



WESTERN STATES WATER COUNCIL

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Web Page: www.westernstateswater.org

August 3, 2023

Mr. Michael Regan, Administrator
Environmental Protection Agency
Washington, DC
regan.michael@epa.gov

Ms. Radhika Fox
Assistant Administrator, Office of Water
Environmental Protection Agency
Washington, DC 20460
fox.radhika@epa.gov

Re: Federal Baseline Water Quality Standards for Indian Reservations
Docket #EPA-HQ-OW-2016-0405

Dear Administrator Regan and Assistant Administrator Fox:

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

Water quality standards are central to achieving the goals of the Clean Water Act on both state lands and tribal reservation lands. However, many states have expressed concerns that the promulgation of nationwide baseline water quality standards for tribes without treatment as states (TAS) authority has the potential to create a more complicated regulatory environment for state water quality and water resources managers and users. At this time, the rule as proposed may raise more questions and conflicts than it will resolve, particularly in western states where a complex mix of state and tribal lands may be present.

As we have noted frequently in the past, the WSWC supports meaningful and substantive consultation with States as co-regulators of the Clean Water Act, seeking input from states beyond mere information-sharing, prior to publication of any proposed or final rules with federalism implications. As described in Executive Order 13132, regulations with federalism implications include actions, “that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Of particular relevance, the Executive Order directs great caution and meaningful consultation when establishing uniform national standards.

The WSWC urges EPA to fully consider the legal and administrative issues associated with promulgating nationwide tribal baseline water quality standards. Questions our states have previously raised include:

(1) How will EPA implement this rule, and under what authorities, particularly with regard to non-jurisdictional waters and unquantified reserved water rights?

(2) How will the baseline WQS impact existing state jurisdictions and water quality programs, particularly where the outer reservation boundaries do not reflect current regulatory jurisdictions or non-tribal lands within reservation boundaries?

(3) How will EPA resolve any differences between state and tribal standards, as well as states' standards and EPA's baseline standards for tribes without TAS authority?

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Tony Willardson".

Tony Willardson
Executive Director

Enclosures: Resolution #490 regarding federal baseline water quality standards for Indian reservations, and WSWC letter commenting on the advanced notice of proposed rulemaking in 2017.

cc: ray.james@epa.gov