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Colorado Water Conservation Board

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August 5, 2009

Tom Browning  
Watershed Protection & Flood Mitigation  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, CO 80203

RE: Chatfield Storage Reallocation Project, Colorado  
AFB/PGM

Dear Mr. Browning:

The Alternative Formulation Briefing Project Guidance Memorandum (PGM) identifies a number of issues for which more information may be required. The purpose of this letter is to provide additional information and clarification as to those issues on behalf of the Colorado Division of Parks and Outdoor Recreation (Parks) and the Colorado Division of Wildlife (Wildlife), collectively referred to as the State.

The State believes existing contracts with both the United States and Denver for the regulation of water storage between elevations 5,423 feet and 5,432 feet, and for Land and Water Conservation Funds, are an absolute constraint in any proposals that may affect the elevation of the water stored in Chatfield Reservoir.

When the United States authorized Chatfield Reservoir to be used for recreational and fish and wildlife purposes, and not just for flood control, it entered into a contract with the State of Colorado Department of Natural Resources to outline the operation of the reservoir. That contract is dated March 1, 1979 and contained certain requirements with which the State agreed to comply, including:

- The permanent pool be maintained at elevation 5,423
- Below 5,432, the reservoir pool level is within the "conservation storage zone"
- State to maintain level between 5,423 and 5,432 "except during periods of severe and protracted drought" as determined by the State and approved by the Corps District Engineer, Omaha District
- Financial responsibility for costs of delivery of water when storage level falls below approximately elevation 5,426



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The State received proposals from several water users to provide water to replace the 3,800 acre feet of estimated annual evaporation loss in order to maintain the permanent pool, and awarded the contract to Denver. In the contract between the State and Denver, Denver recognized the State's responsibility under the March 1979 contract with the United States to maintain the water level between 5,432 feet and 5,423 feet. The Denver contract requires maintenance of a permanent pool between elevations 5,423 and 5,432 with an expected average storage amount of 20,000 acre feet (elevation 5,426.94) for recreational purposes. Denver has the right to the use of water between 5,423 and 5,432 as long as the reservoir is operated as nearly as practicable so that at least 20,000 acre feet is in storage May 1 – Aug 31. The contract allows Denver to "unavoidably" cause the water level to drop below 5,423, but only during severe and prolonged drought conditions, as determined by the State (Colorado Water Conservation Board). Thus Denver is required to replace evaporation in order to maintain the permanent pool except in severe and prolonged drought conditions. This provision only releases Denver from its obligation to provide replacement water for evaporation, however, it does not grant Denver any additional storage space beyond the 10,785 acre feet (the amount of water between elevation 5,423 feet and 5,432 feet).

Any reduction in the elevation below 5,423 would have an adverse impact on recreation as well as on fish and wildlife at the reservoir. Furthermore, under the Land and Water Conservation Fund Project Agreement dated June 18, 1974, the United States granted to Parks \$348,375 for the acquisition of water for the Chatfield permanent pool for recreation use. The 1974 Agreement prohibits conversion of the use of water acquired with Land and Water Conservation Funds (LWCF) to any use other than public outdoor recreation. Thus any use of the permanent pool other than recreation would be in violation of this Agreement. The Agreement specifies that only specific performance, not repayment of funds, is the remedy for breach of the contract. This means that Parks would have to offer recreational use at a replacement site similar to Chatfield at permanent pool levels in order to avoid being in violation of the Agreement with the LWCF. Such action by Parks is not feasible.

The State is not willing to consider modification of any contracts that would allow the permanent pool to drop below elevation 5,423 due to the potential problems with recreation and wildlife, and potential violation of the 1974 LWCF Agreement. Although Denver may agree to make space within elevations 5,423 and 5,432 available for reallocation (subject to the terms and conditions of the 1979 Agreement), the space below 5,423 is not and cannot be available for reallocation.



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The proposal to relocate the existing recreation facilities to elevation 5,447 as a part of the reallocation is assessed in the recreation mitigation study compiled by EDAW. That study indicates that the recreational facilities will be operational at that level. However, this finding is based on the assumption that reservoir levels will not fall below elevation 5,426 from May 1 - August 31 of each year, and below elevation 5,423 at all other times, and that Denver will continue operations of Chatfield, including exchanges, as it has historically. It is our understanding that Denver has submitted a draft EA to install pumps to divert water not only from the storage space between the elevations of 5,432 and 5,423, but also from the space between 5,423 and dead storage level (659 acre feet) during certain conditions. The greatest potential for problems would be created when the recreational facilities are relocated to function at 5,444 by Denver having the ability to reduce reservoir levels below 5,423. These issues have not been addressed by the draft EIS and are of great concern to the State.

The State is especially concerned that the draft EIS does not consider Denver's draft EA. It is the State's position that the EIS regarding the reallocation cannot be considered without integration of the EA proposed by Denver, since the draft EA contains specific operational plans which would potentially have a great impact on the operation of the reservoir under the reallocation. Although Denver may support the reallocation of flood control storage in Chatfield, the question of how the two projects would work in conjunction with each other still remains. Such proposals must be considered in concert in order to assess possible impacts by either project on the other.

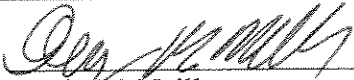
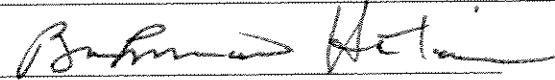
The State recognizes the effort being put forth by the Omaha District and Project Participants to develop a comprehensive mitigation plan. The State believes that the plan should address recreational and fish and wildlife impacts other than those directly associated with wetlands or endangered and migratory species. For example, modeling included in the preliminary draft EIS report predicts reductions in stream flow during certain times which may impact fish habitat and populations below Chatfield. It is unclear in the preliminary draft EIS report whether the eventual plan will include the necessary mitigation for impacts. The State stocks fish downstream to provide enhanced recreational fishing opportunities, and local entities such as Trout Unlimited have invested funding and effort towards stream improvement projects. These areas must be addressed in the mitigation plan. Similarly, future reservoir operations which drawdown water levels in the spring may negatively impact annual Walleye egg collection efforts, which are critical to the State's sport fish stocking program. All of these potential impacts would be directly linked to the reallocation of the flood control pool, although a complete assessment of their probability and magnitude requires better understanding of Denver's proposed operations in Chatfield.



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If you would like additional information on these or any other topics, please do not hesitate to contact us.

Sincerely,

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cc: Alex Davis  
Jennifer Mele