JARED POLIS
2ND DISTRICT, COLORADO

501 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0602
(202) 225-2161
(202) 226-7840 (FAX)

website and email:
http://polis.house.gov

# Congress of the United States
## House of Representatives

COMMITTEES:
COMMITTEE ON
EDUCATION AND LABOR
SUBCOMMITTEES:
EARLY CHILDHOOD, ELEMENTARY AND
SECONDARY EDUCATION

HIGHER EDUCATION, LIFELONG LEARNING
AND COMPETITIVENESS

HEALTHY FAMILIES AND COMMUNITIES

COMMITTEE ON RULES

COMMITTEE ON
SCIENCE AND TECHNOLOGY

STEERING AND POLICY

March 15, 2010

Mr. Scott Franklin
US Army Corps of Engineers - Denver Regulatory Office
9307 South Wadsworth Blvd.
Littleton, CO 80128-6901

Dear Mr. Franklin:

Thank you for the opportunity to comment on the Draft EIS for the Moffat Collection System Project (and related Gross Reservoir Expansion), designated as NOW–2002–80762-DEN. I appreciate in particular your flexibility in adding additional time for comments, as this project has been a source of great confusion and concern for my constituents on both sides of the Continental Divide.

At this point in the process, I cannot endorse the project as proposed, for a variety of reasons. My comments below will be in the form of a summary and amplification of some of what I've heard from constituents over the past year, and also include a few more personal comments from myself.

Concerns about Construction Impact

I will focus this section on concerns expressed by residents in the Coal Creek Canyon/Gross Reservoir area, as well as others from Gilpin and Boulder counties. As you know, and as noted in the DEIS (*DEIS 3-319*), the area around Gross Reservoir is home to a significant population of residents who depend on a two-lane highway for access, and who enjoy Gross Reservoir for their recreation and quality of life. **At this time, I am not satisfied that their interests have been properly addressed in the form of mitigation for possible future construction of a larger dam.**

As noted in the DEIS, construction of the dam expansion will involve anywhere from 44-74 trips per day by large trucks, as well as a much larger number of worker trips, for over four years *(DEIS 4-340 et seq)*. It is easy to forget if one lives in a larger community on the Front Range that residents of the Canyon must drive 20-30 minutes, under good traffic conditions, from Highway 93 to their homes, and every mile of that drive contains potential safety hazards, both

DISTRICT OFFICES

BOULDER OFFICE
4770 BASELINE ROAD, SUITE 220
BOULDER, CO 80303
303-484-9596
303-568-9007 (FAX)

MOUNTAIN OFFICE
101 WEST MAIN STREET, SUITE 1010
FRISCO, CO 80443
970-668-3240

THORNTON OFFICE
1200 EAST 78TH AVENUE, SUITE 105
THORNTON, CO 80229
303-287-4159

to motorists and the bicyclists and motorcyclists who frequent Highway 72. Adding large haul, heavily loaded trucks to the mix concerns residents (and me) greatly, and I believe Denver Water has an obligation to minimize that traffic *even if such mitigation adds to the cost of the project.* It has been suggested *(Comments of The Environmental Group, Coal Creek Canyon, hereafter referred to as "PEG Comments")* that the DEIS's assertion that producing sand-sized material for dam construction on-site (greater than the 60% share noted in the DEIS) would be prohibitively expensive is not accurate, or at least not supported by DEIS documentation. At the very least, the final EIS should document in detail how this conclusion was reached, and preferably should make cost concessions to drastically minimize heavy truck usage of Highway 72. If the latter is deemed not possible, extensive mitigation should occur, including returning the highway to pre-construction condition, scheduling periods of no-traffic during the work day, and investigating additional use of the nearby railroad.

