



# Board of County Commissioners

## BOULDER COUNTY BOARD OF COUNTY COMMISSIONERS

### PUBLIC MEETING

#### Gross Reservoir Community Impact Mitigation Fund Phase I Distribution

**Thursday, June 29, 2023 @ 3 p.m.**

*In-person and virtual via Zoom. No public testimony will be taken during the meeting*

Attendee Link: <https://boco.org/BOCC-GrossReservoir>

Call-in information: 1-833-568-8864, Webinar ID: 161 585 4353

**Staff Presenter:** Barb Halpin, Special Projects Coordinator & Community Engagement Specialist, Boulder County Commissioners' Office

The purpose of the June 29, 2023, meeting is for the Boulder County Commissioners to consider recommendations and determine the amount and distribution method for Phase 1\* funding from Section 2. of the [Denver Water vs. Boulder County Settlement Agreement](#).

The Settlement Agreement, signed in November 2021, established a \$5 million "Reduce Impacts to Residents" Fund (aka, the Gross Reservoir Community Impact Mitigation Fund) to provide direct payments to eligible households that are—or are expected to be—adversely impacted by Denver Water's Gross Reservoir Expansion Project.

Section 2. "Reduce Impacts to Residents" of the Settlement Agreement states:

*2. Boulder County is concerned that numerous households in the vicinity of the Project may experience an increase in noise, light, and/or dust generated by various aspects of the Project. Residents and other road users may also be impacted by traffic delays and traffic noise.*

*2.1. Denver Water will provide \$5,000,000 for a fund to mitigate noise, light, and air impacts to households near the Project. Boulder County will administer the fund and will develop standards or formulas for the fund that ensure a fair and equitable distribution of the money based on the expected type and severity of the noise, light, and/or air impacts to eligible households.*

County staff will present an [Environmental Analysis report](#)\*\* prepared by Pinyon Environmental, Inc. and make recommendations based on the data from the report and detailed accounts of lived experience shared by Gross Reservoir residents.

**Claire Levy** County Commissioner **Marta Loachamin** County Commissioner **Ashley Stolzmann** County Commissioner

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Additionally, two members of the 12-member Gross Reservoir Community Impact Mitigation Fund Community Advisory Working Group will share their experience as residents and members of the working group to present their recommendations for the Board's consideration.

Public testimony will not be taken during the meeting as the purpose of the meeting is to have dedicated time to learn and ask questions of staff and the Working Group concerning their recommendations for funding distribution. Written comments can be emailed to [grossreservoir@bouldercounty.org](mailto:grossreservoir@bouldercounty.org) and will be shared with the County Commissioners prior to the June 29 meeting.

## **BACKGROUND**

Denver Water's Gross Dam Expansion Project ("Project") has been a long-standing concern and source of frustration with Gross Reservoir residents. For more than 20 years, area residents have strongly opposed Denver Water's plans to expand the reservoir by building the dam more than 100 feet taller than the existing dam which was completed in 1954. Specifically, the Project will raise the height of the existing dam by 131 feet. This will more than triple Gross Reservoir's capacity, from approximately 42,000 acre-feet to 119,000 acre-feet.

As many in the community have pointed out, the additional water that will be stored for consumption by downstream Denver Water customers will serve no one in Boulder County. There is also significant community doubt that Denver Water will be able to get enough water to fill the expanded reservoir (or even that they should).

The Boulder County Commissioners recognize that the impacts from the intensive, industrial construction operations occurring year-round, day and night, on Denver Water's property have far reaching impacts on residents, wildlife, the environment, and recreational opportunities in the area. For the nearly two decades the Project was in its planning phase, Boulder County challenged the environmental claims Denver Water made about how the larger reservoir was necessary. At every stage in Denver Water's process to obtain federal agency approval for the Project, Boulder County countered its claims with a list of impacts the Project would have on land and water resources and residential households.

In July 2020, the Federal Energy Regulatory Commission (FERC) issued an Order amending Denver Water's hydropower license that permitted Denver Water to proceed with the Gross Reservoir Expansion Project. Later on, Denver Water sued Boulder County, claiming the County could not apply its local land use (1041) authority to the Project because Project was preempted by federal regulation.

In November of 2021, Boulder County reached an agreement with Denver Water that, among other provisions, directed Denver Water to pay more than \$12.5 million to Boulder County. A specific allotment of \$5 million of the total funding was designated for distribution directly to residents to address the noise, light, air/dust, and truck/traffic impacts to households from the Project, *based on the severity of impacts*. (Note: Obtaining any money at all to give directly to residents is extremely rare and has no precedent in Colorado that Boulder County is aware of.)

Additional payments and in-kind support from the agreement included: Road maintenance and improvements on county roads; Reduction in impacts to county recreation areas; Land preservation; Riparian and sensitive habitat restoration; and Carbon/climate impact offsets.

While the Boulder County Commissioners acknowledge that the \$5 million is not nearly enough—and, in fact, no amount of money could *ever* be enough to counter the impacts on residents living with the 24/7 construction—it is the county’s responsibility to make sure that the money is issued fairly and within the guidelines of the Settlement Agreement.

## **MEETING PURPOSE**

The County Commissioners will consider recommendations from staff and the Gross Reservoir Advisory Working Group on how (and how much) to distribute for Phase 1 funding.

