Here There Be Dragons

The Unknown World of Permitting Under Section 404 of the Clean Water Act

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404 Permitting - Overview

- Background about myself and Confluence
- Experiences with 404 Permitting
- Suggestions

404 Permitting - Background

Education and Experience

- University of Montana – B.S. Wildlife Biology
- Colorado State University – M.S. Rangeland Ecosystem Science
- 22 years experience, 17 years experience consulting and with 404 permitting
- Based in Bozeman for 12 years, do permitting throughout the western U.S.
- Specialize in env. permitting, wetland functions, restoration, and monitoring

Confluence

- Established in in Bozeman in 1997
- Jim Lovell, Principal
- 11 employees
- Specialize in stream and wetland restoration
- Have worked in 16 states, and completed over 500 projects
- Federal, State, Private, Non-profit clients

404 Permitting – Experiences (the Dragons part)

Experiences/Opinions with 404 Permitting

U.S. Army Corps of Engineers regulatory program functions but is chronically underfunded, and because of that, in my opinion, has led to the following:

1. The 'blackbox' approach to permitting
2. Lack of on-the-ground reviews
3. Inconsistent application of requirements
   - Lots of discretion
   - Each office has its own approach
   - Each regulator has their own take
4. Unpredictable timelines
   - Uncertainty about project implementation
   - Compare to 310 and 401 review times

404 Permitting – Suggestions (more Dragons)

Suggestions

If The State of Montana takes on Section 404 Permitting, at a minimum the State should:

1. Plan to have double the current number of Corps staff. *How can the CDs and the 310 program be integrated with 404 permitting?*
2. Create a permitting website to track progress of permit applications. Create a database to collect permit information so we can better understand cumulative impacts to these systems (and then use it!).
3. Conduct onsite reviews, similar to 310 inspections so that more of the constraints, drawbacks, and merits of a project can be better understood and evaluated.
4. Charge a fee if it will help to improve consistency and predictability of the permitting process. (401 charges range from $400 to $20,000)