

October 12, 2018

Mr. Dale Case  
Director of Land Use  
Boulder County Land Use Department  
2045 13th Street Boulder, CO 80302

**Re: Determination of Zoned Land Exemption to Boulder County's Land Use Code, Article 8 - Location and Extent, Areas and Activities of State Interest for Denver Water's Moffat Collection System Project**

Dear Mr. Case,

Pursuant to Section 8-406(A) of the Boulder County Land Use Code ("LUC"), Denver Water seeks your confirmation that the expansion of Gross Reservoir, also known as the Moffat Collection System Project ("Project"), is exempt from Article 8 of the LUC per the "zoned land exemption." Under Article 8, Boulder County regulates "Areas and Activities of State Interest" pursuant to C.R.S. 24-65.1-101, et seq. ("H.B. 1041" or "1041 permit").

Denver Water anticipates deadlines within a Federal Energy Regulatory Commission ("FERC") Order for various construction-related plans and activities requiring FERC approval prior to construction of the dam. Denver Water is beginning preliminary work in anticipation of strict construction timelines and deadlines. These plans sometimes require, and will greatly benefit from, Boulder County's engagement and input now and in the near term. For instance, Colorado Department of Transportation ("CDOT") is interested in having Denver Water improve the intersection of Boulder County's Gross Dam Road and State Highway 72. Also, in the near term, Denver Water will host workshops with consulting parties identified in FERC's Order (which will include Boulder County and the local community) to develop plans to minimize construction disturbance within Boulder County and to the local community. These plans will establish best and preferred methods for traffic management, road use and maintenance, hours of use, and quarry operation times, among other Project criteria. Clearly, these matters of local interest will be developed best with Boulder County's participation to inform and advise all participants of applicable Boulder County policies, standards, and criteria. However, Denver Water's ability to move forward with Boulder County on plans to improve traffic safety before construction begins has been halted because Boulder County has declined to engage without Denver Water's submission of a 1041 permit application. Based on our research, the Project falls within the zoned land exemption in H.B. 1041 for the reasons discussed herein.

In general, H.B. 1041 entitles local governments to designate areas and activities of state interest and regulate those areas through their respective zoning codes. Colo.

Rev. Stat. §24-65.1-101. At the same time, the law exempts from the 1041 process “any development or activity . . . on land which has been zoned by the appropriate local government for the use contemplated by such development or activity” as of May 17, 1974. C.R.S. §24-65.1-107(1)(c)(II). *See also Droste v. Board of County Commissioners of County of Pitkin*, 85 P.3d 585, 589 (Colo. App. 2003) (holding “the plain language of the zoned land exemption specifically provides that AASIA [(Areas and Activities of State Interest Act)] does not apply to ‘any development in an area of state interest’ that meets the statutory criteria for the exemption.”); “A History of the Colorado Land Use Commission’s Intervention, 24 Colo. Law. 303 at \*303 and FN 14 (February 1995) (discussing that the development of a Safeway market blocking the view from the historic Stanley Hotel was not subject to the 1041 requirements because “the area where the construction took place was actually exempt from state regulation” under C.R.S. Section 24-65.1-107(1)(C)(II) as the land had been zoned in 1967 for commercial development).

Gross Dam and Reservoir was constructed in the 1950s and is located within the Forestry zoning district and the 100-year floodplain, which means it is also within the Flood Regulatory Area zoning. The property at issue will continue to be used for a dam and reservoir, although larger in size than the current structure. In fact, the size of the dam following construction fulfills the contemplated use at the time of original design and construction. Denver Water includes with this letter a survey from February 1946 that is on file with Boulder County (Plat Book G, pages 77-78) showing the dam at the height contemplated with the Project (depicting the reservoir at the elevation of 7400 feet). We have also attached a copy of the same map from Denver Water’s records for ease of viewing.

