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Wetlands: Federal Law and National Policy Research Guide

Christine J. McCulloch

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RESEARCH GUIDE

Wetlands: Federal Law and National Policy 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 wetland¹ stands in sharp contrast to the view prevalent in the 1800's.² 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.³

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.

Statement accompanying Exec. Order 11,990, 3 C.F.R. 121 (1978), *reprinted in* 42 U.S.C. § 4321 (1982). 13 Weekly Comp. Pres. Doc. 808, 809 (May 24, 1977).

2. Office of Tech. Assessment, U.S. Cong., Rep. No. OTA-0-206, *Wetlands and Their Use and Regulations* 37 (1982) [hereinafter *OTA Report*]. This viewpoint is exemplified by the following passage from the mid-1800's.

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 reclaimed, in an economic view will be greatly enhanced.

President of the American Public Health Association, 1876.

Toner, *A View of Some of the Leading Public Health Questions in the United States*, II Pub. Health Rep. 1, 22 (1876) (quoted in Myhrum, *Federal Protection of Wetlands Through Legal Process*, 7 B.C. Env'tl. L. Rev. 567 (1979)).

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."⁴ 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.”⁵ Thus, when a treaty has received the concurrence of the Senate and is signed by the President it becomes the “Law of the Land.”⁶

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*⁷ and *Treaties in Force*.⁸

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.”⁹ After several documents (pamphlets) have accumulated, the information is permanently bound. More than one volume may be issued in a particular year.¹⁰ The series also has a cumulative index. The

5. T. Buergenthal & H. Maier, Public International Law - In A Nutshell 91-92 (1985).

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*].

9. I. Kavass & A. Sprudz, *UST Cumulative Index 1950-1970*, I (1973).

10. *Id.*

UTS Cumulative Index consists of four sections: (1) numerical list of documents; (2) chronological index; (3) country index; and (4) subject index.¹¹ 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.¹² 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."¹³ 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."¹⁴ The appendix to the publication furnishes the user with a consolidated tabulation of documents affecting international copyright relations of the United States.¹⁵

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*¹⁶ 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.*

16. I. Kavass & A. Sprudz, *A Guide to the United States Treaties in Force* (1985) (published by William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209).

Guide furnishes the researcher with "access to the current United States treaty law through a variety of retrieval approaches."¹⁷ 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*);¹⁸ (2) a Subject Reference Index (which provides a simple listing, with cross-references, of the subject categories utilized by the *Treaties in Force*);¹⁹ and (3) an Appendix: Treaty Development (arranged alphabetically).²⁰ 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.²¹ This *Guide* is updated annually.

Another useful non-governmental publication is the *Congressional Index*.²² 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,"²³ although the identification system was changed in the 97th Congress.²⁴ The section of the *Congressional Index* which pertains to treaties has its own index²⁵ 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 preparatoires* (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 preparatoires* can also establish, to some degree, the intentions of the parties at the time the treaty was drafted.²⁶

In addition to the *travaux preparatoires*, 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*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*²⁸ or the *Weekly Compilation of Presidential Documents*.²⁹

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

27. See *infra* notes 73-74 and accompanying text.

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).

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 Record 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.

- (1) Convention on Wetlands of International Importance, Especially as Waterfowl Habitat, Feb. 2, 1971, 996 U.N.T.S. 245, *reprinted in* 11 I.L.M. 963 (1972) (commonly known as the Ramsar Convention).

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 Env'tl. L. Rev. 177, 204 (1986).

31. *Treaties in Force*, *supra* note 8, at 230-31.

32. *Convention on Wetlands of International Importance, Especially as Waterfowl Habitat*, Feb. 2, 1971, Preamble, T.I.A.S. No. ____, 996 U.N.T.S. 245, 246 *reprinted in* 11 I.L.M. 963, 969 (1972) [hereinafter Ramsar Convention].

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.³⁵

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.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

35. C. Wren & J. Wren, *The Legal Research Manual: A Game Plan for Legal Research and Analysis* 4-5 (1984).

36. 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 reference³⁷ 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 *Statutes at Large*, the entire legislative session is first printed in the *United States Code Congressional and Administrative News (U.S. Code Cong. & Admin. News)*,³⁸ a secondary source with official citations to and paginations from the *Statutes at Large*. The *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. *Statutory Codes*

The *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 *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 *U.S.C.* title, renum-

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.

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.)*³⁹ and the *United States Code Service (U.S.C.S.)*.⁴⁰ 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

39. The *United States Code Annotated* is published by the West Publishing Company.

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.⁴¹ Under these boldfaced headings are references,⁴² 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)

41. United States Code Annotated - General Index VI (paperback 1987).

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 topics⁴³ 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.⁴⁴ 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

43. "Major topics . . . reflect legal, conceptual, and factually descriptive terms found in USCS source materials." United States Code Service - General Index viii (1986).

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.

- (1) Clean Water Act of 1977, 33 U.S.C.A. §§ 1251-1376 (West 1985 & Supp. 1987).

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

- (2) Coastal Barrier Resource Act, 16 U.S.C.A. §§ 3501-3510 (West 1985 & Supp. 1987).

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

45. 474 U.S. 121 (1985).

46. 715 F.2d 897 (5th Cir. 1983).

47. S. Rep. No. 419, 97th Cong., 2d Sess. 1, 1 reprinted in 1982 U.S. Code Cong. & Admin. News 3212, 3213.

barriers should be conserved in their natural state.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.

- (3) Coastal Zone Management Act, 16 U.S.C.A. §§ 1451-1464 (West 1985 & Supp. 1987).

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.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.⁵⁰

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

- (4) Erodible Land and Wetland Conservation and Reserve Program, 16 U.S.C.A. §§ 3801-3845 (West Supp. 1987).

Authority: Secretary of Agriculture

The Erodible Land and Wetland Conservation and Reserve Program is part of the 1985 Food Security Act,⁵¹ which

48. *Id.* at 3, reprinted in 1982 U.S. Code Cong. & Admin. News at 3214.

49. Coastal Zone Management Act, 16 U.S.C. §§ 1451-1464 (1982).

50. *Id.* § 1452(2)(A), (B).

51. Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354 (1985) (codified as amended in scattered sections of 7 U.S.C. and 16 U.S.C.).

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

(5) Land and Water Conservation Fund Act, 16 U.S.C.A. §§ 460l-4 to -11 (West 1974 & Supp. 1987).

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.

16 U.S.C.A. § 3801(16) (West Supp. 1987). *See also id.* § 3801(a)(4)(B).

54. *Id.* § 3801(a)(4)(A).

55. *Id.* § 3801(a)(8).

56. *Id.* § 3801(a)(9).

57. *Id.* §§ 3821-3823.

58. *Id.* § 3823.

59. 16 U.S.C. § 460l-4 (1982).

60. *Id.* §§ 460l-4 to -10c.

language specifically concerning with wetlands.⁶¹ 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).⁶²

(6) Rural Environmental Conservation Program, 16 U.S.C.A. §§ 1501-1510 (West 1985 & Supp. 1987).

Authority: Secretary of Agriculture

This program is the part of the Agriculture and Consumer Protection Act of 1973⁶³ which presents congressional recommendations concerning conservation and rural pollution abatement.⁶⁴ 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.⁶⁵ 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.⁶⁶

(7) Water Bank Program for Wetlands Preservation, 16 U.S.C.A. §§ 1301-1311 (West 1985).

Authority: Secretary of Agriculture

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-

61. 16 U.S.C.A. § 4601-8(d) (West Supp. 1987).

62. *Id.*

63. Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86, 87 Stat. 221, 241 (1973)(codified as amended in scattered sections of 7 U.S.C. and 16 U.S.C.).

64. H.R. Rep. No. 337, 93d Cong. 1st Sess. 1, *reprinted in* 1973 U.S. Code Cong. & Admin. News 1750, 1786.

65. *Id.*, *reprinted in* 1973 U.S. Code Cong. & Admin. News at 1786-87.

66. 16 U.S.C.A. § 1501 (West Supp. 1987).

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, 1971.⁶⁷

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.⁶⁸

- (8) Wetlands Loan Extension Act of 1976, 16 U.S.C.A. §§ 668dd, 715a, 715k-3, 715k-5, 718a, 718b, 718d (West 1985 & Supp. 1987).

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.⁶⁹

- (9) Wetlands Resource Act, 16 U.S.C.A. §§ 3900-3932 (West Supp. 1985).

Authority: Secretary of the Interior.

This act, to date, is the most comprehensive of all the

67. 16 U.S.C. § 1301 (1982).

68.

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.

69. 16 U.S.C.A. § 1501 (West Supp. 1987).

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.

70. 16 U.S.C.A. § 3901(b) (West Supp. 1987).

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.

