

**MINUTES
of the
WATER QUALITY COMMITTEE
Peppermill Resort Spa Casino
Reno, Nevada
May 23, 2023**

Table of Contents

Welcome and Introductions	4
Approval of Minutes	5
Proposed/Sunsetting Position	5
Western Water & Working Lands Framework.....	7
WOTUS Updates	9
Per- and Polyfluorinated Substances (PFAS)	10
Roundtable: Water Quality and Tribes	11
Sunsetting Position for Fall 2023 Meetings.....	15
Other Matters	15

**MINUTES
of the
WATER QUALITY COMMITTEE
Peppermill Resort Spa Casino
Reno, Nevada
May 23, 2023**

MEMBERS AND ALTERNATES PRESENT *(via zoom)*

ALASKA	<i>Julie Pack Tom Barrett Emma Pokon</i>
ARIZONA	<i>Trevor Baggiore Amanda Long Ayesha Vohra</i>
CALIFORNIA	Jeanine Jones
COLORADO	Jojo La
IDAHO	Jerry Rigby John Simpson
KANSAS	
MONTANA	<i>Anna Pakenham Stevenson</i>
NEBRASKA	Tom Riley Jim Macy
NEVADA	<i>Jennifer Carr</i>
NEW MEXICO	
NORTH DAKOTA	Jennifer Verleger Andrea Travnicek
OKLAHOMA	Sara Gibson
OREGON	
SOUTH DAKOTA	Nakaila Steen
TEXAS	Jon Niermann

UTAH

John Mackey
Sarah Shechter
Todd Stonely

WASHINGTON

Buck Smith

WYOMING

Chris Brown
Jennifer Zygmunt

GUESTS

Luke Tipton, DOWL, LLC
Lisa Fong, USDA Forest Service
Stacey Jensen, Army Civil Works
Gretel Follingstad, NOAA-NIDIS
Anna Johnston, USDA Forest Service
Nicole Bringolf, USDA Forest Service
Tim Newman, U.S. Geological Survey
Kevin Mayes, Texas Parks and Wildlife
Gabriel Venegas, USDA Forest Service
Stephanie Granger, NASA/JPL-Caltech
Norm Semanko, Parsons Behle & Latimer
Jaron Ming, U.S. Fish and Wildlife Service
Melissa Roberts, American Flood Coalition
Ayse Kilic, University of Nebraska - Lincoln
Christian Dunkerly, Desert Research Institute
Michael Whitehead, Bureau of Indian Affairs
Josephine Axt, U.S. Army Corps of Engineers
Kirsty Bramlett, U.S. Fish and Wildlife Service
Brian Frazer, Environmental Protection Agency
Richard Allen, Evapotranspiration Plus, LLC
Corey Buffo, Environmental Protection Agency
AJ Jensby, Nevada Division of Water Resources
Erica Gaddis, SWCA Environmental Consultants
Christopher Estes, Chalk Board Enterprises, LLC
Jen Kramer, Nevada Division of Water Resources
Bridget Bliss, Nevada Division of Water Resources
Alex Fragoso, Nevada Division of Water Resources
Keith Conrad, Nevada Division of Water Resources
Chad Walling, Nevada Division of Water Resources
Christi Cooper, Nevada Division of Water Resources
Bunny Bishop, Nevada Division of Water Resources
Lauren Bartels, Nevada Division of Water Resources

Jared McCrum, Nevada Division of Water Resources
Thomas Pyatte, Nevada Division of Water Resources
Kelly McGowan, Nevada Division of Water Resources
Malcolm Wilson, Nevada Division of Water Resources
Nicole Goehring, Nevada Division of Water Resources
Henry Brooks, Alaska Department of Natural Resource
Ashton McIntosh, Nevada Division of Water Resources
Caitlan McCartin, Nevada Division of Water Resources
Christopher Thorson, Nevada Division of Water Resources
Cara McCarthy, NRCS National Water and Climate Center
Kathy Alexander, Texas Commission on Environmental Quality
Chad Stephens, Nevada Department of Conservation and Natural Resources

