



Triennial Reviews: A Panel

Tina Yin, U.S. EPA Region 9

Ken Norton, Hoopa Valley Tribe

Eric Rich, Navajo Nation EPA

Shawn Muir, Twenty-Nine Palms Band of Mission Indians





Agenda

This session provides an overview of the Triennial Review process and case studies from Tribal staff who have participated in this process at varying levels of capacity, and with different experiences and results.

Participants will learn the general process for conducting a Triennial Review and will be provided real-life examples.

Overview

- Tina Yin – U.S. EPA Region 9

Case studies

- Ken Norton – Hoopa Valley Tribe
- Eric Rich – Navajo Nation EPA
- Shawn Muir – Twenty-Nine Palms Band of Mission Indians

Panel Discussion & Questions

- Tina Yin – U.S. EPA Region 9





Triennial Reviews: Purpose and Requirements

40 CFR 131.20-21

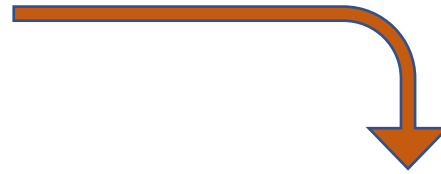
- At least every 3 years
- Public hearing (40 CFR 25.5)
- Explore need for new, modified or updated WQS
- Revisions submitted to EPA
 - OR - Letter to EPA if no revisions identified and why





Some TR Questions

- Are WQS consistent with EPA Regs and Recs?
- Are current WQS appropriate and protective of uses?
- Are new uses desired?
- Narrow or broad revisions?



• EPA Regulations

- <https://www.epa.gov/wqs-tech/federal-water-quality-standards-requirements>
- 2015 Updates

