

CHAPTER 274

HEALTH AND ENVIRONMENT

HOUSE BILL 24-1379

BY REPRESENTATIVE(S) McCluskie and McCormick, Bacon, Boesenecker, Brown, Daugherty, Duran, English, Epps, Jodeh, Joseph, Kipp, Lindsay, Lukens, Mabrey, Marvin, McLachlan, Ricks, Rutinel, Sirota, Titone, Valdez, Velasco, Vigil, Weissman, Amabile, Bird, Lindstedt;
also SENATOR(S) Roberts and Kirkmeyer, Bridges, Buckner, Cutter, Exum, Fields, Gardner, Jaquez Lewis, Lundeen, Michaelson Jenet, Mullica, Pelton R., Priola, Simpson, Will, Zenzinger.

AN ACT

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

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

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

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

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

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

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

(I) ON MAY 25, 2023, THE UNITED STATES SUPREME COURT ISSUED AN OPINION IN *SACKETT V. ENVIRONMENTAL PROTECTION AGENCY*, 598 U.S. 651 (2023), THAT INTERPRETED THE TYPES OF WATER RESOURCES THAT ARE CONSIDERED TO BE "WATERS OF THE UNITED STATES", WHICH ARE SUBJECT TO FEDERAL PERMITTING REQUIREMENTS UNDER SECTION 404 OF THE FEDERAL "CLEAN WATER ACT", PUB.L.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

92-500, CODIFIED AT 33 U.S.C. SEC. 1251 ET SEQ., AS AMENDED, FOR THE DISCHARGE OF DREDGED OR FILL MATERIAL. THE *SACKETT* RULING BECAME IMMEDIATELY EFFECTIVE IN COLORADO, AND THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ARMY CORPS OF ENGINEERS SUBSEQUENTLY PUBLISHED NEW REGULATIONS SEEKING TO CONFORM TO THE *SACKETT* RULING. AS A RESULT, FEDERAL PERMITTING REQUIREMENTS FOR THE DISCHARGE OF DREDGED OR FILL MATERIAL NO LONGER APPLY TO CERTAIN STATE WATERS, INCLUDING MANY WETLANDS.

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

(III) SOME PROJECTS INVOLVING THE DISCHARGE OF DREDGED OR FILL MATERIAL, SUCH AS THOSE FOR FLOOD CONTROL; STREAM RESTORATION; WATER DEVELOPMENT; CONSTRUCTION OR MAINTENANCE OF UNDERGROUND UTILITIES, ROADS, TRANSIT, RAIL, AND HOUSING; AND SIMILAR EFFORTS THAT ARE NO LONGER REGULATED BY THE FEDERAL ACT AS A RESULT OF *SACKETT*, FACE REGULATORY UNCERTAINTY UNLESS COLORADO DEVELOPS ITS OWN DREDGE AND FILL PROGRAM; AND

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

(b) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

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

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

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

THAT WETLANDS ARE STATE WATERS DESERVING OF PROTECTION UNDER THIS ARTICLE 8.

(IV) DEVELOPING A STATE DREDGE AND FILL PROGRAM WILL BENEFIT THE ENTITIES THAT WISH TO ENGAGE IN DREDGE AND FILL PROJECTS WITHIN COLORADO BECAUSE, WITHOUT A DISCHARGE AUTHORIZATION FRAMEWORK, THOSE PROJECTS WILL BE PROHIBITED TO THE DETRIMENT OF COLORADO'S ECONOMY AND GENERAL WELFARE;

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

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

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

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

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

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

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

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

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

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

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

(c) "CONSULTATION" MEANS TO GIVE A FEDERAL, STATE, LOCAL, OR TRIBAL ENTITY THE OPPORTUNITY TO PROVIDE SPECIAL EXPERTISE TO AUTHORIZATION PROCESSES AND TECHNICAL GROUPS, ACT AS A COOPERATING AGENCY, OR ENGAGE AS MUTUALLY AGREED BY THE DIVISION AND THE ENTITY.

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

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

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

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

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

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

(B) ACTIVITIES THAT INVOLVE ONLY THE CUTTING OR REMOVING OF VEGETATION ABOVE THE GROUND, SUCH AS MOWING, ROTARY CUTTING, AND CHAINSAWING, SO LONG AS THE ACTIVITY NEITHER SUBSTANTIALLY DISTURBS THE VEGETATION'S ROOT SYSTEM NOR INVOLVES MECHANIZED PUSHING, DRAGGING, OR OTHER SIMILAR ACTIVITIES THAT REDEPOSIT EXCAVATED SOIL MATERIAL; OR

(C) INCIDENTAL FALLBACK.

