

**Summit Lake Paiute Tribe
Special Council Meeting
Thursday, September 16, 2021
Primary Administrative Office, Sparks, Nevada**

CALL TO ORDER: Chairwoman Randi Lone Eagle called the Special Council Meeting of Thursday, September 16 2021 to order at 7:07 am.

ROLL CALL: Secretary/Treasurer Eugene Mace, Sr. called the roll: Chairwoman Randi Lone Eagle, present; Vice-Chairwoman Nedra Crane, present; and Secretary/Treasurer Eugene Mace, Sr.

STAFF: James Simmons, Natural Resources Director

GUESTS: EPA Headquarters: Deborah Nagle, Director, Office of Science and Technology; Sara Hisel-McCoy, Director, Standards and Health Protection Division; Cory Buffo, Chief, Regional Branch; Erica Fleisig, Team Leader for Tribal Reserved Rights in WQS Rule, Regional Branch; Danielle Anderson, Team Leader for Baseline WQS Rule, Regional Branch; Karen Gude, Office of Water Tribal Program Specialist; Jennifer Brundage, Staff Lead, Reserved Rights in WQS Rule; James Ray, Staff Lead, Baseline WQS Rule. EPA Region 9: Tina Yin, Water Division; Sarah Rowan, Office of Regional Counsel; Kelli Williams, Water Division. EPA Region 10: Lauren McDaid, Pathways Intern; and Mary Lou Soscia, Tribal Consultation Lead for Baseline WQS Rule

Environmental Protection Agency (EPA) Consultation

A PowerPoint on Federal Baseline Water Quality Standards (WQS) for Indian Reservations was presented on the proposed Federal promulgation.

They discussed the points including the following:

- The Potential benefits:
 - Establishing water quality goals for reservation waters.
 - Facilitating tribal participation in water quality management.
 - Protecting reservation waters from upstream discharges.
- Application of potential baseline standards:
 - For Indian reservation waters where EPA has not put other federal WQS into effect or do not have approved tribal or state WQS.
 - Not to apply to off-reservation allotments and tribes that elect to “opt-out”.
- Potential Baseline Standards
 - Designated uses: Protection of uses such as fish propagation, fish consumption, and recreation as well as cultural and traditional uses.
 - Water quality criteria
 - Antidegradation provisions
- Implementation—Standards could include implementation flexibilities and allow for tribal engagement opportunities

The second PowerPoint was presented.

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Protecting Tribal Reserved Rights in Water Quality (WQS): Potential Revisions to the Federal Regulations

The EPA representatives discussed points including the following:

- Overview:
 - Many tribes hold rights reserved through treaties, statutes or Executive Orders to aquatic or aquatic-dependent resources in waters where states have Clean Water Act jurisdiction to establish WQS.
 - EPA is considering revising the federal WQS regulations to explain how tribal reserved rights must be protected when states or EPA are establishing and revising WQS.
 - This is separate from and complimentary to EPA's concurrent action to establish baseline WQS for waters on Indian reservations that currently do not have EPA approved WQS in place.
- Scope of Tribal Reserved Rights vs. Baseline Rules
 - Federal Baseline WQS Rule: EPA is proposing to put into effect baseline WQS on Indian reservations that currently do not have Clean Water Act-effective WQS in place.
 - Tribal Reserved Rights Rule: EPA is proposing to put into effect revisions to its WQS regulations to require that state WQS protect resources reserved to tribes in waters under state jurisdiction (ceded territory) through treaties and equivalent legal agreements.
- Definition of Water Quality Standards
 - Core of water management programs.
 - Definition of the water quality goals for a waterbody.
 - The three components of WQS
 - Designation of Uses
 - Criteria for pollutant levels to protect the uses
 - Antidegradation policy to protect existing uses and high-quality waters
- Establishment of Water Quality Standards
 - Adoption into state or authorized tribal law
 - After adoption of new or revised WQS, the CWA requires the state or authorized tribe to submit them to EPA for approval or disapproval
 - EPA review state and authorized tribal submissions for compliance with the federal WQS regulations
 - Where the EPA Administrator determines new or revised WQS are necessary for a state or tribe, the CWA authorizes EPA to put into effect federal WQS on behalf of a state or tribe.
- Consideration of Tribal Reserved Rights in the WQS Process (History)