Id. § 3901(b)(5).

72. *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*.⁷³ 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."⁷⁴ 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).

gress during the preceding month.⁷⁵ 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.⁷⁶ 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.⁷⁷

To locate information concerning wetlands through the *CIS* system, refer to the following listed terms in the *CIS Index* for valuable research information.⁷⁸

- (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
- (9) National Wildlife Federation
- (10) Nature Conservancy
- (11) natural resources
- (12) National Resource Defense Council
- (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 number⁸⁵ 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.

84. See, e.g., Superintendent of Documents, U.S. Gov't Printing Office, *Monthly Catalog of the United States Government Publications* - November 1987, Prelim. 12 (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.⁸⁶

- (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 effect 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 effecting 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.

the records are arranged alphabetically by the Superintendent of Documents classification number. The first two digits establish the year, the last [several] digits locate the record in the Catalog." *Id.* at Prelim. 13. The entry numbers are also located on the binding of each monthly issue facilitating location of the information.

86. 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.⁸⁷ 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.⁸⁸ The *Federal Register* is useful in updating the *Code of Federal Regulations (C.F.R.)*.⁸⁹ The volumes of the *C.F.R.* are revised and published once each year.⁹⁰ 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.⁹¹ There are numerous finding aids⁹² 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.⁹³ 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.⁹⁴ The *Index* is published monthly and is cumulated.⁹⁵

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.⁹⁶ The emphasis of

87. C. Wren & J. Wren, *supra* note 35, at 5.

88. The Federal Register: What It Is And How To Use It 24 (rev. June 1985) (published by the office of the Federal Register, National Archives and Record Administration).

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.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."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
- (6) Water Resource Council

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.⁹⁹

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.

98. *Id.* (italics added).

99. See *supra* notes 88-95 and accompanying text.

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.”¹⁰⁰

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*

(1) *Protection of Wetlands*, Exec. Order 11,990, 3 C.F.R. 121 (1978), *reprinted in* 42 U.S.C. § 4321 (1982).

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

100. Black's Law Dictionary 294 (abr. 5th ed. 1980).

Table 1 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 7 AGRICULTURE	Part 2: Delegation of Authority by the Secretary of Agriculture and General Officers of the Department	§§ 2.19, 2.62	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).	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. Order No. 11,988 Flood Plain Management and Exec. Order No. 11,990 Protection of Wetlands.
	Part 12: Highly Erodible Land and Wetland Conservation	§§ 12.1-12.33	16 U.S.C.A. §§ 3801-3823, 3841-3844 (West Supp. 1987).	This part of the Code 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.
	Part 21: Uniform Relocation Assistance & Real Property Acquisition for Federal & Federally Assisted Programs	§ 21.8	42 U.S.C. § 4601-4655 (1982 & Supp. III 1985).	This section mandates compliance with other laws and regulations. Specific mention is made of Exec. Order No. 11,988, Floodplain Management and Exec. Order No. 11,990, Protection of Wetlands.
	Part 624: Emergency Watershed Protection	§ 624.6	16 U.S.C. § 2203 (1982); 5 U.S.C. § 301 (1982 & Supp. III 1985); 33 U.S.C. § 701b-1 (1982).	This part sets forth requirements and procedures for federal assistance administered by the Soil Conservation Service. To be eligible for assistance one must conform to the rules and regulations published by the SCS for complying with Exec. Order No. 11,988, Floodplain Management and Exec. Order No. 11,990, Protection of Wetlands.
	Part 650: Compliance with NEPA	§§ 650.3-650.4, 650.7, 650.9, 650.23, 650.26.	42 U.S.C. §§ 4321-4370a (1982); Exec. Order No. 11,988 & Exec. Order No., 11,990.	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.
	Part 700: Experimental Rural Clean Water Program	§ 700.43	7 U.S.C. §§ 411b, 1623(a), 2254 (1982); 15 U.S.C. § 713a-10 (1982); 16 U.S.C. §§ 590e-1, 590e-2, (West Supp. 1987); 21 U.S.C. § 129 (West Supp. 1987); 42 U.S.C.A. §§ 1776a, 1776(b), 1786 (West Supp. 1987).	The purpose of this part is to set forth regulations to carry out an experimental Rural Clean Water Program. The best management plan (BMP) must promote public benefits, one, being identified as preserving wetlands and avoiding actions that may adversely effect floodplains.

Table 2 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 7 AGRICULTURE	Part 701: Conservation and Environmental Programs	§ 701.66	16 U.S.C. §§ 590d, 590e-590i, 590p(e), 590q (1982 & Supp. III 1985); 16 U.S.C. §§ 1501-1510 (1982 & Supp. III 1985); 16 U.S.C. §§ 1510, 1606, 2101-2111 (1982 & Supp. III 1985); 16 U.S.C. §§ 2201-2205 (1982).	When carrying out the conservation and environmental programs administered by the Dept. of Agriculture, persons responsible for any aspect of performing practices are encouraged to implement these practices in such a way as to promote public benefits, such as preserving ecological quality and balance (wetlands being a factor to consider).
	Part 752: Water Bank Program	§§ 752.1-752.2, 752.2-752.7, 752.10, 752.14, 752.16	16 U.S.C. §§ 1301-1311 (1982).	The regulations in this part set forth the terms and conditions for the Water Bank Program. The regulations state that the objective of the Water Bank Program "is to preserve, restore and improve the wetlands of the Nation" 7 C.F.R. § 752.1 (1987).
	Part 1794: Environmental Policies and Procedures	§§ 1794.1-1794.7, 1794.10-1794.13, 1794.20, 1794.22, 1794.30-1794.35, 1794.40-1794.42, 1794.50-1794.55, 1794.60-1794.64, 1794.70-1794.73, 1794.80-1794.85, 1794.90-1794.91.	National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985); Exec. Order No. 11,988 - Flood Plain Management; Exec. Order No. 11,990 - Protection of Wetlands	This part contains the policies and procedures of the Rural Electrification Administration (REA) for implementing various federal statutes and Executive Orders.
	Part 1940: General	§§ 1940.301-1940.304, 1940.310-1940.311, 1940.314, 1940.317, 1940.319, 1940.331.	7 U.S.C. § 1989 (1982 & Supp. III 1985); 42 U.S.C. § 1480(j) (1982); 5 U.S.C. § 301 (1982 & Supp. III 1985).	Subpart G of this Part contains the major environmental policies of the Farmers Home Administration (FmHA). It is designed to integrate the requirements of NEPA with other planning and environmental review procedures required by law.
	Part 1942: Associations	§§ 1942.18, 1942.310	7 U.S.C. § 1989 (1982 & Supp. III 1985).	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.

Table 3 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 7 AGRICULTURE	Part 1943: Farm Ownership, Soil and Water and Recreation	§§ 1943.17, 1943.67	7 U.S.C. § 1989 (1982 & Supp. III 1985).	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.
	Part 1944: Housing	§ 1944.169	42 U.S.C. § 1480 (1982 & Supp. III 1985); 5 U.S.C. § 301 (1982 & Supp. III 1985)	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.
	Part 1945: Emergency	§ 1945.167	7 U.S.C. § 1989 (1982 & Supp. III 1985); 5 U.S.C. § 301 (1982 & Supp. III 1985).	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 agriculture commodity.
	Part 1948: Rural development	§ 1948.86	42 U.S.C. § 8401 (1982).	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.
	Part 1955: Property Management	§§ 1955.66, 1955.136-1955.137	7 U.S.C. § 1989 (1982 & Supp. III 1985); 5 U.S.C. § 301 (1982 & Supp. III 1985); 42 U.S.C. § 1480 (1982 & Supp. III 1985).	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.
	Part 1965: Real Property	§ 1965.14	7 U.S.C. § 1989 (1982 & Supp. III 1985); 5 U.S.C. § 301 (1982 & Supp. III 1985); 42 U.S.C. § 1480 (1982 & Supp. III 1985).	This part deals with several aspects of real property. The noted section involves easements to the U.S. Fish & Wildlife Service.

