April 16, 2026

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Office Wetlands, Oceans, and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted to Brundage.Jennifer@epa.gov

Re: Consultation Comments on EPA's Upcoming Proposal to Rescind the 2024 Water Quality Standards Regulatory Revisions to Protect Tribal Rights.

Dear Ms. Brundage:

The National Tribal Water Council (NTWC) provides the following comments regarding the U.S. Environmental Protection Agency's (EPA) stated intention to withdraw the "Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights," (2024 Rule or Reserved Rights Rule), 89 Fed. Reg. 35,717 (May 2, 2024). The NTWC strongly opposes rescission of the Reserved Rights Rule and requests that EPA terminate this rescission rulemaking process.

From June 15 to September 13, 2021, EPA held a 90-day pre-proposal consultation period on the Reserved Rights Rule. On December 5, 2022, EPA proposed the Reserved Rights Rule and provided a 90-day public comment period. On March 6, 2023, the NTWC submitted comments supporting EPA's efforts to protect aquatic and aquatic-dependent resources reserved for Tribes by Federal law by advocating for revisions to Federal Water Quality Standards (WQS) regulations to recognize those rights.[1] On June 3, 2024, the EPA issued a rule updating the Clean Water Act (CWA) WQS regulation, requiring state WQS to consider and protect Tribal reserved rights, defined as any rights to CWA-protected aquatic and/or aquatic-dependent resources reserved, either expressly or implicitly, through Federal treaties, statutes, or executive orders. The NTWC and Tribal nations throughout the country supported this rulemaking as a recognition of tribal sovereignty and a commitment to Tribal environmental self-determination. The Reserved Rights Rule provides a nationally applicable regulatory process for the consideration and protection of

[1] NTWC Comments on Docket ID No. EPA-HQ-OW-2021-0791, Proposed Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights (March 6, 2023).

Tribal reserved rights during the development of WQS, rather than addressing Tribal reserved rights on a case-by-case basis when state WQS are submitted for evaluation.

On March 20, 2026, fewer than 20 months later, EPA suddenly realized the 2024 Rule exceeds the agency's CWA authority.[2] Tribes and Tribal organizations received notice that EPA was initiating a "consultation and coordination period" on EPA's planned rescission.[3] EPA gave Tribes and Tribal organizations until April 21, 2026, a period of barely 30 days, to submit written comments and request and complete government-to-government consultations between individual Tribes and EPA. In this truncated timeframe, EPA asks Tribes to share any experiences related to and views on the Reserved Rights Rule. EPA claims it intends to use the feedback collected from this consultation process to inform the proposed rule, for which EPA has apparently already determined the outcome (rescission).

For numerous reasons, the NTWC strongly opposes the EPA's stated intention to rescind the Reserved Rights Rule. EPA should terminate this rulemaking process. EPA correctly found it had authority for the Reserved Rights Rule in 2024, and the agency should abide by its recent rulemaking and fully defend the 2024 Rule in court.

I. This Consultation Process Is Taking Place Too Quickly to be Meaningful and has a Predetermined Result.

As noted above, EPA gave Tribes only 30 days to request *and complete* consultation. EPA knows it is substantively and logistically impossible, both for Tribes and EPA, to have meaningful government-to-government consultation within such a short timeframe. NTWC requests that EPA extend the consultation period to the 90-day period EPA provided before proposing the 2024 Rule. Perhaps allowing meaningful consultation can avoid further resources being spent pursuing this rescission.

Moreover, EPA states it intends to use the feedback collected from this consultation process to inform the proposed rule, but how? It appears EPA has already determined the outcome of the rulemaking, deciding in advance it will rescind the Reserved Rights Rule, without analyzing the impacts of such a rescission or considering consultation or public comments in violation of the Administrative Procedures Act. The EPA Policy on Consultation with Indian Tribes, with which EPA's letter states it intends to comply, explains: "Effective consultation means that information obtained from Tribes be given meaningful consideration and EPA should strive for consensus or a mutually desired outcome." Is there any information that Tribes and Tribal organizations could provide at this time that would have any effect on the final rule? Is there any possible consensus or mutually desired outcome other than rescission that EPA is willing to even consider? Or is it guaranteed that EPA will rescind the Reserved Rights Rule? For EPA to comply with its own Consultation Policy, which is a manifestation of EPA's trust responsibility to Tribes, EPA must extend the consultation period and actually listen to Tribes regarding the Reserved Rights Rule.

