151.611 Stream Restoration and Mitigation Authorities -- Powers -- Limitation on authority -- Legislative preferences on funding uses.

(1) A Stream Restoration and Mitigation Authority may be established for any HUC 10 watershed in the Commonwealth. Each authority formed under this section shall be a public body corporate and politic with the authority to:

(a) Sue and be sued;

(b) Enter into contracts with public and private individuals and corporations and engage in cooperative agreements with federal, state, and local governments or agencies, utilities, special districts, and nonprofit organizations for the performance of its duties and functions under KRS 151.610 to 151.615;

(c) Employ personnel as needed, as its fiscal resources may allow, and use the services of volunteers individually or through agreement with governmental agencies, nonprofit organizations, or foundations;

(d) Receive and expend funds from any source, including but not limited to private donations, charitable contributions, public grants, 404 In-lieu Fee Program, and appropriations from the General Assembly; and

(e) Acquire, sell, and hold real interests in property.

(2) Nothing in KRS 151.610 to 151.615 shall be construed to empower or authorize an authority established under KRS 151.610 to 151.615 to exercise regulatory powers with respect to water resources or water quality. An authority established under KRS 151.610 to 151.615 shall not be vested with the power of eminent domain.

(3) It is the preference of the General Assembly that funds contributed by a permittee under a Section 404 Permit into an in-lieu fund for a project designed for stream restoration and mitigation be utilized within the watershed where the adverse effects occur. The General Assembly recognizes that conservation and protection of the water resources of the Commonwealth, including streams, rivers, wetlands, and riparian habitats, may involve, in addition to restoration and enhancement of aquatic and riparian habitat, proper management of wastewater and stormwater, and abatement of pre-existing sources of pollution. Where an authority has been qualified by the USACE to manage an in-lieu fee or other compensatory mitigation arrangement that is approved after July 15, 2008, under Section 404, and to the extent that the USACE and the Mitigation Review Team has approved the use of such funds for elimination of pre-existing sources of pollution, the authority may expend a portion of the funds for those purposes, provided that the:

(a) Funds spent on water quality improvements are a component of a stream or wetland restoration plan for replacement of aquatic resource functions and values; and

(b) Project has been reviewed and approved by the USACE and the Division of Water as being consistent with Sections 404 and 401 of the Clean Water Act.

(4) Nothing in KRS 151.610 to 151.615 shall preclude the authority, when acting as an approved qualified organization managing an in-lieu fee arrangement approved after July 15, 2008, from combining funding from other sources with in-lieu fees in order to achieve efficiencies in stream restoration or mitigation.

Effective: July 15, 2008

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