

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

**ENGROSSED**

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

LLS NO. 24-0964.01 Richard Sweetman x4333

**HOUSE BILL 24-1379**

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**HOUSE SPONSORSHIP**

**McCluskie and McCormick,**

**SENATE SPONSORSHIP**

**Roberts,**

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**House Committees**

Agriculture, Water & Natural Resources  
Finance  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

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

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**Bill Summary**

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

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

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

HOUSE  
Amended 2nd Reading  
April 26, 2024

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

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

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

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

Until the rules become effective:

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

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

exceed 2 years.

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

The bill clarifies that "state waters" includes wetlands.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (b) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (C) INCIDENTAL FALLBACK.

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

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

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

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

17 (D) CAUSEWAYS OR ROAD FILLS;

18 (E) DAMS AND DIKES;

19 (F) ARTIFICIAL ISLANDS;

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

22 (H) LEVEES;

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

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

1 ASSOCIATED WITH SOLID WASTE LANDFILLS; AND

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

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

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

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

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

1 TRANSPORTATION; MOSQUITO ABATEMENT; AND STORMWATER  
2 MANAGEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

5

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

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

16 (p) "ISOLATED WETLANDS" MEANS WETLANDS WHOLLY  
17 SURROUNDED BY UPLANDS, WITH NO CONTIGUOUS SURFACE WATER  
18 CONNECTION TO DOWNSTREAM STATE WATERS. "ISOLATED WETLANDS"  
19 DOES NOT INCLUDE WETLANDS WHERE ANY PORTION OF THE WETLAND IS  
20 WITHIN THE ONE-HUNDRED-YEAR FLOODPLAIN OR WITHIN ONE THOUSAND  
21 FIVE HUNDRED FEET OF THE ORDINARY HIGH WATERMARK OF OTHER STATE  
22 WATERS. IN THE ABSENCE OF ONE-HUNDRED-YEAR FLOODPLAIN MAPPING  
23 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE ONE THOUSAND  
24 FIVE HUNDRED FEET DISTANCE CRITERION APPLIES.

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

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

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

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

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

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

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

27 (4) **Duties of the commission. (a) Rules for state dredge and**

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

9 (I) MUST INCLUDE:

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

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

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

17 AND

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

23 (II) MAY INCLUDE:

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

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

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

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

1 ANALYSIS DEVELOPED THROUGH THE SECTION 404 PERMITTING PROCESS  
2 SHALL BE USED FOR THE PURPOSE OF IMPLEMENTING THIS PROHIBITION.  
3 THE RULES MUST ALSO INCLUDE CRITERIA FOR THE DIVISION TO USE TO  
4 IMPLEMENT THE PROHIBITION.

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

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

9 (B) PROTECT DOWNSTREAM USES;

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

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

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

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

25

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

1 AUTHORIZATION PROGRAM:

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

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

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

26 (IV) AN INDIVIDUAL AUTHORIZATION, INCLUDING ALL CONDITIONS  
27 INCORPORATED INTO THE INDIVIDUAL AUTHORIZATION, IS SUBJECT TO

1 ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION UNDER SECTION  
2 25-8-403 AND THEN JUDICIAL REVIEW UNDER SECTION 25-8-404.

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

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

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

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

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

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

27 (C) THE DIVISION'S STATEWIDE GENERAL AUTHORIZATION FOR

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

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

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

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

27 (c) **Compensatory mitigation requirements.** (I) THE DIVISION

1 SHALL INCLUDE COMPENSATORY MITIGATION REQUIREMENTS IN ALL  
2 INDIVIDUAL AUTHORIZATIONS AND IN GENERAL AUTHORIZATIONS WHERE  
3 THE DIVISION DETERMINES THAT THE PROPOSED DISCHARGE OF DREDGED  
4 OR FILL MATERIAL WILL RESULT IN:

