



Water Quality Standards Development and Review

Region 9 Tribal Water Quality Standards Academy

Disclaimer

- This presentation does not:
 - Impose any binding requirements
 - Determine the obligations of the regulated community
 - 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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What We'll Discuss...

- State/Territory/Tribe WQS Review and Revision Process
 - Public Participation
 - Minimum Requirements for WQS Packages
- EPA's Review of a State or Authorized Tribe's WQS
 - Actions if a State or Authorized Tribe's WQS Do Not Meet CWA Requirements

WQS Liaisons at EPA R9 - Who do you Call?

WQ Standards and Assessment Section

Tina Yin, Manager

Matt Bolt

Debra Denton

Eric Dubinsky

Diane Fleck

Terry Fleming, WQS Coordinator

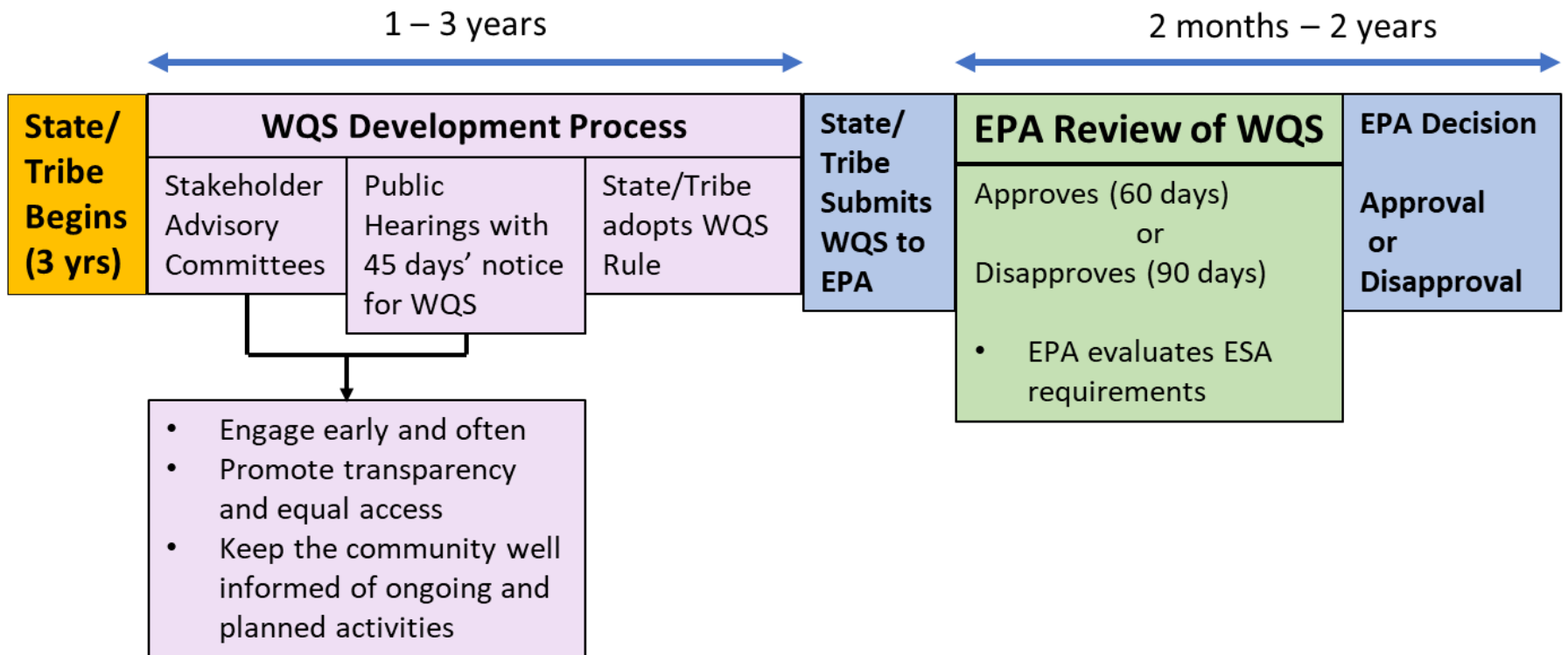
Dave Guiliano

Matt Mitchell

Suesan Saucerman

Hot Tip!
Your Tribal
Grant Project
Officer is
Always here to
Help

Hot Tip!
Terry Fleming is
the R9 WQS
Coordinator. He
Can Help you
get started.



