

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

# COLORADO JOINT REVIEW PROCESS

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## 1995 SUNSET REVIEW



**Joint Legislative Sunrise/Sunset Review Committee  
1995-1996 Members**

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**Department of Regulatory Agencies Staff**

**Joseph A. Garcia  
Executive Director**

**H. Rene Ramirez  
Director, Office of Policy and Research**

**Bruce Harrelson  
Senior Policy Analyst**

**Geoffrey Hier  
Authoring Analyst**

June 30, 1995

The Honorable Richard Mutzebaugh, Chair  
Joint Legislative Sunrise/Sunset Review Committee  
State Capitol Building  
Denver, Colorado 80203

Dear Senator Mutzebaugh:

The Colorado Department of Regulatory Agencies has completed the evaluation of the **Colorado Joint Review Process**. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to §24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

*"The Department of Regulatory Agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."*

*The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."*

The report discusses the question of whether there is a need for the regulation provided under article 10 of title 34, C.R.S. The report also discusses the effectiveness of the division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia  
Executive Director

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## *EXECUTIVE SUMMARY*

Agencies has concluded its Sunset Review of the Colorado Joint Review Process (CJRP), administered by the Department of Natural Resources, and recommends allowing the program to sunset as scheduled.

The CJRP is a non regulatory program designed to streamline the environmental permitting process for large energy and mining projects. The process has been underutilized in recent years because of the lack of large projects and the inability to adapt and market the process to smaller projects that are more common in today's economy.

Since the CJRP exists only on paper it could be argued there is no cost to the taxpayers to maintain it in statute. However, one purpose of the sunset process is to remove outdated or unused laws from the state statutes. There are also informal examples in state government of regulatory agencies working together to streamline regulatory requirements without a statutory mandate. A prime example of this is the Office of Business Development and the Colorado Department of Public Health and Environment working with local health agencies to expedite permits for businesses relocating to Colorado.

Using the criteria for evaluation contained in §24-34-104(9)(b), C.R.S., This sunset review does not recommend the continuation of this program based on a need to protect the public health, safety, and welfare. The concept of interagency cooperation and the elimination of unnecessary red tape pioneered by the CJRP should be encouraged.

## ***BACKGROUND***

The Colorado Joint Review Process (CJRP) administered by the Division of Minerals and Geology in the Department of Natural Resources (DNR), shall be terminated July 1, 1996 unless continued by the general assembly. During the year prior to this date it is the responsibility of the Department of Regulatory Agencies (DORA) to conduct an analysis of the program in compliance with §24-34-104, C.R.S.

The purpose of this review is to determine whether the CJRP should be continued for the protection of the public health, safety and welfare. The report also evaluates the performance of the Division of Minerals and Geology in DNR, related to this program. During this review, DNR must demonstrate that there is still a need for the CJRP and that the process is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted to the Joint Legislative Sunrise and Sunset Review Committee of the Colorado General Assembly. Statutory criteria used in the sunset review is found in the appendix of this report.

The Sunset Review process included an analysis of the statute, interviews with state authorities, DNR staff, local government representatives and regulated individuals. DORA makes every effort to elicit information and comments from all interested parties.

## History

The Colorado Joint Review Process (CJRP) grew out of the Colorado Review Process established by then Governor Lamm to streamline the permitting of ski area development. The process operated informally through interagency agreements from 1978 to 1982 when the general assembly established the CJRP in the Executive Director's Office in the Colorado Department of Natural Resources (DNR). Initial funding for the program was supplemented by grants from the US Department of Energy. The enabling legislation required the DNR to develop a directory of regulations applicable to various types of natural resource development. Fees from the sale of this directory were used to fund annual updates of the publication, which was last updated and published in 1988. The DNR is currently seeking private donations to fund another revision.

In 1987, legislation was passed requiring the Executive Director to establish fees to recover both direct and indirect costs of the program. Fees recovered from users of the process are separated from fees generated by directory sales. In 1988, the general assembly established a sunset date for the program of July, 1993. In 1990, the sunset date was extended to July of 1996.

The Division of Minerals and Geology was created by legislation in 1992. The general assembly combined the functions of several offices and boards in DNR, including the CJRP, into the division by a type 2 transfer.

Throughout its history, the CJRP has been well received by regulatory authorities at the local, state and federal level. The CJRP was used as a model by several states to improve and streamline environmental permitting for major projects. The program has received national recognition, including the 1983 Award for Excellence in Environmental Permitting by President Reagan's Council on Environmental Quality.

