



NATIONAL TRIBAL WATER COUNCIL

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National Tribal Water Council Comments on the EPA’s Proposed Revised Definition of “Waters of the U.S.”



Photo: Wild rice right before harvesting on Perch Lake, Fond du Lac Band of Lake Superior Chippewa

On December 7, 2021, the EPA and the Department of the Army announced a proposed rule to revise the definition of “Waters of the U.S.” (WOTUS). Under the proposed rule, the revised definition would return to the pre-2015 definition with updates considering Supreme Court decisions. EPA and Department of the Army conducted tribal consultation and outreach to obtain feedback on the proposed rule. The public comment period recently ended on February 7, 2022.

The National Tribal Water Council (NTWC) reviewed the proposed rulemaking and submitted a comment letter focusing on protecting tribal waters. The comment letter provided support for the significant nexus analysis, connection between waters, interstate waters, *waters of the Tribe* category, additional funding for tribes, among others.

Significant Nexus Analysis

The National Tribal Water Council supports the use of the significant nexus analysis to determine whether a water body is considered WOTUS and protected under the Clean Water Act (CWA). The significant nexus analysis establishes a scientific connection between protected waters and its downstream effects. This is important for protecting ephemeral streams and upstream waters, such as upstream tributaries and adjacent wetlands.

Additionally, the significant nexus analysis may consider regional differences if examined on a case-by-case basis. This is important for tribes that are in the arid and semi-arid regions, such as the Southwest, that have mostly ephemeral and intermittent streams.



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NTWC Comments on EPA's Proposed Revised Definition of WOTUS (*continued*)

The significant nexus analysis provides an opportunity to consider the effects of climate change, such as changes in weather patterns. Tribes are facing drought conditions and higher temperatures which have impacted water resources. Climate change is impacting the classification of waters, as intermittent streams are changing to ephemeral, etc.

Interstate Waters

The NTWC supports listing interstate waters as an automatic category of WOTUS and its importance in protecting the water quality of downstream waters. The NTWC recommends interstate waters category include waters that flow across or form a boundary between a tribe and state or between two tribes in order to protect tribal waters. Due to limited resources, most tribes do not have federally approved water quality standards and no tribe has a CWA permitting program.

"Waters of the Tribe"

The NTWC supports including an automatic WOTUS category of "Waters of the Tribe" that includes all waters that a tribe designates under its own authorities. The federal government has a special trust obligation to protect tribal treaty and reserved water rights, which are not confined to waters that meet the significant nexus analysis.

Additional Funding and Resources

The NTWC urges additional funding and resources for tribes to implement their own water programs. Tribes have limited staff and resources to develop and implement their own water programs.

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The National Tribal Water Council will continue to provide feedback as the EPA and Department of the Army finalize the revised definition of WOTUS. The NTWC's comment letter in its entirety may be found at: <http://www7.nau.edu/itep/main/ntwc/PolicyResponseKits/Index>



Updates and Announcements

Final 2022 Construction General Permit Public Webinar on February 24th

On January 18, 2022, EPA issued the final 2022 Construction General Permit (CGP). The 2022 CGP will become effective on February 17, 2022, and replace the 2017 CGP, which expires on 2/16/22. This permit covers stormwater discharges from construction activities in areas where EPA is the NPDES permitting authority. For more information, please visit: <https://www.epa.gov/npdes/2022-construction-general-permit-cgp>

EPA will host a public webinar on February 24, 2022, at 1:00 PM (EST) to provide an overview of the 2022 CGP and an opportunity for participants to ask questions. To register, please visit: https://www.zoomgov.com/webinar/register/WN_DsNwf8dQTzC1pCk0HCyVnQ.

EPA Announces the UCMR 5 Final Rule and Public Webinar Meetings

On December 20, 2021, EPA finalized the Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) to establish nationwide monitoring for 29 per- and polyfluoroalkyl substances (PFAS) and lithium in drinking water. This action is essential to addressing the public health and environmental risks of PFAS in drinking water and marks a significant milestone in EPA's PFAS Strategic Roadmap.

► Updates and Announcements *(continued)*

EPA will host two virtual meetings on a first-come, first served basis to provide public water systems (PWSs), states, laboratories, and other stakeholders with a comprehensive overview of the UCMR 5 program. The meetings will address: a general introduction to the UCMR program, PWSs subject to UCMR 5 requirements, the analytes to be monitored, monitoring locations and frequency, reporting requirements, ground water representative monitoring plans (GWRMPs), and the laboratory approval program.

- March 16, 2022; 9:00 AM - 12:30 PM ET - [Register](#)
- March 17, 2022; 1:00 PM - 4:30 PM ET - [Register](#)

For more information, please visit: <https://www.regulations.gov/docket/EPA-HQ-OW-2020-0530>

► Tribal Consultation and Public Comment Opportunities

EPA Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

Deadline: March 29, 2022

EPA is initiating consultation and coordination with federally recognized Indian tribes on Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (the Steam Electric ELG). On July 26, 2021, EPA announced its decision to undertake a rulemaking in which the Agency will determine whether more stringent limitations and standards for coal-fired power plants are appropriate and consistent with the technology-forcing statutory scheme and the goals of the Clean Water Act. Additional information on the Steam Electric ELG can be found at <https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines>. The deadline to submit comments is March 29, 2022.

