



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

February 7, 2013

Regulatory Division SPK-2010-01434

Brian Yansen  
Peabody Energy  
701 Market Street  
St. Louis, Missouri 63101

Dear Mr. Yansen:

We are responding to your invitation to participate in the Peabody Trout Creek Reservoir Project Proposed Study Plan and the upcoming Agency Coordination/Study Plan comment meeting scheduled for February 12 and 13, 2013, in Denver, Colorado. This project involves activities in waters of the United States to construct a dam on Trout Creek southwest of the City of Steamboat Springs in Routt County, Colorado. This Study Plan was submitted to the Federal Energy Regulatory Commission (FERC) and has been assigned FERC Project number P-14446.

We regret that we will not be able to attend this meeting in person, but request to participate via teleconference or video conference. Additionally, we have a number of questions and comments that we wish to have included on your agenda for discussion at the meeting. While many of these issues were discussed during our November 18, 2010, meeting held in Steamboat Springs and again in our letter of December 17, 2010 (Enclosure 1), we have not received any direct response to these issues to date.

Our evaluation of the project indicates that the primary purpose of the project is water storage, apparently for industrial use at various off-site coal mining facilities. Other stated purposes, such as waterfront residential development, creation of a private recreational fishery, and hydropower generation, appear to be ancillary or secondary purposes. As has been relayed to Peabody representatives during the November 18, 2010 meeting and in our December 17, 2010 letter, our regulations require a thorough understanding of project need and an analysis of both on-site and off-site project alternatives. We understand that the FERC analysis is narrower in scope and is limited in context to the issues of hydropower generation at the Trout Creek Reservoir site. While we are committed to working with FERC and other stakeholders for an integrated and streamlined regulatory process, we must emphasize that the limited scope of the FERC licensing process does not preclude our legal requirement for an expanded alternatives analysis under the Clean Water Act Section 404 (b)(1) guidelines. Those same regulations require that authorization be issued for the Least Environmentally Damaging Practicable Alternative (LEDPA). You should also be aware that the prior expenditure of irretrievable resources is not a factor in our evaluation of project alternatives.

We respectfully ask that the following list of questions and comments be included as early as possible on the agenda for discussion at the meeting:

1. Please define and clarify the basic or fundamental need for this project.
2. Discuss the rationale for processing an Environmental Impact Statement (EIS).
3. Discuss the timeline and processing of a U.S. Army Corps of Engineers (USACE) Department of the Army permit application. [Note: Your website Schedule incorrectly identifies, in line item 74, a USACE 404 Permit to be processed in 30 days and prior to the Final EIS.]
4. An Alternative Analysis will be critical to your project and needs to be discussed early in the planning process. [Note: Our 404(b)(1) guidelines require that we examine other sites and methods for meeting project need that may have less impact on the aquatic environment. An alternative analysis must be prepared for each separate project need (if multiples needs are appropriate) and thoroughly evaluated to select the LEDPA.]
5. How will water from the proposed reservoir be delivered to various coal mining operations? The conveyance of this water (surface waterways, pipelines, etc.) should be included in the project description and evaluation, and may increase the project scope.
6. What is the proposed end-use for the electrical power generated by the hydropower station, and how and to where will that power be distributed?
7. It appears that both the State of Colorado and the Bureau of Land Management administer real estate which will be directly impacted by the proposed project. Please describe the involvement of these agencies and their anticipated role in the licensing/permitting process.

And finally, we understand that a revised wetland delineation for the project area will be submitted to us for verification in the summer of 2013, possibly in August. This delineation should incorporate a FACWet analysis as well as the previous recommendations made by Mr. Nathan Green of our office. We request that your wetland consultant coordinate with us to schedule a site visit once this new delineation report is finalized and the wetland boundaries flagged in accordance with the *Minimum Standards* and the *Final Map and Drawing Standards for the South Pacific Division Regulatory Program* (Enclosures 2 and 3). As discussed in the past, you also need to be aware that other alternative project sites may require jurisdictional delineations to fully analyze each alternative's potential aquatic impacts (again, for alternative analysis comparison).

Once project need has been defined, alternatives analysis prepared, and site(s) delineated and verified, you should submit a permit application to our office so that we may see the details of the work you propose, understand the impacts to waters of the U.S., and more fully engage in this process. While we are committed to working with FERC and other stakeholders on this project, it appears that FERC's scope is much narrower than ours and their requirements will not be sufficient to meet our requirements under Section 404 of the Clean Water Act. Therefore, we are coordinating early to provide input so that the project purpose and need, suite of alternatives, and the evaluation presented in NEPA document(s) are usable by us in carrying out our legal responsibilities.

Please refer to identification number SPK-2010-01434 in all future correspondence concerning this project. Additionally, the project manager assigned to this action is Ms. Lesley McWhirter, and please note that our address has changed. You may contact Lesley at our Colorado West Regulatory Branch, 400 Rood Avenue, Room 224, Grand Junction, Colorado 81501-2563, email [Lesley.A.McWhirter@usace.army.mil](mailto:Lesley.A.McWhirter@usace.army.mil), or telephone 970-243-1199 extension 17. Lesley should also be contacted soon with instructions for our participation in this upcoming meeting and if you have any questions.