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[2] *Enclosure: Consultation and Coordination Plan, Upcoming Proposal to Rescind the 2024 Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights*, U.S. EPA at 1 (March 20, 2026).

[3] *Notification of Consultation and Coordination on Upcoming Proposal to Rescind the 2024 Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights*, U.S. EPA (March 20, 2026).

II. The Reserved Rights Rule is Necessary and Important for Tribes, States, and EPA.

Rescinding the Reserved Rights Rule would return to a case-by-case evaluation scenario, which would make it more difficult for Tribes, States, and EPA to protect Tribal Reserved Rights, jeopardize Tribes' ability to protect their members' health, economic interests, and cultural practices, and potentially harm the aquatic resources on which Tribal members rely. Tribal Reserved Rights can include the use of water for various purposes, such as fishing, gathering, ceremonial, domestic, irrigation, and municipal uses. Ensuring sufficient water quality for those uses is essential for the health and wellbeing of Tribal members. Many Tribes hold reserved rights to aquatic and aquatic-dependent resources, and EPA and State water quality decision-making must protect those resources at levels sufficient for continued Tribal uses or risk violating Tribal reserved rights.

Regulations prior to the 2024 Rule did not provide a clear, consistent, and accountable process for States to engage with Tribes in meaningful consideration of Tribal reserved rights when developing or revising WQS. Historic State WQS that were woefully unprotective of Tribal health in light of their much higher fish consumption rates illustrate one critical need for the Reserved Rights Rule.[4] Without the clear guidance from the Reserved Rights Rule, the CWA may continue to be inconsistently and ineffectively applied to the detriment of Tribes and Tribal communities. Moreover, rescinding the 2024 Rule may embolden States to promulgate WQS that ignore Tribal reserved rights, harming Tribes' ability to protect their members' health and economic and cultural practices, and the aquatic resources upon which Tribal uses depend.

The 2024 Rule went into effect less than two years ago and WQS revisions and approvals take years. It is therefore premature for EPA to inquire about Tribes' experiences with the Reserved Rights Rule. EPA also should not use the lack of on-the-ground experience as a reason to claim the Rule is unnecessary or that Tribes are not making use of it. In the limited time that the Reserved Rights Rule has been in effect, even if there have not been finalized WQS revisions utilizing the Rule's process, it has provided Tribes with reassurance that their reserved rights will be considered and protected at the outset of the State WQS-setting process, instead of having to seek protection later through the EPA review process. Moreover, in the absence of the Reserved Rights Rule, EPA's reviews are likely to vary from region to region if not state to state, creating inconsistencies in decision-making processes and in the manner and extent of protection for resources protected by Tribal reserved rights.

Rescinding the Reserved Rights Rule is also likely to result in costly, lengthy delays that could have been avoided, as was the case with Maine, Washington, and Idaho WQS referenced in the preamble to the Reserved Rights Rule (see footnote 4). It is much more difficult for States to incorporate Tribal information when it is provided after they have completed their administrative process for revising WQS. By establishing an initial process for considering Tribal reserved rights, the 2024 Rule allows Tribes to focus their limited resources where and when they are most needed.

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[4] *See, e.g.,* Reserved Rights Rule, 89 Fed. Reg. at 35,718 ("Environmental regulatory schemes have often failed to recognize or protect such rights."); *id.* at 35,721 (explaining EPA took actions related to three State WQS submissions because the WQS submitted by those States were not sufficiently protective of applicable Tribal reserved rights).

Unsurprisingly, the NTWC is aware of no Tribe or Tribal organization that supports rescinding the Rule.