WESTFAST

Lauren Dempsey, U.S. Air Force
Mike Eberle, USDA Forest Service
Travis Yonts, Bureau of Reclamation
Chad Abel, U.S. Fish and Wildlife Service
Christopher Carlson, USDA Forest Service
Paula Cutillo, Bureau of Land Management
John Powderly, Federal Emergency Management Agency
Heather Hofman, NRCS National Water and Climate Center
Joe Casola, National Oceanic and Atmospheric Administration
Roger Gorke, Environmental Protection Agency (WestFAST Chair)
Madeline Franklin, U.S. Bureau of Reclamation (WestFAST Liaison)

STAFF

Tony Willardson
Michelle Bushman
Adel Abdallah
Ryan James

WELCOME AND INTRODUCTIONS

Jennifer Zygmunt, Committee Chair, welcomed members and guests.

APPROVAL OF MINUTES

The minutes from the Fall meetings held in Sulphur, Oklahoma in October 2022 were moved for approval by Jennifer Verleger. The motion was seconded and the minutes were unanimously approved.

NEW AND SUNSETTING POSITIONS

The Committee discussed the Proposed Position regarding EPA's proposed rules on water quality standards and tribal reserved water rights. Buck Smith expressed concerns from a water quantity, water rights standpoint, noting that it is typically up to the state courts to adjudicate tribal reserved water rights. Some clarification was made that the position primarily focuses on other tribal treaty rights with water quality impacts, and attempts to distinguish them from the more typical Indian reserved water quantity rights that our western states are accustomed to working on. There was some discussion about changing the wording of the position for greater clarity on shifting the federal trust responsibility to states.

Jennifer Zygmunt noted that one of Wyoming's biggest concerns about EPA's proposed rule is that the WY DEQ would be put in a position of determining tribal reserved rights, and that is not something they have the expertise or authority to do.

Jennifer also talked about Wyoming's concerns about EPA's proposed timing of the state's triennial review, which can take many years, followed by the EPA-tribal consultation process, after the states has already taken that to the Governor's advisory board for approval for efficiencies and up-front coordination. Wyoming would ask that consultation process occur early in the process during the training and review so that we can understand if there are any concerns at the beginning of the process, rather than at the end.

Emma Pokon We're concerned to some extent about the workload. We have 229 tribes in the State of Alaska and if we had individual tribes asserting reserved rights, at some point, that becomes a workload that our water quality team doesn't have the expertise currently to sort through. Many of these issues were resolved in Alaska through legislation already, but it really opens the door to advocacy that can become a workload that, again, we are concerned about. From my perspective, that's how I understood this language.

Jennifer Zygmunt: One question that we had earlier was, since the Council does not have a separate position on the federal baseline water quality standards rule, again, the Council only sent out a letter without a formal position in 2016. If there's support for this draft position, we've got a few options: (1) we could move this draft position as it is to the Full Council for consideration; (2) we can consider postponing this draft resolution to also work on the baseline water quality standards rule and have one draft resolution that covers both. We would have to do that at the Alaska meeting; or (3) we can move forward with this draft position and the draft position on the baseline water quality standards rule. I think the key decision to make right now would be, do you folks want to

hold off on moving this forward so that we can wrap in the federal baseline water quality standards for tribes into this position on tribal reserved rights, or do you want to keep them separate?

Emma asked about EPA's rulemaking timing, and the potential effect this position might have on the Council's ability to comment. Jennifer noted that according to EPA, they are moving forward with the tribal reserved rights rule, and their intent is to have it promulgated by the end of the year. Comments on the baseline water quality standards rule are due by August 3, which would be before our Alaska meetings. Jojo La expressed some urgency from Colorado's perspective, and noted that the Committee could probably lift the federal baseline WQS language for the position directly from the Council's 2016 letter.