Water Quality Standards Development/Review Process

Triennial Review

- At least once every 3 years, states, territories, and authorized tribes must conduct a triennial review.
 - Hold a public hearing with at least 45 days' notice for the purpose of reviewing applicable WQS [CWA 303(c)(1); 40 CFR 131.20].
 - Separate public hearing with 45 days' notice required if/when revising or adopting WQS.
 - Re-examine and revise, as appropriate, any segments with uses less than 101(a).
 - Provide an explanation if not adopting criteria for pollutants for which EPA has published new or updated 304(a) recommendations.
 - Submit review results and supporting analyses to the EPA Regional Administrator.

WQS Development & Review

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Public Participation

40 CFR § 25.3(b)

- “Public participation is that part of the decision-making process through which responsible officials **become aware of public attitudes** by providing **ample opportunity for interested and affected parties to communicate their views.**”
- It includes:
 - Seeking input and dialogue with the public.
 - Assimilating public views and preferences.
 - Providing access to decision-making processes.
 - Demonstrating that public views have been considered.

Early and Meaningful Involvement

- **Identify** community stakeholders (those affected, influenced or concerned).
- **Encourage** and enable community members to get involved.
- **Listen carefully** to what the community is saying.
- **Take the time** needed to deal with community concerns.
- **Change** planned actions where community comments or concerns have merit.
- **Keep the community well informed** of ongoing and planned activities.
- **Promote transparency** and explain to the community what has been done and why.
- **Develop communication strategy** to encompass the above metrics
- Example Resources
 - The National Environmental Justice Advisory Council's Model Plan for Public Participation (2013)
 - EPA Superfund Community Involvement Toolkit

Specific Public Participation Requirements for New & Revised WQS

- 40 CFR § 131.20 requires public hearing:
 - In accordance with public hearing requirements at 40 CFR part 25 and state or tribal law.
 - Before the hearing, agency makes available:
 - Proposed WQS.
 - Supporting analyses/background information.
- **Same minimum requirements** apply to adopting new WQS and to *WQS revisions*.

Minimum Requirements for Public Hearings Under 40 CFR 25.5

- **Notice:**
 - “Well publicized” and mailed to interested/affected parties at least 45 days before the hearing (or 30 days if no substantial documents to be reviewed for effective participation, nor complex or controversial matters to be addressed by the hearing).
 - Identifies topics and list of relevant materials.
- **Location and time:**
 - Facilitates attendance by the public (e.g., accessible by public transportation, evening and weekend hearings, online participation).
- **Testimony:**
 - Both scheduled and unscheduled.
- **Conduct of hearing:**
 - Provide information regarding issues/decisions, information needed from public.
 - Consider Q&A. “Procedures shall not unduly inhibit free expression of views.”
- **Record:**
 - Transcript or recording of proceedings at no more than cost.

Other Tools for Public Participation

40 CFR Part 25 also specifies:

- **Informational Repositories:** Keeping central collection of rule docs.
- **Mailing Lists:** Maintaining a list of interested parties.
- **Public Notification:** Notifying interested/affected parties of: timetable, issue, applicable laws and participation opportunities.
- **Public Meetings:** Holding informational sessions with no formal presentation or record of proceedings.
- **Response to Comments:** Summarizing public's views (including significant comments, criticisms and suggestions) and describe responses or modifications of rule based on input.

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Minimum Requirements for WQS Submissions to EPA

Whenever a state or tribe submits new or revised WQS, the submission will include one or more of the following:

Use designations

- Consistent with 101(a)(2) and/or supported by UAA.

Criteria

- Sufficient to protect designated uses and based on sound science.

Antidegradation requirements

- Consistent with 40 CFR 131.12.

If applicable: General Policies

- Mixing Zones (131.13), Variances (131.14), Compliance Schedule Authorizing Provisions (131.15).

Minimum Requirements for WQS Submissions to EPA: Supporting Information

- **Methods used and analyses** conducted to support the WQS provisions.
- **Certification by the tribal legal authority**, attorney general, or other appropriate legal authority within the state or tribe that the WQS were duly adopted pursuant to state or tribal law.
- **General information/Justification** to aid the EPA in determining the adequacy of the scientific bases of the WQS that do not include the uses specified in Section 101(a)(2) as well as information on general policies applicable to state and tribal WQS that may affect their application and implementation.

