



3/18/2010

Town Of Frederick
P.O. Box 435
Frederick, Co 80530-0435

Dear Mayor Doering, Mayor Pro Tem Wedel, and Frederick Trustees,

Thank you for your letter of December 15, 2009 in which you detailed reasons why you believe that the Save The Poudre Coalition has made inaccurate statements regarding the proposed NISP project. We appreciate the opportunity to respond. Following are the statements from your recent letter and our related responses.

- *You claim that EPA has stated that NISP would violate the Clean Water Act. This is not included in any statement provided by EPA.*

The EPA has expressed several concerns which, if not properly addressed by the applicant and the Corps of Engineers, would be cause for an EPA veto under the Clean Water Act (CWA). For example, in their October 16, 2008 letter¹ to the Corps sent as part of the required CWA consultation, the EPA said, and we quote:

"Based on the currently available information, EPA believes the proposed action fails to comply with the Clean Water Act Section 404(b)(1) Guidelines (Guidelines) due to:

- 1) availability of less environmentally damaging practicable alternatives (230.10(a)),
- 2) potential for violations of state water quality standards (230.10(b)),

¹ http://savethepoudre.org/docs/epa_nisp_letter_to_colonel_press.pdf

- 3) potential for the proposed action to cause or contribute to significant degradation to waters of the U.S. (230.10(c)), and
- 4) lack of a detailed mitigation plan (230.10(d))."

In our opinion, the phrase "fails to comply" means that in the absence of more or different information available to the EPA, the NISP proposal would indeed violate the Clean Water Act.

- *Your cost estimates for NISP include millions of dollars in costs for alleged upgrades to Fort Collins' water treatment and waste water treatment plants. This as you know has been completely discredited by the Black & Veatch analysis using information in reports prepared for the City of Fort Collins.*

We respectfully disagree that the Black and Veatch study "completely discredited" the analysis indicating that upgrades would be needed for the Fort Collins' water treatment and waste water treatment plants. Yes, it is true that we increased our cost estimates for the proposed NISP project when we read the City of Fort Collins' cost estimates for increased treatment, and because we knew that the Northern District had previously stated that they (you really) would fully pay for any problems created by NISP. We are also aware that the Black & Veatch reports that you paid for discounted the need for additional water and wastewater treatment. Unfortunately, the authors of the Black and Veatch report display a lack of understanding of Front Range river systems. There are many technical errors, errors of omission, and misplaced analyses in their report. We do not believe the results will stand up under scrutiny. Until we learn whether Fort Collins (or the Corps of Engineers for that matter) has updated their cost estimates, we cannot say that "completely discredited" is accurate and we believe that it remains prudent to continue to list additional treatment costs as realistic possibilities.

Germane to this issue, we also feel compelled to mention two closely related points for your consideration. First, water and wastewater treatment comprised only two of the several concerns expressed by the City of Fort Collins in their detailed comments on NISP. Their other principal concerns dealt with water quality in the Poudre River, threats to fish habitat, increased flooding risks from sedimentation, impacts to vegetation and wetlands along the river, impacts to fish and wildlife, air quality and climate, recreation and quality of life, and socioeconomic impacts to Fort Collins' residents. To the best of our knowledge, only one of these additional concerns has been addressed by Black & Veatch or any other consulting firm, namely potential TCE contamination of the river from the abandoned missile silo located under the proposed Glade Reservoir's forebay. Regarding B&V's work on this TCE issue, the City has stated, "... the Black and Veatch memo does not resolve the issues regarding TCE raised by the City of Fort Collins in its comments on the NISP DEIS. Analysis of the TCE issue presented in the NISP DEIS, supporting documents and now the Black and Veatch memo are severely hampered by a fundamental lack of data and analysis regarding the scope and extent of the TCE contamination in the groundwater at the site." Second, we are sure you have noticed that the time horizon and cost estimates for NISP continue to escalate. In 2004, the *NISP News* estimated that costs for "permitting, design and construction is \$370 million." This cost estimate doesn't even count annual O&M costs that, if they approximate C-BT costs of \$121/AF/year, will be about \$4.8

million per year, on average. Additionally, it doesn't even address financing costs, which are likely to be extremely high considering the financing plan for the project and the current risk-adverse climate for revenue bonds. For these and other reasons, Save The Poudre believes costs for NISP will be far higher than currently advertised.

