Filling in the Gaps

BRAINSTORMING OPPORTUNITIES TO ADDRESS CHALLENGES AND NEEDS

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2025 MAWWG MEETING

DAVIS, WV

SEP 23-25, 2025

Overview CWA Section 404

- Establishes a program to regulate the discharge of dredged or fill material from a point source into waters of the United States (WOTUS), including:
  - Oceans
  - Territorial seas
  - Lakes
  - Rivers and streams
  - Wetlands
- Jointly administered by US Army Corps of Engineers and EPA

- *404(a): Authorizes **Army** to issue permits for discharge of dredge or fill material into WOTUS at specified disposal sites*
- 404(b): Directs **Army** to apply environmental criteria developed by **EPA**
  - "Section 404(b)(1) Guidelines" [40 CFR Part 230]
- 404(c): Authorizes **EPA** to limit the specification (i.e., prohibit or withdraw specification; deny, restrict or withdraw the use for specification) of any defined area as a disposal site
- *404(e): Allows for **Army** to develop general permits on national, state, and regional level*
- 404(f): Identifies activities exempt from regulation under 404
- 404(g): Provides States/Tribes option to assume the program for certain waters
  - Subject to **EPA's** review/approval pursuant to 404(h)
- 404(q): Directs **Army**, **EPA**, DOI (FWS) and DOC (NMFS) to develop procedures for reducing delays and redundancy in the 404 permit process
  - Enhanced Coordination Procedures

Provisions of Clean Water Act Section 404 - Statute

Agency Roles & Responsibilities – Jointly Administered

Corps

- Administers day-to-day program, including individual and general permit decisions
- Conducts or verifies jurisdictional determinations
- Develops policy and guidance
- Enforces Section 404 permit provisions

EPA

- Develops and interprets policy, guidance, and environmental criteria used in evaluating permit applications
- Determines scope of geographic jurisdiction and applicability of exemptions
- Approves and oversees State and Tribal assumption
- Reviews and comments on individual permit applications
- Has authority to prohibit, deny, or restrict the use of any defined area as a disposal site
- Can request that certain permit or policy decisions receive a higher level of review
- Enforces Section 404 provisions

Tracking Changes

- NEPA
  - H.R. 4776, Standardizing Permitting and Expediting Economic Development (SPEED) Act (would limit judicial power over NEPA permitting approvals)
  - agencies can consider only effects that are "proximately caused" by major federal actions -- and may not consider effects that are "speculative" or in a time or place separate from the project in question. The provision seeks to codify the Supreme Court's recent decision in Seven County Infrastructure Coalition v. Eagle County, CO.
  - More categorical exclusions
  - Heightened consideration of economic effects
- Budgets
  - prioritizing citizen complaints based on potential
  - replacing "formal" enforcement with guidance that says officials will issue warning letters for a certain class of violations
- WOTUS
  - *Guided by Sackett v. Environmental Protection Agency*
  - More exclusions

Current Policy/Industry Sentiments

- Predictable
- Reasonable
- Affordable
- Expedited
- Consolidated
- Wholistic view of ecosystem, not piecemealed parts

Challenges, Recommendations Summarized

- Association of Wetland Managers (now NAWM) 2015
  - Status And Trends Report On State Wetland Programs In The U.S.
- Environmental Law Institute (ELI) 2023 Report
  - *Filling The Gaps: Strategies for States/Tribes for Protection Of Non-WOTUS Waters*
- NAWM Fall 2023 Wetland News *(Vol. 33 No.5)*
  - *Filling the Gap in State Wetland Protections After Sackett Vs EPA*
- Kearns & West 2022 Report
  - *Networks for Wetlands and Best Practices from State Experiences*

ASWM 2015 Report – Status And Trends

Both statewide and regional general permits (7 states)
Statewide general permits only (12 States) (+7 with both) = 19
Regional general permits only (12 states) (+7 states with both) = 19 states
No general permits (19 states)

- **Formal Net Gain/Increase goal** (6 states)
- **Formal No Net Loss goal** (20 states)
- **Informal No Net Loss goal** (7 states)
- No formal or informal goal (5 states)
- Unknown/Not Asked (12 states)

* RI has wetland-specific designated uses, but no other wetland-specific water quality standards
**AR has an antidegradation policy that includes wetlands, but no other wetland-specific water quality standards

