

Consultation Water Updates

Upcoming Regional and National Actions

San Diego Regional Board Basin Plan Amendment: Biological Objectives



Regional Board Contact: Chad Loflen
Senior Environmental Scientist
Monitoring Assessment & Research Unit

Benthic invertebrates are good indicators of stream condition (health)

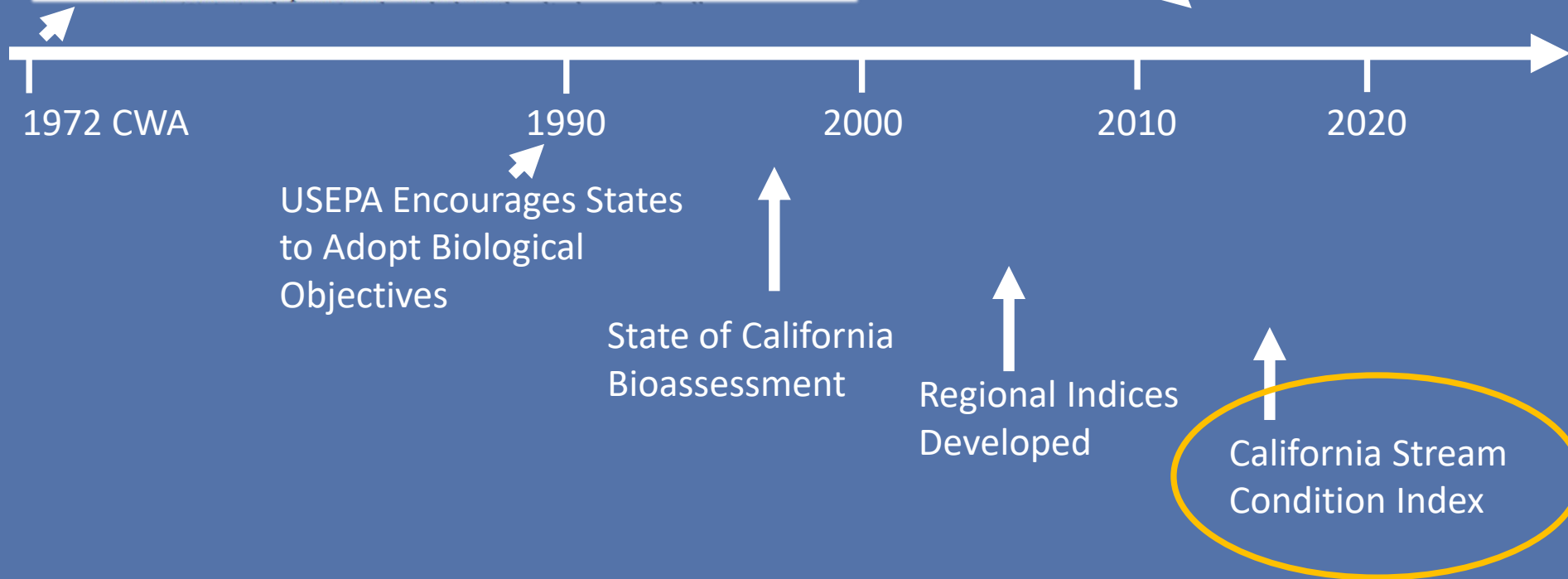
- *Ubiquitous, abundant and diverse*
- *Responsive to stress*
- *Information rich*



NABS (www.benthos.org)

Biological Objectives: From Clean Water Act to Today's Hearing

FEDERAL WATER POLLUTION CONTROL ACT
(33 U.S.C. 1251 et seq.)
AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
TITLE I—RESEARCH AND RELATED PROGRAMS
DECLARATION OF GOALS AND POLICY
SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—



Basin Plan Amendment

- 1) Numeric Biological Objective for streams using the California Stream Condition Index (CSCI \geq 0.79)
 - a) Applies to wadeable streams (perennial and seasonal)
 - b) Does not apply to:
 - non-wadeable streams
 - ephemeral streams
 - streams with hardened bottoms

- 2) Program of Implementation

Adopting a Biological Objective for Streams



- Protect High Quality Streams
- Guide Meaningful Restoration

Tribal consult
request letter sent
Jan 13, 2022

Approved by San
Diego Regional
Board in December
2020

Going to State Board
for approval in
March 2022

Coming to EPA in
Summer 2022

What is Steam Electric Power Generating?