- *You claim that NISP/Glade is already asking the State of Colorado to pay for 25% of the project, at least \$125 million. While there were discussions with the State in 2006 and 2007 about potential financing options, there has never been a request for a grant.*

Our statement on this topic is derived from the NISP Master financing plan, prepared by Red Oak Consulting for the Northern Colorado Water Conservancy District, dated November 2006. The document states that Colorado Water Conservation Board (CWCB) loans are a major funding strategy for the NISP participants and it lists loan amounts of approximately 25% of what were the projected project design and construction costs at the time. We have learned that both the CWCB and The Colorado State Legislature recently received communication from the NCWCD indicating a continued interest in CWCB loan guarantees for the project.

- *You claim that NISP participants have overstated population growth projections. Experts both inside and outside Colorado are projecting that we will see a substantial population increase. We respectfully believe that we have better feel for what will happen in Frederick's future than you do and it is our duty to responsibly plan for this growth.*

Our argument with the growth projections in the NISP DEIS is not that growth will occur – instead, we argue that the magnitude of the growth projections is grossly inaccurate. Our evidence-based analysis is based on regional, county, and local projections from the Colorado State Demography Office and the U.S. Census Bureau. Those projections clearly indicate population growth in the NISP subscriber region is likely to be far lower than projected in the DEIS. Here is an edited excerpt from our analysis supplied for the DEIS:

Population Projections are Overstated

CWCB should reevaluate the population projections used in the draft report for two reasons: 1) the current economic downturn in Colorado's economy will have a far-reaching impact on future economic and population growth; and 2) the population forecasts used by Harvey Economics to develop 2050 projections were in a draft document that has been superseded.

Population projections are *the* driver for increased future water demands, thus it is critical to have accurate and up-to-date projections for planning efforts. Population projections are heavily dependent on the initial rates of population growth, and errors in the first few years compound greatly over time.

An example illustrates this compounding effect. Let's assume community A has a population of 100,000 in the year 2000 and grows at 2% per year for 50 years. In 2050, community A has approximately 269,000 people (Table 1). If an equally sized community, B, only grows at 1% for the first 10 years, and then at 2% for the remaining 40 years, its population in 2050 would be approximately 244,000. In 2010 the population in community

A and B differ by only 11,000 people, but by 2050 with the same population growth over the final 40 years, the communities differ by more than 25,000 people. Thus, initial rates of population growth have a disproportionate impact on the total population at the end of any forecasting period.

Table 1. Community A and B Population Growth.

	A	B
2000	100,000	100,000
2010	122,000	110,000
2020	149,000	135,000
2030	181,000	164,000
2040	221,000	200,000
2050	269,000	244,000

Our current economic downturn will play a significant role in reducing estimated future water demands by decreasing population growth rates over the next few years. Future demands will not be as high as currently projected, even if growth continues at the expected rate five or ten years from now, because our growth is held up at this time. Harvey Economics attempts to argue that the current economic downturn is within the norm of Colorado’s historic, cyclical economic trends. Unfortunately, this is not the case; the data provided illuminate the fact that this recession is the worst Colorado has experienced in the past forty years, with rates of unemployment, foreclosures, and building permits considerably outside the norm. The fact that the economic downturn is nation-wide and world-wide will dramatically slow Colorado’s rate of recovery.

