



United States
Department of
Agriculture

Forest
Service

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Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington DC 20426

Subject: Response to Denver Water's request for an exploratory drilling permit for the proposed Osprey Point Quarry expansion (Gross Hydroelectric Project P-2035)

Dear Secretary Bose:

The U.S. Forest Service (Forest Service) is currently working in partnership with the City and County of Denver (Denver Water), acting through its Board of Water Commissioners on the Gross Reservoir Expansion ("reservoir expansion") Project and the Federal Energy Regulatory Commission (FERC or the Commission) license agreement for Gross Project No. P-2035. This letter is intended to provide updates and information about the status of the project, including Denver Water's request for an exploratory drilling permit and Forest Service finding that the new proposed new quarry location has insufficient effects analysis.

On August 4, 2023, Denver Water sent an email to the Forest Service requesting information on obtaining a new exploratory drilling permit from the Forest Service to perform geotechnical work to investigate viability of expanding the existing Osprey Point Quarry westward onto adjoining National Forest System (NFS) lands. Denver Water also requested a call with the Forest Service to discuss the Standard Form SF-299, Application for Transportation and Utility Systems and Facilities on Federal Lands, and the process for intake of new proposals.

On August 10, 2023, Denver Water and the Forest Service had a brief call to discuss the SF-299 form and the process for intake of new proposals. At this meeting, Denver Water informed the Forest Service the new exploratory drilling proposal was expected to be similar in scope to drilling activities previously authorized in 2018 by Special Use Authorization (SUA) ID BOU563. SUA ID BOU563 authorized the holder to conduct "Subsurface investigation for feasibility and support to design of Gross Reservoir Expansion project."

The investigation would include: one test boring and five test pits along Gross Dam Road and five geophysical lines (seismic refraction). The area of NFS lands authorized for this work was located at Section 20, Township 1S., Range 71W., and 6th Principal Meridian, as shown on Exhibit A of this permit.

On August 24, 2023, Denver Water submitted a new exploratory drilling proposal to the Forest Service for review. Per 36 Code of Federal Regulations (CFR) 251.54(e)(2) and Section 11.21 of Chapter 10 of the Forest Service Handbook 2709.11, the Forest Service completes an initial screening process to determine whether the proposed use is consistent with existing laws,



regulations, and the applicable land and resource management plan. The Forest Service screened this proposal and identified that the proposed work consists of the following general activities on NFS lands:

- Building a rudimentary temporary road (estimated approximately 1,000 feet or more in length and 500 square feet of surface disturbance for the road) in an area west adjoining to the current Osprey Point Quarry, for the track type drill rig to be able to access the proposed exploratory drilling locations.
- Removal of an estimated 50 to 60 trees, boulders, and blow down materials to clear a path for the drill rig.
- Approximately 0.08-acres of total ground surface disturbance related to maneuvering the drill rig across the land surface to planned exploratory drilling locations.
- The drilling of nine borings with unspecified depths below ground surface to collect material samples and data for investigatory geotechnical work.
- Broadcast disposal of approximately 1,800 gallons of drilling slurry material onto the ground surface within the area of the proposed drilling locations.

The new August 24, 2023, exploratory drilling proposal includes work that differs from and was not previously authorized in SUA ID BOU563. SUA ID BOU563 was issued by the Forest Service to Denver Water for the purpose of subsurface investigation for feasibility and design support for the reservoir expansion project. The purpose of the new proposed drilling activities is to determine the feasibility of heavy rock extraction on NFS lands.

The August 24, 2023, exploratory drilling proposal states on page 3 of the “Continuation Exhibit” that “in its Supplemental Environmental Assessment for the Gross Reservoir Expansion Project, FERC has already analyzed the impacts of a quarry on NFS lands. The exploratory drilling that Denver Water is proposing on NFS lands is far less than total impacts analyzed in FERC’s Supplemental Environmental Assessment. Therefore, no additional National Environmental Policy Act (NEPA) analysis is required for the newly proposed exploratory drilling work.” Section 5.2.2 of the 2016 Settlement Agreement specifically states that “The Forest Service may use any previous environmental analysis submitted by Denver Water if that analysis is not out of date, with this determination to be made by the Forest Service. Additional information and environmental analysis may be required by the Forest Service for its decision on the mineral materials permit application.”

