

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

Civil Action No. 1:18-cv-03258-MSK

SAVE THE COLORADO, THE
ENVIRONMENTAL GROUP, WILDEARTH
GUARDIANS, LIVING RIVERS,
WATERKEEPER ALLIANCE, INC., SIERRA
CLUB,

Petitioners,

v.

LT. GEN. TODD T. SEMONITE, in his official
capacity as the Chief of the U.S. Army Corps of
Engineers; DAVID L. BERNHARDT, in his
official capacity as Secretary of the Interior; and
AURELIA SKIPWITH, in her official capacity
as Director of the U.S. Fish and Wildlife
Service,

Respondents,

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

Respondent-Intervenor.

**JOINT MOTION TO VACATE THE CURRENT CASE MANAGEMENT PLAN AND
BRIEFING SCHEDULE AND SET A DEADLINE FOR A SUPERSEDING CASE
MANAGEMENT PLAN**

On April 25, 2019, the Court signed the Joint Case Management Plan proposed by the parties. ECF 20, 21. The Joint Case Management Plan set forth the briefing schedule for this matter. Id. On September 13, 2019, Petitioners moved for a 120-day extension of the briefing schedule as set forth in the Joint Case Management Plan, ECF 27, which the Court granted the

same day. ECF 28. Consequently, the current briefing schedule is as follows: Petitioners' Opening Brief is due by March 11, 2020; Federal Respondents' Brief is due by April 20, 2020; Respondent-Intervenor and Petitioners' Reply Brief is due by June 11, 2020.

The parties now request that the Court vacate the current briefing schedule and set a deadline for the parties to submit a superseding joint case management plan. The following good cause exists for this motion.

1. In 2016, at the conclusion of the Endangered Species Act ("ESA") consultation for Denver Water's Moffat Collection System Project ("Project"), the U.S. Fish & Wildlife Service ("FWS") issued a no-jeopardy biological opinion ("2016 BiOp") and incidental take statement ("ITS") for green lineage cutthroat trout ("GLCT").

2. In 2018, Petitioners submitted a 60-day Notice of Intent ("NOI") to challenge the 2016 BiOp and ITS, and Denver Water asked that the U.S. Army Corps of Engineers ("Corps") request reinitiation of ESA consultation with FWS to address certain issues raised in the NOI.

3. Shortly thereafter, Petitioners filed this lawsuit challenging, among other things, the 2016 BiOp and ITS and the Corps' reliance on those documents.

4. The Corps' reinitiated consultation with FWS presently is underway and is anticipated to conclude with FWS's issuance of a new BiOp that will supersede the 2016 BiOp. FWS's issuance of a new BiOp will arguably render moot Petitioners' ESA claims in this case.

5. Upon issuance of the new BiOp, Federal Defendants will notify the Court and the parties. Petitioners will need to review the new BiOp and consider whether they wish to file any new claims concerning the new BiOp, but that will not be known before the parties begin briefing this matter under the current schedule.

6. Accordingly, the parties respectfully request the Court to vacate the current case management plan and briefing schedule and order that the parties submit a new case management plan and briefing schedule within sixty (60) days of FWS's issuance of a new BiOp.

DATED: February 5, 2020

Respectfully submitted,

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through its Board of Water Commissioners

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users of the CM/ECF system.

Dated: February 5, 2020

Respectfully submitted,

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