

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 24-0606.01 Richard Sweetman x4333

SENATE BILL 24-127

SENATE SPONSORSHIP

Kirkmeyer,

HOUSE SPONSORSHIP

Bird,

Senate Committees

Agriculture & Natural Resources
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF A DREDGE-AND-FILL PERMIT**
102 **PROGRAM TO REGULATE THE DISCHARGE OF POLLUTANTS INTO**
103 **CERTAIN STATE WATERS IN RESPONSE TO RECENT CHANGES IN**
104 **FEDERAL LAW, AND, IN CONNECTION THEREWITH, ESTABLISHING**
105 **THE STREAM AND WETLANDS PROTECTION COMMISSION AND**
106 **THE STREAM AND WETLANDS PROTECTION DIVISION AND**
107 **AUTHORIZING THE STREAM AND WETLANDS PROTECTION**
108 **DIVISION TO ADMINISTER AND ENFORCE THE DREDGE-AND-FILL**
109 **PERMIT PROGRAM IN ACCORDANCE WITH RULES PROMULGATED**
110 **BY THE STREAM AND WETLANDS PROTECTION COMMISSION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates the stream and wetlands protection commission (commission) in the department of natural resources (department) and requires the commission to develop, adopt, and maintain a dredge-and-fill permit program (permit program) for:

- Regulating the discharge of dredged or fill material into certain state waters; and
- Providing protections for state waters, which protections are no more restrictive than the protections provided under the federal "Clean Water Act" as it existed on May 24, 2023.

The bill creates the stream and wetlands protection division (division) in the department to administer and enforce the permit program.

The commission is required to promulgate rules as expeditiously as is prudent and feasible concerning the issuance of permits under the permit program. Until the division implements such rules, the bill prohibits the water quality control division in the department of public health and environment from taking any enforcement action against an activity that includes the discharge of dredged or fill material into state waters if the activity causing the discharge is conducted in a manner that provides for protection of state waters consistent with the protections that would have occurred through compliance with federal law prior to May 25, 2023.

The bill establishes enforcement mechanisms for the permit program. A person who violates the terms of a permit, a rule, or a cease-and-desist order or clean-up order is subject to a civil penalty of not more than \$10,000 per day per violation.

The bill directs the state treasurer to transfer \$600,000 from the severance tax operational fund to the capital construction fund on July 1, 2024, for the implementation of the bill.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) On May 25, 2023, the United States supreme court issued an
5 opinion in *Sackett v. Environmental Protection Agency* that defined the

1 types of water resources that are considered to be "waters of the United
2 States" and are subject to federal permitting requirements under section
3 404 of the federal "Clean Water Act", Pub.L. 92-500, for the discharge of
4 dredged or fill material. The *Sackett* ruling became immediately effective
5 in Colorado, and federal permitting requirements for the discharge of
6 dredged or fill material no longer apply to certain state waters. The United
7 States supreme court effectively narrowed the scope of the federal "Clean
8 Water Act", undoing protections that have safeguarded many of
9 Colorado's waters for over fifty years.

10 (b) To date, Colorado has not had a state permit program to
11 authorize the placement of dredged or fill material into state waters but
12 has relied on the federal government's permit program. The new
13 definition of "waters of the United States" under *Sackett*, narrowing
14 federal jurisdiction in this area, has created a need for a state permit
15 program. This decision has added a tremendous amount of regulatory
16 uncertainty regarding the protection of Colorado's aquatic ecosystems and
17 put at risk sustainable land use. This decision has also shifted the burden
18 to the states to fill the void in permitting programs.

19 (c) Some projects involving the discharge of dredged or fill
20 material, such as for flood control; stream restoration; water development;
21 construction or maintenance of underground utilities, roads, transit, rail,
22 and housing; and similar efforts that are not regulated by the federal
23 "Clean Water Act", face regulatory uncertainty unless Colorado develops
24 its own dredge-and-fill permit program.

25 (2) The general assembly further finds that:

26 (a) Water is Colorado's most critical natural resource. Colorado's
27 water resources provide essential ecosystem services for a healthy

1 environment and serve as a fundamental element of the state's economic
2 growth and prosperity.

3 (b) Colorado has a strong interest in protecting water in Colorado
4 because our economy and way of life rely on clean water. Colorado's
5 rivers supply millions of people in the United States with water needed
6 for drinking, agriculture, industry, and outdoor recreation. Moreover,
7 Colorado must find a way forward to protect waters within its borders and
8 provide regulatory certainty for the economic, environmental, and social
9 quality of life in Colorado.

10 (c) The lack of a permitting program will further exacerbate the
11 unmet housing needs in Colorado and will place at risk the historic
12 investment of close to one billion dollars for affordable housing made by
13 the state over the past three years;

14 (d) A state dredge-and-fill permit program can provide a
15 mechanism for protecting the ecological integrity of Colorado's water
16 resources while accommodating their sustainable utilization to facilitate
17 a strong and prosperous economy;

18 (e) Development of the state water plan involved the largest civic
19 engagement process in the state's history. The state water plan provides
20 a policy roadmap for managing Colorado's water resources in a way that
21 leads to a productive economy, vibrant and sustainable cities, productive
22 agriculture, a strong environment, and a robust recreation industry.

23 (f) In creating a permitting program for dredge-and-fill activities,
24 Colorado can strike a balance between environmental conservation and
25 economic development, ensuring that such activities are conducted
26 responsibly while preserving critical waterways. This will further enable
27 the state to address specific regional challenges, uphold ecological

1 resilience, and provide a crucial layer of protection.

2 (3) Therefore, the general assembly declares that the state must
3 adopt a permit program to regulate the discharge of dredged or fill
4 material into state waters, and, moreover, it is imperative that the state do
5 so as soon as possible.

6 **SECTION 2. In Colorado Revised Statutes, add part 11 to article**
7 **8 of title 25 as follows:**

8 **PART 11**

9 **STREAM AND WETLANDS PROTECTION ACT**

10 **25-8-1101. Short title. THE SHORT TITLE OF THIS PART 11 IS THE**
11 **"STREAM AND WETLANDS PROTECTION ACT".**

12 **25-8-1102. Definitions. AS USED IN THIS PART 11, UNLESS THE**
13 **CONTEXT OTHERWISE REQUIRES:**

14 (1) "CLEAN WATER ACT" MEANS THE "FEDERAL WATER
15 POLLUTION CONTROL ACT AMENDMENTS OF 1972", PUB.L. 92-500,
16 CODIFIED AT 33 U.S.C. SEC. 1251 ET SEQ., AS AMENDED.

17 (2) "COMMISSION" MEANS THE STREAM AND WETLANDS
18 PROTECTION COMMISSION CREATED IN SECTION 25-8-1104.

19 (3) "COMPENSATORY MITIGATION" MEANS REDUCING AN
20 ACTIVITY'S ADVERSE IMPACTS TO THE AQUATIC ENVIRONMENT BY
21 REPLACING LOSSES OF STATE WATERS OR WETLANDS.

22 (4) "CORPS OF ENGINEERS" MEANS THE UNITED STATES ARMY
23 CORPS OF ENGINEERS.

24 (5) **"DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH**
25 **AND ENVIRONMENT.**

26 (6) (a) "DISCHARGE OF DREDGED MATERIAL" MEANS, EXCEPT AS
27 DESCRIBED IN SUBSECTION (6)(b) OF THIS SECTION, ANY ADDITION OF

1 DREDGED MATERIAL INTO, INCLUDING REDEPOSIT OF DREDGED MATERIAL
2 OTHER THAN INCIDENTAL FALLBACK WITHIN, STATE WATERS. THE TERM
3 INCLUDES:

4 (I) THE ADDITION OF DREDGED MATERIAL TO A SPECIFIED
5 DISCHARGE SITE LOCATED IN STATE WATERS;

6 (II) RUNOFF OR OVERFLOW FROM A CONTAINED LAND OR WATER
7 DISPOSAL AREA; AND

8 (III) ANY ADDITION, INCLUDING REDEPOSIT OTHER THAN
9 INCIDENTAL FALLBACK, OF DREDGED MATERIAL INTO STATE WATERS THAT
10 IS INCIDENTAL TO ANY ACTIVITY, INCLUDING MECHANIZED LAND
11 CLEARING, DITCHING, CHANNELIZATION, OR OTHER EXCAVATION.