III. EPA Has Ample Authority to Implement the Reserved Rights Rule.

EPA has not provided any rationale for its about-face determination that the 2024 Rule exceeds the agency's authority. Thus, it is difficult if not impossible for Tribes and Tribal organizations to evaluate and provide meaningful comment on EPA's stated intention to rescind the Reserved Rights Rule during this "consultation and coordination period." Nevertheless, the NTWC provides the following information on EPA's authority for the Reserved Rights Rule, which EPA itself articulated fewer than two years ago in its 2024 rulemaking.

EPA's role as trustee for Tribes carries with it the duty and power to protect Tribal reserved rights. *United States v. Kagama*, 118 U.S. 375, 383-84 (1886). The trust responsibility imposes upon the United States and all its agencies the obligation to follow "the most exacting fiduciary standards" in dealing with Tribes, including in the protection of Tribal rights and property. *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942). In the proposed Reserved Rights Rule, EPA correctly explained: "Tribal reserved rights to aquatic resources could be impaired by water quality levels that limit right holders' ability to utilize their rights . . .. In exercising its CWA section 303(c) authority, EPA has an obligation to ensure that its actions are consistent with treaties, statutes, executive orders, and other sources of Federal law reflecting tribal reserved rights." 87 Fed. Reg. 74,361, 74,364 (Dec. 5, 2022). As EPA has long acknowledged, "'[a]ny specific treaty requirements have the force of law,' and therefore, 'State water quality standards will have to meet any treaty requirements.'" *Id.* at 74,366 (citing 48 Fed. Reg. 51,400, 51,412 (Nov. 8, 1983)). Similarly, EPA's very first comparative risk assessment, which found the 20,000-30,000 American Indians in Wisconsin faced disproportionately high health and environmental risks, linked that risk in part to "decisions on State designated uses for . . . waters in the ceded territor[ies]" because Tribal citizens exercised their treaty-protected rights to obtain 50-90% of their food in ceded areas outside their reservations. TRIBES AT RISK: THE WISCONSIN TRIBES COMPARATIVE RISK PROJECT 44, 17 (EPA 1992). EPA explicitly connected the need for a higher level of environmental protection to "[t]he [Indian] treaties, trust responsibility, and EPA Indian Policy." *Id*. at x.

Water quality standards are the foundation of the Clean Water Act's water quality control program. CWA § 303(c) delineates a cooperative Federal-State framework with Federal oversight, making the EPA's action both lawful and essential. EPA possesses the authority to review and mandate sufficient State (and Tribal) standards while accounting for all pertinent water uses, including those linked to Tribal reserved rights. The 2024 Rule exercises EPA's required oversight role within the CWA's cooperative federalism framework by ensuring that State standards adequately protect designated uses.[5] The Rule aligns with the text and purpose of the CWA and does not represent an unlawful extension of authority. With the Reserved Rights Rule, States retain

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[5] CWA § 303(c) requires States to consider designated uses and corresponding water quality criteria when adopting WQS and to submit those standards to EPA for review and approval. Crucially, if EPA determines a State's standards are inadequate to meet these statutory requirements, EPA must disapprove them and promulgate Federal standards to ensure compliance with the CWA. Thus, EPA is not exceeding authority by implementing the Reserved Rights Rule but rather it is carrying out its mandatory oversight role to ensure standards fully protect designated uses.

their primary responsibilities to adopt standards. EPA's role is conditional oversight, triggered only if standards are inadequate. Again, this structure follows the longstanding § 303(c) practice in which states choose standards, EPA reviews them, and EPA intervenes only if necessary. Requiring States to consider relevant uses and data does not commandeer them; instead, it ensures compliance with Federal minimum requirements established under the CWA.

The Reserved Rights Rule does not compel states to adjudicate or define Tribal reserved rights. Instead, States must evaluate rights established via existing legal sources and Tribal involvement, with the EPA providing direction and monitoring to ensure WQS appropriately protect those rights while remaining in compliance with the Clean Water Act. States have a limited, circumscribed role regarding Tribal reserved rights: they must consider those rights when establishing standards, but they are not responsible for interpreting or adjudicating such rights.

