



**Potesta & Associates, Inc.**

**Engineers & Environmental Consultants**

Charleston, West Virginia ■ Morgantown, West Virginia ■ Winchester, Virginia

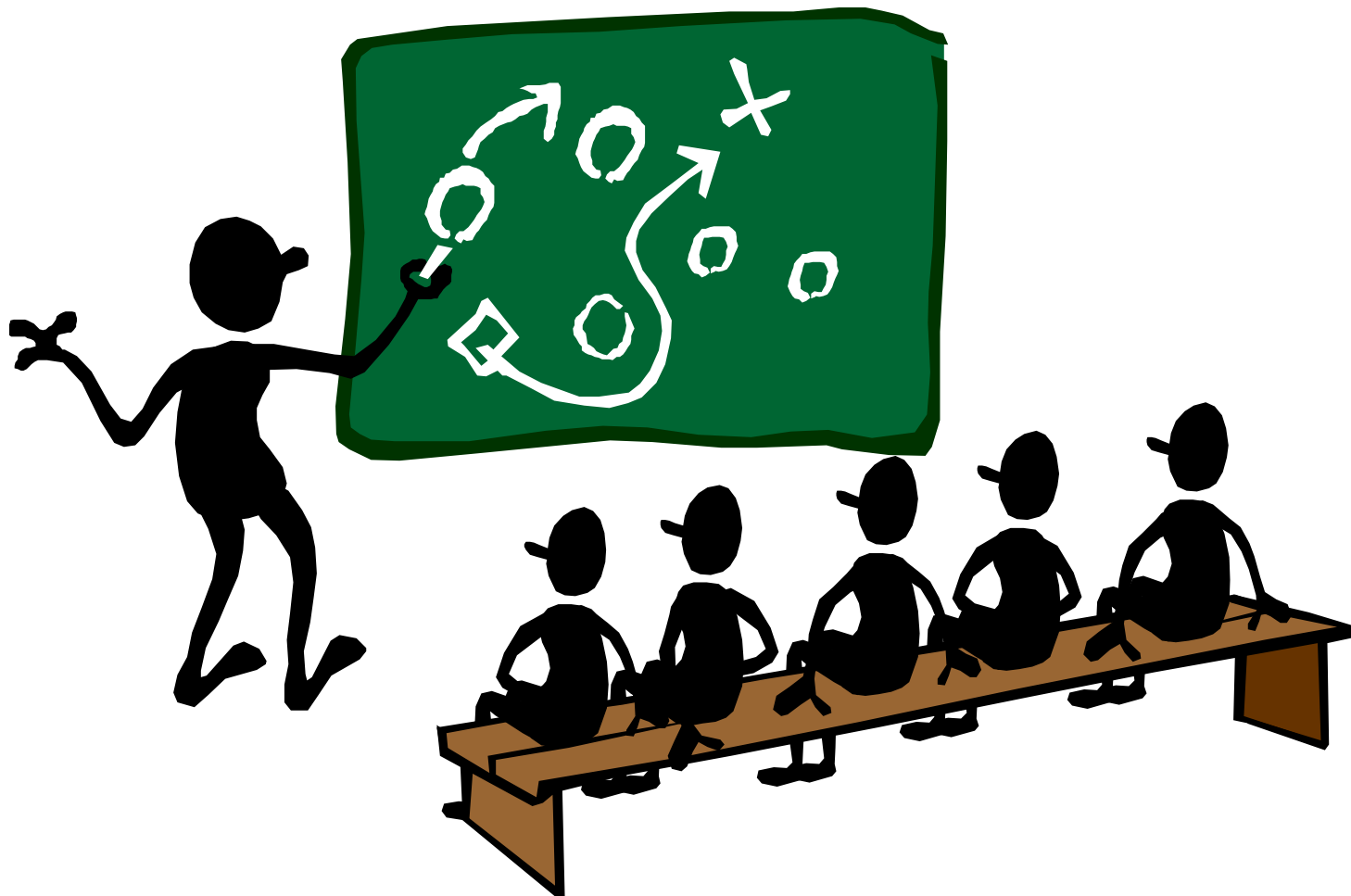
# **“Stream Restoration and Mitigation: Requirements of the Army Corps of Engineers”**

**Presenters:**  
Jessica Yeager



**March 25, 2014**

# Permitting 101



# Statutory Authorities

## **Section 10 of the Rivers and Harbors Act of 1899**

Requires approval prior to any work in, on, over or under navigable waters of the United States, or which affects the course, location, condition or capacity of such waters

