



Federal Baseline Water Quality Standards for Indian Reservations

Proposed Federal Promulgation

Listening session for Tribal Governments
Tuesday, August 31, 2021, 12 – 2 pm EDT

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



EPA Speakers

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Opening Remarks

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Deborah G. Nagle
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Purpose of Today's Discussion

To obtain input from tribal governments prior to publishing a proposed rulemaking in Spring 2022 on potential Tribal Baseline Water Quality Standards (WQS).

EPA will:

- Present current thinking on the proposed rulemaking
- Answer questions and invite feedback



Outline of Today's Discussion

- Background - Why Baseline WQS?
- Input from tribal governments to date
- Potential Baseline WQS – EPA's current thinking and options
- Potential impacts
- Next steps



Background

- Only 46 tribes out of over 300 with reservations currently have EPA-approved WQS effective under the Clean Water Act (CWA).
- Previous Baseline WQS Efforts
 - 1999 – 2003: EPA developed but did not complete a rulemaking to establish federal “core standards” for Indian country waters.
 - 2016: EPA published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit comments on promulgating “baseline” WQS, but did not complete rulemaking.
 - EPA engaged extensively with tribal governments during both efforts



Potential benefits of this rulemaking

- Establishing water quality goals for reservation waters
- Facilitating tribal participation in managing water quality
- Providing basis for enforceable NPDES and other discharge permits
- Protecting reservation waters from upstream discharges
- Providing basis for determining watershed impairments



Input from Tribal Governments to Date

Input from consultation and coordination 2015-2016

- Tribes were cautiously optimistic and generally supportive.
- National Tribal Water Council (NTWC) members were strongly supportive.
- Written comments on 2016 ANPRM (12 tribal governments and associations).

Support conveyed in 2021

- NTWC reiterated its support via a 2020/2021 Transition Brief to EPA.
- The EPA National Tribal Caucus included baseline WQS in their budget priority guidance for FY 2023.



Where would Potential Baseline Standards Apply? Current Thinking:

- Baseline WQS would apply to Indian reservation waters (including tribal trust and Pueblo lands) where EPA has not:
 - promulgated other federal WQS or
 - approved tribal or state WQS
- Baseline WQS would not apply to:
 - off-reservation allotments and
 - tribes that elect to “**opt-out**” in certain circumstances



Baseline WQS and TAS for Tribes

- EPA continues to encourage and support interested tribes to seek TAS to administer the WQS program.
- The BWQS are not meant to discourage tribes from seeking TAS.
- EPA would intend to remove the BWQS for any tribes that subsequently get TAS and EPA-approved WQS.



Potential Baseline Standards

Water quality standards consist of three elements:

1. Designated uses – narrative goals for a waterbody, such as recreation and protection of aquatic life
2. Water quality criteria – numeric or narrative pollutant levels to protect designated uses
3. Antidegradation provisions – protect existing uses and high quality waters



Potential Baseline Standards

1. Designated uses

- Considering for all waters: a full suite of designated uses that provide for protection of uses such as fish propagation, fish consumption, and recreation.
- Suggested by many tribes in 2016 consultation: Protection of cultural and traditional uses of water and aquatic resources.
- Considering whether to designate public drinking water supply use for all fresh waters.



Potential Baseline Standards

2. Water quality criteria

Exploring use of narrative criteria and numeric criteria

- EPA could describe waters as needing to be “free from” certain adverse conditions in order to ensure protection of applicable designated uses
- Establish procedures for EPA to translate narrative criteria into numeric values
- Provide for limited location-specific tailoring to better protect tribal waters (e.g., fish consumption rates)
- Include downstream protection narrative



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, 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 uses such as recreation, fish propagation, and fish consumption).

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.



Potential Baseline Standards

Implementation

- Standards could include **implementation** flexibilities (*e.g.*, mixing zones, WQS variances, compliance schedule provisions).
- Tribal engagement opportunity in EPA's implementation actions such as establishing appropriate water quality-based effluent limits in NPDES permits.
- EPA would also engage in public participation with states and the regulated community in accordance with existing regulations.



Potential Opt-Out Provision

- EPA is interested in obtaining input regarding a potential opt-out provision to enable a tribe to elect not to be included in a final tribal baseline WQS promulgation in certain circumstances.
- 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).



Why not allow Opt-In?

