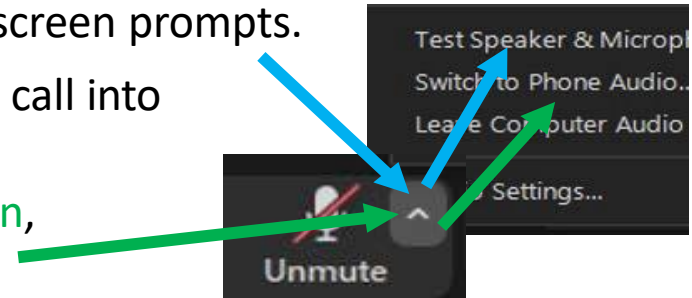




Proposed Rule to Establish Federal Baseline Water Quality Standards for Indian Reservations- Listening Session for Tribal Governments

- Thank you for joining, the presentation will start at 2:00 pm ET.
- You can listen to the presentation through your computer (or mobile device) speakers but need a microphone if you would like to speak.
- To test your audio, click on the [arrow to the right of the Unmute button](#), select “[Test Speaker & Microphone](#),” and follow screen prompts.
- If you do not have speakers, or a microphone, you can call into the meeting:
 - Click on the [arrow to the right of the Unmute button](#),
 - Select “[Switch to Phone Audio](#),” and
 - Dial in using the information displayed on your screen, including your participant ID.
- If you call into the meeting [via phone](#), please turn off your computer speakers to avoid an echo. All participants have been muted but can unmute themselves.
- If you have any technical difficulties chat with Tech Support.
- If you did not use your full name when you connected, please consider renaming yourself:
 - Find your name in the participant list, click on the right arrow, and “Rename.”





Federal Baseline Water Quality Standards for Indian Reservations Proposed Federal Promulgation

July 6, 2023 (2-4 pm ET)
Listening Session for Tribal Governments

U.S. Environmental Protection Agency
Office of Water, Water Quality Standards Program



Logistics: Options for Audio

Option 1: Computer Audio

You can listen to the presentation through your computer (or mobile device) speakers.

You will need a microphone on that device during the discussion part of this session if you would like to speak.

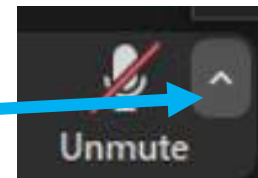
Option 2: Connect to Audio via Phone



Logistics: Connect Phone

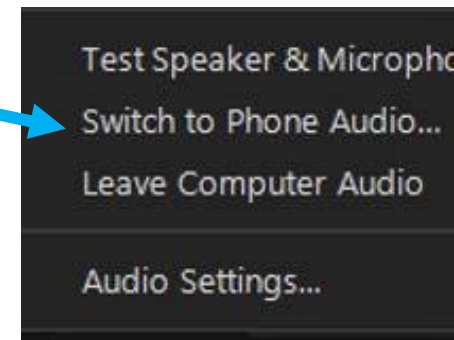
If you do not have speakers or a microphone on your device, you may call in via phone.

To do so, in the **Unmute** button, select the arrow on the right.



Then “**Switch to Phone Audio**” and follow screen prompts.

This method will link your phone line to your computer, and allow you to use controls on your screen (e.g., mute/unmute yourself, raise hand to request to speak).





