



May 31, 2015

TO: Colorado Department of Public Health and Environment  
Attn: John Hranac (WGFP)  
Water Quality Control Division  
4300 Cherry Creek Drive South  
Denver, CO 80246  
cdphe\_401comments\_WGFP@state.co.us

Re: Save the Colorado comments on the WGFP 401 draft certification

Thank you for the opportunity to provide comments on the Water Quality Control Division's 401 draft certification for the proposed Windy Gap Firming Project ("WGFP"). We appreciate that the Division faces a difficult task balancing the protection of the surface waters of this state with the demand for industrialization and diversions to feed "growth" as envisioned by some of the more powerful interests in Colorado. All Coloradans have a stake in the future of our rivers, streams, and lakes and we are hopeful that the Division will fulfill its duties to safeguard our important resources during this certification process.

### Save the Colorado

Save the Colorado is the leading advocacy organization focused on protecting and restoring the Colorado River and its tributaries from the source to the sea. Save the Colorado focuses on fighting irresponsible water projects, supporting alternatives to proposed dams and diversions, fighting and adapting to climate change, supporting river and fish species restoration, and removing deadbeat dams. Save the Colorado has thousands of supporters throughout Colorado and the southwest.

Save the Colorado has been engaged with the proposed WGFP during its federal permitting process and remains concerned that the proposal constitutes a significant threat to the headwaters of the Colorado River. The additional diversions needed to achieve the 30,000 AF of firm yield represent a substantial loss of the scant remaining flows sustaining a prized river that has been drained to the brink of extinction by a century of Front Range water grabs.

## The 401 Draft Certification Is Flawed Because It Heavily Relies On A Faulty Environmental Impact Statement

We are deeply troubled that the 401 draft certification does not represent a careful review of the water quality impacts of WGFP and does not consider the needs of all Coloradans. Instead, the 401 draft certification appears to be yet another step in a rubber-stamp approval process for this dangerous proposal that benefits a select few. As clearly acknowledged by the supporting technical report, the 401 draft certification is heavily dependent on the WGFP Final Environmental Impact Statement (“Final EIS”) and Record of Decision (“ROD”) for its analysis and conclusions. *See, e.g.*, 401 Water Quality Certification Technical Report (“Tech Report”) at 10 (“Although the analyses compiled here rely heavily on water quality work done for the WGFP Final Environmental Impact Statement[...]” and “The analysis performed for the 401 Certification relies on the affected environment as identified in the Final EIS[...]”); Tech Report at 13 (“Reclamation’s ROD confirms that the requirements of the NEPA process have been satisfied and that Alternative 2 [...] along with implementation of the mitigation measures identified in the Final EIS will provide valuable environmental and socioeconomic benefits”); Tech Report at 27 (“A separate alternatives analysis was not performed for the purpose of the 401 Certification, instead a summary of the alternatives selection and screening done for the FEIS is provided here”); Tech Report at 37 (“The analysis performed for the 401 Certification relies on the affected environment as identified in the Final EIS”); Tech Report at 155 (“The NEPA process has demonstrated that the Windy Gap Firming Project is an important economic or social development”).

Save the Colorado and others have previously presented extensive critiques of the Final EIS. We attach here (Attachment A, below) and include by reference multiple groups’ April 20, 2015 letter to the Army Corps of Engineers identifying the Final EIS as fatally flawed and violating the requirements of the National Environmental Policy Act. We also include by reference all attachments identified by the April 2015 letter. To the extent that the 401 draft certification relies on the flawed Final EIS, the certification is necessarily inadequate and fails to meet the requirements of the Clean Water Act.

In particular, we cite the 401 draft certification’s reliance on the Final EIS for support in the following analyses as critical failures in the 401 certification process:

- Alternatives selection and screening (Tech Report at 27-31)
- Grand Lake clarity (Tech Report at 120-121)
- Colorado River temperatures (Tech Report at 122-126)
- Nutrients (Tech Report at 130-133)
- Colorado River flows (Tech Report at 134-137)
- Necessity (Tech Report at 152-156)

We call upon the Division to either complete its mandated analyses independently or suspend the certification process until the numerous shortcomings in the Final EIS identified by Save the Colorado and others are addressed and that document can adequately serve as a basis for the certification. Continuation of the current process leaves the certification vulnerable to challenges against the Final EIS

and creates uncertainty regarding the future of the waters that would be impacted by the proposed WGFP.

