

National Tribal Water Council and EPA Office of Water
2024 Spring In-Person Meeting
Tuesday, April 16, 2024

SUMMARY NOTES

I. Introductions (Elaine Wilson, ITEP)

NTWC: Ken Norton (Chair, R9); Chauncey Means (Vice Chair, R8); Dan Kusnierz (R1); Brian Patterson (R2); Raine Tetreault (R4); Celeste Hockings (R5); Nancy Schuldt (R5); Scott Hauser (At-large, R10); Mary Verner (R10); Eric Morrison (Alaska, R10); *Virtual:* Denise Jensen (R7); Yolanda Barney (Navajo Nation, R9)

EPA: Holly Galavotti (OW); Mae Wu (OW); Jane Nishida (OITA); Yu-Ting Guilaran (OGWDW); Wynne Miller (OWM); Raffael Stein (OWM); Robyn Delehanty (OWM); James Ray (OST); Steve Epting (OWOW); Myra Price (OWOW); Lisa Berrios (OITA); Sarah Finnegan (OITA); Vicky Salazar (OP); Sara Hisel-McCoy (OST); Danielle Anderson (OST); Kelly Gravuer (OST); Lauren Kasperek (OWOW); Elise O’Dea (OGC); Matt Klasen (OW); Ryan Albert (OGWDW); Abigail Golder (OWM)

ITEP: Elaine Wilson; Elaina Doral

II. Opening Remarks

- **Ken Norton, Chair, National Tribal Water Council**

Chairman Norton provided opening remarks to start the 2024 spring in-person meeting and thanked everyone for their attendance. He also expressed appreciation to both Jane Nishida and Mae Wu for attending the meeting. Chairman Norton thanked Holly Galavotti for coordinating the spring meeting.

In the past four years, the Biden-Harris administration has demonstrated its commitment to upholding its tribal trust obligations to American Indian and Alaska Native communities through executive orders on revitalizing environmental justice and advancing racial equity for underserved communities. These presidential orders have laid the groundwork for the next era of tribal environmental self-determination by reaffirming the United States’ commitment to protect the health and welfare of our Native citizens, their lands and waters.

Through the EPA Tribal Action Plan, the Office of Water (OW) has strengthened the nation-to-nation relationship by addressing long-standing water challenges impacting tribal communities. This includes securing funding to improve access to safe drinking water and providing sanitation services to Native American and Alaska Native communities. Additionally, the plan includes the federal government’s commitment to conduct meaningful consultation with tribal nations.

The plan has produced measurable results in various areas. Through the Bipartisan Infrastructure Law, there has been historic funding available, especially for new infrastructure. Federal agencies need to provide effective support for operations and maintenance (O&M) as tribal owners/utilities have added responsibilities to operate and maintain the new infrastructure and may face increased drinking water quality violations. The Indian Health Service (IHS) completed a cost evaluation of O&M of tribally owned water systems and the interagency task force needs to continue its support of these studies and IHS to ensure compliance.

The Clean Water Act (CWA) Section 106 program is being considered for review and focusing on program and operational capacities. NTWC intends to work with the EPA to accurately gather the necessary information and collaborate with the regions to identify the needs to implement this essential program.

The EPA Office of Water has advanced tribal rules that address the regulatory gaps in protecting tribal waters. The Tribal Reserved Rights and the Baseline Water Quality Standards rulemaking are consistent with applicable federal law and policy. The Office of International and Tribal Affairs (OITA) has revised the EPA tribal consultation policy that recognizes government-to-government partnership and considering tribal concerns.

NTWC continues its collaborative interactions with the EPA Office of Water to advance tribal sovereignty and self-determination. Training is needed for tribes to implement treatment in a similar manner as a state (TAS) option under the revised CWA § 401 Improvement Rule. Other needs include reducing health violations and funding for operations and maintenance for tribal drinking water and wastewater infrastructure. By allowing tribes to make their own decisions, it demonstrates a fulfillment of tribal trust obligations while strengthening tribal environmental self-determination.

- **Mae Wu, Deputy Assistant Administrator, EPA Office of Water**

Mae Wu welcomed everyone and thanked the NTWC for the invitation to speak. The EPA Office of Water's Tribal Action Plan has framed the work for the last three years. There are four main priorities: 1) robust coordination and meaningful consultation with tribal nations; 2) increasing infrastructure funding capacity and capacity development for tribal water programs; 3) strengthen and expand water governance in Indian Country; and 4) honoring federal trust responsibilities and protecting tribal reserved rights.

Mae Wu provided a highlight of the milestones over the past three years. Through the Bipartisan Infrastructure Law funding, the level of funding increased to boost infrastructure projects around safe drinking water and wastewater. Tribes are struggling to gain access to basic services. A total of \$387 million was allocated for tribal drinking water and wastewater infrastructure needs with an additional \$203 million to be funded in the upcoming months.

For example, funding was used for infrastructure, addressing harmful emerging contaminants, and identifying lead service lines. Other sources of funding include the small, underserved, and disadvantaged communities tribal grant program and the Alaska Native Villages and rural communities water grant program.

EPA recognizes that communities have difficulty accessing the available funding and now may seek assistance from the [Environmental Justice Thriving Communities Technical Assistance Centers](#) (TCTACs). EPA selected nine water technical assistance providers to help underserved small rural and tribal communities.

Last year, EPA released its final CWA Section 106 guidance and is currently finalizing two supplemental guidances on monitoring and water quality data. The Nonpoint Source Program is working with other agencies on a tribal conservation guide that will be released this summer 2024.

The Office of Water's goal is to expand water governance in Indian Country. Currently, there are 84 tribes with TAS status, and the goal is to have 100 tribes with TAS. EPA is conducting training and outreach events to reach that goal.

