



Federal Baseline Water Quality Standards for Indian Reservations Proposed Federal Promulgation

Western States Water Council

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Office of Water, Water Quality Standards Program



Presenters

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Presentation Overview

- Background and benefits - Why Baseline WQS?
- Input from states to date
- Potential Baseline WQS – EPA’s current thinking
- 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 with states/state associations 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 EPA-issued NPDES and other discharge permits in Indian country



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:
 - approved tribal WQS
 - approved state WQS (a few cases)
 - promulgated other federal WQS
- Baseline WQS would not apply to:
 - off-reservation allotments
 - other circumstances identified by tribes (tbd)



Input from States (on 2016 ANPRM)

- 10 state agencies – concerns or questions included:
 - Perceived lack of EPA authority and resources to promulgate and effectively implement CWA requirements on Indian reservations.
 - Federal baseline WQS might differ from neighboring states and potentially affect upstream dischargers.
 - Baseline WQS should be flexible enough to reflect the differences in uses and natural characteristics of waterbodies.
- WSWC provided comments on:
 - Legal authority and administrative issues
 - Boundaries of tribal lands and jurisdiction
 - Dispute resolution



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

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 or not 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
- Allow use of neighboring state standards
- 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.



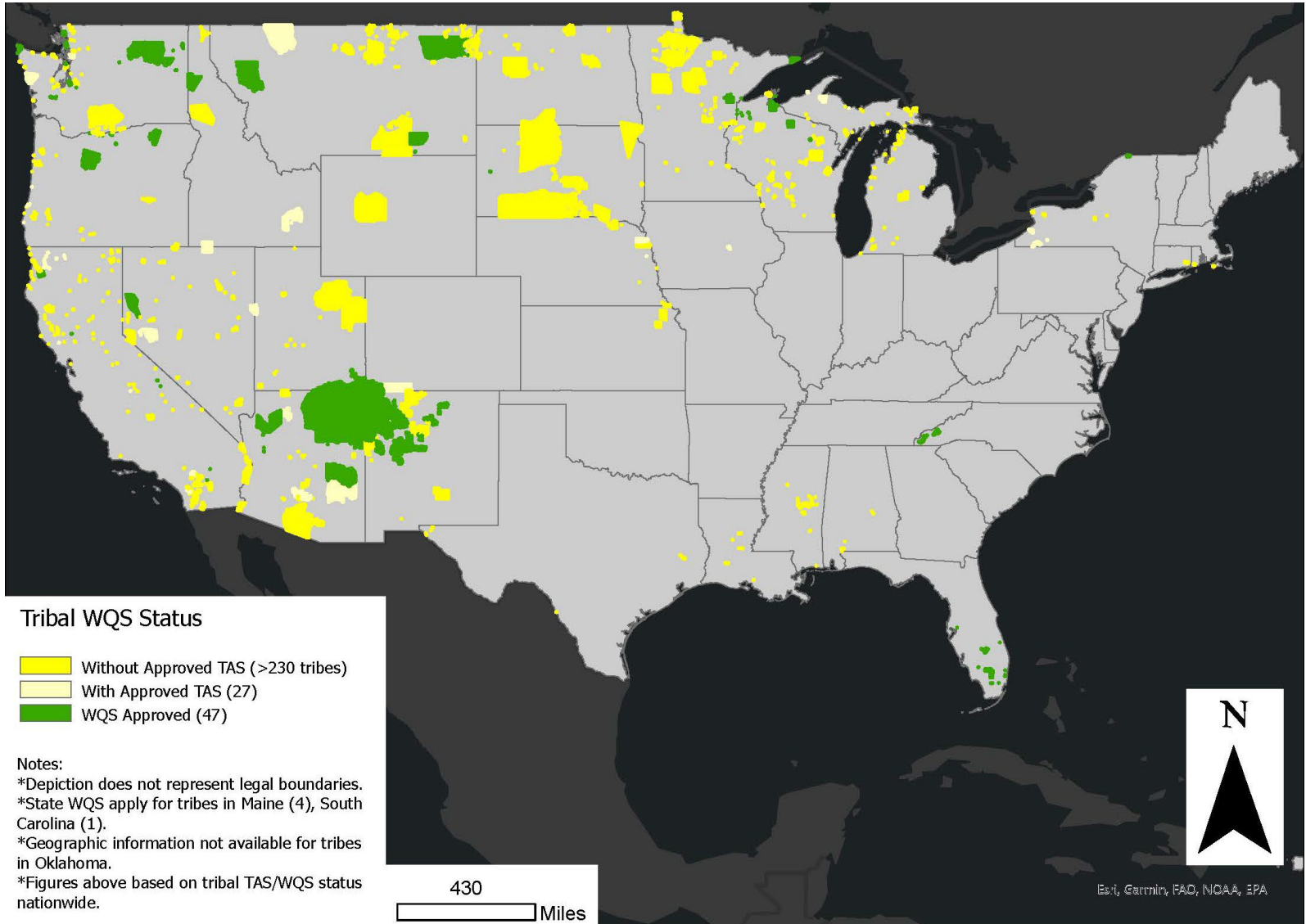
Potential Baseline Standards

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 implementing NPDES permits.
- EPA would also engage in public participation with states and the regulated community in accordance with existing regulations.



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) are 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.



Status and Next Steps

- Tribal consultation and coordination period concluded September 13, 2021.
- EPA anticipates proposing the rule by Summer 2022.



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>