However, the 2019 Final Supplemental Environmental Assessment (Final EA), and the 2014 U.S. Corps of Engineers (Corps) Final Environmental Impact Statement (Final EIS), do not adequately address this proposed changed condition or include proper analysis of the newly proposed locations for the quarry and related operations. The Corps Final EIS analyzed a potential quarry site for the reservoir expansion project, including a location north of the existing boat ramp area within the project boundary on both Denver Water property and NFS lands. The 2019 Final EA includes analysis for a quarry site that is located solely on Denver Water owned land. Page 34 of the Final EA states that “If Denver Water is not able to obtain all the material necessary from the Osprey Point Quarry, it would need to utilize the Final EIS quarry site on Forest Service lands, and would therefore develop a Pit Development and Reclamation Plan, in consultation with the Forest Service and DRMS (Colorado Division of Reclamation, Mining and Safety) pursuant to Forest Service 4(e) condition 26, and file it with the Commission before any

ground-disturbance or construction activities associated with quarry development on Forest Service lands.”

Based on the Forest Service’s review of the existing NEPA documentation for the reservoir expansion project, this newly proposed quarry expansion area, located west of the existing Osprey Point Quarry, would require a new and separate NEPA analysis. The existing NEPA documentation also does not address items that must be evaluated, including but not limited to objectives of the 1997 Revision of the Land and Resource Management Plan and Forest Service-specific sensitive species lists. On September 15, 2023, the Forest Service sent an email to Denver Water to inform them that the Forest Service completed internal proposal initiation forms for their August 24, 2023, exploratory drilling proposal to receive new data gap NEPA analysis as a categorical exclusion (CE).

The planned gap analysis using the CE Category 36 CFR 220.6 (e)(8) for the purpose of issuing an exploratory drilling permit for geotechnical investigation work is not sufficient for production of a quarry on NFS lands. The Forest Service Resource Specialists are currently working on determining requirements for a data gap NEPA analysis, and a decision for the proposed drilling work is anticipated to be sent out for signature by January 5, 2024, or sooner.

In addition to the requirement for a proper NEPA analysis, the Forest Service is required to issue a Mineral Materials permit and conduct a valuation for payment of mineral materials to be extracted from federal land for use in concrete production at the reservoir expansion project site. Denver Water would be required to pay the U.S. Government for the value of the mineral materials that the licensee will harvest from federal lands for use on this construction project.

The Forest Service is also handling issues associated with unauthorized timber removal in relation to the reservoir expansion project. During the March 30, 2023, Annual Review meeting between Denver Water and the Forest Service, Denver Water reported that unauthorized overcutting of timber had occurred on federal land in Section 30 at the project site. On June 22, 2023, the Forest Service Law Enforcement Officer investigated and documented the unauthorized overcutting area. The Forest Service has been receiving expedited requests for previously unplanned timber removal areas for this project, including a recent rush request for new timber removal areas that were not accounted for in the Final Tree Removal Plan dated June 7, 2021.

The Forest Service has limited personnel and time capacity to process requests from the multitude of external parties that request use and occupancy of NFS lands and therefore would like to reiterate its need for advanced notice for proposed activities on NFS lands. The Forest Service has requested at least a three-year plan for the previously authorized activities at the reservoir expansion project site that require agency review. To meet all the laws, regulations, and policies to which the agency must adhere, the Forest Service requests adequate lead times for new project-related proposals to be able to provide sufficient review and, if necessary, authorizations.

Kimberly D. Bose

If you have questions and/or need clarification regarding the above information, please contact Lauren Kryszczuk at 720-708-0988 or lauren.kryszczuk@usda.gov or Pete Gomben, interregional hydropower program manager, at peter.gomben@usda.gov.

Sincerely,

**MONTE
WILLIAMS** Digitally signed by
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MONTE WILLIAMS
Forest Supervisor

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