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RESEARCH GUIDE


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* This Research Guide was developed and written, primarily, with law students in mind. However, the Guide does provide useful information for the practicing attorney and/or policymaker. Part I provides the user with general information and should be reviewed by all parties utilizing this Guide. In Part II, there are several sections which address research guidance and it is meant for the individual learning to research the specific legal topic of wetlands. Parts II, III, and IV identify for the user specific wetland material and resources. These sections are a valuable research tool for both the novice and the advanced researcher.

The purpose of this Research Guide is to impart useful information to its user, but the author hopes it also indicates the importance and impact that wetlands have on our laws, national policy, and most importantly our natural environment.

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I. Introduction

Today's perception of a wetland stands in sharp contrast to the view prevalent in the 1800's. No longer thought of as a wasteland, devoid of economic value except when reclaimed for another use, today's wetland is justifiably protected for its ecological services as well as its intrinsic qualities.

To protect and preserve our remaining natural wetlands, both the government and the private sector have taken an active role. The result is a complex system of laws and agency regulations, plus strong private lobbying and oversight organizations, all of which generate extensive information annually.

1.
Wetlands are areas of great natural productivity, hydrological utility, and environmental diversity, providing natural flood control, improved water quality, recharge of aquifers, and habitat for fish and wildlife resources. Wetlands contribute to the productivity of agricultural products and timber and provide recreational, scientific and aesthetic resources of national interest. The piecemeal alteration and destruction of wetlands through draining, dredging, filling and other means has had an adverse cumulative impact on our natural resources and on the quality of human life.

President Carter, 1977.


Wet lands and saturated soils are not only unremunerative, but if the area is considerable, they prove a source of enervation and disease to the section in which they exist. Although individuals may neglect swamp lands, or find their reclamation and drainage too expensive, the State cannot afford to be indifferent to their continuance, because they check production, limit population and reduce the standard vigor and health. Their value, too, when re-claimed, in an economic view will be greatly enhanced.

President of the American Public Health Association, 1876.

3. OTA Report, supra note 2, at 37. Ecological services include floodpeak reduction, groundwater recharge, water quality improvement, food and habitat, food-chain support, and shoreline stabilization. The dollar value of the ecological services that wetlands provide can sometimes be quantified. Id. Intrinsic qualities of wetlands are for the most part intangible. These qualities rise out of the desire of some people to preserve natural areas for future generations, while others value the fauna and flora found in wetlands and the opportunities for hunting, fishing, boating and other recreational activities. Id.
The purpose of this Research Guide is to simplify the researcher's task when tackling the subject of wetlands. It is designed to provide the user with relevant information sources concerning federal wetland law, corresponding national policy and agency involvement, and insight into the scope of the private sector's involvement.

The Research Guide is set out in a bifurcated format. First, since the topic is in constant flux and information must be continually updated, this Guide will instruct the individual on how to utilize the appropriate available research sources. Second, this Research Guide will identify specific information currently available to the user. Thus, each section in this article will appear in the general format consisting of: (1) a review of the needed reference tools for the particular section and (2) the specific resources available.

This Research Guide is devoted exclusively to federal law and national interests. No endeavor has been made to compile the states' efforts with regard to this important natural resource, though many states have taken action, legislatively and otherwise to protect and regulate their wetlands. This Research Guide attempts to exhaust all possible research sources available on wetlands. However, because the subject matter is vast, the user of this Guide should not consider it complete, but regard it as a substantial base from which one can proceed in researching the topic.

II. Federal Law and Directives

A. Treaties

1. Research Guidance

An international treaty is generally viewed as a "compact between two or more independent nations with a view to the public welfare." When analyzing a "treaty" in the context of U.S. domestic law, the instrument has a special meaning. "It describes an international agreement that, unlike other agree-

4. Black's Law Dictionary 780 (abr. 5th ed. 1983). See also B. Altman & Co. v. United States, 224 U.S. 583, 600 (1912) (a treaty signifies "a compact made between two or more independent nations with a view to the public welfare").
ments the U.S. might conclude, requires the advice and consent of the Senate before the U.S. may become a party to it. Thus, when a treaty has received the concurrence of the Senate and is signed by the President it becomes the "Law of the Land." There are several reference sources available, both governmental and private, which provide the researcher with information about international treaties. The United States government, through the Department of State, issues two publications, United States Treaties and Other International Agreements and Treaties in Force. The text of the treaties are easily accessible through the United States Treaties and Other International Agreements series. "The treaties and agreements in each volume of the United States Treaties and Other International Agreements are arranged in numerical order of their publication by the Department of State in pamphlet form." After several documents (pamphlets) have accumulated, the information is permanently bound. More than one volume may be issued in a particular year. The series also has a cumulative index. The

6. A treaty is considered the law of the land under the supremacy clause of the Constitution. United States v. Belmont, 301 U.S. 324, 331 (1937). The relevant portion of the Constitution states:
   This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Law of any State to the Contrary notwithstanding.
   U.S. Const. art. V, cl. 2 (emphasis added).
   "In United States law, treaties explicitly provided for in the Constitution, may have status and consequences different from those of other international agreements concluded by the United States." L. Henkin, R. Pugh, O. Schachter & H. Smit, International Law - Cases and Materials 138 (1980). For a discussion of Executive Agreements see id. at 149-56.
7. See, e.g., Treaty Affairs Staff, Office of Legal Advisor, U.S. Dep't of State, United States Treaties and Other International Agreements (1984) [hereinafter United States Treaties].
8. See, e.g., Treaty Affairs Staff, Office of Legal Advisor, U.S. Dep't of State, Treaties in Force (1987) [hereinafter Treaties in Force].
10. Id.
UTS Cumulative Index consists of four sections: (1) numerical list of documents; (2) chronological index; (3) country index; and (4) subject index. The Index is updated by supplements which are currently in looseleaf form.

The other governmental reference source, Treaties in Force, is published annually by the Department of State for the purpose of providing information on treaties and other international agreements. It includes those agreements to which the United States has become a party, and which are carried on the records of the Department of State as being in force as of January 1 of each year. The publication's format consists of two parts and includes an appendix. Part one pertains to "bilateral treaties and other international agreements listed by country or other international entity with subject heading under each entry." The second part sets forth "multilateral treaties and other international agreements [to] which the United States is a party, arranged by subject with a listing of the parties to that agreement." The appendix to the publication furnishes the user with a consolidated tabulation of documents affecting international copyright relations of the United States.

Specific reference to the topic of wetlands in the 1987 issue of Treaties in Force is found in part two — Multilateral Treaties and Other Agreements. The term wetlands appears, however, the user is cross-referenced to the subject heading, Conservation. From this point the user is directed to specific treaty information pertaining to wetlands.

The private sector provides the researcher with alternative resources. A Guide to the United States Treaties in Force is a comprehensive guide to treaties. This two-part

11. Id. at II. The UST Cumulative Index was first published in 1973 by a private concern, the William S. Hein Company.
12. Treaties in Force, supra note 8, at iii.
13. Id.
14. Id.
15. Id.
Guide furnishes the researcher with “access to the current United States treaty law through a variety of retrieval approaches.” The first part is arranged in three sections: (1) a Numerical List (treaties and agreements in sequential numerical order, to be used in conjunction with Treaties in Force); (2) a Subject Reference Index (which provides a simple listing, with cross-references, of the subject categories utilized by the Treaties in Force); and (3) an Appendix: Treaty Development (arranged alphabetically). Part two deals exclusively with multilateral treaties and agreements currently in force. Several indices are contained within this part: (1) a chronological index of the individual agreements; and (2) an index to treaties and agreements by country. This Guide is updated annually.

Another useful non-governmental publication is the Congressional Index. The Congressional Index, unlike the sources cited earlier, follows the progress of a treaty through the Senate from its introduction (transmittal from the President) to its final disposition (consent or rejection by the Senate). “All treaties are identified by number and accordingly, appear in numerical and chronological order, although the identification system was changed in the 97th Congress.” The section of the Congressional Index which pertains to treaties has its own index arranged either by subject or international entity (for example, country or international organization).

The researcher should be aware that the treaty itself is

17. Id. at v.
18. Id.
19. Id.
20. Id. at vi.
21. Id. at v.
22. The Congressional Index is published by the Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646.
23. “Treaties unlike any other matters considered by Congress can be held in abeyance through several congresses.” 1 Cong. Index (CCH) 6001 (1987).
24. Id. (footnote added).
25. The Congressional Index does have a general subject index and author index, however, these indices refer to Congressional public bill and resolution numbers. 1 Cong. Index (CCH) 3 (1987).
not the only document generated by an agreement. Similar to the legislative history produced when the United States enacts laws, an international treaty has its counterpart called the *travaux préparatoires* (preparatory materials). These documents can help one in interpreting the treaty by providing insight into the ordinary or apparent significance of the treaty's terms. In addition, the *travaux préparatoires* can also establish, to some degree, the intentions of the parties at the time the treaty was drafted.\textsuperscript{26}

In addition to the *travaux préparatoires*, a treaty being considered for U.S. Senate approval and presidential signature generates documentation at the national level. The researcher should consult the *Congressional Record*\textsuperscript{27} for information concerning Senate debate of and Senate voting on the treaty. Furthermore, documentation from the President always accompanies the treaty marked for Senate approval. One can obtain the text of these documents by consulting the *Public Papers of the Presidents of the United States*\textsuperscript{28} or the *Weekly Compilation of Presidential Documents*.\textsuperscript{29}

\textsuperscript{26} L. Henkin, R. Pugh, O. Schachter \& H. Smit, *supra* note 6, at 628.

\textsuperscript{27} See *infra* notes 73-74 and accompanying text.

\textsuperscript{28} This series is compiled and published by the office of the Federal Register, National Archives and Records Administration. The materials are presented in chronological order and printed in their entirety. The book contains both a subject index and name index. J. Byrne \& F. Burke, *Preface to Public Papers of the Presidents of the United States - Ronald Regan: 1984* at vii (1986).

\textsuperscript{29} The *Weekly Compilation of Presidential Documents* is a companion publication to the *Public Papers of the Presidents of the United States*. It provides the researcher with "a broader range of Presidential materials on a more timely basis." *Id.* The *Weekly Compilation of Presidential Documents* is published in pamphlet form every Monday by the Office of the Federal Register, National Archives and Records Administration. It contains statements, messages, and other Presidential materials released by the White House during the preceding week." *See, e.g.*, 23 Weekly Comp. Pres. Doc. (Sept. 21, 1987) (inside cover). Each weekly issue contains a subject index and a document categories list (which includes, for example, Executive Orders, Proclamations and Communications with Congress). In addition, "[e]ach issue of the *Weekly Compilation of Presidential Documents* includes a cumulative index to prior issues that terminates at the end of each quarter." 23 Weekly Comp. Pres. Doc. (Apr./June 1987) (Second Quarter Index) (inside cover).
2. Treaties in Force Pertaining to Wetlands

To date, only one international treaty is in existence which specifically concerns wetlands. The following information provides the citation of and a short commentary on that treaty.


During the 1960's there was a recognized need for an international effort to protect and conserve global wetlands. The resultant Ramsar Convention was drafted and adopted on February 2, 1971,30 and came into force on December 21, 1975. There are forty-five parties to the Convention. The United States became the last adoptee when it signed the treaty on December 18, 1986, and became a party in April 1987.31

This international treaty recognizes that “[w]etlands constitute a resource of great economic, cultural, scientific and recreational value, the loss of which would be irreparable.”32 Its stated objective is “to stem the progressive encroachment on and the loss of wetlands now and in the future.”33 In his message to the Senate requesting its consent, the President mirrored these views and stated that “United States participation would complement domestic wetlands protection efforts and legislation; help stimulate Latin American countries, in particular, to cooperate in protecting the winter habitat of birds that migrate to North America; and provide a framework for sharing U.S. wetlands technology and experience.”34

30. Comment, An Analysis of Municipal Wetlands Laws and Their Relationship to the Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (Ramsar), 4 Pace Envtl. L. Rev. 177, 204 (1986).
33. Id.
34. President’s Message to Congress Transmitting the Convention and a Protocol, 22 Weekly Comp. Pres. Doc. 856 (June 23, 1986).
B. Statutes

1. Statutes in Force

Statutory law is contained in two collections: (1) session laws; and (2) statutory codes. Session laws form a body of law enacted by the legislature at its annual or biennial sessions. This collection is arranged chronologically. The statutory codes form a collection of enacted statutes compiled according to subject matter, regardless of the date upon which the individual statutes were passed.\(^\text{35}\)

\[\text{a. Session Laws}\]

The *United States Statutes at Large* is the official collection of the United States session laws. This collection contains the entire text of every act passed by Congress, arranged in chronological order.\(^\text{36}\) The information in this collection first appears in the advance sheets (paper bound editions) approximately two months after the President signs an act. When the volume has been completed it is permanently bound and includes both a subject index and an individual index. The subject index is legislation-specific for the session; therefore it is limited in its scope.

When utilizing the subject index, one can either research the topic by subject matter, by using the name of the specific act if known, or by an individual's name related to the topic being researched. In researching the topic of wetlands, the following list of descriptive words or subjects may be useful in locating the required information.

(1) conservation
(2) wetlands
(3) flood control
(4) National Wildlife Refuge System

When the proper information has been located, the index will


\(^{36}\text{In addition to the public laws passed by Congress, the *Statutes at Large* contains Reorganization Plans, Private Laws, Concurrent Resolutions and Proclamations which have been adopted.}\)
provide a page reference\textsuperscript{37} which enables the researcher to locate the act within the volume.