Michelle read the proposed paragraph. "BE IT FURTHER RESOLVED that the Western States Water Council supports meaningful and substantive consultation with States as co-regulators, seeking input from states beyond mere information-sharing, prior to publication of any proposed or final rules with federalism implications," then this is what would be added: "Especially concerning how EPA would implement such a rule and under what authorities, particularly with regard to: (1) non-jurisdictional waters and unquantified reserved water rights (2) how to baseline water quality standards for the impacts existing state jurisdictions and water quality programs, particularly where the outer reservation boundaries do not reflect current regulatory jurisdictions and/or non-tribal lands within the reservation boundaries; and (3) how EPA would resolve any differences between states and tribal standards, as well as states' standards and EPA's baseline standards for tribes without treatment as states (TAS) authority." So that would essentially incorporate both rules together in one Be It Further Resolved.

The Committee expressed interest in adding some supporting Whereas clauses overnight, then presenting two versions of the position to the Full Council, one with the added language about federal baseline WQS for tribes, and one without. Jojo moved to present this to the Full Council, and Jon seconded. Jojo and Jennifer volunteered to work on the new wording.

Sunsetting Position:

Jennifer turned some time over to Jim Macy to talk about his proposed changes to Position #446, regarding the clean and drinking water state revolving funds (SRFs)

Jim: A little background on this. If you haven't followed the recent appropriations from the congressional level for all states, there are 42 states Congressional Representatives that have submitted earmark appropriations on both sides of SRFs, to the extent that only \$341 million and change on the clean water side and actually negative \$107 million on the drinking water side would be allocated out to states this year. Given that the states work through an intended use plan (IUP), and have deliberative methods to route projects, I think this is concerning. Only eight states didn't have Congressional earmarks around the country. Welcome to the ending of the funding clip for SRFs. We're here. What does this mean for the future? I would suggest that we not allow this resolution to expire. And I would propose adding the redline language.

Michelle read: "NOW, THEREFORE, BE IT RESOLVED, that the Administration and Congress should work together to ensure that stable and continuing federal appropriations are made

to the SRF capitalization grants, WIFIA loans and State and Tribal Assistance Grants at funding levels” instead of saying “that are adequate” we add “that reflect the state’s priorities identified in their intended use plans are up and further that the state’s allocations are not reduced, or harmed by direct congressional earmarks. These combined actions are intended to help states address their water infrastructure needs, and protect public health and the environment for the benefit of the people.”

The Committee discussed the position language regarding state priorities and intended use plans (IUPs), and how the Congressional earmarks—which Congress appears to like—are decreasing funding for those state priorities, IUPs, technical assistance, rural and disadvantaged communities and local needs, critical water quality programs, source water protection. Members of the Committee raised specific language contained in their IUPs, but that language varied from state to state. Another concern was raised regarding the impact of earmarks on state primacy (referring to delegated authority under the Clean Water Act to implement CWA programs), because some states use significant set aside funds from the capitalization grants to support staffing for drinking water regulatory programs. With the earmarks, some states may not have the staffing support to implement their programs.

Julie: If we’re going to include a line about state primacy and risking jeopardizing funding for that, we might also include a line from one of our other resolutions about what primacy is and that it’s Congress’s intent that states assumed primacy with certain programs. I can look for a position.

Jennifer: Any objections to adding in that type of Whereas Clause - that it’s the intent of Congress for states to take over primacy programs? Hearing no objections and rather than waiting for Julie, we can essentially just copy it from another position to simply make that statement to support the Be It Resolved Clause.

Michelle noted that the estimated cost for needed wastewater and stormwater infrastructure has not been updated in the position because that survey has not been completed. EPA is supposed to do the survey every five years, but that’s not what has been happening. So the \$271 billion as an investment need is probably extremely outdated at this point. It will be three years before we update this position again, but if the survey comes out in the meantime, we would reference the updated numbers in using this position.