EPA continues to support tribal sovereignty through rulemaking. The Tribal Reserved Rights Rule will soon be finalized. It will provide a regulatory framework by protecting tribal reserved rights in water quality standards. The Federal Baseline Water Quality Standards will be finalized soon as well. The proposed rule will protect 250 Indian reservations that do not currently have CWA standards and ½ million people living on Indian reservations.

EPA finalized the CWA Section 401 Rule, which expands tribal participation in the water quality certification process. EPA plans to finalize the CWA § 404 rule to help streamline the process. The rule will expand opportunities for Tribes to have meaningful engagement in the permitting process.

With the amended WOTUS rule, EPA is re-emphasizing its support for tribal waters and wetlands programs. The White House recently released a Wetland and Water Protection resource guide.

Mae Wu is looking forward to hearing the feedback during PFAS session. As part of the EPA PFAS Strategic Roadmap, EPA recently finalized a drinking water standard for PFAS. It follows the science and will reduce PFAS exposure for approximately 100 million people, prevent thousands of deaths, and reduce tens of thousands of serious illnesses.

Questions/Comments

Eric Morrison requested to include Alaska in the protection of waters in trust responsibility. Alaska Native Tribes' traditional subsistence rights are protected. Currently, Alaska Native Tribes are having trouble with EPA IGAP and grants being denied by the Region 10 tribal advisors. Previously, Region 10 indicated that Alaska tribes shouldn't receive IGAP funds because they do not have reservations. Mae Wu indicated she is interested in hearing more about this concern and experiences.

- **Jane Nishida, Assistant Administrator, EPA Office of International and Tribal Affairs**

Jane Nishida thanked everyone for attending the meeting and for the invitation to speak. She applauded the initiatives of the EPA Office of Water, including the baseline water quality standards and reserved rights rule. Both are important issues and a significant step in protecting tribal waters and resources. Another accomplishment is the PFAS rule. It is important to all Americans to ensure safe drinking water.

Jane Nishida shared the tribal priorities of the EPA Office of International and Tribal Affairs (OITA). In August 2021, President Biden released a memo instructing all federal agencies to review its tribal policies. EPA was the first agency to adopt an agency consultation policy last year. The revisions included, but are not limited to, a better definition for consultation and coordination; guiding principles for the consideration of Indigenous Traditional Ecological Knowledge (ITEK); and notification for coordination and participation. There were additions to the Tribal Treaty Rights Guidance, such as expanding similar rights to nations that do not have treaties. EPA held webinars and developed fact sheets on the revisions.

One important addition to the consultation policy is the recognition of ITEK. During the Tribal Nations Summit, President Biden instructed the agencies to look at its policies and incorporate ITEK. The changes included mandatory EPA employee training and including references to ITEK.

The OITA oversees the Indian General Assistance Program (I-GAP). The office has heard from tribal nations and provided updates to the program, such as providing more flexibility to access GAP funds, strengthening tribal capacity, and streamlining the process. There is a new GAP hub that has tools, lessons learned, and best practices to assist tribal nations.

A consultation was initiated to revise the National Tribal Caucus (NTC) by increasing the number of tribal leaders on the NTC. This is an opportunity for tribal leaders to raise concerns at the national level. Currently, twenty percent of the NTC are tribal leaders. The OITA is seeking comments from tribal partnership groups about what role they should play and whether they should be NTC members.

The OITA is focusing on the importance of the next generation of tribal leaders. OITA signed a MOA with the American Indian Higher Education Consortium to educate, empower, and cultivate tribal youth. The OITA is developing a strategic framework for engagement with tribal colleges and universities.

Questions/Comments

Chairman Norton thanked Jane Nishida and recognized her program staff. The office conducts meaningful and successful engagements with the NTWC.

Eric Morrison thanked OITA for recognizing ITEK. He requested EPA to consider the local and tribal concerns of international trade and regulations. There are concerns for the endangered and threatened valuable resources. Alaska Native Tribes have no interaction with traders. The traders work with the State of Alaska, and do not know the concerns of tribes. Any company from a foreign market should be aware of local and tribal concerns.

Jane Nishida thanked Eric Morrison for raising that concern and mentioned there are options to address this concern. There is an Arctic Executive Steering Committee in Alaska, which is chaired by the State Department and White House and includes various agencies. The committee works with regional offices to identify various issues. Her program staff can follow-up later about the particulars. Another option is the White House Council of Native American Affairs that have

several committees, including the International Indigenous Affairs Committee. The committee is working on the transboundary pollution issues. There is mining development in Canada and may have impacts on waters of the U.S. and tribal nations downstream. Lastly, there is the role of Indigenous people in the United Nations. Her office can raise these issues with the White House Council.

Scott Hauser shared that the Upper Snake River Tribes Foundation have been building a youth program involving climate change for the past five years using Bureau of Indian Affairs (BIA) and GAP funding. Three of the four tribes are in a remote location and a long distance from a college. Scott requested EPA increase the outreach to youth on the reservations to provide an opportunity to go to college. Jane Nishida replied that they recognize that some tribal nations don't have a college. EPA is developing a strategic framework that will reflect all youth and their needs.

Nancy Schuldt noted she appreciates this meeting with EPA in Washington. It's an opportunity to bring new issues to your attention. The Fond du Lac Band of Lake Superior Chippewa see a degradation of tribal resources due to the Alberta tar sands pipeline, which is a transboundary issue. It has caused thermal impacts by thawing peat lands. Her program is seeing things that were not part of the environmental review process. Jane Nishida is familiar with the tribe's issues. EPA meets with its Canadian counterparts on a semi-annual basis and can raise this issue with them.

III. Tribal Drinking Water and Clean Water Infrastructure Discussion

- **Office of Groundwater and Drinking Water** (Yu-Ting Guilaran, OGWDW)

Yu-Ting Guilaran provided an update on the activities of the Office of Ground Water and Drinking Water (OGWDW), such as regulatory work, funding, implementation, partnerships, and technical assistance. She thanked the NTWC for its focused attention on drinking water, and that the OGWDW is thankful for the opportunities to collaborate with the NTWC.