Logistics: Dial-in

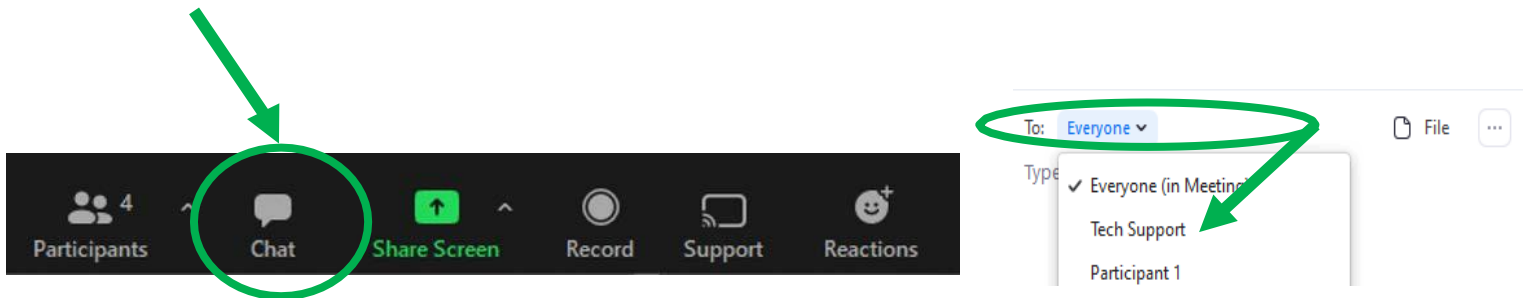
Alternatively, you may dial the following numbers:

Call-in Number: (301) 715-8592

Meeting ID: 891 9074 0610

If you call in, turn off your computer speakers to avoid an echo.

If you still have trouble connecting to audio, **chat with Tech Support.**



A copy of this presentation has been posted in the Chat window.

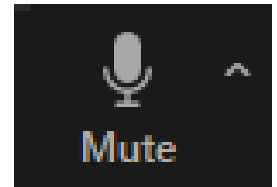


Listening Session Logistics (cont'd)

Please note that lines have been muted upon entry to avoid any echo or sound issues.

If you have unmuted your device or phone, please mute yourself

- On the screen with the mute button on the left,
- Or by pressing *6 on your phone.



This listening session will not be recorded.



Presenters

Jane Nishida

Assistant Administrator

Office of International and Tribal Affairs

U.S. Environmental Protection Agency, Headquarters

Nishida.Jane@epa.gov

Deborah Nagle

Director, Office of Science and Technology

U.S. Environmental Protection Agency, Headquarters

Nagle.Deborah@epa.gov

James Ray

Baseline WQS Rule Manager

U.S. Environmental Protection Agency, Headquarters

Ray.James@epa.gov



Opening Remarks

Jane Nishida
Assistant Administrator
Office of International and Tribal Affairs
U.S. Environmental Protection Agency



Opening Remarks

Deborah G. Nagle
Director, Office of Science and Technology
Office of Water
U.S. Environmental Protection Agency



Purpose of Today's Listening Session

- The purpose of today's listening session is to provide an opportunity for tribes and tribal leaders to:
 - learn more about the proposed rule and how to provide input
 - ask questions, and
 - share their views.
- Listening sessions do not constitute individual tribal-EPA government-to-government consultation. EPA hopes that this session will provide further information to tribes to make an informed decision about whether to request an individual consultation.



Outline of Today's Listening Session

- Presentation by EPA (40 min)
 - Scope
 - Overview
 - Background
 - Proposed baseline water quality standards (WQS)
 - Potential benefits and impacts
 - How to provide comments and request government-to-government consultation
 - Next steps
- Open discussion (1 hr 20 min)

