

THE NEWEST *FEDERAL* IMPLEMENTATION INITIATIVE FOR INDIAN COUNTRY ENVIRONMENTAL MANAGEMENT

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*Modern Environmental & **Tribal** Eras Converge*

1970 Pres. Nixon calls for Policy of *Tribal Self-Determination*

1970 Pres. Nixon creates EPA

1970 Clean Air Act (*cooperative federalism* born)

1972 Clean Water Act (State Water Quality Standards)

1972 Indian Education Act (tribal advisory role)

1974 Safe Drinking Water Act

1975 Indian ***Self-Determination*** & Education Assistance Act

1976 Resource Conservation & Recovery Act

Tribal Environmental Self-Determination via EPA Cooperative Federalism

Amendments authorizing EPA to “**treat tribes as states**”
(TAS) for primacy of various regulatory cooperative
federalism programs

1986 Safe Drinking Water Act

1987 Clean Water Act (Tribal Water Quality Standards)

1990 Clean Air Act

[not RCRA]

Current Regulatory Programs on Indian Reservations

574 Federally Recognized Tribes

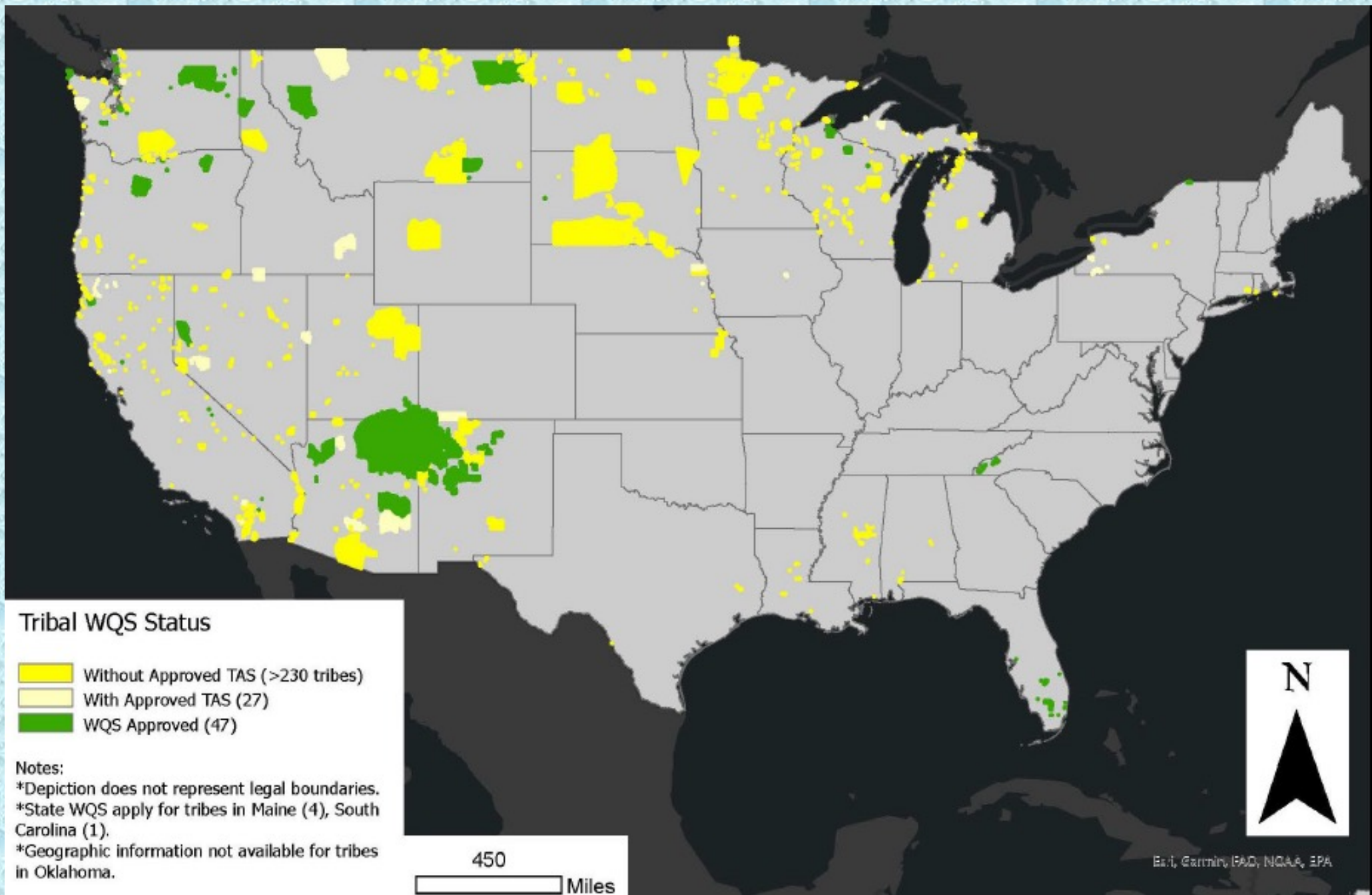
300 “Eligible” Tribes (w/Reservations)

