

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

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

**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.**

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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 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.

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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*,  
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 AND WILDLIFE HABITATS, RECHARGING GROUNDWATER, CONTROLLING  
15 FLOODS, AND KEEPING POLLUTION FROM ENTERING LARGER BODIES OF  
16 WATER;

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

25 (IV) DEVELOPING A STATE DREDGE AND FILL PROGRAM WILL  
26 BENEFIT THE BUSINESSES THAT WISH TO ENGAGE IN DREDGE AND FILL  
27 PROJECTS WITHIN COLORADO BECAUSE, WITHOUT A DISCHARGE

1 AUTHORIZATION FRAMEWORK, THOSE PROJECTS WILL BE PROHIBITED TO  
2 THE DETRIMENT OF COLORADO'S ECONOMY;

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

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

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

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

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

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

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

26 (2) **Applicability - limitations.** NOTHING IN THIS SECTION APPLIES  
27 TO THE ACTIVITIES OF FEDERALLY RECOGNIZED INDIAN TRIBES, INDIANS,

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

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

16 (a) "AQUATIC ECOSYSTEM" MEANS STATE WATERS THAT SERVE AS  
17 HABITAT FOR INTERRELATED AND INTERACTING COMMUNITIES AND  
18 POPULATIONS OF PLANTS AND ANIMALS.

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

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

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

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

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

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

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

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

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



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

7 (C) INCIDENTAL FALLBACK.

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

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

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

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

19 (D) CAUSEWAYS OR ROAD FILLS;

20 (E) DAMS AND DIKES;

21 (F) ARTIFICIAL ISLANDS;

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

24 (H) LEVEES;

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

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

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

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

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

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

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

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

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

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

9 (k) "ECOLOGICAL LIFT" MEANS AN IMPROVEMENT IN THE  
10 BIOLOGICAL, CHEMICAL, GEOMORPHIC, OR HYDROLOGIC HEALTH OF AN  
11 AREA THAT HAS BEEN DAMAGED BY PAST ACTIVITY.

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

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

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

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

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

23 [REDACTED]

24 (m) "ORDINARY HIGH WATERMARK" HAS THE MEANING SET FORTH  
25 IN SECTION 37-87-102 (1)(e).

26 (n) "SECTION 404 PERMIT" MEANS A PERMIT ISSUED BY THE  
27 UNITED STATES ARMY CORPS OF ENGINEERS PURSUANT TO SECTION 404

1 OF THE FEDERAL ACT.

2 (o) "STATE WATERS" HAS THE MEANING SET FORTH IN SECTION  
3 25-8-103 (19).

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

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

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

21 (I) MUST INCLUDE:

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

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

27 (C) THE ESTABLISHMENT OF AUTHORIZATION FEES THAT WILL BE

1 UTILIZED TO IMPLEMENT THE PROGRAM PURSUANT TO SECTION 25-8-210;

2 AND

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

8 (II) MAY INCLUDE:

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

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

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

26 (I) APPLICATION REQUIREMENTS, INCLUDING:

27 (A) PROJECT LOCATION INFORMATION;

- 1 (B) A PROJECT DESCRIPTION, INCLUDING SITE PLANS;
- 2 (C) AN ALTERNATIVES ANALYSIS;
- 3 (D) A PURPOSE AND NEED STATEMENT;
- 4 (E) A DESCRIPTION OF AVOIDANCE AND MINIMIZATION MEASURES;
- 5 (F) A PROJECTED IMPACTS ANALYSIS; AND
- 6 (G) A COMPENSATORY MITIGATION PLAN;

7 (II) A PROHIBITION AGAINST THE DISCHARGE OF DREDGED OR FILL  
8 MATERIAL WHERE THERE IS A PRACTICABLE ALTERNATIVE TO THE  
9 PROPOSED DISCHARGE THAT WOULD HAVE LESS ADVERSE IMPACT ON THE  
10 AQUATIC ECOSYSTEM SO LONG AS THE ALTERNATIVE DOES NOT HAVE  
11 OTHER SIGNIFICANT ADVERSE ENVIRONMENTAL CONSEQUENCES. THE  
12 RULES MUST ALSO INCLUDE CRITERIA FOR THE DIVISION TO USE TO  
13 IMPLEMENT THE PROHIBITION, INCLUDING CONSIDERATION OF THE  
14 FEASIBILITY OF SECURING NECESSARY WATER RIGHTS IN DETERMINING THE  
15 AVAILABILITY OF PRACTICABLE ALTERNATIVES.