- **Have state wetland water quality standards** (6 states)
- **Developing state wetland water quality standards** (10 states)
- **Rely on/apply existing state wetland water quality standards** (31 states)*
- **State has no water quality standards applied to wetlands** (3 states)**

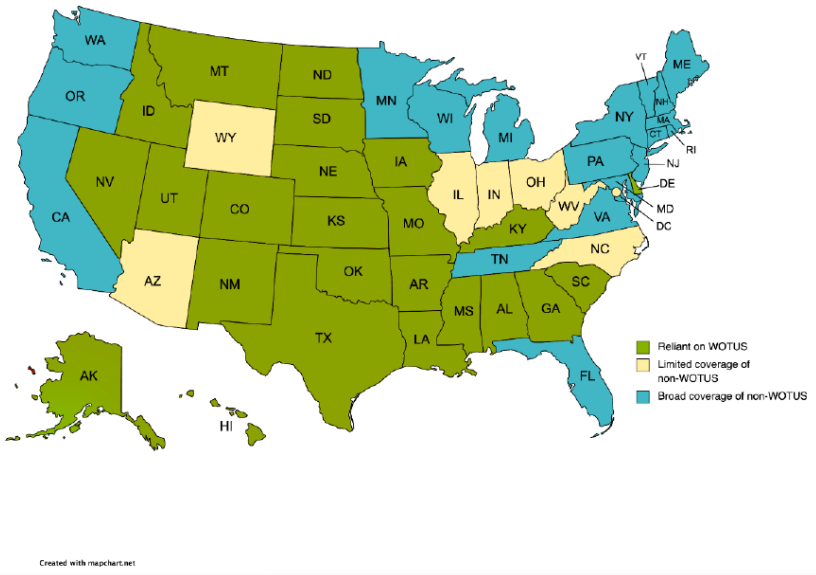
- **State Dredge and Fill Permitting Program** (23 states)
- **Rely on §401 Certification Program + Coastal Program** (6 states)
- **Rely Solely on §401 Certification** (21 states)

ASWM 2015 – Status And Trends Report On State Wetland Programs In The U.S.

Highlights of 2015 Research Recommendations

- What is the jurisdictional range of regulatory activities taking place in each state? What wetland resources are not protected under either state, local or federal programs? What is the strength of programs for wetlands that are regulated?
- What resources do states need to strengthen the four core elements?
- A state-by-state review of monitoring and assessment tool content and how the information is used.
- How are wetland WQS used in §401 certification programs? How are other surface WQS used? Would the development of wetland WQS improve §401 certification program delivery?
- Are one or more types of standards more critical for protection of wetlands than others?
- Research on the differences between exiting staff levels and staffing required to effectively implement state programs.
- More in-depth study of the range of activities that are being conducted within states to adapt to extreme weather events.
- Development of formal case studies and transferable models for sharing effective state integration models. *(related to integration with other state programs, i.e., watershed planning, hazard management)*

Environmental Law Institute (ELI) 2023 report - *Filling the Gaps: Strategies for States/Tribes for Protection of Non-WOTUS Waters*



This map shows the status of state regulatory programs. The 24 states in green are the ones that have relied chiefly on CWA Section 401 to protect freshwater wetlands and tributaries from dredge and fill, rather than on independent state permit programs. Nineteen states (in blue) have fairly comprehensive permitting programs applicable to their waters (including wetlands) that may fall outside the coverage of the Clean Water Act. The seven states in yellow have adopted specialized laws and regulations, or case-by-case review practices, that are expressly intended to fill identified gaps in federal Clean Water Act coverage.

- CWA protections for WOTUS include
  - water quality standards[1]
  - assessing impaired waters, preparing restoration plans, setting TMDLs[2]
  - regulating the discharge of pollutants, from a point source[3]
  - regulating placement of dredge and fill[4]
  - requirements to prevent, report, and correct oil/hazardous substance spills and liability[5]
  - state review of federal activities that may result in discharges[6]