12 (b) "DISCHARGE OF DREDGED MATERIAL" DOES NOT INCLUDE:

13 (I) DISCHARGES OF POLLUTANTS INTO STATE WATERS RESULTING
14 FROM THE ONSHORE PROCESSING OF DREDGED MATERIAL THAT IS
15 EXTRACTED FOR ANY COMMERCIAL USE OTHER THAN FILL, WHICH
16 DISCHARGES ARE SUBJECT TO SECTION 402 OF THE CLEAN WATER ACT
17 EVEN THOUGH THE EXTRACTION AND DEPOSIT OF SUCH MATERIAL MAY
18 REQUIRE A SECTION 404 PERMIT OR A PERMIT ISSUED PURSUANT TO THIS
19 PART 11;

20 (II) ACTIVITIES THAT INVOLVE ONLY THE CUTTING OR REMOVING
21 OF VEGETATION ABOVE THE GROUND, SUCH AS MOWING, ROTARY CUTTING,
22 AND CHAIN-SAWING, SO LONG AS THE ACTIVITY NEITHER SUBSTANTIALLY
23 DISTURBS THE ROOT SYSTEM NOR INVOLVES MECHANIZED PUSHING,
24 DRAGGING, OR OTHER SIMILAR ACTIVITIES THAT REDEPOSIT EXCAVATED
25 SOIL MATERIAL; OR

26 (III) INCIDENTAL FALLBACK.

27 (7) (a) "DISCHARGE OF FILL MATERIAL" MEANS THE ADDITION OF

1 FILL MATERIAL INTO STATE WATERS. THE TERM INCLUDES:

2 (I) PLACEMENT OF FILL MATERIAL THAT IS NECESSARY FOR THE
3 CONSTRUCTION OF ANY STRUCTURE OR INFRASTRUCTURE IN STATE
4 WATERS;

5 (II) THE BUILDING OF ANY STRUCTURE, INFRASTRUCTURE, OR
6 IMPOUNDMENT REQUIRING ROCK, SAND, DIRT, OR OTHER MATERIAL FOR ITS
7 CONSTRUCTION;

8 (III) SITE-DEVELOPMENT FILLS FOR RECREATIONAL, INDUSTRIAL,
9 COMMERCIAL, RESIDENTIAL, OR OTHER USES;

10 (IV) CAUSEWAYS OR ROAD FILLS;

11 (V) DAMS AND DIKES;

12 (VI) ARTIFICIAL ISLANDS;

13 (VII) PROPERTY PROTECTION OR RECLAMATION DEVICES SUCH AS
14 RIPRAP;

15 (VIII) LEVEES;

16 (IX) PLACEMENT OF FILL MATERIAL FOR INFRASTRUCTURE SUCH
17 AS SEWAGE TREATMENT FACILITIES, INTAKE AND OUTFALL PIPES
18 ASSOCIATED WITH POWER PLANTS, AND SUBAQUEOUS UTILITY LINES;

19 (X) PLACEMENT OF FILL MATERIAL FOR CONSTRUCTION OR
20 MAINTENANCE OF ANY LINER, BERM, OR OTHER INFRASTRUCTURE
21 ASSOCIATED WITH SOLID WASTE LANDFILLS; AND

22 (XI) PLACEMENT OF OVERBURDEN, SLURRY, OR TAILINGS OR
23 SIMILAR MINING-RELATED MATERIALS.

24 (b) "DISCHARGE OF FILL MATERIAL" DOES NOT INCLUDE:

25 (I) PLOWING, CULTIVATING, SEEDING, OR HARVESTING FOR THE
26 PRODUCTION OF FOOD, FIBER, OR FOREST PRODUCTS; OR

27 (II) PLACEMENT OF PILINGS IN STATE WATERS UNLESS THE

1 PLACEMENT HAS OR WOULD HAVE THE EFFECT OF A DISCHARGE OF FILL
2 MATERIAL. PLACEMENT OF PILINGS FOR LINEAR PROJECTS, SUCH AS
3 BRIDGES, ELEVATED WALKWAYS, AND POWER LINE STRUCTURES,
4 GENERALLY DOES NOT HAVE THE EFFECT OF A DISCHARGE OF FILL
5 MATERIAL. FURTHERMORE, PLACEMENT OF PILINGS IN STATE WATERS FOR
6 A PIER, A WHARF, OR AN INDIVIDUAL HOUSE ON STILTS GENERALLY DOES
7 NOT HAVE THE EFFECT OF A DISCHARGE OF FILL MATERIAL.

8 (8) "DIVISION" MEANS THE STREAM AND WETLANDS PROTECTION
9 DIVISION CREATED IN SECTION 25-8-1107.

10 (9) "DREDGED MATERIAL" MEANS MATERIAL THAT IS EXCAVATED
11 OR DREDGED FROM STATE WATERS.

12 (10) "DREDGED OR FILL MATERIAL" MEANS DREDGED MATERIAL
13 OR FILL MATERIAL.

14 (11) (a) "FILL MATERIAL" MEANS MATERIAL PLACED IN STATE
15 WATERS WHERE THE MATERIAL HAS THE EFFECT OF:

16 (I) REPLACING ANY PORTION OF STATE WATERS WITH DRY LAND;
17 OR

18 (II) CHANGING THE BOTTOM ELEVATION OF ANY PORTION OF ANY
19 STATE WATERS.

20 (b) "FILL MATERIAL" INCLUDES ROCK, SAND, SOIL, CLAY, PLASTICS,
21 CONSTRUCTION DEBRIS, WOOD CHIPS, OVERBURDEN FROM MINING OR
22 OTHER EXCAVATION ACTIVITIES, AND MATERIALS USED TO CREATE ANY
23 STRUCTURE OR INFRASTRUCTURE IN STATE WATERS.

24 (c) "FILL MATERIAL" DOES NOT INCLUDE SOLID WASTE.

25 (12) (a) "LOSS OF STATE WATERS" MEANS STATE WATERS THAT
26 ARE PERMANENTLY ADVERSELY AFFECTED BY FILLING, FLOODING,
27 EXCAVATION, OR DRAINAGE BECAUSE OF THE DISCHARGE OF DREDGED OR

1 FILL MATERIAL. FOR THE PURPOSES OF THIS SUBSECTION (12):

2 (I) THE ACREAGE OF LOSS OF STATE WATERS IS CALCULATED
3 WITHOUT CONSIDERING COMPENSATORY MITIGATION; IT IS NOT A NET
4 CALCULATION BASED ON THE DIFFERENCE BETWEEN LOSS OF STATE
5 WATERS AND COMPENSATORY MITIGATION;

6 (II) THE LOSS OF STREAM BED INCLUDES THE ACRES OR LINEAR
7 FEET OF STREAM BED THAT ARE FILLED OR EXCAVATED AS A RESULT OF A
8 REGULATED ACTIVITY; AND

9 (III) WHEN CALCULATING LOSS OF STATE WATERS, THE
10 FOLLOWING ARE NOT INCLUDED:

11 (A) WATERS TEMPORARILY FILLED, FLOODED, EXCAVATED, OR
12 DRAINED BUT RESTORED TO PRECONSTRUCTION CONTOURS AND
13 ELEVATIONS AFTER CONSTRUCTION; AND

14 (B) IMPACTS RESULTING FROM ACTIVITIES THAT ARE EXEMPT
15 PURSUANT TO SECTION 25-8-1106 (2)(b).

16 (b) AS USED IN THIS SUBSECTION (12), "PERMANENTLY ADVERSELY
17 AFFECTED" INCLUDES PERMANENT DISCHARGES OF DREDGED OR FILL
18 MATERIAL THAT CHANGE AN AQUATIC AREA TO DRY LAND, INCREASE THE
19 BOTTOM ELEVATION OF A BODY OF WATER, OR CHANGE THE USE OF A
20 BODY OF WATER.

21 (13) "PERMIT PROGRAM" MEANS THE DREDGE-AND-FILL PERMIT
22 PROGRAM ADOPTED BY THE COMMISSION PURSUANT TO SECTION
23 25-8-1105(1) AND ADMINISTERED BY THE DIVISION PURSUANT TO SECTION
24 25-8-1107.

