



# Supplementary Material to the Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule

U.S. Environmental Protection Agency  
and  
Department of the Army

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## **Compendium of State and Tribal Regulatory Practice**

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## Acronyms

Agencies	Environmental Protection Agency and U.S. Army Corps of Engineers
Army	Department of Army
AJD	Approved Jurisdictional Determinations
ATTAINS	Assessment and Total Maximum Daily Load Tracking and Implementation System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
Corps	U.S. Army Corps of Engineers
CWA	Clean Water Act
DA	District Attorney
DEM	Department of Environmental Management
DEP	Department of Environmental Protection
DNR	Department of Natural Resources
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
FRP	Facility Response Plan
FWPA	Freshwater Wetlands Protection Act
FY	Fiscal Year
GIS	Geographic Information Systems
ICIS-NPDES	Integrated Compliance Information System National Pollutant Discharge Elimination System
ICR	Information Collection Request
IR	Interpretive Rule
JDs	Jurisdictional Determinations
NED	National Elevation Dataset
NFPA	National Fire Prevention Association
NPDES	National Pollutant Discharge Elimination System
NHD	National Hydrography Dataset
NHDPlus	National Hydrography Dataset Plus
NPDES	National Pollutant Discharge Elimination System
NRC	National Response Center

NRCS	Natural Resources and Conservation Service
NRPA	Natural Resources Protection Act
NWI	National Wetlands Inventory
MassDEP	Massachusetts Department of Environmental Protection
ORM2	Operation and Maintenance Business Information Link, Regulatory Module
PJD	Preliminary Jurisdictional Determinations
PPT	Parts per Thousand
PSTR	Petroleum Storage Tank Remediation
<i>Rapanos</i>	<i>Rapanos v. United States</i> , 547 U.S. 715 (2006)
RPW	Relatively Permanent Waters
RPA	Resource and Programmatic Assessment
SDWIS/FED	Safe Drinking Water Information System/Federal Version
SPAs	Source Protection Areas
SPCC	Spill Prevention, Control, and Countermeasure
SWANCC	Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001)
TMDLs	Total Maximum Daily Load determinations
TNW	Traditional Navigable Water
UAA	Use Attainability Analysis
USGS	U.S. Geological Survey
WBD	Watershed Boundary Dataset
WQS	Water Quality Standards
WRRDA	Water Resources Reform and Development Act

# Compendium of State and Tribal Regulatory Practice

## 1. State-by-State Program Descriptions

### A. OVERVIEW

States play an important role in managing water resources across the country and implementing Clean Water Act (CWA) programs. This appendix provides a snapshot of the current status of states, including the District of Columbia and the U.S. Territories, regarding CWA programs, definitions of state waters, and the scope of state jurisdiction, as well as additional information on state-level regulations and/or policies that affect waters of the state. The U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) (“the agencies”) compiled this information to describe the breadth of state authorities and to provide a current picture of state regulatory management of water resources.

For the purpose of this snapshot, the agencies compiled information from multiple state and federal sources, as well as from previous analyses undertaken by independent associations and institutions. Information on the various CWA programmatic areas (*e.g.*, CWA section 303, 311, 401, 402, and 404 programs) was drawn from agency websites, numerous publications, maps, and from EPA regional staff. The agencies gathered information on state and territorial water laws and programs through state and territorial agency websites. The agencies have identified where states have authorities to implement CWA programs. Where states do not have authority to implement CWA programs, the agencies have attempted to identify where states regulate activities through permit programs or other similar mechanisms.

In determining where states regulate waters that are not federally jurisdictional under the CWA, the agencies relied primarily on state laws and regulations, identified through publicly available resources. However, some states implement dredge and fill programs in non-federally jurisdictional waters as directed by implementation guidance and policies that may not be available in the databases the agencies used. Thus, the agencies also relied on information contained in the 2013 Environmental Law Institute (ELI) report entitled “State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal CWA.”<sup>1</sup> While the agencies recognize that there have been concerns regarding other findings in the ELI report, to date they are not aware of any critiques of the report’s findings regarding the ability of those states identified in the report as being able to regulate discharges of dredged or fill material into waters outside the scope of the CWA.

Definitions for state and territorial waters, including wetlands, were drawn from online directories of regulatory titles and codes, and thus directly from state laws. Many state definitions of wetlands rely directly or indirectly on the federal regulatory definition of wetlands, as follows:

“Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do

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<sup>1</sup> Environmental Law Institute. 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal CWA. ELI Project No. 0931-01.

support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”<sup>2</sup>

An earlier draft of these summaries was shared with state and territorial agencies for corrections.<sup>3</sup> Following the June 9, 2021 Declarations from the EPA and Army which set the intention for a revision to the definition of “waters of the United States”, this document was further updated to reflect changes which have occurred since the Navigable Waters Protection Rule was implemented.<sup>4</sup> The agencies seek comment on the findings which are described below.

## B. ALABAMA

### Definition of Waters of the State:

- All waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce.<sup>5</sup>

### Definition of Wetlands:

- Those areas delineated pursuant to the technical criteria described in the Federal Wetland Delineation Manual that is currently being used by the Corps and/or any updated manual that may be used in the future. Wetlands do not include those areas which exist solely due to man-induced conditions such as roadside ditches or man-made impoundments excepting those areas created as mitigation sites.<sup>6</sup>
- Those areas as defined by the Corps regulations.<sup>7</sup>

### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>8</sup>

### Additional State Conditions and Requirements:

- No limitations identified.

### 303 Water Quality Standards:

- Has EPA-approved WQS.

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<sup>2</sup> 33 CFR 328.3(c) and 40 CFR 232.2.

<sup>3</sup> The agencies received responses to the draft assessments from twenty-four states and two territories from all regions of the country. Of those responses, twenty-five were from that state or territory department for the environment or natural resources, and one was from the department of public health. These responses can be found in the Step Two Proposed Rule docket at EPA-HQ-OW-2018-0149-0075, available at <https://www.regulations.gov/document?D=EPA-HQ-OW-2018-0149-0075>.

<sup>4</sup> Declarations of Radhika Fox and Jaime A. Pinkham, filed in *Conservation Law Found. et al. v. EPA et al.*, 20-cv-10820-DPW (D. Mass. Jun. 9, 2021) as well as in every other district court challenge to the NWPR.

<sup>5</sup> Ala. Code section 22-22-1(2).

<sup>6</sup> Ala. Admin. Code r. 335-8-1-.02(nnn).

<sup>7</sup> Ala. Admin. Code r. 335-13-1-.03(146).

<sup>8</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 4 in coordination with the state of Alabama.
- Facilities with aboveground storage tanks must register with state, completing a form with location, tanks capacity, substance store and use. State has a spill trust fund, and facilities must comply with state of Alabama Department of Environmental Management code and 40 CFR part 112 to be eligible to access trust fund.<sup>9</sup>
- State code authorizes cost recovery for spills and related damages.<sup>10</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Alabama to administer the NPDES permitting program. The state issues its permits through the Alabama Department of Environmental Management. Alabama has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Alabama does not have an authorized biosolids program.<sup>11</sup>
- EPA has issued one NPDES permit for aquaculture in offshore waters.<sup>12</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in coastal surface waters and wetlands<sup>13</sup> and submerged lands.<sup>14</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR

- Regulatory Change: New state permit for CAFOs allows ADEM Administrator to determine jurisdictional status of waters CAFOs discharge into, untethered from CWA definitions of WOTUS, or statutory or regulatory definitions of Waters of the State.<sup>15</sup>

## C. ALASKA

#### Definition of Waters of the State:

- Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of

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<sup>9</sup> Ala. Admin. Code chapter 335-6-15.

<sup>10</sup> Ala. Code section 22-22-9.

<sup>11</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>12</sup> EPA, Alabama NPDES Permits, available at <https://www.epa.gov/npdes-permits/alabama-npdes-permits>.

<sup>13</sup> Ala. Admin. Code r. 335-8-2-.02. State regulations require mitigation through the creation or restoration of wetlands when there are wetland impacts resulting from an approved project. Ala. Admin. Code r. 335-8-2-.03.

<sup>14</sup> Ala. Admin. Code r. 220-4-.01 *et seq.*

<sup>15</sup> Ala. Admin. Code r. 335-6-7-.11

Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.<sup>16</sup>

#### Definitions of Wetlands:

- *Freshwater wetlands*: environments characterized by rooted vegetation that is partially submerged either continuously or periodically by surface freshwater with less than 0.5 parts per thousand salt content and not exceeding three meters in depth.<sup>17</sup>
- *Saltwater wetlands*: coastal areas along sheltered shorelines characterized by halophilic hydrophytes and macro algae extending from extreme low tide to an area above extreme high tide that is influenced by sea spray or tidally induced water table changes.<sup>18</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>19</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 10 in coordination with the state of Alaska.
- Facilities with small aboveground storage tanks are regulated by State Fire Marshal. State regulates facilities with larger storage capacities (>420,000 gallons for refined products; lower for crude oil); state relies on EPA's SPCC regulations for facilities (>1,320 up to 420,000 gallons).<sup>20</sup>
- State code authorizes cost recovery for spills and related damages; state has a spill trust fund.<sup>21</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Alaska to administer the NPDES permitting program. The state issues its permits through the Alaska Department of Environmental Conservation.

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<sup>16</sup> Alaska Stat. section 46.03.900(37).

<sup>17</sup> Alaska Admin. Code tit. 18, section 75.990(44).

<sup>18</sup> Alaska Admin. Code tit. 18, section 75.990(110).

<sup>19</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>20</sup> Alaska Admin. Code tit. 18, chapter 75.

<sup>21</sup> Alaska Stat. sections 46.03.822, 46.03.824, 46.03.758-759, 46.08.005 *et seq.*



Alaska has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Alaska does not have an authorized biosolids program.<sup>22</sup>

- EPA issues all NPDES permits for federally-owned facilities located in Denali National Park; facilities operating outside State waters (three miles offshore); facilities that have been issued Clean Water Act Section 301(h) waivers; and all permits on tribal lands.<sup>23</sup>

404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in submerged lands.<sup>24</sup>
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: No Change

## D. AMERICAN SAMOA

Definition of Waters of the Territory:

- Waters of the United States as defined in 40 CFR 122.2, as well as those that are located within the jurisdiction of the territory.<sup>25</sup>

Definition of Wetlands:

- Those areas that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, mangroves, streams, springs, cultivated marshes, and similar areas.<sup>26</sup>

Additional Territory Conditions and Requirements:

- No limitations identified.

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- Territory does not have an aboveground storage tank management or regulatory program and relies on EPA to directly implement federal spill prevention and preparedness regulations.

401 Certification:

- The territory has authority to certify, conditionally certify, waive review or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

402 NPDES Program:

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<sup>22</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>23</sup> EPA, Alaska NPDES Permits, available at <https://www.epa.gov/npdes-permits/alaska-npdes-permits>.

<sup>24</sup> Alaska Stat. section 38.05; 11 AAC 61.010 *et seq.*

<sup>25</sup> American Samoa Admin. Code section 24.0201.

<sup>26</sup> *Id.*

- EPA issues all NPDES permits within American Samoa.<sup>27</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has territory authority to issue permits for dredged and fill activities in coastal surface waters and wetlands.<sup>28</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No Change

### E. ARIZONA

#### Definition of Waters of the State:

- All waters within the jurisdiction of the state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems, and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state.<sup>29</sup>

#### Definition of Wetlands:

- An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.<sup>30</sup>

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>31</sup>

#### Additional State Conditions and Requirements:

- The Governor’s Regulatory Review Council is prohibited from approving a state rule that is more stringent than a corresponding federal law unless there is a statutory authority to exceed the requirements of that federal law.<sup>32</sup>
- Arizona Department of Environmental Quality also must ensure that all state laws, rules, standards, permits, variances, and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter.<sup>33</sup>

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<sup>27</sup> EPA, American Samoa NPDES Permits, available at <https://www.epa.gov/npdes-permits/american-samoa-npdes-permits>.

<sup>28</sup> American Samoa Admin. Code sections 26.0201 *et seq.*

<sup>29</sup> Ariz. Rev. Stat. section 49-201(41).

<sup>30</sup> Ariz. Admin. Code section 18-11-101(49).

<sup>31</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>32</sup> Ariz. Rev. Stat. section 41-1052.

<sup>33</sup> Ariz. Rev. Stat. section 49-104.

- Department of Environmental Quality is specifically prohibited from adopting any requirement that is more stringent than the point source permitting requirements under the federal CWA.<sup>34</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 9 in coordination with the state of Arizona.
- Facilities with aboveground storage tanks must register with State Fire Marshal.<sup>35</sup>
- State code authorizes cost recovery for spills and related damages; state has a spill trust fund.<sup>36</sup>

### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

### 402 NPDES Program:

- EPA has approved the state of Arizona to administer the NPDES permitting program. The state issues its permits through the Arizona Department of Environmental Quality. Arizona has an authorized NPDES permit program, pretreatment program, general permits program, biosolids program, and is authorized to regulate federal facilities.<sup>37</sup>
- EPA issues all NPDES permits on tribal lands.<sup>38</sup>

### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in submerged lands.<sup>39</sup>
- Relies on federal permitting authority and CWA section 401.

### Changes Since Publication of the NWPR

- Legislative Change<sup>40</sup>
  - “Surface Water Protection Program” (HB 2691), enacted in May 2021, will allow ADEQ to protect specifically listed non-WOTUS surface waters of the state. The legislation applies to some specific waters, and to other waters used as sources of drinking water, for fishing, and for recreation. It also applies to perennial or intermittent waters that cross state, tribal, and nation boundaries, and to wetlands adjacent to the waters on the list.

<sup>34</sup> Ariz. Rev. Stat. section 49-203.

<sup>35</sup> Ariz. Admin. Code sections 4-36-201 *et seq.*

<sup>36</sup> Ariz. Rev. Stat. sections 49-285, 49-262, 49-282.

<sup>37</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>38</sup> EPA, Arizona NPDES Permits, available at <https://www.epa.gov/npdes-permits/arizona-tribal-lands-npdes-permits-excluding-navajo-nation>.

<sup>39</sup> Ariz. Rev. Stat sections 37-1101, 1153.

<sup>40</sup> HB 2691 passed 5/5/21: <https://www.azleg.gov/legtext/55leg/1R/laws/0325.pdf>

- Proposed Change<sup>41</sup>
  - ADEQ has issued a draft list of protected surface waters, largely based on existing Corps JDs, and screening tools which have not been released to the public yet.

## F. ARKANSAS

### Definition of Waters of the State:

- All streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.<sup>42</sup>

### Definition of Wetlands:

- An area that has water at or near the surface of the ground at some time during the growing season (wetland hydrology). It contains plants that are adapted to wet habitats (hydrophytic vegetation) and is made up of soils that have developed under wet conditions (hydric soils) or any other definition promulgated by the Commission.<sup>43</sup>

### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>44</sup>

### Additional State Conditions and Requirements:

- The Arkansas Pollution Control and Ecology Commission is subject to stringency requirements; prior to promulgating certain rules and regulations that are more stringent than federal requirements the Commission must consider its economic impact on and environmental benefit for the people of Arkansas.<sup>45</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 6 in coordination with the state of Arkansas.
- Facilities with aboveground storage tanks must register tanks with the state and are subject to inspection by the state.<sup>46</sup>

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<sup>41</sup> Draft/proposed implementation tools. WOTUS "Screening Toolkit": <https://azdeq.gov/ScreeningToolkit>; Draft Protected Surface Water List: <https://static.azdeq.gov/wqd/wotus/pswl.pdf>

<sup>42</sup> Ark. Code section 8-4-102(10).

<sup>43</sup> Ark. Code R. 138.00.07-003, available at <http://170.94.37.152/REGS/138.00.07-003F-9429.pdf>.

<sup>44</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>45</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal CWA, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>46</sup> Arkansas Pollution Control and Ecology Commission, 2014. Regulation No. 12, available at [https://www.adeq.state.ar.us/regs/files/reg12\\_final\\_20140714.pdf](https://www.adeq.state.ar.us/regs/files/reg12_final_20140714.pdf).

- State code authorizes cost recovery for spills and related damages; state has a spill trust fund.<sup>47</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Arkansas to administer the NPDES permitting program. The state issues its permits through the Arkansas Division of Environmental Quality. Arkansas has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Arkansas does not have an authorized biosolids program.<sup>48</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in submerged lands.<sup>49</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No Change

## G. CALIFORNIA

#### Definition of Waters of the State:

- Any surface water or groundwater, including saline waters, within boundaries of the State.<sup>50</sup>

#### Definitions of Wetlands:

- An area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area's vegetation is dominated by hydrophytes or the area lacks vegetation.<sup>51</sup>
- Under the California Coastal Act, wetlands are: lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.<sup>52</sup>

<sup>47</sup> Ark. Code sections 8-4-103, 8-7-514, 8-7-509.

<sup>48</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>49</sup> Ark. Code section 22-6-202.

<sup>50</sup> Cal. Wat. Code section 13050(e).

<sup>51</sup> California State Water Resources Control Board, State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (April 2, 2019), available at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/procedures\\_conformed.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/procedures_conformed.pdf).

<sup>52</sup> Cal. Proc. Code section 30121.

- The California Coastal Commission provides a further definition of coastal wetlands: land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include types of wetland where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some during each year and their location within, or adjacent to vegetated wetland or deepwater habitats.<sup>53</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal net gain/increase goal for wetlands.<sup>54</sup>

#### Additional State Conditions and Requirements:

- No limitations identified

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 9 in coordination with the state of California.
- Facilities with aboveground storage tanks are regulated by the State Fire Marshal by state code and are required to register tanks. State inspects facilities with total storage capacities above 10,000 gallons. All subject facilities required to comply with EPA's regulation, 40 CFR part 112.<sup>55</sup>
- State code authorizes cost recovery for spills and related damages; state has a spill trust fund.<sup>56</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of California to administer the NPDES permitting program. The state issues its permits through the California Environmental Protection Agency. California has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. California does not have an authorized biosolids program.<sup>57</sup>

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<sup>53</sup> Cal. Code Regs. tit. 14 section 13577(b)(1).

<sup>54</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>55</sup> Cal. Health and Safety Code sections 25270 *et seq.*

<sup>56</sup> Cal. Gov. Code sections 8670.56.5, 8670.66, 8670.67, 8670.46, 8670.48.

<sup>57</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

- EPA issues all NPDES permits on tribal lands and for any discharges into federal ocean waters.<sup>58</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>59</sup> including isolated waters.<sup>60</sup>

#### Changes Since Publication of the NWPR

- Regulatory Change<sup>61</sup>
  - On January 26, 2021, the Sacramento Superior Court issued a judgment in *San Joaquin Tributaries Authority v. California State Water Resources Control Board* enjoining the board from applying the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* to non-WOTUS state waters via the Water Quality Control Plan under California Water Code §13170.
  - On April 6<sup>th</sup>, 2021, the State Water Board issued a resolution affirming that the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* would be adopted only for WOTUS via the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries, and for all state waters as a state policy for water quality control pursuant to §13140.
- New Guidance<sup>62</sup>
  - Final guidance describing permitting procedures & evaluation criteria for implementing the *Dredge or Fill Procedures* was issued on April 21, 2020.
- Implementation Change<sup>63</sup>

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<sup>58</sup> EPA, NPDES Permits in California, available at <https://www.epa.gov/npdes-permits/npdes-permits-california-excluding-tribal-permits>.

<sup>59</sup> Cal. Wat. Code sections 13000 *et seq.* (dredging and filling constitutes a discharge of waste to waters of the state); Cal. Pr. Code sections 30000 *et seq.* (protection of coastal wetlands from dredged and fill activities); See also Memorandum from Celeste Cantu, Executive Director, California Environmental Protection Agency to Regional Board Executive Officers (Jun. 2, 2004), available at [http://www.swrcb.ca.gov/water\\_issues/programs/cwa401/docs/isol\\_waters\\_guid.pdf](http://www.swrcb.ca.gov/water_issues/programs/cwa401/docs/isol_waters_guid.pdf); California State Water Resources Control Board, State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (April 2, 2019), available at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/procedures\\_conformed.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/procedures_conformed.pdf).

<sup>60</sup> Memorandum from Celeste Cantu, Executive Director, California Environmental Protection Agency to Regional Board Executive Officers (Jun. 2, 2004), available at [http://www.swrcb.ca.gov/water\\_issues/programs/cwa401/docs/isol\\_waters\\_guid.pdf](http://www.swrcb.ca.gov/water_issues/programs/cwa401/docs/isol_waters_guid.pdf); ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>. California State Water Resources Control Board, State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (April 2, 2019), available at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/procedures\\_conformed.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/procedures_conformed.pdf).

<sup>61</sup> State Water Resources Control Board Resolution No. 2021-0012, available at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/wrapp/rs2021\\_0012.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/rs2021_0012.pdf)

<sup>62</sup> State Water Resources Control Board, State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State; available at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/dredge\\_fill/revised\\_guidance.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/dredge_fill/revised_guidance.pdf)

<sup>63</sup> State Water Resources Control Board Resolution No. 2021-0012, available at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/wrapp/rs2021\\_0012.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/rs2021_0012.pdf)



- Declarations by SWRCB (Bishop) & CDFW (Ferranti) representatives in *California vs. Wheeler*. As noted in the Bishop declaration, the State Board and nine Regional Boards lack funding, capacity and training to conduct & review aquatic resource delineations, still relying on USACE JDs in large part. Similarly lack capacity for third-party mitigation review (many RBs do not participate on IRTs), as fed jurisdiction has contracted over important AR types, e.g., vernal pools. CDFW has not made any regulatory changes to their Lake & Streambed Alteration program (LSA) tied to NWPR. The jurisdiction of LSA is not precisely established but is generally understood to extend to upland riparian areas, lacustrine & riverine wetlands but not isolated wetlands in most cases. Ferranti declaration describes pattern of illegal vernal pool landscape conversion & suggests it will worsen with loss of federal permitting requirements as CDFW is not notified of pending impacts to lands supporting state-listed species. Does not describe impacts of NWPR on LSA program.
- Proposed Change<sup>64</sup>
  - No proposed changes to state waters jurisdiction. Proposed AB 377 would require state & regional boards to develop plans to bring all water segments into attainment by 2050 & establish Waterway Recovery Account funded by enforcement penalties.

## H. COLORADO

### Definition of Waters of the State:

- Any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.<sup>65</sup>

### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.<sup>66</sup>

### No Net Loss Goal for Wetlands:

- Has an informal no net loss goal for wetlands.<sup>67</sup>

### Additional State Conditions and Requirements:

- The Colorado Department of Public Health and Environment is prohibited from requiring permits for irrigation flows (or return flows), or permits for various kinds of agricultural waste, except as required by the federal CWA. Where permits are required, their provisions cannot be more stringent than what is required by the federal CWA.<sup>68</sup>

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<sup>64</sup> California Proposed AB-377, available at [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB377](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB377).

<sup>65</sup> Colo. Rev. Stat. section 25-8-103(19).

<sup>66</sup> 5 Code Colo. Regs. 1002-31.5(51).

<sup>67</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>68</sup> Colo. Rev. Stat. section 25-8-504.



- State imposes limitations regarding water quality provisions with respect to the right to divert and use water.<sup>69</sup>
- The Water Quality Control Commission may adopt rules more stringent than corresponding enforceable federal requirements only if it is demonstrated at a public hearing, and the commission finds, based on sound scientific or technical evidence in the record, that state rules more stringent than the corresponding federal requirements are necessary to protect the public health, beneficial use of water, or the environment of the state. Those findings shall be accompanied by a statement of basis and purpose referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the commission's conclusion. The existing policies, rules, and regulations of the commission and division shall be applied in conformance with section 25-8-104 and this section.<sup>70</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 8 in coordination with the state of Colorado.
- State aboveground storage tank regulations apply to tanks with capacities greater than 660 gallons and less than 40,000 gallons; tanks at crude oil production and mining facilities are exempt. Regulations require permits, registration and facility inspection.<sup>71</sup>
- State code authorizes cost recovery for spills and related damages; state has a spill trust fund.<sup>72</sup>

### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

### 402 NPDES Program:

- EPA has approved the state of Colorado to administer the NPDES permitting program. The state issues its permits through the Colorado Department of Public Health & Environment. Colorado has an authorized NPDES permit program and general permits program. Colorado does not have an authorized biosolids program, pretreatment program, and is not authorized to regulate federal facilities.<sup>73</sup>
- EPA issues all NPDES permits on tribal lands.<sup>74</sup>

### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.

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<sup>69</sup> Colo. Rev. Stat. section 25-8-104.

<sup>70</sup> Colo. Rev. Stat. section 25-8-202(8).

<sup>71</sup> 7 Code Colo. Regs. 1101-14.

<sup>72</sup> Colo. Rev. Stat. sections 34-60-121, 34-60-124.

<sup>73</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>74</sup> EPA, Colorado NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/colorado-npdes-permits>.

- Does not have state authority to issue permits for dredged and fill activities in surface waters and wetlands.
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR

- Proposed Change<sup>75</sup>
  - The Colorado Department of Public Health and Environment (CDPHE) developed a draft bill to establish a state dredge and fill permitting program that would cover “gap waters” (i.e., those waters that would have been jurisdictional under pre-2015 practice but are no longer jurisdictional under the NWPR). This bill was never introduced during the 2021 legislative session, however, CDPHE has stated that they will be working with the Water Resources Review Committee to focus on the draft bill during the Interim Session.

## I. THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

#### Definitions of Waters of the Territory:

- All marine, fresh water bodies, and ground water in the Commonwealth.<sup>76</sup>
- Commonwealth or state waters means all waters, fresh, brackish, or marine, including wetlands, surrounding or within the Commonwealth.<sup>77</sup>

#### Definition of Wetlands:

- Areas that are inundated or saturated by surface or groundwater with a frequency sufficient to support a prevalence of plant or aquatic life that requires seasonally saturated soil conditions for growth and/or reproduction. Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries and similar areas in the Northern Mariana Islands archipelago. Wetlands include both wetlands connected to other waters and isolated wetlands. Wetlands do not include those artificial wetlands intentionally created to provide treatment of wastewater or stormwater runoff.<sup>78</sup>

#### Additional Territory Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- Territory has prescriptive aboveground storage tank regulations, incorporating the Uniform Fire Code, industry standards, and spill prevention requirements.<sup>79</sup>

#### 401 Certification:

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<sup>75</sup> CDPHE <https://cdphe.colorado.gov/water-quality-waters-united-states>

<sup>76</sup> NMIAC section 65-130-001.

<sup>77</sup> NMIAC section 65-130-015(l).

<sup>78</sup> Commonwealth of the Northern Mariana Islands Admin. Code section 65-130-015(aa).

<sup>79</sup> Commonwealth of the Northern Mariana Islands Admin. Code sections 65-5-001 *et seq.*

- The territory has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA issues all NPDES permits within the Commonwealth of the Northern Mariana Islands.<sup>80</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has territory authority to issue permits for dredged and fill activities in coastal surface waters and wetlands.<sup>81</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR

- Proposed Change<sup>82</sup>
  - BECQ has proposed minor changes to their definition of 'commonwealth waters' to clarify they include all fresh, brackish and marine waters including wetlands, streambeds, and groundwater.

## J. CONNECTICUT

#### Definition of Waters of the State:

- All tidal waters, harbors, estuaries, rivers, brooks, watercourses, waterways, wells, springs, lakes, ponds, marshes, drainage systems, and all other surface or underground streams, bodies, or accumulations of water, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof.<sup>83</sup>

#### Definitions of Wetlands:

- The term wetlands refers to freshwater wetlands under the Inland Wetlands and Watercourses Act and refers to tidal wetlands under the Tidal Wetlands Act.
- Tidal Wetlands Act: those areas which border on or lie beneath tidal waters, such as, but not limited to banks, bogs, salt marsh, swamps, meadows, flats, or other low lands subject to tidal action including those areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of one foot above local extreme high water; and upon which may grow or be capable of growing some, but not necessarily all, of the species listed in the statute.<sup>84</sup>

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<sup>80</sup> EPA, Commonwealth of the Northern Mariana Islands NPDES Permits, available at <https://www.epa.gov/npdes-permits/commonwealth-northern-mariana-islands-npdes-permits>.

<sup>81</sup> Commonwealth of the Northern Mariana Islands Admin. Code sections 15-10-001 *et seq.*

<sup>82</sup> 65 N. Mar. I. Code § 130

<sup>83</sup> Conn. Gen. Stat. section 22a-423.

<sup>84</sup> Conn. Gen. Stat. section 22a-29.

- Inland Wetlands and Watercourses Act: land, including submerged land, not regulated pursuant to sections 22a-28 to 22a-35, inclusive, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soils Survey, as may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture.<sup>85</sup>
  - “Watercourses” are defined under *IWWCA* as: “rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon this state or any portion thereof, not regulated pursuant to sections 22a-28 to 22a-35, inclusive. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (A) Evidence of scour or deposits of recent alluvium or detritus, (B) the presence of standing or flowing water for a duration longer than a particular storm incident, and (C) the presence of hydrophytic vegetation”.<sup>86</sup>

No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>87</sup>

Additional State Conditions and Requirements:

- No limitations identified

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 1 in coordination with the state of Connecticut.
- Connecticut does not have any specific rules governing aboveground storage tanks. Connecticut's Flammable and Combustible Liquids Code adopts by reference the National Fire Protection Association standards that govern aboveground storage tank design, installation, upgrade, repair, and closure. The requirements are administered locally.<sup>88</sup>
- State code authorizes cost recovery for spills and related damages; state does not have a spill trust fund covering aboveground storage tanks.<sup>89</sup>

401 Certification:

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<sup>85</sup> Conn. Gen. Stat. section 22a-38.

<sup>86</sup> *Ibid.*

<sup>87</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>88</sup> Conn. Gen. Stat. sections 29-291 *et seq.*

<sup>89</sup> Conn. Gen. Stat. sections 22a-438, 22a-452.

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Connecticut to administer the NPDES permitting program. The state issues its permits through the Connecticut Department of Energy and Environmental Protection. Connecticut has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Connecticut does not have an authorized biosolids program.<sup>90</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>91</sup> including isolated waters.<sup>92</sup>

Changes Since Publication of the NWPR: No change

## K. DELAWARE

#### Definition of Waters of the State:

- All water, on the surface and under the ground, wholly or partially within, or bordering the State of Delaware, or within its jurisdiction including but not limited to: (a) Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean; (b) All interstate waters, including interstate wetlands; (c) All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds; (d) All impoundments of waters otherwise defined as waters of the State under this definition; and (e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a) through (d). Waste and stormwater treatment systems including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not “State waters” or “Waters of the State.”<sup>93</sup>

#### Definitions of Wetlands:

- Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bog and similar areas.<sup>94</sup>

<sup>90</sup> EPA, Connecticut NPDES Permits, available at <https://www.epa.gov/npdes-permits/connecticut-npdes-permits>.

<sup>91</sup> Conn. Gen. Stat. sections 22a-36 *et seq.*, 22a-90 *et seq.*, 22a-359 *et seq.*

<sup>92</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>93</sup> 7-7201 Del. Admin. Code 2.0.

<sup>94</sup> *Id.*

- Under the Delaware Wetlands Act<sup>95</sup> and Wetlands Regulations<sup>96</sup>: Those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of Delaware along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary or tributary waterway or any portion thereof, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of two feet above local mean high water, and upon which may grow or is capable of growing any but not necessarily all of the plants listed in the statute.

No Net Loss Goal for Wetlands:

- Has a formal net gain/increase goal for wetlands.<sup>97</sup>

Additional State Conditions and Requirements:

- No limitations identified.

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 3 in coordination with the state of Delaware.
- Facilities with aboveground storage tanks greater than 250 gallons must register with state; additional technical requirements and fees apply based on tank size.<sup>98</sup>
- State code authorizes cost recovery for spills and related damages; state does not have a spill trust fund covering aboveground storage tanks.<sup>99</sup>

401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

402 NPDES Program:

- EPA has approved the state of Delaware to administer the NPDES permitting program. The state issues its permits through the Delaware Department of Natural Resources and Environmental Control. Delaware has an authorized NPDES permit program and state general permits program. Delaware does not have an authorized biosolids program, pretreatment program, and is not authorized to regulate federal facilities.<sup>100</sup>

404 Dredged and Fill Permitting:

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<sup>95</sup> Del. Code tit. 7, section 6601 *et seq.*

<sup>96</sup> 7-7502 Del. Admin. Code 5.0.

<sup>97</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>98</sup> 7-1352 Del. Admin. Code 1.0 *et seq.*

<sup>99</sup> Del. Code tit. 7, sections 6205, 6207.

<sup>100</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

- Has not assumed the 404 program.<sup>101</sup>
- Has state authority to issue permits for dredged and fill activities in surface waters and tidal wetlands.<sup>102</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR

- Implementation Change<sup>103</sup>
  - Clean Water for Delaware Act (signed 7/22/21) -- The Clean Water for Delaware Act establishes a framework for assessing needs and planning and implementing projects that support Delaware’s efforts to improve the quality of the State’s water supply and waterways. A Delaware Clean Water Trust account is created as a funding source for executing projects highlighted by this framework.
- Proposed Change<sup>104</sup>
  - Senate Joint Resolution 2 (151<sup>st</sup> Assembly) Directing the Delaware Department of Natural Resources and Environmental Control to begin coordination with the Federal Agencies Carrying Authority to Identify the Structure Necessary for a State Nontidal Wetlands Program for the Purpose of Shifting Permitting Authority from the Federal Level to the State. The Joint Resolution references Delaware’s historic dependence on federal regulation for nontidal wetlands and the reduction in federal jurisdiction “stripping protections from thousands of acres of Delaware.” This Senate Joint Resolution also requires that a report containing the results of this review be completed and made public within 1 year.

## L. DISTRICT OF COLUMBIA

#### Definition of Waters of the District:

- Flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District of Columbia, but excludes water on private property prevented from reaching underground or land watercourses, and also excludes water in closed collection or distribution systems.<sup>105</sup>

#### Definition of Wetlands:

- A marsh, swamp or other area periodically inundated by tides or having saturated soil conditions for prolonged periods of time and capable of supporting aquatic vegetation.<sup>106</sup>

#### No Net Loss Goal for Wetlands:

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<sup>101</sup> Two state programmatic general permits for impacts associated with piers, docks, mooring piles, boat lifts, breakwaters, etc.

<sup>102</sup> Del. Code tit. 7, sections 7201 *et seq.*, 6601 *et seq.* Although the Tidal Wetlands Act refers to “non-tidal wetlands that include 400 or more contiguous acres,” this provision has never been instituted or used to regulate any non-tidal wetlands by the State of Delaware. Delaware DNREC, email, March 26, 2018.

<sup>103</sup> House Substitute 1 for House Bill 200 (Clean Water for Delaware Act) (2021) available at: <https://legis.delaware.gov/BillDetail/47964>

<sup>104</sup> Delaware Senate General Assembly, Senate Joint Resolution No. 2 (2021), available at <https://legis.delaware.gov/BillDetail?LegislationId=68617>

<sup>105</sup> D.C. Code section 8-103.01(26).

<sup>106</sup> *Id.*



- Does not have a no net loss goal for wetlands.<sup>107</sup>

#### Additional District Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- Aboveground storage tanks are primarily regulated by the DC Fire Building Officials and Code Administrators (BOCA) codes administered by the Fire Prevention Branch of DC Fire and Emergency Medical Services. DC does not have authority to regulate aboveground storage tank operations or the release of petroleum products from aboveground storage tanks, and relies on EPA to directly implement federal spill prevention and preparedness regulations.<sup>108</sup>

#### 401 Certification:

- The District has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA issues all NPDES permits in the District of Columbia.<sup>109</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has district authority to issue permits for dredged and fill activities shoreward of the pierhead line.<sup>110</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR

- Regulatory Change<sup>111</sup>
  - Washington DC conducted an emergency rulemaking that aimed to designate the areas that lost protection under the NWPR as critical areas in need of protection.
- New Guidance<sup>112</sup>
  - The Department of Energy & Environment published guidance for the new critical area rule that was created in response to the NWPR.

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<sup>107</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>108</sup> D.C. Department of Energy & Environment, Underground Storage Tanks, available at <https://doee.dc.gov/service/underground-storage-tanks-faqs>.

<sup>109</sup> EPA, District of Columbia NPDES Permits, available at <https://www.epa.gov/npdes-permits/district-columbia-npdes-permits>.

<sup>110</sup> D.C. Mun. Regs., tit. 21, section 600.

<sup>111</sup> Critical Area General Rules, D.C. Mun. Regs tit.21, § 2500-2505, 2599

<sup>112</sup> Ibid.



## M. FLORIDA

### Definitions of Waters of the State:

- Waters include, but are not limited to, rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural. Solely for purposes of s. 403.0885, waters of the state also include navigable waters or waters of the contiguous zone as used in s. 502 of the CWA, as amended, 33 U.S.C. ss. 1251 et seq., as in existence on January 1, 1993, except for those navigable waters seaward of the boundaries of the state set forth in s. 1, Art. II of the State Constitution.<sup>113</sup>
- Any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.<sup>114</sup>

### Definition of Wetlands:

- Those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.<sup>115</sup>

### No Net Loss Goal for Wetlands:

- Has an informal no net loss goal for wetlands.<sup>116</sup>

### Additional State Conditions and Requirements:

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<sup>113</sup> Fla. Stat. section 403.031(13).

<sup>114</sup> Fla. Stat. section 373.019(22).

<sup>115</sup> Fla. Stat. section 373.019(27).

<sup>116</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

- Requires that the state Department of Environmental Protection study the economic and environmental impact of any proposed standards that would be more stringent than federal law.<sup>117</sup>
- For a Florida standard to be a stricter or more stringent standard than one which has been set by federal agencies pursuant to federal law or regulation, the federal standard must be in counterpoise to the state standard.<sup>118</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 4 in coordination with the state of Florida.
- Facilities with aboveground storage tanks greater than 550 gallons of oil and hazardous substances are required to register, pay fees, and comply with technical requirements, including secondary containment and inspections.<sup>119</sup>
- State code authorizes cost recovery for spills and related damages; state has a spill trust fund.<sup>120</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Florida to administer the NPDES permitting program. The state issues its permits through the Florida Department of Environmental Protection. Florida has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Florida does not have an authorized biosolids program.<sup>121</sup>
- EPA issues all NPDES permits to offshore oil and gas facilities operating in federal waters off the coast of Florida.<sup>122</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.

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<sup>117</sup> Fla. Stat. section 403.804.

<sup>118</sup> Florida Elec. Power Coordinating Group, Inc. v. Askew, 366 So.2d 1186, 1188 (Fla. Dist. Ct. App., 1st Dist. 1978). ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>119</sup> Fla. Admin. Code chapter 62-762.

<sup>120</sup> Fla. Stat. sections 376.11, 376.12, 376.16, 376.121.

<sup>121</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>122</sup> EPA, Florida NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/florida-npdes-permits>.

- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>123</sup> including isolated waters.<sup>124</sup>

#### Changes Since Publication of the NWPR

- Regulatory Change
  - Has assumed the 404 program.<sup>125</sup>
  - Has state authority through the Environmental Resource Permit program to issue permits for dredged and fill activities more broadly than “waters of the United States,” including in all wetlands and surface waters (isolated or connected) and activities in uplands that generate runoff from stormwater construction.<sup>126</sup>

## N. GEORGIA

#### Definition of Waters of the State:

- Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state, which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.<sup>127</sup>

#### Definition of Wetlands:

- Freshwater Wetlands mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps marshes, bogs, and similar areas. (33 CFR 32.93). The ecological parameters for designating wetlands include hydric soils, hydrophytic vegetation, and hydrological conditions that involve a temporary or permanent source of water to cause soil saturation.<sup>128</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>129</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

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<sup>123</sup> Fla. Stat. section 373.403 *et seq.*, 161.011 *et seq.*

<sup>124</sup> Fla. Stat. section 373.414; ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>125</sup> Fla, State 404 Program, available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program>.

<sup>126</sup> Fla. Stat. section 373.414; Fla. Stat. 373.019(21), (27); 373.023; 373.406, 373.4145; 403.813, F.S. See § 373.023, F.S. “Surface waters,” “waters in the state” and “wetlands” are defined by statute in Section 373.019, F.S.

<sup>127</sup> Ga. Code Ann. sections 12-7-3(16), 12-5-22(13).

<sup>128</sup> Ga. Comp. R. & Regs. 391-3-16.03(3).

<sup>129</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 4 in coordination with the state of Georgia.
- Facilities with aboveground storage tanks exceeding 60 gallons are covered and administered by the State Fire Marshal. Plans for storage installations > 660 gallons must be submitted for review by the State Fire Marshal.<sup>130</sup>
- State code authorizes cost recovery for spills and related damages; state does not have a spill trust fund.<sup>131</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Georgia to administer the NPDES permitting program. The state issues its permits through the Georgia Department of Natural Resources. Georgia has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Georgia does not have an authorized biosolids program.<sup>132</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in coastal surface waters and wetlands, as well as submerged lands.<sup>133</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No change

## O. GUAM

#### Definition of Waters of the Territory:

- Water shall be construed to include ponds, springs, wells and streams and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private.<sup>134</sup>
- Waters of the territory means all shore waters surrounding Guam, streams, lakes, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems and

<sup>130</sup> Ga. Code Ann. section 120-3-11.

<sup>131</sup> Ga. Code Ann. 12-5-51, 12-5-51, 12-14-4.

<sup>132</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>133</sup> Ga. Code Ann. sections 12-5-280 *et seq.*

<sup>134</sup> 10 Guam Code Ann. section 46102(b).

other bodies of water, surface and underground, natural or artificial, publicly or privately owned.<sup>135</sup>

#### Definitions of Wetlands:

- Those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, mangroves, natural ponds, surface springs, estuaries and similar such areas.<sup>136</sup>
- An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands typically include swamps, marshes, bogs and similar areas.<sup>137</sup>

#### Additional Territory Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- Territory is working on spill prevention legislation (Aboveground Storage of Regulated Substances Act) that intends to cover petroleum oils and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substances. Currently, EPA Region 9 implements federal spill prevention and preparedness regulations in Guam, and will continue to do so for non-petroleum oils after that Law is enacted.

#### 401 Certification:

- The territory has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA issues all NPDES permits within Guam.<sup>138</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has territory authority to issue permits for dredged and fill activities in coastal surface waters and wetlands.<sup>139</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No Change

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<sup>135</sup> 10 Guam Code Ann. Section 47103(i)

<sup>136</sup> 18 Guam Admin. Rules and Regs. section 3504(b).

<sup>137</sup> Guam Water Quality Standards 2001 Revision Section 5105.

<sup>138</sup> EPA, Guam NPDES Permits, available at <https://www.epa.gov/npdes-permits/guam-npdes-permits>.

<sup>139</sup> 21 Guam Code Ann. section 63101.

## P. HAWAII

### Definition of Waters of the State:

- All waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded.<sup>140</sup>

### Definitions of Wetlands:

- Land that is transitional between terrestrial and aquatic ecosystems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland shall have one or more of the following attributes:
  - At least periodically the land supports predominantly hydrophytic vegetation,
  - The substratum is predominantly undrained hydric soil; or
  - The substratum is non-soil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water.<sup>141</sup>
- Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains.<sup>142</sup>

### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>143</sup>

### Additional State Conditions and Requirements:

- Hawaii has limitations to regulate low wetland and coastal wetlands as well as the elevated wetlands under “basic water quality criteria applicable to all State waters.”<sup>144</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 9 in coordination with the state of Hawaii.
- State does not have specific aboveground storage tank requirements except spill reporting requirements.
- State code authorizes cost recovery for spills and related damages; state does have a spill trust fund.<sup>145</sup>

### 401 Certification:

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<sup>140</sup> Haw. Rev. Stat. section 342D-1.

<sup>141</sup> Haw. Code R. section 11-54-1.

<sup>142</sup> *Id.*

<sup>143</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>144</sup> Haw. Code R. section 11-54-4.

<sup>145</sup> Haw. Rev. Stat. sections 128D-2, 5, 6, 8.

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.<sup>146</sup>

#### 402 NPDES Program:

- EPA has approved the state of Hawaii to administer the NPDES permitting program. The state issues its permits through the Hawaii Department of Health. Hawaii has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Hawaii does not have an authorized biosolids program.<sup>147</sup>
- EPA issues all NPDES permits for any discharges into federal ocean waters in Hawaii.<sup>148</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters,<sup>149</sup> as well as coastal surface waters and wetlands.<sup>150</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No change

## Q. IDAHO

#### Definition of Waters of the State:

- All accumulations of water, surface and underground, natural and artificial, public and private or parts thereof, which are wholly or partially within the state, and flow through or border upon the state, except for private waters.<sup>151</sup>

#### Definition of Wetlands:

- Areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>152</sup>

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>153</sup>

#### Additional State Conditions and Requirements:

<sup>146</sup> Haw. Rev. Stat. section 342D-53.

<sup>147</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>148</sup> EPA, Hawaii NPDES Permits, available at <https://www.epa.gov/npdes-permits/hawaii-npdes-permits>.

<sup>149</sup> Haw. Rev. Stat. sections 174C-91 *et seq.*; Haw. Code R. sections 13-169-50 *et seq.*

<sup>150</sup> Haw. Rev. Stat. sections 205A-21 *et seq.*; Haw. Code R. section 15-150.

<sup>151</sup> Idaho Code Ann. section 39-103(18).

<sup>152</sup> Idaho Admin. Code r. 58.01.25.010(01)(110).

<sup>153</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).



- The Idaho Department of Environmental Quality is to ensure surface water quality in Idaho and meet the goals of the CWA, but is prohibited from enacting rules that impose requirements beyond those of the CWA.<sup>154</sup>
- When the Department of Environmental Quality recommends to the Board of Environmental Quality issuance of a rule that is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, the rule is subject to an additional statutory requirement. The agency must clearly specify that the proposed rule, or portions of it, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule trigger this provision.<sup>155</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 10 in coordination with the state of Idaho.
- State does not regulate aboveground storage tanks, but references EPA’s Spill Prevention, Control, and Countermeasure (SPCC) rule and National Fire Prevention Association (NFPA) code. Local fire districts, cities and counties may have aboveground storage tank ordinances.<sup>156</sup>
- State does not have a codified cost recovery program for spills or a spill trust fund.

### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

### 402 NPDES Program:

- Idaho assumed some program components of the NPDES program on July 1, 2018, and will assume others in the following three years.<sup>157</sup>

### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands.<sup>158</sup>

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<sup>154</sup> Idaho Code Ann. section 39-3601.

<sup>155</sup> Idaho Code Ann. section 39-107D.

<sup>156</sup> See Idaho DEQ, Storage Tanks in Idaho, available at <https://www.deq.idaho.gov/waste-mgmt-remediation/storage-tanks.aspx>.

<sup>157</sup> Idaho’s schedule to assume NPDES program components is as follows: individual municipal permits and pretreatment on July 1, 2018; individual industrial permits on July 1, 2019; general permits (for aquaculture, pesticide, CAFO, suction dredged, and remediation) on July 1, 2020; and federal facilities, general and individual stormwater permits and biosolids on July 1, 2021.

EPA, Idaho NPDES Program Authorization, available at <https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization>.

<sup>158</sup> Idaho Code Ann. sections 42-3801 *et seq.* (regarding stream channels), 58-1301 *et seq.* (regarding lakes). Both programs deal primarily with waters, and can occasionally cover wetlands. ASWM, Idaho State Wetland Program, available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/idaho\\_state\\_wetland\\_program\\_summary\\_111615.pdf](https://www.aswm.org/pdf_lib/state_summaries/idaho_state_wetland_program_summary_111615.pdf).



Changes Since Publication of the NWPR: No change

## R. ILLINOIS

Definition of Waters of the State:

- All accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.<sup>159</sup>

Definition of Wetlands:

- Land that has a predominance of hydric soils (soils that are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even if all three wetland parameters are not present.<sup>160</sup>

No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>161</sup>

Additional State Conditions and Requirements:

- No limitations identified

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 5 in coordination with the state of Illinois.
- State program regulates all new tanks over 110 gallons that store flammable substances, requiring permits and registration, secondary containment and site plans. Administered by the State Fire Marshal.<sup>162</sup>
- State code authorizes cost recovery for spills; state has a spill trust fund.<sup>163</sup>

401 Certification:

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<sup>159</sup> 415 Ill. Comp. Stat. section 5/3.550.

• <sup>160</sup> 20 Ill. Comp. Stat. section 830/1-6(a).

<sup>161</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>162</sup> Ill. Admin. Code tit. 41, section 180.20.

<sup>163</sup> 415 Ill. Comp. Stat. sections 5/25c-1, 5/42.

- The state has authority to certify, conditionally certify, waive review or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Illinois to administer the NPDES permitting program. The state issues its permits through the Illinois Environmental Protection Agency. Illinois has an authorized NPDES permit program, general permits program, and is authorized to regulate federal facilities. Illinois does not have an authorized biosolids program or pretreatment program.<sup>164</sup>
- EPA issues all NPDES permits on tribal lands.<sup>165</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters<sup>166</sup> and state funded activities in wetlands,<sup>167</sup> including isolated waters.<sup>168</sup>

Changes Since Publication of the NWPR: No change

## S. INDIANA

#### Definition of Waters of the State:

- (1) The accumulations of water, surface and underground, natural and artificial, public and private; or (2) a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.
  - The term “waters” does not include: (1) an exempt isolated wetland; (2) a private pond; or (3) an off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.
  - The term includes all waters of the United States, as defined in Section 502(7) of the federal CWA (33 U.S.C. 1362(7)), that are located in Indiana.<sup>169</sup>

#### Definitions of Wetlands:

- Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include: (1) swamps; (2) marshes; (3) bogs; and (4) similar areas.<sup>170</sup>

<sup>164</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>165</sup> EPA, Illinois NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/illinois-npdes-permits>.

<sup>166</sup> 615 Ill. Comp. Stat. section 5.

<sup>167</sup> 20 Ill. Comp. Stat. section 830.

<sup>168</sup> State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>169</sup> Ind. Code section 13-11-2-265.

<sup>170</sup> Ind. Code section 13-11-2-265.7.

- A state regulated wetland is defined as an isolated wetland located in Indiana that is not an exempt isolated wetland.<sup>171</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>172</sup>

#### Additional State Conditions and Requirements:

- Under Indiana’s rulemaking process, the Department of Environmental Management (DEM) and the Water Pollution Control Board must provide notice of a proposed rule in the Indiana Register for each of two required public comment periods.<sup>173</sup>
  - The notice for the first public comment period must describe the subject matter and basic purpose of the proposed rule, including a list all alternatives under consideration.
  - The notice for the second public comment period must identify each element of the proposed rule that imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law, or that applies in a subject area in which federal law does not impose a restriction or requirement.
- State imposes a qualified stringency prohibition; House Bill 1082<sup>174</sup> requires any new state environmental rule that is either more stringent than federal requirements or applies in a subject area where federal law does not impose restrictions or requirements, to be notified to the Indiana legislative branch. Following this the rule cannot take effect until adjournment of a regular session of the General Assembly, providing the opportunity to reject the rule via legislation<sup>175</sup>.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 5 in coordination with the state of Indiana.
- Aboveground storage tanks are regulated by the Indiana Fire Prevention Code, which follows the Uniform Fire Code (NFPA 30 and 30A) and specifies design, installation and permitting requirements. Administered by the State Fire Marshal.<sup>176</sup>
- State code authorizes cost recovery for spills; state has a spill trust fund.<sup>177</sup>

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<sup>171</sup> Ind. Code section 13-11-2-221.5. Exempt isolated wetland is defined at Ind. Code section 13-11-2-74.5.

<sup>172</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>173</sup> Ind. Code sections 13-14-9-3, 13-14-9-4.

<sup>174</sup> Indiana. HB1082, available at <https://iga.in.gov/legislative/2016/bills/house/1082#digest-heading>.

<sup>175</sup> Council of State Governments Midwest (2017). Policy and Research, available at <http://www.csamidwest.org/policyresearch/qom-0317.aspx>

<sup>176</sup> 675 Ind. Admin. Code 22-2.3.

<sup>177</sup> Ind. Code sections 13-24-1-4, 13-30-4-1, 13-25-4-2.

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Indiana to administer the NPDES permitting program. The state issues its permits through the Indiana Department of Environmental Management. Indiana has an authorized NPDES permit program, general permits program, and is authorized to regulate federal facilities. Indiana does not have an authorized biosolids program or pretreatment program.<sup>178</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters<sup>179</sup> and isolated waters.<sup>180</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR

- Legislative Change<sup>181</sup>
  - In April 2021, S.B. 389 was signed into law in Indiana. The law amends existing legislation requiring permits and compensatory mitigation for dredge and fill activities in state wetlands. The law redefines Class II wetlands and removed permit requirements for activities in Class I wetlands, Class II wetlands of less than 3/8 of an acre, ephemeral streams, and Class II wetlands outside the boundaries of a municipality and less than an area of 3/4 of an acre.

## T. IOWA

#### Definition of Waters of the State:

- Any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.<sup>182</sup>

#### Definition of Wetlands:

- An area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.<sup>183</sup>

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<sup>178</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>179</sup> Ind. Code sections 14-28-1, 14-26-2-1 *et seq.*

<sup>180</sup> Ind. Code section 13-18-22-1 *et seq.*

<sup>181</sup> Indiana General Assembly, Senate Bill 389 (2021), available at <http://iga.in.gov/legislative/2021/bills/senate/389>

<sup>182</sup> Iowa code 455B.171.

<sup>183</sup> Iowa Code 456B.1.

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>184</sup>

#### Additional State Conditions and Requirements:

- The Iowa Environmental Protection Commission may not establish an effluent standard for a source that is more stringent than a federal effluent standard under the CWA for such source. However, the Commission may establish a more restrictive effluent limitation for a point source if doing so is necessary to meet WQS and the federal government has not established an effluent standard for that source or class of sources.<sup>185</sup>
- Additionally, NPDES rules adopted by the Commission with respect to concentrated animal feeding operations can be no more stringent than requirements under the federal CWA.<sup>186</sup>
- When the Environmental Protection Commission proposes or adopts rules to implement a “specific federal environmental program,” and the rules are more restrictive than the federal program requires, the Commission must: (1) identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires; (2) state the reasons for proposing or adopting the more restrictive requirement; and (3) include with its reasoning a “financial impact statement” detailing the general impact of the rules on affected parties.<sup>187</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 7 in coordination with the state of Iowa.
- State requires facilities with aboveground storage tanks greater than 1,100 gallons to register and to receive approval of their plan prior to being placed in service. State has adopted the Uniform Fire Code (NFPA 30 and 30A), which is administered by the State Fire Marshal.<sup>188</sup>
- State code authorizes cost recovery for spills and related damages; state has a spill trust fund.<sup>189</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

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<sup>184</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf)

<sup>185</sup> Iowa Code 455B.173.

<sup>186</sup> Iowa Code 459.311.

<sup>187</sup> Iowa Code 455B. 105(3).

<sup>188</sup> Iowa Code sections 101.1 *et seq.*

<sup>189</sup> Iowa Code sections 455B.191, 455B.392, 455B.423, 481A.151.

- EPA has approved the state of Iowa to administer the NPDES permitting program. The state issues its permits through the Iowa Department of Natural Resources. Iowa has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Iowa does not have an authorized biosolids program.<sup>190</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters.<sup>191</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No change

## U. KANSAS

#### Definition of Waters of the State:

- All streams and springs, and all bodies of surface and subsurface waters within the boundaries of the state.<sup>192</sup>

#### Definition of Wetlands:

- Water bodies meeting the technical definition for jurisdictional wetlands given in the Corps of Engineers Wetlands Delineation Manual, as published in January 1987.<sup>193</sup>

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>194</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 7 in coordination with the state of Kansas.
- State requires facilities with aboveground storage tanks to register, pay fees, and obtain operating permits. State has adopted the Uniform Fire Code (NFPA 30 and 30A), which is administered by the State Fire Marshal.<sup>195</sup>
- State code authorizes cost recovery for spills; state has a spill trust fund.<sup>196</sup>

<sup>190</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>191</sup> Iowa Code section 455B.261 *et seq.*; Iowa Admin. Code r. 567-70.1 *et seq.*, 571-13.1 *et seq.*

<sup>192</sup> Kan. Stat. Ann. section 65-161(a)

<sup>193</sup> Kan. Admin. Regs. section 28-16-28b(ff)(3).

<sup>194</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>195</sup> Kan. Admin. Regs. sections 28-44-12 *et seq.*

<sup>196</sup> Kan. Stat. Ann. section 65-171.