Over the past year, the Boulder County Commissioners and county staff have spent time getting to know Gross Reservoir residents by asking questions and soliciting comments through surveys, phone calls, emails, site visits, and meetings with community members to help the Board determine how to fairly and equitably divide up and distribute proceeds from the Gross Reservoir Impact Mitigation Fund.

The commissioners have hosted several community meetings and asked for ongoing input from area residents on all aspects of the Project. Through one-on-one conversations, informal group settings, open house events, site and home visits, and hundreds of email exchanges and survey responses, community residents have provided Boulder County with a full account of what it’s like to live with the noise, lighting, dust, view destruction, wildlife impacts, truck traffic, safety concerns, and other unwelcome outcomes of Denver Water’s Project. (A summary of the Gross Reservoir Community Households surveys is [provided in this report](#).)

The Board also dedicated significant time of the Commissioners’ Office special projects coordinator to meet with residents, gather input, and conduct “boots on the ground” observations of individual households and neighborhoods through the first full year of Denver Water’s construction activities which began in April 2022.

## **Gross Reservoir Advisory Working Group**

From April to June 2023, Boulder County convened a community working group to weigh different scenarios, interests, and collective impacts from both a scientific and subjective standpoint in order to make recommendations to the Board of County Commissioners about a fair and equitable process for distributing money from the Gross Reservoir Community Impact Mitigation Fund.

The Working Group met five times to consider and discuss the impacts from Denver Water’s project on Gross Reservoir area residents. Members of the public were invited to observe and provide written comments during all working group meetings and on an ongoing basis through [grossreservoir@bouldercounty.org](mailto:grossreservoir@bouldercounty.org). The Working Groups recommendations are summarized in the [Boulder County Gross Reservoir Community Advisory Working Group Report](#). (Note: All Working Group meeting notes and documents are posted on the [Boulder County Gross Reservoir website](#).)

## **STAFF RECOMMENDATION**

Staff recommends that the Board of County Commissioners:

- 1) Adopt the Working Group’s recommendations with the following changes:
  - a. Accept a staff recommendation, that—without changing the results from Pinyon’s analysis and while incorporating the Working Group’s methodology for payments to households that are most impacted:

- i. Directs higher payment amounts to households that have significant, direct, mitigatable impacts;
    - ii. Groups clusters of houses listed in the Pinyon report that: 1) have lower rankings, 2) are situated away from direct daily reservoir construction operations, and 3) experience few or infrequent noticeable or mitigatable impacts from the Project and label those groups as areas with minor or lesser impacts from the Project.
    - iii. Awards equal payments (to be determined by the Board) to homes in the lower impact categories. (Note: at the lower ranking levels, small discernments in rankings from one neighbor's house to the next are negligible when the overall impacts are so similar.)
  - b. Remove the "Allocating Interest Earnings Recommendation."
- 2) Put an amount (to-be-determined at the meeting) into an escrow account and subtract that amount from the amount of Phase 1 funding (Note: Working Group recommends \$4 million for Phase 1) to account for any house addresses that may receive an occupancy permit before checks are cut or are discovered after the County Commissioners make a decision today. If any of the escrow money is unspent, it can be put towards Phase 2 funding;
  - 3) Consider putting a time limit of two years since construction work began on the Project (April 2022) for property owners to complete the necessary paperwork and claim their allotted Phase 1 payout amount. Set that date at April 30, 2024, and allocate any unclaimed proceeds from Phase 1 to Phase 2 of the Fund distribution. (Note: the owner of record at the time the check is cut is eligible for the payment.)
  - 4) Authorize staff to finalize the list of eligible households and work the Office of Financial Management to begin collecting required household tax information and generating payments for eligible households according to the approved methodology.

A recording of the meeting will be available on the [Boulder County Open Meeting Portal](#).

*\* Because Denver Water's operational plan for tree removal around Gross Reservoir will not be available until 2024, the Boulder County Commissioners decided that tree removal impacts will not be considered in the first phase of funding (i.e., money from the full \$5 million mitigation fund will be held back for a future round of funding once the tree removal impacts are better known.).*

*As a result, there will be two phases of funding. Phase 1 will distribute funding based on ongoing impacts from the full 7-year Gross Dam Expansion Project. Phase 2 will distribute funding based on impacts from the 2-year tree removal operations, specifically. The Working Group focused on developing recommendations on the methodology to distribute Phase 1 funding. They also developed recommendations on how much funding to retain for Phase 2 of funding distributions.*

*\*\* The Pinyon Environmental Analysis was unable to verify a visual ranking for every property. As such, Boulder County is in the process of verifying lighting and line of sight impacts for houses where no visual impact was determined to be present. Staff have asked property owners of any property assigned a "0" for lighting in the [Pinyon report](#) to let us know if they have a direct line of sight or lighting impacts from Denver Water's construction activities (including construction-related truck/vehicle headlights shining into a home). A [lighting survey](#) is available for Gross Reservoir residents to report their lighting or line of sight/view impacts. Calculations for a payout amount will be determined based on the outcome of the Board of County Commissioners' decision at the June 29, 2023, meeting, and after a visual impact is confirmed as present or not present for households still in question.*