

WAIVER REQUEST -- January 22, 2009

FY 2008-09 Request to Waive the Six-Month Encumbrance Deadline Pursuant to Section 24-30-1404 (7), C.R.S.

**Natural Resources -- Parks
Boat Ramp Construction, Nighthorse Reservoir**

MOTION: Approve the six-month waiver request (\$750,000 CF).

SUMMARY

2010-075

The Department of Natural Resources, Division of Parks and Outdoor Recreation (Parks), cites one reason for the delay in encumbering funds by December 2, 2008, the six-month encumbrance deadline. The division is working on an intergovernmental agreement with the Division of Wildlife (DOW) to construct a boat ramp at Nighthorse Reservoir. The DOW is providing an additional \$2,250,000 to construct the boat ramp, but must enter into an agreement with the U.S. Bureau of Reclamation (BOR) before construction work on the ramp can begin. The BOR is overseeing and performing the actual construction work. According to Parks, funds have not been encumbered yet because of the nature of the construction project, the complexity of the project funding, and the participation of various governmental entities.

FY 2008-09 APPROPRIATION AMOUNT

Fund Source	Appropriation
CF	\$750,000
Total	\$750,000

STAFF QUESTIONS

1. Please explain how the nature of the construction project itself has delayed encumbrance of the FY 2008-09 appropriation. The request cites this as a reason for not encumbering funds, but only explains how the participation of different governmental entities delayed the project.

There were a number of questions that needed to be resolved before a construction contract could be finalized:

- *Who would manage the construction project? - Initially it was thought that the City of Durango would hire a contractor for the construction of the boat ramp at the Nighthorse Reservoir; however, it was decided that the DOW (Division of Wildlife) would enter into a Motorboat Access Grant with the US BOR (Bureau of Reclamation) as sub-grantee. The BOR is responsible for the development and implementation of the project with the DOW managing the project as a grant.*
- *Where on the Nighthorse Reservoir property the boat ramp will be located? - The BOR owns the property and was evaluating different sites for the boat ramp. The BOR made a determination in the fall of 2008 as to where the boat ramp will be built.*
- *Whether or not the existing BOR road providing access to the boat ramp would need to be widened? - The Bureau will widen part of the existing road and will extend the existing road to the boat ramp to provide the road access.*

2. Please explain how the complexity of funding has delayed encumbrance of the FY 2008-09 appropriation. The request cites this as a reason for not encumbering funds, but only explains how the participation of different governmental entities delayed the project.

The DOW must apply for a Motorboat Access Grant in the amount of three million dollars (2.25 million federal funds and \$750,000 of Colorado State Parks' cash funds match) from the US Fish and Wildlife Service (USFWS). The DOW is currently in the process of applying for that grant with the USFWS. Once the grant is secured, the DOW must enter into an Intergovernmental agreement with the BOR. Colorado State Parks has drafted an Interagency agreement with the DOW for the \$750,000 matching funds; however, the \$750,000 cannot be passed from the State Parks to the DOW until the Motorboat Access Grant from the USFWS and the Intergovernmental agreement with the BOR are in place.

In accordance with the federal Anti-Deficiency Act (31 USC 1341) which prohibits the Bureau from entering into any agreement where the funds were not appropriated, the BOR requested an advance payment of the Colorado

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State Parks' \$750,000 matching funds. The Bureau is not authorized to proceed in the process without first receiving an advancement from the State of Colorado. The division of State Parks has formally requested an advance payment waiver from the State Controller's Office which is still pending.

3. When does the division anticipate the DOW entering into an agreement with the BOR? And when does the division anticipate entering into an agreement with the DOW in order to begin the project?

Once the Motorboat Access Grant is approved by the USFWS (approval expected no earlier than the end of January 2009), then the Intergovernmental agreement between the DOW and the BOR can be executed.

The Interagency agreement between the DOW and the division of State Parks has been drafted, but Colorado State Parks cannot execute the Interagency agreement with the DOW until the Motorboat Access Grant from the USFWS and the Intergovernmental agreement with the BOR are in place.

4. Because this request was authorized directly by bill and did not come through the capital development process, can you provide the following information about the project?

Please explain why the boat ramp is necessary.

About how many people use the Nighthorse Reservoir?

In the original plan for the Nighthorse Reservoir, the reservoir was to function in several ways. In addition to providing water for municipal, industrial, agricultural and the endangered fish program, the area was also to be constructed to provide a recreational asset. As part of the recreational build-out, the area was to provide a water-based site including boating, fishing and swimming activities. In order to get boats onto the reservoir surface a boat ramp is required.

The reservoir has not been completed yet, so there is no current or historical use. The estimated visitation to the area based on similar areas nearby is approximately 250,000 visits per year.