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Kansas to administer the NPDES permitting program. The state issues its permits through the Kansas Department of Health and Environment. Kansas has an authorized NPDES permit program, general permits program, and is authorized to regulate federal facilities. Kansas does not have an authorized biosolids program or pretreatment program.<sup>197</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters.<sup>198</sup>
- Relies on federal permitting authority and CWA section 401

Changes Since Publication of the NWPR: No change

## V. KENTUCKY

#### Definition of Waters of the Commonwealth:

- Means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction.<sup>199</sup>

#### No Net Loss Goal for Wetlands:

- Has an informal no net loss goal for wetlands.<sup>200</sup>

#### Definition of Wetlands:

- Defined by 40 C.F.R. 122.2, effective July 1, 2008.<sup>201</sup>

#### Additional Commonwealth Conditions and Requirements:

- An administrative body may adopt administrative regulations to implement a statute only when the legislature authorizes the adoption of such regulations or when regulations are required by federal law, in which case such regulations may be no more stringent than federal law or regulations.<sup>202</sup>

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<sup>197</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>198</sup> Kan. Stat. Ann. sections 24-126, 82a-301 et seq.; Kan. Admin. Regs. sections 5-40, 41, 42, 43, 45, 46.

<sup>199</sup> Ky. Rev. Stat. Ann. section 224.1-010(32).

<sup>200</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>201</sup> 401 Ky. Admin. Regs. 5:002(177).

<sup>202</sup> Ky. Rev. Stat. section 13A.120.

- Qualified prohibitions allow for a Kentucky administrative body to issue a regulation more stringent than federal law, but this is arguably in conflict with the broader stringency prohibition provision.<sup>203</sup>
- If a Kentucky administrative body issuing a regulation is (1) not required by federal law to do so, and (2) is required or authorized by state law to issue a regulation governing the subject matter, the regulation must conform to a federal law or regulation governing a subject matter.
- When enacting a regulation in response to a federal mandate, an administrative body is required to compare its proposed compliance standards with any minimum or uniform standards suggested or contained in the federal mandate. The comparison must contain a written determination as to whether the proposed state regulation will impose stricter requirements or other responsibilities on regulated entities than required by the federal mandate. If so, the comparison analysis must further include a written statement justifying the imposition of stricter standards, requirements, or responsibilities.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 4 in coordination with the Commonwealth of Kentucky.
- Commonwealth has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks. Administered by the State Fire Marshal, including permitting requirements.<sup>204</sup>
- Commonwealth code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>205</sup>

#### 401 Certification:

- The Commonwealth has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.
- For general state permits, Kentucky requires an individual water quality certification for otherwise minor impacts to cold water streams.<sup>206</sup>

#### 402 NPDES Program:

- EPA has approved the Commonwealth of Kentucky to administer the NPDES permitting program. The state issues its permits through the Kentucky Department for Environmental Protection. Kentucky has an authorized NPDES permit program,

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<sup>203</sup> Ky. Rev. Stat. section 13A.245.

<sup>204</sup> 815 Ky. Admin. Regs. 7:120(3)(7)(i).

<sup>205</sup> Ky. Rev. Stat. sections 224.1-400(15), 224.1-070, 224.46-580, 224.99-010.

<sup>206</sup> ASWM (2014) Section 401 Certification Best Practices in Dredged and Fill Permit Programs, available at [https://www.aswm.org/pdf\\_lib/401\\_best\\_practices\\_summary.pdf](https://www.aswm.org/pdf_lib/401_best_practices_summary.pdf).



pretreatment program, general permits program, and is authorized to regulate federal facilities. Kentucky does not have an authorized biosolids program.<sup>207</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has Commonwealth authority to issue permits for dredged and fill activity in surface waters.<sup>208</sup>
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: No change

## W. LOUISIANA

#### Definition of Waters of the State:

- Both surface and underground waters within the state including all rivers, streams, lakes, estuaries, groundwater, and all other water courses and waters within the confines of the state and all bordering waters and the Gulf of Mexico.<sup>209</sup>

#### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.<sup>210</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>211</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 6 in coordination with the state of Louisiana.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks. Administered by the State Fire Marshal.<sup>212</sup>

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<sup>207</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>208</sup> Ky. Rev. Stat. section 151.250.

<sup>209</sup> La. Stat. Ann. section 30:2073(7).

<sup>210</sup> LAC Environmental Regulatory Code tit. 33, part 9, subpart 1, available at [https://deq.louisiana.gov/assets/docs/Legal\\_Affairs/33v09-201605-Water-Quality.pdf](https://deq.louisiana.gov/assets/docs/Legal_Affairs/33v09-201605-Water-Quality.pdf)

<sup>211</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf)

<sup>212</sup> La. Admin. Code tit. 33, chapter 9.

- State has requirements for spill contingency planning and implementation of operating procedures and best management practices similar to SPCC.<sup>213</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund with limits tied to Oil Spill Liability Trust Fund coverage.<sup>214</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Louisiana to administer the NPDES permitting program. The state issues its permits through the Louisiana Department of Environmental Quality. Louisiana has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Louisiana does not have an authorized biosolids program.<sup>215</sup>
- EPA issues all NPDES permits on all tribal lands.<sup>216</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in coastal surface waters and wetlands,<sup>217</sup> as well as submerged lands.<sup>218</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No change

## X. MAINE

#### Definition of Waters of the State:

- Any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.<sup>219</sup>

#### Definitions of Wetlands:

- Freshwater wetlands: freshwater swamps, marshes, bogs and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of

<sup>213</sup> *Id.*

<sup>214</sup> La. Stat. Ann. sections 30:2479, 30:2483, 30:2488, 30:2491.

<sup>215</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>216</sup> EPA, Louisiana NPDES Permits, available at <https://www.epa.gov/npdes-permits/louisiana-npdes-permits>.

<sup>217</sup> La. Rev. Stat. Ann. sections 49:214.21 *et seq.*

<sup>218</sup> La. Rev. Stat. Ann. sections 41:1701 *et seq.*

<sup>219</sup> Me. Stat. tit. 38, section 361-A(7).

wetland vegetation typically adapted for life in saturated soils; and not considered part of a great pond, coastal wetland, river, stream or brook.<sup>220</sup>

- Coastal wetlands: all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.<sup>221</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>222</sup>

#### Additional State Conditions and Requirements:

- Maine’s Department of Environmental Protection must, when feasible, identify any proposed rule that is anticipated to be more stringent than the federal standard, if an applicable federal standard exists. During consideration of a proposed rule, the Department must, when feasible: (1) identify provisions of the proposed rule that it believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists; and (2) justify the difference between the rule and the federal standard.<sup>223</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 1 in coordination with the state of Maine.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks. Administered by the State Fire Marshal.<sup>224</sup>
- State has also incorporated federal SPCC requirements by code; failure to follow federal requirements is violation of state code.<sup>225</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>226</sup>

#### 401 Certification:

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<sup>220</sup> Me. Stat. tit. 38, section 480-B.

<sup>221</sup> *Id.*

<sup>222</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>223</sup> Me. Stat. tit. 38, section 341-H(3).

<sup>224</sup> Me. Stat. tit. 25, section 2482.

<sup>225</sup> *Id.*

<sup>226</sup> Me. Stat. tit. 38, sections 551, 552.

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Maine to administer the NPDES permitting program. The state issues its permits through the Maine Department of Environmental Protection. Maine has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Maine does not have an authorized biosolids program.<sup>227</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>228</sup> including isolated waters.<sup>229</sup>

Changes Since Publication of the NWPR: No change

## Y. MARYLAND

#### Definition of Waters of the State:

- Both surface and underground waters within the boundaries of the state subject to its jurisdiction; the portion of the Atlantic Ocean within the boundaries of the state (territorial seas); the Chesapeake Bay and its tributaries; all ponds, lakes, rivers, streams, tidal and nontidal wetlands, public ditches, tax ditches, and public drainage systems within the state (does not include public drainage systems designed and used to collect, convey, or dispose of sanitary sewage); and the floodplain of free-flowing waters determined by the department on the basis of the 100 year flood frequency.<sup>230</sup>

#### Definitions of Wetlands:

- Nontidal wetland: (a) Means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support and that under normal circumstances does support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; (b) Is determined according to the Federal Manual; (c) Does not include tidal wetlands regulated under Environmental Article, Title 16, Annotated Code of Maryland.<sup>231</sup>
- State wetlands: means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide.<sup>232</sup>

#### No Net Loss Goal for Wetlands:

<sup>227</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>228</sup> Me. Stat. tit. 38, sections 480-A *et seq.*

<sup>229</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>230</sup> Md. Code, Env. section 5-101(l).

<sup>231</sup> Md. Code, Env. section 5-901(m).

<sup>232</sup> Md. Code, Env. section 16-101(p).

- Has a formal no net loss goal for wetlands.<sup>233</sup>

#### Additional State Conditions and Requirements:

- By executive order, each unit of Maryland state government is required to take certain steps when it proposes to adopt a regulation that “provides a standard that is more restrictive or stringent than an applicable standard established under a federal law or regulation which governs the same program or conduct.” The agency must: (1) identify the manner in which the proposed regulation is more restrictive than the applicable federal standard; (2) identify the benefit to public health, safety, welfare, or the environment, expected from adopting the standard; (3) in consultation with the Department of Business and Economic Development, identify whether having a more restrictive standard places an additional burden or cost on regulated persons; and (4) justify the need for the standard.<sup>234</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 3 in coordination with the state of Maryland.
- State requires facilities with aboveground oil storage capacities of 1,000 gallons of used oil or 10,000 gallons or more of virgin oil to obtain oil operations permits and meet specific technical requirements such as secondary containment.<sup>235</sup>
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks. Administered by the State Fire Marshal.<sup>236</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>237</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Maryland to administer the NPDES permitting program. The state issues its permits through the Maryland Department of the Environment. Maryland has an authorized NPDES permit program, pretreatment program, general

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<sup>233</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>234</sup> Md. Exec. Order No. 01.01.1996.03 (1996).

<sup>235</sup> Md. Code Regs. 26.10.01.

<sup>236</sup> *Id.*

<sup>237</sup> Md. Code, Env. sections 4-408, 4-409, 4-411, 4-417, 4-418.

permits program, and is authorized to regulate federal facilities. Maryland does not have an authorized biosolids program.<sup>238</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.<sup>239</sup>
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>240</sup> including isolated waters.<sup>241</sup>

Changes Since Publication of the NWPR: No change

## Z. MASSACHUSETTS

#### Definition of Waters of the Commonwealth:

- All waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, coastal waters, and groundwaters.<sup>242</sup>

#### Definitions of Wetlands:

- Coastal wetlands: Any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.<sup>243</sup>
- Freshwater wetlands: Wet meadows, marshes, swamps, bogs, areas where the groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.<sup>244</sup>

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>245</sup>

#### Additional Commonwealth Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

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<sup>238</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>239</sup> Implements a state programmatic general permit pursuant to CWA Section 404(e) for specified activities. The currently operative SPGP is MDSPGP-5 issued September 26, 2016. See <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/MDSPGP-5.pdf>.

<sup>240</sup> Md. Code, Env. sections 5-501 *et seq.*, 5-901 *et seq.*, 16-101 *et seq.*

<sup>241</sup> Maryland Department of the Environment, Maryland Wetland Program Plan, available at [https://www.epa.gov/sites/production/files/2018-03/documents/maryland\\_de\\_complete\\_final\\_rev2018\\_v4.docx\\_1.pdf](https://www.epa.gov/sites/production/files/2018-03/documents/maryland_de_complete_final_rev2018_v4.docx_1.pdf); ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>242</sup> Mass. Gen. Laws ch. 21 section 26A.

<sup>243</sup> Mass. Gen. Laws ch. 131 section 40.

<sup>244</sup> *Id.*

<sup>245</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 1 in coordination with the Commonwealth of Massachusetts.
- Commonwealth has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, which is administered by the State Fire Marshal. Permit, inspection and technical requirements apply to tanks greater than 10,000 gallons in capacity.<sup>246</sup>
- Commonwealth code authorizes cost recovery for spills and resource damages; Commonwealth has a spill trust fund.<sup>247</sup>

#### 401 Certification:

- The Commonwealth has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- Massachusetts is not authorized to run the NPDES program.<sup>248</sup>
- EPA issues all NPDES permits in Massachusetts.<sup>249</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has Commonwealth authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>250</sup> including isolated waters.<sup>251</sup>

#### Changes Since Publication of the NWPR: No change

## AA. MICHIGAN

#### Definition of Waters of the State:

- Groundwater, lakes, including the Great Lakes bordering the state, rivers, streams, and all other water courses and bodies of water within the jurisdiction of the state, including wetlands.<sup>252</sup>

#### Definition of Wetlands:

- Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, and which is any of the following: i) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream; (ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river

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<sup>246</sup> 527 Mass. Code Regs. 5.00, 9.00

<sup>247</sup> Mass. Gen. Laws ch. 21E sections 5, 11; ch. 21M section 8.

<sup>248</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>249</sup> EPA, Massachusetts NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/massachusetts-npdes-permits>.

<sup>250</sup> Mass. Gen. Laws ch. 131, section 40; ch. 130, section 105; ch. 91.

<sup>251</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>252</sup> Mich. Comp. Laws section 324.3101.



or stream; and more than 5 acres in size; (iii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the department determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner.<sup>253</sup>

No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>254</sup>

Additional State Conditions and Requirements:

- An agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard. If an agency promulgates a rule more stringent than the applicable federally mandated standard, they must submit a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule and an explanation of the exceptional circumstances that necessitate the more stringent standard.<sup>255</sup>

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 5 in coordination with the state of Michigan.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks. Administered by the State Fire Marshal. Applications for plan review required for tanks greater than 1,100 gallons in capacity.<sup>256</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>257</sup>

401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

402 NPDES Program:

- EPA has approved the state of Michigan to administer the NPDES permitting program. The state issues its permits through the Michigan Department of Environmental Quality.

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<sup>253</sup> Mich. Comp. Laws section 324.30301(n).

<sup>254</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>255</sup> Mich. Comp. Laws sections 24.232, 24.245.

<sup>256</sup> Mich. Comp. Laws sections 29.1 *et seq.*

<sup>257</sup> Mich. Comp. Laws sections 324.2010, 324.20119, 324.20126a.



Michigan has an authorized NPDES permit program, pretreatment program, general permits program, biosolids program, and is authorized to regulate federal facilities.<sup>258</sup>

- EPA issues all NPDES permits on tribal lands.<sup>259</sup>

#### 404 Dredged and Fill Permitting:

- Michigan has assumed administration of the 404 program (has full state permitting authority).<sup>260</sup>
- Has state authority to issue permits for dredged and fill activities in isolated waters.<sup>261</sup>

#### Changes Since Publication of the NWPR

- Proposed Change
  - Michigan has proposed legislation – S.B. 61 – that would extend permitting jurisdiction to the ordinary high water mark if it is higher than statutorily defined arbitrary elevations currently used to define the extent of the Great Lakes in Michigan.<sup>262</sup>

## BB. MINNESOTA

#### Definitions of Waters of the State:

- Definition that applies to CWA programs: All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.<sup>263</sup>
- Definition that applies to state Wetland Conservation Act: Surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. Waters of the state includes boundary and inland waters.<sup>264</sup>

#### Definition of Wetlands:

- Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

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<sup>258</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>259</sup> EPA, Michigan NPDES, Permits, available at <https://www.epa.gov/npdes-permits/michigan-npdes-permits>.

<sup>260</sup> EPA, State or Tribal Assumption of the Section 404 Permit Program, available at <https://www.epa.gov/cwa-404/state-or-tribal-assumption-section-404-permit-program>. For Michigan’s assumed Section 404 Program, state statutes provide similar protections and ensure compliance with the CWA by being at least as protective as the CWA (however, Michigan’s laws do not use the exact same definitions or exemption language as the CWA).

<sup>261</sup> If over 5 acres, within 500 feet of a stream or lake, 1000 feet of Great Lakes or Lake St. Clair, or essential to preservation of natural resources. Mich. Comp. Laws section 324.30301(n). See also ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>262</sup> Michigan SB 0061 (2021), available at

[http://www.legislature.mi.gov/\(S\(zat3tgdcqdgvgq1rmkfielyv1\)\)/mileg.aspx?page=getObject&objectname=2021-SB-0061](http://www.legislature.mi.gov/(S(zat3tgdcqdgvgq1rmkfielyv1))/mileg.aspx?page=getObject&objectname=2021-SB-0061)

<sup>263</sup> Minn. Stat. section 115.03-22.

<sup>264</sup> Minn. Stat. section 103G.005-17.

- (2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) under normal circumstances support a prevalence of such vegetation.<sup>265</sup>

No Net Loss Goal for Wetlands:

- Has a formal net gain/increase goal for wetlands.<sup>266</sup>

Additional State Conditions and Requirements:

- 404 Assumption: In the event the state assumes responsibility for the federal 404 permitting program, the rules adopted to establish the program “may not be more restrictive” than the federal 404 program—or more restrictive than state law, if state law is more restrictive than the federal 404 program.<sup>267</sup>
  - The state has not assumed the 404 program. The Minnesota Legislature commissioned a study on the feasibility of 404 Assumption that was completed in 2017.<sup>268</sup>
- Feedlots: State limits NPDES feedlot permitting requirements in that the agency must issue NPDES permits for feedlots only as required by federal law. However, the state also issues state disposal system permits for feedlots which may have additional state-only requirements.<sup>269</sup>

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 5 in coordination with the state of Minnesota.
- State has adopted technical requirements for aboveground storage tanks with capacities greater than 1,100 gallons, such as secondary containment, overfill prevention, recordkeeping and release reporting. Facilities with tanks of 1 million gallons or greater are required to obtain operating permits.<sup>270</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>271</sup>

401 Certification:

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<sup>265</sup> Minn. Stat. section 103G.005-19.

<sup>266</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>267</sup> Minn. Stat. section 103G.2375.

<sup>268</sup> Minnesota Section 404 Assumption Feasibility Study Report, available at [http://www.bwsr.state.mn.us/wetlands/cwa\\_404/Minn\\_Section\\_404\\_Assumption\\_Feasibility\\_Study\\_Report\\_Final.pdf](http://www.bwsr.state.mn.us/wetlands/cwa_404/Minn_Section_404_Assumption_Feasibility_Study_Report_Final.pdf)

<sup>269</sup> Minn. Stat. section 116.07.

<sup>270</sup> Minn. R. 7151.1100.

<sup>271</sup> Minn. Stat. sections 115B.17, 116.155.

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Minnesota to administer the NPDES permitting program. The state issues its permits through the Minnesota Pollution Control Agency. Minnesota has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Minnesota does not have an authorized biosolids program.<sup>272</sup>
- EPA issues all NPDES permits on tribal lands.<sup>273</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>274</sup> including isolated waters.<sup>275</sup>

Changes Since Publication of the NWPR: No change

## CC. MISSISSIPPI

#### Definition of Waters of the State:

- All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds, or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal CWA (33 U.S.C. 1251 et seq.).<sup>276</sup>

#### Definition of Wetlands:

- Coastal wetlands: All publicly-owned lands subject to the ebb and flow of the tide; which are below the watermark of ordinary high tide; all publicly-owned accretions above the watermark of ordinary high tide and all publicly-owned submerged water-bottoms below the watermark of ordinary high tide and includes the flora and fauna on the wetlands and in the wetlands.<sup>277</sup>

#### No Net Loss Goal for Wetlands:

<sup>272</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>273</sup> EPA, Minnesota NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/minnesota-npdes-permits>.

<sup>274</sup> Minn. Stat. Ann. section 103G.

<sup>275</sup> Minnesota Board of Water and Soil Resources, 2001-2003 Minnesota Wetland Report, available at <https://www.leg.state.mn.us/docs/2005/other/050523.pdf>; ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>276</sup> Miss. Code Ann. section 49-17-5(f).

<sup>277</sup> Miss. Code Ann. section 49-27-5(a).

- Has a formal no net loss goal for wetlands.<sup>278</sup>

#### Additional State Conditions and Requirements:

- The Mississippi Commission on Environmental Quality is prohibited from enacting a rule, regulation, or standard relating to water quality or water discharge standards that exceeds the requirements of federal statutes, regulations, standards, criteria, and guidance relating to water quality or water discharge standards promulgated under the federal Administrative Procedure Act.<sup>279</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 4 in coordination with the state of Mississippi.
- State has no specific aboveground storage tank regulations; State relies on EPA Region 4 to implement SPCC requirements.
- State code authorizes cost recovery for spills; state does not have a spill trust fund.<sup>280</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Mississippi to administer the NPDES permitting program. The state issues its permits through the Mississippi Department of Environmental Quality. Mississippi has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Mississippi does not have an authorized biosolids program.<sup>281</sup>
- EPA issues all NPDES permits on tribal lands and to offshore oil and gas facilities operating in federal waters off the coast of Mississippi.<sup>282</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in coastal wetlands<sup>283</sup> and submerged lands.<sup>284</sup>
- Relies on federal permitting authority and CWA section 401.

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<sup>278</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>279</sup> Miss. Code Ann. section 49-17-34(2).

<sup>280</sup> Miss. Code Ann. section 49-17-43.

<sup>281</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>282</sup> EPA, Mississippi NPDES Permits, available at <https://www.epa.gov/npdes-permits/mississippi-npdes-permits>.

<sup>283</sup> Miss. Code Ann. sections 49-27-1 *et seq.*

<sup>284</sup> Miss. Code Ann. sections 29-15-1 *et seq.*

## Changes Since Publication of the NWPR

- Legislative Change<sup>285</sup>
  - Change in definition of "coastal wetlands" and addition of a definition for "ordinary high water mark" (OHWM) allows for the Department of Marine Resources to determine where the OHWM lies. Previously the term was undefined.

## DD. MISSOURI

### Definition of Waters of the State:

- All water within the jurisdiction of this state, including all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common.<sup>286</sup>

### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. This definition is consistent with both the Corps wetlands definition at 33 CFR 328.3(b) and the U.S. EPA wetlands definition at 40 CFR 232.2(r).<sup>287</sup>

### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>288</sup>

### Additional State Conditions and Requirements:

- No limitations identified.

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 7 in coordination with the state of Missouri.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks. State code includes financial responsibility requirements for facilities with aboveground storage tanks, except for refineries, pipeline terminals, rail terminals or marine terminals.<sup>289</sup>

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<sup>285</sup> Miss. Code 49-27-5 / Miss. H.B. 594 (2021)

<sup>286</sup> Mo. Rev. Stat. section 644.016(27).

<sup>287</sup> Mo. Code Regs. tit. 10, 20-7.031(1)(FF).

<sup>288</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf)

<sup>289</sup> Mo. Code Regs. tit. 26, 414.012 *et seq.*

- State code authorizes cost recovery for spills; state does have a spill trust fund.<sup>290</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Missouri to administer the NPDES permitting program. The state issues its permits through the Missouri Department of Natural Resources. Missouri has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Missouri does not have an authorized biosolids program.<sup>291</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Does not have state authority to issue permits for dredged and fill activities in surface waters and wetlands.
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No change

## EE. MONTANA

#### Definition of Waters of the State:

- A body of water, irrigation system, or drainage system, either surface or underground. The term does not apply to: (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.<sup>292</sup>

#### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.<sup>293</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal net gain/increase goal for wetlands.<sup>294</sup>

#### Additional State Conditions and Requirements:

<sup>290</sup> Mo. Rev. Stat. section 260.530, 260.535.

<sup>291</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>292</sup> Mont. Code Ann. section 75-5-103.

<sup>293</sup> Mont. Admin. R. 17.30.502(12).

<sup>294</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

- Montana has qualified stringency prohibitions that apply to rules implementing water quality and public water supply programs. The statutory language, identical for both programs, provides that the Board of Environmental Review may not adopt an implementing rule that is more stringent than the federal regulations or guidelines that address the same circumstances unless the Board makes a written finding— following a public hearing and comment, and based on record evidence—that the more-stringent state requirement: (1) protects public health or the environment of Montana; (2) can mitigate the harm to public health or the environment; and (3) is achievable under current technology.<sup>295</sup>
- The Board of Environmental Review may adopt rules implementing water quality law that are more stringent than corresponding draft or final federal regulations, guidelines, or criteria, only if it makes written findings, based on sound scientific or technical evidence in the record, stating that the stricter state requirements are necessary to protect the public health, beneficial use of water, or the environment of Montana.<sup>296</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 8 in coordination with the state of Montana.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, which may be covered by the Petroleum Tank Release Cleanup Fund provided that they meet minimum design, construction, and installation standards (double-walled and have maximum storage capacities of less than 30,000 gallons).<sup>297</sup>
- State code authorizes cost recovery for spills; state does have a spill trust fund, accessible to facilities with aboveground storage tanks less than 30,000 gallons.<sup>298</sup>

### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

### 402 NPDES Program:

- EPA has approved the state of Montana to administer the NPDES permitting program. The state issues its permits through the Montana Department of Environmental Quality. Montana has an authorized NPDES permit program, general permits program, and is authorized to regulate federal facilities. Montana does not have an authorized biosolids or pretreatment program.<sup>299</sup>

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<sup>295</sup> Mont. Code Ann. section 75-5-203; 75-6-116.

<sup>296</sup> Mont. Code Ann. section 75-5-309.

<sup>297</sup> Mont. Admin. R. 17.58.326.

<sup>298</sup> Mont. Code Ann. sections 75-5-63, 75-5-635.

<sup>299</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.



- EPA issues all NPDES permits on tribal lands.<sup>300</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters.<sup>301</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No change

## FF. NEBRASKA

#### Definition of Waters of the State:

- All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.<sup>302</sup>

#### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>303</sup>

#### No Net Loss Goal for Wetlands:

- Has an informal no net loss goal for wetlands.<sup>304</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 7 in coordination with the state of Nebraska.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks. Installation and replacement of aboveground storage tanks require a permit from the State Fire Marshal.<sup>305</sup>

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<sup>300</sup> EPA, Montana NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/montana-npdes-permits>.

<sup>301</sup> Mont. Code Ann. sections 75-7-101 *et seq.*, 75-7-201 *et seq.*

<sup>302</sup> Neb. Rev. Stat. section 81-1502(21).

<sup>303</sup> 117 Neb. Admin. Code, ch. 1, section 073.

<sup>304</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>305</sup> 153 Neb. Admin. Code, ch. 17.



- State code authorizes cost recovery for spills; state has a spill trust fund for releases from aboveground storage tanks (Petroleum Release Remedial Action Reimbursement Fund).<sup>306</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Nebraska to administer the NPDES permitting program. The state issues its permits through the Nebraska Department of Environmental Quality. Nebraska has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Nebraska does not have an authorized biosolids program.<sup>307</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Does not have state authority to issue permits for dredged and fill activities in surface waters and wetlands.
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: no change

## GG. NEVADA

#### Definition of Waters of the State:

- All waters situation wholly or partly within or bordering upon the state, including but not limited to: all streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems, and drainage systems; and all bodies or accumulations of water, surface and underground, natural or artificial.<sup>308</sup>

#### Definition of Wetlands:

- Land having a water table at, near or above the land surface, or land that has been saturated with water for a period of time long enough to promote wetland or aquatic processes indicated by hydric soil, hydrophytic vegetation and other biological activity adapted to a wet environment.<sup>309</sup>

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>310</sup>

<sup>306</sup> Neb. Rev. Stat. sections 81-1508; 126 Nebraska Admin. Code ch. 18.

<sup>307</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>308</sup> Nev. Rev. Stat. section 445A.415.

<sup>309</sup> Nev. Admin. Code section 321.448.

<sup>310</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

#### Additional State Conditions and Requirements:

- Nevada’s Administrative Procedure Act provides that for purposes of a state agency’s notice of intent to adopt a regulation, as well as in a statement to accompany an adopted regulation, the agency must summarize any state provisions that are more stringent than their federal counterparts. Additionally, when a small business impact statement is required, the agency must further explain why the more-stringent state provisions are necessary.<sup>311</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 9 in coordination with the state of Nevada.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal. Specific state requirements cover aboveground storage tanks at marinas for tanks less than 12,000 gallons, including registration, fees, and technical requirements for secondary containment and overfill prevention.<sup>312</sup>
- State code authorizes cost recovery for spills and resource damages; state does not have a spill trust fund.<sup>313</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Nevada to administer the NPDES permitting program. The state issues its permits through the Nevada Division of Environmental Protection. Nevada has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Nevada does not have an authorized biosolids program.<sup>314</sup>
- EPA issues all NPDES permits on tribal lands.<sup>315</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in submerged lands.<sup>316</sup>
- Relies on federal permitting authority and CWA section 401.

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<sup>311</sup> Nev. Rev. Stat. section 233B.0603(1)(a)(9); 233B.0609(6); 233B.066(1)(i).

<sup>312</sup> Nev. Admin. Code sections 459.9921, 477.323.

<sup>313</sup> Nev. Rev. Stat. section 445A.700, 445C.310.

<sup>314</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>315</sup> EPA, NPDES Wastewater & Stormwater Permits (2017), available at <https://www3.epa.gov/region9/water/npdes/permits.html>.

<sup>316</sup> Nev. Rev. Stat. sections 322.100 *et seq.*; NAC 322.060

Changes Since Publication of the NWPR: No change

## HH. NEW HAMPSHIRE

Definition of Waters of the State:

- Surface waters of the state are perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial.<sup>317</sup>
- Groundwaters shall mean all areas below the top of the water table, including aquifers, wells and other sources of groundwater.<sup>318</sup>

Definition of Wetlands:

- An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.<sup>319</sup>

No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>320</sup>

Additional State Conditions and Requirements:

- No limitations identified.

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 1 in coordination with the state of New Hampshire.
- Aboveground storage tanks are regulated by the state Department of Environmental Services and the Fire Marshal's Office; state has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks. Rules apply to facilities with a single tank with a capacity greater than 660 gallons or facilities with two or more tanks capacity greater than 1,320 gallons. Requirements include registration, construction standards, release detection and prevention, secondary containment, and an SPCC Plan (certified by PE licensed in NH).<sup>321</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>322</sup>

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<sup>317</sup> N.H. Rev. Stat. section 485-A:2(XIV).

<sup>318</sup> *Id.* at V. Although groundwaters are not included in the same definition as surface waters for the purposes of what is a water of the state, New Hampshire treats both surface and groundwater as waters of the state in its Water Pollution and Waste Disposal Act. N.H. Rev. Stat. section 485-A:1.

<sup>319</sup> N.H. Rev. Stat. section 482-A:2.

<sup>320</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>321</sup> N.H. Code Admin. R. Env-Or 300.

<sup>322</sup> N.H. Rev. Stat. chapter 146-A.

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- New Hampshire is not authorized to run the NPDES program.<sup>323</sup>
- EPA issues all NPDES permits in New Hampshire.<sup>324</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>325</sup> including isolated waters.<sup>326</sup>

#### Changes Since Publication of the NWPR

- Regulatory Change<sup>327</sup>
  - Revisions to Wetland Rules effective October 2020
- Proposed Change<sup>328</sup>
  - Bill proposed that would change the definition of ‘prime wetland’.

## II. NEW JERSEY

#### Definition of Waters of the State:

- All surface waters and ground waters in the State.<sup>329</sup>

#### Definitions of Wetlands:

- Coastal wetland: any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware bay and Delaware river, Raritan bay, Barnegat bay, Sandy Hook bay, Shrewsbury river including Navesink river, Shark river, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of 1 foot above local extreme high water, and upon which may grow or is capable of growing some, but not necessarily all, of the listed plants.<sup>330</sup>
- Freshwater wetland: an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal

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<sup>323</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>324</sup> EPA, New Hampshire NPDES Permits, available at <https://www.epa.gov/npdes-permits/new-hampshire-npdes-permits>.

<sup>325</sup> N.H. Rev. Stat. chapter 482-A.

<sup>326</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>327</sup> N.H. DES Administrative Rule Env-Wt 100-900, available at <https://www.des.nh.gov/rules-and-regulatory/administrative-rules?keys=envwt>

<sup>328</sup> N.H. House Bill 158 (2021) regarding definition change of Chapter 482-A:15 “primary wetlands” [www.gencourt.state.nh.us/bill\\_Status/billText.aspx?sy=2021&id=300&txtFormat=html](http://www.gencourt.state.nh.us/bill_Status/billText.aspx?sy=2021&id=300&txtFormat=html)

<sup>329</sup> N.J. Rev. Stat. section 58:1A-3.

<sup>330</sup> N.J. Rev. Stat. section 13:9A-2.

circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the department, in designating a wetland, shall use the 3-parameter approach (i.e. hydrology, soils and vegetation) enumerated in the April 1, 1987 interim-final draft “Wetland Identification and Delineation Manual” developed by the United States Environmental Protection Agency, and any subsequent amendments thereto.<sup>331</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>332</sup>

#### Additional State Conditions and Requirements:

- By executive order issued in 1994, New Jersey agencies adopting a rule or regulation to implement or otherwise comply with federal programs must provide a statement as to whether the rule or regulation contains any standards or requirements which exceed the standards or requirements imposed by federal law. The agency must include a cost-benefit analysis supporting its determination to impose the standards and showing that the standards are achievable under current technology.<sup>333</sup>
- A related requirement in a 2010 executive order prohibits a state agency from proposing a rule that exceeds the requirements of federal law, except when required to do so by state law, or when doing so is necessary to achieve a New Jersey specific public policy goal. Agencies are further required to detail and justify every instance where a proposed rule exceeds the requirements of federal law or regulation.<sup>334</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 2 in coordination with the state of New Jersey.
- State has established specific requirements for facilities with aboveground storage tanks, including requirements for secondary containment, overfill prevention, and tank integrity, similar to SPCC requirements.<sup>335</sup>
- State has also adopted the Uniform Fire Code (NFPA 30 and 30A) as well as the National Building and Mechanical Code (under BOCA) for aboveground storage tanks.<sup>336</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund (New Jersey Spill Compensation and Control Act).<sup>337</sup>

#### 401 Certification:

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<sup>331</sup> N.J. Rev. Stat. section 13:9B-3.

<sup>332</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf)

<sup>333</sup> N.J. Exec. Order No. 27 (Gov. Whitman), Nov. 2, 1994.

<sup>334</sup> N.J. Exec. Order No. 2 (Gov. Christie), Jan. 20, 2010.

<sup>335</sup> N.J. Admin. Code section 7:1E.

<sup>336</sup> *Id.*

<sup>337</sup> N.J. Rev. Stat. section 58:10-23.11.

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of New Jersey to administer the NPDES permitting program. The state issues its permits through the New Jersey Department of Environmental Protection. New Jersey has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. New Jersey does not have an authorized biosolids program.<sup>338</sup>

#### 404 Dredged and Fill Permitting:

- New Jersey has assumed the administration of the 404 program (has full state permitting authority).<sup>339</sup>
- Has state authority to issue permits for dredged and fill activities in coastal surface waters and wetlands,<sup>340</sup> and isolated waters.<sup>341</sup>

#### Changes Since Publication of the NWPR: No change

## JJ. NEW MEXICO

#### Definition of Waters of the State:

- All water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.<sup>342</sup>
- All natural waters flowing in streams and watercourses, whether perennial or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use. A watercourse is hereby defined to be any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and bed with visible evidence of the occasional flow of water.<sup>343</sup>

#### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Wetlands that are constructed outside of a surface water of the state for the purpose of

<sup>338</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>339</sup> EPA, 2018. State or Tribal Assumption of the Section 404 Permit Program, available at <https://www.epa.gov/cwa-404/state-or-tribal-assumption-section-404-permit-program>. Mitigation is required for all wetland and water impacts permitted under an individual permit as well as for three general permits (hazardous waste cleanup and remediation, landfill closures, and redevelopment of brownfields). See ASWM, New Jersey State Wetland Program Summary, available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/new\\_jersey\\_state\\_wetland\\_program\\_summary\\_090415.pdf](https://www.aswm.org/pdf_lib/state_summaries/new_jersey_state_wetland_program_summary_090415.pdf).

<sup>340</sup> N.J. Rev. Stat. sections 13:9A-1 *et seq.*

<sup>341</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>342</sup> N.M. Stat. section 74-6-2.

<sup>343</sup> N.M. Stat. section 72-1-1

providing wastewater treatment and that do not impound a surface water of the state are not included in this definition.<sup>344</sup>

No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>345</sup>

Additional State Conditions and Requirements:

- No limitations identified.

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 6 in coordination with the state of New Mexico.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal. State also has specific aboveground storage tanks regulations that apply to tanks that are 1,320 gallons or more, and less than 55,000 gallons. Requirements include registration, design, construction and installation standards, release detection, record-keeping and financial responsibility.<sup>346</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>347</sup>

401 Certification:

- The state has authority to certify, conditionally certify, waive review or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

402 NPDES Program:

- New Mexico is not authorized to run the NPDES program.<sup>348</sup>
- EPA issues all NPDES permits in New Mexico.<sup>349</sup>

404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Does not have state authority to issue permits for dredged and fill activities in surface waters and wetlands.
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: No change

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<sup>344</sup> N.M. Code R. section 20.6.4.7.W(4).

<sup>345</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>346</sup> N.M. Code R. section 20.5.

<sup>347</sup> N.M. Stat. sections 74-4-7, 74-4-8, 74-4-10.

<sup>348</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>349</sup> EPA, New Mexico NPDES Permits, available at <https://www.epa.gov/npdes-permits/new-mexico-npdes-permits>.



## KK. NEW YORK

### Definition of Waters of the State:

- Includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the state of New York and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.<sup>350</sup>

### Definitions of Wetlands:

- Freshwater wetlands: lands and waters of the state as shown on the freshwater wetlands map which contain any or all of the following: (a) lands and submerged lands commonly called marshes, swamps, sloughs, bogs, and flats supporting aquatic or semi-aquatic vegetation;<sup>351</sup> (b) lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet and provided further that such conditions can be expected to persist indefinitely, barring human intervention; (c) lands and waters substantially enclosed by aquatic or semi-aquatic vegetation as set forth in paragraph (a) or by dead vegetation as set forth in paragraph (b) the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation as set forth in paragraph (a) or by dead vegetation as set forth in paragraph (b) the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation; and (d) the waters overlying the areas set forth in (a) and (b) and the lands underlying (c).<sup>352</sup>
- Tidal wetlands: shall mean and include the following: (a) those areas which border on or lie beneath tidal waters, such as, but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters; (b) all banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any specific vegetation.<sup>353</sup>

### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>354</sup>

### Additional State Conditions and Requirements:

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<sup>350</sup> N.Y. Env. Law section 17-0105(2).

<sup>351</sup> Definition includes descriptions of eight types of vegetation (wetland trees; wetland shrubs; emergent vegetation; rooted, floating-leaved vegetation; free-floating vegetation; wet meadow vegetation; bog mat vegetation; and submergent vegetation).

<sup>352</sup> N.Y. Env. Law section 24-0107(1).

<sup>353</sup> N.Y. Env. Law section 25-0103(1). Definition includes descriptions of ten types of vegetation (salt hay, black grass, saltworts, sea lavender, tall cordgrass, hightide bush, cattails, groundsel, marsh mallow, and low marsh cordgrass).

<sup>354</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).



- No limitations identified.

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 2 in coordination with the state of New York.
- State has established specific requirements for facilities with aboveground storage tanks, with a combined storage capacity of more than 1,100 gallons. Technical requirements include tank registration (every five years), secondary containment, comprehensive inspections, and cathodic protection.<sup>355</sup>
- Additional requirements apply to oil storage facilities with capacities of 400,000 gallons or more, including fees, operating licenses, and implementation of a spill prevention plan.<sup>356</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>357</sup>

### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

### 402 NPDES Program:

- EPA has approved the state of New York to administer the NPDES permitting program. The state issues its permits through the New York Department of Environmental Conservation. New York has an authorized NPDES permit program, general permits program, and is authorized to regulate federal facilities. New York does not have an authorized biosolids or pretreatment program.<sup>358</sup>
- EPA issues all NPDES permits on tribal lands and for some federal facilities.<sup>359</sup>

### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>360</sup> including isolated waters.<sup>361</sup>

### Changes Since Publication of the NWPR: No change

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<sup>355</sup> N.Y. Env. Law sections 17-1001 *et seq.*

<sup>356</sup> N.Y. Nav. Law article 12.

<sup>357</sup> N.Y. Nav. Law sections 171, 189.

<sup>358</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>359</sup> EPA, New York NPDES Permits, available at <https://www.epa.gov/npdes-permits/new-york-npdes-permits>.

<sup>360</sup> N.Y. Env. Law sections 24-0101 *et seq.*, 25-0101 *et seq.*, 15-0501 *et seq.*

<sup>361</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

## LL. NORTH CAROLINA

### Definition of Waters of the State:

- Any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction.<sup>362</sup>

### Definition of Wetlands:

- Areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands classified as waters of the state are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3.<sup>363</sup>

### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>364</sup>

### Additional State Conditions and Requirements:

- Subject to certain exceptions, North Carolina agencies that implement and enforce environmental laws may not adopt a rule for protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted. The exceptions, which are narrow, include where adoption of a more restrictive rule would be required by a serious and unforeseen threat to the public health, safety, or welfare.<sup>365</sup>
- Wetlands classified as waters of the state are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3.<sup>366</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 4 in coordination with the state of North Carolina.
- State regulates aboveground storage tanks at oil terminal facilities only, having a capacity of 21,000 gallons or higher (excluding retail gasoline operations). Facilities are required

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<sup>362</sup> N.C. Gen. Stat. 143-212(6).

<sup>363</sup> 15A N.C. Admin. Code 02B.0202.

<sup>364</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>365</sup> N.C. Gen. Stat. section 150B-19.3.

<sup>366</sup> 15A N.C. Admin. Code 02B .0202.

to register with the state and provide a site plan and description of procedures for the prevention of oil spills.<sup>367</sup>

- Aboveground storage tanks are also covered by the NC Carolina Fire Code (following NFPA Standard 30 and 30A), administered by the State Fire Marshal.<sup>368</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>369</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of North Carolina to administer the NPDES permitting program. The state issues its permits through the North Carolina Department of Environmental Quality. North Carolina has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. North Carolina does not have an authorized biosolids program.<sup>370</sup>
- EPA issues all NPDES permits on tribal lands.<sup>371</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in coastal surface waters and wetlands,<sup>372</sup> submerged lands,<sup>373</sup> and isolated waters.<sup>374</sup>

#### Changes Since Publication of the NWPR

- Regulatory Change<sup>375</sup>
  - On March 16, 2021, the NC Department of Environmental Quality (DEQ) proposed temporary rules to reestablish a permitting mechanism for projects impacting waters subject to state wetland protections but no longer a federally jurisdictional wetland or surface water; the temporary rules became effective May 28, 2021.

## MM. NORTH DAKOTA

#### Definition of Waters of the State:

- All waters within the limits of the state from the following sources of water supply: waters on the surface of the earth excluding diffused surface waters but including surface

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<sup>367</sup> N.C. Gen. Stat. sections 143-215.95 *et seq.*

<sup>368</sup> NC DEQ, Underground Storage Tank Section, available at <http://portal.ncdenr.org/web/wm/ust/otfmain>.

<sup>369</sup> N.C. Gen. Stat. sections 143-215.87, 143-215.88, 143-215.88A, 143-215.90, 143-215.93.

<sup>370</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>371</sup> EPA, North Carolina NPDES Permits, available at <https://www.epa.gov/npdes-permits/north-carolina-npdes-permits>.

<sup>372</sup> N.C. Gen. Stat. sections 113A-100 *et seq.*

<sup>373</sup> N.C. Gen. Stat. section 113-229.

<sup>374</sup> 15A N.C. Admin. Code 2H.1301 *et seq.*

<sup>375</sup> 15A NCAC 02H 0.1400 *et seq.*; 15A NCAC 02H 0.1301 (Revision)

waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes; waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water; all residual waters resulting from beneficial use, and all waters artificially drained; and all waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest 30-year period.<sup>376</sup>

#### Definition of Wetlands:

- A natural depressional area that is capable of holding shallow, temporary, intermittent, or permanent water. It does not include sheetwater.<sup>377</sup>

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>378</sup>

#### Additional State Conditions and Requirements:

- The state department of health may only adopt rules more stringent than federal regulations if, after a public hearing, a written finding is made that federal regulations are not adequate to protect public health and the environment of the state; this law applies to rules adopted pursuant to a number of federal laws including the CWA.<sup>379</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 8 in coordination with the state of North Dakota.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal. All owners or operators of aboveground petroleum storage tanks are required to register tanks with the state and pay an annual registration fee for each tank.<sup>380</sup>
- State code authorizes cost recovery for spills; state has a spill trust fund (Petroleum Tank Release Compensation Fund; covers registered tanks).<sup>381</sup>

#### 401 Certification:

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<sup>376</sup> N.D. Cent. Code section 61-01-01.

<sup>377</sup> N.D. Cent. Code section 61-31-02 (7).

<sup>378</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>379</sup> N.D. Cent. Code section 23-01-04.1.

<sup>380</sup> See North Dakota Attorney General, Above Ground Storage of Liquid Fuels, available at <https://attorneygeneral.nd.gov/public-safety/above-ground-storage-liquid-fuels>.

<sup>381</sup> N.D. Cent. Code, sections 23-20.3-05.1, 23-20.3-09, 23-31-01, 23-37-12.

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of North Dakota to administer the NPDES permitting program. The state issues its permits through the North Dakota Department of Health. North Dakota has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. North Dakota does not have an authorized biosolids program.<sup>382</sup>
- EPA issues all NPDES permits on tribal lands.<sup>383</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in submerged lands.<sup>384</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No Change

## NN. OHIO

#### Definition of Waters of the State:

- All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within or border upon this state or are within its jurisdiction.<sup>385</sup>

#### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands includes swamps, marshes, bogs, and similar areas that are delineated in accordance with the 1987 United States army corps of engineers wetland delineation manual and any other procedures and requirements adopted by the United States army corps of engineers for delineating wetlands.<sup>386</sup>

#### No Net Loss Goal for Wetlands:

<sup>382</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>383</sup> EPA, North Dakota NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/north-dakota-npdes-permits>.

<sup>384</sup> N.D. Cent. Code chapter 61-03, 61-33; N.D. Admin. Code article 89-10-01-34.

<sup>385</sup> Ohio Rev. Code section 1501.30(A)(6).

<sup>386</sup> Ohio Rev. Code section 6111.02(P).

- Has a formal no net loss goal for wetlands.<sup>387</sup>

#### Additional State Conditions and Requirements:

- Prior to adopting any rule relating to environmental protection, state agencies must take steps involving a cost-benefits analysis and technological feasibility of the rule; the agency must submit information to the joint committee on agency rule review.<sup>388</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 5 in coordination with the state of Ohio.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks (as Ohio Fire Code) administered by the State Fire Marshal. Permits are required to install, remove, repair or modify tanks.<sup>389</sup>
- State code authorizes cost recovery for spills; state has a spill trust fund for use by the state to investigate and respond to spills.<sup>390</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Ohio to administer the NPDES permitting program. The state issues its permits through the Ohio Environmental Protection Agency. Ohio has an authorized NPDES permit program, pretreatment program, general permits program, biosolids program, and is authorized to regulate federal facilities.<sup>391</sup>
- EPA issues all NPDES permits on tribal lands.<sup>392</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.<sup>393</sup>
- Has state authority to issue permits for dredged and fill activities in coastal surface waters and wetlands,<sup>394</sup> submerged lands,<sup>395</sup> and isolated waters.<sup>396</sup>

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<sup>387</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>388</sup> Ohio Rev. Code section 121.39.

<sup>389</sup> Ohio Admin. Code 1301:7-7-01 *et seq.*

<sup>390</sup> Ohio Rev. Code sections 3745.12-13.

<sup>391</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>392</sup> EPA, Ohio NPDES Permits, available at <https://www.epa.gov/npdes-permits/ohio-npdes-permits>.

<sup>393</sup> Ohio has considered assumption in 2012-2013. A 2012 attempt to amend the state statute (Ohio Revised Code) as part of an omnibus bill was never adopted by the legislature. Another attempt in 2013 to add it to the budget bill was removed by amendment prior to passing of the bill.

<sup>394</sup> Ohio Rev. Code section 1506.

<sup>395</sup> *Id.*

<sup>396</sup> Ohio Rev. Code sections 6111.021 *et seq.*

- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR

- Regulatory Change<sup>397</sup>
  - In June 2020, Ohio EPA issued a new general permit for filling and discharge of dredge material that covers Category I and Category II isolated wetlands and ephemeral streams. The new general permit was issued in response to the NWPR rule which left these water features unprotected.
- Proposed Change<sup>398</sup>
  - In March 2021, a bill was introduced in the Ohio House of Representatives – H.B. 175 – that would remove ephemeral streams from the definition of Waters of the State. The legislation would effectively remove state regulatory authority over this water feature.

## OO. OKLAHOMA

#### Definition of Waters of the State:

- All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, and includes under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon the state.<sup>399</sup>

#### Definition of Wetlands:

- Those lands subject to periodic or seasonal flooding by water as defined under Section 404 of the Clean Water Act and so designated by the State or Federal agency charged with making such determination.<sup>400</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>401</sup>

#### Additional State Conditions and Requirements:

- Each state environmental agency, prior to adopting rules that are more stringent than federal requirements, must prepare a statement outlining economic impacts and environmental benefits of the rules; the statement must be submitted to the governor and legislature.<sup>402</sup>

<sup>397</sup> State of Ohio Isolated Wetland and Ephemeral Stream General Permit (June 2020), available at <https://epa.ohio.gov/Portals/35/permits/EphemeralStream-and-L1-IW-GP.pdf>

<sup>398</sup> Ohio General Assembly House Bill 175 (2021), available at <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-175>

<sup>399</sup> Oklahoma Stat. tit. 27A, section 1-1-201 (20).

<sup>400</sup> Okla. Admin. Code 460:30-1-3.

<sup>401</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf)

<sup>402</sup> Oklahoma Stat. tit. 27A, section 1-1-206.



### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 6 in coordination with the state of Oklahoma.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal.<sup>403</sup>
- Facilities with aboveground petroleum storage tanks (110 gallons or greater at retail, public airports, marinas, and emergency generators or 2100 gallons or greater at fleet and commercial facilities) must register tanks with Oklahoma Corporation Commission, pay fees, and meet technical requirements related to secondary containment, overfill protection, design, security, inspection and release reporting.<sup>404</sup>
- State code authorizes cost recovery for spills; state has a spill trust fund.<sup>405</sup>

### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

### 402 NPDES Program:

- EPA has approved the state of Oklahoma to administer the NPDES permitting program. The state issues its permits through the Oklahoma Dept. of Environmental Quality. Oklahoma has an authorized NPDES permit program, pretreatment program, general permits program, biosolids program, and is authorized to regulate federal facilities.<sup>406</sup>
- EPA issues permits on all tribal lands.<sup>407</sup>
- Oklahoma does not have the authority to issue NPDES permits for oil and gas exploration and production related industries and pipeline operations. EPA is the permitting authority for these activities.<sup>408</sup>

### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Does not have state authority to issue permits for dredged and fill activities in surface waters and wetlands.
- Relies on federal permitting authority and CWA section 401.

### Changes Since Publication of the NWPR: No change

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<sup>403</sup> Okla. Admin. Code 165:26-1 *et seq.*

<sup>404</sup> *Id.*

<sup>405</sup> Oklahoma Stat. tit. 27A, section 2-7-129; Okla. Admin. Code 252:205-13-1, 252:205-23-2.

<sup>406</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>407</sup> EPA, Oklahoma NPDES Permits, available at <https://www.epa.gov/npdes-permits/oklahoma-npdes-permits>.

<sup>408</sup> 61 Fed. Reg. 65047-65053 (Dec. 10, 1996), available at <https://www.govinfo.gov/content/pkg/FR-1996-12-10/html/96-31274.htm>



## PP. OREGON

### Definition of Waters of the State:

- Lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the state, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.<sup>409</sup>

### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.<sup>410</sup>

### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>411</sup>

### Additional State Conditions and Requirements:

- The Oregon Environmental Quality Commission and the Department of Environmental Quality are prohibited from promulgating or enforcing effluent limitations upon nonpoint source discharges of pollutants resulting from forest operations on forestlands, unless required to do so by the federal CWA.<sup>412</sup>
- Oregon’s Administrative Procedure Act sets forth the state policy that agencies are to adopt rules that correspond with equivalent federal laws and rules, unless: (1) there is specific statutory direction to the agency that authorizes adoption of the rule; (2) a federal waiver authorizes the adoption of the rule; (3) local or special conditions in the state warrant a different rule; (4) the state rule clarifies federal rules, standards, procedures, or requirements; (5) the state rule achieves the goals of the federal and state law with the least impact on public and private resources; or (6) there is no corresponding federal regulation.<sup>413</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 10 in coordination with the state of Oregon.

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<sup>409</sup> Or. Rev. Stat. section 468B.005.

<sup>410</sup> Or. Admin. R. 340-055-0010.

<sup>411</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>412</sup> Or. Rev. Stat. section 468B.110(2).

<sup>413</sup> Or. Rev. Stat. section 183.332.

- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal and local fire departments (OR Fire Code). OR Department of Environmental Quality enforces requirements for facilities with aboveground storage tanks with capacities of 10,000 gal or greater where petroleum oil is received from pipelines or vessels.<sup>414</sup>
- State also has worst case spill contingency plan requirements for oil storage facilities.
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund (Oil Spillage Control Fund) for use by the state for activities, such as reviewing contingency plans and carrying out cleanup activities.<sup>415</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Oregon to administer the NPDES permitting program. The state issues its permits through the Oregon Department of Environmental Quality. Oregon has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Oregon does not have an authorized biosolids program.<sup>416</sup>
- EPA issues permits on all tribal lands and in federal waters off the coast.<sup>417</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>418</sup> including isolated waters.<sup>419</sup>

#### Changes Since Publication of the NWPR

- New Guidance<sup>420</sup>
  - The state of Oregon published a memorandum to the Environmental Quality Commission to outline some of the impacts of the new federal regulations, particularly where the narrowed federal program also limits when the state certifies federal actions as complying with (federally-approved) state water quality standards. ORDEQ is issuing Mutual Agreement Orders (similar to review that would occur under CWA Section 401) to applicants for sites that are no longer jurisdictional.

<sup>414</sup> Or. Admin. R. 837-040-0010 *et seq.*

<sup>415</sup> Or. Rev. Stat. sections 468B.45, 468B.310, 468B.320, 468B.455.

<sup>416</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>417</sup> EPA, Oregon NPDES Permits, available at <https://www.epa.gov/npdes-permits/oregon-npdes-permits>.

<sup>418</sup> Or. Rev. Stat. sections 196.800 *et seq.*; Or. Admin. R. 660-015-0010.

<sup>419</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>420</sup> State of Oregon, Department of Environmental Quality, Memorandum to Environmental Quality Commission (Nov 13, 2020), available at [https://www.oregon.gov/deq/EQCdocs/120320\\_D\\_WOTUS.pdf](https://www.oregon.gov/deq/EQCdocs/120320_D_WOTUS.pdf).

## QQ. PENNSYLVANIA

### Definition of Waters of the Commonwealth:

- Includes any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface or underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.<sup>421</sup>

### Definition of Wetlands:

- Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.<sup>422</sup>

### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>423</sup>

### Additional Commonwealth Conditions and Requirements:

- Commonwealth agencies may not exceed federal standards unless justified by a compelling and articulable interest or required by Commonwealth law.<sup>424</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 3 in coordination with the Commonwealth of Pennsylvania.
- Commonwealth has specific requirements for aboveground storage tank with capacities greater than 250 gallons, including registration, permitting, inspections (for tanks >5,000 gallons) and release reporting. Spill prevention response plans are required for facilities with capacities greater than 21,000 gallons. Specific technical requirements for containment, overfill prevention, corrosion protection, leak detection, and inspection/testing. Tanks located at oil production facilities and a food-related facilities are exempted.<sup>425</sup>
- Commonwealth code authorizes cost recovery for taking corrective action in response to spills; Commonwealth has a spill trust fund (Storage Tank Fund) for use by the Commonwealth to operate the underground and aboveground storage tank programs and carrying out spill cleanup activities.<sup>426</sup>

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<sup>421</sup> 35 Pa. Cons. Stat. section 691.1.

<sup>422</sup> *Id.*

<sup>423</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>424</sup> Pa. Exec. Order No. 1996-1 (Feb. 6, 1996); 4 Pa. Code section 1.371(5).

<sup>425</sup> P.L. 169, No. 32.

<sup>426</sup> 35 Pa. Cons. Stat. sections 691.8, 691.602.

