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Appendix L
Real Estate Plan

REAL ESTATE PLAN CHATFIELD REALLOCATION PROJECT

in

**DOUGLAS, JEFFERSON AND ARAPAHOE
COUNTIES, COLORADO**

Prepared for
US Army Corps of Engineers
Northwest Division
Omaha District

As of

May 16, 2013

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Real Estate Division

REAL ESTATE PLAN

Chatfield Reallocation Project

in

Douglas, Jefferson and Arapahoe Counties, Colorado

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REAL ESTATE PLAN

Chatfield Reallocation Project in

Douglas, Jefferson and Arapahoe Counties, Colorado

PURPOSE: This Real Estate Plan provides preliminary information regarding potential lands, easements and rights-of-way (LER) for the construction, operation and maintenance of the Chatfield Reservoir Reallocation Project. The plan also describes the estimated LER value, together with the estimated administrative and incidental costs attributable to providing the project LER and the acquisition processes required to support project implementation. The non-Federal Sponsor for this project is the Colorado Department of Natural Resources (CDNR).

AUTHORITY: The REP supports the Feasibility Report for the Project. The Reallocation Feasibility Study was authorized by Section 808 of the Water Resources Development Act of 1986, Public Law 99-662, dated 27 November 1986, as amended by Section 3042 of the Water resources Development Act of 2007 (P.L. 110-1144). As instructed in the study authority, the storage reallocation will be made under the authority of the 1958 Water Supply Act. The authorization for the reallocation study under Section 808 of the Water Resources Development Act is as follows:

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 Statute 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, 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 (33 United States Code [USC] § 2201 et seq.; Public Law 99-662; 100 Statute 4082).

PROJECT DESCRIPTION: The Chatfield Reallocation Project is being carried out under the General Investigation Program. A reallocation would re-designate water storage space in the Chatfield Reservoir that is currently exclusively reserved for flood control purposes to storage space for joint flood control and conservation purposes. This is achieved by raising the top elevation of the existing multi-purpose conservation pool (the minimum multi-purpose pool elevation would be raised to 5,444 feet m.s.l.) effectively increasing capacity for multi-purpose water. The expanded multi-purpose pool would be re-designated as the "joint flood control-conservation" pool. By law, LERRD crediting is not applicable to this water reallocation project. The Non-Federal Sponsor must fund 100% of total project costs.

PROPERTY LOCATION: The proposed project site is located within the existing Chatfield Dam/Reservoir in portions of Douglas, Jefferson and Arapahoe Counties, Colorado. The address is

11500 North Roxborough Park Road, Littleton, Colorado 80125. Property site lies south of Interstate 470, southwest of the City of Denver. (Exhibit “A”).

DESCRIPTION OF PROJECT SITE: The proposed project site is located within the existing Chatfield Reservoir on the South Platte River, south of Littleton, Colorado. The United States Army Corps of Engineers began construction of this reservoir and dam in 1967 with completion of the dam in 1975. The primary purpose for the reservoir and dam is flood control. It also serves as one of the area’s water supply reservoirs with sixteen (16) water users. The Chatfield State Park surrounds the reservoir and provides recreational opportunities and wild life habitat.

STUDIES: A Feasibility Study on Chatfield, Cherry Creek, and Bear Creek, Colorado Reallocation was initiated November 25, 1998.

REAL ESTATE REQUIREMENTS and RECOMMENDED ESTATES:

Mitigation: The Non-Federal Sponsor (CDNR) will be required by the Water Storage Agreement (WSA) to acquire lands for ecosystem mitigation, of which most will be offsite. If the project is approved, analysis will be completed to identify specific sites and develop plans that would best meet goals of project. The WSA will require the Non-Federal Sponsor (CDNR) to incrementally acquire mitigation lands offsite after the determination of available onsite mitigation areas. The preliminary onsite mitigation lands are identified in Appendix K, Figures. The possible available mitigation lands offsite were identified in the Project Compensatory Mitigation Plan prepared by ERO Resources Corporation and attached to the Feasibility Report.

For offsite non-Federal mitigation lands, the following standard approved estates will be required:

FEE (where surface and mineral are intact):

The fee simple title to the land, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

Since a title review has not been made of the recommended mitigation lands, we are not aware of the mineral status of the lands identified for mitigation. We will encourage the CDNR to acquire as many of the lands as possible where the surface and mineral estates are intact.