### The Un-adopted Colorado Water Plan

The Tech Report cites the Colorado Water Plan in support of the necessity of the proposed WGFP. Tech Report at 154 (“[...]as identified in the Draft Colorado Water Plan (Chapter 6), The Metro, South Platte and Republican Basins face a municipal gap that could begin as early as 2020 in the Lower South Platte”); Tech Report at 158 (“WGFP is one of the identified Projects and processes identified in the Colorado Water Plan to meet Colorado’s water gap”). We remind the Division that the state water plan has not yet been adopted and the outcome of the intensely controversial project remains much in doubt. See, e.g., “A draft of Colorado’s proposed water plan may not be trickling down to the people” (<http://www.coloradoindependent.com/153050/a-draft-of-colorados-proposed-water-plan-may-not-be-trickling-down-to-the-people>, viewed May 21, 2015) and see “James Eklund’s False Information About The Colorado Water Plan” (<http://www.savethecolorado.org/blog/james-eklunds-false-information-about-the-colorado-water-plan/>). It is inappropriate and unsupported for the Division to base its analyses and decision on draft policy documents that have no legal outcome attached to them; consequently, we ask the Division to strike these references and reconsider its work in this section.

### The Division Must Use Appropriate Measures to Protect Colorado’s Waters

The 401 draft certification relies on mitigation and enhancement measures identified in the Final EIS process and developed through voluntary discussions involving project proponents and other self-interested parties to offset the environmental impacts of the proposed WGFP. See, e.g., Tech Report at 13 (“It is concluded that the identified degradation associated with the WGFP under cumulative effects is largely offset by the identified measures to avoid, minimize, mitigate the project impacts along with measures to enhance the environment, resulting in significant net environmental benefits associated with the Project”).

As discussed above and in the attached December 2014 letter, the Final EIS is a fatally flawed document and utterly fails to adequately disclose the impacts associated the proposed WGFP or present adequate mitigation for those impacts. The Division, by its own account, has the authority however to impose requirements to address water quality impacts resulting from projects such as WGFP. Tech Report at 16. The Division is charged with protecting water quality and may include general and special conditions on a certification. Tech Report at 17.

We call upon the Division to take appropriate independent measures to protect the Colorado River and associated waters if the 401 certification is granted.

### Conclusion

The 401 draft certification is inadequate and violates the Clean Water Act because it relies on the flawed WGFP Final EIS and associated ROD, and the un-adopted Colorado Water Plan. The 401 draft certification is also inadequate because it fails to impose appropriate independent measures to protect

Colorado waters. We respectfully request that the Division revise the 401 certification and conduct an independent analysis that ensures the WGFP will not violate the applicable water quality standards. When conducting this independent analysis, we ask that the Division consider the needs of all Coloradans for clean water and not favor the few who may benefit from the proposed WGFP. Although we are somewhat skeptical of the objectivity of the analyses and decision embodied in the 401 draft certification (*see, e.g.*, Tech Report at 155, "In summary, the WGFP is an essential element of Colorado's plan to meet future water needs"), we are hopeful that the Division will do the right thing for our state and natural heritage.

Respectfully,

A handwritten signature in black ink, appearing to read "Gary Wockner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gary Wockner, PhD, Executive Director  
Save the Colorado  
PO Box 1066  
Fort Collins, CO 80522  
<http://savethecolorado.org>  
970-218-8310

ATTACHMENT A  
(also posted here:

<http://www.savethecolorado.org/blog/wp-content/uploads/2015/04/Green-groups-letter-to-ACE-WGFP-FEIS-4-20-2014.pdf>

SAVE THE COLORADO \* WATERKEEPER ALLIANCE  
WILDEARTH GUARDIANS \* LIVING RIVERS \* SAVE THE POUFRE

April 20, 2015

Mr. Kiel Downing  
U S Army Corps of Engineers  
Omaha District  
Denver Regulatory Office  
9307 S. Wadsworth Blvd.  
Littleton, Colorado 80128

*The Windy Gap Firing Project FEIS is fatally flawed and must be supplemented, and the Army Corps must provide an additional public comment period before issuing a 404 Permit.*

Dear Mr. Downing,

The Upper Colorado River is an over-depleted and stressed aquatic ecosystem. The proposed Windy Gap Firing Project (WGFP) would divert additional water from the river, resulting in further harm. 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. We are extremely concerned about the impacts of WGFP and additional transbasin diversions on the remaining native flows of the Colorado River's headwaters. 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 would not adequately protect critical resource values.

