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## MEMORANDUM

TO: Chatfield Watershed Authority (“CWA”) Technical Advisory Committee (“TAC”)  
FROM: Michael Daugherty  
SUBJECT: Legal Report for April TAC Meeting  
DATE: March 27, 2024

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### **Regulatory Update**

Regulation 73 (*Chatfield Reservoir Control Regulation*; 5 CCR 1002-73). The Colorado Water Quality Control Commission (“WQCC”) held a triennial review informational hearing for Regulation 73 on March 11, 2024. I attended on behalf of CWA. Neither the Water Quality Control Division (“WQCD”) or CWA requested a formal rulemaking or any revisions to the existing regulations. Information regarding current WQCC rulemaking proceedings can be found [here](#).

Chatfield State Park Water Quality Fee. At the Colorado Parks and Wildlife (“CPW”) Commission’s (“CPWC”) March 13, 2024, meeting, CPW staff presented their proposed revisions to CCR 406-16 to accommodate a future request from CWA to establish a water quality fee at Chatfield State Park in accordance with SB23-267. CPWC voted to approve the regulation revision. Attached as Exhibit A is a redline of the regulation revision that was approved. Notably, one Commissioner questioned CPW staff regarding why park visitors should bear the burden of a water quality fee and seemed concerned that the state legislature was targeting park visitors. I recommend our rulemaking petition include substantial information regarding (1) how park visitors both benefit from improved water quality in the Chatfield watershed and (2) how they can negatively impact that water quality.

### **Legislative Update**

The 2024 state legislative session, which convened on January 10, 2024, continues, and new bills are still being introduced. There are numerous water-related bills that may be of interest to the TAC. Attached as Exhibit B to this legal report is a spreadsheet of select water-related bills up for consideration during this year’s session. The legislative session will adjourn on May 8, 2024.

## FINAL REGULATIONS - CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES

### ARTICLE III – ~~CITIZEN RULEMAKING~~ PETITIONS

#### #1606 - Citizen Petition Requirements

Any person may petition the Commission to initiate rulemaking pursuant to 24-4-103(7), C.R.S. All petitions for rulemaking must contain the following information: (1) The name, address, and telephone number of the person requesting the rulemaking; and (2) A copy of the rule proposed in the petition, preferably in redline format, and a general statement of the reasons for the requested rule or revision.

#### #1607 - ~~Reserved~~Implementation of SB 23-267, Chatfield State Park Water quality Fee

A. The Chatfield Watershed Authority may petition the Commission to initiate rulemaking pursuant to SB 23-267, codified at § 33-9-114, CRS, to impose a water quality fee on visitors to Chatfield State Park, provided the requested fee shall not apply to visitors to Chatfield State Park holding an annual or lifetime pass. The Authority's petition must:

- (1) Contain a general statement of the reasons for imposing the requested water quality fee,
- (2) Contain a copy of the proposed rule, preferably in redline format,
- (3) Identify current or proposed water quality projects within the boundaries of the Authority in need of funding, including an overview of the anticipated costs and benefits of such projects, and
- (4) Prioritize current or proposed water quality projects in terms of most urgent need and demonstrate financial need for such projects.

B. In the event the Commission imposes a water quality fee on visitors to Chatfield State Park, the Authority must, on or before June 1, 2029, submit a report to the Division detailing how and to what extent the resulting funding supported water quality projects that benefited Chatfield State Park and its recommendation on whether the water quality fee should be increased, repealed or otherwise amended. At least 25% of the funding will be used for water quality projects within the boundaries of Chatfield State Park. If the recommendation is to increase the fee with CPI, the fee may only be increased to the nearest dollar amount.

#### #1608 - Reserved

**EXHIBIT B**

**2024 COLORADO STATE LEGISLATION TRACKER**

(as of 3/25/2024)

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">SJR24-004</a>  Water Projects Eligibility Lists	Water	Concerning approval of water project revolving fund eligibility lists administered by the Colorado water resources and power development authority.	House: McCormick, Catlin  Senate: Roberts, Simpson  Status: <b>Became Law</b> , signed by Governor on 3/8/24.	Full text (including list of projects) available <a href="#">here</a> .	

