

FINAL REPORT
ON
STATE ASSUMPTION
OF
THE DREDGE AND FILL
PERMIT PROGRAM



FINAL REPORT
ON
STATE ASSUMPTION OF THE DREDGE & FILL PERMIT
PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT
PREPARED FOR THE
U. S. FISH & WILDLIFE SERVICE
BY THE
WATER QUALITY CONTROL DIVISION
COLORADO DEPARTMENT OF HEALTH

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I. INTRODUCTION

This report summarizes an eighteen month study undertaken by the Colorado Department of Health to determine the steps needed for state assumption of the dredge and fill permit program from the U. S. Army Corps of Engineers. State assumption of the program is provided for in Section 404(g)(1) of the Federal Water Pollution Control Act, as amended (33 U.S.C 466 et seq.).

BACKGROUND:

Interest in state assumption of the 404 permit program in Colorado emanated from a variety of sources. The Governor and many members of the state legislature supported state as opposed to federal controls of discharges from dredge and fill operations as the state is a closer, more directly responsible political entity to the citizen applicant. Support among members of the agricultural, mining and construction industries was influenced by the frustration many of their members experienced dealing with any one of five district Corps of Engineers offices, all of which are located outside of Colorado. Corps districts with jurisdiction in Colorado include Omaha, Sacramento, Albuquerque, Kansas City and Tulsa. Permit applicants from the public and private sections pointed to inconsistencies among the different COE districts in administering the program. State assumption, it was believed, would eliminate much of this inconsistency. In this spirit, the Governor encouraged the State Health Department to seek financial assistance for state assumption.

In June, 1980, the department was awarded a grant from the U.S. Fish and Wildlife Service to determine what actions were needed for state takeover of the program. Responsibility for assisting states interested in administering the 404 permit program was invested in the Service by Congress at the time the amendments to the Water Pollution Control Act were passed. The funds made available to Colorado were allocated to the FWS specifically to assist state assumption efforts. Colorado was one of three states to receive a grant for this purpose. The other two states are Michigan and California. Award of the funds was made under cooperative agreement No. 14-16-006-80-918 which is attached as Exhibit A.

The principal goals of the cooperative agreement were to develop the authority needed to administer the 404 permit program at the state level, and to develop processes and procedures needed to manage the program. Management was to include consideration of fish and wildlife needs as well as other beneficial uses of the water and adjacent wetlands. It was anticipated that the state-administered 404 program that emerged in Colorado would serve as a model for other western states.

The study and preparation for assumption were undertaken by a staff assigned to the study unit within the Water Quality Control Division (WQCD) and was assembled specifically for these purposes. At the time, assumption of the program was viewed as an important element to the state's water quality control efforts. As such, it was to be located

in the Water Quality Control Division, a unit of the state health department.

The first task of the Division staff was to develop a detailed work plan to fulfill the provisions of the agreement. The work plan was reviewed and approved by the U. S. Fish and Wildlife Service prior to formal adoption; a copy of it is attached as Exhibit B.

The work plan proved to be an invaluable means of organizing the 404 study and assumption effort. The level of specificity used in defining the objectives and tasks simplified program design and staff assignment. The inclusion of specific due dates for work products helped the staff to organize and prioritize work assignments. Monitoring and evaluating progress was also simplified by careful adherence to the work plan. The work plan also served as the framework for this report, and is referenced throughout.

II. ORGANIZATION

This section describes how the program was organized. The initial step was to define the goals and objectives, this was done with the U.S.F.W.S. The goal statements served as the foundation for the cooperative agreement which delineated the responsibilities of the state.

A. Establishing Goals & Objectives

The overall goals of the U.S.F.W.S. Section 404 assumption effort in Colorado were to develop state authority for administration of the 404 permit program, and to develop processes and procedures for managing the program. The objectives developed to achieve this goal included among others, developing the necessary enabling legislation to assume the program; establishing the in-house capability to operate it, assisting select counties with wetland protection efforts; developing and conducting a public information program on the state's involvement in the dredge and fill permit program; and preparing a final report.

The objectives developed were felt to be those essential to successful state takeover of the permit program. Tasks needed to realize the objectives are delineated in the work plan (Exhibit B) as are specified due dates for work products.

B. Staffing Assignments

The staff unit assigned to the 404 assumption study included a senior water resource specialist who had overall administrative responsibility for the project, an administrative officer who oversaw daily operations, a public health engineer and a research biologist, both of whom provided technical expertise, and a secretary responsible for all clerical support. A list of staff, time commitments and responsibilities is included in Table 1.1.

Table 2.1

Staff Assignments
404 Assumption Study

<u>Job Title</u>	<u>% of Time on 404</u>	<u>Responsibilities</u>
Chief, Policy & Program Development Unit (Sr. Inter Resource Specialist)	33-1/3	<ul style="list-style-type: none"> * Administers 404 study and provides overall policy direction to the program effort. * Supervises fulfillment of the Cooperative Agreement with FUS. * Manages staff assigned to the program. * Directs the effort to develop and respond to 404 legislative effort in the state and to proposed federal amendments.
Program Officer	100%	<ul style="list-style-type: none"> * Addresses needed programmatic changes and modifications. * Coordinates 401 and 404 program efforts * Develops work plan outlining tasks to be accomplished under the cooperative agreement.

% of Time on 404

Responsibilities

- * Monitors fulfillment of the Cooperative Agreement with FHS.
- * Designs and arranges for the conduct of public workshops on the 404/401 programs; responds to inquiries about the program.
- * Designs and publishes informational pamphlets on the 401/404 program, assists in establishing program goals and objectives and in developing priorities.
- * Assists in budget development for the 404 assumption effort.
- * Identifies issues and needs on assumption of the 404 program.
- * Assists in the development of the needed enabling legislation for assumption of the 404 program.
- * Assists with the general administration and operation of the program.

% of Time on 404

Responsibilities

Researcher IV
(Aquatic Biologist)

50%

- * Develops expertise on wetland biology
- * Assesses the water quality impacts of filling wetlands.
- * Assists in the development of division policy on wetlands and the review of 401 applications for wetland fills.
- * Assists in developing wetland mitigation policies and procedures for application.
- * Uses information available to assist regional and local entities in developing wetland protection proposals.
- * Reviews, prepares comments, and determines conditions for 401 certification. Works with the federal agencies in identifying wetlands.
- * Coordinates the state-supported water quality certification with the federally operated 404 program.

Public Health
Engineer

50%

- * Applies appropriate DFP's as conditions for 401 certification.

% of Time on 404

Responsibilities

- * Develops a system for identifying appropriate BIP's for state assumption of the 404 program.
- * Assists in the development and conduct of public education seminars on the application of BIP's in the 404 program.
- * Assists in the administration and operation of the 401/404 program.
- * Provides secretarial support to the 404 assumption effort.
- * Types, arranges meetings, appointments and travel.
- * Provides information on the 401/404 programs over the phone.
- * Supervises clerical tasks associated with the 401 program.

Secretary

50%

The staffing pattern selected for the assumption effort provided an important blend of talents and professional competencies that had high potential for successfully tapping other resources within and without the Division. In addition, this mixture closely replicated the staff patterns used by the district COE office in operating the program. As Table 1.1 indicates, staff assignments were clearly delineated, job descriptions were developed or revised to reflect the new assignment. In addition, performance evaluations were developed and utilized for each staff person assigned to the project. This careful delineation of responsibilities and regular review of performance had a positive effect on morale and productivity and resulted in a low staff turnover rate over the eighteen month life of the project.

III. WORK PROGRAM

This section outlines the principal accomplishments of the project and is organized according to the work plan.

Objective A., Establish an information network among all parties involved in the 404 effort.

An important element in setting up the 404 assumption effort was informing interested and affected agencies of the state's proposal to take over the program. This was accomplished by identifying agencies in the public and private sectors with direct or indirect involvement and interest in the permit program.

Descriptive information on the state's proposal was forwarded to these agencies and groups, each was invited to assign a contact person to serve as a liaison with the project. The liaisons were kept informed of progress on the assumption effort and tapped as resources as the need arose. They were regularly enlisted to review and comment on proposals, work products, etc.

The network of liaisons worked effectively as a means of exchanging and providing information. A list of the liaisons appears in Table 3.1.

Table 3.1

404 Liaisons

William Aultfather
 U.S. Fish & Wildlife Service
 Department of Interior
 Hamilton Building, Suite 400
 1375 K. Street N.W.
 Washington, D.C. 20240

Dale Hoffman
 U.S. Fish & Wildlife Service
 P.O. Box 25486
 Denver Federal Center
 Denver, CO 80225
 234-4616

Vern Helbig
 U.S. Fish & Wildlife Service
 Field Office
 330 S. Garrison
 Lakewood, CO 80226
 234-5897

Lori Williams
 EPA
 Aquatic Protection Branch (WH-585)
 401 M. St. S.W.
 Washington, D.C. 20036
 (202) 472-3400

Dale Vodehna
 EPA
 1860 Lincoln St.
 Suite 103
 Denver, CO 80295
 837-3886

P. T. Barrows
 Wildlife Manager
 Division of Wildlife
 Colorado Department of Natural Resources
 6060 Broadway
 Denver, CO 80216
 825-1192

Barbara Lindstrom
 Office of the Director
 Division of Water Resources
 Colorado Dept. of Natural Resources
 Room 818
 1313 Sherman Street
 Denver, CO 80203
 839-3311 (Tues. Thurs. Fri. 11-5)

Rodney Woods
 Corps of Engineers
 Sacramento District
 Regulatory Unit
 Suite 111
 2784 Crossroads Blvd.
 Grand Junction, CO 81501
 243-1199

Wayne Lea
 Corps of Engineers
 Albuquerque District
 P.O. Box 1580
 Albuquerque, NM 87103
 (505) 766-2776

Del Broers
 Corps of Engineers
 Omaha District
 6014 USPO & Courthouse
 P.O. Box 5
 215 North 17th Street
 Omaha, NE 68101
 (402) 221-4129

Objective B. Draft legislation that will enable the state of Colorado to assume the 404 permit program.

Any state interested in operating a state administered permit program, must first demonstrate to EPA that it has the necessary authorities to assume the permit program. Drafting the necessary enabling legislation was therefore one of the most important tasks of the assumption effort and involved a number of distinct activities:

1. Examine the legislative history of Section 404 of the Clean Water Act.

A thorough review of the legislative history of section 404 was undertaken to provide some historical perspective, to clarify responsibilities associated with state assumption of the program, and to determine the intent of the legislation and the specific concerns of Congress in enacting it. Briefly, the following historical facts emerged from the review:

- * Federal protection of navigable waters of the U. S. dates back to the enactment of the River & Harbor Act of 1899, which authorized the Army Corps of Engineers (COE) to issue permits for dredging activities that protected and enhanced navigation.