• EPA Recommended 304 (a) Criteria

- <https://www.epa.gov/wqc>





**Hoopa Valley Tribe's Triennial Review Experience
"A Narrow and Complex Process"**

Ken Norton
Hoopa Valley Tribe

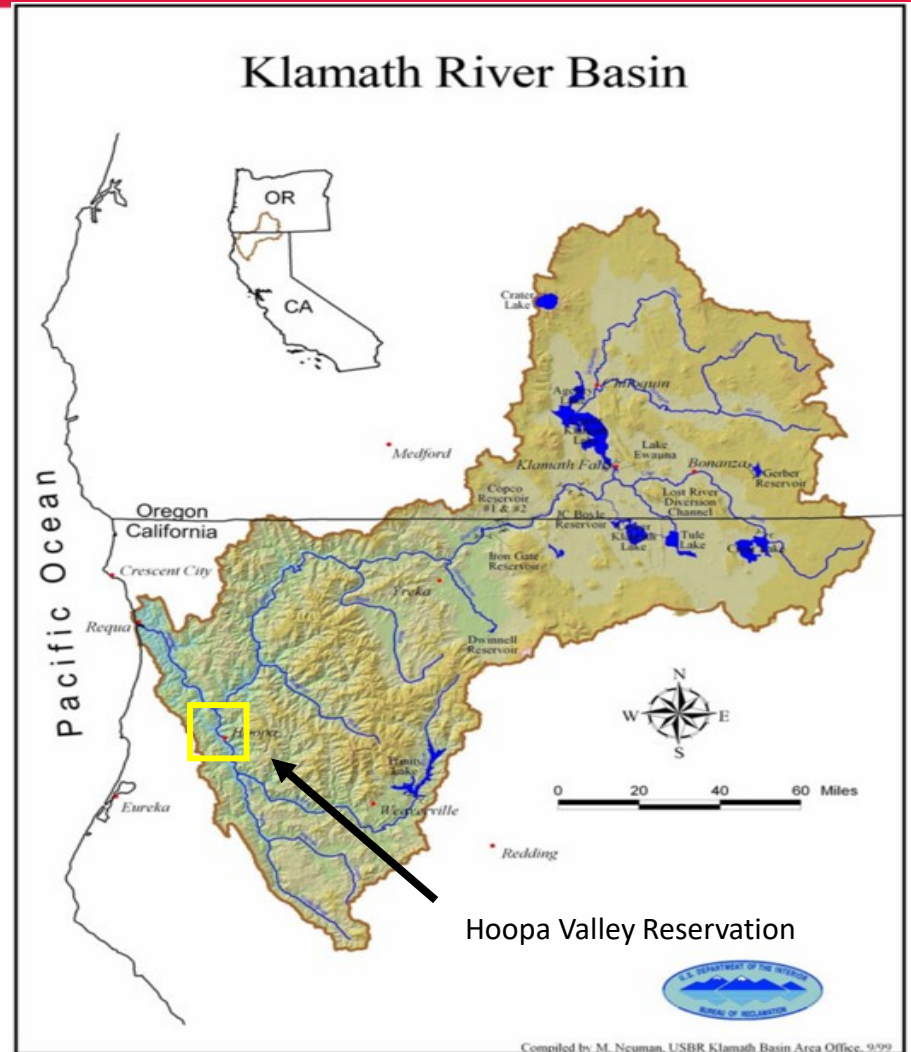




Background:

In 2012 EPA approved amendments to Hoopa's Water Quality Control Plan (WQCP) for several water quality parameters on the Klamath River. EPA's final approval of the parameters required a condition's clause.

EPA stated, "unless and until the Hoopa Valley Tribe completes the process of establishing **Natural Condition** reference for the approved criteria the stated numerical criteria would not be in effect."





This clause was based on EPA 's 2010 approval of the State of California's Total Maximum Daily Loads (TMDL) for the Klamath River.

California developed water quality simulation models for the TMDL that provided a methodology to generated reproducible natural conditions numbers for water quality criteria, including the criterion proposed by the Hoopa tribe.





The Hoopa Tribe's 2014 triennial review includes a process for establishing Natural Condition clauses for its Klamath River criterion.

Obtaining compatibility with the State's Klamath River TMDL will take six (6) years to complete.

- Hoopa recognized early that help was needed to review and evaluate the state's Klamath TMDL models.
- Utilized Klamath Basin Tribal Water Quality Consortium funding (*supported by GAP and CWA 106 funding*) to obtain professional services.
- In 2016, hired a consultant to develop "Staff Report – "Justification for Revisions Proposed to the Hoopa Tribe's WQCP".
 - Included Natural Condition clauses for the tribe's water quality parameters.





Hoopa's Natural Condition clauses were reviewed and approved by:

- Senior Tribal Attorney (Expensive)
- Internal Tribal Resource Departments
- California's Regional Water Quality Control Board





In **2019** Hoopa initiated a **public participation process** for the proposed amendments to the 2014 WQCP pursuant to 40 CFR §25.

- 45 days before conducting a hearing, Hoopa Tribe noticed the public of the hearing and where to review documents
 - Electronic Notice Submittals to Affected Entities
 - Local newspaper notifications

Held public hearing allowing for a minimum **45-day** public notification and comment period.





2019 - Formal submittal to EPA - Request for approval of amendments.

- *Because approval of the **Natural Condition clauses** was considered a “Federal action” under the Endangered Species Act, R9 EPA consulted with the U.S. Fish and Wildlife Service to ensure the approval will not jeopardize listed species or adversely modify designated critical habitat.*





On 5/29/2020 – EPA's R9 Administrator approved Hoopa's 2014 amendments to its WQCP.

Take away – Tribal Triennial Reviews can be complex, costly, and lengthy





WQS Triennial Review

Eric Rich, Navajo Nation EPA
Water Quality Program





Changes to Consider

- Change existing criteria
 - adopt from: federal recommended criteria, states, tribes, latest scientific studies
 - derive: from toxicological studies
 - new contaminants of concern
- New federal guidance –
 - antidegradation implementation
 - variances







Changes to Consider

- New water bodies
- New designated uses
- Flow types (ephemeral, intermittent, perennial)
- New language on background conditions, unique or protected waters
- Input from stakeholders









Changes to Consider

- New water quality standards for:
 - ground water and/or
 - reuse (not approved by USEPA)
- Any changes should stick to science and benefit your tribal community.





Triennial Review Process

- Draft document with proposed changes
 - underline new language
 - strikethrough old, deleted language
- Work with USEPA throughout process
- Work with legal counsel throughout process
- Public notice/public hearing
 - meet USEPA and tribal requirements





Triennial Review Process

- Response to public comments
 - response based on science
 - modify standards document as needed based on comments
 - draft new triennial review underline/strikethrough draft
 - coordinate with USEPA and legal counsel
- Prepare for council approval
 - legislative sponsor, information session (?)
 - get on council agenda / present to council
 - council approval, disapproval, modification / request for more information





Triennial Review Process

- Council approval without modifications
 - prepare final triennial review submittal package to USEPA
 - package includes: council approved version of standards (possible underline/strikethrough), public notice copy, response to public comments, cover letter from director, jurisdictional map / jurisdictional statement, and letter from legal counsel that standards promulgated according to tribal rulemaking process.





