

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

Honorable Marcia S. Krieger

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

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

Petitioners,

v.

LIEUTENANT GENERAL 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 SKIPWORTH, in her official
capacity as Director of the U.S. Fish and Wildlife Service.

Federal Respondents,

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

Respondent-Intervenor.

**FEDERAL RESPONDENTS' MOTION TO DISMISS FOR LACK OF
JURISDICTION**

Comes now Federal Respondents Lieutenant General 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
Skipworth, in her official capacity as Director of the U.S. Fish and Wildlife Service,
who move to dismiss Petitioners Save the Colorado, the Environmental Group,

WildEarth Guardians, Living Rivers, Waterkeeper Alliance, Inc., and Sierra Club's Supplemental Petition for Review of Agency Action (ECF No. 45-1) for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), (c), (h)(3).

As set forth in the attached supporting memorandum, the Federal Power Act, 16 U.S.C. § 825***l***(b), confers "exclusive" jurisdiction on the courts of appeals to review all claims, like those in the Supplemental Petition, that raise issues inhering in a controversy over a Federal Energy Regulatory Commission licensing decision. Consequently, Federal Respondents' motion should be granted and Petitioners' Supplemental Petition for Review of Agency Action should be dismissed.

Respectfully submitted on this 17th day of August, 2020.

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/s Sara E. Costello
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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2020, a copy of the foregoing was filed through the Court's CM/ECF management system and electronically served on counsel of record.

/s Sara E. Costello
Sara E. Costello
Trial Attorney