



# YUROK TRIBE

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March 6, 2023

Michael S. Regan, Administrator  
U.S. Environmental Protection Agency  
Office of the Administrator, 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Submitted via Federal eRulemaking Portal: <https://www.regulations.gov/>

## **Re: Revisions to the Federal Water Quality Standards Regulations to Protect Tribal Reserved Rights, Docket ID No. EPA-HQ-OW-2021-0791**

Aiy-ye-kwee' Administrator Regan,

The Yurok Tribe (Tribe), a sovereign nation and federally recognized Indian Tribe, appreciates the opportunity to express its general support for, and provide substantive comments<sup>1</sup> on, the Environmental Protection Agency's (EPA) proposed revisions to the Clean Water Act (CWA) water quality standards (WQS) regulations at 40 C.F.R. § 131 (Proposed Regulations).<sup>2</sup> The Yurok Tribe commends EPA's efforts to require states to evaluate tribal reserved rights to aquatic and/or aquatic-dependent resources in an area or downstream of an area when developing new and revised WQS. Overall, the proposed regulations represent a crucial step toward ensuring reserved rights to aquatic and aquatic-dependent resources are protected for federally recognized Tribes and their members.

However, the Tribe suggests additional language to the Proposed Regulations to further support Tribal sovereignty, further increase protection of aquatic and non-aquatic resources to reduce exposure risk to Tribal members and further enhance physical and cultural wellbeing of Tribal members, and to further increase protection of Tribal reserved rights. To that end, the Tribe writes to express concerns with specific aspects of the Proposed Rule to ensure that the Yurok People can meaningfully exercise their fishing rights while ensuring their health and safety—and the health and safety of the resources themselves—are adequately protected. Some of these concerns include: (1) ensuring states submit data consistent with long term restoration efforts and traditional ecological knowledge (TEK) provided by tribes; (2) specifying compliance with federal statutes such as the Endangered Species Act (ESA); (3) ensuring long-term restoration projects are considered when determining the unsuppressed level of an aquatic or aquatic-dependent resource; and (4)

<sup>1</sup> The Yurok Tribe thanks JoAnn Kintz and Maher Mahmood from Democracy Forward and Nazune Menka, Megan Pynes, Tiana Wilson-Blindman, Lauren Havey, Laura Tepper, and Amaya Ramsey-Malone from the University of Berkeley Environmental Law Clinic for their assistance in drafting these comments.

<sup>2</sup> 40 C.F.R. §§ 131.3 (adding definitions for “tribal reserved rights” and “rights holders”), 131.5 (adding “tribal reserved rights” to factors EPA considers), 131.6 (requiring state documentation of consideration of “tribal reserved rights”), 131.9 (adding “tribal reserved rights” and substantive and procedural requirements for their addition to WQS) and 131.20 (adding evaluation of whether there are tribal reserved rights applicable to waters subject to the state's WQS and whether WQS need to be revised to protect those rights).

ensuring the acceptable risk of cancer rate under the proposed regulations sufficiently protects tribal subsistence communities.

## I. The Tribe is a Relevant Rights Holder

The Yurok Tribe is the largest Native nation within California with over 6,400 members. The Yurok People have always lived along the Pacific Coast and inland on the Klamath River. As stated in the Yurok Constitution:

The Ancestral Lands of the Yurok Tribe extend unbroken along the Pacific Ocean coast (including usual and customary offshore fishing areas) from Damnation Creek, its northern boundary, to the southern boundary of the Little River drainage basin, and unbroken along the Klamath River, including both sides and its bed, from its mouth upstream to and including the Bluff Creek drainage basin. Included within these lands are the drainage basin of Wilson Creek, the drainage basins of all streams entering the Klamath River from its mouth upstream to and including the Bluff Creek and Slate Creek drainage basins, including the village site at Big Bar (except for the drainage basin upstream from the junction of Pine Creek and Snow Camp Creek), and the Canyon Creek (also known as Tank Creek) drainage basin of the Trinity River, the drainage basins of streams entering the ocean or lagoons between the Klamath River and Little River (except for the portion of the Redwood Creek drainage basin beyond the McArthur Creek drainage basin, and except for the portion of the Little River drainage basin which lies six miles up from the ocean). Our Ancestral Lands include all submerged lands, and the beds, banks and waters of all the tributaries within the territory just described. Also included within the Ancestral Lands is a shared interest with other tribes in ceremonial high country sites and trails as known by the Tribe, as well as the Tribe's usual and customary hunting, fishing and gathering sites.<sup>3</sup>

