

Second Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0606.01 Richard Sweetman x4333

SENATE BILL 24-127

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SENATE SPONSORSHIP

Kirkmeyer,

HOUSE SPONSORSHIP

Bird,

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Senate Committees

Agriculture & Natural Resources

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE ESTABLISHMENT OF A DREDGE-AND-FILL PERMIT  
102 PROGRAM TO REGULATE THE DISCHARGE OF POLLUTANTS INTO  
103 CERTAIN STATE WATERS IN RESPONSE TO RECENT CHANGES IN  
104 FEDERAL LAW, AND, IN CONNECTION THEREWITH, ESTABLISHING  
105 THE STREAM AND WETLANDS PROTECTION COMMISSION AND  
106 THE STREAM AND WETLANDS PROTECTION DIVISION AND  
107 AUTHORIZING THE STREAM AND WETLANDS PROTECTION  
108 DIVISION TO ADMINISTER AND ENFORCE THE DREDGE-AND-FILL  
109 PERMIT PROGRAM IN ACCORDANCE WITH RULES PROMULGATED  
110 BY THE STREAM AND WETLANDS PROTECTION COMMISSION.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does*

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.*

*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 creates the stream and wetlands protection commission (commission) in the department of natural resources (department) and requires the commission to develop, adopt, and maintain a dredge-and-fill permit program (permit program) for:

- Regulating the discharge of dredged or fill material into certain state waters; and
- Providing protections for state waters, which protections are no more restrictive than the protections provided under the federal "Clean Water Act" as it existed on May 24, 2023.

The bill creates the stream and wetlands protection division (division) in the department to administer and enforce the permit program.

The commission is required to promulgate rules as expeditiously as is prudent and feasible concerning the issuance of permits under the permit program. Until the division implements such rules, the bill prohibits the water quality control division in the department of public health and environment from taking any enforcement action against an activity that includes the discharge of dredged or fill material into state waters if the activity causing the discharge is conducted in a manner that provides for protection of state waters consistent with the protections that would have occurred through compliance with federal law prior to May 25, 2023.

The bill establishes enforcement mechanisms for the permit program. A person who violates the terms of a permit, a rule, or a cease-and-desist order or clean-up order is subject to a civil penalty of not more than \$10,000 per day per violation.

The bill directs the state treasurer to transfer \$600,000 from the severance tax operational fund to the capital construction fund on July 1, 2024, for the implementation of the bill.

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

2           **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds that:

4           (a) On May 25, 2023, the United States supreme court issued an  
5 opinion in *Sackett v. Environmental Protection Agency* that defined the

1 types of water resources that are considered to be "waters of the United  
2 States" and are subject to federal permitting requirements under section  
3 404 of the federal "Clean Water Act", Pub.L. 92-500, for the discharge of  
4 dredged or fill material. The *Sackett* ruling became immediately effective  
5 in Colorado, and federal permitting requirements for the discharge of  
6 dredged or fill material no longer apply to certain state waters. The United  
7 States supreme court effectively narrowed the scope of the federal "Clean  
8 Water Act", undoing protections that have safeguarded many of  
9 Colorado's waters for over fifty years.

10 (b) To date, Colorado has not had a state permit program to  
11 authorize the placement of dredged or fill material into state waters but  
12 has relied on the federal government's permit program. The new  
13 definition of "waters of the United States" under *Sackett*, narrowing  
14 federal jurisdiction in this area, has created a need for a state permit  
15 program. This decision has added a tremendous amount of regulatory  
16 uncertainty regarding the protection of Colorado's aquatic ecosystems and  
17 put at risk sustainable land use. This decision has also shifted the burden  
18 to the states to fill the void in permitting programs.

19 (c) Some projects involving the discharge of dredged or fill  
20 material, such as for flood control; stream restoration; water development;  
21 construction or maintenance of underground utilities, roads, transit, rail,  
22 and housing; and similar efforts that are not regulated by the federal  
23 "Clean Water Act", face regulatory uncertainty unless Colorado develops  
24 its own dredge-and-fill permit program.

25 (2) The general assembly further finds that:

26 (a) Water is Colorado's most critical natural resource. Colorado's  
27 water resources provide essential ecosystem services for a healthy

1 environment and serve as a fundamental element of the state's economic  
2 growth and prosperity.

3 (b) Colorado has a strong interest in protecting water in Colorado  
4 because our economy and way of life rely on clean water. Colorado's  
5 rivers supply millions of people in the United States with water needed  
6 for drinking, agriculture, industry, and outdoor recreation. Moreover,  
7 Colorado must find a way forward to protect waters within its borders and  
8 provide regulatory certainty for the economic, environmental, and social  
9 quality of life in Colorado.

10 (c) The lack of a permitting program will further exacerbate the  
11 unmet housing needs in Colorado and will place at risk the historic  
12 investment of close to one billion dollars for affordable housing made by  
13 the state over the past three years;

14 (d) A state dredge-and-fill permit program can provide a  
15 mechanism for protecting the ecological integrity of Colorado's water  
16 resources while accommodating their sustainable utilization to facilitate  
17 a strong and prosperous economy;

18 (e) Development of the state water plan involved the largest civic  
19 engagement process in the state's history. The state water plan provides  
20 a policy roadmap for managing Colorado's water resources in a way that  
21 leads to a productive economy, vibrant and sustainable cities, productive  
22 agriculture, a strong environment, and a robust recreation industry.

23 (f) In creating a permitting program for dredge-and-fill activities,  
24 Colorado can strike a balance between environmental conservation and  
25 economic development, ensuring that such activities are conducted  
26 responsibly while preserving critical waterways. This will further enable  
27 the state to address specific regional challenges, uphold ecological

1 resilience, and provide a crucial layer of protection.

2 (3) Therefore, the general assembly declares that the state must  
3 adopt a permit program to regulate the discharge of dredged or fill  
4 material into state waters, and, moreover, it is imperative that the state do  
5 so as soon as possible.

6 **SECTION 2.** In Colorado Revised Statutes, **add** article 21 to title  
7 36 as follows:

8 **ARTICLE 21**

9 **Stream and Wetlands Protection Act**

10 **36-21-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 21 IS  
11 THE "STREAM AND WETLANDS PROTECTION ACT".

12 **36-21-102. Definitions.** AS USED IN THIS ARTICLE 21, UNLESS THE  
13 CONTEXT OTHERWISE REQUIRES:

14 (1) "CLEAN WATER ACT" MEANS THE "FEDERAL WATER  
15 POLLUTION CONTROL ACT AMENDMENTS OF 1972", PUB.L. 92-500,  
16 CODIFIED AT 33 U.S.C. SEC. 1251 ET SEQ., AS AMENDED.

17 (2) "COMMISSION" MEANS THE STREAM AND WETLANDS  
18 PROTECTION COMMISSION CREATED IN SECTION 36-21-104.

19 (3) "COMPENSATORY MITIGATION" MEANS REDUCING AN  
20 ACTIVITY'S ADVERSE IMPACTS TO THE AQUATIC ENVIRONMENT BY  
21 REPLACING LOSSES OF STATE WATERS OR WETLANDS.

22 (4) "CORPS OF ENGINEERS" MEANS THE UNITED STATES ARMY  
23 CORPS OF ENGINEERS.

24 (5) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL  
25 RESOURCES CREATED IN SECTION 24-33-101.

