

A scenic river with rapids and a rafting party. The river flows through a valley with rocky banks and lush green trees. In the background, there are brown, rocky hills under a clear blue sky. A yellow raft with several people is navigating a section of white water rapids in the middle of the river.

***Regional Water Board
Regulating Impacts to Federal
and State Waters***

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Water Board Permits

Federal

**Clean Water Act, Section 401
Water Quality Certification**

State

**Porter-Cologne Water Quality
Control Act
(a.k.a. California Water Code)
Waste Discharge Requirements**





Clean Water Act Section 401

- Waters of the U.S.
- Corps requires State certification
- Protection of State Water Quality Standards
- If Standards protected, then 401 cert may be issued



Why the Permits?

Protection of “Beneficial Uses”

- Fisheries and other wildlife habitat
- Rare, threatened or endangered species
- Recreation
- Drinking water
- Human health
- Groundwater recharge
- Flood peak attenuation/Flood water storage
- Wetland habitat
- Water quality enhancement
- Marine habitat
- Commercial and sport fishing







State priority – No Net Loss

***California Wetlands Conservation Policy
Executive Order W-59-93 “To ensure no overall net loss and long term net-gain in the quantity, quality and permanence of wetlands acreage and values in California...”***

CWC requires that the “[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas.”

Senate Concurrent Resolution No. 28 - “[i]t is the intent of the legislature to preserve, protect, restore, and enhance California’s wetlands and the multiple resources which depend on them for benefit of the people of the State.”



Army Corps of Engineers

Army Corps determines if Waters of the U.S. will be impacted by project

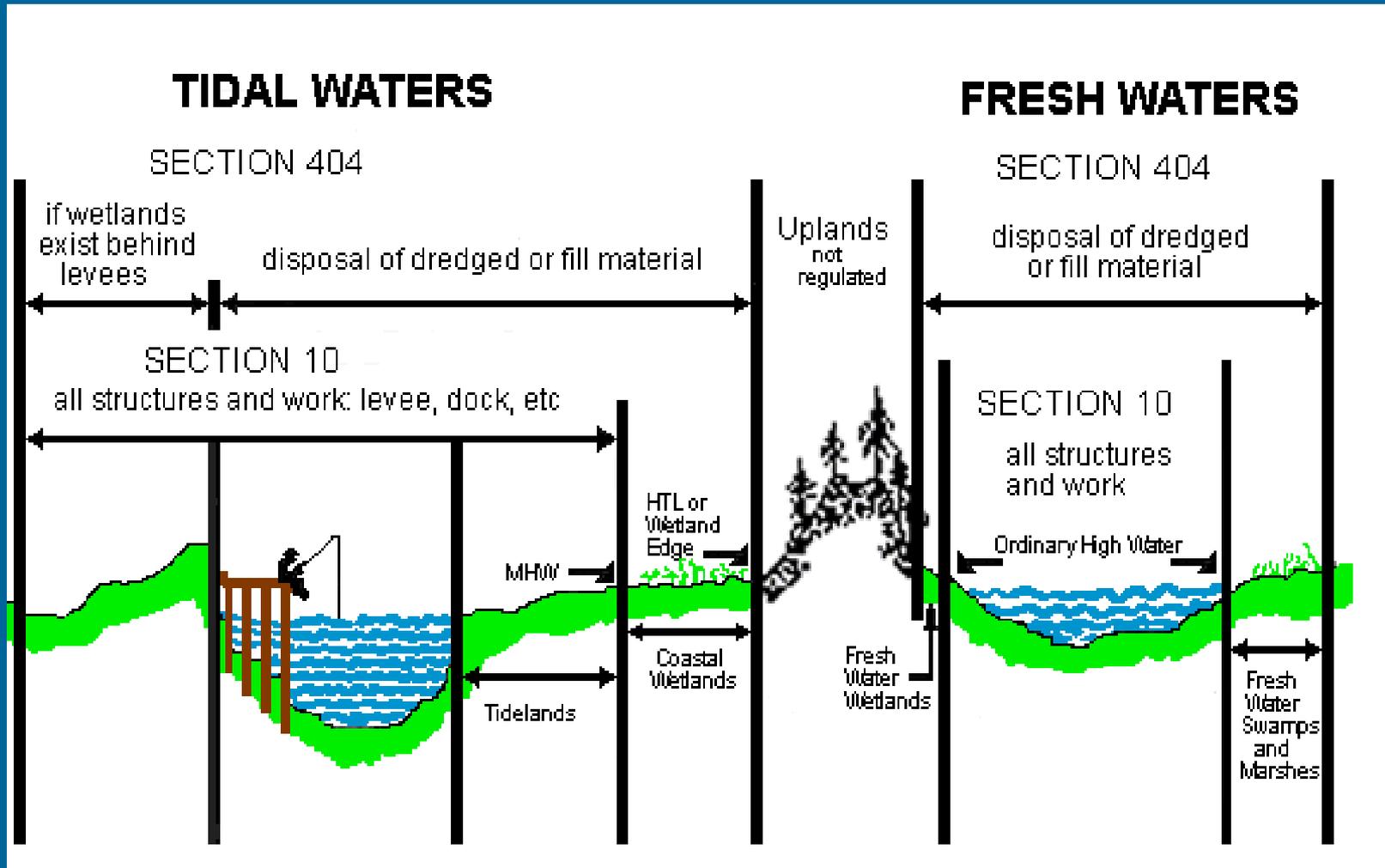
If Waters of the U.S. will be impacted, a 404 permit from the Army Corps is needed, and a 401 from us

