



**ENSOLUM**

Navigating Colorado's New  
Dredge and Fill Bill  
and Lesser Prairie Chicken  
Update

January 16, 2025

# Overview

- Lesser Prairie Chicken update
- New protections to state waters and House Bill 24-1379
- Discuss temporary authorizations and Regulation 87 program



# Lesser Prairie Chicken Update





# Lesser Prairie Chicken (*Tympanuchus pallidicinctus*)

- A member of the grouse family that is mostly found in Colorado, Kansas, New Mexico, Texas, and Oklahoma.
- Every spring males perform mating rituals at leks to court females.

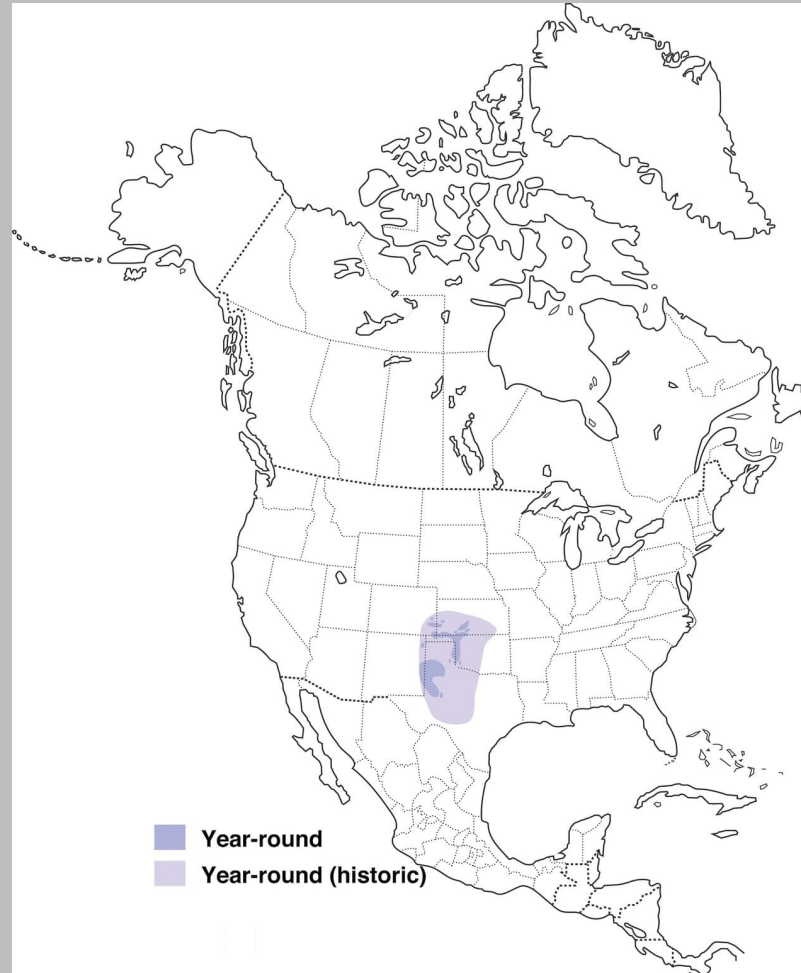


# Lesser Prairie Chicken Update

- Colorado Parks and Wildlife updated their High Priority Habitat maps in December 2024
- There was no change to Lesser Prairie Chicken habitat but some lek statuses changed



# Lesser Prairie Chicken Range Map





# State Waters and House Bill 24-1379



# Clean Water Act Over the Years

- The Clean Water Act (CWA) has changed several times over the past 10 years.
- The latest change occurred in 2023 with the Supreme Court decision in Sackett v. EPA.
- The Supreme Court concluded that definition for Waters of the United State was too broad.





# Sackett v. EPA Implications for State Waters

- The Sackett decision eliminating federal protection for most wetlands and seasonal streams in Colorado.
- These aquatic features provide pivotal roles for wildlife, drinking water, controlling floods, recharging ground water, and mitigating pollution.



# House Bill 24-1379

- Colorado law makers drafted the House Bill (HB) 24-1379 to protect state waters from impacts of dredge and fill activities.
- HB-24-1379 was signed into law on May 30, 2024.



# Implementation of HB 24-1379

- The Water Quality Control Division (WQCD) will oversee implementing the bill and running the programs to monitor and protect state waters.
- The goal for the WQCD is to create a dredge and fill program and mitigation rules by December 31, 2025.





May 30, 2024 – HB 24-1379 signed into law



January 1, 2025 – Temporary Authorizations



WQCD starts drafting legal language and the creation of the Regulation 87 program

February 2026 – WQCD starts enforcing Regulation 87

# HB 24-1379 Timeline

- On January 1, 2025, the WQCD will require temporary authorizations for all projects that require preconstruction notifications.
- By February 2026, the WQCD will start enforcing Regulation 87
  - Projects that will require compensatory mitigation will fall under Regulation 87

# Preconstruction Notice

- The purpose of a preconstruction notice (PCN) is to let the lead permitting agency to evaluate impacts from project activities fall under a certain permit/authorization.
- WQCD plans to use the United States Army Corps of Engineers structure of PCNs.





# Temporary Authorizations

- The goal of the temporary authorizations is to be interim solution until Regulation 87 is official.
- Temporary authorizations will only be good for 2 years.
- Temporary authorizations will be required when “impacts” from project activities would trigger the requirement for compensatory mitigation.

# Unavoidable Impacts to State Waters

- WCQD defines unavoidable impacts as “negative impacts on wetlands and streams that are unavoidable after all reasonable measures have been taken to minimize them.”
- Unavoidable impact thresholds:
  - Wetlands (0.1 acres)
  - Streams (0.03 acres)



# Compensatory Mitigation

- WQCD defines compensatory mitigation as “the required restoration of state waters for the purpose of offsetting unavoidable impacts that remain.”
- The goal of compensatory mitigation is to address and replace all functions of state waters that were impacted by an authorized dredge and fill activity.





# Regulation 87 Goals

- **Program Rules**
  - To be as protective as federal 404 guidelines
  - Adopt procedure, fees, and consultation programs
- **Individuals Authorization Rules**
  - Application requirements
  - Criteria for alternative analyses
  - Other terms and conditions
- **Compensatory Mitigation Rules**
  - Functional assessments and ratios for individual mitigation projects.
  - Acre-based ratios using the watershed approach.

# What is the takeaway?



# What is the takeaway?

- HB 24-1379 and Regulation 87 are designed to bring back protections to state waters that are important for public health, wildlife, and the environment
- The Regulation 87 is still a work in progress and things can change.
  - The WQCD is putting on monthly stakeholder meetings
- As of now, temporary authorizations are required for any project that would require a preconstruction notice and when activities would require compensatory mitigation.



Questions?



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**THANK YOU FOR ATTENDING**

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