Table 4 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 7 AGRICULTURE	Part 1980: General	§§ 1980.175; 1980.180; 1980.318, 1980.632	7 U.S.C. § 1989 (1982 & Supp. III 1985); 5 U.S.C. § 301 (1982 & Supp. III 1985); 42 U.S.C. § 1480 (1982 & Supp. III 1985).	Each section identified deals with a loan program and references environmental concerns such as wetlands and floodplains.
	Part 300: The Coal Loan Guarantee Program	§ 300.24	42 U.S.C. § 6272 (1982).	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.
	Part 417: Wind Energy Technology Application Program	§ 417.6	42 U.S.C. § 9205 (1982); 41 U.S.C. § 506(a) (1982).	This part establishes a wind energy technology application program and procedures governing financial assistance. A statement concerning compli- ance with regulations protecting wetlands is required.
	Part 500: Definitions	§ 500.2	42 U.S.C. §§ 7101-7111 (1982 & Supp. III 1985).	"Wetlands areas" are defined in the noted section.
TITLE 10 ENERGY	Part 790: The Geother- mal Loan Guarantees Pro- gram	§ 790.23	30 U.S.C. §§ 1141-1147 (1982 & Supp. III 1985); 42 U.S.C. §§ 7101-7111 (1982 & Supp. III 1985).	The issuance of a federally guaranteed loan under these regulations must comply with NEPA and is subject to Ex. Order No. 11,988, <u>Floodplain Management</u> and Ex. Order No. 11,990, <u>Protection of Wetlands</u> .
	Part 1022: Compliance with Floodplain/Wetland Environmental Review Requirements	§§ 1022.1-1022.5, 1022.11-1022.21.	Exec. Order No. 11,988; Exec. Order No. 11,990.	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, <u>Flood Plain Management</u> and Executive Order No. 11,990, <u>Protection of Wetlands</u> .
	Part 1039: Uniform Relo- cation Assistance and Real Property Acquisi- tion for Federal and Fed- erally Assisted Programs	§ 1039.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	This section requires that all federal laws, regulations and Executive Orders be complied with when implementing this part. This includes environmental programs and laws.

Table 5 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 13 BUSINESS CREDIT AND ASSISTANCE	Part 116: Policies of General Application	§§ 116.30-116.35	15 U.S.C. § 631 (1982); 15 U.S.C. § 661 (1982); Exec. Order No. 11,988; Exec. Or- der No. 11,990.	Subpart D deals with specifically implementing Ex. Order No. 11,988, Floodplain Management and Ex. Order No. 11,990, Protection of Wetlands. It covers the policies, procedures, standards and criteria for determining the applicability of the Executive Orders.
	Part 120: Business Loan Policy	§ 120.103-2	15 U.S.C. §§ 634(b)(6), 636(a), (b) (1982).	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.
	Part 122: Business Loans	§ 122.4	15 U.S.C. §§ 634(b)(6), 636(a) (1982).	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.
	Part 123: Disaster Physi- cal Disaster and Eco- nomic Injury Loan	§ 123.14	15 U.S.C. §§ 634(b)(6), 636(b), (c), (f) (1982).	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.
TITLE 14 AERONAUTICS AND SPACE	Part 1208: Uniform Relo- cation Assistance and Real Property Acquisi- tion for Federal and Fed- erally Assisted Programs	§ 1208.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	This noted section requires that all other federal laws and Executive Orders be complied with when implementing these regulations.
	Part 1216: Environmental Quality	§§ 1216.200- 1216.205, 1216.307, 1216.320	Exec. Order No. 11,988; Exec. Order No. 11,990.	Sections 1216.200-1216.205 deal specifically with the implementation of the Ex. Order No. 11,988, Floodplain Management and Ex. Order No. 11,990, Protection of Wetlands. Sections 1216.307 and 1216.320 discuss NEPA and implementing programs which protect wetlands.

Table 6 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 15 COMMERCE AND TRADE (ch. NOAA)	Part 11: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs	§ 11.8	42 U.S.C. § 4601-4655 (1982 & Supp. III 1985).	The noted section states that in implementing these regulations compliance with other federal laws and Executive Orders is required.
	Part 923: Coastal Zone Management Program Development and Approval Regulations	§§ 923.3, 923.21, 923.30-923.31, 923.82, 923.94, 923.101.	16 U.S.C. §§ 1451-1464 (1982 & Supp. III 1985).	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, <u>Protection of Wetlands</u> .
	Part 930: Federal Consistency with Approval Coastal Management Programs	§§ 930.39, 930.77.	16 U.S.C. §§ 1451-1464 (1982 & Supp. III 1985).	These regulations concern Agency obligations to comply with the federal consistency provisions of the CZMA. Impact on wetlands must be taken into account when discussing consistency in the federal provisions.
	Part 931: Coastal Energy Impact Program	§ 931.94	16 U.S.C. §§ 1451-1464 (1982 & Supp. III 1985).	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.
	Part 4: Licenses, Permits, Exceptions and Determinations	§§ 4.41, 4.51, 4.81	42 U.S.C. 7101-7352 (1982 & Supp. III 1985).	Regulations which require the consideration of national environmental goals when issuing a license or permit by the Federal Energy Regulatory Commission.
TITLE 18 CONSERVATION OF POWER AND RESOURCES	Part 157: Applications for Certificate of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under § 7.1 the Natural Gas Act	§ 157.202	15 U.S.C. §§ 717-717w (1982); 42 U.S.C. §§ 7101-7352 (1982 & Supp. III 1985); 15 U.S.C. §§ 3301-3432 (1982).	Subpart F establishes the guidelines for when an interstate pipeline may obtain a blanket certificate authorizing certain construction and operation of facilities, sales arrangements, amendments and abandonment under section 7 of the Natural Gas Act.

Table 7 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 18 CONSERVATION OF POWER AND RESOURCES	Part 401: Rules of Practice and Procedure	§§ 401.35, 401.56	Delaware River Basin Compact, Pub. L. , 75 Stat. 688 ()	These regulations govern the process whereby the Delaware River Basin Commission will include projects in the Comprehensive Plan and extend them into an annual Water Resource Program.
	Part 725: Implementation of Executive Order 11,988, Floodplain Management and Executive Order 11,990, Protection of Wetlands	§§ 725.0-725.9	Exec. Order No. 11,988; Exec. Order No. 11,990.	These regulations establish the procedures which are to be followed by the U.S. Water Resources Council in implementing the Executive Orders 11,988 and 11,990 when it initiates water resource planning assistance activities.
	Part 740: State Water Management Planning Program	§ 740.7	42 U.S.C. § 1962c (1982).	These regulations establish financial and program assistance to states for water management programs which address each state's particular needs. It is required that national environmental goals and objectives be taken into account when issuing assistance.
TITLE 22 FOREIGN RELATIONS	Part 161: Regulations for Implementation of the National Environmental Policy Act (NEPA)	§§ 161.7, 161.11	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	These regulations of the State Department are designed to supplement the published CEQ regulations. The regulations address the incorporation of environmental considerations into the decisionmaking process of the State Department.
TITLE 23 HIGHWAYS	Part 645: Utilities	§ 645.209	23 U.S.C. §§ 123, 315 (1982 & Supp. III 1985).	These regulations deal with the policies, procedures and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.
	Part 771: Environmental Impact and Related Procedures	§ 771.103	Exec. Order No. 11,988; Exec. Order No. 11,990.	The purpose of these regulations are to comply with the national environmental goals when considering policy and procedure for the Federal Highway Administration and Urban Mass Transportation Administration.

Table 8 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 23 HIGHWAYS	Part 777: Mitigation of Environmental Impacts to Privately Owned Wetlands	§§ 777.1, 777.3, 777.5, 777.7, 777.9, 777.11	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985); 23 U.S.C. §§ 109(h), 138, 315 (1982 & Supp. III 1985); Exec. Order No. 11,990.	The stated purpose of these regulations is to "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." 18 C.F.R. § 777.1 (1987).
	Part 42: Uniform Relocation Assistance and Real Property for Federal and Federally Assisted Programs	§ 42.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	This noted section requires that there be compliance with federal environmental laws, regulations and executive orders when implementing this part.
	Part 50: Protection and Enhancement of Environmental Quality	§ 50.4	42 U.S.C. § 535(d) (1982).	These regulations apply to all HUD policy actions unless excepted by regulation, and require the consideration of environmental issues and national policy.
TITLE 24 HOUSING AND URBAN DEVELOPMENT	Part 58: Environmental Review Procedures for the Community Development Block Grant, Rental Rehabilitation and Housing Development Grant Program.	§ 58.5	42 U.S.C. 5304(f) (1982 & Supp. III 1985).	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.
	Part 590: Urban Homesteading	§ 590.11	12 U.S.C. § 1706e (1982 & Supp. III 1985); 42 U.S.C. § 3535(d) (1982).	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.
	Part 600: Comprehensive Planning Assistance	§ 600.65	12 U.S.C. § 1706e (1982 & Supp. III 1985).	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.