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

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

20 (B) PROTECT DOWNSTREAM USES;

21 (C) ADDRESS THE DIRECT, INDIRECT, AND CUMULATIVE IMPACTS  
22 OF THE ACTIVITY; AND

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

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

1           (c) **Rules for compensatory mitigation.** THE COMMISSION SHALL  
2 PROMULGATE RULES BY MAY 31, 2025, TO PROVIDE DETAILS CONCERNING  
3 COMPENSATORY MITIGATION REQUIREMENTS, INCLUDING:

4           (I) FUNCTIONAL ASSESSMENT METHODS AND RATIOS FOR  
5 DETERMINING COMPENSATORY MITIGATION REQUIREMENTS FOR BOTH  
6 WETLAND AND STREAM MITIGATION TO ASSESS IMPACTS AND MITIGATION  
7 BASED ON AN ECOLOGICAL FUNCTION APPROACH; AND

8           (II) COMPENSATORY MITIGATION THRESHOLDS FOR STREAMS.

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


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

17           (II) IN ADDITION TO ANY COMPENSATORY MITIGATION  
18 REQUIREMENTS THE DIVISION DETERMINES ARE NECESSARY TO COMPLY  
19 WITH THE COMMISSION'S RULES AND SUBSECTION (5)(c) OF THIS SECTION,  
20 FOR PROJECTS SUBJECT TO THE REQUIREMENTS OF SECTION 37-60-122.2  
21 (1)(b), THE DIVISION SHALL TAKE INTO CONSIDERATION THE OFFICIAL  
22 STATE POSITION REGARDING MITIGATION FOR FISH AND WILDLIFE  
23 RESOURCES, WHICH POSITION IS ESTABLISHED PURSUANT TO SECTION  
24 37-60-122.2 (1), AND MAY ADOPT ALL OR PART OF SUCH POSITION INTO  
25 INDIVIDUAL AUTHORIZATIONS AS CONDITIONS.

26           (III) 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 EFFECTS TO  
8 STATE WATERS WHEN PERFORMED SEPARATELY, AND HAVE ONLY MINIMAL  
9 CUMULATIVE ADVERSE EFFECTS ON WATER QUALITY AND AQUATIC  
10 ECOSYSTEMS. THE CATEGORIES OF GENERAL AUTHORIZATIONS MUST  
11 CORRESPOND WITH THE VARIOUS NATIONWIDE AND REGIONAL PERMITS  
12 ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS. THE DIVISION  
13 MAY TAILOR THE TERMS OF CERTAIN NATIONWIDE OR REGIONAL PERMITS  
14 TO ACHIEVE GREATER EFFICIENCY AND TO ADDRESS COLORADO-SPECIFIC  
15 NEEDS, INCLUDING BUT NOT LIMITED TO EMERGENCY RESPONSE TO  
16 WILDFIRE AND VOLUNTARY RESTORATION AND ENHANCEMENT EFFORTS  
17 DESIGNED SOLELY FOR THE PURPOSE OF PROVIDING ECOLOGICAL LIFT.

18   
19 (II) FOR A LINEAR PROJECT THAT CROSSES A SINGLE BODY OF  
20 WATER OR MULTIPLE BODIES OF WATER SEVERAL TIMES AT SEPARATE AND  
21 DISTANT LOCATIONS, EACH CROSSING IS CONSIDERED A SINGLE AND  
22 COMPLETE PROJECT FOR PURPOSES OF A GENERAL AUTHORIZATION. AS  
23 USED IN THIS SUBSECTION (5)(b)(II):

24 (A) "LINEAR PROJECT" MEANS A PROJECT CONSTRUCTED FOR THE  
25 PURPOSE OF TRANSPORTING PEOPLE OR GOODS OR PROVIDING SERVICES  
26 THROUGH TRANSPORT FROM A POINT OF ORIGIN TO A TERMINAL POINT,  
27 WHICH OFTEN INVOLVES MULTIPLE CROSSINGS OF A SINGLE BODY OF



