

## APPENDIX A

### Cut-Sheets for Key States

# California Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of California Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>California Department of Water Resources (DWR)</b> – Water Supply and Storage, Flood Management and Preparedness, Dam Safety and Maintenance, Drought Mitigation, Water Conservation and Efficiency, Climate Change Adaptation, Emergency Response and Preparedness, Research and Data Collection, Power Generation, Local Levee Assistance Program (LLAP)</li> <li>• <b>State Water Resources Control Board (SWRCB)</b> – Water Quality Regulation and Permitting, Environmental Protection, Climate Adaptation, Water Conservation, Water Quality Monitoring and Assessments, Water Rights Allocation/Permitting, Data Collection and Analysis, Drinking Water Treatment and Distribution Loans and Grants</li> <li>• <b>California Environmental Protection Agency (CalEPA)</b> – Umbrella agency overseeing various regulatory agencies (including SWRCB), Water Policy Development and Implementation, Water Quality Monitoring and Assessment, Environmental Compliance and Enforcement, Water Policy Development and Implementation, Emergency Response and Preparedness, Climate Adaptation and Resilience</li> <li>• <b>State of California Central Valley Flood Protection Board (CVFPB)</b> – Flood Control System Regulation and Permitting, Enforcement, Flood Control Projects, Encroachment Permits</li> <li>• <b>Delta Stewardship Council</b> – Management of the Sacramento-San Joaquin Delta, Delta Plan Development, Water Conveyance, Policy Development and Recommendations</li> <li>• <b>California State Coastal Conservancy</b> – Coastal Protection and Restoration, Water Quality Improvement, Wetland</li> </ul>

	<p>Restoration, Stream and Riparian Restoration, Climate Adaptation and Resilience</p> <ul style="list-style-type: none"> <li>• <b>California Coastal Commission</b> – California Coastal Management Program, Coastal Habitat Restoration, Enforcement, Coastal Permitting, Local Coastal Programs (LCPs)</li> <li>• <b>San Francisco Bay Conservation and Development Commission (BCDC)</b> – Planning and Regulation of San Francisco Bay and Suisan Marsh, Permitting and Enforcement, Bay Plan Development</li> <li>• <b>California Water Commission</b> – Water Management Issues, Water Storage Investment Program, Water Conveyance Project Resiliency, Advise DWR, Review of State Water Project (SWP)</li> <li>• <b>California Department of Fish and Wildlife (CDFW)</b> – Lake and Streambed Alteration Program, Water Rights Consultations, Instream Flow Program</li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Regional Water Quality Control Boards (Regional Boards)</b> <ul style="list-style-type: none"> <li>○ Count: 9</li> <li>○ Work with SWRCB to implement Clean Water Act</li> <li>○ Water Quality Compliance and Enforcement Actions, Stormwater Runoff Regulation, Waste Discharge Permits (National Pollutant Discharge Elimination System (NPDES) Permits), Water Quality Certification</li> </ul> </li> <li>• <b>Integrated Regional Water Management Groups (IRWMs)</b> <ul style="list-style-type: none"> <li>○ Count: 48</li> <li>○ Identify and Implement Regional Water Management Solutions Projects</li> <li>○ Non-regulatory regional groups of cities, counties, water agencies, special districts, NGOs, community/environmental groups, disadvantages communities, tribes, etc. formed as intermediaries to access state IRWM funds</li> </ul> </li> <li>• <b>Joint Power Authority (JPA)</b> <ul style="list-style-type: none"> <li>○ Count: Unknown</li> <li>○ Legal entities formed from multiple water systems to allow for regional coordination and to jointly exercise any power common to the contracting entities</li> </ul> </li> <li>• <b>Special Districts</b> <ul style="list-style-type: none"> <li>○ Count: Unknown</li> <li>○ Authorized in California Water Code (CWC); local governments formed to oversee a particular aspect of water management in an area</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ See <i>Local and Regional Jurisdictions Overview</i> below for examples of Special Districts related to surface water management</li> <li>○ Includes Resource Conservation Districts <ul style="list-style-type: none"> <li>▪ Count: 96</li> </ul> </li> </ul>
<b>Overview of Key Practices</b>	
<p><i>Key authorities regarding California water resources management are contained in the California Water Code (CWC),<sup>[35]</sup> the California Code of Regulations (CCR) Title 23 – Waters,<sup>[34]</sup> and California Government Code (CGC)<sup>[36]</sup></i></p>	
<p>Flood and Floodplain Permitting and Management</p>	<ul style="list-style-type: none"> <li>• Local governments participating in the National Flood Insurance Program (NFIP) (approximately 99% of California communities) are required to develop floodplain management ordinances and review floodplain development permits for any development project lying within a 100-year floodplain.<sup>[8],[37]</sup></li> <li>• DWR provides state oversight of local floodplain management, with responsibilities including technical assistance, coordination of regional projects, and funding of flood management projects. Additionally, DWR is responsible for the operation and maintenance of federally constructed flood control features and the preparation of the Central Valley Flood Protection Plan (CVFPP), which guides the State’s participation in flood management.<sup>[7]</sup></li> <li>• CVFPB is the main entity responsible for establishing and enforcing standards for California’s Central Valley flood control system. CVFPB manages encroachments on the State Plan of Flood Control (SPFC) through the CVFPB Enforcement Program, is responsible for adopting updates to the CVFPP, and issues permits for any proposed work located within a Board-Adopted Plan of Flood Control.<sup>[27],[28]</sup></li> <li>• CDFW provides oversight of lake and streambed alterations through the Lake and Streambed Alteration (LSA) Program, which requires any person, agency, or utility to notify CDFW prior to beginning an activity that could potentially impact the natural flow, bank, or water quality of any river, stream, or lake. In the case that a project may substantially adversely affect fish and wildlife, an LSA Agreement may be required.<sup>[5]</sup></li> </ul>
<p>Levee Permitting and Management</p>	<ul style="list-style-type: none"> <li>• CVFPB issues construction permits for any proposed work, including levees, which encroach into rivers, waterways, and floodways within and adjacent to federal and State flood control projects, Regulated Streams (per CCR Tit. 23, Division 1, Table 8.1), and/or within Designated Floodways adopted by the CVFPB.<sup>[29]</sup></li> <li>• Regional Boards issue Water Quality Certifications for projects, including levee construction, involving the removal or</li> </ul>

	<p>placement of dredged or fill materials in State wetlands or waterways. Pursuant to Section 401 of the federal Clean Water Act, Water Quality Certifications are issued to ensure levee projects approved by the U.S. Army Corps of Engineers also meet State water quality requirements.<sup>[17]</sup></p> <ul style="list-style-type: none"> <li>Local government Special Districts, including Reclamation Districts and Levee Districts, oversee the operation and maintenance of levees, bypasses, channels, and control structures. CVFPB oversees these districts and through the CVFPB Enforcement Program, enforces the erection, maintenance, and protection of levees.<sup>[27]</sup></li> </ul>
<p>Stormwater Permitting</p>	<p>The SWRCB and Regional Water Boards work in conjunction to implement and enforce NPDES permits for pollution from stormwater runoff from municipal separate storm sewer systems, industrial, and construction activities.<sup>[25]</sup> Information regarding California’s Storm Water General Permits, including permit registration documents, compliance, and monitoring data, is publicly available and tracked through SWRCB’s Stormwater Multiple Application and Report Tracking System (SMARTS).<sup>[24]</sup></p>
<p>Drainage Permitting and Management</p>	<ul style="list-style-type: none"> <li>Local governments are responsible for regulating drainage. Counties are responsible for issuing drainage permits, with permit requirements outlined in each County’s Code. In the case that drainage activities could result in discharge to surface, coastal, or ground waters, a Waste Discharge Requirements (WDRs) permit or NPDES permit could be required in addition to the County permit.<sup>[16]</sup></li> <li>Counties can form Drainage Districts to oversee drainage activities within the County and review drainage reports, plans, and permit applications.<sup>[35]</sup></li> </ul>
<p>Dam Permitting and Management</p>	<p>DWR is the primary agency overseeing Dam Permitting and Management in California. DWR’s Division of Safety of Dams (DSOD) issues construction permits for dams, oversees dam construction, performs technical evaluations, conducts inspections, and identifies and corrects potential dam safety issues. DSOD reviews Applications for Approval of Plans and Specifications for work involving the construction/enlargement, repair/alteration, and removal of a dam or reservoir. Upon completion of construction and review by DSOD, DSOD may issue a Certificate of Approval if the dam or reservoir is deemed safe to impound water.<sup>[9]</sup></p>
<p>Surface Water Quality</p>	<p>The SWRCB Division of Water Quality oversees surface water quality throughout the state and develops the state’s surface water quality standards, which follow the minimum requirements of the</p>

Monitoring and Management	Clean Water Act. SWRCB’s Division of Water Quality enforces surface water quality standards through permitting point source discharges and implementing nonpoint source pollution control programs. Additionally, SWRCB’s Division of Drinking Water works in coordination with the nine Regional Boards to conduct statewide surface water quality monitoring and issue orders to clean contaminated sites. <sup>[23]</sup>
Water Supply and Diversion Rights	SWRCB’s Division of Water Rights is responsible for the management of the use of state waters. CWC requires that all water users must obtain a water right from SWRCB to divert water for beneficial uses, including small amounts for domestic or commercial livestock water purposes. For beneficial uses under 4,500 gallons per day for immediate use or 10 acre-feet-per-year for storage, a water right can be obtained without a pre-existing basis by registering with the Division of Water Rights and complying with any additional conditions set by the California Department of Fish and Wildlife. SWRCB is the sole entity in charge of administering water rights law in California. Like other Western states, California’s water rights law follows the “Doctrine of Prior Appropriation”, which provides the highest priority to the earliest water users. <sup>[20]</sup>

**CALIFORNIA STATE AGENCIES OVERVIEW**

California Department of Water Resources (DWR)

Founded in 1956, DWR is one of the California Natural Resources Agency’s seven departments, responsible for managing and protecting the State’s water resources. It is comprised of eleven main divisions, eight main offices, 5 field divisions, and 4 regional offices.<sup>[10]</sup>

DWR has numerous authorities and responsibilities regarding water resource management in the State, including but not limited to: Operating and maintaining the California SWP, updating the SPFC, preparing the CVFPP, overseeing all State dams and reservoirs, issuing Certificates of Approval for dam projects, addressing climate change impacts on California’s water resources, administering the LLAP, and research and planning<sup>[10]</sup>.

DWR is headed by the Director, who is appointed by the Governor and approved by the Senate. The Director oversees DWR’s nearly 4,000 employees, including deputy directors, and is advised by a General Counsel.<sup>[11],[35]</sup>

State Water Resources Control Board (SWRCB)

SWRCB was founded as a consolidation of California’s Divisions of Water Rights and Water Quality Control with the purpose of preserving the State’s water resources and

protecting water quality. SWRCB is comprised of multiple divisions based on different authorities and responsibilities, two of which are related to water quality and water rights and are described below.

- **Division of Water Quality:** The primary functions of this division are to protect, enhance, and restore water quality through setting statewide water quality standards, issuing statewide general permits (NPDES, WDR), conducting statewide surface water monitoring and assessments, and issuing orders to clean contaminated sites.
- **Division of Water Rights:** The primary functions of this division are to issue water rights permits specifying amounts, conditions, and construction timetables for diversion and storage, monitor diversion data and reporting, and enforce water rights allocations.

SWRCB additionally regulates drinking water to manage compliance with the Safe Drinking Water Act and provides financial assistance to water quality projects throughout the State.

SWRCB is made up of a five-person board, with each Board member appointed by the Governor and confirmed by the Senate. SWRCB works in conjunction with nine Regional Boards to develop and enforce water quality objectives and implementation plans in each of the nine regions.<sup>[23]</sup>

#### California Environmental Protection Agency (CalEPA)

CalEPA was founded in 1991 to unify and coordinate the State's environmental regulatory programs under one umbrella program. CalEPA oversees various regulatory agencies, including the SWRCB, and works with SWRCB to coordinate statewide efforts to monitor and assess water quality, enforce water quality standards and pollution prevention, develop and implement water policy, and plan emergency response and preparedness actions regarding water quality, among other things. CalEPA is headed by the Secretary and executive staff, with each regulatory program run by its own board.<sup>[14]</sup>

#### State of California Central Valley Flood Protection Board (CVFPB)

CVFPB was founded to establish, maintain, and enforce standards for the construction, maintenance, and operation of California's Central Valley flood control system. CVFPB coordinates State entities, local flood risk control agencies, and the U.S. Army Corps of Engineers to minimize flooding. CVFPB has numerous authorities and responsibilities regarding flood management in the Central Valley, including but not limited to managing encroachments on the SPFC, adopting updates to the CVFPP, and issuing floodplain development permits. Additionally, CVFPB is responsible for ensuring that State and federal levees and facilities of the SPFC are operated and maintained through the CVFPB Enforcement Program. CVFPB's board consists of seven members appointed by the Governor and confirmed by the Senate.<sup>[27],[28]</sup>



### Delta Stewardship Council

The Delta Stewardship Council was founded as a result of the Sacramento-San Joaquin Delta Reform Act of 2009 to develop and oversee implementation of the Delta Plan, which aims to ensure the sustainable management of the Sacramento-San Joaquin Delta. Authorities and responsibilities of the Delta Stewardship Council include policy development and recommendations, monitoring progress of the Delta Plan, and providing recommendations to improve governance and resource management in the Delta region.<sup>[33]</sup>

### State Coastal Management Agencies

California has three designated coastal management agencies tasked with administering the federal Coastal Zone Management Act (CZMA) in California. An overview of the responsibilities of each of these agencies is provided below:

- *California State Coastal Conservancy* – The California State Coastal Conservancy is a non-regulatory agency that supports projects to protect coastal resources through the implementation of projects, including the California Water Action Plan and Wildlife Action Plan and provides technical assistance and grant funding for projects related to coastal protection and restoration.<sup>[31]</sup>
- *California Coastal Commission* – The California Coastal Commission was established as part of the California Coastal Act of 1976 to plan and regulate uses of land and water in coastal zones. The commission oversees the implementation and enforcement of California’s Coastal Management Program, issues coastal development permits, and approves communities’ Local Coastal Programs (LCPs).<sup>[1]</sup>
- *San Francisco Bay Conservation and Development Commission (BCDC)* – The BCDC was established to protect the San Francisco Bay and Suisan Marsh through coastal planning, permitting, and enforcement actions. BCDC is responsible for the San Francisco Bay Plan development, which is the BCDC’s comprehensive plan for the Bay and its shoreline.<sup>[39]</sup>

### California Water Commission

The California Water Commission (Commission) was formed to provide a public forum for discussing water issues, administer funding in the Water Storage Investment Program, formulate policy papers, and monitor and report on the SWP. Additionally, the Commission advises the Director of the DWR on key programs and activities and approves DWR rules and regulations. The Commission consists of nine members appointed by the Governor and approved by the Senate.<sup>[26]</sup>



### California Department of Fish and Wildlife (CDFW)

CDFW was founded to conserve and manage the State's fish, wildlife, and natural habitats. Its primary purposes include overseeing the health of fish and wildlife populations, protecting and restoring essential habitats, enforcing regulations for hunting and fishing, conducting scientific research to inform conservation efforts, and promoting public education about wildlife conservation and environmental stewardship. Regarding surface waters, CDFW administers the LSA Program, which requires that any entity planning a project that may alter the State's rivers, lakes, or streams must notify the CDFW and enter into an LSA Agreement with the department in the case of potentially adverse effects due to the project.<sup>[5]</sup> Additionally, CDFW's Instream Flow Program conducts flow studies, collects field data, and develops instream flow guidelines for public and agency use to inform instream flow requirements for the State's watersheds that are protective of fish and wildlife resources.<sup>[4]</sup>

CDFW is headed by a Director, who is supported by various offices and the Chief Deputy Director, who assists the Director in overseeing the department's various divisions.<sup>[3]</sup> CDFW is also divided into regions that facilitate localized management, including the Northern, North Central, Bay Delta, Central, South Coast, Inland Deserts, and Marine Regions. Regional boundaries are based on numerous factors, including the regions' ecosystems, watersheds, wildlife and fisheries management needs, and socioeconomic factors.<sup>[2]</sup>

### **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

#### Regional Water Quality Control Boards (Regional Boards)

California contains nine Regional Boards that work with SWRCB to implement the Clean Water Act in California on a regional level. Regional boundaries for the nine Regional Boards are based on watershed boundaries. As such, water quality requirements in each region are based on the climate, topography, geology, and hydrology of the watershed. Within each Regional Boards' boundaries, key responsibilities and authorities include:

- Coordination with SWRCB to review NPDES permit applications;
- Controlling water levels and flows for water conservation and flood projects within the region;
- Development and periodic review of water quality control plans for all areas within the region;
- Coordination with SWRCB to implement the State's nonpoint source management plan; and
- Local data collection and monitoring and data-sharing with state agencies.

The Regional Boards are comprised of seven part-time Board members appointed by the Governor and confirmed by the Senate.<sup>[23]</sup>

### Integrated Regional Water Management (IRWM) Groups

IRWM is a collaborative effort headed by DWR to identify and implement regional water management solutions. IRWM projects are mainly funded through bond funds approved by California voters and include regional projects to mitigate drought impacts, improve water supply reliability, reduce flood and fire risk, increase water storage, restore ecosystems, and improve water quality. California has 48 IRWM regions, which are made up of various stakeholders, including cities, counties, water agencies, special districts, non-governmental organizations, community groups, tribes, and disadvantaged groups, and cover 99% of the State's population.<sup>[12]</sup> The 48 IRWM regions are non-regulatory and are formed as an intermediaries to access DWR IRWM funds.

### Joint Powers Authority (JPA)

Per CGC §6500, water systems in California may form JPAs, which are legal entities with the authority to jointly exercise any power common to the contacting entities and with rights that can include the shared use of water sources, billing services, purchase agreements, or infrastructure. JPAs allow for regional coordination on water supply and quality projects while protecting the financial interests of the individual systems. An example of a JPA in California is the San Francisquito Creek JPA, which was formed in 1999 between three cities and two districts to plan, manage, and coordinate flood risk reduction regionally.

### Special Districts

Special districts are local governments created by community members or State law to deliver specialized services to an area. CWC authorizes various special districts related to water management. The following special districts have authority over some aspect of water management discussed in Table 1. It is important to note that the list of districts listed below is not an exhaustive list of special districts with water management authority in California.

- *Drainage Districts* – Per CWC §56000-56130, drainage districts are local governments formed to perform stormwater and wastewater management and conservation. They are authorized to operate and maintain surface and underground drainage systems. Drainage districts may work with the County in which they operate to determine whether to approve drainage permit applications.
- *Reclamation Districts* – Per CWC §50000-53901, reclamation districts are local governments formed to build, maintain, protect, and repair local reclamation works in coordination with the CVFPB. There are approximately 110 reclamation districts in California, each of which is governed by a board of trustees elected by either property owners in the district or by the County Board of Supervisors.
- *Levee Districts* – Per CWC §70000-70272, levee districts are local governments formed to protect district lands from overflow and to operate, maintain, and repair levees, bypasses, channels, and control structures. Levee districts are governed by three directors, who are elected by property owners in the district.

- *Resource Conservation Districts* – Established by Public Resources Code Division 9 to conduct projects that conserve soil and water, control runoff and soil erosion, manage watersheds, protect water quality, and develop water storage and distribution. Resource Conservation Districts are governed by locally elected or appointed boards of directors and may receive financial and technical assistance from the California Department of Conservation.<sup>[40]</sup>

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in California are generally contained within the CWC, CCR, or CGC. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the CWC or the applicable County Ordinance Code. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.



**Table 1. Key Policies and Regulations for Surface Water Management in California**

<b>Practice Area</b>	<b>Policy / Regulation</b>	<b>Date (1)</b>	<b>Key Principles</b>
Floodplain Development	CGC §65302, §65560, §65800 <sup>[36]</sup>	1/1/2023, 1/1/2018, 1980	<ul style="list-style-type: none"> <li>Local governments participating in the NFIP are required to develop and submit floodplain management ordinances to DWR for approval.</li> </ul>
	CWC §9603-9616, §9120-9122 <sup>[35]</sup>	1/1/2008, 1/1/2008	<ul style="list-style-type: none"> <li>DWR is responsible for the preparation of updates to the SPFC and preparation of the CVFPP, and CVFPB is responsible for their adoption.</li> </ul>
	CWC §8590-9142 <sup>[35]</sup>	1/1/2008	<ul style="list-style-type: none"> <li>Permits issued from CVFPP with approval from the U.S. Army Corps of Engineers (USACE) are required for any proposed work located within a CVFPB-Adopted Plan of Flood Control.</li> <li>CVFPB enforces that SPFC facilities and State/federal levees are operated and maintained through the CVFPB Enforcement Program, which allows CVFPB to issue Notices of Violation and take other enforcement actions.</li> </ul>
	FGC §1600-1617 <sup>[38]</sup>	Effective: 2003 Last Amended: 7/12/2021	<ul style="list-style-type: none"> <li>Any person, governmental agency, or public utility must notify the CDFW of any project that will 1) divert or obstruct the natural flow of any river, stream, or lake; 2) use material from any river, stream, or lake; 3) alter the bed, channel, or bank of any river, stream, or lake; or 4) deposit any foreign material into any river, stream, or lake.</li> <li>CDFW may require an LSA Agreement for projects that they believe may significantly adversely affect fish and wildlife resources.</li> </ul>
Levees	CCR Tit. 23 §120 <sup>[34]</sup>	12/31/2009	<ul style="list-style-type: none"> <li>A permit is required by CVFPB for the construction, reconstruction, raising, enlargement, or modification of any levee within a floodway. Permits issued by CVFPB require approval from USACE.</li> </ul>
	CWC §8700-8709 <sup>[35]</sup>	1/1/2014	<ul style="list-style-type: none"> <li>CVFPB enforces the erection, maintenance, and protection of levees through the CVFPB Enforcement Program.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
	CCR Tit. 23 §3855 <sup>[34]</sup>	Last Amended: 5/25/2000	<ul style="list-style-type: none"> <li>Regional Boards issue Water Quality certifications to ensure that projects involving the removal or placement of dredge or fill materials into State waters, including levee construction, comply with Section 401 of the federal Clean Water Act and State water quality regulations.</li> </ul>
	CWC §50000-53901 <sup>[35]</sup>	1951	<ul style="list-style-type: none"> <li>The State's 110 Reclamation Districts are Special Districts with jurisdiction to construct, maintain, operate, and repair reclamation works, including Delta levees. Reclamation Districts may adopt a Plan of Reclamation, which must be approved by CVFPB.</li> </ul>
	CWC §70000-70272 <sup>[35]</sup>	1959	<ul style="list-style-type: none"> <li>Levee Districts are Special Districts with jurisdiction to operate, maintain, and repair levees, bypasses, channels, and control structures in coordination with CVFPB.</li> </ul>
	CWC §79780-79781 <sup>[35]</sup>	11/4/2014	<ul style="list-style-type: none"> <li>DWR and CVFPB received \$395 million to fund statewide flood management projects, focusing on multi-benefit initiatives that enhance public safety and fish and wildlife habitats. Of this funding, \$295 million is specifically designated to reduce the risk of levee failure and flooding in the Delta, supporting local assistance, special flood protection projects, levee improvements, and emergency response initiatives.<sup>[35]</sup></li> <li>DWR administers the LLAP and provides financial support to local public agencies managing flood control outside the Sacramento-San Joaquin Delta. The program funds geotechnical evaluations and repairs of damaged flood control facilities through competitive grants to local agencies.<sup>[13]</sup></li> </ul>
Stormwater Management	CWC §13370 <sup>[35]</sup>	1987	<ul style="list-style-type: none"> <li>The SWRCB and Regional Boards are required under the Federal Water Pollution Control Act to issue waste discharge requirements and permits per the state's participation in the NPDES.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
	CWC §13376 <sup>[35]</sup>	Effective: 1978 Last Amended: 1/1/2011	<ul style="list-style-type: none"> <li>• Permits must be obtained to discharge pollutants into waters of the state.</li> </ul>
	Industrial (Order 2014-0057-DWQ), Construction (Order 2022-0057-DWQ), and MS4 (Order 2013-0001-DWQ) <sup>[25]</sup>	Last Amended: 11/6/2018, 10/1/2023, 7/1/2013	<ul style="list-style-type: none"> <li>• General permits authorize certain discharges of relatively uncontaminated stormwater from construction, industrial, and MS4 activities and public storm sewer systems.</li> <li>• In the event of wildfires, required sampling and reporting of industrial discharges can be suspended if certain conditions are met, such as operations will cease for more than ten days or if sampling is unsafe.<sup>[15]</sup></li> <li>• Construction storm water discharges in the Lake Tahoe Hydrologic Unit are regulated under a separate permit adopted by the Regional Board and not covered under the Construction General Permit.<sup>[18]</sup></li> <li>• Construction storm water discharges on Tribal lands are regulated by the United States Environmental Protection Agency (USEPA).<sup>[18]</sup></li> </ul>
	CWC §13383.10 <sup>[35]</sup>	1/1/2020	<ul style="list-style-type: none"> <li>• Any person applying to a city or county for a business license must demonstrate enrollment in a NPDES permit in the case that stormwater discharge is applicable.<sup>[21]</sup></li> </ul>



Practice Area	Policy / Regulation	Date (1)	Key Principles
Drainage Management	CWC §56000-56130 <sup>[35]</sup>	1955	<ul style="list-style-type: none"> <li>Counties have the authority to issue drainage permits for activities that may affect drainage within the County. Permits from most Counties are required for activities that will impair the flow of water in a channel, deposit material into a channel, alter riparian vegetation, alter storm water drainage structures, or impair easements dedicated for drainage purposes.</li> <li>Counties can form Drainage Districts to oversee, operate, and maintain drainage activities within the County.</li> </ul>
	CWC §13376 <sup>[35]</sup>	Effective: 12/1/1979 Last Amended: 1/1/2023	<ul style="list-style-type: none"> <li>In the case that a drainage activity involves discharges to surface waters, a NPDES permit is required in addition to any applicable County permits.</li> </ul>
	CWC §13260 <sup>[35]</sup>	Effective: 1969 Last Amended: 6/10/2023	<ul style="list-style-type: none"> <li>In the case that a drainage activity involves discharges to coastal waters or groundwater, a Report of Waste Discharge must be filed with the appropriate Regional Board to obtain Waste Discharge Requirements (WDRs).</li> </ul>
Dam Management	CWC §6075-6076 <sup>[35]</sup>	1965	<ul style="list-style-type: none"> <li>All dams and reservoirs in the State are under the jurisdiction of DWR. As such, DWR's DSOD is responsible for the supervision of the construction, operation, maintenance, and removal of dams and reservoirs for the protection of life and property.</li> </ul>
	CWC §6002 <sup>[35]</sup>	Effective: 1943 Last Amended: 1965	<ul style="list-style-type: none"> <li>Approval is required from DSOD for the construction, modification, or removal of any artificial barrier which has the ability to impound water and (1) is 25 feet or more in height or (2) has an impounding capacity of 50 acre-feet or more.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
	CWC §6260-6267, §6357 - 6357.4 <sup>[35]</sup>	Effective: 1943 Last Amended: 1965	<ul style="list-style-type: none"> <li>• An approved Application for Approval of Plans and Specifications is required prior to beginning work on a dam or reservoir. There are three different applications: Construction or Enlargement, Repair or Alteration, and Removal.</li> <li>• Once work is completed, a Certificate of Approval is issued by DSOD if the department deems the project safe to life and property.</li> </ul>
Surface Water Quality	CWC §13140-13142 <sup>[35]</sup>	1969	<ul style="list-style-type: none"> <li>• SWRCB is responsible for formulating and adopting a State Plan for water quality control. Objectives of the plan must be designed to protect beneficial uses of water and may include implementation programs.</li> </ul>
	CWC §13240 <sup>[35]</sup>	1969	<ul style="list-style-type: none"> <li>• Regional Boards must formulate and adopt water quality control plans for all areas within the region, which must be periodically reviewed and revised.</li> </ul>
	CWC §13369 <sup>[35]</sup>	Effective: 1999 Last Amended: 1/1/2013	<ul style="list-style-type: none"> <li>• SWRCB must work with the Regional Boards, the California Coastal Commission, and other appropriate agencies to prepare a detailed program to implement the State's nonpoint source management plan.</li> </ul>
	CWC §1200-1203 <sup>[35]</sup>	1943	<ul style="list-style-type: none"> <li>• Permits are required to appropriate any and all water used for useful and beneficial purposes upon lands.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
Water Supply and Diversion Rights	(2)		<ul style="list-style-type: none"> <li>• Individuals can hold riparian water rights, appropriative rights, or prescription rights. Any individual who does not have a riparian right and began using water after 1914 must receive a water right permit from SWRCB before using water.</li> <li>• Individuals who began exercising their water right prior to the enactment of the State Water Commission Act in 1914 have a pre-1914 appropriative water right and do not need a water right permit unless they have increased their use since 1914. In the case of increased use, a water right permit must be obtained for the new amount. If an individual stopped using their water right for any five year or more period since 1914, they may have lost their right, in which case, they would need to apply for a water right permit.</li> <li>• Priority of water is determined by priority of appropriation initiated on or after December 19, 1914. If there is not enough water available for competing riparian users, they must share the available supply according to their needs, with interior domestic purposes having the highest priority.</li> </ul>
	CWC §2500-2868 <sup>[35]</sup>	1943	<ul style="list-style-type: none"> <li>• SWRCB can implement a statutory adjudication, which is a system-wide adjudication on all water users in a given stream system regardless of the water users' rights.</li> </ul>

(1) Unless explicitly stated, dates listed in Table 1 are the effective date of the policy/regulation.

(2) Although several provisions of the CWC imply the existence of different types of water rights in California, these designations are a product of the decisional law of the State's courts and are, therefore, not explicitly mentioned in the CWC.

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	CVFPB	<p>A floodplain development permit must be obtained from CVFPB in the case that the levee plans warrant an Encroachment Permit. Submitted permits are forwarded to USACE’s Levees and Channels Branch for review. After review, USACE provides either an approval or denial letter to CVFPB, who in turn, decides whether to issue the permit. Approved permits must include a USACE approval letter.</p> <p>In the case of lake or streambed alterations, notification of a project must be submitted to CDFW prior to the beginning of any work. After receiving notification, CDFW assesses whether the proposed activity could significantly harm existing fish and wildlife resources. If deemed potentially harmful, the department provides a draft agreement within 60 days; the entity must respond within 30 days to confirm acceptance or request modifications.</p>	<p>Applicants for a floodplain development permit may petition to the Board for reconsideration within 30 days of when CVFPB adopts the decision.<sup>[30]</sup></p> <p>Entities who have 1) received word that their project must obtain an LSA Agreement with CDFW and 2) cannot reach an LSA Agreement with CDFW can request a panel of arbitrators to resolve the dispute, which must be appointed within 14 days. The panel consists of one representative from each party and a mutually agreed-upon chair with relevant scientific expertise. A decision must be issued within 14 days.<sup>[38]</sup></p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Levees	CVFPB	<p>After an application to construct a levee is submitted to CVFPB, CVFPB forwards the information to USACE's Levees and Channels Branch for review. After review, USACE provides either an approval or denial letter to CVFPB who in turn, decides whether to issue the permit. Approved permits must include a USACE approval letter.</p> <p>After a Water Quality Certification application is submitted to the applicable Regional Board, the Regional Board's board member shall provide public notice of the application and may hold a public hearing. After review of all application materials and consideration of the hearing, the Regional Board will decide whether to approve or deny the application.<sup>[34]</sup></p>	<p>Applicants may petition to the Board for reconsideration within 30 days of when CVFPB adopts the decision.<sup>[30]</sup></p> <p>Any person who has received notice of final determination from the applicable Regional Board and who wishes to appeal the decision must file a petition with SWRCB within 30 days of receiving notice from the Regional Board. The petition will be reviewed by SWRCB within 270 days unless a hearing is required. In the case that SWRCB disagrees with the Regional Board's determination, it may request the Regional Board to overturn the decision or can take appropriate action itself (CWC §13320).<sup>[35]</sup></p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater	SWRCB, Division of Water Quality, and Regional Boards	<p>The state has three general NPDES permits: Construction, Industrial, and MS4s, including Caltrans (see Table 1). Any activities that may cause pollution from stormwater runoff must apply for coverage under these permits with SWRCB.</p> <p>NPDES permit applications must be filed to the Regional Board presiding over the region in which stormwater will be discharged along with a Report of Waste Discharge (ROWD). Upon receiving the completed NPDES and ROWD applications, the Regional Board works with USEPA to determine whether to adopt the proposed permit. The Regional Board review and permit issuance process takes approximately six months on average.</p>	<p>Any person who has received notice of final determination from the applicable Regional Board and who wishes to appeal the decision must file a petition with SWRCB within 30 days of receiving notice from the Regional Board. The petition will be reviewed by SWRCB within 270 days unless a hearing is required. In the case that SWRCB disagrees with the Regional Board's determination, it may request the Regional Board to overturn the decision or can take appropriate action itself (CWC §13320).<sup>[35]</sup></p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	Local governments, Regional Boards	<p>After submittal of a County drainage permit, County reviewers and inspectors will review the proposed project to determine if it will adversely affect natural or manmade drainage systems.<sup>[32]</sup></p> <p>To apply for a WDR, a Report of Waste Discharge form must be submitted to the appropriate Regional Board. The process of developing and adopting the WDR takes approximately three months.<sup>[16]</sup></p> <p>For information regarding the permitting process of NPDES permits, see Stormwater Permitting Overview above.</p>	<p>The appeal process for County drainage permit decisions varies by County. Typically, any person who has received notice of the zoning administrator's decision and wishes to appeal the decision must file a written notice of appeal to the zoning administration within 10 days of receiving the decision. The zoning administrator shall forward the information to the County's board of supervisors, who will hear the appeal and reverse the order if deemed appropriate.<sup>[32]</sup></p> <p>For information regarding the appeals process for NPDES permits and WDRs, see Stormwater Dispute / Appeals Process Above.</p>
Dams	DWR	<p>After an application to construct, alter, or remove a dam is submitted, DWR's DSOD will conduct an initial review and may issue approval of the application. Upon completion of construction and final inspection by DSOD, DSOD may issue a Certificate of Approval.</p>	<p>DWR can deny a Certificate of Approval or revoke a Certificate of Approval in the case it deems a dam unsafe to life and property. Prior to revoking a Certificate of Approval, DWR must hold a hearing, and any petition for a writ of mandate must be commenced within thirty days of receiving the notice of revocation (CWC §6357 - 6357.4<sup>[35]</sup>).</p>



Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Water Rights	SWRCB	SWRCB is the sole entity that issues water permits. Once a permit application is received, SWRCB publishes a public notice, which allows other stakeholders to provide comments. Depending on the scale of the water right, an Environmental Impact Report may be required under the California Environmental Quality Act. After thorough review, SWRCB decides whether to grant the water right permit. <sup>[20]</sup>	Any person aggrieved by an action or decision of SWRCB can file a Petition for Reconsideration with the SWRCB. A formal appeal must be submitted within 30 days of receiving the decision. <sup>[35]</sup>

## CITATIONS

- [1] California Coastal Commission. (n.d.-a). Our Mission. <https://www.coastal.ca.gov/whoware.html>
- [2] California Department of Fish and Wildlife (CDFW). (n.d.-a). CDFW Regions. <https://wildlife.ca.gov/Regions>
- [3] California Department of Fish and Wildlife (CDFW). (n.d.-b). CDFW Office Directory / Organizational Structure. <https://wildlife.ca.gov/Organization>
- [4] California Department of Fish and Wildlife (CDFW). (n.d.-c). Instream Flow Program. <https://wildlife.ca.gov/Conservation/Watersheds/Instream-Flow>
- [5] California Department of Fish and Wildlife (CDFW). (n.d.-d). Lake and Streambed Alteration Program. <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>
- [6] California Department of Water Resources (DWR). (n.d.-a). Flood Management. <https://water.ca.gov/Programs/Flood-Management>
- [7] California Department of Water Resources (DWR). (n.d.-b). Central Valley Flood Protection Plan. <https://water.ca.gov/Programs/Flood-Management/Flood-Planning-and-Studies/Central-Valley-Flood-Protection-Plan>
- [8] California Department of Water Resources (DWR). (n.d.-c). National Flood Insurance Program. <https://water.ca.gov/Programs/Flood-Management/National-Flood-Insurance-Program>
- [9] California Department of Water Resources (DWR). (n.d.-d). Division of Safety of Dams. <https://water.ca.gov/programs/all-programs/division-of-safety-of-dams>
- [10] California Department of Water Resources (DWR). (n.d.-e). About. <https://water.ca.gov/About>
- [11] California Department of Water Resources (DWR). (n.d.-f). California Department of Water Resources (DWR). (n.d.-f). Executive Team. <https://water.ca.gov/About/Executive-Team>
- [12] California Department of Water Resources (DWR). (n.d.-g). Integrated Regional Water Management. <https://water.ca.gov/programs/integrated-regional-water-management>
- [13] California Department of Water Resources (DWR). (n.d.-h). Local Levee Assistance Program. <https://water.ca.gov/Work-With-Us/Grants-And-Loans/Local-Levee-Assistance-Program>
- [14] California Environmental Protection Agency (CalEPA). (n.d.-a). About Us. <https://calepa.ca.gov/about/>
- [15] California Water Boards. (2020, October). Guidance for Compliance with the Industrial Stormwater General Permit in Areas Impacted by Wildfires. [https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/docs/industrial/igp\\_wildfire.pdf](https://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/industrial/igp_wildfire.pdf)
- [16] California Water Boards. (2023, April). Waste Discharge Requirements. [https://www.waterboards.ca.gov/water\\_issues/programs/waste\\_discharge\\_requirements/](https://www.waterboards.ca.gov/water_issues/programs/waste_discharge_requirements/)
- [17] California Water Boards. (2023, August). Water Quality Certification. [https://www.waterboards.ca.gov/centralvalley/water\\_issues/water\\_quality\\_certification/](https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/)
- [18] California Water Boards. (2023, October). 2009 Construction Stormwater General Permit Frequently Asked Questions. [https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/const\\_permit\\_faqs.html](https://www.waterboards.ca.gov/water_issues/programs/stormwater/const_permit_faqs.html)
- [19] California Water Boards. (2024, January). Porter-Cologne Water Quality Control Act – Water Code Division 7 and Related Sections. [https://www.waterboards.ca.gov/laws\\_regulations/docs/portercologne.pdf](https://www.waterboards.ca.gov/laws_regulations/docs/portercologne.pdf)
- [20] California Water Boards. (2024, July). Water Rights – Frequently Asked Questions. [https://www.waterboards.ca.gov/waterrights/board\\_info/faqs.html#\\_top](https://www.waterboards.ca.gov/waterrights/board_info/faqs.html#_top)
- [21] California Water Boards. (2024, June). Senate Bill 205/891 - Business License Requirements. [https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/sb\\_205\\_business\\_license\\_requirements.html](https://www.waterboards.ca.gov/water_issues/programs/stormwater/sb_205_business_license_requirements.html)
- [22] California Water Boards. (2024, June). Water Partnerships Overview. [https://www.waterboards.ca.gov/drinking\\_water/certlic/drinkingwater/waterpartnership.html](https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.html)
- [23] California Water Boards. (n.d.-a). About the California Water Boards. [https://www.waterboards.ca.gov/publications\\_forms/publications/factsheets/docs/boardoverview.pdf](https://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/boardoverview.pdf)

- [24] California Water Boards. (n.d.-b). Stormwater Multiple Application and Report Tracking System (SMARTS) Resources. [https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/smarts/](https://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts/)
- [25] California Water Boards. (n.d.-c). Storm Water Program. [https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/](https://www.waterboards.ca.gov/water_issues/programs/stormwater/)
- [26] California Water Commission. (n.d.-a). California Water Commission. <https://cwc.ca.gov/>
- [27] Central Valley Flood Protection Board (CVFPB). (n.d.-a). Central Valley Flood Protection Board Enforcement Authority. <https://cvfpb.ca.gov/enforcement/>
- [28] Central Valley Flood Protection Board (CVFPB). (n.d.-b). Permitting at the Central Valley Flood Protection Board. <https://cvfpb.ca.gov/permitting/>
- [29] Central Valley Flood Protection Board (CVFPB). (n.d.-c). General Permit Application Information. <https://cvfpb.ca.gov/permitting/general-permit-application-information/>
- [30] Central Valley Flood Protection Board (CVFPB). (n.d.-d). Frequently Asked Questions. <https://cvfpb.ca.gov/permitting/faq/#faq21>
- [31] Coastal Conservancy of California. (n.d.-a). About Us. <https://scc.ca.gov/about/about-us/>
- [32] Contra Costa Public Works. (n.d.-a). Permit (Drainage and Flood Control). <https://www.contracosta.ca.gov/5783/Permit-Drainage-and-Flood-Control>
- [33] Delta Stewardship Council. (n.d.-a). About the Delta Plan. <https://deltacouncil.ca.gov/delta-plan/>
- [34] Legislature of the State of California. (n.d.-a). California Code of Regulations. <https://oal.ca.gov/publications/ccr/>
- [35] Legislature of the State of California. (n.d.-b). California Water Code. <https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=WAT&tocTitle=+Water+Code+-+WAT>
- [36] Legislature of the State of California. (n.d.-c). California Government Code. <https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=GOV&tocTitle=+Government+Code+-+GOV>
- [37] Legislature of the State of California. (n.d.-d). Government Code, Title 7. Planning and Land Use [65000-66499.58] Article 5. Authority for and Scope of General Plans. [https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=GOV&division=1.&title=7.&part=&chapter=&article=](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=1.&title=7.&part=&chapter=&article=)
- [38] Legislature of the State of California. (n.d.-e). Fish and Game Code. <https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=FGC&tocTitle=+Fish+and+Game+Code+-+FGC>
- [39] San Francisco Bay Conservation and Development Commission (BCDC). (n.d.-a). What We Do. <https://bcdc.ca.gov/what-we-do/>
- [40] California Department of Conservation. (n.d.). Resource Conservation District Assistance Program. <https://www.conservation.ca.gov/dlrp/RCD>

Input provided by DWR Deputy Director of Communications, Ryan Endean.

# Colorado Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Colorado Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

The table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

<b>Agencies Overview</b>	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Colorado Water Conservation Board (CWCB)</b> – Water Supply and Drought Planning, Interstate Compacts (in conjunction with DWR), Flood Management, water project funding</li> <li>• <b>Colorado Division of Water Resources (DWR, aka Colorado State Engineer)</b> – Water Rights Administration, Dam Safety, Well Permitting, Interstate Compacts (in conjunction with CWCB)</li> <li>• <b>Colorado Judicial Branch, Water Courts</b> – Water Appropriations</li> <li>• <b>Colorado Department of Public Health and Environment (CDPHE), Water Quality Control Division</b> – Surface Water Quality Management, Stormwater Management, Drinking Water Quality</li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Water Conservation Districts</b> – Region-specific water project implementation, hydrologic studies, and representing constituents’ interests regarding interstate river compact issues               <ul style="list-style-type: none"> <li>○ Count: 4</li> </ul> </li> <li>• <b>Water Conservancy Districts</b> – Local government agencies established by petition to fund and operate water projects within their designated areas, while promoting public welfare and supporting interstate cooperation               <ul style="list-style-type: none"> <li>○ Count: 59</li> </ul> </li> <li>• <b>Conservation Districts</b> – Local land and water resource management, conservation practice implementation, and representing regional interests in</li> </ul>

	<p>natural resource conservation, established by the State Conservation Commission</p> <ul style="list-style-type: none"> <li>○ Count: 77</li> <li>● <b>Basin Roundtables</b> – Watershed-level water supply planning and water project funding administration (stakeholder forum) <ul style="list-style-type: none"> <li>○ Count: 9</li> </ul> </li> <li>● <b>Drainage Districts</b> – Public organizations of landowners that construct and maintain drainage works for agricultural land, overseen by the county in which they are located. <ul style="list-style-type: none"> <li>○ Information regarding the number of drainage districts in Colorado is not readily available.</li> </ul> </li> <li>● <b>Irrigation Districts</b> – Public, fee-collecting organizations managed by local landowners to raise money for irrigation projects and operate ditch systems. May also drain tailwaters.<sup>[20]</sup> <ul style="list-style-type: none"> <li>○ Count: 16</li> </ul> </li> <li>● <b>Drainage and Flood Control Districts</b> – Floodplain management authority <ul style="list-style-type: none"> <li>○ Count: 2</li> </ul> </li> </ul>
--	---

**Overview of Key Practices**

*Key authorities regarding Colorado water resources management are contained in Colorado Revised Statutes (CRS) Title 37 et seq<sup>[10]</sup>, and the Colorado Code of Regulations (CCR) Titles 2<sup>[11]</sup> and 5.*

<p>Flood and Floodplain Permitting and Management</p>	<p>Local communities (i.e., jurisdictions with zoning authority), are responsible for local floodplain management and floodplain development permitting. CWCB provides state oversight of local floodplain management, with responsibilities including guidance, technical assistance, and enforcement of floodplain regulations. The regulatory framework for the state’s floodplain management program follows those of the National Flood Insurance Program (NFIP), although the State has higher minimum standards in regard to freeboard and floodways that communities must follow.</p>
<p>Levee Permitting and Management</p>	<p>Levees are regulated as dams, which are overseen by DWR.<sup>[11]</sup> Additionally, Chapter 13 of CWCB’s Floodplain and Stormwater Criteria Manual contains guidelines for levee design.<sup>[15]</sup></p>
<p>Drainage Management</p>	<p>Drainage of agricultural lands is managed by drainage districts or irrigation districts, overseen by the board of commissioners in the county where most of the land is located.<sup>[19]</sup></p>

Stormwater Management	The CDPHE Water Quality Control Division regulates and permits pollution from stormwater runoff from large municipalities and urbanized areas, industrial facilities, and most construction projects. State oversight is required by the state’s participation in the National Pollutant Discharge Elimination System (NPDES).
Dam Permitting and Management	DWR is the primary agency that oversees Dam Permitting and Management in Colorado. The State Engineer issues permits for jurisdictional dams, conducts inspections, and may order the removal or modification of unsafe dams. DWR Division Offices review Notice of Intent applications for non-jurisdictional dams. <sup>[11]</sup>
Surface Water Quality Monitoring and Management	The CDPHE Water Quality Control Division oversees surface water quality throughout the state and develops the state’s surface water quality standards, which follow the minimum requirements of the Clean Water Act. The CDPHE enforces surface water quality standards through permitting point source discharges and implementing nonpoint source pollution control programs.
Water Supply and Diversion Rights	The Colorado Water Courts are solely responsible for adjudicating water rights, changes of water rights, and plans for augmentation within a particular water division. DWR has the responsibility to administer the use of waters of the state in accordance with decrees of the court.

**COLORADO STATE AGENCY(IES) OVERVIEW**

Colorado Water Conservation Board (CWCB)

The CWCB is an executive branch agency responsible for statewide water policy and planning. The CWCB operates under the direction of a 15-member board composed of representatives from eight major river basins<sup>1</sup>, a representative from the City and County of Denver, the Division of Natural Resources Executive Director, the Commissioner of Agriculture, the Attorney General, the State Engineer, the Division of Wildlife Director, and the CWCB Director. CWCB responsibilities broadly include water supply planning, floodplain management, watershed management, and water project financing. Staff are organized into five sections, each dedicated to overseeing distinct aspects of CWCB’s responsibilities:

- **Finance:** Manages funding and financial resources for water projects and initiatives across the state.
- **Interstate, Federal, and Water Information:** Protects Colorado’s decree and interstate compact entitlement.

<sup>1</sup> River basins are based primarily on USGS HUC 4 subregions but combine some subregions.

- **Stream and Lake Protection:** Regulates and monitors the health of streams and lakes throughout Colorado.
- **Water Supply Planning:** Develops and oversees statewide water supply planning and demand management studies, policies, and programs.
- **Watershed and Flood Protection:** Supports watershed planning and oversees the state's floodplain management.

Colorado Department of Natural Resources - Division of Water Resources (DWR)

The DWR, also known as the Office of the State Engineer, is a division of the Department of Natural Resources. DWR regulates the use of water in accordance with decrees of the court and law, issues water well permits, represents Colorado in interstate water compact proceedings (a shared responsibility with CWCB depending on the particular compact), monitors streamflow and water use, issues construction permits for dams and performs dam safety inspections, and maintains state-wide databases with water-related information. DWR is directed by the State Engineer, and all permits issued by DWR must be approved by the State Engineer. Under the State Engineer, there are seven Divisions with offices located throughout the state in each major drainage basin<sup>[3]</sup>. The Division Office staff are responsible for day-to-day administration of DWR functions within their jurisdictions, including enforcement of decrees and water laws, measurement of streamflow and reservoir levels, and dam inspections<sup>[5]</sup>.

Colorado Judicial Branch – Water Court

The seven Colorado Water Courts are specialized state courts of the State of Colorado and include each of the major river basins (South Platte, Arkansas, Rio Grande, Gunnison, Colorado, White, and San Juan rivers). The Water Right Determination and Administration Act of 1969 (the "1969 Act") created seven water divisions based upon major drainage basins. Each water division is staffed with a division engineer appointed by the state engineer (see DWR above), a water judge appointed by the Supreme Court, a water referee appointed by the water judge, and a water clerk assigned by the district court. All water rights applications are under the jurisdiction of the Water Courts, and a person or entity must receive a court decree to confirm their right to appropriate water.<sup>[6]</sup> In multi-division cases, which can include interbasin transfers<sup>2</sup> and cross-basin appropriations<sup>3</sup>, the water court can issue a decree and impose conditions on the transfer that is then monitored by the Division Engineer to ensure compliance. If there are disputes, water court decisions can be appealed to the Colorado Supreme Court. Some notable examples of interbasin transfers in Colorado include the Colorado-Big Thompson Project (CBT), which moves water from the Colorado River Basin to the South Platte River Basin, and Transmountain Diversions, a specific type of interbasin transfer in which water is moved from the Western to the Eastern Slope, where much of Colorado's population and agriculture is located.

---

<sup>2</sup> Interbasin transfers involve physically moving water from one river basin to another.

<sup>3</sup> Cross-basin appropriations refer to the legal appropriations of water from one basin for use in another.



## Colorado Department of Public Health and Environment (CDPHE) – Water Quality Control Division

The CDPHE is a cabinet-level department whose director is appointed by the governor. The CDPHE is made up of nine divisions that provide public health and environmental protection services and programs, one of which, the Water Quality Control Division, has surface water management authorities. The Water Quality Control Division monitors and reports on the quality of state waters to protect water sources, prevent pollution, and provide safe drinking water. This Division conducts water system inspections, issues permits, and enforces drinking water quality system compliance.

### **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

#### Water Conservation Districts

Water Conservation Districts in Colorado are established by the Colorado State Legislature and serve as policy-making bodies, addressing the unique needs of different regions. They can build and administer water projects, conduct studies, take part in litigation, and represent local interests regarding interstate river compact issues.<sup>[17]</sup> They also provide technical and financial support to private landowners to improve land management in collaboration with the Natural Resource Conservation Service and other state and federal agencies. The jurisdictions of Water Conservation Districts are determined by a combination of hydrologic and political boundaries. There are currently four Water Conservation Districts in the State<sup>[13]</sup>:

- Colorado River Water Conservation District (CRWCD) – established in 1937. The CRWCD is the primary water policy and planning agency for the Colorado Basin within Colorado. It covers approximately 29,000 square miles and is comprised of 15 counties.
- Southwestern Water Conservation District (SWCD) – established in 1941. The SWCD was formed to protect, conserve, use and develop the water resources of the Southwestern basin, an area which includes the San Juan and Dolores River Basins. It covers nine counties.
- Rio Grande Water Conservation District (RGWCD) – established in 1967. The RGWCD was formed to represent the San Luis Valley in litigation over the Rio Grande Compact<sup>[17]</sup> and serves to protect, enhance, and develop water resources in the Rio Grande River Basin. It covers five counties.
- Republican River Water Conservation District (RRWCD) – established in 2004. The RRWCD was created by the state legislature to incorporate local involvement in managing compliance with the Republican River Compact between Colorado, Kansas, and Nebraska. It covers seven counties.

#### Water Conservancy Districts

Water Conservancy Districts in Colorado are local government agencies established by petition to fund and operate water projects within their designated areas. These districts have the authority to acquire, hold, and dispose of water rights, waterworks, and other property necessary for their operations<sup>[21]</sup>. They can construct and maintain facilities for

water conveyance and have the power to condemn property when necessary for public use. Additionally, the districts can enter into contracts with federal agencies for the construction and operation of water infrastructure and are able to finance their projects through taxes, bonds, and cooperation with federal agencies. They are also responsible for distributing water to lands within their jurisdiction, setting water allotments, and establishing equitable rates for use<sup>[21]</sup>. The districts can levy assessments and employ personnel to manage their business affairs effectively. Their powers are designed to ensure efficient management and use of water resources in the state.

### *Conservation Districts*

In Colorado, conservation districts are organized to address the critical need for land and water conservation in the face of erosion and depletion of water resources. The state has lost approximately six million acres of agricultural land due to improper farming practices, excessive groundwater withdrawal, and insufficient conservation efforts.<sup>[22]</sup> To counteract these challenges, conservation districts, originally known as soil conservation districts, were established to help protect natural resources such as topsoil, water reserves, and local ecosystems. These districts promote sustainable land use and watershed management practices, focusing on controlling wind and water erosion and preventing flood damage. The State Conservation Board, which oversees the districts, also administers funding for conservation projects and collaborates with local stakeholders, including municipalities and other agencies, to ensure effective resource management. The reorganization in 2002 changed the name of these districts and the governing board to reflect their broader focus on all aspects of conservation, not just soil, to better align with current needs.

### *Basin Roundtables*

In 2005, nine basin roundtables were established by the Colorado Water for the 21<sup>st</sup> Century Act (CRS Title 37 Article 75)<sup>[9]</sup> to facilitate discussions on water management issues and encourage locally driven collaborative solutions. These roundtables represent each of the state's eight major river basins and the Denver metropolitan area. The basin roundtables have regular meetings (typically monthly or quarterly) and are comprised of key water stakeholders in their jurisdiction, including representatives from counties, cities, water rights owners (e.g., irrigators), water utilities, and water managers. Each roundtable has between 14 to 49 voting members, as well as several non-voting members. Key responsibilities include:

- Water resource planning, including development and updates of the Basin Implementation Plans, which inform DWR's statewide Colorado Water Plan
- Prioritization of water projects and recommendation of funding to CWCB.
- Public engagement and collaboration.

Funding for basin roundtables comes from state funds for water management and conservation administered through the CWCB (i.e., the severance tax trust fund) and contributions from participating members. The success of the basin roundtables varies from basin to basin since each has different stakeholders and specific challenges. They

have been successful in fostering regional cooperation and stakeholder engagement in water planning as well as contributing to the Colorado Water Plan. However, they have also faced challenges, including slow progress due to a high number of collaborators as well as difficulty to find consensus on inter-basin issues (e.g., trans-mountain diversions), which can create tensions between basins.

### Drainage Districts

Drainage districts are formed by a vote of landowners, overseen by the board of commissioners of the county in which most of the land is located. Drainage districts may construct drainage systems to drain land for agricultural use, assess and tax landowners for benefits, issue bonds, and exercise eminent domain.<sup>[1]</sup>

### Irrigation Districts

Irrigation districts are formed by landowners that petition the county board of commissioners. Irrigation districts may construct and maintain irrigation works, hold water rights, provide irrigation water, assess and tax landowners for benefits, issue bonds, and exercise eminent domain. Irrigation districts are responsible for draining tailwaters resulting from their irrigation and may drain and reclaimed seeped or marshy land.<sup>[20]</sup>

### Drainage and Flood Control Districts (special districts)

Colorado has two special drainage and flood control districts established by Colorado legislature (CRS Title 32 Articles 11<sup>[7]</sup> and 11.5<sup>[8]</sup>) to assist local governments in urban areas with multi-jurisdictional drainage and flood control challenges. The Mile High Flood District (formerly the Urban Drainage and Flood Control District) serves seven counties in the Denver metropolitan area, and the Fountain Creek Watershed, Flood Control, and Greenway District services two counties in the vicinity of Colorado Springs. These districts are comprised of locally elected officials representing public agencies within the jurisdiction.

Responsibilities include conducting planning studies, partnering with local government for construction and maintenance activities, watershed master planning, and flood hazard mapping. Additionally, these districts have land use authority within 100-year flood plains and can provide input to public agencies on land use applications that may have direct or indirect impacts to a watershed or flood zone, including input on floodplain development permits.

These districts are funded through property taxes, special assessments, services fees, and state and federal grants.

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Colorado are generally contained within the CRS or the CCR. Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation in Colorado are generally contained within the CRS or the CCR. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Colorado**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	2 CCR 408-1 <sup>[13]</sup> <sup>[23]</sup>	Amended: 1/14/2022	<ul style="list-style-type: none"> <li>• The CWCB designates and approves the state’s floodplains.</li> <li>• A Floodplain Development Permit from a local community (e.g., City) is typically required for construction or development activities that occur within 100-year flood hazard areas.</li> <li>• The CWCB oversees the state’s floodplain management program and is charged with enforcing state rules and regulations.</li> <li>• Communities may adopt local standards above and beyond the FEMA and CWCB minimum requirements.</li> <li>• Violations are inspected by the CWCB, and “Notices of Non-Compliance” are issued by the CWCB.</li> <li>• Limits surcharge to a maximum of 0.5 feet for floodways, including those with no effective floodway or new/updated studies have been conducted.</li> <li>• Requires the lowest floor of new structures (including basements) to be 1 foot above Base Flood Elevation (BFE).</li> <li>• Any change to the Base Flood Elevation (BFE) must be within +/- 0.3 feet, ensuring that changes to flood risk are minimal and manageable.</li> <li>• In Letter of Map Revision (LOMR)-Flood (LOMR-F) areas, the lowest floor must be 1 foot freeboard above the previous BFE, offering higher protection against future flood risks.</li> <li>• For critical facilities, the lowest floor must be 2 feet above BFE.</li> </ul>
Levees	2 CCR 402-1 <sup>[11]</sup>	Amended: 1/1/2020	Levees are regulated as dams, defined as “A constructed barrier, together with appurtenant structures, constructed above ground surface for the purpose of impounding water. Flood control and storm runoff detention dams are included.”

Practice Area	Policy / Regulation	Date	Key Principles
	2 CCR 408-1 <sup>[13]</sup>	Amended: 1/14/2022	The CWCB stipulates that levees must meet design criteria outlined by FEMA to be considered as providing protection. The US Army Corps of Engineers regulates the construction and use of levees in waters of the United States. Artificial embankments functioning as a Levee or a Flood Control Structure, for which protection will be considered for designation and approval, must comply with the provisions set forth in the “Mapping of Areas Protected by Levee Systems,” or the “Office of the State Engineer Rules State Engineer Rules and Regulations for Dam Safety and Dam Construction” to be considered as providing protection
Drainage	CRS 37-20 <sup>[1]</sup>	Effective: 1963 Last Amended: 2017	<ul style="list-style-type: none"> <li>• Allows landowners to form drainage districts.</li> <li>• Outlines the process for district formation and powers granted to districts.</li> </ul>
	CRS 37-41 through 43 <sup>[20]</sup>	Last amended: 2002	<ul style="list-style-type: none"> <li>• Outlines formation process and rules of operations for water conservation and irrigation districts.</li> <li>• Allows irrigation districts to drain land for agricultural improvement or as made necessary by its irrigation.</li> </ul>
Stormwater Management	5 CCR 1002-61 <sup>[12]</sup>	6/14/2020	<ul style="list-style-type: none"> <li>• Permits must be obtained for certain stormwater discharges, including discharges associated with industrial activities, municipal storm sewer systems, and construction activities.</li> <li>• The CDPE is charged with permitting and enforcing compliance through inspections, data reviews, and audits.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	Colorado Stormwater Program Fact Sheet <sup>[24]</sup>	20212/08/2024	<ul style="list-style-type: none"> <li>• General permits authorize certain discharges of relatively uncontaminated stormwater from construction, industrial, and Mining, Extraction &amp; Paving Material activities and public storm sewer systems. Permit Types are COR-010000 (light industry), COR-020000 (heavy industry), COR-030000 (construction activities disturbing one or more acres), COR-040000 (mining operations), COR-060000 (recycling facilities).</li> <li>• The COG850000 permit authorizes stormwater discharges associated with sand and gravel mining operations, while the COG500000 permit is specific to discharges from drinking water treatment facilities.</li> <li>• Multiple individual permits are issued to authorize stormwater discharges from facilities or activities not adequately addressed by general permits, ensuring site-specific compliance with Colorado's water quality regulations.</li> </ul>
Dam Management	CRS 37-87 <sup>[9]</sup>	Effective: 1879 Last Amended: 2017	<ul style="list-style-type: none"> <li>• The State Engineer must approve dams that create a reservoir exceeding 100 acre-feet (AF) of capacity, 20 acres of surface area, or a height of 10 feet from the lowest point of the natural ground to the spillway crest.</li> <li>• The State Engineer has the authority to inspect and order removal of dams deemed unsafe.</li> </ul>
	2 CCR 402-1 <sup>[11]</sup>	1/1/2020	<ul style="list-style-type: none"> <li>• Establish reasonable standards for dam designs and creates a framework for the State Engineer's review of dam performance.</li> </ul>



Practice Area	Policy / Regulation	Date	Key Principles
Surface Water Quality	5 CCR 1002-32 through 62	6/14/2024	<ul style="list-style-type: none"> <li>• Classifies state waters based on their ability to support beneficial uses in the present and expected beneficial uses in the future.</li> <li>• Establishes surface water quality standards for all state waters to ensure water quality protects public health and meets state and federal requirements for the highest beneficial use.</li> <li>• Some surface waters are designated for special uses such as wildlife habitat, scenic rivers, or other specific protections. Water quality standards are adjusted accordingly to meet these additional uses.</li> <li>• Operators of construction sites, industrial facilities, and MS4s must obtain a general permit if their discharges affect surface waters.</li> <li>• Individual permits for discharges to surface waters include effluent limits, monitoring, and conditions to ensure compliance with water quality standards.</li> </ul>
Water Supply and Diversion Rights	CRS 37-92 <sup>[10]</sup>	5/15/2024	<ul style="list-style-type: none"> <li>• All water in the state is a public resource and a court decree is required to confirm priority and allowed uses of water rights, with some exceptions (e.g., rain collection for small-scale domestic use, small scale domestic wells)</li> <li>• Water rights are based on prior appropriation, and the priority date for a water right is the date when the appropriation is fully established (i.e., the water is put to beneficial use) (CRS 37-92-305)</li> <li>• CWCB has the sole authority to appropriate water for environmental preservation (e.g., minimum stream flows).</li> <li>• Details the jurisdiction of water courts and their role in adjudicating water rights and resolving disputes (CRS 37-92-301)</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	A floodplain development permit must be obtained from the local floodplain administrator.	The appeals process for a decision made on a floodplain development permit is determined by the community. Often, the decision is first appealed locally and then to the district court.
Levees	N/A	Levees are regulated as dams in Colorado. Although not strictly a permit, construction of a new jurisdictional dam, or alteration or repair of an existing jurisdictional dam, must be approved by the State Engineer. For non-jurisdictional dams, a Notice of Intent must be submitted to the applicable DWR Division Engineer.	The applicant or any other person affected or aggrieved by the State Engineer's approval or disapproval of plans and specifications for construction of a reservoir/dam, or the alteration, modification, repair or enlargement of a reservoir or dam which will affect the safety of the structure may request an adjudicatory hearing before the State Engineer (2 CCR 402-1). If the party is dissatisfied with the State Engineer's decision, they can request judicial review by appealing to the district court.
Drainage	Drainage or Irrigation Districts	Landowners desiring the construction of drainage works may petition the board of directors of the drainage or irrigation district of which they are a member. <sup>[1][19]</sup>	In the case that a landowner's property is damaged, or a landowner refuses to allow a drain to be constructed on their land, the landowner and district will first attempt to resolve the dispute internally. If an agreement cannot be reached, compensation will be determined by eminent domain proceedings. A party wishing to dispute an action of a drainage or irrigation district may take the matter to the district court. <sup>[1][19]</sup>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater	CDPHE, Water Quality Control Division	Applications for individual permits or coverage under the state general and individual permits for surface water protection (including stormwater discharges, Table 1) are submitted to the CDPHE. This applies to both individual and general permits, but not to certifications under the general permits. For certain permit actions, CDPHE may issue a public notice for comments.	Affected parties may request an administrative hearing to challenge the terms and conditions of issued permits, challenge the terms and conditions of permit modifications, and challenge denials of permit applications. If the CDPHE grants the request to hold the hearing, the matter is referred to a hearing officer or the Office of Administrative Courts (OAC) to hold the administrative hearing. The OAC administrative law judge then issues an interim decision that can then be appealed to the executive director of CDPHE. The executive director's decision represents a final agency action. <sup>[2]</sup>
Dams	DWR	Although not strictly a permit, construction of a new jurisdictional dam, or alteration or repair of an existing jurisdictional dam, must be approved by the State Engineer. For non-jurisdictional dams, a Notice of Intent must be submitted to the applicable DWR Division Engineer.	The applicant or any other person affected or aggrieved by the State Engineer's approval or disapproval of plans and specifications for construction of a reservoir/dam, or the alteration, modification, repair or enlargement of a reservoir or dam which will affect the safety of the structure may request an adjudicatory hearing before the State Engineer (2 CCR 402-1). If the party is dissatisfied with the State Engineer's decision, they can request judicial review by appealing to the district court.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Water Rights	Colorado Judicial Branch, Water Courts	Water matters are generally commenced in a water court by the filing of an application with the water clerk. The water referee consults with the Division Engineer (DWR) and proposes a ruling. If there is no protest by the applicant or others, the case is closed.	Any party may file a protest to the referee's ruling with the water court. The matter is then re-referred to the water judge for a hearing on the matter <sup>[4]</sup> . Appeals of the water judge's decision are filed with the Colorado Supreme Court. <sup>[18]</sup>

[1] Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available and may vary by local Floodplain Administrator.

## CITATIONS

- [1] Colorado Office of Legislative Legal Services. (2023). Colorado Revised Statutes Title 37 Article 20 – Drainage and Drainage Districts. <https://leg.colorado.gov/sites/default/files/images/olls/crs2023-title-37.pdf>
- [2] Colorado Department of Public Health & Environment. (n.d.). Permit Adjudications. <https://cdphe.colorado.gov/permit-adjudications>
- [3] Colorado Division of Water Resources. (2024, June 11). Colorado Division of Water Resources Organizational Chart. [https://drive.google.com/file/d/1c82DDdcJ86YeRIsDor2RzU859L248aN\\_/view](https://drive.google.com/file/d/1c82DDdcJ86YeRIsDor2RzU859L248aN_/view)
- [4] Colorado Division of Water Resources. (2016). Synopsis of Colorado Water Law. <https://drive.google.com/file/d/1txSsGXnM48GajnL6WTie00JUc4Smu2Z>
- [5] Colorado Division of Water Resources. (n.d.). General Information Brochure. <https://drive.google.com/file/d/1mCsu9Bu-Z1mQCRchsoOsz4Rdywn1f96/view>
- [6] Colorado Division of Water Resources. (n.d.). Water Rights. <https://dwr.colorado.gov/services/water-administration/water-rights>
- [7] Colorado Office of Legislative Legal Services. (2024, May 15). Colorado Revised Statutes Title 32 Article 11 – Urban Drainage and Flood Control Act. <https://leg.colorado.gov/sites/default/files/images/olls/crs2023-title-32.pdf>
- [8] Colorado Office of Legislative Legal Services. (2024, May 15). Colorado Revised Statutes Title 32 Article 11.5 – Fountain Creek Watershed, Flood Control, and Greenway District. <https://leg.colorado.gov/sites/default/files/images/olls/crs2023-title-32.pdf>
- [9] Colorado Office of Legislative Legal Services. (2024, May 15). Colorado Revised Statutes Title 37 Article 87 – Reservoirs. <https://leg.colorado.gov/sites/default/files/images/olls/crs2023-title-37.pdf>
- [10] Colorado Office of Legislative Legal Services. (2024, May 15). Colorado Revised Statutes Title 37 Article 92 – Water Right Determination and Administration. <https://leg.colorado.gov/sites/default/files/images/olls/crs2023-title-37.pdf>
- [11] Colorado Secretary of the State. (2020, January 1). Colorado Code of Regulations Title 2 Section 402-1 – Rules and Regulations for Dam Safety and Dam Construction. <https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=8426&fileName=2%20CCR%20402-1>
- [12] Colorado Secretary of the State. (2020, June 14). Colorado Code of Regulations Title 5 Section 1002-61 – Colorado Discharge Permit System Regulations. <https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=2061&fileName=5%20CCR%201002-61>
- [13] Colorado State University (n.d.). Colorado Water Knowledge: Agencies & Organizations. <https://waterknowledge.colostate.edu/water-management-administration/agencies-organizations/#1521669671984-f21802de-b705>
- [14] Colorado Water Conservation Board. (2022, January 14). Rules and Regulations for Regulatory Floodplains in Colorado. [https://dnrweblink.state.co.us/CWCB/0/edoc/215736/2%20CCR%20408-1%20Floodplain%20Rules\\_Final%20Adopted%20Rules.pdf](https://dnrweblink.state.co.us/CWCB/0/edoc/215736/2%20CCR%20408-1%20Floodplain%20Rules_Final%20Adopted%20Rules.pdf)
- [15] Colorado Water Conservation Board (2008, September). Colorado Floodplain and Stormwater Criteria Manual Volumes 1 & 2. <https://dnrweblink.state.co.us/CWCB/0/edoc/144212/FloodplainManual.zip?searchid=6fd08826-cde7-4e61-aa79-e387a7923292>
- [16] Colorado Water Conservation Board. (n.d.). Colorado Water Conservation Board – About Us. <https://cwcb.colorado.gov/about-us>
- [17] Jones, P. A. and Cech, T. (2009). Colorado Water Law for Non-Lawyers. University Press of Colorado, Boulder, CO.
- [18] Colorado Judicial Branch. (n.d.). *Colorado courts at a glance*. <https://www.coloradojudicial.gov/sites/default/files/2023-07/2020webglance.pdf>

- [19] Colorado Office of Legislative Legal Services. (2023). Colorado Revised Statutes Title 37 Articles 40 - 50 – Water Conservation and Irrigation Districts.  
<https://leg.colorado.gov/sites/default/files/images/olls/crs2023-title-37.pdf>
- [20] Legislative Council Staff. (2022, February 23). Irrigation Districts in Colorado.  
[https://leg.colorado.gov/sites/default/files/r22-235\\_irrigation\\_district\\_interested\\_persons\\_memo.pdf](https://leg.colorado.gov/sites/default/files/r22-235_irrigation_district_interested_persons_memo.pdf)
- [21] Colorado Revised Statutes. (2024). *C.R.S. 37-45-118. General powers*. Colorado Revised Statutes Annotated, Title 37. Water and Irrigation, Article 45. Water Conservancy Districts.  
<https://advance.lexis.com>
- [22] Colorado General Assembly. (2022). *35-70-103. Powers and duties of commission*. Justia.  
<https://law.justia.com/codes/colorado/2022/title-35/article-70/section-35-70-103/>
- [23] Colorado Water Conservation Board. (2022, November 18). *Rules and regulations for regulatory floodplains in Colorado: CWCB higher standards*. Department of Natural Resources, Colorado Water Conservation Board. <https://cwcb.colorado.gov/floodplain-rules-revisions>
- [24] Colorado Department of Public Health and Environment. (2024). *COR400000: Stormwater discharge*. Colorado Department of Public Health and Environment.  
<https://cdphe.colorado.gov/cor400000-stormwater-discharge>

Input provided by CDPHE Clean Water Program Manager, Nathan Moore, CWCB Chief of Watershed and Flood Protection, Kevin Houck, and DWR Deputy Director, Tracy Kosloff.