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

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

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

14 (d) **Preconstruction notifications.** THE DIVISION SHALL UTILIZE  
15 THE EXISTING STRUCTURE OF PRECONSTRUCTION NOTIFICATIONS IN THE  
16 NATIONWIDE AND REGIONAL PERMITS ISSUED BY THE UNITED STATES  
17 ARMY CORPS OF ENGINEERS, INCLUDING GENERAL AUTHORIZATIONS FOR  
18 CATEGORIES OF ACTIVITIES THAT DO NOT REQUIRE PRECONSTRUCTION  
19 NOTIFICATION. WHERE PRECONSTRUCTION NOTIFICATION IS REQUIRED BY  
20 A GENERAL AUTHORIZATION BEFORE THE COMMENCEMENT OF AN  
21 ACTIVITY, THE PROJECT PROPONENT MUST PROVIDE AT LEAST THIRTY  
22 CALENDAR DAYS OF PRECONSTRUCTION NOTICE TO THE DIVISION UNLESS  
23 A SHORTER NOTICE IS ALLOWED UNDER THE TERMS OF THE APPLICABLE  
24 GENERAL AUTHORIZATION. AFTER PROVIDING SUCH PRECONSTRUCTION  
25 NOTIFICATION, THE PROJECT PROPONENT MAY COMMENCE THE ACTIVITY  
26 IF:

27 (I) THE DIVISION ISSUES TO THE PROJECT PROPONENT A NOTICE OF

1 AUTHORIZATION IN WRITING THAT THE PROJECT PROPONENT MAY  
2 COMMENCE THE ACTIVITY; OR

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

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

22 (f) **Administrative guidance.** THE DIVISION MAY ESTABLISH  
23 GUIDANCE TO ASSIST IN ADMINISTERING THE DREDGE AND FILL DISCHARGE  
24 AUTHORIZATION PROGRAM. ADDITIONALLY, THE DIVISION MAY RELY UPON  
25 RELEVANT GUIDANCE FROM THE FEDERAL ENVIRONMENTAL PROTECTION  
26 AGENCY AND THE UNITED STATES ARMY CORPS OF ENGINEERS, INCLUDING  
27 TECHNICAL GUIDANCE AND ENVIRONMENTAL ANALYSES UNDER THE

1 FEDERAL "NATIONAL ENVIRONMENTAL POLICY ACT OF 1969", 42 U.S.C.  
2 SEC. 4231 ET SEQ., AS AMENDED, IN ADMINISTERING THE PROGRAM, TO THE  
3 EXTENT SUCH GUIDANCE IS CONSISTENT WITH THIS SECTION AND THE  
4 COMMISSION'S RULES.

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

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

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

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

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

27 (B) WHERE THE APPLICANT SHOWS PROOF OF PURCHASE OF

1 MITIGATION BANK CREDITS THAT MEET OR EXCEED THE COMPENSATORY  
2 MITIGATION REQUIREMENTS THAT WOULD HAVE BEEN APPLICABLE UNDER  
3 THE FEDERAL NATIONWIDE OR REGIONAL PERMIT; AND

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

14 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE SEPTEMBER 1,  
15 2026.

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

19 (8) **Applicability and scope of dredge and fill discharge**  
20 **authorization program - prohibitions on discharge without an**  
21 **authorization - definitions.** (a) EXCEPT WHEN CONDUCTING AN  
22 EXEMPTED ACTIVITY DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION OR  
23 WHEN DISCHARGING INTO AN EXCLUDED TYPE OF WATER DESCRIBED IN  
24 SUBSECTION (8)(d) OF THIS SECTION, A PERSON SHALL NOT DISCHARGE  
25 DREDGED OR FILL MATERIAL INTO STATE WATERS WITHOUT FIRST  
26 OBTAINING COVERAGE UNDER A GENERAL AUTHORIZATION OR AN  
27 INDIVIDUAL AUTHORIZATION FOR THE DISCHARGE.

