

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 24-0964.01 Richard Sweetman x4333

HOUSE BILL 24-1379

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A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF STATE WATERS IN RESPONSE TO**
102 **RECENT FEDERAL COURT ACTION, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does 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 requires the water quality control commission (commission) in the department of public health and environment (department) to promulgate rules by May 31, 2025, as necessary to implement a state dredge and fill discharge authorization program (program) and requires the division of administration (division) in the

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.

HOUSE
Amended 3rd Reading
April 29, 2024

HOUSE
Amended 2nd Reading
April 26, 2024

department to administer and enforce authorizations for activities that will result in the discharge of dredged or fill material into state waters. The rules must focus on avoidance of, minimization of, and compensation for the impacts of dredge and fill activity (activity), include application requirements, and be at least as protective as the guidelines developed pursuant to section 404 (b)(1) of the federal "Clean Water Act".

The bill establishes duties for the division in administering the program, as follows:

- The division shall issue individual authorizations consistent with the rules promulgated by the commission;
- The division shall issue general authorizations for the discharge of dredged or fill material into state waters from certain categories of activities that have minimal effects on state waters and the environment;
- The division shall utilize the existing structure of preconstruction notifications in the nationwide and regional permits established by the United States Army Corps of Engineers and issue general authorizations to be effective for categories of activities that do not require preconstruction notification; and
- The division may include conditions in a notice of authorization, on a case-by-case basis, to clarify the terms and conditions of a general authorization or to ensure that an activity will have only minimal individual and cumulative adverse effects on state waters.

Compensatory mitigation is required in all individual authorizations and in general authorizations where unavoidable adverse impacts to wetlands will affect over one-tenth of an acre or, for streams, where unavoidable adverse impacts greater than the threshold established by the commission by rule will occur. Compensatory mitigation may be accomplished through the purchase of mitigation bank credits, an in-lieu fee program, or project-proponent-responsible mitigation.

Until the rules become effective:

- The division's Clean Water Policy 17, "Enforcement of Unpermitted Discharges of Dredged and Fill Material into State Waters", continues to be effective;
- For projects that do not qualify for enforcement discretion under the division's Clean Water Policy 17, the division may issue temporary authorizations for the discharge of dredged or fill material into state waters only under certain conditions; and
- Temporary authorizations must include conditions necessary to protect the public health and the environment and to meet the intent of the bill.

The division may issue a temporary authorization for a period not to

exceed 2 years.

The bill deems certain activities exempt and therefore does not require a discharge authorization for, or otherwise require regulation of, such activities. The bill also excludes certain types of waters from the bill's regulatory requirements.

The bill clarifies that "state waters" includes wetlands.

In current law, with certain exceptions, an applicant for any water diversion, delivery, or storage facility that requires an application for a permit, license, or other approval from the United States must inform the Colorado water conservation board, the parks and wildlife commission, and the division of parks and wildlife of its application and submit a mitigation proposal. The bill extends the same requirement to an applicant for any such facility that requires an individual authorization from the division.

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-8-205, **add** (1)(h)
3 as follows:

4 **25-8-205. Control regulations.** (1) The commission may
5 promulgate control regulations for the following purposes:

6 (h) IN ACCORDANCE WITH SECTION 25-8-205.1, TO ESTABLISH
7 REQUIREMENTS, PROHIBITIONS, AND STANDARDS FOR THE DISCHARGE OF
8 DREDGED OR FILL MATERIAL INTO STATE WATERS.

9 **SECTION 2.** In Colorado Revised Statutes, **add** 25-8-205.1 as
10 follows:

11 **25-8-205.1. State waters protection - applicability - program**
12 **to regulate the discharge of dredged or fill material - duties of**
13 **commission and division - applicability and scope of section -**
14 **legislative declaration - definitions - rules - repeal.** (1) **Legislative**
15 **declaration.** (a) THE GENERAL ASSEMBLY FINDS THAT:

16 (I) ON MAY 25, 2023, THE UNITED STATES SUPREME COURT
17 ISSUED AN OPINION IN *SACKETT V. ENVIRONMENTAL PROTECTION AGENCY*,

1 598 U.S. 651 (2023), THAT INTERPRETED THE TYPES OF WATER RESOURCES
2 THAT ARE CONSIDERED TO BE "WATERS OF THE UNITED STATES", WHICH
3 ARE SUBJECT TO FEDERAL PERMITTING REQUIREMENTS UNDER SECTION
4 404 OF THE FEDERAL "CLEAN WATER ACT", PUB.L. 92-500, CODIFIED AT
5 33 U.S.C. SEC. 1251 ET SEQ., AS AMENDED, FOR THE DISCHARGE OF
6 DREDGED OR FILL MATERIAL. THE *SACKETT* RULING BECAME IMMEDIATELY
7 EFFECTIVE IN COLORADO, AND THE FEDERAL ENVIRONMENTAL
8 PROTECTION AGENCY AND THE UNITED STATES ARMY CORPS OF
9 ENGINEERS SUBSEQUENTLY PUBLISHED NEW REGULATIONS SEEKING TO
10 CONFORM TO THE *SACKETT* RULING. AS A RESULT, FEDERAL PERMITTING
11 REQUIREMENTS FOR THE DISCHARGE OF DREDGED OR FILL MATERIAL NO
12 LONGER APPLY TO CERTAIN STATE WATERS, INCLUDING MANY WETLANDS.

13 (II) AS OF MARCH 2024, COLORADO HAS NOT HAD A STATE
14 PROGRAM TO AUTHORIZE THE DISCHARGE OF DREDGED OR FILL MATERIAL
15 INTO STATE WATERS AND HAS INSTEAD RELIED ON THE UNITED STATES
16 ARMY CORPS OF ENGINEERS SECTION 404 PERMIT PROGRAM. THE NEW
17 DEFINITION OF "WATERS OF THE UNITED STATES" UNDER *SACKETT*, WHICH
18 NARROWS FEDERAL JURISDICTION IN THIS AREA, HAS CREATED A NEED FOR
19 A STATE DREDGE AND FILL PROGRAM. WITH FEWER FEDERAL DISCHARGE
20 PERMITS BEING ISSUED BY THE UNITED STATES ARMY CORPS OF
21 ENGINEERS FOLLOWING *SACKETT*, MANY STREAMS, LAKES, AND WETLANDS
22 IN COLORADO ARE AT RISK OF IRREVERSIBLE HARM.

23 (III) SOME PROJECTS INVOLVING THE DISCHARGE OF DREDGED OR
24 FILL MATERIAL, SUCH AS THOSE FOR FLOOD CONTROL; STREAM
25 RESTORATION; WATER DEVELOPMENT; CONSTRUCTION OR MAINTENANCE
26 OF UNDERGROUND UTILITIES, ROADS, TRANSIT, RAIL, AND HOUSING; AND
27 SIMILAR EFFORTS THAT ARE NO LONGER REGULATED BY THE FEDERAL ACT

1 AS A RESULT OF *SACKETT*, FACE REGULATORY UNCERTAINTY UNLESS
2 COLORADO DEVELOPS ITS OWN DREDGE AND FILL PROGRAM; AND

3 (IV) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT LED
4 STAKEHOLDER EFFORTS DURING 2023 THAT FOCUSED ON REGULATORY
5 OPTIONS TO ADDRESS THE *SACKETT* DECISION, AND THE PROVISIONS OF
6 THIS SECTION DIRECTLY REFLECT THE INPUT RECEIVED DURING THESE
7 EFFORTS CONCERNING EXEMPTED ACTIVITIES AND EXCLUDED TYPES OF
8 WATERS.

9 (b) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

10 (I) WATER IS COLORADO'S MOST CRITICAL NATURAL RESOURCE,
11 AND SAFEGUARDING WATER QUALITY IS OF PARAMOUNT IMPORTANCE FOR
12 THE PROTECTION OF PUBLIC HEALTH AND COLORADO'S ENVIRONMENT;

13 (II) COLORADO'S WETLANDS AND SEASONAL STREAMS PLAY A
14 CRUCIAL ROLE IN MAINTAINING WATER QUALITY FOR DRINKING WATER
15 AND WILDLIFE HABITATS, RECHARGING GROUNDWATER, CONTROLLING
16 FLOODS, AND KEEPING POLLUTION FROM ENTERING LARGER BODIES OF
17 WATER;

18 (III) GIVEN THE CRUCIAL ROLE THAT WETLANDS PLAY IN
19 PROTECTING COLORADO'S WATER RESOURCES, IT IS IN THE STATE'S
20 INTEREST TO EXPRESSLY INCLUDE "WETLANDS" AS A CATEGORY OF "STATE
21 WATERS" IN THE DEFINITION OF THAT TERM USED IN THIS ARTICLE 8. THIS
22 CLARIFICATION IS CONSISTENT WITH AND REITERATES THE DEPARTMENT
23 OF PUBLIC HEALTH AND ENVIRONMENT'S LONGSTANDING RECOGNITION
24 THROUGH RULES AND PROGRAM IMPLEMENTATION THAT WETLANDS ARE
25 STATE WATERS DESERVING OF PROTECTION UNDER THIS ARTICLE 8.

26 (IV) DEVELOPING A STATE DREDGE AND FILL PROGRAM WILL
27 BENEFIT THE ENTITIES THAT WISH TO ENGAGE IN DREDGE AND FILL

1 PROJECTS WITHIN COLORADO BECAUSE, WITHOUT A DISCHARGE
2 AUTHORIZATION FRAMEWORK, THOSE PROJECTS WILL BE PROHIBITED TO
3 THE DETRIMENT OF COLORADO'S ECONOMY AND GENERAL WELFARE;

4 (V) A STATE DREDGE AND FILL PROGRAM CAN PROVIDE A
5 MECHANISM FOR PROTECTING THE CHEMICAL, PHYSICAL, AND BIOLOGICAL
6 INTEGRITY OF COLORADO'S WATER RESOURCES WHILE FACILITATING A
7 STRONG AND PROSPEROUS ECONOMY; AND

8 (VI) NOTWITHSTANDING THE NARROWER SCOPE OF WATERS
9 PROTECTED AT THE FEDERAL LEVEL AFTER THE *SACKETT* DECISION, THE
10 UNITED STATES ARMY CORPS OF ENGINEERS' SECTION 404 PERMIT
11 PROGRAM PROVIDES A WELL-ESTABLISHED AND PROTECTIVE FRAMEWORK
12 UPON WHICH COLORADO SHOULD MODEL ITS OWN DREDGE AND FILL
13 PROGRAM.