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">SB24-005</a>  Prohibit Landscaping Practices for Water Conservation	Water	Concerning the conservation of water in the state through the prohibition of certain landscaping practices.	House: McCormick, McLachlan  Senate: Roberts, Simpson  Status: <b>Became Law</b> , signed by Governor on 3/15/24.	On and after January 1, 2025, the bill prohibits local governments from allowing the installation, planting, or placement of nonfunctional turf, artificial turf, or invasive plant species on commercial, institutional, or industrial property, common interest community property, or a street right-of-way, parking lot, median, or transportation corridor. The bill also prohibits the department of personnel from allowing the installation, planting, or placement of nonfunctional turf, artificial turf, or invasive plant species as part of a project for the construction or renovation of a state facility, which project commences on or after January 1, 2025.	<a href="#">FN1</a> <a href="#">FN2</a>

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">SB24-037</a>  Study Green Infrastructure for Water Quality Management	Natural Resources & Environment  Water	Concerning alternative mechanisms for achieving compliance with water quality standards.	House: Lynch, McCormick  Senate: Simpson, Bridges  Status: Under Consideration (Agriculture & Natural Resources Committee referred amended to Appropriations on 2/29/24)	The bill requires the division of administration (division) in the department of public health and environment (department), in collaboration with the university of Colorado's Mortenson center in global engineering and resilience and the Colorado water institute located within Colorado state university, to: <ul style="list-style-type: none"> <li>• Conduct a feasibility study of the use of green infrastructure, which refers to nature-based, watershed-scale water quality management solutions that are an alternative to traditional gray infrastructure, which refers to centralized water treatment facilities, and the use of green financing mechanisms for water quality management;</li> <li>• Establish one or more pilot projects in the state to demonstrate the use of green infrastructure, green financing mechanisms, or both;</li> <li>• Adopt rules establishing a prepermit baseline date to assist municipalities and other water providers to pursue prepermit solutions for compliance with state and federal water quality standards; and</li> <li>• Submit a report and present to the water resources and agriculture review committee on the progress of the feasibility study and any pilot projects and on any legislative and administrative recommendations to promote the use of green infrastructure and green financing mechanisms for water quality management in the state.</li> </ul>	<a href="#">FN1</a> <a href="#">FN2</a>

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">SB24-038</a>  Authorize Conservancy District Water Management	Water	Concerning conservancy districts, and, in connection therewith, authorizing a conservancy district to participate in a plan for augmentation; contract with water users outside the conservancy district for the provision of services; exercise certain powers regarding the control, delivery, use, and distribution of water; establish a water activity enterprise; and sell, lease, or otherwise dispose of the use of water or capacity in works by contract.	House: Martinez, McCormick  Senate: Bridges, Simpson  Status: Under Consideration (3/27/24, upon adjournment; Senate Agriculture & Natural Resources Committee)	<p>Under current law, when certain conditions exist, a district court may establish conservancy districts for the conservation, development, utilization, and disposal of water for agricultural, municipal, and industrial uses. <b>Section 1</b> of the bill allows conservancy districts to conserve, develop, utilize, or dispose of water for commercial uses as well. <b>Section 2</b> authorizes the board of directors of a conservancy district to:</p> <ul style="list-style-type: none"> <li>• Submit and participate in a plan for augmentation for the benefit of water rights and wells within and outside of the boundaries of the conservancy district;</li> <li>• Contract with water users within and outside of the conservancy district for the provision of services;</li> <li>• Exercise certain powers concerning the management, control, delivery, use, and distribution of water in conjunction with a plan for augmentation;</li> <li>• In conjunction with <b>sections 4 and 5</b>, establish a water activity enterprise, which is a government-run business, for the purpose of pursuing or continuing water activities; and</li> <li>• Sell, lease, or otherwise dispose of the use of water or capacity in works by term contracts or by contracts for the perpetual use of the water or works to certain entities.</li> </ul> <p><b>Section 3</b> authorizes a conservancy district to:</p> <ul style="list-style-type: none"> <li>• Enter into long-term contracts with public and private entities for the accomplishment of functions of the conservancy district; and</li> <li>• Avail itself of aid, assistance, and cooperation from the federal government, the state government, and local governments.</li> </ul> <p><b>Sections 4 and 5</b> allow a conservancy district to establish a water activity enterprise, which is a business that receives less than 10% of its annual revenues in grants from all Colorado state and local governments combined, is authorized to issue its own revenue bonds, and is excluded</p>	<a href="#">FN1</a>

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
				from the provisions of the "Taxpayer's Bill of Rights" in the state constitution.	

