

U S Army Corps of Engineers Poudre River Basin Water Supply Projects Permit Process and Update

To
Poudre Runs Through It
Study/Action Work Group
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By
Cody Wheeler
Regulatory Specialist/EIS Project Manager
U S Army Corps of Engineers
Omaha District, Denver Regulatory Office



Corps of Engineers Regulatory Program

- Section 404 of the Clean Water Act
- 404 Permit required for deposition of dredged or fill material in waters of the U.S. including waterways and wetlands
- Impacts to aquatic resources evaluate through a 404b1 analysis
- Our Mission: Protect aquatic environments and balance public interest.



Key Federal Laws

- National Environmental Policy Act (NEPA)
 - Requires evaluation of environmental impacts of all federally funded or authorized projects
 - Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or
 - Environmental Impact Statement (EIS)
- National Historic Preservation Act (NHPA)
- Endangered Species Act (ESA)
- Water Quality Certification by CDPHE under Section 401 of the Clean Water Act



NEPA and 404b1 Integration

- Factors to be evaluated in the 404b1 and the NEPA analysis overlap but are not completely the same.
- When the Corps is the lead federal agency, it prepares a NEPA document that also meets the 404b1 requirements.
- NEPA documents prepared by other agencies may not contain sufficient detail to satisfy the 404b1 requirements and the Corps may need to supplement.



Key 404b1 & NEPA Differences

- Practicable v. Reasonable Alternatives
- Screening Criteria
 - Costs v. Economics
 - Natural environmental values v. any factor
- Least Environmentally Damaging Practicable Alternative (LEDPA) v. Better Alternative
- Sequencing v. Inclusion of Mitigation



Practicable v. Reasonable Alternatives

- 404b1 guidelines require practicable alternatives be evaluated in detail
 - Practicable focuses on those alternatives that can be accomplished by the applicant
- NEPA requires all reasonable alternatives be evaluated in detail. Reasonable alternatives include those that are:
 - Practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant and
 - Beyond the control of the applicant and jurisdiction of the lead agency
- Options outside applicant control/agency jurisdiction should be captured in the No Action alternative



Screening Criteria

- 404b1 guidelines specify 5 categories to screen for the LEDPA
 - Costs, logistics, technology, environmental consequences, overall project purpose
- NEPA , in general terms, identifies 4 factors
 - Technology, economics and common sense
 - Underlying project purpose and need



Screening Criteria

➤ Costs v. Economic Factors

- 404b1 guidelines specify costs rather than economics
- Costs “thresholds” for alternatives screening are to be based on:
 - Type of project
 - Costs associated with comparable type projects
 - Type of applicant



Screening Criteria

- Costs v. Economic Factors (cont'd)
 - NEPA allows for consideration of economic factors to screen alternatives. Can include use of:
 - Cost:benefit ratios (Regulatory is prohibited from undertaking such analyses)
 - Socioeconomic costs
 - Substantial differences in determination of which alternatives to carry forward can occur.



Screening Criteria

- Other Significant Adverse Environmental Consequences
 - 404b1 guidelines allow for consideration of significant effects to “other natural environmental values” and damage to other ecosystems
 - NEPA allows use of humane environment consequences (socioeconomic factors)



LEDPA v. Better Alternative

- 404b1 guidelines mandate that Corps only approve the LEDPA
 - Impacts to aquatic resources driving Corps' final decision
 - Can consider other significant adverse environmental consequences to other ecosystems
- NEPA doesn't prescribe decision on which alternative



LEDPA v. Better Alternative

- Most agencies looking for “best” alternative
 - One alternative “more fully or better addresses” management plans, goals, political issues compared to others
- Regulatory constrained to LEDPA
 - If one practicable alternative provides greater social benefits (with greater aquatic resource impacts) compared to another with less aquatic resource impacts and less social or economic benefits, Corps must approve lower impacting alternative.



