

APPLYING THE COLORADO JOINT REVIEW PROCESS TO
OIL SHALE DEVELOPMENT PROJECTS

By

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INTRODUCTION

For seventy years oil shale has been on the verge of making a valuable contribution towards our energy independence. In the early days, developers needed land, water, finances, technical know-how and economics on their side to launch the industry. Today, these are still essential ingredients, however, project proponents must also acquire an awesome array of government permits, licenses, and approvals prior to construction and operation. This paper describes the Joint Review Process which is Colorado's attempt to streamline and coordinate the regulatory actions required for oil shale projects as well as other major natural resource development projects.

CURRENT PERMITTING PROBLEMS

Since the early 1970's a wide variety of laws and regulations pertaining to the development of energy and mineral resources have been adopted. Today, over 100 federal, state, and local government approvals or permits are applicable to oil shale development in Colorado. Needless to say, the implementation of these requirements is not easy, often resulting in a confusing, frustrating, and time consuming process for all involved. Problems frequently associated with the existing regulatory framework include:

- The proliferation of environmental and land use laws and regulations adopted over the past ten years has resulted in a complex array of permits, approvals and other government actions required for resource development.
- Regulations often duplicate, overlap and conflict with one another, resulting in jurisdictional disputes, confusion about requirements and substantial expenditures of public and private time and money.

- The complexity and number of regulations has encouraged industry to seek one permit at a time. Sequential permitting requires a substantial amount of time and tends to diminish the quality of the overall review of a project.
- Opportunities for public participation are limited and occur late in the review process; possibilities for delay, conflict, and litigation are increased markedly.
- A number of permit approvals are tied to specific waste treatment processes, the design of which do not fit into the traditional project planning sequence of preliminary design, financing and final equipment ordering. Even if the probability of obtaining a permit is high, the integral nature of pollution control as part of the design phase makes it desirable to obtain permits specifying effluent limitations early. Most regulatory agencies, however, only want to approve final designs. In addition, a few regulatory programs put deadlines on the maximum time during which construction must begin. The result is often complex scheduling problems.

In response to the confusion and frustration, state governments have adopted a number of regulatory reforms including; computer-based permit tracking, the use of decision-making deadlines, general permits, joint applications, joint hearings, one-step permitting, over-the-counter processing, permit application coordinators, and site inventory/banking. The Joint Review Process is Colorado's approach to improving the overall efficiency of the regulatory system.

WHAT IS THE CJRP?

The Colorado Joint Review Process (CJRP) may best be described by stating what the program is not. First, it is not a new regulatory bureaucracy that can override or modify existing laws and regulations. Also, it does not in any way reduce public participation nor is it designed to "grease the skids" for certain projects.

On the contrary, Colorado's Joint Review Process offers industry participants an alternative to traditional project reviews by establishing a management system that coordinates the regulatory reviews of all participating agencies at all levels of government. It is important to note that the Joint Review Process is voluntary and works entirely within established regulatory requirements. The CJRP encourages concurrent scheduling of regulatory processes rather than the traditional sequential approach. By doing so, it minimizes the opportunities for conflicting and duplicative activities by different entities.

Colorado's Joint Review Process is conducted in three stages. Stage I begins when a project sponsor presents the state with a request to participate in the CJRP. The request should be submitted early in the overall project development cycle. Primary considerations in the review of a request include the project's significance in terms of its technical and geographic implications as well as potential environmental and socioeconomic impacts. After reviewing the application, the Governor and his Cabinet decide whether or not the project will be accepted.

Stage II begins after project acceptance. The first CJRP activity is an interagency meeting with the representatives from federal, state, and local agencies. This meeting provides the proponent the opportunity to introduce the project and related planning activities to all agencies at the same time rather than to each agency separately.

Once all agencies have a basic understanding of the project, the state works closely with federal and local agencies to organize the Joint Review Process Team. The CJRP Team coordinates all

CJRP activities. Membership includes one representative from each level of government with that person responsible for coordinating the activities of the CJRP Team with other agencies at their respective levels of government. Once the CJRP Team is formed, the member agencies and the project proponent enter into a joint agreement confirming their commitment to the Colorado Joint Review Process. A statement of responsibilities is also prepared which outlines the responsibilities of every federal, state, and local agency involved in the project review.

Throughout this stage there are a number of public information meetings designed to solicit the public concerns about the project. If an Environmental Impact Statement is required, these meetings can serve as the "scoping" meetings required by the President's Council on Environmental Quality. The public is encouraged to attend all CJRP meetings.

The final product of Stage II is the project decision schedule. The decision schedule is constructed using the project proponent's anticipated dates for submitting major permit applications. Once the schedule is prepared, the opportunities for improved coordination during the actual permitting processes are discussed. Such improvements include, but are not limited to, joint pre-application meetings, master applications, and joint public hearings. A unique feature of the decision schedule is that each agency and the proponent agree to it in writing. While the decision schedule agreement is not legally binding, it does signify the good faith intentions of all involved to perform their jobs within the agreed time frames.

It is important to remember that Stage II activities occur simultaneously while the company prepares data and analyses required by the various land-use and environmental regulations. Thus, the CJRP does not add any time to the overall project review.

The implementation of the project specific decision schedule is the final stage of the Joint Review. It is during this stage that the normal regulatory processes are implemented with the

assistance of the various coordination activities planned during Stage II. The CJRP Team monitors the permitting activities and resolves coordination problems as they arise.