FEE EXCLUDING MINERALS (With Restriction on Use of the Surface) (where surface owner expresses a desire to reserve the mineral estate):

The fee simple title to the land, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; excepting and excluding all (coal) (oil and gas), in and under said land and all appurtenant rights for the exploration, development, production and removal of said (coal) (oil and gas), but without the right to enter upon or over the surface of said land for the purpose of exploration, development, production and removal therefrom of said (coal) (oil and gas).

Where the CDNR identifies mitigation lands for acquisition where the mineral rights have been severed from the surface estate, the following procedure will be required: CDNR will obtain a Mineral Assessment Report for the property indicating the potential for mineral development, including the potential for mining and surface disturbance. The Report will be submitted to the Government for review by the Corps and the Chatfield Mitigation Company. The Government will assess the risk of allowing the sponsor to acquire the lands without the mineral rights. If the

Government determines that the risk of third party mineral development is minimal compared to the environmental qualities of the land proposed for acquisition, the Government will approve the sponsor acquiring the tract with standard Fee Estate No. 1 and footnote 1, excluding the third party mineral interests.

All offsite fee acquisitions will be on a voluntary basis. Colorado State law prohibits condemnation for environmental mitigation purposes. In cases where the sponsor cannot acquire the mitigation areas in fee, such as in the case of a land owner unwilling to grant fee title interest, we recommend the use of a conservation easement or other non-standard estate to facilitate cooperation from private land owners and successfully implement the project. A non-standard estate for mitigation (perpetual conservation easement) has been submitted separately from this decision document for approval at HQ USACE.

Disposal: All excavated soil will be relocated on site and debris disposal will be limited to the utilization of commercially licensed operating facilities, eliminating the need for real estate disposal instruments.

Privately Owned Improvements on Corps Managed Lands: Privately owned improvements lie within the proposed project area. Most of these improvements were constructed in conjunction with third party agreements held by the State of Colorado, the City of Denver, County of Denver, and Highland Ranch (See Exhibit "D"). Improvements include campground areas, a marina, recreational trails, roads, toilets, and wild life habitat. Exhibit "B-1" shows one of the entrance areas to the park and a typical road within the park. Exhibits "B-2" and "B-3" show improvements that are known to lie below the proposed minimum multi-purpose pool of 5,444 foot elevation and would need to be relocated, if the reallocation is approved. Existing records indicate 72 outgrants will be affected by the proposed project as of January 12, 2009. Outgrant uses include but are not limited to recreational use, overhead and buried power lines and communication cables, roads, right-of-way, maintenance, operation and maintenance of electric powered water intake pumping station, pipeline and sewer line easements, water lines, water pump stations, telephone facilities, buried gas line and drainage easements. At this conceptual level of the study, the number of outgrants impacted by the raise in water elevation to the maximum pool of 5,444 feet has not been determined. A survey of the area will be needed to determine precisely all areas affected by the increased elevation pool.

We have included costs to amend the existing outgrants and coordinate facility adjustments with the facility owner and the NFS in the REP baseline cost estimate.

FEDERAL OWNED LANDS: Project construction will take place on federally owned lands identified on Exhibit "C". The majority of the federally owned lands are leased to the State of Colorado, the City and County of Denver, the City of Littleton and Highlands Ranch who manage the lands for public park and recreation purposes (see Exhibit "D"). The Chatfield Reservoir Project operates to provide joint flood control and conservation, including storage for municipal and industrial water supply as well as providing recreation facilities and fishery habitat protection and enhancement. The intended use of this Real Estate Plan is to address the reallocation of a portion of the exclusive flood control storage area to joint use for water storage while maintaining the current uses.

