

**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

HOUSE SPONSORSHIP

McCluskie and McCormick,

SENATE SPONSORSHIP

Roberts,

House Committees

Agriculture, Water & Natural Resources
Finance
Appropriations

Senate Committees

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.**

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.

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.

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 REDEFINED 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 CONSISTENT
10 WITH 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 BUSINESSES 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;

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

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

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

1 BEEN ACHIEVED.

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

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

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

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

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

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

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

1 SECTION;

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

8 (C) INCIDENTAL FALLBACK.

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

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

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

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

20 (D) CAUSEWAYS OR ROAD FILLS;

21 (E) DAMS AND DIKES;

22 (F) ARTIFICIAL ISLANDS;

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

25 (H) LEVEES;

26 (I) PLACEMENT OF FILL MATERIAL FOR INFRASTRUCTURE SUCH AS
27 SEWAGE TREATMENT FACILITIES, INTAKE AND OUTFALL PIPES ASSOCIATED

1 WITH POWER PLANTS, AND SUBAQUEOUS UTILITY LINES;

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

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

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

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

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

27 (g) "DREDGE AND FILL ACTIVITY" MEANS AN ACTIVITY THAT

1 INCLUDES THE DISCHARGE OF DREDGED OR FILL MATERIAL.

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

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

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

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

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

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

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

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

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

24 ■ ■

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

27 (n) "SECTION 404 PERMIT" MEANS A PERMIT ISSUED BY THE

1 UNITED STATES ARMY CORPS OF ENGINEERS PURSUANT TO SECTION 404
2 OF THE FEDERAL ACT.

3 (o) "STATE WATERS" HAS THE MEANING SET FORTH IN SECTION
4 25-8-103 (19).

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

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

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

22 (I) MUST INCLUDE:

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

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

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

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

9 (II) MAY INCLUDE:

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

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

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

27 (I) APPLICATION REQUIREMENTS, INCLUDING:

- 1 (A) PROJECT LOCATION INFORMATION;
- 2 (B) A PROJECT DESCRIPTION, INCLUDING SITE PLANS;
- 3 (C) AN ALTERNATIVES ANALYSIS;
- 4 (D) A PURPOSE AND NEED STATEMENT;
- 5 (E) A DESCRIPTION OF AVOIDANCE AND MINIMIZATION MEASURES;
- 6 (F) A PROJECTED IMPACTS ANALYSIS; AND
- 7 (G) A COMPENSATORY MITIGATION PLAN;
- 8 (II) A PROHIBITION AGAINST THE DISCHARGE OF DREDGED OR FILL
- 9 MATERIAL WHERE THERE IS A PRACTICABLE ALTERNATIVE TO THE
- 10 PROPOSED DISCHARGE THAT WOULD HAVE LESS ADVERSE IMPACT ON THE
- 11 AQUATIC ECOSYSTEM SO LONG AS THE ALTERNATIVE DOES NOT HAVE
- 12 OTHER SIGNIFICANT ADVERSE ENVIRONMENTAL CONSEQUENCES. THE
- 13 RULES MUST ALSO INCLUDE CRITERIA FOR THE DIVISION TO USE TO
- 14 IMPLEMENT THE PROHIBITION, INCLUDING CONSIDERATION OF THE
- 15 FEASIBILITY OF SECURING NECESSARY WATER RIGHTS IN DETERMINING THE
- 16 AVAILABILITY OF PRACTICABLE ALTERNATIVES.
- 17 (III) DIRECTION TO THE DIVISION TO INCLUDE CONDITIONS IN
- 18 INDIVIDUAL AUTHORIZATIONS, WHICH CONDITIONS ARE DESIGNED TO:
- 19 (A) REMOVE OR REDUCE THE IMPACT TO STATE WATERS OF A
- 20 DISCHARGE OF DREDGED OR FILL MATERIAL;
- 21 (B) PROTECT DOWNSTREAM USES;
- 22 (C) ADDRESS THE DIRECT, INDIRECT, AND CUMULATIVE IMPACTS
- 23 OF THE ACTIVITY; AND
- 24 (D) ENSURE THAT AN AUTHORIZED ACTIVITY AS A WHOLE WILL
- 25 COMPLY WITH ALL APPLICABLE STATE WATER QUALITY REQUIREMENTS,
- 26 EITHER AS PROPOSED OR AS CONDITIONED IN THE AUTHORIZATION; AND
- 27 (IV) OTHER INDIVIDUAL AUTHORIZATION TERMS, SUCH AS

1 MONITORING, RECORD-KEEPING, AND REPORTING REQUIREMENTS.

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

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

9 (II) COMPENSATORY MITIGATION THRESHOLDS FOR STREAMS.

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


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

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

27 (III) AN INDIVIDUAL AUTHORIZATION, INCLUDING ALL CONDITIONS

1 INCORPORATED INTO THE INDIVIDUAL AUTHORIZATION, IS SUBJECT TO
2 ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION UNDER SECTION
3 25-8-403 AND THEN JUDICIAL REVIEW UNDER SECTION 25-8-404.

