

# An Act

SENATE BILL 23-270

BY SENATOR(S) Roberts and Simpson, Bridges, Buckner, Coleman, Cutter, Exum, Fields, Ginal, Hinrichsen, Jaquez Lewis, Kolker, Marchman, Mullica, Pelton B., Priola, Will, Winter F., Zenzinger, Fenberg;  
also REPRESENTATIVE(S) McCormick and Catlin, Amabile, Bacon, Bird, Boesenecker, Bradley, Brown, Daugherty, DeGraaf, deGruy Kennedy, Dickson, Duran, English, Frizell, Gonzales-Gutierrez, Hamrick, Herod, Jodeh, Joseph, Kipp, Lindsay, Lukens, Lynch, Marshall, McLachlan, Michaelson Jenet, Ricks, Sharbini, Story, Taggart, Titone, Valdez, Velasco, Wilson, Young, McCluskie.

CONCERNING ACTIVITIES THAT RESTORE THE ENVIRONMENTAL HEALTH OF  
NATURAL STREAM SYSTEMS WITHOUT ADMINISTRATION.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly finds that:

(a) Functioning natural streams are beneficial to all Coloradans because they provide clean water for farms and cities as well as broad-based public safety and ecological services, including:

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

- (I) Forest and watershed health;
- (II) Wildfire mitigation and recovery;
- (III) Flood safety;
- (IV) Water quality;
- (V) Recreation; and
- (VI) Riparian and aquatic habitats;

(b) Functioning natural streams that are connected to floodplains balance the patterns of sediment erosion and deposition, which protects water infrastructure, including diversion structures, ditches, pumps, pipes, and reservoirs, that are susceptible to damage and adverse impacts from sedimentation, especially sedimentation resulting from fires and floods;

(c) Stream restoration projects are an essential tool for water project developers and wastewater and stormwater dischargers to meet regulatory obligations;

(d) Stream restoration projects address the legacy of water quality and habitat impacts from abandoned mines or catastrophic mine spills that have deprived entire communities of safe drinking water; and

(e) The Colorado water plan sets a vision for thriving watersheds and calls for multi-benefit projects that restore stream health to enhance water supply security for agriculture, communities, tourism, and ecosystem function.

(2) The general assembly therefore declares that, because of the vast amount of benefits that natural streams provide the state's communities and environment, the state should facilitate and encourage the commencement of projects that restore the environmental health of natural stream systems.

**SECTION 2.** In Colorado Revised Statutes, 37-92-602, add (9) as follows:

**37-92-602. Exemptions - presumptions - stream restoration**

**projects - report - legislative declaration - definitions.** (9) (a) THE GENERAL ASSEMBLY HEREBY DECLARES THAT STREAM RESTORATION PROJECTS ARE ESSENTIAL FOR THE PROTECTION OF PUBLIC SAFETY, WELFARE, PROPERTY, AND THE ENVIRONMENT.

(b) AS USED IN THIS SUBSECTION (9), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "MINOR STREAM RESTORATION ACTIVITY" MEANS ANY OR ALL OF THE FOLLOWING ACTIVITIES:

(A) STABILIZING THE BANKS OR SUBSTRATE OF A NATURAL STREAM WITH HARD, BIOENGINEERED, OR NATURAL MATERIALS THAT, UNDER LESS THAN EXTREME FLOW CONDITIONS, ALLOW WATER TO FLOW DOWNSTREAM, DO NOT CAUSE THE WATER LEVEL TO EXCEED THE ORDINARY HIGH WATER MARK, AND MAY INCIDENTALLY INCREASE SURFACE AREA OF THE NATURAL STREAM;

(B) MECHANICAL GRADING OF THE GROUND SURFACE ALONG A NATURAL STREAM SYSTEM IN A MANNER THAT DOES NOT RESULT IN GROUNDWATER EXPOSURE, DIVERSIONS OF SURFACE WATER, OR THE COLLECTION OF STORM WATER;

(C) STABILIZING AN EPHEMERAL OR INTERMITTENT NATURAL STREAM BY INSTALLING DEFORMABLE AND POROUS STRUCTURES INTO THE BANKS AND SUBSTRATE, WHICH MAY INCIDENTALLY AND TEMPORARILY INCREASE SURFACE AREA OR INFILTRATION;

(D) DAYLIGHTING A NATURAL STREAM THAT HAS BEEN PIPED OR BURIED;

(E) REDUCING THE SURFACE AREA OF A NATURAL STREAM TO ADDRESS REDUCTIONS IN HISTORICAL FLOW AMOUNTS; AND

(F) INSTALLING STRUCTURES OR RECONSTRUCTING A CHANNEL IN A NATURAL STREAM SYSTEM FOR THE SOLE PURPOSE OF RECOVERY FROM THE IMPACTS OF A WILDLAND FIRE OR FLOOD EMERGENCY.

(II) "NATURAL STREAM" HAS THE MEANING SET FORTH IN SECTION 37-87-102 (1)(b).

(III) "NATURAL STREAM SYSTEM" MEANS THE EXTENT OF A NATURAL STREAM IN THE STATE AND THE GEOMORPHIC FLOODPLAIN AND ASSOCIATED RIPARIAN AREA.