- Steam electric plants use fossil fuels (such as coal, oil and natural gas) or nuclear power to heat water in boilers, which generates steam. The steam is used to drive turbines connected to electric generators.
- The plants generate wastewater in the form of chemical pollutants and thermal pollution (heated water) from their water treatment, power cycle, ash handling and air pollution control systems, as well as from coal piles, yard and floor drainage, and other miscellaneous wastes.
- These are regulated by industry specific limits called Effluent Limitation Guidelines implemented via NPDES Wastewater Permits.

Background

- In 2015, EPA issued a final rule (the 2015 Rule) updating the 1982 effluent limitations guidelines and standards (ELGs) for steam electric power plants. This rule was subject to multiple legal challenges and two administrative petitions for reconsideration specifically for FGD and BATW
- On August 31, 2020, the final reconsideration rule (the 2020 Rule) was signed effective October 2020, containing revised ELGs for the above two waste streams.
- On January 20, 2021 President Biden directed federal agencies to review several rules including this one.
- On July 26, 2021, EPA announced that the Agency intends to publish a proposed rule (Supplemental Rule) by Fall of 2022 that will:
 - Consider membrane filtration for FGD (flue gas desulfurization) wastewater.
 - Consider whether revisions to bottom ash transport water (BATW) are warranted.

Tribal Outreach

- Changes in ELGs could result in changes in surface water quality, changes in air quality, and changes in intake water quantity and or quality.
- Eight Tribal areas Nation-wide were identified as being within the area of public water systems potentially impacted by these proposed ELG changes.
- Seven of the eight Tribal areas were in ND, SD, and NE. Only one area in Region 9 with potential impact identified is the Navajo Nation with impacts to areas in AZ, NM, and UT. (APS Four Corners Power Plant or FCPP)

Bottom Ash Transport Water

Bottom Ash Transport Water (BATW) is the water used to transport ash from combusted coal away from the boilers.

Current Requirements

- The 2020 Rule requires zero discharge of pollutants from BATW, based on use of a high efficiency recycle system like being designed at FCPP.
 - There is an allowance for a site-specific purge of up to 10% of the volume of transport water system (as determined appropriate by the permit authority) based on the need of the facility.
 - New proposed ELGs may limit or eliminate this allowance.

Steam Electric ELG Tribal Consultation Webinars:

February 1, 2022

Tribal Webinar and Listening Session

Webinar time: 1:00-2:30 EST

February 9, 2022

Tribal Webinar and Listening Session

Webinar time: 1:00-2:30 EST

EPA Contact: Tony Tripp

Phone: (202) 566-1419

Email: tripp.anthony@epa.gov

ELG Comment Deadlines

- January 18, 2022 is initiation of Tribal Consultation.
- March 15, 2022 is deadline for Requesting Government-to-Government Consultation Meeting
- March 29, 2022 is close of Tribal Consultation.
- Tribes may submit written comments or request further information via e-mail to: benware.richard@epa.gov or (202) 566-1369
- **Additional meetings or webinars may be scheduled and, if so, will be posted to the TCOTs website at <https://tcots.epa.gov>.**

Pacific Ocean Aquafarms

Ongoing Engagement Opportunity

Project Background

- Net pen aquaculture facility proposed to be located off the coast of Southern California
 - Two proposed sites: Long Beach and San Diego
- Currently undergoing environmental review under the National Environmental Policy Act (NEPA)
 - More info: <https://www.fisheries.noaa.gov/national/aquaculture/pacific-ocean-aquafarms-proposed-action-and-alternatives>
- EPA's role is to issue Clean Water Act NPDES permit. Currently in "pre-application" phase.

Engagement Opportunity

- We are asking for information from tribes to support NPDES permit development and Environmental Impact Statement (EIS) development (siting, potential NHPA overlap, etc.)
- Early coordination letter sent out to tribal leaders and THPOs in March 2021.
- EPA will offer government-to-government consultation after NPDES permit application is received.

