

The background features a vertical gradient from light purple at the top to light blue at the bottom. Numerous water droplets of various sizes are scattered across the surface, some with soft shadows and highlights, giving them a three-dimensional appearance.

# WATER DIVISION UPDATES

OCTOBER 24, 2022

# Federal Baseline Water Quality Standards (WQS) Rule for Tribal Lands

## WHY?

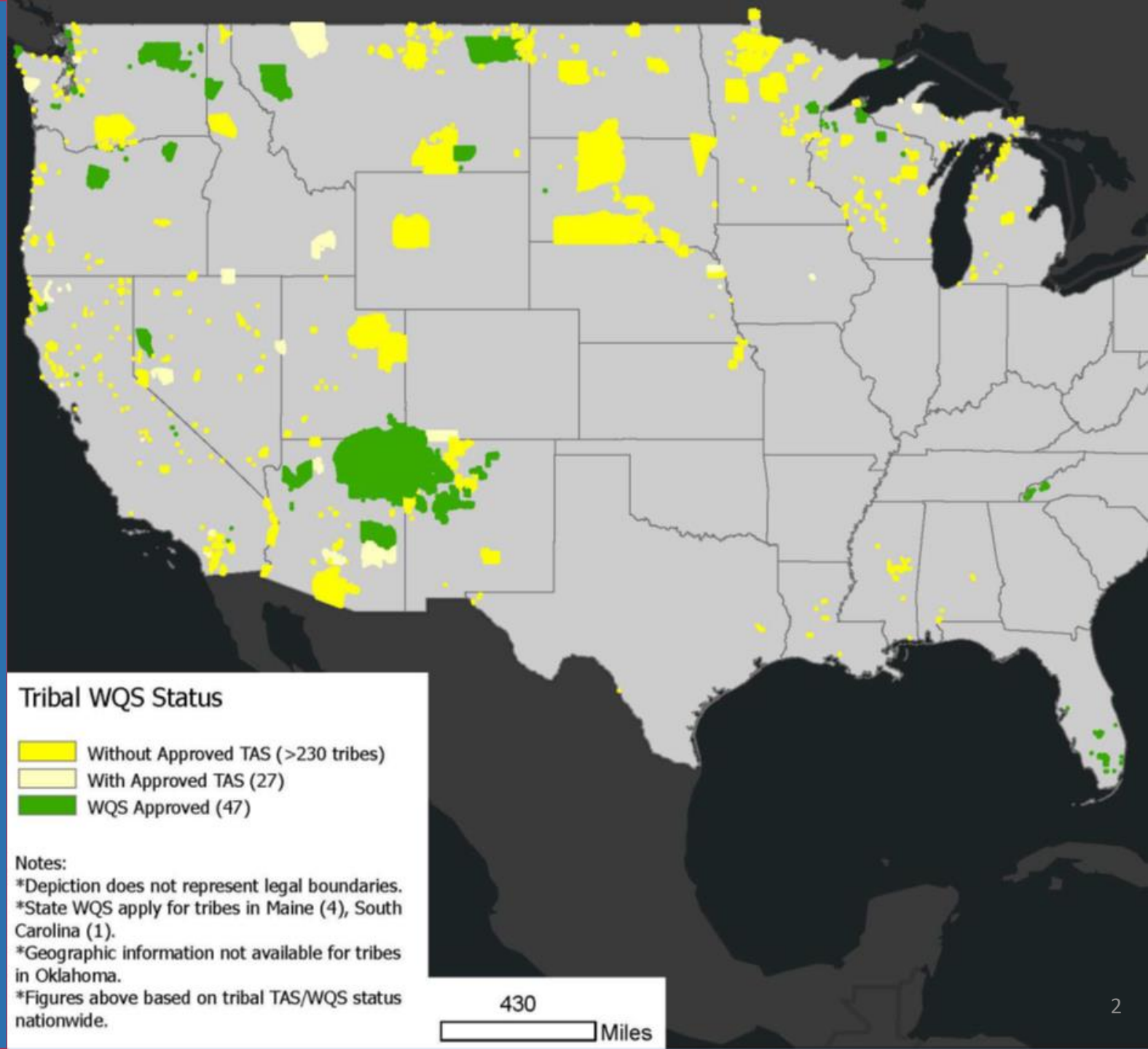
- Less than 20 % of tribal waters have CWA WQS
- Longstanding gap in CWA protection

