

Katie Hobbs
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Karen Peters
Director

August 3, 2023

United States Environmental Protection Agency
Attn: Administrator Michael S. Regan
1200 Pennsylvania Avenue NW
Washington, DC 20004

RE: Federal Baseline Water Quality Standards for Indian Reservations
Docket ID No. EPA-HQ-OW-2016-0405

Dear Administrator Regan:

The Arizona Department of Environmental Quality (ADEQ) appreciates the opportunity to provide comments on EPA's proposed Federal Baseline Water Quality Standards: Tribal Reservations rules and supports protecting all surface waters within Arizona's borders.

As a member of the Association of Clean Water Administrators (ACWA), ADEQ supports the comments submitted by ACWA on this proposed rule. ADEQ would like to especially echo the comments from ACWA and other states regarding implementation of the rule by EPA. ADEQ is very concerned that EPA has not completed scoping the level of effort and estimated resources needed to implement the proposed rule. In Arizona, effective implementation of this rule will require an extensive collaborative effort by the EPA, ADEQ and tribes.

Arizona has 22 federally recognized Native American tribes that represent more than 296,000 people. A total of 20 reservations cover more than 30,938 square miles (27%) of the state, ranging in size from the very large Navajo Nation reservation, which is the size of West Virginia, to the Tonto Apache reservation which covers about 85 acres. Of the 22 tribes, eight have treatment as state (TAS) status and can develop their own surface water quality standards; and only four have EPA-approved standards. These tribes are the Hopi, Hualapai, Navajo, and White Mountain Apache, which cover 19,702 sq. mi. of the state. That leaves 11,236 sq. mi. (10%) in Arizona without the protection of surface water quality standards.

In addition to the spatial scale issues above, tribal lands are sometimes commingled with public and private lands in Arizona; such as in the Phoenix metropolitan area and some cities along the Colorado River. Tribal lands are also part of a "checkerboard" of public, private and tribal land south of Winslow in northern Arizona. While the total number of waters on which federal standards apply depends on the final dispensation of the Supreme Court ruling on Sackett v. EPA, there are at least 99 Arizona surface waters that cross reservation boundaries that will likely be affected. Of those waters, there are currently 33 federal Arizona Pollutant Discharge Elimination System

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(AZPDES) permits. An additional 238 surface waters with 74 more AZPDES permits lie within a five-mile buffer of the tribal reservation boundaries.

During recent virtual meetings with states and tribes, EPA stated that no funding was attached to this proposed rule. Given that EPA Region 9 has yet to issue final action on water quality standards submitted by ADEQ to the agency in November of 2019 due to inadequate staffing, ADEQ is not confident that EPA has the ability to fully support tribes and states in the effort to establish baseline water quality standards.

Additionally, as pointed out by other states and ACWA, the proposed rule also needs to define a resolution process for inconsistencies between state and tribal baseline water quality standards. A cursory review of the current tribal standards in Arizona found that significant inconsistency between numeric criteria already exists; adding additional standards across all tribes will add another level of complexity if these issues are not resolved in the process of establishing baseline standards.

Given EPA Region 9 capacity and the complexity of applying standards in a state where reservation and historic tribal lands are often intermingled with public and private land, ADEQ urges EPA to establish a clear, concise and effective implementable approach to the rule before finalization.

Thank you for your time and consideration,

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Trevor Baggiore
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Arizona Department of Environmental Quality