

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, at 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

ELEV.	AREA	CU. FEET	ACRE FEET	ELEV.	AREA	CU. FEET	ACRE FEET	ELEV.	AREA	CU. FEET	ACRE FEET	ELEV.	AREA	CU. FEET	ACRE FEET
7000	6.3	283,000	6.5	7100	68.9	144,950,000	3324.3	7200	217.7	738,980,000	16,985.7	7300	469.1	2,206,800,000	50,660.5
1	6.7	588,500	13.4	2	70.1	147,950	3393.8	1	219.9	749,428	17,204.5	1	472.1	2,227,300	51,129.4
2	7.2	911,000	20.9	3	72.5	154,000	3536.5	2	222.2	760,032	17,425.6	2	475.1	2,247,200	51,603.6
3	7.7	1,255,000	28.8	4	73.7	157,200	3609.5	3	224.4	770,791	17,648.9	3	478.1	2,267,700	52,080.8
4	8.1	1,615	37.1	5	74.9	160,500	3689.8	4	226.7	780,938	17,874.5	4	481.1	2,288,400	52,561.0
5	8.6	2,000	45.9	6	76.1	163,900	3759.3	5	228.9	789,776	18,102.3	5	484.1	2,309,300	53,044.2
6	9.0	2,405	55.2	7	77.3	167,000	3836.0	6	231.2	799,002	18,332.4	6	487.1	2,330,500	53,530.4
7	9.5	2,825	64.9	8	78.5	170,500	3913.9	7	233.4	809,450	18,564.7	7	490.1	2,352,000	54,019.6
8	9.9	3,265	75.0	9	79.7	174,000	3993.0	8	235.7	819,920	18,799.2	8	493.1	2,373,700	54,511.8
9	10.4	3,730	85.6	10	81.2	177,400	4073.3	9	237.9	829,500	19,036.1	9	496.1	2,395,700	55,007.0
7010	11.3	4,215	96.7	11	82.4	181,000	4155.1	10	240.2	839,623	19,275.1	10	499.1	2,418,200	55,505.2
1	11.7	4,720	108.2	1	83.6	184,200	4238.8	1	242.4	850,000	19,516.5	1	502.2	2,440,400	56,006.5
2	12.2	5,240	120.1	2	84.8	187,400	4322.3	2	244.7	860,480	19,760.0	2	505.2	2,463,200	56,510.8
3	12.6	5,735	132.5	3	86.0	190,600	4407.7	3	246.9	872,000	20,005.9	3	508.2	2,486,300	57,018.1
4	13.1	6,345	145.4	4	87.2	193,800	4494.3	4	249.2	882,500	20,253.9	4	511.2	2,509,700	57,528.4
5	13.5	6,915	158.7	5	88.4	197,000	4582.1	5	251.4	894,000	20,504.3	5	514.2	2,533,400	58,041.7
6	14.0	7,520	172.4	6	89.6	200,200	4671.1	6	253.7	905,500	20,756.8	6	517.2	2,557,400	58,558.0
7	14.4	8,135	186.6	7	90.8	203,400	4762.1	7	255.9	915,500	21,011.7	7	520.2	2,581,700	59,077.3
8	14.9	8,760	201.3	8	92.0	206,600	4854.2	8	258.2	925,500	21,268.7	8	523.2	2,606,400	59,599.6
9	15.3	9,440	216.4	9	93.2	210,000	4945.2	9	260.4	935,500	21,528.1	9	526.2	2,631,700	60,124.9
7020	15.8	10,100	231.9	10	94.5	213,400	5039.3	10	262.7	945,200	21,789.6	10	529.2	2,657,400	60,653.2
1	16.2	10,770	247.9	1	95.7	216,800	5134.6	1	264.9	954,900	22,053.5	1	532.2	2,683,600	61,184.5
2	16.7	11,530	264.4	2	97.0	220,200	5231.1	2	267.2	964,600	22,319.5	2	535.2	2,710,200	61,718.8
3	17.1	12,270	281.3	3	98.3	223,600	5328.8	3	269.4	974,300	22,587.9	3	538.2	2,737,300	62,256.1
4	17.6	13,020	298.6	4	99.6	227,000	5427.7	4	271.7	984,000	22,857.4	4	541.3	2,764,700	62,796.4
5	18.0	13,700	316.4	5	100.8	230,400	5527.9	5	273.9	993,700	23,131.2	5	544.3	2,792,400	63,338.9
6	18.5	14,580	334.7	6	102.0	233,800	5629.3	6	276.2	1,003,400	23,406.0	6	547.3	2,820,500	63,883.3
7	18.9	15,400	353.4	7	103.2	237,200	5731.9	7	278.4	1,013,100	23,683.6	7	550.3	2,849,000	64,433.5
8	19.4	16,230	372.5	8	104.4	240,600	5835.7	8	280.7	1,022,800	23,963.2	8	553.3	2,877,900	64,988.8
9	19.8	17,090	392.1	9	105.8	244,000	5940.7	9	282.9	1,032,500	24,245.0	9	556.3	2,907,200	65,549.1
7030	20.3	17,975	412.2	10	107.0	247,400	6047.1	10	285.2	1,042,200	24,529.1	10	559.3	2,936,900	66,109.4
1	20.7	18,830	432.7	1	108.2	250,800	6154.7	1	287.4	1,051,900	24,814.5	1	562.3	2,966,400	66,669.7
2	21.2	19,735	453.6	2	109.4	254,200	6263.5	2	289.7	1,061,600	25,100.0	2	565.3	2,995,700	67,229.9
3	21.7	20,690	475.1	3	110.6	257,600	6373.5	3	291.9	1,071,300	25,386.5	3	568.3	3,025,000	67,790.1
4	22.1	21,670	497.0	4	111.9	261,000	6484.7	4	294.2	1,081,000	25,673.2	4	571.3	3,054,300	68,350.3