If no Waters of the U.S. will be impacted, but Waters of the State, no Army Corps permit needed, and Waste Discharge Requirements or waiver of WDRs are needed from us





Army Corps Regulatory Jurisdiction



Waters of the U.S.

Department of Fish & Wildlife

<http://www.dfw.ca.gov/1600>

1600 Streambed Alteration Agreement

For work in any stream course
Appropriate mitigation may be required

**Projects requiring DFW Streambed
Alteration Agreement usually need
Regional Water Board authorization**



Jurisdictional Waters

- Federal waters (Ordinary High Water & Three Parameter Wetlands *soil, water & vegetation*)
- State waters as defined in the California Water Code

“Any surface water or groundwater, including saline waters, within the boundaries of the state”



How to Identify Regulated Waters

Examine on-site drainage

- Leaf line
- Staining
- Running water
- Defined stream bank
- Hydrophytic vegetation

Refer to topographical map or aerial photos

- Streams
- Sharp contours
- Thick vegetation
- Seasonal ponds



Examples of Waters of the State

- Rivers
- Creeks (including seasonal, intermittent, and headwaters)
- Wetlands - seasonal, marshes and tidal
- Bays and estuaries
- Ponds, lakes and vernal pools
- Grassy swales (creek tributaries)
- Drainage Ditches (some)
- Wetland seeps



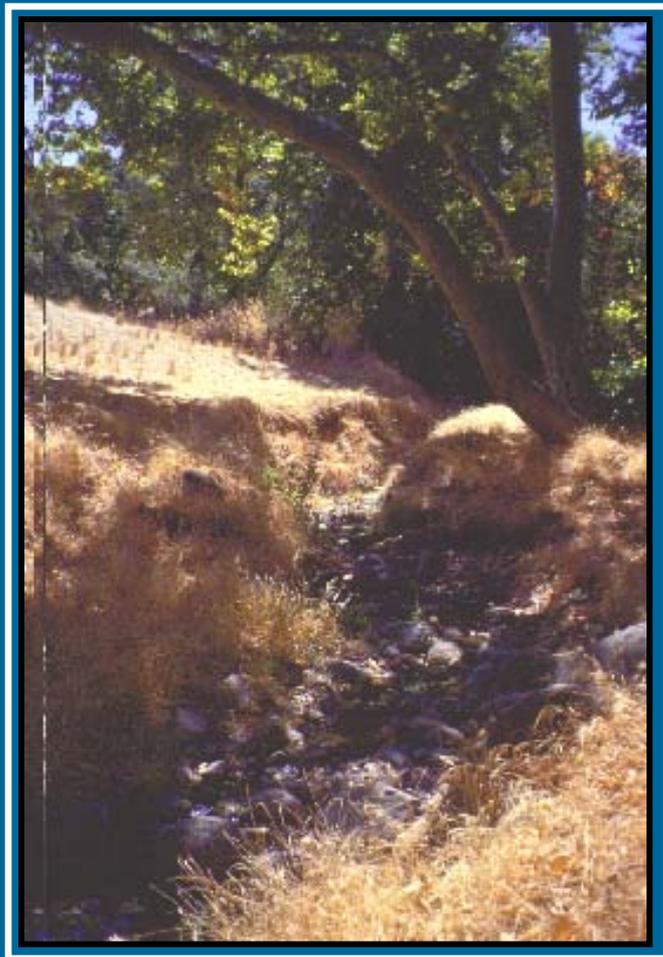


This perennial creek is Waters of the State





These seasonal creeks are also Waters of the State, whether flowing or not





This seasonal wetland ...