Yu-Ting is the co-chair of the Infrastructure Task Force (ITF) along with Wynne Miller. Last year, Yu-Ting and Wynne visited two Northwest tribes and saw the impacts of climate change firsthand. EPA offers technical assistance through the [Creating Resilient Water Utilities](#) (CRWU) and offers practical tools and training. EPA assisted more than 60 water utilities and welcome any requests for CRWU assistance.

The OGWDW is focused on reducing the health-based violations in all community water systems. Currently, 93% of the people served by community water systems received drinking water that meets all applicable health-based drinking water standards. Regulations are needed to reduce contaminants. Funding and technical assistance are needed to provide hands-on resources. Small water systems need assistance with addressing new regulations. EPA provides training and webinars.

In April, EPA finalized the PFAS rule and announced nearly \$1 billion in funding to address emerging contaminants for small or disadvantaged communities. Approximately \$19.3 million is

available for tribes. Yu-Ting Guilaran thanked the NTWC and Tribal PFAS Working Group for their comment letter and feedback on addressing PFAS at the source. Funding is available to address not only PFAS, but other emerging contaminants like perchlorate, lithium, and manganese.

Through the Bipartisan Infrastructure Law, about \$60 million has been provided annually for a total of \$300 million for tribes for the inventory and replacement of lead services lines. Last year, EPA proposed the Lead and Copper Rule Improvements. In 2021, EPA required public water systems to conduct initial lead service lines inventory by October 2024.

EPA is working with public water systems to issue public notification of lead exceedance. This is a new requirement for water systems. EPA is developing a template in order to be in compliance by October 2024.

In April 2023, EPA released the results of the [7th Drinking Water Infrastructure Needs Survey and Assessment](#) (DWINSA) that examines the needs for infrastructure improvements and maintenance at public water systems in the U.S. The results show that drinking water systems need \$625 billion for over the next 20 years. Tribes will need \$4 billion over the next 20 years. EPA recognizes that the need far exceeds the funding available.

There was a second allocation of BIL that included \$158 million to address tribal drinking water infrastructure needs. In FY 2023, a total of \$10 million was allocated for the drinking water infrastructure grant. The overall total of \$416 million was allocated for tribes under the BIL.

EPA has increased its efforts to address cybersecurity. On March 18, 2024, the White House sent a memo to the governors about the ongoing threats to water systems and steps to take to reduce risk from a cyberattack. EPA in the coming months will provide support for tribal utilities.

Recently, EPA initiated consultation for the national program guidance. The deadline to submit comments on the implementation of the EPA 2022-2026 strategic plan is June 4, 2024. For more information, please visit: tcots.epa.gov

Yu-Ting Guilaran mentioned the Infrastructure Task Force that supports drinking water, wastewater, and solid waste for tribal nations. The task force consists of the EPA, IHS, HUD, USDA, BIA, BOR, and CDC. The task force meets once a year for information exchange, to have high level discussions, and identify areas to coordinate agency efforts. Last year, the NTWC requested more engagement with members of the ITF. EPA would like to schedule a joint meeting this year with the NTWC.

Lastly, EPA met with its partner, Indian Health Service. This is an example of implementation of supporting tribal water infrastructure. They identified the need to hire more engineers.

- **Office of Wastewater Management** (Wynne Miller, OWM)
Wynne Miller provided an update of the Office of Wastewater Management (OWM) activities. The BIL provided \$965 million over a 5-year period (for both drinking water and wastewater

infrastructure in Tribal communities). In FY 2023, \$64 million was allocated for planning, design, and construction of wastewater infrastructure for tribes. OWM anticipates about \$69 million of funding for this year. The funding for FY 2023 was used for 60 projects to improve wastewater for 19,000 tribal homes. The funding also provides training and technical assistance to help tribes build capacity. For the Alaska Native Villages Drinking Water and Wastewater Infrastructure Grant Program, in FY 2023, a total of \$40 million was allocated for eight projects to improve drinking water and wastewater for 1,000 rural and Alaska Native homes.

The OWM recognizes the need to address emerging contaminants like PFAS, 6-PPD, microplastics, and harmful algal blooms. Under the BIL, there was \$20 million allocated for tribal wastewater over five (5) years. There is \$11 million already available through the clean water Indian set-aside. The funding goes to the regions where they reach out to tribes with a need to address emerging contaminants. Funding can be used for non-routine sampling, purchase monitoring equipment, remove emerging contaminants from water reuse, etc. Tribes may consult with their regional tribal coordinators for more information.

EPA has several resources for technical assistance. The CRWU was previously mentioned. In addition, there are environmental finance centers with 29 centers across the nation. There is wastewater technical assistance for tribes and there will be new providers later this year.

EPA is working on wastewater access and expansion. EPA has been working with 11 pilot communities over the past two years to address decentralized septic issues. Many communities need help and EPA is trying to close the gap for wastewater access. EPA hopes to assist approximately 150 communities over the next three years, which includes tribal communities. Please let EPA know if you need assistance and put you on the list.

EPA has a water technical assistance request form available online. Tribes may fill out the form to request assistance for federal funding, infrastructure, and water services. For more information, please visit: <https://www.epa.gov/water-infrastructure/forms/water-technical-assistance-request-form>

- **Water Infrastructure Division** (Raffael Stein, WID)

Raffael Stein provided information on a new program, community grants, overseen by the Water Infrastructure Division. The new program is known as community project funds or congressional directed spending/earmarks.

For earmarks, Congress selects projects for grant funding identified in the legislation itself. EPA makes awards through regional offices and manages the grants. The community grants are subject to standard federal requirements, such as NEPA. For the past three years, Congress has appropriated \$3.7 billion for over 2,000 projects. Of those projects, there were 22 projects for tribes and the appropriated Congressional funding was \$38 million.

