

## Why Are Wetlands Important?

For decades, we were unaware of the critical functions wetlands perform. In this new century, we understand the importance of keeping natural wetland systems healthy. Montana's remaining wetlands are essential to waterfowl, shorebirds, and other wildlife, water quality, and for providing flood control.



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Poncho McCoy

## What About Artificial Wetlands?

The Natural Resources Conservation Service (NRCS) defines an artificial wetland as land that was not a wetland under natural conditions, but now exhibits wetland characteristics due to human activities. Human-induced wetlands, like those under irrigation, may meet the requirements of wetlands by water, soils, and vegetation.

It is possible that artificial wetlands may not be subject to provisions of the NRCS Swampbuster Program, but be regulated by the ACOE under Section 404 of the Clean Water Act. The ACOE decides, on a case by case basis, if a human-induced wetland is subject to protection.

## Wetlands And Water Rights

Although you may desire an artificial wetland, will you have a water right for the water in that wetland? Unless you have a valid water right, your use of water for that wetland may not be protected against others who desire the use of that water. A water right gives you a property right (and a priority date) that is valid in state Water Court. The Montana Department of Natural Resources and Conservation (DNRC) has




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jurisdiction over the issuance of new water use permits, as well as changes of existing water rights to new uses. To find out more about water rights, and whether you have, or can obtain, a water right for an artificial wetland, contact your nearest DNRC Regional Office.

### For More Information

Or to request additional materials on wetlands and wetland-related programs available in the state, contact the Montana Watercourse at 406-994-6671.

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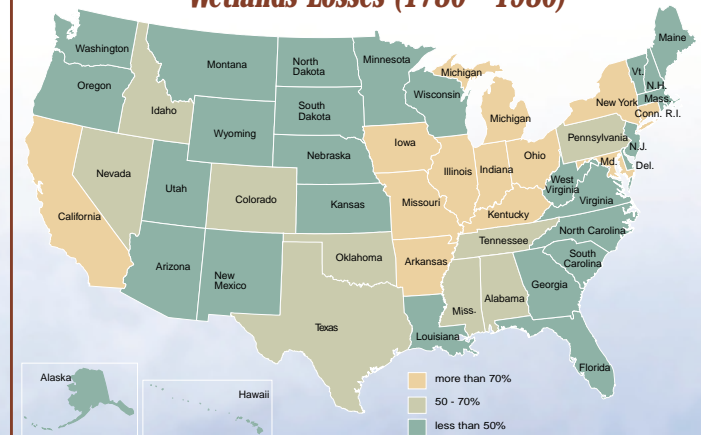
# WETLAND LAWS, PERMITS AND REGULATIONS

## Navigating The Maze

Often seen as wastelands, an estimated 25% of Montana's wetlands have vanished in the last century and a half. We now realize that wetlands are critical natural resources.

As our appreciation of wetland functions and values has increased, so has society's commitment to protecting them. Our laws express that commitment, and government regulations help us to implement the laws. This brochure describes wetland protection laws and provides a chart to help you find your way through the sometimes-complicated wetland permitting process. By working together, perhaps we can build a legacy of wetland gains to correct our historic losses.

### Wetlands Losses (1780 - 1980)



Data from: Dahl, T.E. 1990. Wetlands Losses in the United States: 1780s to 1980s. US Dept. of Interior, Fish & Wildlife Service, Washington D.C.



## What Is A Wetland?

**B**efore undertaking any activity that may impact a wetland, you should have some understanding of basic wetland principles. Wetlands are considered transition zones

between open water and uplands. Wetlands types in Montana include sloughs, margins around lakes, ponds and streams, wet meadows, fens, and potholes. Even so, many folks have separate ideas of what constitutes these areas and as a result they have different definitions of wetlands.

## Wetland: A Legal Definition

Government agencies have adopted a consistent wetland definition developed jointly by the Army Corps of Engineers (ACOE) and Environmental Protection Agency (EPA), in "The Wetlands Delineation Manual of 1987":

*Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.*

This wetland definition is based on hydrology, hydric soils and hydrophytic vegetation. Only areas that meet all three

criteria are considered wetlands subject to federal regulation.



