

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:14-cv-02749-PAB

AUDUBON SOCIETY OF GREATER DENVER, a Colorado non-profit organization,

Petitioner,

v.

UNITED STATES ARMY CORPS OF ENGINEERS,

Respondent,

CASTLE PINES METROPOLITAN DISTRICT,
CASTLE PINES NORTH METROPOLITAN DISTRICT,
CENTENNIAL WATER AND SANITATION DISTRICT,
TOWN OF CASTLE ROCK, and
COLORADO DEPARTMENT OF NATURAL RESOURCES,

Intervenor respondents.

PETITIONERS'S REQUEST FOR A STATUS CONFERENCE AND SITE VISIT

Petitioner Audubon Society of Greater Denver (“Denver Audubon”) respectfully requests that this Court hold a status conference, preferably at Chatfield State Park, at the earliest date possible. Denver Audubon is concerned that irreparable harm will occur at Chatfield State Park before the Court issues its ruling, and thus Denver Audubon believes a preliminary injunction may be necessary. However, a status conference to apprise all parties of the current timeline and plan for carrying out the Chatfield Reallocation Project could reveal information that would alleviate Denver Audubon’s concerns, thereby

obviating a request for a preliminary injunction. Thus, Denver Audubon requests a status conference at the site.

In compliance with Local Rule 7.1, counsel for Denver Audubon has conferred in good faith with counsel for the United States Army Corps of Engineers (“the Corps”), the Colorado Department of Natural Resource (“the State”), and the Chatfield Participating Entities (collectively with the State, “Intervenors”) regarding this motion.

On January 27, 2017, counsel for the Corps stated that her client opposes both Denver Audubon’s request for a status conference and its request for a site visit. Also on January 27, 2017, counsel for the State stated that the Intervenors “do not oppose a request for a telephone conference with the judge to determine the status of his review.” However, the State’s counsel stated that the Intervenors are opposed to a site visit.

In support for its Motion for Status Conference and Site Visit, Denver Audubon sets forth the following information:

1. On October 8, 2014, Denver Audubon filed a Petition for Review of Agency Action against the Corps. Parties completed briefing on June 17, 2016.
2. In an email sent on November 18, 2016, counsel for Denver Audubon asked counsel for the Corps and the Intervenors for information on any plans for tree-cutting or existing landscape changes that are scheduled for 2017, recommending a status conference to discuss what plans were in store for the Chatfield Reallocation Project. Counsel for the Corps stated that counsel for the State would have the best information as to this inquiry. Counsel for the State, on behalf of all Intervenors, stated on December 10, 2016, “that

some changes to existing landscape and tree removal are currently scheduled to begin as early as August, 2017.”

3. Counsel for the State later stated in a January 27, 2017, email that “some borings will be taken and evaluation pits dug to further develop the plans for moving various recreational facilities at the site,” although counsel referred Denver Audubon to the Chatfield Reallocation website (chatfieldreallocation.org) for further information.
4. Having been referred to the Chatfield Reallocation website, counsel for Denver Audubon did a thorough examination of the information provided therein and found information to be contradictory.
5. According to a Technical Advisory Committee recommendation dated May 2016 and posted on the website, the first round of tree-cutting operations could occur November 2016 through February 2017.
6. However, according to a Fact Sheet Updates dated November 11, 2016, and posted on the website, specific plans to relocate recreational facilities, as well as tree-cutting plans, are slated to go to the Corps for approval in April 2017, leaving Denver Audubon confused as to what information is accurate and concerned that a preliminary injunction is necessary.
7. Furthermore, the Chatfield Reallocation website does not contain any information regarding the “borings” and “evaluation pits” mentioned by counsel for the Corps, particularly where and when such activities will occur.

While opposing counsel has provided Denver Audubon with some information and has referred Denver Audubon to the Chatfield Reallocation website, the information Denver Audubon has been able to gather thus far is vague and oftentimes contradictory.

In sum, Denver Audubon is concerned that irreparable harm will occur at Chatfield State Park as a result of operations preparing for the reallocation. Denver Audubon is in the dark as to when and where operations will occur, and without the knowledge of upcoming project plans, Denver Audubon is inclined to move for a preliminary injunction. However, noting that requesting a preliminary injunction would be taxing on the Court's time and on all parties, Denver Audubon is requesting a status conference in order to gain more concrete information that may alleviate concerns of irreparable harm.

Furthermore, Denver Audubon requests that the Court hold such a status conference at the site. A site visit would allow the Court to clearly assess what activities are slated to occur in the near future and whether those activities will pose a risk of irreparable harm. In addition to hearing counsel for the Corps and the Intervenor explain plans, the Court would be able to visualize how those plans will impact the park.

WHEREFORE, Plaintiff respectfully requests that the Court hold a status conference and site visit in this matter.

Dated: February 6, 2017

Respectfully submitted,

/s/ Kevin Lynch

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CERTIFICATE OF SERVICE

I certify that on this 6th day of February, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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