Recently, Congress required EPA to provide a report and allow states to implement and manage earmark grants under the Appropriations Act. Congress asked to get feedback from states and tribes about the report. Raffael Stein had a few questions for feedback.

Question #1: EPA would like to confirm that tribal recipients would opt to continue direct EPA management of community grants rather than state implementation.

- Nancy Schuldt responded “yes.” There has been conflict and uncertainty when funding goes through the state before it goes to the tribes. It’s an unnecessary administrative burden.
- Chauncey Means agrees with Nancy. Not every tribe has a good relationship with a state.
- Eric Morrison stated that Alaska Native Tribes have no relationship with the state. Alaska Native Tribes would rather talk to EPA.
- Scott Hauser shared that some tribal programs have one staff and may have no ability to write grants. It’s a large undertaking. Raffael Stein replied they have seen that throughout the country. He noted that Congress would like to see more grants awarded in a timely manner and the thought was that states would streamline the process.
- Eric Morrison commented that tribes have network issues and the federal government provided funding for broadband, but that went through the state (State of Alaska), which does not recognize tribes.
- Chauncey Means noted that this may cause a sovereignty issue by allowing a state to come to tribes and telling a tribe what to do.

Question #2: EPA makes the award to the specific named recipient, but one instance, the funding was awarded through an interagency agreement with IHS. Do tribal recipients like this option?

- Yolanda Barney noted an instance where EPA awarded funding to the IHS rather than the Navajo Nation. A percentage was given to IHS to administer those funds and the total funding amount decreased for Navajo Nation. She doesn’t support funds going to IHS.
- Eric Morrison stated that he is fine with funds going to IHS, since IHS has a trust responsibility to tribes.

IV. CWA 319/106/Wetlands Tribal Grant Programs

- **Section 319 Program Update** (Steve Epting, Office of Wetlands, Oceans, and Watersheds)
Steve Epting provided an update on the Section 319 program, such as funding, program activities, and guidelines.

The program funding amounts include \$182 million (FY2023) and \$174.5 million (FY2024). For FY2025, there is a President’s budget request for \$189 million for the program. Tribal 319 funding includes competitive grants and base grants. In FY2023, \$3.6 million was awarded for competitive grants and \$10.2 million for base grants.

The program is working to address tribal non-point source (NPS) priorities, such as trainings and program guidelines. In 2023, EPA awarded a cooperative agreement with the National Association of Wetland Managers to conduct tribal NPS webinar trainings. EPA is currently revising the CWA 319 Guidelines for states to include an up-to-date Tribal NPS Management Plan as an alternative to a watershed-based plan. Additionally, the program is developing a Federal

Conservation Guide that identifies federal assistance programs for tribal water quality and natural resources conservation work.

EPA is also reviewing Tribal 319 guidelines to identify sections in need of updating. Steve Epting plans to attend an upcoming monthly call to provide more information and get feedback.

- **CWA 106 Program** (Robyn Delehanty, Office of Wastewater Management)
Robyn Delehanty provided an overview of the funding and program activities for the CWA 106 program. In FY2023, the program finalized its CWA 106 Tribal Guidance. Tribes received a \$2 million increase in program funding with an overall funding amount of \$28.5 million.

In FY2024, the guidance will be available in hard copy and supplemental information on monitoring strategy and data management will be finalized. The final appropriation included a \$11 million decrease in funding.

For FY2025, EPA requested a \$9.3 million increase for tribal programs with \$6.7 million to support tribal programs and \$2.4 million for an Indian Country-specific national aquatic resource survey (NARS.) If approved, the program will review the allocation formula. The program will seek feedback on the framework for the Indian Country-specific NARS.

Questions/Comments

Nancy Schuldt noted the benefit of the increased base funding. She would like to further discuss the tribal NARS concept and connect it to another NTWC priority of data management. Data management is an area where tribes struggle. Depending on the funding structure, investments could be made regionally or nationally to provide data management and support. Robyn Delehanty responded she would like to continue the conversation and noted that EPA developed supplemental information on data management that tribes can use.

Eric Morrison shared that his tribe worked with the Landscape Conservation Cooperative Network in the past. The cooperative was funded by the U.S. Fish and Wildlife Service. Alaska Tribes had a good working relationship with both the cooperative and U.S. Fish and Wildlife Service. He suggested using their model as a guide in working with tribes.

Steve Epting thanked Eric and Nancy for their feedback. Steve noted that by working on the conservation guide, the EPA is learning about other programs. At this time, a program needs multiple funding sources because one project may need more than one grant funding.

Eric Morrison commented that many Alaska Native Tribes do not have reservations. However, Alaska Native Tribes obtain grant funding based on the small reservation grant formula. He noted that the traditional subsistence areas vary in land size and traveling to check on the areas can be costly, especially in higher fuel costs.

- **Wetland Program Development Grant Program** (Myra Price, Office of Wetlands, Oceans, and Watersheds)

Myra Price provided an overview of the Wetland Program Development Grant Program, funding, and program activities. The grant program was established in 1990. Currently, the grant program has four separate competition processes, such as regional NOFOs, tribal-only NOFO, national NOFO, and a five-star NOFO. In FY2023, there was \$14.68 million in funding available. In FY2024 there was \$14.16 million in funding available. The Tribal only NOFO is 10% of the yearly allocation.

For FY2025, EPA requested \$22 million in funding, which will support research and investigations. EPA will release the Tribal RFA soon.

Questions/Comments

Holly Galavotti invited Myra Price to an upcoming monthly call to provide further information on the grant program.

V. GAP Hub Overview: Gap Hub Summary and Executive Order

- **Gap Hub Summary** (Sarah Finnegan, OITA American Indian Environment Office)
Sarah Finnegan provided a summary and live demonstration of the GAP Hub, which was launched a few months ago for GAP officers to use. The purpose of the hub is to look at the performance of GAP, and not looking at the performance of GAP recipients.