The Yurok Tribe has both express and implied reserved rights through the executive order that established the Yurok Reservation,<sup>4</sup> the Hoopa-Yurok Settlement Act of 1988 (HYSA) and the *Winters* doctrine. As the Ninth Circuit explained in *Metlakatla*, “[t]he type of legal instrument that establishes a reservation [...] makes no difference to our inquiry into a tribe’s attendant resource rights.”<sup>5</sup>

The Yurok Reservation was established by executive order on November 16, 1855, pursuant to the authority granted by the Act of March 3, 1853<sup>6</sup> and the Act of March 3, 1855,<sup>7</sup> which authorized the President to establish reservations for “Indian purposes” in California.<sup>8</sup> The Reservation is comprised of the lower forty-five miles of the Klamath River, a mile on either side, from the Yurok village of Req-woi at the mouth of the Klamath River to upstream of the Yurok village of Weych-pues. Though the executive order is silent as to the Yurok’s right to water, under the reserved water rights doctrine established in *Winters v. United States*, 207 U.S. 564 (1908) (*Winters* doctrine) and its progeny, the Yurok Tribe has an implied right to the “amount of water necessary to fulfill the purpose

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<sup>3</sup> The Yurok Constitution, Article 1, Section 1.

<sup>4</sup> See *Mattz v. Arnett*, 412 U.S. 481, 484 (1973).

<sup>5</sup> *Metlakatla Indian Cmty. v. Dunleavy*, 58 F.4th 1034, 1046, 2023 WL 1421500 (9th Cir. 2023).

<sup>6</sup> 10 Stat. 226, 238.

<sup>7</sup> 10 Stat. 686, 699.

<sup>8</sup> See *Mattz*, 412 U.S. at 487.

of the reservation.”<sup>9</sup> The Yurok Reservation was established on the lower Klamath River so the Tribe could maintain its fishing and river-centric way of life, reserving to the Tribe fishing and water rights to support that lifestyle and conferring a legal duty on the federal government to protect those rights.<sup>10</sup> The Klamath River and its fishery are “not much less necessary to the existence of the [Yurok] than the atmosphere they breathe[.]”<sup>11</sup>

In addition to the rights asserted above, the Yurok Tribe has specified reserved rights as outlined by the HYSA.<sup>12</sup> In recognizing the two distinct reservations for the Yurok and Hoopa Valley Tribes, the HYSA declared that “[t]he unallotted trust land and assets” would be held in trust by the United States for the benefit of the two Tribes.<sup>13</sup> The legislation also established and confirmed “the property interests of the Yurok Tribe...including its interest in the fishery, enabling the Tribe to organize and assume governing authority.”<sup>14</sup> As Congress and the United States Supreme Court have recognized, access and relationship with the waters and fish within them are inseparable from the existence of and relationship between the Yurok Tribe and the land.<sup>15</sup>

The Yurok People, the Tribe’s inherent sovereignty, and the Yurok Constitution provide the Tribal government authority to create Yurok laws, manage Yurok lands and natural resources, and adjudicate violations of Yurok laws in Yurok Tribal Court. The Yurok Tribe’s jurisdiction extends throughout the Yurok Ancestral Territory and “to all of its members wherever located, to all persons throughout its territory, and within its territory, over all lands, waters, riverbeds, submerged lands, properties, air space, minerals, fish, forests, wildlife, and other resources, and any interest therein now or in the future.”<sup>16</sup> Via the adoption of the Yurok Constitution, the Yurok Tribe, in its governing authority, strives to:

- 1) Preserve forever the survival of our tribe and protect it from forces which may threaten its existence;
- 2) Uphold and protect our tribal sovereignty which has existed from time immemorial and which remains undiminished;
- 3) Reclaim the tribal land base within the Yurok Reservation and enlarge the Reservation boundaries to the maximum extent possible within the ancestral lands of our tribe and/or within any compensatory land area;
- 4) Preserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren on, forever;
- 5) Provide for the health, education, economy, and social wellbeing of our members and future members;
- 6) Restore, enhance, and manage the tribal fishery, tribal water rights, tribal forests, and all other natural resources; and

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<sup>9</sup> *Cappaert v. United States*, 426 U.S. 128, 141 (1976).

<sup>10</sup> *See Baley v. United States*, 942 F.3d 1312, 1335 (Fed. Cir. 2019); *Klamath Water Users Protective Ass’n v. Patterson*, 204 F.3d 1206, 1213 (9th Cir. 1999); *Parravano v. Babbitt*, 70 F.3d 539, 541 (9th Cir. 1995).

