Utah Water Quality Task Force Meeting
Minutes

December 4, 2014 9:30am-12:00am
Utah Division of Water Quality
195 N. 1950 W.
Salt Lake City, Utah

Attendance

Name	Representing
Jim Bowcutt	DEQ/DWQ
Gertrudys Adkins	Utah Division of Water Rights
Craig Miller	Utah Water Resources
Casey Burns	NRCS
Jason Roper	NRCS
Carl Adams	DWQ
Rhonda Miller	USU Extension
Ben Radcliff	USBR
Mark Muir	USFS
Nancy Mesner	USU
Norm Evenstad	NRCS
Scott Daly	DEQ/DWQ
Craig Walker	Utah division of Wildlife
Thayne Mickelson	UDAF
Jay Olsen	UDAF
W.D. Robinson	Epic Engineering

Carl Adams- Welcome and Introductions

Jim Bowcutt- Water Quality Task Force Charter and Utah NPS MOU (See attached presentation)

- The Task Force Charter explains what the responsibilities of the Task Force are, who should be involved, and identifies subcommittees

- The NPS MOU is an agreement between all land management agencies in the state. It says how NPS pollution will be managed on those lands.

- All participating agencies on the Task Force should be included on the Utah NPS MOU. There is more to the NPS program than just land management.

- Jim will send out the current MOU and Charter to the Task Force so that they can give feedback on everything that needs to be updated, and new sections can be added as needed.

- A draft revised Charter and MOU will be presented to the Task Force at the next meeting. The Task Force Charter could possibly be adopted at the next meeting, but the MOU will take more time to finalize since it will require signatures from each agency on the MOU, and those agencies will have to review them separately before it can be adopted.

Carl Adams- Utah Lake Algal Bloom (See presentation)

- There is a seasonal variation in algal species, generally from diatoms and green algae species in spring and early summer to blue green algae, or cyanobacteria, in late summer to the early fall.

- Lindon Harbor had the largest concentration of blue green algae in the lake.

- The predominant cyanotoxin found in the lake was microcystin. All other types of algal toxin were very low to non-detect.

- The conditions for algae blooms were conducive this year due to the high temperatures and calm conditions.

- The State needs to develop a means to identify toxic algal blooms before they become lethal.

Casey Burns- NRCS Normal Farming Exemptions for 404 permits (See presentation)

- A 404 permit is needed anytime work is done at or below the highwater mark of a waterbody.

- There are currently 404 exemptions for normal farming practices.

- This is not an exemption just for NRCS projects, but can be used by anyone.

- It is a concern that landowners could potentially get confused and get in trouble when deciding if a project warrants an exemption when doing a project themselves. It would be best to work with a certified planner to avoid this.

- The landowner needs to talk to the NRCS before the project is implemented. They will not be able to certify a project that is already installed.

- If a landowner does not have a contract with the NRCS they will be lower priority customers, and it may be more difficult to receive technical assistance.

- Even if a practice is exempt it may be a good idea for the landowner to contact the Army Corps. To make them aware of what was going on anyway.

Mark Muir- U.S. Forest Service BMP Manual (See presentation)

- A copy of the BMP manual is available online in PDF format if anyone is interested. http://www.fs.fed.us/biology/resources/pubs/watershed/FS_National_Core_BMPs_April2012.pdf

- The Forest Service BMP manual was developed so that the Forest Service would have a common list of BMPs that are being implemented across the U.S.

- One of the main reasons that the BMP program came about has to do with the lawsuit that was being filed on logging operations and the classification of logging roads as a potential point source in Oregon.

- Water quality monitoring data is currently available in a database instead of just hard copies. However, the database is only accessible at Forest Service offices. If someone is interested in obtaining that data they should work directly with the Forest Service.

Carl Adams- Updates to Watershed Protection Section and 303(d) List (See Presentation)

- There are several new hires in the division of Water Quality, including new managers in various sections.

- The structure of DWQ has also changed, and the Watershed Protection, Assessment, and Monitoring Sections are now in the same Brach, managed by Erica Gaddis.

- Waterbodies that are currently listed on the 303(d) list will be removed from the list if they are able to meet standards for two listing cycles.

- More delistings are anticipated in the next few years.

Final Items

- The next meeting will be held on February 12th at the Department of Agriculture and Food.
- Possible topics include:
    - A report from the I&E subcommittee
    - Monitoring Strategies
    - MOU/Water Quality Task Force Charter
    - Bear River Development Project
    - NRCS and their use of drones

WATER QUALITY TASK FORCE CHARTER AND UTAH NPS MOU

Jim Bowcutt
NPS Program Coordinator
Water Quality Task Force December 5th, 2014

Water Quality Task Force Charter

- Last Updated in 2010
- Defines the responsibilities of the Task Force
- What should the products of the Task Force be?
- Identifies who should be at the table.
- Identifies subcommittees of the Task Force
  - Monitoring
  - Outreach
- Is adopted by the Task Force at a scheduled meeting

Utah NPS MOU

- Current Parties of the MOU:
  - Utah Division of Water Quality
  - Utah Department of Agriculture and Food
  - Utah Division of Forestry, Fire, and State Lands
  - U.S. Department of Agriculture, Forest Service
  - U.S. Department of the Interior
  - Bureau of Land Management
  - National Park Service

Utah NPS MOU

Purpose:

- To better coordinate agency activities
- Identifies what each entity will do to help work towards reducing NPS in the State.
- Has signatory lines for each agency that is currently mentioned in the MOU.

Moving Forward

- Are there any other agencies that should be included in either the Task Force, or NPS MOU?
- What parts of the Charter or MOU are occurring, and What could we do better at?
- Are there any additional goals, or deliverables that should be included in these documents?

Homework!!!

Charter

- All members of the Task Force should review the Charter and give any feed back that they may have.
- What can we do better?
- What else can we do?

MOU

- Each Agency should review their section of the MOU.
- What is still relevant?
- What additional action items are needed?

Timeline

- January 31st all comments and updates to Jim Bowcutt
- February Task Force Meeting- Review the Charter and MOU. Adopt Charter.
- March- finalize MOU, and obtain signatures

October 2014 Cyanobacteria Bloom on Utah Lake

Carl Adams

Utah Department of Environmental Quality

Timeline of Events

Oct 4
- Dog 1 dies within hours of swimming in Utah Lake (west side)
- Veterinarian concludes death was caused by ingestion of blue-green algae
- Not reported to DWQ until October 20

Oct 5
- Dog 2 dies within hours of playing in Utah Lake near Lindon Boat Harbor
- Lots of "algae" in water
- Dog vomited bright green "algae"

Oct 6
- Bloom reported to DWQ
- First samples collected
- Microcystin levels above health thresholds used by other states (6 – 10 µg/L)
- Dog sent to USU for necropsy

Oct 7
- UDWR confirms approximately 100 waterfowl dead, mostly in Provo Bay
- No liver damage observed at gross necropsy
- No toxins detected in birds

Oct 8
- DWQ second sampling event in open water and Jordan River
- Toxin levels are dropping

Oct 9
- Utah County Health Department issues swimming warning
- UDWR advises anglers and hunters to avoid algal scums and not eat dead fish/birds

Oct 10
- Samples collected at shoreline and in Jordan River
- Shoreline samples showed very high levels of microcystin (730 µg/L)

Oct 22
- Samples collected at shoreline, open water, and Jordan River
- All results non-detect or below WHO guidelines