Model WQS Template for Waters on Indian Reservations

Hot Tip!
**Always Start
with the
Template!**



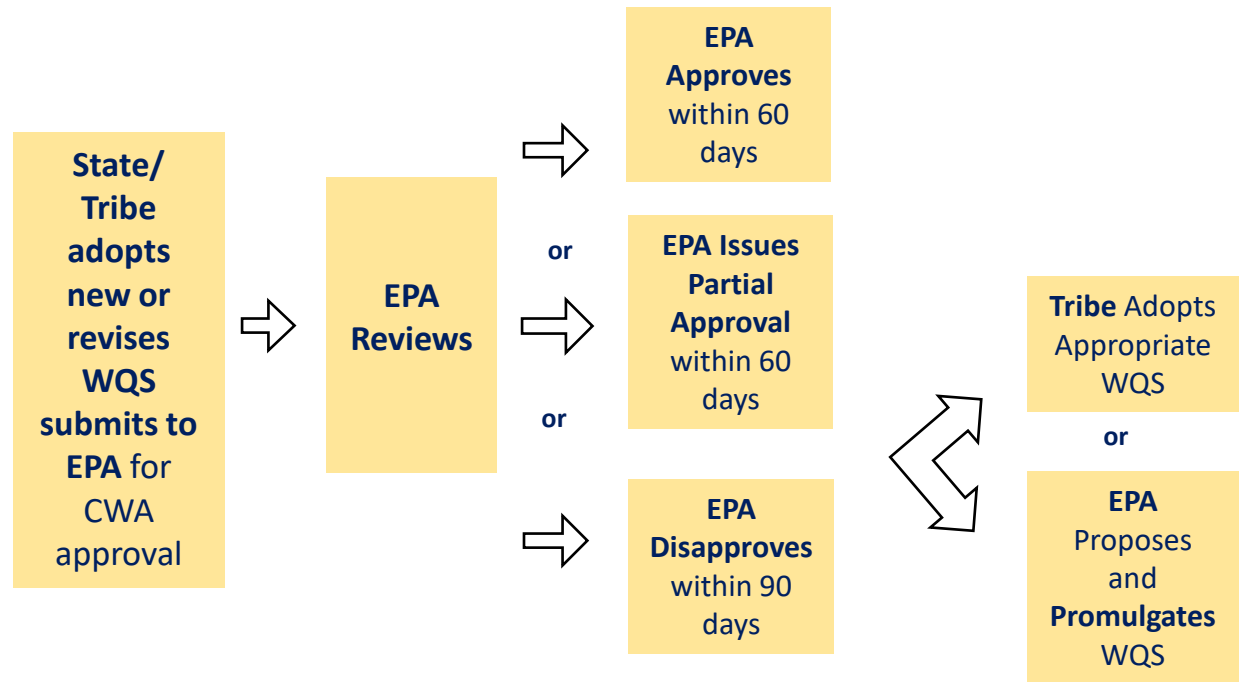
Table of Contents:

- a. Waters of the reservation
- b. Definitions
- c. Designated Uses
- d. Narrative water quality criteria
- e. Numeric water quality criteria
- f. Antidegradation policy
- g. Antidegradation implementation methods*
- h. Mixing Zone Policy
- i. Compliance Schedule Authorization Provision*
- j. WQS Variance Authorizing Provision*

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EPA Review and Action (40 CFR 131.21)



Hot Tip!
Meeting these timelines is only possible if we have strong early engagement throughout the development process

EPA's Two Key Questions for Approval / Disapproval Decisions

1. Is this a new or revised WQS under CWA 303(c)(3) upon which EPA must act?

Four-part test¹:

1. Is it legally binding?
 2. Does it address uses, criteria, and/or antidegradation?
 3. Does it establish desired condition or instream level of protection?
 4. Is it new or revised?
2. Do the submitted standards meet the requirements of the Act and the implementing regulations at 40 CFR 131?

¹ <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>

EPA's Review: "Do the submitted standards meet the Requirements of the CWA and EPA's Implementation Regulations?"