Jennifer: So it’s ready Jen, Jon? Any other requirements? Not hearing any feedback, we have a position that I would entertain a motion for to bring to the Full Council for consideration. It was moved, second and unanimously passed.

WESTERN WATER AND WORKING LANDS FRAMEWORK

Madeline Franklin, WestFAST Federal Liaison introduced Martin Lowenfish, Outcomes Division Director, Natural Resources Conservation Service (NRCS). Martin shared a PowerPoint presentation on western water and working lands framework for conservation action. NRCS uses the frameworks to coordinate and track progress on addressing defined conservation concerns

across large geographic areas. These frameworks provide a shared vision for targeting vulnerable landscapes that cross state boundaries and for voluntary conservation benefiting both agriculture and the environment. This is not a new funding initiative.

NRCS hosted a public listening session back in 2020 to gather feedback on how the agency could better address water quantity and related issues in the West. Development of this framework is one of the follow-up actions NRCS is taking to address comments and concerns raised during the public listening session.

Through frameworks, NRCS assesses issues across large geographic areas and identifies landscapes with natural resource vulnerabilities and conservation challenges. NRCS further identifies opportunities to help individuals, entities, and communities voluntarily conserve natural resources and build resiliency to emerging threats. Water supply in sufficient quantity and quality is declining in many areas of the West as it is increasingly threatened by growing demand and the impacts of climate change. Declining water supply threatens water and working land resources that sustain agricultural productivity and environmental quality in these areas. These interrelated threats increase challenges encountered by water resource managers and producers as well as the opportunities for NRCS to deliver conservation assistance where it can make a greater impact. Through the water and working lands framework, NRCS has identified six major management challenges: (1) forecasting water supply; (2) sustaining agricultural productivity; (3) protecting groundwater availability; (4) protecting surface water availability; (5) managing and restoring rangelands and forestlands; and (6) responding to disruptions from catastrophic events.

NRCS takes a wide variety of actions to help individuals, entities, and communities respond to each of these major management challenges. For example, the agency installs and maintains snow survey sites, directly assists farmers in improving irrigation efficiency, and provides technical and financial assistance to communities recovering from disasters like floods. The framework categorizes responses into various strategies. These strategies enable NRCS leaders and managers across the West to set comparable goals for effective program delivery. NRCS will use this framework to coordinate and track progress on helping individuals, entities, and communities across the West. Farmers, ranchers, irrigation districts, groundwater management entities, municipalities, tribes, and others across the West are working together to attain clean and available water supplies, healthy soils, resilient landscapes, and thriving agricultural communities now and in the future. NRCS is working to assist them to accelerate voluntary conservation of water and working land resources.

Questions:

Jennifer Zygmunt: You spoke about disaster resilience. Can you talk about any new opportunities through NRCS for those types of projects, emergency response, particularly as we're getting into the flooding season in western states?

Martin: I think it really speaks to the planning process in watershed plans. I'm being very vague here in general, but it does speak to our broader sort of climate folks focus and understanding of the impacts of climate change. As we plan for disaster recovery, we look towards what's the potential future condition and how that may impact water resources, rather than just assuming sort

of a what that old steady state might be. That's the concept behind when we're talking about resilience. We make sure that we're looking at the real future condition that we're planning for.

