

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-03258

SAVE THE COLORADO, a Colorado nonprofit corporation;
THE ENVIRONMENTAL Group, a Colorado nonprofit corporation;
WILDEARTH GUARDIANS, a nonprofit corporation;
LIVING RIVERS, a nonprofit corporation;
WATERKEEPER ALLIANCE, INC., a nonprofit corporation; and
SIERRA CLUB, a nonprofit corporation.

Petitioners,

v.

LIEUTENANT GENERAL TODD T. SEMONITE, in his official capacity as the Chief of the
U.S. Army Corps of Engineers;
RYAN ZINKE, in his official capacity as Secretary of the Interior; and
MARGARET EVERSON, in her official capacity as Acting Director of the U.S. Fish and
Wildlife Service.

Respondents,

CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF
WATER COMMISSIONERS.

Proposed Respondent-Intervenor.

DECLARATION OF JAMES LOCHHEAD

I, James Lochhead, declare as follows:

1. I am currently the Chief Executive Officer and Manager (“CEO/Manager”) of Denver Water. I have served in this position since 2010. As the CEO/Manager, I am the chief executive officer of Denver Water, secretary to the City and County of Denver Board of Water Commissioners (“Board”) and custodian of all records. I carry out all other duties and responsibilities as assigned by the Board as it fulfills its charter obligations. I execute the policies and decisions of the Board with respect to all matters appropriate for the Board’s action, give overall direction to employees and oversee the work necessary to provide an adequate supply of water to the residents of the City and County of Denver and entities with whom Denver Water has a water supply or service contract. In addition, I represent the Board in ongoing relationships with all levels of government, community organizations and the public served. I recommend to the Board a rate structure and other income producing procedures that will assure adequate revenues to meet operating and maintenance costs, finance of ongoing capital improvement programs, and the principal and interest payments on debts. Eight division directors, the general counsel, the internal auditor and the chief of staff report directly to me. I have first-hand experience with, and personal knowledge of the facts and matters discussed in this declaration, and, if called upon as a witness, I could and would competently testify thereto.
2. Denver Water is a municipal utility organized under Article X of the Charter of the City and County of Denver and governed by a Board of Water Commissioners. Attached as Exhibit A is a true and correct copy of Article X of the Charter of the City and County of Denver.
3. Denver Water supplies drinking water to more than 1.4 million people, including inhabitants outside of the City and County of Denver who are served pursuant to section 10.1.13

of the Charter. In addition to drinking water, Denver Water has also supplied non-potable recycled water since 2004. In fulfilling its essential role, Denver Water also strives to be an environmental steward, including serving as a leader in water conservation and reuse efforts, threatened and endangered species protection and recovery, restoration of water quality and aquatic ecosystems, as well as forest health and watershed protection.

4. Beginning in 1918, to serve the growing capital city of Colorado, Denver Water acquired the initial water supply system, and since then has developed a visionary, multi-basin system of reservoirs, tunnels, canals, treatment plants, and pipelines. A large component of this system operates from water naturally flowing by gravity from high in the mountains to the front range. The system was developed and is operated under a strategy of diverse supply sources operating in a coordinated manner to withstand drought and meet the demands of an ever-growing population. The overall system consists of two geographically distinct and separate water collection and treatment systems – a North System and a South System – which are operated in conjunction with each other.

5. In the 1940s, engineering designs for Gross Dam and Reservoir depicted the facility at its full size of 113,077 acre-feet. Attached as Exhibit B is a true and correct copy of the Map of Reservoir No. 22, dated February 19, 1946.

6. In 1955, Denver Water completed the first of a contemplated two-phased dam construction. The resulting 340-foot Gross Dam, 41,811 acre-foot Gross Reservoir and a 7,598kW hydroelectric facility have been operated and maintained by Denver Water pursuant to a Federal Power Act license issued by the Federal Energy Regulatory Commission (“FERC”).

