



Baseline Water Quality Standards for Indian Reservations: Developing an Advance Notice of Proposed Rulemaking (ANPRM)

State webinar presentation – September 1, 2016

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Purpose of Today's Webinar

To obtain input from states and intergovernmental associations prior to publishing an Advance Notice of Proposed Rulemaking (ANPRM) later in 2016 on potential Baseline Water Quality Standards (WQS) for Indian reservations.

EPA will:

- Present current thinking on the ANPRM for potential Baseline standards
- Answer questions
- Invite feedback – Are we on the right track? Are we missing anything important?



Outline of Today's Webinar

- Why Baseline standards?
- Why an ANPRM?
- Schedule
- Potential Baseline WQS – EPA's current thinking and options
 - Designated uses
 - Water quality criteria
 - Antidegradation requirements
 - Implementation provisions
- Potential coverage
- Next steps



Why Baseline Standards?

EPA is exploring a rulemaking to establish federally-promulgated baseline WQS for Indian reservations that do not have Clean Water Act (CWA) effective WQS.

- Would be aimed at closing the gap in WQS for Indian reservation waters. Fewer than 50 of over 300 tribes with Indian reservations have WQS effective under the CWA.
- Individually promulgating standards “one tribe at a time” would take many years and strain resources.
- Not all tribes may seek TAS; and even with streamlined TAS applications, many tribes may continue to experience obstacles to establishing their own CWA-effective WQS.
- Reservation waters without such WQS may not have the full suite of protections afforded under the CWA.



Baseline WQS would NOT...

- Change existing NPDES permit development and responsibilities; EPA generally issues NPDES permits now on reservation waters and will continue to issue them.
- Affect the scope of existing EPA-approved state programs.
- Affect the more than 40 tribes that currently have EPA-approved WQS.
- Diminish a tribe's ability to apply for TAS and establish their own WQS.



Why an ANPRM?

- In April 2016, EPA decided to issue an ANPRM this year that provides details of a potential proposed rule and invites input from tribes, states, and the public.
- ANPRM provides an opportunity to engage substantively with tribes and states on the concept and obtain tribal and state perspectives.
- The ANPRM will help identify potential issues before moving forward on a potential rulemaking.



Schedule

- Tribal/EPA Government to Government consultation and coordination – June 29 through August 31
- Information Sessions with states and intergovernmental associations – July 22 through September 1
 - State Informational Webinar –August 8
 - Face to Face Conversation – ACWA Annual Meeting in Seattle, WA – August 17
 - Joint ACWA and ECOS Informational Webinar – September 1
- Publish the ANPRM in the Federal Register by the end of the calendar year



What Might Be Included in Potential Baseline Standards?

EPA would seek input in the ANPRM on:

- **Which components of water quality standards should be included to ensure CWA water quality protection of all waters on Indian reservations?**
 - Includes designated uses, narrative and numeric water quality criteria, antidegradation requirements, and general provisions such as authorizing provisions for mixing zones, compliance schedules, and WQS variances.
- **Should EPA establish “one set of WQS that apply universally”? And:**
 - Allow limited tailoring by establishing cultural and traditional designated use to account for unique practices?
 - Provide limited range of fish consumption rates used in HHC?
 - Ensure greater protection for high quality and outstanding natural resource waters of particular importance to tribe through antidegradation?



For What Waters Would Potential Baseline Standards Apply?

- Could apply to all reservation waters except those having CWA-applicable WQS.
- Reservation waters include: waters in formal reservations and waters in lands not located within formal reservations that are held in trust for tribal governments.



