

The Southwestern Water Conservation District

The West Building, 841 E Second Avenue
Durango, CO 81301

NOTICE IS HEREBY GIVEN

A Regular Board Meeting of the
Southwestern Water Conservation District
will be held via Zoom and in person at
841 E 2nd Avenue in Durango, Colorado

Wednesday, April 10, 2024

10:00 AM to 4:30 PM

[Click here to join Zoom](#)

Phone Number: (346) 248 7799

Meeting ID: 835 9975 3537

Password: 474186

Posted and Noticed April 09, 2024

Tentative Agenda

Public may attend the meeting in person at SWCD's office (841 E 2nd Avenue in Durango, Colorado) or via Zoom using the connection information above. If you plan to attend in person, please RSVP to info@swwcd.org to ensure there will be adequate space in SWCD's conference room.

*Please email morock@swwcd.org if you have difficulty joining the Zoom meeting. Please raise your hand to be recognized by the chair. To raise your hand by phone, dial *9. To raise your hand by computer, please use Alt+Y (Windows) or Option+Y (Mac). To mute and unmute by phone, dial *6.*

Except the time indicated for when the meeting is scheduled to begin, the times noted for each agenda item are estimates and subject to change. The Board may address and act on agenda items in any order to accommodate the needs of the Board and the audience. Agenda items can also be added during the meeting at the consensus of the Board. Agenda items may be placed on the Consent Agenda when the recommended action is non-controversial. The Consent Agenda may be voted on without reading or discussing individual items. Any Board member may request clarification about items on the Consent Agenda. The Board may remove items from the Consent Agenda at their discretion for further discussion.

Wednesday April 10, 2024

1.0 Call to Order – Roll Call, Verification of Quorum (10:00 a.m.)

2.0 Review and Approve Agenda (10:01 a.m.)

3.0 Approve and/or Remove Consent Agenda Items (10:05 a.m.)

4.0 Consent Agenda (Board Action)

4.1 Approval of Minutes (10/11-12/23, 12/06/23, 01/09/24, 01/25/24, 02/14-15/2024, 02/29/2024)

4.2 Summary and Acceptance of Treasurer's Report, January & February

4.3 Proposed MOU for Animas River @ Durango Water Quality Sampling

5.0 Legislative Affairs (10:10 a.m.)

5.1 State Legislative Update, including discussion and possible SWCD position on any introduced bills – Garin Vorthmann

5.1.1 SB24-197- Drought Task Force Recommendations

5.1.2 HB24-1435 – CWCB Projects Bill

5.1.3 SB24-199 – Species Conservation Trust Fund Projects

5.1.4 SB24-0127 – Regulation of State Waters #1

5.1.5 HB24-1379 – Regulation of State Waters #2

5.2 Federal Affairs Update – Christine Arbogast

6.0 Executive Session (10:30 a.m.)

6.1 Application of the Dolores Water Conservancy District, Case No. 24CW3001, Water Division 7

7.0 Summary and Action Items from Executive Session (10:44 a.m.)

8.0 General Counsel Legal Report (10:45 a.m.)

8.1 January, February Water Court Resume Review (Divisions 3, 4, 7)

8.2 Proposed Ratification of Filing of Statement of Opposition in Dolores Water Conservancy District’s Case No. 24CW3001, Water Division 7

8.3 Draft Contract for Implementation of CWCB Local Capacity Grant

9.0 Staff Reports (11:15 a.m.)

9.1 Colorado River Basin Conditions & Activities – Steve Wolff

9.2 Colorado River Basin Post-2026 Alternatives – Steve Wolff & Beth Van Vurst

9.3 2024 Board Committee Assignments – Steve Wolff and Mo Rock

9.4 SWCD Water Conservation and Infrastructure Program Update – Steve Wolff and Mo Rock

9.5 2025 CWCB Instream Flow Program Recommendations – Steve Wolff & Carrie Padgett

9.5.1 Goat Creek (San Miguel Basin)

9.5.2 Burrows Creek (Animas River Basin)

9.6 Summary from SWCD’s 40th Annual Seminar – Mo Rock & Elaine Chick

9.7 SWCD Website Update – Mo Rock

10.0 Questions and Comments from the Public (11:50 a.m.)

Lunch (12:00 pm)

11.0 Special Presentation - (1:00 p.m.)

Colorado Airborne Snow Measurement (CASM) - Jeff Deems

12.0 Partner Updates (1:30 p.m.)

12.1 Division Engineers for Water Divisions 4 and 7 – Bob Hurford and Rob Genualdi

12.2 Water Information Program Report - Elaine Chick

12.3 Harris Water Engineering Report - Carrie Padgett

12.4 CWCB Grant Opportunities – Laura Spann

13.0 Public Comment (2:20 p.m.)

14.0 Director Updates and Issues for Discussion (2:30 p.m.)

15.0 Downscaled Risk Study Presentation for Southwestern Colorado (3:00 p.m.)

- 15.1 Introduction – Steve Wolff
- 15.2 Presentation – Pete Foster (WWE)
- 15.3 Board Discussion

16.0 Executive Session (as needed) (4:00 p.m.)

- 16.1 Colorado River Compact, Interstate and Intrastate matters, including Post-2026 Colorado River Guidelines

17.0 Summary and Action Items from Executive Session (4:20 p.m.)

18.0 Upcoming Meetings and Announcements (4:25 p.m.)

- 18.1 April 25, 2024 SWCD Special Board Meeting – Legislative Update
- 18.2 May 9, 2024 SWCD Special Board Meeting – Legislative Update (if needed)
- 18.3 June 12-13, 2024 SWCD Regular Board Meeting

19.0 Adjournment (4:30 p.m.)

5.0 Legislative Updates

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

INTRODUCED

LLS NO. 24-0539.02 Sarah Lozano x3858

SENATE BILL 24-197

SENATE SPONSORSHIP

Roberts and Will,

HOUSE SPONSORSHIP

McCluskie,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES FOR THE CONSERVATION OF WATER IN THE**
102 **STATE, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE**
103 **PROPOSALS OF THE COLORADO RIVER DROUGHT TASK FORCE.**

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>.)

Section 2 of the bill allows the owner of a decreed storage water right to loan water to the Colorado water conservation board (board) for a stream reach for which the board does not hold a decreed instream flow water right.

Current law requires the board to establish an agricultural water

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.

protection program for water divisions 1 and 2. **Section 3** changes current law by requiring the board to establish an agricultural water protection program in each water division.

Current law allows periods of nonuse of a water right to be tolled in certain circumstances for the purposes of determining whether a water right is abandoned. **Section 4** changes current law by allowing a water right to be tolled for the duration that an electric utility that owns a water right in water division 6 decreases use of, or does not use, the water right if the decrease in use or nonuse occurs during the period beginning January 1, 2020, and ending December 31, 2050, and if the water right is owned by the electric utility since January 1, 2019.

Current law requires an owner of a conditional water right to obtain a finding of reasonable diligence or the conditional water right is considered abandoned. **Section 5** allows the water judge, in considering a finding of reasonable diligence for a conditional water right that is owned by an electric utility in water division 6 since January 2019, to consider the following as supporting evidence:

- The conditional water right may be used to support a specific project or potential future generation technologies or concepts that have the potential to advance progress toward Colorado's clean energy and greenhouse gas emission reduction goals; and
- The electric utility or another entity has made efforts to investigate or research the viability of future generation technologies that have the potential to advance progress toward Colorado's clean energy and greenhouse gas emission reduction goals.

In determining the amount of historical consumptive use for a water right, a water judge is prohibited from considering certain specified uses. **Section 6** prohibits the water judge from considering the decrease in use or nonuse of a water right owned by an electric utility in division 6 since January 1, 2019, which decrease in use or nonuse occurs during the period beginning January 1, 2019, and ending December 31, 2050, in determining the amount of historical consumptive use. If the water right is leased by the electric utility to a third party, the water right is not entitled to historical consumptive use protection for the period the water right is subject to the lease.

Current law allows the board to approve certain grants related to water conservation and requires the board to establish criteria to require the grant applicant to provide matching funds of at least 25%. **Section 7** allows the board to reduce or waive fund matching requirements in the case of a grant to the Ute Mountain Ute Tribe or the Southern Ute Indian Tribe.

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

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

4 (a) Since 2000, the Colorado river basin, including the Colorado
5 river and its tributaries in Colorado, has experienced unprecedented
6 drought conditions that have contributed to decreased water supplies;

7 (b) Climate change, drier conditions, and depleted snowpack may
8 further reduce the water available in Colorado's surface streams for
9 beneficial uses and threaten Colorado's significant interests in the
10 Colorado river and its tributaries; and

11 (c) Dry hydrology continues to reduce water supplies across the
12 western slope of Colorado and the Colorado river basin and threatens the
13 security of available water resources.

14 (2) The general assembly further finds and declares that:

15 (a) Senate Bill 23-295, enacted in 2023, created the Colorado river
16 drought task force and a sub-task force related to tribal matters and tasked
17 those entities with proposing ideas and making recommendations to
18 address drought in the Colorado river basin;

19 (b) From July 2023 to December 2023, the task force and the
20 sub-task force met frequently across Colorado and, on December 15,
21 2023, published a report of the task force's and sub-task force's work,
22 topics of discussion, and recommendations;

23 (c) In the report, the task force and the sub-task force made
24 several recommendations and produced several narrative suggestions;

25 (d) Some of the recommendations and narrative suggestions do
26 not require statutory changes, as they relate to funding or federal policy;
27 and

1 (e) In addition, some of the recommendations and narrative
2 suggestions are being addressed in other legislation or efforts, such as the
3 annual water projects bill required pursuant to section 37-60-122 (1)(b),
4 Colorado Revised Statutes, and the long bill for the 2023-24 state fiscal
5 year.

6 (3) The general assembly therefore determines that it is in the best
7 interest of Colorado to adopt some of the recommendations and narrative
8 suggestions of the Colorado river drought task force and sub-task force
9 related to tribal matters in order to protect, promote, and bolster
10 Colorado's stake in the Colorado river and its tributaries.

11 **SECTION 2.** In Colorado Revised Statutes, 37-83-105, **amend**
12 (3) introductory portion; and **add** (1)(c) as follows:

13 **37-83-105. Owner may loan agricultural water right - loans to**
14 **Colorado water conservation board for instream flows - rules -**
15 **definition.** (1) (c) (I) NOTWITHSTANDING SUBSECTION (1)(b) OF THIS
16 SECTION, AN OWNER OF A DECREED STORAGE WATER RIGHT, IN ADDITION
17 TO LOANS MADE PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, MAY
18 LOAN WATER TO THE COLORADO WATER CONSERVATION BOARD TO
19 PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE
20 DEGREE FOR A STREAM REACH FOR WHICH THE BOARD DOES NOT HOLD A
21 DECREED INSTREAM FLOW WATER RIGHT, WHICH LOAN THE BOARD MAY
22 ACCEPT IN ACCORDANCE WITH SECTION 37-92-102, THIS SECTION, AND
23 ANY RULES ADOPTED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

24 (II) AS USED IN THIS SUBSECTION (1)(c), "STORAGE" HAS THE
25 MEANING SET FORTH IN SECTION 37-92-103.

26 (3) The Colorado water conservation board shall promulgate rules,
27 AS APPLICABLE, regarding the following necessary steps for its review and

1 acceptance of loans for instream flow use pursuant to subsection
2 ~~(1)(b)(H)~~ SUBSECTIONS (1)(b)(II) AND (1)(c)(I) of this section:

3 **SECTION 3.** In Colorado Revised Statutes, 37-60-133, **amend**
4 (1)(a) as follows:

5 **37-60-133. Minimum criteria and guidelines for agricultural**
6 **water protection programs.** (1) (a) The board shall develop minimum
7 criteria and guidelines for the establishment of an agricultural water
8 protection program in EACH water division ~~1 or 2~~ pursuant to section
9 37-92-305 (19)(b)(IV)(B) to assure sufficient protection and monitoring
10 of agricultural water protection water rights pursuant to section 37-92-305
11 (19)(b)(III).

12 **SECTION 4.** In Colorado Revised Statutes, 37-92-103, **amend**
13 (2)(a) and (2)(b)(VI); and **add** (2)(c) and (7.3) as follows:

14 **37-92-103. Definitions.** As used in this article 92, unless the
15 context otherwise requires:

16 (2) "Abandonment of a water right" means the termination of a
17 water right in whole or in part as a result of the intent of the owner
18 thereof to discontinue permanently the use of all or part of the water
19 available thereunder. Any period of nonuse of any portion of a water right
20 shall be tolled, and no intent to discontinue permanent use shall be found
21 for purposes of determining an abandonment of a water right for the
22 duration that:

23 (a) The land on which the water right has been historically applied
24 is enrolled under a federal land conservation program; ~~or~~

25 (b) The nonuse of a water right by its owner is a result of
26 participation in:

27 (VI) Any contract or agreement with the Colorado water

1 conservation board that allows the board to use all or a part of a water
2 right to preserve or improve the natural environment to a reasonable
3 degree under section 37-92-102 (3); OR

4 (c) DURING THE PERIOD BEGINNING JANUARY 1, 2020, AND ENDING
5 DECEMBER 31, 2050, AN ELECTRIC UTILITY IN DIVISION 6 DECREASES USE
6 OF A WATER RIGHT, OR DOES NOT USE A WATER RIGHT, IF THE ELECTRIC
7 UTILITY HAS OWNED THE WATER RIGHT SINCE JANUARY 1, 2019.

8 (7.3) "ELECTRIC UTILITY" MEANS A QUALIFYING RETAIL UTILITY,
9 AS DEFINED IN SECTION 40-2-125.5 (2)(c), OR A WHOLESALE GENERATION
10 AND TRANSMISSION ELECTRIC COOPERATIVE SUBJECT TO SECTION
11 25-7-105 (1)(e)(VIII)(I).

12 **SECTION 5.** In Colorado Revised Statutes, 37-92-301, **add**
13 (4)(a)(I.5) as follows:

14 **37-92-301. Administration and distribution of waters.**

15 (4) (a) (I.5) IF AN APPLICATION DESCRIBED IN SUBSECTION (4)(a)(I) OF
16 THIS SECTION FILED ON OR BEFORE DECEMBER 31, 2050, SEEKS A FINDING
17 OF REASONABLE DILIGENCE FOR A CONDITIONAL WATER RIGHT THAT IS
18 OWNED BY AN ELECTRIC UTILITY IN DIVISION 6 SINCE JANUARY 1, 2019,
19 THE WATER JUDGE MAY CONSIDER THE FOLLOWING AS SUPPORTING
20 EVIDENCE FOR A FINDING OF REASONABLE DILIGENCE:

21 (A) THE CONDITIONAL WATER RIGHT MAY BE USED TO SUPPORT A
22 SPECIFIC PROJECT OR POTENTIAL FUTURE GENERATION TECHNOLOGIES OR
23 CONCEPTS THAT HAVE THE POTENTIAL TO ADVANCE PROGRESS TOWARD
24 COLORADO'S CLEAN ENERGY AND GREENHOUSE GAS EMISSION REDUCTION
25 GOALS; AND

26 (B) THE ELECTRIC UTILITY HAS MADE EFFORTS TO DEVELOP THE
27 WATER RIGHT WITH REASONABLE DILIGENCE, WHICH MAY INCLUDE

1 EFFORTS MADE BY THE ELECTRIC UTILITY OR ANOTHER ENTITY IN THE
2 ELECTRIC GENERATION AND DISTRIBUTION INDUSTRY OR A RELATED
3 RESEARCH INDUSTRY TO INVESTIGATE THE TECHNICAL OR COMMERCIAL
4 VIABILITY OF FUTURE GENERATION TECHNOLOGIES OR CONCEPTS THAT
5 HAVE THE POTENTIAL TO ADVANCE PROGRESS TOWARD COLORADO'S
6 CLEAN ENERGY AND GREENHOUSE GAS EMISSION REDUCTION GOALS.

7 **SECTION 6.** In Colorado Revised Statutes, 37-92-305, **amend**
8 (3)(c)(I) and (3)(c)(II)(D); and **add** (3)(c)(III) as follows:

9 **37-92-305. Standards with respect to rulings of the referee and**
10 **decisions of the water judge - definitions.** (3) (c) In determining the
11 amount of historical consumptive use for a water right in division 1, 2, 3,
12 4, 5, or 6, the water judge shall not consider any decrease in use resulting
13 from the following:

14 (I) The land on which the water from the water right has been
15 historically applied is enrolled under a federal land conservation program;
16 **or**

17 (II) The nonuse or decrease in use of the water from the water
18 right by its owner for a maximum of five years in any consecutive
19 ten-year period as a result of participation in:

20 (D) A water banking program as provided by law; OR

21 (III) THE DECREASE IN USE OR NONUSE OF A WATER RIGHT OWNED
22 BY AN ELECTRIC UTILITY IN DIVISION 6 SINCE JANUARY 1, 2019, THAT
23 OCCURS DURING THE PERIOD BEGINNING JANUARY 1, 2019, AND ENDING
24 DECEMBER 31, 2050; EXCEPT THAT ANY WATER RIGHT, OR PORTION OF A
25 WATER RIGHT, THAT IS LEASED BY THE ELECTRIC UTILITY TO A THIRD
26 PARTY IS NOT ENTITLED TO HISTORICAL CONSUMPTIVE USE PROTECTION
27 PURSUANT TO THIS SECTION FOR THE PERIOD THAT THE WATER RIGHT, OR

1 PORTION OF THE WATER RIGHT, IS SUBJECT TO THE LEASE.

2 **SECTION 7.** In Colorado Revised Statutes, 37-60-106.3, **amend**
3 (6)(c) as follows:

4 **37-60-106.3. State water plan - legislative declaration - grant**
5 **program. (6) Water plan implementation grant program.** The board
6 may approve grants pursuant to the following requirements:

7 (c) The board shall establish criteria that require matching funds
8 of at least twenty-five percent; except that:

9 (I) The board may award grants in 2021 and 2022 with reduced
10 matching fund requirements; AND

11 (II) IN THE CASE OF A GRANT TO THE UTE MOUNTAIN UTE TRIBE
12 OR THE SOUTHERN UTE INDIAN TRIBE, INCLUDING ALL SUBDIVISIONS OR
13 SUBSIDIARIES OF, AND BUSINESS ENTERPRISES WHOLLY OWNED BY, EITHER
14 TRIBE, THE BOARD MAY REDUCE OR WAIVE FUND MATCHING
15 REQUIREMENTS.

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

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

INTRODUCED

LLS NO. 24-1125.01 Clare Haffner x6137

HOUSE BILL 24-1435

HOUSE SPONSORSHIP

McCormick and Catlin,

SENATE SPONSORSHIP

Roberts and Simpson,

House Committees

Agriculture, Water & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE FUNDING OF COLORADO WATER CONSERVATION**
102 **BOARD PROJECTS, AND, IN CONNECTION THEREWITH, MAKING**
103 **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 appropriates the following amounts for the 2024-25 state fiscal year from the Colorado water conservation board (CWCB) construction fund to the CWCB or the division of water resources in the department of natural resources for the following projects:

- Continuation of the satellite monitoring system, \$380,000

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.

- (section 1 of the bill);
- Continuation of the floodplain map modernization program, \$1,000,000 (section 2);
- Continuation of the weather modification permitting program, \$500,000 (section 3);
- Continuation of the Colorado Mesonet project, \$200,000 (section 5);
- Continuation of the water forecasting partnership project, \$2,000,000 (section 6);
- Support of modeling and data analyses for the upper Colorado river commission's development of operational guidelines for Lake Powell and Lake Mead, \$500,000 (section 7);
- Support for the division of water resources' statewide diversion telemetry project, \$1,827,500 (section 8);
- Support of a study update and scenario analyses for groundwater resource goals for the southern high plains designated groundwater basin, \$250,000 (section 9); and
- Support for projects that support drought planning and mitigation, \$4,000,000 (section 11).

Section 4 directs the state treasurer to transfer up to \$2,000,000 from the CWCB construction fund to the CWCB litigation fund on July 1, 2024.

The CWCB is authorized to make loans from the severance tax perpetual base fund or the CWCB construction fund:

- In an amount up to \$155,650,000 to the Windy Gap firming project (section 12); and
- In an amount up to \$101,000,000 to the northern integrated supply project water activity enterprise owned by the northern Colorado water conservancy district to develop a new regional water supply project (section 13).

Section 10 directs the state treasurer to transfer \$2,000,000 on July 1, 2024, from the CWCB construction fund to the turf replacement fund to finance the state turf replacement program.

Section 14 directs the state treasurer to transfer \$20,000,000 on July 1, 2024, from the severance tax perpetual base fund to the CWCB construction fund for the purchase and sale agreement between the Colorado river water conservation district and the public service company of Colorado for the purchase of the water rights associated with the Shoshone power plant.

Section 15 appropriates \$23,300,000 from the water plan implementation cash fund to the CWCB to fund grants that will help implement the state water plan.

Sections 16 and 17 amend current law, under which the state treasurer is directed to make 2 transfers of \$2.5 million each from the

economic recovery and relief cash fund to the CWCB construction fund. The CWCB is required to use the \$2.5 million from one of the transfers for the direct and indirect costs of providing assistance to political subdivisions and other entities applying for federal "Infrastructure Investment and Jobs Act" money and other federally available money related to water funding opportunities (water funding purposes). The CWCB is required to use the \$2.5 million from the other transfer for issuing grants to political subdivisions of the state or other entities for the hiring of temporary employees, contractors, or both that will assist those political subdivisions and other entities in applying for federal "Infrastructure Investment and Jobs Act" money and other federally available money related to natural resource management (natural resource management purposes).

Sections 16 and 17 allow the CWCB, on or after July 1, 2024, to expend money from either of the 2 transfers for either the water funding purposes or the natural resource management purposes.

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

2 **SECTION 1. Continuation of the satellite monitoring system**

3 **- operation and maintenance - appropriation.** (1) For the 2024-25

4 state fiscal year, \$380,000 is appropriated to the department of natural

5 resources for use by the division of water resources. This appropriation

6 is from the Colorado water conservation board construction fund created

7 in section 37-60-121, C.R.S. To implement this section, the division of

8 water resources may use this appropriation to install, maintain, and

9 operate satellite-monitored stream gauges and lysimeters for water rights

10 administration and data collection pursuant to section 37-80-102 (10),

11 C.R.S.

12 (2) The money appropriated in subsection (1) of this section

13 remains available for the designated purposes until it is fully expended.