Due to the length of time it takes the government to publish the permanently bound volumes of the \textit{Statutes at Large}, the entire legislative session is first printed in the \textit{United States Code Congressional and Administrative News (U.S. Code Cong. \& Admin. News)},\textsuperscript{38} a secondary source with official citations to and paginations from the \textit{Statutes at Large}. The \textit{U.S. Code Cong. \& Admin. News} not only provides the researcher with the text of the act but it also publishes some congressional committee reports relating to major pieces of legislation. This series has an index for each volume. When one has located the pertinent information the index can provide the statute cite and, if included in the volume, the legislative history cite, which refers to the information for that legislative session.

To find legislation regarding wetlands, one can either research the topic by subject matter or by using the name of the act. The following list includes relevant boldfaced subject headings.

(1) wetlands
(2) conservation
(3) environmental protection
(4) legislative history

b. \textit{Statutory Codes}

The \textit{United States Code (U.S.C. or Code)} is the official collection of statutes currently in force, and is organized according to subject matter. The \textit{U.S.C.} is divided into numbered titles, fifty in all, each of which contains statutes pertaining to a particular subject. The editors of this collection have broken down the session laws into segments and have inserted each segment into the relevant \textit{U.S.C.} title, renum-

\textsuperscript{37} Page references identify the beginning pages of each law, except those acts which have been amended or repealed, then the page reference identifies where the change actually appears in the document.

\textsuperscript{38} The collection is published by West Publishing Company, P.O. Box 3526, St. Paul, Minnesota 55165.
bering the sections of each law. The Code has a General Index and a Popular Name Table which aid the user by giving the appropriate U.S.C. cite, thus directing one to the proper title and section in the U.S.C. collection. Information on wetlands, when utilizing the General Index, can be located by using the following listed terms.

1. actual name of the act
2. wet meadows
3. wetlands
4. conservation
5. flood plain
6. waterfowl
7. Water Bank Program
8. definitions
9. erosion
10. Erodible Land and Water Conservation and Reserve Program
11. Soil and Water Resource Conservation

The following listed terms should also be consulted, though at this time these terms provide only cross-references.

1. swamps and overflowed lands
2. Soil and Water Conservation District
3. soil erosion

In addition to the United States Code, the official federal code, there are two unofficial codes published — the United States Code Annotated (U.S.C.A.) and the United States Code Service (U.S.C.S.). Both publications provide not only the exact language of the act but also a host of other pertinent research information.

The U.S.C.A.'s format is analogous to that adopted by the U.S.C. It is broken down into fifty titles, with sections that correspond to those of the official Code. In addition to the official cite that follows each section of the statute, each section may have one or more of the following features: library

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40. The United States Code Services is published by The Lawyers Co-Operative Publishing and Bancroft-Whitney Company.
references; historical notes and cross-references; and/or annotations or notes of decisions. The collection has two index systems. The General Index which is contained in separate volumes (paperback), covers the entire fifty titles. In addition, each individual title has a separate index pertaining specifically to that body of law within that title, located in the last volume of that title. Only the General Index and the Popular Name Table are published annually. Since the annotated code is not published annually, the permanently bound hard-covered volumes are kept current through the use of corresponding pocket parts. The researcher, when investigating a topic should consult both the hard covered volume and its corresponding pocket part. The indexes of the U.S.C.A. employ boldfaced, capital letter headings which conform to standard familiar classifications of the law. Under these boldfaced headings are references, which are subdivided when the material warrants it, and cross references. The following is a list of subject headings relevant to the topic of wetlands.

(1) specific name of act
(2) wet meadows
(3) wetlands
(4) wetland resources
(5) swamps and overflowed lands
(6) Erodible Land and Wetland Conservation and Resource Program
(7) erosion
(8) Water Bank Program
(9) waterfowl
(10) water resources
(11) soil and water resource conservation

The following listed terms should also be consulted, though at this time these terms provide only cross references.

(1) marshes
(2) coastal marsh land (see estuaries)

42. "References are prepared in a variety of ways to catch the attention of a researcher and lead him to the sought after section:" (1) topical; (2) descriptive; (3) conceptual; and (4) colloquial. Id.
(3) Conservation District
(4) flood control
(5) Environmental Quality Council
(6) estuaries
(7) water supply (see wetland preservation, migratory fowl, Water Bank Program)

The U.S.C.S.'s format is almost identical to that of the U.S.C.A.. The two publications are distinguished by the reference features which follow the text of each statute. The features provided by the U.S.C.S. are: history; ancillary law and directives; Code of Federal Regulations references; cross-references; research guide (for example, Am. Jur. 2d; annotations from the A.L.R.; law review articles); and/or interpretative notes and decisions. The U.S.C.S. has both a General Index which is comprised of several permanently bound hard-covered volumes with a looseleaf update binder, and a title specific index located in the last volume of each title. This collection provides annual pocket parts to update each parent volume, which furnishes the same type of information found in the permanently bound hard-covered volumes.

The major topics in the indexes are printed in boldfaced capital letters for easy identification. Most references under these major topics lead directly to the authority sought; if not the reference will indicate where to find specific or related material elsewhere in the index. The following list of major topics should be investigated when researching the subject wetlands through the U.S.C.S. collection.

(1) specific name of the act
(2) wetlands
(3) wet meadows
(4) definitions
(5) national parks (within this subject heading refer to wetlands)
(6) converted wetlands

44. Id. at ix.
(7) flood control

c. List of Current Federal Law Pertaining to Wetlands

The following list sets forth existing federal statutes which specifically identify and deal with wetlands as a natural resource. Provided for the user of this Research Guide is the current statutory citation, the individual or agency who has the authority to implement/oversee the act, and a short synopsis of the statute and its relationship to wetlands.

   Authority: United States Army Corps of Engineers; United States Environmental Protection Agency

This act does not expressly mention wetlands. However, the U.S. Army Corps of Engineers' program for implementation and regulation under section 404 (dredge and fill) of this act provides a major avenue for federal involvement regarding wetlands. This interpretation of section 404 has been upheld in United States v. Riverside Bayview Homes, Inc.45 In addition to the Corps' jurisdiction, the United States Environmental Protection Agency (EPA) may also regulate wetlands under the Clean Water Act. A case which provides insight into EPA's jurisdiction and interpretation of the Clean Water Act is Avoyelles Sportsmen's League, Inc. v. Marsh.46

   Authority: Secretary of the Interior

Congress took steps in this act to protect coastal barriers "which are among the most unstable of land forms".47 Having determined that the development of coastal barriers (with the aid of the federal government) was diminishing the productivity of estuaries and wetlands, Congress concluded that coastal

46. 715 F.2d 897 (5th Cir. 1983).
barriers should be conserved in their natural state.\textsuperscript{48} The language of the act in sections 3501 and 3502(1)(B) identifies wetlands associated with coastal barriers as a resource that should be protected and conserved. However, no specific definition of a wetland is set forth within the body of the act, nor is one referenced from another source.

Authority: Secretary of Commerce
This law was enacted because Congress determined that there was a national interest in the effective management, beneficial use, protection, and development of the nation’s coastal zone.\textsuperscript{49} The act set forth the following directive concerning coastal wetlands:

to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs . . . which [the] programs should at least provide for —
(A) the protection of natural resources, including wetlands, floodplains, estuaries . . . within the coastal zone, and
(B) the management of coastal development to minimize . . . the destruction of natural protective features such as beaches, dunes, wetlands and barrier islands.\textsuperscript{50}

This act does not define the term wetland within the body of the law, nor is a definition referenced from another source.

Authority: Secretary of Agriculture
The Erodible Land and Wetland Conservation and Reserve Program is part of the 1985 Food Security Act,\textsuperscript{51} which

\textsuperscript{48} Id. at 3, \textit{reprinted in} 1982 U.S. Code Cong. & Admin. News at 3214.
\textsuperscript{49} Costal Zone Management Act, 16 U.S.C. §§ 1451-1464 (1982).
\textsuperscript{50} Id. § 1452(2)(A), (B).
addresses several issues, including resource conservation.52 These sections of the act discuss wetlands within the scope of agriculture. The statute defines the term wetlands,53 converted wetland,54 hydric soil,55 and hydrophytic vegetation.56 The program has a section dedicated entirely to wetland conservation,57 in which the Secretary of Agriculture is directed to consult with the Secretary of the Interior when carrying out the subchapter.58


Authority: Secretary of the Interior

This act concerns the recreational aspects of our natural resources. The act specifically states that its purposes are "to assist in preserving, developing and assuring accessibility to all citizens of the U.S. . . . [of a] quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation."59 When first enacted, the term wetland was not contained within the text of the act.60 In the 1986 amendments, Congress inserted

52. An Act to extend and revise agricultural price support and related programs, to provide for agriculture export, resource conservation, farm credit, and research and related programs, to continue food assistance to low income persons, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes.

Id. at 198, 99 Stat. at 1354.

53. The term wetland, except when such term is part of the term "converted wetland," means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

54. Id. § 3801(16) (West Supp. 1987). See also id. § 3801(a)(4)(B).

55. Id. § 3801(a)(8).

56. Id. § 3801(a)(9).

57. Id. §§ 3821-3823.

58. Id. § 3823.


60. Id. §§ 460l-4 to -10c.
language specifically concerning with wetlands. The term wetland is not defined within the law itself; however, one is referred to the technical definition of a wetland in 16 U.S.C.A. § 3921 (West Supp. 1987).


This program is the part of the Agriculture and Consumer Protection Act of 1973 which presents congressional recommendations concerning conservation and rural pollution abatement. Congress attempted to obtain a better environment for rural America by providing a broad range of environmental programs to be implemented by the Secretary of Agriculture. To initiate these programs, the Secretary was authorized by Congress to enter into multi-year contracts with individuals willing to participate in these programs. For example, the Rural Environmental Conservation Program allows the Secretary to contract, for a specified period of time with an eligible individual, for an easement over that individual’s property containing a wetland.


This act has an extensive policy statement concerning wetlands. It states:

Congress finds that it is in the public’s interest to preserve, restore, and improve the wetlands of the Nation, and thereby to conserve surface waters, to preserve and improve habitat for migratory waterfowl and other wildlife resources, to reduce run-off, soil erosion and wind ero-

62. Id.
sion, and contribute to flood control, to contribute to improved water quality and reduce stream sedimentation, to contribute to improved surface moisture, to reduce acres of new land coming into production, and to retire lands now in agriculture production, to enhance the natural beauty of the landscape, and to promote comprehensive and total national management planning. The Secretary of Agriculture is . . . authorized and directed to formulate and carry out a continuous program to prevent the serious loss of wetlands, and to preserve, restore, and improve such lands, which programs shall begin July 1, 1971.\footnote{16 U.S.C. § 1301 (1982).}

In addition to the comprehensive policy statement, this act also includes a broad wetlands definition, which incorporates other sources outside the scope of the act.\footnote{As used in this chapter, the term "wetlands" means (1) the inland fresh areas described as types 1 through 7 in Circular 39, Wetlands of the United States, published by the United States Department of Interior (or the inland fresh areas corresponding to such types in any successor wetland classification system developed by the Department of the Interior), (2) artificially developed inland fresh areas that meet the description of the inland fresh areas described in clause (1) of this sentence, and (3) such other wetland types as the Secretary may designate. Id. § 1302.}

\begin{enumerate}
\hspace{1cm} Authority: Secretary of the Interior.
This act was originally known as the Wetlands Loan Act 16 U.S.C. §§ 715k-3, -5 (1982), but was amended in 1976 to its current form. The act authorizes appropriations for wetland preservation and for other essential waterfowl habitat.\footnote{16 U.S.C.A. § 1501 (West Supp. 1987).}
\hspace{1cm} Authority: Secretary of the Interior.
This act, to date, is the most comprehensive of all the
\end{enumerate}
statutes enacted which concern the natural resource — wetlands. This law, unlike the previous eight discussed in this section, is not limited in scope to one specific aspect of a wetland such as recreation, agriculture, coastal zone or financial. The purpose of this law is to:

promote in concert with other Federal and State statutes and programs, the conservation of wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere.70

This act provides a technical definition of a wetland.71 The act also espouses on the wetlands intrinsic qualities, thus meriting this natural resource for protection.72

2. Proposed Legislation/Legislative History

The same primary research tools are utilized for obtaining the legislative history of an act and for determining if there is relevant proposed legislation on a specific topic. The Congressional Record, a government publication, and the Congressional Information Service Index and Abstract (CIS) are the best sources available to the researcher. Other less comprehensive sources, which also provide legislative resource information are the CCH’s Congressional Index, and the Monthly Catalog, a government publication.

71. The term “wetland” means land that has a predominance of hydric soils and that it is inundated or saturated by surface and ground water at a frequency and duration sufficient to support, and that under normal circumstances does support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.
72. Id. § 3901(b)(5).
73. Id. § 3901(a).
a. Congressional Record

The Congressional Record is issued each day that Congress is in session. This publication is indexed semimonthly in the Congressional Record Index. Following each congressional session, the semimonthly editions of the Congressional Record Index are revised and published in a permanently bound cumulative volume. The Index contains a subject/name index and a status section entitled “History of Bills and Resolution.” This Index provides the user with easy access to legislative debate by subject or law maker, and enables one to establish legislative chronologies.

Wetland material can be located by referring to the following listed subjects in the Index.

(1) name of law maker
(2) wetland
(3) natural resource
(4) ecology
(5) water
(6) water pollution
(7) coastal zone

b. Congressional Information Service Index and Abstract

Congressional Information Service Index and Abstract (CIS) began in 1970 and is published by the Congressional Information Service, Inc. CIS is an abstract/index system compiling congressional publications. It is maintained in an annual hard covered three-volume set composed of the titles: Abstracts, Indexes, and Legislative Histories.

The CIS Index is published every month (paper bound) and identifies publications which have been issued by Con-

73. See, e.g., 133 Cong. Rec. D1270 (daily ed. Oct. 1, 1987) (this statement can be found in all issues of the Congressional Record).