# Iowa Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Iowa Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

<b>Agencies Overview</b>	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>Iowa Department of Natural Resources (DNR)</b> – Floodplain Management, Stormwater Management, Drainage and Levee Permitting and Systems, Dam Permitting and Management, Water Quality, Water Allocation</li> <li>• <b>Iowa Department of Agriculture &amp; Land Stewardship</b> – Soil and Water Conservation Districts</li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>Soil and Water Conservation Districts</b> – Water management at the county level.               <ul style="list-style-type: none"> <li>• Count: 100</li> </ul> </li> <li>• <b>Watershed Management Authorities</b> – Water management at the HUC 8 watershed level.               <ul style="list-style-type: none"> <li>• Count: 29</li> </ul> </li> <li>• <b>Drainage Districts</b> – Drainage management at the sub-county watershed level.               <ul style="list-style-type: none"> <li>• Count: ~3,700</li> </ul> </li> </ul>
<b>Overview of Key Practices</b>	
<i>Key authorities regarding Iowa water resources management are contained in the Iowa Code and 567 Iowa Administrative Code.</i>	
Flood and Floodplain Permitting and Management	The DNR’s Floodplain and Dam Safety Section oversees floodplain management at a state level and regulates construction on all flood plains and floodways. Local jurisdictions including cities and counties implement regulations and ordinances that comply with state and federal regulations.
Levee Permitting and Management	Drainage Districts are established at a local level and handle local permitting along with county offices with approval from

	the DNR for applicable construction, operation or maintenance activities.
Stormwater Permitting	DNR administers individual and general National pollutant Discharge Elimination System (NPDES) permits relating to construction, industrial, and municipal separate storm sewer systems (MS4) activities. Local jurisdictions including city and county officials administer local permits.
Drainage Permitting and Management	Drainage Districts are established at a local level and handle local permitting along with county offices with approval from the DNR for applicable construction, operation or maintenance activities. Landowners who construct a levee, ditch, or underground tile or drain for agricultural purposes or to improve water drainage must first file an application with the county auditor. <sup>[19]</sup>
Dam Permitting and Management	DNR is the primary agency overseeing Dam permitting and management in Iowa. Permits are issued by the department's Floodplain and Dam Safety Section.
Surface Water Quality Monitoring and Management	The DNR oversees surface water quality throughout the state. Water quality standards are outlined in the State Water Quality Standards that apply to all point and non-point sources of pollution.
Water Supply and Diversion Rights	Water supply and diversion rights are managed by the DNR under the water use permit and are based on the concept of "beneficial use".

**IOWA STATE AGENCY(IES) OVERVIEW**

*Iowa Department of Natural Resources (DNR)*

The Iowa DNR is the state's primary regulatory water authority. DNR manages fish and wildlife programs, recreational activities in states parks, and is the regulatory authority for the federal land, air, and water laws.<sup>[5]</sup> The DNR is comprised of four divisions, one of which is relevant to surface water and is outlined below:

- **Environmental Protection:** This division covers air, land, and water quality including permitting, lake and river restoration projects, and water plan development, among other functions. Within the division, the Land Quality Bureau manages groundwater, floodplains, dam safety, and land resources, and the Water Quality Bureau manages water quality standards, wetland protection and restoration, wastewater and stormwater management practices, and funding opportunities. Additionally, the division includes the Air Quality Bureau and the Field Service Bureau.<sup>[6]</sup>



### Iowa Department of Agriculture and Land Stewardship (IDALS)

The Iowa Department of Agriculture and Land Stewardship manages land stewardship and agricultural programs that protect land, waterways, and quality of life. This includes the Division of Soil Conservation & Water Quality and the Division of Water Resources, both of which are described below.

- **Division of Water Resources:** The functions of this division include the Water Resources Bureau, which manages the Watershed Protection Program to provide technical and financial assistance towards the development of watershed initiatives and soils and water conservation districts. The Bureau also manages the Iowa Conservation Reserve Enhancement Program (CREP) that incentivizes landowners to voluntarily establish wetlands in the tile-drained regions of the state, and agricultural drainage resources. <sup>[2]</sup>
- **Division of Soil Conservation & Water Quality:** The functions of this division include managing and supporting local watershed management projects administered by soil and water conservation districts as well as administering Clean Water Iowa programs, among other functions. Clean Water Iowa works to improve soil and water quality for farmers, landowners, municipalities, and other stakeholders.<sup>[1]</sup>

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### Soil and Water Conservation Districts (SWCDs)

Soil and Water Conservation Districts were established during the 1930s in response to the recognized need to implement soil and water conservation. SWCDs are typically located in county seats and are governed by a locally elected 5-member board who direct soil and water conservation efforts and provide financial assistance to landowners. <sup>[10]</sup> IDALS funds SWCDs under the Agriculture and Natural Resources Appropriations Act; funding includes payment for the administration of soil and water conservation programs, as well as reimbursement of SCWD expenditures.<sup>[20]</sup>

### Watershed Management Authorities (WMAs)

Watershed Management Authorities were established in 2010 as a mechanism for collaborative watershed management between cities, counties, stakeholders, and SWCDs. WMAs can be formed by two or more political subdivisions (cities, counties, SWCDs) within a HUC-8 watershed boundary and are managed by a Board of Directors. Planning at the watershed level enables multi-jurisdictional partnership and cooperation. Functions of WMAs include assessing and reducing flood risk, assessing and improving water quality, monitoring federal flood risk planning, and funding allocation, and education. WMAs may enter contracts to carry out their functions but do not have regulatory powers and may not tax or exercise eminent domain.<sup>[7][23][24]</sup> WMA's

do not have any fixed funding mechanism but receive grants and community contributions.<sup>[26]</sup>

### Drainage Districts

Drainage Districts are established under Iowa Code 468.2 and oversee surface water drainage at a sub-county level for agricultural and other land uses. Two or more landowners can petition to form a district, typically overseen by the County Board of Supervisors who act as Drainage District Trustees. However, landowners can also elect their own trustees via a special election after the district has been legally established. Landowners own facilities which are then managed by the Board of Trustees.<sup>[21]</sup> District members pay for all maintenance and repairs based on the original assessed value of their property to the original assessed value of the entire district.<sup>[22]</sup> Counties can levee additional property taxes on the drainage district members to repay construction warrants.<sup>[21]</sup>

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Iowa are generally contained within the Iowa Code and Iowa Administrative Code. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the Iowa Code and Iowa Administrative Code. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Iowa**

Practice Area	Policy / Regulation	Date	Key Principles
Flood and Floodplain Management	IAC 567 Chapter 71 <sup>[12]</sup>	Enacted: 1972	<ul style="list-style-type: none"> <li>• Permits are required for most work on streams and rivers throughout the state.</li> <li>• DNR’s Floodplain and Dam Safety Section administers the floodplain and development permit. Most agricultural facilities are exempt from regulation.</li> <li>• DNR can delegate regulatory authority to a local government by approving local floodplain regulations.</li> </ul>
Levees	IAC 468 <sup>[9]</sup> ; IAC 567—72.4(455B) <sup>[13]</sup>	2022	<ul style="list-style-type: none"> <li>• Approval is required by the Department for construction, operation, or maintenance of levees or dikes for rural areas located on a floodplain or floodway of any stream or river draining more than 10 square miles or draining more than 2 square miles in urban areas.</li> <li>• Flood control levees must follow the following criteria: levee height must provide at least 3 ft of freeboard above design flood profile, levees shall provide for adequate interior drainage and ponding, minimum design flood protection level corresponds to the flood profile for Q100, The location and alignment of agricultural levees or dikes shall be compatible with existing encroachment limits so that minimum flood protection levels will not be increased and said levee or dike alignment otherwise shall be consistent with the rules governing the location of encroachment limits set out in 567—75.4(455B)</li> <li>• Agricultural levees must follow the following criteria: the permanent height of levees shall be limited so that overtopping will occur due to discharges from Q10 to Q25 where the more comprehensive levee system with the greater level of protection.</li> </ul>
Stormwater Management	Gen permits: 567 IAC Chapters 60, 64, and 65 <sup>[15],[12],[17]</sup>	2022; 2024	<ul style="list-style-type: none"> <li>• Outlines the state’s requirements for stormwater discharge.</li> <li>• DNR issues 9 General NPDES permits.</li> <li>• Discharges from facilities or construction sites that may temporarily degrade Outstanding National Resource Water or Outstanding State Resource Water require an individual NPDES permit.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	General Permits: GP #1 GP #2 GP#3	1992	<ul style="list-style-type: none"> <li>• General stormwater permits cover 3 classes of activity:</li> <li>• Construction: permit is required if work disturbs more than one acre of land (GP #2)</li> <li>• Industrial: permit required for stormwater discharges that potentially contain pollutants (GP #1)</li> <li>• Industrial facilities that use asphalt plants, concrete plants, quarries, sand and gravel pits, and rock crushers (GP #3)</li> </ul>
	567 IAC Chapter 64 <sup>[10]</sup>	1992	<ul style="list-style-type: none"> <li>• MS4: individual permit required for populations greater than 10,000 people</li> <li>• Individual permits are also required for discharges that are mixtures of stormwater and non-stormwater.</li> </ul>
Drainage Management	IAC 468 <sup>[9]</sup> and associated case law <sup>[19]</sup>	2022	<ul style="list-style-type: none"> <li>• Approval is required by the Department for construction, operation, or maintenance of levees or dikes for rural areas located on a floodplain or floodway of any stream or river draining more than 10 square miles or draining more than 2 square miles in urban areas.</li> <li>• Under IAC § 468.621 landowners of property at higher elevations have the right to benefit from the natural flow of water downhill and are not liable for damages caused by such drainage unless it increases the quantity of water or changes the manner of discharge on land separate from their own. The downhill estate cannot interrupt the natural flow of water or cast water back onto the uphill estate. Uphill estates cannot exercise drainage rights if the downhill estate obtains a counter easement.</li> <li>• Drainage easements are binding upon subsequent owners of land, even if purchasers do not have notice of the easement.</li> <li>• Drainage management legislation additionally governs levee districts.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	Iowa Code 456B.13 <sup>[25]</sup>	2023	<ul style="list-style-type: none"> <li>• A protected wetland may not be drained without a permit from DNR.</li> <li>• A permit may only be granted if the applicant replaces the wetland, or if the wetland no longer meets the criteria for protection.</li> <li>• A drainage district does not require a permit to maintain or replace existing infrastructure, so long as the scope of the infrastructure is not expanded.</li> </ul>
Dam Management	IAC § 567-73.3 <sup>[14]</sup>	2021	<ul style="list-style-type: none"> <li>• Permits are required for dams with a height of at least 25 feet and a storage volume of at least 15 acre-ft, a storage capacity of at least 50 acre-feet and a height of at least 6 feet, or any high hazard dams where dam failure may result in probable loss of human life.</li> <li>• Legislation also assigns dam hazard potential which considers anticipated future land and impoundment use.</li> </ul>
Surface Water Quality	IAC § 567-60 <sup>[15]</sup> ; IAC Chapter 61 <sup>[16]</sup>	2/9/22	<ul style="list-style-type: none"> <li>• Establishes State Water Quality Standards and permit requirements for discharges.</li> <li>• State Water Quality Standards apply to all point and nonpoint sources of pollution.</li> </ul>
Water Supply and Diversion Rights	IAC 567-subrules 52.10(1) and (3) <sup>[18]</sup>	9/8/21	<ul style="list-style-type: none"> <li>• A water use permit that covers water diversions and allocation is required by any person or entity that withdraws at least 25,000 gallons of water in a 24-hour period during any calendar year and is based on the concept of “beneficial use”</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entities	Permitting Overview	Dispute / Appeals Process
Floodplain Development	<ul style="list-style-type: none"> <li>• Local Jurisdictions</li> <li>• DNR</li> </ul>	Floodplain development permits are obtained through the DNR PERMT online tool. Local permits are administered by city or county officials. Applications submitted through the PERMT system can take up to 3 months to be reviewed.	N/A [1]
Levees	<ul style="list-style-type: none"> <li>• Local Jurisdiction</li> <li>• DNR</li> </ul>	DNR issues permits for projects that impact wetlands or waterways. Two or more landowners can petition to form a drainage district.	N/A [1]
Stormwater	<ul style="list-style-type: none"> <li>• DNR</li> </ul>	The DNR issues three NPDES General permits for industrial and construction activity and an individual NPDES permit for MS4 entities. A Notice of Intent (NOI) must be sent to the DNR and approval must be issued before the start of soil disturbing activities. Applications for individual permits must be submitted 180 days prior to the start of operations.	Aggrieved persons may appeal any conditions of the permit by filing a written notice of appeal and request for administrative hearing with the DNR director within 30 days of appeal of the permit (Iowa Code § 455B.174 and IAC § 567-64.13). <sup>[4]</sup>

Permit Type	Permitting Entities	Permitting Overview	Dispute / Appeals Process
Drainage	<ul style="list-style-type: none"> <li>Local Jurisdiction</li> <li>DNR</li> </ul>	<p>DNR issues permits for projects that impact wetlands or waterways.</p> <p>Two or more landowners can petition to form a drainage district or to establish, improve, or repair a district facility. The board then decides based on a benefit-cost analysis if the project will proceed to hearing.<sup>[19]</sup> Approvals prioritize economic benefits to the drained land over potential effects like downstream flooding. Landowners who benefit from approved projects are assessed to cover the cost of construction, while landowners who are harmed by the project are awarded damages.<sup>[8]</sup></p>	<p>Objections to drainage district establishment must be made in writing and filed in the office of the county auditor at or before the time set for such hearing. <sup>[8]</sup></p>
Dams, Dikes, and Other Water Control Devices	<ul style="list-style-type: none"> <li>DNR</li> </ul>	<p>Permit is required to construct, modify, drawdown, or remove a dam. Design engineer must provide signed and seal construction plans to the Department, showing that the proposed dam meets all Department criteria.</p>	<p>Any person aggrieved by a permit decision may file a notice of appeal as governed by IAC § 567- 7.<sup>[14]</sup></p>
Water Rights	<ul style="list-style-type: none"> <li>DNR</li> </ul>	<p>Permit is required from the DNR for agricultural, industrial, and municipal uses that involve large scale withdrawals or diversions of water. Permits are valid for ten years and require a yearly submission of a Water Use Report to the DNR.</p>	<p>N/A [1]</p>

[1] Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available.

## CITATIONS

- [1] Clean Water Iowa. (n.d.) Home. <https://www.cleanwateriowa.org/>
- [2] Iowa Department of Agriculture and Land Stewardship (IDALS). (n.d.-a). Water Resources Bureau. <https://iowaagriculture.gov/water-resources-bureau>
- [3] Iowa Department of Agriculture and Land Stewardship (IDALS). (n.d.-b). Soil and Water Conservation Districts. <https://costshare.iowaagriculture.gov/swcdlocations>
- [4] Iowa Department of Natural Resources (DNR). (2019, May 1). City of Cedar Falls NPDES Permit. <https://www.cedarfalls.com/DocumentCenter/View/20/Cedar-Falls-NPDES-Permit?bidId=>
- [5] Iowa Department of Natural Resources (DNR). (n.d.-a). About DNR. <https://www.iowadnr.gov/About-DNR>
- [6] Iowa Department of Natural Resources (DNR). (n.d.-b). Introduction to Environmental Services Division Metrics. <https://experience.arcgis.com/experience/f57d1f8a00f1444596d5045ee6dc6798/page/Introduction/>
- [7] Iowa Department of Natural Resources (DNR). (n.d.-c). Water Management Authorities. ([https://www.iowadnr.gov/Portals/idnr/uploads/water/watershed/files/publications/WMA\\_Handout\\_v2.pdf](https://www.iowadnr.gov/Portals/idnr/uploads/water/watershed/files/publications/WMA_Handout_v2.pdf))
- [8] Iowa Environmental Council. (2020, September). Modernizing Agriculture Drainage Law in Iowa. <https://www.iaenvironment.org/webres/file/modernizing%20ag%20drainage%20law%20in%20iowa.pdf>
- [9] Iowa State Legislature (n.d.-a) IAC 468. <https://www.legis.iowa.gov/docs/ico/chapter/468.pdf>
- [10] Iowa State Legislature. (1997, November 19). IAC 567 – Chapter 64. [https://www.legis.iowa.gov/DOCS/ACO/GNAC/iacpdf\(9-4-02\)/iac/567iac/56764/56764.pdf](https://www.legis.iowa.gov/DOCS/ACO/GNAC/iacpdf(9-4-02)/iac/567iac/56764/56764.pdf)
- [11] Iowa State Legislature. (2021, September 8). IAC 567- Chapter 52. <https://www.legis.iowa.gov/docs/ACO/chapter/567.52.pdf>
- [12] Iowa State Legislature. (2021, September 8). IAC 567-Chapter 71. <https://www.legis.iowa.gov/docs/iac/chapter/567.71.pdf>
- [13] Iowa State Legislature. (2021, September 8). IAC 567-Chapter 72.4(455B). <https://www.legis.iowa.gov/docs/iac/rule/567.72.4.pdf>
- [14] Iowa State Legislature. (2021, September 8). IAC 567-Chapter 73. <https://www.legis.iowa.gov/docs/iac/chapter/567.73.pdf>
- [15] Iowa State Legislature. (2022, December 14). IAC 567 - Chapter 60. <https://www.legis.iowa.gov/docs/ACO/chapter/567.60.pdf>
- [16] Iowa State Legislature. (2022, February 9). IAC 567-Chapter 61. <https://www.legis.iowa.gov/docs/ACO/chapter/567.61.pdf>
- [17] Iowa State Legislature. (2024, May 15). IAC 567 - Chapter 65. <https://www.legis.iowa.gov/docs/iac/chapter/567.65.pdf>
- [18] Iowa State Legislature. (n.d.-b). IAC 567- Chapter.52.10. <https://www.legis.iowa.gov/docs/iac/rule/06-07-2006.567.52.10.pdf>
- [19] Iowa State University, Center for Agricultural Law and Taxation. (2020, August 31). Iowa Drainage Law: A Legal Review. <https://www.calt.iastate.edu/article/iowa-drainage-law-legal-review>
- [20] Legislative Services Agency. (2022, July 1). Budget Unit Brief – FY 2023. <https://www.legis.iowa.gov/docs/publications/FT/1285261.pdf>
- [21] Lutz & Anderson. (n.d.) Drainage Districts vs. Watershed Management Authorities. <https://www.capitalcrossroadsvision.com/wp-content/uploads/2015/11/terry-lutz.pdf>
- [22] Story County. (n.d.). Drainage Districts. <https://www.storycountyiowa.gov/Faq.aspx?QID=208>
- [23] Iowa State Legislature. (2023, December 22). Iowa Code 466B. <https://www.legis.iowa.gov/DOCS/ACO/IC/LINC/Chapter.466b.pdf>
- [24] Prairie Rivers of Iowa RC&D. (2022). Ioway Creek Watershed Management Authority. <https://www.prrcd.org/ioway-creek-watershed-management-authority/>



- [25] Iowa State Legislature. (2023). Iowa Code 456B.13. <https://law.justia.com/codes/iowa/title-xi/chapter-456b/section-456b-13/>
- [26] Hansen, Kate. (2023). From the Source: A Look at Iowa's Watershed Management Authorities. Center for Rural Affairs. <https://www.cfra.org/sites/default/files/publications/From%20the%20Source-%20%20A%20Look%20at%20Iowa%E2%80%99s%20Watershed%20Management%20Authorities%20WEB.pdf>

# Idaho Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Idaho Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

The table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Idaho Department of Water Resources (IDWR)</b> – Water Rights Allocation including Adjudication, Permitting, Licensing, and Transfers; Water Administration; Dam and Mine Tailings Management; Well Construction Permitting and Well Driller Licensing; State Coordination of Idaho’s National Flood Insurance Program; Regulation of Stream Channel Alterations; and Measuring and Inventorying State Surface and Ground Water Resources.</li> <li>• <b>Idaho Water Resource Board</b> – Water Planning; Water Project Financing; Managed Aquifer Recharge; Cloud Seeding Program; Water Supply Bank; and Water Transaction Program.</li> <li>• <b>Idaho Department of Environmental Quality (IDEQ)</b> – Water Quality Regulation and Enforcement, including a Surface Water Program and a Storm Water Program.<sup>[1]</sup></li> </ul>

<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>IDWR Director</b> – The Director shall have direction and control of the distribution of water from all natural water sources within a water district.</li> <li>• <b>Water Districts</b> – Supervision of regional water distribution, led by watermasters and organized on a watershed or sub-watershed scale (Idaho Code Title 42, Chapter 6)<sup>[15]</sup> <ul style="list-style-type: none"> <li>○ Count: 98</li> </ul> </li> </ul>
--	--

**Overview of Key Practices**

*Key authorities regarding Idaho water resources management are contained in Idaho Statutes Title 42 et seq<sup>[15]</sup>.*

<p>Flood and Floodplain Permitting and Management</p>	<p>The Floodplain Management Unit, housed within the Water Compliance Bureau of the IDWR, is administered by the State National Flood Insurance Program (NFIP) Manager, who coordinates Idaho’s program consistent with federal law. The Floodplain Manager oversees the review of city ordinances created to deal with floodplain issues, assisting communities with flood planning and training for floodplain protection, and assisting communities to adopt floodplain ordinances to qualify for the NFIP.<sup>[9]</sup> The NFIP is managed with the Community Assistance Program – State Support Services Element (CAP-SSSE), a FEMA grant which has a 75% federal and 25% state cost share. Over 170 communities in Idaho participate in the NFIP.<sup>[10]</sup></p>
---	--

<p>Stream Channel Protection</p>	<p>The Stream Channel Protection Section within the IDWR’s Water Compliance Bureau manages permits for proposed stream channel alterations. IDWR issues two types of stream channel alteration permits: the Joint Application for Stream Channel Alteration Permit (Joint Application) and Letter Permits for Recreational Mining (Letter Permit).<sup>[15]</sup></p>
----------------------------------	---

<p>Levee Permitting and Management</p>	<p>The State of Idaho authorizes local governments to form levee districts, which are responsible for maintaining, operating, and/or constructing levees in their jurisdictional areas. Permitting for levees is commonly administered on a county level through floodplain development permits.<sup>[15]</sup></p>
--	---

<p>Stormwater Management</p>	<p>The Idaho Department of Environmental Quality (IDEQ) Surface and Wastewater Division manages permitting for municipal, construction, and industrial stormwater discharge. Responsibility for stormwater runoff management and</p>
------------------------------	--

	infrastructure is distributed among municipal entities including cities, drainage districts, and local water association users. <sup>[1]</sup>
Drainage Management	Drainage is managed by local jurisdictions, and is subject to regulation from cities, local water user associations, and drainage districts. Agricultural drainage is managed through drainage districts, which are authorized in locations requiring drainage or diking as outlined in Idaho Code Title 42 Chapter 29.
Dam Permitting and Management	The Safety of Dams Program within the IDWR regulates approximately 400 water storage dams and about 20 mine tailings impoundment structures in Idaho. It operates in all four regional offices and is based primarily in the Western Region office in Boise. Public and private dams are subject to state regulation. Dams and mine tailings impoundment structures are inspected at least once every five years, depending on hazard classification, physical condition, age, and maintenance history. The IDWR releases risk analysis reports for high-hazard dams to identify and prioritize risk reduction measures. <sup>[10]</sup>
Surface Water Quality Monitoring and Management	The IDEQ's Surface and Wastewater Division enforces water quality standards through permitting point source discharges and implementing nonpoint source pollution control programs. It also monitors and assesses surface water quality, develops water quality improvement plans (total maximum daily loads, or TMDLs), and implements improvements prescribed in TMDLs. <sup>[6]</sup>
Water Supply and Diversion Rights	The IDWR manages water allocation and distribution, issuing, modifying, and administering water rights. Idaho follows the doctrine of prior appropriation for both surface and ground water rights. Water users must obtain a water right before putting water to beneficial use. IDWR issues water right permits, licenses, and transfers. IDWR also receives water right adjudication claims and prepares and submits recommendations to the 5 <sup>th</sup> Judicial District court in Twin Falls for consideration and decree. IDWR also maintains comprehensive records of water rights. <sup>[8]</sup>

## IDAHO STATE AGENCY(IES) OVERVIEW

### Idaho Department of Water Resources (IDWR)

The IDWR is responsible for administering water rights, facilitating water rights adjudications, maintaining water rights records, and overseeing water delivery in times of shortage. The IDWR oversees water districts, which are led by an elected watermaster in charge of measuring and distributing water within the district. The Director of the IDWR is appointed by the Governor and confirmed by the State Senate. The IDWR provides administrative and technical support for the Idaho Water Resource Board's projects to manage surface water, stabilize or recover aquifers, and invest in water infrastructure projects.<sup>[8]</sup> The IDWR is also responsible for:

- Regulation and inspection of dams and mine tailings impoundment structures
- Groundwater protection and well oversight
- Permitting and regulation of stream channel alterations
- Coordination with local communities to comply with the National Flood Insurance Program.
- State-wide water science and data collection.

The IDWR is divided into the following bureaus and sections:

- **Water Allocation Bureau** – one of two regulatory bureaus; includes Water Rights Section, and Adjudication Section. The Water Allocation Bureau supervises the appropriation and allotment of water for beneficial use.
- **Water Compliance Bureau** – the other regulatory bureau; includes Water Distribution Section, Groundwater Protection Section, Enforcement Unit, Stream Channel Protection Section, and Floodplain Management Unit. The Water Compliance Bureau administers programs to protect state water resources and ensure fair and equitable distribution and use of the state's waters. It includes a National Floodplain Insurance Program Manager and an Enforcement Coordinator to support multiple regulatory programs across the department.
- **Planning and Projects Bureau** – includes Idaho Water Resources Board, Water Projects Section, and Water Supply Bank. The Idaho Water Resource Board (IWRB) comprises 8 members. The Planning and Projects Bureau works with the Technical Services Bureau to implement and manage projects assigned by the Idaho Water Resource Board. The Water Resource Board offers grant programs for flood management and aging infrastructure.
- **Technical Services Bureau** – includes Hydrology Section, and Geospatial Technology Section. The Technical Services Bureau collects and analyzes hydrologic data for IDWR and develops geospatial tools and maps to support management and protection of water resources in the State.

The Safety of Dams Program is a standalone unit overseen by the Director of the IDWR. In addition to its central office in Boise, the IDWR has four regional offices in Boise (Western Regional Office), Coeur d' Alene (Northern Regional Office),

Idaho Falls (Eastern Regional Office), and Twin Falls (Southern Regional Office), and two field offices in Salmon and Preston.<sup>[11]</sup> The IDWR divides the state into over 50 administrative basins based partly on USGS HUC 8 watershed boundaries (with each administrative basin assigned to one of the four regions) to coordinate water management activities.<sup>[12]</sup>

### Idaho Department of Environmental Quality (IDEQ)

The Idaho Department of Environmental Quality includes Surface Water, Drinking Water, Wastewater (including stormwater), and Groundwater Divisions that ensure compliance with state water quality standards in their respective areas. The Surface and Wastewater Division monitors surface water quality and collects aquatic habitat data, oversees a nonpoint source pollution management program, enforces state-level water quality standards and has the authority to develop policies to address implementation of water quality standards.<sup>[6]</sup> The Surface and Wastewater Division develops water quality improvement plans (total maximum daily load, or TMDL) for water bodies not meeting water quality standards. TMDLs are made on a subbasin (HUC 4) level.<sup>[6]</sup> Watershed Advisory Groups (WAGs): Groups of interested citizens who provide local public input and guidance to DEQ during the development of water quality improvement plans or total maximum daily loads (TMDLs) for water bodies that fail to meet water quality standards.<sup>[3]</sup>

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### Water Districts

Water districts in Idaho supervise regional water distribution and are created with administrative boundaries representing watersheds or sub-watersheds. Idaho Code Title 42 Chapter 6 outlines the rules for water districts, stipulating that districts may be created for each public stream and tributary or independent source of water supply, and districts may extend to a distance of 40 miles between the extreme points of diversion. Water districts can supervise the use of streams, rivers, lakes, ground water and other natural water sources as necessary to carry out the laws in accordance with the priorities of the rights. If the use of water in a district does not affect or conflict with the use of water by other water rights holders outside of the district, a new district may be created.<sup>[15]</sup> Water districts are led by watermasters, which are elected on a yearly basis. There are currently 98 water districts in the State. Funding for water districts comes from water user fees collected by the districts.

### Drainage Districts

Drainage Districts can be organized in any portion of a county requiring drainage or diking, as outlined in Idaho Code Title 42 Chapter 29. They are authorized to appropriate waters that are made available through the construction of drainage infrastructure as long as

existing water rights are not impaired, subject to applicable laws regarding appropriations. Funding for drainage districts comes from local property taxes.<sup>[15]</sup>

### Soil and Water Conservation Districts

Idaho has 50 soil and water conservation districts, which are state subdivisions responsible for protecting natural resources on private lands, led by locally elected volunteer boards of five or seven supervisors.<sup>[2]</sup>

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to the authorities, duties, and responsibilities of the IDWR are generally contained within the Idaho Statutes Titles 42 and 43, and in the Idaho Administrative Procedures Act (IDAPA) Administrative Code Rule 37 (Department of Water Resources).

Key policies and regulations related to the authorities, duties, and responsibilities of the IDEQ are generally contained within the Idaho Statutes Title 39, and in the IDAPA Administrative Code Rule 58 (Department of Environmental Quality).

Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation in Idaho are generally contained within the Idaho Statutes Title 39 and 42.

Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Idaho**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	Idaho Code §46-1022 <sup>[16]</sup>	1998	<ul style="list-style-type: none"> <li>Local governments (e.g., county) may adopt floodplain zoning ordinances which identify floodplains and regulate developments in the floodplain.</li> </ul>
	Executive Order No. 2015-06 <sup>[19]</sup>	2015	<ul style="list-style-type: none"> <li>Designates the IDWR as the agency "to lead State implementation and administration of the National Flood Insurance Act of 1-968 and 44 CFR 560.25, Rules and Regulations of the Federal Insurance Administration."</li> <li>The IDWR Floodplain Coordinator is responsible for statewide administration of the NFIP.<sup>[20]</sup></li> </ul>
	Idaho Code §42-3801 <sup>[15]</sup>	1971	<ul style="list-style-type: none"> <li>Stream channels may not be altered unless approved by the Stream Channel Protection Section in IDWR's Water Compliance Bureau. Stream channels and environments shall be protected from alteration to protect fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality.</li> </ul>
Levees	Idaho Code §42-44 <sup>[15]</sup>	1990	<ul style="list-style-type: none"> <li>Any portion of a county requiring the maintenance, operation, or construction of a levee to contain irrigation water or prevent flooding may be organized into a levee district.</li> <li>Levee districts shall provide for the storage and containment of irrigation water and the prevention of flood damage.</li> <li>Regulation of levees in Idaho is commonly on a county basis (see §46-1022 above).</li> </ul> <p>See also: 44 CFR Section 65.10 of the NFIP Regulations. (<a href="https://idwr.idaho.gov/wp-content/uploads/sites/2/floodplain-mgmt/Levee-FAQ-Jan08.pdf">https://idwr.idaho.gov/wp-content/uploads/sites/2/floodplain-mgmt/Levee-FAQ-Jan08.pdf</a>)</p>



Practice Area	Policy / Regulation	Date	Key Principles
Stormwater Management	IDAPA 58.01.25 <sup>[1]</sup>	2023	<ul style="list-style-type: none"> <li>• The Idaho Pollutant Discharge Elimination System (IPDES) Rules establish the procedures and requirements for permitting of pollutant discharge to waters of the United States in Idaho.</li> <li>• Three categories of stormwater discharge are permitted through IPDES: industrial, construction, and municipal.</li> </ul>
Drainage Management	Idaho Code §42-29 <sup>[15]</sup>	1913	<ul style="list-style-type: none"> <li>• Any portion of a county requiring drainage and/or diking may be organized into a drainage district.</li> <li>• Drainage districts and other county or sub-county jurisdictions manage infrastructure necessary to drain surface waters. Municipalities may act as drainage districts.</li> </ul>
Dam Management	Idaho Code §42-17 <sup>[15]</sup>	1969 (amended 2016)	<ul style="list-style-type: none"> <li>• Dams with a height greater than 10 feet are subject to state oversight of construction, enlargement, alteration, or repair. Plans, drawings, and specifications must be approved by the Director of the IDWR prior to dam modifications taking place.<sup>[15]</sup></li> <li>• Dams taller than 10 feet and with a reservoir volume greater than or equal to 50 acre-feet must work with a licensed professional engineer to prepare design drawings, reports, specifications, and other information necessary for construction.<sup>[13]</sup></li> </ul>
	IDAPA 37.03.06 <sup>[14]</sup>	2021	<ul style="list-style-type: none"> <li>• Establishes standards for dam construction and guidelines for safety evaluation of new or existing dams.</li> </ul>
Surface Water Quality	IDAPA 58.01.02 <sup>[5]</sup>	2023	<ul style="list-style-type: none"> <li>• Establishes surface water quality standards for all state waters to meet requirements of the Clean Water Act and protect public health and water quality.</li> <li>• Places restrictions on the discharge of wastewater and on human activities that may adversely affect public health and water quality in the waters of the state.</li> <li>• There are three elements in water quality standards: beneficial use, criteria, and antidegradation.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Water Supply and Diversion Rights	Idaho Code §42-2 <sup>[15]</sup>	1951 (amended 1990)	<ul style="list-style-type: none"> <li>• Waters in Idaho are a public resource and a water right is required to divert water or to apply water to lands, with the exception of water used for firefighting, forest practices, or for the cleanup of hazardous substances.</li> <li>• Water rights holders who determine that water use is causing injury to a water right may petition the IDWR director to order curtailment or mitigation of injury.</li> <li>• The IDWR has exclusive authority over appropriation of surface water and groundwater in Idaho.</li> <li>• Additional water rights are not needed for generating hydroelectricity if the water user already holds a water right for beneficial use of the water.</li> </ul>
	IDAPA 37.03.02, 37.03.08, 37.03.11 <sup>[18]</sup>	Updated 2024	<ul style="list-style-type: none"> <li>• The extent of application of water to beneficial use is determined through field examinations carried out by IDWR staff or certified water rights examiners appointed by the IDWR Director.</li> <li>• Applications to appropriate water are processed by the IDWR and the priority date is established by the time and date the Department receives the application.</li> <li>• Surface water and groundwater rights are managed conjunctively in areas having a common groundwater supply.</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	A floodplain development permit must be obtained from the local floodplain administrator. Permitting for levees is administered on a county (or otherwise local) level through floodplain development permits. <sup>[15]</sup>	Permitting decisions are made by the floodplain administrator, in coordination with irrigation and drainage entities. <sup>[9]</sup> Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available and may vary by local floodplain administrator.
Stormwater Discharge	IDEQ	Applications for IPDES permits are made to the IDEQ. Construction activities, industrial activities, and municipal storm drains all require an IPDES stormwater permit. <sup>[7]</sup>	Appeal of an IPDES permit decision can be made by filing a petition for review with the department’s hearing coordinator within 28 days after the department serves notice of the final permit decision. The department will issue a final determination after conducting a review of the petition and administrative record on appeal. <sup>[1]</sup>
Drainage	Local Government/ Floodplain Administrator	Some irrigation and drainage activities that occur within a Special Flood Hazard Area (SFHA) or mapped floodway require a National Flood Insurance Program (NFIP) permit. Activities requiring an NFIP permit are determined by the local floodplain administrator. Other activities can be permitted collectively under a General Irrigation Floodplain Development (GIFD) permit. <sup>[20]</sup>	Local floodplain administrators are responsible for reviewing proposed irrigation and drainage activities to determine whether a permit is required. Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available and may vary by local floodplain administrator.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	IDWR	Although not strictly a permit, construction of a new jurisdictional dam, or alteration or repair of an existing jurisdictional dam, must be approved by the Director of the IDWR. Certificates of approval for dams may contain terms and conditions for approval, which are subject to changes based on the discretion of the IDWR director.	Prior to a certificate of approval being revoked, a public hearing must be held. Any party aggrieved by the final order of the director can seek judicial review. Appeals must be filed with the IDWR in writing within 15 days after receipt of written notice of the decision issued by the IDWR director. <sup>[15]</sup>
Water Rights	IDWR	Acquisition of a new use of water begins with an application for water right permit to the IDWR. Following a prescribed period to develop and put the water to beneficial use permit holders submit notices of proof to the Department demonstrating their beneficial use of water. Following receipt of a notice of proof, the IDWR or authorized proxy inspect the water system and uses being made of the water, which must be considered “beneficial use”. <sup>[18]</sup> Following inspection and a demonstration of beneficial use, IDWR issues a licensed water right at which time the water use is deemed “perfected.” Water rights can be leased and sold (such changes must be approved by the IDWR through a written application process). <sup>[15]</sup>	Any party may file a protest against the approval or rejection of a water rights application within 10 days of the publication of notice of approval. The IDWR director shall consider the evidence of the appeal and determine whether to grant or revoke the permit. After the hearing, any party aggrieved by the outcome may seek judicial review in court. According to Idaho Code Title 67 Chapter 52, the court shall affirm the agency action unless the court finds that the action was in violation of constitutional or statutory provisions, in excess of agency authority, made unlawfully, or arbitrary. <sup>[17]</sup>

## CITATIONS

- [1] City of Boise (n.d.). Stormwater and Drainage Control. <https://www.cityofboise.org/departments/public-works/stormwater-and-drainage-control/>
- [2] Idaho Association of Soil and Water Conservation Districts (n.d.) District Information. <https://www.iascd.org/district-information.html>
- [3] Idaho Department of Environmental Quality (n.d.) Watershed Advisory Groups. <https://www.deq.idaho.gov/public-information/advisory-groups-and-committees/watershed-advisory-groups/>
- [4] Idaho Department of Environmental Quality Surface and Wastewater Division (2023). Idaho Pollutant Discharge Elimination System Rules. <https://adminrules.idaho.gov/rules/current/58/580125.pdf>
- [5] Idaho Department of Environmental Quality Surface and Wastewater Division (2023). Water Quality Standards. <https://www.epa.gov/sites/default/files/2014-12/documents/idwqs.pdf>
- [6] Idaho Department of Environmental Quality (2022). Surface Water. <https://www.deq.idaho.gov/water-quality/surface-water/>
- [7] Idaho Department of Environmental Quality (2022). Storm Water Permits. <https://www.deq.idaho.gov/permits/water-quality-permits-certifications/storm-water-permits/>
- [8] Idaho Department of Water Resources (2024). Idaho Department of Water Resources: About IDWR. <https://idwr.idaho.gov/about-IDWR/>
- [9] Idaho Department of Water Resources (2023). Floodplain Management. <https://idwr.idaho.gov/floods/>
- [10] Idaho Department of Water Resources (2023). 2023 Annual Report. <https://idwr.idaho.gov/wp-content/uploads/sites/2/general/2023-Directors-Annual-Report-FINAL.pdf>
- [11] Idaho Department of Water Resources (2023). IDWR FY23 Performance Report. <https://idwr.idaho.gov/wp-content/uploads/sites/2/general/IDWR-FY23-Performance-Report-for-Website.pdf>
- [12] Idaho Department of Water Resources (2023). Water Rights Overview. <https://idwr.idaho.gov/water-rights/>
- [13] Idaho Department of Water Resources (2022). Dam Safety Program. <https://idwr.idaho.gov/dams/>
- [14] Idaho Department of Water Resources Water Allocations Bureau (2021). Safety of Dams Rules. <https://adminrules.idaho.gov/rules/current/37/370306.pdf>
- [15] Idaho Legislature (2024). Idaho Statutes Title 42 Irrigation and Drainage – Water Rights and Reclamation. <https://legislature.idaho.gov/statutesrules/idstat/Title42/>
- [16] Idaho Legislature (2024). Idaho Statutes Title 46 Chapter 10 – State Disaster Preparedness Act. <https://legislature.idaho.gov/statutesrules/idstat/title46/t46ch10/sect46-1022/>
- [17] Idaho Legislature (2024). Idaho Statutes Title 67 Chapter 52 State Government and State Affairs – Idaho Administrative Procedure Act. <https://legislature.idaho.gov/statutesrules/idstat/Title67/T67CH52/>
- [18] Idaho Office of Administrative Rules Coordinator (n.d.). IDAPA 37 Current Administrative Rules. <https://adminrules.idaho.gov/rules/current/37/>
- [19] State of Idaho Executive Department (2015). Provisions for State Cooperation with the Federal Insurance Administration under the National Flood Insurance Act of 1968, as amended. [https://adminrules.idaho.gov/rules/2015%20Archive/EXOs/2015-06\\_ExOr\\_15-8.pdf](https://adminrules.idaho.gov/rules/2015%20Archive/EXOs/2015-06_ExOr_15-8.pdf)
- [20] Weaver, M. (2019). Floodplain Management Memorandum No. 1 [Memorandum]. Idaho Department of Water Resources. <https://idwr.idaho.gov/wp-content/uploads/sites/2/floodplain-mgmt/20190528-NFIP-Irrigation-and-Drainage-Permit-Guidance-Memo.pdf>

Input was provided by IDWR Director, Mathew Weaver, and IDEQ Surface and Wastewater Division Administrator, Mary Anne Nelson.

# Illinois Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Illinois Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>Illinois Environmental Protection Agency (IEPA), Bureau of Water</b> – Water quality regulation, protection of streams, lakes, and groundwater, federal and state water law enforcement.</li> <li>• <b>Illinois Department of Natural Resources (IDNR), Office of Water Resources (OWR), Department of Water Resource Management (DWRM)</b><sup>1</sup> – Flood prevention, State parks operation, habitat restoration, floodplain management, construction permit issuance, National Flood Insurance Program (NFIP) coordination, Lake Michigan Water Use allocation and monitoring</li> <li>• <b>Illinois State Water Survey</b>- Technical partner to DNR, FEMA flood mapping analysis, climatology, water withdrawal registration records, water use measurement</li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>IDNR, DWRM</b> – Provides coordination of state assistance to regional stormwater management programs; enacts floodplain standards in six northeastern counties</li> <li>• <b>Drainage Districts</b> – Special-purpose local governmental entities that manage and maintain drainage systems within their designated boundaries</li> <li>• <b>Levee Districts</b><sup>2</sup> – Special-purpose governmental entities responsible for the construction, maintenance, and operation of levees, dikes, and other flood protection structures.</li> <li>• <b>Soil and Water Conservation Districts</b> – Political Subdivisions of the state government that advise the public on a wide range of interests including conserving and protecting soil, water, and other natural resources.</li> </ul>

<sup>1</sup> OWR encompasses Regulatory Programs and DWRM.

<sup>2</sup> Drainage and Levee Districts sometimes coordinate efforts to maintain both flood protection and agricultural productivity in flood-prone areas. In fact, some areas have multi-purpose districts where a single district oversees both levees and drainage systems to streamline their management.

<b>Overview of Key Practices</b>	
<p><i>Key authorities and standards regarding Illinois' water resources management are contained in the Illinois Compiled Statutes (ILCS)<sup>[1]</sup>, Illinois Administrative Code (ILL ADM. CODE)<sup>[2]</sup> and the Code of Federal Regulations (CFR).<sup>[3]</sup></i></p>	
<p>Flood and Floodplain Permitting and Management</p>	<p>The Illinois Department of Natural Resources, Office of Water Resources (IDNR/OWR) administers the state's floodplain management regulations and coordinates with federal agencies like the US Army Corps of Engineers. IDNR/OWR performs direct State regulation of certain developments and sets standards for local programs.<sup>[4]</sup> Proposed development projects must also meet the requirements of the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA) and local ordinances. The enforcement of floodplain regulations is typically the responsibility of local building departments, zoning boards, or floodplain administrators. They review development proposals, issue permits, and conducts inspections using the following four ordinances: zoning ordinances, building codes, subdivision regulations, and "stand alone" ordinances. Finally, some communities in northeastern Illinois have been delegated authority to issue floodway permits on behalf of IDNR.<sup>[5]</sup> Additionally, communities in the 6 county Chicago area follow a different set of administrative rules that, due to urban density, prohibit many uses of floodway that might be allowed elsewhere.</p>
<p>Levee Permitting and Management</p>	<p>Illinois has a state levee program that operates under the oversight of IDNR/OWR that supports the construction, maintenance, and regulations of levees that could impact flood plains.<sup>[5]</sup> IDNR/OWR has initiated the creation of a levee safety program, which, as of November 2024, is not yet staffed. Additionally, local governments, drainage districts, and other state agencies, including the Illinois Emergency Management Agency (IEMA), may be involved with implementing regulations and overseeing levee systems in the state.</p>
<p>Stormwater Permitting</p>	<p>Stormwater quality is regulated at the federal level through section 402 of the Clean Water Act, which created the National Pollutant Discharge Elimination System (NPDES) and is overseen by the U.S. EPA. Although a federal program, the NPDES is delegated to the states, with Illinois receiving a delegation on October 23<sup>rd</sup>, 1977. It requires a permit for the discharge of stormwater and establishes discharge and monitoring/reporting requirements. The act calls for implementation in two phases; Phase 1 addresses the most significant sources of pollution whereas Phase II addresses other sources to protect water quality. Stormwater quantity in Illinois is under the legal authority of local governments, which are encouraged to develop and implement stormwater ordinances.<sup>[6]. [13]</sup></p>



<p>Drainage Permitting and Management</p>	<p>Permitting and approval processes are largely managed at the drainage district level, with each district having specific rules and procedures. However, there is still coordination with state and federal agencies, including IDNR, IEPA, and US Army Corps of Engineers, especially in cases where projects impact larger watercourses or wetlands. Drainage of more than 10 square miles in rural areas or 1 square mile in urban areas is regulated by IDNR. When drainage systems span multiple districts, interdistrict coordination can take place through the formation of joint drainage districts or regional water management authorities that handle drainage and water resource management on a larger, regional scale. Additionally, the County Board or a designated county entity, such as the County Stormwater Management Planning Committee, is required to prepare a countywide plan for managing natural and man-made drainageways.</p>
<p>Dam Permitting and Management</p>	<p>The OWR Division of Water Resource Management (DWRM) issues permits for the construction, operation, modification, and maintenance of new and existing dams. As specified in Ill. Admin. Code tit. 17, § 3702.30, Dams are classified into one of three classifications based on hazard potential. Hazard potential is the degree (high, moderate, low) to threat to life and property in the event of a dam failure in excess of that which would naturally occur downstream of the dam, with the two higher classifications requiring a permit, and the lower classification only requiring one if a certain size requirement is met. Existing Class III dams the have a drainage area of 6400 acres or more (rural) or 640 acres or more (urban), are more than 25 ft in height with an impounding capacity of greater than 15 acre-feet and have an impounding capacity of 50 acre-feet or more (dam height greater than 6 ft) may be contacted by the OWR. Permits are also required for removing and transferring ownership of dams. Anyone constructing a new dam should submit a preliminary design report to DWRM for a provisional hazard classification.</p>
<p>Surface Water Quality Monitoring and Management</p>	<p>IEPA's Bureau of Water is responsible for monitoring the quality of Illinois' surface water resources, including its inland lakes, streams, rivers, and Lake Michigan. It receives federal funds authorized through the Federal Clean Water Act (CWA) from the USEPA to conduct annual monitoring programs. IEPA also tracks environmental conditions to evaluate the efficacy of water-pollution-control programs. Resource quality conditions are assessed in terms of the degree to which water attains "beneficial uses," or "designated uses." Pollution control programs are designed to protect designated individual uses. IEPA must provide a list of those waters where their designated uses are deemed "impaired."<sup>[7]</sup>The Illinois Pollution Control Board is the regulatory body responsible for establishing water quality standards.</p>



<p>Water Supply and Diversion Rights</p>	<p>Under Illinois’s riparian rights system, landowners generally have ownership of waterways on their property. Reasonable use doctrine generally applies to both surface and groundwater, which are sometimes regulated by the same legislation, like the Water Use Act of 1983 (525 ILCS 45).<sup>[1][15]</sup> IDNR is the primary state agency responsible for regulating public surface water. It may require permits for certain types of water diversions from public water sources, particularly if they are for significant uses such public water supplies, industrial uses, or large-scale agricultural irrigation. Additionally, the IDNR is responsible for allocating Illinois’ 3,200 cubic feet per second (cfs) share of water from Lake Michigan, a crucial water supply for the northeastern counties (Cook, Lake, DuPage, Kane, and Will Counties). This includes domestic water supply, direct diversion, and diversions of tributaries and runoff. The U.S. Army Corps of Engineers conducts Illinois’ Lake Michigan annual diversion accounting.<sup>[8]</sup></p>
--	--

**ILLINOIS STATE AGENCY(IES) OVERVIEW**

Illinois Environmental Protection Agency (IEPA)

The IEPA is responsible for regulating water quality in Illinois, overseeing protection of streams, lakes, and groundwater from pollution, and enforcing federal and state water laws. The Agency’s Bureau of Water– Surface Water Section is responsible for monitoring Illinois’ surface water resource quality, encompassing its inland lakes, streams and rivers, and Lake Michigan. IEPA’s functions relevant to surface water management practices are performed by its Bureau of Water, as summarized below:

- **Bureau of Water:** Works to ensure that Illinois’ rivers, streams, and lakes will support all uses for which they are designated including protection of aquatic life, recreation, drinking water supply, and fish consumption. The Bureau also monitors the quality of the state’s surface and groundwater resource; runs a municipal, stormwater, and industrial effluent permitting program; administers a permit program for community water supplies regularly inspects sources of water pollution to and drinking water treatment facilities; and ensures compliance with regulatory standards. To aid, the Bureau provides loan and grant programs that support upgrading existing and build new wastewater, stormwater treatment, and public water supply infrastructure; reduces nonpoint source pollution; conducts green infrastructure projects; and protects and restores Illinois’ inland lakes and streams.

Illinois Department of Natural Resources (IDNR)

The IDNR manages the state’s natural and cultural resources, including water resources and oversees flood prevention, operates state parks, and works on habitat restoration projects. Within IDNR, Office of Water Resources (OWR) oversees water resources planning, navigation, floodplain management, the National Flood Insurance Program, water supply, drought, and interstate organizations on water resources. Interagency

duties include the state water plan, drought response, flood emergency situation reports, and review of Illinois water use law. The OWR consists of the following four Divisions:

- **Division of Capital Programs:** Administration of Urban Flooding Mitigation program, water supply planning including water withdrawals from Federal reservoirs, stream gaging, operation and maintenance of state facilities, and Technical Liaison to the Illinois Emergency Management Agency (IEMA)
- **The Division of Water Resource Management (DWRM):** Regulation of construction in the floodways of rivers, lakes, and streams; construction and operation of dams; construction in public bodies of water; and diversion of water from Lake Michigan. DWRM inspects dams, gives permits, and regulates floodplains. DWRM has four program sections:
  - Northeastern II Regulatory Programs: Floodplain management activities in the metropolitan Chicago counties of Cook, DuPage, Kane, Lake, McHenry, and Will
  - Downstate Regulatory Programs: Floodplain management in the remaining counties
  - Statewide Programs: Non-permit programs applicable in all areas of the state and coordination of regulatory floodplain mapping and approval of stream discharges used for regulatory programs
  - Lake Michigan Programs: management and representation of Illinois' interests in Lake Michigan (including permit issuance) and administration of Lake Michigan allocation
- **The Division of Coastal Management:** Non-regulatory division (created in 2012 under federal Coastal Zone Management Act of 1972) dedicated to protecting and enhancing the environmental, economic, and social value of Illinois' Great Lakes Coastal Region.
- **The Division of Program Development:** Legislation review and development; funding planning for the Office of Water Resources; and collaboration with Federal, State, and local governments in programming and implementation of office programs

### Illinois Water Survey (ISWS)

The ISWS is a division in the Prairie Research Institute at the University of Illinois. Data, services, and expertise provided by the ISWS serve as a technical basis for people and policymakers in Illinois. The ISWS is a technical partner to DNR, provides FEMA flood mapping analysis, works on climatology, keeps records of water withdrawal registration, and measure water use.

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### DWRM Local/Regional Management<sup>[4]</sup>

Although DWRM is a state division falling under IDNR/OWR, it also manages numerous local and regional surface water practices through some of its program sections:

- The Northeastern II. Regulatory Programs manage floodplain activities in the six northeastern counties (Cook, DuPage, Kane, Lake, McHenry, and Will) and are run out of the Bartlett office. The Illinois General Assembly enacted laws that set different floodplain standards following severe floods in 1986 and 1987. Generally, the requirements for northeastern Illinois are more restrictive than the rest of the State. In addition, in northeastern Illinois, IDNR/OWR may delegate some authority to approve construction projects under the state's floodway construction rules to select counties or communities upon approval of sufficient staff and expertise. This is especially significant for developers since it can speed up the permitting process.
- The Downstate Regulatory Programs manage floodplain activities and issue permits in the remaining 96 counties (not part of the northeastern counties) and are run out of the Springfield office.
- The Statewide Program manages the coordination of state assistance to regional stormwater management programs. Of the 102 counties in Illinois, 16 have been granted authority from the state to manage stormwater to address urban flooding.<sup>[4]</sup>

### Drainage Districts

In Illinois, drainage districts are established under state law and have specific roles and responsibilities to ensure proper drainage, prevent flooding, and manage water flow in agricultural and rural areas. Some of the key roles and responsibilities of drainage districts include the following:

- Maintenance and Operation of Drainage Infrastructure: Includes upkeep drainage ditches, canals, and other drainage systems. This includes regular cleaning, dredging, and repair work. Additionally, many drainage districts manage subsurface drainage tiles, which are used to drain excess water from farmland.
- Flood Control and Water Management: Prevent flooding by managing water levels and flow, particularly during heavy rainfall or snowmelt. This also includes water diversion measures to protect farmland and other properties from excessive water accumulation.
- Regulation and Permitting: Regulate activities that affect the drainage system, such as construction projects, land development, and drainage infrastructure alterations.
- Assessment and Collection of Taxes: Levy assessments on property owners within their respective districts to fund their operations. Assessments are typically based on the benefit received by the property from the drainage improvements.
- Legal Authority and Enforcement: Have legal authority to enforce regulations within their jurisdiction, including taking legal action against entities that violate district rules. Also involved in resolving disputes between property owners

regarding drainage issues, such as water rights and impact of drainage improvements.

### Levee Districts

Levee districts in Illinois have several key responsibilities focused on flood control and land protection.

- **Construction and Maintenance of Levees:** Includes building and maintaining levees, dikes, and other structures designed to prevent flooding from rivers, streams, and other bodies of water.
- **Flood Control Infrastructure:** manage floodgates, pumping stations, drainage channels, and other infrastructure necessary to control water levels and prevent floodwaters from inundating protected areas.
- **Inspection and Repair:** Conduct regular inspections of levees and related infrastructure to ensure their integrity and effectiveness. If damage or deterioration is found, the district is responsible for repairs and reinforcement.
- **Funding and Assessments:** Secure funding for activities primarily through assessments levied on property owners within the district. They may also seek state or federal grants for large projects or disaster recovery.
- **Land and Property Management:** May need to acquire land or property rights to build or maintain levees and other infrastructure.

### Soil and Water Conservation Districts (SWCD)

SWCDs are political subdivisions of the state government authorized under the SWCD Act that advise the public on a wide range of interests including conserving and protecting soil, water, and other natural resources. SWCDs work with federal and state employees to install conservation practices funded by local, state, and federal funds, and landowner contributions and assist citizens with technical services.<sup>[16]</sup>

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Illinois are generally contained within the Illinois Compiled Statutes (ILCS), Titles 35 (Environmental Protection) and 17 (Conservation) of the Illinois Administrative Code (LL ADM CODE), and the Code of Federal Regulations (CFR). Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally performed by the DWRM. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Illinois**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	17 ILL ADM CODE Parts 3700, 3704 and 3708 <sup>[2]</sup>	12/31/2014	<ul style="list-style-type: none"> <li>• All construction projects that may impact the flood carrying capacity of rivers, lakes, and streams are regulated by the DWRM</li> <li>• Affects all streams and lakes except for identified floodways in northeastern Illinois, which require a permit for activities draining one square mile or greater (urban areas) or ten square miles or greater (rural areas)</li> <li>• Permit application submittal to DWRM is not needed for minor construction activities that do not significantly impact flood flow capacity such as minor grading, utility crossings, and small-scale construction projects</li> </ul>
	55 ILCS 5/3-5029 55 ILCS 5/51062 65 ILCS 5/11 <sup>[1]</sup>	1/1/2024 1/1/2019 1/1/2019	<ul style="list-style-type: none"> <li>• Provides authority for five northeastern Illinois counties to impose additional requirements on their communities</li> <li>• Sets minimum standards for floodplain management</li> <li>• Requires development of countywide plans that may incorporate watershed plans and evaluate and address urban flooding problems</li> <li>• Home rule communities can add their home rule authority as granted by the Illinois Constitution<sup>3</sup></li> </ul>
	615 ILCS 5/40 new <sup>[1]</sup>	8/9/2024	<ul style="list-style-type: none"> <li>• Requires the DNR to ensure that state agencies comply with the NFIP requirements</li> <li>• Requires all state agencies to obtain a special flood hazard area development permit before undertaking development activity on state owned property that is located in a special flood hazard area.</li> </ul>
Levees	H.R.1495 – WRDA of 2007 <sup>[9]</sup>	2007-2008 1/15/2014	<ul style="list-style-type: none"> <li>• Establishes a Committee on Levee Safety, tasked with developing recommendations for a national levee safety program that reports its finding to specified congressional committees (Title IX)</li> <li>• Authorizes flood control, navigation, and environmental projects and studies by the Army Corps of Engineers</li> <li>• All applications and written inquiries received by the DWRM are reviewed free of charge to determine whether the proposed work requires authorization</li> </ul>

<sup>3</sup> A home rule community is authorized to do anything that is not prohibited by statute

Practice Area	Policy / Regulation	Date	Key Principles
			<ul style="list-style-type: none"> <li>• DNR approval for construction/alteration requires levees to prove that in the event of a flood the height of the top of the levee, other parties would not be harmed</li> </ul>
	70 ILCS 605/5-1 to 605/5-30, 605/6-1 to 605/6-23 <sup>[1]</sup>	First enacted 1955.	<ul style="list-style-type: none"> <li>• Drainage districts can fund levee projects, typically through special assessments on property owners within the district who benefit from the levee system</li> <li>• Creation of levee districts, specialized districts focused on constructing and maintaining levees for flood protection; have the authority to levy special assessments on properties and issue bonds to finance levee projects</li> </ul>
Stormwater Management	55 ILCS 5/51062 <sup>[1]</sup>	1/1/2019	<ul style="list-style-type: none"> <li>• Management and mitigation of the effects of urbanization on stormwater drainage in metropolitan counties served by the Chicago Metropolitan Agency</li> <li>• Does not apply to any county with a population in excess of 1,500,000 except as provided in subsection (c) of the statute</li> <li>• Directs County Board to prepare a countywide plan for the management of stormwater runoff</li> <li>• County board may prescribe by ordinance rules governing the location, width, course, and release rate of all stormwater runoff channels, streams, and basins</li> </ul>
	Wisconsin v. Illinois, 449 U.S. 48 <sup>[10]</sup>	1980	<ul style="list-style-type: none"> <li>• Stormwater runoff numbers calculated by the U.S. Army Corps of Engineers as part of Lake Michigan Water Allocation</li> </ul>
	40 CFR Parts 9, 122, 123, and 124 <sup>[3]</sup>	12/8/1999 2021 <sup>4</sup>	<ul style="list-style-type: none"> <li>• Municipalities in urban areas required to obtain permit coverage for discharges from their municipal separate storm sewer systems (MS4s)</li> <li>• Municipalities located outside of urbanized areas may need to comply within 180 days' notice</li> <li>• Revises definition of industrial storm water to expand the "no-exposure" exemption to all industrial categories except construction</li> </ul>
	17 ILL ADM CODE Part 3700 <sup>[2]</sup>	12/31/2014	<ul style="list-style-type: none"> <li>• All construction activities in the floodways of streams in urban areas where stream drainage area is ten square miles or more must be permitted by the DWRM prior to construction</li> </ul>

<sup>4</sup> The MS4 Permit is in the process of being reissued. Timeframe for renewal most likely March 2024. <sup>[13]</sup>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	55 ILCS 5/51062 <sup>[1]</sup>	1/1/2019	<ul style="list-style-type: none"> <li>Requires preparation of countywide plan for the management of natural and man-made drainageways</li> </ul>
	70 ILCS 605 <sup>[1]</sup>	First enacted 1955.	<ul style="list-style-type: none"> <li>Establishes drainage districts through petition process in circuit court by landowners</li> <li>Provides mechanisms for resolving disputes between landowners over drainage issues</li> </ul>
Dam Management	17 ILL ADM CODE Part 3702 <sup>[2]</sup>	Enacted 1980. Last Amended 2014	<ul style="list-style-type: none"> <li>Dams categorized into classes (class I, class II, or class III) according to degree of threat to life and property in the event of dam failure and size classifications (small, intermediate, or large) based on dam height and impounding capacity</li> <li>Class I and II dams require OWR permit prior to start of construction; Class III require OWR permit only if the dam exceeds certain height and storage capacity thresholds, located near populated areas, critical infrastructure, or environmentally sensitive areas, or if the dam's structural integrity is in question</li> </ul>
	615 ILCS 5 <sup>[1]</sup>	2/7/1996	<ul style="list-style-type: none"> <li>Authorizes the IDNR to issue permits for dam construction, operation, and management</li> </ul>
Surface Water Quality	33 U.S.C. §1251 et seq. <sup>[11]</sup>	1972	<ul style="list-style-type: none"> <li>Establishes basic structure for regulating discharges of pollutants into waters of the United States and regulating quality standards for surface waters</li> <li>IEPA must report to the USEPA the quality of Illinois surface water (lakes, streams, Lake Michigan, wetlands)</li> <li>Section 401 of the CWA states that certification must be granted or waived to authorize discharge of dredged or fill material</li> </ul>
	35 ILL ADM CODE, Subtitle C: Water pollution <sup>[2]</sup>	1/1/1976	<ul style="list-style-type: none"> <li>Sets criteria for ammonia, dissolved oxygen, and pH levels</li> <li>Sets standards for thermal discharges to protect aquatic life from harmful temperature changes</li> <li>Provides specific water quality standards specific to the Lake Michigan basin</li> </ul>
	415 ILCS 5 <sup>[1]</sup>	2/24/2017	<ul style="list-style-type: none"> <li>Provides framework for variances from specific water quality standards</li> </ul>



Practice Area	Policy / Regulation	Date	Key Principles
Water Supply and Diversion Rights	17 ILL. ADM. CODE Part 3730 <sup>[2]</sup>	11/2014	<ul style="list-style-type: none"> <li>Establishes Lake Michigan<sup>5</sup> water allocation rules that are implemented by IDNR/OWR's Lake Michigan Management Section</li> <li>Allocation of water from Lake Michigan made through a hearing and order procedure</li> <li>Entities receiving an allocation of Lake Michigan water are given an allocation permit</li> </ul>
	70 ILCS 605 <sup>[1]</sup>	Enacted 1955	<ul style="list-style-type: none"> <li>Provides mechanisms for resolving disputes between landowners over drainage and water diversion issues</li> </ul>
	525 ILCS 45 <sup>[1]</sup>	1983	<ul style="list-style-type: none"> <li>Establishes system for registration and reporting of significant water users (those withdrawing over 100,000 gal/day)</li> <li>Requires state agencies to develop water management plans</li> <li>Regulates water withdrawals during droughts or other period of low water availability to protect public water supplies and other critical uses</li> </ul>
	615 ILCS 5 <sup>[1]</sup>	2/7/1996	<ul style="list-style-type: none"> <li>Regulates diversion or withdrawal of water from public water to ensure it does not harm the environment or downstream users</li> </ul>
	615 ILCS 45, 50 <sup>[1]</sup>	2/7/1996	<ul style="list-style-type: none"> <li>Authorizes Lake Michigan Water Allocation Program</li> </ul>
	615 ILCS 3704 <sup>[1]</sup>	12/31/2014	<ul style="list-style-type: none"> <li>Defines public waters and outlines regulations regarding all open public streams that are considered navigable by watercraft for commercial use.</li> </ul>
	Wisconsin v. Illinois, 449 U.S. 48 <sup>[10]</sup>	1980	<ul style="list-style-type: none"> <li>Illinois limited to 3,200 cfs of Lake Michigan water based on a 40-year running average</li> <li>Sets the terms for Illinois' Lake Michigan annual diversion accounting performed by the U.S. Army Corps of Engineers</li> </ul>

<sup>5</sup> Lake Michigan is a critical water source for the northeastern portion of Illinois



**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	DWRM	Development permits are required for projects located within a Special Flood Hazard Area (SFHA). A joint application can be filed to simplify the approval process of project authorizations from the U.S. Army Corps of Engineers, IDNR/OWR, and the IEPA. <sup>[12]</sup>	A community intending to enact or revise its floodplain regulations must contact IDNR/OWR to confirm that the proposed revisions comply with State and NFIP requirements. <sup>[4]</sup> To challenge issuance/denial of a permit, individuals can sue for administrative review.
Levees	IDNR	Applicants must submit a permit to IDNR/OWR, which includes a project description, engineering plans, hydrological and hydraulics analyses, an environmental impact assessment, and relevant maps, surveys, and property rights documentation. If approved, the permit will include specific conditions including monitoring requirements, post-construction inspections, and maintenance obligations. For levees classified as high hazard, the permittee may be required to develop and maintain an Emergency Action Plan (EAP) to address potential levee failures and protect downstream communities.	If an applicant is dissatisfied with a permitting condition or is denied a permit, the first step is to submit a formal written appeal to the IDNR. IDNR will then review all relevant documentation and may hold a meeting or hearing in some cases to allow the appellant to present their case. If the appellant is not satisfied with the outcome of the IDNR review, it can further appeal to the Director of the IDNR or with an Illinois state court.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater	IEPA	As required by the NPDES, first submit Notice of Intent (NOI) to the IEPA. For construction activities that disturb one acre more of land, a construction general permit is required. Both construction and industrial permits require a Stormwater Pollution Prevention Plan (SWPPP). For municipalities and other public entities operating separate storm water sewer systems in urbanized areas, a Municipal Separate Storm Sewer System (MS4) Permit is required. <sup>[14]</sup> Finally, for specific facilities that do not fall under the general permits, an individual permit is required.	Any person aggrieved by the decision of an enforcement officer may request review by the municipality's board of elected officials or the appropriate body. Additionally, if there is a dispute with the municipality Chief Engineer, a written notice can be filed with the Chief Engineer within ten days of the determination. <sup>[13]</sup>
Drainage	Drainage Districts	An entity wishing to conduct activities that may impact drainage, including installing new tiles and modifying existing drainage structures, must apply for a permit from their local drainage district. Specific permitting requirements are set by the drainage district.	If a significant drainage improvement is needed, such as constructing a new drain or modifying a watercourse, a petition must be filed with the district. This involved a formal approval process, including public notice and hearings.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	DWRM	The Division of Water Resource Management (DWRM) issues permits under its Dam Safety Program Section. This may involve an initial site review or assessment. Additionally, detailed engineering plans and specifications, including design drawings, calculations, and construction methods, must be prepared. This is followed by hydrologic and hydraulic studies, an environmental impact assessment (EIA), and an emergency action plan (EAP).	If an inspection finds that a dam is in an unsafe condition, OWR will notify the County's appropriate officials and State's Attorney, as well as the Illinois Emergency Management Agency (IEMA). Additionally, an existing Class I or II dam owner within 90 days of notice must provide written intention of the date the owner will submit a revised permit application implementing the changes, the time frame for initiating and completing the appropriate remedial measures, and the methods and designs used to the remedial measures. To challenge issuance/denial of a permit, individuals can sue for administrative review.
Water Rights	DWRM	Significant users (entities withdrawing over 1,000 gpm) must register their withdrawal and may soon be required to obtain a permit from the IDNR. Lake Michigan water allocations are reviewed by the Lake Michigan Management Section in the Chicago Office.	A party wishing to appeal the decision made regarding water rights must file an appeal in the circuit court, typically within 30 days of the decision being issued. <sup>[1]</sup> A petition for modification can be filed to the IDNR to modify an allocation permit. <sup>[2]</sup>

## CITATIONS

- [1] Illinois General Assembly – Illinois compiled statutes. (n.d). <https://www.ilga.gov/legislation/ilcs/ilcs.asp>
- [2] Legal Information Institute. (n.d.-b). *Illinois Administrative Code*. Legal Information Institute <https://www.law.cornell.edu/regulations/illinois>
- [3] ECFR.io.(n.d). *E-CFR: Code of federal regulations*. <https://www.ecfr.gov/>
- [4] *Part 3: Regulatory Standards*. [www.illinoisfloods.org](http://www.illinoisfloods.org). (2006, March). <https://www.illinoisfloods.org/content/documents/desk-reference/8%20Regulatory%20Basis.pdf>
- [5] *Office of Water Resources Programs*. Illinois Department of Natural Resources. (n.d.-c). <https://dnr.illinois.gov/waterresources/programs.html>
- [6] *Stormwater Requirements*. Illinois Department of Natural Resources. (n.d.). <https://epa.illinois.gov/topics/forms/water-permits/storm-water.html>
- [7] *Resource assessments*. Illinois Environmental Protection Agency (n.d.). <https://epa.illinois.gov/topics/water-quality/watershed-management/resource-assessments.html>
- [8] *Lake Michigan Water Allocation*. Illinois Department of Natural Resources (n.d.-a). <https://dnr.illinois.gov/waterresources/lakemichiganwaterallocation.html>
- [9] H.R.1495 – 110<sup>th</sup> Congress (2007-2008): Water Resources Development Act of 2007 | Congress.gov | Library of Congress. (n.d.-b). <https://www.congress.gov/bill/110th-congress/house-bill/1495>
- [10] *Wisconsin v. Illinois*, 449 U.S. 48 (1980). Justia Law. (n.d.). <https://supreme.justia.com/cases/federal/us/449/48/>
- [11] Environmental Protection Agency. (n.d.). EPA. <https://www.epa.gov/laws-regulations/summary-clean-water-act>
- [12] Section 10: Permit Requirements Contents. (n.d.-c) <https://www.illinoisfloods.org/content/documents/desk-reference/10%20permit%20requirements.pdf>
- [13] Model Stormwater Management Ordinance. (n.d.-c). <https://dnr.illinois.gov/content/dam/soi/en/web/dnr/waterresources/documents/il-model-stormwater-ordinance.pdf>
- [14] *MS4*. Illinois Environmental Protection Agency (n.d.-a). <https://epa.illinois.gov/topics/forms/water-permits/storm-water/ms4.html>
- [15] Janasie, C. *An overview of Water Law in Illinois*. (2020). Sea Grant Law Center. NSGLC-20-04-02. <https://nsglc.olemiss.edu/Advisory/pdfs/il-water-law.pdf>
- [16] *SWCD Overview*. Association of Illinois Soil and Water Conservation Districts. (n.d.). <https://aiswcd.org/about-aiswcd/swcds/>
- [17] *About Us*. Illinois State Water Survey. (n.d.). <https://www.isws.illinois.edu/about>

# Indiana Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Indiana Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

<b>Agencies Overview</b>	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>Indiana Department of Environmental Management (IDEM)</b> – Surface Water Quality Monitoring, Spill Investigation, NPDES, direct discharge, Permitting and Compliance Stormwater Permitting and Management, Dredge and Fill Permitting and Compliance; Development of Water Quality Standards, Nonpoint Source Management and Planning, SDWA programs</li> <li>• <b>Indiana Department of Natural Resources (DNR)</b> – Regulation of Dam Safety, Permitting of Construction in the Floodway, Regulation of Groundwater Quantity, Dam Permitting, Water Rights, Low Head Dams, Public Freshwater Lake Preservation matters, Floodplain Management activities, National Flood Insurance coordination, Water Well drilling matters, and Enforcement Actions by the Division</li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>Soil and Water Conservation Districts (SWCDs)</b> – Water management at the county level.               <ul style="list-style-type: none"> <li>○ Count: 92</li> </ul> </li> <li>• <b>Regional Planning Commissions (RPCs)</b> – RPCs responsible for regional planning and coordination.</li> </ul>
<b>Overview of Key Practices</b>	
<p><i>Key authorities regarding Indiana water resources management are contained in Indiana Code (IC) Title 14 – Natural and Cultural et seq.<sup>[1]</sup>, and the Indiana Administrative Code (IAC) Title 327 et seq.<sup>[2]</sup></i></p>	
Flood and Floodplain Permitting and Management	Local communities in Indiana, including jurisdictions with zoning authority, are responsible for developing and enforcing floodplain management ordinances and managing permits for floodplain development. The Indiana Department of Natural

	Resources (DNR) provides state oversight, offering guidance, technical assistance, and enforcement of floodplain regulations. Additionally, the Indiana Department of Environmental Management (IDEM) integrates floodplain management with water quality and stormwater management practices. The regulatory framework for floodplain management in Indiana aligns with the National Flood Insurance Program (NFIP) standards.
Levee Permitting and Management	DNR is responsible for overseeing levee permitting and inspections. In addition to the state regulations governed by DNR, counties or Conservancy Districts may manage flood control works (including levees) within their boundaries, and federally recognized levees must also comply with federal programs and guidelines.
Stormwater Permitting	Key permits include the Construction Stormwater Permit for sites disturbing over one acre, the Municipal Separate Storm Sewer System (MS4) Permit for municipalities with storm sewer systems, and the Industrial Stormwater Permit for industrial facilities. Applicants must submit detailed plans, such as a Stormwater Pollution Prevention Plan (SWPPP) or Stormwater Management Program Plan (SWMPP), for review. Compliance involves regular monitoring and reporting to IDEM. Local municipalities may have additional requirements.
Drainage Permitting and Management	Local drainage boards are responsible for regulating drainage, which includes overseeing the construction, maintenance, and repair of regulated drains. When cross-district drainage involves multiple counties, landowners or drainage districts can form a joint board to oversee the operation, maintenance, and improvement of shared drains.
Dam Permitting and Management	DNR classifies dams based on potential hazard level (high, significant, or low) and sets forth requirements for the construction, alteration, and maintenance of dams. It also issues permits, conducts inspections, requires owners of high hazard dams to obtain inspections from private sector professional engineers, and requires emergency actions plans (EAPs) for high-hazard dams. It further produces a roster of Low Head Dams in the state and requires owners to obtain liability insurance and install warning signage.
Surface Water Quality Monitoring and Management	The Office of Water Quality branch of IDEM conducts surface water monitoring. This involves collecting water and biological samples and analyzing them to assess the status of water quality across the state. This work is done in accordance with the Indiana Surface Water Quality Monitoring Strategy, which guides and prioritizes the type of monitoring IDEM must do to meet Clean Water Act and requirements. <sup>[3]</sup>

Water Supply and Diversion Rights	DNR oversees water use and diversions. Indiana follows the riparian doctrine, meaning landowners whose property is adjacent to a water body have the right to make reasonable use of the water. Additionally, Indiana is a part of the Great Lakes-St. Lawrence River Basin Water Resources Compact, an agreement between eight Great Lakes states and two Canadian provinces to regulate diversion of water from the Great Lakes basin. In 1983, Indiana began a statewide registration and water use reporting program. <sup>[4]</sup>
-----------------------------------	--

## INDIANA STATE AGENCY(IES) OVERVIEW

### Indiana Department of Environmental Management (IDEM)

The IDEM issues permits for air, water, and waste management, oversees compliance, and addresses environmental incidents. Established in 1985, IDEM reorganized prior state environmental programs and began operations on July 1, 1986. IDEM is comprised of five offices: Office of Legal Counsel, Office of Air Quality, Office of Land Quality, Office of Water Quality, and the Office of Program Support. The most relevant to surface water management practices is the Office of Water Quality (OWQ). OWQ develops rules, guidelines, and procedures; assesses surface water and groundwater quality; regulates and monitors drinking water supplies and wastewater facilities; and protects watersheds and wetlands. OWQ's primary functions are described below. <sup>[5]</sup>

- **Drinking Water:** The Drinking Water Branch carries out requirements of the federal Safe Drinking Water Act (SDWA), which is designed to ensure that Public Water Supplies (PWS) deliver water that is adequate in quantity and safe to drink. The Drinking Water Branch consists of the following sections: Compliance, Inspection, Groundwater, Capacity Development & Operator Certification, and Permits.
- **Wastewater Compliance:** Inspectors monitor National Pollutant Discharge Elimination System (NPDES) permits to assure compliance with permit conditions as well as assist operators with proper maintenance and operation techniques, as well as identify and document permit and water quality violations.
- **Wastewater Permitting:** The Water Permitting Branch issues NPDES, including stormwater, and construction permits to sources that discharge wastewater to streams, lakes, and other water bodies. Additionally, the Permits Administration Section administers the non-storm water NPDES general permit program.
- **Surface Water Monitoring:** The OWQ conducts surface water monitoring in accordance with the Indiana Surface Water Quality Monitoring Strategy, which guides and prioritizes the type of monitoring IDEM must do to meet the Clean Water Act (CWA) requirements. Data is analyzed and used for statewide and watershed specific surface water-related assessments, water quality standards development, NPDES permitting and compliance activities, and public health advisories for fish consumption and blue-green algae.