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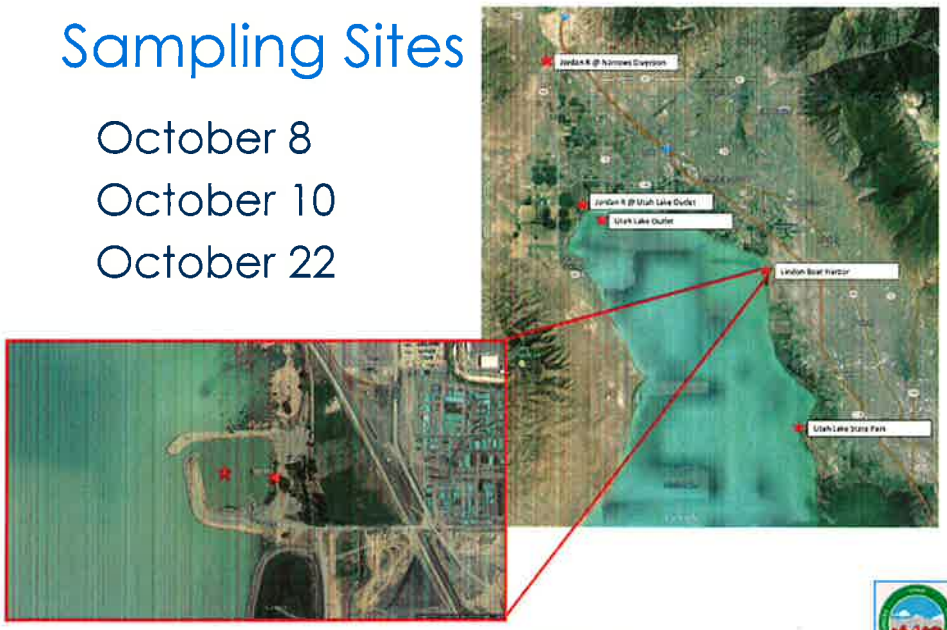
October 6 Sampling Sites

Sampling Date: 10/6

Slide 3

Sampling Sites

October 8
October 10
October 22



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Timeline in Pictures

Lindon Harbor – Oct 6

Provo Bay – Oct 8

Lindon Harbor – Oct 10

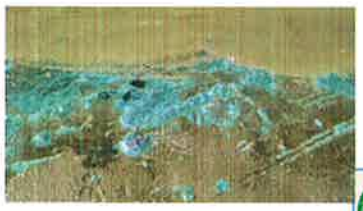
Utah Lake, west side – Oct 12

Lindon Harbor – Oct 22

Slide 5

Toxin-producing Cyanobacteria Observed 10/6/14

- *Dolichospermum solichospermum*
- *Dolichospermum sigmoideum*
- *Aphanizomenon flos-aquae**
- *Microcystis* species



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Cyanotoxin Results and Advisory Levels

Toxin	Toxic Effects	Range Measured in Utah Lake	Recreation Advisory Levels (other states)
Microcystins (several types)	Liver toxin	Non-detect to 11.2 µg/l Shoreline sample from bloom: 730 µg/l	6 – 10 µg/l
Cylindrospermopsin	Liver toxin	Non-detect to 0.22 µg/l	10 µg/l
Anatoxin-a	Neurotoxin	Non-detect to 0.1 µg/l	1 – 20 µg/l
Saxitoxin	Neurotoxin	Non-detect	0.6 - 100 ug/

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Necropsy Results

- Death attributed to Acute cardiovascular collapse (shock)
  - No "algae" or cyanotoxins (Anatoxin-a and Microcystins) observed in dog's stomach
  - No visible liver damage
  - Heart abnormalities observed (right ventricular hypertrophy)

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Conditions for Blue-green Algal Blooms

- Nutrients (phosphorus)
- Warm temperatures
- Clear water
- Stagnant conditions
- Toxic species present

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Lessons Learned

Toxin analyses could be expensive ($8,750 for 18 samples)

- Methods not available for all toxins
- Representativeness of results

Interagency coordination

- Rapid response needed

Establish and share a protocol

- Utah Lake example: Utah Valley Health Dept, State Parks, Division of Wildlife, Utah Lake Commission, Drinking water and secondary water providers

Visual observations of a bloom, such as shoreline scum, appear to be reasonably reliable to identify that a potential hazard exists

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Steps Forward

Developing Guidance and Protocols with the Utah Department of Health for responding to Harmful Algae Blooms

- Coordination Processes
  - Local Health Departments are the lead
  - Who else should be notified?
- Criteria for Advisories/Warnings
  - Tiered approach depending on available data
  - Establish threshold Levels for issuing and removing advisories
- Public Notifications

EXTRA SLIDE(S)

Risk

We need to know 2 things:

- The dose that won't cause health effects (for instance, an EPA "reference dose")
- The exposure dose

If the exposure dose is less than the "reference dose", we conclude that health effects are unlikely

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Dose that won't cause health effects

WHO Tolerable daily intake (TDI): the amount of a potentially harmful substance that can be consumed daily over a lifetime with negligible risk of adverse health effects

EPA Reference Dose (RfD): An estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

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Reference Dose and Tolerable Daily Intake for Microcystins

- EPA (2006) RfD = 0.003 µg/kg/day
  - 10x for extrapolating from mice to people
  - 10x for human variability (sensitive populations)
  - 10x because very few studies available
  - Total uncertainty factor of 1,000 (3,000 is the maximum EPA will use)
- WHO (1999) TDI = 0.04 µg/kg/day
  - Total uncertainty factor of 1,000 for the same reasons as EPA
  - Used different tox. study than EPA

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The other information needed to evaluate risk: Exposure

- Three major exposure routes:
  - Inhalation
  - Ingestion
  - Dermal

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Estimating Exposure Example

	Drinking Water Adult	Swimming Adult	Swimming Child
Intake Rate (ml/day)	2,000	100	150
Exposure Frequency (days/yr)	365	90	90
Exposure Duration (yr)	30	30	6
Body Weight (kg)	80	80	15

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To estimate risk, we need to quantify exposure

$$Average\ Daily\ Dose = \frac{C \times IR \times ED \times EF}{AT\ x\ BW}$$

Where: C = microcystin concentration
IR = intake rate
ED = exposure duration
EF = exposure frequency
AT = averaging time
BW = body weight

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Interpretive Rule
Clean Water Act
"Normal Farming" Exemptions

Casey Burns

Wetlands and NRCS

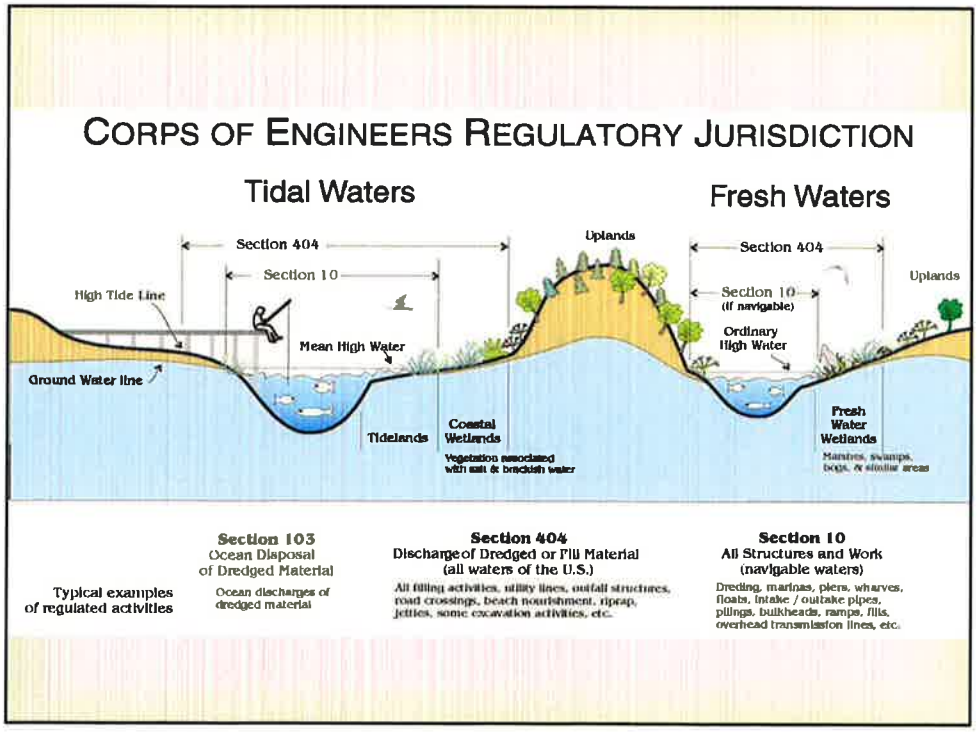
At NRCS, we must look at wetlands in 3 ways:

