

DENVER WATER



April 11, 2011

Mr. Scott Franklin  
U. S. Army Corps of Engineers  
Denver Regulatory Office  
9307 South Wadsworth Blvd  
Littleton, CO 80128

***Subject: Proposed Mediation Agreement and the Moffat Project***

Dear Mr. Franklin:

We would like to inform you that Denver Water and eighteen entities on the West Slope of Colorado will release a proposed "Mediation Agreement" later this month that addresses numerous issues related to the operation of Denver Water's system and the development of its proposed Moffat Collection System Project (Moffat Project). This proposed Mediation Agreement will be subject to public review and the determination by each entity whether or not to execute the agreement. We will provide you a copy of the proposed Mediation Agreement as soon as it is released to the public.

We would like to clarify that the Improvements in the proposed Mediation Agreement are designed to improve the existing stream environment in the Fraser and Upper Colorado Rivers in Grand County. However, these "Improvements" are NOT intended to serve as mitigation for impacts of the proposed Moffat Project. Instead, we anticipate that as part of the U.S. Army Corps of Engineers (COE) permitting process for the project, the COE will approve a mitigation plan designed to avoid, minimize, or mitigate any new impacts to the stream environment that might be caused by the Moffat Project.

Article III E.1.a. of the proposed Mediation Agreement explains the relationship between the Improvements and mitigation:

- a. **Relationship to Moffat Project Permitting Process.** Denver Water has applied for a permit for the Moffat Project from the Corps of Engineers ("COE") under Section 404 of the Clean Water Act. The Moffat Project involves enlargement of Gross Reservoir located in Boulder County and the diversion of additional water from the Upper Colorado, Williams Fork and Fraser River watersheds in Grand County. Grand County is a consulting agency in that permitting process and has submitted comments to COE that are a part of the regulatory record. As part of the permitting process, the COE will approve a Mitigation Plan designed

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to avoid, minimize, or mitigate any new impacts to the stream environment that might be caused by the Moffat Project.

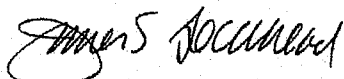
- i. **Mitigation.** The provisions of this Article III.E are not intended to define and do not substitute for the Mitigation Plan that will be required by COE. Denver Water will comply with the Mitigation Plan approved by COE in addition to fulfilling the commitments contained in this Article III.E. The funds committed by Denver Water in Articles III.E.2, E.3 and E.4 are subject to proportional reduction if the Mitigation Plan required in the permitting process mandates funds for the purposes described in those sections.
- ii. **Improvements.** Denver Water's commitments in sections E.5 through E.24 include several measures designed to improve current stream conditions ("Improvements") and do not represent mitigation for the Moffat Project. The Signatories agree that they shall not represent that the Improvements are designed or intended to avoid, minimize, or mitigate any impacts associated with the Moffat Project.

Further, the Mediation Agreement contains a proposed Intergovernmental Agreement for the Learning by Doing/Cooperative Effort. Paragraph C of that document provides:

The Cooperative Effort does not constitute mitigation for the Moffat Project. The Board [Denver Water] agrees to undertake all mitigation measures related to Grand County (Mitigation Measures) required in the permit for the Moffat Project to be issued by the Corps of Engineers (COE). The parties to the Cooperative Effort agree not to pursue a challenge to the Mitigation Measures described in the COE permit for the Moffat Project. All the parties to the Cooperative Effort will work in good faith to implement the Cooperative Effort in a way that complements the Mitigation Measures.

We hope that this letter makes clear the distinction between the proposed Mediation Agreement and mitigation to be included in the COE permit for Moffat Project. If you have questions or would like additional information, please contact us.

Respectfully,



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