

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0964.01 Richard Sweetman x4333

HOUSE BILL 24-1379

HOUSE SPONSORSHIP

McCluskie and McCormick,

SENATE SPONSORSHIP

Roberts,

House Committees

Agriculture, Water & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF STATE WATERS IN RESPONSE TO
102 RECENT FEDERAL COURT ACTION.

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 department to administer and enforce authorizations for activities that will

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.

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*,
18 598 U.S. 651 (2023), THAT REDEFINED THE TYPES OF WATER RESOURCES

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

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

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

1 COLORADO DEVELOPS ITS OWN DREDGE AND FILL PROGRAM; AND

2 (IV) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT LED

3 STAKEHOLDER EFFORTS DURING 2023 THAT FOCUSED ON REGULATORY

4 OPTIONS TO ADDRESS THE *SACKETT* DECISION, AND THE PROVISIONS OF

5 THIS SECTION DIRECTLY REFLECT THE INPUT RECEIVED DURING THESE

6 EFFORTS CONCERNING EXEMPTED ACTIVITIES AND EXCLUDED TYPES OF

7 WATERS.

8 (b) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

9 (I) WATER IS COLORADO'S MOST CRITICAL NATURAL RESOURCE,

10 AND SAFEGUARDING WATER QUALITY IS OF PARAMOUNT IMPORTANCE FOR

11 THE PROTECTION OF PUBLIC HEALTH AND COLORADO'S ENVIRONMENT;

12 (II) COLORADO'S WETLANDS AND SEASONAL STREAMS PLAY A

13 CRUCIAL ROLE IN MAINTAINING WATER QUALITY FOR DRINKING WATER,

14 RECHARGING GROUNDWATER, CONTROLLING FLOODS, AND KEEPING

15 POLLUTION FROM ENTERING LARGER BODIES OF WATER;

16 (III) GIVEN THE CRUCIAL ROLE THAT WETLANDS PLAY IN

17 PROTECTING COLORADO'S WATER RESOURCES, IT IS IN THE STATE'S

18 INTEREST TO EXPRESSLY INCLUDE "WETLANDS" AS A CATEGORY OF "STATE

19 WATERS" IN THE DEFINITION OF THAT TERM USED IN THIS ARTICLE 8. THIS

20 CLARIFICATION IS CONSISTENT WITH AND REITERATES THE DEPARTMENT

21 OF PUBLIC HEALTH AND ENVIRONMENT'S LONGSTANDING RECOGNITION

22 THROUGH RULES AND PROGRAM IMPLEMENTATION THAT WETLANDS ARE

23 STATE WATERS DESERVING OF PROTECTION UNDER THIS ARTICLE 8.

24 (IV) DEVELOPING A STATE DREDGE AND FILL PROGRAM WILL

25 BENEFIT THE BUSINESSES THAT WISH TO ENGAGE IN DREDGE AND FILL

26 PROJECTS WITHIN COLORADO BECAUSE, WITHOUT A DISCHARGE

27 AUTHORIZATION FRAMEWORK, THOSE PROJECTS WILL BE PROHIBITED TO

1 THE DETRIMENT OF COLORADO'S ECONOMY;

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

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

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

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

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

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

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

25 (2) **Applicability - limitations.** NOTHING IN THIS SECTION APPLIES
26 TO THE ACTIVITIES OF FEDERALLY RECOGNIZED INDIAN TRIBES, INDIANS,
27 THEIR POLITICAL SUBDIVISIONS, OR TRIBALLY CONTROLLED AFFILIATES,

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

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

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

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

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

1 DIVISION AND THE ENTITY.

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

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

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

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

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

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

24 (B) ACTIVITIES THAT INVOLVE ONLY THE CUTTING OR REMOVING
25 OF VEGETATION ABOVE THE GROUND, SUCH AS MOWING, ROTARY CUTTING,
26 AND CHAINSAWING, SO LONG AS THE ACTIVITY NEITHER SUBSTANTIALLY
27 DISTURBS THE VEGETATION'S ROOT SYSTEM NOR INVOLVES MECHANIZED

1 PUSHING, DRAGGING, OR OTHER SIMILAR ACTIVITIES THAT REDEPOSIT
2 EXCAVATED SOIL MATERIAL; OR

3 (C) INCIDENTAL FALLBACK.