14 **SECTION 2. Continuation of the Colorado floodplain map**

15 **modernization program - appropriation.** (1) For the 2024-25 state

16 fiscal year, \$1,000,000 is appropriated to the department of natural

1 resources for use by the Colorado water conservation board. This
2 appropriation is from the Colorado water conservation board construction
3 fund created in section 37-60-121, C.R.S. To implement this section, the
4 Colorado water conservation board may use this appropriation to continue
5 to assist with the preparation of revised and improved floodplain studies
6 and maps for communities throughout Colorado and participate in
7 federally sponsored floodplain map modernization activities.

8 (2) The money appropriated in subsection (1) of this section
9 remains available for the designated purposes until it is fully expended.

10 **SECTION 3. Continuation of the weather modification**
11 **permitting program - appropriation.** (1) For the 2024-25 state fiscal
12 year, \$500,000 is appropriated to the department of natural resources for
13 use by the Colorado water conservation board. This appropriation is from
14 the Colorado water conservation board construction fund created in
15 section 37-60-121, C.R.S. To implement this section, the Colorado water
16 conservation board may use this appropriation to assist water
17 conservation and conservancy districts with the development of cloud
18 seeding programs to provide benefits to recreation, streams, and
19 reservoirs through snowpack enhancement.

20 (2) The money appropriated in subsection (1) of this section
21 remains available for the designated purposes until it is fully expended.

22 **SECTION 4. Restoration of litigation fund cash balance -**
23 **transfer.** On July 1, 2024, the state treasurer shall transfer \$2,000,000, or
24 so much thereof as may be necessary to restore the balance of the
25 litigation fund to \$2,000,000, from the unreserved cash in the Colorado
26 water conservation board construction fund created in section 37-60-121,
27 C.R.S., to the litigation fund created in section 37-60-121 (2.5), C.R.S.,

1 to assist in addressing legal issues associated with compact compliance
2 or any other litigation activities as specified under section 37-60-121,
3 C.R.S.

4 **SECTION 5. Continuation of the Colorado Mesonet project**

5 **- appropriation.** (1) For the 2024-25 state fiscal year, \$200,000 is
6 appropriated to the department of natural resources for use by the
7 Colorado water conservation board. This appropriation is from the
8 Colorado water conservation board construction fund created in section
9 37-60-121, C.R.S. To implement this section, the Colorado water
10 conservation board may use this appropriation to support the Colorado
11 Mesonet, including for the following activities: Operation, maintenance,
12 travel, communications, and database and website management for
13 temperature and precipitation stations.

14 (2) The money appropriated in subsection (1) of this section
15 remains available for the designated purposes until it is fully expended.

16 **SECTION 6. Continuation of the water forecasting**

17 **partnership project - appropriation.** (1) For the 2024-25 state fiscal
18 year, \$2,000,000 is appropriated to the department of natural resources
19 for use by the Colorado water conservation board. This appropriation is
20 from the Colorado water conservation board construction fund created in
21 section 37-60-121, C.R.S. To implement this section, the Colorado water
22 conservation board may use this appropriation to support the development
23 of new ground and aerial remote sensing data, to develop hydrologic
24 modeling practices, to provide reliable volumetric water supply
25 forecasting, and to provide better characterization of snowpack.

26 (2) The money appropriated in subsection (1) of this section
27 remains available for the designated purposes until it is fully expended.

1 **SECTION 7. Continuation of the modeling and data analyses**
2 **for the upper Colorado river commission - appropriation.** (1) For the
3 2024-25 state fiscal year, \$500,000 is appropriated to the department of
4 natural resources for use by the Colorado water conservation board. This
5 appropriation is from the Colorado water conservation board construction
6 fund created in section 37-60-121, C.R.S. To implement this section, the
7 Colorado water conservation board may use this appropriation to provide
8 support to the upper Colorado river commission's interstate planning and
9 negotiation efforts, including the following modeling and data analyses:
10 Streamgaging and streamflow, runoff forecasting, consumptive use,
11 reservoir operations and evaporation, and drought contingency planning.

12 (2) The money appropriated in subsection (1) of this section
13 remains available for the designated purposes until it is fully expended.

14 **SECTION 8. Statewide diversion telemetry project -**
15 **appropriation.** (1) For the 2024-25 state fiscal year, \$1,827,500 is
16 appropriated to the department of natural resources for use by the division
17 of water resources. This appropriation is from the Colorado water
18 conservation board construction fund created in section 37-60-121,
19 C.R.S. To implement this section, the division of water resources may use
20 this appropriation to fund the installation of telemetry equipment at sites
21 across Colorado.

22 (2) The money appropriated in subsection (1) of this section
23 remains available for the designated purposes until it is fully expended.

24 **SECTION 9. Southern high plains groundwater study update**
25 **- appropriation.** (1) For the 2024-25 state fiscal year, \$250,000 is
26 appropriated to the department of natural resources for use by the
27 Colorado water conservation board. This appropriation is from the

1 Colorado water conservation board construction fund created in section
2 37-60-121, C.R.S. To implement this section, the Colorado water
3 conservation board may use this appropriation to update a 2002 study in
4 order to provide scenario analyses and community facilitation to establish
5 groundwater resource goals for residents of the southern high plains of
6 Colorado.

7 (2) The money appropriated in subsection (1) of this section
8 remains available for the designated purposes until it is fully expended or
9 the study update is complete.

10 **SECTION 10. Continuation of the state turf replacement**
11 **program - transfer - appropriation.** (1) On July 1, 2024, the state
12 treasurer shall transfer \$2,000,000 from the Colorado water conservation
13 board construction fund created in section 37-60-121, C.R.S., to the turf
14 replacement fund created in section 37-60-135 (6)(a)(I), C.R.S., to
15 finance the state turf replacement program created in section 37-60-135,
16 C.R.S.

17 (2) (a) For the 2024-25 state fiscal year, \$2,000,000 is
18 appropriated to the department of natural resources for use by the
19 Colorado water conservation board. This appropriation is from the turf
20 replacement fund created in section 37-60-135 (6)(a)(I), C.R.S. To
21 implement this section, the Colorado water conservation board may use
22 this appropriation for the state turf replacement program pursuant to
23 section 37-60-135, C.R.S., including to cover the direct and indirect costs
24 of administering one or more turf replacement programs.

25 (b) The money appropriated in subsection (2)(a) of this section
26 remains available for the designated purposes until June 30, 2028.

27 **SECTION 11. Drought resilience investment - appropriation.**

1 (1) For the 2024-25 state fiscal year, \$4,000,000 is appropriated to the
2 department of natural resources for use by the Colorado water
3 conservation board. This appropriation is from the Colorado water
4 conservation board construction fund created in section 37-60-121,
5 C.R.S. To implement this section, the Colorado water conservation board
6 may use this appropriation:

7 (a) To advance projects within and complementary to the 2023
8 state water plan that support drought planning, practical implementation
9 of drought mitigation techniques, education, guidance, and training; and

10 (b) For projects that focus on the following areas: Drought
11 resilience workshops, state water plan outreach campaign, water loss
12 prevention and validator training, adaptive and critical drought projects,
13 storage analysis opportunities and alternatives, and development of a
14 water conservation handbook.

15 (2) The money appropriated in subsection (1) of this section
16 remains available for the designated purposes until it is fully expended.

17 **SECTION 12. Increased water project loan authorization -**
18 **Windy Gap firming project.** (1) Pursuant to section 37-60-122 (1)(b),
19 C.R.S., the Colorado water conservation board is authorized to make
20 loans in the amount of up to \$155,650,000 from the Colorado water
21 conservation board construction fund created in section 37-60-121,
22 C.R.S., to the Windy Gap firming project water activity enterprise for the
23 completion of the Windy Gap firming project.

24 (2) The money authorized in subsection (1) of this section remains
25 available for the designated purposes until it is fully expended.

26 (3) The Colorado water conservation board may make loans for
27 the project specified in subsection (1) of this section from money that is

1 or may become available to the Colorado water conservation board
2 construction fund. The total amount of the loans will be in the amount
3 listed in subsection (1) of this section plus or minus the amount, if any,
4 as may be justified by reason of ordinary fluctuations in construction
5 costs as indicated by the engineering cost indices applicable to the types
6 of construction required for the project or as may be justified by reason
7 of changes in the plans for the project due to differing or unforeseen site
8 conditions, errors or omissions in the plans and specifications, changes
9 instituted by regulatory agencies, or changes in material quantities beyond
10 contract limits.

11 **SECTION 13. Northern integrated supply project - loan**
12 **authorization.** (1) Pursuant to section 39-29-109 (2)(a)(I.5), C.R.S., the
13 Colorado water conservation board is authorized to make loans in the
14 amount of up to \$101,000,000 from the severance tax perpetual base fund
15 created in section 39-29-109 (2)(a), C.R.S., to the northern integrated
16 supply project water activity enterprise owned by the northern Colorado
17 water conservancy district to develop a new regional water supply project.
18 The project will provide new water supplies annually for eleven
19 communities and four water districts in the northern front range.

20 (2) The money authorized in subsection (1) of this section remains
21 available for the designated purposes until it is fully expended.

22 (3) The Colorado water conservation board may make loans for
23 the project specified in subsection (1) of this section from money that is
24 or may become available to the severance tax perpetual base fund. The
25 total amount of the loans will be in the amount listed in subsection (1) of
26 this section plus or minus the amount, if any, as may be justified by
27 reason of ordinary fluctuations in construction costs applicable to the

1 types of construction required for the project or as may be justified by
2 reason of changes in the plans for the project due to differing or
3 unforeseen site conditions, errors or omissions in the plans and
4 specifications, changes instituted by regulatory agencies, or changes in
5 material quantities beyond contract limits.

6 **SECTION 14. Colorado river water conservation district -**
7 **purchase of Shoshone power plant water rights - transfer -**
8 **appropriation.** (1) On July 1, 2024, the state treasurer shall transfer
9 \$20,000,000 from the severance tax perpetual base fund created in section
10 39-29-109 (2)(a), C.R.S., to the Colorado water conservation board
11 construction fund created in section 37-60-121, C.R.S., to support the
12 purchase and sale agreement between the Colorado river water
13 conservation district and the public service company of Colorado for the
14 purchase of the water rights associated with the Shoshone power plant.

15 (2) (a) For the 2024-25 state fiscal year, \$20,000,000 is
16 appropriated to the department of natural resources for use by the
17 Colorado water conservation board. This appropriation is from the
18 Colorado water conservation board construction fund created in section
19 37-60-121, C.R.S. To implement this subsection (2)(a), the Colorado
20 water conservation board may use this appropriation to partner with the
21 Colorado river water conservation district in the purchase of the water
22 rights owned by the public service company of Colorado and currently
23 used for the operation of the Shoshone power plant. The Colorado water
24 conservation board shall vote to release the money to the Colorado river
25 water conservation district after confirming that the closing conditions of
26 the purchase and sale agreement between the Colorado river water
27 conservation district and the public service company of Colorado have

1 been met.

2 (b) The money appropriated in subsection (2)(a) of this section
3 remains available for the designated purposes until June 30, 2031.

4 **SECTION 15. Grant-making for projects that assist in**
5 **implementing the state water plan - appropriation.** (1) For the
6 2024-25 state fiscal year, \$23,300,000 is appropriated to the department
7 of natural resources for use by the Colorado water conservation board.
8 This appropriation is from the water plan implementation cash fund
9 created in section 37-60-123.3 (1)(a), C.R.S. To implement this
10 subsection (1), the Colorado water conservation board may use this
11 appropriation for grant-making for projects that assist in the
12 implementation of the state water plan pursuant to section 37-60-106.3
13 (6), C.R.S., through the Colorado water conservation board's application
14 and guidelines process.

15 (2) The money appropriated in subsection (1) of this section
16 remains available for the designated purposes until it is fully expended.

17 **SECTION 16.** In Colorado Revised Statutes, 24-75-228, **add**
18 (2.5)(a.5) as follows:

19 **24-75-228. Economic recovery and relief cash fund - creation**
20 **- allowable uses - interim task force - report - legislative declaration**
21 **- definitions - repeal.** (2.5) (a.5) NOTWITHSTANDING SUBSECTIONS
22 (2.5)(a)(IV) AND (2.5)(a)(V) OF THIS SECTION, ON OR AFTER JULY 1, 2024,
23 ANY MONEY TRANSFERRED BY THE STATE TREASURER TO THE COLORADO
24 WATER CONSERVATION BOARD CONSTRUCTION FUND, CREATED IN SECTION
25 37-60-121 (1)(a), PURSUANT TO SUBSECTIONS (2.5)(a)(IV) AND
26 (2.5)(a)(V) OF THIS SECTION MAY BE EXPENDED FOR ANY OF THE PURPOSES
27 SPECIFIED IN SECTION 37-60-121 (13) OR (14).

1 **SECTION 17.** In Colorado Revised Statutes, 37-60-121, **add** (15)
2 as follows:

3 **37-60-121. Colorado water conservation board construction**
4 **fund - creation - nature of fund - funds for investigations -**
5 **contributions - use for augmenting the general fund - funds created**
6 **- rules - repeal.** (15) NOTWITHSTANDING SUBSECTIONS (13) AND (14) OF
7 THIS SECTION, ON OR AFTER JULY 1, 2024, THE BOARD MAY USE THE
8 MONEY TRANSFERRED PURSUANT TO SECTION 24-75-228 (2.5)(a)(IV) AND
9 (2.5)(a)(V) FOR ANY OF THE PURPOSES SPECIFIED IN SUBSECTION (13) OR
10 (14) OF THIS SECTION.

11 **SECTION 18. Safety clause.** The general assembly finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, or safety or for appropriations for
14 the support and maintenance of the departments of the state and state
15 institutions.

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

INTRODUCED

LLS NO. 24-0606.01 Richard Sweetman x4333

SENATE BILL 24-127

SENATE SPONSORSHIP

Kirkmeyer,

HOUSE SPONSORSHIP

Bird,

Senate Committees

Agriculture & Natural Resources

House Committees

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.**

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.

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)(1)
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 (1) 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.

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

INTRODUCED

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

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF STATE WATERS IN RESPONSE TO**
102 **RECENT FEDERAL COURT ACTION.**

Bill Summary

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

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

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

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

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

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

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

Until the rules become effective:

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

The division may issue a temporary authorization for a period not to exceed 2 years.

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

The bill clarifies that "state waters" includes wetlands.

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

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

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

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

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

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

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

16 (I) ON MAY 25, 2023, THE UNITED STATES SUPREME COURT
17 ISSUED AN OPINION IN *SACKETT V. ENVIRONMENTAL PROTECTION AGENCY*,
18 598 U.S. 651 (2023), THAT REDEFINED THE TYPES OF WATER RESOURCES

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

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

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

1 COLORADO DEVELOPS ITS OWN DREDGE AND FILL PROGRAM; AND

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

8 (b) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

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

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

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

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

1 THE DETRIMENT OF COLORADO'S ECONOMY;

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

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

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

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

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

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

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

25 (2) **Applicability - limitations.** NOTHING IN THIS SECTION APPLIES
26 TO THE ACTIVITIES OF FEDERALLY RECOGNIZED INDIAN TRIBES, INDIANS,
27 THEIR POLITICAL SUBDIVISIONS, OR TRIBALLY CONTROLLED AFFILIATES,

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

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

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

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

24 (c) "CONSULTATION" MEANS TO GIVE A FEDERAL, STATE, LOCAL,
25 OR TRIBAL ENTITY THE OPPORTUNITY TO PROVIDE SPECIAL EXPERTISE TO
26 AUTHORIZATION PROCESSES AND TECHNICAL GROUPS, ACT AS A
27 COOPERATING AGENCY, OR ENGAGE AS MUTUALLY AGREED BY THE

1 DIVISION AND THE ENTITY.

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

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

9 (B) RUNOFF OR OVERFLOW FROM A CONTAINED LAND OR WATER
10 DISPOSAL AREA; AND

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

15 (II) "DISCHARGE OF DREDGED OR FILL MATERIAL" DOES NOT
16 INCLUDE:

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

24 (B) ACTIVITIES THAT INVOLVE ONLY THE CUTTING OR REMOVING
25 OF VEGETATION ABOVE THE GROUND, SUCH AS MOWING, ROTARY CUTTING,
26 AND CHAINSAWING, SO LONG AS THE ACTIVITY NEITHER SUBSTANTIALLY
27 DISTURBS THE VEGETATION'S ROOT SYSTEM NOR INVOLVES MECHANIZED

1 PUSHING, DRAGGING, OR OTHER SIMILAR ACTIVITIES THAT REDEPOSIT
2 EXCAVATED SOIL MATERIAL; OR

3 (C) INCIDENTAL FALLBACK.

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

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

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

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

15 (D) CAUSEWAYS OR ROAD FILLS;

16 (E) DAMS AND DIKES;

17 (F) ARTIFICIAL ISLANDS;

18 (G) PROPERTY PROTECTION OR RECLAMATION DEVICES SUCH AS
19 RIPRAP;

20 (H) LEVEES;

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

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

27 (K) PLACEMENT OF OVERBURDEN, SLURRY, TAILINGS, OR SIMILAR

1 MINING-RELATED MATERIALS.

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

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

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

22 (f) "DREDGE AND FILL ACTIVITY" MEANS AN ACTIVITY THAT
23 INCLUDES THE DISCHARGE OF DREDGED OR FILL MATERIAL.

24 (g) "DREDGE AND FILL PROGRAM" MEANS THE REGULATORY
25 DREDGE AND FILL DISCHARGE AUTHORIZATION PROGRAM DESCRIBED BY
26 THIS SECTION, INCLUDING THE RULES PROMULGATED BY THE COMMISSION,
27 AS ADMINISTERED BY THE DIVISION PURSUANT TO THIS SECTION.

1 (h) "DREDGED MATERIAL" MEANS MATERIAL THAT IS EXCAVATED
2 OR DREDGED FROM STATE WATERS.

3 (i) "DREDGED OR FILL MATERIAL" MEANS DREDGED MATERIAL OR
4 FILL MATERIAL.

5 (j) "ECOLOGICAL LIFT" MEANS AN IMPROVEMENT IN THE
6 BIOLOGICAL, CHEMICAL, AND HYDROLOGIC HEALTH OF AN AREA THAT HAS
7 BEEN DAMAGED BY PAST ACTIVITY.

8 (k) (I) "FILL MATERIAL" MEANS, EXCEPT AS DESCRIBED IN
9 SUBSECTION (3)(k)(III) OF THIS SECTION, MATERIAL PLACED IN STATE
10 WATERS WHERE THE MATERIAL HAS THE EFFECT OF:

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

12 (B) CHANGING THE BOTTOM ELEVATION OF ANY PORTION OF ANY
13 STATE WATERS.

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

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

19 (l) "INCIDENTAL FALLBACK" MEANS THE REDEPOSIT OF SMALL
20 VOLUMES OF DREDGED MATERIAL THAT IS INCIDENTAL TO EXCAVATION
21 ACTIVITY IN STATE WATERS WHEN SUCH MATERIAL FALLS BACK TO
22 SUBSTANTIALLY THE SAME PLACE AS THE INITIAL REMOVAL. "INCIDENTAL
23 FALLBACK" INCLUDES SOIL THAT IS DISTURBED WHEN DIRT IS SHOVELED
24 AND THE BACK-SPILL THAT COMES OFF A BUCKET WHEN SUCH SMALL
25 VOLUME OF SOIL OR DIRT FALLS INTO SUBSTANTIALLY THE SAME PLACE
26 FROM WHICH IT WAS INITIALLY REMOVED.

27 (m) "NATURAL STREAM SYSTEM" HAS THE MEANING SET FORTH IN

1 SECTION 37-92-602 (9)(b)(III).

2 (n) "ORDINARY HIGH WATERMARK" HAS THE MEANING SET FORTH
3 IN SECTION 37-87-102 (1)(e).

4 (o) "SECTION 404 PERMIT" MEANS A PERMIT ISSUED BY THE
5 UNITED STATES ARMY CORPS OF ENGINEERS PURSUANT TO SECTION 404
6 OF THE FEDERAL ACT.

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

9 (q) "UPLAND" MEANS ANY LAND AREA THAT, UNDER NORMAL
10 CIRCUMSTANCES, IS NOT A WETLAND AND DOES NOT LIE BELOW THE
11 ORDINARY HIGH WATERMARK.

12 (r) "WETLANDS" MEANS AREAS THAT ARE INUNDATED OR
13 SATURATED BY SURFACE OR GROUNDWATER AT A FREQUENCY AND FOR A
14 DURATION SUFFICIENT TO SUPPORT, UNDER NORMAL CIRCUMSTANCES, A
15 PREVALENCE OF VEGETATION TYPICALLY ADAPTED FOR LIFE IN
16 SATURATED SOIL CONDITIONS.

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

26 (I) MUST INCLUDE:

27 (A) PROCEDURES FOR THE ISSUANCE, MODIFICATION, AND

1 TERMINATION OF INDIVIDUAL AND GENERAL AUTHORIZATIONS, INCLUDING
2 PUBLIC NOTICE AND PARTICIPATION REQUIREMENTS;

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

5 (C) THE ESTABLISHMENT OF AUTHORIZATION FEES THAT WILL BE
6 UTILIZED TO IMPLEMENT THE PROGRAM PURSUANT TO SECTION 25-8-210;
7 AND

8 (II) MAY INCLUDE:

9 (A) DETAILS CONCERNING THE DIVISION'S CONSULTATION WITH
10 FEDERAL, STATE, LOCAL, AND TRIBAL ENTITIES, ESPECIALLY THOSE
11 ENTITIES WITH SPECIAL EXPERTISE WITH RESPECT TO ANY
12 ENVIRONMENTAL, NATURAL RESOURCE, OR AGRICULTURE-RELATED ISSUE,
13 AND ESPECIALLY AS RELATED TO INDIVIDUAL AUTHORIZATIONS;

14 (B) FURTHER CLARIFICATION OF THE TERMINOLOGY USED TO
15 DEFINE THE EXEMPTIONS AND EXCLUSIONS IN SUBSECTIONS (8)(b) AND
16 (8)(d) OF THIS SECTION WITHOUT LIMITING OR EXPANDING THE SCOPE OF
17 THE EXEMPTIONS AND EXCLUSIONS; AND

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

27 (b) **Rules for individual authorizations.** THE COMMISSION SHALL

1 PROMULGATE RULES BY MAY 31, 2025, CONCERNING INDIVIDUAL
2 AUTHORIZATIONS FOR DREDGE AND FILL ACTIVITIES. THE RULES MUST
3 INCLUDE:

- 4 (I) APPLICATION REQUIREMENTS, INCLUDING:
 - 5 (A) PROJECT LOCATION INFORMATION;
 - 6 (B) A PROJECT DESCRIPTION, INCLUDING SITE PLANS;
 - 7 (C) AN ALTERNATIVES ANALYSIS;
 - 8 (D) A PURPOSE AND NEED STATEMENT;
 - 9 (E) A DESCRIPTION OF AVOIDANCE AND MINIMIZATION MEASURES;
 - 10 (F) A PROJECTED IMPACTS ANALYSIS; AND
 - 11 (G) A COMPENSATORY MITIGATION PLAN;

12 (II) A PROHIBITION AGAINST THE DISCHARGE OF DREDGED OR FILL
13 MATERIAL WHERE THERE IS A PRACTICABLE ALTERNATIVE TO THE
14 PROPOSED DISCHARGE THAT WOULD HAVE LESS ADVERSE IMPACT ON
15 STATE WATERS AND CRITERIA FOR THE DIVISION TO IMPLEMENT SUCH
16 PROHIBITION. THE GENERAL ASSEMBLY RECOGNIZES THAT THIS
17 SUBSECTION (4)(b)(II) MAY RESULT IN CERTAIN RESTRICTIONS ON AND
18 REQUIREMENTS FOR PROJECTS SEEKING AUTHORIZATION FOR DREDGE AND
19 FILL ACTIVITIES. SUCH RESTRICTIONS AND REQUIREMENTS DO NOT RESULT
20 IN MATERIAL INJURY TO OR IMPAIRMENT OF WATER RIGHTS SO LONG AS
21 THE PROJECT'S PURPOSE CAN REASONABLY BE MET. THE DIVISION SHALL
22 CONSIDER THE FEASIBILITY OF SECURING NECESSARY WATER RIGHTS IN
23 DETERMINING THE AVAILABILITY OF PRACTICABLE ALTERNATIVES.