7. Gross Reservoir stores water in Denver Water’s North System for delivery to the Moffat Treatment Plant. Untreated (“raw”) water stored in Gross Reservoir also supplies Denver Water’s contractual “raw water customers,” including the cities of Arvada and Westminster, and North Table Mountain Water and Sanitation District. Attached as Exhibit C is a true and correct excerpt of the Executive Summary of the Moffat Project Final Environmental Impact Statement, issued by the U.S. Army Corps of Engineers in April 2014 (“FEIS”), at pages ES-1 – ES-10. Attached as Exhibit D is a true and correct excerpt of Chapter 1, the Purpose and Need, of the FEIS, at pages 1-1 – 1-20 and 1-26 – 1-27. The entire FEIS is available at <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Colorado/EIS-Moffat/> (last visited Jan. 23, 2019).

8. In the early 1980s, Denver Water proposed providing additional storage in its collection system by building the Two Forks Dam at the confluence of the north and south forks of the South Platte River.

9. After a multi-year review process and substantial investment in the project by Denver Water, the U.S. Environmental Protection Agency vetoed the proposed Two Forks Dam in 1990.

10. During the permitting effort for the Two Forks Dam, environmental organizations, including, *inter alia*, the Sierra Club, the Audubon Society, Trout Unlimited, the Environmental Defense Fund, and the Wilderness Society, developed “*A Plan for Satisfying The Denver Metropolitan Area Water Needs Through the Year 2010*” (“Plan”). Attached as Exhibit E is a true and correct excerpt of the “*A Plan for Satisfying The Denver Metropolitan Area Water Needs Through the Year 2010*,” at pages i – I-11.

11. Following the Buffalo Creek (1996) and Hayman (2002) fires, which burned forests surrounding Denver Water's South Platte watershed, Denver Water needed to discontinue delivery of water to its southern treatment plants. This occurred because operations at the reservoirs on the southern end had to cease operations to avoid maintenance problems associated with the large amount of debris in the reservoirs and to avoid taste and odor problems that would still exist in the treated water. This required that Denver Water utilize the North System to meet the needs of a significant percentage of Denver Water's service area.

12. In addition to these operational difficulties, the Hayman Fire coincided with a severe drought in 2002 that jeopardized Denver Water's water supply. To avoid a shortfall, Denver Water implemented extreme measures, including: mandating consumption restrictions; applying surcharges for water use; reducing minimum bypass flows on western slope streams; shutting of the Moffat Treatment Plant during portions of the drought; and constructing a makeshift system to pump treated water from the South System through irrigation ditches to the North System where it had to be re-treated for distribution.

13. Beginning in 2003, Denver Water and Respondents undertook a vigorous and comprehensive public review process to develop the purpose and need for the Moffat Collection System Project ("Moffat Project" or "Project") and identify and assess viable alternatives. The analysis of alternatives undertaken pursuant to the National Environmental Policy Act ("NEPA") for the Moffat Project, combined with the Clean Water Act Section 404 "least environmentally damaging practicable alternative" (or "LEDPA") factors, guided Denver Water to its preferred alternative during the development of the draft environmental impact statement ("EIS"). *See*

attached Exhibit F, a true and correct excerpt of FEIS Chapter 2, Proposed Actions and Alternatives, at pages 2-1 – 2-7, 2-22 – 2-24, and 2-53 – 2-54.

14. Because Gross Dam and Gross Reservoir are jurisdictional hydropower facilities, changes to them require amendment of Denver Water’s current license issued by FERC under the Federal Power Act. The FERC license amendment is a prerequisite to moving forward with the Project. Denver Water applied to FERC for a license amendment in November 2016 to construct, operate and maintain the Project.

15. Denver Water has already expended approximately \$35 million for Moffat Project development costs, including environmental analysis, engineering, federal and state permitting, design, and planning, as well as tens of thousands of staff hours and substantial effort, towards permitting, design and mitigation to complete the Project.