25 (14) "PRIOR-CONVERTED CROPLAND" MEANS ANY AREA THAT,
26 PRIOR TO DECEMBER 23, 1985, WAS DRAINED OR OTHERWISE
27 MANIPULATED FOR THE PURPOSE, OR HAVING THE EFFECT, OF MAKING

1 PRODUCTION OF AN AGRICULTURAL PRODUCT POSSIBLE. FOR THE
2 PURPOSES OF THIS SUBSECTION (14):

3 (a) THE COMMISSION AND THE DIVISION SHALL RECOGNIZE
4 DESIGNATIONS OF PRIOR-CONVERTED CROPLAND MADE BY THE UNITED
5 STATES SECRETARY OF AGRICULTURE;

6 (b) AN AREA IS NO LONGER CONSIDERED PRIOR-CONVERTED
7 CROPLAND IF THE AREA IS ABANDONED AND HAS REVERTED TO WETLANDS;

8 (c) ABANDONMENT OCCURS WHEN PRIOR-CONVERTED CROPLAND
9 IS NOT USED FOR, OR IN SUPPORT OF, AGRICULTURAL PURPOSES AT LEAST
10 ONCE IN THE IMMEDIATELY PRECEDING FIVE YEARS; AND

11 (d) THE DIVISION SHALL DETERMINE WHETHER PRIOR-CONVERTED
12 CROPLAND HAS BEEN ABANDONED.

13 (15) "SECTION 404 PERMIT" MEANS A PERMIT ISSUED BY THE CORPS
14 OF ENGINEERS PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT.

15 (16) "STATE WATER PLAN" MEANS THE STATE WATER PLAN
16 DESCRIBED IN SECTION 37-60-106.3.

17 (17) "STATE WATERS" HAS THE MEANING SET FORTH IN SECTION
18 25-8-103 (19).

19 (18) "WETLANDS" MEANS AREAS THAT ARE INUNDATED OR
20 SATURATED BY SURFACE OR GROUNDWATER AT A FREQUENCY AND
21 DURATION SUFFICIENT TO SUPPORT, UNDER NORMAL CIRCUMSTANCES, A
22 PREVALENCE OF VEGETATION TYPICALLY ADAPTED FOR LIFE IN
23 SATURATED SOIL CONDITIONS.

24 **25-8-1103. Intent and scope of article.** (1) THIS PART 11 IS
25 INTENDED TO ADDRESS THE REGULATORY GAP IN REGULATION CREATED
26 BY THE UNITED STATES SUPREME COURT'S MAY 2023 *SACKETT V.*
27 *ENVIRONMENTAL PROTECTION AGENCY* DECISION BY MANAGING

1 DISCHARGES OF DREDGED OR FILL MATERIAL INTO STATE WATERS, USING
2 COLORADO-SPECIFIC CONDITIONS, IN A MANNER CONSISTENT WITH THE
3 REGULATION OF STATE WATERS UNDER THE FEDERAL REGULATIONS AND
4 STATE PROCEDURES IN EFFECT BEFORE *SACKETT*, WHILE ACCOUNTING FOR
5 CONSTITUTIONAL LIMITATIONS. THIS PART 11 IS FURTHER INTENDED TO
6 PROVIDE A SUFFICIENTLY SPECIFIC AND UNDERSTANDABLE DESCRIPTION
7 OF THOSE PROTECTED WATER RESOURCES, AS SET FORTH IN SECTION
8 25-8-1106 (2), TO GIVE CERTAINTY TO PERSONS CONDUCTING REGULATED
9 ACTIVITIES.

10 (2) THE PERMIT PROGRAM IMPLEMENTED PURSUANT TO THIS PART
11 11 MUST INCORPORATE THE ELEMENTS OF, AND BE NO LESS BROAD IN
12 COVERAGE THAN, NATIONWIDE AND GENERAL SECTION 404 PERMITS
13 ADDRESSING SUBJECTS THAT ARE APPLICABLE TO COLORADO.

14 (3) THE PERMIT PROGRAM IMPLEMENTED PURSUANT TO THIS PART
15 11 MUST CARRY FORTH THE PRINCIPLES AND GOALS OF THE STATE WATER
16 PLAN AS DESCRIBED IN SECTION 37-60-106.3, SPECIFICALLY ITS CALL FOR
17 A MORE EFFICIENT PERMITTING PROCESS AND BETTER INTEGRATION OF
18 WATER QUALITY AND QUANTITY PLANNING AND MANAGEMENT. THIS WILL
19 REQUIRE COLLABORATION AND COORDINATION WITHIN AND AMONG
20 VARIOUS STATE AGENCIES.

21 (4) THE PERMIT PROGRAM IMPLEMENTED PURSUANT TO THIS PART
22 11 IS INTENDED TO PROTECT AND MANAGE THOSE WATER RESOURCES THAT
23 WERE SUBJECT TO THE JURISDICTION OF THE SECTION 404 PERMIT
24 PROGRAM PRIOR TO *SACKETT* BUT ARE NO LONGER SUBJECT TO FEDERAL
25 REGULATION. THE PERMIT PROGRAM IS NOT INTENDED TO REGULATE
26 DISCHARGES TO GROUNDWATER.

27 (5) THIS PART 11 SHALL BE CONSTRUED TO REQUIRE THE PERMIT

1 PROGRAM TO IMPOSE REGULATORY MEASURES THAT ENSURE THAT THE
2 ENVIRONMENTAL BENEFITS OF THE REGULATORY MEASURES HAVE A
3 REASONABLE RELATIONSHIP TO THE ECONOMIC, ENVIRONMENTAL,
4 ENERGY, AND PUBLIC HEALTH COSTS AND IMPACTS OF THE REGULATORY
5 MEASURES.

6 (6) (a) NO PROVISION OF THIS PART 11 SHALL BE INTERPRETED SO
7 AS TO SUPERSEDE, ABROGATE, OR IMPAIR RIGHTS TO DIVERT WATER AND
8 APPLY WATER TO BENEFICIAL USES IN ACCORDANCE WITH:

9 (I) SECTIONS 5 AND 6 OF ARTICLE XVI OF THE STATE
10 CONSTITUTION;

11 (II) ANY COMPACT ENTERED INTO BY THE STATE;

12 (III) ARTICLES 80 TO 92 OF TITLE 37; OR

13 (IV) ANY COLORADO COURT DETERMINATIONS WITH RESPECT TO
14 THE DETERMINATION AND ADMINISTRATION OF WATER RIGHTS.

15 (b) NOTHING IN THIS PART 11 SHALL BE CONSTRUED, ENFORCED,
16 OR APPLIED SO AS TO CAUSE OR RESULT IN MATERIAL INJURY TO WATER
17 RIGHTS.

18 (7) NOTHING IN THIS SECTION IS INTENDED TO APPLY TO THE
19 ACTIVITIES OF FEDERALLY RECOGNIZED INDIAN TRIBES, INDIANS, THEIR
20 POLITICAL SUBDIVISIONS, OR TRIBALLY CONTROLLED AFFILIATES,
21 UNDERTAKEN OR TO BE UNDERTAKEN, ON LANDS WITHIN THE EXTERIOR
22 BOUNDARIES OF AN INDIAN RESERVATION LOCATED WITHIN THE STATE.
23 ADDITIONALLY, NOTHING IN THIS SECTION IS INTENDED TO APPLY TO THE
24 ACTIVITIES OF THIRD-PARTY, NON-INDIAN OWNERS AND OPERATORS
25 UNDERTAKEN, OR TO BE UNDERTAKEN WITH RESPECT TO RESERVATION
26 WATERS ON INDIAN TRUST LANDS WITHIN THE EXTERIOR BOUNDARIES OF
27 AN INDIAN RESERVATION LOCATED WITHIN THE STATE. ON

1 PRIVATELY-OWNED FEE LANDS WITHIN THE EXTERIOR BOUNDARIES OF AN
2 INDIAN RESERVATION LOCATED WITHIN THE STATE, THIS SECTION APPLIES
3 ONLY TO THE DISCHARGE OF DREDGE OR FILL MATERIALS OF NON-INDIAN
4 PERSONS.

5 **25-8-1104. Stream and wetlands protection commission -**
6 **created - membership - compensation - public meetings - voting.**

7 (1) THE STREAM AND WETLANDS PROTECTION COMMISSION IS CREATED
8 IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AS A **TYPE 1**
9 ENTITY, AS DEFINED IN SECTION 24-1-105. THE COMMISSION EXERCISES ITS
10 POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS UNDER THE
11 DEPARTMENT.

12 (2) THE COMMISSION CONSISTS OF NINE RESIDENTS OF THE STATE,
13 EACH OF WHOM IS APPOINTED BY THE GOVERNOR, WITH THE CONSENT OF
14 THE SENATE, FOR TERMS OF THREE YEARS; EXCEPT THAT, OF THE MEMBERS
15 WHO ARE INITIALLY APPOINTED TO THE COMMISSION, THE GOVERNOR
16 SHALL SPECIFY THREE MEMBERS WHO SHALL SERVE INITIAL TERMS OF ONE
17 YEAR AND THREE MEMBERS WHO SHALL SERVE INITIAL TERMS OF TWO
18 YEARS.