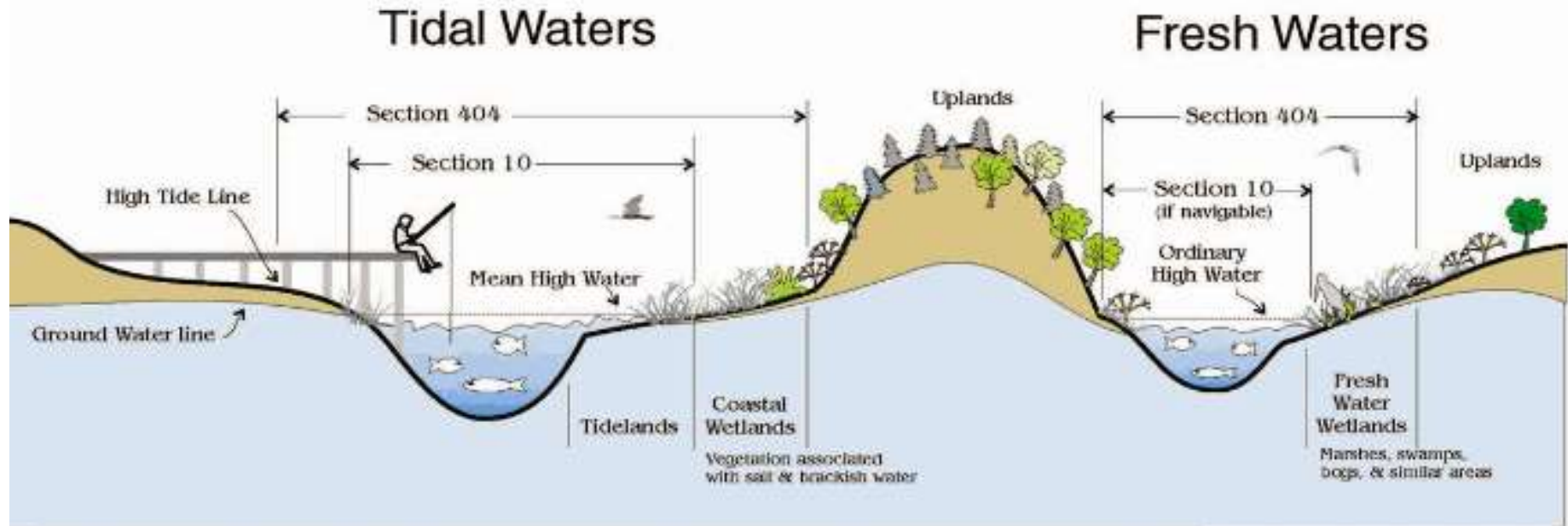
## **Section 404 of the Clean Water Act**

Requires approval prior to discharging dredged or fill material into the waters of the United States



# So what is Jurisdictional?

## CORPS OF ENGINEERS REGULATORY JURISDICTION



Typical examples  
of regulated activities

### **Section 103** Ocean Disposal of Dredged Material

Ocean discharges of  
dredged material

### **Section 404** Discharge 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 (navigable waters)

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

# Section 10 River

## Kanawha River





# Is this a Section 10 River ?



# Section 10 River

## Coal River – Normal Flow Conditions



**YES**



# Activities That Require Section 10





# Section 404 of the CWA

## Dredged and Fill Material

- Wetlands
- Channels with a Defined Bed and Bank that have an OHWM
  - Intermittent and Perennial Streams (or Relatively Permanent Waters)
  - Ephemeral Channels (that pass the significant nexus test)
- Tidal Areas, Mud Flats....(or things we don't see in WV that still fall under Section 404)



"Rapanos"