Sequencing v. Inclusion of Mitigation

- 404b1 Mitigation MOA with EPA requires that compensatory mitigation not be included in the alternatives analysis and determination of the LEDPA
 - Avoidance and minimization is utilized
- NEPA has no limitations on use of mitigation in reaching conclusion for agency “preferred alternative”
 - Many agencies encourage the use of mitigation to support selection of one option over others



No Action Alternative

- Required under 404b1 guidelines and NEPA
- No Action alternative defined as:
 - An alternative that can meet the need but does not involve regulated discharge, OR
 - Permit denial
- Should include alternatives beyond control of applicant



No Action Alternative

- If “permit denial” No Action option is used, Corps needs to disclose what the applicant will likely do.
- Those alternatives that are unavailable to the applicant, whether or not they require Federal action (permits) should normally be included in the analysis of the No Action (permit denial) alternative.
- This informs the decision maker and public of the consequences of a denial.
- Need to discuss consequences of other likely uses of the project site.



No Action Alternative

- Level of analysis of No Action Alternative
 - Evaluate to the extent necessary
 - Degree of analysis devoted to each alternative in the EIS is to be substantially similar to the proposed action
 - Need to be careful in not undertaking and displaying speculative analysis

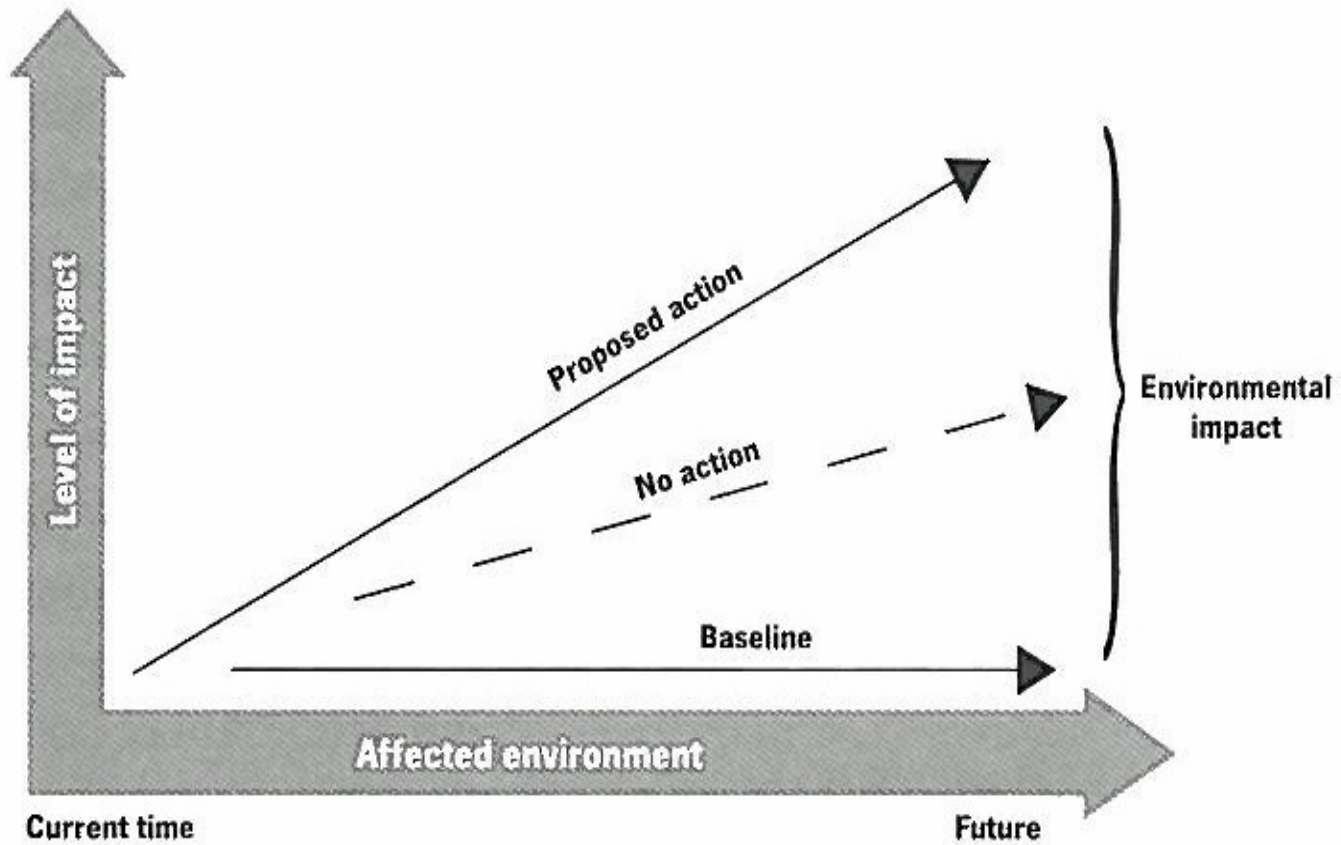


No Action Alternative

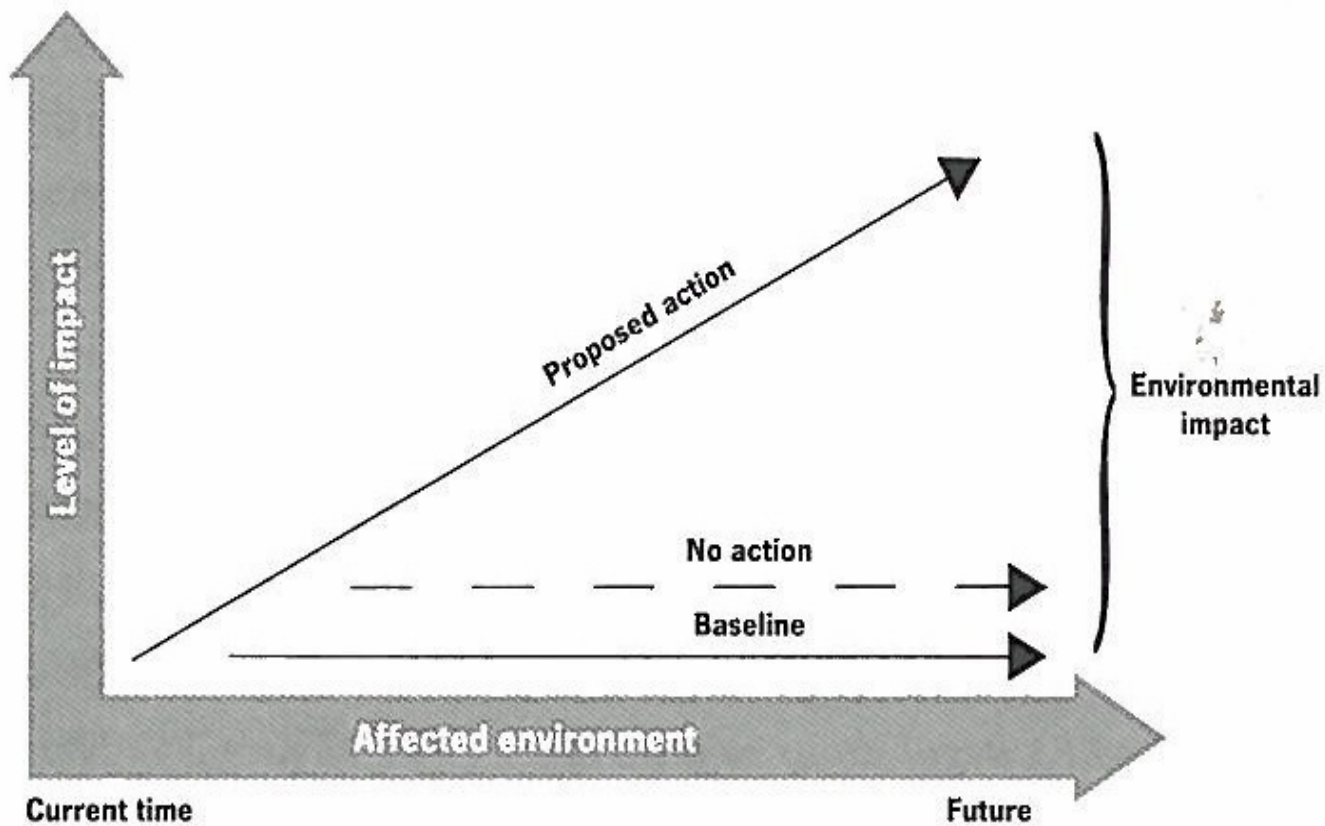
- Agencies have differing views of the No Action Alternative
 - Many use to establish environmental baseline or benchmark in which to compare other alternatives against.
 - Corps Regulatory normally does not share this view but holds that the affected environment is the baseline.