26 (6) (a) "DISCHARGE OF DREDGED MATERIAL" MEANS, EXCEPT AS  
27 DESCRIBED IN SUBSECTION (6)(b) OF THIS SECTION, ANY ADDITION OF

1 DREDGED MATERIAL INTO, INCLUDING REDEPOSIT OF DREDGED MATERIAL  
2 OTHER THAN INCIDENTAL FALLBACK WITHIN, STATE WATERS. THE TERM  
3 INCLUDES:

4 (I) THE ADDITION OF DREDGED MATERIAL TO A SPECIFIED  
5 DISCHARGE SITE LOCATED IN STATE WATERS;

6 (II) RUNOFF OR OVERFLOW FROM A CONTAINED LAND OR WATER  
7 DISPOSAL AREA; AND

8 (III) ANY ADDITION, INCLUDING REDEPOSIT OTHER THAN  
9 INCIDENTAL FALLBACK, OF DREDGED MATERIAL INTO STATE WATERS THAT  
10 IS INCIDENTAL TO ANY ACTIVITY, INCLUDING MECHANIZED LAND  
11 CLEARING, DITCHING, CHANNELIZATION, OR OTHER EXCAVATION.

12 (b) "DISCHARGE OF DREDGED MATERIAL" DOES NOT INCLUDE:

13 (I) DISCHARGES OF POLLUTANTS INTO STATE WATERS RESULTING  
14 FROM THE ONSHORE PROCESSING OF DREDGED MATERIAL THAT IS  
15 EXTRACTED FOR ANY COMMERCIAL USE OTHER THAN FILL, WHICH  
16 DISCHARGES ARE SUBJECT TO SECTION 402 OF THE CLEAN WATER ACT  
17 EVEN THOUGH THE EXTRACTION AND DEPOSIT OF SUCH MATERIAL MAY  
18 REQUIRE A SECTION 404 PERMIT OR A PERMIT ISSUED PURSUANT TO THIS  
19 ARTICLE 21;

20 (II) ACTIVITIES THAT INVOLVE ONLY THE CUTTING OR REMOVING  
21 OF VEGETATION ABOVE THE GROUND, SUCH AS MOWING, ROTARY CUTTING,  
22 AND CHAIN-SAWING, SO LONG AS THE ACTIVITY NEITHER SUBSTANTIALLY  
23 DISTURBS THE ROOT SYSTEM NOR INVOLVES MECHANIZED PUSHING,  
24 DRAGGING, OR OTHER SIMILAR ACTIVITIES THAT REDEPOSIT EXCAVATED  
25 SOIL MATERIAL; OR

26 (III) INCIDENTAL FALLBACK.

27 (7) (a) "DISCHARGE OF FILL MATERIAL" MEANS THE ADDITION OF

1 FILL MATERIAL INTO STATE WATERS. THE TERM INCLUDES:

2 (I) PLACEMENT OF FILL MATERIAL THAT IS NECESSARY FOR THE  
3 CONSTRUCTION OF ANY STRUCTURE OR INFRASTRUCTURE IN STATE  
4 WATERS;

5 (II) THE BUILDING OF ANY STRUCTURE, INFRASTRUCTURE, OR  
6 IMPOUNDMENT REQUIRING ROCK, SAND, DIRT, OR OTHER MATERIAL FOR ITS  
7 CONSTRUCTION;

8 (III) SITE-DEVELOPMENT FILLS FOR RECREATIONAL, INDUSTRIAL,  
9 COMMERCIAL, RESIDENTIAL, OR OTHER USES;

10 (IV) CAUSEWAYS OR ROAD FILLS;

11 (V) DAMS AND DIKES;

12 (VI) ARTIFICIAL ISLANDS;

13 (VII) PROPERTY PROTECTION OR RECLAMATION DEVICES SUCH AS  
14 RIPRAP;

15 (VIII) LEVEES;

16 (IX) PLACEMENT OF FILL MATERIAL FOR INFRASTRUCTURE SUCH  
17 AS SEWAGE TREATMENT FACILITIES, INTAKE AND OUTFALL PIPES  
18 ASSOCIATED WITH POWER PLANTS, AND SUBAQUEOUS UTILITY LINES;

19 (X) PLACEMENT OF FILL MATERIAL FOR CONSTRUCTION OR  
20 MAINTENANCE OF ANY LINER, BERM, OR OTHER INFRASTRUCTURE  
21 ASSOCIATED WITH SOLID WASTE LANDFILLS; AND

22 (XI) PLACEMENT OF OVERBURDEN, SLURRY, OR TAILINGS OR  
23 SIMILAR MINING-RELATED MATERIALS.

24 (b) "DISCHARGE OF FILL MATERIAL" DOES NOT INCLUDE:

25 (I) PLOWING, CULTIVATING, SEEDING, OR HARVESTING FOR THE  
26 PRODUCTION OF FOOD, FIBER, OR FOREST PRODUCTS; OR

27 (II) PLACEMENT OF PILINGS IN STATE WATERS UNLESS THE

1 PLACEMENT HAS OR WOULD HAVE THE EFFECT OF A DISCHARGE OF FILL  
2 MATERIAL. PLACEMENT OF PILINGS FOR LINEAR PROJECTS, SUCH AS  
3 BRIDGES, ELEVATED WALKWAYS, AND POWER LINE STRUCTURES,  
4 GENERALLY DOES NOT HAVE THE EFFECT OF A DISCHARGE OF FILL  
5 MATERIAL. FURTHERMORE, PLACEMENT OF PILINGS IN STATE WATERS FOR  
6 A PIER, A WHARF, OR AN INDIVIDUAL HOUSE ON STILTS GENERALLY DOES  
7 NOT HAVE THE EFFECT OF A DISCHARGE OF FILL MATERIAL.

8 (8) "DIVISION" MEANS THE STREAM AND WETLANDS PROTECTION  
9 DIVISION CREATED IN SECTION 36-21-107.

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

12 (10) "DREDGED OR FILL MATERIAL" MEANS DREDGED MATERIAL  
13 OR FILL MATERIAL.

14 (11) (a) "FILL MATERIAL" MEANS MATERIAL PLACED IN STATE  
15 WATERS WHERE THE MATERIAL HAS THE EFFECT OF:

16 (I) REPLACING ANY PORTION OF STATE WATERS WITH DRY LAND;  
17 OR

18 (II) CHANGING THE BOTTOM ELEVATION OF ANY PORTION OF ANY  
19 STATE WATERS.

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

24 (c) "FILL MATERIAL" DOES NOT INCLUDE SOLID WASTE.

25 (12) (a) "LOSS OF STATE WATERS" MEANS STATE WATERS THAT  
26 ARE PERMANENTLY ADVERSELY AFFECTED BY FILLING, FLOODING,  
27 EXCAVATION, OR DRAINAGE BECAUSE OF THE DISCHARGE OF DREDGED OR



1 FILL MATERIAL. FOR THE PURPOSES OF THIS SUBSECTION (12):

2 (I) THE ACREAGE OF LOSS OF STATE WATERS IS CALCULATED  
3 WITHOUT CONSIDERING COMPENSATORY MITIGATION; IT IS NOT A NET  
4 CALCULATION BASED ON THE DIFFERENCE BETWEEN LOSS OF STATE  
5 WATERS AND COMPENSATORY MITIGATION;

6 (II) THE LOSS OF STREAM BED INCLUDES THE ACRES OR LINEAR  
7 FEET OF STREAM BED THAT ARE FILLED OR EXCAVATED AS A RESULT OF A  
8 REGULATED ACTIVITY; AND

9 (III) WHEN CALCULATING LOSS OF STATE WATERS, THE  
10 FOLLOWING ARE NOT INCLUDED:

11 (A) WATERS TEMPORARILY FILLED, FLOODED, EXCAVATED, OR  
12 DRAINED BUT RESTORED TO PRECONSTRUCTION CONTOURS AND  
13 ELEVATIONS AFTER CONSTRUCTION; AND

14 (B) IMPACTS RESULTING FROM ACTIVITIES THAT ARE EXEMPT  
15 PURSUANT TO SECTION 36-21-106 (2)(b).