Table 9 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 24 HOUSING AND URBAN DEVELOPMENT	Part 881: Section 8 Housing Assistance Pay- ments Program for Sub- stantial Rehabilitation	§ 881.206	42 U.S.C. §§ 1437a, 1437c, 1437f (1982 & Supp. III 1985).	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.
	Part 882: Section 8 Housing Assistance Pro- gram Existing Housing	§ 882.407	42 U.S.C. §§ 1437a, 1437c, 1437f (1982 & Supp. III 1985).	These regulations deal with the implementation of the Section 8 program. The noted section requires compliance with environmental regulations.
	Part 885: Loans for Housing for the Elderly or Handicapped	§ 885.220	12 U.S.C. § 1701q (1982).	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.
	Part 886: Section 8 Housing Assistance Pay- ments Program - Special Allocations	§ 886.313	42 U.S.C. §§ 1437a, 1437c, 1437f (1982 & Supp. III 1985).	These regulations deal with the Section 8 Program and the noted section states that environmental regulations must be complied with.
	Part 941: Public Housing Development	§ 941.208	42 U.S.C. §§ 1437b, 1437c, 1437g (1982 & Supp. III 1985).	These regulations govern the development and operation of low income housing. This part states that environmental requirements must be complied with.
	Part 968: Comprehensive Improvement Assistance Program	§ 968.9	42 U.S.C. §§ 1437d, 1437 (1982 & Supp. III 1985).	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.
	Part 1800: Financial As- sistance Program for the Solar Energy and Energy Conservation Bank	§ 1800.137	12 U.S.C. §§ 3602-3619 (1982 & Supp. III 1985).	States that federal assistance shall be provided by financial institutions which are in compliance with all applicable Federal and state laws and regulations. This does include environmental laws, and those specifically noted Executive Order No. 11,990 and Coastal Barrier Resource Act.

Table 10 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 26 INDIANS	Part 216: Surface Explo- ration, Mining and Rec- lamation of Land	§ 216.104	25 U.S.C. § 355 NT (1982); 25 U.S.C. § 396 (1982 & Supp. III 1985); 25 U.S.C. § 437a (1982); 25 U.S.C. §§ 501-502 (1982); 5 U.S.C. § 301 (1982 & Supp. III 1985).	Policy dictates that the government should encourage the development of the mineral resources underlying Indian Land. However, the intent of the Indian/public with regard to this policy requires that adequate measures be taken to avoid correct, or minimize environmental damage. These regulations set forth procedures to achieve this goal.
	Part 63: Floodplain Man- agement and Wetland Procedures	§§ 63.1-63.9	Exec. Order No. 11,988; Exec. Order No. 11,990.	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.
TITLE 28 JUDICIAL ADMINISTRATION	Part 11: Department of Labor National Environ- mental Policy Act (NEPA) Compliance pro- cedures	§ 11.11	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985); Exec. Order No. 11,988; Exec. Order No. 11,990.	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.
	Part 12: Uniform Reloca- tion Assistance and Real Property for Federal and Federally Assisted Pro- grams	§ 12.8	42 U.S.C. § 4601-4655 (1982 & Supp. III 1985).	This section mandates compliance with other laws and regulations. Specifically noted in the section was Executive Order No. 11,990, <u>Protection of Wetlands.</u>
TITLE 30 MINERAL RESOURCES	Part 250: Oil and Gas and Sulfur Operations in the Outer Continental Shelf	§ 250.2	43 U.S.C. §§ 1331-1356 (1982 & Supp. III 1985); 42 U.S.C. §§ 4321-70a (1982 & Supp. III 1985); 16 U.S.C. 1451-1464 (1982 & Supp. III 1985).	These regulations set forth the procedures, guidelines, and policy needed to implement the Outer Continental Shelf Lands Act. The noted section defines a marine environment as including the natural resource-wetland.
	Part 251: Geological and Geophysical (G&G) Ex- ploration of the Outer Continental Shelf	§ 251.2	43 U.S.C. §§ 1331-1356 (1982 & Supp. III 1985); 42 U.S.C. §§ 4321-70a (1982 & Supp. III 1985); 16 U.S.C. 1451-1464 (1982 & Supp. III 1985).	Primary purpose of this part is to establish policy procedures and requirements for conducting geological and geophysical activities not authorized under a lease on the Outer Continental Shelf. "Coastal Zone" as defined by the regulations includes wetlands.

Table 11 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
MINERAL RESOURCES	Part 256: Outer Continental Shelf Minerals and Rights-of-Way Management, General	§ 256.5	43 U.S.C. §§ 1331-1356 (1982 & Supp. III 1985); 42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985); 16 U.S.C. §§ 1451-1464 (1982 & Supp. III 1985).	These regulations establish the procedures under which the Secretary of the Interior will exercise the authority it was granted to administer a leasing program for minerals and grant rights-of-way on the submerged land of the Outer Continental Shelf. "Coastal Zone" as defined in the regulations includes wetlands.
	Part 715: General Performance Standards	§ 715.13	30 U.S.C. §§ 1201-1328 (1982 & Supp. III 1985).	These regulations deal with the surface coal mining reclamation operations. The noted section deal with postmining use of the land and environmental concerns.
	Part 780: Surface Mining Permit Application - Minimum Requirement for Reclamation and Operation Plan	§ 780.16	30 U.S.C. §§ 1201-1328 (1982 & Supp. III 1985), 16 U.S.C. §§ 470 to 470w-6 (1982 & Supp. III 1985).	This part sets forth the minimum requirements for the Secretary of the Interior's approval of regulatory provisions for mining operations and reclamation plan portions of applications for permits.
	Part 784: Underground Mining Permit - Minimum Requirements for Reclamation and Operation Plan	§ 784.21	30 U.S.C. §§ 1201-1328 (1982 & Supp. III 1985), 16 U.S.C. §§ 470 to 470w-6 (1982 & Supp. III 1985).	These regulations provide the minimum requirements that are needed for the Secretary's approval for the mining operation and reclamation plan portions of applications for permits dealings with underground operations.
	Part 816: Permanent Program Performance Standards - Surface Mining Activity	§ 816.97	30 U.S.C. §§ 1201-1328 (1982 & Supp. III 1985).	This part sets forth minimum environmental protection performance standards to be adopted and implemented under the regulatory programs for surface mining.
	Part 817: Permanent Program Performance Standards - Underground Mining Activities	§ 817.97	30 U.S.C. §§ 1201-1328 (1982 & Supp. III 1985).	This part sets forth minimum environmental protection performance standards to be adopted and implemented under the regulatory programs for underground mining.

Table 12 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 32 NATIONAL DEFENSE	Part 232: Natural Resources, Fish and Wildlife Management	§ 232.2	10 U.S.C. § 2671 (1982 & Supp. III 1985); 16 U.S.C. §§ 670a-670c (1982).	These regulations set forth a program for fish and wildlife management. The regulations state that "[w]etlands valuable for waterfowl and other wildlife purpose shall be preserved wherever possible." 32 C.F.R. § 232.2(5) (1987).
	Part 259: Uniform Relocation Assistance and Real Property for Federal and Federally Assisted Programs	§ 259.8	42 U.S.C. 4601-4655 (1982 & Supp. III 1985).	This section requires compliance with other federal laws, applicable regulations and executive orders. The noted section mentions environmental concerns.
	Part 644: Real Estate Program	§§ 644.318-644.320	5 U.S.C. § 301 (1982 & Supp. III 1985); 10 U.S.C. § 3012 (1982); Exec. Order No. 11,990; 16 U.S.C. §§ 1451-1464 (1982 & Supp. III 1985).	Subpart F establishes general authority, responsibilities, procedures, methods and guidance for the performance of real property disposal. Specific mention was made of areas concerning wetlands, floodplains and the coastal zone.
	Part 651: Environmental Effects of Army Actions	§§ 651.16, 651.21, 651.27, 651.28	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	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.
TITLE 33 NAVIGATION	Part 989: Environmental Impact Analysis Process	§ 989.16	10 U.S.C. § 8012 (1982).	Air Force regulations implementing NEPA and other environmental policy, such as that concerning wetlands.
	Part 209: Administrative Procedure	§ 209.145	5 U.S.C. § 301 (1982 & Supp. III 1985); 33 U.S.C. § 1-59t (1982 & Supp. III 1985).	"This regulation prescribes the policy, practice and procedures to be followed by all Corps of Engineers installations and activities in connection with the disposal of dredge material in navigable waters of the transportation of dredged material for the purposes of dumping it in the ocean waters associated with Federal projects as hereafter defined." 33 C.F.R. § 209.145(a) (1987).

