

Regulations

FEDERAL:

- Clean Water Act Section 404 [33 USC 1344] regulates:
 - ✓ mechanized land clearing;
 - ✓ earth-moving activities in wetlands (including recontouring);
 - ✓ any activity that converts a wetland into a non-wetland or affects flow, circulation, or reach of waters (including ditching);
 - ✓ any activity that converts wetland to a new use; and
 - ✓ road construction.

At a minimum, all wetlands must have uses designated that meet the goals of Section 101(a)(2) of the Clean Water Act by providing for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water, unless the results of a use-attainability analysis show that these goals cannot be achieved (EPA 1990).

- Conservation and Trade Act (1990)
- Department of the Army, Section 404 Permit Regulations [33 CFR Parts 320-330] Policies for evaluating permit applications to discharge dredged or fill material
The District Office of the U.S. Army Corps of Engineers has the authority to determine which lands are subject to wetlands regulations (see *Memorandum to the Field: Federal Guidance for the Establishment, Use and Operation of Mitigation Banks*, 20 November 1995, available through the Colorado Division of Wildlife, Division of Habitat Conservation).
- Emergency Wetlands Resources Act of 1986 [16 USC 3931 (a)]
- Endangered Species Act
- EPA Section 404(b)(1) Guidelines [40 CFR Part 230] Guidelines for Specification of Disposal Sites for Dredged or Fill Material
- EPA and Department of the Army MOA Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines [6 February 1990]
- Federal Interagency Delineation Manual
- Fish and Wildlife Coordination Act [16 USC 661 *et seq.*]

(continued)

- Fish and Wildlife Service Mitigation Policy [46 FR p. 7644-7663, 1981]
- Federal Power Act
- Federal Reserved Rights
- Federal Land Policy and Management Act
- Food Security Act of 1985 as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 [16 USC 3801 *et seq.*]: Swampbuster Provision
- Migratory Bird Treaty Act
- Multiple Use/Sustained Yield Act
- National Environmental Policy Act [42 CFR 4321 *et seq.*] including the council on Environmental Quality's Implementing Regulations [40 CFR Parts 1500-1508]
- North American Wetlands Conservation Act
- Presidential Executive Order 11990
- Rivers and Harbors Act of 1899 Section 10 [33 USC 403 *et seq.*]
- Water Quality Standards Regulation [40 CFR 131.10(a)]
- Wild and Scenic Rivers Act

STATE:

- Conservation Easements
- Greenways
- Instream Flow Programs
- Public Trust Doctrine (Lamb and Lord 1992)
- Wetlands and Shoreline Protection Programs Scenic Rivers Programs
- Zoning
- All states require a water-quality certification stating that a proposed project will not violate the water-quality standards of that state (contact the Regulatory Functions Branch of the U.S. Army Corps of Engineers).

- Colorado Water Quality Control Act (CRS 1973 25-8-101 *et seq.*, as amended):
 - ⊙ Only wetlands that have surface water, standing or flowing, are subject to the Colorado Water Quality Standards.
 - ⊙ Storm waters may not be channeled to wetlands (Colorado Water Quality Standards 2/11/93)
 - ⊙ Water quality standards are set to protect organisms living in wetlands, not wetlands per se.
 - ⊙ Aquatic-life (not drinking-water) standards apply to tributary wetlands.
 - ⊙ Constructed wetland are not considered “wetlands.” They are subject to discharge parameters.
- Colorado State Water Quality Standards 3.1.1[1][b]:
 Basic standards applicable to surface waters of Colorado:
 ...shall be free of substances attributable to human-caused discharge (point source or non-point source)
 in amounts, concentrations, or combinations which... for wetlands
 - produce color, odor, or other conditions in such a degree as to create a nuisance or impart any undesirable taste to significant edible aquatic species; or
 - are toxic to humans, animals, plants, or other aquatic life; or
 - are harmful to the water-quality-dependent functions of the wetlands.
 - ⊙ “Colorado’s statute authorizes protection of water necessary to ‘preserve the natural environment to a reasonable degree.’ In Colorado, despite this broad language, the program has been restricted almost entirely to the preservation of cold water fisheries” (MacDonnell 1993).
- Colorado State Water Quality Standards 3.1.24 A3:
 - ⊙ The Commission has decided not to adopt biological criteria as water quality standards for wetlands at this time. Very little is known at present about the structure and function of aquatic communities within wetlands. Concerns that have been raised regarding the lack of standardized, field-tested biological evaluation techniques are much more significant with respect to wetlands than to other surface waters.
- Colorado State Water Quality Standards 3.1.7[b][iv][c]:
 - ⊙ Wetlands water-quality standards shall not be interpreted or applied in a manner that restricts the lawful exercise of water right.
- Colorado Department of Wildlife/Colorado Department of Transportation Memorandum of Understanding
- Water Quality Standards Regulation 40 CFR 131.10(a):
 - ⊙ In no case shall a state adopt waste transport or waste assimilation as a designated use of any “waters of the United States.”

SUGGESTED READING:

- Garbisch, E.W. 1989. Information needs in the planning process for wetland creation and restoration. *Wetland Creation and Restoration: The Status of the Science*, Vol. II. U.S. Environmental Protection Agency, Environmental Research Laboratory, Corvallis, OR. p. 9-13.
- MacDonnell, Larry. 1993. Law and policy relevant to wetland and riparian ecosystems. *Balancing Western Water Use—Western Water Law and Policy: Implications for Wetland and Riparian Ecosystems*. Symposium Proceedings, Lakewood, CO. Society of Wetland Scientists, Rocky Mountain Chapter. p. 37-42.
- U.S. Department of Agriculture. 1994. National Food Security Act Manual (NFSAM), Third Edition. Part 513 Preparing for Wetland Determinations. Natural Resource (Soil) Conservation Service, Conservation Planning Division.
- U.S. Army Corps of Engineers. 1993. Obtain a permit. *Streambank Protection Guidelines for Landowners and Local Governments*. U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS. 60 p.
- . Permit Program: A Guide for Applicants, EP 1145-2-1, Washington, DC.