



# Stream and Wetlands: What is the latest definition and best practices

Peter D. McKone, CWB  
Senior Project Director  
[pmckone@wcgrp.com](mailto:pmckone@wcgrp.com)  
817-946-7379

# Outline

- › Latest news and notes
- › Waters of the US
- › Permitting and best practices

# Latest News and Notes

- › Jurisdictional Determinations (JDs) have been the subject of recent as well as ongoing attention
- › U.S. Supreme Court and Rapanos decision
  - Approved vs. preliminary JDs
- › U.S. Supreme Court and Hawkes decision
  - Approved JD is final agency action
- › Waters of the U.S. Rule
  - Numerous litigation actions
  - Presidential Executive Order
- › Regulatory Guidance Letter 16-01
  - No JD Whatsoever category

# Corps Regulatory Program

- **Protect Navigation:** Sections 9 and 10 of the Rivers and Harbors Act of 1899
- **Restore and maintain the physical, chemical and biological integrity of the Nation's waters:** Section 404 of the Clean Water Act
- **Protect marine resources associated with ocean disposal of dredged material:** Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972

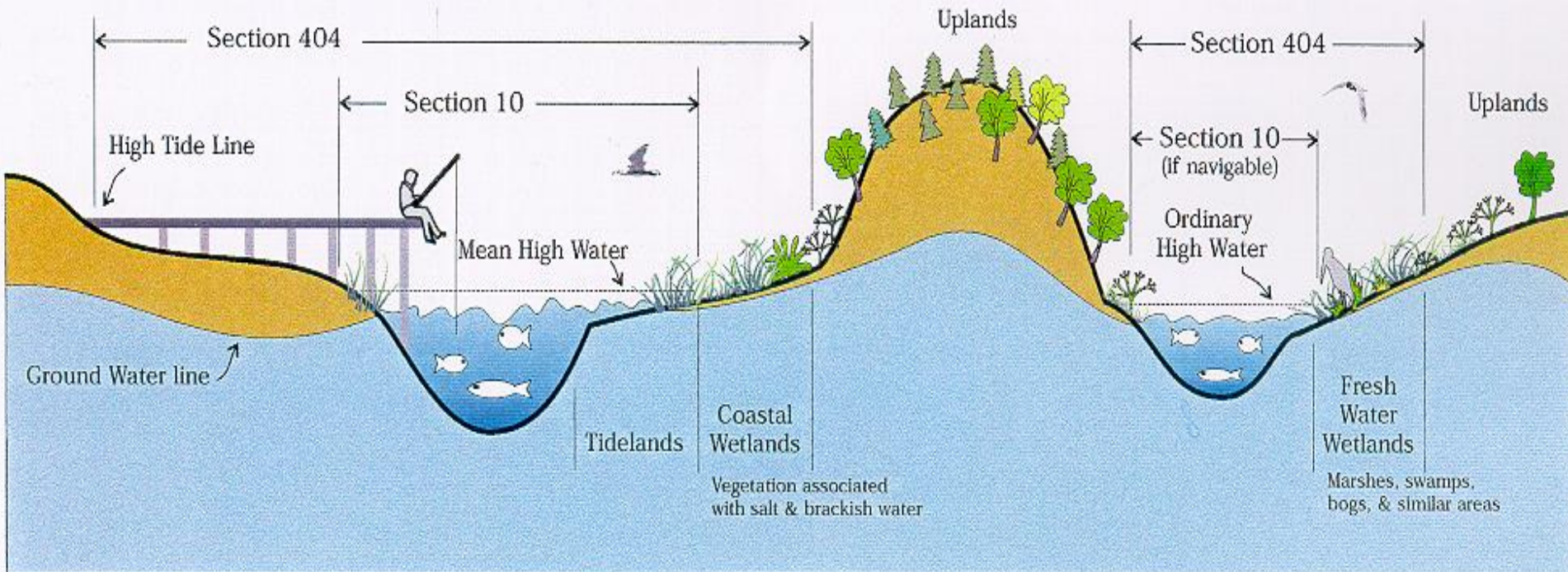
# Waters of the U.S.

- › Navigable waters and interstate waters
- › Lakes, streams, rivers, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds.
- › Tributaries of waters
- › Territorial seas
- › Adjacent wetlands

# CORPS OF ENGINEERS REGULATORY JURISDICTION

## Tidal Waters

## Fresh Waters



### Section 103

Ocean Discharge  
of Dredged Material

Ocean discharges of  
dredged material

Typical examples  
of regulated activities

### Section 404

Disposal of Dredged or Fill Material  
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,  
road crossings, beach nourishment, riprap,  
jetties, some excavation activities, etc.

### Section 10

All Structures and Work

Dredging, marinas, piers, wharves,  
floats, intake / outtake pipes,  
pilings, bulkheads, ramps, fills,  
overhead transmission lines, etc.