The Project is exempt under the zoned land exemption because the property was zoned for such uses by right prior to May 17, 1974. As of May 17, 1974, the Flood Regulatory Area zoning rules applied to “portions of land subject to inundation by the 100-year flood.” Section 3.4 of the zoning rules for a “Flood Regulatory Area” provides: “Permitted uses: the following open uses shall be permitted within the Flood Regulatory Area to the extent they are not prohibited in a particular area by any underlying zoning category: . . . (4) Utility facilities such as dams, power plants, flowage areas, transmission lines, pipelines, and water monitoring devices.” Amendment to Boulder County Zoning Resolution, Approved August 11, 1969, Section 18.5, 3.4(4). The use contemplated for the Project was not prohibited in the underlying Forestry Zoning District. Thus, 1041 “does not regulate or apply to lands that fall under the zoned land exemption.” *See Droste*, 85 P.3d at 589.

Our research into the history of the 1969 Flood Regulatory Areas zoning provides insight into why dams were viewed as desirable features in a floodplain. A book published by the City of Boulder notes that during the flood in May 1969, “Gross Reservoir captured the entire runoff generated above the dam averting what would have been much greater flooding in the South Boulder Creek valley.” *See SILVIA PETTEM*,

BOULDER'S FLOODS AND FLOOD MANAGEMENT: PAST AND PRESENT 81-82 (2016). Only a few months later, Boulder County enacted the Flood Area zoning regulations. Although flood control is not the purpose of Gross Dam, it provides a flood protection benefit to Boulder County, as demonstrated in 1969 and more recently in 2013.

We seek Boulder County's concurrence that the Project is exempt from Article 8 of the LUC, so we can begin preparatory work and specific construction activity plans that are being developed now and in the very near term with Boulder County's engagement. We also look forward to working with Boulder County to secure any ancillary permits necessary for successful completion of the Project. Though the Project is exempt from 1041, Denver Water is open to alternative ideas and processes to engage the public and Boulder County Commissioners throughout the process.

Sincerely,



Jeff Martin  
Program Manager  
Denver Water

**LAND OWNERSHIP**

Tract 44	Vanadium Corp. of America.
47	" " " "
Sur. No. 18788	" " " "
Ellis Group	" " " "
Tract 45	Miramonte Inv. Co.
48	" " " "
Sur. No. 480 Am.	" " " "
Resumption Placer	" " " "
Tract 107	" " " "
108	" " " "
109	" " " "
110	" " " "
Tract 49	U. S. Government
63	" " " "

TWP. 1 SOUTH - RANGE 72 WEST  
RANGE 71 WEST

NATIONAL FOREST

24

ROOSEVELT

25

STATE OF COLORADO } ss.  
City and County of Denver

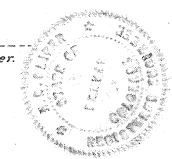
H. R. OLIVER, being duly sworn, on his oath deposes and says that he is the engineer at Reservoir No. 22; that the survey of the same and the map thereof were made under his direction, that such survey is accurately represented upon this map, that he has read the statements thereon, and that the same are true of his own knowledge.

*H. R. Oliver*  
Engineer.

Subscribed and sworn to before me this  
21st day of February A.D. 1946

*M. C. Anderson*  
Notary Public.

My commission expires August 21, 1949



Accepted for filing in the office of the State Engineer of Colorado  
on the 23rd day of FEBRUARY A.D. 1946

*M. L. Simons*  
State Engineer.  
by \_\_\_\_\_  
Deputy.

**CLAIMANTS STATEMENT**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned City and County of Denver, claimant, acting by and through its Board of Water Commissioners, whose post-office address is City and County Building, or Box 625, Denver, Colorado, has caused to be located RESERVOIR No. 22, as hereinafter mentioned, has made these several statements relative thereto, and filed the same in compliance with the laws of the State of Colorado. The accompanying map shows the location of said reservoir, and forms a part of this filing: (This reservoir is a part of the Denver Municipal Water System, principal features of which are shown on filing number 14894 in the State Engineers' Office.)

First: Height of Dam is 430 feet.

Second: The initial point of survey is located on the north-easterly end of the dam which is at a point whence the corner common to Tracts Nos. 37, 38, Township 1 South, Range 71 West of the Sixth Principal Meridian, (Resurvey of 1926-27) bears N. 67° 11' E. 1299.7 feet.

Third: The table of capacities shown hereon gives the area and total capacity for each foot in depth from the bottom of the outlet tube up to and including the high water line.