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

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

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

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

(D) CAUSEWAYS OR ROAD FILLS;

(E) DAMS AND DIKES;

(F) ARTIFICIAL ISLANDS;

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

(H) LEVEES;

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

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

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

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

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

(B) PLACEMENT OF PILINGS IN STATE WATERS, UNLESS THE PLACEMENT HAS OR WOULD HAVE THE EFFECT OF A DISCHARGE OF FILL MATERIAL. PLACEMENT OF PILINGS FOR LINEAR PROJECTS, SUCH AS BRIDGES, ELEVATED WALKWAYS, AND POWER LINE STRUCTURES, GENERALLY DOES NOT HAVE THE EFFECT OF A DISCHARGE OF FILL MATERIAL. FURTHERMORE, PLACEMENT OF PILINGS IN STATE WATERS FOR A PIER, A WHARF, OR AN INDIVIDUAL HOUSE ON STILTS GENERALLY DOES NOT HAVE THE EFFECT OF A DISCHARGE OF FILL MATERIAL. EXAMPLES OF ACTIVITIES THAT WOULD HAVE THE EFFECT OF A DISCHARGE OF FILL MATERIAL INCLUDE PROJECTS WHERE THE PILINGS ARE SO CLOSELY SPACED THAT SEDIMENTATION RATES WOULD BE INCREASED, PROJECTS IN WHICH THE PILINGS THEMSELVES EFFECTIVELY WOULD REPLACE THE BOTTOM OF A BODY OF STATE WATERS, PROJECTS INVOLVING THE

PLACEMENT OF PILINGS THAT WOULD REDUCE THE REACH OR IMPAIR THE FLOW OR CIRCULATION OF STATE WATERS, AND PROJECTS INVOLVING THE PLACEMENT OF PILINGS THAT WOULD RESULT IN THE ADVERSE ALTERATION OR ELIMINATION OF AQUATIC FUNCTIONS.

(f) "DRAINAGE DITCH" MEANS A DITCH THAT IS DESIGNED FOR AT LEAST THE PARTIAL PURPOSE OF INCREASING DRAINAGE OF A PARTICULAR LAND AREA OR INFRASTRUCTURE FOR PURPOSES INCLUDING AGRICULTURE; TRANSPORTATION, INCLUDING ROADSIDE AND RAILROAD TRANSPORTATION; MOSQUITO ABATEMENT; AND STORMWATER MANAGEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) "ORDINARY HIGH WATERMARK" MEANS THAT LINE ON THE SHORE ESTABLISHED BY THE FLUCTUATIONS OF WATER AND INDICATED BY PHYSICAL CHARACTERISTICS, SUCH AS:

(I) A CLEAR, NATURAL LINE IMPRESSED ON THE BANK;

(II) SHELIVING;

(III) CHANGES IN THE CHARACTER OF SOIL;

(IV) DESTRUCTION OF TERRESTRIAL VEGETATION;

(V) THE PRESENCE OF LITTER AND DEBRIS; OR

(VI) OTHER APPROPRIATE MEANS THAT CONSIDER THE CHARACTERISTICS OF THE SURROUNDING AREA.

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

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

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

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

(4) Duties of the commission. (a) (I) Rules for state dredge and fill discharge authorization program - definition. THE COMMISSION SHALL PROMULGATE RULES BY DECEMBER 31, 2025, AS NECESSARY TO IMPLEMENT A STATE DREDGE AND FILL DISCHARGE AUTHORIZATION PROGRAM. THE RULES MUST FOCUS ON AVOIDANCE AND MINIMIZATION OF ADVERSE IMPACTS AND ON COMPENSATION FOR UNAVOIDABLE ADVERSE IMPACTS OF DREDGE AND FILL ACTIVITY AND MUST INCORPORATE THE GUIDELINES DEVELOPED PURSUANT TO SECTION 404 (b)(1) OF THE FEDERAL ACT.

(II) THE RULES PROMULGATED PURSUANT TO SUBSECTION (4)(a)(I) OF THIS SECTION MUST INCLUDE:

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

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

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

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

(E) AN EXEMPTION FOR VOLUNTARY STREAM RESTORATION EFFORTS IN EPHEMERAL STREAMS THAT DO NOT REQUIRE COMPENSATORY MITIGATION AND ARE DESIGNED SOLELY TO PROVIDE ECOLOGICAL LIFT WHERE THE ACTIVITY IS TAKING PLACE. AS USED IN THIS SUBSECTION (4)(a)(I)(E), "EPHEMERAL STREAM" MEANS A STREAM CHANNEL OR A REACH OF A STREAM CHANNEL THAT CARRIES FLOW DURING, AND FOR A SHORT DURATION AS THE DIRECT RESULT OF, PRECIPITATION EVENTS AND THAT HAS A CHANNEL BOTTOM THAT IS ALWAYS ABOVE THE GROUNDWATER TABLE.

(III) THE RULES PROMULGATED PURSUANT TO SUBSECTION (4)(a)(I) OF THIS SECTION MAY INCLUDE:

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

(B) A DEADLINE SHORTER THAN TWO YEARS FOR THE DIVISION TO ACT UPON A COMPLETE APPLICATION FOR AN INDIVIDUAL AUTHORIZATION FOR PROJECTS THAT INVOLVE MINIMAL TO MODERATE COSTS AND HAVE MINIMAL WATER QUALITY IMPACTS OR LIMITED POTENTIAL WATER QUALITY IMPACTS.

(IV) (A) IN PROMULGATING THE RULES DESCRIBED IN SUBSECTION (4)(a)(I) OF THIS SECTION, THE COMMISSION SHALL ENSURE THAT THE RULES ARE AS PROTECTIVE AS THE GUIDELINES SET FORTH IN SECTION 404 (b)(1) OF THE FEDERAL ACT AND IN EFFECT AS OF THE EFFECTIVE DATE OF THIS SECTION.

