

YAMPA-WHITE RIVER BASIN ROUNDTABLE

PO Box 774968
Steamboat Springs, CO 80477

April 18, 2009

VIA MAIL AND EMAIL mcrgeis@usace.army.mil

Ms. Rena Brand, Project Manager
U.S. Army Corps of Engineers
Denver Regulatory Office
9307 South Wadsworth Blvd.,
Littleton, CO 80128-6901

Re: Notice of Intent to Prepare an EIS for Proposed Regional Watershed Supply Project in Wyoming and Colorado; Applicant Million Conservation Resource Group; Notice in Federal Register, Vol 74, No. 53, Page 11920, March 20, 2009

Dear Ms. Brand:

The Yampa-White River Basin Roundtable (the "Roundtable") is an organization created by Colorado statute in HB05-1177, and consists of approximately 26 appointed representatives of water interests in the Yampa, White, and Green River basins in Colorado, together with additional non-voting members from industry and governmental agencies. I am the Chairman of such Roundtable.

Our Roundtable meets quarter-annually. Approximately a year ago, Aaron Million and his attorney and engineers made a presentation to our Roundtable regarding his proposed diversion and delivery project from Flaming Gorge Reservoir to the front range of Colorado via pipeline along the I-80 corridor, as noted in your Intent to Prepare EIS noted above (the "Million Project").

Based upon our understanding of the proposed project of the Million Conservation Resource Group, as noted in the Notice from your office appearing in the Federal Register as noted above, our Roundtable has the following concerns and suggestions regarding the scope of inquiry and investigation in the proposed EIS for the project:

1. The Roundtable is concerned that the priority date for the diversion from Flaming Gorge by the Million Project under an allotment contract from the Bureau of Reclamation, the owner of Flaming Gorge Reservoir, will be deemed to be the date of the water storage right for Flaming Gorge Reservoir under Utah law, which we understand to be in the 1950's. If such priority date is used, then if the Million Project reduces Colorado's share of unused Colorado River Water under the 1922 Colorado River Compact to near zero or below, such that in the future a lower basin call for water is delivered to the Upper Colorado River Commission, and enforced by curtailments under strict priority in Colorado, the effect would be that the new, previously unconceived Million Project

would cause the curtailment of most of the major non-agricultural storage rights and power plant rights within the Yampa River Basin, since such rights are virtually all later than the 1950's.

I note in passing that when the Roundtable members described this concern to Aaron Million during his presentation, he affirmed that he would seek to have a priority date for his Million Project as of a current year, not the 1950's. However, even if well intended, our Roundtable remains concerned that Mr. Million is unable to change the water right priority of a federal water right without an act of Congress, and that the 1950's priority will be enforced against the state of Colorado, and therefore against the post-1950's projects of the Yampa River Basin.

We request that your EIS examine the direct and indirect effects upon existing Colorado River water users in Colorado caused by the likely effects of a lower basin Colorado River call resulting from the considerable trans-basin depletion planned by the Million Project and the ability or inability of the Million Conservation Resource Group to utilize the senior water storage priority of Flaming Gorge Reservoir, rather than a current priority as of the date of any reservoir allotment contract.

2. We request an identification of the scope of the Million Project. This has not been done to date and is needed for an EIS. The EIS focus should look at all alternatives that get water to the Front Range. This means alternatives should include a diversion of surplus waters to the Front Range from the Missouri River system, a Blue Mesa Reservoir pump back project, a Yampa Maybell Pump back project, a Blue River pump back project, and whatever other practical solution that may have been proposed for delivering sizable quantity of water to the Front Range. The Million Project is one of several options. Merely using different diversion points from the Green as alternatives in an EIS is inadequate. Diversion point options are subcategories within an alternative of an EIS. "True alternatives" in an EIS look at all reasonable options to accomplish the same end task, i.e., delivering water to the Front Range. As currently depicted the only two alternatives in this EIS are the Million Project and a 'no effect' alternative, which is not practical because there will be an effect if the Million Project is not accomplished.
3. No end user is identified. Simply stating that the West End Reservoir, Cactus Hill Reservoir, Lake Hattie Reservoir, and T-Cross Reservoir are the end users is not adequate. Reservoirs are not end users. An EIS must also analyze the impacts to the environment and economy of communities that are impacted by the pipeline network and users who are benefitted. Without an end user, the Million Project is a speculative project that cannot meet the "Can and Will" test and "anti-Speculation" test of Colorado water law.
4. We request the EIS identify availability of undeveloped remaining Colorado River water under the compacts. The Colorado Water Conservation Board, by direction of the Colorado Legislature, has entered into a consulting contract to study whether and in what

amount Colorado has remaining undeveloped water from the Colorado River under the 1922 and 1945 compacts. Such study is not done and hence it is not known if there is Colorado River Water available.