EXPERIENCE WITH THE CJRP

Since the program's inception in 1978, nine major energy and mineral resource development projects have been accepted for participation in the CJRP. Five of these projects have been in the oil shale sector including: Rio Blanco Oil Shale Company's Surface Retort and Open Pit Mine Demonstration Project; Multi Mineral Corporation's Nahcolite Mine; The Standard Oil Company (Ohio), Superior Oil, and Cleveland-Cliffs Shale Oil Company's Pacific Shale Project; Chevron Shale Oil Company's Clear Creek Shale Oil Project; and Union Oil Company's Parachute Creek Shale Oil Program, Phase II Project. In addition to other mineral and energy projects, the CJRP has been applied to ski area development projects and is currently being considered for use on other diverse projects.

During its development, the CJRP has been monitored and analyzed by a wide variety of organizations, states, and individuals. The consensus seems to be that the CJRP offers substantial benefits for all involved. A few of the primary benefits are highlighted below:

For Everyone:

- Provides a good information, communications forum throughout the planning/permitting process;
- Issues and concerns are raised earlier than normal;
- Identifies all parties' responsibilities;
- Eliminates unnecessary confusion and frustration;
- Causes of delays are made explicit.

For Government Agencies:

- Interagency coordination occurs earlier, easier, and in a more organized fashion;
- Local issues are aired earlier;
- Federal agencies are forced to communicate better with state and local agencies;
- Companies submit better applications which facilitates the regulatory reviews.

For Companies:

- Reduces time needed for understanding permitting process and reaching all relevant agencies;
- Establishes extensive public record on project;
- Identifies concerns early in planning process;
- Avoids procedural slip-ups and other unnecessary delays;
- Reduces incidence of legal challenges;
- Interagency coordination streamlines permitting process;
- Negotiated decision schedule allows company to set an expedited pace.

For Environmental/Citizen Groups:

- Offers early opportunity for dialogue with corporations and government agencies;
- Promotes greater coverage of socioeconomic issues;
- Greater access to project data and reports;
- Project can be monitored more efficiently;
- Advance notice of formal public hearings and review periods.

CJRP AND OIL SHALE PROJECTS

It is beyond the scope of this paper to fully describe the application of the CJRP on each of the participating shale oil projects. However, a few examples of how the CJRP has improved the efficiency and a responsiveness of the reviews are appropriate:

- During the review of the Multi Mineral Nahcolite Mine (the first stage of a much larger shale oil facility) the need for a full Environmental Impact Statement was alleviated through early negotiations establishing means for addressing anticipated impacts at the outset. This shaved at least a year off the anticipated permitting time schedule.
- In order to keep the Rio Blanco Oil Shale Pilot Retort and Mine Demonstration project on schedule, participants in the CJRP agreed to a master permit application for the project. Using the required Detailed Development Plan as the master document, special indexes were developed which clearly identified where the information required by the State Mined Land Reclamation Division, the U.S. Environmental Protection Agency and others could be found.

This substantially reduced the time consuming task of rewriting the same information in a number of different formats.

- To avoid preparation of multiple reports on the same subject, project sponsors and representatives from local, state, and federal governments have agreed to jointly prepare necessary documents. This approach has been used in preparing socioeconomic analyses for the Chevron, Pacific, and Union projects. Not only has this approach saved considerable amounts of money, but it has avoided the time and headache of trying to resolve the inevitable discrepancies that would emerge from three separate socioeconomic studies on the same project.
- Through the CJRP, a wide variety of preliminary analyses have been reviewed by agencies before being finalized and widely distributed for review. Most recently the participants in the Union Joint Review reviewed the environmental report which will eventually be released as the project EIS. Such early reviews are extremely helpful in identifying and correcting inaccuracies and other deficiencies in documents prior to being distributed for public review.

While the above are clear examples of how the CJRP can improve project reviews, the CJRP is not a panacea for all the ills associated with obtaining the permits necessary for a shale oil facility. For example, the CJRP can do nothing to avoid the present delays being caused by the threatened and endangered fish controversy on the Colorado River, or the SO₂ air emission permitting delays in the Grand Valley. Likewise, the CJRP can do little to avoid litigation if it becomes necessary in these or other situations. However, should litigation of one form or another become inevitable, it is our belief that by virtue of the project's participation in the CJRP all the pertinent issues will be clarified and a substantial public record will be available to hasten the judicial process.

The CJRP has also not been able to insure that each EIS prepared on a participating shale oil project will be the epitome of the perfectly clear

and comprehensive decision-making tool. These projects are simply too complex and the distillation of reams of data and analyses into a 300 page readable document is an extremely demanding task. Especially, when EIS's are geared to an eighth grade reading ability. It has also been difficult to provide a substantial level of consistency among the various project EIS's. This is largely due to the fact that some projects such as Union have substantial amounts of data available from previous operations while others such as Pacific are early in the overall project development cycle.

Despite these shortcomings, there is little doubt that the intergovernmental and public-private cooperation that occurs as a part of the CJRP has substantially improved the overall quality of EIS's and the permitting process as a whole. In recognition of this fact, the CJRP was awarded the 1983 National Environmental Industry Award for Excellence by the President's Council on Environmental Quality and the Environmental Industry Council. Other states have also developed their own joint reviews based on the Colorado model, and the Colorado General Assembly has incorporated the CJRP into the state statutes.

CONCLUSION

The Colorado Joint Review Process will not bring the long-held promise of oil shale to fruition. Other variables such as economics and technological advancements will prove to be the crucial factors. The CJRP can, however, offer the participating projects the prospect of a fair and timely review process.