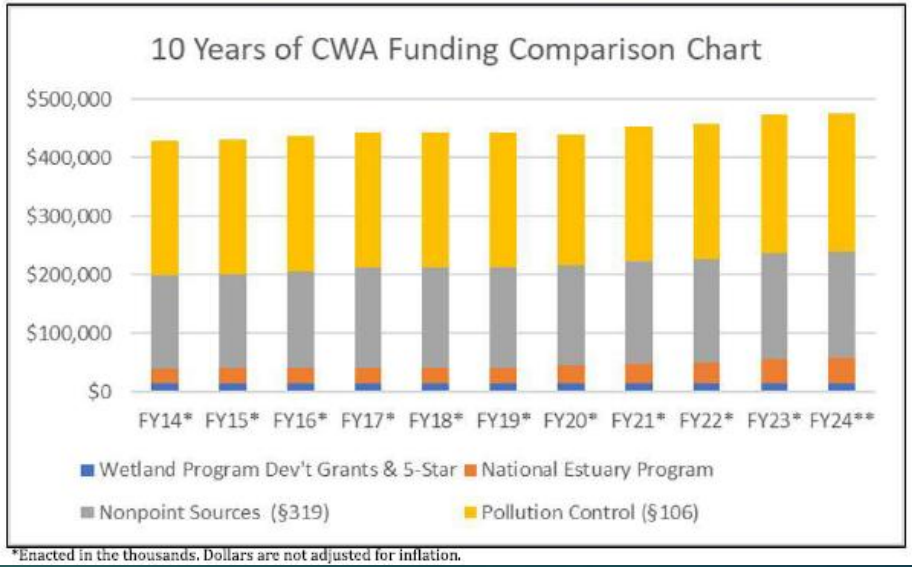
ELI 2023 report - *Filling the Gaps: Strategies for States/Tribes for Protection of Non-WOTUS Waters*

- Permitting Isolated-Waters *(2 examples)*:
  - Following SWANCC (2001) - Ohio and Indiana enacted an isolated wetlands permit program.
    - In 2021, Indiana legislature excluded Class 1 wetlands and some Class 2 wetlands from state regulation.
    - In 2022, Ohio legislature reverted state regulation of non-WOTUS ephemeral streams to federal scope.
- Other Approaches:
  - State/local protections of buffers via critical area conservation laws (WA, NH, MA), laws regulating general land use and development
    - SC county excludes wetlands from zoning/subdivision lot calculations – reduces development density and encroachment
    - Illinois county defined jurisdictional waters as all non-WOTUS with protections provided under county level watershed developmental ordinance
  - Defining regulation need by activity, not the water
    - AZ permit requirement for facilities that discharge pollutants into groundwater, tied to aquifer WQS and best available technology
    - At least 30 states have/currently require instream flow requirements which provide a basis for protection. Many of the flow requirements are tied to NPDES permitting and may be limiting for non-WOTUS waters
  - Hazard Mitigation and Resilience
    - Iowa's Watershed (multi-stakeholder) Approach was created through a National Disaster Resilience grant program provides for majority of costs of flood resilience projects focused on watershed level restoration

NAWM Fall 2023 Wetland News *(Vol. 33 No.5)*

- Observations, Takeaways:
  - Funding has been flat → reduced funding
  - Call for Congress to:
    - Significantly increase appropriated funds
    - Allow the funds to be used for implementation
  - Loss of protections likely to effect states that are:
    - Comparatively more economically challenged
    - Downstream from those that can't or won't increase their state level protection

	Wetland Program Dev't Grants & 5-Star	National Estuary Program	Nonpoint Sources (§319)	Pollution Control (§106)
Budget Account	STAG Categorical Grant	Enviro Programs & Mgmt	STAG Categorical Grant	STAG Categorical Grant
Type	Competitive	Mix	Formula	Formula
FY14*	$14,661	$25,098	$159,252	$230,806
FY15*	$14,661	$26,723	$159,252	$230,806
FY16*	$14,661	$26,723	$164,915	$230,806
FY17*	$14,661	$26,773	$170,915	$230,806
FY18*	$14,661	$26,723	$170,915	$230,806
FY19*	$14,661	$26,723	$170,915	$230,806
FY20*	$14,183	$29,823	$172,348	$223,289
FY21*	$14,192	$31,822	$177,000	$230,000
FY22*	$14,192	$35,000	$178,000	$231,000
FY23*	$14,692	$40,000	$182,000	$237,000
FY24**	$14,692	$42,000	$182,000	$237,000



*Enacted in the thousands. Dollars are not adjusted for inflation.




