



Regulatory Implementation of a WQS Program

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Ways To Protect Tribal Waters (CWA WQS Program)

- Water quality standards (WQS) provide the regulatory and scientific foundation for protecting water quality under the Clean Water Act (CWA). WQS not only set water quality goals for a tribe's water bodies, but also serve as the regulatory basis for establishing water quality-based treatment controls and strategies. To administer a WQS program under the CWA, a tribe must apply to EPA for authorization to be treated in a similar manner as a state (TAS).
- Tribal WQS can be MORE protective than federal water quality criteria, and can be customized to meet the specific needs of the Tribe.

Ways To Protect Tribal Waters (401 Certification)

- Under Section 401 of the Clean Water Act (CWA), any activity requiring a federal license or permit that might result in a discharge to jurisdictional waters (which include many wetlands) must also receive a certification ensuring the permit or license will protect water quality. The certifying authority can either grant, deny, or condition a certification, or determine that a certification isn't needed (a waiver).
- 401 certification is not its own permit action.

Ways to Protect Tribal Waters (NPDES Permits)

- The CWA authorizes EPA to treat tribes as states for the following specific purposes: grants; water quality standards; clean lakes; nonpoint source management; certification; the national pollutant discharge elimination system (NPDES); and regulating the discharge of dredged or fill material into waters of the United States (the § 404 program). EPA has not treated the CWA's list as exhaustive.
- Section 402 of the CWA requires that a discharge of any pollutant or combination of pollutants to surface waters that are deemed waters of the United States (WOTUS) be regulated by a NPDES Permit.
- Currently No Tribes have TAS for NPDES.
- The Navajo Nation and The Dry Creek Rancheria Band of Pomo Indians have expressed interest in obtaining TAS for NPDES.
- Currently there are 42 Tribal NPDES Permits issued by EPA Region 9.

Implementing Tribal WQS in NPDES Permits

- **Developing, Reviewing, and Approving NPDES Permits on Tribal Land**
- **What Standards Apply?**
 - Tribal Standards
 - Downstream State Standards
 - Other Standards
- **Priority Pollutant Scan**
- **Reasonable Potential Analysis**
- **How are Limits / Permit Conditions Set?**
 - TBELs
 - WQBELs
 - Narrative Limits
- **Whole Effluent Toxicity (WET) Limits**
 - CA Toxicity Provisions
- **Antidegradation / Protection & Maintenance of Tribal Water Quality**

Implementing Tribal WQS in NPDES Permits

- **Pretreatment and Biosolids**
- **Monitoring and Reporting**
- **Special Conditions and Standard Conditions**
- **Post Permitting issues**
 - Modifications
 - Compliance
 - Inspections

NPDES Case Studies

How Tribal WQS are implemented in NPDES Permits



1. Shiprock WWTF

Receiving Water: San Juan River
Discharge Volume/Type: 1.0 MGD / Secondary
WQS used/ 401 Cert: NNWQS / Navajo

2. Low Threat General Permit

Receiving Water: WOTUS in Navajo
Discharge Volume/Type: < 0.05-0.5 MGD/Varies
WQS used/401 Cert: NNWQS / Navajo

3. Upper Village of Moenkopi WWTF

Receiving Water: Moenkopi Wash
Discharge Volume/Type: 0.185 MGD / Tertiary
WQS used/401 Cert: Hopi & AZ / Hopi



WQS program implementation case study

Christopher Ott, PE
**Dry Creek Rancheria Band of Pomo
Indians**





Agenda

- **401 Certification Requests from Third Parties**
- **Example of Certification**
- **Tribal Project Self Certification Example**





401 Certification Requests

- Usually come by US Postal service to the Tribe
- Require rapid assessment of relevancy
- Tribe must become “expert” quickly

Executive Order on Promoting Energy Infrastructure and Economic Growth (New EPA rule)

- timeframe for certification (federal agencies determine the “reasonable” period of time)
- certification decision must be based on specific discharges not on the water quality effects of the activity as a whole
- restricts the conditions that states and tribes may impose, limiting them to point source discharges





Dry Creek 401 Certification Example

RESPONSE TO 2020 USACE NWP CERTIFICATION REQUESTS

Date: December 15, 2020
Permits Affected: 2020 Army Corps of Engineers Nationwide
Applicant: Department of Army, Corps of Engineers
Contact: San Francisco District

CERTIFICATION DECISIONS:

A. Permits Certified

Dry Creek certifies the following NWPs: 5, 6, 13, 20, 22, 24, 27, 30, 32, 37, 38.

Dry Creek has determined that discharges from the foregoing proposed permits will comply with water quality requirements.

B. Permits Denied

Dry Creek denies certification for the following NWPs: 3, 4, 7, 12, 14, 16, 18, 19, 21, 23, 25, 29, 31, 33, 34, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, C, D

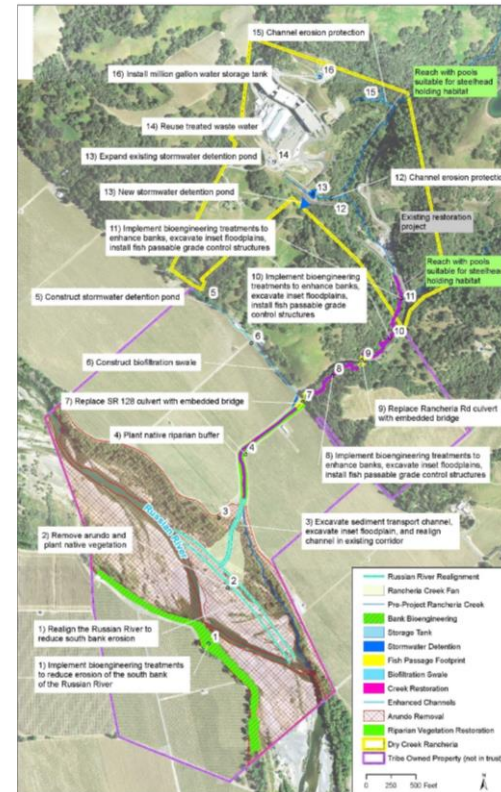
C. Bases for Denial





Dry Creek Rancheria Stream Flow Enhancement and Restoration Project

- 16 restoration actions on Rancheria Creek and the Russian River
- Project spanned trust and fee lands
- Multiple State and Federal Jurisdictions involved as project spanned trust and fee land