- **Dredge and Fill Permitting:** The OWQ issues 401 water quality certifications for projects that require a 404 dredge and fill permit from the U.S. Army Corps of Engineers. Additionally, OWQ reviews projects that propose dredge and fill to State regulated wetlands and issues permits when impacts warrant it.

Indiana Department of Natural Resources (IDNR)

The IDNR is a state agency that plays a key role in managing the state’s natural and cultural resources. It was established to protect the state’s environment, wildlife, and outdoor spaces. An overview of the agency’s functions is listed below:

- **Wildlife and Fisheries Management:** IDNR manages the state’s wildlife populations to ensure their health and sustainability. This includes habitat preservation, species monitoring, and wildlife research. The agency also oversees fish populations in Indiana’s surface waters, including stocking programs, habitat restoration, and fishing regulations to maintain healthy aquatic ecosystems.
- **State Parks and Reservoirs:** Oversees Indiana’s state parks and reservoirs, providing recreational opportunities such as camping hiking, boating, and fishing. The agency is responsible for the maintenance, operation, infrastructure, and natural resource conservation of park facilities.
- **Forestry:** IDNR also manages Indiana’s state forests and focuses on sustainable forestry practices that balance timber production, wildlife habitat, and recreation. They also provide technical assistance and resources to private landowners for forest management, which include reforestation, timber stand improvement, and wildlife habitat enhancement.
- **Water Resources and Dams:** IDNR regulates dams and levees in Indiana, regarding inspection, safety, and compliance with state regulations, authorized in part by the Flood Control Act (IC 14-28-1). They provide technical assistance to local communities. Additionally, they oversee water use and management across the state.

**LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

Soil and Water Conservation Districts (SCWDs)

SCWDs are local government entities tasked with stewardship of natural resources within their respective counties. SCWDs provide expertise in soil and water conservation, which is used in the context of watershed and environmental planning. They ensure that land use and infrastructure plans incorporate best practices for soil and water conservation, such as erosion control, stormwater management, and sustainable agricultural practices. SCWDs also provide technical assistance and expertise on conservation practices to landowners and local governments. The primary source of funding for SCWDs comes from Clean Water Indiana (CWI) through grants. Funding for CWI comes from the state general fund and fees collected from commercial fertilizer sales.



### Regional Planning Commissions (RPCs)

RPCs are multi-county organizations that focus on regional development and planning. RPCs provide regional planning and coordination across multiple jurisdictions, utilized in watershed and environmental planning. Additionally, RPCs are involved in broader land use and infrastructure planning, including water management and conservation. They also help integrate conservation practices into regional development plans and assist in securing funding and grants for conservation projects initiated by SWCDs. RPCs obtain funding from a combination of federal, state, and local sources, including the U.S. Department of Transportation, Economic Development Administration, Indiana Department of Transportation, and county and municipalities.

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Indiana are generally contained within the IC or the IAC. Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the IC or the IAC. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Indiana**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	IC 14-28-1 IC 14-28-3 <sup>[1]</sup>	7/1/1995	<ul style="list-style-type: none"> <li>• Any construction, development, or changes in floodways must be permitted by DNR.</li> <li>• DNR oversees and ensures compliance with floodplain regulations across the state.</li> <li>• Local governments can adopt and enforce their own floodplain management ordinances.</li> </ul>
	IAC 312 10 <sup>[2]</sup>	1/1/1998	<ul style="list-style-type: none"> <li>• Details the procedures and criteria for floodplain management, including the permitting process for construction and development in flood-prone areas.</li> <li>• Provides specifics on floodway boundaries, base flood elevation determinations, and floodplain mapping</li> </ul>
Levees	IC 14-27 <sup>[1]</sup>	7/1/1996	<ul style="list-style-type: none"> <li>• Regulates levee construction, inspections, and maintenance</li> </ul>
	IC 14-28-1 <sup>[1]</sup>	7/1/1995	<ul style="list-style-type: none"> <li>• Any construction, reconstruction, or alteration of a levee within a floodplain requires a permit from DNR.</li> <li>• All flood control works must be coordinated in design, construction, and operation.</li> </ul>
Stormwater Management	IC 13-18 <sup>[1]</sup>	7/1/1996	<ul style="list-style-type: none"> <li>• IDEM issues permits for stormwater discharges associated with construction activities, industrial facilities, and municipal storm sewer systems (MS4s)</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	CSGP, MS4 General Permits <sup>1[6]</sup>	12/18/2021	<ul style="list-style-type: none"> <li>• The Construction Stormwater General Permit (CSGP) is a cooperative effort with local Soil and Water Conservation Districts (SWCDs); required for projects disturbing once acre or more.</li> <li>• IDEM designates municipalities and/or counties required to develop MS4s; local MS4 ordinance required to be at a minimum as strict as a CSGP.</li> <li>• Where local MS4 has jurisdiction, projects are required to meet both local ordinance requirements and CSGP requirements<sup>[7]</sup></li> </ul>
Drainage Management	IC 36-9-27 <sup>[1]</sup>	9/1/1981	<ul style="list-style-type: none"> <li>• Each county may establish drainage boards responsible for overseeing the construction, maintenance, and repair of regulated drains.</li> <li>• “Regulated drain” is an open drain and/or tiled drain<sup>[9]</sup></li> </ul>
Dam Management	IC 14-27 <sup>[1]</sup>	7/1/2002	<ul style="list-style-type: none"> <li>• Any construction, alteration, or removal of a dam requires a permit from DNR.</li> <li>• DNR must review materials to ensure dam’s design and construction will meet safety standards and not negatively impact the environment or downstream properties.</li> <li>• Dam owners required to develop and maintain an Emergency Action Plan (EAP) outlining procedures for responding to potential dam failures; EAP submitted to DNR and local emergency management agencies</li> </ul>
	IAC 312 <sup>[2]</sup>	1/10/2024	<ul style="list-style-type: none"> <li>• Includes detailed regulations and guidelines for permitting process, including criteria for design, construction, maintenance, and inspection of dams</li> </ul>
Surface Water Quality	IC 13-18-4 <sup>[1]</sup>	7/1/1996	<ul style="list-style-type: none"> <li>• IDEM has authority to control and prevent pollution to the state’s surface waters.</li> <li>• Establishes water quality standards designed to protect the state’s water resources for drinking water, recreation, fishing, and aquatic ecosystem uses</li> </ul>

<sup>1</sup> Formerly administered through 327 IAC 15-5 and 327 IAC 15-13 and switched to CSGP and MS4, respectively<sup>[6]</sup>

Practice Area	Policy / Regulation	Date	Key Principles
Water Supply and Diversion Rights	IC 14-25-7 <sup>[1]</sup>	7/1/1995	<ul style="list-style-type: none"> <li>• Each significant water withdrawal facility (SWWF), defined as having the capability of withdrawing more than 100,000 gal/d, must obtain a permit from DNR.</li> <li>• Owners of SWWF must report annual water use within three months after the end of each calendar year.<sup>[8]</sup></li> </ul>
	IC 14-25-15 <sup>[1]</sup>	2023	<ul style="list-style-type: none"> <li>• Mandates regional review of uses from the Great Lakes of 5 MGD or greater average in any 90-day period, and the prohibition of diversions from the Great Lakes Basin<sup>2</sup></li> <li>• Requires permitting of daily withdrawals in excess of any of the following<sup>3</sup>: 5 MG from Lake Michigan surface water, 100,000 gal from a salmonid stream; 1 MG any other surface water source</li> </ul>
	IAC 312 6.2 <sup>[2]</sup>	9/1/2014	<ul style="list-style-type: none"> <li>• Governs the sale or transfer of a facility with a baseline volume and the issuance of an individual or general permit for a withdrawal, consumptive use, or diversion</li> </ul>

<sup>2</sup> Exceptions include straddling communities, communities in straddling counties, and intra-basin transfers.

<sup>3</sup> Calculated according to 90-day average.

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	DNR	A floodway development permit must be obtained from DNR. The DNR will then conduct a technical review and either approve or deny the floodway development permit.	<p>If a permit application is denied, the applicant has the right to appeal the decision. The appeal must be filed with the DNR, and the process involves a review of the decision and potentially a public hearing.</p> <p>To initiate the appeals process, the party seeking to appeal must file a notice of appeal with the DNR’s Natural Resources Commission (NRC), which serves as a platform for administrative review and resolution of disputes regarding decisions made by DNR and is part of the broader administrative appeals mechanism established under Indiana’s Administrative Orders and Procedures Act (AOPA). The appeal is reviewed by an Administrative Law Judge (ALJ) appointed by the NRC who can affirm, modify, or reverse the DNR’s final decision.</p>
Levees	DNR	After an application to construct a levee is submitted, DNR will conduct a thorough review, focusing on the design and hydraulic impact of the levee. If the permit is approved, it may include specific permit conditions.	N/A <sup>4</sup>

<sup>4</sup> Information on appeals regarding levee construction was not found to be readily available.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater	IDEM <sup>50</sup>	The state has three general permits: Construction Stormwater General Permit (CSGP), Industrial Stormwater Permit, and Municipal Separate Storm Sewer System Permit (MS4). Some MS4s are issued an individual permit based on population.	Any person who has received notice of the final determination may file a formal notice of appeal with IDEM's Office of Environmental Adjudication (OEA). The formal hearing is conducted by the ALJ and if the appellant disagrees with ALJ's decision, they may appeal to the Environmental Rules Board (ERB) for further review.
Drainage	County Drainage Board	Any construction, modification, or maintenance of regulated drains requires a permit from the local county drainage board. The county surveyor classifies all regulated drains in the county as: in need of reconstruction, in need of periodic maintenance, or that are to be vacated.	Landowners may make a request to the county drainage board to classify or reclassify a drain affecting their land, provided at least 10 percent of the landowners make the request (IC 36-9-27). The county surveyor will then submit a classification report to the board for approval and can advance the date of referral. If there is damage or obstruction, the surveyor can either require the perpetrator to remedy the problem or recover damages from them (IC 36-9-27-47 and 47). <sup>[7]</sup>

<sup>5</sup> IDEM is in the process of transitioning from a permit by Rule to a Master General Permit (MGP) for the industrial stormwater program (the construction and MS4 programs have already moved to an MGP) <sup>[10]</sup>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	DNR	A permit is required from DNR to construct or modify a dam or its appurtenant structures. The DNR then conducts a thorough review of the submitted plans and documentation to ensure the dams meet state safety regulations. The permit includes specific conditions and requirements that the owner must follow during construction.	Any person aggrieved by an action or decision can file a formal complaint with DNR. The complaint may proceed to administrative review or a hearing before an ALJ. The decision made by the ALJ can be further appealed to the NRC, and the local court system.
Water Rights	DNR	Significant water withdrawals (exceeding 1000,000 gal/d) require a permit from DNR. The application requires information about the location, purpose, withdrawal method and amount of water to be used.	An affected party can file a complaint with DNR, particularly over disputes involving large-scale water withdrawals, potential violations of water rights, or conflicts over regulated water use. If mediation fails, the dispute may proceed to formal adjudication through the DNR's administrative processes, which includes a hearing before an ALJ.

## CITATIONS

- [1] TITLE 14. NATURAL AND CULTURAL RESOURCES. Indiana General Assembly. (n.d.). <https://iga.in.gov/laws/2023/ic/titles/14>
- [2] *Indiana administrative code*. Indiana General Assembly – Indiana Register. (n.d.). [http://iac.iga.in.gov/iac/iac\\_title?iact=327](http://iac.iga.in.gov/iac/iac_title?iact=327)
- [3] Water Quality in Indiana. (2024, July 24). *Surface water monitoring*. <https://www.in.gov/idem/cleanwater/surface-water-monitoring/>
- [4] Water. (2022, October 7). *Great Lakes Compact*. <https://www.in.gov/dnr/water/lake-michigan/great-lakes-compact/>
- [5] Idem. (2022, August 10). *Idem Offices*. IDEM. <https://www.in.gov/idem/contact/idem-offices/>
- [6] Storm Water Permitting. (2024, April 15). *Construction/land disturbance permitting*. <https://www.in.gov/idem/stormwater/construction-land-disturbance-permitting/>
- [7] Storm Water Permitting. (2022, September 21). *Step by step process for compliance with the Construction Stormwater General Permit*. <https://www.in.gov/idem/stormwater/construction-land-disturbance-permitting/step-by-step-process-for-compliance-with-327-iac-15-5/>
- [8] Water. (2022a, August 19). *Significant water withdrawal facility registration*. <https://www.in.gov/dnr/water/water-availability-use-rights/significant-water-withdrawal-facility-registration/>
- [9] M. Owen Mohler. (n.d.). *Legal Considerations for Solving Drainage Problems*. Retrieved August 8, 2024, from [https://www.infarmbureau.org/docs/default-source/document-library/public-policy/legal-considerations-for-solving-drainage-problems-\(brochure\)07c8bb4bd5406b3696e3ff0000f5c395.pdf?sfvrsn=2b88d0e8\\_0](https://www.infarmbureau.org/docs/default-source/document-library/public-policy/legal-considerations-for-solving-drainage-problems-(brochure)07c8bb4bd5406b3696e3ff0000f5c395.pdf?sfvrsn=2b88d0e8_0)
- [10] Storm Water Permitting. (2022a, August 16). *Stormwater program transition to master general permits*. <https://www.in.gov/idem/stormwater/resources/stormwater-program-transition-to-master-general-permits/>

Input provided by IDEM Assistant Commissioner, Martha Clark Mettler and from Jennifer Ware and Ken Smith of the Indiana DNR.



# Kansas Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Kansas Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

The table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

<b>Agencies Overview</b>	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Kansas Department of Agriculture (KDA)</b> – Oversees the Kansas Division of Water Resources (KDWR), which administers water laws, regulates dams/levees/stream alterations, manages interstate river compacts, and coordinates the National Flood Insurance Program (NFIP).</li> <li>• <b>Kansas Department of Health and Environment (KDHE)</b> – Oversees the Bureau of Water, which is responsible for drinking water and water quality regulation and enforcement.</li> <li>• <b>Kansas Water Office (KWO)</b> – Water planning, policy, coordination, and marketing. Develops and implements the Kansas Water Plan and oversees water projects throughout the state.<sup>[1]</sup></li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Regional Advisory Committees (RAC)</b> – Representing the 14 watersheds in the state, RACs advise the KWO and Kansas Water Authority on local water-related issues and serve as a link to the public and water management entities.<sup>[23]</sup> <ul style="list-style-type: none"> <li>○ Count: 14</li> </ul> </li> <li>• <b>Water Assurance Districts</b> – groups of municipalities and industries who have rights to water from federal reservoirs and share operating agreements to ensure supply in low-flow years. Assurance Districts can levy annual charges to members to cover operation and maintenance costs.<sup>[21]</sup> <ul style="list-style-type: none"> <li>○ Count: 3</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Drainage Districts</b> - Per K.S.A. 24-601, a majority of landowners within swamp or overflowed lands, located in one or more counties, can form a drainage district for reclamation and protection from water.</li> <li>• <b>Watershed Districts</b> - Formed to manage and improve water resources within designated watersheds, addressing issues like erosion and flooding, and require local landowner petitions for their establishment. <ul style="list-style-type: none"> <li>○ Count: 75</li> </ul> </li> <li>• <b>Conservation Districts</b> – Units of local governments that conduct non-regulatory programs and provide technical assistance and public education in cooperation with state and federal agencies to address agricultural and urban environmental issues related to the conservation of soil, water, and related resources. <ul style="list-style-type: none"> <li>○ Count: 105</li> </ul> </li> </ul>
--	--

**Overview of Key Practices**

*Key authorities regarding Kansas water resources management are contained in Kansas Statutes Chapters 74 and 82a et seq<sup>[17],[18]</sup>, and Kansas Administrative Regulations Agency 28 Article 16.<sup>[19]</sup>*

Flood and Floodplain Permitting and Management	The KDWR coordinates the NFIP in Kansas, consistent with federal law. Permitting for floodplain development is managed on a community (e.g. county) level. Local floodplain development standards must meet or exceed the minimum requirements of the national flood insurance act of 1968. Floodplain regulations must be approved by the KDWR chief engineer prior to implementation. <sup>[7]</sup>
Stream Channel Protection	The KDWR oversees permitting for stream channel alterations. Stream channel alterations and the construction, operation, and maintenance of dams and other water obstructions require written consent or permit by the KDWR chief engineer. <sup>[3]</sup>
Levee Permitting and Management	The KDWR oversees permitting for fills and levees, with final approval resting with the chief engineer. On a county level, the board of county commissioners can construct levees (subject to KDWR approval) to benefit or promote public health, convenience, or welfare. <sup>[14]</sup>
Stormwater Management	The Bureau of Water within the Kansas Department of Health and Environment (KDHE) manages permitting for industrial, construction, and municipal stormwater runoff in accordance with the National Pollutant Discharge Elimination System (NPDES) rules. The Industrial Programs Section manages permits for discharges from construction and industrial activities, while the Municipal Programs Section manages permits for MS4 systems. <sup>[9]</sup>

Drainage Management	The Watershed Management Section of the KDHE oversees a nonpoint source pollution program to address Section 319 of the federal Clean Water Act. <sup>[10]</sup> KDWR issues permits for surface water drainage within floodplains. Counties can organize drainage districts to provide infrastructure necessary for managing drainage of surface waters. <sup>[14]</sup>
Dam Permitting and Management	The Dam Safety Program in the KDWR reviews and approves plans for constructing new dams, modifying and operating existing dams, and monitors high-risk dams. Final approval of dam permit applications rests with the chief engineer. <sup>[8]</sup>
Surface Water Quality Monitoring and Management	The Bureau of Water in the KDHE sets and enforces water quality standards through permitting of activities in public waters (e.g., streams, rivers, lakes, wetlands) and permitting of point source discharges. The Watershed Management Section oversees a nonpoint source pollution program. The KDHE develops total maximum daily load (TMDL) regulations, which are organized by river basins in the State. <sup>[10]</sup>
Water Supply and Diversion Rights	The KDWR manages water allocation and distribution through issuing permits to appropriate water, regulating usage, and keeping records of all water rights in the State. Kansas follows the doctrine of prior appropriation for water rights. <sup>[2]</sup>

**KANSAS STATE AGENCY(IES) OVERVIEW**

*Kansas Department of Water Resources (KDWR)*

The KDWR is part of the Kansas Department of Agriculture and is led by the Chief Engineer. It administers water laws governing how water is allocated and used, regulates the construction of dams, levees, and stream alterations, manages the State’s four interstate river compacts, and coordinates the NFIP. The KDWR also administers the Water Appropriation program, which coordinates with groundwater management districts, irrigation districts, rural water districts, public wholesale water supply districts, and water assurance districts, administers the Water Transfer Act and Water Banking Act, and administers intensive groundwater use control areas. The KDWR is the only water rights agency in the United States that is subordinate to a department of agriculture (the Secretary of Agriculture has administrative authority over the chief engineer regarding water rights decisions).<sup>[2]</sup>

*Bureau of Water, Kansas Department of Health and Environment (KDHE)*

The Bureau of Water within the KDHE is responsible for maintaining water quality in the State. It develops and enforces clean drinking water standards, manages harmful algal blooms and surface water quality standards, regulates municipal, commercial, and industrial wastewater plants and lagoons, and oversees underground injection control and the water well program.<sup>[10]</sup>



*Bureau of Environmental Field Services, Kansas Department of Health and Environment (KDHE)*

The Bureau of Environmental Field Services within the KDHE oversees the livestock waste management program in the State. It develops watershed plans governing non-point source control in specific watersheds of Kansas.

*Kansas Water Office (KWO)*

The Kansas Water Office is responsible for water planning, policy, coordination, and marketing. It develops and implements the Kansas Water Plan and oversees water projects throughout the state including projects for water conservation, water management, technology and crop varieties, and water supply. The Kansas Water Office is also responsible for monitoring the storage capacity of reservoirs and monitoring climate and drought conditions and outlook.<sup>[1]</sup>

The Kansas Water Plan is a statewide plan to address current water resources issues and to plan for future needs. It is developed by the Kansas Water Authority (KWA), a 24-member group within the KWO, with input from 14 regional advisory committees representing the 14 watersheds in the State.<sup>[1]</sup> The KWA serves in an advisory role to the governor, the legislature, and the director of the KWO, and reviews plans for development, management, and use of water resources by state or local agencies.<sup>[18]</sup>

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

*Regional Advisory Committees (RAC)*

There are 14 Regional Advisory Committees, each associated with regional planning areas established by the KWA in 2014 to provide local insights on water issues. The planning areas are organized based on watershed boundaries in the State. RACs establish Regional Goal Action Plans for their regions, which inform the KWO's comprehensive state water plan, which outlines the development, conservation, and management of water resources, including sections for regional planning areas.<sup>[23]</sup> Committee membership positions are volunteer positions with 4-year terms. Funding for the Kansas Water Plan, including implementation of RACs, comes from the State Water Plan Fund and is determined by the State Legislature on an annual basis.<sup>[20]</sup>

*Water Assurance Districts*

Water Assurance Districts are groups of municipalities and industries who pool their resources to purchase storage space in federal reservoirs. The purpose of this program is to enable municipal and industrial water rights holders to access water storage from state-owned or state-controlled space in federal reservoirs during drought or low-flow conditions when their appropriation rights to natural flow may not satisfy water demands. There are three Water Assurance Districts in Kansas (Kansas River, Marias des Cygnes River, and Cottonwood/Neosho River Water Assurance Districts). The KDWR chief

engineer oversees the allocation of water storage and protects reservoir releases from diversion from non-members. The operating agreement, which stipulates the organization and operations of assurance districts, is re-negotiated every five years by the district, the KWO, the chief engineer, the KDWR, and the Army Corps of Engineers.<sup>[21]</sup>

### Drainage Districts

Kansas Drainage Districts are formed to manage water resources and flood control, often spanning multiple counties. These districts, created by landowners, oversee drainage infrastructure, benefiting properties within and sometimes outside the district. Within 30 days of district formation, landowners elect a five-member board of supervisors<sup>[14]</sup>. Supervisors manage district operations, including bond issuance for projects. Elections are based on land acreage, with each acre representing one vote. To initiate the formation of a cross-county drainage district in Kansas, a petition must be filed. This petition needs to be signed by a specified percentage of landowners in each county involved.

### Watershed Districts

Kansas Watershed Districts are governmental entities established through a petition process or initiated by the county board of commissioners to address water-related challenges and promote sustainable water resource management in Kansas.<sup>[25]</sup> Watershed Districts have the authority to construct, operate, and maintain water management works, such as dams and drainage systems<sup>[14]</sup>. Funding for projects and operations within Watershed Districts is derived from a general levy on all taxable tangible property located within the District.

### Conservation Districts

Units of local governments that conduct non-regulatory programs and provide technical assistance and public education in cooperation with state and federal agencies to address agricultural and urban environmental issues related to the conservation of soil, water, and related resources. Boundaries correspond with county lines.<sup>[24]</sup>

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Kansas are generally contained within the Kansas Statutes Chapters 74 and 82a.

Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation in Kansas are generally contained within the Kansas Statutes Chapters 65 and 82a.

Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Kansas**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	K.S.A. 12-766 <sup>[12]</sup>	1991 (revised 2004)	<ul style="list-style-type: none"> <li>Local governments (e.g., county) may adopt floodplain zoning ordinances which identify floodplains and regulate developments in the floodplain.</li> </ul>
	K.A.R. 5-44 <sup>[5]</sup>	2007	<ul style="list-style-type: none"> <li>Floodplain regulations require approval by the KDWR chief engineer.</li> <li>Local floodplain development standards shall meet or exceed the minimum requirements of the national flood insurance act of 1968.</li> </ul>
	K.S.A. 82a-301 through 82a-328 <sup>[3]</sup>	Varies (revised 2023)	<ul style="list-style-type: none"> <li>Stream channels may not be altered unless given written consent or permit by the KDWR chief engineer.</li> <li>The regulation of construction, operation, and maintenance of all dams or water obstructions is under the jurisdiction of the KDWR and the chief engineer.</li> </ul>
Levees	K.S.A. 24-126 <sup>[6]</sup>	2002	<ul style="list-style-type: none"> <li>It is unlawful to construct fills and levees without the prior approval of the KDWR chief engineer. If construction of the levee is not counter to the public interest, the chief engineer will approve the proposed work.</li> <li>Plans submitted for approval shall include maps, profiles, cross-sections, data and information on the upstream and downstream effects from the proposed work and required fees.</li> </ul>
	K.A.R. 5-45 <sup>[4]</sup>	Revised 2008	<ul style="list-style-type: none"> <li>Specifies design requirements for levees and floodplain fills.</li> </ul>
Wastewater & Stormwater Management	K.S.A. 65-164 <sup>[15]</sup> , 165 <sup>[16]</sup> & 171d	1907 (revised 2017)	<ul style="list-style-type: none"> <li>Describes permit requirements for discharge of sewage to waters of the State.</li> </ul>
	K.A.R. 28-16-1-174 <sup>[19]</sup>	Varies (revised 2015)	<ul style="list-style-type: none"> <li>Water quality shall be maintained to meet standards outlined in the federal Clean Water Act.</li> <li>Three categories of stormwater discharge are permitted through the KDHE: industrial, construction, and municipal.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	K.S.A 24 <sup>[14]</sup>	1905 (revised 1986)	<ul style="list-style-type: none"> <li>• The boards of county commissioners have the power and duty to organize drainage districts in their respective counties to drain surface waters.</li> <li>• Drainage districts construct and manage infrastructure necessary to drain surface waters.</li> <li>• Drainage districts must cover at least 160 acres and include names, locations, and land descriptions of both participating and non-participating owners within the district.</li> </ul>
Dam Management	K.S.A. 82a-301 through 82a-328 <sup>[3]</sup>	Varies (revised 2023)	<ul style="list-style-type: none"> <li>• Construction of dams or other stream obstructions requires prior approval from the KDWR chief engineer.</li> <li>• The chief engineer has the power and duty to perform inspections of dams and other water obstructions, adopt and amend rules related to the construction, modification, operation and maintenance of dams, and revoke approval of dams if safety and other conditions are not met.</li> </ul>
	K.A.R. 5-40-1 through 5-40-77 <sup>[8]</sup>	Varies (revised 2007)	<ul style="list-style-type: none"> <li>• Contains design requirements for earth dams to meet state regulatory requirements, including height, freeboard, and spillway design.</li> </ul>
Surface Water Quality	K.S.A. 65-171d; K.A.R. 28-16-28 <sup>[19]</sup>	Varies (revised 2022)	<ul style="list-style-type: none"> <li>• Establishes surface water quality standards for all state waters to meet requirements of the Clean Water Act and protect public health and water quality.</li> <li>• Places restrictions on the discharge of wastewater and on human activities that may adversely affect public health and water quality in the waters of the state and describes treatment requirements for effluent.</li> </ul>



Practice Area	Policy / Regulation	Date	Key Principles
Water Supply and Diversion Rights	Kansas Water Appropriation Act (KWAA), K.S.A. 82a-701 through 82a-774 <sup>[18]</sup>	1945 (amended 2023)	<ul style="list-style-type: none"> <li>• Governs how water is allocated and used<sup>[11]</sup></li> <li>• Prior to 1945, Kansas water law was a hybrid between riparianism and prior appropriation, which presented legal challenges as water resources were further developed. The KWAA replaced this structure with a prior appropriation doctrine (“first in time, first in right”).<sup>[2]</sup></li> <li>• All water rights other than domestic rights require permission from the chief engineer (a permit).</li> <li>• The chief engineer is the lead water officer in charge of administering Kansas’s four interstate compacts.</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	KDWR	Applications for floodplain development permits are submitted to the KDWR. Kansas is divided into three hydrologic zones based on the area density of streams, each with unique permitting requirements. Additional permits may be required depending on the type of work being proposed, including construction permits from county and local government.	Rejected applications may receive items to be modified for reconsideration. Aggrieved parties may petition for review of their application through a hearing before the chief engineer or a hearing officer. Any final order of the Department of Agriculture issued from such hearings is not subject to reconsideration. <sup>[18]</sup>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater Discharge	KDHE	<p>The KDHE manages permits for stormwater discharge. The stormwater permitting program is administered by the Industrial and Municipal Programs Section in the Bureau of Water and covers the three areas of construction, industrial, and municipal (MS4) activities.<sup>[9]</sup></p>	<p>Permittees or permit applicants whose permit has been denied, revoked, or modified may appeal to the secretary of health and environment within 30 days of receiving notice of the permit decision. The Office of Administrative Hearings (OAH) conducts administrative hearings according to the Kansas Administrative Procedure Act (KAPA). The presiding officer renders the final order.<sup>[13]</sup></p>
Drainage	KDWR, Drainage Districts	<p>Applications for activities related to drainage of surface waters in a floodplain are submitted to the KDWR. Not all drainage activities require a permit. Additional permits may be required depending on the type of work being proposed, including construction permits from county and local government. A petition from adjacent landowners is required to establish a ditch, drain, or watercourse. The petition must describe the proposed project and be filed with a township clerk, along with a bond to cover potential costs. Upon receipt of the petition, the township trustee determines the need for the project and an engineer is consulted for the technical aspects of the project<sup>[14]</sup>.</p>	<p>Rejected applications may receive items to be modified for reconsideration. Aggrieved parties may petition for review of their application through a hearing before the chief engineer or a hearing officer. Any final order of the Department of Agriculture issued from such hearings is not subject to reconsideration.<sup>[18]</sup></p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	KDWR	The KDWR chief engineer regulates the construction, operation, and maintenance of dams 25 feet or greater in height, or six feet or greater in height with a storage capacity of 50 acre-feet or more of water from the auxiliary spillway. An approved permit is required prior to construction or modification of a dam.	If a permit application fails to meet requirements, applicants are notified and given 30 days to provide the required items to satisfy application requirements. If an application is dismissed due to the failure to provide requested items, the applicant has 30 days to apply to have the application reinstated for reconsideration. <sup>[1]</sup>
Water Rights	KDWR	Obtaining a water rights permit begins with filing an application with the KDWR. If it is determined that water is available at the requested location and its use will not interfere with other area water rights, minimum streamflow, or the public interest, and it meets all other KDWR requirements, the application may be approved. By law, water use must be reported annually.	The chief engineer shall render a decision on permit applications within 150 days of receiving complete applications. Decisions are based on the use of water for beneficial purposes for the highest public benefit and maximum economic development. Rejected applications may receive items to be modified for reconsideration. Aggrieved parties may petition for review of their application through a hearing before the chief engineer or a hearing officer. Any final order of the Department of Agriculture issued from such hearings is not subject to reconsideration. <sup>[18]</sup>

## CITATIONS

- [1] Cornell Law School Legal Information Institute (n.d.). Kan. Admin. Regs. § 5-40-8 - Acceptable application. <https://www.law.cornell.edu/regulations/kansas/K-A-R-5-40-8>
- [2] Griggs, B. (2021). An Overview of Kansas Water Law. [https://kslegislature.org/li/2022/b2021\\_22/committees/ctte\\_h\\_water\\_1/documents/testimony/20210126\\_02.pdf](https://kslegislature.org/li/2022/b2021_22/committees/ctte_h_water_1/documents/testimony/20210126_02.pdf)
- [3] Kansas Department of Agriculture (2023). Obstructions in Streams. <https://www.agriculture.ks.gov/home/showpublisheddocument/5968/638519661979730000>
- [4] Kansas Department of Agriculture (2008). K.S.A. 24-126 Regulations. <https://www.agriculture.ks.gov/home/showpublisheddocument/6020/638468217149330000>
- [5] Kansas Department of Agriculture (2007). Floodplain Management Regulations. <https://www.agriculture.ks.gov/home/showpublisheddocument/6022/638538754166630000>
- [6] Kansas Department of Agriculture (2002). The Levee Law. <https://www.agriculture.ks.gov/home/showpublisheddocument/5974/638468215387370000>
- [7] Kansas Department of Agriculture (n.d.). Floodplain Management. <https://www.agriculture.ks.gov/divisions-programs/division-of-water-resources/water-structures/floodplain-management>
- [8] Kansas Department of Agriculture (n.d.). Dam Safety Resources. <https://www.agriculture.ks.gov/divisions-programs/division-of-water-resources/water-structures/dam-safety-program/dam-safety-resources>
- [9] Kansas Department of Health and Environment (n.d.). Stormwater Programs. <https://www.kdhe.ks.gov/756/Stormwater-Programs>
- [10] Kansas Department of Health and Environment (n.d.). Watershed Management Section. <https://www.kdhe.ks.gov/974/Watershed-Management-Section>
- [11] Kansas Legislative Research Department (n.d.). Administration of Water in Kansas. <https://klrd.org/publications/administration-of-water-in-kansas/>
- [12] Kansas Office of Revisor of Statutes (2004). Chapter 12-766 – Floodplain Zoning Ordinances. [https://www.ksrevisor.org/statutes/chapters/ch12/012\\_007\\_0066.html](https://www.ksrevisor.org/statutes/chapters/ch12/012_007_0066.html)
- [13] Kansas Office of Revisor of Statutes (2012). Chapter 77-Statutes; Administrative Rules and Regulations and Procedure. <https://www.krgc.ks.gov/images/stories/pdf/Statutes/KAPA%20statutes.pdf>
- [14] Kansas Office of Revisor of Statutes (2022). Chapter 24-Drainage and Levees. [https://ksrevisor.org/statutes/ksa\\_ch24.html](https://ksrevisor.org/statutes/ksa_ch24.html)
- [15] Kansas Office of Revisor of Statutes (2022). Chapter 65-164-Sewage. [https://www.ksrevisor.org/statutes/chapters/ch65/065\\_001\\_0064.html](https://www.ksrevisor.org/statutes/chapters/ch65/065_001_0064.html)
- [16] Kansas Office of Revisor of Statutes (2022). Chapter 65-165-Permits for discharge of sewage or extension of sewer system. [https://www.ksrevisor.org/statutes/chapters/ch65/065\\_001\\_0065.html](https://www.ksrevisor.org/statutes/chapters/ch65/065_001_0065.html)
- [17] Kansas Office of Revisor of Statutes (2022). Chapter 74.-State Boards, Commissions, and Authorities. [https://www.ksrevisor.org/statutes/ksa\\_ch74.html](https://www.ksrevisor.org/statutes/ksa_ch74.html)
- [18] Kansas Office of Revisor of Statutes (2022). Chapter 82a.-Waters and Watercourses. [https://ksrevisor.org/statutes/ksa\\_ch82a.html](https://ksrevisor.org/statutes/ksa_ch82a.html)
- [19] Kansas Secretary of State (2024). Kansas Administrative Regulations Agency 28 Article 16-Water Pollution Control. [https://sos.ks.gov/publications/pubs\\_kar\\_Regs.aspx?KAR=28-16](https://sos.ks.gov/publications/pubs_kar_Regs.aspx?KAR=28-16)
- [20] Kansas Water Authority (2023). Kansas Water Authority & Regional Advisory Committees Presentation to the House Committee on Water. [https://www.kslegislature.org/li/b2023\\_24/committees/ctte\\_h\\_water\\_1/documents/testimony/20230124\\_02.pdf](https://www.kslegislature.org/li/b2023_24/committees/ctte_h_water_1/documents/testimony/20230124_02.pdf)
- [21] Kansas Water Office (2009). Water Assurance Program. <https://www.agriculture.ks.gov/home/showpublisheddocument/5694/638467889021030000>

- [22] Kansas Water Office (n.d.). Kansas Water Authority. <https://www.kwo.ks.gov/about-us/kansas-water-authority>
- [23] Kansas Water Office (n.d.). Regional Advisory Committees. <https://www.kwo.ks.gov/about-us/regional-advisory-committees>
- [24] Kansas Department of Agriculture (n.d.). Conservation Districts. <https://www.agriculture.ks.gov/divisions-programs/division-of-conservation/conservation-districts>
- [25] Kansas Department of Agriculture (n.d.). Watershed Districts. <https://www.agriculture.ks.gov/divisions-programs/division-of-conservation/watershed-districts>

Input was provided by KWO Director, Connie Owen, and KDHE Bureau of Water Head, Tom Stiles.

# Michigan Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Michigan Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

<b>Agencies Overview</b>	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Michigan Department of Environment, Great Lakes, and Energy (EGLE)</b> – Water Appropriation, Dam Permitting and Management, Floodplain Permitting and Management, Drainage Permitting and Management, Water Project Funding and Development, Stormwater Permitting and Management, Point and Nonpoint Source Pollution Programs, Development and Enforcement of Water Quality Standards, Aquatic Invasive Species Investigation and Program Implementation, Source Contamination Investigation, Water Quality Monitoring, Stream and Lake Alteration Permits</li> <li>• <b>Michigan Department of Natural Resources (DNR)</b> – Dam Management Projects Funding and Technical Assistance, Michigan Natural Rivers Program Administration, Aquatic Habitat Management</li> <li>• <b>Michigan Department of Agriculture and Rural Development (MDARD)</b> – Water Quality Monitoring, Conservation Reserve Enhancement Program, Oversight of Intercounty Drains, Water Resource Management and Conservation</li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>The Great Lakes and St. Lawrence Governors and Premiers (GSGP)</b> – Surface Freshwater Resource Protection and Management, Water Diversion Regulation, Sustainable Economic Development</li> <li>• <b>Public Advisory Councils (PACs)</b> – Count: 11; Management of Local Pollutant Areas of Concern, Water Quality Monitoring and Projects Implementation</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Drain Commissioners / Drainage Districts</b> – County-level Drainage Permitting and Management, Participation in Intercounty Drainage Boards</li> <li>• <b>Conservation Districts</b> – Count: 75; Natural Resource Management, Algal Bloom Management, Water Quality Monitoring, Agricultural Conservation Easement Program</li> </ul>
--	---

**Overview of Key Practices**

*Key authorities regarding Michigan water resources management are contained in Michigan Compiled Law (MCL) Titles 280 and 324<sup>[41]</sup>, and the Michigan Administrative Code (Mich. Admin. Code) R. 323 et seq.<sup>[32]</sup>*

<p>Flood and Floodplain Permitting and Management</p>	<p>EGLE is the primary agency responsible for Flood and Floodplain Permitting and Management in Michigan per the State’s Floodplain Regulatory Authority found in Part 31 of the 1995 Michigan Natural Resources and Environmental Protection Act (NREPA).<sup>[23]</sup> The Water Management Section of EGLE’s Water Resources Division is responsible for managing floodplain development and issuing permits for development within 100-year floodplains with a drainage area of two or more square miles.<sup>[22]</sup></p> <p>For administrative purposes, the Water Management Section divides the state into nine “Districts” based on floodplain characteristics throughout the State, with District floodplain engineers each responsible for one to two Districts. The District floodplain engineer is responsible for identifying floodplains, issuing permits for activities within their floodplain District, and assisting communities in enrolling in and administering the National Floodplain Insurance Program (NFIP). The regulatory framework and minimum requirements for the State’s floodplain management program follow those of NFIP.<sup>[21],[22]</sup></p>
---	--

<p>Levee Permitting and Management</p>	<p>EGLE is the entity responsible for overseeing Levee Permitting and Management within the State. Although Michigan code does not explicitly mention levee permitting and management, EGLE is given authority to oversee levees within the State through Part 31 of NREPA, which gives EGLE the authority to take necessary actions to manage the State’s floodplain development.</p> <p>EGLE only explicitly mentions permitting for the construction, alteration, or modification of levees in its description of projects considered to be Minor Projects (MPs), and therefore, qualifying for an expedited permitting process. The criteria for levees to be permitted under this process is outlined below in Table 1. The process of permitting levees that do not meet the</p>
--	--

	<p>criteria established by EGLE to be considered MPs is unclear. However, it is assumed the construction, alteration, or repair of levees built within a 100-year floodplain could require a floodplain development permit from EGLE and/or a dam permit depending on the specifications of the levee project.</p>
Stormwater Permitting	<p>Michigan participates in the National Pollutant Discharge Elimination System (NPDES) program, giving the State authority to manage NPDES permits, including those for stormwater runoff from various activities. EGLE’s Water Resources Division oversees the regulation and permitting of stormwater pollution from municipal separate storm sewer systems (MS4s), industrial, and construction sites. EGLE maintains an online database, MiEnviro, which provides information on NPDES permit applications, reports, public notices, and issued permits.<sup>[24],[25]</sup></p>
Drainage Permitting and Management	<p>In Michigan, both EGLE and local governments share responsibility for regulating drainage. Each county elects a county drainage commissioner, who manages drainage permitting and oversight within their jurisdiction, working closely with drainage districts to oversee all drains in the county. When drains cross county lines, multiple county drain commissioners may form Intercounty Drainage Boards to manage drainage across these boundaries. In most cases, permits from both the county and EGLE are required prior to the start of a drainage project. Table 1 below outlines the permit requirements for different drainage projects.<sup>[1],[16]</sup></p>
Dam Permitting and Management	<p>EGLE is the primary agency overseeing Dam Permitting and Management in Michigan. EGLE’s Dam Safety Program is responsible for managing the State’s over 2,500 dams with responsibilities including, but not limited to, issuing construction permits for dams, conducting inspections, performing compliance activities necessary to enforce dam safety laws, and responding to dam safety emergencies. Additional permits for dam construction may also be required from the United States Army Corps of Engineers.<sup>[19],[20]</sup></p>
Surface Water Quality Monitoring and Management	<p>EGLE oversees surface water quality throughout the State and develops the State’s surface water quality standards, which follow the minimum requirements of the Clean Water Act. EGLE enforces federal and State surface water quality standards through permitting point source discharges and implementing nonpoint source pollution control programs. Additionally, EGLE monitors and compiles surface water quality data to perform statewide assessment of surface water</p>



	<p>quality conditions and issues permits for construction activities that may affect surface water quality.<sup>[18]</sup></p>
<p>Water Supply and Diversion Rights</p>	<p>EGLE is responsible for the management of the use of state waters through its permitting and registration process and is the sole entity in charge of issuing water permits.<sup>[17]</sup></p> <p>Registration of water withdrawals is required with EGLE’s Water Use Program for all large quantity water withdrawals within the State with a capacity of 100,000 gallons per day or more and up to two million gallons per day. Large water withdrawals can be registered through the EGLE’s Water Withdrawal Assessment Tool (WWAT), site review by EGLE, or an alternative analysis process.<sup>[17],[18]</sup></p> <p>A Water Withdrawal Permit from EGLE is required prior to appropriating water for withdrawals that have a capacity greater than two million gallons per day or for withdrawals that transfer more than 100,000 gallons per day from one Great Lake watershed to another. Exceptions to this permit requirement include community water supply withdrawals, bottled water production, seasonal withdrawals, and temporary withdrawals. Water Withdrawal Permits make up less than one percent of authorized water withdrawals in the State.<sup>[18]</sup></p>

**MICHIGAN STATE AGENCIES OVERVIEW**

Michigan Department of Environment, Great Lakes, and Energy (EGLE)

In 2019, Executive Order (EO) 2019-16 renamed the Michigan Department of Environmental Quality (DEQ) the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and expanded the department to streamline the State’s air, water, land, and energy management efforts.<sup>[7]</sup> The department is led by a Director, who is appointed by the Governor of Michigan and confirmed by the State Senate. Supporting the Director are one chief deputy director and two deputy directors.<sup>[5]</sup> EGLE is primarily funded by State restricted revenue (46%) and federal funds (39%), as well as other state and private fund sources (15%).<sup>[37]</sup>

EGLE is organized into six functional divisions, six programmatic offices, and five administrative sections. The six programmatic offices are each led by office directors who are overseen by one of the department’s deputy directors. These offices are responsible for developing and implementing specific initiatives and programs and include the following: Office of the Clean Water Public Advocate, Office of Climate and Energy, Office of the Environmental Justice Public Advocate, Office of the Great Lakes, Office of Legislative Affairs, and Office of Public Information.<sup>[5]</sup> Among these, the Office of the

Great Lakes and the Office of Legislative Affairs have authorities and responsibilities directly related to surface water management:

- **Office of the Great Lakes** – The Office of the Great Lakes leads efforts to protect and restore the Great Lakes by developing policies, implementing strategic programs, and collaborating with partner organizations to promote sustainable water use and development of Great Lakes maritime resources.<sup>[4]</sup>
- **Office of Legislative Affairs** – The Office of Legislative Affairs represents EGLE to the Michigan State Legislature on matters regarding EGLE’s legislative activities, including the development and implementation of the department’s environmental regulations.<sup>[6]</sup>

In addition to its offices, EGLE is comprised of the following six functional divisions: Air Quality Division; Drinking Water and Environmental Health Division; Materials Management Division; Oil, Gas, and Minerals Division; Remediation and Redevelopment Division; and Water Resources Division. Each of these divisions is overseen by the chief deputy director and headed by a division director.<sup>[5]</sup> Among these divisions, the Drinking Water and Environmental Health Division and the Water Resources Division have authorities and responsibilities related to surface water management:

- **Drinking Water and Environmental Health Division** – The Drinking Water and Environmental Health Division is responsible for the protection of Michigan’s drinking water sources. Responsibilities related to surface water management include source water assessments and protection, contamination investigation, and onsite wastewater management.<sup>[9]</sup>
- **Water Resources Division** – The Water Resources Division is responsible for developing Michigan’s water quality standards and regulating and permitting various activities related to surface water, including the construction of dams, construction activities in floodplains, stormwater discharges, wastewater discharges, and other dredging and filling activities. Additional responsibilities include assessing aquatic community health, overseeing aquatic invasive species concerns, managing point and nonpoint source pollution programs, and assisting local communities in enrolling in the NFIP.<sup>[8]</sup>

EGLE’s divisions and offices are advised by various boards and advisory groups on both policy and programmatic matters. These groups are often mandated formally through State legislation or EOs and consist of both internal and external organizations. The following groups advise EGLE on various aspects of surface water management, which are detailed below:

- **Michigan PFAS Action Response Team (MPART)** – Created in 2019 through EO 2019-03, MPART acts as an advisory body to EGLE to address PFAS contamination of the State’s air, land, and water resources. Responsibilities of MPART related to surface water management include the facilitation of interagency coordination of PFAS initiatives, contaminated site identification,

surface water and fish tissue sampling and cleanup, and aquatic species protection.<sup>[42]</sup> Per EO 2019-03, MPART has the authority to create advisory workgroups to assist MPART in performing its duties and to consult with outside authorities, including private sector members, government agencies, and higher education institutions, when necessary. Current advisory groups to MPART include the Citizen's Advisory Workgroup, the Local Public Health Department Advisory Committee, and the Science Advisory Workgroup.<sup>[43]</sup>

- **Environmental Permit Review Commission (EPRC)** – Created in 2018 through Public Act 268, EPRC advises the Director of the EGLE on permit-related disputes and is responsible for reviewing petitions for permit application and final decisions. The commission consists of 15 individuals appointed by the Governor.<sup>[10]</sup>
- **Environmental Rules Review Committee (ERRC)** – Created in 2018 through Public Act 267, ERRC oversees the rulemaking activities of EGLE and includes four ex-officio department heads and 12 members appointed by the Governor.<sup>[11]</sup>
- **Statewide Public Advisory Council (SPAC)** – Per the United States (U.S.) – Canada Great Lakes Water Quality Agreement, the U.S. and Canada's governments shall cooperate with state, provincial, and tribal governments protect the water quality of the Great Lakes through the development and implementation of Remedial Action Plans (RAPs) for the 43 identified Areas of Concern (AOCs). Out of the 14 AOCs originally identified in Michigan, three have been cleaned and removed from the list for the State. The remaining 11 AOCs each have an individual Public Advisory Council (PAC) consisting of local stakeholders responsible for management of their respective AOC (*See Local and Regional Jurisdictions Overview*). SPAC was formed in 1991 as a forum to provide advice and input to EGLE on the individual AOCs and to provide statewide oversight of the AOC program. The council consists of one representative from each of the remaining 11 AOCs.<sup>[12]</sup>
- **Water Asset Management Council (WAMC)** – Created in 2018 through Public Act 324, WAMC aids communities in the development or enhancement of their drinking water, wastewater, and storm water asset management programs. The nine-member voting council's responsibilities include the development of asset management templates for community use and annual reporting to the Michigan Infrastructure Council (MIC) on the condition of water infrastructure throughout the State.<sup>[13]</sup>
- **Water Use Advisory Council (WUAC)** – Established in 1994 under Part 328 of the Natural Resources and Environmental Protection Act, WUAC is responsible for advising EGLE, DNR, and MDARD on Michigan's Water Use Program, which oversees large quantity withdrawals, annual water use data collection, and water withdrawal permits. Council members are appointed by the Governor, the Senate Majority Leader, the Speaker of the House of Representatives, and the EGLE Director and represent various industries and Michigan's Tribal Nations.<sup>[14]</sup>

### Michigan Department of Natural Resources (DNR)

In 2011, EO 2011-1 abolished the Michigan Department of Natural Resources and Environment and created the Michigan DNR and the Michigan DEQ, which was later renamed in 2019 through EO 2019-6 to EGLE.<sup>[7]</sup> DNR is the State's main entity responsible for the conservation, protection, management, and sustainable use of Michigan's natural and cultural resources, including lakes, rivers, fish, wildlife, parks, recreational facilities, forests, and minerals.<sup>[34]</sup> The department is headed by a Director, who is appointed by the Governor and confirmed by the State Senate, and is comprised of the following five divisions, each of which is headed by a chief and overseen by the Natural Resources Deputy: Fisheries, Forest Resources, Law Enforcement, Parks and Recreation, and Wildlife.<sup>[33]</sup> Of the five divisions, the Fisheries Division has authorities related to surface water management, with specific responsibilities defined below:

- Funding for dam management projects and technical guidance;<sup>[35]</sup>
- Protection of the State's 16 Natural Rivers through the Michigan Natural Rivers Program;<sup>[45]</sup>
- Permitting of construction activities within 400-feet of any designated Natural River or designated stream segment;<sup>[45]</sup> and
- Aquatic habitat management through providing funding, facilities sharing, and outreach for various partnerships, including the Michigan Inland Lakes Partnership, Midwest Glacial Lakes Partnership, and the National Fish Habitat Partnership.<sup>[36]</sup>

### Michigan Department of Agriculture and Rural Development (MDARD)

Founded in 1921, MDARD is dedicated to advancing and protecting Michigan's food and agricultural sector. Its mission includes ensuring a safe food supply, safeguarding animal and plant health, fostering sustainable rural development, and preserving agricultural environments. MDARD's efforts focus on enhancing water quality, improving fish and wildlife habitats, and overseeing regional initiatives related to surface water quality.<sup>[31]</sup>

One of MDARD's key programs related to surface water quality is the Conservation Reserve Enhancement Program (CREP), which aims to protect Michigan's surface waters by offering financial incentives to farmers who agree to set aside environmentally sensitive agricultural lands for conservation purposes. This program helps improve water quality and conserve natural resources by reducing farming and ranching in these critical basins. Additionally, MDARD oversees intercounty drains and coordinates activities between the State's conservation districts to further support water management and conservation efforts.<sup>[44]</sup>

MDARD is comprised of four bureaus and eight divisions under the direction of a director, who is appointed by the Governor and approved by the State Senate.<sup>[31]</sup>

### Statewide Interagency Efforts

Multiple joint programs exist among Michigan's State agencies to combine resources and enhance coordination across these organizations. These collaborative efforts ensure a cohesive approach to managing and protecting the State's natural resources. An example of these programs is the Michigan Invasive Species Program, which is a joint effort between EGLE, DNR, and MDARD to address invasive species throughout the State. Among other responsibilities, the program is responsible for preparing the Aquatic Invasive Species State Management Plan, which aims to protect the State's surface waters and aquatic habitats from harmful invasive species.<sup>[38]</sup>

## **LOCAL AND REGIONAL JURISDICTIONS OVERVIEW**

### The Great Lakes and St. Lawrence Governors and Premiers (GSGP)

GSGP is a regional organization that brings together chief executives from the Great Lakes states, including Michigan, and the Canadian provinces of Ontario and Québec to promote the Great Lakes and St. Lawrence River region's economic growth and protect the region's surface freshwater resources. Signed by the GSGP, the 2005 Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement (Agreement) and the 2008 Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact) outline measures for each state and province to implement to manage and protect the basin. Since signing the Agreement and the Compact, GSGP has continued to promote policies and initiatives that protect and improve the health of the Great Lakes and St. Lawrence River and to oversee the region's economic development and water diversions.<sup>[28]</sup> Members of GSGP include the governors of each of the Great Lakes states, as well as one representative from each of the Canadian provinces. The Governor of Michigan currently serves as Chair of GSGP. As GSGP is an international organization comprised of chief executives from both Canada and the United States, GSGP is funded primarily by federal funding from both governments, as well as by state and provincial funding for specific programs and private investments.<sup>[29]</sup>

### Public Advisory Councils (PACs)

As mentioned in the discussion of EGLE's SPAC, the AOC Program, established in 1987 under the Great Lakes Water Quality Agreement, initially identified 14 AOCs in Michigan. Local PACs were created in each community with an AOC to develop and implement RAPs for their restoration. Currently, there are 11 AOCs and corresponding PACs actively working in Michigan, with each PAC composed of local community members and open to any interested individuals. These PACs collaborate with the USEPA and EGLE to restore their respective AOCs. PACs and specific AOC projects are mainly funded by the federal government under the 2002 Great Lakes Legacy Act. This legislation grants the USEPA

the authority to allocate federal funds for cleanup efforts in the remaining AOCs in the Great Lakes.<sup>[15]</sup>

### Drain Commissioners / Drainage Districts

Under the Michigan Drain Code (Public Act 40 of 1956), county drain commissioners are elected officials tasked with overseeing the construction, operation, and maintenance of county drains to manage stormwater and prevent flooding. They are responsible for planning, designing, and implementing drainage projects, assessing costs, levying taxes within their counties, and issuing drain use permits for projects within their county.<sup>[39],[1]</sup>

The Michigan Drain Code also defines the roles and authorities of drainage districts, which are local entities formed for stormwater and wastewater management and conservation.<sup>[39]</sup> These districts, which are often aligned with the natural topography of the land, manage and oversee drainage systems, handle drainage projects, and address water-related issues affecting both agricultural and developed areas.<sup>[1]</sup> County drain commissioners have the authority to levy taxes for each district and have jurisdiction over all drains within their counties, including those maintained by drainage districts.<sup>[2]</sup>

When drains extend across multiple counties, an Intercounty Drainage Board is established, comprising the county drain commissioners from each affected county. Drain commissioners, district drainage boards, and MDARD can apply for a County Drain General Permit from EGLE for construction activities related to county drains on behalf of Intercounty Drainage Boards. County drain commissioners are funded through county budgets, which include funding from various sources, such as property taxes, state funds, federal funds, fees and licenses, and grants. Similarly, drainage districts and Intercounty Drainage Boards are primarily funded through property taxes and fees and can receive funding from state and federal grants for specific projects.<sup>[16]</sup>

### Conservation Districts

Michigan's 75 conservation districts provide local control of natural resource management programs and activities for the conservation of their soil, water, and other renewable natural resources. Regarding surface waters, Michigan's conservation districts oversee the implementation of best management practices to safeguard the state's freshwater resources. They address issues such as algal blooms and assist landowners in applying for wetland reserve easements through the Agricultural Conservation Easement Program, which supports the restoration, protection, and enhancement of wetlands.<sup>[30]</sup> Pursuant to the Michigan Conservation District Law (Public Act 439 of 1994), conservation district boards are comprised of five elected members who serve four-year terms, with district boundaries defined by the administrative boundaries of cities, townships, and incorporated villages. Conservation districts are primarily funded through property taxes and fees and can receive funding from state and federal grants for specific projects<sup>[40]</sup>



## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Michigan are generally contained within the Mich. Admin. Code or the MCL. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the Mich. Admin. Code or the MCL. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Michigan**

Practice Area	Policy / Regulation	Date (1)	Key Principles
Floodplain Management	MCL §324.3104 <sup>[41]</sup>	Effective: 1994 Last Amended: 10/20/2021	<ul style="list-style-type: none"> <li>• EGLE has authority over the alterations of the watercourses of all rivers and streams in the State to ensure that the floodplains and floodways are not used for residential construction and are free from obstruction. As such, EGLE may take steps necessary to ensure that there are no negative impacts to floodplains, including the issuance of permits.</li> <li>• A floodplain permit issued by EGLE is required for any construction or alteration activity within a floodplain.</li> <li>• New residential construction is prohibited in floodways.</li> <li>• MCL §324.3104 does not explicitly set requirements for projects triggering the need for a floodplain permit. However, it does state that EGLE must propose general project permit requirements by the end of 2019. Having done so, EGLE’s website and permitting procedures indicate the following:               <ul style="list-style-type: none"> <li>• Floodplain permits are required for construction activities within 100-year floodplains of rivers, streams, or drains which have a drainage area two square miles or greater; and</li> <li>• EGLE’s District floodplain engineers are responsible for permit review and issuance within their jurisdiction, as well as assisting communities in enrolling in the NFIP.<sup>[21]</sup></li> </ul> </li> </ul>



Practice Area	Policy / Regulation	Date (1)	Key Principles
Levees	MCL §324.3104 <sup>[41]</sup>	Effective: 1994 Last Amended: 10/20/2021	<ul style="list-style-type: none"> <li>• MCL §324.3104 does not explicitly set requirements for levee projects triggering the need for a permit. However, it gives authority to EGLE to manage development within the State’s floodplains. Having done so, EGLE’s website and permitting procedures for MPs indicate that levees meeting all of the applicable following requirements are considered projects with minor anticipated impacts to State waters and, therefore, qualify for an MP permit: <ul style="list-style-type: none"> <li>• Levees located within public parks, wildlife refuges, or game areas owned and operated by the federal and State government;</li> <li>• Levees with a maximum elevation not exceeding the 10-year flood elevation;</li> <li>• New levees not located within the floodway;</li> <li>• Replacement of levees in regulated streams must provide equal or greater hydraulic capacity; and</li> <li>• Levees not regulated as dams and requiring a dam permit.<sup>[3]</sup></li> </ul> </li> <li>• Levees not meeting the requirements for an MP permit may be subject to floodplain or dam permitting procedures, depending on project specifics.</li> </ul>
Stormwater Management	Mich. Admin. Code R. §323.2101 <sup>[32]</sup>	Effective: 1979 Last Amended: 2003	<ul style="list-style-type: none"> <li>• Permits must be obtained to discharge pollutants into waters of the State.</li> <li>• Permitting, monitoring, and reporting to both State and federal entities is required per the State’s participation in the NPDES.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
	<p>Mich. Admin. Code R. §323.2101 – §323.2197<sup>[32]</sup></p>	<p>Effective: 1979 Last Amended: 2006</p>	<ul style="list-style-type: none"> <li>• Storm water permits issued by EGLE’s Water Resources Division authorize certain discharges of relatively uncontaminated stormwater from the following activities: <ul style="list-style-type: none"> <li>• Construction activities which disturb one or more acres of land;</li> <li>• Discharges from MS4s to surface waters of the State in urbanized areas; and</li> <li>• Industrial activities, including mining; manufacturing; warehousing and storage; transportation; landfills; steam electric power plants; recycling facilities and automobile salvage yards; wastewater treatment facilities; and hazardous waste treatment, storage, and disposal facilities.</li> </ul> </li> <li>• Construction activities disturbing one to five acres of land receive automatic stormwater coverage under the Soil Erosion and Sedimentation Control Program (SESC) permit, if applicable, or if the applicant is an authorized public agency.</li> <li>• Certain industrial activities may be exempt from permitting requirements if there is no potential for precipitation to come into contact with industrial materials or activities.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
Drainage Management	MCL §280.21 – §280.33 <sup>[41]</sup>	Effective: 1956 Last Amended: 2021	<ul style="list-style-type: none"> <li>• The county drainage commissioner has authority over all drains within the county.</li> <li>• A drain use permit from the county drainage commissioner is required for any work within the legal right-of-way of a county drain or drain easements to protect the drainage district from potential damage and future costs.</li> </ul>
	MCL §280.101 – §280.135 <sup>[41]</sup>	Effective: 1956 Last Amended: 2021	<ul style="list-style-type: none"> <li>• Intercounty Drainage Districts are formed to manage drainage systems that span multiple counties, coordinating efforts across county lines.</li> <li>• Intercounty Drainage District Boards are made up of the county drainage commissioners of the affected counties.</li> </ul>
	MCL §280.1 – §280.630 <sup>[41]</sup>	Effective: 1956 Last Amended: 2021	<ul style="list-style-type: none"> <li>• The following drainage projects are considered low-impact projects and, therefore, may be permitted under EGLE’s County Drain General Permit Category expedited permitting process: the construction or alteration of clear span bridges; short culverts; culvert end sections; riprap; long culverts; drain realignments; and/or the installation of vanes and riffles. <ul style="list-style-type: none"> <li>• County Drain General Permit applications may be filed by a county drain commissioner, a drainage district board, or MDARD on behalf of an Intercounty Drainage Board.</li> </ul> </li> <li>• Drainage projects that do not meet the County Drain General Permit criteria must apply for a regular Joint Permit Application (JPA). Drainage projects typically requiring a JPA include, but are not limited to, deepening, widening, straightening, extending, creating, enclosing, or adding branches to a drain. <ul style="list-style-type: none"> <li>• JPAs may be filed by individuals, landowners, county drainage commissioners, drainage district boards, or MDARD.</li> </ul> </li> </ul>
Dam Management	MCL §324.31501 - §324.31529 <sup>[41]</sup>	5/24/1995	<ul style="list-style-type: none"> <li>• Per Part 315 of NREPA, a permit is required from EGLE for the construction of a dam that is six or more feet in height and impounds five surface acres or more at the design flood elevation.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
	MCL §324.20701 – §324.30723 <sup>[41]</sup>	5/24/1995	<ul style="list-style-type: none"> <li>• Per Part 307 of NREPA, a permit is required from EGLE for the construction of a dam in any lake where a circuit court has issued an order establishing the level at which the lake must be maintained.</li> <li>• In the case that a permit is not required for dam construction under Part 315 of NREPA, it is likely that a dam permit will be required under Part 307 of NREPA.</li> <li>• Counties have the authority to perform inspections of dams every three years. County inspectors shall provide an inspection report to EGLE following completion of dam inspection. In the case that the report indicates a threat to safety or danger to natural resources, EGLE may conduct an inspection and, as a result, may require repairs or replacement of the dam.</li> </ul>
Surface Water Quality	Mich. Admin. Code R. §323.1041 – §323.1117 <sup>[32]</sup>	Effective: 1979 Last Amended: 2006	<ul style="list-style-type: none"> <li>• EGLE is the entity responsible for establishing and enforcing surface water quality standards to ensure water quality meets protects public health and meets State and federal requirements.</li> <li>• The State’s water quality standards require that all designated uses of water be protected by EGLE. Designated uses include the following: Agriculture, navigation, industrial water supply, public water supply at points of intake, warmwater and coldwater fish, other indigenous aquatic life and wildlife, fish consumption, and partial and total body contact recreation.</li> </ul>
	Mich. Admin. Code R. §323.1201 – §323.1221 <sup>[32]</sup>	Effective: 1979 Last Amended: 2006	<ul style="list-style-type: none"> <li>• EGLE has the authority to set water quality-based effluent limits (WQBELs) for point source discharges to protect the designated uses of the State’s surface waters and include provisions for establishing Total Maximum Daily Loads, waste load allocations, and calculating WQBELs below quantification levels.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
Water Supply and Diversion Rights	MCL §324.32705 – §324.32706 <sup>[41]</sup>	Effective: 5/24/1995 Last Amended: 7/6/2008	<ul style="list-style-type: none"> <li>• Registration of water withdrawals with EGLE is required for withdrawals with a capacity between 100,000 and 2,000,000 gallons per day in EGLE’s designated Zone A, B, C, and D management areas, with the following exceptions:               <ul style="list-style-type: none"> <li>• Withdrawals of more than 1,000,000 gallons per day in EGLE’s designated Zone C management areas are required to obtain a Water Withdrawal permit from EGLE.</li> <li>• Intra-basin transfers greater than 100,000 gallons per day are required to obtain a Water Withdrawal permit from EGLE.</li> </ul> </li> <li>• Diversions of State waters outside of the Great Lakes basin are prohibited unless authorized by State law.</li> </ul>
	MCL §324.32723 <sup>[41]</sup>	Effective: 5/24/1995 Last Amended: 7/6/2008	<ul style="list-style-type: none"> <li>• A Water Withdrawal Permit is required for withdrawals with a total capacity of more than 2,000,000 gallons per day or meeting the above requirements. Exceptions to this include withdrawals from community water suppliers, seasonal withdrawals, and temporary withdrawals, as well as withdrawals for bottled water production.</li> </ul>
	MCL §324.32707 – §324.32708 <sup>[41]</sup>	Effective: 5/24/1995 Last Amended: 7/6/2008	<ul style="list-style-type: none"> <li>• Annual reporting of withdrawals is required for all permitted or registered water withdrawals within the State.</li> <li>• Farm owners with registered or permitted withdrawals for agricultural purposes may report annual water withdrawals to MDARD as part of their conservation plan, which is submitted to MDARD by April 1 of each year.</li> </ul>

(1) Unless explicitly stated, dates listed in Table 1 are the effective date of the policy/regulation.

