Implications for state programs in light of County of Maui, the Navigable Waters Protection Rule and Section 401 revisions

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Navigable Waters Protection Rule

How many streams are intermittent or ephemeral in Colorado?

- USGS flowlines (while underestimates*) are the best option for broad scale estimates.
- The USGS National Hydrography Dataset ("NHD") estimates that 44% of Colorado’s streams are intermittent and 24% are ephemeral, meaning that at least 68% of Colorado's waters are temporary in nature.
- *"USGS flowlines underestimate stream channel length by 64.6%.” Heine, R.A., C.L. Lant, and R.R. Sengupta 2004"

Figure 1. Intermittent streams in Colorado based on USGS National Hydrography Dataset. Note, this map does not include ephemeral drainages.
Section 401

- Scope of project
- Reasonable period of time
Section 401

Colorado Water Supply Projects

- Transbasin diversions
- Geographic scale of potential impact on water quality
County of Maui

- Supreme Court ruling consistent with past practice in Colorado
- EPA Guidance?