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">SB24-081</a> Perfluoroalkyl & Polyfluoroalkyl Chemicals	Natural Resources & Environment	Concerning measures to increase protections from perfluoroalkyl and polyfluoroalkyl chemicals.	House: Kipp, Rutinel Senate: Cutter Status: Under Consideration (passed by Senate on 3/25/24)	<p>Current law prohibits the sale or distribution of class B firefighting foam that contains perfluoroalkyl and polyfluoroalkyl chemicals (PFAS chemicals). <b>Section 1</b> of the bill, on and after January 1, 2025, repeals the exemption from the prohibition for gasoline distribution facilities, refineries, and chemical plants.</p> <p>Current law also prohibits the sale or distribution of products in certain product categories on and after certain dates if the products contain intentionally added PFAS chemicals (product phaseout timeline). Current law exempts from the definition of "product" drugs, medical devices, biologics, or diagnostics (medical products) approved or authorized by the federal food and drug administration or the federal department of agriculture (applicable federal agencies), but not medical products cleared by the applicable federal agencies. The bill changes current law by:</p> <ul style="list-style-type: none"> <li>• Clarifying that medical products cleared by the applicable federal agencies are also exempted from the definition of "product" (<b>section 4</b>);</li> <li>• On and after January 1, 2025, prohibiting the sale or distribution of certain outdoor apparel intended for extreme or extended use in severe wet conditions (outdoor apparel for severe wet conditions) that contains intentionally added PFAS chemicals unless the product is accompanied by a disclosure that states that the product contains PFAS chemicals (disclosure requirement) (<b>section 5</b>);</li> <li>• On and after January 1, 2025, as part of the product phaseout timeline, banning the sale or distribution of cleaning products, cookware, dental floss, menstruation products, ski wax, and textile articles that contain intentionally added PFAS chemicals (<b>section 5</b>);</li> <li>• On and after January 1, 2028, repealing the disclosure requirement and banning the sale or distribution of outdoor apparel for severe wet conditions that contains intentionally added PFAS chemicals (<b>section 5</b>);</li> </ul>	<a href="#">FN1</a>



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				<ul style="list-style-type: none"> <li>On and after January 1, 2032, repealing the product phaseout timeline (<b>section 5</b>) and prohibiting the sale or distribution of any nonexempted product that contains intentionally added PFAS chemicals (<b>section 6</b>); and</li> <li>On and after July 1, 2024, prohibiting a person from installing artificial turf that contains intentionally added PFAS chemicals on any portion of property in the state (<b>section 6</b>).</li> </ul>	

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">SB24-127</a>  Regulate Dredged & Fill Material State Waters	Water	Concerning the establishment of a dredge-and-fill permit program to regulate the discharge of pollutants into certain state waters in response to recent changes in federal law, and, in connection therewith, establishing the stream and wetlands protection commission and the stream and wetlands protection division and authorizing the stream and wetlands protection division to administer and enforce the dredge-and-fill permit program in accordance with rules promulgated by the stream and wetlands protection commission.	House: Bird  Senate: Kirkmeyer  Status: Under Consideration (4/4/24 at 1:30 pm, Senate Agriculture & Natural Resources Committee)	<p>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:</p> <ul style="list-style-type: none"> <li>Regulating the discharge of dredged or fill material into certain state waters; and</li> <li>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.</li> </ul> <p>The bill creates the stream and wetlands protection division (division) in the department to administer and enforce the permit program.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<a href="#">FN1</a>

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">SB24-148</a> Precipitation Harvesting Storm Water Detention	Water	Concerning allowing certain facilities to use water detained in a storm water detention and infiltration facility for precipitation harvesting.	House: McLachlan, Bradley  Senate: Van Winkle  Status: Under Consideration (3/25/24 at 10 am, House Floor Work; passed by Senate on 3/4/24)	Under current law, an entity that owns, operates, or has oversight over a storm water detention and infiltration facility (facility) is not allowed to divert, store, or otherwise use water detained in the facility. For facilities that are also approved for use as a precipitation harvesting facility, either through a substitute water supply plan or an augmentation plan, the bill authorizes the use of water detained in the facility for precipitation harvesting.	<a href="#">FN1</a>

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">HJR24-1018</a>  Grand Lake Water Clarity	Natural Resources & Environment	Concerning the water clarify of Grand Lake, Colorado's largest and deepest natural lake.	House: McCluskie  Senate: Roberts  Status: <b>Adopted</b> , signed by Speaker and President on 3/4/24.	The Colorado General Assembly recognizes the importance of Grand Lake and its unique clarity as an aesthetic, recreational, wildlife, tourist, economic, and historic asset to the state and nation; recognizes the importance of the C-BT project for essential water deliveries to Colorado's northern Front Range and plains region and economy; and urges the collaborating entities of the 2016 MOU to continue their efforts to establish effective, measurable, demonstrable, and achievable short- and long-term solutions to increase the clarity depths in Grand Lake and meet state-issued clarity standards.	