14 (c) NOW, THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT:

15 (I) THIS SECTION IS NECESSARY TO ESTABLISH A COMPREHENSIVE
16 DREDGE AND FILL PROGRAM TO PROTECT STATE WATERS, NO MATTER HOW
17 THE FEDERAL TERM "WATERS OF THE UNITED STATES" IS DEFINED IN THE
18 FUTURE; AND

19 (II) FOR THE PURPOSE OF PROVIDING CLARIFICATION CONCERNING
20 THE LIMITATIONS ON THE SCOPE OF COLORADO'S DREDGE AND FILL
21 PROGRAM GOING FORWARD, THE PROGRAM ESTABLISHED IN THIS SECTION
22 INCLUDES:

23 (A) EXPRESS EXEMPTIONS FOR CERTAIN TYPES OF ACTIVITIES THAT
24 ARE NOT SUBJECT TO DREDGE AND FILL PROGRAM REQUIREMENTS; AND

25 (B) EXPRESS EXCLUSIONS FOR CERTAIN TYPES OF WATERS THAT
26 MAY OTHERWISE FALL UNDER THE DEFINITION OF "STATE WATERS".

27 (2) **Applicability - limitations.** NOTHING IN THIS SECTION APPLIES

1 TO THE ACTIVITIES OF FEDERALLY RECOGNIZED INDIAN TRIBES, INDIANS,
2 THEIR POLITICAL SUBDIVISIONS, OR TRIBALLY CONTROLLED AFFILIATES,
3 WHICH ACTIVITIES ARE UNDERTAKEN OR TO BE UNDERTAKEN ON LANDS
4 WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION LOCATED WITHIN
5 THE STATE. ADDITIONALLY, NOTHING IN THIS SECTION APPLIES TO THE
6 ACTIVITIES OF THIRD-PARTY NON-INDIAN OWNERS AND OPERATORS,
7 WHICH ACTIVITIES ARE UNDERTAKEN OR TO BE UNDERTAKEN WITH
8 RESPECT TO RESERVATION WATERS ON INDIAN TRUST LANDS WITHIN THE
9 BOUNDARIES OF AN INDIAN RESERVATION LOCATED WITHIN THE STATE.
10 WITH REGARD TO PRIVATELY OWNED FEE LAND, AS DEFINED IN SECTION
11 25-7-1302 (4), WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION
12 LOCATED WITHIN THE STATE, THIS SECTION APPLIES ONLY TO THE
13 DISCHARGE OF DREDGED OR FILL MATERIALS OF PERSONS WHO ARE NOT
14 INDIANS.

15 (3) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
16 OTHERWISE REQUIRES:

17 (a) "CLEAN WATER POLICY 17" MEANS THE DIVISION'S CLEAN
18 WATER POLICY 17, "ENFORCEMENT OF UNPERMITTED DISCHARGES OF
19 DREDGED AND FILL MATERIAL INTO STATE WATERS".

20 (b) "COMPENSATORY MITIGATION" MEANS THE RESTORATION,
21 REESTABLISHMENT, REHABILITATION, ESTABLISHMENT, CREATION,
22 ENHANCEMENT, OR PRESERVATION OF STATE WATERS FOR THE PURPOSE OF
23 OFFSETTING UNAVOIDABLE ADVERSE IMPACTS THAT REMAIN AFTER ALL
24 APPROPRIATE AND PRACTICABLE AVOIDANCE AND MINIMIZATION HAS
25 BEEN ACHIEVED.

26 (c) "CONSULTATION" MEANS TO GIVE A FEDERAL, STATE, LOCAL,
27 OR TRIBAL ENTITY THE OPPORTUNITY TO PROVIDE SPECIAL EXPERTISE TO

1 AUTHORIZATION PROCESSES AND TECHNICAL GROUPS, ACT AS A
2 COOPERATING AGENCY, OR ENGAGE AS MUTUALLY AGREED BY THE
3 DIVISION AND THE ENTITY.

4 (d) (I) "DISCHARGE OF DREDGED OR FILL MATERIAL" MEANS,
5 EXCEPT AS DESCRIBED IN SUBSECTION (3)(d)(II) OF THIS SECTION, ANY
6 ADDITION OF DREDGED OR FILL MATERIAL INTO, INCLUDING REDEPOSIT OF
7 DREDGED OR FILL MATERIAL OTHER THAN INCIDENTAL FALLBACK WITHIN,
8 STATE WATERS. THE TERM INCLUDES:

9 (A) THE ADDITION OF DREDGED OR FILL MATERIAL TO A SPECIFIED
10 DISCHARGE SITE LOCATED IN STATE WATERS;

11 (B) RUNOFF OR OVERFLOW FROM A CONTAINED LAND OR WATER
12 DISPOSAL AREA; AND

13 (C) ANY ADDITION, INCLUDING REDEPOSIT OTHER THAN
14 INCIDENTAL FALLBACK, OF DREDGED OR FILL MATERIAL INTO STATE
15 WATERS THAT IS INCIDENTAL TO ANY ACTIVITY, INCLUDING MECHANIZED
16 LAND CLEARING, DITCHING, CHANNELIZATION, OR OTHER EXCAVATION.

17 (II) "DISCHARGE OF DREDGED OR FILL MATERIAL" DOES NOT
18 INCLUDE:

19 (A) DISCHARGES OF POLLUTANTS INTO STATE WATERS RESULTING
20 FROM THE ONSHORE PROCESSING OF DREDGED MATERIAL THAT IS
21 EXTRACTED FOR ANY COMMERCIAL USE OTHER THAN FILL, WHICH
22 DISCHARGES ARE SUBJECT TO SECTION 402 OF THE FEDERAL ACT, EVEN
23 THOUGH THE EXTRACTION AND DEPOSIT OF SUCH MATERIAL MAY REQUIRE
24 A SECTION 404 PERMIT OR AN AUTHORIZATION ISSUED PURSUANT TO THIS
25 SECTION;

26 (B) ACTIVITIES THAT INVOLVE ONLY THE CUTTING OR REMOVING
27 OF VEGETATION ABOVE THE GROUND, SUCH AS MOWING, ROTARY CUTTING,

1 AND CHAINSAWING, SO LONG AS THE ACTIVITY NEITHER SUBSTANTIALLY
2 DISTURBS THE VEGETATION'S ROOT SYSTEM NOR INVOLVES MECHANIZED
3 PUSHING, DRAGGING, OR OTHER SIMILAR ACTIVITIES THAT REDEPOSIT
4 EXCAVATED SOIL MATERIAL; OR

5 (C) INCIDENTAL FALLBACK.

6 (e) (I) "DISCHARGE OF FILL MATERIAL" MEANS, EXCEPT AS
7 DESCRIBED IN SUBSECTION (3)(e)(II) OF THIS SECTION, THE ADDITION OF
8 FILL MATERIAL INTO STATE WATERS. THE TERM INCLUDES:

9 (A) PLACEMENT OF FILL MATERIAL THAT IS NECESSARY FOR THE
10 CONSTRUCTION OF ANY STRUCTURE OR INFRASTRUCTURE IN STATE
11 WATERS;

12 (B) THE BUILDING OF ANY STRUCTURE, INFRASTRUCTURE, OR
13 IMPOUNDMENT REQUIRING ROCK, SAND, DIRT, OR OTHER MATERIAL FOR ITS
14 CONSTRUCTION;

15 (C) SITE DEVELOPMENT FILLS FOR RECREATIONAL, INDUSTRIAL,
16 COMMERCIAL, RESIDENTIAL, OR OTHER USES;

17 (D) CAUSEWAYS OR ROAD FILLS;

18 (E) DAMS AND DIKES;

19 (F) ARTIFICIAL ISLANDS;

20 (G) PROPERTY PROTECTION OR RECLAMATION DEVICES SUCH AS
21 RIPRAP;

22 (H) LEVEES;

23 (I) PLACEMENT OF FILL MATERIAL FOR INFRASTRUCTURE SUCH AS
24 SEWAGE TREATMENT FACILITIES, INTAKE AND OUTFALL PIPES ASSOCIATED
25 WITH POWER PLANTS, AND SUBAQUEOUS UTILITY LINES;

26 (J) PLACEMENT OF FILL MATERIAL FOR CONSTRUCTION OR
27 MAINTENANCE OF ANY LINER, BERM, OR OTHER INFRASTRUCTURE

1 ASSOCIATED WITH SOLID WASTE LANDFILLS; AND

2 (K) PLACEMENT OF OVERBURDEN, SLURRY, TAILINGS, OR SIMILAR
3 MINING-RELATED MATERIALS.

4 (II) "DISCHARGE OF FILL MATERIAL" DOES NOT INCLUDE:

5 (A) PLOWING, CULTIVATING, SEEDING, OR HARVESTING FOR THE
6 PRODUCTION OF FOOD, FIBER, OR FOREST PRODUCTS; OR

7 (B) PLACEMENT OF PILINGS IN STATE WATERS, UNLESS THE
8 PLACEMENT HAS OR WOULD HAVE THE EFFECT OF A DISCHARGE OF FILL
9 MATERIAL. PLACEMENT OF PILINGS FOR LINEAR PROJECTS, SUCH AS
10 BRIDGES, ELEVATED WALKWAYS, AND POWER LINE STRUCTURES,
11 GENERALLY DOES NOT HAVE THE EFFECT OF A DISCHARGE OF FILL
12 MATERIAL. FURTHERMORE, PLACEMENT OF PILINGS IN STATE WATERS FOR
13 A PIER, A WHARF, OR AN INDIVIDUAL HOUSE ON STILTS GENERALLY DOES
14 NOT HAVE THE EFFECT OF A DISCHARGE OF FILL MATERIAL. EXAMPLES OF
15 ACTIVITIES THAT WOULD HAVE THE EFFECT OF A DISCHARGE OF FILL
16 MATERIAL INCLUDE PROJECTS WHERE THE PILINGS ARE SO CLOSELY
17 SPACED THAT SEDIMENTATION RATES WOULD BE INCREASED, PROJECTS IN
18 WHICH THE PILINGS THEMSELVES EFFECTIVELY WOULD REPLACE THE
19 BOTTOM OF A BODY OF STATE WATERS, PROJECTS INVOLVING THE
20 PLACEMENT OF PILINGS THAT WOULD REDUCE THE REACH OR IMPAIR THE
21 FLOW OR CIRCULATION OF STATE WATERS, AND PROJECTS INVOLVING THE
22 PLACEMENT OF PILINGS THAT WOULD RESULT IN THE ADVERSE
23 ALTERATION OR ELIMINATION OF AQUATIC FUNCTIONS.

24 (f) "DRAINAGE DITCH" MEANS A DITCH THAT IS DESIGNED FOR AT
25 LEAST THE PARTIAL PURPOSE OF INCREASING DRAINAGE OF A PARTICULAR
26 LAND AREA OR INFRASTRUCTURE FOR PURPOSES INCLUDING AGRICULTURE;
27 TRANSPORTATION, INCLUDING ROADSIDE AND RAILROAD

1 TRANSPORTATION; MOSQUITO ABATEMENT; AND STORMWATER
2 MANAGEMENT.

3 (g) "DREDGE AND FILL ACTIVITY" MEANS AN ACTIVITY THAT
4 INCLUDES THE DISCHARGE OF DREDGED OR FILL MATERIAL.

5 (h) "DREDGE AND FILL PROGRAM" MEANS THE REGULATORY
6 DREDGE AND FILL DISCHARGE AUTHORIZATION PROGRAM DESCRIBED BY
7 THIS SECTION, INCLUDING THE RULES PROMULGATED BY THE COMMISSION,
8 AS ADMINISTERED BY THE DIVISION PURSUANT TO THIS SECTION.

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

11 (j) "DREDGED OR FILL MATERIAL" MEANS DREDGED MATERIAL OR
12 FILL MATERIAL.

13 (k) "ECOLOGICAL LIFT" MEANS AN IMPROVEMENT IN THE
14 BIOLOGICAL HEALTH, AS WELL AS THE CHEMICAL, GEOMORPHIC, OR
15 HYDROLOGIC HEALTH, OF AN AREA THAT HAS BEEN DAMAGED, DEGRADED,
16 OR DESTROYED.

17 (l) "FENS OR PEATLANDS" MEANS WETLANDS WITH ORGANIC SOIL
18 THAT ARE CLASSIFIED AS A HISTOSOL IN THE GUIDANCE DOCUMENT TITLED
19 "FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES" PUBLISHED
20 BY THE FEDERAL NATURAL RESOURCES CONSERVATION SERVICE.

21 (m) (I) "FILL MATERIAL" MEANS, EXCEPT AS DESCRIBED IN
22 SUBSECTION (3)(m)(III) OF THIS SECTION, MATERIAL PLACED IN STATE
23 WATERS WHERE THE MATERIAL HAS THE EFFECT OF:

24 (A) REPLACING ANY PORTION OF STATE WATERS WITH UPLAND; OR

25 (B) CHANGING THE BOTTOM ELEVATION OF ANY PORTION OF ANY
26 STATE WATERS.

27 (II) "FILL MATERIAL" INCLUDES ROCK, SAND, SOIL, CLAY,

1 PLASTICS, CONSTRUCTION DEBRIS, WOOD CHIPS, OVERBURDEN FROM
2 MINING OR OTHER EXCAVATION ACTIVITIES, AND MATERIALS USED TO
3 CREATE ANY STRUCTURE OR INFRASTRUCTURE IN STATE WATERS.

4 (III) "FILL MATERIAL" DOES NOT INCLUDE SOLID WASTE.

5

6 (n) "ISOLATED ORDINARY HIGH WATERMARK REACHES" MEANS
7 REACHES OF STATE WATERS WITH AN ORDINARY HIGH WATERMARK THAT
8 ARE BORDERED UPSTREAM AND DOWNSTREAM BY UPLANDS.

9 (o) "ISOLATED PONDS AND IMPOUNDMENTS" MEANS PONDS AND
10 IMPOUNDMENTS THAT ARE NOT WITHIN THE ONE-HUNDRED-YEAR
11 FLOODPLAIN OR WITHIN ONE THOUSAND FIVE HUNDRED FEET OF AN
12 ORDINARY HIGH WATERMARK OF OTHER STATE WATERS. IN THE ABSENCE
13 OF ONE-HUNDRED-YEAR FLOODPLAIN MAPPING BY THE FEDERAL
14 EMERGENCY MANAGEMENT AGENCY, THE ONE THOUSAND FIVE HUNDRED
15 FEET DISTANCE CRITERION APPLIES.

16 (p) "ISOLATED WETLANDS" MEANS WETLANDS WHOLLY
17 SURROUNDED BY UPLANDS. "ISOLATED WETLANDS" DOES NOT INCLUDE
18 WETLANDS WHERE ANY PORTION OF THE WETLAND IS WITHIN THE
19 ONE-HUNDRED-YEAR FLOODPLAIN OR WITHIN ONE THOUSAND FIVE
20 HUNDRED FEET OF THE ORDINARY HIGH WATERMARK OF OTHER STATE
21 WATERS. IN THE ABSENCE OF ONE-HUNDRED-YEAR FLOODPLAIN MAPPING
22 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE ONE THOUSAND
23 FIVE HUNDRED FEET DISTANCE CRITERION APPLIES.

24 (q) "KETTLE PONDS" MEANS LAKES, PONDS, OR WETLANDS
25 LOCATED WITHIN A FORMERLY GLACIATED LANDSCAPE AND FORMED BY
26 ICE BLOCKS LEFT BY A RETREATING GLACIER.

27 (r) "ORDINARY HIGH WATERMARK" MEANS THAT LINE ON THE

1 SHORE ESTABLISHED BY THE FLUCTUATIONS OF WATER AND INDICATED BY
2 PHYSICAL CHARACTERISTICS, SUCH AS:

- 3 (I) A CLEAR, NATURAL LINE IMPRESSED ON THE BANK;
- 4 (II) SHELIVING;
- 5 (III) CHANGES IN THE CHARACTER OF SOIL;
- 6 (IV) DESTRUCTION OF TERRESTRIAL VEGETATION;
- 7 (V) THE PRESENCE OF LITTER AND DEBRIS; OR
- 8 (VI) OTHER APPROPRIATE MEANS THAT CONSIDER THE
9 CHARACTERISTICS OF THE SURROUNDING AREA.

10 (s) "SECTION 404 PERMIT" MEANS A PERMIT ISSUED BY THE UNITED
11 STATES ARMY CORPS OF ENGINEERS PURSUANT TO SECTION 404 OF THE
12 FEDERAL ACT. THE TERM INCLUDES AN INDIVIDUAL PERMIT, ACTIVITIES
13 AUTHORIZED BY A NATIONWIDE OR REGIONAL PERMIT, AND A LETTER OF
14 PERMISSION ISSUED IN ACCORDANCE WITH REGULATIONS OF THE UNITED
15 STATES ARMY CORPS OF ENGINEERS.

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

18 (u) "UPLAND" MEANS ANY LAND AREA THAT, UNDER NORMAL
19 CIRCUMSTANCES, IS NOT A WETLAND AND DOES NOT LIE BELOW THE
20 ORDINARY HIGH WATERMARK.

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

26 (4) **Duties of the commission. (a) Rules for state dredge and**
27 **fill discharge authorization program - definition.** THE COMMISSION

1 SHALL PROMULGATE RULES BY DECEMBER 31, 2025, AS NECESSARY TO
2 IMPLEMENT A STATE DREDGE AND FILL DISCHARGE AUTHORIZATION
3 PROGRAM. THE RULES MUST FOCUS ON AVOIDANCE AND MINIMIZATION OF
4 ADVERSE IMPACTS AND ON COMPENSATION FOR UNAVOIDABLE ADVERSE
5 IMPACTS OF DREDGE AND FILL ACTIVITY AND MUST BE AT LEAST AS
6 PROTECTIVE AS THE GUIDELINES DEVELOPED PURSUANT TO SECTION 404
7 (b)(1) OF THE FEDERAL ACT. THE RULES:

8 (I) MUST INCLUDE:

9 (A) PROCEDURES FOR THE ISSUANCE, MODIFICATION, AND
10 TERMINATION OF INDIVIDUAL AND GENERAL AUTHORIZATIONS, INCLUDING
11 PUBLIC NOTICE AND PARTICIPATION REQUIREMENTS;

12 (B) THE DURATION OF AUTHORIZATIONS; EXCEPT THAT THE
13 DURATION OF AN AUTHORIZATION MUST NOT EXCEED FIVE YEARS;

14 (C) THE ESTABLISHMENT OF AUTHORIZATION FEES THAT WILL BE
15 UTILIZED TO IMPLEMENT THE PROGRAM PURSUANT TO SECTION 25-8-210;
16 AND

17 (D) DETAILS CONCERNING THE DIVISION'S CONSULTATION WITH
18 FEDERAL, STATE, LOCAL, AND TRIBAL ENTITIES, ESPECIALLY THOSE
19 ENTITIES WITH SPECIAL EXPERTISE WITH RESPECT TO ANY
20 ENVIRONMENTAL-, NATURAL RESOURCE-, OR AGRICULTURE-RELATED
21 ISSUE; AND

22 (II) MAY INCLUDE:

23 (A) FURTHER MINOR CLARIFICATION OF THE TERMINOLOGY USED
24 TO DEFINE THE EXEMPTIONS AND EXCLUSIONS IN SUBSECTIONS (8)(b) AND
25 (8)(d) OF THIS SECTION WITHOUT LIMITING OR EXPANDING THE SCOPE OF
26 THE EXEMPTIONS AND EXCLUSIONS; AND

27 (B) AN EXEMPTION FOR VOLUNTARY STREAM RESTORATION

1 EFFORTS IN EPHEMERAL STREAMS THAT DO NOT REQUIRE COMPENSATORY
2 MITIGATION AND ARE DESIGNED SOLELY TO PROVIDE ECOLOGICAL LIFT
3 WHERE THE ACTIVITY IS TAKING PLACE. AS USED IN THIS SUBSECTION
4 (4)(a)(II)(B), "EPHEMERAL STREAM" MEANS A STREAM CHANNEL OR A
5 REACH OF A STREAM CHANNEL THAT CARRIES FLOW DURING, AND FOR A
6 SHORT DURATION AS THE DIRECT RESULT OF, PRECIPITATION EVENTS AND
7 THAT HAS A CHANNEL BOTTOM THAT IS ALWAYS ABOVE THE
8 GROUNDWATER TABLE.