1. Food Security Act
2. Clean Water Act
3. Executive Order 11990

Wetlands and NRCS

At NRCS, we must look at wetlands in 3 ways:

1. Food Security Act
2. **Clean Water Act**
3. Executive Order 11990

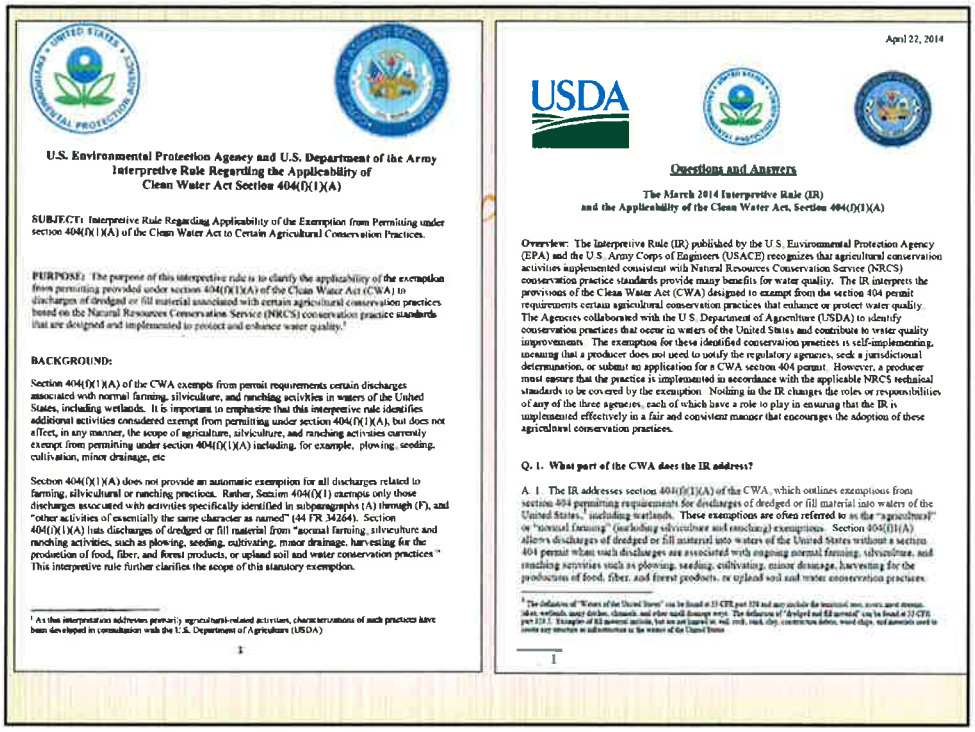


404 Exempt Activities

- **Normal Farming Activities**
- Farm/Stock Pond Construction/Maintenance
- Farm roads
- Maintenance Activities (Emergency Reconstruction)
- Irrigation related facilities

Normal Farming Activities Interpretive Rule

- Effective April 3, 2014
  - In Federal Register, comments submitted on June 5, 2014
- Clarifies/adds to Section 404(f)(1)(A) of the CWA
- Signed by COE and EPA



U.S. Environmental Protection Agency and U.S. Department of the Army
Interpretive Rule Regarding the Applicability of
Clean Water Act Section 404(f)(1)(A)

SUBJECT: Interpretive Rule Regarding Applicability of the Exemption from Permitting under section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices.

PURPOSE: The purpose of this interpretive rule is to clarify the applicability of the exemption from permitting provided under section 404(f)(1)(A) of the Clean Water Act (CWA) to discharges of dredged or fill material associated with certain agricultural conservation practices based on the Natural Resources Conservation Service (NRCS) conservation practice standards that are designed and implemented to protect and enhance water quality.[1]

BACKGROUND:

Section 404(f)(1)(A) of the CWA exempts from permit requirements certain discharges associated with normal farming, silviculture, and ranching activities in waters of the United States, including wetlands. It is important to emphasize that this interpretive rule identifies additional activities considered exempt from permitting under section 404(f)(1)(A), but does not affect, in any manner, the scope of agriculture, silviculture, and ranching activities currently exempt from permitting under section 404(f)(1)(A) including, for example, plowing, seeding, cultivation, minor drainage, etc

Section 404(f)(1)(A) does not provide an automatic exemption for all discharges related to farming, silvicultural or ranching practices. Rather, Section 404(f)(1) exempts only those discharges associated with activities specifically identified in subparagraphs (A) through (F), and "other activities of essentially the same character as named" (44 FR 34264). Section 404(f)(1)(A) lists discharges of dredged or fill material from "normal farming, silviculture and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices." This interpretive rule further clarifies the scope of this statutory exemption.

[1] As this interpretation addresses primarily agricultural-related activities, characterizations of such practices have been developed in consultation with the U.S. Department of Agriculture (USDA)

1

April 22, 2014

USDA

Questions and Answers

The March 2014 Interpretive Rule (IR)
and the Applicability of the Clean Water Act, Section 404(f)(1)(A)

Overview: The Interpretive Rule (IR) published by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) recognizes that agricultural conservation activities implemented consistent with Natural Resources Conservation Service (NRCS) conservation practice standards provide many benefits for water quality. The IR interprets the provisions of the Clean Water Act (CWA) designed to exempt from the section 404 permit requirements certain agricultural conservation practices that enhance or protect water quality. The Agencies collaborated with the U.S. Department of Agriculture (USDA) to identify conservation practices that occur in waters of the United States and contribute to water quality improvements. The exemption for these identified conservation practices is self-implementing, meaning that a producer does not need to notify the regulatory agencies, seek a jurisdictional determination, or submit an application for a CWA section 404 permit. However, a producer must ensure that the practice is implemented in accordance with the applicable NRCS technical standards to be covered by the exemption. Nothing in the IR changes the roles or responsibilities of any of the three agencies, each of which have a role to play in ensuring that the IR is implemented effectively in a fair and consistent manner that encourages the adoption of these agricultural conservation practices.

Q. 1. What part of the CWA does the IR address?

A. 1. The IR addresses section 404(f)(1)(A) of the CWA, which outlines exemptions from section 404 permitting requirements for discharges of dredged or fill material into waters of the United States,[1] including wetlands. These exemptions are often referred to as the "agricultural" or "normal farming" (including silviculture and ranching) exemptions. Section 404(f)(1)(A) allows discharges of dredged or fill material into waters of the United States without a section 404 permit when such discharges are associated with ongoing normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.