## ***SUMMARY OF STATUTE***

The Colorado Joint Review Process is contained in §34-10-101, et. seq., C.R.S. The Legislative declaration emphasizes the need for a state agency to coordinate and facilitate the permitting process for developers of natural resources and independent governmental permitting agencies. The act specifies that participation by any developer is voluntary and that non-participation shall not be grounds to deny a permit.

The statute identifies the Division of Minerals and Geology as the lead state agency and enumerates its responsibilities in §34-10-103, C.R.S. Sponsors of natural resource extraction, conversion, transpiration, management, or water development projects may elect to participate in the process. Sponsors choosing to participate must submit information about the project, the required permits and the government agencies involved to the DNR. The CJRP staff is then responsible for requesting the participation of the various federal, state and local regulatory authorities. The division is also required to prepare for sale a comprehensive directory of natural resource regulations related to development activities.

Section 103.5 allows the director of the Minerals and Geology Division to recover direct and indirect costs of the administration of the program from project sponsors. Section 104 contains the sunset provision for the article.

The Colorado Office Of Regulatory Reform (ORR) was created, in part, to provide comprehensive licensing, permitting and regulatory information to new and expanding small businesses. ORR is required by §24-34-904(1)(m), C.R.S. to coordinate environmental information and regulatory assistance with the CJRP. This is the only other statutory reference to the process.

### **Other Statutory References**



The CJRP exists to coordinate a wide variety of environmental and natural resource permitting and regulatory programs. These regulatory programs are independent of direct control by the CJRP and are developed and implemented at the local, state and federal levels. Participation in the CJRP is entirely at the discretion of the individual agencies involved.

### **Regulations**

The division has not promulgated regulations to implement this article. According to division staff, project sponsors negotiated fees on an individual basis for projects implemented after the fee provisions were enacted.

## **PROGRAM DESCRIPTION AND ADMINISTRATION**

divided into three phases:

**Phase I** is implemented when a project sponsor applies to the division for participation in the process. Participation in the process requires the sponsor to file with the CJRP information regarding the nature, scope, size and duration of the project in question, as well as a list of government agencies potentially involved in permitting or regulating the project. Division staff review the application for applicability to the program. Eligible projects are those requiring permits from multiple agencies at either the local, state or federal level.

**Phase II** involves the CJRP staff assuming a lead role in coordinating meetings and hearings between regulatory authorities and interested parties to obtain input into the project design and planning. Participation by regulatory agencies is not mandatory, however, most agencies participate to leverage resources and reduce duplication of efforts. Early involvement by government agencies and environmental groups is intended to minimize opposition to major projects by providing input at the “front end”. Permit review schedules are developed for the local, state and federal agencies involved. Coordinated permit review can reduce expensive public hearings.

During **Phase III**, the feasibility studies are completed, public hearings conducted and permit applications are reviewed against regulatory requirements. The CJRP staff facilitate information flow to eliminate bottlenecks and meet established timeframes.

The CJRP is a  
voluntary program

## *SUNSET ANALYSIS*

Information provided by the CJRP contains no quantifiable data regarding the effectiveness of the process. The planning and permitting process for projects of the scope eligible for participation in the process can take years. Anecdotal information indicates industry participants believe the upfront participation by various parties actually increases the timeline for obtaining necessary permits. However, industry participants believe the process reduces litigation after permits are issued, since public interest and environmental groups are involved in early planning.

In reviewing surveys conducted during previous reviews of the CJRP it is clear the strongest support for the process is with government agencies. Questions related to efficiency, timeliness, participation, and project quality all scored very high by agencies surveyed. Project quality, participation and efficiency questions were not uniformly supported by industry and public interest groups. However, the responses did not indicate opposition to the process.

The voluntary nature of the CJRP resulted in criticism in previous reviews. Some survey respondents indicated that not all participants in the process cooperated fully. A few participants suggested making the process mandatory for all major projects to improve cooperation and participation from reluctant agencies.

Only nine projects have undergone the formal CJRP since it was implemented. Many of those never emerged beyond the review stage and were removed from consideration by the project sponsor due to economic changes in the state. Ten projects, including Denver International Airport (DIA), used an informal CJRP to identify required permits and begin discussions with regulatory agencies. For various reasons, the project sponsors did not elect to use the formal CJRP. Some sponsors felt internal resources were better equipped to obtain the necessary permits, others did not believe the number of required permits justified the use of the CJRP.

The last project involving the CJRP staff was a project initiated by the US Forest Service in 1992 to review the Breckenridge Ski Area Expansion. The DNR has represented state agencies on ten Forest Service Ski Area expansion review projects.

