

# U.S. Army Corps of Engineers Sacramento District

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# Overview

- Corps and Regulatory Program refresher
  - ▶ Primary authorities of Regulatory Program
  - ▶ What is a “water of the U.S.?”
  - ▶ Identifying a wetland
  - ▶ When is a permit required?
- Types of permits and process overview
- Enforcement
  - ▶ Elements of a violation
  - ▶ Enforcement Process
  - ▶ Limitations
  - ▶ Resolution
  - ▶ Case Study

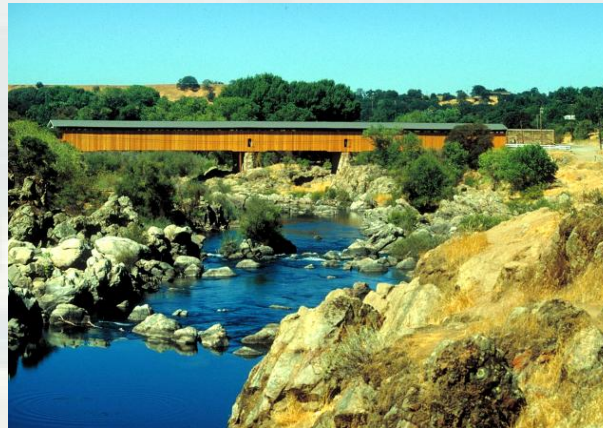




# Introduction to the Corps



- Navigation
- Flood Control
- Military/Civil Construction
- Disaster/Emergency Response
- Recreation
- Research and Development
- **Regulatory**