19 (3) (a) THE MEMBERSHIP OF THE COMMISSION MUST REPRESENT
20 DIVERSE REGIONS OF THE STATE AND REFLECT SUCH REGIONS' INTERESTS
21 IN WATER IN THE STATE.

22 (b) AT LEAST THREE MEMBERS OF THE COMMISSION MUST RESIDE
23 WEST OF THE CONTINENTAL DIVIDE.

24 (c) NO MORE THAN FIVE MEMBERS OF THE COMMISSION MAY BE
25 AFFILIATED WITH THE SAME POLITICAL PARTY.

26 (d) AT LEAST ONE MEMBER OF THE COMMISSION MUST BE FROM AN
27 AGRICULTURAL COMMUNITY.

1 (e) AT LEAST THREE MEMBERS OF THE COMMISSION MUST BE
2 EMPLOYED IN A SECTOR OF THE STATE'S ECONOMY THAT HAS BEEN OR IS
3 LIKELY TO BE REGULATED BY THE DIVISION.

4 (f) AT LEAST THREE MEMBERS OF THE COMMISSION MUST HAVE
5 SUBSTANTIAL AND RELEVANT SCIENTIFIC, TECHNICAL, OR LEGAL
6 EXPERIENCE.

7 (g) AT LEAST THREE MEMBERS OF THE COMMISSION MUST HAVE
8 SUBSTANTIAL EXPERIENCE WITH WATER RIGHTS OR WATER RESOURCES
9 MANAGEMENT.

10 (4) WHENEVER A VACANCY ON THE COMMISSION EXISTS, THE
11 GOVERNOR SHALL APPOINT A MEMBER FOR THE REMAINING PORTION OF
12 THE UNEXPIRED TERM CREATED BY THE VACANCY, SUBJECT TO
13 CONFIRMATION BY THE SENATE.

14 (5) (a) THE GOVERNOR MAY REMOVE A MEMBER OF THE
15 COMMISSION FOR MALFEASANCE IN OFFICE, FAILURE TO REGULARLY
16 ATTEND MEETINGS, OR ANY OTHER CAUSE THAT RENDERS THE MEMBER
17 INCAPABLE OR UNFIT TO DISCHARGE THE MEMBER'S DUTIES.

18 (b) IF ANY MEMBER OF THE COMMISSION IS ABSENT FROM TWO
19 CONSECUTIVE MEETINGS, THE CHAIR OF THE COMMISSION SHALL
20 DETERMINE WHETHER THE CAUSE OF THE ABSENCES WAS REASONABLE. IF
21 THE CHAIR DETERMINES THAT THE CAUSE OF THE ABSENCES WAS
22 UNREASONABLE, THE CHAIR SHALL NOTIFY THE GOVERNOR OF THE CHAIR'S
23 DETERMINATION. AFTER REVIEWING THE CHAIR'S DETERMINATION, THE
24 GOVERNOR MAY REMOVE THE MEMBER FROM THE COMMISSION AND
25 APPOINT A QUALIFIED PERSON FOR THE UNEXPIRED PORTION OF THE
26 MEMBER'S TERM, SUBJECT TO CONFIRMATION BY THE SENATE.

27 (6) EACH MEMBER OF THE COMMISSION WHO IS NOT A FULL-TIME

1 EMPLOYEE OF THE STATE MAY RECEIVE A PER DIEM IN AN AMOUNT EQUAL
2 TO THE AMOUNT PAID TO MEMBERS OF THE GENERAL ASSEMBLY FOR
3 ATTENDANCE AT INTERIM COMMITTEES, AS ESTABLISHED BY THE
4 EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL PURSUANT TO
5 SECTION 2-2-307 (3)(a)(IV)(A), FOR EACH DAY ACTUALLY AND
6 NECESSARILY SPENT IN THE DISCHARGE OF OFFICIAL DUTIES, NOT TO
7 EXCEED ONE THOUSAND TWO HUNDRED DOLLARS IN ANY STATE FISCAL
8 YEAR, AND EACH MEMBER SHALL RECEIVE REIMBURSEMENT FOR TRAVEL
9 AND OTHER NECESSARY EXPENSES ACTUALLY INCURRED IN THE
10 PERFORMANCE OF THE MEMBER'S OFFICIAL DUTIES.

11 (7) THE COMMISSION SHALL SELECT FROM ITS MEMBERSHIP A
12 CHAIR, A VICE-CHAIR, AND A SECRETARY. THE SECRETARY OF THE
13 COMMISSION SHALL KEEP A RECORD OF THE COMMISSION'S PROCEEDINGS.

14 (8) THE COMMISSION SHALL HOLD REGULAR PUBLIC MEETINGS AND
15 MAY HOLD OTHER MEETINGS UPON THE CALL OF THE CHAIR OR THE
16 VICE-CHAIR AT SUCH OTHER TIMES AS THE CHAIR OR VICE-CHAIR DEEM
17 NECESSARY. WRITTEN NOTICE OF THE TIME AND PLACE OF EACH MEETING
18 SHALL BE E-MAILED TO EACH MEMBER AT LEAST FIVE DAYS BEFORE THE
19 MEETING OCCURS.

20 (9) EACH MEMBER OF THE COMMISSION HAS ONE VOTE.
21 TWO-THIRDS OF THE MEMBERS OF THE COMMISSION CONSTITUTES A
22 QUORUM. THE CONCURRENCE OF A MAJORITY OF THE COMMISSION
23 MEMBERS ON ANY MATTER WITHIN THE SCOPE OF THE COMMISSION'S
24 POWERS AND DUTIES IS REQUIRED FOR ANY DETERMINATION MADE BY THE
25 COMMISSION.

26 **25-8-1105. Duties of commission - rules - administrator.**

27 (1) THE COMMISSION SHALL:

1 (a) DEVELOP, ADOPT, AND MAINTAIN A DREDGE-AND-FILL PERMIT
2 PROGRAM FOR REGULATING THE DISCHARGE OF DREDGED OR FILL
3 MATERIAL INTO STATE WATERS;

4 (b) PROMULGATE RULES CONCERNING THE ISSUANCE OF PERMITS,
5 AS DESCRIBED IN SECTION 25-8-1106;

6 (c) SET PERMIT FEE AMOUNTS IN ACCORDANCE WITH SECTION
7 25-8-1106, WHICH FEE AMOUNTS MUST REQUIRE PERMITTEES TO PAY NO
8 MORE THAN FIFTY PERCENT OF THE COST OF ADMINISTERING THE PERMIT
9 PROGRAM, AND REVIEW THE AMOUNTS OF THE FEES AT LEAST EVERY
10 THREE YEARS;

11 (d) ADVISE, CONSULT WITH, AND COOPERATE WITH OTHER
12 ENTITIES, INCLUDING THE DEPARTMENT OF AGRICULTURE CREATED IN
13 SECTION 24-1-123; THE DIVISION OF RECLAMATION, MINING, AND SAFETY
14 CREATED IN SECTION 34-20-103; THE DIVISION OF PARKS AND WILDLIFE
15 CREATED IN SECTION 33-9-104; THE DIVISION OF WATER RESOURCES
16 DESCRIBED IN SECTION 24-33-104 (1)(e); THE WATER CONSERVATION
17 BOARD CREATED IN SECTION 37-60-102; THE WATER QUALITY CONTROL
18 COMMISSION CREATED IN SECTION 25-8-201; THE WATER QUALITY
19 CONTROL DIVISION WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND
20 ENVIRONMENT; THE FEDERAL GOVERNMENT; OTHER STATES; AND GROUPS,
21 POLITICAL SUBDIVISIONS, AND INDUSTRIES AFFECTED BY THIS PART 11 AND
22 THE POLICIES OR RULES OF THE COMMISSION IN ORDER TO STREAMLINE
23 PERMITTING, PROMOTE EFFICIENCY, AND MINIMIZE THE REGULATORY
24 BURDEN OF THE DREDGE-AND-FILL PERMIT PROGRAM;

25 (e) EXERCISE, WITH THE DIVISION, ALL INCIDENTAL POWERS
26 NECESSARY OR PROPER FOR CARRYING OUT THE PURPOSES OF THIS PART
27 11, INCLUDING THE POWERS TO ISSUE AND ENFORCE RULES AND ORDERS;

1 (f) PERFORM SUCH OTHER DUTIES AS MAY LAWFULLY BE ASSIGNED
2 TO THE COMMISSION BY LAW; AND

3 (g) ACT AS AN APPELLATE BODY TO REVIEW DETERMINATIONS OF
4 THE DIVISION, AS DESCRIBED IN SECTION 25-8-1109 (4).