Triennial Review Process

- Council disapproval, modifications / more information request
 - inform USEPA of status
 - resolve issues with council
 - new underline / strikethrough draft may be required.
 - issues resolved, submit package to USEPA as above
- Lawsuits are always possible after council approval
 - avoid by working with all interested parties early on during public comment period





Triennial Review Process

- Once approved by tribal council, standards should be legally in effect for tribe (ordinances, etc)
- Standards are not in effect for federal Clean Water Act permits until USEPA approval







Twenty-Nine Palms Triennial Review

Shawn Muir, Director of Tribal Programs

Twenty-Nine Palms Band of Mission Indians





History

1997: Tribal EPA Established

Began long-term surface water monitoring program

2006: Tribe received Treatment in a similar manner As States (TAS) from the United States Environmental Protection Agency (USEPA) Region IX under Section 303(c) and 401 of the Clean Water Act

2015: Tribal Council and US EPA approved the Tribal Water Quality Standards (TWQS)

Standards are currently being implemented for ambient monitoring and projects which may impact Tribal Water Resources.





Whitewater River





Whitewater River





Whitewater River





Twenty-Nine Palms Band of Mission Indians

Tribal Water Quality Standards –
Presentation to Tribal Council

Purpose:

- Exercise tribal sovereignty to protect natural resources
- Identify important cultural, community, and recreational uses of Tribal water resources (beneficial uses)
- Establish criteria to protect beneficial uses
- Anti-degradation clause and 401 certification program to protect existing uses





Twenty-Nine Palms Band of Mission Indians

Tribal Water Quality Standards

Water Quality Standards **Criteria** and **Beneficial Uses**

The Goal of water quality standards criteria is to protect beneficial uses, and protect the most sensitive designated use.

Beneficial Use: Groundwater Recharge, Agricultural Supply, Culturally Significant, Wildlife and livestock habitat, etc.

WQS Criteria:

