

# Colorado Dredge and Fill Program Implementation (HB24-1379)

**Southwest Basins Roundtable | October 24, 2024**  
Colorado Department of Public Health & Environment  
Water Quality Control Division



**COLORADO**  
Department of Public  
Health & Environment

# Introductions

- **Annette Quill** - Senior Policy Advisor, *Water Quality Control Division*.
- **Kelly Morgan** - Clean Water Compliance & Enforcement Section Manager, *Water Quality Control Division*.
- **Jojo La** - Director, *Environmental Boards and Commissions*.
- **Payeton Childers** - Policy Advisor, *Environmental Boards and Commissions*.



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# Overview of HB24-1379

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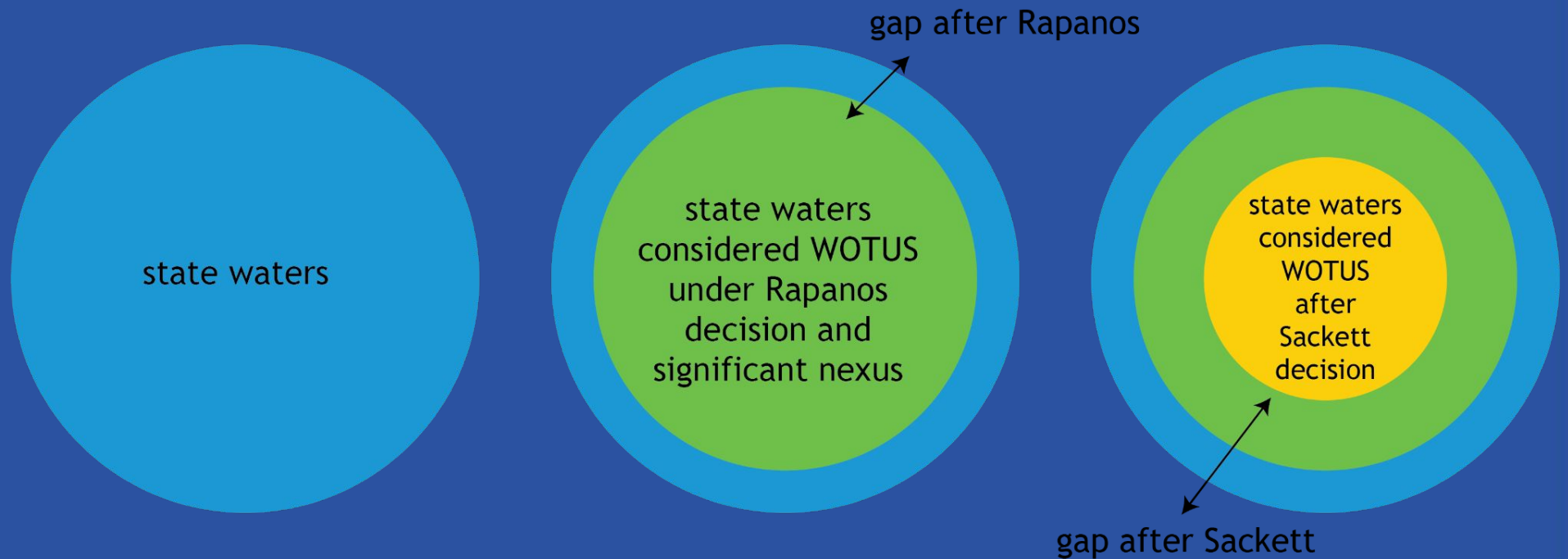


# Purpose & Scope of House Bill 24-1379

- On May 30, 2024, House Bill (HB) 24-1379 was signed into law.
- *The intent of the legislation is to ensure that “state waters” are protected from the impacts of dredge and fill activity after the U.S. Supreme Court limited the historic scope of federal protection under the Clean Water Act through its decision in Sackett v. EPA.*
- NOT intended to replace the Corps of Engineers’ 404 Program in Colorado; ONLY applies to “state waters” that are not WOTUS.



