DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
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WASHINGTON, D.C. 20314-1000

CECW-P/CECW-NWD

12 MAY 2010

MEMORANDUM FOR COMMANDER, Northwestern Division (CENWD-PDD)

SUBJECT: Implementation Guidance for Section 3042 of the Water Resources Development Act of 2007 (WRDA 2007) (P.L. 110-114) and Section 116 of Division C of the Omnibus Appropriations Act of 2009 (P.L 111-8) - Chatfield Lake, Colorado, Reallocation for Water Supply

1. Authorization. Section 808 of the Water Resources Development Act of 1986 (P.L. 99-662), as amended by Section 3042 of WRDA 2007, authorizes the Secretary, upon request of the Colorado Department of Natural Resources (CDNR) and the Chief of Engineers' finding of feasibility and economic justification, to reassign (i.e., reallocate) storage space in the Chatfield Reservoir, Colorado, to joint flood control-conservation purposes, including storage for municipal and industrial water supply, agriculture, and recreation and fishery habitat protection and enhancement. Section 116 of Division C of the Omnibus Appropriations Act of 2009 (P.L 111-8) authorizes the CDNR to perform modifications of Chatfield Reservoir and any required mitigation which results from implementation of the project for reallocation of storage space. Section 116 also directs that in carrying out the reallocation of storage, the Secretary shall collaborate with the CDNR and local interests to determine the costs to be repaid for storage that reflects the limited reliability of the resources and capability of non-Federal interests to make use of the reallocated storage space. Copies of Section 116 and Section 808 are enclosed for information.

2. Chatfield Lake Reallocation. The Chatfield Lake reallocation will be implemented in accordance with all laws, regulations, policies and procedures normally applicable to reallocation for M&I water supply (see ER 1105-2-100, Appendix E, Section VIII). The District will complete the in-progress, 50/50 cost-shared feasibility-level water supply reallocation report, which will be the decision document supporting the project partnership/water storage agreement. Both the report and agreement will require approval by the Assistant Secretary of the Army for Civil Works (ASA(CW)).

3. CDNR Work. Section 116 authorizes CDNR to perform modifications of Chatfield Lake and any required mitigation which results from implementation of the CDNR water supply reallocation. The work items to be performed by CDNR will be identified during the planning process and described in the reallocation report. The work must meet the following requirements:

a. Written Request. CDNR must request in writing the specific work items they wish to perform. A copy of this request must be included in the reallocation report.

b. Approval process. The ASA(CW) approval of the reallocation report will include the determination of whether the proposed works items to be performed by CDNR are integral to the project. Once the reallocation report is approved, non-substantive refinements to the details of the work items may be approved by the District Commander. Additions to or substantive changes involving the work items described in the approved reallocation report must be approved by HQUSACE.

c. Agreement. Prior to proceeding with any work, CDNR and the Government must execute a project partnership/water storage agreement for design, construction and implementation associated with the reallocation. The agreement will include provisions covering the work proposed to be undertaken by CDNR, including but not limited to identification of the work items and requirements for Corps oversight and approval of such work and compliance with environmental laws and regulations and other Federal and State laws and regulations.

d. Design. Any design provided by CDNR shall be performed in accordance with the requirements in ER 1110-2-1150, reviewed in accordance with EC 1165-2-209, and subject to the applicable peer review guidance. The CDNR will not commence the construction of any work items until the designs, detailed plans and specifications, and arrangements for the prosecution of such work have been approved by the District Commander. Upon completion of any work items, CDNR will furnish to the District a copy of final as-built drawings.

e. Construction. Work items performed by CDNR will be subject to Corps review or onsite inspection, as applicable, and certification by the District Commander that the work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies. All applicable environmental compliance requirements (e.g. NEPA and obtaining all applicable Federal, State, and local permits) must be satisfied prior to initiation of construction. CDNR must comply with all applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

4. Cost of Storage Provision. The second provision of Section 116 regarding the cost of storage was addressed in the ASA(CW) letter, dated January 22, 2009, which approved a modified method, supported by CDNR, for determining the costs to be repaid by CDNR for storage in Chatfield Lake based on the limited reliability of resources and CDNR's capability to

make use of the reallocated storage space. This method will be incorporated in the plan recommended in the reallocation report.

FOR THE COMMANDER:

Encl

THEODORE A. BROWN, P.E.
Chief, Planning and Policy Division
Directorate of Civil Works

Division C of the Omnibus Appropriations Act of 2009, Public Law 111-8 March 10, 2009.

SEC. 116. CHATFIELD RESERVOIR, COLORADO.
The Colorado Department of Natural Resources is authorized to perform modifications of the facility (Chatfield Reservoir, Colorado), and any required mitigation which results from implementation of the project: *Provided,* That in carrying out the reassignment of storage space provided for in this section, the Secretary shall collaborate with the Colorado Department of Natural Resources and local interests to determine costs to be repaid for storage that reflects the limited reliability of the resources and the capability of non-Federal interests to make use of the reallocated storage space in Chatfield Reservoir, Colorado.

Section 808 of the Water Resources Development Act of 1986, Public Law 99-662, as amended by Section 3042, South Platte River Basin, Colorado, of the Water Resources Development Act of 2007, Public Law 110-114

The project for flood control and other purposes on the South Platte River Basin in Colorado, authorized by the Flood Control Act of 1950 (64 Stat. 175) is modified to authorize the Secretary, upon request of and in coordination with the Colorado Department of Natural Resources and upon the Chief of Engineers' finding of feasibility and economic justification, to reassign a portion of the storage space in the Chatfield Lake project to joint flood control-conservation purposes, including storage for municipal and industrial water supply, agriculture, environmental restoration, and recreation and fishery habitat protection and enhancement. Appropriate non-Federal interests shall agree to repay the cost allocated to such storage in accordance with the provisions of the Water Supply Act of 1958, the Federal Water Project Recreation Act, and such other Federal laws as the Secretary determines appropriate.