[1] The definition of "Waters of the United States" can be found at 33 CFR part 328 and may include the territorial seas, rivers, most streams, lakes, wetlands, many ditches, channels, and other small drainage ways. The definition of "dredged and fill material" can be found at 33 CFR part 323.2. Examples of fill material include, but are not limited to, soil, rock, sand, clay, construction debris, wood chips, and materials used to create any structure or infrastructure in the waters of the United States

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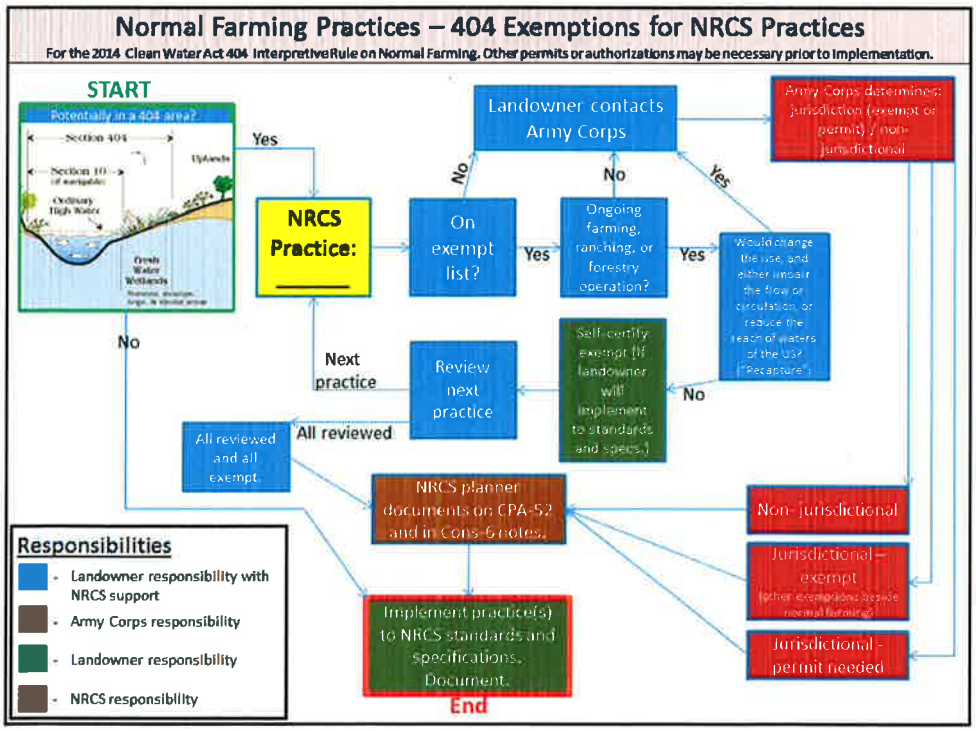


404(f)(1)(A) of the CWA

- Exempts "normal farming" activities from the section 404 and associated 401 permit requirements
  - The new IR clarifies that certain agricultural conservation practices that enhance or protect water quality are also exempt.
  - COE/EPA use the NRCS Conservation Practice Standards

Clarification of "normal farming"

- Includes 56 NRCS conservation practice standards (annual review needed)

Exempt Practices

Practice Code / Practice Name / Most Recent Version

314 Brush Management Sep-09
315 Herbaceous Weed Control Apr-10
320 Irrigation Canal or Lateral Sep-10
326 Clearing and Snagging Jul-10
327 Conservation Cover Sep-10
338 Prescribed Burning Sep-10
342 Critical Area Planting Dec-13
353 Monitoring Well Sep-10
380 Windbreak/Shelterbelt Establishment May-11
382 Fence Apr-13
383 Fuel Break Apr-05
386 Field Border Dec-13
388 Irrigation Field Ditch Apr-11
390 Riparian Herbaceous Cover Sep-10
391 Riparian Forest buffer Jul-10
393 Filter Strip Dec- 13
394 Firebreak Sep-10
395 Stream Habitat Improvement and Management Sep-10
396 Aquatic Organism passage Apr-11
398 Fish Raceway or Tank Sep-09
399 Fishpond Management Sep-11
400 Bivalve Aquaculture Gear and Biofouling Control Apr-11
412 Grassed Waterway*
422 Hedgerow Planting Sep-10
423 Hillside Ditch May-08
453 Land Reclamation, Landslide Treatment Feb-05
455 Land Reclamation, Toxic Discharge Control May-05
460 Land Clearing Sep-11
484 Mulching May-11
490 Tree/Shrub Site Preparation Jan-06
500 Obstruction Removal Jan-10
511 Forage Harvest Management Apr-10
512 Forage and Biomass Planting Jan-10
528 Prescribed Grazing Sep-10
533 Pumping Plant May-11
543 Land Reclamation, Abandoned Mined Land Aug-06
544 Land Reclamation, Currently Mined Land Aug-06
548 Grazing Land Mechanical Treatment Sep-10 *
550 Range Planting Apr-10
568 Trails and Walkways Jan-10
575 Animal Trails and Walkways Apr-10
578 Stream Crossing Sep-11
587 Structure for Water Control Apr-10
601 Vegetative Barrier Jan-10
612 Tree/Shrub Establishment May-11
643 Restoration & Management of Rare & Declining Habitats Sep-10
644 Wetland Wildlife Habitat Management Sep-10
646 Shallow Water Development and Management Sep-10
647 Early Successional Habitat Development / Management Sep-10
650 Windbreak/Shelterbelt Renovation Jul-10
654 Road/Trail/Landing Closure and Treatment Nov-08
655 Forest Trails and Landings Sep-11
657 Wetland Restoration Sep-10
659 Wetland Enhancement Sep-10
660 Tree/Shrub Pruning Jan-06
666 Forest Stand Improvement May-11
* - see exceptions

All other NRCS practices and landowner activities are not exempt without further assessment.

All "normal farming" exemptions

- Apply only to discharges of dredged or fill material into waters of the United States

All "normal farming" exemptions:

- Are self-implementing
  - Producers/land owners ***do not need notification, verification or documentation*** from the COE or EPA to ensure the activity is exempt
- Apply to producers involved in NRCS planning/programs and
- Apply to producers NOT involved in NRCS planning/programs

Interpretive Rule

- DOES NOT change roles/responsibilities
- NRCS NOT authorized to administer the CWA
  - Should NOT "confirm or verify" practice standard meets the exemption of producers not receiving TA or FA
  - Should NOT conduct field visits of producers not receiving TA or FA
  - **NRCS role stays the same** – providing voluntary assistance to agricultural producers, using State-modified Conservation Practice Standards, specs, and the Conservation Planning Process

Interpretive Rule

- **DOES NOT change existing exemptions**, which include ongoing normal farming, silviculture, and ranching activities such as:
  - plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, upland soil and water conservation practices, maintenance of levees and drainage ditches, construction of farm and stock ponds, irrigation ditches, and farm and forest roads

"Recapture" still applies

- For all exemptions, if the activity would:
  - change the use, and either
    - impair the flow or circulation, or
    - reduce the reach of waters of the United States,
  - it would <u>not be exempt</u> and would, therefore, require a section 404 permit prior to construction or any work in waters.

  - This provision is in section 404(f)(2) of the CWA and is often referred to as the "recapture" clause.

- Up to the landowner to determine. May be difficult for them.

If There is a Contract

- Provide IR information to the landowner
- Be available to answer questions and facilitate
- Provide conservation plan with standards and specs
- Document communication and conclusions on CPA-52 and in Cons-6 notes
- Certify installation

If There is CTA

- Provide conservation plan with standards and specs
- Provide IR info
- If there is an NRCS folder, document in Cons-6
- Encourage landowner to document