Table 13 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 33 NAVIGATION	Part 230: Policy and Procedure for Implementing NEPA	§§ 230.3, 230.5, 230.19, 230.25	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	These regulations provide policy and procedural guidance which supplements the CRO's final regulations on implementing NEPA. These regulations specifically identify the natural resource — wetlands.
	Part 236: Water Resources Policies and Authorities: Corps of Engineers Participation in Implementing for Environmental Quality	§ 236.4	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	These regulations provide policy for including Environmental Quality (EQ) measures in the Corps of Engineers water resource development program. A natural resource identified in the regulations — wetlands.
	Part 238: Water Resources Policies and Authorities: Flood Damage Reduction Measures in Urban Areas	§ 238.7	33 U.S.C. § 701a (1982).	This regulation provides policy and guidance for the Corps of Engineers participation in urban flood damage reduction projects and establishes criteria to distinguish between improvements to be accomplished by the Corps under its flood control authority and storm sewers systems to be accomplished by local interests.
	Part 282: Water Resources Policies and Authorities: Federal Participation in Shore, Hurricane, Tidal and Lake Flood Protection	§§ 282.3, 282.8	33 U.S.C. §§ 426e-426h (1982).	This set of regulations provide policies and guidelines for determining the extent of federal participation in potential federal projects for shore erosion control, and hurricane, abnormal tidal and lake flood protection.
	Part 320: General Regulation Policy	§ 320.4	33 U.S.C. §§ 401-467e (1982 & Supp. III 1985), 33 U.S.C. § 1344 (1982), 33 U.S.C. § 1413 (1982).	This set of regulations sets forth the policy of the U.S. Army Corps of Engineers when regulating the waters and its ability to evaluate permit applications.

Table 14 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 33 NAVIGATION	Part 323: Permits for Discharge of Dredged or Fill Material into Waters of the United States	§§ 323.2, 323.4-323.5	33 U.S.C. § 1344 (1982).	This set of regulations set 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.
	Part 325: Processing of the Department of Army Permits	§ 325.3	33 U.S.C. §§ 401-467e (1982 & Supp. III 1985), 33 U.S.C. § 1344 (1982), 33 U.S.C. § 1413 (1982).	These regulations are arranged in the basic timing sequences used by the Corps in processing applications for the Department of Army permits.
	Part 328: Definition of Waters of the United States	§§ 328.3-328.4	33 U.S.C. § 1344 (1982).	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.
	Part 330: National Permits	§§ 330.3, 330.5-330.7	33 U.S.C. §§ 401-467e (1982 & Supp. III 1985), 33 U.S.C. § 1344 (1982), 33 U.S.C. § 1413 (1982).	The purpose of this regulation is to describe the Department of Army's nationwide permit program.
TITLE 34 EDUCATION	Part 15: Relocation Assistance and Real Property Acquisition	§ 15.8	42 U.S.C. 4601-4655 (1982 & Supp. III 1985).	This section requires compliance with other laws, regulations and Executive Orders. This includes environmental subjects.
TITLE 36 PARKS, FORESTS AND PUBLIC PROPERTY	Part 59: Land and Water Conservation Fund Program of Assistance to States; Post-completion Compliance Responsibility	§ 59.3	16 U.S.C. §§ 4602.4 to 4602-11 (1982 & Supp. III 1985).	These regulations set forth guidelines and policy for the Land and Water Conservation Fund.
	Part 72: Urban Park and Recreation Recovery Act of 1978	§ 72.56	16 U.S.C. §§ 2501-2514 (1982 & Supp. III 1985).	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.

Table 15 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 36 PARKS, FORESTS AND PUBLIC PROPERTY	Part 219: Planning	§§ 219.23, 219.27	16 U.S.C. §§ 1604, 1613 (1982 & Supp. III 1985), 5 U.S.C. § 301 (1982 & Supp. III 1985).	These regulations govern the process for developing, adopting and revising land and resources management for the National Forest System.
	Part 904: Uniform Relocation Assistance and Real Property for Federal and Federally Assisted Programs	§ 904.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	The noted section requires compliance with other federal laws, regulations and Executive Orders. Specific mention is made of the Executive Order protecting wetlands.
	Part 907: Environmental Quality	§ 907.12	40 U.S.C. § 875(8) (1982); 42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	These regulations are intended to supplement the CEQ's final regulations on the implementation of NEPA. They prescribe how the Pennsylvania Avenue Development Corp. intends to consider environmental factors when dealing with Corp. decisions.
	Part 17: Medical	§ 17.173	38 U.S.C. §§ 5031-5037 (1982).	This part deals with grants to states for the construction of state home facilities. The applications for these projects require the consideration of environmental concerns such as wetlands.
TITLE 38 PENSIONS, BOUNSES AND VETERANS REFERAL	Part 25: Uniform Relocation Assistance and Real Property for Federal and Federally Assisted Programs	§ 25.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	This section mandates compliance with all federal laws, regulations and Executive Orders. Specific mention is made of the Executive Order protecting wetlands.
	Part 26: Environmental Effects of VA Actions	§ 26.	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	The purpose of these regulations is to implement NEPA and take into account environmental issues.
	Part 39: State Cemetery Grants	§ 39.3	38 U.S.C. § 1008 (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 16 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 39 POSTAL SERVICE	Part 776: Flood Plain Management and Protection of Wetland Procedures	§§ 776.1-776.8	Exec. Order No. 11,988; Exec. Order No. 11,990; 39 U.S.C. § 401 (1982).	These regulations implement Executive Order No. 11,988, <u>Flood Plain Management and Executive Order No. 11,990, Protection of Wetlands.</u>
	Part 4: Uniform Relocation Assistance and Real Property for Federal and Federally Assisted Programs	§ 4.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	This section mandates that there be compliance with all federal laws, regulations and Executive Orders. Specific mention is made of the Executive Order which requires protection of the natural resource — wetlands.
TITLE 40 PROTECTION OF THE ENVIRONMENT	Part 6: Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act	§§ 6.107-1.108, 6.302, 6.605	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	These regulations cover the Environmental Protection Agency's implementation of NEPA and the consideration of other national environmental concerns in its decisionmaking process.
	Part 35: State and Local Assistance	§ 35.925-15	33 U.S.C. §§ 1251-1376 (1982 & Supp. III 1985)	Subpart E deals with grants for the construction of treatment works under the Clean Water Act. Environmental policy must be included in the decisionmaking process.
	Part 116: Designation of Hazardous Substances	§ 116.3	33 U.S.C. §§ 1251-1376 (1982 & Supp. III 1985)	These regulations deal with the designation of hazardous substances. The noted section provides a definition of navigable waters which includes wetlands.
	Part 117: Determination of Reportable Quantities for Hazardous Substances	§ 117.1	33 U.S.C. §§ 1251-1376 (1982 & Supp. III 1985).	These regulations include a definition of navigable waters and this includes wetlands.

Table 17 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 40 PROTECTION OF THE ENVIRONMENT	Part 122: EPA Adminis- tered Permit Programs; The National Discharge Elimination System	§ 122.2	33 U.S.C. §§ 1251-1376 (1982 & Supp. III 1985).	These regulations contain provisions for the NPDES Program under the Clean Water Act. In the definition section the phrase "waters of the United States" or "water of the U.S." shall include wetlands.
	Part 230: Section 404(b)(1) Guidelines for Specification or Disposal Sites for Dredge or Fill Material	§§ 230.1, 230.3, 230.20, 230.41, 230.74	33 U.S.C. §§ 1344(b), 1361(a) (1982).	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.
	Part 233: 404 State Pro- gram Transfer Regula- tions	§§ 233.3-233.4, 233.17, 233.35, 233.37, 233.41- 233.42	33 U.S.C. §§ 1251-1376 (1982 & Supp. III 1985).	These regulations cover the state program which has been authorized to implement section 404 of the Clean Water Act.
	Part 256: Guidelines for Development and Imple- mentation of Solid Waste Management Program	§ 256.50	42 U.S.C. § 6942(b) (1982).	Subpart F requires that these regulations be implemented so that there is coordinated action with other programs and agencies.
	Part 257: Criteria for Classification of Solid Waste Disposal Facilities and Practices	§ 257.3-3	42 U.S.C. §§ 6907(a)(3), 6944(a) (1982). 33 U.S.C. § 1345(d) (1982).	These regulations establish the criteria to be used under RCRA in determining which solid waste facility and practices pose a reasonable probability of having an adverse effect on the health of the public or on the environment.
	Part 435: Oil and Gas Extraction Point Source Category	§ 435.41	33 U.S.C. §§ 1251-1376 (1982 & Supp. III 1985).	Subpart D deals with the Coastal Subcategory. Within these regulations coastal is defined so as to include wetlands.
	Part 1508: Terminology and Index	§ 1508.27	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	This part defines terminology which shall be uniform when used through out the Federal Government when implementing and/or discussing NEPA.