# Colorado “State Waters” vs. WOTUS



# Exempted Activities (1 through 7)

## Legislation identifies 13 exempted activities

- (I-IV) Activities covered under 404 permits and activities that had prior AJDs
- (V) Normal farming and ranching activities
- (VI) Maintenance (including emergency reconstruction) of structures such as dikes, dams, levees, lagoons, transportation structures
- (VII)
  1. Construction or maintenance of farm ponds or stock ponds located in uplands
  2. Construction or maintenance of irrigation ditches/acequias  
(INCLUDES HEADGATES)
  3. Maintenance of drainage ditches, roadside ditches, and other ditches or canals

*This exemption (VII) includes broad, detailed definitions of the terms “construction,” “maintenance,” and “irrigation ditch/acequia”*



# Exempted Activities (8 through 13)

## Legislation identifies 13 exempted activities

- (VIII) Construction of temporary sedimentation basins on construction sites
- (IX) Construction or maintenance of farm or forest roads or temporary roads for wildfire mitigation or mining
- (X) Emergency response activities to natural disasters
- (XI) Maintenance of water and wastewater facilities, including reconstruction of related structures
- (XII) Maintenance of off-channel reservoirs, including dredging
- (XIII) Wildlife habitat management activities - those that occur on land managed primarily for wetland or riparian species





# Excluded Water Features (1 through 7)

## Legislation identifies 11 excluded water features

- (I) Ditches and canals in upland
- (II) Stormwater control features in upland
- (III) Artificially irrigated areas that would otherwise revert to upland
- (IV) Artificial lakes, lagoons, or ponds created in upland used for stock watering, irrigation, etc.
- (V) Wetlands adjacent to a ditch or canal that are supported by the water in the ditch or canal
- (VI) Recharge ponds in upland
- (VII) Artificial reflecting or swimming pools in upland





# Excluded Water Features (8 through 11)

## Legislation identifies 11 excluded water features

- (VIII) Water-filled depressions incidental to mining or construction activities (gravel pits) in upland, until abandoned
- (IX) Swales and erosional features, such as gullies, small washes, and rills, that do not contain wetlands or an ordinary high water mark
- (X) Groundwater
- (XI) Prior converted cropland
  - Incorporates 2020 NWPR preamble definition of “PCC”
  - Abandonment exception: “Abandoned” means not used for ag. purposes at least once in the previous 5 years



# HB24-1379 - Implementation Components

[HB24-1379](#) directs the Water Quality Control **Division** to develop a dredge and fill authorization program and the Water Quality Control **Commission** to establish program and mitigation rules by **Dec. 31, 2025**.

Dredge and fill  
authorization program

Issue individual and general  
authorizations for dredge and fill  
activities.

Regulation No. 87

A control regulation for avoiding,  
minimizing, and mitigating the impacts of  
dredge and fill activity.



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# Commission Rulemaking Hearing Process

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# Water Quality Control Commission - Overview

## Who is the Water Quality Control Commission?

Made up of **nine volunteers**.  
Appointed by Governor, confirmed  
by Senate.

Serve **three-year rolling terms**.