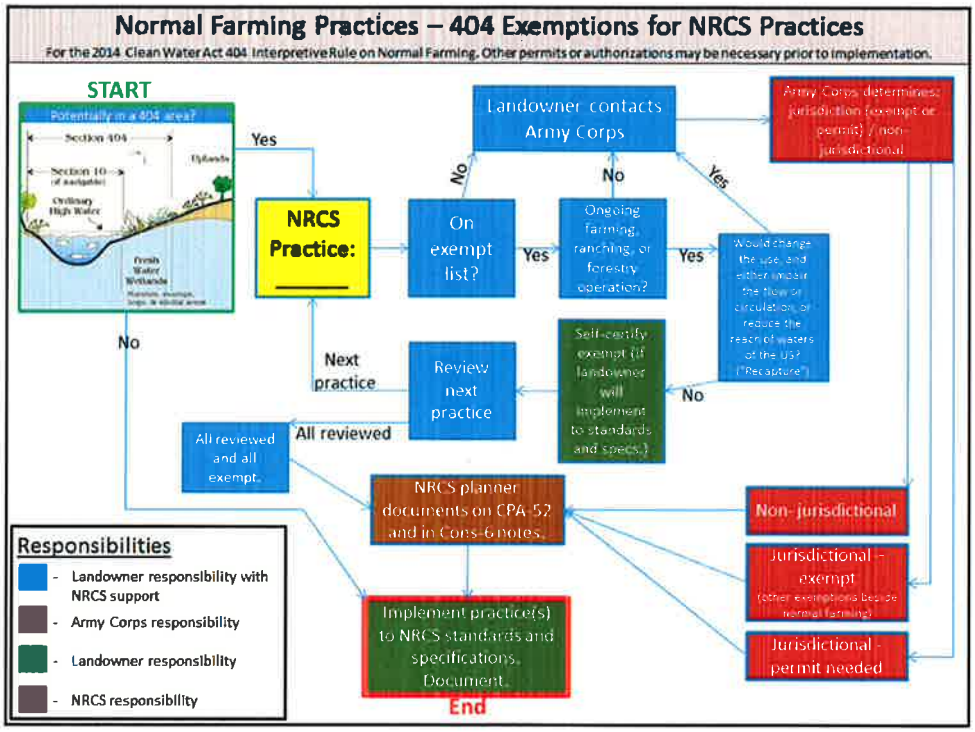
If There is Nothing

- And landowner asks us:
  - Provide standards or point to eFOTG
  - Provide IR info
  - Encourage landowner to document
- If the landowner doesn't ask, they are still able to proceed on their own if they follow the process

NRCS Documentation

- In Cons-6 notes.
- On CPA-52:

Special Environmental Concerns: Environmental Laws, Executive Orders, policies, etc.						
In Section "G" complete and attach Environmental Procedures Guide Sheets for documentation as applicable. Items with a "•" may require a federal permit or consultation/coordination between the lead agency and another government agency. In these cases, effects may need to be determined in consultation with another agency. Planning and practice implementation may proceed for practices not involved in consultation.						
G. Special Environmental Concerns (Document existing/ benchmark conditions)	J. Impacts to Special Environmental Concerns					
	No Action		*Alternative 1*		*Alternative 2*	
	Document all impacts (Attach Guide Sheets as applicable)	√ if needs further action	Document all impacts (Attach Guide Sheets as applicable)	√ if needs further action	Document all impacts (Attach Guide Sheets as applicable)	√ if needs further action
•Clean Air Act *Guide Sheet FS1 FS-2*		☐		☐		☐
•Clean Water Act / Waters of the U.S. *Guide Sheet Fact Sheet*		☐		☐		☐



EPA, Corps May Withdraw Interpretive Rule On Permit-Exempt Conservation Practices

Thursday, December 4, 2014

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By Amena H. Saiyid

Dec. 3 — The Environmental Protection Agency and the U.S. Army Corps of Engineers haven't ruled out the option of withdrawing a non-binding interpretive rule that outlines agricultural conservation practices that would be exempt from Clean Water Act dredge-and-fill permits due to the confusion it has caused among farmers and ranchers, an Agriculture Department official said Dec. 3.

"It is one of the options that is being considered," Jason Weller, chief of the Natural Resources Conservation Service, told Sen. Pat Roberts (R-Kan.), the ranking member of the Senate Agriculture, Nutrition and Forestry Committee.

The committee convened the hearing to examine voluntary approaches by farmers and ranchers to improve water and soil quality.

In summary

- No change in CWA roles and responsibilities
- Clarifies existing exemptions
- Exemptions are self-implementing - no notification, verification, or documentation needed

Permits Needed from the Corps

General Permits (GP) – 45-60 days
- Most common are the Nationwide Permits and GP 40

Nationwide Permit (NWP) – 45-60 days
- For minimal adverse effects to aquatic environment
- Up to ½ acre impact or 300 linear feet of stream
- Activity specific
  - NWP 13 (Bank Stabilization), NWP 14 (Road Crossings), NWP 12 (Utility Lines), NWP 29 (Residential Development)

Standard/Individual Permits (IP) – 120 days
- Activities with more than minimal impacts

NWP Applicable to NRCS Programs

- NWP 3 – Maintenance
- NWP 12 – Utility Lines
- NWP 13 – Bank Stabilization
- NWP 18 – Minor Discharges
- NWP 23 – Cat EX (coming soon?)
- NWP 27 – Wetland Restoration
- NWP 37 – EWP
- NWP 40 – Agricultural Activities

Applicable NWP cont'n

- NWP 41 – Reshaping Ditches
- NWP 45 – Repair of Uplands
- NWP 46 - Discharges in Ditches

Other Corps Requirements

- Threatened/Endangered Species Assessment
- Historic Properties Assessment
  - GP/NWP need info upfront
  - IP need info eventually to process permit

Coordination with Army Corps

- Discussions with Army Corps staff on coordination
- AWS will put together information packets that will usually meet Corps needs
- Landowners still must be the POC with the Corps
- NRCS staff can facilitate
- Projects should not proceed until permitting is complete. Document in Cons-6 and CPA-52

The following language is included in all USDA wetland determinations:

"This certified wetland determination/delineation has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985. This determination/delineation may not be valid for identifying the extent of the COE's Clean Water Act jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the COE prior to starting the work."

Wetland Executive Order 11990

- "Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands…"
- "…shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds:
  - (1) that there is no practicable alternative to such construction, and
  - (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use."

Wetland Executive Order 11990

- No Certified Wetland Determination needed
- Bottom line is to avoid or minimize harm to all wetlands
- Document on "wetland" section of CPA-52 (Special Env. Concerns) and on the wetlands guidesheet.
- Include conservation measures on CPA-52 and spec sheets

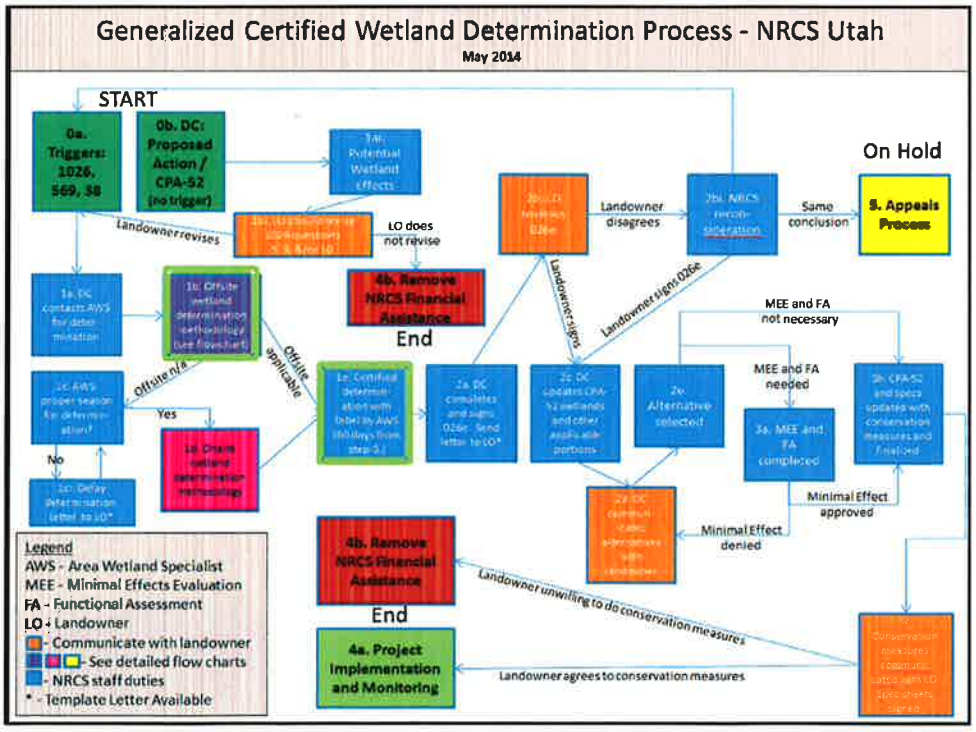
NRCS Wetland Roles By Program Guidelines - Utah 11/6/2014

