

**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.

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**PETITIONER'S REPLY ON ITS MOTION FOR STATUS CONFERENCE AND SITE VISIT**

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Petitioner Audubon Society of Greater Denver (“Denver Audubon”) maintains that a status conference is necessary. While Intervenor added information to the Chatfield Storage Reallocation Project Website (“Website”) in an update document on February 16, 2017, this information further demonstrates that project plans continually change. Intervenor state that construction “including any activity that may result in significant land disturbance” will commence in October 2017.<sup>1</sup> That information has changed

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<sup>1</sup> Chatfield Storage Reallocation Project Current Activities/Status, <http://chatfieldreallocation.org/wp-content/uploads/2017/02/Chatfield-Reallocation-CSRP-Summary-Status-CSRP-Activities.pdf> (last visited February 20, 2017).

significantly from what little information the Intervenor had provided to Denver Audubon on December 10, 2016. The February 16 document also neglects to give necessary details, including but not limited to: what kind of “construction” will begin, when Intervenor plan to negotiate and finalize contracts with construction contractors, and exactly where activities like “exploratory pits” are occurring in the park.

Nothing Denver Audubon has submitted implies an improper request to consider extra-record evidence in deciding the merits of the case. Denver Audubon asks the Court to consider additional information related to the issues of irreparable injury to the park and of the balancing of harms and the public interest, related to the potential need for a preliminary injunction to preserve the status quo. Despite what the Army Corps states in its response, this is unrelated to the agency’s administrative record that the Court uses to decide the merits of this case.

Settled law shows that extra-record evidence may be considered related to a preliminary injunction beyond the merits of the APA claim. *E.g. Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003)(where the district court heard testimony outside the administrative record from parties during a hearing on the plaintiff’s motion for a preliminary injunction). This is because “[a] motion for a preliminary injunction raises issues, such as irreparable injury and the balance of harm, that are not likely to be addressed in an agency’s administrative record.” *Unified Gov’t of Wyandotte Cty./Kansas City, Kan. v. U.S. Gen. Servs. Admin.*, No. 11-2400-JTM, 2012 WL 602838, at \*2 (D. Kan. Feb. 24, 2012).

Dated: February 21, 2017

Respectfully submitted,

/s/ Kevin Lynch

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**CERTIFICATE OF SERVICE**

I certify that on this 21st 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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/s/ Kevin Lynch  
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