



BYPASS FLOWS: Additional Sources of Authority

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- I. Section 404 of the Clean Water Act, 33 USC § 1344
 - *Georgia River Network v. U.S. Army Corps of Engineers*, 334 F. Supp. 2d 1329 (N.D. Ga. 2003) (release flows imposed as a condition of issuance of a 404 permit for a reservoir)
 - *Morgan v. Walter*, 728 F. Supp. 1483 (D. Idaho 1989) (404 application initially rejected; Corps accepted revised application containing a bypass flow and fish ladder as mitigation measures, but court preliminarily enjoined construction on grounds that bypass flows were insufficient)
- II. Section 401 of the Clean Water Act, 33 USC § 1341, and state laws implementing § 401
 - *PUD No. 1 of Jefferson County v. Washington Dep't of Ecology*, 511 U.S. 700 (1994) (“state may include minimum stream flow requirements in a certification under § 401 of the Clean Water Act insofar as necessary to enforce a designated use contained in a state water quality standard”)
- III. Section 10 of the Federal Power Act, 16 USC § 797
 - Release flow conditions in FERC licenses
- IV. H.B. 1041, CRS 24-65.1-101 *et seq.*
 - *City and County of Denver v. Bergland*, 517 F. Supp. 155, 207-8 (D. Colo. 1981) (upholding County 1041 regulations to mitigate environmental impacts of water project development on national forest land within Grand County, and finding such regulation “not necessarily inconsistent” with the state's role in the adjudication and administration of water)
 - *City of Colorado Springs v. Eagle County*, 895 P.2d 1105 (Colo. App. 1994), *cert. denied*, 116 S.Ct. 564 (1995) (upholding County denial of 1041 permit for water project on national forest land where Corps and Forest Service permits had issued)