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

- 26 (A) REMOVE OR REDUCE THE IMPACT TO STATE WATERS OF A
27 DISCHARGE OF DREDGED OR FILL MATERIAL;

1 (B) PROTECT DOWNSTREAM USES;

2 (C) ADDRESS THE DIRECT AND INDIRECT IMPACTS OF THE
3 ACTIVITY; AND

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

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

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

12 (I) FUNCTIONAL ASSESSMENT METHODS AND RATIOS FOR
13 DETERMINING COMPENSATORY MITIGATION REQUIREMENTS FOR BOTH
14 WETLAND AND STREAM MITIGATION TO ASSESS IMPACTS AND MITIGATION
15 BASED ON AN ECOLOGICAL FUNCTION APPROACH; AND

16 (II) COMPENSATORY MITIGATION THRESHOLDS FOR STREAMS.

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

20 (a) **Individual authorizations.** (I) UPON THE COMMISSION'S
21 PROMULGATION OF RULES PURSUANT TO SUBSECTION (4) OF THIS SECTION,
22 THE DIVISION SHALL ISSUE INDIVIDUAL AUTHORIZATIONS CONSISTENT
23 WITH THE RULES PROMULGATED BY THE COMMISSION UNDER SUBSECTION
24 (4) OF THIS SECTION.

25 (II) IN ADDITION TO ANY COMPENSATORY MITIGATION
26 REQUIREMENTS THE DIVISION DETERMINES ARE NECESSARY TO COMPLY
27 WITH THE COMMISSION'S RULES AND SUBSECTION (5)(c) OF THIS SECTION,

1 FOR PROJECTS SUBJECT TO THE REQUIREMENTS OF SECTION 37-60-122.2
2 (1)(b), THE DIVISION SHALL TAKE INTO CONSIDERATION THE OFFICIAL
3 STATE POSITION REGARDING MITIGATION FOR FISH AND WILDLIFE
4 RESOURCES, WHICH POSITION IS ESTABLISHED PURSUANT TO SECTION
5 37-60-122.2 (1), AND MAY ADOPT ALL OR PART OF SUCH POSITION INTO
6 INDIVIDUAL AUTHORIZATIONS AS CONDITIONS.

7 (III) AN INDIVIDUAL AUTHORIZATION, INCLUDING ALL CONDITIONS
8 INCORPORATED INTO THE INDIVIDUAL AUTHORIZATION, IS SUBJECT TO
9 ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION UNDER SECTION
10 25-8-403 AND JUDICIAL REVIEW UNDER SECTION 25-8-404.

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

26 (II) EACH GENERAL AUTHORIZATION MUST COVER A THRESHOLD
27 OF NO MORE THAN ONE-HALF ACRE OF UNAVOIDABLE ADVERSE EFFECTS

1 TO WETLANDS AND NO MORE THAN THE THRESHOLD ESTABLISHED BY THE
2 COMMISSION FOR UNAVOIDABLE ADVERSE EFFECTS TO STREAMS, EXCEPT
3 FOR RESTORATION OR ENHANCEMENT PROJECTS THAT DO NOT HAVE ANY
4 ACREAGE THRESHOLDS IF SUCH PROJECTS DEMONSTRATE ECOLOGICAL
5 IMPROVEMENT.

6 (III) FOR A LINEAR PROJECT THAT CROSSES A SINGLE BODY OF
7 WATER OR MULTIPLE BODIES OF WATER SEVERAL TIMES AT SEPARATE AND
8 DISTANT LOCATIONS, EACH CROSSING IS CONSIDERED A SINGLE AND
9 COMPLETE PROJECT FOR PURPOSES OF A GENERAL AUTHORIZATION. AS
10 USED IN THIS SUBSECTION (5)(b)(III):

11 (A) "LINEAR PROJECT" MEANS A PROJECT CONSTRUCTED FOR THE
12 PURPOSE OF TRANSPORTING PEOPLE OR GOODS OR PROVIDING SERVICES
13 THROUGH TRANSPORT FROM A POINT OF ORIGIN TO A TERMINAL POINT,
14 WHICH OFTEN INVOLVES MULTIPLE CROSSINGS OF A SINGLE BODY OF
15 WATER OR MULTIPLE BODIES OF WATER AT SEPARATE AND DISTANT
16 LOCATIONS.

17 (B) "SINGLE AND COMPLETE PROJECT" MEANS THE PORTION OF A
18 LINEAR PROJECT PROPOSED OR ACCOMPLISHED BY ONE OWNER OR
19 DEVELOPER OR BY A PARTNERSHIP OR OTHER ASSOCIATION OF OWNERS OR
20 DEVELOPERS, WHICH PROJECT INCLUDES ALL CROSSINGS OF A SINGLE BODY
21 OF STATE WATERS AT A SPECIFIC LOCATION. FOR THE PURPOSES OF THIS
22 SUBSECTION (5)(b)(III)(B), INDIVIDUAL CHANNELS IN A BRAIDED STREAM
23 OR RIVER, OR INDIVIDUAL ARMS OF A LARGE, IRREGULARLY SHAPED
24 WETLAND OR LAKE, ARE NOT SEPARATE BODIES OF STATE WATERS, AND
25 CROSSINGS OF SUCH FEATURES CANNOT BE CONSIDERED SEPARATELY.

26 (IV) GENERAL AUTHORIZATIONS ISSUED BY THE DIVISION ARE
27 SUBJECT TO ADMINISTRATIVE RECONSIDERATION BY THE COMMISSION

1 UNDER SECTION 25-8-403; EXCEPT THAT NOTICES OF AUTHORIZATION TO
2 CONDUCT AN ACTIVITY UNDER A GENERAL AUTHORIZATION ARE NOT
3 SUBJECT TO SUCH ADMINISTRATIVE RECONSIDERATION BUT ARE SUBJECT
4 TO JUDICIAL REVIEW UNDER SECTION 25-8-404.

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

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

10 (B) FOR STREAMS, WHERE UNAVOIDABLE ADVERSE IMPACTS
11 GREATER THAN THE THRESHOLD ESTABLISHED BY THE COMMISSION BY
12 RULES PROMULGATED PURSUANT TO SUBSECTION (4)(c)(II) OF THIS
13 SECTION WILL OCCUR.

14 (II) COMPENSATORY MITIGATION MUST COMPENSATE FOR ALL
15 FUNCTIONS OF STATE WATERS THAT WILL BE LOST AS A RESULT OF THE
16 AUTHORIZED ACTIVITY. COMPENSATORY MITIGATION MAY BE
17 ACCOMPLISHED THROUGH THE PURCHASE OF MITIGATION BANK CREDITS,
18 AN IN-LIEU FEE PROGRAM, OR PROJECT PROPONENT-RESPONSIBLE
19 MITIGATION.

20 (d) **Preconstruction notifications.** THE DIVISION SHALL UTILIZE
21 THE EXISTING STRUCTURE OF PRECONSTRUCTION NOTIFICATIONS IN THE
22 NATIONWIDE AND REGIONAL PERMITS ISSUED BY THE UNITED STATES
23 ARMY CORPS OF ENGINEERS AND ISSUE GENERAL AUTHORIZATIONS FOR
24 CATEGORIES OF ACTIVITIES THAT DO NOT REQUIRE PRECONSTRUCTION
25 NOTIFICATION. WHERE PRECONSTRUCTION NOTIFICATION IS REQUIRED BY
26 A GENERAL AUTHORIZATION BEFORE THE COMMENCEMENT OF AN
27 ACTIVITY, THE PROJECT PROPONENT MUST PROVIDE AT LEAST THIRTY

1 CALENDAR DAYS OF PRECONSTRUCTION NOTICE TO THE DIVISION UNLESS
2 A SHORTER NOTICE IS ALLOWED UNDER THE TERMS OF THE APPLICABLE
3 GENERAL AUTHORIZATION. AFTER PROVIDING SUCH PRECONSTRUCTION
4 NOTIFICATION, THE PROJECT PROPONENT MAY COMMENCE THE ACTIVITY
5 IF:

6 (I) THE DIVISION ISSUES TO THE PROJECT PROPONENT A NOTICE OF
7 AUTHORIZATION IN WRITING THAT THE PROJECT PROPONENT MAY
8 COMMENCE THE ACTIVITY; OR

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

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

27 (6) **Transition - repeal.** (a) UNTIL THE RULES PROMULGATED BY

1 THE COMMISSION PURSUANT TO SUBSECTION (4) OF THIS SECTION BECOME
2 EFFECTIVE:

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

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

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

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

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

1 AUTHORIZATION.

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

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

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

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

19 (I) ACTIVITIES IN RECEIPT OF A VALID AND CURRENT SECTION 404
20 PERMIT THAT WAS EFFECTIVE PRIOR TO MAY 25, 2023;

21 (II) ACTIVITIES IN RECEIPT OF A VALID AND CURRENT SECTION 404
22 PERMIT BASED ON PRELIMINARY JURISDICTIONAL DETERMINATIONS THAT
23 ADDRESS ALL STATE WATERS ON-SITE, REGARDLESS OF FEDERAL
24 JURISDICTION, ON AND AFTER MAY 25, 2023;

25 (III) ACTIVITIES IN RECEIPT OF A VALID AND CURRENT APPROVED
26 JURISDICTIONAL DETERMINATION FINDING THAT A STATE WATER IS NOT
27 SUBJECT TO FEDERAL JURISDICTION DATED PRIOR TO MAY 25, 2023;

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

12 (V) MAINTENANCE, INCLUDING EMERGENCY RECONSTRUCTION OF
13 RECENTLY DAMAGED PARTS, OF CURRENTLY SERVICEABLE STRUCTURES,
14 SUCH AS DIKES, DAMS, LEVEES, GROINS, RIPRAP, BREAKWATERS,
15 CAUSEWAYS, BRIDGE ABUTMENTS OR APPROACHES, AND TRANSPORTATION
16 STRUCTURES. THE COMMISSION MAY FURTHER CLARIFY THE EXEMPTION
17 DESCRIBED IN THIS SUBSECTION (8)(b)(V) THROUGH RULE-MAKING.

18 (VI) CONSTRUCTION OR MAINTENANCE OF FARM OR STOCK PONDS
19 OR IRRIGATION DITCHES OR THE MAINTENANCE OF DRAINAGE DITCHES. AS
20 USED IN THIS SUBSECTION (8)(b)(VI):

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

1 INTENT OF REDUCING SEEPAGE LOSSES AND IMPROVING CONVEYANCE
2 EFFICIENCY. ALL NEW LINING OF DITCHES, IN INSTANCES WHERE THE DITCH
3 HAD NOT PREVIOUSLY BEEN LINED, IS CONSIDERED CONSTRUCTION.

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

18 (C) "MAINTENANCE" PERTAINING TO AN IRRIGATION DITCH OR A
19 DRAINAGE DITCH INCLUDES A REPAIR TO AN EXISTING STRUCTURE OR
20 FEATURE TO KEEP THE DITCH IN ITS EXISTING STATE OR PROPER CONDITION
21 OR TO PRESERVE IT FROM FAILURE OR DECLINE. SUCH MAINTENANCE
22 INCLUDES EXCAVATION OF ACCUMULATED SEDIMENTS BACK TO ORIGINAL
23 CONTOURS; RESHAPING OF SIDE-SLOPES; BANK STABILIZATION TO PREVENT
24 EROSION WHERE REASONABLY NECESSARY USING BEST MANAGEMENT
25 PRACTICES AND, FOR MAINTENANCE OF DRAINAGE DITCHES, MATERIALS
26 THAT ARE COMPATIBLE WITH EXISTING BANK MATERIALS; ARMORING,
27 LINING, AND PIPING FOR THE PURPOSE OF REPAIRING A PREVIOUSLY

1 ARMORED, LINED, OR PIPED SECTION OF A DITCH SO LONG AS ALL WORK
2 OCCURS WITHIN THE FOOTPRINT OF THE PREVIOUS WORK; AND
3 REPLACEMENT OF EXISTING CONTROL STRUCTURES WHERE THE ORIGINAL
4 FUNCTION IS NOT CHANGED AND ORIGINAL APPROXIMATE CAPACITY IS NOT
5 INCREASED.

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

9 (VIII) CONSTRUCTION OR MAINTENANCE OF FARM ROADS OR
10 FOREST ROADS OR TEMPORARY ROADS FOR MOVING MINING EQUIPMENT
11 WHERE SUCH ROADS ARE CONSTRUCTED AND MAINTAINED, IN
12 ACCORDANCE WITH BEST MANAGEMENT PRACTICES, TO ASSURE THAT
13 FLOW AND CIRCULATION PATTERNS AND CHEMICAL AND BIOLOGICAL
14 CHARACTERISTICS OF THE STATE WATERS ARE NOT IMPAIRED, THAT THE
15 REACH OF THE STATE WATERS IS NOT REDUCED, AND THAT ANY ADVERSE
16 EFFECT ON THE STATE WATERS WILL BE OTHERWISE MINIMIZED.

17 (c) **Recapture provision - rules.** CONSISTENT WITH SECTION 404
18 (f)(2) OF THE FEDERAL ACT, ANY DISCHARGE OF DREDGED OR FILL
19 MATERIAL INTO STATE WATERS INCIDENTAL TO ANY ACTIVITY THAT
20 BRINGS AN AREA OF THE STATE WATERS INTO A USE TO WHICH IT WAS NOT
21 PREVIOUSLY SUBJECT, WHERE THE FLOW OR CIRCULATION OF STATE
22 WATERS MAY BE IMPAIRED OR WHERE THE REACH OF SUCH WATERS MAY
23 BE REDUCED, IS NOT INCLUDED WITHIN THE EXEMPTED ACTIVITIES
24 DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION. THE COMMISSION MAY
25 FURTHER CLARIFY THE EFFECT OF THIS SUBSECTION (8)(c) THROUGH
26 RULE-MAKING.

27 (d) **Excluded types of waters - definitions.** NOTWITHSTANDING

1 THE DEFINITION OF "STATE WATERS" PROVIDED IN SECTION 25-8-103 (19),
2 AN AUTHORIZATION IS NOT REQUIRED FOR THE DISCHARGE OF DREDGED OR
3 FILL MATERIAL INTO THE FOLLOWING TYPES OF WATERS, AND SUCH A
4 DISCHARGE IS NOT OTHERWISE PROHIBITED OR REGULATED UNDER THIS
5 SECTION:

6 (I) ALL DITCHES AND CANALS, INCLUDING DRAINAGE DITCHES,
7 ROADSIDE DITCHES, IRRIGATION DITCHES, AND STORM WATER
8 CONVEYANCES THAT ARE EXCAVATED ON UPLAND AND NOT WITHIN ANY
9 NATURAL STREAM SYSTEMS;

10 (II) ARTIFICIALLY IRRIGATED AREAS THAT WOULD REVERT TO
11 UPLANDS IF IRRIGATION CEASED;

12 (III) ARTIFICIAL LAKES OR PONDS THAT ARE CREATED ENTIRELY
13 BY EXCAVATING OR DIKING UPLAND TO COLLECT AND RETAIN WATER AND
14 THAT ARE USED EXCLUSIVELY FOR STOCK WATERING; IRRIGATION;
15 DETAINING OR RETAINING STORM WATER; SETTLING BASINS, INCLUDING
16 THOSE USED FOR STORM WATER QUALITY PURPOSES; OR RICE GROWING;

17 (IV) ARTIFICIAL REFLECTING OR SWIMMING POOLS OR OTHER
18 SMALL ORNAMENTAL BODIES OF WATER CREATED BY EXCAVATING OR
19 DIKING UPLAND TO RETAIN WATER FOR PRIMARILY AESTHETIC REASONS;

20 (V) WATER-FILLED DEPRESSIONS CREATED IN UPLANDS
21 INCIDENTAL TO MINING OR CONSTRUCTION ACTIVITY AND PITS EXCAVATED
22 IN UPLANDS FOR THE PURPOSE OF OBTAINING FILL, SAND, OR GRAVEL
23 UNLESS AND UNTIL THE CONSTRUCTION OR EXCAVATION OPERATION IS
24 ABANDONED AND THE RESULTING WATER FEATURE IS STATE WATERS;

25 (VI) SWALES AND EROSIONAL FEATURES, SUCH AS GULLIES, SMALL
26 WASHES, AND RILLS, THAT DO NOT CONTAIN WETLANDS OR AN ORDINARY
27 HIGH WATERMARK;

1 (VII) GROUNDWATER. AS USED IN THIS SUBSECTION (8)(d)(VII),
2 "GROUNDWATER" MEANS SUBSURFACE WATERS IN A ZONE OF SATURATION
3 THAT ARE OR CAN BE BROUGHT TO THE SURFACE OF THE GROUND OR TO
4 SURFACE WATERS THROUGH WELLS, SPRINGS, SEEPS, OR OTHER DISCHARGE
5 AREAS. "GROUNDWATER" DOES NOT INCLUDE WETLANDS.

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

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

27 **25-8-103. Definitions.** As used in this article 8, unless the context

1 otherwise requires:

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

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

10 **25-8-210. Fees established administratively - rules -**
11 **shareholding requirement - phase-in period - clean water cash fund**
12 **- creation - repeal.** (1) (d) ON OR BEFORE MAY 31, 2025, THE
13 COMMISSION SHALL ESTABLISH BY RULE THE AUTHORIZATION FEES FOR
14 THE DREDGE AND FILL PROGRAM, AS DEFINED IN SECTION 25-8-205.1 (3).
15 THE DIVISION SHALL TRANSMIT THE FEES COLLECTED PURSUANT TO THE
16 COMMISSION'S FEE-SETTING RULES ADOPTED UNDER THIS SUBSECTION
17 (1)(d) TO THE STATE TREASURER, WHO SHALL CREDIT THE FEES TO THE
18 CLEAN WATER CASH FUND CREATED IN SUBSECTION (4) OF THIS SECTION.

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

21 **37-60-122.2. Fish and wildlife resources - legislative**
22 **declaration - fund - authorization.** (1) (b) Except as provided in this
23 ~~paragraph (b)~~ SUBSECTION (1)(b), the applicant for any water diversion,
24 delivery, or storage facility ~~which~~ THAT requires an application for a
25 permit, A license, or other approval from the United States, OR THAT
26 REQUIRES AN APPLICATION FOR AN INDIVIDUAL AUTHORIZATION FROM THE
27 DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND

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

23 **SECTION 6. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly; except
26 that, if a referendum petition is filed pursuant to section 1 (3) of article V
27 of the state constitution against this act or an item, section, or part of this

1 act within such period, then the act, item, section, or part will not take
2 effect unless approved by the people at the general election to be held in
3 November 2024 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.

SWCD

Bill Tracker

March 27, 2024

Bill #	Position	Calendar Notification	Short Title	Sponsors	Most Recent Status
HB24-1007		Wednesday, March 27 2024 CONSIDERATION OF SENATE AMENDMENTS TO HOUSE (1) in house calendar.	Prohibit Residential Occupancy Limits	M. Rutinel (D) J. Mabrey (D) / T. Exum (D) J. Gonzales (D)	3/20/2024 House Considered Senate Amendments - Result was to Laid Over Daily
HB24-1024		NOT ON CALENDAR	Extend Outreach Campaigns Wildfire Risk Mitigation	T. Story (D) E. Velasco (D) / L. Cutter (D)	1/22/2024 House Committee on Agriculture, Water & Natural Resources Refer Unamended to Appropriations
HB24-1091		NOT ON CALENDAR	Fire-Hardened Building Materials in Real Property	K. Brown (D) B. Titone (D) / L. Cutter (D) S. Jaquez Lewis (D)	3/12/2024 Governor Signed
HB24-1168		NOT ON CALENDAR	Equal Access to Public Meetings	M. Froelich (D) M. Rutinel (D) / N. Hinrichsen (D)	3/20/2024 House Committee on Transportation, Housing & Local Government Refer Amended to Appropriations
HB24-1178		Wednesday, March 27 2024 GENERAL ORDERS - SECOND READING OF BILLS (6) in house calendar.	Local Government Authority to Regulate Pesticides	C. Kipp (D) M. Froelich (D) / L. Cutter (D) S. Jaquez Lewis (D)	3/19/2024 House Second Reading Laid Over Daily - No Amendments
HB24-1362		NOT ON CALENDAR	Measures to Incentivize Graywater Use	M. Lukens (D) M. Catlin (R) / D. Roberts (D) C. Simpson (R)	3/25/2024 House Committee on Agriculture, Water & Natural Resources Refer Amended to Finance
HB24-1379		NOT ON CALENDAR	Regulate Dredge & Fill Activities in State Waters	J. McCluskie (D) K. McCormick (D) / D. Roberts (D)	3/20/2024 Introduced In House - Assigned to Agriculture, Water & Natural Resources
HB24-1413		Wednesday, March 27 2024 State Library Appropriations 7:30 a.m. Room Old (29) in house calendar.	Severance Tax Transfers	S. Bird (D) R. Taggart (R) / B. Kirkmeyer (R) J. Bridges (D)	3/25/2024 Introduced In House - Assigned to Appropriations
SB24-005		NOT ON CALENDAR	Prohibit Landscaping Practices for Water Conservation	D. Roberts (D) C. Simpson (R) / K. McCormick (D) B. McLachlan (D)	3/15/2024 Governor Signed

SB24-026		NOT ON CALENDAR	Agriculture & Natural Resources Public Engagement Requirement	D. Roberts (D) P. Will (R) / B. McLachlan (D) M. Catlin (R)	3/25/2024 House Committee on Agriculture, Water & Natural Resources Refer Unamended to Appropriations
SB24-031		NOT ON CALENDAR	Local Authority Enforce Violation of Noxious Weed Act	D. Roberts (D) / M. Lukens (D) B. McLachlan (D)	3/12/2024 Governor Signed
SB24-037		NOT ON CALENDAR	Study Green Infrastructure for Water Quality Management	C. Simpson (R) J. Bridges (D) / M. Lynch (R) K. McCormick (D)	2/29/2024 Senate Committee on Agriculture & Natural Resources Refer Amended to Appropriations
SB24-038		Wednesday, March 27 2024 SENATE AGRICULTURE & NATURAL RESOURCES COMMITTEE Upon Adjournment SCR 352 (1) in senate calendar.	Authorize Conservancy District Water Management	J. Bridges (D) C. Simpson (R) / M. Martinez (D) K. McCormick (D)	1/10/2024 Introduced In Senate - Assigned to Agriculture & Natural Resources
SB24-127		Thursday, April 4 2024 SENATE AGRICULTURE & NATURAL RESOURCES COMMITTEE 1:30 PM SCR 352 (2) in senate calendar.	Regulate Dredged & Fill Material State Waters	B. Kirkmeyer (R) / S. Bird (D)	2/6/2024 Introduced In Senate - Assigned to Agriculture & Natural Resources
SB24-129		Thursday, March 28 2024 SENATE BUSINESS, LABOR, & TECHNOLOGY COMMITTEE Upon Adjournment Old Supreme Court (4) in senate calendar.	Nonprofit Member Data Privacy & Public Agencies	B. Pelton (R) C. Kolker (D) / C. deGruy Kennedy (D) L. Frizell (R)	2/6/2024 Introduced In Senate - Assigned to Business, Labor, & Technology
SB24-148		NOT ON CALENDAR	Precipitation Harvesting Storm Water Detention	K. Van Winkle (R) / B. McLachlan (D) B. Bradley (R)	3/25/2024 House Third Reading Passed - No Amendments
SB24-165		NOT ON CALENDAR	Air Quality Improvements	K. Priola (D) L. Cutter (D) / M. Rutinel (D) L. Garcia (D)	3/20/2024 Senate Committee on Transportation & Energy Refer Amended to Finance
SB24-179		Thursday, March 28 2024 SENATE LOCAL GOVERNMENT & HOUSING COMMITTEE Upon Adjournment SCR 352 (1) in senate calendar.	Floodplain Management Program	C. Simpson (R) N. Hinrichsen (D) / M. Catlin (R) T. Story (D)	3/7/2024 Introduced In Senate - Assigned to Local Government & Housing

SJM24-002		NOT ON CALENDAR	Congress Fund \$35 Million to Water Infrastructure Improvements for the Nation Act	D. Roberts (D) C. Simpson (R) / J. McCluskie (D) B. McLachlan (D)	3/18/2024 Signed by the President of the Senate
SJR24-004	Support	NOT ON CALENDAR	Water Projects Eligibility Lists	D. Roberts (D) C. Simpson (R) / K. McCormick (D) M. Catlin (R)	3/8/2024 Governor Signed

Colorado Water Congress 2024 Bill Status Sheet

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Sent to Governor	Governor Signed
HB24-1024	Extend Outreach Campaigns Wildfire Risk Mitigation	22-Jan	10-Jan	1/22 Ag	Ap										
HB24-1029	Prohibit Foreign Ownership Agriculture & Natural Resources	22-Jan	10-Jan	3/7 SCMVA											
HB24-1062	Warrants for Metro Sewage Disposal Districts	22-Jan	10-Jan	2/1 EE		5-Feb	6-Feb	7-Feb	3/19 LGH	22-Mar	25-Mar				
HB24-1073	Independent Ethics Commission Jurisdiction		10-Jan	2/21 THLG	Ap										
HB24-1117	Invertebrates & Rare Plants Parks & Wildlife Commission		26-Jan	2/22 Ag	03/01 Ap	5-Mar	11-Mar	18-Mar	4/4 Ag						
HB24-1152	Accessory Dwelling Units	26-Feb	30-Jan	2/27 THLG	Ap										
HB24-1178	Local Government Authority to Regulate Pesticides	26-Feb	1-Feb	2/15 EE	3/15 Ap	25-Mar									
HB24-1313	Housing in Transit-Oriented Communities		20-Feb	3/6 THLG	3/25 F										
HB24-1362	Measures to Incentivize Graywater Use		6-Mar	3/25 Ag											
HB24-1379	Regulate Dredge & Fill Activities in State Waters		20-Mar	Ag											
SB24-005	Prohibit Landscaping Practices for Water Conservation	22-Jan	10-Jan	1/25 Ag		30-Jan	31-Jan	2-Feb	2/26 Ag	28-Feb	29-Feb	1-Mar	11-Mar	12-Mar	15-Mar

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Sent to Governor	Governor Signed
SB24-009	Local Government Disaster-related Programs	22-Jan	10-Jan	1/25 Ag	Ap										
SB24-026	Agriculture and Natural Resources Public Engagement Requirement	22-Jan	10-Jan	1/18 Ag	3/8 Ap	12-Mar	13-Mar	13-Mar	3/25 Ag						
SB24-028	Study Biochar in Wildfire Mitigation Efforts	22-Jan	10-Jan	1/25 Ag	Ap										
SB24-037	Study Green Infrastructure for Water Quality Management	4-Mar	10-Jan	2/29 Ag	Ap										
SB24-038	Authorize Conservancy District Water Management	25-Mar	10-Jan	3/27 Ag											
SB24-058	Landowner Liability Recreational Use Warning Signs	29-Jan	17-Jan	1/29 J		1-Feb	2-Feb	5-Feb	2/20 J	22-Feb	23-Feb	11-Mar	11-Mar	12-Mar	15-Mar
SB24-081	Perfluoroalkyl & Polyfluoroalkyl Chemicals	20-Mar	22-Jan	3/12 BLT		22-Mar	25-Mar								
SB24-085	Sales & Use Tax Rebate for Digital Asset Purchases		24-Jan	BLT											
SB24-127	Regulate Dredged & Fill Material State Waters	25-Mar	6-Feb	4/4 Ag											
SB24-148	Precipitation Harvesting Storm Water Detention	26-Feb	7-Feb	2/28 Ag		1-Mar	4-Mar	2-Mar	3/11 Ag	22-Mar	25-Mar				
SB24-154	Accessory Dwelling Units	26-Feb	12-Feb	LGH											
SB24-174	Sustainable Affordable Housing Assistance		5-Mar	3/26 LGH											
HJR-1018	Grand Lake Water Clarity		23-Feb			26-Feb	26-Feb				27-Feb	4-Mar	4-Mar		
SJR24-004	Water Projects Eligibility Lists	22-Jan	17-Jan	1/25 Ag			30-Jan	2-Feb	2/15 Ag		20-Feb	21-Feb	22-Feb	27-Feb	8-Mar

BILL STATUS	ABBREVIATIONS
Bill scheduled for action at next SA meeting (yellow)	Ag = Agriculture, Livestock & Water
Bill not calendared (no fill)	Ap = Appropriations Committee
Bill Passed, date of action (green)	BLEW = Business, Labor, Economic and Workforce Development Committee
Bill no longer active (gray)	CC = Conference Committee
Bill did not go to second committee or no action required (black)	F = Finance Committee
CWC POSITION	HIE= Health, Insurance, and Environment
Bill scheduled for activity in CWC State Affairs (yellow)	J = Judiciary
Support (green)	THLG = Transportation, Housing & Local Government
Oppose (orange)	SCMVA = State, Civic, Military & Veterans Affairs
Amend (blue)	EE = Energy & Environment
Monitor, Neutral, No Position	UA = Upon Adjournment
No Motions Made	UR = Upon Recess
	Ag = Agriculture and Natural Resources Committee
	CD = Capital Development

TE = Transportation & Energy
E = Education
BLT = Business Labor & Development
PBHHS = Public & Behavioral Health & Human Services

7.0 Staff Reports

Upper Colorado Region Weekly Hydrology Summary

This hydrologic information is provided weekly to summarize the hydrologic conditions in the Upper Colorado Region. If additional information is required, please contact Heather Patno (hpatno@usbr.gov).

Selected Reservoir Status - Report Date: March 28, 2024

Reservoir	Elevation (ft)	Live Storage (1000 AF)	% of Live Capacity	Avg Daily Unreg Inflow (cfs)	Daily Release (cfs)
Lake Powell	3,559.25	7,734	33%	8,052	11,347
Blue Mesa	7,487.14	556	67%	489	1,402
Flaming Gorge	6,026.99	3,154	86%	1,959	1,182
Fontenelle	6,468.09	105	31%	1,035	1,163
Navajo*	6,041.47	1,076	65%	503	352
Elephant Butte**	4,336.96	439	22%	449	1,530

Current as of: 3/28/2024

* Uses Modified Unregulated Inflow

** Unreg Inflow Current as of: 3/24/2024

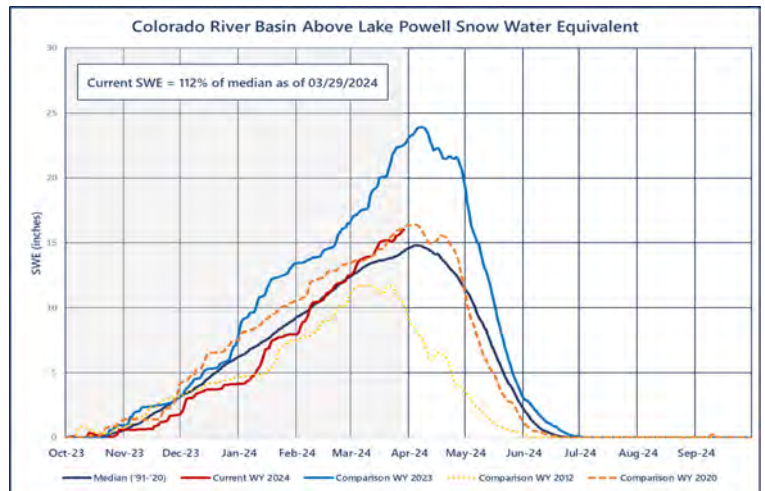
Selected Reservoir Inflows - Unregulated Forecast and Observed Inflow

Reservoir	2024 April-July Volume (KAF) (March Midmonth Forecast)	2024 April-July % of Avg March Midmonth Forecast	Feb Unreg Inflow (Acre-Feet)	February Unreg Inflow Observed (% Average)
Lake Powell	5,400	84%	344,846	95%
Blue Mesa	575	90%	23,642	105%
Fontenelle	600	82%	33,728	118%
Flaming Gorge	850	88%	57,214	126%
Navajo*	460	73%	18,263	68%

*When the MUI is negative, it indicates the upstream storage and transbasin diversion losses are greater than the total inflow.

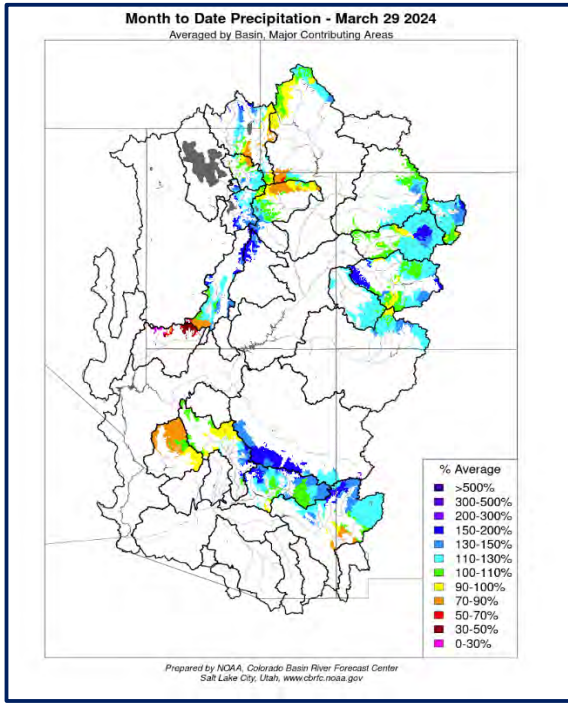


[SWE \(% median peak\)](#)

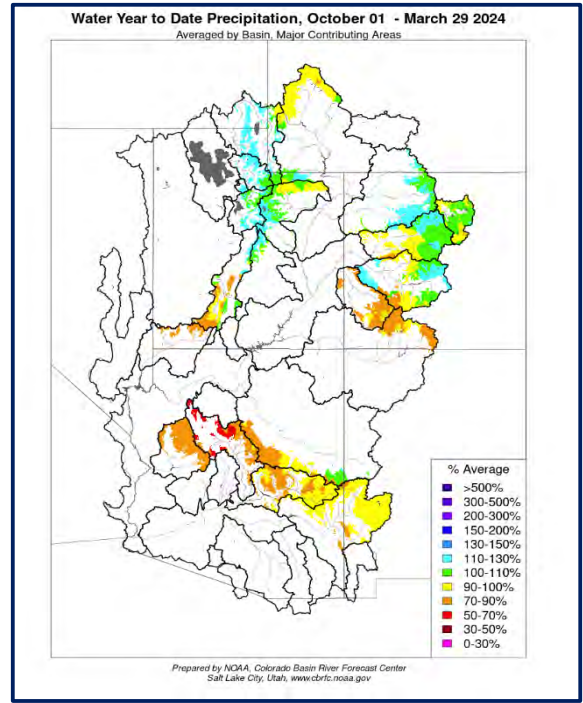


Note: The NRCS site list generating the aggregate SWE values in this graphic is limited to only those sites that have been in operation for the entire WY 1991 - 2020 comparison period. For this reason, the percent median may vary slightly from that reported directly from NRCS.

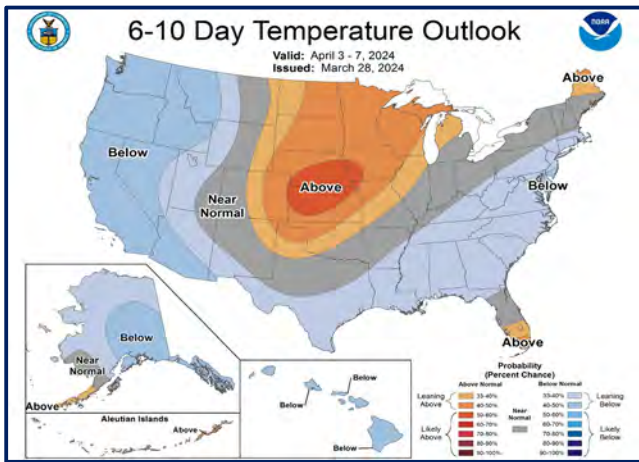
Upper Colorado Region Weekly Hydrology Summary



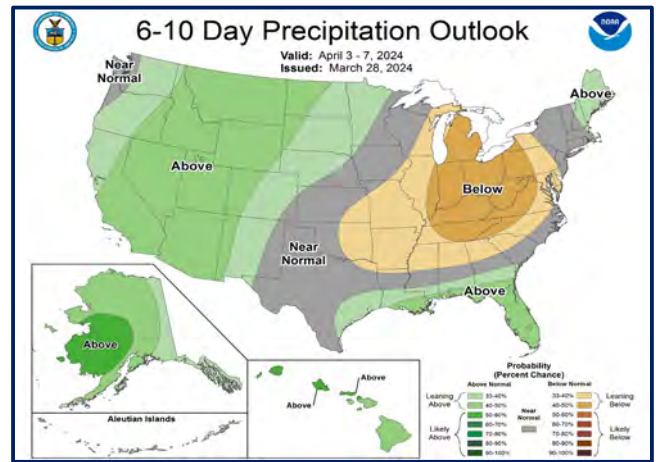
[Month to Date Precipitation](#)



[Water Year to Date Precipitation](#)

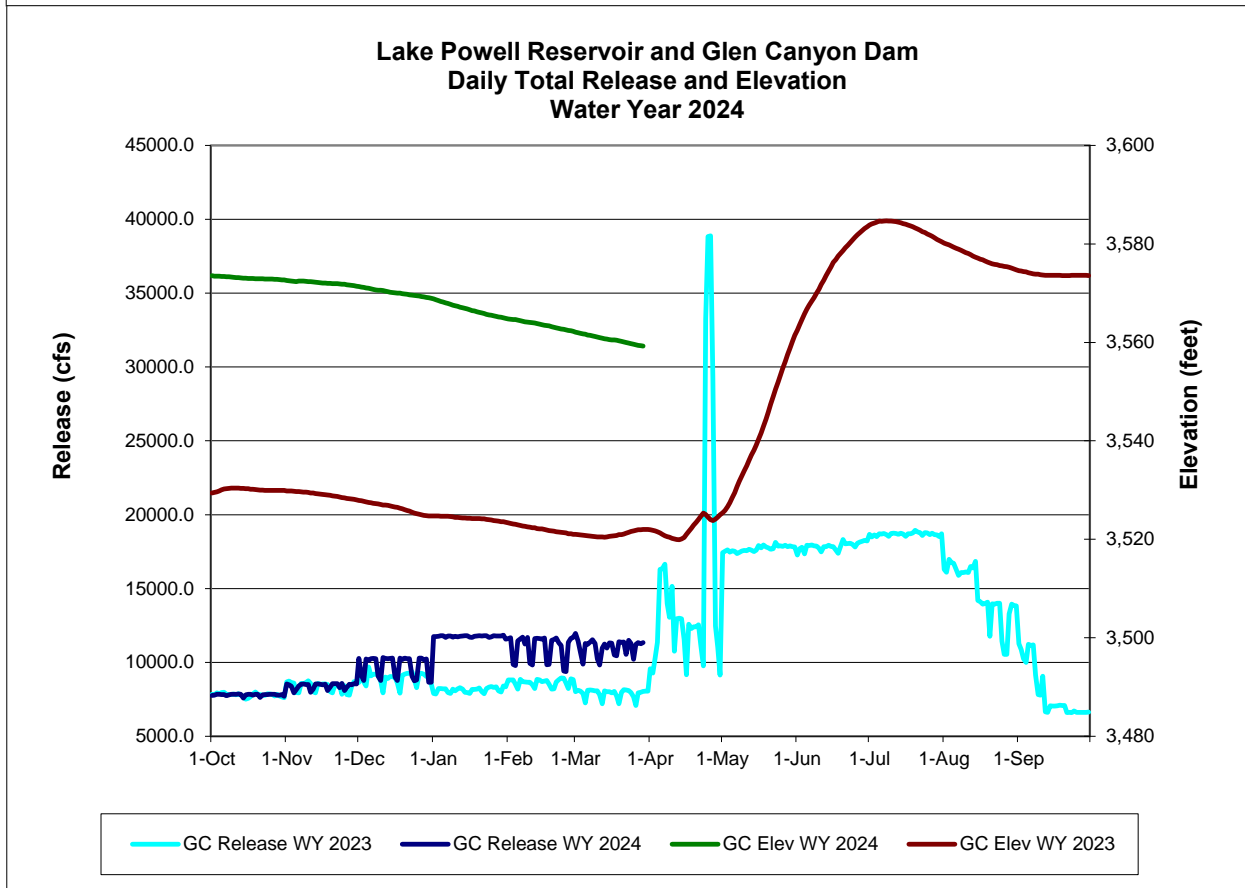
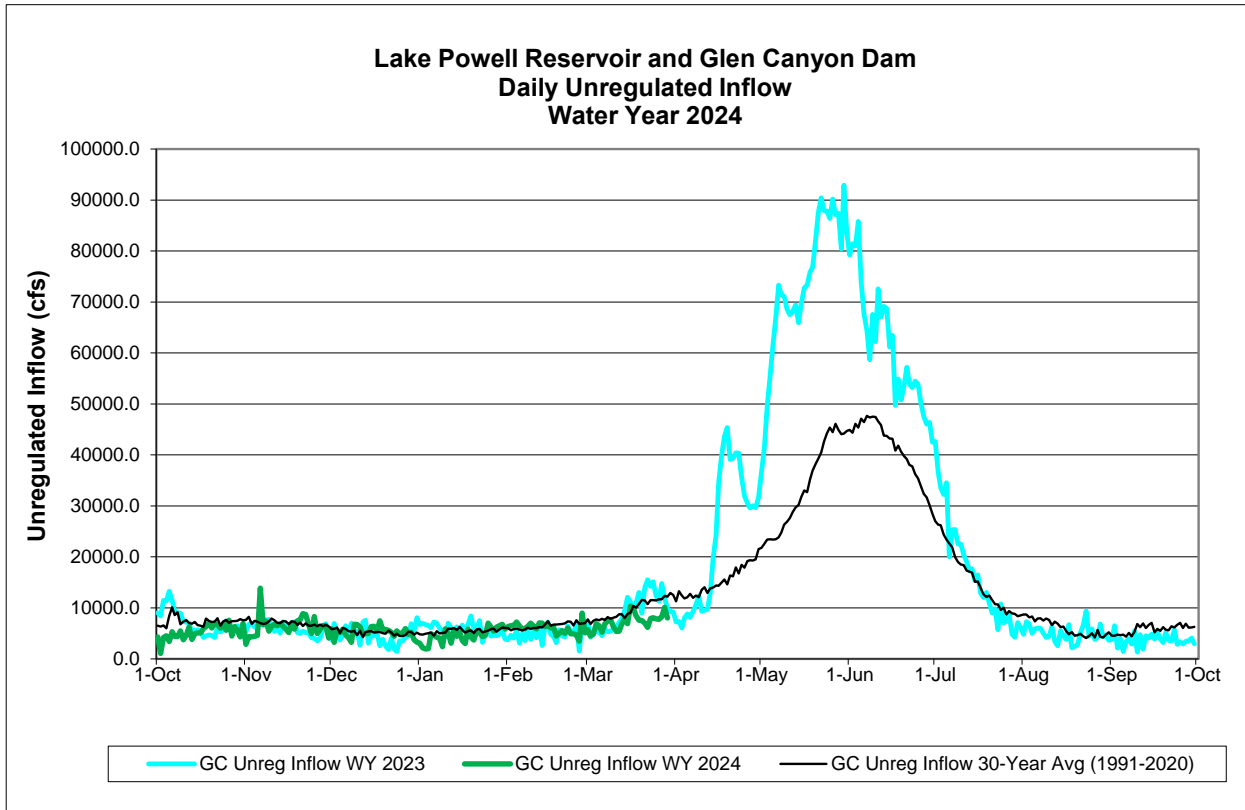


