

# FY 2009-10 Supplemental Capital Construction Request

## Public Health and Environment

Superfund Site Cleanup, Clear Creek/Central City, Chem Sales, Summitville, Vasquez Boulevard

### Motion:

Approve the supplemental request to extend spending authority of the FY 2006-07 appropriation for the Clear Creek Superfund Site cleanup project (\$14,785,000, including \$1,478,500 CFE and \$13,306,500 FF).

### GENERAL INFORMATION

2001-117

#### 1. Which supplemental criterion does the request meet?

Unforeseen Contingency

The Department of Public Health and Environment says this supplemental request is necessary due to unanticipated delays experienced during activities leading up to remedial action at the Clear Creek site.

#### 2. Which projects will be restricted to fund the supplemental request?

A restriction will be unnecessary because the supplemental request is for extension of existing spending authority and does not involve additional spending authority.

#### 3. Has the request been approved by OSPB and CCHE?

Yes

### PRIOR APPROPRIATION AND SUPPLEMENTAL REQUEST INFORMATION

The appropriation to be amended was authorized in the following bill: SB 07-0181

<u>Fund Source</u>	<u>Prior Appropriations</u>	<u>Supplemental Request</u>	<u>Future Requests</u>	<u>Total Cost</u>
CFE	\$2,278,500	\$0	\$0	\$2,278,500
FF	\$27,616,500	\$0	\$0	\$27,616,500
	\$29,895,000	\$0	\$0	\$29,895,000

### REASON FOR SUPPLEMENTAL REQUEST

This supplemental request is for an extension of spending authority for funds previously appropriated to continue work at the Clear Creek Superfund site. Extending spending authority will allow the department to finalize mine waste reclamation and construct water treatment facilities. Due to unanticipated delays during activities leading up to remedial action at the site, most of the project's FY 2006-07 appropriation of \$14,875,000 (\$1,478,500 CFE and \$13,306,500 FF) will not be encumbered or expended prior to the expiration date of March 22, 2010. The department is requesting an extension of spending authority for the appropriation until 2013. No new spending authority is being requested. To date, \$1,994,243 of the FY 2006-07 appropriation has been spent, including \$227,713 from cash funds and \$1,766,530 from federal funds. The Hazardous Substance Response Fund is the source of cash funds for the project.

According to the department, activities conducted by the department and the U.S. Environmental Protection Agency (EPA) leading up to remedial action were significantly more time consuming and resource intensive than planned due to complex ownership issues associated with area properties, subsequent difficulties in identifying owners of and obtaining access to area properties, the need to acquire property or property interests, and time needed to develop an enforcement approach. The department says that the federal government requires a state match to be in place before a contractor can be selected and cleanup can proceed, and the department must have its cost share

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available for the Clear Creek cleanup to go forward. Because of limited federal funding, projects that are not ready to proceed will have funds diverted to other projects nationally.

According to the department, failure to approve an extension in spending authority for the Clear Creek site would adversely affect public health by halting the project, thus prolonging the exposure of local residents to contaminants at the site and continuing contamination of North Clear Creek, which contributes to a drinking water supply for over 300,000 people. Improving the water quality of the creek will also promote the survival of aquatic life. In addition, the department says money already invested in the project would represent a loss if the project does not continue. The department notes that failure to proceed on the Clear Creek project could influence the EPA's funding decisions for other Superfund sites in Colorado. The department also notes that a Superfund Record of Decision, vetted through a public comment process and approved by the department and the EPA, mandates the completion of the Clear Creek cleanup under the Superfund Act.

### **SUMMARY OF PROJECT**

The Clear Creek Superfund cleanup project mitigates an area contaminated by mining activity that encompasses the 400-square mile drainage basin in Clear Creek and Gilpin counties. The federal Superfund program provides for cleanup of hazardous/radioactive waste sites on the EPA's National Priorities List. Twenty-two sites in Colorado have been identified for inclusion on the list. After the Clear Creek site was listed in 1983, erosion from numerous mine waste piles was stabilized and controlled. The EPA and the department also constructed the Argo Tunnel Water Treatment Plant as part of the cleanup, which prevents contaminants from entering Clear Creek. Remaining work includes mine waste pile cleanup and construction of additional water treatment facilities, concentrating on Clear Creek's north fork.

In 1985, the General Assembly approved Senate Bill 85-109, which recognized the existence of sites subject to the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or the Superfund Act). The federal government provides up to 90 percent of funding for Superfund site cleanup. Senate Bill 85-109 created the Hazardous Substance Response Fund to provide the state's share of site cleanup. The state is authorized to obtain federal funds to complete cleanup activities when no responsible party is willing or able to perform the necessary cleanup.

### **QUESTIONS / OUTSTANDING ISSUES**

All responses to staff questions have been incorporated into the write-up above.