments before it makes a final decision whether to approve the Windy Gap Firing Project. The FEIS for the nearby Moffat Collection System Project contains similar flaws, and the Army Corps of Engineers' Moffat Project manager stated the agency would "carefully consider all comments [it] receive[s] up to the point we make a decision," as "[a]ll federal agencies across the nation are required to consider all meaningful and substantive comments that come in on a public disclosure document such as an EIS."²⁸ We respectfully request that Reclamation similarly consider these comments on the Windy Gap Firing Project FEIS prior to issuing a ROD. Thank you for considering our comments on the proposed Senate Document 80 Determination and the 2014 Carriage Contract. In addition, thank you for inserting these comments into the legal, public record for the Environmental Impact Statement process for the Windy Gap Firing Project.

Respectfully,



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²⁸ Charlie Brennan, *Army Corps will take more comment on Gross Reservoir project*, Daily Camera, June 5, 2014, available at http://www.dailycamera.com/News/ci_25908721/Army-Corps-will-take-more-comment; see also *Wyo. Lodging & Rest. Ass'n v. U.S. Dep't of Interior*, 398 F. Supp. 2d 1197, 1208-11 (D. Wyo. 2005) (allowing parties to raise issues regarding a NEPA Environmental Assessment that were previously brought to the agency's attention by other commenters); *Portland Gen. Elec. Co. v. Bonneville Power Admin.*, 501 F.3d 1009, 1024 (9th Cir. 2007) (similar).