



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Dam Construction/Colorado River: Environmental Groups File Federal NEPA/Clean Water Act/ESA Judicial Challenge to Denver Water (Colorado) Project

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Waterkeeper Alliance, Inc. and several other environmental organizations (collectively “Waterkeeper”) filed a December 19th Petition for Review of Agency Action (“Petition”) in the United States District Court for the District of Colorado challenging the construction and operation of a project (Moffat Collection System Project [Moffat Project]).

The Moffat Project is described as a Denver water project which would:

... constitute the tallest dam in the history of Colorado, serve as the largest construction project ever in Boulder County, and cause extensive damage on both sides of the Continental Divide.

Waterkeeper states that the Moffat Project would divert water from the Colorado River on Colorado’s Western Slope and transport it underneath the Continental Divide to store it in an expanded Gross Reservoir on the state’s Eastern Slope to enhance the water supply for the city and county of Denver, Colorado. Concern is expressed in the Petition about the diversion’s effect on the Colorado River’s ability to continue to provide water to downstream users in western Colorado and adjacent states.

Waterkeeper argues that the United States Corps of Engineers’ (“Corps”) decision to authorize the Moffat Project violated three federal statutes which include:

- National Environmental Policy Act (“NEPA”)
- Endangered Species Act (“ESA”)
- Clean Water Act (“CWA”)

NEPA is alleged to have been violated by the Corps’:

- Failure to adopt the least environmentally damaging practicable alternative
- Adoption of a flawed Statement of Purpose and Need
- Failure to adequately consider a reasonable range of viable alternatives
- Failure to take a hard look at the best data and information available at the time of the Corps’ 2017 decision
- Failure to adequately consider the cumulative impacts of the project and other reasonable foreseeable actions that will impact the Colorado River

- Failure to prepare a Supplemental Environmental Impact Statement to analyze new information/significant changes in the project components

The ESA is stated to have been violated by the Corps and the United States Fish and Wildlife Service by reliance on a June 17, 2016, biological opinion concerning the green lineage cutthroat trout and an allegedly arbitrary and unlawful incidental take statement along with failure to reinstate consultation under Section 7(a)(2) of the statute.

The CWA is stated to have been violated by skewing the purpose and need for the project and artificially narrowing the range of practical alternatives through screening criteria and failure to select the least environmentally damaging practical alternative that could achieve the basic project purpose.

A copy of the Petition can be found [here](#).