# Rapanos v. United States

## Carabell v. United States

**"Rapanos"**

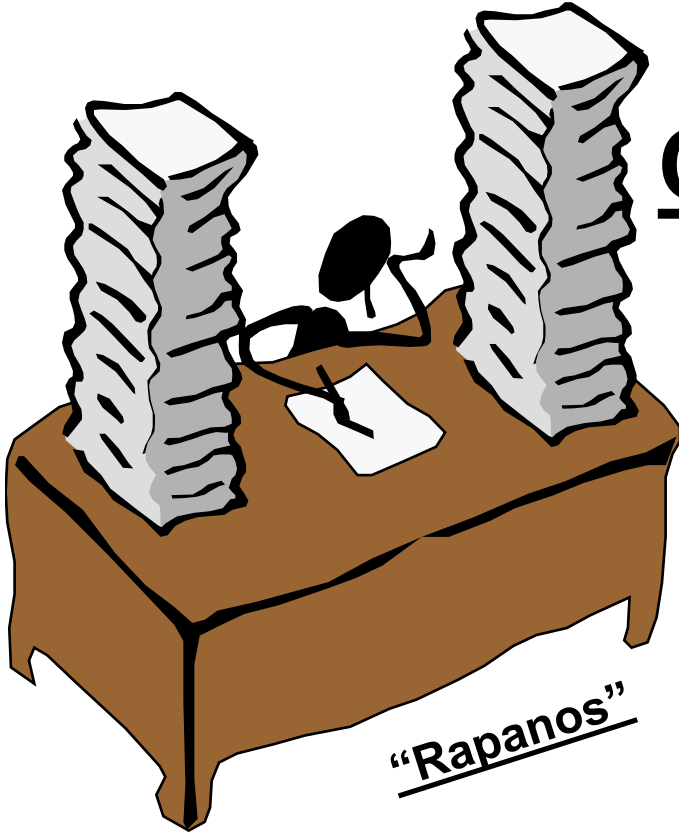
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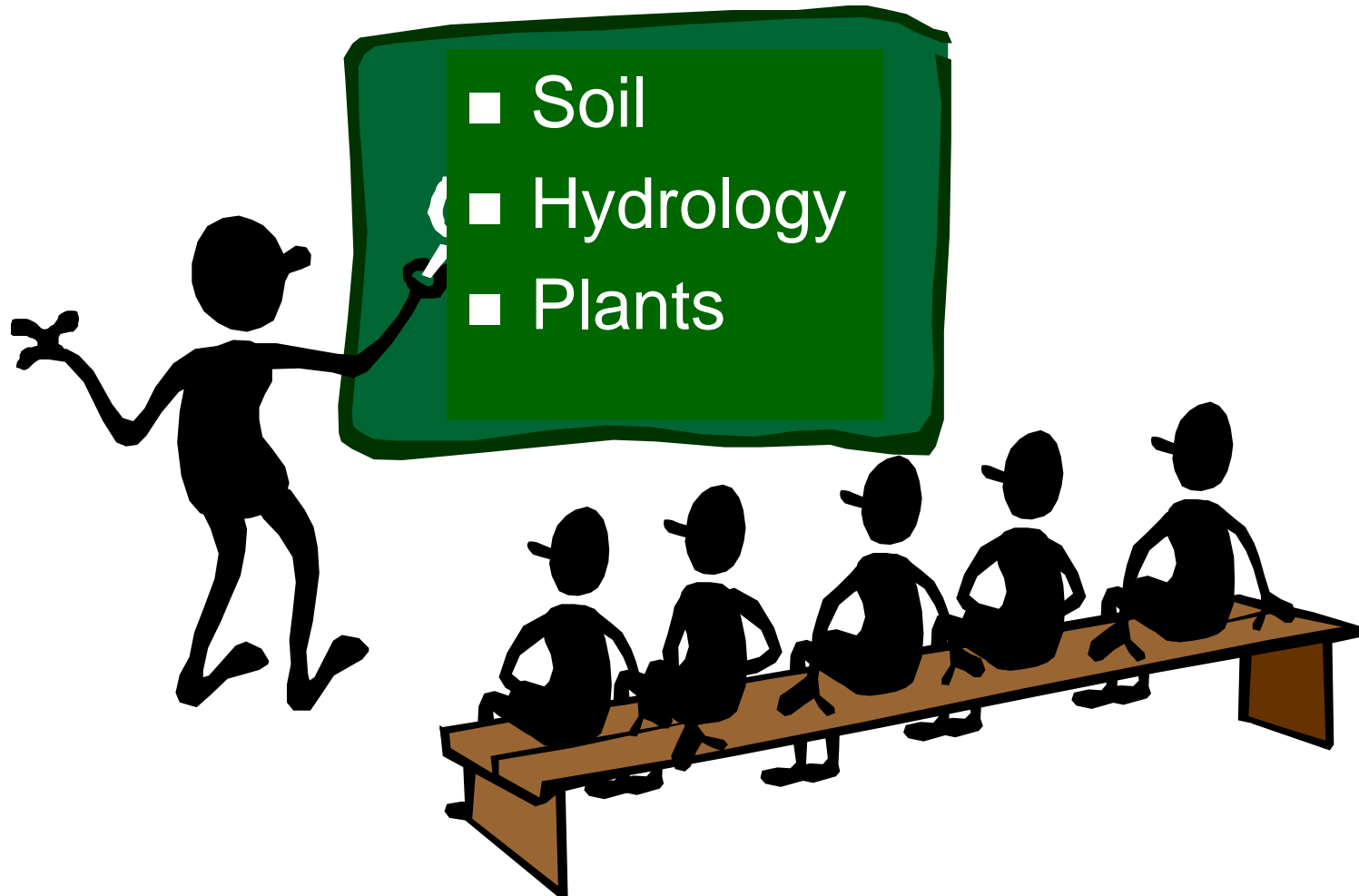
# Aquatic Resources Post Rapanos



