



**Summary Report of Tribal
Consultation and Coordination for the
Proposed Rule:
Federal Baseline
Water Quality Standards
for Indian Reservations**

U.S. Environmental Protection Agency

November 2021

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Introduction

This consultation report was prepared to support the EPA’s proposed rule *Federal Baseline Water Quality Standards for Indian Reservations*.

EPA initiated a 90-day pre-proposal tribal consultation and coordination period by sending a “Notification of Consultation and Coordination” letter on June 11, 2021, to all 574 federally recognized tribes as of that date. The consultation period began on June 15, 2021 and ended on September 13, 2021. EPA conducted the consultation and coordination process in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes (<https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>).

In addition to two national tribal listening sessions held in July and August 2021, EPA presented at 16 meetings of tribal staff and leadership, held 4 staff-level coordination/engagement meetings, and held 4 government-to-government meetings. EPA continued outreach and engagement with tribes at national and regional tribal meetings after the end of the consultation period. EPA considered all pre-proposal tribal input received as it developed the proposed rule.

This report summarizes the consultation and coordination conducted with tribal governments, tribal consortia, and other tribal organizations prior to development of the proposed rule as well as comments provided by participants at tribal government meetings and the written comments received during the pre-proposal tribal consultation period. The summary is intended to provide a description of the wide range of comments received from tribal governments and tribal organizations as part of this consultation process.

Consultation and Coordination

On June 11, 2021, EPA sent a Tribal Consultation Notification letter inviting tribal officials to participate in consultation and coordination events and provide comments to EPA. The letter (Appendix A) was sent to all 574 federally recognized tribes as of that date. EPA also notified tribes of the consultation via the Tribal Consultation Opportunities Tracking System on the EPA Tribal Portal (<http://tcots.epa.gov>). The letter invited tribal leaders and designated consultation representatives to participate in the tribal consultation and coordination process.

To solicit comments on the proposed rulemaking and in recognition of tribal government and tribal nation sovereignty, EPA consulted with tribes to gain an understanding of tribal views on the potential rulemaking to revise the federal water quality standards regulation to close the gap in Clean Water Act water quality standards for tribal waters. This rulemaking is built on past work starting in 1999 with the “core standards” for Indian reservation waters and was continued from 2015-2016 with the development of the Advance Notice of Proposed Rulemaking for Federal Baseline Water Quality Standards for Indian Reservations. These prior efforts were not completed, however, both involved extensive engagement with tribal governments, providing a strong foundation for this 2021 work effort. Due to the ongoing pandemic, EPA participated in all meetings virtually.

The consultation period ended on September 13, 2021, though EPA continued both coordination and government-to-government consultation with tribal governments after the close of the consultation period. EPA continued to accept tribal consultation comment letters after the close of the consultation period as well.

Information Sharing, Engagement and Coordination

EPA engaged with tribes at 16 tribal consortia and regional tribal operations committees (RTOC) meetings and held 2 national listening sessions for tribal representatives. Table 1 below lists the title and date of each information sharing meeting EPA participated in.

Table 1: Information Sharing and Tribal Engagement Meetings

Date	Event
July 8, 2021	First National Listening Session for Tribes
July 12, 2021	Region 2 Tribal Nations Listening Session
July 13, 2021	Region 6 RTOC Meeting
July 13, 2021	Washington Coordinated Tribal Water Quality Program/NWIFC
July 14, 2021	Region 5 RTOC Meeting
July 14, 2021	National Tribal Water Council – EPA Monthly Call
July 15, 2021	Region 10 RTOC Meeting
July 21, 2021	Region 7 RTOC Meeting
July 22, 2021	Region 9 RTOC Meeting
August 4, 2021	Region 4 RTOC Meeting
August 4, 2021	EPA National Tribal Caucus
August 11, 2021	Region 1 RTOC Meeting
August 11, 2021	National Tribal Water Council
August 25, 2021	Tribal Environmental Coalition in Oklahoma
August 26, 2021	Region 8 RTOC Meeting
August 31, 2021	Second National Listening Session for Tribes
September 22, 2021	EPA Tribal Wetlands Workshop
November 17, 2021	Oregon Tribal Environmental Forum

EPA provided the same background information at each meeting via PowerPoint presentation except the September 27 National Tribal Caucus Office of Water 1-on-1, where background was summarized verbally. Representative copies of the presentations are available in the docket for this proposed rule.