- * Amendments to The Water Pollution Control Act in 1972 expanded the Corps' authority to issue permits for the discharge of dredged or fill material into waters of the U.S. (not just navigable waters) in compliance with guidelines developed by the Environmental Protection Agency (EPA) in conjunction with the COE under section 404(b)(1) of the Act.
- * In 1975, a federal district court ruled that the definition of navigable waters as applied by the Corps in administering the Section 404 program was inconsistent with the intent of the law, and therefore ordered the Corps to regulate dredge or fill discharges to "all waters of the U.S". (NRDC v. Callaway, 392 F. Supp. 685 (D.D.C. 1975).
The Corps complied with the court order in three phases. Phase I included all waters previously regulated by the Corps plus all wetlands adjacent to these waters. Phase II included primary tributaries to Phase I waters and lakes with a surface area greater than five acres, plus adjacent wetlands. Phase III included all waters of the United States.
- * The installation of Phase III in 1977 brought the section 404 program to Colorado.

* In 1977, Congress made major changes to the federal Water Pollution Control Act, subsequently referred to as the Clean Water Act. Amendments to section 404 included section 404(g) which provides for state administration of the permit program in Phase II & III waters. The amendments include detailed requirements for state program approval and operation. Section 404(f) provides for the exemption of specific activities from the 404 permit requirements. Examples of exempted activities include:

- a. normal farming, forestry and ranching.
- b. maintenance, including emergency reconstruction of dikes, dams, levees, etc.
- c. construction or maintenance of farm or stock ponds or irrigation ditches.
- d. construction of temporary sedimentation basins.

* Provisions for the issuance of general and nationwide permits were also part of the 1977 amendments.

* The 1977 amendments also included strict timelines for processing and issuing dredge or fill permits.

The legislative history indicated that the impetus for the state assumption provisions came from two sources:

- 1) The states' concern that the land use implications associated with the application of section 404 would infringe upon authorities that traditionally belong to states & local units of government, and
- 2) The expansion of program jurisdiction as a result of NRDC v. Callaway and the corresponding conflicts that arose over the exercise of federal v. state authorities.

The state program amendments emerged as a workable compromise between the House proposal to limit the program to traditionally navigable waters, and the Senate's desire to maintain the full scope of the program. Predictably, the States supported the state program amendments. The following points can be derived from a review of the Congressional debate and discussions on the state program amendments.

- Congress did not intend to alter the nature of the permit program (as established in the 1972 Act).
- state programs are to mirror the federal one.
- an approved state program is one established under state law and which functions in lieu of the federal program; it is not a delegation of federal authority.

- institutional and procedural requirements for state programs are modeled on the section 402 program.
- EPA is to have a strong oversight role in state-administered programs.
- token financial assistance would be provided to assist states in setting up dredge and fill permit programs; sources indicated included sections 106 & 205(g) funds.

The 1977 amendments provide for EPA approval and continuing oversight of state programs. These two provisions seem to imply that Congress wanted to insure maintenance of the federal standards to which the program had been adhering. Both provisions, however, demonstrate serious insensitivity to the need for latitude at the state level to tailor and operate the program consistent with individual state needs.

2. Review section 404 of the Clean Water Act, the Consolidated Regulations, etc. to determine requirements for assumption.

The federal statute contains explicit requirements for state assumption and includes federal review criteria, time schedules, and provision for withdrawing approval of a state program. In brief general statutory requirements for state administered programs cover:

1. submittal of a "full and complete" program description;
2. statement by the Attorney General that the state has adequate authority to assume the program;
3. authority to issue permits which comply with Section 404(b)(1) guidelines;
4. authority to issue permits for fixed terms not to exceed 5 years;
5. authority to issue permits which can be terminated or modified for cause;
6. authority to forward notice of applications to EPA, the public and to other affected states and to provide opportunity for public hearing;
7. authority to enforce compliance with permit provisions through civil and criminal penalties;
8. authority to assure continued involvement in federal & federal-state planning processes;
9. minimum funding and qualified staff.

Specific requirements for 404 assumption were included in the Consolidated Permit Regulations which also include requirements for EPA and state operation of the NPDES, UIC and RCRA programs, and EPA operation of the PSD program. The Consolidated Permit regs as they apply to a state-administered 404 program include detailed provisions for the application for state assumption, state program descriptions, the Attorney General's statement confirming that the state has the legal authority to administer and operate the program and the development of a memorandum of agreement between the state and the regional administrator of EPA outlining the processes for information transfer, reporting requirements, and compliance monitoring, among other things.

By law, any state that desires to assume the section 404 dredge and fill permit program must apply and assure compliance with the 404(b)(1) guidelines. Under the 1977 amendments to the Clean Water Act, the Administrator of EPA can withdraw approval of a state 404 program or prevent a state from issuing a permit if the state fails to comply with these guidelines. Although termed guidelines, the requirements placed on their use reinforce that they are, in fact, regulations,

Section 404(b)(1), guideline provisions with which a state administered 404 program must comply include adherence to the purpose of the guidelines - i.e. to restore and maintain the chemical, physical, and biological integrity of the waters of the U. S. through the control of discharges of dredged or fill material. The guidelines are based on the precept that dredged or fill material should not be discharged into the aquatic ecosystem, including wetlands, unless it can be demonstrated that

such a discharge is necessary and will not have unacceptable adverse impacts. The guidelines specify conditions that must be fulfilled in making this determination; physical, chemical and biological tests that must be undertaken; the characteristics of a site that must be evaluated; etc.

3. Review the adequacy of the state's statutory authority for assumption of the 404 program.

State statutes were reviewed to determine if they provided the necessary authorities for assumption of the 404 program. It became clearly apparent that state laws and regulations didn't meet a fraction of the requirements for state assumption as outlined in the federal act, the Consolidated Permit Regulations or the section 404(b)(1) guidelines. A memo detailing the discrepancies was developed and submitted as part of the first progress report to U.S.F.W.S.

4. Collect and review other state's adopted and/or proposed legislation, regulations, etc regarding 404 related activities.

The National Conference of State Legislatures, headquartered in Denver, was enlisted to assist with the task of identifying states that had passed 404-related statutes and/or regulated dredge and fill activities independent of the section 404 requirements.

The 404 assumption efforts in Michigan and California were well underway when Colorado began its study. Telephone and written contact was made with project staff in both states; the advice and information provided from their experience was very useful in the development of the program, and also helped avoid some pitfalls.

Among the most valuable realizations that emerged from the review of other states' efforts to control dredge and fill activities was the fact that state statutory approaches very much reflect the traditional concerns and political attitudes of the particular state, and are therefore not readily transferable to another state. The outlook and approach to regulating dredge and fill activities in a water-rich state like Michigan for example, are far different from those that could be readily employed in water scarce Colorado. This reinforced the need to tailor the 404 program to meet the needs and circumstances of the state

5. Draft summary assessment of elements that should be included in the legislation and determine the annual cost of the program to the state.

The summary assessment of elements needed in the draft 404 legislation were developed from a comparative analysis of existing state statutes and the provisions for state assumption found in the federal Clean Water Act. This analysis reconfirmed that Colorado did not have many of the authorities needed for state takeover of the program and would have to seek them from the legislature. Table 3.2 outlines the principal authorities needed for assumption.

TABLE 3.2

KEY ELEMENTS NEEDED IN DRAFT

LEGISLATION FOR SECTION 404

ASSUMPTION IN COLORADO

1. authority to require and issue permits for the discharge of dredged and fill material into state waters and adjacent wetlands;
2. authority to promulgate regulations in accordance with state and federal law for the orderly and effective administration of a dredge and fill permit program;
3. authority to exempt from state permit requirements those activities exempted under the federal act;
4. authority to insure notice of applications to EPA, the public, and to other affected states;
5. provision for adequate funding and personnel to operate the program.

Annual cost estimates for a state-operated 404 program were determined from actual costs obtained from the federal agencies currently involved in the program. A breakdown of annual operating expenses was requested from each of the five district COE offices with jurisdiction in Colorado, the regional EPA office, and the Regional U. S. Fish and Wildlife office. Cost estimates for 404-related activities were also requested from the state Divisions' of Wildlife, and Water Quality Control. Agencies with lesser direct involvement were also polled for estimated annual expenditures on 404. The U. S. Forest Service, the Park Service and the Bureau of Land Management (BLM) were included in this group. The annual cost estimates compiled appear in Table 3.3 and Table 3.4

Table 3.3

ANNUAL BUDGET FIGURES

404 PROGRAM

<u>AGENCY</u>	<u>ANNUAL COSTS</u>	<u>STAFF</u>
U.S. Fish & Wildlife (region)	\$42,640 (130 permits processed at \$328 per permit)	2 biologists
U.S. Environmental Protection Agency	\$130,000 (includes salaries, travel, overhead, & equipment)	2 biologists .5 clerical
Amy Corps of Engineers Sacramento District	\$395,100 (total) \$230,000 (includes personnel, vehicles, travel, overhead, office and aerial photography)	1 civil engineer 2 civil eng. technicians 1 clerk typist 2 civil eng./bio. techs. 1 clerk typist 1 environmental spec. 1 permit process. coord. 1 permit control asst., clerk typists, supervisory personnel
Omaha District	\$70,000 (10% of total workload)	19 fte 2 planning 2 attorneys 3 part time
Amy Corps of Engineers (cont'd) Albuquerque District	\$95,100	3 biologists

1 Inter-disciplinary
 1 engineering tech.
 1 clerk typist (temp)
 support received from biologists, archaeologist, lawyer, hydrologist, economist & clerical typists.

\$290,000
 (includes salaries, equipment, travel, operations, support services & administration)

1.5 engineers
 .5 clerical

\$44,544*
 (includes salaries, travel and overhead)

TOTAL \$302,284

Colorado Division of wildlife

Colorado Water Quality Control Division

*does not reflect FWS grant for 40% study

Table 3.4
Annual Budget Estimates
State Administered 404 Program

Personnel

WQCD Director (5%)	\$ 2,532	
Section Chiefs (10%)	8,761	
Senior Engineer	36,136	
Biologist	29,203	
2 - Eng. Technicians	44,858	
Biological Technician	20,895	
Planner/Receiver	25,295	
Admin. Officer 1B	20,895	
Clerk Typist	13,021	
	<u>201,596</u>	- Sub Total
<u>Legal Assistance</u>	10,000	
<u>Public Hearings (2)</u>	7,000	
<u>Travel</u>	10,000	
<u>Automatic Data Processing</u>	3,000	
<u>Start-up Equipment</u>	21,606	
<u>Office Supplies</u>	800	
<u>Public Information</u>	7,500	
	<u>\$261,502</u>	- Total

An analysis of the combined state and federal costs associated with the dredge and fill permit program indicated that certain cost savings would be realized with state assumption. The cost reductions identified will be influenced by the state's ability to consolidate many of the functions currently handled by five separate COE district offices. State assumption would also serve to reduce much of the costly duplication associated with running the same program out of five offices. Some of the obvious cost savings would result from consolidating offices, staff, and laboratory facilities.

