

Local, State, and Federal Approval Criteria and Application Materials for Water Projects.

Part I: Criteria

Prepared by NWCCOG Water Quality/ Quantity Committee

July 22, 2016

Criteria for Regulatory Approval

✓ = criterion included in permit requirements
 ☆ = criterion referenced indirectly

	Representative 1041 regulations for matters of state interest. ("1041") Authority for local government regulations from 24 CRS § 61.1-101 et seq.					Forest Service Special Use Authorization. ("USFS") 36 CFR 251 et seq. *Note: This authorization is only applicable to projects on USFS land.					§ 404 regulations for the discharge of dredged and fill material. ("404") 33 USC § 1344. Army Corps of Engineers: 33 CFR § 320; EPA Guidelines: 40 CFR 230. * Note: The overarching criterion for 404 is that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 CFR 230.10(a).					§ 401 State Water Quality Certificate ("401 Cert.") 33 USC § 1341; CRS § 25-8-302; 40 CFR § 121 et seq.					Colorado Water Conservancy Act. ("Water Conservancy Act") CRS § 37-45-118(b)(II). *Note: This section applies only to conservancy districts and to projects diverting water from the Colorado River Basin.					Notes:
III. Socioeconomic criteria.	1041	USFS	404	401 Cert	Water Conservancy Act	Notes:																				
I. Project is in compliance with other permits and approvals	✓		✓																							
II. Project is technically and financially feasible	✓	✓	✓																							
a. Project will not have significant adverse affect on existing and projected land use patterns	✓	☆				USFS requires that an authorized agent reviewing a proposal shall reject it if "[t]he proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses." 36 CFR § 251.54(e)(5)(i).																				
b. Project will not have a significant adverse effect on the capability of local governments affected by the Project to provide services, or exceed the capacity of service delivery systems	✓		☆		✓	404 requires the denial of a permit application if the proposed development will "have an unacceptable adverse effect on municipal water supplies." 33 USC § 1344(c). 404 regulations do not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degradation of waters of the [US]," including "adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies." 40 CFR 230.10(c)(1). Water Conservancy Act states that any transmountain diversion project "shall be designed, constructed, and operated in such manner that the present... [and] prospective uses of water for irrigation and other beneficial consumptive use purposes... within the natural basin of the Colorado river in the state of Colorado from which water is exported will not be impaired nor increased in cost at the expense of the water users within the natural basin." CRS 37-45-118(b)(II).																				

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Socioeconomic criteria, continued.	1041	USFS	404	401 Cert	Water Conservancy Act	Notes:
c. Project will not have significant adverse affect on existing permanent and seasonal housing	✓					
d. Project will not will not create an undue financial burden on existing or future residents of the County.	✓				✓	<u>Water Conservancy Act</u> states that any transmountain diversion project "shall be designed, constructed, and operated in such manner that the present... [and] prospective uses of water for irrigation and other beneficial consumptive use purposes... within the natural basin of the Colorado river in the state of Colorado from which water is exported will not be impaired nor increased in cost at the expense of the water users within the natural basin." CRS 37-45-118(b)(II).
e. Anticipated growth and development that may occur as a result of a proposed project can be accommodated within the financial and environmental capacity of the area to sustain such growth and development	✓					
f. Project will not significantly degrade any current or foreseeable future sector of the local economy	✓		☆			<u>404</u> does not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degratation of waters of the [US]" including "adverse effects. . . on recreational, aesthetic, and economic values." 40 CFR 230.10(c)(4). For private projects, <u>404</u> also "assume[s] that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the market place," but <i>may</i> conduct a separate analysis of overall public interest and impacts to the local economy as needed. 33 CFR § 320.4(q).
g. Project will not have significant adverse affect on existing and potential recreational opportunities	✓		✓			<u>404</u> requires the denial of a permit application if the proposed development will "have an unacceptable adverse effect" on "recreation areas." 33 USC § 1344(c). <u>404</u> also does not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degratation of waters of the [US]" including "adverse effects. . . on recreational, aesthetic, and economic values." 40 CFR 230.10(c)(4). Also under the public interest review, applicants must "avoid significant adverse effects" on "historic, cultural, scenic, and recreational values." 33 CFR § 320.4(e).
h. Project will not have significant adverse affect on areas of paleontological, historic or archaeological importance	✓		✓			As part of the <u>404</u> public interest review, applicants must "avoid significant adverse effects on. . . historic, cultural, scenic, and recreational values." 33 CFR § 320.4(e).
i. Project will not cause a nuisance (noise, glare, dust, fumes, vibration, odor)	✓					
j. The benefits accruing to the County and its citizens from the Project outweigh the losses of any natural, agricultural, recreational, grazing, commercial or industrial resources within the County, or the losses of opportunities to develop such resources	✓		☆			Under <u>404</u> public interest review, "[t]he extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited" will be evaluated as criteria in every application. 33 CFR 320.4 (a)(2)(iii).