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

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

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

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

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

20 (V) NORMAL FARMING, SILVICULTURE, AND RANCHING ACTIVITIES,  
21 SUCH AS PLOWING; SEEDING; CULTIVATING; MINOR DRAINAGE;  
22 APPLICATION OF ON-FARM CHEMICALS; HARVESTING FOR THE PRODUCTION  
23 OF FOOD, FIBER, AND FOREST PRODUCTS; OR UPLAND SOIL AND WATER  
24 CONSERVATION PRACTICES. AS USED IN THIS SUBSECTION (8)(b)(IV),  
25 "UPLAND SOIL AND WATER CONSERVATION PRACTICES" MEANS ANY  
26 DISCHARGE OF DREDGED OR FILL MATERIAL INTO STATE WATERS  
27 INCIDENTAL TO SOIL AND WATER CONSERVATION PRACTICES FOR THE

1 PURPOSE OF IMPROVING, MAINTAINING, OR RESTORING UPLANDS,  
2 INCLUDING RANGELAND MANAGEMENT PRACTICES, EROSION CONTROL  
3 PRACTICES, AND VEGETATION MANAGEMENT PRACTICES.

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

12 (VII) CONSTRUCTION OR MAINTENANCE OF FARM PONDS, STOCK  
13 PONDS, FARMLAGOONS, RECHARGE FACILITIES LOCATED IN UPLANDS, AND  
14 IRRIGATION DITCHES OR ACEQUIAS, OR MAINTENANCE OF DRAINAGE OR  
15 ROADSIDE DITCHES. NONEXEMPTED ACTIVITIES INCLUDE NEW WORK OR  
16 WORK TO EXTEND, EXPAND, OR RELOCATE AN IRRIGATION DITCH WHERE  
17 AT LEAST FORTY-FIVE PERCENT OF THE WATER IN THE DITCH IS USED FOR  
18 AGRICULTURAL PURPOSES. AS USED IN THIS SUBSECTION (8)(b)(VI):

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

1 INSTANCES WHERE THE DITCH HAS NOT PREVIOUSLY BEEN LINED, IS  
2 CONSIDERED CONSTRUCTION.

3 (B) "IRRIGATION DITCH OR ACEQUIA" INCLUDES A HUMAN-MADE  
4 FEATURE OR A MAINTAINED NATURAL FEATURE IF USE OF THE MAINTAINED  
5 NATURAL FEATURE EXISTED ON JANUARY 1, 2024, AND AN UPLAND SWALE  
6 THAT MOVES OR CONVEYS WATER TO AN ULTIMATE IRRIGATION USE OR  
7 PLACE OF USE, OR MOVES OR CONVEYS IRRIGATION WATER, ALSO KNOWN  
8 AS "RUNOFF", AWAY FROM IRRIGATED LANDS. "IRRIGATION DITCH OR  
9 ACEQUIA" 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 APPURTENANT TO AND  
13 FUNCTIONALLY RELATED TO IRRIGATION DITCHES. IF A DITCH CARRIES  
14 WATER, FORTY-FIVE PERCENT OF WHICH IS USED FOR IRRIGATION,  
15 IRRIGATION RETURN FLOWS, OR PRECIPITATION OR SNOWMELT THAT  
16 MOVES FROM AN IRRIGATED FIELD EITHER TO OR AWAY FROM AN AREA  
17 SUBJECT TO BEING IRRIGATED, THAT DITCH IS CONSIDERED AN IRRIGATION  
18 DITCH AND NOT A DRAINAGE DITCH. USED IN THIS SUBSECTION (8)(b)(VI):

19 (C) "CONSTRUCTION" INCLUDES NEW WORK OR WORK THAT  
20 RESULTS IN AN EXTENSION OR EXPANSION OF AN EXISTING STRUCTURE,  
21 AND THE CONSTRUCTION OF IRRIGATION DITCHES INCLUDES ACTIVITIES  
22 SUCH AS PLACEMENT OF NEW CONTROL STRUCTURES, DITCH RELOCATION,  
23 DITCH CONVERSION INTO PIPE, AND LINING, WHICH MEANS PLACING  
24 IMPERVIOUS MATERIAL SUCH AS CONCRETE, CLAY, OR GEOTEXTILE WITHIN  
25 THE FLOW PERIMETER OF AN OPEN CANAL, LATERAL, OR DITCH WITH THE  
26 INTENT OF REDUCING SEEPAGE LOSSES AND IMPROVING CONVEYANCE  
27 EFFICIENCY. ALL NEW LINING OF DITCHES, IN INSTANCES WHERE THE DITCH

