



Proposed Revisions to the Federal Water Quality Standards Regulation to Protect Tribal Reserved Rights

Update for Association of Clean Water Administrators
NPDES Permitting National Meeting
February 28, 2023

U.S. Environmental Protection Agency, Office of Water,
Water Quality Standards Program



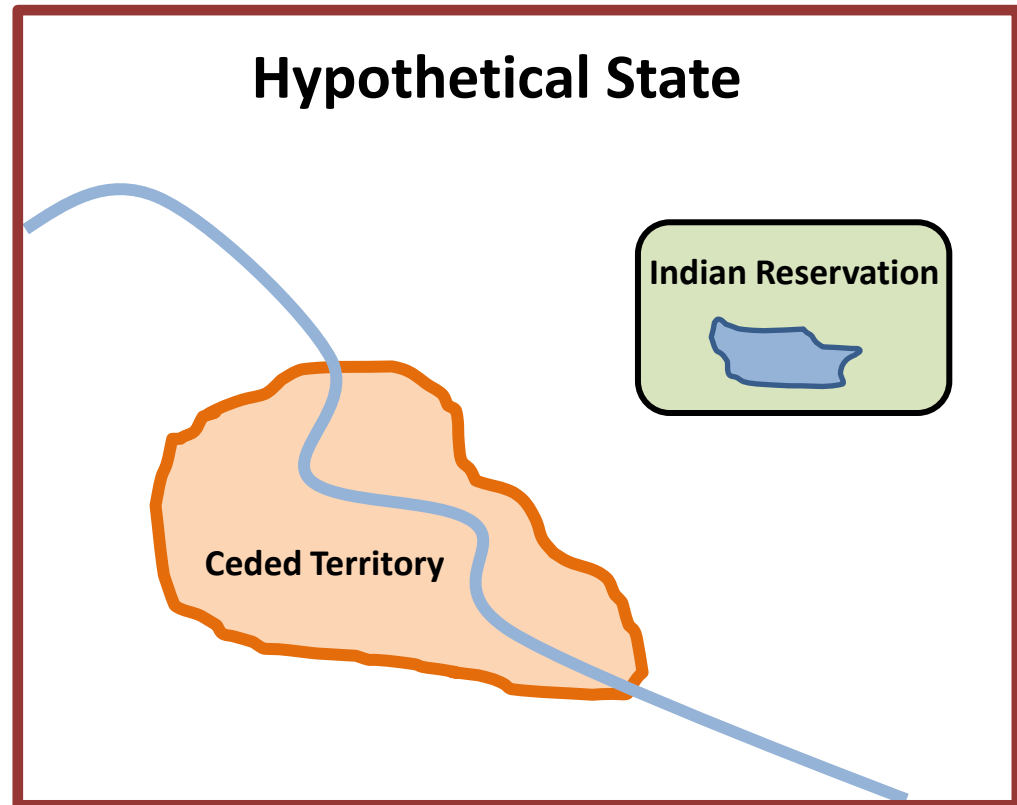
Overview

- EPA is proposing revisions to the federal water quality standards regulation (WQS) at 40 CFR Part 131.
- The proposed revisions describe how WQS must protect aquatic and aquatic-dependent resources – such as fish and wild rice - reserved to tribes through treaties, statutes, executive orders, or other sources of federal law, in waters of the United States.
- Once final, this proposal would create a regulatory framework to be applied case-specifically to ensure that WQS protect resources reserved to tribes.



Scope of Tribal Reserved Rights Rule

- Waters where states establish WQS (e.g., in ceded territory).
- This proposed rule is separate from and complementary to EPA's concurrent work to propose baseline WQS for waters on Indian reservations that currently do not have CWA-effective WQS in place.





What Is EPA Proposing to Require?

- Where tribal reserved rights exist, states must account for those rights in revising their designated uses, criteria, and/or antidegradation provisions.
- WQS must protect unsuppressed use of any reserved resources.
 - Determined by considering past, present and potential future use of the resource.
- WQS must protect the health of the tribal members exercising reserved rights to at least the same risk level at which the general population of the state would otherwise be protected.
 - EPA anticipates the primary application of this provision to be in determining the appropriate cancer risk level when deriving criteria to protect human health.



What Is EPA Proposing? con't

- State WQS submissions must include documentation of the state's efforts to obtain information about the existence of any applicable tribal reserved rights, their current and past use, scope, and nature, as well as the level of water quality that protects those rights.
- States must re-evaluate whether WQS need to be revised to protect any applicable tribal reserved rights at each triennial WQS review.
- EPA will initiate tribal consultation with the right holders when reviewing WQS submissions to determine whether state WQS protect applicable reserved rights.



Circumstances Where Proposed 40 CFR 131.9 May Necessitate New or Revised WQS

- The existing Federal WQS regulation already requires protection of
 - Many aquatic and aquatic-dependent resources that tribes have rights to fish, hunt or gather
 - Presently attained uses
- EPA anticipates that the circumstances where WQS may need to be adjusted to protect tribal reserved rights would fall primarily into two categories:
 1. Human health criteria to protect tribal fish consumers
 2. Where a reserved right is not already accounted for as a designated or presently attained use for a waterbody, but that waterbody could be reasonably expected to support that right in the future (e.g., if restoration efforts are underway).



Potential Benefits

- By laying out how EPA would review state WQS that impact aquatic resources reserved to tribes, this proposed rule would improve protection of
 - resources reserved to tribes, and
 - the health of tribal members exercising their reserved rights.
- The proposed regulatory framework is also intended to provide transparency and predictability for tribes, states, regulated industries and municipalities, and the public.



How to Provide Input & Next Steps

- Please submit written comments by Monday, March 6, through the docket at <https://www.regulations.gov/docket/EPA-HQ-OW-2021-0791>
- Pending review of comments, EPA anticipates finalizing this rule in late 2023.



For More Information

For more information, visit EPA's website for this rulemaking:
<https://www.epa.gov/wqs-tech/revising-federal-water-quality-standards-regulations-protect-tribal-reserved-rights>