

DATE: 4/24/2024

TO: Committee reviewing SB24-127

Senator Kirkmeyer, and Representative Bird

FROM: Debbie Ford  
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RE: **SENATE BILL 24-127**

I attended the committee meeting on Bill 24-127 and on HB1379. I also have studied and supported HB1379 because of its strong protection of Wetlands and Wildlife. **Your bill falls extremely short of protecting Wetlands, habitat, and wildlife.**

I am going to focus on the importance of protecting the wetlands and bodies of water in Colorado to protect and maintain our natural vegetation, ecosystems, streams, and watercourses which are home to our wildlife. Even though the percentage of wetlands in Colorado is only 2-3% the Wetland areas provide 80 to 82% of the habitat for wildlife.

The Colorado Natural Heritage Program suggests Colorado has lost 50% of its wetlands since statehood (1876).

SB 24-127 doesn't begin to protect Colorado's wetlands and streams. It lacks more than 12 aspects that were contained in the federal program pre-Sackett.

The Bill's 1500 feet recommendation would be terribly detrimental to wetlands and wildlife. This recommendation is being highly criticized by many leading not-for-profits and experts. You said you were willing to review this. I believe designated wetlands by US Fish and Wildlife is a better determinant.

For example, in Jefferson County, along Turkey Creek on Shadow Mountain Dr. there are 11 designated wetland classifications by US Fish and Wildlife, and it is a refuge for wildlife. As stated, the Sackett decision took away protections of these areas that were over 5 decades old.

I know wildlife and our beautiful ecosystems is a major definer of who Colorado is. We must protect Colorado by protecting its water. Colorado should be the leader in protecting the wetlands.

One of the most important goals of conservation groups and CPW is to protect our wildlife, birds, pollinators, fish, and our wetlands.

Without essential protections of our water and wetlands, we jeopardize wildlife.

Also, in reading the proposed Commission members it lacks in Conservation and Wildlife members that help protect wildlife habitats. Can they be added?

I want to end with a quote from a friend that asked me to share his quote that supports the efforts of protecting wildlife.

“Keep fighting for those creatures.”

John Fielder

Thank you.



**Water Users Association of District No. 6**

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*Re: Concerning the Proposed Dredge and Fill Legislation*

Speaker McCluskie, Representative McCormick, Senator Roberts, Senator Kirkmeyer, Representative Bird, Representative Sirota, and Senator Mullica:

On behalf of the Water Users Association of District No. 6 (the “WUA”), I am writing to express the following concerns regarding the legislation proposed to address the gap in federal permitting requirements under section 404 of the federal Clean Water Act that resulted from the United States Supreme Court’s (the “Court”) revision of the definition of “waters of the United States” in *Sackett v. Environmental Protection Agency*.

The WUA is an association of senior water rights owners that divert water from Boulder Creek and its tributaries. The WUA has more than forty members. Those members own almost all of the senior water rights decreed from Boulder Creek and its tributaries. The WUA’s members apply their decreed water rights to use via direct diversion and diversion to storage in off-channel reservoirs for subsequent use. Those uses have historically been and are primarily agricultural irrigation. Increasingly, however, they include industrial, municipal, augmentation, and a host of other decreed uses, as well. The routine maintenance of the ditches and canals owned by the WUA’s members requires the placement of fill to maintain the integrity of the structures and facilitate their conveyance of water. The routine maintenance of the off-channel reservoirs requires the removal of silt to maintain storage capacity and water quality and the regular placement of fill to prevent erosion.

As a result of the Court’s revision of the definition of waters of the United States in *Sackett*, certain state waters are no longer subject to the previously applicable permitting requirement for the discharge of dredged and fill material. The General Assembly is, consequently, currently considering two bills, House Bill 24-1379 and Senate Bill 24-127, either of which would alternatively create a state permit program regulating the discharge of dredged and fill material into waters of the United States, as defined in the *Sackett* opinion, and other state waters, as set forth in the legislation.

Both the house and senate bills define “state waters,” require a permit to discharge dredged or fill material into state waters, and carve out exemptions and/or exceptions.

The proposed house bill, particularly, exempts certain activities that involve the discharge dredged and fill material into state waters from the permitting requirement and excludes certain types of waters from the definition of state waters, thereby authorizing the discharge of dredged and fill material into the excluded water types without a permit. The senate bill, similarly, sets forth circumstances under which the discharge of dredged and fill material does not require a permit.

The WUA is concerned that the exemptions and exclusions contained within the house bill are unworkably narrow. Specifically, the house bill exempts the discharge of dredged and fill material into irrigation ditches from the permitting requirement and includes irrigation ditches and off-channel

reservoirs in the exceptions to the definition of state waters. However, the bill defines “irrigation ditch” as a human-made feature or swale that conveys water for an ultimate irrigation use and off-channel reservoirs are excepted from the definition of state waters if used exclusively for stock watering, irrigation, settling basins, or rice growing.

As noted, though the ditches and off-channel reservoirs owned by the WUA’s members have historically been and are used primarily for irrigation purposes, the vast majority of them now carry or store water that could or will be used for industrial, municipal, augmentation, and a host of other uses, as well. The routine maintenance of the ditches is not consequently exempt from the permitting requirement, and neither the ditches nor the off-channel reservoirs fall within the applicable exception from the definition of state waters. As such, under the house bill, the WUA’s members’ routine maintenance of the ditches and off-channel reservoirs would require a permit. Notably, the circumstances listed in the senate bill under which the discharge of dredged or fill material does not require a permit includes discharges into ditches and off-channel reservoirs that convey and store water that could or will be used for a variety of purposes. Under the senate bill, the maintenance of the structures would not require a permit.

The narrow list of exempted activities and excepted types of waters appears arbitrary and inconsistent with the underlying purpose of the legislation—to maintain water quality and the aquatic environment. Subjecting the routine maintenance of ditches and off-channel reservoirs to the permitting requirement simply because the water conveyed and stored in the structures could or will be used for purposes in addition to irrigation is unworkable, overly burdensome, and inconsistent with the section 404 permitting requirements that existed prior to the Court’s *Sackett* decision.

The WUA, consequently, requests that any legislation that the General Assembly adopt to fill the regulatory gap that resulted from the *Sackett* decision either exempt from the permitting requirement the discharge of dredged or fill material in connection with the maintenance of ditches and off-channel reservoirs that convey or store water used for a variety of purposes or include such ditches and off-channel reservoirs as types of waters excluded from the definition of state waters.

Thank you for considering the WUA’s members’ concerns regarding the proposed legislation.

Sincerely,



Tom "Whitey" O'Malley (Apr 22, 2024 15:50 MDT)

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Thomas O'Malley, President  
Water Users Association of District No. 6