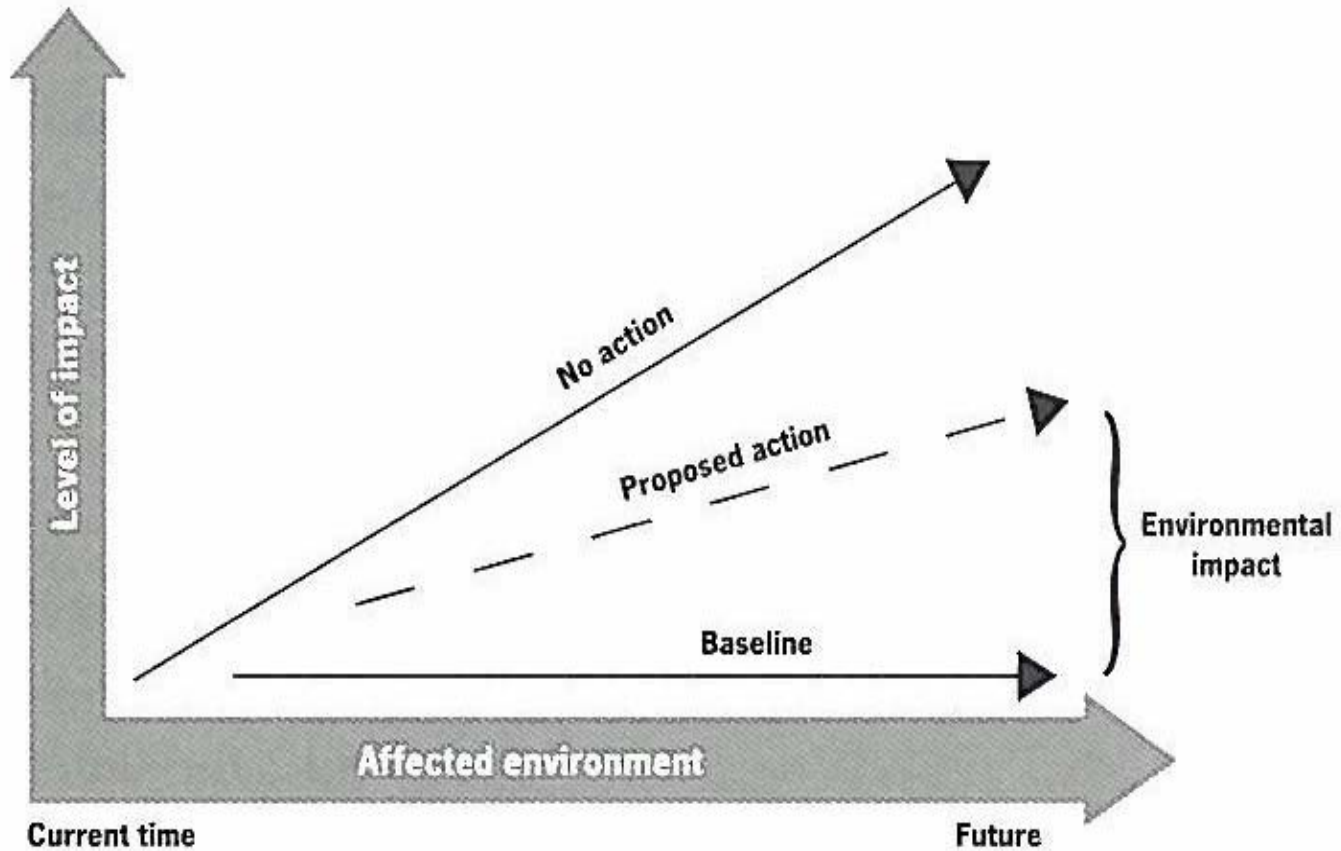
Scenario 1. Typical Situation



Scenario 2 . No-Action Alternative Same as Baseline



Scenario 3. No-Action Alternative Worse Than Proposed Action



EIS Evaluation Factors

Physical Resources	Biological Resources	Human Resources
<ul style="list-style-type: none">• Soils• Geology• Mineral Resources• Surface Water Resources• Groundwater Resources• Water Rights and Water Use• Air Quality• Noise	<ul style="list-style-type: none">• Wetlands• Wildlife• Aquatic Resources• Threatened and Endangered Species and Other Special Status Species• Vegetation	<ul style="list-style-type: none">• Transportation• Visual Resources/Aesthetics• Cultural and Paleontological Resources• Land Use• Recreation• Socioeconomics• Hazardous Materials• Health and Safety• Environmental Justice