74 Tribes Treated as States

46 Tribes w/approved **Water Quality Standards** (WQS)

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15% Indian Country (IC) Waters Protected



WQS: The Foundation of the Clean Water Act

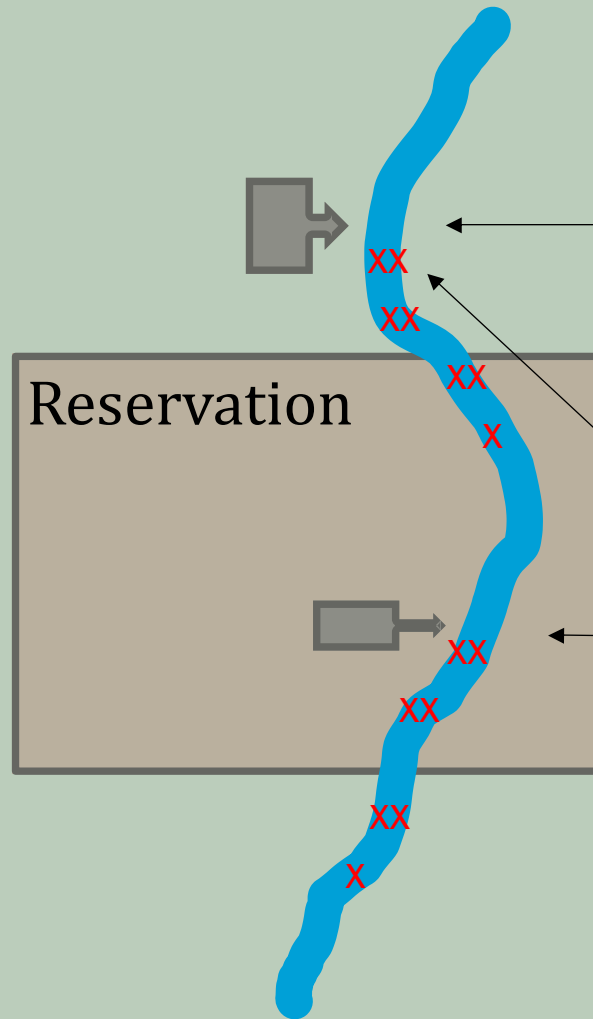
1. WQS set goals for quality of specific waterbodies
 - *Designate desired uses (aquatic ecosystems, recreation, etc.)*
 - *Set criteria protecting uses*
 - *Set antidegradation requirements*
2. WQS influence stringency of pollution permit conditions
3. WQS control local certification of federal permits
4. WQS determine waterbody “impairment”

State

Reservation

State WQS set
permit conditions

No WQS
--Permit
conditions?



Consequences of Gap in WQS → Uncertainty

Regulated firms: Which WQS applicable on Reservations?
Upstream of Reservations? Risk of citizen suits?

States: Which WQS are applicable upstream of Reservations?
Health risks to State residents in and downstream of
Reservations?

Tribes: Water quality trends? Health risks to tribal citizens?
Risks to cultural values?

EPA: Environmental injustice? Discharge federal trust
responsibility?

Federal “Baseline” WQS for Indian Reservations

EPA-developed national WQS program applicable to Reservations lacking TWQS

- *Designated uses: consumption of fish & aquatic resources, cultural uses of water & aquatic resources*
- *Numeric criteria: tied to Indigenous consumption rates*
- *Narrative criteria: “water must be free from pollutants that prevent growth of plants harvested for cultural & traditional purposes”*

Tribal Consultation Complete

Summer 2021: Listening sessions, tribal organizations & individual tribes' input

- *Overwhelming support; National Tribal Water Council urges full promulgation for tribal sovereignty & federal trust responsibility*
- *Still TAS option: TWQS replace Baseline WQS*

Summer 2022: expect Advance Notice of Proposed Rulemaking for public comment

Related Federal Implementation Proposal

Protecting tribal reserved rights via WQS *outside Reservations*

- *Tribal subsistence & cultural rights in aquatic resources reserved by treaty, statute, Executive Order*
- *Possible regulatory revision requiring protection of tribal reserved rights for approval of State WQS*
- *Disapproved SWQS can be replaced by FWQS*

Thank You! Questions?