Sincerely,



Susan Bachini Nall  
Chief, Colorado West Regulatory Branch

Enclosures:

1. December 17, 2010, Corps letter to Peabody Energy
2. Minimum Standards for Wetland Delineations
3. Final Map and Drawing Standards

Copies furnished (w/ Enclosure 1):

- Mr. Shana Murray, Federal Energy Regulatory Commission, Small Hydropower Coordinator, 888 First St. NE, Washington, DC 20426
- Ms. Sarah Fowler and Ms. Melanie Wasco, U.S. Environmental Protection Agency, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129
- Ms. Patty Schrader Gelatt, U.S. Fish and Wildlife Service, Ecological Services 764 Horizon Drive, Building B, Grand Junction, Colorado 81506
- Ms. Wendy Reynolds, Bureau of Land Management, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 80625
- Mr. Bill Atkinson, Aquatic Biologist, Colorado Division of Parks and Wildlife, 925 Weiss Dr., Steamboat Springs, CO 80477
- Ms. Erin Light, Division Engineer, Region 6, Colorado Division of Water Resources, P.O. Box 773450, Steamboat Springs, Colorado
- Mr. Ted Kowalski, Colorado Water Conservation Board, 1313 Sherman Street, Room 721 Denver, Colorado 80203

Mr. Chad L. Phillips, Planning Director, Routt County, PO Box 773749, Steamboat Springs,  
Colorado 80477

Mr. David Merritt, URS Corporation, 713 Cooper Avenue, Suite 110, Glenwood Springs,  
Colorado 81601

Mr. Troy Thompson, ERO Resources Corporation, 1842 Clarkson Street, Denver, Colorado  
80218



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REPLY TO  
ATTENTION OF

December 17, 2010

Regulatory Division SPK-2010-01434

Brian Yansen  
Peabody Energy  
701 Market Street  
St. Louis, Missouri 63101

Dear Mr. Yansen:

We are writing to you concerning your request for a Department of the Army permit for the Peabody Energy Trout Creek Reservoir project. This project involves activities in waters of the United States to construct a dam on Trout Creek southwest of the City of Steamboat Springs in Routt County, Colorado. We have reviewed the materials you submitted this fall (including a "Request for Proposal" of a Corps 3<sup>rd</sup> party consultant for an Environmental Impact Statement (EIS)) and were also glad to participate in the multi-agency pre-application meeting held on November 18, 2010 in Steamboat Springs. The purpose of this letter is to reiterate some of our discussions at the November 18<sup>th</sup> meeting and advise you of next steps to proceed with your project.

During our meeting the importance of project purpose and need was discussed. Multiple project purposes make for a very difficult and complex alternatives analysis as a whole range of alternatives would likely be required for each separate project purpose. As currently described, your project appears to have a multitude of purposes including: 1) existing and future water supply for coal mining, 2) hydropower, 3) waterfront real estate, and 4) fish propagation. You were and are again encouraged to carefully consider a very specific and succinct project purpose and need. This first step is fundamental and is critically important in order to determine Federal scope of analysis, permit needs, and NEPA processes such as an EIS. Please be aware that ultimately, the Lead Federal Agency will make the final determination on project purpose and need.

If water supply for coal mining is the defined project purpose, your submittal should include more detailed water needs analysis for each of the proposed future mine sites and criteria used to estimate these future needs (i.e. firm yield) in order to consider the full range of project alternatives. Additionally, and perhaps more importantly, if hydropower is the singular or an additional project purpose, your next step is to coordinate with the Federal Energy Regulatory Commission (FERC) and begin the pre-filing process. The July 15, 1983 Memorandum of Understanding Between the Federal Energy Regulatory Commission and the Department of the Army Regarding Non-Federal Hydropower Development makes it clear that Federal Energy

Enclosure 1

Regulatory Commission (FERC) will be the lead Federal agency for non-federal hydropower projects. In this case the Corps of Engineers will be a cooperating or a co-lead agency.

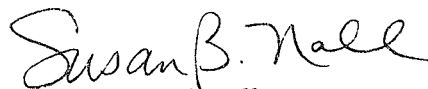
If waterfront housing and fisheries are maintained as part of the project purpose and need, additional details with your criteria used to meet these purposes must also be provided. As we have previously stated, under the 404(b)(1) guidelines the Corps is mandated to choose the Least Environmentally Damaging Practicable Alternative. If there are ways to avoid or minimize impacts to waters of the United States, you must implement these measures in your project alternatives.

To summarize, we strongly suggest that you begin by resubmitting a project purpose and need statement. If hydropower generation is a component of this project FERC should be contacted immediately. Please provide us a response to these suggestions so that we may determine who will be the Federal lead.

On another note, Nathan Green of this office has been in contact with your wetland consultant, Ms. Leigh Rouse with ERO Resources, regarding the wetland delineation at the Trout Creek dam site and the placement of groundwater monitoring wells. We have determined that the best course of action regarding this spring delineation confirmation of the Trout Creek site is to install the wells, generally as laid out in her drawing received via email on November 16, 2010. The water resources (including wetlands) should be delineated and verified on the ground by us in spring or summer to determine if and where additional monitoring wells are needed. We will continue to work with your consultant to ensure we have enough data to determine the extent of artificial hydrology on the site, if any exists. As discussed during our recent meeting, you also need to be aware that other alternative project sites may require jurisdictional delineations to fully analyze each alternative's potential aquatic impacts.

Please refer to identification number #SPK-2010-1434 in any future correspondence concerning this project. If you have any questions, please contact Mr. Green at our Colorado West Regulatory Branch, 400 Rood Avenue, Room 134, Grand Junction, Colorado 81501-2563, email [Nathan.J.Green@usace.army.mil](mailto:Nathan.J.Green@usace.army.mil), or telephone 970-243-1199 x12. Early coordination and pre-application meetings are very important to project execution and success. Your continued cooperation is appreciated.

Sincerely,



Susan Bachini Nall

Chief, Colorado West Regulatory Branch

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