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

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

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

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

15 (D) CAUSEWAYS OR ROAD FILLS;

16 (E) DAMS AND DIKES;

17 (F) ARTIFICIAL ISLANDS;

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

20 (H) LEVEES;

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

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

27 (K) PLACEMENT OF OVERBURDEN, SLURRY, TAILINGS, OR SIMILAR

1 MINING-RELATED MATERIALS.

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

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

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

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

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

1 (h) "DREDGED MATERIAL" MEANS MATERIAL THAT IS EXCAVATED
2 OR DREDGED FROM STATE WATERS.

3 (i) "DREDGED OR FILL MATERIAL" MEANS DREDGED MATERIAL OR
4 FILL MATERIAL.

5 (j) "ECOLOGICAL LIFT" MEANS AN IMPROVEMENT IN THE
6 BIOLOGICAL, CHEMICAL, AND HYDROLOGIC HEALTH OF AN AREA THAT HAS
7 BEEN DAMAGED BY PAST ACTIVITY.

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

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

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

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

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

19 (l) "INCIDENTAL FALLBACK" MEANS THE REDEPOSIT OF SMALL
20 VOLUMES OF DREDGED MATERIAL THAT IS INCIDENTAL TO EXCAVATION
21 ACTIVITY IN STATE WATERS WHEN SUCH MATERIAL FALLS BACK TO
22 SUBSTANTIALLY THE SAME PLACE AS THE INITIAL REMOVAL. "INCIDENTAL
23 FALLBACK" INCLUDES SOIL THAT IS DISTURBED WHEN DIRT IS SHOVELED
24 AND THE BACK-SPILL THAT COMES OFF A BUCKET WHEN SUCH SMALL
25 VOLUME OF SOIL OR DIRT FALLS INTO SUBSTANTIALLY THE SAME PLACE
26 FROM WHICH IT WAS INITIALLY REMOVED.

27 (m) "NATURAL STREAM SYSTEM" HAS THE MEANING SET FORTH IN

1 SECTION 37-92-602 (9)(b)(III).

2 (n) "ORDINARY HIGH WATERMARK" HAS THE MEANING SET FORTH
3 IN SECTION 37-87-102 (1)(e).

4 (o) "SECTION 404 PERMIT" MEANS A PERMIT ISSUED BY THE
5 UNITED STATES ARMY CORPS OF ENGINEERS PURSUANT TO SECTION 404
6 OF THE FEDERAL ACT.

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

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

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

17 (4) **Duties of the commission. (a) Rules for state dredge and**
18 **fill authorization program - definition.** THE COMMISSION SHALL
19 PROMULGATE RULES BY MAY 31, 2025, AS NECESSARY TO IMPLEMENT A
20 STATE DREDGE AND FILL DISCHARGE AUTHORIZATION PROGRAM. THE
21 RULES MUST FOCUS ON AVOIDANCE OF, MINIMIZATION OF, AND
22 COMPENSATION FOR THE UNAVOIDABLE ADVERSE IMPACTS OF DREDGE
23 AND FILL ACTIVITY AND MUST BE AT LEAST AS PROTECTIVE AS THE
24 GUIDELINES DEVELOPED PURSUANT TO SECTION 404 (b)(1) OF THE
25 FEDERAL ACT. THE RULES:

26 (I) MUST INCLUDE:

27 (A) PROCEDURES FOR THE ISSUANCE, MODIFICATION, AND

1 TERMINATION OF INDIVIDUAL AND GENERAL AUTHORIZATIONS, INCLUDING
2 PUBLIC NOTICE AND PARTICIPATION REQUIREMENTS;

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

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

8 (II) MAY INCLUDE:

9 (A) DETAILS CONCERNING THE DIVISION'S CONSULTATION WITH
10 FEDERAL, STATE, LOCAL, AND TRIBAL ENTITIES, ESPECIALLY THOSE
11 ENTITIES WITH SPECIAL EXPERTISE WITH RESPECT TO ANY
12 ENVIRONMENTAL, NATURAL RESOURCE, OR AGRICULTURE-RELATED ISSUE,
13 AND ESPECIALLY AS RELATED TO INDIVIDUAL AUTHORIZATIONS;

