

# How the District Violated the Clean Water Act, and How You Can Avoid Doing the Same





# Presentation Overview

- Urban Drainage - District's History with Enforcement Actions
- ERO Resources – General Guidance & Considerations for 404 Permits





- District has been in business for 44 years and actively doing construction projects for about 40 of those years

	Projects	Funds Spent
CIP	Over 600	\$225,400,000
Maintenance & SPR	Over 2500	\$201,847,000
Totals	Over 3100	\$427,247,000

- All of those projects were construction along the major drainageways, and required review and approval from the USACE





# District - 404 Permit Violations

Coal Creek, Boulder County – 1993

Piney Creek, Arapahoe County - 2012



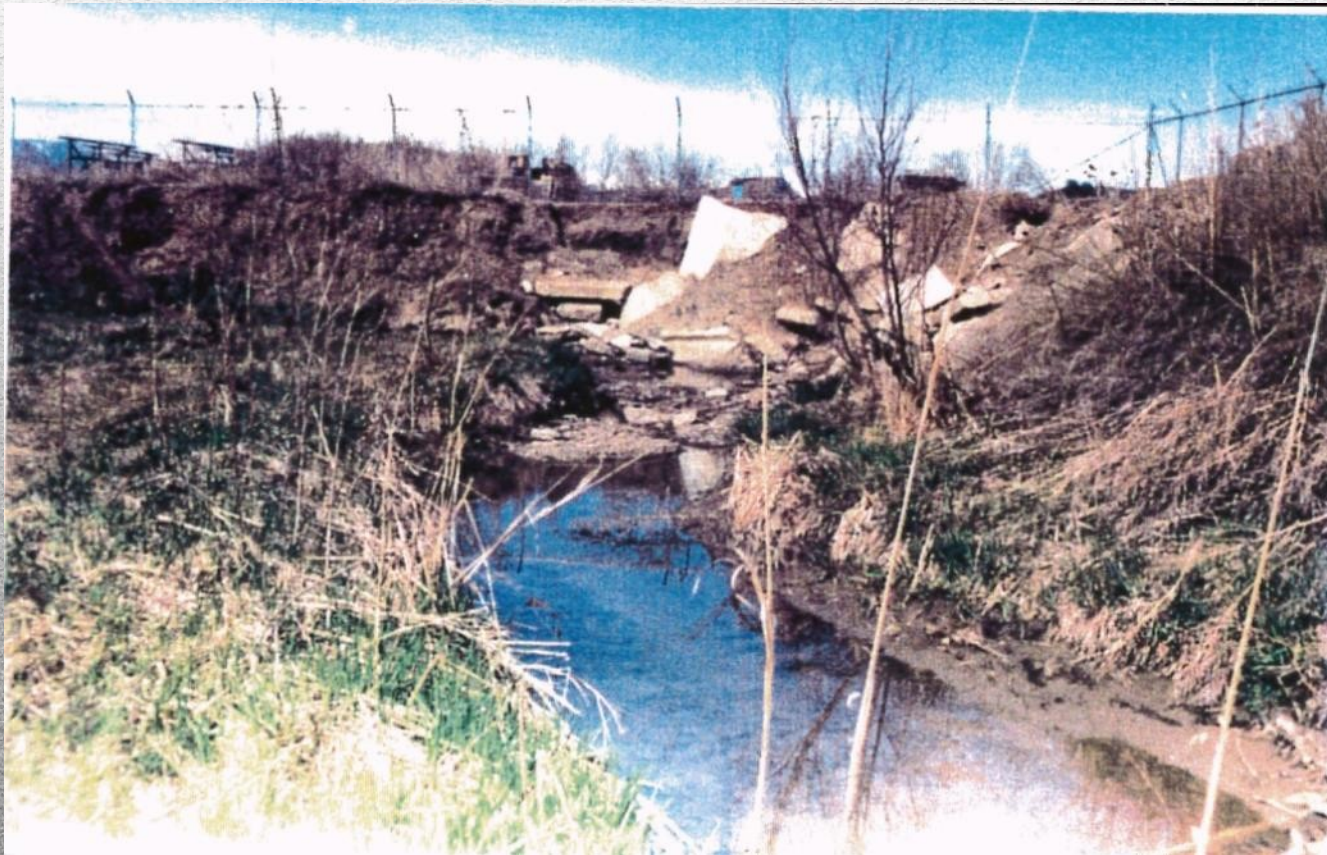


# Coal Creek





# Coal Creek



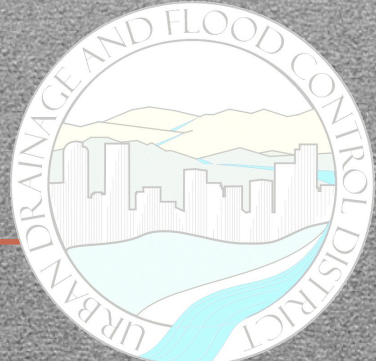
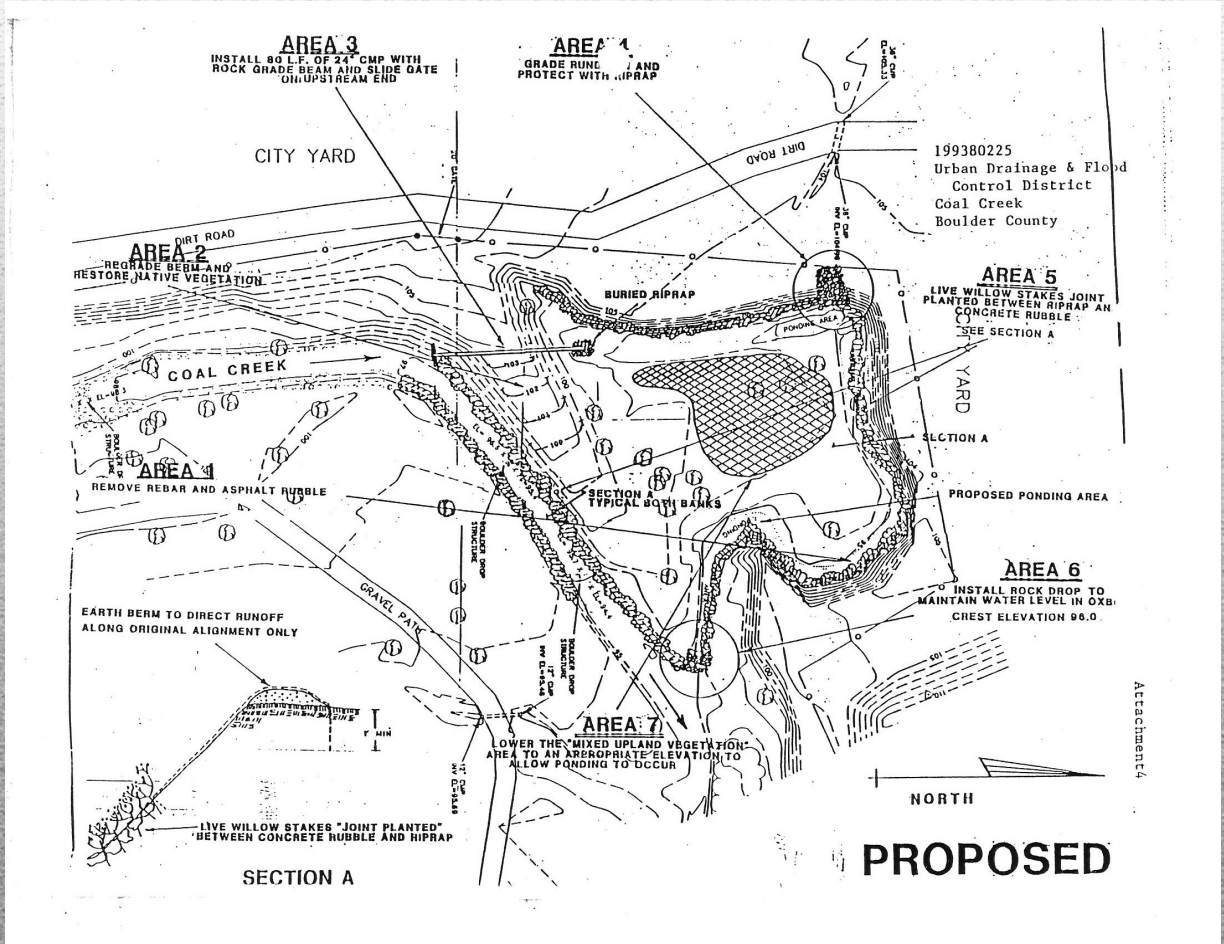


