



Checklist of Critical Issues to Consider when Applying for a Section 404 Individual Permit

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This checklist is intended to inform applicants of critical issues that need to be addressed in the Section 404 permit evaluation process.

I. Threatened & Endangered Species (not meant to be all inclusive, just the biggies):

Preble's meadow jumping mouse:

- A. Does a "suitable habitat determination" need to be done for Preble's?
- B. Is your project area suitable habitat for Preble's? If so, has a trapping survey been done and approved by the US Fish and Wildlife Service?
- C. Is your project located in designated critical habitat for Preble's?

Ute ladies' tress orchid and Colorado butterfly plant: Is your project located in an area where a plant survey is required? If so, has a survey been done and approved by the US Fish and Wildlife Service?

Platte River System Depletions:

- A. Do you have to have a Corps permit to construct the entire project ("but for" our permit, the depletion of flows will not occur)?
- B. Does your project result in flow depletions- either a new depletion or the Corps' permit allows a historic depletion to resume or continue? Examples include, but are not limited to, construction of a dam; aggregate mining that exposes tributary groundwater; construction of a new water treatment plant; construction of a water supply pipeline (where an EA or EIS was prepared by another agency and the Corps is permitting the single and complete pipeline project); construction or reconstruction of a municipal water supply intake; conversion of a permitted aggregate mine to municipal or industrial water supply storage.
- C. If your project that causes the depletion, such as an aggregate mine, requires a Substitute Supply Plan (Augmentation Plan) from the State Engineer's Office, you need to provide a copy to the Corps.
- D. If the water used for augmentation has never undergone consultation, under Section 7(a) of the Endangered Species Act, for flow depletions, it is likely that the water used for augmentation will need to be consulted on.
- E. If your project has multiple purposes (such as aggregate mining and municipal water supply), that both result in depletions, the Section 7 consultation for both purposes must occur before the Corps can issue the permit.
- F. If your project could be used in the future to store municipal and/or industrial water (not part of the current project purpose), the following condition will be included in the permit:

"Based on information provided by the applicant, the Corps has determined the basic project purpose to be aggregate mining. This project purpose was the basis upon which the Corps conducted its review of the application, as well as a basis for the Corps' determination that permit issuance is in the best interest of the public. Accordingly, the Corps authorizes no change in project purpose, or in the nature of the permitted activity, without prior review and approval. One specific example would be conversion of the aggregate mine pits to storage of municipal and/or industrial water."

II. Historic Properties & Cultural Resources:

A. Are you aware of any cultural resources on-site? Are there any features or structures on the property that may be eligible for listing on the National Register (bridges, barns, houses, railroad embankments, irrigation ditches, etc., that are older than 50 years)?

B. Is your project located in a National Historic Landmark District? Central City, Black Hawk, Georgetown, and Silver Plume, as well as other areas, are so designated.

III. Floodplains: 33 CFR Part 320.4 (I), *Floodplain Management*, which implements Executive Order 11988, requires that the Corps make significant efforts to avoid authorizing developments within floodplains. Therefore, if a practicable alternative exists for construction of your project outside of the floodplain, this is the alternative for which a permit should be sought. For projects where filling of floodplains is proposed in order to increase developable land, it is very doubtful a permit will be issued.

IV. 404(b)(1) Guidelines:

Project Purpose and Need:

A. The Corps determines “basic” and “overall” project purposes. The “basic” project purpose is used to determine if the project is water dependant (Non-water dependant projects are presumed to have less damaging, to the aquatic ecosystem, alternatives). “Overall” project purpose is used to screen alternatives, with selection of the least damaging, to the aquatic ecosystem, practicable alternative required (unless there are other significant adverse environmental consequences).

B. Is your initial project purpose too narrowly or broadly defined? Broad definitions require too many alternatives to be analyzed. Narrow definitions eliminate alternatives that could truly meet your purpose and need,

C. Have you sufficiently demonstrated a public need for the project?

Alternatives:

A. If the discharge involves a special aquatic site (wetlands, mudflats, pool & riffle complexes), are sufficient alternatives presented to clearly select the least damaging, to the aquatic ecosystem, alternative that meets the “overall” project purpose?

B. Have you considered any off-site alternatives? If not, why? (For projects with large-scale impacts, the Corps must consider off-site alternatives. Just because you now have a legal interest in the land, or have an option to purchase one, doesn’t mean that off-site alternatives can’t be considered.)

C. Prior to receiving a permit, you must provide an alternative analysis. The analysis should provide at least 3 alternatives; no build; build; and build with total avoidance of impacts to waters of the U.S. The number of acceptable alternatives varies with the size of the project and value of the aquatic resources to be impacted.

D. We must screen alternatives based on the following criteria:

The Corps can only issue a permit for the practicable alternative that has the least adverse affect on the aquatic ecosystem, so long as there are not other significant adverse environmental consequences. Practicable means capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

E. If your project is associated with an EA or EIS prepared by another Federal agency, is the preferred alternative presented in the EA or EIS the least damaging to the aquatic ecosystem? Is the Purpose and Need correctly defined for our purposes, so as not to eliminate alternatives that would meet the Corps’ definition of overall project purpose?

Avoidance, Minimization & Compensatory Mitigation:

A. You must demonstrate, and the Corps must verify, that you have avoided and minimized impacts to aquatic resources to the maximum practical extent. This must occur prior to any consideration of compensatory mitigation (compensatory mitigation is necessary to offset unavoidable impacts, after minimizing these impacts).

B. Buffers can be both a form of minimization and compensatory mitigation. Compensatory mitigation includes creation, restoration, enhancement and/or preservation used to offset unavoidable impacts. Buffer areas created merely by moving development areas further away from aquatic resources are considered a form of minimizing impacts. If a buffer area is enhanced, through the planting of native vegetation, shrubs, trees, etc., this enhancement may be counted as compensatory mitigation.

C. How will your proposed compensatory mitigation, as well as remaining aquatic resources, be protected in the future? What's the best method available for protection (deed restriction, conservation easement, fee title transfer of land)?

D. You will be required to submit a complete mitigation plan (meeting the mitigation plan requirements of the Final Compensatory Mitigation Rule - April 10, 2008). The Corps must receive this before a permit can be issued. Compliance with the Final Compensatory Mitigation Rule must be determined prior to permit issuance.

(1990 Corps/EPA Mitigation MOA) "If the mitigation plan necessary to ensure compliance with the Guidelines is not reasonably implementable or enforceable, the permit shall be denied." We can't make this determination without a mitigation plan.

E. If, after avoidance and minimization considerations, your project has wetland impacts greater than 0.5 acre, you will likely be required to use the **Functional Assessment of Colorado Wetlands (FACWet) Method** to assist in determining wetland functions potentially impacted, to assess the ability of mitigation plans to replace impacted functions, and to assess the success of mitigation wetlands.

V. Special Aquatic Resources:

A. The U.S. Fish and Wildlife Service has classified fens as Category 1 Resources. What this means is that they consider impacts to fens non-mitigatable. The only methods that might be suitable for fen impact mitigation, within the Corps Denver Regulatory Office's area of Colorado, are restoration of a degraded fen or purchase of mitigation credits from the Warm Springs Mitigation Bank.

B. For activities that may qualify, with project modifications, for authorization by a Nationwide Permit, certain aquatic sites or resources that may require special consideration are fens, springs, important spawning areas, Critical Resource Waters, Wild Trout Waters and Wild and Scenic Rivers.