## BENEFITS?

- Provide protection of beneficial uses (fish consumption, cultural and traditional uses)
- Protects from Upstream Discharges
- Basis to determine WQ Impairments

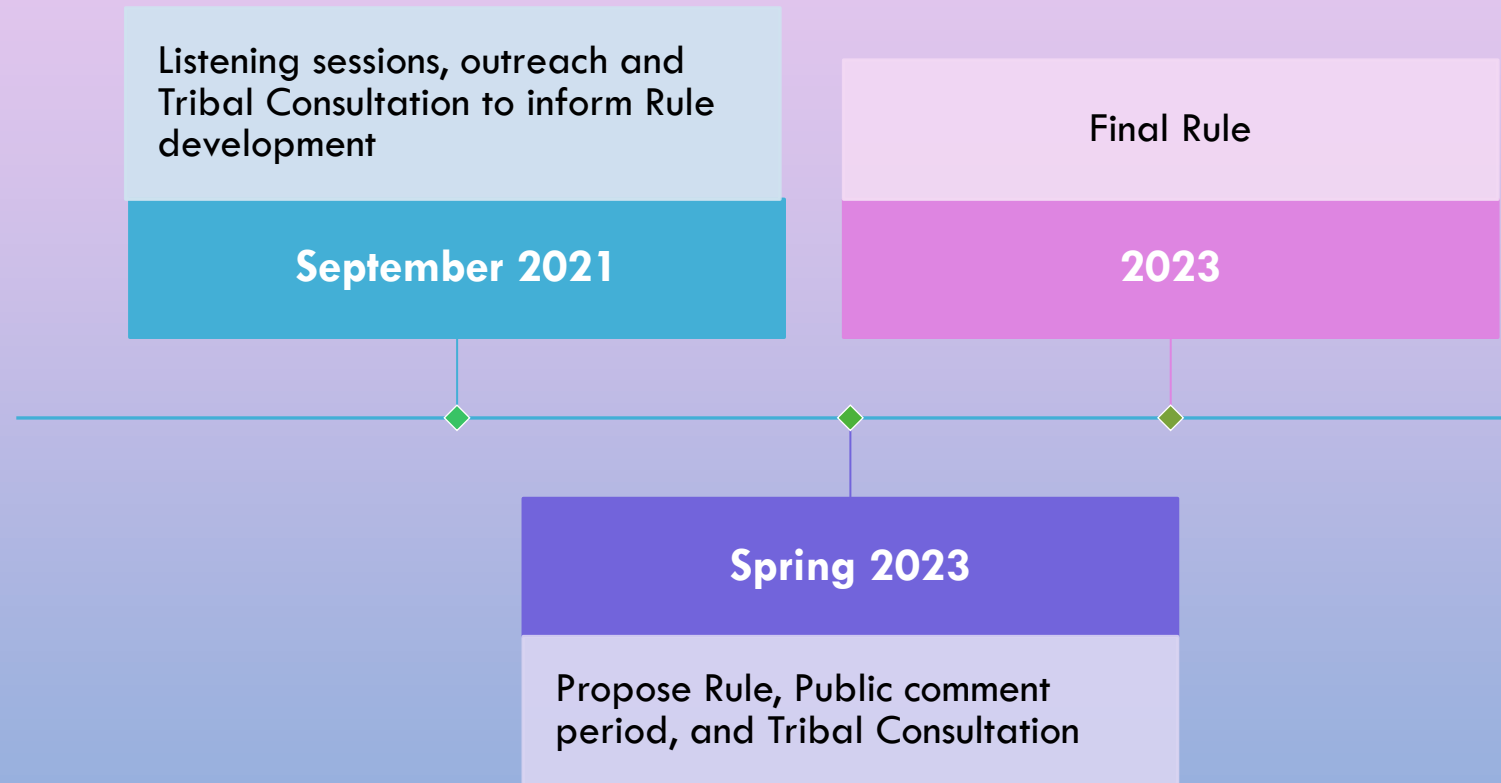
## WHERE?