#### 401 Certification:

- The Commonwealth has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the Commonwealth of Pennsylvania to administer the NPDES permitting program. The state issues its permits through the Pennsylvania Department of Environmental Protection. Pennsylvania has an authorized NPDES permit program, general permits program, and is authorized to regulate federal facilities. Pennsylvania does not have an authorized biosolids or pretreatment program.<sup>427</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the Section 404 program.<sup>428</sup>
- Has Commonwealth authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>429</sup> including isolated waters.<sup>430</sup>

Changes Since Publication of the NWPR: No change

## RR. PUERTO RICO

#### Definition of Waters of the Territory:

- All coastal waters, surface waters, estuarine waters, ground waters and wetlands as defined in this Regulation.<sup>431</sup>

#### Definition of Wetlands:

- A natural area saturated by surface or ground water, at an interval or duration sufficient to sustain, and under normal circumstances, does sustain or would sustain vegetation typically adapted to saturated, flooded, or marshy soil conditions, which includes areas such as swamps, marshes, coastal plains (salt flats and mud flats), open bodies of water, salt marshes or similar areas.<sup>432</sup>

#### Additional Territory Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

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<sup>427</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>428</sup> Implements a State Programmatic General Permit pursuant to CWA 404(e) for specifically identified activities under Section 404 of the CWA or section 10 of the Rivers and Harbors Act of 1899. The currently operative permit is PASPGP-5 (issued July 2016). 46 Pa. B. 3879; <http://www.nap.usace.army.mil/Portals/39/docs/regulatory/spgp/PASPGP-5.pdf?ver=2018-01-12-111748-487>.

<sup>429</sup> 32 Pa. Cons. Stat. sections 693.1 *et seq.*

<sup>430</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>431</sup> Puerto Rico Rule 1301.1.

<sup>432</sup> 12 L.P.R.A. section 5005.

#### 311 Oil Spill Prevention, Preparedness and Response:

- Territory does not have an aboveground storage tank regulatory program and relies on EPA to directly implement federal spill prevention and preparedness regulations.

#### 401 Certification:

- The territory has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA issues all NPDES permits within Puerto Rico.<sup>433</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No Changes

## SS. RHODE ISLAND

#### Definition of Waters of the State:

- All surface waters including all waters of the territorial sea; tidewaters; all inland waters of any river, stream, brook, pond, or lake; and wetlands, as well as all groundwaters.<sup>434</sup>

#### Definitions of Wetlands:

- Freshwater wetlands: Includes, but is not limited to, those areas that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support a prevalence of vegetation adapted for life in saturated soil conditions. Freshwater wetlands includes, but is not limited to: marshes, swamps, bogs, emergent, and submergent plant communities, and for the purposes of this chapter, rivers, streams, ponds, and vernal pools.<sup>435</sup>
- Coastal wetland: Any salt marsh bordering on the tidal waters of this state, whether or not the tidal waters reach the littoral areas through natural or artificial watercourses, and those uplands directly associated and contiguous thereto which are necessary to preserve the integrity of that marsh. Marshes shall include those areas upon which grow one or more of certain species.<sup>436</sup>

#### No Net Loss Goal for Wetlands:

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<sup>433</sup> EPA, Puerto Rico NPDES Permits, available at <https://www.epa.gov/npdes-permits/puerto-rico-npdes-permits>.

<sup>434</sup> R.I. Gen. Laws section 46-12-1.

<sup>435</sup> R.I. Gen. Laws section 2-1-20.

<sup>436</sup> R.I. Gen. Laws section 46-23-6. Definition includes descriptions of seventeen types of vegetation (smooth cordgrass, salt meadow grass, spike grass, black rush, saltworts, sea lavender, saltmarsh bulrushes, hightide bush, tall reed, tall cordgrass, broadleaf cattail, narrowleaf cattail, spike rush, chairmaker's rush, creeping bentgrass, sweet grass, and wild rye).

- Has an informal no net loss goal for wetlands.<sup>437</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 1 in coordination with the state of Rhode Island.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal.
- State also has specific requirements for aboveground storage tanks with a combined storage capacity over 500 gallons, including overfill protection, secondary containment, cathodic protection for tank bottoms, and inspections (routine and for tanks of 10,000 gallons or more, detailed inspections required within 10 years of the tank installation). Spill Prevention and Emergency Plans are required; facilities can use federal SPCC plans to comply.<sup>438</sup>
- State code authorizes cost recovery for spills and resource damages; state has a spill trust fund.<sup>439</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Rhode Island to administer the NPDES permitting program. The state issues its permits through the Rhode Island Department of Environmental Protection. Rhode Island has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Rhode Island does not have an authorized biosolids program.<sup>440</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>441</sup> including isolated waters.<sup>442</sup>

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<sup>437</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>438</sup> 250 R.I. Code R. 140-25-2.

<sup>439</sup> R.I. Gen. Laws sections 46-12.5.1-6, 46-12.5.1-7, 46-12.7-2.1.

<sup>440</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>441</sup> R.I. Gen. Laws sections 2-1-18 *et seq.*, 46-23-1 *et seq.*

<sup>442</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

### Changes Since Publication of the NWPR: No change

- Regulatory change<sup>443</sup>
  - Freshwater Wetland Rules Revised; filed July 19, 2021, effective date January 15, 2022

## TT. SOUTH CAROLINA

### Definition of Waters of the State:

- Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.<sup>444</sup>

### Definition of Wetlands:

- Coastal wetlands: include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the department shall have the authority to designate its approximate geographic extent.<sup>445</sup>

### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>446</sup>

### Additional State Conditions and Requirements:

- No limitations identified.

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 4 in coordination with the state of South Carolina.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal. Owners must register tanks with the State Fire Marshal's Office for review.<sup>447</sup>

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<sup>443</sup> 250 R.I. Code R. 150-15-2. Available at <https://rules.sos.ri.gov/regulations/inactive/part/250-150-15-2>

<sup>444</sup> S.C. Code Ann. section 48-1-10(2).

<sup>445</sup> S.C. Code Ann. section 48-39-10(G).

<sup>446</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf)

<sup>447</sup> S.C. Code Ann. section 39-41-260.



- State code authorizes cost recovery for spills; state does not have a spill trust fund.<sup>448</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of South Carolina to administer the NPDES permitting program. The state issues its permits through the South Carolina Department of Health and Environmental Control. South Carolina has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. South Carolina does not have an authorized biosolids program.<sup>449</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in coastal surface waters and wetlands<sup>450</sup> and submerged lands.<sup>451</sup>
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: No change

## UU. SOUTH DAKOTA

#### Definitions of Waters of the State:

- All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.<sup>452</sup>

#### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, and similar areas.<sup>453</sup>

#### No Net Loss Goal for Wetlands:

<sup>448</sup> S.C. Code Ann. sections 48-43-560, 48-43-610.

<sup>449</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>450</sup> S.C. Code Ann. sections 8-39-10 *et seq.*

<sup>451</sup> S.C. Code Ann. section 49-1-10; S.C. Code Regs. 19-450.

<sup>452</sup> S.D. Codified Laws section 34A-2-2(12).

<sup>453</sup> S.D. Admin. R. 74:51:01:01(53).

- Does not have a no net loss goal for wetlands.<sup>454</sup>

#### Additional State Conditions and Requirements:

- No rule that has been promulgated pursuant to South Dakota’s laws regarding environmental protection, mining, oil, gas, and/or water may be more stringent than any corresponding federal law, rule, or regulation.<sup>455</sup>
- Another South Dakota stringency provision governs the rules pertaining to applications for a federal license or permit necessary to conduct an activity which may result in a discharge into waters of the state. It prohibits the Water Management Board from establishing rules for certification that exceed minimum federal requirements.<sup>456</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 8 in coordination with the state of South Dakota.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal.<sup>457</sup>
- State also has differentiated requirements for aboveground storage tanks for facilities with total capacities of 250,000 gallons or less and facilities with more 250,000 gallons, including secondary containment, overflow protection, cathodic protection, and internal inspections.<sup>458</sup>
- State code authorizes cost recovery for spills; state has a spill trust fund (Petroleum Release Compensation Fund).<sup>459</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of South Dakota to administer the NPDES permitting program. The state issues its permits through the South Dakota Department of Environment and Natural Resources. South Dakota has an authorized NPDES permit program, pretreatment program, general permits program, biosolids program, and is authorized to regulate federal facilities.<sup>460</sup>

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<sup>454</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>455</sup> S.D. Codified Laws section 1-40-4.1.

<sup>456</sup> S.D. Codified Laws 34A-2-34.

<sup>457</sup> S.D. Codified Laws section 34A-2-100.

<sup>458</sup> *Id.*

<sup>459</sup> S.D. Codified Laws sections 34A-12-3, 34A-12-12, 34A-2-53.

<sup>460</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

- EPA issues all NPDES permits on tribal lands.<sup>461</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in submerged lands.<sup>462</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No change

## VV. TENNESSEE

#### Definition of Waters of the State:

- Any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters.<sup>463</sup>

#### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>464</sup>

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>465</sup>

#### Additional State Conditions and Requirements:

- The government operations committee reviewing an environmental protection or water pollution control rule must recommend to the general assembly termination of any rule that imposes on municipalities or counties environmental requirements or restrictions that are more stringent than federal statutes or rules on the same subject and that result in increased expenditure requirements on municipalities or counties beyond those required to meet the federal requirements – provided that, during the public comment period, the agency was made aware of the issue, and the increased expenditure level was specified. The provision does not apply if the general assembly has appropriated funds to cover the increased expenditures.<sup>466</sup>

#### 303 Water Quality Standards:

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<sup>461</sup> EPA, South Dakota NPDES Permits, available at <https://www.epa.gov/npdes-permits/south-dakota-npdes-permits>.

<sup>462</sup> S.D. Codified Laws section 41-2-18; S.D. Admin. R. 41:04:03:01 *et seq.*

<sup>463</sup> Tenn. Code Ann. section 69-3-103.

<sup>464</sup> Tenn. Comp. R. & Regs. 0400-40-07-.03.

<sup>465</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>466</sup> Tenn. Code Ann. section 4-5-226(k).

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 4 in coordination with the state of Tennessee.
- State has adopted the 2003 edition of the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal.<sup>467</sup>
- State code authorizes cost recovery for spills; state does not have a spill trust fund related to aboveground storage tanks (one exists for underground storage tanks).<sup>468</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Tennessee to administer the NPDES permitting program. The state issues its permits through the Tennessee Department of Environment and Conservation. Tennessee has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. Tennessee does not have an authorized biosolids program.<sup>469</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>470</sup> including isolated waters.<sup>471</sup>

#### Changes Since Publication of the NWPR

- Proposed Change<sup>472</sup>
  - While not directly related to jurisdictional issues, proposed amendments to TN's water quality code by HB 707/SB 1043 (2021) would have eliminated previous permit requirements for land application of treated sewage or wastewater.
- New Guidance<sup>473</sup>
  - Guidance on the exception to "Waters of the State" was initial guidance and did not significantly increase or decrease the protection of state waters, though its rebuttable presumption that all surface waters are linked with groundwater may be viewed as increasing protections.<sup>474</sup> Changes to Hydrologic Determination (HD) guidance for determining whether a waterbody is a Water of the State were minor

<sup>467</sup> Tenn. Code Ann. sections 50-3-101 *et seq.*

<sup>468</sup> Tenn. Code Ann. sections 68-212-114, 68-216-103.

<sup>469</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>470</sup> Tenn. Code Ann. section 69-3-108; Tenn. Comp. R. & Regs. 0400-4-7.

<sup>471</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>472</sup> Tenn. H.B. 707 (2021); Tenn. S.B. 1043 (2021).

<sup>473</sup> Tenn. Dept. of Water Resources, DWR-NR-G-03, Hydrologic Determinations (2020)

<sup>474</sup> Tenn. Dept. of Water Resources, DWR-NR-G-05, Waters of the State Exception Clause (2020)

and did not seem to have a major impact on whether certain waters are jurisdictional.

## WW. TEXAS

### Definition of Waters of the State:

- Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.<sup>475</sup>

### Definition of Wetlands:

- An area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term “hydric soil” means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term “hydrophytic vegetation” means a plant growing in: water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term “wetland” does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland where construction or creation commenced on or after August 28, 1989, and that was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation that has been approved or requested by soil and water conservation districts. If this definition of wetland conflicts with the federal definition in any manner, the federal definition prevails.<sup>476</sup>

### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>477</sup>

### Additional State Conditions and Requirements:

- The Texas Commission on Environmental Quality is prohibited from entering into a memorandum of agreement or any other form of contract with or among state or federal agencies that would impose requirements on the state with respect to administering the water pollution control permitting program under the CWA that are “other than” or more stringent than those “specifically set forth” in CWA section 402(b). This narrow

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<sup>475</sup> Tex. Water Code section 26.001(5).

<sup>476</sup> 30 Tex. Admin. Code section 307.3(a)(84).

<sup>477</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

provision does not, on its face, prohibit Texas Commission on Environmental Quality from enacting regulatory requirements that are more stringent than federal law; rather, it prohibits Texas Commission on Environmental Quality from imposing stricter requirements by way of inter-agency agreements.<sup>478</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 6 in coordination with the state of Texas.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal.<sup>479</sup>
- State also has specific requirements for aboveground storage tanks, including registration, fees, installation notification, reporting, recordkeeping, release reporting and corrective action; tanks located at petrochemical plants, petroleum refineries, electric generating facilities, or bulk facilities are exempted.<sup>480</sup>
- State code authorizes cost recovery for spills and related damages. State no longer has a spill trust fund; the Petroleum Storage Tank Remediation (PSTR) fund ended in 2012.<sup>481</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Texas to administer the NPDES permitting program. The state issues its permits through the Texas Commission on Environmental Quality. Texas has an authorized NPDES permit program, pretreatment program, general permits program, biosolids program, and is authorized to regulate federal facilities.<sup>482</sup>
- Texas is not authorized to issue permits for activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline. EPA is the permitting authority for those facilities.<sup>483</sup>
- EPA issues all NPDES permits on tribal lands.<sup>484</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.

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<sup>478</sup> Tex. Water Code section 26.017(5).

<sup>479</sup> 30 Tex. Admin. Code chapter 334.

<sup>480</sup> *Id.*

<sup>481</sup> Tex. Nat. Res. Code sections 40.202, 40.251.

<sup>482</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>483</sup> *Id.*

<sup>484</sup> EPA, Texas NPDES Permits, available at <https://www.epa.gov/npdes-permits/texas-mpdes-permits>.

- Does not have state authority to issue permits for dredged and fill activities in surface waters and wetlands.
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: No change

## XX. U.S. VIRGIN ISLANDS

Definition of Waters of the Territory:

- All waters within the jurisdiction of the United States Virgin Islands including all harbors, streams, lakes, ponds, impounding reservoirs, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the United States Virgin Islands, including the territorial seas, contiguous zones, and oceans.<sup>485</sup>

Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include salt ponds, marshes, swamps, and similar areas.<sup>486</sup>

Additional Territory Conditions and Requirements:

- No limitations identified.

303 Water Quality Standards:

- Has EPA-approved WQS.

311 Oil Spill Prevention, Preparedness and Response:

- Territory does not have an aboveground storage tank regulatory program and relies on EPA to directly implement federal spill prevention and preparedness regulations.

401 Certification:

- The territory has authority to certify, conditionally certify, waive review or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

402 NPDES Program:

- EPA has approved the territory of the Virgin Islands to administer the NPDES permitting program. The territory issues its permits through the Virgin Islands Department of Conservation and Cultural Affairs. The Virgin Islands has an authorized NPDES permit

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<sup>485</sup> 12 V.I.C. section 182(f).

<sup>486</sup> Virgin Islands Rules and Regulations Title 12, Chapter 7, Subchapter 186, available at <https://www.epa.gov/sites/production/files/2014-12/documents/viwqs.pdf>.



program, general permits program, and is authorized to regulate federal facilities. The Virgin Islands do not have an authorized biosolids or pretreatment program.<sup>487</sup>

404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has territory authority to issue permits for dredged and fill activities in coastal surface waters and wetlands.<sup>488</sup>
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: No change

## YY. UTAH

Definition of Waters of the State:

- All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.<sup>489</sup>

Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>490</sup>
- No Net Loss Goal for Wetlands:
- Has an informal no net loss goal for wetlands.<sup>491</sup>

Additional State Conditions and Requirements:

- The Utah Water Quality Board is prohibited from enacting a rule to administer any program under the federal CWA that is more stringent than the corresponding federal rule, except where specific conditions are satisfied. To enact a more stringent state rule, the Board must: (1) take public comment and hold a hearing; (2) make a written finding based on record evidence that the federal regulations are inadequate to protect public health and the environment in Utah; and (3) issue an accompanying opinion that cites and

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<sup>487</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>488</sup> 12 V.I.C. sections 901 *et seq.*

<sup>489</sup> Utah Code section 19-5-102.

<sup>490</sup> Utah Admin. Code r. 317-8-1.5(60)

<sup>491</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

evaluates the public health and environmental information and studies in the record that form the basis for the Board’s conclusion.<sup>492</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 8 in coordination with the state of Utah.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) as Utah State Fire Code for aboveground storage tanks, administered by the State Fire Marshal for state-owned tanks and by local fire departments for all other tanks.<sup>493</sup>
- State does not have an authorized cost recovery mechanism for spills; state does not have a spill trust fund for aboveground storage tanks (applies to underground storage tanks only).<sup>494</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Utah to administer the NPDES permitting program. The state issues its permits through the Utah Department of Environmental Quality. Utah has an authorized NPDES permit program, pretreatment program, general permits program, biosolids program, and is authorized to regulate federal facilities.<sup>495</sup>
- EPA issues permits on tribal lands.<sup>496</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters.<sup>497</sup>
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: No change

## ZZ. VERMONT

#### Definitions of Waters of the State:

- Defined under the Wetlands Protection and Water Resources Management Act: Any and all rivers, streams, brooks, creeks, lakes, ponds or stored water, and groundwaters, excluding municipal and farm water supplies.<sup>498</sup>

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<sup>492</sup> Utah Code section 19-5-105.

<sup>493</sup> Utah Code section 53-7-106.

<sup>494</sup> Utah Code section 19-5-115

<sup>495</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>496</sup> EPA, Utah NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/utah-npdes-permits>.

<sup>497</sup> Utah Code section 73-3-29.

<sup>498</sup> Vt. Stat. Ann. tit. 10, section 902(3).

- Defined under the Water Pollution Control Act: All rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the state or any portion of it.<sup>499</sup>

#### Definition of Wetlands:

- Those areas of the state that are inundated by surface or groundwater with a frequency sufficient to support significant vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include but are not limited to marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs and ponds, but excluding such areas as grow food or crops in connection with farming activities.<sup>500</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>501</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 1 in coordination with the state of Vermont.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal.<sup>502</sup>
- State code authorizes cost recovery for spills and related damages. State has a spill trust fund for aboveground storage tanks (Petroleum Cleanup Fund) covering farm and residential tanks up to \$10,000. For bulk storage facilities storing motor fuel or heating oil, the reimbursement ceiling is \$990,000.<sup>503</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Vermont to administer the NPDES permitting program. The state issues its permits through Vermont Department of Environmental Conservation. Vermont has an authorized NPDES permit program, pretreatment program, and general

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<sup>499</sup> Vt. Stat. Ann. tit. 10, section 1251(13).

<sup>500</sup> Vt. Stat. Ann. tit. 10, section 902(5).

<sup>501</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>502</sup> Vt. Stat. Ann. tit. 10, section 1929a, chapter 159.

<sup>503</sup> Vt. Stat. Ann. tit. 10, sections 6612, 6615, 6615d.

permits program. Vermont does not have an authorized biosolids program and is not authorized to regulate federal facilities.<sup>504</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>505</sup> including isolated waters.<sup>506</sup>

#### Changes Since Publication of the NWPR

- Legislative Change<sup>507</sup>
  - Vermont House bill 108 (already passed and signed into law) amends Vermont Water Quality Standards to clarify that the standards apply to wetlands and discharges to wetlands.

## AAA. VIRGINIA

#### Definition of Waters of the Commonwealth:

- All water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.<sup>508</sup>

#### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.<sup>509</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal no net loss goal for wetlands.<sup>510</sup>

#### Additional Commonwealth Conditions and Requirements:

- Virginia imposes a Commonwealth limitation on sewage systems that may be no more stringent than the CWA. The State Water Control Board may not require the state or any of its political subdivisions to upgrade the level of treatment in a sewage treatment works to a level more stringent than that required by applicable provisions of the federal CWA.<sup>511</sup>

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<sup>504</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>505</sup> Vt. Stat. Ann., tit. 10, section 6081; Vt. Code R. 12 004 056.

<sup>506</sup> Vt. Code R. 12 004 056; ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>507</sup> 10 V.S.A. § 1253. Classification of waters designated, reclassification, available at

<https://legislature.vermont.gov/bill/status/2022/H.108>

<sup>508</sup> Va. Code Ann. section 62.1-44.3.

<sup>509</sup> *Id.*

<sup>510</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>511</sup> Va. Code Ann. section 62.1-44.15:1.

- When the Virginia State Water Control Board proposes a standard or policy to be adopted by regulation under the Water Control Law that contains provisions that are “more restrictive than applicable federal requirements,” the Board must provide to the proper standing committee of each house of the Commonwealth legislature a description of those provisions and the reason why they are needed.<sup>512</sup>
- When the Board adopts WQS, it is required to adopt them “according to applicable federal criteria or standards,” unless the Board determines that “an additional or more stringent standard” is necessary to protect public health, aquatic life, or drinking water supplies.<sup>513</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 3 in coordination with the Commonwealth of Virginia.
- Commonwealth has a comprehensive oil spill prevention and preparedness program administered by the Virginia Department of Environmental Quality; the Virginia Aboveground Storage Tank Program requires registration, notification, and closure of tanks for owners of facilities with aggregate aboveground storage capacity of more than 1,320 gallons of oil or an operator of an individual tank with a storage capacity of more than 660 gallons.
- Facilities with aggregate storage of 25,000 gallons or more of oil are required to develop an Oil Discharge Contingency Plan and comply with pollution prevention standards and procedures (*e.g.*, inventory control, inspections, secondary containment, cathodic protection, training, leak detection and financial responsibility requirements).
- Facilities with 1 million gallons or more must comply with additional prevention standards and have a Groundwater Characterization Study to monitor the groundwater.
- Commonwealth code authorizes cost recovery for spills and related damages. Commonwealth has a spill trust fund (Petroleum Storage Tank Reimbursement Fund) covering releases from underground and aboveground storage tanks.

### 401 Certification:

- The Commonwealth has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

### 402 NPDES Program:

- EPA has approved the Commonwealth of Virginia to administer the NPDES permitting program. The state issues its permits through the Virginia Department of Environmental Quality. Virginia has an authorized NPDES permit program, pretreatment program,

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<sup>512</sup> Va. Code Ann. section 62.1-44.15(3a), (10).

<sup>513</sup> Va. Code Ann. section 62.1-44.19:7(B).

general permits program, and is authorized to regulate federal facilities. Virginia does not have an authorized biosolids program.<sup>514</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has Commonwealth authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>515</sup> including isolated waters.<sup>516</sup>

Changes Since Publication of the NWPR: No change

## BBB. WASHINGTON

#### Definition of Waters of the State:

- Lakes, rivers, ponds, streams, inland waters, underground water, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington.<sup>517</sup>

#### Definition of Wetlands:

- Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990 that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands.<sup>518</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal net gain/increase goal for wetlands.<sup>519</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

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<sup>514</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>515</sup> Va. Code Ann. sections 28.2-13, 62.1-44.5, 62.1-44.15; 9 Va. Admin. Code sections 25-210-10 *et seq.*

<sup>516</sup> Applies existing Virginia Water Protection (VWP) Permit requirements. Virginia DEQ, email, March 19, 2018. *See also* ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>517</sup> Wash. Rev. Code section 90.48.020.

<sup>518</sup> Wash. Rev. Code section 36.70a.030(23).

<sup>519</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

- The 311 program is administered by EPA Region 10 in coordination with the state of Washington.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by local fire departments. If a facility transfers oil to or from a tank vessel, such as a barge or oil tanker, or to or from a pipeline, then it is subject to Washington State’s Contingency Planning and Facility Oil Handling Standards regulations.<sup>520</sup>
- State code authorizes cost recovery for spills and related damages. State has a spill trust fund; requires state to pursue funding from responsible party and federal sources (e.g., Oil Spill Liability Trust Fund) before using fund.<sup>521</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Washington to administer the NPDES permitting program. The state issues its permits through the Washington Department of Ecology. Washington has an authorized NPDES permit program, pretreatment program, and general permits program. Washington does not have an authorized biosolids program and is not authorized to regulate federal facilities.<sup>522</sup>
- EPA issues permits for federally-owned facilities and for tribal lands.<sup>523</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters<sup>524</sup> and isolated waters.<sup>525</sup>

#### Changes Since Publication of the NWPR:

- Implementation Change<sup>526</sup>
  - There has been an increase in state Administrative Orders issued by Washington Department of Ecology, which has required an increase in staff and funding.

<sup>520</sup> Wash. Admin. Code chapters 173-182, 173-180.

<sup>521</sup> Wash. Rev. Code sections 90.56.330, 90.56.360, 90.56.500.

<sup>522</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>523</sup> EPA, Washington NPDES Permits, available at <https://www.epa.gov/npdes-permits/washington-npdes-permits>.

<sup>524</sup> Wash. Rev. Code chapter 77.55.

<sup>525</sup> Wash. Rev. Code chapter 90.48. Washington Department of Ecology regulates impacts to federally non-jurisdictional wetlands through administrative orders. Washington Department of Ecology, Wetland regulation & permitting resources, available at <https://ecology.wa.gov/Water-Shorelines/Wetlands/Regulations>; ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>526</sup> Memorandum for the Record, Patrick Johnson August 19, 2021



## CCC. WEST VIRGINIA

### Definition of Waters of the State:

- Any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands.<sup>527</sup>

### Definition of Wetlands:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>528</sup>

### No Net Loss Goal for Wetlands:

- Has an informal no net loss goal for wetlands.<sup>529</sup>

### Additional State Conditions and Requirements:

- No legislative rule or program of the state department of environmental protection may be more stringent than any federal rule or program except to the limited extent that the agency first makes a written finding that there exists scientifically supportable evidence for such a rule or program reflecting factors unique to the state.<sup>530</sup>
- With certain exceptions, rules promulgated by the state department of environmental protection may include provisions which are more stringent than federal rules, provided the agency supplies information that demonstrates that such provisions are reasonably necessary to protect, preserve or enhance the quality of the environment, human health, or safety.<sup>531</sup>

### 303 Water Quality Standards:

- Has EPA-approved WQS.

### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 3 in coordination with the state of West Virginia.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks.<sup>532</sup>

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<sup>527</sup> W.Va. Code section 22-11-3(23).

<sup>528</sup> W.Va. Code R. section 47-10-2.58.

<sup>529</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>530</sup> W. Va. Code section 22-5-4.

<sup>531</sup> W. Va. Code section 22-1-3a.

<sup>532</sup> W. Va. Code sections 22-30, 22-31.

- State also has developed comprehensive aboveground storage tank requirements, including registration, release reporting requirements, submission of a Spill Prevention and Response Plan, inspection of secondary containment by a professional engineer or certified tank inspector, and financial responsibility requirements.<sup>533</sup>
- State code authorizes cost recovery for spills and related damages. State has a spill trust fund for releases from aboveground storage tanks (Protect Our Water Fund).<sup>534</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of West Virginia to administer the NPDES permitting program. The state issues its permits through the West Virginia Department of Environmental Protection. West Virginia has an authorized NPDES permit program, pretreatment program, general permits program, and is authorized to regulate federal facilities. West Virginia does not have an authorized biosolids program.<sup>535</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in isolated waters.<sup>536</sup>
- Relies on federal permitting authority and CWA section 401.

Changes Since Publication of the NWPR: No change

## DDD. WISCONSIN

#### Definition of Waters of the State:

- Those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, well, impounding reservoirs, marshes, watercourses, drainage systems, and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.<sup>537</sup>

#### Definition of Wetlands:

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<sup>533</sup> *Id.*

<sup>534</sup> W. Va. Code § 22-11-22, 22-11-25, 22-11-29, 22-19-2.

<sup>535</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>536</sup> West Virginia Department of Environmental Protection, Application for West Virginia State Waters Permit for Federally Non-Jurisdictional Waters, available at

<https://dep.wv.gov/WWE/Programs/wqs/Documents/401%20Program/Isolated%20Waters%20Application%20090315.pdf>; ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>537</sup> Wis. Stat. Ann. section 281.01(18).

- An area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.<sup>538</sup>

#### No Net Loss Goal for Wetlands:

- Has a formal net gain/increase goal for wetlands.<sup>539</sup>

#### Additional State Conditions and Requirements:

- The Wisconsin Department of Natural Resources is required to comply with and not exceed the requirements of the federal CWA and federal regulations in promulgating pollution discharge elimination rules, as those rules relate to: point source discharges, effluent limitations, municipal monitoring requirements, standards of performance for new sources, toxic effluent standards or prohibitions, and pretreatment standards.<sup>540</sup>
- If the Department of Natural Resources seeks to adopt an environmental quality standard more restrictive than a standard provided under corresponding federal law or regulation, the department must advise the board why the more restrictive standard is needed to protect public health, safety or the environment.<sup>541</sup>

#### 303 Water Quality Standards:

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 5 in coordination with the state of Wisconsin.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks.<sup>542</sup>
- State (Department of Agriculture, Trade and Consumer Protection) regulates all aboveground storage tanks with a capacity of 110 gallons or greater and requires approval of construction plan, registration, permitting, inspections and fees.<sup>543</sup>
- State code authorizes cost recovery for spills and related damages. State has a spill trust fund for releases from aboveground storage tanks (Petroleum Environmental Cleanup Fund Act) that expires on June 30, 2020.<sup>544</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

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<sup>538</sup> Wis. Stat. Ann. section 23.32(1).

<sup>539</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf\\_lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf_lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

<sup>540</sup> Wis. Stat. Ann. section 283.11(2).

<sup>541</sup> Wis. Admin. Code NR section 1.52(3); <http://www.ncsl.org/research/environment-and-natural-resources/state-agency-authority-to-adopt-more-stringent-environmental-standards.aspx>.

<sup>542</sup> Wis. Admin. Code Comm. chapter 10.

<sup>543</sup> *Id.*

<sup>544</sup> Wis. Stat. Ann. sections 292.98-.99.

#### 402 NPDES Program:

- EPA has approved the state of Wisconsin to administer the NPDES permitting program. The state issues its permits through the Wisconsin Department of Natural Resources. Wisconsin has an authorized NPDES permit program, pretreatment program, general permits program, biosolids program, and is authorized to regulate federal facilities.<sup>545</sup>
- EPA issues all NPDES permits on tribal lands.<sup>546</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in surface waters and wetlands,<sup>547</sup> including isolated waters.<sup>548</sup>

#### Changes Since Publication of the NWPR

- Implementation Change<sup>549</sup>
  - An existing state law – Wisconsin Act 183(2017) - which exempts discharges in urban and rural areas for non-federal wetland, is now being implemented for the wetlands now deemed non-federal under the NWPR rule that would have been covered under state and federal permitting requirements.

### EEE. WYOMING

#### Definition of Waters of the State:

- All surface and groundwater, including waters associated with wetlands, within the state.<sup>550</sup>

#### Definition of Wetlands:

- Those areas in Wyoming having all three (3) essential characteristics: (A) Hydrophytic vegetation; (B) Hydric soils; and (C) Wetland hydrology.<sup>551</sup>

#### No Net Loss Goal for Wetlands:

- Does not have a no net loss goal for wetlands.<sup>552</sup>

#### Additional State Conditions and Requirements:

- No limitations identified.

#### 303 Water Quality Standards:

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<sup>545</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>546</sup> EPA, Wisconsin NPDES Permits, available at <https://www.epa.gov/npdes-permits/wisconsin-npdes-permits>.

<sup>547</sup> Wis. Stat. Ann. chs. 30, 31, section 281.36.

<sup>548</sup> ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

<sup>549</sup> Declaration of David Siebert, Division Administrator, Wisconsin DNR, State of California v. Wheeler, civ. no. 3:20-cv-03005-RS, filed May 1, 2020

<sup>550</sup> Wyo. Stat. Ann. section 35-11-103(c)(vi)

<sup>551</sup> Wyo. Stat. Ann. section 35-11-103(c)(x)

<sup>552</sup> ASWM, Status and Trends Report on State Wetland Programs in the United States (2015), available at [https://www.aswm.org/pdf/lib/state\\_summaries/status\\_and\\_trends\\_report\\_on\\_state\\_wetland\\_programs\\_in\\_the\\_united\\_states\\_10\\_2015.pdf](https://www.aswm.org/pdf/lib/state_summaries/status_and_trends_report_on_state_wetland_programs_in_the_united_states_10_2015.pdf).

- Has EPA-approved WQS.

#### 311 Oil Spill Prevention, Preparedness and Response:

- The 311 program is administered by EPA Region 8 in coordination with the state of Wyoming.
- State has adopted the Uniform Fire Code (NFPA 30 and 30A) for aboveground storage tanks, administered by the State Fire Marshal, including plan review.
- State requires notification to Wyoming Department of Environmental Quality for aboveground storage tanks containing gasoline and diesel fuel. State also has specific technical requirements for aboveground storage tanks, including construction, secondary containment, cathodic protection, overfill prevention (additional requirements for tanks > 100,000 gallons), and leak detection; for facilities with tanks of capacities of 100,000 gallons or greater, follow inspection requirements in API Standard 653.
- Facilities with storage capacities greater than 1,320 gallons required to have a federal SPCC plan filed with the state.
- State code authorizes cost recovery for spills and related damages. State does not have a spill trust fund.<sup>553</sup>

#### 401 Certification:

- The state has authority to certify, conditionally certify, waive review, or deny certification of federal permits and licenses. Without certification or waiver the federal agency cannot issue the permit or license.

#### 402 NPDES Program:

- EPA has approved the state of Wyoming to administer the NPDES permitting program. The state issues its permits through the Wyoming Department of Environmental Quality. Wyoming has an authorized NPDES permit program, general permits program, and is authorized to regulate federal facilities. Wyoming does not have an authorized biosolids or pretreatment program.<sup>554</sup>
- EPA issues all NPDES permits on tribal lands.<sup>555</sup>

#### 404 Dredged and Fill Permitting:

- Has not assumed the 404 program.
- Has state authority to issue permits for dredged and fill activities in isolated waters.<sup>556</sup>
- Relies on federal permitting authority and CWA section 401.

#### Changes Since Publication of the NWPR: No change

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<sup>553</sup> Wyo. Stat. Ann. section 35-11-901, 903.

<sup>554</sup> EPA, State Program Authority, available at <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>555</sup> EPA, Wyoming NPDES Permits, available at <https://www.epa.gov/npdes-permits/wyoming-npdes-permits>.

<sup>556</sup> 020.0011.2 Wyo. Code R. section 2.

## 2. Tribe-by-Tribe CWA Authorization

### FFF. Overview

Tribes play an important role in managing water resources and, where eligible, implementing Clean Water Act (CWA) programs. This appendix provides a snapshot of the current known status of federally-recognized tribes regarding CWA programs (including the eligibility status of a tribe’s treatment in a manner similar as a state (TAS) status and the approval status of their water quality standards), definitions of tribal waters, and additional information on tribal codes, ordinances, regulations, and/or policies that affect “waters of the reservation.”

The U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) (“the agencies”) compiled this information to describe the breadth of known tribal authorities and to provide a picture of federal and tribal regulatory management of water resources. For the purpose of this snapshot, the agencies compiled information from multiple tribal and federal sources. Information on CWA section 303(c) was drawn from the EPA’s website.<sup>1</sup> The agencies gathered information on tribal water laws and programs through tribal agency websites, EPA websites, EPA regional staff, and from information provided by tribes to the agencies. All but one of the tribes with TAS for CWA section 303(c) water quality standards also have TAS for CWA section 401 water quality certification.

In determining where tribes have the authority to regulate waters that are not federally jurisdictional under the CWA, the agencies relied primarily on tribal codes, ordinances, and regulations, identified through publicly available resources. However, some tribes may implement programs in non-federally jurisdictional waters as directed by implementation guidance and policies that may not be available in the information sources used by the agencies. This appendix is based upon the agencies’ research but may not include the entire universe of tribal ordinances, programs, and definitions. Tribes may have ordinances, programs, or definitions which are not included in this appendix. The agencies also acknowledge that because the federal government generally implements CWA programs on tribal lands, the one exception being where tribes have received TAS to administer for CWA section 303(c) water quality standards or for CWA section 401 water quality certification, a reduced scope of CWA jurisdiction will affect tribes differently than it will affect states. Many tribes may lack the capacity to administer a tribal water program under tribal law, to create a program, or to expand programs that currently exist. Other tribes may rely on the federal government for enforcement of water quality violations.

Definitions for tribal waters, including wetlands, were drawn from online directories of regulatory titles and codes, and thus directly from tribal laws. Many tribes have also expressed to the agencies in meetings and comments the cultural or spiritual significance of water to tribal traditions, and the agencies have attempted to capture where tribes have made statements of the cultural or spiritual significance of wetlands and other aquatic resources in their tribal codes and ordinances, where such information was publicly available. Many tribal definitions of wetlands rely directly or indirectly on the federal regulatory definition of wetlands, as follows:

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<sup>1</sup> Information on EPA approvals for tribes to administer a water quality standards program, and EPA’s approvals of those tribes’ water quality standards is available at <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

- “Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”<sup>2</sup>

An earlier draft of this assessment was shared with tribes for corrections.<sup>3</sup> In order to ensure that the tribal information is as accurate as possible, the agencies have been reviewing information about CWA-related tribal laws and programs since publishing the *Resource and Programmatic Assessment for the Proposed Revised Definition of “Waters of the United States,”* including information submitted in response to the proposed rule and information shared with the agencies as a part of the tribal consultation process. The agencies have made recommended changes and clarified their findings as appropriate in response to those comments. The agencies have also incorporated the latest and most accurate information of which they have become aware about tribal water laws and programs into this appendix.

The agencies also recognize that while some tribes may have authority to regulate tribal waters under tribal law, they may not yet have established water programs to implement their tribal laws and codes. Similarly, the agencies recognize that even if a tribe has established a permitting program that is similar to CWA sections 402 or 404, that is not necessarily an indication that the tribal program parallels or regulates waters equivalent to the geographic scope and range of activities regulated under CWA sections 402 or 404.

## G.G. Assiniboine and Sioux Tribes

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on August 29, 1996.
- Initial water quality standards approved by the EPA on April 25, 2000.<sup>4</sup>

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on August 29, 1996.

## H.H.H. Bad River Band of Lake Superior Tribe of Chippewa Indians

### Definition of “wetlands”

- “Wetland” shall mean an area that is inundated or saturated at or near the surface caused by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in aquatic or saturated soil conditions, commonly

<sup>2</sup> 33 CFR 328.3(c) and 40 CFR 232.2 (as recodified in 2019); 33 CFR 328.3(c) and 40 CFR 120.2 (as codified in this final rule).

<sup>3</sup> The agencies received responses to the draft assessments from five tribes and six tribal organizations. These responses can be found in the Step Two Proposed Rule docket at EPA-HQ-OW-2018-0149-0076, available at <https://www.regulations.gov/document?D=EPA-HQ-OW-2018-0149-0076>. As part of the tribe’s response, the Bad River Band of the Lake Superior Tribe of Chippewa Indians provided the agencies with a copy of their Wetland and Watercourse Protection Ordinance.

<sup>4</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-assiniboine-and-sioux-tribes-fort-peck-indian>.



known as hydrophytic vegetation, that satisfy the 1987 Corps of Engineers Wetland Delineation Manual and subsequent revisions, guidance and updates.<sup>5</sup>

- “Wetland” means an area that is inundated or saturated at or near the surface caused by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in aquatic or saturated soil conditions, commonly known as hydrophytic vegetation.<sup>6</sup>

#### Other Definitions

- “Watercourse” shall mean any waterway, drainageway, drain, river, stream, lake, pond or any body of surface water having definite banks, a bed and visible evidence of a continued flow or continued occurrence of water.<sup>7</sup>
- “Protected wetland” shall mean any of the following:
  1. The following wetlands:
    - i. Wetlands contiguous to any lake, stream, river, pond, or other water course, whether partially or entirely contained within the project site.
    - ii. Wetlands, regardless of size, which are partially or entirely within five hundred (500) feet of the ordinary high water mark unless any lake, stream, river, pond, or other water course is determined by the Bad River Natural Resources Department that surface and groundwater hydrologic connection does not exist.
    - iii. Wetlands, regardless of size, which are not contiguous to any lake, stream, river, pond or other watercourse, if the Bad River Natural Resources Department determines the protection of the wetland is essential to the preservation of the natural resources of the Tribe from pollution, impairment or destruction.
  2. All wetlands which are two (2) or more acres in size, whether partially or entirely contained within the project site.
  3. Wetlands, regardless of size, that protects critical natural resources from pollution, impairment or destruction as determined by the Bad River Natural Resources Department. In making this determination, the Bad River Natural Resources Department must find one or more of the following functions or values apply to the particular site:
    - i. It supports tribal, state or federally endangered or threatened plants, fish or wildlife.
    - ii. It is determined to be a rare or uncommon wetland in the region.
    - iii. It has rare or unique features.
    - iv. It supports Tribal rights for hunting, fishing, trapping, ricing, and cultural and ceremonial/spiritual uses.
    - v. It is used for scientific research.
    - vi. It provides water quality enhancement, flood flow alteration and/or sediment stabilization.

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<sup>5</sup> Bad River Reservation Wetland and Watercourse Protection Ordinance 323.4 (LL).

<sup>6</sup> Bad River Band of the Lake Superior Tribe of Chippewa Indians Water Quality Standards (D) (43).

<sup>7</sup> Bad River Reservation Wetland and Watercourse Protection Ordinance 323.4 (kk).

4. Buffer areas adjacent to any of the wetlands listed above or watercourses, whether partially or entirely on the project site. Buffer areas or portions thereof which are located within the project site shall be protected even if the adjacent wetland or watercourse is not located on the project site. Buffer size shall be a minimum of one hundred (100) feet surrounding open water wetlands and top of fifteen percent (15%) slopes.<sup>8</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on June 26, 2009.
- Initial water quality standards approved by the EPA on September 21, 2011.<sup>9</sup>

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on June 26, 2009.

#### 402-like and 404-like Ordinance

- The Bad River Reservation Wetland and Watercourse Protection Ordinance establishes standards and procedures for the review and regulation of the use of wetlands and watercourses, including issuing permits.
- Except for those activities expressly permitted by Paragraph 323.8, it shall be unlawful for any person to do any of the following unless and until a permit is obtained from the Bad River Natural Resources Department pursuant to this ordinance. A permit is required for: ... (h) Constructing, extending or enlarging any pipe, culvert, or open or closed drainage facility which discharges silt, sediment, organic, or inorganic materials, chemicals, fertilizers, flammable liquids or other pollutants to any lake, stream, protected wetland, or watercourse, except through a retention area, settling basin, or treatment facility designed to control and eliminate the pollutant. The ordinance shall apply to all land uses.<sup>10</sup> Whenever persons requesting a permit are also subject to Federal permit requirements, the following shall apply:
  - (a) Approvals under this section shall not relieve a person of the need to obtain a permit from the U.S. Army Corps of Engineers or Environmental Protection Agency, if required.
  - (b) Issuance of a permit by the U.S. Army Corps of Engineers or Environmental Protection Agency shall not relieve a person of the need to obtain approval under this ordinance, if applicable....<sup>11</sup>

#### Statements of cultural or spiritual significance of wetlands:

- In their natural state, wetlands provide important tribal/public benefits and ecological functions. They provide habitat areas for fish, wildlife, and vegetation, water quality maintenance and pollution control, flood control, shoreline erosion control, natural resource education, scientific study, open space, recreation opportunities,

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<sup>8</sup> Bad River Reservation Wetland and Watercourse Protection Ordinance 323.4 (aa).

<sup>9</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-bad-river-band-lake-superior-chippewa-tribe>.

<sup>10</sup> Bad River Reservation Wetland and Watercourse Protection Ordinance 323.7.

<sup>11</sup> *Id.*, at 323.5 (only relevant portions cited).

environmental niches, and most importantly the traditional, cultural, and spiritual aspects of our heritage.<sup>12</sup>

### III. Big Pine Paiute Tribe

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on October 24, 2005.
- Initial water quality standards approved by the EPA on January 24, 2006.<sup>13</sup>

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on October 24, 2005.

#### Other Novel Protections:

- The tribe has water quality standards for wetlands: All wetlands shall be free from substances attributable to wastewater or other discharges that produce adverse physiological responses in humans, animals, or plants; or which lead to the presence of undesirable or nuisance aquatic life. All wetlands shall be free from activities that would substantially impair the biological community as it naturally occurs due to physical, chemical and hydrologic processes.<sup>14</sup>

### JJJ. Bishop Paiute Tribe

#### Definition of “waters of the reservation”

- “Water or waters” means any water, surface or underground located on or running through the Reservation.<sup>15</sup>

#### Other Definitions

- “Pollutant” means any substance that will alter the quality of the waters of reservation.<sup>16</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 11, 2006.
- Initial water quality standards approved by the EPA on August 15, 2008.<sup>17</sup>

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 11, 2006.

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<sup>12</sup> *Id.* at 323.2.

<sup>13</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-big-pine-paiute-tribe-owens-valley>.

<sup>14</sup> Big Pine Paiute Tribe Water Quality Standards Section VI.j. November 2005. Available at: <https://www.epa.gov/sites/production/files/2014-12/documents/bigpine-tribe.pdf>.

<sup>15</sup> Bishop Paiute Tribe, Ordinance No. 97-11, Water Pollutants, 2(F). Available at: <https://www.epa.gov/sites/production/files/2014-12/documents/bigpine-tribe.pdf>.

<sup>16</sup> *Id.* at 2(D).

<sup>17</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-bishop-paiute-tribe-ca>.

#### 402-like and 404-like Ordinance

- No person shall discharge any pollutant into the waters of the Reservation.<sup>18</sup>

### KKK. Blackfeet Tribe

#### Definition of “reservation waters”

- (1) All naturally occurring bodies of water within the exterior boundaries of the Blackfeet Reservation regardless of alteration by man, including but not limited to lakes, rivers, reservoirs, streams, intermittent streams, ephemeral streams, mudflats, wetlands, springs, sloughs, potholes, ponds, groundwater, ephemeral drainages, irrigation return water that flows into a naturally occurring body of water, tributaries of waters identified above, including any bodies of water classifiable as “tribal waters” under the Blackfeet Tribe Surface Water Quality Standards and Antidegradation Policy.<sup>19</sup>

#### Definition of “wetland”

- “Wetland” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include but are not limited to mudflats, seeps, swamps, marshes, bogs, potholes and other similar areas.<sup>20</sup>

#### Other Definitions

- “Aquatic lands” means all Reservation land below the ordinary high water mark or within a wetland and associated riparian lands. Aquatic lands include lands overlying groundwater that borders or underlies perennial and intermittent streams.<sup>21</sup>
- “Discharge” means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, injecting or dumping of waste or a hazardous substance into surface water bodies and groundwater aquifers of the Tribe.<sup>22</sup>
- “Pollution” means the contamination or other degradation of the physical, chemical or biological properties of land, water or air, including a change in temperature, taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or other substance onto the land or into the water or air that will, or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wildlife, birds, fish or other aquatic life.<sup>23</sup>
- “Project” means any physical alteration of aquatic lands, or any activity that affects or may affect aquatic lands or any associated upland buffers.<sup>24</sup>

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<sup>18</sup> Bishop Paiute Tribe, Ordinance No. 97-11, Section 3, Prohibited Discharges.

<sup>19</sup> Blackfeet Tribe Aquatic Lands Protection Ordinance No. 117 Article III. Available at:

[http://www.blackfeetenvironmental.com/ordinance90/ORDINANCE\\_117\\_FINAL\\_VERSION\\_\(3-21-2019\).pdf](http://www.blackfeetenvironmental.com/ordinance90/ORDINANCE_117_FINAL_VERSION_(3-21-2019).pdf)

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on May 2, 2012.<sup>25</sup>
- Initial water quality standards have not yet been approved by the EPA.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on May 2, 2012.

### 404-like Ordinance

- No person, corporation, association or other entity of any kind shall undertake a project on the Blackfeet Reservation within any aquatic lands as defined in this Ordinance, or that may affect any aquatic lands, without applying for and being granted a permit by the Director of the Blackfeet Environmental Office.<sup>26</sup>
- The Director shall evaluate, in consultation with technical staff, the following (but not limited to) effects in connection with an application: (1) the impacts of any dredge or fill activities; (2) impacts to water quality; (3) any impact to water quantity; (4) creation or change of flow patterns, currents, and/or turbidity of any Reservation waters resulting from the project; (5) disruption of life cycles, seasonal uses, and populations of fish, aquatic animals, wildlife, and plant life existent on or dependent on Reservation waters, aquatic and riparian lands; (6) if the application is for a permanent structure, whether the structure will be designed and constructed in a manner to assure permanence; (7) whether the project will pass reasonably anticipated water flows, currents, or fluctuations in surface water elevations without creating erosion or siltation upstream, downstream, or at the project location; (8) an assessment of cumulative impacts; and (9) any other pertinent project effects.<sup>27</sup>

## LLL. Blue Lake Rancheria

### Definition of “waters of the tribe”

- “Water or waters” means any water, surface or underground, located on or running through the Rancheria or other territory over which the Tribe has Jurisdiction.<sup>28</sup>

### Definition of “wetlands”

- “Wetland” means land transitional between terrestrial and aquatic systems where the water take is usually at or near the surface or the land is covered by shallow water. For the purposes of this Ordinance, wetlands must have one or more of the following three attributes: 1) At least periodically, the land supports predominantly hydrophytes; 2) the substrate is predominantly undrained hydric soil; and/or 3) the substrate is nonsoil and is saturated with water or covered by shallow waters at some time during the growing season of each year. The term for wetlands as used in this Ordinance is drawn from the U.S. Fish and Wildlife publication titled “Classification

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<sup>25</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-blackfeet-tribe>.

<sup>26</sup> Blackfeet Tribe Aquatic Lands Protection Ordinance No. 117 section 4.1.

<sup>27</sup> *Id.* at section 4.4.

<sup>28</sup> Blue Lake Rancheria Water Quality Ordinance 07-2000 Section 2(h). Available at <https://bluelakerancheria-nsn.gov/wp-content/uploads/2017/07/07-00.pdf>.

of Wetlands and Deepwater Habitats of the United States,” dated December, 1979. Where clarification of the term wetland is needed, the explanation in this publication, as amended from time to time, shall be controlling.<sup>29</sup>

#### Other Definitions

- “Fill material” means soil, rocks, sand, waste of any kind, or any other material which displaces soil or water or reduces water retention potential.
- “Pollutant” means any substance that will alter the quality of the waters of the Blue Lake Rancheria or other territory over which the Tribe has jurisdiction.

#### 402-like and 404-like Ordinance

- Prohibited Activities:
  - No person shall discharge any pollutant into the waters or wetlands of the Rancheria or other territory over which the Tribe has jurisdiction.
  - Except as otherwise provided by this ordinance or a permit obtained from the U.S. Army Corps of Engineers, a person shall not: 1) Deposit or permit the placing of fill material in a wetland within the Rancheria or other territory over which the Tribe has jurisdiction; 2) Dredge, remove, or permit the removal of soil or minerals from a wetland within the Rancheria or other territory over which the Tribe has jurisdiction; 3) Drain surface water from a wetland; 4) Alter in any way the hydrology of, or drainage to, a wetland; or 5) Alter in any way the qualities of a wetland that create the conditions that allow the wetland to exist.
  - If federal law, including rules of the U.S. Army Corps of Engineers, would all for the issuance of a permit for activities described in sub-section (b), the Tribal EPA has the authority to prohibit such activity to protect the health and safety of the wetland, the wetland habitat, and/or any plant life or wildlife relying on the wetland for survival.<sup>30</sup>

### MMM. Cabazon Band of Mission Indians

#### 303(c) Water Quality Standards

- Application under review; notice issued June 5, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.<sup>31</sup>

#### 401 Certification

- Application under review; notice issued June 5, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

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<sup>29</sup> *Id.* at Section 2(i).

<sup>30</sup> *Id.* at Section 4.

<sup>31</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

## NNN. Cherokee Nation

### Definition of “waters of the Nation”

- “Waters of the Nation” means all streams, lakes, ponds, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon Cherokee Nation or any portion thereof, and shall include under all circumstances waters which are contained within the boundaries of, flow through or border upon this Nation or any portion thereof.<sup>32</sup>

### Other Definitions

- “Pollutant” includes but is not limited to dredged spoil, solid waste, incinerator residue, medical waste, sewage, garbage, sewage sludge, munitions, chemicals, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agribusiness waste.

### 402-like and 404-like Ordinance

- Authorities. The Commission may establish, implement and enforce programs and requirements that cover any potential or actual source of pollution and any activity, including but not limited to: 1) point source discharges, land application of wastes or chemicals, surface impoundments, and other facilities for treatment, storage or disposal of wastewater, animal wastes or sludge; 2) groundwater, wells, underground injection control, underground and aboveground storage tanks, and pipelines; 3) drinking water, water use, dams, and hydrologic modifications; 4) stormwater, nonpoint source pollution, and best management practices; 5) water quality, water quality standards, and certifications, wetlands, protection of instream flow, and water planning; 6) air quality, source controls and emission standards, and noxious odors or gases; 7) storage, facility siting, treatment, disposal, and transportation of hazardous waste, solid waste, pesticides, toxic substances, and other pollutants; 8) dredge and fill, mining, oil and gas extraction, and forestry practices; 9) environmental assessments, reviews, and impact statements; 10) inspections, sampling, compliance, enforcement, and administrative hearings; 11) indoor air quality, asbestos, lead-based paint, radon, and required disclosures and remediation of habitable structures contaminated or rendered dangerous by manufacturing of illegal drugs, other chemicals or harmful materials; 12) protection or regulation of fish and wildlife; and 13) any program or activity conducted in cooperation with or funded by federal, state, local, or tribal governments.<sup>33</sup>

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<sup>32</sup> Cherokee Nation Code, Title 27 Environmental Quality, Section 201 (14). Updated May 29, 2019. Available at <https://attorneygeneral.cherokee.org/media/Supcrg3j/word-searchable-full-code.pdf>.

<sup>33</sup> Cherokee Nation Environmental Quality Code, Section 204.



## OOO. Cheyenne and Arapaho Tribes

### 402-like and 404-like Ordinance

- Waters Offense: (a) It shall be unlawful to: (1) Interfere with or alter the flow of water in any stream, river, or ditch, without lawful authority to do so, or a permit from the Tribes, and in violation of the right of any other person; or (2) Knowingly break, injure, alter or destroy any bridge, dam, levee, embankment, reservoir, water tank, water line, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or (3) Pollute or befoul any water in any of the following ways: (i) construct or maintain a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or (ii) deposit, pile, unload or leave any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, spring or source of water used for domestic purposes; or (iii) construct, establish, or maintain any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filth therefrom find their way into said source of water; or (iv) knowingly cause or allow any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes. (b) A water offense shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.<sup>34</sup>

## PPP. Citizen Potawatomi Nation

### 402-like and 404-like Ordinance

- Waters Offense. (A) It is unlawful to: (1) Interfere with or alter the flow of water in any stream, river, or ditch, in violation of the right of any other person; or, (2) Knowingly break, injure, alter, or destroy any bridge, dam, levee, embankment, reservoir, water tank, water line, or other structure intended to create hydraulic power or pressure to direct the flow of water; or, (3) Pollute or befoul any water in the following ways: (a) construct or maintain a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage there from shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or, (b) Deposit, pile, unload or leave any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage there from will flow directly into the waters of any stream, well, spring or source of water used for domestic purpose; or, (c) Knowingly cause or allow any substance harmful or potentially harmful to human life to enter into a source of water used for domestic

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<sup>34</sup> Cheyenne-Arapaho Tribes of Oklahoma Law and Order Code, Title 2, Subpart D, Section 566. Available at: <https://www.narf.org/nill/codes/cheyaracode/offenses.html>.

purposes. (B) Section 12-5-169 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Six (6) months, or both.<sup>35</sup>

## QQQ. Coeur D’Alene Tribe

### Definition of “Reservation waters”

- “Reservation waters” or “Coeur d’Alene Reservation waters” includes lakes, rivers, ponds, streams (including intermittent and ephemeral streams), wetlands, and all other surface waters and water courses within the exterior boundaries of the 1894 Coeur d’Alene Reservation. These waters are portrayed in Map Attachments 1 through 4 hereto and referred to therein as “Reservation Waters.”<sup>36</sup>

### Definition of “wetland”

- “Wetland” means any area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>37</sup>

### Other Definitions

- “Permit” means a document issued pursuant to tribal code or federal laws (such as NPDES, CWA, Section 401; CWA, Section 404) specifying the waste treatment and control requirements and waste discharge conditions.<sup>38</sup>
- “Pollutant” includes dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.<sup>39</sup>
- “Point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, sewer, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.<sup>40</sup>
- “Reservation TAS Waters” or “Coeur d’Alene Reservation TAS Waters” means waters that are a distinct yet connected sub-set of the “Reservation Waters” and for which EPA has expressly approved the Water Quality Standards for Approved Surface Waters of the Coeur d’Alene Tribe under section 303 of the CWA and affirmed the Tribes authority to set water quality standards under section 518(e) of the CWA. These waters are portrayed in Map Attachments 1 through 4 hereto and referred to therein as “Reservation TAS Waters.” EPA’s approval of the Tribe’s water

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<sup>35</sup> Citizen Potawatomi Nation Tribal Criminal Code, Title 12, Section 12-5-169. Available at: <https://www.potawatomi.org/images/court%20codes/Title%2012%20CRIMINAL%20OFFENSES%20AND%20PUNISHMENT.pdf>.