1 WATER OR MULTIPLE BODIES OF WATER AT SEPARATE AND DISTANT  
2 LOCATIONS.

3 (B) "SINGLE AND COMPLETE PROJECT" MEANS THE PORTION OF A  
4 LINEAR PROJECT PROPOSED OR ACCOMPLISHED BY ONE OWNER OR  
5 DEVELOPER OR BY A PARTNERSHIP OR OTHER ASSOCIATION OF OWNERS OR  
6 DEVELOPERS, WHICH PROJECT INCLUDES ALL CROSSINGS OF A SINGLE BODY  
7 OF STATE WATERS AT A SPECIFIC LOCATION. FOR THE PURPOSES OF THIS  
8 SUBSECTION (5)(b)(II)(B), INDIVIDUAL CHANNELS IN A BRAIDED STREAM  
9 OR RIVER, OR INDIVIDUAL ARMS OF A LARGE, IRREGULARLY SHAPED  
10 WETLAND OR LAKE, ARE NOT SEPARATE BODIES OF STATE WATERS, AND  
11 CROSSINGS OF SUCH FEATURES CANNOT BE CONSIDERED SEPARATELY.

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

18 (c) **Compensatory mitigation requirements.** (I) THE DIVISION  
19 SHALL INCLUDE COMPENSATORY MITIGATION REQUIREMENTS IN ALL  
20 INDIVIDUAL AUTHORIZATIONS AND IN GENERAL AUTHORIZATIONS WHERE:

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

23 (B) FOR STREAMS, WHERE UNAVOIDABLE ADVERSE IMPACTS  
24 GREATER THAN THE THRESHOLD ESTABLISHED BY THE COMMISSION BY  
25 RULES PROMULGATED PURSUANT TO SUBSECTION (4)(c)(II) OF THIS  
26 SECTION WILL OCCUR.

27 (II) COMPENSATORY MITIGATION MUST COMPENSATE FOR ALL

1 FUNCTIONS OF STATE WATERS THAT WILL BE LOST AS A RESULT OF THE  
2 AUTHORIZED ACTIVITY. COMPENSATORY MITIGATION MAY BE  
3 ACCOMPLISHED THROUGH THE PURCHASE OF MITIGATION BANK CREDITS,  
4 AN IN-LIEU FEE PROGRAM, OR PROJECT PROPONENT-RESPONSIBLE  
5 MITIGATION.

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

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

22 (II) FORTY-FIVE CALENDAR DAYS ELAPSE WITHOUT THE DIVISION  
23 PROVIDING THE PROJECT PROPONENT A NOTICE OF WRITTEN OBJECTION TO  
24 THE ACTIVITY OR PROVIDING A NOTICE THAT THE DIVISION HAS  
25 DETERMINED THE NOTIFICATION IS INCOMPLETE, THE ACTIVITY DOES NOT  
26 MEET THE CRITERIA FOR THE CATEGORY OF ACTIVITIES COVERED BY THE  
27 GENERAL AUTHORIZATION, OR THE ACTIVITY WILL NOT COMPLY WITH ALL

1 APPLICABLE FEDERAL AND STATE STATUTORY AND REGULATORY  
2 REQUIREMENTS. A NOTICE OF WRITTEN OBJECTION PROVIDED TO A  
3 PROJECT PROPONENT BY THE DIVISION MUST STATE THE BASIS OF THE  
4 DIVISION'S OBJECTIONS WITH SPECIFICITY, IS SUBJECT TO DIRECT JUDICIAL  
5 REVIEW UNDER SECTION 25-8-404, AND IS NOT SUBJECT TO  
6 ADMINISTRATIVE RECONSIDERATION UNDER SECTION 25-8-403.

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

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

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

1           **(6) Transition - repeal.** (a) UNTIL THE RULES PROMULGATED BY  
2 THE COMMISSION PURSUANT TO SUBSECTION (4) OF THIS SECTION BECOME  
3 EFFECTIVE:

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

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

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

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

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

1 TO ADDRESS DISCHARGES THAT OCCURRED UNDER THE TEMPORARY  
2 AUTHORIZATION.

3 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE SEPTEMBER 1,  
4 2026.

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

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

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

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

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

27 (III) ACTIVITIES IN RECEIPT OF AN ACTIVE SECTION 404 PERMIT

1 THAT WAS ISSUED ON OR AFTER MAY 25, 2023, EXCEPT TO THE EXTENT  
2 THAT THE PROJECT AREA OF THE SECTION 404 PERMIT INVOLVES A  
3 DISCHARGE OF DREDGED OR FILL MATERIAL INTO STATE WATERS THAT  
4 HAVE BEEN DETERMINED BY THE UNITED STATES ARMY CORPS OF  
5 ENGINEERS TO NOT BE WATERS OF THE UNITED STATES;

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

17 (V) MAINTENANCE, INCLUDING EMERGENCY RECONSTRUCTION OF  
18 RECENTLY DAMAGED PARTS, OF CURRENTLY SERVICEABLE STRUCTURES,  
19 SUCH AS DIKES, DAMS, LEVEES, GROINS, RIPRAP, BREAKWATERS,  
20 CAUSEWAYS, BRIDGE ABUTMENTS OR APPROACHES, AND TRANSPORTATION  
21 STRUCTURES.