74. This part of the Congressional Record Index is broken down into several sections: (1) Senate Bills; (2) Senate Joint Resolutions; (3) Senate Concurrent Resolutions; (4) Senate Resolutions; (5) House Bills; (6) House Joint Resolutions; (7) House Concurrent Resolutions; and (8) House Resolutions. See, e.g., 133 Cong. Rec. Index (1987).
progress during the preceding month. The CIS Index provides a variety of topical indexes which include: (1) index of subject and name; (2) index of titles; (3) indexes of Bills Reports, Documents, Hearings and Print Number; and (4) index of Committee and Subcommittee Chairmen. The CIS Index entry provides a number, referred to as the CIS abstract number (accession number system), which will ultimately enable the user to locate the abstract pertaining to that particular entry. The CIS abstract number provides information about the parent body (congressional chamber), the committee of origin, the type of document (hearing, print report, etc.), and the order in which CIS abstracted the document in a given year.

To locate information concerning wetlands through the CIS system, refer to the following listed terms in the CIS Index for valuable research information:

1. wetlands and marshes
2. Wetlands Conservation Fund
3. Wetlands Loan Act
4. conservation of natural resources
5. flood control
6. hydrology
7. marine resource conservation
8. National Audubon Society
10. Nature Conservancy
11. natural resources
13. soil conservation
14. water resource development

C. CCH Congressional Index

The Congressional Index is a looseleaf service, published by Commerce Clearing House, Inc., and is arranged in two

75. See, e.g., 17 CIS Annual Index vii (1986).
76. Id. at xii.
77. Id. at x.
78. The source used to compile this list was the 1987 CIS Index.
volumes. Volume one encompasses matters concerning both the Senate and the House, while volume two covers only the House of Representatives. 79 This publication can provide the status of pending legislation or be used to establish legislative chronologies. It contains both a subject index and an author index. The subject index is extremely comprehensive, identifying a topic under a variety of subjects. 80 The author index arranges the public bills and resolutions under the name of the principal author or sponsor. 81 Like the subject index, the author index is continually updated. 82 The following subjects can provide access to wetland information. 83

(1) wetlands
(2) agriculture (see subheading - conservation)
(3) animal and wildlife (see subheading - wetlands and migratory waterfowl)
(4) Coastal Wetlands Recovery Act
(5) environmental protection (see subheading - wetlands)
(6) fishing and fisheries
(7) National Wetland Inventory and Evaluation Act

d. Monthly Catalog

Most government documents are indexed in the Monthly Catalog of the United States Publications. This publication is indexed monthly, with cumulative semiannual and annual volumes. "Entries in the Monthly Catalog are indexed for access by the following indexes:" 84 (1) author index; (2) title index; (3) subject index; (4) series/report index; (5) contract number index; and (6) title keyword index. Each item has a Monthly Catalog entry number 85 which indicates where more

79. See, e.g., 1 Cong. Index (CCH) at 3 (1987).
80. Id. at 2001.
81. Id. at 4001.
82. Id. at 2001, 4001.
83. The source used to compile this information was based on the year 1987.
85. "MONTHLY CATALOG ENTRY NO. - The entry number is assigned after
detailed information is available.

To locate wetland information pertaining to legislative action, the following listed terms, though not inclusive, should be investigated.66

(1) Wetland conservation - United States
(2) Wetland conservation - United States - Congress
(3) Wetland conservation - United States - Finance
(4) Wetlands - Law and Legislation - United States
(5) Wetlands - United States - Congresses

e. 1987 Proposed Legislation

This section represents an area that is in constant flux, becoming obsolete at the end of the congressional year and therefore a list of proposed wetlands legislation has not been included. However, a few comments on the type and number of bills reviewed by the House and Senate committees can provide insight into the current congressional attitude toward wetlands.

In 1987, between the Senate and House committees, there were nine bills being reviewed which concerned, directly or indirectly, wetlands. These bills covered wetlands that affect agricultural lands, coastal waters, estuarine areas, open space areas and rain forests. The bills included statements on national wetland policy, guidance on implementing programs, explanations on how to regulate the various communities affecting wetlands, and provisions for financial assistance. Though the bills covered a variety of ecosystems and subject matter, the reoccurring theme throughout the 1987 proposed legislation was conservation and preservation of this natural resource.

66. The source used to compile this list of terms was based on the year 1987.
C. Regulations

1. Research Guidance

As with statutes, administrative rules are arranged in two ways: chronologically and according to subject matter. The Federal Register is published daily (weekdays only), and includes, in chronological order, regardless of which party issued them, rules and regulations, proposed rules, notices, and presidential documents. The Federal Register is useful in updating the Code of Federal Regulations (C.F.R.). The volumes of the C.F.R. are revised and published once each year. The C.F.R. arranges the administrative rules into fifty titles according to specific regulatory topics. To determine the latest version of a rule, both publications must be used in unison. There are numerous finding aids to help the researcher find specific information in the Federal Register/C.F.R. system and update the material.

The Federal Register Index is arranged first according to the agency which issued the document in the Federal Register, and, second alphabetically within the categories. The Index is "based on a consolidation of the entries appearing in the Contents of each day's Federal Register" and includes broad subject references. The Index is published monthly and is cumulated.

The C.F.R. Index and Finding Aids is an annual index containing two major finding aids: a subject/agency index, and the Parallel Table of Authorities and Rules. The emphasis of

87. C. Wren & J. Wren, supra note 35, at 5.
89. Id.
90. Id.
91. Id. at 10.
92. Id. at 59. These include the Federal Register Index, the List of CFR Sections Affected (LSA), and the CFR Index and Finding Aids.
93. Id.
94. Id. (italics added).
95. Id.
96. Id. at 70.
this Index is placed on directing the user to C.F.R. Parts.\textsuperscript{97} "For each Part of the C.F.R., entries are provided in the index under the name of the issuing agency and under as many subjects required to describe the overall contents of the Part."\textsuperscript{98}

In addition to the Federal Register/C.F.R. system published by the federal government, there are several unofficial sources that provide information about the federal rules and regulations. One example is the United States Code Service's publication, Index to Finding Aids to Code of Federal Regulations. This publication, issued annually, contains six types of finding aids, including a subject/agency index. After the user locates the specific subject or agency involved, this publication directs the user to the proper C.F.R. cite. The following descriptive subject headings within the U.S.C.S. system can be used to locate the C.F.R. sections pertaining to wetlands.

1. wetlands
2. coastal zone
3. flood plains
4. Water Bank Program
5. water resources

There are also two electronic legal data base services, Lexis and Westlaw, which provide immediate retrieval of C.F.R. sections dealing with wetlands. Both electronic services maintain a current C.F.R. data base. By searching these data bases with the term wetland, the user can identify and retrieve all sections in the C.F.R. which mention that term. Westlaw and Lexis probably provide the researcher with the most comprehensive list of C.F.R. sections dealing with wetlands, while expending the least amount of time on research. However, the user should be aware that the information retrieved through these systems is only as current as the C.F.R. year noted and the information should be updated through the Federal Register as previously discussed.\textsuperscript{99}

\textsuperscript{97} "A Part in the C.F.R. contains the regulations on a single function or specific subject matter under the control of the issuing agency." Id. at 71.
\textsuperscript{98} Id. (italics added).
\textsuperscript{99} See supra notes 88-95 and accompanying text.
WETLANDS RESEARCH GUIDE

2. Tables

The following Tables, which appear on pages 194 through 213 of this article, provide a listing of wetland-related regulations. The information provided includes: the title in which the regulation appears, the specific section in which the term wetland appears, the authority by which the regulation was promulgated and a short comment on the regulation(s). These Tables are current through 1986-1987.

D. Executive Orders

1. Research Guidance

An Executive Order is defined as "[a]n order or regulation issued by the President . . . for the purpose of interpreting, implementing or giving administrative effect to a provision of the Constitution . . . law or treaty. To have the effect of law such orders must be published in the Federal Register."

There are several sources which can provide the text of an Executive Order. These sources include the following: (1) Federal Register; (2) Code of Federal Regulations; (3) Weekly Compilation of Presidential Documents; (4) Codification of Presidential Proclamations and Executive Orders; (5) Public Papers of the President; (6) United States Code (if unavailable or out of date, use the secondary sources: the United States Code Annotated or the United States Code Service); and (7) United States Code Congressional & Administrative News.

2. Executive Orders Pertaining to Wetlands


Increased government awareness of the importance of wetlands as a natural resource is exemplified by President Carter's Executive Order 11,990, Protection of Wetlands. This Executive Order required that federal agencies must avoid

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<tr>
<th>Title</th>
<th>Part</th>
<th>Sections</th>
<th>Authority</th>
<th>Comments</th>
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<tr>
<td>Part 2: Delegation of Authority by the Secretary of Agriculture and General Officers of the Department</td>
<td>§§ 2.19, 2.62</td>
<td>Authority of Secretary to delegate his authority is based on § 4(a) of Reorganization Plan No. 2 of 1953. 7 C.F.R. §§ 2, 3 (1987).</td>
<td>Both of these sections deal with the delegation of authority by the Secretary of Agriculture to other officers of the Agricultural Department so that they may deal with the implementation and monitoring of programs concerning Exec. Orders No. 11,988 Flood Plain Management and Exec. Order No. 11,990 Protection of Wetlands.</td>
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<tr>
<td>Part 12: Highly Erodible Land and Wetland Conservation</td>
<td>§§ 12.1-12.33</td>
<td>16 U.S.C.A. §§ 3801-3823, 3841-3844 (West Supp. 1987).</td>
<td>This part sets forth the terms and conditions under which a person who, after December 23, 1985, produces an agricultural commodity on highly erodible land or converted wetland, shall be determined ineligible for certain benefits provided by the U.S. Dept. of Agriculture.</td>
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<td>Part 650: Compliance with NEPA</td>
<td>§§ 650.3-650.4, 650.7, 650.9, 650.23, 650.26</td>
<td>42 U.S.C. §§ 4321-4370a (1982); Exec. Order No. 11,988 &amp; Exec. Order No., 11,990.</td>
<td>These regulations prescribe procedures by which the SCS is to implement the provisions of NEPA. These regulations, in addition, set forth procedures that the SCS will implement concerning other environmental concerns such as wetlands.</td>
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<td>Part 1942: Associations</td>
<td>§§ 1942.18, 1942.310</td>
<td>7 U.S.C. § 1989 (1982 &amp; Supp. III 1985).</td>
<td>This part deals with the policies and procedures for making and processing insured loans for community facilities and to public bodies to facilitate development of private business enterprises. The application sections state that all projects or facilities must comply with Ex. Order No. 11,990, and avoid direct or indirect damage to a wetland when an alternative is practicable.</td>
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<td>Part 1943: Farm Ownership, Soil and</td>
<td>§§ 1943.17, 1943.67</td>
<td>7 U.S.C. § 1989 (1982 &amp;</td>
<td>This part deals with Farm Ownership loans. The noted sections state that loans will not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.</td>
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<td>Water and Recreation</td>
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<td>Supp. III 1985)</td>
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<td>Part 1944: Housing</td>
<td>§ 1944.169</td>
<td>42 U.S.C. § 1480 (1982 &amp;</td>
<td>Subpart D, which is where the noted section appears, deals with insured loans under the Housing Act of 1949. The land use objectives of the act state, that to the extent practicable, location of the projects shall result in the preservation of wetlands.</td>
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<td>Supp. III 1985); 5 U.S.C. §</td>
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<td>301 (1982 &amp; Supp. III 1985)</td>
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<td>Part 1945: Emergency</td>
<td>§ 1945.167</td>
<td>7 U.S.C. § 1989 (1982 &amp;</td>
<td>Subpart D, which is where the noted section appears, deals with the policies and procedures for making insured emergency loans to farmers, ranchers and aquaculture operators. Loans cannot be made for any purpose that will contribute to the conversion of a wetland to produce an agricultural commodity.</td>
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<td>Part 1948: Rural development</td>
<td>§ 1948.86</td>
<td>42 U.S.C. § 8401 (1982)</td>
<td>Subpart B, which is where the noted section appears, sets forth policies and procedures concerning assistance to areas impacted by increased coal and uranium production, processing or transportation. The section identified deals with criteria that will be considered in the selection for site development. This section states that Ex. Order No. 11,988, Floodplain Management and Ex. Order No. 11,990, Protection of Wetlands will be complied with when identifying a site.</td>
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<td>Part 1955: Property Management</td>
<td>§§ 1955.66, 1955.136-1955.137</td>
<td>7 U.S.C. § 1989 (1982 &amp;</td>
<td>Section 1955.66 discusses leasing of land. It states that a description of the property, including the presence of a wetland, must be included. The other sections fall into a subpart that deals with the sale of inventory property. Under these sections when the sale will alter a wetland, one must locate the wetland and provide an environmental assessment.</td>
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<td>Supp. III 1985); 5 U.S.C. §</td>
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<td>Supp. III 1985); 5 U.S.C. §</td>
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<td><strong>TITLE 7</strong></td>
<td>AGRICULTURE</td>
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<td>Each section identified deals with a loan program and references environmental concerns such as wetlands and floodplains.</td>
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<td>1980.632</td>
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<td>Part 300: The Coal Loan Guarantee Program</td>
<td>§ 300.24</td>
<td>42 U.S.C. § 6272 (1982).</td>
<td>When applying for a loan under the Coal Loan Guarantee Program, the party applying for the loan must comply with NEPA and take into consideration environmental impacts on natural resources such as wetlands.</td>
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<tr>
<td><strong>TITLE 10</strong></td>
<td>ENERGY</td>
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<td>The issuance of a federally guaranteed loan under these regulations must comply with NEPA and is subject to Ex. Order No. 11,988, Floodplain Management and Ex. Order No. 11,990, Protection of Wetlands.</td>
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<td>Part 1022: Compliance with Floodplain/Wetland Environmental Review Requirements</td>
<td>§§ 1022.1-1022.5, 1022.11-1022.21.</td>
<td>Exec. Order No. 11,988, Exec. Order No. 11,990.</td>
<td>This part establishes policy and procedures for discharging the Department of Energy (DOE’s) responsibilities with respect to compliance with Executive Order No. 11,988, Flood Plain Management and Executive Order No. 11,980, Protection of Wetlands.</td>
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<td>Part 1039: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs</td>
<td>§ 1039.8</td>
<td>42 U.S.C. §§ 4601-4655 (1982 &amp; Supp. III 1985).</td>
<td>This section requires that all federal laws, regulations and Executive Orders be complied with when implementing this part. This includes environmental programs and laws.</td>
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<td>Title</td>
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<td>Part 120: Business Loan Policy</td>
<td>§ 120.103-2</td>
<td>15 U.S.C. §§ 634(b)(6), 636(a), (b) (1982).</td>
<td>This part established the broad policies that the Small Business Administration will follow in determining whether to grant or deny federal assistance. This part requires compliance with 10 C.F.R. Part 116.</td>
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<td>Part 122: Business Loans</td>
<td>§ 122.4</td>
<td>15 U.S.C. §§ 634(b)(6), 636(a) (1982).</td>
<td>This part deals with business loans and the noted section states that 10 C.F.R. Part 116 is applicable to this set of regulations.</td>
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<td>Part 123: Disaster Physical Disaster and Economic Injury Loan</td>
<td>§ 123.14</td>
<td>15 U.S.C. §§ 634(b)(6), 636(b), (c), (f) (1982).</td>
<td>The noted section of this part refers to 10 C.F.R. Part 116 and its requirements. In addition, these regulations mention coastal barrier systems.</td>
</tr>
<tr>
<td>TITLE 14 AERONAUTICS AND SPACE</td>
<td>Part 1208: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs</td>
<td>§ 1208.8</td>
<td>42 U.S.C. §§ 4601-4655 (1982 &amp; Supp. III 1985).</td>
<td>This noted section requires that all other federal laws and Executive Orders be complied with when implementing these regulations.</td>
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<td>Title</td>
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<td><strong>Table 6 : Code of Federal Regulations Pertaining to Wetlands</strong></td>
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<td><strong>TITLE 15 COMMERCE AND TRADE (ch. NOAA)</strong></td>
<td>Part 923: Coastal Zone Management Program Development and Approval Regulations</td>
<td>§§ 923.3, 923.21, 923.30-923.31, 923.82, 923.94, 923.101</td>
<td>16 U.S.C. §§ 1451-1464 (1982 &amp; Supp. III 1985).</td>
<td>The primary purpose of these provisions is to establish the requirements for State Coastal Zoning Management. This part specifically quotes the CZMA which identifies wetlands as an important natural resource. In addition, the regulations mention Ex. Order No. 11,990, Protection of Wetlands.</td>
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<td>Part 931: Coastal Energy Impact Program</td>
<td>§ 931.94</td>
<td>16 U.S.C. §§ 1451-1464 (1982 &amp; Supp. III 1985).</td>
<td>These regulations deal with the implementation of the Coastal Energy Impact Program which provides federal financial assistance to coastal states. In awarding the assistance environmental consequences, such as the impact on wetlands, are required to be considered.</td>
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Table 7: Code of Federal Regulations Pertaining to Wetlands

