



COLORADO

Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

June 23, 2016

Paula Daukas
City and County of Denver
Board of Water Commissioners
1600 West 12th Avenue
Denver, Colorado 80204

Re: Section 401 Colorado Water Quality Certification No.: 4369
US Army Corps of Engineers 404 Permit No.: 200280762
FERC Project No. 2035
Project Name: Moffat Collection System
Location: Grand, Boulder, Park, Summit, Jefferson and Denver Counties
Water Course: South Boulder Creek, Gross Reservoir, North Fork South Platte River, South Platte River, Chatfield Reservoir, Fraser River, Williams Fork River, Blue River, and Colorado River
Reviewable Designation: COSPUS04, COSPUS06a, COSPUS06b, COSPUS14, COSPUS15, COSPBO04a, COSPBO04b, COSPBO15, COUCUC03, COUCUC08, COUCUC10a, COUCUC10b, COUCUC10C, COUCBL17

Dear Ms. Daukas:

The Colorado Department of Public Health and Environment (CDPHE), Water Quality Control Division (Division) has completed its review of the Moffat Collection System Project Clean Water Act (CWA) Section 401 Permit Application. We have also reviewed our preliminary determination with the issuance of the State of Colorado 401 Certification Public Notice (5 CCR 1002-82, § 82.5(B)) and have completed an antidegradation review pursuant to Regulation 31, Basic Standards and Methodologies for Surface Water (5 CCR 1002-31, § 31.8(3)).

Regulation 82 Requirements

Regulation 82, (5 CCR 1002-82) which addresses certifications under Section 401 of the Clean Water Act, directs the Division to consider antidegradation requirements identified in the state's Procedural Regulation, Regulation 21 (5 CCR 1002-21), requirements contained in the Basic Standards and Methodologies for Surface Water, Regulation 31 (5 CCR 1002-31), the Basic Standards for Ground Water, Regulation 41 (5 CCR1002-41), as well as appropriate classifications and water quality standards, effluent limits, control regulations, Best Management Practices (BMPs), water quality mitigation measures and public comments. The Division is directed to provide either a regular certification, conditional certification, or to deny certification based upon review of the application and the applicable water quality requirements as listed in section 82.5(A)(1) of Regulation 82.

Section 82.5(B)(6) provides that “[c]ertification shall not be denied where the imposition of conditions or denial would result in material injury to water rights as prohibited under section 25-8-104 C.R.S.” The pertinent part of § 25-8-104(1) states as follows:

No provision of this article shall be interpreted as to supersede, abrogate, or impair rights to divert water and apply water to beneficial uses in accordance with the



provisions of sections 5 and 6 of article XVI of the constitution of the State of Colorado, compacts entered into by the State of Colorado, or the provisions of articles 80 to 93 of title 37, C.R.S., or Colorado court determinations with respect to the determination and administration of water rights. Nothing in this article shall be construed, enforced, or applied so as to cause or result in material injury to water rights.... Nothing in this article shall be construed to allow the commission or the division to require minimum stream flows or minimum water levels in any lakes or impoundments.

Project Background

The Moffat Collection System Project is expected to provide larger water deliveries to the Denver metropolitan area by increasing the storage capacity of the existing Gross Reservoir by raising the current dam height. On the West Slope the project is expected to have impacts to the Fraser River and its tributaries, Grand Lake, Shadow Mountain Reservoir, the Colorado River after it enters Shadow Mountain Reservoir through Granby Reservoir and Windy Gap Reservoir to the confluence with the Williams Fork River and the Williams Fork River and its upper tributaries. Impacts have also been identified in the Blue River below Dillon Reservoir, North Fork South Platte River, Chatfield Reservoir, South Platte River and South Boulder Creek. The impacted portion of the Colorado River is identified as Upper Colorado River Basin segment 3. Grand Lake, Shadow Mountain Reservoir, and Granby Reservoir are identified as Upper Colorado River Basin segment 12. Windy Gap Reservoir is Upper Colorado River Basin segment 13. The Colorado River from Shadow Mountain Reservoir to Granby Reservoir is Upper Colorado segment 2. The Williams Fork River and tributaries are Upper Colorado River Basin segment 8. The Blue River below Dillon Reservoir is Blue River segment 17.

The project impacts the following water bodies on the East Slope -North Fork South Platte River is Upper South Platte River Basin segment 4. South Platte River above Chatfield Reservoir is segment 6a. Chatfield Reservoir is Upper South Platte segment 6b. The South Platte River mainstem through Denver is Upper South Platte River segments 14 and 15. South Boulder Creek, Gross Reservoir and South Boulder Creek below Gross Reservoir are Boulder Creek segments 4a, 15 and 4b respectively.

All of these segments are “reviewable,” meaning that an antidegradation review is required. The antidegradation review process requires a determination as to whether the activity is likely to result in significant degradation of the impacted waters. The Division’s “significance determinations” consider the “net effect of the new or increased water quality impacts Taking into account any environmental benefits resulting from the regulated activity and any water quality enhancements or mitigation measures....” 5 CCR 1002-31, § 31.8(3)(c).

Division Comments and Antidegradation Review

The Division has reviewed information submitted concerning the Moffat Collection System Project against the requirements of Regulation 82 and the other applicable regulations cited herein. The construction activities described in the Moffat Collection System are expected to be only short-term in nature and are therefore not significant in the context of an antidegradation review. Operation of the Moffat Collection System Project does not involve discharges, but it does lead to potential long-term water quality impacts. These potential impacts and the required conditions to mitigate such impacts are explained in detail in the attached *Rationale for Conditional 401 Certification of the Moffat Collection System Project*.

Certification Statement

Based on the Division's analysis and evaluation, as further explained in the attached *Rationale for Conditional 401 Certification for the Moffat Collection System Project*, and based on consideration of the short-term impacts of construction activities and BMPs and conditions imposed by other agencies, as well as conditions on operation of the project as imposed by the Division, including the development of adaptive management practices in response to monitoring and assessed conditions, the Division concludes that there is reasonable assurance that the project will be conducted in a manner that complies with all applicable water quality requirements. See 5 CCR 1002-82, § 82.5(A)(3); 40 CFR § 121.2(a)(3). Therefore, this letter shall serve as official notification that the Division is issuing a "Conditional Certification" in accordance with 5 CCR 1002-82, § 82.5(A)(3). Conditions for this certification are included in the attached document, *Rationale for Conditional 401 Certification of the Moffat Collection System Project*.

This § 401 Water Quality Certification shall apply to both the construction and operation of the project for which a federal license or permit is required, and shall apply to the water quality impacts associated with the Moffat Collection System Project. This certification does not constitute a relinquishment of the Division's authority as defined in the Colorado Water Quality Control Act, nor does it fulfill or waive any other local, state, or federal requirements.

If you have any questions or need additional information, please contact John Hranac of my staff at (303) 692-3586.

Sincerely,



Patrick Pfaltzgraff
Director, Water Quality Control Division
Colorado Department of Public Health and Environment

Enclosures: *Rationale for Conditional 401 Certification of the Moffat Collection System Project*
Regulation 82.6 Certification Requirements

C: Tim Carey, US Army Corps of Engineers, Denver Regulatory Office, Littleton, CO
Kimberly D. Bose, Federal Energy Regulatory Commission, Washington, D.C.
Peter Yarrington, Federal Energy Regulatory Commission, Washington, D.C.
Steve Hocking, Federal Energy Regulatory Commission, Washington, D.C.
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