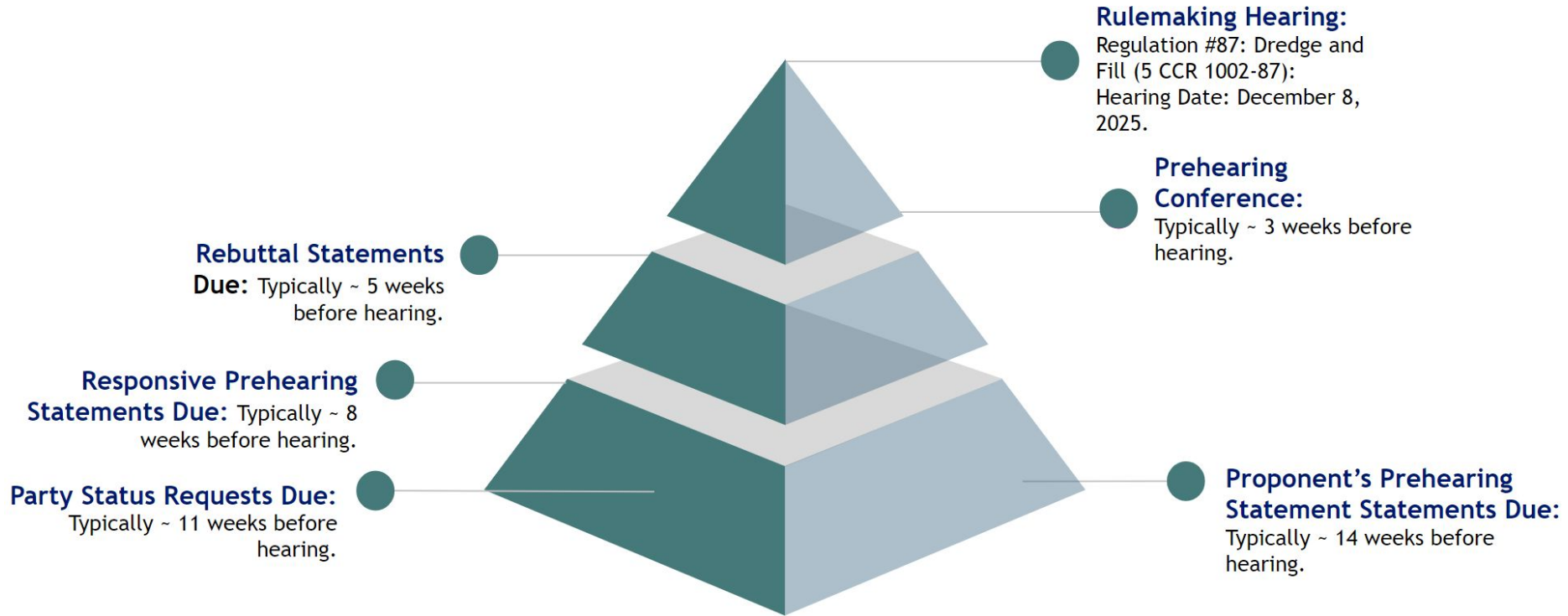
Water quality expertise,  
technical/legal/municipal/  
water and wastewater treatment  
training, agricultural experience,  
regulated entities.

## Who is the Water Quality Control Division?

Serve as staff to the Commission  
Implements the Commission's  
regulations  
Develops and proposes regulations  
Oversee facilities that discharge  
water to our waterways



# Commission Rulemaking Hearing Process - Timeline



# Commission Contact Information and Important Links

**Jojo La**

Director/Administrator.

Environmental Boards and Commissions.

[Jojo.La@state.co.us](mailto:Jojo.La@state.co.us).

Cell phone: (720)-277-9262.

**Payeton Childers**

Policy Advisor.

Environmental Boards and Commissions.

[Payeton.Childers@state.co.us](mailto:Payeton.Childers@state.co.us).

Cell phone: (720)-749-7324.

**General Inquiries:**

[cdphe.wqcc@state.co.us](mailto:cdphe.wqcc@state.co.us).

## Helpful Links

[Meeting Information \(Agendas, long Range schedule, etc.\)](#)

[Commissioners' Information](#)

[Rulemaking Hearing Folder](#)

[Rulemaking Process Information](#)



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# HB24-1379 Implementation

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# HB24-1379 Implementation - Overview of Requirements

**Until Jan. 1, 2025:  
Use of Clean Water Policy 17  
continues.**

Projects not requiring compensatory mitigation continue to operate under Clean Water Policy 17 until Jan. 1, 2025.

**Jan. 1, 2025:  
Nationwide/regional  
permits become effective.**

Temporary authorizations will be required for all projects requiring preconstruction notification.

Temporary authorizations will be required when “impact” thresholds are triggered to require compensatory mitigation.

**Feb. 2026: Regulation  
No. 87 becomes  
effective.**

Projects requiring compensatory mitigation will be covered under Regulation No. 87.



# Clean Water Policy 17 - Overview

- [Clean Water Policy 17](#) (Enforcement of Unpermitted Discharges of Dredged and Fill Material into State Waters) remains in effect until **Jan. 1, 2025**.
- This policy addresses the protection of state waters impacted by discharges of dredged or fill material that are outside of federal Clean Water Act jurisdiction as a result of the *Sackett* decision.
- Owners and operators of any activity that will result in a discharge of dredged or fill material into non-WOTUS state waters should provide notification to the division.
- Projects must comply with the protective conditions of the policy.