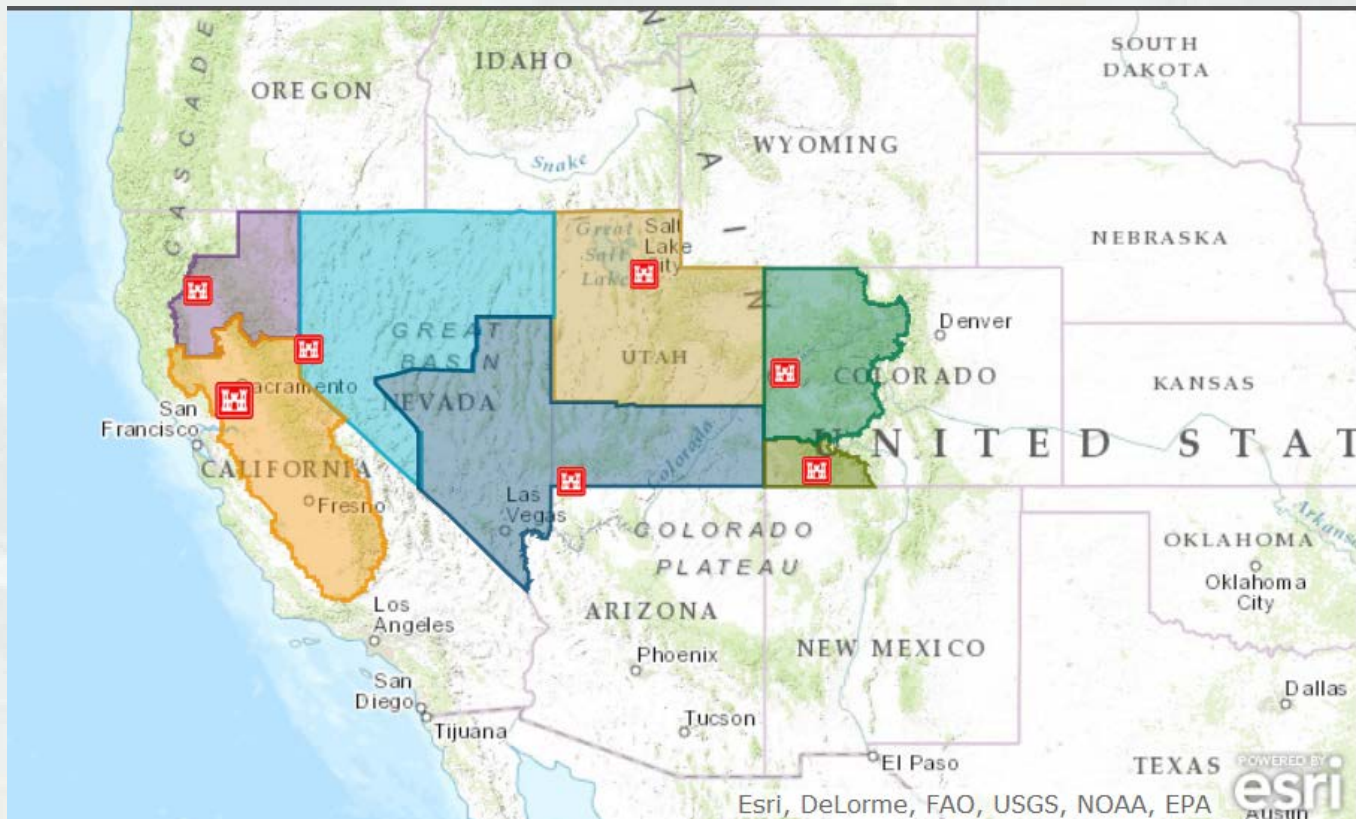




# Corps Regulatory Program

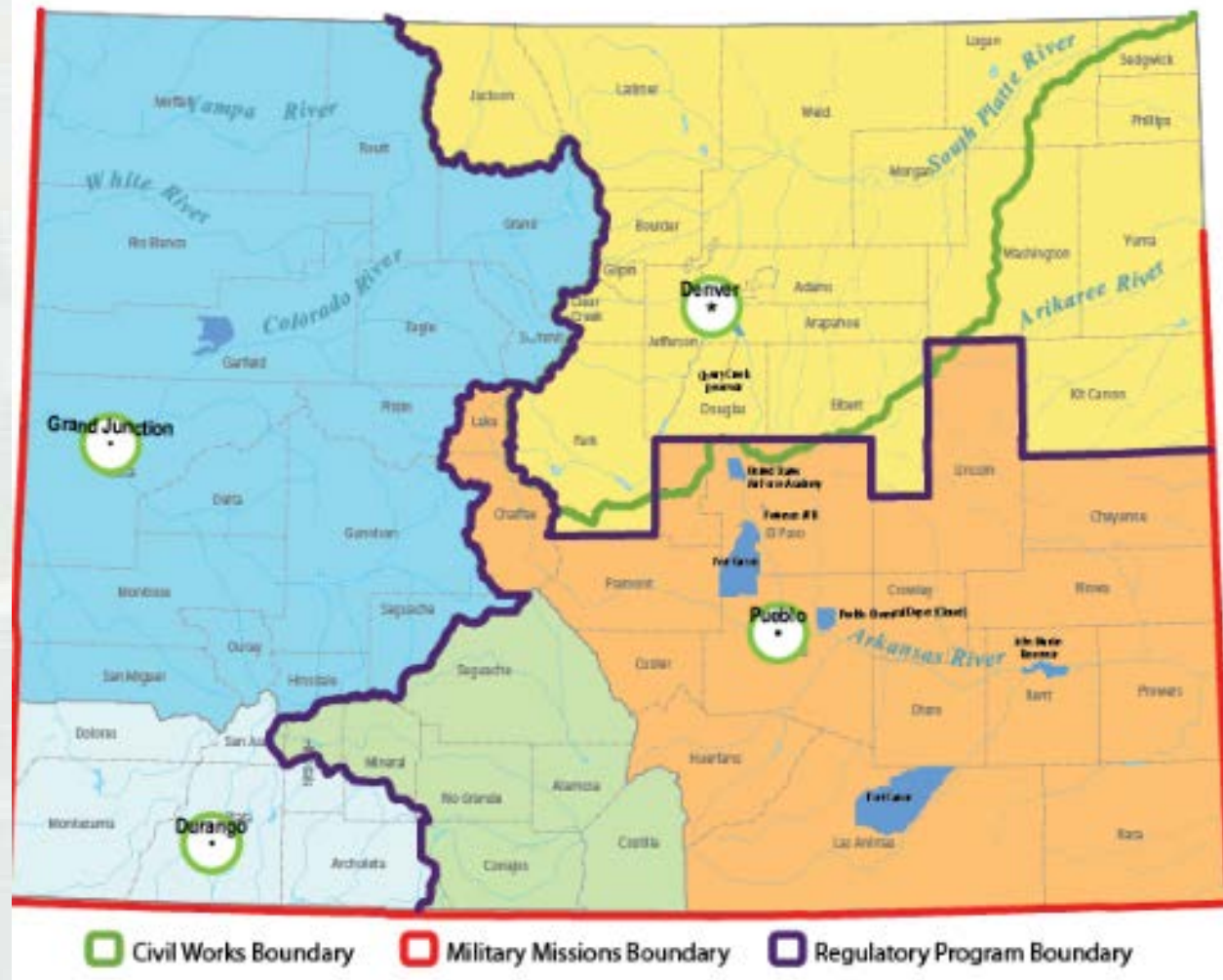


# Sacramento District





# Colorado Regulatory Map



# Regulatory Authorities

- Section 10 of Rivers and Harbors Act of 1899
  - ▶ Work or structures in, under or above navigable waters
- Section 404 of the Clean Water Act
  - ▶ Discharges of dredged or fill material into waters of the US
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972
  - ▶ Transportation of dredged material for ocean disposal