Some cost savings will understandably be offset by the expense incurred in establishing a state-administered program. Mirroring the federal effort, as called for in the law, will require expanding the administrative, monitoring and enforcement staffs and the laboratory capabilities, some of these costs are not readily recoverable. However, over time, the anticipated water quality improvements (which reduce the need for remedial action) that result from the protection provided by the program will likely offset some of these costs as well.

The initial cost of state assumption was estimated to be approximately \$260,000, all of which would have to be borne by the state. The prospect of significant federal financial help disappeared with reductions in the section 106 and 205(g) programs. The budget narrative for state assumption is attached as Exhibit C.

6. Draft proposed legislation for assumption of the 404 permit program.

Legislation was drafted to provide the authorities required for state assumption of the 404 program. The draft was reviewed by an advisory committee representing private and public entities. A list of agencies represented on the advisory group appears in Table 3.4.

TABLE 3.5

REPRESENTATION ON

SECTION 404 LEGISLATIVE ADVISORY COMMITTEE

1. Law firm specializing in water issues
2. Consulting Engineers
3. County Administrator
4. Water Conservancy District
5. Colorado Open Space Council
6. League of Women Voters
7. Colorado Contractors Association

Staff support and technical assistance was provided by the 404 unit, the Attorney General's Office, the Division of Wildlife, and the Executive Director's office of the Department of Natural resources

The draft legislation was forwarded to affected agencies and groups for review. During the review period, the president of the State Senate introduced Senate Bill 16 which contained the authorities for state 404 assumption but differed in some respects from the draft developed by the Staff and the Advisory Group.

The principal difference between the two pieces of legislation was the placement of administrative authority for the program. Senate Bill 16 placed this authority with the State Engineer's Office, the other draft invested it with the State Water Quality Control Division. Both legislative drafts are included as Exhibit D.

Legislative debate and testimony before senate and house committees focused on the merits of state assumption of the program, the cost to the state, and the placement of the program. Testimony supporting state takeover frequently included comments about the difficulty and expense incurred by citizens dealing with the federal COE offices all of which are located outside of Colorado. Certain supporters of state takeover argued that the program could be operated statewide by the network of district engineers working through the State Engineer's office for an estimated \$50,000 per year. Numerous arguments contesting this figure were presented to the Senate and House Committees on Agriculture and the Environment. These committees also heard testimony on the Corps' administration of the program, suggestions for administering a state program, the perceived need and intent of the program in Colorado and recommendations on agency location.

In response to arguments that arose over placement, the sponsor of the bill asked the water quality proponents to submit a rationale for locating the program in the health department. The following is a summary of the points included in the rationale.

1. The dredge and fill permit program is part of the federal effort to improve and protect the quality of the nation's waters. Responsibility for water quality at the state level has traditionally been invested in the Water Quality Control Division. Assumption of 404 by the WQCD is therefore an appropriate extension of the responsibilities it currently exercises.
2. Successful takeover of the 404 program will require a working knowledge and understanding of other sections of the federal Clean Water Act with which section 404 must comply. WQCD staff have been working with these requirements for a number of years and have the needed experience and familiarity with the federal network.

The above-referenced rationale was one of many efforts to convince the sponsoring legislators to place administrative responsibility for the program with the Water Quality Control Division. All efforts failed. Senate Bill 16 made steady progress through the various committees with minor changes. It was waiting action by the House Appropriations Committee when the bill's principal sponsor was notified that the General Counsel within the EPA had determined that as formulated, the bill would

not meet the legal requirements for state assumption. Legislative action on the bill was halted at this time. A copy of EPA's opinion is attached to this report as Exhibit E.

Supporters of the bill were understandably disappointed. Rather than take issue with the EPA opinion, they decided instead to wait for Congressional action on the reauthorization of the Clean Water Act scheduled for the 1982 Congressional session.

Receipt of the EPA opinion and the decision of the sponsoring legislators to halt action on the bill for the time being forced a reordering of activities for the 404 assumption study. Preparations for state assumption were channeled into making needed improvements to the companion 401 program. The rationale for taking this action was rooted in the belief that a well organized, smoothly operating 401 program would greatly facilitate 404 assumption if and when it occurred, as the purpose of and procedures for the two programs closely paralleled one another.

Objective C. Establish in-house foundation for reviewing 404 applications and developing BMP's.

1. Determine how the program is administered and operated by the federal and state agencies currently involved.

The aim of this element of the work plan was to prepare for replication of the federal program. Requests for descriptive information on involvement in the 404 program were sent to all affected state and federal agencies. Following receipt of the replies, a meeting was set up in October, 1980 to discuss program needs and operation and to exchange some practical information about day-to-day operations. This meeting was attended by the three principal COE districts, USFWS, EPA, the Bureau of Land Management and a number of state agencies.

The information that surfaced served as a blueprint for the design of the state program. Each of the attendees candidly described how his/her agency was involved, the number and type of staff assigned, the responsibilities of the more critical staff and their contribution(s) to the program. To clarify what can be expected on assuming the program, one of the COE representatives gave a detailed description of a typical work day.

2. Compare and contrast current in-house capabilities for program administration and operation with those required for assumption.

An analysis of the overall program and its application in Colorado was developed from the October meeting. The conclusion drawn was that Colorado clearly had the potential to successfully administer and operate the 404 program, but would have to significantly expand and reassign human and financial resources to accomplish it. The budget analysis (Exhibit C) describes a number of the actual tasks undertaken as part of the dredge and fill permit program, and includes staffing recommendations.

Staff training began early in the study so that the needed expertise would be available if and when assumption took place. Diligent efforts were made to identify courses that would prepare staff for State takeover. Staff took advantage of technical and managerial training opportunities. The knowledge and skills acquired have regularly been applied in the course of evaluating 401 applications, managing the study and developing essential interagency ties.

3. Develop a system for determining where 404 permits are needed.

Determining where 404 permits are needed is an important means of forecasting where significant activity will take place so that preparations can be made to target resources. The 404 log book and files were used to compile this information; increases and decreases were noted by activity, type and location. The system that was developed attempted to project where activity will be concentrated based on past experience and an assessment of future needs. Future needs took into account the growth occurring in energy and recreation area development and the impact both would likely have on a state-administered 404 program.

The negative water quality impacts associated with the following 401/404 permitted activities:

1. gravel extraction
2. placer mining
3. intake and outfall structures
4. bank stabilization
5. utility crossings

The criteria used in selecting the permitted activities for BMP development included the frequency of occurrence in Colorado, and the adverse water quality impacts wrought by them.

Applicable BMP's were identified for each activity, methods of application were described in detail and included sketches or diagrams as appropriate. Situations and/or circumstances for appropriate application were also cited. The initial draft of the BMP's is being reviewed by interested and affected agencies. Once finalized, the BMP's will be applied on a case by case basis to the 401 applications

Objective D. Assist in identifying wetlands in selected counties undergoing significant growth pressures

Under this objective, the Water Quality Control Division undertook activities to assist in identifying wetlands in selected counties undergoing significant growth pressures. The state role under this objective was to assist and support the federal agencies in making informed decisions regarding wetlands. The actual policy and decision making rests with the federal agencies.

Wetland identification efforts included site inspections of a number of development areas in an effort to develop a better understanding of the varying types of wetlands and the functions they serve. In accordance with provision D.1 of the work program, many of these inspections took place at controversial growth impacted development sites on the western slope. On-site investigations and meetings occurred at the following sites:

- AMAX Molybdenum Mine,
- Crested Butte,
- the Adam's Rib Ski Resort at Eagle,
- and the Keystone Ski Area, Summit County.

Each of these meetings and inspections served to bring affected and interested state local and federal agencies together to examine the issues and identify feasible and appropriate alternatives to proposed wetland fills. A number of other sites were investigated to obtain more knowledge on the subject and include, among others:

- Steamboat Springs' developments,
- the Craig Golf Course,
- numerous other Summit County developments,
- Telluride developments, and
- developments in Crested Butte and Grand County.

Actual wetland identification for most of these projects was not an issue as most clearly complied with the definition applied by the Corps. The one exception was Whistler Village near Walton Creek in Steamboat Springs. The identification of the area as wetland was disputed by a number of public and private entities. The project was followed closely; actions taken served as a valuable education in wetland identification.

Valuable information on wetland identification was provided in a lecture delivered by Chuck Elliot of the U.S. Fish & Wildlife Service and USFWS sponsored course on Habitat Evaluation Procedures (HEP). The latter outlines methods of assigning values to wetlands.

The acquisition and review of numerous resource materials has also been very valuable in developing the in-house capability to identify and evaluate wetlands. The USFWS agreement provided the opportunity for the Division to considerably expand its reference materials on wetlands and related subject areas. Discussion of the importance of preserving and protecting wetlands received special emphasis in the eleven public meetings/workshops (see Table 3.6) that were conducted under the USFWS agreement. The video presentation, a key element of the workshop presentations, contained a segment that described the numerous functions that wetlands fulfill and emphasized the problems that arise with their loss. The question and answer portions of the workshops also served as a valuable means of exchanging information and correcting misconceptions about wetlands.

Wetlands were also addressed in the public information pamphlets developed as part of the cooperative agreement with the USFWS.

Other wetland activities include the technical review and support provided to the Northwest Colorado Council of Governments (NWCCOG) on the development of two handbooks designed to protect wetlands from development activities through conflict resolution and mitigation. The COG conducted a series of workshops in the six county area (Summit, Grand, Eagle, Jackson, Routt and Pitkin) to explain the actions that local and county governments can take to preserve and protect wetlands. The Division also participated in the wetlands identification efforts in Summit County. Activities here included site visits, ground truthing the areas in question and participation in the mapping and the development of mitigation measures for wetland losses.

Protection of wetlands was also fostered by the Division's policy on the issuance of section 401 certificates for proposed wetland fills. Under this policy proposed in April, all applications for wetland fills must be accompanied by acceptable mitigation plans to qualify for waiver of certification. If the review of the application uncovers problems with the mitigation proposal, the applicant is promptly sent notification along with suggestions for changes. Failure to respond or resolve the problems can result in denial of 401 certification.