The 2009 unemployment rate, at 7.9%, is the highest unemployment rate Colorado has experienced since 1976.² The change in employment from 2008 to 2009, at -4.0%, is the largest drop Colorado has experienced by more than a factor of three; in fact, this rate has only ever been negative for 4 of the past 33 years! Building permits are at their lowest level since 1970, and the percent change in building permits from 2008 to 2009 is -61.4%, the worst drop yet. Data for State GDP and personal income is not available for 2008 or 2009, but one can assume that the trends highlighted above will be expressed in these numbers as well. These factors are the drivers for economic and population growth in the state and clearly, this is not “normal” when compared to other cyclical downturns in Colorado’s recent history.

Secondly, the population forecasts from 2005-2035 used by Harvey Economics were draft, i.e. un-official, and never available to the public.³ These draft forecasts were provided to Harvey Economics by the Colorado Department of Local Affairs (DOLA) in early 2008, but DOLA has since updated its projections to 2035, and published this data in November 2008. These more recent data should be used in the water demand projections and should also be used to reevaluate the models Harvey Economics used to project populations in 2050.

² As reported in Table 1 of Appendix B. Colorado Water Conservation Board. 2009. *State of Colorado 2050 Municipal and Industrial Water Use Projections*. June.

³ Personal communication with Department of Local Affairs staff member, September 2009.

- *You claim that the U.S. Army Corps of Engineers agreed with your concerns and made the decision to redo all of the work in the Draft Environmental Impact Statement. This is totally inaccurate. A supplemental EIS is being prepared to more fully investigate specific issues raised by a number of parties.*

To be frank, the Corps of Engineers rarely talks to us in spite of their Commander's pledge "to broaden and encourage public participation, which is an extremely important part of this process." Furthermore, we have no idea exactly what the Corps is or is not doing regarding what will be new or different in the Supplemental EIS other than what they publicly released in early 2009⁴:

"Due to the number and complexity of significant comments received during the comment period, the Corps has determined that additional analysis is required before a decision on whether to approve or deny the permit can be made.

We will revise key portions of the original draft and conduct additional study in categories such as hydrology modeling, water quality, vegetation and aquatic resources."

What we do know is that Save The Poudre and many other individuals, agencies, and groups submitted significant, detailed questions regarding "hydrology modeling, water quality, vegetation and aquatic resources," all of which were extensively, if inadequately, addressed in the first Draft EIS. Therefore, we believe it is fair to say that the Corps was persuaded to redo substantial parts of their first draft, and will likely add additional analyses not previously covered in response to our questions and those of others. Whether the Supplemental Draft EIS will satisfactorily answer our questions when released is, of course, unknown. In fact, you may be interested to know that several of the DEIS documents prepared by the Corps of Engineers since 2004 have dragged out to a fourth draft.⁵

- *[The letter we received had a portion of this next point missing here] ... the existing population during drought conditions. The Red Oak financial feasibility study completed in November, 2006 conservatively looked at two growth scenarios - 1/2 of the Harvey Economics growth projection (provided in the DEIS and reviewed by BBC, part of the 3rd party consultant team), and 1/4 the growth projection by Harvey Economics. In both cases, the funding of the entire project built at once was feasible.*

We have addressed the population growth scenarios previously in this letter. We thoroughly reviewed the Harvey Economics growth projections as well as the Red Oak Consulting report on NISP financing options. As stated previously, the growth projections are significantly higher than those described by the State Demography Office, which were recently revised significantly downward for the next two decades. We encourage you and all of the NISP participants to pursue due diligence on your own and make your own practical decisions as to whether the NISP project is affordable given these new growth

⁴ <http://www.fcgov.com/nispview/pdf/core-news.pdf>

⁵ See compilation maintained by the EPA at <http://tinyurl.com/yg4mq95>

projections. The Red Oak Consulting and Harvey Economics analyses were prepared for the NCWCD with Northern's interests in mind; do they actually reflect the best long-term interests of the Town of Frederick? In our opinion the answer is no.