14 (B) FURTHER CLARIFICATION OF THE TERMINOLOGY USED TO
15 DEFINE THE EXEMPTIONS AND EXCLUSIONS IN SUBSECTIONS (8)(b) AND
16 (8)(d) OF THIS SECTION WITHOUT LIMITING OR EXPANDING THE SCOPE OF
17 THE EXEMPTIONS AND EXCLUSIONS; AND

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

27 (b) **Rules for individual authorizations.** THE COMMISSION SHALL

1 PROMULGATE RULES BY MAY 31, 2025, CONCERNING INDIVIDUAL
2 AUTHORIZATIONS FOR DREDGE AND FILL ACTIVITIES. THE RULES MUST
3 INCLUDE:

- 4 (I) APPLICATION REQUIREMENTS, INCLUDING:
 - 5 (A) PROJECT LOCATION INFORMATION;
 - 6 (B) A PROJECT DESCRIPTION, INCLUDING SITE PLANS;
 - 7 (C) AN ALTERNATIVES ANALYSIS;
 - 8 (D) A PURPOSE AND NEED STATEMENT;
 - 9 (E) A DESCRIPTION OF AVOIDANCE AND MINIMIZATION MEASURES;
 - 10 (F) A PROJECTED IMPACTS ANALYSIS; AND
 - 11 (G) A COMPENSATORY MITIGATION PLAN;

12 (II) A PROHIBITION AGAINST THE DISCHARGE OF DREDGED OR FILL
13 MATERIAL WHERE THERE IS A PRACTICABLE ALTERNATIVE TO THE
14 PROPOSED DISCHARGE THAT WOULD HAVE LESS ADVERSE IMPACT ON
15 STATE WATERS AND CRITERIA FOR THE DIVISION TO IMPLEMENT SUCH
16 PROHIBITION. THE GENERAL ASSEMBLY RECOGNIZES THAT THIS
17 SUBSECTION (4)(b)(II) MAY RESULT IN CERTAIN RESTRICTIONS ON AND
18 REQUIREMENTS FOR PROJECTS SEEKING AUTHORIZATION FOR DREDGE AND
19 FILL ACTIVITIES. SUCH RESTRICTIONS AND REQUIREMENTS DO NOT RESULT
20 IN MATERIAL INJURY TO OR IMPAIRMENT OF WATER RIGHTS SO LONG AS
21 THE PROJECT'S PURPOSE CAN REASONABLY BE MET. THE DIVISION SHALL
22 CONSIDER THE FEASIBILITY OF SECURING NECESSARY WATER RIGHTS IN
23 DETERMINING THE AVAILABILITY OF PRACTICABLE ALTERNATIVES.

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

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

- 1 (B) PROTECT DOWNSTREAM USES;
- 2 (C) ADDRESS THE DIRECT AND INDIRECT IMPACTS OF THE
- 3 ACTIVITY; AND
- 4 (D) ENSURE THAT AN AUTHORIZED ACTIVITY AS A WHOLE WILL
- 5 COMPLY WITH ALL APPLICABLE STATE WATER QUALITY REQUIREMENTS,
- 6 EITHER AS PROPOSED OR AS CONDITIONED IN THE AUTHORIZATION; AND
- 7 (IV) OTHER INDIVIDUAL AUTHORIZATION TERMS, SUCH AS
- 8 MONITORING, RECORD-KEEPING, AND REPORTING REQUIREMENTS.

9 (c) **Rules for compensatory mitigation.** THE COMMISSION SHALL

10 PROMULGATE RULES BY MAY 31, 2025, TO PROVIDE DETAILS CONCERNING

11 COMPENSATORY MITIGATION REQUIREMENTS, INCLUDING:

12 (I) FUNCTIONAL ASSESSMENT METHODS AND RATIOS FOR

13 DETERMINING COMPENSATORY MITIGATION REQUIREMENTS FOR BOTH

14 WETLAND AND STREAM MITIGATION TO ASSESS IMPACTS AND MITIGATION

15 BASED ON AN ECOLOGICAL FUNCTION APPROACH; AND

16 (II) COMPENSATORY MITIGATION THRESHOLDS FOR STREAMS.