Fourth: The total capacity of said reservoir is 4,921,800 cubic feet, (113,078 acre feet), for which claim is hereby made for domestic, mechanical, and manufacturing uses, generation of power, and municipal uses, including storage, regulation, exchange and adjustment, and also for irrigation and other beneficial purposes.

Fifth: The sources of supply are South Boulder Creek, Fraser River, Williams Fork River, Blue River, and their tributaries, both by direct transmission, or impounding, and by exchange.

Sixth: The estimated cost is \$16,446,000.

Seventh: Work on the Denver Municipal Water System, of which this is a part, was commenced by survey on the 21st day of March, 1914, and on features peculiar to storage in this reservoir, on May 10, 1945.

Attest: \_\_\_\_\_  
Secretary.

By: *R. C. Simons*  
President.

SHEET 1 OF 2 SHEETS

THE DENVER MUNICIPAL WATER WORKS  
D. D. GROSS, Chief Engineer.

MAP OF RESERVOIR No. 22  
BOULDER COUNTY, COLORADO.  
COURSES REFERRED TO TRUE MERIDIAN.  
IRRIGATION DIV. No. 1. WATER DISTRICT No. 6.

Scale: 1" = 500'	FEB. 19, 1946	
DR. H.A.G.	TR. H.A.G.	CK. HRO.
APP. <i>D. D. Gross</i> Ch. Eng.	DR.	17597

CASE 15 No. 2

DR. 14 NO. 2

CAPACITY TABLE

Table with columns for ELEV., AREA, CU. FEET, and ACRE FEET, organized into four vertical sections (7000-7100, 7100-7200, 7200-7300, 7300-7400).

TRAVERSE NOTES FOR HIGH WATER LINE

Table with columns for STA., BEARING, and DIST., detailing traverse measurements for high water line.

Accepted for filing in the office of the State Engineer of Colorado on the 23rd day of FEBRUARY A.D. 1946.

M. L. Henderson State Engineer.

by Deputy.

SHEET 2 OF 2 SHEETS

THE DENVER MUNICIPAL WATER WORKS D.D. GROSS, Chief Engineer. MAP OF RESERVOIR NO. 22 BOULDER COUNTY, COLORADO. COURSES REFERRED TO TRUE MERIDIAN. IRRIGATION DIV. NO. 1. WATER DISTRICT NO. 6.

Scale: 1" = 500'. APR. 1946 DR. 17597

LAND OWNERSHIP

Tract 44	Manitou Corp. of America.
Tract 47	.....
Tract 48	Miramonte Inv. Co.
Tract 49	.....
Tract 50	.....
Tract 51	.....
Tract 52	.....
Tract 53	.....
Tract 54	U.S. Government
Tract 55	.....

TR. 1 SOUTH - RANGE 71 WEST

# NATIONAL FOREST

# ROOSEVELT



**CLAIMANT'S STATEMENT**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, *[Name]*, being duly sworn, on his oath deposes and says that he is the engineer of the survey of the National Forest of Colorado, and that he has read the statements herein, and that he believes the same to be true to his own knowledge.

First: That the survey was made by *[Name]* and *[Name]*, and that the same was made in accordance with the provisions of the Act of Congress, approved March 3, 1879, and the Act of Congress, approved August 15, 1894, and the Act of Congress, approved June 16, 1906, and the Act of Congress, approved August 15, 1909, and the Act of Congress, approved August 15, 1916, and the Act of Congress, approved August 15, 1924, and the Act of Congress, approved August 15, 1932, and the Act of Congress, approved August 15, 1940, and the Act of Congress, approved August 15, 1948, and the Act of Congress, approved August 15, 1956, and the Act of Congress, approved August 15, 1964, and the Act of Congress, approved August 15, 1972, and the Act of Congress, approved August 15, 1980, and the Act of Congress, approved August 15, 1988, and the Act of Congress, approved August 15, 1996, and the Act of Congress, approved August 15, 2004, and the Act of Congress, approved August 15, 2012, and the Act of Congress, approved August 15, 2020.