An issue separate from wetland identification and protection but that has absorbed considerable time and energy is the effect of placer mining on water quality and aquatic habitat. Individual placer mining operations have increased significantly as the value of the gold extracted has remained at relatively high levels making even costly extraction a profitable proposition. Although applications for certification for these activities has increased commensurately, many people are still mining the streams using small mechanical dredges, unaware of the need for 401/404 authorization. Unfortunately, far too many go unreported. In response, a comprehensive placer mining policy has been put together by the Division in order to minimize the environmental damage associated with these operations. The policy is expected to be finalized soon. Although the policy will be quite effective in curbing habitat, wildlife, and water quality loss, those waters below a daily average of 5 cfs are not within exercised jurisdiction of the 401/404 program and may in many situations be more sensitive to placer mining than streams with greater velocities. The Division is still trying to resolve this matter.

Some research has been done on a proposed placer mining site that has received 401/404 certification. The location is at the mouth of Badger Creek, a tributary to the Arkansas River near Salida. Three traveling kick net samples were taken in known areas at three different

locations, above, below, and within the mining site. This preliminary sampling will be followed up by samples taken during the actual placer dredging and after mining has terminated. The objective is to determine if the macro invertebrate community is affected by the mining operation.

The future for wetlands in Colorado looks considerably brighter as a result of the accomplishments made possible under the agreement with the Fish and Wildlife Service. The Water Quality Control Division has been able to expand staff expertise in wetlands identification and evaluation. These efforts have been very valuable to the operation and administration of the section 401 program, and will be readily transferrable if and when the state assumes the section 404 permit program.

Objective E. Inform the public of the state's current and proposed involvement in the 401/404 program.

The public education component of this study included an analysis of the materials available on the 401 and 404 programs, the design and distribution of pamphlets describing the state's efforts, and the development and conduct of a series of public meetings and workshops on Sections 401 and 404 of the Clean Water Act.

As outlined in the work program, the first step involved examining the public information materials developed to date to determine what information was already available and what areas the state might then address.

The bulk of the materials reviewed had been prepared by federal agencies and addressed various elements of the 404 permit program; no information was uncovered on the companion state-operated 401 programs. Topics covered in the federal publications included historical and explanatory information about the 404 program, how the program is implemented and how to obtain a permit. The films and photographic slide presentations focused on the need for the program, graphically illustrating what can happen if dredge and fill activities are not regulated. The value of wetlands and the protection provided by 404 were also covered in this medium. The outcome of this exercise was the selection of the state's proposal to take over the dredge and fill permit program, as the topic for one public information pamphlet, and a description of the inter-relationship between the two programs - 401 and 404 for the other.

Content outlines were developed for both pamphlets; these along with format recommendations were forwarded to the liaisons and to other interested and affected agencies for review and comment. The recommendations received were incorporated as appropriate, and the pamphlets were printed in bulk. The format selected was the four-sided mailer which imposed constraints on the amount of narrative information that could be included. This had the beneficial effect of making the language used in the pamphlets clear and concise. The size, ability to use art work effectively and the ease in mailing also influenced selection of the four-sided mailer. Examples of the public information pamphlets developed and distributed under the agreement are included as Exhibit F.

The pamphlets were distributed to interested agencies and groups in both the public and private sectors for circulation among their staffs and/or members. Bulk mailings were made to selected professional and trade associations whose members were likely candidates for 401/404 certificates and permits. Single copies were made available to anyone upon request. Courtesy copies were sent to the State Water Quality Control Commission, members of selected state legislative committees, and to other states engaged in similar 404 assumption endeavors. Demand for the pamphlets exceeded supply within months of the first printing; a second printing in reduced quantity was therefore authorized.

In contrast, the seminars and workshops were to provide opportunities for face to face exchange of information on the operation and administration of the 401 and 404 programs and to inform the general public and special interest groups of the state's proposal to assume administrative responsibility for the 404 program.

The design of the workshops, Exhibit G, addressed procedural and content elements. The first task under the procedural element was to determine the information needs. This was accomplished through telephone and written surveys of representatives from a variety of interested and affected groups, and a review of inquiries about the two programs. Everyone contacted was asked for recommendations on issues to cover, groups to target, and appropriate methods of delivering the information.

The recorded responses to the first question clearly indicated that a general lack of knowledge and understanding existed among the general public in the opinion of many of those interviewed or submitting written comments. The principal recommendation that emerged from the survey was to cover basic details about the program such as the types of activities that require permits, procedures followed to obtain a certificate and permit, criteria used in evaluating applications, and the length of time for processing. A second suggestion was to address the implication of proposed permitted activities on wetlands. Many respondents indicated that there appeared to be fairly widespread public concern about the identification of wetlands and the mitigation currently required for filling them. The review of written and telephone inquiries supported the need for basic information about both programs, particularly procedures for obtaining 401 certificates.

The recommendations that emerged from the survey and review served as the basis for selecting the content for the workshops. Format suggestions included public meetings, workshops, seminars and presentations at scheduled meetings of groups affected by or with strong interest in the the dredge and fill permit program. The most frequent recommendation was for public meetings aimed at general or mixed audiences. Most of those surveyed indicated that the information needs of individual or specific interest groups, for the most part, did not merit singling them out for special presentations. Addressing mixed groups, many opined, would satisfactorily cover the diverse information

needs of most of the others. Those that suggested targeting the presentations felt that individual meetings or workshops would be an effective means of addressing problems and issues unique to a given group. Groups recommended for targeting included land developers and contractors, sand and gravel operators, county and municipal staffs and members of the agriculture and ranching communities. A concerted effort was made through the publicity campaign to involve these groups in the general meetings.

The survey responses also influenced the development of the schedule for the meetings. Suggestions for times and locations were also solicited from the 404 liaisons, the regional COG's and Commissions, and from special interest groups. A copy of the workshop schedule appears in Table 3.6

TABLE 3.6

Schedule of Public Meetings

<u>Location</u>	<u>Date</u>	<u>Time</u>	<u>Place</u>
Sterling	Thurs. 6/25	8:00 p.m.	Northern Colorado Health Dept. 700 Columbine
Pueblo	Wed. 7/29	7:30 p.m.	City Hall COG Conference Room
Canon City	Thurs. 7/30	7:00 p.m.	Fremont County Building 6th & Macon
Colorado Springs	Wed. 8/5	7:00p.m.	Pikes Peak Area COG 27 East Vermijo St.
Denver	Thurs. 8/6	7:00 p.m.	Colorado Health Department 4210 East 11th Avenue Room 150
Durango	Tues. 8/11	1:00 p.m.	Centennial Savings 1101 East 2nd Avenue
Montrose	Wed. 8/12	7:30 p.m.	City Council Chambers City Hall Annex Uncompaghré & S. 1st
Alamosa	Mon. 8/17	7:00 p.m.	San Luis Valley Federal Savings and Loan 401 Edison
Grand Junction	Tues. 8/18	7:00 p.m.	Mesa County Courthouse 540 Rood Avenue
Fort Collins	Wed.8/26	7:00 p.m.	Poudre School District, R-1 2407 La Porte Avenue
Gunnison	Tues.9/1	7:00 p.m.	Gunnison County Courthouse 200 East Virginia

Travelling convenience for the participants and facilitors was an important consideration in developing the schedule. The evening hours were selected to facilitate the attendance of people who would not be able to attend during working hours.

The content of the meetings was to meet the information needs that emerged from the survey. Topics covered included brief background on the state and federal water quality acts, the provisions of sections 401 and 404 of the federal act, a visual presentation on the types of activities covered under the permit program and the need and methods employed to protect wetlands. The criteria used in evaluating 401 applications and the procedures followed to obtain a 401 certificate were outlined in detail. Emergency procedures, BMP's and mitigation were also covered. Questions and comments were invited throughout the presentation. One or more representatives from the Corps attended most of the meetings, and responded to questions about the 404 program. The facilitator answered inquiries about the state-operated program.

The time spent responding to inquiries was possibly the most valuable element of the public workshops. It provided a unique opportunity to exchange viewpoints and to correct misconceptions about the purpose and operation of the programs. Table 3.7 lists some of the questions, issues and concerns most frequently raised at the public meetings.

TABLE 3.7

ISSUES AND CONCERNS
RAISED AT PUBLIC
MEETINGS ON 401/404

<u>ISSUE</u>	<u>RESPONSE</u>
The benefit of a state-administered 404 program.	State assumption will permit consolidation of a number of functions currently undertaken by 5 separate offices, eliminating much of the duplication and lack of consistency that currently plagues the program in Colorado. As a public entity, the state-level agency administering the program is closer to the regulated citizen and will likely be more responsive. Water quality control has traditionally been a responsibility of the state in Colorado.
Justification of the cost/benefit ratios of the program in a state like Colorado.	State assumption will require expenditure of funds not currently spent. It is hoped that the economies of scale realized by consolidating operations and streamlining administration will offset much of the initial expenses. The economic benefits of water quality improvements derived from the program are real, but difficult to assess in actual dollars.
Capability of the state to replicate the federal effort.	The state is serious about assuming administrative responsibility for the 404 program and has already taken definitive preparatory steps to do so. An initial survey of the capabilities required indicate that the state has the potential of operating a technically and administratively sound 404 program. One of the greatest concerns is adequate funding to undertake it.

<u>ISSUE</u>	<u>RESPONSE</u>
Position on wetland protection	Wetland protection is a key element of section 404. Given that a state-administered program must replicate the federal program, wetland protection will be part of the state 404 program.
EPA oversight and involvement of other federal agencies in state administered program.	EPA oversight of a state operated 404 program is provided for in the Clean Water Act. Review of applications by the U.S.F.W.S. is also provided for, as is coordinated planning among affected agencies. Federal involvement in state administered programs will continue unless Congressional action is taken to alter or change it.
Expand the number of activities included under the general and nationwide permit categories	The Corps is making a diligent effort to do this. Inclusion of an activity in one of these categories significantly reduces the time and paperwork associated with permit processing. Meeting attendees were encouraged to notify the Corps of categories and types of activities they felt merited inclusion in either category. The general conditions for inclusion were outlined.
Time it takes to process 401 and 404 applicatons.	Section 401 applications generally take 6 to 8 weeks to process, the 404 permit takes an average of 60 to 90 days. Time can be saved by processing them simultaneously.

Another important component of the public information effort was the publicity campaign for the meetings. The campaign was developed from the strategy outlined in Table 3.8

Table 3.8

Outline for Publicity

401/404 Workshops

1. Develop a fact sheet and flyer on the 401/404 workshops.
2. Furnish copies of the fact sheet and schedule to interested and affected governmental agencies (state, local, regional and federal). Request that they notify or furnish lists of constituent groups. Make a few personal (phone) contacts.
3. Develop a press release, distribute it to the local press, radio stations and special interest groups along with the fact sheet. Send out 2-3 weeks ahead of time. Follow-up with phone calls as appropriate.
4. Set up an appointment with the local press to discuss meetings or workshops as desired and/or feasible.
5. Prepare fliers for general distribution, display them at appropriate locations (optional).