In addition, the entire Colorado River ecosystem—from Grand County, Colorado to San Luis Rio Colorado, Mexico—is severely depleted and further endangered. The extended drought in the Colorado River basin has lowered flows in the river and lowered the levels of reservoirs along its path. The Central Arizona Project is predicting a shortage of Colorado River water in 2017<sup>1</sup>, and Las Vegas is

---

<sup>1</sup> <http://www.cap-az.com/index.php/public/blog?start=4>

planning for continued falling levels of Lake Mead, including a potential “Dead Pool.”<sup>2</sup> Fish species listed by the Endangered Species Act continue to struggle for survival and have remained on the endangered and threatened lists for decades.<sup>3</sup> The Grand Canyon continues to degrade due to low water levels, water temperatures, and a lack of sediment, all caused by the construction of dams and the diversion of water upstream.<sup>4</sup> And finally, farther downstream the Colorado River continues to be 100% drained dry and does not reach the Sea of Cortez. Remarkably, all ~5 trillion gallons/year of the Colorado River’s waters are diverted for human use and consumption.<sup>5</sup>

The proposed WGFP would drain an additional tens-of-thousands of acre feet of water out of the very top of the Colorado River system in Grand County, Colorado. In wet years, well over 30,000 acre feet would be diverted. This proposal would continue the environmentally devastating history of further draining and destroying the Colorado River and its tributaries, and would likely worsen all of the downstream environmental impacts noted above. If built, the WGFP would push the Upper Colorado River over the brink.

#### The Army Corps Cannot Rely on the FEIS’s Flawed Analysis To Issue a Section 404 Permit

The U.S. Army Corps of Engineers must issue a Clean Water Act section 404 permit before the Windy Gap Firing Project can be constructed. The Corps cannot issue a 404 permit for a project “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.” 40 C.F.R. § 230.10(a). When the Corps analyzes the WGFP 404 permit application, it intends to rely on the U.S. Bureau of Reclamation’s Final Environmental Impact Statement (FEIS) for the project. However, as summarized below, the FEIS for WGFP is fatally flawed and does not comply with the National Environmental Policy Act (NEPA) or the Clean Water Act for numerous reasons. Accordingly, neither Reclamation nor the Army Corps can rely on the inadequate FEIS to identify the environmental and socio-economic impacts of the WGFP, as required by NEPA. In addition, when deciding whether to issue a Clean Water Act section 404 permit for the project, the Army Corps cannot rely on the flawed FEIS to identify reasonable alternatives to the WGFP or to consider whether its adverse effects could be

---

<sup>2</sup> <http://www.reviewjournal.com/news/water-environment/panel-recommends-650-million-lake-mead-project-rate-hike>

<sup>3</sup> <http://cpluhna.nau.edu/Biota/fishes.htm>

<sup>4</sup> [http://www.glencanyon.org/glen\\_canyon/grand-canyon](http://www.glencanyon.org/glen_canyon/grand-canyon)

<sup>5</sup> <http://www.smithsonianmag.com/science-nature/the-colorado-river-runs-dry-61427169/?no-ist>

mitigated. Because the Windy Gap Firing Project FEIS is fatally flawed, the Army Corps must conduct additional analysis before issuing a 404 permit for the project.

Specifically, the FEIS for the Windy Gap Firing Project is fatally flawed for the following reasons:<sup>6</sup>

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.<sup>7</sup>
2. The FEIS fails to adequately analyze and address water conservation and efficiency alternatives.<sup>8</sup>
3. The FEIS fails to adequately analyze and address cumulative, direct, indirect, and connected impacts.<sup>9</sup>
4. The FEIS fails to adequately analyze and address construction costs.<sup>10</sup>
5. The FEIS fails to adequately analyze and address the impacts to hydrology, water quality, and stream morphology.<sup>11</sup>

---

<sup>6</sup> Save The Colorado incorporates the comments that have been raised by other commenters and that are summarized below in numbers 1-22. 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 1-22 below. See *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).