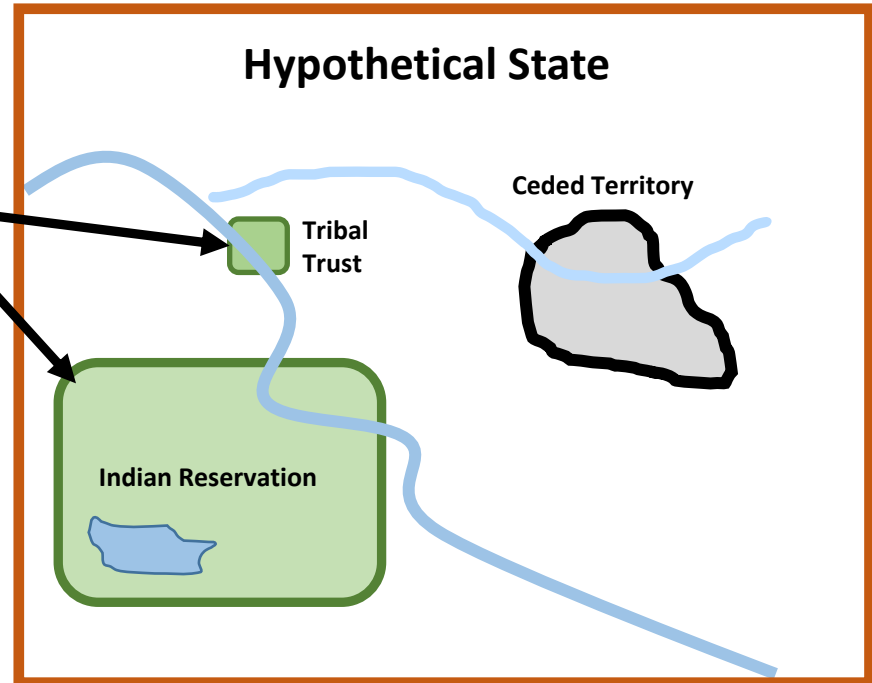


Scope of Baseline WQS Rule

Baseline WQS Rule
For Indian reservation waters that currently do not have Clean Water Act effective WQS in place

separate from
and
complementary to

Tribal Reserved Rights Rule
To protect rights in ceded territories where states establish and maintain WQS under the Act





Overview

- On April 27, the EPA Administrator signed a proposed rule to establish federal “baseline” WQS for Indian reservation waters that currently do not have WQS in effect under the Clean Water Act (CWA), with limited exceptions.
- This proposed rulemaking recognizes the importance of tribal waters and the need to better protect the water resources tribes rely on.
- Fifty years after enactment of the CWA, the vast majority of Indian reservations do not have this foundational protection in place for their waters.
 - Only 47 tribes out of over 300 with reservations currently have EPA-approved WQS effective under the CWA.



Overview

- Baseline WQS will provide a more robust and transparent foundation for EPA to implement CWA programs in Indian country including:
 - establishing water quality-based effluent limits (WQBELs) in NPDES permits for reservation waters
 - performing CWA section 401 certification of federal licenses and permits
 - analyzing permits to discharge dredged and fill material under CWA section 404
 - identifying impaired waters
- Although EPA prefers for tribes to obtain authority to administer their WQS program and develop their own WQS, EPA's promulgation of baseline WQS would serve to better safeguard water quality until tribes, with continued assistance from EPA, obtain that authority, and adopt and administer CWA WQS themselves.



Background

- In 2001, EPA Administrator Carol Browner made an Administrator Determination that federal WQS are necessary to fulfill the CWA requirements for tribal waters that lacked WQS, triggering the duty for EPA to propose such standards, and signed the never-published proposed “core” standards.
- In 2016, EPA took public comment on an Advance Notice of Proposed Rulemaking (ANPRM), changing the terminology to “baseline” WQS to signal a new commitment to protect tribal water resources.
- EPA has an existing legal duty to promulgate WQS for those Indian reservation waters that do not have CWA-effective WQS in place, based on the 2001 Administrator Determination.



Where Would Baseline WQS Apply?