The DEIS *(p. 4-401 et seq)* describes the excavation of a quarry on the eastern shore of the reservoir, totaling 30 acres which would not be reclaimed. Further, the proposed project envisions the destruction of tens of thousands of trees in the inundation area and elsewhere *(DEIS 4-230),* which will not be replanted until the expanded reservoir is filled. These and other concerns of residents (especially around noise and air quality, see PEG Comments) come under the general category of "quality of life," which is directly tied to home values. Residents believe (and I agree) that these concerns were given short shrift in the DEIS: While it is undeniably true, in the old saying, that you have to break some eggs to make an omelet, the sensitivity here is that the residents and recreational users of Coal Creek Canyon do not stand to benefit at all from the project, but stand to suffer many of the consequences. It is incumbent therefore upon Denver Water to mitigate these concerns to the greatest extent possible, even, again, if such mitigation increases the project cost.

The primary purpose of NEPA is to identify actions that have the least possible environmental impact, and Title I of said act requires federal agencies to use "all practicable means" to ensure humans and nature can co-exist in harmony, and also to "promote the widest range of beneficial uses of the environment without undesirable …consequences." While the term "practicable" has been interpreted somewhat inconsistently in the past, I believe the circumstances of this case – where a sizeable local community ("community" defined both in its human and ecological senses) bears the brunt of the "consequences" but enjoys none of the benefit – clearly point toward aggressive mitigation of environmental damage caused by the dam expansion. Reclamation plans, or lack thereof, for the gravel quarry should be reconsidered. The replanting schedule should be made more aggressive, and the inundation of rare plant communities should be looked at in far more detail than it is in the DEIS (where it is dismissed as a non-impediment to the preferred alternative), and avoided.

<u>Concerns about Project Need and Water Conservation</u>

As expressed by concerned residents (refer to *PEG Comments*, *Trout Unlimited Comments*, and numerous individual comments), this is both a substantive and a political shortfall of the DEIS.

Substantively, NEPA requires Impact Statements to set up and choose from among alternatives that cover the broad range of practicable alternatives to solve a particular problem. Unfortunately, it is not established by the DEIS that the problem to be addressed actually exists, or at least not in the form described, and therefore the alternatives chosen for evaluation in the DEIS are not an accurate description of the range of "solutions." The other main function of NEPA, which envisions clear communication to the public about the purpose of federal actions and the process undertaken to choose from among alternatives, has been greatly hampered in this case by questionable (or at least undocumented) assumptions and seemingly faulty logic. **Both of these shortfalls must be addressed, at the risk of losing a great deal of trust among Colorado residents, for this and future actions.**

Perhaps the single most often noted concern with the DEIS is the central assumption made about the shortfall in the Denver Water system, which is calculated at 18,000 AF by 2030 *(DEIS, 1-11-12)*. It is important to note that much of the negative reaction to the analysis on water shortfalls can more accurately be called confusion, which in itself is a major concern. It is hard to avoid the observation that the particular metrics and technique used to arrive at this number happen to be those that would be likely to produce a larger shortfall. For instance, the analysis uses the data years 1973-1999, but does not seem to fully integrate the years since, which have seen large decreases in water use (mostly as a result of the 2001-2 drought). As a result, the DEIS incorporates only 16,000 AF of conservation savings into the 2030 estimate, a number over a decade old *(DEIS p. 1-12)*, when Denver Water's own Strategic Rate Initiative (2010) envisions that same 16,000 AF **by 2016**, and 29,000 by 2045 (*PEG Comments*). Analysis relied upon by the DEIS reports a conservation savings by Denver Water's customers of 27,500 AF in the period from 1980 to 1997 (18 years), which included no significant droughts, but only 16,000 AF more in the period from 2010 to 2030 (20 years). There is no explanation given for this predicted 48% slowdown in conservation gains, other than speculation about "demand hardening," which is at best weakly supported. Indeed, the DEIS considers even 16,000 AF of savings shaky ("... no compelling analysis or basis to be confident of these savings," *DEIS 1-17*), which paints a remarkably bleak picture not shared by most observers of the past several years of *actual results*.