<sup>11</sup> *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)).

<sup>12</sup> 25 U.S.C. § 1300i available at PL 100–580 (S 2723), PL 100–580, October 31, 1988, 102 Stat 2924.

<sup>13</sup> *Id.* at § 1300i-1(b) & (c) (emphasis added).

<sup>14</sup> *Parravano v. Babbitt*, 70 F.3d 539, 546 (9th Cir. 1995) (citing S.R. 564, 100th Cong., 2d Sess., 2–9 (1988); H.R. 938, Pt. 1, 100th Cong., 2d Sess., 8–15).

<sup>15</sup> *See Mattz*, 412 U.S. at 487–88 (1973) (iterating that a specific, primary purpose for establishing the reservation was to secure to the Indians the access and right to fish without interference from others).

<sup>16</sup> Yurok Const. art. I, § 3.

7) Ensure peace, harmony, and protection of individual human rights among our members and among others who may come within the jurisdiction of our tribal government.<sup>17</sup>

Accordingly, the Tribe has a vested interest as a “rights holder” under the Proposed Regulations and submits the following substantive comments in support of its inherent Tribal sovereignty over aquatic and aquatic-dependent resources both on and off reservation, in support of the physical, cultural, economic, and social wellbeing of its members, and for the restoration and enhancement of Tribal natural resources, fisheries, waters, and forests.

### A. History of the Klamath River

Water quality is of great importance to the Yurok Tribe, since a substantial portion of its history, culture, identity, spirituality, and economy is derived from the Klamath River and its resources. The River is considered the lifeblood of the people.<sup>18</sup> Because of this intrinsic relationship between Yurok People and the River, one of the Tribe’s highest priorities is to protect and preserve the resources of the Klamath River in order to sustain the future of the Yurok People.

When the Klamath Reservation was first established in 1855,<sup>19</sup> the River had many fish species including salmon, steelhead, eulachon, lamprey, and green sturgeon.<sup>20</sup> Today, Klamath River fish populations are a small fraction of their historic amounts. Over the past century, drought conditions and the ecological impacts of the Klamath River dams and their artificial reservoirs (which blocked key inland routes the salmon rely on) have resulted in low flows, increased water temperatures, poor water quality, significant fish habitat degradation, and habitat loss. These effects have had a devastating impact on the fisheries and the Yurok People. Numerous other land and water management practices have led to a decline in the Tribe’s access to its fishery resources, including gold mining, timber harvest, road construction, cattle grazing, and water diversions.<sup>21</sup>

Low flows and warmer temperatures have caused repeated outbreaks of parasites among salmon leading to extreme mortality rates. In 2002, a catastrophic fish kill, known as the “Klamath Fish Kill,” left over 70,000 adult salmon dead along the banks of the Klamath River.<sup>22</sup> Less than twenty years later, another catastrophic fish kill occurred. In 2021, over 70 percent of the young,

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<sup>17</sup> Yurok Const. pmbl.

<sup>18</sup> Kathleen Sloan, *Yurok and the Klamath River: Yurok Historical Context and Data for Assessing Current Conditions and the Effects of the proposed Klamath Restoration Project on Yurok Tribal Trust Assets and Yurok Resources of Cultural and Religious Significance*, 3 (Feb. 2011), [https://media.fisheries.noaa.gov/dam-migration/yurok\\_klamath\\_doi\\_2011.pdf](https://media.fisheries.noaa.gov/dam-migration/yurok_klamath_doi_2011.pdf).

<sup>19</sup> *Mattz v. Arnett*, 412 U.S. 481, 484 (1973).

<sup>20</sup> Sloan, *supra* note 18, at 4.

<sup>21</sup> Laurel Gonzeli et al., *Klamath Dam Removal Science Coordination Workshop Summary Report* (Feb. 11, 2021), [https://www.yuroktribe.org/\\_files/ugd/23c897\\_a9b7fadb1e1e4b16b1cea02287f02d4c.pdf](https://www.yuroktribe.org/_files/ugd/23c897_a9b7fadb1e1e4b16b1cea02287f02d4c.pdf).