<sup>7</sup> See “Letter #1138,” and “Letter #883”:  
[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](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](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf).

<sup>8</sup> See “Letter #1138,” and “Letter #883”:  
[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf).

<sup>9</sup> “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](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](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf).

<sup>10</sup> See “Letter #1138”:  
[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf).

<sup>11</sup> See “Letter #1138” and “Letter #1126”:  
[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf).

6. The FEIS fails to adequately consider and analyze a full range of alternatives.<sup>12</sup>
7. The FEIS fails to adequately analyze and address aquatic and environmental impacts.<sup>13</sup>
8. The FEIS fails 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.<sup>14</sup>
9. The FEIS fails to adequately analyze and address the likely environmental impact of the preferred alternative in light of the most recent period of record.<sup>15</sup>
10. The FEIS fails to adequately analyze and address the likely environmental impacts of the alternatives in light of the best-available science on climate change.<sup>16</sup>
11. The FEIS fails to adequately analyze and address the environmental impacts to Grand Lake.<sup>17</sup>
12. The FEIS fails to adequately analyze and address stream temperature impacts to the Colorado River and streams in Grand County that are tributaries to the Colorado River.<sup>18</sup>
13. The FEIS fails to adequately analyze and address impacts to federally listed Endangered Species under the Endangered Species Act.<sup>19</sup>

---

<sup>12</sup> See “Letter #1138” and “Letter #1059”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf).

<sup>13</sup> 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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses) and “Letter 1141”:  
[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_government\\_agencies.pdf](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf).

<sup>14</sup> See “Letter #1052”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf).

<sup>15</sup> See “Letter #1059”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf)

<sup>16</sup> See “Letter #1059” and “Letter #1126”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf)

<sup>17</sup> See “Letter #58” and “Letter #1103”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf)

<sup>18</sup> See “Letter #1126”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf)

<sup>19</sup> See “Letter 1126”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf)

14. The FEIS fails to adequately analyze and address cumulative impacts with the proposed Northern Integrated Supply Project.<sup>20,21</sup>
15. The “No Action Alternative” in the FEIS is misleading, speculative, and does not represent a true “no action” alternative.<sup>22</sup>
16. The FEIS fails to analyze the capability of individual WGFP participants, including but not limited to the Platte River Power Authority, to meet their water needs by other means.<sup>23</sup>
17. The FEIS fails to address the impacts of climate change from providing water to the coal-fired power plant at the Platte River Power Authority.<sup>24</sup>
18. The FEIS fails to analyze and address the water used for fracking in the Purpose and Need.<sup>25</sup>
19. The FEIS fails 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.<sup>26</sup>
20. The FEIS fails to adequately analyze and address the impact of climate change on water supplies proposed to be used by the WGFP.<sup>27</sup>
21. The FEIS fails 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

---

<sup>20</sup> See “Letter 1126,” and “Letter #1117”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_organizations_groups_businesses.pdf)

<sup>21</sup> See Save The Poudre letter, April 10, 2011:

[http://poudriver.home.comcast.net/~poudriver/STP\\_letter\\_to\\_Corps\\_Bureau\\_EPA\\_NISP-Impacts-On-Colorado-River-4-10-2001.pdf](http://poudriver.home.comcast.net/~poudriver/STP_letter_to_Corps_Bureau_EPA_NISP-Impacts-On-Colorado-River-4-10-2001.pdf)

<sup>22</sup> See “Letter 1126”:

[http://www.usbr.gov/gp/eca/wgfp\\_feis/feis\\_appendix\\_f\\_organizations\\_groups\\_businesses.pdf](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](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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf)

<sup>23</sup> See Save The Poudre letter, April 19, 2012: <http://poudriver.home.comcast.net/~poudriver/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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf)

<sup>24</sup> <http://www.nwf.org/pdf/Global-Warming/ghg%20co%20fact%20sheet.pdf>.