PIKE NATIONAL FOREST: The use of some U.S. Forest Service managed lands within the Pike National Forest and along Sugar Creek have been identified as being critical for one of the project mitigation purposes. The reallocation project will result in the destruction of some of the Preble's mouse designated critical habitat. The proposed habitat restoration area identified on Figure 1 of the Appendix E Challenge Cost Share Agreement (page E-30) is located on the Forest Service lands along Sugar Creek. Although a fee estate is required for wildlife mitigation, the sponsor is not able to acquire a fee interest in the lands managed by the Forest Service, who has proposed the use of the Challenge Cost Share

Agreement found in Exhibit F of the REP and Appendix E of the Compensatory Mitigation Plan (CMP). The agreement is basically a license or federal use agreement between Douglas County, Chatfield Reservoir Mitigation Company and the USDA Forest Service Pike and San Isabel National Forests Cimarron National Grasslands (PSICC) outlining the goals within a 4.5 mile designated critical habitat reach along Sugar Creek. The U.S. Forest Service has indicated that the Challenge Cost Share Agreement is the only approved vehicle available for use by the U.S. Forest Service for land use agreements in which the USFS accepts, but does not contribute funds. Based on USFS policy, the Agreement cannot be granted in perpetuity, but can be extended (Condition X of the Challenge Cost Share Agreement). We recommend the Agreement be approved in lieu of a fee estate due to the following factors that lower the risk of future threat to the mitigation areas not held in perpetuity: The mitigation occurs on lands protected and managed by the USFS as part of the Pike National Forest and there is every indication that the USFS intends to manage the mitigation lands in the future as part of the Pike National Forest. This reach of Sugar Creek is designated as critical habitat for the federally threatened Preble's meadow jumping mouse and will be managed as critical habitat in the future. If Preble's is delisted in the future, the delisting would be based on maintaining the conservation measures in place (based on discussions with USFWS). The off-site mitigation for impacts to designated critical habitat for Preble's will also be an enforceable condition in the Biological Opinion. The lands adjoining the Sugar Creek mitigation site are habitat for the federally threatened prairie montane skipper and its habitat is protected and managed as such by the USFS. The Chatfield Water Providers, through the Chatfield Mitigation Company, are required to establish an upfront escrow fund to fully fund mitigation implementation and O&M.

The proposed Sugar Creek Mitigation Improvements have not been designed or finalized due to the conceptual level of investigation authorized by this study.

CHATFIELD STATE PARK: Onsite habitat mitigation areas are located within the Chatfield Reservoir's existing Federal project boundary and within the Chatfield State Park. The majority of the Park is leased to the State of Colorado Department of Natural Resources for a 25 year term (through May 11, 2028). The CDNR is the sponsor for the reallocation project and serves as an umbrella state agency for the Division of Parks and Wildlife, who manage the Park, and the Colorado Water Conservation Board, who are the lead division for the reallocation project. For the onsite mitigation on park lands, we recommend that the state park lease be amended to extend the term up to 50 years and to incorporate the mitigation responsibilities for those areas designated within the leased premises. The CDNR has suggested an intra-agency agreement between their two Divisions, Parks and Wildlife and the Water Conservation Board. The agreement would set forth the Colorado Water Conservation Board's lead in insuring the operation and maintenance of the mitigation areas. The following mitigates the risk of the proposed mitigation not existing in perpetuity: Chatfield State Park is the premier state park in the state park system. It is the leading revenue source for the Colorado State Park agency. There is very low risk of it being abandoned by Colorado Parks and Wildlife (i.e., the lands on which the on-site mitigation will occur will remain protected). Mitigation will be included in the terms and conditions between the Corps and CDNR and the water providers. The Chatfield Water Providers, through the Chatfield Mitigation Company, will establish an upfront escrow fund to fully fund mitigation implementation and O&M. The Corps will retain authority over implementation of the mitigation. The mitigation for impacts to Preble's habitat will be specified in the Service's Biological Opinion and incorporated into the project decision documents and the Reallocated Storage User Agreements. The obligation to implement the CMP as specified in the Water Storage Agreement between the Corps and CDNR, which is then assigned by CDNR to each of the Chatfield Water Providers in the Reallocated Storage User Agreements. The individual contracts between the CDNR and each Chatfield Water Provider will continue in perpetuity. There is a defined process for overseeing and reporting mitigation implementation and the monitoring of mitigation success (Section 7 of the CMP). In order to fully use the reallocated storage, as described in Section 7.2.1 of the CMP, the Chatfield Water Providers must meet the mitigation milestones. If these mitigation milestones are not met, the ability to use the reallocated storage will be restricted accordingly.

If it is determined that the proposed amendment to the existing park lease is not within the district's authority to execute, the amendment will be submitted to HQUSACE for approval.