<sup>22</sup> The Yurok Tribe, *Federal Regulators Green Light Largest River Restoration Project in US History* (Nov. 17, 2022), <https://www.yuroktribe.org/post/federal-regulators-green-light-largest-river-restoration-project-in-us-history>; Michael Belchik et al., *The Klamath River Fish Kill of 2002; Analysis of Contributing Factors*, Yurok Tribal Fisheries Program (Feb. 2004),

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/PCFFA&IGFR/part2/pcfpa\\_155.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/PCFFA&IGFR/part2/pcfpa_155.pdf)

ocean-bound Chinook salmon, the only commercial salmon remaining in the Klamath River,<sup>23</sup> were killed by a parasitic infection.<sup>24</sup> While the parasite—*Ceratonova shasta*—is naturally occurring, conditions, such as drought spurred on by climate change, and man-made factors, such as the four hydroelectric dams on the mainstem of the Klamath, increase the prevalence of the disease exponentially.<sup>25</sup> More recently, the McKinney Fire in California destroyed more than 45,000 acres of forest impacting the Klamath River. Debris from the fire, in combination with an intense thunderstorm, led to landslides that thickened the River with mud for 155 miles, causing oxygen levels in the River to drop and killing tens of thousands fish.<sup>26</sup> In addition to fish kill, there was a prolonged drought between late 2011 to early 2017,<sup>27</sup> and again in 2021,<sup>28</sup> when inflows with the Klamath Basin were at historic low levels. These are but a few examples of the conditions that the Yurok Tribe and Yurok People have had to endure over the past twenty years.

Climate change continues to be a threat to the Yurok Tribe. According to the National Oceanic and Atmospheric Administration (“NOAA”), based on 30-year averages, the Klamath Basin is increasingly warmer and dryer. Climate change has resulted in: 1) loss of snowpack and higher water temperatures that threaten the salmon and other resources of the Klamath River; 2) increased demand for scarce water supplies; 3) greater precipitation extremes (drought to flood cycle); 4) sea level rise; 5) land and fire management; and 6) community health issues.<sup>29</sup>

Degraded conditions on the Klamath River and dramatic declines in fish population have wrought extraordinary economic, spiritual, and cultural hardships on Yurok members.

- *Economic:* From 2016–2021, the Yurok Tribe closed its commercial fishery, including its subsistence fishery in 2017, based on the record-low salmon returns.<sup>30</sup> In 2020, the Yurok Tribe’s Fall Chinook allocation was 6,906 adult fish, which is far below necessary to meet

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<sup>23</sup> Juliet Grable, *In the Klamath River Basin, the Drought Punishes Everyone*, Sierra (June 4, 2021), <https://www.sierraclub.org/sierra/klamath-river-basin-drought-punishes-everyone>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Scott Harding, *Klamath River Devastated by Wildfire-Related Fish Kill*, Hyropower Reform Coalition (Aug. 9, 2022), <https://hydroreform.org/2022/08/klamath-river-devastated-by-wildfire-related-fish-kill/>.

<sup>27</sup> See Grable *supra* note 23.

<sup>28</sup> Cong. Rsch. Serv., IN11689, *Drought in the Klamath River Basin 1* (2022), [https://crsreports.congress.gov/product/pdf/IN/IN11689/3#:~:text=Recent%20Drought%20and%20Federal%20Response,for%20irrigators%20\(Figure%202\)](https://crsreports.congress.gov/product/pdf/IN/IN11689/3#:~:text=Recent%20Drought%20and%20Federal%20Response,for%20irrigators%20(Figure%202)).

<sup>29</sup> Testimony of the Yurok Tribe before the House of Representatives Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies Regarding the Impact of Climate Change to the Yurok Tribe (Mar. 6, 2019), <https://docs.house.gov/meetings/AP/AP06/20190306/109006/HHRG-116-AP06-Wstate-JamesJ-20190306.pdf>; *Yurok Tribe: Climate Change Adaptation Plan for Water and Aquatic Resources*, Northern Arizona University: Institute for Tribal Environmental Professionals, [https://www7.nau.edu/itep/main/tcc/Tribes/pn\\_yurok#:~:text=Traditional%20Aquatic%20Species%3A%20Climate%20effects,access%20%E2%80%93%20for%20Yurok%20Tribal%20Members](https://www7.nau.edu/itep/main/tcc/Tribes/pn_yurok#:~:text=Traditional%20Aquatic%20Species%3A%20Climate%20effects,access%20%E2%80%93%20for%20Yurok%20Tribal%20Members).