16 (b) AS USED IN THIS SUBSECTION (12), "PERMANENTLY ADVERSELY  
17 AFFECTED" INCLUDES PERMANENT DISCHARGES OF DREDGED OR FILL  
18 MATERIAL THAT CHANGE AN AQUATIC AREA TO DRY LAND, INCREASE THE  
19 BOTTOM ELEVATION OF A BODY OF WATER, OR CHANGE THE USE OF A  
20 BODY OF WATER.

21 (13) "PERMIT PROGRAM" MEANS THE DREDGE-AND-FILL PERMIT  
22 PROGRAM ADOPTED BY THE COMMISSION PURSUANT TO SECTION  
23 36-21-105(1) AND ADMINISTERED BY THE DIVISION PURSUANT TO SECTION  
24 36-21-107.

25 (14) "PRIOR-CONVERTED CROPLAND" MEANS ANY AREA THAT,  
26 PRIOR TO DECEMBER 23, 1985, WAS DRAINED OR OTHERWISE  
27 MANIPULATED FOR THE PURPOSE, OR HAVING THE EFFECT, OF MAKING

1 PRODUCTION OF AN AGRICULTURAL PRODUCT POSSIBLE. FOR THE  
2 PURPOSES OF THIS SUBSECTION (14):

3 (a) THE COMMISSION AND THE DIVISION SHALL RECOGNIZE  
4 DESIGNATIONS OF PRIOR-CONVERTED CROPLAND MADE BY THE UNITED  
5 STATES SECRETARY OF AGRICULTURE;

6 (b) AN AREA IS NO LONGER CONSIDERED PRIOR-CONVERTED  
7 CROPLAND IF THE AREA IS ABANDONED AND HAS REVERTED TO WETLANDS;

8 (c) ABANDONMENT OCCURS WHEN PRIOR-CONVERTED CROPLAND  
9 IS NOT USED FOR, OR IN SUPPORT OF, AGRICULTURAL PURPOSES AT LEAST  
10 ONCE IN THE IMMEDIATELY PRECEDING FIVE YEARS; AND

11 (d) THE DIVISION SHALL DETERMINE WHETHER PRIOR-CONVERTED  
12 CROPLAND HAS BEEN ABANDONED.

13 (15) "SECTION 404 PERMIT" MEANS A PERMIT ISSUED BY THE CORPS  
14 OF ENGINEERS PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT.

15 (16) "STATE WATER PLAN" MEANS THE STATE WATER PLAN  
16 DESCRIBED IN SECTION 37-60-106.3.

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

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

24 **36-21-103. Intent and scope of article.** (1) THIS ARTICLE 21 IS  
25 INTENDED TO ADDRESS THE REGULATORY GAP IN REGULATION CREATED  
26 BY THE UNITED STATES SUPREME COURT'S MAY 2023 *SACKETT V.*  
27 *ENVIRONMENTAL PROTECTION AGENCY* DECISION BY MANAGING

1 DISCHARGES OF DREDGED OR FILL MATERIAL INTO STATE WATERS, USING  
2 COLORADO-SPECIFIC CONDITIONS, IN A MANNER CONSISTENT WITH THE  
3 REGULATION OF STATE WATERS UNDER THE FEDERAL REGULATIONS AND  
4 STATE PROCEDURES IN EFFECT BEFORE *SACKETT*, WHILE ACCOUNTING FOR  
5 CONSTITUTIONAL LIMITATIONS. THIS ARTICLE 21 IS FURTHER INTENDED TO  
6 PROVIDE A SUFFICIENTLY SPECIFIC AND UNDERSTANDABLE DESCRIPTION  
7 OF THOSE PROTECTED WATER RESOURCES, AS SET FORTH IN SECTION  
8 36-21-106(2), TO GIVE CERTAINTY TO PERSONS CONDUCTING REGULATED  
9 ACTIVITIES.

10 (2) THE PERMIT PROGRAM IMPLEMENTED PURSUANT TO THIS  
11 ARTICLE 21 MUST INCORPORATE THE ELEMENTS OF, AND BE NO LESS  
12 BROAD IN COVERAGE THAN, NATIONWIDE AND GENERAL SECTION 404  
13 PERMITS ADDRESSING SUBJECTS THAT ARE APPLICABLE TO COLORADO.

14 (3) THE PERMIT PROGRAM IMPLEMENTED PURSUANT TO THIS  
15 ARTICLE 21 MUST CARRY FORTH THE PRINCIPLES AND GOALS OF THE STATE  
16 WATER PLAN AS DESCRIBED IN SECTION 37-60-106.3, SPECIFICALLY ITS  
17 CALL FOR A MORE EFFICIENT PERMITTING PROCESS AND BETTER  
18 INTEGRATION OF WATER QUALITY AND QUANTITY PLANNING AND  
19 MANAGEMENT. THIS WILL REQUIRE COLLABORATION AND COORDINATION  
20 WITHIN AND AMONG VARIOUS STATE AGENCIES.

21 (4) THE PERMIT PROGRAM IMPLEMENTED PURSUANT TO THIS  
22 ARTICLE 21 IS INTENDED TO PROTECT AND MANAGE THOSE WATER  
23 RESOURCES THAT WERE SUBJECT TO THE JURISDICTION OF THE SECTION  
24 404 PERMIT PROGRAM PRIOR TO *SACKETT* BUT ARE NO LONGER SUBJECT TO  
25 FEDERAL REGULATION. THE PERMIT PROGRAM IS NOT INTENDED TO  
26 REGULATE DISCHARGES TO GROUNDWATER.

27 (5) THIS ARTICLE 21 SHALL BE CONSTRUED TO REQUIRE THE

1 PERMIT PROGRAM TO IMPOSE REGULATORY MEASURES THAT ENSURE THAT  
2 THE ENVIRONMENTAL BENEFITS OF THE REGULATORY MEASURES HAVE A  
3 REASONABLE RELATIONSHIP TO THE ECONOMIC, ENVIRONMENTAL,  
4 ENERGY, AND PUBLIC HEALTH COSTS AND IMPACTS OF THE REGULATORY  
5 MEASURES.

6 (6) (a) NO PROVISION OF THIS ARTICLE 21 SHALL BE INTERPRETED  
7 SO AS TO SUPERSEDE, ABROGATE, OR IMPAIR RIGHTS TO DIVERT WATER  
8 AND APPLY WATER TO BENEFICIAL USES IN ACCORDANCE WITH:

9 (I) SECTIONS 5 AND 6 OF ARTICLE XVI OF THE STATE  
10 CONSTITUTION;

11 (II) ANY COMPACT ENTERED INTO BY THE STATE;

12 (III) ARTICLES 80 TO 92 OF TITLE 37; OR

13 (IV) ANY COLORADO COURT DETERMINATIONS WITH RESPECT TO  
14 THE DETERMINATION AND ADMINISTRATION OF WATER RIGHTS.

15 (b) NOTHING IN THIS ARTICLE 21 SHALL BE CONSTRUED,  
16 ENFORCED, OR APPLIED SO AS TO CAUSE OR RESULT IN MATERIAL INJURY  
17 TO WATER RIGHTS.

18 **36-21-104. Stream and wetlands protection commission -**  
19 **created - membership - compensation - public meetings - voting.**

20 (1) THE STREAM AND WETLANDS PROTECTION COMMISSION IS CREATED  
21 IN THE DEPARTMENT AS A **TYPE 1** ENTITY, AS DEFINED IN SECTION  
22 24-1-105. THE COMMISSION EXERCISES ITS POWERS AND PERFORMS ITS  
23 DUTIES AND FUNCTIONS UNDER THE DEPARTMENT.