Second: That the survey was made in accordance with the provisions of the Act of Congress, approved March 3, 1879, and the Act of Congress, approved August 15, 1894, and the Act of Congress, approved June 16, 1906, and the Act of Congress, approved August 15, 1909, and the Act of Congress, approved August 15, 1916, and the Act of Congress, approved August 15, 1924, and the Act of Congress, approved August 15, 1932, and the Act of Congress, approved August 15, 1940, and the Act of Congress, approved August 15, 1948, and the Act of Congress, approved August 15, 1956, and the Act of Congress, approved August 15, 1964, and the Act of Congress, approved August 15, 1972, and the Act of Congress, approved August 15, 1980, and the Act of Congress, approved August 15, 1988, and the Act of Congress, approved August 15, 1996, and the Act of Congress, approved August 15, 2004, and the Act of Congress, approved August 15, 2012, and the Act of Congress, approved August 15, 2020.

Third: That the survey was made in accordance with the provisions of the Act of Congress, approved March 3, 1879, and the Act of Congress, approved August 15, 1894, and the Act of Congress, approved June 16, 1906, and the Act of Congress, approved August 15, 1909, and the Act of Congress, approved August 15, 1916, and the Act of Congress, approved August 15, 1924, and the Act of Congress, approved August 15, 1932, and the Act of Congress, approved August 15, 1940, and the Act of Congress, approved August 15, 1948, and the Act of Congress, approved August 15, 1956, and the Act of Congress, approved August 15, 1964, and the Act of Congress, approved August 15, 1972, and the Act of Congress, approved August 15, 1980, and the Act of Congress, approved August 15, 1988, and the Act of Congress, approved August 15, 1996, and the Act of Congress, approved August 15, 2004, and the Act of Congress, approved August 15, 2012, and the Act of Congress, approved August 15, 2020.

Fourth: That the survey was made in accordance with the provisions of the Act of Congress, approved March 3, 1879, and the Act of Congress, approved August 15, 1894, and the Act of Congress, approved June 16, 1906, and the Act of Congress, approved August 15, 1909, and the Act of Congress, approved August 15, 1916, and the Act of Congress, approved August 15, 1924, and the Act of Congress, approved August 15, 1932, and the Act of Congress, approved August 15, 1940, and the Act of Congress, approved August 15, 1948, and the Act of Congress, approved August 15, 1956, and the Act of Congress, approved August 15, 1964, and the Act of Congress, approved August 15, 1972, and the Act of Congress, approved August 15, 1980, and the Act of Congress, approved August 15, 1988, and the Act of Congress, approved August 15, 1996, and the Act of Congress, approved August 15, 2004, and the Act of Congress, approved August 15, 2012, and the Act of Congress, approved August 15, 2020.

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STATE OF COLORADO }  
 City and County of Denver } ss.  
 I, *[Name]*, being duly sworn, on his oath deposes and says that he is the engineer of the survey of the National Forest of Colorado, and that he has read the statements herein, and that he believes the same to be true to his own knowledge.



Accepted for filing in the office of the State Engineer of Colorado on the 23<sup>RD</sup> day of FEBRUARY A.D. 1946

*[Signature]*  
 State Engineer.

Deputy.

Subscribed and sworn to before me this 21<sup>st</sup> day of February A.D. 1946  
*[Signature]*  
 Notary Public.  
 My commission expires August 21, 1949

FILED  
 STATE ENGINEER  
 DEPARTMENT OF NATURAL RESOURCES  
 DENVER, COLORADO

CAPACITY TABLE

TRAVERSE NOTES FOR HIGH WATER LINE

Table with columns: ELEV., AREA, CU. FEET, ACRE FEET. Multiple columns for different elevation points (7000, 7100, 7200, 7300, 7400, 7500, 7600, 7700, 7800, 7900).

Table with columns: STA., BEARING, DIST., STA., BEARING, DIST. for traverse notes. Includes stationing from 0+00 to 104+105 and bearings like N. 67° 11' E., S. 79° 58' W., etc.

Accepted for filing in the office of the State Engineer of Colorado on the 23RD day of FEBRUARY, 1946

State Engineer

SHEET 2 OF 2 SHEETS

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Scale: 1" = 500' FEB. 19, 1946 Dr. H.A.S. Tr. H.A.S. Ch. C.T.P. Apr. D.D.Gross, Inc. Dr. 17597