# HB24-1379 Implementation - WQCD Responsibilities

Until Regulation No. 87 is promulgated by the commission, the division will:

- Develop and issue **temporary authorizations** (*beginning Jan. 1, 2025*).
- Recognize **nationwide and regional general permits issued by the United States Army Corps of Engineers (USACE)** as being valid authorizations to discharge dredged or fill material into state waters.
- Develop a **statewide general authorization for discharges to isolated state waters**.



# Temporary Authorizations - Overview

- Temporary authorizations will be limited to **two years**, include conditions essential for protecting public health and the environment, and align with the intent of the HB24-1379.
- Temporary authorizations will be used as an interim solution until Regulation No. 87 is promulgated to ensure protection for projects requiring compensatory mitigation.
- Temporary authorizations will require compliance with USACE nationwide and regional general permit conditions and include Colorado-specific requirements.



# USACE Nationwide and Regional 404 Permits - Overview

- Beginning on January 1, 2025, the division will utilize the existing structure of preconstruction notifications in the nationwide and regional permits established by the United States Army Corps of Engineers (USACE), including general authorizations for categories of activities that do not require preconstruction notification.



# Isolated State Waters General Authorization - Overview

- The division will issue a **five-year** statewide authorization for discharges into isolated wetlands, ponds, and streams, which will:
  - Incorporate best practices for environmental protection.
  - Exempt preconstruction notification requirements.
  - Cannot be used for projects that exceed thresholds for “unavoidable impacts” on wetlands and streams.
  - Exclude specific waters from coverage.

## “Unavoidable Impact” Thresholds

Wetlands

Streams

0.1 acre

0.03 acre



# Compensatory Mitigation Requirements - Overview

- The division will include compensatory mitigation requirements in all individual and general authorizations for projects that exceed “unavoidable impact” thresholds for wetlands (**0.1 acre**) and streams (**0.03 acre**).
- Compensatory mitigation will address all functions of state waters impacted by the authorized dredge and fill activity.

*Unavoidable impacts* are the negative impacts on wetlands and streams that are unavoidable after all reasonable measures have been taken to minimize them.

*Compensatory mitigation* is required to restore state waters for the purpose of offsetting unavoidable impacts that remain.





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# Regulation No. 87 Development

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# Regulation No. 87 Content

## Program Rules

- Same degree of stringency as the USACE regulations.
- **MUST** adopt: procedures, duration, fees, consultation, and an exemption for certain voluntary stream restoration activities.
- **MAY** adopt: clarification of exemptions and exclusions, shorter timeline for issuance of authorizations.

## Individual Authorization Rules

- Application requirements.
- Criteria for alternatives analyses, purpose and need statements, etc.

## Compensatory Mitigation Rules

- Potential guidance to accompany.



# Engagement Timeline

## Colorado Dredge and Fill Program Implementation (HB24-1379)



Basin roundtable outreach

Sept 4

Sept 13

Oct 1

Oct 4

Nov 6

Dec 4

Jan 29

Feb 20

Mar 20

Apr 16

May 22

Jun 18

Jul 23

Aug 21

Sept 18

Oct 23

Nov 19

Dec 8

2024

2025

Compensatory mitigation workshop (wetlands)

Compensatory mitigation workshop (streams)

Army Corps regional and nationwide 404 permit implementation planning begins

Draft Regulation No. 87 target date to share

Draft Regulation No. 87 discussions

Draft General Authorization for Discharges to Isolated State Waters target issuance date

Rulemaking hearing

Temporary Authorization discussions begin

# Upcoming opportunities for involvement



**Register to attend our next stakeholder meeting on Zoom:**

- **Wednesday, November 6, 2024 | 9:30 to 11:30 a.m.**
  - Virtual Only



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# Stay Informed

## Visit our website:

- For more information on implementation, please visit the division's [dredge and fill program website](#).
- For more information on the engagement process, click on the [Colorado dredge and fill program implementation engagement page](#).

## Sign up for email notifications:

- To ensure you continue receiving email notifications regarding this process, please sign up to receive emails on the engagement page.

## Contact information:

- If you have questions, please email [cdphe.commentswqcd@state.co.us](mailto:cdphe.commentswqcd@state.co.us).





# Questions?



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