



PUBLIC NOTICE

**US Army Corps
of Engineers®
Albuquerque District**

Application Number: SPK-2014-00518

Date: February 17, 2023

Comments Due: April 18, 2023 (extended from May 20, 2023)

SUBJECT: The U.S. Army Corps of Engineers, Albuquerque District, (Corps) is evaluating a request from the Clinton Ditch & Reservoir Company to raise the elevation of the spillway of the Clinton Gulch Reservoir in order to increase the storage capacity of the reservoir. The proposed project would result in the inundation and loss of 3.02 acres of wetlands, including 1.27 acre of fen wetlands, and 85 linear feet of Clinton Creek (a perennial stream). This notice is to inform interested parties of the proposed activity and to solicit comments. Please note that the comment period deadline was originally May 20, 2023, but has been extended to April 18, 2023. The original Public Notice is otherwise unchanged.

AUTHORITY: This application is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States (U.S.).

APPLICANT:
Clinton Ditch & Reservoir Company
Attn: Tom Daugherty
P.O. Box 172
Frisco, CO 80443

AGENT:
LRE Water
Attn: Ashley Moffat
909 Colorado Avenue
Glenwood Springs, CO 81601

LOCATION: The project site is located on Clinton Creek, directly east of Colorado State Highway 91 and 3.3 miles northeast of Fremont Pass, at approximately latitude 39.414103°, Longitude -106.173288°, Summit County, Colorado.

PROJECT DESCRIPTION: The applicant has proposed to expand capacity of the existing Clinton Gulch Reservoir by 473 acre-feet by altering infrastructure within the dam. More specifically, a 72-inch spillway pipe that is buried within the embankment of the dam would be raised to effectively increase the water surface elevation of the reservoir by approximately 5 feet. No additional work outside of the footprint of the dam embankment is necessary to complete the project. It is estimated the project would inundate 3.02 acres of wetlands, including 1.27 acre of fen

wetland, and 85 linear feet of Clinton Creek. Based on the available information, the overall project purpose is to develop water storage in the Upper Blue River Basin for multiple uses. The applicant believes there is a need to provide the shareholders of the Clinton Ditch and Reservoir Company with reliable water supplies in the Upper Blue River Basin to help firm their water availability during periods of extended drought. The enclosed narrative and drawings provide additional project details.

PROPOSED MITIGATION: Mitigation is an important part of the U.S. Army Corps of Engineers permitting process. Mitigation is sequential and includes avoidance, minimization, and compensation for unavoidable adverse impacts to aquatic resources. A detailed mitigation plan is not required for issuance of a public notice, but all three aspects of mitigation must be adequately addressed prior to any Corps permit decision.

Currently, the applicant has attempted to avoid and minimize impacts to aquatic resources by limiting impacts to the existing reservoir. The applicant has not provided a complete compensatory mitigation plan at this time but has provided conceptual information about how they plan to conduct compensatory mitigation. In general, conceptual mitigation plans include re-establishment, rehabilitation, and enhancement of wetlands in the upper Blue River watershed at various sites. The applicant is also considering purchasing compensatory mitigation credits from the Western Slope In-Lieu Fee Program operated by the National Forest Foundation.

OTHER AUTHORIZATIONS:

WATER QUALITY CERTIFICATION: Under Section 401 of the Clean Water Act (CWA), the Corps cannot issue a permit to conduct any activity that may result in a discharge into waters of the United States unless a Section 401 water quality certification (WQC) is granted, verifying compliance with water quality requirements, or WQC is waived. The Colorado Department of Public Health and Environment is the certifying authority responsible for making WQC decisions.

ADDITIONAL INFORMATION:

Environmental Setting: Clinton Gulch Reservoir is located on private property at an elevation of approximately 11,058 feet. The reservoir is approximately 93 surface acres and there are 11.28 acres of wetlands, including 2.89 acre of fen wetlands, in the survey area that surrounds the reservoir. The reservoir was constructed in the 1970s directly on Clinton Creek, a perennial stream. The site is surrounded by sub-alpine habitats and terrain. The reservoir and surrounding lands are commonly used by the public for fishing and hiking.