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	EGLE	A floodplain development permit must be obtained from EGLE prior to the construction or alteration of any project within a 100-year floodplain. Permits submitted to EGLE are reviewed by the associated EGLE District floodplain engineer. <sup>[22]</sup>	<p>Any person aggrieved by a decision of EGLE during the permit application process may file an EPRC Petition for permit application review. A three-person panel will be convened to review the dispute and make a recommendation to the Director, who then issues a final decision based on the panel's recommendation.</p> <p>Within 21 days of EGLE’s final decision and order on a permit, any person aggrieved by the decision can request a review by filing an Environmental Permit Review Commission Petition. A three-person panel from the EPRC will review the record and may adopt, modify, or reverse the decision. EGLE shall issue a final decision, which is subject to judicial review, for contested case hearings within six months of receiving the petition (MCL §324.32723<sup>[41]</sup>).</p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Levees	EGLE	An MP permit application for any levee meeting the criteria for an MP project must be submitted to EGLE's Water Resources Division. MP permit applications are typically reviewed by EGLE without public notice, though the WRD may issue a notice or conduct a site inspection if needed. If the project is expected to cause more than minimal adverse effects, EGLE may require a more detailed individual permit process. <sup>[3]</sup>	The disputes and appeals process for levee permitting is the same as that outlined in the Floodplain Development Dispute / Appeals Process.
Stormwater	EGLE	Once a stormwater permit application is submitted to EGLE, the department makes preliminary determinations, including whether to issue or deny the permit, and drafts proposed effluent limitations and compliance schedules. A draft permit is then prepared and sent to the applicant and the USEPA Region V administrator before public notice. The department will subsequently issue a public notice and hold a 30-day comment period; if no comments are received, EGLE will issue the permit, but if comments are received, a public hearing will be held (Mich. Admin. Code R. §323.2115 – §323.2134 <sup>[32]</sup> ).	The disputes and appeals process for stormwater permitting is the same as that outlined in the Floodplain Development Dispute / Appeals Process.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	County Drainage Commissioners, EGLE	<p>The permitting process for county drain use permits differs between counties and is outlined in each county's Code of Ordinance.</p> <p>After submission of a County Drain General Permit application, EGLE will review the application and issue a decision to the applicant within 30 days of receiving the completed application.<sup>[26]</sup></p> <p>After submission of a JPA, EGLE will review the permit for administrative completeness within 90 days of receiving the application. Once the application is deemed complete or additional materials have been received from the applicant, EGLE will issue a public notice and hold a public hearing, if applicable. Following the public hearing, EGLE will issue a determination on the permit within 60 to 90 days of holding the hearing.<sup>[27]</sup></p>	<p>The disputes and appeals process for county drain use permits differs between counties and is outlined in each county's Code of Ordinance.</p> <p>The disputes and appeals process for both County Drain General and JPA permits from EGLE is the same as that outlined in the Floodplain Development Dispute / Appeals Process.</p>



Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	EGLE	<p>After submitting a dam construction permit to EGLE’s Dam Safety Program, EGLE will review the conceptual plans to assess potential significant adverse effects on public health, safety, welfare, property, or natural resources. If the project passes this initial review, EGLE then evaluates detailed engineering plans and specifications in the second step to ensure they meet all design standards before issuing a permit. This two-step approach allows applicants to receive early feedback on project viability and ensures that detailed engineering work is only undertaken after preliminary approval (MCL §324.31515<sup>[41]</sup>).</p>	<p>The disputes and appeals process for dam permitting and management procedures is the same as that outlined in the Floodplain Development Dispute / Appeals Process.</p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Water Rights	EGLE	<p>EGLE is the sole entity that issues water withdrawal permits and oversees water withdrawal registrations. For water withdrawal permitting, once a permit application is received by EGLE, the department will notify relevant parties within the vicinity of the proposed project and hold a 30-day public comment period. EGLE will review the application to determine if the withdrawal would violate public or private rights or have a negative effect on the basin's economic and natural environments. If no negative impacts are anticipated, EGLE will issue a Water Withdrawal Permit. EGLE shall issue a determination on the permit application within 120 days of receipt of an administratively complete application (MCL §324.32723<sup>[41]</sup>).</p>	<p>The disputes and appeals process for water rights permitting is the same as that outlined in the Floodplain Development Dispute / Appeals Process.</p>

## CITATIONS

- [1] Clinton County St. Johns Michigan. (n.d.-x). Office of the Drain Commissioner. [https://www.clinton-county.org/250/Drain-Commissioners-Office#:~:text=The%20Michigan%20Drain%20Code%20\(Public,county%20drains%20in%20Clinton%20County](https://www.clinton-county.org/250/Drain-Commissioners-Office#:~:text=The%20Michigan%20Drain%20Code%20(Public,county%20drains%20in%20Clinton%20County).
- [2] Department of Environment, Great Lakes, and Energy (EGLE). (2021, August). General Permit Categories in the State of Michigan. <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/Wetlands/General-Permit-Categories.pdf?rev=e7fc28cb17e14c7b821b7595f6aa585d&hash=490A504F4063BC141104F8DDDCAF70AE>
- [3] Department of Environment, Great Lakes, and Energy (EGLE). (2021, August). Minor Project Categories in the State of Michigan. <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/Wetlands/Minor-Project-Categories.pdf?rev=c0e17657e1484b20afe47010a67a6999&hash=3C83AAE98832042FA83E28328C7C9842>
- [4] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-a). Office of the Great Lakes. <https://www.michigan.gov/egle/about/organization/office-of-the-great-lakes>
- [5] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-b). Organizational Chart. <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Org-Charts/EGLE.pdf?rev=72c42d1c003e44f6af522e19e3567b01&hash=C0550FC2C0438A9DCB21F3529B6D5C1F>
- [6] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-c). Office of Legislative Affairs. <https://www.michigan.gov/egle/about/organization/legislative-affairs>
- [7] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-d). About Us. <https://www.michigan.gov/egle/about>
- [8] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-e). Water Resources Division. <https://www.michigan.gov/egle/about/organization/water-resources>
- [9] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-f). Drinking Water and Environmental Health Division. <https://www.michigan.gov/egle/about/organization/drinking-water-and-environmental-health>
- [10] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-g). Environmental Permit Review Commission (EPRC). <https://www.michigan.gov/egle/about/groups/environmental-permit-review-commission>
- [11] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-h). Environmental Rules Review Committee. <https://www.michigan.gov/egle/about/groups/environmental-rules-review-committee>
- [12] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-i). Statewide Public Advisory Council (SPAC). <https://www.michigan.gov/egle/about/groups/spac>
- [13] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-j). Water Asset Management Council. <https://www.michigan.gov/egle/about/groups/water-asset-management-council>
- [14] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-k). Water Use Advisory Council. <https://www.michigan.gov/egle/about/groups>
- [15] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-l). Areas of Concern. <https://www.michigan.gov/egle/faqs/water-resources-protection/areas-of-concern>
- [16] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-m). Permits for County Drain Activities. <https://www.michigan.gov/egle/about/organization/water-resources/inland-lakes-and-streams/permits-for-county-drain-activities>
- [17] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-n). FAQ: Water Withdrawals. <https://www.michigan.gov/egle/faqs/water-resources-protection/water-withdrawals>
- [18] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-o). Water Use Program. <https://www.michigan.gov/egle/about/organization/geologic-resources-management/water-use>
- [19] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-p). Dam Safety – Program Overview. <https://www.michigan.gov/egle/about/organization/water-resources/dam-safety/program-overview>

- [20] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-q). Dam Safety – Construction Permits for Dams. <https://www.michigan.gov/egle/about/organization/water-resources/dam-safety/construction-permits-for-dams>
- [21] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-r). Water Resources Division Staff Maps. <https://www.michigan.gov/egle/about/organization/water-resources/staff>
- [22] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-s). Floodplains. <https://www.michigan.gov/egle/about/organization/water-resources/floodplain-management/floodplains>
- [23] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-t). Floodplain Management / National Flood Insurance. <https://www.michigan.gov/egle/about/organization/water-resources/floodplain-management>
- [24] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-u). National Pollutant Discharge Elimination System (NPDES) Permits. <https://www.michigan.gov/egle/about/organization/water-resources/npdes>
- [25] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-v). Storm Water Programs. <https://www.michigan.gov/egle/about/organization/water-resources/storm-water>
- [26] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-w). Application Under County Drains General Permit Category. <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Forms/WRD/Wetlands/EQP9220-Application-Under-County-Drains-General-Permit-Category.pdf?rev=388e3b6d244a4ad29457192a5f55ad7d&hash=E5A9E2F6B4A4F8251B33E9E2751D014C>
- [27] Department of Environment, Great Lakes, and Energy (EGLE). (n.d.-x). EGLE/USACE Joint Permit Application. <https://www.michigan.gov/egle/about/organization/water-resources/joint-permit-application>
- [28] Great Lakes St. Lawrence Governors & Premiers. (n.d.-a). Great Lakes Agreement and Compact. <https://gsgp.org/projects/water-management/great-lakes-agreement-and-compact/>
- [29] Great Lakes St. Lawrence Governors & Premiers. (n.d.-b). Members. <https://gsgp.org/members/>
- [30] Michigan Association of Conservation Districts. (n.d.-a). Water. <https://www.macd.org/water>
- [31] Michigan Department of Agriculture & Rural Development (MDARD). (n.d.-a). About MDARD. <https://www.michigan.gov/mdard/about>
- [32] Michigan Department of Licensing and Regulatory Affairs. (n.d.-a). Michigan Administrative Code (Mich. Admin. Code). <https://ars.apps.lara.state.mi.us/AdminCode/AdminCode>
- [33] Michigan Department of Natural Resources (DNR). (2023, December). Organizational Chart. <https://www.michigan.gov/dnr/-/media/Project/Websites/dnr/Documents/Executive/Misc/DNR-All-OrgChrt.pdf?rev=a5336f3953994ce3b2658daad5385ebc&hash=1AFD1A5B993ECD85E48579806980F083>
- [34] Michigan Department of Natural Resources (DNR). (n.d.-a). About Us. <https://www.michigan.gov/dnr/about>
- [35] Michigan Department of Natural Resources (DNR). (n.d.-b). Dams. <https://www.michigan.gov/dnr/managing-resources/fisheries/dams>
- [36] Michigan Department of Natural Resources (DNR). (n.d.-c). Habitat Management. <https://www.michigan.gov/dnr/managing-resources/fisheries/habitat>
- [37] Michigan House. (2023, January). Budget Briefing: Environment, Great Lakes, and Energy. [https://www.house.mi.gov/hfa/PDF/EnvironmentalQuality/EGLE\\_Subcmte\\_Testimony\\_EGLE\\_BudgetBriefing\\_1-31-23.pdf](https://www.house.mi.gov/hfa/PDF/EnvironmentalQuality/EGLE_Subcmte_Testimony_EGLE_BudgetBriefing_1-31-23.pdf)
- [38] Michigan Invasive Species Program. (n.d.-a). Invasive Species: State Response. <https://www.michigan.gov/invasives/stateresponse>
- [39] Michigan Legislature. (1956). The Drain Code of 1956 – Act 40 of 1956. <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-40-of-1956.pdf>
- [40] Michigan Legislature. (1994). Act 451 of 1994. <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-451-of-1994>
- [41] Michigan Legislature. (n.d.-a). Michigan Compiled Laws (MCL) – Chapter 324. <https://legislature.mi.gov/Laws/MCL?objectName=mcl-chap324>
- [42] Michigan PFAS Action Response Team (MPART). (n.d.-a). About MPART. <https://www.michigan.gov/pfasresponse/about>

- [43] Michigan PFAS Action Response Team (MPART). (n.d.-b). Advisory Groups. <https://www.michigan.gov/pfasresponse/about/advisory-groups>
- [44] United States Department of Agriculture (USDA). (2022, March). Michigan – Conservation Reserve Enhancement Program (CREP). [https://www.michigan.gov/mdard/-/media/Project/Websites/mdard/documents/environment/crep/FSA\\_CREP\\_Factsheet\\_Michigan\\_FINAL.pdf?rev=407c24238063437ab6f3de7d17866f04&hash=76CBBCCCEB2B292B7B904B88AC9967AB](https://www.michigan.gov/mdard/-/media/Project/Websites/mdard/documents/environment/crep/FSA_CREP_Factsheet_Michigan_FINAL.pdf?rev=407c24238063437ab6f3de7d17866f04&hash=76CBBCCCEB2B292B7B904B88AC9967AB)
- [45] Michigan Department of Natural Resources. (n.d.). Natural Rivers. <https://www.michigan.gov/dnr/managing-resources/fisheries/natural-rivers>

Input was provided by Jon Spieles of the Michigan DNR.

# Minnesota Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Minnesota Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Minnesota Department of Natural Resources (MN DNR)</b> – Water Appropriation, Dam Permitting and Management, Floodplain Permitting and Management, Groundwater Protection, Public Drainage Systems</li> <li>• <b>Minnesota Board of Water and Soil Resources (BWSR)</b> – Watershed Management, Drainage Permitting and Management, Administration of Funding for Soil and Water Conservation</li> <li>• <b>Minnesota Pollution Control Agency (MPCA)</b> – Stormwater Permits, Wastewater Permitting, Water Quality Standards, Administration of Funding Through U.S EPA Clean Water Act Section 319(h) Grants, Clean Water Partnership Loan Program, and the Clean Water Fund</li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Watershed Districts (WD)</b> – Water management at the watershed level; Watershed Management Districts created by WDs for funding watershed projects               <ul style="list-style-type: none"> <li>• <b>Metro Watershed Districts</b> – Watershed Districts in the seven-county metro area (Minneapolis-St. Paul metropolitan area)                   <ul style="list-style-type: none"> <li>• <b>Water Management District</b> – Optional mechanism for funding specific watershed projects established by watershed districts. District boundaries are defined by an area of project need or benefit.                       <ul style="list-style-type: none"> <li>○ Count: 45 (30 WD; 15 Metro WD)</li> </ul> </li> </ul> </li> <li>• <b>Watershed Management Organizations (WMOs)</b> – Units of watershed management that operate as joint powers, watershed districts, or functions of county government                   <ul style="list-style-type: none"> <li>○ Count: 47</li> </ul> </li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Soil and Water Conservation Districts (SWCDs)</b> – Independent units of water management at the county level administered by the BWSR. <ul style="list-style-type: none"> <li>○ Count: 91</li> </ul> </li> </ul>
<b>Overview of Key Practices</b>	
<i>Key authorities regarding Minnesota water resources management are contained in the Minnesota Statutes Chapter 103 and the Minnesota Administrative Rules 61115; 7050; 7090.</i>	
<p>Flood and Floodplain Permitting and Management</p> <p>Levee Permitting and Management</p>	<p>The MN DNR oversees community floodplain management programs and approval of ordinances, coordinates between FEMA and communities, and manages permitting. Most local governments have a floodplain ordinance based on a previous version of the state’s model (pre-2022). To be in full compliance with the National Flood Insurance Program (NFIP), the MN DNR reviews and approves new and amended floodplain ordinances prior to adoption. WDs may have overlapping floodplain management regulation with local governments and can be sources of floodplain data.</p>
Stormwater Permitting	<p>The Minnesota Pollution Control Agency regulates stormwater runoff from municipalities, construction sites, and businesses that store materials outside. Additionally, the MPCA provides funding to municipal wastewater and stormwater projects through funding programs like the Clean Water State Revolving Fund or Point Source Implementation grants.</p>
Drainage Permitting and Management	<p>Public drainage authorities work with MN DNR to implement drainage management practices. Public authorities include County Board of Commissioners, Joint County Board of Commissioners, Watershed Districts Board of Managers, and Water Management Organizations to administer Chapter 103E drainage systems in accordance with Minnesota drainage law.<sup>[10],[21]</sup> The BWSR is responsible for regulating drainage as the administrative agency for SWCDs.</p>
Dam Permitting and Management	<p>MN DNR is the primary agency overseeing Dam Permitting and Management in Minnesota. MN DNR issues construction permits for dams, conducts inspections, and may order the removal or modification of unsafe dams. Additionally, Minn. Stat. § 103G.511 authorizes a state dam safety program for dam repair, removal, and reconstruction.<sup>[20]</sup></p>
Surface Water Quality Monitoring and Management	<p>The MPCA oversees water quality standards provided in Minnesota Rules Chapters 7050 and 7052. Water quality standards are outlined into seven use classes and state standards require final approval by the U.S. Environmental Protection Agency.</p>

Water Supply and Diversion	The MN DNR manages the Water Appropriation Permit Program which balances competing management objective for both the development and protection of Minnesota’s water resources.
----------------------------	---

## MINNESOTA STATE AGENCY(IES) OVERVIEW

### Minnesota Department of Natural Resources (MN DNR)

The MN DNR manages the state’s water resources to sustain healthy waterways and conserve the diversity of natural lands, waters, and wildlife. The MN DNR is comprised of six divisions based on authorities and responsibilities.<sup>[8]</sup> The Ecological and Water Resources Division is divided into four sections described below:

- **Ecosystem Management and Protection:** The Ecosystem Management and Protection section focuses on preserving and protecting species, resources, and areas for scientific study and public understanding.
- **Conservation Assistance and Regulation:** The Conservation Assistance and Regulation section focuses on dam safety and permits and water regulation, including environmental review among other functions.
- **Inventory, Monitoring and Analysis:** The Inventory, Monitoring, and Analysis sections focuses on water monitoring and surveys, groundwater management, and river and lake ecology.
- **Strategic Information Services:** The Strategic Information Services section provides business operations, communications and planning, and information technology.

### Minnesota Board of Water and Soil Resources (BWSR)

The BWSR works to improve and protect land and water resources including implementing soil and water policy, comprehensive local water management, and the Wetland Conservation Act. The BWSR supports local government’s water management goals by providing water-related planning, grant, and regulatory programs and is the administrative agency for soil and water conservation districts, watershed districts, metropolitan watershed management organizations, and counties responsible for land and water management.<sup>[6]</sup> Additionally, the BWSR provides coordination and facilitation of the Drainage Management Team (DMT), an interagency team of staff members from state and deferral agencies, and academic institutions that coordinate and network regarding agricultural drainage topics.<sup>[1]</sup> BWSR also facilitates the Drainage Work Group, which provides science-based recommendations regarding drainage issues and potential updates to Minnesota Statutes Chapter 103E Drainage.<sup>[25]</sup> BWSR is comprised of 9



divisions based on different responsibilities, including water resources, which is described below.

- **Water Resources:** The primary functions of this division are to support local government's water management goals.<sup>[6]</sup> The Division of Water Resources provides programs in the following areas: Planning/Conservation Programs, Grant Programs, and Regulatory Programs. The Planning/Conservation Programs provide management programs for Watershed and Metro Watershed Districts. The Grant Programs offer funding and grants at the county level to both county governments and SWCDs. The Regulatory Program helps with Wetland Regulation and Minnesota Buffer Law.

As the state's water and soil conservation agency, the BWSR directs, coordinates, and provides funding to local governments and is the state administrative agency for soil and water conservation districts <sup>[7]</sup>

### Minnesota Pollution Control Agency (MPCA)

The MPCA works to improve and ensure clean air and water, sustainable land, and a better climate and works with regulated parties, businesses, governments, and tribal nations to prevent and reduce pollution of air, land, and water. <sup>[15]</sup> The MPCA is organized into seven divisions, four of which are applicable to water resources and are outlined below:

- **Watershed:** The primary functions of this division are to address water pollution and protect healthy waters.
- **Environmental Analysis and Outcomes:** The primary function of this division is air and water monitoring work including data analysis, standards development, and ensuring the accessibility of environmental data to the public.
- **Industrial:** The primary functions of this division pertaining to water management are to handle permitting for industrial wastewater and stormwater facilities.
- **Municipal:** This division has authority over municipal wastewater, stormwater, and construction stormwater permits.

Additionally, the MPCA has access to state and federal funding sources for watershed projects.<sup>[14]</sup> This includes the federal Clean Water Act Section 319, state Clean Water Partnership grants and loans, or through the Clean Water Fund.

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### Watershed Districts (WD)

Minnesota contains WDs, administered by the BWSR<sup>[7]</sup>, that are responsible for water management on a watershed basis and conserve natural resources through land use planning and flood control projects, among other conservation measures. WDs administered by the BWSR are typically comprised of three or more board members, and have broad authority, including control of the use of water resources within the district. Metro WDs have additional watershed management plan requirements compared to non-

metro watershed districts and must develop and revise watershed management plans every 10 years.<sup>[19]</sup>

- **Watershed Management Districts (WMD):** WMDs are optional mechanisms for funding watershed projects established by WDs through the amendment of the watershed district plan. WMD areas are defined by areas of project need or benefit and can only be utilized for projects initiated or ordered to be implemented through formal hearing and adoption processes.<sup>[5]</sup>

#### Watershed Management Organizations (WMOs)

WMOs are local units of government in the seven-county Metro Area to prepare and implement surface water management plans based on watershed boundaries.<sup>[19]</sup> WMOs are administered by the BWSR, and can be organized in the following ways:

- As a joint powers agreement between cities and townships within the watershed;
- As a watershed district operating under Minn. Stat. Chapter 103B or Minn Stat. Chapter 103 D;
- As a function of county government.

Joint Powers WMOs have the authority to manage and plan for the surface water management in a watershed, regulate land use and development in a watershed, and manage drainage systems in the watershed, among other functions. <sup>[3]</sup>

#### Soil and Water Conservation Districts (SWCDs)

SWCD implement the Soil and Water Conservation Policy outlined in Minnesota's Water Law through management of direct natural resource management programs.<sup>[22]</sup> Although SWCDs follow county boundaries, they are independent units of local government that rely on county governments to supplement their operating expenses. SWCDs are administered by the BWSR and operate under the authority of Minn. Stat. Chapter 103 C and are subject to other statues and rules as well.<sup>[7]</sup>

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Minnesota are generally contained within the Minnesota Statues or the Minnesota Administrative Rules. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the Minnesota Statues or the Minnesota Administrative Rules. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Minnesota**

Practice Area	Policy / Regulation	Date	Key Principles
Flood and Floodplain Management; Levees	Minn. Stat Chapter 103F <sup>[3]</sup> ; Minn. R. §§ 6120.5000 – 6120.6200 <sup>[23]</sup>	1989; 1991	<ul style="list-style-type: none"> <li>• Requires communities to develop and submit floodplain management ordinances that are in full compliance with the National Flood Insurance Program (NFIP).</li> <li>• Charges the State (MN DNR) with coordinating floodplain management and providing general regulatory assistance among federal, state, and local entities. Review and approve all new and amended floodplain ordinances prior to adoption to verify that minimum state and federal standards are met.</li> <li>• Communities use floodplain ordinance in conjunction with FEMA-approved maps to guide land use decisions.</li> <li>• Levee systems are overseen by the U.S. Army Corps of Engineers Levee Program and FEMA,<sup>[24]</sup> Our research could not find regulations administered by the Minnesota state government.</li> </ul>
Stormwater Management	Minn. R. 7090 <sup>[16]</sup>	1991	<ul style="list-style-type: none"> <li>• General permits cover multiple entities with similar operations and types of discharges to reduce the amount of sediment and other pollutants entering state waters from stormwater systems</li> </ul>
	General Permits MNR040000, MNR100001, MNR050000	11/16/2020, 8/1/2023, 4/1/2020	<ul style="list-style-type: none"> <li>• Permits are required for owners or operators for any construction activity disturbing one acre or more of soil or less than one acre of soil if that activity is part of a “larger plan of development or sale” that covers more than one acre such as a subdivision, phased project or a combination of construction activities.</li> <li>• Online application for a NPDES/SDS construction stormwater permit that requires the creation of a Stormwater Pollution Prevention Plan (SWPPP) prior to application.</li> <li>• Industrial stormwater permittees in Minnesota are regulated by a general permit that is reissued every five years.</li> <li>• Permit is to reduce the pollutant levels in point source discharges and protect water quality in accordance with the U.S Clean Water Act, Minnesota statutes and rules, and federal laws and regulations.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	Minn. Stat. Chapter 103 E <sup>[21]</sup>	1989	<ul style="list-style-type: none"> <li>• MN DNR issues the General Public Waters Work Permit GP 2004-0001 to MnDOT for the repair or construction of culverts, bridges, and stormwater outfalls affecting Public Waters.</li> <li>• Minnesota Drainage Law enables the construction, improvement, and repair of drainage systems across property and governmental boundaries. Systems are administered by public drainage authorities including county and joint county boards or watershed districts who act on behalf of benefited property owners. Most drainage proceedings are petition based. Petitions for drainage improvements or modifications are filed within the local jurisdiction.</li> </ul>
Dam Management	Minn. R.6115.0350; Minn. R. 6115.0410 <sup>[17]</sup>	8/7/2009	<ul style="list-style-type: none"> <li>• A permit is required from MNDNR for the construction, alteration, repair, removal, or transfer of ownership of a regulated dam.</li> <li>• Defines which dams are subject to state jurisdiction and establishes three dam safety hazard classes.</li> </ul>
	Dam Safety Standards <sup>[9]</sup> ; Minn. Stat. §§ 103G.515 <sup>[20]</sup>	2003	<ul style="list-style-type: none"> <li>• The MN DNR is authorized to inspect dams and issue orders directing dam owners to make necessary repairs.</li> <li>• Dams with impoundment storage between 15 and 50 acre ft and height of dam between 6 and 25 ft are subject to MN DNR Dam Safety Regulations but are exempt from Dam Safety Permits if no potential for loss of life.</li> <li>• Dams with height greater than 25 ft and impoundment storage greater than 50 ft are subject to all MN DNR Dam Safety Regulations.</li> <li>• Larger dams may be exempt from the Safety Rules if there is no potential for loss of life due to failure or improper operation.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Surface Water Quality	Minn. R. Chapter 7050 <sup>[18]</sup>	1982	<ul style="list-style-type: none"> <li>• MPCA oversees state water quality standards defined in Minnesota Rules chapters Waters of the State and Lake Superior Basin Water Standards.</li> <li>• The federal Clean Water Act requires states to designate beneficial users for all waters and develop water quality standards to protect each use. Additional beneficial users protected in Minnesota include drinking water, industrial and agricultural uses, wildlife, navigation, and aesthetic enjoyment.</li> </ul>
Water Supply and Diversion Rights	Minn. Stat. § 103G.271	1985	<ul style="list-style-type: none"> <li>• Permits are required for water users withdrawing more than 10,000 gallons of water per day or 1 million gallons per year from a surface water or groundwater, except for domestic uses for less than 25 persons, test pumping groundwater sources, reuse of water already authorized by a permit, and certain agricultural drainage systems. <sup>[1]</sup></li> <li>• All permitted users are required to submit annual water use reports.</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entities	Permitting Overview	Dispute / Appeals Process
Floodplain Development and Levees	Local Floodplain Administrator	A floodplain development permit must be obtained from the Zoning Administrator for all floodplain districts.	N/A (Note 1)
Stormwater	MPCA	The state has three general permits: Construction, Industrial, and MS4s (see Table 1).	Any person may petition the commissioner for designation or redesignation of an MS4 (Minn. R. 7090.1010) <sup>[16]</sup>

Permit Type	Permitting Entities	Permitting Overview	Dispute / Appeals Process
Drainage	MN DNR	Public Water Works permits are not required to maintain or repair public drainage systems if the work is undertaken according to drainage law. Drainage authorities are legally required to notify the DNR if repairs to public drainage systems could potentially affect public waters. <sup>[11]</sup>	(Minnesota Public Drainage Manual – Chapter 2 – VII) <sup>[1]</sup>  The drainage code provides for two appeals statutes which give jurisdiction to review the proceedings of the drainage authority and to review all available, credible evidence to reach the court's own conclusions in a drainage proceeding. (Minn. Stat. §§ 103E.095 and 103E.091)
Dams, Dikes, and Other Water Control Devices	MN DNR	The MN DNR issues permits for dam construction, alteration, removal, and transfer of property containing a dam. Applications for permits are submitted via MPARS or through the State Dam Safety Engineer. <sup>[9]</sup>	N/A [1]
Water Appropriation and Use	MN DNR	Applications for water appropriation permits are completed through the MN DNR Permitting and Reporting System. Local governments have 30 days to review and issue comments to the MN DNR per the Minnesota Statutes 103G and Minn. Rules 6115. <sup>[12]</sup>	A permit hearing may be held or may be waived by the Commissioner of Natural Resources, who makes an order issuing or denying the permit. An affected party may subsequently demand that a hearing be held and will be responsible for the associated costs if the final order remains unchanged after the hearing is conducted.

[1] Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available.

## CITATIONS

- [1] Minnesota Board of Soil and Water Resources (BSWR). (n.d.-a). Drainage Management Team. <https://bwsr.state.mn.us/drainage-management-team>
- [2] Minnesota Board of Soil and Water Resources (BSWR). (2016). Public Drainage Manual. <https://bwsr.state.mn.us/Minnesota-Public-Drainage-Manual>
- [3] Minnesota Board of Soil and Water Resources (BSWR). (n.d.-a). Watershed Management Organization. <https://bwsr.state.mn.us/watershed-management-organizations>
- [4] Minnesota Board of Soil and Water Resources (BSWR). (n.d.-b). Watershed Districts. <https://bwsr.state.mn.us/watershed-districts>
- [5] Minnesota Board of Soil and Water Resources (BSWR). (n.d.-c). Water Management Districts. <https://bwsr.state.mn.us/water-management-districts>
- [6] Minnesota Board of Soil and Water Resources (BSWR). (n.d.-d). Water Resources. <https://bwsr.state.mn.us/water>
- [7] Minnesota Board of Soil and Water Resources (BSWR). (n.d.-e) Minnesota SWCDs. <https://bwsr.state.mn.us/minnesota-swcds#mnswwcds>
- [8] Minnesota Department of Natural Resources (MNDNR). (n.d.-a). Our Mission. <https://www.dnr.state.mn.us/aboutdnr/mission.html>
- [9] Minnesota Department of Natural Resources (MNDNR). (n.d.-a). Permit Guidelines for Dams. [https://www.dnr.state.mn.us/waters/surfacewater\\_section/damsafety/permit\\_guidelines.html](https://www.dnr.state.mn.us/waters/surfacewater_section/damsafety/permit_guidelines.html)
- [10] Minnesota Department of Natural Resources (MNDNR). (n.d.-b). Public Drainage Ditch Systems. [https://www.dnr.state.mn.us/waters/surfacewater\\_section/public-ditches.html](https://www.dnr.state.mn.us/waters/surfacewater_section/public-ditches.html)
- [11] Minnesota Department of Natural Resources (MNDNR). (n.d.-c). Public Waters Work Permit Program. [https://www.dnr.state.mn.us/waters/watermgmt\\_section/pwpermits/index.html](https://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/index.html)
- [12] Minnesota Department of Natural Resources (MNDNR). (n.d.-d). Water Use Permits. [https://www.dnr.state.mn.us/waters/watermgmt\\_section/appropriations/permits.html](https://www.dnr.state.mn.us/waters/watermgmt_section/appropriations/permits.html)
- [13] Minnesota Department of Natural Resources (MNDNR). (n.d.-e). Water Use Permit Program. [https://www.dnr.state.mn.us/waters/watermgmt\\_section/appropriations/index.html](https://www.dnr.state.mn.us/waters/watermgmt_section/appropriations/index.html)
- [14] Minnesota Pollution Control Agency (MPCA). (n.d.-a). Watershed Funding. <https://www.pca.state.mn.us/business-with-us/watershed-project-funding>
- [15] Minnesota Pollution Control Authority (MPCA). (n.d.-b). About Us. <https://www.pca.state.mn.us/about-mpca/about-us>
- [16] Minnesota State Legislature. Minnesota Rules (2024). Rule 7090.1010 <https://www.revisor.mn.gov/rules/7090.2010/>
- [17] Minnesota State Legislature. Minnesota Rules (n.d.-a). Chapter 6115 – Public Water Resources. <https://www.revisor.mn.gov/rules/6115/>
- [18] Minnesota State Legislature. Minnesota Rules (n.d.-b). Chapter 7050 – Waters of the State <https://www.revisor.mn.gov/rules/7050/>
- [19] Minnesota State Legislature. (2023a) Minnesota Statutes §103B.201– Metropolitan Water Management Program; Purpose. <https://www.revisor.mn.gov/statutes/cite/103B.201>
- [20] Minnesota State Legislature. (2023b) Minnesota Statutes §§103G.511-515 – Publicly Owned Dam Repair. <https://www.revisor.mn.gov/statutes/cite/103G.511>
- [21] Minnesota State Legislature. (2023c) Minnesota Statutes, Chapter 103 E – Drainage. <https://www.revisor.mn.gov/statutes/cite/103E>
- [22] Minnesota State Legislature. (2023d) Minnesota Statutes, Chapter 103C- Soil and Water Conservation Districts. <https://www.revisor.mn.gov/statutes/cite/103C>
- [23] Minnesota State Legislature. (2023e) Minnesota Statutes, Chapter 103F – Protection of Water Resources. <https://www.revisor.mn.gov/statutes/cite/103F>
- [24] St. Paul District, U.S. Army Corps of Engineers. (2015). Levee Safety Program: Minnesota. <https://www.mvp.usace.army.mil/Home/Projects/Article/570999/levee-safety-program-minnesota/>

- [25] Minnesota Board of Soil and Water Resources (BSWR). (n.d.) Drainage Work Group.  
<https://bwsr.state.mn.us/drainage-work-group>
- [26] Minnesota State Legislature. (2019) Minnesota Statutes §§103G.311 – Permit Hearing.  
<https://www.revisor.mn.gov/statutes/cite/103G.311>

Input was provided by Dan Miller of the Minnesota DNR.



# Missouri Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Missouri Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Missouri Department of Natural Resources (MoDNR), Division of Environmental Quality (DEQ), Water Protection Program</b> – State Water Plan Development, Surface Water Quality Monitoring, Stormwater Permitting and Management, Development of Water Quality Standards, Drinking Water Treatment, Clean Water Commission, Water Policy Implementation, Wastewater Permitting and Management, Water Project Funding and Development.</li> <li>• <b>MoDNR, Missouri Geological Survey (MGS)</b> - Earth Science Information and Services, Dam and Reservoir Safety, Geological Survey, Land Reclamation, Soil and Water Conservation, Water Resources Center, Stewardship of Natural Resources, Surface and Groundwater Monitoring, Groundwater Studies for Quantity and Quality Assessment.</li> <li>• <b>Missouri Department of Conservation (MDC)</b> – Science Branch, Regional Resource Management, and Statewide Resource Management, Stream Habitat Program, Management of Aquatic Resources, Stream and Riparian Restoration, Streambank Stabilization and Erosion Control.</li> <li>• <b>Missouri Department of Public Safety (DPS), Division of State Emergency Management Agency (SEMA)</b> – Floodplain Management, Disaster and Recovery, Management of Disaster-Related Funding, Flood Preparedness and Response.</li> </ul>

<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Soil and Water Conservation Districts (SWCDs)</b> – Water quality protection at the county level. <ul style="list-style-type: none"> <li>○ Count: 114</li> </ul> </li> <li>• <b>Regional Planning Commissions (RPCs)</b> – Regional planning and coordination. <ul style="list-style-type: none"> <li>○ Count: 19</li> </ul> </li> <li>• <b>Drainage Districts</b> – Established by landowners to protect land from water effects. Not regulated by MoDNR or under executive branch oversight.</li> <li>• <b>Levee Districts</b> – Established by landowners to protect land prone to flooding or erosion. Not regulated by MoDNR or under executive branch oversight.</li> </ul>
--	---

**Overview of Key Practices**

*Key authorities regarding Missouri water resources management are contained in the Missouri Revised Statutes (RSMo) Title XV et seq<sup>[1]</sup>, and the Missouri Code of State Regulations (CSR) Title 10 et seq<sup>[2]</sup>.*

<p>Flood and Floodplain Permitting and Management</p>	<p>The regulatory framework and minimum requirements for Missouri’s floodplain management program align with the National Flood Insurance Program (NFIP) standards. Local governments issue floodplain development permits through SEMA for projects involving the state of Missouri. For projects proposed within regulatory floodways, a "no-rise" certificate, if applicable, should be obtained before issuing a permit<sup>[3]</sup>. SEMA’s Floodplain Management Section administers the NFIP for the state of Missouri.</p>
<p>Levee Permitting and Management</p>	<p>Levee permitting and management are primarily handled through the "Four States Collaboration," which includes the USACE and stakeholders from Missouri, Kansas, Nebraska, and Iowa. This partnership enhances levee safety and flood risk management along the Missouri River. MDNR participates in levee discussions but lacks regulatory authority over levee permitting authority.</p>
<p>Stormwater Permitting</p>	<p>The MoDNR issues site-specific permits for discharging regulated stormwater, typically valid for five years. A permit is required for Municipal Separate Storm Sewer Systems (MS4s) when located within an urban area with a population of 50,000 or more people<sup>[4]</sup>. Nine large MS4s and 160 small MS4s are designated and currently regulated under the Master General Permit for Phase II MS4s.<sup>[5]</sup> If the MS4 discharges stormwater to waters of the United States, it must obtain a permit under the NPDES. As a permit approaches expiration, it is redrafted and made available for public review and comment for 30 days on the department’s Water Public Notices webpage<sup>[5]</sup>. State oversight is required by the state’s</p>

	participation in the National Pollutant Discharge Elimination System (NPDES).
Drainage Permitting and Management	County commissions in Missouri have the authority to appoint drainage and reclamation commissioners. These commissioners are responsible for overseeing the draining and reclamation of swamp and overflowed lands within their jurisdiction, subject to Clean Water Act 404 or 401 permitting requirements or other federal frameworks. Landowners who hold a majority of the acreage in areas prone to overflow can organize a drainage district. The district can undertake the permitting, planning, construction, and maintenance of drainage infrastructure.
Dam Permitting and Management	The MoDNR is the primary agency overseeing dam permitting and management in Missouri. For new dams 35 feet or taller, owners must obtain both a construction permit to build the dam and a safety permit to operate it. Significant modifications to existing dams of the same height also require a construction permit. Dams built before August 13, 1981 need a registration permit. Department staff conduct an initial engineering analysis to ensure compliance with minimum standards. Safety permits are issued for operating dams built after August 13, 1981. Exemptions exist for dams licensed under the Federal Power Act and those primarily used for agricultural purposes.
Surface Water Quality Monitoring and Management	The MoDNR is responsible for overseeing surface water quality monitoring and management in the state. The DNR publishes water quality reports, including the biennial Missouri Integrated Water Quality Report, and maintains a list of impaired waters to guide improvement efforts as required by the Clean Water Act <sup>[6]</sup> . To protect and improve water quality, the department uses the Missouri Ambient Water Quality Monitoring Network, which collects data on rivers, streams, and lakes, and engages citizen monitoring programs for additional support. This approach ensures effective management and compliance with the federal Clean Water Act (CWA).
Water Supply and Diversion Rights	Major water users with the capacity to withdraw or divert 100,000 gallons of water or more per day must file a registration document with the MoDNR. Missouri observes riparian water rights and does not require a specific water use or diversion permit; however, the registration ensures that all major users are officially documented.

## MISSOURI STATE AGENCY(IES) OVERVIEW

### Missouri Department of Natural Resources (MoDNR)

Under the Omnibus State Reorganization Act of 1974 and Missouri Revised Statutes, section 640.010, the Missouri General Assembly established the Missouri Department of Natural Resources to consolidate state agencies dealing with land, air, water, energy, and cultural resources<sup>[7]</sup>. MoDNR funds its programs through federal and state grants, bonds, permit fees, private donations, and state budget allocations. MoDNR is organized into five divisions: Division of Administrative Support, Division of Energy, Division of Environmental Quality, Missouri Geological Survey, and Missouri State Parks. MoDNR also contains the Missouri Clean Water Commission and the Missouri Soil and Water Conservation Districts Commission, the latter of which develops programs for the preservation of soil and water quality, oversees the Soil and Water Conservation Districts, and provides technical assistance. <sup>[23][26]</sup>

MoDNR's Environmental Quality Division is responsible for protecting and enhancing Missouri's water quality. The division works to ensure clean air, land and water by cleaning up pollution from the past, addressing pollution problems of today and identifying potential pollution issues of the future. The division administers five technical programs, two of which have authorities and responsibilities related to water management<sup>[8]</sup>.

- **Water Protection Program:** This program administers clean water and drinking water responsibilities for Missouri. The program is delegated by the U.S. Environmental Protection Agency to conduct duties for the federal Clean Water Act and Safe Drinking Water Act, and carries out state responsibilities, such as operator certification and construction permitting. The Water Protection Program works with stakeholders, the general public and regulated facilities to comply with state and federal water regulations<sup>[9]</sup>.
- **Environmental Services program:** This program provides analytical information and scientific data that supports the department. The program also provides direct assistance to local communities and emergency responders throughout Missouri<sup>[10]</sup>.

MoDNR's Missouri Geological Survey (MGS) provides Earth science information and services that promote the responsible use of Missouri's natural resources, protect public health and safety, and support environmental stewardship through programs in administration, dam and reservoir safety, geological survey, land reclamation, soil and water conservation, and water resource management<sup>[25]</sup>. Within the MGS, the Water Resources Center monitors surface and groundwater levels, develops flood resiliency projects, manages water use data, and ensures the availability and safety of Missouri's vital water resources through strategic planning and collaboration with local and federal partners. Additionally, the Soil and Water Conservation Program supports Missouri's 114 county districts by providing grants, technical assistance, and training to promote sustainable agricultural practices, prevent soil erosion, and enhance water quality.

The Missouri Clean Water Commission works with the Water Protection Program to supervise the administration and enforcement of the Missouri Clean Water Law, ensuring the protection and improvement of water quality in the state<sup>[20]</sup>. Established in 1972 by the Missouri General Assembly, the commission replaced the Water Pollution Board and was later reassigned to the MoDNR under the Omnibus State Reorganization Act of 1974. The Clean Water Commission is responsible for developing the state's water quality standards and list of impaired waters. In collaboration with industry, citizens, and local governments, the commission develops comprehensive plans to prevent and control pollution, takes enforcement actions against violations, and establishes funding priorities for water quality preservation<sup>[26]</sup>.

MoDNR is headed by a Director, who is appointed by the Governor and confirmed by the Missouri Senate. The Director manages the policy and operations of the department through its five divisions and is supported by the Deputy Director<sup>[11]</sup>. Within each division, a Division Director is appointed to oversee each Division and is supported by two Deputy Division Directors. Additionally, MoDNR contains twelve Boards, Commissions, and Councils, nine of which have decision-making authority and three of which act in an advisory capacity only.

#### Missouri Department of Conservation (MDC)

The MDC was created by the Missouri Conservation Commission, established through a 1936 constitutional amendment. The Conservation Commission was designed to oversee the new agency, which began operations in 1937. The MDC funds its programs through a combination of revenues including a dedicated state sales tax, user fees, excise taxes, and private donations. The department is responsible for overseeing the health of aquatic ecosystems and providing recommendations on sustainable practices in water use and ecological flows. This involves managing fisheries to maintain healthy fish populations, protecting and restoring wetlands and riparian areas to enhance water quality, and conducting research to support water resource conservation. The department also collaborates with other agencies and stakeholders to address water-related issues and implement conservation strategies.

The MDC is headed by a Director who is appointed by the Conservation Commission. Three deputy directors serve under the MDC director. Each deputy directory oversees one of the three department areas. The MDC also has eight regional administrators dedicated to implementing department priorities at the local level.

#### Missouri Department of Public Safety (DPS)

The State Emergency Management Agency (SEMA), a division of the Department of Public Safety, is the state of Missouri's coordinating agency for disaster planning, response and recovery. SEMA works with other state departments and agencies, local governments, the federal government, and volunteer and faith-based organizations to ensure coordinated and efficient management during large scale emergencies and disasters. SEMA is funded through federal grants, state appropriations, user fees, and private donations. When the Governor declares a state of emergency in Missouri, SEMA

operates the State Emergency Operations Center (SEOC) to lead the disaster response effort. SEMA comprises of four divisions, one of which is related to water management, as described below<sup>[13]</sup>.

- **Recovery Division:** When a disaster occurs that may require response and recovery efforts beyond the capabilities of the state and local jurisdictions, the Recovery Division coordinates and conducts damage surveys with local and federal agencies and prepares, at the Governor's direction, a federal disaster declaration request. The Division is composed of the Floodplain Management Program which administers the National Flood Insurance Program (NFIP) for the state of Missouri. SEMA also is a Cooperating Technical Partner (CTP) with FEMA in the production of Digital Flood Insurance Rate Maps (DFIRM) under the federal "Risk Map" modernization program. In addition, the section partners with the Missouri Floodplain and Stormwater Managers Association (MFSMA) and others to offer NFIP training for local floodplain managers, planners, insurance agents, elected officials, engineers and surveyors, lenders and realtors<sup>[14]</sup>.

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### *Drainage Districts*

In Missouri, drainage districts are established by the owners of a majority of the acreage in any continuous body of swamp, wet, or overflowed lands subject to overflow, through the signing of articles of association. Drainage district powers are held by a board of supervisors responsible for constructing and maintaining drainage infrastructure, levying taxes for funding, managing water flow to prevent flooding, enforcing drainage regulations, and calling upon residents for assistance in emergencies<sup>[1]</sup>. Drainage districts are funded through property taxes, state and federal grants, local government funds, and low-interest loan programs. While minority or downstream landowners may not have decision-making power in drainage districts, water drainage disputes between neighboring properties are governed by the "reasonable use" doctrine. This framework allows landowners to alter drainage on their property if it does not cause unreasonable harm to adjacent properties<sup>[22]</sup>.

### *Levee Districts*

In Missouri, levee districts can be formed by landowners holding a majority of acreage in areas susceptible to flooding, erosion, or overflow, to protect and reclaim land for agricultural, sanitary, or public benefit purposes<sup>[1]</sup>. These districts are governed by a board of supervisors, who have extensive powers to build, maintain, and improve levee structures, such as altering waterways, constructing levees, and managing water flow to prevent erosion and flood damage. Funding for levee districts is primarily collected through property taxes levied on landowners within the district, and supervisors may also acquire land or rights-of-way to carry out necessary protective work.

### *Regional Planning Commissions (RPCs)*

Missouri contains 19 RPCs that are responsible for developing comprehensive regional plans for physical, social, and economic development, including land use, transportation,



and public utilities. RPCs are funded through federal grants, state grants, local contributions, and service contracts, with oversight from the Missouri Association of Councils of Governments (MACOG). RPCs' number of board member varies by region but typically includes representatives from various local government units. Key responsibilities and authorities of RPCs include:

- Provide advisory services to local governments and public or private agencies on regional planning issues.
- Conduct research, collect and analyze data, and prepare reports and maps to support regional planning efforts.
- Publicize and advertise the commission's purposes, objectives, and findings, and engage with the public and local governments.

### Soil and Water Conservation Districts (SWCDs)

Missouri contains 114 SWCDs that are responsible for implementing soil and water conservation practices that decrease soil erosion and protect water resources at the county level. SWCDs are typically comprised of five board members, and their jurisdictions typically follow county boundaries, but exceptions may exist where watershed boundaries are more relevant. SWCDs have various responsibilities related to local governance of soil and water conservation, including developing regulations, employing assistants, and coordinating with the state soil and water districts commission<sup>[15]</sup>. Within district boundaries, key responsibilities and authorities of SWCDs include:

- Formulate and enforce rules, regulations, and policies for soil and water conservation within the district.
- Work with the state soil and water districts commission, submitting necessary documents, reports, and audit statements for approval.
- Assist in administering the state soil and water conservation cost-share program, including requiring landowners to enter into agreements for maintaining cost-shared projects.

SWCDs may utilize the following funding mechanisms to cover the costs of operations and projects: Property taxes, special assessments, federal and state funding, and revenue bonds.

Per RSMo 278.140 two or more SWCDs may form Joint Boards to: (1) manage water across district boundaries, or (2) undertake a joint project<sup>[15]</sup>.

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Missouri are generally contained within the RSMo or the CSR. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the RSMo or the CSR. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.



**Table 1. Key Policies and Regulations for Surface Water Management in Missouri**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	MoSEMA 60.3(a) <sup>[16]</sup>	June 2022	<ul style="list-style-type: none"> <li>• Executive Order establishing and amending floodplain management regulations, specifically designating the State Emergency Management Agency (SEMA) as the coordinator for the NFIP in Missouri.</li> <li>• SEMA is responsible for issuing floodplain development permits.</li> </ul>
Levees	RSMo 245 - 246 <sup>[1]</sup>	August 2008	<ul style="list-style-type: none"> <li>• County commissions can establish levee districts to manage lands subject to overflow or erosion (Chapter 245.290).</li> <li>• To extend a levee up to ten miles or enlarge a levee district for better flood protection, a petition from at least five landowners must be submitted to the county commission (Chapter 245.310).</li> </ul>
Stormwater Management	10 CSR 20-6.200, 20-6.010 <sup>[2]</sup>	January 2023	<ul style="list-style-type: none"> <li>• The NPDES program, established under the Clean Water Act (CWA), requires facilities and municipalities that discharge stormwater into U.S. waters to obtain permits, which Missouri adopted through the Missouri Clean Water Law.</li> <li>• Permits are required for building, altering, or operating point sources, water contaminant sources, or wastewater facilities.</li> <li>• Exemptions include nonpoint source discharges, internal plumbing, routine maintenance, certain small-scale systems, and emergency cleanups.</li> <li>• Permittees must comply with Missouri Clean Water Law and NPDES Program.</li> <li>• Continuing authorities must be designated, and applications may require additional approvals based on the type of authority and project scope.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	RSMo 241 – 246 <sup>[1]</sup>	August 2002	<ul style="list-style-type: none"> <li>• County commissions may appoint drainage and reclamation commissioners to manage the draining and reclaiming of swamp and overflowed lands to render them tillable.</li> <li>• Landowners holding a majority of the acreage in swampy or overflow-prone lands can form a drainage district.</li> <li>• Landowners may drain or protect swamp, wet, flat, or overflowed land for agricultural or sanitary purposes without forming a district, by constructing ditches, tiles, or levees, provided they compensate other landowners for any land used or damages incurred.</li> <li>• A petition signed by at least five landowners is required to initiate the formation of a drainage district, which must detail the boundaries and purpose of the proposed district.</li> <li>• The drainage district is responsible for the construction, maintenance, and operation of drainage systems within its boundaries, ensuring effective water management.</li> <li>• Upon the establishment of a drainage district, the circuit court will appoint three commissioners to oversee the district's operations and manage drainage improvements.</li> <li>• The board is responsible for the inspection and maintenance of drainage works to ensure they function effectively and to prevent blockages or failures.</li> </ul>
Dam Management	RSMo 236 <sup>[18]</sup>	August 1939	<ul style="list-style-type: none"> <li>• All dams and reservoirs must be inspected periodically to assess threats to public safety, life, or property.</li> <li>• The state may alter, repair, or remove abandoned dams deemed a threat to public safety, life, or property. The chief engineer may request that the attorney general recover the expenses from the dam's owner..</li> </ul>
	10 CSR 22-2.010 <sup>[2]</sup>	January 2019	<ul style="list-style-type: none"> <li>• A Construction Permit is required for new dams 35 feet or higher. Existing dams 35 feet or higher need a registration permit.</li> <li>• Exemption is federal dams and agricultural dams if used primarily for agricultural purposes.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Surface Water Quality	RSMo 644 <sup>[20]</sup>	July 2024	<ul style="list-style-type: none"> <li>The MoDNR has the authority to enforce water quality standards, issue permits, and regulate water pollution.</li> <li>Causing pollution or placing contaminants into state waters, exceeding water quality standards, or discharging hazardous substances without a permit is prohibited</li> <li>The use of water must comply with permit conditions and not exceed the limits established for beneficial purposes.</li> </ul>
	10 CSR 20-7.015 <sup>[2]</sup>	June 2023	<ul style="list-style-type: none"> <li>Sets limits for pollutants discharged to waters in Missouri, integrating aspects of former rules and updating to align with the Clean Water Act.</li> </ul>
	10 CSR 20-7.031 <sup>[24]</sup>	September 2023	<ul style="list-style-type: none"> <li>Sets surface water quality standards, including designated uses, general and specific pollutant criteria, and antidegradation requirements for waters of the state</li> <li>Reviewed and amended as necessary once every three years.</li> </ul>
Water Supply and Diversion Rights	RSMo 256 <sup>[21]</sup>	August 1961	<ul style="list-style-type: none"> <li>Missouri requires every major water user that has the capacity to divert 100,000 gallons or more per day to register their water use.</li> <li>The state does not require a water use or water diversion permit to use water.</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	To obtain a floodplain development permit in Missouri, landowners must submit a permit application to the local governing body, which implements floodplain management ordinances. The application will be reviewed to ensure compliance with state standards and local regulations before approval is granted.	N/A (Note 1)
Levees	Levee Districts	The board of directors of any levee district shall determine if the levees constructed by the district are insufficient and may proceed to cause surveys, maps, and profiles of the proposed work of improvement to be made <sup>[1]</sup> . The board must also call a landowners' meeting to levy an additional tax for the improvements, and permits must be obtained from the appropriate authorities, including local governing bodies <sup>[1]</sup> .	Under RSMo sections 621.250 and 640.013, the applicant can appeal this denial or any permit conditions by filing a petition with the Administrative Hearing Commission (AHC) within 30 days of the notice <sup>[19]</sup> .

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater	MoDNR	Stormwater permitting is governed under the Missouri Clean Water Law or the NPDES program, depending on whether the discharge is to waters of the State of Missouri or waters of the United States. Permits are required for discharging regulated stormwater from industrial facilities. The state has two permit types: Site-Specific and Master General. Site-Specific are tailored to individual locations based on the nature of stormwater and the receiving water body well the Master General cover multiple locations with similar activities. MS4 Permits are required for systems collecting or conveying stormwater, including ditches and gutters.	Under RSMo sections 621.250 and 640.013, the applicant can appeal this denial or any permit conditions by filing a petition with the AHC within 30 days of the notice <sup>[19]</sup> . Once the AHC reviews the appeal, it issues a recommended decision to the CWC, which then makes the final decision regarding permit issuance, denial, or any permit condition. This final decision is mailed to all parties involved and can be subject to judicial review under Chapter 536 <sup>[20]</sup> .
Drainage	Drainage Districts	Applications are typically submitted to the relevant local authority, such as a county commission, drainage district board, or a city's public works department. For projects that could impact water quality, wetlands, or require compliance with the state's water pollution control laws, the MoDNR may be the relevant permitting authority. The MoDNR will review for compliance with water quality standards. Draft permits are open for public comment for 30 days and after addressing comments, the permit may be issued or modified.	Disputes concerning a permit can be appealed to the local County Commission or Drainage District Board. The applicant can request a hearing where they can present their case and argue against the decision. If the Missouri DNR is the permitting authority the applicant must file an appeal with the AHC. The AHC will review the case, hold a hearing, and issue a decision.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	MoDNR	After an application to construct a dam is submitted, the MoDNR's Dam and Reservoir Safety Council delegates review of the permit application to the Chief Engineer to ensure that it meets the regulatory requirements. The Chief Engineer or their delegate may conduct technical evaluations of the application, including site inspections and assessments of the proposed design and construction plans. After the review, the council, upon hearing recommendations from the Chief Engineer, will make the final decision regarding the issuance of the permit.	Permits denied or revoked can be appealed to the council. Requests for hearings must be made within 30 days of notice. The record of the hearing will be reviewed, and a final written decision will be issued. Further legal action can be pursued after the council's decision. Decisions by the council can be subject to judicial review as outlined in RSMo 236.480 <sup>[18]</sup> .
Water Rights	MoDNR	Missouri requires large water users, defined as those with capacity to withdraw or divert at least 100,000 gallons of water per day from surface or groundwater sources, to register with the state managed by the MoDNR. Registration must be completed within 30 days of reaching the threshold. Registered users must submit an Annual Water Use Report to the MoDNR in the first quarter of the calendar year <sup>[17]</sup> .	Complaints can be filed with the MoDNR. The MoDNR's Water Protection Program will investigate and issue a resolution based on their findings. For further recourse, an appeal can be made to the Circuit Court, where a judge will review the MoDNR's decision for legal compliance <sup>[27]</sup> .

[1]Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available and may vary by local Floodplain Administrator.

## CITATIONS

- [1] Revisor of Statutes. (n.d.). *Missouri Revised Statutes: Title XV - Lands, Levees, Drainage, Sewers, and Public Water Supply (Chapters 241-250)*. <https://revisor.mo.gov/main/Home.aspx>
- [2] Missouri Secretary of State. (n.d.). Code of State Regulations (CSR) - 10 CSR. <https://www.sos.mo.gov/adrules/csr/current/10csr/10csr>
- [3] Missouri Department of Transportation. (2022). Floodplain Management. <https://www.modot.org/floodplain-management>
- [4] Electronic Code of Federal Regulations. (2023, June 12). § 122.32—Stormwater discharges from small municipal separate storm sewer systems. <https://www.ecfr.gov/current/title-40/chapter-1/subchapter-D/part-122/subpart-B/section-122.32>
- [5] Missouri Department of Natural Resources. (n.d.). Stormwater Permits. <https://dnr.mo.gov/water/business-industry-other-entities/permits-certification-engineering-fees/stormwater>
- [6] Missouri Department of Natural Resources. (n.d.). Water Monitoring Data. <https://dnr.mo.gov/water/hows-water/monitoring-data>
- [7] Missouri Department of Natural Resources. (n.d.). History. <https://dnr.mo.gov/about-us/history>
- [8] Missouri Department of Natural Resources. (n.d.). Division of Environmental Quality. <https://dnr.mo.gov/about-us/division-environmental-quality>
- [9] Missouri Department of Natural Resources. (n.d.). Water Protection Program. <https://dnr.mo.gov/about-us/division-environmental-quality/water-protection-program>
- [10] Missouri Department of Natural Resources. (n.d.). Environmental Services Program. <https://dnr.mo.gov/about-us/division-environmental-quality/environmental-services-program>
- [11] Missouri Department of Natural Resources. (n.d.). Meet the Director and Executive Staff. <https://dnr.mo.gov/about-us/meet-director-executive-staff>
- [12] Missouri Department of Conservation. (n.d.). Missouri Department of Conservation. <https://mdc.mo.gov/>
- [13] State Emergency Management Agency. (n.d.). Branches. <https://sema.dps.mo.gov/about/branches.php>
- [14] State Emergency Management Agency. (n.d.). Recovery. <https://sema.dps.mo.gov/about/recovery.php>
- [15] Missouri Revisor of Statutes. (2001, August 28). *Missouri Revised Statutes: Title XVII - Agriculture and Animals (Chapter 278)*. <https://revisor.mo.gov/main/OneSection.aspx?section=278.080&bid=14880>
- [16] Missouri State Emergency Management Agency. (n.d.). *FEMA model ordinances 60.3(d)*. Retrieved from <https://sema.dps.mo.gov/programs/floodplain/forms.php>
- [17] Missouri Department of Natural Resources. (2022, June). *Major water users reporting*. Missouri Department of Natural Resources. <https://dnr.mo.gov/water/business-industry-other-entities/reporting/major-water-users><https://revisor.mo.gov/main/OneChapter.aspx?chapter=236>
- [18] Revisor of Statutes. (2023, August 28). *Missouri Revised Statutes: Title XIV – Roads and Waterways (Chapters 226-238)*. <https://revisor.mo.gov/main/Home.aspx>
- [19] Revisor of Statutes. (n.d.). *Missouri Revised Statutes: Title XL – Additional Executive Departments (Chapters 620-680)*. <https://revisor.mo.gov/main/Home.aspx>
- [20] Revisor of Statutes. (n.d.). *Missouri Revised Statutes: Title XXXVI – Statutory Actions and Torts (Chapter 536)*. <https://revisor.mo.gov/main/Home.aspx>
- [21] Revisor of Statutes. (n.d.). *Missouri Revised Statutes: Title XVI – Conservation, Resources and Development (Chapter 256)*. <https://revisor.mo.gov/main/Home.aspx>
- [22] Missouri Department of Natural Resources. (2000). *A summary of Missouri water law (Missouri State Water Plan Series Volume VII)*. Missouri Geological Survey. <https://share.mo.gov/nr/mgs/MGSDData/Books/Water%20Resources/A%20Summary%20of%20Miss>

[ouri%20Water%20Law%20\(Missouri%20State%20Water%20Plan%20Series%20Volume%20VII\)/WR51.pdf](#)

- [23] Missouri Department of Natural Resources. (n.d.). *Soil and water districts commission*.  
<https://dnr.mo.gov/commissions-boards-councils/soil-water-districts-commission>
- [24] Missouri Secretary of State. (2023). *10 CSR 20-7A*.  
<https://www.sos.mo.gov/cmsimages/adrules/csr/current/10csr/10c20-7a.pdf>
- [25] Missouri Department of Natural Resources. (n.d.). *Missouri Geological Survey*.  
<https://dnr.mo.gov/about-us/missouri-geological-survey>
- [26] Missouri Department of Natural Resources. (n.d.). *Clean Water Commission*.  
<https://dnr.mo.gov/commissions-boards-councils/clean-water-commission>
- [27] Missouri General Assembly. (1989). *RSMo § 478.220 - Circuit courts: Jurisdiction*.  
<https://revisor.mo.gov/main/OneSection.aspx?section=478.220&bid=26715&hl=>

Input provided by MDC Aquatic and Biometrics Section Chief, Doug Novinger, and MoDNR's Erin Fanning, Joel Reschly, Bob Bacon, Chris Wieberg, John Hoke, Ryan Stack, and Michael Weller.