The data will illustrate how GAP is doing and to help tell the story of GAP, which can help bolster funding. The data is reviewed collectively to make better informed decisions and improve the program management of GAP.

The hub was developed by a contractor with input from a work group that included tribal representatives. EPA already collects a large amount of data and that was used to input into the hub. EPA can use the hub to look at GAP performance at the national and regional levels.

GAP Hub is the first national performance mechanism for the program. The data comes from ETEP, capacity indicators, and work plans. The hub relies on the capacity indicators as the primary data point. GAP Hub is an internal EPA tool, and the information is entered into the hub by the regional GAP officers.

Questions/Comments

Eric Morrison shared a concern that Alaska Native Tribes have been denied GAP funding. The denial occurs during the renewal period and the tribe is unable to do anything at that point. The funding is being denied due to the finance policy, which needs to be updated. Eric noted that the finance policy is accepted by other agencies. Tribes recently attended a virtual meeting with the Region 10 tribal advisor. They were told they can't apply until next year. Alaska Native Tribes have traditional subsistence rights under ANSCA.

Sarah Finnegan replied that her office does provide a guidance document, but the decisions are made by the regions. Her office plans to follow up with Eric Morrison about the comment.

- **Executive Order 14112** (Lisa Berrios, OITA American Indian Environment Office)
Lisa Berrios provided an overview of the White House Executive Order 14112. On December 6, 2023, President Biden signed the executive order on [*Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Self-Determination*](#). The executive order requires federal agencies to take action to ensure federal funding for tribes is accessible, flexible, and equitable. It creates a one-stop-shop for federal funding through a capital clearinghouse.

The White House has provided directives on consultation and implementation. There is a plan to have a government wide approach for consultation on the executive order. The White House wants to be informed on what agencies are doing to implement the executive order.

The American Indian Environment Office is working closely with the White House on implementation. There is a White House Implementation Committee that is co-chaired by the Office of Management and Budget and the Domestic Policy Council. The committee oversees two task forces: Budget and Federal Reform. EPA has representation on both task forces, and they meet twice a week.

The budget task force will provide a guidance to agencies by August 2024. By May 2024, every agency must submit an unmet needs budget assessment. The federal reform task force is looking at best practices and making processes more streamlined. The task force is reviewing the grants.gov website.

Questions/Comments

Chairman Norton stated that the executive order includes compacting, and he asked if that is still being discussed. Lisa Berrios replied that the office is looking at three options but doesn't have specifics. The office has talked about the TAS process and best practice areas to leverage 638.

VI. EPA Tribal Climate Adaptation Efforts (Vicky Salazar, EPA Office of Policy; and Andy Bessler, EPA Office of Environmental Justice & External Civil Rights)

Vicky Salazar presented on the EPA Tribal Climate Adaptation efforts. The 2022-2026 EPA Strategic Plan included a goal to assist at least 400 federally recognized tribes to take action to anticipate, prepare for, adapt to, or recover from the impacts of climate change. EPA has identified priorities to achieve this goal, such as capacity building and town halls.

EPA has conducted engagement and listening sessions to get feedback on tribal needs and concerns. The program held a town hall on February 27 and the next town hall is scheduled for May 9. Town hall topics include identifying tribal climate needs, best practices for implementing grants, relocation, and monitoring progress.

The program provides capacity building through technical assistance, environmental justice roadshows, and assistance from Thriving Communities Technical Assistance Centers (TCTACs). EPA is partnering with the National Tribal Caucus to hold a Tribal & Indigenous Climate Intensive on June

10-14, 2024. Other resources include a climate change website for tribes that will launch in May 2024 and funding through program office appropriations.

Andy Bessler provided information on available resources from the EPA Office of Environmental Justice & External Civil Rights (OEJECR). There is an environmental justice webinar series held on the last Wednesday of every month that provides program updates, best environmental justice practices, and open discussion. The [OEJECR grants page](#) provides updates, engagement opportunities, and grantee spotlights. There are various environmental justice grants available through the Inflation Reduction Act.

For more information, please visit both: <https://www.epa.gov/climate-adaptation> and <https://www.epa.gov/environmentaljustice>.

Questions/Comments

Scott Hauser shared that his program was awarded the EJ collaborative solving grant in October 2023. Six months have passed, and no funding has been released. His program had to redo financial policies, employee policies, etc. The process has been frustrating and has dissuaded him from applying again.

Chauncey Means echoed what Scott Hauser said. His program is going through an environmental assessment pre-project. EPA officer is contacting tribal staff for this project when the project has not been designed. The tribal program typically does this work themselves. Andy Bessler suggested hiring a subject matter expert to assist through the Tribal Environmental Impact Network. Chauncey replied that his program needs the funding to hire someone because the tribe is capable.

Scott Hauser shared that this is a three-year funding opportunity. EPA has requested to rewrite their work plan, budget and requested information on certain subjects three years out, which can be difficult to predict.

VII. Regulatory Updates and Discussion

- **Revisions to the Federal Water Quality Standards Regulation to Protect Tribal Reserved Rights** (Sara Hisel-McCoy, Office of Science and Technology)

Sara Hisel-McCoy provided background information and updates on the proposed rule. The proposed rule was released on December 5, 2022. There was a 90-day tribal consultation period from June 11, 2021, 2023 to September 13, 2021.

During the consultation period, EPA received 47 comment letters from tribes and tribal associations. Overall, there were 162 unique written comments. EPA conducted four (4) government-to-government consultation meetings. Written comments are available at the online docket at: <https://www.regulations.gov/docket/EPA-HQ-OW-2021-0791>.