<sup>36</sup> Coeur d’Alene Water Quality Standards for Approved Surface Waters Section 2. 2010. Available at <https://www.epa.gov/sites/production/files/2017-02/documents/wqs-coeurdalene.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

quality standards and confirmation of the Tribe’s authority to regulate water quality on these waters does not in any way release the Coeur d’Alene Tribe’s claim to sole authority to regulate all Coeur d’Alene Reservation Waters and all Disputed Waters.<sup>41</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on August 5, 2005.<sup>42</sup>
- Initial water quality standards were approved by EPA on June 12, 2014.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on August 5, 2005.

### Statements of cultural or spiritual significance of water resources

- The purposes of these water quality standards are to restore, maintain and protect the chemical, physical, biological, and cultural integrity of Coeur d’Alene Reservation TAS Waters; to promote the health, social welfare, and economic well-being of the Coeur d’Alene Tribe, its people, and all the residents of the Coeur d’Alene Reservation; to achieve a level of water quality that provides for all cultural uses of the water, the protection and propagation of fish and wildlife, for recreation in and on the water, and all existing and designated uses of the water; to promote the holistic watershed approach to management of Reservation TAS Waters of the Coeur d’Alene Tribe; to provide for the protection of threatened and endangered species and to provide necessary guidance for the protection and/or maintenance of water quality throughout Reservation TAS waters.<sup>43</sup>
- In the tribe’s water quality standards, they have established a designated use for “cultural water use,” which means those water uses necessary to support and maintain the way of life of the Coeur d’Alene People including, but not limited to: use for sufficient flow for fish survival, and wildlife needs, and preservation of habitat for berries, roots, medicines and other vegetation significant to the values of the Coeur d’Alene People. Cultural water uses also include ceremonial activities involving Native American spiritual and cultural practices which may involve intimate contact with water and consumption of water. This shall include uses of a waterbody to fulfill cultural, traditional, spiritual, or religious needs of the Coeur d’Alene Tribe, as approved by the Coeur d’Alene Tribe.<sup>44</sup>

### Other Novel Protections

- The tribe has water quality standards for wetlands: (1) All wetlands which are considered Reservation TAS Waters, and which are not constructed wetlands, shall be subject to the Narrative Criteria (section 5), Antidegradation (section 6), and Narrative Toxic Substances Criterion (section 7(1)) provisions within this chapter. (2) Water quality in wetlands which are considered Reservation TAS Waters shall be maintained at naturally occurring levels, within the natural range of variation for the individual wetland. (3) Physical and biological characteristics shall be maintained and

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<sup>41</sup> *Id.*

<sup>42</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-coeur-dalene-tribe-indians>.

<sup>43</sup> Coeur d’Alene Water Quality Standards Section 1(3).

<sup>44</sup> *Id.* at Section 2.

protected by: (a) Maintaining hydrological conditions, including hydroperiod, hydrodynamics, and natural water temperature variations; (b) Maintaining the natural hydrophytic vegetation; and (c) Maintaining substrate characteristics necessary to support existing and designated uses. (4) Wetlands shall not be used in lieu of stormwater treatment, except as specified by number 7, below. Stormwater shall be treated before discharge to a wetland. (5) Point and nonpoint sources of pollution shall not cause destruction or impairment of wetlands except where authorized under section 404 of the CWA. (6) Wetlands shall not be used as repositories or treatment systems for wastes from human sources, except as specified by number 7, below. (7) Wetlands intentionally created from non-wetland sites for the sole purpose of wastewater or storm water treatment (constructed wetlands) are not considered "Reservation TAS Waters" and are not subject to the provisions of this section.<sup>45</sup>

## RRR. Confederated Salish and Kootenai Tribes

### Definition of “navigable waters”

- “Navigable waters” means the south part of Flathead Lake, being the portion of the Lake located within the exterior boundaries of the Reservation, the portion of Flathead River located within the outer boundaries of the Reservation, and all other lakes, reservoirs, ponds, rivers, streams and bodies of water which are in fact and are located within the outer boundaries of the Reservation.<sup>46</sup>

### Definition of “reservation waters”

- “Reservation waters” means: (1) All naturally occurring bodies of water with the exterior boundaries of the Reservation regardless of alteration by man, including but not limited to lakes, rivers, streams (including intermittent streams) mudflats, wetlands, sloughs, potholes, and ponds from which fish and wildlife are or could be taken, but does not include wholly manmade water bodies. (2) Tributaries of waters identified in subpart (1) above; (3) Wetlands adjacent to Reservation waters.<sup>47</sup>

### Definition of “wetlands”

- “Wetlands” means water-land interface areas which are inundated by surface and/or ground waters at the frequency and duration of time periods sufficient to establish, and under natural conditions, support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to: swamps, marshes, bogs and similar areas. Wetland areas may be separated from the main body of water by maintaining barriers or natural berms.<sup>48</sup>
- “Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in

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<sup>45</sup> *Id.* at Section 10.

<sup>46</sup> Confederated Salish and Kootenai Tribes Shoreline Protection Ordinance, Ordinance No. 64(A), Section 2(e); Confederated Salish and Kootenai Tribes Shoreline Protection Regulations Chapter 2.25. Available at: <http://csktnrd.org/component/rsfiles/download?path=Regulations%2BApplications%252FOrdinance%2B64a.pdf>.

<sup>47</sup> Confederated Salish and Kootenai Tribes Aquatic Lands Conservation Ordinance, Ordinance No. 87-A, Part III Section 1.m; Confederated Salish and Kootenai Tribes Aquatic Lands Conservation Ordinance Regulations, Part I, Section 1.4(o). Both available at: <http://www.csktnrd.org/component/rsfiles/download?path=EP%252F87areg.pdf>.

<sup>48</sup> Shoreline Protection Regulations Chapter 2.43.

saturated soil conditions. Wetlands generally include but are not limited to swamp, marshes, bogs and similar areas.<sup>49</sup>

#### Other Definitions

- “Aquatic lands” means all land below the mean annual high water mark of a Reservation water body.<sup>50</sup>
- “Discharge of dredged material” means any addition or placement of dredged materials into Reservation waters or on aquatic lands whether through direct placement or by secondary means such as runoff, slumping or overflow from a disposal site.<sup>51</sup>
- “Discharge of fill material” means any addition or placement of fill materials into Reservation waters or onto aquatic lands.<sup>52</sup>
- “Dredged material” means material that is excavated, displaced, or removed from aquatic lands.<sup>53</sup>
- “Dredging” means the process of excavating material from the lake bottom and thereby lowering the elevation of a portion of the lake bottom. This shall include the process of extending the lake area landward by excavating material from the lakeshore protection area and thereby lowering the elevation of that portion of the lake.<sup>54</sup>
- “Fill material” means any material used for the purpose of replacing Reservation waters with dry land or dredged material.<sup>55</sup>
- “Filling” means the process of discharging material onto a lake bottom and thereby raising the elevation of a portion of the lake bottom. This shall include the elimination of an aquatic environment or wetland environment by extending the dry land area into such aquatic or wetland area.<sup>56</sup>
- “Permit” means a document issued by the Tribes verifying compliance with the requirements and provisions of these regulations.<sup>57</sup>
- “Project” means a physical alteration of aquatic lands, wetlands, or Reservation waters, not otherwise exempted by this Ordinance or implementing regulations, which has the potential to cause a material change in the condition of such lands or water in contravention of the policy of this Ordinance, and includes but is not limited to dredging, filling, unregulated access detrimental to aquatic lands, irrigation diversions and returns, drainage ditches and construction on aquatic lands, and furthermore, includes maintenance or repair involving any of the above activities.<sup>58</sup>

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<sup>49</sup> Aquatic Lands Conservation Ordinance Part III Section 1.p.

<sup>50</sup> *Id.* at Part III Section 1.c.

<sup>51</sup> *Id.* at Part III Section 1.e.

<sup>52</sup> *Id.* at Part III Section 1.f.

<sup>53</sup> *Id.* at Part III Section 1.l.

<sup>54</sup> Shoreline Protection Regulations Chapter 2.11.

<sup>55</sup> Aquatic Lands Conservation Ordinance Part III Section 1.h.

<sup>56</sup> Shoreline Protection Regulations Chapter 2.13.

<sup>57</sup> *Id.* at Chapter 2.26.

<sup>58</sup> Aquatic Lands Conservation Ordinance Part III Section 1.l.

- “Shoreline protection area” means the area below mean annual high water mark on that portion of the Flathead Lake which is located within the exterior boundaries of the Flathead Reservation.<sup>59</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on March 1, 1995.<sup>60</sup>
- Initial water quality standards were approved by EPA on March 18, 1996.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on March 1, 1995.

#### 404-like Ordinances and Associated Regulations

- It shall be prohibited, after the effective date of this Ordinance, for any person—
  - (1) to make or cause to be made, on the bed or banks of any navigable water below high water mark, any fill or deposit of rock, earth, sand, soil, gravel, shells or other materials, or refuse matter of any kind or description, whether for the purpose of constructing a landfill or other structure (other than a structure referred to in Section 4 of this Ordinance), or otherwise; and
  - (2) to dredge, or otherwise remove or displace by any means soil, sand, gravel, shells or other material, whether or not of intrinsic value, from the bed or banks of any navigable water below high water mark except that which has been identified from inspection by authorized staff as normal or abnormal accumulation of silt, sand or gravel behind existing structure. If at which time of identification, it is determined that removal of said accumulation would not cause significant damage to the lake or lakebed, a variance will be granted at the discretion of the Shoreline Protection Board.<sup>61</sup>
- Any fill or deposit of the type referred to in subsection (a)(1) of this section which was made prior to and is in existence on the effective date of this Ordinance is hereby declared to be unlawful, and, not later than six months following the effective date of this Ordinance, the person who made such fill or deposit or caused such fill or deposit to be made, or the successor in interest of the property, riparian to the navigable water, to which such fill or deposit abuts, or the person maintaining such fill or deposit on the effective date of this Ordinance, or any or all of them, shall remove such fill or deposit and return the land underlying such fill or deposit to its original condition: Provided, that, upon application submitted to the Tribal Council by any such person, the Tribal Council may grant a variance with respect to any such fill or deposit, exempting the fill or deposit from the application of this subsection (b), if it determines that the removal of the fill or deposit would be more harmful to the environment than leaving the fill or deposit in place: Provided further, that the granting of any such variance shall not prevent the Tribal Council from terminating

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<sup>59</sup> Shoreline Protection Regulations Chapter 2.35.

<sup>60</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-confederated-salish-and-kootenai-tribes-flathead>

<sup>61</sup> Shoreline Protection Ordinance Section 3(a).

- the same at a later time upon reaching a different determination and requiring the person to comply with the provisions of this subsection (b) within three months after receiving notification of such termination from the Tribal Council.<sup>62</sup>
- These regulations are adopted under the authority of Tribal Ordinance 64A (Revised), which authorizes the adoption of regulations regarding the issuance or denial of permits for work in navigable waters within the Tribe’s jurisdiction, including work done on the bed and banks below mean annual high water mark of all navigable waters within the exterior boundaries of the Flathead Reservation.<sup>63</sup>
  - It is the policy of the Tribal Council to prevent the degradation of Reservation waters and aquatic lands by regulating construction or installation of projects upon aquatic lands whenever such project may cause erosion, sedimentation, or other disturbances adversely affecting the quality of Reservation waters and aquatic lands.<sup>64</sup>
  - Permit Required. a. No work may commence on a project until the responsible person has been issued a permit for the project. b. All work on a project shall be conducted pursuant to the terms and conditions of the project permit. c. A permit shall be prominently displayed at the project site for the duration of construction activities and for two weeks thereafter.<sup>65</sup>
  - These regulations in no manner supersede or negate the necessity of obtaining other permits as may be required by federal or Tribal agencies with jurisdiction over a project. Where any provision of these regulations imposes more stringent regulations, requirements or limitations than imposed or required by any other applicable regulation, resolution, ordinance or statute, these regulations shall govern.<sup>66</sup>

### SSS. Confederated Tribes of the Chehalis Reservation

#### Definition of “waters of the tribe”

- “Surface waters of the Chehalis Indian Tribe” includes rivers, ponds, tributaries, creeks, streams, inland waters, wetlands and all other surface waters and water courses on land within the Chehalis Reservation.<sup>67</sup>

#### Other Definitions

- “Permit” means a document specifying the waste treatment and control requirements and waste discharge conditions.<sup>68</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on March 7, 1995.<sup>69</sup>
- Initial water quality standards were approved by EPA on February 3, 1997.

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<sup>62</sup> *Id.* at Section 3(b).

<sup>63</sup> Shoreline Protection Regulations Chapter 1.2.

<sup>64</sup> Aquatic Lands Protection Ordinance Part II Section 2.

<sup>65</sup> *Id.* at Part IV Section 1.

<sup>66</sup> Regulations for the Aquatic Lands Conservation Ordinance Part 1 Section 1.3.

<sup>67</sup> Confederated Tribes of the Chehalis Reservation Water Quality Standards Section 2(29). Available at <https://www.epa.gov/sites/production/files/2014-12/documents/confederated-tribes-chehalis.pdf>.

<sup>68</sup> *Id.* at Section 2(22).

<sup>69</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-confederated-tribes-chehalis-reservation>.



#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on March 7, 1995.

#### Statements of cultural or spiritual significance of water resources

- In the tribe’s water quality standards, they have established a designated use for “ceremonial and Religious water use,” which means activities involving traditional Native American spiritual and cultural practices which involve primary (direct) and secondary contact with water.<sup>70</sup>

### TTT. Confederated Tribes of the Colville Reservation

#### Definition of “waters of the reservation”

- “Waters of the Reservation” means all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface water, groundwater and watercourses located within the Colville Indian Reservation.<sup>71</sup>

#### Definition of “wetlands”

- “Wetlands” means areas that contain hydric soils and/or are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and those artificial wetlands intentionally created from nonwetland areas to mitigate for the conversion of wetlands that are approved by the Tribes or the federal government. Wetlands do not include non-tribal and non-federally approved artificial wetlands intentionally created from nonwetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, and those wetlands created after January 1, 1997, that were unintentionally created as a result of the construction of a road, street, or highway.<sup>72</sup>
- “Wetland” means those areas, which under normal conditions exhibit at least two of the following criteria: saturated surface conditions or open water present during a significant portion of the year; hydric soils; a prevalence of vegetation adapted to saturated soils. Swamps, marshes, bogs, wet meadows, and ponds typically are wetlands. For the purposes of this Chapter, wetlands are considered to be natural waters.<sup>73</sup>

#### Other Definitions

- “Aggregate development” means the excavation, removal, and processing of aggregate, including the removal of vegetation and overburden necessary to expose the aggregate. Prospecting and exploration activities shall be included within the meaning of this term when the removal of geologic sample materials exceeds a cumulative total in excess of one ton. Aggregate development shall exclude

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<sup>70</sup> Confederated Tribes of the Chehalis Reservation Water Quality Standards Section 2(7).

<sup>71</sup> Confederated Tribes of Colville Reservation Code, Title 4, Chapter 4-5 On-Site Wastewater Treatment and Disposal, Section 4-5-4 (ss). Available at <https://www.cct-cbc.com/current-code/>.

<sup>72</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-4 (bbb).

<sup>73</sup> *Id.* at Chapter 4-9 Hydraulics Project, Section 4-9-3 (nn).

excavations or grading used primarily for on-site construction and on-site road construction and maintenance.<sup>74</sup>

- “Dredging” means the removal of bed material.<sup>75</sup>
- “Fill material” means material placed in natural waters within the Colville Reservation where the material has the effect of: (1) Replacing any portion of a natural water with dry land; or (2) Changing the bottom elevation of any portion of a natural water. Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in natural waters within the Colville Reservation. The term fill material does not include trash or garbage.<sup>76</sup>
- “Permit” means a document issued by a public body which specifies waste treatment and control requirements and waste discharge conditions.<sup>77</sup>
- “Permit” means any form of permission required under this management program or other tribal regulation prior to undertaking activity within shoreline areas, including shoreline development permits, variances, conditional use permits, permits for oil or natural gas exploration activities, permission which may be required for selective commercial timber harvesting, livestock grazing, and shoreline exemptions.<sup>78</sup>
- “Pollutant” includes but is not limited to dredged spoil, soil, slurry, solid waste, incinerator residue, sewage, sewage and industrial sludge, garbage and trash, chemical waste, biological nutrient, biological material, radioactive material, heat, discarded equipment, material and plant matter, rock, sand, gravel, mine tailings, discarded containers, and all other industrial, municipal or agricultural waste.<sup>79</sup>
- “Shoreline Areas” means all surface waters of the Reservation, including lakes, reservoirs, streams, and wetlands, and underlying lands, lands extending landward for two hundred feet in all directions as measured on a horizontal plan from the ordinary high water mark or wetland, and in addition shall include 100-year floodplains.<sup>80</sup>
- “Watercourse” means any portion of a channel, bed, or bottom of natural waters.<sup>81</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on May 2, 2018.<sup>82</sup>
- Initial water quality standards were promulgated by EPA on July 6, 1989.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on May 2, 2018.

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<sup>74</sup> *Id.* at Chapter 4-5 Aggregate Development & Reclamation Act, Section 4-6-2 (b).

<sup>75</sup> *Id.* at Chapter 4-9 Hydraulics Project, Section 4-9-3 (q).

<sup>76</sup> *Id.* at Chapter 4-9 Hydraulics Project, Section 4-9-3 (r).

<sup>77</sup> *Id.* at Chapter 4-8 Water Quality Standards, Section 4-8-4 (o).

<sup>78</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-4 (gg).

<sup>79</sup> *Id.* at Chapter 4-8 Water Quality Standards, Section 4-8-4 (s).

<sup>80</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-4 (kk).

<sup>81</sup> *Id.* at Chapter 4-9 Hydraulics Project, Section 4-9-3 (ll).

<sup>82</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-confederated-tribes-colville-reservation>.

#### 402-like Ordinance <sup>83</sup>

- (a) No person shall discharge any waste from a point source into Reservation waters without having first obtained a permit from either the BPA [sic] or the Department, as applicable. (b) The Department may, through the issuance of regulatory permits, directives, and orders, control miscellaneous waste discharge not covered by section 4-8-9(a).<sup>84</sup>
- Under the Forest Practices Chapter of the tribe’s code, the following is included as a Class III Forest Practice for operations that are deemed to have some potential for damaging a Reservation resource or the health, safety, or welfare of the Reservation population and that require an application: (3) Ground-based or hand application of chemicals.<sup>85</sup>
- Under the Forest Practices Chapter of the tribe’s code, the following is included as a Class IV Forest Practice for operations that are deemed to have potential for a significant effect on Reservation resources or the health, safety or welfare of the Reservation population and that require an application: (2) Any aerial application of chemicals, or use of a pesticide under an experimental use permit granted under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act.<sup>86</sup>
- The use of herbicides and pesticides shall be prohibited to remove noxious plants in streams, lakes and wetland areas except where no reasonable alternatives exist and it is demonstrated that such activity is in the public interest. A conditional use permit (CUP) shall be required in such cases.<sup>87</sup>
- All shoreline developments and uses shall utilize best management practices (BMPs) to minimize any increase in surface water runoff and to control, treat and release runoff so that receiving water quality and shore properties and features are not adversely affected. Such practices may include but are not limited to dikes, berms, catch basins or settling ponds, installation and required maintenance of oil/water separators, grassy swales, interceptor drains and landscaped buffers.<sup>88</sup>
- Solid and liquid wastes and untreated effluents shall not be allowed to enter any bodies of water or to be discharged onto land.<sup>89</sup>
- The release of oil, chemicals, or hazardous materials onto land or into the water is prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.<sup>90</sup>

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<sup>83</sup> Note that several of the same chapters of the Colville’s tribal code are cited both under 402-like and 404-like ordinances. The agencies have placed the portions of the tribal code that are similar to each respective program under the appropriate heading.

<sup>84</sup> Confederated Tribes of Colville Reservation Code, Title 4, Chapter 4-8 Water Quality Standards, Section 4-8-9.

<sup>85</sup> *Id.* at Chapter 4-7 Forest Practices, Section 4-7-5 (c), only relevant portions cited.

<sup>86</sup> *Id.* at Chapter 4-7 Forest Practices, Section 4-7-5 (d), only relevant portions cited.

<sup>87</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-15 (c)(1).

<sup>88</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-7 (b)(5).

<sup>89</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-7 (b)(11).

<sup>90</sup> *Id.* at Chapter 4-15 Shoreline Management, Section CTC 4-15-17 (b)(12). Note that this provision is also similar to provisions in CWA section 311.

- Herbicides and pesticides shall not be applied or allowed to directly enter water bodies or wetlands unless approved for such use by the Tribal Natural Resources Department.<sup>91</sup>

#### 404-like Ordinances<sup>92</sup>

- Water quality permits are required for aggregate development and aggregate development operations, exploration, and prospecting operations on all lands within the Colville Indian Reservation as specified in this Chapter for all activities commenced, resumed, modified, or expanded after the adoption of this Chapter, where aggregate development results in, or has resulted in: (1) More than one acre of disturbed area; (2) Slopes greater than thirty feet high and steeper than 1.5 foot horizontal to 1.0 foot vertical; or (3) More than one acre of disturbed area within a twenty acre area, when the disturbed area results from prospecting or exploration activities.<sup>93</sup>
- All development shall be located, designed, constructed and managed to protect and/or not adversely affect those natural features which are valuable, fragile or unique to the region, including but not limited to: (A) Wetlands, marshes, bogs, swamps, and river deltas; (B) Natural resources including but not limited to, sand and gravel deposits, timber, or natural recreational beaches; (C) Fish, shellfish and wildlife habitats, migratory routes and spawning areas; (D) Accretion shore forms; and (E) Natural or man-made scenic vistas or features.<sup>94</sup>
- When a development site encompasses environmentally sensitive areas (floodplains, wetlands, steep slopes, and fish and wildlife habitat), these features shall be left intact and maintained as open space or buffers. All development shall be set back from these areas to prevent hazardous conditions and property damage as well as to protect valuable shoreline features and resources.<sup>95</sup>
- The control of aquatic weeds by derooting, rotovating, or other method which disturbs the bottom sediments and related aquatic life shall be considered development for which a substantial development permit is required, unless it will maintain existing water depth for navigation in an area covered by a previous permit for such activity. In this case it shall be considered normal maintenance and repair and therefore exempt from the requirement to obtain a substantial development permit.<sup>96</sup>
- No hydraulic project shall be commenced unless the Department has received and approved, or conditionally approved an application pursuant to this Chapter.<sup>97</sup>
- Alteration of wetlands shall only occur in accordance with the requirements of CTC 4-15.<sup>98</sup>

<sup>91</sup> *Id.* at Chapter 4-15 Shoreline Management, Section CTC 4-15-17 (b)(14).

<sup>92</sup> Note that several of the same chapters of the Colville's tribal code are cited both under 402-like and 404-like ordinances. The agencies have placed the portions of the tribal code that are similar to each respective program under the appropriate heading.

<sup>93</sup> Confederated Tribes of Colville Reservation Code, Title 4, Chapter 4-6 Aggregate Development & Reclamation Act, Section 4-6-4.

<sup>94</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-7 (b)(7). *See also* Section 4-15-13.

<sup>95</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-7 (b)(15).

<sup>96</sup> *Id.* at Chapter 4-15 Shoreline Management, Section 4-15-15 (c)(10).

<sup>97</sup> *Id.* at Chapter 4-9 Hydraulics Project, Section 4-9-5, which also lists several permitting exemptions.

<sup>98</sup> *Id.* at Chapter 4-9 Hydraulics Project, Section 4-9-6 (a), discussing applications for hydraulics projects and avoidable impacts. *See also* 4-9-48, which offers general provisions.

- Approval of an application to conduct a hydraulic project under this Chapter does not constitute approval of any other permit that may be required, and except as expressly provided in this Chapter, does not constitute a waiver of any other requirement of this Code. Other permits and requirements may also apply to certain practices, as required by the Forest Practices, Shoreline Protection, Water Quality Standards, Mining Practices Water Quality, Water Use and Permitting or other applicable laws. These may also include permits issued by the United States Army Corps of Engineers by authority of the Clean Water Act Section 404 and the Rivers and Harbors Act Section 10 for work in navigable waters or “waters of the United States.”<sup>99</sup>
- The Forest Practices Chapter of the tribe’s code includes the following operations as Class I Forest Practices for operations that are deemed to have no direct potential for damaging a Reservation resource or the health, safety or welfare of the Reservation population and do not require an application: (2) the removal of forest products (including live, dead and down material, *i.e.*, firewood, fence posts, poles, fern, etc.) for personal, noncommercial use, provided: (removals and operations shall not be conducted within waters or wetlands; (4) road maintenance including road grading, rocking, and installation of cross drains, except movement, placement, or replacement of materials which have a direct potential for entering waters or wetlands.<sup>100</sup>
- Under the Forest Practices Chapter part of the tribe’s code, the following are included as Class III Forest Practices for operations that are deemed to have some potential for damaging a Reservation resource, or the health, safety or welfare of the Reservation population and require an application: (6) Replacement of water crossing structures, and road maintenance wherein the movement, placement, or replacement of materials has the direct potential for entering waters or wetlands; (8) Operations such as pre-commercial thinning or slashing if conducted inside the Riparian Management Zone.<sup>101</sup>

#### Statements of cultural or spiritual significance of water resources

- In the tribe’s water quality standards, they have established a designated use for “ceremonial and Religious water use,” which means activities involving traditional Native American spiritual practices which involve, among other things, primary (direct) contact with water.<sup>102</sup>

## UUU. Confederated Tribes of the Goshute reservation

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on May 23, 2019.<sup>103</sup>
- Initial water quality standards have not yet been approved by the EPA.

### 401 Certification

<sup>99</sup> *Id.* at Chapter 4-9 Hydraulics Project, Section 4-9-7 (g).

<sup>100</sup> *Id.* at Chapter 4-7 Forest Practices, Section 4-7-5 (a), only relevant portions cited.

<sup>101</sup> *Id.* at Chapter 4-7 Forest Practices, Section 4-7-5 (c), only relevant portions cited.

<sup>102</sup> Confederated Tribes of the Colville Reservation Water Quality Standards, 40 CFR 131.35(d)(3). Available at <https://www.govinfo.gov/content/pkg/CFR-2005-title40-vol21/xml/CFR-2005-title40-vol21-sec131-35.xml>.

<sup>103</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-confederated-tribes-goshute-reservation>

- Found eligible to administer a water quality certification program (TAS) on May 23, 2019.

## VVV. Confederated Tribes of the Umatilla Indian Reservation

### Definition of “navigable waters”

- “Navigable” means waters that are sufficiently deep and wide enough for navigation; such waters in the United States come under federal jurisdiction and are protected by the Clean Water Act, 33 U.S.C. §§ 1251 et seq.<sup>104</sup>

### Definition of “waters of the reservation”

- “Tribal waters” means (a) all water arising upon, traversing, or bordering the Umatilla Indian Reservation, whether the water is flowing or stationary, whether it is above or below the surface of the ground, and whether it is diffused or contained within a defined water course or body of water of any kind; and (b) all water reserved at any time to the Tribes or the Reservation by the United States and the Tribes; and (c) all water which in the course of nature or as a result of artificial works, flows into or enhances said waters.<sup>105</sup>
- “Waters of the Reservation” means ground water, deep and shallow alluvial/basalt aquifers lakes, rivers, ponds, streams (including intermittent and ephemeral streams) wetlands, ponds, impounding reservoirs, canals, and all other waters, natural or artificial, within the boundaries of the Reservation.<sup>106</sup>

### Definition of “wetlands”

- “Wetlands” means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, swales, riparian zones, and similar areas with hydrophytes and hydric soils.<sup>107</sup>

### Other Definitions

- “Discharge” means flow of surface water in a stream or canal or the outflow of ground water from a flowing artesian well, ditch, or spring. Can also apply to discharge of liquid effluent from a facility or to chemical emissions into the air through designated venting mechanisms.<sup>108</sup>
- “Point source” means any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.<sup>109</sup>

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<sup>104</sup> Confederated Tribes of the Umatilla Indian Reservation Water Code Section 1.07(A)(37). Available at: <http://ctuir.org/water-code>.

<sup>105</sup> *Id.* at Section 1.07(A)(58).

<sup>106</sup> *Id.* at Section 1.07(A)(66).

<sup>107</sup> *Id.* at Section 1.07(A)(67).

<sup>108</sup> *Id.* at Section 1.07(A)(20).

<sup>109</sup> *Id.* at Section 1.07(A)(42).

- “Pollutant” can include dredge spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, dirt, and industrial, municipal, and agricultural waste entering, existing in or discharged into water.<sup>110</sup>
- “Pollution” includes such contamination, or other alteration of the physical, chemical, or biological properties, or any waters of the Reservation including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gas, solid, radioactive, or other substance into any waters of the Confederated Tribes as will or is likely to create a nuisance or impair any beneficial use of such waters.<sup>111</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 30, 2001.<sup>112</sup>
- Initial water quality standards were approved by EPA on October 18<sup>th</sup>, 2001.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 30, 2001.

### 402-like and 404-like Ordinance

- Water System Development Permit: is required this Code for the purpose of constructing water diversion works for appropriating Tribal water resources.<sup>113</sup>
- Water Use Permit: is required under this Code for the purpose of appropriating Tribal water resources for beneficial use.<sup>114</sup>
- Temporary Water Use Permit: is required under this Code for the purpose of appropriating Tribal water resources for beneficial use for a specified and limited period of time.<sup>115</sup>
- Anti-degradation Review is required under this Code for the purpose of conducting any activity which may result in any fill, removal, or discharge into the waters of the Reservation.<sup>116</sup>
- Water Quality Certification Required. Any applicant for a Tribal permit to conduct any activity which may result in any discharge into the waters of the Reservation must provide the Tribal permitting program or department with a Water Quality Certification from the Director that any such activity will comply with this Code, regulations implementing this Code, and the Water Quality Standards. The certification is obtained through the completion of an antidegradation review.<sup>117</sup>

### 404-like Ordinance

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<sup>110</sup> *Id.* at Section 1.07(A)(43).

<sup>111</sup> *Id.* at Section 1.07(A)(44).

<sup>112</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-confederated-tribes-umatilla-indian-reservation-oregon>.

<sup>113</sup> *Id.* at Section 1.11(A)(1). *See also* Chapter 2.

<sup>114</sup> *Id.* at Section 1.11(A)(2). *See also* Chapter 2.

<sup>115</sup> *Id.* at Section 1.11(A)(3). *See also* Chapter 2.

<sup>116</sup> *Id.* at Section 1.11(A)(6). *See also* Chapter 3.

<sup>117</sup> CTUIR Water Code Section 3.04(A).



- Stream Zone Alteration Permit for Major Alteration: is required under this Code, for the purpose of performing any activity that alters streamflow, water quality, ground contours, or perennial vegetation which may cause environmental impacts that are of general public concern.<sup>118</sup>
- Stream Zone Alteration Permit for Minor Alteration: is required under this Code, for the purpose of performing any activity that alters streamflow, water quality, ground contours, or perennial vegetation which may cause negligible negative environmental impacts.<sup>119</sup>

#### Statements of cultural or spiritual significance of water resources

- “Płix iwá čúuš” (Water is medicine): The world of the šiyápu is linear where life begins and ends in a series of separate events. The world of the natítayt is circular and continuous. Natítaytwit is tamánwit (religion/law), it is láqayxit (light), it is ha?ášwit (air/breath), it is táatpas (dress/clothing), it is iníit (dwelling/house), it is tkw átat (food), it is sinwit (speech), it is tiičám (land), it is čúuš (water) and it is the natítayt (Indian). All are one and inseparable. Tamánwit is both religion and law. It is the respect of all aspects of Indian life and it is the way of life. Čúuš is tamánwit and we must teach and live tamánwit. We must share water with all living things. If we do not share, our greed will harm us. We must not look upon waqíšwit (life) as the šiyápu. We must take care of the water. Seven generations in the past we had good water. Seven generations in the future we must give back the same that was lent to us by Aniłá (the Creator); cold, clean water. So we think of fourteen generations of cold, clean, plentiful water. As we did seven generations back, so should we be able to do seven generations in the future, go to any stream or river and get cold clean water to drink. “Čúušnimna inaknúwiyáša náaman láaxw wáwnakw šáš” Water keeps all our bodies for us. Čúuš is a part of everything. It is within natítayt, it is within tiičám, and it is within núsux (the salmon). It is essential for the survival of all life. Cold, clean, healthy water is the life blood of the land. We drink water to remind us of who we are. Čúuš cleanses and heals our bodies, “Płix iwá čúuš”.<sup>120</sup>

## WWW. Confederated Tribes of the Warm Springs Reservation

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on May 25, 1999.<sup>121</sup>
- Initial water quality standards were approved by EPA on September 28, 2001.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on May 25, 1999.

<sup>118</sup> *Id.* at Section 1.11(A)(4). *See also* Chapter 5.

<sup>119</sup> *Id.* at Section 1.11(A)(5). *See also* Chapter 5.

<sup>120</sup> *Id.* at Section 1.01.

<sup>121</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-confederated-tribes-warm-springs-indian-reservation>.

## XXX. Dry Creek Rancheria Band of Pomo Indians

### Definition of “waters of the Rancheria”

- “Waters of the Rancheria” or “Rancheria waters” means any water, surface or underground, contained within, flowing through or bordering upon the Dry Creek Rancheria or any portion thereof.<sup>122</sup>

### Other Definitions

- “Point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, culvert, well, discrete fissures, containers, rolling stock, concentration animal feeding operation, vessel, or other floating craft.<sup>123</sup>
- “Pollutant” means any substance that will alter the quality of the waters of the Rancheria.<sup>124</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on October 17, 2011.<sup>125</sup>
- Initial water quality standards have not yet been approved by the EPA.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on October 17, 2011.

### 402-like and 404-like Ordinance

- No person shall discharge any pollutant into any Rancheria water from a point source or conduct dredge and fill activities in any designated wetland area of the Rancheria without first having applied for and obtained a permit from the Department of Environmental Protection after approval by the Dry Creek Rancheria Board of Directors. Any person who intends to alter or enlarge an existing activity described in Chapter 1, Section 4 of this Ordinance, or who intends to cause or direct such alteration or enlargement of such activities, shall, prior to alteration, or enlargement of such activities, apply for and obtain a valid permit from the Department of Environmental Protection after approval by the Board of Directors.<sup>126,127</sup>

### Statements of cultural or spiritual significance of wetlands

- Since time immemorial, the creek informally known as Rancheria Creek, its tributary streams, the streambeds thereof and the riparian areas adjacent thereto, have been natural resources of profound significance to the Dry Creek Rancheria Band of Pomo Indians and the Dry Creek Rancheria Pomo people have used these resources for

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<sup>122</sup> Tribal Water Quality Ordinance of the Dry Creek Rancheria Band of Pomo Indians (Title 2 of the Environmental Code), , Chapter 2 (AA). Available at <http://drycreekrancheria.com/wp-content/uploads/2013/08/2-DCR-Water-Quality-Ordinance-FINAL.pdf>.

<sup>123</sup> *Id.* at Chapter 2(P).

<sup>124</sup> *Id.* at Chapter 2(Q).

<sup>125</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-dry-creek-rancheria-band-pomo-indians>.

<sup>126</sup> Tribal Water Quality Ordinance of the Dry Creek Rancheria Band of Pomo Indians (Title 2 of the Environmental Code), Chapter 8.1.

<sup>127</sup> *See Id.* at Appendix A for a sample application form.

cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life.<sup>128</sup>

#### Other Novel Protections

- The provisions of this Ordinance shall apply to all existing and proposed point and non-point pollution discharges into surface or ground waters, and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health and safety, water quality, and other fundamental interests of the Tribe, including such activities conducted by non-members of the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to: (A) Landfills and open dumps; (B) Storage of animal waste; (C) Automobile graveyards and junkyards; (D) Land filling of sludge or septic system waste; (E) Individual, residential, industrial, commercial, or agricultural sewage treatment facilities; (F) Individual, residential, industrial, commercial, fire protection, or agricultural water control devices including but not limited to treatment facilities or systems, dams, reservoirs, ponds, pools, tanks, wells, pipelines, flumes, canals, and intake or diversion systems; (G) Underground and above-ground liquid storage containers; (H) Surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses. (I) All prospecting activities involving removal of soil or rock materials, including operations involving the reopening of existing mine pits, tunnels, or quarries. (J) Sand and gravel operations. (K) Activities such as suction dredging, that have the potential to affect the riparian area, water quality, or channel morphology; (L) Potential non-point source pollution problem areas including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification, and residential activities; (M) Any current or future identified point source pollution problem areas; and (N) Application of herbicide, insecticide, or other pesticide or toxic materials, or fertilizer for non-domestic use. The provision of this Ordinance shall apply to all wellhead protection areas within the exterior boundaries of the Rancheria, to all persons and businesses on the Dry Creek Rancheria, to all land, trust, or fee, and to all activities in areas with the potential to affect water quality, public health and safety, and other fundamental interests of the Tribe.<sup>129</sup>

#### YYY. Eastern Band of Cherokee Indians

##### Definition of “waters of the tribe”

- “Cherokee waters” means all water within the exterior boundaries of the Qualla Boundary and all other lands held in trust for the Eastern Band of Cherokee Indians, including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps, wetlands, and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface.<sup>130</sup>

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<sup>128</sup> *Id.* at Section 2(A).

<sup>129</sup> *Id.* at Chapter 1.4.

<sup>130</sup> Eastern Band of Cherokee Indians Tribal Code Section 113E-3. Available at: [https://librarystage.municode.com/tribes\\_and\\_tribal\\_nations/eastern\\_band\\_of\\_cherokee\\_indians/codes/code\\_of\\_ordinances?nodeId=THCHCO\\_CHI13EWAQUUCOTRWA](https://librarystage.municode.com/tribes_and_tribal_nations/eastern_band_of_cherokee_indians/codes/code_of_ordinances?nodeId=THCHCO_CHI13EWAQUUCOTRWA). See also Eastern Band of Cherokee Indians Ordinance No. 622. Available at

- The “waters of the Eastern Band of Cherokee Indians” are defined as: (a) All waters located upon or bordering Cherokee trust lands, whether flowing or stationary, whether above or below the surface of the ground, and whether diffused or contained within a defined watercourse or water body of any kind; (b) All waters reserved or granted to the Tribe or to Cherokee trust lands by the United States and the Tribe; and (c) All water which in the course of nature or as the result of artificial works, flows into or otherwise enhances such waters.<sup>131</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on January 26, 2015.<sup>132</sup>
- Initial water quality standards were approved by EPA on March 28, 2019.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on January 26, 2015.

#### Statements of cultural or spiritual significance of waters

- The Eastern Band of Cherokee Indians recognizes Tribal waters are the source of life, tranquility, and prosperity. Tribal waters include streams, rivers, natural springs, and wetlands that support a diverse array of environmental, cultural, and economic values. The Tribe recognizes that protecting these waters requires a strategic and integrated approach across all Tribal watersheds to encourage prudent use of the Tribe’s water resources and enhance its quality and productivity.<sup>133</sup>

### ZZZ. Fond du Lac Band of the Minnesota Chippewa Tribe

#### Definition of “wetlands”

- “Wetlands” means those areas that are comprised of hydric soils and are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation. Wetlands include, but are not limited to, shallow and deep marshes, wet meadows, swamps, bogs, and forested wetlands.<sup>134</sup>

#### Other Definitions

- “Discharge” means to place, fill, or dump.<sup>135</sup>
- “Fill” means soil, sand gravel, clay, peat, debris, and refuse waste of any kind, or any material which displaces soil or water or reduces water retention potential, and untreated storm water that results in sedimentation within a wetland.<sup>136</sup>

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[https://librarystage.municode.com/tribes\\_and\\_tribal\\_nations/eastern\\_band\\_of\\_cherokee\\_indians/ordinances/code\\_of\\_ordinances?nodeId=857538](https://librarystage.municode.com/tribes_and_tribal_nations/eastern_band_of_cherokee_indians/ordinances/code_of_ordinances?nodeId=857538).

<sup>131</sup> *Id.* at Section 131-3.

<sup>132</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-eastern-band-cherokee-indians>.

<sup>133</sup> Eastern Band of Cherokee Indians Ordinance No. 622, Section 113E-1(a).

<sup>134</sup> Fond du Lac Band Wetlands Protection and Management Ordinance, Ordinance No. 03/06, Section 201 (aaa). Available at <http://www.fdlrez.com/government/ords/03-06ord.pdf>.

<sup>135</sup> *Id.* at Section 201 (k).

<sup>136</sup> *Id.* at Section 201 (p).

- “Point source” means any discernible, confined and discrete conveyance from which pollutants are or may be discharged into a water body.<sup>137</sup>
- “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.<sup>138</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on May 16, 1996.<sup>139</sup>
- Initial water quality standards were approved by EPA on December 27, 2001.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on May 16, 1996.

#### 404-like Ordinance

- It shall be unlawful for any person to perform any of the actions specified under this Section within the Fond du Lac Reservation unless and until a Wetland Activity Permit is obtained from the Resource Management Division pursuant to this Ordinance. A Wetland Activity Permit is required for an activity in a wetland, or within a designated buffer zone of a wetland, unless specifically exempted under this Section 303 of this Ordinance.<sup>140</sup>

#### Statements of cultural or spiritual significance of wetlands

- In their natural state, wetlands provide important tribal and public benefits and ecological functions. They provide habitat areas for fish, wildlife, and vegetation, water quality maintenance and pollution control, flood control, shoreline erosion control, natural resource education, scientific study, open space, recreation opportunities, environmental niches, and most importantly the traditional, cultural, and spiritual aspects of our heritage.<sup>141</sup>

#### Other Novel Protections

- A Shoreland Permit is required for any activity to be completed in the shoreland overlay district. Activity is, but not limited to, the construction or alteration of buildings, and accessory structures including temporary structures such as docks, the installation and/or alteration of individual sewage treatment systems, grading and filling activities, extraction and excavation activities, or removal of vegetation within the Shoreland Overlay District.<sup>142</sup>

<sup>137</sup> Water Quality Standards of the Fond du Lac Reservation, Ordinance No. 12/98, Section 201 (oo). Amended September 11, 2001. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/chippewa-tribe.pdf>.

<sup>138</sup> *Id.* at Section 201 (pp).

<sup>139</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-fond-du-lac-band-minnesota-chippewa-tribe>.

<sup>140</sup> Fond du Lac Band Wetlands Protection and Management Ordinance, Ordinance No. 03/06, Section 302.

<sup>141</sup> *Id.* at Section 102.

<sup>142</sup> Fond du Lac Band, Land Use Ordinance, Ordinance No. 02/07, Section 603. Available at <http://www.fdlrez.com/government/ords/02-07ord.pdf>.

## AAAA. Fort Belknap Indian Community

### Other Novel Protections

- The tribal code prohibits throwing refuse in waters: No person shall deposit, place or throw into any Reservation waters, or leave upon the ice or in such waters any cans, bottles, debris, refuse or other solid waste material; and no person shall abandon any automobile, boat, or other vehicles in such waters. Any automobile, boat, or other vehicles not removed from such waters within thirty (3) days shall constitute abandonment.<sup>143</sup>

## BBBB. Gila River Indian Community

### Other Definitions

- “Permit” means a written document authorized by the Department. A permit is between the Department and a person, whereby the person voluntarily consents to the conditions in the permit and the jurisdiction of the Community in exchange for permission to construct, operate, modify, or conduct a certain approved activity on Reservation lands.<sup>144</sup>
- “Pollutant” means any substance that contains contaminants (examples include, but are not limited to, solid or hazardous substances or wastes, chemicals, septage, pesticides, herbicides, fertilizers, wastewater, garbage, petroleum products, biological materials, dirt and other earth derived materials, heat, and radioactive materials).<sup>145</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on October 30, 2018.<sup>146</sup>
- Initial water quality standards have not yet been approved by the EPA.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on October 30, 2018.

### 402-like Ordinance

- The Department is authorized to issue both general permits and individual permits.<sup>147</sup>
- General Wastewater and Reclaimed Water Management Ordinance Provisions include:
  - The disposal of wastewater and septage is strictly prohibited except as expressly provided in Section 15.603.

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<sup>143</sup> The Laws of the Gros Ventre and Assiniboine Tribes of Fort Belknap, Title X, Fish and Wildlife Conservation Code, Section 7.05. Available at [https://indianlaw.mt.gov/Portals/127/fortbelknap/codes/fort\\_belknap\\_tribal\\_code.pdf](https://indianlaw.mt.gov/Portals/127/fortbelknap/codes/fort_belknap_tribal_code.pdf). See also Section 12.18 (“No person shall: A. Deposit refuse in Reservation waters.”).

<sup>144</sup> Gila River Indian Community Wastewater and Reclaimed Water Management Ordinance, Title 15, Chapter 6, Section 15.602.A.71. 2016. Available at [http://www.gricdeq.org/view/download.php/about-us/downloads/user\\_file\\_4](http://www.gricdeq.org/view/download.php/about-us/downloads/user_file_4).

<sup>145</sup> *Id.* at Section 15.602.A.78.

<sup>146</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-gila-river-indian-community>.

<sup>147</sup> Gila River Indian Community Wastewater and Reclaimed Water Management Ordinance, Title 15, Chapter 6, Section 15.601.E.4.

- It shall be unlawful to dispose, collect, truck or haul, treat, store, handle, distribute, release, discharge, recharge, reuse, or manage wastewater, septage, treated wastewater, or reclaimed water in a manner that creates a nuisance and/or an environmental and/or public health and safety hazard as determined by the Department in coordination with Community health departments.
- (11) Treated wastewater or reclaimed water may only be discharged to authorized locations pursuant to a Department issued permit, federal law, and/or as otherwise approved by the Department.
- (13) A permittee shall take all necessary actions to eliminate and correct any adverse impact on the public health or the environment resulting from permit noncompliance.
- (14) The preparation, transport, land application, or disposal of any sludge or biosolids shall be managed pursuant to GRIC Code Title 18, Chapter 2, Waste Management.
- (17) Within 60 calendar days of the effective date of this chapter, the Department shall determine if an existing facility is a Type “A”, “B”, or “C” facility. Within 180 calendar days of the effective date, the Department shall issue revised permits for each centralized wastewater treatment facility.<sup>148</sup>

## CCCC. Grand Portage Band of the Minnesota Chippewa Tribe

### Definition of “waters of the Reservation”

- “Waters of the Reservation” means any accumulation of water, surface or underground, natural or artificial, public or private, or parts thereof which are wholly or partially within, flow through, or border upon the Grand Portage Reservation; including but not limited to lakes, streams, and wetlands.<sup>149</sup>

### Definition of “wetland”

- “Wetland” means those areas that have a predominance of hydric soils, are inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. “Normal circumstances” refers to the soil and hydrologic conditions normally present, without regard to whether the vegetation has been removed or whether the lands have been otherwise modified/manipulated by human activity.<sup>150</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on July 16, 1996.<sup>151</sup>
- Initial water quality standards were approved by EPA on November 2, 2005.

### 401 Certification

<sup>148</sup> *Id.* at Section 15.601.F, only relevant portions cited.

<sup>149</sup> Grand Portage Band of the Minnesota Chippewa Indians Water Quality Standards Section IV. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/grandportageband.pdf>.

<sup>150</sup> *Id.*

<sup>151</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-grand-portage-band-minnesota-chippewa-tribe>.



- Found eligible to administer a water quality certification program (TAS) on July 16, 1996.

#### Statements of cultural or spiritual significance of wetlands and water resources

- The Tribe's existence has been dependent on the ability of the land and waters to provide natural resources for consumption, subsistence, cultural preservation, religious practice and sustainable economic development. Areas within the Reservation serve as a refuge for Tribal members to continue to practice a life that exemplifies sustainable economic development, and that preserves the resources critical to cultural integrity and survival of the Tribe.<sup>152</sup>
- In the tribe's water quality standards, they have established a designated use for cultural uses: wild rice areas and aesthetics (a stream, river, lake, wetland or impoundment, with an uncharacteristic beauty or which represents the traditional value system of the Grand Portage Band of Chippewa, as determined by the Grand Portage Reservation Water Resources Board).<sup>153</sup>

#### Other Novel Protections

- The tribe's water quality standards apply to wetlands, including designated uses for wetlands<sup>154</sup>: The GPWRB will impose the most stringent statutory and regulatory controls for all new and existing point sources and will impose the best management practices for non-point sources and wetland alterations.<sup>155</sup>

## DDDD. Grand Traverse Band of Ottawa and Chippewa Indians

#### Definition of "wetlands"

- "Protected wetland" means a wetland which meets one or more of the following criteria: (1) a wetland which is within five hundred (500) feet of a lake or stream; (2) a wetland which is five (5) or more acres in size; (3) a wetland set aside for protection by the Tribal Council; or (4) a wetland subject to regulation by the federal government.<sup>156</sup>

#### Other Definitions

- "Environmentally sensitive sites" includes sites with one or more of the following characteristics: (1) Sites where driveways have been planned with a slope greater than ten percent (10%) (10 feet horizontal to 1 foot vertical). (2) Sites with heavy clay soils (commonly termed hardpan clay), and soils classified in hydrological Group D in the soil surveys published by the Soil Conservation Service, U.S. Department of Agriculture. (3) Sites which may cause sedimentation or flood onto adjacent land areas if earth changes occur. **(4) Sites located within one hundred (100) feet of a wetland.** (5) Other environmentally sensitive sites identified by the Tribal

<sup>152</sup> Grand Portage Band of the Minnesota Chippewa Indians Water Quality Standards Section VI.

<sup>153</sup> *Id.* at Section V.E.

<sup>154</sup> *Id.* at Section V.

<sup>155</sup> *Id.* at Section VII.

<sup>156</sup> Grand Traverse Band Code, Title 8 Conservation, Ecology, and Hunting/Fishing, Section 302 (yy). Available at [https://www.narf.org/nill/codes/grand\\_traverse/Title\\_8.pdf](https://www.narf.org/nill/codes/grand_traverse/Title_8.pdf).

government as having a high potential for environmental degradation including flooding as a result of soil erosion or stormwater runoff on-site or off-site.<sup>157</sup>

#### 402 and 404-like Ordinance

- Permit Requirements ... (b) Regulated Earth Changes. Earth changes requiring a soil erosion and stormwater runoff control permit from the enforcement officer(s) designated by the Tribal Council include the following: (1) Earth changes connected with any of the following activities which disturb land within five hundred (500) feet of a lake or stream, except for normal maintenance:... (B) Site preparation for a single-family residence and multiple family residential developments. (C) Tribal buildings and service facilities.... (D) Recreational facilities.... (E) Utilities.... (F) Oil, gas, and mineral wells.... (H) Logging activities ... (J) Earth changes on agricultural lands.... (2) Earth changes for environmentally-sensitive residential sites. (3) Industrial or commercial use development sites, regardless of size, location, or environmental sensitivity. (4) (A) All developments which includes housing, commercial, subsidiary enterprises, individual or other entity developments within the Tribe's jurisdiction regardless of size, location, or environmental sensitivity. (B) All multi-family developments regardless of size, location or environmental sensitivity<sup>158</sup>

#### EEEE. Havasupai Tribe

##### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 26, 2011.<sup>159</sup>
- Initial water quality standards have not yet been approved by the EPA.

#### FFFF. Hoopa Valley Tribe

##### Definition of “waters of the tribe”

- “Waters of the Reservation” or “Reservation waters” means any water, surface or underground, contained within, flowing through or bordering upon the Hoopa Valley Indian Reservation or any portion thereof.”<sup>160</sup>

##### Other Definitions

- “Permit” means any formal authorization from, or approval by, the Tribe, the Review Committee, or other tribal entities and agencies, the absence of which would preclude surface mining operations or other activities regulated hereby.<sup>161</sup>
- “Point source” means any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, culvert, well, discrete

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<sup>157</sup> *Id.* at Section 302 (u), emphasis added.

<sup>158</sup> *Id.* at Section 303, only relevant portions cited.

<sup>159</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-havasupai-tribe>.

<sup>160</sup> Hoopa Valley Tribe, Title 37 Pollutant Discharge Prohibition Ordinance, Ordinance No. 3-95, Section 2. Available at <https://www.hoopa-nsn.gov/wp-content/uploads/2015/06/Title37-PollutantDischarge080395.pdf>.

<sup>161</sup> Hoopa Valley Tribe, Title 35 Riparian Protection and Surface Mining Practices Ordinance, Ordinance No. 3-92, Section 35.2.18. Available at <https://www.hoopa-nsn.gov/wp-content/uploads/2015/06/Title35-RiparianMining080392.pdf>.

fissures, containers, rolling stock, concentration animal feeding operation, vessel, or other floating craft.<sup>162</sup>

- “Pollutant” means any substance that will alter the quality of the waters of the Reservation.<sup>163</sup>
- “Riparian area” shall be defined according to the reasonable discretion of the Review Committee, but shall include at a minimum, with respect to the Trinity River, the lands lying between the stakeline boundaries of the allotments and former allotments along that river. The Review Committee’s discretion shall be guided by the standard that the vegetation, soil, and mineral resources, and ground and surface waters of the riparian area are to be viewed as a comprehensive ecosystem<sup>164</sup>.

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on May 17, 1996.<sup>165</sup>
- Initial water quality standards were approved by EPA on September 11, 2002.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on May 17<sup>th</sup>, 1996.

#### 402-like and 404-like Ordinance

- Section 4.1 of the tribe’s Pollutant Discharge Prohibition Ordinance requires a permit from the Riparian Review Committee for a wide range of activities that affect water quality, including “all existing and proposed point and non-point pollution discharges into surface or ground waters, and to all activities which have the potential to affect... water quality,” including but not limited to: (A) landfills and open dumps; (B) storage of animal waste; (D) landfilling of sludge or septic system waste; (E) individual, residential, industrial, commercial, or agricultural sewage treatment facilities; (F) individual, residential, industrial, commercial, fire protection, or agricultural water control devices; (G) underground and above-ground liquid storage containers; (H) surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses; (I) all prospecting activities involving removal of soil or rock materials; (J) sand and gravel operations; (K) activities such as suction dredging, that have the potential to affect the riparian area, water quality, or channel morphology; (M) identified point source pollution problem areas; and (N) application of herbicide, insecticide, or other pesticide or toxic material or fertilizer for non-domestic use.<sup>166</sup>

#### 404-like Ordinance

- The tribe requires a permit from the Tribal Council for “surface mining or mineral development activities” within the Trinity and Klamath River riparian areas with the potential to affect water quality under its Riparian Protection and Surface Mining

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<sup>162</sup> Hoopa Valley Tribe, Title 37 Pollutant Discharge Prohibition Ordinance, Ordinance No. 3-95, Section 2.

<sup>163</sup> Id.

<sup>164</sup> Hoopa Valley Tribe, Title 35 Riparian Protection and Surface Mining Practices Ordinance, Ordinance No. 3-92, Section 35.2.24.

<sup>165</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-hoopa-valley-tribe>.

<sup>166</sup> Hoopa Valley Tribe, Title 37 Pollutant Discharge Prohibition Ordinance, Sections 1.4 and 4.1, only relevant portions cited.

Practices Ordinance, including but not limited to: (a) surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses; (b) all prospecting activities involving removal of soil or rock materials; (c) sand and gravel operations; (d) any activities such as suction dredging, that have the potential to affect the riparian area, water quality, or the channel of the Trinity River; (e) any activities in the Trinity River or Klamath River riparian areas with potential to affect the riverbed or river flow, ground or surface water quality, or fishery, cultural, or ceremonial values.<sup>167</sup>

Statements of cultural or spiritual significance of wetlands and water resources

- Since time immemorial, the Trinity River, its tributary streams, the streambeds thereof, and the riparian areas adjacent thereto, have been natural resources of the most profound significance to the Hoopa Valley Tribe, and Hupa people have always used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life.<sup>168</sup>
- In the tribe's surface water quality standards, they have established a designated use for cultural uses which is defined as a use that has religious, ceremonial, subsistence significance or provides a role in Hoopa Tribal culture.<sup>169</sup>

## GGGG. Hopi Tribe

Definition of "wetlands"

- "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, cienegas, tinajas, and similar areas.<sup>170</sup>

303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 23, 2008.<sup>171</sup>
- Initial water quality standards were approved by EPA on July 8, 2008.