# When You Hear The Term Wetland.....



# What Makes A Wetland A Wetland Are Three Features





# Is this a Wetland?





# STREAMS



E  
A  
S  
Y!!!!!!!



**HARDER TO  
DEFINE**



# Significant Nexus Evaluation (SNE)

This will require an assessment of both hydrologic and ecological factors

- Hydrologic – volume duration and frequency of flow, proximity to the TNW, size of the watershed, rainfall, snowpack etc.
- Ecological – the ability of the tributary and/or adj. wetlands to carry pollutants and flood waters to TNWs, or to provide aquatic habitat that supports biota of a TNW or to trap/filter pollutants; store flood waters or maintain water quality of a TNW



# Surprise!!!!



**Delineations Can be Deadly**

# Why you shouldn't delineate in the Rain.....





# Was This A Stream?



- Has Bed And Bank Features
- Perennial In Nature – Originated From A Seep
- Close To A TNW

# Well Look What I Did!!!!



Remedial Measures from Diesel Fuel Spill



# Pre-Construction Delineation



# Section 404

## Do I need a permit?





# Regulated Activities



**Discharge of dredged or fill material into waters of the United States**

# Regulated Activities



Discharge of dredged or fill material into waters of the United States



# Regulated Activities



Placement of material below the  
Ordinary High Water Mark





# TYPES OF PERMITS

- **GENERAL PERMITS**

- Nationwide Permit**

- Regional General Permits**

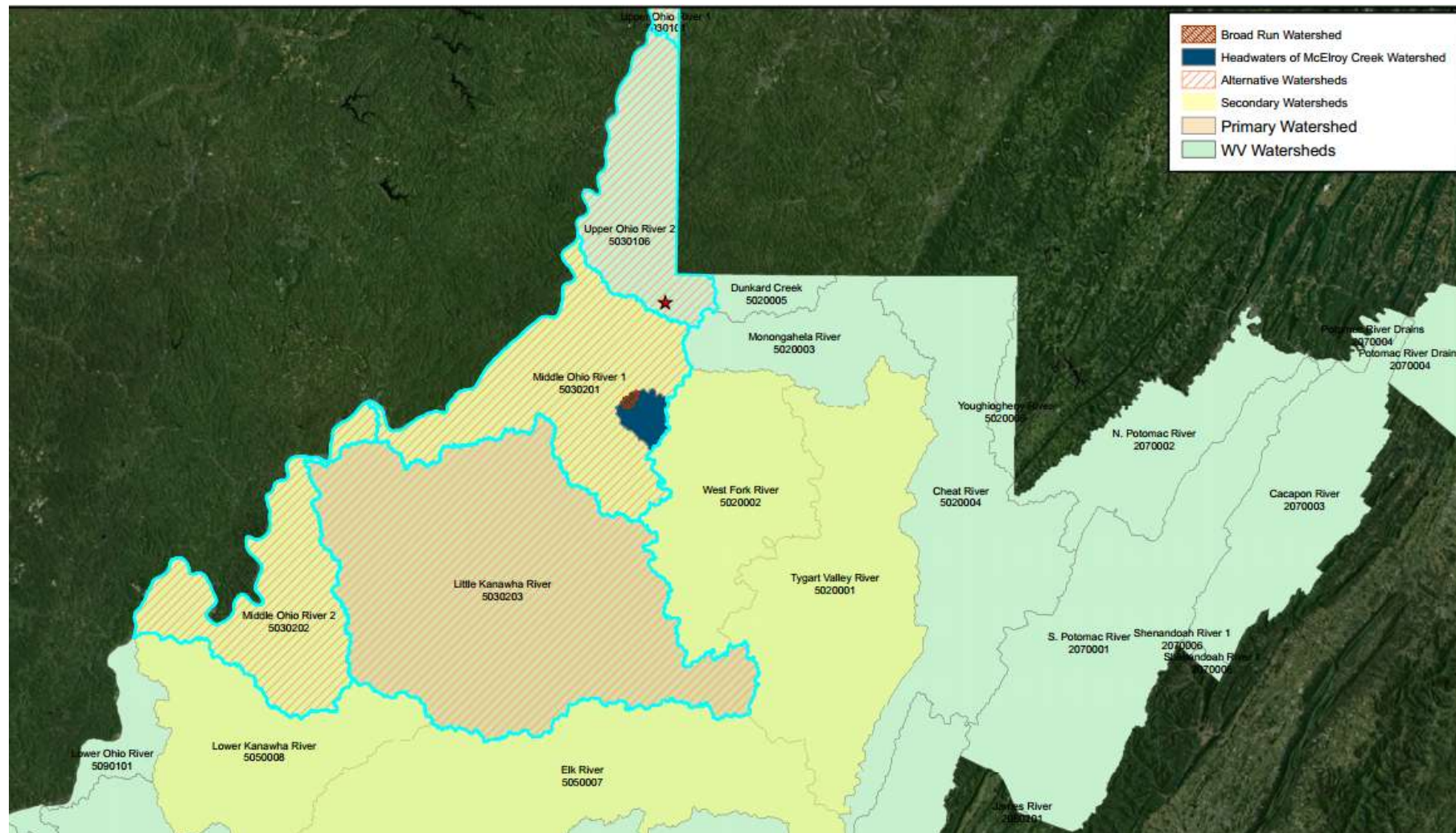
- **INDIVIDUAL PERMITS**

# Mitigation Rule

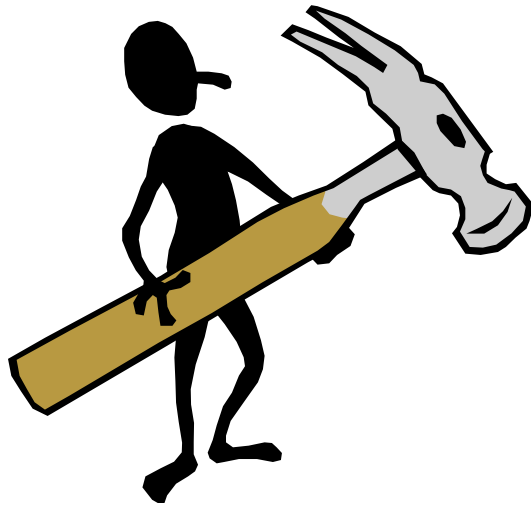
- **Goal** – level playing field (permittee, Mitigation Banks, ILFs) to the maximum extent practicable
- **Mitigation sequence retained**
  - avoid, minimize, compensate for unavoidable impacts and lost aquatic functions
- **Preference hierarchy for mitigation options:**
  - Mitigation bank credits
  - In-lieu fee program credits
