UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

MAY 15 2009

Ref: EPR-N

Colonel David C. Press
Commander
U.S. Army Corps of Engineers, Omaha District
1616 Capitol Avenue
Omaha, NE 68102-4901

Re: EPA Comments on the Preliminary Draft Environmental Impact Statement for Chatfield Storage Reallocation Project

Dear Colonel Press,

The U.S. Environmental Protection Agency, Region 8 (EPA) has reviewed the U.S. Army Corps of Engineers' (Corps) Preliminary Draft Environmental Impact Statement (PDEIS) for the Chatfield Storage Reallocation (Chatfield) Project. EPA offers these comments in accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C), and our authority pursuant to Section 309 of the Clean Air Act (CAA), 42 U.S.C. Section 7609, and Section 404 of the Clean Water Act (CWA), 33 U.S.C. 1344. The NEPA staff has worked closely with the Wetlands program and we concur with the overarching concerns raised in their letter (attached). Additionally, we offer the following, more detailed comments on the alternatives considered in the PDEIS. In order to best resolve these concerns, we would like to request a meeting with you and your staff as soon as possible.

Background

The Colorado Water Conservation Board (CWCB), a division of the State of Colorado's Department of National Resources, requested that the Corps consider reallocating space within Chatfield Reservoir for water supply purposes, on behalf of a group of 15 water users in the Denver metropolitan area. Some of the water users requesting the reallocation currently rely on non-tributary groundwater from the Denver Basin aquifer, which cannot be replenished with run-off water from rain or snow-melt. To decrease their dependence on nonrenewable aquifers, many

water users have secured rights to surface water in the South Platte River and Plum Creek. These sources are considered renewable, because they can be replenished with seasonal run-off from rain or snow-melt. However, because many of the water users' surface water rights are considered junior, they can only call on this supply when the rivers are high enough to accommodate senior rights first. If approved, a reallocation at Chatfield would store renewable surface water for storage and use during low-flow periods, thereby helping these regional water users meet demand for municipal and industrial needs in response to population growth in the region, and provide additional water supplies for agricultural and recreational uses.

Four alternatives were evaluated in the PDEIS, including the No Action Alternative. The proposed action, Alternative 3, would use Chatfield Reservoir to store renewable surface water from Plum Creek and the South Platte River for storage and use during low-flow periods. Under this alternative, storage from the flood control pool would be reallocated to the joint flood control-conservation pool. The elevation of the multipurpose/conservation pool would be raised 12 feet; from 5,432 mean sea level (msl) to 5,444 feet msl. The average annual yield under Alternative 3 is estimated at 8,539 acre-feet. However, the exact pool elevation of 5,444 feet msl would not be achieved every year due to fluctuations in the amount of runoff available on an annual basis; elevations would fluctuate up to 21 feet, creating water levels anywhere from 5,423 msl to 5,444 msl (page 4-24).

EPA understands that the planning process has been underway for several years, and that the project sponsors strongly support Alternative 3. Unfortunately, EPA was not involved in the development of this document, and it was not until February 2009 that we realized the project involved the discharge of dredged and fill material in waters of the U.S. and, therefore, triggered the substantive requirements of an individual 404 permit. EPA's review of the PDEIS has identified significant concerns with regard to the project's conformity with the CWA Section 404(b)(1) Guidelines, as well as impacts to water quality, wetlands and habitat for endangered species. EPA is also concerned with the lack of a detailed mitigation plan for offsetting these impacts. EPA believes these concerns, summarized below, must be addressed prior to moving forward with issuing the DEIS.