(IV) "STREAM RESTORATION PROJECT" MEANS A PROJECT THAT IS DESIGNED AND CONSTRUCTED:

(A) WITHIN A NATURAL STREAM SYSTEM; AND

(B) FOR THE PURPOSES OF WILDLAND FIRE MITIGATION; FLOOD MITIGATION; BANK STABILIZATION; WATER QUALITY PROTECTION OR RESTORATION; HABITAT, SPECIES, OR ECOSYSTEM RESTORATION; SOURCE WATER PROTECTION; INFRASTRUCTURE PROTECTION; OR SEDIMENT AND EROSION MANAGEMENT.

(c) IF A STREAM RESTORATION PROJECT IS LIMITED TO ONE OR MORE MINOR STREAM RESTORATION ACTIVITIES:

(I) THE STREAM RESTORATION PROJECT DOES NOT CAUSE MATERIAL INJURY TO ANY VESTED WATER RIGHT; AND

(II) THE STREAM RESTORATION PROJECT IS NOT AN UNNECESSARY DAM OR OTHER OBSTRUCTION.

(d) THE OWNER OR PROPONENT OF A STREAM RESTORATION PROJECT SHALL NOT INSTALL THE STREAM RESTORATION PROJECT IN A MANNER THAT ADVERSELY AFFECTS THE FUNCTION OF STRUCTURES USED TO DIVERT WATER OR MEASURE WATER FLOW BY HOLDERS OF VESTED WATER RIGHTS WITHOUT THE PERMISSION OF THE OWNERS OF THE STRUCTURES.

(e) NOTWITHSTANDING ANY PROVISION IN THIS SUBSECTION (9) TO THE CONTRARY, NOTHING IN THIS SUBSECTION (9):

(I) CREATES A PRESUMPTION OF INJURY FOR ANY ACTIVITY THAT DOES NOT MEET THE DEFINITION OF A MINOR STREAM RESTORATION ACTIVITY PURSUANT TO SUBSECTION (9)(b)(I) OF THIS SECTION;

(II) CREATES A BASIS FOR A WATER RIGHT, CREDIT, OR OTHER RIGHT FOR THE USE OF WATER;

(III) CREATES PRECEDENT FOR THE LITIGATION OF, CREATES A LEGISLATIVE DETERMINATION OF, ALTERS, OR AFFECTS ANY REAL PROPERTY INTERESTS, INCLUDING EXPRESS OR PRESCRIPTIVE FLOWAGE EASEMENTS AFFECTING LAND ALONG A PUBLIC STREAM HELD BY ANY POLITICAL SUBDIVISION OR PERSON;

(IV) PROHIBITS THE STATE ENGINEER FROM TAKING ANY ACTION NECESSARY TO COMPLY WITH AN INTERSTATE COMPACT, INTERSTATE APPORTIONMENT DECREE, OR INTERSTATE AGREEMENT;


(V) ALTERS, AMENDS, OR AFFECTS ANY FEDERAL, STATE, OR LOCAL LAW OR REQUIREMENT THAT OTHERWISE APPLIES TO A STREAM RESTORATION PROJECT; OR


(VI) IMPAIRS OR IN ANY WAY AFFECTS THE ABILITY OF ANY PERSON TO APPROPRIATE WATER FOR PURPOSES RELATED TO A STREAM RESTORATION PROJECT.

(f) A STREAM RESTORATION PROJECT THAT HAS OBTAINED ANY APPLICABLE PERMITS OR IS UNDER CONSTRUCTION OR COMPLETED BY AUGUST 1, 2023, DOES NOT CAUSE MATERIAL INJURY TO ANY VESTED WATER RIGHT AND IS NOT AN UNNECESSARY DAM OR OTHER OBSTRUCTION.

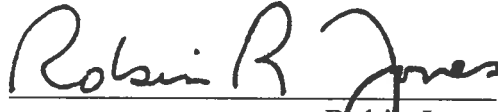
**SECTION 3. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

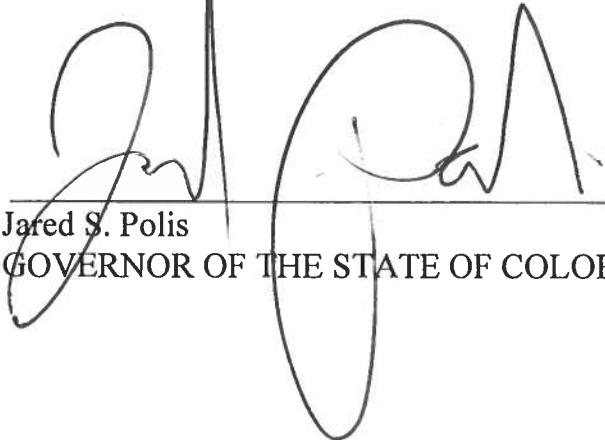
  
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Steve Fenberg  
PRESIDENT OF  
THE SENATE

  
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Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

  
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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

  
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Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED Monday June 5<sup>th</sup> 2023 at 4:25 PM  
(Date and Time)

  
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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO