



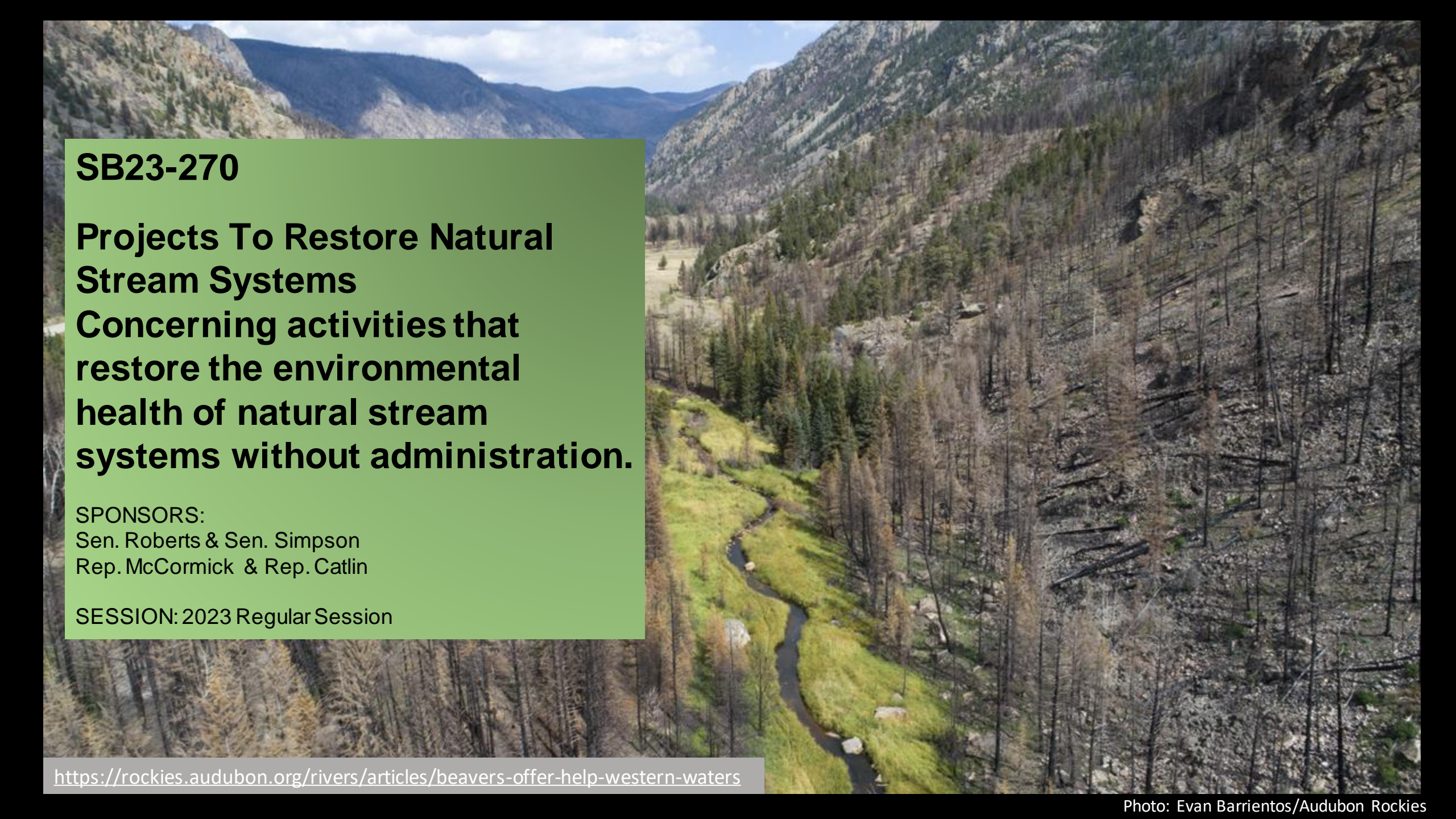
Western Colorado ranch

## SB23-270 Review

# Projects to Restore Natural Stream Systems

Stream Restoration Workshop, June 17, 2024



An aerial photograph of a mountain valley. A river flows through a lush green meadow in the center. To the right, a large area of the forest is charred and blackened, indicating a recent fire. The surrounding mountains are rocky and sparsely forested.

**SB23-270**

**Projects To Restore Natural  
Stream Systems  
Concerning activities that  
restore the environmental  
health of natural stream  
systems without administration.**

SPONSORS:

Sen. Roberts & Sen. Simpson  
Rep. McCormick & Rep. Catlin

SESSION: 2023 Regular Session

# Reach of the SB23-270 Training

## Statewide reach

- From September 2023 to March 2024, over **800** people attended either an in-person or virtual SB23-270 training session.
- Feedback from each session was incorporated.
- Thank you to DNR and DWR for input and partnership.

## Next steps

- Create a training manual based upon the SB23-270 training.
- Take into the field!



Colorado Springs SB23-270 training. Image: Samantha Grant

# Goals of the SB23-270 training

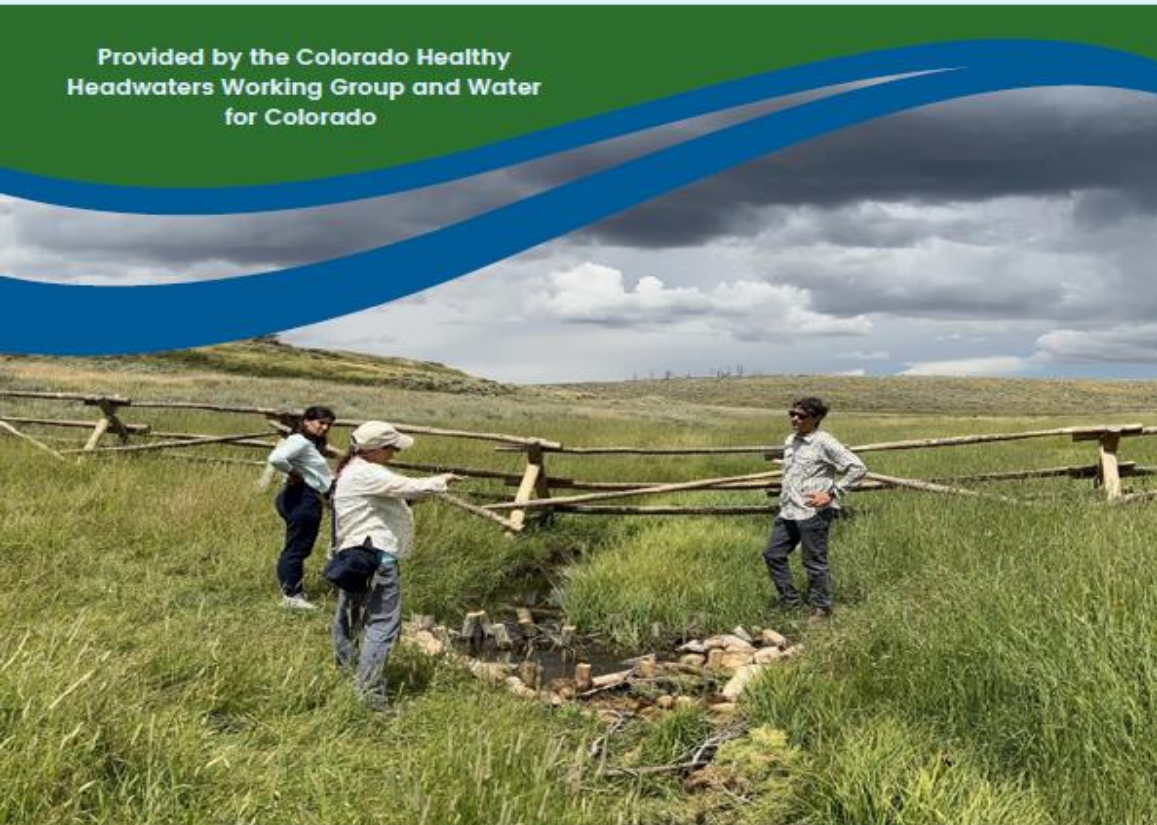
**Our two main goals for the training were to increase understanding and confidence on:**

- 1. Identifying which types of projects/restoration methods can fit within the SB270 Minor Stream Restoration Activities criteria**
- 2. Best management practices for projects that do or do not fit within SB270.**



# TRAINING MANUAL: TRANSLATING SB23-270 PROJECTS TO RESTORE NATURAL STREAM SYSTEMS

Provided by the Colorado Healthy  
Headwaters Working Group and Water  
for Colorado



## Overview: SB270 & Stream Restoration Activities



### What is SB270? Projects to restore Natural Streams Systems

SB270 was passed by the Colorado legislature in 2023 to “facilitate and encourage the commencement of projects that restore the environmental health of natural stream systems.” The bill lays out a number of criteria that stream restoration projects must adhere to in order for the project to NOT be subject to water rights administration. SB270 was a dynamic effort led by DNR bringing multiple sectors of water stakeholders together for this legislative “fix” aimed at providing greater certainty for stream restoration proponents around whether or not a water right might be needed for their project. Although SB270 made its debut in 2023, there had been at least four years of internal agency discussion to find a path forward that allowed for stream restoration while respecting water rights.

### What is the problem SB270 sought to address?

Degraded, incised streams are unfortunately common across Western states. Causes of degradation vary - the most typical causes are listed in Table 1a. Detrimental impacts of incised streams include lower groundwater tables, lower summer base flows, higher sedimentation, reduced water quality, warmer temperatures and loss of riparian and wetland habitat for wildlife and forage for livestock.



SB270 cites the beneficial nature of functioning natural streams for all Coloradans – see Table 1b. The large majority of all stream restoration projects happening in Colorado are voluntary (as opposed to being required for mitigation) and are happening on both private and public lands.

1a. Common Causes of Degraded Streams	1b. Benefits of healthy stream systems listed by SB270
<ul style="list-style-type: none"> <li>• Riparian vegetation removal often caused by unmanaged grazing, heavy ungulate populations, or development</li> <li>• Historic mining</li> <li>• Historic timber harvest</li> <li>• Altered flows, dams</li> <li>• Moved and channelized for transportation infrastructure, agriculture or development</li> <li>• Beaver removal</li> </ul>	<ul style="list-style-type: none"> <li>• Forest &amp; watershed health;</li> <li>• Wildland fire mitigation;</li> <li>• Flood safety;</li> <li>• Water quality;</li> <li>• Recreation; and</li> <li>• Riparian and aquatic habitats.</li> <li>• Also “functioning natural streams that are connected to floodplains balance the patterns of sediment erosion and deposition, which protects water infrastructure . . .”</li> </ul>

## Where does SB270 fit into Colorado Water Statutes? CRS 37-92-602 – Exemptions - presumptions - Legislation Declaration

602 creates EXEMPTIONS to typical water rights administration for the use of water because the legislature has deemed these uses essential and unlikely to cause material injury (but many rules apply to each of these that are set forth in the statute).

✓ Rural residential wells 15gpm or less

✓ Wells used exclusively for fire-fighting purposes

✓ Wells used exclusively for monitoring purposes

✓ Rain barrels—collecting rain from a residence to use for household/yard

✓ Storm water detention/infiltration facilities

✓ Post wildland fire facilities

✓ Minor Stream Restoration Activities

“Exemptions” =  
Criteria to follow,  
which are detailed  
on the following  
pages!



### SB270 Safeguards for water users and compacts

- 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 the holders of vested water rights without the permission of the owners of the structures. CRS 37-92-602(9)(d)
- Nothing in the statute prohibits the state engineer from taking any action necessary to comply with an interstate compact, interstate apportionment decree, or interstate agreement. CRS 37-92-602(9)(e)

### How does SB270 define a “stream restoration project”?

“A project that is designed and constructed within a natural stream system” (see definitions below) AND for 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.” CRS 37-92-602(9)(b)(IV).”

#### Key Definitions:

**Natural Stream**

A place on the surface of the earth where water naturally flows regularly or intermittently with a perceptible current between observable banks, although the location of such banks may vary under different conditions. CRS 37-87-102(1)(b)

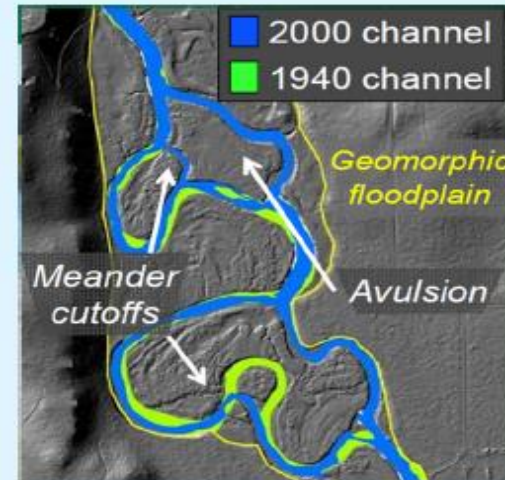
**Natural Stream System**

Natural stream system means the extent of a natural stream in the state and the geomorphic floodplain and associated riparian area. CRS 37-92-602(9)(b)(III).

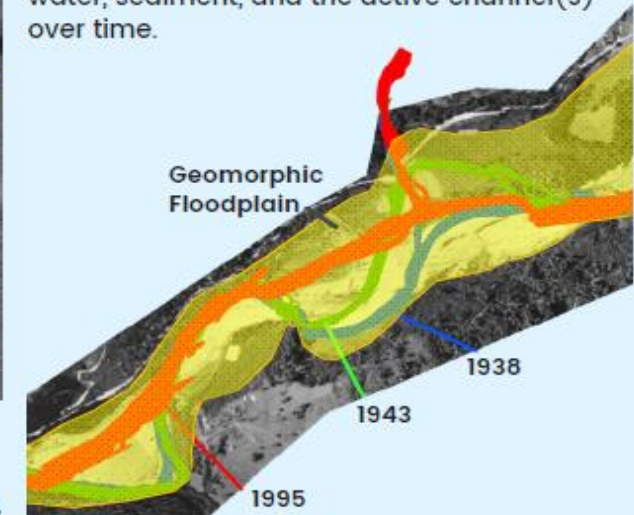
**Geomorphic Floodplain**

Suite of geomorphic surfaces created and shaped by fluvial processes — the land area that the river has moved over and could move into again. Similar to the Fluvial Hazard Zone mapping that “accounts for sediment and debris that moves through a stream corridor while FEMA floodplain maps only account for the water” in a static system.

### Why use the Geomorphic Floodplain as the reference for restoration ?



It provides a broader context for river restoration based upon the movement of water, sediment, and the active channel(s) over time.



Graphics from USGS, NOAA, & The Nature Conservancy PPT:  
[Geomorphic Floodplains and the use of process domains to guide restoration strategy.](#)

The CRITERIA to follow for the SIX MINOR STREAM RESTORATION ACTIVITIES under SB270 that can proceed without being subject to water rights administration

Read the chart from left to right across the rows

	Restoration Method	Type of stream	Criteria	Criteria	Criteria
1	Stabilizing the banks or substrate	of a Natural stream with hard or natural materials (perennial)	that allow water to flow downstream	and do not cause the water level to exceed the Ordinary High Water Mark (OHWM)	and may incidentally increase the surface area of the stream
2	Mechanical grading of the ground surface	along a natural stream system	that does not result in ground water exposure	is not a diversion of surface water	and does not collect storm water
3	Stabilizing banks and substrate	of an ephemeral or intermittent stream	with deformable porous structures	that may incidentally and temporarily	increase surface area or infiltration
4	Daylighting	a Natural stream	that has been piped or buried		
5	Reducing the surface area	of a Natural stream	to address reductions in historical flow amounts		
6	Installing structures or reconstructing a channel	in a natural stream system	for the purpose of recovery	from the impacts of fire or flood emergency	

Note: The boxes highlighted in green (1, 3, & 6) are particularly relevant for low-tech process-based restoration "LTPBR" projects

# Minor Activity 1: Stabilizing the Bank or Substrate (perennial streams)



## How does SB270 define bank or substrate stabilization for perennial streams?

"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." CRS 37-92-602(9)(b)(ii)

This provision can be broken down into 5 elements/criteria that must be followed in order to qualify for the exemption, which means the stream restoration project can proceed without obtaining a water right:

- ✓ Stabilizing the banks or the substrate
- ✓ With hard, bioengineered or natural materials
- ✓ Allow water to flow downstream under < extreme flow conditions
- ✓ The structure does not cause the water level to exceed the OHWM
- ✓ May incidentally increase the natural stream's surface area

Think of this as anything from base flows up to high spring flows

A common description of the OHWM equates it to "the mark left by average peak flow over multiple years."



## What is the Ordinary High Water Mark (OHWM)?

Under Section 404 of the Clean Water Act, the OHWM defines the lateral limits of Federal jurisdiction over non-tidal Waters of the United States (WOTUS) in the absence of adjacent wetlands. It is:

- "That line on the shore established by the fluctuations of water and
- Indicated by physical characteristics such as:
  - A clear, natural line impressed on the bank, shelving
  - Changes in the character of the soil
  - Destruction of the terrestrial vegetation
  - The presence of litter and debris, OR
- Other appropriate means that consider the characteristics of the surrounding areas." USACE National OHWM Field Delineation Manual for Rivers and Streams, Nov. 2022

## Ordinary High Water Mark in Colorado:

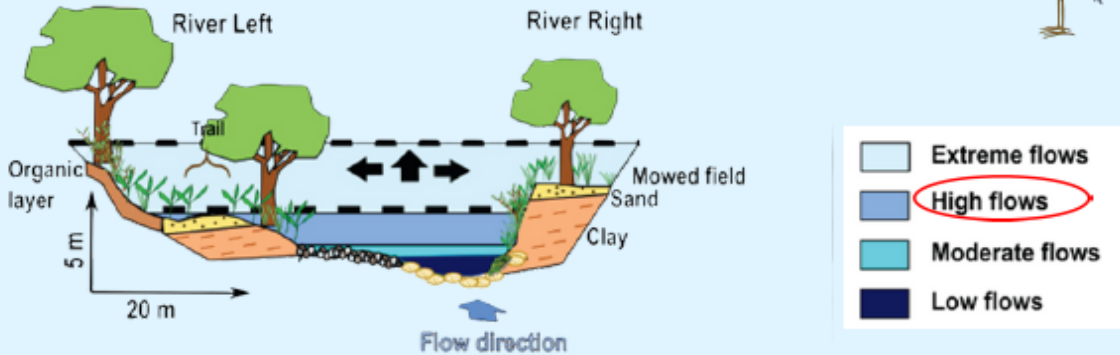
## Mean Annual Flood:

OHW is the visible channel of a natural watercourse within which water flows with sufficient frequency so as to preclude the erection or maintenance of man-made improvements without special provision for protection against flows of water in such channel or the channel defined by the mean annual flood, whichever is greater.  
CRS 37-87-102(1)(e)

Mean Annual Flood is a flood which has a magnitude which is expected to be equaled or exceeded on the average once every 2.33 years and has a 43% chance of being equaled or exceeded during any year.  
CRS 37-87-102(1)(a)

"Despite being used as a regulatory boundary for over a century, the federal definition of OHWM does not refer to a specific frequency of high water." USACE OHWM Manual, 2022

This graphic from the USACE OHWM Manual is helpful to understand the various flows - HIGH FLOWS = OHWM



"In many streams, the boundaries of bankfull channel, active channel, and the location of the OHWM will correspond or closely overlap." USACE OHWM Manual, 2022

## Understanding High Flows: Quotes and graphics from the USACE OHWM Manual, 2022

"Streams are dynamic and diverse systems, so there will be special cases in which high flows are not always contained within the more obvious banks and therefore, the OHWM will be above the active channel."



For instance, stream-wetland complexes as shown in these graphics of on-channel and off-channel beaver complexes.



### Key Takeaways:

- 💧 The OHWM is the mark left by average peak flow over multiple years
- 💧 The OHWM is NOT a static line, it can change over both time and space
- 💧 The USACE definition does not refer to a specific frequency of high water
- 💧 Delineating the OHWM is part of your responsibility when designing a restoration project to qualify as "minor" under SB270 - documenting where it occurs before and after your project is installed.



So, how do the 5 criteria for Minor Stream Restoration Activity 1 translate to the ground for projects?



Utah Restoration Project

Your structures must be porous to allow flows to continue downstream and not force the flows above the OHWM. This example meets those criteria.



Where is the OHWM?  
Try to identify it in this photo! It's not always easy to tell.



PALS near Gunnison, CO



BMS in Utah (Trout Unlimited project)

### Key Definitions for common LTPBR structures:

<b>Post-Assisted Log Structure</b>	A hand-built structure that mimics and promotes the process of wood accumulation. The structure is temporary and built using natural woody materials.
<b>Beaver Mimicry Structure</b>	Known by many different names, such as Beaver Dam Analogue (BDA) and Sediment Retention structure, it is a temporary structure constructed mainly from natural wood, cobble, and twigs designed to promote the process of beaver dam activity by beaver.
<b>Large Woody Debris</b>	A structure meant to replicate the natural process of LWD in streams, which is defined as trees, logs, rootwads, and large tree branches greater than 3 feet in length and 4 inches in diameter that fall into streams, the majority of which enters the stream system from bank erosion, landslides, windthrow, and tree mortality.

## More Examples of LTPBR Projects that would meet the criteria for SB270 Minor Restoration Activity 1.



Photo courtesy of Eagle County Open Space

Bank attached PALS

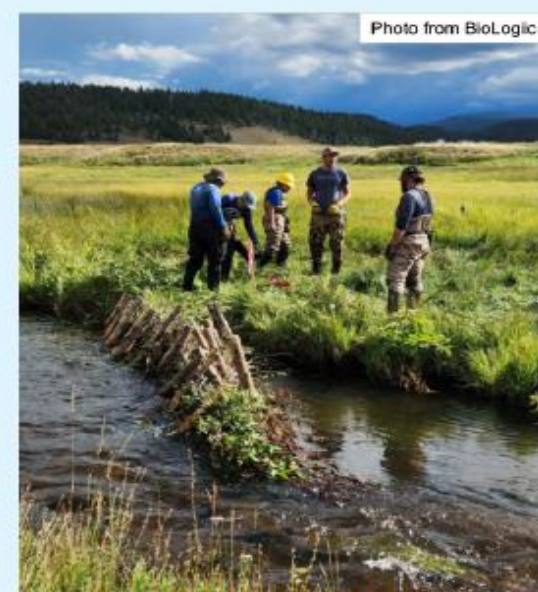


Photo from BioLogic

Bank attached PALS



Anabran Solutions photo

Channel spanning PALS



LWD & PALS example from eastern Oregon – Anabran Solutions project & photo

# Minor Activity 2: Mechanical Grading



## How does SB270 define “mechanical grading”?

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
- the collection of stormwater.

Reminder: This includes the geomorphic floodplain

## Case Study: Larimer County’s River Buffs Restoration Project

This High-tech PBR project involves using mechanical grading for floodplain reconnection & overflow channel creation, including low-flow channel narrowing. Treatments reconnected extensive floodplain areas using large and small wood structures (including in-channel, on banks and gravel bars, and in overflow channels across the newly reconnected floodplain).



### Example Approaches to Mechanical Grading

- Levee setbacks
- Removal of riprap
- Setting former grade of the floodplain
- Traditional high-tech approaches that reset the channel

“The floodplain surface is not flat, being composed of natural levees, levee back-slopes, splay deposits, abandoned channels, ridge and swale topography, back swamps, and open-water bodies.” Rediscovering, Reevaluating, and Restoring Lost River-Wetland Corridors, Wohl et al., Frontiers in Earth Science, 2021.



# Minor Activity 3: Stabilizing the Bank or Substrate (Ephemeral & intermittent streams)



## How does SB270 define “stabilizing”?

Stabilizing an ephemeral stream 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.

**NOTE: This provision was drafted with particular restoration work in mind that has been done in ephemeral streams over the past decade with great success in stopping erosional headcuts in Western Colorado rangeland ephemeral streams. As shown in the photos, the structures are built with rocks to reduce the erosional force of seasonal flow events - they are called Zeedyk Rock Structures.**

## The Channel Incision Problem

Sage-grass mesic areas are essential to wildlife and livestock alike. They will be lost if we aren't able to stop erosional headcuts (often caused by roads, livestock trails, or other disturbances), which move up the valley and through the wetland, causing irrevocable damage.

### Zeedyk Rock Structure

Low profile, hand-built treatments made of rocks intended to restore hydrologic and ecological function of wet meadows and small, degraded streams.

## The Channel Incision Solution



Project photos from Shawn Conner, BioLogic

Examples of Zeedyk rock work in ephemeral streams – stabilizing the erosional headcuts to keep it from destroying the critical meadow habitat

# Minor Activity 4: Daylighting a Natural Stream



## How does SB270 define “daylighting”?

Daylighting a natural stream that has been piped or buried.

## Daylighting and Reconfiguration

Throughout Colorado and the West, rivers have been buried under concrete and asphalt where cities developed – this gives us the opportunity to take the river out of the pipe and “daylight” it again. Furthermore, historic mining tailings have buried streams in more remote areas, where excavating these natural systems is important for restoring floodplains and healthy, natural systems.



### Case Study: Swan Creek Restoration Site, Summit County

At Swan Creek in Summit County, the stream had been buried by residual gravel piles left from historic dredge mining totally destroying the riparian corridor and natural stream functions. Through a collaboration, the stream was “daylighted” by first removing the mine tailings and then reconstructing meander bends and riffle, run, pool, glide series. Governor Polis signed SB270 into law here in 2023!

Gov Polis, surrounded by DNR staff and bill sponsors signs SB270 into law!

# Minor Activity 6: Recovery from Wildland Fire & Flood Emergency



## How does SB270 define fire & flood recovery?

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.

### Things to note:

- Opens up opportunities to do LTPBR work post fire and flooding
- There are no OHWM constraints or constraints around incidental increase in surface area
- There is no statutory definition of emergency, but numerous examples in Colorado show substantial impacts to water supplies and fish and other aquatic life from wildfires in the first 1-5 years. The circumstances of the emergency will inform the response and timeline.

## Case Study: Coalition for the Poudre River

The Coalition’s Fire Recovery work with many partners in the Cameron Peak burn area is aimed at improving water quality and riparian health and reducing flood risk. Structures installed like in the photo will help capture sediment, reduce the force of high velocity runoff from monsoons and snowmelt, and further reduce erosion and downcutting as well as improve water quality.

### Methods Aimed at Reducing Erosion / Post-Fire

- Creating Log Jams
- Felling trees into streams and floodplain
- Zeedyk rock structures
- Willow/riparian vegetation staking
- PALS



All these methods can fit within the SB270 Minor Stream Restoration Activities!



What about pre-fire work?

See next page

Go to Criteria 1 & Criteria 3

## What about pre-fire work to improve fire resilience?

An ounce of prevention is worth a pound of cure!

- Wildfire Ready Watersheds Program: CWCB program that “assists communities in planning and implementing mitigation strategies to minimize these [fire] impacts” before the wildfire comes.
- Grants are available to help prepare and implement Wildfire Ready Watershed Action Plans

See <https://www.wildfirereadywatersheds.com/> for more information

## What about improving Drought Resilience?

Two recent studies have concluded that beaver have the potential to increase summer water availability in rain dominated basins.



Dryparian: Channelized, rapid runoff

Riparian: Natural storage, slow seep

In summary, if you are working to restore stream corridors BEFORE a fire or flood emergency happens, then you'll need to meet the criteria of Minor Stream Restoration Activities 1 or 3 as explained on the previous pages.



# Department of Water Resources (DWR) Review of Projects



- ➔ State law does NOT require stream restoration projects to be reviewed by DWR
- ➔ SB270 did NOT change that – it did NOT create a new review or permit requirement

## How do you go forward?

Project practitioners can decide if they want DWR review before commencing a project. DWR staff have stated they would appreciate being contacted early in the process so they can give input and help identify any issues.

### Suggestions from DWR for Successful Collaboration

- Project proponents are encouraged to have informal discussions with local DWR staff about project concepts early.
- Written project proposals submitted to DWR will typically be provided with a written response that constitutes neither approval nor denial of the project; it simply expresses any concerns that DWR has (or doesn't have).

Project elements that are unlikely to trigger DWR's statutory administrative authority include the following: Those that meet the definition of a minor stream restoration activity



Visit DWR's website to review general information

# Suggested Best Management Practices for Stream Restoration Projects



## Safeguards & Sideboards

You do not want to be doing your project in a way or location that would adversely affect the function or structure used to divert water or measure water flows by holders of vested water rights. Nothing in the statute prohibits the state engineer from taking any action necessary to comply with an interstate compact, interstate apportionment decree, or interstate agreement, or to order the discontinuance of an unpermitted diversion, storage, or obstructions that impede the flow to water users.

## Your Best Management Practices Checklist

- ✓ **Early Conversation:**  
Discuss with your partners the project goals, and how they can or cannot be met within one of the SB270 Minor Stream Restoration Activities.
- ✓ **Choose the appropriate Minor Stream Restoration Activity**  
Select this based on where you're working (pre or post fire, perennial, intermittent, ephemeral stream).
- ✓ **Document prior to project commencement:**
  - Baseline conditions of the stream system type, photo points of stream corridor during high and low flows if possible, OHWM; document flows if a stream gage or other measuring device is available.
  - Best estimate of how proposed restoration methods and project design will conform to SB270 criteria.
- ✓ **Consider consulting with DWR**  
While not required by statute, it's good practice to have DWR review your project for the SB270 criteria before project installation.
- ✓ **Document project results after installation:**  
Especially where and how results relate to SB270



### What if my project doesn't qualify as a "minor restoration activity" under SB270?

This would most likely happen if:

- The project goes beyond the OHWM in a perennial stream soon after the installation of the project.
- Project will cause more than an incidental increase in surface area (this is not defined in statute).