Staff from EPA’s Office of Water, Region 10, Office of International and Tribal Affairs, and the respective EPA Regional offices participated in these meetings.

Individual Consultation and Coordination Meetings

A total of 7 tribes requested individual consultation or staff-level coordination. Table 2 below lists the staff-level coordination meetings that EPA held, and Table 3 below lists the government-to-government meetings that EPA held.

In two instances, EPA was unable to schedule consultation meetings where the tribe did not follow up after multiple outreach attempts.

Table 2: Staff-Level Coordination Meetings

Date	Tribe
August 12, 2021	Buena Vista Rancheria of Me-Wuk Indians
September 1, 2021	Leech Lake Band of Ojibwe
October 25, 2021	Squaxin Island Tribe
December 7, 2021	Buena Vista Rancheria of Me-Wuk Indians

Table 3: Government-to-Government Meetings

Date	Tribal Nation
September 16, 2021	Pokagon Band of Potawatomi Indians
September 16, 2021	Summit Lake Paiute Tribe
September 20, 2021	Little River Band of Ottawa Indians
September 28, 2021	Nez Perce Tribe

EPA provided the same background information at each meeting via PowerPoint presentation. Representative copies of the presentations are available in the docket for this proposed rule.

Staff from EPA's Office of Water, Region 10, Office of International and Tribal Affairs, and the respective EPA Regional offices participated in these meetings. Staff from the Office of General Counsel also participated in some government-to-government meetings. Following each government-to-government meeting EPA sent tribal leadership a follow-up letter thanking the tribe for consulting with EPA and summarizing the tribe's comments during the discussion.

Written Comments

EPA received pre-proposal comment letters from the following tribes and tribal organizations:

- August 13, 2021 – Region 10 Regional Tribal Operations Committee
- August 24, 2021 – Nez Perce Tribe of Idaho
- September 10, 2021 – National Tribal Water Council
- September 13, 2021 – Pyramid Lake Paiute Tribe
- September 13, 2021 – Seneca Nation of Indians
- September 13, 2021 – Leech Lake Band of Ojibwe
- September 22, 2021 – Onondaga Nation
- September 27, 2021 – Snoqualmie Indian Tribe

- October 28, 2021 – Nez Perce Tribe of Idaho
- October 28, 2021 – Buena Vista Rancheria of Me-Wuk Indians

All letters submitted are available in the docket for this rulemaking at Docket ID No. EPA-HQ-OW-2016-0405.

Themes Emerging from Consultation and Coordination Meetings and Comment Letters

This section summarizes the key themes of comments received through the tribal consultation process, including feedback provided by tribes during information sharing and engagement, staff-level coordination and government-to-government consultation meetings as well as written feedback provided in comment letters. The majority of commenters were supportive of the potential rule in concept. EPA considered all pre-proposal tribal input in developing the proposed rule.

1. Questions about schedule and process

- Some tribal government representatives wanted to understand EPA's plan to reach out to states on this proposed rulemaking.
- Some tribal government representatives wanted EPA to ensure that tribal governments are given proper options for government-to-government consultation on this proposed rulemaking.

2. Baseline Water Quality Standards

- Many tribal government representatives provided comments to EPA to ensure that federal baseline water quality standards address tribal fish consumption rates and include cultural and traditional designated uses as well as tribal subsistence fishing.
- Some tribal government representatives asked how EPA will use data for the narrative to numeric translation.
- Some tribal government representatives expressed concern that EPA will adopt lower water quality standards and not protect tribal waters.
- Some tribal government representatives expressed concern and asked that EPA pay attention to consistency with tribe-adopted/non-CWA water quality standards.
- Some tribal government representatives requested that EPA include protection of groundwater, ephemeral waters, springs, and adjacent wetlands as a designated use.
- Some tribal government representatives requested that EPA address emerging contaminants such as PFAS, personal care products, pharmaceuticals, and radionuclides.

3. Opt-Out Approach

- Some Tribal government representatives requested that EPA conduct a government-to-government consultation process for tribes who want to “opt out” of coverage of federal baseline water quality standards.
- Some Tribal government representatives requested that EPA not have time limits for tribes to “opt out.”