Kearns & West 2022 Report - *Networks for Wetlands and Best Practices from State Experiences*

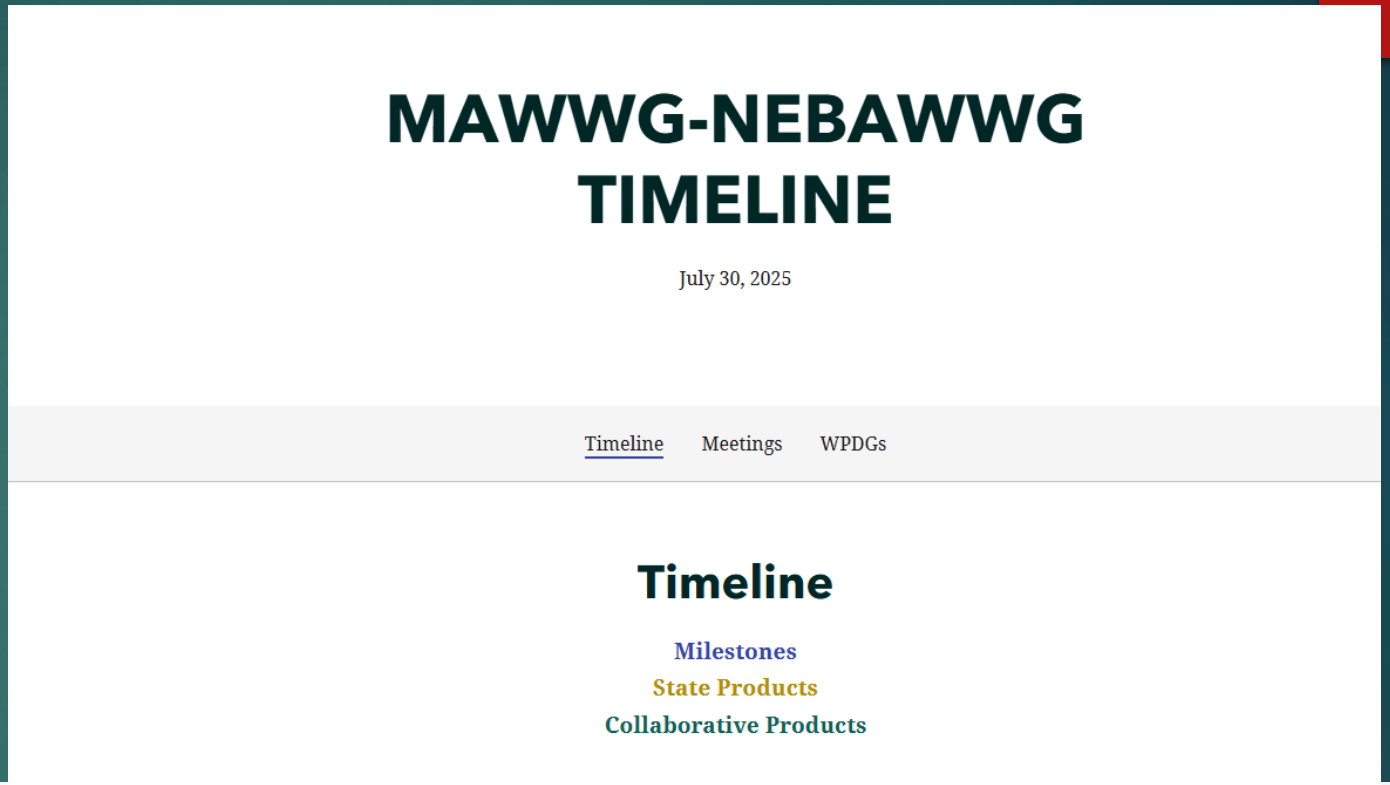
- Best practices include:
  - approaching relationships with a partnership mindset
  - building collaborative work environments
  - creating strong Strategic Plans and internal coordination
  - engaging in effective public outreach
- Barriers include:
  - funding, staff capacity, aging maps, communication
- Expressed needs include:
  - updated NWI/mapping, ecosystem level data,
  - long-term funding,
  - using data for policy development,
  - wetland designations, WQS for wetlands,
  - training

Ongoing Efforts

- MAWWG-NEBAWWG collaboration
- Watershed Resource Registry (WRR)
- CEF – highlight updates in 4 groups

MAWWG-NEBAWWG Collaboration

- Updated MAWWG-NEBAWWG timeline
  - 1998 - present
- Reach out to EPA if you'd like us to highlight additional products, meetings