[6-10 Day Temperature](#)

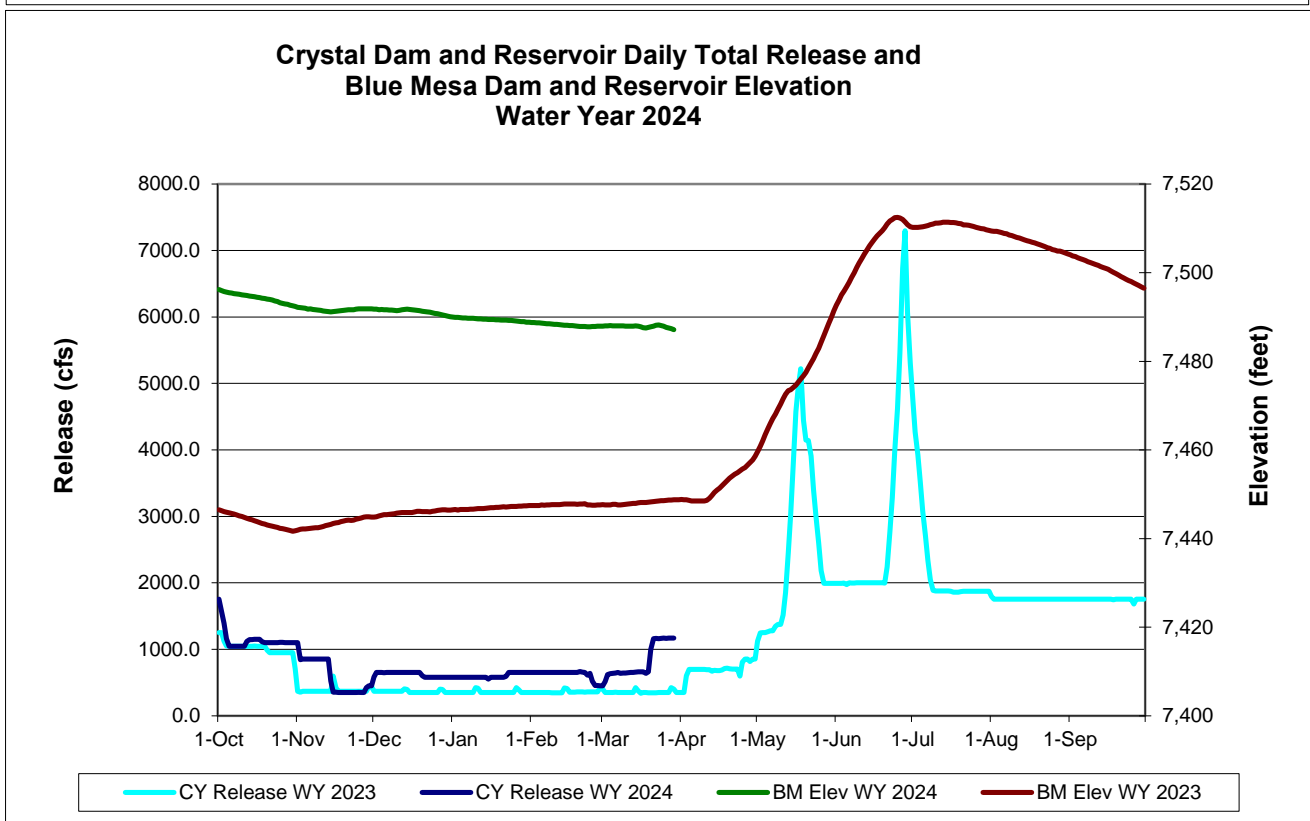
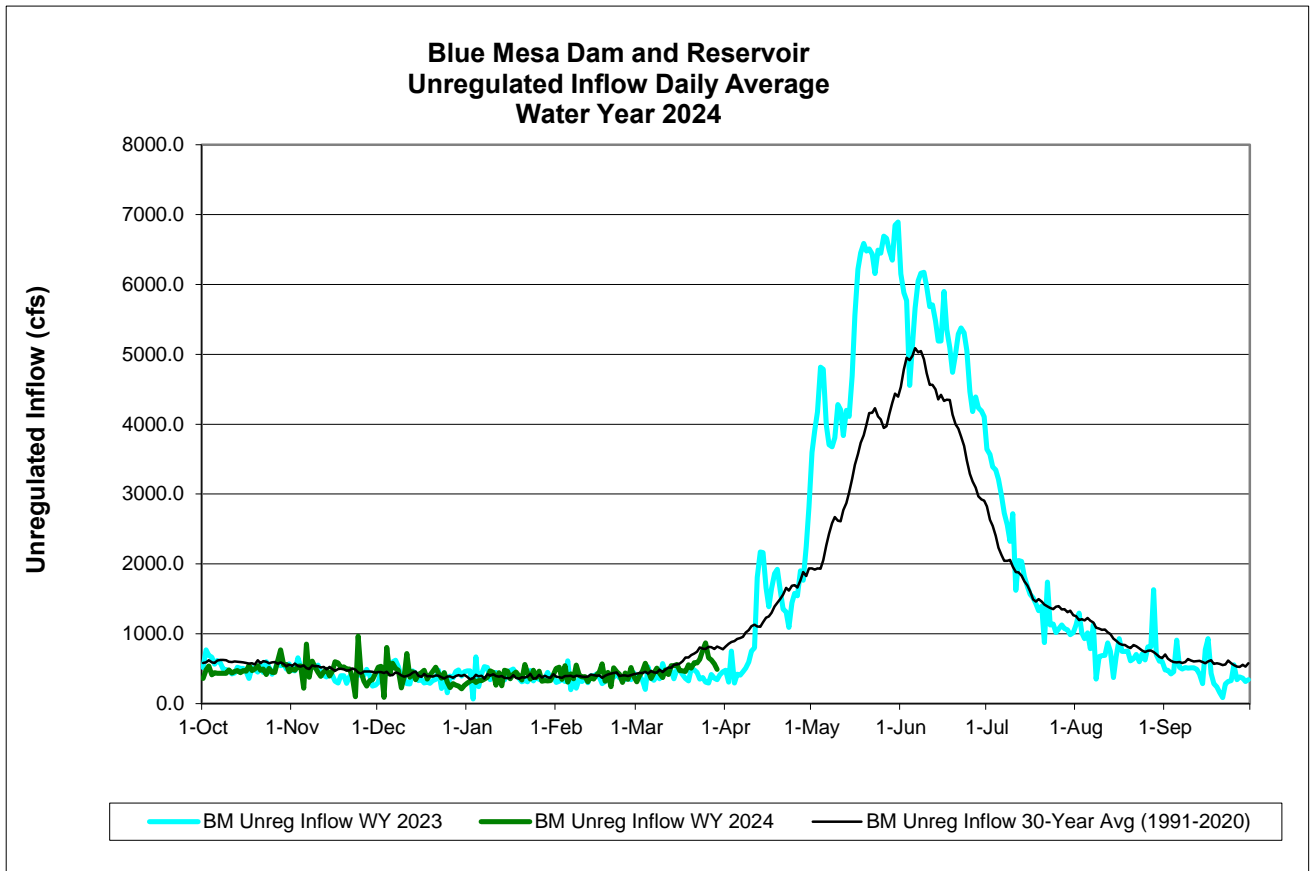


[6-10 Day Precipitation](#)

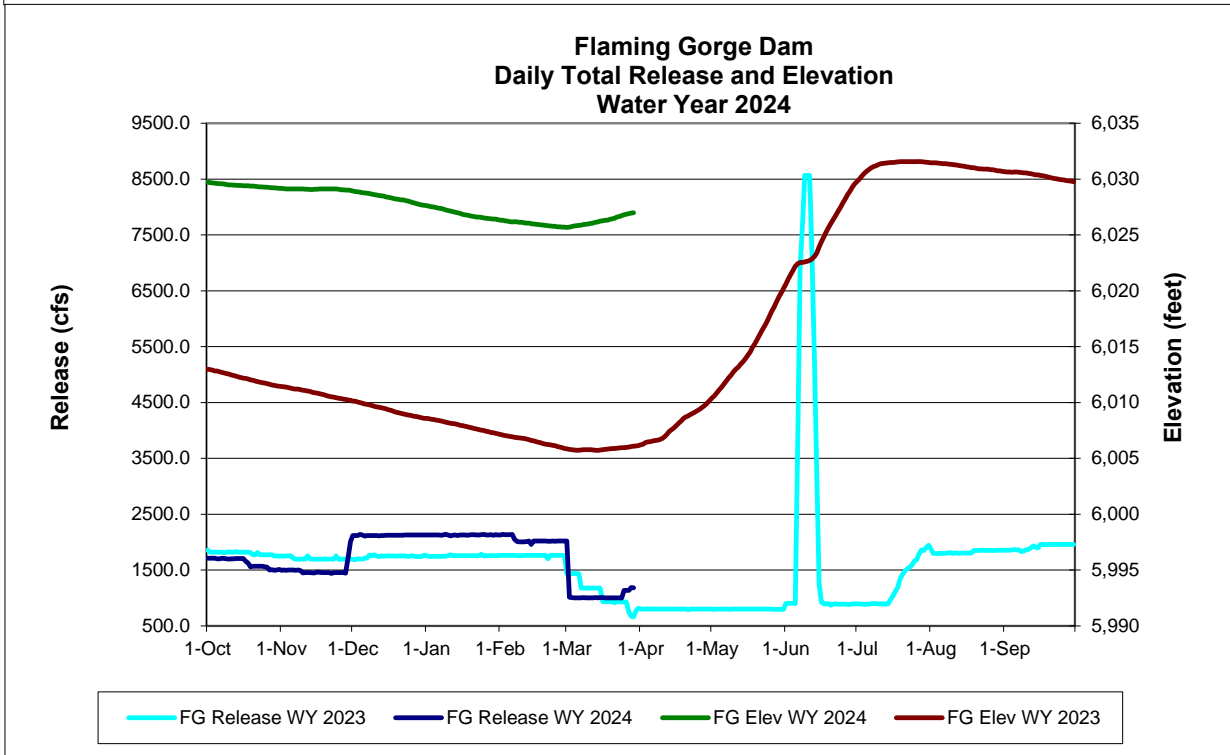
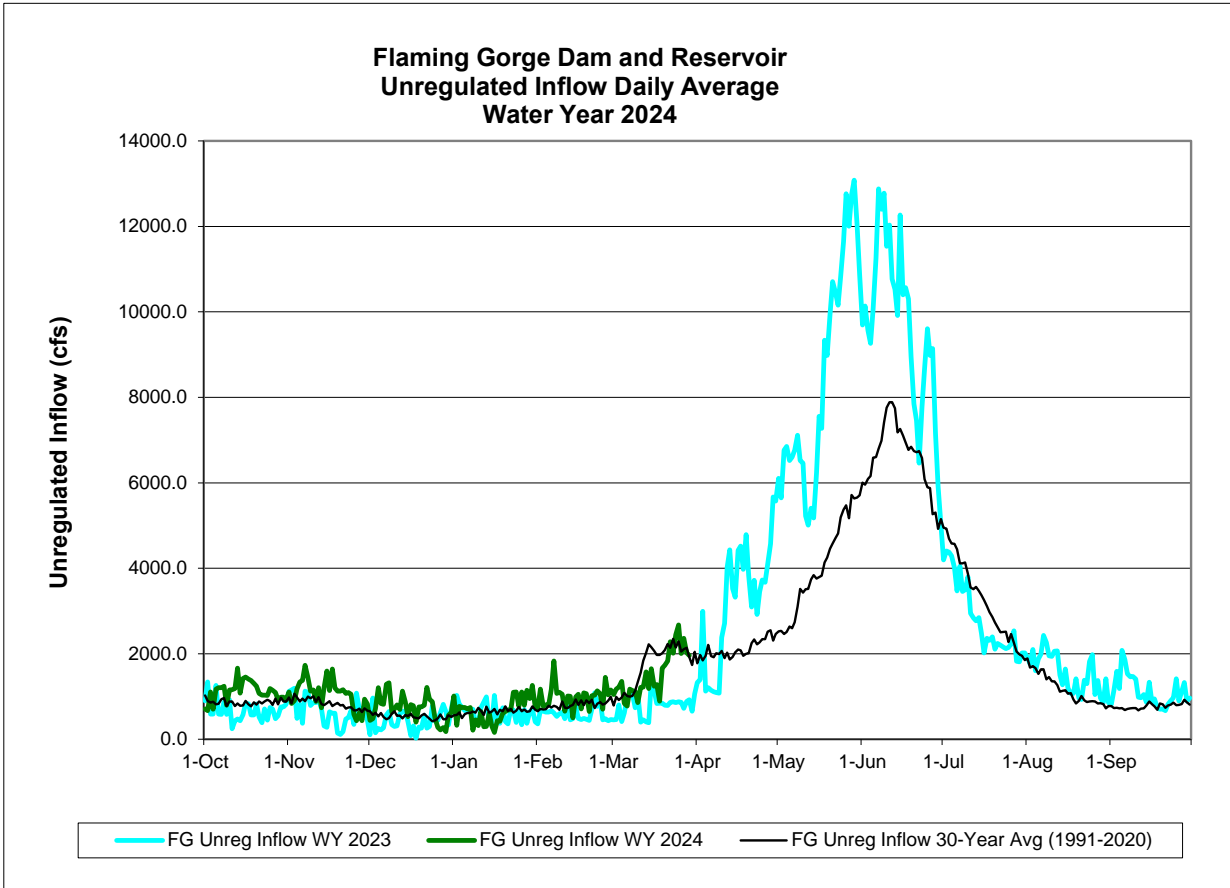
Upper Colorado Region Weekly Hydrology Summary



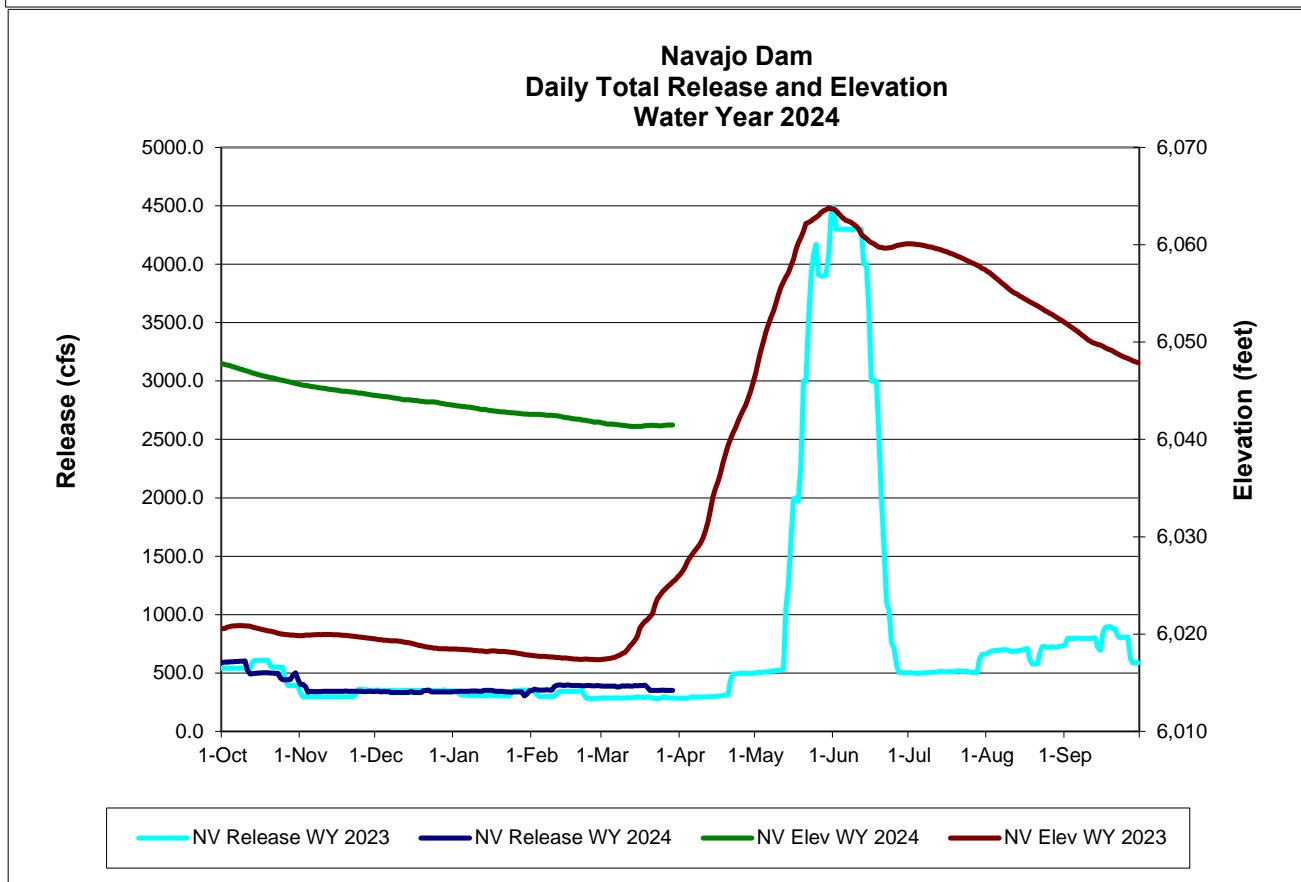
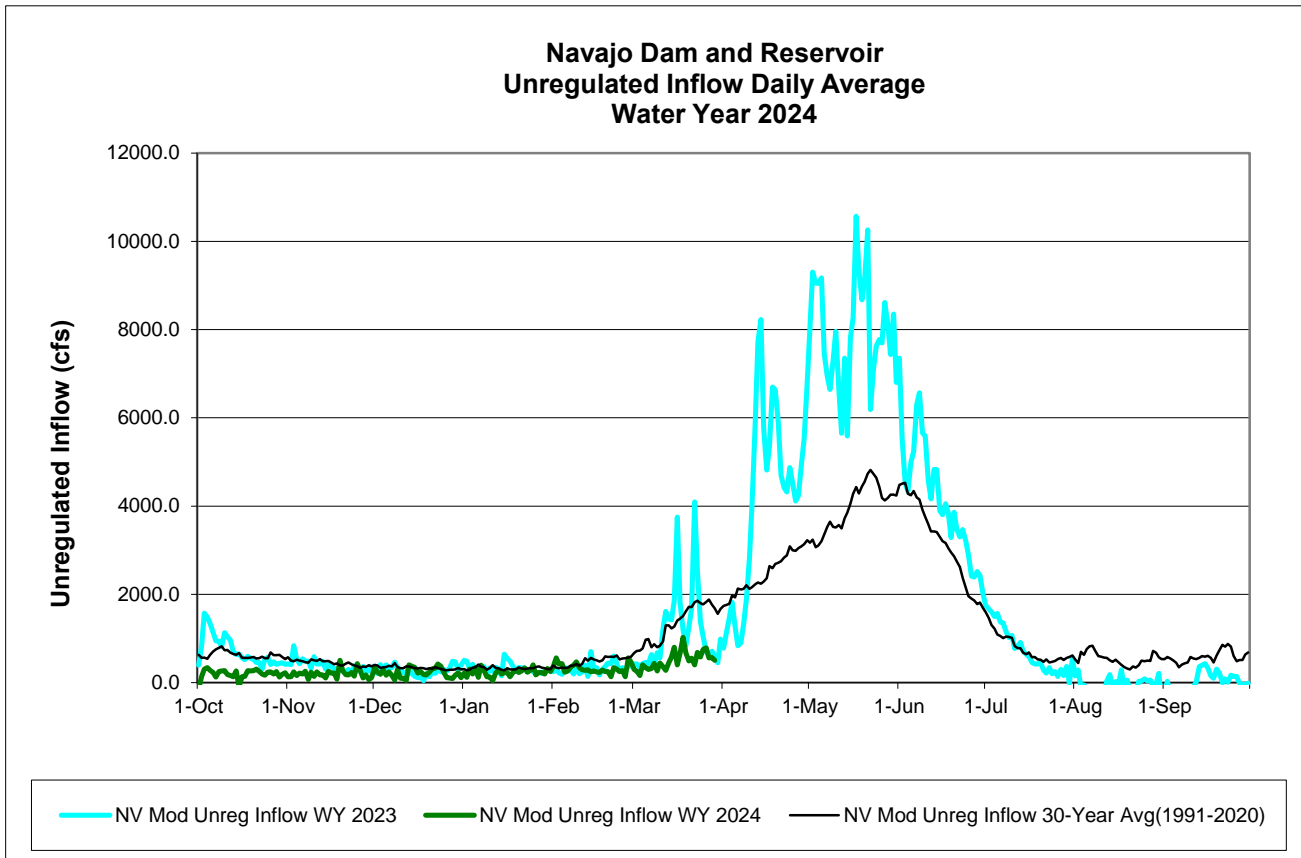
Upper Colorado Region Weekly Hydrology Summary