  - Permittee-responsible mitigation under a watershed approach
    - On-site and/or in-kind permittee-responsible mitigation
    - Off-site and/or out-of-kind permittee-responsible mitigation
- **Watershed Approach**
- **Performance Standards** – ecologically-driven, equivalent/effective standards, best available science
- **Compliance** – increase compliance visits, establish enforceable success criteria, prescribed monitoring reports
- **Adaptive management** – make fixes for successful performance
- **Does not change *when* mitigation is required**
- **Does change *where* and *how***



# Watershed Approach







Enhancement

ILF

Rehabilitation

Restoration

Preservation

Compensation

Banking

HOW DOES IT WORK?????

# STEP 1

- Determine Your Impacts
- Determine Existing Condition of the Impact Area
  - SWVM
    - HGM – Functional Capacity Scores
    - Physical Indicators – RBP Scores
    - Chemical Indicators – Water Quality
    - Biological Indicators - WVSCI

# West Virginia Stream and Wetland Valuation Metric

(Stream Valuation Metric - Worksheet 1 of 3)

USACE FILE NO./Project Name:	Reynolds Creek Development (SWMP #2.0 Example)		IMPACT COORDINATES: (in Decimal Degrees)	Lat.	-81.5346	Long.	39.1713	WEATHER:	Cloudy, 40 degrees	DATE:	January 28, 2011	
STREAM CLASSIFICATION:	Intermittent		IMPACT STREAM/SITE ID AND SITE DESCRIPTION: [X stream slope, watershed size (acres), wetland or upland]	Channel Slope 4X, 70 ac Watershed, Un-impaired Forestland				MITIGATION STREAM CLASS./SITE ID AND SITE DESCRIPTION: [X stream slope, watershed size (acres), wetland or upland]		Intermittent, Channel Slope 4.5X, 85 ac Watershed, minimal impacts due to gas exploration and logging		
STREAM IMPACT LENGTH:	250	FORM OF MITIGATION:	Permittee Responsible - Onsite	MIT COORDINATES: (in Decimal Degrees)	Lat.	-81.5213	Long.	39.2314	PRECIPITATION PAST 48 HRS:	0.1	Mitigation Length:	475

