



Designated Uses

Edmundo Hernandez

Pechanga Band of Luiseno Indians





Agenda

This presentation will cover the basic components of Designated uses

- Where to start
- Example
- Working with States





Why are DU Important?

- Establish water quality goals and communicate these goals to the public (e.g. tribal members, nontribal community, etc.).





Where to Start?

- **Clean Water Act Section 101(a)(2)**
 - Aquatic Life and Recreation
- **Clean Water Act Section 303(c)**
 - Use and Value for Many Purposes
- **Existing Uses**
- **Subcategories**
- **Consider Downstream Uses**





CWA Section 101(a)(2) uses

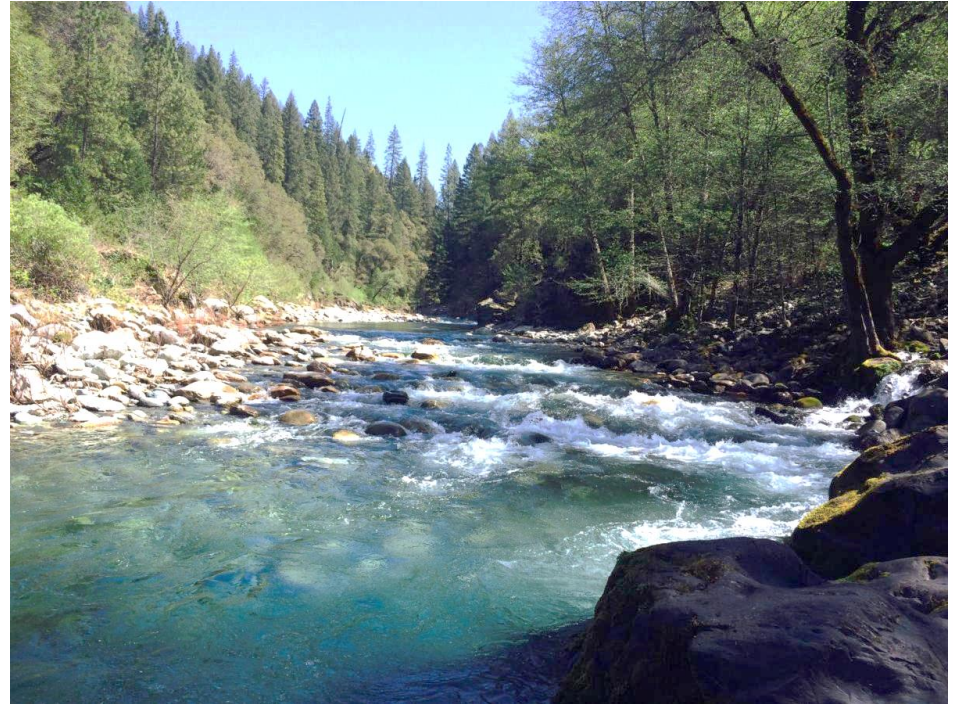
- Wherever attainable, water quality must provide for the protection and propagation of fish, shellfish and wildlife, and recreation in and on the water.





CWA SECTION 303(c)(2)(A) USES

- Public water supplies
- Protection and propagation of fish, shellfish, and wildlife
- Recreation
- Agriculture
- Industry
- Navigation





303(c)- Tribal Specific Use

Primary Contact Ceremonial Use

- For the purpose of protecting quality of water specifically for ceremonial, cultural, holistic, religious and traditional purposes for members of the Tribe. These include, but are not limited to, immersion, vaporization, or intentional/accidental ingestion.





Existing Uses

- Existing uses are uses that were "actually attained" in a water body on or after November 28, 1975. (40 CFR 131.3(e)).
- “Actually attained” means
 - Use has occurred and
 - Water quality has been sufficient to support use.





Existing Uses

Determining existing uses that have been actually attained may involve evaluating data on:

- Historical/current water quality.
- Historical/current biological condition.
- Pattern, frequency, and type of use.





Existing Uses- Challenges

Establishing uses were "actually attained" for tribal waters may be difficult because:

- Historical water quality data might not exist.
- Historical biological conditions may have been altered due to off Reservation land uses (e.g. water diversions, dams, etc.).
- Concerns over confidential information.





Designated Use Subcategories

- A Tribe can adopt subcategories (and/or seasonal classifications) to further refine designated uses.
- Subcategories and seasonal uses are often used because determining water quality criteria to appropriately protect waters with broad use categories can be difficult.





Subcategories Example

Recreational uses are often divided into two subcategories:

- **Primary Contact.** Protects people from illness due to immersion in water. All activities where ingestion is likely, such as swimming and surfing.
- **Secondary Contact.** Protects people when engaging in activities where ingestion is unlikely, such as boating and wading.





Consider Downstream Uses

- When designating uses remember to take into consideration the water quality standards of downstream waters
- 40 CFR 131.10(b)) requires States and Tribes to ensure the designated use and its corresponding water quality criteria provide for the attainment and maintenance of the water quality standards of downstream waters.





Example

Step 1: Identify the water body

- Black Oak Creek

Step 2: CWA 101(a)(2) uses

- Yes, no UAA is necessary

Step 3: Section 303(c) uses

- Public water supplies
- Recreation





Example Continued

Step 4: Are there Existing Uses?

Yes, Cold Freshwater Habitat

Step 5: Are Subcategories necessary?

- Yes, Primary Contact and Secondary Contact

Step 6: Do the DU protect downstream uses?

- Yes, downstream uses are Irrigation and Secondary Contact





Working with States

State's Triennial Review

- Know when the state's triennial review of their WQS begins. Early involvement is important.
- States are still learning how to conduct consultation. States often only send consultation letters to leadership.
- Most states have long triennial review periods. It's a marathon not a sprint.





Questions?

Contact Information:

Edmundo Hernandez, Pechanga Band of Luiseno Indians

ehernandez@Pechanga-nsn.gov , (951) 770-6150