*Title 33 of Code of Federal Regulations  
Parts 320 to 332*



# Section 10 Rivers and Harbors Act of 1899

## *Navajo Reservoir, Lake Powell, Colorado River*





# Purpose of Rivers and Harbors Act



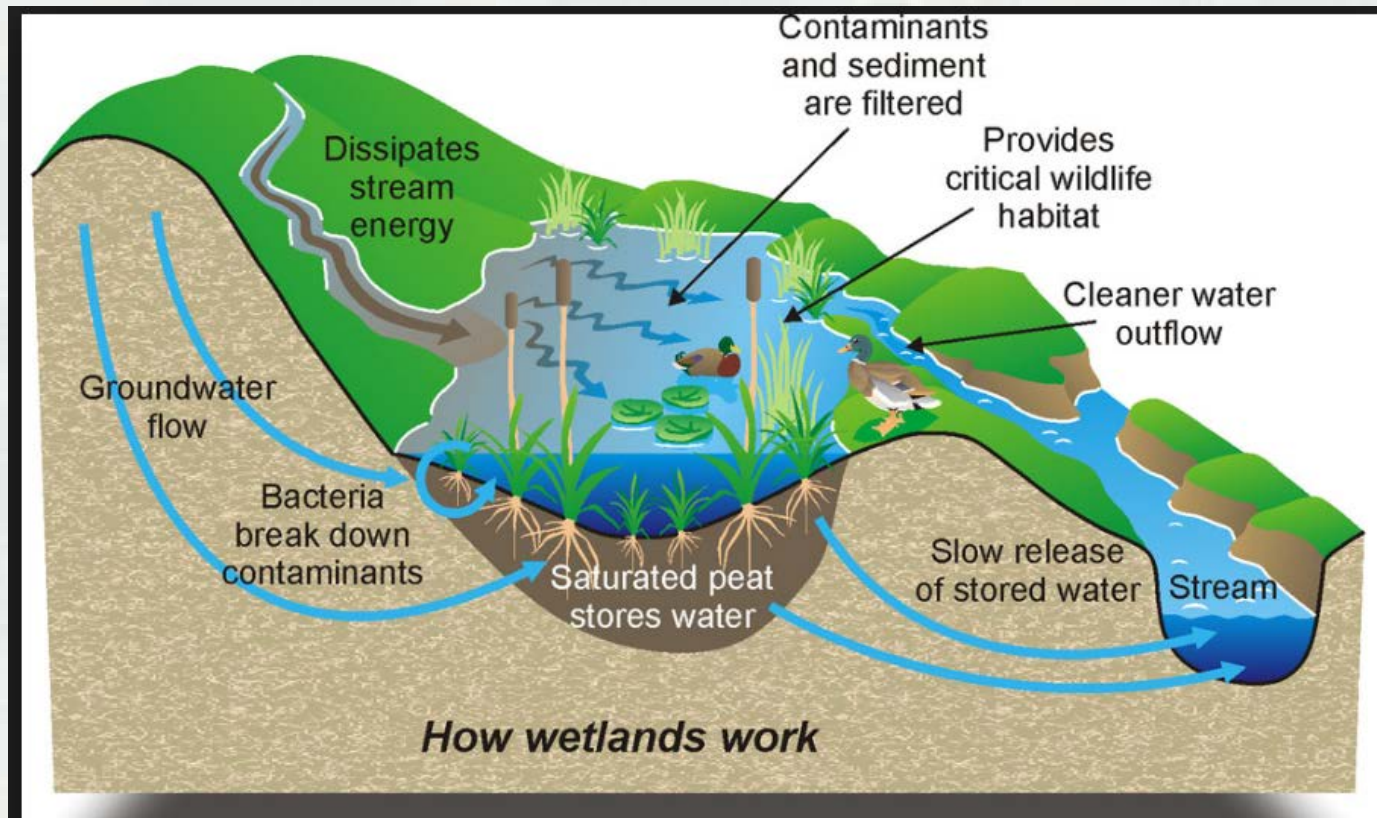
# Section 404 Clean Water Act

- Permit required in order to **discharge dredged or fill material** into “waters of the United States”





# Purpose of the Clean Water Act



# Waters of the United States

*(Long definition at 33 CFR 328)*

- Navigable waters, including the territorial seas
- Interstate waters, including wetlands
- Territorial Seas
- Impoundments to above
- Tributaries to above
- Adjacent wetlands to above