24 (2) THE COMMISSION CONSISTS OF NINE RESIDENTS OF THE STATE,  
25 EACH OF WHOM IS APPOINTED BY THE GOVERNOR, WITH THE CONSENT OF  
26 THE SENATE, FOR TERMS OF THREE YEARS; EXCEPT THAT, OF THE MEMBERS  
27 WHO ARE INITIALLY APPOINTED TO THE COMMISSION, THE GOVERNOR

1 SHALL SPECIFY THREE MEMBERS WHO SHALL SERVE INITIAL TERMS OF ONE  
2 YEAR AND THREE MEMBERS WHO SHALL SERVE INITIAL TERMS OF TWO  
3 YEARS.

4 (3) (a) THE MEMBERSHIP OF THE COMMISSION MUST REPRESENT  
5 DIVERSE REGIONS OF THE STATE AND REFLECT SUCH REGIONS' INTERESTS  
6 IN WATER IN THE STATE.

7 (b) AT LEAST THREE MEMBERS OF THE COMMISSION MUST RESIDE  
8 WEST OF THE CONTINENTAL DIVIDE.

9 (c) NO MORE THAN FIVE MEMBERS OF THE COMMISSION MAY BE  
10 AFFILIATED WITH THE SAME POLITICAL PARTY.

11 (d) AT LEAST ONE MEMBER OF THE COMMISSION MUST BE FROM AN  
12 AGRICULTURAL COMMUNITY.

13 (e) AT LEAST THREE MEMBERS OF THE COMMISSION MUST BE  
14 EMPLOYED IN A SECTOR OF THE STATE'S ECONOMY THAT HAS BEEN OR IS  
15 LIKELY TO BE REGULATED BY THE DIVISION.

16 (f) AT LEAST THREE MEMBERS OF THE COMMISSION MUST HAVE  
17 SUBSTANTIAL AND RELEVANT SCIENTIFIC, TECHNICAL, OR LEGAL  
18 EXPERIENCE.

19 (g) AT LEAST THREE MEMBERS OF THE COMMISSION MUST HAVE  
20 SUBSTANTIAL EXPERIENCE WITH WATER RIGHTS OR WATER RESOURCES  
21 MANAGEMENT.

22 (4) WHENEVER A VACANCY ON THE COMMISSION EXISTS, THE  
23 GOVERNOR SHALL APPOINT A MEMBER FOR THE REMAINING PORTION OF  
24 THE UNEXPIRED TERM CREATED BY THE VACANCY, SUBJECT TO  
25 CONFIRMATION BY THE SENATE.

26 (5) (a) THE GOVERNOR MAY REMOVE A MEMBER OF THE  
27 COMMISSION FOR MALFEASANCE IN OFFICE, FAILURE TO REGULARLY

1 ATTEND MEETINGS, OR ANY OTHER CAUSE THAT RENDERS THE MEMBER  
2 INCAPABLE OR UNFIT TO DISCHARGE THE MEMBER'S DUTIES.

3 (b) IF ANY MEMBER OF THE COMMISSION IS ABSENT FROM TWO  
4 CONSECUTIVE MEETINGS, THE CHAIR OF THE COMMISSION SHALL  
5 DETERMINE WHETHER THE CAUSE OF THE ABSENCES WAS REASONABLE. IF  
6 THE CHAIR DETERMINES THAT THE CAUSE OF THE ABSENCES WAS  
7 UNREASONABLE, THE CHAIR SHALL NOTIFY THE GOVERNOR OF THE CHAIR'S  
8 DETERMINATION. AFTER REVIEWING THE CHAIR'S DETERMINATION, THE  
9 GOVERNOR MAY REMOVE THE MEMBER FROM THE COMMISSION AND  
10 APPOINT A QUALIFIED PERSON FOR THE UNEXPIRED PORTION OF THE  
11 MEMBER'S TERM, SUBJECT TO CONFIRMATION BY THE SENATE.

12 (6) EACH MEMBER OF THE COMMISSION WHO IS NOT A FULL-TIME  
13 EMPLOYEE OF THE STATE MAY RECEIVE A PER DIEM IN AN AMOUNT EQUAL  
14 TO THE AMOUNT PAID TO MEMBERS OF THE GENERAL ASSEMBLY FOR  
15 ATTENDANCE AT INTERIM COMMITTEES, AS ESTABLISHED BY THE  
16 EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL PURSUANT TO  
17 SECTION 2-2-307 (3)(a)(IV)(A), FOR EACH DAY ACTUALLY AND  
18 NECESSARILY SPENT IN THE DISCHARGE OF OFFICIAL DUTIES, NOT TO  
19 EXCEED ONE THOUSAND TWO HUNDRED DOLLARS IN ANY STATE FISCAL  
20 YEAR, AND EACH MEMBER SHALL RECEIVE REIMBURSEMENT FOR TRAVEL  
21 AND OTHER NECESSARY EXPENSES ACTUALLY INCURRED IN THE  
22 PERFORMANCE OF THE MEMBER'S OFFICIAL DUTIES.

23 (7) THE COMMISSION SHALL SELECT FROM ITS MEMBERSHIP A  
24 CHAIR, A VICE-CHAIR, AND A SECRETARY. THE SECRETARY OF THE  
25 COMMISSION SHALL KEEP A RECORD OF THE COMMISSION'S PROCEEDINGS.

26 (8) THE COMMISSION SHALL HOLD REGULAR PUBLIC MEETINGS AND  
27 MAY HOLD OTHER MEETINGS UPON THE CALL OF THE CHAIR OR THE

1 VICE-CHAIR AT SUCH OTHER TIMES AS THE CHAIR OR VICE-CHAIR DEEM  
2 NECESSARY. WRITTEN NOTICE OF THE TIME AND PLACE OF EACH MEETING  
3 SHALL BE E-MAILED TO EACH MEMBER AT LEAST FIVE DAYS BEFORE THE  
4 MEETING OCCURS.

5 (9) EACH MEMBER OF THE COMMISSION HAS ONE VOTE.  
6 TWO-THIRDS OF THE MEMBERS OF THE COMMISSION CONSTITUTES A  
7 QUORUM. THE CONCURRENCE OF A MAJORITY OF THE COMMISSION  
8 MEMBERS ON ANY MATTER WITHIN THE SCOPE OF THE COMMISSION'S  
9 POWERS AND DUTIES IS REQUIRED FOR ANY DETERMINATION MADE BY THE  
10 COMMISSION.

11 **36-21-105. Duties of commission - rules - administrator.**

12 (1) THE COMMISSION SHALL:

13 (a) DEVELOP, ADOPT, AND MAINTAIN A DREDGE-AND-FILL PERMIT  
14 PROGRAM FOR REGULATING THE DISCHARGE OF DREDGED OR FILL  
15 MATERIAL INTO STATE WATERS;

16 (b) PROMULGATE RULES CONCERNING THE ISSUANCE OF PERMITS,  
17 AS DESCRIBED IN SECTION 36-21-106;

18 (c) SET PERMIT FEE AMOUNTS IN ACCORDANCE WITH SECTION  
19 36-21-106, WHICH FEE AMOUNTS MUST REQUIRE PERMITTEES TO PAY NO  
20 MORE THAN FIFTY PERCENT OF THE COST OF ADMINISTERING THE PERMIT  
21 PROGRAM, AND REVIEW THE AMOUNTS OF THE FEES AT LEAST EVERY  
22 THREE YEARS;

23 (d) ADVISE, CONSULT WITH, AND COOPERATE WITH OTHER  
24 AGENCIES OF THE STATE, THE FEDERAL GOVERNMENT, AND OTHER STATES  
25 AND WITH GROUPS, POLITICAL SUBDIVISIONS, AND INDUSTRIES AFFECTED  
26 BY THIS ARTICLE 21 AND THE POLICIES OR RULES OF THE COMMISSION;

27 (e) EXERCISE, WITH THE DIVISION, ALL INCIDENTAL POWERS

1 NECESSARY OR PROPER FOR CARRYING OUT THE PURPOSES OF THIS  
2 ARTICLE 21, INCLUDING THE POWERS TO ISSUE AND ENFORCE RULES AND  
3 ORDERS;

4 (f) PERFORM SUCH OTHER DUTIES AS MAY LAWFULLY BE ASSIGNED  
5 TO THE COMMISSION BY LAW; AND

6 (g) ACT AS AN APPELLATE BODY TO REVIEW DETERMINATIONS OF  
7 THE DIVISION, AS DESCRIBED IN SECTION 36-21-109 (4).

