

Tribal WQS Academy

Use Revisions





Disclaimer

- This Presentation does not:
 - Impose any binding requirements
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 - Change or substitute for any statutory provision or regulation requirement
 - Represent, change or substitute for any Agency policy or guidance
 - Control in any case of conflict between this discussion and statute, regulation, policy, or guidance

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Part 2 of 2 - Revising Uses





OUTLINE

- What is a UAA
- When is a UAA Required
- When is a UAA Not Required
- How to Revise a 101(a)(2) Use
 - The Six 131.10(g) Factors
 - Highest Attainable Use (HAU)
- How to Revise a non-101(a)(2) Use
 - Use/Value Demonstration
- Existing Uses

DARN, WE MIGHT AS
WELL GO HOME

WARNING
FISH IN THIS
LAKE CONTAIN
MERCURY





Can Designated Uses be Revised?

- Yes! Uses can be revised to reflect:
 - **More specific** desired condition (e.g., aquatic life use to cold water- or warm water-aquatic life use).
 - Clearer articulation of the **attainable** use (e.g. primary vs secondary- contact recreation use).
- Revising designated uses can lead to more effective criteria, permits, TMDLs.

Primary/Secondary Recreation Uses





Required Rationale to Revise a Use?

This depends on the use type:

- 101(a)(2) uses, and subcategories of such uses are held to a higher bar such that a use attainability analysis (UAA) is required before removing the use.
- Non 101(a)(2) uses - use/value demonstration, but a UAA would also be acceptable.

UAAs and use/value demonstration provide the required rationale when adopting revised WQS



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What is a UAA?

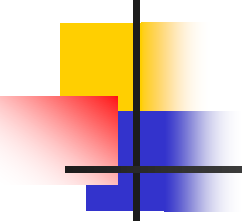
What is a UAA?

“Structured scientific assessment of the physical, chemical, biological, and economic factors affecting the attainment of the use.



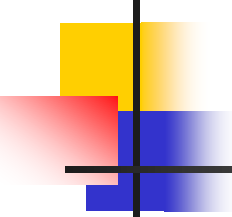
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When is a UAA Required (131.10(j))

- Designating uses for the first time that do NOT include uses specified in CWA 101(a)(2).
- Removing a 101(a)(2) use, or subcategory of such a use, or adopting a subcategory of such a use with less stringent criteria.



When is a UAA Not Required (131.10(k))

- Designating the uses specified in CWA 101(a)(2) for the first time.
- Designating a subcategory of a 101(a)(2) use that requires criteria at least as stringent as previously applicable.
- Removing or revising non 101(a)(2) uses. However, must justify how consideration of the use and value of such uses supports the action (i.e., “Use and Value” Demonstration)



Knowledge Check

- State Adventure currently has designated an aquatic life use. It would like to adopt uses that provide a more accurate reflection of the attainable uses in the waterbody. The current zinc criterion to protect the aquatic life use is 2 mg/L.
 - If the state wishes to adopt a “zinc-limited aquatic life use” with a criterion of 5 mg/L for Lake A-**Is a UAA required?**
 - If the state wishes to adopt a “high quality zinc aquatic life use” for Lake B with a criterion of 1 mg/L-**Is a UAA required?**