The publicity campaign was very effective in generating attendance at the meetings. Numbers of the press were present at every meeting, and local television and radio stations frequently conducted interviews with the facilitator before or after the meetings. The publicity effort was very successful in meeting the goal of "getting the word out."

Judging from comments and inquiries received during and after the presentations, the public meetings did succeed in providing needed information on the 401/404 programs. The immediate result of this effort has been an increase in the number of inquiries about regulated activities and 401 certificates. An increase in reported violations has also been noted. Although not documented, it is theorized that people are reporting suspected violations because they now recognize them.

CONCLUSIONS

The section 404 assumption study demonstrated that Colorado has the interest and ability to administer the dredge and fill permit program authorized under section 404 of the Clean Water Act.

Under the study, the state sought to acquire the essential authorities required for state assumption. Pursuit of state assumption was halted with notification from EPA's General Counsel that the state's draft legislation would not satisfy the legal requirements for assumption. In response, the sponsors of the legislation decided to delay further action until reauthorization of the Clean Water Act, scheduled for the 1982 Congressional Session, was completed.

Waiting until the reauthorization is complete allows the state to

- to state water allocation decisions;
- lack of flexibility in designing and tailoring state programs to meet state needs;
- number and breadth of criteria that a state must apply in evaluating the impacts of 404 permits;
- power of the federal government to deny or overturn a state authorized permit once a state has assumed the program.

The establishment of a viable state-administered program in Colorado will require amending these provisions of Section 404 and the accompanying regulations. Colorado has taken action to affect these changes by lending support to legislative changes proposed by the National Governor's Association.

APPENDIX

EXHIBITS

- A. Cooperative Agreement with U.S.F.W.S.
- B. Work Program for 404 Assumption effort
- C. Budget Narrative Analysis
- D. Draft Legislation
- E. EPA Opinion on Draft 404 Legislation
- F. Public Information Pamphlets
- G. 401/404 Workshop Design

EXHIBIT A

COOPERATIVE AGREEMENT
NO. 14-16-0006-80-312

COOPERATIVE AGREEMENT

Between
U.S. Fish and Wildlife Service
and the
Colorado Department of Health

PURPOSE

This Cooperative Agreement between the Fish and Wildlife Service, United States Department of the Interior, hereinafter referred to as FWS, and the Colorado Department of Health, hereinafter referred to as CDH, is entered into for the purpose of carrying out policies established in Section 208(I)(1) and Section 404(g)(1), of the Clean Water Act of 1977 (P.L. 95-217), and the Fish and Wildlife Coordination Act (P.L. 85-624, as amended by P.L. 95-72). This Agreement is entered into pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-274), 41 U.S.C. 501-509.

WHEREAS, the Clean Water Act provides that the Secretary of the Interior, acting through the Director of the FWS, shall, upon request of a State Governor and without reimbursement, provide technical assistance to the State in developing and implementing a statewide program for regulating the discharge of dredged or fill material,

WHEREAS, the said Act also provides that any State desiring to administer its own permit program for the discharge of dredged or fill material into navigable waters may establish and administer a permit program under State laws, subject to approval by the U.S. Environmental Protection Agency,

WHEREAS, the Governor of Colorado has requested assistance from FWS for the purpose of providing technical assistance in the early development of a State program for regulating the discharge of dredged or fill material under Sections 208/404 of the Clean Water Act.

WHEREAS, it is to the mutual desire of FWS and CDH to work in harmony for the purpose of developing a viable state-operated 404 permit program which in turn considers of fish and wildlife uses, including habitat preservation and wetlands protection as well as other uses in the State's waters.

The overall goals of this Agreement are:

1. Development of State authority for administration of a 404 permit program which also can be used as a model in other western States.
2. Development of processes and procedures for managing the program which include consideration of fish and wildlife uses, as well as other beneficial uses.

STATEMENT OF WORK

The Fish and Wildlife Service will:

1. Provide technical assistance from Washington, D.C., Region 6, Salt Lake City Area Office, and the Colorado State Field Offices to the Colorado Department of Health.
 - a. Technical Assistance
 - (1) Expertise in wetlands, aquatic biology, and BMP's development.
 - (2) Equivalent to one-person-year, full-time, for each fiscal year.
2. Fund up to \$65,000 in FY 1980, and \$65,000 in FY 1981 to CDH for expenditures in achieving the work items listed below.
3. Assist CDH in conducting educational, informational meetings and/or workshops as primary duties allow.

The Colorado Department of Health will:

1. Draft legislation which would enable the State to assume the 404 program. The proposed legislation will include consideration of:
 - a. The ability to balance protection of the uses of the State's waters, including fish and wildlife,
 - b. A process for administering a Section 404 and Section 208(b)(1)(B) program. This will include authority to develop approvable Best Management Practices (BMP's) to substitute for 404 permits for appropriate activities.
 - c. Provision for staffing, funding, and facilities necessary to adequately support the program.
 - d. The September 15, 1980, interim report will review the progress on this effort. Final proposed legislation will be prepared by February 28, 1981.
2. Establish a strong in-house foundation for reviewing 404 applications and developing BMP's.
 - a. Gather and review relevant information from Federal, State, regional, and local governments and from private sources. Make this information available to others.

To be completed by September 15, 1980.

- b. Develop a system for determining where 404 permits are needed. This system will be used, inter alia, to gather basic information so that a determination can be made of where BMP's might be appropriate and what BMP's might be used.

Draft to be delivered by December 31, 1980. Final to be completed by February 28, 1981.

c. Develop a system for identifying appropriate BMP's and mitigation measures and the types of 404-covered activities these might be applied to.

To be completed by February 28, 1981.

3. Apply the system so that 404-covered activities in Colorado are identified in as many areas as possible and identify appropriate BMP's or mitigation measures where possible.

To be completed by September 30, 1981.

4. Assist in the identification of wetlands, using at a minimum existing Section 404 regulatory definitions of waters of the U.S., in counties where there are growth pressures which threaten wetlands. This will be done in few key western slope counties beginning in Summit County. This will be jointly conducted with appropriate Federal, State, local, and private entities using information which reflects the State-of-the-Art. Agencies involved in the Summit County effort include the Corps of Engineers, EPA, FWS, CDH, the Northwest Colorado Council of Governments, and the Summit County Planning Office. Information gathered here will be applied in identification of wetlands in other parts of the State. CDH will assist in this team effort through:

- a. Compilation and analysis of information.
- b. Calling meetings among agencies and the public when appropriate.
- c. Trying to develop a consensus on the identification of wetlands.

Progress report to be completed by September 30, 1981.

5. Prepare a public education seminar which will be presented at public meetings. The seminar will have different components so that it can be directed at different interest groups. At least 10 seminars will be held in FY 1981. This educational effort will be closely coordinated with 209 agencies which should result in their assistance in developing BMP's and responding to other local 404 issues. It should also bring about a more effective operation of the 404 program through increased understanding.

Seminar will be prepared by February 28, 1981.

6. Develop pamphlets for public information which are directed towards the public, 208 entities, and permit applicants.

Two pamphlets prepared by September 15, 1980.

7. The CDH will maintain close liaison among the Department, Boards, and Commissions of the State, local, and Federal Governments, including, for example, FWS, Colorado Division of Wildlife, Environmental Protection Agency, Labor and Power Resources Service, and the Corps of Engineers for recommendations, technical expertise, and source of funds.

8. The CDH will provide the results of the above work in final report which will include the proposed model legislation and program to the FWS on November 30, 1981. Draft of the final report will be due to FWS on November 1, 1981. Interim reports will be provided to FWS on September 15, 1980, and April 15, 1981. Ten (10) copies of the interim reports are required and one (1) camera-ready original plus five copies of the final report are required.

DURATION OF AGREEMENT

This Agreement shall become effective when signed by both parties and shall remain in effect through November 30, 1981. The FY 1981 funds and assistance are subject to the funds being appropriated by Congress.

AMENDMENTS

Amendments to this basic Agreement may be proposed by either party and shall become effective upon approval of both parties. This Agreement may be amended by mutual agreement of both parties until the purposes of this Agreement are fulfilled.

TERMINATION

This Agreement may be terminated for noncompliance by either party upon thirty (30) days' written Notice of Intention to terminate.

DISCLAIMER

The CDH reserves the right to disagree with FWS or any other Federal or State agency regarding the necessary contents of the proposed legislation or program. The FWS, through its participation, is not giving advance concurrence to the delegation of the 404 program to Colorado or the adequacy of the proposed legislation or program.

PROJECT MANAGERS

The project manager for the CDH will be Marcia M. Hughes, Public Resources Specialist, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220, telephone (303) 320-9133, and the project manager for the FWS will be Deborah Hoffman, Aquatic Biologist, U.S. Fish and Wildlife Service, Region 6, P. O. Box 25486, DFC, Denver, Colorado 80225, telephone (303) 230-4616.

PROGRESS AND BUDGET REPORT

A progress and budget report must be submitted to and approved by FWS prior to all work performed by the CDH.

FINANCIAL ADMINISTRATION

Detailed monthly invoices for payment shall be submitted to the Service; the vouchers shall itemize all charges for materials, labor, travel, overhead, and GSA. In making these payments, there shall be retained by the FWS 10 percent of the estimated amount of each service provided by the CDH until final completion of each phase of the project. Invoices shall be submitted through the Project Manager, FWS, for review and approval.

GENERAL PROVISIONS

Attached General Provisions are hereby included as part of this Agreement.

Effective Date of the Memorandum 6/23/80

Signed: Don W. Minnich
Don W. Minnich
Regional Director
U.S. FISH AND WILDLIFE SERVICE

Signed: Frank A. Taylor
Frank A. Taylor, D.D.
Executive Director
NATIONAL DEPARTMENT OF HEALTH

WORK PROGRAM
DREDGE AND FILL TRANSFER STUDY

GOAL: To identify and develop the abilities needed to enable the State of Colorado to assume the dredge and fill permit program.

Objective

A. Establish an information network among all parties involved in the 404 effort.

Tasks and Outputs:

1. Notify all interested parties and affected agencies of the State's current and proposed involvement in the 404 permit program.
2. In the interest of facilitating interagency coordination and public participation, request that each agency/organization assign a contact person to serve as a liaison with the 404 program effort.
 - . Compile a mailing list of assigned contact people, keep them regularly informed of progress.
 - . Channel information requests through the liaisons, distribute progress reports to them, involve them in meetings as appropriate.
 - . Distribute materials for review and comment to liaisons.

Objective

B. Draft legislation that will enable the State of Colorado to assume the 404 permit program.

Tasks and Outputs:

1. Examine the history and background of Section 404 of the Clean Water Act; consult the Legislative History of the Clean Water Act to determine the intent of the legislation and the specific concerns of Congress, federal agencies and others.
 - . Develop a memo outlining the background and history of the legislation.