Permitting Process

- US Army Corps of Engineers took the permitting lead
- Section 401 of the Clean Water Act (CWA)
 - Discharge into the waters of the US
- In cases where a state or tribe does not have authority, EPA is responsible for issuing certification
- Projects that span both trust and fee lands are a gray area for permits in general 401 certification was no different.





Dry Creek Rancheria Project

- Project spanned fee and trust property
 - Caused regulatory uncertainty over who had or could have jurisdiction
- State Water Resource Control Board
 - Deferred to the EPA
- EPA
 - Deferred to Dry Creek Rancheria
- Dry Creek Rancheria
 - Issued the 401 certification for the whole project.
 - All that only took a lifetime (just kidding)





Questions?

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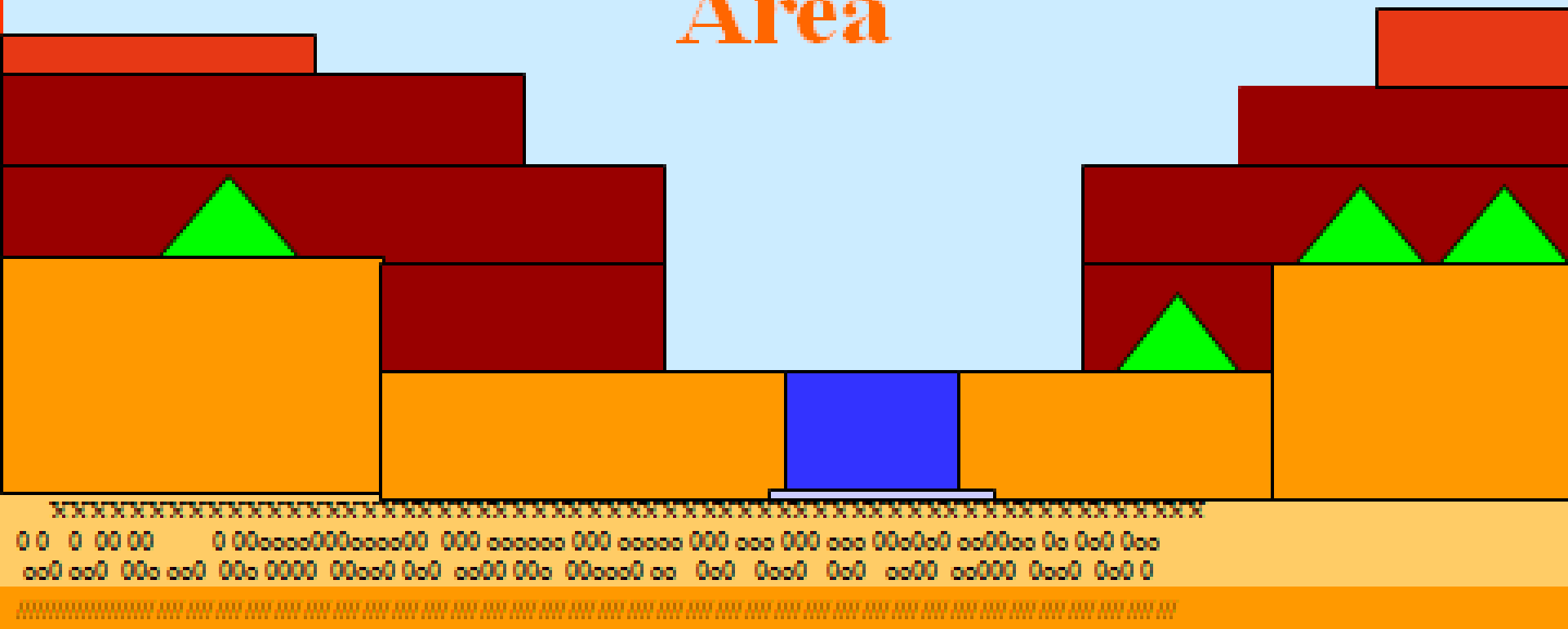
Hualapai Water Resources Program

Alvin Crook, Acting Water Resource Manager
Lanny Siyuja, Air/Water/GIS Technician
Jalen Walker, Water/Air Technician





Groundwater Protection Area



**Non Permitted Activities
Prohibited**

**Illegal Activities Call
Hualapai Water Resources (928) 769-2254**



















Resources and References

- NPDES Permit Writers' Manual: <https://www.epa.gov/npdes/npdes-permit-writers-manual>
- Shiprock Permit/FS: <https://www.epa.gov/npdes-permits/ntua-shiprock-wastewater-treatment-facility-shiprock-nm-nn0020621>
- Low Threat General Permit/FS: <https://www.epa.gov/npdes-permits/general-permit-low-threat-discharge-navajo-nation-nng990001>
- Upper Village of Moenkopi Permit/FS: <https://www.epa.gov/npdes-permits/upper-village-moenkopi-wwtf-arizona-az0024619>
- CA Toxicity Implementation Policy: https://www.waterboards.ca.gov/water_issues/programs/state_implementation_policy/tx_ass_cntrl.html
- Proposal to Reissue and Modify Nationwide Permits <https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>