9 (b) **Rules for individual authorizations.** THE COMMISSION SHALL
10 PROMULGATE RULES BY DECEMBER 31, 2025, CONCERNING INDIVIDUAL
11 AUTHORIZATIONS FOR DREDGE AND FILL ACTIVITIES. THE RULES MUST
12 INCLUDE:

- 13 (I) APPLICATION REQUIREMENTS, INCLUDING:
- 14 (A) PROJECT LOCATION INFORMATION;
 - 15 (B) A PROJECT DESCRIPTION, INCLUDING SITE PLANS;
 - 16 (C) AN ALTERNATIVES ANALYSIS;
 - 17 (D) A PURPOSE AND NEED STATEMENT;
 - 18 (E) A DESCRIPTION OF AVOIDANCE AND MINIMIZATION MEASURES;
 - 19 (F) A PROJECTED IMPACTS ANALYSIS; AND
 - 20 (G) A COMPENSATORY MITIGATION PLAN;
- 21 (II) A PROHIBITION AGAINST THE DISCHARGE OF DREDGED OR FILL
22 MATERIAL WHERE THERE IS A PRACTICABLE ALTERNATIVE TO THE
23 PROPOSED DISCHARGE THAT WOULD HAVE LESS ADVERSE IMPACT ON
24 STATE WATERS SO LONG AS THE ALTERNATIVE DOES NOT HAVE OTHER
25 SIGNIFICANT ADVERSE ENVIRONMENTAL CONSEQUENCES. ANY PURPOSE
26 AND NEED STATEMENT, EVALUATION OF ALTERNATIVES, AND IMPACTS
27 ANALYSIS DEVELOPED THROUGH THE SECTION 404 PERMITTING PROCESS

1 SHALL BE USED FOR THE PURPOSE OF IMPLEMENTING THIS PROHIBITION.
2 THE RULES MUST ALSO INCLUDE CRITERIA FOR THE DIVISION TO USE TO
3 IMPLEMENT THE PROHIBITION.

4 (III) DIRECTION TO THE DIVISION TO INCLUDE CONDITIONS IN
5 INDIVIDUAL AUTHORIZATIONS, WHICH CONDITIONS ARE DESIGNED TO:

6 (A) REMOVE OR REDUCE THE IMPACT TO STATE WATERS OF A
7 DISCHARGE OF DREDGED OR FILL MATERIAL;

8 (B) PROTECT DOWNSTREAM USES;

9 (C) ADDRESS THE DIRECT, INDIRECT, AND CUMULATIVE IMPACTS
10 OF THE ACTIVITY; AND

11 (D) ENSURE THAT AN AUTHORIZED ACTIVITY AS A WHOLE WILL
12 COMPLY WITH ALL APPLICABLE STATE WATER QUALITY REQUIREMENTS,
13 EITHER AS PROPOSED OR AS CONDITIONED IN THE AUTHORIZATION; AND

14 (IV) OTHER INDIVIDUAL AUTHORIZATION TERMS, SUCH AS
15 MONITORING, RECORD-KEEPING, AND REPORTING REQUIREMENTS.

16 (c) **Rules for compensatory mitigation.** THE COMMISSION SHALL
17 PROMULGATE RULES BY DECEMBER 31, 2025, TO PROVIDE DETAILS
18 CONCERNING COMPENSATORY MITIGATION REQUIREMENTS, INCLUDING
19 METHODS FOR ASSURING IMPACTS TO WETLANDS AND STREAMS ARE FULLY
20 COMPENSATED THROUGH FUNCTIONAL ASSESSMENTS AND RATIOS THAT
21 CAN BE APPLIED THROUGH INDIVIDUAL MITIGATION PROJECTS OR BY
22 APPLYING ACRE-BASED RATIOS USING THE WATERSHED APPROACH AS
23 DESCRIBED BY THE UNITED STATES ARMY CORPS OF ENGINEERS.

24
25 (5) **Duties of the division.** THE DIVISION HAS THE FOLLOWING
26 DUTIES IN ADMINISTERING THE STATE DREDGE AND FILL DISCHARGE
27 AUTHORIZATION PROGRAM:

1 (a) **Individual authorizations.** (I) UPON THE COMMISSION'S
2 PROMULGATION OF RULES PURSUANT TO SUBSECTION (4) OF THIS SECTION,
3 THE DIVISION SHALL ISSUE INDIVIDUAL AUTHORIZATIONS CONSISTENT
4 WITH THE RULES PROMULGATED BY THE COMMISSION UNDER SUBSECTION
5 (4) OF THIS SECTION.

6 (II) IN ADDITION TO ANY COMPENSATORY MITIGATION
7 REQUIREMENTS THE DIVISION DETERMINES ARE NECESSARY TO COMPLY
8 WITH THE COMMISSION'S RULES AND SUBSECTION (5)(c) OF THIS SECTION,
9 FOR PROJECTS SUBJECT TO THE REQUIREMENTS OF SECTION 37-60-122.2
10 (1)(b), THE DIVISION SHALL TAKE INTO CONSIDERATION THE OFFICIAL
11 STATE POSITION REGARDING MITIGATION FOR FISH AND WILDLIFE
12 RESOURCES, WHICH POSITION IS ESTABLISHED PURSUANT TO SECTION
13 37-60-122.2 (1), AND MAY ADOPT ALL OR PART OF SUCH POSITION INTO
14 INDIVIDUAL AUTHORIZATIONS AS CONDITIONS.

15 (III) THE DIVISION SHALL ACT UPON AN APPLICATION FOR AN
16 INDIVIDUAL AUTHORIZATION WITHIN TWO YEARS AFTER RECEIVING A
17 COMPLETE APPLICATION. THIS PERIOD MAY BE EXTENDED BY A WRITTEN
18 AGREEMENT BETWEEN THE DIVISION AND THE APPLICANT. THIS PERIOD
19 MAY ALSO BE EXTENDED BY THE DIVISION IF THERE ARE SIGNIFICANT
20 CHANGES TO THE PROJECT THAT IS THE SUBJECT OF THE APPLICATION OR
21 IF THERE IS SIGNIFICANT NEW INFORMATION CONCERNING THE
22 ENVIRONMENTAL IMPACTS OF THE PROJECT, IN WHICH CASE THE DIVISION
23 SHALL PROVIDE NOTICE TO THE APPLICANT OF THE EXTENSION IN WRITING
24 ALONG WITH AN EXPLANATION OF THE BASIS FOR THE EXTENSION.

25 (IV) AN INDIVIDUAL AUTHORIZATION, INCLUDING ALL CONDITIONS
26 INCORPORATED INTO THE INDIVIDUAL AUTHORIZATION, IS SUBJECT TO
27 ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION UNDER SECTION

1 25-8-403 AND THEN JUDICIAL REVIEW UNDER SECTION 25-8-404.

2 (b) **General authorizations - categories - definitions.** (I) IN
3 ADDITION TO THE DIVISION'S AUTHORITY IN SUBSECTION (5)(b)(III) OF THIS
4 SECTION TO ISSUE A STATEWIDE GENERAL AUTHORIZATION FOR
5 DISCHARGES TO ISOLATED STATE WATERS, THE DIVISION SHALL ISSUE
6 GENERAL AUTHORIZATIONS FOR THE DISCHARGE OF DREDGED OR FILL
7 MATERIAL INTO STATE WATERS FOR CATEGORIES OF ACTIVITIES THAT ARE
8 SIMILAR IN NATURE AND SIMILAR IN IMPACT ON THE QUALITY OF STATE
9 WATERS, CAUSE ONLY MINIMAL ADVERSE IMPACTS TO STATE WATERS
10 WHEN PERFORMED SEPARATELY, AND HAVE ONLY MINIMAL CUMULATIVE
11 ADVERSE IMPACTS ON STATE WATERS. THE CATEGORIES OF GENERAL
12 AUTHORIZATIONS MUST CORRESPOND WITH THE VARIOUS NATIONWIDE
13 AND REGIONAL PERMITS ISSUED BY THE UNITED STATES ARMY CORPS OF
14 ENGINEERS. THE DIVISION MAY TAILOR THE TERMS OF CERTAIN
15 NATIONWIDE OR REGIONAL PERMITS OR CREATE ADDITIONAL GENERAL
16 AUTHORIZATIONS TO ACHIEVE GREATER EFFICIENCY AND TO ADDRESS
17 COLORADO-SPECIFIC NEEDS, INCLUDING BUT NOT LIMITED TO EMERGENCY
18 RESPONSE TO WILDFIRE AND VOLUNTARY ECOLOGICAL RESTORATION
19 AND ENHANCEMENT PROJECTS.

20 (II) (A) BEGINNING JANUARY 1, 2025, UNTIL THE RULES
21 DESCRIBED IN SUBSECTION (4) OF THIS SECTION ARE PROMULGATED AND
22 THE DIVISION ISSUES GENERAL AUTHORIZATIONS UNDER THE RULES, THE
23 NATIONWIDE AND REGIONAL GENERAL PERMITS ISSUED BY THE UNITED
24 STATES ARMY CORPS OF ENGINEERS, AS SUCH PERMITS APPLY TO
25 COLORADO AND SUBJECT TO SUBSECTIONS (8)(b) AND (8)(d) OF THIS
26 SECTION, CONSTITUTE VALID AUTHORIZATIONS TO DISCHARGE DREDGED
27 OR FILL MATERIAL INTO STATE WATERS THAT ARE NOT SUBJECT TO

1 FEDERAL JURISDICTION. THE DIVISION SHALL RECOGNIZE COMPLIANCE
2 WITH THE APPLICABLE TERMS OF THE NATIONWIDE AND REGIONAL
3 GENERAL PERMITS AS CONSTITUTING COMPLIANCE WITH THIS SECTION.
4 BEGINNING JANUARY 1, 2025, AN APPLICANT SEEKING AUTHORIZATION
5 FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO STATE WATERS
6 THAT ARE NOT SUBJECT TO FEDERAL JURISDICTION SHALL SUBMIT TO THE
7 DIVISION ANY PRECONSTRUCTION NOTIFICATION REQUIRED UNDER THE
8 APPLICABLE NATIONWIDE OR REGIONAL GENERAL PERMIT. IF THE
9 APPLICABLE NATIONWIDE OR REGIONAL GENERAL PERMIT REQUIRES
10 COMPENSATORY MITIGATION, THE APPLICANT SHALL OBTAIN A
11 TEMPORARY AUTHORIZATION FROM THE DIVISION PURSUANT TO
12 SUBSECTION (6)(a)(II) OF THIS SECTION BEFORE THE COMMENCEMENT OF
13 THE ACTIVITY.

14 (B) THIS SUBSECTION (5)(b)(II) IS REPEALED, EFFECTIVE
15 DECEMBER 31, 2026.

16 (III) (A) AS EXPEDITIOUSLY AS IS PRUDENT AND FEASIBLE, THE
17 DIVISION SHALL ISSUE A STATEWIDE GENERAL AUTHORIZATION FOR
18 DISCHARGES TO ISOLATED STATE WATERS. FOR PURPOSES OF THIS
19 SUBSECTION (5)(b)(III), "ISOLATED STATE WATERS" ARE ISOLATED
20 WETLANDS, ISOLATED PONDS AND IMPOUNDMENTS, AND ISOLATED
21 ORDINARY HIGHWATER MARK REACHES.

