



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 29 2016

OFFICE OF WATER

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is continuing consultation and coordination with federally recognized Indian tribes on a potential rulemaking now under development that would establish baseline water quality standards (WQS) under the Clean Water Act (CWA) for waters on Indian reservations that currently do not have EPA-approved WQS in place. The EPA previously initiated consultation with tribes on this matter from August to November 2015. The input received at that time, and from several meaningful exchanges since, was used to further develop the concepts included in the attached consultation plan.

As we prepare for the rule itself, we have decided to develop an Advance Notice of Proposed Rulemaking (ANPRM) on the baseline WQS effort. The ANPRM will provide a valuable opportunity for the EPA to engage in further meaningful dialogue with tribes and to obtain public input.

During the 2015 consultation and coordination with federally recognized tribes, the EPA communicated with a number of tribes and their leaders by participating in more than ten events, including webinars, conferences, and Regional Tribal Operations Committee (RTOC) meetings. Additionally, the EPA received formal written comments from several tribal governments and from the National Tribal Water Council (NTWC). The EPA gained valuable insight from this input, appreciates all of the comments received, and looks forward to an ongoing partnership and dialogue with tribes throughout this ANPRM process.

Much of the input received on establishing baseline WQS highlighted the benefits to tribes and the environment that a potential federal rulemaking would provide. Water quality standards define the goals for water bodies and establish the criteria that must be met to support those goals, serving as the foundation for controlling pollution as mandated by the CWA. By promulgating baseline WQS on Indian reservations, the EPA will be better equipped to work with tribes to not only improve water quality in impaired waters, but also prevent future degradation of waters by providing a basis to assess the health of water bodies and impose permitting limits to control pollution discharges, including upstream discharges.

Enclosed is a consultation and coordination plan that includes a description of the ANPRM, the process and timeline the EPA intends to follow, and information on how you and your designated representative(s) can provide input. Please let us know if you have comments or ideas about the plan itself in order to ensure we have meaningful tribal input before publishing the ANPRM. The EPA's

general consultation information is also available on the EPA's Tribal Portal (<http://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>).

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<http://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>). We invite you and your designated representative(s) to participate in this process. The EPA also extends an invitation for tribes to request formal government-to-government consultation during the consultation and coordination period. The EPA's anticipated timeline for the consultation and coordination period is expected to extend from the date of this letter to August 31, 2016.

If you have any questions, please contact Mary Lou Soscia (soscia.marylou@epa.gov). We look forward to hearing from you on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Beauvais". The signature is written in a cursive style with a large initial "J" and "B".

Joel Beauvais
Deputy Assistant Administrator

Enclosure

Tribal Consultation and Coordination Plan
Baseline Tribal Water Quality Standards
June 2016

Background Information

The EPA is considering a federal rulemaking to establish baseline water quality standards (WQS) for waters on Indian reservations that do not have Clean Water Act (CWA) WQS in place.

The EPA is involved in a number of important efforts to better protect water resources of importance to tribes. These include:

- The January 2016 proposed rule enabling tribes to apply for the CWA section 303(d) program for listing impaired waters and developing total maximum daily loads (TMDLs) (see <http://www.epa.gov/tmdl/proposed-rule-treatment-indian-tribes-similar-manner-states-purposes-section-303d-clean-water>).
- The February 2016 final guidance describing the process by which EPA will honor and respect tribal treaty rights and engage with tribes during consultation on EPA actions (see <https://www.epa.gov/tribal/tribal-treaty-rights>).
- The May 2016 final interpretive rule to streamline the process for tribes to be treated in a similar manner as a state (TAS) (see <https://www.epa.gov/wqs-tech/revised-interpretation-clean-water-act-tribal-provision>).

The EPA recognizes, however, that even with these efforts, it is likely that the majority of reservation waters nationally will continue to lack full CWA protections for years to come. Only 43 tribes out of over 300 with reservations currently have EPA-approved WQS. While this number may grow, the absence of standards in the meantime means that EPA's ability to fully protect tribal water uses is limited, and EPA must often rely on the WQS of surrounding jurisdictions.

A potential baseline WQS could fill the standards gap in Indian reservation waters and better position EPA and tribes to realize the human health and environmental protections and benefits envisioned in the CWA. Such baseline WQS could be used in water quality permitting decisions that impact reservation waters, including permits directly upstream from reservation waters.

EPA encourages tribes to seek to qualify for TAS authority under CWA section 518. Tribe-adopted, EPA-approved WQS would supersede any federal baseline WQS established by this potential rulemaking.