How to address it:

- Can you still design the project to not cause material injury to water rights?
- Consider requesting DWR review prior to installation
- Utilize best management practices to help reduce risk of harm - see next page.

Remember: The law states there is NO "presumption of injury for any activity that does not meet the definition of a minor stream restoration activity."

CRS 37-92-602(9)(e)

## Project Planning Considerations to Reduce Water Rights Concerns

### Historical Footprint of the natural stream system:

- Design your project to restore what was historically present (riparian/wetland vegetation, connection to floodplain etc.) before the degradation occurred, and not beyond that. See box below.

### Choose these factors with care:

- **Location:** Look for places that minimize risk of conflicts with water rights & flooding from beavers – e.g. upper watersheds above reservoirs/diversions, partnering with Sr. water right landowners.
- **UTPBR method/design:** beaver mimicry-type structures should mimic naturally occurring Beaver dams that are porous, temporary/deformable, and made of natural materials that allow base flow and fish passage through, under, and around.
- **Timing of installation:** Be careful during low-flow summer months – you don't want your project to reduce flows downstream of your project for any significant time (1 day can be significant).

### Engagement, transparency, and many partners:

Who would potentially be concerned? Include them or at least address their concerns; project planning that proactively includes water users & other watershed stakeholders who may be concerned has many benefits.

### Post project considerations:

Adaptive Mgt	Monitoring Changes
<ul style="list-style-type: none"> <li>• What worked?</li> <li>• What did not?</li> <li>• Where are opportunities to apply lessons learned?</li> </ul>	<ul style="list-style-type: none"> <li>• Hydrology/flow/surface area</li> <li>• Vegetation condition</li> <li>• Sediment capture</li> <li>• Plant &amp; animal species diversity</li> </ul>

Be prepared to work with landowners to address beaver coexistence or other post project aspects if needed!



## BDA Design Considerations



✗ Aggressive BDA Design



✓ Low profile, porous design

### Here are some helpful tips for identifying historical footprint:

- Aerial photos if available prior to disturbance (post-1930s)
- Colorado Natural Heritage Program's Historical Wetland Areas mapping tool
- Reference reaches of similar streams, valleys, and wetlands
- Geological testing – soil profiles, geomorphic analysis

# What were some of the main questions we got during the SB270 training sessions?

- Did anything in SB270 change how 404 permits are determined? No
- Did anything in SB270 require restoration projects to be reviewed by DWR? No
- Does anything in SB270 apply to natural beaver dams? No
- Lots of questions about the OHWM – how to delineate it, does it change over time (yes), definition in Colorado vs USACE
- What does “minor” mean in the context of “Minor Stream Restoration Activity” – does it have anything to do with the length or acres involved in a project? No, it is all about the staying within the criteria that makes a project “minor”

**What is OHWM?** Under Section 404 of the Clean Water Act, the OHWM defines the lateral limits of Federal jurisdiction over non-tidal Waters of the US (WOTUS), in the absence of adjacent wetlands.

- “that **line on the shore established by the fluctuations of water** and
- indicated by **physical characteristics** such as:
  - [a] clear, natural line impressed on the bank, shelving,
  - changes in the character of soil,
  - destruction of terrestrial **vegetation**,
  - the presence of litter and debris, or
- other appropriate means that consider the characteristics of the surrounding areas.”

A common description of the OHWM equates it to “the mark left by **average peak flow over multiple years.**”

ERDC/CRREL TR-22-26

Cold Regions Research  
and Engineering Laboratory



US Army Corps  
of Engineers®  
Engineer Research and  
Development Center



Wetlands Regulatory Assistance Program (WRAP)

## National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams

Interim Version

Gabrielle C. L. David, Ken M. Fritz, Tracie-Lynn Nadeau, Brian  
J. Topping, Aaron O. Allen, Patrick H. Trier, Steven L.  
Kichefski, L. Allan James, Ellen Wohl, and Daniel Hamill

November 2022



Approved for public release; distribution is unlimited.

# Our Suggestions for Best Management Practices **under** SB270



- **Early Conversation** - discuss with your partners the project goals – how they can or cannot be met within SB270
  - **Choose the appropriate Minor Stream Restoration Activity** based on where you're working (pre or post fire, perennial, intermittent, ephemeral stream)
- **Document *prior* to project commencement:**
  - Baseline conditions – stream system type, photo points of stream corridor during high and low flows if possible, OHWM, flows if stream gage or other measuring device is available
  - Best estimate of how proposed restoration methods and project design will conform to SB270 criteria
- **Consider consulting with DWR to review your** proposed project for the SB270 criteria ***before*** project installation
- **Document project results after installation** related to the SB270 criteria

# BMPs if project **does NOT fit** under SB270



- Most likely scenario of being outside of SB270:
  - **going beyond the OHWM** in a perennial stream soon after installation of the project
  - Project will cause more than an “incidental” increase in surface area
- Analysis becomes can you still design the project to not cause material injury to water rights? Remember law states there is ***no presumption of harm*** if project doesn't fit within SB270, but you must take care to not cause actual harm.
- Consider requesting **DWR review** prior to project installation
- **See BMPs** on next slide to help reduce risk of any harm.