(B) IF THE COMMISSION FINDS, BASED ON A DEMONSTRATION AT A PUBLIC RULEMAKING HEARING, THAT THE GUIDELINES SET FORTH IN SECTION 404 (b)(1) OF THE FEDERAL ACT ARE NOT PROTECTING STATE WATERS, THE COMMISSION SHALL AMEND ITS RULES OR ADOPT NEW RULES TO PROTECT STATE WATERS. SUCH A HEARING MAY BE INITIATED BY THE COMMISSION UPON ITS OWN MOTION OR UPON A PETITION FROM THE DIVISION. ANY INTERESTED PERSON MAY PETITION TO THE COMMISSION TO INITIATE A HEARING, AND THE COMMISSION MAY GRANT OR DENY SUCH A REQUEST.

(C) THE COMMISSION'S FINDINGS TO SUPPORT ANY CHANGES TO ITS RULES MUST BE BASED ON SOUND SCIENTIFIC OR TECHNICAL EVIDENCE IN THE RECORD DEMONSTRATING THAT RULES MORE PROTECTIVE THAN THE GUIDELINES SET FORTH IN SECTION 404 (b)(1) OF THE FEDERAL ACT ARE NECESSARY TO PROTECT THE CHEMICAL, PHYSICAL, AND BIOLOGICAL INTEGRITY OF STATE WATERS. THE FINDINGS MUST BE ACCOMPANIED BY A STATEMENT OF BASIS AND PURPOSE REFERRING TO AND EVALUATING THE INFORMATION AND STUDIES CONTAINED IN THE RECORD, WHICH FORM THE BASIS FOR THE COMMISSION'S CONCLUSION.

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

(I) APPLICATION REQUIREMENTS, INCLUDING:

(A) PROJECT LOCATION INFORMATION;

(B) A PROJECT DESCRIPTION, INCLUDING SITE PLANS;

(C) AN ALTERNATIVES ANALYSIS;

(D) A PURPOSE AND NEED STATEMENT;

(E) A DESCRIPTION OF AVOIDANCE AND MINIMIZATION MEASURES;

(F) A PROJECTED IMPACTS ANALYSIS; AND

(G) A COMPENSATORY MITIGATION PLAN;

(II) A PROHIBITION AGAINST THE DISCHARGE OF DREDGED OR FILL MATERIAL WHERE THERE IS A PRACTICABLE ALTERNATIVE TO THE PROPOSED DISCHARGE THAT WOULD HAVE LESS ADVERSE IMPACT ON STATE WATERS SO LONG AS THE ALTERNATIVE DOES NOT HAVE OTHER SIGNIFICANT ADVERSE ENVIRONMENTAL CONSEQUENCES. ANY PURPOSE AND NEED STATEMENT, EVALUATION OF ALTERNATIVES, AND IMPACTS ANALYSIS DEVELOPED THROUGH THE SECTION 404 PERMITTING PROCESS SHALL BE USED FOR THE PURPOSE OF IMPLEMENTING THIS PROHIBITION. THE RULES MUST ALSO INCLUDE CRITERIA FOR THE DIVISION TO USE TO IMPLEMENT THE PROHIBITION.

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

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

(B) PROTECT DOWNSTREAM USES;

(C) ADDRESS THE DIRECT, INDIRECT, AND CUMULATIVE IMPACTS OF THE ACTIVITY ON THE CHEMICAL, PHYSICAL, AND BIOLOGICAL INTEGRITY OF STATE WATERS; AND

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

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

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

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

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

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

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

(IV) AN INDIVIDUAL AUTHORIZATION, INCLUDING ALL CONDITIONS INCORPORATED INTO THE INDIVIDUAL AUTHORIZATION, IS SUBJECT TO ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION UNDER SECTION 25-8-403 AND THEN JUDICIAL REVIEW UNDER SECTION 25-8-404.

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

(II) BEGINNING JANUARY 1, 2025, UNTIL THE RULES DESCRIBED IN SUBSECTION (4) OF THIS SECTION ARE PROMULGATED AND THE DIVISION ISSUES GENERAL AUTHORIZATIONS UNDER THE RULES, THE NATIONWIDE AND REGIONAL GENERAL PERMITS ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS, AS SUCH PERMITS APPLY TO COLORADO AND SUBJECT TO SUBSECTIONS (8)(b) AND (8)(d) OF THIS SECTION, CONSTITUTE VALID AUTHORIZATIONS TO DISCHARGE DREDGED OR FILL MATERIAL INTO STATE WATERS THAT ARE NOT SUBJECT TO FEDERAL JURISDICTION. THE DIVISION SHALL RECOGNIZE COMPLIANCE WITH THE APPLICABLE TERMS OF THE NATIONWIDE AND REGIONAL GENERAL PERMITS AS CONSTITUTING COMPLIANCE WITH THIS SECTION. BEGINNING JANUARY 1, 2025, AN APPLICANT SEEKING AUTHORIZATION FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO STATE WATERS THAT ARE NOT SUBJECT TO FEDERAL JURISDICTION SHALL SUBMIT TO THE DIVISION ANY PRECONSTRUCTION NOTIFICATION REQUIRED UNDER THE APPLICABLE NATIONWIDE OR REGIONAL GENERAL PERMIT. IF THE APPLICABLE NATIONWIDE OR REGIONAL GENERAL PERMIT REQUIRES COMPENSATORY MITIGATION, THE APPLICANT SHALL OBTAIN A TEMPORARY AUTHORIZATION FROM THE DIVISION PURSUANT TO SUBSECTION (6)(a)(II) OF THIS SECTION BEFORE THE COMMENCEMENT OF THE ACTIVITY.

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

(B) THE DIVISION'S STATEWIDE GENERAL AUTHORIZATION FOR DISCHARGES TO ISOLATED STATE WATERS DOES NOT INCLUDE THE FOLLOWING STATE WATERS, WHICH MAY BE ISOLATED STATE WATERS: FENS OR PEATLANDS OR KETTLE PONDS. DISCHARGES OF DREDGED OR FILL MATERIAL TO THESE ISOLATED STATE WATERS OF

SIGNIFICANCE REQUIRE AN AUTHORIZATION BY THE DIVISION AS DESCRIBED IN SUBSECTION (5)(a), (5)(b)(I), OR (5)(b)(II) OF THIS SECTION.

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

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

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

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

(IV) GENERAL AUTHORIZATIONS ISSUED BY THE DIVISION ARE SUBJECT TO ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION UNDER SECTION 25-8-403; EXCEPT THAT NOTICES OF AUTHORIZATION TO CONDUCT AN ACTIVITY UNDER A GENERAL AUTHORIZATION ARE NOT SUBJECT TO SUCH ADMINISTRATIVE RECONSIDERATION BUT ARE SUBJECT TO JUDICIAL REVIEW UNDER SECTION 25-8-404.

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

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

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

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

(d) **Preconstruction notifications.** THE DIVISION SHALL UTILIZE THE EXISTING

STRUCTURE OF PRECONSTRUCTION NOTIFICATIONS IN THE NATIONWIDE AND REGIONAL PERMITS ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS, INCLUDING GENERAL AUTHORIZATIONS FOR CATEGORIES OF ACTIVITIES THAT DO NOT REQUIRE PRECONSTRUCTION NOTIFICATION. WHERE PRECONSTRUCTION NOTIFICATION IS REQUIRED BY A GENERAL AUTHORIZATION BEFORE THE COMMENCEMENT OF AN ACTIVITY, THE PROJECT PROPONENT MUST PROVIDE AT LEAST THIRTY CALENDAR DAYS OF PRECONSTRUCTION NOTICE TO THE DIVISION UNLESS A SHORTER NOTICE IS ALLOWED UNDER THE TERMS OF THE APPLICABLE GENERAL AUTHORIZATION. AFTER PROVIDING SUCH PRECONSTRUCTION NOTIFICATION, THE PROJECT PROPONENT MAY COMMENCE THE ACTIVITY IF:

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

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

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

(f) **Administrative guidance.** THE DIVISION MAY ESTABLISH GUIDANCE TO ASSIST IN ADMINISTERING THE DREDGE AND FILL DISCHARGE AUTHORIZATION PROGRAM. ADDITIONALLY, THE DIVISION MAY RELY UPON RELEVANT GUIDANCE FROM THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ARMY CORPS OF ENGINEERS, INCLUDING TECHNICAL GUIDANCE AND ENVIRONMENTAL ANALYSES UNDER THE FEDERAL "NATIONAL ENVIRONMENTAL POLICY ACT OF 1969", 42 U.S.C. SEC. 4231 ET SEQ., AS AMENDED, IN ADMINISTERING THE PROGRAM, TO THE EXTENT SUCH GUIDANCE IS CONSISTENT WITH THIS SECTION AND THE COMMISSION'S RULES.

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

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

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

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

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

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

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

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

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

(8) Applicability and scope of dredge and fill discharge authorization program - prohibitions on discharge without an authorization - definitions.

(a) EXCEPT WHEN CONDUCTING AN EXEMPTED ACTIVITY DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION OR WHEN DISCHARGING INTO AN EXCLUDED TYPE OF WATER DESCRIBED IN SUBSECTION (8)(d) OF THIS SECTION, A PERSON SHALL NOT DISCHARGE DREDGED OR FILL MATERIAL INTO STATE WATERS WITHOUT FIRST OBTAINING COVERAGE UNDER A GENERAL AUTHORIZATION OR AN INDIVIDUAL AUTHORIZATION FOR THE DISCHARGE.

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

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

(II) ACTIVITIES IN RECEIPT OF AN APPROVED JURISDICTIONAL DETERMINATION ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS PRIOR TO MAY 25, 2023, FINDING THAT THE STATE WATERS INTO WHICH THE PROPOSED DISCHARGE OF DREDGED OR FILL MATERIAL WILL OCCUR ARE NOT WATERS OF THE UNITED STATES UNLESS THERE HAS BEEN A SIGNIFICANT HYDROLOGICAL CHANGE SINCE THE DETERMINATION WAS ISSUED;

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

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

(V) NORMAL FARMING, SILVICULTURE, AND RANCHING ACTIVITIES, SUCH AS PLOWING; SEEDING; CULTIVATING; MINOR DRAINAGE; APPLICATION OF ON-FARM CHEMICALS; HARVESTING FOR THE PRODUCTION OF FOOD, FIBER, AND FOREST PRODUCTS; OR UPLAND SOIL AND WATER CONSERVATION PRACTICES. AS USED IN THIS SUBSECTION (8)(b)(V), "UPLAND SOIL AND WATER CONSERVATION PRACTICES" MEANS ANY DISCHARGE OF DREDGED OR FILL MATERIAL INTO STATE WATERS INCIDENTAL TO SOIL AND WATER CONSERVATION PRACTICES FOR THE PURPOSE OF IMPROVING, MAINTAINING, OR RESTORING UPLANDS, INCLUDING RANGELAND MANAGEMENT PRACTICES, EROSION CONTROL PRACTICES, AND VEGETATION MANAGEMENT PRACTICES.

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

(VII) CONSTRUCTION OR MAINTENANCE OF FARM PONDS, STOCK PONDS, FARM LAGOONS, SPRINGS, RECHARGE FACILITIES LOCATED IN UPLANDS, AND IRRIGATION DITCHES OR ACEQUIAS, OR MAINTENANCE OF A DRAINAGE DITCH, ROADSIDE DITCH, OR A DITCH OR CANAL CONVEYING WASTEWATER OR WATER. CONSTRUCTION OF NEW WORK OR TO EXTEND, EXPAND, OR RELOCATE AN IRRIGATION DITCH OR ACEQUIA FOR MUNICIPAL OR INDUSTRIAL PURPOSES IS NOT AN EXEMPT ACTIVITY. AS USED IN THIS SUBSECTION (8)(b)(VII):

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

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

(B) "IRRIGATION DITCH OR ACEQUIA" INCLUDES A HUMAN-MADE FEATURE OR A MAINTAINED NATURAL FEATURE IF USE OF THE MAINTAINED NATURAL FEATURE EXISTED ON JANUARY 1, 2024, AND AN UPLAND SWALE THAT MOVES OR CONVEYS WATER TO AN ULTIMATE IRRIGATION USE OR PLACE OF USE, OR MOVES OR CONVEYS IRRIGATION WATER, ALSO KNOWN AS "RUNOFF", AWAY FROM IRRIGATED LANDS. "IRRIGATION DITCH OR ACEQUIA" MAY INCLUDE A DISTRIBUTION SYSTEM OR ITS PARTS, INCLUDING HUMAN-MADE CANALS, LATERALS, DITCHES, SIPHONS, PUMPS, HEADGATES, WING WALLS, WEIRS, DIVERSION STRUCTURES, PIPES, PUMP SYSTEMS, RETURN STRUCTURES, AND SUCH OTHER FACILITIES APPURTENANT TO AND FUNCTIONALLY RELATED TO IRRIGATION DITCHES. IF A DITCH CARRIES WATER THAT IS USED FOR IRRIGATION, IRRIGATION RETURN FLOWS OR RETURN FLOW OBLIGATIONS, AQUIFER RECHARGE, AQUIFER OR STREAM AUGMENTATION OR REPLACEMENT, OR PRECIPITATION OR SNOWMELT THAT MOVES FROM AN IRRIGATED FIELD EITHER TO OR AWAY FROM AN AREA SUBJECT TO BEING IRRIGATED, THAT DITCH IS CONSIDERED AN IRRIGATION DITCH AND NOT A DRAINAGE DITCH.

(C) "MAINTENANCE" MEANS MAINTENANCE PERTAINING TO A HUMAN-MADE STRUCTURE, SUCH AS A FARM POND, STOCK POND, OR MAINTAINED SPRING, OR A MAINTAINED NATURAL FEATURE CONVEYING WATER FOR IRRIGATION OR WILDLIFE PURPOSE IF USE OF THE MAINTAINED NATURAL FEATURE EXISTED AS OF JANUARY 1, 2024; MAINTENANCE PERTAINING TO A DRAINAGE DITCH, A ROADSIDE DITCH, OR A DITCH OR CANAL CONVEYING WASTEWATER OR WATER FOR IRRIGATION OR FOR MUNICIPAL PURPOSES, DOMESTIC PURPOSES, INDUSTRIAL PURPOSES, COMMERCIAL PURPOSES, AUGMENTATION, RECHARGE, WILDLIFE, RECREATION, COMPACT COMPLIANCE, OR ANY OTHER PURPOSE; AND MAINTENANCE PERTAINING TO REPAIRS TO AN EXISTING STRUCTURE OR FEATURE TO KEEP IT IN ITS EXISTING STATE OR PROPER CONDITION OR TO PRESERVE IT FROM FAILURE OR DECLINE. SUCH MAINTENANCE INCLUDES EXCAVATION OF ACCUMULATED SEDIMENTS BACK TO ORIGINAL CONTOURS; RESHAPING OF SIDE-SLOPES; BANK STABILIZATION TO PREVENT EROSION WHERE REASONABLY NECESSARY USING BEST MANAGEMENT PRACTICES AND, FOR MAINTENANCE OF DRAINAGE DITCHES, MATERIALS THAT ARE COMPATIBLE WITH EXISTING BANK MATERIALS; ARMORING, LINING, AND PIPING FOR THE PURPOSE OF REPAIRING A PREVIOUSLY ARMORED, LINED, OR PIPED SECTION OF A DITCH SO LONG AS ALL WORK OCCURS WITHIN THE FOOTPRINT OF THE PREVIOUS WORK; AND REPLACEMENT OF EXISTING CONTROL STRUCTURES WHERE THE ORIGINAL FUNCTION IS NOT CHANGED AND ORIGINAL APPROXIMATE CAPACITY IS NOT INCREASED.

