Fiscal Year 2009-10 Capital Construction Request

Public Health and Environment

Natural Resources Damage Restoration

PROGRAM PLAN STATUS

1999-093

Approved Program Plan? N/A **Date Approved:**

The project does not construct any physical facilities.

PRIORITY NUMBERS

Prioritized By	Priority	
DeptInst	2 of 2	
OSPB	N/A of 44	OSPB did not prioritize this cash project.

PRIOR APPROPRIATION AND REQUEST INFORMATION

Fund Source	Prior Approp.	FY 2009-10	FY 2010-11	Future Requests	Total Cost
CF	$0	$14,546,274	$0	$0	$14,546,274
CFE	$16,019,425	$0	$0	$0	$16,019,425
FF	$0	$4,000,000	$0	$0	$4,000,000
Total	$16,019,425	**$18,546,274**	$0	$0	$34,565,699

ITEMIZED COST INFORMATION

Cost Item	Prior Approp.	FY 2009-10	FY 2010-11	Future Requests	Total Cost
Land Acquisition	$0	$0	$0	$0	$0
Professional Services	$0	$0	$0	$0	$0
Construction	$16,019,425	$18,546,274	$0	$0	$34,565,699
Equipment	$0	$0	$0	$0	$0
Miscellaneous	$0	$0	$0	$0	$0
Contingency	$0	$0	$0	$0	$0
Total	$16,019,425	**$18,546,274**	$0	$0	$34,565,699

PROJECT DESCRIPTION / SCOPE OF WORK

The Department of Public Health and Environment (DPHE) is requesting a combination of cash funds and federal funds spending authority to finance projects that restore or replace natural resources that have been damaged as a result of releases of hazardous substances into the environment. This year's request is to work cooperatively with the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Reclamation to complete projects at the Rocky Mountain Arsenal and the California Gulch sites.

All projects that are part of this request must be approved by the three Natural Resources Trustees (the Colorado Attorney General, and the Executive Directors of the DPHE and of the Department of Natural Resources). Project proposals are solicited, evaluated, and screened according to established procedures. To date, the trustees have approved two of the three projects that are part of the California Gulch settlement. The first project installs a bulkhead seal at the Dinero Tunnel in order to decrease the amount of acid mine drainage entering Lake Fork of the Arkansas River. The second project constructs a mine waste repository at the Tiger Mine in order to reduce mining-related contamination to Lake Fork. The third project involves stream channel restoration for two miles along the Upper Arkansas River in order to improve aquatic habitat, and is expected to be approved by the trustees at an upcoming meeting, according to DPHE.

Fiscal Year 2009-10 Capital Construction Request

Public Health and Environment

Natural Resources Damage Restoration

PROJECT JUSTIFICATION

See Project Description / Scope of Work.

PROGRAM INFORMATION

Colorado has settled six Natural Resource Damages lawsuits with responsible parties under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund), 43 C.F.R. Part 11. Funds are set aside by the state in the Natural Resource Damage Recovery Fund, pursuant to Section 25-16-104.7, C.R.S., to be used for the restoration or replacement of lost or damaged natural resources as a result of releases of hazardous substances into the environment.

LEED CERTIFICATION INFORMATION

The project is not required to comply with the provisions of Senate Bill 07-051 regarding LEED certification because it does not involve the renovation, design, or construction of a state-assisted facility, as defined in the legislation.

PROJECT STATUS

This is a new request for these sites. Expenditures were approved for the California Gulch site by the Natural Resource Damages Trustees on January 15, 2009. The trustees are expected to approve expenditures for the Rocky Mountain Arsenal in FY 2009-10.

SOURCE OF CASH FUNDS

The source of cash funds is the Natural Resource Damage Recovery Fund. Money in the fund is derived from court-approved settlements from parties responsible for resource damage, plus interest accrued. To date, the fund has received $14.5 million from responsible parties for the Rocky Mountain Arsenal and the California Gulch Superfund sites. The department anticipates receiving an additional $4 million in federal funds for these projects via the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Reclamation.

STAFF QUESTIONS AND ISSUES

1. The request did not include any information about the Rocky Mountain Arsenal projects. Please briefly summarize work to be done there and why it is necessary.

No projects have been chosen yet for the Rocky Mountain Arsenal, so we could not include information on them. The projects are likely to include open space (habitat) purchase, and wetlands and other wildlife habitat enhancement, as well as water conservation projects. These projects are designed to restore, replace or enhance natural resources damaged at the site. The use of the NRD settlement funds for this purpose is specified in federal statute.

2. When will the trustees meet again to consider the third project at the California Gulch Superfund site and the Rocky Mountain Arsenal project(s)?

There is no set date for the next trustees meeting. As projects are developed and vetted by local stakeholders and representatives of the trustees, they will be brought to the trustees for approval.

3. Since the inception of the program, how much has the department expended or encumbered for the Natural Resources Damage Restoration project? (In FY 2008-09 request, it was reported that $8.2 million had been encumbered/expended from over $16 million appropriated.)

Since 1999, approximately $11.1 million has been expended and encumbered for NRDS activity.

4. Another capital request received appropriations in FY 2003-04 and FY 2007-08 for Superfund site cleanup at

California Gulch, Captain Jack Mill, Standard Mine. Appropriations totaled $34.3 million, including $3.4 million CF and $30.9 FF. Please explain the difference between work completed on that project at California Gulch and work to be completed at California Gulch under this request.

The appropriations referenced in the question are from cash funds (Hazardous Substance Response Fund) and are for the clean up of the contamination caused at those sites (for example, actually removing the contaminated soils, or treating water to remove contaminants). The current request is also cash funds (Natural Resources Damage Recovery Fund) which is for replacing natural resources (plants, animals, fish etc) damaged by the contamination at the sites. The two types of funding / projects are differentiated by federal statute. Settlement monies for natural resource damages cannot be used for any other purpose and are not part of the "cleanup" activities at a site.

5. The request does not show any out-year funding estimates. Does the department anticipate requesting funds for this project in the future, in order to complete work at these two Superfund sites? If so, please explain.

These funds are not related to "completing work" at the sites. The cleanup work is not funded with Natural Resource Damage settlements. The spending authority requested covers the Natural Resource Restoration projects we reasonably expect to fund for the next three years. There will be additional requests in future years, until all of the settlement funds, including accrued interest, are spent. For the Rocky Mountain Arsenal, we have recovered $10 million from Shell Oil, and expect to recover an additional $7 million from the U.S Army. For California Gulch we have recovered $10.5 million from Newmont mining, and have a $10 million claim in bankruptcy court against Asarco.

IMPACT ON OPERATING BUDGET

	1st Year	2nd Year	3rd Year	Total
Personnel Services	The project has no impact on state operating costs.			
Maintenance				
Utilities				
Supplies/Equipment				
Other				

PROJECT SCHEDULE

	Start Date	Completion Date
California Gulch Projects	Summer 2009	June 2010
Rocky Mountain Arsenal Projects	Summer 2009	Summer 2012