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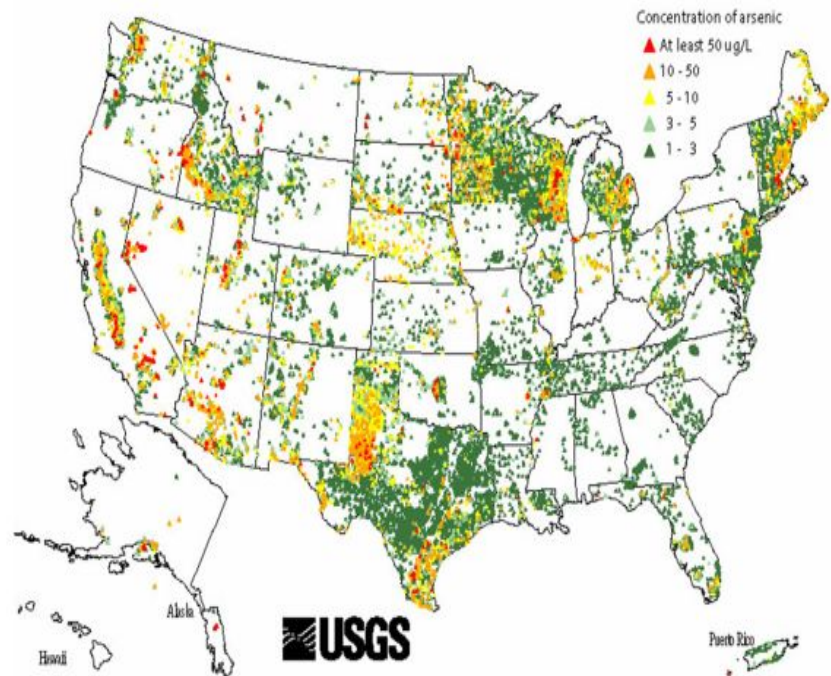


UAA Requirements

- EPA specifies 6 factors to demonstrate that a use is not attainable.
 - “131.10(g) factors.”
- A UAA must demonstrate that one of these factors precludes attainment of the use.

The “131.10(g) Factors”

1. **Naturally occurring** pollutant concentrations prevent the attainment of the use.



The “131.10(g) Factors” (cont’d)

2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.



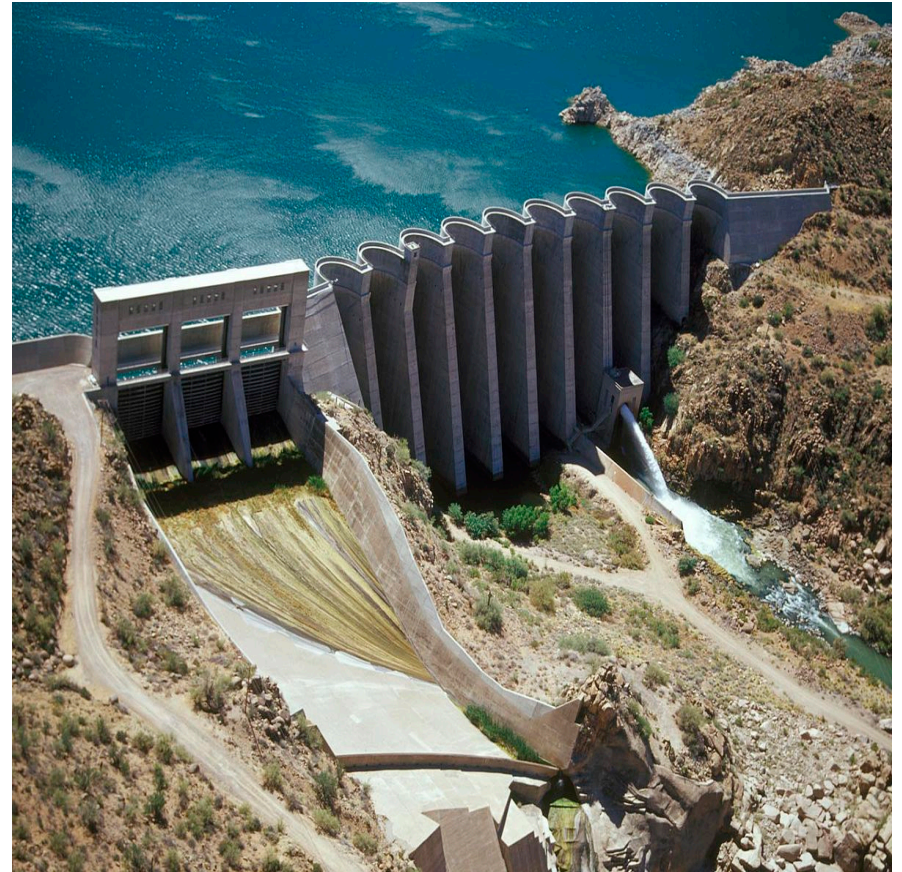
The “131.10(g) Factors” (cont’d)

3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.