5 (2) (a) THE COMMISSION SHALL EMPLOY AN ADMINISTRATOR WHO
6 SHALL PERFORM SUCH DUTIES AS THE COMMISSION DEEMS NECESSARY;
7 EXCEPT THAT THE COMMISSION SHALL NOT DELEGATE TO THE
8 ADMINISTRATOR ANY AUTHORITY TO:

9 (I) PROMULGATE RULES;

10 (II) MAKE DETERMINATIONS; OR

11 (III) ISSUE ORDERS OR COUNTERMAND ORDERS OF THE
12 COMMISSION.

13 (b) THE ADMINISTRATOR MUST HAVE APPROPRIATE PRACTICAL,
14 EDUCATIONAL, AND ADMINISTRATIVE EXPERIENCE RELATED TO WATER
15 RESOURCES MANAGEMENT AND SHALL BE EMPLOYED BY THE DEPARTMENT
16 PURSUANT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION.

17 (3) BEFORE TAKING ANY FINAL ACTION, THE COMMISSION SHALL
18 CONSIDER THE TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS
19 OF THE ACTION, INCLUDING AN EVALUATION OF THE BENEFITS DERIVED
20 FROM ACHIEVING THE GOALS OF THIS PART 11 AND THE ECONOMIC,
21 ENVIRONMENTAL, PUBLIC HEALTH, AND ENERGY IMPACTS TO THE PUBLIC
22 AND AFFECTED PERSONS.

23 **25-8-1106. Permit program - rules.** (1) AS EXPEDITIOUSLY AS
24 IS PRUDENT AND FEASIBLE, THE COMMISSION SHALL PROMULGATE RULES
25 FOR THE DEVELOPMENT, ADOPTION, AND MAINTENANCE OF THE PERMIT
26 PROGRAM. THE COMMISSION SHALL MAXIMIZE THE USE OF GENERAL
27 PERMITS TO ENSURE THAT MOST ACTIVITIES THAT ARE SUBJECT TO THE

1 PERMIT PROGRAM MAY PROCEED WITHOUT AN INDIVIDUAL PERMIT SO
2 LONG AS THE PERMITTEE COMPLIES WITH THE TERMS OF THE GENERAL
3 PERMIT. THE COMMISSION SHALL PROMULGATE THE RULES AS FOLLOWS:

4 (a) **General permits.** THE COMMISSION SHALL PROMULGATE
5 RULES ADOPTING GENERAL PERMITS FOR CATEGORIES OF ACTIVITIES THAT
6 ARE SIMILAR IN NATURE AND CAUSE ONLY MINIMAL ADVERSE EFFECTS TO
7 STATE WATERS WHEN PERFORMED SEPARATELY. IN THE RULES, THE
8 COMMISSION SHALL INCORPORATE BY REFERENCE THE NATIONWIDE,
9 GENERAL, AND REGIONAL PERMITS ISSUED BY THE CORPS OF ENGINEERS AS
10 OF MAY 24, 2023, TO THE EXTENT THAT THE SUBJECTS OF SUCH PERMITS
11 ARE APPLICABLE IN COLORADO. THE COMMISSION SHALL ALSO
12 INCORPORATE BY REFERENCE ALL ADDITIONAL NATIONWIDE, GENERAL,
13 AND REGIONAL PERMITS ISSUED BY THE CORPS OF ENGINEERS AFTER MAY
14 24, 2023, TO THE EXTENT THAT THE SUBJECTS OF SUCH PERMITS ARE
15 APPLICABLE IN COLORADO. THE COMMISSION SHALL ALSO AFFORD
16 GENERAL PERMIT COVERAGE BY RULE FOR ADDITIONAL ACTIVITIES,
17 INCLUDING ACTIVITIES WITH EFFECTS IN EXCESS OF IMPACT THRESHOLDS
18 IN EXISTING CORPS OF ENGINEERS NATIONWIDE PERMITS, TO PROCEED
19 UPON PRECONSTRUCTION NOTIFICATION, SO LONG AS MITIGATION OF THE
20 LOSS OF STATE WATERS AT A ONE-FOR-ONE RATIO ENSURES IMPACTS TO
21 STATE WATERS ARE NO MORE THAN MINIMAL.

22 (b) **Preconstruction notifications.** THE COMMISSION SHALL
23 PROMULGATE RULES THAT UTILIZE THE EXISTING STRUCTURE OF
24 PRECONSTRUCTION NOTIFICATIONS IN THE NATIONWIDE, GENERAL, AND
25 REGIONAL PERMITS ESTABLISHED BY THE CORPS OF ENGINEERS, INCLUDING
26 RULES DESCRIBING CIRCUMSTANCES IN WHICH A PRECONSTRUCTION
27 NOTIFICATION IS NOT REQUIRED. WHERE SUCH RULES REQUIRE

1 PRECONSTRUCTION NOTIFICATION BEFORE THE COMMENCEMENT OF AN
2 ACTIVITY, THE RULES MUST REQUIRE THE PROJECT PROPONENT TO PROVIDE
3 AT LEAST THIRTY CALENDAR DAYS OF PRECONSTRUCTION NOTICE TO THE
4 DIVISION. AFTER PROVIDING SUCH PRECONSTRUCTION NOTIFICATION, THE
5 PERMITTEE MAY COMMENCE THE ACTIVITY IF:

6 (I) THE DIVISION INDICATES IN WRITING THAT THE PERMITTEE MAY
7 COMMENCE THE ACTIVITY; OR

8 (II) FORTY-FIVE CALENDAR DAYS ELAPSE WITHOUT THE DIVISION
9 PROVIDING THE PERMITTEE A WRITTEN OBJECTION TO THE ACTIVITY. A
10 NOTICE OF OBJECTION PROVIDED TO A PERMITTEE BY THE DIVISION MUST
11 STATE THE BASIS OF THE DIVISION'S OBJECTIONS WITH SPECIFICITY.

12 (c) **Individual permits.** THE COMMISSION SHALL PROMULGATE
13 RULES FOR THE ISSUANCE OF INDIVIDUAL PERMITS FOR THE DISCHARGE OF
14 DREDGED OR FILL MATERIAL INTO STATE WATERS IN ASSOCIATION WITH
15 ACTIVITIES THAT DO NOT REQUIRE A GENERAL PERMIT AS DESCRIBED IN
16 SUBSECTION (1)(a) OF THIS SECTION. THE RULES MUST STREAMLINE THE
17 APPLICATION AND ADMINISTRATIVE REVIEW PROCESS TO MINIMIZE DELAY
18 OF THE COMMENCEMENT OF ACTIVITIES SUBJECT TO THE PERMIT PROGRAM.

19 (d) **Rules criteria restricted.** THE RULES ADOPTED BY THE
20 COMMISSION FOR THE PERMIT PROGRAM MUST USE CRITERIA THAT ARE NO
21 MORE STRINGENT THAN THE CRITERIA DEVELOPED BY THE ADMINISTRATOR
22 OF THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY IN CONJUNCTION
23 WITH THE SECRETARY OF THE ARMY PURSUANT TO 33 U.S.C. SEC. 1344
24 (b).

25 (e) **Compliance certification required.** AN APPLICANT FOR AN
26 INDIVIDUAL PERMIT SHALL PROVIDE THE DIVISION A CERTIFICATION FROM
27 THE WATER QUALITY CONTROL DIVISION THAT THE DISCHARGE AND

1 OPERATION OF THE PROJECT WILL COMPLY WITH WATER QUALITY
2 STANDARDS AND ANTIDegradation REQUIREMENTS PROMULGATED BY
3 THE WATER QUALITY CONTROL COMMISSION. THE DIVISION SHALL NOT
4 GRANT AN INDIVIDUAL PERMIT UNTIL THE DIVISION OBTAINS THE
5 CERTIFICATION REQUIRED BY THIS SUBSECTION (1)(e); EXCEPT THAT THE
6 REQUIREMENTS OF THIS SUBSECTION (1)(e) ARE WAIVED IF THE WATER
7 QUALITY CONTROL DIVISION FAILS OR REFUSES TO ACT ON A REQUEST FOR
8 CERTIFICATION WITHIN A REASONABLE PERIOD OF TIME, WHICH SHALL NOT
9 EXCEED ONE YEAR AFTER RECEIPT OF THE REQUEST.