2. Review Section 404 of the Clean Water Act, the Consolidated Regulations, other existing regulations and the draft 404(b)(1) guidelines to determine what is or might be required of the State in assuming the dredge and fill program.
 - . Develop an outline of the authorities, etc. required.

3. Review current Colorado statutory authority, past and present proposed state legislation to determine what elements of the State's Water Quality Control Act need to be revised or amended.
 - . Examine roles of affected State agencies in the 404 permit process.
 - . Develop a memo outlining what authorities applicable to the 404 permit program are currently available under adopted and proposed State legislation.

- ↓ 4. Collect and review other state's adopted and/or proposed legislation, regulations, procedures and program guidelines on 404-related activities.
 - . Identify and contact states that have passed pertinent legislation on 404 related activities. (An effort will be made to find a central resource for this information.) As they become known, review other states' regulations, procedural guidelines etc. for applicability in Colorado.
 - . Interview appropriate personnel in selected states to get a historical perspective on what 404 program related approaches have or have not been successful and why.
 - . Compile a list of legislative actions, rules and regulations, procedural approaches, etc. applied or attempted in other states that might have potential application in Colorado, compare and contrast these with the authorities required for the transfer under federal law and regulation.

↓ indicates FWS input or assistance

5. Draft summary assessment of elements that should be included in the legislation and determine the annual cost of program to the State.

Summarize the elements that should be included in the draft legislation; prepare an interim progress report. Delivery Date to FWS - September 15, 1980



Determine the annual cost of the program by contacting federal and state agencies currently involved in its administration and operation. Agencies contacted will include the regional EPA, the district offices of the Corps of Engineers with jurisdiction in Colorado, the Fish and Wildlife Service, and the State Division of Wildlife. Each agency contacted will be asked for annual administrative and operational cost breakdowns. Specifically, they will be asked to furnish the number and qualifications of full and part-time staff, overhead costs, and the type and cost of equipment used. In addition, the Corps administrators will be asked for the number and type of permits processed in Colorado annually, and the number and cost of enforcement actions taken each year. Inquiry will also be made into the actual and projected cost increases for the program.

Once compiled and analyzed, this information will serve as the basis for estimating the size and type of expense the State will incur in assuming the program. Delivery Date to FWS - September 15, 1980

A fiscal note will be developed and attached to the proposed draft legislation once it is completed.

6. Draft proposed legislation for assumption of the 404 permit program.

The sample legislation will be drafted using the information assembled in the legislative and fiscal analyses (work items 1,2,3,4, and 5). Data on the development of best management practices and mitigation measures (Objective C) will also be reflected in the draft legislation as will the State's ability to balance protection of water quality and the preservation of fish & wildlife habitats with other demands on the State's water.

Comments and recommendations from affected agencies and individuals will be considered and included as appropriate in the draft legislation.

- ↓ . Copies of the draft legislation will be submitted to all affected state and federal agencies for review and comment prior to consideration by the appropriate state legislative committee. Delivery Date to FWS - January 3, 1981
- . Prepare final proposed legislation. Delivery Date to FWS - February 28, 1981

Objective

- C. Establish in-house foundation for reviewing 404 applications and developing BMP's.

Tasks and Outputs:

- ↓ 1. Determine how the program is administered and operated by the federal and state agencies currently involved.
 - . Identify all state and federal agencies currently involved with the 404 program; determine the role and responsibility of each one.
 - . Contact each agency for information on processing and evaluation procedures, staff organization and assignments, job descriptions and work loads, equipment needs, etc.
 - . Carefully assess the involvement of each agency; if available, gather flow charts of processes adhered to by agencies in the review of permit applications, analyze application forms, follow-up activities, and fiscal impacts.
 - . Draft a memo outlining the findings and their applications in Colorado. Send to affected agencies for comment. Delivery Date to FWS - January 3, 1981
 - . Prepare final memo. Delivery Date to FWS - February 28, 1981
- 2. Compare and contrast current in-house capabilities for program administration and operation with those currently undertaken and required for assumption of the 404 permit program.
 - . Where discrepancies exist, examine the availability and opportunity for training Water Quality Control Division staff.

- . Outline procedures, staff needs, costs, etc. for establishing the program in-house.
- . Make a sincere effort to build the necessary expertise among existing staff.



3. Develop a system for determining where 404 permits are needed.

- . Using the regulations and guidelines, list all activities that require a 404 permit as well as those not affected; distinguish among activities covered by general, nationwide and individual permits.
- . Compile a list of the location (by counties) and the type of 404 permits processed in Colorado since the program's inception. Note any increases or decreases in the number and types processed over the three year period.
- . Prepare draft memo which sets forth a system for determining where 404 permits are needed. Delivery Date to FWS - December 31, 1980
- . Finalize the memo. Delivery Date to FWS - February 28, 1981



4. Develop a system for identifying appropriate BMP's and mitigation measures.

- . Review current literature on BMP's
- . Survey federal and state agencies for information on the development and application of BMP's and mitigation measures. Emphasis will be placed on those with applicability in Colorado.
- . Develop two systems, one for identifying BMP's and another for mitigation measures. Delivery Date to FWS - February 28, 1981



5. Apply the system developed for BMP's and mitigation measures to identify appropriate BMP's or mitigation measures where possible.

- . Prepare a strategy for applying BMP's and mitigation measures to targeted 404 permit-covered activities in Colorado. Frequency of occurrence and tested success in Colorado will be among the criteria used in selecting the 404 activities. Delviery Date to FWS - February 28, 1981

- . Follow procedures outlined in the strategy prepared for applying BMP's & mitigation measures.
- . Analyze the steps involved in each 404 permit covered activity; determine the applicability of BMP's and/or mitigation measures for each step.
Example: For construction of a dam, break total construction into relevant components and form BMP's for each component.
- . Educate staff and others on application procedures developed.
- . Document outcomes randomly through follow up visits. Delivery Date to FWS - September 30, 1981

Objective

- D. Assist in identifying wetlands in selected counties undergoing significant growth pressures.
1. Identify a few key western slope counties that are expected to incur significant population increases as a result of energy development and/or recreation area expansion.
 - ↓ 2. Using the 404 regulatory definitions of waters of the U.S., assist federal and state agencies in the identification and mapping of wetlands in the selected growth-impacted areas.
 - ↓ 3. Assist the regional council of governments, the affected county(ies) and federal agencies in analyzing the information gathered and conducting public meetings as appropriate.
 4. Assist in developing a consensus agreement on the identification of wetlands among federal and private entities as appropriate.
 5. Prepare progress report on wetlands identification project. Delivery Date to FWS - September 30, 1981

Objective

- E. Inform the public of the State's current and proposed involvement in the 401/404 program.

Tasks and Outputs:

1. Analyze existing and needed public education efforts on the 401/404 program.
 - . Collect and review public information materials on the 401/404 program currently used by federal, state, regional and local governments and private sources.
 - . Determine topics that the State could appropriately address in two public information pamphlets.
 - . Develop an outline and format for educational/informational pamphlets. August, 1980
 - . Circulate recommended topics, content outline and format suggestions among affected agencies. August, 1980
 - . Design pamphlets using appropriate input solicited from staff and affected agencies. Delivery Date to FWS - September 15, 1980

2. Prepare and conduct a series of seminars or workshops on the 401/404 program.
 - . Identify groups that might benefit from educational seminars or workshops on the State's 401/404 efforts.
 - . Delineate informational needs of the different groups identified.
 - . Design educational seminars/workshops to address identified needs; select locations for them.
 - . Distribute design for review and comment among affected agencies. January 1981
 - . Incorporate comments received as appropriate, prepare final design for seminar/ workshops. Delivery Date to FWS - February 28, 1981

- . Undertake necessary preparations for conducting seminars/workshops - i.e. selecting sites, involving locals, advertising, compiling mailing lists, etc.
- . Conduct seminars/workshops.
- . Record and summarize proceedings of each seminar/workshop.
- . Develop report on seminars/workshops for final report. Delivery Date to FWS - November 30, 1981

Objective

F. Prepare and submit final report on program outcomes and model legislation.

Tasks and Outputs:

1. Prepare and submit ten (10) copies of interim progress reports on the realization of milestones. Delivery Date to FWS - September 15, 1980 & April 15, 1981
2. Submit a draft copy of the final report on program outcomes to the FWS for review and comment prior to final publication, November 1, 1981
 - . Decide on the number and format for the final report.
 - . Compile a list of recipients for the final report.
 - . Prepare and submit one (1) camera-ready original and five copies of the final report. Delivery Date to FWS - November 30, 1981

Budget Narrative

404 Dredge and Fill Program

According to the 1977 amendments to the Water Pollution Control Act, State assumption of the dredge and fill permit program from the Army Corps of Engineers requires that the State have the following authorities:

- 1) To issue permits for the discharge of dredged or fill material into navigable waters and adjacent wetlands;
 - a. Permits are for fixed terms not to exceed five years;
 - b. Permits can be terminated or modified for cause, but not limited to:
 - . violation of any condition of the permit;
 - . obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;
 - . change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- 2) To insure compliance with permit conditions through inspections and monitoring (Section 308, Clean Water Act);
- 3) To assure that the public, and any State whose waters may be affected receive notice of each permit application;
- 4) To provide opportunity for public hearing before a ruling on each application.
- 5) To assure that the Administrator of EPA receives notice of each application for a permit;

- 6) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendation to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not acceptable, that the permitting State will notify the affected State in writing;
- 7) To abate violations of the permit or the permit programs, including civil and criminal penalties and other ways and means of enforcement;
- 8) To assure continued coordination with federal and state water-related planning and review processes;

The necessary authorities, once acquired, translate into the following capabilities:

- 1) In order to issue a 404 permit responsibly, the Division must collect pertinent information on the proposed activity, evaluate the merit of it from an engineering and biological perspective, determine the adverse impact(s) it is likely to have on overall water quality, municipal water supplies, fish and wildlife habitats, or recreational areas, and determine what, if any conditions would need to be imposed to minimize the cumulative environmental impacts of any given activities;

Currently, the information submitted by the applicant for evaluation includes;

- 1) A detailed description of the proposed activity, its purpose and intended use (private, public, commercial or other) including description of the type of structures, if any to be erected, composition and quantity of materials to be discharged, and the means of conveyance and the source of discharge or fill material;
- 2) The exact location of the proposed activity;
- 3) The waterway into which the discharge will be made;
- 4) The dates that the activity is expected to begin and end; etc.

Once submitted, this data must be evaluated by the staff, principal members of which must be biologists, hydrologists, and engineers. The hydrologists are needed to determine the water quality impacts, the biologists consider the impacts on wetlands, fish and wildlife habitats, and the engineers determine the structural soundness of any proposed construction and the consequences of other types of activities, i.e., changing river channels, rip-rapping river banks, etc.