WOTUS UPDATES

Brian Frazer, Director, Office of Wetlands, Oceans and Watersheds (OWOW), EPA and Stacey Jensen, Office of the Assistant Secretary of the Army (Civil Works) talked about the Biden Administration's WOTUS Rule. The agencies' rulemaking process has focused on building a definition that is durable, that stakeholders are familiar with, and that landowners can count on when making decisions about the operations in which projects go forward with and when. The definition of waters of the United States is a foundational term of the CWA. The definition affects most programs that protect water quality under this Act. He provided an update on the rule status, and a litigation update. The final revised definition of what is the United States rule was published in the Federal Register on January 18, 2023. The rule took effect on March 20, 2023. However, the final rule is not currently operative in certain states due to litigation. On March 19, 2023, the U.S. District Court for the Southern District of Texas granted a motion preliminarily in joining the 2023 rule in Idaho and Texas. On April 12, 2023, U.S. District Court for North Dakota granted a motion preliminarily in joining the 2023 final rule, and 24 additional states. On May 10, the U.S. Court of Appeals for the Sixth Circuit Court issued an order granting the motion of Kentucky for injunction pending appeal of the District Court decision. In light of the ongoing litigation, the agencies will interpret waters of the United States consistent with the pre-2015 regulatory regime in 27 states and for Kentucky and others in the Sixth Circuit litigation until further notice. The agency is also reviewing these decisions and our options. Further information is available on the EPA website.

Jennifer Zygmunt raised the work the WSWC did to put together a white paper exploring regional approaches, and invited any further insights from Brian and Stacey into the status of the agencies' implementation guidance and consideration of regional approaches.

Stacey noted that the Corps has been implementing the WOTUS rule since the effective date in the states where it is applicable, and has done considerable internal training, and have posted those implementation materials. If there's a particular topic area that you folks are interested in, please let us know. We can see what existing resources we have, or something else that may be needed for that. There also is the draft-approved JD form and its associated guidebook that the court is using that's publicly available. It's just more of a step-by-step process on how to fill the form out, but it can be helpful as well. Any other questions?

Tony Willardson asked about the ongoing efforts among the different agencies as far as potential mapping of WOTUS.

Stacey: As you recall, the Navigable Water Protection Rule (NWPR) had a separate proposal embedded in that proposed rule about some sort of mapping database - mapping layer for all of WOTUS. As we worked through that, it got a little more challenging to achieve. Certainly, the states would be involved in anything we did. That effort kind of evolved. I'm sure you're aware that EPA has their own website that's GIS based that does show existing determinations that have

been made. The Corps also has a public facing site, which shows our internal database of all the approved JDs that have been made. The EPA website has a user-friendly format. Landowners can look and see if a JD has been determined near them, or their property, which can help inform them whether the waters on their property may be WOTUS or not. It's just an extra piece of information that can be helpful in that space. The actual effort has evolved. We have an interagency group, Brian, that your folks actually are a big part of as well, that focuses more on existing tools and how to improve those tools. There is discussion in the Corps of perhaps using AI technology in the future, but we're a ways off from that - having some sort of predictive tool. There's a lot of professional judgment that goes into it, at least the current rule, with the Significant Nexus standard and the factors and functions and all of that. There are ways we can start using what we've done with JD's and watershed in the past, knowing some of the factors and functions we use. We're starting to collect that data better in our internal database and learn from that, and maybe in the future, who knows, there's some sort of predictive tool there, but we're not there yet.

Brian: As Stacey mentioned, on the maps we're looking at putting on some of the territories. I do want to clarify that there are no maps or data sets out there that will delineate all waters that are jurisdictional under any definition of WOTUS. We have a stream map and data sets from USGS that do not delineate waters that are or are not jurisdictional. Instead, they're used for a wide variety of purposes. As with any definition of WOTUS, under the rule, the agency would make determinations on a case-by-case basis and typically, by request of the landowner.

PER- AND POLYFLUORINATED SUBSTANCES (PFAS)

Jennifer Zygmunt provided an update on the PFAS Subcommittee's actions over the past year. This Committee first started talking about PFAS at our Summer 2020 meeting in Montana, and formed the PFAS Subcommittee to talk about what the common PFAS concerns are for western states, activities that the WSWC can pursue without duplicating efforts of other associations, and then ultimately exploring whether this Committee wanted to propose a specific position related to PFAS. Representatives on the subcommittee were from Alaska, Colorado, Washington, and Wyoming. Since that time, the subcommittee met twice in 2022, which led to the WSWC hosting a States-Only Roundtable in January 2023, as a starting point to get feedback on these questions. We had 15 states participate. We heard a lot of valuable feedback. There's a broad spectrum of where states are at in terms of implementing PFAS activities. And if you look at tab P in the briefing book you can see a summary of that roundtable, including all the feedback provided, as well as a summary of the subcommittee actions.