5	22.6	22,195	519.3	5	113.1	264,400	6597.2	5	296.4	1,090,700	25,960.0	5	574.3	3,083,600	68,910.5
6	23.0	23,619	542.1	6	114.3	267,800	6710.9	6	298.7	1,100,400	26,247.8	6	577.3	3,112,900	69,470.7
7	23.5	24,630	565.4	7	115.5	271,200	6825.8	7	300.9	1,110,100	26,535.6	7	580.3	3,142,200	70,030.9
8	23.9	25,681	589.1	8	116.7	274,600	6941.9	8	303.2	1,119,800	26,823.5	8	583.3	3,171,500	70,591.1
9	24.4	26,690	613.2	9	118.1	278,000	7059.2	9	305.4	1,129,500	27,111.4	9	586.3	3,200,800	71,151.3
7040	24.8	27,790	637.8	10	119.3	281,400	7177.9	10	307.7	1,139,200	27,400.2	10	589.3	3,230,100	71,711.5
1	25.3	28,860	662.9	1	120.5	284,800	7297.8	1	309.9	1,148,900	27,689.6	1	592.3	3,259,400	72,271.7
2	25.7	29,987	688.4	2	121.7	288,200	7418.9	2	312.2	1,158,600	27,979.5	2	595.3	3,288,700	72,831.9
3	26.2	31,120	714.3	3	122.9	291,600	7541.2	3	314.4	1,168,300	28,269.9	3	598.3	3,318,000	73,392.1
4	26.6	32,260	740.7	4	124.1	295,000	7664.7	4	316.7	1,178,000	28,560.3	4	601.3	3,347,300	73,952.3
5	27.1	33,445	767.6	5	125.4	298,400	7789.5	5	318.9	1,187,700	28,851.7	5	604.3	3,376,600	74,512.5
6	27.5	34,610	794.8	6	126.6	301,800	7915.6	6	321.2	1,197,400	29,143.1	6	607.3	3,405,900	75,072.7
7	28.1	35,830	822.5	7	127.8	305,200	8042.7	7	323.5	1,207,100	29,434.5	7	610.3	3,435,200	75,632.9
8	28.5	37,065	850.8	8	129.0	308,600	8171.1	8	325.8	1,216,800	29,725.9	8	613.3	3,464,500	76,193.1
9	28.9	38,320	879.5	9	130.2	312,000	8300.7	9	328.0	1,226,500	30,017.3	9	616.3	3,493,800	76,753.3
7050	29.7	39,595	908.8	10	131.9	315,400	8431.7	10	330.3	1,236,200	30,308.7	10	619.3	3,523,100	77,313.5
1	30.5	40,950	938.9	1	133.7	318,800	8564.5	1	332.5	1,245,900	30,600.1	1	622.3	3,552,400	77,873.7
2	31.3	42,280	969.0	2	135.4	322,200	8699.0	2	334.8	1,255,600	30,891.5	2	625.3	3,581,700	78,433.9
3	32.1	43,600	1001.5	3	137.2	325,600	8835.3	3	337.0	1,265,300	31,182.9	3	628.3	3,611,000	78,994.1
4	32.9	45,000	1034.0	4	139.0	329,000	8973.3	4	339.3	1,275,000	31,474.3	4	631.3	3,640,300	79,554.3
5	33.7	46,485	1067.3	5	140.7	332,400	9113.1	5	341.5	1,284,700	31,765.7	5	634.3	3,669,600	80,114.5
6	34.5	48,090	1101.4	6	142.4	335,800	9254.6	6	343.8	1,294,400	32,057.1	6	637.3	3,698,900	80,674.7
7	35.3	49,505	1136.3	7	144.2	339,200	9397.9	7	346.0	1,304,100	32,348.5	7	640.3	3,728,200	81,234.9
8	36.1	51,090	1172.0	8	145.9	342,600	9542.9	8	348.3	1,313,800	32,639.9	8	643.3	3,757,500	81,795.1
9	36.9	52,600	1208.5	9	147.7	346,000	9689.7	9	350.5	1,323,500	32,931.3	9	646.3	3,786,800	82,355.3
7060	37.7	54,310	1245.8	10	149.4	349,400	9838.2	10	352.8	1,333,200	33,222.7	10	649.3	3,816,100	82,915.5
1	38.5	56,080	1283.9	1	151.2	352,800	9988.5	1	355.0	1,342,900	33,514.1	1	652.3	3,845,400	83,475.7
2	39.3	57,610	1322.8	2	153.0	356,200	10140.5	2	357.3	1,352,600	33,805.5	2	655.3	3,874,700	84,035.9
3	40.1	59,390	1362.5	3	154.7	359,600	10294.3	3	359.5	1,362,300	34,096.9	3	658.3	3,904,000	84,596.1
4	40.9	61,140	1403.0	4	156.4	363,000	10449.8	4	361.8	1,372,000	34,388.3	4	661.3	3,933,300	85,156.3
5	41.7	63,080	1444.3	5	158.2	366,400	10607.0	5	364.0	1,381,700	34,679.7	5	664.3	3,962,600	85,716.5
6	42.5	64,830	1486.4												



CAPACITY TABLE

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

TRAVERSE NOTES FOR HIGH WATER LINE

Table with columns: STA., BEARING, DIST., STA., BEARING, DIST., STA., BEARING, DIST. Contains traverse data for high water line.

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

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. 8.

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