

Section 1. In Colorado Revised Statutes, **add** 25-8-503.6 as follows:

**25-8-503.6 Waters of the State Protection- legislative declaration - fund - **WHATEVER ELSE THIS****

**TITLE NEEDS TO INCLUDE.** (1) **Legislative declaration:** THE GENERAL ASSEMBLY HEREBY FINDS:

(a) DUE TO THE FEDERAL GOVERNMENT’S ACTIONS TO REVISE THE WATERS OF THE UNITED STATES (WOTUS) RULE, ALSO KNOWN AS THE “NAVIGABLE WATERS PROTECTION RULE,” AS OF JUNE 22, 2020 THE FEDERAL PERMITTING OF DREDGE AND FILL FROM CONSTRUCTION PROJECTS WILL NO LONGER COVER ALL STATE WATERS PROTECTED FROM UNPERMITTED DISCHARGE BY STATE LAW, SEE COLORADO WATER QUALITY CONTROL ACT § 25-8-501, C.R.S.;

(b) COLORADO DOES NOT HAVE A STATE DREDGE AND FILL PERMITTING PROGRAM AND HAS RELIED ON THE FEDERAL GOVERNMENT FOR THIS SERVICE, BUT WITH THE REVISED WOTUS RULE, THERE IS INCREASED NEED FOR A STATE PROGRAM;

(c) SOME DREDGE AND FILL PROJECTS, SUCH AS FLOOD CONTROL, STREAM RESTORATION, WATER DEVELOPMENT, UNDERGROUND UTILITIES, ROAD, TRANSIT, RAIL, HOUSING OR COMMERCIAL, WHICH DO NOT RECEIVE A FEDERAL PERMIT BEFORE JUNE 22, 2020, WILL BE PROHIBITED UNDER § 25-8-501, C.R.S. UNLESS COLORADO DEVELOPS ITS OWN DREDGE AND FILL PERMIT PROGRAM;

(d) SUPPORTING COLORADO’S CONSTRUCTION SECTOR IS CRITICAL TO ECONOMIC RECOVERY AND A STRONG COLORADO ECONOMY;

(e) DEVELOPING A DREDGE AND FILL PERMIT PROGRAM WILL BENEFIT THE BUSINESSES WHO WISH TO ENGAGE IN DREDGE AND FILL PROJECTS WITHIN COLORADO BECAUSE, WITHOUT A PERMIT PROGRAM, THOSE PROJECTS WILL BE PROHIBITED TO THE DETRIMENT OF COLORADO’S ECONOMY;

(f) A COLORADO DREDGE AND FILL PERMIT PROGRAM SHOULD MAINTAIN THE STATUS QUO OF PROTECTING STATE WATERS IN EFFECT PRIOR TO JUNE 22, 2020.

(2) (a) THE WATER QUALITY CONTROL COMMISSION SHALL ADOPT FEES ON OR BEFORE DECEMBER 1, 2020. THE COMMISSION WILL ESTABLISH THE FOLLOWING FEES:

(1) A FEE FOR APPLICATION FOR A DREDGE AND FILL PERMIT. THE APPLICATION FEE WOULD INCLUDE AN ANALYSIS OF POTENTIAL PERMIT CONDITIONS AND PROCESSING OF THE PERMIT;

(2) A FEE FOR DEVELOPING JURISDICTIONAL DETERMINATIONS OF WHETHER DREDGE AND FILL PROJECTS WOULD REQUIRE A STATE PERMIT;

(3) A FEE FOR WATERS OF THE STATE AND WETLAND MITIGATION PROJECT SERVICES SOUGHT BY FEE PAYERS; AND,

(4) SUCH OTHER FEES THE COMMISSION DETERMINES APPROPRIATE.

(b) SUCH FEES SHALL BE DEPOSITED IN THE CONSTRUCTION SECTOR FUND, SECTION 25-8-502(1.5)(a)(II), TO COVER THE DIRECT AND INDIRECT COSTS TO IMPLEMENT THIS SECTION.

(3) (a) IF THE FEDERAL PERMITTING OF DREDGE AND FILL FROM CONSTRUCTION PROJECTS WILL NO LONGER COVER ALL STATE WATERS PROTECTED FROM UNPERMITTED DREDGE OR FILL ACTIVITIES BY STATE LAW, THE WATER QUALITY CONTROL COMMISSION SHALL PROMULGATE THE REGULATIONS NECESSARY TO IMPLEMENT THIS SECTION AND AUTHORIZE THE DIVISION TO ISSUE PERMITS RELATING TO THE DISCHARGE OF POLLUTANTS OF DREDGED OR FILL MATERIAL INTO STATE WATERS. SUCH RULES WILL GIVE CONSIDERATION TO:

(I) THE PROTECTION OF WATERS CONSIDERED WATERS OF THE UNITED STATES PRIOR TO JUNE 22, 2020 UNDER SECTION 404 OF THE CLEAN WATER ACT, AS AMENDED, 33 U.S.C. 1251 ET SEQ.,