Potential Baseline Standards

Water quality standards generally consist of the following elements:

1. Designated uses
2. Water quality criteria
3. Antidegradation requirements
4. Implementation provisions



Potential Baseline Standards

1. Designated uses – 101(a)(2)

- EPA would designate the CWA section 101(a)(2) uses of protection and propagation of fish, shellfish, and wildlife and recreation in and on the waters (“fishable, swimmable”) for all waters.
- In the first round of consultation, tribes expressed a clear interest in using WQS to help protect their ***cultural and traditional*** uses of water and aquatic resources.
- EPA would seek comment on two options:
 - **Option A:** Include “cultural and traditional uses of the water by a tribe” *explicitly* in the Baseline Water Quality Standards designated uses.
 - **Option B:** Cover cultural and traditional uses *implicitly* in the BWQS under sections 101(a)(2) and 303(c) of the CWA, and/or through criteria adjustments.
- EPA would also seek comment on designation of a public water supply use for all waters.



Potential Baseline Standards

2. Water quality criteria

Water quality criteria can be expressed as narrative or numeric:

- **Narrative** (*qualitative*): used to express the protective condition of a water body when pollutants are unknown, unstudied or cannot be precisely measured.
- **Numeric** (*quantitative*): specify precise, measurable levels of particular chemicals or conditions allowable in a water body.

EPA would seek comment on combination of narrative and numeric.



Potential Baseline Standards

2. Water quality criteria – Narrative

The baseline WQS water quality criteria could include:

- Requirement for waters to be “free from” certain adverse conditions and types of substances, per longstanding EPA guidance.
- Narrative to protect cultural and traditional uses.
- Narrative for downstream protection per recent EPA guidance developed with states.
- Narrative wetlands WQS currently being developed.



Potential Baseline Standards

2. Water quality criteria – Numeric

- Include most aquatic life and human health numeric 304(a) recommended criteria.
- Options for default fish consumption rates (FCR) may include:
 - 175 g/day for Northwest tribes
 - 160 g/day half of the USDA recommended daily protein intake
 - 142 g/day EPA default “subsistence” rate
 - 22 g/day national human health criteria default



Potential Baseline Standards

3. Antidegradation requirements

Antidegradation: requirements complement designated uses and water quality criteria by providing a framework for maintaining and protecting water quality that has already been achieved.

Tier 1. Existing in-stream uses for all waters of the United States

- Applies a minimum level of protection to all waters even when another tier is also assigned.

Tier 2. High quality waters (where water quality is better than the levels necessary to support the CWA section 101(a)(2) uses)

- Provides a process (Tier 2 review) to allow measured consideration prior to allowing a lowering of water quality.

Tier 3. Outstanding National Resource Waters (ONRW)

- Includes a prohibition of any lowering of water quality.

EPA would seek comment on including both an **antidegradation policy** consistent with all three tiers of maintenance and protection and detailed **antidegradation implementation methods** in the text of any resulting Baseline rule.