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- In 2016, after consultations and coordination with tribes regarding reserved rights to fish for subsistence in Maine and in the Pacific Northwest, EPA took action to harmonize WQS with tribal reserved rights in Maine and the Pacific Northwest.
- EPA required that human health criteria established for waters under state jurisdiction where tribes reserved the rights to fish for subsistence/sustenance be set at more stringent levels to protect tribal fish consumers in those waters.
- EPA took a different position on this issue in 2019, concluding that tribal reserved rights do not require any special consideration in the WQS context.
- EPA has concluded that its 2016 position was consistent with the intent of the CWA.
- Potential National Regulatory Framework
 - EPA is considering incorporating the following Concepts into the WQS regulations:
 - State and EPA must not impair tribal reserved rights when establishing, revising, and approving WQS.
 - As informed through consultation with applicable tribes, if tribal reserved rights exist in waters where the WQS will apply, and the level of water quality necessary to protect those rights is known, then upholding those rights requires protecting that water quality.
 - EPA is considering providing the following options for states to ensure protection of applicable reserved rights:
 - Establishment of designated uses that incorporate protection of tribal reserved resources.
 - Establishment of water quality criteria that protect tribal reserved rights in waters where those rights apply.
 - Assignment of Tier 3 antidegradation protection in waters where tribal reserved rights apply and where current water quality is sufficient to protect those rights.
- Potential Benefits of this Change to the Federal WQS Regulations
 - Provide sustainable and transparent regulatory framework to require protection of tribal reserved rights in future WQS actions.
 - Provide a framework for national discussion on how to harmonize the Clean Water Act with tribal reserved rights.
- Next Steps
 - Submit written comments to Jennifer Brundage by email.
 - EPA anticipates proposing this rule in spring 2022. EPA plans to provide additional opportunities to solicit comments from tribes once the rule is proposed.

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Ms. Crane asked what “opted out” meant. Danielle Anderson said that tribes can opt out of the baseline WQS anytime and for whatever reason they want by contacting the appropriate regional office and letting them know they wish to opt out. A list of these tribes will be maintained. Ms. Lone Eagle asked how many tribes have opted out. Ms. Anderson said that they are early in this process and once the rule is out in Spring 2022, that would be when the tribes should make the opted out known.

Mr. Simmons wanted to clarify that once the rule was implemented, the state’s water quality standards which are EPA approved will then apply as the baseline(s) for tribal reservation waters. And asked if the tribes will be required to have water quality program in place to meet the states’ WQS program. He asked how a smaller tribe without a WQS person be able to fund maintaining this WQS baseline. It was explained that tribal baselines WQS would be federal not related to state WQS programs. They envision the small tribes in a partnership with EPA as the implementing authority. Mr. Simmons further asked whether there would be funding going to tribes to achieve and or monitor compliance with the baseline WQS. Ms. Anderson said as yet, there has been no specific funding set aside. GAP or other existing water quality standard funds may potentially be used. This was also emphasized by Ms. Yin, but EPA would still implement the NPDS permitting. It remains a challenge. Mr. Simmons concluded that Natural Resources Department will need to work directly with EPA Region 9 for assistance.

The EPA thanked the SLPT Council for allowing them to give the consultation.

Ms. Lone Eagle thanked the EPA for their time and the Tribal Council and Mr. Simmons for setting up the meeting.

The EPA personnel left the meeting.

Next meeting:

Regular Council Meeting September 18, 2021, at the Administrative Office in Sparks, Nevada at 8:00 am in person and with ZOOM.

MOTION: Vice-Chairwoman Nedra Crane moved to adjourn. Secretary/Treasurer Eugene Mace, Sr. seconded the motion. Chairwoman Randi Lone Eagle called the vote: 2 FOR. 0 AGAINST, 0 ABSTAINED. Meeting adjourned 8:07 am

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I, **Eugene Mace, Sr.**, Secretary/Treasurer of the Summit Lake Paiute Tribal Council, hereby certify that the Minutes of the September 16, 2021, Special Council Meeting were approved with corrections by the Council during a duly held meeting October 16, 2021 at which there was a quorum present, and the Council voted: **4 - FOR; 0 - AGAINST; 0 - ABSTAINING**, Chairwoman Randi Lone Eagle did not vote because there was not a tie.

11/20/2021
Date

Eugene Mace
Eugene Mace, Sr.
Secretary/Treasurer
Summit Lake Tribal Council