The residents of the Denver area have, rather, become vastly more responsible users of our water resources since 2002 (nearly 30% decline 2002-2008), and there is no evidence (or at least no evidence presented in the DEIS) that the marginal return of additional conservation, either voluntary or regulatory, is declining. Indeed, it is quite easy to envision, in the absence of the Moffat/Gross project, the 18,000 AF "shortfall" disappearing into the paper calculations from which it sprang. Such a result would be a win-win for nearly all parties, but there is no extensive analysis in the DEIS of any possible public reaction to a no-action choice other than the trends thought to exist in 2002 and 1997, based on the two decades before that. This, it seems to residents (and me) is a disservice both to Colorado, and to the NEPA process itself. It is true that

Denver Water does not fully control conservation practices at a regulatory level (the DEIS notes as much on p. 1-17, by remarking that short-term conservation strategies are "beyond the scope of the EIS"), but it should not stop the DEIS from fully and objectively analyzing a no-action (or different action) alternative in light of conservation developments in the past few years.

Additionally, the DEIS relies heavily on demand analyses done in 2002 *(DEIS 1-9, 1-12),* which (reasonably for then, not for now) assumed such demand-increasing trends as full employment in the Denver area, no recessions, increased federal and state spending, as well as increasing per capita consumption of water. Needless to say, the combination of the 2008-10 recession and the 2001-2 drought have changed those assumptions drastically.

The Final EIS, therefore, would benefit greatly from a more exhaustive and realistic estimation of projected conservation trends and available alternative sources of additional water, including the increased use of other reservoirs. That the four alternatives chosen for extensive analysis all included expansion of Gross Reservoir *(DEIS 1-4)* and none included even a realistic – to say nothing of cautiously optimistic – assessment of the additional potential of water conservation or coinciding utilization of existing infrastructure, is not lost on my constituents, and has been interpreted as "rigging the game," a potentially catastrophic result for future NEPA work in Colorado.

Finally, my constituents have noted a fundamental disconnect in some of the core reasoning in the DEIS supporting additional raw water diversion into Gross Reservoir. While the DEIS considers four different elements of the "need" for the project, they all seem to revolve around concerns over the impact of extreme drought and disaster on the Denver supply. But the 2001-2 drought, considered a 300 year event, never produced more than a Stage 2 emergency, suggesting an excess of caution on the part of water planners that must be weighed against the impact of the preferred alternative. Moreover, as noted in the DEIS *(1-14),* Denver's Strategic Reserve of 30,000 AF, *which is explicitly authorized to address these types of drought or disaster conditions,* is not considered as mitigative of the project need.

Again, I will return to the fundamental dynamic in this project (and to be fair, most trans-basin diversions), where all of the negative impact occurs where none of the benefit accrues. And in this case, the impacts are large, both to the residents and recreation users of the Gross area, and ecologically and economically to the residents of the source counties (see following section). It is unavoidable in these cases, and central to the requirements of NEPA, that it be exhaustively shown that a) A real problem exists to be solved, and b) There is no feasible alternative to the chosen one. The DEIS fails on both accounts.

Concerns about Source Rivers and Watersheds

In addition to Boulder and Gilpin counties, the Second Congressional District includes the counties of Grand and Summit, sources for the water diverted by the Moffat Tunnel and Windy Gap projects. My office has received numerous comments from residents of these two West

Slope counties questioning the DEIS analysis of environmental and recreational impacts to the Upper Colorado basin. The health of the Blue, Fraser, and Colorado rivers is crucial to the economy and quality of life of these counties.

First, the long term impacts and effects of eliminating the *high* flow periods of the Fraser River are not fully addressed in the Draft Environmental Impact Study. The diversion plan, roughly speaking, would take water from the Upper Colorado area in wet years (*DEIS 4-5*), but eliminating these high flow periods will result in further stream degradation, increased algae and weed growth and warmer water temperatures, particularly in the Fraser River. These certain results of the preferred alternative would severely impact the economic and ecological base of the two counties, affecting fish habitat, whitewater conditions, and the overall aesthetic experience. As one constituent notes in a letter:

> I raft the Grand County rivers when there is water in them, and noticed that the water clarity in the Colorado below Kremmling was greatly reduced this year (Summer, 2009). In 30 years, I have not seen such an alarming amount of algae in that stretch of the Colorado River. (*pers comm.*)