Upper Colorado Region Weekly Hydrology Summary



Upper Colorado Region Weekly Hydrology Summary



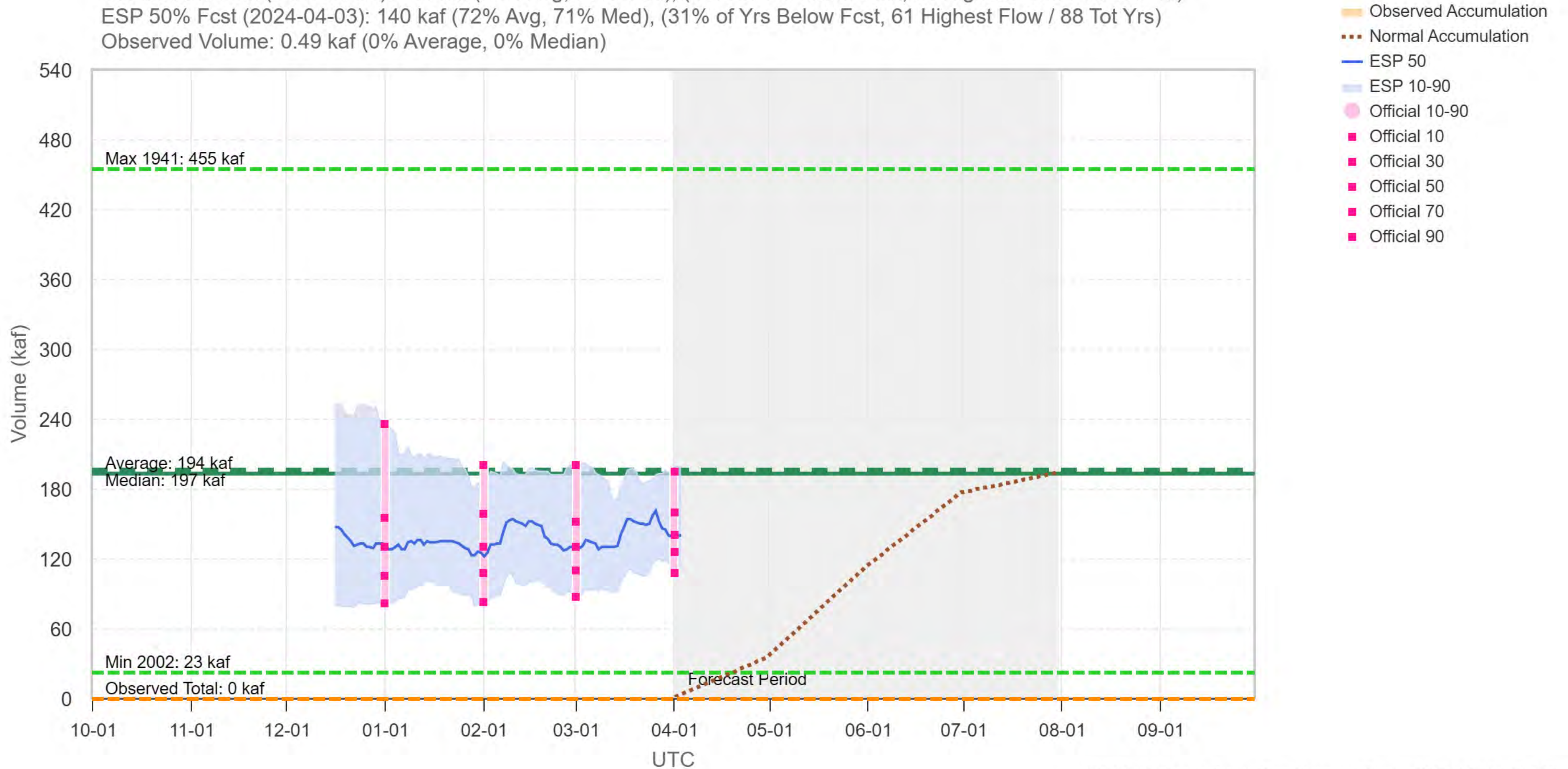
2024 Water Supply Forecast - San Juan - Pagosa Springs (PSPC2)

ESP is Unregulated and No Precipitation Forecast Included

Official 50% Fcst (2024-04-01): 140 kaf (72% Avg, 71% Med), (31% of Yrs Below Fcst, 61 Highest Flow / 88 Tot Yrs)

ESP 50% Fcst (2024-04-03): 140 kaf (72% Avg, 71% Med), (31% of Yrs Below Fcst, 61 Highest Flow / 88 Tot Yrs)

Observed Volume: 0.49 kaf (0% Average, 0% Median)



2024 Water Supply Forecast - Dolores - Mcphee Reservoir (MPHC2)

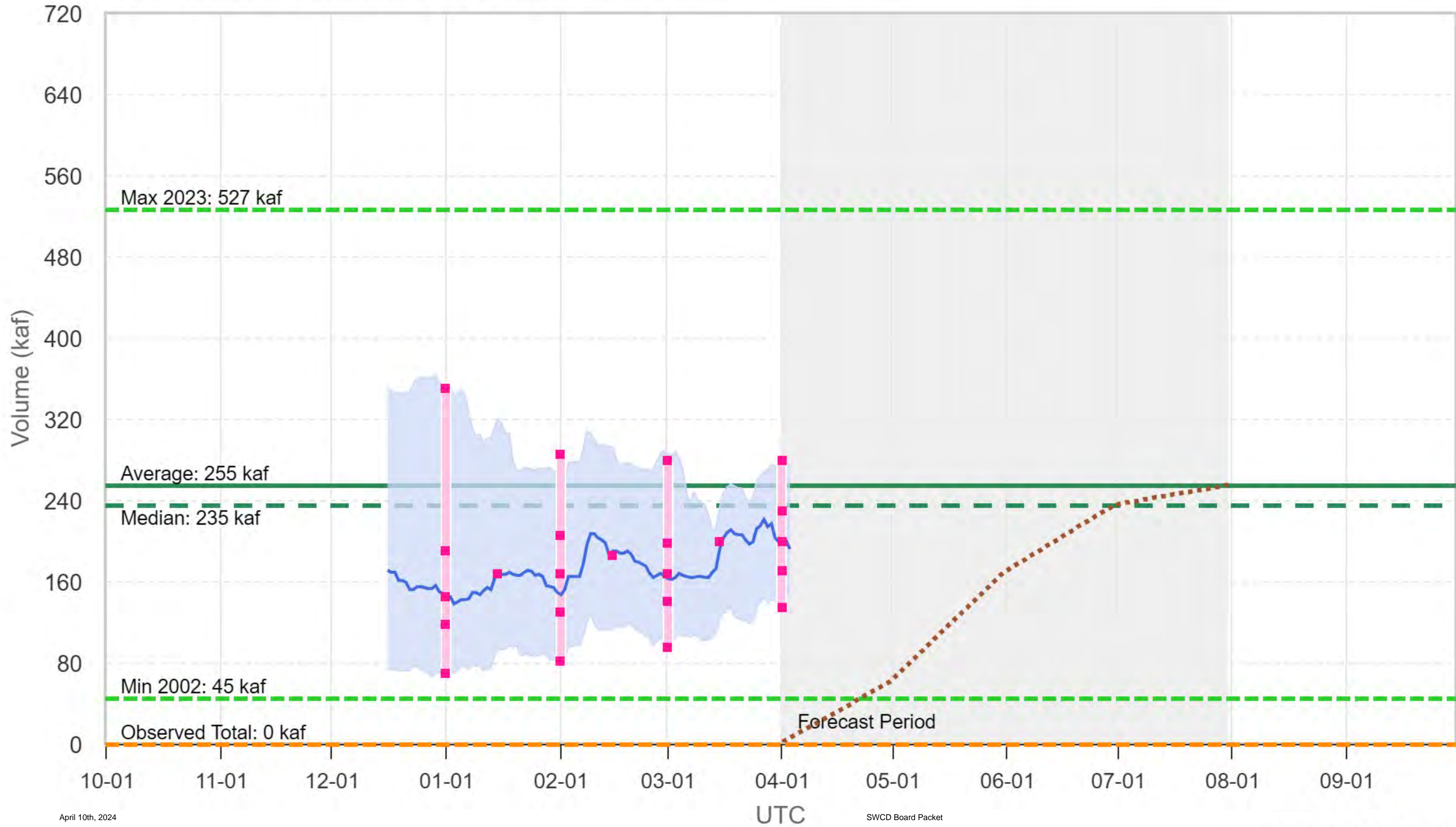
ESP is Unregulated and No Precipitation Forecast Included

Official 50% Fcst (2024-04-01): 200 kaf (78% Avg, 85% Med), (32% of Yrs Below Fcst, 30 Highest Flow / 43 Tot Yrs)

ESP 50% Fcst (2024-04-03): 192 kaf (75% Avg, 82% Med), (30% of Yrs Below Fcst, 31 Highest Flow / 43 Tot Yrs)

Observed Volume: 0.28 kaf (0% Average, 0% Median)

- Observed Accumulation
- Normal Accumulation
- ESP 50
- ESP 10-90
- Official 10-90
- Official 10
- Official 30
- Official 50
- Official 70
- Official 90



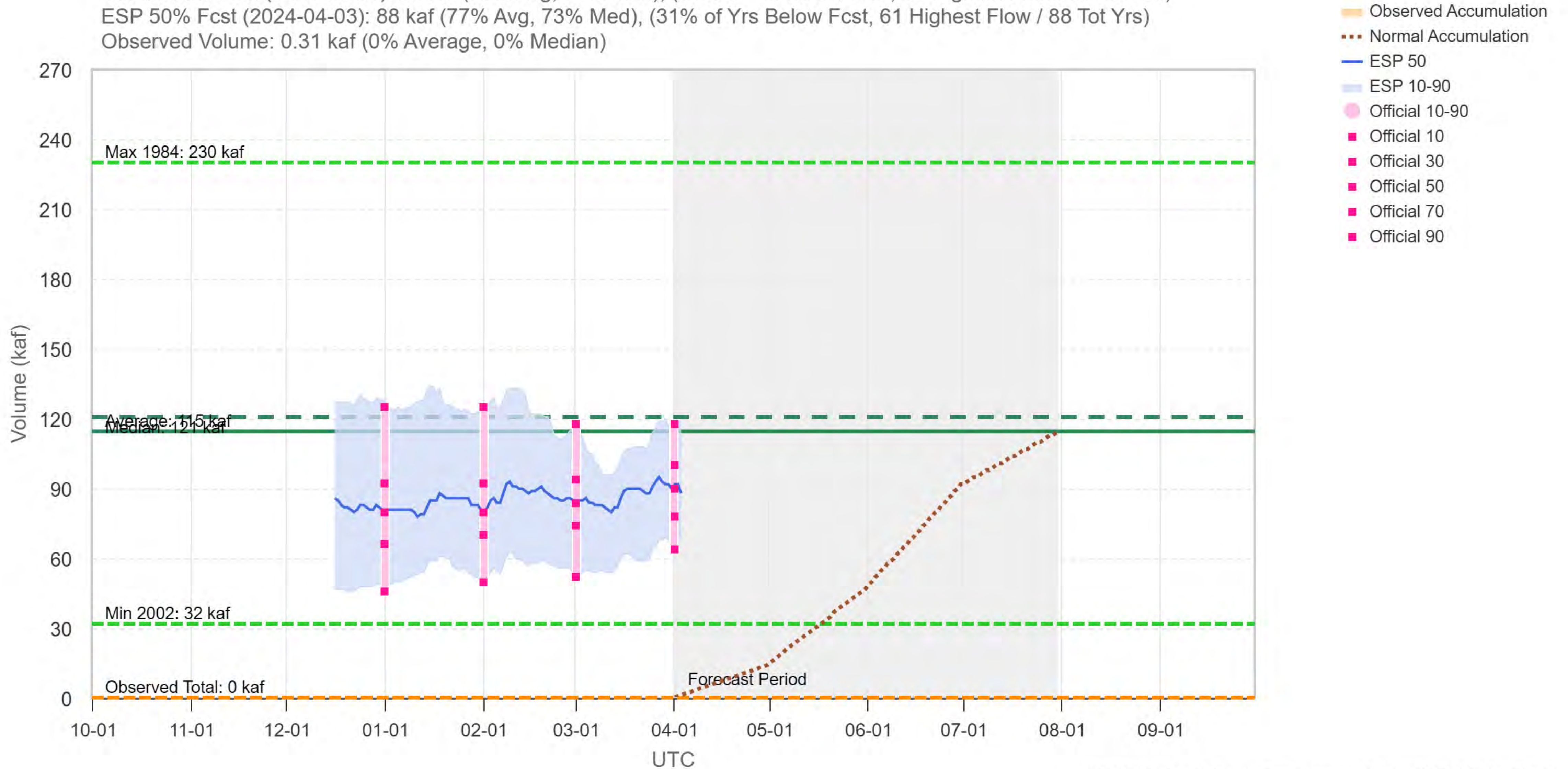
2024 Water Supply Forecast - San Miguel - Placerville, Nr (SMPC2)

ESP is Unregulated and No Precipitation Forecast Included

Official 50% Fcst (2024-04-01): 90 kaf (78% Avg, 74% Med), (31% of Yrs Below Fcst, 61 Highest Flow / 88 Tot Yrs)

ESP 50% Fcst (2024-04-03): 88 kaf (77% Avg, 73% Med), (31% of Yrs Below Fcst, 61 Highest Flow / 88 Tot Yrs)

Observed Volume: 0.31 kaf (0% Average, 0% Median)



2024 Water Supply Forecast - Animas - Durango (DRGC2)

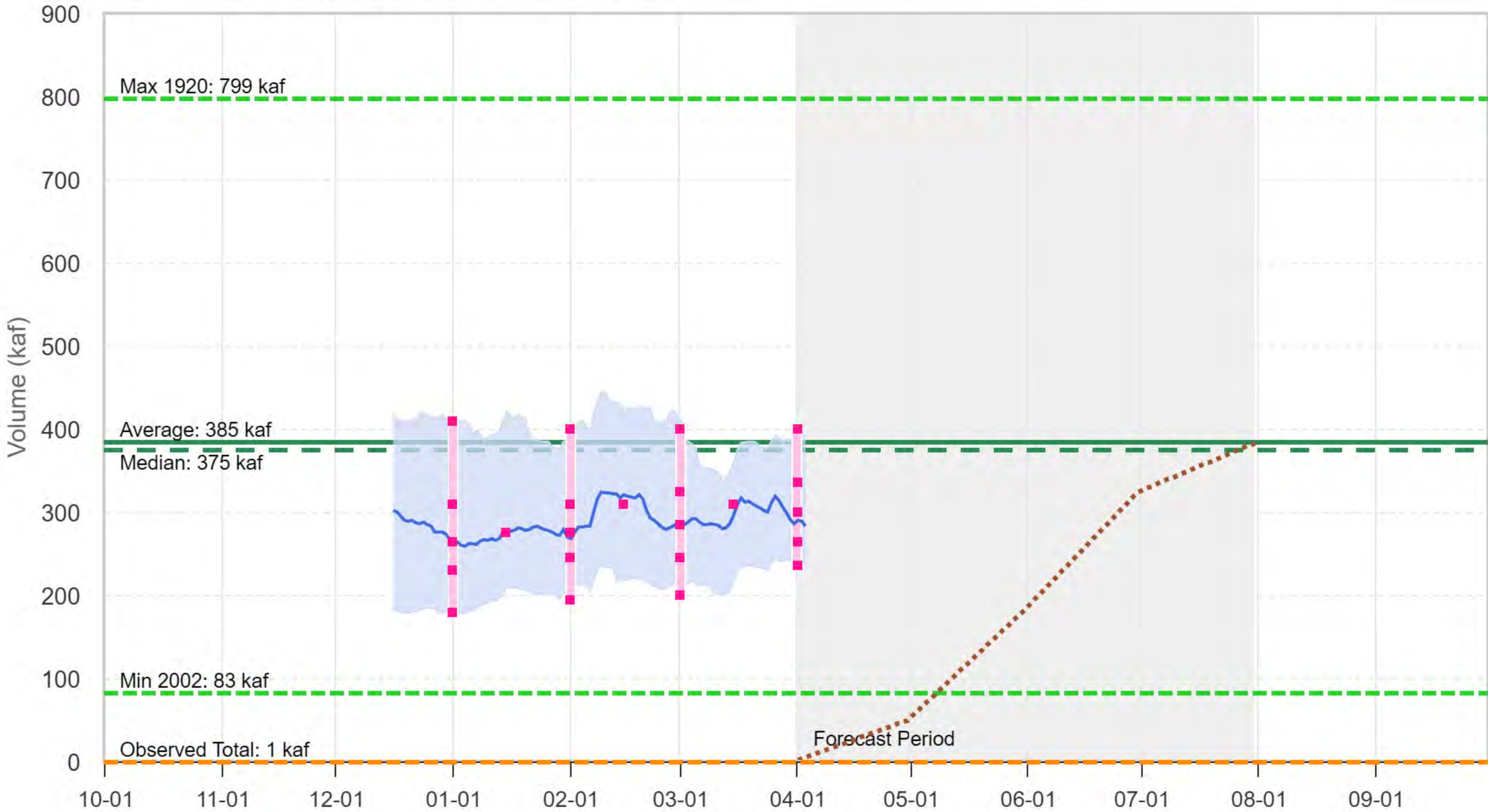
ESP is Unregulated and No Precipitation Forecast Included

Official 50% Fcst (2024-04-01): 300 kaf (78% Avg, 80% Med), (30% of Yrs Below Fcst, 79 Highest Flow / 112 Tot Yrs)

ESP 50% Fcst (2024-04-03): 283 kaf (73% Avg, 75% Med), (24% of Yrs Below Fcst, 86 Highest Flow / 112 Tot Yrs)

Observed Volume: 0.70 kaf (0% Average, 0% Median)

- Observed Accumulation
- Normal Accumulation
- ESP 50
- ESP 10-90
- Official 10-90
- Official 10
- Official 30
- Official 50
- Official 70
- Official 90



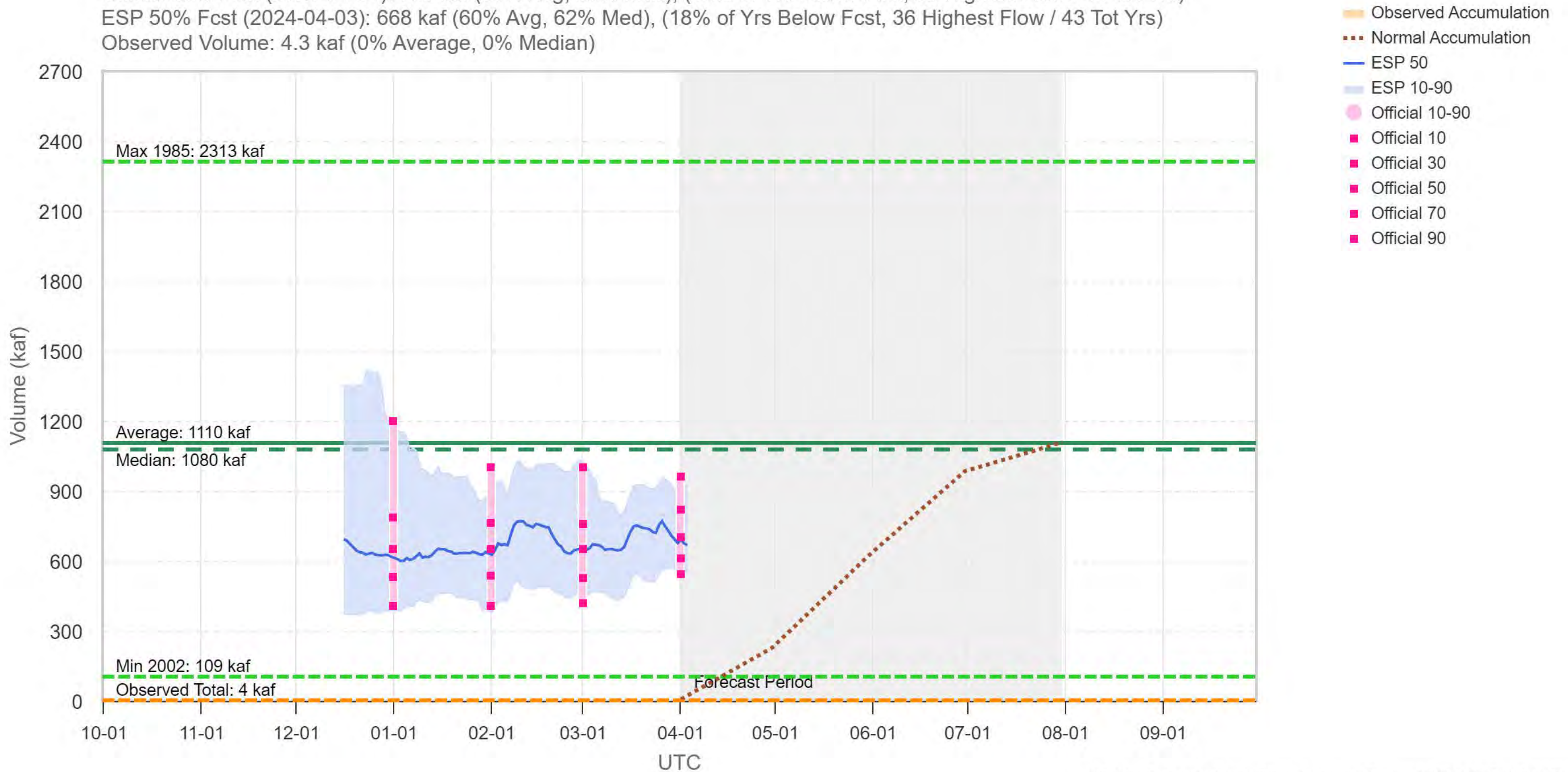
2024 Water Supply Forecast - San Juan - Bluff, Nr (BFFU1)

ESP is Unregulated and No Precipitation Forecast Included

Official 50% Fcst (2024-04-01): 700 kaf (63% Avg, 65% Med), (18% of Yrs Below Fcst, 36 Highest Flow / 43 Tot Yrs)

ESP 50% Fcst (2024-04-03): 668 kaf (60% Avg, 62% Med), (18% of Yrs Below Fcst, 36 Highest Flow / 43 Tot Yrs)

Observed Volume: 4.3 kaf (0% Average, 0% Median)



2024 Water Supply Forecast - Colorado - Lake Powell, Glen Cyn Dam, At (GLDA3)

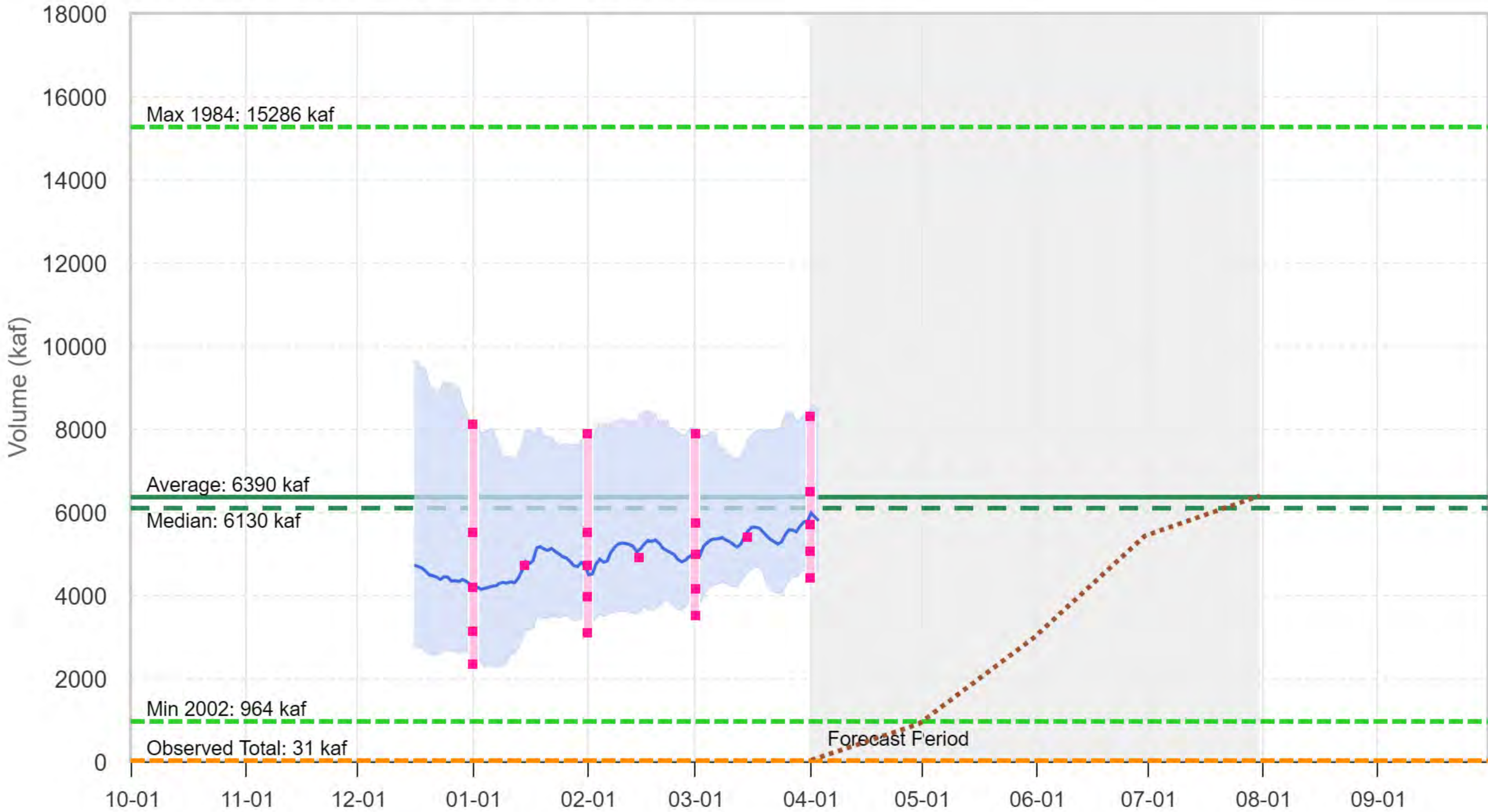
ESP is Unregulated and No Precipitation Forecast Included

