404 Assumption - Jeff Ryan, Supervisor Lewis and Clark Conservation District

Background: I retired from DEQ about a year and a half ago. Most of my 20+ years with them involved issuing 401 certifications of the Army Corps 404 permits (I developed the DEQ 401 program) and issuing 318 turbidity authorizations (I developed the 318 streamlining process that allowed FWP/CDs to issue 318s in conjunction with 124/310 permitting). Collectively this involved thousands of projects in Montana streams and wetlands. I helped the Corps develop their mitigation program and represented DEQ on all the interagency work groups that authorized the mitigation process and then approved specific mitigation programs.

State assumption of 404 is not new. About 15 years ago I was approached by a legislator about the Conservation Districts (CDs) assuming 404. Apparently the idea was dropped due to lack of federal funding for the assumption, but the reality is the CDs are a voluntary workforce with limited expertise in a complicated federal permitting process. They do well with their own 310 permitting process which has its own intricacies, but is virtually focussed on just the bed and bank of perennial streams. Due to the CD's local knowledge of 'their" streams, the 310 permitting process is not only local control of the resource, but in almost all cases, very timely permit issuance, approximately 30 days or less.

If a state agency is to assume 404 DEQ is probably the most logical choice. Most of DEQ's water programs are EPA delegated authority (EPA provides oversight over 404) and DEQ is well versed in the Clean Water Act. There would definitely be a learning curve to implement the program, but not necessarily any more than other federal programs DEQ has assumed. Unfortunately fees would have to be assessed for the DEQ 404 permit, a legislative mandate for DEQ permits, but streamlining of permitting could be worth it. The other major advantage would be the connection a DEQ 404 permit could have with it's other DEQ permits. A good example would be DEQ's Hard Rock Mining permit or coal mining permits . A proposed mining operation permit could be considered in conjunction with the 404 permit, literally under the same roof, with consultation amongst co-workers, not federal folks sometimes as far away as Omaha the Corps district headquarters. Other DEQ programs such as the current 401 certification of 404 could just be a part of the 404 process incorporating existing staff and resources into it as could the existing DEQ wetlands program be an integral part of wetland/stream mitigation decisions for the wetland/stream mitigation component of 404.
Another potential permit streamlining process would be for DEQ to form a working relationship with the CDs to allow them to make the permitting recommendations on many of the stream 404 permits that qualify for 404 nationwide permits (that is the majority of the current Corps permitting workload). The CDs would have to be receptive to this and share permit fees, but many of the permits they review under their 310 authority also need 404 permits. Their recommendations could be as simple as the 318 check off they now do - just another way to streamline permitting.

The basic question is - continue regulation from a federal agency controlled from a thousand miles away or go with state control of permits that likely could result in streamlined permitting.