Proposed National Primary Drinking Water Regulation for Per- and Polyfluoroalkyl Substances (PFAS)

Deadline: April 16, 2022

The EPA is initiating consultation and coordination with federally recognized Indian tribes to obtain input on the agency's forthcoming proposed National Primary Drinking Water Regulations (NPDWR) for per- and polyfluoroalkyl substances (PFAS), including perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), in accordance with the requirements of the Safe Drinking Water Act (SDWA) and other applicable statutes. EPA is developing a proposed PFAS NPDWR to improve public health protection by reducing drinking water exposure from PFOA, PFOS, and potentially other PFAS.

The deadline to submit comments is April 16, 2022. EPA is holding two webinar and listening sessions:

- February 23, 2022 (2:00 - 4:00 PM ET) To register: <https://www.eventbrite.com/e/250368217077>
- March 8, 2022 (2:00 - 4:00 PM ET) To register: <https://www.eventbrite.com/e/250368217077>

Potential Revisions to the Drinking Water Infrastructure Grant Tribal Set-Aside Allocation Formula

Deadline: May 2, 2022

The EPA is initiating consultation and coordination with federally recognized Indian tribes to inform potential revisions to the Drinking Water Infrastructure Grant Tribal Set-Aside (DWIG-TSA) allocation formula. The allocation formula is used to determine how DWIG-TSA funds are distributed among the EPA Regions with federally recognized Indian tribes (currently all 10 EPA Regions). These funds are then distributed by EPA Regions to eligible tribal drinking water infrastructure projects within each Region.

Tribal Consultation and Public Comment Opportunities *(continued)*

The deadline to submit comments is May 2, 2022. EPA is holding two webinar and listening sessions:

- March 1, 2022 (3:00 - 4:00 PM ET) To register: https://www.zoomgov.com/meeting/register/vJlsf-ysrzlvGSgJ3E2_S8BQIYofNtdQSjg
- March 10, 2022 (2:00 - 3:00 PM ET) To register: <https://www.zoomgov.com/meeting/register/vJltc--vqDsiHmlv2Gr5FeSVXBzjMR9-exE>

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All consultation materials may be found at: <https://tcots.epa.gov>

Events and Webinars

Inter Tribal Council of Arizona, Inc. – National Tribal Water & Wastewater Operator Training & Certification Program

The Inter Tribal Council of Arizona, Inc. National Tribal Water and Wastewater Operator Training and Certification Program is providing live online training. Each course consists of sequential lessons that are provided in a series of live online classes that are 3-hours in length.

Upcoming courses include, but are not limited to, the following:

- Wastewater Lagoon: March 1 to March 16
- Wastewater Collection Level 1: April 5 to April 28

To register, or to view the 2022 training schedule, please visit: <https://itcaonline.com/programs/environmental-quality-programs/tws-tmap/tws-training-events/>

Native American Water Association, Inc.

The Native American Water Association is a National Non-Profit, 501(c)6 Organization founded to provide tribal water and wastewater operators, managers, utility commissions and tribal leadership with continued training and technical assistance in their goals to: Strengthen tribal sovereignty and Self-determination and protect health and environment in Indian Country.

Upcoming events include:

- March 9, 2022: Small Water System Operations and Maintenance Part 1
- March 16, 2022: Small Water System Operations and Maintenance Part 2

To register: https://www.eventbrite.com/o/native-american-water-association-22061331832#live_events

EPA Technical Assistance Webinar Series – Improving CWA-NPDES Permit Compliance

- March 31, 2022: Optimizing Nutrient Removal in Activated Sludge WWTPs

To register: <https://www.epa.gov/compliance/technical-assistance-webinar-series-improving-cwa-npdes-permit-compliance>



Events and Webinars (*continued*)

EPA Small Drinking Water Systems Webinar Series

- March 29, 2022: Tribal Community Water Systems

To register: <https://www.epa.gov/water-research/small-drinking-water-systems-webinar-series>

EPA Tools and Resources Webinar Series

- March 16, 2022: Advances in Environmental Monitoring - Water Sensors
- April 20, 2022: Use of Electronic Health Records to Address Pressing Environmental Health Questions

To register: <https://www.epa.gov/research-states/epa-tools-and-resources-webinar-series>

3rd National PFAS Conference

June 15-17, 2022

The 3rd National PFAS Conference, “Highly Fluorinated Compounds – Environmental Justice and Scientific Discovery,” will be held at the coastal town of Wilmington, NC - where GenX-contaminated drinking water was first detected. This conference series is uniquely designed to exchange information, provide support to PFAS-affected communities, and facilitate engagement with across diverse sectors involved with PFAS to accelerate the protection of health and the environment.

The registration fee is \$100 and the deadline to register is April 1, 2022. For information on travel awards and registration, please visit: <https://pfasmeeting.wordpress.ncsu.edu/>

National Association of Wetland Managers: Annual State/Tribal/Federal Coordination Meeting

August 15-19, 2022

The National Association of Wetland Managers’ (formerly ASWM) Annual State/Tribal/Federal Coordination Meeting will be held at the National Conservation Training Center (Shepherdstown, WV) from August 15-19, 2022. The purpose of this annual meeting is to support state and tribal wetland program managers, and other wetland professionals as they respond to challenges in the coming year. If circumstances require it, the meeting may be changed to a fully virtual format.

The registration fee is \$396 (for members and early rate) and the deadline to register is August 5, 2022. For information on travel scholarships and registration, please visit: <https://www.aswm.org/2022-annual-state-tribal-federal-coordination-meeting>

SHARE YOUR STORY

We publish our newsletter on a monthly basis and would like to share your story. All submissions must be made by second Wednesday of each month for consideration. Please note: we reserve the right to make final decisions regarding all submitted content.

You may submit your story and photos to elaine.wilson@nau.edu



NTWC Members: For more information, visit [Meet the Council](#)

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