## **Previous Studies**

Three previous studies of the CJRP were reviewed for this report, the first by Thomas J. Gallegher, University of Alaska, Fairbanks in 1985. The purpose of Mr. Gallegher's study was to evaluate the CJRP for use as a model for the State of Alaska. The study consisted primarily of a 10 question survey of 66 individuals involved in the process from various federal, state and local government agencies, public interest groups and industry representatives.

The survey found general support for the process. The strongest support was among regulatory authorities, the weakest with the environmental groups. Mr. Gallegher concluded the CJRP had the potential for application beyond its current scope, such as public works and large construction projects, and was conceptually supported by every group involved in the process.

The second study was prepared by the Center for Improvement of Public Management (CIPM) in 1986. The study consisted of written surveys of participants, personal interviews with previous participants and focus group discussions with persons involved in the CJRP.

This study corroborated the Gallegher findings of support for the process. It also found slightly less enthusiasm among the environmental/public interest groups. The report recommended modifications to the CJRP to address the economic reality of smaller scale projects. Recommendations were made to aggressively market the CJRP to the new airport and other public works projects.

**Evaluation of  
the CJRP to  
Sunset  
Criteria**

A third study was produced in 1987 by Genevieve M. Kruzel, a graduate student at the University of Colorado at Denver. Ms. Kruzel's report consisted of interviews with former participants of the CJRP and a reinterpretation of data compiled from the survey's in the first two studies. Ms. Kruzel's report was criticized by the DNR for containing factual errors. However, she did raise valid points about the degree of support for the process by various participants.

***Necessity of Regulation***

The CJRP is a formalized coordination of existing regulatory programs, including: US Forest Service, Bureau of Land Management, Mined Land Reclamation Board, Colorado Oil and Gas Commission, and environmental programs in the Colorado Department of Public Health and Environment. Individually, these programs must stand on their own merits in a determination of necessity to protect the public health, safety and welfare. An evaluation of each program is beyond the scope of this report. Therefore, it is assumed individual programs meet the necessity test. If it is assumed individual programs are fulfilling a public protection role, the CJRP is not a necessary function of state government.

***Ability of Statutes and Regulations to Enhance and Protect the Public Interest***

One intent of the CJRP was to enhance public participation in major projects. Ostensibly, this would provide greater public protection on projects with significant environmental impacts. The reports previously cited all noted that public interest groups were the least supportive of any participant in the CJRP. According to these reports, some participants felt this was because the process reduced public participant's ability to raise last minute objections and challenge large projects.

The CJRP is strongly supported in concept by regulatory authorities. Cooperation and communication between local, state and federal agencies are definitely in the public interest. The process falls in line with the theories of reinventing government and total quality management.

### **Efficiency and Effectiveness of the CJRP**

Previous studies indicate participants believe the process resulted in better quality project development. However, there is no empirical data to evaluate the efficiency or effectiveness of the CJRP. Comments by industry participants indicate a belief that participation increased the time period required to obtain permits, but that the tradeoff was worth it for reduced future litigation expenses. Since few projects utilizing the process ever achieved full production, this theory cannot be validated. Advocates of the process have been unable to market the CJRP to major public works projects, such as DIA or E-470.

## **Conclusions**

The CJRP has many advocates in both the regulatory arena and the private sector. Conceptually, the process is a model example of streamlining the permitting bureaucracy in the spirit of reinventing government. Unfortunately, it is a solution in search of a problem. Originally designed for large scale energy and mining projects, the CJRP has not been successfully adapted to smaller projects. Discussions with individuals involved with the DIA and E-470 project planning revealed that although they were aware of the CJRP, they used internal resources to coordinate the permitting process.

The CJRP originally operated through interagency agreements with a goal of coordinated reviews to reduce costs to agencies and industry, and improve the quality of projects. A review of previous studies of the process and interviews with past participants indicates a belief that better projects were achieved. However, fees for the CJRP are in addition to those charged by individual agencies. This directly contradicts the contention of proponents that efficiencies are achieved by use of the process.

**RECOMMENDATIONS****Allow CJRP to Sunset*****RECOMMENDATION 1 - Allow the Colorado Joint Review Process to sunset as scheduled July 1, 1996.***

The sunset review process is intended, in part, to eliminate outdated and unused regulatory programs. The CJRP has not been used in many years. The large scale projects it was developed to facilitate are no longer economically feasible. In fact, many of the original applicants in the CJRP withdrew applications and ceased operations before permits were issued. The DNR has not been able to market the process to smaller projects currently in the development stages in Colorado.

