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June 26, 2024

**RE: Response to Request for Information (SPA-2023-00231)**

Dear Mr. Frank:

This letter is in response to your letter to me dated May 28<sup>th</sup>, 2024, regarding the Army Corps of Engineers' (Corps) investigation related to work TEP Rocky Mountain LLC (TEP) performed on a gravel road leading to its operations in Garfield County, Colorado. Specifically, your letter states that the "subject activity includes the construction to a culvert road crossing on an unnamed tributary of the Colorado River, located south of the Garfield County Landfill, Township 6 South, Range 94 West, Section 20 SENE, at latitude 39.5113°, longitude -107.9061°." You also asked TEP to address several questions; responses to those questions are provided below.

**Location Correction and Background**

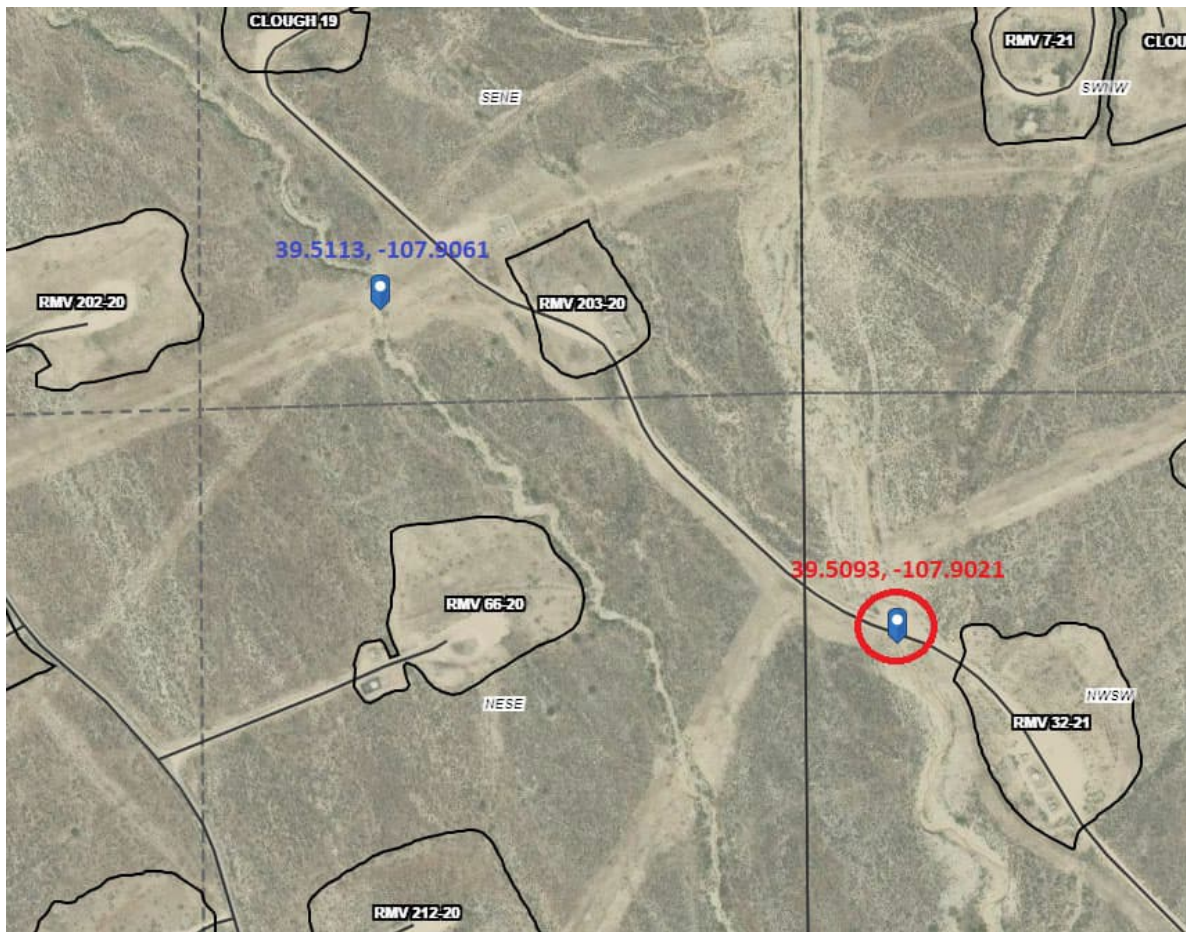
As an initial matter, we think it would be helpful to provide some background information and to also provide the correct location of where the activity described in your letter occurred.