SPONSOR OWNED LANDS: The Non-Federal Sponsor owns no lands within the project footprint. As a water supply project, the cost share is 100% Non-Federal responsibility. There is no cost share accounting or LERRD crediting. The Non-Federal Sponsor is responsible for all project costs including acquiring LERRD for the offsite mitigation.

The Non-Federal Sponsor will not acquire the offsite mitigation lands until the project has been approved. CDNR has been notified in writing of the risks associated with acquisition prior to Project approval.

The Water Storage Agreement will require the Non-Federal Sponsor (CDNR) to perform the non-Federal work as specified in Reallocation Report and in accordance with applicable Federal, State and local laws, regulations and policies.

NAVIGATION SERVITUDE: There are no navigational servitude issues within this project footprint.

INDUCED FLOODING: No induced flooding impacts outside of the Federal project boundary have been identified. Therefore, no additional LER is identified as a necessary acquisition for completion of the project as a result of induced flooding. The HEC5 model was used to evaluate the impacts of the reallocation on pool levels, releases and downstream flows. There is no impact to flood frequency downstream of Chatfield project boundary due to the reallocation.

PUBLIC LAW 91-646: The Non-Federal Sponsor (CDNR) must comply with Public Law 91-646 as stated in the Water Storage Agreement. The Water Storage Agreement will require the Non-Federal Sponsor (CDNR) to perform the non-Federal work as specified in Reallocation Report and in accordance with applicable Federal, State and local laws, regulations and policies.

MINERALS: The status of mineral rights on the recommended project lands have not been determined. The sponsor will be required to concentrate its acquisition efforts on properties that have not severed the mineral rights from the surface estate. The mineral interests will be acquired outright or surface mining will be restricted on the mitigation tracts acquired for the project. Rare exceptions could be granted if justified per the discussion above.

PLANNING AND DESIGN: Real Estate issues have not been identified relevant to Planning and Design, due to the nature of the conceptual level of investigation at this stage of the feasibility analysis.

FACILITY/UTILITY RELOCATION: Only the adjustment of the privately owned facilities on Corps managed fee lands are required by the project. The Non-Federal Sponsor (CDNR) is responsible for all facility adjustments that are required because of the rise in pool elevation. Upon approval, the project will proceed to design and implementation, and subsequent identification of the specific utility locations requiring relocation.

ASSESSMENT OF LOCAL SPONSOR: The Non-Federal Sponsor (CDNR) is required to certify their ability and experience to acquire and provide the LERRD for construction, operation, maintenance of the project, including its condemnation authority and quick-take capability.

The Colorado Department of Natural Resources reflects an organization of 1,465 employees and an annual budget of approximately \$242.5 million. Under State Law, they have the authority to acquire lands by purchase or condemnation. Their areas of expertise currently encompass Water Resources and

Conservation, Forestry, Parks and Recreation, State Board of Land Commissioners, Oil and Gas Conservation, Geological Survey and Mine Reclamation and Safety. The knowledge and experience of this State organization is comprehensive and includes land acquisition for State and Federal projects. ▲

BASELINE COST ESTIMATE: A Gross Appraisal and Baseline Cost Estimate for the project are difficult to determine due to a lack of a definitive design. No definitive individual tracts of mitigation land ownerships are identified at this time. Areas for possible mitigation land acquisition are identified in Exhibit “E” (furnished by ERO Resources Corporation). ▲

A Brief Market Survey was conducted by the Omaha District Staff Appraiser based on the 26 reaches identified by ERO Resources Corporation. The results of the appraiser’s efforts were furnished to ERO Resources Corporation to establish a basis for comparison for lands in the 26 reaches they identified as potential habitat mitigation lands (cost of acres versus habitat mitigation units available).

The Water Storage Agreement will require the Non-Federal Sponsor (CDNR) to incrementally acquire mitigation lands. The Non-Federal Sponsor (CDNR) will not be acquiring the required mitigation lands until the project has been approved and the WSA executed. The Non-Federal Sponsor (CDNR) has provided USACE – Omaha District a map with a listing of the possible mitigation lands available on each parcel as part of the Conservation Mitigation Plan included in the Reallocation Report.

The Non-Federal Sponsor (CDNR) will acquire the appropriate number of mitigation units (acreage varies by habitat available) as the project progresses.