17 (5) **Duties of the division.** THE DIVISION HAS THE FOLLOWING

18 DUTIES IN ADMINISTERING THE STATE DREDGE AND FILL DISCHARGE

19 AUTHORIZATION PROGRAM:

20 (a) **Individual authorizations.** (I) UPON THE COMMISSION'S

21 PROMULGATION OF RULES PURSUANT TO SUBSECTION (4) OF THIS SECTION,

22 THE DIVISION SHALL ISSUE INDIVIDUAL AUTHORIZATIONS CONSISTENT

23 WITH THE RULES PROMULGATED BY THE COMMISSION UNDER SUBSECTION

24 (4) OF THIS SECTION.

25 (II) IN ADDITION TO ANY COMPENSATORY MITIGATION

26 REQUIREMENTS THE DIVISION DETERMINES ARE NECESSARY TO COMPLY

27 WITH THE COMMISSION'S RULES AND SUBSECTION (5)(c) OF THIS SECTION,

1 FOR PROJECTS SUBJECT TO THE REQUIREMENTS OF SECTION 37-60-122.2
2 (1)(b), THE DIVISION SHALL TAKE INTO CONSIDERATION THE OFFICIAL
3 STATE POSITION REGARDING MITIGATION FOR FISH AND WILDLIFE
4 RESOURCES, WHICH POSITION IS ESTABLISHED PURSUANT TO SECTION
5 37-60-122.2 (1), AND MAY ADOPT ALL OR PART OF SUCH POSITION INTO
6 INDIVIDUAL AUTHORIZATIONS AS CONDITIONS.

7 (III) AN INDIVIDUAL AUTHORIZATION, INCLUDING ALL CONDITIONS
8 INCORPORATED INTO THE INDIVIDUAL AUTHORIZATION, IS SUBJECT TO
9 ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION UNDER SECTION
10 25-8-403 AND JUDICIAL REVIEW UNDER SECTION 25-8-404.

11 (b) **General authorizations - categories - definitions.** (I) THE
12 DIVISION SHALL ISSUE GENERAL AUTHORIZATIONS FOR THE DISCHARGE OF
13 DREDGED OR FILL MATERIAL INTO STATE WATERS FOR CATEGORIES OF
14 ACTIVITIES THAT ARE SIMILAR IN NATURE AND SIMILAR IN IMPACT ON THE
15 QUALITY OF STATE WATERS, CAUSE ONLY MINIMAL ADVERSE EFFECTS TO
16 STATE WATERS WHEN PERFORMED SEPARATELY, AND HAVE ONLY MINIMAL
17 CUMULATIVE ADVERSE EFFECTS ON WATER QUALITY AND THE AQUATIC
18 ENVIRONMENT. THE CATEGORIES OF GENERAL AUTHORIZATIONS MUST
19 CORRESPOND WITH THE VARIOUS NATIONWIDE AND REGIONAL PERMITS
20 ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS. THE DIVISION
21 MAY TAILOR THE TERMS OF CERTAIN NATIONWIDE OR REGIONAL PERMITS
22 TO ACHIEVE GREATER EFFICIENCY AND TO ADDRESS COLORADO-SPECIFIC
23 NEEDS, INCLUDING BUT NOT LIMITED TO EMERGENCY RESPONSE TO
24 WILDFIRE AND VOLUNTARY RESTORATION EFFORTS DESIGNED SOLELY FOR
25 THE PURPOSE OF PROVIDING ECOLOGICAL LIFT.

26 (II) EACH GENERAL AUTHORIZATION MUST COVER A THRESHOLD
27 OF NO MORE THAN ONE-HALF ACRE OF UNAVOIDABLE ADVERSE EFFECTS

1 TO WETLANDS AND NO MORE THAN THE THRESHOLD ESTABLISHED BY THE
2 COMMISSION FOR UNAVOIDABLE ADVERSE EFFECTS TO STREAMS, EXCEPT
3 FOR RESTORATION OR ENHANCEMENT PROJECTS THAT DO NOT HAVE ANY
4 ACREAGE THRESHOLDS IF SUCH PROJECTS DEMONSTRATE ECOLOGICAL
5 IMPROVEMENT.