8 (2) (a) THE COMMISSION SHALL EMPLOY AN ADMINISTRATOR WHO  
9 SHALL PERFORM SUCH DUTIES AS THE COMMISSION DEEMS NECESSARY;  
10 EXCEPT THAT THE COMMISSION SHALL NOT DELEGATE TO THE  
11 ADMINISTRATOR ANY AUTHORITY TO:

12 (I) PROMULGATE RULES;

13 (II) MAKE DETERMINATIONS; OR

14 (III) ISSUE ORDERS OR COUNTERMAND ORDERS OF THE  
15 COMMISSION.

16 (b) THE ADMINISTRATOR MUST HAVE APPROPRIATE PRACTICAL,  
17 EDUCATIONAL, AND ADMINISTRATIVE EXPERIENCE RELATED TO WATER  
18 RESOURCES MANAGEMENT AND SHALL BE EMPLOYED BY THE DEPARTMENT  
19 PURSUANT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION.

20 (3) BEFORE TAKING ANY FINAL ACTION, THE COMMISSION SHALL  
21 CONSIDER THE TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS  
22 OF THE ACTION, INCLUDING AN EVALUATION OF THE BENEFITS DERIVED  
23 FROM ACHIEVING THE GOALS OF THIS ARTICLE 21 AND THE ECONOMIC,  
24 ENVIRONMENTAL, PUBLIC HEALTH, AND ENERGY IMPACTS TO THE PUBLIC  
25 AND AFFECTED PERSONS.

26 **36-21-106. Permit program - rules.** (1) AS EXPEDITIOUSLY AS  
27 IS PRUDENT AND FEASIBLE, THE COMMISSION SHALL PROMULGATE RULES



1 FOR THE DEVELOPMENT, ADOPTION, AND MAINTENANCE OF THE PERMIT  
2 PROGRAM. THE COMMISSION SHALL MAXIMIZE THE USE OF GENERAL  
3 PERMITS TO ENSURE THAT MOST ACTIVITIES THAT ARE SUBJECT TO THE  
4 PERMIT PROGRAM MAY PROCEED WITHOUT AN INDIVIDUAL PERMIT SO  
5 LONG AS THE PERMITTEE COMPLIES WITH THE TERMS OF THE GENERAL  
6 PERMIT. THE COMMISSION SHALL PROMULGATE THE RULES AS FOLLOWS:

7 (a) **General permits.** THE COMMISSION SHALL PROMULGATE  
8 RULES ADOPTING GENERAL PERMITS FOR CATEGORIES OF ACTIVITIES THAT  
9 ARE SIMILAR IN NATURE AND CAUSE ONLY MINIMAL ADVERSE EFFECTS TO  
10 STATE WATERS WHEN PERFORMED SEPARATELY. IN THE RULES, THE  
11 COMMISSION SHALL INCORPORATE BY REFERENCE THE NATIONWIDE,  
12 GENERAL, AND REGIONAL PERMITS ISSUED BY THE CORPS OF ENGINEERS AS  
13 OF MAY 24, 2023, TO THE EXTENT THAT THE SUBJECTS OF SUCH PERMITS  
14 ARE APPLICABLE IN COLORADO. THE COMMISSION SHALL ALSO  
15 INCORPORATE BY REFERENCE ALL ADDITIONAL NATIONWIDE, GENERAL,  
16 AND REGIONAL PERMITS ISSUED BY THE CORPS OF ENGINEERS AFTER MAY  
17 24, 2023, TO THE EXTENT THAT THE SUBJECTS OF SUCH PERMITS ARE  
18 APPLICABLE IN COLORADO. THE COMMISSION SHALL ALSO AFFORD  
19 GENERAL PERMIT COVERAGE BY RULE FOR ADDITIONAL ACTIVITIES,  
20 INCLUDING ACTIVITIES WITH EFFECTS IN EXCESS OF IMPACT THRESHOLDS  
21 IN EXISTING CORPS OF ENGINEERS NATIONWIDE PERMITS, TO PROCEED  
22 UPON PRECONSTRUCTION NOTIFICATION, SO LONG AS MITIGATION OF THE  
23 LOSS OF STATE WATERS AT A ONE-FOR-ONE RATIO ENSURES IMPACTS TO  
24 STATE WATERS ARE NO MORE THAN MINIMAL.

25 (b) **Preconstruction notifications.** THE COMMISSION SHALL  
26 PROMULGATE RULES THAT UTILIZE THE EXISTING STRUCTURE OF  
27 PRECONSTRUCTION NOTIFICATIONS IN THE NATIONWIDE, GENERAL, AND

1 REGIONAL PERMITS ESTABLISHED BY THE CORPS OF ENGINEERS, INCLUDING  
2 RULES DESCRIBING CIRCUMSTANCES IN WHICH A PRECONSTRUCTION  
3 NOTIFICATION IS NOT REQUIRED. WHERE SUCH RULES REQUIRE  
4 PRECONSTRUCTION NOTIFICATION BEFORE THE COMMENCEMENT OF AN  
5 ACTIVITY, THE RULES MUST REQUIRE THE PROJECT PROPONENT TO PROVIDE  
6 AT LEAST THIRTY CALENDAR DAYS OF PRECONSTRUCTION NOTICE TO THE  
7 DIVISION. AFTER PROVIDING SUCH PRECONSTRUCTION NOTIFICATION, THE  
8 PERMITTEE MAY COMMENCE THE ACTIVITY IF:

9 (I) THE DIVISION INDICATES IN WRITING THAT THE PERMITTEE MAY  
10 COMMENCE THE ACTIVITY; OR

11 (II) FORTY-FIVE CALENDAR DAYS ELAPSE WITHOUT THE DIVISION  
12 PROVIDING THE PERMITTEE A WRITTEN OBJECTION TO THE ACTIVITY. A  
13 NOTICE OF OBJECTION PROVIDED TO A PERMITTEE BY THE DIVISION MUST  
14 STATE THE BASIS OF THE DIVISION'S OBJECTIONS WITH SPECIFICITY.

15 (c) **Individual permits.** THE COMMISSION SHALL PROMULGATE  
16 RULES FOR THE ISSUANCE OF INDIVIDUAL PERMITS FOR THE DISCHARGE OF  
17 DREDGED OR FILL MATERIAL INTO STATE WATERS IN ASSOCIATION WITH  
18 ACTIVITIES THAT DO NOT REQUIRE A GENERAL PERMIT AS DESCRIBED IN  
19 SUBSECTION (1)(a) OF THIS SECTION. THE RULES MUST STREAMLINE THE  
20 APPLICATION AND ADMINISTRATIVE REVIEW PROCESS TO MINIMIZE DELAY  
21 OF THE COMMENCEMENT OF ACTIVITIES SUBJECT TO THE PERMIT PROGRAM.