Potential Baseline Standards

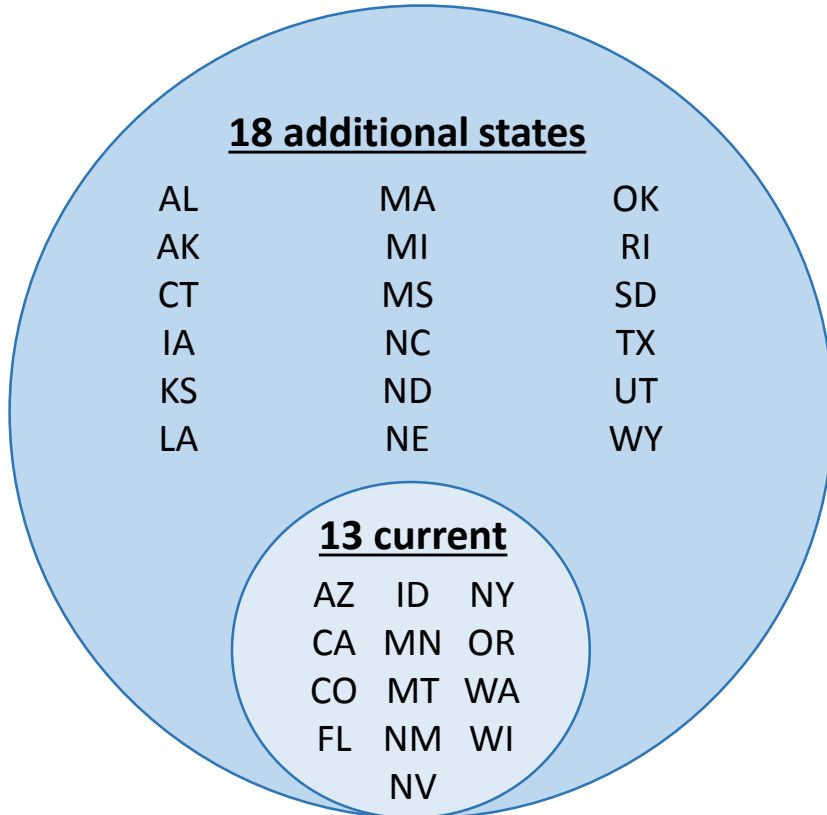
4. Implementation

- Standards could include **implementation** flexibilities (*e.g.*, authorizing provisions for mixing zones, compliance schedules, and WQS variances).
- Implementation would occur with full opportunities for public engagement as provided in EPA regulations.
- EPA would also consult with tribes and states on specific decisions as appropriate.

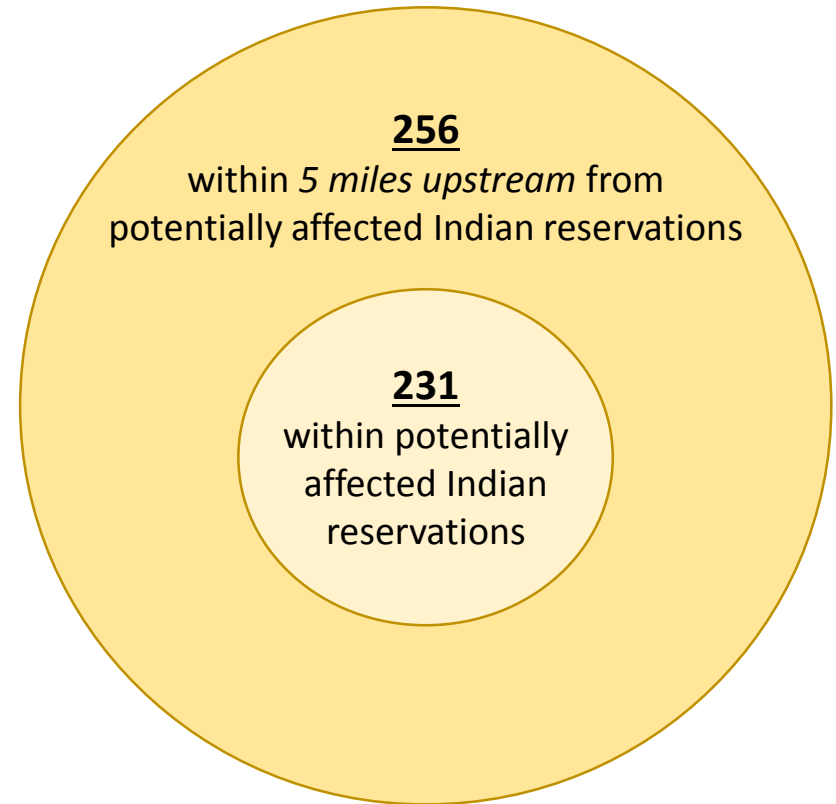


Potential Coverage of Baseline WQS

31 total states with Indian reservations that could be covered by BWQS



Approximately 487
NPDES individual discharger permits



*An unknown number of the potentially covered tribes lack reservation waters and would not be covered by Baseline WQS.



For More Information

- Mary Lou Soscia, soscia.marylou@epa.gov
- Environmental protection in Indian Country:
<https://www.epa.gov/tribal>
- Clean Water Act and Water Quality Standards:
<https://www.epa.gov/standards-water-body-health>
- Aquatic and Human Health Criteria:
<https://www.epa.gov/wqc/national-recommended-water-quality-criteria>



How to Provide Comments after the Webinar

Please email any comments after the webinar to the following address:

Mary Lou Soscia, soscia.marylou@epa.gov