- *You claim that the NISP participants do not practice or promote water conservation. The Town of Frederick has had an increasing block rate structure for many years. The Town has implemented mandatory and voluntary watering restrictions for many years and is planning to update its water conservation plan. As a group the NISP participants use much less water per capita than Fort Collins and most other municipalities in Colorado.*

With due respect, we have not made the blanket statement that NISP participants do not practice or promote water conservation. We respectfully ask you to review our water conservation analysis in our Healthy Rivers Alternative⁶ which describes our evidence-based analysis of the NISP subscriber water conservation practices and policies. Our comments on the NISP DEIS show that Frederick is not an official NISP project participant, but is a recipient of CWCWD water and is therefore subject to CWCB rules governing “Covered Entities.” However, Frederick itself does not yet provide enough water to be classified as a covered entity so your town is not required to submit a conservation plan to the state. If you are doing one anyway, kudos to you.

We believe it is fair to say that NISP participants could do much to improve their conservation programs. Contrary to the assertions in the DEIS, other published documents indicate that most participants have meager programs in place and those programs are not effectively reaching the target audience.⁷ While nearly all entities have adopted the 1992 National Energy Policy Guidelines (required) they have not gone beyond these basic national requirements to promote indoor efficiency, despite existing technologies—readily available in the marketplace—that save even more water.

Many of the participant utilities have implemented education and outreach measures that inform customers about the importance of water efficiency. However, many lack conservation measures that go beyond education. For example, rebates provide incentive for customers to use water more efficiently and regulations require wise water use. Conservation measures like these help to further increase efficiency, improve behavioral practices, and educate the public. The combination of multiple measures greatly improves the overall effectiveness of any water conservation program and conservation has been proven to be cost effective and a source of real water savings.⁸ Public perception of water conservation has also drastically changed in areas where education *and* other measures, such as incentives, regulation and conservation pricing, are present.

⁶ http://www.savethepoudre.org/docs/stp_healthy_rivers_alternative.pdf

⁷ Western Resource Advocates, *Front Range Water Meter*, Appendix A: Detailed Individual Utility Summaries, Fort Lupton 56, Fort Morgan 58, Evans 55, Erie, 53 (2007). <http://www.westernresourceadvocates.org/watermeter/index.php>

⁸ Western Resource Advocates, *Smart Savings: Water Conservation Measures that Make ¢ents*. 2008. <http://www.westernresourceadvocates.org/media/pdf/Smart%20Savings%20Water%20Conservation.pdf>

While a number of NISP participants do have outdoor water ordinances on file that are meant to reduce excessive use of water resources, few are actually enforced, resulting in an ineffective law. For example, in 2006, the City of Fort Lupton stated that it “currently has more CBT water than it needs and as a result has not implemented strict water conservation measures.”⁹ Consequently, existing ordinances pertaining to time of day watering restrictions and water waste are neither tracked nor enforced by the city. The City of Fort Morgan and the Town of Erie also have an ordinance prohibiting water waste, but again violations are neither tracked nor enforced.¹⁰

- *You claim that NISP will cause the dry up of 100,000 acres of ag land and result in an \$85 million impact to the agricultural economy. NISP will not cause the dry up of one acre. As the no-action alternative now shows, if NISP is not built, there will be 62,000 acres of dry up. As you should know based on recent history in the state, the fallacy that NISP will cause growth is just plain wrong. Also, the 48,000 acres of growth over ag land is far higher than what would actually be the case.*

We would be interested in seeing any evidence-based analysis you can provide that substantiates these claims. We stand by our analysis that shows that developing the NISP project would seriously harm the agricultural economy of the region, lead to long-term soil degradation, and dry-up of irrigated farmland. We would also be interested in knowing what specific measures the town of Frederick has taken or plans to take to protect irrigated farmland and irrigation water resources within and near its borders or within its proposed growth area.

