National Tribal Water Council

• Technical and scientific body to assist EPA, federally recognized Indian Tribes, Alaska Native Tribes, their associated tribal communities & tribal organizations, with research & information for decision-making on water issues and water-related concerns
Purpose of the NTWC

Advocate for:

• Best interests of federally-recognized Indian and Alaska Native Tribes in matters pertaining to water.

• Health and sustainability of clean water, and for the productive use of water for the health and well-being of Indian Country, Indian communities, Alaska Native Tribes, and Alaska Native Villages.
NTWC: What We Do

• Hold two in-person meetings annually, conduct monthly conference calls, and work to address priority water issues impacting Indian Country

• Information exchange and outreach

• Policy Response Kits (PRK)

• Topics include Water - Drinking, Ground and Surface; Nutrient Strategies; Indigenous Cultural Values and Water; Climate Change Impacts; and Infrastructure Consultation
Concerns on these Issues

• Administration’s Executive Order
  • Permitting process

• Proposed revisions to WOTUS: Step 1 and Step 2
  • WOTUS supplemental comments
  • Waters of the Tribe (WOTT)

• 401 Certification revision

• Bristol Bay / Pebble Mine - Withdrawal of the 2014 Proposed Determination

• Importance of Tribal Water Quality Standards
NTWC’s Overarching Concerns

- Administration’s aim at dismantling CWA & longstanding environmental programs
- EPA’s minimization of tribal water issues & reduced priority within EPA’s senior leadership
- Proposed WOTUS rule, 401 Cert & impacts on tribal waters & other resources
- Seeking greater coordination to elevate water issues impacting tribes
- Encouraging tribal leaders to voice concerns
WOTUS – Proposed revisions & supplemental comments

• EPA has not finalized “Step-2” WOTUS Rule - accepting “supplemental comments”

• Navajo Nation supplemental comments or “consultation” comments
  • EPA should exclude tribes from the rule changes because of the greater importance of waters to tribes and EPA’s greater obligations to tribes; and
  • EPA should consider geographic differences when framing the rule, such that tribes (and states) in arid and semi-arid areas of the country are more dependent on intermittent and ephemeral waters and so those waters should be included as WOTUS in those regions.
WOTUS – Proposed revisions & supplemental comments

• Region 9 Tribal Caucus/NTWC Recommendation - rearticulating the Navajo Nation proposal as a request for EPA to include a new category of WOTUS for any waters within or flowing through tribal trust land that are designated by a tribal government as protected “Waters of the Tribe” (“WOTT”).
  • WOTT would be treated as WOTUS, regardless of any narrowing of the definition by EPA, for purposes of TAS approvals, WQS and 401 certs, grants and other actions under the CWA.
  • This new category would be added to the WOTUS rule, and would not need an amendment to the CWA.
  • Ensures tribally designated waters are treated as WOTUS for all purposes under the CWA.
WOTUS – Proposed revisions & supplemental comments

• Region 9 Tribal Caucus/NTWC Recommendation - This approach would:
  o ensure the protection of waters that are critically important to sustain tribal communities, especially in the arid Southwest;
  o enable EPA to continue to honor its trust responsibility to tribes for waters that may not be covered under the proposed new narrowed definition of WOTUS; and
  o give certainty to industry regarding which waters constitute WOTUS without the need for an evaluation that may yield ambiguous results.

• Tribal support for Navajo Nation’s proposal and strongly urge EPA to consider an approach in the new rule that creates a separate category of WOTUS for any waters within or flowing through tribal trust land that are designated by a tribal government as protected.
401 Cert Revision – Concerns & Impacts on Tribal Water Resources

• If proposal applies deadlines from receipt of application rather than from determination of completeness, tribes and states could have insufficient time and information for making their decisions

• Impacts if scope of certification is narrowed: possible degradation of tribal water and related water-dependent natural and cultural resources

• Impacts similar to above if application of NEPA, ESA, and NHPA is narrowed

• Encroachment on tribal sovereignty if agencies are allowed to reject certification conditions
401 Cert Revision – Concerns & Impacts on Tribal Water Resources

• Any of the limits on certification authority listed mentioned would narrow both EPA’s and tribes’ ability to bring enforcement actions to protect water quality
  ○ This in turn could limit exercise of federal trust responsibility and protection of tribal treaty rights/reserved water rights

• When combined with WOTUS rule, which currently proposes to narrow the types of waters covered by CWA programs, there will be fewer CWA discharge permits issued which will in turn diminish tribal authority to protect water resources through the certification program
Bristol Bay-Pebble Mine: Concerns & Potential Impacts to Alaska Tribes & Villages

• Impacts to the land, ecosystems and natural resources of Bristol Bay
  o Endangering subsistence, cultural and economic balance - salmon is the main livelihood & subsistence harvesting for all who live in Bristol Bay

• Impacts to water, aquatic ecosystem and natural resources whose fragility is subject to devastating changes if subjected to toxic substances

• Impacts to the return of salmon that have returned to Bristol Bay for thousands of years will not only destroy the largest wild sockeye salmon resource in the world, but will forever alter a traditional culture whose very fabric was built on this resource
Bristol Bay-Pebble Mine: Concerns & Potential Impacts to Alaska Tribes & Villages

• While salmon is the mantle of protection the people of Bristol Bay seek, we cannot limit the impact to other environments & species by this loss -
  o ecosystem of salmon throughout the Gulf of Alaska and the Bering Sea,
  o all spheres of life impacted by this critical resource, beginning from nutrients given to tiny organisms in streambeds caused by decaying salmon that are eaten the next year by juvenile salmon, salmon dragged onto the forest floor by bears, eagles and wolves that distribute their nutrients to the old growth trees;
  o to species impacted in the oceans - killer whales, seal lions, seals, otters, sea gulls and other wildlife.
Importance for Tribes to have Tribal Water Quality Standards

• Protect tribal water resources (foundation for Tribal Water Protection Ordinances)
• Framework for CWA Section 401 (TAS)
• A secondary protection for tribes - tribal WQS could be included into CWA discharge permits
• Framework for applying for federally-approved WQS under section 303(c)
Importance for Tribes to have Tribal Water Quality Standards

• NTWC is developing a guide (handbook) as a resource for tribes to develop its own set of water quality standards ("WQS") under its own tribal authority, separate from federally-approved WQS.

• Beneficial to tribes that do not have federally-approved WQS, but desire to assert its tribal authority to develop WQS equal to or more stringent than the federal WQS.
Thank you / Contact Information

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