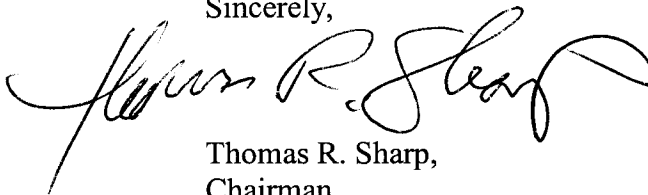
5. We request the availability of Wyoming water above Flaming Gorge Dam be analyzed. The Bureau of Reclamation may conclude that excess waters are not there at that location.
6. The Purpose and Need of the EIS is inadequate. We request a much more detailed description. The purpose reads: "As part of allocation to the States of Wyoming and Colorado under the Colorado River and Upper Colorado River Compacts, approximately 250,000 acre-feet per year of new annual firm yield would be withdrawn from Flaming Gorge Reservoir and the Green River and transported to help meet the projected water supply needs of southeastern Wyoming and the Front Range of Colorado."
7. We request a number listing the amount of Green River peak flows that would be used. The Park Service wants to keep the highest level of the peak flows for washing down sandbars in the Green and is requesting that the water just prior to peak flows be used for filling new projects such as the Million Project. We request the EIS address which part of the peak flow is available for projects and quantify it.
8. There are groups in Wyoming talking about taking hundreds of thousands of AF of water annually and dumping it into the river system after using Ion Exchange or other large scale purification techniques to clean the water from Coal Bed Methane gas well dewaterings. The EIS should determine the applicability of the CBM water to the Million Project or augmentation.
9. We request the EIS environmental and economic analysis extend downstream of the Flaming Gorge Dam. The environmental and economic analysis of the EIS currently ends at the Flaming Gorge Dam. It should go well beyond this to at least the confluence of the Yampa and Green if not the White River. Further, the Green River below Flaming Gorge and the Yampa River flows are required to maintain the habitat for the 4 endangered fish, and the EIS must assess whether the Million Project will cause the Yampa Plan and its Programmatic Biological Opinion to fail, thereby triggering re-consultation with all existing users within the Yampa River.
10. We request the EIS determine affects of the Million Project on Temperature, Flows, and Water Quality
11. At the presentation by Aaron Million to our Roundtable, Mr. Million represented that his Million Project would not upset or interfere with or adversely affect the approximate 54,000 AF of water in the Yampa River annually which was reserved under the Yampa Plan and Programmatic Biological Opinion for consumption within the Yampa River basin. Hence, we request on behalf of our roundtable that the EIS analysis include analyzing a subordination of the Million Project to the future 54,000 AF of annual

consumptive use water from the Yampa River System under the PBO. Further, we request that such subordination be included in any allotment contract with the Bureau of Reclamation for water from Flaming Gorge to the Million Project.

12. We request the EIS analyze the effect of the Million Project not receiving all the 160,000 AF the Bureau of Rec has stated it has available from Flaming Gorge when their CRSP water right is used to fulfill its primary purpose of meeting a lower basin call. When flows are low, analyze if that affects the firm yield of the Million Project.
13. We request that the EIS analyze the implications on the economy and environment of the Yampa, White, and Green River Basins if the Million Project takes the remaining unused Colorado river compact allocation and then energy or other industrial/municipal users have to buy and dry up agricultural water resources from the Yampa, White, and Green River Basins in order to continue or expand their respective operations. We further request that the EIS analyze what mitigation to the Yampa, White, and Green River Basins would be necessary to prevent the above.

Thank you for the opportunity to comment on the scoping of the Million Project EIS.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas R. Sharp". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas R. Sharp,
Chairman