Following is a summary of the impacts NISP would have on our region's agricultural economy:

- The NISP DEIS indicates the project plans to use 100,000 acre feet of agricultural water for the initial fill of Glade Reservoir. Please refer to sections 2.4.1 and 2.4.1.3 in the NISP DEIS for details. In the Cache la Poudre Basin irrigators apply on average 1.44 acre-feet of water per acre of irrigated farmland, meaning that ~70,000 acre feet of farmland would be dried up at least temporarily just to fill the reservoir.
- The NISP DEIS indicates the project will use agricultural water during dry years. Section 2.4.1.4 of the NISP DEIS indicates the project plans to use up to 24,500 acre-feet of agricultural water per year when the Grey Mountain right does not achieve project objectives under drought conditions. This would dry up to ~17,400 acres of irrigated land during those years.
- The Grey Mountain Right is already being used by downstream irrigators. The Grey Mountain Right averages approximately 20,000 acre-feet per year, and is

⁹ Clear Water Solutions, City of Ft. Lupton Water Conservation Plan, 2006, 14.

¹⁰ Western Resource Advocates, *Front Range Water Meter*, Appendix A: Detailed Individual Utility Summaries, Fort Morgan 58; Erie, 53. 2007.

being used by irrigators in the lower Cache la Poudre and South Platte basin downstream under 'free river' conditions. Permanently diverting that flow and storing it in Glade Reservoir would lead to the permanent dry up of 14,000 acres of irrigated farmland.

- Irrigated soils in the South Platte Basin will become too saline to farm. Replacing clean, gravity-fed irrigation water from the Poudre River with saline, pumped water from the South Platte via the South Platte Water Conservation Project will lead to the permanent loss of 5,000 acres of existing salt-affected soils in the South Platte Basin that are currently being irrigated.
- Yields from irrigated crops in the South Platte Basin will decline. Corn, onions, cole crops, and other crops are all considered salt sensitive. Replacing clean, gravity-fed irrigation water from the Poudre River with saline, pumped water from the SPWCP will lead to permanent yield reductions (up to 20% yield decline per year for salt-sensitive crops) unless water quantity is increased proportionally, which is not indicated for the project.
- Building Glade Reservoir would divert U.S. Highway 287 through the heart of some of the last viable ranchland and farmland in Larimer County: Irrigators in this region have stated they could not withstand population and development pressures if the highway were relocated, and thousands of rural residents in that region would be negatively impacted by the new presence of a major highway traveled by thousands of cars and tractor-trailer vehicles each day.

The NISP DEIS estimate that 62,000 acres will be dried up with Alternative 1 is based on a grossly inflated number that came from an estimate early in the NEPA process (actually the number was on the order of 69,000 acres). Later in the DEIS process this was revised downward to 33,637 acres after Northern and the Corps of Engineers requested a revised estimate. In our analysis we have revised this further downward to 23,059 acre-feet, placing Alternative 1 on par with the action alternatives as to acres dried up.

Whether or not NISP will *cause* growth is really a matter of semantics. It would certainly *facilitate* growth and the participants would clearly be under pressure to grow in order to service the enormous debt they will incur by participating.

That future growth of the NISP participants will take place over 48,000 acres of irrigated land is a very reasonable figure based upon readily available data pertaining to projected population growth of the participants by 2050. If land use policies remain relatively constant and population density remains at ~3.47 people/acre, growth would occupy a land base of 127,000 acres, 76,000 acres greater than at present. Since 63% of the land in the participants area is irrigated, multiplying this times 76,000 gives you 48,000 acres.

- *You claim that NISP will take water from the ag community. The overwhelming support from the ag community as evidenced by the Ag Rally and the list of ag organizations who have officially written letters of support for NISP demonstrate that this is just plain*

ridiculous. The junior appropriations right used by NISP ensures that water that would be used by NISP presently flows out of the state.

The “overwhelming support” from the agricultural community as evidenced by the Ag Rally last June proves little or nothing. One might even say that this support is naïve given the data showing that NISP will in no way benefit agriculture and in fact will prove harmful. This support is more likely based on the fact that the agricultural community has a perception of perpetual drought along the Front Range and traditionally been pro storage in that, historically, storage has generally been beneficial to agriculture. This is a mindset that is hard to change, but when it comes to NISP the situation is clearly different. The bottom line is that NISP is not another C-BT. No new water will come into the Poudre basin with NISP and in fact, as our analysis has clearly shown, the basin will lose water.