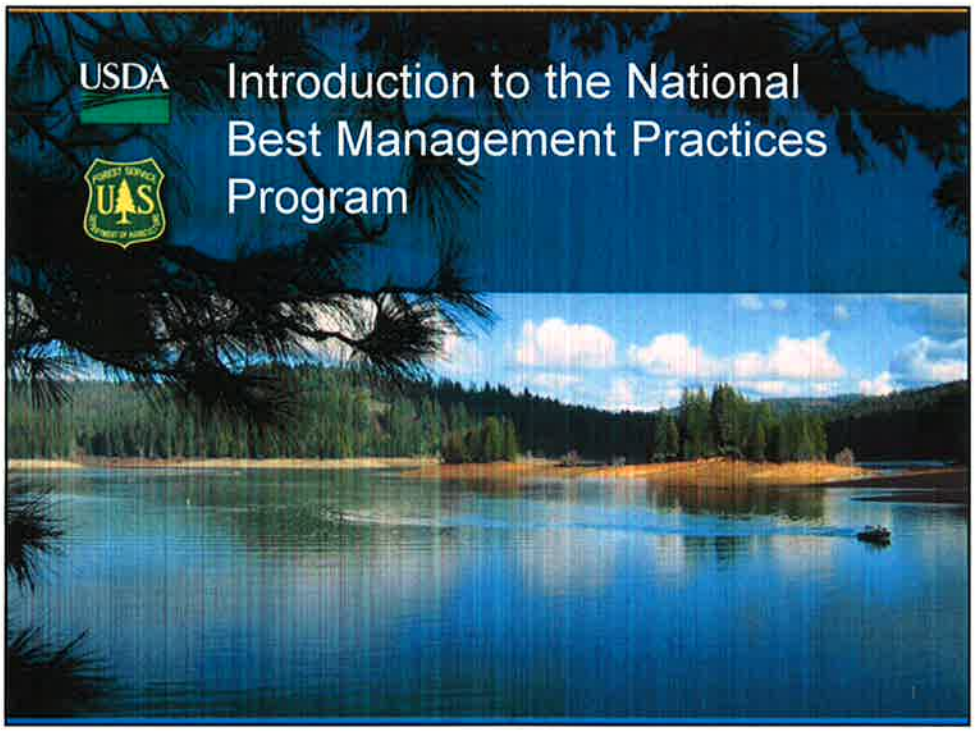
PROGRAM	NRCS RESPONSIBILITY AND ROLE^			
	Food Security Act	Clean Water Act (technical)*	Clean Water Act (point of contact)	Wetland Protection EO 11990
Farm Bill (EQIP, CSP, ACEP)	NRCS Planner and Area Wetland Specialist (AWS) will play an active role in providing information and technical determinations to ensure participants are in compliance with FSA. See FSA flow chart.	NRCS staff shall ensure compliance with CWA prior to project implementation. Information on CWA IR can be passed on to the landowner, but it is their responsibility to judge if covered by IR. See IR	The landowner is the POC, but NRCS may facilitate the process.	Take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the beneficial functions of wetlands when "providing federally undertaken, financed or assisted construction and improvements." If approved by the appropriate line officer and necessary as partof the planning process, AWS may provide assistance, including wetland determinations, on CTA plans. However, CPA-026e should not be completed and no labels should be applied. Determination should only consist of a map and the determination forms (optional). The landowner may use the information for CWA purposes.
CTA - Mitigation	If a landowner is in non-compliance with FSA, NRCS staff (including AWS) shall use the NRCS Utah Functional Assessment to determine lost functions and calculate a mitigation ratio. Conservation planning for the mitigation	Mitigation plan for FSA can be designed to meet CWA as well.	Landowner.	
CTA - General	Assistance may be provided that is consistant with the guidance in the EO 11990 column.	Information on CWA IR can be passed on to the landowner, but it is their responsibility to make determinations. See IR	Landowner.	
EWP	n/a	EWP and AWS staff may provide technical assistance as time allows. Work may fall under NWPs.	Project sponsors or their consultants shall be the POC. AWS may provide support to EWP staff and project sponsors with CWA compliance.	
Dam Rehab	*What if there is a nexus with debris basins, O&M, or downstream?*		*TBD after discussion with Dam Rehab staff.*	
WRP/WRE (Landowner Contract)	n/a	The WRP planner may request assistance from the AWS. Work should primarily fall under NWP 27.	The landowner is the POC, but NRCS may facilitate the process.	
WRP/WRE (Federal Contract) & FPE			NRCS may play an active role, but the landowner is still the POC.	

* - For all projects with an NRCS federal nexus, NRCS staff shall ensure CWA compliance prior to implementation. In most cases, NRCS staff time spent on CWA should be to pass along wetland technical information to the landowner gathered to support FSA and EO 11990. NRCS staff do not make CWA jurisdictional determinations or provide CWA delineations.

^ - NRCS should not provide determinations or delineations on Federal land.


Thanks! Questions?


Generalized Certified Wetland Determination Process - NRCS Utah
May 2014
START
0a. Triggers: 1026, 569, 38
0b. DC: Proposed Action / CPA-52 (no trigger)
1a: Potential Wetland effects
On Hold
Landowner disagrees
Same conclusion
5. Appeals Process
Landowner revises
LO does not revise
4b. Remove NRCS Financial Assistance
End
1a. DC contacts AWS for determination
1b. Offsite wetland determination methodology (see flowchart)
Offsite n/a
Offsite applicable
Landowner signs
Landowner signs D26e
MEE and FA not necessary
MEE and FA needed
1c. AWS: proper season for determination?
Yes
No
1d. Delay determination (letter to LO*)
1e. Onsite wetland determination methodology
1e. Certified determination with label by AWS (60 days from step 2.)
2a. DC completes and signs D26e. Send letter to LO*
2c. DC updates CPA-52 wetlands and other applicable portions
2v. Alternative selected
3a. MEE and FA completed
3b. CPA-52 and specs updated with conservation measures and finalized
Minimal Effect approved
Minimal Effect denied
4b. Remove NRCS Financial Assistance
End
Landowner unwilling to do conservation measures
4a. Project Implementation and Monitoring
Landowner agrees to conservation measures
Legend
AWS - Area Wetland Specialist
MEE - Minimal Effects Evaluation
FA - Functional Assessment
LO - Landowner
- Communicate with landowner
- See detailed flow charts
- NRCS staff duties
* - Template Letter Available



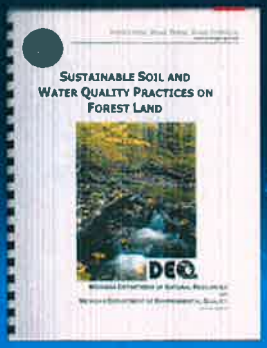
The National BMP Program

Overview

- What is the National BMP Program?
- Why are we doing this now?
- What are the Program elements?

The National BMP Program

- Best Management Practices (BMPs)
  - Non-Point Source (NPS) Control
  - Required by EPA
  - Administered by States



The National BMP Program

The National BMP Program

Questions:

- What is the National BMP Program?
- Why are we doing this now?
- What are the Program elements?

The National BMP Program

Several Reasons …

- Central to the Agency mission
- OMB PART (Bad Grades)
- MOUs with EPA/States
- High Levels of Public Interest
  - New Planning Rule – Comments
  - Appeals & Litigation
  - High-Profile Court Cases

Early History

- 2007
  - OMB PART
  - 3-prong Strategy to Address Deficiencies
    - Watershed Condition Framework
    - BMP program
    - Aquatic condition inventory
  - MOU with EPA
  - Water becomes an emphasis area

2012 Planning Rule

- Section 219.8(A)(4)
  - The Chief shall establish requirements for national best management practices for water quality in the Forest Service Directives System.
  - Plan components must ensure implementation of these practices.