Official 50% Fcst (2024-04-01): 5700 kaf (89% Avg, 93% Med), (43% of Yrs Below Fcst, 35 Highest Flow / 60 Tot Yrs)

ESP 50% Fcst (2024-04-03): 5790 kaf (91% Avg, 94% Med), (43% of Yrs Below Fcst, 35 Highest Flow / 60 Tot Yrs)

Observed Volume: 31 kaf (0% Average, 1% Median)

- Observed Accumulation
- Normal Accumulation
- ESP 50
- ESP 10-90
- Official 10-90
- Official 10
- Official 30
- Official 50
- Official 70
- Official 90





March 11, 2024

Camille Calimlim Touton
Commissioner
Bureau of Reclamation
US Department of the Interior

Dear Commissioner Touton:

On November 15, 2021, twenty Colorado River Basin Tribes sent a letter to Secretary of the Interior Deb Haaland outlining key “Guiding Principles” for developing the next framework for long-term management of the Colorado River. That letter also insisted on greater inclusion of Basin Tribes in the development and implementation of what replaces the 2007 Interim Guidelines (the Post-2026 Guidelines). Although 20 Basin Tribes expressed common views in the November 2021 letter, each of the undersigned Basin Tribes has individual issues of specific relevance to its own rights and interests that will be communicated throughout this process, including but not necessarily limited to individual government-to-government consultation with the United States. This letter is intended to inform the United States and the Colorado River Basin States of our common views and expectations regarding how Basin Tribes’ water rights should be treated and protected under any alternative that will be analyzed and considered for inclusion in any draft or final environmental impact statement (EIS) and what ultimately becomes the Post-2026 Guidelines.

The November 2021 letter expressed the expectation that the United States would fully protect Basin Tribes’ water rights throughout the process of developing and promulgating the Post-2026 Guidelines. Both alternatives proposed in Reclamation’s since-withdrawn draft Supplemental Environmental Impact Statement (SEIS) analyzing operational alternatives to bridge us to the Post-2026 period, however, directly threatened the rights of Basin Tribes. Although good hydrology in 2023 and the development of the Lower Basin States plan helped avoid the need for Reclamation to proceed with implementing either of the alternatives in the now-withdrawn draft SEIS, the need for major reductions of water use in the Basin remains and the Post-2026 Guidelines will undoubtedly result in cuts to the existing water supplies of at least some Basin Tribes.

We are aware of ongoing efforts among the Basin States to develop one or more alternatives for Reclamation to consider. We, the undersigned tribal leaders, believe it is now time to more specifically explain the Basin Tribes' **key principles** that must be adhered to if the United States, as our trustee, and the Basin States expect our support of any proposed or preferred alternative for the Post-2026 Guidelines.

We appreciate Reclamation's efforts to develop an approach during the Post-2026 EIS process that enhances tribal engagement and inclusivity by establishing the Federal-Tribes-States Group and explicitly including in the purpose and need statement for the Post-2026 EIS the need to consider Tribes' interests. *See Colorado River Reservoir Operations: Development of Post-2026 Guidelines and Strategies for Lake Powell and Lake Mead*, 88 Fed. Reg. 72535 (Oct. 20, 2023) (Scoping Summary Report). The Scoping Summary Report expressly identifies the need for Post-2026 Guidelines "that provide flexibility and predictability for Basin Tribes to remain able to benefit from their water rights and have an opportunity to participate in voluntary conservation programs[.]" and includes a stated purpose to "provide new or enhanced opportunities for Basin Tribes to benefit from their water rights[.]" We offer these **key principles** regarding the development of Post-2026 Guidelines and future management of the Colorado River not as a "Tribal alternative" per se, but as a joint statement of tribal consensus independent of federal and/or Basin State action that clarifies what the Basin Tribes expect from the United States in order to satisfy these aspects of the stated purpose and need.

We expect the United States and the Basin States to incorporate these principles into whatever alternatives emerge during the Post-2026 EIS process, recognizing that some of the principles may require additional action outside the Post-2026 EIS process and Post-2026 Guidelines. We are committed to developing proposals and negotiating agreements to supplement the Post-2026 EIS process as necessary for the realization of the principles below that do not fall squarely within the scope of Post-2026 Guidelines. We call on the United States to do the same to ensure that these principles are fully incorporated into the Basin's post-2026 management framework.

Our **key principles** are as follows:

1. To meet its trust responsibility to Basin Tribes, the United States must take actions to actively protect Tribal water rights (irrespective of whether they have already been finally quantified – hereinafter referred to collectively as "Tribal Water Rights").

Basin Tribes cannot benefit from their Tribal Water Rights – and thus a critical portion of the purpose and need for the post-2026 cannot be achieved – if the Post-2026 Guidelines jeopardize Tribal Water Rights through curtailment or development caps on Tribes, or exacerbate already existing barriers to Basin Tribes' ability to fully develop and benefit from their water rights. More specifically, to meet its trust responsibility to Basin Tribes the United States must:

- Reject any alternative that would impose involuntary or uncompensated out-of-priority cuts on the five Tribes whose rights were finally decreed in *Arizona v. California*, 547 U.S. 150 (2006), and ensure that these Tribes will be included as beneficiaries of alternative water supplies if their ability to use their water rights is disrupted by the Post-2026 Guidelines;
 - For CAP Tribes with congressionally approved settlements, finding alternative water supplies that are equivalent in value to the water rights lost due to cuts required under the Post-2026 Guidelines;
 - Find alternative supplies for Tribes for whom CAP Water (whether Indian or NIA priority) is a source of supply or had been identified as a source of supply to be made available through their future water settlements that are equivalent in value to the CAP water lost due to any cuts required under the Post-2026 Guidelines;
 - Reject any alternative that would impose development caps on Basin Tribes;
 - Fully analyze all potential adverse impacts to Tribal Water Rights and all other Tribal trust assets from any and all alternatives being considered for inclusion in the post-2026 Guidelines;
 - Identify all potential adverse impacts, whether direct, indirect, or cumulative, to Tribal Water Rights, whether such water is being presently put to use or is as yet unused, when analyzing alternatives considered for incorporation into the Post-2026 Guidelines.
 - Consult with affected Tribes to identify and implement mutually agreed-upon actions to avoid or mitigate impacts to Tribes caused by the Post-2026 Guidelines;
 - Seek and secure adequate funding to ensure the United States effectively protects Tribal Water Rights as described above through mutually-agreed upon mitigation, voluntary conservation, creative and durable compensation mechanisms, and/or developing alternative water supplies, as well as through infrastructure development.
2. Empower Tribes to determine how and when to use their water rights by adopting and supporting a portfolio of flexible tools.

Basin Tribes have long faced systemic barriers to developing and benefiting from their water rights. Through the Post-2026 EIS process and by supporting legislation as necessary, Reclamation should help develop ways to empower Basin Tribes to use their water rights in more flexible ways, such as:

- Ensure that the eligibility and participation requirements of any conservation programs included in the Post-2026 Guidelines are established and operated in a

manner that maximizes Basin Tribes' ability to participate in them without triggering onerous financial burdens. This will further the Post-2026 EIS process' identified need of "provid[ing] Colorado River water users, including Basin Tribes, expanded opportunities to conserve, store, and take subsequent delivery of water in and from Lake Mead and/or Lake Powell." (*Scoping Summary Report*, 88 Fed. Reg. 72536).

- Clarify legal authority and address water accounting issues to enhance Tribes' ability to lease or otherwise market or use water off their Reservations, including for environmental and in-stream flow purposes.
 - Facilitate the creation of compensated forbearance agreements that enable Basin Tribes to benefit from their water rights in a manner that avoids increasing cumulative consumptive demand.
3. Provide for a permanent, formalized structure for Tribal participation in implementing Post-2026 Guidelines, and in any future Colorado River policy and governance.

One of the shortcomings of the 2007 Interim Guidelines was that lack of formal tribal inclusion in their implementation. Consistent with its stated goal of designing a process that "enhances Tribal engagement and inclusivity," 88 Fed. Reg. 39457 (June 16, 2023), Reclamation should build off positive progress such as the Federal-Tribes-States Group and develop a governance structure that formally and permanently includes Basin Tribes as governmental partners in the implementation of the Post-2026 Guidelines and other policy and governance discussions concerning the management of the Colorado River. And at a minimum, anything in the Post-2026 Guidelines that formally triggers an obligation on the part of Reclamation to consult with the Basin States should trigger a similar obligation to the Basin Tribes (in addition to and not as a replacement for ongoing government-to-government consultation between the United States and individual Basin tribes).

We look forward to working with the United States and Basin States to ensure that Basin Tribes' water rights are adequately considered and protected in the development and implementation of the Post-2026 Guidelines.

Sincerely,

Melvin Baker, Chairman, Southern Ute Indian Tribe

Corrina Bow, Chairwoman, Paiute Indian Tribe of Utah

Martin Harvier, President, Salt River Pima-Maricopa Indian Community

Manuel Heart, Chairman, Ute Mountain Ute Tribe

Calvin Johnson, Chairman, Tonto Apache Tribe

Jordan D. Joaquin, Chairman, Fort Yuma Quechan Indian Tribe

Arden Kucate, Governor, Pueblo of Zuni Tribe

Tanya Lewis, Chairwoman, Yavapai-Apache Nation

Robert Miguel, Chairman, Ak Chin Indian Community

Julius Murray, Chairman, Ute Indian Tribe

Sonja Newton, Vice President, Jicarilla Apache Nation

Robert Ogo, President, Yavapai-Prescott Indian Tribe

Deryn Pete, Chairwoman, Las Vegas Tribe of Paiute

Terry Rambler, Chairman, San Carlos Apache Tribe

Edward D. Smith, Vice Chairman, Chemehuevi Tribe

Kasey Velasquez, Chairman, White Mountain Apache Tribe

cc:

David Palumbo, Deputy Commissioner, Bureau of Reclamation

Jacklynn Gould, Regional Director, Lower Colorado River, Bureau of Reclamation

Wayne Pullan, Regional Director, Upper Colorado River, Bureau of Reclamation

Carly Jerla, Coordinator, Senior Water Resources Program Manager, Bureau of Reclamation

KayLee Nelson, Native American Affairs Program Manager, Lower Colorado Basin Region

Ernie Rheume, Native American Affairs Program Manager, Upper Colorado Basin Region

Rod Smith, Attorney, US Department of the Interior, Office of the Solicitor

UPPER DIVISION STATES ALTERNATIVE FOR POST-2026 OPERATIONS

OF LAKE POWELL AND LAKE MEAD

Colorado, New Mexico, Utah, and Wyoming's alternative provides for **sustainable** operations that are aligned with **hydrologic conditions**, help to **rebuild storage**, and **operate within the Law of the River**.

1 POWELL OPERATIONS

Lake Powell releases are aligned with hydrologic conditions, which helps re-build storage and adapts to variability

POWELL RELEASES

100% FULL
Releases as required for dam safety

81% - 100% FULL
8.1 - 9.0 MAF per year

20% - 81% FULL
6.0 - 8.1 MAF per year

< 20% FULL
6.0 MAF per year

MEAD RELEASES

Lake Mead operations are adapted from a concept first proposed by the Lower Division States

2 LAKE MEAD OPERATIONS

Modeled Lower Basin operations call for reductions in use depending upon reservoir conditions, with Lower Basin reductions of 1.5 million acre-feet under most conditions

3

OTHER CONSIDERATIONS

PARALLEL ACTIVITIES

Under agreements separate from the Post-2026 NEPA process, Upper Basin actions could include CRSPA* initial units and voluntary conservation, and acknowledgement of undeveloped settled Tribal water rights

*Colorado River Storage Project Act

CONTINUED COLLABORATION

The Upper Division States are committed to continued collaboration with the Bureau of Reclamation, Basin States, Tribal Nations, water users, and environmental and recreation groups



UPPER DIVISIONS STATES ALTERNATIVE FOR POST-2026 OPERATIONS OF LAKE POWELL AND LAKE MEAD INFOGRAPHIC TEXT

Colorado, New Mexico, Utah, and Wyoming's alternative provides for sustainable operations that are aligned with hydrologic conditions, help to rebuild storage, and operate within the Law of the River.

In the background of the infographic, the Upper Basin States of Colorado, New Mexico, Utah, and Wyoming are grouped, as are the Lower Basin States of Arizona, California, and Nevada.

Powell Operations

Lake Powell releases are aligned with hydrologic conditions, which helps re-build storage and adapts to variability.

Powell Releases

1. When the reservoir is 100% full, releases are done as required for dam safety
2. At 81%-100% Full, releases equal 8.1-9.0 Million Acre-feet (MAF) per year
3. At 20%-81% Full, releases equal 6.0-8.1 MAF per year
4. When the reservoir is less than 20% full, releases are 6.0 MAF per year

Mead Releases

Lake Mead operations are adapted from a concept first proposed by the Lower Division States.

Lake Mead Operations

Modeled Lower Basin operations call for reductions in use depending upon reservoir conditions, with Lower Basin reductions of 1.5 million acre-feet under most conditions.

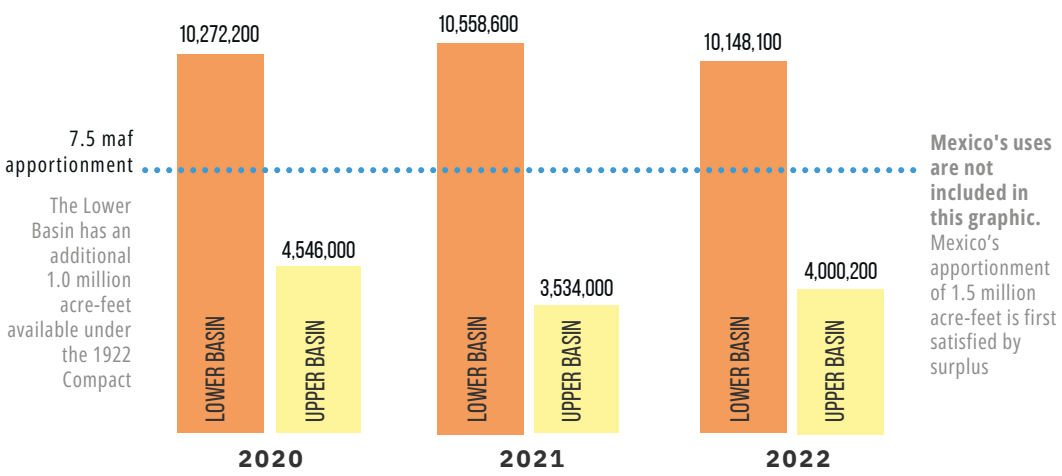
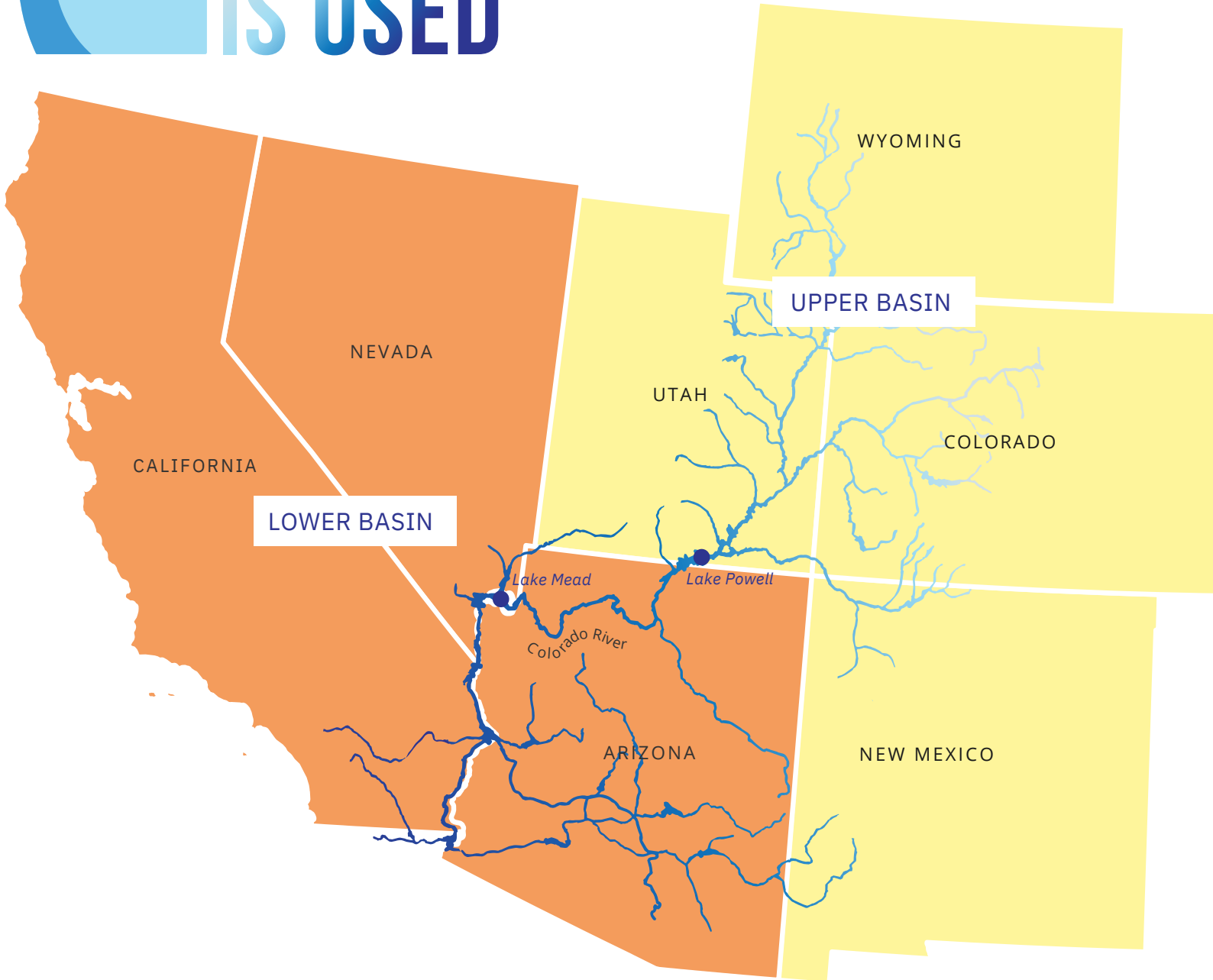
Other Considerations

PARALLEL ACTIVITIES - Under agreements separate from the Post-2026 NEPA process, Upper Basin actions could include CRSPA* initial units and voluntary conservation, and acknowledgement of undeveloped settled Tribal water rights. *Colorado River Storage Project Act

CONTINUED COLLABORATION - The Upper Division States are committed to continued collaboration with the Bureau of Reclamation, Basin States, Tribal Nations, water users, and environmental and recreation groups.

WHERE THE WATER IS USED

COLORADO RIVER BASIN



WATER USE BY BASIN

Lower Basin use includes Mainstem Colorado River deliveries, evaporation and transit losses, and estimated tributary use.

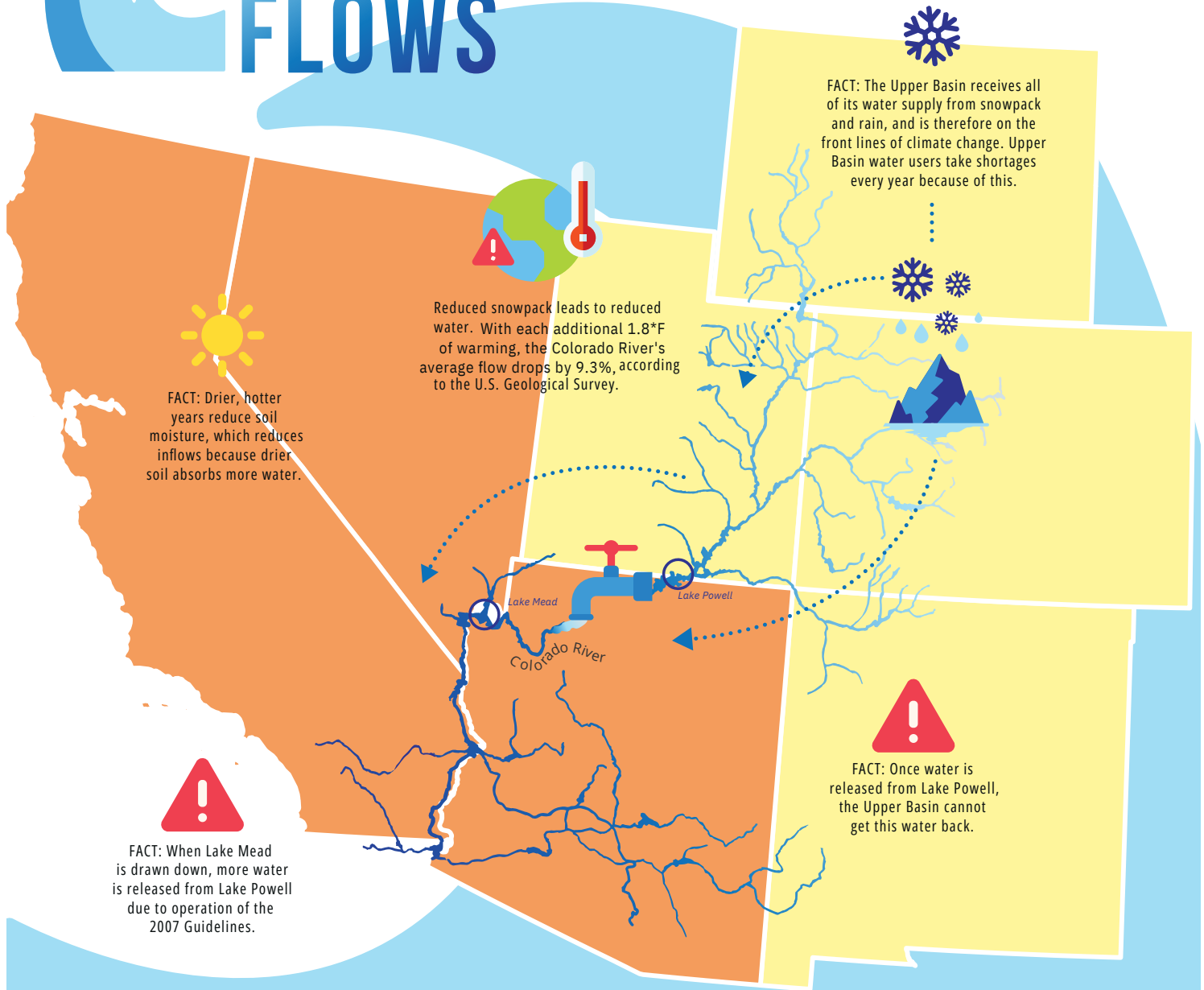
Lower Basin tributary uses have not been reported since 2005.