If the agricultural community did an honest appraisal of the data, the numbers supporting NISP would likely be far less than overwhelming. It is an inescapable fact that NISP will take water from agriculture. 43,000 AF of clean, gravity-fed water currently being used by irrigators will be taken out of the Poudre River and sent to participating municipalities. An average of 20,000 acres of this, the Grey Mountain water right, is being used by downstream irrigators every year under 'free river' conditions. The loss of that water will dry up or negatively affect approximately 14,000 acres. The other 23,000 AF will be replaced by more saline, pumped water from the SPWCP. Acreage irrigated with this saline water will have crop yields significantly reduced and at least 5,000 acres will go out of production in the near term because of soil salinity exacerbated by use of that water.

Regarding agricultural support, are you aware of the opposition to NISP expressed by the Irrigationists Association of District 1¹¹? Regarding the "junior appropriations," there are undoubtedly high water years in which unappropriated water will still flow to Nebraska for their farmers to use. In all but the lowest flow years, however, NISP would indeed capture water currently used by junior appropriators, or by anyone under so-called 'free river' conditions. We find it most peculiar that few recognize that these farmers will indeed be negatively affected if NISP were built. Indeed, we have interviewed farmers in the lower Poudre River watershed who utilize the Grey Mountain Right under free river conditions, and who oppose NISP since their agricultural operations would be harmed by the loss of that water. We also wonder if you are aware that NISP would cause accelerated salinization of portions of land currently irrigated by either the Larimer-Weld or the New Cache ditches. These irrigation companies are well aware of which parcels would be affected and have not yet, as far as we know, negotiated any financial arrangements with Northern for NISP to move forward. This seems to be yet another uncounted cost of the NISP proposal. Similarly, diverting the junior Grey Mountain Right and senior water rights to NISP/Glade would create much less flexible conditions in the Poudre River under which water trades could be executed by other senior water rights owners. Our own analysis indicates this will likely lead to conflicts and legal action between water users if NISP were to be built.

¹¹ Water Court Case Nos. 92CW130-140 and 97CW246

Thank you for taking the time to put your concerns in writing. It helps us better understand why individuals such as yourselves and communities such as Frederick may believe that the proposed NISP project is in their best interests. We hope that if you take the time to carefully digest our responses, you will see that some commonly held beliefs are not as simple as some may have encouraged you to believe. Should you ever decide that a presentation from us or meeting with us regarding NISP would be in Frederick's best interest, please feel free to contact us. We would be happy to share our perspective, and we encourage you to contact the U.S. Environmental Protection Agency directly for yet a different perspective.

In closing, we ask you to consider the following: **If an entity from a neighboring county came into your community expressing its intent to divert water from a river running through Frederick, with plans to relocate a major U.S. Highway through the heart of some of the last remaining productive farm and ranch land or other land of economic interest near Frederick, degrading a natural or economic resource Frederick had spent tens of millions of dollars to protect, threatening the economic lifeblood of dozens of Frederick businesses, forcing costly upgrades in city utilities, and leading to innumerable other negative impacts, wouldn't you object?**

We would like to invite you and any of the other NISP participants to Fort Collins where you can see the Cache la Poudre River, speak with irrigators and other water users, discuss the economic impacts with business leaders in our area, and see the likely impacts for yourselves. Please contact me at the phone number below and we would be happy to arrange such a meeting.

We wish your community all the best in the years ahead.

Sincerely,



Gary Wockner,
Executive Director



Mark Easter,
Chairman of the Board



John Bartholow,
Board Member



Greg Speer,
Board Member

Save The Poudre: Poudre Waterkeeper
970-988-9274

CC: Kathy Peterson, General Manager, Left Hand Water District
Mike DiTullio, District Manager, Fort-Collins-Loveland Water District

Wesley LaVanchy, Town Manager, Town of Firestone
John Zadel, General Manager, Central Weld County Water District
Mark Kokes, General Manager, Morgan County Quality Water District