

State Response to Sackett v. EPA: Colorado General Assembly Enacts Legislation Expanding Regulatory Authority Over Wetlands/Streams



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The 74th General Assembly of the State of Colorado has enacted House Bill 24-1379 which is described as:
...concerning the regulation of state waters in response to recent federal court action and, in connection therewith, making an appropriation.

The stated objective of HB 24-1379 is to provide the Colorado Water Quality Control Commission the authority to promulgate rules regulating certain wetlands and waters that had formally been subject to federal Clean Water Act jurisdiction as Waters of the United States (“WOTUS”).

The United States Supreme Court issued an opinion in 2023 in the Sackett case addressing the scope of the Clean Water Act definition of WOTUS. The majority Opinion narrowed the scope of what constitutes a WOTUS for the purposes of the Clean Water Act. Further, because of this decision, the United States Environmental Protection Agency and Corps of Engineers issues a final rule later that year revising the definition of WOTUS to conform to the Sackett decision.

A key requirement of HB 24-1379 is the mandate that the Colorado Water Quality Control Commission promulgate rules as necessary to implement a State Dredge and Fill Discharge Authorization Program. It also requires the administration and enforcement of authorizations for activities that will result in the discharge of dredged or fill material into state waters.

Such rules are required to focus on avoidance and minimization of adverse impact and on compensation for unavoidable adverse impacts of dredge and fill activity. In addition, they must be at least as protective as the guidelines developed pursuant to Section 404(b)(1) of the federal Clean Water Act.

The legislation clarifies that state waters “includes wetlands”. Further, certain activities are exempted and therefore do not require discharge authorization for, or otherwise require regulation, of such activities.

A copy of HB 24-1379 can be downloaded [here](#).