Table 18 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 43 PUBLIC LANDS	Part 11: Natural Resource Damage Assessments	§ 11.41	42 U.S.C. § 9651(c) (1982).	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.
	Part 2310: Land Withdrawals, General Procedures	§ 2310.3-2	43 U.S.C. § 1201 (1982); 43 U.S.C. § 1740 (1982).	These regulations set forth the standards and procedures to be compiled with by the Secretary of the Interior when withdrawing federal land.
	Part 3425: Leasing on Application	§ 3425.1-3425.7	30 U.S.C. §§ 181-287 (1982 & Supp. III 1985); 30 U.S.C. §§ 351-359 (1982); 30 U.S.C. §§ 521-531 (1982); 43 U.S.C. §§ 1201 (1982); 43 U.S.C. §§ 1701-1784 (1982 & Supp. III 1985).	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.
	Part 2: Organizations, Functions and Delegation of Authority	§ 2.53	5 U.S.C. § 552 (1982).	This section states that matters concerning flood plain management and wetland protection.
TITLE 44 EMERGENCY MANAGEMENT AND ASSISTANCE	Part 9: Flood Plain Management and Protection of Wetlands	§§ 9.1-9.18	Exec. Order No. 11988; Exec. Order No. 11,900.	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.
	Part 10: Environmental Considerations	§§ 10.5, 10.8, 10.12, 10.14	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	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 19 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 44 EMERGENCY MANAGEMENT AND ASSISTANCE	Part 25: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs	§ 25.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	This section requires compliance with all federal laws, regulations and Executive Orders.
	Part 59: Natural Flood Insurance Program, General Provisions	§ 59.4	42 U.S.C. 4001-4128 (1982 & Supp. III 1985).	These regulations set forth procedures and requirements for the NFIP. The regulations specifically identify the Executive Orders and require compliance.
	Part 205: Federal Disaster Assistance	§§ 205.3, 205.52, 205.54, 205.113, 205.400, 205.402, 205.407	42 U.S.C. § 5201 (1982).	The purpose of these regulations is to prescribe the standards and procedures to be followed in implementing the Disaster Relief Act.
TITLE 45 PUBLIC WATER	Part 15: Relocation Assistance and Real Property Acquisition Policies	§ 15.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	This section requires compliance with all federal law, regulations and Executive Orders.
TITLE 47 TELECOMMUNICATION	Part 1: Practices and Procedures	§ 1.1307	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985).	The noted section falls within the scope of the regulations dealing with the implementation of NEPA and requiring the consideration of all environmental policy in the decisionmaking process.
TITLE 49 PUBLIC LANDS	Part 25: Uniform Relocation Assistance and Real Property	§ 25.8	42 U.S.C. §§ 4601-4655 (1982 & Supp. III 1985).	This section requires compliance with all federal laws, regulations and Executive Orders.

Table 20 : Code of Federal Regulations Pertaining to Wetlands

Title	Part	Sections	Authority	Comments
TITLE 49 TRANSPORTATION	Part 226: Assistance to States for Local Rail Service Under § 5 of the Department of Transportation	§ 266.19	49 U.S.C. §§ 1651-1654 (1982 & Supp. III 1985).	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.
	Part 1105: Guidelines for Implementation of the National Environmental Policy Act of 1969.	§ 1105.7	42 U.S.C. §§ 4321-4370a (1982 & Supp. III 1985); 16 U.S.C. § 1247(d) (1982); 5 U.S.C. §§ 553, 559 (1982 & Supp. III 1985).	This section deals with the implementation of NEPA requirements. The noted section specifies the reporting requirements needed to ensure compliance. Wetlands are identified under land use. 49 C.F.R. § 1105.7(3)(iii) (1987).
TITLE 50 WILDLIFE AND FISHERIES	Part 20: Migratory Bird Hunting	§ 20.108	16 U.S.C. §§ 701-708(h) (1982). 16 U.S.C. § 712 (1982).	This set of regulations discusses bird habitat and the environmental considerations that must be complied with in order to maintain that habitat. Wildlife habitat for migratory bird species is often a wetland.
	Part 602: Guidelines for Fishery Management Plans	§ 602.11	16 U.S.C. §§ 1801-1882 (1982 & Supp. III 1985).	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.

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.

(2) *Floodplain Management*, Exec. Order 11,988, 3 C.F.R. 117 (1978), *amended by* 3 C.F.R. 412 (1979), *reprinted in* 42 U.S.C. § 4321 (1982).

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.¹⁰¹ The most current version is the *Federal Practice Digest*, 3d which covers the reported cases from 1975 to date.¹⁰² 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.*

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 libraries¹⁰³ 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.

(1) *Natural Resources Defense Counsel, Inc. v. Callaway*, 392 F. Supp. 685 (D.D.C. 1975).

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

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

(2) *American Dredging Co. v. Dutchyshyn*, 480 F. Supp. 957 (E.D. Pa.), *aff'd*, 614 F.2d 769 (3d Cir. 1979).

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."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."¹⁰⁵

(3) *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."¹⁰⁶

(4) *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."¹⁰⁷

(5) *United States v. Bradshaw*, 541 F. Supp. 884 (D. Md. 1982).

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

104. *American Dredging Co. v. Dutchyshyn*, 480 F. Supp. 957, 960 (E.D. Pa. 1979).

105. *Id.* (citation omitted).

106. *United States v. Byrd*, 609 F.2d 1204, 1210 (7th Cir. 1979).

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

(6) *Bayou Des Familles Development Corp. v. United States Army Corps of Engineers*, 541 F. Supp. 1025 (E.D. La. 1982).

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.

(7) *North Dakota v. United States*, 460 U.S. 300 (1983).

The federal statutes involved in this case are the Migratory Bird Hunting Stamp Act¹⁰⁹ 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

108. *United States v. Bradshaw*, 541 F. Supp. 884, 885 (D. Md. 1982).

109. Migratory Bird Hunting Stamp Act, 16 U.S.C.A. §§ 718-718j (West 1985 & Supp. 1987).

110. Wetland Loan Act, 16 U.S.C.A. §§ 715k-3 to -5 (West 1985 & Supp. 1987).

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.

(9) *United States v. Robinson*, 570 F. Supp. 1157 (M.D. Fl. 1983).

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.

(10) *United States v. Lambert*, 589 F. Supp. 366 (M.D. Fl. 1984).

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.

(11) *United States v. Fort Pierre*, 747 F.2d 464 (8th Cir. 1984).

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.

(12) *United States v. Ciampitti*, 615 F. Supp. 116 (D.N.J.), *aff'd*, 772 F.2d 893 (3d Cir.), *cert. denied*, 475 U.S. 1013 (1984).

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.

(13) *United States v. Riverside Bayview Homes, Inc.*, 729 F.2d 391 (6th Cir. 1984), *rev'd*, 474 U.S. 121 (1985).

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.

(14) *Ashwood Manor Civil Association v. Dole*, 619 F. Supp. 52 (E.D. Pa.), *aff'd*, 779 F.2d 41 (3d Cir.), *cert. denied*, 475 U.S. 1082 (1985).

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).

(15) *Track 12, Inc. v. District Engineer, United States Army Corps of Engineers*, 618 F. Supp. 488 (D. Minn. 1985).

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.

(16) *National Wildlife Federation v. Hanson*, 623 F. Supp. 1539 (E.D.N.C. 1985).

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.

(17) *Newport Galleria Group v. Deland*, 618 F. Supp. 1179 (D.D.C. 1985).

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

111. *National Wildlife Fed'n v. Hanson*, 623 F. Supp. 1539, 1540 (E.D.N.C. 1985).

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.

(18) *United States v. Cumberland Farms of Connecticut, Inc.*, 647 F. Supp. 1166 (D. Mass. 1986).

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]."¹¹² 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).

112. *United States v. Cumberland Farms of Connecticut, Inc.*, 647 F. Supp. 1166, 1168 (D. Mass. 1986).

(20) *Bailey v. United States*, 647 F. Supp. 44 (D. Idaho 1986).

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.

(21) *United States v. Akers*, 651 F. Supp. 320 (E.D. Cal. 1987).

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.

(22) *United States v. Larkins*, 657 F. Supp. 76 (W.D. Ky. 1987).

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.

(23) *United States v. Rivera Torres*, 656 F. Supp. 251 (D.P.R. 1987).

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.

(24) *Tull v. United States*, 107 S. Ct. 1831 (1987).

The Supreme Court held: (1) the "[s]eventh [a]mendment 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] [s]eventh [a]mendment does not guarantee [a] jury trial to assess civil penalties under the Act."¹¹³

(25) *National Wildlife Federation v. Laubscher*, 662 F. Supp. 548 (S.D. Tex. 1987).

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 *Congres-*

113. *Tull v. United States*, 107 S. Ct. 1831 (1987).