# Montana Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Montana Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>Montana Department of Natural Resources and Conservation (DNRC)</b> – Water Appropriation Permitting, Dam Permitting and Enforcement, Floodplain Planning and Management, Water Resource Planning, Real-Time Stream Flow Data and Hydrologic Assessments, Administration of State Revolving Funds</li> <li>• <b>Montana Department of Environmental Quality (DEQ)</b> – Water Quality Monitoring, Water Quality Standards, Source of Pollution Evaluations, Nonpoint Source Management Planning, Water Project Funding and Development, Wetland Conservation, Water Quality Permitting and Enforcement</li> <li>• <b>Montana Water Court</b> – Adjudication of Existing Water Rights Claims, Localized Water Dispute Settlements</li> <li>• <b>Montana Fish, Wildlife, and Parks (FWP)</b> – Instream Flow Protection and Permitting, Environmental Review, Riparian and Wetland Restoration</li> <li>• <b>Montana Watershed Coordination Council</b> – Coordination of watershed issues</li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>Montana District Courts</b> - Localized Water Dispute Settlements, Enforcement Proceedings, Review of Appeals for New Water Appropriations</li> <li>• <b>Montana Conservation Districts</b> – Water Conservation and Supply Planning, Water Quality Monitoring, Watershed Restoration, Streambed (310) Permits</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Local Floodplain Administrators</b> – Floodplain Management Ordinances, Flood Risk Management, Floodplain Permitting and Enforcement, Public Outreach</li> <li>• <b>Local Watershed Conservation Organizations</b> – Water Quality Monitoring, Habitat Restoration</li> <li>• <b>Drainage Districts</b> – Construction and Maintenance of Drainage Systems, Flood Prevention</li> </ul>
--	---

**Overview of Key Practices**

*Key authorities regarding Montana water resources management are contained in Montana Code Annotated 2023 (MCA) Title 85 et seq<sup>[9]</sup> and the Administrative Rules of Montana (ARM) Title 36 et seq.<sup>[7]</sup>*

<p>Flood and Floodplain Permitting and Management</p>	<p>Local city and county floodplain administrators are responsible for adopting and enforcing floodplain management regulations, including floodplain management ordinances, based on federal and State requirements in the MCA and ARM. Additionally, local floodplain administrators are responsible for enrolling in the National Flood Insurance Program (NFIP) and issuing floodplain development permits. The regulatory framework and minimum requirements for the state’s floodplain management program follow those of the NFIP.<sup>[18]</sup></p> <p>The DNRC Floodplain Community Assistance and Mapping Programs provide state oversight of floodplain management, with responsibilities including technical assistance, approval of ordinances, assistance with flood study data and mapping, and coordination between the Federal Emergency Management Agency (FEMA) and communities.<sup>[18]</sup></p> <p>The DNRC also mandates permits for any alterations to the natural flow or bed of a stream, including activities like dredging, filling, and bank stabilization, to safeguard aquatic habitats. The permit application process requires detailed project descriptions, site plans, and an assessment of potential impacts on fish and wildlife, with a focus on ensuring compliance with the Montana Stream Protection Act.</p>
<p>Levee Permitting and Management</p>	<p>There do not appear to be any Montana agencies that issue permits specifically for the construction or modification of levees. However, one or multiple permits from various local, state, and federal agencies may be required for work on or near a waterway that will (1) physically alter any stream or its banks, (2) discharge dredged or fill material into waters, (3) cause unavoidable short-term violations of water quality</p>

	standards, and/or (4) affect existing fish and wildlife. Details regarding applicable permits are described below in Table 1.
Stormwater Permitting	The DEQ Water Quality Division regulates and permits pollution from stormwater runoff from small municipal separate storm sewer systems (MS4s), industrial facilities, and construction activities that disturb more than one acre of land <sup>[4]</sup> . These state-issued permits are issued as part of the Montana Pollutant Discharge Elimination System (MPDES). <sup>[3]</sup> Exceptions to this are stormwater permits issued on tribal lands, which are National Pollutant Discharge Elimination System (NPDES) permits issued by the United States Environmental Protection Agency (USEPA) as part of their NPDES program. <sup>[24]</sup>
Drainage Permitting and Management	The MCA authorizes the formation of drainage districts within the State to construct, repair, and maintain drainage systems and to adopt the necessary regulations, policies, and procedures to do so. As such, drainage districts have the regulatory authority to implement a permitting system for drainage management within their district. However, a review of the drainage districts currently operating within the state revealed that none of the reviewed districts issue permits specifically for drainage management purposes. <sup>[9]</sup>
Dam Permitting and Management	DNRC is the primary agency overseeing Dam Permitting and Management in Montana. DNRC's Dam Safety Program issues permits for the construction, modification, and removal and/or decommission of high hazard dams; issues permits for the operation of high hazard dams; assists dam owners with monitoring, funding, and emergency planning; and performs education and outreach about dam safety. Additionally, DNRC has the authority to perform inspections, order the drainage of reservoirs, or take any steps necessary to eliminate potential hazards to life and property. <sup>[14]</sup>
Surface Water Quality Monitoring and Management	The DEQ Water Quality Division oversees surface water quality throughout the state and develops the state's surface water quality standards, which follow the minimum requirements of the Clean Water Act (CWA). DEQ enforces surface water quality standards through permitting point source discharges and implementing nonpoint source pollution control programs. DEQ additionally monitors and compiles local surface water quality data to perform statewide assessment of surface water quality conditions, evaluates sources of pollution, updates the state Nonpoint Source

	Management Plan, and coordinates statewide wetland conservation activities. <sup>[2]</sup>
Water Supply and Diversion Rights	The DNRC, Water Court, and district courts work together to manage the use of state waters and implement the Water Use Act in Montana. All surface water uses except for small livestock pits and reservoirs located on non-perennial flowing streams must apply for a Beneficial Water Use Permit before putting it to beneficial use. <sup>[11]</sup> Water rights established prior to the implementation of the Water Use Act of 1973 are reviewed and appropriated by the Water Court. New water permit applications and changes to existing water rights are reviewed and approved by the DNRC, with appeals to these decisions and other localized water disputes reviewed by the district courts. <sup>[25]</sup>

## MONTANA STATE AGENCIES OVERVIEW

### Montana Department of Natural Resources and Conservation (DNRC)

The DNRC was founded in 1971 to manage state lands and resources to ensure sustainable use and protection of the environment. The DNRC is organized into four main divisions: Forestry and Trust Lands; Oil and Gas Conservation; Conservation and Resource Development; and Water Resources. DNRC's Water Resources Division is responsible for the management and allocation of Montana's waters, including the protection of existing and future beneficial uses, as well as wildlife and aquatic life. DNRC's Water Resources Division includes eight regional offices and is divided into multiple bureaus, which have the authorities and responsibilities defined below:

- **Water Sciences:** This bureau aids water resource management by delivering real-time surface water monitoring data, analyzing water rights applications, assessing surface hydrology, studying water availability, regulating transboundary water compacts, and training court-appointed water commissioners.<sup>[19]</sup>
- **Water Rights:** This bureau is responsible for reviewing and approving new water appropriation permits and certain changes to water rights. In addition to permit decisions, the Water Rights Bureau maintains a searchable database of water rights, including those decreed by the Water Court, newly permitted, and certain changes to water rights.<sup>[10],[25]</sup>
- **Adjudication, Enforcement, and Distribution Bureau:** This bureau provides technical support to the Water Court with the adjudication of pre-July 1973 water rights; leads the Department's efforts to address enforcement needs; and provides technical and administrative assistance to distribution projects.<sup>[12],[25]</sup>
- **Water Operations:** This bureau is responsible for administering the Dam Safety Program, floodplain mapping, floodplain community assistance, and the Board of Water Well Contractors Program<sup>1</sup>.<sup>[23]</sup>
- **State Water Projects:** This bureau manages and maintains state-owned water infrastructure, including 22 dams, 250 miles of irrigation canals, and a hydropower facility, while overseeing water marketing and supporting local water user associations with contracts and project operations.<sup>[22]</sup>
- **Planning, Implementation, and Communication:** This bureau helps communities to develop locally led water planning processes, engage stakeholders, connect to state and federal resources, complete grant applications, and identify and implement projects. Additionally, the Planning, Implementation, and Communication Bureau is involved with federal and tribal contracts and manages state water planning through its development and adoption of the State Water Plan and Drought Management Plan.<sup>[21]</sup>

DNRC is headed by a director, who is appointed by the Governor and confirmed by the Montana Senate. The Director oversees each of DNRC's four divisions' Division Administrators and is supported by the Deputy Director. Within each division, Bureau

---

<sup>1</sup> Soon to be moved to the Adjudication, Enforcement, and Distribution Bureau.

Chiefs are appointed to oversee each bureau. Additionally, DNRC contains nine boards and commissions, six of which have decision-making authority and three of which act in an advisory capacity only.<sup>[23]</sup>

### Montana Department of Environmental Quality (DEQ)

Montana's DEQ promotes and fosters a healthy environment through its development of regulations, environmental monitoring, and enforcement and planning activities. DEQ is headed by a director, who is appointed by the Governor of Montana. Below the director, the department is divided into the following three divisions: Air, Energy, and Mining; Waste Management and Remediation; and Water Quality. Each division is headed by an administrator and divided into bureaus headed by chiefs.<sup>[8]</sup> DEQ's Water Quality Division is divided into four bureaus, which have the authorities and responsibilities defined below:

- **Water Quality Planning Bureau:** This bureau sets numeric and narrative water quality standards, monitors surface water quality for compliance with state and federal regulations, identifies impaired streams, maintains statewide monitoring databases, conducts inventories of pollution sources, manages nonpoint source programs, and develops and implements water quality improvement plans.<sup>[2]</sup>
- **Engineering Bureau:** This bureau administers water pollution control and drinking water revolving funds, reviews subdivision drainage features, ensures compliance with minimum standards, and regulates public water and wastewater system designs.<sup>[8]</sup>
- **Water Protection Bureau:** This bureau issues and monitors discharge permits, offers training and technical assistance, manages source water protection.<sup>[4]</sup>
- **Public Water Supply Bureau:** This bureau regulates public drinking water and wastewater systems, ensures compliance with monitoring and quality standards, and provides training and certification for system operators.<sup>[8]</sup>

### Montana Water Court

The Montana Water Court is one of the three main entities responsible for implementing the Water Use Act in Montana. The Water Court, which was created in 1979, is a special district court with the jurisdiction to determine the validity of existing water rights in the State prior to July 1, 1973. As such, the Water Court facilitates the statewide adjudication of over 219,000 existing water rights claims and decrees water rights on a basin-wide basis, with the current estimated completion to be 2028. Additionally, the Water Court has the authority to determine whether existing rights have been abandoned due to nonuse. In addition to the adjudication of existing water claims, the Water Court also assists district courts in local water disputes on questions about existing water rights.

The Water Court is led by a Chief Water Judge and an Associate Water Judge, who are appointed by the Chief Justice of the Montana Supreme Court. In addition to the Chief Water Judge and Associate Water Judge, water masters are appointed by the Chief Water Judge to serve particular basins around the State. Water masters assist in making

decisions on water rights claims and facilitate potential settlements of disputes in district courts.<sup>[25]</sup> Current or retired district court judges may also be appointed by the Chief Water Judge to serve as water judges within their districts, with the authority to preside over water claims within their district's boundary. As stated above, DNRC's Adjudication, Enforcement, and Distribution Bureau assists the Water Court throughout the adjudication process by providing information and technical support to both people filing water rights claims and the water judges and also, by conducting field investigations of claims at the request of water judges.<sup>[26]</sup>

### Montana Fish, Wildlife, and Parks (FWP)

The Montana FWP was established in 1971 to consolidate various functions related to the management and conservation of the state's fish, wildlife, and parks into a single entity. The department plays a critical role in the State's water management through regulating activities that could impact aquatic systems, such as construction activities near rivers and lakes. Regarding surface waters, the Montana FWP issues Stream Protection Act (SPA) 124 Permits to ensure that projects adhere to environmental standards and minimize negative effects on aquatic life. Additionally, the department is involved in stream access management and has the authority to perform water rights calls depending on instream flows. The Montana FWP engages in conservation initiatives to maintain and restore aquatic habitats, including riparian and wetland restoration projects, and conducts research and monitoring of surface water systems throughout the state.<sup>[6]</sup>

The Montana FWP is headed by a director, who is appointed by the Governor and supported by the Deputy Director. The department has three divisions – Finance, Fish and Wildlife, and Parks – and seven administrative regions throughout the State. Each administrative region is led by a Regional Administrator, who reports to the Director.<sup>[5]</sup>

### Montana State Legislature

The Environmental Quality Council (EQC) and Water Policy (WPIC) are two interim committees that provide legislative supervision over water issues in Montana. The EQC is an interbranch body with 12 appointed legislative members and 4 public members. Its statutory duties are outlined in 75-10324, MCA. The EQC provides oversight for the Department of Environmental Quality (DEQ), the Department of Fish, Wildlife, and Parks (FWP), and the Department of Natural Resources and Conservation (DNRC). The WPIC is a partisan committee of the Legislature that analyzes and advises the Legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect the state's resources. It has 10 legislative members, and its statutory duties are in 85-2-105, MCA.

### Montana Watershed Coordination Council (MWCC)

The MWCC formed in 1995 to unite and support Montana's watershed communities. It has helped unite over 60 watershed groups throughout Montana by creating a more



efficient system of cooperation and coordination among natural resource governmental agencies and organizations. In 2013, MWCC obtained its 501c3 status and finalized its Articles of Incorporation and By-laws to officially become a staff-run organization. The MWCC promotes a “Watershed Approach,” emphasizing community involvement, local leadership, and consensus-building over litigation to achieve sustainable solutions. MWCC cultivates broad-based support for community-driven approaches through three primary efforts:

- **Connecting Watershed Communities:** MWCC organizes conferences, workshops, tours, and events to connect Montana’s watershed community partners
- **Supporting Local Conservation:** MWCC supports local watershed conservation organizations by promoting capacity-building and on-the-ground projects
- **Inspiring Conservation Leadership:** MWCC shares stories and recognizes accomplishments within Montana’s watershed communities to inspire others and bolter support for land water conservation efforts

## LOCAL AND REGIONAL JURISDICTIONS OVERVIEW

### District Courts

District courts are one of the three main entities responsible for implementing the Water Use Act in Montana. The State has 22 judicial districts with 56 elected district court judges with the jurisdiction to hear cases of localized water disputes between individual users. In the case that more information on an existing right is needed, water masters from the Water Court may assist the district court in its hearing. In the case of localized water-related disputes, district courts may also appoint water commissioners to monitor water use and distribute water to water rights holders within their district.<sup>[26]</sup>

In addition to hearing disputes between water users, each Montana district court supervises water use within its jurisdiction. As such, district court judges can appoint water commissioners to do on-site enforcement proceedings regarding the distribution of water according to the terms of a decree in response to a petition of water rights holders owning 15% or more of the water rights on a watercourse, an application by both the DNRC and one or more water rights holders, or an application of the board(s) of one or more irrigation districts.

In the case that DNRC denies an application for a new or changed water right, the decision may be appealed for review by a district court.<sup>[25]</sup>

### Conservation Districts

Montana’s 58 conservation districts were created in 1939 to provide communities with local control of natural resource management programs and activities for the conservation



of their soil, water, and other renewable natural resources per MCA 76-15-101 through 76-15-1014. Conservation district boundaries roughly align with those of Montana's 56 counties, with the exception of two counties which each have two conservation districts within the county. Regarding surface waters, conservation districts oversee the planning and implementation of water supply planning, monitoring activities, and restoration projects. Additionally, conservation districts are the entity in charge of reviewing and issuing 310 Permits, which are required under the Montana Natural Streambed and Land Preservation Act for any activity that may physically alter a perennially flowing stream. Conservation districts are overseen by an elected board of supervisors, with the number of elected supervisors varying depending on the conditions within the district. Districts' boards of supervisors have the authority to levy taxes on local properties within their district boundary. As such, conservation districts are typically funded through a combination of property taxes and State grants through DNRC.<sup>[1],[9]</sup>

### Local Floodplain Administrators

Local floodplain administrators are responsible for adopting and enforcing floodplain management regulations, including floodplain management ordinances, that comply with State and federal requirements, as required by the NFIP. Local floodplain administrators are responsible for enrolling in the NFIP and for reviewing and issuing floodplain development permits for any construction activities within designated floodplains. Additionally, they are responsible for enforcing floodplain regulations, managing flood-prone areas, conducting inspections, and performing public outreach. Local floodplain administrators coordinate with DNRC's Floodplain Management Program to manage flood risks within their jurisdictions, gain technical assistance, and acquire flood data. Local floodplain administrators are funded through county budgets, which include funding from various sources, such as property taxes, state funds, federal funds, fees and licenses, and grants.<sup>[17],[18]</sup>

### Local Watershed Conservation Organizations

Local watershed conservation organizations in Montana are dedicated to preserving and enhancing water resources through community-driven efforts. They typically focus on maintaining water quality, restoring habitats, and promoting sustainable land management practices within specific watersheds. They are often supported by the MWCC, which provides training, resources, and funding to enhance local capacities. Montana's local watershed groups work on a vast array of restoration projects, from riparian habitat recovery and invasive species management to water quality monitoring and community outreach and education efforts.

### Drainage Districts

Per MCA 85-8-101 through 85-8-803, drainage districts are responsible for overseeing the construction, repair, and maintenance of drainage systems within their district boundaries and for adopting the regulations, policies, and procedures necessary to ensure flood prevention and the conservation, development, utilization, and disposal of water. Each drainage district is governed by a Board of Commissioners comprised of

three commissioners, who are elected for three-year terms by landowners within the district boundaries. Drainage districts have the authority to levy property taxes within their boundaries to fund their operations, with additional support coming from state grants provided by DNRC.<sup>[9]</sup>

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Montana are generally contained within the MCA or the ARM.<sup>[9],[7]</sup> Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

Landowners in Montana may utilize a Joint Application Form for proposed work in the state's streams, wetlands, floodplains, and other bodies of water to apply for one or more of the following local, state, or federal permits: 310 Permit, SPA 124 Permit, 318 Authorization and 401 Certification, Navigable Rivers Land Use License, Lease or Easement, Section 404 Permit, Section 10 Permit, and Floodplain Permit. The Joint Application Form simplifies the process by reducing the number of separate applications required, thereby streamlining the permitting process. Applicants must submit the Joint Application Form along with any associated fees to each relevant agency, as indicated on the form. Permits applicable to key practice areas in the State's surface water management that are covered by the Joint Application Form are highlighted in Table 1.<sup>[16]</sup>

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the MCA or the ARM.<sup>[7],[9]</sup> Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Montana**

Practice Area	Policy / Regulation	Date <sup>2</sup>	Key Principles
Floodplain Management	MCA 76-5-301 – 76-5-302 <sup>[9]</sup>	Effective: 1971 Last Amended: 1995	<ul style="list-style-type: none"> <li>• Local city or county local floodplain administrators are responsible for developing and submitting floodplain management ordinances.</li> <li>• Both DNRC and communities have the authority to investigate noncompliance.</li> </ul>
	MCA 76-5-201 <sup>[9]</sup>	Effective: 1971 Last Amended: 2009	<ul style="list-style-type: none"> <li>• DNRC has the authority to create a program to designate floodplains and floodways for each watercourse and drainway in the State.</li> <li>• DNRC has the authority to make studies to acquire flood data and can enter into arrangements with State and federal agencies to acquire flood data.</li> </ul>
	MCA 76-5-402 – 76-5-403 <sup>[9]</sup>	Effective: 1971 Last Amended: 2009	<ul style="list-style-type: none"> <li>• Floodway uses are regulated to prevent any increase in flood levels.</li> <li>• Permits are required for any activity that may alter or disturb land in a designated 100-year floodplain. These permits may be obtained through submitting the Joint Application Form, discussed above in <i>Summary of Key Policies, Regulations, And Operating Procedures</i>, to the applicable local floodplain administrator.</li> <li>• The following uses are prohibited within a designated floodway: buildings for living, assembly purposes, or permanent use by humans; structures that will cause water to be diverted from the floodway, cause erosion, obstruct the flow of water, or reduce the floodway’s carrying capacity; and the construction or storage of an object subject to flotation during flood periods.</li> </ul>

<sup>2</sup> Unless explicitly stated, dates listed in Table 1 are the effective date of the policy/regulation.

Practice Area	Policy / Regulation	Date <sup>2</sup>	Key Principles
Levees	See note <sup>3</sup>		<ul style="list-style-type: none"> <li>• Permits are not specifically required for the construction of levees.</li> <li>• However, one or more of the permits below may be required for the construction or modification of work within a waterway depending on the location and specifications of the levee. Please note that federal permits, such as the Section 10 Permit and 404 Permit, that may also be required are not included in the list below, as they are not regulated by a Montana state or local agency.<sup>[15]</sup></li> <li>• A Joint Application Form can be used to apply for the following permits to reduce the number of forms an applicant must complete:<sup>[15]</sup></li> </ul>
			<p><u>310 Permit</u></p> <ul style="list-style-type: none"> <li>• Required by the Montana Natural Streambed and Land Preservation Act for any activity that physically alters the bed or banks of a perennially flowing stream.</li> <li>• Issued by the applicable local Conservation District to any private, nongovernmental individual or entity<sup>[15]</sup></li> </ul>
			<p><u>SPA 124 Permit</u></p> <ul style="list-style-type: none"> <li>• Required by the Montana SPA for any project including the construction or modification of facilities that may affect the natural shape or form of any stream or its banks or tributaries.</li> <li>• Issued by the Montana FWP to any agency or subdivision of government<sup>[15]</sup></li> </ul>
			<p><u>City or County Floodplain Development Permit</u></p> <ul style="list-style-type: none"> <li>• See “Floodplain Management” above</li> </ul>
			<p><u>318 Authorization</u></p> <ul style="list-style-type: none"> <li>• Required by the federal CWA for any activity that will cause unavoidable short-term violations of water quality standards.</li> <li>• Issued by the DEQ Water Protection Bureau to any agency, person, or entity, public or private<sup>[15]</sup></li> </ul>

<sup>3</sup> Information on policies requiring permits for the construction of levees depends on the permit type and issuing regulatory agency. Specific policy information, including relevant codes and effective and amended dates, can be found on the issuing agencies' websites and in the MCA.

Practice Area	Policy / Regulation	Date <sup>2</sup>	Key Principles
			<p><u>Montana Land-Use License or Easement</u></p> <ul style="list-style-type: none"> <li>• Required for any activity involving the construction, placement, maintenance, or modification of a structure in, over, below, or above a navigable river.</li> <li>• Issued by the DNRC Real Estate Management Bureau to any entity involved in construction activities<sup>[15]</sup></li> </ul>
Stormwater Management	ARM 17.30.1105 <sup>[8]</sup>	2/14/2003	<ul style="list-style-type: none"> <li>• Permits must be obtained to discharge pollutants into waters of the state for discharges associated with construction activity, industrial activity, mining and oil and gas activity, or from small MS4s.</li> </ul>
	ARM 17.30.1110, 17.30.1351 <sup>[8]</sup>	2/14/2003	<ul style="list-style-type: none"> <li>• DEQ has the authority to require monitoring and reporting of storm water discharges depending on the frequency and type of discharge.</li> <li>• Permittees must develop and implement a Storm Water Pollution Prevention Plan (SWPPP) to receive a general permit.</li> </ul>
	General Permits MTR100000, MTR000000, MTR040000	2/14/2003	<ul style="list-style-type: none"> <li>• General permits authorize certain discharges of relatively uncontaminated stormwater from construction (MTR100000); industrial, mining, and oil and gas (MTR000000); and MS4 (MTR040000) activities.</li> <li>• Dischargers from all areas of Montana, except tribal lands, can apply for coverage under the general permits.</li> </ul>

Practice Area	Policy / Regulation	Date <sup>2</sup>	Key Principles
Drainage Management	MCA 85-8-701 <sup>[9]</sup>	1957	<ul style="list-style-type: none"> <li>• Drainage districts are authorized to construct, repair, and maintain drainage systems within their district boundaries.</li> <li>• Drainage districts may formulate and adopt the necessary regulations, policies, and procedures needed for flood prevention and the conservation, development, utilization, and disposal of water.</li> </ul>
Dam Management	MCA 85-15-209 – 85-15-210 <sup>[9]</sup>	Effective: 1985 Last Amended: 1993	<ul style="list-style-type: none"> <li>• A construction permit is required from DNRC for the construction of any dam with a storage capacity equal to or greater than 50 AF of water that is located on non-federal property and is classified as high-hazard.</li> <li>• Dam classification is obtained through the submittal of an Application for Determination of Hazard Classification and inspection by a DNRC Dam Safety Program engineer. Dam classification is determined by the potential to cause loss of human life downstream in the event of a dam breach.</li> <li>• “Construction” refers to the construction of new dams, modifications to existing dams, and the removal and/or decommissioning of existing dams.</li> </ul>
	ARM 36.14.3 <sup>[7]</sup>	Effective: 11/24/88 Last Amended: 9/21/12	<ul style="list-style-type: none"> <li>• Details the construction permit application process.</li> </ul>
	MCA 85-15-107, MCA 85-15-305 <sup>[9]</sup>	Effective: 1975 Last Amended: 2003	<ul style="list-style-type: none"> <li>• Dams exempt from obtaining a construction permit from DNRC include dams with a storage capacity less than 50 AF or dams with a storage capacity greater than 50 AF and meeting one of the following criteria: an active mining permit from the Department of Environmental Quality, federally owned dams, dams licensed by the Federal Energy Regulatory Commission, non-federal dams on federal property with federal agency oversight, dams with a Major Facilities siting Act Certificate, and dams located on Superfund sites.</li> </ul>

Practice Area	Policy / Regulation	Date <sup>2</sup>	Key Principles
	MCA 85-15-212 – 85-15-213 <sup>[9]</sup>	Effective: 1985 Last Amended: 1993	<ul style="list-style-type: none"> <li>• High hazard dam owners must develop an operation plan for DNRC approval. DNRC must issue a permit to operate the dam prior to operation, and inspections must be performed by a qualified engineer at a minimum of every five years.</li> </ul>
	ARM 36.14.4 <sup>[7]</sup>	Effective: 11/24/88 Last Amended: 9/21/12	<ul style="list-style-type: none"> <li>• Details the operation permit application process and provides specifics on the engineer's inspection.</li> </ul>
	MCA 85-15-214 – 85-15-215 <sup>[9]</sup>	Effective: 1985 Last Amended: 1993	<ul style="list-style-type: none"> <li>• DNRC has the authority to respond to complaints about all dams (not just high-hazard dams). DNRC can order inspections or emergency repairs and can take any necessary actions to eliminate the hazard to safeguard life and property, including revoking permits.</li> </ul>
Surface Water Quality	MCA 75-5-301 <sup>[9]</sup>	Effective: 1971 Last Amended: 2023	<ul style="list-style-type: none"> <li>• DEQ is responsible for establishing the classification of all state waters in accordance with their present and future most beneficial uses.</li> <li>• DEQ is responsible for formulating and adopting both numeric and narrative water quality standards to protect the designated beneficial uses of state waters in accordance with Section 303(c) of the federal CWA.</li> </ul>
	MCA 75-5-311 <sup>[9]</sup>	Effective: 1991 Last Amended: 2021	<ul style="list-style-type: none"> <li>• A county can establish a local water quality district to undertake planning and information-gathering activities necessary to develop a proposed local water quality program</li> </ul>
	MCA 75-5-401 – 75-5-411 <sup>[9]</sup>	Effective: 1971 Last Amended: 2021	<ul style="list-style-type: none"> <li>• DEQ issues permits for wastewater and stormwater discharges to surface waters and maintains a publicly available online permit management and reporting system.</li> </ul>

Practice Area	Policy / Regulation	Date <sup>2</sup>	Key Principles
	MCA 75-5-701 – 75-7-704 <sup>[9]</sup>	1997	<ul style="list-style-type: none"> <li>• DEQ is the lead agency in charge of Montana’s Nonpoint Source Management Program and updating the Nonpoint Source Management Plan every five years.</li> </ul>
Water Supply and Diversion Rights	MCA 85-2-212 - 85-2-282 <sup>[9]</sup>	Effective: 1979 Last Amended: 2015	<ul style="list-style-type: none"> <li>• The Water Court facilitates the adjudication of existing water rights claims and has the authority to determine abandonment of existing rights due to nonuse.</li> </ul>
	MCA 85-2-301 - 85-2-315 <sup>[9]</sup>	Effective: 1973 Last Amended: 2023	<ul style="list-style-type: none"> <li>• Permits are required to appropriate surface water for all beneficial uses, except for small livestock pits and reservoirs located on non-perennial flowing streams, which have a separate stockwater permit exception.</li> <li>• New water appropriation permits or changes to existing water rights are reviewed and approved by DNRC.</li> </ul>
	MCA 85-2-401 <sup>[9]</sup>	Effective: 1973 Last Amended: 2023	<ul style="list-style-type: none"> <li>• Priority of water is given on a first in time, first in right basis in which water rights are allocated based on the chronological order of when they were established.</li> </ul>
	MCA 85-2-406 <sup>[9]</sup>	Effective: 1973 Last Amended: 1997	<ul style="list-style-type: none"> <li>• District courts have the jurisdiction to hear localized water disputes, supervise the distribution of water among all appropriators, and hear appeals of DNRC’s decisions regarding new water permits and changes to existing water rights.</li> </ul>
	MCA 85-2-701 - 85-2-708 <sup>[9]</sup>	Effective: 1979 Last Amended: 2009	<ul style="list-style-type: none"> <li>• Federal reserved and Indian reserved rights are water rights (also called Compacts) that were established when a tribe or federal agency was granted land within the state. The State of Montana has 18 negotiated and federally approved Compacts.</li> </ul>



**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	City or County Floodplain Administrator	<p>Applicants must receive all required state and federal permits prior to submitting a floodplain development permit application. Floodplain development permits must be obtained from the local city or county floodplain administrator, who can be found through contacting DNRC’s Water Resources Division. Floodplain development permits can be obtained through submitting the Joint Application Form to their local floodplain administrator.<sup>[16]</sup></p> <p>The Joint Application Form must be submitted to the appropriate issuing agencies, and the approximate review time varies by agency and permit type. More information regarding the permitting processes can be found in the Joint Application Form and on the issuing agencies’ websites.<sup>[15],[16]</sup></p>	<p>Appeals can be submitted by landowners affected by the decision, the permit applicant, or any other party aggrieved by the decision of the permit application. Appeals must be received within 30 days of receipt of the decision by the local floodplain administrator. Appeals are heard by the DNRC Appeals Board, who can uphold or reject the floodplain administrator’s decision.<sup>[17]</sup></p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Levees	See Table 1 for Permitting Entities	<p>As noted in Table 1, there does not appear to be a specific permit required for the construction or modification of a levee in Montana. However, depending on the conditions and location of the levee project, one or more permits may be required. A Joint Application Form can be used to apply for most applicable state and local permits, as well as Section 404 and Section 10 federal permits.<sup>[16]</sup></p> <p>The Joint Application Form must be submitted to the appropriate issuing agencies, and the approximate review time varies by agency and permit type. More information regarding the permitting processes can be found in the Joint Application Form and on the issuing agencies' websites.<sup>[15],[16]</sup></p>	Appeal processes for applicable permits for the construction or modification of levees differ by issuing agency and permit type. More information regarding specific appeal processes can be found in the MCA or on the issuing agencies' websites.
Stormwater	DEQ Water Quality Division	The state has three general MPDES stormwater permits: Construction, Industrial (including mining and oil and gas activities), and MS4s (see Table 1). Any activities outside of tribal lands that may cause pollution from stormwater runoff must apply for coverage under these permits with MPDES. Activities within tribal lands that may cause pollution from stormwater runoff must apply to the USEPA for coverage under a NPDES permit.	Any person who has received notice of the final determination may request through written request a hearing before the Board of Environmental Review within 30 days of receipt of DEQ's determination. The hearing must be held within 90 days of receipt of written request. Within 120 days of the hearing, the Board of Environmental Review shall affirm, modify, or reverse DEQ's decision (MCA 75-5-403 <sup>[9]</sup> ).

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	Drainage Districts	<p>A review of drainage districts currently operating within Montana revealed no clear permitting requirements specific to drainage activities; however, activities that affect wetlands may require submission of a joint permit application.<sup>[27]</sup> Decisions by drainage districts regarding things like construction activities, levies and taxes, and inspections are made collectively by the three-person Board of Commissioners.<sup>[9]</sup></p>	<p>The MCA gives drainage districts the authority to adopt regulations, policies, and procedures necessary to manage drainage systems within their district. As such, disputes and appeals processes of drainage districts are likely set by each individual districts and vary between districts (MCA 85-8-701<sup>[9]</sup>).</p>
Dams	DNRC	<p>Prior to applying for a dam construction permit, a Downstream Hazard Classification must be performed by a DNRC engineer. After an application to construct a dam is submitted, the DNRC Dam Safety Program will review the submitted materials and issue or deny a permit within 60 days of receipt of the application.<sup>[14]</sup></p> <p>After completion of construction, DNRC will approve or deny the dam's operation plan and may issue an operation permit.<sup>[14]</sup></p>	<p>Any person aggrieved by an action or decision of DNRC can request a hearing. Once a hearing has been held or if the hearing request is denied, the person aggrieved can appeal the decision to the district court (MCA 2-4-601 et seq.<sup>[9]</sup>).</p> <p>Complaints regarding dam safety may be filed by submitting a written and signed complaint to DNRC (MCA 85-15-215<sup>[9]</sup>).</p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Water Rights	DNRC, Water Court, District Courts	<p>DNRC is the entity responsible for issuing water permits for new appropriations and approving changes to existing rights, while the Water Court is responsible for adjudicating existing water right claims.</p> <p>The permitting process for new appropriations has been updated as of 2024 through HB 114. The updated process includes an optional meeting and analyses by DNRC prior to submitting a permit application, followed by a public comment period on the draft preliminary determination by DNRC and a notice of opportunity to object. In the case that no objection valid is heard, DNRC issues the permit; otherwise, a hearing begins.<sup>[13],[25]</sup></p>	<p>In the case that DNRC states in its draft preliminary determination that it plans to deny a permit or approve the permit with modifications, the applicant may request a hearing prior to the final decision.</p> <p>In the case that DNRC denies a permit application, the applicant may appeal to the applicable district court. During the hearing, a districts court may call upon the local water master for technical assistance in decision making. District court decisions can be appealed to the Montana Supreme Court.<sup>[26]</sup></p> <p>Appeals of Water Court decisions must be made within 180 days of the decree and are heard in the Montana Supreme Court.<sup>[25]</sup></p>

## CITATIONS

- [1] Montana Association of Conservation Districts. (n.d.-a). Montana's Conservation Districts. <https://montanaconservation.org/>
- [2] Montana Department of Environmental Quality (DEQ) Water Quality Planning Bureau. (2019, June). DEQ-7 Montana Numeric Water Quality Standards. <https://deq.mt.gov/files/Water/WQP/Standards/PDF/DEQ7/DEQ-7.pdf>
- [3] Montana Department of Environmental Quality (DEQ). (2021). Montana Pollutant Discharge Elimination System (MPDES) General Permit for Storm Water Discharges Associated with Construction Activity. [https://deq.mt.gov/files/Water/WQInfo/Documents/2021%20Public%20Notices/PN-MT\\_21-31/FINAL/2021-FS-MTR100000.pdf](https://deq.mt.gov/files/Water/WQInfo/Documents/2021%20Public%20Notices/PN-MT_21-31/FINAL/2021-FS-MTR100000.pdf)
- [4] Montana Department of Environmental Quality (DEQ). (n.d.-a). Permitting and Operator Assistance. <https://deq.mt.gov/water/assistance>
- [5] Montana Fish, Wildlife, and Parks (FWP). (n.d.-a). About FWP. <https://fwp.mt.gov/aboutfwp/regions>
- [6] Montana Fish, Wildlife, and Parks (FWP). (n.d.-b). Water Management. <https://fwp.mt.gov/conservation/fisheries-management/water-management>
- [7] Montana Secretary of State. (n.d.-a). Administrative Rules of Montana (ARM). <https://rules.mt.gov/>
- [8] Montana Secretary of State. (n.d.-b). Administrative Rules of Montana (ARM) 17.1.101. Organization of Department. <https://rules.mt.gov/browse/collections/aec52c46-128e-4279-9068-8af5d5432d74/policies/f49204b6-2352-4cba-a82c-0e383027d4ae>
- [9] Montana State Legislature. (n.d.-a). Montana Code Annotated 2023 (MCA) – Title 85. Water Use. [https://leg.mt.gov/bills/mca/title\\_0850/chapters\\_index.html](https://leg.mt.gov/bills/mca/title_0850/chapters_index.html)
- [10] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-a). Understanding Water Rights. <https://dnrc.mt.gov/Water-Resources/Water-Rights/Understanding-Water-Rights/#:~:text=A%20right%20to%20the%20use,of%20the%20right%20was%20required.>
- [11] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-b). Exceptions to Permit Requirements. <https://dnrc.mt.gov/Water-Resources/Water-Rights/Apply-for-Water-Rights/Water-Rights-Permit-Exceptions>
- [12] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-c). Water Adjudication. <https://dnrc.mt.gov/Water-Resources/Water-Rights/Adjudication>
- [13] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-d). Permit and Change Application Process Information. <https://dnrc.mt.gov/Water-Resources/Water-Rights/Apply-for-Water-Rights/Permit-and-Change-Overhaul>
- [14] The Montana Department of Natural Resources & Conservation (DNRC). (2021, April). Introduction to the Montana Dam Safety Program. [https://dnrc.mt.gov/\\_docs/water/Dam\\_Safety/PUBLICATIONS/DSP-Brochure-4-22-2021-WEB.pdf](https://dnrc.mt.gov/_docs/water/Dam_Safety/PUBLICATIONS/DSP-Brochure-4-22-2021-WEB.pdf)
- [15] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-e). Stream Permitting. <https://dnrc.mt.gov/licenses-and-permits/stream-permitting/>
- [16] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-f). JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES. [https://dnrc.mt.gov/\\_docs/permits-services/Stream-Permitting-Joint-Application.pdf](https://dnrc.mt.gov/_docs/permits-services/Stream-Permitting-Joint-Application.pdf)
- [17] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-g). Permitting and Regulations. <https://dnrc.mt.gov/Water-Resources/Floodplains/Permitting-and-Regulations>
- [18] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-h). The National Flood Insurance Program in Montana – Quick Guide. [https://dnrc.mt.gov/\\_docs/water/Floodplains/Permits-Regulations/2023\\_MTQG\\_INTERACTIVE.pdf](https://dnrc.mt.gov/_docs/water/Floodplains/Permits-Regulations/2023_MTQG_INTERACTIVE.pdf)
- [19] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-i). Water Science & Data. <https://dnrc.mt.gov/Water-Resources/Water-Science-and-Data/>

- [20] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-j). Montana Floodplain Program. <https://dnrc.mt.gov/Water-Resources/Floodplains/>
- [21] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-k). Water Planning Implementation and Communications. <https://dnrc.mt.gov/Water-Resources/Water-Planning-Implementation-and-Communications/>
- [22] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-l). State Owned Dams & Canals. <https://dnrc.mt.gov/Water-Resources/State-Owned-Dams-and-Canals>
- [23] The Montana Department of Natural Resources & Conservation (DNRC). (n.d.-m). About DNRC. <https://dnrc.mt.gov/Directors-Office/about>
- [24] United States Environmental Protection Agency (USEPA). (2024, July). Montana NPDES Permits. <https://www.epa.gov/npdes-permits/montana-npdes-permits>
- [25] University of Montana School of Law - Land Use & Natural Resources Clinic. (2014). Water Rights in Montana. [https://courts.mt.gov/External/Water/UM\\_WaterRightsStudy.pdf](https://courts.mt.gov/External/Water/UM_WaterRightsStudy.pdf)
- [26] Water Policy Interim Committee. (2018, February). Water Rights in Montana. <https://leg.mt.gov/content/Publications/Environmental/2018-water-rights-handbook-final.pdf>
- [27] Montana Watercourse. (2006, September). Representing Property with Wetlands and Riparian Areas. [https://leg.mt.gov/content/committees/interim/2009\\_2010/water\\_policy/minutes/wpic07092009\\_ex10.pdf](https://leg.mt.gov/content/committees/interim/2009_2010/water_policy/minutes/wpic07092009_ex10.pdf)

Input was provided by DEQ Policy Analyst, Eric Sivers and DNRC's Anna Pakenham Stevenson, Mallory Scharf, Douglas Brugger, and Jake Mohrmann.

# North Dakota Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of North Dakota Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>North Dakota Department of Water Resources (NDDWR)</b> – Water Appropriation, Dam Permitting and Management, Floodplain Permitting and Management, Drainage Permitting and Management, Water Project Funding and Development<sup>1</sup>.</li> <li>• <b>North Dakota Department of Environmental Quality (NDDEQ), Division of Water Quality</b> – Stormwater Management, Watershed Management and Surface Water Quality Monitoring, Spill Investigation, Development of Water Quality Standards, Groundwater Protection</li> <li>• <b>NDDEQ, Division of Municipal Facilities</b> – Administration of Funding Through the Clean and Drinking Water State Revolving Funds (CWSRF and DWSRF, respectively), Water Quality Monitoring and Enforcement for Public Water Systems</li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>“Water Resource Districts” (WRDs) and “Joint Water Resource Boards” (Joint Boards)</b> – Water management at the county and sub-county level; Joint Boards created for inter-watershed planning by and between WRDs.               <ul style="list-style-type: none"> <li>○ Count: 58 WRDs; 8 Joint Boards</li> </ul> </li> </ul>
Overview of Key Practices	
<p><i>Key authorities regarding North Dakota water resources management are contained in North Dakota Century Code (NDCC) Title 61 et seq<sup>[13]</sup>, and the North Dakota Administrative Code (NDAC) Title 89 et seq<sup>[16]</sup>.</i></p>	

<sup>1</sup> NDDWR partners with local project sponsors to fund flood control, water supply, irrigation, and other general water management projects.

Flood and Floodplain Permitting and Management	Local communities (i.e., jurisdictions with zoning authority), are responsible for developing floodplain management ordinances and managing permitting for floodplain development. NDDWR provides state oversight of local floodplain management, with responsibilities including guidance, technical assistance, and enforcement of floodplain regulations. The regulatory framework and minimum requirements for the state’s floodplain management program follow those of the National Flood Insurance Program (NFIP).
Levee Permitting and Management	NDDWR issues construction permits for levees capable of obstructing greater than 50 acre-feet (AF) of water. WRDs provide review of permit applications and have the authority to investigate and remove unauthorized levees.
Stormwater Permitting	The NDDEQ Division of Water Quality regulates and permits pollution from stormwater runoff from large municipalities and urbanized areas, industrial facilities, and most construction projects. State oversight is required by the state’s participation in the National Pollutant Discharge Elimination System (NPDES).
Drainage Permitting and Management	NDDWR and WRDs are responsible for regulating drainage. A permit issued by the NDDWR is required for any surface drainage to a watershed area greater than 80 acres. Permit applications are forwarded to the applicable WRD, which has the authority to approve or deny the application; however, final decisions regarding drainage permits are made by NDDWR.
Dam Permitting and Management	NDDWR is the primary agency overseeing Dam Permitting and Management in North Dakota. NDDWR issues construction permits for dams, conduct inspections, and may order the removal or modification of unsafe dams. WRDs provide review of permit applications and have the authority to investigate and remove unsafe dams. NDDWR updated the Dam Safety Regulations in January 2024 to reflect state-of-the-practice requirements to minimize loss of human life.
Surface Water Quality Monitoring and Management	The NDDEQ Division of Water Quality oversees surface water quality throughout the state and develops the state’s surface water quality standards, which follow the minimum requirements of the Clean Water Act. NDDEQ enforces surface water quality standards through permitting point source discharges and implementing nonpoint source pollution control programs. NDDEQ additionally monitors and compiles local surface water quality data to perform statewide assessment of surface water quality conditions.



Water Supply and Diversion Rights	NDDWR is responsible for the management of the use of state waters. All water uses except for domestic, livestock, fish, wildlife, and other recreational uses (unless the aforementioned are greater than 12.5 AF per year) apply for a water permit before putting water to beneficial use. NDDWR is the sole entity in charge of reviewing water permits.
-----------------------------------	--

Maps illustrating North Dakota’s Hydrologic Unit Code 12-digit watershed classifications (HUC12), as defined by the US Geological Survey (USGS), and relevant surface water management authorities for the key practices are shown in Figures ND-1 through ND-3.

## NORTH DAKOTA STATE AGENCY(IES) OVERVIEW

### North Dakota Department of Water Resources (NDDWR)

The NDDWR fosters and promotes water resources development of the state. NDDWR is comprised of six divisions based on the different authorities and responsibilities described below.<sup>[5],[11]</sup> In addition, the Director of DWR serves as the Secretary to the ND State Water Commission (SWC) which reviews and considers cost-share requests from project sponsors seeking financial assistance from the Department of Water Resources.

- **Administration:** The Administration division provides overall direction of agency powers and duties as defined by State water laws. Activities performed under this division include general operations, accounting, human resources, records management, contract coordination, and fiscal control.
- **Atmospheric Resources:** The Atmospheric Resources division consists of the Atmospheric Resource Board (ARB). Among other functions, the ARB oversees the monitoring and collection of precipitation and climate data, conducts research, and performs education and outreach related to weather and climate systems.
- **Planning and Education:** The Planning and Education division produces data and information related to water resources, such as Geographic Information Systems (GIS) data, policies, and planning reports.
- **Regulatory:** The Regulatory Division is responsible for regulating and permitting the construction of dams, dikes, and other water control devices. Additional responsibilities include administration of the Floodplain Management Program, sovereign lands management, drainage permitting, and dam safety.
  - The Regulatory Division Engineering and Permitting Section is divided into three project areas that are based on basin boundaries.<sup>[12]</sup>
- **Water Appropriation:** The Water Appropriation division is responsible for the administration and enforcement of water permits.
- **Water Development:** The Water Development division implements a cost-share assistance program, which allows NDDWR to partner with local project sponsors to fund water management projects. NDDWR also administers the federal Municipal, Rural, and Industrial (MR&I) Water Supply Program.

## North Dakota Department of Environmental Quality (NDDEQ)

The NDDEQ was created to conserve and protect the quality of the State's air, land and water resources. NDDEQ is comprised of six divisions based on the different authorities and responsibilities, two of which are related to water management and described below<sup>[3]</sup>.

- **Division of Water Quality:** The primary functions of this division are to enforce state and federal environmental laws through permitting, inspection, sampling, analytical services, and monitoring<sup>[2]</sup>. The Division of Water Quality oversees five programs: Groundwater Protection, North Dakota Pollution Discharge Elimination System (NDPDES) Programs, Watershed Management, Spill Investigation, and Special Projects. The NDPDES Program ensures State compliance with the federal Clean Water Act, including administration of regulations related to municipal/industrial wastewater and stormwater management. The Watershed Management Program is responsible for monitoring and assessing surface water quality across the state in coordination with local and federal partners, The Special Projects division is responsible for developing state water quality standards.
- **Division of Municipal Facilities:** The primary functions of this division are to monitor drinking water, approve water and wastewater plans and specifications, certify water system operators, conduct inspections, and provide financial assistance for water suppliers through the Clean and Drinking Water State Revolving Funds (CWSRF and DWSRF, respectively).

The NDDEQ additionally regulates air quality and waste management and provides analytical laboratory services.

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### Water Resource Districts (WRDs) and Joint Boards

North Dakota contains 58 WRDs that are responsible for water management at the local county or sub-county level (Figure ND-2)<sup>[9]</sup>. WRDs are typically comprised of three or more board members, and their jurisdictions typically follow county boundaries, with the exception of Bottineau and Cass Counties, which contain WRDs established along watershed boundaries. WRDs have various responsibilities related to drainage, watershed planning, and project development<sup>[19]</sup>. Within district boundaries, key responsibilities and authorities of WRDs include:

- Coordination with NDDWR to review permits for dikes, dams, and other water control devices.
- Controlling water levels and flows for water conservation and flood projects within the district.
- Development of rules and regulations concerning the management, control, regulation, and conservation of water and preventing the pollution or misuse of water resources.
- Investigate and enforce regulations for illegal / unpermitted drainage and construction.

- Local data collection and monitoring and data-sharing with state agencies.
- Assess fees for water management project financing.

WRDs may utilize the following funding mechanisms to cover the costs of operations and projects: Property taxes, special assessments, federal and state funding, and revenue bonds.

Per NDDC 61-16.1 two or more WRDs may form Joint Boards to: (1) manage water across district boundaries; eight Joint Boards have been formed for this purpose, or (2) undertake a joint project.

### Rural Regional Water Systems

The State has three Rural Regional Water Systems that are managed by its own Board or Authority comprised of local entities<sup>[8]</sup>. The primary purpose of the Rural Regional Water Systems are to provide local surface water supplies to rural communities that would otherwise largely be dependent on groundwater. The three Regional Water System service areas are shown in Figure ND-3 and include the Northwest Area Water Supply, the Southwest Water Pipeline Project, and the Western Area Water Supply. Each of these systems are managed by their own boards or authorities comprised of local agencies served by the systems. Generally, these systems interact with state agencies for the purposes of funding, regulatory approvals, and long-term planning.

Operations of these systems are typically funded through the following mechanisms: federal and state funding, user fees, and special assessments.

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in North Dakota are generally contained within the NDCC or the NDAC. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the NDCC or the NDAC. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in North Dakota**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	NDCC 61-16.2 <sup>[13]</sup>	Unk. (Note 1)	<ul style="list-style-type: none"> <li>• Communities are responsible for developing and submitting floodplain management ordinances.</li> <li>• NDDWR is responsible for coordinating floodplain management among federal, state, and local entities.</li> <li>• Floodway uses are regulated to prevent any increase in flood levels.</li> <li>• Both NDDWR and communities have the authority to investigate noncompliance.</li> </ul>
Levees	NDCC 61-16.1-38 <sup>[13]</sup>	Unk. (Note 1)	<ul style="list-style-type: none"> <li>• A permit is required from NDDWR for the construction of a levee capable of obstructing 50 AF of water or more.</li> <li>• WRDs are provided the opportunity to review applications and propose modifications or conditions.</li> </ul>
Stormwater Management	NDAC 33.1-16-01 <sup>[15]</sup>	1/1/2019	<ul style="list-style-type: none"> <li>• Permits must be obtained to discharge pollutants into waters of the state.</li> <li>• Permitting, monitoring, and reporting to both state and federal entities is required per the state's participation in the NPDES.</li> </ul>
	General Permits NDR05-0000, NDR11-0000, NDR32-0000, and NDR04-0000	1/2020	<ul style="list-style-type: none"> <li>• General permits authorize certain discharges of relatively uncontaminated stormwater from construction, industrial, and Mining, Extraction &amp; Paving Material activities and public storm sewer systems.</li> <li>• Dischargers from all areas of North Dakota, except tribal lands, can apply for coverage under the general permits.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	NDCC 61-32 <sup>[13]</sup>	Unk. (Note 1)	<ul style="list-style-type: none"> <li>• Permits are required for drainage to a pond, slough, lake, or sheetwater with a watershed of 80 acres or more. Drainage cannot adversely affect downstream land unless flowage easements are obtained.</li> <li>• Permits are required for subsurface management systems affecting 80 acres or more. WRDs must be notified for smaller systems.</li> </ul>
	NDAC 89-02-01 <sup>[16]</sup>	Effective: 12/1/1979 Last Amended: 1/1/2023	<ul style="list-style-type: none"> <li>• NDDWR assesses whether drainage is of statewide or interdistrict significance, meaning it affects state property, wildlife values, or other districts, and is in charge of final approvals for drainage of statewide or interdistrict significance.</li> <li>• All applications can be approved or denied by the local WRD.</li> </ul>
Dam Management	NDCC 61-16.1-38 <sup>[13]</sup>	Unk. (Note 1)	<ul style="list-style-type: none"> <li>• A permit is required from NDDWR for the construction of a low-hazard dam or other device capable of retaining, obstructing, or diverting more than 50 AF of water or a medium-hazard or high-hazard dam capable of retaining, obstructing, or diverting more than 25 AF of water.</li> </ul>
	NDAC 89-08 <sup>[16]</sup>	Effective: 11/1/1989 Last Amended: 7/1/2024	<ul style="list-style-type: none"> <li>• Construction activities that involve the impoundment, protection, or diversion of water require a permit.</li> <li>• Emergency situations may require expedited permits.</li> </ul>
	Dam Safety Standards <sup>[7]</sup>	1/10/2024	<ul style="list-style-type: none"> <li>• Aligns dam safety practices with federal recommendations and current state of the dam safety practice.</li> <li>• Dam hazard classification is determined by potential to cause loss of human life downstream in the event of a dam breach.</li> </ul>
Surface Water Quality	NDAC 33.1-16-02.1 <sup>[15]</sup>	1/1/2019	<ul style="list-style-type: none"> <li>• Classifies state waters based on their ability to support beneficial uses</li> <li>• Establishes surface water quality standards to ensure water quality meets protects public health and meets state and federal requirements for beneficial uses</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Water Supply and Diversion Rights	NDCC 61-04 <sup>[13]</sup>	Unk. (Note 1)	<ul style="list-style-type: none"> <li>• Permits are required to appropriate greater than 12.5 AF of water, except for domestic use, livestock, fish, wildlife, or recreation.</li> <li>• The quantity of water appropriated cannot exceed the beneficial use, except municipal permits, which can account for future use.</li> <li>• Priority of water is given in the following order: domestic, municipal, livestock, irrigation, industrial, and fish / wildlife/ recreational.</li> <li>• Changes to the purpose of water can only be for a higher priority use.</li> </ul>
	NDAC 89-03 <sup>[16]</sup>	4/1/1989	<ul style="list-style-type: none"> <li>• Storage for flood control does not create a water right.</li> <li>• Water may be stored once per year, and reservoir inflows must be allowed to pass through.</li> </ul>

(1) Effective dates of NDCC sections are not explicitly included in legislation and may require consulting official legislative records or historical archives for accurate information.

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	A floodplain development permit must be obtained from the local floodplain administrator, who is responsible for notifying the State Engineer.	N/A (Note 1)
Levees	NDDWR	After an application to construct a levee is submitted, NDDWR will conduct an initial review and forward the application with any conditions to the applicable WRD. The WRD may propose additional modifications or conditions. NDDWR will then make a final decision on the application.	Any person aggrieved by an action or decision of NDDWR can request a hearing. Once a hearing has been held or if the hearing request is denied, the person aggrieved can appeal the decision to the district court (NDCC 61-03-22 <sup>[13]</sup> ; NDCC 28-32-42 <sup>[14]</sup> ). Complaints for unauthorized levees may be filed with the applicable WRD. Decisions made by the WRD may be appealed to NDDWR (NDCC 61-16.1-53.1 <sup>[13]</sup> ).
Stormwater	NDDEQ, Division of Water Quality	The state has four general NDPDES permits: Construction, Industrial, Mining, and MS4s (see Table 1). Any activities that may cause pollution from stormwater runoff must apply for coverage under these permits with NDDEQ.	Any person who has received notice of the final determination may request a hearing from the NDDEQ and appeal the decision to district court (NDAC 33-16-01-28 <sup>[15]</sup> ; NDCC 61-28-07 <sup>[13]</sup> )

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	NDDWR	NDDWR will first determine whether the application is considered “drainage of statewide or interdistrict significance”. The applicable WRD will approve or deny the permit application. If approved by the WRD, applications for drainage of statewide or interdistrict significance are forwarded to NDDWR for final review and approval.	Landowners can file complaints about unauthorized drains. The WRD investigates and may order the closure. If closure is ordered, the WRD must hold a hearing. Decisions can be appealed to NDDWR. NDDWR can either return enforcement to the WRD, make a final decision, or forward the appeal to the State Attorney. After a hearing, NDDWR’s decision can be appealed to the district court. (NDCC 61-32-07 <sup>[13]</sup> ; NDCC 61-32-08 <sup>[13]</sup> )
Dams	NDDWR	After an application to construct a dam is submitted, the NDDWR Dam Safety Program will conduct an initial review and forward the application with any conditions to the applicable WRD. The WRD may propose additional modifications or conditions. NDDWR will then make a final decision on the application.	Any person aggrieved by an action or decision of NDDWR can request a hearing. Once a hearing has been held or if the hearing request is denied, the person aggrieved can appeal the decision to the district court. (NDCC 61-03-22 <sup>[13]</sup> ; NDCC 28-32-42 <sup>[14]</sup> ) Complaints for unauthorized dams may be filed with the applicable WRD. Decisions made by the WRD may be appealed to NDDWR (NDCC 61-16.1-53.1 <sup>[13]</sup> ).
Water Rights	NDDWR	NDDWR is the sole entity that issues water permits. The permitting process requires the notification of relevant parties in the vicinity of the proposed diversion and a 30-day public comment period.	Any person aggrieved by an action or decision of NDDWR can request a hearing. Once a hearing has been held or if the hearing request is denied, the person aggrieved can appeal the decision to the district court (NDCC 61-04-05 <sup>[13]</sup> ; NDCC 28-32-42 <sup>[14]</sup> ).

[1] Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available and may vary by local Floodplain Administrator.



## CITATIONS

- [1] North Dakota Department of Environmental Health. (2022, December 19). NDPDES Storm Water Permitting Policy Designation Criteria for Small MS4s. [https://deq.nd.gov/publications/wq/2\\_NDPDES/Stormwater/MS4/NDR04-MS4\\_Designation\\_Criteria.pdf](https://deq.nd.gov/publications/wq/2_NDPDES/Stormwater/MS4/NDR04-MS4_Designation_Criteria.pdf)
- [2] North Dakota Department of Environmental Quality (NDDEQ). (2021, October). Division of Water Quality Fact Sheet. [https://deq.nd.gov/publications/DeptFactSheets/WaterQuality\\_media.pdf?v=2](https://deq.nd.gov/publications/DeptFactSheets/WaterQuality_media.pdf?v=2)
- [3] North Dakota Department of Environmental Quality (NDDEQ). (n.d.). Department of Environmental Quality Webpage. <https://deq.nd.gov/>
- [4] North Dakota Department of Water Resources (NDDWR). (2024a). ND Department of Water Resources Map Service. <https://mapservice.dwr.nd.gov/>
- [5] North Dakota Department of Water Resources (NDDWR). (2024b). North Dakota Department of Water Resources Webpage. <https://www.swc.nd.gov/>
- [6] North Dakota Department of Water Resources (NDDWR). (2024c, January). Instructions for Completing an Application for a Conditional Water Permit. [https://www.dwr.nd.gov/pdfs/conditional\\_water\\_permit\\_instructions.pdf](https://www.dwr.nd.gov/pdfs/conditional_water_permit_instructions.pdf)
- [7] North Dakota Department of Water Resources (NDDWR). (2024d, January 10). North Dakota Dam Safety Standards. [https://www.dwr.nd.gov/pdfs/reg\\_05\\_2024\\_nd\\_dam\\_safety\\_standards\\_policy.pdf](https://www.dwr.nd.gov/pdfs/reg_05_2024_nd_dam_safety_standards_policy.pdf)
- [8] North Dakota Department of Water Resources (NDDWR). (2023, February). North Dakota Regional Water Supply Projects. [https://www.swc.nd.gov/pdfs/regional\\_water\\_system.pdf](https://www.swc.nd.gov/pdfs/regional_water_system.pdf)
- [9] North Dakota Department of Water Resources (NDDWR). (2021, May). Water Resource Districts Map. [https://www.swc.nd.gov/graphic\\_files/wrd\\_map.png](https://www.swc.nd.gov/graphic_files/wrd_map.png)
- [10] North Dakota Department of Water Resources (NDDWR). (2020, October 27). Construction Permit Water Management Policy. [https://www.dwr.nd.gov/pdfs/reg\\_2020\\_1\\_construction\\_permit\\_water\\_management\\_policy.pdf](https://www.dwr.nd.gov/pdfs/reg_2020_1_construction_permit_water_management_policy.pdf)
- [11] North Dakota Department of Water Resources (NDDWR). (n.d.-a). About DWR Fact Sheet. [https://www.swc.nd.gov/pdfs/dwr\\_what\\_we\\_do.pdf](https://www.swc.nd.gov/pdfs/dwr_what_we_do.pdf)
- [12] North Dakota Department of Water Resources (NDDWR). (n.d.-b). Regulatory Engineer Project Areas. [https://www.swc.nd.gov/pdfs/regulatory\\_engineer\\_project\\_areas.pdf](https://www.swc.nd.gov/pdfs/regulatory_engineer_project_areas.pdf)
- [13] North Dakota Legislative Branch. (n.d.-b). North Dakota Century Code, Title 61 – Waters. <https://ndlegis.gov/general-information/north-dakota-century-code/index.html>
- [14] North Dakota Legislative Branch. (n.d.-a). North Dakota Century Code, Chapter 28-32 – Administrative Agencies Practice Act. <https://ndlegis.gov/cencode/t28c32.pdf>
- [15] North Dakota Legislative Branch (n.d.-c). North Dakota Administrative Code Article 33.1-16 – Control, Prevention, and Abatement of Pollution of Surface Water. <https://ndlegis.gov/agency-rules/north-dakota-administrative-code/index.html>
- [16] North Dakota Legislative Branch (n.d.-d). North Dakota Administrative Code Title 89 – Water Commission. <https://ndlegis.gov/agency-rules/north-dakota-administrative-code/index.html>
- [17] North Dakota Rural Water Systems Association. (n.d.-a). Community Water Systems. <https://www.ndrw.org/membership/public-community-water-systems/>
- [18] North Dakota Rural Water Systems Association. (n.d.-b). Rural/Regional Water Systems. <https://www.ndrw.org/membership/public-community-water-systems/>
- [19] North Dakota Water Resource Districts Association. (2021, September 1). Handbook for Water Managers. <https://ndwater.b-cdn.net/wp-content/uploads/2022/02/2021-ND-Water-Managers-Handbook.pdf>
- [20] North Dakota State Water Commission (SWC). (2019). Quick Guide for Floodplain Management in North Dakota. [https://www.swc.nd.gov/pdfs/floodplain\\_quick\\_guide.pdf](https://www.swc.nd.gov/pdfs/floodplain_quick_guide.pdf)

# Nebraska Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Nebraska Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Nebraska Department of Natural Resources (NeDNR)</b> – Surface Water, Groundwater, Floodplain Management, Dam Safety, Natural Resources Planning, Water Planning and Integrated Management, Storage of Natural Resources and Related Data, Administration of State Funds</li> <li>• <b>Nebraska Department of Environment and Energy (NDEE)</b> – Stormwater Management, National Pollutant Discharge Elimination System (NPDES), Surface and Groundwater Quality Monitoring, Air Quality, Waste Management, Remediation, Energy</li> <li>• <b>Natural Resources Commission</b> – Facilitate Natural Resource-Related Projects and Planning</li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Natural Resources Districts (NRD)</b> – Count 23 Watershed-level project and planning units tasked with:               <ul style="list-style-type: none"> <li>○ Erosion Prevention and Control</li> <li>○ Prevention of Damages from Flood Water and Sediment</li> <li>○ Flood Prevention and Control</li> <li>○ Soil Conservation</li> <li>○ Water Supply for Beneficial Uses</li> <li>○ Development, Management, Utilization, and Conservation of Groundwater and Surface Water</li> <li>○ Pollution Control</li> <li>○ Solid Waste Disposal and Drainage</li> <li>○ Drainage Improvement and Channel Rectification</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Development and Management of Fish and Wildlife Habitat</li> <li>○ Development and Management of Recreational and Park Facilities</li> <li>○ Forestry and Range Management</li> </ul>
<b>Overview of Key Practices</b>	
<i>Key authorities regarding Nebraska water resources management are contained in Nebraska Revised Statutes (NRS) chapters 31, 46, and 61, and the Nebraska Administrative Code.</i>	
Flood and Floodplain Permitting and Management	Local governments adopt floodplain management regulations and issue construction permits. Local flood management regulations must comply with the minimum standards set by NeDNR.
Levee Permitting and Management	Local governments may permit the construction of levees, provided that the levees comply with NeDNR’s minimum standards for floodplain management pertaining to obstructions in floodplains.
Stormwater Permitting	NDEE regulates and permits pollution from stormwater runoff from urban areas, industrial facilities, construction sites, and livestock waste. State oversight is required by the state’s participation in the National Pollutant Discharge Elimination System (NPDES).
Drainage Permitting and Management	County boards develop drainage improvement plans, construct and maintain drains, collect fees from benefiting parties, and award damages to parties who may be injured by drainage activities.
Dam Permitting and Management	NeDNR issues permits for construction, modification, and removal of dams, conducts inspections and may order modification or removal of unsafe dams. NeDNR also issues permits to impound water.
Surface Water Quality Monitoring and Management	NDEE sets water quality standards for surface water, conducts monitoring, identifies impaired waters, issues permits for point source discharges under NPDES, and administers the state’s Nonpoint Source Pollution Management Program and Source Water Protection Program.
Water Supply and Diversion Rights	NeDNR is responsible for water rights and supplies. NeDNR issues permits for surface water appropriation, allocates water during shortages, and determines when surface water features are fully appropriated or overappropriated. NeDNR and NRDs collaborate to develop integrated management plans that may place limits on water appropriations. NeDNR operates a streamgaging program to measure the waters of the State.

## NEBRASKA STATE AGENCY(IES) OVERVIEW

### Nebraska Department of Natural Resources (NeDNR)

NeDNR is the regulatory and administrative authority responsible for quantities of surface, minimum standards for floodplain management, dam safety, water and natural resources planning, and natural resources data. The state is divided into two geographic divisions. NeDNR has six thematic divisions listed below:

- **Dam Safety:** The Dam Safety Division regulates the construction, operation, and maintenance of dams. This includes maintaining an inventory of all dams in Nebraska, reviewing plans for the construction or modification of dams, performing inspections, providing training, and assisting with dam-related emergency preparation and response.
- **Floodplain Management:** The Floodplain Management Division develops minimum standards for floodplain management, produces flood risk maps, coordinates with the National Flood Insurance Program (NFIP), administers the Federal Emergency Management Agency (FEMA)'s Flood Mitigation Assistance grant, develops the statewide Flood Mitigation Plan, and offers technical assistance to local communities.
- **Groundwater:** The Groundwater Division is responsible for well registration, issues groundwater permits to public water suppliers, and reviews applications for industrial groundwater transfers.
- **Surface Water:** The Surface Water Division grants permits for surface water appropriation.
- **Water Planning:** The Water Planning Division coordinates with NRDs to develop single-district and basin-wide integrated management plans, administers interstate agreements, conducts outreach and education, performs technical analysis to support decision making, and determines when a basin is fully or over appropriated.
- **Water Administration:** The Water Administration Division measures streamflow and rainfall, allocates water during shortages, and cancels or adjudicates unused water rights.

### Nebraska Department of Environment and Energy (NDEE)

NDEE was formed by the merger of the Nebraska Department of Environmental Quality and the Nebraska Energy Office in 2019 and has the mission of protecting and improving human health, the environment, and energy resources. NDEE sets the state's regulatory standards for water quality and designates beneficial uses of water bodies. NDEE has five divisions listed below:

- **Inspection and Compliance:** The Inspection and Compliance Division ensures compliance with waste management, air quality, NPDES, and livestock regulations.
- **Planning and Aid:** The Planning and Aid Division is responsible for water planning, administering grants and relevant items under the state revolving fund, and the State Energy Program and Dollar Energy Saving Loan Program.

- **Permitting and Engineering:** The Permitting and Engineering Division issues permits for solid waste, wastewater, air quality, construction and operations, and NPDES.
- **Drinking Water and Groundwater:** The Drinking Water and Groundwater Division is responsible for oversight of drinking water utilities, monitoring surface and groundwater quality, wellhead protection, and Underground Injection Control.
- **Monitoring and Remediation:** The Monitoring and Remediation Division is responsible for environmental monitoring, petroleum remediation, and administration of the Superfund and Resource Conservation and Recovery Act programs.

### Natural Resources Commission

The Nebraska Natural Resources Commission advises the Department of Natural Resources as requested by the director and any other functions specifically conferred on the commission by law. The commission has no jurisdiction over matters pertaining to water rights.<sup>[27]</sup> The Natural Resources Commission administers state grants to provide financial assistance for natural resource-related projects and planning. In the event of a dispute between one or more NRD and NeDNR regarding integrated management plans, an Interrelated Water Review Board (IWRB) will be convened to arbitrate the dispute, and the Natural Resources Commission will nominate members to serve on the Board. As of 2015, no IWRB had ever been convened. <sup>[2][3]</sup>

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### Natural Resources Districts (NRD)

Natural Resources Districts were established in 1972 to serve as a more coordinated replacement for several types of special-purpose districts.<sup>[26]</sup> Nebraska contains 23 NRDs with boundaries approximately based on major river basins (HUC-6) modified to follow the nearest county lines. The NRDs are autonomous local government entities with elected boards of directors. NRDs are responsible for development and implementation of integrated management plans for water resources within their jurisdictions, in coordination with NeDNR. NRDs collaborate to develop basin-wide plans for fully appropriated or overappropriated surface water features that span three or more districts. NRDs are responsible for establishing rules related to well pumping and are responsible for well permitting in some locations. NRDs also conduct projects to protect and manage natural resources that align with their 12 areas of responsibility, listed above in the summary table. NRDs are funded by levying property taxes and may receive additional funds from the Natural Resources Commission.<sup>[4][5]</sup>

### Drainage Districts

Public corporations formed by a collection of landowners with authority to drain lands, to construct and maintain drainage works, and levy taxes.<sup>[6]</sup> Formation of new drainage districts has been prohibited since 1972, due to legislation intended to reduce the number of special-purpose districts in the state and encourage consolidation; however,

existing drainage districts were allowed to continue operation.<sup>[26]</sup> In the event that a drainage district is dissolved, authority over drainage reverts to the county in which it was located.<sup>[6]</sup> Representatives from NeDNR were not aware of any currently active drainage districts.