16. Denver Water worked closely with stakeholders, seeking collaboration and solutions that would benefit not only Denver Water’s customers, but also communities and the environment impacted by Denver Water’s diversions. At least five years of negotiations among dozens of parties from across Colorado produced the Colorado River Cooperative Agreement (“CRCA”), creating a long-term partnership between Denver Water and more than forty (40) different entities in the Colorado River basin on Colorado’s West Slope, and major environmental organizations such as Trout Unlimited (who originally opposed the Two Forks project). Among other commitments, and in addition to required mitigation under its various permit approvals, Denver Water agreed to pursue additional water conservation and water reuse measures and pledged \$25 million dollars toward water quality and aquatic habitat enhancement projects in Western Colorado. Denver Water also agreed to utilize the increased capacity and flexibility

afforded by the Moffat Project to make water available to the West Slope for environmental and other purposes. Performance of some of Denver Water's obligations under the CRCA is contingent upon completion of the Moffat Project. Among their commitments, the West Slope parties agreed not to oppose the Moffat Project, paving the way for the Project to proceed.

17. To date, Denver Water has commenced voluntary efforts under its partnership with Grand County and other parties, referred to as the "Learning By Doing" program, pursuing the goal to "maintain, and, where reasonably possible, restore and enhance the conditions of the aquatic environment in Grand County." One project completed under this program has restored and improved aquatic habitat in a popular stretch for fishing on the Fraser River. Other commitments include restoration of approximately two miles of South Boulder Creek and two miles of the Upper Williams Fork River, donation of land to be included within the National Forest System and managed by the U.S. Forest Service, and the expenditure of millions of dollars towards projects to improve Colorado's environment.

18. In a similar cooperative spirit, Denver Water entered into an intergovernmental agreement with the cities of Boulder and Lafayette, to allow these cities to store up to 5,000 acre-feet of water (the "Environmental Pool") in the enlarged reservoir for municipal supply, the release of which will bolster low flows in South Boulder Creek. Operation of the Environmental Pool will reduce the extent and frequency of dry-up on South Boulder Creek, thereby improving the health of aquatic communities.

19. Resolving years of conflict, Denver Water entered into a settlement agreement with the U.S. Forest Service enumerating mitigation and enhancement measures for use of federal lands and setting forth the mandatory Federal Power Act Section 4(e) license conditions.

20. In total, Denver Water has committed to more than sixty (60) unique mitigation, enhancement and compliance measures spanning both the West and East Slopes at a total cost exceeding \$20 million.

21. Attached as Exhibit G is a true and correct excerpt of the Moffat Project Record of Decision, issued by the U.S. Army Corps of Engineers on July 6, 2017, at Section 1, pages 1 – 5.

22. Attached as Exhibit H is a true and correct excerpt of the CWA Section 404 Permit issued by the U.S. Army Corps of Engineers on September 8, 2017, at pages 1 – 6.

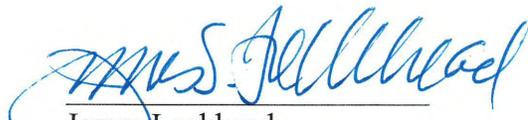
23. Attached as Exhibit I is a true and correct excerpt of the Moffat Project Biological Opinion issued by the U.S. Fish and Wildlife Service on June 17, 2016 (2016 BiOp), at pages 1 – 9.

24. Attached as Exhibit J is a true and correct copy of the Moffat Project Colorado Water Quality Control Division Clean Water Act Section 401 Certification issued by the Colorado Department of Health and Environment on June 23, 2016, and an excerpt of the attached “Rationale” at pages 1 – 4.

25. Attached as Exhibit K is a true and correct excerpt of the Fish and Wildlife Mitigation Plan developed by Denver Water in June 2011, approved by Colorado Parks and Wildlife as well as the Colorado Wildlife Commission, and affirmed by the Colorado Water Conservation Board as the official state position on the mitigation actions required of Denver Water for fish and wildlife resources.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed in Denver, Colorado on February 5, 2019.


James Lochhead