The thorough and timely processing of applications will require support and assistance of other affected state agencies. Specifically, the Division hopes to draw upon the resources of the state Engineer's office, the Division of Wildlife, the Geological Survey, and the archeologists working through the State Historical Society. Actual tasks assumed by these agencies would be covered and reimbursed under formal contracts or cooperative agreements with the Division.

Possibly the most critical factor in processing the 404 permits will be the support personnel needed to duplicate forms, log, and route them, assemble and route responses, maintain files, track and retrieve computerized data, type correspondence, etc. An adequate number of staff to handle the expanding workload is extremely important to the timely turnaround of permit applications.

In addition to processing and issuing permits, the Division will also be responsible for monitoring and enforcing the law that covers dredge or fill activities.

Regulatory responsibilities will include periodic monitoring of permitted activities to ensure compliance with permit conditions and surveillance to detect illegal or unauthorized operations. Typically, investigating violations and reporting illegal activities could be handled by the Division's engineering technicians and by the regional or district engineers employed by the Water Quality Control Division and the State Engineer's Office. The Division of Wildlife should also be helpful in this endeavor.

Overall administrative responsibility for monitoring and surveillance activities would rest with the WQCD. Again, assistance provided by the other agencies would be covered under contractual agreements.

Enforcement of the state law covering dredge or fill activities and the accompanying regulations will be assumed by the WQCD. The law will provide for civil and criminal proceedings, and for penalties. Prosecution of violators will be handled by the Attorney General's Office.

Administrative and supervisory staff time will need to be allocated to the 404 program. It is anticipated that this need can be accommodated within the existing organization under current staffing patterns.

Item 4 at the opening of this narrative indicates that the State must be prepared to conduct public hearings on 404 permit decisions. Administratively this process will likely be handled through the Division. Hearings would be scheduled before an impartial officer as the need arose. Follow-up adjudicatory hearings would be arranged through the Attorney General's Office. The estimated costs of setting up and conducting these hearings must be a part of the annual 404 program budget.

A preliminary assessment of the Corps operated 404 program indicates that we will likely need to acquire additional equipment in order to effectively operate the program. Most specifically, we will need additional photographic equipment for surveillance and monitoring, computer access for data storage and retrieval, an aerial photograph viewing table, and possibly some additional clerical equipment, i.e., typewriters, filing cabinets, duplicating machine, etc. Additional motor vehicles for field work will also be needed.

The number and type of 404 permits processed by the Corps in Colorado and the number of violations handled provide some perspective on the workload and the amount of activity the State can expect in assuming the program.

Individual permits, evaluated on a case by case basis, take the longest time to process and involve most of the staff. The accompanying evaluation for these permits must consider environmental, economic, health, and welfare concerns, natural resources and hazards, aesthetics and recreation, etc. General and nationwide permits can be issued for activities expected to cause only minimal environmental harm both individually and cumulatively. Permits in both of these categories can be processed in considerably shorter time than that required for individual permits.

Data on permit activity received from the Corps offices indicates a steady increase since the program's inception. Although a healthy percentage of actions can qualify for nationwide or general permits, the expansion in the energy and recreational industries will likely result in an increase in individual permits as well. It is safe to predict that permitted activities in all categories will increase.

As permit violations occur, the State, in assuming the 404 program, may issue an administrative order requiring compliance within a specific time period or take civil action, such as a permanent or temporary injunction. A violation determined to be willful or negligent, can incur fines between \$2,500 and \$25,000 per day of violation, or imprisonment for up to one year, or both under the Corps' regulations. A second violation is punishable by a fine of no more than \$50,000 per day or up to 2 years imprisonment, or both. Similar penalties apply to discharges for which no permit has been obtained.

The following list outlines the number of violations handled in Colorado by the different Corps offices between January 1 and August 15, 1980.

<u>District Office</u>	<u>Number of Violations</u>
Omaha	12
Sacramento	80
Albuquerque	5

The number of enforcement actions processed by the different offices is directly related to the number of permit actions occurring in the same time period, and the number of field personnel available for surveillance.

The amount of staff time and energy expended on enforcement actions is difficult to assess because of the variations in type and complexity of the violations. It is estimated, however, that an engineer and biologist would be needed for assessments and administrative actions. Surveillance could be successfully handled by a staff member with a general background and an engineering technician supported by multi-disciplined field personnel working for the Division and for other affected state agencies.

The estimated annual cost of assuming the 404 permit program is approximately \$261,000. This total is broken down into the following functions:

<u>Personnel</u>	<u>Cost per Year*</u>
*Director, Water Quality Control Division 5 percent of time for overall administration	\$ 2,532
*Section Chiefs, Permits and Enforcement 10 percent of time for program supervision	\$ 8,761
*1 Senior Engineer reviews permits, serves in a supervisory capacity, establishes methods and procedures for accomplishing work	\$ 36,136

<u>Personnel</u>	<u>Cost per Year</u>
*1 Biologist, Master's degree review and process applications, work with enforcement and regulatory sections, conduct wetlands studies, policy guidelines, etc.	\$ 29,203
*2 Civil Engineering Technicians Handles telephone inquiries, review applications for construction in or on navigable waters, prepare permits, coordinate on site investigations prior to issuing permits, inspect projects under construction for permit compliance, investigate complaints	\$ 44,858
*1 Biological Technician reviews and processes applications to insure proposed work will not adversely affect water quality in the receiving stream, performs on-site investigations prior to issuing permits, conducts or coordinates post- permit investigations, conducts or coordinates surveillance surveys and investigation of complaints	\$ 20,895
*1 Environmental Planner prepares Environmental Assessments for permit applications to determine impact of proposed activity on the environment, reviews and comments on draft reports and regulations, coordinates cooperative	\$ 25,295

agreements with other governmental agencies, State Federal and local

*I Administrative Assistant \$ 20,895

coordinates paperwork associated with processing permits, reviews applications as they come in for completeness, logs them in, routes to appropriate staff person, maintains control logs, establishes the ADP format for the program, collects and distributes data; handles follow-up correspondence to applicants; prepares and disseminates monthly public notice lists, maintains files

*I Clerk Typist \$ 13,021

assists with telephones and preparing standard correspondence, transmits correspondence from other agencies to applicants, maintains suspense listing regarding sequenced action required on each permit application

\$ 201,596 (Subtotal)

Support Services for 404 Program

Program support for processing and evaluating permits, conducting on-site investigations, surveillance surveys, etc. will hopefully be shared under contractual arrangement with the Division of Water Resources (State Engineer's Office), and the Division of Wildlife, both located in the Department of Natural Resources.

* Salary figures include fringe benefits

The State Historical Society will be consulted on a case by case basis when the need arises to determine if a given proposal would adversely affect sites or items of identified historical significance.

Legal support for the 404 program will be provided by the State Attorney General's Office, also under contractual arrangement. It is estimated that an attorney would spend 5 to 6 hours per month on 404 related matters. This figure may increase as energy and recreation development in Western Colorado increases with corresponding increases in the need for 404 permits.

<u>Support Resources</u>	<u>Cost</u>
Division of Water Resources field engineers would review applications, assist with pre-permit site evaluations, complaint investigations surveillance surveys, and compliance monitoring	(\$ 25,000)*
Division of Wildlife field biologists would review applications, assist with pre-permit site evaluations, and surveillance surveys	(\$ 25,000)*
Office of the Attorney General an attorney would be needed for consultation on legal matters associated with the 404 program, and would need to be involved in the preparation for public and adjudicatory hearings	(\$ 10,000)

* availability dependent on interagency agreement; not included in

Table 3.3

Public Hearings

In assuming the 404 dredge and fill permit program, the State must be prepared to conduct public hearings on permit decisions as the need for such arises. Generally, public hearings are held to acquire additional information or evidence that would be useful in evaluating a proposed permit action. The public hearing also affords the public an opportunity to present their views on a given proposal. According to the federal regulations governing the 404 permit program, any person can submit a written request for a public hearing. Such a determination is forwarded in writing to the requesting parties.

When a public hearing is to be held, public notice must be issued within a specific period before the hearing. The estimated costs for conducting public hearings include the preparation and mailing of public notices, the court reporter, the attorney's fees for consultation, and the duplication and distribution of transcripts.

It is estimated that the State will need to conduct two public hearings a year. Actual expenses incurred will depend on the length of the hearings. The following are estimates for arranging and conducting the hearings:

Preparation - (duplication and mailing costs)	\$ 500
Attorney's fees	\$2,000
Court reporter	\$2,000
Hearing Officer (adjudicatory hearings)	\$2,500
(4 day hearing and preparation and decision)	_____
	\$7,000(Subtotal)

Costs associated with adjudicatory hearings would be slightly higher as they would require the appointment of a presiding officer from another agency of State government, (Division of Hearing Officers, Department of Social Services). This

individual would be reimbursed on an hourly basis for preparation, hearing, and preparing a decision. Current reimbursement is \$30.00 per hour.

Equipment

Equipment needs for the 404 program would include the following:

2-35 MM cameras @ \$235	\$ 470
2-4 wheel drive vehicles	\$16,000
Maps	\$ 150
1-slide projector and screen	\$ 400
Additional desks, typewriters and other office equipment	\$ 3,000
	<hr/>
	\$20,020 (Subtotal)

Travel

The staff engineers, technicians and biologists will travel extensively in state inspecting sites, investigating complaints and monitoring permit compliance.

Annual travel expenses are estimated to be \$10,000 (Subtotal)

Public Information

Informing the public of the program has evolved as an important element in the successful operation of the 404 program. Public information efforts include extensive telephone and written correspondence distribution of informational materials, involvement in workshops, audio-visual presentations before interested groups, etc. The involvement of staff in these activities and the costs incurred in mailing, etc. amount to approximately \$7,500 per year. \$ 7,500 (Subtotal)

Automatic Data Processing Support

Data gathered from the applications processed will be computerized. Costs associated with this process are estimated at \$3,000 per year.

\$ 3,000 (Subtotal)

Total \$261,502

PART 8

DREDGE AND FILL PERMIT SYSTEM

25-8-801. Permits required for discharge of dredged or fill material - administration. (1) No person shall discharge any dredge or fill material into any state surface waters and adjacent wetlands without first having obtained a permit from the Division for such discharge. Each application for a permit duly filed under the federal act shall be deemed to be a permit application filed under this article, and each permit issued pursuant to the federal act shall be deemed to be a permit issued under this article after the 404 permit program has been assumed by the state.

(2) The Division shall examine applications for and may issue, suspend, revoke, modify, deny, or otherwise administer permits for the discharge of dredged or fill material into state surface waters. Such administration shall be in accordance with the provisions of this article and regulations promulgated by the Commission. The State Engineer shall provide assistance in conducting local evaluation of activities subject to this section. The Colorado Division of Wildlife and any affected local government shall be consulted on permit applications.