Contacts

Sunny Elliott, R9 NPDES, Elliott.Sunny@epa.gov, (415) 972-3840

Peter Kozelka, R9 NPDES, Kozelka.Peter@epa.gov, (415) 972-3448

Consolidated EPA Water Actions and Tribal Engagement Calendar



**Tribal Engagement Opportunities
for National and Regional* Water Actions**

January 2022

Highlights for January	
12, 13, 18	WOTUS Virtual Public Hearings
25-27	Winter RTOC

MON	TUE	WED	THU	FRI	SAT	SUN
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
		WOTUS: Virtual Public Hearing 7-10am PST, register here .	WOTUS: Virtual Public Hearing 11am-2pm PST, register here .			
17	18	19	20	21	22	23
	WOTUS: Virtual Public Hearing 2-5pm PST, register here .		WOTUS: Webinar discussion for tribes 9am-12pm PST, register here .			

- Summary of Rulemaking
- Key Dates
- HQ contact
- Region 9 Contact

Tribal Engagement Opportunities for National and Regional Water Actions 2022

National Consultations

Revised Definition of "Waters of the United States": EPA and Army will publish a proposed Rule, "Revised Definition of "Waters of the U.S." This proposal puts back into place the pre-2015 definition of WOTUS, updated to reflect consideration of Supreme Court decisions. There will be a 60-day public comment period on the proposed rule which will begin with its publication in the Federal Register.

Offer to Consult: December 7th 2021- February 7th 2022.

Submit Comments: To the docket, [here](#).

Request Agency Consultation: Contact Rose Kwok at cwawotus@epa.gov before end of comment period.

Virtual Public Hearings: January 12th (7-10am PT), register [here](#); January 13th (11am-2pm PT) register [here](#); January 18th (2-5pm PT) register [here](#); January 19th (12pm-2pm PT), register [here](#). Information on how to participate will be available on EPA's [website](#). There is also anticipated engagement via regional roundtables announced in October, details forthcoming.

Region 9 Contact: Sahrye Cohen, email cohen.sahrye@epa.gov

Tribal CWA 319 Equity Engagement: On September 27 Lynda Hall shared a memo, entitled [Near-term Actions to Support Environmental Justice in the Program](#). In the memo EPA commits to take actions to ensure equitable and fair access to the benefits of cleaner water provided by the Section 319 program. Specifically, the memo strongly encourages action in FY22 by state NPS programs to begin incorporating approaches to enhance environmental equity funding programs. Additionally, the memo commits EPA's national NPS program to several actions in FY22 in support of this goal, including seeking input and progress via quarterly engagements with State, Tribal and Territorial grantees. Recognizing that this will be a shared learning experience, we are continuing an ongoing dialogue with the NPS community as this work goes forward.

Listening Sessions: Kick-off Engagement Call with 319 Grantees 12/9, 11am-12pm PST, register [here](#). Stay tuned for Regional 319 Equity Discussion Call with Margot Buckelew (HQ NPS branch) expected in Jan-Feb timeframe.

Region 9 Contact: Howard Kahan, email Kahan.Howard@epa.gov

HQ Contact: Steve Epting, email epting.steve@epa.gov

Federal Baseline Water Quality Standards for Indian Reservations: In September 2016, EPA published an advance notice of proposed rulemaking (ANPR) soliciting public comment on whether to establish federal baseline water quality standards for waters on Indian reservations that do not yet have standards under the Clean Water Act (CWA) and, if so, what those standards should be and how they should be implemented. During a 90-day public comment period, EPA received comments from tribal governments and associations; state officials, agencies, and associations; private citizens; and private entities. EPA's goal in initiating this rulemaking is to identify ways to address the existing gaps in CWA protection of reservation waters.

Offer to Consult: 06/15/2021-09/13/2021

Submit Written Feedback: to Mary Lou Soscia, Email: soscia.marylou@epa.gov

Region 9 Contact: Kate Pinkerton, Email: Pinkerton.kate@epa.gov or Terry Fleming, email: Fleming.Terrance@epa.gov

Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights: Tribes hold many reserved rights to resources on lands and waters under federal jurisdiction, through treaties and equivalent agreements with the U.S. government. The U.S. Constitution defines treaties as the supreme law of the land. Pursuing a change to its water quality standards regulations to codify the path to compliance with existing legal obligations to ensure that water quality standards do not impair tribal reserved rights and give clear and sustainable direction as to the scope of states' obligations. This will help EPA ensure protection of reserved rights in treaties and equivalent agreements when establishing, revising, and reviewing water quality standards.

Offer to Consult: 06/15/2021-09/13/2021