6 (III) FOR A LINEAR PROJECT THAT CROSSES A SINGLE BODY OF
7 WATER OR MULTIPLE BODIES OF WATER SEVERAL TIMES AT SEPARATE AND
8 DISTANT LOCATIONS, EACH CROSSING IS CONSIDERED A SINGLE AND
9 COMPLETE PROJECT FOR PURPOSES OF A GENERAL AUTHORIZATION. AS
10 USED IN THIS SUBSECTION (5)(b)(III):

11 (A) "LINEAR PROJECT" MEANS A PROJECT CONSTRUCTED FOR THE
12 PURPOSE OF TRANSPORTING PEOPLE OR GOODS OR PROVIDING SERVICES
13 THROUGH TRANSPORT FROM A POINT OF ORIGIN TO A TERMINAL POINT,
14 WHICH OFTEN INVOLVES MULTIPLE CROSSINGS OF A SINGLE BODY OF
15 WATER OR MULTIPLE BODIES OF WATER AT SEPARATE AND DISTANT
16 LOCATIONS.

17 (B) "SINGLE AND COMPLETE PROJECT" MEANS THE PORTION OF A
18 LINEAR PROJECT PROPOSED OR ACCOMPLISHED BY ONE OWNER OR
19 DEVELOPER OR BY A PARTNERSHIP OR OTHER ASSOCIATION OF OWNERS OR
20 DEVELOPERS, WHICH PROJECT INCLUDES ALL CROSSINGS OF A SINGLE BODY
21 OF STATE WATERS AT A SPECIFIC LOCATION. FOR THE PURPOSES OF THIS
22 SUBSECTION (5)(b)(III)(B), INDIVIDUAL CHANNELS IN A BRAIDED STREAM
23 OR RIVER, OR INDIVIDUAL ARMS OF A LARGE, IRREGULARLY SHAPED
24 WETLAND OR LAKE, ARE NOT SEPARATE BODIES OF STATE WATERS, AND
25 CROSSINGS OF SUCH FEATURES CANNOT BE CONSIDERED SEPARATELY.

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

10 (B) FOR STREAMS, WHERE UNAVOIDABLE ADVERSE IMPACTS
11 GREATER THAN THE THRESHOLD ESTABLISHED BY THE COMMISSION BY
12 RULES PROMULGATED PURSUANT TO SUBSECTION (4)(c)(II) OF THIS
13 SECTION WILL OCCUR.

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 PROJECT PROPONENT-RESPONSIBLE
19 MITIGATION.

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

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

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

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

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 EFFECTS ON STATE WATERS.

27 (6) **Transition - repeal.** (a) UNTIL THE RULES PROMULGATED BY

1 THE COMMISSION PURSUANT TO SUBSECTION (4) OF THIS SECTION BECOME
2 EFFECTIVE:

3 (I) NOTWITHSTANDING SUBSECTION (8)(a) OF THIS SECTION,
4 CLEAN WATER POLICY 17 CONTINUES IN EFFECT;

5 (II) FOR ACTIVITIES THAT WOULD HAVE BEEN COVERED UNDER A
6 FEDERAL NATIONWIDE OR REGIONAL PERMIT BUT DO NOT QUALIFY FOR
7 ENFORCEMENT DISCRETION UNDER CLEAN WATER POLICY 17 BECAUSE
8 THEY WOULD REQUIRE COMPENSATORY MITIGATION, THE DIVISION MAY
9 ISSUE TEMPORARY AUTHORIZATIONS FOR THE DISCHARGE OF DREDGED OR
10 FILL MATERIAL INTO STATE WATERS:

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

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

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

1 AUTHORIZATION.

2 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE SEPTEMBER 1,
3 2026.

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

7 (8) **Applicability and scope of dredge and fill material**
8 **discharge authorization program - prohibitions on discharge without**
9 **an authorization - definitions.** (a) EXCEPT WHEN CONDUCTING AN
10 EXEMPTED ACTIVITY DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION OR
11 WHEN DISCHARGING INTO AN EXCLUDED TYPE OF WATER DESCRIBED IN
12 SUBSECTION (8)(d) OF THIS SECTION, A PERSON SHALL NOT DISCHARGE
13 DREDGED OR FILL MATERIAL INTO STATE WATERS WITHOUT FIRST
14 OBTAINING COVERAGE UNDER A GENERAL AUTHORIZATION OR AN
15 INDIVIDUAL AUTHORIZATION FOR THE DISCHARGE.

