

Background

Much of the deep-soil native habitats in eastern Washington have been converted to agriculture. A large portion of this land, particularly in the Columbia River Basin, is under irrigation. Additionally, some agricultural areas in western Washington are also irrigated. In many areas, the regional groundwater table is higher than it was before irrigation. Many wetlands have formed adjacent to irrigation conveyance systems and in low-lying areas where irrigation occurs. Some confusion exists as to whether these wetlands are considered "jurisdictional" – that is, whether they are regulated under federal, state, or local laws. This focus sheet explains how wetlands in irrigation areas are regulated under Washington state law. Applicable provisions of federal or local laws are not addressed by this document. *Consult with the U.S. Army Corps of Engineers for applicability of federal law and your local city or county planning department for applicability of local laws.*

Keep in mind: If a wetland falls under federal, state, or local regulation, it only means that the wetland is subject to the provisions of the law. This does not mean the wetland cannot be impacted – it simply means that the law applies and governs the proposed impact. In many cases, certain land use actions may be exempt from regulation or a wetland impact may be allowed under a permitting program.

Wetland Definition

The same definition of wetlands is used in the three state laws that regulate wetlands: the Growth Management Act, RCW 36.0A.030 (20); the Shoreline Management Act, RCW 90.58.030 2(h); and the Water Pollution Control Act, WAC 173-201A.020:

Wetlands means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

“Artificial” Wetlands

State law distinguishes between wetlands that are regulated as wetlands and those that are “artificial” wetlands. “Artificial” wetlands such as stormwater ponds and irrigation ditches may still be regulated by other state laws. Even if they are found to be “artificial” wetlands, they may be considered “waters of the state” and regulated as a surface water body under state water quality law (RCW 90.48 and WAC 173-201A). Different standards for protection may apply. Contact Ecology’s wetland staff for assistance (see More Information on page 3).

Basically, this definition means:

1. A wetland must have indicators of three features: water, plants, and soils. It must have enough water to support “water-loving” (hydrophytic) plants, so the water must be present during the growing season. The presence of water creates low-oxygen conditions that support hydrophytic plants and also creates specialized soil characteristics.
2. The definition also distinguishes between “natural” and “artificial” wetlands. The definition requires that if an irrigation induced wetland is to be considered artificial, and thus not subject to state regulation as a wetland, it must meet both of the following characteristics:
 - a. It was intentionally created; and
 - b. It is in a formerly non-wetland (upland) site.

Clarification of the terms “intentionally created” and “non-wetland”

The term “intentionally created,” and the examples given in the definition, require that the artificial wetland not be the result of an accident or an unexpected by-product of some other intentional act. Therefore, artificial wetlands are found where someone **intentionally** creates a water feature such as a ditch, pond, or canal. The only situation where an artificial wetland results from an **unintentional** action is when construction of a road (after July 1, 1990) inadvertently creates a new wetland.

The term “non-wetland” means an area where wetland characteristics are lacking, i.e., an upland area. Thus, if someone intentionally creates a new water feature, such as a ditch or pond, in an area that was already wetland, the new water feature is still regulated under state law as a wetland.

In irrigated agricultural areas, wetlands can result from localized conditions (e.g., a leaking irrigation ditch) or as a result of a region-wide rise in groundwater resulting from regional irrigation projects. These types of wetlands are regulated by state wetland law and cannot be filled or drained without appropriate mitigation. However, if the irrigation practices are changed (such as moving irrigation away from a particular field for a year or two, or water conservation practices are implemented), and the wetland dries up and no longer performs wetland functions, then no mitigation is required.

Examples

The following examples may help illustrate how the wetland definition applies to artificial wetlands in real-world situations.

1. **A ranch pond was built to supply water to livestock on a dry hillside and wetland conditions form over time.** Clearly, the pond meets both criteria for being an artificial wetland, as it was an intentionally created water feature in an upland site.
2. **Wetland vegetation is found along the inside edge or bottom of an irrigation canal.** The canal is an intentionally created water feature. If the canal was dug through uplands, then the wetland within the canal is not regulated as a wetland. If the canal was dug through an existing wetland, then the wetlands within the canal are subject to regulation.

3. **A wetland is found down-gradient of a leaking irrigation canal or pipe.** The wetland is subject to regulation because it is an unintentional result of digging the canal. However, the canal (or a leaking irrigation pipe) can be repaired or lined to improve water conservation. If the wetland disappears as a result of the improvement, the loss of the wetland is not regulated. If wetland conditions persist, then it cannot be further altered without a permit.
4. **A wetland is found within a field that is irrigated.** The wetland is subject to regulation because it was not intentionally created. Although filling the wetland would be regulated, changes in irrigation practices (such as going from flood to drip irrigation) that would dry up the wetland would not be regulated.
5. **A wetland is found in a field that is not irrigated, but irrigation water from a field higher up has raised the groundwater table.** The wetland is subject to regulation because it was not intentionally created as part of a water feature.
6. **Wetland indicators (water, plants and soils) are found within a stormwater pond.** The wetland is not subject to regulation as a wetland if the stormwater pond was created in an upland area. However, if the stormwater pond is created within a wetland, then it is subject to regulation.

These examples are intended to provide a general idea of how state regulations apply to wetlands in irrigated agricultural areas. Landowners and applicants are encouraged to contact Ecology's regional wetland staff for assistance in determining how state wetland law applies to their situation (see More Information below).

More Information

Ecology will post up-to-date information on this topic on the Irrigation-Influenced Wetlands web page: <http://www.ecy.wa.gov/programs/sea/wetlands/irrigation.html>.

For information on how state law addresses isolated wetlands, see Ecology Publication # 01-06-020 (<http://www.ecy.wa.gov/biblio/0106020.html>).

For more information or assistance in determining state authority to regulate wetlands, contact the regional wetlands specialist for the county in which the wetland is located: <http://ecy.wa.gov/programs/sea/wetlands/contacts.html>.

Special accommodations:

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