Updated March 2024



WHERE THE WATER FLOWS

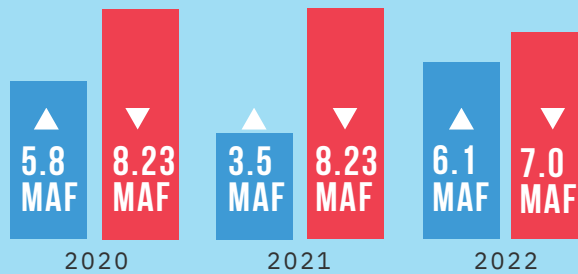
COLORADO RIVER BASIN



WATER THAT FLOWED INTO LAKE POWELL



WATER RELEASED FROM LAKE POWELL INTO LAKE MEAD



Unregulated Inflow, 24-Month Study, Bureau of Reclamation



COLORADO
Colorado Water Conservation Board
Department of Natural Resources



THE SOUTHWESTERN WATER CONSERVATION DISTRICT
 Developing and Conserving the Waters in the
 SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
West Building – 841 East Second Avenue
DURANGO, COLORADO 81301
 (970) 247-1302

BOARD MEMORANDUM

From: Steve Wolff & Mo Rock
Subject: Board Committee Assignments for 2024
Date: March 5, 2024

SWCD’s board committees will be structured to have three or four board members per committee. The board president will chair all committees except Finance, which the Secretary-Treasurer chairs. However, all Board members are welcome to attend any committee meetings. Proposed 2024 board committee assignments are below.

2024 Board Committees

Executive	Finance	Personnel	Legal	Outreach
Jenny Russell, Chair <i>President</i>	Charlie Smith, Chair <i>Secretary-Treasurer</i>	Jenny Russell, Chair <i>President</i>	Jenny Russell, Chair <i>President</i>	Jenny Russell, Chair <i>President</i>
J.R. Ford <i>Vice President</i>	Amy Huff	Dagan Chadd	David Guilliams	Kenny Heldman
Charlie Smith <i>Secretary-Treasurer</i>	J.R. Ford	Gerald Koppenhafer	Amy Huff	Dagan Chadd
	Kenny Heldman	David Guilliams	Gerald Koppenhafer	David Guilliams

Committee descriptions:

The following are general descriptions of the scope of each board committee. These committees may propose policies or positions for board consideration and approval.

Finance: This committee will consider finance-related topics, including long- and short-term District financial goals, investment priorities and vehicles, audit, and budget, among others. In addition, this committee will consider and direct District investment actions.

Personnel: This committee will consider items related to District personnel policies and issues.

Litigation & Legal: This committee will consider items related to the District's litigation priorities, including authorizing the filing of statements of opposition. In addition, this committee will handle routine legal matters, such as the review and approval of contract amendments and renewals.

Outreach: This committee will consider items related to the District's strategies and tools for public education and engagement.



THE SOUTHWESTERN WATER CONSERVATION DISTRICT

Developing and Conserving the Waters in the
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
West Building – 841 East Second Avenue
DURANGO, COLORADO 81301
(970) 247-1302

BOARD MEMORANDUM

From: Mo Rock & Steve Wolff

Subject: SWCD Water Conservation and Infrastructure Program Update

Date: April 04, 2024

CWCB LOCAL CAPACITY GRANT STATUS

In 2023 SWCD submitted a local assistance program grant application to CWCB to support the implementation of the Water Conservation and Infrastructure Program, and more specifically to address the funding of a community navigator and the maintenance of a project pipeline. In January, the District was awarded \$156,706. Currently, the General Counsel is reviewing both the MOU from the San Juan Resource Conservation and Development Council (to serve as Fiscal agent) and the contract from CWCB. This grant requires a 25% match, which SWCD has approved \$50,000 of in our 2024 budget.

PARTNER MEETING

In January SWCD held its first partner meeting for interested individuals and organizations. This event had nearly 50 attendees representing 26 different entities in southwest Colorado and was a strong sign that local entities find value in this new program. We are planning to have a second partner meeting in late April or May now that we have ironed out some of the financial questions.

BOR WATERSMART GRANT

We are still waiting for Reclamation to release their spending plan and guidelines for the rest of the Upper Basin water conservation funds. In the meantime, we are looking at applying for a Reclamation WaterSMART grant (Planning and Project Design). These grants can be used for collaborative planning and design of projects to support water management improvements. This includes funding for: (1) Water Strategy Grants to conduct planning activities to improve water supplies (e.g., water supplies to disadvantaged communities that do not have reliable access to water, water marketing, water conservation, drought resilience, and ecological resilience); (2)

Project Design Grants to conduct project-specific design for projects to improve water management; and (3) comprehensive Drought Contingency Plans. Depending on how the grant application is structured, the required match is 0%, 25% or 50%. Grant applications are due May 21, 2024. If we decide to formally apply for this grant with SWCD as the lead, we may need to hold a special Board call to discuss any SWCD funding contribution/match.



THE SOUTHWESTERN WATER CONSERVATION DISTRICT

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(970) 247-1302

BOARD MEMORANDUM

From: Mo Rock
To: SWCD Board
Subject: Website Accessibility
Date: March 26, 2024

HB21-1110 requires that CO state agencies (including all special districts) comply with accessibility guidelines by July 1, 2024. Since we are rapidly approaching the second deadline, staff have dived into options to update our website to be ADA compliant in the coming months.

From research, staff recommends moving forward with Streamline to help manage our website, updating documents/pages to current standards, and helping staff stay up-to-date on changing ADA guidelines. We find it important to have a platform accessible to all constituents of our District.

Background:

- Thousands of special districts have been sued across the country due to ADA compliance – these payouts range from \$4,000 to \$40,000.
- Our website is currently NOT ADA compliant, leaving the district vulnerable to litigation.
- Based on estimates, it would take 45-90 days (about 3 months) to completely update our website on our own. I do not have the expertise, or capacity to do this.
- Hiring an outside contractor is an option, but costs range from about \$3,000 to \$5,000 and does not include regular maintenance.
- Accessibility experts (come in for 5-10 grand) don't keep things compliant

Current Website Costs, totaling \$3,375 (includes Eventbrite profit):

- About \$1,000/year through Blue Channel
- \$375/year Mailchimp
- \$ Eventbrite (takes 20% about)

Streamline:

- Only works with Special Districts and
- Partners with the Special Districts Association (SDA), which offers us discounted pricing.
- Has optional additional features that would consolidate other software that we use regularly
 - For example, we currently pay for MailChimp, but we could switch to doing newsletters through our website
- Community Pro - \$350/Month
- Compliance Basics - \$235/Month

The Special District Website Accessibility Report

Share or Download Report

Southwestern Water Conservation District
Web Accessibility and Risk Report
Prepared on 10/31/2023 - 06:10 PM

What you'll find in this report:

1. [Your current accessibility report / risk snapshot](#)
2. [Top accessibility issues on your site](#)
3. [Pages that need to be fixed](#)
4. [Your timeline to reach accessibility](#)
5. [Your monthly progress tracker](#)

1. Your current accessibility / risk snapshot

Overall accessibility and risk score

94
FAIL

Your current accessibility & risk rating score: 94/100 (FAIL)

It appears your website needs a bit of work to reach accessibility, but don't worry you're not alone. Countless other districts are in the same boat. The most important thing to do is set up a plan to reach compliance.

Why is 100% compliance critical?

- More than **2,403 districts** have been affected by an accessibility action. About 6% of all districts in the US, including county-dependent districts have been fined, received demand letters, or gotten Department of Justice Office of Civil Rights (OCR) letters for website ADA violations in the US. **That number is expected to exceed 4,000 (10%) by the end of 2024.**
- **The number of lawsuits rose 56% in 2021, and the penalties for noncompliance are rising fast** – averaging \$4,000 for an ADA claim in 2019 to \$39,000 in 2022. It's a situation that The Wall Street Journal calls "very perilous" in a [recent article](#).
- **Very few if any**, special district insurance policies even partially cover the costs of web accessibility issues.

4. Your timeline to reach accessibility

Obviously, **timeline is the big question**. While we don't know all the ins and outs of your organization or tech stack, we do know the major factors that can affect the timeline of your accessibility plan. We've laid out the known factors and a couple of scenarios below that would get you back to compliance and away from risk.

Factors for your timeline

Factor 1: Your CMS	WordPress
Factor 2: The type of errors on your site	Structural + Presentational
Factor 3: The volume of errors on your site	438
Factor 4: The amount of time your staff has available to work on remediation	Unknown

Estimated Remediation Scenarios

Details

- ✘ **Option 1: Do it yourself**
 - 🔥 **Between 45 - 90 days of hands-on remediation.**
 - Plan for dedicated developer and staff time each week.
 - [Share this report with your web developer](#)
- 📄 **Option 2: Hire a remediation service**
 - 👤 **Custom quote required for timeline.**
 - Plan for an in-depth audit, a full website remediation project, and ongoing fees (in addition to current website and hosting).
- ✔ **Option 3: Use an accessible-first website platform**
 - ✅ **Our special district website partner [Streamline](#) will convert your site to a fully-compliant platform for you.**
 - Plan for 1 hour of staff training. Includes ongoing accessibility, state compliance tools, indemnification against ADA claims, and unlimited support.

[Get a Quote](#)

Example:



Streamline Platform - Subscription Agreement

CUSTOMER: **Southwestern Water Conservation District**

ORDER DATE: **03 / 25 / 2024**

This Software as a Service Agreement (“Agreement”) is entered into on the start date listed below, between Streamline (DBA of Digital Deployment, Inc.) with a place of business at 3301 C Street #1000, Sacramento, CA 95816 (“Company”), and the Customer listed above (“Customer”). This Agreement incorporates the [Streamline Terms of Service](#). W9 is available online. **Most customers prefer annual billing for convenience, but all subscriptions are cancellable anytime with a written 30-day notice.**

DESCRIPTION OF SERVICES: See Page 2 for an overview of what Streamline Web includes, and for more information please review our [subscription-based website toolkit for local government](#) .

SUBSCRIPTION ORDER:

Name	Price
Streamline Web - Community Pro SDA Colorado 30% Discount - (Original \$500)	\$350.00

One-Time Build Costs: **\$1500**

Order #: **15783065484**

Invoice Frequency: **Annually**

Original Order? **Original**

Additional Billing Details: **na**

Billing Start Date: **06 / 01 / 2024**

Paying with check?

Mail the check to: PO Box 207561, Dallas, TX 753207561

Billing Person:

Phone:

Billing Address:

Email:

City, State, Zip:

Streamline:

Name:

Title:

Date:

Signature:

Customer:

Name:

Title:

Date:

Signature:



(916) 900-6619

info@getstreamline.com

www.getstreamline.com

3301 C Street #1000, Sacramento, CA 95816



What Your Subscription Includes



Technology

- **Easy-to-use website tool allows you to control your content** - no more waiting on a vendor or IT.
- **Built-in ADA compliance** (the platform is fully accessible out of the “box”).
- **State-specific transparency dashboard** with checkpoints for all posting requirements.
- **Meeting dashboard with agenda reminders**, one-click agenda and minute upload that takes seconds.
- **Ongoing improvements** to existing features included at no cost - your software will never be out of date.



Setup and Training

- **Multiple options** for initial site build and migrating existing content.
- **Introduction to your state requirements** so you know what needs to be posted.
- **Training** for anyone on your staff via remote meeting to help you learn the system.
- **Free domain** included (acmemud.specialdistrict.org) or connect your own custom domain / web address.
- **Free SSL security certificate** so that your site is served over https and visitors are protected.



Ongoing Support

- **Unlimited support** is included for anyone on your staff responsible for updating the website.
- **Support system is built into your website** - get help with the click of a button.
- **Unlimited hosting** of content and files so you never have to “upgrade” your account.
- **Extensive knowledge base** of how-to articles and getting started guides are available 24/7.
- **Can’t figure out how to send your question? That’s ok, you’ll have our technical support number, too.**

And if (when) your state passes additional website mandates, Streamline Web will be updated to help you comply as effortlessly as possible.

10.0 Partner Updates



Elaine Chick - WIP Update – SWCD Board Meeting

- **SWCD Annual Water Seminar** – I am happy to say that the SWCD Water Seminar was another success. We had 208 paid attendees, 10 - Ft. Lewis students and other complementary tickets, 19 presenters, 2 media, and 14 board members and guests, for a total of 253 people in attendance. So far, the feedback and evaluations have been very positive.

I have placed a hold on Thursday, March 27 and Friday, March 28, 2025 for next year's Water Seminar at the Sky Ute Casino. The Seminar will take place on a Friday again.

- **Children's Water Festival** – This year Children's Water Festival will be taking place on May 15, 2024 at Ft. Lewis College. All the schools who usually attend have sent in their registration confirmation and most of the presenters have also registered, so it is coming along. I am still looking for four to five more presenters. I am also looking for volunteers to help guide some of the classes to their presentations. If anyone would like to volunteer, or can spread the word, it would be appreciated.

I will be starting to put together all the scheduling next week.

- **Forest to Faucets** –

We will be holding our next Forest to Faucets training in Pagosa Springs on June 4 – 5, 2024. We will be using the Pagosa Area Water Sanitation District conference room as our classroom base.

WIP provides all the teacher kits that included all items necessary for teachers to reproduce our activities, help with the coordination and planning, provide lunches for all teachers and presenters for the two days, and Elaine will be facilitating two activities.

HARRIS WATER ENGINEERING, INC.
954 EAST SECOND AVENUE, #202
DURANGO, COLORADO 81301
970-259-5322
carrie@durangowater.com

Memorandum
April 3, 2024

To: SWCD Board of Directors
From: Carrie Padgett
Subject: Engineering Report for the April 10, 2024 Board Meeting

The following is a summary of the topics Carrie Padgett worked on for SWCD since the last Board meeting, during the months of February and March. For more background and detail please contact me.

On March 1st, my hourly rate will be increasing to \$120 per hour. I have been at my current hourly rate since 2021. I am confident my rate remains very competitive within the water resources sector for the quality of services I provide. Thank you again for the opportunity to serve SWCD and our community. Please feel free to contact me if you have any questions.

San Juan and Upper Basin Endangered Fish Recovery Programs

After the series of Biology Committee and other committee meetings in early February, I've participated in only a few conference calls since then.

In mid-March I attended a water availability meeting host by Reclamation to discuss official March forecast for Navajo Reservoir. While these last few storms have increased the San Juan Basin above Navajo Reservoir snowpack, the projected inflow into Navajo Reservoir did not increase. The minimum, most probable, and maximum forecasts are provided by the Colorado Basin River Forecast Center (CBRFC). These latest forecasts give less than a 3 percent change of sufficient water being available for a spring peak release. Due to the observed snowpack and CRBFC forecast, no spring peak is proposed for this year. I will attend a Navajo Reservoir Operations meeting in late April where these estimates will be updated and the proposed releases for 2024 will be presented.

It should also be noted that the role Tom Pitts holds for the Upper Program will be filled by Rich Belt in the upcoming year. The Executive Committee pursued hiring Tom's replacement and will fund Rich and Tom will the staffing transition occurs. Tom will remain our representative on the San Juan Program's Coordinate Committee.

Navajo Reservoir

As I mentioned above, the next coordination meeting will be held on April 23 in Farmington. I plan to attend this meeting.

Community Navigator Technical Support

I recently began providing technical support to the community navigator team. As part of the District's interest in developing a community navigator position and expanding the grant program, a project pipeline database was created. This database was created with projects listed in the Basin Implementation Plan and regional stream management plans. The team has done extensive outreach surrounding the database and I've updated the database accordingly. The team has been able to add over 75 projects to the original list. I will continue to work with the team to update this list as they move forward.

As part of this technical team, I have also attended a workgroup meeting regarding the Natural Resources Damage Funds (NRDF) available for the Animas River watershed. I see a future opportunity for the community navigator to work with these interested parties in pursuing projects in the basin that leverage these NRDF along with other local, state, and federal funding opportunities.

General

I continue to work with Steve, Mo, and Beth on various other tasks within the District that are outside my typically memo headings/sections. These include:

- In recent months, I prepared a summary of the District's Project Water Rights for Steve's internal use.
- I've provided technical review of Notice of Intent applications for use of the District's 06CW127 water rights.

16.0 Upcoming Events

COLORADO GROWING WATER SMART

Western Slope 2025

The Land and Water Challenge

Colorado is navigating significant uncertainty around water availability, requiring local jurisdictions to fundamentally rethink water use and to assume new leadership roles.

Historically, planning for water resources and land use have been conducted separately. Yet, where and how we build impacts the quantity of water needed and the quality of water that supports our ecosystems.

Elected officials, water resource managers, and land use planners can increase resilience and create water smart communities even as populations grow by collaborating to identify and implement strategies that address local and regional water concerns.

Growing
Water
Smart



The Growing Water Smart Workshop

The Growing Water Smart workshop brings key community decisionmakers on water and land use planning together to collaborate on sustainable water use. The workshop utilizes a range of public engagement, planning, communication, and policy implementation tools to help community teams realize their water efficiency, watershed health, and water resilience goals.

Growing Water Smart is a joint program of the Sonoran Institute and the Babbitt Center for Land and Water Policy. We intend to deliver a workshop in early 2025 on the Western Slope in partnership with the Colorado River District and the Southwestern Water Conservation District.

Eligibility: Counties, municipalities, and districts located on Colorado's Western Slope.

Costs: The workshop is free. Participants cover their own travel. Meals and lodging are provided.

What makes this workshop unique?

Time: A rare opportunity to for local leaders to focus - away from competing priorities - on the connection between water and land use with a cross departmental and cross sector team.

Structure: A majority of the workshop is spent in team work sessions. Each team gets nearly twelve hours of professionally facilitated discussion to help teams develop a concrete plan of action.

Access: Staff from some of the state's leading organizations working to integrate water and land use including the Colorado Water Conservation Board, Colorado Department of Local Affairs, Colorado State University Colorado Water Center, and many additional leading water experts will be in attendance and serve as facilitators.

Action: The workshop works towards creating a team action plan developed by consensus. After the workshop teams can apply for a follow-up technical assistance grant to implement key components of the action plan.

Network: Spend time learning from your peers and upon completion teams join a Peer-to-Peer network of over 68 communities in Colorado who have participated in the GWS Workshop.

Program at a Glance

The Growing Water Smart workshop offers your team the time to collaborate and focus on the water resource challenges that are influencing your community's growth and development. The program is comprised of the following elements:

Team-Oriented Work Sessions: Teams assess community data, trends, and existing policies; develop succinct messaging around water; identify strategies to become water resilient; and develop an action plan to implement these strategies. Sessions are facilitated by professionals in the field who guide teams through strategic discussions.

Learning Best Practices: Presentations and written materials provide key knowledge around integrating water conservation, efficiency, reuse, and watershed protection into existing and future development.

Peer-to-Peer Networking: Participants meet and exchange ideas with peers from other jurisdictions and past workshop participants.

Eligibility and Team Composition

The workshop is designed to build and foster interdisciplinary teams from counties, municipalities, and districts committed to taking collaborative action around water. Applicants build a team of five to seven individuals with diverse knowledge, skills, and perspectives needed to secure their community's water future and implement the developed action plan. Team composition varies to reflect the needs of each community, and often includes:

- Elected and appointed officials*
- Current and long-range land use planners*
- Water resource managers*
- Economic development leaders
- Sustainability and resilience officers
- Parks and public works staff
- Representatives of regional planning organizations
- Local non-profit organizational representatives
- Community task force members
- Consultants contributing to your current water and land use efforts

* Denotes required representative

Multi-jurisdictional or regional teams may also apply. One or more representatives from each local government should be represented, and the team should be in pursuit of a common water goal.

Follow up Funding

Upon workshop completion, teams become eligible to apply for up to \$10,000 in technical assistance funding to help carry out a water and land use integration strategy identified in the team's action plan.

Previous projects have included:

- Land use code audits and policy recommendations
- The inclusion of water in comprehensive plan updates
- Collaborative stakeholder engagement and facilitation
- Metrics to measure water and land use integration
- Turf removal and low water use demonstration gardens

Contact Information

We are here to help! If you are interested in applying or have questions about the program, please contact: growingwatersmart@sonoraninstitute.org

About the Babbitt Center for Land and Water Policy

The Babbitt Center for Land and Water Policy, a Center of the Lincoln Institute of Land Policy, seeks to advance the integration of land and water management to meet the current and future needs of Colorado River Basin communities, economies, and the environment.

About the Sonoran Institute

The Sonoran Institute's mission is to connect people and communities with the natural resources that nourish and sustain them. Learn more about how you can help at [SonoranInstitute.org/donate](https://www.SonoranInstitute.org/donate). Your support preserves the environment for future generations and makes a lasting impact in communities across the Colorado River Basin.

Go to [SonoranInstitute.org](https://www.SonoranInstitute.org) to learn about our programs, history, and recent news. Or find us on Social Media:



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