22 (d) THE RULES ADOPTED BY THE COMMISSION FOR THE PERMIT  
23 PROGRAM MUST USE CRITERIA THAT ARE NO MORE STRINGENT THAN THE  
24 CRITERIA DEVELOPED BY THE ADMINISTRATOR OF THE FEDERAL  
25 ENVIRONMENTAL PROTECTION AGENCY IN CONJUNCTION WITH THE  
26 SECRETARY OF THE ARMY PURSUANT TO 33 U.S.C. SEC. 1344 (b).

27 (2) **Applicability and scope of permit program.** (a) EXCEPT AS

1 INDICATED IN SUBSECTION (2)(b) OF THIS SECTION, A PERSON MUST  
2 POSSESS A PERMIT ISSUED PURSUANT TO THIS ARTICLE 21 IN ORDER TO  
3 DISCHARGE DREDGED OR FILL MATERIAL INTO ANY:

4 (I) STATE WATERS THAT EXHIBIT A BED, BANK, AND ORDINARY  
5 HIGH WATERMARK;

6 (II) FENS; OR

7 (III) WETLANDS LYING WHOLLY OR PARTIALLY WITHIN THE  
8 ONE-HUNDRED-YEAR FLOODPLAIN OR WITHIN ONE THOUSAND FIVE  
9 HUNDRED FEET OF THE ORDINARY HIGH WATERMARK OF A STREAM,  
10 RESERVOIR, OR LAKE.

11 (b) **Exemptions from the permit program.** NOTWITHSTANDING  
12 ANY OTHER PROVISION OF THIS ARTICLE 21, AND EXCEPT AS DESCRIBED IN  
13 SUBSECTION (2)(c) OF THIS SECTION, THE DISCHARGE OF DREDGED OR FILL  
14 MATERIAL DOES NOT REQUIRE A PERMIT AND IS NOT PROHIBITED BY OR  
15 OTHERWISE SUBJECT TO REGULATION UNDER THIS ARTICLE 21 IF THE  
16 DREDGED OR FILL MATERIAL IS DISCHARGED:

17 (I) INTO A WASTE TREATMENT SYSTEM, INCLUDING A TREATMENT  
18 POND OR LAGOON, THAT IS DESIGNED TO MEET THE REQUIREMENTS OF THE  
19 CLEAN WATER ACT OR THE "COLORADO WATER QUALITY CONTROL ACT",  
20 ARTICLE 8 OF TITLE 25;

21 (II) INTO GROUNDWATER, AS DEFINED IN SECTION 37-91-102 (7);

22 (III) INTO PRIOR-CONVERTED CROPLAND;

23 (IV) INTO HUMAN-MADE DITCHES OR CANALS THAT CONVEY  
24 WATER OR WASTEWATER;

25 (V) INTO WETLANDS THAT ARE ADJACENT TO A DITCH OR CANAL  
26 AND SUPPORTED BY THE WATER IN THE ADJACENT DITCH OR CANAL;

27 (VI) INTO ANY COMPONENT OF A CONVEYANCE OR SYSTEM OF

1 CONVEYANCES, INCLUDING ROADS WITH DRAINAGE SYSTEMS, MUNICIPAL  
2 STREETS, CATCH BASINS, CURBS, GUTTERS, DITCHES, HUMAN-MADE  
3 CHANNELS, OR STORM DRAINS THAT ARE DESIGNED TO:

4 (A) CONVEY, RETAIN, CONCENTRATE, SETTLE, REDUCE, OR  
5 REMOVE POLLUTANTS, EITHER ACTIVELY OR PASSIVELY, FROM  
6 WASTEWATER OR STORM WATER SYSTEMS PRIOR TO DISCHARGE; OR

7 (B) ELIMINATE SUCH DISCHARGE;

8 (VII) INTO AN ARTIFICIALLY IRRIGATED AREA THAT WOULD  
9 REVERT TO DRY LAND IF THE IRRIGATION CEASED;

10 (VIII) INTO AN ARTIFICIAL LAKE OR POND CREATED BY  
11 EXCAVATING OR DIKING DRY LAND, SUCH AS A FARM AND STOCK  
12 WATERING POND, AN IRRIGATION POND, A SETTLING BASIN, A LOG  
13 CLEANING POND, OR A COOLING POND;

14 (IX) INTO AN ARTIFICIAL REFLECTING POOL, A SWIMMING POOL, OR  
15 ANY OTHER SMALL ORNAMENTAL BODY OF WATER CREATED BY  
16 EXCAVATING OR DIKING DRY LAND TO RETAIN WATER FOR PRIMARILY  
17 AESTHETIC REASONS;

18 (X) INTO WATER-FILLED DEPRESSIONS CREATED IN DRY LAND,  
19 WHICH DEPRESSIONS ARE INCIDENTAL TO MINING OR CONSTRUCTION  
20 ACTIVITY, INCLUDING ANY PITS THAT ARE EXCAVATED FOR OBTAINING  
21 FILL, SAND, OR GRAVEL AND FILL WITH WATER;

22 (XI) INTO ANY SWALE OR EROSIONAL FEATURE, SUCH AS A GULLY  
23 OR SMALL WASH, WHICH SWALE OR EROSIONAL FEATURE IS  
24 CHARACTERIZED BY LOW-VOLUME, INFREQUENT, OR SHORT-DURATION  
25 FLOW;

26 (XII) INTO A WASTEWATER RECYCLING STRUCTURE CONSTRUCTED  
27 ON DRY LAND, A DETENTION AND RETENTION BASIN BUILT FOR

1 WASTEWATER RECYCLING, A GROUNDWATER RECHARGE BASIN, A  
2 PERCOLATION POND BUILT FOR WASTEWATER RECYCLING, OR A WATER  
3 DISTRIBUTARY STRUCTURE BUILT FOR WASTEWATER RECYCLING;

4 (XIII) INTO WATERS THAT ARE DETERMINED TO NOT BE WATERS  
5 OF THE UNITED STATES IN AN APPROVED JURISDICTIONAL DETERMINATION  
6 ISSUED BY THE CORPS OF ENGINEERS BEFORE MAY 25, 2023;

7 (XIV) FROM 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;

11 (XV) FOR THE PURPOSE OF MAINTAINING CURRENTLY  
12 SERVICEABLE STRUCTURES SUCH AS DIKES, DAMS, LEVEES, GROINS,  
13 RIPRAP, BREAKWATERS, CAUSEWAYS, BRIDGE ABUTMENTS OR  
14 APPROACHES, AND TRANSPORTATION STRUCTURES, INCLUDING:

15 (A) EMERGENCY REPAIR, RECONSTRUCTION, OR REPLACEMENT OF  
16 RECENTLY DAMAGED PARTS; AND

17 (B) MINOR DEVIATIONS IN A STRUCTURE'S CONFIGURATION OR  
18 FILLED AREA TO ACCOMMODATE CHANGES IN MATERIALS, CONSTRUCTION  
19 TECHNIQUES, REGULATORY REQUIREMENTS, OR CONSTRUCTION CODES OR  
20 SAFETY STANDARDS;

21 (XVI) FOR THE PURPOSE OF CONSTRUCTING OR MAINTAINING  
22 FARM OR STOCK PONDS OR DITCHES OR CANALS;

23 (XVII) FOR THE PURPOSE OF CONSTRUCTING TEMPORARY  
24 SEDIMENTATION BASINS ON A CONSTRUCTION SITE THAT DOES NOT  
25 INCLUDE PLACEMENT OF FILL MATERIAL INTO STATE WATERS;

26 (XVIII) FOR THE PURPOSE OF CONSTRUCTING OR MAINTAINING  
27 FARM ROADS, FOREST ROADS, OR TEMPORARY ROADS FOR MOVING MINING