Terry Lonner

## Key Federal Laws Affecting Wetlands

**Clean Water Act (CWA)** 1972 Preamble is administered by the Environmental Protection Agency, the Army Corps of Engineers, and state agencies.

Section 401 requires that states review and certify permits that may result in pollution discharges into surface waters and wetlands

Section 402 established a permit system required for any discharge of pollutants from a point source into navigable waters

Section 404 jointly administered by the ACOE and EPA, governs dredging and filling of land

**National Environmental Policy Act** NEPA requires federal agencies to take action to minimize the destruction, loss or degradation of wetlands and to preserve the natural values of wetlands on federal lands

**Executive Order 11990** Requires federal agencies take action to minimize destruction, loss or degradation of wetlands and to preserve natural values of wetlands on federal lands

**Rivers and Harbors Act** Gives authority to the ACOE to prohibit discharge of solids or construction into tidal and navigable or adjacent waters

**1985 Food Securities Act** "Swampbuster," denies some federal subsidies for conversion of wetlands to agricultural uses

**Endangered Species Act** Administered by U.S. Fish and Wildlife Service, protects wetlands that offer unique habitat for endangered and threatened species

## State Laws Affecting Wetlands

The Montana Environmental Policy Act and two Montana Administrative Rules regulate activities that may affect wetlands.

## Tribal Laws Affecting Wetlands

Tribal governments in Montana safeguard the health, welfare, and economic security of their people. They protect aquatic resources—including wetlands—that are critical for water quality, fisheries and wildlife. The Confederated Salish and Kootenai Tribe and Blackfeet Nation currently have regulations and ordinances in place. Tribes on the other five Montana reservations are also developing wetland programs and strategies. If you own land adjacent to or within reservation boundaries, you need to consult with the appropriate tribal government office about wetlands on your property.

## Navigating The Permit Maze

Typical Question	Answer	Permit Name	Agency	Contact	Waiting Period
"I want to build an access road across the wetland to get to my new house. Do I need a permit?"	YES	404	ACOE, or DEQ regarding water quality issues	Allan Steinle, ACOE 406-441-1375 John Wardell, EPA 406-441-1140	About 30 days for projects of minimal environmental impact; 60-120 days for major impact.
"I want to clear away some shrubs and brush on my wetland. Can I use a bulldozer and grader?"	Heavy equipment requires a permit. Hand-held equipment (chainsaws, shovels) may be used without permit.	404	ACOE, or DEQ regarding water quality issues	Allan Steinle or staff 406-441-1375	About 30 days.
"I want to build a pond. Do I need a permit?"	Yes. Permits needed for heavy equipment in a wetland or drainage area; also for water rights.	404 / Water Right Permit	ACOE, or DEQ for water quality issues; DNRC Water Rights Bureau	Allan Steinle or staff 406-441-1375 DNRC Staff 406-444-6610	About 30 days.
"I want to build a gravel bar to direct the flow of stream water into the irrigation ditch. Do I need a permit?"	YES	310	Submit application for 310 permit to local CD. Depending on nature of work and the location, DEQ and DNRC may need to be contacted.	Local County Conservation District (CD)	Local CD (meets monthly) determines if permit needed, and will schedule inspection and submit a report at next meeting. A 310 permit is valid for a year. March is a good time to submit application for permit, usually needed by August.
"Do I have a wetland? I need to know for a building project."	Ask NRCS specialist or wetland consultant. If your land contains hydric soil, NRCS will refer you to a wetlands specialist for a wetland delineation. If dredge or fill is needed, ACOE must be consulted.	Swampbuster & possibly 404. If minor disruption (< 3 acres), you might proceed under nationwide permit. You need letter from ACOE to confirm.	NRCS, ACOE	Local NRCS (Also provides a wetlands technical guide of regional wetland plants.) Allan Steinle or staff 406-441-1375	Time to check soil map (1 hr. to 2 days). Schedule depends on consultant, demands, area of land and coordination with others. Usually 30 days for projects of minimal environmental impact and 60-120 days for major impact.

\* For further reference see: "A Guide To Stream Permitting in Montana", March 1997, available from your local conservation district office.