**Repeal Requirements of ORR*****RECOMMENDATION 2 - Repeal 24-34-904 (1)(m), C.R.S. requiring the Office of Regulatory Reform to provide and coordinate environmental information and regulatory assistance in conjunction with the CJRP.***

ORR was created to provide assistance to small business. Projects the size of those eligible for participation in the CJRP are unlikely to be developed by a business meeting ORR's statutory definition of a small business. ORR has not documented any instances of a small business requesting information regarding the CJRP.



**Interagency  
Cooperative  
Agreements.**

***RECOMMENDATION 3 - Encourage informal interagency cooperative agreements.***

While the legislation formally recognizing the CJRP should be allowed to expire, the concept of intergovernmental cooperation and communication should not. The process started through informal agreements between industry and government agencies. In the event a project developer requested cooperative permit reviews, state agencies have the necessary authority to work together to form an ad hoc joint review process.

*APPENDICES*

## Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

## Colorado Joint Review Process Statute

**34-10-101. Legislative declaration.** The general assembly hereby finds, determines, and declares that continued beneficial development of its natural resources, including water resources, is important to the state of Colorado; that the many governmental permits and licenses to be obtained by a natural resources developer can cause confusion and delay; that the jurisdictional integrity of each unit and agency of local, state, and federal government must be maintained; and that an agency of state government the function of which would be to coordinate relations between developers of natural resources and units and agencies of local, state, and federal governments would make the permitting process more efficient and, therefore, offer a benefit to the people of Colorado. The general assembly further declares that the Colorado joint review process, created by this article, shall be the proper agency of state government to undertake the coordination function, so that problems arising in the preproduction stages of natural resources development projects can be expeditiously resolved.

**34-10-102. Colorado joint review process.** (1) There is hereby created, in the division of minerals and geology, an agency to be known as the Colorado joint review process.

(2) The Colorado joint review process created by this section shall exercise its powers and perform its duties and functions specified in this article under the department of natural resources and the division of minerals and geology as if the same were transferred to the division of minerals and geology by a type 2 transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

**34-10-103. Duties of the Colorado joint review process.** (1) Sponsors of natural resource extraction, conversion, transportation, management, or water development projects may elect to utilize the Colorado joint review process. Upon receipt of a written request from a project sponsor, the Colorado joint review process shall initiate project coordination procedures. Project coordination procedures shall include, but not be limited to, the following:

(a) Filing of a project statement by the developer, which statement shall contain accurate information relating to the nature, location, size, and duration of the project;

(b) Filing of a list of governmental agencies by the developer, which list shall contain the names and addresses of all local, state, and federal governmental units and agencies which the developer reasonably expects to be involved in the permitting and licensing process with regard to the project;

(c) Service of the project statement upon each federal, state, and local governmental unit and agency contained in the list filed by the developer, together with a request to each such governmental unit and agency to participate;

(d) Organization and management of meetings involving the developer and all involved government units and agencies;

(e) Maintenance of continuing communication among all involved parties;

(f) Any other action which will facilitate the timely approval or denial of permits and licenses required by the developer for the commencement of the project;

(g) Preparation of a directory of federal, state, and local regulations applicable to various types of natural resource development activities. Such directory shall be updated annually. Revenues from sales of the directory shall be deposited in the joint review process revolving fund, which fund is hereby created. This fund shall only be used to publish and update the directory.

(2) Failure of the sponsor to utilize the Colorado joint review process established in this article shall not be used as grounds or rationale by any of the governmental agencies involved in the permitting or licensing process as grounds for the denial of any of the action requested by the sponsor.

**34-10-103.5. Fees for utilization of process - cash fund - creation - general fund appropriations.** (1) The director of the division of minerals and geology by rule shall establish fees for the direct and indirect costs of the administration of those projects supported by fees from sponsors of projects utilizing the Colorado joint review process.

(2) All fees collected shall be transmitted to the state treasurer, who shall credit the same to the Colorado joint review process cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly in the same manner as the general fund appropriation for the joint review process.

(3) The general assembly may from time to time appropriate moneys available from the general fund of the state to fund such direct and indirect costs of the joint review process funded pursuant to this section.

**34-10-104. Legislative review - termination of functions - repeal of article.** (1) The Colorado joint review process shall be terminated on July 1, 1996, unless the general assembly votes to renew the legislative mandate of this article. The functions of the Colorado joint review process shall also terminate on July 1, 1996. Prior to such termination, these functions shall be reviewed as provided for in section 24-34-104, C.R.S.

(2) This article shall be repealed, effective July 1, 1996.