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<th>Title</th>
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<tr>
<td>TITLE 18</td>
<td>CONSERVATION</td>
<td>Part 401: Rules of Practice and Procedure</td>
<td>§§ 401.35, 401.56</td>
<td>Delaware River Basin Compact, Pub. L. 76 Stat. 688</td>
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<td></td>
<td>OF POWER AND RESOURCES</td>
<td>Part 725: Implementation of Executive Order 11,988, Floodplain Management and Executive Order 11,990, Protection of Wetlands</td>
<td>§§ 725.0-725.9</td>
<td>Exec. Order No. 11,988; Exec. Order No. 11,990.</td>
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<td>Part 740: State Water Management Planning Program</td>
<td>§ 740.7</td>
<td>42 U.S.C. § 1962c (1982).</td>
</tr>
<tr>
<td>TITLE 22</td>
<td>FOREIGN RELATIONS</td>
<td>Part 161: Regulations for Implementation of the National Environmental Policy Act (NEPA)</td>
<td>§§ 161.7, 161.11</td>
<td>42 U.S.C. §§ 4321-4370 (1982 &amp; Supp. III 1985).</td>
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<td>Part 771: Environmental Impact and Related Procedures</td>
<td>§ 771.103</td>
<td>Exec. Order No. 11,986; Exec. Order No. 11,990.</td>
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</table>
Table 8: Code of Federal Regulations Pertaining to Wetlands

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<th>Title</th>
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<tr>
<td>TITLE 23</td>
<td>HIGHWAYS</td>
<td>Part 777: Mitigation of Environmental Impacts to Privately Owned Wetlands</td>
<td>§§ 777.1, 777.3, 777.5, 777.7, 777.9, 777.11</td>
<td>The stated purpose of these regulations is to &quot;provide policy and procedures for the evaluation and mitigation of adverse environmental impacts to privately owned wetlands caused by new construction of Federally-aided highway projects.&quot; 18 C.F.R. § 777.1 (1987).</td>
</tr>
<tr>
<td>TITLE 24</td>
<td>HOUSING AND URBAN DEVELOPMENT</td>
<td>Part 42: Uniform Relocation Assistance and Real Property for Federal and Federally Assisted Programs</td>
<td>§ 42.8</td>
<td>This noted section requires that there be compliance with federal environmental laws, regulations and executive orders when implementing this part.</td>
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<td>Part 50: Protection and Enhancement of Environmental Quality</td>
<td>§ 50.4</td>
<td>These regulations apply to all HUD policy actions unless excepted by regulation, and require the consideration of environmental issues and national policy.</td>
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<td>Part 58: Environmental Review Procedures for the Community Development Block Grant, Rental Rehabilitation and Housing Development Grant Program</td>
<td>§ 58.5</td>
<td>These regulations require that environmental considerations be reviewed and taken into account. This includes, for example the following: Executive Order No. 11,990, Coastal Zone Management Act, Coastal Barrier Resource Act.</td>
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<td>Part 590: Urban Homesteading</td>
<td>§ 590.11</td>
<td>These regulations deal with the implementation of the Urban Homesteading Program and the noted section states that when applying to HUD under this program that environmental issues must be considered. Section notes Executive Order No. 11,990.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Part 600: Comprehensive Planning Assistance</td>
<td>§ 600.65</td>
<td>The purpose of these regulations is to establish the Department’s requirements for applying § 701 of the Housing Act of 1954 as amended by the Housing and Community Development Act of 1974. These regulations encompass environmental considerations, policy and goals.</td>
</tr>
<tr>
<td>Title</td>
<td>Part</td>
<td>Sections</td>
<td>Authority</td>
<td>Comments</td>
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<tr>
<td>Part 881: Section 8 Housing Assistance Payments Program for Substantial Rehabilitation</td>
<td>§ 881.206</td>
<td>42 U.S.C. §§ 1437a, 1437c, 1437f (1982 &amp; Supp. III 1985).</td>
<td>These regulations deal with the implementation of the Section 8 program. The noted section establishes that environmental concerns, such as wetlands, must be considered when implementing these regulations.</td>
<td></td>
</tr>
<tr>
<td>Part 882: Section 8 Housing Assistance Program Existing Housing</td>
<td>§ 882.407</td>
<td>42 U.S.C. §§ 1437a, 1437c, 1437f (1982 &amp; Supp. III 1985).</td>
<td>These regulations deal with the implementation of the Section 8 program. The noted section requires compliance with environmental regulations.</td>
<td></td>
</tr>
<tr>
<td>Part 885: Loans for Housing for the Elderly or Handicapped</td>
<td>§ 885.220</td>
<td>12 U.S.C. § 1701q (1982).</td>
<td>These regulations deal with financial assistance and loans obtained pursuant to the Housing Act of 1959. The regulation specifically notes in the application section that environmental regulations must be complied with.</td>
<td></td>
</tr>
<tr>
<td>Part 886: Section 8 Housing Assistance Payments Program - Special Allocations</td>
<td>§ 886.313</td>
<td>42 U.S.C. §§ 1437a, 1437c, 1437f (1982 &amp; Supp. III 1985).</td>
<td>These regulations deal with the Section 8 Program and the noted section states that environmental regulations must be complied with.</td>
<td></td>
</tr>
<tr>
<td>Part 941: Public Housing Development</td>
<td>§ 941.208</td>
<td>42 U.S.C. §§ 1437b, 1437c, 1437g (1982 &amp; Supp. III 1985).</td>
<td>These regulations govern the development and operation of low income housing. This part states that environmental requirements must be complied with.</td>
<td></td>
</tr>
<tr>
<td>Part 968: Comprehensive Improvement Assistance Program</td>
<td>§ 968.9</td>
<td>42 U.S.C. §§ 1437d, 1437f (1982 &amp; Supp. III 1985).</td>
<td>The purpose of these regulations is to prescribe requirements and procedures for the Comprehensive Improvement Assistance Program which includes the observance of other programs, notably the environmental programs.</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td>Part</td>
<td>Sections</td>
<td>Authority</td>
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<tr>
<td>TITLE 28 JUDICIAL ADMINISTRATION</td>
<td>Part 63: Floodplain Management and Wetland Procedures</td>
<td>§§ 63.1-63.9</td>
<td>Exec. Order No. 11,988; Exec. Order No. 11,990.</td>
<td>This part sets forth procedures which are to be followed by the Department of Justice to implement the Executive Orders, Nos. 11,988 and 11,990.</td>
</tr>
<tr>
<td>TITLE 29 LABOR</td>
<td>Part 11: Department of Labor National Environmental Policy Act (NEPA) Compliance procedures</td>
<td>§ 11.11</td>
<td>42 U.S.C. §§ 4321-4370e (1982 &amp; Supp. III 1985); Exec. Order No. 11,988; Exec. Order No. 11,990.</td>
<td>The purpose of these regulations is to prescribe procedures to be followed by the Department of Labor's agencies when such agencies contemplate action which may be subject to NEPA and other national environmental concerns.</td>
</tr>
<tr>
<td>Title</td>
<td>Part</td>
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<td>Authority</td>
<td>Comments</td>
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<td></td>
<td>Part 651: Environmental Effects of Army Actions</td>
<td>§§ 651.16, 651.21, 651.27, 651.28</td>
<td>42 U.S.C. §§ 4321-4370a (1982 &amp; Supp. III 1985).</td>
<td>These regulations state that it is a continuing policy of the Department of Army to serve as a trustee of the environment, therefore it has promulgated these regulations in order to implement this policy. Wetlands are a natural resource, stated within the regulations, that will receive consideration in the Department's decisionmaking process.</td>
</tr>
<tr>
<td>Title</td>
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<tr>
<td>Table 14: Code of Federal Regulations Pertaining to Wetlands</td>
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<tr>
<td><strong>Title</strong></td>
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<td><strong>Sections</strong></td>
<td><strong>Authority</strong></td>
<td><strong>Comments</strong></td>
</tr>
<tr>
<td>TITLE 33 NAVIGATION</td>
<td></td>
<td>§ 323.2, 323.4-323.5</td>
<td>33 U.S.C. § 1344 (1982).</td>
<td>This set of regulations sets forth those special policies which are to be followed by the Corps when reviewing applications for Department of Army permits to authorize the discharge of dredge and fill material into the waters of the United States.</td>
</tr>
<tr>
<td></td>
<td>Part 328: Definition of Waters of the United States</td>
<td>§ 328.3-328.4</td>
<td>33 U.S.C. § 1344 (1982).</td>
<td>The phrase “waters of the United States” is defined in this section as it applies to the jurisdictional limits of authority of the Corps of Engineers under the Clean Water Act.</td>
</tr>
<tr>
<td>TITLE 34 EDUCATION</td>
<td>Part 15: Relocation Assistance and Real Property Acquisition</td>
<td>§ 15.8</td>
<td>42 U.S.C. 4601-4655 (1982 &amp; Supp. III 1985).</td>
<td>This section requires compliance with other laws, regulations and Executive Orders. This includes environmental subjects.</td>
</tr>
<tr>
<td></td>
<td>Part 72: Urban Park and Recreation Recovery Act of 1978</td>
<td>§ 72.56</td>
<td>16 U.S.C. §§ 2501-2514 (1982 &amp; Supp. III 1985).</td>
<td>The purpose of these regulations is to set forth guidelines for awarding and administering the three types of grants available through the UPAPP program. In the section noted, it requires the applicants to comply with all applicable federal laws and regulations.</td>
</tr>
<tr>
<td>Title</td>
<td>Part</td>
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<td></td>
<td>Part 211: Environmental Quality</td>
<td>§ 907.12</td>
<td>30 U.S.C. §§ 503l-5037</td>
<td>These regulations are intended to supplement the CERCLA final regulations on the implementation of NEPA. They provide the Pennsylvania Environmental Protection Agency with enforcement tools to address environmental concerns such as wetlands.</td>
</tr>
<tr>
<td></td>
<td>Part 212: Medical</td>
<td>§ 17.173</td>
<td>42 U.S.C. §§ 4061-4065 (1982)</td>
<td>This part deals with grants for the construction of state home facilities. The application for these projects require the consideration of environmental concerns such as wetlands.</td>
</tr>
</tbody>
</table>
| PENSIONS, BOUNTIES, AND VETERANS' REFERRAL | Part 26: Uniform Relocation Assistance and Property for Federally Assisted Programs | § 26.8 | 42 U.S.C. §§ 4601-4605 (1982) | This section mandates compliance with all federal laws, regulations and Executive Orders. Specific mention is made of the Executive Order 13088, "Protection of Environmental Justice Communities: The purpose of these regulations is to implement NEPA and take into account environmental issues."
| | Part 28: Environmental Protection Agency | § 39.3 | 30 U.S.C. §§ 1001-1005 (1982) | The purpose of this set of regulations is to establish policy under which the federal government can assist the state in expanding or improving veteran's cemeteries. |