401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 23, 2008.

Statements of cultural or spiritual significance of wetlands and water resources

- In the tribe's surface water quality standards, they have established a designated use for Primary Contact Ceremonial (PCC) use. Primary contact ceremonial means the use of a spring, stream reach, lake, or other water body for religious or traditional

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<sup>167</sup> Hoopa Valley Tribe, Title 35 Riparian Protection and Surface Mining Practices Ordinance, Ordinance No. 3-92, Sections 35.1 and 35.4.

<sup>168</sup> Hoopa Valley Tribe, Title 37 Pollutant Discharge Prohibition Ordinance, Section 1.2(A).

<sup>169</sup> *Id.* at Section 6.1(O).

<sup>170</sup> Hopi Tribe Water Quality Standards Chapter 8. Revised November 2010. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/hopitribe.pdf>.

<sup>171</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-hopi-tribe>.

purposes by members of the Hopi Tribe; such use involves immersion and intentional or incidental ingestion of water, and it requires protection of sensitive and valuable aquatic life and riparian habitat.<sup>172</sup>

#### Other Novel Protections

- The tribe’s general water quality standards apply to wetlands.<sup>173</sup>

### HHHH. Hualapai Indian Tribe

#### Definition of “tribal waters”

- “Tribal waters” means all surface waters and groundwater located on, within, underlying, or passing through, Hualapai Tribal Lands.<sup>174</sup>

#### Definition of “wetlands”

- “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, bogs, vernal pools, fens, ciengas, and marshes.<sup>175</sup>

#### Other Definitions

- “Discharge” means the addition of a pollutant to any Tribal waters from any point source.<sup>176</sup>
- “Point source” means any discernible, confined, and discrete conveyance from which pollutants are or may be discharged into a water body, and does not include return flows from irrigated agriculture.<sup>177</sup>
- “Pollutant” means any substance which will alter the quality of tribal waters, and which is discharged in such a manner that either the discharge itself or the resulting alteration of water quality does not comply with federal or tribal standards, and includes, but is not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste.<sup>178</sup>
- “Surface water” means any water of the United States, as that phrase is defined in 33 CFR 328.3, and includes the following: wetlands, lakes, streams, reservoirs, natural ponds, rivers, creeks, washes, draws, mudflats, sandflats, wetlands, sloughs, backwaters, prairie potholes, wet meadows, playa lakes; all impoundments of waters otherwise defined as surface waters; tributaries of surface waters; and wetlands adjacent to surface waters.<sup>179</sup>

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<sup>172</sup> Hopi Tribe Water Quality Standards Chapter 4, Section 4.102.D.

<sup>173</sup> *Id.* at Chapter 1, Section 1.105.

<sup>174</sup> Hualapai Tribe Water Resources Ordinance, Chapter 1, Section 110.UU. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/hualapai-tribe.pdf>.

<sup>175</sup> *Id.* at Section 110.WW.

<sup>176</sup> *Id.* at Section 110.P.

<sup>177</sup> *Id.* at Section 110.LL.

<sup>178</sup> *Id.* at Section 110.MM.

<sup>179</sup> *Id.* at Section 110.PP.

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on July 22, 2004.<sup>180</sup>
- Initial water quality standards were approved by EPA on September 17, 2004.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on July 22, 2004.

### 402-like Ordinance

- Discharge Permits: To further implement the purposes and provisions of this Ordinance, the Water Resources Program is hereby authorized to develop a program for issuing permits in accordance with the National Pollutant Discharge Elimination System provisions of the Clean Water Act. Unless and until the Hualapai Tribe asserts primary responsibility for NPDES permitting, the EPA shall work together with the Tribe to develop, issue and enforce permits for dischargers within Hualapai tribal lands in accordance with standards set forth in this Ordinance.<sup>181</sup>
- No person shall conduct any activity which causes a discharge from a point source into a Tribal water without first obtaining an NPDES permit from EPA under section 402 of the Clean Water Act or from the Water Resources Program, if the program implements an NPDES permit program pursuant to section 604 of this Ordinance. In addition, to the extent the activity constitutes “development” under subtitle A of the Hualapai Environmental Review Code, such person shall obtain a permit from the Tribal Environmental Review Commission as required by Subtitle A.<sup>182</sup>

### Statements of cultural or spiritual significance of water resources

- “Traditional Cultural Place” means tribal waters and surrounding areas which meet the definition of a “traditional cultural place” under the Hualapai Cultural Heritage Resources Ordinance, namely, a place that is eligible for the National Register because of its association with cultural practices or beliefs of a living community that are rooted in that community’s history and are important in maintaining the continuing cultural identity of the community, or a place that has been determined eligible for the Hualapai Register. These places serve as exclusive harvest areas where members of the Hualapai Tribe may search for and extract plant life and vegetation to be used for ethnobotanical purposes (*e.g.*, constructing baskets and cradleboards, as well as for medicinal and/or any other such purposes commonly identified by the Hualapai community as being associated with traditional uses), as well as for religious gatherings and sensitive ceremonial activities.<sup>183</sup>

## III. Jicarilla Apache Nation

### Other Definitions

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<sup>180</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-hopi-tribe>.

<sup>181</sup> Hualapai Tribe Water Resources Ordinance, Chapter 6, Section 604.

<sup>182</sup> *Id.* at Chapter 7, Section 701.A.

<sup>183</sup> *Id.* at Chapter 6, Section 110.TT.



- Environmentally Sensitive Areas means portions of the Nation that are: (1) Within the valleys of the San Juan, Navajo, Rio Puerco, or Chama Rivers and bounded by the topographic line on either side of the river that is one hundred (100) vertical feet, measured perpendicularly to the river channel, above the river channel; or (2) Within the surface water drainages or alluvial areas within fifty (50) vertical feet, measured perpendicularly to the drainage channel, of all major perennial and ephemeral creeks, canyons, washes, arroyos, and draws within the Nation; (3) Within a radius of one thousand (1,000) horizontal feet around any fresh water spring, well, or domestic or public water source in existence on January 1, 1994; or (4) Within one hundred (100) vertical feet, measured perpendicularly to the water surface, of all lakes, playas, or stock or livestock watering ponds within the Nation.<sup>184</sup>

#### Statements of cultural or spiritual significance of water resources

- In administering this [Water Code], the Water Commission and the Water Administrator shall consider the following Policy: (A) Water is a life-giving resource and its use should benefit the greatest possible number of members of the Nation.<sup>185</sup>
- The rivers, lakes, and ponds of the Nation are to be retained as nearly as possible in their natural condition, prohibiting the obstruction of flows and maintaining water levels necessary to preserve traditional and religious, recreational, fish and wildlife uses, and maintain aesthetic and environmental values to the greatest extent possible.<sup>186</sup>

#### Other Novel Protections

- The tribe adopted a Water Code to govern the right to impound, divert, withdraw, use, or affect the use of the waters of the Nation.<sup>187</sup>
- The purpose of the Unlined Surface Impoundments Ordinance is to ensure that the Nation’s environment is protected from any unlined surface impoundment utilized in connection with oil and gas exploration, production, processing, or transportation.<sup>188</sup>

## JJJJ. Kalispel Indian Community

#### Definition of “waters of the Reservation”

- “Waters of the Reservation” means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, marshes, wetlands, inlets, canals, and all other bodies of surface water, natural, or artificial, inland, fresh, public or private (except those private waters that do not combine or affect a junction with natural surface or underground waters), which are within the Reservation.<sup>189</sup>

#### Definition of “wetlands”

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<sup>184</sup> Jicarilla Apache Nation Code, Title 14 Environmental Protection Code, Chapter 3 Unlined Surface Impoundments Ordinance, Section 14-3-4 (D). Available at: <http://jicarillaoga.com/uploads/1512664422-JANCTitle14EnvironmentalProtection.pdf>.

<sup>185</sup> Jicarilla Apache Nation Code, Title 21 Water Code, Section 21-6-1 (A). Available at: <http://jicarillaoga.com/uploads/1527625549-Title21WaterCode.pdf>.

<sup>186</sup> *Id.* at Section 21-6-3 (D).

<sup>187</sup> *Id.* at Section 21-5-5.

<sup>188</sup> Jicarilla Apache Nation Code, Title 14 Environmental Protection Code, Chapter 3 Unlined Surface Impoundments Ordinance, Section 14-3-2.

<sup>189</sup> Water Quality Standards Applicable to Waters within the Kalispel Indian Reservation, Section 4. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/kalispel-tribe-wqs.pdf>.



- “Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.<sup>190</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on November 4, 2002.<sup>191</sup>
- Initial water quality standards were approved by EPA on June 24, 2004.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on November 4, 2002.

#### Statements of cultural or spiritual significance of water resources

- The tribe’s water quality standards include a ceremonial and cultural designated use. These criteria apply to waters used for swimming and wading: 1) *E.coli* shall not exceed a geometric mean of 126 colony forming units/100mL with no single sample exceeding 235 colony forming units/100mL. 2) Livestock, pet, human, commercial, and industrial wastes are not allowed to be drained or discharged into Waters of the Reservation without control or treatment with best management practices approved by the department and sufficient to meet all criteria. No wastewater source is permitted to cause a violation in Kalispel Tribal Water Quality Standards. 3) Toxic, radioactive, or deleterious materials shall be below levels which have the potential either singularly or in combination to interfere with use as a source water for domestic and municipal water supplies, or adversely affect public health as determined by the department.<sup>192</sup>

## KKKK. Karuk Tribe

#### 303(c) Water Quality Standards

- Application under review; notice issued October 24, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

#### 401 Certification

- Application under review; notice issued October 24, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

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<sup>190</sup> *Id.*

<sup>191</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-kalispel-indian-community-kalispel-reservation>

<sup>192</sup> Water Quality Standards Applicable to Waters within the Kalispel Indian Reservation, Section 12(f).

## LLLL. Kashia Band of Pomo Indians

### Definition of “waters of the Rancheria”

- “Water or Waters” means any water, surface or underground located on or running through the Rancheria.<sup>193</sup>

### Other Definitions

- “Pollutant” means any substance that will alter the quality of the waters of the Rancheria.<sup>194</sup>
- “Quality of the water or waters” means any chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.<sup>195</sup>

### 402-like and 404-like Ordinance

- No person shall discharge any pollutant into the waters of the Rancheria.<sup>196</sup>

## MMMM. Keweenaw Bay Indian Community

### 303(c) Water Quality Standards

- Application under review; notice issued April 8, 2019. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

### 401 Certification

- Application under review; notice issued April 8, 2019. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

## NNNN. Kletsel Dehe Band of Wintun Indians

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 7, 2016.<sup>197</sup>
- Initial water quality standards have not yet been approved by EPA.

### 401 Certification

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<sup>193</sup> Kashia Band of Pomo Indians, Ordinance 7 Prohibiting the Discharge of Any Pollutant into the Waters of the Rancheria, Section 2(G). Available at <http://stewartspoint.org/wp/wp-content/uploads/2012/10/TribalOrdinance7.pdf>.

<sup>194</sup> *Id.* at Section 2(D).

<sup>195</sup> *Id.* at Section 2(F[sic]).

<sup>196</sup> *Id.* at Section 3. “This ordinance is being enacted at this time as an emergency measure to maintain the quality of Rancheria waters until such time as the Stewarts Point Rancheria Community Council can enact a new water ordinance comprehensively regulating water quality and the discharge of pollutants on the Rancheria” (Kashia Band of Pomo Indians, Ordinance 7, Section 1).

<sup>197</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

- Found eligible to administer a water quality certification program (TAS) on April 7, 2016.

## O000. Lac Courte Oreilles Band of Lake Superior Chippewa Indians

### Definition of “navigable”

- Lakes, ponds, and flowages on the Lac Courte Oreilles Reservation shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication “Surface Resources of Sawyer County” or are shown on United States Geological Survey quadrangle maps.<sup>198</sup>
- Rivers and streams on the Lac Courte Oreilles Reservation shall be presumed to be navigable if they are designated as continuous waterways or intermittent waterways on United States Geological Survey quadrangle maps.<sup>199</sup>

### Other Novel Protections

- Shoreland Protection Code requires “Setbacks from Navigable Water”: (1) Building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution. (2) For lots that abut on navigable waters, all buildings and structures, new dwellings on vacant lots and replacement dwellings; except piers and boat hoists shall be set back a minimum of 75 feet from the ordinary high-water mark of navigable waters and wetlands adjacent to any navigable water. The minimum setbacks shall be 100 feet on the Chippewa Flowage. All setback distances are measured from the overhang or appendage such as a deck, horizontally to the closest point of the ordinary high-water mark. For lots that abut on nonnavigable wetlands, all buildings and structures shall be set back a minimum of 50 feet from the wetland boundary. Navigable wetlands shall be determined by a representative of the Lac Courte Oreilles Conservation Department. Certification of wetland delineation, if required, is the responsibility of the property owner. (3) New boathouses shall not be allowed within 75 feet (100 feet on the Chippewa Flowage) of the ordinary high-water mark of navigable waters. (4) Retaining walls shall not be allowed within 75 feet (100 feet on the Chippewa Flowage) of the ordinary high-water mark of navigable waters, within 75 feet (100 feet on the Chippewa Flowage) of navigable wetlands or within 50 feet of nonnavigable wetlands....<sup>200</sup>

## PPPP. Lac du Flambeau Band of Lake Superior Chippewa Indians

### Definition of “reservation waters”

- “Reservation waters” means all lakes, streams, sloughs, bayous, and marsh outlets which are navigable in fact and which are located within the reservation; lakes which

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<sup>198</sup> Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, Tribal Code of Law, Title VI Conservation, Chapter 7 Shoreland Protection Code, Section 7.105(1). Available at:

<sup>199</sup> *Id.* at Section 7.105(2).

<sup>200</sup> *Id.* at Section 7.501.

are partly within this reservation are included to the extent of the shoreline within the reservation.<sup>201</sup>

#### Definition of “wetlands”

- “Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions as well as having hydric soils present. Wetlands generally include, but are not limited to swamps, marshes, and bogs.<sup>202</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 8, 2008.<sup>203</sup>
- Initial water quality standards were approved by EPA on September 17, 2010.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 8, 2008.

#### 404-like Ordinance

- No tribal member or lessee shall conduct, nor shall any tribal member or lessee permit, employ, contract or authorize any person to conduct, any of the following activities without a permit therefor from the Tribe: (1) Deposit any material or place any structure upon the bed of any reservation water without obtaining appropriate Tribal and/or Federal Permits.<sup>204</sup>
- Filling, grading, lagooning, dredging, ditching and excavating may only be conducted in accordance with the provisions of Chapters III, IV, V, VI and VII of this ordinance, and only if done in a manner designed to minimize erosion, sedimentation, and impairment of fish and wildlife habitat.<sup>205</sup>
- Any use not permitted in Section 23.702 is prohibited in any reservation wetland area unless a conditional use permit is granted by the Tribe.<sup>206</sup>

#### Other novel protections

- The following setback requirements are established in order to protect the health, safety, and welfare of tribal members and licenses and to reduce flood hazards and prevent water pollution: (1) A setback of seventy-five (75) feet from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure shall be required, excepting piers, boat hoists, fish hatcheries, and boathouses. (2) No boathouse shall be used for human habitation nor constructed beyond the ordinary high-water mark of any reservation body of water. All new

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<sup>201</sup> Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Code, Chapter 23 Reservation Water and Shoreline Protection and Enhancement Ordinance, Section 23.108 (5). Available at: <https://www.lacduflambeau.com/uploads/files/Court-Ordinances/CHAP23%20Reservation%20Water%20and%20Shoreline%20Protection%20and%20Enhancement%20Ordinance.pdf>.

<sup>202</sup> *Id.* at Section 23.108 (18).

<sup>203</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-lac-du-flambeau-band-lake-superior-chippewa-tribe>.

<sup>204</sup> Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Code, Chapter 23 Reservation Water and Shoreline Protection and Enhancement Ordinance, Section 23.301.

<sup>205</sup> *Id.* at Section 23.804.

<sup>206</sup> *Id.* at Section 23.703.

boathouses must be constructed at a minimum setback of five (5) feet from the ordinary high water mark and must not exceed three-hundred (300) square feet in area and must not exceed thirteen (13) feet in height.<sup>207</sup>

- No person shall cut aquatic vegetation growing or found in any reservation body of water without first consulting with the Tribal Natural Resource Department as to the identity of the vegetation said person proposes to cut. In the event that the Tribal Natural Resource Department determines that the vegetation is in fact wild rice or advantageous to wildlife or fish habitat, it shall issue a written notice to said person not to cut...<sup>208</sup>

## QQQQ. Leech Lake Band of the Minnesota Chippewa Tribe

### 303(c) Water Quality Standards

- Application under review; notice issued May 31, 2019. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe's assertion of authority<sup>209</sup>.

### 401 Certification

- Application under review; notice issued May 31, 2019. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe's assertion of authority.

## RRRR. Little Traverse Bay Bands of Odawa Indians

### Definition of "wetlands"

- "Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, not contiguous to the Great Lakes, an inland lake or pond, or a river or stream. Wetlands must have hydric soils, wetland vegetation and presence of wetland hydrology.<sup>210</sup>

### Other Definitions

- "Coastal Wetland" means wetlands that are within one mile or less of the Lake Michigan shoreline.<sup>211</sup>

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<sup>207</sup> *Id.* at Section 23.802.

<sup>208</sup> *Id.* at Section 23.501.

<sup>209</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

<sup>210</sup> Little Traverse Bay Bands of Odawa Indians, Waganakising Odawak Statute 2006-0106, Wetland Protection and Management Statute, Section II(K). Available at <https://www.ltbodawa-nsn.gov/OdawaRegister/Legislative/Statutes/2006/wos%202006-016%20Wetlands%20Protection%20Statute-passed%20by%20Council.pdf>. See also Little Traverse Bay Bands of Odawa Indians Tribal Code of Law, Title IV Natural Resources, Chapter 4 Wetland Protection and Management, Section 4.403.K. Available at: <https://www.ltbodawa-nsn.gov/TribalCode.pdf>.

<sup>211</sup> Little Traverse Bay Bands of Odawa Indians Wetland Protection Management Statute at Section III(B).

- “Contiguous Wetland” means a wetland bordering a lake or stream or that is directly connected to, or within 500 feet of, the surface waters of the Great Lakes.<sup>212</sup>
- “High quality wetlands” means those wetlands determined to be of high quality by the LTBB Wetland Protection Officer using the rapid assessment for functional values analysis.<sup>213</sup>
- “Inland Wetland” means any wetland over one mile from the Lake Michigan shoreline.<sup>214</sup>
- “Non-contiguous Wetland” means a wetland over 500 feet from the surface waters of the Reservation land and not directly connected to waters therein.<sup>215</sup>
- “Native Wetlands” means wetlands that are within or connected to the 1855 LTBB Treaty Delineated Reservation that include marshes, bogs, fens, sedge meadows, seeps, or wet prairies.<sup>216</sup>

#### 404-like Ordinance

- Regulations: 1. Uses Allowed Without a Permit: The Environmental Services Department shall develop regulations for uses allowed in a wetland without a permit. 2. Uses Allowed With a Permit: The Environmental Services Department shall develop regulations for activities allowed in a wetland with a permit. 3. Prohibited Uses: The Environmental Services Department shall develop regulations for uses that are prohibited in a wetland. They will include but are not limited to the following: i. Deposit or permit the placing of fill material in a wetland; ii. Dredge, remove, or permit the removal of soil or minerals from a wetland; iii. Construct, operate, or maintain any use or development in a wetland; iv. Drain surface water from a wetland; v. Engage in wanton destruction or waste of fish, game, reptiles, amphibians or plants.<sup>217</sup>

#### Statements of cultural or spiritual significance of wetlands

- Cultural Values. The critical environmental functions of Wetland Areas make them very important to Little Traverse Bay Bands of Odawa Indians (LTBB) culture in that they provide medicinal, food and utilitarian plants, and a forum for outdoor education and ceremony.<sup>218</sup>
- By protecting wetlands, we protect our heritage for the next seven generations. The
- Purposes of this Statute include encouraging education and proper cultural uses of our wetlands, and reducing their over harvesting.<sup>219</sup>

#### Other novel protections

- Great Lakes Protection Statute was enacted to help protect and preserve the Great Lakes ecosystem. Under the statute, no person under the jurisdiction of the tribe (A) may commence or carry out any drilling activity (including any slant or directional drilling) to extract oil, gas, or other petroleum products from lands beneath waters

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<sup>212</sup> *Id.* at Section III(D).

<sup>213</sup> *Id.* at Section III(E).

<sup>214</sup> *Id.* at Section III(G).

<sup>215</sup> *Id.* at Section III(H).

<sup>216</sup> *Id.* at Section III(I).

<sup>217</sup> *Id.* at Section VIII.A.

<sup>218</sup> *Id.* at Section I.B.

<sup>219</sup> *Id.* at Section II.B.

under any of the Great Lakes, or (B) may commence or carry out any activities to sell or divert any waters from the Great Lakes.<sup>220</sup>

## SSSS.Lummi Tribe

### Definition of “waters of the tribe”

- “Water” means Lummi Nation ground water and surface water.<sup>221</sup>
- “Surface waters of the Lummi Indian Reservation” means any or all fresh or marine waters originating from precipitation or ground water discharge that are found at the surface of the earth and that originate or flow in, into, or through the Reservation, or that are stored on the Reservation, primarily in rivers, streams, springs, seeps, ponds, wetlands, lakes, and storm water drainage facilities.<sup>222</sup>
- “Lummi Nation Water” means all fresh and marine waters that originate or flow in, into, or through the Reservation or trust lands, or that are stored on the Reservation or trust lands, whether found on the surface of the earth or underground, and all Lummi Nation tribal reserved water rights.<sup>223</sup>

### Definition of “wetlands”

- “Wetlands” means those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>224</sup>

### Other Definitions

- “Adjacent Wetlands” means wetlands bordering, contiguous, or neighboring “waters of the United States” as defined by 33 CFR 328, as amended from time to time.<sup>225</sup>
- “Contiguous Wetlands” means wetlands that are connected to waters of the Reservation or trust lands or other geographic features (*e.g.*, open space) by any of the following criteria: (1) all or part of the wetland lies within the 100-year floodplain of waters of the Reservation or trust lands; (2) hydric soil and hydrophytic vegetation extend continuously to waters of the Reservation or trust lands or other pertinent geographic features; or (3) sufficient evidence exists to conclude the wetland is hydrologically connected and is immediately adjacent to waters of the Reservation or trust lands or other pertinent geographic features.<sup>226</sup>
- “Filling” means the depositing of any material on a site that raises the surface level of the land or the bed of a body of water above its prior or natural elevation.<sup>227</sup>

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<sup>220</sup> *Id.* at Section II (only relevant portions cited).

<sup>221</sup> Lummi Code of Laws, Title 17 Water Resources Protection Code, Chapter 17.09 Definitions, Section 17.09.010. Available at: [https://www.lummi-nsn.gov/userfiles/393\\_Title\\_17\\_Water\\_Resources\\_Protection\\_Code\\_Resolution\\_2016-014.pdf](https://www.lummi-nsn.gov/userfiles/393_Title_17_Water_Resources_Protection_Code_Resolution_2016-014.pdf).

<sup>222</sup> Lummi Tribe, Lummi Administrative Regulations (LAR), Water Quality Standards for Surface Waters of the Lummi Indian Reservation; 17. LAR 07.020. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/lummi-nation-wqs.pdf>.

<sup>223</sup> Lummi Code of Laws, Title 17 Water Resources Protection Code, Chapter 17.09 Definitions, Section 17.09.010.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*



- “Isolated Wetlands” means non-tidal wetlands not part of a surface tributary system to intrastate or navigable waters of the United States and are no [sic] adjacent to such tributary waterbodies.
- “Permit” means a document issued pursuant to the Lummi Code of Laws or federal regulations.<sup>228</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on March 5, 2007.<sup>229</sup>
- Initial water quality standards were approved by EPA on September 30, 2008.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on March 5, 2007.

### 402-like and 404-like Ordinances

- It is civilly prohibited for any person to: (f) take, store, or alter water, or discharge into Lummi Nation Water, or affect the quality or quantity of Lummi Nation Water without a permit authorizing such taking, altering, or discharging or without an exemption issued pursuant to this Code.<sup>230</sup>
- Storm Water Management
  - (a) No person may engage in any use or activity regulated by this Chapter that affects or has the potential to affect the quality or quantity of storm water as listed in this Chapter without obtaining a land use permit from the Lummi Planning Department, as provided in Title 15 of the Lummi Code of Laws and regulations adopted thereunder, and developing a storm water pollution prevention plan approved by the Water Resources Manager. (b) Regulated activities include all: (1) new developments; and (2) re-developments. (c) Obtaining a permit from the Lummi Planning Department does not waive the necessity of obtaining the appropriate permits from the U.S. Army Corps of Engineers and/or the U.S. Environmental Protection Agency or other appropriate permits as required.<sup>231</sup>
  - When storm water discharges directly or indirectly through a conveyance system into a wetland, the following additional requirements must be met: (1) Storm water discharges to wetlands must be controlled and treated to the extent necessary to meet appropriate water quality standards. (2) Discharges to wetlands shall maintain the hydroperiod and flows of existing site conditions to the extent necessary to protect the characteristic functions of the wetland. (3) Created wetlands that are intended to mitigate for loss of wetland acreage, function, and value shall not be designed to also treat storm water.<sup>232</sup>
  - All large development projects will conduct an analysis of off-site water quality impacts resulting from the project and shall mitigate these impacts.

<sup>228</sup> Lummi Tribe Water Quality Standards 17 LAR 07.020.

<sup>229</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-lummi-nation>.

<sup>230</sup> Lummi Tribe Water Resources Protection Code, Chapter 17.08, Prohibited Acts, Enforcement, Review, and Appeals, Section 17.08.010(f) (only relevant portions cited).

<sup>231</sup> *Id.* at Chapter 17.05, Stormwater Management, Section 17.05.020.

<sup>232</sup> *Id.* at Section 17.05.060(f).

The analysis will extend a minimum of one-fourth mile downstream from the project. The existing or potential impacts to be evaluated and mitigated include, but are not limited to, excessive sedimentation, streambank erosion, discharges to ground water or recharge areas, violations of water quality standards, and spills and discharges of priority pollutants identified under Section 307(a) of the Federal Clean Water Act.<sup>233</sup>

#### 402-like Ordinance

- The primary means to be used for controlling point source waste discharges shall be through the issuance of waste discharge permits, in compliance with 17 LAR 07.090 (Mixing Zones) and 17 LAR 07.190 (Implementation) as provided for in the Lummi Code of Laws Water Resources Protection Code (Title 17) as amended and Section 402 of the Clean Water Act (33 U.S.C. 1342).<sup>234</sup>

#### 404-like Ordinance

- Permit Required for Activities in Streams, Wetlands, and Their Buffers. (a) No activity or development shall be allowed on streams, wetlands, or their buffers within the Lummi Reservation and trust lands without a permit issued by the Lummi Planning Department unless the activity is specifically exempted or allowed in this Chapter. Permits may be issued with conditions or may require mitigation for activities affecting streams or wetlands within the Lummi Reservation or trust lands. (b) All lands lying within the boundaries of the Lummi Reservation and trust lands fall under the jurisdiction of the Lummi Nation and the requirements of this Chapter, including lands owned by the LIBC, lands held in trust, fee lands owned by tribal members, and fee lands owned by non-tribal members.<sup>235</sup>
- Regulated Activities. A permit shall be obtained from the Lummi Planning Department before undertaking any of the following (or similar) activities in a stream, stream bank, or wetland: (a) the removal, excavation, grading, or dredging of soil, sand, organic matter, or material of any kind; (b) the dumping, discharging, or filling with any material; (c) the draining, flooding, or disturbing of the water level or water table; (d) the placing of obstructions; (e) the removal or alteration of beaver dams; (f) the construction, reconstruction, expansion, or demolition of any structure, road, or utility; (g) the destruction or alteration of vegetation (*e.g.*, through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a wetland) which substantially changes the vegetation, topography, or hydrology; or (h) activities that would result in the introduction of sediment, excess nutrients, or pollutants or in a change in the physical or chemical characteristics of wetland water, including quantity.<sup>236</sup>
- Stream Buffers. Buffers shall be established around all streams as follows: (a) Category 1: all streams shall have a minimum of a one hundred (100) foot buffer of natural vegetation on both sides of the channel. The buffer width shall be a horizontal distance measured from the ordinary high water mark of the stream channel. No

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<sup>233</sup> *Id.* at Section 17.05.060(g).

<sup>234</sup> Lummi Tribe Water Quality Standards 17 LAR 07.190(c).

<sup>235</sup> Lummi Tribe Water Resources Protection Code, Chapter 17.06 Stream and Wetland Management, Section 17.06.020; *see also*: Lummi Administrative Regulation Wetland Management Regulations, 17 LAR 06.

<sup>236</sup> *Id.* at Section 17.06.030.

septic systems shall be placed within two hundred (200) feet of a Category 1 stream. (b) Category 2: all streams shall have a minimum of a twenty-five (25) foot buffer of natural vegetation on both sides of the channel. The buffer width shall be a horizontal distance measured from the ordinary high water mark of the stream channel. No septic systems shall be placed within one hundred (100) feet of a Category 2 stream. (c) All stream stretches constrained by riparian wetlands shall have the appropriate wetland-buffer width applied within such a stretch unless the stream-buffer width is greater.<sup>237</sup>

#### Statements of cultural or spiritual significance of water resources

- The tidelands are an economically and culturally critical resource that includes salmon habitat, shellfish, extensive eel grass beds, herring spawning grounds, surf smelt, sand lance, wildlife, and water supply intakes for salmon and shellfish hatcheries.<sup>238</sup>
- Streams and wetlands provide a number of benefits to the Lummi Nation, including fish habitat; habitat for migratory birds, amphibians such as frogs and salamanders, and other wildlife; cultural plants and other cultural practices and properties; providing recharge water to ground-water aquifers; preventing saltwater intrusion; improving water quality; providing water to streams during summer low flows; holding flood and storm waters; and recreational and educational opportunities.<sup>239</sup>
- All water that flows through or falls onto the Reservation discharges to resource-rich tidelands and estuaries of the Reservation and/or contributes to aquifer recharge on the Reservation. The estuaries and tidelands of the Reservation (including the overlying waters) support a diverse assemblage of flora, fauna, and habitats such as eelgrass, shellfish, and salmonid rearing areas. The quality of the resources associated with the estuaries and tidelands affects the political integrity, economic security, health, and welfare of the Lummi Nation as well as subsistence, cultural, commercial, and other uses by tribal members.<sup>240</sup>
- “Tribal Cultural water use” means use of water in a water body to fulfill cultural, traditional, spiritual, or religious needs of the Lummi Nation or its members, as approved by the Lummi Nation Cultural Committee.<sup>241</sup>

#### TTTT. Makah Indian Tribe

##### Definition of “waters of the tribe”

- “Surface waters of the tribe” include lakes, rivers, ponds, streams (including intermittent and ephemeral streams), wetlands, inland waters, saltwater, and all other surface waters and watercourses within the exterior boundaries of the reservation.<sup>242</sup>

##### Definition of “wetlands”

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<sup>237</sup> *Id.* at Section 17.06.090.

<sup>238</sup> *Id.* at Chapter 17.05 Storm Water Management, Section 17.05.010(b).

<sup>239</sup> *Id.* at Chapter 17.06, Stream and Wetland Management, Section 17.06.010(a).

<sup>240</sup> *Id.* at Chapter 17.07 Water Quality Standards, Section 17.07.010(a).

<sup>241</sup> Lummi Tribe Water Quality Standards 17 LAR 07.020.

<sup>242</sup> Makah Tribe Water Quality Standards for Surface Water, Part I, Section 2.

- “Wetland” means any area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>243</sup>

#### Other Definitions

- “Permit” means a document issued pursuant to tribal code or federal laws (such as NPDES; CWA, Section 401; CWA, Section 404) specifying the waste treatment and control requirements and waste discharge conditions.<sup>244</sup>
- “Pollutant” includes, but is not limited to dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC 2011 et seq.)), heat, wrecked or discarded equipment, oil, mine tailings, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.<sup>245</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on December 23, 2003.<sup>246</sup>
- Initial water quality standards were approved by EPA on September 29, 2006.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on December 23, 2003.

#### Statements of cultural or spiritual significance of wetlands

- “Ceremonial and spiritual water use” means activities involving Native American spiritual and cultural practices that may involve primary and secondary contact with water as well as consumption of water. This shall include uses of a water body to fulfill cultural, traditional, spiritual, or religious needs of the Makah Indian Tribe, as approved by the Makah Tribal Council.<sup>247</sup>

## UUUU. Menominee Indian Tribe

#### Definition of “navigable waters”

- “Navigable waters” means waters with beds and banks and sufficiently deep and wide for navigation with a canoe or other small craft. Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport tribal, interstate or foreign commerce or other intermittent waterways that may be deemed by the Director to fulfill purposes of navigation. A determination of navigability, once made, applies laterally over the entire surface of the water body and is not

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-makah-indian-nation>.

<sup>247</sup> Makah Tribe Water Quality Standards for Surface Water, Part I, Section 2. Available at: <https://www.epa.gov/sites/production/files/2014-12/documents/makah-tribe-wqs.pdf>.

extinguished by other actions or events which impede or destroy the navigable capacity.<sup>248</sup>

#### Definition of “waters of the Reservation”

- “Waters of the reservation” mean such accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the Menominee Reservation, but the term does not include any private or municipal pond, or any pond, reservoir or facility built for reduction or control of pollution or cooling of water prior to discharge unless the discharge therefrom causes or threatens to cause water pollution.<sup>249</sup>

#### Definition of “wetlands”

- “Wetlands” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated (hydric) soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas.<sup>250</sup>

#### Other Definitions

- “Discharge of a pollutant” means any addition of any pollutant or combination of pollutants to waters of the Menominee Indian Tribe of Wisconsin from any point source. This definition includes additions of pollutants into waters of the Menominee Indian Tribe of Wisconsin from surface runoff which is collected or channelled [sic] by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works..<sup>251</sup>
- “OMRW” means outstanding Menominee resource water; see Article VI.<sup>252</sup>
- “ONRW” means outstanding national resource water; see Article VI.<sup>253</sup>
- “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, all radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, nutrients, toxic substances, pesticides, and industrial, municipal, and agricultural waste (and their components and breakdown products) discharged into water or entering through other means.<sup>254</sup>
- “Unauthorized discharge of substances” means chemicals, toxic substances, hazardous substances or wastes, components of industrial discharge(s), heavy metals, organic compounds, pesticides, discharge(s), loadings, or other pollutants that enter

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<sup>248</sup> Menominee Indian Tribe of Wisconsin Tribal Code, Part II General Legislation, Chapter 512 Surface Water, Article I, Section 512-5. Available at: <https://www.ecode360.com/12096674>.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

ONRW or affect OMRW designated waters of the Reservation without prior issuance of a tribal water permit.<sup>255</sup>

#### 402-like and 404-like Ordinance

- All activities that affect water quality, water quantity, and uses of waters of the Reservation shall be regulated by the Tribe. This chapter prohibits unauthorized discharges of substances to waters and wetlands of the Menominee Indian Reservation and regulates water quality, water quantity, and activities that affect water quality, water quantity, and uses of waters of the Reservation.<sup>256</sup>
- Activities that require a tribal water permit include but are not limited to the following:
  - (1) New or increased discharges to waters that will affect OMRW designated waters of the Reservation.
  - (2) Existing discharges that enter ONRW designated waters of the Reservation.
  - (3) New or existing hydrological modifications that affect waters of the Reservation; this shall include dams, impoundments, and other structures that affect water quality criteria and/or affect the nature of the waters so as to prohibit the natural spawning runs and other migrational patterns of indigenous fish.
  - (4) Shoreline disturbance activities that may affect the beds and banks of waters of the Reservation; these activities include many types of shoreland construction, *e.g.*, placement of a seawall or riprap for erosion protection and placement of boat ramps to facilitate the launch or retrieval of watercraft, provided that such boat ramps are deemed to present a potential significant impact to tribal waters in the opinion of the Director.
  - (5) Stream crossing activities, including skidding trails and bridge and culvert placement, improvement, or replacement and fill placed in wetlands and water bodies in conjunction with the improvement or replacement of bridge and culvert crossings for municipal, township, county, state, tribal, or federal projects. The replacement of historic bridges must be coordinated with the Tribal Department of Historic Preservation. In addition, the existing structure must be removed and the replacement must be constructed on the same or similar alignment with hydraulic capacity that is consistent with the tribal and federal regulations and requirements. The placement of fill material into wetlands is authorized for widening of the road approaches to conform to the width or alignment of the new structure. All excess material must be placed at an upland location. If the project involves changing the channel of a river, creek, or stream, then additional requirements may be applied. These activities also include the installation and removal of submerged utility line crossings; additionally, the following special conditions must be met:
    - (a) Utility lines placed across the channel of an authorized federal navigation project must be embedded at least six feet below the authorized channel depth, or to a lesser depth if approved by the Corps of Engineers.

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<sup>255</sup> *Id.*

<sup>256</sup> *Id.* at Article I, Section 512-1.A.

- (b) Dredged or fill material may be placed as backfill or bedding, regulated by the Tribe, so long as there is no change in preconstruction bottom contours. Excess fill must be removed to an upland disposal area.
  - (c) The utility line must not be placed within 500 feet of a levee or flood wall constructed and/or maintained with federal funds.
  - (d) Utility crossings involving pipelines must comply with Federal Department of Transportation regulations for installation of pipelines.
  - (e) All utility lines transporting oil, gas, or other pollutive substances must be equipped with shutoff valves at the upland edge of the water crossing to prevent unnecessary pollution of waters in the event of pipeline failure.
- (6) Placement of fish barrier structures that prevent the upstream and/or downstream movement of fish, often associated with impoundment structures.
- (7) Dredging activities that include the removal, by suction, scooping or scraping devices, of materials channelward of the ordinary high-water mark from navigable waters, provided that all dredged materials are placed on an upland site, not a wetland, and above the ordinary high-water mark.
- (8) Placement of new and existing dry fire hydrants that include an intake structure and pipe in or on the bed and banks of water bodies for the purpose of constructing a dry fire hydrant to supply water for firefighting purposes.
- (9) Withdrawal of water from (surface) waters of the Reservation. Persons who want to withdraw surface waters from waters of the Reservation shall be restricted to quantity limitations and must obtain a tribal water permit from the Tribe. Typically, persons wishing to withdraw surface water from waters of the Reservation will submit a permit application to the Tribe and shall be limited to the following minimum requirements if a permit is issued:
- (a) Withdrawal of 25,000 gallons or less of surface water per day from rivers and 1,000 gallons or less per day from lakes (note: withdrawal of water for emergency fire situations is exempt from these requirements).
  - (b) Withdrawal of surface water by persons shall not adversely affect the quantity of surface water available to any other person, facility, practice or activity. The Department will evaluate each withdrawal for appropriate flows based on existing or acquired flow data. Based on each evaluation, including applications in excess of the above limits, a percentage of the total flow may be permitted to be withdrawn but shall not cause a violation of the use designations or water quality standards of this chapter. Surface water extraction which results in the latter person, facility, practice or activity not being able to obtain sufficient surface water shall constitute adverse effect.
  - (c) Withdrawal of surface water by persons, facilities, practices, or activities shall not cause a violation of the use designations or water quality standards of this chapter.
  - (d) Persons who propose to withdraw surface water shall submit a feasibility report to the Tribe which documents the quantity of surface water intended to be extracted per day and other relevant narrative and plan drawing information. No facility, practice or activity shall be undertaken until



approval of a feasibility report is obtained from the Tribe and a tribal water permit is issued.

(10) Dredging and filling of wetlands that affect waters of the Reservation.

(11) The application of pesticides within 200 feet of waters of the Reservation.

Note: Certain activities listed in Subsection C(1) to (11) may require additional permits and/or certification. Such additional permits and certifications shall be obtained by the applicant prior to issuance of a tribal water permit.<sup>257</sup>

Statements of cultural or spiritual significance of wetlands and water resources

- Ceremonial, religious and spiritual use is a designated use under the tribe’s water quality standards: All waters of the Reservation are used for ceremonial and spiritual purposes by tribal members (and descendants). The Tribe holds water sacred, and our historic past epitomizes this statement. The original five clans of the Menominee, consisting of the Bear, Eagle, Wolf, Crane, and Moose, depended on water to sustain life and used water to perform their ceremonial responsibilities. Additional historic and modern ceremonial uses of water include, but are not limited to, uses in the annual Sturgeon Ceremony, wild rice harvest, and the harvesting of medicinal plants from waters of the Reservation. Traditional religious use of water in Big Drum Ceremonies, the sweat lodge, and other ceremonies is (still) practiced today. These uses may involve, among other things, primary direct contact, drinking and inhalation of water. Recognizing the ceremonial and traditional use of water and its life-giving properties is important for the spiritual significance of the Menominee people.<sup>258</sup>
- Cultural use is a designated use under the tribe’s water quality standards: All waters of the Reservation, and aquatic natural resources, are designated for historic, traditional, and cultural uses. Cultural water uses encompass all ethnohydrological uses of water associated with unique Menominee ways of life. These uses include, but are not limited to, the ethnobotanical harvest and medicinal use of numerous plants associated with aquatic, wetland, and riparian habitats, as well as basic socioeconomic uses of waters of the Reservation for sustenance. Aquatic plants that grow in waters of the Reservation are vital to continuation of Menominee culture through the use of those plants for medicinal purposes by Menominee people.
  - All living things on the Menominee Reservation in some way use the waters of the Reservation to sustain life. People, animals, birds, plants, trees, and insects use water and have their place in Menominee culture.
  - Waters of the Reservation shall be maintained and protected in such an ecological condition that will allow (traditional) Menominee educational uses associated with waters of the Reservation to continue perpetually.
  - Cultural educational uses shall include, but not be limited to, ethnohydrological learning experiences that are passed from one generation to the next regarding the harvest of plants and animals. Culturally, to the Menominee people, waters of the Reservation are as significant as the forest ecosystem and will continue to be regarded with the same deference. The Tribe protects the forest ecosystem with sustained yield forestry management practices; this same (everlasting) treatment shall be afforded waters of the Reservation, for it is the very essence of sustaining life which is critical to

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<sup>257</sup> *Id.* at Article II, Section 512-32.C (citations omitted). Available at: <https://www.ecode360.com/12096785>.

<sup>258</sup> *Id.* at Article II, Section 512-7.C.

maintaining the culture of the Menominee people. Cultural uses are very significant to the Tribe, indigenous forest-dwelling people that have for more than five millennia relied upon the water in the Tribe's historic range to sustain unique Menominee ways of life.<sup>259</sup>

## VVVV. Miccosukee Tribe of Indians

### Definition of “waters of the tribe”

- “Tribal Reservation Surface Waters” means all waters within the exterior boundaries of the Miccosukee Tribe’s Federal Reservation and Miccosukee Reserved Area, including water situated wholly or partly within, or bordering upon Tribal Reservation Lands and the Miccosukee Reserved Area, whether public, private, or Federally protected lands, *e.g.*, National Parks or Preserves.<sup>260</sup>

### Definition of “wetlands”

- “Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that are under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>261</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on December 20, 1994.
- The tribe’s initial water quality standards were approved on May 25, 1999, with additional standards approved for the Miccosukee Reserve Area on March 15, 2001.<sup>262</sup>
- A second supplemental application is under review; notice issued April 12, 2019.

### 401 Certification

- Found eligible to administer a water quality standards program (TAS) on December 20, 1994.

## WWWW. Mohegan Tribe of Indians of Connecticut

### 311-like Ordinance

- The Mohegan Tribal Council hereby adopts and incorporates by reference, as if laid out here in full, all the substantive provisions of the United States Federal Water Pollution Control Act, Clean Water Act, Oil Pollution Control Act which are in effect

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<sup>259</sup> *Id.* at Article II, Section 512-7.D.

<sup>260</sup> Miccosukee Environmental Protection Code Subtitle B, Water Quality Standards for Surface Waters of the Miccosukee Tribe of Indians, Section 1.B. Available at: <https://www.epa.gov/sites/production/files/2014-12/documents/miccosukee.pdf>.

<sup>261</sup> *Id.*

<sup>262</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-miccosukee-tribe-indians-florida>.

for existing sources, operations and new construction projects on the Mohegan Indian Reservation.<sup>263</sup>

- The Mohegan Tribal Council hereby adopts and incorporates by reference, as if laid out here in full, the applicable sections of the following substantive federal regulations as Mohegan tribal regulations: (1) 40 CFR 110 Discharge of Oil; (2) 40 CFR 112 Oil Pollution Prevention; (3) 40 CFR 116 Designation of Hazardous Substances; (4) 40 CFR 117 Determination of Reportable Quantities for Hazardous Substances.<sup>264</sup>

#### 402-like Ordinance

- The Mohegan Tribal Council hereby adopts and incorporates by reference, as if laid out here in full, all the substantive provisions of the United States Federal Water Pollution Control Act, Clean Water Act, Oil Pollution Control Act which are in effect for existing sources, operations and new construction projects on the Mohegan Indian Reservation.<sup>265</sup>
- The Tribe adopts and incorporates by reference, as if laid out here in full, the applicable sections of the following substantive federal regulations as Mohegan tribal regulations: (5) 40 CFR 122 EPA Administered Permit Programs: The National Pollutant Discharge Elimination System; (6) 40 CFR 123 State Programs; (7) 40 CFR 125 Criteria and standards for the national pollutant discharge elimination system.<sup>266</sup>
- The Mohegan Tribal Council hereby adopts and incorporates by reference, as if laid out here in full, all the substantive provisions listed below of the State of Connecticut Department of Environmental Protection (CTDEP) Water Regulations as the Mohegan Environmental Protection Department (MEPD) Water Regulations governing environmental protection within the Mohegan Indian Reservation as Mohegan tribal regulations. (2) Delegation of Permitting Authority for Water Pollution Control and Exemption from Public Notice 22a-430-1 through 2; (3) General Conditions Applicable to Water Discharge Permits and Procedures and Criteria for Issuing Water Discharge Permits 22a-430-3 through 4.

#### 404-like Ordinance

- The Mohegan Tribal Council hereby adopts and incorporates by reference, as if laid out here in full, all the substantive provisions of the United States Federal Water Pollution Control Act, Clean Water Act, Oil Pollution Control Act which are in effect for existing sources, operations and new construction projects on the Mohegan Indian Reservation.<sup>267</sup>
- The Mohegan Tribal Council hereby adopts and incorporates by reference, as if laid out here in full, the applicable sections of the following substantive federal

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<sup>263</sup> Mohegan Tribe of Indians Code, Part II, Chapter 5, Article X Environmental Protection Department, Section 5-211(a) (only relevant portions cited). Available at:

[https://library.municode.com/tribes\\_and\\_tribal\\_nations/mohegan\\_tribe/codes/code\\_of\\_laws?nodeId=PTIIMOTRINCO\\_CH5HES\\_AWE\\_ARTXENPRDE\\_S5-208ESMOENPRCO](https://library.municode.com/tribes_and_tribal_nations/mohegan_tribe/codes/code_of_laws?nodeId=PTIIMOTRINCO_CH5HES_AWE_ARTXENPRDE_S5-208ESMOENPRCO).

<sup>264</sup> *Id.* at Section 5-211(b) (only relevant portions cited).

<sup>265</sup> *Id.* at Section 5-211(a) (only relevant portions cited).

<sup>266</sup> *Id.* at Section 5-211(b) (only relevant portions cited).

<sup>267</sup> *Id.* at Section 5-211(a), only relevant portions cited.

regulations as Mohegan tribal regulations: (11) 40 CFR 233 404 State program regulations.<sup>268</sup>

- The Mohegan Tribal Council hereby adopts and incorporates by reference, as if laid out here in full, all the substantive provisions listed below of the State of Connecticut Department of Environmental Protection (CTDEP) Water Regulations as the Mohegan Environmental Protection Department (MEPD) Water Regulations governing environmental protection within the Mohegan Indian Reservation as Mohegan tribal regulations. (4) Inland Wetlands and Watercourses 22a-39-1 through 22a-39-15; (6) Tidal Wetlands 22a-30-1 through 22a-30-17.<sup>269</sup>

#### Other Novel Protections

- The Mohegan Tribal Council hereby adopts and incorporates by reference, as if laid out here in full, all the substantive provisions listed below of the State of Connecticut Department of Environmental Protection (CTDEP) Water Regulations as the Mohegan Environmental Protection Department (MEPD) Water Regulations governing environmental protection within the Mohegan Indian Reservation as Mohegan tribal regulations. (1) Aquifer Protection Area Land Use Regulations 22a-354i-1 through 10;(5) Sewage System Additives and Detergents 22a-462-1 through 3; (7) Water Diversion 22a-372-1, 22a-377(b)-1, 22a-377(c)-1, 22a-377(c)-2.<sup>270</sup> Subsection (h) directs the more stringent or specific requirements to apply in the case of conflict. Subsection (j) notes that the Mohegan Tribe’s Water Law and Regulations automatically update to match the most recent federal and state<sup>271</sup> law and regulations.

### XXXX. Morongo Band of Mission Indians

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 3, 2018.<sup>272</sup>
- Initial water quality standards have not yet been approved by EPA.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 3, 2018.

### YYYY. Navajo Nation

#### Definition of “navigable waters”

- “Navigable waters” means waters of the Navajo Nation.<sup>273</sup>

#### Definition of “waters of the Nation”

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<sup>268</sup> *Id.* at Section 5-211(b), only relevant portions cited.

<sup>269</sup> *Id.* at Section 5-211(d), only relevant portions cited.

<sup>270</sup> *Id.* at Section 5-211(d), only relevant portions cited.

<sup>271</sup> *Id.* at Section 5-211(h) and (j).

<sup>272</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

<sup>273</sup> Navajo Nation Code, Title 4 Environmental Protection, Navajo Clean Water Act Section 102(a)(21). Available at: <http://www.navajopublicwater.org/NNCleanWaterAct.pdf>.

- “Waters of the Navajo Nation” means all surface waters, including but not limited to portions of rivers, streams (including perennial, intermittent and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands, mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, impoundments, riparian areas, springs, and all other bodies or accumulations of water, surface, natural or artificial, public or private, including those dry during part of the year, that are within or border the Navajo Nation. This definition shall be interpreted as broadly as possible to include all waters that are currently used, were used in the past, or may be susceptible to use in interstate, intertribal, or foreign commerce. Consistent with federal requirements, the Director may exclude from waters of the Navajo Nation certain waste treatment systems.<sup>274</sup>

#### Definition of “wetlands”

- “Wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>275</sup>

#### Other Definitions

- “Discharge of pollutant(s)” means any addition of any pollutant to navigable waters from any point source.<sup>276</sup>
- “Waste” or “pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) “sewage from vessels” within the meaning of section 312 of the Clean Water Act; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the Navajo Nation, and the Navajo Nation determines that “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended (42 U.S.C 2011 et. seq.,) heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the waters of the Reservation, including discharges of storm water that result in deleterious alterations of the hydrology and morphology of waters of the Reservation.<sup>277</sup>

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<sup>274</sup> *Id.* at Section 102(a)(43).

<sup>275</sup> *Id.* at Section 102(a)(44).

<sup>276</sup> *Id.* at Section 102(a)(9).

<sup>277</sup> *Id.* at Section 409.3-1(k).

#### 402-like Ordinance

- The Department may issue general orders applicable throughout the Reservation for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the Oneida Reservation. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties by means of a public hearing. The Department shall, when appropriate, consult with other tribal departments and entities having particular expertise in the subject matter of the order.<sup>278</sup>
- The Department may enter into agreements with the responsible authorities of the state or any of its political subdivisions, subject to approval by the Board and the Oneida Business Committee, relative to methods, means and measures to be employed to control pollution of any inter-jurisdiction streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with the state or any political subdivision thereof concluded by direct legislative act of the Oneida Business Committee or the Oneida General Tribal Council.<sup>279</sup>
- (a) The Department shall require that all persons discharging any substance to waters of the Reservation requiring a permit under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., report the manner used, amount used, and amount discharged to the waters of the Reservation for each substance. The Department may verify reports received by field monitoring of any discharge. (b) The Department may establish minimum effluent volumes for which reports are required under this Section. (c) Wastewater Discharge Environmental Fee: Beginning in 1997, there is established a Wastewater Discharge Environmental Fee. This fee shall be paid by each person required by Section 409.6-1 to report a discharge. In 1997, the fee under this Section shall be based on an administrative fee...plus an additional fee, to be set by the Department by rule and to be based on the concentration or quantity or both of pollutants discharged. (d) Violators of the reporting requirement established under Section 409.6-1 shall forfeit not less than \$100 nor more than \$5,000 for each offense. Each day of continued violation is a separate offense.<sup>280</sup>

#### Other Novel Protections

- Land Use Permit. The purpose of a land use permit is to ensure that the proposed disturbance of the land is compliant with applicable law. (a) A land use permit is required before: (1) Any structure, other than a building, is erected, moved, or structurally altered. (2) A restoration project is initiated. This includes wetland restoration and stream bank enhancement. (3) Best management practices are implemented. (4) Any land is disturbed. This does not include: (A) Cropping or planting trees or vegetation. (B) Habitat enhancement activities, such as invasive species control and wildlife plantings. (C) Maintenance of a structure or land use that has been approved pursuant to a previously issued land use permit. (b) Standards Attached to Permits. In granting a land use permit for filling, grading, lagooning, dredging, or excavating, the following considerations shall be addressed and

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<sup>278</sup> *Id.* at Section 409.4-4.

<sup>279</sup> *Id.* at Section 409.4-7.

<sup>280</sup> *Id.* at 409.6-1.

- standards shall be attached to the permit where applicable... (5) Fill materials shall not restrict floodway or appreciably reduce the storage capacity of the floodplain. (6) Sides of a channel or artificial waterway shall be stabilized to prevent slumping. (7) Sides of a channel or artificial waterway shall be constructed with horizontal to vertical side slopes of 3:1 or flatter in sand or gravel, 1:1 or flatter in organic soils, and 2:1 or flatter in other soils, unless bulkheads or riprapping are provided.<sup>281</sup>
- The Department may order or cause the abatement of pollution of waters of the Reservation which the Department has determined to be significant and caused by a nonpoint source, as defined in Section 409.3-7, including pollution which causes the violation of a water quality standard, pollution which generally impairs the aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health, pollution which interferes with cultural or religious uses of waters of the Reservation, or pollution which otherwise significantly impairs water quality. Any and all orders of the Department issued under this Section shall be consistent with the goals and objectives of the Duck-Apple-Ashwaubenon Creeks Priority Watershed Project or such other priority watershed projects as may be designated under Section 409.4-11. Participation by a person in a designated priority watershed project and the compliance by that person with any and all criteria established by said priority watershed project shall entitle the person to a rebuttable presumption of compliance with the requirements of this Section (emphasis added).<sup>282</sup>
  - Non-Point Source Pollution. Erosion, sedimentation, or any non-point source pollution during and after any land disturbance shall not exceed that which would occur if the land was left in its undisturbed state and/or was controlled in accordance with the practices established in this section. (a) Practices to control non-point source pollution are expressed in terms of performance and include the following:<sup>283</sup>
  - Protected Area District Overlay (E-1). The purposes of the Protected Area District Overlay are to preserve ecological relationships, natural resources, and aesthetic, cultural and historical values; and to protect the health and integrity of wetlands, watersheds, natural systems, environmental corridors, capacities of floodways and drainages, and other areas of significance, such as historical and cultural sites. Permitted uses in the Protected Area District Overlay of the Reservation shall be planned and managed in a manner to minimize, insofar as practicable, any resultant damage to the ecology, environment and capacities of natural systems; and the long term health and preservation of cultural historical resources of the Reservation.
    - This district overlay shall extend over: (1) All navigable waters, drainage ways, shoreland areas and floodplains. (2) Habitats of endangered or threatened species as defined by federal or state law. (3) Historical, cultural or archeological resources, as defined by Tribal law.
    - Permitted Uses. (1) Any use permitted within the Conservancy District.
    - Conditional Uses. (1) Any activity within a shoreland area, other than a permitted use. (2) Non-structural industrial or commercial uses such as loading areas, parking areas, and airport landing strips. (3) Private and public

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<sup>281</sup> *Id.* at Section 605.10-1 (only relevant portions cited).