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Column No. 1- Impact Existing Condition (Debit)			
<b>HGM Score (attach data forms):</b>		Average	
Hydrology	0.8	0.8	
Biogeochemical Cycling	0.8		
Habitat	0.8		
<b>PART I - Physical, Chemical and Biological Indicators</b>			
	Points Scale	Range	Site Score
<b>PHYSICAL INDICATOR</b> (Applies to all stream classifications)			
<b>USEPA RBP (High Gradient Data Sheet)</b>			
1. Epifaunal Substrate/Available Cover	I-II	0-1	16
2. Embeddedness	I-II		16
3. Velocity/ Depth Regime	I-II		16
4. Sediment Deposition	I-II		16
5. Channel Flow Status	I-II		16
6. Channel Alteration	I-II		16
7. Frequency of Riffles (or bends)	I-II		16
8. Bank Stability (LB & RB)	I-II		16
9. Vegetative Protection (LB & RB)	I-II		16
10. Riparian Vegetative Zone Width (LB & RB)	I-II		16
Total RBP Score	Suboptimal		160
Sub-Total			0.8
<b>CHEMICAL INDICATOR</b> (Applies to Intermittent and Perennial Streams)			
<b>WYDEP Water Quality Indicators (General)</b>			
<b>Specific Conductivity</b>			
500-599 = 50 points	I-III	I-I	500
<b>pH</b>			
6.0-8.0 = 80 points	I-III		7.5
<b>DO</b>			
>5.0 = 30 points	I-III		7
Sub-Total			0.8
<b>BIOLOGICAL INDICATOR</b> (Applies to Intermittent and Perennial Stream)			
<b>WY Stream Condition Index (WYSCI)</b>			
Very Good	I-III	I-I	80
Sub-Total			0.8
<b>PART II - Index and Unit Score</b>			
Index	Linear Feet	Unit Score	
0.8	1000	800	

HGM Scores

+

Physical Indicators  
RBP Scores

+

Chemical Indicators

+

Biological Indicators  
WVSCI Scores

=

Index Score

The Index Score multiplied by the linear footage provides a Unit Score

# STEP 2

- Determine Your Mitigation
- Determine Existing Condition of the Mitigation Area
- Predict Mitigation Site Condition at:
  - ☐ 5 years
  - ☐ 10 years
  - ☐ 20 years

Column No. 2- Mitigation Existing Condition - Baseline (Credit)				
HGM Score (attach data forms):			Average	
Hydrology	0.58	0.54		
Biogeochemical Cycling	0.61			
Habitat	0.43			
PART I - Physical, Chemical and Biological Indicators				
	Points Scale	Range	Site Score	
PHYSICAL INDICATOR (Applies to all stream classifications)				
USEPA RBP (High Gradient Data Sheet)				
1. Epifaunal Substrate/Available Cover	1-20	1-1	9	
2. Embeddedness	1-20		9	
3. Velocity/ Depth Regime	1-20		12	
4. Sediment Deposition	1-20		8	
5. Channel Flow Status	1-20		11	
6. Channel Alteration	1-20		9	
7. Frequency of Riffles (or bends)	1-20		12	
8. Bank Stability (LB & RB)	1-20		10	
9. Vegetative Protection (LB & RB)	1-20		10	
10. Riparian Vegetative Zone Width (LB & RB)	1-20		12	
Total RBP Score		Marginal	102	
Sub-Total			0.51	
CHEMICAL INDICATOR (Applies to Intermittent and Perennial Stream)				
WYDEP Water Quality Indicators (General)				
Specific Conductivity		1-1	52.9	
<=33 - 30 points				
pH			6.92	
6.0-8.0 = 80 points				
DO			9.05	
>5.0 = 30 points				
Sub-Total			1	
BIOLOGICAL INDICATOR (Applies to Intermittent and Perennial Stream)				
WY Stream Condition Index (WYSCI)				
Very Good		1-100	1-1	89.55
Sub-Total				1

PART II - Index and Unit Score		
Index	Linear Feet	Unit Score
0.688333333	571	393.04