“The 131.10(g) Factors” (cont’d)

4. Dams, diversions, or other types of **hydrologic modifications** preclude the attainment of the use and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use.



The “131.10(g) Factors” (cont’d)

5. Physical conditions related to the natural features of the water body such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, **preclude attainment of aquatic life protection uses.**



The “131.10(g) Factors” (cont’d)

6. Controls more stringent than those required by sections 301(b) and 306 of the Act would result in **substantial and widespread economic and social impact.**






Highest Attainable Use (HAU)

After completing a required UAA a state/authorized tribe must adopt the HAU and the criteria to protect the HAU.

- HAU: The **modified** aquatic life, wildlife, or recreation use that is **both closest to the 101(a)(2) use and attainable**, based on the evaluation of the factor(s) in § 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability.”



HAU is the attainable use that results from the process of determining what is not attainable

Example:

- State or authorized tribe demonstrates that a use cannot be attained due to natural background Se concentrations (§131.10(g)(1));
- State or authorized tribe determines the HAU by considering the “**best use**” that can be attained despite the impact of natural background Se concentrations. One option would be to describe the HAU as a “Se-limited aquatic life use”.



HAU is the **modified** aquatic life or recreation use

- **Example:**

- State or authorized tribe demonstrates through a UAA that the warm water aquatic life use is not attainable;
- HAU would be a modified version of the warm water aquatic life use that is attainable and closest to the 101(a)(2) uses, such as a “limited warm water aquatic life use.”



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Non 101(a)(2) Uses

- States/authorized tribes are required to take into consideration the “use and value” of water for public water supplies, propagation of fish, shellfish and wildlife, recreation, and agricultural, industrial and other purposes.
- UAAs required for uses related to protection/propagation of fish, shellfish, and wildlife, recreation in and on the water.
- A “use and value” demonstration is required for uses NOT related to protection/propagation of fish, shellfish, and wildlife, recreation in and on the water.



Use and Value Demonstration

- Examples of what to consider :
 - Relevant descriptive information.
 - Attainability information.
 - Value and/or benefits associated with either retaining or removing the use.
 - Impacts of the use removal on other designated uses.



When Can Uses **NOT** be Removed?

States or authorized tribes may not remove designated uses (40CFR 131.10(h)), if:

- 1. They are **existing uses**...unless a use requiring more stringent criteria is added.*
- 2. Such uses will be attained by implementing effluent limits...and by implementing cost-effective and reasonable best management practices for non point source control.*



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What are Existing Uses?

- Those uses actually attained in a waterbody on or after November 28, 1975, whether or not they are included in the WQS.
- Existing uses serve as a baseline or “floor” of water quality, below which we don’t want to drop.



How Do you Determine the Existing Use?

Existing uses are not typically identified in a state's WQS. *So, how do you determine if a use is existing?*

1. Site-specific determination.
2. Clear data showing the extent to which water quality since 1975 has been attained to support a use that actually occurred in the water.
3. Where data on uses attained and/or water quality are limited, insufficient or inconclusive, evaluate the quantity, quality, and reliability of the available data to determine EU.



Difference Between Existing Uses and Designated Uses?

- Designated uses focus on the attainable goal/condition **that may not yet be attained.**
- Existing uses focus on the past or present condition **actually attained.**



Key Messages–UAAAs

- Use revisions can reflect more accurate depictions of uses for a waterbody and allow for a clearer articulation of the attainable use with more effective criteria.

- States/authorized tribes may not remove designated uses if:
 1. *They are existing uses...unless a use requiring more stringent criteria is added.*

 1. *Such uses will be attained by implementing effluent limits...and by implementing cost-effective and reasonable best management practices for non point source control.*



Key Messages–UAAs (cont'd)

- **101(a)(2)** uses or subcategories of such uses may be revised or removed once a UAA is conducted, and EPA approves the resulting use change.
- When adopting a new or revised WQS based on a UAA, states/authorized tribes shall adopt the **HAU**.
- **Non 101(a)(2)** uses may be revised or removed once a use/value demonstration or a UAA is conducted, and EPA approves the resulting use change.
- States/authorized tribes should engage early and often with EPA when developing a UAA.



Questions?

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