# Temporary WQCD WOTUS Policy – issued July 2023 in response to the SCOTUS Sackett decision and is still in effect until new rules adopted

1) **Restoration projects that obtain a 404 permit** - the new state policy **won't change anything** for restoration projects that obtain a USACE NW27 (or similar general permit) because Section 1.0 states:

- *"Discharges of dredged or fill material that **proceed in accordance with the terms of valid 404 permits** (including nationwide and general permits that do not require pre-construction notifications) **will be recognized as being in compliance with the WQCA** and not be targeted for enforcement and do not need to take additional steps under this policy."*
- LTPBR projects located in intermittent and perennial streams have been applying for **NW27** permits.

2) **Restoration projects that don't obtain a 404 permit because it's not required under the CWA** (i.e. not WOTUS even before Sackett) - for projects in ephemeral drainages in rangelands that did not fall within WOTUS, again, **it appears nothing will change:**

- *"Section 5 of this policy also explains that the division does not intend to take enforcement action for unpermitted discharges of dredged or fill material into state waters resulting from activities that have historically been exempted by federal law or **for discharges to water features excluded from the pre-2015 definition of WOTUS.**"*
- Rangeland Zeedyk work in ephemeral drainages would fit in this category of not needing a permit.

WATER QUALITY CONTROL DIVISION  IMPLEMENTATION POLICY  COLORADO DEPARTMENT OF PUBLIC HEALTH AND THE ENVIRONMENT	Implementation Policy Number: CW-17
	Statutory or Regulatory Citations: Colorado Water Quality Control Act Federal Clean Water Act 5 CCR 1002-31
	Key Words: dredge and fill, compliance, enforcement, Colorado Discharge Permit System, 404 permits.
ENFORCEMENT OF UNPERMITTED DISCHARGES OF DREDGED AND FILL MATERIAL INTO STATE WATERS	Approved by: <b>Nathan T. Moore</b> Nathan Moore, Clean Water Program Manager
	Approval date: July 6, 2023

## TABLE OF CONTENTS

BACKGROUND.....	2
PURPOSE.....	3
AUTHORITY.....	3
DEFINITIONS.....	3
APPLICABILITY.....	6
POLICY.....	7
SECTION 1 - DISCHARGES AUTHORIZED BY FEDERAL 404 PERMITS CONTINUE TO BE PERMISSIBLE UNDER WQCA.....	8
SECTION 2 - NOTIFICATION TO THE DIVISION FOR UNPERMITTED DISCHARGES.....	8
SECTION 3 - SCOPE OF UNPERMITTED DISCHARGES INTO SACKETT GAP WATERS ELIGIBLE FOR ENFORCEMENT DISCRETION UNDER THIS POLICY.....	9
SECTION 4 - PROJECTS SHOULD COMPLY WITH PROTECTIVE CONDITIONS FROM FEDERAL NATIONWIDE AND GENERAL PERMITS.....	9
4.1 PROTECTIVE CONDITIONS.....	10
4.2 ADDITIONAL OVERSIGHT CONSIDERATIONS.....	10
SECTION 5 - CONTINUED RECOGNITION OF FEDERAL SECTION 404 EXEMPTIONS AND EXCLUSIONS.....	11
5.1 EXEMPTIONS.....	11
5.2 EXCLUSIONS.....	12
SECTION 6 - CONTINUED ENFORCEMENT DISCRETION FOR PROJECTS IN STATE WATERS THAT WERE NEVER SUBJECT TO FEDERAL 404 PERMITTING.....	12
SECTION 7 - ADDITIONAL LIMITATIONS OF THIS POLICY.....	13

# HB1379 – New State Stream/Wetlands 404 Program

- HHWG Policy Committee members and Protect Colorado Waters Coalition worked heavily on this bill to make it the best it could be for a new CO streams/wetlands dredge & fill permit program.
- **Top 4 coalition “asks” made it into the final bill:**
  - ❑ New program applies to “Waters of the State,” which is much broader than federal WOTUS
  - ❑ The permitting program *focuses on avoidance first and foremost, then minimization, and then compensatory mitigation* of unavoidable adverse impacts to waters of the state
  - ❑ 404 federal guidelines are the floor, not the ceiling for any state rules
  - ❑ No new Commission was formed – WQCC will draft the new rules and issue individual permits
- **How does it apply to:**
- [Ephemeral streams](#) – the WQCC must promulgate rules that include: AN EXEMPTION FOR VOLUNTARY STREAM RESTORATION EFFORTS IN EPHEMERAL STREAMS THAT DO NOT REQUIRE COMPENSATORY MITIGATION AND ARE DESIGNED SOLELY TO PROVIDE ECOLOGICAL LIFT WHERE THE ACTIVITY IS TAKING PLACE.
- [Perennial and intermittent](#) – If your project requires a NW27 or other USACE 404 permit, then you will not need a separate permit from WQCD.
- Rulemaking by the WQCC will begin September 2024 and the **adoption deadline is Dec 31, 2025**