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

19 (I) ACTIVITIES IN RECEIPT OF A VALID AND CURRENT SECTION 404
20 PERMIT THAT WAS EFFECTIVE PRIOR TO MAY 25, 2023;

21 (II) ACTIVITIES IN RECEIPT OF A VALID AND CURRENT SECTION 404
22 PERMIT BASED ON PRELIMINARY JURISDICTIONAL DETERMINATIONS THAT
23 ADDRESS ALL STATE WATERS ON-SITE, REGARDLESS OF FEDERAL
24 JURISDICTION, ON AND AFTER MAY 25, 2023;

25 (III) ACTIVITIES IN RECEIPT OF A VALID AND CURRENT APPROVED
26 JURISDICTIONAL DETERMINATION FINDING THAT A STATE WATER IS NOT
27 SUBJECT TO FEDERAL JURISDICTION DATED PRIOR TO MAY 25, 2023;

1 (IV) NORMAL FARMING, SILVICULTURE, AND RANCHING
2 ACTIVITIES, SUCH AS PLOWING; SEEDING; CULTIVATING; MINOR DRAINAGE;
3 HARVESTING FOR THE PRODUCTION OF FOOD, FIBER, AND FOREST
4 PRODUCTS; OR UPLAND SOIL AND WATER CONSERVATION PRACTICES. AS
5 USED IN THIS SUBSECTION (8)(b)(IV), "UPLAND SOIL AND WATER
6 CONSERVATION PRACTICES" MEANS ANY DISCHARGE OF DREDGED OR FILL
7 MATERIAL INTO STATE WATERS INCIDENTAL TO SOIL AND WATER
8 CONSERVATION PRACTICES FOR THE PURPOSE OF IMPROVING,
9 MAINTAINING, OR RESTORING UPLANDS, INCLUDING RANGELAND
10 MANAGEMENT PRACTICES, EROSION CONTROL PRACTICES, AND
11 VEGETATION MANAGEMENT PRACTICES.

12 (V) MAINTENANCE, INCLUDING EMERGENCY RECONSTRUCTION OF
13 RECENTLY DAMAGED PARTS, OF CURRENTLY SERVICEABLE STRUCTURES,
14 SUCH AS DIKES, DAMS, LEVEES, GROINS, RIPRAP, BREAKWATERS,
15 CAUSEWAYS, BRIDGE ABUTMENTS OR APPROACHES, AND TRANSPORTATION
16 STRUCTURES. THE COMMISSION MAY FURTHER CLARIFY THE EXEMPTION
17 DESCRIBED IN THIS SUBSECTION (8)(b)(V) THROUGH RULE-MAKING.

18 (VI) CONSTRUCTION OR MAINTENANCE OF FARM OR STOCK PONDS
19 OR IRRIGATION DITCHES OR THE MAINTENANCE OF DRAINAGE DITCHES. AS
20 USED IN THIS SUBSECTION (8)(b)(VI):

21 (A) "CONSTRUCTION" INCLUDES NEW WORK OR WORK THAT
22 RESULTS IN AN EXTENSION OR EXPANSION OF AN EXISTING STRUCTURE,
23 AND THE CONSTRUCTION OF IRRIGATION DITCHES INCLUDES ACTIVITIES
24 SUCH AS PLACEMENT OF NEW CONTROL STRUCTURES, DITCH RELOCATION,
25 DITCH CONVERSION INTO PIPE, AND LINING, WHICH MEANS PLACING
26 IMPERVIOUS MATERIAL SUCH AS CONCRETE, CLAY, OR GEOTEXTILE WITHIN
27 THE FLOW PERIMETER OF AN OPEN CANAL, LATERAL, OR DITCH WITH THE

1 INTENT OF REDUCING SEEPAGE LOSSES AND IMPROVING CONVEYANCE
2 EFFICIENCY. ALL NEW LINING OF DITCHES, IN INSTANCES WHERE THE DITCH
3 HAD NOT PREVIOUSLY BEEN LINED, IS CONSIDERED CONSTRUCTION.