Some of the common themes that came out of that roundtable, most states are currently on fact-finding missions, doing monitoring studies to figure out where they have PFAS. Most states are pursuing planning and strategic planning documents, developing partnerships, and working groups. One definitive common ground is that most states don't have devoted emerging contaminants staff and that's one of the biggest challenges. We're all working on public education and outreach. We're all concerned about biosolids, although states are in different places in terms of action items. Some states, but not many, have developed their own standards or action levels. Many states are developing modeling tools. I think most states are evaluating their definitions of disadvantaged communities.

In terms of common challenges, staffing is one of the biggest issues. We just don't have the devoted people to tackle this resource. It's hard to make decisions without clear standards from EPA. Obviously, those standards are coming in the near future, which will create our own implementation challenges. States expressed concern about uncertainty with the contamination and how to balance this new initiative with other existing statewide initiatives, particularly with staffing issues. IJA funds are a good thing, but it can be difficult to connect the funding to the need. We need sustainable solutions for disposal. Others challenges included the need greater lab capacity, the need for better guidance on technical support and quality assurance as part of that lab analysis and sampling. States expressed concerns about private wells, and working with Department of Defense to address PFAS contamination.

Some of the common ground noted could be considered for a WSWC position statement, such as the successes and challenges and coordinating with the Department of Defense, since many of our states have military sites. With water reuse being an important topic in the West, it has its own PFAS concerns. Again, the issue of private wells. I know in Wyoming, we have a good portion of our population on private wells. How do we get those tested? How do we get remediation in those areas if they don't qualify for the IJA funds? We talked about wildfires among the challenges, limited water sources, and that it's not always an option to find another source, meaning that we're going to have to figure out how to clean up the contamination that we have appointed.

We wanted to propose to the committee today to see if there is an interest in PFAS and see if the Committee would like to direct the subcommittee to pursue a specific position on PFAS? Questions or comments?

The Committee did not express interest in pursuing a PFAS position at this time. The Committee has done some groundwork to see where our states are on this issue, so that in the event that EPA does come up with a proposed rule at some point, we would already have some information in place.

ROUNDTABLE: WATER QUALITY AND TRIBES

Jennifer noted that here are two separate rulemaking activities that EPA has proposed, which are hot topic issues right now. The first is the tribal reserved rights rule, which public comment has closed. Please refer to Tab Q in your binder. Michelle compiled highlights from all of the western states comment letters that were submitted to EPA during the public comment period, and these comments informed the proposed position in Tab C. I know that there's a lot of details that we may not agree on, but I think there are some common things that we do agree on.

Secondly, the federal baseline water quality standards. The WSWC does not have a separate position for this subject at this time. However, the WSWC did put together a letter in 2016, when it was the advanced notice of proposed rulemaking. That letter is under Tab Q in your binder for your review.

Corey Buffo, the Branch Chief in the Water Quality Standards Program at EPA Headquarters, provided some information about both of these rules. He noted that the reserve rights comment period had closed and they were busy responding to those comments. One common thing we heard from just about everyone is that neither tribes nor states were comfortable with states determining the scope and nature of the reserve right and so we're working on that. We're going to be talking about the implementation of the rule with the Association of Clean Water Administrators (ACWA). Some states will be part of that conversation. We can certainly have those conversations in the future too. Implementation is not straightforward. Some states have done this before and some haven't. Maybe that's the time we really start picking up these conversations and talk about how the process would work - to the extent we haven't answered those questions in the rule, which we hope to get out by the end of this calendar year.