4. Opt-In Approach

- Some tribal government representatives requested that EPA consider an “opt-in” approach regarding coverage of federal baseline water quality standards.

5. Implementation Issues

- Some tribal government representatives requested a clearer understanding on the impact of CWA section 401 water quality certifications.
- Some tribal government representatives requested clarification if EPA will change how federally-issued NPDES permits for discharges to Indian reservation waters are developed and if consultation will be required for NPDES permits.
- Some tribal government representatives requested information on how baseline water quality standards will affect tribes that are at headwaters of streams.
- Some tribal government representatives requested information on how EPA will address adverse impacts on downstream WQS.
- Some tribal government representatives requested information on how EPA will provide enforcement for baseline water quality standards.
- Some tribal government representatives wanted to understand how they can use antidegradation requirements to protect high quality waters.
- Some tribal government representatives requested information regarding how EPA will address changes in the definition of “waters of the United States” if that definition is changed through subsequent rulemaking
- Some tribal government representatives requested that EPA ensure there is a process to address any future inconsistencies between state and baseline water quality standards.
- Some tribal government representatives requested information to understand how EPA will work with tribal governments to coordinate NPDES permit development.
- Some tribal government representatives requested information on how EPA will address any future changes in EPA’s CWA section 304(a) criteria recommendations and/or WQS guidance.

6. Concern about how a national rulemaking can address regional differences and needs

- Some tribal government representatives requested information on how local data documenting fish consumption rates and other regional specific information can be incorporated in baseline WQS.

- Some tribal government representatives requested information on how EPA will address Pacific Northwest water temperature issues.

7. Treatment in a Similar Manner as States (TAS)

- Many tribal government representatives requested that EPA provide increased support and resources for tribal governments to accelerate TAS work efforts.

- Many tribal government representatives wanted a clear understanding of how tribes would be removed from coverage by baseline water quality standards once they receive TAS authority to administer a WQS program and obtain EPA approval of tribe-adopted WQS.

8. Increased funding needs for Tribes

- Many tribal government representatives requested that EPA provide increased 106 funding.

- Some tribal government representatives requested that EPA increase funding to tribes to work with EPA in NPDES permit development.

9. Jurisdictional issues

- Some tribal government representatives requested that EPA ensure trust lands are included in the scope of baseline water quality standards coverage.

- Some tribal government representatives requested more information on how EPA will address off-reservation allotments.

- Some tribal government representatives requested more information on how EPA will address reservations with checkerboard land jurisdictions.

- Some tribal government representatives expressed concern about the impact of this proposed rulemaking on tribes in Oklahoma and asked EPA to provide language in the preamble to prevent unintended consequences of this rulemaking.

- Some tribal government representatives requested that EPA develop a pathway for Alaska Native Villages to establish water quality standards.

- Some tribal government representatives requested information from EPA on how EPA will address tribal sovereignty for tribes in Maine and requested that EPA develop a process for water quality standards to apply to tribes in Maine.

10. Boundary Issues

- Some tribal government representatives expressed concerns about boundary disputes with neighboring states.

- Some tribal government representatives expressed concerns regarding how baseline water quality standards would apply to upstream and downstream waters.

11. Government to Government Consultation

- Some tribal government representatives requested government to government consultation prior to a final rule.

Themes Emerging from Consultation Comment Letters

Region 10 RTOC – August 13, 2021

- The promulgation of baseline water quality standards must be region specific.
- Proposed water quality standards for EPA Region 10 must include designated uses to protect for fish, shellfish, and other cultural resources.
- Proposed water quality standards for EPA Region 10 must include appropriate fish consumption rates.

Nez Perce Tribe of Idaho – August 24, 2021

- Expressed strong support for the rulemaking.
- EPA should take steps to reinstate the water quality criteria for human health it promulgated for Washington State in 2016.
- EPA has an obligation to uphold treaty rights including during the promulgation and adoption of water quality in state waters.

National Tribal Water Council – September 10, 2021

- Tribes should be able to account for PFAS while tailoring the baseline water quality standards to their waters given that these compounds bioaccumulate in plants and animals that are integral to tribal subsistence, cultural, and ceremonial practices.
- The NTWC-TPWG recommends that the baseline water quality standards include numeric criteria for PFAS chemicals to ensure protection of designated uses.

