

# MAKAH TRIBAL COUNCIL

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Director Deborah Nagle  
Office of Science and Technology  
Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

September 17, 2021

Re: Makah Tribal Council Input on Protecting Reserved Rights in Water Quality Standards

Dear Director Nagle:

The Makah Tribal Council is writing to follow up on our consultative meeting held Wednesday, September 15<sup>th</sup> regarding the Environmental Protection Agency's (EPA) intent to revise federal water quality standards to improve the recognition and protection of tribal reserved rights. As we discussed in our Government-to-Government meeting, the Makah Tribal Council appreciates EPA's efforts to consult early and often with the Makah Tribe on this important subject. We know that this is both a federal and regional priority for EPA and hope to see this approach implemented across EPA's programs and rule-makings in the future. The Makah Tribal Council looks forward to consulting with EPA as this rule is developed.

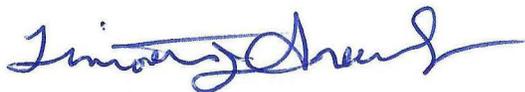
We must reiterate that the ocean, treaty fisheries, and treaty reserved harvest of natural resources are of foundational importance to the Makah Tribe, supporting our economy, cultural practices and spiritual beliefs, and way of life. Our treaty fisheries support the nutritional and financial security of most of the Makah community and over half of our economy. Clean water underlies the health of these resources, safe exercise of our treaty rights, the health and nutritional security of the Makah people, and our natural resource-based economy. Because of this, the Makah Tribe has been actively engaged with EPA and Washington State to protect and improve water quality in our region for many years. A brief summary of our priorities, concerns, and confirmation of commitments made during the meeting is below.

- 1. Importance of Protecting Connected Waters:** The Makah Tribe's Usual and Accustomed Fishing Area (U&A) is located at the confluence of the interconnected waters and ecosystems of the California Current, Alaska Current, and the Strait of Juan de Fuca. Because Makah fisheries are pre-terminal, impacts to water quality on the ocean, within Puget Sound, and from British Columbia directly impact the health of our treaty resources. It is imperative that water quality standards (WQS) developed to protect treaty-reserved rights apply both within the specific geographic boundaries of those place-based rights, as well as to adjacent and connected waters. We understand that EPA intends to initiate a collaborative process and consult with relevant Tribes to identify the appropriate scope of this potential WQS designation. We support this approach.

2. **Determining Appropriate Levels of Water Quality:** The materials EPA provided on the proposed rulemaking include language stating that the proposed new WQS would apply where *“the level of water quality necessary to protect those rights is known.”* We strongly recommend that these levels be tailored to regional needs and priorities, and determined through collaboration and consultation between EPA and affected Tribes. In the meeting, EPA indicated that it is the agency’s intent to develop the level of WQS in collaboration with Tribes. The agency also intends to center Tribes as the target population or user group of the water resources and ensure that the new WQS reflect tribal priorities and uses – not those of the public at large. We support this approach.
3. **Science-Based and Quantitative Metrics:** We understand that EPA is considering various options for the incorporation of tribal reserved rights into state WQS. These include both designated uses (a more narrative goal) as well as water quality criteria (numeric/quantitative). Where possible, we support the use of science-based and data-driven standards and criteria. We look forward to working with EPA and Washington State to develop an appropriate and science-based approach.
4. **Funding to Support Technical Analyses:** EPA should provide the technical and financial support necessary to conduct analyses and fill relevant data gaps in order to determine the level of water quality protection that the WQS must achieve to be protective of treaty reserved rights. EPA could perform this technical analysis, or provide funding for Tribes to do so. We appreciate EPA’s intent to conduct a multi-year collaborative process with Tribes to develop appropriate WQS that are protective of treaty rights. We are also concerned about adequate funding for this effort particularly given that EPA funding is subject to changes in federal administration. We know that EPA funding is limited and we appreciate EPA’s efforts to direct research and provide funding to fill data gaps. We look forward to continuing to work with EPA on this.
5. **Continued Communication and Consultation:** We appreciate the early consultative opportunity – prior to EPA’s initiation of a formal rule-making. This is consistent with the intent of the recent Presidential Memorandum on consultation, as well as the Makah Tribe’s own consultation protocols as outlined in the Makah Ocean Policy. We hope to see this approach continue and urge EPA to provide an opportunity for Tribes to review and consult on the draft rule before it is published.

We look forward to continuing to work with EPA to improve protection of treaty reserved rights in federal WQS. This action would have meaningful benefits for the protection of Makah treaty harvest and the health of our community. Please contact the Makah Tribal Council Secretary, JoDean Haupt-Richards (jodean.haupt-richards@makah.com or 360-645-3235) with any questions or if you would like additional information.

Sincerely,



Timothy J. Greene Sr.  
Chairman  
Makah Tribal Council