The National BMP Program

NEDC vs. Brown (2010)

- Annulled the "Silvicultural Exemption"

- Original CWA Regulations:
  - Point Sources – NPDES Permits
  - Non- Point Sources – Exempt (BMPs)

The National BMP Program

NEDC vs. Brown (2010)

- 2010 - 9th Circuit rules on NEDC vs. Brown
- 2012 - Appealed to the Supreme Court

Conflict: Executive / Judicial Branches

The National BMP Program

The Situation ...

- USDA / USFS / DOI didn't want permits
- DOJ didn't want the SC to decide case

The Solution ...

- EPA had to clarify CWA Regulations
  - USFS National BMP Program
  - Implementation / Effectiveness Monitoring
  - "Silvicultural Exemption" Preserved

The National BMP Program

Questions:

- What is the National BMP Program?
- Why are we doing this now?
- What are the Program elements?

The National BMP Program

4 Elements

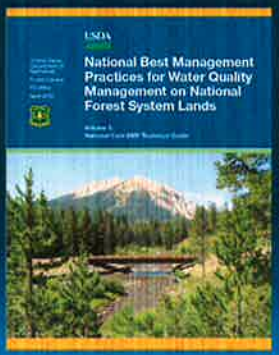
- 1) Core BMP's (practices).
- 2) Technical Guide - Monitoring Protocols
  - Implementation
  - Effectiveness
- 3) Revised Directives Forest Service Manual 2532 and Handbook 2509.19
- 4) National Database / Reporting

National BMP Program

Core BMPs (Practices) Vol 1.

11 Resource Categories

- Aquatic Ecosystems
- Chemical Use
- Facilities / Special Uses
- Fire Management
- Minerals Management



- Rangeland Management
- Recreation Management
- Roads Management
- Vegetation Management
- Water Use

Planning

Core BMPs Vol 1.

- Volume 1 (published and on the web)
  - General and non-prescriptive (what to do)
  - Requires site-specific prescriptions at project level that conform with (how to do)
    - State requirements/programs
    - Regional guidance (FSH 2509.22)
    - Land management plans
    - Project-specific design criteria
    - Other (BLM Gold Book, State DOT handbooks, etc.)

The National BMP Program

Core BMPs (Practices) Vol 1.

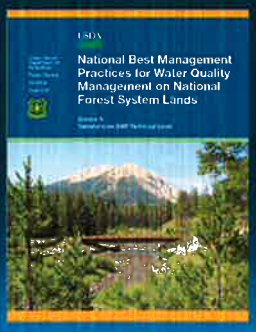
- **Best Management Practices (BMPs)**

What they are …

Venue for Tracking / Monitoring BMPs on USFS Land

They provide for:

- Consistent Reporting
- Consistent Monitoring
- "Cover the Bases"



What they are not …

Prescriptions \ Technical Specifications

They <u>don't</u> provide:

- Water bar spacing
- Buffer Strip Width
- … etc. etc.

Monitoring

- Volume 2 (to be published but draft on web)
  - Monitoring (42 Protocols)
    - Implementation: Did we do what we said we would do?
    - Effectiveness: Did our work produce desired results?
  - IDT review of implementation and effectiveness
  - Forms and protocols
  - Random design

FSM 2532 Update

- Policy statement - Establish and apply the National Best Management Practices (BMPs) Program to all land and resource management activities as the method for control of non-point sources of water pollution to achieve established State or national water quality goals.

FSH 2509.19

- Provide a consistent national approach for non-point source pollution management on National Forest System (NFS) lands.
- Incorporate adaptive management principles to manage water quality on NFS lands.
  - Continuous Cycle of Monitoring, Documenting, and Improving Management

Data Management

- National data management system
  - Interim Access database
  - Will allow for queries at all levels
  - Rule sets for summarizing each evaluation form
    - Implementation rating
      - Fully, mostly, marginally, not successful or no BMPs used
    - Effectiveness rating
      - Effective, moderately effective, or not effective

Funding

- Use and monitoring of BMPs has been agency policy for decades
  - Cost is the responsibility of the program carrying out the activity
  - Should not be new implementation costs as national core BMPs are non-prescriptive
  - Forests will need to adjust existing monitoring to account for biennial evaluation targets

The National BMP Program

Forest Management / BMPs

Public Concern

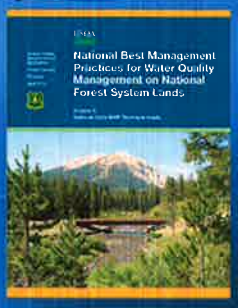
9th Circuit Court

NEDC v. Brown

Litigation

U.S. Supreme Court

- Consistency
- Comparability
- Accountability



Brenda Halter-Glenn
Forest Supervisor – Superior NF
"A *Perfect* Storm"

Final Thought

Smokey says …

Final Thought

Smokey says …

Discussion

303(d) For You and Me

Carl Adams
carladams@utah.gov

Utah Department of Environmental Quality

Assignments

1) Measure water quality in all streams and lakes throughout the State

2) Assess and report on all the data collected every two years

3) Restore waters not meeting standards / Establish Total Maximum Daily Loads

What is the 303(d) list?