Pyramid Lake Paiute Tribe – September 13, 2021

- Baseline water quality standards should be presumed to serve both cultural and traditional beneficial uses.
- The baseline water quality standards should protect consumptive uses presuming drinking water as beneficial use and that water will be consumed, purposefully, intentionally and with no distinction as to seasonality of such uses.
- The most stringent standards should be imposed to protect all waters as water that will be ingested/consumed/drinking water and be recognized for traditional and cultural uses.
- EPA will need to describe all the reservation waters to which the standards will apply and all the waters which the standards will not apply.

- Tribes should not have to “opt-out” of coverage of baseline water quality standards, it should be an “opt-in” decision for the tribe.

Seneca Nation of Indians – September 13, 2021

- Tribes that want to obtain TAS and develop water quality standards on their own should have an easier process, and funding should not be competitive for tribes because it can leave them vulnerable.
- Native Nations should be protected from upstream dischargers in the same manner as states.
- Native Nations should be the sole owner of data obtained from within their boundaries.
- Native Americans may view this as a direct threat to their health, culture, traditions, and spiritual well-being, and may view this as a violation of treaty rights.

Leech Lake Band of Ojibwe – September 13, 2021

- Optimistic about the baseline water quality standards but EPA should encourage tribes to gain TAS in order to develop their own tribal water quality standards.
- Standards need to be developed at the individual reservation level to address potential issues related to fish consumption rates and the natural background conditions of reservation waters.
- EPA needs to be explicit about the process to “opt-out” of coverage by this rule.

Onondaga Nation – September 22, 2021

- EPA may not impose its regulations or its procedural standards on sovereign indigenous nations acting within their own territories.
- The proposed federal BWQS should be focused on upstream discharges and protecting Native Nation water quality goals.
- EPA should limit its use of baseline water quality standards to regulating upstream waters.
- EPA should develop “baseline standards” that incorporate all designated or legally protected uses of Nation waters.

Snoqualmie Indian Tribe – September 27, 2021

- The Tribe requests another opportunity for consultation on a proposed draft rule, prior to any EPA decision to publish a draft rule for comment.
- EPA should provide sufficient resources to tribes, including Snoqualmie Tribe, for implementation and enforcement of WQS consistent with tribal priorities.
- It will be critical for EPA to provide a way to tailor the baseline WQS based on regional differences.
- EPA must establish mechanisms to update the baseline WQS when new guidance needs to be incorporated.

Nez Perce Tribe of Idaho – October 28, 2021

- The Tribe has consistently emphasized the importance for fish for the Nez Perce people for vital ceremonial, subsistence, commercial needs, and the tribes desire for healthy, harvestable fish runs to support Nez Perce Treaty Reserve Rights and the Nez Perce fishing economy.
- The Tribe has also worked closely with EPA to collect data on Nez Perce fish consumption through the 1994 CRITFC Fish Consumption Study and the 2016 Idaho Tribal Fish Consumption Study. Both Surveys demonstrated that Nez Perce Tribal people consumed fish at levels that exceed both the general population and EPA's default fish consumption rate.
- The Tribe asks EPA to use these rulemakings to fulfill treaty and trust responsibilities to uphold tribal treaty rights by protecting the water resources which tribes and tribal members rely.
- The Nez Perce Tribe supports this rulemaking to help ensure tribal participation and the realization of tribal goals in the management upon reservation water quality.
- The Tribe supports regulations where EPA would work with tribes to implement water quality standards in a flexible manner.
- The Tribe expects EPA to administer the Clean Water Act until such time as tribes choose to pursue Treatment as State.