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

(IX) CONSTRUCTION OR MAINTENANCE OF FARM ROADS OR FOREST ROADS OR TEMPORARY ROADS FOR MOVING WILDFIRE AND POST-FIRE MITIGATION EQUIPMENT AND RELATED MATERIALS OR MINING EQUIPMENT WHERE SUCH ROADS ARE

CONSTRUCTED AND MAINTAINED, IN ACCORDANCE WITH BEST MANAGEMENT PRACTICES, TO ASSURE THAT FLOW AND CIRCULATION PATTERNS AND CHEMICAL AND BIOLOGICAL CHARACTERISTICS OF THE STATE WATERS ARE NOT IMPAIRED, THAT THE REACH OF THE STATE WATERS IS NOT REDUCED, AND THAT ANY ADVERSE IMPACTS ON THE STATE WATERS WILL BE OTHERWISE MINIMIZED;

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

(XI) MAINTENANCE OF WATER REUSE FACILITIES, WASTEWATER RECLAMATION FACILITIES, WATER MANAGEMENT FACILITIES, WATER TREATMENT FACILITIES, OR WASTEWATER WATER TREATMENT FACILITIES. SUCH MAINTENANCE INCLUDES RECONSTRUCTION DUE TO RECENT DAMAGE OR MAINTENANCE OF CURRENTLY SERVICEABLE STRUCTURES, SUCH AS PUMPS, CONTROL SYSTEMS, WEIRS, GATES, CLARIFIERS, SOLIDS HANDLING, FILTERS, SEDIMENTATION BASINS, TREATMENT PONDS AND LAGOONS, AND RELATED FEATURES, WHICH MAINTENANCE ACTIVITIES KEEP THE FACILITY IN ITS EXISTING STATE OR PROPER CONDITION TO PRESERVE IT FROM FAILURE OR DECLINE.

(XII) MAINTENANCE ACTIVITIES IN OFF-CHANNEL RESERVOIRS THAT DO NOT DIRECTLY AFFECT A CONNECTED NATURAL STREAM. SUCH MAINTENANCE INCLUDES EMERGENCY RECONSTRUCTION DUE TO RECENT DAMAGE; MAINTENANCE OF CURRENTLY SERVICEABLE STRUCTURES SUCH AS SPILLWAYS, OUTLET STRUCTURES, GATES, PUMPS, AND CONTROL SYSTEMS; AND RESHAPING OF SIDE SLOPES, BANK STABILIZATION, OR DREDGING, WHICH MAINTENANCE ACTIVITIES KEEP AN OFF-CHANNEL RESERVOIR IN ITS EXISTING STATE OR PROPER CONDITION AND TO PRESERVE IT FROM FAILURE OR DECLINE.

(XIII) WILDLIFE HABITAT MANAGEMENT ACTIVITIES, INCLUDING SEEDING, CULTIVATING, MINOR DRAINAGE, VEGETATION MANAGEMENT, IRRIGATING, WATER MANAGEMENT, AND MAINTENANCE OF DITCHES, DIKES, EMBANKMENTS, IMPOUNDMENTS, WATER CONTROL FEATURES, AND OTHER WATER CONVEYANCE FEATURES THAT ARE HUMAN-MADE OR MAINTAINED OR THAT OCCUR NATURALLY TO SUPPORT WILDLIFE HABITAT. "WILDLIFE HABITAT MANAGEMENT" MEANS ACTIVITIES THAT OCCUR ON LAND MANAGED PRIMARILY FOR WETLAND OR RIPARIAN HABITATS TO SUPPORT WETLAND AND RIPARIAN SPECIES AND DOES NOT INCLUDE ACTIVITIES THAT ARE INCIDENTAL TO LAND USED FOR RESIDENTIAL, INDUSTRIAL, OR COMMERCIAL PURPOSES.

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

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

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

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

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

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

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

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

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

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

(IX) SWALES AND EROSIONAL FEATURES, SUCH AS GULLIES, SMALL WASHES, AND RILLS, THAT DO NOT CONTAIN WETLANDS OR AN ORDINARY HIGH WATERMARK;

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

(XI) PRIOR CONVERTED CROPLAND. AS USED IN THIS SUBSECTION (8)(d)(XI), "PRIOR CONVERTED CROPLAND" MEANS ANY AREA THAT, PRIOR TO DECEMBER 23, 1985, WAS DRAINED OR OTHERWISE MANIPULATED FOR AGRICULTURAL PURPOSES, WHICH INCLUDES LAND USE THAT MAKES THE PRODUCTION OF AN AGRICULTURAL PRODUCT POSSIBLE, INCLUDING GRAZING AND HAYING. CROPLAND THAT IS LEFT IDLE OR FALLOW FOR CONSERVATION OR AGRICULTURAL PURPOSES FOR ANY PERIOD OF