4 (B) "IRRIGATION DITCH" INCLUDES A HUMAN-MADE FEATURE OR
5 AN UPLAND SWALE THAT CONVEYS WATER TO AN ULTIMATE IRRIGATION
6 USE OR PLACE OF USE, MOVES OR CONVEYS WATER TO AN ULTIMATE
7 IRRIGATION USE OR PLACE OF USE, OR MOVES OR CONVEYS IRRIGATION
8 WATER, ALSO KNOWN AS "RUNOFF", AWAY FROM IRRIGATED LANDS.
9 IRRIGATION DITCHES MAY INCLUDE A DISTRIBUTION SYSTEM OR ITS PARTS,
10 INCLUDING HUMAN-MADE CANALS, LATERALS, DITCHES, SIPHONS, PUMPS,
11 HEADGATES, WING WALLS, WEIRS, DIVERSION STRUCTURES, PIPES, PUMP
12 SYSTEMS, AND SUCH OTHER FACILITIES AS ARE APPURTENANT TO AND
13 FUNCTIONALLY RELATED TO IRRIGATION DITCHES. IF A DITCH CARRIES
14 ONLY IRRIGATION WATER, IRRIGATION RETURN FLOWS, OR PRECIPITATION
15 OR SNOWMELT THAT MOVES FROM AN IRRIGATED FIELD EITHER TO OR
16 AWAY FROM AN AREA SUBJECT TO BEING IRRIGATED, THAT DITCH IS
17 CONSIDERED AN IRRIGATION DITCH AND NOT A DRAINAGE DITCH.

18 (C) "MAINTENANCE" PERTAINING TO AN IRRIGATION DITCH OR A
19 DRAINAGE DITCH INCLUDES A REPAIR TO AN EXISTING STRUCTURE OR
20 FEATURE TO KEEP THE DITCH IN ITS EXISTING STATE OR PROPER CONDITION
21 OR TO PRESERVE IT FROM FAILURE OR DECLINE. SUCH MAINTENANCE
22 INCLUDES EXCAVATION OF ACCUMULATED SEDIMENTS BACK TO ORIGINAL
23 CONTOURS; RESHAPING OF SIDE-SLOPES; BANK STABILIZATION TO PREVENT
24 EROSION WHERE REASONABLY NECESSARY USING BEST MANAGEMENT
25 PRACTICES AND, FOR MAINTENANCE OF DRAINAGE DITCHES, MATERIALS
26 THAT ARE COMPATIBLE WITH EXISTING BANK MATERIALS; ARMORING,
27 LINING, AND PIPING FOR THE PURPOSE OF REPAIRING A PREVIOUSLY

1 ARMORED, LINED, OR PIPED SECTION OF A DITCH SO LONG AS ALL WORK
2 OCCURS WITHIN THE FOOTPRINT OF THE PREVIOUS WORK; AND
3 REPLACEMENT OF EXISTING CONTROL STRUCTURES WHERE THE ORIGINAL
4 FUNCTION IS NOT CHANGED AND ORIGINAL APPROXIMATE CAPACITY IS NOT
5 INCREASED.

6 (VII) CONSTRUCTION OF TEMPORARY SEDIMENTATION BASINS ON
7 A CONSTRUCTION SITE, WHICH CONSTRUCTION DOES NOT INCLUDE
8 PLACEMENT OF FILL MATERIAL INTO STATE WATERS; AND

9 (VIII) CONSTRUCTION OR MAINTENANCE OF FARM ROADS OR
10 FOREST ROADS OR TEMPORARY ROADS FOR MOVING MINING EQUIPMENT
11 WHERE SUCH ROADS ARE CONSTRUCTED AND MAINTAINED, IN
12 ACCORDANCE WITH BEST MANAGEMENT PRACTICES, TO ASSURE THAT
13 FLOW AND CIRCULATION PATTERNS AND CHEMICAL AND BIOLOGICAL
14 CHARACTERISTICS OF THE STATE WATERS ARE NOT IMPAIRED, THAT THE
15 REACH OF THE STATE WATERS IS NOT REDUCED, AND THAT ANY ADVERSE
16 EFFECT ON THE STATE WATERS WILL BE OTHERWISE MINIMIZED.