Almost any surface water is a Water of the State

This ponded wetland...



This concrete-lined creek...



This vernal pool...



ver-nal [vúrn'l] *adjective*

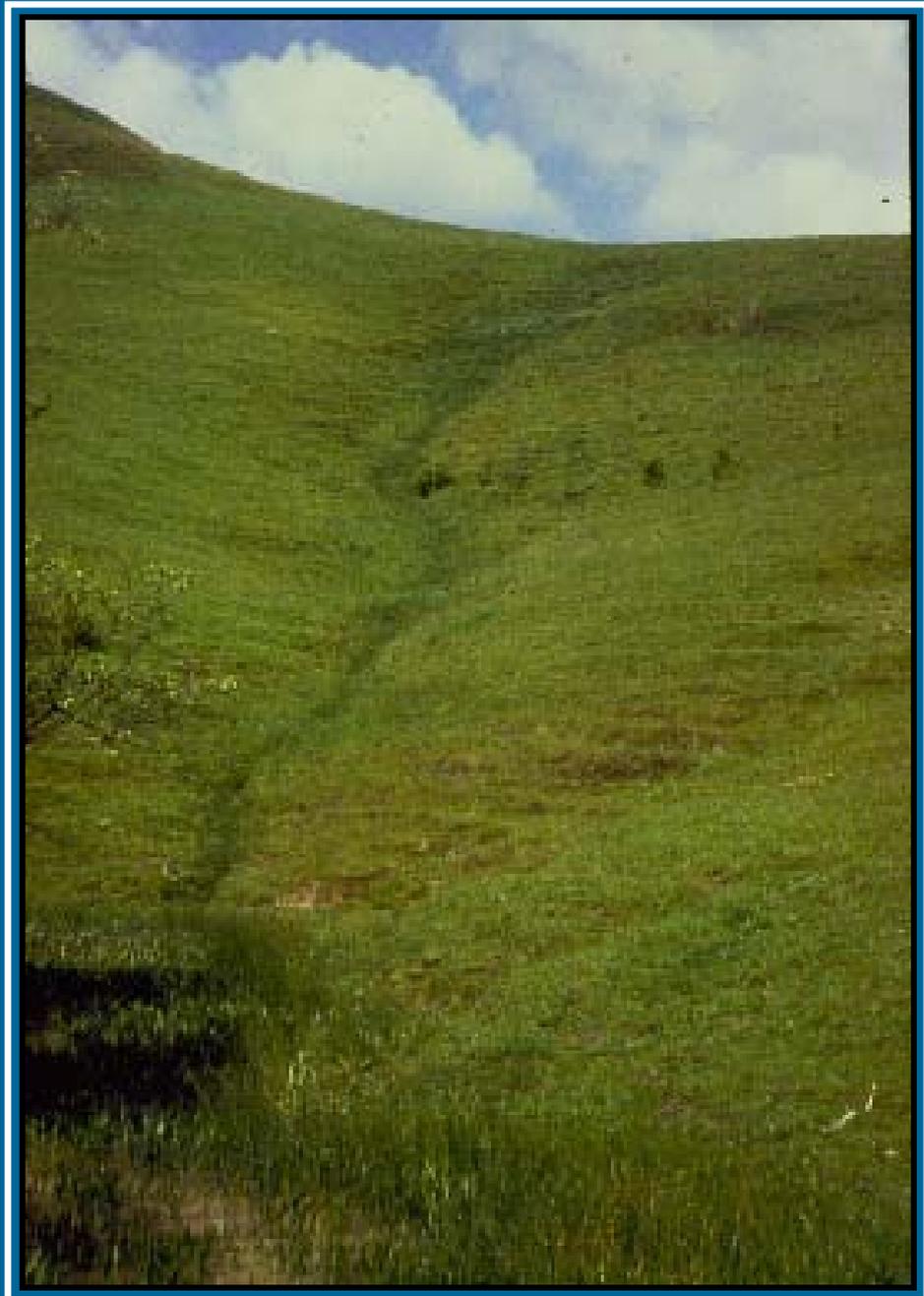
1. in the spring: appearing or happening in the season of spring



...and this seep wetland.