10 (2) **Applicability and scope of permit program.** (a) EXCEPT AS
11 INDICATED IN SUBSECTION (2)(b) OF THIS SECTION, A PERSON MUST
12 POSSESS A PERMIT ISSUED PURSUANT TO THIS PART 11 IN ORDER TO
13 DISCHARGE DREDGED OR FILL MATERIAL INTO ANY:

14 (I) STATE WATERS THAT EXHIBIT A BED, BANK, AND ORDINARY
15 HIGH WATERMARK;

16 (II) FENS; OR

17 (III) WETLANDS LYING WHOLLY OR PARTIALLY WITHIN THE
18 ONE-HUNDRED-YEAR FLOODPLAIN OR WITHIN ONE THOUSAND FIVE
19 HUNDRED FEET OF THE ORDINARY HIGH WATERMARK OF A STREAM,
20 RESERVOIR, OR LAKE.

21 (b) **Exemptions from the permit program.** NOTWITHSTANDING
22 ANY OTHER PROVISION OF THIS PART 11, AND EXCEPT AS DESCRIBED IN
23 SUBSECTION (2)(c) OF THIS SECTION, THE DISCHARGE OF DREDGED OR FILL
24 MATERIAL DOES NOT REQUIRE A PERMIT AND IS NOT PROHIBITED BY OR
25 OTHERWISE SUBJECT TO REGULATION UNDER THIS PART 11 IF THE
26 DREDGED OR FILL MATERIAL IS DISCHARGED:

27 (I) INTO A WASTE TREATMENT SYSTEM, INCLUDING A TREATMENT

1 POND OR LAGOON, THAT IS DESIGNED TO MEET THE REQUIREMENTS OF THE
2 CLEAN WATER ACT OR THE "COLORADO WATER QUALITY CONTROL ACT",
3 THIS ARTICLE 8:

4 (II) INTO GROUNDWATER, AS DEFINED IN SECTION 37-91-102 (7);

5 (III) INTO PRIOR-CONVERTED CROPLAND;

6 (IV) INTO HUMAN-MADE DITCHES OR CANALS THAT CONVEY
7 WATER OR WASTEWATER;

8 (V) INTO WETLANDS THAT ARE ADJACENT TO A DITCH OR CANAL
9 AND SUPPORTED BY THE WATER IN THE ADJACENT DITCH OR CANAL;

10 (VI) INTO ANY COMPONENT OF A CONVEYANCE OR SYSTEM OF
11 CONVEYANCES, INCLUDING ROADS WITH DRAINAGE SYSTEMS, MUNICIPAL
12 STREETS, CATCH BASINS, CURBS, GUTTERS, DITCHES, HUMAN-MADE
13 CHANNELS, OR STORM DRAINS THAT ARE DESIGNED TO:

14 (A) CONVEY, RETAIN, CONCENTRATE, SETTLE, REDUCE, OR
15 REMOVE POLLUTANTS, EITHER ACTIVELY OR PASSIVELY, FROM
16 WASTEWATER OR STORM WATER SYSTEMS PRIOR TO DISCHARGE; OR

17 (B) ELIMINATE SUCH DISCHARGE;

18 (VII) INTO AN ARTIFICIALLY IRRIGATED AREA THAT WOULD
19 REVERT TO DRY LAND IF THE IRRIGATION CEASED;

20 (VIII) INTO AN ARTIFICIAL LAKE OR POND CREATED BY
21 EXCAVATING OR DIKING DRY LAND, SUCH AS A FARM AND STOCK
22 WATERING POND, AN IRRIGATION POND, A SETTLING BASIN, A LOG
23 CLEANING POND, OR A COOLING POND;

24 (IX) INTO AN ARTIFICIAL REFLECTING POOL, A SWIMMING POOL, OR
25 ANY OTHER SMALL ORNAMENTAL BODY OF WATER CREATED BY
26 EXCAVATING OR DIKING DRY LAND TO RETAIN WATER FOR PRIMARILY
27 AESTHETIC REASONS;

1 (X) INTO WATER-FILLED DEPRESSIONS CREATED IN DRY LAND,
2 WHICH DEPRESSIONS ARE INCIDENTAL TO MINING OR CONSTRUCTION
3 ACTIVITY, INCLUDING ANY PITS THAT ARE EXCAVATED FOR OBTAINING
4 FILL, SAND, OR GRAVEL AND FILL WITH WATER;

5 (XI) INTO ANY SWALE OR EROSIONAL FEATURE, SUCH AS A GULLY
6 OR SMALL WASH, WHICH SWALE OR EROSIONAL FEATURE IS
7 CHARACTERIZED BY LOW-VOLUME, INFREQUENT, OR SHORT-DURATION
8 FLOW;

9 (XII) INTO A WASTEWATER RECYCLING STRUCTURE CONSTRUCTED
10 ON DRY LAND, A DETENTION AND RETENTION BASIN BUILT FOR
11 WASTEWATER RECYCLING, A GROUNDWATER RECHARGE BASIN, A
12 PERCOLATION POND BUILT FOR WASTEWATER RECYCLING, OR A WATER
13 DISTRIBUTARY STRUCTURE BUILT FOR WASTEWATER RECYCLING;

14 (XIII) INTO WATERS THAT ARE DETERMINED TO NOT BE WATERS
15 OF THE UNITED STATES IN AN APPROVED JURISDICTIONAL DETERMINATION
16 ISSUED BY THE CORPS OF ENGINEERS BEFORE MAY 25, 2023;

17 (XIV) FROM NORMAL FARMING, SILVICULTURE, AND RANCHING
18 ACTIVITIES, SUCH AS PLOWING; SEEDING; CULTIVATING; MINOR DRAINAGE;
19 HARVESTING FOR THE PRODUCTION OF FOOD, FIBER, AND FOREST
20 PRODUCTS; OR UPLAND SOIL AND WATER CONSERVATION PRACTICES. AS
21 USED IN THIS SUBSECTION (2)(b)(XV), "UPLAND SOIL AND WATER
22 CONSERVATION PRACTICES" MEANS ANY DISCHARGE OF DREDGED OR FILL
23 MATERIAL TO STATE WATERS INCIDENTAL TO SOIL AND WATER
24 CONSERVATION PRACTICES FOR THE PURPOSE OF IMPROVING,
25 MAINTAINING, OR RESTORING UPLANDS, INCLUDING RANGELAND
26 MANAGEMENT PRACTICES, EROSION CONTROL PRACTICES, AND
27 VEGETATION MANAGEMENT PRACTICES;

1 (XV) FOR THE PURPOSE OF MAINTAINING CURRENTLY
2 SERVICEABLE STRUCTURES SUCH AS DIKES, DAMS, LEVEES, GROINS,
3 RIPRAP, BREAKWATERS, CAUSEWAYS, BRIDGE ABUTMENTS OR
4 APPROACHES, AND TRANSPORTATION STRUCTURES, INCLUDING:

5 (A) EMERGENCY REPAIR, RECONSTRUCTION, OR REPLACEMENT OF
6 RECENTLY DAMAGED PARTS; AND

7 (B) MINOR DEVIATIONS IN A STRUCTURE'S CONFIGURATION OR
8 FILLED AREA TO ACCOMMODATE CHANGES IN MATERIALS, CONSTRUCTION
9 TECHNIQUES, REGULATORY REQUIREMENTS, OR CONSTRUCTION CODES OR
10 SAFETY STANDARDS;

11 (XVI) FOR THE PURPOSE OF CONSTRUCTING OR MAINTAINING
12 FARM OR STOCK PONDS OR DITCHES OR CANALS;

13 (XVII) FOR THE PURPOSE OF CONSTRUCTING TEMPORARY
14 SEDIMENTATION BASINS ON A CONSTRUCTION SITE THAT DOES NOT
15 INCLUDE PLACEMENT OF FILL MATERIAL INTO STATE WATERS;

16 (XVIII) FOR THE PURPOSE OF CONSTRUCTING OR MAINTAINING
17 FARM ROADS, FOREST ROADS, OR TEMPORARY ROADS FOR MOVING MINING
18 EQUIPMENT, SO LONG AS THE ROADS ARE CONSTRUCTED AND MAINTAINED
19 IN ACCORDANCE WITH BEST MANAGEMENT PRACTICES TO ASSURE THAT
20 FLOW AND CIRCULATION PATTERNS AND CHEMICAL AND BIOLOGICAL
21 CHARACTERISTICS OF THE STATE WATERS ARE NOT IMPAIRED, THAT THE
22 REACH OF THE STATE WATERS IS NOT REDUCED, AND THAT ANY ADVERSE
23 EFFECT ON THE AQUATIC ENVIRONMENT IS MINIMIZED;