Buena Vista Rancheria of Me-Wuk Indians – October 28, 2021

- Buena Vista Rancheria would like to see EPA provide support to tribal governments to develop their own Water Quality Standards by providing funding, technical assistance, and support for tribes to develop and adopt standards internally. If EPA moves forward with developing National Water Quality Standards on behalf of tribes, the Tribe recommends that EPA work closely with tribes to ensure that standards reflect the needs and interests of tribes.
- The Tribe recommends that EPA develop tribal uses and water quality protections for all tribal waters in the United States including waters on tribal trust land.
- The Tribe recommends that EPA develop an Opt-in provision instead of an Opt-out provision. If EPA continues with an Opt-out provision, the Tribe recommends that EPA not place a time limit for tribes to opt-out.
- Tribal WQS should protect the diverse water bodies on tribal lands including ephemeral waters, springs, adjacent wetlands, and groundwater, which are examples of waters that the Buena Vista Rancheria relies on culturally, spiritually, ecologically, and for economic development.
- EPA should create WQS that protect the values and beneficial uses specific to tribal lifeways, cultural uses of water, and tribal subsistence fishing.
- The Tribe requests that EPA conduct Government to Government consultation with the Buena Vista Rancheria to create specific water quality standards to protect waterbodies and tribal uses.
- The Tribe recommends that EPA removes barriers for tribes to achieve Treatment as State to gain the authority to implement their water quality protection programs recognizing tribal Sovereignty and right to “Self Determination.”

Appendix A: Notification of Consultation and Coordination Letter Sent to Tribes on June 11, 2021



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WATER

Re: Notification of Consultation and Coordination on Potential Promulgation of Tribal Baseline Water Quality Standards Under the Clean Water Act

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized Indian tribes on a forthcoming rulemaking that would establish tribal 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. EPA previously engaged in consultation with tribal governments on this matter to inform the Agency's 2016 Advance Notice of Proposed Rulemaking (ANPRM) for Federal Baseline Water Quality Standards for Indian Reservations. The input received at that time, and from several meaningful exchanges with tribal governments since, was used to further develop the concepts included in the attached consultation plan.

Much of the input received on establishing tribal baseline WQS during the 2016 consultation period highlighted the benefits to tribes and the environment that a 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 tribal baseline WQS for Indian reservation waters that currently do not have EPA-approved WQS in place, EPA will be better equipped to work with tribal governments 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 effluent limits to control pollution discharges, including discharges upstream from waters with baseline WQS.

This action is separate from and complementary to EPA's forthcoming rulemaking to revise the federal water quality standards regulations to protect tribal reserved rights in waters where states have WQS jurisdiction. EPA has initiated a concurrent 90-day tribal consultation period for that separate but complementary action.

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>).

EPA invites you and/or your designated consultation representative(s) to participate in this process. **The 90-day consultation period begins on June 15, 2021 and ends on September 13, 2021.** EPA will continue to consider comments received after the close of the consultation period to the extent possible as EPA moves forward with decision-making. Pending the input that EPA receives during the tribal consultation period, EPA anticipates proposing this rule in early 2022. This will provide an additional opportunity for tribes to comment during the

public comment period on the proposal. EPA invites interested tribal governments to request individual government-to-government consultation with EPA by contacting:

Mary Lou Soscia at soscia.marylou@epa.gov/(503) 381-3840

In order to provide time to schedule consultations prior to the close of the consultation period, please provide such requests by August 23, 2021. Given that this is a national consultation including all tribes and the United States is recovering from the pandemic, we anticipate that most if not all consultations will need to be conducted virtually.

EPA will hold a listening session via webinar for tribal leaders and staff on Thursday, July 8, 2021, from 1:00-3:00 pm (EDT). You can register for the webinar at <https://www.epa.gov/wqs-tech/tribal-baseline-WQS>. While listening sessions do not constitute individual tribal-EPA government-to-government consultation, it is hoped the sessions will provide further information to tribes to make an informed decision about whether to request an individual consultation.

EPA plans to hold a second listening session via webinar towards the end of the consultation period. EPA plans to announce the date and time of the second webinar in early August and anticipates scheduling the webinar to occur in late August or early September. **Updates on the second webinar will be posted to:** <https://www.epa.gov/wqs-tech/tribal-baseline-WQS>.

Enclosed is a consultation and coordination plan that provides additional background and detail about the forthcoming rulemaking and the process that EPA intends to follow, including information on how you can provide input on this action. *This information is also available on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov>.*

Please contact our official EPA representative for this consultation and coordination process, Mary Lou Soscia (soscia.marylou@epa.gov) at (503) 381-3840 if you have any questions or would like to request alternate arrangements to the process outlined in the consultation and coordination plan. We look forward to hearing from you.