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">HB24-1062</a>  Warrants for Metro Sewage Disposal Districts	Water	Concerning administrative inspection warrants for a metropolitan sewage disposal district.	House: Evans, Titone Senate: Priola  Status: <b>Passed</b> (passed by Senate on 3/25/24; passed by House on 2/6/24)	To protect public health and the environment, a metropolitan sewage disposal district (district) is required to ensure that wastewater generated by local businesses is properly treated pursuant to the industrial pretreatment program (program) approved by the environmental protection agency. This requires district inspectors to inspect certain properties to investigate actual, suspected, or potential violations of the program. Under current law, the boundaries of a district may exist within multiple municipal and county lines, which makes it challenging for the district to obtain administrative inspection warrants when property owners deny district inspectors entry to a property. The bill allows authorized inspectors of a district to enter and inspect, in a reasonable time and manner, any property for the purpose of investigating any violations of the program. If an inspection is denied, the bill authorizes a district to obtain a warrant from the district court or county court upon a proper showing of the need for entry and inspection.	<a href="#">FN1</a>

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<a href="#">HB24-1178</a>  Local Government Authority to Regulate Pesticides	Agriculture	Concerning local government authority to regulate pesticides.	House: Kipp, Froelich  Senate: Cutter, Jaquez Lewis  Status: Under Consideration (3/25/24 at 10 am, House Floor Work)	Current law prohibits a local government from creating laws that regulate the use of pesticides by pesticide applicators regulated by state or federal law. The bill allows a local government to create and enforce laws regulating the sale or use of pesticides to protect the health and safety of the community with certain exceptions.	<a href="#">FN1</a> <a href="#">FN2</a> <a href="#">FA1</a>

BILL NO. & NAME	TOPIC AREA	BILL DESCRIPTION	SPONSORS, ACTION TAKEN, & STATUS	BILL SYNOPSIS	NOTES/KEY ISSUES
<a href="#">HB24-1362</a>  Measures to Incentivize Graywater Use	Water	Concerning measures to promote the use of graywater.	House: Lukens, Catlin  Senate: Roberts, Simpson  Status: Under Consideration (3/25/24 at 1:30 pm, Agriculture, Water & Natural Resources Committee)	<p>Under current law, a board of county commissioners or governing body of a municipality (local government) may authorize the use of graywater within its jurisdiction. Graywater refers to certain types of wastewater that is collected from fixtures before it is treated and put to certain beneficial uses.</p> <p>The bill authorizes the installation of graywater treatment works and the use of graywater statewide; except that a local government:</p> <ul style="list-style-type: none"> <li>• May adopt an ordinance or a resolution prohibiting the installation of graywater treatment works or the use of all graywater or categories of graywater use within its jurisdiction; and</li> <li>• Shall notify the division of administration in the department of public health and environment of any such local ordinance or resolution adopted.</li> </ul> <p>To incentivize the installation of graywater treatment works within a residential building for indoor water reuse, the bill also creates a state income tax credit that allows a taxpayer to claim a credit up to 50% of the cost of such installation or up to \$5,000, whichever is less.</p>	<a href="#">FN1</a>

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<a href="#">HB24-1379</a>  Regulate Dredge & Fill Activities in State Waters	Water	Concerning the regulation of state waters in response to recent federal court action.	House: McCluskie, McCormick  Senate: Roberts  Status: Under Consideration (Introduced and assigned to Agriculture, Water & Natural Resources Committee on 3/20/24)	<p>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 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".</p> <p>The bill establishes duties for the division in administering the program, as follows:</p> <ul style="list-style-type: none"> <li>• The division shall issue individual authorizations consistent with the rules promulgated by the commission;</li> <li>• 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;</li> <li>• 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</li> <li>• 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.</li> </ul>	



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				<p>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.</p> <p>Until the rules become effective:</p> <ul style="list-style-type: none"> <li>• The division's Clean Water Policy 17, "Enforcement of Unpermitted Discharges of Dredged and Fill Material into State Waters", continues to be effective;</li> <li>• 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</li> <li>• Temporary authorizations must include conditions necessary to protect the public health and the environment and to meet the intent of the bill.</li> </ul> <p>The division may issue a temporary authorization for a period not to exceed 2 years.</p> <p>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.</p> <p>The bill clarifies that "state waters" includes wetlands.</p> <p>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</p>	

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				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.	