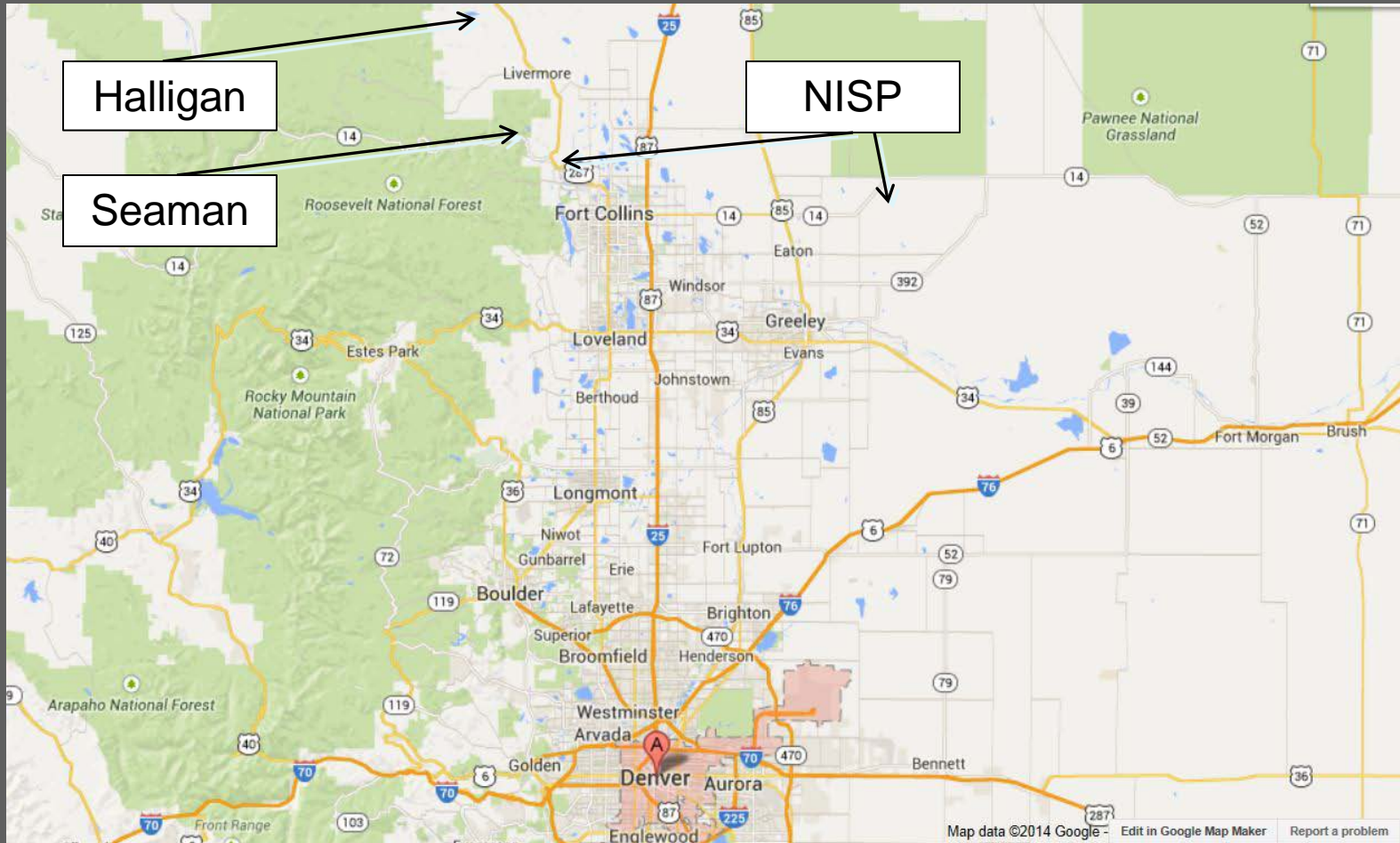
Final Thought

“A detailed statement of alternatives cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man.”

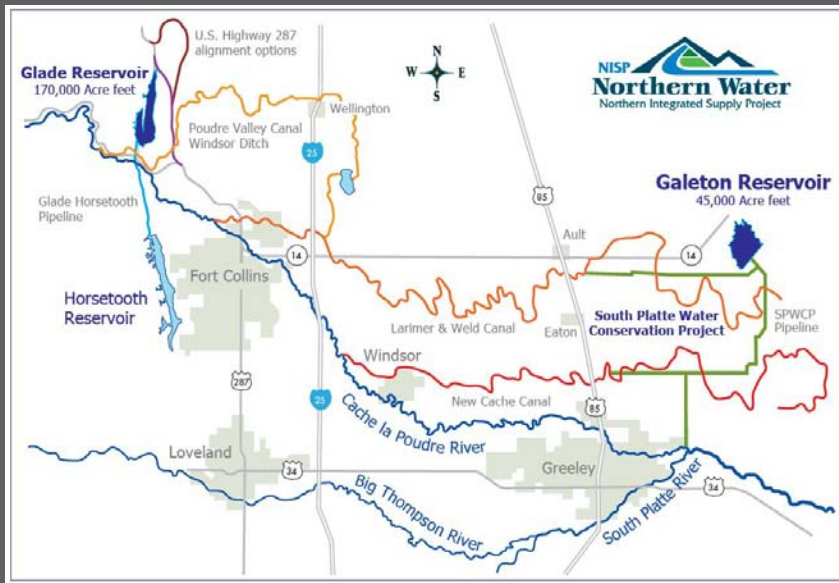
U.S. Supreme Court - 1978



Corps Regulatory EISs Proposed Water Supply Projects



Northern Integrated Supply Project (NISP) Supplemental Draft EIS



Proposed Glade Reservoir, Galeton Reservoir -
Larimer and Weld Counties

Overview

- Two new off-channel reservoirs proposed by NCWCD
 - Glade Reservoir
 - Galeton Reservoir
- Flows diverted from Poudre River
- Corps started EIS in 2004
- Corps released Draft EIS in 2008

Update

- Water quality and biology impact studies currently under review
- Supplemental Draft EIS release June 2015



Halligan / Seaman Water Supply Projects Draft EIS



Halligan Reservoir, Larimer County



Seaman Reservoir, Larimer County

Overview

- Expansion of existing Halligan and Seaman Reservoirs proposed by Fort Collins and Greeley
- Reservoirs located on North Fork Poudre River in Larimer County
- Corps started EIS in 2006

Update

- Purpose and need evaluation complete.
- Currently screening alternatives.
- Draft EIS release Spring 2016.



U S Army Corps of Engineers Colorado Front Range Water Supply EIS Process and Update



Cody Wheeler
Regulatory Specialist / EIS Project Manager
US Army Corps of Engineers
Denver Regulatory Office
9307 S. Wadsworth Blvd
Littleton, Colorado 80128-6901
Phone: 720-922-3846

Corps Denver Regulatory Website
<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Colorado.aspx>