Developing an Advance Notice of Proposed Rulemaking

To initiate such an effort, we have decided to develop an Advance Notice of Proposed Rulemaking (ANPRM) on the baseline WQS. The ANPRM will provide a valuable opportunity for the EPA to engage in further meaningful dialogue with tribes and to obtain public input. Publication of the ANPRM would be followed by a public comment period and in-depth tribal consultation and coordination.

Potential Benefits for Tribes

The potential benefits of baseline federal WQS would be significant, and include:

- Establishing goals for the quality of reservation waters that are recognized under the CWA;

- Providing a basis for enforceable National Pollutant Discharge Elimination System (NPDES) permits to require controls beyond basic technology-based controls (water discharges allowed by NPDES permits must meet WQS set under the CWA for those receiving waters);
- Providing a mechanism to control discharges through other federal licenses and permits (CWA section 401 certification);
- Facilitating tribal participation with states and the federal government to inform CWA based water quality management decisions impacting those waters on the reservation; and
- Protecting reservation water quality from upstream discharges flowing into reservation waters from other jurisdictions.

Areas for Consultation and Coordination

Consistent with the EPA’s Policy on Consultation and Coordination with tribes (<https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>), the EPA is establishing this additional opportunity to consult and coordinate with federally recognized tribes in order to solicit feedback on all aspects of the potential baseline WQS, with particular emphasis on obtaining tribal input on specific approaches and provisions before publishing the ANPRM.

EPA Seeking Comment and Dialogue on Proposed Tribal Baseline WQS ANPRM

EPA is seeking tribal feedback for baseline WQS to inform the development and improvement of the ANPRM so that it addresses tribal water quality needs. Specifically, EPA is seeking tribal comment on various water quality standards approaches under the Clean Water Act using a combination of CWA 101(a)(2) designated uses, antidegradation provisions, numeric criteria, narrative “free from” criteria, general WQS provisions, and implementation provisions including mixing zones and compliance schedules. EPA is also interested in any input regarding whether there are any concerns that would warrant not including a tribe in any final federal baseline WQS rulemaking. However, the EPA recognizes that fully customized standards are best achieved by a tribe with TAS that develops its own WQS for approval by the EPA. Tribe-adopted, EPA-approved WQS best reflect tribal-specific circumstances and uses that are not feasible for national baseline WQS.

Tribal Consultation and Coordination Process and Time Frame

The table below represents some of the consultation steps currently planned, and is meant as a starting point. The EPA will also resume consultation and coordination with federally recognized tribes after the ANPRM is published, likely concurrent with the public comment period that immediately follows publication of an ANPRM.

Tribes may access this letter and consultation plan, and other materials that may be developed, through the Tribal Consultation Opportunities Tracking System (TCOTS), located at:

<http://tcots.epa.gov/oita/TConsultation.nsf/TC?OpenView>.

Tribal Government Consultation and Coordination Timeline	
Date	Event
Date of letter through August 31, 2016	Tribal government to government consultation and coordination period
July 13	Region 6 Regional Tribal Operations Committee (RTOC) meeting, NM, information and coordination discussion.
July 13	Region 5 RTOC, Stockbridge-Munsee Tribe Reservation, WI, information and coordination discussion.
July 20	Tribes-only information, coordination and consultation webinar* 12:00 noon – 1:30 pm ET Call in number: 866-299-3188, 503-326-5873# Adobe Connect: http://acms.com/bwqs/
August 4	Region 4 RTOC, Cherokee, NC, information and coordination discussion.
August 10	Tribes-only information, coordination and consultation webinar* 12:00 noon – 1:30 pm ET Call in number: 866-299-3188, 503-326-5873# Adobe Connect: http://acms.com/tbwqs/ <i>(additional webinars may be scheduled)</i>
August 11	Region 9 RTOC, San Francisco, CA, information and coordination discussion. (Details at: https://www.epa.gov/tribal/regional-tribal-operations-committee-region-9)
August 15-18	Tribal Lands Environmental Forum (TLEF), Mohegan Sun Resort, CT Consultation event Wednesday, August 17, from 10:30 am – 12:00 noon ET; Information presentation Wednesday, August 17, from 3:30 – 5:00 pm ET (Details at: http://www7.nau.edu/itep/main/Conferences/confr_tlef)
TBD	Additional information presentations at EPA RTOC meetings will provide an opportunity for coordination discussions with Tribal Governments.
August 31	End of consultation period.

*The webinar will include two segments: The first segment will be used to coordinate and share information, and provide an opportunity for input and questions on the proposal. The second segment will provide an opportunity for consultation comments from tribal consultation officials.

Tribes may submit written consultation comments by email or mail and request additional information:

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For additional information on the Clean Water Act and Water Quality Standards, please visit:
<http://www.epa.gov/laws-regulations/summary-clean-water-act> and <https://www.epa.gov/standards-water-body-health>.