

# Notice of intent to sue over expansion of Boulder County's Gross Reservoir

A coalition of environmental groups has filed a notice of intent to sue to stop the expansion of Gross Reservoir, targeting a number of federal agencies as well as Denver Water for what the potential plaintiffs claim would be a violation of the Endangered Species Act.

The 60-day notice, served late Thursday, names the U.S. Department of the Interior, the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers, as well as Denver Water as potential defendants in a suit that, if it goes forward, would be filed at U.S. District Court in Denver.

Plaintiffs in the legal action would include Save the Colorado; Waterkeeper Alliance; the Environmental Group, which represents homeowners in the Coal Creek Canyon area; Living Rivers; and the Sierra Club.



Gross Reservoir, seen here in September 2017, would lose as many as 1,800 trees per acre around its 12.5 miles of shoreline if an intended expansion project goes through.

*(Cliff Grassmick / Staff Photographer)*

The 13-page letter of notice details how filling the enlarged dam in southwest Boulder County would require greater diversions of water from small headwater tributaries to the Colorado River in Grand County that contain the green lineage cutthroat trout, which is an imperiled species under the Endangered Species Act.

"The result of operating this new project is that thousands of trout would be killed," a news release stated. The federal fish and wildlife service "failed to properly analyze the threat and ensure that the loss of these native species would not doom the population when combined with the host of other challenges facing the river and the fish including climate change."

Denver Water, which serves 1.4 million customers in the Denver metro area — but, very few in Boulder County — hopes to raise Gross Dam by 131 feet to a height of 471 feet, and increase the capacity of the reservoir by 77,000 acre feet. It has been estimated that [the construction would require the removal of as many as 650,000 trees](#) from the present shoreline, although some estimates put the number significantly lower.

### **'One piece of our legal claims'**

The [expansion has been permitted by the U.S. Army Corps of Engineers](#), and awaits licensing by the Federal Energy Regulatory Commission for an amendment to Denver Water's existing hydroelectric license to the facility before construction can begin.

A public comment period for that licensing ended April 9, and it is uncertain when the commission will rule on that application.

Although it is the first official salvo to be fired in the looming legal battle, it is likely not to be the last.

"The Endangered Species Act requires that you notify the agency, to give them the opportunity to fix the problem, and they have 60 days to respond

before you can file a lawsuit," Save the Colorado Director Gary Wockner said.

"This is one piece of our legal claims about why the project violates federal laws, including the National Environmental Policy Act, the Clean Water Act, as well as the Endangered Species Act," Wockner said. NEPA, as it's known, and the Clean Water Act, do not require a 60-day advance notice, he explained.

"This is the beginning of our legal effort to stop the Gross Dam expansion in its tracks," Wockner added. As for the pending commission decision, he said, "We have put in comments, and also alleged that the Army Corps of Engineers violated the National Environmental Policy Act and Clean Water Act when they gave it a permit — however, this small piece has to be done first."

Denver Water on Friday was still reviewing the notice, but issued a statement attributed to CEO/Manager Jim Lochhead.

"The Gross Reservoir Expansion Project will make Colorado's rivers and environment better off in the future. Delaying this project actually delays environmental benefits, including 1,000 acre-feet of water for rivers and streams in Grand County and an environmental pool with 5,000 acre-feet of water for South Boulder Creek," the statement read.

"Denver Water is providing more than \$20 million, water management and action that will result in myriad stream health and habitat improvements. We're proud that this project will help us achieve our goals of providing a secure water supply for our customers in the most environmentally sustainable way possible."

A spokesman for the fish and wildlife service in Denver declined to comment on pending litigation.

## **Opposition by Boulder County**

Before conclusion of the public comment period on the commission licensing decision, Boulder County was among those making its feelings known. In so doing, [Boulder County questioned whether the project was even needed](#), given that projected future service shortfalls on which Denver Water's plans were based have so far not panned out, and in Boulder County's opinion, may never do so.

"Nonstructural strategies" for improving water security should be examined, County Attorney Ben Pearlman wrote, "so that (the commission) can make a more informed decision about whether Denver Water Actually needs new storage space in Gross Reservoir."

The exact timing of a commission licensing decision is a mystery to those who are so anxious to know its ruling.

"We don't know the timing," Wockner said Friday. "Everyone is waiting on (the commission)."

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