



Wetlands

The protections afforded wetlands and other waters of the United States under Section 404 of the Clean Water Act pose important issues in most public or private development projects. Kaplan Kirsch & Rockwell works closely with clients proposing or opposing development projects on Section 404 issues. A careful and strategic approach to the requirements of Section 404—and to their interaction with other requirements, such as the National Environmental Protection Act (NEPA) or the Endangered Species Act—is critical to these projects.

We bring expertise in dealing with Section 404 issues to all matters in which we are involved. Our attorneys have addressed Section 404 permitting issues, permit exemptions, and interconnected NEPA and Endangered Species Act compliance issues associated with highway, airport, large dam, flood control, coastal development, commercial, and residential projects nationwide.

Representative Experience

- Advise a Colorado Front Range municipal client in Section 404 permitting process for large reservoir project, including compliance with NEPA and other environmental requirements.
- Advise a client on the implications of the proposed Two Forks Dam on the South Platte River in Colorado for the client's interests downstream in Nebraska, resulting in the only veto of a Section 404 permit by the Environmental Protection Agency in the history of Section 404.
- Address the complicated interaction of Section 404 with NEPA and the Endangered Species Act in airport, flood control, water, highway, and development projects in Washington, Colorado, Illinois, Arizona, Utah, and Wyoming; and the interaction of Section 404 and local permitting schemes in several states, including Colorado.
- Represent commercial developers in obtaining, monitoring, and closing 404 permits.
- Represent nonprofit organizations in advocating for riparian and wetland protections from oil and gas development before state regulatory agencies.
- Represent nonprofits in reviewing and commenting on Section 404 permit applications nationwide.
- Represent private landowner in receiving a “no permit required” determination by Corps for mine reclamation project.
- Firm attorney represented Alaska Native village in challenging Section 404 permit for proposed oil and gas development project in National Petroleum Reserve-Alaska.

Representative Cases

National Parks Conservation Association v. Semonite, 916 F.3d 1075 (D.C. Cir. 2019) (Successfully challenged Army Corps of Engineers' permit for a transmission corridor crossing the James River at Jamestown, Virginia under NEPA and National Historic Preservation Act.)

National Wildlife Federation v. Army Corps of Engineers, 170 F. Supp. 3d 6 (D.D.C. 2016) (Challenge to Corps' issuance of Nationwide Permit 13 for bank stabilization structures under Clean Water Act, NEPA, and Endangered Species Act).

Turner v. Ga. River Network, 297 Ga. 306 (2015) (Represented environmental groups in precedential case regarding buffer protection for waters under Georgia Erosion and Sedimentation Act.)

Georgia River Network v. Army Corps of Engineers, 517 Fed. Appx. 699 (11th Cir. 2013) (Challenged wetlands permit for 1000-acre reservoir under Clean Water Act and NEPA in Cairo, Georgia.)



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Center for a Sustainable Coast v. Army Corps of Engineers, 2015 U.S. Dist. LEXIS 42946 (S.D. Ga. 2014). (Challenged Corps' issuance of a programmatic general permit for docks along the Georgia Coast under the Rivers and Harbors Act, NEPA, and Endangered Species Act.)

Bull River Bluff Properties v. Georgia DNR, 2014 Ga. ENV. LEXIS 1 (Feb. 20, 2014) (Represented intervening client groups and successfully defended state's denial of a marina permit in two-day administrative trial.)

Altamaha Riverkeeper v. Hutcheson, Case No. 2:11-cv-00100-LGW (S.D. Ga. 2010) (Citizen suit action against private landowner for violations of the Clean Water Act, resulting in settlement with federal and state agencies requiring restoration and permanent protection of 700 acres of coastal wetlands.)

Holy Cross Wilderness Defense Fund v. Madigan, 960 F.2d 1515 (10th Cir. 1992) (Challenged Corps' wetlands permitting process.)