

WETLANDS DESKBOOK

4TH EDITION

by

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and

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ENVIRONMENTAL LAW INSTITUTE

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*Additional material can be found on the book’s website at
<http://www.eli.org/eli-press-books/wetlands-deskbook-4th-edition>.*

ELR's Wetlands Deskbook

Few areas of environmental law have invited as much controversy and litigation as federal wetlands law. And, few areas are as important to the health of our ecosystems and the protection of drinking water sources. Although there is no single wetlands statute, a number of federal and state statutes and programs address protection and use of wetlands. Federal statutes that impact water pollution, agricultural production, fish and wildlife habitat, and certain federal benefit programs all touch on wetlands. This complicated legal structure results in an array of definitions, prohibitions, and policies applicable to activities that affect wetlands. All of this has created significant challenges for the regulatory agencies charged with overseeing the nation's wetlands and generated a significant number of U.S. Supreme Court cases, ranging from *U.S. v. Riverside Bayview Homes* to *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* through *Rapanos v. United States* and then to *Sackett v. EPA*.

Wetlands law must consider the very delicate balance of private land rights, since wetlands often occur on privately owned land, versus the considerable public interest in preserving and protecting the ecological benefits of wetlands. This balance is reflected in laws and policies that set up procedural safeguards, delineation guidance, and mitigation requirements in some cases. The balance can also be seen in the various federal wetlands acquisition programs and was at the heart of the recent Supreme Court decision *Koontz v. St. Johns River Water Management District*, which addressed regulatory takings. In short, federal laws and their implementation by federal and state agencies demand careful study and understanding by all practitioners in this important area.

The *Wetlands Deskbook* is part of ELI's comprehensive program to protect wetlands, one of our most valuable natural resources. ELI's Wetlands Program provides professionals and the public with timely, balanced information on wetlands law, policy, science, and management in order to prevent wetlands loss and result in a net gain of wetlands across the United States. The Wetlands Program has three major areas of focus: education and outreach to promote the best in wetlands protection; convening experts and stakeholders; and research and policy analysis on cutting-edge issues, particularly mitigation banking. This Deskbook is an example of the program at work, as we seek to make wetlands law more accessible to practitioners.

The *Wetlands Deskbook* is part of ELI's Deskbook series, which combines the invaluable experience of the top practitioners in the field with the encyclopedic coverage and keen insight provided by the staff of the *Environmental Law Reporter*. Deskbooks provide practicing attorneys, students, environmental professionals, and government officials an "at-the-fingertips" resource for accessing and understanding environmental law. The series covers climate change, endangered species, NEPA, TSCA, FIFRA, and many other topics by combining in-depth analysis of the topic with necessary reference materials, such as regulations, guidance documents, and forms.

The Deskbooks are natural partners to ELI's flagship resource, the *Environmental Law Reporter*. *ELR* is an attorney-edited gateway to researching and understanding environmental law and policy, with coverage since 1971 available online in an easily searchable format. *ELR* couples thousands of insightful articles on environmental law and policy with the most important updates, decisions, statutes, regulations, and agency documents and a cumulative index and bibliography to help you navigate this highly complex area of law. More information about the Deskbooks, *ELR*, and ELI's Wetlands Program is available at www.eli.org.

The *Wetlands Deskbook* was authored by Peggy Strand and Lowell Rothschild, both experts in this important area. The *Wetlands Deskbook* has become known as one of the most authoritative sources on this area of law due to the insight and care Peggy and Lowell have put into this work over many years. The significant reworking of the fourth edition reflects major changes in the area of law and the authors' careful rethinking of how best to present this to readers. We are very grateful to them for their hard work and dedication in bringing the Deskbook into being. *ELR* staff also deserves our sincerest thanks for their effort and skill in helping us to create this valuable resource.

The Environmental Law Institute makes law work for people, places, and the planet. With its nonpartisan, independent approach, ELI promotes solutions to tough environmental problems. The Institute's unparalleled research and highly respected publications inform the public debate and build the institutions needed to advance sustainable development. We hope the *Wetlands Deskbook* provides valuable insight into this vital area of environmental law and regulation.

John C. Cruden
President, ELI

About the Authors



Margaret “Peggy” Strand is a partner at Venable, LLP in Washington, D.C. Ms. Strand has substantial experience advising on the regulatory requirements of federal and state law, including wetlands, natural resources, protected species, climate change, and pollution control. She was Chief of the Environmental Defense Section in the U.S. Justice Department, Environmental and Natural Resources Division, from 1984 to 1991, and served as a Justice Department trial attorney and supervisor since 1976. Ms. Strand is active with the National Academy of Sciences, as she currently chairs the Environmental Law Committee of the Transportation Research Board and has served on the Academy’s Board on Environmental Studies and Toxicology. She has also participated in various Academy study committees evaluating wetlands and other environmental topics.

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