A tribal consultation summary and a response to comments were developed. A few key themes were shared, including the following:

- *States should not have the authority or responsibility for interpreting Tribal reserved rights; and the*

- *Rule is an overdue recognition of Tribal reserved rights; clean water is necessary to protect Tribal reserved resources and lifeways.*

The EPA Administrator signed the final rule on April 26, 2024. For more information, please visit: <https://www.epa.gov/wqs-tech/revising-federal-water-quality-standards-regulation-protect-tribal-reserved-rights>

Questions/Comments

Chairman Norton commented that this is the first time that tribal reserved rights are being protected under federal law. Previously, states would negotiate with tribes to protect tribal reserved rights, but often would falter. NTWC applauds the efforts of the agency in taking these steps and it is a good day for Indian Country when this rule becomes finalized.

Eric Morrison stated that the NTWC members serve as representatives for tribes. He shared that tribes should be given more time to comment, as the rulemaking is very important for tribes. It gives tribes an opportunity to interact with the agency and help identify issues and work on them. He urged the EPA to consider giving tribes more time for commenting.

Kelly Gravuer responded that the tribal reserved rights rule should only apply within the water quality standards context, which was heard by EPA in the comments. She noted that the EPA is not making any decisions for tribal water but providing a regulatory framework for tribes to work with the state in a transparent manner.

Scott Hauser expressed interest in what the language would look like for the second bullet in the presentation. Scott commented that in Idaho the state views tribal treaty rights as antiquated and an unresolved issue. Chauncey Means added that treaties are different for every tribe. Kelly Gravuer responded that EPA anticipates additional conversations about the particular waters and states regarding this rule.

Dan Kusnierz asked if the standards only apply for numeric human health criteria. Kelly Gravuer replied that it applies to all water quality standards. The rule will have three partners: EPA, states, and tribes. When a state is updating its standards, states need to consider tribal reserved rights under this rule.

- **U.S. EPA's Proposal to Promulgate Federal Baseline Water Quality Standards for Indian Reservations** (James Ray, Office of Science and Technology)

James Ray provided background information and updates on the proposed rule. The proposed rule was released on April 27, 2023, and the 90-day tribal consultation/public comment period was from May 3, 2023, to August 1, 2023.

During the consultation period, EPA received 13 comment letters from tribes and tribal associations. Overall, there were 3,314 comment letters and EPA conducted four (4) government-to-government consultation meetings. Written comments are available at the public docket in the Federal Register. A tribal consultation summary and response to comment document will be posted in the docket for the final rule.

It is anticipated that the rule will be finalized in fall 2024. For more information, please visit: <https://www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act>

Questions/Comments

Chairman Norton asked if there has been consultation with other federal agencies regarding the aquatic numeric criteria. James Ray replied that the EPA is in the process of engaging in consultation with the U.S. Fish and Wildlife and NOAA. For example, factoring baseline rule in NPDES permits would be specific to certain areas during the ESA consultation.

Chairman Norton asked if there have been discussions about the opt-out procedures and criteria. Sara Hisel-McCoy responded that EPA has discussed certain scenarios where tribes can opt-out. She noted that what EPA finalizes may or may not be what was proposed, which happens with all other rules.

Chairman Norton noted concern on the timing of the proposed rule knowing it is springtime already. He mentioned a deadline where rules may not be considered as outlined in the Congressional Review Act (CRA). NTWC raised these concerns in a letter to EPA Administrator Regan. James Ray responded that the EPA is trying to push forward with rules before the CRA deadline. EPA is committed to ensuring this rule is in place and effective before a change in administration.

Nancy Schuldt inquired if there was specific guidance for the narrative translator. James Ray replied that, as proposed there is a five-step translation procedure for the narrative criteria. A program can dig deeper under those steps to find additional specifics to come to those numeric values. EPA is working on implementation materials to help derive those values.

Rainee Tetreault commented that the Eastern Band of Cherokee Indians have water quality standards. The program went through the anti-degradation review process. She asked if there are plans to support tribes with little to no staff going through the review process under the baseline rule. James Ray responded that a tribe could contact their regional tribal water quality standards coordinator to obtain assistance or find resources.

Rainee Tetreault asked about tribes without TAS and the baseline rule. James Ray replied that the EPA would remain as the implementing body, and it would not fall on the tribes.

- **CWA 404(g) Rule** (Lauren Kasparek, Office of Wetlands, Oceans, and Watersheds)
Lauren Kasparek provided an update on the 404(g) rulemaking revisions. CWA section 404 requires a permit for discharging of dredge and fill material into the waters of the United States unless there is an exemption. CWA section 404(g) authorizes states and tribes to assume responsibility for the administration of the section 404 program.

The rule was last revised in 1988. Throughout the years, EPA has received requests from states and tribes for clarity on various aspects of the program, such as assumption requirements. In August 2023, EPA proposed revisions to the existing regulation. The goal of the revisions is to update the regulations to be consistent with EPA's existing regulatory revisions and respond to states and tribes for greater clarity. EPA is looking to expand on opportunities for tribes to meaningfully engage in permit actions. Also, there may be opportunities for tribes to raise concerns if a permit may affect their resources within Indian Country and outside Indian Country on a proposed discharge.

EPA is currently reviewing the comment letters and plans to finalize the rule in summer 2024. The agency is not accepting any more comments on the proposed revisions. However, EPA would like feedback on the outreach efforts once the revisions are finalized, such as what worked well or what did not?

Questions/Comments

Scott Hauser commented on the rollout and outreach. Federal agencies want feedback from tribal leadership, but tribal leaders may not have time or knowledge. As staff provide feedback, federal agencies may not see this as the same level as tribal leadership. Tribal leaders do ask staff to take the lead.

- **2023 CWA Section 401 Water Quality Certification Improvement Rule**, (Liana Prudencio, Office of Wetlands, Oceans, and Watersheds)

The 2023 CWA Section 401 Water Quality Certification Improvement Rule became effective on November 22, 2023. EPA developed several outreach materials and conducted outreach engagements.