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 Quarterly's *Federal Regulatory Directory*,¹¹⁵ *Information, U.S.A.*,¹¹⁶ and the *Encyclopedia of Governmental Advisory Organizations*.¹¹⁷ 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

book is for sale through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

115. *Congressional Quarterly's Federal Regulatory Directory* contains a comprehensive review of the thirteen largest federal agencies. "Each profile contains sections on the agency's history, power and authority, commissioners or board members, personnel by function, relevant legislation and congressional committees, and information sources within the agency or elsewhere." *Congressional Quarterly's Federal Regulatory Directory* vii (C. McGovern & N. Blanpied eds. 1985). In addition, there are ninety "other important regulatory agencies, both independent and with executive departments. Included are summaries of responsibilities and a list of telephone contacts, information sources and regional offices." *Id.* This publication also contains both a name and subject index. The term "wetlands" appears in the subject index.

116. M. Lesko, *Information, U.S.A.* (1983). This book attempts to catalog all the resources of the federal government. Though published in 1983, the book still provides the researcher with invaluable information.

117. *Encyclopedia of Governmental Advisory Organizations 1988-89* (D. Allard & D. Batten 6th ed. 1988). This publication is a reference guide to over five thousand four hundred committees. *Id.* at 10. "The emphasis in the *Encyclopedia* is on currently active committees but it also includes many that are no longer functioning, as well as some that were authorized, but never activated or funded." *Id.* at 9.

This source provided four wetlands references. The text of the Research Guide includes only the currently active organization. The other three advisory organizations, which are no longer functioning are: (1) Interagency Task Force on Our Nation's Wetlands (established in 1977 pursuant to Executive Order 11,990 and terminated in 1978); (2) Water Bank Advisory Board (Wetlands)(established in 1977 pursuant to the Water Bank Act and terminated in 1973); and (3) Wetlands Advisory Panel (established by the Office of Technology Assessment at the request of the Senate Committee on Environment and Public Works and terminated in 1984). *Id.* at 426.

on national environmental priorities, and develops guidelines for implementation of environmental statutes. 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

118. Council on Environmental Quality, Office of the President, Memorandum, Guidance on Applying Section 404(r) of the Clean Water Act to Federal Projects Which Involve the Dredge and Fill Materials into Waters of the United States, Including Wetlands (Nov. 17, 1980).

United States Department of Commerce
Herbert Hoover Building
14th Street & Constitutional Avenue, N.W.
Washington, D.C. 20230
(202) 377-4190

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

Washington, D.C. 20240

(202) 343-4545

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 administers several programs which pertain to natural ecosystems. These programs are multifaceted and support laboratory, field, and the-

oretical studies concerning natural, managed and man-dominated terrestrial, freshwater and wetland ecosystems.

B. *Private and Public Interest Organizations*

The information used to compile this part of the Research Guide was derived from the *Encyclopedia of Associations*¹¹⁹ 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 organizations. This publication has three indices to expedite the user's retrieval of information: (1) an institutional index; (2) an alphabetical index to Research Centers; and (3) a subject index. Both publications have several references in their subject indexes (keyword indexes) to wetlands.

(1) Association of State Wetland Managers

Box 528

Chester, Vermont 05143

This organization holds workshops and national conferences on both policy and scientific issues which concern wetlands. 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

119. *Encyclopedia of Associations* - 1988 (K. Koek & S. Martin 22d ed. 1988). The *Encyclopedia of Associations* is published by Gale Research Company, Book Tower, Detroit, Michigan 48226.

120. *Research Centers Directory* (A. Palmer & L. Byrant 6th ed. 1979). The *Research Centers Directory* is published by Gale Research Company, Book Tower, Detroit, Michigan 48226.

121. *Encyclopedia of Associations* - 1988 at 1925 (K. Koek & S. Martin 22d ed. 1988).

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.

(6) National Wetlands Conservation Project (NWCP)

c/o The Nature Conservancy
1800 N. Kent Street
Suite 800
Arlington, Virginia 22209
(703) 841-5300

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.

(7) National Wetlands Technical Council

1616 P Street, N.W.
Suite 200
Washington, D.C. 20036
(202) 328-5150

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.

(8) Society of Wetland Scientists

P.O. Box 296
Wilmington, North Carolina 28402

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.

(9) Wetlands Institute

Lehigh University

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.

(3) 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.

(4) 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

(5) 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*.

(6) 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 *Environment 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

124. *Directory of Special Libraries and Information Centers* (B. Darnay 9th ed. 1985). This directory is published by Gale Research Company, Book Tower, Detroit, Michigan 48226.

125. M. Lesko, *Information, U.S.A.* (1983).

126. *Directory of Special Libraries and Information Centers* vii (B. Darnay 9th ed. 1985).

Region III

Curtis Building

6th & Walnut Streets

Philadelphia, Pennsylvania 99106

(215) 597-0580

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*

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.

127. *Encyclopedia of Information Systems and Services* 1985-86 (J. Schmittroth, Jr. 6th ed. 1985). The *Encyclopedia of Information Systems and Services* is published by Gale Research Company, Book Tower, Detroit, Michigan 48226.

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.

- (2) J. Kusler, Our National Wetland Heritage: A Protection Guidebook (3d printing 1985).

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.

- (3) International Union for the Conservation of Nature and Natural Resources, Convention on Wetlands of International Importance Especially as Waterfowl Habitat (1984).

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.

- (4) J. Mitsch & J. Gosselink, Wetlands (1986).

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.

- (5) Office of Technology Assessment, U.S. Congressional Report No. OTA-0-206, Wetlands and Their Use and Regulations (1982).

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

- (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.

- (7) Wetlands (G. Silberhorn ed. 1985).

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.

- (8) Wetlands and Water Management on Mined Lands (R. Brooks, D. Samuel & J. Hill eds. 1985).

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.

- (9) U.S. Environmental Protection Agency & U.S. Fish & Wildlife Service, Dep't of Interior, No. EPA 905-84-002, The Ecological Impacts of Wastewater on Wetlands: An Annotated Bibliography (1984).

This annotated bibliography contains references dealing

130. Cairns & Pratt, *Aquatic Environments on Mined Lands: Progress and Future Needs*, in *Wetlands and Water Management on Mined Lands 1* (R. Brooks, D. Samuel & J. Hill eds. 1985).

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).

(10) U.S. General Accounting Office, GAO/RCED-85-154, A Bibliography of Documents Issued by the GAO on Matters Related to: Environmental Protection (1985).

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.

(11) U.S. General Accounting Office, GAO/RCED-83-134, Land Use Bibliography (1983).

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*¹³¹

(1) Hanson, *Damming Agricultural Drainage: The Effect of Wetland Preservation and Federal Regulation on Agricultural Drainage in Minnesota*, 13 William Mitchell Law Review 135 (1987).

This article reviews the evolution of agricultural drainage

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 Info-trac 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 10452, 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.

- (2) Seltzer & Steinberg, *Wetlands and Private Development*, 12 Columbia Journal of Environmental Law 159 (1987).

This article discusses the current state of regulated wetlands verses 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."¹³²

- (3) Kalo & Kalo, *The Battle to Preserve North Carolina's Estuarine Marsh: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust*, 64 North Carolina Law Review 565 (1986).

This article analyzes the debate over property ownership with the North Carolina's estuarine complex¹³³ and the legal ramifications arising from this situation.

- (4) Landers, Lotspeich & Osiason, *Environmental Regulatory Streamlining: A State Perspective*, 2 Journal of Land Use & Environmental Law 1 (1986).

The article's main focus is on "the duplication and overlap present in Florida's environmental regulatory process."¹³⁴

- (5) Parker, *A Title Report As to Swamp and Overflowed Lands Sold in California*, 13 Western State University Law Review 563 (1986).

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

132. Seltzer & Steinberger, *Wetlands and Private Development*, 12 Colum. J. Envtl. L. 159, 200-01 (1987).

133. Kalo & Kalo, *The Battle to Preserve North Carolina's Estuarine Marsh: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust*, 64 N.C.L. Rev. 565, 568 (1986).

134. Landers, Lotspeich & Osiason, *Environmental Regulatory Streamlining: A State Perspective*, 2 J. Land Use & Envtl. L. 1 (1986).

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

(6) Torres, *Wetlands and Agriculture: Environmental Regulation and the Limits of Private Property*, 34 University of Kansas Law Review 539 (1986).

"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

(7) Caves, *Wetlands Law: An Overview and Consideration of a Principal Problem*, 6 Glendale Law Review 91 (1984).

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.

(8) Fisher, *Minnesota Water Management Law and Section 404 Permits: A Practitioner's Perspective*, 7 Hamline Law Review 249 (1984).

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.

(9) Gramling, *Wetland Regulation and Wildlife Habitat Protection: Proposals for Florida*, 8 Harvard Environmental Law Review 365 (1984).

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

(10) Want, *Federal Wetland Law: The Cases and the Problems*, 8 Harvard Environmental Law Review 1 (1984).