Table 15: Code of Federal Regulations Pertaining to Wetlands

https://digitalcommons.pace.edu/pelr/vol5/iss1/7
<table>
<thead>
<tr>
<th>Title</th>
<th>Part</th>
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<th>Authority</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Title</td>
<td>Part</td>
<td>Sections</td>
<td>Authority</td>
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<tr>
<td>Part 230: Section 404(b)(1) Guidelines for Specification or Disposal Sites for Dredge or Fill Material</td>
<td>§§ 230.1, 230.3, 230.20, 230.41, 230.74</td>
<td>33 U.S.C. §§ 1344(b), 1361(a) (1982).</td>
<td>The purpose of these guidelines is to restore and maintain the chemical, physical, and biological integrity of the waters of the United States through the control of discharge of dredged or fill material. The phrase “waters of the United States” is defined within these regulations and extends to wetlands.</td>
<td></td>
</tr>
<tr>
<td>Part 256: Guidelines for Development and Implementation of Solid Waste Management Program</td>
<td>§ 256.50</td>
<td>42 U.S.C. § 6942(b) (1982).</td>
<td>Subpart F requires that these regulations be implemented so that there is coordinated action with other programs and agencies.</td>
<td></td>
</tr>
<tr>
<td>Part 435: Oil and Gas Extraction Point Source Category</td>
<td>§ 435.41</td>
<td>33 U.S.C. §§ 1251-1376 (1982 &amp; Supp. III 1985).</td>
<td>Subpart D deals with the Coastal Subcategory. Within these regulations coastal is defined so as to include wetlands.</td>
<td></td>
</tr>
<tr>
<td>Part 1508: Terminology and Index</td>
<td>§ 1508.27</td>
<td>42 U.S.C. §§ 4321-4370a (1982 &amp; Supp. III 1985).</td>
<td>This part defines terminology which shall be uniform when used throughout the Federal Government when implementing and/or discussing NEPA.</td>
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<tr>
<td>Title</td>
<td>Part</td>
<td>Sections</td>
<td>Authority</td>
<td>Comments</td>
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</table>

The purpose of these procedures, which have been set forth in this section, is to provide a simplified assessment process when determining damages in coastal and marine environments. Various parts of this section identify wetlands and other similar natural environments, such as mangrove swamps, as areas that are within the scope of this section.

These regulations set forth the standards and procedures to be complied with by the Secretary of the Interior when withdrawing federal land.

These regulations cover the application process through which the Department of the Interior may consider holding lease-sales. This includes the consideration of environmental issues in the decisionmaking process.

This section states that matters concerning flood plain management and wetland protection.

These regulations set forth the policy, procedures and responsibilities to implement the Executive Orders. It further states that the FEMA will not take any action unless these regulations are complied with.

These regulations correspond to the CEQ's regulations concerning NEPA. These regulations require that NEPA and other environmental programs be considered in FEMA decisionmaking process.
<table>
<thead>
<tr>
<th>Title</th>
<th>Part</th>
<th>Sections</th>
<th>Authority</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Part 205: Federal Disaster Assistance</td>
<td>§§ 205.3, 205.52, 205.54, 205.113, 205.400, 205.402, 205.407</td>
<td>42 U.S.C. § 5201 (1982).</td>
<td>The purpose of these regulations is to prescribe the standards and procedures to be followed in implementing the Disaster Relief Act.</td>
</tr>
<tr>
<td>Title</td>
<td>Part</td>
<td>Sections</td>
<td>Authority</td>
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</tr>
<tr>
<td>TITLE 49 TRANSPORTATION</td>
<td>Part 226: Assistance to States for Local Rail Service Under § 5 of the Department of Transportation</td>
<td>§ 266.19</td>
<td>49 U.S.C. §§ 1651-1654 (1982 &amp; Supp. III 1985).</td>
<td>To qualify for assistance, the regulations require that environmental factors be taken into consideration and the applicant must submit an EA. In addition, if further required the applicant must also submit an EIS. Specific mention was made of construction in wetlands.</td>
</tr>
<tr>
<td></td>
<td>Part 602: Guidelines for Fishery Management Plans</td>
<td>§ 602.11</td>
<td>16 U.S.C. §§ 1801-1882 (1982 &amp; Supp. III 1985).</td>
<td>These regulations implement the Magnuson Fishery Conservation and Management Act that pertains to the development, content, submission, amendment, review and final implementation of a fishery management plan. Wetlands are defined in the regulations as an environmental factor to be included when formulating the plan.</td>
</tr>
</tbody>
</table>
supporting projects or assisting third parties involved in new construction in wetlands unless: (1) no practicable alternative exists; (2) or if no practicable alternative exists, the agency includes in its action all practicable measures which will minimize the harm to the wetlands; and (3) the agency considers the effect on the survival and quality of wetlands.


This Executive Order requires all federal agencies to avoid direct or indirect support of flood plain development whenever there is a practicable alternative. Insofar as many wetlands are part of a flood plain system, this Order could influence wetland development. Case law concerning this particular Executive Order can be found in Savia v. United States Postal Service, 659 F. Supp. 653 (D.D.C. 1987).

E. Federal Case Law

1. Research Guidance

Litigation in the federal courts is digested by the West Publishing Company. West has issued four different series, each dealing with a specific chronological time span. The most current version is the Federal Practice Digest, 3d which covers the reported cases from 1975 to date. The permanently bound hard-covered volumes were published in 1984. This series is updated by annual pocket parts and supplemental pamphlets for the current year in progress. To aid the researcher, the Federal Practice Digest, 3d includes a descriptive word index, a word-phrase index, a plaintiff-defendant table, and a table of cases.

Unique to the Federal Practice Digest, 3d is the topic key number system. The entry in the various finding aids refers

101. The Federal Digest includes all reported cases prior to 1939. This is followed by the Modern Federal Practice Digest which covers the period of 1938 to 1961. Federal cases reported during 1961 to 1975 can be found in the Federal Practice Digest, 2d. C. Wren & J. Wren, supra note 35, at 15.

102. Id.
WETLANDS RESEARCH GUIDE

the researcher to this number. Table 21 provides a compilation of West topic-key numbers associated with wetlands and related aspects.

The electronic data bases, Westlaw and Lexis, also provide several libraries which may be utilized in researching wetlands. Note, however, that by searching with the term “wetland(s)” only, a list of several hundred reported cases may be retrieved depending upon which library and file is used. Therefore, it is best to streamline the search by incorporating other terms such as conservation, flood control, waterfowl, or agriculture with the term “wetland(s),” or limit the span of time and/or courts involved.

2. Major Federal Wetlands Cases

This section contains case law which identified and resolved issues pertaining to wetlands. The list provided here is not comprehensive, but is a sampling of cases analyzing common wetland issues, which are of first impression or which interpret a particular aspect of federal law or policy.


This court determined that: (1) when Congress defined the phrase “navigable waters” within the scope of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), it asserted federal jurisdiction over the Nation’s waters to the maximum extent permissible under the Commerce Clause; and (2) because of the preceding conclusion, the term “navigable waters” used in the FWPCA is not limited to the traditional tests of navigability.

103. Westlaw provides the following libraries which can be used to access reported federal cases: (1) Federal - General, Case Law; and (2) Federal - Topical, Environmental Law. In addition, West topic-key numbers can be used in the Westlaw system. Lexis provides the following libraries: (1) General Federal Library; and (2) Environmental Law Library (within which there are several case law and reference files).
### TABLE 21 Compilation of West Topic-Key Numbers Associated with Wetlands

<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>KEY NUMBER</th>
<th>DESCRIPTION</th>
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<tbody>
<tr>
<td>ENVIRONMENT</td>
<td>25.5(3)</td>
<td>Environment Protection in general — Particular applications</td>
</tr>
<tr>
<td></td>
<td>25.7(3)</td>
<td>Water pollution — Federal regulations</td>
</tr>
<tr>
<td></td>
<td>25.7(4)</td>
<td>Water pollution — Waters protected</td>
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<td></td>
<td>25.7(6)</td>
<td>Water pollution — Substances and sources; what is pollution</td>
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<tr>
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<td>25.7(13)</td>
<td>Water pollution — Permits and certifications</td>
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<tr>
<td></td>
<td>25.7(14)</td>
<td>Water pollution — Permits and certifications: Proceedings</td>
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<td></td>
<td>25.7(19)</td>
<td>Water pollution — Compliance and enforcement: Abatement and cease-and-desist orders</td>
</tr>
<tr>
<td></td>
<td>25.7(20)</td>
<td>Water pollution — Compliance and enforcement: Removal of pollutants; public reimbursement</td>
</tr>
<tr>
<td>HEALTH AND ENVIRONMENT</td>
<td>25.7(23)</td>
<td>Water pollution — Civil liability; clean up cost</td>
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<td>25.7(24)</td>
<td>Water pollution — Offenses, penalties, and fines; proceedings</td>
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<td></td>
<td>25.10(2)</td>
<td>Environment Impact Statement — Necessity for statement</td>
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<td></td>
<td>25.10(6)</td>
<td>Environment Impact Statement — Content, sufficiency, and accuracy</td>
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<td>25.15(1)</td>
<td>Judicial Review and intervention — In general</td>
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<tr>
<td></td>
<td>25.15(2)</td>
<td>Judicial Review and intervention — Injunction</td>
</tr>
<tr>
<td></td>
<td>25.15(3)</td>
<td>Judicial Review and intervention — Injunction: Preliminary injunction</td>
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<td>25.15(3.2)</td>
<td>Judicial Review and intervention — Decision or actions reviewable</td>
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<td>25.15(3.3)</td>
<td>Judicial Review and intervention — Proceedings for review; pleading; record</td>
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<tr>
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<td>25.15(4)</td>
<td>Judicial Review and intervention — Parties; standing</td>
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<td>25.15(6)</td>
<td>Judicial Review and intervention — Scope of inquiry or review</td>
</tr>
<tr>
<td></td>
<td>25.15(8)</td>
<td>Judicial Review and intervention — Scope of inquiry or review: Water pollution issues</td>
</tr>
<tr>
<td></td>
<td>25.15(12)</td>
<td>Judicial Review and intervention — Judgment or order, relief</td>
</tr>
<tr>
<td>NAVIGABLE WATERS</td>
<td>1</td>
<td>Navigability in general</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>Power to control and regulate</td>
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<td></td>
<td>6</td>
<td>Improvement of channels and streams — In general</td>
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<tr>
<td></td>
<td>7</td>
<td>Improvement of channels and streams — Power to make or authorize</td>
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<td>22</td>
<td>Piers, dams and cables: Authority to construct and maintain, or to authorize construction and maintenance</td>
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<td></td>
<td>35</td>
<td>Sewage and pollution</td>
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<td></td>
<td>38</td>
<td>Reclamation and improvement</td>
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</tbody>
</table>


The Third Circuit held that the five hundred twenty-one
"acres in question came within the regulatory definition of freshwater wetlands, and that the land was ecologically valuable to the Delaware ecological system."\textsuperscript{104} The court further stated that "the right of the federal government to exercise jurisdiction over wetlands and similar areas beyond the classic 'navigable waters' concept frequently has been upheld in a long line of cases."\textsuperscript{105}

(3) \textit{United States v. Byrd}, 609 F.2d 1204 (7th Cir. 1979).

In this case, the court determined that Lake Wawase, an intrastate body of water, was subject to federal jurisdiction. "We may conclude that Congress constitutionally may extend its regulatory control of navigable waters under the Commerce Clause to wetlands which adjoin or are contiguous to intrastate lakes which are used by interstate travelers for water related recreational purposes."\textsuperscript{106}

(4) \textit{National Wildlife Federation v. Adams}, 629 F.2d 587 (9th Cir. 1980).

At issue in this case was Executive Order 11,990, Protection of Wetlands, which deals with federal activity such as construction within wetlands. The court determined that, although the Executive Order extends broader federal protection to wetlands than NEPA standing alone, the Order is less prohibitory and contemplates a greater balancing of factors. The court stated that: "[t]he test for determining whether an alternative propounded by agencies promulgating regulations under Executive Order 11,990 is practicable is whether it is capable of attainment within relevant, existing constraints."\textsuperscript{107}


In this case the court tackled the issue of wetland restoration. The court concluded that a plan to restore wetlands


\textsuperscript{105} Id. (citation omitted).

\textsuperscript{106} United States v. Byrd, 609 F.2d 1204, 1210 (7th Cir. 1979).

\textsuperscript{107} National Wildlife Fed'n v. Adams, 629 F.2d 587, 591-92 (9th Cir. 1980) (footnote omitted).
which had been filled in violation of the Federal Water Pollution Control Act must: "(1) confer maximum environmental benefits, (2) be achievable as a practicable matter, and (3) bear an equitable relationship to the decree and kind of wrong which it is intended to remedy." 108


This case involved the construction of levee lines for flood control in a cypress-topels gum swamp and marsh. The statutory laws at issue were the Clean Water Act and the Rivers and Harbors Act. The court determined that the Army Corps of Engineers is required by regulations to consider not only the flood protection aspects of the project, but also other factors including the water quality and ecological consequences on the fish and wildlife habitat (which in this particular case was a wetland). The court concluded that the Corps had the discretion to deny a permit based on ecological grounds.