# Waters include Wetlands and “Other Waters”

- Wetlands
  - ▶ E.g., seasonal wetlands, including vernal pools
- Rivers
- Streams
- Lakes/ponds
- Ditches



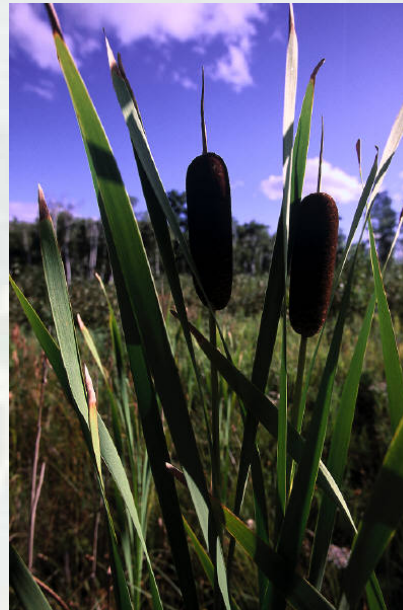
# Defining and Identify Wetlands

- Definition

- ▶ Those areas that are inundated or saturated sufficiently to support, and under normal circumstances do support, a prevalence of wetland vegetation.

- 3 parameter test

- ▶ Wetland vegetation
- ▶ Hydrology
- ▶ Wetland soils

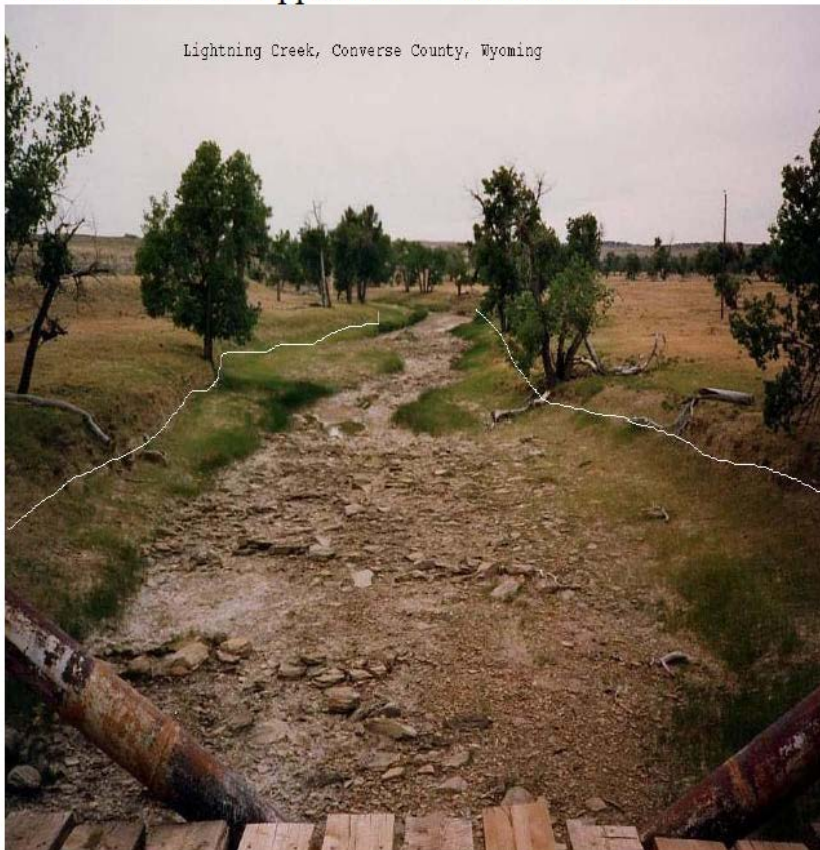




# Defining Ordinary High Water Mark

- Line on the shore established by the fluctuation of water

**Photo 28.** Ephemeral tributary, Converse County, WY.  
White lines mark approximate location of OHWM.



and indicated by  
physical  
characteristics



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# Types of Permits





# Mitigation



# Compliance with Related Laws

- National Environmental Policy Act
- Section 7 of Endangered Species Act
- Section 106 of National Historic Preservation Act
- Section 401 of Clean Water Act





# ESA - Section 7(a)(2)





# Section 106 of the National Historic Preservation Act



# Section 401 of Clean Water Act



# Enforcement Actions

- Elements of a Violation under CWA
  1. Discharge of
  2. Pollutants into
  3. Navigable waters from a
  4. Point source by any
  5. Person
  6. Without authorization





# Discharge

33 USC Section 1362 (12) Discharge – “any addition of any pollutant...”



# Fill = Pollutant

- 1) Replacing any portion of a water of the United States with dry land; or
- 2) Changing the bottom elevation of any portion of a water of the United States.