In regard to the federal baseline water quality standards, I think many of you are aware, but this has a long history. EPA made a determination in 2001 that the vast majority of tribal reservations lands and waters needed to be covered by WQS. Under the CWA, we have the discretion to make a determination that standards are necessary to fulfill the obligations of the CWA. EPA made that determination and then didn't get around to promulgating a rule. In 2016, we picked it up again with an advance notice of proposed rulemaking. I believe we engaged with all of you and a whole bunch of others, and got some really good comments and direction of where we wanted to go with it. We've now proposed the federal baseline WQS rule, and it's in the 90-day comment period (May 5 to August 3). We have public hearings scheduled for June 27 and July 12. All of this is on our website.

Unlike the reserved rights rulemaking, this covers tribal waters where tribes have jurisdiction but don't have WQS. Reserved rights are where the states have jurisdiction. They're complementary roles, but they don't really overlap. The challenge is, EPA does the implementation in Indian country. We write the permits, hopefully we do the listing, and we have the resources. This is sort of a gap filling exercise where we're giving ourselves the WQS we need in order to write those permits, which can help protect downstream state waters. Then of course, we'll be communicating probably more with states about how to protect the tribal waters from upstream, depending on the state and the situation.

What we were planning on doing was just promulgating typical uses, antidegradation, and criteria. The criteria is a little different. We're putting narratives in place. The narratives include tribal and cultural uses. Then we're using binding translation procedures to translate those narratives into numeric criteria as the permits come up. There's a bunch of reasons why we're doing that. Partly because my team can't promulgate regulations that are numeric every time we update our recommendations. I think it will give more flexibility, as we'll be able to use state standards as well and not necessarily know in advance for each reservation what WQS are appropriate. We will be able to tailor it to some degree on site specific considerations, including tribal uses of the water is that a one-size-fits all set of numeric criteria wouldn't have allowed us. I think that's pretty much an overview there. If you have questions, I can probably answer those a little better than I can for the reserve rights at this point.

Questions/Comments:

Jennifer: Thanks, Cory. I can speak for the State of Wyoming. We are supportive of the intent of the rule. It's just the legal and procedural concerns, and some of the regulatory uncertainty involved with those rules that causes us a great deal of concern. Speaking of the baseline water quality standards, I appreciate that review. I think the idea of the narrative criteria with the translator, understanding that gives you flexibility to address different nations across the United States, it makes it very difficult for states to review and understand the potential impacts and how that rule would affect, or how it would integrate with our water quality standards. That's where we're really struggling with: how does that narrative rule help us work with our tribes? How does that affect discharges both on and off the reservation? I don't know if you can speak anymore to the narrative criteria, the translator giving examples, but that's where I think we have the most concern.

Corey: I'm sure some states have examples of translation errors as well. We say in the rule what we're looking at using and that's our recommendations, and by and large, I think that's what's going to drive it. That's what drives it now when we're writing permits. I will say though, that despite the fact that we don't know in advance, there's a process in the rule that recognizes the process of issuing permits, where we do have the opportunity to engage states and tribes when it comes to actually putting numbers into the permits. This is sort of setting up a framework, but it's not the final answer. It may be kind of hard to forecast in many cases. It might not be hard for some facilities who kind of know already. It's just putting in place the framework that we need to effectively and transparently implement the CWA in Indian country that we didn't have in all reservations before.

Jennifer: Thanks for that response. I will just add on to my comment that I can't emphasize enough the importance of state engagement on these rules. We felt it was lacking on the tribal reserved rights rule and were disappointed that the baseline water quality standards rule came out without any meaningful state engagement prior to the rule being drafted and proposed. So again, I just really urge EPA to take that seriously moving forward in any opportunities to increase state engagement with the rules.

Corey: We're trying. The timing has been tough. We're taking a lot of meetings and doing what we can to move things forward. I'll admit that.