1 EQUIPMENT, SO LONG AS THE ROADS ARE CONSTRUCTED AND MAINTAINED  
2 IN ACCORDANCE WITH BEST MANAGEMENT PRACTICES TO ASSURE THAT  
3 FLOW AND CIRCULATION PATTERNS AND CHEMICAL AND BIOLOGICAL  
4 CHARACTERISTICS OF THE STATE WATERS ARE NOT IMPAIRED, THAT THE  
5 REACH OF THE STATE WATERS IS NOT REDUCED, AND THAT ANY ADVERSE  
6 EFFECT ON THE AQUATIC ENVIRONMENT IS MINIMIZED;

7 (XIX) FOR THE PURPOSE OF PROVIDING EMERGENCY RESPONSE TO,  
8 MITIGATION OF, OR RECOVERY FROM DAMAGE CAUSED BY A FIRE, A FLOOD,  
9 OR OTHER NATURAL DISASTER SO LONG AS THE DISCHARGE IS CONDUCTED  
10 IN A MANNER THAT MINIMIZES THE LOSS OF STATE WATERS TO THE EXTENT  
11 PRACTICABLE AND IN ACCORDANCE WITH BEST MANAGEMENT PRACTICES  
12 THAT DO NOT INTERFERE WITH EFFORTS TO ADDRESS THE UNDERLYING  
13 EMERGENCY;

14 (XX) AS A RESULT OF DREDGING TO RECLAIM LOST CAPACITY IN  
15 A RESERVOIR, SO LONG AS THE DISCHARGE IS PERFORMED IN ACCORDANCE  
16 WITH BEST MANAGEMENT PRACTICES AND IN COORDINATION WITH THE  
17 DIVISION OF PARKS AND WILDLIFE CREATED IN SECTION 33-9-104 TO  
18 ENSURE MINIMAL IMPACTS TO FISH AND WILDLIFE RESOURCES;

19 (XXI) IN ASSOCIATION WITH A PROJECT THAT PROCEEDS UNDER A  
20 SECTION 404 PERMIT ISSUED PRIOR TO MAY 25, 2023;

21 (XXII) PURSUANT TO AUTHORIZATION UNDER A SECTION 404  
22 PERMIT;

23 (XXIII) IN A MANNER THAT CAUSES A LOSS OF STATE WATERS  
24 CONSISTING OF NO MORE THAN ONE-TENTH OF AN ACRE OF WETLANDS OR  
25 THREE-HUNDREDTHS OF AN ACRE OF STREAM; OR

26 (XXIV) IN COMPLIANCE WITH A MINING AND RECLAMATION  
27 PERMIT ISSUED BY THE DIVISION OF RECLAMATION, MINING, AND SAFETY

1       CREATED IN SECTION 34-20-103.

2           (c)   EXCEPT WITH RESPECT TO DISCHARGES DESCRIBED IN  
3       SUBSECTIONS (2)(b)(XXI) TO (2)(b)(XXIII), ANY DISCHARGE OF DREDGED  
4       OR FILL MATERIAL INTO STATE WATERS THAT IS INCIDENTAL TO ANY  
5       ACTIVITY HAVING AS ITS PURPOSE BRINGING A SIGNIFICANT AREA OF STATE  
6       WATERS INTO A USE TO WHICH THE AREA WAS NOT PREVIOUSLY SUBJECT,  
7       AND THAT SIGNIFICANTLY IMPAIRS OR REDUCES THE FLOW, REACH, OR  
8       CIRCULATION OF STATE WATERS, REQUIRES A PERMIT UNDER THIS SECTION.  
9       FURTHERMORE, ANY DISCHARGE OF DREDGED OR FILL MATERIAL INTO  
10      STATE WATERS THAT CONSTITUTE A SIGNIFICANT ATTRIBUTE OF A STATE  
11      GOLD MEDAL TROUT FISHERY, A NATIONAL PARK, A NATIONAL MONUMENT,  
12      A NATIONAL WILDLIFE REFUGE, A DESIGNATED WILDERNESS AREA, OR A  
13      STATE PARK IS REQUIRED TO HAVE A PERMIT UNDER THIS SECTION.

14           (3) THE COMMISSION SHALL PROMULGATE RULES FOR THE PERMIT  
15      PROGRAM AS DESCRIBED IN THIS SECTION AS EXPEDITIOUSLY AS IS  
16      PRUDENT AND FEASIBLE. UNTIL SUCH RULES ARE AVAILABLE TO BE  
17      IMPLEMENTED BY THE DIVISION, THE WATER QUALITY CONTROL DIVISION  
18      IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL NOT  
19      TAKE ENFORCEMENT ACTION AGAINST ANY ACTIVITY THAT INCLUDES THE  
20      DISCHARGE OF DREDGED OR FILL MATERIAL INTO STATE WATERS IF THE  
21      ACTIVITY CAUSING THE DISCHARGE IS CONDUCTED IN A MANNER THAT  
22      PROVIDES FOR PROTECTION OF STATE WATERS CONSISTENT WITH THE  
23      PROTECTIONS THAT WOULD HAVE OCCURRED THROUGH COMPLIANCE WITH  
24      SECTION 404 PERMIT REQUIREMENTS FOR SUCH DISCHARGES PRIOR TO  
25      MAY 25, 2023.

26           **36-21-107. Stream and wetlands protection division - created**  
27      **- director of division - duties of division.** (1) THE STREAM AND

1 WETLANDS PROTECTION DIVISION IS CREATED WITHIN THE DEPARTMENT  
2 TO ADMINISTER AND ENFORCE THE PERMIT PROGRAM.

3 (2) THE DIRECTOR OF THE DIVISION:

4 (a) IS EMPLOYED BY THE DEPARTMENT PURSUANT TO SECTION 13  
5 OF ARTICLE XII OF THE STATE CONSTITUTION;

6 (b) MUST BE A LICENSED PROFESSIONAL ENGINEER OR HAVE A  
7 GRADUATE DEGREE IN ENGINEERING OR OTHER SPECIALTY DEALING WITH  
8 WETLANDS OR WATER RESOURCES MANAGEMENT;

9 (c) MUST HAVE APPROPRIATE PRACTICAL AND ADMINISTRATIVE  
10 EXPERIENCE IN WETLANDS OR WATER RESOURCES MANAGEMENT; AND

11 (d) MUST NOT BE THE ADMINISTRATOR EMPLOYED BY THE  
12 COMMISSION PURSUANT TO SECTION 36-21-105 (2).

13 (3) THE DIVISION SHALL:

14 (a) ACT AS STAFF TO THE COMMISSION IN COMMISSION  
15 PROCEEDINGS OTHER THAN ADJUDICATORY OR APPELLATE PROCEEDINGS  
16 IN WHICH THE DIVISION IS A PARTY;

17 (b) CARRY OUT THE ENFORCEMENT PROVISIONS OF THIS ARTICLE  
18 21;

19 (c) ADMINISTER THE PERMIT PROGRAM AS PROVIDED IN SECTION  
20 36-21-106;

21 (d) MAINTAIN A MAILING LIST OF PERSONS REQUESTING NOTICE OF  
22 ACTIONS BY THE DIVISION OR BY THE COMMISSION AND NOTIFY PERSONS  
23 ON THE LIST OF SUCH ACTIONS; AND

24 (e) PERFORM SUCH OTHER DUTIES AS ARE LAWFULLY ASSIGNED TO  
25 THE DIVISION BY THE COMMISSION.