The federal statutes involved in this case are the Migratory Bird Hunting Stamp Act 109 and the Wetlands Act of 1961 (Wetland Loan Act). 110 These laws granted the federal government the authority to acquire easements over wetlands. However, a 1977 North Dakota statute restricted the United States' ability to acquire these easements. The Supreme Court concluded that North Dakota's statute could not restrict the federal government's ability to acquire wetlands easements; thus the easements that were acquired in violation of the state statute were none-the-less valid.

(8) Avoyelles Sportsmen's League, Inc. v. Marsh, 715 F.2d 897 (5th Cir. 1983).

This case involved the Environmental Protection Agency (EPA) and its jurisdiction under the Clean Water Act. The court determined that: (1) the EPA's wetland definition was

consistent with the Clean Water Act; (2) the EPA’s identification of a wetland was not arbitrary or capricious; (3) the EPA’s decision to review vegetation as well as soil and hydrology data was not improper because the Agency’s action was an interpretive application and not an amendment of the 1977 wetlands definition; and (4) in this case, the land-clearing activities were not exempt farming activities, thus a dredge and fill permit was required.


This case concerned the restoration of marsh land (wetland) adjacent to Florida’s Trout River, part of the navigable waters of the United States. The court determined that: (1) the restoration plan must be designed so as to confer the maximum environmental benefits possible when balanced with equity; (2) the remedy of restoration is not precluded just because the restoration plan may take several years to complete; and (3) although the filling of an adjacent wetland to a navigable waterway violates two federal laws, it would be improper in this case to enforce restoration of a wetland above the Florida Department of Environmental Regulation’s permit line.


This court made the following decision concerning wetland restoration: (1) pursuant to the Clean Water Act, a court has the authority to order restoration and impose a civil penalty as a means of enforcing compliance; (2) a violation of the law governing wetlands does not automatically require restoration as a remedy; (3) the injunctive power derived from the Clean Water Act is designed to permit a court to restore favorable environmental characteristics which have been disrupted by an unlawful filling; and (4) the burden of persuasion is upon the government to establish the existence of wetlands by a preponderance of the evidence.

This case deals with an artificial wetland which was created inadvertently in 1968 as a by-product of the Army Corps of Engineers activity in the area. This area, as a wetland, was devoid of wildlife and was not conducive to any recreational activity. The court concluded that in this particular case the area was not a protected wetland under the Clean Water Act.


In this case the federal government was seeking a permanent injunction restraining the defendants from filling a wetland. The court determined that: (1) the site involved had saturated soil and aquatic vegetation characteristic of a wetland and was within the jurisdiction of the Army Corps of Engineers; (2) the defendants had to apply for and be denied a permit before they could bring a “taking” action; and (3) the defendants, once enjoined from engaging in their unlawful activity, would be required to prepare a plan for restoring the wetland area if the requirements set forth by the court were satisfied.


In this case the Supreme Court made determinations regarding: (1) the regulatory jurisdiction of the Army Corps of Engineers under section 404 of the Clean Water Act; (2) the appropriateness of the Army Corps of Engineers' definition of “waters of the United States”; and (3) the “taking” defense of the defendants. The Supreme Court ruled that the defendant was afforded a remedy for a regulatory “taking” under the Tucker Act. The Court further stated that the Corps had the jurisdiction under the Clean Water Act to regulate wetlands adjacent to navigable waterways.


This case involved Executive Order No. 11,990, Protection of Wetlands. The court determined that: (1) when there
is doubt as to the applicable law, regulation or Order intended to protect the environment, the doubt should be resolved in favor of the Order's application in order to prevent permanent damage to the environment; (2) the Executive Order imposes duties on federal agencies above and beyond the general requirements of NEPA; and (3) the Executive Order, while providing for the protection of wetlands, does not contemplate a range of choice for the agency as narrowly constricted as that demanded by 49 U.S.C. § 303 (1982).


The issues determined in this case were: (1) the Corps had jurisdiction over a tract of land under section 301 of the Clean Water Act, even though it was not a natural wetland (the artificial wetland had been created by various local and state activities and not by the Corps); and (2) the Corps was correct in denying the permit to fill because the artificial wetland was ecologically important as a wildlife habitat, a flood storage area and a source of water quality benefits.


The court determined that when identifying a wetland the Army Corps of Engineers must base its determination "on sound scientific analysis of vegetation, hydrology and soils,"111 following an actual investigation that had been conducted. The court, after review of the Corps' actions, concluded that the Corps' analysis of the data was inadequate and thus the Corps' determination that the area in question was not a wetland could not be sustained.


The plaintiff, a developer, brought this action seeking to enjoin the Environmental Protection Agency from holding public hearings, pursuant to the Clean Water Act, about the

plaintiff's development project in a wetlands area. The court determined that: (1) the EPA regional administrator did not abuse his discretionary power, derived from section 404(c) of the Clean Water Act, to initiate a proceeding which would prohibit the Army Corps of Engineers from issuing a section 404 permit; and (2) the EPA's action did not constitute "final agency action," thus the district court did not have subject matter jurisdiction over the plaintiff's suit.


This case involved farming activities within a wetland. The court, in arriving at its ruling, stated that it had to "balance two enduring values: serving the needs of the present [farming productivity] and safeguarding the dreams of the future [natural wetlands]." The court determined the following: (1) in this particular case the farming activity had not been "established and continuous" and was thus exempt from the regulations involved; (2) the farming corporation, in this set of circumstances, could not avoid the Clean Water Act's "recapture provisions;" (3) the "restoration injunction" was appropriate; and (4) within certain circumstances, the farming corporation was required to pay the statutory penalty.

(19) *Friends of the Earth v. Hintz*, 800 F.2d 822 (9th Cir. 1986).

This case discusses a mitigation agreement between the Army Corps of Engineers and the applicant which incorporates a wetland substitution plan. The court determined that: (1) a substituted parcel of land in the mitigation agreement may, under the appropriate set of circumstances, constitute mitigation that would relieve the Corps of the obligation of performing an environmental impact statement before granting the permit; and (2) the Corps was entitled to consider the impact of the substituted wetland as presented in the mitigation plan (agreement).


This case defines wetlands. The court stated: (1) the Corps' wetland definition was not arbitrary or capricious; (2) there is no requirement that an area be saturated to be characterized as a wetland; and (3) the fact that the wetland may have been artificially created through the construction of a lake dam did not negate the Corps’ assertion of regulatory jurisdiction under the Clean Water Act.


This action was brought against a rancher who continued his activities after the Army Corps of Engineers determined that he was violating the Clean Water Act. The court ruled that the wetland regulatory definition, as it pertains to vegetation, is meant to exclude uplands which demonstrate an aberrative presence of wetland vegetation. The definition does not exclude those wetlands which receive their water from man-made structures. In addition, the court believed that the term “wetland” and “waters” are broad enough to encompass, within the scope of the Clean Water Act, artificial wetlands.


At issue in this case were: (1) the definition of a wetland and the frequency/duration of saturated soil conditions; (2) evidentiary questions and the burden of persuasion-proof at different points in the action; (3) what qualifies as an exemption under the Clean Water Act; and (4) when and if restoration can be ordered.


This action was brought to prevent a property owner in Puerto Rico from filling a mangrove forest. The court determined that the Clean Water Act’s provisions concerning dredge and fill material can be applied to wetlands in Puerto Rico. In addition, the court stated that the mangrove forest, as found in this case, was a wetland within the scope of the Clean Water Act.
The Supreme Court held: (1) the "seventh amendment guarantees a jury trial to determine liability in actions by the Government seeking civil penalties and injunctive relief under the Clean Water Act; but (2) the seventh amendment does not guarantee a jury trial to assess civil penalties under the Act."  

This action was brought by individuals seeking to require the Environmental Protection Agency and the Army Corps of Engineers to exercise jurisdiction over certain wetlands. The court ruled that: (1) the plaintiff did not have standing in this action; (2) the wetland area in question was within the jurisdiction of the two agencies; (3) the agencies' actions were subject to judicial review; and (4) the court would not order the nonfederal defendant to undertake restoration because the EPA and the Corps had not invoked the enforcement techniques which were clearly within their jurisdiction.

III. Organizational Involvement by the Federal Government and the Private Sector

A. Federal Regulatory Agencies and Congressional Committees

Numerous agencies and committees of the legislative and executive branches are responsible for regulating and/or monitoring our national wetlands. An annotated list of some of these agencies was compiled from these sources:

114. These sources are not the only resources available which provide information on agencies and committees. Another valuable source is The United States Government Manual which is published annually as the official handbook of the federal government. The United States Government Manual "provides comprehensive information on the agencies of the legislature, judicial, and executive branches. The Manual also includes information on quasi-official agencies, international organizations in which the United States participates, and boards, committees, and commissions." The United States Government Manual 1987/88 III (rev. June 2, 1987). "The Manual is published as a special edition of the Federal Register." Id. (citation omitted). This
sional Quarter’s Federal Regulatory Directory, Information, U.S.A., and the Encyclopedia of Governmental Advisory Organizations. The following information is not exhaustive, but should provide the user with a substantial base to begin his/her research.

1. Executive Branch

(1) Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006
(202) 395-5750

The Council on Environmental Quality (CEQ) has a number of defined functions which enable the executive branch to formulate national environmental policy. In addition, the Council also prepares and submits annual reports to Congress.
on national environmental priorities, and develops guidelines for implementation of environmental statues. The CEQ has taken an active role in wetland protection by publishing guidelines which clarify and implement national policy.118

(2) Agricultural Stabilization and Conservation Service
Conservation and Environment Protection Division
United States Department of Agriculture
14th Street & Independence Avenue, S.W.
P.O. Box 2415
Washington, D.C. 20013
(202) 447-6221

This agency administers voluntary land use programs to protect, preserve, expand and conserve farmlands, wetlands and forests. One agency program is the Water Bank Program. In this program, the owner of a wetland area which has been determined to be a significant waterfowl nesting and breeding area is eligible for assistance to preserve and protect the wetlands and adjacent areas.

(3) United States Army Corps of Engineers
United States Department of Army
Pulaski Building
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314
(202) 272-0001

The primary function of the Army Corps of Engineers is to regulate programs and construction pertaining to navigable waterways. The Corps is the lead agency responsible for the section 404 program under the Clean Water Act. In administering the 404 program, the Corps can assert its regulatory jurisdiction over wetlands adjacent to navigable waterways. The Corps' wetland research program is carried out primarily by the Waterways Experiment Station (WES).

(4) National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration (NOAA) oversees the Coastal Zone Management Act which identifies wetlands as a coastal resource that must be protected and conserved. NOAA includes specialized offices such as the Office of Protected Species and Habitat Conservation, and the National Marine Fisheries Service ((202) 673-5245).

(5) Land and Natural Resource Division
United States Department of Justice
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530
(202) 633-2701
This division of the Justice Department represents the United States in legal actions, both criminal and civil, which involve natural resources, environmental quality, and wildlife resources.

(6) National Wetlands Inventory
Office of Biological Survey
United States Fish & Wildlife Service
United States Department of the Interior
1735 K Street, N.W.
Washington, D.C. 20240
(202) 343-1626
The National Wetlands Inventory is a computerized data bank containing information on wetlands and deepwater habitats. The data include a breakdown of all national wetland areas according to their ecological and physical characteristics, geological location, and natural resource value.

(7) Permits and Licenses Branch
Ecological Services
United States Fish & Wildlife Service
United States Department of the Interior
1375 K Street, N.W. Room 415
This branch of the United States Fish & Wildlife Service monitors wetlands and other aquatic areas in an attempt to prevent unnecessary environmental damage and/or destruction during dredging and dumping activities.

(8) **Regional Wetland Coordinator**

Ralph A. Tiner  
United States Fish & Wildlife Service  
United States Department of the Interior  
Gateway Center  
Newton Corner, Massachusetts 02158  
(617) 653-8115

(9) **Wetland Ecology Group**

United States Fish & Wildlife Service  
United States Department of the Interior  
2627 Redwing Road  
Ft. Collins, Colorado 80526  
(303) 226-9390

(10) **United States Geological Survey**

United States Department of the Interior  
National Center  
12201 Sunrise Valley Drive  
Reston, Virginia 22092  
(703) 648-7411

The United States Geological Survey (U.S.G.S.) has mapped many of our remaining national wetland areas. The U.S.G.S. National Cartographic Information Center, in conjunction with the U.S. Fish & Wildlife Service's National Wetland Inventory has made maps of the nation's wetlands available to the public. When calling this service at 1-800-USA-MAPS, the user (caller) should give the name of the state for which the wetlands map is sought. If possible, the caller should also give the town and the U.S.G.S. map series quadrangle relating to the area of interest.

(11) **Protect Our Wetlands and Duck Resources (POWDR) Task Force**
Office of the Secretary of the Interior  
United States Department of Interior  
1800 C Street, N.W.  
Washington, D.C. 20240  
(202) 343-3171  

This task force is a public advisory organization associated with the Department of the Interior. Officially established in 1983, this task force is comprised of twenty-four members representing a variety of public and private organizations, and meets at least twice a year. POWDR's purpose is to identify and implement, if possible, methods and measures which will ensure the conservation of our nation's wetlands.

2. Legislative Branch

(1) Office of Technology Assessment  
Science, Information and Natural Resources Division  
United States Congress  
600 Pennsylvania Avenue, S.E.  
Washington, D.C. 20570  
(202) 224-9241 (Congressional & Public Affairs)  
(202) 224-8996 (Publications)  
(202) 226-2253 (Science, Information and Natural Resources Division)  

This Office provides Congress with information and analysis on political, economic, physical, scientific, and social effects of technology application. The Office of Technology Assessment (OTA) works closely with the various congressional committees to provide information which will clarify uncertainties or conflicting issues that arise, or to provide alternative methods by which a committee can approach and resolve issues.

