



March 10, 2021

Jane Nishida, Acting Administrator
U. S. Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Submitted to Nishida.Jane@epa.gov

RE: National Tribal Water Council's 2020-2021 National Water Priorities

Dear Ms. Nishida:

The National Tribal Water Council (NTWC) recently shared its 2020-2021 Transition Brief with Radhika Fox, Acting Assistant Administrator, Office of Water. Our brief highlighted 11 priority actions needed to address EPA's weakened protection of tribal waters and other resources on tribal lands. The NTWC has identified five (5) key priority actions which are critical to the protection of tribal waters and communities. These actions can be immediately acted upon under the agency's discretion. The NTWC was very encouraged by the agency's recent decision to rescind the August 13, 2019 memorandum entitled *Update on OITA Review of Treatment as a State Applications* that placed additional burdens on tribes seeking treatment as a state for regulatory programs. Acting upon the actions identified below will not only strengthen the tribal/EPA partnerships, but clearly demonstrate the agency's trust, statutory and policy commitments with Indian tribes and Alaskan Native Villages.

The NTWC requests that the following priorities be acted upon:

1. **The Navigable Waters Protection and Clean Water Act Section 401 Certification Rules** have disproportionately impacted tribal governments and communities across the country. These rules were issued without adequate tribal consultation even though the implementation of the rules will have a substantial impact on tribal waters, treaty rights, the trust obligation, and tribal cultural resources. The NTWC requests EPA to withdraw its defense of legal challenges brought against both of these rules. On behalf of EPA, the Department of Justice would inform the court that they are not going to defend the rules in the litigation, resulting in the court to vacate and remand the rules. Also, EPA could seek a voluntary remand determination by the court falling back on previous legal standings of both rules. We

understand the agency is exploring all the legal options to replace the 2020 Navigable Waters Protection and Clean Water Act Section 401 Certification Rules. It is our hope that once the EPA Administrator is confirmed, a more definitive course of action can be shared with tribal nations.

2. **The importance of completing and advancing the Tribal Baseline Water Quality Standards Rule** under the rule process. Reinvigorating the federal baseline standards initiative is a high NTWC priority. Promulgation of federal standards is recognized by both EPA and the NTWC as a priority in filling the regulatory gaps that continue to exist in Indian country. Too many tribes still have no options available to safeguard their water supply or water quality.
3. **Increase funding to the Safe Drinking Water Tribal Set-aside Program to 5% of the total allocation to the Safe Drinking Water State Revolving Program.** The NTWC request that EPA allocate 5% of the Safe Drinking Water State Revolving Funds to the Tribal Safe Drinking Water Tribal Set-aside Program. Increased funding will further address the disparity of safe access to drinking water on tribal lands, where 6% of tribal homes still lack access to safe drinking water, especially in the arid southwest and Alaska.
4. **Request EPA's Office of Water to Restructure the FY 2022-2023 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.
5. **Request EPA's Office of Water to recommit and immediately activate the Infrastructure Task Force (ITF),** to address the ongoing critical needs in Indian country related to drinking water and wastewater infrastructure. It is paramount to reinstate the Operations and Maintenance (O&M) workgroup to better understand barriers facing tribal sanitation and drinking water utilities. We look forward to participating in discussions regarding tribal system operation and maintenance, as well as waste management on the next ITF conference call.

Thank you for your attention to the NTWC's concerns and priorities. We hope that you will seriously consider our requests and share our priorities with incoming EPA Administrator Mr. Michael Regan when the opportunity may arise. Please address your written correspondence concerning our comments and recommendations to me, at kenpnorton@gmail.com.

Sincerely,



Ken Norton, Chair
National Tribal Water Council

Cc: Nate Delano, US EPA Office of Water, Delano.nathaniel@epa.gov