22 (B) THE DIVISION'S STATEWIDE GENERAL AUTHORIZATION FOR
23 DISCHARGES TO ISOLATED STATE WATERS DOES NOT INCLUDE THE
24 FOLLOWING STATE WATERS, WHICH MAY BE ISOLATED STATE WATERS:
25 FENS OR PEATLANDS OR KETTLE PONDS. DISCHARGES OF DREDGED OR FILL
26 MATERIAL TO THESE ISOLATED STATE WATERS OF SIGNIFICANCE REQUIRE
27 AN AUTHORIZATION BY THE DIVISION AS DESCRIBED IN SUBSECTION (5)(a),

1 (5)(b)(I), OR (5)(b)(II) OF THIS SECTION.

2 (C) THE DIVISION'S STATEWIDE GENERAL AUTHORIZATION FOR
3 DISCHARGES TO ISOLATED STATE WATERS MUST IDENTIFY BEST
4 MANAGEMENT PRACTICES TO PROTECT ISOLATED STATE WATERS. THE
5 STATEWIDE GENERAL AUTHORIZATION FOR DISCHARGES TO ISOLATED
6 STATE WATERS MUST NOT REQUIRE PRECONSTRUCTION NOTIFICATION AS
7 DESCRIBED IN SUBSECTION (5)(d) OF THIS SECTION.

8 (D) THE DIVISION'S STATEWIDE GENERAL AUTHORIZATION FOR
9 DISCHARGES TO ISOLATED WATERS MUST NOT AUTHORIZE A PROJECT
10 WHERE THE ENTIRE PROJECT'S UNAVOIDABLE ADVERSE IMPACTS EXCEED
11 ONE-TENTH OF AN ACRE OF WETLANDS OR THREE-HUNDREDTHS OF AN
12 ACRE OF STREAMBED. A PROJECT IN EXCESS OF ONE OF THESE THRESHOLDS
13 REQUIRES A PERMIT BY THE DIVISION AS DESCRIBED IN SUBSECTION (5)(a),
14 (5)(b)(I), OR (5)(b)(II) OF THIS SECTION.

15 (E) IF THE DIVISION ISSUES THE STATEWIDE AUTHORIZATION FOR
16 DISCHARGES TO ISOLATED STATE WATERS DESCRIBED IN THIS SUBSECTION
17 (5)(b)(III) PRIOR TO THE COMMISSION'S RULE-MAKING DESCRIBED IN
18 SUBSECTION (4) OF THIS SECTION, THE DIVISION SHALL NOTICE THE DRAFT
19 GENERAL AUTHORIZATION FOR PUBLIC COMMENT FOR SIXTY DAYS PRIOR
20 TO ITS ISSUANCE. THE STATEWIDE GENERAL AUTHORIZATION FOR
21 DISCHARGES TO ISOLATED STATE WATERS IS SUBJECT TO ADMINISTRATIVE
22 REVIEW BY THE COMMISSION PURSUANT TO SECTION 25-8-403.

23 (F) THE AUTHORIZATION TERM OF THE STATEWIDE GENERAL
24 AUTHORIZATION FOR DISCHARGES TO ISOLATED STATE WATERS IS FIVE
25 YEARS.

26 (IV) GENERAL AUTHORIZATIONS ISSUED BY THE DIVISION ARE
27 SUBJECT TO ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION

1 UNDER SECTION 25-8-403; EXCEPT THAT NOTICES OF AUTHORIZATION TO
2 CONDUCT AN ACTIVITY UNDER A GENERAL AUTHORIZATION ARE NOT
3 SUBJECT TO SUCH ADMINISTRATIVE RECONSIDERATION BUT ARE SUBJECT
4 TO JUDICIAL REVIEW UNDER SECTION 25-8-404.

5 (c) **Compensatory mitigation requirements.** (I) THE DIVISION
6 SHALL INCLUDE COMPENSATORY MITIGATION REQUIREMENTS IN ALL
7 INDIVIDUAL AUTHORIZATIONS AND IN GENERAL AUTHORIZATIONS WHERE
8 THE DIVISION DETERMINES THAT THE PROPOSED DISCHARGE OF DREDGED
9 OR FILL MATERIAL WILL RESULT IN:

10 (A) GREATER THAN ONE-TENTH OF AN ACRE OF UNAVOIDABLE
11 ADVERSE IMPACTS TO WETLANDS; OR

12 (B) GREATER THAN THREE-HUNDREDTHS OF AN ACRE OF
13 UNAVOIDABLE IMPACTS TO STREAMS.

14 (II) COMPENSATORY MITIGATION MUST COMPENSATE FOR ALL
15 FUNCTIONS OF STATE WATERS THAT WILL BE LOST AS A RESULT OF THE
16 AUTHORIZED ACTIVITY. COMPENSATORY MITIGATION MAY BE
17 ACCOMPLISHED THROUGH THE PURCHASE OF MITIGATION BANK CREDITS,
18 AN IN-LIEU FEE PROGRAM, OR PERMITTEE-RESPONSIBLE MITIGATION.

19 (d) **Preconstruction notifications.** THE DIVISION SHALL UTILIZE
20 THE EXISTING STRUCTURE OF PRECONSTRUCTION NOTIFICATIONS IN THE
21 NATIONWIDE AND REGIONAL PERMITS ISSUED BY THE UNITED STATES
22 ARMY CORPS OF ENGINEERS, INCLUDING GENERAL AUTHORIZATIONS FOR
23 CATEGORIES OF ACTIVITIES THAT DO NOT REQUIRE PRECONSTRUCTION
24 NOTIFICATION. WHERE PRECONSTRUCTION NOTIFICATION IS REQUIRED BY
25 A GENERAL AUTHORIZATION BEFORE THE COMMENCEMENT OF AN
26 ACTIVITY, THE PROJECT PROPONENT MUST PROVIDE AT LEAST THIRTY
27 CALENDAR DAYS OF PRECONSTRUCTION NOTICE TO THE DIVISION UNLESS

1 A SHORTER NOTICE IS ALLOWED UNDER THE TERMS OF THE APPLICABLE
2 GENERAL AUTHORIZATION. AFTER PROVIDING SUCH PRECONSTRUCTION
3 NOTIFICATION, THE PROJECT PROPONENT MAY COMMENCE THE ACTIVITY
4 IF:

5 (I) THE DIVISION ISSUES TO THE PROJECT PROPONENT A NOTICE OF
6 AUTHORIZATION IN WRITING THAT THE PROJECT PROPONENT MAY
7 COMMENCE THE ACTIVITY; OR

8 (II) FORTY-FIVE CALENDAR DAYS ELAPSE WITHOUT THE DIVISION
9 PROVIDING THE PROJECT PROPONENT A NOTICE OF WRITTEN OBJECTION TO
10 THE ACTIVITY OR PROVIDING A NOTICE THAT THE DIVISION HAS
11 DETERMINED THE NOTIFICATION IS INCOMPLETE, THE ACTIVITY DOES NOT
12 MEET THE CRITERIA FOR THE CATEGORY OF ACTIVITIES COVERED BY THE
13 GENERAL AUTHORIZATION, OR THE ACTIVITY WILL NOT COMPLY WITH ALL
14 APPLICABLE FEDERAL AND STATE STATUTORY AND REGULATORY
15 REQUIREMENTS. A NOTICE OF WRITTEN OBJECTION PROVIDED TO A
16 PROJECT PROPONENT BY THE DIVISION MUST STATE THE BASIS OF THE
17 DIVISION'S OBJECTIONS WITH SPECIFICITY, IS SUBJECT TO DIRECT JUDICIAL
18 REVIEW UNDER SECTION 25-8-404, AND IS NOT SUBJECT TO
19 ADMINISTRATIVE RECONSIDERATION UNDER SECTION 25-8-403.

20 (e) **Notices of authorization.** THE DIVISION MAY ISSUE NOTICES
21 OF AUTHORIZATION, WHERE APPROPRIATE, TO MEMORIALIZE COVERAGE
22 UNDER A GENERAL AUTHORIZATION. THE DIVISION MAY INCLUDE
23 CONDITIONS IN NOTICES OF AUTHORIZATION , ON A CASE-BY-CASE BASIS,
24 TO CLARIFY THE TERMS AND CONDITIONS OF A GENERAL AUTHORIZATION
25 OR TO ENSURE THAT THE ACTIVITY WILL HAVE ONLY MINIMAL INDIVIDUAL
26 AND CUMULATIVE ADVERSE IMPACTS ON STATE WATERS.

27 (f) **Administrative guidance.** THE DIVISION MAY ESTABLISH

1 GUIDANCE TO ASSIST IN ADMINISTERING THE DREDGE AND FILL DISCHARGE
2 AUTHORIZATION PROGRAM. ADDITIONALLY, THE DIVISION MAY RELY UPON
3 RELEVANT GUIDANCE FROM THE FEDERAL ENVIRONMENTAL PROTECTION
4 AGENCY AND THE UNITED STATES ARMY CORPS OF ENGINEERS, INCLUDING
5 TECHNICAL GUIDANCE AND ENVIRONMENTAL ANALYSES UNDER THE
6 FEDERAL "NATIONAL ENVIRONMENTAL POLICY ACT OF 1969", 42 U.S.C.
7 SEC. 4231 ET SEQ., AS AMENDED, IN ADMINISTERING THE PROGRAM, TO THE
8 EXTENT SUCH GUIDANCE IS CONSISTENT WITH THIS SECTION AND THE
9 COMMISSION'S RULES.

10 (g) **Western slope staff.** THE DIVISION MAY, TO THE EXTENT
11 RESOURCES ALLOW, ESTABLISH ONE OR MORE STAFF POSITIONS IN THE
12 WESTERN SLOPE REGION OF THE STATE TO ASSIST WITH DREDGE AND FILL
13 PROGRAM ADMINISTRATION IN THAT GEOGRAPHIC AREA.

14 (6) **Transition - repeal.** (a) UNTIL THE RULES PROMULGATED BY
15 THE COMMISSION PURSUANT TO SUBSECTION (4) OF THIS SECTION BECOME
16 EFFECTIVE AND THE DIVISION ISSUES GENERAL AUTHORIZATIONS UNDER
17 THE RULES:

18 (I) NOTWITHSTANDING SUBSECTION (8)(a) OF THIS SECTION,
19 CLEAN WATER POLICY 17 CONTINUES IN EFFECT UNTIL JANUARY 1, 2025;

20 (II) FOR ACTIVITIES THAT DO NOT QUALIFY FOR ENFORCEMENT
21 DISCRETION UNDER CLEAN WATER POLICY 17 BECAUSE THE ACTIVITIES
22 WOULD REQUIRE COMPENSATORY MITIGATION, AND FOR ACTIVITIES THAT
23 PROCEED UNDER A FEDERAL NATIONWIDE OR REGIONAL PERMIT PURSUANT
24 TO SUBSECTION (5)(b)(II) OF THIS SECTION AND THAT REQUIRE
25 COMPENSATORY MITIGATION, THE DIVISION MAY ISSUE TEMPORARY
26 AUTHORIZATIONS FOR THE DISCHARGE OF DREDGED OR FILL MATERIAL
27 INTO STATE WATERS:

1 (A) WHERE ANY REQUIRED COMPENSATORY MITIGATION IS
2 ASSOCIATED ONLY WITH STREAMS AND NOT WETLANDS AND WOULD
3 RESULT IN NET INCREASES IN THE FUNCTIONS AND SERVICES OF STATE
4 WATERS; OR

5 (B) WHERE THE APPLICANT SHOWS PROOF OF PURCHASE OF
6 MITIGATION BANK CREDITS THAT MEET OR EXCEED THE COMPENSATORY
7 MITIGATION REQUIREMENTS THAT WOULD HAVE BEEN APPLICABLE UNDER
8 THE FEDERAL NATIONWIDE OR REGIONAL PERMIT; AND

9 (III) TEMPORARY AUTHORIZATIONS MUST INCLUDE CONDITIONS
10 NECESSARY TO PROTECT THE PUBLIC HEALTH AND THE ENVIRONMENT AND
11 TO MEET THE INTENT OF THIS SECTION. THE DIVISION MAY ISSUE A
12 TEMPORARY AUTHORIZATION FOR A PERIOD NOT TO EXCEED TWO YEARS,
13 AND A TEMPORARY AUTHORIZATION EXPIRES AS PROVIDED IN THE
14 ISSUANCE OR DENIAL OF THE FINAL NOTICE OF AUTHORIZATION. THE FINAL
15 NOTICE OF AUTHORIZATION MUST INCLUDE SUCH TERMS AND CONDITIONS,
16 INCLUDING THOSE FOR COMPENSATORY MITIGATION, AS ARE NECESSARY
17 TO ADDRESS DISCHARGES THAT OCCURRED UNDER THE TEMPORARY
18 AUTHORIZATION.

19 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE SEPTEMBER 1,
20 2026.

21 (7) **Relationship to section 25-8-104.** THE RULES PROMULGATED
22 PURSUANT TO THIS SECTION ARE SUBJECT TO, AND DO NOT AMEND OR
23 LIMIT, THE RESTRICTIONS DESCRIBED IN SECTION 25-8-104.

24 (8) **Applicability and scope of dredge and fill discharge**
25 **authorization program - prohibitions on discharge without an**
26 **authorization - definitions.** (a) EXCEPT WHEN CONDUCTING AN
27 EXEMPTED ACTIVITY DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION OR

1 WHEN DISCHARGING INTO AN EXCLUDED TYPE OF WATER DESCRIBED IN
2 SUBSECTION (8)(d) OF THIS SECTION, A PERSON SHALL NOT DISCHARGE
3 DREDGED OR FILL MATERIAL INTO STATE WATERS WITHOUT FIRST
4 OBTAINING COVERAGE UNDER A GENERAL AUTHORIZATION OR AN
5 INDIVIDUAL AUTHORIZATION FOR THE DISCHARGE.

6 (b) THE FOLLOWING ACTIVITIES ARE EXEMPT FROM THE
7 REQUIREMENTS OF THIS SECTION AND DO NOT REQUIRE A DISCHARGE
8 AUTHORIZATION:

9 (I) ACTIVITIES IN RECEIPT OF AN ACTIVE SECTION 404 PERMIT THAT
10 WAS ISSUED PRIOR TO MAY 25, 2023;

11 (II) ACTIVITIES IN RECEIPT OF AN UNEXPIRED APPROVED
12 JURISDICTIONAL DETERMINATION ISSUED BY THE UNITED STATES ARMY
13 CORPS OF ENGINEERS PRIOR TO MAY 25, 2023, FINDING THAT THE STATE
14 WATERS INTO WHICH THE PROPOSED DISCHARGE OF DREDGED OR FILL
15 MATERIAL WILL OCCUR ARE NOT WATERS OF THE UNITED STATES;

16 (III) ACTIVITIES IN RECEIPT OF AN ACTIVE SECTION 404 PERMIT
17 THAT WAS ISSUED ON OR AFTER MAY 25, 2023, EXCEPT TO THE EXTENT
18 THAT THE PROJECT AREA OF THE SECTION 404 PERMIT INVOLVES A
19 DISCHARGE OF DREDGED OR FILL MATERIAL INTO STATE WATERS THAT
20 HAVE BEEN DETERMINED BY THE UNITED STATES ARMY CORPS OF
21 ENGINEERS TO NOT BE WATERS OF THE UNITED STATES;

22 (IV) ACTIVITIES ASSOCIATED WITH A PROJECT FOR WHICH THE
23 PROJECT PROPONENT APPLIED FOR AN INDIVIDUAL SECTION 404 PERMIT
24 PRIOR TO MAY 25, 2023;

25 (V) NORMAL FARMING, SILVICULTURE, AND RANCHING ACTIVITIES,
26 SUCH AS PLOWING; SEEDING; CULTIVATING; MINOR DRAINAGE;
27 APPLICATION OF ON-FARM CHEMICALS; HARVESTING FOR THE PRODUCTION

1 OF FOOD, FIBER, AND FOREST PRODUCTS; OR UPLAND SOIL AND WATER
2 CONSERVATION PRACTICES. AS USED IN THIS SUBSECTION (8)(b)(V),
3 "UPLAND SOIL AND WATER CONSERVATION PRACTICES" MEANS ANY
4 DISCHARGE OF DREDGED OR FILL MATERIAL INTO STATE WATERS
5 INCIDENTAL TO SOIL AND WATER CONSERVATION PRACTICES FOR THE
6 PURPOSE OF IMPROVING, MAINTAINING, OR RESTORING UPLANDS,
7 INCLUDING RANGELAND MANAGEMENT PRACTICES, EROSION CONTROL
8 PRACTICES, AND VEGETATION MANAGEMENT PRACTICES.

9 (VI) MAINTENANCE, INCLUDING EMERGENCY RECONSTRUCTION OF
10 RECENTLY DAMAGED PARTS, OF CURRENTLY SERVICEABLE STRUCTURES,
11 SUCH AS DIKES, DAMS, LEVEES, LAGOONS, GROINS, RIPRAP, BREAKWATERS,
12 CAUSEWAYS, BRIDGE ABUTMENTS OR APPROACHES, AND TRANSPORTATION
13 STRUCTURES. MAINTENANCE ALSO INCLUDES MINOR DEVIATIONS IN A
14 STRUCTURE'S CONFIGURATION OR FILLED AREA TO ACCOMMODATE
15 CHANGES IN MATERIALS, CONSTRUCTION TECHNIQUES, REGULATORY
16 REQUIREMENTS, OR CONSTRUCTION CODES OR SAFETY STANDARDS.

17 (VII) CONSTRUCTION OR MAINTENANCE OF FARM PONDS, STOCK
18 PONDS, FARM LAGOONS, SPRINGS, RECHARGE FACILITIES LOCATED IN
19 UPLANDS, AND IRRIGATION DITCHES OR ACEQUIAS, OR MAINTENANCE OF
20 DRAINAGE OR ROADSIDE DITCHES. NONEXEMPTED ACTIVITIES INCLUDE
21 NEW WORK OR WORK TO EXTEND, EXPAND, OR RELOCATE AN IRRIGATION
22 DITCH THAT DOES NOT CARRY WATER PRIMARILY USED FOR
23 AGRICULTURAL PURPOSES. AS USED IN THIS SUBSECTION (8)(b)(VII):

24 (A) "CONSTRUCTION" INCLUDES NEW WORK AND WORK THAT
25 RESULTS IN AN EXTENSION OR EXPANSION OF AN EXISTING STRUCTURE,
26 AND THE CONSTRUCTION OF IRRIGATION DITCHES OR ACEQUIAS INCLUDES
27 ACTIVITIES SUCH AS PLACEMENT OF NEW CONTROL STRUCTURES, DITCH

1 RELOCATION, DITCH CONVERSION INTO PIPE, AND LINING, WHICH MEANS
2 PLACING IMPERVIOUS MATERIAL SUCH AS CONCRETE, CLAY, OR
3 GEOTEXTILE WITHIN THE FLOW PERIMETER OF AN OPEN CANAL, LATERAL,
4 OR DITCH WITH THE INTENT OF REDUCING SEEPAGE LOSSES AND
5 IMPROVING CONVEYANCE EFFICIENCY. ALL NEW LINING OF DITCHES, IN
6 INSTANCES WHERE THE DITCH HAS NOT PREVIOUSLY BEEN LINED, IS
7 CONSIDERED CONSTRUCTION.

8 (B) "IRRIGATION DITCH OR ACEQUIA" INCLUDES A HUMAN-MADE
9 FEATURE OR A MAINTAINED NATURAL FEATURE IF USE OF THE MAINTAINED
10 NATURAL FEATURE EXISTED ON JANUARY 1, 2024, AND AN UPLAND SWALE
11 THAT MOVES OR CONVEYS WATER TO AN ULTIMATE IRRIGATION USE OR
12 PLACE OF USE, OR MOVES OR CONVEYS IRRIGATION WATER, ALSO KNOWN
13 AS "RUNOFF", AWAY FROM IRRIGATED LANDS. "IRRIGATION DITCH OR
14 ACEQUIA" MAY INCLUDE A DISTRIBUTION SYSTEM OR ITS PARTS,
15 INCLUDING HUMAN-MADE CANALS, LATERALS, DITCHES, SIPHONS, PUMPS,
16 HEADGATES, WING WALLS, WEIRS, DIVERSION STRUCTURES, PIPES, PUMP
17 SYSTEMS, RETURN STRUCTURES, AND SUCH OTHER FACILITIES
18 APPURTENANT TO AND FUNCTIONALLY RELATED TO IRRIGATION DITCHES.
19 IF A DITCH CARRIES WATER THAT IS USED PRIMARILY FOR IRRIGATION,
20 IRRIGATION RETURN FLOWS, OR PRECIPITATION OR SNOWMELT THAT
21 MOVES FROM AN IRRIGATED FIELD EITHER TO OR AWAY FROM AN AREA
22 SUBJECT TO BEING IRRIGATED, THAT DITCH IS CONSIDERED AN IRRIGATION
23 DITCH AND NOT A DRAINAGE DITCH.