The Non-Federal Sponsor (CDNR), at their costs, will construct the project with oversight and approval by the United States Army Corps of Engineers Omaha District.

The United States Army Corps of Engineers Omaha District estimates the costs to amend the Chatfield out grants to be \$108,000.00. Estimated labor to assist and coordinate acquisitions efforts between Sponsor, utilities companies, private land owners, environmental interests, Federal agencies, State and local Highway interests, non-standard estate implementation, and mitigation land certification is \$122,000. The District has calculated an additional 25% preliminary contingency of \$58,000 to account for unknown obstacles and challenges involved in such a contentious and complicated acquisition plan. Total Omaha District Real Estate Baseline cost estimate at this time from information available is \$288, 000. No real estate work on outgrants or other acquisitions will be initiated until funds are received from the Non Federal Sponsor (CDNR) and made available for labor account use.

HTRW: There are no known potential HTRW within the project area.

ATTITUDE OF LANDOWNERS: The property owners, whose land potentially may be impacted by this project, are generally supportive of the project.

ACQUISITION SCHEDULE:

Feasibility Study Approval (HQ)	30 September 2013
NFS execute Water Storage Agreement	30 September 2013
NFS begins Real Estate Acquisitions	1 October 2013
Certify Real Estate Recreation mods	20 December 2013
Advertise IFB for Recreation Mods	2 January 2014
Rec Mod Construction Contract Award	1 March 2014
Begin Rec Mod Construction Phase	1 April 2014
Complete Rec Mod Construction Phase	31 March 2016

The Non-Federal Sponsor will responsible for contracting all design work and providing those designs to the Corps. The Non-Federal Sponsor must acquire the appropriate mitigation lands for the project. The acquisition of the required mitigation lands will be acquired concurrent with the ongoing relocation construction of the recreation infrastructure. Contracts for the mitigation work will be let as the real estate acquisitions are certified. The incremental utilization of reallocated storage will not take place until documentation of the required acquisitions have been provided, reviewed, and confirmed as stated in the Water Storage Agreement.

RECOMMENDATIONS/COMMENTS: The U.S. Army Corps of Engineers Omaha District and the Colorado Department of Natural Resources (CNDR) recommends that the Feasibility Report for the Chatfield Reallocation Project be approved.