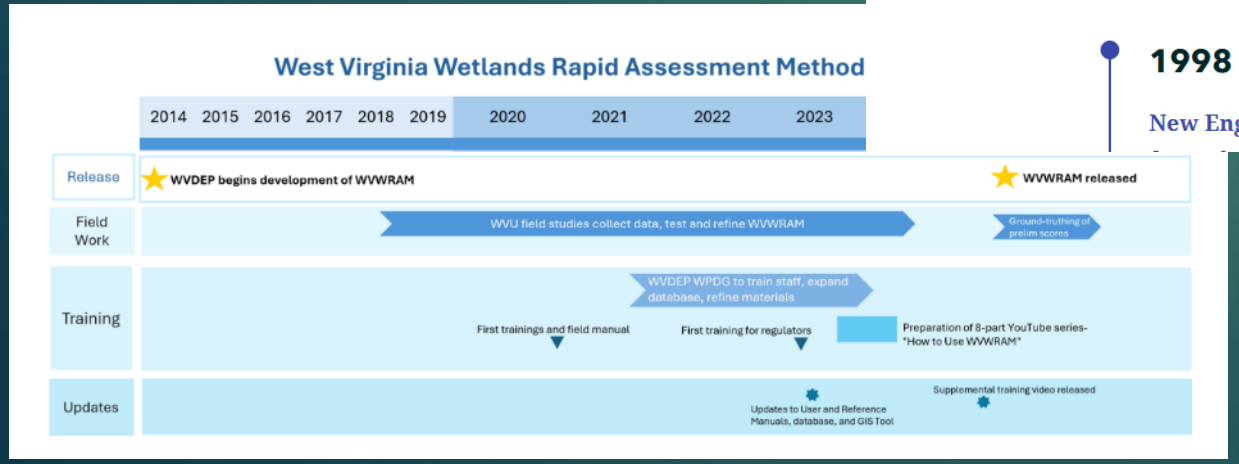
MAWWG-NEBAWWG TIMELINE

July 30, 2025

Timeline Meetings WPDGs

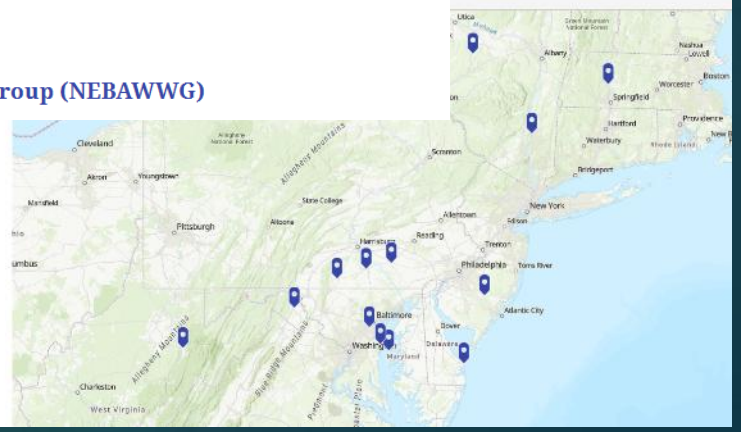
Timeline

Milestones
State Products
Collaborative Products



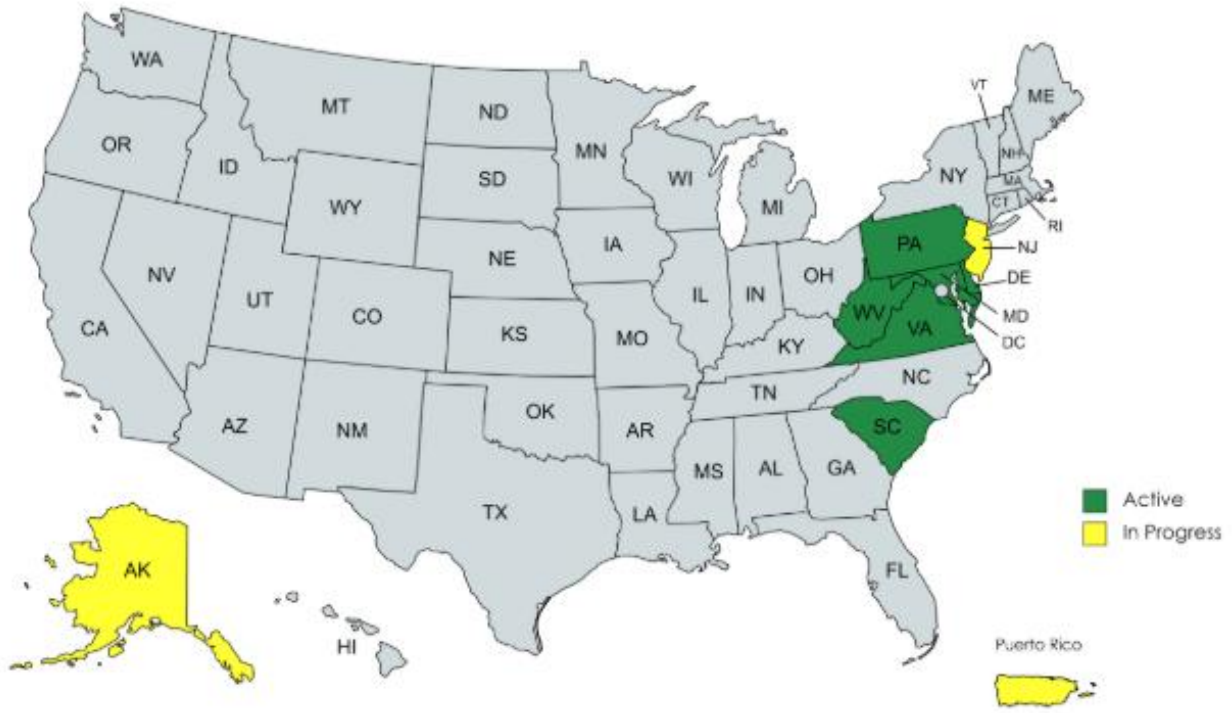
1998

New England Biological Assessment of Wetlands Work Group (NEBAWWG)