<sup>282</sup> *Id.* at 409.4-12.

<sup>283</sup> *Id.* at 605.12-1.



uses such as: golf courses, tennis courts, driving ranges, archery ranges, game farms, fish hatcheries, shooting preserves, target, trap and skeet ranges, hiking trails, bridle trails and bike paths. (4) Residential uses such as: lawns, gardens, parking areas, and play areas. (5) Uses or structures accessory to open space. (6) Uses or structures accessory to permitted uses. (7) Sewage treatment plants. (8) Ponds, if in the floodplain. (9) Additional uses as approved by the Land Commission

- Prohibited Uses. Every use not listed above is a prohibited use, except as may be approved by the Land Commission as a conditional use.
- Standards.
  - (1) Setbacks. (A) All structures, except structures which have a function which makes it necessary for an on or near water location (e.g., boathouses and bridges) or are otherwise regulated within this law, shall be at least seventy-five (75) feet from the ordinary high-water mark of navigable waters or a drainage way. (B) On-site sewage disposal systems shall be at least fifty (50) feet from the ordinary high-water mark of navigable waters or a drainage way. (C) Setbacks for pastures and agricultural uses, such as cultivating, cropping, fertilizing and applying pesticides: thirty-five (35) feet from the ordinary high-water mark. (D) Setbacks for feedlots and barnyards: one hundred (100) feet from the ordinary high-water mark. (E) Setbacks for waste disposal or the storage of scrap materials, byproducts, raw materials, or marginal products such as fill material, pulp wood, sand and gravel: one hundred (100) feet from the ordinary high-water mark.
  - (2) All roads, bridges and railroads shall only cross navigable waters or drainage ways upon issuance of a permit. All such construction shall minimize the area affected and vegetation and environmental damage (e.g., siltation, destruction of natural vegetation, degradation of aesthetics) to navigable waters and drainage ways and the lands adjacent to them. All waterway crossings shall minimize obstruction to water flow. Roads, bridges and railroads: (A) Shall have adequate flood proofing measures provided to a height at or above the flood protection elevation. (B) Shall be constructed to minimize any increase in the one hundred year flood elevation. No increase in the one hundred year flood elevation shall exceed one-tenth (0.1) of a foot. Also, no increase in the one hundred year flood elevation shall be allowed unless appropriate arrangements are made with all affected parties.
  - (3) Removal of shorecover shall be conducted in accordance with any applicable Tribal law.
  - (4) The following non-conforming uses which were in existence at the time of the original adoption of this law shall conform to the provisions of this law within three (3) years following the date each case is recorded as a non-conforming use: (A) Setbacks for pastures. (B) Setbacks for any agricultural uses. (C) Setbacks for feedlots and

barnyards. (D) Setbacks for waste disposal or the storage of other materials, as covered in 605.8-3(e)(1)(E).

(5) Floodplains. No structure, fill, deposit, obstruction, or other use may be allowed in the floodplain which, acting alone or in combination with existing or future uses, unduly affects the capacity of the floodway, unduly increases flood heights, or unduly diminishes the storage capacity of the floodplain. (A) Structures in a floodplain: ... (ii) Shall have a low flood damage potential. (iii) Shall be constructed and placed on the building site so as to offer minimum obstruction to the flow of flood waters. Wherever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flow of flood waters and will be placed with their longitudinal axes approximately on the same line as those of adjoining structures. (iv) Shall be firmly anchored to prevent them from being washed away by flood waters. (v) Shall have all service facilities such as electrical and heating equipment at or above the flood protection elevation. (B) Compliance with this law shall not be grounds for the removal of lands from the floodplain unless such lands are filled to a height of at least two (2) feet above the elevation of the one hundred year flood for the particular area and are contiguous to other lands lying outside the floodplain. (C) Fill or deposition of materials: (i) Shall be protected against erosion by riprap, vegetation cover, sheet piling, or a bulkhead (ii) Shall have some beneficial purpose and no more than is necessary to achieve that purpose shall be deposited, a plan shall be submitted by the owner showing the uses to which the filled land will be put and the final dimensions of the proposed fill. (D) All construction and substantial improvements to utilities, sewage disposal systems, and wells shall be flood proofed at or above the flood protection elevation... (F) Existing Structures in the Floodplain. No modifications or additions shall be allowed to any existing structures which are not in compliance with permitted floodplain standards or uses, unless such modifications or additions meet all of the following criteria: (i) The modifications or additions to structures shall not increase the amount of obstruction to flood flows. (ii) Any addition to a structure shall be flood proofed, by means other than the use of fill, to at or above the flood protection elevation... (iv) Flood Proofing. Flood proofing measures shall be designed consistent with an elevation at or above the flood protection elevation to withstand flood velocities, forces, and other factors associated with flooding. All flood proofing shall provide anchorage to resist flotation and lateral movement.<sup>284</sup>

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<sup>284</sup> *Id.* at 605.8-3 (only relevant portions cited).

## ZZZZ. Pala Band of Mission Indians

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 19, 2016.<sup>285</sup>
- Initial water quality standards have not yet been approved by EPA.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 19, 2016.

## AAAAA. Pawnee Nation of Oklahoma

### Definition of “waters of the Nation”

- “Waters of the Pawnee Nation (Nation)” means all streams, lakes, ponds, marshes, navigable and non-navigable watercourses and waterways, wells, springs, irrigation systems, drainage systems, storm sewers, wetlands as defined by the Nation, and all other bodies or accumulations of water including surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon the jurisdiction of the Pawnee Nation, including but not limited to the Pawnee Nation Reservation as established by the Act of April 10, 1876, or any portion thereof.<sup>286</sup>
- “Pawnee water” means all the waters, surface and ground, supplying, arising upon, occurring within, flowing through, and bordering upon, the boundaries of the Pawnee Reservation as established in 1876.<sup>287</sup>

### Definition of “wetlands”

- “Wetland” means any area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>288</sup>

### Other Definitions

- “Discharge” includes but is not limited to a discharge of a pollutant, and means any addition of any pollutant to waters within or affecting the Nation’s jurisdiction from any point source.<sup>289</sup>
- “Discharge of a pollutant” or “discharge” means any addition of a pollutant or combination of pollutants to Pawnee waters from any point source.<sup>290</sup>
- “Point source” means any discernible, confined and discrete conveyance or outlet including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure container, rolling stock or vessel or other floating craft from which pollutants are or may be discharged into waters within the Nation’s jurisdiction. The term “point

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<sup>285</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

<sup>286</sup> Pawnee Nation of Oklahoma Law and Order Code, Title XII Natural Resource Protection Act, Section 007(aa). Available at: <https://www.pawneenation.org/files/documents/Title-XII.pdf>.

<sup>287</sup> *Id.* at Section 402(r).

<sup>288</sup> *Id.* at section 502.

<sup>289</sup> *Id.* at Section 007(e).

<sup>290</sup> *Id.* at Section 402(j).

source” shall not include agricultural storm water discharge and return flows from irrigated agriculture.<sup>291</sup>

- “Point source” means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, container, casing, dam gate or spillway, well, discrete fissure, container, rolling stock, or vessel or other floating craft, confined animal feeding operations and landfill leachate collection systems, petroleum production lease lines or underground injection system lines from which pollutants are or may be discharged.<sup>292</sup>
- “Pollutant” includes but is not limited to dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste.<sup>293</sup>
- “Pollution” or “pollutant” means any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to: (1) Public health, safety, or welfare (2) Domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses (3) Livestock, wild animals, or birds (4) Fish or other aquatic life.<sup>294</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on November 4, 2004.<sup>295</sup>
- Initial water quality standards have not been approved by EPA.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on November 4, 2004.

#### 402-like and 404-like Ordinance

- This Chapter asserts the authority of the Pawnee Nation to implement the goals and policies of the Nation to: (3) Utilize area-wide planning and management to control sewage and other discharges; (11) Prohibit the discharge of toxic pollutants in toxic amounts and, to the extent practicable eliminate, or effectively control, the discharge of pollutants from any source; (12) Require environmental review of proposed activities which may cause individual or cumulative adverse impacts to water quality, natural resources, public health, lands, recreation, cultural or historical values, air, quality of life, or other aspects of the Nation’s environment; (13) Require projects to be modified to avoid adverse impacts if possible, to minimize unavoidable impacts, and provide full mitigation for unavoidable impacts; (14) Prohibit or regulate activities which may cause or contribute to a violation of this Chapter and applicable water quality standards, or a violation of federal law.<sup>296</sup>

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<sup>291</sup> *Id.* at Section 007(r).

<sup>292</sup> *Id.* at Section 402(u).

<sup>293</sup> *Id.* at Section 007(s).

<sup>294</sup> *Id.* at Section 402(v).

<sup>295</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pawnee-nation>.

<sup>296</sup> Pawnee Nation of Oklahoma Law and Order Code, Title XII Natural Resource Protection Act, Section 401(d) (only relevant portions cited).

- Authority of the Department of Environmental Conservation and Safety. The DECS shall have the authority and the responsibility of the following: (1) Carry out the implementation and enforcement provisions of this Chapter, including enforcement of civil penalty provisions, criminal prosecution of violators and such other administrative and judicial relief as may be appropriate; (2) Administer waste discharge permit system as provided in this Chapter; (3) Monitor waste discharges and the water resources of the Pawnee Nation; (5) To enter and inspect at any time and in any manner any open property, premise, or place for the purpose of investigating any activity causing, threatening or allowing water pollution, or ascertaining compliance or noncompliance with any rule or order promulgated under this Chapter. Such entry is also authorized in regulated businesses for the purpose of inspecting and copying records required to be kept concerning any effluent source; (14) To issue, modify, or revoke permits pursuant to this Chapter, and to grant or deny variances; (16) Require or conduct monitoring and testing of waters and discharges, and the submission of reports or laboratory analyses performed by laboratories or operators; (17) Require the submission of plans, specifications and other data in connection with the issuance of permits or certifications required pursuant to this article.<sup>297</sup>
- Authority of the Environmental Regulatory Commission The Commission shall have the Authority and Responsibility pursuant to this act to: (2) Require the submission of plans, specifications and other data in connection with the issuance of regulatory permits required pursuant to this law; Issue, continue in effect, revoke, amend, modify, condition, deny, renew, or refuse to renew permits, licenses, water quality certifications and other authorizations as issued by the commission; (3) Establish a schedule of fees for permits, studies, laboratory services or technical assistance and for recovering copy and other costs in response to open records requests; (4) Issue, modify, or revoke orders requiring the construction of new disposal or treatment systems or the modification or extension of existing systems, or the adoption of other remedial measures to prevent, control or abate pollution.<sup>298</sup>
- Water Pollution Control: The DECS shall develop comprehensive programs for preventing, reducing, or eliminating the pollution of the waters and ground waters of the Nation. DECS shall make reasonable efforts to cooperate with neighboring jurisdictions and persons that are affected by the programs. In the development of such programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. Programs may include Dredge or Filled Material (CWA 404 Permits), National Permit Discharge Elimination System (CWA 402 Permits), joint NPDES Permitting, or Tribal Certification of Federal Permits and Licenses. The Director is authorized to initiate or make joint investigations with any such agencies of the condition of any waters in any state or Tribe affecting the waters of the Nation, and of the discharges of any sewage,

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<sup>297</sup> *Id.* at Section 403(b) (only relevant portions cited).

<sup>298</sup> *Id.* at Section 403(c) (only relevant portions cited).

- industrial wastes, or any substance derived from point source or non point source pollutants which may adversely affect such waters.<sup>299</sup>
- Unlawful Acts-Penalties. (a) Unlawful acts: The following unlawful acts are each a crime and subject to enforcement provisions of this Law and other laws of the Pawnee Nation, unless the proper entity has first obtained a permit or written authorization from the Pawnee Nation as authorized under this Law: (1) It is unlawful for any person to divert, withdraw, or otherwise make any use of, or take any action of what ever kind substantially affecting, the waters of the Pawnee Nation unless authorized to do so pursuant to the provision of this law; (2) It is unlawful to for any person to cause pollution to be introduced into any waters within Pawnee Indian Country or to place or cause to be placed any contaminant or waste in a location upon the lands where they are likely to cause pollution of any water within Pawnee Indian Country; (3) It is unlawful to violate any provision set forth in any permit or certification issued within Pawnee Indian Country; (7) It is unlawful to construct, modify, or operate any pollution disposal system within Pawnee Indian Country without having a current permit authorizing such activity; (8) It is unlawful to construct or use without permit any outlet for the discharge of sewage, industrial waste, petroleum waste, brine water, or any other pollutant or wastes onto the lands or into any waters within Pawnee Indian Country; (9) It is unlawful to construct, use, or operate any outlet used for draining secondary containment of spilled product or contaminated storm water in a manner which is not permitted or otherwise authorized under 40 CFR Part 112 and the laws and regulations of the Pawnee nation; (10) It is unlawful to conduct dredge and fill activities in or adjacent to waters of the Nation or violate any permit provision or condition thereof. (11) It is unlawful to land apply or dispose of any waste, waste water, or sludge without permit; (14) It is unlawful to discharge any pollutant on to the land or into Pawnee waters without having first obtained a permit from the Pawnee Nation or USEPA for such discharge. Neither a permit issued pursuant to this Chapter nor an application therefore creates or recognizes a right in the permit holder or applicant to use Pawnee waters for beneficial purposes or any other property right or interest.<sup>300</sup>
  - Except as otherwise provided in subsection (b) of this section, any point source discharge into waters of the Nation, or in a place likely to reach waters of the Nation, by or from any facility, activity, source or entity regulated by the Pawnee Nation, shall be unlawful unless a permit has first been obtained from the Pawnee Nation.<sup>301</sup>
  - Pollution Control: A. No person shall cause pollution of, or discharge pollutants upon the lands or into the waters of the Pawnee Nation. B. No person shall cause violation of any provision(s) and/or criteria of water quality standards (in part or otherwise) as contained in the Pawnee Nation Water Quality Standards. C. No person shall discharge or attempt discharge of other waters (wastewater or otherwise) without authorization of the DECS or other duly authorized authority as provided by the

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<sup>299</sup> *Id.* at Section 404. *See also* Chapter 9 “Pollutant Discharges” for more on permitting (Section 902).

<sup>300</sup> *Id.* at Section 408 (only relevant portions cited).

<sup>301</sup> *Id.* at Section 905(a). *See also* the second Section 905 for un-authorized discharge offense.

Pawnee Nation Natural Resource Protection Act (Title XII, Pawnee Nation Law and Order Code).<sup>302</sup>

#### Other Novel Protections

- The Nation has Wetland Water Quality Standard with numeric and narrative criteria. Further the standard states: (c.) Point and nonpoint sources of pollution shall not cause destruction or impairment of wetlands except where authorized under section 404 of the CWA. (d.) Wetlands shall not be used as repositories or treatment systems for wastes from human sources, except as specified by number (e), below. (e.) Wetlands intentionally created from non-wetland sites for the sole purpose of wastewater or storm-water treatment (constructed wetlands) are not considered “waters of the Nation” and are not subject to the provisions of this section.<sup>303</sup>
- Title XII, Chapter 6 is on Aquatic Buffers: It is the desire of the Pawnee Nation to protect and maintain the native vegetation in riparian and wetland areas by implementing specifications for the establishment, protection, and maintenance of vegetation along all stream systems or coastal zones within its jurisdictional authority. Buffers adjacent to stream systems and coastal areas provide numerous environmental protection and resource management benefits...
- Title XII, Chapter Twelve is "Oil Pollution Control"
- The Pawnee Nation of Oklahoma also offers permits for oil and gas exploration. See TITLE XIII, Energy Resource Protection Act

#### BBBBB. Pit River Tribe

##### Definition of “waters of the tribe”

- “Waters within the Tribes exterior boundaries” or “Tribal waters” means any water, surface or underground, contained within, flowing through or bordering upon the Tribes territory or any portion thereof.”<sup>304</sup>

##### Other Novel Protections

- Solid Waste Disposal Ordinance: The provisions of this Ordinance shall apply to all existing and proposed solid waste disposal activities and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health, safety, welfare, land, air or water quality and other fundamental interests of the Tribe, including such activities conducted by non-members of the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:
  - Landfills and open dumps;
  - Storage of animal waste;
  - Automobile graveyards and junkyards;
  - Landfilling of sludge or septic system waste;

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<sup>302</sup> *Id.* at Title XI Environmental Conservation and Safety, Section 19.02. Available at: <https://www.pawneenation.org/files/documents/Title-XI.pdf>.

<sup>303</sup> *Id.* at Title XII Natural Resource Protection Act, Section 401(c)(8), Section 512.

<sup>304</sup> Pit River Tribal Code, Title 15: Natural Resources and Water Code, Chapter 1. Solid Waste Disposal Ordinance (Pit River Tribal Solid Waste Disposal Ordinance), Section 204(A)(68). Available at: <http://pitrivertribe.org/title-15-solid-waste/>.



- Individual, residential, industrial, commercial, or agricultural sewage treatment facilities; and
- All other activities that involve the storage, collection, transportation, or disposal of solid and/or hazardous waste within the exterior boundaries of the Tribe.<sup>305</sup>

#### Statements of cultural or spiritual significance of wetlands and water resources

- A stated goal of the Solid Waste Disposal Ordinance is to “protect fundamental Tribal cultural, ceremonial, religious, residential, agricultural, commercial, industrial, forest, fishery, wetlands, riparian and environmentally sensitive lands within the exterior boundaries of the Pit River Tribe; and economic stability of residential.”<sup>306</sup>

### CCCCC. Poarch Band of Creeks

#### Definition of “waters of the Tribe”

- “Waters of the Tribe” include all those waters that satisfy the federal definition of “Waters of the U.S.” that is found in 40 CFR 122.2, and generally include all lakes, rivers, streams (including intermittent and ephemeral streams), natural wetlands, sloughs, and ponds located within the exterior boundaries of the reservation.<sup>307</sup>

#### Definition of “wetlands”

- “Wetlands” means those areas which are defined in 40 C.F.R. Part 232.2, as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>308</sup>
- “Constructed wetlands” means those wetlands intentionally designed, constructed, and operated on upland, non-wetland sites for the primary purpose of wastewater or storm water treatment or environmental remediation. Constructed wetlands are not considered “Waters of the Tribe.”<sup>309</sup>

#### Other Definitions

- “Groundwater” means water beneath the surface of the ground whether or not flowing through known and definite channel.<sup>310</sup>
- “Permit” means an authorization and license issued under the authority of the Regulatory Commission regulating certain activities on the Reservation as required under this Title.<sup>311</sup>
- “Point source” means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,

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<sup>305</sup> *Id.* at Section 202(A).

<sup>306</sup> *Id.* at Section 103(A)(3).

<sup>307</sup> Poarch Band of Creeks Tribal Code, Title 26 Environmental Protection, Chapter 4 Water Resource Management, Section 26-4-2 (l). Available at: [https://library.municode.com/tribes\\_and\\_tribal\\_nations/poarch\\_band\\_of\\_creek\\_indians/codes/code\\_of\\_ordinances?nodeId=TIT26ENPR](https://library.municode.com/tribes_and_tribal_nations/poarch_band_of_creek_indians/codes/code_of_ordinances?nodeId=TIT26ENPR).

<sup>308</sup> *Id.* at Section 26-1-2 (t)

<sup>309</sup> *Id.* at Section 26-4-2 (b).

<sup>310</sup> *Id.* at Section 26-1-2 (e).

<sup>311</sup> *Id.* at Section 26-1-2 (h).

container, rolling stock, or concentrated animal feeding operation from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

- “Surface Water” means water upon the surface of the earth whether contained in bounds created naturally or artificially.<sup>312</sup>

#### 402-like and 404-like Ordinance

- The purpose of the Tribe’s Water Resource Management Program is...to provide a legal basis for regulatory pollution controls.<sup>313</sup>
- *Regulatory Controls.* For both *point* and *nonpoint sources*, any regulatory pollution controls established by the Tribe or the Federal Government must be developed to ensure a level of water quality that will satisfy these *water quality standards* and support *designated use* classifications as determined by the Tribe. Regulatory pollution controls established for *point sources* shall be consistent with applicable portions of the Federal Clean Water Act (33 U.S.C. §1251 et seq.).<sup>314</sup>
- *Permitting Under the Water Resource Management Program: Reserved.* This Section will be developed, concurrent with the Tribe’s NPDES Program, to provide a program for permitting of point and non-point sources to protect the *waters of the Tribe*.<sup>315</sup>

#### Other Novel Protections

- The tribal code establishes the authority for the tribe to have water quality standards for wetlands: All wetlands on the Reservation which are not constructed wetlands are considered waters of the Tribe, and shall be subject to narrative criteria and applicable anti-degradation provisions.<sup>316</sup>
- Forested lands within the Reservation will be managed to protect Tribal timber, watershed, wildlife habitat, and recreation resources. The Tribe may from time-to-time harvest commercially important tree species from forested lands, so long as BMPs are utilized that will protect wetlands and environmentally sensitive watersheds, by reducing soil erosion and managing storm water runoff into these areas. Harvesting of timber resources on Tribal lands will be managed such that no harmful effects will be realized on adjacent or nearby properties.<sup>317</sup>

## DDDDD. Pokagon Band of Potawatomi Indians

#### General Provisions

- The tribe has adopted the substantive provisions of Michigan’s Natural Resource and Environmental Protection Act, MCL 324.101 *et seq.* (“NREPA”) as Tribal Law,

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<sup>312</sup> *Id.* at Section 26-1-2 (m).

<sup>313</sup> *Id.* at Section 26-4-3 (b).

<sup>314</sup> *Id.* at Section 26-4-3 (b)(2).

<sup>315</sup> *Id.* at Section 26-4-13.

<sup>316</sup> *Id.* at Section 26-4-10.

<sup>317</sup> *Id.* at Section 26-3-11 (a).

excluding however, all matters governed by the Pokagon Band's Hunting and Gathering Code and any rules or regulations adopted thereunder.<sup>318</sup>

## EEEE. Port Gamble S'Klallam Tribe

### Definition of "waters of the Reservation"

- "Surface waters of the Port Gamble S'Klallam Reservation" includes lakes, rivers, ponds, streams (including intermittent and ephemeral streams), wetlands, and all other surface waters and water courses, including marine waters, of the Port Gamble S'Klallam Reservation.<sup>319</sup>

### Definition of "wetlands"

- "Wetland" means any area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>320</sup>
- "Wetlands" or "wetland areas" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands have one or more of the following attributes: (1) At least periodically, the land supports predominantly hydrophytes (water loving plants; those which typically grow in water, whether the water is present year round or seasonally); (2) the substrate is predominantly hydric (damp or undrained) soil; and (3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year.<sup>321</sup>

### Other Definitions

- "Permit" means a document issued pursuant to tribal code or federal laws (such as NPDES, CWA, Section 401; CWA, Section 404) specifying the waste treatment and control requirements and waste discharge conditions.
- "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, sewer, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
- "Pollutant" includes dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C 2011 *et seq.*), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. "

### 303(c) Water Quality Standards

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<sup>318</sup> Pokagon Band of Potawatomi Indians, Health and Safety Act, Section 2.04. Available at <http://www.pokagon.com/sites/default/files/assets/department/government/form/2015/health-and-safety-act-current-150126-2130.pdf>.

<sup>319</sup> Port Gamble S'Klallam Water Quality Standards for Surface Waters 2. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/port-gamble-tribe-wqs.pdf>.

<sup>320</sup> Id.

<sup>321</sup> Port Gamble S'Klallam Tribal Code 24.01.02 (h). Available at: <https://www.pgst.nsn.us/images/law-and-order/Title-24.pdf>.

- Found eligible to administer a water quality standards program (TAS) on September 24, 2003.<sup>322</sup>
- Initial water quality standards were approved by EPA on September 27, 2007.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on September 24, 2003.

#### 402-like and 404-like Ordinance

- Permit Required for Certain Activities: Any person conducting an activity within the jurisdiction of the Port Gamble S’Klallam Reservation that will or is likely to significantly impact the environment shall be required to obtain a permit from the Port Gamble S’Klallam Tribe under this title prior to commencing the activity. Activities requiring a permit include, but are not limited to, the following: a) Preparation of a site for the construction of a building or area for purpose of business use or public use; b) The construction of any structure except single family residences and construction which expands the square footage of the exterior of an existing structure by more than 500 square feet; c) New road construction or road widening; d) Road construction or repair and right of way maintenance that alters a natural drainage course; e) Construction, installation, or repair of culverts and drainage ditches; f) Construction of any water related project regardless of the nature or extent of the construction activity; g) Any docks or other projects of a permanent or semi-permanent nature which interfere with the normal use of the tidelands or surface of the waters overlying lands within the Port Gamble S’Klallam Reservation at any state of water level; h) Dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulk heading; diking; rip rapping; or driving of piling; i) Timber harvesting; j) Spraying or other application of pesticides and herbicides, except for use by single family residences; k) Clearing and grading involving the removal of more than 150 cubic yards of soil, sand, or gravel; and l) Storage, application, disposal, or incineration of solid waste and/or hazardous materials as those terms are defined under the Resource Conservation Recovery Act (42 U.S.C. §§ 6903), as it may be amended.<sup>323</sup>

#### Statements of cultural or spiritual significance of water resources

- General Factors for Evaluation of Environmental Impacts: The determination of whether an activity will or is likely to significantly impact the environment shall be made in the context of Port Gamble S’Klallam tribal culture and values. Factors to be taken into consideration in evaluating an application for a permit and the environmental checklist for significant impacts on the environment include: d) Whether the proposed activity may cause loss or destruction of cultural, historical, or scientific resources; e) Whether the proposed activity may cause loss or destruction of culturally significant plant materials; f) The degree to which the proposed activity affects health and safety of the Port Gamble S’Klallam tribal community.<sup>324</sup>

<sup>322</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-port-gamble-sklallam-tribe>.

<sup>323</sup> Port Gamble S’Klallam Tribal Code 24.01.02.

<sup>324</sup> *Id.* at 24.04.04 (only relevant portions cited).

- The spirit of S’Klallam people has always been inextricably linked to our land and continues to be the unifying base for our tribal community.<sup>325</sup>
- The purposes of these water quality standards are to restore, maintain and protect the chemical, physical, biological, and cultural integrity of the surface waters of the Port Gamble S’Klallam Reservation; to promote the health, social welfare, and economic well-being of the Port Gamble S’Klallam Tribe, its people, and all the residents of the Port Gamble S’Klallam Reservation; to achieve a level of water quality that provides for all cultural uses of the water, the protection and propagation of fish and wildlife, for recreation in and on the water, and all existing and designated uses of the water; to promote the holistic watershed approach to management of tribal waters; and to provide for protection of threatened and endangered species.<sup>326</sup>

#### Other Novel Protections

- There shall be undisturbed, natural, vegetated buffers left adjacent to rivers, streams, and wetlands, marine shorelines, flood plains, and erosion hazard areas. No construction, accessory uses septic tanks, or agriculture is allowed in the buffer. No timber harvesting is permitted within the buffer, except that trees which have naturally fallen across the waterway may be removed, provided prior authorization is obtained from the Tribe, through the Planning Director. A buffer of 150 feet shall remain adjacent to all fish bearing streams, including Shipbuilders at The Bars, Little Boston, and Middle creeks. A buffer of 100 feet shall remain adjacent to all nonfish bearing perennial streams. A buffer of 50 feet shall remain adjacent to all non-fish bearing seasonal streams and all mapped and unmapped wetlands. The Tribe may increase or decrease the size of a buffer for a particular activity in order to meet other goals, purposes, and standards of this title, or other applicable law. Buffers shall be measured landward from the ordinary high water mark. Buffers shall be left on both sides of the waterway.<sup>327</sup>

## FFFFF. Pueblo of Acoma

#### Definition of “Pueblo waters”

- Pueblo waters: “Pueblo waters” for regulatory purposes means all surface and subsurface waters flowing on, across, through, beneath, or bordering Pueblo lands.<sup>328</sup>

#### Definition of “wetlands”

- “Wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, cienegas, tinajas, and similar areas. Constructed wetlands used for treatment purposes are not included in this definition.<sup>329</sup>

<sup>325</sup> *Id.* at 24.01.01.

<sup>326</sup> Port Gamble S’Klallam Water Quality Standards for Surface Waters 1(3).

<sup>327</sup> Port Gamble S’Klallam Tribal Code 24.08.01(c).

<sup>328</sup> Pueblo of Acoma Water Quality Standards Section VII. Revised December 2005. Available at <https://www.epa.gov/sites/production/files/2014-10/documents/acoma-wqs.pdf>.

<sup>329</sup> *Id.*

## Other Definitions

- “Point source” means any discernible, confined, and discrete conveyance from which pollutants are or may be discharged into a water body; does not include return flows from irrigated agriculture.<sup>330</sup>

## 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 17, 2001.<sup>331</sup>
- Initial water quality standards were approved by EPA on April 17, 2001.

## 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 17, 2001.

## Statements of cultural or spiritual significance of water resources

- As the first and foremost user of water in the region, the Pueblo of Acoma acknowledges that water is essential to all life at Acoma and is indispensable to the practice of age-old traditions and to our cultural preservation. Within this context, the Pueblo of Acoma Water Quality Standards are intended to accomplish the following: To promote the health, welfare, political integrity, economic well-being, and traditional culture of the Acoma people.<sup>332</sup>

## GGGGG. Pueblo of Isleta

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on October 13, 1992.<sup>333</sup>
- Initial water quality standards were approved by EPA on December 24, 1992.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on October 13, 1992.

## HHHHH. Pueblo of Laguna

### Definition of “Pueblo waters”

- “Pueblo waters” means all groundwater and all surface waters, including but not limited to all or portions of rivers, streams (including perennial, intermittent, and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands, mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, impoundments, riparian areas, springs, and all other bodies or accumulations of surface water, natural or artificial, public or private, including those dry for part of the year, that are within or bordering upon the Pueblo. Consistent with

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<sup>330</sup> *Id.*

<sup>331</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-acoma>.

<sup>332</sup> Pueblo of Acoma Water Quality Standards Section I.B (only relevant portions cited).

<sup>333</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-isleta>.

federal requirements the Pueblo may exclude from Pueblo waters certain waste treatment systems.<sup>334</sup>

#### Definition of “wetlands”

- “Wetlands” mean areas that are inundated or saturated by surface or groundwater frequently and long enough to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The term generally includes swamps, marshes, bogs, and similar areas.<sup>335</sup>

#### Other Definitions

- “Point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, landfill leachate collection system, container, or concentrated animal feeding operation (“CAFO”), from which pollutants are or may be discharged into a water body. The term does not include agricultural storm water discharges (except from CAFOs) or return flows from irrigated agriculture.<sup>336</sup>
- “Pollutant” means any type of contaminant, including but not limited to toxic substances, hazardous substances, dredge spoil, solid waste, sewage, chemicals, pesticides, herbicides, fungicides, rodenticides, fertilizers, incinerator residue, discarded equipment, rock, sand, dirt, sewage, and oil, regardless of whether in liquid, solid, or gaseous form.<sup>337</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on December 20, 2016.<sup>338</sup>
- Initial water quality standards were approved by EPA on July 19, 2017.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on December 20, 2016.

#### Statements of cultural or spiritual significance of water resources

- The Laguna Pueblo Council also recognizes that the Pueblo’s clean waters are an extraordinary resource and wishes to ensure their protection so that the traditional and cultural uses of those waters may continue.<sup>339</sup>

### IIII. Pueblo of Nambe

#### Definition of “wetlands”

- “Wetlands” means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in a saturated soil

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<sup>334</sup> Pueblo of Laguna Code, Title XI, Chapter 2, Water Quality Standards, Section 11-2-3(43). Available at: <https://www.epa.gov/sites/production/files/2017-08/documents/laguna-tribe.pdf>.

<sup>335</sup> *Id.* at Section 11-2-3(48).

<sup>336</sup> *Id.* at Section 11-2-3(37).

<sup>337</sup> *Id.* at Section 11-2-3(38).

<sup>338</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-laguna>.

<sup>339</sup> Pueblo of Laguna Code, Title XI, Chapter 2, Water Quality Standards, Section 11-2-1A.



condition in New Mexico. Wetlands that are constructed outside of surface water channel for providing wastewater treatment (and do not impound a surface water) are not included in this definition.<sup>340</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on August 18, 1995.<sup>341</sup>
- Initial water quality standards were approved by EPA on August 18, 1995.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on August 18, 1995.

#### Other Novel Protections

- The Pueblo has water quality standards for wetlands: All wetlands on Pueblo lands which are not constructed wetlands are considered “waters within the jurisdiction of the Tribe.” “Wetlands” shall be subject to narrative criteria and applicable antidegradation provisions, as well as site-specific numerical criteria if applicable. Created wetlands shall be subject only to narrative criteria. Wetlands are generally assumed to provide habitat capable of supporting aquatic biota (*e.g.*, fish, benthic macroinvertebrates, amphibians, or hydrophytic vegetation) on an ongoing or periodic basis. It shall be a goal of the Tribe to maintain the water quality of wetlands at naturally occurring levels, within the natural range of variation for the individual wetland. For substances that are not naturally occurring, water quality requirements shall be based on protecting existing uses of the wetland consistent with antidegradation requirements, the Tribe's narrative water quality criteria, criteria assigned to hydrologically-connected surface waters, or appropriate criteria guidance issued by the EPA. Natural wetlands shall not be considered as repositories or treatment systems for wastes from human sources.<sup>342</sup>

### JJJJ. Pueblo of Picuris

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on August 7, 1995.<sup>343</sup>
- Initial water quality standards were approved by EPA on August 7, 1995.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on August 7, 1995.

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<sup>340</sup> Pueblo of Nambe Water Quality Code Section VI. November 2017. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/nambe-tribe.pdf>.

<sup>341</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-nambe>.

<sup>342</sup> Pueblo of Nambe Water Quality Code Section III.P.

<sup>343</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-picuris>.

## KKKKK. Pueblo of Pojoaque

### Definition of “tribal waters”

- “Tribal waters” means all waters within the exterior boundaries of the Pueblo of Pojoaque Indian Reservation, including water situated wholly or partly within, or bordering upon the Reservation, whether surface or subsurface, public or private, with the exception of privately owned treatment lagoons and stock watering ponds that do not combine with other surface or subsurface waters.<sup>344</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on March 21, 1996.<sup>345</sup>
- Initial water quality standards were approved by EPA on March 21, 1996.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on March 21, 1996.

### Statements of cultural or spiritual significance of water resources

- The Pueblo’s water quality standards include standards specific to segments designated for primary contact. The regulations are applicable to segments designated for ceremonial and recreational use. Primary contact also means any use of water bodies for Native American traditional cultural, religious, or ceremonial purposes in which there is intimate contact with the water body that may pose a significant health risk. This may include but is not limited to ingestion or immersion.<sup>346</sup>

## LLLLL. Pueblo of Sandia

### Definition of “surface waters of the Pueblo”

- “Surface water of the Pueblo of Sandia” means a surface water of the Pueblo of Sandia, or reach of a surface water of the Pueblo of Sandia, for which the Tribal Council has adopted a designated a use or uses and applicable water quality criteria. This includes all surface waters situated wholly or partly within or bordering upon the Pueblo of Sandia, including lakes (both manmade and natural), rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, reservoirs, or natural ponds. Surface waters of the Pueblo of Sandia also include all tributaries of such waters, including adjacent wetlands, any manmade bodies of water that were originally created in surface waters of the Pueblo of Sandia or resulted in the impoundment of surface waters of the Pueblo of Sandia, and any “waters of the United States” as defined under the Clean Water Act. These “waters of the United States” will be protected by the Pueblo of

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<sup>344</sup> Pueblo of Pojoaque Water Quality Standards Section I.C. Revised 2015. Available at: <https://www.epa.gov/sites/production/files/2014-12/documents/pojoaque-tribe.pdf>.

<sup>345</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-pojoaque>.

<sup>346</sup> Pueblo of Pojoaque Water Quality Standards Section IV.D.

Sandia in a manner consistent with the Pueblo of Sandia Water Quality Standards and Tribal authority.<sup>347</sup>

#### Definition of “wetlands”

- “Wetlands” means those areas inundated or saturated by surface water and/or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, vegetation typically adapted for life in saturated soil conditions. Constructed wetlands used for waste water treatment purposes are not included in this definition.<sup>348</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on December 24, 1992.<sup>349</sup>
- Initial water quality standards were approved by EPA on August 10, 1993.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on December 24, 1992.

#### Other Novel Protections

- The Pueblo has water quality standards for wetlands.
  - Biocriteria: All wetlands within the reservation, which are not constructed wetlands (used for the repository or treatment system for wastes from human sources) are considered surface waters of the Pueblo of Sandia. It is the policy of the Pueblo of Sandia to protect wetlands because wetlands provide a variety of environmental benefits including wildlife habitat and recharge of groundwater. The Pueblo of Sandia will, through the use of multi-metric indices of benthic macroinvertebrates, fish, periphyton, or other appropriate wetland indicators ensure that the biological integrity of wetlands is maintained, Wetland integrity shall not significantly differ from reference wetlands, taking account variability. A significant adverse alteration of the biological integrity of wetlands at naturally occurring levels, within the natural range of variation for the individual wetlands and values of wetlands shall not occur.<sup>350</sup>
  - Wildlife habitat designated use: Wildlife habitat use means surface waters including wetlands that are suitable to support and propagate animal and plant species. Wildlife habitat will be free from any substances at concentrations that are toxic to or will adversely affect animal and plant species that use the environments for feeding, drinking, habitat or propagation, or can bioaccumulate and impair the community of animals in a watershed or the ecological integrity of surface waters of the Pueblo of Sandia.<sup>351</sup>

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<sup>347</sup> Pueblo of Sandia Water Quality Standards Section VII. November 2009. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/sandia-tribe.pdf>.

<sup>348</sup> *Id.*

<sup>349</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-sandia>.

<sup>350</sup> Pueblo of Sandia Water Quality Standards Section III.P.

<sup>351</sup> *Id.* at Section IV.K.

- The uses and standards are as follows for the Surface Water Ponds/Wetlands in the Pueblo of Sandia Bosque. All wetlands on the Pueblo of Sandia which are not constructed wetlands are considered “waters within the jurisdiction of the Pueblo of Sandia.” Wetlands shall be subject to the narrative criteria and applicable antidegradation provisions, as well as site-specific numerical criteria below. Wetlands are generally assumed to provide habitat capable of supporting aquatic biota on an ongoing or periodic basis. It shall be the goal of the Pueblo of Sandia to maintain the water quality of wetlands at naturally occurring levels, within the natural range of variation for the individual wetland. For substances that are not naturally occurring, water quality requirements shall be based on protecting existing uses of the wetland consistent with antidegradation requirements, the Pueblo of Sandia’s narrative water quality criteria, criteria assigned to hydrologically-connected surface waters, or appropriate criteria guidance issued by the U.S. Environmental Protection Agency. Natural wetlands shall not be considered as repositories or treatment systems for wastes from human sources.<sup>352</sup>

## MMMMM. Pueblo of Santa Ana

### Definition of “surface waters of the Pueblo”

- “Surface waters of the Pueblo of Santa Ana” means a surface water of the Pueblo of Santa Ana, or reach of a surface water of the Pueblo of Santa Ana, for which the Tribal Council has adopted a segment description and has designated a use or uses and applicable water quality criteria. This includes all surface waters situated wholly or partly within or bordering upon the Pueblo of Santa Ana, including lakes (both manmade and natural), rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, reservoirs, or natural ponds. Surface waters of the Pueblo of Santa Ana also include all tributaries of such waters, including adjacent wetlands, any manmade bodies of water that were originally created in surface waters of the Pueblo of Santa Ana or resulted in the impoundment of surface waters of the Pueblo of Santa Ana, and any “waters of the United States” as defined under the Clean Water Act. These “waters of the United States” will be protected by the Pueblo of Santa Ana in a manner consistent with the Pueblo of Santa Ana Water Quality Standards and Tribal authority. Also called “Surface Waters of the Pueblo.”<sup>353</sup>

### Definition of “water resources of the Pueblo”

- “Water resources of the Pueblo” means all surface waters of the Pueblo and any other water for which the Pueblo has either a water right or a responsibility to protect the water. This term includes groundwater, stormwater, and other waters not specifically covered by the Clean Water Act.<sup>354</sup>

### Definition of “wetlands”

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<sup>352</sup> *Id.* at Section V.D.

<sup>353</sup> Pueblo of Santa Ana Water Quality Standards Section 59. November 26, 2013. Available at <https://www.epa.gov/sites/production/files/2015-09/documents/stana-tribe.pdf>.

<sup>354</sup> *Id.* at Section I.

- “Wetlands” means those areas inundated or saturated by surface water and/or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, vegetation typically adapted for life in saturated soil conditions. Constructed wetlands used for waste water treatment purposes are not included in this definition.<sup>355</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on July 20, 2015.<sup>356</sup>
- Initial water quality standards were approved by EPA on August 31, 2015.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on July 20, 2015.

### Statements of cultural or spiritual significance of water resources

- The Tribal Council recognizes that the Pueblo's clean waters are an extraordinary resource and wishes to ensure their protection so that traditional and cultural uses of those waters may continue. The Tribal Council wishes to protect the health, safety, welfare, and environment of the Pueblo, its people, and residents. The Tribal Council therefore enacts these Standards in order to prevent, reduce, and eliminate pollution of surface waters of the Pueblo of Santa Ana and to plan the development and use (including restoration and enhancement) of land and water resources within the Pueblo's jurisdiction by: 1) Designating the existing and attainable uses for which the surface waters of the Pueblo shall be protected; 2) Prescribing water quality standards to sustain these designated uses and to provide for the protection and propagation of fish and wildlife and recreation in and on the water; 3) Protecting other uses of surface waters of the Pueblo, such as irrigation, ceremonial, domestic water supply, and recharge of domestic water supply, provided that pollution that may result from such uses shall not lower the quality of the water below that required for recreation and protection and propagation of fish and wildlife; 4) Assuring that degradation of surface waters of the Pueblo shall be minimized and that economic growth shall occur in a manner consistent with the preservation of the Pueblo's existing clean water resources.<sup>357</sup>

### Other Novel Protections

- The Pueblo has water quality standards for wetlands: All wetlands within the reservation, with the exception of wetlands constructed for the repository or treatment of wastes from human sources, are considered surface waters of the Pueblo. All wetlands will be held to the standards necessary to support the biological and physical characteristics naturally present within the wetlands. Wetlands will be protected to prevent significant adverse impacts on: water flow and circulation, erosion, or sedimentation patterns; natural water temperature variations; the chemical, nutrient

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<sup>355</sup> *Id.* at Section 2.

<sup>356</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-santa-ana>.

<sup>357</sup> Pueblo of Santa Ana Water Quality Standards Section I.A.

and dissolved oxygen regime of the wetland; the normal movement of aquatic fauna; the pH of the wetland; and normal water levels or elevations.<sup>358</sup>

## NNNNN. Pueblo of Santa Clara

### Definition of “tribal waters”

- “Tribal waters” means all waters within the exterior boundaries of the Reservation, including water situated wholly or partly within, or bordering upon, the Reservation, all lakes, rivers, streams (including perennial, intermittent, and ephemeral streams), irrigation ditches, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, reservoirs and natural ponds, and all tributaries and impoundments of such waters. Waters which do not combine with other surface or subsurface waters, such as stock tanks, treatment lagoons, or reservoirs are private waters and are excluded from this Code, but any receiving bodies of water impacted from the effluent from such reservoirs and treatment lagoons are part of tribal waters.<sup>359</sup>

### Definition of “wetlands”

- “Wetland” means those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs and similar areas. Constructed wetlands used for wastewater treatment purposes are not included in this definition.<sup>360</sup>

### Other Definitions

- “Regulated activity” means any activity that requires a permit or water quality certification pursuant to tribal or federal law, any activity subject to non-point source control requirements or regulations, and any activity which is otherwise subject to tribal regulations that specify that the antidegradation review process is applicable.<sup>361</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on July 19, 1995.<sup>362</sup>
- Initial water quality standards were approved by EPA on July 19, 1995.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on July 19, 1995.

### Other Novel Protections

- The Antidegradation Policy of the Pueblo is applicable to all tribal waters and wetlands, as follows: 5. Degradation of tribal waters through direct, indirect, or

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<sup>358</sup> *Id.*

<sup>359</sup> Pueblo of Santa Clara Water Quality Standards Section VII.

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-santa-clara>.

cumulative impacts shall not result in the net loss of wetland acreage or wetland functions.<sup>363</sup>

- Under implementation of the antidegradation requirements, proposed activities shall be reviewed to ensure compliance with the following: d. Any proposed activity that would result in the net loss of wetland acreage or wetland functions is prohibited.<sup>364</sup>
- Narrative water quality standards apply to all Tribal waters, including wetlands, unless stricter standards are imposed.<sup>365</sup>

## OOOOO. Pueblo of Taos

### Definition of “Pueblo waters”

- “Pueblo Waters” means all waters situated wholly within, partly within, or bordering upon the Reservation, excluding those that do not combine with other surface or sub-surface waters, such as stock tanks, treatment lagoons, or reservoirs. However, receiving waters impacted by the effluent from such reservoirs and treatment lagoons are included. Other examples of Pueblo Waters include, but are not limited to, portions of rivers, streams (perennial, intermittent and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands, mudflats, sandflats, sloughs, impoundments, riparian areas, springs, and all other bodies or accumulations of surface water, natural or artificial, public or private, including those dry part of the year.<sup>366</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on December 8, 2005.<sup>367</sup>
- Initial water quality standards were approved by EPA on June 19, 2006.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on December 8, 2005.

### Statements of cultural or spiritual significance of water resources

- The Tribal Council recognizes that the Pueblo’s clean waters are an extraordinary resource and wishes to ensure their protection so that traditional and cultural uses of those waters may continue. The Tribal Council wishes to protect the health, safety, welfare, and environment of the Pueblo, its people, and residents. The Tribal Council therefore enacts these [Water Quality] Standards in order to prevent, reduce, and eliminate pollution of Pueblo waters and to plan the development and use (including restoration and enhancement) of land and water resources within the Pueblo’s jurisdiction by: 1) Designating the existing and attainable uses for which the Pueblo waters shall be protected. 2) Prescribing water quality standards to sustain these designated uses and to provide for the protection and propagation of fish and wildlife

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<sup>363</sup> Pueblo of Santa Clara Water Quality Standards Section II.A (only relevant portions cited).

<sup>364</sup> *Id.* at Section II.B.1 (only relevant portions cited).

<sup>365</sup> *Id.* at Section III.

<sup>366</sup> Pueblo of Taos Water Quality Standards Section VII. January 2019. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/taos-tribe.pdf>.

<sup>367</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-taos>.



and recreation in and on the water. 3) Protecting other uses of Pueblo waters, such as irrigation, ceremonial, drinking water, and recharge of domestic water supply, provided that pollution that may result from such uses shall not lower the quality of the water below that required for recreation and protection and propagation of fish and wildlife. 4) Assuring that degradation of Pueblo waters shall be minimized and that economic growth shall occur in a manner consistent with the preservation of the Pueblo's existing clean water resources.<sup>368</sup>

#### Other Novel Protections

- All wetlands on the reservation which are not constructed wetlands are considered "Pueblo waters." Wetlands shall be subject to narrative criteria and applicable antidegradation provisions unless site-specific numerical criteria have been assigned. Constructed wetlands shall only be subject to narrative criteria. Wetlands are generally assumed to provide habitat capable of supporting aquatic biota (e.g., fish, macroinvertebrates, amphibians, or hydrophytic vegetation) on a regular or periodic basis. It shall be a goal of the Pueblo to maintain the water quality of wetlands at natural background levels, within the natural range of variation for the particular wetland. For substances that are not naturally occurring, water quality requirements shall be based upon protecting existing uses of the wetland consistent with antidegradation requirements, the Pueblo's narrative water quality criteria, or appropriate criteria guidance issued by the U.S. Environmental Protection Agency. Natural wetlands shall not be considered as repositories or treatment systems for wastes from human sources.<sup>369</sup>

## PPPPP. Pueblo of Tesuque

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 29, 1997.<sup>370</sup>
- Initial water quality standards were approved by EPA on April 29, 1997.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 29, 1997.

#### Other Novel Protections

- The Pueblo's general water quality standards are applicable to wetlands.<sup>371</sup>

## QQQQQ. Puyallup Tribe

#### Definition of "waters of the tribe"

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<sup>368</sup> Pueblo of Taos Water Quality Standards Section I.A.

<sup>369</sup> *Id.* Section III.G.

<sup>370</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pueblo-tesuque>

<sup>371</sup> Pueblo of Tesuque Water Quality Standards Section I.C. November 30, 2015. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/tesuque-tribe.pdf>.

- “Surface waters of the Puyallup Tribe” includes rivers, ponds, streams, inland waters, wetlands and all other surface waters and water courses on trust land within the 1873 Survey Area described in the Settlement Agreement of August 27, 1988, ratified by Congress in the Puyallup Land Claim Settlement Act, 25 U.S.C. Section 1773(b).<sup>372</sup>

#### Definition of “wetlands”

- “Wetlands” shall mean areas that are inundated or saturated by ground or surface water at a frequency or duration sufficient to support, or which does support, vegetation typically adapted for life in saturated soil conditions. Wetlands generally include marshes, swamps, bogs, and similar areas and may be but are not necessarily characterized by special soil conditions such as peat, muck and mud. [Ord. 220692a (06/22/92) § 3]<sup>373</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on May 25, 1994.<sup>374</sup>
- Initial water quality standards were approved by EPA on October 31, 1994.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on May 25, 1994.

#### 404-like Ordinance

- Permits Required. No person or entity shall undertake any of the following activities on any trust land without first obtaining from the Tribe two permits, a development permit and a construction permit: (2) Construction of any building or structure within 200 feet of a shoreline or wetlands area; (4) Dredging or filling of waters, watercourses or wetlands, drilling, dumping, filling, removal of any sand, gravel, soil or minerals, bulkheading, diking, riprapping, or driving of piling;...The applicant for any permit shall have the burden of establishing that the application meets the requirements of this code and other applicable law, and that issuance of a permit is otherwise appropriate.<sup>375</sup>
- Environmental Checklist. (1) Purpose. The environmental checklist provides an overview of the environmental impact of a proposed project. The Director will determine whether an initial recommendation can be made on that basis or whether an environmental impact statement is needed. (2) Submission of Information. The applicant shall complete the checklist form provided by the Environmental Department, and provide any other information requested by the Environmental Director. (3) Standards for Initial Review of Impact on the Environment. An initial review of the impact that a proposed project will have on the environment shall take

<sup>372</sup> Puyallup Tribal Code, Chapter 10.08 Water Quality Standards for Surface Waters 10.08.020 (aa). Available at: <https://www.codepublishing.com/WA/PuyallupTribe/>.

<sup>373</sup> Puyallup Tribal Code, Chapter 15.16 Permit Applications Procedure Code 15.16.030 (aa). Available at: <https://www.codepublishing.com/WA/PuyallupTribe/>.

<sup>374</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-puyallup-tribe-indians>.

<sup>375</sup> Puyallup Tribal Code, Chapter 15.16 Permit Applications Procedure Code 15.16.050 (only relevant portions cited).

into account the following factors: ... (G) Provision for undisturbed, natural vegetated buffers adjacent to rivers, streams, and wetlands.<sup>376</sup>

#### Statements of cultural or spiritual significance of water resources

- In the tribe’s water quality standards, they have established a designated use for “ceremonial and religious water use,” which means activities involving traditional Native American spiritual and cultural practices which involve primary (direct) and secondary contact with water.<sup>377</sup>

### RRRRR. Pyramid Lake Paiute

#### Definition of “waters of the tribe”

- “Surface waters of the [Pyramid Lake Paiute Tribe]” means all water bodies within the exterior boundaries of the Tribal Reservation.<sup>378</sup>

#### Other Definitions

- “Permit” means a legally binding document issued by a Tribe, State or Federal permits agency to the owner or manager of a point source discharge. The permit document contains a schedule of compliance requiring the permit holder to achieve a specified standard or limitation by a specified date, which is usually the date that the permit becomes effective. Permit documents also specify monitoring and reporting requirements to be conducted by the applicant.<sup>379</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on January 30, 2007.<sup>380</sup>
- Initial water quality standards were approved by EPA on December 19, 2008.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on January 30, 2007.

#### Other Novel Protections

- The tribe’s narrative water quality standards apply to wetlands.<sup>381</sup>

### SSSSS. Quartz Valley Indian Community

#### 303(c) Water Quality Standards

- Application under review; notice issued October 24, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for

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<sup>376</sup> *Id.* at 15.16.070 (only relevant portions cited).

<sup>377</sup> Puyallup Tribal Code, Chapter 10.08 Water Quality Standards for Surface Waters 10.08.020 (g).

<sup>378</sup> Pyramid Lake Paiute Tribe Water Quality Control Plan Section II Water Quality Standards, Definition of Terms. September 16, 2015. Available at: <https://www.epa.gov/sites/production/files/2014-12/documents/pyramid-lake-tribe.pdf>.

<sup>379</sup> *Id.*

<sup>380</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-pyramid-lake-paiute-tribe>.

<sup>381</sup> Pyramid Lake Paiute Tribe Water Quality Control Plan Section II Water Quality Standards, Narrative Standards of Water Quality.

TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe's assertion of authority.

#### 401 Certification

- Application under review; notice issued October 24, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe's assertion of authority.

## TTTTT. Quinault Indian Nation

#### Other Definitions

- “Hydraulic Project” means any activity in or near or potentially effecting tidelands, rivers, lakes, springs, streams, sloughs, ponds, groundwaters, wetlands, marshes, and any other body of water.<sup>382</sup>
- “Reservation Resource” shall mean land, water, trees and other vegetation, fish and wildlife, and capital improvement within the exterior boundaries of the Quinault Indian Reservation.<sup>383</sup>
- “Natural Resource Practice” shall mean any activity conducted on or directly pertaining to forest lands, tidelands, rivers, lakes, springs, streams, sloughs, ponds, groundwater, wetlands, marshes and any other body of water, including but not limited to...(10) Any activity with the potential to effect tidelands, rivers, lakes, springs, streams, sloughs, ponds, groundwater's, wetlands, marshes, and any other body of water.<sup>384</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on September 20, 2018.<sup>385</sup>
- Initial water quality standards have not been approved by EPA.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on September 20, 2018.

#### 402-like and 404-like Ordinance

- It shall be a violation of this Title for a person shall carry on the activities of a forest products operator or conduct [a] hydraulic project without an approved natural resource practice application.<sup>386</sup>
- It shall be a violation of this Title for any person to divert any stream or river or remove water from any river, stream, spring, pond, tidal area, lake, or any other body of water on the Quinault Indian Reservation, including ground waters, without obtaining an approved application to do so from the Department. It shall be a

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<sup>382</sup> Quinault Indian Nation Title 61 Natural Resource Management 61.03.010 (t). Available at: <http://qlandandwater.org/wp-content/uploads/2017/08/Title-61-Natural-Resource-Management.pdf>.

<sup>383</sup> *Id.* at 61.03.010 (bb).

<sup>384</sup> *Id.* at 61.03.010 (o) (only relevant portions cited).

<sup>385</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-quinault-indian-nation>.

<sup>386</sup> Quinault Indian Nation Title 61 Natural Resource Management 61.05.010 (a).

violation of this Title for any person to conduct work in or near (within 200 feet) of a stream, river, lake, tidal area, pond, groundwater, or any other body of water on the Quinault Indian Reservation without obtaining an approved application from the Quinault Department of Natural Resources to do so.<sup>387</sup>

- Hydraulic applications may include conditions which require the applicant to: ... (2) Pay for waters diverted or polluted. (3) Pay for damage to fish spawning beds or other natural or man-made resources of the Quinault Indian Nation caused by work carried out under the application.<sup>388</sup>
- The Department shall develop standards for natural resources practices within the Coastal District which shall include, but shall not be limited to, the following: ... (2) The use of heavy equipment within the Coastal District shall be restricted to minimize damage to soil, vegetation and water resources. (3) Shoreline protection strips of appropriate width but no less than 200 feet, shall be left undisturbed along coastal bluffs, beach fronts and coastal wetlands and marshes when the Department determines that such control is necessary to protect the water resource, wildlife resource, prevent accelerated erosion, or protect against windstorm damage. Minor clearing may be allowed within 200 feet of coastal beaches, beach fronts, coastal wetlands, and marshes in those areas where such clearing *is* authorized by the Quinault Indian Nation's zoning laws or regulations and the clearing activity will not harm the water resource, wildlife resource, accelerate erosion, or cause potential windstorm damage.<sup>389</sup>

#### Statements of cultural or spiritual significance of water resources

- The Quinault Division of Natural Resources manages natural resources on the lands of the Quinault Indian Nation's Usual and Accustomed area including the ocean. The natural environment and its resources are deeply intertwined with the culture and economy of the Quinault. The traditional tribal worldview is that the people are a part of nature, not apart from nature. "Place-based" people have developed an intimate relationship with their specific natural environment through history. Their physical, mental, social and spiritual health is directly and uniquely related to the health of the ecosystems of the lands and waters they inhabit.<sup>390</sup>

## UUUUU. Red Cliff Band of Lake Superior Chippewa Indians

#### Definition of "navigable waterway"

- "Navigable waterway" shall refer to any body of water that (1) is subject to the ebb and flow of the tide or seiche, (2) connects with a continuous interstate waterway, (3) has navigable capacity, and/or (4) is actually navigable.<sup>391</sup>

#### Other Definitions

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<sup>387</sup> *Id.* at 61.07.010 (a).