24 (C) "MAINTENANCE" MEANS MAINTENANCE PERTAINING TO A
25 HUMAN-MADE STRUCTURE, SUCH AS A FARM POND, STOCK POND, OR
26 MAINTAINED SPRING, OR A MAINTAINED NATURAL FEATURE CONVEYING
27 WATER FOR IRRIGATION OR WILDLIFE PURPOSE IF USE OF THE MAINTAINED

1 NATURAL FEATURE EXISTED AS OF JANUARY 1, 2024; MAINTENANCE
2 PERTAINING TO A DITCH OR CANAL CONVEYING WASTEWATER OR WATER
3 FOR IRRIGATION OR FOR MUNICIPAL PURPOSES, DOMESTIC PURPOSES,
4 INDUSTRIAL PURPOSES, COMMERCIAL PURPOSES, AUGMENTATION,
5 RECHARGE, WILDLIFE, RECREATION, COMPACT COMPLIANCE, OR ANY
6 OTHER PURPOSE; AND MAINTENANCE PERTAINING TO REPAIRS TO AN
7 EXISTING STRUCTURE OR FEATURE TO KEEP IT IN ITS EXISTING STATE OR
8 PROPER CONDITION OR TO PRESERVE IT FROM FAILURE OR DECLINE. SUCH
9 MAINTENANCE INCLUDES EXCAVATION OF ACCUMULATED SEDIMENTS
10 BACK TO ORIGINAL CONTOURS; RESHAPING OF SIDE-SLOPES; BANK
11 STABILIZATION TO PREVENT EROSION WHERE REASONABLY NECESSARY
12 USING BEST MANAGEMENT PRACTICES AND, FOR MAINTENANCE OF
13 DRAINAGE DITCHES, MATERIALS THAT ARE COMPATIBLE WITH EXISTING
14 BANK MATERIALS; ARMORING, LINING, AND PIPING FOR THE PURPOSE OF
15 REPAIRING A PREVIOUSLY ARMORED, LINED, OR PIPED SECTION OF A DITCH
16 SO LONG AS ALL WORK OCCURS WITHIN THE FOOTPRINT OF THE PREVIOUS
17 WORK; AND REPLACEMENT OF EXISTING CONTROL STRUCTURES WHERE THE
18 ORIGINAL FUNCTION IS NOT CHANGED AND ORIGINAL APPROXIMATE
19 CAPACITY IS NOT INCREASED.

20 (VIII) CONSTRUCTION OF TEMPORARY SEDIMENTATION BASINS ON
21 A CONSTRUCTION SITE, WHICH CONSTRUCTION DOES NOT INCLUDE
22 PLACEMENT OF FILL MATERIAL INTO STATE WATERS; ■■■

23 (IX) CONSTRUCTION OR MAINTENANCE OF FARM ROADS OR FOREST
24 ROADS OR TEMPORARY ROADS FOR MOVING WILDFIRE AND POST-FIRE
25 MITIGATION EQUIPMENT AND RELATED MATERIALS OR MINING EQUIPMENT
26 WHERE SUCH ROADS ARE CONSTRUCTED AND MAINTAINED, IN
27 ACCORDANCE WITH BEST MANAGEMENT PRACTICES, TO ASSURE THAT

1 FLOW AND CIRCULATION PATTERNS AND CHEMICAL AND BIOLOGICAL
2 CHARACTERISTICS OF THE STATE WATERS ARE NOT IMPAIRED, THAT THE
3 REACH OF THE STATE WATERS IS NOT REDUCED, AND THAT ANY ADVERSE
4 IMPACTS ON THE STATE WATERS WILL BE OTHERWISE MINIMIZED;

5 (X) ACTIVITIES FOR THE PURPOSE OF PROVIDING EMERGENCY
6 RESPONSE TO, PREVENTATIVE MITIGATION OF, OR RECOVERY FROM
7 DAMAGE CAUSED BY A FIRE, A FLOOD, OR OTHER NATURAL DISASTER SO
8 LONG AS THE ACTIVITY IS CONDUCTED IN A MANNER THAT MINIMIZES THE
9 LOSS OF STATE WATERS TO THE EXTENT PRACTICABLE AND IN
10 ACCORDANCE WITH BEST MANAGEMENT PRACTICES THAT DO NOT
11 INTERFERE WITH EFFORTS TO ADDRESS THE UNDERLYING EMERGENCY;

12 (XI) MAINTENANCE OF WATER REUSE FACILITIES, WASTEWATER
13 RECLAMATION FACILITIES, WATER TREATMENT FACILITIES, OR
14 WASTEWATER WATER TREATMENT FACILITIES. SUCH MAINTENANCE
15 INCLUDES RECONSTRUCTION DUE TO RECENT DAMAGE OR MAINTENANCE
16 OF CURRENTLY SERVICEABLE STRUCTURES, SUCH AS PUMPS, CONTROL
17 SYSTEMS, WEIRS, GATES, CLARIFIERS, SOLIDS HANDLING, FILTERS, AND
18 SEDIMENTATION BASINS, WHICH MAINTENANCE ACTIVITIES KEEP THE
19 FACILITY IN ITS EXISTING STATE OR PROPER CONDITION TO PRESERVE IT
20 FROM FAILURE OR DECLINE.

21 (XII) MAINTENANCE ACTIVITIES IN OFF-CHANNEL RESERVOIRS
22 THAT DO NOT DIRECTLY AFFECT A CONNECTED NATURAL STREAM. SUCH
23 MAINTENANCE INCLUDES EMERGENCY RECONSTRUCTION DUE TO RECENT
24 DAMAGE; MAINTENANCE OF CURRENTLY SERVICEABLE STRUCTURES SUCH
25 AS SPILLWAYS, OUTLET STRUCTURES, GATES, PUMPS, AND CONTROL
26 SYSTEMS; AND RESHAPING OF SIDE SLOPES, BANK STABILIZATION, OR
27 DREDGING, WHICH MAINTENANCE ACTIVITIES KEEP AN OFF-CHANNEL

1 RESERVOIR IN ITS EXISTING STATE OR PROPER CONDITION AND TO
2 PRESERVE IT FROM FAILURE OR DECLINE.

3 (XIII) WILDLIFE HABITAT MANAGEMENT ACTIVITIES, INCLUDING
4 SEEDING, CULTIVATING, MINOR DRAINAGE, VEGETATION MANAGEMENT,
5 IRRIGATING, WATER MANAGEMENT, AND MAINTENANCE OF DITCHES,
6 DIKES, EMBANKMENTS, IMPOUNDMENTS, WATER CONTROL FEATURES, AND
7 OTHER WATER CONVEYANCE FEATURES THAT ARE HUMAN-MADE OR
8 MAINTAINED OR THAT OCCUR NATURALLY TO SUPPORT WILDLIFE HABITAT.

9 "WILDLIFE HABITAT MANAGEMENT" MEANS ACTIVITIES THAT OCCUR ON
10 LAND MANAGED PRIMARILY FOR WETLAND OR RIPARIAN HABITATS TO
11 SUPPORT WETLAND AND RIPARIAN SPECIES AND DOES NOT INCLUDE
12 ACTIVITIES THAT ARE INCIDENTAL TO LAND USED FOR RESIDENTIAL,
13 INDUSTRIAL, OR COMMERCIAL PURPOSES.

14 (c) **Recapture provision - rules.** CONSISTENT WITH SECTION 404
15 (f)(2) OF THE FEDERAL ACT, ANY DISCHARGE OF DREDGED OR FILL
16 MATERIAL INTO STATE WATERS INCIDENTAL TO ANY ACTIVITY THAT
17 BRINGS AN AREA OF THE STATE WATERS INTO A USE TO WHICH IT WAS NOT
18 PREVIOUSLY SUBJECT, WHERE THE FLOW OR CIRCULATION OF STATE
19 WATERS MAY BE IMPAIRED OR WHERE THE REACH OF SUCH WATERS MAY
20 BE REDUCED, IS NOT INCLUDED WITHIN THE EXEMPTED ACTIVITIES
21 DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION. THE COMMISSION MAY
22 FURTHER CLARIFY THE EFFECT OF THIS SUBSECTION (8)(c) THROUGH
23 RULE-MAKING.

24 (d) **Excluded types of waters - definitions.** NOTWITHSTANDING
25 THE DEFINITION OF "STATE WATERS" PROVIDED IN SECTION 25-8-103 (19),
26 AN AUTHORIZATION IS NOT REQUIRED FOR THE DISCHARGE OF DREDGED OR
27 FILL MATERIAL INTO THE FOLLOWING TYPES OF WATERS, AND SUCH A

1 DISCHARGE IS NOT OTHERWISE PROHIBITED OR REGULATED UNDER THIS
2 SECTION:

3 (I) ALL PORTIONS OF DITCHES AND CANALS THAT ARE EXCAVATED
4 ON UPLAND AND THAT CONVEY WATER OR WASTEWATER;

5 (II) STORM WATER CONTROL FEATURES THAT ARE CONSTRUCTED
6 TO CONVEY, TREAT, OR STORE STORM WATER AND THAT ARE CREATED IN
7 UPLAND;

8 (III) ARTIFICIALLY IRRIGATED AREAS THAT WOULD REVERT TO
9 UPLANDS IF IRRIGATION CEASED;

10 (IV) ARTIFICIAL LAKES, LAGOONS, OR PONDS THAT ARE CREATED
11 ENTIRELY BY EXCAVATING OR DIKING UPLAND TO COLLECT AND RETAIN
12 WATER AND THAT ARE USED EXCLUSIVELY FOR STOCK WATERING,
13 IRRIGATION, SETTLING BASINS, OR RICE GROWING;

14 (V) WETLANDS THAT ARE ADJACENT TO A DITCH OR CANAL AND
15 SUPPORTED BY WATER IN THE ADJACENT DITCH OR CANAL;

16 (VI) RECHARGE FACILITIES, INCLUDING PONDS, INCLUDED IN
17 UPLANDS FOR THE PURPOSE OF FACILITATING RECHARGE OF AQUIFERS OR
18 STREAMS;

19 (VII) ARTIFICIAL REFLECTING OR SWIMMING POOLS OR OTHER
20 SMALL ORNAMENTAL BODIES OF WATER CREATED BY EXCAVATING OR
21 DIKING UPLAND TO RETAIN WATER FOR PRIMARILY AESTHETIC REASONS;

22 (VIII) WATER-FILLED DEPRESSIONS CREATED IN UPLANDS
23 INCIDENTAL TO MINING OR CONSTRUCTION ACTIVITY AND PITS EXCAVATED
24 IN UPLANDS FOR THE PURPOSE OF OBTAINING FILL, SAND, OR GRAVEL
25 UNLESS AND UNTIL THE CONSTRUCTION OR EXCAVATION OPERATION IS
26 ABANDONED AND THE RESULTING WATER FEATURE IS STATE WATERS;

27 (IX) SWALES AND EROSIONAL FEATURES, SUCH AS GULLIES, SMALL

1 WASHES, AND RILLS, THAT DO NOT CONTAIN WETLANDS OR AN ORDINARY
2 HIGH WATERMARK;

3 (X) GROUNDWATER. AS USED IN THIS SUBSECTION (8)(d)(X),
4 "GROUNDWATER" MEANS SUBSURFACE WATERS IN A ZONE OF SATURATION
5 THAT ARE OR CAN BE BROUGHT TO THE SURFACE OF THE GROUND OR TO
6 SURFACE WATERS THROUGH WELLS, SPRINGS, SEEPS, OR OTHER DISCHARGE
7 AREAS. "GROUNDWATER" DOES NOT INCLUDE WETLANDS.