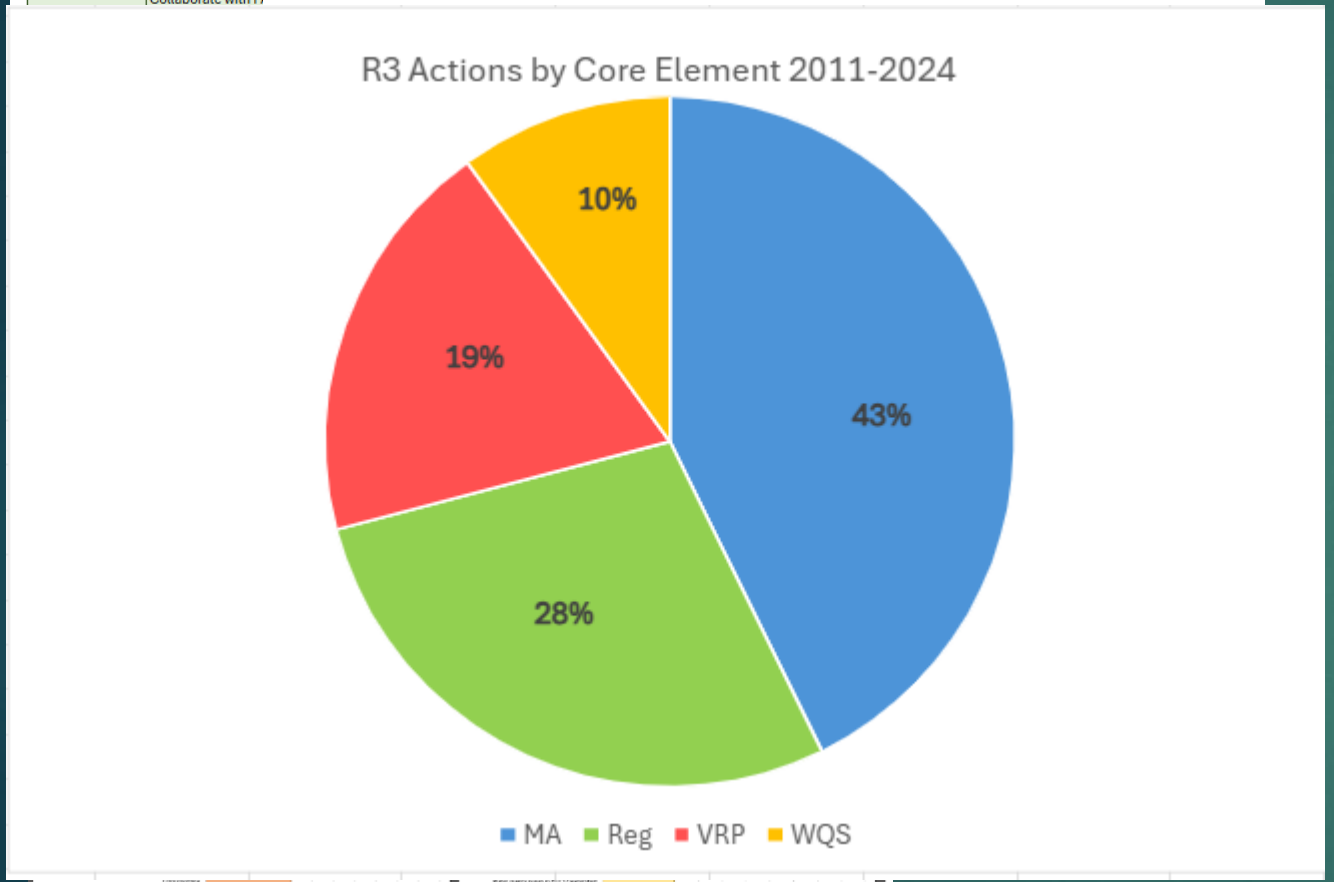


Watershed Resources Registry (WRR)

- WRR moving to a new, internally-hosted platform
  - No changes to public accessibility
- Will be folded into a National-scale tool, but maintain local datasets
- Rebuilding custom widgets into Experience Builder
  - All input as to improvements to current tools encouraged!
- Anticipated completion is end of this calendar year



PA DCNR WPP (2026)	WPP Goal Language	CEF Objective reference	CEF Objective #
Goal: 1.1	Develop and Maintain a DCNR Wetland Program Plan		
1.1.1	Define wetlands monitoring objectives and strategies	MA 1.a,MA 1.b	1,2
1.1.2	Document program's long-term environmental goals	MA 1.a	1
1.1.3	Identify programs that will ultimately use monitoring data (e.g.,track trends,401 certification,restor	MA 1.a	1
	Collaborate with P		



Core Element Framework (CEF)

- Monitoring and Assessment
- Regulatory Activities
- Voluntary Restoration
- Water Quality Standards for Wetlands

Funding

Table 3: Which funding types can be used for each CEF Action? In this table, we have identified which funding types can pay for specific ESTP Actions for each Core Element (Tables 3a – 3d). Additionally, they have been color coded to match Region 7's ESTP Tiering Chart (T1 = Tier 1 is red; T2 = Tier 2 is blue; T3 = Tier 3 is green). (See Appendix 1 for Region 7's Tiering Chart).

Table 3a: Monitoring and Assessment CE

# Tier	WPDG**	106	319	SRF	GAP	HWCG	5 STAR UW
T1: Obj 1, Action b Define wetlands monitoring objectives and strategies	X	X		X	X	X	X