1 HAD NOT PREVIOUSLY BEEN LINED, IS CONSIDERED CONSTRUCTION.

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

16 (E) "MAINTENANCE" MEANS MAINTENANCE PERTAINING TO A  
17 HUMAN-MADE STRUCTURE, SUCH AS A FARM POND, STOCK POND, OR  
18 MAINTAINED SPRING, OR A MAINTAINED NATURAL FEATURE CONVEYING  
19 WATER FOR IRRIGATION OR WILDLIFE PURPOSE IF USE OF THE MAINTAINED  
20 NATURAL FEATURE EXISTED AS OF JANUARY 1, 2024; MAINTENANCE  
21 PERTAINING TO A DITCH OR CANAL CONVEYING WASTEWATER OR WATER  
22 FOR IRRIGATION OR FOR MUNICIPAL PURPOSES, DOMESTIC PURPOSES,  
23 INDUSTRIAL PURPOSES, COMMERCIAL PURPOSES, AUGMENTATION,  
24 RECHARGE, WILDLIFE, RECREATION, COMPACT COMPLIANCE, OR ANY  
25 OTHER PURPOSE; AND MAINTENANCE PERTAINING TO REPAIRS TO AN  
26 EXISTING STRUCTURE OR FEATURE TO KEEP IT IN ITS EXISTING STATE OR  
27 PROPER CONDITION OR TO PRESERVE IT FROM FAILURE OR DECLINE. SUCH

1 MAINTENANCE INCLUDES EXCAVATION OF ACCUMULATED SEDIMENTS  
2 BACK TO ORIGINAL CONTOURS; RESHAPING OF SIDE-SLOPES; BANK  
3 STABILIZATION TO PREVENT EROSION WHERE REASONABLY NECESSARY  
4 USING BEST MANAGEMENT PRACTICES AND, FOR MAINTENANCE OF  
5 DRAINAGE DITCHES, MATERIALS THAT ARE COMPATIBLE WITH EXISTING  
6 BANK MATERIALS; ARMORING, LINING, AND PIPING FOR THE PURPOSE OF  
7 REPAIRING A PREVIOUSLY ARMORED, LINED, OR PIPED SECTION OF A DITCH  
8 SO LONG AS ALL WORK OCCURS WITHIN THE FOOTPRINT OF THE PREVIOUS  
9 WORK; AND REPLACEMENT OF EXISTING CONTROL STRUCTURES WHERE THE  
10 ORIGINAL FUNCTION IS NOT CHANGED AND ORIGINAL APPROXIMATE  
11 CAPACITY IS NOT INCREASED.

12 (VIII) CONSTRUCTION OF TEMPORARY SEDIMENTATION BASINS ON  
13 A CONSTRUCTION SITE, WHICH CONSTRUCTION DOES NOT INCLUDE  
14 PLACEMENT OF FILL MATERIAL INTO STATE WATERS; [REDACTED]

15 (IX) CONSTRUCTION OR MAINTENANCE OF FARM ROADS OR FOREST  
16 ROADS OR TEMPORARY ROADS FOR MOVING WILDFIRE AND POST-FIRE  
17 MITIGATION EQUIPMENT AND RELATED MATERIALS OR MINING EQUIPMENT  
18 WHERE SUCH ROADS ARE CONSTRUCTED AND MAINTAINED, IN  
19 ACCORDANCE WITH BEST MANAGEMENT PRACTICES, TO ASSURE THAT  
20 FLOW AND CIRCULATION PATTERNS AND CHEMICAL AND BIOLOGICAL  
21 CHARACTERISTICS OF THE STATE WATERS ARE NOT IMPAIRED, THAT THE  
22 REACH OF THE STATE WATERS IS NOT REDUCED, AND THAT ANY ADVERSE  
23 IMPACTS ON THE STATE WATERS WILL BE OTHERWISE MINIMIZED;

24 (X) ACTIVITIES FOR THE PURPOSE OF PROVIDING EMERGENCY  
25 RESPONSE TO, PREVENTATIVE MITIGATION OF, OR RECOVERY FROM  
26 DAMAGE CAUSED BY A FIRE, A FLOOD, OR OTHER NATURAL DISASTER SO  
27 LONG AS THE ACTIVITY IS CONDUCTED IN A MANNER THAT MINIMIZES THE