CHATFIELD REALLOCATION PROJECT SITE

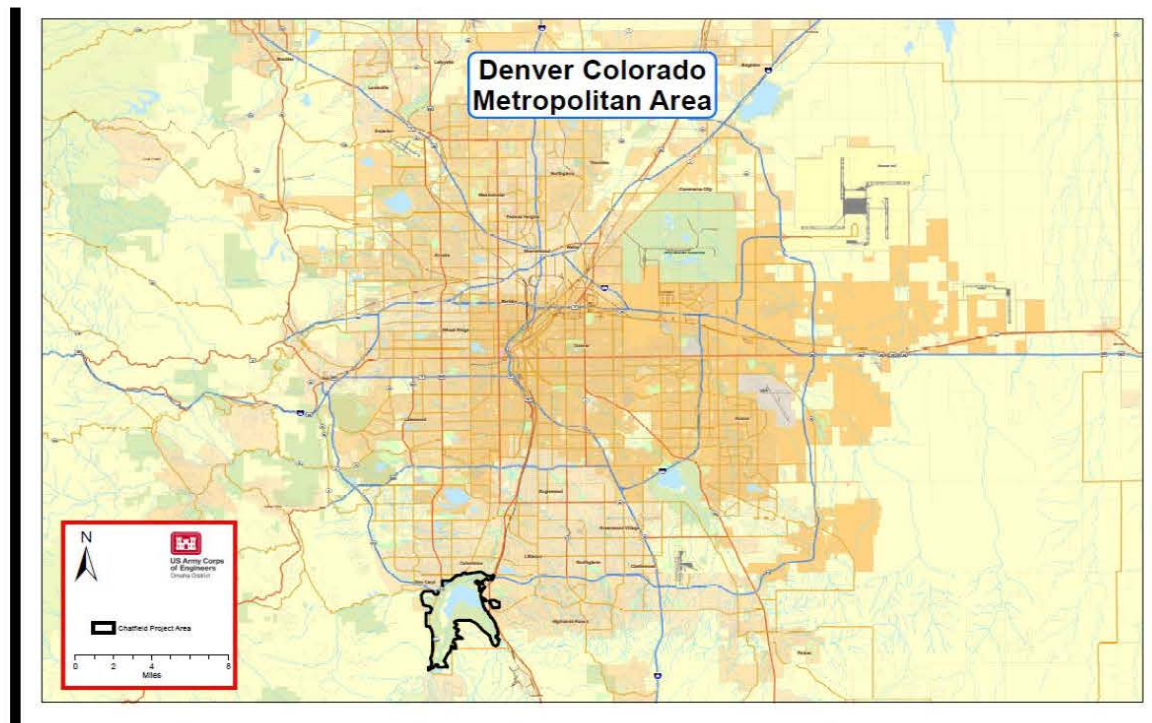


EXHIBIT "A"