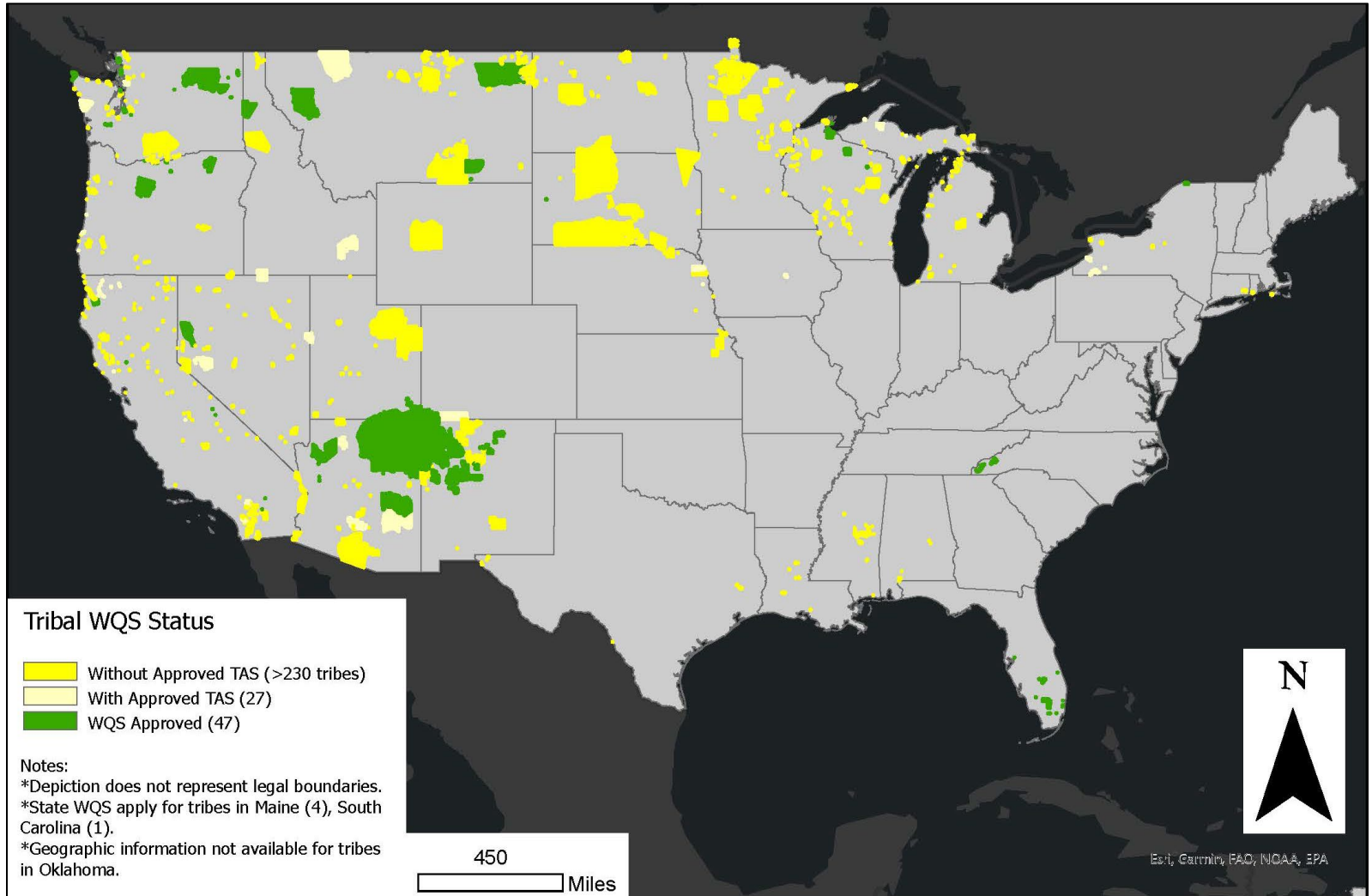
- Tribes will likely need extended time to make formal decisions to opt-in to the baseline WQS
- EPA can process opt-out requests within time frame of the final rule

Other considerations:

- Baseline WQS do not expand authority over tribal waters, but do expand opportunities for partnership in the protection of tribal waters.



Location of Potential Baseline WQS





Potential Impacts on Dischargers

- Approximately 164 NPDES individual discharger permits (including 7 major dischargers) are located within reservations potentially covered by baseline WQS.
- Approximately 280 (57 majors) located within 5 miles upstream from waters potentially covered by the baseline WQS.
- Nationally there are over 50,000 individual NPDES permits.
- Further analysis is underway to evaluate the potential costs and benefits of the Tribal Baseline WQS rule.



Next Steps

Consultation, Coordination, and Outreach

- Tribal consultation and coordination period concludes September 13, 2021. Please submit written comments to Mary Lou Soscia by e-mail at soscia.marylou@epa.gov.
- Ongoing presentations to RTOCs and other tribal government entities
- Tribal governments interested in requesting government-to-government consultation with EPA are encouraged to submit a request to the following contact by September 13, 2021: (soscia.marylou@epa.gov or (503) 381-3840)

Additional Outreach

- EPA is also beginning outreach to states.

Pending outcome of tribal consultation and coordination, EPA anticipates proposing this rule by Spring 2022. This will provide an additional opportunity for tribal governments to request government-to-government consultation with EPA and comment during the public comment period on the proposal.



How to Provide Comments after the Listening Session

- Please send comments by **September 13, 2021** via e-mail to Mary Lou Soscia (soscia.marylou@epa.gov).
- 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.
- EPA plans to provide additional opportunities to solicit comments from tribes once the rule is proposed.



How to Request Government-to-Government Consultation

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

- Consultations will likely be conducted virtually.
- Tribes may request that consultation occur simultaneously for this potential rulemaking and the reserved rights rulemaking.



For More Information

Mary Lou Soscia, soscia.marylou@epa.gov

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EPA's website for this rulemaking:

<https://www.epa.gov/wqs-tech/tribal-baseline-WQS>

EPA Policy on Consultation and Coordination with Indian Tribes:

<http://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>

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>