(2) Senate Committee on Environment and Public Works  
458 SDO Building  
Washington, D.C. 20510-6175  
(202) 224-6176 (Majority Staff)  

This Senate Committee oversees and reviews legislation concerning environmental policy, environmental research and development, fisheries and wildlife, and water resources. The
following two subcommittees deal with similar issues:

Senate Subcommittee on Environmental Pollution
Washington, D.C. 20510-6175
(202) 224-6691

Senate Subcommittee on Water Resources, Transportation, and Infrastructure
Washington, D.C. 20510-6176
(202) 224-3597

(3) House of Representatives Committee on Merchant Marine and Fisheries
1334 LHO Building
Washington, D.C. 20515-6230
(202) 225-4047

This House Committee oversees and reviews legislation dealing with coastal zone management, fisheries and wildlife, restoration, refuges, and conservation. The following subcommittee works with related legislation.

Subcommittee on Fisheries and Wildlife Conservation and the Environment
Annex 2 H2-543
Washington, D.C. 20575
(202) 266-3533

(4) House of Representatives Committee on Science, Space and Technology
2321 RHO Building
Washington, D.C. 20515-6301
(202) 225-6371 (Majority Staff)

This House Committee oversees and reviews legislation concerned with environmental research and the National Science Foundation. The following subcommittee also has the authority to deal with issues concerning natural resources.

Subcommittee on Natural Resources, Agricultural Research and Environment
Annex 2 H2-388
Washington, D.C. 20515-6303
(202) 266-6983
3. Independent Agencies

(1) Office of Wetland Protection
United States Environmental Protection Agency (EPA)
401 M Street, S.W.
Washington, D.C. 20460
(202) 382-7946

The Environmental Protection Agency (EPA) was established in 1970 to protect, preserve and enhance the national environment, today and for future generations, to the fullest extent possible under the law. As one of its functions, the EPA has jurisdiction under the Clean Water Act to influence man's activities in wetlands. In addition, in recognition of a wetland area's impact on the ecosystem and this natural resource's decline within the last century, the Agency has established an Office of Wetland Protection.

Office of Wetland Protection
Policy and Regulations Branch
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
(202) 382-5043

Office of Wetland Protection
Programs Operations Branch
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
(202) 382-7073

(2) Ecosystem Studies
Division of Environmental Biology
Directorate for Biological, Behavioral and Social Sciences
National Science Foundation
1800 G Street, N.W. Room 336
Washington, D.C. 20550
(202) 357-9596

The National Science Foundation adminsters several programs which pertain to natural ecosystems. These programs are multifaceted and support laboratory, field, and the-
oretical studies concerning natural, managed and man-domi-
nated terrestrial, freshwater and wetland ecosystems.

B. Private and Public Interest Organizations

The information used to compile this part of the Re-
search Guide was derived from the Encyclopedia of Associa-
tions119 and Research Centers Directory.120 The Encyclopedia
of Associations is a comprehensive listing and abstract system
of organizations. The book has eighteen subject sections with
alphabetical listings of organizations assigned to each subject.
Access to entries is facilitated by the alphabetical Name and
Keyword Index.121 The Research Centers Directory is a guide
to university-related and other nonprofit research organiza-
tions. This publication has three indices to expedite the user's
retrieval of information: (1) an institutional index; (2) an al-
phabetical index to Research Centers; and (3) a subject index.
Both publications have several references in their subject in-
dexes (keyword indexes) to wetlands.

(1) Association of State Wetland Managers
Box 528
Chester, Vermont 05143

This organization holds workshops and national confer-
ences on both policy and scientific issues which concern wet-
lands. Information derived from their conferences is published
for the benefit of the public and other organizations interested
in wetlands.

(2) Center for Wetlands
University of Florida
Phelps Laboratory
Gainesville, Florida 32611
(904) 392-2424


The Center, founded in 1973, engages in research on wetlands and their role in the interactions between man and nature. Studies on wetlands include: (1) wetland ecosystem dynamics; (2) use of wetlands for tertiary treatment of sewage; (3) a variety of ecological studies of coastal ecosystems; (4) environmental impact analysis; and (5) energy analysis at the local regional and national levels.

(3) Center for Wetland Resources
Louisiana State University
Baton Rouge, Louisiana 70803
(504) 388-1558
This Center is part of Louisiana State University's environmental program. The principal areas of research include: (1) coastal zone and flood plain process; (2) systems ecology; and (3) resources and management.

(4) Ducks Unlimited
One Waterfowl Way
Long Grove, Illinois 60084
(312) 438-4300
This international organization was founded in 1937. Its membership includes conservationists interested in migratory waterfowl and wildlife habitat from the United States, Canada, Mexico and New Zealand. One of the organization's purposes is to restore or build natural wetland areas for the migratory waterfowl of North America.

(5) Great Swamp Research Institute
49 Lyons Road
Basking Ridge, New Jersey 07920
(201) 221-9337
The Institute conducts basic and applied environmental and ecological research on the relationship of urbanization to natural areas. The data collected from the Institute's research is available to the scientific community and general public. In addition, Great Swamp Research Institute offers technical assistance to local, state and federal governments, and to private organizations.
To achieve its goal of preserving aquatic and wetlands ecosystems, the Nature Conservancy collaborates with government agencies, and conservation and research organizations in developing new ways to manage these fragile aquatic ecosystems. Currently the Conservancy protects 230,000 acres of wetlands.

This organization, founded in 1977, is composed of scientists in the field of wetland evaluation and management. The Council provides a forum for the exchange, within the wetland community, of scientific and technical information. To this end, the National Wetlands Technical Council conducts regional workshops for wetland scientists. This group also participates in the Wetland Program of the Environmental Law Institute and publishes the *National Wetlands Newsletter* in collaboration with the Environmental Law Institute.

This organization focuses on the scientific aspect of wetlands. It holds workshops and conferences on wetlands issues, including both wetlands science and related topics such as wetlands regulation and policy. The information derived from these conferences is often published for the benefit of the public and interested parties.
Bethlehem, Pennsylvania 18015
(215) 691-7000

This Institute was founded in 1919 and is an integral facet of Lehigh University’s Center for Marine and Environmental Studies. The principal fields of research are the coastal wetlands, salt marshes, and shallow water marine environments. The data collected from the Institute’s research is published in scientific journals.

(10) Wetlands Watch
Izaak Walton League of America
1701 N. Fort Meyer Drive
Suite 1100
Arlington, Virginia 22209
(703) 528-1818

The Izaak Walton League of America was founded in 1922. The League works to educate the public on how to conserve, maintain, protect and restore the natural resources of the United States. This organization sponsors a variety of environmental programs, including the Wetlands Watch.

C. Publications

This part of the Research Guide contains a listing of the resource publications issued by both the government and the private sector. The sources listed in section one pertain to the federal government and can be found in any library designated a government depository. The sources found in section two are general reference materials which can be found in law libraries or libraries specializing in the environmental sciences.

1. Federal Government

(1) Energy Abstracts for Policy Analysis
United States Department of Energy
Office of Science & Technology Information
P.O. Box 62
Oak Ridge, Tennessee 37831
(615) 576-1301

This monthly abstract issue covers the subjects of energy
research, conservation and policy, and is limited to substantive articles or reports. These articles focus on legislation, regulations, and other legal aspects, as well as social, economic and environmental issues. The abstract's indexes include: (1) a corporate author index; (2) a personal author index; (3) a subject index; and (4) a report number index. The term wetland appears in the subject index and references are provided. This abstract is available from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

(2) EPA Publications Bibliography - Quarterly Abstract Bulletin
Publications
Printing Management Office, Room M215
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
(202) 382-2116

This publication contains bibliographic citations with abstracts derived from reports by the U.S. Environmental Protection Agency which are included in the National Technical Information Service (NTIS) collection. This abstract series has several indexes which include: (1) report title index; (2) subject (keyword) index; (3) corporate/personal author index; (4) contract number index; and (5) access/report number index. The subject index contains "wetlands" references.

(3) Government Reports: Announcements & Index
National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, Virginia 22161
(703) 484-4600

Government Reports is produced by the National Technical Information Service (NTIS), an agency of the Department of Commerce. NTIS maintains an extremely comprehensive collection of governmental reports which are documented in the Government Reports: Announcements & Index. The annual Index is divided into the following indexes: (1) keyword
index; (2) personal author index; (3) corporate author index; (4) contract/grant number index; and (5) NTIS order/report number index. The term wetlands appears in the keyword index with entry number(s) identified for the user.

(4) GAO Documents
Government Accounting Office
GAO Information Handling & Support Facility
Box 6015
Gaithersburg, Maryland 20877
This series is a comprehensive record, published monthly, of GAO publications and documents. Its cumulative index is entitled *Index to GAO Documents*. The *Index* contains a subject index, an agency/organizational index, and a document number index.

(5) Monthly Catalog of the United States Government Publications
Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
The *Monthly Catalog* indexes and abstracts most government documents. This includes not only legislative documentation, policy or law, but also reports produced by various governmental agencies on scientific, technological, economic or social impacts. This series has an extensive index.122

(6) Publishing Office
Office of Technology Assessment
U.S. Congress
600 Pennsylvania Avenue, S.E.
Washington, D.C. 20510
(202) 224-8996
The Office of Technology Assessment (OTA) publishes reports, memoranda, and background papers on a variety of topics, including natural resources. For information concerning publications, contact either the OTA directly at the number above or consult the *Monthly Catalog* which contains

122. See *supra* notes 84-86 and accompanying text.
cites for OTA publications.

(7) **Selected Bibliography**

Superintendent of Documents  
U.S. Government Printing Office  
Washington, D.C. 20402

Due to the large number of books, pamphlets and subscription services that are available through the Superintendent of Documents, a concise, separate series of catalogs entitled *Selected Bibliography* are issued according to subject matter. Wetlands publications appear in the *Selected Bibliographies* entitled Conservation and Wildlife Management. Other catalogs that should be consulted are Agriculture and Land Use.

2. **Private and Public Interest Organizations**

(1) **National Wetlands Newsletter**  
Environmental Law Institute  
Suite 200  
1616 P Street, N.W.  
Washington, D.C. 20036  
(202) 328-5150  

This bimonthly newsletter is written specifically for an audience concerned or involved with the future of wetlands. Each issue presents current information regarding federal and state laws, policies, and programs. The information is presented in a variety of formats: professional articles, litigation updates, bibliographies of recent literature and scientific research, and notices about upcoming symposia, conferences, and workshops.

(2) **Environmental Protection Directory**  
Marquis Who’s Who  
200 E. Ohio Street  
Chicago, Illinois 60611  

This directory provides information on the various governmental agencies and private organizations active in the environmental field.
Environmental Index: A Guide to Key Literature of the Year
Environment Information Center, Inc.
48 West 38th Street
New York, New York 10016
(212) 944-8500
Environment Information Center, Inc. provides a host of services and resources for the researcher. Its publication contains citations to environmental literature, books and films. In addition, this publication contains a section which summarizes legislation, and a directory of federal and state environmental officials.

Land Use Planning Abstracts: A Selected Guide to Land and Water Resource Information
Environment Information Center, Inc.
Land Use Reference Department
124 E. 39th Street
New York, New York 10016
(212) 685-0845
This annual abstract has several useful indices which include: (1) subject index; (2) Standard Industrial Classification (SIC) Code index; and (3) author index.\(^ {123} \)

Environmental Law Reporter
Environmental Law Institute
1616 P Street
Washington, D.C. 20036
(202) 328-5150
This is a monthly looseleaf service written and compiled by lawyers. It reproduces the entire text of court opinions, digests significant pending legislation, highlights major judicial, legislative and regulatory developments, and provides quick access to all major federal statutes and regulations. In addition, the monthly “News and Analysis” section provides commentary and articles on current areas of interest.

\(^ {123} \) Environment Information Center, Inc. also publishes an annual volume entitled Environment Abstracts. This book provides the same services as does Land Use Planning Abstracts.
Environmental Reporter
Bureau of National Affairs
1231 25th Street, N.W.
Washington, D.C. 20037
(202) 452-4323

This publication is a weekly review of the current environmental issues. Each issue contains a Highlight, Current Development and Special Analysis Section, plus a Topical Summary. In addition, there is an annual index published for the series which refers to wetlands materials and related issues. BNA also publishes, and cites to a series called the *Environmental Reporter - Cases*. This series reproduces the entire opinion of current environmental cases.

D. Libraries

The *Directory of Special Libraries and Information Centers*\(^{124}\) and *Information, U.S.A.*\(^{125}\) provided the following information on libraries specializing in materials or collections on wetlands. "The *Directory of Special Libraries and Information Centers* is a comprehensive guide to special and research libraries, information centers, archives and similar facilities maintained by business firms, nonprofit organizations, educational institutions, government agencies and other types of organizations in the United States and Canada."\(^{126}\) This publication contains an extensive subject index which contains the term wetland and provides references. The other source for this section was *Information, U.S.A.*, a research directory of the federal government which describes the various federal resources available to the public and also contains an index.

1. Federal Government

(1) U.S. Environmental Protection Agency Library

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This library contains materials about the environmental sciences and law, management, economics, and toxicology with a special collection on wetlands ecology. The library is open to the public.

(2) National Agricultural Library
10301 Baltimore Blvd.
Beltsville, Maryland 20705
(301) 344-3744
This library provides published material and reference services on a variety of subjects including those related to wetlands. Loans of reference works are available to the public through the interlibrary loan service. Another service, called the Quick Bibliography Series, provides free bibliographies on a wide variety of subjects upon request.

