



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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December 22, 2016

Mary Lou Soscia  
Region 10 Environmental Protection Agency  
805 SW Broadway, Suite 500  
Portland, Oregon 97205

RE: Docket ID EPA-HQ-OW-2016-0405

Dear Ms. Soscia:

On September 19, 2016, the United States Environmental Protection Agency (EPA) offered an advanced notice of proposed rulemaking for review and comment. The notice addresses a proposal to set baseline water quality standards that would apply on Indian reservations nationwide. EPA states the following in the notice:

*The primary benefit of federal-baseline WQS [water quality standards] would be to ensure that Indian reservation waters that are without CWA [Clean Water Act] effective WQS have direct water quality based protection under the CWA. Many of the CWA's mechanisms for protecting water quality, such as water quality based effluent limits in NPDES [National Pollutant Discharge Elimination System] discharge permits, rely on WQS as the foundation for water quality based decisions. Without applicable WQS, these mechanisms may be limited.*

This statement provides a false premise to support an action that will lead to future conflicts and legal actions with states. Most states, to include South Dakota, have spent more than 40 years establishing science-based water quality standards that recognize each state's unique topography, hydrology, geology, climate, and the resulting rivers, streams, and lakes that make up the state's surface waters. These water quality standards have been reviewed and approved by EPA on a periodic basis, making them Clean Water Act-effective outside tribal borders.

It is not clear why EPA would choose to ignore these 40 plus years of work that states have completed to establish viable water quality standards that fit the waterways of each state. Clearly, EPA-approved state water quality standards would provide a much stronger baseline for developing tribal water quality standards and be better tailored to fit tribes within the state, rather than using EPA's proposed broad-brush approach using federal water quality criteria.

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EPA has admitted it does not have the time or information necessary to tailor its federal water quality criteria even regionally. Making beneficial use determinations and imposing subsequent water quality standards on waters that EPA is completely unfamiliar with simply makes no sense. Dictating these types of decisions without an understanding of local conditions and the correlating science-based standards is not only poor science; it is poor public policy as well.

EPA states that baseline water quality standards for tribes are intended to be a starting point, allowing tribes to proceed to the next step of obtaining "*treatment as states*" under the federal Clean Water Act. EPA goes on to state that as with all water quality standards, these baseline standards will be subject to change, allowing each tribe to develop standards that fit their water quality goals.

If this is really true, EPA should use existing state standards as the starting point, as those standards have a valid historical, scientific and EPA-reviewed and approved basis and will bring the tribes in that state much closer to a realistic starting point. EPA's proposed, one-size-fits-all approach using federal water quality criteria will be an unrealistic starting point and will place the tribes in a position of having water quality standards that will curb economic development for the tribes with absolutely no environmental benefit. Considering the high unemployment and poverty conditions that many tribes face today, that would truly be a tragedy.

Thank you for the opportunity to comment on this advanced notice of proposed rulemaking.

Sincerely,



Steven M. Pirner, P.E.  
Secretary

cc: Governor Dennis Daugaard  
Attorney General Marty Jackley  
South Dakota Tribal Relations Secretary Steve Emery  
Shaun McGrath, EPA Region 8 Administrator  
South Dakota Congressional Delegation  
Western States Water Council