11/15/2004



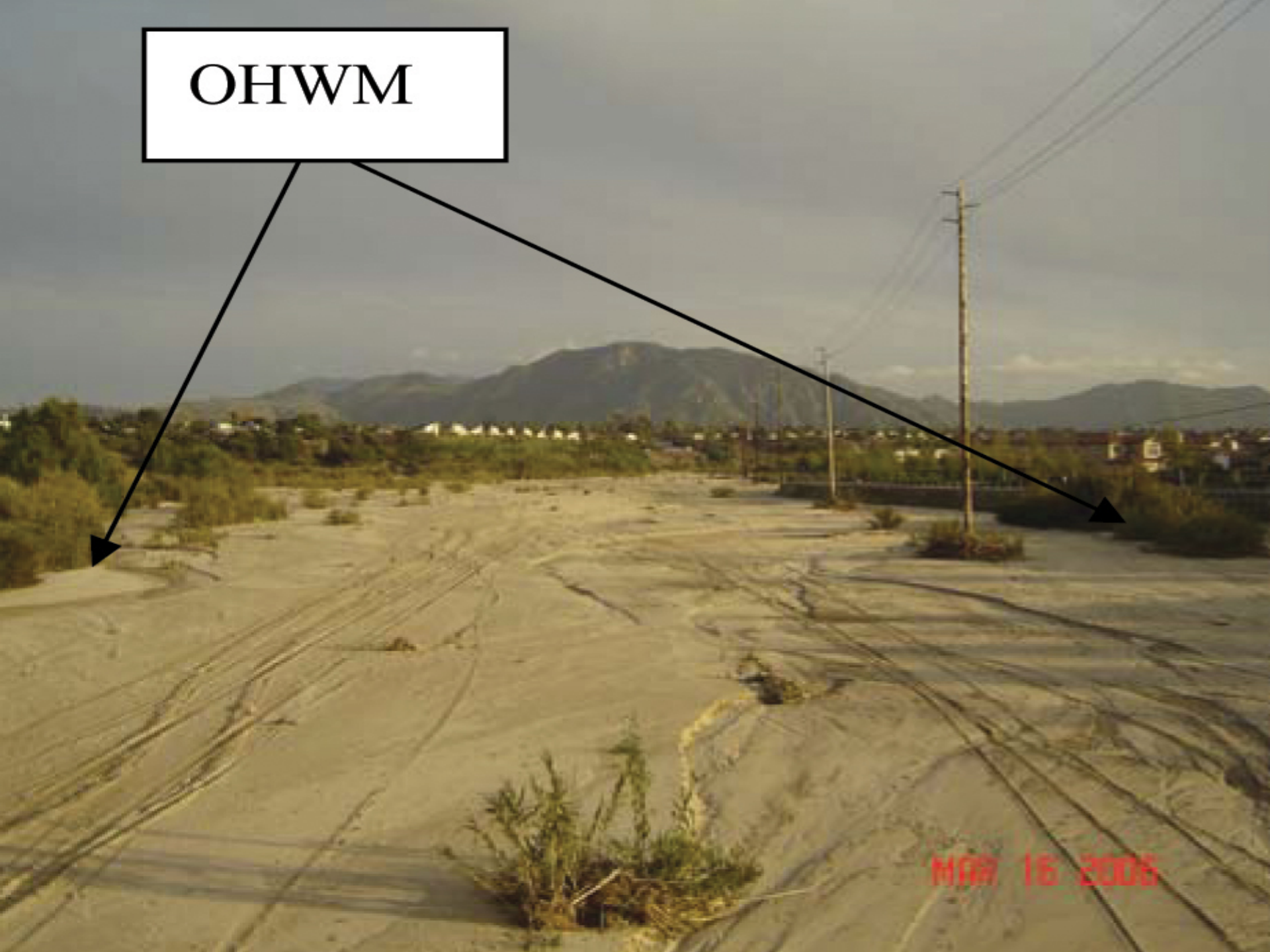








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MAR 16 2006





Lightning Creek, Converse County, Wyoming



# Regulated Activity

Permit required from the Corps for discharges of  
dredged or fill material into waters of the  
United States  
(33 CFR Part 323)

Big yellow machines are not a discharge of fill material!





# Types of Permits

- › Individual Permits
  - › Standard
  - › Letters of Permission
- › General Permits
  - › Regional
  - › Programmatic
  - › Nationwide

# Standard Individual Permit

- › Required when activity cannot be authorized by a general permit/LOP.
- › Multi-agency review (can include EPA, USACE, USFWS, SHPO)
- › When application administratively complete, USACE issues joint Public Notice for Sections 401 and 404.
  - › 15-30 day comment period
  - › Opportunity for public hearing
- › 404 permit required – USACE
- › 401 water quality certification required– state
- › Can take a long time to process

# Nationwide Permits

- › Developed for specific types of activities that will not result in more than minimal impacts to the Nation's waters.



# Nationwide Permits

- › 52 Nationwide Permits
- › Focus on environmental protection while providing timely and simplified authorizations for work in aquatic environments
- › Are valid for 5 years from date of issuance (effective 3/2017 to 3/2022)
- › Regional conditions
  - Some statewide
  - Some District specific

# Nationwide Permits

- › Pre-Construction Notification (PCN) required in many cases
  - Potential to impact cultural resources
  - Potential to impact threatened or endangered species
  - Presence of wetlands/special aquatic sites
- › Resource agency coordination required in some cases
- › If project meets scope & conditions of NWP & does not involve or exceed PCN triggers and/or thresholds, project may be completed w/o a written authorization
  - NOTE: If PCN required but not submitted & work initiated, activity is unauthorized

# Regional Permits

- › Issued by the individual USACE Districts to various entities to permit specific types of routine minor activities.
- › Conditioned to ensure only minor impacts to waters.



# What to Watch Out For

- › No delineation of waters of the U.S. conducted
- › Incorrect delineations
- › Incorrect determination on permitting options
  - › Pipelines
  - › Roads
  - › Small projects
- › Didn't take into account threatened and endangered species, or migratory birds
- › Didn't take into account cultural resources

# Questions?