- Designated Uses = Fishable/ Swimmable
- Criteria protective of uses + based on sound science
- Antidegradation policy + implementation methods
- General implementation policies - Mixing zones, Compliance schedule authorizing provisions, Variances etc.
- Public Participation
- Completeness of package
 - Certification Statement: WQS were duly adopted pursuant to tribal law.
 - Strikeout version – for revisions

Hot Tip!
WQS Liaisons
Should know
before you
submit

Hot Tip!
EPA Starts
Early in
Process



Other EPA Legal Obligations Included in EPA WQS Review Process

- **Tribal Consultation**

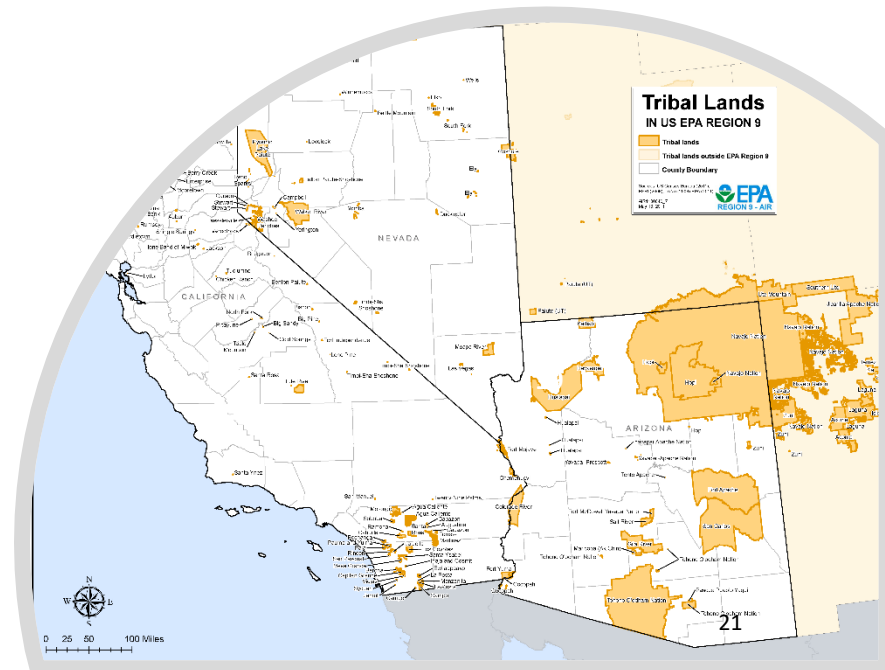
- EPA engages in Consultation with tribes that may be affected by WQS actions

- **Endangered Species Act (ESA)**

- 7(a)(2): Federal agencies shall “consult” with FWS/NMFS to ensure actions are not likely to jeopardize listed species or adversely modify designated critical habitats.

- **National Environmental Policy Act (NEPA) Requirements**

- None – Not required for WQS



Common Issues with WQS Packages

Colorado River Indian Tribes

- Not sharing early draft with EPA WQS liaison
- Not all waters have fishable/swimmable uses
- Standards not protective of use
- Missing scientific justification
- Downstream uses not Protected
- Missing antidegradation implementation method
- Not enough time for public notice and comment



When WQS are Applicable

- WQS submitted to EPA do not become the “applicable” WQS for CWA purposes until approved by EPA.
- Approved WQS remain the CWA-effective WQS until EPA approves revisions or promulgates more stringent replacement WQS.

Requirements for State Adoption / EPA Promulgation After **Disapproval**

- Authorized tribe or state must adopt the changes specified by EPA in disapproval letter within 90 days after notification of EPA's disapproval.
- Otherwise, EPA shall promptly propose and promulgate the changes specified by EPA.
- EPA has 90 days to finalize the promulgations.
- Reference: 40 CFR 131.22(a) and CWA section 303(c)(4)

What About Gaps in Existing WQS?

- EPA Administrator may make a determination that a new or revised standard is necessary to meet the requirements of the Act, which triggers duty to promptly propose and promulgate such WQS.
- The state or authorized tribe can forestall finalization of such an EPA rule by adopting a new or revised standard that EPA deems to be in accordance with CWA requirements before EPA promulgation.
- Reference: CWA 303(c)(4)(B)

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[EPA WQS Website](#)

- Regulations, Guidance, Requirements

[EPA WQS Tools for Tribes Website](#)

- Model WQS Template for Waters on Indian Reservations
- EPA 304(a) Criteria Tables and Human Health Criteria Calculator

• **Training and Reference Materials**

- [EPA WQS Handbook](#)
- [Water Quality Standards Academy](#)
- Tribal WQS Academy

• **Contacts**

- Tina Yin, Manager, R9 Water Standards and Assessment
(yin.christina@epa.gov)
- Terry Fleming, R9 WQS Coordinator
(fleming.terrence@epa.gov)

Resources

Salt River Pima Maricopa Tribe

Questions? Discussion