24 (XIX) FOR THE PURPOSE OF PROVIDING EMERGENCY RESPONSE TO,
25 MITIGATION OF, OR RECOVERY FROM DAMAGE CAUSED BY A FIRE, A FLOOD,
26 OR OTHER NATURAL DISASTER SO LONG AS THE DISCHARGE IS CONDUCTED
27 IN A MANNER THAT MINIMIZES THE LOSS OF STATE WATERS TO THE EXTENT

1 PRACTICABLE AND IN ACCORDANCE WITH BEST MANAGEMENT PRACTICES
2 THAT DO NOT INTERFERE WITH EFFORTS TO ADDRESS THE UNDERLYING
3 EMERGENCY;

4 (XX) AS A RESULT OF DREDGING TO RECLAIM LOST CAPACITY IN
5 A RESERVOIR, SO LONG AS THE DISCHARGE IS PERFORMED IN ACCORDANCE
6 WITH BEST MANAGEMENT PRACTICES AND IN COORDINATION WITH THE
7 DIVISION OF PARKS AND WILDLIFE CREATED IN SECTION 33-9-104 TO
8 ENSURE MINIMAL IMPACTS TO FISH AND WILDLIFE RESOURCES;

9 (XXI) IN ASSOCIATION WITH A PROJECT THAT PROCEEDS UNDER A
10 SECTION 404 PERMIT ISSUED PRIOR TO MAY 25, 2023;

11 (XXII) PURSUANT TO AUTHORIZATION UNDER A SECTION 404
12 PERMIT;

13 (XXIII) IN A MANNER THAT CAUSES A LOSS OF STATE WATERS
14 CONSISTING OF NO MORE THAN ONE-TENTH OF AN ACRE OF WETLANDS OR
15 THREE-HUNDREDTHS OF AN ACRE OF STREAM; OR

16 (XXIV) INTO WETLANDS OR STREAMS THAT ARE RESTORED
17 PRIMARILY FOR ECOLOGICAL LIFT SO LONG AS THE PROJECT PROPONENT
18 DETERMINES THAT A NET INCREASE IN AT LEAST ONE OR MORE WETLAND
19 FUNCTIONS AND SERVICES WITH NOT MORE THAN MINIMAL DECREASE IN
20 OTHER WETLAND FUNCTIONS AND SERVICES CAN BE ACHIEVED. ___

21 (c) EXCEPT WITH RESPECT TO DISCHARGES DESCRIBED IN
22 SUBSECTIONS (2)(b)(XXI) TO (2)(b)(XXIII), ANY DISCHARGE OF DREDGED
23 OR FILL MATERIAL INTO STATE WATERS THAT IS INCIDENTAL TO ANY
24 ACTIVITY HAVING AS ITS PURPOSE BRINGING A SIGNIFICANT AREA OF STATE
25 WATERS INTO A USE TO WHICH THE AREA WAS NOT PREVIOUSLY SUBJECT,
26 AND THAT SIGNIFICANTLY IMPAIRS OR REDUCES THE FLOW, REACH, OR
27 CIRCULATION OF STATE WATERS, REQUIRES A PERMIT UNDER THIS SECTION.

1 FURTHERMORE, ANY DISCHARGE OF DREDGED OR FILL MATERIAL INTO
2 STATE WATERS THAT CONSTITUTE A SIGNIFICANT ATTRIBUTE OF A STATE
3 GOLDMEDAL TROUT FISHERY, A NATIONAL PARK, A NATIONAL MONUMENT,
4 A NATIONAL WILDLIFE REFUGE, A DESIGNATED WILDERNESS AREA, OR A
5 STATE PARK IS REQUIRED TO HAVE A PERMIT UNDER THIS SECTION.

6 (3) THE COMMISSION SHALL PROMULGATE RULES FOR THE PERMIT
7 PROGRAM AS DESCRIBED IN THIS SECTION AS EXPEDITIOUSLY AS IS
8 PRUDENT AND FEASIBLE. UNTIL SUCH RULES ARE AVAILABLE TO BE
9 IMPLEMENTED BY THE DIVISION, THE WATER QUALITY CONTROL DIVISION
10 SHALL NOT TAKE ENFORCEMENT ACTION AGAINST ANY ACTIVITY THAT
11 INCLUDES THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO STATE
12 WATERS IF THE ACTIVITY CAUSING THE DISCHARGE IS CONDUCTED IN A
13 MANNER THAT PROVIDES FOR PROTECTION OF STATE WATERS CONSISTENT
14 WITH THE PROTECTIONS THAT WOULD HAVE OCCURRED THROUGH
15 COMPLIANCE WITH SECTION 404 PERMIT REQUIREMENTS FOR SUCH
16 DISCHARGES PRIOR TO MAY 25, 2023.

17 **25-8-1107. Stream and wetlands protection division - created**
18 **- director of division - duties of division.** (1) THE STREAM AND
19 WETLANDS PROTECTION DIVISION IS CREATED WITHIN THE DEPARTMENT
20 TO ADMINISTER AND ENFORCE THE PERMIT PROGRAM.

21 (2) THE DIRECTOR OF THE DIVISION:

22 (a) IS EMPLOYED BY THE DEPARTMENT PURSUANT TO SECTION 13
23 OF ARTICLE XII OF THE STATE CONSTITUTION;

24 (b) MUST BE A LICENSED PROFESSIONAL ENGINEER OR HAVE A
25 GRADUATE DEGREE IN ENGINEERING OR OTHER SPECIALTY DEALING WITH
26 WETLANDS OR WATER RESOURCES MANAGEMENT;

27 (c) MUST HAVE APPROPRIATE PRACTICAL AND ADMINISTRATIVE

1 EXPERIENCE IN WETLANDS OR WATER RESOURCES MANAGEMENT; AND
2 (d) MUST NOT BE THE ADMINISTRATOR EMPLOYED BY THE
3 COMMISSION PURSUANT TO SECTION 25-8-1105 (2).
4 (3) THE DIVISION SHALL:
5 (a) ACT AS STAFF TO THE COMMISSION IN COMMISSION
6 PROCEEDINGS OTHER THAN ADJUDICATORY OR APPELLATE PROCEEDINGS
7 IN WHICH THE DIVISION IS A PARTY;
8 (b) CARRY OUT THE ENFORCEMENT PROVISIONS OF THIS PART 11;
9 (c) ADMINISTER THE PERMIT PROGRAM AS PROVIDED IN SECTION
10 25-8-1106;
11 (d) MAINTAIN A MAILING LIST OF PERSONS REQUESTING NOTICE OF
12 ACTIONS BY THE DIVISION OR BY THE COMMISSION AND NOTIFY PERSONS
13 ON THE LIST OF SUCH ACTIONS; AND
14 (e) ADVISE, CONSULT WITH, AND COOPERATE WITH OTHER
15 ENTITIES, INCLUDING THE DEPARTMENT OF AGRICULTURE CREATED IN
16 SECTION 24-1-123; THE DIVISION OF RECLAMATION, MINING, AND SAFETY
17 CREATED IN SECTION 34-20-103; THE DIVISION OF PARKS AND WILDLIFE
18 CREATED IN SECTION 33-9-104; THE DIVISION OF WATER RESOURCES
19 DESCRIBED IN SECTION 24-33-104 (1)(e); THE WATER CONSERVATION
20 BOARD CREATED IN SECTION 37-60-102; THE WATER QUALITY CONTROL
21 COMMISSION CREATED IN SECTION 25-8-201; THE WATER QUALITY
22 CONTROL DIVISION WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND
23 ENVIRONMENT; THE FEDERAL GOVERNMENT; OTHER STATES; AND GROUPS,
24 POLITICAL SUBDIVISIONS, AND INDUSTRIES AFFECTED BY THIS ARTICLE 21
25 AND THE POLICIES OR RULES OF THE COMMISSION IN ORDER TO
26 STREAMLINE PERMITTING, PROMOTE EFFICIENCY, AND MINIMIZE THE
27 REGULATORY BURDEN OF THE DREDGE-AND-FILL PERMIT PROGRAM;

1 (f) PERFORM SUCH OTHER DUTIES AS ARE LAWFULLY ASSIGNED TO
2 THE DIVISION BY THE COMMISSION.