TIME REMAINS IN AGRICULTURAL USE AND, IF THE CROPLAND OTHERWISE QUALIFIES UNDER THIS SUBSECTION (8)(d)(XI), IS PRIOR CONVERTED CROPLAND. THE COMMISSION AND THE DIVISION SHALL RECOGNIZE DESIGNATIONS OF PRIOR CONVERTED CROPLAND MADE BY THE UNITED STATES SECRETARY OF AGRICULTURE. AN AREA IS NO LONGER CONSIDERED PRIOR CONVERTED CROPLAND IF THE AREA IS ABANDONED AND HAS REVERTED TO WETLANDS. ABANDONMENT OCCURS WHEN PRIOR CONVERTED CROPLAND IS NOT USED FOR, OR IN SUPPORT OF, AGRICULTURAL PURPOSES AT LEAST ONCE IN THE IMMEDIATELY PRECEDING FIVE YEARS. THE DIVISION SHALL DETERMINE WHETHER PRIOR CONVERTED CROPLAND HAS BEEN ABANDONED, SUBJECT TO APPEAL TO THE COMMISSION.

(9) FOR THE 2024-25 STATE FISCAL YEAR AND FOR EACH STATE FISCAL YEAR THEREAFTER, IF THE TOTAL NUMBER OF AUTHORIZATIONS ISSUED PURSUANT TO SUBSECTION (5) OF THIS SECTION EXCEEDS OR IS PROJECTED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO EXCEED ONE HUNDRED TEN AUTHORIZATIONS, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL SEEK A SUPPLEMENTAL APPROPRIATION FROM THE GENERAL ASSEMBLY TO PAY THE COSTS OF PROCESSING THE AUTHORIZATIONS AND TO ENSURE THAT AUTHORIZATIONS ARE PROCESSED IN A TIMELY MANNER.

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

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

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

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

25-8-210. Fees established administratively - rules - shareholding requirement - phase-in period - clean water cash fund - creation - repeal.

(1)(d) ON OR BEFORE DECEMBER 31, 2025, THE COMMISSION SHALL ESTABLISH BY RULE THE AUTHORIZATION FEES FOR THE DREDGE AND FILL PROGRAM, AS DEFINED IN SECTION 25-8-205.1 (3). THE DIVISION SHALL TRANSMIT THE FEES COLLECTED PURSUANT TO THE COMMISSION'S FEE-SETTING RULES ADOPTED UNDER THIS SUBSECTION (1)(d) TO THE STATE TREASURER, WHO SHALL CREDIT THE FEES TO THE CLEAN WATER CASH FUND CREATED IN SUBSECTION (4) OF THIS SECTION.

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

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

(d) FOR THE 2026-27 STATE FISCAL YEAR AND FOR EACH STATE FISCAL YEAR THEREAFTER, THE STATE TREASURER SHALL TRANSFER TWO HUNDRED FORTY-EIGHT

THOUSAND THREE HUNDRED FOUR DOLLARS FROM THE GENERAL FUND TO THE CLEAN WATER CASH FUND.

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

37-60-122.2. Fish and wildlife resources - legislative declaration - fund - authorization. (1) (b) Except as provided in this ~~paragraph (b)~~ SUBSECTION (1)(b), the applicant for any water diversion, delivery, or storage facility ~~which~~ THAT requires an application for a permit, a license, or other approval from the United States, OR THAT REQUIRES AN APPLICATION FOR AN INDIVIDUAL AUTHORIZATION FROM THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-8-205.1, shall inform the Colorado water conservation board, parks and wildlife commission, and division of parks and wildlife of its application and submit a mitigation proposal pursuant to this section. Exempted from such requirement are the Animas-La Plata project, the Two Forks dam and reservoir project, and the Homestake water project for which definite plan reports and final environmental impact statements have been approved or ~~which~~ THAT are awaiting approval of the same; applicants for site specific 404 FEDERAL dredge and fill permits OR INDIVIDUAL AUTHORIZATIONS UNDER SECTION 25-8-205.1 (5)(a) for ~~operations~~ ACTIVITIES not requiring construction of a reservoir; and applicants for section 404 federal nationwide permits OR GENERAL AUTHORIZATIONS ISSUED PURSUANT TO SECTION 25-8-205.1 (5)(b). If an applicant that is subject to ~~the provisions of~~ this section and the commission agree upon a mitigation plan for the facility, the commission shall forward such agreement to the Colorado water conservation board, and the board shall adopt such agreement at its next meeting as the official state position on the mitigation actions required of the applicant. In all cases, the commission shall proceed expeditiously and, no later than sixty days ~~from~~ AFTER the applicant's notice, unless extended in writing by the applicant, make its evaluation regarding the probable impact of the proposed facility on fish and wildlife resources and their habitat and ~~to~~ make its recommendation regarding such reasonable mitigation actions as may be needed.