22 (VI) CONSTRUCTION OR MAINTENANCE OF FARM PONDS, STOCK  
23 PONDS, AND IRRIGATION DITCHES USED ONLY FOR AGRICULTURAL  
24 PURPOSES OR MAINTENANCE OF DRAINAGE DITCHES AND IRRIGATION  
25 DITCHES THAT ALSO CARRY WATER FOR MUNICIPAL OR INDUSTRIAL USE.

26 AS USED IN THIS SUBSECTION (8)(b)(VI):

27 (A) "CONSTRUCTION" INCLUDES NEW WORK OR WORK THAT

1 RESULTS IN AN EXTENSION OR EXPANSION OF AN EXISTING STRUCTURE,  
2 AND THE CONSTRUCTION OF IRRIGATION DITCHES INCLUDES ACTIVITIES  
3 SUCH AS PLACEMENT OF NEW CONTROL STRUCTURES, DITCH RELOCATION,  
4 DITCH CONVERSION INTO PIPE, AND LINING, WHICH MEANS PLACING  
5 IMPERVIOUS MATERIAL SUCH AS CONCRETE, CLAY, OR GEOTEXTILE WITHIN  
6 THE FLOW PERIMETER OF AN OPEN CANAL, LATERAL, OR DITCH WITH THE  
7 INTENT OF REDUCING SEEPAGE LOSSES AND IMPROVING CONVEYANCE  
8 EFFICIENCY. ALL NEW LINING OF DITCHES, IN INSTANCES WHERE THE DITCH  
9 HAD NOT PREVIOUSLY BEEN LINED, IS CONSIDERED CONSTRUCTION.

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

24 (C) "MAINTENANCE" PERTAINING TO AN IRRIGATION DITCH, A  
25 DRAINAGE DITCH, OR A DITCH THAT CARRIES RAW WATER FOR MUNICIPAL  
26 OR INDUSTRIAL USE INCLUDES A REPAIR TO AN EXISTING STRUCTURE OR  
27 FEATURE TO KEEP THE DITCH IN ITS EXISTING STATE OR PROPER CONDITION

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

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

16 (VIII) CONSTRUCTION OR MAINTENANCE OF FARM ROADS OR  
17 FOREST ROADS OR TEMPORARY ROADS FOR MOVING 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 EFFECT ON THE STATE WATERS WILL BE OTHERWISE MINIMIZED.

24 (c) **Recapture provision - rules.** CONSISTENT WITH SECTION 404  
25 (f)(2) OF THE FEDERAL ACT, ANY DISCHARGE OF DREDGED OR FILL  
26 MATERIAL INTO STATE WATERS INCIDENTAL TO ANY ACTIVITY THAT  
27 BRINGS AN AREA OF THE STATE WATERS INTO A USE TO WHICH IT WAS NOT



1 PREVIOUSLY SUBJECT, WHERE THE FLOW OR CIRCULATION OF STATE  
2 WATERS MAY BE IMPAIRED OR WHERE THE REACH OF SUCH WATERS MAY  
3 BE REDUCED, IS NOT INCLUDED WITHIN THE EXEMPTED ACTIVITIES  
4 DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION. THE COMMISSION MAY  
5 FURTHER CLARIFY THE EFFECT OF THIS SUBSECTION (8)(c) THROUGH  
6 RULE-MAKING.

