



2020/2021 Transition Brief

NTWC Mission

To advocate for the best interests of federally recognized Indian and Alaska Native Tribes, and Tribally authorized organizations, in matters pertaining to water. To advocate for the health and sustainability of clean and safe 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.

Who We Are

The National Tribal Water Council (NTWC) is a technical and scientific body created to assist the Environmental Protection Agency (EPA), federally recognized Indian Tribes, Alaska Native Tribes, and associated tribal communities and tribal organizations with research and information for decision-making regarding water issues and water-related concerns that impact Indian and Alaska Native tribal members and residents of Alaska Native Villages and Indian Country in the United States. The Council is not a policy-making body, but it provides to EPA the collective knowledge and experience of its members to help inform EPA's regulatory and policy-making role, including EPA's trust responsibility to tribes and its obligation to protect tribal resources. NTWC's input is not a substitute for government-to-government consultation between EPA and individual tribal nations.

National Tribal Water Council Transition Water Priorities

Over the past four years, EPA has undertaken a variety of actions that have significantly impacted tribal interests. These include providing stagnant or declining allocations of funds to tribal water programs, upon which many tribes rely, such as the Safe Drinking Water and Clean Water Tribal Set-Aside programs; repealing and/or revising regulations that serve to protect the tribal environment; streamlining of strategic documents that have significantly weakened EPA's ability to engage in the work needed to protect human health and the environment in Indian Country; and updating program guidance documents in a manner that minimizes EPA's relationship with and obligations to tribes and makes acknowledgement of tribal environmental issues and needs look like an afterthought. These actions have been taken within very short time frames and without meaningful tribal consultation, and therefore have violated EPA's own tribal consultation policies. NTWC has identified urgent priority actions needed to address EPA's weakened protection of tribal waters and other resources in Indian Country. NTWC requests that the following priorities be considered and implemented within the first 100 days of the new EPA administration. By taking these actions, EPA will demonstrate that it takes seriously



its trust responsibility and statutory and policy obligations to work cooperatively with tribal governments to protect human health and the environment in Indian Country.

- 1**  **Request the Incoming EPA Administrator to Reaffirm EPA's Indian Policy.** In 1984, EPA Administrator William Ruckelshaus issued EPA's Indian Policy 'to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-government" relations between Federal and Tribal Governments.' The key principle stated in that policy was to "give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands." Subsequent EPA Administrators have each reaffirmed this policy, most recently in 2019 by Administrator Wheeler. NTWC requests that the new EPA Administrator reaffirm EPA's Indian Policy as soon as possible after assuming office, to emphasize tribes' increasingly important role in protecting their and the nation's environment.

- 2**  **Request EPA to withdraw its defense of the Navigable Waters Protection and Clean Water Act Section 401 Certification Rules.** Numerous states, tribes, and environmental organizations have filed legal challenges against these two rules, as well as against the 2019 rule repealing the Clean Water Rule. Most of the lawsuits have asserted that these rules are too narrow and impermissibly restrict water protection. Ideally, President-elect Biden will rescind Executive Orders 13778 and 13868 Section 3 and issue new Executive Orders directing EPA and, with respect to the Navigable Waters Protection Rule, the Army Corps of Engineers, to promulgate new rules that properly carry out the purposes of the Clean Water Act (CWA). The NTWC requests that EPA (and the Corps, where relevant) choose not to defend against these challenges to the Navigable Waters Protection and CWA Section 401 Certification Rules. [The Department of Justice would inform the court that it has been instructed to decline to defend the rules in the litigation; request the court to vacate and remand the rules to the agencies; and request that the Clean Water Rule of 2015 be reinstated pending a new rulemaking.]

- 3**  **Request EPA to Promulgate Baseline Water Quality Standards** for the 240 tribes who do not have federally approved water quality standards (WQS). Promulgating baseline standards would fill a hole in the CWA, which does not provide for federal WQS in the absence of state or tribal standards. Filling this hole would allow these tribal waters to be protected by CWA permits, and would also allow those tribes to issue CWA 401 certifications protecting their waters, since the new CWA 401 Certification Rule limits certifications to promulgated requirements.

- 4**  **Request EPA to Increase the funding to the Safe Drinking Water Tribal Set-aside Program to five percent of the total allocation to the Safe Drinking Water State Revolving Program.** The NTWC requests that EPA allocate five percent of the Safe Drinking Water State Revolving funds to the Tribal Safe Drinking Water Tribal Set-aside Program. Increased funding will help address the disparity of access to safe drinking water on tribal lands, where 6% of tribal homes still lack access to safe drinking water, especially in the southwest and in Alaska.
- 5**  **Request EPA's Office of Water to recommit and immediately activate the Infrastructure Task Force,** to address the ongoing critical needs in Indian Country related to drinking water and wastewater infrastructure and system operation and maintenance, as well as waste management.
- 6**  **Request EPA's Office of Water to restructure the FY2022 -2023 National Water Program Guidance and Strategic Plan,** specifically re-establishing the 13 tribal measures that were removed under the FY 2018 -2019 Lean Management process. Re-establishing these key tribal measures will continue to provide critical program information for the protection of human health and the environment on tribal lands.
- 7**  **Request EPA to propose restoration of the National Oceans Policy,** giving tribes a voice in the best management of critical natural resources that support traditional tribal lifeways, including both coastal and inland salmonid, and other migratory species on which many tribal communities depend; promoting tribal interests in the face of climate change and preserving critical species spawning grounds.
- 8**  **Request EPA to reconsider its Policy of Cooperative Federalism,** specifically in regards to deferring to states before implementing enforcement actions under the agency's statutory authorities. Civil enforcement cases have declined to their lowest levels in over a decade, and states have essentially held veto power over federal enforcement actions even where there are longstanding CWA violations that impact downstream states and tribes.
- 9**  **Request EPA to recommit to science-based Policies and Decision Making,** especially regarding, but not limited to, implementing water quality standards that are protective of human health and the environment, including sensitive populations and significant trust resources. A specific example is to recommit to EPA's previously promulgated but subsequently withdrawn human health criteria protective of subsistence and cultural uses by tribes in Maine and Washington.

- 10**  **Request EPA’s Office of International and Tribal Affairs (OITA) to Eliminate its Supplemental Policy** “of ensuring that local governments that are located within or contiguous to the areas of Indian country covered by a regulatory TAS [treatment as a state] application are notified of the application and have an opportunity to provide any appropriate input as EPA develops its decision.” The NTWC views this policy as discriminatory. It has proven to place unnecessary burdens on tribes by creating additional legal costs and longer approval periods for tribal TAS applications.
- 11**  **Request EPA to maximize its authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)** to address Superfund sites, including several mega-Superfund sites in EPA Region 10. EPA’s authorities under CERCLA are paramount in providing cleanup of tribal homelands, which are proportionally the most impacted by the releases of hazardous substances. Federal intervention continues to be needed in light of states’ inherent bias to keep cleanup costs low to support the big industries responsible for these sites.

The NTWC offers these priorities for the new administration’s consideration. But we also submit that focusing solely on human concerns over the environment is not enough. As Native Americans, we think very differently about our environment. We do not own it. It was created for us to use the land properly and with a sacred respect. We are a part of our environment; without caring for our environment we cannot survive. Those of us who work in the field of protecting the waters of our ancestors are fundamentally obligated to protect the land, waters and air that encompass our traditional lands. We have no choice.

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