- Applies to Tribal waters with no EPA approved Tribal WQS
- Will **not apply** to:
  - Tribal waters with EPA approved WQS
  - Off Reservation allotments
  - Tribes that “Opt-Out”



# BASELINE WQS RULE TIMELINE

<https://www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act>





# PROPOSED CWA SECTION 401 AND WOTUS RULES

## **CWA SECTION 401 IMPROVEMENT RULE**

- INTENT OF RULEMAKING IS TO PRESERVE TRIBAL AND STATE AUTHORITIES & IMPROVE THE IMPLEMENTATION PROCESS
- PROPOSED ON JUNE 9, 2022; TRIBAL COORDINATION AND CONSULTATION IN SUMMER 2021; FINAL RULE EXPECTED IN MID-2023

## **WATERS OF THE U.S. (WOTUS)**

- 2020 NAVIGABLE WATERS PROTECTION RULE (NWPR) WAS VACATED IN LATE 2021
- NEW RULE WAS PROPOSED ON DECEMBER 7, 2021; TRIBAL COORDINATION AND CONSULTATION IN WINTER 2022; FINAL RULE EXPECTED BY END OF 2022
- PROPOSED RULE INCORPORATES PRE-2015 DEFINITION AS IMPACTED BY COURT DECISIONS
  - EXPECT A MORE 'STABLE' IMPLEMENTATION
  - FOCUS ON PROTECTING PUBLIC HEALTH, THE ENVIRONMENT, AND DOWNSTREAM COMMUNITIES

# TRIBAL RESERVED RIGHTS RULE

## What are Tribal Reserved Rights?

- Many tribes hold rights to aquatic resources (e.g. the right to fish or harvest aquatic plants) through treaties, statutes, and other sources of federal law in state waters.

## What is our Past Practice?

- States and EPA had not regularly considered tribal reserved rights when establishing and revising WQS.
- 2016: EPA took actions in Maine and Washington to harmonize WQS with tribal reserved rights.