<sup>388</sup> *Id.* at 61.07.010 (d).

<sup>389</sup> *Id.* at (only relevant portions cited).

<sup>390</sup> Quinault Division of Natural Resources, <http://qlandandwater.org/>.

<sup>391</sup> Red Cliff Band of Lake Superior Chippewa Indians, Tribal Code, Chapter 11 Logging, Burning, Woodcutting, and Harvesting, Section 11.2.23. Available at: <http://redcliff-nsn.gov/government/TribalChapters/Chapter11.pdf>.

- “Discharge” means the unintentional or intentional spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of any liquid, gaseous, or solid material.<sup>392</sup>
- “Environmental Change” means: (a) Any dock building, dredging., filling, stream diversion, wetland draining, or similar activity that potentially alters the biological, chemical, physical, and cultural integrity of the environment; (b) Any construction activity that may alter or alters the natural environment (biological, chemical, physical, and cultural integrity) to the extent of the area of impact, whether pre-disturbed or not; (c) Removal and proper disposal of dredged materials, dirt, slurry, rock, sand, or municipal, industrial, or agricultural waste; (d) The outdoor discharge or spraying of any poison, pesticide, or herbicide; (e) Demolition with use of any explosive substance such as gun powder or dynamite, other than through the legitimate use of firearms; or (f) Metallic or non-metallic mining activities.
- “Fill” means a deposit of earth material placed by artificial means.<sup>393</sup>
- “Pollution” means point or non-point source discharge of any solid waste, incinerator residue, chemical waste, biological nutrient, biological material, wrecked or discarded equipment, rubbish, sewage, garbage, trash or other harmful or unsightly substance into any waters, any lands or emitted into the air. (08-22-06)<sup>394</sup>

#### 402-like and 404-like Ordinance

- Except as otherwise provided in this section, no person shall cause any pollution within the exterior boundaries of the Reservation.<sup>395</sup>
- Environmental Change Permit:
  - No person shall cause, or permit to be caused, any environmental change without an Environmental Change Permit issued by the Environmental Department.<sup>396</sup>
  - Commercial applicers of poisons or pesticides must receive an Environmental Change Permit from the Environmental Department.

#### Other Novel Protections

- The tribe’s commercial logging regulations include:
  - No logging activities shall occur within the riparian buffer zone, which consists of: 150 feet of the horizontal distance from the Lake Superior high water elevation and 100 feet of horizontal distance from the stream and not within the 100 year flood plain of a pond, lake, stream or river (37.6.10). Exemptions will only be granted through the PAC approval process as part of the Tribe’s Emerald Ash Borer Management Plan.<sup>397</sup>

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<sup>392</sup> Red Cliff Band of Lake Superior Chippewa Indians Tribal Code Chapter 12 Pollution and Environmental Protection, Section 12.2.3. Available at: <http://redcliff-nsn.gov/government/TribalChapters/Chapter12.pdf>.

<sup>393</sup> Red Cliff Band of Lake Superior Chippewa Indians, Tribal Code, Chapter 55 Flood Damage Reduction Ordinance, Section 55.2.10. Available at: <http://redcliff-nsn.gov/government/TribalChapters/Chapter55.pdf>.

<sup>394</sup> Red Cliff Band of Lake Superior Chippewa Indians Tribal Code Chapter 12 Pollution and Environmental Protection, Section 12.2.19.

<sup>395</sup> Red Cliff Band of Lake Superior Chippewa Indians Tribal Code Chapter 12 Pollution and Environmental Protection, Section 12.3.1.

<sup>396</sup> *Id.* at Section 12.4.1.

<sup>397</sup> Red Cliff Band of Lake Superior Chippewa Indians, Tribal Code, Chapter 11 Logging, Burning, Woodcutting, and Harvesting, Section 11.4.5.



- Logging road stream crossings must utilize [best management practices] intended to limit stream channel changes, erosion, sedimentation, and disruption of aquatic life as specified by the PAC Review Board and Commercial Logging Permit conditions. The Natural Resources Department may impose additional conditions for stream crossings of navigable waterways to mitigate effects of the crossing.<sup>398</sup>
- Machinery use in or near dry washes is prohibited at all times.<sup>399</sup>
- Setbacks. In all zones, the following rules concerning setbacks from the lake shore shall apply. (a) Lake Superior. There shall be a setback of 150 feet of horizontal distance from the Lake Superior High Water Elevation. All structures and major ground cover disturbances shall be prohibited. (b) Streams. On all streams a minimum setback of 100 feet of horizontal distance from the stream bankfull mark and not within the 100 year flood plain is required. (c) Decks and Building Prohibited. Decks, observation platforms and buildings are expressly prohibited in the shoreline setback area. Docks within the exterior boundaries of the reservation proposed in the shoreline setback area require review by the PAC Team and approval by Tribal Council on a case by case basis. (d) Greater Setback. In cases of adverse soil to topographical conditions, the Zoning Administrator and/or Planning Board may require greater setbacks which shall be measured as a horizontal distance.<sup>400</sup>
- Floodplain Development Permits. It shall be unlawful for any person to begin construction or other development activity including but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in Section 1.6, until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.<sup>401</sup>

## VVVVV. Resighini Rancheria

### Definition of “waters of the Reservation”

- “Reservation Waters” or “Waters of the Reservation” means any water, surface or underground, contained within, flowing through or bordering upon the Resighini Rancheria or any portion thereof.<sup>402</sup>

### Other Definitions

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<sup>398</sup> *Id.* at Section 11.4.10.

<sup>399</sup> *Id.* at Section 11.4.11.

<sup>400</sup> *Id.* at Chapter 37, Land Use, Section 37.6.10. Available at <http://redcliff-nsn.gov/Government/TribalChapters/Chapter37.pdf>.

<sup>401</sup> Red Cliff Band of Lake Superior Chippewa Indians, Tribal Code, Chapter 55 Flood Damage Reduction Ordinance, Section 55.3.3.

<sup>402</sup> Resighini Rancheria, Tribal Water Quality Ordinance Number 01-2002, Section 2. Revised March 31, 2006. Available at: [https://klamathwaterquality.com/documents/Resighini\\_Rancheria\\_Final\\_WQ\\_Ordinance\\_Revised\\_6\\_06.pdf](https://klamathwaterquality.com/documents/Resighini_Rancheria_Final_WQ_Ordinance_Revised_6_06.pdf).



- “Pollutant” means any substance that will alter the quality of the waters of the Reservation.<sup>403</sup>

#### 402-like and 404-like Ordinance

- No person shall discharge any pollutant into any Reservation water from a point source or conduct dredge and fill activities in any designated wetland area of the Reservation without first having applied for and obtained a permit from the Riparian Review Committee after approval by the Business Council. Any person who intends to alter or enlarge an existing activity authorized by this Ordinance, or who intends to cause or direct such alteration or enlargement of such activities, shall, prior to alteration or enlargement of such activities, apply for and obtain a valid permit from the Riparian Review Committee after approval by the Business Council.<sup>404</sup>

#### Other Novel Protections

- The Rancheria has water quality criteria specifically for wetlands. The following wetlands criteria shall apply to all waters of the Reservation: (A) Water quality in wetlands shall be maintained at naturally occurring levels, within the natural range of variation for individual wetlands. (B) Physical and biological characteristics shall be maintained and protected by: (1) Maintaining hydrological conditions, including hydro period, hydrodynamics and natural water temperature variations; (2) Maintaining the natural hydrophitic vegetation; and (3) Maintaining substrate characteristics necessary to support existing and characteristic uses.<sup>405</sup>

## WWWW. Rincon Band of Luiseño Mission Indians

#### Definition of “waters of the Reservation”

- “Rincon Reservation Water” means all fresh waters that originate or flow in, into, or through the Rincon Reservation, or that are stored on the Rincon Reservation, whether found on the surface of the earth or underground, and all Rincon Band tribal reserved water rights.<sup>406</sup>

#### Definition of “wetlands”

- “Wetlands” means those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>407</sup>

#### Other Definitions

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<sup>403</sup> *Id.*

<sup>404</sup> *Id.* at Section 801.

<sup>405</sup> *Id.* at Section 509.

<sup>406</sup> Rincon Band of Luiseño Mission Indians, Water Resources Protection Ordinance, Ordinance No. 8.900, Section 8.903 (jjj). Available at: [https://rincon-nsn.gov/wp-content/uploads/2019/05/8\\_0900-Water-Resources-Protection-Ordinance.pdf](https://rincon-nsn.gov/wp-content/uploads/2019/05/8_0900-Water-Resources-Protection-Ordinance.pdf)

<sup>407</sup> *Id.* at Section 8.903 (ffff).

- “Adjacent Wetlands” means wetlands bordering, contiguous, or neighboring “waters of the United States” as defined by 33 CFR part 328, as amended from time to time.<sup>408</sup>
- “Contiguous Wetlands” means wetlands that are connected to waters of the Rincon Reservation or other geographic features (*e.g.*, open space) by any of the following criteria: (1) All or part of the wetland lies within the 100-year floodplain of waters of the Rincon Reservation; (2) Hydric soil and Hydrophytic vegetation extend continuously to waters of the Rincon Reservation or other pertinent geographic features; or (3) Sufficient evidence exists to conclude the wetland is hydrologically connected and is immediately adjacent to waters of the Rincon Reservation or other pertinent geographic features.<sup>409</sup>
- “Filling” means the depositing of any material on a site that raises the surface level of the land or the bed of a body of water above its prior or natural elevation.<sup>410</sup>
- “Illicit discharges” mean any non-storm water discharges to storm water drainage systems that could cause or contribute to a Degradation of water quality, sediment quality, or ground water quality, including, but not limited to, sanitary sewer connections, industrial process water, interior floor drains, car washing, and iron grate systems.<sup>411</sup>
- “Pollution” means the presence of matter, energy, Contamination, or other alteration of the physical, chemical, or biological properties of water or land whose nature, location, or quantity produces undesired environmental effects, including, but not limited to, changes in aesthetics, temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters as will or threatens to render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to cultural, spiritual, domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wildlife, birds, fish, or other aquatic life.<sup>412</sup>
- “Isolated Wetlands” means non-tidal wetlands not part of a surface tributary system to intrastate or navigable waters of the United States and are no adjacent to such tributary waterbodies.<sup>413</sup>
- “Ongoing agricultural activity” means agricultural activities (including grazing, tilling, planting, and other activities) that are ongoing as long as the area on which they are conducted has not been converted to another use or has lain idle so long that modifications to the hydrology are necessary to resume operation. Any lands that have been idle for five years or longer will no longer be considered as lands with "ongoing" agricultural activities. This definition should be interpreted in line with that of the U.S. Department of Agriculture and shall not be interpreted in any way to regulate any adjudicated water right or interest of an allottee, or allotment in trust status, on the Rincon Reservation.<sup>414</sup>

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<sup>408</sup> *Id.* at Section 8.903 (b).

<sup>409</sup> *Id.* at Section 8.903 (l).

<sup>410</sup> *Id.* at Section 8.903 (s).

<sup>411</sup> *Id.* at Section 8.903 (ii).

<sup>412</sup> *Id.* at Section 8.903 (zz).

<sup>413</sup> *Id.* at Section 8.903 (mm).

<sup>414</sup> *Id.* at Section 8.903 (uu).

- “Wetland complex” means areas where wetlands and uplands form a highly interspersed mosaic, often with a number of small, hydrologically interconnected (either through ground water or surface water) wetlands as commonly found in hummock and swale topography.<sup>415</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 3, 2018.<sup>416</sup>
- Initial water quality standards have not yet been approved by EPA.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 3, 2018.

### 402-like and 404-like Ordinance

- Applicability. (a) Except as provided in subsection (b) below, this Ordinance applies to all Persons using or desiring to use Rincon Reservation Water or undertaking activities or desiring to undertake activities that affect Rincon Reservation Water, including, but not limited to, surface and ground waters in, on, or underlying all lands within the boundaries of the Rincon Reservation.<sup>417</sup> Stream and Wetland Management
  - It is the intent of the Rincon Band to achieve no net loss of streams, wetlands, and their functions and, in the long term, to achieve a net gain of stream and wetland functions within the boundary of the Rincon Reservation. These goals will be achieved by measures such as requiring site planning to avoid or minimize damage to streams and wetlands wherever possible and by requiring restoration or enhancement of degraded streams and wetlands to offset losses that are unavoidable. It is also the intent of the Rincon Band to pursue a policy of actively encouraging the restoration or enhancement of streams and wetlands with a high potential to provide wildlife, cultural, water-quality, or Aquifer-recharge functions.<sup>418</sup>
  - The purposes of Rincon Band Stream and Wetland Management are: (1) To protect the functions and values of Rincon Reservation streams and wetlands from the impacts of development activities and other land uses; (2) To encourage appropriate residential development and land-use practices by and for tribal members and non-tribal members as well as commercial and business growth on the Rincon Reservation for tribal employment opportunities by providing defined stream and wetland management standards, requirements, and Mitigation alternatives for effective project planning; (3) To protect and enhance wildlife resources, cultural resources, and the quantity and quality of Rincon Reservation ground water; and (4) To protect surface-water quality and enhance storm-water management.<sup>419</sup>
- The [Rincon Environmental Department (RED)] shall have the authority to, and shall promulgate, amend, or rescind regulations relating to standards of quality for waters

<sup>415</sup> *Id.* at Section 8.903 (bbbb).

<sup>416</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

<sup>417</sup> Rincon Band of Luiseno Mission Indians, Water Resources Protection Ordinance, Ordinance No. 8.900, Section 8.904 (a).

<sup>418</sup> *Id.* at Section 8.915 (b).

<sup>419</sup> *Id.* at Section 8.915 (c).

of the Rincon Reservation and for substances discharged therein in order to maintain the highest possible standards in accordance with the public policy of the Rincon Band as declared in Section 8.901 & 8.902.<sup>420</sup>

- Any Person who in violation of this Ordinance discharges any pollutant into the waters of the Rincon Reservation shall be liable for all costs associated with or necessary to clean up, abate, or remove said pollutants from the waters of the Rincon Reservation and restore the quality of the waters of the Rincon Reservation to their condition as they existed immediately prior to the discharge.<sup>421</sup>
- Water Quality Standards Antidegradation Policy: Discharges which cause violation of the Antidegradation Policy or any narrative or numerical water quality objective are prohibited.... In some cases, the Tribal Council may allow limited degradation of existing water quality to benefit the Tribe for economic, developmental, or cultural reasons. The conditions upon which this may be allowed will be fully disclosed by the Tribal Council and will follow an application process and public participation. The level of water quality to protect existing beneficial uses shall be fully protected. All reasonable and cost-effective strategies shall be implemented for nonpoint source releases.... If it is determined that some degradation is in the best interest of the members of the Rincon Band Tribe, some increase in pollutant level may be appropriate. However, in no case may such increases cause adverse impacts to existing or probable future beneficial uses of waters of the Tribe.<sup>422</sup>
- If a proposed action has the possibility to adversely affect the water quality of Rincon Band Creek, an application must be filed with the RED. The application must describe the action proposed and its effects on Reservation waters, how this information was derived, and a justification for the action. Upon satisfying these requirements, the RED will recommend or not recommend this proposal to be considered by the Tribal Council. Tribal Council will make a determination whether to consider the proposal further. If the Tribal Council wishes to consider the application further, the public participation process will take place. The Tribal Council has the sole authority in permitting degradation to waters of the Rincon Reservation. If the Tribal Council makes the decision to allow degradation, they will submit their decision to the U.S. EPA for review and approval.<sup>423</sup>

#### Statements of cultural or spiritual significance of water resources

- Streams and wetlands provide a number of benefits to the Rincon Band, including Habitat for migratory birds, amphibians such as frogs and salamanders, and other wildlife; cultural plants and other cultural practices and properties; providing recharge water to ground-water Aquifers; improving water quality; providing water to streams during summer low flows; holding flood and storm waters; and recreational and educational opportunities.<sup>424</sup>

#### Other Novel Protections

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<sup>420</sup> *Id.* at Section 8.920 (a).

<sup>421</sup> *Id.* at Section 8.921 (c).

<sup>422</sup> *Id.* at Appendix D -- Antidegradation Policy.

<sup>423</sup> *Id.* at Appendix D Section (e).

<sup>424</sup> *Id.* at Section 8.915 (a).

- WELLHEADS: The Water Resources Protection Ordinance provides guidelines to determine appropriate conditions to be included in permits issued by the RED for the protection of wellhead areas and ground water resources of the Rincon Band.<sup>425</sup>

## XXXXX. Rosebud Sioux Tribe

### Other Definitions

- “Discharge of a pollutant” means any addition of any pollutant to the waters of the Rosebud Reservation from a point source.<sup>426</sup>
- “Point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which any pollutant is or may be discharged.<sup>427</sup>
- “Pollutant” means any material that when added to water causes pollution, including but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical, biological, or radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, soil, industrial, municipal and agricultural products or waste.<sup>428</sup>
- “Pollution” means the human-made or human-induced alteration of the chemical, physical, biological, or radiological integrity of water.<sup>429</sup>

### 402-like and 404-like Ordinance

- Prohibited Activities. (1) Except as may be permitted under this Title, no person shall cause or allow the discharge of any pollutant from a point source or nonpoint source that reduces the quality of the waters of the Reservation to below the standards established pursuant to Section 19-6-105 of this Chapter. (2) No person shall violate the terms or conditions of any pollution discharge or activity permit or regulation issued pursuant to this Chapter.<sup>430</sup>
- Permit for Point Source Discharge. (1) Federal and Tribal Permits Required. (a) Any point source discharge of pollutants into the waters of the Reservation requires a permit from the federal Environmental Protection Agency. No person may discharge any pollutant from a point source into waters of the Reservation without having first obtained a permit from the EPA. (b) Further, no person may discharge any pollutant from a point source into waters of the Reservation without first having obtained a permit from the Commission pursuant to this Chapter. (2) Tribal Permit for Point Source Discharge. (a) In lieu of a petition for permit as required by Section 19-6-109(1) and (2), the applicant shall provide to the Director of Water Resources a complete and full copy of his petition to the federal Environmental Protection Agency at the same time as it is supplied to the EPA. (b) Upon receipt of a complete petition the Director of Water Resources shall immediately contact the appropriate federal Environmental Protection Agency office and advise it of the Director’s intent to

<sup>425</sup> *Id.* at Section 8.905 (d).

<sup>426</sup> Code of the Rosebud Sioux Tribe, Title 19 Environmental Protection Section 19-6-102 (2).

<sup>427</sup> *Id.* at Section 19-6-102 (5).

<sup>428</sup> *Id.* at Section 19-6-102 (6).

<sup>429</sup> *Id.* at Section 19-6-102 (7).

<sup>430</sup> *Id.* at Section 19-6-104.

review and provide public participation on the permit petition. The Director shall request that EPA not act prior to conclusion of the tribal process. (c) Within two weeks of having first received a petition, the Director may request the applicant to supply within a reasonable time such additional information as he deems necessary to permit a thorough review of the petition. If the applicant fails to submit the requested information within the reasonable time established in the Director's request, the Director may reject the petition for such failure. (d) Upon receipt of a complete petition pursuant to Section 19-6-109 or 19-6-110(2)(a), the Land Use and Environment Commission shall, in accordance with informal hearing procedures established in Title 18, Chapter 21, determine whether to issue the requested permit. The Commission shall grant the permit only if it finds, by clear and convincing evidence, that: Commission shall not grant a permit unless it finds on the record that ... (e) If the federal Environmental Protection Agency has not yet issued a permit, the Director shall urge EPA to act consistent with the decision on the tribal permit. If EPA has issued a permit, the Director shall insure that the Commission's permit conditions are at least as stringent as those in the EPA permit.<sup>431</sup>

## YYYYY. Sac & Fox Tribe of the Mississippi in Iowa

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on August 13, 2019.
- Initial water quality standards have not yet been approved by EPA.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on August 13, 2019.

## ZZZZZ. Saint Regis Mohawk Tribe

### Definition of “waters of the tribe”

- “Tribal surface water” means all water above the surface of the ground situated wholly or partly within or bordering upon the exterior boundaries of the Territory, including but not limited to lakes, ponds, artificial impoundments, streams, stream reaches, rivers, springs, seeps, and wetlands.<sup>432</sup>

### Definition of “wetlands”

- “Wetlands” means lands and waters of Akwesasne as shown on the wetlands map and that are seasonally or permanently flooded by shallow water as well as lands where the water table is close to the surface; in either case the presence of abundant water has caused the formation of hydric soils and has favored the dominance of either hydrophytic or water tolerant plants which are [dependent] upon or tolerant of very moist conditions. Wetlands may or may not contain species that are of value culturally to the Mohawks of Akwesasne. Lands that are under active agricultural use

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<sup>431</sup> *Id.* at Section 19-6-110 (only relevant portions cited).

<sup>432</sup> Saint Regis Mohawk Tribe, Water Quality Standards for the Saint Regis Mohawk Tribe Under the Authority of the Clean Water Act §303(c), Section II. Available at: <https://www.epa.gov/sites/production/files/2014-12/documents/stregis-tribe.pdf>.

that are periodically flooded, soaked, or wet are not considered to be wetlands by definition.

- Wetlands are comprised of marshes, bogs, swamps and fens supporting aquatic or semi-aquatic vegetation: i) “Marshes” are wet areas periodically inundated with standing or slowly moving water and/or permanently inundated areas characterized by emergent herbaceous vegetation, and to a lesser extent, anchored floating plants and submergents. ii) “Bogs” are peat covered areas or peat filled depressions with a high water table and a surface carpet of acidophilic mosses (chiefly Sphagnum). The water table is at or near the surface in the spring, and slightly below during the remainder of the year. iii) “Swamps” are wooded wetlands including both forest swamps and thicket swamps, with 25% cover or more of tall trees and shrubs. In swamps, standing to gently flowing waters occur seasonally or persist for long periods on the surface. iv) “Fens” are peat accumulating wetlands characterized by surface layers of poorly to moderately decomposed peat, often with well decomposed peat near the base. They are generally covered by a dominant component of sedges although grasses and reeds may be present. Fens receive some draining from surrounding mineral soil and supports marsh-like vegetation. v) “Wooded Wetlands” are wetlands dominated by trees; a forested wetland. vi) “Wet Meadows” are grasslands with nearly saturated soil near the surface, but without standing water for most of the year. vi) “Open Water” refers to water that is free of emergent vegetation or artificial obstructions. vii) “Emergent Wetland” refers to wetlands dominated by mostly herbaceous emergent vegetation. viii) “Forested Wetlands” are defined by the presence of trees which mostly cover the site (see, “Wooded Wetlands”). ix) “Scrub/Shrub Wetlands” exhibit wetland soils and hydrogeology, and are populated largely by shrubs, bushes or brush which are persistent year to year. x) “Reed Swamps” refers to marshes dominated by Phragmites (common reed). xi) “Slough” refers to an elongated marsh often bisected by a creek with slowly flowing surface water. xii) “Pot Hole” refers to a shallow, marsh-like pond. xiii) “Peatland” is a generic term for any wetland that accumulates partially decayed plant matter.<sup>433</sup>

#### Other Definitions

- “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, heat, wrecked or discarded equipment, rock, sand, and industrial, municipal, and agricultural waste discharged into water.<sup>434</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on October 16, 2002.<sup>435</sup>
- Initial water quality standards were approved by EPA on September 14, 2007.

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<sup>433</sup> Saint Regis Mohawk Tribe, Akwesasne Wetlands Conservation Act (AWCA), Section 01-0103(5).

<sup>434</sup> Saint Regis Mohawk Tribe, Water Quality Standards for the Saint Regis Mohawk Tribe Under the Authority of the Clean Water Act §303(c), Section II.

<sup>435</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-saint-regis-mohawk-tribe>



#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on October 16, 2002.

#### 404-like Ordinance

- Permits. 1. After issuance of the official wetlands map, any person desiring to conduct on wetlands designated on the map any of the regulated activities set forth in subdivision two of this section must obtain a permit as required by this title. 2. Activities subject to regulation shall include any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any wetland, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a stormwater or sanitary sewer outfall, discharging sewage treatment effluent or other liquid wastes into or as to drain into a wetland; and any other activity which substantially impairs any of the several functions served by wetlands or the benefits derived from wetlands which are set forth in section 01-0102(5) of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if, in the discretion of the Environment Division, they inhibit or otherwise substantially affect the function of the wetlands and/or are located within 100 feet from the boundary of such wetland as indicated on the wetlands map.<sup>436</sup>

#### Statements of cultural or spiritual significance of water resources

- Any loss of wetlands deprives the people of Akwesasne of some or all of the many and multiple benefits to be derived from wetlands, including, but not limited to: ... e) education of future generations by providing readily accessible outdoor bio-physical laboratories, living classrooms and vast training and education resources; f) open space and aesthetic appreciation by providing areas for hunting, gathering, fishing, canoeing, bird-watching and camping often in the only remaining open areas along increasingly crowded river fronts; ... h) support of valuable medicinal plants and trees of cultural and economic importance including, but not limited to, Heartweed (*Polygonum persicaria*) and Black Ash (*Fraxinus nigra*).<sup>437</sup>
- The purpose of these water quality standards is to facilitate sovereign self-determination and the restoration and preservation of traditional hunting, fishing, gathering and cultural uses in, on and around Tribal Surface Waters. The Environment Division is committed to providing cleaner, safer water for all of creation. These water quality standards will in turn promote the general welfare and well-being of the community by allowing the Tribe and its members to utilize the water for traditional, cultural and ceremonial purposes.<sup>438</sup>

#### Other Novel Protections

- The tribe's water quality standards apply to wetlands: 1. All wetlands within the exterior boundaries of the territory that are not constructed wetlands shall be subject

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<sup>436</sup> AWCA Section 01-0301.

<sup>437</sup> *Id.* at Section 01-0102(4) (only relevant portions cited).

<sup>438</sup> Saint Regis Mohawk Tribe, Water Quality Standards for the Saint Regis Mohawk Tribe Under the Authority of the Clean Water Act §303(c), Section I.A.

- to the Narrative Criteria (Section IV, subsection 2), Antidegradation (section 2) and the Saint Regis Mohawk Tribe Wetlands Protection Act. [www.srmtenv.org/wetlands](http://www.srmtenv.org/wetlands).
2. Water quality in wetlands shall be maintained at naturally occurring levels, within the natural range of variation for the individual wetland, unless otherwise specified and approved by the Environment Division. 3. Physical and biological characteristics shall be maintained and protected by: a. Maintaining hydrological conditions, including hydroperiod, hydrodynamics, and natural water temperature variations; b. Maintaining the natural hydrophytic vegetation; c. Maintaining substrate characteristics necessary to support existing and designated uses. 4. Point and Nonpoint sources of pollution shall not cause destruction or impairment of wetlands except where authorized under Section 404 of the CWA. 5. Natural wetlands shall not be used as repositories or treatment systems for wastes from human sources.<sup>439</sup>
- In the tribe’s water quality standards, they have established a designated use for “ceremonial and spiritual water use,” which is the use of water for spiritual and cultural practices which may involve primary and secondary contact. This shall include uses of Tribal Surface Waters of a water body to fulfill cultural, traditional, spiritual, or religious needs of the Tribe or its members.<sup>440</sup>

## AAAAAA. San Carlos Apache Tribe

### 303(c) Water Quality Standards

- Application under review; notice issued October 24, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.<sup>441</sup>

### 401 Certification

- Application under review; notice issued October 24, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

## BBBBBB. Seminole Tribe of Florida

### Definition of “navigable waters”

- The term “navigable waters” means the waters of the United States, including the territorial seas.<sup>442</sup>

### Definition of “waters of the Reservation”

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<sup>439</sup> *Id.* at Section IV.F.

<sup>440</sup> *Id.* at Section II and Section VI.

<sup>441</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

<sup>442</sup> Seminole Tribe of Florida, Tribal Water Code, Subtitle B, Water Quality Code, Section 11.6.

- The term “Reservation surface waters” means “waters of the United States” that are located within the boundaries of the Tribe's Reservations specified in Section 11.2 of this Chapter. This term specifically includes wetlands.<sup>443</sup>

#### Definition of “wetlands”

- The term “wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.<sup>444</sup>

#### Other Definitions

- The term “discharge of a pollutant” and the term “discharge of pollutants” each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.<sup>445</sup>
- The term “pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) “sewage from vessels” within the meaning of Section 312 of the Act; or (B) water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes, has been approved under authority of the federal Safe Drinking Water Act or other applicable federal law, and if such Commission determines that such injection or disposal will not result in the degradation of ground or surface water resources.

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on June 1, 1994.<sup>446</sup>
- Initial water quality standards for the Big Cypress Reservation were approved by EPA on September 26, 1997. Initial water quality standards for the Brighton Reservation were approved by EPA on November 18, 1998.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on June 1, 1994.

#### Other Novel Protections

- The tribe’s water quality standards for wetlands are to be taken into consideration for permits:
  - ISSUANCE OF PERMITS. Each permit issued by the Commission pursuant to subsection 3.5.8 of Subtitle A shall impose such conditions as may be

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<sup>443</sup> *Id.*

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

<sup>446</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-seminole-florida>.

necessary to ensure that the permit will not result in a violation of water quality standards that have been validly adopted by the Commission. Each annual report to the Council that is approved by the Commission shall include a report on the Commission's experience in exercising its existing permitting authority and shall present recommendations to the Council on whether the delegation of additional permitting authority would help to achieve the goals, policies and purposes of this Subtitle.<sup>447</sup>

- The Commission is authorized to include in its rules any provisions that the Commission deems necessary or advisable to carry out this subtitle, including but not limited to: a procedure through which an applicant for a federal license or permit to conduct any activity that may result in a discharge to surface waters, including wetlands, may apply to the Director for certification, pursuant to section 401 of the Clean Water Act, that any such discharge will comply with the Tribe's water quality standards and other requirements of the Clean Water Act.<sup>448</sup>
- CONDITIONS FOR PERMITS ISSUED BY THE COMMISSION. The Department shall provide scientific and technical support to the Commission in specifying conditions to include in any permit issued by the Commission pursuant to subsection [3.6] of Subtitle A of this Code to ensure that the permit will not result in a violation of the Tribe's water quality standards.<sup>449</sup>
- APPLICATION FOR PERMIT. 1. Any person who intends to dig a well or use, drain or divert surface or ground waters of the reservation or Tribal Trust Lands, unless the person intending to engage in such activity is already a tribally licensed user under Section 1.4 of this Code for such activity, must apply for a permit to dig a well or engage in such activity, before digging the well or engaging in the activity. ... 3. The Director may require additional information sufficient to determine whether the proposed use, well or drainage or diversion presents any threat to the health or safety, or to the economic interests, of the Tribe or any member thereof, or to the water, water resources or physical environment or the reservation or Tribal Trust Lands.<sup>450</sup>

## CCCCCC. Seneca Nation of Indians

### 303(c) Water Quality Standards

- Application under review; notice issued November 8, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe's assertion of authority.<sup>451</sup>

### 401 Certification

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<sup>447</sup> Seminole Tribal Water Code, Subtitle B, Section 12.2.5.

<sup>448</sup> *Id.* at Section 12.3.1.2 (only relevant portions cited).

<sup>449</sup> *Id.* at Section 13.4.5.

<sup>450</sup> Seminole Tribe of Florida, Tribal Water Code, Subtitle A, Beneficial Use and Conservation of Water Resources, section 3.6.3 (only relevant portions cited). Available at: [https://www.semtribe.com/STOF/docs/default-source/environmental-resource-management/seminole-tribal-water-code/subtitle-a-beneficial-use-and-conservation-of-water-resources.pdf?sfvrsn=77d7845a\\_6](https://www.semtribe.com/STOF/docs/default-source/environmental-resource-management/seminole-tribal-water-code/subtitle-a-beneficial-use-and-conservation-of-water-resources.pdf?sfvrsn=77d7845a_6).

<sup>451</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

- Application under review; notice issued November 8, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

## DDDDDD. Shoalwater Bay Indian Tribe

### Definition of “waters of the tribe”

- “Waters of the tribe” means all streams, lakes, ponds, marshes, wetlands, salt water, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, draining systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon: (1) The lands, wetlands and tidelands within the exterior boundaries of the Shoalwater Bay Indian Reservation; (2) Any lands, wetlands or tidelands outside the exterior boundaries of the reservation which are held in fee by the Shoalwater Bay Tribe or held in trust by the United States government for the benefit of the Shoalwater Bay Tribe or its individual members; or, (3) Any lands wetlands or tidelands deemed Shoalwater Bay “Indian Country” as defined in 18 U.S.C. § 1151.<sup>452</sup>

### Definition of “wetlands”

- “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include tidelands, swamps, marshes, bogs, and similar areas. Wetlands shall be defined using definitions and criteria currently used by the Army Corps of Engineers in their Wetland Manual.<sup>453</sup>

### Other Definitions

- “Pollutant” includes, but is not limited to, dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage sludge, garbage, trash, dead animals, chemical waste, hazardous substance, pesticide, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, oil, battery acid, gasoline, paint, solvents, rock, sand, sediment or any industrial, municipal, or agricultural waste, and any other substance which causes pollution as defined in section 23.02.130, and/or any “solid waste” as that term is defined in the Solid Waste Disposal Act at 42 U.S.C. § 6903 (27).<sup>454</sup>

### 402-like and 404-like Ordinance

- Permit Required for Certain Activities. All persons conducting any of the following activities within the boundaries of the Shoalwater Bay Indian Reservation shall be required to obtain a permit, and fill out an environmental checklist, from the Shoalwater Tribe for the purposes of: a) Site preparation for the construction of a

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<sup>452</sup> Shoalwater Bay Indian Tribe, Tribal Code, Title 23 Environmental Infractions Ordinance, Section 23.02.230. Available at: <https://www.shoalwaterbay-nsn.gov/assets/PDFs/Law--Order-Codes/SHO-TITLE-23-Environmental-Infractions-2001.pdf>.

<sup>453</sup> *Id.* at Section 23.02.240.

<sup>454</sup> *Id.* at Section 23.20.120.

- building in an area for the purpose of human habitation, business use, or public area; b) Timber harvesting; c) Road construction or repair and right of way maintenance; d) Construction or repair of culverts and drainage ditches; e) Construction of any water or flood related project, including any project within the tidelands of the Shoalwater Bay Reservation; f) Any project of a permanent or temporary nature which interferes with the normal public use of the surface waters within the exterior boundaries of the Shoalwater Bay Reservation; g) Dredging, drilling, dumping, filling, removal of sand, gravel, soil, or other minerals, bulkheading, diking, riprapping, or pile driving. [sic] h) Spraying or other application of pesticides and herbicides, except for use by single family residences so long as used in compliance with the label requirements and so long as such use does not directly impact other members of the Shoalwater Bay Tribal Community; i) Clearing and grading activities; and j) All other activities determined by the [Shoalwater Bay Environmental Protection Department (SBEPD)] to likely have an adverse impact on the tribal natural environment.<sup>455</sup>
- Tribal General Permits (TGPs). The SBEPD shall develop Tribal General Permits (TGPs) for use for certain activities. The TGP shall establish the conditions under which certain activities may be conducted on the lands and waters of the Shoalwater Bay Tribe without the requirement that the person carrying out those activities obtain a specific permit under section 23.03.010 of this ordinance.<sup>456</sup>
  - “Significantly Affecting the Environment.” The determination of whether an activity will significantly affect the environment shall be made in the context of Shoalwater Bay culture and values. Factors to be taken into consideration in making this determination include: a) The degree to which the proposed activity will adversely impact--a) Water quality or quantity; 2) Threatened or endangered species habitat; 3) The health and safety of the Shoalwater Bay people; 4) The tidelands and/or wetlands of the Reservation; and, b) The extent to which the proposed activity: 1) Is considered controversial or risky by the community; 2) Is a potential, or actual, violation of federal environmental statutes or regulations, or Tribal law; and 3) Has the potential to impact cultural resources, known or unknown.<sup>457</sup>
  - Any person who excavates, dredges, fills, or alters the watercourse of any waters of the Tribe, or any waters of the United States, including wetlands and tidelands, without a permit, or in violation of the terms of a permit from the Tribe has committed a Class A infraction.<sup>458</sup>

#### Other Novel Protections

- See the Shoalwater Bay Indian Tribe’s general water quality standards, which apply to proposed activities under the Ordinance and include subsections for natural character preserved, natural buffers [for tidelands and wetlands], water quality, flood

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<sup>455</sup> *Id.* at Section 23.03.010.

<sup>456</sup> *Id.* at Section 23.03.020.

<sup>457</sup> *Id.* at Section 23.03.110.

<sup>458</sup> *Id.* at Section 23.06.010. *See also* Section 23.06.020 (“Any person who excavates, mines, drains, road builds or engages in any other earth removal or disposition project on any wetlands, tidelands, or other lands of the Tribe without a permit, or in violation of the terms of a permit, from the Tribe has committed a Class A infraction”) and Section 23.06.040 (“Any person who uses fill material to accommodate any development activity without a tribal permit insuring that such fill will not alter or prohibit the natural flow of surface or ground water has committed a Class A infraction”).

proofing, erosion control, use of fill, clearing and grading, sewage disposal/drinking water, and herbicides/pesticides.<sup>459</sup>

## EEEEEE. Shoshone-Bannock Tribes

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on September 5, 2008.<sup>460</sup>
- Initial water quality standards have not yet been approved by EPA.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on September 5, 2008.

## FFFFFF. Shoshone-Paiute Tribes

### 303(c) Water Quality Standards

- Application under review; notice issued May 22, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe's assertion of authority.<sup>461</sup>

### 401 Certification

- Application under review; notice issued May 22, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe's assertion of authority.

## GGGGGG. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

### Definition of “waters of the reservation”

- “Reservation Waters” or “Waters” is defined as all waters, surface or subsurface, arising upon, occurring within or flowing through the Lake Traverse Reservation lands including, without limitation, all waters within the jurisdiction of the Sisseton Wahpeton Oyate under the 1867 Treaty, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the Lake Traverse Reservation, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA other than cooling ponds as defined in 40 CFR 423.11(m) (July 1, 1991).<sup>462</sup>

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<sup>459</sup> *Id.* at Section 23.03.340.

<sup>460</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-shoshone-bannock-tribes>.

<sup>461</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

<sup>462</sup> Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Tribal Code, Chapter 61 Environmental Protection Code, Title III, Water Quality, Section 61-03-05 (n). Available at [https://www.narf.org/nill/codes/sisseton\\_wahpeton/Chapter61.pdf](https://www.narf.org/nill/codes/sisseton_wahpeton/Chapter61.pdf).



## Other Definitions

- “Activity” or “activities” means a portion of an action that includes: (1) any significant disturbance of land surface or subsurface within the Reservation; and (2) any other significant disturbance within the Reservation, including research projects, that impact water, domestic and wild animals, air, plants or humans, their facilities and/or cultural, spiritual or historical sites and objects.<sup>463</sup>
- “Discharge” or “discharge of pollutant” is defined as any addition of an identifiable substance or a pollutant or combination of pollutants to waters from any point source.<sup>464</sup>
- “Environmental permit (permit)” means the document issued by [the Office of Environmental Protection (OEP)] to applicants after environmental review that will contain the permission to proceed with the action and any required special conditions or mitigations; or issued as a categorical exclusion.<sup>465</sup>
- “Pollutant” means any substance or energy entering the environment as a direct or indirect result of human activity that alters or has the potential to alter the physical, chemical, biological, cultural, spiritual, or aesthetic properties of the environment.<sup>466</sup>
- “Pollutant” or “Pollutants” is defined as dredged soil, slurry, solid waste, incinerator residue, garbage, sewage sludge, munition, chemical wastes, biological material, radioactive material, heat, wrecked or discarded equipment, rock, cellar dirt and industrial, municipal, or agricultural waste discharged into water.<sup>467</sup>
- “Reservation environment” means the physical and biological resources of the Tribe within the original boundaries of the Reservation, including but not limited to land, water, air, minerals, cultural, spiritual or historical sites, objects, humans, animal and plant life and aesthetic values.<sup>468</sup>

## 402-like and 404-like Ordinance

- Unlawful Acts. Except as may be permitted under this Title, no person shall cause or allow the discharge of any pollutant from a point source or nonpoint source that reduces the quality of the waters of the Lake Traverse Reservation to below the standards established pursuant to established OEP regulations and this Title. No person shall violate the terms and conditions of any pollution discharge or activity permit or regulation issued pursuant to Title III.<sup>469</sup>
- Permit to Degrade Reservation Waters. Upon petition in accordance with this title, the OEP shall, in agreement with the public hearing procedures, decide whether to issue a permit to conduct an activity that will cause or allow the discharge of a pollutant into any body of reservation water for which water quality standards are established. If an applicant seeks a point source discharge permit, he shall include the request for water quality degradation in the permit application.<sup>470</sup>

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<sup>463</sup> *Id.* at Title II Tribal Environmental Policy Act, Section 61-02-02 (b).

<sup>464</sup> *Id.* at Section 61-03-05 (f).

<sup>465</sup> *Id.* at Section 61-02-02 (e)(5).

<sup>466</sup> *Id.* at Section 61-02-02 (h).

<sup>467</sup> *Id.* at Section 61-03-05 (l).

<sup>468</sup> *Id.* at Title I General and Administrative Provisions, Section 61-01-04 (m).

<sup>469</sup> *Id.* at Section 61-03-06.

<sup>470</sup> *Id.* at Section 61-03-09.

- Every person seeking to conduct an activity defined by §61-02-02(b) shall submit a permit application to OEP.... (c) All persons, entities, or agencies conducting any of the following activities within the exterior boundaries of the Reservation shall be required to obtain an environmental permit prior to taking any physical action upon the environment: (1) Preparation of a site for the construction of a building or area for purposes of human habitation, business use, or public area; (2) Construction, placement, or expansion of any structure to be used for industrial, commercial, or residential purposes; (3) Construction, placement, or expansion of any public or private road or bridge, right of way, transportation facility, or public facilities of any nature; or (4) Other activities such as constructing dams and timber harvest; and other potential ground or air disturbing activities.<sup>471</sup>
- Permit Limitations, Conditions and Mitigation.... (b) In issuing a permit, OEP may include conditions and mitigation requirements to reduce, prevent, or mitigate significant adverse impacts and to protect the Reservation environment from degradation. Mitigation may include monetary compensation to the Tribe or others for adverse impacts to the Reservation environmental and natural resources, and may also include requirements of replacement or restoration of impacted resources.<sup>472</sup>

## HHHHHH. Skokomish Indian Tribe

### Definition of “wetlands”

- “Wetlands” and “wetland areas” mean lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water. Wetlands have one or more of the following attributes: (1) At least periodically, the land predominantly supports hydrophytes. (2) The substrate is predominantly undrained hydric soil. (3) The substrate is non-soils and is saturated with water or covered by shallow water at some time during the growing season of each year.<sup>473</sup>

### Other Definitions

- “Buffer” means a quantifiable area of land adjacent to a critical area (streams, wetlands, marine shorelines, erosion hazard areas) that protects the functions and values of a critical area.<sup>474</sup>

### 402-like and 404-like Ordinance

- When [SKEPA Permits Are] Required. Any person conducting an activity within the boundaries of the Reservation or with the boundaries of Tribal Trust land outside of the Reservation shall be required to obtain a Skokomish Environmental Protection Act (SKEPA) Permit from the Skokomish Department of Natural Resources. Activities requiring a permit include, but are not limited to, the following: (a) Preparation of a site for the construction of a building or area for purpose of human

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<sup>471</sup> *Id.* at Section 61-02-04.

<sup>472</sup> *Id.* at Section 61-02-07.

<sup>473</sup> Skokomish Indian Tribe, Skokomish Tribal Code (S.T.C), Title 6 Land Use and Natural Resources, S.T.C. 6.03 Skokomish Environmental Protection Act, Section 6.03.116(t). Available at: <http://www.skokomish.org/wp-content/uploads/2017/07/STC-6.03.pdf>.

<sup>474</sup> *Id.* at Section 6.03.116(a)

habitation, business use, or public use; (b) Construction of any structure and construction that expands the square footage of the exterior of an existing structure by more than 100 square feet or has clearing, grading, and/or land disturbing components; (c) Conduct of a business operation; (d) Road construction or repair, and right-of-way maintenance; (e) Construction or repair of culverts and drainage ditches; (f) Construction of any water or flood-related project, regardless of the nature or extent of the construction activity; (g) Any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands within the Reservation at any state of water level; (h) Dredging, drilling, dumping, removal of sand, gravel, or minerals, bulkheading, diking, riprapping, or driving of piling; (i) Timber harvesting on lands not designated as forest lands; (j) Spraying or other application of pesticides and herbicides, except for use by single family residences using non-commercial grade products; (k) Clearing, grading, or other land disturbing activity; (l) Storage, application, disposal, or incineration of solid waste and/or hazardous materials as defined within the Resource Conservation Recovery Act, 42 U.S.C. § 6992 et seq. (m) Other activities prohibited or restricted pursuant to regulations promulgated by the Department under this Act.<sup>475</sup>

#### Other Novel Protections

- **Natural Buffers.** All activities must leave undisturbed, natural, vegetated buffers adjacent to rivers, streams, and wetlands. Construction, accessory uses, septic tanks, and agriculture are prohibited within the buffer. Timber harvesting is prohibited within the buffer, except those trees that have naturally fallen across a waterway or are deemed a danger, which may be removed upon prior authorization from the Director. A buffer of 150 feet shall remain adjacent to all fish-bearing streams, including the Skokomish River and Skabob Creek. A buffer of 100 feet shall remain adjacent to all non-fish-bearing streams. The Tribal Council may increase or decrease the size of a buffer for a particular activity in order to meet other goals, purposes, and standards of this Act or other applicable law. Buffers shall be measured landward from the channel migration zone or the ordinary high water mark, whichever is greater. Buffers adjacent to a stream or river shall be left on both sides of the waterway.<sup>476</sup>
- **Estuarine and/or Near Shore Marine Shoreline Setback.** Structures or activities that are not water-dependent uses shall be located inland, at least 250 feet from the mean high water level, when practicable.<sup>477</sup>
- **Flood Proofing.** No activity shall be located in areas subject to flooding or tidal inundation unless complete flood-proofing measures have been implemented, and then only when the location of the structure will not aggravate flooding potentials of the nearby properties. Structures within the 100-year flood plain must comply with federal flood-proof standards necessary to obtain federal flood insurance, whether flood insurance is obtained or not.<sup>478</sup>
- **Erosion Control, Clearing, and Grading.** An erosion control plan must be approved prior to issuance of a permit under this Act for any activity that poses a risk of erosion

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<sup>475</sup> *Id.* at Section 6.03.145.

<sup>476</sup> *Id.* at Section 6.03.122.

<sup>477</sup> *Id.* at Section 6.03.125.

<sup>478</sup> *Id.* at Section 6.03.128.

during or after construction. No earth or debris resulting from the activity shall be allowed to enter streams, lakes, or marine waters. No activity shall contribute to foundation instability or mass soil movement. All clearing, grading and land disturbing activities must be designed to minimize impact to the environment.<sup>479</sup>

- Use of Fill. Use of fill material is permitted only upon prior approval by the Director. If an activity uses fill material to accommodate the activity, the Director may require a professionally licensed engineer to certify that the fill will not alter or impede the natural flow of surface water or groundwater, or present a geologic hazard. There shall be no excavation or filling of stream channels or lakes, or alteration of stream courses unless required for a project that would enhance the biological productivity of the aquatic environment, in which case it will be a conditional use.<sup>480</sup>
- Herbicides and Pesticides. Application of herbicides and pesticides is prohibited except for: (a) Conditional permits that may be issued for agricultural (including tree farming) and residential applications, but only when no reasonable alternative is available to control pests or invasive plant growth; and (b) Single family residences using non-commercial grade products.<sup>481</sup>

### IIIIII. Snoqualmie Indian Tribe

#### Definition of “waters of the Tribe”

- “Waters of the Tribe” include all those water resources held by the Tribe, by the United States in trust for the Tribe or by Snoqualmie Tribal members that satisfy the federal definition of “Waters of the U.S.” that is found in 40 CFR 122.2, and generally include all lakes, rivers, streams (including intermittent and ephemeral streams), natural wetlands, sloughs, and ponds located within and that flow on, across, or adjacent to Snoqualmie Tribal lands.<sup>482</sup>

#### Definition of “wetlands”

- “Wetlands” mean those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. See 40 C.F.R. Part 230.3(t). This includes lands where saturation with water is a dominant or predominant factor in determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface, including, but not limited to, native plants and species.<sup>483</sup>

#### Other Definitions

- “Constructed wetlands” means those wetlands intentionally designed, constructed, and operated on upland, non-wetland sites for the primary purpose of wastewater or

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<sup>479</sup> *Id.* at Section 6.03.129.

<sup>480</sup> *Id.* at Section 6.03.130.

<sup>481</sup> *Id.* at Section 6.03.132.

<sup>482</sup> Snoqualmie Indian Tribe, Tribal Council Act 6-1, An Act Relating to Surface Water Resources Management, Section 5.0.

<sup>483</sup> *Id.*

storm water treatment or environmental remediation. Constructed wetlands are not considered waters of the Tribe.<sup>484</sup>

#### 402-like and 404-like Ordinance

- The Tribe intends to eliminate both point and nonpoint sources of pollutants. To achieve that goal, the Tribe shall require surface water discharge permits that will impose necessary regulatory pollution controls. Any such controls incorporated into a surface water discharge permit shall be established by the Tribe and must be developed to ensure a level of water quality that will satisfy water quality standards and support designated use classifications as determined by the Tribe. Regulatory pollution controls established for point and nonpoint sources shall be consistent with, or more protective than, applicable portions of the Federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* ... The Tribe desires to regulate activities involving the placement of dredged or fill material into waters of the Tribe. This shall be accomplished through the surface water discharging program.<sup>485</sup>
- The provisions of this Chapter shall apply to all existing and proposed point and nonpoint pollution sources that discharge directly or indirectly into surface or ground waters of the Tribe, and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health and safety, water quality and other fundamental interests of the Tribe, including such activities conducted by non-members of the Tribe or on privately owned lands. Activities to be regulated hereunder include, but are not limited to: (a) Landfills and open dumps; (b) Storage of animal waste; (c) Automobile graveyards and junkyards; (d) Landfilling of sludge or septic system waste; (e) Individual, residential, industrial, commercial or agricultural sewage treatment facilities; (f) Individual, residential, industrial, commercial, fire protection, or agricultural water control devices including but not limited to treatment facilities or systems, dams, reservoirs, ponds, pools, tanks, wells, pipelines, flumes, canals and intake or diversion systems; (g) Underground and above-ground liquid storage containers; (h) Surface and subsurface removal of mineral resources, overburden, rock or soil, including quarry operations (borrow pitting) for road surfacing or other uses; (i) All prospecting activities involving removal of soil or rock materials, including operations involving the reopening of existing mine pits, tunnels or quarries; (j) Sand and gravel operations; (k) Activities such as suction dredging, that have the potential to affect the riparian area, including wetland areas and riparian habitat, water quality or channel morphology; (l) Activities such as clearing vegetation in wetlands and buffers that have the potential to affect water temperature; (m) Activities that prevent fish passage to upstream habitat; (n) Potential non-point source pollution problem areas including soil disturbing activities such as agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification and residential activities; (o) Activities likely to result in the placement of dredged and/or fill material into waters of the Tribe; and (p) Application of herbicide, insecticide or other pesticide or toxic materials or fertilizer for non-domestic use, in conjunction with Tribal pesticides policies, including applicable code provisions.<sup>486</sup>

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<sup>484</sup> *Id.*

<sup>485</sup> *Id.* at Section 3.0.

<sup>486</sup> *Id.* at Section 4.0.

- The purpose of the surface water permitting program is to promote tribal health, safety and welfare by providing for the comprehensive management, and elimination or avoidance of discharges to surface waters of the Tribe. The program is designed to reduce flooding, erosion, sedimentation; prevent and mitigate habitat loss; enhance groundwater recharge; and prevent water quality degradation. These goals are achieved through the implementation of comprehensive and thorough permit system, which includes inspection, enforcement, and maintenance measures intended to promote the effectiveness of the requirements contained in this section.<sup>487</sup>
- Surface Water Discharge Permit for Soil Disturbing Activities. All entities and persons (hereafter called “operators”) conducting soil disturbing activities on Snoqualmie Tribal lands must apply for a surface water discharge permit. ...<sup>488</sup>
- Storm Water Pollution Prevention Plan. The ENR Department shall direct an operator to develop a Storm Water Pollution Prevention Plan (“SWPPP”) as part of any permit application for a surface water discharge permit for a soil disturbing activity....<sup>489</sup>
- Section 6.13.5, “Surface Water Discharge Permit for Point Sources,” is reserved. Section 6.13.6, “Surface Water Discharge Permit for Dredged and Fill Material” is also reserved.
- Conditional permits for the application of herbicides and pesticides may be obtained from the ENR Department, as well.<sup>490</sup>
- The ENR Department has discretionary authority to establish a wetlands and riparian mitigation planning and permit system that incorporates mitigation options, and to implement and coordinate the Tribe’s no-net loss of wetlands policy pertaining to traditional areas. This discretionary authority includes implementing on Snoqualmie Tribal lands a strategic hierarchy of avoidance, minimization, and mitigation, as well as establishing and revising a wetlands ratings system, on site mitigation, such as buffer averaging and/or ratios, and off-site mitigation options, including ratios for acceptable mitigation, and/or mitigation banking, in providing equivalent riparian protection an incentive for on-site avoidance or mitigation, and coordinating with efforts in traditional areas for wetlands and riparian protection, restoration, and mitigation.<sup>491</sup>

#### Other Novel Protections

- Buffer Designation. The ENR Department is authorized to establish buffers for all waters of the Tribe, and appropriate exemptions or mitigation measures, and to recommended buffers on streams within the aboriginal territory of the Snoqualmie Tribe. Generally, buffers for waters of the Tribe will be set at 300 feet, but exceptions as noted in Table 1 may apply. The buffer distance in feet shall be measured from the ordinary high water mark on each bank of the water body and may extend out the distance in Table 1 from both sides of the water body. A minimum buffer width of 300 feet shall be required for wetlands with important wildlife functions such as habitat used heavily by migratory birds or threatened or endangered species regardless of the water body type. ... No activities that the ENR Department finds

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<sup>487</sup> *Id.* at Section 6.13.1.

<sup>488</sup> *Id.* at Section 6.13.2 (only relevant portions cited).

<sup>489</sup> *Id.* at Section 6.13.3 (only relevant portions cited).

<sup>490</sup> *Id.* at Section 6.13.7.

<sup>491</sup> *Id.* at Section 6.4.4 (only relevant portions cited).

- degrade the water body’s habitat, temperature, water quality and ecological function shall be conducted within the buffer width. These activities include but are not limited to: roads and road building, land clearing and grading, soil disturbing activities, storage of hazardous and non hazardous materials, or any other activity that would remove vegetation and diminish the functionality of the buffer.<sup>492</sup>
- The ENR Department has the authority to establish appropriate zoning and buffers for wetlands protection. A 300 foot buffer around wetlands and riparian areas is hereby generally required.<sup>493</sup>
  - The Tribe has established water quality standards for wetlands: All wetlands on Snoqualmie Tribal lands which are not constructed wetlands are considered waters of the Tribe, and shall be subject to narrative criteria, applicable antidegradation and riparian management provisions. It shall be the goal of the Tribe to maintain the water quality of wetlands at naturally occurring levels, within the natural range of variation for the individual wetland. For substances that are not naturally occurring, water quality requirements shall be based on protecting existing uses of the wetland consistent with antidegradation requirements, the Tribe’s narrative water quality criteria, or criteria assigned to hydrologically connected surface waters, or appropriate criteria guidance issued by the EPA.<sup>494</sup>

#### Statements of cultural or spiritual significance of water resources

- In the Tribe’s water quality standards, they have established a designated use for cultural uses. Waters in this classification are intended for cultural, religious, or traditional use.<sup>495</sup>

## JJJJJ. Sokaogon Chippewa Community

#### Definition of “waters of the tribe”

- “Tribal waters” means all waters upon and under the Sokaogon Chippewa Community Tribal Lands at any and all points in the hydrologic cycle as provided by the Clean Water Act.<sup>496</sup>

#### Definition of “wetlands”

- “Wetlands” means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, hydrophytic vegetation typically adapted for life in saturated soil conditions, such as algae and cattails.<sup>497</sup>

#### Other Definitions

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<sup>492</sup> *Id.* at Section 6.4.4 (only relevant portions cited). *See also* Table 1.

