

August 3, 2023

Michael S. Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave NW, Suite 1101 A
Washington, DC 20460

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

Dear Administrator Regan,

The North Dakota Department of Water Resources (NDDWR) appreciates the opportunity to comment on the proposed Federal Baseline Water Quality Standards for Indian Reservations Rule (Rule). The DWR sustainably manages and develops North Dakota's water resources for the health, safety, and prosperity of its people, businesses, agriculture, energy, industry, and natural resources. In part, this includes funding and constructing water infrastructure projects across the state for flood control, water supply, and other state-authorized uses.

The Rule, as proposed, continues to implement the Environmental Protection Agency's (EPA) stance that water infrastructure is considered pollution by listing "hydrologic integrity" as an unacceptable water quality criterion including "structural attributes that influence...the water body, including the characteristic pattern of flow magnitude, timing, duration, frequency, and rate of change of a water body".

NDDWR is a regulatory agency that issues permits for construction of dams, dikes, and other water retention structures; NDDWR additionally permits water use for water supply, irrigation, industrial, and recreation among other uses. The North Dakota State Water Commission (NDSWC), in partnership with NDDWR, cost-shares up to 75% for water infrastructure and in the next two years will appropriate over \$780 million towards water supply, flood control, and general water projects. In addition, the NDSWC also owns the Devils Lake Outlets that have, in part, influenced watersheds across the Devils Lake Basin in North Dakota. In short, water infrastructure is necessary for the health and safety of all people and is a necessary part of supporting North Dakota's largest industries—agriculture and energy through flood protection and drainage as well as irrigation and industrial uses of water. The EPA's ongoing stance that water quality standards cannot be met if hydrology is altered implies that infrastructure such as flood protection can be achieved in ways that don't affect the environment at all.

As a part of NDDWR's and the North Dakota Department of Environmental Quality's (NDDEQ) permitting processes, impacts to waters are properly mitigated and managed at a state level to assure that the state's water resources remain healthy and safe. All projects meet the requirements of the Endangered Species Act, National Environmental Protection Act, and other

state and federal regulations. NDDWR respectfully requests the removal of these requirements from the Rule to assure that Indian Reservations that choose to invest in infrastructure are able to do so without fear of not meeting the narrative criteria the EPA has proposed.

Thank you for considering NDDWR's comments. If there are any questions, please feel free to reach out to me at asebach@nd.gov or 701-328-2795.

A handwritten signature in black ink, appearing to read "Abby Ebach". The signature is written in a cursive, flowing style.

Abby Ebach
Director of Public Policy
North Dakota Department of Water Resources