The outreach materials available include a larger Q&A document, fact sheets, and application templates for TAS. The section 401 website has a series of recordings for different stakeholders and webinar slides. For more information, please visit: <https://www.epa.gov/cwa-401/final-2023-cwa-section-401-water-quality-certification-improvement-rule>

The program plans to present at the 2024 CWA Tribal Water Forum in May. The presentation will include an overview of the rules and opportunities for TAS. Nancy Schuldt will present on a tribal experience during the session.

Questions/Comments

During the Region 9 Tribal EPA conference last October 2023, NTWC heard feedback from tribes. Chairman Norton shared that tribes were interested in acting as a neighboring jurisdiction. However, there is a gray area when there is a violation of a tribe's water quality requirements. Chairman Norton sees this as a training opportunity for the agency. A hands-on training could be developed that uses a tribe's requirements and its role as a neighboring jurisdiction. He noted some tribes are interested in full authority and the tribes are in the 303(c) process.

Liana Prudencio asked if there were discussions on lessons learned. Chairman Norton replied that the lessons learned are defining jurisdictional waters, which depends on a case-by-case basis. Chairman Norton stated that tribes are interested in learning how to protect their waters, be a part of the process, and learning what criteria are used to protect cultural uses.

Nancy Schuldt shared an on the ground unexpected occurrence of this rule. The rulemaking has contributed to reawakening of the state's responsibilities under section 401 certification for when the state makes 401 decisions. Nancy is seeing positive developments on how the state is implementing the 401 process.

Chairman Norton inquired about the recent training in New Mexico. Liana Prudencio replied the training covered many topics, including a treatment as a state session for intermediate level staff and learning about the CWA for new staff. Moving forward, EPA plans to provide training at different levels.

Chairman Norton asked if there were conversations about barriers on program capacity, such as experienced staff. Liana Prudencio shared that attendees were mostly new to the program.

Liana Prudencio learned from the training that case studies are important and showcasing the successful programs.

- **Waters of the U.S.** (Rose Kwok, OWOW; Elise O'Dea, Office of General Counsel)
Chairman Norton requested information on the amendments of the proposed rule, particularly the meaning of the removal of non-continuous flow of water under the plurality rule, and it's implied that intermittent streams are not part of WOTUS. Additionally, Chairman Norton requested an update the amendments of interstate wetlands and on the state litigation.

Rose Kwok provided information on the amended final rule and Elise O'Dea provided updates on the litigation. In August 2023, EPA issued a final rule to amend the January 2023 rule to conform to the definition of WOTUS based on the Supreme Court's decision on *Sackett v. EPA*.

During the May 2023 *Sackett* case, the Court considered the jurisdictional standards set forth in the rule: the plurality standard and the significant nexus standard. The Supreme Court concluded that the *Rapanos* plurality was correct, and the significant nexus standard was inconsistent with the CWA. For more information, please visit: <https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update>

EPA conducted various listening sessions and training presentations, which are available on the EPA website. On March 2024, the White House Council on Environmental Quality released a [Wetland and Water Protection Resource Guide](#) for states and tribes.

Elise O'Dea shared that there are four active cases: three cases brought by states and one case by a private citizen. For two of the cases, a summary briefing has been developed. One case was

dismissed due to a lack of jurisdiction, but it is being appealed. The case brought by the private citizen has just started.

Questions/Comments

Scott Hauser asked if the EPA is considering drafting another rule based on the tribal comments on treating tribal waters as interstate waters. Rose Kwok replied that the EPA did solicit comments on what constitutes a tribal boundary and whether to consider tribal boundaries similar to state boundaries. EPA is focusing on first defending interstate waters category as a whole before it tackles the interstate waters.

Chairman Norton asked if the Maui guidance was in the federal register. Rose Kwok replied that the EPA sought comments on the guidance and are in the process of considering those comments. Chairman Norton noted that the constituents of a pollutant in the discharge may initiate an NPDES permit, but the Court's decision looks at the pollutant as a whole. It doesn't look at the constituents of a pollutant. Rose Kwok replied that the EPA is reviewing the comments and has not finalized the guidance yet.

VIII. Joint Session of NTWC/Tribal PFAS Working Group

- **PFAS Strategic Roadmap Update** (Matt Klasen, Office of Water)

Matt Klasen provided an update on the PFAS Strategic Roadmap and its activities. The roadmap was released in October 2021 and includes timelines for actions from 2021 to 2024. EPA's approach is centered around considering the PFAS lifecycle, getting upstream from the problem, holding polluters accountable, using science-based decision-making, and prioritizing protection of disadvantaged communities.

In December 2023, EPA released its *PFAS Strategic Roadmap: Second Annual Progress Report* highlighting the accomplishments for the year. EPA conducted several listening sessions in early 2023 to listen and learn from the communities.

In April 2024, EPA released an updated PFAS Destruction and Disposal Interim Guidance that provides information on available technologies. The guidance provides the latest available destruction and disposal technologies for PFAS-containing waste, such as storage, underground injection, landfilling, and thermal treatment.

For more information, please visit: www.epa.gov/pfas

- **Final PFAS National Drinking Water Standards** (Ryan Albert, Office of Water)

On April 10, 2024, EPA finalized the [PFAS National Primary Drinking Water Regulation](#) that establishes enforceable levels for six PFAS. Ryan Albert provided a brief overview of the final rule.

EPA's final rule reflects flexibilities for public water systems. Often, individual PFAS co-occur, and the final regulation includes a "hazard index" approach to protect people from these mixtures. The rule is flexible and allows water systems to determine the best solution for their community. Most systems may use granular activated carbon and anion exchange.

Additionally, EPA has a [Water Technical Assistance](#) program that provide resources and assistance to water systems to develop plans, build capacity, and apply for funding.

- **Proposed Rule for PFAS Reporting and Monitoring** (Abigail Golder, Office of Wastewater Management)

Abigail Golder presented information on an upcoming proposed rule for PFAS Reporting and Monitoring Requirements in NPDES Permits. EPA anticipates publishing the proposed rulemaking in the Federal Register in fall 2024, and there will be opportunity for public comment.