TEP owns oil and gas locations in Garfield County, Colorado. Numerous existing gravel roads allow access to these locations. Because of the topography of the area, ephemeral and intermittent drainages have formed to drain snowpack runoff and precipitation from the nearby mountains. At certain times of the year, and depending on the snowpack in a year, there are low water crossings on access roads formed when the drainages cross these roads.

On April 7<sup>th</sup>, 2023, TEP received a Corrective Action Required Field Inspection Form (Inspection Report) from the Colorado Oil and Gas Conservation Commission, now known as the Colorado Energy and Carbon Management Commission (ECMC). The Inspection Report stated that travel on the access road at issue here was unsafe because run off had caused erosion and degradation of the road. Specifically, ECMC found there was "[n]o access to the location [because] the access road . . . has severe degradation & erosion & is washed out." The agency ordered TEP to correct this situation by promptly "repair[ing] and maintain[ing] the lease road." ECMC Enforcement Guidance explains that a "Corrective Action Required Inspection Report requires an operator to correct a less serious violation within a specified time. If the operator does not correct the violation within the time prescribed, the Director may issue a [Notice of Alleged Violation] and seek a penalty." Copies of the Inspection Report and the excerpt from the Enforcement Guidance are attached.

TEP performed repair work on the road on April 18 in compliance with ECMC's order. This work involved moving existing material that had eroded from the road to re-level the road and embankment to improve travel. TEP did not import fill material from off-site. The culvert seen in the photographs attached to your letter had been previously abandoned in place and was not in use. Thus, the culvert is unrelated to the maintenance work.

We also would like to note the correct location of this activity. The coordinates provided in your letter refer to a different location than where the road maintenance work at issue was completed. For clarity, the map below shows the coordinates noted in your letter (in blue), and the coordinates of the location of maintenance on the access road (red circle). The photographs provided in your letter were taken in the red circled area; no activity occurred at the coordinates shown in blue.



#### Response to Corps Investigation

Your letter states that the Corps has opened an investigation to determine whether this activity is regulated under Section 404 of the Clean Water Act and occurred without a Department of the Army (DA) authorization. TEP does not believe the road repair and maintenance activities occurred in waters that are regulated under the Clean Water Act because the water that was running across the road is an intermittent drainage through an upland area that would not be considered “waters of the United States” under the Corps’ regulations. The Corps’ definition of waters of the United States includes tributaries of traditionally navigable waters “that are relatively permanent, standing or continuously flowing bodies of water.” 33 CFR 328.3(a)(3). Your letter states that the drainage is a tributary of the Colorado River.

First, the drainage through this crossing should not be considered a tributary and is not a relatively permanent, standing or continuously flowing body of water. Flow in this drainage is significantly impacted by precipitation and seasonal runoff of snowmelt. In late spring, snowmelt from the high country will run through the drainage at issue here. Parts of the drainage, including the location of this crossing, will then dry up for much of the year except during localized rain events. The snowpack was above average in 2023; according to National Resources Conservation Service (NRCS) data, the snowpack in Garfield County was 126% of average on April 1, 2023. There were also higher

than average temperatures in April 2023, which led to flooding in some parts of the western slope. ECMC's inspector came to the access road at a time of significant snowmelt runoff, but the drainage through this crossing does not run continuously and should not be considered a water of the United States.

Even in the event the Corps determines the drainage is regulated under the Clean Water Act, TEP's maintenance is an exempt activity under Section 404(f) of the Act. Specifically, under Section 404(f)(1)(B), discharge of dredge and fill material is not prohibited if it is "for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures." The Corps regulations also exempt discharges from maintenance of transportation structures. 33 CFR 323.4(a)(2) ("Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.").

