



NATIONAL CONGRESS OF AMERICAN INDIANS

December 22, 2016

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Submitted via Regulations.gov - Docket ID No. EPA-HQ-OW-2016-0405

Re: NCAI Comments on Docket Number EPA-HQ-OW-2016-0405 – Federal Baseline Water Quality Standards for Indian Reservations, Advance Notice of Public Rulemaking

Dear Ms. Soscia:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities, please accept our below comments on the Environmental Protection Agency's (EPA) Advance Notice of Public Rulemaking (ANPR) regarding the development of Federal Baseline Water Quality Standards for Indian reservations. We believe this is an important step in protecting water quality for Tribal Nations who have not gone through the Treatment-As-a-State process, or may have jurisdictional uncertainties on waters flowing through Tribal lands. We encourage the EPA to develop any Federal Baseline Water Quality Standards in continued consultation with Tribal Nations to provide an easily adaptable template, while ensuring the ability to tailor the standards to fit the specific needs for each region and Tribe.

As mentioned in the ANPR, out of the 567 federally recognized Tribal Nations, there are over 300 Tribes with reservations on which they can exercise authority to regulate water quality standards. However, less than 50 Tribes have been approved to administer a Water Quality Standards (WQS) program under Section 518(e) of the Clean Water Act to be treated in a manner similar to a state (TAS). Even when Tribes do have an approved WQS program, enforcement and jurisdictional issues often arise due the impacts of allotment which have checkerboarded many reservations. Without the clear authority, Tribes are often subjected to State standards which do not account for protection of Tribal uses and are set below current federal guidelines.

Therefore, the ability to have Federal Baseline Water Quality Standards is welcomed and can provide important protections to waters which might not otherwise qualify, as well as expedite the process for Tribes seeking WQS approval. However, EPA must take into account several factors when developing these standards and include Tribal Nations in every step of the process.

NCAI supports the comments already made that any Federal Baseline Water Quality Standards must be an adaptable template for streamlining the process for Tribes to adopt WQS. Any Federal Baseline WQS must also provide the flexibility for each Tribe to tailor its specific needs, while also allowing for Tribes to choose whether nor to adopt them.

The water uses, standards, and protections can vary greatly by region and by Tribe, so setting a strict “one size fits all” WQS without any flexibility, might have unintended negative consequences. For example, some Tribes focus on protecting water quality for the health of their trust and treaty fishing resources. In this case, effective WQS must take into account the specific scientific data from that region’s waters to set the levels to effectively protect the health of the fish and the health of people consuming the fish. Tribes must have the ability to designate uses, criteria, and standards that are specific to their waters and uses. Federal WQS must be adaptable and aim to expedite the process of developing and approving regionally appropriate standards to help Tribal Nations go through the TAS process at the EPA.

One of the most critical components to effective WQS is enforcement. While important, Tribal adoption of Federal Baseline WQS will increase already overburdened Tribal departments to collect and analyze data, and then implement specific controls according to the WQS and Clean Water Act. EPA should provide Tribal Nations with the financial and training support necessary for implementation, and allow each Tribe’s to develop regulatory systems to fit within their existing natural resource priorities.

NCAI encourages EPA to continue the Tribal consultation process in the development of the Federal Baseline Water Quality Standards proposed rules in order to ensure that they became a template for Tribes to simplify the TAS process by empowering Tribes adapt the standards to fit their specific needs. If you have any questions, please contact NCAI Staff Attorney, Colby Duren, at cduren@ncai.org.

Sincerely,

A handwritten signature in black ink that reads "Jacqueline Pata". The signature is written in a cursive, flowing style.

Jacqueline Pata
Executive Director