Clean Water Act Section 404 Issues

EPA believes the PDEIS does not provide sufficient information to establish compliance with the CWA Section 404(b)(1) Guidelines, 40 CFR Part 230 (Guidelines). Specifically, the PDEIS does not include a complete 404(b)(1) alternatives analysis and, based on the information in the document, EPA believes the Proposed Action is not the Least Environmentally Damaging Practicable Alternative (LEDPA). The Corps has indicated that it plans to provide a 404(b)(1) analysis for the relocation of the swim beach but does not intend to apply the 404(b)(1) analysis to other elements of the proposed action, including the relocation of infrastructure like recreational facilities and roads, which would also impact Waters of the U.S. However, EPA is concerned that the project is being improperly segmented, as all proposed relocation of infrastructure is a direct result of the proposed rising elevation of the reservoir for water storage. Therefore, EPA believes a (b)(1) alternatives analysis is needed that considers the entire proposed action as a single and complete project, in determining the LEDPA.

For purposes of both NEPA and Clean Water Act requirements, the analysis regarding the availability of less environmentally damaging practicable alternatives (40 CFR §230.10(a)) does not appear sufficient. EPA believes the PDEIS inappropriately constrained the alternatives analysis given that the purpose and need for action is identified as increasing availability of water in the greater Denver area. Council on Environmental Quality regulations require the EIS to examine all reasonable alternatives to the proposal (Section 1502.14). The PDEIS only rigorously explored and objectively evaluated the reallocation of storage space in Chatfield Reservoir. This alternative has significant environmental impacts, and EPA is concerned that the PDEIS does not adequately consider alternatives for increasing water supply that may be less environmentally damaging than the reallocation at Chatfield. This will be particularly important to the 404 program, as the 404 program outlined in a separate letter to you. EPA strongly recommends that all reasonable alternatives that are practicable and feasible from a technical and economic standpoint be considered in the DEIS.

Water Quality

EPA believes the PDEIS may not adequately address the project's potential to exacerbate existing water quality concerns in Chatfield Reservoir. The Chatfield Reservoir Clean Lakes Study identified potential water quality problems for Chatfield Reservoir because of increases in eutrophication caused by nutrient loading and other pollutants. At the same time a Total Maximum Annual Load was approved by the State for phosphorous, the Colorado Water Quality Control Division developed a target for chlorophyll-a (page 3-10). The PDEIS states that its water quality model predicts the Proposed Action would result in a long-term phosphorous concentration increase of 60 percent over the No Action alternative. The increased phosphorus load will likely result in violations of the associated water quality standards. Furthermore, E. coli concentrations are estimated to be highest under Alternative 3, which would have the greatest potential increase in shoreline areas. The PDEIS states that E. coli concentrations could increase by roughly 32 percent, which is an aesthetic and a human health concern for this recreational amenity. In addition, several segments of the South Platte River below Chatfield Reservoir are on the State's 303(d) list of impaired water bodies for E. coli. This project would likely increase loads of E. coli into these already impaired water bodies. EPA believes these are significant impacts, and the PDEIS must analyze these potential impacts fully and mitigate as much as possible.

Lack of Mitigation

The PDEIS states that the Proposed Action will potentially inundate approximately 587 acres of shoreline, including 81.8 acres of what EPA believes to be high quality wetlands. The project would also impact 75.3 acres of Preble's Mouse habitat and 81.8 acres of bird habitat, and inundate approximately 200 acres of mature, difficult-to-replace cottonwood galleries. The PDEIS states that these impacts will be mitigated, and the document provides a conceptual plan which states that they will only inundate these resources if mitigation can be found in advance of the impacts. While there appears to be an intention to replace the functions and values of those resources, EPA does not believe that adequate mitigation can be found in the affected watersheds. We are also concerned that the PDEIS does not address the feasibility of

implementing the proposed mitigation.

EPA appreciates the opportunity to comment at this stage of the planning process. We are committed to working with the Corps and other stakeholders to improve the analysis of potential impacts of this proposal as we coordinate to identify an alternative that satisfies the project purpose and ensures effective protection for human health and the environment. We look forward to scheduling a meeting with you to discuss our concerns at your earliest convenience. If we may provide further explanation of our concerns, please contact Melanie Wasco of my staff at (303) 312-6540, or me at (303) 312-6004.

Sincerely,

Larry Svoboda
Director, NEPA Program

CC:

Tim Carey, U.S. Army Corps of Engineers
Eric Laix, U.S. Army Corps of Engineers