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

13 (I) ALL DITCHES AND CANALS, INCLUDING DRAINAGE DITCHES,  
14 ROADSIDE DITCHES, AND IRRIGATION DITCHES THAT ARE EXCAVATED ON  
15 UPLAND;

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

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

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

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

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

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

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

14 (IX) PRIOR CONVERTED CROPLAND. AS USED IN THIS SUBSECTION  
15 (8)(d)(IX), "PRIOR CONVERTED CROPLAND" MEANS ANY AREA THAT, PRIOR  
16 TO DECEMBER 23, 1985, WAS DRAINED OR OTHERWISE MANIPULATED FOR  
17 AGRICULTURAL PURPOSES, WHICH INCLUDES LAND USE THAT MAKES THE  
18 PRODUCTION OF AN AGRICULTURAL PRODUCT POSSIBLE, INCLUDING  
19 GRAZING AND HAYING. CROPLAND THAT IS LEFT IDLE OR FALLOW FOR  
20 CONSERVATION OR AGRICULTURAL PURPOSES FOR ANY PERIOD OF TIME  
21 REMAINS IN AGRICULTURAL USE AND, IF THE CROPLAND OTHERWISE  
22 QUALIFIES UNDER THIS SUBSECTION (8)(d)(IX), IS PRIOR CONVERTED  
23 CROPLAND. THE COMMISSION AND THE DIVISION SHALL RECOGNIZE  
24 DESIGNATIONS OF PRIOR CONVERTED CROPLAND MADE BY THE UNITED  
25 STATES SECRETARY OF AGRICULTURE. AN AREA IS NO LONGER  
26 CONSIDERED PRIOR CONVERTED CROPLAND IF THE AREA IS ABANDONED  
27 AND HAS REVERTED TO WETLANDS. ABANDONMENT OCCURS WHEN PRIOR

1 CONVERTED CROPLAND IS NOT USED FOR, OR IN SUPPORT OF,  
2 AGRICULTURAL PURPOSES AT LEAST ONCE IN THE IMMEDIATELY  
3 PRECEDING FIVE YEARS. THE DIVISION SHALL DETERMINE WHETHER PRIOR  
4 CONVERTED CROPLAND HAS BEEN ABANDONED, SUBJECT TO APPEAL TO  
5 THE COMMISSION.

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

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

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

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

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

27 **SECTION 5.** In Colorado Revised Statutes, 37-60-122.2, **amend**

1 (1)(b) as follows:

2 **37-60-122.2. Fish and wildlife resources - legislative**  
3 **declaration - fund - authorization.** (1) (b) Except as provided in this  
4 ~~paragraph (b)~~ SUBSECTION (1)(b), the applicant for any water diversion,  
5 delivery, or storage facility ~~which~~ THAT requires an application for a  
6 permit, A license, or other approval from the United States, OR THAT  
7 REQUIRES AN APPLICATION FOR AN INDIVIDUAL AUTHORIZATION FROM THE  
8 DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND  
9 ENVIRONMENT PURSUANT TO SECTION 25-8-205.1, shall inform the  
10 Colorado water conservation board, parks and wildlife commission, and  
11 division of parks and wildlife of its application and submit a mitigation  
12 proposal pursuant to this section. Exempted from such requirement are  
13 the Animas-La Plata project, the Two Forks dam and reservoir project,  
14 and the Homestake water project for which definite plan reports and final  
15 environmental impact statements have been approved or ~~which~~ THAT are  
16 awaiting approval of the same; applicants for site specific 404 FEDERAL  
17 dredge and fill permits OR INDIVIDUAL AUTHORIZATIONS UNDER SECTION  
18 25-8-205.1 (5)(a) for ~~operations~~ ACTIVITIES not requiring construction of  
19 a reservoir; and applicants for section 404 federal nationwide permits. If  
20 an applicant that is subject to ~~the provisions of~~ this section and the  
21 commission agree upon a mitigation plan for the facility, the commission  
22 shall forward such agreement to the Colorado water conservation board,  
23 and the board shall adopt such agreement at its next meeting as the  
24 official state position on the mitigation actions required of the applicant.  
25 In all cases, the commission shall proceed expeditiously and, no later than  
26 sixty days ~~from~~ AFTER the applicant's notice, unless extended in writing  
27 by the applicant, make its evaluation regarding the probable impact of the

1 proposed facility on fish and wildlife resources and their habitat and to  
2 make its recommendation regarding such reasonable mitigation actions  
3 as may be needed.

4           **SECTION 6. Act subject to petition - effective date.** This act  
5 takes effect at 12:01 a.m. on the day following the expiration of the  
6 ninety-day period after final adjournment of the general assembly; except  
7 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
8 of the state constitution against this act or an item, section, or part of this  
9 act within such period, then the act, item, section, or part will not take  
10 effect unless approved by the people at the general election to be held in  
11 November 2024 and, in such case, will take effect on the date of the  
12 official declaration of the vote thereon by the governor.