The access road is a currently serviceable transportation structure. It has been used for a number of years to allow access to TEP's and others' oil and gas locations. The Clean Water Act and the Corps' regulations specifically exempt TEP's activity to re-level and maintain the functionality of the road.

Finally, even if the maintenance exemption did not apply (TEP believes it does), the Corps' Nationwide Permit No. 3 (NWP 3) would also authorize TEP's maintenance of the access road. NWP 3(a) authorizes the repair, rehabilitation, or replacement of any currently serviceable structure or fill. It also authorizes minor deviations in the structure's configuration or filled area that are necessary to make the repair, rehabilitation, or replacement. As discussed, TEP did not actually deviate from the access road's configuration or area—it simply moved dirt that had eroded from the road and embankment back onto the road and embankment to keep the road level and safe for travel. Nonetheless, in the event the statutory and regulatory exemptions did not apply to part of the work, TEP's maintenance activity would be authorized by NWP 3.

#### **Response to Corps Questions:**

1. *A description of all activities that have occurred in any type of aquatic resource on the site. Aquatic resources include, but are not limited to, rivers, streams, ditches, lakes, ponds, and wetlands. The information you provide should include the purpose and need for the work, when the work was conducted (start and end dates), what equipment was used, the area (in square feet or acres) of the aquatic resource(s) that was/were affected, and the amount (in cubic yards) and type of material that was discharged into the aquatic resource(s);*

As discussed above, TEP does not believe any activities occurred in aquatic resources that would be considered "waters of the United States" so as to be regulated under Section 404 of the Clean Water Act. Any water crossing the access road runs intermittently to drain snowmelt and precipitation runoff. Nonetheless, TEP will provide the information requested.

TEP's contractor conducted maintenance work on the access road and embankment on April 18<sup>th</sup>, 2023. The purpose of this work was to repair and relevel the access road due to loss of road material caused by erosion. The work was necessary for such maintenance and to comply with ECMC's April 7<sup>th</sup>, 2023, order. The contractor used a front-end loader to move approximately 10-12 cubic yards of dirt that had eroded from the access road and place it back onto the road and embankment for releveling.

2. *Any information about the location, type, and number of aquatic resource(s) potentially affected in the project area;*

TEP does not believe any aquatic resources were potentially affected in the project area.

3. *A copy of any federal, state, tribal or local permits or other authorizations obtained for the activity;*

No federal, state, tribal or local permits were obtained for the maintenance activity because none were required. This was a routine maintenance activity conducted in response to a significant volume of snowmelt water that made access to well pads above this crossing difficult. The well pads above this location contain active, properly permitted oil and gas wells. As such, TEP has a legal obligation to maintain access to these locations in good / serviceable condition so that we can continue the safe and responsible operation of these wells and so ECMC can inspect them. Further, as previously noted, the ECMC issued an Inspection Report on April 7<sup>th</sup>, 2023, which ordered TEP to repair erosion of the road caused by seasonal run-off. See attached Inspection Report.

4. *Names and addresses of the individuals, companies, or contractors that conducted the activity;*

Moody Construction & Sons, Inc. conducted the road maintenance work. Moody's address and phone number are P.O. Box 906, Rifle, CO 81650; 970-379-9192.

5. *Photographs of the site before and after the activity; and*

Attached are photographs comparing the site before the maintenance was completed and photographs of the same areas taken on June 11<sup>th</sup>, 2024. We do not have photographs immediately after the maintenance was completed.

6. *Any other information you believe would be pertinent to our initial investigation of this matter.*

Please see the description above.

If needed, TEP personnel are readily available for an on-site meeting to assist the Corps in its further investigation and understanding of this matter. Please reach out to me via email at [sbrennan@terraep.com](mailto:sbrennan@terraep.com) or telephone at 970-948-3166 to confirm a date and time that you are available to meet at the location. We look forward to working with you to resolve this matter.

Sincerely,

**Shawn Brennan** Digitally signed by Shawn Brennan  
Date: 2024.06.26 12:55:35 -06'00'

Shawn Brennan  
Environmental Manager  
Terra Energy Partners  
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970-948-3166