

- b. Ephemeral waters that receive a continuous discharge that enhances habitat by causing a perennial flow shall be protected in the same manner as other perennial waters. In these cases, designated uses and criteria shall be evaluated for revision to a more stringent standard, unless a Use Attainability Analysis has been performed and approved by the Tribe and the U.S. Environmental Protection Agency, Region VIII.

10. Variances from Water Quality Criteria

Tribal waters where it is not feasible to achieve these water quality standards may be granted a temporary variance from specific criteria in these standards. Such a variance temporarily modifies the water quality standard for a stream or stream segment and includes an expiration date, a water quality goal, and an interim standard that is effective for the duration of the variance. All other standards, including designated uses, other criteria applicable to those designations, and other requirements not modified by the variance shall remain in effect. Variances are noted in the tables in **Section 12. Designated Uses, Criteria, and Variances for Stream Segments**, and are described in detail in **Table 12.1**.

a. Types of Variances

- (1) *Discharger-specific variances* may be adopted where the conditions precluding the attainment of designated uses are shown to be applicable to specific discharges.
 - (2) *Temporary Standards*, applicable to all pollution sources located on a stream, stream segment, or a portion thereof, may be adopted where the conditions precluding attainment of designated uses are characteristic of the entire stream or stream segment.
- b. All variances must be supported by a use attainment demonstration (showing attainment of the use is not feasible); must provide for protection of the highest attainable use that can be met and criteria necessary to protect that use; and must be approved by the Tribe and EPA. A variance may be authorized where existing uses are protected and one or more of the following causes for non-attainment of a designated use are justified:
- (1) naturally-occurring pollutant concentrations prevent the attainment of the use;
 - (2) ephemeral, intermittent, or low-flow conditions or water levels prevent attainment of the use unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges to enable uses to be met;

- (3) human-caused conditions or sources of pollutants prevent attainment of a designated use and cannot be corrected or correction would cause more environmental damage than to leave uncorrected;
 - (4) dams, diversions or other structures prevent the attainment of a use, and it is not feasible to restore the water body to its original condition or to operate the structure in a way that would result in attainment of that use;
 - (5) natural physical conditions such as substrate, cover, flow, etc. unrelated to water quality, prevent the attainment of an aquatic life use;
 - (6) more stringent controls than those required by sections 301(b) and 306 of the Clean Water Act would result in substantial and wide spread economic and social impact.
- c. The written justification for a variance, in addition to explaining why one or a combination of the factors in paragraph (b) preclude the attainment of designated uses, must include documentation that controls have been evaluated and there is no reasonable control available that can be employed to attain the designated uses in the short term. Also, the justification must include a plan to gather additional information and/or conduct projects to remedy the conditions that preclude the attainment of designated uses, including a TMDL analysis where one is required. For temporary standards, the justification must also show that the conditions precluding the attainment of designated uses are representative of the water body segment, rather than one or more individual discharges.
 - d. All variances shall have a specific expiration date. The date shall be based upon the amount of time it is reasonably expected will be needed to remedy the water quality problem precluding the attainment of designated uses. Variances shall be reviewed every 3 years, and a variance may be extended only if the conditions for granting the variance still apply. Upon expiration, the general numeric water quality standards apply.
 - e. All variances shall identify interim water quality standards. Variances that are pollutant-specific shall have pollutant-specific interim standards. In no case shall interim standards be set at levels that would impair or otherwise have a negative impact on existing water quality.
 - f. For variances applicable to facilities with NPDES permits, such permits must include two sets of permit limits. One set shall be at a level sufficient to achieve the interim standards, and one set shall be at a level to achieve the underlying standards upon expiration of the variance. Permit limits for facilities for which a variance has been obtained must also be set to achieve all applicable technology-based controls.

11. Use Designations

a. Use Designation Codes:

AG	Agriculture, irrigation and/or livestock watering
CWAL	Cold Water Aquatic Life