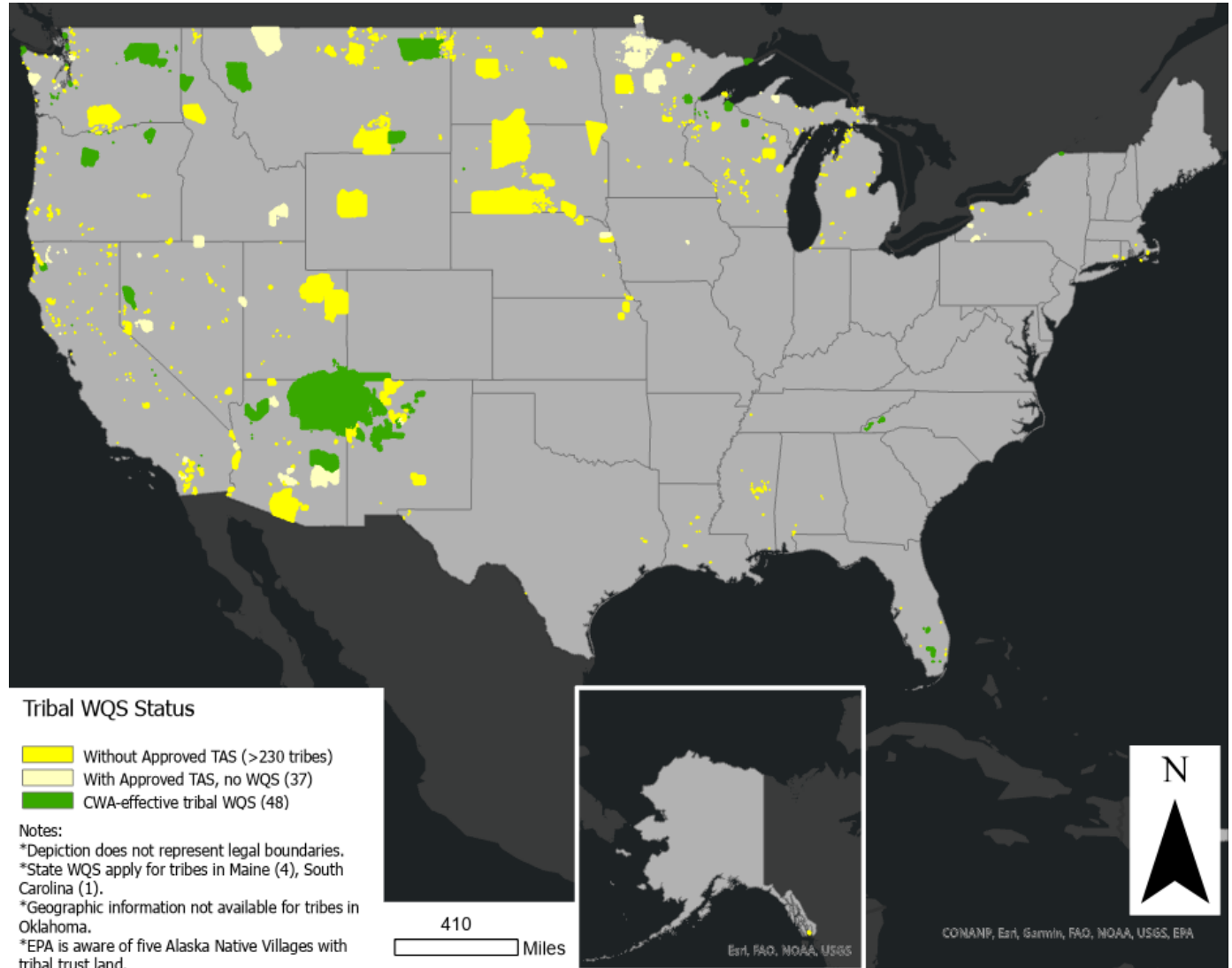
- EPA is proposing to promulgate baseline WQS for all Indian reservation waters **with the following exceptions:**
- Automatic exceptions:
 - Where tribes have adopted EPA-approved WQS under the CWA (47 tribes)
 - Where EPA has promulgated other federal WQS (1 tribe)
 - Where states have authority from Congress to administer WQS over Indian country:
 - All Indian country: Maine (4 tribes), South Carolina (1 tribe)
 - Partial areas of Indian country: Oklahoma (6 tribes), Washington (1 tribe)
- Case-by-case exceptions:
 - Where a tribe chooses to be excluded from baseline WQS coverage and EPA approves.

The rule would not apply in non-reservation areas of Indian country, such as allotments and dependent Indian communities located off-reservation.



Where Would Baseline WQS Apply?

- Tribes in yellow are candidates for baseline WQS
- Tribes in green have EPA-approved or promulgated WQS





Components of WQS

Water quality standards consist of three main components

Designated uses – Describes the water quality goals or desired condition for a specific water body (e.g., protection of aquatic life, primary contact recreation).