T1: Obj 1, Action c Develop monitoring design, or an approach and rationale for site selection that best serves monitoring objectives (e.g., census, probabilistic survey, rotating basin)	X	X		X	X	X	X
T1: Obj 1, Action d Select a core set of indicators to represent wetland condition or a suite of functions	X	X		X	X	X	X
T1: Obj 2, Action b Monitor wetland resources as specified in strategy	X	X		X	X	X	X
T1: Obj 2, Action c Establish reference condition	X	X	X	X	X	X	X

<u>To address eligible CEF activities:</u>

- CWA 104b3 – wetland program development grants (competitive)
- CWA 106 - water pollution control programs
- CWA 319 - general funding for nonpoint source pollution programs and threats
- GAP - for tribes, general funding to develop capacity to manage water programs
- CWSRF/CWISA - WQ infrastructure projects
- DWSRF - to ensure safe drinking water
- Healthy Watershed Grant
- Five Star and Urban Waters Grant

What can the states do? What tools do they need?

*Some ideas for **brainstorming session***

- *Condition/functional assessments*
- *WQS for wetlands (follow stream example)*
- *Plug into NWCA*
- *Determining what is/not WOTUS (where are the grey areas)*
- *Using Citizen Science to …?*

Brainstorming Session…

- Break into CEF groups (see list)
- Each group will discuss ~10 mins
- After that move to the next group - until you've been to each group
- We'll come together and review notes afterward
- The notes will stay up for the whole meeting – feel free to add more later