<sup>30</sup> The Yurok Tribe, *Catastrophic Juvenile Fish Kill Unfolds in Real Time on the Klamath River: Massive Disease Outbreak Puts Klamath Salmon on Path to Extinction* (May 13, 2021), <https://www.yuroktribe.org/post/catastrophic-juvenile-fish-kill-unfolds-in-real-time-on-the-klamath-river>

their subsistence and ceremonial needs, let alone their commercial needs.<sup>31</sup> Many members faced economic hardship as they rely on salmon for their livelihood, either through selling fish or sport-fishing tourism.<sup>32</sup> As one member notes, a rich salmon harvest “feeds the family” and “buy[s] our kids school clothes.”<sup>33</sup> Tribal businesses also lost annual income from lack of fish supply.<sup>34</sup> Economic hardships are magnified even further in a community where the average annual income of tribal members on the Yurok Reservation is \$11,000 annually<sup>35</sup> which is below the poverty line.<sup>36</sup>

- *Spiritual and Cultural:* Traditional Yurok ceremonies rely on the quality of water so that Tribal members can properly perform their cultural and spiritual traditions. For example, ceremonies such as the Brush Dance, Jump Dance, White Deerskin Dance, and Boat Dance, require close proximity to the Klamath River.<sup>37</sup> Part of the ceremonial practice includes bathing in and drinking the River water, which is directly connected to water quality. As one member of the Yurok Tribe recalls, because many of the ceremonies revolve around salmon, it helps her connect to her ancestral heritage: “My people have lived on the Klamath for thousands of years, and I know that the salmon today are the descendants of those my ancestors managed. These salmon are a direct tie to my ancestors—the physical representation of their love for me.”<sup>38</sup> A threat to the water quality is a direct threat to these deep-rooted spiritual and cultural practices.

Despite the difficulty that the Yurok Tribe has faced in fighting to protect the Klamath River and the salmon, and while there is still significant work to be done, the Tribe is optimistic that recent developments will assist in better outcomes in the near and long term. On November 17, 2022, the Federal Energy Regulatory Commission (FERC) issued an order surrendering licenses to the Lower Klamath Project and approving the removal of four dams from the Klamath Basin.<sup>39</sup> This is the largest restoration effort in history, made possible by the joint efforts of the Karuk Tribe, Yurok Tribe, California, Oregon, conservation organizations, commercial fishing organizations, and dam

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<sup>31</sup> Letter from Chairman Joseph L. James to Gina Raimonda, Sec’y of Commerce, Re: Commercial Fishery Disaster Declaration for the 2020 Yurok Klamath River Commercial Fishery (Apr. 15, 2021), [https://media.fisheries.noaa.gov/2021-09/21-073899\\_Yurok%20incoming.pdf](https://media.fisheries.noaa.gov/2021-09/21-073899_Yurok%20incoming.pdf)

<sup>32</sup> Brook Thompson, The Familial Bond Between the Klamath River and the Yurok People: How a Tribal Community’s Health is Intimately Connected to the Health of the River, High Country News (Aug. 14, 2021), <https://www.hcn.org/issues/53.9/indigenous-affairs-klamath-basin-the-familial-bond-between-the-klamath-river-and-the-yurok-people>

<sup>33</sup> Lise Morehouse, *‘It Takes Our Purpose’: With No Salmon, Yurok Tribe Struggles With Identity*, NPR (Nov. 29, 2017), <https://www.npr.org/sections/thesalt/2017/11/29/561581193/it-takes-our-purpose-with-no-salmon-yurok-tribe-struggles-with-identity>

<sup>34</sup> See Sloan *supra* note 18 at 43.

<sup>35</sup> Yurok Tribe, Written Testimony Regarding H.R. 5548, Fishery Failures: Urgently Needed Disaster Declarations Act (Jan. 14, 2020), <https://www.congress.gov/116/meeting/house/110359/witnesses/HHRG-116-II13-Wstate-MyersF-20200114.pdf>

<sup>36</sup> *Id.*

<sup>37</sup> See Sloan *supra* note 18 at 43.

<sup>38</sup> See Thompson *supra* note 32.

