



November 21, 2025

Mr. Lee M. Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Submitted via email to: Zeldin.Lee@epa.gov

Re: NTWC's Concerns Regarding EPA's Decision Not to Defend the 2024 Tribal Reserved Rights Rule

Dear Administrator Zeldin:

The National Tribal Caucus (NTC) and the National Tribal Water Council (NTWC) express grave concerns regarding the U.S. Environmental Protection Agency's (EPA) decision not to defend the 2024 Tribal Reserved Rights Rule (TRR Rule) in the current litigation brought by 12 states in the U.S. District Court for the District of North Dakota. On September 16, 2025, the EPA informed the court that it would cease defending the rule against the plaintiffs' claim that the agency did not have the authority under the Clean Water Act (CWA) to mandate states to consider and protect tribal reserved rights, that is, rights to aquatic and aquatic-dependent resources reserved to federally recognized tribes through treaties, statutes, executive orders, or other sources of federal law. The NTC and NTWC view this decision as a violation of EPA's legal duty to protect tribal rights under the CWA. It also violates the United States' trust responsibility to honor the treaty and other reserved rights of federally recognized tribes.

We assert that the 2024 TRR Rule is plainly within the agency's authority under the CWA. The primary national objectives of the CWA are to ensure that our Nation's water quality "provides for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water" – this includes use of aquatic resources by tribes. Moreover, the TRR Rule aligns with these water-quality protection goals by establishing procedures for states and the federal government to consider water-dependent tribal reserved rights when determining water quality objectives and pollution limitations for rivers, lakes, and streams. States already assess their water resources as part of the process under the CWA for setting water quality

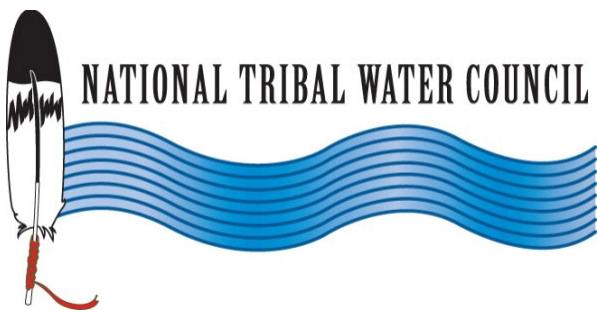


Office of Native American Initiatives

Northern Arizona University
PO Box 15004
Flagstaff, AZ 86011-5004
Elaine H. Wilson, NTWC Project Manager

928-523-9555 office
928-523-1266 fax
nau.edu/ITEP
Elaine.Wilson@nau.edu
480-452-6774 cell





standards and effluent limitations to protect human health, the environment, and the beneficial uses of water. Furthermore, states are already required to evaluate the impact of their water quality regulations on the water quality goals and objectives of neighboring states. A process for the consideration of tribal reserved rights to water and water resources is covered by the same CWA authorities.

We are confident that the TRR Rule achieves the CWA objectives of promoting public health and welfare through improved water quality not only by protecting tribal members' use of waters for fishing or gathering but also by providing the water protection required to safeguard aquatic uses by all citizens. Several states have collaborated cooperatively with tribes who have asserted reserved rights in state waters and have done so without conflict and without imposing additional costs or having trouble in interpreting the asserted right. For instance, the State of Washington has integrated tribal reserved rights into its water regulatory framework by reinstating federal water quality standards (WQS) that "protect the health of...tribes with treaty-reserved rights to fish" (2022 Human Health Criteria Rule). The Fond Du Lac Band of Lake Superior Chippewa has effectively collaborated with the Minnesota Pollution Control Agency over the years, promoting constant implementation and enforcement of the state's wild rice water quality standards, and facilitating informal staff-to-staff coordination regarding the incorporation of Traditional Ecological Knowledge in their ongoing triennial WQS review process. Furthermore, the Band possesses off-reservation treaty reserved rights in several states throughout the upper Great Lakes. They have recognized the advantages of collaborating with Wisconsin's Department of Natural Resources via an intertribal agency (Great Lakes Indian Fish and Wildlife Commission/Voigt Task Force) to explore the possibility of implementing water quality standards aimed at protecting wild rice and to revise fish consumption rates to more accurately represent traditional subsistence lifeways.

