



Denver Water's Gross Reservoir Project Given the Go-Ahead by the Tenth Circuit

On September 15, 2026, the U.S. Court of Appeals for the Tenth Circuit issued its [decision in *Save the Colorado v. Graham*](#), unanimously reversing a lower court's injunction and clearing the way for Denver Water to finish the project and fill the expanded Gross Reservoir.

The appellate court ruled that the U.S. Army Corps of Engineers (Corps) acted lawfully and reasonably under the National Environmental Policy Act (NEPA) and the Clean Water Act (CWA) when it issued the permits for the project.

Background

A coalition of environmental groups led by Save the Colorado sued to halt Denver Water's \$800 million project to raise the Gross Dam by 131 feet and triple the reservoir's capacity by an additional 77,000 acre-feet. The groups argued that the Corps failed to adequately evaluate how climate change and future droughts would affect water levels and stream flows.

The environmental coalition challenged the environmental impact statement issued by the Corps, arguing that the agency used outdated pre-2010 water data that ignored modern aridification driven by climate change of the Colorado River Basin. Additionally, they asserted that the project's narrowly defined purpose restricted alternative solutions and that the analysis failed to adequately evaluate cumulative downstream degradation on Western Slope waterways.

Fourteen Years of Permit Reviews Followed by an Injunction

After a 14-year permit application and review process, Denver Water's project was halted in October 2024 by rulings from U.S. Senior District Judge Chistine M. Arguello. In the 86-page ruling on the merits that the Tenth Circuit reversed, Judge Arguello held that the Corps had violated the CWA and NEPA when permitting the expansion of the reservoir.¹

Six months after issuing its ruling on the merits, Judge Arguello issued orders temporarily halting construction and permanently barring aspects of the reservoir expansion, noting that Denver Water proceeded at its own risk during pending litigation. Subsequent modifications by the judge on June 3, 2025, permitted structural dam work to continue strictly for safety reasons while keeping restrictions on diverting water to fill the reservoir. The order vacated the project's environmental permit and blocked Denver Water from executing the expansion, tree clearing, and reservoir pool enlargement.²

Tenth Circuit's Reversal

Written by Judge Timothy Tymkovich, the three-judge panel reversed the district court's rulings and determined that the Army Corps' environmental reviews were not arbitrary or capricious, stating in part:

Exercising jurisdiction under 28 U.S.C. § 1291, we reverse. The district court found that the Corps violated the CWA and NEPA because it (1) too narrowly defined the Moffat Project's purpose, and (2) failed to adequately consider project costs and climate change's impact on the project's feasibility.

We conclude the Corps may include a project's multiple related purposes when defining the project's purpose. And we also find that the Corps' determinations on cost and climate change were reasonable and supported by the record.

The court noted that the agency had "considered and meaningfully evaluated" climate models but ultimately found them too unreliable to quantify precise future impacts on stream flows.

Substantial Deference to Agency Decisions

Central to the appellate court's reversal is its emphasis that the judiciary's role is not to second-guess technical or scientific judgments made by federal agencies, provided those decisions rest on a reasoned basis. Judge Tymkovich held:

To clearly demonstrate an alternative should be excluded, the Corps need only take "a hard look at the proposals and reach[] a meaningful conclusion based on the evidence." *Id.*

In the context of a NEPA claim, arbitrary-and-capricious review carries even more deference. *Seven Cnty.*, 605 U.S. at 180 (requiring "substantial deference to the agency" when reviewing for compliance with NEPA).

The Tenth Circuit vacated the permanent injunction issued by the district court and remanded the case with instructions to enter judgment against the environmental groups. Unless Save the Colorado or others seek an *en banc* review by the Tenth Circuit, or appeal the decision to the U.S. Supreme Court, this decision effectively ends the decades-long permitting battle, allowing Denver Water to complete construction and begin filling the expanded reservoir.

This blog was drafted by [John L. Watson](#), an attorney in the Spencer Fane Denver, Colorado, office. For more information, visit www.spencerfane.com.

¹ See [District Court order, 86-page opinion](#)

² *Save the Colorado v. Semonite*, Civil Action No. 1:18-cv-03258-CMA, ECF No. 176 (D. Colo. Apr. 3, 2025)

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