# Coal Creek



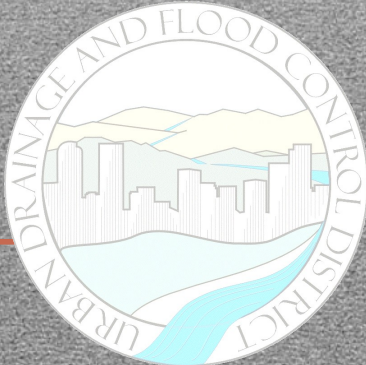


# Coal Creek



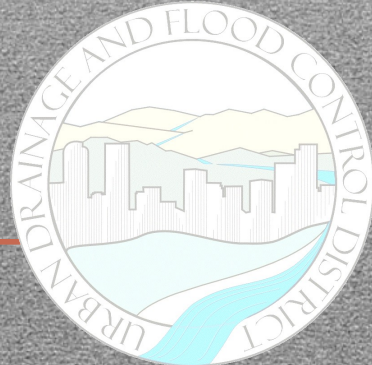


# Coal Creek





# Coal Creek





# Piney Creek





# Piney Creek





# Piney Creek





# Piney Creek





# Piney Creek





# Piney Creek





# Piney Creek

## ➤ Mitigation Project

- Address adverse effects of sediment removal project

## ➤ Supplemental Environmental Project (SEP)

- To Stabilize Banks on upstream reach of Piney Creek

## ➤ Pay a Fine

- Offset by SEP

## ➤ Improved Process at District

- Avoid future violations

## ➤ Discuss at our Annual Seminar

- Educate Others





# Mitigation Project



## Piney Creek at Farms Sediment Removal

- Willow Stake (100)
  - Area of Impact
  - Native Wetland Seed Mix
  - Erosion Control Blanket
  - Tree Planting Zone (20, combination poles and deep-planted)
- Image Source: Microsoft UC-G, 2012



Figure 4  
Restoration Activities

Prepared for: UDFCD  
File: 5192 figure 4.mxd (WH)  
January 2013





# Supplemental Environmental Project





# Improved Processes at District

## New Clean Water Act Section 404 Protocol

- Each project reviewed by outside consultant with expertise in Section 404 Authorizations
- Consultant prepares all submittals to the Corps and facilitates coordination
- Consultant remains on the project team to address changes as they arise
- Quarterly Lunch and Learns





To Permit or Not to Permit?

That is the Question...for the Corps.





FIVE MINUTE VERSION  
OF AN HOUR TALK ON  
SECTION 404 OF  
THE CLEAN WATER ACT





# REGULATED ACTION

Discharge of dredged or fill material

- Addition of material – bank reconstruction, drop structure
- Redeposit of material – bulldozing or moving material, shaping with bucket





# REGULATED AREAS

40 CFR 230.3(s) The term waters of the United States means:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;  
All interstate waters including interstate wetlands;
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
  - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
  - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;All impoundments of waters otherwise defined as waters of the United States under this definition;
- Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;
- The territorial sea;
- Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

























# TYPES OF PERMITS

- Individual General Permits
- Regional General Permits
  - RGP-12 Aquatic Habitat Improvements for Streams
- Nationwide Permits
  - NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities.
  - Still under a permit even if no PCN required





# VIOLATIONS

- Unpermitted discharge
  - Disclose minor discharges
- Permit violations
  - Excess discharge/disturbance
  - Not built to permit
  - Monitoring





# POST PERMIT CHANGES (Design or Field)

- ASK FIRST!!
  - Coordinate with consultant
  - Coordinate with the Corps
- Get Amendment if Needed





# DURING CONSTRUCTION

- Integrated Team
  - Owner, Engineer, Consultant, Contractor
- Pre-construction Meeting
  - Identify permit requirements - Legally binding
- Site Preparation
  - Protect sensitive areas, clearing, dewatering, access
- On-site Construction Monitoring
  - Owner's rep
  - Immediate correction





# LESSONS LEARNED

- Identify Potential WUS
  - Is there a regulated area? ASSUME NOTHING!
- Coordinate with Agencies
  - What is required?
  - Continue to communicate
- Develop a Strategy
  - Avoidance and Minimization
  - Permitting Approach
  - Compliance





# CWA REGULATORY UPDATE

## • EPA/Corps Proposed Rule to “Clarify” Jurisdiction

- Supported by EPA draft science report
- Stresses importance of ephemeral and intermittent streams, riparian/floodplain wetlands w/subsurface connection, unidirectional wetlands and waters
- Expect to see more landscape-level Significant Nexus Evaluations







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