Establishing common water conservation goals can promote tribal-state partnerships by acting as a bridge for cooperation if opposing views develop on the protection of tribal reserved rights. Because of the significant harm that has resulted from historical contamination of tribal waters and treaty-protected resources, having a national framework that enhances state-tribal partnerships as well as federal protections is critical. The TRR Rule provides "transparency and clari[ty]" for implementing this type of framework within the state and federal WQS-planning process. 89 Fed. Reg. 35717, 35718 (May 2, 2024).

The EPA's decision to withdraw its defense of the TRR Rule and instead agree with the litigants' claims that the rule exceeds the agency's legal authority has two significant and



Office of Native American Initiatives

Northern Arizona University
PO Box 15004
Flagstaff, AZ 86011-5004
Elaine H. Wilson, NTWC Project Manager

928-523-9555 office
928-523-1266 fax
nau.edu/ITEP
Elaine.Wilson@nau.edu
480-452-6774 cell





detrimental consequences: (1) it relies on the court to invalidate the rule, thereby violating EPA's duty to complete a notice-and-comment process before rescinding a rule, and (2) it delegates the responsibility back to the states to address tribal rights, which undoubtedly will be exercised in an inconsistent manner from state to state.

The NTC and NTWC ask the EPA to undertake the legally required notice-and-comment process under the Administrative Procedure Act (APA), 5 U.S.C. § 553, before revising or rescinding the 2024 TRR Rule. Complying with notice-and-comment rulemaking requirements allows tribes, states, and the general public to provide feedback while also requiring the agency to explain its departure from the previous rule and demonstrate that its new position adheres to the underlying statute (the CWA), is supported by good reason, as required by the APA, and is better, in the agency's opinion, than the previous policy.

Our organizations are dedicated to enhancing the regulatory framework for ancestral waters and lands to ensure that WQS protects resources reserved for tribes. We urge the EPA to honor its trust obligation by maintaining its commitment to protecting cultural practices within and beyond reservation boundaries and to ensure the health of tribal members as they exercise their reserved rights. We ask that the agency adhere to procedural requirements for revising or rescinding the rule, which will facilitate discussion and tribal involvement, instead of counting on the court to invalidate the rule, which at the least will result in inconsistent policies being implemented across the country.

Thank you for your consideration regarding this matter, and we look forward to EPA's response to our request. Should you have any questions regarding this letter, you may contact us at either Kenpnorton@gmail.com or Tabitha.oto@gmail.com.

Sincerely,

Ken Norton, Chair
National Tribal Water Council

Tabitha Langston, Chair
National Tribal Caucus

Cc: OW Assistant Administrator, Jessica L. Kramer, Kramer.JessicaL@epa.gov
OW Principal Deputy Assistant Administrator, Peggy Browne, browne.peggy@epa.gov



Office of Native American Initiatives

Northern Arizona University
PO Box 15004
Flagstaff, AZ 86011-5004
Elaine H. Wilson, NTWC Project Manager

928-523-9555 office
928-523-1266 fax
nau.edu/ITEP
Elaine.Wilson@nau.edu
480-452-6774 cell





OW Deputy Assistant Administrator, Caitlin McHale, mchale.caitlin@epa.gov

OW Deputy Assistant Administrator, Wes Brooks, brooks.wes@epa.gov

OW Senior Counsel & Policy Advisor, Shawn Waldron, Waldron.Shawn@epa.gov

OITA Assistant Administrator, Usha Turner, turner.usha@epa.gov

OITA Principal Deputy Assistant Administrator, Victoria Tran, tran.victoria@epa.gov

AIEO Director, Lisa Berrios, berrios.lisa@epa.gov

OWOW Director, Brian Frazer, frazer.brian@epa.gov

OWOW Division Director, Sara Hisel-McCoy, Hisel-McCoy.Sara@epa.gov

OW Tribal Program Coordinator, Holly Galavotti, Galavotti.holly@epa.gov



Office of Native American Initiatives

Northern Arizona University
PO Box 15004
Flagstaff, AZ 86011-5004
Elaine H. Wilson, NTWC Project Manager

928-523-9555 office
928-523-1266 fax
nau.edu/ITEP
Elaine.Wilson@nau.edu
480-452-6774 cell