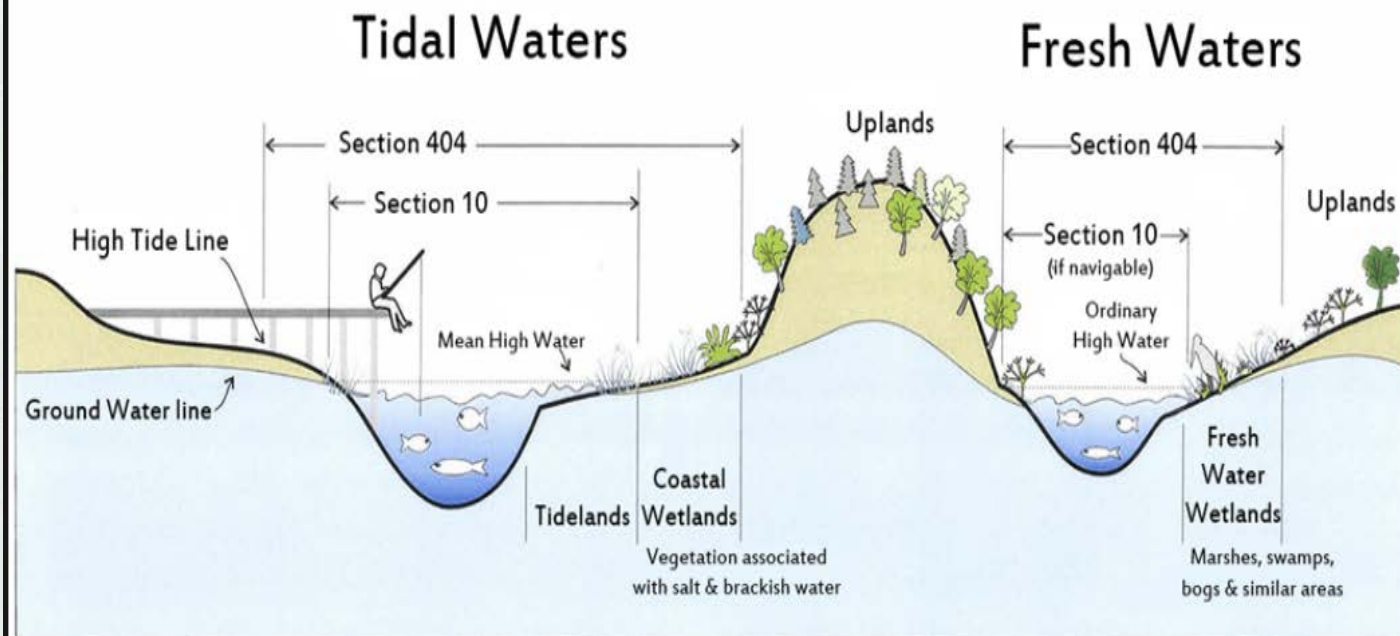
Examples - rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and material used to create any structure or infrastructure in a waters of the United States.

**The term fill material does not include trash or garbage.**



# Navigable Waters

## Corps of Engineers Regulatory Jurisdiction



Typical examples of regulated activities

**Section 103**  
Ocean Discharge of Dredged Material  
Ocean discharges of dredged material.

**Section 404**  
Disposal of Dredged or Fill Material  
All filling activities, utility lines, outfall structures, beach nourishment, riprap, jetties, some excavation activities, etc.

**Section 10**  
All Structures and Work (navigable waters)  
Dredging, marinas, piers, wharves, floats, intake/outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.





# Point Source

- Any discernible, confined, and discrete conveyance (such as a pipe ditch container, or conduit)
  - ▶ Including bulldozers, back-hoes, dump trucks, and other equipment.



# Person

- “Person” includes both:
  - ▶ Party who actually performed the work, AND
  - ▶ Party with responsibility for or control over the performance of the work.



# Without Authorization or Exemption



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

## DEPARTMENT OF THE ARMY PERMIT

Permittee:

Attn:  
#APPLICANT\_ADDRESS1#

Permit Number: SPK-2015-00781

Issuing Office: U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 "J" Street  
Sacramento, California 95814-2922

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. A notice of appeal options is enclosed.





# Enforcement Resolution

- After-the-Fact Permit Application
- Voluntary Restoration
- Initial Corrective Measures
- Referral to DOJ
- Referral to EPA