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

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

25 (A) "LINEAR PROJECT" MEANS A PROJECT CONSTRUCTED FOR THE
26 PURPOSE OF TRANSPORTING PEOPLE OR GOODS OR PROVIDING SERVICES
27 THROUGH TRANSPORT FROM A POINT OF ORIGIN TO A TERMINAL POINT,

1 WHICH OFTEN INVOLVES MULTIPLE CROSSINGS OF A SINGLE BODY OF
2 WATER OR MULTIPLE BODIES OF WATER AT SEPARATE AND DISTANT
3 LOCATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 PROGRAM ADMINISTRATION IN THAT GEOGRAPHIC AREA.

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

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

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

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

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

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

1 INCLUDING THOSE FOR COMPENSATORY MITIGATION, AS ARE NECESSARY
2 TO ADDRESS DISCHARGES THAT OCCURRED UNDER THE TEMPORARY
3 AUTHORIZATION.

4 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE SEPTEMBER 1,
5 2026.

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

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

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

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

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

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

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

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

23 (VI) CONSTRUCTION OR MAINTENANCE OF FARM PONDS, STOCK
24 PONDS, AND IRRIGATION DITCHES USED ONLY FOR AGRICULTURAL
25 PURPOSES OR MAINTENANCE OF DRAINAGE DITCHES AND IRRIGATION
26 DITCHES THAT ALSO CARRY WATER FOR MUNICIPAL OR INDUSTRIAL USE.
27 AS USED IN THIS SUBSECTION (8)(b)(VI):

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

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

25 (C) "MAINTENANCE" PERTAINING TO AN IRRIGATION DITCH, A
26 DRAINAGE DITCH, OR A DITCH THAT CARRIES RAW WATER FOR MUNICIPAL
27 OR INDUSTRIAL USE INCLUDES A REPAIR TO AN EXISTING STRUCTURE OR

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

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

17 (VIII) CONSTRUCTION OR MAINTENANCE OF FARM ROADS OR
18 FOREST ROADS OR TEMPORARY ROADS FOR MOVING MINING EQUIPMENT
19 WHERE SUCH ROADS ARE CONSTRUCTED AND MAINTAINED, IN
20 ACCORDANCE WITH BEST MANAGEMENT PRACTICES, TO ASSURE THAT
21 FLOW AND CIRCULATION PATTERNS AND CHEMICAL AND BIOLOGICAL
22 CHARACTERISTICS OF THE STATE WATERS ARE NOT IMPAIRED, THAT THE
23 REACH OF THE STATE WATERS IS NOT REDUCED, AND THAT ANY ADVERSE
24 EFFECT ON THE STATE WATERS WILL BE OTHERWISE MINIMIZED.

25 (c) **Recapture provision - rules.** CONSISTENT WITH SECTION 404
26 (f)(2) OF THE FEDERAL ACT, ANY DISCHARGE OF DREDGED OR FILL
27 MATERIAL INTO STATE WATERS INCIDENTAL TO ANY ACTIVITY THAT

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

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

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

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

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

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

26 (V) ARTIFICIAL REFLECTING OR SWIMMING POOLS OR OTHER
27 SMALL ORNAMENTAL BODIES OF WATER CREATED BY EXCAVATING OR

1 DIKING UPLAND TO RETAIN WATER FOR PRIMARILY AESTHETIC REASONS;

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

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

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

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

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

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

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

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

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

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

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

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

1 by the applicant, make its evaluation regarding the probable impact of the
2 proposed facility on fish and wildlife resources and their habitat and to
3 make its recommendation regarding such reasonable mitigation actions
4 as may be needed.

5
6 **SECTION 6.** In Colorado Revised Statutes, 39-29-109.3, **amend**
7 (1) introductory portion; and **add** (11) as follows:

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

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

24 (b) ON JULY 1, 2025, THE STATE TREASURER SHALL TRANSFER
25 SEVEN HUNDRED FORTY-EIGHT THOUSAND DOLLARS FROM THE
26 OPERATIONAL FUND TO THE CLEAN WATER CASH FUND CREATED IN
27 SECTION 25-8-210 (4) FOR USE BY THE DEPARTMENT OF PUBLIC HEALTH

1 AND ENVIRONMENT IN ADMINISTERING THE PROGRAM DESCRIBED IN
2 SECTION 25-8-205.1.

3 (c) THIS SUBSECTION (11) IS REPEALED, EFFECTIVE JULY 1, 2027.

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

6 25-8-210. Fees established administratively - rules -
7 stakeholding requirement - phase-in period - clean water cash fund
8 - creation - repeal. (4) (a) The clean water cash fund is created in the
9 state treasury. The fund consists of:

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

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

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

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

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

27 (2) For the 2024-25 state fiscal year, \$20,739 is appropriated to

1 the department of law. This appropriation is from reappropriated funds
2 received from the department of public health and environment under
3 subsection (1)(b) of this section and is based on an assumption that the
4 department of law will require an additional 0.1 FTE. To implement this
5 act, the department of law may use this appropriation to provide legal
6 services for the department of public health and environment.

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