Water quality criteria – Water quality levels that will protect the designated use. Can be numeric criteria or narrative criteria.

Antidegradation – A provision that establishes requirements for maintaining and protecting water quality that has already been achieved. This includes maintaining and protecting the water quality that supports existing uses, high quality waters, and outstanding National resource waters.



Proposed Baseline WQS

1. Designated Uses

EPA proposes to promulgate the following designated uses consistent with CWA section 101(a)(2):

- (1) **Aquatic Life.** Protection and propagation of fish, shellfish, and wildlife, which includes protection of the health of human consumers of fish, shellfish, and other aquatic life.
- (2) **Primary Contact Recreation.** Provides for recreation in and on the water.

EPA proposes to promulgate an explicit cultural and traditional designated use to ensure full protection of such uses:

- (3) **Cultural and traditional uses.** Protection of cultural and traditional uses of reservation waters.

EPA is inviting public comment on whether EPA should designate a public water supply use for all Indian reservation fresh waters covered by the scope of this rule or whether this use is best addressed by allowing tribes to request such a designated use case-by-case after the rule is final.



Proposed Baseline WQS

2. Water Quality Criteria

To ensure protection of the baseline designated uses, EPA is proposing to promulgate narrative criteria with binding procedures for EPA to translate the narrative criteria into numeric values as needed for implementation. The procedures would:

- Reflect the latest science (e.g., latest published CWA section 304(a) ambient water quality criteria recommendations).
- Provide for limited location-specific tailoring to better protect tribal waters (e.g., fish consumption rates).
- Provide the option to rely upon adjacent state or tribal CWA-effective WQS.



Proposed Baseline WQS

- 2. Water Quality Criteria: Narrative criteria with binding procedures for EPA to translate to numeric values as needed (1/3)**

Baseline Narrative
Criteria



Baseline Binding
Translation Procedures



Proposed Baseline WQS

2. Water Quality Criteria: Narrative criteria with binding procedures for EPA to translate to numeric values as needed (2/3)

Baseline Narrative Criteria

All waters shall be free from:

- Toxic, radioactive, deleterious, conventional, non-conventional, or other pollutants in amounts that will prevent attainment of...designated uses; or
- Adverse impacts to the chemical, physical, or biological integrity caused by pollutants or pollution that prevent the attainment of...designated uses; or
- Substances attributable to...discharges that settle to form objectionable deposits; float as debris, scum, oil, or other matter to form nuisances; produce objectionable color, odor, taste, or turbidity; or produce undesirable or nuisance aquatic life; or
- Conditions that could cause jeopardy to the continued existence of any threatened or endangered species under the Endangered Species Act....

All waters shall maintain a level of water quality... that provides for the attainment and maintenance of the WQS of downstream waters....



Proposed Baseline WQS

2. Water Quality Criteria: Narrative criteria with binding procedures for EPA to translate to numeric values as needed (3/3)

Baseline Binding Translation Procedures

<i>Option One</i>	
For parameters for which EPA has section 304(a) criteria recommendations	Translate the baseline narrative criteria using the section 304(a) criteria recommendations .
<i>Option Two</i>	
For parameters for which EPA has section 304(a) criteria recommendations, and data are available that more accurately reflect site-specific conditions	Translate the baseline narrative criteria using the section 304(a) criteria recommendations modified to reflect site-specific conditions (e.g., tribal fish consumption rate, ambient monitoring data).
<i>Option Three</i>	
Where tribal or state numeric criteria are available that are more appropriate, and for parameters for which EPA does not have CWA section 304(a) criteria recommendations.	Translate the baseline narrative criteria using numeric criteria available in: <ul style="list-style-type: none"> • Tribal WQS not yet CWA effective, or • Adjacent state or adjacent tribal CWA-effective WQS
<i>Option Four</i>	
For waters of the Great Lakes System	Translate the baseline narrative criteria using required criteria methodologies for the Great Lakes Basin .
<i>Option Five</i>	
If none of the above options apply or are available	EPA may rely on existing CWA implementation provisions to translate applicable narrative criteria, as necessary.



