

Summary of the Proposed Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation and Clean Water Act Section 401 Certification Procedures



On March 28, 2018, the U.S. Environmental Protection Agency approved the Southern Ute Indian Tribe's application to be treated in a similar manner as a state for purposes of the Clean Water Act's water quality standards and section 401 water quality certification programs. At the direction and with the support of the Southern Ute Indian Tribal Council, the Environmental Programs Division ("Division") has developed water quality standards and Clean Water Act section 401 water quality certification procedures for tribal waters. What follows is a summary of the Division's proposed water quality standards, Clean Water Act (CWA) section 401 certification procedures, and general public notice and comment period announcement.

Proposed Water Quality Standards

Water quality standards form a legal basis for controlling pollutants entering tribal waters. Water quality standards describe the desired condition of a water body and the means by which that condition will be protected or achieved. Water bodies can be used for purposes such as recreation (e.g. swimming, fishing, boating), protection of aquatic life, agricultural, public water supply, industrial, navigation, and other purposes.

The Division has developed proposed water quality standards to protect public health and welfare, enhance the quality of water, and serve the purposes of the CWA. To ensure that the standards are approvable, the Division has included the elements required under the CWA and EPA's implementing regulation: (1) designated uses for tribal waters, (2) numeric and narrative water quality criteria designed to protect each designated use, (3) anti-degradation policies and procedures to ensure consideration of the maintenance of high quality waters and the protection of water quality supporting attainment of the designated uses, and (4) general policies to protect water quality. The proposed numeric and narrative water quality criteria incorporate all of the EPA's CWA section 304(a) criteria recommendations available when these water quality standards were developed. Any new CWA 304(a) criteria recommendations will be considered during future triennial reviews of these water quality standards.

The proposed water quality standards serve the primary functions of (1) establishing water quality goals for water bodies on the Southern Ute Indian Reservation over which the Tribe has authority to set water quality standards and (2) providing the legal basis for regulatory pollution controls. Establishing criteria and designated uses that protect aquatic and wildlife species, recreational use, potable water, and agricultural uses is also an important objective of these standards. More specifically, the standards should serve, and will be implemented to achieve, these purposes:

1) Assessment. Provide a point of reference for the assessment of surface water quality. The standards represent the water quality goals of the Tribe for surface waters and will be used in assessing potential impacts to that quality.

2) Regulatory Controls. Point source regulatory pollution controls for discharges impacting waters on the Reservation will need to ensure a level of water quality that will satisfy the water quality standards. Regulatory pollution controls established for point source discharges will also be consistent with applicable sections of the Clean Water Act. Tribal programs to control nonpoint sources, whether regulatory or voluntary, will be designed to meet the water quality standards.

3) Protection of Aquatic and Wildlife Species. The Tribe intends that the designated uses and criteria assigned to tribal waters will provide a level of water quality fully protective of aquatic and wildlife species dependent on it, including threatened or endangered species listed under the Endangered Species Act.

Clean Water Act Section 401 Certification Procedures

Under Clean Water Act (CWA) section 401, a federal agency cannot issue a permit or license for an activity that may cause a discharge to waters of the United States until the state or tribe where the discharge would originate has granted or waived CWA section 401 certification. With this authority, the Tribe can certify, deny, waive, or condition its certification for permits or licenses based in part on the proposed project's compliance with the Tribe's CWA-approved water quality standards. CWA section 401 certification authority, therefore, is an important tool for protecting water quality, although it is limited in scope and application to situations involving federally permitted or licensed activities that may cause a discharge to a water of the United States.

The Tribe's proposed 401 water quality certification procedures:

- 1) delegate authority to the Division to act on behalf of the Tribe in exercising the Tribe's CWA section 401 certification authority;
- 2) establish an application process through the Division that requires the applicant to reimburse the Tribe for the costs of application review;
- 3) establish a process for applications to be reviewed both internally within the tribal organization (through a proposed project notification process) and through a public review and comment process;
- 4) set forth the factors that will be considered in reviewing applications (e.g., compliance with water quality standards);
- 5) describe the decision-making process and the possible decisions (e.g., grant, grant with conditions, deny, or waive);
- 6) list the general requirements that will apply to all of the Tribe's CWA section 401 certifications; and
- 7) provide for judicial review in the Tribal Court of any CWA section 401 certification decisions by the Environmental Programs Division.

Notice and Request for General Public Comments

All documents related to the notice can be found at the Tribe's website at <https://www.southernute-nsn.gov/justice-and-regulatory/epd/public-comments/>. A live online hearing regarding the Tribe's proposed Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation and Clean Water Act Section 401 Water Quality Certification Procedures will be held on October 7, 2021 at 3:00 p.m. To attend the hearing, please register at <https://bit.ly/3wnzxAb> before the event. The recorded hearing can be found at the Tribe's website above after October 11, 2021.

Comments will be accepted until October 22, 2021. You may submit comments related to the water quality standards or 401 certification procedures through the following methods:

- E-mail: wqs@southernute-nsn.gov (Preferred Method)
- Mail: Water Quality Standards Committee, Environmental Programs Division, Southern Ute Indian Tribe, P.O. Box 737 #81, 71 Mike Frost Way, Ignacio, Colorado 81137.

All comments received will be reviewed and the Division will provide a response to all comments. Once completed, the proposed water quality standards and 401 certification procedures will be sent to EPA for review and approval.

If you have any questions, please call Alexandra Ratcliff at 970-563-2256 or Jeff Seebach at 970-563-2272.