<sup>25</sup> See Save The Poudre letter, October 4, 2011: [http://poudriver.home.comcast.net/~poudriver/STP\\_letter-to-BuRec-WGFP-Water-For-Fracking-10-4-2011.pdf](http://poudriver.home.comcast.net/~poudriver/STP_letter-to-BuRec-WGFP-Water-For-Fracking-10-4-2011.pdf).

<sup>26</sup> See Save The Poudre letter, April 19, 2012: <http://poudriver.home.comcast.net/~poudriver/STP-letter-to-BOR-ACE-PRPA-WGFP-FEIS-4-19-2012.pdf>.

<sup>27</sup> See Save The Poudre letter, March 13, 2012: <http://poudriver.home.comcast.net/~poudriver/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](http://www.usbr.gov/gp/eca/wgfp_feis/feis_appendix_f_government_agencies.pdf).

process of extraction and distribution of oil and gas includes significant methane leaks which significantly contribute to climate change.<sup>28</sup>

22. The FEIS fails to address the impact on salinity as required by the Clean Water Act. The first reference of the detriment of trans-basin diversions was mentioned by John Wesley Powell. He noted the pristine quality of the headwater streams, and how that quality was lost once the river received the sediment and salt loads of the Colorado Plateau Province. For example, saline water enters the Colorado River in large quantities near Glenwood Springs, CO on the Roaring Fork River, and the Dolores River near Bedrock, CO. Taking more water out of the headwaters will increase the salt loading of the Colorado River for downstream users in the lower basin and Mexico. This cumulative impact must be analyzed in the EIS. The cost of mitigating Colorado's contribution to salt loading in the Colorado River must also be assessed. As the upper basin states prepare for more trans-basin diversions, eventually a negative water quality threshold will be surpassed and the consequence will be a federal lawsuit against the upper basin states.
23. In addition, as enumerated in the its comments<sup>29</sup>, the U.S. Environmental Protection Agency has stated that the FEIS:
  - a. has "issues with data, methodologies, and conclusions"
  - b. does not account for important new information from the Colorado Division of Wildlife
  - c. needs to be "supplemented" (i.e., a Supplemental Environmental Impact Statement needs to be created).

#### The Army Corps Must Supplement the WGFP FEIS

As noted above, EPA commented that the FEIS needs to be supplemented due to its numerous flaws. We agree with the EPA and we ask that the Army Corps, at a minimum, supplement the FEIS and conduct additional data collection and analysis, as requested by EPA. The NEPA regulations state it is "essential" that an FEIS contains "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 agency must supplement an FEIS if there are "significant new circumstances or information" relevant to a project. *Id.* § 1502.9(c)(1)(ii). Moreover, the Clean

---

<sup>28</sup> <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>.

<sup>29</sup> <http://www.savethecolorado.org/blog/wp-content/uploads/2014/11/EPA-comments-WGFP-FEIS-2-6-2012.pdf>

Water Act Section 404(b)(1) Guidelines recognize that there may be cases when the Army Corps must supplement NEPA documents in order to meet the independent requirements of Clean Water Act 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 the Clean Water Act, the Army Corps must collect additional data and supplement the FEIS.

#### The Army Corps Should Provide an Additional Public Comment Period

Even if the Army Corps fails to supplement the FEIS, we request that the Corps open up its review of the WGFP FEIS to a new public comment period. EPA recommended that the Corps make all supplemental information available for public comment, and we agree with EPA. EPA Letter to Corps at 2. Because the FEIS contains significant new information, and because the WGFP is extremely controversial, 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).

We would like to thank the Army Corps for considering these comments before it makes a decision on whether to issue a Section 404 permit for the Windy Gap Firing Project. In addition, thank you for inserting these comments into the legal, public record for the Section 404 and Environmental Impact Statement processes for the Windy Gap Firing Project.

Respectfully,

Gary Wockner, PhD  
Save The Colorado  
PO Box 1066  
Fort Collins, CO 80522

Mark Easter  
Save The Poudre  
PO Box 20  
Fort Collins, CO 80522

Pete Nichols  
Waterkeeper Alliance  
17 Battery Place, Suite 1329  
New York, NY 10014

Jen Pelz  
WildEarth Guardians  
1536 Wynkoop St., Suite 310  
Denver, CO 80202

John Weisheit  
Living Rivers – Colorado Riverkeeper  
PO Box 466  
Moab, UT 84532