Proposed Baseline WQS

3. Antidegradation Policy and Implementation Methods

Antidegradation Policy: provides a framework for maintaining and protecting water quality that has already been achieved, providing three tiers of maintenance and protection.

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 public review process prior to deciding to allow a lowering of water quality.

Tier 3. Outstanding National Resource Waters (ONRW)

Generally prohibits any lowering of water quality.

Implementation Methods: address how to implement EPA's proposed antidegradation policy



Proposed Baseline WQS

4. Mixing Zone Policy and Compliance Schedule Authorizing Provision

In the baseline WQS, EPA is proposing to promulgate:

- A detailed mixing zone policy that would allow EPA to establish mixing zones on a case-by-case basis when issuing NPDES permits.
- A compliance schedule authorizing provision.



Proposed Baseline WQS

5. Federal Administrative Procedure to Revise Baseline Designated Uses and Establish WQS Variances

- The proposed rule would promulgate an administrative procedure for EPA to:
 - revise baseline designated uses,
 - add designated uses and associated criteria, or
 - establish WQS variances to the baseline WQS for specific waterbodies, where appropriate, consistent with EPA's regulations.
- The procedure includes public participation steps consistent with EPA regulations, including a public hearing, accessible documentation, and opportunity for public comment.
- EPA would maintain a public website containing:
 - Updated list of the applicable designated uses and associated criteria,
 - Updated list of WQS variances,
 - Accompanying explanations of the statutory and regulatory basis for the decisions.



Implementation of Baseline WQS

- EPA is proposing to require the Regional Administrator for each respective Region to initiate tribal consultation with a tribe(s) when taking actions under this rule that may affect tribal interests.
- EPA would implement the baseline WQS, in consultation with Tribes, in a manner that would address location-specific water quality conditions and tribal circumstances, as appropriate.
- EPA would be consistent with all relevant public participation requirements to ensure transparency for states, stakeholders, and the regulated community.
- EPA anticipates that this rule would facilitate a process of mutual consideration and discussion between EPA, Tribes, and states, and provide an opportunity for EPA to work closely with Tribes and states when implementing applicable baseline WQS.



Option to be Excluded from Baseline WQS Coverage

- Case-by-case exceptions, for example:
 - tribes are presently working toward seeking TAS for WQS and/or adopting WQS for submittal to EPA
 - tribes may need additional time to gather more information about baseline WQS and prepare for partnership opportunities with EPA
 - Baseline WQS are not consistent with tribal priorities at this time
- To seek exclusion from the rule, a tribe should communicate with the EPA Regional Administrator, explaining the basis of the tribes' request to be excluded from coverage at this time and providing any supporting information.
- Tribes may seek to be excluded at any time between now and 90 days after the final rule is published in the Federal Register (estimated Spring 2024).
- EPA is proposing that the final rule and baseline WQS would be effective under the CWA 120 days after publication in the Federal Register.
- Under this proposed rule, EPA would maintain a publicly available list, on a dedicated website, indicating which of tribes are covered by baseline WQS, which are excluded from coverage at this time, and which tribes already have CWA-effective WQS in place.



Conditions Under Which Baseline WQS Would No Longer Apply

For tribal waters that are covered by a final baseline WQS rule, the baseline WQS would cease to apply to those waters after EPA approves the tribe's own CWA WQS:



Upon that EPA approval, the tribe's waters covered by the EPA approval would no longer fall within the scope of the final rule and the baseline WQS would no longer apply to those waters.