Column No. 3- Mitigation Projected at Five Years Post Completion (Credit)				
HGM Score (attach data forms):			Average	
Hydrology	0.63	0.62		
Biogeochemical Cycling	0.72			
Habitat	0.51			
PART I - Physical, Chemical and Biological Indicators				
	Points Scale	Range	Site Score	
PHYSICAL INDICATOR (Applies to all stream classifications)				
USEPA RBP (High Gradient Data Sheet)				
1. Epifaunal Substrate/Available Cover	1-20	1-1	14	
2. Embeddedness	1-20		13	
3. Velocity/ Depth Regime	1-20		14	
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5. Channel Flow Status	1-20		13	
6. Channel Alteration	1-20		11	
7. Frequency of Riffles (or bends)	1-20		14	
8. Bank Stability (LB & RB)	1-20		12	
9. Vegetative Protection (LB & RB)	1-20		13	
10. Riparian Vegetative Zone Width (LB & RB)	1-20		14	
Total RBP Score		Suboptimal	129	
Sub-Total			0.645	
CHEMICAL INDICATOR (Applies to Intermittent and Perennial Stream)				
WYDEP Water Quality Indicators (General)				
Specific Conductivity		1-1	52.9	
<=33 - 30 points				
pH			6.92	
6.0-8.0 = 80 points				
DO			9.05	
>5.0 = 30 points		10-30		
Sub-Total			1	
BIOLOGICAL INDICATOR (Applies to Intermittent and Perennial Stream)				
WY Stream Condition Index (WYSCI)				
Very Good		1-100	1-1	89.55
Sub-Total				1

PART II - Index and Unit Score		
Index	Linear Feet	Unit Score
0.750833333	571	428.73

Column No. 4- Mitigation Projected at Ten Years Post Completion (Credit)				
HGM Score (attach data forms):				Average
Hydrology	0.78	0.76		
Biogeochemical Cycling	0.82			
Habitat	0.68			
PART I - Physical, Chemical and Biological Indicators				
	Points Scale	Range	Site Score	
PHYSICAL INDICATOR (Applies to all stream classifications)				
USEPA RBP (High Gradient Data Sheet)				
1. Epifaunal Substrate/Available Cover	1-20	1-1	15	
2. Embeddedness	1-20		15	
3. Velocity/ Depth Regime	1-20		16	
4. Sediment Deposition	1-20		16	
5. Channel Flow Status	1-20		16	
6. Channel Alteration	1-20		17	
7. Frequency of Riffles (or bends)	1-20		15	
8. Bank Stability (LB & RB)	1-20		17	
9. Vegetative Protection (LB & RB)	1-20		16	
10. Riparian Vegetative Zone Width (LB & RB)	1-20		16	
Total RBP Score	Suboptimal		159	
Sub-Total			0.795	
CHEMICAL INDICATOR (Applies to Intermittent and Perennial Stream)				
WYDEP Water Quality Indicators (General)				
Specific Conductivity		1-1	52.9	
<=33 - 30 points	1-30			
pH			6.92	
6.0-8.0 = 80 points	1-30			
DO			9.05	
>5.0 = 30 points	10-30			
Sub-Total			1	
BIOLOGICAL INDICATOR (Applies to Intermittent and Perennial Stream)				
WY Stream Condition Index (WYSCI)				
Very Good	1-100	1-1	89.55	
Sub-Total			1	

PART II - Index and Unit Score		
Index	Linear Feet	Unit Score
0.845833333	571	482.971

Column No. 5- Mitigation Projected At Maturity (Credit)				
HGM Score (attach data forms):			Average	
Hydrology	0.9	0.8967		
Biogeochemical Cycling	0.92			
Habitat	0.87			
PART I - Physical, Chemical and Biological Indicators				
	Points Scale	Range	Site Score	
PHYSICAL INDICATOR (Applies to all stream classifications)				
USEPA RBP (High Gradient Data Sheet)				
1. Epifaunal Substrate/Available Cover	1-20	1-1	16	
2. Embeddedness	1-20		16	
3. Velocity/ Depth Regime	1-20		17	
4. Sediment Deposition	1-20		17	
5. Channel Flow Status	1-20		17	
6. Channel Alteration	1-20		18	
7. Frequency of Riffles (or bends)	1-20		16	
8. Bank Stability (LB & RB)	1-20		18	
9. Vegetative Protection (LB & RB)	1-20		17	
10. Riparian Vegetative Zone Width (LB & RB)	1-20		17	
Total RBP Score	Optimal		169	
Sub-Total			0.845	
CHEMICAL INDICATOR (Applies to Intermittent and Perennial Stream)				
WYDEP Water Quality Indicators (General)				
Specific Conductivity		1-1		
<=33 - 30 points	1-30		52.9	
pH				
6.0-8.0 = 80 points	1-30		6.92	
DO				
>5.0 = 30 points	10-30	9.05		
Sub-Total			1	
BIOLOGICAL INDICATOR (Applies to Intermittent and Perennial Stream)				
WY Stream Condition Index (WYSCI)				
Very Good	1-100	1-1	89.55	
Sub-Total			1	