The Reserved Rights Rule represents a legitimate exercise of the EPA's oversight authority, aligning with the text, structure, and purpose of the CWA, rather than constituting an unlawful expansion of power. What is more, although EPA's policies may and do change, these rights remain in place. Even if EPA rescinds the 2024 Rule, the agency will still be obligated by Federal law to protect Tribal reserved rights when reviewing States' proposed WQS. But in the 2024 Rule's absence, EPA will be shouldering a more burdensome, uncertain, and at times chaotic process for doing so. The Reserved Rights Rule ensures transparency, clarity, and uniformity in the consideration of Tribal reserved rights when States (and Tribes) designate or update uses or water quality standards, and EPA should preserve that process.

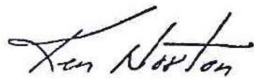
IV. Conclusion

Almost by definition, EPA's proposed rescission of the Reserved Rights Rule implies an unprecedented withdrawal of agency protection for those aquatic and/or aquatic-dependent resources used by American Indians and protected by Federal law. Considered in context, the agency's proposal stands nearly alone in 50 years of programmatic actions aimed at *protecting* the environmental interests of Indigenous peoples. Just two years after EPA was created in 1970, it recognized that State governments lacked regulatory authority over Indian country water quality and announced EPA would directly implement the CWA in Indian country. In 1977, in the face of the Clean Air Act's (CAA) *silence* on Indian country implementation, EPA boldly began treating Tribes like States authorized to redesignate their air quality with consequent permitting requirements for off-reservation sources. For the next three years, EPA developed cross-program principles ensuring effective protection consistent with the Federal trust responsibility for actions affecting reservation environments and Indigenous peoples' subsistence and cultural uses of the natural environment.

EPA's Indian country experience helped it become the *first* Federal agency to answer President Reagan's 1983 call for a national policy of Tribal self-determination. EPA's 1984 Indian Policy set out nine principles aimed at achieving effective Indian country environmental protection and supporting Tribal environmental self-determination. The Indian Policy broke new ground for the Federal executive branch with its affirmative acknowledgement of tribal sovereignty, its commitment to Tribal environmental self-determination, and its connection of the Federal trust responsibility to the development and implementation of environmental programs in Indian country. Since the agency's adoption of the Indian Policy in 1984, *every* EPA Administrator including Administrator Zeldin has reaffirmed it.

Guided by the Indian Policy, EPA supported Tribal calls prodding Congress to authorize EPA primacy delegations for State-like tribal regulatory roles in the CWA, the CAA, the Safe Drinking Water Act, the Superfund, and the Emergency Planning & Community Right to Know Act. Those so-called treatment-as-a-state (TAS) provisions opened doors for true Tribal program implementation consistent with the Nation's Tribal self-determination policy. TAS opportunities can be extremely valuable tools for translating cultural values into enforceable environmental standards. Progress toward that goal has been steady but slow; modern Tribal governments are struggling to develop institutional capacity for administering a variety of complex Federal programs. In the meantime, the Federal trust responsibility and the Indian Policy counsel EPA's continued direct implementation in lieu of Tribal programs, and vigilance in its supervision of States and other Federal agencies. After all, the geographic scope of Indian country where Federal and Tribal law regulate is dwarfed by the Tribes' ceded territories. Federally reserved rights in treaties, statutes and executive orders in the ceded territories are essential to the health and cultural preservation of Tribes and Indigenous peoples. The 2024 Rule was a positive step forward in a long journey that EPA and Tribes have walked together in a government-to-government fashion for five decades. Rescission of the 2024 Rule with no replacement option and no defensible explanation is a step backward and raises questions about the agency's current commitment to Tribal health and welfare. We urge you to terminate the pending proposal to rescind the 2024 Rule because rescission is inconsistent with the Indian Policy, the Federal trust responsibility, and the national self-determination policy.

Sincerely,



Ken Norton, Chair
National Tribal Water Council

Cc: Holly Galavotti, EPA Office of Water