Potential Benefits of the Rule

- Establishing water quality goals for Indian reservation waters
- Facilitating tribal participation in managing water quality
- Providing basis for enforceable NPDES and other discharge permits
- Establishing WQS on Indian reservation waters to inform upstream discharges
- Relying on baseline WQS for CWA section 401 certifications by tribes with authority to administer CWA section 401 or EPA as the certifying authority
- Enabling tribes to utilize antidegradation implementation methods to protect culturally significant waters by nominating them as outstanding national resource waters
- Providing basis for determining water quality impairments



Anticipated Economic Impacts of the Rule

- Baseline WQS would not themselves impose costs on any entity.
- However, to best inform the public, EPA has analyzed potential control costs that point sources discharging into or upstream from waters covered by this rule may incur as a result of implementing the baseline WQS.
 - Approximately 164 NPDES individual discharger permits are located within reservations potentially covered by baseline WQS.
 - Approximately 270 are located within 5 miles upstream from those reservations
- Estimated total costs: from \$15.5M to \$30.5M annually (20 years, 3% discount rate), plus one-time costs of \$6.1M and \$1.2M respectively.



Proposed Amendment to CWA section 404(b)(1) Regulations

EPA's baseline WQS proposed rule includes a proposed conforming amendment to [40 CFR part 230*](#) to clarify that section 404 permits need to comply with federally promulgated WQS (such as the baseline WQS), as well as with state WQS as currently provided.

*[EPA's Guidelines required by CWA section 404\(b\)\(1\)](#).



How to Provide Input

- Tribal governments interested in requesting government-to-government consultation with EPA can submit a request to James Ray: Ray.James@epa.gov or (202) 566-1433.
 - Consultations will likely be conducted virtually.
- Tribal consultation and coordination period concludes August 1, 2023. All input must be received and meetings concluded prior to August 3, 2023 to ensure they will be considered in development of the final rule.
- Please provide meeting requests by July 7, 2023 to allow time to schedule them within the consultation period.
- Tribal governments may also submit written comments through the public docket at www.regulations.gov/docket/EPA-HQ-OW-2016-0405 prior to the end of the public comment period on August 3.



How EPA Will Consider Tribal Input

- Verbal comments will be summarized, considered, and addressed in the Tribal Consultation Summary accompanying the final rule.
- All written comments, including any written comments provided during consultation, will be posted to the public docket for the rule at www.regulations.gov/docket/EPA-HQ-OW-2016-0405), considered, and addressed in EPA's Response to Comment document accompanying the final rule.
- The Tribal Consultation Summary and the Response to Comment document will be posted in the docket for the final rule.



Next Steps

- EPA will continue engagement with tribes through regional meetings (e.g., Regional Tribal Operations Committee meetings).
- EPA will hold a public hearing on Wednesday, July 12 (2-4 pm ET).
- Pending review of tribal input and public comments, EPA anticipates finalizing this rule in Spring 2024.



Appendix of Resources

- Federal baseline WQS public website: [epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act](https://www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act)
- Tribes and Water Quality Standards: [epa.gov/wqs-tech/tribes-and-water-quality-standards](https://www.epa.gov/wqs-tech/tribes-and-water-quality-standards)
- Water Quality Standards Tools for Tribes: [epa.gov/wqs-tech/water-quality-standards-tools-tribes](https://www.epa.gov/wqs-tech/water-quality-standards-tools-tribes)
- EPA Actions on Tribal Water Quality Standards and Contacts: [epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts](https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts)



Open Discussion

While this listening session is not being recorded, a note-taker will be taking notes on the questions and discussions.

EPA's notes from today's discussion are releasable under the Freedom of Information Act.

How to Provide Questions or Comments:

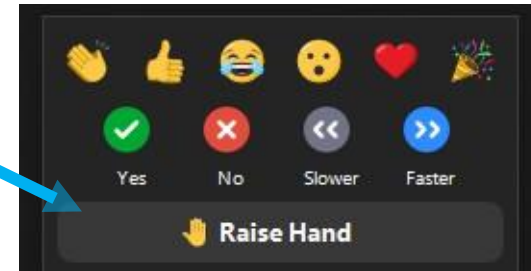
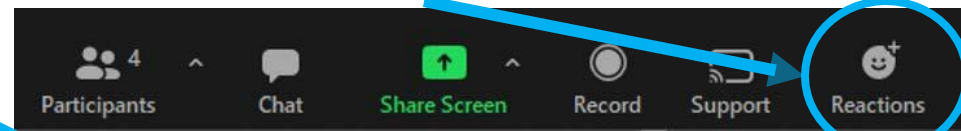
1. Verbally by raising your hand, or
2. In writing via the chat function of the Zoom platform. The next two slides will provide instructions for both.