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k. Project emphasizes the most efficient water use, recycling, reuse and conservation.	✓		✓			404 has a "water conservation" element to its public interest review that "requires the efficient use of water resources in all actions which involve the significant use of water or that significantly affect the availability of water for alternative uses including opportunities to reduce demand and improve efficiency in order to minimize new supply requirements." 33 CFR § 320.4(m).
l. Will not result in excess capacity or create duplicative services.	✓					
m. Necessary to meet projected community development and population demands in area to be served	✓		☆			Under the 404 public interest review, the "relative extent of the public and private need for the proposed structure or work" will be evaluated as criteria in every application. 33 CFR § 320.4(a)(2)(i).
n. Constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities	✓					
Water Conservancy Act						
IV. Environmental criteria.	1041	USFS	404	401 Cert.	Act	Notes:
a. The project will not significantly degrade existing air quality	✓					
b. The project will not significantly degrade existing visual quality	✓		☆			404 does not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degradation of waters of the [US]" including "adverse effects. . . on recreational, <i>aesthetic</i> , and economic values." 40 CFR 230.10(c)(4) (emphasis added).
c. The project will not significantly degrade existing surface water quality	✓		✓	✓		404 does not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degradation of waters of the [US]." 40 CFR 230.10(c)(4). 401 certifies with reasonable assurance that "the activity will be conducted in a manner which will not violate applicable water quality standards." 40 CFR § 121.2(a)(3).
d. The project will not significantly degrade existing groundwater quality	✓					
e. The project will not significantly degrade existing floodplan, wetlands, and riparian areas	✓		✓			Under 404, no permit will be granted unless "benefits of the proposed alteration outweigh the damage to the wetlands resource." 33 CFR § 320.4(b)(4).
f. Project will not significantly degrade terrestrial or aquatic animal life or habitat	✓		✓			Along with this criteria, the State 1041 regulations authorize local governments to develop 1041 regulations for "[a]reas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance." CRS § 24.65.1.201(1)(c). This includes "the protection of those areas essential for wildlife habitat." CRS § 24.65.1.202.(3). § 122.2 Wildlife Mitigation Plan, described further in Part II: Application Materials, requires applicant to develop a "Wildlife Mitigation Plan," although it has no regulatory effect.

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<i>Environmental criteria, continued.</i>	1041	USFS	404	401 Cert.	Water Conservancy Act	Notes:
g. Project will not significantly deteriorate terrestrial plant life or plant habitat	✓		✓			
h. Project will not significantly deteriorate soils and geologic conditions	✓		✓			
i. Project will not result in an unreasonable risk of releases of hazardous materials	✓		✓			
j. Urban development, population densities, and site layout and design of stormwater and sanitation systems prevent the pollution of aquifer recharge areas.	✓					

Part II: Application Materials and Required Analyses

Application Materials & Required Analyses.

*Note: Local 1041 requirements purposefully overlap with NEPA requirements to reduce burden on applicant while providing information necessary for the local government to issue the permit.

1041
USFS
404
401 Cert.
National Environmental Policy Act ("NEPA") - 42 USC § 4321 et seq; 40 CFR § 1501 et seq. *Note: For any "major Federal action," NEPA requires a "detailed statement" on a project's environmental impacts. 42 USC § 4332(C). For example, the decision to issue a 404 permit by the Corps of Engineers often is considered a "major federal action" that requires assessments and analyses under the National Environmental Policy Act (NEPA). Other "major federal actions" may include the issuance of Rights of Way permits by federal land managers, the incorporation of Bureau of Reclamation facilities, or where there is a need to issue or amend a FERC license.
§ 122.2 State Fish & Wildlife Mitigation Plan Regulations. ("§ 122.2") 37
CRS § 60-122.2; 2 CCR 406-1602. *Note: Although a Wildlife Mitigation Plan has no regulatory effect, § 122.2 requires the applicant to develop a Plan in order to "determine as official State position on [a Plan]."
*** Note: The Water Conservancy Act is not included in Part II because, while it has regulatory requirements, it does not have an application process with required materials or analyses.**