## What is EPA Considering?

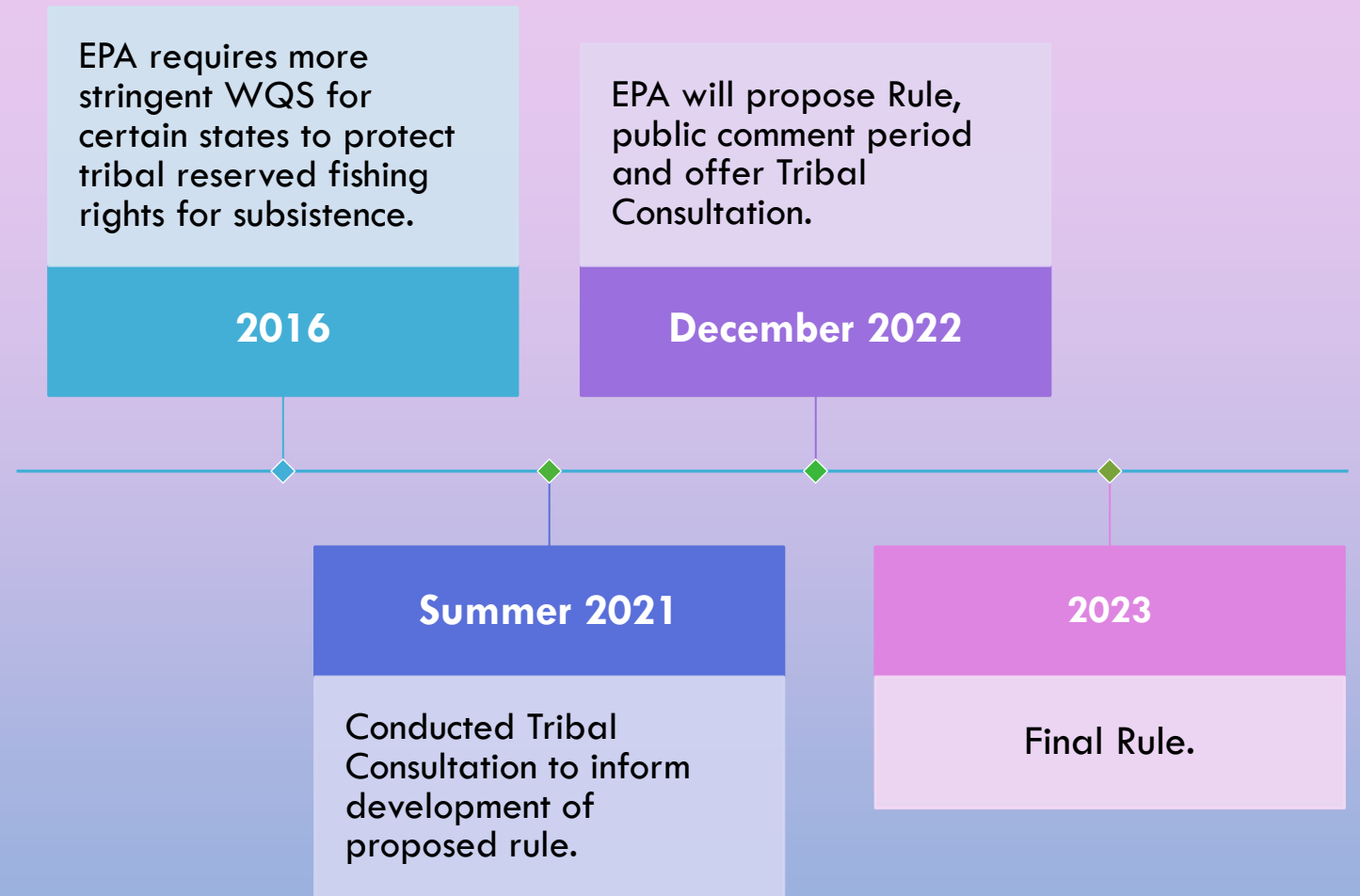
- A rule to provide a sustainable and transparent regulatory framework to ensure that water quality is maintained as necessary to support tribal reserved rights.

## What would the rule require?

- Establishing designated uses that explicitly incorporate protection of tribal reserved rights to aquatic resources.
- Establishing water quality criteria that protect tribal reserved rights in waters where those rights apply.

# WQS FOR TRIBAL RESERVED RIGHTS RULE TIMELINE

<https://www.epa.gov/wqs-tech/revising-federal-water-quality-standards-regulations-protect-tribal-reserved-rights>



## National BIL Tribal Funding for Water Infrastructure

<b>Appropriation</b>	<b>Five Year Total</b>
<b>CWISA BIL General Supplemental</b>	<b>\$234M</b>
<b>CWISA Emerging Contaminants</b>	<b>\$20M</b>
<b>DWIG-TSA BIL General Supplemental</b>	<b>\$234M</b>
<b>DWIG-TSA Emerging Contaminants</b>	<b>\$80M</b>
<b>DWIG-TSA Lead Service Lines</b>	<b>\$300M</b>
<b>TOTAL for all Appropriations</b>	<b>\$868M</b>

[Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law Memo](#)

# BIL: Eligibility for New Programs

## DWSRF – Emerging Contaminants

- Emphasis on PFAS, but can address any contaminant on EPA's CCL: <https://www.epa.gov/ccl>

## DWSRF – Lead Service Line Replacements

- Must be a lead service line replacement project or associated activity **directly connected** to the identification, planning, design, or replacement of lead service lines.

## CWSRF – Emerging Contaminants

- Emerging Contaminants include: PFAS, biological contaminants, pharmaceutical and personal care products, nanomaterials, microplastics



# TRIBAL CONSULTATION

## Prioritization for BIL Funding

- October 2022: Early Engagement
- December 2022: Initiate Consultation
- February 2023: Conclude Consultation
- April 2023: Finalize Project Prioritization Criteria

**BIL Infrastructure Session – Tuesday at 4pm with IHS**