Entrance to Chatfield State Park



Typical Road within Chatfield Park

EXHIBIT B-1



First Aid Station at Beach



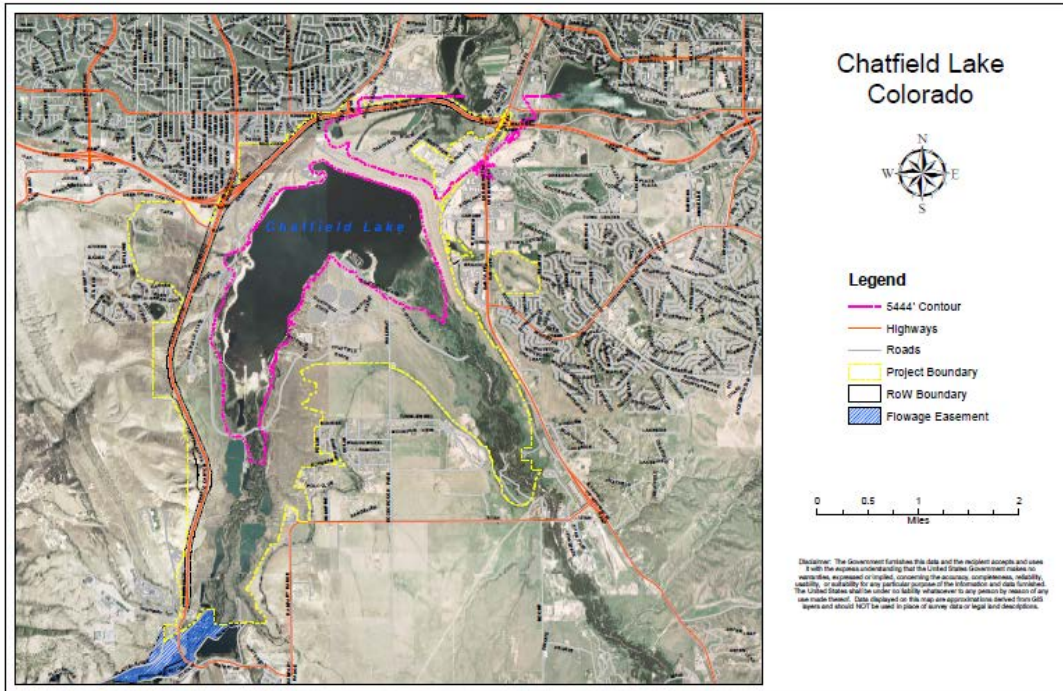
Comfort Station at Beach

EXHIBIT B-2



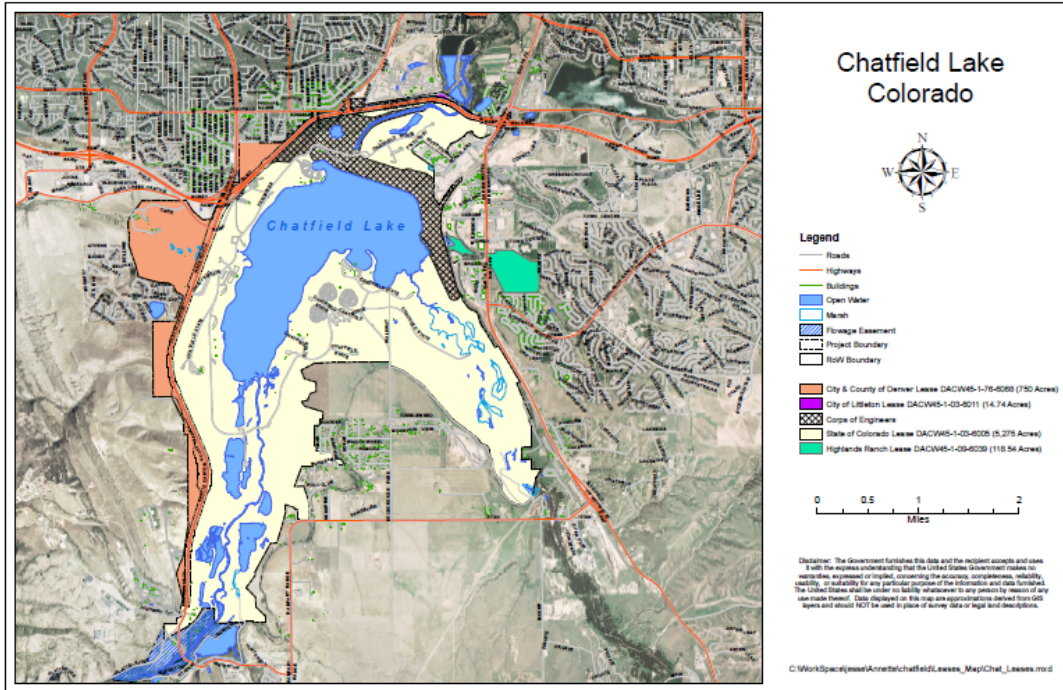
Marina will be raised to 5,444 ft. elevation

EXHIBIT B-3



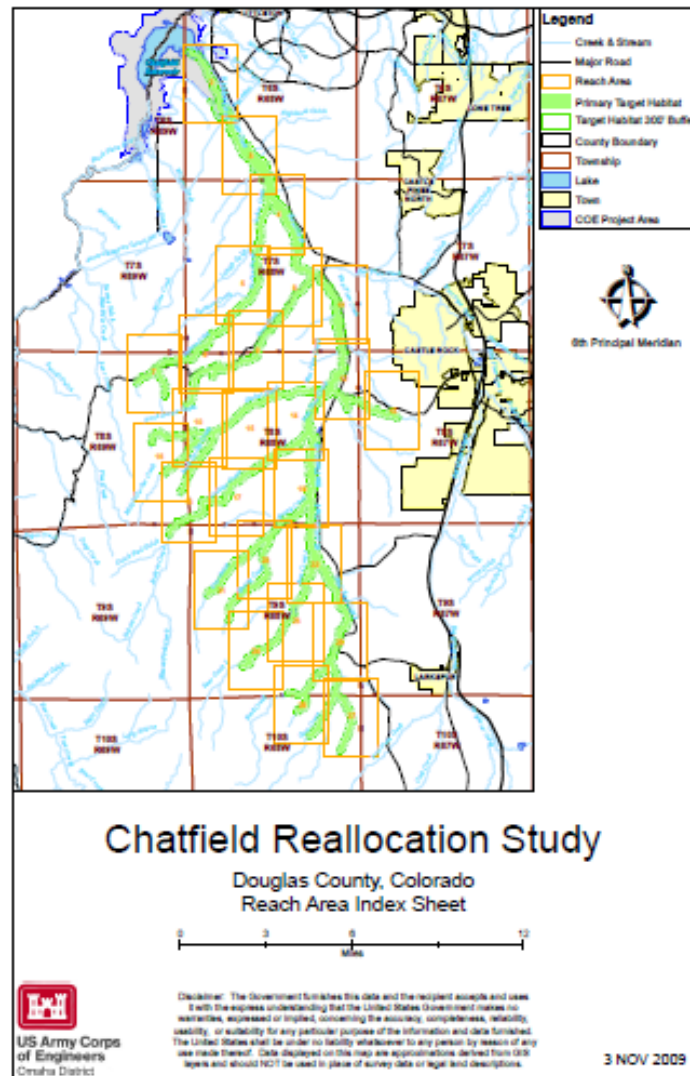
CHATFIELD REALLOCATION PROJECT MAP

EXHIBIT “C”



MAP OF LEASED AREA WITHIN CHATFIELD PROJECT

EXHIBIT “D”



Map of Possible Mitigation Lands for
Chatfield Reallocation Project

EXHIBIT “E”