**Headwater
creeks
=
Waters of
the State**



Drainage ditches and swales can be Waters of the State



This is not a Water of the State

**Artificial drainage
features in which no
natural runoff exists
are not covered by
state and federal
agencies.**



Applying for Regional Water Board Permits (401/WDRs)

- Same Report of Waste Discharge Application for both 401 Certification and Waste Discharge Requirements
- RWB web-site (401 info and application)
- Fee Calculator
- WDR options:
 - Waiver of WDRs
 - Coverage under the SWRCB general permits



Isolated Wetlands or other Waters

- Isolated wetlands are not waters of the United States (No 404)
- State retains authority to regulate discharges of waste into any waters of the State, regardless of Corps jurisdiction
- General Vs. Individual WDRs
- Statewide General WDR for impacts outside corps jurisdiction < 0.20 acres or 400 linear feet
- RGP-emergency, Small Habitat, etc.



General 401 for Small Habitat Restoration

- Streamlined (CEQA & Public Notice)
- Size limits \leq 5 acres or 500 linear ft
- Has its own NOI
- Specific eligibility and monitoring requirements





Processing Permit Application

- Complete application (CEQA & Other permits)
- Protection of Water Quality Standards
 - Beneficial uses
 - Water Quality Objectives (Narrative and Numeric)
 - Antidegradation
- Avoidance, Minimize, Mitigate
- Overall watershed impact
- Cumulative impacts
- 21-Day Public Comment Period (401 and WDRs)

TMDLs and Impaired Receiving Waters

- **>60% of the North Coast Watersheds are listed as sediment and temperature impaired**
- **When evaluating impaired receiving waters: consider degradation from all project aspects including impacts from increased storm water runoff, increased temperature, and loss of riparian vegetation**



Important Permit Elements

- **Pre-Application Meetings and coordination**
- **Project description**
- **Mitigation (proper ratios and monitoring)**
- **Revegetation**
- **Storm water treatment**
- **CEQA**



Mitigation

- In kind (i.e. stream for stream, wetland for wetland)
- On site vs. Off site
 - Close proximity to area of impact (Watershed)
 - ACOE (New Mitigation Rule) Vs. SWB (Wetland and Riparian Protection Policy)
- Banks (USFWS programmatic biological opinions, service areas and available credits)
- Compensatory Mitigation vs. Non (BMPs)
- Revegetation vs. Mitigation
- Ratios (Banks 1:1, Temp 1:1-1.5:1, Perm 3:1)





Revegetation

- Required for all vegetation disturbed areas
- Submit plan with application
- Specify native plant species
- Diversity in types of plants (grasses, shrubs, trees)
- Optimum results: remove invasives, leave site better than before

Storm Water Treatment

- We evaluate the impacts to Water Quality from all elements of a project before we issue a permit
- Construction and Post-Construction Storm Water Treatment Best Management Practices (BMPs)
- **Hydromodification** (pre vs post volume and flow duration)





Post-Construction Storm Water Treatment

- With an individual 401 or individual WDRs the RWB has the discretion to require storm water treatment BMPs
- May require treatment BMPs even if no increase in impervious surface
 - Example: bridge replacement w/out additional impervious area





Post-Construction Storm Water Treatment

- Recommend use of Santa Rosa and Sonoma County Storm Water Low Impact Development Technical Design Manual for projects throughout our region
- www.srcity.org/stormwaterLID





401 Enforcement

- **Corrective actions requested during inspection**
- **Informal correspondence**
- **Notice of Violation**
- **Cease and Desist Order**
- **Administrative Civil Liability**
- **Cleanup and Abatement Order**
- **Notification to other agencies**

Coordination with RWB Needed

- **Vegetation removal - Migratory Bird Act**
- **Bridge maintenance (General WDRs and waiver)**
- **Emergency projects**
- **Reduction of hardscape – alternatives to rip rap**





Questions?