26 (4) BEFORE TAKING ANY FINAL ACTION, THE DIVISION SHALL  
27 CONSIDER THE TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS



1 OF THE ACTION, INCLUDING AN EVALUATION OF THE BENEFITS DERIVED  
2 FROM ACHIEVING THE GOALS OF THIS ARTICLE 21 AND THE ECONOMIC,  
3 ENVIRONMENTAL, PUBLIC HEALTH, AND ENERGY IMPACTS TO THE PUBLIC  
4 AND AFFECTED PERSONS.

5 **36-21-108. Enforcement.** (1) A PERSON WHO VIOLATES THIS  
6 ARTICLE 21, THE TERMS OF A PERMIT ISSUED UNDER THIS ARTICLE 21, A  
7 RULE PROMULGATED PURSUANT TO THIS ARTICLE 21, OR A  
8 CEASE-AND-DESIST ORDER OR CLEAN-UP ORDER ISSUED PURSUANT TO THIS  
9 ARTICLE 21 IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN TEN  
10 THOUSAND DOLLARS PER DAY PER VIOLATION. IN DETERMINING THE  
11 AMOUNT OF A PENALTY UNDER THIS SUBSECTION (1), A COURT SHALL  
12 CONSIDER:

- 13 (a) THE POTENTIAL DAMAGE CAUSED BY THE VIOLATION;
- 14 (b) THE VIOLATOR'S COMPLIANCE HISTORY;
- 15 (c) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR  
16 NEGLIGENT;
- 17 (d) ANY GOOD FAITH EFFORTS BY THE VIOLATOR TO AVOID THE  
18 VIOLATION;
- 19 (e) THE IMPACT UPON OR THREAT POSED TO THE PUBLIC HEALTH  
20 OR ENVIRONMENT AS A RESULT OF THE VIOLATION;
- 21 (f) THE DURATION OF THE VIOLATION; AND
- 22 (g) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A  
23 RESULT OF THE VIOLATION.

24 (2) WHENEVER THE DIVISION HAS REASON TO BELIEVE THAT A  
25 VIOLATION OF THIS ARTICLE 21, A RULE PROMULGATED PURSUANT TO THIS  
26 ARTICLE 21, OR AN ORDER OR PERMIT ISSUED PURSUANT TO THIS ARTICLE  
27 21 HAS OCCURRED, THE DIVISION SHALL CAUSE WRITTEN NOTICE TO BE

1 SERVED PERSONALLY OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED,  
2 UPON THE ALLEGED VIOLATOR OR THE ALLEGED VIOLATOR'S AGENT FOR  
3 SERVICE OF PROCESS. THE NOTICE SHALL STATE THE NATURE OF THE  
4 VIOLATION AND THE FACTS ALLEGED TO CONSTITUTE THE VIOLATION, AND  
5 THE NOTICE MAY INCLUDE THE NATURE OF ANY PROPOSED CORRECTIVE  
6 ACTION.

7 (3) THE DIVISION MAY INSTITUTE AN ADMINISTRATIVE ACTION OR  
8 A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO IMPOSE AND  
9 COLLECT PENALTIES UNDER THIS SECTION. IN SUCH AN ACTION, THE COURT  
10 MAY CONSIDER THE APPROPRIATENESS OF THE AMOUNT OF THE PENALTY  
11 IF THIS ISSUE IS RAISED BY THE PARTY AGAINST WHOM THE PENALTY WAS  
12 ASSESSED.

13 **36-21-109. Judicial review - jurisdiction - appeals.** (1) ANY  
14 FINAL RULE, ORDER, PERMIT, OR DETERMINATION BY THE COMMISSION OR  
15 DIVISION IS SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH ARTICLE  
16 4 OF TITLE 24.

17 (2) A STAY OF ANY ORDER OF THE DIVISION PENDING JUDICIAL  
18 REVIEW DOES NOT RELIEVE ANY PERSON FROM LIABILITY UNDER SECTION  
19 36-21-108, BUT THE COURT SHALL CONSIDER THE REASON FOR THE  
20 REQUEST FOR JUDICIAL REVIEW IN DETERMINING THE AMOUNT OF ANY  
21 PENALTY.

22 (3) A PROCEEDING FOR JUDICIAL REVIEW OF ANY FINAL ORDER,  
23 PERMIT, OR DETERMINATION OF THE COMMISSION OR DIVISION SHALL BE  
24 FILED IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE AFFECTED  
25 STATE WATERS ARE LOCATED. ANY PROCEEDING FOR JUDICIAL REVIEW OF  
26 ANY FINAL RULE OF THE COMMISSION SHALL BE FILED IN THE DENVER  
27 DISTRICT COURT.

1 (4) A FINAL DECISION OF THE DIVISION MAY BE APPEALED TO THE  
2 COMMISSION, ALTHOUGH AN APPEAL TO THE COMMISSION IS NOT A  
3 PREREQUISITE TO JUDICIAL REVIEW OF A FINAL DECISION OF THE DIVISION.

4 **SECTION 3.** In Colorado Revised Statutes, 24-33-104, **add** (1)(I)  
5 as follows:

6 **24-33-104. Composition of the department.** (1) The department  
7 of natural resources consists of the following commissions, divisions,  
8 boards, offices, and councils:

9 (I) THE STREAM AND WETLANDS PROTECTION COMMISSION  
10 CREATED IN SECTION 36-21-104 AND THE STREAM AND WETLANDS  
11 PROTECTION DIVISION CREATED IN SECTION 36-21-107.

12 **SECTION 4.** In Colorado Revised Statutes, 25-8-202, **amend** (7)  
13 introductory portion and (7)(b)(I) as follows:

14 **25-8-202. Duties of commission - rules.** (7) The commission and  
15 the division shall recognize water quality responsibilities of the following  
16 state agencies, referred to in this subsection (7) as the "implementing  
17 agencies": The office of mined land reclamation; the state engineer; the  
18 energy and carbon management commission created in section  
19 34-60-104.3 (1); THE STREAM AND WETLANDS PROTECTION COMMISSION  
20 CREATED IN SECTION 36-21-104; and the state agency responsible for  
21 activities related to the federal "Resource Conservation and Recovery Act  
22 of 1976", 42 U.S.C. sec. 6901 et seq., as amended, and related state  
23 programs. Activities subject to the jurisdiction of the implementing  
24 agencies that result in discharge to state waters shall be regulated as  
25 follows:

26 (b) (I) The division ~~shall be~~ IS solely responsible for the issuance  
27 and enforcement of permits authorizing point source discharges to surface

1 waters of the state affected by such discharges; EXCEPT THAT THE STREAM  
2 AND WETLANDS PROTECTION DIVISION CREATED IN SECTION 36-21-107 IS  
3 SOLELY RESPONSIBLE FOR THE ISSUANCE AND ENFORCEMENT OF PERMITS  
4 AUTHORIZING DISCHARGES OF DREDGED OR FILL MATERIAL INTO STATE  
5 WATERS, AS DEFINED IN SECTION 25-8-103 (19).

6 **SECTION 5.** 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 - repeal.** (1) The executive director of the  
10 department of natural resources shall submit with the department's budget  
11 request for each fiscal year a list and description of the programs the  
12 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 SIX HUNDRED THOUSAND DOLLARS FROM THE OPERATIONAL FUND TO THE  
20 CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302 (1)(a) FOR  
21 THE IMPLEMENTATION OF THE "STREAM AND WETLANDS PROTECTION  
22 ACT", ARTICLE 21 OF TITLE 36.

23 (b) THIS SUBSECTION (11) IS REPEALED, EFFECTIVE JULY 1, 2026.

24 **SECTION 6. Safety clause.** The general assembly finds,  
25 determines, and declares that this act is necessary for the immediate  
26 preservation of the public peace, health, or safety or for appropriations for

- 1 the support and maintenance of the departments of the state and state
- 2 institutions.