Alternatives: Alternatives to the proposed project are analyzed to identify the least environmentally damaging practicable alternative that meets the

applicant's project purpose and need. Practicability is based on cost, logistics, and technology. All project alternatives, including those which may be less damaging to the aquatic environment, will be considered. The applicant has provided information concerning project alternatives. Alternatives currently proposed by the applicant include:

1. Raising Spillway to Increase Capacity of Existing Reservoir (Proposed Alternative): This alternative is the applicant-proposed alternative and involves raising the spillway by 5 feet to increase the capacity of the reservoir by 473 acre-feet. This alternative would involve impacts to 3.02 acres of wetlands, including the 1.27 acre of fen wetland, and 85 linear feet of perennial stream (Clinton Creek).
2. Water Conservation Only: This alternative involves implementing water conservation plans that have been developed by some of the members of the Clinton Ditch Company. In total, it is estimated that these plans would conserve 377 acre-feet per year. The applicant has described this alternative as not meeting their need to withstand 4 or more consecutive years of drought.
3. Raising Spillway by Less than 5 Feet to Increase Capacity of Existing Reservoir: This alternative involves analyzing the impacts to aquatic resources that would be sustained and the associated increased storage capacity from increasing the spillway elevation by 2, 3, and 4 feet, rather than 5 feet. In general, the magnitude of impacts to aquatic resources is directly related to the height of the spillway, resulting in estimated impacts ranging from 1.35 acre to 2.47 acre of wetland being inundated.
4. Utilize Existing Water Storage from Dillon Reservoir: This alternative would involve utilizing existing storage within Dillon Reservoir to satisfy demand. Additional storage from Wolford Mountain Reservoir would also be needed to satisfy senior water rights. The applicant has described this alternative as not being practicable due to costs and the not having legal agreements in place with all members of the Clinton Ditch and Reservoir Company.
5. Dredge Existing Reservoir to Increase Capacity: This alternative would increase capacity of the reservoir by dredging and removing accumulated sediments. It is estimated that 375 acre-feet of sediment would need to be removed. The applicant has described this alternative as not being practicable due to cost and not being able to utilize the reservoir while dredging is being conducted.
6. Construction of New Reservoir(s) (Boyle Report): This alternative considers three reservoir locations in Summit County that were investigated as part of what is referred to as the Boyle Report, dated 2004.

The investigation provided an examination of potential water storage sites on the Swan River, the Middle Fork of the Swan River, and on Indiana Creek. Each of the potential reservoirs would require additional facilities to address water right issues. The applicant has described each of these potential reservoir projects as being more environmentally damaging than that proposed alternative. These potential reservoir projects were also described as not being practicable due to associated costs.

7. Construction of Peru Creek Reservoir: This alternative involves constructing a reservoir on Peru Creek, where Summit County holds a water storage right. The applicant has described this alternative as both more environmentally damaging than the proposed alternative and as being not practicable due to costs.
8. Construction of Lower Blue Reservoir: This alternative involves the construction a storage reservoir on Monte Cristo Creek, in Summit County. The reservoir would allow for 600 acre-feet of storage and has been estimated to involve impacts to 8.46 acres of wetlands, including 0.38 acre of fen wetland. This alternative has been described by the applicant as not being practicable due to costs and logistics.

Other alternatives may develop during the review process for this permit application. Additional information concerning project alternatives may be available from the applicant or their agent.

HISTORIC PROPERTIES: The Corps consulted district files and records, the latest version of the National Register of Historic Places (NRHP), and state records of NRHP-eligible and potentially eligible historic properties to determine if there are any historic properties that may be affected by the proposed undertaking. Further, the project area has been recently surveyed for historic properties and no eligible historic properties are known to exist in the proposed project permit area. Based on this initial information, the Corps has made a preliminary determination that the proposed project will not affect historic properties that meet the criteria for inclusion in the NRHP.

ENDANGERED SPECIES: The Corps has reviewed the U.S. Fish and Wildlife Service's latest published version of federally listed endangered and threatened species located in Summit County, Colorado to determine if any listed species or their critical habitat may occur in the proposed project area. The Corps has made a preliminary determination that the proposed project may affect and is likely to adversely affect federally-listed species and their critical habitat, including Canada lynx (*Lynx canadensis*), Colorado pikeminnow (*Ptychocheilus lucius*), the razorback sucker (*Xyrauchen texanus*), the bonytail chub (*Gila elegans*), and the humpback chub (*Gila cypha*).

FLOODPLAIN MANAGEMENT: The Corps is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, federal, state, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before **April 18, 2023**, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough

evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Comments and requests for additional information should be submitted to:

Benjamin Wilson, Senior Project Manager
US Army Corps of Engineers, Albuquerque District
400 Rood Avenue, Room 224
Grand Junction, CO 81501-2520
(970) 243-1199 X 1012
E-mail: Benjamin.R.Wilson@usace.army.mil

Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available through the Freedom of Information Act.

DISTRICT ENGINEER
ALBUQUERQUE DISTRICT
CORPS OF ENGINEERS

Enclosure