National Pollutant Discharge Elimination System (NPDES) permit applicants are required to report information on a list of pollutants in their application that they expect to discharge. Currently, PFAS is not listed in the application regulations. EPA is updating the application regulations to ensure that facilities monitor and report the presence of PFAS.

EPA is reviewing and looking to revise the NPDES permit applications to add monitoring and reporting requirements to application forms: 2A, 2C, 2D, 2E, and 2F. The purpose of the rulemaking is to obtain more information which will help EPA, states, and industry to reduce PFAS pollution at the source.

Questions/Comments

Eric Morrison shared the Salamatof Tribe submitted a letter of protest for the permit renewal for the John M. Asplund Wastewater Treatment Facility in the Cook Inlet. An environmental group sampled a dead beluga and fish during the last permit renewal. The samples indicated the presence of PFAS. The City of Anchorage needed more evidence that the PFAS was coming from the facility. His program plans to conduct more sampling in the mixing zone this summer. Eric asked what else could be done. Alaska Native tribal members gather clams and utilize the area in the Cook Inlet.

Holly Galavotti replied that they will follow up with EPA Region 10. Matt Klasen agreed that Region 10 follows this more closely. The regulation Abigail described would help get more data and better understand if there is an issue. Relatedly, EPA issued recommendations to the states in a memo in December 2022 about monitoring and best management practices.

Nancy Schuldt inquired about granular activated carbon (GAC) and anion exchange as the best technologies. Ryan Albert replied that currently there are four technologies available: granular activated carbon, anion exchange, reverse osmosis, and nanofiltration. GAC and anion exchange are most cost effective and able to treat the PFAS listed in the regulation. Reverse osmosis is costly and energy intensive. This is based on the available information today and will change in the future as technology improves.

Nancy Schuldt commented that the mining sector uses these chemicals but is protected under proprietary information. Kevin Weiss replied that companies applying for permits have the data available in the permit application.

Mary Verner stated that this is reminiscent of when PCBs started being regulated. Mary asked if the EPA would develop TMDLs and/or go upstream to the source. Abigail replied that would be a wonderful goal to reach. However, this rulemaking is narrow in scope and should lead to more research. Matt Klasen added that the EPA is using all the tools available at the agency, getting upstream of the problem, and working to prevent the contamination in the first place.

Rainee Tetreault noted that the treatment technologies are energy intensive, such as incineration. Are there concerns about the carbon footprint? Ryan Albert replied that as part of their evaluation, EPA did consider greenhouse gas emissions but did not consider the offsite impacts. EPA is aware of the concerns.

Dan Kusnierz inquired about the regulations for the disposal of resins from the use of GAC. Ryan Albert replied that EPA does not want a media transfer of PFAS. GAC is one of the best tools available today to protect human health and exposure. EPA is taking other steps to try to limit reintroduction of PFAS. Matt Klasen added this is a broad challenge, but that EPA is moving in the right direction with more research and regulation.

Eric Morrison shared that the Salamatof Tribe were sampling for contaminants from mining in the Juneau Channel. The tribe mediated with the EPA to allow the tribe to measure contaminants in their traditional foods. Eric hoped the regulation would make allowances for accepting traditional knowledge and concerns. Matt Klasen shared that EPA is conducting studies about PFAS plant uptake and it has a tribal component. EPA recognizes tribal lifeways and possible exposure.

Nancy Schuldt shared that the Fond du Lac Band of Lake Superior Chippewa is involved in that research with wild rice. Additionally, the research may indicate the remediation work has been efficient. She noted how PFAS behaves differently than other chemicals. Recent smelt research showed how PFAS can mimic a fish hormone.

Denise Jensen mentioned that the Winnebago Tribe of Nebraska is participating in the research as well, involving milkweed.

- **Tribal PFAS Working Group 2024 Priorities** (Dianne Barton, Scott Hauser, and Dan Kusnierz, Tribal PFAS Working Group)

Dianne Barton, co-lead of the Tribal PFAS Working Group, provided an update of the working group's activities. Earlier this year, the working group welcomed the chairperson of the National Tribal Air Association as a member of the working group. They expanded the scope to include the effects of PFAS on air quality.

The working group's monthly calls include presentations from tribes and other entities. The working group provided a presentation at the Tribal Lands and Environment Forum last August and they plan to participate again this August. Other working group activities included developing the 2024 Priorities and writing comment letters. Scott Hauser highlighted a recent

comment letter on the *Proposed Rule to include PFAS Monitoring and Reporting Requirements in NPDES Permits and Permit Applications*. The comment letter is available on the NTWC [website](#).

Questions/Comments

Dan Kusnierz commented that the working group has a precautionary approach and recognizes that the EPA is doing the same with the roadmap, such as preventing media transfer.

Abigail Golder indicated keeping an open dialogue with the NTWC and Tribal PFAS Working Group.

Matt Klasen thanked the working group for the overview and comments. EPA is looking at what comes next, since the roadmap covers 2022 to 2024.

IX. Wrap Up (Ken Norton, National Tribal Water Council)

Chairman Norton thanked everyone for their informative presentations. He thanked Mae Wu and Jane Nishida for taking the time to attend today's meeting. Additionally, Chairman Norton thanked Brian Patterson for his invocation and reminding us of the spirituality of water.

Today's meeting included important information and highlighted issues that the NTWC plans to comment on, such as the restructuring of the National Tribal Caucus. The FY2024 budget for tribal programs may be reduced and the NTWC sees the trend of funding reduction in tribal set-asides for drinking water. Chairman Norton appreciates the invite from Yu-Ting Guilaran and Wynne Miller to participate in the ITF. The rulemaking updates were beneficial and hopes the rules would make a difference in Indian Country.