



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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

Dear Colonel Press:

The Environmental Protection Agency Region 8 (EPA) has reviewed the Preliminary Draft Environmental Impact Statement (PDEIS) and Feasibility Report for the Chatfield Storage Reallocation Project. We are writing to notify you of our overarching concerns regarding the scope of analysis for this project and the potential for significant environmental impacts from the proposed action, and to request a meeting to discuss EPA's concerns. EPA acknowledges the need to ensure adequate water supply storage for the project sponsors. However, EPA wants to ensure that the decision of selecting an appropriate storage solution is made consistent with the relevant laws and regulations. As you are well aware, Chatfield is a valuable environmental and recreational resource in close proximity to Denver. Therefore, it is in the public interest that the U.S. Army Corps of Engineers (Corps) carefully consider the anticipated adverse impacts to Chatfield and thoroughly evaluate the practicability of other alternatives, so that the alternative selection withstands close scrutiny. EPA is offering to work with the Corps to resolve these issues in order to allow the project to move forward.

This letter is intended to convey the overarching concerns of the EPA Wetlands program, in particular, in regard to the lack of a thorough Clean Water Act §404(b)(1) analysis. We expect the EPA National Environmental Policy Act (NEPA) program to provide a separate correspondence voicing their concerns regarding this PDEIS soon.

As you are aware, federal agencies must analyze the environmental impacts of certain actions as required by NEPA, §404 of the Clean Water Act (CWA) and its implementing regulations, as well as Executive Order 11990. Among other requirements, these authorities mandate that information pertaining to any projects affecting wetlands and waters of the United States must be thoroughly disclosed and evaluated, and the least environmentally damaging practicable alternative (LEDPA) must be selected.

As an initial matter, EPA is concerned that the analysis in the PDEIS considers the raising of water levels in the reservoir separately from the other associated actions, including the relocation of infrastructure. In the case of a civil works project like this one, EPA understands

the Corps is bound by all substantive requirements normally required of an individual permit applicant according to 40 CFR 230.2(a)(2); 33 CFR § 336.1(a); Army Corps of Engineers, *Planning Guidance Notebook*, App. C, C-6. These requirements include consideration of a single and complete project as well as compliance with the CWA §404(b)(1) Guidelines. In this instance, the raising of the water levels at Chatfield Reservoir and all actions that must be taken as a result of the higher water levels must be evaluated together as a single and complete project. EPA believes the Corps must consider the scope and impacts of the entire project when conducting the analysis required by the CWA §404(b)(1) Guidelines and in determining the LEDPA.

In addition, EPA is concerned the PDEIS inappropriately constrained the alternatives analysis given the identified purpose and need of the action, to increase availability of water in the greater Denver area. According to the PDEIS, alternatives were selected, designed and evaluated to determine the best and highest use of Chatfield Reservoir. Instead of analyzing all potential alternatives against the purpose and need of the project and implementing the requirements of NEPA, CWA § 404 and its implementing regulations and Executive Order 11990, the clear focus of the PDEIS is on the reallocation of storage space in Chatfield Reservoir. This analysis began with the assumption that "new storage space made available in an existing structure is without the costly and (presumably) more environmentally impacting action of constructing new storage facilities" (page 2-3 PDEIS). However, as shown in Chapter 2 of the PDEIS, the preferred alternative is potentially the most environmentally damaging alternative analyzed. 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. The PDEIS provides much of the analysis required for a CWA §404(b)(1) analysis in its current form, however EPA does not believe that an adequate practicability analysis was done, which allowed alternatives to be discarded rather than fully considered and analyzed. EPA strongly recommends the alternatives analysis thoroughly address all appropriate alternatives for increasing water supply and adequately consider the practicability of each alternative.

Among the issues EPA has identified thus far regarding the environmental impacts of this project, the project as proposed in the PDEIS will potentially inundate approximately 587 acres of shoreline; including 81.8 acres of what EPA believes to be high quality wetlands. The project also impacts 75.3 acres of Prebles Mouse habitat, and 81.8 acres of bird habitat. The project would also inundate approximately 200 acres of mature, difficult to replace cottonwood galleries. Although the PDEIS states that these impacts will be mitigated for, and provides a conceptual plan which will only inundate these resources if mitigation can be found in advance of the impacts, EPA does not believe that adequate mitigation can be found in the affected watersheds.

In addition, EPA is concerned with the high probability of violating certain water quality standards for Chatfield Reservoir. The current water quality standards for chlorophyll *a* and phosphorus are predicated on the reservoir having no further assimilative capacity. According to the PDEIS, the project is predicted to cause a significant increase of nutrients due to what is termed the new lake effect. EPA also believes that the wetlands which will be inundated currently provide some nutrient uptake functions which will be lost, thereby increasing further

the nutrient load reaching the reservoir as a result of this project. The increase in phosphorus load will likely result in violations of the associated water quality standards.

We look forward to working closely with the Corps to resolve the issues raised by this letter. If you have any questions regarding this letter, please contact Brian Caruso of my staff at 303-312-6573.

Sincerely,



Humberto L. Garcia Jr., Program Director
Ecosystems Protection Program

cc: Eric Laux, USACOE-Omaha
Tim Carey, USACOE-Denver