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Nebraska are generally contained within Nebraska Revised Statutes chapters 31, 46, 61, and 81 and in the Nebraska Administrative Code. Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the Nebraska Revised Statutes chapters 31, 46, 61, and 81 and in the Nebraska Administrative Code. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Nebraska**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	NRS 31-1001 to 31-1023 <sup>[6]</sup>	1983 (Note 1)	<ul style="list-style-type: none"> <li>• NeDNR is the official state agency for floodplain management and establishes minimum standards for local flood plain management regulation.<sup>[7]</sup></li> <li>• The primary consideration is danger to life and property.</li> <li>• Local governments adopt and enforce flood plain management regulations and are encouraged to participate in the National Flood Insurance Program (NFIP).</li> </ul>
	Flood Hazard Mitigation Plan <sup>[8]</sup>	2022	<ul style="list-style-type: none"> <li>• Developed by NeDNR under NRS 61-225 through 61-229.</li> <li>• Intended to reduce long term flood risk to human life and property and to enhance the natural and beneficial functions of floodplains.</li> </ul>
Levees	NAC Title 455 Chapter 1: Minimum Standards for Floodplain Management Programs <sup>[7]</sup>	2008	<ul style="list-style-type: none"> <li>• Levees are subject to NeDNR's minimum standards for floodplain management that relate to obstructions along waterways.</li> <li>• Regulated by local governments.</li> </ul>
Stormwater Management	NAC Title 119 Chapter 3 – NPDES Regulations Applicable to Storm Water Discharges <sup>[9]</sup>	2023	<ul style="list-style-type: none"> <li>• Adopts the requirements of 40 Code Federal Regulations part 122.26.<sup>[10]</sup></li> <li>• Requires an NPDES permit for stormwater discharge.</li> </ul>



Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	NRS 31 <sup>[6]</sup>	1983 (Note 1)	<ul style="list-style-type: none"> <li>• County Boards may construct drains and manage drainage.</li> <li>• City councils have concurrent jurisdiction with the county in which they reside for areas within three miles of the city.</li> <li>• Landowners may drain their land into any natural watercourse, provided that the county deems such drainage to be conducive to public welfare.</li> <li>• Landowners may not divert drainage to another's land where it would not naturally flow.</li> <li>• Establishment of new drainage districts prohibited after 20 June 1972.</li> </ul>
Dam Management	NAC Title 457: Department of Natural Resources Rules for Surface Water <sup>[11]</sup>	2006	<ul style="list-style-type: none"> <li>• Applications for storage permits associated with dams not subject to the Safety of Dams and Reservoirs Act must be accompanied by a project map.</li> </ul>
	NAC Title 458: Safety of Dams and Reservoirs <sup>[12]</sup>	2008	<ul style="list-style-type: none"> <li>• Applies to dams at 25 or more feet high or with a capacity of 50 acre-feet or more.</li> <li>• Approval from NeDNR is required to construct, enlarge, reconstruct, alter, abandon, breach, or remove a dam.</li> <li>• Hazard potential categorized by potential for loss of life and property damage if dam fails (does not consider likelihood of failure).</li> </ul>
	Safety of Dams and Reservoirs Act <sup>[13]</sup>	2017	<ul style="list-style-type: none"> <li>• Places NeDNR in charge of Dam safety and approvals.</li> <li>• Creates the Dam Safety Cash Fund.</li> <li>• Statutory authority for NAC Title 458.</li> </ul>
Surface Water Quality	NRS 81-1501 to 1532 Environmental Protection Act <sup>[28]</sup>	Enacted 1971. Last updated 2022.	<ul style="list-style-type: none"> <li>• Establishes the NDEE and defines powers and duties.</li> <li>• Political subdivisions may be exempt if they control pollution in a manner that is consistent with the Environmental Protection Act.</li> </ul>



Practice Area	Policy / Regulation	Date	Key Principles
	NAC Title 117: Nebraska Department of Environmental Quality <sup>[14]</sup>	2019	<ul style="list-style-type: none"> <li>• Waters that constitute an outstanding State or National resource may not be degraded.</li> <li>• Lowering the existing quality of other waters will only be permitted for the sake of important and necessary economic or social development.</li> <li>• Beneficial use is designated by stream segment or lake.</li> <li>• Water quality standards that may be necessary to protect downstream beneficial uses apply regardless of whether those uses are present.</li> </ul>
Water Supply and Diversion Rights	Nebraska Constitution Article XV-6 <sup>[15]</sup>	1920	<ul style="list-style-type: none"> <li>• The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest.</li> <li>• Domestic use has the highest priority, followed by agriculture, then manufacturing.</li> <li>• Prior appropriation applies to water users appropriating water for the same purpose.</li> </ul>
	NRS 46-229 <sup>[16]</sup>	2004	<ul style="list-style-type: none"> <li>• NeDNR may terminate water rights that have not been used for five consecutive years unless sufficient justification is provided for nonuse.</li> </ul>
	Nebraska Ground Water Management and Protection Act <sup>[17]</sup>	2014	<ul style="list-style-type: none"> <li>• Requires that local NRD(s) and NeDNR jointly develop and adopt an integrated management plan for any river basin, subbasin, or reach that NeDNR determines is fully appropriated or overappropriated.</li> <li>• Plans include objectives, monitoring requirements, and surface water controls.</li> <li>• If a river basin includes three or more NRDs that are required to develop integrated management plans, a basin-wide plan will be adopted.</li> <li>• Integrated management plans may also be adopted voluntarily.</li> </ul>

(1) Date originally enacted. Last revised date is not explicitly provided by legislation and may require consulting official legislative records or historical archives for accurate information.

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development and Levees	Local floodplain administrator	Local governments issue construction permits in accordance with local regulations and the minimum standards for floodplain management established by NeDNR. (This may include construction of levees). <sup>[6][7]</sup>	A variance or exception to floodplain regulations may be granted with good cause if it will not result in additional threats to the public. <sup>[7]</sup>
Stormwater	NDEE	<p>A NPDES Construction Storm Water General Permit – Notice of Intent is required for construction that disturbs one or more acres of soil. The notice of intent must be submitted to NDEE at least seven days prior to land grading or clearing.</p> <p>A NPDES Industrial Storm Water General Permit – Notice of Intent is required for industrial activities that result in stormwater discharge. The notice of intent must be submitted to NDEE at least 30 days prior to facility start-up. The applicant must also develop a Storm Water Pollution Prevention Plan.<sup>[9]</sup></p>	NPDES permits may be opposed and permitting decisions may be appealed in accordance with 40 CFR 124.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	Drainage Districts/ County Boards	Landowners may petition a local drainage district (if established before 20 June 1972 and not dissolved) or the county board for drainage improvements. If the board determines that the improvement should be undertaken, it will propose a plan within 90 days, then hold a hearing on anticipated benefits and damages associated with the plan. Within 30 days of the hearing, the board will make a final decision and assess benefits to landowners who benefit and award damages to landowners who are harmed. <sup>[6]</sup>	Approval of a drainage improvement plan may be appealed to the district court within 20 days. The complainant will be responsible for the costs of the appeal if the appeal is not sustained. <sup>[6]</sup>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	NeDNR	<p>An Application for a Permit to Impound Water must be submitted to the NeDNR and granted prior to constructing or enlarging a reservoir that is off stream, has at least 15 acre-feet of capacity below the lowest outflow, or will hold water to be diverted for beneficial use. For dams subject to Title 457, a project map must be submitted with the application. For dams subject to Title 458, engineering drawings and specifications must be submitted with a completed Application for Approval of Plans for Dams within six months of applying for a Permit to Impound Water. <sup>[13][18][19]</sup></p> <p>An Application for Approval of Plans for Dams must be submitted to the NeDNR and be approved prior to constructing, reconstructing, enlarging, altering, breaching, removing, or abandoning a dam with a height of at least 25 feet or a storage capacity of at least 50 acre-feet (i.e. subject to Title 458). Applications for dams classified as high hazard must be accompanied by an emergency action plan. NeDNR may choose to hold one or more public hearings. As-built drawings must be submitted to NeDNR for certification within 60 days of completion. <sup>[18][13]</sup></p>	<p>A person who believes that they or their property is endangered by the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam may submit a written complaint to NeDNR. NeDNR will conduct an inspection and investigation and provide a report to the complainant. If unsafe conditions exist, NeDNR will order the dam owner to correct the condition. <sup>[13]</sup></p>

Water Rights	NeDNR	<p>Anyone who wants to appropriate water must submit an application to NeDNR. NeDNR will post a public notice of the application. The priority of a water right is determined by the date on which the application is submitted.<sup>[19]</sup> [1] An application may not be submitted in a river basin that is under a stay or moratorium due to NeDNR declaring it fully or over appropriated unless a variance petition is granted. To receive a variance petition, the applicant must show that their project existed prior to any moratorium or stay or that the project will not harm other users.<sup>[21][17]</sup></p> <p>NeDNR may cancel an appropriation that has not been used for five consecutive years unless there is sufficient cause for nonuse. This process is sometimes referred to as adjudication.<sup>[16]</sup></p> <p>If NeDNR determines that a river basin, subbasin, or reach is fully appropriated or overappropriated, NeDNR and the NRD(s) in which the affected area is located will jointly develop and adopt an Integrated management plan within three years. The plan may include increased monitoring and enforcement of surface water diversions, limitation or prohibition of additional surface water appropriations, and requirements that appropriators implement conservation measures. An NRD may also opt to adopt</p>	<p>When a notice of application is posted, any person may submit a written comment in support or opposition of the application, which will be considered by NeDNR in deciding whether to grant the permit. A person with sufficient interest may submit a formal opposition and request a hearing. A person requesting a hearing must pay a portion of the costs associated with the hearing and may participate in the hearing.<sup>[20] [22]</sup></p> <p>An appropriator may request that NeDNR administer the appropriations by curtailing lower priority rights. NeDNR must verify that there is insufficient water before curtailing any rights.<sup>[24]</sup></p> <p>Adjudication begins when the NeDNR conducts a review or field investigation and makes a preliminary determination that the water right has not been used in the last five years and that there is no reason not to cancel it. NeDNR must give notice to the owner of the water right, who has 30 days to contest the preliminary determination and justify the nonuse of the water. NeDNR may then dismiss the cancellation process or proceed to a hearing and decide whether to cancel the water right based on the evidence presented. The owner of the water right may appeal a cancelation of their right to the Court of Appeals within 30 days.<sup>[25]</sup></p>
--------------	-------	--	--

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
		<p>an integrated management plan voluntarily. If a river basin includes three or more NRDs that are required to develop Integrated management plans, a basin-wide plan will be adopted. All Integrated management plans developed in the basin must be consistent with the basin-wide plan.<sup>[17]</sup></p>	<p>If there is disagreement between NeDNR and an NRD regarding an integrated management plan or basin-wide plan, an IWRB will be convened to hold hearings and resolve the dispute, which may include ordering the adoption of a plan. NeDNR and NRDs may mutually agree to modify an integrated management plan, including one ordered by an IWRB. One party may also raise concerns about another's implementation actions. If an agreement cannot be reached, an IWRB will be convened to rule on the modifications or reassign the jurisdiction for implementation to another party. A party whose jurisdiction has been terminated may request that the IWRB be reconvened at least one year later to consider reinstating the jurisdiction.<sup>[3]</sup></p>

## Citations

- [1] Nebraska Legislative Branch (2000). Nebraska Revised Statute 61-212 - Water divisions; denomination.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=61-212>
- [2] State of Nebraska. (n.d). Natural Resources Commission Website.  
<https://nrc.nebraska.gov/>
- [3] Nebraska Legislative Branch (2009). Nebraska Revised Statute 46-719 - Interrelated Water Review Board; created; members; powers and duties.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=46-719>
- [4] Nebraska Legislative Branch (2023). Nebraska Revised Statute 77-3442 – Property tax levies, maximum levy; exceptions.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=77-3442>
- [5] Nebraska Natural Resources Commission (2021) Nebraska Administrative Code Title 263 – Administration of Natural Resources Water Quality Fund.  
<https://rules.nebraska.gov/>
- [6] Nebraska Legislative Branch (n.d.). Nebraska Revised Statute 31 - Drainage.  
<https://nebraskalegislature.gov/laws/browse-chapters.php?chapter=31>
- [7] Nebraska Department of Natural Resources. (2008 July 1). Nebraska Administrative Code Title 455 - Floodplain Management.  
<https://rules.nebraska.gov/>
- [8] Nebraska Department of Natural Resources. (2022). Nebraska State Flood Hazard Mitigation Plan. <https://dnr.nebraska.gov/floodplain/nebraska-flood-hazard-mitigation-plan>
- [9] Nebraska Department of Environment and Energy. (2023). Nebraska Administrative Code Title 119 Chapter 3 - NPDES Regulations Applicable to Storm Water Discharges. <https://rules.nebraska.gov/>
- [10] United States. (1990). Title 40 Code of Federal Regulations Part 122.6 - Storm water discharges. <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-122/subpart-B/section-122.26>
- [11] Nebraska Department of Natural Resources. (2006). Nebraska Administrative Code Title 457 - Department of Natural Resources Rules for Surface Water.  
<https://rules.nebraska.gov/>
- [12] Nebraska Department of Natural Resources. (2008). Nebraska Administrative Code Title 458 - Safety of Dams and Reservoirs. <https://rules.nebraska.gov/>
- [13] Nebraska Legislative Branch (2017). Nebraska Revised Statute 46-1601 to 1670 - Safety of Dams and Reservoirs Act.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=46-1601>
- [14] Nebraska Department of Environment and Energy. (2019). Nebraska Administrative Code Title 117 - Nebraska Department of Environmental Quality.  
<https://rules.nebraska.gov/>
- [15] State of Nebraska. (1920). Nebraska State Constitution Article XV-6.  
<https://nebraskalegislature.gov/laws/articles.php?article=XV-6>
- [16] Nebraska Legislative Branch (2004). Nebraska Revised Statute 46-220 - Appropriations; beneficial or useful purpose required; termination; procedure.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=46-229>

- [17] Nebraska Legislative Branch (2014). Nebraska Revised Statute 46-701 - Nebraska Groundwater Management and Protection Act.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=46-701>
- [18] Nebraska Department of Natural Resources. (n.d). Approval of Dams Webpage.  
<https://dnr.nebraska.gov/dam-safety/approval-dams>
- [19] Nebraska Legislative Branch (2014). Nebraska Revised Statute 46-241 - Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=46-241>
- [20] Nebraska Legislative Branch (2001). Nebraska Revised Statute 46-233 - Application to appropriate water; time of making; contents; procedure; priority date; notice; hearing; temporary permit; emergency use.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=46-233>
- [21] Nebraska Department of Natural Resources. (2006). Nebraska Administrative Code Title 457 Chapter 23 - Moratorium Area Variances for Surface Water Appropriations. <https://rules.nebraska.gov/>
- [22] Nebraska Legislative Branch (2019). Nebraska Revised Statute 61-206 - Department of Natural Resources; jurisdiction; rules and regulations; hearings; orders; powers and duties.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=61-206>
- [23] Nebraska Department of Natural Resources. (n.d). Opportunities for Participation in the Permitting Process (Instructions for Responding to the Notice of Application).  
[https://dnr.nebraska.gov/sites/default/files/doc/surface-water/notice-sw-application/Opportunities for Participation in Permitting Process.pdf](https://dnr.nebraska.gov/sites/default/files/doc/surface-water/notice-sw-application/Opportunities%20for%20Participation%20in%20Permitting%20Process.pdf)
- [24] Nebraska Department of Natural Resources. (n.d). Water Administration Frequently Asked Questions Webpage. <https://dnr.nebraska.gov/water-admin/faqs>
- [25] Nebraska Legislative Branch (2006). Nebraska Revised Statute 46-229.02 - Appropriations; preliminary determination of nonuse; notice; order of cancellation; procedure. <https://nebraskalegislature.gov/laws/statutes.php?statute=46-229.02>
- [26] Kennedy, Richard. (1980). Managing Water Resources Through State Natural Resource Districts. Nebraska Natural Resources Commission.  
<https://govdocs.nebraska.gov/epubs/N1000/B067-1980.pdf>
- [27] Nebraska Legislative Branch (1969). Nebraska Revised Statute 2-1504 - Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy. <https://nebraskalegislature.gov/laws/statutes.php?statute=2-1504>
- [28] Nebraska Legislative Branch (2022). Nebraska Revised Statute 81-1532 - Environmental Protection Act.  
<https://nebraskalegislature.gov/laws/statutes.php?statute=81-1532>

Input provided by NDEE's Tara Anderson and NeDNR's Jeremy Gehle.



# Nevada Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Nevada Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Nevada Department of Conservation and Natural Resources (NDCNR)</b> – Floodplain Management, Interagency Collaboration, Watershed Management and Surface Water Quality Monitoring, Nonpoint Pollution Source Control, Water Quality Standards and Reporting, Stormwater Discharge. Includes the Nevada Division of Water Resources (NDWR) and Nevada Division of Environmental Protection (NDEP)</li> <li>• <b>Nevada Department of Wildlife (NDOW)</b> - Instream Flow Protection and Permitting, Riparian and Wetland Restoration, Wildlife and Fisheries Management, Water Quality Monitoring.</li> <li>• <b>Nevada Department of Transportation (NDOT)</b> – Erosion Control, Stormwater Discharge Permits and Management within right of way.</li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Western Regional Water Planning Commission</b> – public body in Washoe County, Nevada, tasked with developing and overseeing the implementation of a comprehensive regional water management plan for the Truckee Meadows area, including water supply, wastewater management, and flood control.</li> <li>• <b>Water Conservancy Districts</b> – Created under specific state provisions, these districts establish regulations and oversee water resources and related infrastructure within their boundaries.             <ul style="list-style-type: none"> <li>○ Count: 28</li> </ul> </li> <li>• <b>Colorado River Commission</b> – Establishes policies regarding the management of Nevada’s share of hydropower and water resources from the Colorado River.</li> </ul>

<b>Overview of Key Practices</b>	
<i>Key authorities regarding Nevada water resources management are contained in Nevada Revised Statutes (NRS) Title 48 et seq<sup>[13]</sup>, and the Nevada Administrative Code (NAC) Chapter 445A et seq<sup>[10]</sup>.</i>	
Flood and Floodplain Permitting and Management	Flood and floodplain permitting in Nevada is mainly managed by local jurisdictions in coordination with state and federal agencies. The NDWR coordinates between the Federal Emergency Management Agency (FEMA) and local communities, including through administration of grants, education, and assistance with floodplain mapping. The state's floodplain management program follows the regulatory framework and minimum requirements of the National Flood Insurance Program (NFIP).
Levee Permitting and Management	There are few levees in the State of Nevada, and levees are exempt from state-level permitting. Local governments handle ongoing maintenance, with oversight from the U.S. Army Corps of Engineers when federal interests are involved, or from FEMA with regards to floodplain designations.
Stormwater Permitting	The NDEP under the Bureau of Water Pollution Control regulates and permits pollution from stormwater runoff from large municipalities and urbanized areas, industrial facilities, and most construction projects. State oversight is required by the state's participation in the National Pollutant Discharge Elimination System (NPDES). Local governments also play a crucial role in implementing and enforcing stormwater regulations at the municipal level.
Drainage Permitting and Management	Local or county governments, with oversight from state agencies such as NDEP, are responsible for regulating drainage and issuing permits. The NDEP may also require permits if the project has the potential to affect water quality, particularly under the Clean Water Act regulations. For state-managed lands or state highway projects, NDOT may be involved <sup>[1]</sup> .
Dam Permitting and Management	NDWR is the primary agency responsible for the permitting and management of non-federal dams in Nevada. NDWR issues construction permits for dams, conducts inspections, and may order the removal or modification of unsafe dams. Owners of significant or high hazard dams must also develop Emergency Action Plans, reviewed by NDWR, to prepare for potential failures. Federal agencies, such as the U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers, may also be involved for larger dams with significant impacts and are responsible for federal dams within the state.
Surface Water Quality Monitoring and Management	The NDEP Division of Water Quality oversees the Water Quality Assessment and Protection Program, which includes regular monitoring of surface water bodies for pollutants and

	compliance with federal Clean Water Act standards. NDEP is responsible for issuing water quality certifications, developing Total Maximum Daily Loads (TMDLs) for impaired waters, and enforcing state water quality regulations.
Water Supply and Diversion Rights	Nevada utilizes a prior appropriation system for water rights. Water rights and the management of water resources are overseen by the NDWR. The NDWR regulates water use across the state, requiring permits for all uses (except for domestic use of groundwater). Individuals or entities seeking to divert or use water must obtain a permit from NDWR. This agency is the sole authority responsible for reviewing and issuing these permits, ensuring that water use is aligned with state laws. Pre-statutory water rights may be adjudicated by district courts, following an assessment by the State Engineer.

**NEVADA STATE AGENCY(IES) OVERVIEW**

*Nevada Department of Conservation and Natural Resources (NDCNR)*

The NDCNR is a broad and multifaceted department committed to protecting Nevada’s natural, cultural, and recreational resources<sup>[2]</sup>. NDCNR is comprised of eight divisions with different authorities and responsibilities, two of which are related to water management and described below.

- **Nevada Division of Environmental Protection (NDEP):** The Environmental Protection division regulates and monitors water quality to ensure compliance with environmental standards. It manages water pollution control programs, administers the Clean Water State Revolving Fund, and enforces permits related to wastewater discharges and stormwater runoff. NDEP also conducts assessments of surface and groundwater quality, manages water resource data, and collaborates with other state and federal agencies to protect Nevada's water resources.
- **Nevada Division of Water Resources (NDWR):** The Division of Water Resources manages and regulates the state's water resources, including the allocation, use, and conservation of surface and groundwater. It oversees water rights and permits, ensuring that water use complies with state laws and policies. NDWR administers the appropriation process for water diversions, monitors water levels and usage, and responds to water rights violations. The NDWR includes the office of the State Engineer, who is typically appointed as an officer of the court to manage and regulate the deliveries of surface water under decreed water rights.

*Nevada Department of Wildlife (NDOW)*

The NDOW was created for the restoration and management of fish and wildlife resources, and the regulation of hunting and fishing activities. NDOW is organized into seven divisions, each with distinct authorities and responsibilities. One of these divisions, which focuses on water management, is detailed below<sup>[3]</sup>.

- **Division of Fisheries:** Manages aquatic species and their habitats, including fish stocking programs, aquatic habitat restoration, and water quality monitoring. This division is directly involved with managing and conserving water resources to support healthy fish populations.

Nevada Department of Transportation (NDOT)

The NDOT oversees projects related to road safety, traffic management, and transportation planning to ensure efficient and safe travel across the state. The department also works on integrating transportation systems with environmental considerations, which includes addressing stormwater runoff and maintaining infrastructure resilience<sup>[4]</sup>. NDOT is organized into five divisions, each with distinct authorities and responsibilities. One of these divisions, which focuses on water management, is detailed below<sup>[3]</sup>.

- **Environmental Services Division:** Manages NDOT's stormwater program, which includes maintaining a Stormwater Management Plan (SWMP) and ensuring compliance with the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit. The division is responsible for reducing the environmental impact of stormwater runoff from road projects, including construction activities and maintenance practices. This includes installing water detention systems, utilizing technology to minimize pollutants, and reporting annually on the SWMP's status and modifications<sup>[5]</sup>.

**LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

Western Regional Water Planning Commission

The Western Regional Water Planning Commission was created by the Western Regional Water Commission Act to manage water resources, integrate regional efforts, and promote conservation and water quality. The Western Regional Water Commission is governed by a Board of Trustees composed of nine members. The jurisdiction of the Regional Water Commission covers the entire area within the boundaries of Washoe County, Nevada, except for certain excluded areas, including land within the Tahoe Regional Planning Compact, certain Indian reservations or colonies, and specific groundwater basins. The Western Regional Water Planning Commission's key responsibilities include utilizing resources for sustainability and environmental values, centralizing decision-making and coordination, and managing and conserving water supplies and stormwater effectively<sup>[6]</sup>.

The Western Regional Water Planning Commission may utilize bonds for initial expenses and have broad authority to plan and finance water projects through various means. Specific funding methods beyond bonds, such as grants, loans, or revenue from water services, may be employed but are not detailed explicitly<sup>[6]</sup>.

### Water Conservancy Districts

Water Conservancy Districts are established through a process initiated by the boards of county commissioners. The process begins with a petition filed by the board of county commissioners in the county where most of the proposed district's lands are located. The petition is submitted to the district court, which oversees the establishment of the district and ensures compliance with legal requirements. Nevada contains twenty-eight Water Conservancy Districts that are responsible for managing water resources for various beneficial uses, including irrigation, municipal supply, and flood control<sup>[7]</sup>. Water Conservancy Districts are typically comprised of nine or more board members, and their jurisdictions typically follow county boundaries, but exceptions may exist where watershed boundaries and tribal water rights are more relevant. Board members must be residents of the district. Water Conservancy Districts are tasked with a range of important responsibilities, including constructing, maintaining, and operating "works" necessary for the supply of water for various uses, including domestic, irrigation, power, milling, manufacturing, mining, and other beneficial purposes. This includes infrastructure like dams, reservoirs, canals, pipelines, and tunnels<sup>[6]</sup>. Water Conservancy Districts in Nevada are funded through property taxes, bond issuance, grants, operational revenues, and partnerships or contracts.

Per NRS 48-541, the board of directors of any water conservancy district may plan, finance, and construct water development projects.

### Colorado River Commission

The Colorado River Commission consists of seven commissioners selected by the governor and the Southern Nevada Water Authority. The Colorado River Commission protects the rights and interests of the state and serves as Nevada's representative in local, state, and federal programs relating to water, environment, and electricity on the Colorado River.<sup>[18]</sup>

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Nevada are generally contained within the NRS or the NAC. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the NRS or the NAC. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Nevada**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	NRS 278 <sup>[9]</sup>	6/5/2023	<ul style="list-style-type: none"> <li>• Governing bodies may regulate land use and construction in flood-prone areas to prevent potential flood hazards.</li> <li>• Grants authority to local governments to enforce zoning ordinances that address flood hazards and ensure public safety.</li> <li>• Requires the lowest floor of buildings in flood-prone areas to be elevated at or above the base flood elevation to reduce flood risk.</li> <li>• Mandates the disclosure of potential flood hazards to prospective property buyers in subdivisions.</li> </ul>
	NRS 543 <sup>[12]</sup>	2019	<ul style="list-style-type: none"> <li>• The NDCNR coordinates with federal entities regarding flood control projects.</li> <li>• Counties may create or serve as flood control districts.</li> </ul>
Levees	NAC 535.040	2003	<ul style="list-style-type: none"> <li>• Levees are exempted from dam regulations.</li> </ul>
Stormwater Management	NAC 445A <sup>[11]</sup>	12/29/2020	<ul style="list-style-type: none"> <li>• Permits must be obtained to discharge pollutants into waters of the state.</li> <li>• Best Management Practices must be implemented to control stormwater runoff and protect water quality.</li> <li>• General permits cover a range of activities including stormwater discharges from construction sites and industrial operations.</li> </ul>
	NRS 543 <sup>[12]</sup>	2019	<ul style="list-style-type: none"> <li>• The governing body of a flood control district manages and controls stormwater within its jurisdiction.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	NRS 445A <sup>[11]</sup>	12/29/2020	<ul style="list-style-type: none"> <li>• Permits are required for constructing, operating, or modifying any water system or drainage system, ensuring compliance with local and state regulations.</li> <li>• If a system violates permit conditions and fails to rectify the issues, the local governing body may assume control of the system and assess property for continued operation.</li> </ul>
	NRS 534.025	1987	<ul style="list-style-type: none"> <li>• Removal of groundwater to alleviate potential hazards associated with a rise in water levels from secondary recharge (aka return flows) can be considered a beneficial use.</li> </ul>
Dam Management	NAC 535 (law) and NRS 535 (associated regulations) <sup>[13]</sup>	6/12/2023	<ul style="list-style-type: none"> <li>• A permit is required for the construction, alteration, or removal of any dam, including low hazard dams, if the dam has the potential to affect public safety or property.</li> <li>• Plans must be submitted to the State Engineer 30 days before construction of dams that are 20 feet or taller or that will hold more than 20 acre-feet of water.</li> <li>• Dams must be inspected annually (high hazard), every three years (significant hazard), or every five years (low hazard), covering visual, structural, and operational aspects, and identifying maintenance needs.</li> <li>• The State Engineer assigns hazard classifications to dams based on potential consequences of failure, including loss of life and property damage.</li> <li>• Hazard classifications are subject to change based on downstream conditions and do not guarantee safety.</li> </ul>



Practice Area	Policy / Regulation	Date	Key Principles
Surface Water Quality	NAC 445A <sup>[11]</sup>	12/29/2020	<ul style="list-style-type: none"> <li>• The water quality standards for surface waters must include criteria to protect the water for designated uses, including, but not limited to, aquatic life, recreation, and drinking water to meet the requirements of the Federal Water Pollution Control Act.</li> <li>• Permits are required for point source discharges and may include added conditions to ensure that the discharge does not violate water quality standards.</li> </ul>
Water Supply and Diversion Rights	NRS 533 <sup>[6]</sup>	5/1/2023	<ul style="list-style-type: none"> <li>• Water belongs to the public.</li> <li>• A permit from NDWR is required for the appropriation of water for beneficial use or for changes to an existing appropriation.</li> <li>• The State Engineer will grant a permit if there is unappropriated water available, and the proposed appropriation is in the public interest and doesn't conflict with existing rights or the protectible interest of domestic wells.</li> <li>• The State Engineer and district court are responsible for adjudication of vested water rights.</li> </ul>



**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	The Nevada Division of Water Resources (NDWR) facilitates floodplain management and ensures compliance with both state and federal requirements. Local governments implement floodplain regulations and developers must submit permit applications from local governing bodies.	If an applicant disagrees with a permit decision or interpretation of floodplain regulations, they must appeal to the local board or committee responsible for floodplain management.
Levees	Local Government/ Floodplain Administrator	In Nevada, levee permitting involves a combination of federal and local regulatory oversight. The State Engineer has no authority over levee systems, but plans may be reviewed by local governments. Local authorities conduct inspections to ensure compliance with approved plans and regulations, while the U.S. Army Corps of Engineers provides oversight to ensure adherence to federal standards.	Appeals are conducted through the relevant local or federal procedure, depending on the entity with jurisdiction.
Stormwater	NDEP, Stormwater program	NDEP oversees the National Pollutant Discharge Elimination System (NPDES) permit program, which regulates stormwater discharges from construction sites, municipal stormwater systems, and industrial activities. Local flood control districts are responsible for managing and controlling stormwater within their respective jurisdictions.	If an applicant disagrees with a stormwater permit decision, they must first appeal to the local permitting authority, such as the public works department or environmental services division responsible for the permit. If this local appeal does not resolve the issue, the matter can be escalated to the NDEP. The NDEP has the authority to review and decide on such appeals. Should the dispute remain unresolved after state-level review, parties may seek judicial review in state court (NRS 278.028 <sup>[9]</sup> ).

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	Local	Counties may adopt or review drainage plans.	If drainage works are constructed that result in the diversion of water to which another water user has a right, the owner of the drainage works may be guilty of a misdemeanor. The State Engineer may take action against the owner of the drainage works.
Dams	NDCNR, Division of Water Resources	After an application to construct a dam is submitted, the NDWR Dam Safety Program will conduct a review to make sure the dam complies with state laws, safety standards and regulations. Once a dam is operational, it must adhere to ongoing maintenance and safety requirements set by the NDWR. Permit fees are the same regardless of size or complexity. Annual storage fees are based on use and storage capacity.	Any person aggrieved by an action or decision of NDWR can appeal that decision to the district court.

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Water Rights	NDCNR, Division of Water Resources	<p>NDWR is the sole entity that issues new water right permits. The NDWR reviews all applications to evaluate whether there is water available at the source, whether the use conflicts with existing rights or the protectable interests in domestic wells, and whether the use is in the public interest.<sup>[6]</sup> Permits are subject to per-acre water use limits, which are specific to each basin. The most common water rights are pre-statutory rights, established by decree or historical appropriation. Claims of pre-statutory rights are taken at face value unless challenged, in which case, they are subject to adjudication.</p>	<p>If a party believes a water right application could harm their existing rights, they can file a protest within 30 days of the notice's final publication. The NDWR will review the protest and may hold a hearing if additional information is needed. Any person aggrieved by an action or decision of NDWR can appeal that decision to the district court.</p> <p>During the adjudication of a pre-statutory right, the State Engineer conducts an investigation to substantiate the claim and requires that the applicant provide documentation. The State Engineer then provides a determination to the district court, which issues a decree of the water rights. The State Engineer is typically appointed as an officer of the court for the purposes of adjudication.</p>

## CITATIONS

- [1] Nevada Department of Transportation. (n.d.). *Drainage manual*. <https://www.dot.nv.gov/doing-business/about-ndot/ndot-divisions/engineering/design/drainage-manual>
- [2] Nevada Division of Conservation and Natural Resources. (n.d.). About us. <https://dcnr.nv.gov/about-us>
- [3] Nevada Department of Wildlife. (n.d.). About us. <https://www.ndow.org/about/>
- [4] Nevada Department of Transportation. (n.d.). *About NDOT*. Nevada Department of Transportation. <https://www.dot.nv.gov/doing-business/about-ndot>
- [5] Nevada Department of Transportation. (n.d.). Stormwater resources and documents. <https://www.dot.nv.gov/doing-business/about-ndot/ndot-divisions/stormwater/resources-documents>
- [6] Legislative Counsel Bureau. (2007). *Nevada Revised Statutes: Chapter 533 - Water Rights*. <https://www.leg.state.nv.us/statutes/74th/Stats200727.html>
- [7] Nevada Department of Conservation and Natural Resources. (n.d.). *Conservation Districts Program*. <https://dcnr.nv.gov/divisions-boards/conservation-districts-program>
- [8] Legislative Counsel Bureau. (n.d.). *Nevada Revised Statutes: Chapter 541 – Water Conservancy Districts*. <https://www.leg.state.nv.us/nrs/NRS-541.html#NRS541Sec010>
- [9] Legislative Counsel Bureau. (2023, June 5). *Nevada Revised Statutes: Chapter 278 - Planning and Zoning*. <https://www.leg.state.nv.us/nrs/nrs-278.html#NRS278Sec010>
- [10] Legislative Counsel Bureau. (2023, June 4). *Nevada Revised Statutes: Chapter 532 - Wells and Water Rights*. <https://www.leg.state.nv.us/nrs/nrs-532.html>
- [11] Legislative Counsel Bureau. (2020, December 29). *Nevada Administrative Code: Chapter 445A - Water Controls*. <https://www.leg.state.nv.us/nac/nac-445a.html>
- [12] Legislative Counsel Bureau. (2023, August 1). *Nevada Revised Statutes: Chapter 543 – Control of Floods*. <https://www.leg.state.nv.us/nrs/nrs-543.html#NRS543Sec410>
- [13] Legislative Counsel Bureau. (2023, June 12). *Nevada Revised Statutes: Chapter 535 - Use and Distribution of Water*. <https://www.leg.state.nv.us/NRS/nrs-535.html>
- [14] Legislative Counsel Bureau. (n.d.). *Nevada Revised Statutes: Chapter 536 - Penalties for Violations of Water Rights Regulations*. <https://www.leg.state.nv.us/nrs/NRS-536.html#:~:text=Every%20person%20who%20shall%20willfully,be%20guilty%20of%20a%20misdemeanor.&text=NRS%20536.200%20Penalties%20for%20violation%20of%20chapter%2C%20order%20or%20regulation.,-1>
- [15] Legislative Counsel Bureau. (n.d.). *Nevada Revised Statutes: Chapter 048 - Definitions*. <https://www.leg.state.nv.us/nrs/nrs-048.html>
- [16] Nevada Legislature. (2021). *NRS: Chapter 233B - Nevada Administrative Procedure Act*. <https://www.state.nv.us>
- [17] Nevada Division of Environmental Protection. (n.d.). *Compliance and enforcement*. <https://www.ndep.nv.gov>
- [18] Colorado River Commission of Nevada. (2024). *Colorado River Commission of Nevada*. <https://crc.nv.gov/index.php>

Input was provided by NDWR's Chris Thorson, John Guillory, Chad Walling, Adam Sullivan, and Beau Parker.

# Ohio Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Ohio Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

<b>Agencies Overview</b>	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>Ohio Environmental Protection Agency (EPA), Division of Drinking and Ground Waters</b> – Surface Water Management, Stormwater Permitting, Public Water System Regulation</li> <li>• <b>Ohio Department of Natural Resources (ODNR)</b> – Floodplain Management, Levee Permitting, Dam Permitting, Water Diversions, Consumptive Use Permits, High Capacity Water Withdrawal Registrations, and Water Rights</li> <li>• <b>Ohio Department of Health</b> – Water Quality, Private Water Systems Program)</li> <li>• <b>Ohio Department of Agriculture (ODA), Division of Soil and Water Conservation</b> – Drainage, Soil and Water Conservation Districts</li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>Soil and Water Conservation District (SCWD)</b> – Water management at the county level.               <ul style="list-style-type: none"> <li>○ Count: 88</li> </ul> </li> <li>• <b>Drainage Districts</b></li> <li>• <b>Watershed Districts</b></li> </ul>
<b>Overview of Key Practices</b> <i>Key Authorities regarding Ohio’s water resource management are contained in the Ohio Revised Code Chapter 1521 and 1522 Division of Water Resources and Ohio Administrative Code Chapter 1501 Division of Soil and Water Resources.</i>	
Flood and Floodplain Permitting and Management	Local communities (i.e., jurisdictions with zoning authority) are responsible for developing floodplain management ordinances and managing permitting for floodplain development. ODNR provides state oversight of local floodplain management, with

	responsibilities including guidance, technical assistance, and enforcement of floodplain regulations. The regulatory framework and minimum requirements for the state’s floodplain management program follow those of the National Flood Insurance Program (NFIP).
Levee Permitting and Management	The ODNR Division of Water Resources issues construction permits for Class I or II structures as designated by the Chief of the Division based on preliminary design reports during the preliminary review for a new levee. There are no exemption criteria for levees, however Class III structures do not require permits but remain under the jurisdiction of Ohio’s Dam Safety Laws.
Stormwater Permitting	The OEPA Division of Surface Water regulates and permits pollution from stormwater runoff from large and medium municipalities and urbanized areas, industrial facilities, and most construction projects. Most discharges require coverage by a National Pollutant Elimination System (NPDES) permit. SCWDs oversee implementing rules and regulations for compliance with the EPA guidelines.
Drainage Permitting and Management	Drainage Permitting and Management is managed at the county level by SCWDs in compliance with NPDES Phase II regulations. The ODA oversees and supports SCWDs through funding, technical assistance, among other functions. Some SCWDs oversee drainage with stormwater runoff permitting and management. SCWDs may also facilitate dialog among landowners, provide suggestions to help them resolve drainage issues, and if necessary, host mediation sessions (though the mediator’s fees must be paid by the landowners). <sup>[37]</sup>
Dam Permitting and Management	The ODNR oversees Dam Permitting and Management in Ohio. ODNR issues construction permits for dams, conducts inspections, and may order the removal or modification of unsafe dams.
Surface Water Quality Monitoring and Management	The OEPA Division of Drinking and Ground Waters oversees surface water quality throughout the state and develops the state’s surface water quality standards, which follow the minimum requirements of the Clean Water Act. OEPA enforces surface water quality standards through permitting point source discharges and implementing nonpoint source pollution control programs. Public Water Systems additionally monitor water quality regularly.
Water Supply and Diversion Rights	The ODNR Division of Water Resources oversees water supply and diversions from both the Ohio River Basin and Lake Erie Basin.

## OHIO STATE AGENCY(IES) OVERVIEW

### Ohio Environmental Protection Agency (EPA)

The Ohio EPA has several regulatory divisions that encourage environmental protection and regulate industries through permits, monitoring, technical assistance, and enforcement action among other responsibilities. The Division of Surface Water and the Division of Drinking and Ground Waters are described below.<sup>[19]</sup>

- **Division of Surface Water (DSW):** The primary functions of this division are to ensure compliance with the federal Clean Water Act and increase the number of water bodies that can be safely used for swimming and fishing. The DSW monitors water, issues permits, enforces laws, and encourages pollution prevention practices through the following programs: Water Quality Programs, Credible Data Program, Enforcement Program, GIS & Interactive Maps, Permits Programs, Section 208 Plans and State Water Quality Management Plan Program, and the Sport Fish Consumption Advisory Program.<sup>[19]</sup> The Water Quality Programs support the Clean Water Act's goals for surface water; the Credible Data Program classifies surface water monitoring; the Enforcement Program ensures compliance to water quality standards; the Permits Program contains permit regulations and procedures for wastewater, stormwater, and other issues pertaining to water quality; the Section 208 Plans and State Water Quality Management Plan Program pertains to Areawide Waste Treatment Management Plans; and the Sport Fish Consumption Advisory Program provides information relating to fish consumption advisories.
- **Division of Drinking and Ground Waters (DDAGW):** The primary functions of this division are to ensure compliance with the federal Safe Drinking Water Act and evaluate threats to the public drinking water systems.<sup>[17]</sup> The largest section of the DDAGW oversees and monitors Ohio's ~4,400 public water systems (PWSs). This includes the Source Water Assessment and Protection Program (SWAP) that helps communities protect their sources of drinking water. <sup>[13],[18]</sup>

### Ohio Department of Natural Resources (ODNR)

The ODNR works to conserve and protect the state's diverse natural resources, including wildlife, water resources, forestry, and oil and gas, and ensure the balance of these resources for all. The ODNR is comprised of twelve divisions based on the different authorities and responsibilities, one of which is related to water management and described below. <sup>[10]</sup>

- **Division of Water Resources:** The primary functions of this division are to ensure wise water management decisions and to protect Ohio's water resources by providing information, technical assistance, and regulatory guidance. The Division of Water Resources oversees four programs: Dam Safety, Floodplain Management, Water Inventory and Planning, and H2Ohio. The Dam Safety Program ensures that life, health, and property are protected from dam and levee failures. The Floodplain Management Program works with the Federal Emergency Management Agency (FEMA) to implement the National Flood Insurance Program



(NFIP) statewide. The Water Inventory and Planning Program implements and enforces Ohio's rules, regulations, and contracts related to water supply and water resource development and is responsible for water withdrawal and consumptive use permitting. The H2Ohio program utilizes a data driven approach to improve long term water quality through voluntary conservation practices.<sup>[14]</sup>

### Ohio Department of Agriculture (ODA)

The Ohio Department of Agriculture works to ensure the safety of the state's food supply and health of Ohio's food animals and plant life. The ODA is comprised of 19 divisions and programs, one of which is outlined below.

- **Division of Soil and Water Conservation (DSWC):** The primary functions of this Division are to provide leadership, services, financial assistance, and multifaceted programming to help preserve and protect soil, water, and land resources to Ohio's 88 Soil and Water Conservation Districts. Additionally, the DSWC implements the agricultural and non-point source water pollution control programs.<sup>[7]</sup>
  - **Watershed Program:** The Watershed Program, initiated by House Bill 7 (133<sup>rd</sup> General Assembly), supports local conservation initiatives and water quality planning, supports new regional programs, and helps guide the expansion of the H2Ohio program by working with local, state, and federal partners. It develops Regional Watershed Plans that include water quality data, funding opportunities, and management measures to support local conservation and guide Governor DeWine's H2Ohio initiative. These plans are living documents, updated biannually based on stakeholder feedback, with the next edition due in fall 2024.<sup>[6]</sup> The ODA additionally helps support increased staffing in SWCDs through the SWCD Grant Management Program.<sup>[18]</sup>

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### Soil and Water Conservation Districts

Ohio contains 88 SWCDs that are responsible for water management at the local county level. SWCDs are typically comprised of 5 publicly elected volunteer Board of Supervisors members, and their jurisdictions follow county boundaries. These Districts meet the conservation needs of local land users by providing technical, financial, and educational resources.<sup>[20]</sup>

- Coordination with ODA to implement agricultural and non-point source pollution control programs and other BMPs
- Engage in regional-scale watershed planning per House Bill 7.
- Development and enforcement of regulations regarding drainage improvement projects.
- Development of rules and regulations regarding compliance with OEPA stormwater standards.<sup>[2]</sup>
- Coordination with ODA to encourage producer enrollment in H2Ohio's voluntary water conservation practices.



### Drainage Districts

County commissioners can establish drainage maintenance districts with standardized assessments and maintenance funds based on similarity in costs and geography. They can also designate a lead county engineer for multi-county improvements.

### Watershed Districts

Watershed Districts are established under Section 6105.02 of the Ohio Revised Code to manage water resources effectively. These districts can be formed by petitioning the board of county commissioners and must include at least one watercourse or drainage area. The districts are responsible for flood control, water quality management, and soil conservation. They also have the authority to implement improvement projects, levy assessments, and collaborate with other entities for resource management.<sup>[27]</sup>

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Ohio are generally contained within the ORC or the OAC. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the ORC or the OAC. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Ohio**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	OAC 1501:22-1 <sup>[24]</sup> ORC 1521.13 <sup>[34]</sup>	7/26/1990	<ul style="list-style-type: none"> <li>• Works with FEMA and the 751 Ohio municipalities and counties to implement the NFIP statewide</li> <li>• Flood water conveyance is maintained in accordance with standards established under the NFIP.</li> <li>• Authorizes the chief of the division of water resources to coordinate the floodplain management activities of state agencies and political subdivisions with the floodplain management activities of the United States.</li> </ul>
Levees	ORC 1521.06 <sup>[34]</sup> OAC 1501:21-13-10 <sup>[23]</sup>	9/1/2021	<ul style="list-style-type: none"> <li>• A permit is required from ODNR for the construction of Class I or II structures. Class III structures, as determined by the Chief, are exempt from permitting, but remain under the jurisdiction of the Dam Safety Laws</li> <li>• Hydraulic analyses are conducted to determine flood elevations for stream reaches affected by the construction of levees.</li> </ul>
Stormwater Management	ORC 6111.03 <sup>[29]</sup>	1/1/2019	<ul style="list-style-type: none"> <li>• A general NPDES permit is required to discharge to surface waters to ensure compliance with the Clean Water Act</li> <li>• Active landfills, metal mining, coal surface mining, and bulk terminals are not eligible for industrial storm water general permit coverage</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	<p>General Permits: OHC000006, OHR000007, OHQ00004,</p>	<p>4/23/2023; 6/1/2022; 4/1/2021</p>	<ul style="list-style-type: none"> <li>• Construction sites that disturb 1 or more acres of ground or that are part of a larger plan, development, or sale require a permit</li> <li>• Municipal Separate Storm Sewer System (MS4): Phase 1 addresses stormwater runoff from large and medium MS4s that serve a population greater than 250,000 (large) or a population between 100,000 and 250,000 (medium). General Permits authorize certain discharges associated with industrial activity and MS4s serving populations of 100,000 or more (Phase 1). Some MS4s serving fewer than 100,000 have additional requirements under Phase 2.</li> <li>• Industrial stormwater discharges that runoff into waters of the state or MS4, excluding discharges into a combined sewer system or sewer treatment plant, must obtain NPDES permit coverage.</li> </ul>
<p>Drainage Management</p>	<p>ORC 940.19<sup>[35]</sup>, ORC 307.37<sup>[33]</sup></p>	<p>3/24/2021</p>	<ul style="list-style-type: none"> <li>• Ohio Drainage Law consists largely of court precedent set through past civil litigation.</li> <li>• Landowners located in SWCDs can file a petition with the board of the district, SWCDs can advise drainage issues resolutions, but do not have the authority to tell landowners what they can do with their property.</li> <li>• Landowners are entitled to reasonable use of water that flows across their land if it is returned to its natural course.</li> </ul>
<p>Dam Management</p>	<p>ORC 1521.06<sup>[34]</sup></p>	<p>9/1/2021</p>	<ul style="list-style-type: none"> <li>• A construction permit is required from ODNR for the construction of a dam that is greater than ten feet in height or with a storage capacity greater than fifty acre-feet at the elevation of the top of the dam.</li> </ul>
	<p>Dam Safety Standards<sup>[8]</sup>, [12], [34]</p>	<p>2/1/2019</p>	<ul style="list-style-type: none"> <li>• Aligns dam safety practices with federal recommendations and current state of the dam safety practice.</li> <li>• Dams are classified based on height, storage volume and downstream hazard. Downstream hazard is determined by potential to cause loss of human life and flood water damage downstream in the event of a dam breach.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Surface Water Quality	OAC 3745-1 <sup>[21]</sup>	Effective: 1972 Last Updated: 1/4/2024	<ul style="list-style-type: none"> <li>• Water bodies are classified based on designated use including recreational, drinking water, and industrial uses.</li> <li>• Limits discharge of pollutants into surface waters under NPDES permit program.</li> <li>• Water Quality Standards apply to all surface waterways except, waters defined in ORC 6111.01 as sewerage, treatment, or disposal systems or private waters that do not affect junctions with natural surface waters.</li> </ul>
Water Supply and Diversion Rights	ORC 1522.11 <sup>[34]</sup>	10/17/2019	<ul style="list-style-type: none"> <li>• The Great Lakes- St. Lawrence River Basin Water Resources Compact prohibits new or increased inter basin transfers out of the Great Lakes Basin without first obtaining a permit issued by the chief of the division of water resources.</li> </ul>
	ORC 1521.22 <sup>[34]</sup>	10/17/2019	<ul style="list-style-type: none"> <li>• Permits are required from the Chief of the Division of Water Resources for a diversion of more than an average of 100,000 GPD of water over any 30-day period out of the Ohio River watershed into another basin.</li> <li>• Landowners have the right to make reasonable use of their land under common law, and only incur liability when harmful interference of water flow is unreasonable as determined by a court.</li> <li>• Ohio doctrine of riparian rights regards diversion of water from streams as use of water and generally limits the use of stream water to those who own the lands bordering the stream for use on that land.</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	Permits are required for all proposed construction and other developments in special hazard zones (A zones) as identified by Flood Hazard Boundary Maps (FHBM). Counties and municipal corporations not participating in the national flood insurance program must adopt resolutions or ordinances that exceed the standards outlined in OAC 1501:22-1-04 which are considered the minimum standards.	Noncompliance with regulations or ordinances by a county or municipal corporation requires written notice on the action to correct the noncompliance. Failure to do can result in the attorney general taking actions for appropriate relief in a court of competent jurisdiction (OAC 1501:22-1-07 <sup>[24]</sup> ).
Levees	ODNR	After the submittal of a preliminary design report, if the structure is determined to be a Class I or II structure, the applicant will be notified within 45 days of approval or disapproval by the chief of the Division of Water Resources. Upon approval, permit application must be submitted with statutory filing fee and surety bond, final design report, plans and specification, and detailed cost estimate. Permit issued by the chief of the Division of Water Resources.	Any person who receives notice of denial or modification of a permit is entitled to a hearing. Any party adversely affected by the denial or revocation of a permit can appeal the decision to the court of common pleas of Franklin County (ORC 1521.29 <sup>[34]</sup> , ORC Chapter 119 <sup>[32]</sup> ).

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater	OEPA, Division of Surface Water	Ohio implements the federal storm water programs. Two stormwater permit applications for industrial and construction activities: Option 1 is to submit an individual NPDES permit application. Option 2 is to file Notice of Intent (NOI) form requesting coverage under a general permit. Most stormwater discharges require coverage by a National Pollutant Discharge Elimination System (NPDES) permit. <sup>[16]</sup>	N/A (Note 1)
Drainage	Local SCWD	Mutual Agreement Drainage Agreements are made under the supervision of SCWDs. Petition projects are approved and completed through the County Commissioner's office with surveys and designs completed by the County Engineer. Drainage improvements that benefit or damage land in two or more counties are conducted by a joint board of county commissioners and the petition for the improvement is filed with the clerk of the board of commissioners for the lead county. <sup>[29]</sup>	Unsatisfied landowners petitioning to make Drainage Improvements can appeal the decision made by the Commissioner to the Court of Common Appeals. <sup>[36]</sup>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	Ohio DNR	After the submittal of a preliminary design report, the applicant will be notified within 45 days of approval or disapproval by the chief of the Division of Water Resources. Upon approval, permit application must be submitted with statutory filing fee and surety bond, final design report, plans and specification, and detailed cost estimate. Permit issued by the chief of the Division of Water Resources.	Any person who receives notice of denial or modification of a permit is entitled to a hearing. Any party adversely affected by the denial or revocation of a permit can appeal the decision to the court of common pleas of Franklin County (ORC 1521.29 <sup>[34]</sup> , ORC Chapter 119 <sup>[32]</sup> ).
Water Rights	Ohio DNR	Permits are required for diversions from the Ohio River Basin and Lake Erie Basin. Diversions from the Lake Erie Basin are subject to ORC 1522.11. Permits applications are submitted, with a fee of one thousand dollars, to and approved by the Chief of Water Resources if the chief determines the permit qualifies as an exception to the prohibitions against diversions in Section 4.9 of the Great Lakes-St. Lawrence River Basin Water Resources Compact. Permit applications for diversions from the Ohio River watershed are submitted with the quantity of water to be diverted, the purpose of diversion, the life of the project for which the water is to be diverted, among other information.	Applicants are afforded the right to a hearing after denial or revocation of a permit. Any party adversely affected by the denial or revocation of a permit can appeal the decision to the court of common pleas of Franklin County (Ohio Administrative Code Rule 1501-2-10 <sup>[26]</sup> , Ohio Rev. Code 119.01 to 119.13 <sup>[32]</sup> )

[1] Information on regulations or public resources detailing the dispute and appeals process through the OEPA was not found to be readily available.

## CITATIONS

- [1] Allen Soil and Water Conservation District. (n.d). Drainage Program. <https://www.allenswcd.com/drainage-program/>
- [2] Athens Soil and Water Conservation District (n.d.). City of Athens Contractor Permit Training. <https://www.athensswcd.org/urban-stormwater.html>
- [3] Callahan, C. C. (1979). Principles of Water Rights Law in Ohio. [https://senr.osu.edu/sites/senr/files/imce/files/course\\_materials/5451ReadingMaterials/Principles\\_of\\_Water.pdf](https://senr.osu.edu/sites/senr/files/imce/files/course_materials/5451ReadingMaterials/Principles_of_Water.pdf)
- [4] Black, L. P. (n.d.). Ohio Stream Management Guide No. 2. <https://crwp.org/wp-content/uploads/2021/11/who-owns-ohios-streams.pdf>
- [5] Ohio Department of Agriculture (ODA). (n.d.-a). Drainage Law. [https://agri.ohio.gov/divisions/soil-and-water-conservation/resources/ohio\\_drainage\\_law](https://agri.ohio.gov/divisions/soil-and-water-conservation/resources/ohio_drainage_law)
- [6] Ohio Department of Agriculture (ODA). (n.d.-b). ODA Watershed Programs. [https://agri.ohio.gov/divisions/soil-and-water-conservation/resources/1\\_RWP\\_Landing](https://agri.ohio.gov/divisions/soil-and-water-conservation/resources/1_RWP_Landing)
- [7] Ohio Department of Agriculture. (n.d.-c). Division of Soil and Water Conservation. <https://agri.ohio.gov/divisions/soil-and-water-conservation/about-us>
- [8] Ohio Department of Natural Resources (ODNR). (n.d.). Dam Construction Permit. <https://ohiodnr.gov/buy-and-apply/regulatory-permits/water-use-management/05-dam-construction-permit>
- [9] Ohio Department of Natural Resources (ODNR). (n.d.-a). Water Diversion Permit from Ohio River Basin. <https://ohiodnr.gov/rules-and-regulations/rules-and-regulations-by-division/water-resources/water-diversion-permit-ohio-river-basin>
- [10] Ohio Department of Natural Resources (ODNR). (n.d.-b). Home <https://ohiodnr.gov/home>
- [11] Ohio Department of Natural Resources (ODNR). (n.d.-c). Levee Construction Permit. <https://ohiodnr.gov/buy-and-apply/regulatory-permits/water-use-management/levee-construction-permit>
- [12] Ohio Department of Natural Resources (ODNR). (n.d.-d). Dam & Levee Classification. <https://ohiodnr.gov/rules-and-regulations/rules-and-regulations-by-division/water-resources/dam-levee-classification>
- [13] Ohio Department of Natural Resources (ODNR). (n.d.-e). Division of Drinking and Groundwaters. <https://epa.ohio.gov/divisions-and-offices/drinking-and-ground-waters/about-ddagw>
- [14] Ohio Department of Natural Resources (ODNR). (n.d.-f). Division of Water Resources. <https://ohiodnr.gov/discover-and-learn/safety-conservation/about-ODNR/water-resources/about-the-division>
- [15] Ohio Environmental Protection Agency (OEPA). (n.d.-a) Stormwater Discharge General Permits. <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/dischargers-covered-under-stormwater-discharge-general-permits>
- [16] Ohio Environmental Protection Agency (OEPA). (n.d.-b). Stormwater Program. <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/stormwater-program>
- [17] Ohio Environmental Protection Agency (OEPA). (n.d.-c). Division of Drinking and Ground Waters. <https://epa.ohio.gov/divisions-and-offices/drinking-and-ground-waters/about-ddagw>
- [18] Ohio Environmental Protection Agency (OEPA). (n.d.-d). Source Water Assessment and Protection Program. [https://epa.ohio.gov/divisions-and-offices/drinking-and-ground-waters/source-water-protection-and-underground-injection-control-\(UIC\)/source-water-assessment-and-protection-program](https://epa.ohio.gov/divisions-and-offices/drinking-and-ground-waters/source-water-protection-and-underground-injection-control-(UIC)/source-water-assessment-and-protection-program)
- [19] Ohio Environmental Protection Agency (OEPA). (n.d.-e). Divisions and Offices. <https://epa.ohio.gov/divisions-and-offices>
- [20] Ohio Federation of Soil and Water Conservation Districts (n.d.). Our Roots. <https://ofswcd.org/about/our-roots.html>



- [21] Ohio Legislative Branch. (n.d.). Ohio Administrative Code, Chapter 3745-1 – Water Quality Standards. <https://codes.ohio.gov/ohio-administrative-code/chapter-3745-1>
- [22] Ohio Legislative Branch. (2000, November 12). Ohio Administrative Code, Rule 1501-2-10 – Appeal Procedures. <https://codes.ohio.gov/ohio-administrative-code/rule-1501-2-10>
- [23] Ohio Legislative Branch. (2005, January 16). Ohio Administrative Code, Rule 1501:21-13-10 – Levees, general requirements. <https://codes.ohio.gov/ohio-administrative-code/rule-1501:21-13-10>.
- [24] Ohio Legislative Branch. (n.d.-a). Ohio Administrative Code, Chapter 1501:22-1 Floodplain Management. <https://codes.ohio.gov/ohio-administrative-code/chapter-1501:22-1>
- [25] Ohio Legislative Branch. (n.d.-b). Ohio Administrative Code, Division of Soil and Water Resources - Dam Safety. <https://codes.ohio.gov/ohio-administrative-code/1501:21>
- [26] Ohio Legislative Branch. (n.d.-c). Ohio Administrative Code, Water Diversion. <https://codes.ohio.gov/ohio-administrative-code/chapter-1501-2>
- [27] Ohio Legislative Branch. (1957, August 23). Ohio Revised Code, Section 6105.02 Watershed district created. <https://codes.ohio.gov/ohio-revised-code/section-6105.02>
- [28] Ohio Legislative Branch. (1957, August 23). Ohio Revised Code, Section 6135.01 Procedure where more than one county or state affected by improvement. <https://codes.ohio.gov/ohio-revised-code/section-6135.01>
- [29] Ohio Legislative Branch. (2019, October 17a). Ohio Revised Code, Section 6111.03 Water Pollution control powers of director of environmental protection. <https://codes.ohio.gov/ohio-revised-code/section-6111.03>
- [30] Ohio Legislative Branch. (2019, October 17b). Ohio Revised Code, Section 1521.29 - Determinations for application approval. <https://codes.ohio.gov/ohio-revised-code/section-1521.29>
- [31] Ohio Legislative Branch. (2019, October 17c). Ohio Revised Code, Section 1522.11- Permit for new or increased diversion of water out of Lake Erie Watershed. <https://codes.ohio.gov/ohio-revised-code/section-1522.11>
- [32] Ohio Legislative Branch. (n.d.-a). Ohio Revised Code, Chapter 119 - Administrative Procedure. <https://codes.ohio.gov/ohio-revised-code/chapter-119>
- [33] Ohio Legislative Branch. (n.d.-b). Ohio Revised Code, Chapter 307 - Board of County Commissioners – Powers. <https://codes.ohio.gov/ohio-revised-code/chapter-307>
- [34] Ohio Legislative Branch. (n.d.-c). Ohio Revised Code, Chapter 1521 - Division of Water Resources. <https://codes.ohio.gov/ohio-revised-code/chapter-1521>
- [35] Ohio Legislative Branch. (n.d.-d). Ohio Revised Code, Chapter 940 - Soil And Water Conservation Commission. <https://codes.ohio.gov/ohio-revised-code/chapter-940>
- [36] Union Soil and Water Conservation District. (n.d.). Ohio Drainage Law. <https://www.unioncountyohio.gov/ohio-drainage-law>
- [37] Richland Soil and Water Conservation District. (2020). Ohio Drainage Laws. <https://richlandswcd.net/stormwater-drainage/ohio-drainage-laws/>

Input was provided by ODNR Division of Water Resources Chief, Dena Barnhouse.

# Oklahoma Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Oklahoma Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

<b>Agencies Overview</b>	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>Oklahoma Water Resources Board (OWRB)</b> — Water Use Permitting, Dam Permitting and Management, Floodplain Permitting and Management, Water Project Funding and Development, Groundwater Management</li> <li>• <b>Oklahoma Department of Environmental Quality (DEQ)</b> — Stormwater Permitting, Surface Water Quality Permitting and Management, Watershed Planning, Drainage Permitting and Management</li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>Conservation Districts</b>— Water management at the county and sub-county level.               <ul style="list-style-type: none"> <li>○ Count: 84</li> </ul> </li> </ul>
<b>Overview of Key Practices</b>	
<i>Key authorities regarding Oklahoma water resources management are contained in Oklahoma Statutes and the Oklahoma Administrative Code (OAC) Title 785.</i>	
Flood and Floodplain Permitting and Management	OWRB provides state oversight of local floodplain management, with responsibilities including guidance, technical assistance, and enforcement of floodplain regulations. The regulatory framework and minimum requirements for the state’s floodplain management program follow those of the National Flood Insurance Program (NFIP). Local communities (i.e., jurisdictions with zoning authority), are also responsible for developing floodplain management ordinances and managing local permitting for floodplain development.

Levee Permitting and Management	There are 78 levee systems in the state that are managed at the county level. Conservation Districts have the authority to construct and maintain levees.
Stormwater Permitting	The ODEQ Water Quality Division regulates and permits pollution from stormwater runoff from large municipalities and urbanized areas, industrial facilities, and most construction projects. State oversight is required by the state’s participation in the National Pollutant Discharge Elimination System (NPDES).
Drainage Permitting and Management	Local jurisdictions are responsible for regulating drainage through community drainage and flood control ordinances. Permits are not required for diffuse water use.
Dam Permitting and Management	OWRB is the primary agency overseeing Dam Permitting and Management in Oklahoma. OWRB issues construction permits for dams, conducts inspections, and may order the removal or modification of unsafe dams that increase the risk of downstream damage due to dam failure.
Surface Water Quality Monitoring and Management	The ODEQ oversees surface water quality throughout the state and develops the state’s surface water quality standards, which follow the minimum requirements of the Clean Water Act. The states’ surface water management criteria consist of beneficial use, water quality criteria, and antidegradation requirements. The Oklahoma Water Quality Standards are reviewed at least every three years.
Water Supply and Diversion Rights	OWRB is responsible for the management of the use of state waters. All uses of surface water except for domestic must apply for a water use permit, with the first person to obtain a permit establishing superior right over other applicants. OWRB is the sole entity in charge of regulating surface water rights, groundwater rights, and water rights transfers.

**OKLAHOMA STATE AGENCY(IES) OVERVIEW**

Oklahoma Water Resources Board (OWRB)

The OWRB is the water resources planning and development agency for the state and serves to manage, protect, and improve water resources. The nine board members, each representing a different region, are appointed by the governor and serve a seven-year term. Members represent one of the following major water use types: recreation, industrial, irrigation, municipal, rural residential, agriculture, soil conservation, and oil and gas production. The OWRB is comprised of four divisions:<sup>[10]</sup>

- **Water Rights Administration** – Responsible for the administration of the State’s water rights and well drillers programs. The division also employs hydrologists to work on water availability investigations.



- **Financial Assistance** – Assists communities with water infrastructure loans and grants.
- **Engineering and Planning** – Includes the Dam Safety, Floodplain, and Planning programs.
- **Water Analysis, Trends, and Environmental Research** – Conducts water and biological sampling to support state water resource management, providing technical analysis, trends, recommendations, and assessments for diverse stakeholders, including municipalities, academia, and businesses.

Oklahoma Department of Environmental Quality (ODEQ)

The ODEQ is Oklahoma’s primary environmental protection agency and conserves and protects that State’s air, land, and water resources through several core functions including permitting, planning, and environmental assessment and monitoring. The ODEQ is comprised of six divisions, two of which are related to water resources and are outlined below:

- **Water Quality Division (WQD)** – The primary functions of the WQD are to regulate the facilities that distribute public drinking water and manage and discharge wastewater. The WQD also manages construction permitting and watershed planning and maintains the state water quality standards. <sup>[12]</sup>
- **Office of Business and Regulatory Affairs** — The functions of this division include assistance with permit applications for water quality permits, financial and grant assistance for water and wastewater infrastructure improvements, and assistance for local governments, among other functions. <sup>[11]</sup>

**LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

Conservation Districts

Oklahoma contains 84 Conservation Districts that conduct activities related to water management at the county level. As legal subdivisions of the state government, districts help citizens with natural resource management and act as community planners and public health officials, among other functions. Conservation districts do not have any authority over water rights. Districts typically follow county lines and are governed by five board members, two of whom are elected by area voters and two of whom are appointed by the Oklahoma Conservation Commission.<sup>[19]</sup> Conservation districts are funded by the county or counties in which they are located and may receive additional funding from the state for specific programs.<sup>[21]</sup>

**SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Oklahoma are generally contained within the Oklahoma Statutes or the OAC. Table 1 includes a brief

description of major policies and regulations governing each key practice areas, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the Oklahoma Statutes or the OAC. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Oklahoma**

<b>Practice Area</b>	<b>Policy / Regulation</b>	<b>Date</b>	<b>Key Principles</b>
Floodplain Management	OAC Title 785.55 <sup>[5]</sup>	Unk. (Note 1)	<ul style="list-style-type: none"> <li>• Rules and regulations including floodplain development permits, floodplain mapping, and other related activities.</li> <li>• Establishes the OWRB as the coordinator between local communities' floodplain boards and the NFIP</li> </ul>
	OK Stat Chapter 23 <sup>[14]</sup>	1989	<ul style="list-style-type: none"> <li>• The Oklahoma Floodplain Management Act provides framework for floodplain management in the state and establishes the OWRB as primary agency for coordinating floodplain management activities.</li> <li>• Communities are authorized to develop floodplain regulations, designate hazard areas, and establish floodplain boards.</li> </ul>
	State Flood Plan— Senate Bill 1269 <sup>[20]</sup>	2020	<ul style="list-style-type: none"> <li>• The State Flood Plan is integrated with the Oklahoma Comprehensive Water Plan (OCWP) to create a statewide flood planning initiative to raise awareness and motivate actions to reduce flood risk. The plan identifies mitigation projects and provides a structure with which communities can initiate and coordinate successful floodplain management programs</li> </ul>
Levees	82 OK Stat § 541 <sup>[15]</sup>	2023	<ul style="list-style-type: none"> <li>• Authorizes conservation districts to regulate, build and manage levees.</li> </ul>
	OAC § 785:55-1-4 <sup>[9]</sup>	Unk. (Note 1)	<ul style="list-style-type: none"> <li>• A permit is required from OWRB for all proposed developments or substantial improvements on state owned or operated property in a regulatory floodplain.</li> </ul>
Stormwater Management	Title 27A OK Stat §2-6-205 <sup>[11]</sup>	2023	<ul style="list-style-type: none"> <li>• Permits must be obtained to discharge pollutants into waters of the state.</li> <li>• Permitting, monitoring, and reporting to both state and federal entities is required per the state's participation in the NPDES.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	General Permits: OKR10, OKR05, OKR04 <sup>[2]</sup>	2022; 2022; 2024	<ul style="list-style-type: none"> <li>• General permits authorize certain discharges of relatively uncontaminated stormwater from construction, industrial, and municipal stormwater systems.</li> <li>• Construction permits are required for all activity disturbing one acre of land or more, or that is part of a “larger common plan of development or scale”.</li> <li>• General OKR04 permits are required for small, urbanized areas under MS4 Phase II.</li> </ul>
	OKR04	2024	<ul style="list-style-type: none"> <li>• Individual municipal stormwater permits are required for medium or large cities or counties with populations greater than 100,000 under MS4 Phase I.</li> </ul>
Drainage Management	60 OK Stat § 60	6/10/1988	<ul style="list-style-type: none"> <li>• Diffuse surface water is not regulated by water use law but is controlled by laws that govern pollution runoff. Local Jurisdictions can manage local drainage through community drainage and flood control ordinances.</li> </ul>
	82 OK Stat. Chapt. 3	Repealed 1972	<ul style="list-style-type: none"> <li>• Governed drainage and drainage districts.</li> </ul>
Dam Management	OAC 785:25 <sup>[7]</sup>	9/11/2024	<ul style="list-style-type: none"> <li>• A permit is required from the OWRB for the construction of any dams greater than 25 ft in height or with a storage capacity of more than 50 AF. Dams that meet these criteria are subject to the Oklahoma Dam Safety Act.</li> <li>• Specifies dam classifications as to size and potential hazard based on the downstream risk in the event of dam failure.</li> </ul>
	82 OK Stat § 110.5 <sup>[16]</sup>	4/1/1992	<ul style="list-style-type: none"> <li>• Specifies the powers and duties of the OWRB regarding dam regulations, permitting, inspections, and the dissemination of general dam safety knowledge.</li> <li>• The OWRB has the power to grant or deny applications for the construction or modification of dams for dams except those classified as low hazard and used primarily for construction purposes; such dams are only required to notify the OWRB of construction.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Surface Water Quality	OAC 252:730 <sup>[6]</sup>	Unk. (1)	<ul style="list-style-type: none"> <li>• Provisions of state law that describe the desired conditions of a waterbody which consist of designated beneficial use, water quality criteria, and antidegradation requirements and establishes the DEQ as the regulatory body. Oklahoma Water Quality Standards are reviewed at least every three years.</li> </ul>
Water Supply and Diversion Rights	OAC 785:20 <sup>[8]</sup>	12/31/91	<ul style="list-style-type: none"> <li>• Water use permits from OWRB are required for any non-domestic use of ground or stream water.</li> <li>• For appropriation to be approved, the water must be intended for present or future beneficial use, and the proposed use must not interfere with domestic or existing appropriative uses.</li> <li>• If the application is for the transportation of water for use outside the system wherein the water originates, uses within the stream system, including pending applications, are given priority.</li> <li>• Stream water permits can be acquired for non-domestic use of water running in definite streams. The first person to obtain a permit establishes a superior right relative to other applicants.</li> </ul>

(1) Effective dates of OAC sections are not explicitly included in legislation and may require consulting official legislative records or historical archives for accurate information.