PART II - Index and Unit Score		
Index	Linear Feet	Unit Score
0.9225	571	526.75



# STEP 3

- Determine Temporal Loss
- Determine Long-term Protection
- Determine Buffer
- Determine Restoration Level
- Evaluate ILF



Long-term Protection	
% Add. Mitigation and Monitoring Period	Long-Term Protection (Years)
1 - 5/10 Year Monitoring	101
Sub-Total	0

PART IV - Index to Unit Score Conversion			
Final Index Score	Linear Feet	Unit Score (Debit)	ILF Cntr (Offsetting Debit Units)
0.3	1000	300	\$640,000.00

Temporal Loss-Construction	
<i>Note: Ratio of duration of specific functional loss between the time of an impact (debit) and completion of emergency mitigation (credit).</i>	
Years	5
Sub-Total	0.12
Temporal Loss-Maturity	
<i>Note: Period between completion of emergency mitigation measures and the time required for maturity, as it relates to Resilience (i.e., maturity of loss relative to provide requisite matter and detritus within requisite storage or without further accident).</i>	
% Add. Mitigation	Temporal Loss-Maturity (Years)
88%	20
Sub-Total	0.24

Long-term Protection	
% Add. Mitigation and Monitoring Period	Long-Term Protection (Years)
88% - 5/10 Year Monitoring	50
Sub-Total	0.3208

PART IV - Index to Unit Score Conversion			
Final Index Score	Linear Feet	Unit Score (Debit)	ILF Cntr (Offsetting Debit Units)
1.4808	1000	1480.3	\$1,184,640.00





Temporal Loss-Construction	
<i>Note: Estimate duration of specific functional loss between the time of an impact (debit) and completion of compensatory mitigation (credit).</i>	
Years	5
Sub-Total	0.12
Temporal Loss-Maturity	
<i>Note: Period between completion of compensatory mitigation measures and the time required for maturity, as it relates to function (i.e., maturity of tree stream to provide riparian shelter and detritus within riparian stream or wetland habitat corridor).</i>	
% Add. Mitigation	Temporal Loss-Maturity (Years)
88%	20
Sub-Total	0.24

Long-term Protection	
% Add. Mitigation and Monitoring Period	Long-Term Protection (Years)
88% - 5/10 Year Monitoring	50
Sub-Total	0.3208

PART IV - Index to Unit Score Conversion			
Final Index Score	Linear Feet	Unit Score (Debit)	ILF Cntr (Offsetting Debit Units)
1.4808	1000	1480.8	\$1,184,640.00



PART V - Comparison of Unit Scores and Projected Balance									
Final Unit Score (Debit) [No Net Loss Value]	1480.8	Mitigation Existing Conditions - Baseline (Credit)	393.038333	Mitigation Projected at Five Years Part Completion	428.725833	Mitigation Projected at Ten Years Part Completion (Credit)	482.97083	Mitigation Projected At Maturity (Credit)	526.748
FINAL PROJECTED NET BALANCE					35.6875		\$9.9325		133.709

Part VI - Mitigation Considerations (Incentives)				
Extent of Stream Restoration		Extended Upland Buffer Zone		
<i>Note 1: Reference the Institutional Standard to determine the correct Restoration Levels (below) for your project.</i>		<i>Note 1: Reference Institutional Standard for the definitions of the Buffer Zone Mitigation Levels and Types (below).</i>		
<i>Note 2: Place an "X" in the appropriate category (only select one).</i>		<i>Note 2: Enter the buffer width for each channel side (Left Bank and Right Bank).</i>		
<i>Note 3: Select the appropriate mitigation type.</i>				
Level I Restoration		Buffer Width	Left Bank	
Level II Restoration	X	25	0-50	Preservation and Re-vegetation
Level III Restoration			51-150	Preservation
		Buffer Width	Right Bank	
		25	0-50	Preservation and Re-vegetation
			51-150	Preservation
		Average Buffer	25	

Site	Impact Unit Yield (Debit)	Mitigation Unit Yield (Credit)
Main Channel Dan Branch (DB 3-4)	1480.8	257.3901



# STEP 4

- Determine Which Mitigation Avenue to Pursue

# ANY QUESTIONS??????