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

4 (XI) MAINTENANCE OF WATER REUSE FACILITIES, WASTEWATER  
5 RECLAMATION FACILITIES, WATER TREATMENT FACILITIES, OR  
6 WASTEWATER WATER TREATMENT FACILITIES. SUCH MAINTENANCE  
7 INCLUDES RECONSTRUCTION DUE TO RECENT DAMAGE OR MAINTENANCE  
8 OF CURRENTLY SERVICEABLE STRUCTURES, SUCH AS PUMPS, CONTROL  
9 SYSTEMS, WEIRS, GATES, CLARIFIERS, SOLIDS HANDLING, FILTERS, AND  
10 SEDIMENTATION BASINS, WHICH MAINTENANCE ACTIVITIES KEEP THE  
11 FACILITY IN ITS EXISTING STATE OR PROPER CONDITION TO PRESERVE IT  
12 FROM FAILURE OR DECLINE.

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

22 (XIII) WILDLIFE HABITAT MANAGEMENT ACTIVITIES, INCLUDING  
23 SEEDING, CULTIVATING, MINOR DRAINAGE, VEGETATION MANAGEMENT,  
24 IRRIGATING, WATER MANAGEMENT, AND MAINTENANCE OF DITCHES,  
25 DIKES, EMBANKMENTS, IMPOUNDMENTS, WATER CONTROL FEATURES, AND  
26 OTHER WATER CONVEYANCE FEATURES THAT ARE HUMAN-MADE OR  
27 MAINTAINED OR THAT OCCUR NATURALLY TO SUPPORT WILDLIFE HABITAT.

1 "WILDLIFE HABITAT MANAGEMENT" MEANS ACTIVITIES THAT OCCUR ON  
2 LAND MANAGED PRIMARILY FOR WETLAND OR RIPARIAN HABITATS TO  
3 SUPPORT WETLAND AND RIPARIAN SPECIES AND DOES NOT INCLUDE  
4 ACTIVITIES THAT ARE INCIDENTAL TO LAND USED FOR RESIDENTIAL,  
5 INDUSTRIAL, OR COMMERCIAL PURPOSES.

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

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

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

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

27 (III) ARTIFICIALLY IRRIGATED AREAS THAT WOULD REVERT TO

1 UPLANDS IF IRRIGATION CEASED;

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

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

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

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

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

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

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

27 (XI) PRIOR CONVERTED CROPLAND. AS USED IN THIS SUBSECTION

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

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

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

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

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

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

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

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

24           **37-60-122.2. Fish and wildlife resources - legislative**  
25 **declaration - fund - authorization.** (1) (b) Except as provided in this  
26 ~~paragraph (b)~~ SUBSECTION (1)(b), the applicant for any water diversion,  
27 delivery, or storage facility ~~which~~ THAT requires an application for a

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

27

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

3           **39-29-109.3. Severance tax operational fund - core reserve -**  
4 **grant program reserve - definitions - repeal.** (1) The executive director  
5 of the department of natural resources shall submit with the department's  
6 budget request for each fiscal year a list and description of the programs  
7 the executive director recommends to be funded from the severance tax  
8 operational fund created in section 39-29-109 (2)(b), referred to in this  
9 section as the "operational fund". Except as otherwise provided in  
10 ~~subsection (10)~~ **SUBSECTIONS (10) AND (11)** of this section, the general  
11 assembly may appropriate money from the total money available in the  
12 operational fund to fund recommended programs as follows:

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

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

20           **SECTION 7.** In Colorado Revised Statutes, 25-8-210, **add**  
21 (4)(a)(I.5) and (4)(d) as follows:

22           **25-8-210. Fees established administratively - rules -**  
23 **stakeholding requirement - phase-in period - clean water cash fund**  
24 **- creation - repeal.** (4) (a) The clean water cash fund is created in the  
25 state treasury. The fund consists of:

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

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

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

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

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

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

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