

# Clean Water Act Section 401 Program

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Item D: Informational item

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# Presentation purpose

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- Provide an overview of Section 401 of the Clean Water Act
- Discuss the effect of recent federal rule changes on the program

# Clean Water Act Section 401 Program

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- Section 401 of the Clean Water Act requires applicants for federally licensed projects that may discharge to seek a water quality certification from DEQ
- Section 401 gives authority to states to protect state's waters
- DEQ implements Oregon Administrative Rules and Oregon Statutes with the program
- Certifications contain conditions which ensure compliance with State of Oregon water quality rules

# Clean Water Act Section 401 Program

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- Water Quality Certifications are generally issued for dredge/fill projects and non-federal hydroelectric projects
- Certifications address any possible discharge, not just discharge that comes directly from pipes (as a NPDES permit does)
- Certifications address all water quality impacts expected from the project construction, project operation, and project footprint

# Section 401 Hydro Projects

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- DEQ evaluates all project activities
- DEQ reviews all components of water quality standards
- Water Quality Certifications address:
  - Reservoir water quality
  - Downstream water quality
  - Other parameters, like flow and water level increases downstream
- Certifications used to implement allocations from TMDLs

# Section 401 Dredge and Fill Projects

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- Certification is triggered by the discharge of material into a waterbody (stream, wetland, etc.)
- DEQ evaluates potential water quality impacts from the construction and operation of a project
- 401 reviews post construction stormwater management plans, dredging and disposal plans, etc.
- 401 coordinates with clean up, TMDL program, other agencies

# Program Challenges

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- Revisions to EPA/401 rule (effective September 2020)
  - Affects state certification process and limits scopes of Water Quality Certifications
- WOTUS changes (effective June 2020)
  - Limits which state waters are subject to federal jurisdiction, in turn limiting applicability of Water Quality Certifications

# Section 401 Rule Change Impacts

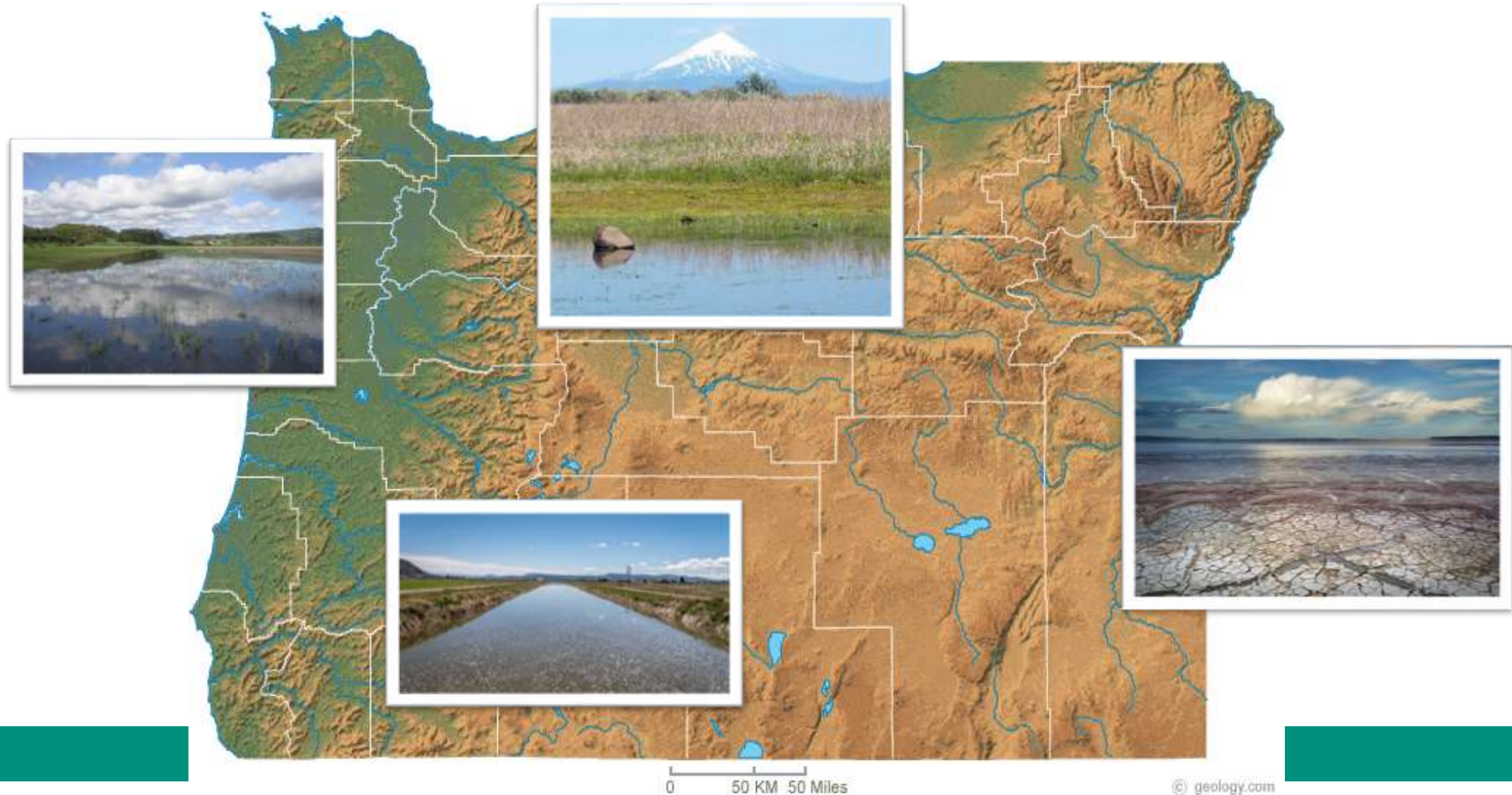
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## What has changed?

- Procedures: New requirements for permittees and agency staff
- Scope
- Timeframes: Limits on how long the agency has to issue a certification or waive review
- Justification
- Enforcement: DEQ enforcement options limited, federal agency retains authority



# WOTUS: Understanding the Impacts to 401



# WOTUS: Immediately Affects 401 Water Quality Certifications

- Changes to WOTUS definition mainly affect dredge/fill certifications
- For federal jurisdictional waters, DEQ is staying the course
- For non-federal jurisdictional waters, DEQ is pursuing Mutual Agreement Orders with project applicants



# Clean Water Act Section 401 Presentation

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## Questions and discussion