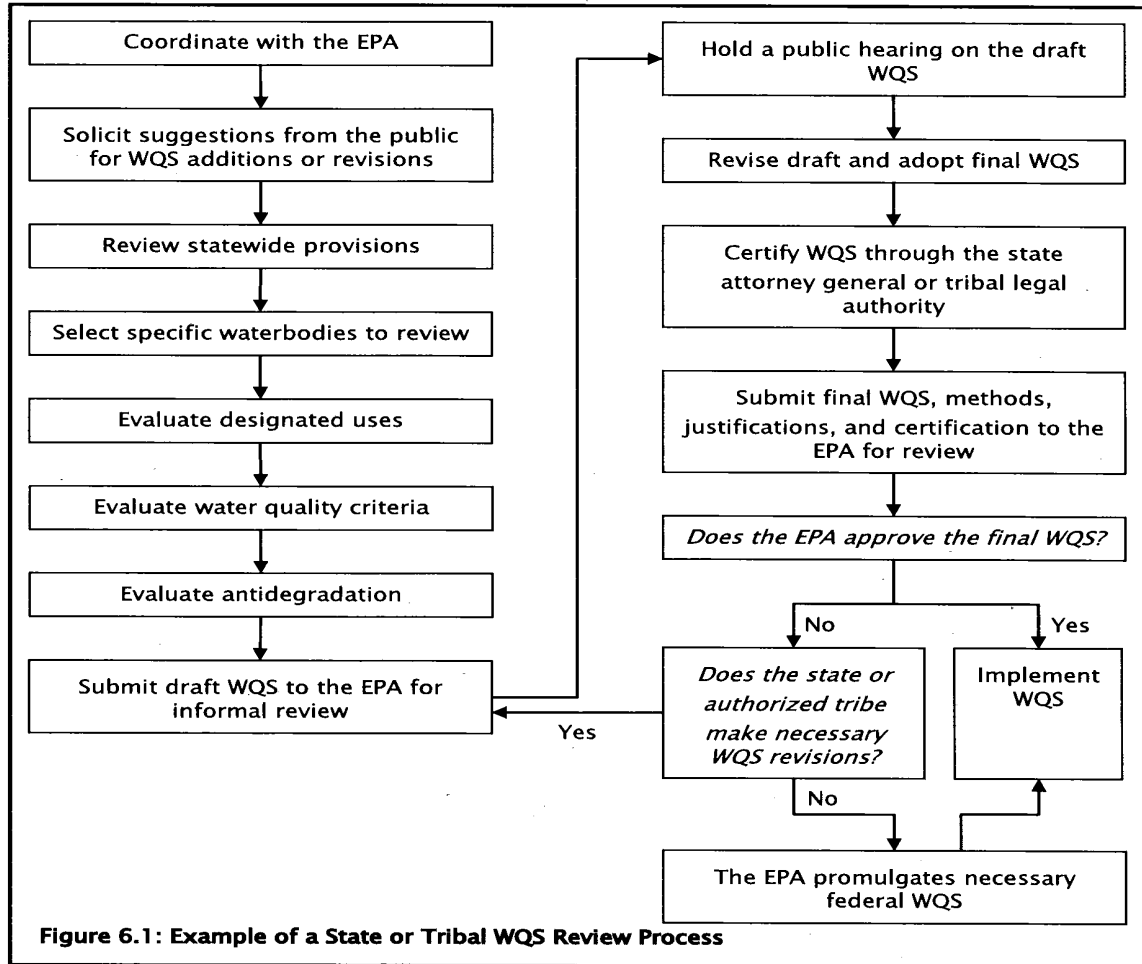
Numeric: pH shall range from 6.5-9.0

Narrative: Aesthetic, *“All waters shall be free from substances attributable to wastewater of domestic or industrial origin or other discharges which adversely affect designated uses”*





Figure 6.1 displays an example of a state or tribal WQS review process.





**PROOF OF PUBLICATION
(2015.5 C.C.P)**

This space is for the County Clerk' Filing Stamp

Twenty-Nine Palms Band of Mission Indians

Triennial Review Process – Notice of Public Hearing published 6/27/2019 and 7/4/2019

STATE OF CALIFORNIA
County of San Bernardino

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of the:

THE DESERT TRAIL

a newspaper of general circulation, printed and published WEEKLY in the City of TWENTYNINE PALMS County of San Bernardino, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Bernardino, State of California,

under the date of November 11, 1938.

Case Number 43099: that the notice, of which the annexed is printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in supplement thereof on the following date(s), to-wit:

06/27, 07/04
in the year 2019

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date at: TWENTYNINE PALMS,
California,
This 04TH day of JULY, 2019.



Signature
MICHELE JACKSON

PUBLIC NOTICE/TWQS

PUBLIC NOTICE
The Twenty-Nine Palms Band of Mission Indians hereby gives notice that it is conducting the first triennial review process for the Tribal Water Quality Standards (TWQS) and is soliciting public input. The TWQS may be viewed at <https://www.29palmsband.org/>. Comments will be accepted at a public hearing on Tuesday, August 27, 2019 from 4:00 pm until 5:00 pm at the Spotlight 29 Casino Meeting Room, 46-206 Harrison Place, Coachella, CA 92236, or by contacting the Tribal Environmental Protection Agency at 46-200 Harrison Place, Coachella, CA 92236, (760) 998-6767 or tepa@29palmsband-nsn.gov.
AUG 27 2019
AUG 27 4 12Z 7/4/2019





Twenty-Nine Palms Band of Mission Indians

Triennial Review Process – First
Public Hearing 8/27/2019

- This public hearing meets requirements to receive public input on reviewing current TWQS
- Tribal EPA will work with the Tribe to revise TWQS where appropriate
- Draft TWQS will be posted 45 days in advance of an additional public hearing to receive public input
- Final draft TWQS will be sent to U.S. EPA for comment
- TWQS will be adopted by the Tribe and sent to U.S. EPA for approval
- EPA-approved TWQS will be published in the Federal Register





Twenty-Nine Palms Band of Mission Indians

Triennial Review

- 8/27/2019 Public Hearing
- 1/29/2020 Presentation to Tribal Council
- 7/2/2020 Draft submission to EPA
- 9/10/2020 Received EPA comments
- 12/10/2020 Revisions completed





Questions?

Contact Information:

- Tina Yin, U.S. EPA Region 9
yin.christina@epa.gov (415) 972-3579
- Ken Norton, Hoopa Valley Tribe
kennorton@gmail.com (530) 625-5515
- Eric Rich, Navajo Nation EPA
AGUAPURO@wildblue.net (928) 890-7599
- Shawn Muir, Twenty-Nine Palms Band of Mission Indians
smuir@29palmsbomi-nsn.gov (760) 863-3972