CHAPTER 5
303(D) LIST OF RIVERS AND STREAMS

2014 Integrated Report

UTAH DIVISION OF WATER QUALITY

CHAPTER 6
303(D) LIST OF LAKES AND RESERVOIRS

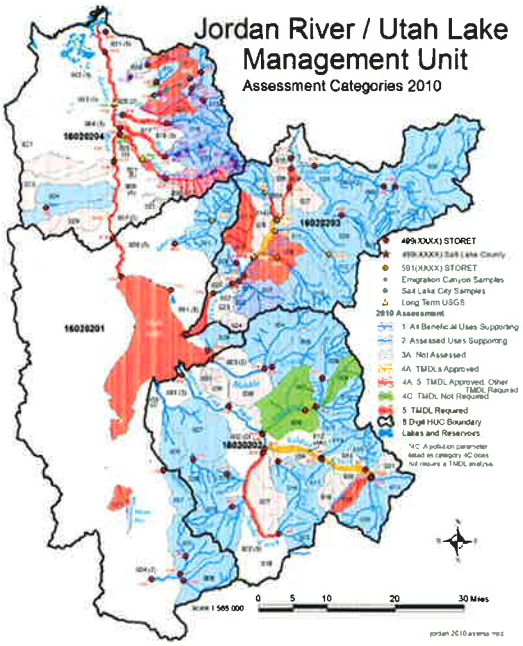
2014 Integrated Report

UTAH DIVISION OF WATER QUALITY

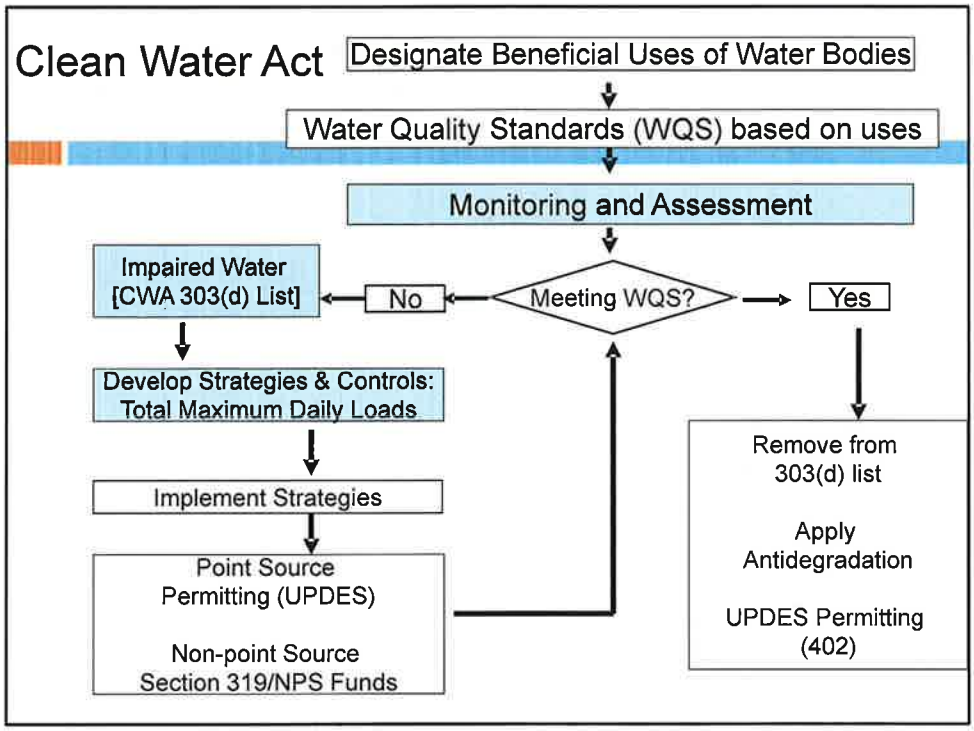
Slide 3

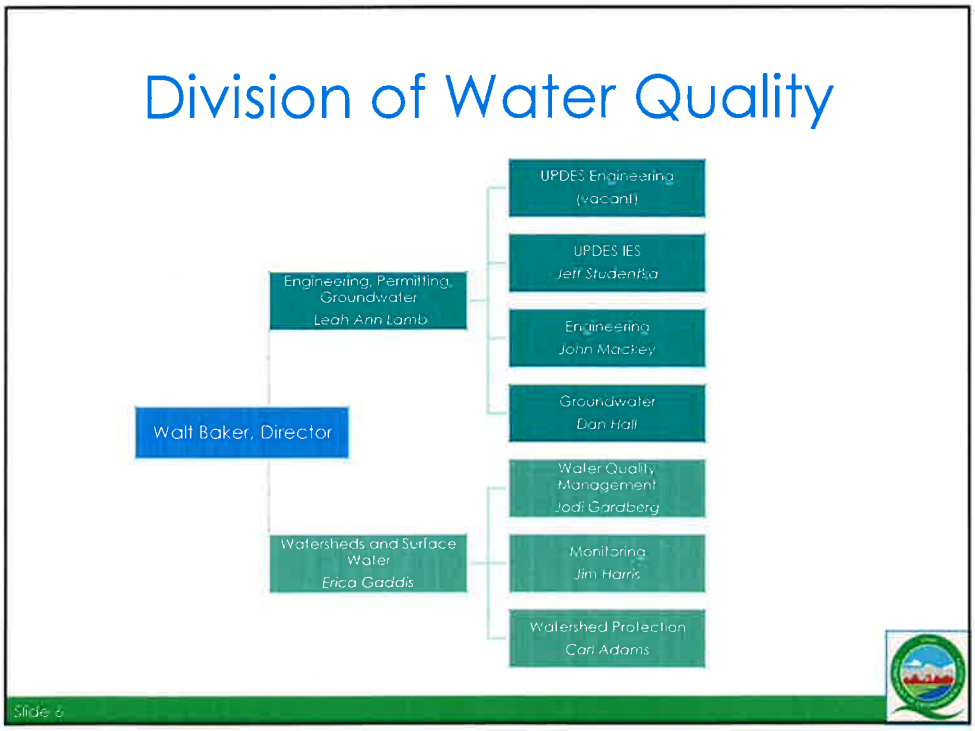
Jordan River / Utah Lake Management Unit

Assessment Categories 2010



Slide 4


Clean Water Act
Designate Beneficial Uses of Water Bodies
Water Quality Standards (WQS) based on uses
Monitoring and Assessment
Meeting WQS?
No
Yes
Impaired Water [CWA 303(d) List]
Develop Strategies & Controls: Total Maximum Daily Loads
Implement Strategies
Point Source Permitting (UPDES)
Non-point Source Section 319/NPS Funds
Remove from 303(d) list
Apply Antidegradation
UPDES Permitting (402)


Division of Water Quality
Walt Baker, Director
Engineering, Permitting, Groundwater
Leah Ann Lamb
Watersheds and Surface Water
Erica Gaddis
UPDES Engineering
(vacant)
UPDES IES
Jeff Studenka
Engineering
John Mackey
Groundwater
Dan Hall
Water Quality Management
Jodi Gardberg
Monitoring
Jim Harris
Watershed Protection
Cari Adams
Slide 6

Vision Statement

The CWA Section 303(d) program provides effective **integration** for implementation of activities to **restore** and **protect** the nation's aquatic resources, where the nation's waters have been **assessed**, restoration and protection objectives have been systematically **prioritized**, and TMDLs and **alternative** approaches are being **adaptively** implemented to achieve water quality goals with the **collaboration** of States, federal agencies, tribes, stakeholders, and the public.

Slide 7

The Big Picture

Restore and maintain the chemical, physical, and biological integrity of Utah's waters

Slide 8

Vision Key Points

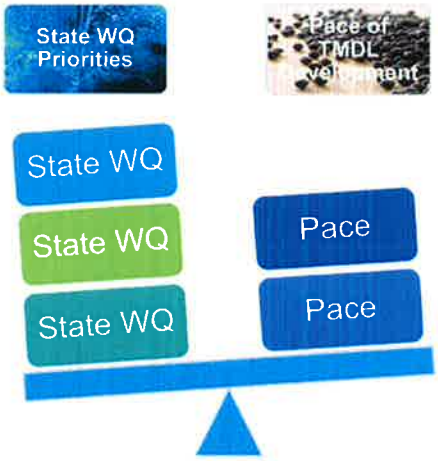
- Progress over Pace
- Probability of Successful Implementation
- Diverse Restoration Approaches
- State Assumption of Long Range Priorities
- Do Less with Less but Do What's Most Important

Slide 9

Where We've Been

Slide 10

Where We're Going



Slide 11

An Opportunity

- Focus on State Water Quality Priorities
- Emphasize Results: Restoration & Protection
- Embrace Adaptability & Flexibility
- Extend the Planning Horizon
- Pursue Efficiencies while Recognizing Uncertainties
- A Better Way Without Changing CWA
- EPA has Bought In

Slide 12

Components

Prioritization
Alternatives
Engagement
Integration
Assessment
Protection

Slide 13

Prioritization

Many options for how to set priorities

- Pollutant
- Beneficial Use
- Water body
- Public or agency interest
- Implementation and recovery potential
- Other

Slide 14

Alternatives

"Use the tool appropriate for the job"

Potential options include:

- Direct to Implementation
- TMDL surrogates
- Cooperative Agreements

Slide 15

Engagement

Provide an open forum for dialog among:

- DEQ
- Other agency partners
- Public
- Stakeholders
- Regulated Community

Slide 16

Integration

Engage partners to achieve WQ Goals

- 319 / NPS Program
- Other CWA Programs
- Federal & State Programs
- Non-governmental interests

Slide 17

Assessment

Priorities supported by appropriate data and modeling

- TMDL or alternative development
- Re-evaluate after implementation

Slide 18

Protection

Vision endorses protection

- Anti-degradation Reviews
- 401 Certifications
- Invest in protecting supporting waters
- "Informational" TMDLs / Watershed plans

Vision Review

- Better focus on Utah's priorities
- Makes 303(d) universe smaller and doable
- Allows new tools for an uncertain world
- Extends timeframe, recognizes reality
- Identifies milestones and timelines
- Provides more accountability

Schedule

Water Quality Task Force – Dec. 4th

Water Quality Board – Dec. 16th

Emails / phone calls – The earlier the better

carladams@utah.gov

801-536-4338