



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

**MAY 18 2010**

Ref: 8EPR-EP

Colonel Robert J. Ruch  
District Commander  
U.S. Army Corps of Engineers, Omaha District  
1616 Capitol Avenue  
Omaha, Nebraska 68102-4901

Re: Chatfield Reallocation Study

Dear Colonel Ruch:

Thank you for your February 3, 2010, letter regarding the Chatfield Reallocation Study. The Environmental Protection Agency (EPA) is committed to open communication with the U.S. Army Corps of Engineers (Corps) on the Chatfield Storage Reallocation project to ensure the long-term water needs of the Denver metropolitan area are addressed while protecting this valuable urban amenity. We understand the Feasibility Study/Draft Environmental Impact Statement (FS/DEIS) has not been finalized and are hopeful our concerns may be resolved prior to publication of the FS/DEIS. This letter applies to the Clean Water Act Section 404 issues as our NEPA review will be performed when the FS/DEIS is published.

One of the major issues facing the western United States is a projected shortage of potable water delivery reservoirs. As a result, my staff has recently reviewed several EIS documents for water supply projects, mainly in conjunction with the Corps' regulatory program. As you are aware, EPA and the Corps must review all water supply projects and ensure that regulations for environmental protection are consistently and properly applied.

The Chatfield Reservoir State Park (Chatfield) provides a broad array of uses ranging from traditional uses such as camping and boating to more distinctive uses such as scuba diving. The proximity to the Denver metropolitan area combined with the diversity of available activities makes it a very important resource in Colorado and deserving of protection. These resources, in an otherwise arid region of the western United States, are valuable to not only birds, fish and other wildlife but to the residents of the Denver area as well.

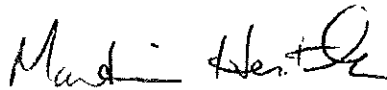
Compliance with applicable Clean Water Act (CWA) requirements for the Corps' civil works projects such as Chatfield must be ensured. The requirements include selection of the Least Environmentally Damaging Practicable Alternative (LEDPA) in accordance with the Clean Water Act (CWA) §404(b)(1) Guidelines (Guidelines). In your February 3, 2010, letter you indicate that rather than considering the Guidelines in Corps' civil works projects, the Corps applies the *Economic and Environmental Principles and Guidance for Water and Related Land*


*Resources Implementation Studies (P&G).* Consideration of the P&G does not preclude applicability of and compliance with the Clean Water Act requirements, including the Guidelines, to civil works projects. In particular, EPA notes the Corps' regulations at 33 C.F.R. § 335.2 state "the Corps does not issue itself a CWA permit to authorize Corps discharges of dredged material or fill material into U.S. waters, but does apply the 404(b)(1) guidelines and other substantive requirements of the CWA and other environmental laws."

In order to comply with the Guidelines, alternatives must be considered prior to mitigation to identify the LEDPA. The Guidelines require avoidance and minimization of adverse impacts and the selection of the LEDPA before applying compensatory mitigation for unavoidable impacts. This sequencing requirement was clarified in the February 6, 1990 *Memorandum of Agreement between the EPA and Department of Army Concerning the Determination of Mitigation Under the CWA Section 404(b)(1) Guidelines* (Mitigation MOA) and the *2008 Compensatory Mitigation for Losses of Aquatic Resources Final Rule*. According to the Corps *Mitigation MOA Q's and A's* and the *Memorandum for See Distribution, Subject: Section 404 Mitigation Memorandum of Agreement*, February 7, 1990, the Department of Army intended integration of this sequencing framework into all Corps activities including civil works projects. In addition, the sequencing requirement applicability to Corps civil works projects was affirmed in the recent §404(c) *EPA Final Determination regarding the Proposed Yazoo Backwater Area Pumps Project, Issaquena County, Mississippi*, which stated that "adverse environmental impacts associated with the proposed discharge of fill material to waters of the United States first be avoided to the maximum extent practicable and then minimized to the extent appropriate and practicable. For unavoidable impacts which remain, compensatory mitigation is required to offset wetland and other aquatic resource losses." (p. 60).

As we discussed in our May, 2009 letter, the Corps is required by regulation to analyze the alternatives to ensure the selection of the LEDPA. In order to assure compliance with the Guidelines, the alternatives must be reanalyzed to determine how each alternative avoids and minimizes impacts to waters of the United States independent of mitigation. We look forward to discussing these issues prior to the issuance of the FS/DEIS. If you have any questions, please contact Karen Reed, Wetlands and Tribal Unit Chief, at 303-312-6019 ([reed.karen@epa.gov](mailto:reed.karen@epa.gov)) or Brent Truskowski, Wetlands Team, at 303-312-6235 ([truskowski.brent@epa.gov](mailto:truskowski.brent@epa.gov)).

Sincerely,



 Carol L. Campbell  
Assistant Regional Administrator,  
Office of Ecosystems Protection  
and Remediation