Julie Pack: Thank you so much for that explanation. What was the impetus for this rule? It's my understanding that EPA, when administering the NPDs program, currently uses state water quality standards and incorporates those into permits. What waters are actually unprotected that provided the need for this rule?

Corey: The premise that EPA is using state standards, I have not found to be true in all instances. It may be the case where you are, but regions are doing different things. We need to be a bit more uniform, transparent, regularized and translating this. Frankly, some of the regions were missing opportunities because they didn't have a process and standards in place to translate or to put into the permit. I don't know if that be a change everywhere, some places may be able to put limits in the permits, but this will put more regularity, more transparency. If we're just writing permits to

state standards, I'm not sure exactly where we're getting the authority. That's what this rule is aiming to shore up.

Julie: But isn't the authority for the tribes who meet criteria for Treatment as a State (TAS) status to take the first go at promulgating these WQS, not EPA?

Corey: It has long been our preference for tribes to get TAS and water quality standards. The tribes know their waters best and so they're best able to tailor the standards to their own particular uses and considerations. However, there's a lot of tribes who have not gotten there because they don't have the resources. There are at least 47 who are not currently covered by any sort of standard. We're filling the gap.

Julie: Filling the gap for tribes who have not yet met the TAS criteria that Congress required before? In Alaska, our tribal landscape is very complex and unique. We're struggling to figure out how this applies, particularly given EPA's deviation from the definition of reservation, as reflected in the CWA. We're concerned because Alaska's tribal landscape is so different, and EPA did not consult with Alaska before this and so this is causing major confusion right now because of that.

Corey: I've heard that. I know we're meeting with Alaska in the coming weeks to see what we can sort through. I realize you have more contemporary designations and definitions that we need to take a harder look at and figure out where they fit. We might not be able to answer everything before the rule, but we're going to do our best.

Julie: We think that to provide meaningful comment this engagement should have happened before the proposed rule, not during the comment period. Because now, we're at a loss of how we are going to provide comment with what's in the rule and what are we going to be stuck with? Are we going to have to sue and bring as an argument that EPA failed to include enough detail to provide meaningful comment and they substantially changed it? Fundamentally, we would like engagement with the states for rules like this.

Corey: We understand the desire for engagement, we do our best.

Julie: Thank you. Appreciate it.

Jojo La: Would you be able to provide further information on the implementation of the rule, especially pertaining to fee lands, or checkerboard lands on tribal reservations? How the rule might be implemented through those kinds of checkerboard lands. Especially in the context of state water quality standards that differ from the federal baseline water quality standards. Thank you.

Corey: The reservation includes holdings within the boundaries of the reservation. Some reservations are checkerboarded, but they're still within the boundaries of the reservation. That's true of all the environmental statutes we implement in Indian country. We don't try to differentiate between different squares on the checkerboard. Differing standards, you're talking about standards being different after we translate the narrative then on surrounding state waters. We have downstream protection provisions. There are processes in place to consult on the permits and talk through any issues we have. Frankly, this is the same issue we face often between two different

states. Sometimes it's not so challenging and we can work it out. There was one time it went all the way to the Supreme Court. There may be more of that, but we have been implementing in Indian country now. I don't know that the processes will be that different than it has been. There will just be a little more transparency than there had been in terms of what we're looking at putting in permits and how we're looking to engage. I think both of those are spelled out in the rule.

Jennifer: We sure appreciate you answering our questions.

Corey: Happy to talk some more. I know earlier engagement was everyone's preference. We did what we could. It's been a real timing challenge as well. But I think we're in a better place than we were.

SUNSETTING POSITIONS FOR FALL 2023 MEETINGS

The Committee does not have any sunseting positions for the Fall 2023 meetings.

OTHER MATTERS

Jennifer noted that the Water Quality work plan needed some updates. She recommended deferring the discussion until the Alaska meeting, when the Council should have a new Policy Analyst on staff to assist with the work plan tasks.

There being no other matters, the Water Quality Committee was adjourned.