This is an extensive article covering the statutes and the

135. Parker, *A Title Report As to Swamp and Overflowed Lands Sold in California*, 13 W. St. U.L. Rev. 563, 563 (1986).

136. Torres, *Wetlands and Agriculture: Environmental Regulation and the Limits of Private Property*, 34 U. Kan. L. Rev. 539, 539 (1986).

137. Gramling, *Wetland Regulation and Wildlife Habitat Protection: Proposals for Florida*, 8 Harv. Envtl. L. Rev. 365, 366 (1984) (footnotes omitted).

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

(11) Blumm, *Wetlands Preservation, Fish and Wildlife Protection, and 404 Regulations: A Response*, 18 Land and Water Law Review 469 (1983).

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

(12) Edwards, Zehner & Moore, *Constitutional and Policy Implications of Louisiana's Proposed Environmental Energy Tax: Political Expediency or Effective Regulation?*, 58 Tulane Law Review 215 (1983).

"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

(13) Ferretti, *Restoring the Nation's Wetlands: Can the Clean Water Act's Dredge and Fill Guidelines Do the Job?*, 1 Pace Environmental Law Review 105 (1983).

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

(14) Owens, *Land Acquisition and Coastal Resource Management: A Pragmatic Perspective*, 24 William & Mary Law Review 625 (1983).

This discussion of the elements of a land acquisition pro-

138. Blumm, *Wetlands Preservation, Fish and Wildlife Protection, and 404 Regulations: A Response*, 18 Land and Water L. Rev. 469, 469 (1983).

139. Edwards, Zehner & Moore, *Constitutional and Policy Implications of Louisiana's Proposed Environmental Energy Tax: Political Expediency or Effective Regulation?*, 58 Tul. L. Rev. 215, 215 (1983).

140. Ferretti, *Restoring the Nation's Wetlands: Can the Clean Water Act's Dredge and Fill Guidelines Do the Job?*, 1 Pace Env'tl. L. Rev. 105, 122 (1983).

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

(15) Pierce, *The Constitutionality of State Environmental Taxes*, 58 Tulane Law Review 169 (1983).

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

(16) Dawson, *Massachusetts Wetlands and Floodplains Revisited*, 4 Western New England Law Review 623 (1982).

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

(17) Kussy, *Wetland and Floodplain Protection and the Federal-Aid Highway Program*, 13 Environmental Law 161 (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

(18) Parish & Morgan, *History, Practice and Emerging Problems of Wetlands Regulation: Reconsidering Section 404 of the Clean Water Act*, 17 Land & Water Law Review 43 (1982).

This article critiques the section 404 program under the

141. Owens, *Land Acquisition and Coastal Resource Management: A Pragmatic Perspective*, 24 Wm. & Mary L. Rev. 625, 630 (1983).

142. Pierce, *The Constitutionality of State Environmental Taxes*, 58 Tul. L. Rev. 169, 214 (1983).

143. Kussy, *Wetland and Floodplain Protection and the Federal-Aid Highway Program*, 13 Env'tl. L. 161, 163 (1982) (footnote omitted).

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

(19) Myhrum, *Federal Protection of Wetlands Through Legal Process*, 11 Land Use & Environmental Law Review 357 (1980).

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

(20) Comment, *An Analysis of Municipal Wetlands Laws and Their Relationships to the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (RAMSAR)*, 4 Pace Environmental Law Review 177 (1986).

"[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.

(21) Comment, *Preserving Nebraska's Wetlands: Now and In the Future*, 63 Nebraska Law Review 473 (1984).

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*:

144. Myhrum, *Federal Protection of Wetlands Through Legal Process*, 11 Land Use & Envtl. L. Rev. 357, 360 (1980).

145. Comment, *An Analysis of Municipal Wetlands Laws and Their Relationships to the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (RAMSAR)*, 4 Pace Envtl. L. Rev. 177, 177 (1986).

146. Comment, *Preserving Nebraska's Wetlands: Now and In the Future*, 63 Neb. L. Rev. 473, 475 (1984).

An Analysis Under the Commerce and Supremacy Clauses, 29 Loyola Law Review 153 (1983).

"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

(23) Comment, *Conflicting Interests in Southern Louisiana's Wetlands: Private Developers verses Conservationists, and the State and Federal Regulatory Role*, 56 Tulane Law Review 1006 (1982).

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

(24) Comment, *Home Rule Wetlands Protection in Massachusetts: Lovequist v. Conservation Commission of the Town of Dennis*, 9 Boston College Environmental Affairs Law Review 103 (1980).

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

(25) Note, *The Right to Jury Trial Under the Clean Water Act - The Jury Is Still Out*, 41 University of Miami Law Review 665 (1987).

147. Comment, *The Coastal Wetlands Environmental Levy: An Analysis Under the Commerce and Supremacy Clauses*, 29 Loy. L. Rev. 153, 153 (1983).

148. Comment, *Conflicting Interests in Southern Louisiana's Wetlands: Private Developers versus Conservationists, and the State and Federal Regulatory Role*, 56 Tul. L. Rev. 1006, 1010 (1982).

149. Comment, *Home Rule Wetlands Protection in Massachusetts: Lovequist v. Conservation Commission of the Town of Dennis*, 9 B.C. Env'tl. Affs. L. Rev. 103, 106 (1980).

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.

(26) Note, *United States v. Tull: A Polluter's Right to a Jury Trial*, 4 Pace Environmental Law Review 473 (1987).

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.

(27) Note, *The Taking of Wetlands Under Section 404 of the Clean Water Act*, 17 Environmental Law 111 (1986).

"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

(28) Note, *Army Corps of Engineers Jurisdiction Over Wetlands Under Section 404 of the Clean Water Act: United States v. Riverside Bayview Homes, Inc.*, 13 Ecology Law Quarterly 579 (1986).

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.

(29) Note, *The Supreme Court Upholds the Corps' "Wetlands Jurisdiction"*, 2 Journal of Land Use & Environmental Law 65 (1986).

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

(30) Note, *DER Regulatory Jurisdiction*, 2 Journal of Land Use & Environmental Law 85 (1986).

150. Note, *The Taking of Wetlands Under Section 404 of the Clean Water Act*, 17 Env'tl. L. 111, 112 (1986).

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

(32) Note, *An Affirmation of Section 404 Jurisdiction Over Wetlands: United States v. Riverside Bayview Homes, Inc.*, 30 Washington University Journal of Urban & Contemporary Law 257 (1986).

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

(33) Note, *Environmental Law-The Sixth Circuit's Unsettling Interpretation of the Corps of Engineers' Wetlands Definition*, 20 Land & Water Law Review 475 (1985).

This case note analyzes the Sixth Circuit's decision in the *United States v. Riverside Bayview Homes, Inc.*, 729 F.2d 391 (6th Cir. 1984).

(34) Note, *Wetlands Protection and the Neglected Child of the Clean Water Act: A Proposal for Shared Custody of Section 404*, 5 Virginia Journal of Natural Resources Law 227 (1985).

This note examines the controversy surrounding section 404 of the Clean Water Act "and proposes a possible solution to some of the deficiencies of the section 404 program."¹⁵²

(35) Note, *The Warren S. Henderson Wetlands Protection Act of 1984: Enough Protection*, 9 Nova Law Journal 141 (1984).

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

152. Note, *Wetlands Protection and the Neglected Child of the Clean Water Act: A Proposal for Shared Custody of Section 404*, 5 Va. J. Nat. Resources L. 227, 229 (1985).

make[s] recommendations for possible changes which may increase the protection of wetlands in Florida.”¹⁵³

(36) Note, *Environmental Law - Nationwide Permits for Categories of Waters Issued By the Corps of Engineers Under FWPCA Section 404: A Legislative Administrative Interpretation Ratified By Congress?*, 61 North Carolina Law Review 904 (1983).

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

(37) Recent Developments, *Sixth Circuit Narrows Definition of "Wetlands" for Purposes of Corps of Engineers' Jurisdiction*, 25 Natural Resources Journal 480 (1985).

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). *Riverside* discussed the Corps' jurisdiction and interpretation of section 404 of the Clean Water Act.

(38) Recent Developments, *Tenth Amendment Not Violated By Requiring Local Governmental Compliance With the Clean Water Act*, 23 Natural Resources Journal 273 (1983).

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

(39) Recent Developments, *Enforcement of the Maryland Wetlands Act "Bogs Down" In the Court of Appeals*, 41 Maryland Law Review 137 (1981).

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

(40) Significant Developments, *The Clean Water Act - More*

153. Note, *The Warren S. Henderson Wetlands Protection Act of 1984: Enough Protection*, 9 Nova L. J. 141, 142 (1984).

Section 404: The Supreme Court Gets Its Feet Wet, 65 Boston University Law Review 995 (1986).

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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