

PROSPECTIVE PROJECTS ENVIRONMENTAL REVIEWS AND PERMITTING

Deborah L. Freeman

Trout, Raley, Montano, Witwer & Freeman, P.C.

January 31, 2015

Federal Reviews

- **Clean Water Act Section 404 permit** – discharge incident to proposed construction.
- Decision whether to issue 404 permit involves both *procedural* and *substantive* requirements.

Federal Reviews, cont'd

Key *Procedural* Requirement - NEPA compliance.

- EIS is a disclosure document that:
 - evaluates *impacts* of proposed project on full range of resources that make up the human environment.
 - evaluates *alternatives* to project and their impacts.
 - discloses *mitigation* for impacts and consequences that remain unavoidable.

- Purpose of EIS is 2-fold:
 - To inform *public* and give public opportunity to comment on impacts, alternatives, and mitigation.
 - To inform *federal permitting agencies* of facts so they make an informed decision on whether to grant or deny permit.

Federal Reviews, cont'd

- EIS's issue in Draft and Final.
 - Public comment on Draft.
 - Public hearings.
 - Final EIS:
 - ~ More detail on mitigation.
 - ~ May reflect State/Local approvals.
 - ~ Includes refined analyses between Draft and Final.
 - ~ Responds to comments received on DEIS.
 - Typically, one year between Draft and Final.

Federal Reviews, cont'd

Substance of Corps' Permitting – 404(b)(1) Guidelines.

- LEDPA test – Project is the least environmentally damaging practicable alternative that meets the P&N.
- Project will not cause or contribute to violations of WQ standards, ESA, NHPA, and other laws.
- Appropriate and practicable steps have been taken to minimize adverse impacts on the aquatic ecosystem.
- Project will not result in significant degradation of waters of the US, after consideration of mitigation.

Federal Reviews, cont'd

- **Public interest review** – Corps is to issue a permit that meets the above criteria *unless it is contrary* to the public interest.
- **Public input** – public notice on permit application; potential hearing(s) if requested.
- **Issuance of ROD** – permit, if issued, will contain appropriate terms and conditions.

Federal Reviews, cont'd

- Other Federal Approvals may apply, e.g.--
 - Reclamation approvals
 - Department of Transportation
- Two additional **Federal Laws** typically triggered by a decision pending on a federal permit:
 - **ESA Section 7 Compliance** – If project “may affect” federally listed species or designated critical habitat.
 - **Section 106 of National Historic Preservation Act** – federal agencies must consider the effects of their permitting actions on cultural resources that are eligible for or listed in National Register.

State and Local Reviews

- State Regulatory Reviews
 - State Fish & Wildlife Mitigation Planning Process.
 - State 401 Water Quality Certification Process.
- Local Approvals

Prospective Poudre Projects

- Northern Integrated Supply Project (NISP)
- Halligan Reservoir Expansion
- Seaman Project