SECTION 6. In Colorado Revised Statutes, 39-29-109.3, **amend** (1) introductory portion; and **add** (12) as follows:

39-29-109.3. Severance tax operational fund - core reserve - grant program reserve - definitions - repeal. (1) The executive director of the department of natural resources shall submit with the department's budget request for each fiscal year a list and description of the programs the executive director recommends to be funded from the severance tax operational fund created in section 39-29-109 (2)(b), referred to in this section as the "operational fund". Except as otherwise provided in ~~subsection (10)~~ SUBSECTIONS (10) AND (12) of this section, the general assembly may appropriate money from the total money available in the operational fund to fund recommended programs as follows:

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

(b) THIS SUBSECTION (12) IS REPEALED, EFFECTIVE JULY 1, 2027.

SECTION 7. In Colorado Revised Statutes, 25-8-305, **add** (5) as follows:

25-8-305. Annual report - repeal. (5) (a) ON OR BEFORE OCTOBER 1, 2026, AND FOR EACH YEAR THEREAFTER, THE REPORT DESCRIBED IN SUBSECTION (1) OF THIS SECTION MUST PROVIDE AN OVERALL UNDERSTANDING OF THE STATE OF IMPLEMENTATION OF THE DREDGE AND FILL DISCHARGE AUTHORIZATION PROGRAM DESCRIBED IN SECTION 25-8-205.1. FOR THIS PURPOSE, THE DIVISION SHALL DEVELOP A TWELVE-MONTH REPORTING PERIOD. AT A MINIMUM, THE REPORT MUST INCLUDE:

(I) PROGRAM STAFFING AND BUDGET OVER THE TWELVE-MONTH REPORTING PERIOD;

(II) GENERAL AUTHORIZATION PROGRAM COMPONENTS OVER THE TWELVE-MONTH REPORTING PERIOD, INCLUDING:

(A) THE TOTAL NUMBER OF PRECONSTRUCTION NOTIFICATIONS OR COVERAGE VERIFICATION REQUESTS RECEIVED DURING THE TWELVE-MONTH REPORTING PERIOD;

(B) THE TOTAL NUMBER OF PROJECTS AUTHORIZED TO PROCEED DURING THE TWELVE-MONTH REPORTING PERIOD;

(C) THE TOTAL NUMBER OF PROJECTS AUTHORIZED TO PROCEED DURING THE TWELVE-MONTH REPORTING PERIOD THAT INCLUDED SPECIAL CONDITIONS;

(D) THE TOTAL NUMBER OF PROJECTS AUTHORIZED TO PROCEED UNDER SECTION 25-8-205.1 (5)(d) DURING THE TWELVE-MONTH REPORTING PERIOD;

(E) THE TOTAL NUMBER OF PROJECTS DENIED GENERAL AUTHORIZATION COVERAGE DURING THE TWELVE-MONTH REPORTING PERIOD AND A SUMMARY OF THE REASONS FOR DENIALS;

(F) THE RANGE OF TIME AND AVERAGE TIME REQUIRED TO PROCESS PRECONSTRUCTION NOTIFICATIONS AND COVERAGE VERIFICATION REQUESTS FROM RECEIPT TO FINAL DECISION DURING THE TWELVE-MONTH REPORTING PERIOD; AND

(G) THE TOTAL NUMBER OF FULL-TIME EMPLOYEES TASKED WITH PROCESSING PRECONSTRUCTION NOTIFICATIONS, COVERAGE VERIFICATION REQUESTS, AND TECHNICAL ASSISTANCE DURING THE TWELVE-MONTH REPORTING PERIOD; AND

(III) INDIVIDUAL AUTHORIZATION PROGRAM COMPONENTS, INCLUDING:

(A) THE TOTAL NUMBER OF AUTHORIZATION APPLICATIONS RECEIVED DURING THE TWELVE-MONTH REPORTING PERIOD;

(B) THE TOTAL NUMBER OF PROJECTS AUTHORIZED TO PROCEED DURING THE TWELVE-MONTH REPORTING PERIOD;

(C) THE TOTAL NUMBER OF PROJECTS DENIED AUTHORIZATION COVERAGE DURING

THE TWELVE-MONTH REPORTING PERIOD AND A SUMMARY OF THE REASONS FOR DENIALS;

(D) THE TOTAL NUMBER OF APPLICATIONS AWAITING ACTION AT THE END OF THE TWELVE-MONTH REPORTING PERIOD;

(E) THE RANGE OF TIME AND AVERAGE TIME REQUIRED TO PROCESS INDIVIDUAL AUTHORIZATION APPLICATIONS FROM RECEIPT TO FINAL DECISION DURING THE TWELVE-MONTH REPORTING PERIOD; AND

(F) THE TOTAL NUMBER OF FULL-TIME EMPLOYEES TASKED WITH PROCESSING INDIVIDUAL AUTHORIZATIONS DURING THE TWELVE-MONTH REPORTING PERIOD.

(b) ON A QUARTERLY BASIS, THE DIVISION SHALL REPORT TO THE JOINT BUDGET COMMITTEE THE NUMBER OF INDIVIDUAL DREDGE AND FILL AUTHORIZATIONS AND NOTICES OF AUTHORIZATION THAT THE DIVISION PROJECTS TO ISSUE FOR THE FISCAL YEAR. THE DIVISION SHALL SUBMIT THESE REPORTS SO THAT THEY COINCIDE WITH QUARTERLY BUDGET FORECASTS.

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

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

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

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

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

Approved: May 29, 2024