8 (XI) PRIOR CONVERTED CROPLAND. AS USED IN THIS SUBSECTION
9 (8)(d)(XI), "PRIOR CONVERTED CROPLAND" MEANS ANY AREA THAT, PRIOR
10 TO DECEMBER 23, 1985, WAS DRAINED OR OTHERWISE MANIPULATED FOR
11 AGRICULTURAL PURPOSES, WHICH INCLUDES LAND USE THAT MAKES THE
12 PRODUCTION OF AN AGRICULTURAL PRODUCT POSSIBLE, INCLUDING
13 GRAZING AND HAYING. CROPLAND THAT IS LEFT IDLE OR FALLOW FOR
14 CONSERVATION OR AGRICULTURAL PURPOSES FOR ANY PERIOD OF TIME
15 REMAINS IN AGRICULTURAL USE AND, IF THE CROPLAND OTHERWISE
16 QUALIFIES UNDER THIS SUBSECTION (8)(d)(XI), IS PRIOR CONVERTED
17 CROPLAND. THE COMMISSION AND THE DIVISION SHALL RECOGNIZE
18 DESIGNATIONS OF PRIOR CONVERTED CROPLAND MADE BY THE UNITED
19 STATES SECRETARY OF AGRICULTURE. AN AREA IS NO LONGER
20 CONSIDERED PRIOR CONVERTED CROPLAND IF THE AREA IS ABANDONED
21 AND HAS REVERTED TO WETLANDS. ABANDONMENT OCCURS WHEN PRIOR
22 CONVERTED CROPLAND IS NOT USED FOR, OR IN SUPPORT OF,
23 AGRICULTURAL PURPOSES AT LEAST ONCE IN THE IMMEDIATELY
24 PRECEDING FIVE YEARS. THE DIVISION SHALL DETERMINE WHETHER PRIOR
25 CONVERTED CROPLAND HAS BEEN ABANDONED, SUBJECT TO APPEAL TO
26 THE COMMISSION.

27 (9) FOR THE 2024-25 STATE FISCAL YEAR AND FOR EACH STATE

1 FISCAL YEAR THEREAFTER, IF THE TOTAL NUMBER OF AUTHORIZATIONS
2 ISSUED PURSUANT TO SUBSECTION (5) OF THIS SECTION EXCEEDS OR IS
3 PROJECTED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
4 TO EXCEED ONE HUNDRED TEN AUTHORIZATIONS, THE DEPARTMENT OF
5 PUBLIC HEALTH AND ENVIRONMENT SHALL SEEK A SUPPLEMENTAL
6 APPROPRIATION FROM THE GENERAL ASSEMBLY TO PAY THE COSTS OF
7 PROCESSING THE AUTHORIZATIONS AND TO ENSURE THAT
8 AUTHORIZATIONS ARE PROCESSED IN A TIMELY MANNER.

9 **SECTION 3.** In Colorado Revised Statutes, 25-8-103, **amend**
10 (19) as follows:

11 **25-8-103. Definitions.** As used in this article 8, unless the context
12 otherwise requires:

13 (19) "State waters" means any and all surface and subsurface
14 waters ~~which~~ THAT are contained in or flow in or through this state,
15 INCLUDING WETLANDS, but does not include waters in sewage systems,
16 waters in treatment works of disposal systems, waters in potable water
17 distribution systems, and all water withdrawn for use until use and
18 treatment have been completed.

19 **SECTION 4.** In Colorado Revised Statutes, 25-8-210, **add** (1)(d),
20 (4)(a)(I.5), and (4)(d) as follows:

21 **25-8-210. Fees established administratively - rules -**
22 **shareholding requirement - phase-in period - clean water cash fund**
23 **- creation - repeal.** (1) (d) ON OR BEFORE **DECEMBER 31, 2025**, THE
24 COMMISSION SHALL ESTABLISH BY RULE THE AUTHORIZATION FEES FOR
25 THE DREDGE AND FILL PROGRAM, AS DEFINED IN SECTION 25-8-205.1 (3).
26 THE DIVISION SHALL TRANSMIT THE FEES COLLECTED PURSUANT TO THE
27 COMMISSION'S FEE-SETTING RULES ADOPTED UNDER THIS SUBSECTION

1 (1)(d) TO THE STATE TREASURER, WHO SHALL CREDIT THE FEES TO THE
2 CLEAN WATER CASH FUND CREATED IN SUBSECTION (4) OF THIS SECTION.

3 (4) (a) The clean water cash fund is created in the state treasury.

4 The fund consists of:

5 (I.5) MONEY THAT THE GENERAL ASSEMBLY TRANSFERS TO THE
6 FUND PURSUANT TO SUBSECTION (4)(d) OF THIS SECTION;

7 (d) FOR THE 2026-27 STATE FISCAL YEAR AND FOR EACH STATE
8 FISCAL YEAR THEREAFTER, THE STATE TREASURER SHALL TRANSFER TWO
9 HUNDRED FORTY-EIGHT THOUSAND THREE HUNDRED FOUR DOLLARS FROM
10 THE GENERAL FUND TO THE CLEAN WATER CASH FUND.

11 **SECTION 5.** In Colorado Revised Statutes, 37-60-122.2, **amend**
12 (1)(b) as follows:

13 **37-60-122.2. Fish and wildlife resources - legislative**
14 **declaration - fund - authorization.** (1) (b) Except as provided in this
15 ~~paragraph (b)~~ SUBSECTION (1)(b), the applicant for any water diversion,
16 delivery, or storage facility ~~which~~ THAT requires an application for a
17 permit, A license, or other approval from the United States, OR THAT
18 REQUIRES AN APPLICATION FOR AN INDIVIDUAL AUTHORIZATION FROM THE
19 DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND
20 ENVIRONMENT PURSUANT TO SECTION 25-8-205.1, shall inform the
21 Colorado water conservation board, parks and wildlife commission, and
22 division of parks and wildlife of its application and submit a mitigation
23 proposal pursuant to this section. Exempted from such requirement are
24 the Animas-La Plata project, the Two Forks dam and reservoir project,
25 and the Homestake water project for which definite plan reports and final
26 environmental impact statements have been approved or ~~which~~ THAT are
27 awaiting approval of the same; applicants for site specific 404 FEDERAL

1 dredge and fill permits OR INDIVIDUAL AUTHORIZATIONS UNDER SECTION
2 25-8-205.1 (5)(a) for ~~operations~~ ACTIVITIES not requiring construction of
3 a reservoir; and applicants for section 404 federal nationwide ~~permits OR~~
4 ~~GENERAL AUTHORIZATIONS ISSUED PURSUANT TO SECTION 25-8-205.1~~
5 ~~(5)(b)~~. If an applicant that is subject to ~~the provisions of~~ this section and
6 the commission agree upon a mitigation plan for the facility, the
7 commission shall forward such agreement to the Colorado water
8 conservation board, and the board shall adopt such agreement at its next
9 meeting as the official state position on the mitigation actions required of
10 the applicant. In all cases, the commission shall proceed expeditiously
11 and, no later than sixty days ~~from~~ AFTER the applicant's notice, unless
12 extended in writing by the applicant, make its evaluation regarding the
13 probable impact of the proposed facility on fish and wildlife resources
14 and their habitat and ~~to~~ make its recommendation regarding such
15 reasonable mitigation actions as may be needed.

16
17 **SECTION 6.** In Colorado Revised Statutes, 39-29-109.3, **amend**
18 (1) introductory portion; and **add** (11) as follows:

19 **39-29-109.3. Severance tax operational fund - core reserve -**
20 **grant program reserve - definitions - repeal.** (1) The executive director
21 of the department of natural resources shall submit with the department's
22 budget request for each fiscal year a list and description of the programs
23 the executive director recommends to be funded from the severance tax
24 operational fund created in section 39-29-109 (2)(b), referred to in this
25 section as the "operational fund". Except as otherwise provided in
26 ~~subsection (10)~~ SUBSECTIONS (10) AND (11) of this section, the general
27 assembly may appropriate money from the total money available in the

1 operational fund to fund recommended programs as follows:

2 (11)(a) ON JULY 1, 2024, THE STATE TREASURER SHALL TRANSFER
3 SEVEN HUNDRED FORTY-EIGHT THOUSAND DOLLARS FROM THE
4 OPERATIONAL FUND TO THE CLEAN WATER CASH FUND CREATED IN
5 SECTION 25-8-210 (4) FOR USE BY THE DEPARTMENT OF PUBLIC HEALTH
6 AND ENVIRONMENT IN ADMINISTERING THE PROGRAM DESCRIBED IN
7 SECTION 25-8-205.1.

8 (b) THIS SUBSECTION (11) IS REPEALED, EFFECTIVE JULY 1, 2027.

9

10 **SECTION 7. Appropriation.** (1) For the 2024-25 state fiscal
11 year, \$747,639 is appropriated to the department of public health and
12 environment. This appropriation is from the clean water cash fund created
13 in section 25-8-210 (4)(a), C.R.S. Any money appropriated in this section
14 not expended prior to July 1, 2025, is further appropriated to the
15 department for the 2025-26 state fiscal year for the same purpose. To
16 implement this act, the department may use this appropriation as follows:

17 (a) \$726,900 for use by the water quality control division for clean
18 water program costs, which amount is based on an assumption that the
19 division will require an additional 8.7 FTE; and

20 (b) \$20,739 for the purchase of legal services.

21 (2) For the 2024-25 state fiscal year, \$20,739 is appropriated to
22 the department of law. This appropriation is from reappropriated funds
23 received from the department of public health and environment under
24 subsection (1)(b) of this section and is based on an assumption that the
25 department of law will require an additional 0.1 FTE. To implement this
26 act, the department of law may use this appropriation to provide legal
27 services for the department of public health and environment.

1 **SECTION 8. Safety clause.** The general assembly finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, or safety or for appropriations for
4 the support and maintenance of the departments of the state and state
5 institutions.