



# THE NAVAJO NATION

JOE SHIRLEY, JR.  
PRESIDENT

BEN SHELLY  
VICE-PRESIDENT

September 3, 2009

David C. Press, Colonel  
Corps of Engineers, District Commander  
Department of the Army, Omaha District  
1616 Capitol Ave.  
Omaha, NE 68102-4901

Dear Colonel Press:

Our apology for an oversight and missing the deadline date of our response to your request, and that the Navajo Nation Historic Preservation Department – Traditional Culture Program (NNHPD-TCP) is in receipt of the proposed request for a permit authorization under Section 404 of the Clean water Act from Million Conservation Resource Group. The project will consist of constructing a water supply pipeline from Wyoming to southern Colorado to existing and proposed new reservoirs in southeastern Wyoming and the Front Range of Colorado.

After reviewing your consultation documents, HPD-TCP has concluded the proposed undertaking/project area will impact Navajo traditional cultural properties. The HPD-TCP, on behalf of the Navajo Nation has concerns at this time

The Green River of Wyoming, and Utah supply the sacred rivers of the Navajo Nation, such as the Colorado, Little Colorado, San Juan, Rio Grande, and Animas Rivers of the Four Corners region. Not only does the Green River supply the Navajo Nation, but tribes within the vicinity of the Green River/Colorado and proposed project. The Navajo Nation recommends consultation with surrounding tribes of the proposed project/area under Section 106 of the National Historic Preservation Act of 1969.

The Navajo Nation has interest and concerns with the proposed project. So, if the proposed project inadvertently discovers habitation sites, plant gathering areas, human remains and objects of cultural patrimony the HPD-TCP request that we be notified respectively in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA).

The HPD-TCP appreciates the Department of the Army's consultation efforts, pursuant to 36 CFR Pt. 800.1 (c)(2)(iii). Should you have any additional concerns and/or questions, do not hesitate to contact me electronically at [tonyjoe@navajo.org](mailto:tonyjoe@navajo.org) or telephone at 928-871-7750. Mr. Kelly Francis will be taking over all Section 106 Consultations soon within the near future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tony H. Joe, Jr.".

Tony H. Joe, Jr., Supervisory Anthropologist (*Section 106 Consultations*)  
Historic Preservation Department – Traditional Culture Program

TCP 2009-786  
CC Office File/Chrono

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September 28, 2009

SENT BY E-MAIL

Ms. Rena Brand, Regulatory Specialist  
U.S. Army Corps of Engineers, Omaha District  
Denver Regulatory Office  
9307 S. Wadsworth Blvd.  
Littleton, CO 80128-6901

Re: Scoping Comments – Environmental Impact Statement for the Regional Watershed  
Supply Project (RWSP) – Wyoming and Colorado

Dear Ms. Brand:

This letter provides the scoping comments of the Ute Indian Tribe (“Ute Tribe”) of the Uintah and Ouray Reservation on the Environmental Impact Statement being prepared by your agency for the RWSP. These comments are provided pursuant to the Public Notice issued August 11, 2009 extending the comment period until September 28, 2009.

The Uintah and Ouray Reservation is located in northeastern Utah. A portion of the Reservation’s eastern boundary is formed by the Green River and the Tribe holds vested *Winters* reserved water rights in the Green River as well as several tributaries including the White River and the Duchesne River. The Tribe is in the process of negotiating a quantification of its water rights and, a significant quantity of that water, in excess of 100,000 acre-feet is available directly from the Green River with an October 3, 1861 priority date. That date is, by far, the most senior priority date on the River.

Initially, the Tribe notes that the Purpose and Needs Statement as well as the range of reasonable alternatives are not well defined or explained. The Needs statement should provide a detailed explanation of the location of and demands for water being addressed by the proposed project. The range of reasonable alternatives should include other methods for meeting that demand including conservation efforts, in-basin water projects, groundwater availability, and other in-basin supplies of water.

The potential impact on the Tribe and its water rights in the Green River is not addressed in

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the scoping documents or the modeling. As stated above, the Tribe holds vested reserved water rights in the Green River that have been tentatively quantified in excess of 100,000 acre-feet. These are the senior right on the Green River and the United States, including the Bureau of Reclamation, the Army Corps of Engineers, and the Fish and Wildlife Service all have a trust duty to assure that the Tribe's right to water and the use of that water is fully protected. Additionally, the Department of the Interior has committed to provide the Tribe with space for the storage of the Tribe's Green River water in Flaming Gorge Reservoir. The Tribe's senior water rights, as well as the storage of that water in Flaming Gorge Reservoir must be included in the EIS baseline and in any future modeling to assure the protection of this most valuable trust asset.

Finally, the need to assure the full protection of the Tribe's water assets is exacerbated and further complicated by the flows in the Green River committed to fish recovery. Those committed flows run below Flaming Gorge Reservoir through the Uintah and Ouray Reservation. The Tribe does not believe that its reserved water rights in the Green River, which vested on October 3, 1861, are affected by or in any way subordinated to the flows committed to fish recovery. However, the loss of water in Flaming Gorge Reservoir as the result of the upstream withdraw by the RWSP of potentially 250,000 acre-feet of water may impact the Tribe's ability to exercise and use its water rights without reductions in the fish flows. These potential impacts must be fully analyzed in the EIS.

The Tribe wishes to remain on the Corps' mailing list to receive information on the RWSP EIS. Please send those materials via e-mail to the Tod Smith, the Tribe's Special Water Counsel at [tod@whiteingsmith.com](mailto:tod@whiteingsmith.com). You may also contact Mr. Smith at 303-499-5249.

Sincerely,

/s/ Tod J. Smith

Tod J. Smith  
Special Water Counsel – Ute Indian Tribe