(II) WHEN SUCH PERMITS ARE REQUIRED AND EXEMPTIONS, APPLICATION, AND FILING REQUIREMENTS,

(III) REASONABLE ASSURANCE THAT THE PROJECT WILL COMPLY WITH ALL APPLICABLE STATE WATER QUALITY REQUIREMENTS, EITHER AS PROPOSED OR AS CONDITIONED IN THE PERMIT,

(IV) BOTH THE CONSTRUCTION AND OPERATION OF THE PERMITTED ACTIVITY,

(V) DIRECT AND INDIRECT EFFECTS OF THE PERMITTED ACTIVITY,

(VI) AUTHORIZING PERMIT CONDITIONS DESIGNED TO DO ANY OF THE FOLLOWING:

(A) REMOVE OR REDUCE AN IMPAIRMENT TO STATE WATERS OR WETLANDS THAT WOULD OTHERWISE RESULT FROM THE PROJECT;

(B) IMPROVE THE WATER QUALITY THAT WOULD OTHERWISE RESULT FROM THE PROJECT;

(C) REMOVE OR REDUCE THE EFFECT OF A DISCHARGE OF FILL MATERIAL;

(D) MITIGATE ANY UNAVOIDABLE LOSSES OF STATE WATERS RESULTING FROM THE PROJECT OR ASSIST IN MEETING STATE WATER QUALITY REQUIREMENTS, INCLUDING PROTECTION OF DOWNSTREAM USES,

(VII) TERMS AND CONDITIONS AFFECTING SUCH PERMITS, NOTICE AND PUBLIC PARTICIPATION, AND DURATION,

(VIII) REVIEW OF SUCH PERMITS,

(IX) MONITORING, RECORDING, AND REPORTING REQUIREMENTS,

(X) COMPLIANCE WITH ANY APPLICABLE CONSULTATION PROVISIONS UNDER FEDERAL LAW; AND

(XI) SUCH OTHER REQUIREMENTS AT LEAST AS STRINGENT AS SECTION 404 OF THE CLEAN WATER ACT, AS AMENDED, 33 U.S.C. 1251 ET SEQ.

(b) THE REQUIREMENTS OF 25-8-202(8) DO NOT APPLY TO ANY REGULATIONS ADOPTED PURSUANT TO THE SECTION.

(c) UNTIL THE RULES PROMULGATED BY THE COMMISSION BECOME EFFECTIVE, THE DEPARTMENT MAY ISSUE PERMITS PURSUANT TO SECTION 501 OF THIS PART IN ACCORDANCE WITH FEDERAL LAW, REGULATIONS, AND GUIDANCE IN EFFECT AS OF APRIL 20, 2020.

(4) THE CONSTRUCTION SECTOR FUND, SECTION 25-8-502(1.5)(a)(II), MAY BE USED BY THE DIVISION TO COVER THE DIRECT AND INDIRECT COSTS TO IMPLEMENT THIS SECTION.

Section 2. In Colorado Revised Statutes, 25-8-104, **amend** (1) as follows:

25-8-104. **Interpretation and construction of water quality provisions.** (1) No provision of this article shall be interpreted so as to supersede, abrogate, or impair rights to divert water and apply water to beneficial uses in accordance with the provisions of sections 5 and 6 of article XVI of the constitution of the state of Colorado, compacts entered into by the state of Colorado, or the provisions of articles 80 to 93 of title 37, C.R.S., or Colorado court determinations with respect to the determination and administration of water rights. Nothing in this article shall be construed, enforced, or applied so as to cause or result in material injury to water rights. The general assembly recognizes that this article may lead to dischargers choosing consumptive types of treatment techniques in order to meet water quality requirements. Under such circumstances, the discharger must comply with all of the applicable provisions of articles 80 to 93 of title 37, C.R.S., and shall be obliged to remedy any material injury to water rights to the extent required under the provisions of articles 80 to 93 of title 37, C.R.S. The question of whether such material injury to water rights exists and the remedy ~~therefor~~ THEREFORE shall be determined by the water court. This section shall not be interpreted so as to prevent the issuance of a permit pursuant to sections 25-8-501 to 25-8-503503.6 which is necessary to protect public health. Nothing in this article shall be construed to allow the commission or the division to require minimum stream flows or minimum water levels in any lakes or impoundments.

Section 3. In Colorado Revised Statute, 25-8-503, **amend** (4) as follows:

(4) No permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements OR, FOR A

DREDGE AND FILL PERMIT ISSUED PURSUANT TO SECTION 503.6 OF THIS ARTICLE, ADEQUATE CONDITIONS OR MITIGATION TO PROVIDE REASONABLE ASSURANCE THAT THE PROJECT WILL COMPLY WITH ALL APPLICABLE STATE WATER QUALITY REQUIREMENTS. Effluent limitations, CONDITIONS, AND MITIGATION designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary to achieve the levels of protection required by the standards.