If the preferred alternative is implemented, diversion from historic flows of the Fraser will near 80%, greatly increasing the economic, ecological, and aesthetic loss to Grand County residents and recreationists. The DEIS does not take these concerns seriously enough, in the opinion of many of my constituents. In fact the document barely notes the potential negative impact of diversion during wet years, and the loss of "flushing" flows. Particularly striking is the DEIS' contention that the "Moffat Project alternatives would have none to negligible impacts to fish, benthic invertebrates, and their habitats for most stream segments *(DEIS 5-46),"* which may be true for some hypothetical stream at or near historic pristine conditions, but certainly not for streams near breaking points with 80% plus diversion. Such statements do not pass the "laugh test" with most of my West Slope constituents, and follow directly from the DEIS' decision to consider 2006 conditions, as opposed to historic conditions, as its baseline.

Also, the DEIS does not take into account the cumulative effect of both the Moffat Tunnel project and the Windy Gap Firming project in its section on "Cumulative Effects" (*Chapter 5*). Although the Windy Gap Firming Project is under the control of the Bureau of Reclamation and Northern Water District, both projects impact the Fraser River and the Colorado River. The Moffat Tunnel EIS process is not the first to do a poor job accounting for cumulative impact of concurrent or planned actions, and won't be the last, but given the precarious health of the Fraser (the 3rd most endangered river in the nation according to American Rivers) and Colorado (subject to an *additional* 9% flow decrease according to the DEIS (*5-30*)), there is no room left for choosing convenient "baseline" conditions that minimize perceived impacts. We are at a stage when only the most cautious approach to base-lining impacts in an EIS process is consistent with NEPA's charge to *"promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man" (NEPA Preamble).*

Summit County constituents share Grand County's concerns regarding the DEIS and its potential impacts in Summit County, especially on the Blue River. They feel the document has serious flaws and that reasonable alternatives were not provided. May through September is a critical recreation period on the Blue River and the DEIS does not address seasonal and daily impacts of the project, even though it does remark that recreational impacts on streams can be "major (*DEIS 5-49*)," without further comment. There are currently five commercial rafting companies that run operations on the Blue River during these months. Decreased flows on the Blue River would cause serious economic impacts to these companies and the people they employ. The DEIS also does not address concerns regarding decreased water levels in Dillon Reservoir, which may lead to increased costs for the Town of Dillon to operate their marina. Lower reservoir levels also increase the amount of dust in the environment, an impact not addressed at all in the DEIS. Finally, the DEIS fails to consider the ongoing issues and the cumulative impacts for the entire River Basin.

There are several ways in which the permit for the Moffat project, if issued, could successfully address these various issues. Most important are two concepts: First, a commitment to abide by Grand County's Stream Management Plan; and Second, a condition of permitting that would implement adaptive management for the diversion plan. Adaptive management is a concept whereby extensive monitoring is done under all conditions (wet and dry years) and triggers are set for certain indicators beyond which diversions would be cut off. Stream temperature, sufficient flushing flows, and other criteria can be set in consultation with agency and outside ecologists and biologists. I won't attempt to recommend the specifics of those kinds of arrangements here, but I will be keenly interested in whether they are in place before the end of the EIS process before I can support the project.

* * * * *

In conclusion, I would like to reiterate my appreciation for the extra time given for commenters to digest the analysis contained in the DEIS. But I would also like to reiterate my concern on several levels with the status of the project. First, the DEIS is confusing, and contains numerous instances of poor or unclear logic, or faulty (or at least undocumented) assumptions. This is troubling both on grounds of the immediate impending decision and for future NEPA actions. Second, the DEIS fails to account for existing conditions and dynamics on a range of topics: From the already severely depleted health of the Fraser, Colorado, and other rivers affected by the action alternatives, to the recent success and future potential of water conservation on the Front Range. In the end, I am worried that the Moffat Tunnel project, if permitted and constructed as currently constituted, would have the effect of placing another bunch of straws on the proverbial camel's back, and would do so under conditions of "need" that are less than persuasive. Under these conditions, an EIS process must be especially careful not to cherry pick baselines and assumptions that tend to minimize potential impacts.. And that is the essence of my concern.

Please feel free to contact me or my office with any response you might have.

Sincerely,

Jared Polis
Member of Congress (CO-2)