<sup>493</sup> *Id.* at Section 6.10.

<sup>494</sup> *Id.*

<sup>495</sup> *Id.* at Section 6.11(d).

<sup>496</sup> Sokaogon Chippewa Community, Water Quality Standards, Section V. July 30, 2010. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/molelakeband-wqs.pdf>.

<sup>497</sup> *Id.*



- “Pollutant” means any substance, chemical, chemical breakdown product, plus heat, the presence of which in the environment is the direct or indirect result of a human activity.<sup>498</sup>

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on September 29, 1995.<sup>499</sup>
- Initial water quality standards were approved by EPA on January 22, 1996.

### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on September 29, 1995.

### Statements of cultural or spiritual significance of water resources

- Water has always been an integral and sacred part of the Sokaogon people’s survival, identity and culture. Water is the life-supporting blood of Mother Earth that human beings share in common with all living things. The purpose of this ordinance is to protect the health and welfare of the Sokaogon people and the integrity of tribal aquatic natural and cultural resources by enacting policy, procedures, criteria and standards for Tribal Waters to maintain ambient water quality by prohibiting any permanent, detectable alteration or degradation of Tribal Waters.<sup>500</sup>
- In the tribe’s water quality standards, they have established a designated use for cultural uses, which means use of all Tribal Waters for cultural, subsistence, spiritual, medicinal, ceremonial, and aesthetic purposes that include any element of the environment that is ecologically associated with Tribal Waters.<sup>501</sup>
- The [Sokaogon Chippewa Community] has depended on the ability of Tribal Lands and Tribal Waters to provide basic cultural preservation, religious practice, and abundant natural resources for consumption, subsistence, sustainable economic development, and sociological health.<sup>502</sup>
- Wild Rice (*Zizania palustris*) is defined as a cultural and natural resource of the Sokaogon people that has sustained their subsistence for over 300 years. The Sokaogon Chippewa Community reservation was designated with a 600-acre wild rice lake as its centerpiece.<sup>503</sup>

## KKKKKK. Southern Ute Indian Tribe

### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on March 28, 2018.<sup>504</sup>
- Initial water quality standards have not yet been approved by EPA

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<sup>498</sup> *Id.*

<sup>499</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-mole-lake-band-lake-superior-tribe-chippewa-indians>.

<sup>500</sup> Sokaogon Chippewa Community, Water Quality Standards, Section I.B. [151.01].

<sup>501</sup> *Id.* at Section II.B.1. [151.11].

<sup>502</sup> *Id.* at Section IV.

<sup>503</sup> *Id.* at Section V.

<sup>504</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-southern-ute-indian-tribe>

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on March 28<sup>th</sup>, 2018.

### LLLLLL. Spokane Tribe

#### Definition of “waters of the Tribe”

- “Surface waters of the Tribe” includes lakes, rivers, ponds, streams (including intermittent streams), wetlands, inland waters and all other surface waters and water sources of the Reservation.<sup>505</sup>

#### Definition of “wetland”

- “Wetland” means any area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, riparian zones and similar areas.<sup>506</sup>

#### Other Definitions

- “Constructed wetlands” means those wetlands intentionally created from non-wetland sites for the sole purposes of wastewater or stormwater treatment.
- “Engineered wetlands” means wetlands intentionally altered from their natural condition for the purpose of enhancing the wetlands’ ability to filter wastewater or storm water.<sup>507</sup>
- “Pollutant” includes, but is not limited to, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, mining, milling, municipal, and agricultural waste discharged into water.<sup>508</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on July 23, 2002.<sup>509</sup>
- Initial water quality standards were approved by EPA on April 22, 2003.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on July 23, 2002.

#### Statements of cultural or spiritual significance of water resources

- The purposes of these water quality standards are: to restore, maintain and protect the chemical, physical, biological, and cultural integrity of the surface waters of the

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<sup>505</sup> Spokane Tribe, Surface Water Quality Standards, Section 2. Resolution 2010-173. February 25, 2010. Available at <https://www.epa.gov/sites/production/files/2014-12/documents/spokane-tribe-wqs.pdf>.

<sup>506</sup> *Id.*

<sup>507</sup> *Id.*

<sup>508</sup> *Id.*

<sup>509</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-spokane-tribe-indians>

Spokane Indian Reservation; to promote the health, safety, welfare, and economic well-being of the Spokane Tribe, its people, and all the residents of the Spokane Indian Reservation; to achieve a level of water quality that provides for the protection and propagation of fish and wildlife, for recreation in and on the water, and for all existing and designated uses of the water; to promote the holistic watershed approach to management of the Reservation's water; and, to provide for protection of threatened and endangered species.<sup>510</sup>

- In the tribe's water quality standards, they have established a designated use for "cultural water use," which means the use of waters to support and maintain the way of life of the Spokane Tribal People, including, but not limited to: use for instream flow, habitat for fisheries and wildlife, and preservation of habitat for berries, roots, medicines and other vegetation significant to the values of the Spokane Tribal People.<sup>511</sup>

#### Other Novel Protections

- The tribe has established water quality standards for wetlands: (1) All wetlands within the reservation which are not constructed or engineered shall be subject to the Narrative Criteria (Section 5) and Toxic Pollutants Criteria (Section 6) provisions of this chapter. (2) Water quality in wetlands shall be maintained at naturally occurring levels: within the natural range of variation for the individual wetland. (3) Physical and biological characteristics shall be maintained and protected by: (a) Maintaining hydrological conditions, including hydroperiod, hydrodynamics, and natural water temperature variations; (b) Maintaining vegetation; and, the natural hydrophytic (c) Maintaining substrate characteristics necessary to support existing and designated uses. (4) Wetlands shall not be used in lieu of stormwater treatment, except as specified by number (7) below. Stormwater shall be treated before discharge to a wetland. (5) Point and nonpoint sources of pollution shall not cause destruction or impairment of wetlands except where authorized under Section 404 of the CWA. (6) Wetlands shall not be used as repositories or treatment systems for wastes from human sources, except as specified by number (7) below. (7) Wetlands intentionally created from non-wetland sites or by enhancing naturally-occurring wetlands for the sole purpose of wastewater or stormwater treatment (constructed or engineered wetlands) are not considered "surface waters of the tribe" and are not subject to the provisions of this section.<sup>512</sup>

## MMMMMM. Stockbridge Munsee Community

#### Definition of "waters of the tribe"

- "Waters of the Reservation" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this federal Indian reservation or any portion thereof, except that bodies of water confined to and

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<sup>510</sup> Spokane Tribe, Surface Water Quality Standards, Section 1.

<sup>511</sup> *Id.* at Section 2.

<sup>512</sup> *Id.* at Section 12.

retained within the limits of private property which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be “waters of the reservation” under this definition.<sup>513</sup>

#### Other Definitions

- “Pollutant” means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, forestry, municipal, or agricultural waste.<sup>514</sup>
- “Permit” means a permit issued under this article.<sup>515</sup>

#### 402-like and 404-like Ordinance

- (A) No person shall discharge any pollutant into any reservation water from a point source without first having applied for, nor after December 31, 1988, without having obtained a permit from the Division for such discharge. Each application for a permit duly filed under the federal Clean Water Act shall be deemed to be a permit application filed under this Article, and each permit issued pursuant to the Federal Act shall be deemed to be a temporary permit issued under this Article which shall expire when the federal permit expires. (B) The Tribe shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer permits for the discharge of pollutants into reservation waters. Such administration shall be in accordance with the provisions of this Article and regulations, if any, promulgated by the Tribe. (C) The Tribe shall promulgate such regulations as may be necessary for the orderly and effective administration of permits for the discharge of pollutants.  
...<sup>516</sup>
- General Provisions:
  - Streambed Alteration. (A) Alteration work shall not be permitted within the high water mark of any stream without receiving a permit from the Tribal Council. ... (B) There shall be no heavy equipment allowed within the confines of any stream. In-stream work shall be completed with equipment situated out of the stream channel.<sup>517</sup>
  - Lakeshore Management. (A) A permit is required by any person who proposes to do any work which will alter or diminish the course, current, or cross sectional area of a lake or its lakeshore. Without limitation, the following activities are, when conducted below mean annual high water elevation, examples of work for which a permit is required. Construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning; filling; constructing breakwaters or pilings, wharves, and docks.<sup>518</sup>
  - Obstructions to Fish Passage. (A) No object may be built in or across a stream that will block or inhibit the free passage of fish past that point. (B) Any person proposing such work must submit a written project proposal to be

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<sup>513</sup> Stockbridge-Munsee Tribal Law Water Pollution Control, Section 34.2(B). Available at: <https://www.mohican.com/mt-content/uploads/2015/11/ch-34-water-pollution-control.pdf>.

<sup>514</sup> *Id.* at Section 34.2(E).

<sup>515</sup> *Id.* at Section 34.2(G).

<sup>516</sup> *Id.* at 34.24.

<sup>517</sup> *Id.* at Section 34.39.

<sup>518</sup> *Id.* at Section 34.41.

reviewed by the Tribal Council in conjunction with the U.S. Fish and Wildlife Service, Bureau of Indian Affairs, or other appropriate parties at a public meeting. If approval is received, and a permit granted, permit conditions must be adhered to which will facilitate the passage of fish.<sup>519</sup>

- Forestry. (A) Effective December 31, 1988, forest logging shall be prohibited within an area within ten (10) chains (660 feet) of the bank of any reservation stream determined by the Tribe to have the potential to support a population of fishes or which serves as a spawning ground for the same. (B) Logging roads shall be prohibited within the area described in subsection (A) except for permitted activities under subsection (C).<sup>520</sup>
- Oil & Gas Recovery Activities, Surface Mining. (A) Effective December 31, 1988, oil and gas exploration and recovery activities (underground injection is prohibited) and surface mining activities shall be prohibited within an area 1,000 feet from the banks of any reservation stream or lake determined by the Tribe to have the potential to support a population of fishes of which serves as a spawning ground for the same. (B) Any person seeking to engage in such activities covered under subsection (A) within one-half mile of a tribally designated stream under that subsection must submit a written project proposal to the Tribal Council for a permit to conduct such activities. The Tribal Council shall make the final decision as to whether such activities will be permitted and what conditions shall be required to preserve the species or species habitat. (C) Effective December 31, 1988, oil and gas exploration and recovery activities, and surface mining activities, which will affect reservation streams and lakes will require a tribal permit.
- Livestock. (A) Effective December 31, 1988, corrals designed and constructed for holding, loading, and unloading livestock are prohibited within an area one hundred (100) feet from the banks of any reservation stream or lake unless permitted by the Tribe under subsection (C) of this Section. (B) Effective December 31, 1988, livestock watering, feeding, and salting locations are prohibited within an area one thousand (1,000) feet from the banks of any reservation stream or lake unless permitted by the Tribe under subsection (E) of this Section. (C) Any person desiring to engage in activities covered under subsections (A) and (B) of this Section must submit in writing a project proposal to the Tribal Council. The Tribal Council shall make a final decision as to whether such activities will be permitted and what conditions will be imposed. Factors the Tribe may consider may include: (1) Fish preservation and spawning habitat preservation; and (2) Water quality protection to meet the standards of that particular watershed, as established by the stream classification system.<sup>521</sup>

## NNNNNN. Susanville Indian Rancheria

### Definition of “waters of the Rancheria”

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<sup>519</sup> *Id.* at Section 34.42.

<sup>520</sup> *Id.* at Section 34.43.

<sup>521</sup> *Id.* at Section 34.45.

- “Water or Waters” mean any water, surface or underground, located on or running through the Rancheria.<sup>522</sup>

#### Other Definitions

- “Pollutant” means any substance that will alter the quality of the waters of the Susanville Indian Rancheria.<sup>523</sup>

#### 402-like and 404-like Ordinance

- No person shall discharge any pollutant into the waters of the Susanville Indian Rancheria.<sup>524</sup>
- Any person discharging any pollutant into the waters of the Rancheria shall pay a civil fine in an amount not to exceed \$1,000 for each day in which the violation occurs.<sup>525</sup>

#### Other Novel Protections

- The tribe has a Tribal Environmental Policy Ordinance, pursuant to their gaming compact with the state of California. The ordinance establishes a uniform policy which evaluates potential off-Reservation environmental effects of any and all Projects to be commenced or continued on or after the effective date of the Compact. The goal of the environmental review process is to ensure that, when the Tribal Business Council makes a final decision as to whether, and under what conditions, to proceed with an on-Reservation Project, it is fully informed regarding the potential off-Reservation environmental effects of that Project in making that decision and in evaluating alternatives, as well as the costs and benefits of the Project and its alternatives.<sup>526</sup>

## OOOOOO. Swinomish Indian Tribal Community

#### Definition of “waters of the Reservation”

- “Reservation waters” means all surface water located within the exterior boundaries of the Swinomish Indian Reservation, including without limitation Regulated Surface Waters.<sup>527</sup>

#### Definition of “regulated surface waters”

- “Regulated Surface Waters” means all surface waters located within the exterior boundaries of the Swinomish Indian Reservation, including without limitation Padilla Bay, Padilla Bay Lagoon, Similk Bay, Turner’s Bay, Kiket Bay, Lone Tree Lagoon, Lone Tree Creek, Skagit Bay, Skagit River- North Fork, Snee-Oosh Creek,

<sup>522</sup> Susanville Indian Rancheria, Discharge of Pollutants into the Waters of the Susanville Indian Rancheria Ordinance, Section III (6). Ordinance No. 2003-001. Available at: [https://www.narf.org/nill/codes/susanville/Discharge\\_of\\_Pollutants\\_Ordinance\\_2003-001\\_.pdf](https://www.narf.org/nill/codes/susanville/Discharge_of_Pollutants_Ordinance_2003-001_.pdf).

<sup>523</sup> *Id.* at Section III (3).

<sup>524</sup> *Id.* at Section II.

<sup>525</sup> *Id.* at Section IV.

<sup>526</sup> Susanville Indian Rancheria, Discharge of Pollutants into the Waters of the Susanville Indian Rancheria Ordinance, Section III (6). Ordinance No. 2000-003. Available at: [https://www.narf.org/nill/codes/susanville/Environmental\\_Policy\\_Ordinance\\_2000-003\\_.pdf](https://www.narf.org/nill/codes/susanville/Environmental_Policy_Ordinance_2000-003_.pdf).

<sup>527</sup> Swinomish Indian Tribal Community, Tribal Code, Title 19 Environmental Protection, Chapter 6, Water Quality Standards Code, Section 19-06.080 (A)(44). Ordinance No. 390. Available at: <https://www.epa.gov/sites/production/files/2017-09/documents/swinomish-wqs-title19-chapter6.pdf>.

Swinomish Channel, Munks Creek, Fornsby Creek, named and unnamed palustrine and marine wetlands, named and unnamed intermittent streams, springs and seeps, and all delineated, inventoried, undelineated, and uninventoried wetlands.<sup>528</sup>

#### Definition of “wetlands”

- “Wetlands” means any lands that fit the criteria established by the U.S. Army Corps of Engineers Wetlands Delineation Manual (1987). Generally, wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation.<sup>529,530</sup>

#### Other Definitions

- “Aquatic Lands” means all areas below the ordinary high water mark and above the extreme low water mark.<sup>531</sup>
- “Buffer” means an area around a core designated area in which development is limited by the provisions of this Chapter in order to provide protection for the natural resources and ecological functions and values of such areas.<sup>532</sup>
- “Discharge” means any addition of any pollutant to Regulated Surface Waters from any point source.<sup>533</sup>
- “Dredging” means the removal of materials, including but not limited to silt, mud, sediments and sand, from the bottom of water bodies.<sup>534</sup>
- “Pollutant” means any substance or activity which causes or contributes to, or may cause or contribute to, pollution. Pollutant includes without limitation dredge spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.<sup>535</sup>
- “Project” means a development, surface modification, or use activity or proposed development, surface modification, or use activity.<sup>536</sup>
- “Sensitive Areas” means any of the following designated areas: wetlands sensitive areas, fish and wildlife sensitive areas, geological hazard sensitive areas, and sea level rise risk sensitive areas, as defined in this Chapter.<sup>537</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on April 18, 2008.<sup>538</sup>
- Initial water quality standards were approved by EPA on August 25, 2017.

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<sup>528</sup> *Id.* at Section 19-06.080 (A)(40).

<sup>529</sup> *Id.* at Section 19-06.080 (A)(44).

<sup>530</sup> Swinomish Indian Tribal Community, Tribal Code, Title 19 Environmental Protection, Chapter 4, Shorelines and Sensitive Areas Code, Section 19-04.070 (A)(53). Available at: [http://www.swinomish-nsn.gov/media/4944/1904shorelines\\_sensitiveareas.pdf](http://www.swinomish-nsn.gov/media/4944/1904shorelines_sensitiveareas.pdf).

<sup>531</sup> *Id.* at Section 19-04.070 (A)(1).

<sup>532</sup> *Id.* at Section 19-04.070 (A)(4).

<sup>533</sup> Swinomish Water Quality Standards Code, Section 19-06.080 (A)(19).

<sup>534</sup> Swinomish Shorelines and Sensitive Areas Code, Section 19-04.070 (A)(13).

<sup>535</sup> Swinomish Water Quality Standards Code, Section 19-06.080 (A)(36).

<sup>536</sup> Swinomish Shorelines and Sensitive Areas Code, Section 19-04.070 (A)(35).

<sup>537</sup> *Id.* at Section 19-04.070 (A)(41).

<sup>538</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-swinomish-indian-tribal-community>.



#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on April 18, 2008.

#### 402-like and 404-like Ordinance

- The tribe issues Shoreline and Sensitive Area permits that have aspects similar to both CWA sections 402 and 404:
  - Permit Required. No person shall commence any project within any shoreline classification, sensitive area or associated buffer within the exterior boundaries of the Reservation without first obtaining a permit from the Department.<sup>539</sup>
  - Permit application requires “A description of the anticipated impacts the project would have on the shorelines, sensitive areas or associated buffers if approved.”<sup>540</sup>
  - Preserve, Restore, or Enhance. The Department shall require an applicant seeking a permit under the terms and provisions of this Chapter to undertake mitigation designed to preserve, restore or enhance the shoreline ecological functions and processes, and functions and values of any sensitive area affected by the project for which the applicant seeks the permit.<sup>541</sup>
  - No mining shall be permitted in any shoreline classification, sensitive area, or associated buffer.<sup>542</sup>
  - Dredging. (A) Shoreline Classification. The Department may issue a permit for dredging in a shoreline classification for the following activities: (1) Routine maintenance operations of existing structures, including but not limited to docks, piers and boat channels; or (2) New development where: (a) Reasonable alternatives to dredging are infeasible; and (b) All impacts of the dredging are mitigated. (3) Notwithstanding Section 19-04.280(A)(2), dredging shall not be permitted in Aquatic Lands along the Natural Shorelines classification, except for the express purpose of restoring natural tideland elevations and shoreline ecological functions and processes. (B) No dredging shall be permitted in any sensitive area, including named streams, except for the express purpose of restoring the functions and values of the sensitive area, as part of a restoration project approved by the Tribe.<sup>543</sup>
  - Point Source Discharge into a Landslide Hazard Sensitive Area. (A) Prohibition. Point source discharges from surface water facilities, impervious surfaces and roof drains onto or within fifty (50) feet upslope from a landslide hazard area are prohibited, subject to the exceptions in Section 19-04.510(B).<sup>544</sup>

#### Statements of cultural or spiritual significance of water resources

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<sup>539</sup> Swinomish Shorelines and Sensitive Areas Code, at Section 19-04.080 (A).

<sup>540</sup> *Id.* at Section 19-04.100(5).

<sup>541</sup> *Id.* at Section 19-04.200 (A).

<sup>542</sup> *Id.* at section 19-04.270.

<sup>543</sup> *Id.* at Section 19-04.280.

<sup>544</sup> Swinomish Shorelines and Sensitive Areas Code, Section 19-04.510.

- Reservation waters are of critical importance to the Tribe’s treaty fishery, for fish and wildlife habitat, and for cultural and aesthetic reasons.<sup>545</sup>
- The cultural and economic functions and values of sensitive areas include, but are not limited to: (1) Traditional hunting, fishing, and gathering activities; (2) Traditional spiritual practices; (3) Protection of groundwater; (4) Protection of property from potential flood damage, damage due to soil erosion or sediment deposition and damage due to geological hazards; (5) Viewing and appreciation of nature, including fish and wildlife; and (6) Solitude and contemplation.<sup>546</sup>
- Since time immemorial, fishing, including shellfish harvesting, hunting, and gathering has been a central focus of the Tribe’s culture and of critical importance to the Tribe’s economy and the economic and general well-being of its members, many of whom are dependent upon fishing, hunting, and gathering for their livelihood, for their subsistence, and for ceremonial, cultural, and spiritual purposes.<sup>547</sup>
- The Tribe and its members use Reservation waters in myriad ways, including but not limited to subsistence, ceremonial, and commercial fishing, shellfishing, hunting, and gathering; fish, shellfish, wildlife, and plant habitat and habitat restoration; Tribal governmental, industrial, commercial, and domestic uses; public water and drinking water supply; ceremonial, cultural, and spiritual uses; navigation; and recreational and aesthetic uses.<sup>548</sup>
- In the Tribe’s water quality standards, they have established a designated use for “spiritual and cultural use,” which means the use of water which is demonstrated to support and maintain the traditional way of life of the Tribe or its members including, but not limited to: contact uses; maintenance of sufficient instream flows to preserve, protect, and enhance fish populations significant to the values and culture of the Tribe or upon which the Tribe’s Treaty fisheries depend; preservation and/or restoration of habitat for fish, shellfish, and wildlife significant to the values and culture of the Tribe; preservation of habitat for berries, roots, medicines and other vegetation significant to the values and culture of the Tribe; and preservation of the natural and traditional aesthetic quality and character of the Reservation.<sup>549</sup>

#### Other Novel Protections

- The Tribe’s Shoreline and Sensitive Area permits have several novel aspects, including:
  - Setbacks, such as, residential shoreline setbacks: (1) Minimum setbacks for structures that are not water-dependent structures shall be fifty (50) feet from the ordinary high water mark....<sup>550</sup> There are setbacks for most classifications of shorelines, found throughout Title 19.
  - Wetlands buffer provisions<sup>551</sup> and stream buffer provisions.<sup>552</sup>

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<sup>545</sup> *Id.* at Section 19-04.060 (C).

<sup>546</sup> *Id.* at Section 19-04.060 (R).

<sup>547</sup> Swinomish Water Quality Standards Code, Section 19.06.030 (H).

<sup>548</sup> *Id.* at Section 19.06.030 (M).

<sup>549</sup> *Id.* at Section 19.06.080 (A)(46). *See also* Section 19.06.110 and Section 19.06.130.

<sup>550</sup> Swinomish Shorelines and Sensitive Areas Code, Section 19-04.330(D) (only portions cited).

<sup>551</sup> *Id.* at Section 19-04.410.

<sup>552</sup> *Id.* at Section 19-04.460.

- The Tribe has established water quality standards for wetlands: Water quality in wetlands within the exterior boundaries of the Reservation, including created wetlands which are not constructed wetlands, shall be protected by maintaining the hydrological conditions, hydrophytic vegetation, and substrate characteristics to support existing and designated uses. Narrative and numeric water quality criteria described in and Sections 19-06.140 through 19-06.150 of this Chapter, shall apply to this section as indicated in Tables 3 and 9.<sup>553</sup>

#### PPPPPP. Te-Moak Tribe of Western Shoshone Indians of Nevada (South Fork Band)

##### Definition of “waters of the Reservation”

- “Water or waters” shall mean any water, surface or underground, located on or running through the Reservation.<sup>554</sup>

##### Other Definitions

- “Pollutant” shall mean any substance that will alter the quality of the waters of the Reservation.<sup>555</sup>

##### 402-like and 404-like Ordinance

- Prohibited Discharges. No person shall discharge any pollutant into the waters of the Reservation.<sup>556</sup>

#### QQQQQQ. Tohono O’odham Nation

##### Definition of “waters of the Nation”

- “Waters of the Nation” means all waters which originate in or flow in, into or through the lands of the Nation, or which are stored on the land of the Nation, whether found on the surface or underground.<sup>557</sup>
- “Nation’s Water” means: (1) all waters which originate in or flow in, into or through the Nation’s Lands, or which are stored within the Nation’s Lands, whether found on the surface or underground; (2) Effluent existing on the Nation’s Lands; and (3) all Central Arizona Project water to which the Nation has a right, whether or not located within the Nation’s Lands.<sup>558</sup>

##### Other Definitions

- “Pollutant” means any substance that will degrade the quality of the waters of the Nation.<sup>559</sup>

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<sup>553</sup> Swinomish Water Quality Standards Code, Section 19-06.150 (C).

<sup>554</sup> Te-Moak Tribe of Western Shoshone Indians, South Fork Band Indian Reservation, Water Pollution Ordinance Section 2(G). Available at: <https://narf.org/nill/codes/temoakcode/98ordtm01.html>.

<sup>555</sup> *Id.* at Section 2(D).

<sup>556</sup> *Id.* at Section 3.

<sup>557</sup> Tohono O’odham Nation of Arizona, Tribal Code, Title 25 Water, Chapter 5 Water Quality, Section 5.H. Available at: <http://www.tolc-nsn.org/docs/Title25Sch5.pdf>.

<sup>558</sup> Tohono O’odham Nation of Arizona, Tribal Code, Title 25 Water, Chapter 3 Nation’s Water Code, Section 3103.

<sup>559</sup> Tohono O’odham Nation of Arizona, Water Quality Code, Section 5.F.

#### 402-like and 404-like Ordinance

- Prohibited Discharges. No person shall discharge any pollutant into the waters of the Nation which causes an imminent and substantial endangerment to the health and welfare of persons or the natural environment.<sup>560</sup>

#### Statements of cultural or spiritual significance of water resources

- All waters which originate in or flow in, into or through the Tohono O'odham Nation, or which are stored in or by the Tohono O'odham Nation, whether found on the surface or underground, are a sacred and valuable public resource of the Tohono O'odham Nation to be protected for the present and future use of the Tohono O'odham Nation as a whole.<sup>561</sup>
- The Nation's Water is a life giving public resource and is vital to the cultural, spiritual, economic, and political interests of the O'odham.<sup>562</sup>

#### Other Novel Protections

- The Nation's Water Code establishes a permitting provision for certain water uses: no Person may use any amount of the Nation's Water without first obtaining a Permit in accordance with this Code. A Permit is required to undertake any of the following activities: (1) to withdraw and use Groundwater; (2) to use, impound or store any Surface Water, including through Diversions, Charcos, or Catchments; (3) to use, impound or store underground SAWRSA Water; or (4) to dedicate or use the Nation's Water for instream flows or riparian habitat enhancement or maintenance.<sup>563</sup>

## RRRRRR. Tulalip Tribes

#### Definition of "waters of the Tribes"

- "Waters of the Tribes" means all streams, lakes, ponds, wetlands, salt waters, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon:
  - (a) The lands, wetlands and tidelands within the boundaries of the Tulalip Tribes Reservation; or
  - (b) All lands, wetlands or tidelands outside the exterior boundaries of the Reservation which are held in fee by the Tulalip Tribes or held in trust by the United States government for the benefit of the Tulalip Tribes or its individual members; and
  - (c) All lands, wetlands, or tidelands deemed Tulalip "Indian Country" as defined in 18 U.S.C. 1151.<sup>564</sup>

#### Definition of "wetlands"

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<sup>560</sup> *Id.* at Section 1.

<sup>561</sup> Tohono O'odham Nation of Arizona, Tribal Code, Title 25 Water, Chapter 3 Nation's Water Code, Preamble. Available at: <http://www.tolc-nsn.org/docs/Title25Ch3.pdf>.

<sup>562</sup> *Id.* at Section 3101 (A).

<sup>563</sup> *Id.* at Section 3305 (A).

<sup>564</sup> Tulalip Tribes, Tribal Codes, Title 8 Natural Resources, Chapter 8.20 Environmental Infractions, Section 8.20.050 (17). Available at: <https://www.codepublishing.com/WA/Tulalip/>.

- “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>565</sup>
- “Wetlands” are defined as all lands of the Tulalip Indian Reservation which are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, marine shorelines, swamps, marshes, bogs, fens, and open bodies of freshwater. The area within the berms of the closed landfill located within original Tulalip allotments T91 and T92 (now T507) is not included within the definition of “wetlands.” Wetlands on the Tulalip Reservation include all areas waterward from the wetland edge. If the vegetation has been removed, a wetland shall be determined by the presence of hydric soils. Regulated wetlands do not include artificial wetlands intentionally constructed from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, stormwater detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. Wetlands created, restored, or enhanced as part of an approved mitigation plan are considered to be regulated wetlands.<sup>566</sup>

#### Other Definitions

- “Environmentally sensitive lands” include wellhead protection zones, surface waters such as lakes, ponds, seasonal and perennial streams, springs, wetlands, and their shorelines and buffer zones; saltwater shorelines, beaches, bluffs, and all of Tulalip Bay; slopes over 15 percent or otherwise subject to slope instability, potential landslide or significant erosion; special soil types including hydric soils, soils unsuitable for building foundations and road beds, essential habitat for animals and/or plants considered culturally important to the Tribes, especially fish, eagles, hawks, falcons, owls, deer, bears, cedar and ironwood (*Holodiscus discolor*). The area within the berms of the closed landfill located within original Tulalip allotments T91 and T92 (now T507) is not included within the definition of “environmentally sensitive lands.”<sup>567</sup>
- “Pollutant” includes dredged spoil, solid waste, dirt, slurry, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive material (except those regulated under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*), heat wrecked or discarded equipment, rock, sand, cellar dirt, oil, battery acid, gasoline, paint, solvents, or any industrial, municipal, or agricultural waste.<sup>568</sup>

#### 303(c) Water Quality Standards

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<sup>565</sup> *Id.* at Section 8.20.050 (18).

<sup>566</sup> Tulalip Tribes, Tribal Codes, Title 7 Land Use, Chapter 7.110 Environmentally Sensitive Lands, Section 7.110.050 (1). Available at: <https://www.codepublishing.com/WA/Tulalip/>.

<sup>567</sup> *Id.* at Section 7.110.020.

<sup>568</sup> Tulalip Tribes, Tribal Codes, Title 8 Natural Resources, Chapter 8.20 Environmental Infractions, Section 8.20.050 (10).

- Found eligible to administer a water quality standards program (TAS) on May 9, 1996.<sup>569</sup>
- Initial water quality standards have not yet been approved by EPA.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on May 9, 1996.

#### 402-like and 404-like Ordinance

- The “Land Use” title of the tribal code contains provisions that are similar to both CWA section 402 and CWA section 404.
  - Construction practices. Erosion measures which are sufficient to prevent sediment transport to surface waters shall be employed during any construction or grading activities within the exterior boundaries of the Tulalip Indian Reservation. Where sensitive lands are impacted by proposed development, stormwater management and erosion control plans shall be required. Any practices employed shall meet the Department of Ecology’s Stormwater Management Program guidelines.<sup>570</sup>
  - Hydraulic projects (excluding bridges). No hydraulic projects, including but not limited to culverts, fill, diversions or waterwheels, shall occur in any streams, wetlands, or marshes within the exterior boundaries of the Tulalip Indian Reservation without review by the Tulalip Department of the Environment and issuance of a use and occupancy permit by the Executive Director containing conditions that minimize impacts to fish and wildlife habitat, and drainage and flood control.<sup>571</sup>
  - Bridges. Bridges on the Tulalip Indian Reservation shall be prohibited unless in conformance with the following procedures: (1) A use and occupancy permit issued by the Executive Director shall be required prior to construction of any bridge within the exterior boundaries of the Tulalip Indian Reservation. ... (3) Bridge maintenance or replacement shall occur only after written consent has been obtained from the Tulalip Tribes. [Ord. 80 § 25.5, 1-9-1995].<sup>572</sup>
  - Notwithstanding any other provision of this title, the Tribal decision-maker may prohibit, or condition, development that will have, or potentially will have, significant adverse environmental impacts, upon or to environmentally sensitive lands. Conditions may include mitigation requirements...<sup>573</sup>
- The “Environmental Infractions” chapter of the “Natural Resources” title of the tribal code also contains provisions that are similar to both CWA section 402 and CWA section 404, including:
  - Any person who excavates, dredges, fills, or alters the wetlands, tidelands, or water of the Tribes, or any water of the United States that lies within the exterior boundaries of the Reservation, without a permit, or in violation of the

<sup>569</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-tulalip-tribes-washington>.

<sup>570</sup> Tulalip Tribes, Tribal Codes, Title 7 Land Use, Chapter 7.120 General Conditions, Section 7.120.020.

<sup>571</sup> *Id.* at Section 7.120.030.

<sup>572</sup> *Id.* at Section 7.120.040 (only portions cited).

<sup>573</sup> Tulalip Tribes, Tribal Codes, Title 7 Land Use, Chapter 7.110 Environmentally Sensitive Lands, Section 7.110.0401.

terms of a permit, from the Tribes or the appropriate Federal authority has committed a Class A infraction.<sup>574</sup>

- Use of fill material. Any person who uses fill material to accommodate any development activity without certification from a licensed professional engineer that such fill will not alter or prohibit the natural flow of surface or ground water has committed a Class A infraction.<sup>575</sup>
- Earth or construction debris. Any person who allows earth or construction debris to enter water, wetlands, or tidelands of the Tribes, or any waters of the United States that lie within the exterior boundaries of the Reservation, has committed a Class B infraction.<sup>576</sup>
- Pesticide application. Any person who applies, or allows to be applied, to any lands or waters of the Tribes any rodenticide, insecticide, herbicide, fungicide, algaecide, or any other pesticides no matter the application procedure without a permit, or in violation of the terms of a permit, from the Tribes has committed a Class B infraction.<sup>577</sup>
- Application within buffer zone. Any person who applies, or allows to be applied, any rodenticide, insecticide, herbicide, fungicide, algaecide, or any other pesticides no matter the application procedure, on or within any buffer zone established by the Tribes for any stream, wetland, or marsh, has committed a Class B infraction.<sup>578</sup>
- Unlawful discharge of sewage. Any person who discharges, or allows to be discharged, sewage to the lands or waters of the Tribes, including to the ground, surface water, groundwater, or wetlands, has committed a Class A infraction.<sup>579</sup>
- Spill of hazardous substance or toxic pollutant. Unless in possession of an NPDES permit issued by the U.S. Environmental Protection Agency and certified by the Tulalip Tribes, issued pursuant to delegated Federal authority, any person engaged in any operation or activity which results in a spill, discharge, or release of any hazardous substance or toxic pollutant onto the lands or waters of the Tribes, or the waters of the United States that lie within the exterior boundaries of the Reservation, has committed a Class A infraction.<sup>580</sup>
- Spill of pollutant. Unless in possession of an NPDES permit issued by the U.S. Environmental Protection Agency and certified by the Tulalip Tribes, issued pursuant to delegated Federal authority, any person engaged in any operation or activity which results in a spill, discharge, or release of any hazardous substances or toxic pollutant onto the lands or waters of the Tribes, or the waters of the United States that lie within the exterior boundaries of the Reservation, has committed a Class B infraction.<sup>581</sup>

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<sup>574</sup> Tulalip Tribes, Tribal Codes, Title 8 Natural Resources, Chapter 8.20 Environmental Infractions, Article III Excavation/Dredging/Filling, Section 8.20.100.

<sup>575</sup> *Id.* at Section 8.20.130.

<sup>576</sup> *Id.* at Section 8.20.140.

<sup>577</sup> *Id.* at Section 8.20.220.

<sup>578</sup> *Id.* at Section 8.20.230.

<sup>579</sup> *Id.* at Section 8.20.240.

<sup>580</sup> *Id.* at Section 8.20.280.

<sup>581</sup> *Id.* at Section 8.20.290.



- Toxic or hazardous substances. Unless in possession of an NPDES permit issued by the U.S. Environmental Protection Agency and certified by the Tulalip Tribes, issued pursuant to delegated Federal authority, any person who disposes of, or causes to be released, any toxic pollutant, radioactive waste or other hazardous substances on or within any lands or waters of the Tribes, or the waters of the United States that lie within the exterior boundaries of the Reservation, has committed a Class A infraction.<sup>582</sup>
- Pollutants. Unless in possession of an NPDES permit issued by the U.S. Environmental Protection Agency and certified by the Tulalip Tribes, issued pursuant to delegated Federal authority, any person who disposes of, or causes to be released, any pollutant on or within any lands or waters of the Tribes, or the waters of the United States that lie within the exterior boundaries of the Reservation, without a permit, or in violation of the terms of a permit, from the Tribes has committed a Class B infraction.<sup>583</sup>

#### Statements of cultural or spiritual significance of water resources

- The Puget Sound shoreline is one of the most important physical features of the Tulalip Reservation to the Tulalip Tribes (“the Tribes”), its members, and non-Tribal residents. The shoreline is where many ancestral settlements and burial sites are located and where Tribal fishing, gathering, cultural activities, and recreation continue to this day.<sup>584</sup>

#### Other Novel Protections

- The tribe’s “Environmentally Sensitive Lands” chapter of the “Land Use” Title of the tribal code establishes buffers for protection of sensitive lands, including freshwater wetlands and streams, and the buffer width if depending on the class of the wetland or stream<sup>585</sup> and for cultural sensitive areas.<sup>586</sup>
- The tribe’s “Standards for Surface Mining” establishes buffer zones for surface mining activities: A minimum 200-foot buffer of vegetation is required between any mining activity and all surface waters, including streams, wetlands, lakes and marine waters.<sup>587</sup>

## SSSSSS. Turtle Mountain Band of Chippewa Indians

#### Definition of “waters of the tribe”

- “Tribal water” will mean any and all waters arising on, underlying, flowing through, located upon or bordering, otherwise occurring and contained within the Reservation, tributary or non-tributary. All waters reserved at any time to the Turtle Mountain Band of Chippewa. All Water necessary to make the land habitable and productive, all water sources within or bordering the reservation and its allotments; including any body of water that drains into waters of the Tribe, up to and including but not limited

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<sup>582</sup> *Id.* at Section 8.20.440.

<sup>583</sup> *Id.* at Section 8.20.450.

<sup>584</sup> Tulalip Tribes, Tribal Codes, Title 8 Natural Resources, Chapter 8.30 Tidelands Management Policies, Section 8.30.010 (1).

<sup>585</sup> Tulalip Tribes, Tribal Codes, Title 7 Land Use, Chapter 7.110 Environmentally Sensitive Lands, Section 7.110.070.

<sup>586</sup> *Id.* at Section 7.115.060.

<sup>587</sup> Tulalip Tribes, Tribal Codes, Title 8 Natural Resources, Chapter 8.35 Surface Mining, Section 8.35.130 (3).

to; small intermittent or ephemeral waters, those that are man-made or man-altered, and those broken by man-made or natural obstacles.<sup>588</sup>

#### 402-like and 404-like Ordinance

- Permit Required. 1. No person, organization for profit as a sole proprietorship, receiver, partnership, joint venture, trust estate, firm, unincorporated association, corporation or government, including but not limited to any part, subdivision or agency from and after the adoption of this Act, will divert or undertake any activity affecting or involving tribal water without first obtaining a permit under this Chapter. 2. Discharge, injection, or deposition of any waste, wastewater, or other contaminant into Reservation water is not permitted. 3. A permit application is required for any of the following activities: a. Diversion of water from any stream course, spring, or well; b. Change in the point of water diversion, whether of surface or groundwater; c. Change in the use of waters, the place of use, method of diversion, or season of use; d. Transfer of tribal water outside the watershed of origin; e. Alteration of any stream course or stream band for any purpose, including without limitation, road construction and repair; f. Recharge of groundwater; g. Hydropower generation; h. Storage or impoundment of water; and i. Dedication of water to in-stream flow. ... 8. The application of pesticides within 200 feet of waters of the Reservation or recharge areas of the Shell Valley aquifer.<sup>589</sup>
- Categories of Permits include: 3. Stream Zone Alteration Permit. Grants the Right to Alter the Streambed or Banks of the Reservation. The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. A stream zone Alteration permit is required for all persons engaging in activities that affect the bed or banks of Reservation streams, including, but not limited to: a. Construction of temporary diversion structures; b. Road and culvert construction and repair; c. Logging operations; and d. Other activities affecting the stability of the stream channel, provided that such permit is not required during an emergency condition declared by the Commission. 4. Discharge Permits. Permits to dispose of contaminated wastewater into the surface or ground water that exists within the scope of tribal jurisdiction will not be approved.<sup>590</sup>

#### 404-like Ordinance

- The powers granted by this section shall be exercised through ordinances which may determine, establish, regulate and restrict: 1. The areas within which agriculture, forestry, industry, mining, trades, business, and recreation may be conducted. 2. The areas in which residential uses may be regulated or prohibited. 3. The areas in and along natural watercourses, channels, streams and creeks in which trades or industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted. 4. Trailer camps, tourist camps, motels, and mobile home parks. 5. Designate certain areas, uses or purposes which may be subjected to special

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<sup>588</sup> Turtle Mountain Band of Chippewa Indians of North Dakota, Tribal Code, Title 30 Water Act, Section 30.0105 (15).

Available at: <https://tmchippewa.com/wp-content/uploads/TITLE-30-Tribal-Water-Act.pdf>.

<sup>589</sup> *Id.* at Section 30.0401.

<sup>590</sup> *Id.* at Section 30.0405 (only relevant portions cited).

regulation. 6. The location of buildings and structures that are designated for specific uses and designation of uses for which building and structures may not be used or altered. 7. The location, height, bulk, number of stories and size of buildings and other structures. 8. Location of roads and schools. 9. Building setback lines. 10. The density and distribution of population. 11. The percentage of a lot which may be occupied, size of yards, courts and other open spaces. 12. Places, structures or objects with a special character, historic interest, aesthetic interest or other significant value, historic landmarks and historic districts.<sup>591</sup>.

#### Statements of cultural or spiritual significance of water resources

- Nibi (water) is sacred and is vital to all life within the environment, including human life and especially to the lives of the Turtle Mountain Band of Chippewa Indians. Gichi Manitou, in our Creation Story, breathed life into Nibi, our water, and gave us the water spirits to guide our actions and to protect the water. Our traditional teachers reveal that the Chippewa women were given the responsibility for protecting the water. To honor that role, the women will lead water ceremonies and to promote tribal water standards outlined in the [Turtle Mountain Band of Chippewa Indians] Water Act. These guiding principals have led to the following declarations.<sup>592</sup>
- Water has cultural, spiritual, social, environmental, health, and economic values that require protection and we must guide the appropriate use and management of all resources affecting the watershed and drainage basins of the Reservation and its allotted lands.<sup>593</sup>

## TTTTTT. Twenty-Nine Palms Band of Mission Indians

#### Definition of “waters of the Tribe”

- “Waters of the Tribe” means all ponds, streams, springs, sub-surface waters, seeps, wetlands, canals, irrigation and drainage ditches, and all other surface and groundwaters which arise on, border, transverse, or underlie the Twenty-Nine Palms Reservation or are otherwise within the jurisdiction of the Tribe and which contain water at some point in the year and are connected to other waters via surface or below ground flows. Figures 1 and 2 in Appendix D illustrate the extent and location of Tribal waters and the interaction between surface water and groundwater on the Reservation.<sup>594</sup>
- “Tribal Waters” means all waters over which the Tribe has jurisdiction and that satisfy the federal definition of “waters of the U.S.” found at 40 CFR 122.2. See Section 1 – Purpose and Authority.<sup>595</sup>

#### Definition of “wetlands”

- “Wetland(s)” means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances

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<sup>591</sup> Turtle Mountain Band of Chippewa Indians of North Dakota, Tribal Code, Title 31 Zoning of Shorelands, Section 31.0602. Available at <https://tmchippewa.com/wp-content/uploads/TITLE-31-Zoning-of-Shorelands.pdf>.

<sup>592</sup> *Id.* at Section 30.0101.

<sup>593</sup> *Id.* at Section 30.0103.

<sup>594</sup> Twenty-Nine Palms Band of Mission Indians, Tribal Water Quality Standards, Section 1.5.92. Version 1.0, July 16, 2015. Available at <https://www.epa.gov/sites/production/files/2015-09/documents/twenty-nine-palms-tribe.pdf>.

<sup>595</sup> *Id.* at Section 1.5.83.

does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, marshes, bogs, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include wetlands intentionally constructed from non-wetland sites outside waters of the Reservation.<sup>596</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on October 26, 2006.<sup>597</sup>
- Initial water quality standards were approved by EPA on August 20, 2015.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on October 26, 2006.

#### Other Novel Protections

- The tribe’s general water quality standards apply to wetlands.<sup>598</sup>

## UUUUUU. Ute Mountain Ute Tribe

#### Definition of “waters of the tribe”

- “Tribal Waters (or Water Bodies)” means all waters over which the Tribe has jurisdiction and that satisfy the federal definition of “waters of the U.S.” found at 40 CFR 122.2. See Section 1, Purpose and Authority.<sup>599</sup>

#### Definition of “wetlands”

- “Wetland(s)” means an area that is inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are considered Tribal Waters and generally include swamps, bogs, marshes, and similar areas.<sup>600</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on September 26, 2005.<sup>601</sup>
- Initial water quality standards were approved by EPA on October 19, 2015.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on September 26, 2005.

#### Statements of cultural or spiritual significance of water resources

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<sup>596</sup> *Id.* at Section 1.5.95.

<sup>597</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-twenty-nine-palms-band-mission-indians>.

<sup>598</sup> Twenty-Nine Palms Band of Mission Indians, Tribal Water Quality Standards, Section 1.6.1.

<sup>599</sup> Ute Mountain Ute Tribe, Water Quality Standards for Surface Waters, Section 3. January 20, 2011. Resolution # 2011-010. Available at: <https://www.epa.gov/sites/production/files/2014-12/documents/utewqs.pdf>.

<sup>600</sup> *Id.*

<sup>601</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-ute-mountain-ute-tribe>.

- In the tribe’s water quality standards, they have established a designated use for “Tribal cultural use,” which means waters that are used for Tribal ceremonial purposes and traditional activities. Examples of water contact that may be associated with Tribal use include ingestion and body contact. The preservation of the quality of these waters is important in the preservation of Ute Culture.<sup>602</sup>

#### Other Novel Protections

- The tribe has established water quality standards for wetlands: The Tribe recognizes that the natural water quality of wetlands may differ from that of associated streams. Existing water quality, uses and functions of wetlands will be protected.<sup>603</sup>

### VVVVVV. Walker River Paiute Tribe

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on February 29, 2016.<sup>604</sup>
- Initial water quality standards have not been approved by EPA.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on February 29, 2016.

### WWWWWW. White Mountain Apache Tribe

#### Definition of “waters of the tribe”

- “Waters” and “Waters of the White Mountain Apache Tribe” means all lakes, rivers, ponds, streams, springs, sub-surface waters, seeps, wetlands, canals, irrigation and drainage ditches, and all other surface and ground waters which arise on, border, transverse or underlie the Fort Apache Reservation or are otherwise within the jurisdiction of the White Mountain Apache Tribe and which contain water at some point in the year and are connected to other waters via surface or below ground flows.<sup>605</sup>

#### Definition of “wetland”

- “Wetland” means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, marshes, bogs, and similar areas. This includes wetlands created, restored or enhanced as part of a mitigation procedure. This does not include constructed wetlands intentionally constructed from non-wetland sites outside waters of the Fort Apache Indian Reservation.<sup>606</sup>

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<sup>602</sup> Ute Mountain Ute Tribe, Water Quality Standards for Surface Waters, Section 11.

<sup>603</sup> *Id.* at Section 8.

<sup>604</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-walker-river-paiute-tribe>

<sup>605</sup> White Mountain Apache Tribe, Environmental Code, Section 3.8(A)(78). Available at: <http://www.wmat.nsn.us/Legal/Environmental%20Code%20--%20051815%20IN%20EFFECT.pdf>.

<sup>606</sup> *Id.* at Section 3.8(A)(81).

#### Other Definitions

- “Pollutant” means see “water contaminant.”<sup>607</sup>
- “Water contaminant” means any substance that alters the physical, chemical, or biological qualities of water.<sup>608</sup>

#### 303(c) Water Quality Standards

- Found eligible to administer a water quality standards program (TAS) on February 3<sup>rd</sup>, 1997.<sup>609</sup>
- Initial water quality standards were approved by EPA on September 27<sup>th</sup>, 2001.

#### 401 Certification

- Found eligible to administer a water quality certification program (TAS) on February 3<sup>rd</sup>, 1997.

#### 402-like Ordinance

- The Environmental Planning Office shall implement and enforce this Ordinance, including but not limited to the water quality standards and anti-degradation policy, by establishing and maintaining controls on the discharge of pollutants to surface waters. The White Mountain Apache Tribe may adopt additional regulations and Ordinances for enforcement of the Water Quality Standards. Unless and until the White Mountain Apache Tribe asserts primary responsibility for NPDES permitting, the EPA shall work together with the Tribe to develop, issue and enforce permits for dischargers within the Reservation in accordance with standards set forth in this Ordinance.<sup>610</sup>

#### Statements of cultural or spiritual significance of water resources

- Tú, water, is one of the gifts of the Creator that is essential to the survival of the White Mountain Apache People. Water is inseparable from our land and culture. Our homeland has always been blessed with a great number of springs, streams, and meadows to sustain a diverse and vibrant community of plants, wildlife, and people. We have always sought to protect our precious natural resources and special places. We recognize that we must assert full authority over all the lands and waters of our Reservation to protect them from abuse. The standards for water quality in this Tribal Ordinance will guide the protection of our waters for present and future generations.<sup>611</sup>
- The Clean Water Act also states that “it is the national goal that, wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” Irrigation, primary contact, domestic water supply (including municipal and industrial), groundwater recharge, plant gathering, fish culture, and respect for culturally or religiously significant areas are other beneficial uses of the Tribal waters intended to be protected by this Ordinance. Any contamination that may result from such uses shall not lower the quality of the water below what is needed for life,

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<sup>607</sup> *Id.* at Section 3.8(A)(63).

<sup>608</sup> *Id.* at Section 3.8(A)(79).

<sup>609</sup> <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-white-mountain-apache-tribe>

<sup>610</sup> White Mountain Apache Tribe, Environmental Code, Chapter 3 Water Quality Protection, Section 3.3(A)(1).

<sup>611</sup> *Id.* at Preamble.



including human recreation and protection and propagation of fish and wildlife that depend on Tribal waters.<sup>612</sup>

- The Tribal Council may designate a water body as an Outstanding Tribal Resource Water due to cultural value, the presence of archeological or historic sites, ecological or biological features, scenic beauty, or other exceptional qualities of importance to the Tribe.<sup>613</sup>
- In the tribe’s water quality standards, they have established a designated use for “Ceremonial Primary Contact.” The standards for primary contact waters set forth in subparagraph J shall apply to protect ceremonial uses.<sup>614</sup>
- In the tribe’s water quality standards, they have established a designated use for “Gathering of Medicinal or Otherwise Culturally Significant Plants.” The standards for Secondary Contact Recreation shall be applied to protect this use. In addition, native riparian and wetland plants shall not be removed without Tribal review and authorization, unless they are being gathered by individual Tribal members for private use.<sup>615</sup>
- In the tribe’s water quality standards, they have established a designated use for “Cultural Significance.” Actions that disrespect waters of religious significance are prohibited. Potential violations of this standard will be reviewed by the Cultural Advisory Committee. Any actions that may affect these waters must be reviewed and approved under the Tribal Plan and Project Review Process.<sup>616</sup>

#### Other Novel Protections

- The tribe’s general water quality standards apply to wetlands.<sup>617</sup>

## XXXXXX. Winnebago Tribe of Nebraska

### 303(c) Water Quality Standards

- Application under review; notice issued November 19, 2019. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.<sup>618</sup>

### 401 Certification

- Application under review; notice issued November 19, 2019. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

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<sup>612</sup> *Id.* at Section 3.1 (A).

<sup>613</sup> *Id.* at Section 3.2 (D) (3)

<sup>614</sup> *Id.* at Section 3.6 (L).

<sup>615</sup> *Id.* at Section 3.6 (M).

<sup>616</sup> *Id.* at Section 3.6 (N).

<sup>617</sup> *Id.* at Section 3.1 (C).

<sup>618</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.



## YYYYYY. Yerington Paiute Tribe

### 303(c) Water Quality Standards

- Application under review; notice issued October 24, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.<sup>619</sup>

### 401 Certification

- Application under review; notice issued October 24, 2018. EPA provides notice to appropriate governmental entities and the local public when a tribal application for TAS is ready for review. The notice generally provides 30 days to receive comments on the tribe’s assertion of authority.

## ZZZZZZ. Yurok Tribe

### Definition of “waters of the tribe”

- “Waters of the Reservation” or “YIR waters” means any water, surface or underground, contained within, flowing through or bordering upon the Yurok Indian Reservation [(YIR)] or any portion thereof.<sup>620</sup>

### Other Definitions

- “Bodies of water” means any surface or groundwater located on or draining into the YIR including: wetlands, ponds, lakes, streams, rivers, creeks, drainage ditches, culverts including seasonal streams and wetlands.<sup>621</sup>
- “Pollutant” means any substance that will alter the quality of the waters of the Reservation.<sup>622</sup>

### 402-like and 404-like Ordinance

- The purpose of this Ordinance is to exercise comprehensive Tribal regulatory authority over all surface and groundwater matters, and to protect fundamental Tribal cultural, ceremonial, religious, fisheries, subsistence, seasonal residential, public health and safety, and water quality issues by ensuring adequate drinking water, protecting beneficial uses, prohibiting all point source discharges and restricting non-point source discharges of pollutants within the exterior boundaries of the YIR.<sup>623</sup>
- Unless otherwise dictated by enacting Tribal Resolution, the provisions of this Ordinance shall apply to all existing and proposed point source and non-point source pollution discharges into surface or ground waters, and to all activities which have the potential to affect cultural, ceremonial, religious, fisheries, subsistence, seasonal residential, public health and safety, water quality, and other fundamental interests of the Tribe.<sup>624</sup>

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<sup>619</sup> <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

<sup>620</sup> Yurok Tribe, Water Pollution Control Ordinance, Section 2. Available at: <http://www.yuroktribe.org/government/councilsupport/documents/FinalYurokWaterPollutionControlOrdinance120705.pdf>.

<sup>621</sup> *Id.*

<sup>622</sup> *Id.*

<sup>623</sup> *Id.* at Section 1.3.

<sup>624</sup> *Id.* at Section 1.4.

- Permits Required. Any person who intends to alter or enlarge an existing activity described in section 1.4 of this Ordinance, or to commence a new such activity, or who intends to cause or direct such alteration, enlargement or commencement of such activities, shall prior to alteration, or enlargement or commencement of such activities, apply for and obtain a valid permit from [the Yurok Tribe Environmental Program]. Information specifically regarding the permit process for actions involving wetland may be found in the Wetland Conservation Plan.<sup>625</sup>

Statements of cultural or spiritual significance of water resources

- Since time immemorial, the Klamath River, its tributary streams, its estuary, the streambeds thereof, the riparian areas adjacent thereto and the Pacific Ocean, have been natural resources of the most profound significance to the Tribe. Yurok people have always used these resources for cultural, ceremonial, religious, fishery, subsistence, residential and other purposes fundamental to the Tribe’s way of life.<sup>626</sup>
- The people of the Yurok Tribe have a primary interest in the protection, control, and conservation of the water resources which flow into and through the YIR, and the quality of such waters must be protected to insure the health, economic, aesthetic, and cultural well-being of the Yurok People.<sup>627</sup>

Other Novel Protections

- The tribal code establishes wellhead protection areas, including a Wellhead Protection Area Use Permit.<sup>628</sup>

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<sup>625</sup> *Id.* at Section 4.1.

<sup>626</sup> *Id.* at Section 1.2.1.

<sup>627</sup> *Id.* at Section 1.2.2.

<sup>628</sup> *Id.* at Section 5.

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26 U.S.C. section 9509(c)(1)(A)

33 U.S.C. 1344(e)

33 U.S.C. section 104

33 U.S.C. section 106

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33 U.S.C. section 1311(b)(1)(C)

33 U.S.C. section 1329(i)

33 U.S.C. section 1342(l)

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33 U.S.C. section 1362(7)

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