How to Submit Questions or Comments Verbally

If you would like to speak to ask a question, or make a comment, please raise your hand.

- On a computer (or mobile device), select the **Reactions** button then click on “**Raise Hand**”
- If you called in and did not enter an attendee number, please press *9 on your phone to raise your hand.
- When it is your turn to speak, the host will call on you by using your name or phone number.
- At that time, you can unmute yourself by pressing the unmute button on your screen or dialing *6 on your phone.
- Please feel free to turn on your video while you are speaking.
- If you have technical issues, start a chat with Technical Support.

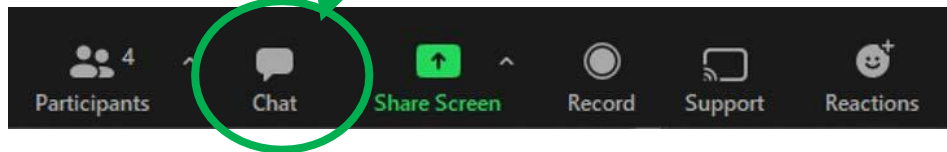




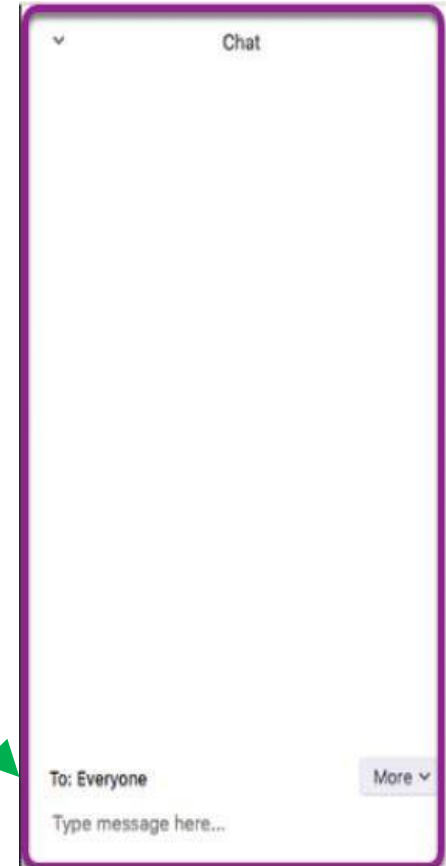
How to Submit Written Questions or Comments

If you would like to submit a **written** question to the speakers during this session,

- Open the **Chat**,



- In the Chat window, select To “Everyone”
- Type your question in the Text Box, and
- Hit Enter.



Please note you may hear silence as we wait for questions to be submitted. The meeting will end at 3 pm or after 15 minutes of silence, whichever is soonest.



To Help Answer Questions Today

Fred Leutner, Environmental Protection Specialist
U.S. Environmental Protection Agency



How to Provide Input after the Listening Session

- You may request government-to-government consultation by contacting James Ray at Ray.James@epa.gov or (202) 566-1433.
- Please send written comments via the e-rulemaking docket at www.regulations.gov/docket/EPA-HQ-OW-2016-0405
- All comments must be received and meetings concluded by the close of the public comment period on August 3, 2023 to ensure they are considered in development of the final rule.



For More Information

- James Ray, Ray.James@epa.gov
- EPA's website for this rulemaking: <https://www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act>.
- Tribes may access EPA's consultation letter for this effort and related consultation information in EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov>.
- Clean Water Act and Water Quality Standards: <https://www.epa.gov/standards-water-body-health>



Thank You for Participating!

This session has ended.