Sincerely,

DEBORAH NAGLE Digitally signed by DEBORAH NAGLE
Date: 2021.06.11 10:54:59 -04'00'
Deborah G. Nagle, Director
Office of Science and Technology

cc: Tribal Environmental Directors and Natural Resource Directors
EPA Regional Indian Coordinators

Enclosure

Consultation and Coordination Plan Potential Promulgation of Tribal Baseline Water Quality Standards Under the Clean Water Act

Overview

EPA is developing a proposed rule to establish tribal baseline water quality standards (WQS) for waters on Indian reservations that do not have Clean Water Act (CWA) WQS in place.

This rulemaking recognizes the importance of tribal waters and the need to better protect the water resources on which tribes rely. Over 80% of Indian reservations currently do not have CWA WQS. Establishing federal baseline WQS and implementing them in consultation with tribal governments would ensure human health and environmental protection for these waters and would help support the tribes' own interests in protecting their water quality and uses of reservation waters.

The rulemaking would be relevant to Indian reservation waters that currently do not have CWA-effective WQS in place. This is separate from and complementary to EPA's concurrent forthcoming proposed regulatory revisions that would be relevant to situations where tribes have reserved rights to aquatic or aquatic-dependent resources in waters where states have jurisdiction to establish WQS. EPA has initiated a concurrent 90-day tribal consultation period for that separate and complementary action.

Background information on the initiative

At this time, only 46 tribes out of over 300 with reservations currently have EPA-approved WQS. While this number may grow, the absence of CWA WQS in the meantime means a lack of full CWA protection for tribal water uses.

Some tribal leaders may recall that between 1999 and 2003, EPA developed but did not complete a rulemaking to establish federal "core standards" for Indian country waters that did not have EPA-approved WQS. More recently, EPA published an Advance Notice of Proposed Rulemaking in 2016 to solicit comments on promulgating "baseline" WQS to protect tribal water resources. EPA engaged extensively with tribal governments during both of those efforts, and much of the input received highlighted the benefits to tribes and the environment that a federal rulemaking would provide.

EPA is now poised to proceed with rulemaking to propose baseline WQS by building on the elements of those prior efforts, in close coordination and consultation with tribes, to ensure protection exists for reservation waters. Tribal baseline WQS would fill the standards gap in Indian reservation waters and better position tribes to realize the human health and environmental protections and benefits envisioned in the CWA.

Note that EPA remains committed to working with tribes that wish to obtain "treatment in a similar manner as a state" (TAS) to administer the WQS program under CWA section 518, and providing support and tools to assist them. Tribe-adopted, EPA-approved WQS would supersede, consistent with the process outlined in EPA's regulations, any federal baseline WQS established by this rulemaking.

Potential benefits of this rulemaking

The potential benefits of EPA promulgating tribal baseline WQS would be significant, and include:

- Establishing goals for the quality of reservation waters that are recognized under the CWA and narrowing the gap in CWA human health and environmental protections in Indian country;
- Facilitating tribal participation with states and the federal government to inform CWA-based water quality management decisions impacting those waters on tribal reservations;

- 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 (e.g., CWA section 401 certification);
- Protecting reservation water quality from upstream discharges flowing into reservation waters from other jurisdictions; and
- Assessing the health of tribal waters to determine impairment.

Seeking comment and dialogue on rulemaking to promulgate tribal baseline water quality standards

In developing the proposed rule, EPA seeks input and dialogue with tribes on the contents of the potential baseline WQS. For example, EPA is considering using a combination of CWA section 101(a)(2) designated uses¹ together with potential cultural and traditional uses, and use as a public water supply where appropriate. Such WQS would also include water quality criteria to protect the designated uses, an antidegradation provision and implementation procedures, and general WQS provisions such as mixing zone policies and compliance schedule authorizing procedures.

EPA is exploring opportunities to provide limited tailoring of tribal baseline WQS to reflect location-specific circumstances but acknowledges that fully tailored standards are best achieved by a tribe with TAS that develops its own WQS for approval by EPA.