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

27 (d) **Excluded types of waters - definitions.** NOTWITHSTANDING

1 THE DEFINITION OF "STATE WATERS" PROVIDED IN SECTION 25-8-103 (19),
2 AN AUTHORIZATION IS NOT REQUIRED FOR THE DISCHARGE OF DREDGED OR
3 FILL MATERIAL INTO THE FOLLOWING TYPES OF WATERS, AND SUCH A
4 DISCHARGE IS NOT OTHERWISE PROHIBITED OR REGULATED UNDER THIS
5 SECTION:

6 (I) ALL DITCHES AND CANALS, INCLUDING DRAINAGE DITCHES,
7 ROADSIDE DITCHES, IRRIGATION DITCHES, AND STORM WATER
8 CONVEYANCES THAT ARE EXCAVATED ON UPLAND AND NOT WITHIN ANY
9 NATURAL STREAM SYSTEMS;

10 (II) ARTIFICIALLY IRRIGATED AREAS THAT WOULD REVERT TO
11 UPLANDS IF IRRIGATION CEASED;

12 (III) ARTIFICIAL LAKES OR PONDS THAT ARE CREATED ENTIRELY
13 BY EXCAVATING OR DIKING UPLAND TO COLLECT AND RETAIN WATER AND
14 THAT ARE USED EXCLUSIVELY FOR STOCK WATERING; IRRIGATION;
15 DETAINING OR RETAINING STORM WATER; SETTLING BASINS, INCLUDING
16 THOSE USED FOR STORM WATER QUALITY PURPOSES; OR RICE GROWING;

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

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

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

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

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

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

27 **25-8-103. Definitions.** As used in this article 8, unless the context

1 otherwise requires:

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

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

10 **25-8-210. Fees established administratively - rules -**
11 **shareholding requirement - phase-in period - clean water cash fund**
12 **- creation - repeal.** (1) (d) ON OR BEFORE MAY 31, 2025, THE
13 COMMISSION SHALL ESTABLISH BY RULE THE AUTHORIZATION FEES FOR
14 THE DREDGE AND FILL PROGRAM, AS DEFINED IN SECTION 25-8-205.1 (3).
15 THE DIVISION SHALL TRANSMIT THE FEES COLLECTED PURSUANT TO THE
16 COMMISSION'S FEE-SETTING RULES ADOPTED UNDER THIS SUBSECTION
17 (1)(d) TO THE STATE TREASURER, WHO SHALL CREDIT THE FEES TO THE
18 CLEAN WATER CASH FUND CREATED IN SUBSECTION (4) OF THIS SECTION.

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

21 **37-60-122.2. Fish and wildlife resources - legislative**
22 **declaration - fund - authorization.** (1) (b) Except as provided in this
23 ~~paragraph (b)~~ SUBSECTION (1)(b), the applicant for any water diversion,
24 delivery, or storage facility ~~which~~ THAT requires an application for a
25 permit, A license, or other approval from the United States, OR THAT
26 REQUIRES AN APPLICATION FOR AN INDIVIDUAL AUTHORIZATION FROM THE
27 DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND

1 ENVIRONMENT PURSUANT TO SECTION 25-8-205.1, shall inform the
2 Colorado water conservation board, parks and wildlife commission, and
3 division of parks and wildlife of its application and submit a mitigation
4 proposal pursuant to this section. Exempted from such requirement are
5 the Animas-La Plata project, the Two Forks dam and reservoir project,
6 and the Homestake water project for which definite plan reports and final
7 environmental impact statements have been approved or ~~which~~ THAT are
8 awaiting approval of the same; applicants for site specific 404 FEDERAL
9 dredge and fill permits OR INDIVIDUAL AUTHORIZATIONS UNDER SECTION
10 25-8-205.1 (5)(a) for ~~operations~~ ACTIVITIES not requiring construction of
11 a reservoir; and applicants for section 404 federal nationwide permits. If
12 an applicant that is subject to ~~the provisions of~~ this section and the
13 commission agree upon a mitigation plan for the facility, the commission
14 shall forward such agreement to the Colorado water conservation board,
15 and the board shall adopt such agreement at its next meeting as the
16 official state position on the mitigation actions required of the applicant.
17 In all cases, the commission shall proceed expeditiously and, no later than
18 sixty days ~~from~~ AFTER the applicant's notice, unless extended in writing
19 by the applicant, make its evaluation regarding the probable impact of the
20 proposed facility on fish and wildlife resources and their habitat and ~~to~~
21 make its recommendation regarding such reasonable mitigation actions
22 as may be needed.

23 **SECTION 6. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly; except
26 that, if a referendum petition is filed pursuant to section 1 (3) of article V
27 of the state constitution against this act or an item, section, or part of this

1 act within such period, then the act, item, section, or part will not take
2 effect unless approved by the people at the general election to be held in
3 November 2024 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.