3 (4) BEFORE TAKING ANY FINAL ACTION, THE DIVISION SHALL
4 CONSIDER THE TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS
5 OF THE ACTION, INCLUDING AN EVALUATION OF THE BENEFITS DERIVED
6 FROM ACHIEVING THE GOALS OF THIS PART 11 AND THE ECONOMIC,
7 ENVIRONMENTAL, PUBLIC HEALTH, AND ENERGY IMPACTS TO THE PUBLIC
8 AND AFFECTED PERSONS.

9 **25-8-1108. Enforcement.** (1) A PERSON WHO VIOLATES THIS
10 PART 11, THE TERMS OF A PERMIT ISSUED UNDER THIS PART 11, A RULE
11 PROMULGATED PURSUANT TO THIS PART 11, OR A CEASE-AND-DESIST
12 ORDER OR CLEAN-UP ORDER ISSUED PURSUANT TO THIS PART 11 IS SUBJECT
13 TO A CIVIL PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS PER DAY
14 PER VIOLATION. IN DETERMINING THE AMOUNT OF A PENALTY UNDER THIS
15 SUBSECTION (1), A COURT SHALL CONSIDER:

- 16 (a) THE POTENTIAL DAMAGE CAUSED BY THE VIOLATION;
- 17 (b) THE VIOLATOR'S COMPLIANCE HISTORY;
- 18 (c) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR
19 NEGLIGENT;
- 20 (d) ANY GOOD FAITH EFFORTS BY THE VIOLATOR TO AVOID THE
21 VIOLATION;
- 22 (e) THE IMPACT UPON OR THREAT POSED TO THE PUBLIC HEALTH
23 OR ENVIRONMENT AS A RESULT OF THE VIOLATION;
- 24 (f) THE DURATION OF THE VIOLATION; AND
- 25 (g) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A
26 RESULT OF THE VIOLATION.

27 (2) WHENEVER THE DIVISION HAS REASON TO BELIEVE THAT A

1 VIOLATION OF THIS PART 11, A RULE PROMULGATED PURSUANT TO THIS
2 PART 11, OR AN ORDER OR PERMIT ISSUED PURSUANT TO THIS PART 11 HAS
3 OCCURRED, THE DIVISION SHALL CAUSE WRITTEN NOTICE TO BE SERVED
4 PERSONALLY OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, UPON
5 THE ALLEGED VIOLATOR OR THE ALLEGED VIOLATOR'S AGENT FOR SERVICE
6 OF PROCESS. THE NOTICE SHALL STATE THE NATURE OF THE VIOLATION
7 AND THE FACTS ALLEGED TO CONSTITUTE THE VIOLATION, AND THE
8 NOTICE MAY INCLUDE THE NATURE OF ANY PROPOSED CORRECTIVE
9 ACTION.

10 (3) THE DIVISION MAY INSTITUTE AN ADMINISTRATIVE ACTION OR
11 A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO IMPOSE AND
12 COLLECT PENALTIES UNDER THIS SECTION. IN SUCH AN ACTION, THE COURT
13 MAY CONSIDER THE APPROPRIATENESS OF THE AMOUNT OF THE PENALTY
14 IF THIS ISSUE IS RAISED BY THE PARTY AGAINST WHOM THE PENALTY WAS
15 ASSESSED.

16 **25-8-1109. Judicial review - jurisdiction - appeals.** (1) ANY
17 FINAL RULE, ORDER, PERMIT, OR DETERMINATION BY THE COMMISSION OR
18 DIVISION IS SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH ARTICLE
19 4 OF TITLE 24.

20 (2) A STAY OF ANY ORDER OF THE DIVISION PENDING JUDICIAL
21 REVIEW DOES NOT RELIEVE ANY PERSON FROM LIABILITY UNDER SECTION
22 25-8-1108, BUT THE COURT SHALL CONSIDER THE REASON FOR THE
23 REQUEST FOR JUDICIAL REVIEW IN DETERMINING THE AMOUNT OF ANY
24 PENALTY.

25 (3) A PROCEEDING FOR JUDICIAL REVIEW OF ANY FINAL ORDER,
26 PERMIT, OR DETERMINATION OF THE COMMISSION OR DIVISION SHALL BE
27 FILED IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE AFFECTED

1 STATE WATERS ARE LOCATED. ANY PROCEEDING FOR JUDICIAL REVIEW OF
2 ANY FINAL RULE OF THE COMMISSION SHALL BE FILED IN THE DENVER
3 DISTRICT COURT.

4 (4) A FINAL DECISION OF THE DIVISION MAY BE APPEALED TO THE
5 COMMISSION, ALTHOUGH AN APPEAL TO THE COMMISSION IS NOT A
6 PREREQUISITE TO JUDICIAL REVIEW OF A FINAL DECISION OF THE DIVISION.

7 **SECTION 3. In Colorado Revised Statutes, 25-8-202, amend (1)**
8 **introductory portion, (1)(i.5), (7) introductory portion, and (7)(b)(I) as**
9 **follows:**

10 **25-8-202. Duties of commission - rules. (1) The commission**
11 **shall develop and maintain a comprehensive and effective program for**
12 **prevention, control, and abatement of water pollution and for water**
13 **quality protection throughout the entire state and to ensure provision of**
14 **continuously safe drinking water by public water systems, and, in**
15 **connection therewith, shall:**

16 **(i.5) Promulgate rules and regulations to govern the division's**
17 **certification activities pursuant to section 401 of the federal act AND**
18 **SECTION 36-21-106 (1)(d). THE REQUIREMENTS FOR CERTIFICATION**
19 **DESCRIBED IN SECTION 36-21-106 (1) MUST BE IDENTICAL TO THE**
20 **REQUIREMENTS FOR CERTIFICATION PURSUANT TO SECTION 401 OF THE**
21 **FEDERAL ACT.**

22 **(7) The commission and the division shall recognize water quality**
23 **responsibilities of the following state agencies, referred to in this**
24 **subsection (7) as the "implementing agencies": The office of mined land**
25 **reclamation; the state engineer; the energy and carbon management**
26 **commission created in section 34-60-104.3 (1); THE STREAM AND**
27 **WETLANDS PROTECTION COMMISSION CREATED IN SECTION 25-8-1104; and**

1 the state agency responsible for activities related to the federal "Resource
2 Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6901 et seq., as
3 amended, and related state programs. Activities subject to the jurisdiction
4 of the implementing agencies that result in discharge to state waters shall
5 be regulated as follows:

6 (b) (I) The division ~~shall be~~ IS solely responsible for the issuance
7 and enforcement of permits authorizing point source discharges to surface
8 waters of the state affected by such discharges; EXCEPT THAT THE STREAM
9 AND WETLANDS PROTECTION DIVISION CREATED IN SECTION 25-8-1107 IS
10 SOLELY RESPONSIBLE FOR THE ISSUANCE AND ENFORCEMENT OF PERMITS
11 AUTHORIZING DISCHARGES OF DREDGED OR FILL MATERIAL INTO STATE
12 WATERS, AS DEFINED IN SECTION 25-8-103 (19).

13 **SECTION 4.** In Colorado Revised Statutes, 25-8-302, **amend**
14 **(1)(f)** as follows:

15 **25-8-302. Duties of division.** (1) The division shall:

16 **(f) Review and certify, conditionally certify, or deny requests for**
17 **certifications under the provisions of section 401 of the federal act,**
18 **SECTION 36-21-106 (1), and this article ARTICLE 8, known as "401**
19 **certificates". Conditions attached to the division's certification shall MUST**
20 **only implement rules which THAT the commission has made applicable**
21 **to 401 certifications. THE DIVISION SHALL CERTIFY general or nationwide**
22 **permits under section 404 of the federal act shall be certified for use in**
23 **Colorado without the imposition of any additional state conditions.**
24 **Appeals by an affected entity of a final 401 certification decision of the**
25 **division shall be heard in accordance with section 24-4-105 C.R.S., of the**
26 **"State Administrative Procedure Act".**

27 **SECTION 5.** In Colorado Revised Statutes, 25-8-103, **amend (4)**

1 as follows:

2 **25-8-103. Definitions.** As used in this article 8, unless the context
3 otherwise requires:

4 (4) "Division" means, EXCEPT AS USED IN PART 11 OF THIS
5 ARTICLE 8, the division of administration of the department of public
6 health and environment.

7 **SECTION 6. Safety clause.** The general assembly finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, or safety or for appropriations for
10 the support and maintenance of the departments of the state and state
11 institutions.