(3) The Commission shall promulgate such regulations as may be necessary and proper for the orderly and effective administration of permits for the discharge of dredged or fill material. Such regulations shall be consistent with the provisions of this article and with the federal act and shall be in furtherance of the policy contained in section 25-8-102, C.R.S. 1973, and may pertain to and implement, among other matters, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:

- (a) Identification and address of the owner and operator of the activity, facility or process which is to be permitted;
- (b) Location, quantity, and quality characteristics of the permitted discharge;
- (c) Effluent limitations and requirements for treatment prior to discharge;
- (d) Equipment and procedures required for mandatory monitoring as well as record-keeping and reporting requirements;
- (e) Schedules of compliance;
- (f) Procedures to be followed by division personnel for entering and inspecting premises;
- (g) Submission of pertinent plans and specifications for the facility, process or activity which is to be permitted;
- (h) Restrictions on transfers of the permit;
- (i) Procedures to be followed in the event of expansion or modification of the activity, process or facility to be permitted or modification of the quality of the discharge and resulting impacts on uses of the affected waters;
- (j) Duration of the permit, not to exceed five years, and renewal procedures;
- (k) Authority of the Division to require changes in plans and specifications for the activity, process or facility which is to be permitted as a condition for the issuance of a permit;
- (l) Authority of the Division to evaluate and require evaluation of economically and technically feasible alternatives to the proposed activity which are also less environmentally damaging to the aquatic environment;
- (m) Notice requirements of any intent to take an action that is likely to result in a new or altered discharge;

(n) Applicable standards and requirements which assure compliance with sections 307, 403, and 404(b)(1) of the federal act;

(o) Procedures for issuing appropriate notice of pending permit applications;

(p) Procedures for notifying and consulting with another state whose waters may be affected by the issuance of a permit;

(q) Procedures to coordinate with federal and state water-related planning and review processes and to require compliance with any regulatory part of such state plans.

(4) Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the Division.

(5) The Division may authorize general permits to be issued which authorize certain dredge or fill activities on a state or regional basis for certain clearly described categories of activities which will cause minimal adverse environmental effects on water quality and which are in furtherance of the policy contained in section 25-8-102, C.R.S. 1973.

(6) Best Management Practices (BMP's) which are adopted so as to supercede the requirement for a 404 permit under the federal act, shall be applied in lieu of the requirement for a permit under this part.

25-8-802. Activities exempted. (1) A dredge and fill permit for the discharge of dredged material or fill material shall not be required for any activities exempted under the federal act.

25-8-803. Fees. (1) The Commission shall establish and, as necessary, revise a schedule of non-refundable fees for the processing of applications for the issuance of permits under this section sufficient to cover the reasonable costs of such processing, administration, and enforcement. The monies collected under this subsection (8) shall be remitted to the state treasurer for deposit to the credit of the general fund and will serve as a cash fund for use by the Division for operation of this permit program.

25-8-804. Public Participation. (1) Public notice of every complete application for a dredge and fill permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a permit. Procedures for the circulation of public notice shall be established by the Division and shall include at least the following:

- (a) Notice shall be circulated within the geographical areas of the proposed discharge.
- (b) Notice shall be mailed to any person or group upon request.
- (c) Upon request, the Division shall add the name of any person or group to a mailing list of persons or groups receiving copies of notices for all permit applications within the state or within a certain geographic area.

(2) The Commission shall promulgate such regulations as are necessary and appropriate to provide an opportunity for a public meeting, when appropriate, prior to the issuing or denial of a dredged and fill permit.

25-8-805. Issuance and conditions. (1) The Division shall issue a dredge and fill permit in accordance with regulations promulgated under this article when it has determined that federal requirements and the provisions of this article have been met with respect to both the application and the proposed permit.

(2) No discharge shall be permitted that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit is conditioned to prevent such a violation or an appropriate schedule of compliance is included.

(3) Permit applications shall be processed in a timely fashion.

25-8-806. Coordination with Part 5. For any activity which would otherwise be subject to permit requirements under this part and under sections 501 to 503, only one of the two permits shall be required. That permit shall meet all pertinent requirements under both sections. The Division shall determine which permit should be issued following consultation with the applicant.

25-8-807. Effective Date. This part will be effective immediately after EPA approves state assumption of the 404 permit program and will remain in affect as long as the assumption status continues.

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(Continued)PART 8
DREDGE AND FILL PERMIT SYSTEM

25-8-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Dredged material" means material that is excavated or dredged from navigable waters as defined in the federal act.

(2) "Federal act" means the "Federal Water Pollution Control Act", commonly referred to as the "Clean Water Act", as from time to time amended.

(3) "Fill material" means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterway.

(4) "Navigable waters", for the purposes of this part 8, does not include wetlands which are the direct or indirect result of activities of man, including but not limited to, any flow from man-made, nontidal drainage and irrigation ditches or the land irrigated thereby.

25-8-802. Permits required for discharge of dredged material or fill material - administration. (1) No person shall discharge any dredged material or fill material into any navigable waters without first having obtained a permit from the state engineer for such dredged material or fill material discharge.

(a) A permit shall not be required for the diversion, carriage, storage, exchange, or release of water in the exercise of water rights.

(b) The purpose for requiring permits for dredge material and fill material discharges is for the protection and maintenance of water quality standards in navigable waters during construction or in the utilization of navigable waters as disposal sites or fill sites.

(c) Each application for a permit duly filed under the federal act shall be deemed to be a permit application filed under this part 8, and each permit issued pursuant to the federal act shall be deemed to be a permit issued under this part 8.

(2) The state engineer shall examine applications for and may issue, suspend, revoke, modify, deny, or otherwise administer permits for the discharge of dredged material or fill material into navigable waters. Such administration shall be in accordance with the provisions of this article and regulations promulgated by the state engineer.

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(3) The state engineer shall promulgate such regulations as may be necessary and proper for the orderly and effective administration of permits for the discharge of dredged material or fill material. Such regulations shall be consistent with the provisions of this article and with federal requirements and shall be in furtherance of the policy contained in section 25-3-102 and may pertain to and implement, among other matters, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:

(a) Identification and address of the owner and operator of the activity which is to be permitted;

(b) Location, quantity, and quality characteristics of the permitted discharge;

(c) Monitoring as well as record-keeping and reporting requirements, consistent with standard procedures and methods established by the state engineer;

(d) Schedules of compliance;

(e) Procedures to be followed by the state engineer for entering and inspecting premises;

(f) Submission of pertinent plans and specifications for the dredged material or fill material discharge which is to be permitted;

(g) Restrictions on transfers of the permit;

(h) Procedures to be followed in the event of the expansion or modification of the dredged material or fill material discharge to be permitted;

(i) Duration of the permit, not to exceed five years, and renewal procedures;

(j) Authority of the state engineer to require changes in plans and specifications for the dredged material or fill material discharge which is to be permitted as a condition for the issuance of a permit;

(k) Notice requirements of any intent to take an action that is likely to result in a new or altered dredged material or fill material discharge;

(l) Appropriate standards and requirements which assure compliance with the applicable enforceable requirements of the federal act;

(m) Procedures for issuing appropriate notice of pending permit applications;

(n) Procedures for notifying and consulting with another state whose waters may be affected by the issuance of a permit;

(o) Procedures to coordinate with federal and federal-state water-related planning and review processes.

(4) Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the state engineer. Nothing in this section shall require permit with respect to steps necessary to protect life or property during flood or high water in an emergency.

(5) The regulations promulgated under this section shall not be more stringent than, nor contain any additional conditions or requirements in excess of, the applicable enforceable requirements of the federal act.

(6) The state engineer or his designated representative may cause general permits to be issued which authorize types of dredge or fill activities on a state or regional basis for described categories of activities or authorize without the need of a permit certain dredge or fill activities, upon notification by the discharger to the state engineer or his designated representative, which will not cause significant or major adverse effects on water quality and which are in furtherance of the policy contained in section 25-8-102.

(7) This part 8 shall not be administered so as to supersede, abrogate, or impair in any way the operation of articles 80 to 93 of title 37, C.R.S. 1973, expressly including but not limited to the rights of holders of valid water rights to erect and maintain in good repair any necessary ditches, dams, canals, reservoir feeders, diversion works, spillways, waste boxes, weirs, flumes, riprap, or other systems which are historically incident to the use of those water rights, and this part 8 shall not be administered so as to require minimum stream flows or minimum water levels in any lake or impoundment.

25-8-803. Activities exempted. (1) A dredge and fill permit for the discharge of dredged material or fill material shall not be required for any activities exempted under the federal act.

(2) The provisions of any dredge and fill permit which is required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, those required by the federal act or regulations.

25-8-804. Application - fee - public participation.
(1) The permits shall run from the dates of issuance, and the annual fees shall be paid to the state engineer. The state engineer shall establish a fee schedule designed to defray the reasonable cost of processing dredge and fill permits. No fee shall be charged for discharges undertaken under 25-8-802(6).

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S.B.
(Continued) 16

(2) Upon receipt of an application, the state engineer shall prepare a tentative determination to issue or deny the permit and, if it is to be issued, a tentative determination as to the terms and conditions of such permit.

(3) Public notice of every complete application for a dredge and fill permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a permit. Procedures for the circulation of public notice shall be established by the state engineer

(a) Notice shall be circulated within the geographical areas of the proposed discharge.

(b) Notice shall be mailed to any person or group upon request.

(c) Upon request, the state engineer shall add the name of any person or group to a mailing list of persons or groups receiving copies of notices for all permit applications within this state or within a certain geographical area.

(4) The state engineer shall promulgate such regulations as are necessary and appropriate to provide an opportunity for a public hearing, when appropriate, prior to the granting or denial of a dredge and fill permit. In no event shall the period allowed for public comment or hearing, should such public comment or hearing be deemed necessary and appropriate by the state engineer, exceed sixty days.

25-b-805. Permits - when required and when prohibited.

(1) The state engineer shall issue a dredge and fill permit in accordance with regulations promulgated under this part 8 when he has determined that enforceable federal requirements and the provisions of this part 8 have been met with respect to both the application and the proposed permit.

(2) No dredged material or fill material discharge shall be permitted that by itself or in combination with other pollution will result in the pollution of receiving waters in excess of the pollution permitted by an applicable water quality standard, unless the permit is conditioned to prevent such a violation, or a variance from a water quality standard or control regulation is granted according to the procedures set forth in part 4 of this article, or other suitable arrangements are made which will repair injury to existing beneficial uses in a timely fashion.

(3) Applicants for permits shall be advised within thirty days after receipt of any application, or supplement thereto, if and in what respect the application or supplement is incomplete. Upon failure of the state engineer to notify the applicant as provided in this subsection (3), the