(3) Natural Resource Library
Office of Library and Information Services
Department of the Interior
18th & C Streets, N.W.
Washington, D.C. 20240
(202) 343-5821 (general information)
(202) 343-5815 (reference library)
This library provides information covering conservation and the development of natural resources, such as wetlands. Other available services include computerized literature searches and legal research.

2. Private and Public Interest Organizations

(1) Center for Wetlands Reference Library
Phelps Library
University of Florida
Gainseville, Florida 32611
(904) 392-2424
The library, containing materials on wetlands research, ecosystem modeling and energy analysis, maintains over eight hundred books, sixty-four dissertations, forty-eight hard copy technical reports, and several other resources. The library is open to the public at specified hours.

(2) Center for Wetlands Resources  
Coastal Information Repository  
Louisiana State University  
Baton Rouge, Louisiana 70803  
(504) 388-8265  
This library maintains a collection of materials covering geology, marine science, ecology, meteorology, wetlands soil, chemistry, ports, and waterways. In addition to these materials, the library contains special indexes pertaining to wetlands and publishes a Wetland Thesaurus, now in its second edition.

(3) Federated Conservationists of Westchester County  
FCWC Office Resource Library  
Natural Science Building Room 1002  
State University New York  
Purchase, New York 10577  
(914) 253-8043  
This library maintains a collection covering wetland legislation, water supply and quality, and air pollution. The library is open to the public for reference use only.

(4) National Wetlands Technical Council Library  
1616 P Street  
Suite 200  
Washington, D.C. 20036  
(202) 328-5150  
This organization maintains a library of over one hundred and fifty volumes on wetland science, management and law.

E. Databases

There are several research sources available that will provide information concerning on line database systems. These sources include the *Encyclopedia of Information Systems*
WETLANDS RESEARCH GUIDE

and Services,127 Online Database Search Service Directory,128 and the Directory of Online Databases.129

In reviewing these sources, the user will encounter difficulty because of the diversity of the subject (i.e. flood control, aquifer recharge, wildlife habitat, etc.). For example, in focusing in on the topic of wetlands, only one of the three above-mentioned sources provided a single reference to a database that dealt exclusively with the subject of wetlands. To prevent a limited search and to locate an appropriate database, expand the search to include other general references such as water resources, aquaculture, environment, natural resources, and wildlife.

(1) Wetland Values Bibliographic Database

Producers: Waterways Experimental Station
United States Army Corps of Engineers
Division of Biological Services
United States Fish & Wildlife Services
United States Department of the Interior

This service contains approximately four thousand citations, with abstracts, to literature on the function and value of wetlands. The sources for this database include scientific journals, government publications and thesis.


128. Online Database Search Service Directory (J. Schmittroth, Jr. & D. Maxfield 1st ed. 1984). This publication "[p]rovides detailed descriptions on the online information retrieval services offered by the public, academic, and special libraries, private information firms, and other organizations in the United States and Canada." Id. at 579. This Directory is available from Gale Research Company, Book Tower, Detroit, Michigan 48226.

129. 7 Directory of Online Databases (1986). The Directory of Online Databases is published by Cuadra/Elsevier, 52 Vanderbilt Avenue, New York, New York 10017. "This Directory has been designed to help subscribers keep abreast of the vast amount of information contained in online databases . . . available for interactive access by users from remote computer terminals and microcomputers." Id. at vii.
IV. Annotated Bibliography

A. Books

(1) F. Daiber, Conservation of Tidal Marshes (1986).

This three hundred forty-one page handbook presents measures that will conserve and preserve tidal marshes of the temperate North American east coast. This book is available from Van Nostrand Reinhold, 115 Fifth Avenue, New York, New York 10003.


This one hundred sixty-eight page guidebook contains literature on wetlands values and management techniques. This guidebook is particularly valuable to a novice researching the topic of wetlands and is available through the Environmental Law Institute, Suite 600, 1346 Connecticut Avenue, N.W., Washington, D.C. 20036.


This four hundred seventy-three page book contains the proceedings of the Second Conference of the Contracting Parties to the Ramsar Convention. This publication is available through the Publications Services, IUCN, Avenue du Mont-Blanc, CH-1296, Gland, Switzerland.


This five hundred thirty-nine page textbook on the scientific and management aspects of both freshwater and coastal wetlands is available through Van Nostrand Reinhold, 115 Fifth Avenue, New York, New York 10003.


This book contains the results of the Office of Technology Assessment's investigations on wetlands which has been requested by the Senate Committee Environment and Public Works. This book presents a comprehensive look at wetlands,
their uses, and regulations under the section 404 program of the Clean Water Act. This book is available from the Superin-

(6) Proceedings: National Wetlands Assessment Symposium
(J. Kusler & P. Riexinger eds. 1986).

This three hundred thirty-one page volume contains the proceedings of the National Wetland Assessment Symposium. The information serves as a guide to approaching a wetlands assessment and offers different methods of evaluating the assessment. This book is available through the Association of State Wetland Managers, Box 528, Chester, Vermont 05143.


This two hundred page volume is comprised of papers presented at the 1985 Annual Conference of the Society of Wetland Scientists. This book is available through The Society of Wetland Scientists, P.O. Box 296, Wilmington, North Carolina 28402.


This three hundred ninety-three page volume contains the proceedings of a conference held at Pennsylvania State University on October 23-24, 1985. The purpose of the conference and the focus of the articles in the book is “to explore positive aspects of maintaining aquatic environments on mined lands.” 130 This publication is available from the Agricultural Conference Coordinator - Wetlands, 409 J.O. Keller Conference Center, University Park, Pennsylvania 16802.


This annotated bibliography contains references dealing

with the impacts of wastewater on wetlands. The book provides indexes to subjects, keywords and geographical locations. One may order a copy from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (NTIS No. PB-84-191-626).


This is a bibliography of documents, directly or indirectly related to environmental protection, released by the U.S. General Accounting Office (GAO) during January 1981 to December 1984. The publication can be obtained from GAO Information Handling & Support Facility, Box 6015, Gaithersburg, Maryland 20877.


This bibliography identifies documents which directly or indirectly relate to land use planning, management, and control. This bibliography can be obtained by contacting GAO Information Handling & Support Facility, Box 6015, Gaithersburg, Maryland 20877.

B. Law Review Articles


This article reviews the evolution of agricultural drainage

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131. The information used to compile the list of law review articles was obtained from an electronic database known as LegalTrac. LegalTrac, a database on the InfoTrac system, enables the user to search for bibliographic references to articles and commentaries from over seven hundred twenty legal periodicals as well as business journals and newspapers. LegalTrac is produced by Information Access Company, 11 Davis Drive, Belmont California 94002 ((800) 227-8431).

If this resource is unavailable, the *Index to Legal Periodicals*, published by the H.W. Wilson Company, 950 University Avenue, Bronx, New York 10462, provides similar information. The articles listed in the *Index to Legal Periodicals* are indexed under subject and author.
development in Minnesota, the effect that federal regulations have on this agricultural tool, and the state’s role in alleviating problems caused by federal regulation in this area.


This article discusses the current state of regulated wetlands versus the private developer. The authors conclude, following a review of case law and regulatory practice, that private developers should “approach development in wetland areas with a view toward working closely with federal and state agencies.”


This article analyzes the debate over property ownership with the North Carolina’s estuarine complex and the legal ramifications arising from this situation.


The article’s main focus is on “the duplication and overlap present in Florida’s environmental regulatory process.”


This article analyzes the topic from a practical viewpoint, by using examples of the questions concerning titles founded upon supposed swamp and overflowed land grants. The author hopes that by presenting the information in this format


that "a clear grasp of the distinction between various classes of land will be understood."135


"This article examines the role of the federal government in wetlands regulation and suggests that the conflict between agricultural productivity and wetlands protection is being decided in favor of wetlands."136


This article presents a brief overview of wetlands law: the importance of wetlands, levels of governmental regulation, the taking issue, and some comments on the future of wetlands.


This article is part of a symposium issue on Minnesota water law and is intended to be a guide for practitioners who must deal with the dredge and fill program under the Clean Water Act.


"This article explores the inadequate protection afforded wildlife habitat under Florida law relating to wetlands and wildlife."137


This is an extensive article covering the statutes and the


case law that governs jurisdiction, judicial review, defenses, and remedies in wetlands' litigation.


This article "defends the permit program established under section 404 of the Clean Water Act against charges of bureaucratic red tape and over regulation."138


"This article will demonstrate not only that tax measures such as CWEL [Coastal Wetlands Environmental Levy] are patently unconstitutional attempts to tax interstate commerce, but that taxation is not an appropriate, let alone best, means of regulating the use of pipelines in Louisiana's coastal zone."139


This article discusses section 404 of the Clean Water Act and its capacity for restoring the nation's wetlands. The author concludes that the "Guidelines' inherent distinction between degraded and pristine wetlands poses a significant obstacle to restoration."140


This discussion of the elements of a land acquisition pro-


gram and its application to a coastal management program concludes that "because land acquisition is an essential tool for effective management of the coastal areas, private and public agencies should be encouraged to coordinate their efforts to accommodate diverse interests and incorporate land acquisition into integrated coastal management systems."\(^{141}\)


This article focuses on the constitutionality of a state imposing an environmental tax. The author, using Louisiana's Coastal Wetlands Environmental Levy as a case study, analyzes the issues and ultimately establishes "four constitutional constraints on a state's power to impose an environmental tax."\(^{142}\)


This article studies Massachusetts law covering wetlands and floodplains from 1978 to 1982.


"This article documents the current relationships between the FAHP [Federal-Aid Highway Program] and the federal laws, regulations, and policies that provide for the protection and regulation of activities in wetlands and floodplains."\(^{143}\)


This article critiques the section 404 program under the

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Clean Water Act administered by the Army Corps of Engineers. The authors offer several possible alternate methods of implementation or reforms of the program.


This extensive article discusses the importance of wetlands, reviews the history of section 404 of the Clean Water Act, especially those provisions pertaining to wetlands, and concludes with a look at the "legislative response to the surprising evolution of section 404."144


"[T]his paper presents a comparative law survey of municipal wetlands protection statutes in the United States and their relationship to the Ramsar Convention."145 The article focuses on: (1) the need for wetland protection and its development; (2) several U.S. state wetland statutes; (3) analysis of the Ramsar Convention; and (4) recommendations by the author for changes needed in the Convention to promote its effectiveness in the international community.


The "purpose of [this] article is to increase public awareness of the importance of Nebraska's wetlands and to evaluate the means presently available to aid in wetlands preservation."146

(22) Comment, The Coastal Wetlands Environmental Levy:


“This comment addresses and analyzes the Coastal Wetlands Environmental Levy (CWEL), a highly publicized but futile attempt by the state of Louisiana to raise substantial revenues by taxing the transportation of oil and gas through the state's coastal wetlands.”147


This article surveys "certain federal and state laws applicable to activities in Louisiana's wetlands, the jurisdictional reach of the various laws, the practices they cover, citizens' rights, if any, to secure enforcement of these laws, and the tests and balances as called for in judicial decision-making applying these laws.”148


This article analyzes Massachusetts wetlands issues. The author examines municipal authority to regulate wetlands under Massachusetts law, discusses the adoption of the home rule in Massachusetts and analyzes the "application of the home rule principles to wetlands protection in the Lovequist case.”149


This note analyzes the case of United States v. Tull, 769 F.2d 1982 (4th Cir. 1985). The author reviews applicable law and concludes that the Fourth Circuit's decision was incorrect and that the decision should be reversed by the Supreme Court.


This note analyses the Supreme Court's decision in United States v. Tull, 107 S. Ct. 1831 (1987), reversing the decision of the Fourth Circuit.


"This Note discusses the wetlands jurisdiction of the Army Corps of Engineers under the dredge and fill permit section of the Clean Water Act." 150 The author "concludes with a discussion of a plaintiff's chances of succeeding with a regulatory taking claim when a permit has been denied." 151


This note analyzes the Supreme Court case United States v. Riverside Bayview Homes, Inc., 474 U.S. 121 (1985). This case resolved issues concerning regulatory taking and the Army Corps of Engineers' jurisdiction under section 404 of the Clean Water Act.


This note also analyzes the Supreme Court case United States v. Riverside Bayview Homes, Inc., 474 U.S. 121 (1985).


151. Id.
This note analyzes the Florida case, Department of Environmental Regulation v. Goldring, 477 So. 2d 532 (Fla. 1985), which concerned wetlands. (31) Note, United States v. Riverside Bayview Homes, Inc: Wetlands, Fish or Waterfowl?, 32 Loyola Law Review 477 (1986).


This note "chart[s] the history of wetlands legislation in Florida leading up to the adoption of the Wetlands Protection Act, analyze[s] the Act in light of its expressed purposes, and

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make[s] recommendations for possible changes which may increase the protection of wetlands in Florida."\textsuperscript{153}


This note presents a review of section 404 of the Clean Water Act, Congressional action and the Army Corps of Engineers' jurisdiction.


This note is an analysis of the Sixth Circuit's decision in the case, United States v. Riverside Bayview Homes, Inc., 729 F.2d 391 (6th Cir. 1984). \textit{Riverside} discussed the Corps' jurisdiction and interpretation of section 404 of the Clean Water Act.


This article discusses recent case law and the constitutionality of requiring local governments to comply with the Clean Water Act.


This article analyzes the case of Hirsh v. Maryland Department of Natural Resources, 288 Md. 95, 416 A.2d 10 (1980). \textit{Hirsh} dealt with the validity of applying the Maryland Department of Natural Resources private wetland regulations to the Hirsh's property.

(40) Significant Developments, \textit{The Clean Water Act - More}


This article analyzes the Supreme Court case United States v. Riverside Bayview Homes, Inc., 474 U.S. 121 (1985). This case resolved issues concerning regulatory taking and the Army Corps of Engineers' jurisdiction under section 404 of the Clean Water Act.

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