EPA is interested in obtaining input regarding a potential provision to enable a tribe to elect to not be included (i.e., “opt out”) in a final tribal baseline WQS promulgation if it has a plan or intends to have a plan to develop CWA WQS, in agreement with the respective EPA Region. EPA is also interested in receiving input regarding the timing for a tribe to elect to opt out of a tribal baseline WQS promulgation: (1) during the public comment period associated with a proposed rulemaking; (2) by a specified deadline after the tribal baseline promulgation has become effective for CWA purposes but prior to a pre-established “applicability” date; or both (1) and (2).

Opportunities for tribes to participate

The consultation period tribal input on this proposal will remain open for 90 days and will include two listening sessions via webinar.

EPA will hold a listening session via webinar for tribal leaders and staff on July 8, 2021 from 1:00-3:00 pm (EDT). You can register for the first webinar at <https://www.epa.gov/wqs-tech/tribal-baseline-WQS>.

EPA plans to hold a second webinar towards the end of the consultation period. **EPA plans to announce the date and time of the second webinar in early August and anticipates scheduling the webinar to occur in late August or early September.** The final date and time along with registration information will be 1) posted on EPA’s website for this rulemaking (<https://www.epa.gov/wqs-tech/tribal-baseline-WQS>), and 2) shared with those who register for the first webinar on July 8, 2021.

The webinars will provide tribes and tribal leaders an opportunity to ask questions and learn more about this consultation opportunity and the proposed rule.

Tribes may submit written comments to:

¹ These uses include the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water.

Mary Lou Soscia, Email: soscia.marylou@epa.gov

Tribes may access this letter and related consultation information in EPA's Tribal Consultation Opportunities Tracking System (TCOTS) located at <https://tcots.epa.gov>.

EPA's goal is to ensure there is sufficient information for tribal leaders and their designated consultation representative(s) to make an informed decision about the desire to continue with government-to-government consultation and to understand how to provide informed input. At any point during the consultation period EPA invites tribal nations to request government-to-government consultation with EPA. Tribes may request consultation for this potential rulemaking as well as the concurrent tribal reserved rights rulemaking at the same time. EPA looks forward to working with federally recognized tribes to better understand their needs and answer questions related to the proposed revisions to the federal water quality standards regulation.

The information that you provide during the consultation period will help inform our forthcoming rulemaking. Whether or not you participate in this consultation and coordination process, you will still have the opportunity to provide input on the forthcoming proposed rule, which we anticipate will be available for public comment in early 2022. The proposed rule will be published in the Federal Register, accessible at [regulations.gov](https://www.federalregister.gov), and available on EPA's website for this rulemaking (<https://www.epa.gov/wqs-tech/tribal-baseline-WQS>).

Tribal Consultation and Coordination Process and Timeline

Date/Time	Event	Contact Information
June 15, 2021	Initiation of the 90-day tribal consultation period. Consultation notification letters are emailed to tribal leaders.	EPA Contact: Mary Lou Soscia (503) 381-3840 (soscia.marylou@epa.gov)
July 8, 2021 1:00-3:00 PM (EDT)	Webinar #1 for Tribal Leaders and Staff: Potential Promulgation of Tribal Baseline Water Quality Standards Under the Clean Water Act for Waters on Indian Reservations that Currently do not Have EPA-Approved WQS in Place	EPA Contact: Mary Lou Soscia (503) 381-3840 (soscia.marylou@epa.gov) To register, please visit EPA's website for this rulemaking (https://www.epa.gov/wqs-tech/tribal-baseline-WQS).
Date and Time TBD Anticipated late August or early September	Webinar #2 for Tribal Leaders and Staff (same content as Webinar #1): Potential Promulgation of Tribal Baseline Water Quality Standards Under the Clean Water Act for Waters on Indian Reservations that Currently do not Have EPA-Approved WQS in Place	EPA Contact: Mary Lou Soscia (503) 381-3840 (soscia.marylou@epa.gov) Final date and time along with registration information will be: 1) posted on EPA's website for this rulemaking (https://www.epa.gov/wqs-tech/tribal-baseline-WQS) and 2) shared with those who register for the first webinar on July 8.

Date/Time	Event	Contact Information
September 13, 2021	Close of formal tribal consultation and coordination period.	Any written comments must be received by this date. They can be e-mailed to Mary Lou Soscia (soscia.marylou@epa.gov)