Notes:

I. Description of project purpose and need, including:							
a. The need for the Project	✓	✓	✓		✓		
b. Alternatives to the Project that were considered and rejected	✓				✓	✓	Under <u>NEPA</u> , an analysis of the project alternatives is the "heart of the environmental impact statement." 40 CFR 1502.16(c).
c. Other required permits and approvals	✓	✓		✓			
d. Technical and financial feasibility of the Project	✓	✓					
II. Socioeconomic impacts Requires applicant to provide analysis of project impacts to the following areas:							
	1041	USFS	404	401 Cert.	NEPA	§122.2	Notes:
a. Land Use	✓				✓		<u>NEPA</u> requires a discussion of "[p]ossible conflicts between the proposed action and the objectives of federal, regional, state, and local. . . land use plans, policies and controls for the area concerned." 40 CFR § 1502.16(c). <u>NEPA</u> also requires an analysis of indirect effects of a proposed project, which "may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate." 40 CFR § 1508.8(b).
b. Local government services	✓				✓		

Part II: Application Materials and Required Analyses

c. Housing	✓						
d. Financial burden on county residents	✓						
e. Local economy	✓				✓		NEPA analyses may include a cost-benefit analysis, which would examine economic benefits weighed against "any analyses of unquantified environmental impacts, values, and amenities." 40 CFR § 1502.23
f. Recreational opportunity	✓				✓		
g. Areas of paleontological, historic or archaeological importance	✓				✓		NEPA requires a discussion of "[u]rban quality, historic and cultural resources, and the design of the built environment." 40 CFR § 1502.16(g)
h. Agricultural productivity capability of the land in the source development area (NRCS classification) and describe the potential effects of the diversion of water for the municipal or industrial water project on that agricultural productivity capability;	✓						
<p><i>Socioeconomic impacts, continued.</i> Requires the following information:</p>							
	1041	USFS	404	401 Cert.	NEPA	§122.2	Notes:
h. If project will cause nuisances such as noise, glare, dust, fumes, vibration, or odor.	✓						
i. Projected community development and population demands in area to be served	✓				✓		NEPA requires an analysis of indirect effects of a proposed project, which "may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate." 40 CFR § 1508.8(b).
j. Efficient water use, recycling and reuse technology the Project intends to use.	✓						
k. Anticipated growth and development, and how Project can be accommodated within the financial and environmental capacity of the area where growth will occur.	✓				✓		NEPA analysis, see II.i. above.
l. Description of how the project will affect urban development, urban densities, stormwater, and sanitation systems	✓						
m. Description of how the project may affect adjacent communities and users on wells.	✓				✓		NEPA analysis, see II.i. above.
n. Description of increased water or wastewater treatment costs and plan to offset increased costs determined to be a direct result of flow modification from proposed project.	✓						

Part II: Application Materials and Required Analyses

III. Environmental impacts. Requires applicant to provide analysis of project impacts to the following areas:	1041	USFS	404	401 Cert.	NEPA	§ 122.2	Notes:
a. Air quality	✓				✓		NEPA requires an analysis of indirect effects of a proposed project, which "may include ... related effects on air and water and other natural systems." 40 CFR § 1508.8(b).
b. Visual quality	✓						
c. Surface water quality	✓		✓	✓	✓		A "central element" of the <u>401 Cert.</u> is "the identification of appropriate 'best management practices' (BMPs) for a proposed project" that "protect receiving water quality." 5 CCR § 1002-82, Appendix I.
d. Groundwater quality	✓		✓	✓	✓		<u>401 Cert.</u> , see III.c., above.
e. Water quantity	✓				✓		
f. Floodplain, wetlands, and riparian areas	✓				✓		
g. Terrestrial or aquatic animal life or habitat	✓		✓		✓	✓	
h. Terrestrial and aquatic plant life or habitat	✓				✓		
i. Soils, geologic conditions and natural hazards	✓				✓		
j. Monitoring and mitigation plan.	✓		✓		✓	✓	