**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	A floodplain development permit must be obtained from the local county floodplain administrator who is appointed by the local county or municipal floodplain board for all proposed development or substantial improvement located on state owned or operated property within the regulatory floodplain. Floodplain boards are established by boards of county commissioners and municipal governing bodies.	Any aggrieved persons can appeal the decision of a county floodplain board by filing written notice with the Board of Adjustment and the floodplain board with 10 days of the decision (Floodplain Prevention Regulations Article 4 – Section E) <sup>[14]</sup>
Levees	OWRB	OWRB administers all permits for all proposed developments or substantial improvements on state owned or operated property in a regulatory floodplain. The Board issues notice to counties and municipalities participating in the NFIP at least 30 days before granting the permit.	N/A [1]
Stormwater	ODEQ, Water Quality Division	The state has three general NDPDES permits: Construction, Industrial, and MS4s (see Table 1). Any activities that may cause pollution from stormwater runoff must apply for coverage under these permits with ODEQ.	N/A [1]

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	OWRB	Our research did not find drainage to be subject to state level permitting.	N/A [1]
Dams	OWRB	Permits are required from OWRB prior to construction for that construction alteration, repair, or removal of any dams greater than 25 ft in height or with a storage capacity of more than 50 acre-feet. Applications must be accompanied by plans prepared by a registered professional engineer. Public notice may be required. (785:25-5)	Any interested person may submit written comments on dam applications. (785:25-5) <sup>[7]</sup>
Water Rights	OWRB	OWRB is the sole entity that issues water permits. The permitting process requires a public notice of application within the protest period. Permit approval typically takes 60 to 90 days.  To obtain a stream water permit, applicants must establish that unappropriated water is available, the water is needed by the applicant and will be put to beneficial use, the proposed use will not interfere with existing uses, and that any use of water outside the stream system will not interfere with uses inside the stream system. <sup>[13]</sup>	Any person aggrieved by an action or decision of OWRB can appeal the decision and file an amended application or apply for a lesser amount no later than 15 days after the denial of the original application. (82 OK Stat § 105.14) <sup>[3]</sup>

[1] Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available and may vary by local jurisdiction.

## CITATIONS

- [1] Oklahoma Department of Environmental Quality (ODEQ). (n.d.). Municipal Permitting. <https://www.deq.ok.gov/municipal-permitting/>
- [2] Oklahoma Department of Environmental Quality (ODEQ). (n.d.). Stormwater Permitting. <https://www.deq.ok.gov/stormwater-permitting/>
- [3] Oklahoma State Legislature. (n.d.). 82 Oklahoma Statutes § 105.14. <https://law.justia.com/codes/oklahoma/title-82/section-82-105-14/>
- [4] Oklahoma State Legislature. (n.d.). 60 Oklahoma Statutes § 60. <https://law.justia.com/codes/oklahoma/title-60/section-60-60/>
- [5] Oklahoma State Legislature. (n.d.). Oklahoma Administrative Code 785:55. <https://law.cornell.edu/regulations/oklahoma/title-785/chapter-55>
- [6] Oklahoma State Legislature. (n.d.). Oklahoma Administrative Code 252:730. <https://www.deq.ok.gov/wp-content/uploads/deqmainresources/730.pdf>
- [7] Oklahoma State Legislature. (n.d.). Oklahoma Administrative Code 785:25. <https://www.owrb.ok.gov/rules/pdf/current/Ch25.pdf>
- [8] Oklahoma State Legislature. (n.d.). Oklahoma Administrative Code Title 785. <https://rules.ok.gov/code>
- [9] Oklahoma State Legislature. (n.d.). Oklahoma Administrative Code § 785:55-1-4. <https://www.law.cornell.edu/regulations/oklahoma/OAC-785-55-1-4>
- [10] Oklahoma Water Resources Board (OWRB). (n.d.). About Us. <https://oklahoma.gov/owrb/about-us.html>
- [11] Oklahoma Water Resources Board (OWRB). (n.d.). Office of Business and Regulatory Affairs. <https://www.deq.ok.gov/divisions/obra/>
- [12] Oklahoma Water Resources Board (OWRB). (n.d.). Water Quality Division. <https://www.deq.ok.gov/divisions/wqd/>
- [13] Oklahoma Water Resources Board (OWRB). (n.d.). Water Use Permitting. [https://www.owrb.ok.gov/studies/groundwater/arbuckle\\_simpson/pdf/waterusepermitting.pdf](https://www.owrb.ok.gov/studies/groundwater/arbuckle_simpson/pdf/waterusepermitting.pdf)
- [14] Oklahoma State Legislature. (n.d.). Oklahoma Statutes Chapter 23. <https://govt.westlaw.com/okjc/Browse/Home/Oklahoma/OfficialOklahomaStatutes?guid=NE46BA3A0C76711DB8F04FB3E68C8F4C5&transitionType=Default&contextData=%28sc.Default%29>
- [15] Oklahoma State Legislature. (n.d.). Oklahoma Statutes §82-541. <https://law.justia.com/codes/oklahoma/title-82/section-82-541/>
- [16] Oklahoma State Legislature. (2023). Oklahoma Statutes § 110.5 [https://govt.westlaw.com/okjc/Document/NDA04FAB0C8CA11DB8F04FB3E68C8F4C5?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/okjc/Document/NDA04FAB0C8CA11DB8F04FB3E68C8F4C5?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))
- [17] Oklahoma State Legislature. (2023). Oklahoma Statutes §27A-2-6-205. <https://law.justia.com/codes/oklahoma/title-27a/section-27a-2-6-205/>
- [18] Oklahoma County. (2009, October 28). Flood Damage Prevention Regulations. [https://www.oklahomacounty.org/Portals/0/2010FloodPlainManagement\\_1.pdf](https://www.oklahomacounty.org/Portals/0/2010FloodPlainManagement_1.pdf)
- [19] Oklahoma Association of Conservation Districts. (2024, January 10). Conservation Districts. <https://www.okconservation.org/districts>
- [20] Oklahoma Water Resources Board (OWRB). (2024, May 8). State Flood Plan. <https://oklahoma.gov/owrb/floodplain-management/state-flood-plan.html>
- [21] Oklahoma State Legislature. (2020). Oklahoma Statutes §27A-3. <https://law.justia.com/codes/oklahoma/title-27a/section-27a-3-1-101/>

Input was provided by OWRB General Counsel Sara D. Gibson.

# South Dakota Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of South Dakota Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>South Dakota Department of Agriculture and Natural Resources (DANR)</b> – Flood Control Permitting, Stormwater Management, Surface Water Quality Management, Dam Permitting and Management               <ul style="list-style-type: none"> <li>• <b>South Dakota Water Management Board</b> – Water Rights, Water Quality Standards, Dam Safety Standards, Water Use Regulation</li> </ul> </li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>Conservation District (CD)</b> – Coordination of all available technical, financial, and educational resources to meet the needs of the local land manager with the conservation of soil, water and other natural resources and development of and enforcement of soil erosion and standards               <ul style="list-style-type: none"> <li>○ Count: 68</li> </ul> </li> <li>• <b>Drainage Districts and County Drainage Boards</b> – Construction and maintenance of drainage infrastructure, Flood prevention, Water Flow Control</li> <li>• <b>Water Development Districts</b> – State Water Plan Initiative Recommendations, Management of Water Resources               <ul style="list-style-type: none"> <li>○ Count: 7</li> </ul> </li> </ul>
Overview of Key Practices	
<p><i>Key authorities regarding South Dakota water resources management are contained in South Dakota Codified Laws Century Code<sup>[1]</sup> and the Administrative Rules of South Dakota<sup>[2]</sup></i></p>	
Flood and Floodplain Permitting and Management	<p>DANR processes flood control permit applications and provides technical assistance and guidance and helps local governments comply with federal and state regulations. The regulatory framework and minimum requirements for the state’s floodplain management program follow those of the</p>

	<p>National Flood Insurance Program (NFIP) under the direction of the Office of Emergency Management within the Department of Public Safety. Counties and municipalities are responsible for developing floodplain management ordinances and managing permitting for floodplain development. The South Dakota Department of Game, Fish, and Parks also administers a lakeshore and bottom lands permit that is required before beginning any work on, or alteration or disturbance of, a lake, lakebed, or lakeshore.</p>
<p>Levee Permitting and Management</p>	<p>For levees which are not federally managed, local floodplain administrators are primarily responsible for issuing permits and ensuring that levee construction, modification, and maintenance are conducted safely and comply with environmental regulations. There is also coordination with federal entities, including the U.S. Army Corps of Engineers if the levee affects navigable waters or federally regulated wetlands.</p> <p>DANR has the regulatory authority to issue flood control permits for levees or other flood control works.</p>
<p>Stormwater Permitting</p>	<p>The DANR regulates pollution from stormwater runoff and administers the National Pollutant Discharge Elimination System (NPDES) program for stormwater discharges for construction sites, industrial facilities, temporary discharge, and municipal separate storm sewer systems (MS4s). Local governments are responsible for issuing permits and ensuring compliance with local stormwater management requirements.</p>
<p>Drainage Permitting and Management</p>	<p>Local counties have jurisdiction over drainage and are responsible for local permitting and regulatory compliance. Additionally, cities and municipalities manage stormwater and drainage permitting and regulation within city limits.<sup>[3]</sup></p>
<p>Dam Permitting and Management</p>	<p>DANR is the primary agency overseeing dam permitting and management in South Dakota. DANR issues permits for the construction and modification of dams above certain storage capacity, evaluates the potential impacts on water resources, and conducts dam safety inspections. The criteria for dam classifications and standards for dam safety inspections are outlined in the Administrative Rules of South Dakota.<sup>[4]</sup> Dams can be classified as “High-hazard potential dam,” “Significant-hazard potential dam,” and “Low-hazard potential dam,” based on loss of human life potential and level of property destruction in the case of dam failure/mis-operation.</p>

Surface Water Quality Monitoring and Management	The DANR oversees surface water quality throughout the state and develops the state's surface water quality standards. Water quality monitoring and assessment is conducted through DANR's Water Quality Program and Watershed Protection Program. Water quality monitoring is also conducted through local partnerships with Water Development Districts, Conservation Districts and volunteer monitoring groups.
Water Supply and Diversion Rights	DANR is responsible for the management of the state's water rights program and issues water rights permits. The Water Management Board is the governing entity to oversee water allocation in South Dakota. Water rights are granted based on prior appropriation.

**SOUTH DAKOTA STATE AGENCY(IES) OVERVIEW**

South Dakota Department of Agriculture and Natural Resources (DANR)

The DANR protects and preserves agriculture, environment, and natural resources through regulatory services, conservation, and financial and technical assistance. DANR is comprised of the following divisions based on the different authorities and responsibilities described below, as well as a division dedicated to the state fair. [5]

- **Agriculture and Environmental Services:** Responsibilities of the Agriculture and Environmental Services division include air quality monitoring, waste management, minerals and mining management, Livestock Services, which includes the permitting of concentrated animal feeding operations, among other functions.
- **Resource Conservation and Forestry:** The Resource Conservation and Forestry Division is responsible for watershed protection, including nonpoint source pollution and water quality monitoring and assessment, forestry, and other conservation functions. Additionally, the Division's Conservation Commission is responsible for conservation district grant funding and loans, board of supervisor appointments, and administrative organization, among other functions. [14]
- **Office of Water:** The Office of Water is responsible for drinking water programs, the Water Quality Program, and South Dakota water rights. The Drinking Water Program implements state and federal regulations by enforcing the South Dakota Drinking Water Regulations that apply to the ~645 public water systems in the state.[6] The Water Quality Program administers a permitting program addressing surface water discharges to include stormwater, wastewater and other regulated discharges. Additionally, this Program: monitors the water quality of streams, assists with the development of the Integrated Report, develops surface and groundwater quality standards and reviews 401 water quality certification requests. [8] The Water Rights Program manages water rights in the state as well as flood control permits and dam safety, among other functions.

- **Financial and Technical Assistance:** Responsibilities of this division include administration of grants and loans for environmental projects seeking infrastructure funding, including drinking water, storm water, and watershed restoration. <sup>[12]</sup>

The South Dakota Water Management Board authorizes water appropriations for beneficial use of water resources. <sup>[9]</sup> The Board operates under DANR but is not explicitly part of any branch or division. Instead, it operates as an independent entity that works in close collaboration with various offices within DANR, most notably the Office of Water, which handles the day-to-day administration of water-related programs. The Water Management Board, authorized under Section 1-40-15 of the South Dakota Codified Laws, has numerous duties, including issuing, denying, or canceling water permits; establishing surface and groundwater quality standards; approving groundwater discharge permits; establishing drinking water standards; setting ordinary high water marks; regulating water use; establishing safety of dam standards; validating vested water right claims; issuing water quality variances; establishing well construction standards; and establishing standards for above and below ground storage tanks and underground injection wells. Water Management Board is comprised of seven members, each with unique expertise. <sup>[10]</sup>

The South Dakota Department of Agriculture and the Department of Environmental and Natural Resources merged in 2021 to become the South Dakota Department of Agriculture and Resources to serve the state more effectively and more effectively. <sup>[6]</sup>

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### Conservation Districts (CDs)

CDs are a sub-division of the state government and coordinate assistance between local, state, and federal resources. Each district is comprised of five publicly elected supervisors. District functions include conservation leadership, promoting land use practices that promote the health of air, soil, water, plants and habitat for animals, wetlands restoration, groundwater resource protection, and tree planting and land cover. <sup>[11]</sup> Coordination between CDs is administered via the South Dakota Association of Conservation Districts. The DANR Division of Resource Conservation & Forestry and the State Conservation Commission assist CDs with programs and technical assistance, provide funding for CDs projects through the Coordinated Natural Resources Conservation Grant program and loans for equipment and supplies, and support accounting and financial reporting procedures. <sup>[13]</sup>

### Drainage Districts

Drainage districts in South Dakota are specific to a localized area and are focused on the practical implementation of drainage solutions, which entails controlling the flow of water to prevent flooding and ensure water is diverted from areas from damage-prone areas. They are also responsible for constructing and maintaining drainage infrastructure, including open ditches, culverts, and underground tile systems. Drainage districts are



governed by elected trustees from within the district, typically elected by landowners in the district. The elected trustees have the authority to make decisions regarding the planning, funding, and operation of drainage projects. Drainage districts are overseen by county drainage boards and may be replaced by coordinated drainage areas established by the county. The board of county commissioners also provides funds, equipment, and accommodation for drainage activity taking place in its jurisdiction.

### Water Development Districts

South Dakota has seven Water Development Districts (WDD) that have a broad mandate to promote conservation, development, and responsible water management within their boundaries. They serve as a district-wide clearinghouse authority for water quality and supply projects through technical, organizational, and financial assistance to prospective and existing project sponsors and through recommending projects for inclusion in the state water plan. Their purpose, duties, functions, and other controls are enumerated in Title 46A (Water Management) of the South Dakota Codified Laws.<sup>[3]</sup> On a practical level, almost any activity involving water can be considered by the districts, but they have no regulatory authority.

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in South Dakota are generally contained within the South Dakota Codified Laws (SDCL)<sup>[1]</sup> or the Administrative Rules of South Dakota (ARSD).<sup>[2]</sup> Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the SDCL<sup>[1]</sup> or the ARSD.<sup>[2]</sup> Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.



**Table 1. Key Policies and Regulations for Surface Water Management in South Dakota**

<b>Practice Area</b>	<b>Policy / Regulation</b>	<b>Date</b>	<b>Key Principles</b>
Floodplain Management	SDCL 11-4 <sup>[15]</sup>	4/9/2021	<ul style="list-style-type: none"> <li>Counties and municipalities in South Dakota have the authority to adopt ordinances and regulations related to floodplain management under their zoning and land-use planning powers</li> </ul>
	SDCL 9-36 <sup>[16]</sup>	Enacted 1911. Last updated 2012	<ul style="list-style-type: none"> <li>Municipalities may establish stream boundaries, construct flood control works, and enter into agreements with the United States, the State of South Dakota, or other government entities to prevent or control flooding.</li> </ul>
	SCDL 7-18-14 <sup>[17]</sup>	Enacted 1971. Last updated 1972	<ul style="list-style-type: none"> <li>Counties may enter into agreements with the United States, the State of South Dakota, or other government entities to prevent or control flooding.</li> </ul>
	SDCL 46-5-47 <sup>[18]</sup>	Enacted 1983. Last amended 2011.	<ul style="list-style-type: none"> <li>Construction of flood control works requires a permit from the Water Management Board.</li> </ul>
	SDCL 46-2A-11 <sup>[18]</sup>	1983	<ul style="list-style-type: none"> <li>Permits for flood control works may only be granted for projects that will reduce damage from flooding or erosion and not increase flood risk elsewhere.</li> </ul>
	44 CFR §59, §60, §65, and §70 <sup>[19]</sup>	7/11/2024	<ul style="list-style-type: none"> <li>Implementation of NFIP regulations required for any action (federal, state, or local) that occurs within the Special Flood Hazard Area (SFHA) as identified on a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM)</li> </ul>
Levees	SDCL 9-36-11 <sup>[16]</sup>	Enacted 1911. Last updated 2012	<ul style="list-style-type: none"> <li>Municipalities may construct levees along any river or stream flowing within or through its boundaries.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	SDCL 46A-14-28 to 46A-14-31 <sup>[3]</sup>	4/9/2021	<ul style="list-style-type: none"> <li>• Provides watershed districts with the authority to construct and maintain levees, dikes, and other flood control works</li> <li>• Grants districts the power to acquire property and rights-of-way necessary for these projects</li> </ul>
	SDCL 46-5-47 <sup>[18]</sup>	Enacted 1983. Last amended 2011.	<ul style="list-style-type: none"> <li>• Construction of flood control works requires a permit from the Water Management Board.</li> </ul>
Stormwater Management	SDCL 34A-2 <sup>[20]</sup>	4/9/2021	<ul style="list-style-type: none"> <li>• Requires entities discharging stormwater into state waters to obtain a permit</li> <li>• This includes stormwater from construction sites, industrial facilities, and municipal separate storm sewer systems (MS4s).</li> <li>• Erosion and sediment control measures must be taken through measures preventing sediment from entering water bodies via stormwater runoff</li> </ul>
	SDCL 46A-11-20 to 46A-11-30 <sup>[3]</sup>	4/9/2021	<ul style="list-style-type: none"> <li>• Drainage districts can construct and maintain stormwater management facilities, levy assessments to fund stormwater projects, and acquire land necessary for stormwater infrastructure</li> </ul>
	ARSD 74:52 <sup>[21]</sup>	2/21/1993	<ul style="list-style-type: none"> <li>• Implements the federal NPDES program in South Dakota, which includes stormwater discharges</li> <li>• General permits authorize certain discharges of relatively uncontaminated stormwater from construction, industrial, MS4</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	SDCL 46A-10A <sup>[3]</sup>	4/9/2021	<ul style="list-style-type: none"> <li>• Provides counties with permitting authority and regulatory framework for permissible surface water drainage through county drainage plans. Drainage plans are implemented by drainage controls administered by a given county. County Commissions act as Drainage Boards, which have county-wide/broad jurisdiction, focus on regulation and oversight, and are part of the county's government structure.</li> <li>• Provides for the replacement of drainage districts with other management structures, including coordinated drainage areas.</li> <li>• Any unit of local government may enter into a joint powers agreement with the board of county commissioners and with each other to avoid overlapping drainage jurisdiction and promote cooperation and continuity.</li> </ul>
Dam Management	SDCL 46-7-2 to 46-7-3, 46-7-5 <sup>[18]</sup>	4/9/2021	<ul style="list-style-type: none"> <li>• Construction, alteration, or repair of a dam or reservoir may require a permit from the South Dakota Department of Agriculture and DANR, depending on size of dam and whether the storage capacity is increased</li> <li>• Authorizes DANR to conduct safety inspections of dams</li> </ul>
	ARSD 74:02:08 <sup>[4]</sup>	3/26/2019	<ul style="list-style-type: none"> <li>• Establishes criteria for dam classification based on hazard levels, requirements for emergency action plans (EAPs), and standards for dam safety inspections; high hazard dams must have an EAP</li> <li>• Specify engineering and safety standards that must be met, including spillway capacity and structural integrity,</li> </ul>
Surface Water Quality	SDCL 34A-2, 34A-10 <sup>[20]</sup> ; ARSD 74:51-74:52 <sup>[21][22]</sup>	12/5/2018	<ul style="list-style-type: none"> <li>• Sets specific standards for pollutants in surface waters</li> <li>• Classifies water bodies according to designated uses and assigns specific water quality criteria to protect these uses</li> <li>• Includes antidegradation policy to prevent deterioration of water quality in waters that currently meet or exceed established standards</li> <li>• Sets requirements for surface water discharge permits</li> </ul>
	SDCL 46-8 <sup>[18]</sup>	4/9/2021	<ul style="list-style-type: none"> <li>• Ensures that dam operations do not infringe on the rights of other water users</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Water Supply and Diversion Rights	SDCL 46-5 <sup>[18]</sup>	4/9/2021	<ul style="list-style-type: none"> <li>• Water right permits required for all uses of water except domestic use.</li> <li>• Water right permit is required for domestic water use that exceeds either 25,920 gallons per day or a peak pump rate of 25 gallons per minute with the exception of cattle in a pasture setting.</li> <li>• Permits are required for water distribution systems using more than 18 gallons per minute</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	A floodplain development permit must be obtained from the local floodplain administrator, who is usually part of the city or county planning department.	A party not satisfied with decisions made by local floodplain administrators can file an administrative appeal to the Board of County Commissioners or, in some cases, the Drainage Board (SDCL 46A-10A-26). <sup>[3]</sup> If still not satisfied, can seek judicial review in the state circuit court, which reviews decisions made by administrative bodies and can affirm, modify, or overturn the decision. (SDCL 1-26). <sup>[23]</sup>
Levees	Local Floodplain Administrator, DANR	The application is submitted to the local floodplain administrator or DANR if a flood control permit is required. If the levee project involves navigable waters or has the potential to impact wetlands, a permit from the US Army Corps of Engineers under Section 404 of the CWA may also be required.	Any person aggrieved by an action or decision of a local floodplain administrator may seek judicial review by filing with the state circuit court. (SDCL 46A and 31) <sup>[3][24]</sup>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater	DANR	The state has four NPDES permits associated with stormwater discharges: Construction, MS4, Temporary Discharge, and Industrial (see Table 1). DANR issues permits to control and manage the discharge of stormwater to prevent pollution of water bodies.	Any applicant or affected party disagreeing with the final determination may file a request for reconsideration by submitting additional information or clarification to DANR. If not resolved through reconsideration, an applicant can submit a formal appeal to the Office of Hearing Examiners or directly to the Board of Water and Natural Resources. After the hearing, the hearing officer or board issues a decision. (SDCL 34A-2, 1-26). [20][23]
Drainage	Local Jurisdiction	Permits are required by county boards for new drainage over a certain size or area and for expansions of previously permitted activity.	County Boards hold the authority to decide what types of complaints to hear or can alternatively push complaints to the circuit court. Additionally, the DANR has a statewide mediation program to assist property owners in resolving disputes over drainage issues (SDCL 46A-11A). <sup>[3]</sup> This involves DANR sending a mediation notice to the identified parties, setting a time and place for an initial mediation meeting between the parties to the dispute and a mediator. Any person or party that claims to be impacted is allowed to intervene in the mediation process if their claim is properly substantiated and if filed upon timely notice (SDCL 46A-11A-9). <sup>[3]</sup>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	SD DANR	<p>To take advantage of right protection afforded in water rights law, a Location Notice must be filed prior to construction of dams that impound 25 acre-feet of water or less at the primary spillway elevation, will hold water only to be employed for in-place uses, and are constructed on a dry draw or nonnavigable stream. Dam construction must begin within 60 days of filing.</p> <p>Water Right Permits are required for dams that impound 25 acre-feet of water or less at the primary spillway elevation, dams where diversions will be used for uses other than reasonable domestic use, or if the proposed dam is constructed on a navigable stream. Permit approval is required before construction begins.</p> <p>The Safety of Dams rules dictate that a South Dakota registered professional engineer must prepare plans and specifications for dams with a crest height greater than 25 feet and dam crest storage greater than 15 acre-feet. The Chief Engineer may also request a preliminary risk assessment (ARSD 74:02:08).<sup>[4]</sup></p>	<p>An applicant or affected party disagreeing with an action of decision by DANR can request a hearing for the Water Management Board to consider the application and recommendation during a board meeting (SDCL 46-7-19 to 46-7-22).<sup>[18]</sup></p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Water Rights	SD DANR	<p>SD DANR is the sole entity that issues water permits. South Dakota follows the prior appropriation doctrine, giving priority to users with senior priority dates, with the exception that certain domestic uses take precedence over other types of appropriations. The permitting process requires a notice to be published in the county newspaper where the diversion takes place and where water is used. Processing uncontested applications can take approximately three months. Contested applications are considered by the state Water Management Board.</p>	<p>A contested case hearing between an applicant for water rights and petitioner in opposition to issuance of the water right is brought before the Water Management Board. The board's ruling may be appealed to circuit court (SDCL 46-5-15).<sup>[18]</sup></p>

## CITATIONS

- [1] *Codified Laws*. South Dakota Legislature. (n.d.-a). <https://sdlegislature.gov/Statutes>
- [2] *Administrative Rules*. South Dakota Legislature. (n.d.-a). <https://sdlegislature.gov/Rules/Administrative>
- [3] *Codified Law 46A*. South Dakota Legislature. (n.d.-c). <https://sdlegislature.gov/Statutes/46A>
- [4] *Administrative Rule 74:02*. South Dakota Legislature. (n.d.-a). <https://sdlegislature.gov/Rules/Administrative/74:02>
- [5] South Dakota Department of Agriculture and Natural Resources (DANR). (n.d.-a). Home <https://danr.sd.gov/>
- [6] South Dakota State News. (2021, April 19). South Dakota Department of Agriculture and Natural Resources. [https://news.sd.gov/news?id=news\\_kb\\_article\\_view&sysparm\\_article=KB0037506&sys\\_kb\\_id=efc6a1c01b10a9506e4aa97ae54bcbbb&spa=1](https://news.sd.gov/news?id=news_kb_article_view&sysparm_article=KB0037506&sys_kb_id=efc6a1c01b10a9506e4aa97ae54bcbbb&spa=1)
- [7] South Dakota Department of Agriculture and Natural Resources (DANR). (n.d.-c). Water Quality in South Dakota. <https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/default.aspx>
- [8] South Dakota Department of Agriculture and Natural Resources (DANR). (n.d.-d). Water Rights in South Dakota. <https://danr.sd.gov/OfficeOfWater/WaterRights/default.aspx>
- [9] Boards and Commissions (State of South Dakota). (n.d.). Water Management Board. <https://boardsandcommissions.sd.gov/Information.aspx?BoardID=106>
- [10] South Dakota Association of Conservation Districts. (n.d.). What is a Conservation District? <https://www.sdconservation.org/what-is-a-conservation-district>
- [11] South Dakota Department of Agriculture and Natural Resources (DANR). (n.d.-e). Environmental Funding. <https://danr.sd.gov/Funding/EnviromentalFunding/default.aspx>
- [12] South Dakota Department of Agriculture and Natural Resources (DANR). (n.d.-f). Conservation in South Dakota. <https://danr.sd.gov/Conservation/ConservationDistricts/MissionResponsibilities/default.aspx>
- [13] South Dakota Department of Agriculture and Natural Resources (DANR). (n.d.-g). Conservation Commission. <https://danr.sd.gov/Conservation/ConservationDistricts/ConservationCommission/Responsibilities/default.aspx>
- [14] *Codified Law 11-4*. South Dakota Legislature. (n.d.-c). <https://sdlegislature.gov/Statutes/11-4>
- [15] *Codified Law 9*. South Dakota Legislature. (n.d.-c). <https://sdlegislature.gov/Statutes/9>
- [16] *Codified Law 7*. South Dakota Legislature. (n.d.-c). <https://sdlegislature.gov/Statutes/7>
- [17] *Codified Law 46*. South Dakota Legislature. (n.d.-f). <https://sdlegislature.gov/Statutes/46>
- [18] *Code of Federal Regulations*. Federal Register. (n.d.). <https://www.ecfr.gov/current/title-44>
- [19] *Codified Law 34A*. South Dakota Legislature. (n.d.-f). <https://sdlegislature.gov/Statutes/34A>
- [20] *Administrative Rule 74:52*. South Dakota Legislature. (n.d.-b). <https://sdlegislature.gov/Rules/Administrative/74:52>
- [21] *Administrative Rule 74:51*. South Dakota Legislature. (n.d.-b). <https://sdlegislature.gov/Rules/Administrative/74:51>
- [22] *Codified Law 1*. South Dakota Legislature. (n.d.-c) <https://sdlegislature.gov/Statutes/1>
- [23] *Codified Law 31*. South Dakota Legislature. (n.d.-g) <https://sdlegislature.gov/Statutes/31>

Feedback was provided by DANR's Brian Walsh, Eric Gronlund, Whitney Kilts, Bill Smith, Aaron Ward, Paul Lorenzen, and Kent Woodmansey.



# Texas Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Texas Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

<b>Agencies Overview</b>	
State agencies governing surface water and their primary or major roles and responsibilities	<ul style="list-style-type: none"> <li>• <b>Texas Water Development Board (TWDB)</b> – Water Supply and Flood Planning, Data Collection, Water Supply, Conservation, and Flood Funding</li> <li>• <b>Texas Commission on Environmental Quality (TCEQ)</b> – Cleanups and Remediation, Emergency Response, Licensing, Permits and Registrations, Pollution Prevention, Surface Water Permitting and Management</li> </ul>
Local and regional jurisdictions for surface water management practices and authorities	<ul style="list-style-type: none"> <li>• <b>River Authorities</b><sup>[1]</sup> – Public agencies that manage the state’s rivers; Manage water supply, energy production, and recreation               <ul style="list-style-type: none"> <li>○ Count: 24</li> </ul> </li> <li>• <b>Soil and Water Conservation Districts (SWCDs)</b><sup>[1]</sup> – Locally governed and landowner operated, Soil erosion, water conservation, land management practices               <ul style="list-style-type: none"> <li>○ Count: 216</li> </ul> </li> <li>• <b>Drainage Districts</b> – Surface water runoff management, flood risk mitigation, agricultural and developed land drainage</li> <li>• <b>Levee Improvement Districts</b> – Flood protection, Storm management</li> </ul>
<b>Overview of Key Practices</b>	
<p><i>Key authorities regarding Texas water resources management are contained in the Texas Water Code (TWC)<sup>[2]</sup>, and the Texas Administrative Code (TAC).<sup>[3]</sup></i></p>	

<p>Flood and Floodplain Permitting and Management</p>	<p>Local governments (cities, counties, and municipalities) adopt and enforce floodplain ordinances that regulate development within designated floodplains, as identified by the Federal Emergency Management Agency (FEMA) through Flood Insurance Rate Maps (FIRMs). TWDB is the state NFIP Coordinating Office, administers the state’s flood planning program, and provides grants to local governments for flood planning, mitigation projects, and flood control infrastructure. In some areas, local flood control districts are established to manage flood risks and implement flood mitigation projects.</p>
<p>Levee Permitting and Management</p>	<p>For levee construction or modification, permits from the TCEQ are required. Additionally, Levee Improvement Districts (LIDs), political subdivisions of the State of Texas, construct and maintain levees and other flood control improvements along rivers. LIDs are subject to administrative supervision of the TCEQ.<sup>[4]</sup></p>
<p>Stormwater Permitting</p>	<p>TCEQ issues stormwater permits for runoff from construction sites, industrial facilities, and publicly owned and operated storm sewers. This includes stormwater discharges into surface water bodies, which fall under the Texas Pollutant Discharge Elimination System (TPDES), the state’s version of the National Pollutant Discharge Elimination System (NPDES). These permits regulate the quality and quantity of wastewater and stormwater discharges to protect and maintain water quality.</p>
<p>Drainage Permitting and Management</p>	<p>Drainage districts (special-purpose districts) have the authority to construct, maintain, and operate drainage infrastructure such as canals, levees, ditches, and stormwater retention basins. Additionally, cities, counties, and other local jurisdictions often have their own drainage regulations and permitting regulations. These are typically aligned with state and federal standards but often include additional requirements specific to local conditions.</p>
<p>Dam Permitting and Management</p>	<p>TCEQ regulates the construction, operation, and maintenance of dams over a certain height and storage capacity and ensures their safety and compliance across the state. The Dam Safety Program reviews and approves plans and specifications for construction of new dams and modifications to existing dams.</p>
<p>Surface Water Quality Monitoring and Management</p>	<p>TCEQ oversees surface water quality and is responsible for monitoring, regulating, and protecting the quality of surface water bodies. TCEQ establishes water quality standards to maintain surface water quality in the state and conducts regular monitoring to assess water quality conditions. The TCEQ TPDES program has federal authority over discharges of pollutants to Texas surface water, including discharges</p>

	associated with oil, gas, and geothermal exploration and development activities, which were previously regulated by the Railroad Commission of Texas. <sup>[5]</sup>
Surface Water Rights and Availability	TCEQ administers water rights in Texas, which includes issuing new and amended water rights as well as enforcing them. Watermaster Programs enforce water rights within their jurisdictions and the TCEQ regional offices enforce water rights in all other areas of the state. <sup>[6]</sup>

## TEXAS STATE AGENCY(IES) OVERVIEW

### Texas Water Development Board (TWDB)

The TWDB is a state agency responsible for financing public water projects in Texas, planning for droughts and floods, and conducting water-related science and data collection. The board was created by constitutional amendment in 1957 after years of drought, which triggered disaster declarations in more than 200 counties. The board is governed by a three-member board who are appointed by the governor with the advice and consent of the senate. State law requires one board member to have a background in engineering, one member to have a background in finance, and one member to have experience in law or business. The primary functions of the TWDB are summarized below:

- **Water Supply Planning:** The board is responsible for developing and implementing a statewide water plan, which is updated every five years and identifies water demands, available supplies, and strategies to meet the state’s future water needs. TWDB supports each of the 16 regional planning areas in Texas in developing their respective regional water plans, which are then integrated into the State Water Plan.
- **Water Project Financing:** Another important function of the board is to provide loans and grants to Texas communities for a wide range of water and wastewater projects, including stormwater control, dams, reservoirs, water distribution systems, agricultural water conservation projects, and wastewater treatment. A major funding initiative managed by the TWDB is the State Water Implementation Fund for Texas, which supports the implementation of water supply projects identified in the State Water Plan.
- **Flood Planning and Mitigation:** The TWDB is tasked with developing the state’s first comprehensive flood plan. The plan brings together the findings of the 15 river basin-based regional flood plans and makes legislative and floodplain management recommendations to guide state, regional, and local flood control policy. Additionally, the board provides flood funding through state and federal grants, conducts floodplain mapping and related services, and administers the National Flood Insurance Program (NFIP) in Texas.

## Texas Commission on Environmental Quality (TCEQ)

The TCEQ is responsible for safeguarding the environment and public health in Texas by regulating air and water quality, managing waste, responding to environmental emergencies, and promoting sustainable practices. The TCEQ is made up of six Offices (Air, Waste, Water, Compliance and Enforcement, Legal and Administrative Services). The Office of Water administers surface water permitting and management at TCEQ, protecting the State's water resources in a manner consistent with sustainable economic development, working towards clean and available water. Each of the four divisions in the Office of Water are summarized below:<sup>[7]</sup>

- **Water Supply Division (Drinking Water):** Ensures the efficient administration of the production, treatment, delivery and protection of safe and adequate drinking water, and also provides general supervision of districts. This includes ensuring that water produced by a public water system (PWS) is safe to drink through consumer confidence reports, monitoring, notification, and approval requirements.
- **Water Availability Division (Surface Water Rights and Availability):** Permits surface water rights and manages Texas' Watermaster programs. Managing surface water rights includes consideration of water conservation and drought contingency plans, environmental flows, and water availability. Watermasters' enforce water rights, monitor water use, and report any violations of water rights or unauthorized use. There are four Watermaster Programs, funded by the water right holders, in the Brazos River, Concho River, Rio Grande, and South Texas area.
- **Water Quality Planning Division (Water Quality in Rivers, Lakes, and Estuaries):** Preserves and improves the quality of the state's surface waters by establishing quality standards; monitoring, assessing, and reporting conditions; and implementing plans to reduce pollution and improve water quality. The division uses an adaptive, iterative cycle of management activities to ensure quality and continuously improve programs and procedures.
- **Water Quality Division (Wastewater and Stormwater):** Establishes permitting requirements for discharges into or adjacent to water in the state, and issues a variety of permits, registrations, and authorizations. This includes Section 401 Certification Reviews of U.S. Army Corps of Engineer Section 404 permits for the discharge of dredged or fill materials into waters of the U.S. (WOTUS). Additionally, the program issues permit by rule for PWSs, which allows generators of hazardous waste to treat certain wastes without having to go through the formal permitting process.<sup>[8]</sup> Additionally, the program issues stormwater and wastewater permits, water rights, and water diversions.

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### River Authorities

River authorities in Texas are political subdivisions of the state government that have the power to conserve, control, and distribute the waters of a designated geographic region. Sources of funding for river authorities include user fees from selling water, electricity,

wastewater treatment, and other services. Many river authorities were established during a period of dam-building in the 1930s. They operate a variety of infrastructure, including electricity-producing dams, reservoirs, electric transmission lines, and public parks. River authorities' range from one to 19 counties, but the majority cover an entire river basin or large portions of it. Each river authority is governed by its own law, usually a chapter of the Special District Local Laws Code, that grants it broad authority to engage in a variety of functions. However, the actual functions each river authority performs vary widely depending on its location, water needs, and roles of other water entities.<sup>[9]</sup>

### Soil and Water Conservation Districts (SWCDs)

SWCDs aim to further soil and water conservation efforts and work with public and private organizations and agencies to enhance water quality and quantity in the state. They formed after the passage of the Texas Soil Conservation Law and with the establishment of the Texas State Soil and Water Conservation Board (TSSWCB), which provides technical and programmatic assistance and administers grants to SWCDs. The TSSWCB also provides funding to SWCDs to support the administrative costs of the districts and to implement conservation programs. SWCDs are a subdivision of the State government and are brought into existence by a vote of the landowners within the boundaries of the district. They are then administered by a board of five directors, each one coming from one of the five subdivisions (SWCD State Districts) to ensure geographical representation.<sup>[10]</sup>

### Drainage Districts

Drainage Districts are special-purpose districts that construct, maintain, and operate drainage systems. Additionally, many drainage districts have the authority to levy taxes and issue bonds to finance drainage projects, which includes their construction, maintenance, and operation. To create a drainage district, landowners in a specific area submit a petition to the commissioner court. The district is governed by an elected board of directors.

### Levee Improvement Districts

Levee Improvement Districts (LIDs) are political subdivisions of the state and are subject to the administrative supervision of the TCEQ. They are responsible for providing flood protection and stormwater management services. They construct and maintain levees and other flood control improvements along rivers as well as reclaim lands from overflow from rivers and ensure their proper drainage. The primary source of funding for LIDs comes from property taxes levied on property owners within their boundaries.

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Texas are generally contained within the TWC or the TAC. Additionally, there are some important statutes located in the Texas Local Government Code (TLGC) and Texas Government Code

(TGC). Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the TWC or the TAC. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Texas**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	TWC, Chapter 16-Subchapter I <sup>[2]</sup>	9/1/1985	<ul style="list-style-type: none"> <li>Local governments must adopt and enforce floodplain management ordinances that meet or exceed the minimum standards set by the National Flood Insurance Program (NFIP) to be eligible for flood insurance</li> <li>Supports floodplain mapping to assist in planning and managing flood risks</li> <li>Permits must be obtained for development within floodplains to ensure that construction activities do not increase flood risks</li> </ul>
	TLGC, Chapters 232 and 233 <sup>[11]</sup>	9/1/1989 9/1/1991	<ul style="list-style-type: none"> <li>Counties may require developers to submit subdivision plats demonstrating how the development will be protected from flooding, including the use of flood control structures</li> <li>Counties have the authority to require permits for floodplain development and can impose conditions to mitigate flood risks</li> <li>Counties can enforce floodplain management regulations, including imposing fines and other penalties for non-compliance</li> </ul>
	TAC Title 31, Part 10 <sup>[3]</sup>	1/1/1998	<ul style="list-style-type: none"> <li>Provides guidelines for the development of regional and state flood plans, used to guide floodplain management and mitigation effort</li> <li>Specifies rules local governments must follow to remain in compliance with state and federal floodplain management requirements</li> </ul>
Levees	TWC, Chapters 16 and 57 <sup>[2]</sup>	8/30/1971	<ul style="list-style-type: none"> <li>Procedures for creating LIDs (special-purpose districts formed to manage levee construction, maintenance, and flood control) include petitions by landowners, approval by the TCEQ, and holding of an election</li> <li>Outlines requirements for design, construction, and maintenance of levees, ensuring that they meet safety and engineering standards</li> </ul>



Practice Area	Policy / Regulation	Date	Key Principles
	TGC, Chapter 418 <sup>[12]</sup>	9/1/1987	<ul style="list-style-type: none"> <li>• The Texas Department of Emergency Management (TDEM) coordinates responses to levee failures, including evacuation, repair, and recovery efforts</li> <li>• Local governments must include levee-related risks and response strategies in their emergency management plans</li> </ul>
Stormwater Management	TWC, Chapter 26 <sup>[2]</sup>	9/1/1967	<ul style="list-style-type: none"> <li>• Entities discharging stormwater into waters of the date must obtain a permit from the TCEQ</li> <li>• All stormwater discharges must comply with water quality standards and implement best management practices (BMPs)</li> </ul>
	Permits <sup>[13]</sup> TXR050000, TXR150000, TXR040000 <sup>(1)*</sup> , TXG500000 <sup>(2)*</sup>	8/14/2021 3/5/2023 8/15/2024 3/29/2019	<ul style="list-style-type: none"> <li>• General permit requirements for stormwater discharges from industrial facilities, construction activities, small municipal separate storm sewer systems (MS4s), and quarries in certain watersheds.</li> </ul>
	TAC, Title 30, Chapters 213, 305, and 311 <sup>[3]</sup>	12/27/1996 6/19/1986	<ul style="list-style-type: none"> <li>• More stringent regulations for the Edwards Aquifer (due to its sensitivity); includes the submittal of Water Pollution Abatement Plans (WPAPs) from projects within the Edwards Aquifer recharge transition and contributing zones</li> <li>• Stormwater discharges associated with industrial activities, construction activities, and MS4s must obtain permits under the TPDES program</li> <li>• Best management practices for certain watersheds and facilities are included in watershed-specific rules.</li> </ul>



Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	TWC, Chapters 11 and 16 <sup>[2]</sup>	9/1/1977	<ul style="list-style-type: none"> <li>• Entities that divert or impound surface water for drainage must obtain a permit from TCEQ.</li> <li>• Authorizes the creation of drainage districts, special-purpose districts established to manage and improve drainage infrastructure in specific areas</li> <li>• TWDB provides financial assistance to local governments and drainage districts for flood control and drainage districts</li> </ul>
	TLGC, Chapter 232 <sup>[11]</sup>	9/1/1989	<ul style="list-style-type: none"> <li>• Counties can impose requirements on developers to construct drainage infrastructure, including detention ponds, culverts, and drainage channels</li> </ul>
Dam Management	TWC, Chapter 11, Chapter 12, Chapter 16, Subchapter B <sup>[2]</sup>	9/1/1977	<ul style="list-style-type: none"> <li>• A dam or reservoir can be constructed without a permit if used for domestic or livestock purposes, and capacity does not exceed 200 AF. However, a review of plans and specifications may still be required for dam safety purposes.</li> <li>• Establishment and enforcement of dam safety program, which includes the inspection of dams, enforcement of safety standards, and oversight of dam construction and repairs</li> <li>• Dams must be inspected regularly based on hazard classification (high, significant, or low); classification based on the potential consequences of a failure with respect to loss of life and property damage</li> <li>• Owners of high and significant hazard dams must develop and maintain Emergency Action Plans (EAPs)</li> </ul>
	TAC, Title 30, Chapter 299 <sup>[3]</sup>	1/1/2009	<ul style="list-style-type: none"> <li>• Outlines specific engineering standards for the design and construction of dams, including requirements for materials, spillways, and structural stability.</li> <li>• Establishes inspection requirements to ensure dams meet safety standards.</li> </ul>
Surface Water Quality	TWC, Chapter 26 <sup>[2]</sup>	9/1/1969	<ul style="list-style-type: none"> <li>• Establishes permitting system requiring all surface water dischargers to obtain a permit from the TCEQ</li> <li>• TCEQ adopts, reviews, and revises surface water quality standards</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	TAC, Title 30, Chapter 307 <sup>[3]</sup>	9/29/2022	<ul style="list-style-type: none"> <li>• Codifies the Texas Surface Water Quality Standards (TSWQS), which set criteria for various water quality parameters, including dissolved oxygen, pH, temperature, toxic substances, and bacteria</li> <li>• Standards assign designated uses to water bodies with corresponding water quality criteria to project these uses</li> </ul>
Water Supply and Diversion Rights	TAC Title 30, Chapter 288, 298 <sup>[3]</sup>	5/3/1993 6/1/2011	<ul style="list-style-type: none"> <li>• Water rights holders must submit a water conservation plan and drought contingency plan to TCEQ indicating adoption of reduced water use and increased water use efficiency measures</li> <li>• Establishment of environmental flow standards; considered when issuing or modifying water rights permits</li> </ul>
	TWC Chapter 11, Subchapter G <sup>[2]</sup>		<ul style="list-style-type: none"> <li>• TCEQ can issue temporary permits for short-term water uses, particularly in cases of emergency or seasonal need</li> <li>• TCEQ can issue new water rights or change existing water rights.</li> <li>• Surface water uses exempted from permit requirement include domestic and livestock use, wildlife management, and emergencies like wildfires</li> <li>• Allows for use of water for beneficial uses such as municipal, industrial, agricultural, mining, and recreation</li> <li>• TCEQ has authority to appoint a watermaster for any water division or subdivision where it is deemed necessary to protect water rights and ensure equitable distribution of water</li> </ul>

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting/ Review Process Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	Property owners or developers intending to build or modify structures in a designated floodplain must apply for a floodplain development permit from the local floodplain administrator.	If an applicant disagrees with the decision of a permit (denial or specific conditions imposed), they can file a formal appeal with the local floodplain management authority. This decision is typically final at the local level, although if the decision involves state regulations or broader environmental regulations, it may be appealed by the TCEQ. The TWDB, as the State NFIP Coordinating office, may also work with FEMA and communities to resolve disputes.
Levees	TCEQ	An application for the construction or improvement of a levee must be filed with the executive director together with a set of preliminary plans. Ordinarily, existing maps and information are adequate for the development of acceptable preliminary plans without the necessity of extensive site clearing or detailed surveys.	Any person aggrieved by an action or decision of TCEQ can file a request for reconsideration or an administrative appeal. The review process may include meetings, further analysis, and potentially a public hearing. If the dispute is still not resolved, it may be referred to the State Office of Administrative Hearings (SOAH) and is overseen by an Administrative Law Judge (ALJ). If the parties are still not satisfied, they can seek judicial review by filing a lawsuit in state court.
Stormwater	TCEQ	The state has four general stormwater permits: Industrial, Multi-Sector, Construction, small MS4s, and Quarries (see Table 1).	Any activities that may cause pollution from stormwater runoff must apply for an individual TPDES permit if not eligible for coverage under these general permits with TCEQ.

Permit Type	Permitting Entity	Permitting/ Review Process Overview	Dispute / Appeals Process
Drainage	Local Drainage Administrator	Developers must obtain a permit from the city or county, which includes approval of drainage plans to ensure new developments comply with local drainage ordinances. In areas served by a drainage district, the district itself may issue specific permits for drainage projects with its boundaries.	A formal complaint can be filed with the relevant local authority or drainage district. The local authority or drainage district would then inspect the site, review the complaint, and investigate the alleged violation or issue. If the aggrieved party disagrees with this decision, they can request a hearing before the city council, county commissioners' court, or the board of directors of the drainage district.
Dams	TCEQ	Upon receipt of a dam construction or modification application, the TCEQ conducts a review, which includes an evaluation of the dam's design, safety measures, environmental impacts, and downstream impacts. The TCEQ may be required to provide public notice of the proposed dam project. High-hazard dams may be subject to periodic inspections by the TCEQ to ensure continued compliance with safety standards.	TCEQ may conduct an internal review of the complaint or appeal to determine if the issue can be resolved administratively. If the dispute cannot be reconciled, it may be referred to SOAH for a contested case hearing before an ALJ. The ALJ will then issue a "proposal for decision" (PFD), which is reviewed by the TCEQ commissioners who then issue a final order. A party dissatisfied with the TCEQ's final order may seek judicial review by filing a lawsuit in a state district court.

Permit Type	Permitting Entity	Permitting/ Review Process Overview	Dispute / Appeals Process
Water Rights	TCEQ	TCEQ evaluates water right applications and typically processes simple and uncontested applications within 300 days. In some cases, a public notice may be required, which could increase the processing time. In jurisdictions covered by a watermaster program, watermasters monitor water use and enforce water rights. Additionally, water users with permits must submit declarations of intent to the watermaster for approval before the water can be used.	The water rights dispute/appeals process begins with a public notice and the opportunity for protest, followed by a contested case hearing before an ALJ, if necessary. After the hearing, the TCEQ reviews the findings and issues a final order, which can be further appealed to a state district court.
Water Quality	TCEQ	TCEQ evaluates water quality applications and typically processes simple and uncontested applications within 360 days. In most cases, two public notices and a public comment period are required, which could increase the processing time.	TCEQ will consider all comments which have been filed in a timely manner to determine whether any issues that were raised require changes to the preliminary decision or the proposed permit, and prepare a written response to all relevant comments. All timely filed hearing and reconsideration requests will be considered by the TCEQ. If granted requests and issued are referred to SOAH or ADR where the evidentiary record is considered. TCEQ will then make a final decision on the draft permit.

- (1) \* Due to a delay in the Texas NeT-MS4 system set-up, TCEQ adopted renewal Phase II MS4 General Permit (TXR040000) on August 14, 2024.
- (2) \* TCEQ anticipates issuing the renewal of the general permit in 2025 pending the completion of rulemaking for 30 TAC Chapter 311, Subchapter H; No new or renewal application for authorization can be submitted in the interim.

## CITATIONS

- [1] Raster, N. (n.d.). *Texas Water Explorer*. Texas Water Basics. <https://texaswaterexplorer.tnc.org/texas-water-basics.html#texas-water-agencies>
- [2] *Statutes, codes, and regulations*. Legal research tools from Casetext. (n.d.-a). <https://casetext.com/statute/texas-codes/water-code>
- [3] *Texas Administrative Code*. Texas administrative code. (n.d.). [https://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](https://texreg.sos.state.tx.us/public/readtac$ext.viewtac)
- [4] *Levee improvement districts*. Texas – Sugar Land. (n.d.). [https://www.sugarlandtx.gov/1726/Levee-Improvement-Districts#:~:text=Levee%20Improvement%20Districts%20\(LIDs\)%20are,flood%20control%20improvements%20along%20rivers](https://www.sugarlandtx.gov/1726/Levee-Improvement-Districts#:~:text=Levee%20Improvement%20Districts%20(LIDs)%20are,flood%20control%20improvements%20along%20rivers)
- [5] *What is the “Texas Pollutant Discharge Elimination System (TPDES)”?* Texas Commission on Environmental Quality. (n.d.). [https://www.tceq.texas.gov/permitting/wastewater/pretreatment/tpdes\\_definition.html](https://www.tceq.texas.gov/permitting/wastewater/pretreatment/tpdes_definition.html)
- [6] *Surface Water Rights and Availability*. Texas Commission on Environmental Quality. (n.d.-a). [https://www.tceq.texas.gov/permitting/water\\_rights/wawr\\_permits.html](https://www.tceq.texas.gov/permitting/water_rights/wawr_permits.html)
- [7] *Water*. Texas Commission on Environmental Quality. (n.d.-a). [https://www.tceq.texas.gov/agency/water\\_main.html](https://www.tceq.texas.gov/agency/water_main.html)
- [8] Department of Toxic Substances Control (n.d.). *Managing Hazardous Waste*. [Dtsc.ca.gov. https://dtsc.ca.gov/permit-by-rule-management-of-aqueous-waste-containing-cyanide/#:~:text=The%20Permit%20by%20Rule%20process,eligible%20for%20Permit%20by%20Rule](https://dtsc.ca.gov/permit-by-rule-management-of-aqueous-waste-containing-cyanide/#:~:text=The%20Permit%20by%20Rule%20process,eligible%20for%20Permit%20by%20Rule).
- [9] *River authorities of Texas*. Texapedia.(n.d.). <https://texapedia.info/state-agencies/river-authorities/>
- [10] *Texas soil and water conservation districts*. TexasStateSoil&Water. (n.d.). <https://www.tsswcb.texas.gov/swcdfs>
- [11] *Texas Local Government Code*. (n.d.). <https://statutes.capitol.texas.gov/?link=LG>
- [12] Legislature, Tex, (n.d.). *Tex. Gov’t code chap. 418 – emergency mgmt*. Texas Government Code Chapter 418 – Emergency Management <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.418.htm>
- [13] *Stormwater permits*. Texas Commission on Environmental Quality. (n.d.-b). <https://www.tceq.texas.gov/permitting/stormwater>

Input was provided by Sam Marie Hermitte of the TWDB and by Jim Rizk and Jill Csekitz of the TCEQ.

# Utah Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Utah Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

The table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Utah Division of Water Resources</b> (Department of Natural Resources) – Water planning, development of water sources and systems, consultation on interstate agreements, and management of revolving loan funds for water development projects. The duties of the Utah Division of Water Resources are described in Utah Code Title 73, Chapter 10.</li> <li>• <b>Utah Watersheds Council</b> – Stakeholder forum to facilitate discussion of water policy at the watershed and state levels. Facilitates the establishment of local councils. Established by the Division of Water Resources under the Watershed Council Act (HB 166) (2020).</li> <li>• <b>Utah Division of Water Rights</b> (Department of Natural Resources) – Regulation of water rights, water rights adjudication, dam safety. The duties of the Utah Division of Water Rights are described in Utah Code Title 73, Chapter 2.</li> <li>• <b>Utah Division of Water Quality (DWQ)</b> (Department of Environmental Quality) – Administration of federal surface water quality standards and Utah’s Water Quality Act for areas including stormwater, drainage, nutrient pollution, and watershed protection, and management of revolving loan fund for water quality projects. The duties of the DWQ are described in Utah Code Title 19, Chapter 5.</li> <li>• <b>Utah Division of Drinking Water (DDW)</b> (see <a href="https://deq.utah.gov/division-drinking-water">https://deq.utah.gov/division-drinking-water</a> for more info.)</li> </ul>

<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Water Conservancy Districts</b> – Water Conservancy Districts are tasked with conserving and developing water resources for beneficial use and have authority to control and make use of unappropriated waters for domestic and agricultural use.<sup>[16]</sup> <ul style="list-style-type: none"> <li>○ Count: 15</li> </ul> </li> <li>• <b>Community Floodplain Management</b> – On a local level, communities are responsible for adopting and enforcing a flood damage prevention ordinance and overseeing local permitting for development in the floodplain.<sup>[6]</sup> <ul style="list-style-type: none"> <li>○ Count: community-based</li> </ul> </li> <li>• <b>Drainage Districts</b> – Local government entities responsible for construction and maintenance of land drainage.</li> <li>• <b>Local Watershed Councils</b> - Local councils, certified by the Utah Watersheds Council, that provide forums for discussion and collaboration on watershed issues and work to address local water management challenges. <ul style="list-style-type: none"> <li>○ Count: 12</li> </ul> </li> </ul>
<p><b>Overview of Key Practices</b></p>	
<p><i>Key authorities regarding Utah water resources management are contained in the Utah Code, Title 73 (Water and Irrigation) and the Utah Administrative Code (UAC) Title R317 (Environmental Quality, Water Quality).</i></p>	
<p>Flood and Floodplain Permitting and Management</p>	<p>The Utah Floodplain Management Program is housed within the Utah Division of Emergency Management (DEM) and provides state-level oversight of floodplain management in accordance with the minimum requirements of the National Flood Insurance Program (NFIP). On a local level, the planning divisions in communities (jurisdictions with zoning authority) are responsible for issuing floodplain development permits and maintaining flood maps.<sup>[6]</sup></p>
<p>Levees</p>	<p>The State of Utah does not appear to directly regulate the use of levees. If a levee meets the regulatory design, operation, and maintenance criteria, it is accredited by the Federal Emergency Management Agency (FEMA) as providing adequate risk reduction and the levee-impacted area will be designated as moderate-risk, as opposed to being classified in the Special Flood Hazard Area (SFHA).<sup>[6]</sup> The Utah Department of Public Safety evaluated the risk of levee failure in the 2024 update of the Utah Enhanced State Hazard Mitigation Plan. The Department emphasized the need for obtaining FEMA certification and accreditation for existing levees in the state.<sup>[20]</sup></p>



<p>Stormwater Management</p>	<p>The Utah Division of Water Quality manages the Utah Pollutant Discharge Elimination System (UPDES) and the permitting for stormwater and pollutant management, which is required by the National Pollutant Discharge Elimination System (NPDES). The Utah Storm Water Program is part of the UPDES Program and regulates storm water discharges from municipal systems, construction activities, and industrial activities. Concentrated Animal Feeding Operations (CAFOs) that discharge to waters of the state are considered point source dischargers and are regulated by the UPDES permit program.</p>
<p>Drainage Management</p>	<p>Drainage management is overseen by local districts, which are established under Title 17B of the Utah Code. These districts manage drainage projects, including stormwater systems and agricultural drainage. They have the authority to construct, maintain, and improve drainage infrastructure and can finance these projects through taxes or bonds. Districts also collaborate with local governments to ensure projects align with land use plans, minimizing flood risks and enhancing water flow efficiency.</p>
<p>Dam Permitting and Management</p>	<p>The Utah Division of Water Rights oversees the state’s Dam Safety Section, which provides technical expertise on the design, construction, operation and inspection of existing dams and dams that are being developed. Written approval from the State Engineer is required before commencing any construction, alteration, removal, or abandonment of dams or reservoirs. The Utah Division of Water Resources provides state allocated funds for necessary dam safety upgrades.</p>
<p>Surface Water Quality Monitoring and Management</p>	<p>The Utah Division of Water Quality (DWQ), housed within the Department of Environmental Quality, oversees surface water quality management and administers Utah’s Water Quality Act, which follows the minimum standards of the Clean Water Act. The DWQ manages permits for point source discharges and implements a nonpoint source pollution management program.<sup>[5]</sup></p>
<p>Water Supply and Diversion Rights</p>	<p>The Utah Division of Water Rights administers rights for water supply and diversion. Rights for surface water diversion and use established prior to 1903 can be established by filing a “diligence claim” with the Division of Water Rights, subject to public notice and judicial review. All other rights must be established by the appropriation process administered by the Division of Water Rights. The Utah Division of Water Rights conducts statewide monitoring and enforcement of water rights.<sup>[6]</sup></p>

## UTAH STATE AGENCY(IES) OVERVIEW

### Utah Division of Water Resources

The division is an agency within the Utah Department of Natural Resources responsible for statewide water policy and planning. It operates under a 9-member Board of Water Resources composed of representatives from Utah's eight river districts and the Great Salt Lake. The division is organized into seven sections, each dedicated to overseeing distinct aspects of water management in Utah:

- **River Basin Planning:** Prepares and updates the State Water Plan, statewide water-use numbers, regional conservation goals, and basin reports.
- **Water Conservation:** Reviews water conservation plans submitted by water suppliers to comply with the Water Conservation Act (73-10-32)<sup>[15]</sup> and provides assistance as systems work to improve water efficiency.
- **Design & Construction:** Provides engineering design and construction management services for board-funded irrigation and dam safety projects, as well as engineering assistance for sister agencies (e.g., Wildlife, Parks).
- **Project Funding:** Helps the Board of Water Resources administer revolving funds to develop new water projects and refurbish aging projects.
- **Geology:** Provides geologic expertise for applications in general geology, hydrology, wells, groundwater recharge, geologic hazards, public inquiries, and education, and provides technical assistance for sister agencies (e.g., Wildlife, Utah Geological Survey).
- **Hydrology & Modeling:** Supports water planning and development activities by determining the quantity of available water, assessing technical solutions for water shortages, assisting the Construction & Design section with dam safety projects, and producing water models to help with decision making.
- **Technical Services:** Provides Geographic Information Systems (GIS) and Computer Aided Design (CAD) services to the rest of the division, partner agencies, and the public, and manages datasets (e.g., water-related land use, culinary water supplier boundaries, etc.).

### Utah Watersheds Council

In 2020, Utah passed the Watershed Councils Act, authorizing the creation of the Utah Watersheds Council and twelve local watershed councils to foster stakeholder discussions on water policy without regulatory or enforcement powers, complementary to county-level efforts. The Utah Watersheds Council comprises state agency leaders, representatives from agricultural, environmental, and business sectors, and legal experts in water law. The council is responsible for organizing itself, selecting leadership, adopting policies, overseeing the local watershed councils, and promoting collaboration on water management.<sup>[17]</sup> Quarterly public meetings are held, and federal agencies may be invited to participate as liaisons. The council can advise the Governor and legislature on water issues and is to advise the Utah Division of Water Resources on the preparation of the State Water Plan.

### Utah Division of Water Rights

The Utah Division of Water Rights, also known as the Office of the State Engineer, is an agency within the Utah Department of Natural Resources tasked with regulating, adjudicating, and enforcing water rights, regulating stream channel alterations and well drilling, collecting water use data, and managing dam safety in the state. The DWR is organized into seven regions based on surface drainage areas,<sup>[10]</sup> each with unique water rights policies.

The State Engineer appoints river commissioners to oversee distribution systems, which are jurisdictions established either by court order or by the State Engineer and cover specific areas of the state.<sup>[10]</sup> Distribution systems are used to keep track of surface water and groundwater diversions and publicly report diversion data. While some Division of Water Rights regions remain open to surface water appropriation, most are considered to be fully appropriated and new diversions and uses can only be approved through change applications filed on existing rights.<sup>[6]</sup> Utah Code Title 73 Chapter 2 describes statutes related to the State Engineer power and duties.

### Utah Division of Water Quality

The Utah Division of Water Quality (DWQ) is an agency within the Utah Department of Environmental Quality tasked with administering Utah's water quality standards for areas including stormwater, drainage, nutrient pollution, and watershed protection, and management of revolving loan fund for water quality projects. The duties of the DWQ are described in Utah Code Title 19, Chapter 5. The DWQ is guided by the Water Quality Board, which is appointed by the governor with the consent of the state senate and meets monthly. The Water Quality Board is intended to represent various stakeholders in the water quality community, with nine positions that include representatives from industry, local government, nongovernmental organizations, and public health. Board positions are staggered over 3-year terms.<sup>[13]</sup>

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### Water Conservancy Districts

Water Conservancy Districts are established by the State Legislature, with the purpose of conserving and developing water and land resources to provide for the greatest beneficial use of water in the state. There are 15 Water Conservancy Districts in Utah. Water Conservancy Districts are authorized to control and make use of all unappropriated waters, apply water to the highest duty for domestic and agricultural use, and work with federal agencies to manage water projects. District boundaries are determined based on water demand and supply, with some districts containing only a single county and others containing multiple counties. They are governed by a board of trustees not to exceed 11 members, or 21 members if the district is made up of more than five counties. Board members are either elected, or appointed by the county legislative body (if the district comprises a single county) or by the governor and the

State Senate (if the district is made up of multiple counties). Board members must be residents of the district. Funding for Water Conservancy Districts comes primarily from water use fees and property taxes.<sup>[16]</sup>

### Community-level Floodplain Management

In Utah, community planning divisions are responsible for adopting and enforcing flood damage prevention ordinances and overseeing local permitting for development in the floodplain. Planning divisions are organized in counties and municipalities. They conduct field inspections and issue citations for violations of flood ordinances and advise FEMA when flood maps require updates. Floodplain permits are required for all development that occurs within the Special Flood Hazard Area (SFHA).<sup>[6]</sup>

### Drainage Districts

The Drainage District Act is described in Utah Code Title 17B, Chapter 2a and establishes the framework for drainage districts in Utah, outlining their powers and responsibilities. Districts manage land drainage through canals, ditches, and pipes, focusing on improving land by controlling excess water. Their responsibilities include issuing bonds, regulating water rights, and performing works such as widening or straightening watercourses. Drainage districts can tax public and private land for the benefits of drainage works, and trustees for each district are appointed by the county legislative body.

### Local Watershed Councils

Local Watershed Councils provide forums for discussion and collaboration on watershed issues and work to address local water management challenges. The councils are certified under the Utah Watersheds Council's framework, ensuring diverse representation of stakeholders from agriculture, industry, water quality, and habitat management. There are eleven local councils based on hydrologic basins and a twelfth for the Great Salt Lake Basin (comprised of five watersheds draining into the Great Salt Lake).<sup>[17]</sup> Each basin has an Area Planning Specialist from the Division of Water Resources acting as a liaison.

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Utah are generally contained in the Utah Code Title 73 and the UAC.

Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation in Utah are generally contained in the Utah Code Title 73 and the UAC.

Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Utah**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	Federal Regulation 44 CFR 60.3(b) <sup>[1]</sup>	Amended: 7/11/2024	<ul style="list-style-type: none"> <li>• A floodplain development permit from the local community is required if the proposed development is located in a Special Flood Hazard Area (SFHA) as determined by the community’s Flood Insurance Rate Map (FIRM), and for construction and development activities that occur within 100-year flood hazard areas.</li> </ul>
	Utah Code 73-3-29 <sup>[15]</sup>	5/13/2024	<ul style="list-style-type: none"> <li>• Requires anyone wanting to alter the bed or banks of a natural stream to obtain written authorization from the State Engineer prior to commencing work.</li> </ul>
Levees	Utah Enhanced State Hazard Mitigation Plan <sup>[20]</sup>	2024	<ul style="list-style-type: none"> <li>• Emphasizes the need for obtaining FEMA certification and accreditation for existing levees in the state.</li> </ul>
Stormwater Management	UAC R317-8-11 <sup>[2]</sup>	4/15/2021	<ul style="list-style-type: none"> <li>• Permits must be obtained for discharges associated with construction and industrial activities, medium and large municipal storm sewer systems, and discharges contributing to a violation of water quality standards or contributing significantly to pollution of waters of the State.</li> <li>• Concentrated Animal Feeding Operations (CAFOs) that discharge to waters of the state are considered point source dischargers and are regulated by the UPDES permit program.</li> </ul>
	Utah Code 19-5-108.5 <sup>[14]</sup>	5/01/2024	<ul style="list-style-type: none"> <li>• Describes the conditions and requirements for stormwater permits under the environmental quality code Water Quality Act.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	Utah Code 17B-2a-2 <sup>[19]</sup>	Enacted: 2007 Amended: 2023	<ul style="list-style-type: none"> <li>• A "ditch" is defined as any drain or watercourse, natural or constructed, within or outside the drainage district.</li> <li>• Drainage Districts may regulate and control all water developed, appropriated, or owned by the district for the benefit of district landholders.</li> <li>• A person who impairs the usefulness of a drain, ditch, or other work of a drainage district is guilty of a class C misdemeanor.</li> <li>• No new drainage districts may be created.</li> </ul>
Dam Management	Utah Code Title 73 Chapter 5a (Dam Safety) <sup>[15]</sup>	1990-1996 (varies)	<ul style="list-style-type: none"> <li>• Approval from the State Engineer is required before anyone can construct, alter, or abandon dams.</li> <li>• Dams are classified according to hazard and use.</li> </ul>
Surface Water Quality	UAC R317 Rules 1-15, 100-102, 401, 550, 560, and 801 <sup>[2]</sup>	6/01/2014	<ul style="list-style-type: none"> <li>• Describes definitions and general requirements, standards for quality of waters of the state (R317-2), and includes rules on pollutant discharge elimination systems (R317-8), administrative procedures (R317-9), permitting water reuse projects (R317-13), approval of change in point of discharge (R317-14), and water quality certification (R317-15)</li> <li>• Surface water quality standards are reviewed and updated every three years by the DWQ, or in response to new information or changes in State or Federal Laws.<sup>[5]</sup></li> </ul>
	Utah Code Title 19, Chapter 5 <sup>[13]</sup>	5/01/2024	<ul style="list-style-type: none"> <li>• Covers the laws related to water quality, including the makeup of the Water Quality Board, rules related to agricultural water discharge, stormwater permits, and the designation of areas with quality control problems.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Water Supply and Diversion Rights	Utah Code Title 73-1, 73-2, 73-3, 73-4 <sup>[15]</sup>	2024 (varies)	<ul style="list-style-type: none"> <li>• Water rights are based on prior appropriation for beneficial use, where beneficial use is declared to be a public use (73-1-5).</li> <li>• Priority of water rights is given to the first one to appropriate a water source (i.e., first in time first in right) (73-3-5a).</li> <li>• All waters in the state are considered a public resource.</li> </ul>
	Watershed Councils Act	5/12/2020	<ul style="list-style-type: none"> <li>• Legislative framework that establishes diverse stakeholder forums for water policy discussions without regulatory or enforcement powers.</li> <li>• The Utah Watersheds Council consists of state officials, university representatives, and various stakeholders, with a majority required for quorum.</li> <li>• Watershed Councils must hold at least semi-annual meetings and maintain public access to documents and policies.</li> </ul>



**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local floodplain administrator	Floodplain development permits must be obtained from the local floodplain administrator. Permitting documents can include an overview of the proposed project and information on base flood elevation, flood encroachment analysis, and no-rise certification.	Appeals are made locally to the local floodplain administrator's office. <sup>[7]</sup>
Streambed or stream channel alterations	Utah Division of Water Rights	Any work involving the alteration of the bed or banks of a natural stream requires written authorization from the State Engineer prior to starting construction.	The state engineer may approve the application, in whole or in part, with any reasonable terms needed to protect the natural environment. <sup>[15]</sup>
Levees	N/A	Our research did not reveal any regulation of levees at the state level in Utah, however, the Utah Department of Public Safety has placed priority on obtaining FEMA certification and accreditation for existing levees in the state. <sup>[20]</sup> Levees constructed in wetlands may be subject to federal permitting requirements.	N/A
Stormwater	Utah Department of Environmental Quality, Division of Water Quality (DWQ)	Applications for surface water discharge permits (UPDES municipal, industrial, stormwater, or construction) and operating permits for wastewater treatment systems are submitted to the Utah DWQ.	The DWQ, upon review of permit applications, will issue a draft permit, seek public comment in area newspapers, hold necessary public hearings, and issue final permits. <sup>[4]</sup>



Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	Drainage Districts	Drainage management is handled locally. Prior to the passage of Utah Code 17B-2a-204, which prohibits the formation of new drainage districts, landowners could petition the local government for the formation of a drainage district. Landowners within an existing district can request that the district execute a project within its jurisdiction. <sup>[18]</sup>	Landowners can submit a validation petition, requesting a court to validate actions related to a district's eligible functions, including drainage projects. The petition must describe the project, present the facts supporting its validity, and be verified by the district's board. A hearing is scheduled by the district court, with public notice provided. Landowners may participate in the hearing or submit objections, but failure to appear results in automatic acceptance of the petition's claims.
Dams	Utah Division of Water Rights	Dam approval is subject to the authority of the State Engineer's office (DWR). Approval from the state engineer is required before anyone can construct, alter, or abandon dams. <sup>[11]</sup>	A person who disagrees with an order regarding a dam may file a Request for Reconsideration with the State Engineer within 20 days. Alternatively, an appeal may be filed with the district court within 30 days of the order or up to 30 days after a Request for Reconsideration is denied. <sup>[21]</sup>
Water Rights	Utah Division of Water Rights	The State engineer issues water rights and specifies the conditions of use. The water rights adjudication process defines existing rights, quantifies unknown rights, and removes unused and abandoned rights through judicial decree of the district court.	The State Engineer provides notice to all potential water right claimants to submit claims. Water users can contest the list of unclaimed rights and the proposed determination by filing an objection with the district court. Objections must be resolved before a decree can be rendered on the list of unclaimed rights or the proposed determination. <sup>[6]</sup>

## CITATIONS

- [1] Cornell Law School Legal Information Institute (n.d.). 44 CFR § 60.3 - Flood plain management criteria for flood-prone areas. <https://www.law.cornell.edu/cfr/text/44/60.3>
- [2] Cornell Law School Legal Information Institute (n.d.). Utah Admin. Code R317 – Water Quality. <https://www.law.cornell.edu/regulations/utah/environmental-quality/title-R317>
- [3] Utah Department of Environmental Quality, Division of Drinking Water (n.d.). Division of Drinking Water. <https://deq.utah.gov/division-drinking-water>
- [4] Utah Department of Environmental Quality, Division of Water Quality (2024). Water Quality Permits. <https://deq.utah.gov/water-quality/water-quality-permits>
- [5] Utah Department of Environmental Quality, Division of Water Quality (2023). Water Quality Standards. <https://deq.utah.gov/water-quality/water-quality-standards>
- [6] Utah Department of Natural Resources, Division of Water Rights (n.d.). Water Right Information. <https://waterrights.utah.gov/wrinfo/default.asp>
- [7] Utah Division of Emergency Management (n.d.). Floodplain Management. <https://floodhazards.utah.gov/floodplain-management/>
- [8] Utah Division of Emergency Management (2020). Quick Guide: Floodplain Management in Utah. [https://floodhazards.utah.gov/wp-content/uploads/2023/06/Quick-Guide\\_June2020\\_FINAL.pdf](https://floodhazards.utah.gov/wp-content/uploads/2023/06/Quick-Guide_June2020_FINAL.pdf)
- [9] Utah Division of Water Rights (2024). Division Overview. <https://waterrights.utah.gov/wrinfo/Brochures/Overview-About-Us-2024.pdf>
- [10] Utah DNR Online Maps (2024). Utah Water Right Areas. <https://www.arcgis.com/home/item.html?id=0b14d51c4ad34cedac2cd0fd6045ac54>
- [11] Utah Office of Administrative Rules (2016). Natural Resources, Water Rights, Rule 10: Dam Safety Classifications, Approval Procedures and Independent Reviews. <https://adminrules.utah.gov/public/rule/R655-10/Current%20Rules>
- [12] Utah Office Of Legislative Research and General Counsel (2012, November). Briefing Paper: How Utah Water Works. [https://waterrights.utah.gov/wrinfo/Brochures/how\\_utah\\_water\\_works.pdf](https://waterrights.utah.gov/wrinfo/Brochures/how_utah_water_works.pdf)
- [13] Utah State Legislature (2024). Utah Code of Regulations Title 19 Chapter 5 Section 103 – Water Quality Board. <https://le.utah.gov/xcode/Title19/Chapter5/19-5-S103.html>
- [14] Utah State Legislature (2024). Utah Code of Regulations Title 19 Chapter 5 Section 108.5 – Storm water permits. [https://le.utah.gov/xcode/Title19/Chapter5/19-5-S108.5.html?v=C19-5-S108.5\\_2020070120200701](https://le.utah.gov/xcode/Title19/Chapter5/19-5-S108.5.html?v=C19-5-S108.5_2020070120200701)
- [15] Utah State Legislature (n.d.). Utah Code of Regulations Title 73. <https://le.utah.gov/xcode/Title73/73.html>
- [16] Utah State Legislature (n.d.). Utah Code of Regulations Title 17B Chapter 2a Part 10 – Water Conservancy District Act. <https://le.utah.gov/xcode/Title17B/Chapter2A/17B-2a-P10.html>
- [17] Utah State Legislature. (2024). Utah Code of Regulations Title 73 - Water and Irrigation, Chapter 10g - Water Infrastructure and Long-term Planning, Part 3 - Watershed Councils Act. [https://le.utah.gov/xcode/Title73/Chapter10G/73-10g-P3.html?v=C73-10g-P3\\_2024050120240501](https://le.utah.gov/xcode/Title73/Chapter10G/73-10g-P3.html?v=C73-10g-P3_2024050120240501)
- [18] Utah State Legislature. (n.d.). Title 17B. Special districts. [https://le.utah.gov/xcode/title17b/C17B\\_1800010118000101.pdf](https://le.utah.gov/xcode/title17b/C17B_1800010118000101.pdf)
- [19] Utah State Legislature (2023). Utah Code of Regulations Title 17B Chapter 2a Part 2 – Drainage District Act. <https://le.utah.gov/xcode/Title17B/Chapter2A/17B-2a-P2.html>
- [20] Utah Department of Public Safety – Division of Emergency Management. (2024). Utah Enhanced State Hazard Mitigation Plan. <https://hazards.utah.gov/state-of-utah-hazard-mitigation-plan/>
- [21] Association of State Dam Safety Officials. (2020). Summary of State Laws and Regulations on Dam Safety. [https://damsafety-prod.s3.amazonaws.com/s3fs-public/files/FINAL%20-%202020%20Update%20State%20Laws%20and%20Regulations%20Summary\\_0.pdf](https://damsafety-prod.s3.amazonaws.com/s3fs-public/files/FINAL%20-%202020%20Update%20State%20Laws%20and%20Regulations%20Summary_0.pdf)

Input provided by Utah Department of Natural Resources – Division of Water Resources Assistant Director, Todd Stonely.

# Wisconsin Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Wisconsin Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Wisconsin Department of Natural Resources (DNR)</b> – Water Quality Standards and Monitoring, Wastewater Discharge Permitting, Surface Water and Wetland Protection, Floodplain and Shoreland Zoning Management, Aquatic Habitat Conservation, Invasive Species Control</li> <li>• <b>Wisconsin Public Service Commission (PSC)</b> – Regulation of Water Utilities, Approval of Water Utility rates and Policies, Water Conservation Program Oversight, Water Utility Management</li> <li>• <b>Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP)</b> – Nutrient Management and Runoff Reduction, Agricultural Water Management, Pesticide and Fertilizer Regulation, Conservation Grants and Technical Assistance</li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Land Conservation Committees (LCCs)</b> – County-level management of soil conservation and non-point source water pollution through the development of Land and Water Resource Management Plans.               <ul style="list-style-type: none"> <li>○ Count: 72 LCCs</li> </ul> </li> <li>• <b>Regional Planning Commissions (RPCs)</b> – Multi-county planning agencies that assist local governments with regional land use, transportation, and water resource planning.               <ul style="list-style-type: none"> <li>○ Count: 8 RPCs</li> </ul> </li> <li>• <b>Drainage Districts</b> – Local government entities overseen by a county drainage board, organized for the purpose of draining water from agricultural lands.               <ul style="list-style-type: none"> <li>○ Count: approximately 190</li> </ul> </li> </ul>

<b>Overview of Key Practices</b>	
<i>Key authorities regarding Wisconsin water resources management are contained in Wisconsin Statutes Chapter 281 et seq<sup>[7]</sup>, and the Wisconsin Administrative Code Chs. NR 100-199 et seq<sup>[15]</sup>.</i>	
Flood and Floodplain Permitting and Management	Local communities are responsible for developing floodplain management ordinances and managing permitting for floodplain development. Most communities are part of the National Flood Insurance Program (NFIP) The Wisconsin Department of Natural Resources (DNR) provides state oversight, offering guidance, and technical assistance. The regulatory framework and minimum requirements for the state's floodplain management program exceed those of the NFIP, ensuring enhanced flood risk reduction and protection of natural floodplain values.
Levee Permitting and Management	The DNR issues permits for the construction, modification, or repair of non-federally managed levees to ensure compliance with state regulations. The DNR and state floodplain engineer review permit applications and oversees levee projects, including safety and environmental considerations. Local governments or levee districts are responsible for maintaining and managing levee systems, and they must report on levee conditions as required. The DNR has the authority to inspect levees and address any issues related to unauthorized or non-compliant levee structures.
Stormwater Permitting	Permits are required for construction sites that disturb one or more acres, ensuring that erosion control measures are implemented to prevent sediment runoff. MS4s also need permits to manage stormwater runoff, reduce pollution, and implement best management practices (BMPs). Permit plans are submitted to the DNR, which reviews applications and monitors compliance through inspections. DNR's regulation of stormwater quality covers storms up to the 2-year, 24-hour storm event. Local governments may regulate water from larger storms. Local governments with municipal permits are responsible for implementing and enforcing their own parallel stormwater regulations within their jurisdictions. Industrial stormwater discharges are permitted by DNR through the National Pollutant Discharge Elimination System (NPDES).
Drainage Permitting and Management	The DNR handles permits for activities affecting navigable waters, ensuring compliance with environmental regulations and providing technical guidance. County drainage boards and drainage districts manage local drainage systems, overseeing construction and maintenance of drainage projects and addressing local drainage issues. The DATCP oversees these drainage districts, particularly with regard to expansion

	of drainage works, ensuring they comply with state laws and monitoring the activities of the county drainage board.
Dam Permitting and Management	Dam permitting and management are primarily regulated by the DNR. The DNR oversees the permitting process for dam construction, modification, and removal to ensure compliance with safety and environmental standards. Applicants can complete the permit application process online. DNR’s water management engineers conduct ongoing inspections based on the dam’s hazard rating and work continuously with dam owners to ensure continued compliance.
Surface Water Quality Monitoring and Management	Surface water quality monitoring and management are overseen by the DNR, including the setting of Total Maximum Daily Loads (TMDL). The DATCP supports these efforts through the Land and Water Conservation Board, which connects local and state governments in providing guidance on conservation practices. County-level Land Conservation Committees implement local soil and water conservation projects to address non-point source pollution.
Water Supply and Diversion Rights	The DNR manages surface water supply rights for navigable waters through a permitting system for large withdrawals, diversions, and construction of intakes, with a focus on maintaining public trust and ensuring that water use does not adversely impact water levels or availability. Priorities include upholding the public trust doctrine, which emphasizes the protection of water resources for the benefit of all citizens, and respecting riparian rights, which grant property owners access to water resources adjacent to their land <sup>[1]</sup> . Additionally, regulations cover interbasin transfers of water to safeguard water quantity and quality across regions. DNR is the state’s representative of the Great Lakes Compact Council and oversees diversions from the watershed of the Great Lakes.

## WISCONSIN STATE AGENCY(IES) OVERVIEW

### Department of Natural Resources

The DNR is responsible for protecting and managing the state’s natural resources, including its water, land, and wildlife. The DNR manages surface water programs, including water quality monitoring, floodplain and shoreland zoning, stormwater management, and regulation of water withdrawals and diversions. DNR maintains a database of water permits. The DNR is structured into six divisions to manage its diverse responsibilities:

- Environmental Management Division - The Environmental Management Division of the Wisconsin DNR is responsible for overseeing programs that protect the state’s air, land, and water resources<sup>[2]</sup>. The division manages water quality initiatives, hazardous waste regulations, air quality standards, and pollution control efforts. The Division also implements policies for wastewater

management, conducting environmental monitoring, and ensuring compliance with both state and federal environmental laws.

- External Services Division - The External Services Division of the Wisconsin DNR handles regulatory services like permitting, inspections, discharge permits for large farms, and enforcement related to water, stormwater and land management. It also provides technical assistance and outreach to ensure compliance with environmental regulations, balancing economic activities with sustainable practices to protect Wisconsin's natural resources.
- Forestry Division - The Forestry Division of the Wisconsin DNR manages the state's forest resources, focusing on sustainable forestry practices, fire prevention, forest health, and public land management. The division also supports private landowners with forest stewardship programs and ensures the health and productivity of Wisconsin's forests for future generations.
- Fish, Wildlife & Parks Division - The Fish, Wildlife & Parks Division of the Wisconsin DNR is responsible for managing and conserving the state's fish and wildlife populations, as well as overseeing public lands and outdoor recreation. The division implements conservation programs, regulates hunting and fishing, and manages state parks.
- Internal Services Division - The Internal Services Division of the Wisconsin DNR supports the agency's operations through functions like finance, human resources, information technology, and administrative services.
- Public Safety and Resource Protection Division - The Public Safety and Resource Protection Division of the Wisconsin DNR focuses on enforcing laws related to natural resource protection, public safety, and environmental regulations.

## **Department of Agriculture, Trade, and Consumer Protection**

### *Drainage Program*

The Department of Agriculture, Trade, and Consumer Protection (DATCP) oversees around 190 active drainage districts across 27 counties, the state's drainage program, which ensures that drainage districts, governed by county drainage boards, operate in compliance with state laws. These districts manage constructed drains that help remove excess water from agricultural land. About 10% of Wisconsin's drainage systems are part of these regulated districts, and DATCP provides oversight under Wisconsin law, including the monitoring of drainage boards and their annual reporting requirements.<sup>[19]</sup>

### *Land and Water Conservation Board*

The Land and Water Conservation Board (LWCB) in Wisconsin is a key advisory body focused on land and water conservation efforts. It operates under the DATCP<sup>[3]</sup>. The Land and Water Conservation Board (LWCB) comprises a mix of ex-officio members, including secretaries from various state departments, appointed county representatives, and specialized members representing urban areas, river management, agriculture, and charitable organizations. Advisory members include federal and academic representatives, such as those from the U.S. Secretary of Agriculture, the University of Wisconsin-Madison, and county conservation staff. LWCBs key responsibilities include:



- Assists in managing and allocating financial resources for local conservation projects and programs.
- Approves comprehensive Land and Water Management Plans developed by counties to address and manage local conservation challenges.
- Reviews and assesses priority lake and watershed plans to ensure they are effectively addressing critical water resource issues and supporting sustainable management practices.

## **LOCAL AND REGIONAL JURISDICTION(S) OVERVIEW**

### **Land Conservation Committees**

In Wisconsin, each county board must establish a Land Conservation Committee (LCC) to oversee and implement local conservation efforts. The LCCs are composed of nine board members, and their jurisdictions typically follow county boundaries, however, collaboration across counties is common in broader conservation efforts. County boards appoint members and members serve two-year terms<sup>[3]</sup>. The LCC is responsible for developing Land and Water Resource Conservation Plans, coordinating with other agencies, monitoring progress, and ensuring public involvement. The LCC may design and build flood management structures and oversee landscape modifications to prevent flooding.

### **Regional Planning Commissions**

Regional Planning Commissions (RPCs) in Wisconsin are quasi-governmental agencies formed by executive order of the Governor. Most parts of the state are covered by an RPC. RPCs provide intergovernmental planning and coordination for the physical, social, and economic development of the Region. Under Wisconsin law, RPCs conduct research studies, collect and analyze data, and create plans for regional development. RPCs publish reports on their objectives and findings and provide advisory services to local governments and agencies on planning issues. The commissions may receive additional designations under state and federal programs. For instance, one commission is a designated water quality planning agency. The Commission maintains regional development policies, serves as the sewer service area management agency, provides technical assistance for groundwater studies and water quality management, and promotes wetland preservation and floodplain management<sup>[4]</sup>. The Commission also participates in watershed planning projects and provides stormwater management planning.

Commissions receive funding from state and federal planning grant programs, which account for less than 40 percent of their total expenditures. The remainder comes from local sources, primarily through general appropriations for data collection, planning, and coordination<sup>[4]</sup>.

### **Drainage Districts**

Drainage districts are established by a petition of landowners, under the jurisdiction of the drainage board of the county in which most of the land is located. Drainage districts

construct and maintain drainage infrastructure and manage conflicts between landowners relating to drainage issues. Drainage districts may levee assessments to landowners for the benefits received from projects. Oversight from the county drainage board ensures that drainage districts comply with Wisconsin's drainage regulations.<sup>[18]</sup>

### **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Wisconsin are generally contained within the Wisconsin Statutes Chapter 281 et seq<sup>[7]</sup>, and the Wisconsin Administrative Code Chs. NR 100-199 et seq<sup>[15]</sup>. Table 1 includes a brief description of major policies and regulations governing each key practice area, including their effective dates.

### **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the Wisconsin Statutes Chapter 281 et seq<sup>[7]</sup>, and the Wisconsin Administrative Code Chs. NR 100-199 et seq<sup>[15]</sup>. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.



**Table 1. Key Policies and Regulations for Surface Water Management in Wisconsin**

Practice Area	Policy / Regulation	Date	Key Principles
Floodplain Management	Administrative Code NR 116 <sup>[5]</sup>	8/1/2023	<ul style="list-style-type: none"> <li>• Each community is required to implement and uphold floodplain zoning ordinances.</li> <li>• Establishes uniform basis for floodplain regulations to protect public health and safety, reduce flood damage and costs, and promote responsible development in flood-prone areas.</li> <li>• Includes zoning based on permitted uses.</li> <li>• Requires lower floors 2 feet above base flood elevation and dry land access to structures.</li> </ul>
Levees	WI Statute 31.36 <sup>[6]</sup>	4/7/2021	Municipalities must provide right-of-way for levees and can appoint levee commissioners to manage them.
	WI Statute 31.309 <sup>[6]</sup>	8/6/2023	The DNR funds repairs and maintenance for the Portage levee system, but the City of Portage is responsible for ongoing upkeep after repairs are completed.
	WI Statute 87.02	Unk. (Note 1)	The DNR may order the construction, maintenance, or removal of levees and other works necessary for flood control.

Practice Area	Policy / Regulation	Date	Key Principles
	NR 116.17	1986	<ul style="list-style-type: none"> <li>• A municipality may change its floodplain zoning of an area protected by a levee only if DNR finds that the levee provides adequate protection.</li> <li>• If a levee would cause obstruction of flood flows, floodplain maps, zoning, regional flood profiles, and floodway lines must be updated to reflect the change in flood height.</li> <li>• The U.S. Army Corps of Engineers' standards are the minimum standard for levee design and construction.</li> <li>• The local government must create an emergency action plan for any area behind a levee that would otherwise be in a floodplain.</li> <li>• Levees must be annually inspected by a professional engineer, and the results of the inspection must be sent to DNR.</li> <li>• Municipalities may permit levees that protect agricultural land from floods up to the 10-year flood, provided that upstream increase in the height of the 10-year flood is no more than 0.5 feet and there is no upstream increase in the height of the regional flood.</li> </ul>
Stormwater Management	WI Statute 283.33	2017	<ul style="list-style-type: none"> <li>• A permit from DNR is required for discharges of stormwater associated with industrial activities, construction, municipal separate storm sewers, and any other facility or activity that DNR determines significantly pollutes the waters of the state.</li> <li>• DNR may not require a permit under this section for diffuse surface drainage or agricultural stormwater discharge.</li> <li>• DNR is directed to establish rules for stormwater permit applications and fees.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Drainage Management	WI Statute 200.35(9) <sup>[8]</sup>	Unk. (Note 1)	A metropolitan sewerage commission may divert storm water, groundwater and water from lakes (other than the Great Lakes), rivers or streams into drains with a permit from DNR but may not divert the water to another watershed.
	WI Statute Chapter 88 <sup>[9]</sup>	2023	<ul style="list-style-type: none"> <li>• A county board of drainage commissioners is appointed by the court or the state engineer to oversee the operations of any drainage district located within (or mostly within) the county and make decisions related to drainage projects.</li> <li>• The board of commissioners is responsible for maintaining drainage systems and ensuring they function properly.</li> <li>• Landowners can petition for the formation of a drainage district if they believe it is necessary to improve or maintain drainage.</li> </ul>
	Administrative Code ATCP 48 <sup>[10]</sup>	2022	<ul style="list-style-type: none"> <li>• Systems must be designed to effectively manage water while minimizing soil erosion and sedimentation.</li> <li>• Regulations to prevent drainage systems from contributing to water contamination.</li> </ul>
Dam Management	WI Statute Chapter 31 <sup>[6]</sup>	2023	<ul style="list-style-type: none"> <li>• A permit is required from the DNR for the construction, repair, or removal of dams.</li> <li>• Dams must be properly abandoned or removed with DNR approval, ensuring that the removal does not negatively impact the environment or public safety.</li> <li>• Construction or enlargement of a dam that would affect the water level within a drainage district or in a drain owned by an individual requires permission from the drainage district or landowner.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
	Administrative Code NR 333 <sup>[11]</sup>	2021	<ul style="list-style-type: none"> <li>• Applies to the design, construction, operation, and maintenance of large dams.</li> <li>• Dams must be designed following specific criteria based on the potential hazard classification (low, significant, or high hazard). These classifications are determined by a dam's size, location, and potential failure consequences, considering factors such as downstream population density, infrastructure, and environmental impact.</li> <li>• Periodic inspections are mandated to ensure dam safety and compliance with regulations.</li> </ul>
Surface Water Quality	Administrative Code NR 102 <sup>[12]</sup>	2023	<ul style="list-style-type: none"> <li>• Establishes the general policy for water quality management and protection of the state's surface water.</li> <li>• Establishes the designated uses for Wisconsin's surface waters, including supporting fish and aquatic life, recreational use, and public health protection.</li> </ul>
	WI Statute Chapter 92 <sup>[13]</sup>	2023	<ul style="list-style-type: none"> <li>• Establishes the land and water resource management planning program.</li> <li>• Sets criteria for land and water resource management plans, including control of non-point source water pollution.</li> </ul>

Practice Area	Policy / Regulation	Date	Key Principles
Water Supply and Diversion Rights	WI Statute 30.18	2011	<ul style="list-style-type: none"> <li>• Permits are required for withdrawal of water from streams for the purpose of maintaining water levels in a navigable lake or stream or for agriculture.</li> <li>• Permits are required for withdrawals from lakes or streams that result in a water loss averaging 2,000,000 gallons per day or more in a 30-day period.</li> <li>• To receive a permit, the proposed withdrawal must not injure public rights in navigable waters or adversely impact downstream riparians without their consent. The proposed withdrawal and use must also be consistent with the public interest, not significantly harm water quality, and not conflict with any applicable plan for future use of waters of the state.</li> </ul>
	Administrative Code NR 851 <sup>[14]</sup>	2024	Establishes rules for water supply and diversion rights in Wisconsin, including criteria for managing and regulating water withdrawals, diversions, and transfers across the Great Lakes Basin and other watersheds.
	WI Statute 281.343 <sup>[7]</sup>	2023	<ul style="list-style-type: none"> <li>• Ratifies Great Lakes – St. Lawrence River Basin Water Resources Compact.</li> <li>• Any water withdrawal of 100,000 gallons per day or more on average over any 30-day period within the Great Lakes Basin must be reported and is subject to regulation.</li> </ul>

(1) Effective dates of WI Statute sections are not explicitly included in legislation and may require consulting official legislative records or historical archives for accurate information.

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local	Floodplain development permitting is managed at the local level, with communities responsible for developing and enforcing floodplain management ordinances. The DNR provides state oversight and sets standards that exceed those of NFIP, ensuring enhanced flood risk reduction. Each community must implement and uphold these floodplain zoning ordinances to align with state and federal standards.	The process starts with filing an appeal with the local government authority that issued the permit. The local Board of Adjustment will review the appeal and may hold a hearing to resolve the issue. If the dispute remains unresolved, an administrative hearing can be requested and if needed, the appellant can seek judicial review by filing a lawsuit in circuit court <sup>[17]</sup> .
Levees	Local	Local governments are primarily responsible for providing the necessary right-of-way for levee construction and can appoint levee commissioners to oversee their management <sup>[6]</sup> . Any changes to municipal floodplain zoning associated with the construction of a levee may only be made if DNR finds that the levee provides adequate protection.	Disputes regarding levee permits or management decisions should first be appealed to the local government or levee district responsible for the levee. If unresolved locally, the issue can be escalated to the DNR. For further unresolved disputes, an administrative hearing can be requested, and if the dispute persists, judicial review can be sought by filing a lawsuit in circuit court <sup>[17]</sup> .

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Stormwater	DNR	<p>The DNR administers a range of permits, primarily through NPDES, including those for construction sites, municipal stormwater systems, and industrial activities. The permitting process requires compliance with standards designed to reduce pollutants, manage runoff, and protect water resources. Key components include the development of a stormwater management plan, implementation of BMPs, and ongoing monitoring and reporting.</p>	<p>If a permit holder or applicant disputes a stormwater permit decision, they should contact DNR to seek a resolution. If this does not resolve the issue, the formal appeals process begins with filing a petition for a contested case hearing with the DNR where an administrative law judge (ALJ) will issue a proposed decision. Should the dispute remain unresolved, the applicant may seek judicial review<sup>[15]</sup>.</p>
Drainage	DNR	<p>A permit from the DNR is required to alter the course of a navigable stream, including stream relocation or enclosing a waterway into a pipe drain, conduit, or storm sewer. General permits are for routine, low-impact activities, such as small drainage maintenance. Individual permits are needed for significant projects, like large-scale modifications or new systems. Applicants must submit detailed plans and specifications with their application. The DNR reviews these to ensure compliance with water laws and environmental regulations.</p>	<p>If there is a dispute or appeal concerning drainage permits, the process begins with filing an appeal with the DNR within 30 days of the permit decision. If the appeal is not resolved, the applicant can request an administrative hearing conducted by an ALJ. Should the dispute remain unresolved, the applicant may seek judicial review<sup>[15]</sup>.</p> <p>If there is a dispute between drainage districts under the jurisdiction of the same drainage board, the board will resolve the issue. If there is a dispute between drainage districts under different drainage boards, the boards will work together to resolve the issue. If the issue cannot be resolved, the matter will go to arbitration.<sup>[9]</sup></p>

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Dams	DNR	Dam permitting and management are overseen by the DNR. The DNR is responsible for issuing permits for dam construction, modification, and removal, ensuring compliance with state regulations and safety standards. The permit application process can be completed online through the DNR's water permits page, where applicants can obtain a WAMS ID, submit applications, pay fees, and track the status of their permits.	If there is a dispute or appeal concerning dam permits, the process begins with filing an appeal with the DNR within 30 days of the permit decision. If the appeal is not resolved, the applicant can request an administrative hearing conducted by an administrative law judge (ALJ). Should the dispute remain unresolved, the applicant may seek judicial review <sup>[15]</sup> .



Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Water Rights	DNR	<p>Water withdrawals are regulated by the DNR through a permitting process that depends on the volume and location of the withdrawal. Any withdrawal of 100,000 gallons per day or more over a 30-day period in the Great Lakes Basin requires a Water Use Permit, which can either be a General Permit or an Individual Permit depending on the volume<sup>[16]</sup>. Withdrawals averaging 100,000 gallons per day or more within a 30-day period, located outside of the Great Lakes Basin must be reported to DNR. An Individual Permit is needed for withdrawals exceeding 1,000,000 gallons per day over a 30-day period<sup>[7]</sup>. Priority is given to the first applicant requesting to withdraw water from a given source. Applicants must register and may need additional approvals under Wisconsin law before initiating or increasing withdrawals, especially if the withdrawal could significantly impact water resources.</p>	<p>The dispute and appeals process for water rights and permitting decisions begins when an applicant or affected party disagrees with the DNR's decision regarding waterway protection and water withdrawals. If a project does not meet the criteria for a general permit or exemption, the applicant must apply for an individual permit. If the permit application is denied, the applicant can submit an appeal to DNR or pursue further review through administrative or judicial procedures outlined under state statutes<sup>[17]</sup>.</p>

## CITATIONS

- [1] Wisconsin Department of Natural Resources. (n.d.). Why Regulate Waterways? [https://dnr.wisconsin.gov/topic/Waterways/about\\_us/whyRegulate.html](https://dnr.wisconsin.gov/topic/Waterways/about_us/whyRegulate.html)
- [2] Wisconsin Department of Natural Resources. (n.d.). *About the Division of Environmental Management*. Wisconsin Department of Natural Resources. <https://dnr.wisconsin.gov/about/divisions/EM#:~:text=The%20purpose%20of%20the%20DNR's,and%20individuals%20we%20work%20with.https://docs.legis.wisconsin.gov/statutes/statutes/15/ii/135/4>
- [3] Wisconsin Legislature. (n.d.). *Wis. Stat. § 92.10*. <https://docs.legis.wisconsin.gov/statutes/statutes/92/10>
- [4] Southeastern Wisconsin Regional Planning Commission. (n.d.). *Profile of Wisconsin's regional planning commissions*. [https://www.sewrpc.org/SEWRPCFiles/Publications/ppr/profile\\_wisconsins\\_regional\\_planning\\_commissions.pdf](https://www.sewrpc.org/SEWRPCFiles/Publications/ppr/profile_wisconsins_regional_planning_commissions.pdf)
- [5] Wisconsin Legislature. (n.d.). *Wis. Admin. Code ch. NR 116*. [https://docs.legis.wisconsin.gov/code/admin\\_code/nr/100/116](https://docs.legis.wisconsin.gov/code/admin_code/nr/100/116)
- [6] Wisconsin Legislature. (2023, August 1). *Wis. Stat. § 31*. <https://docs.legis.wisconsin.gov/statutes/statutes/31>
- [7] Wisconsin Legislature. (2023). *Wis. Stat. § 281*. <https://docs.legis.wisconsin.gov/statutes/statutes/281>
- [8] Wisconsin Legislature. (2023). *Wis. Stat. § 200.35(9)(a)*. <https://docs.legis.wisconsin.gov/statutes/statutes/200/35/9/a>
- [9] Wisconsin Legislature. (n.d.). *Wis. Stat. § 88*. <https://docs.legis.wisconsin.gov/statutes/statutes/88>
- [10] Wisconsin Legislature. (2023). *Wis. Admin. Code ch. ATCP 48*. [https://docs.legis.wisconsin.gov/code/admin\\_code/atcp/40/48](https://docs.legis.wisconsin.gov/code/admin_code/atcp/40/48)
- [11] Wisconsin Legislature. (2022). *Wis. Admin. Code ch. NR 333*. [https://docs.legis.wisconsin.gov/code/admin\\_code/nr/300/333](https://docs.legis.wisconsin.gov/code/admin_code/nr/300/333)
- [12] Wisconsin Legislature. (2021). *Wis. Admin. Code ch. NR 102*. [https://docs.legis.wisconsin.gov/code/admin\\_code/nr/100/102](https://docs.legis.wisconsin.gov/code/admin_code/nr/100/102)
- [13] Wisconsin Legislature. (2023). *Wis. Stat. § 92*. <https://docs.legis.wisconsin.gov/statutes/statutes/92>
- [14] Wisconsin Legislature. (2023). *Wis. Admin. Code ch. NR 851*. [https://docs.legis.wisconsin.gov/code/admin\\_code/nr/800/851](https://docs.legis.wisconsin.gov/code/admin_code/nr/800/851)
- [15] Wisconsin Department of Natural Resources. (n.d.). *Chs. NR 100-199; Environmental protection – General*. Wisconsin.gov. [https://docs.legis.wisconsin.gov/code/admin\\_code/nr/100-199](https://docs.legis.wisconsin.gov/code/admin_code/nr/100-199)
- [16] Wisconsin Department of Natural Resources. (n.d.). *Water use permits*. Wisconsin DNR. <https://dnr.wisconsin.gov/topic/WaterUse/permits.html>
- [17] Wisconsin Legislature. (n.d.). *Wisconsin statutes: Section 227.57*. <https://docs.legis.wisconsin.gov/statutes/statutes/227/iii/57>
- [18] Wisconsin Department of Agriculture, Trade, and Consumer Protection. (2021). *Drainage Districts in Wisconsin*. <https://datcp.wi.gov/Documents2/DrainageProgramFactSheet.pdf>
- [19] Wisconsin Department of Agriculture, Trade and Consumer Protection. (n.d.). *Drainage Districts*. [https://datcp.wi.gov/Pages/Programs\\_Services/DrainageDistricts.aspx](https://datcp.wi.gov/Pages/Programs_Services/DrainageDistricts.aspx)

Input was provided by Wisconsin DNR's Amy Minser, Benjamin Callan, Brian Cunningham, Kari Fleming, and Thomas Nedland.

# Wyoming Cut Sheet

DATE: December 28, 2024  
 TO: North Dakota Department of Water Resources  
 FROM: EKI Environment & Water, Inc.  
 SUBJECT: Review of Wyoming Surface Water Management Regulatory Structures for Key Practices & Use of Watershed-level Jurisdictions

## SUMMARY TABLE

Table below summarizes some key considerations regarding surface water management regulatory structures, authorities, and the use of watershed-level jurisdictions.

Agencies Overview	
<p>State agencies governing surface water and their primary or major roles and responsibilities</p>	<ul style="list-style-type: none"> <li>• <b>Wyoming State Engineer’s Office (SEO)</b> – Water Appropriation Permitting, Water Rights Adjudication, Dam Design Permitting and Enforcement, Instream Flow Protection and Permitting, Interstate and Intrastate Streams and Rivers Management, Snow Survey Data Analysis, Water Supply Forecasting</li> <li>• <b>Wyoming Department of Environmental Quality (WDEQ)</b> – Water Quality Standards and Monitoring, Watershed Protection, Point Source Discharge Permitting, Nonpoint Source Planning and Grant Administration, Nutrient Pollution, Stormwater Management, Administration of State Revolving Loan Program</li> <li>• <b>Wyoming Office of Homeland Security</b> – State Oversight of Community Enrollment in of National Flood Insurance Program (NFIP), Disaster Mitigation and Response</li> <li>• <b>Environmental Quality Council</b> – Hearing Examiner for Challenges to WDEQ Decisions and Other State Agencies Regarding Environmental Matters</li> <li>• <b>Wyoming Water Development Commission (WWDC) and Wyoming Water Development Office (WWDO)</b> – Water Resource Development and Planning, Dam and Reservoir Planning, Hydrologic Studies, River Basin Planning, Water Resource Projects Grant Funding</li> </ul>
<p>Local and regional jurisdictions for surface water management practices and authorities</p>	<ul style="list-style-type: none"> <li>• <b>Local Floodplain Administrators</b> - Floodplain Management Ordinances, Flood Risk Management, Floodplain Permitting and Enforcement, Public Outreach</li> <li>• <b>Special Districts</b> <ul style="list-style-type: none"> <li>○ Authorized in the Wyoming Statues (W.S.); local governments formed to oversee a particular aspect of water management in an area</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ See <i>Local and Regional Jurisdictions Overview</i> below for examples of Special Districts related to surface water management</li> </ul>
<p><b>Overview of Key Practices</b></p>	
<p><i>Key authorities regarding Wyoming water resources management are contained in W.S. Title 19 et seq and Title 41 et seq<sup>[3]</sup>, and the Wyoming Administrative Rules (Wyo. Code R.)<sup>[19]</sup>.</i></p>	
<p>Flood and Floodplain Permitting and Management</p>	<p>Local county floodplain administrators of communities participating in the NFIP are responsible for adopting and enforcing floodplain management ordinances and issuing floodplain development permits. The regulatory framework and minimum requirements for the floodplain management programs must meet or exceed the minimum NFIP requirements.<sup>[16]</sup></p> <p>The Wyoming Office of Homeland Security provides State oversight of floodplain management through assisting communities in NFIP enrollment, coordinating funding opportunities between participating communities and the Federal Emergency Management Agency (FEMA), and developing the Wyoming State Hazard Mitigation Plan, which includes an assessment of statewide flood risk and mitigation actions.<sup>[17]</sup></p>
<p>Levee Permitting and Management</p>	<p>According to the National Levee Database, there are just under 20 levee systems in the State of Wyoming. With the exception of those authorized, constructed, operated, and maintained by the United States Army Corps of Engineers, local jurisdictions, including cities, communities, and special districts, are responsible for managing the construction and operation and maintenance (O&amp;M) of levees within their jurisdictions.<sup>[6].<sup>[3]</sup></sup> Additionally, local jurisdictions are responsible for the development and implementation of levee permitting procedures as needed.<sup>[3]</sup></p>
<p>Stormwater Permitting</p>	<p>WDEQ’s Water Quality Division regulates and permits discharges from stormwater point sources under the Wyoming Discharge Elimination System (WYPDES) program. WDEQ issues the following five types of general permits for storm water discharges: Large Construction General Permits (LCGP) for construction activities causing five or more acres of disturbance, Small Construction General Permits for construction activities causing the disturbance of one to five acres of land (SCGP), Industrial General Permits (IGP), Mineral Mining General Permits (MMGP), and Municipal Separate Storm Sewer System (MS4) General Permits.<sup>[8]</sup></p>

	<p>Tribal lands (i.e., the Wind River Reservation) are not subject to the WYPDES program for storm water permitting and are, instead, regulated by the EPA’s National Pollutant Discharge Elimination System (NPDES) Permit Program.<sup>[5]</sup></p>
<p>Drainage Permitting and Management</p>	<p>W.S. authorizes the formation of drainage districts within the State to construct, repair, and maintain drainage systems within their district. Additionally, drainage districts have the authority to reclaim wet or overflowed lands and inspect, deepen, widen, and repair any drain, ditch, levee, or embankment within their district when necessary.<sup>[3]</sup> W.S. does not explicitly mention specific regulatory authorities of drainage districts, including the authority to implement a permitting system for drainage management. Our review of drainage districts and of joint irrigation and drainage districts within the State did not indicate that these districts issue permits specifically for drainage management purposes. Similarly, our research did not indicate that any State agencies explicitly oversee drainage management, including permitting of drainage activities.</p>
<p>Dam Permitting and Management</p>	<p>The SEO is the primary agency overseeing Dam Permitting and Management in Wyoming. The SEO Division of Surface Water issues construction permits for dams, conducts on-site inspections, and may order the removal or modification of unsafe dams as part of the Safety of Dams Program.<sup>[18]</sup></p>
<p>Surface Water Quality Monitoring and Management</p>	<p>WDEQ’s Water Quality Division oversees surface water quality throughout the State and develops the State’s surface water quality standards, which follow the minimum requirements of the federal Clean Water Act and the Wyoming Environmental Quality Act.<sup>[13],[12]</sup> WDEQ’s Water Quality Division enforces surface water quality standards through permitting point source discharges under the WYPDES Program and implementing nonpoint source pollution control programs.<sup>[14]</sup> Additionally, WDEQ Water Quality Division’s Monitoring Program monitors and compiles local surface water quality data to support statewide water quality assessments and total maximum daily load (TMDL) development efforts. As nutrient pollution is a concern in Wyoming surface waters, WDEQ is also involved in the development of the Wyoming Nutrient Strategy, which develops and implements numeric nutrient criteria to avoid cyanobacterial blooms within the State’s surface waters.<sup>[10]</sup></p>

Water Supply and Diversion Rights	The SEO Board of Control is responsible for the management of the use of state waters, with authorities including the adjudication of existing water rights, the approval of new water rights applications, and the management of changes to existing rights. In Wyoming, a diversion permit must be acquired from the SEO Board of Control for any withdrawals of water from streams, including ditches, pipelines, and Temporary Water Hauls, prior to putting that water to beneficial use. A “Special Application” and permit is required for special application stock and domestic diversions not exceeding 25 gallons per minute. The SEO Board of Control also issues permits for the enlargement of ditches and pipelines and the construction and modification of various types of reservoirs. The SEO Board of Control is the sole entity in charge of reviewing water permits. <sup>[24],[21]</sup>
-----------------------------------	---

## WYOMING STATE AGENCIES OVERVIEW

### Wyoming State Engineer’s Office (SEO)

The SEO was established in 1888 to manage Wyoming’s water resources and administer a water law system in the State based upon the doctrine of prior appropriation. The SEO is led by the State Engineer, who is appointed by the Governor and confirmed by the Wyoming Senate. It is organized into the following six functional divisions, each of which is overseen by an administrator appointed by the State Engineer: Surface Water; Groundwater; Board of Control; Interstate Streams; Administration; and Support Services. Among the functional divisions, the Surface Water and Engineering, Board of Control, and Interstate Stream Divisions have specific responsibilities and authorities related to surface water management, which are detailed below. For administrative efficiency, the State is divided into four geographic water divisions, each managed by a Water Division Superintendent, based on the State’s basins and drainage patterns.<sup>[23]</sup>

- **Surface Water:** The Surface Water Division is responsible for managing the surface waters of the state with responsibilities including the review of permit applications for water diversions, water storage, changes to use, and instream flows. Additionally, this division carries out the Safety of Dams Program for the State, which includes on-site inspections, as well as the review and approval of dam construction permits by the State Engineer.<sup>[21],[5]</sup>
- **Board of Control:** The Board of Control Division is comprised of the State Engineer, who serves as the Board’s president, and the four Water Division Superintendents. A quasi-judicial body, the Board of Control is a quasi-judicial body with sole jurisdiction over the adjudication, administration, and amendment of water rights in the State.<sup>[21]</sup>
- **Interstate Streams:** The Interstate Streams Division provides technical and policy support for SEO efforts that aim to preserve Wyoming’s ability to use and develop



the State's water allocations. Additionally, this division manages Wyoming water rights in regard to federal court decrees, international treaties, and interstate compacts negotiated between states.<sup>[22]</sup>

### Wyoming Department of Environmental Quality (WDEQ)

WDEQ was founded in 1971 to manage state lands and resources through comprehensive environmental management and regulatory oversight. The WDEQ is headed by a director, who is appointed by the Governor and confirmed by the Senate. Below the director, the department is organized into seven divisions: Abandoned Mine Land; Administration; Air Quality; Industrial Siting; Land Quality; Solid and Hazardous Waste; and Water Quality. Each division is headed by an administrator, who oversees policy development and program management within their division.<sup>[9]</sup>

WDEQ's Water Quality Division is the main authority in charge of regulating and monitoring water quality within the State, with key authorities and responsibilities related to surface waters including, but not limited to, the following:

- Developing and adopting surface water quality standards for State waters;
- Monitoring surface water quality for compliance with State and federal regulations;
- Administering State Revolving Loan Funds;
- Regulating public water and wastewater systems;
- Issuing and monitoring permits for storm water discharges;
- Managing nonpoint source programs within the State; and
- Regulating point source pollutant discharges into surface waters under the WYPDES Program.<sup>[12],[8]</sup>

### Wyoming Office of Homeland Security

The Wyoming Office of Homeland Security was founded in 2002 as the primary agency responsible for disaster preparedness and response within the State of Wyoming. The office, which is run by a director appointed by the Governor and approved by the Wyoming Senate, is responsible for preparing the Wyoming State Mitigation Plan, which details risk of various natural disasters throughout the State and provides plans for mitigation. While floodplain management within Wyoming is managed mainly by Wyoming's counties and/or special districts, the Wyoming Office of Homeland Security provides State oversight of floodplain management through assisting communities in NFIP enrollment, coordinating funding opportunities between participating communities and FEMA, and flooding mitigation, response, and recovery planning.<sup>[16],[17]</sup>

### Environmental Quality Council

The Environmental Quality Council is an independent entity founded in 1973 as part of the Wyoming Environmental Quality Act with the authority to hear challenges to WDEQ

decisions related to the laws, rules, regulations, standards, or orders issued by the department per W.S. §35-11-112<sup>[3]</sup>, except those regarding industrial siting or abandoned mine lands. The council consists of seven members appointed by the Governor and confirmed by the Wyoming Senate.<sup>[15]</sup>

### Wyoming Water Development Commission (WWDC) and Wyoming Water Development Office (WWDO)

Created as a result of Chapter 29 of the Wyo. Code R.<sup>[19]</sup>, the WWDC and WWDO are a joint organization responsible for the coordination, development, and planning of Wyoming's water resources. The WWDC is comprised of ten members who represent each of the State's four water divisions (discussed above) and the Wind River Reservation and are each appointed by the Governor. The WWDO is comprised of 25 professional and support employees who are headed by a director appointed by the Governor. In 1975, the WWDC established the Wyoming Water Development Program to develop and protect the State's water resources. The WWDO works with local communities to implement the program, which includes various planning and monitoring efforts throughout the State regarding surface waters, including, but not limited to dam and reservoir planning, instream flow filings, river basin planning, irrigation infrastructure planning, watershed studies, and grant administration for water infrastructure projects.<sup>[26],[27]</sup>

## **LOCAL AND REGIONAL JURISDICTIONS OVERVIEW**

### Local County Floodplain Administrator

Local county floodplain administrators are responsible for adopting and enforcing floodplain management regulations, including floodplain management ordinances, that comply with State and federal requirements, as required by the NFIP. Local floodplain administrators are responsible for enrolling in the NFIP and for reviewing and issuing floodplain development permits for any construction activities within designated floodplains.<sup>[17],[2][17]</sup> Additionally, they are responsible for enforcing floodplain regulations, managing flood-prone areas, conducting inspections, and performing public outreach. Local floodplain administrators coordinate with the Wyoming Office of Homeland Security to manage flood risks within their jurisdictions, gain technical assistance, and acquire flood data. Local county floodplain administrators are funded through county budgets, which include funding from various sources, such as property taxes, state funds, federal funds, fees and licenses, and grants.<sup>[3],[16][17]</sup>

### Special Districts

Special districts are local governments created by community members or State law to deliver specialized services to an area. W.S. authorizes various special districts related to water management. Special districts are overseen by an elected board of supervisors, with the number of elected supervisors varying depending on the conditions within the district. They are primarily funded through property taxes and fees and can receive



funding from state and federal grants for specific projects. Special districts may also issue bonds or secure loans to finance larger capital improvement projects. The following types of special districts have authority over some aspect of water management within the State. It is important to note that the list of districts listed below is not an exhaustive list of special districts with water management authority in Wyoming.

- *Drainage Districts* – Per W.S. §41-9-101 – §41-9-606, drainage districts are local governments formed to perform stormwater and wastewater management and conservation. They are authorized to operate and maintain surface and underground drainage systems. Drainage districts may work with the County in which they operate to determine whether to approve drainage permit applications.<sup>[3]</sup>
- *Conservation Districts* – Per W.S. §11-16-101 – §11-16-135, Wyoming’s 34 conservation districts were formed to provide local control of natural resource management programs and activities for the conservation of their soil, water, and other renewable natural resources. Regarding surface waters, Wyoming conservation districts oversee the planning and implementation of water supply planning, monitoring activities, and restoration projects. Additionally, various conservation districts within the State perform watershed assessments and administer water quality cost share programs for projects within their district boundaries.<sup>[3],[7]</sup>
- *Watershed Improvement Districts* – Per W.S. §41-8-101 – §41-8-126, watershed improvement districts are local governments formed to enhance and manage water resources within their watersheds by implementing projects such as erosion control, flood management, and water conservation initiatives. They are authorized to levy assessments on properties within their boundaries and collaborate with various stakeholders to promote sustainable land and water management practices.<sup>[3]</sup>
- *Flood Control Districts* – Per W.S. §41-3-801 – §41-3-803, flood control districts in Wyoming are established to manage and mitigate flood risks within their jurisdictions by designing and implementing flood control infrastructure such as levees, drainage systems, and retention basins. Under Wyoming Code, these districts are authorized to levy assessments and issue bonds to fund flood prevention and control projects, ensuring protection for communities and infrastructure against flood-related damage.<sup>[3]</sup>

## **SUMMARY OF KEY POLICIES, REGULATIONS, AND OPERATING PROCEDURES**

Key policies and regulations related to surface water management in Wyoming are generally contained within the W.S. or the Wyo. Code R. Table 1 includes a brief description of major policies and regulations governing each key practice areas, including their effective dates.

## **REGULATORY PATHWAY FOR SURFACE WATER PROJECT IMPLEMENTATION**

Regulatory pathways for surface water project implementation are generally contained within the W.S. or the Wyo. Code R. Table 2 outlines the permitting entities and processes for appeals or disputes for each key practice area.

**Table 1. Key Policies and Regulations for Surface Water Management in Wyoming**

Practice Area	Policy / Regulation	Date (1)	Key Principles
Floodplain Management	44 Code of Federal Regulations (CFR) §60.3 <sup>[2]</sup> (2)	1976	<ul style="list-style-type: none"> <li>• Local county local floodplain administrators are responsible for developing and submitting floodplain management ordinances.</li> <li>• Floodway uses are regulated to prevent any rises in flood levels.</li> <li>• Prior to issuance of a local floodplain permit, proposed floodway developments must provide evidence that “no-rise” will occur or obtain a Conditional Letter of Map Revision.</li> <li>• A permit is required from the local floodplain administrator for any development activity in a Special Flood Hazard Area (SFHA).</li> </ul>
	W.S. §19-13-104 <sup>[3]</sup>	Effective: 1951 Last Amended: 2/21/2023	<ul style="list-style-type: none"> <li>• The Wyoming Office of Homeland Security has the authority to manage the mitigation of hazards, including flooding, and is the primary agency responsible for preparing plans, such as the Wyoming State Mitigation Plan, related to disaster mitigation, response, and recovery.</li> <li>• States with communities participating in the NFIP typically have a State NFIP Coordinator responsible for assisting local communities in NFIP enrollment and financing. Wyoming’s State NFIP Coordinator works in the Wyoming Office of Homeland Security’s Grants and Finance Section.</li> </ul>
	W.S. §41-8-101 – §41-8-126 <sup>[3]</sup>	Effective: 1961 Last Amended: 1998	<ul style="list-style-type: none"> <li>• Watershed improvement districts may be formed for the prevention and control of erosion, floodwater, and sediment damage; storage and conservation development; and utilization and water disposal. They have the authority to levy taxes and special assessments in order to construct, improve, operate, and contract the maintenance of structures and improvements related to water resource management and floodwaters.</li> </ul>
	W.S. §41-3-801 – §41-3-803 <sup>[3]</sup>	Effective: 1955 Last Amended: 1998	<ul style="list-style-type: none"> <li>• Flood control districts may be formed with the purpose of managing and mitigating flood risks within their jurisdictions. They have the authority to levy taxes and special assessments to design, implement, and operate flood prevention and flood control projects.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
Levees	W.S. §41-9-101 – §41-9-606 <sup>[3]</sup>	1911	<ul style="list-style-type: none"> <li>• Special districts can be formed to manage the construction and maintenance of levees within the district. Types of special districts that either have implicit levee management authority per Wyoming code or are currently overseeing levee projects in the State include, but are not limited to, the following:               <ul style="list-style-type: none"> <li>• Drainage Districts;</li> <li>• Water Conservation Districts;</li> <li>• Watershed Improvement Districts; and</li> <li>• Flood Control Districts.</li> </ul> </li> <li>• The requirement of a permit for levee construction is determined by the rules and regulations set by the local jurisdiction in which the proposed project is to be constructed. Any person interested in constructing a levee should contact the local county and/or district.</li> </ul>
	W.S. §41-3-701 – §41-3-779 <sup>[3]</sup>	1957	
	W.S. §41-8-101 – §41-8-126 <sup>[3]</sup>	1961	
	W.S. §41-3-801 – §41-3-803 <sup>[3]</sup>	1955	
	44 CFR §60.3 <sup>[2]</sup>	1976	<ul style="list-style-type: none"> <li>• In the case that a proposed levee will be built within a SFHA-designated floodplain, a floodplain development permit will need to be acquired from the local floodplain administrator prior to beginning construction, in addition to any other locally required permits regarding the construction of a levee.</li> </ul>
Stormwater Management	020-2 Wyo. Code R. §2-6 <sup>[19]</sup>	Effective: 1992 Last Amended: 3/23/2015	<ul style="list-style-type: none"> <li>• Permits must be obtained to discharge pollutants into waters of the State.</li> <li>• Permitting, monitoring, and reporting to both State is required per the State's WYPDES.</li> <li>• Dischargers from all areas of Wyoming, except tribal lands, can apply for coverage under the WYPDES general permits.</li> <li>• All general permits require the permittee to have a completed and signed Storm Water Pollution Prevention Plan (SWPPP) and site maps. With the exception of SCGP permits, the SWPPP and site maps must be sent to WDEQ.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
	General Permits WYR100000, WYR10A000, WYR000000, WYR320000, WYR040000	1992	<ul style="list-style-type: none"> <li>• General permits authorize certain discharges of relatively uncontaminated stormwater from large construction (LCGP), small construction (SCGP), industrial (IGP), mineral mining (MMGP), and MS4 activities.</li> </ul>
Drainage Management	W.S. §41-9-101 – §41-9-606 <sup>[3]</sup>	1911	<ul style="list-style-type: none"> <li>• Drainage districts are authorized to construct, repair, and maintain drainage systems within their district boundaries.</li> <li>• Drainage districts may reclaim wet or overflowed lands and perform inspections within their district boundaries as needed for flood prevention and the conservation, development, utilization, and disposal of water.</li> <li>• In the case of cross-jurisdictional irrigation or drainage works, two or more incorporated irrigation or drainage districts may, upon the written request of ten or more landowners, vote to cooperate in the operation and maintenance of their respective systems.</li> </ul>
Dam Management	W.S. §41-3-308 <sup>[3]</sup>	Effective: 1977 Last Amended: 1992	<ul style="list-style-type: none"> <li>• The State Engineer has the authority to create regulations and standards for the design, construction, alteration, abandonment, maintenance, monitoring, operation, repair, and removal of dams.</li> <li>• In the case that a dam or diversion system is located in a remote area and poses no threat to public safety or property, the State Engineer may waive any/all State requirements related to dam safety.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
	037-5 Wyo. Code R. §5-1 <sup>[19]</sup>	5/28/1980	<ul style="list-style-type: none"> <li>• A permit from the SEO is required to construct, enlarge, repair, alter, or remove any dam. The permit application must be prepared by or under the direction of a Wyoming professionally licensed engineer.</li> <li>• A certified map prepared by a Wyoming licensed engineer or surveyor is required to be submitted as part of the permit application for projects including dams.</li> <li>• Special requirements for plans of dams include the following: for earthen dams, the slope must not be less than 3:1 for the front side and 2:1 for the back side; for earthen dams, a minimum freeboard of 5 feet is required; and for dams with a height greater than 20 feet, the spillway must have sufficient capacity to pass the flood flow for a 100-year storm.</li> </ul>
	037-1 Wyo. Code R. §1-4 <sup>[19]</sup>	3/5/1974	<ul style="list-style-type: none"> <li>• A Reservoir Application must be submitted for any constructed facility used to store water.</li> <li>• A Reservoir Special Application may be submitted for the construction of storage facilities (1) not exceeding 20 acre-feet in capacity or 20 feet in dam height or (2) not exceeding 50 acre-feet in capacity, 20 acre-feet in height, or 20 acre-feet of inactive capacity for floodwater detention reservoirs.</li> </ul>
Surface Water Quality	020-1 Wyo. Code R. §1-1 through §1-37 <sup>[19]</sup>	Effective: 7/21/1994 Last Amended: 4/24/2018	<ul style="list-style-type: none"> <li>• Classifies state waters based on their ability to support beneficial uses</li> <li>• Establishes surface water quality standards to ensure water quality meets protects public health and meets State and federal requirements for beneficial uses</li> </ul>
	020-1 Wyo. Code R. §1-6 <sup>[19]</sup>	Effective: 7/21/1994 Last Amended: 4/24/2018	<ul style="list-style-type: none"> <li>• WDEQ has the authority to make recommendations to the State Engineer regarding proposed new diversions that could result in violations of water quality regulations.</li> </ul>

Practice Area	Policy / Regulation	Date (1)	Key Principles
	020-2 Wyo. Code R. § 2-4	Effective: 7/21/1994 Last Amended: 3/23/2015	<ul style="list-style-type: none"> <li>• WDEQ’s Water Quality Division issues permits for point source discharges under the WYPDES program.</li> </ul>
	W.S. §11-16-101 – §11-16-135 <sup>[3]</sup>	Effective: 1941 Last Amended: 3/13/2013	<ul style="list-style-type: none"> <li>• Conservation districts have the authority to manage natural resource management programs within their jurisdictions, including water quality cost share programs for projects within their boundaries and assessments of watersheds.</li> </ul>
Water Supply and Diversion Rights	037-1 Wyo. Code R. §1-4 <sup>[19]</sup>	3/5/1974	<ul style="list-style-type: none"> <li>• A permit from the SEO is required to appropriate water for any beneficial use that does not utilize an existing, permitted facility. Wyoming does not recognize riparian rights.</li> <li>• A permit must be obtained prior to commencement of any project proposing to appropriate water with the exception of pre-Statehood water rights, which are referred to as Territorial Appropriations.</li> <li>• Priority of water rights is given under the doctrine of prior appropriation on a “first in time, first in right” basis.</li> </ul>
	037-1 Wyo. Code R. §1-22 <sup>[19]</sup>	3/5/1974	<ul style="list-style-type: none"> <li>• Permits can be issued for instream flow purposes, including fisheries purposes.</li> </ul>
	037-10 Wyo. Code R. §10-1 <sup>[19]</sup>	3/5/1974	<ul style="list-style-type: none"> <li>• The owner of any valid direct flow water right is allowed to store their direct flow provided that it doesn’t affect or injury another Wyoming appropriator.</li> </ul>

(1) Unless explicitly stated, dates listed in Table 1 are the effective date of the policy/regulation.

(2) Although not explicitly specified in Wyoming code, communities participating in the NFIP are required to issue permits for all proposed construction or development projects within SFHAs, per 44 CFR § 60.3. As such, communities participating in the NFIP are required to develop and implement a floodplain development permitting process for floodplain management purposes.

**Table 2. Regulatory Pathways for Surface Water Management Projects**

Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Floodplain Development	Local Floodplain Administrator	Floodplain development permits must be obtained from the local floodplain administrator, who can be found through contacting the applicable county’s Planning and Development Department, prior to the start of construction on a project. The application process for a floodplain development permit varies by county and is set by the local floodplain administrator in accordance with NFIP guidelines. <sup>[4]</sup>	N/A (1)
Levees	Local Jurisdiction(s)	In Wyoming, local jurisdictions, including counties, cities, and some special districts, have the authority to develop permitting procedures for the construction and O&M of levees. In the case that a levee permit is required, the permitting process could be found in the local jurisdiction’s Code of Ordinance or by contacting the local county, city, and/or district. <sup>[3],[6]</sup>	N/A (1)
Stormwater	WDEQ Water Quality Division	The state has five general WYPDES permits: LCGP, SCGP, IGP, MMGP, and MS4s (see Table 1). Any activities that may cause pollution from stormwater runoff must apply for coverage under these permits with WYPDES. Upon receipt of a completed permit application, WDEQ will review and issue a determination within 30 days. <sup>[8]</sup>	Any person who has received notice of the final determination from WDEQ may appeal the decision by requesting a hearing before the Wyoming Environmental Quality Council (W.S. §35-11-112 <sup>[3]</sup> ).



Permit Type	Permitting Entity	Permitting Overview	Dispute / Appeals Process
Drainage	Drainage Districts	A review of special districts within Wyoming revealed that no drainage districts are currently operating within the State and only one joint Irrigation and Drainage District is currently operating within the State. As such, no permitting requirements specific to drainage activities were found.	Any landowner within a drainage district can dispute the validity of an assessment for constructions or repairs on their property in the applicable district court with ten days' notice of the initial assessment notice. In order to be exempt from the assessment, the landowner or other interested parties must demonstrate to the court that the assessment is inequitable or void because the lands were not subject to assessment (W.S. 41-9-250 <sup>[3]</sup> ).
Dams	SEO	After an application to construct a dam is submitted, the State Engineer shall review the plans and specifications of the proposed dam and approve or reject the application. Upon approval of the application, a public hearing will be held. Following the hearing, the State Engineer will make a final decision on the application and may issue a permit (W.S. §35-12-110 <sup>[19]</sup> ).	Any person aggrieved by an action or decision of the State Engineer can appeal to the district court in the applicable county (037-12 Wyo. Code R. §12-24 <sup>[19]</sup> ).
Water Rights	SEO Board of Control	The SEO Board of Control is the sole entity that issues water permits. The permitting process includes the examination and approval of the application by the State Engineer for a permit, submission of a notice of completion of work, submission of proof of appropriation to the Water District Superintendent, and the issuance of a certificate of appropriation by the SEO Board of Control (037-1 Wyo. Code R. §1-2 <sup>[19]</sup> ).	Any person aggrieved by an action or decision of the SEO Board of Control can appeal to the district court in the applicable county. In the case that the district court believes the Board is better qualified to hear the case, the Board shall hear and decide on matters as if it is the first review. Otherwise, the district court has the authority to hear the case (037-7 Wyo. Code R. §7-1 <sup>[19]</sup> ).

(1) Information on regulations or public resources detailing the dispute and appeals process was not found to be readily available and may vary by the local permitting administrator.

## CITATIONS

- [1] Joint Powers Water Board. (n.d.-a). Board Information. <https://jpwb.org/>
- [2] National Archives. (n.d.-a). Code of Federal Regulations (CFR) Title 44 Emergency Management and Assistance. <https://www.ecfr.gov/current/title-44>
- [3] State of Wyoming 67<sup>th</sup> Legislature. (n.d.-a). Wyoming Statutes Public Access. <https://advance.lexis.com/container/?pdmfid=1000516&crd=10e6db9c-d2a0-4490-9b0b-f502b201bd95&config=00JAAzZmQ5YjBjOC1hNDdjLTQxNGMtYmExZi0wYzZiYWlxMmM5YzckAFBvZENhdGFsb2cJAHazmy52H3XVa9c97KcS&ecom=6s85k&prid=1df0e961-41fa-4d8c-94ae-cc5771d97a29>
- [4] Town of Wright, Wyoming. (n.d.-a). Code of Ordinance. Title 12 Flood Control. [https://codelibrary.amlegal.com/codes/wrightwy/latest/wright\\_wy/0-0-0-4173](https://codelibrary.amlegal.com/codes/wrightwy/latest/wright_wy/0-0-0-4173)
- [5] United State Environmental Protection Agency (USEPA). (2024, January). Wyoming NPDES Permits. <https://www.epa.gov/npdes-permits/wyoming-npdes-permits>
- [6] United States Army Corps of Engineers (USACE). (n.d.-a). National Levee Database - Jackson Hole Upper Right Bank. <https://levees.sec.usace.army.mil/levees/6005000150>
- [7] Wyoming Association of Conservation Districts (WACD). (n.d.-a). Water. <https://conservewy.com/water/>
- [8] Wyoming Department of Environmental Quality – Water Quality Division. (n.d.-a). Construction Storm Water Permitting in Wyoming. <https://deq.wyoming.gov/water-quality/wypdes/discharge-permitting/storm-water-permitting/>
- [9] Wyoming Department of Environmental Quality. (n.d.-b). Divisions. <https://deq.wyoming.gov/about/divisions/>
- [10] Wyoming Department of Environmental Quality. (n.d.-c). Nutrient Pollution. <https://deq.wyoming.gov/water-quality/watershed-protection/surface-water-quality-standards/nutrient-pollution/>
- [11] Wyoming Department of Environmental Quality. (n.d.-d). Storm Water Permitting. <https://deq.wyoming.gov/water-quality/wypdes/discharge-permitting/storm-water-permitting/>
- [12] Wyoming Department of Environmental Quality. (n.d.-e). Surface Water Quality Standards. <https://deq.wyoming.gov/water-quality/watershed-protection/surface-water-quality-standards/>
- [13] Wyoming Department of Environmental Quality. (n.d.-f). Watershed Protection. <https://deq.wyoming.gov/water-quality/watershed-protection/>
- [14] Wyoming Department of Environmental Quality. (n.d.-g). Wyoming Discharge Elimination System (WYPDES). <https://deq.wyoming.gov/water-quality/wypdes/>
- [15] Wyoming Environmental Quality Council. (n.d.-a). Environmental Quality Council. <https://wyomingeqc.wyo.gov/>
- [16] Wyoming Office of Homeland Security. (n.d.-a). Floodplain Management in Wyoming Quick Guide. <https://drive.google.com/file/d/1OGD2PKCsuCxxPTUpryfm932nyzFx218/view>
- [17] Wyoming Office of Homeland Security. (n.d.-b). National Flood Insurance Program. <https://hls.wyo.gov/programs/mitigation/nfip>
- [18] Wyoming Secretary of State. (n.d.-a). Safety of Dams. <https://seo.wyo.gov/surface-water/safety-of-dams>
- [19] Wyoming Secretary of State. (n.d.-b). Wyoming Administrative Rules. <https://rules.wyo.gov/Search.aspx?mode=7>
- [20] Wyoming State Engineer's Office. (2019, October). Submitting a Reservoir Application (Hardcopy). <https://drive.google.com/file/d/1tsHvHgvEhBf6AV7xf1vXglyQrG-tePxN/view>
- [21] Wyoming State Engineer's Office. (n.d.-a). Board of Control. <https://seo.wyo.gov/board-of-control>
- [22] Wyoming State Engineer's Office. (n.d.-b). Interstate Streams. <https://seo.wyo.gov/interstate-streams>
- [23] Wyoming State Engineer's Office. (n.d.-c). State Engineer's Office Organization. <https://seo.wyo.gov/administration/seo-organization>

- [24] Wyoming State Engineer's Office. (n.d.-d). Surface Water Applications and Forms. <https://seo.wyo.gov/surface-water/applications-and-forms>
- [25] Wyoming State Engineer's Office. (n.d.-e). Surface Water. <https://seo.wyo.gov/surface-water>
- [26] Wyoming Water Development Office (WWDO). (2024, August). Information provided via phone communication on 9 August 2024.
- [27] Wyoming Water Development Office (WWDO). (n.d.-a). WWDC Home Page. <https://wwdc.state.wy.us/>

## APPENDIX B

### State Agency Involvement

**Feedback Received from State Agencies**

NDDWR

State	Agency	Response
California	Dept. of Water Resources	Written comments received.
Colorado	Division of Water Resources	Redline revisions received.
	Water Conservation Board	Redline revisions received.
	Dept. of Public Health and Environment	Redline revisions received.
Idaho	Dept. of Water Resources	Redline revisions received.
	Dept. of Environmental Quality	Redline revisions received.
Illinois	Dept. of Natural Resources	Verbal feedback and discussion. Met with DNR staff on 11/4.
Indiana	Dept. of Environmental Mgmt.	Redline revisions received.
	Dept. of Natural Resources	Redline revisions received.
Kansas	Water Office	Written comments received.
	Dept. of Health and Environment - Bureau of Water	Redline revisions received.
Michigan	Dept. of Natural Resources	Written comments received.
Minnesota	Dept. of Natural Resources	Redline revisions received.
Missouri	Dept. of Conservation	Redline revisions received.
	Dept. of Natural Resources	Verbal feedback and discussion. Met with DNR staff on 11/1.
Montana	Dept. of Environmental Quality	Written comments received.
	Dept. of Natural Resources and Conservation	Redline revisions received.
Nebraska	Dept. of Energy and Environment	Redline revisions received.
	Dept. of Natural Resources	Redline revisions received.
Nevada	Division of Water Resources	Verbal feedback and discussion. Met with DWR staff on 11/15.
Ohio	Dept. of Natural Resources	Redline revisions received.
Oklahoma	Water Resources Board	Redline revisions received.
S. Dakota	Dept. of Ag. and Natural Resources	Redline revisions received.
Texas	Commission on Environmental Quality	Redline revisions received.
	Water Development Board	Redline revisions received.
Utah	Division of Water Resources	Redline revisions received.
Wisconsin	Dept. of Ag, Trade, and Consumer Protection	Written comments received.
	Dept. of Natural Resources	Verbal feedback and discussion. Met with DNR staff on 11/14.

Abbreviations:

- Ag. = Agriculture
- Dept. = Department
- DNR = Department of Natural Resources
- DWR = Department of Water Resources
- NDDWR = North Dakota Department of Water Resources
- S. = South

Notes:

1. Agency representatives from Iowa and Wyoming did not respond to requests for feedback.