<sup>39</sup> Federal Energy Regulatory Commission, Order Modifying and Approving Surrender of License and Removal of Project Facilities (Nov. 17, 2022), [https://www.opb.org/pdf/Klamath%20Project%20Order\\_1668750641288.pdf](https://www.opb.org/pdf/Klamath%20Project%20Order_1668750641288.pdf).

owner PacifiCorp. Restoration efforts are slated to begin later this year, opening up hundreds of miles of historic salmon habitat and improving water quality, paving the way for the Klamath River to recover from the inhospitable conditions it's faced and for the salmon to come home.<sup>40</sup>

In addition, to address impacts of climate change President Biden signed the Inflation Reduction Act (IRA), which provides funding specifically for tribal communities to address threats posed by climate change.<sup>41</sup> And on December 8, 2022, Secretary Haaland of the Department of the Interior announced that tribal water projects in the Klamath River Basin will receive \$5.8 million “to restore aquatic ecosystems, improve the resilience of habitats, and mitigate the effects of the ongoing drought crisis.”<sup>42</sup> This funding includes a Juvenile Salmonid Survival and Migration Rate Study conducted jointly by the Hoopa Valley Tribe, Karuk Tribe and Yurok Tribe, as well as discrete funding to the Yurok Tribe to conduct habitat restoration in the Oregon Gulch Project, Mainstem Trinity River.<sup>43</sup> The Yurok Tribe applauds these efforts.

And in line with these efforts, EPA’s Proposed Rule requiring consideration of tribal reserved rights when establishing WQS “is a critical component of reducing the impact of climate change on tribes.”<sup>44</sup> As additional efforts are made to address climate-related challenges facing tribal communities, EPA needs to continue to consider that many tribes are more vulnerable to the impacts of climate change based on their interdependence and connectedness to the environment for their livelihood and existence. Tribes have limited flexibility when it comes to accessing new gathering places and hunting grounds.<sup>45</sup> And the Yurok Tribe should not bear the disproportionate burden of the ecological impacts that have occurred outside its control. It is thus imperative to address these rapid changes through a close partnership between tribal, federal, and state interests to develop creative solutions to address the complexities of this global issue.

## **B. The EPA has a Trust Responsibility to the Yurok Tribe and its Federally Reserved Fishing and Water Rights**

The Yurok Reservation was established on the lower Klamath River so the Tribe could maintain its fishing and river-centric way of life, reserving to the Tribe fishing and water rights to support that lifestyle and conferring a legal duty on the federal government to protect those rights. See *Baley v. United States*, 942 F.3d 1312, 1335 (Fed. Cir. 2019); *Klamath Water Users Protective Ass’n v. Patterson*, 204 F.3d 1206, 1213 (9th Cir. 1999) (the Bureau and United States act “as a trustee for the

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<sup>40</sup> The Yurok Tribe, Federal Regulators Green Light Largest River Restoration Project in US History (Nov. 18, 2022), <https://www.yuroktribe.org/post/federal-regulators-green-light-largest-river-restoration-project-in-us-history>.

<sup>41</sup> Domestic Policy Council, The White House Tribal Nations Summit Progress Report (2022), [https://www.whitehouse.gov/wp-content/uploads/2022/11/2022\\_11\\_23-WH-Tribal-Nations-Summit-Progress-Report-Final.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/11/2022_11_23-WH-Tribal-Nations-Summit-Progress-Report-Final.pdf)

<sup>42</sup> Press Release, Dep’t of the Interior, During Visit to Klamath River, Secretary Haaland Announces Four Tribal Water Projects (Dec. 8, 2022), <https://www.doi.gov/pressreleases/during-visit-klamath-river-secretary-haaland-announces-four-tribal-water-projects>.

<sup>43</sup> *Id.*

<sup>44</sup> Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights, 87 Fed. Reg. 74,361 (proposed Dec. 5, 2022) (to be codified at 40 C.F.R. Part 131), <https://www.regulations.gov/document/EPA-HQ-OW-2021-0791-0001>.

<sup>45</sup> T.M. Bull Bennett et al., *Ch. 12: Indigenous Peoples, Lands, and Resources. Climate Change Impacts in the United States: The Third National Climate Assessment*, J. M. Melillo, Terese (T.C.) Richmond, and G. W. Yohe, Eds., U.S. Global Change Research Program, 297- 317, <https://nca2014.globalchange.gov/report/sectors/indigenous-peoples#intro->



Tribes, has a responsibility to protect their rights and resources.”); *Parravano v. Babbitt*, 70 F.3d 539, 541 (9th Cir.1995). The Klamath River and its fishery are “not much less necessary to the existence of the [Yurok] than the atmosphere they breathe[.]” *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)). As elaborated above, through the creation of the Yurok Reservation, the Yurok Tribe has federally reserved fishing and water rights that must be supported and protected by the United States under its trust responsibility toward the Yurok Tribe.

The EPA, as a federal agency, shares the United States’ trust responsibility to the Yurok Tribe to ensure its actions and policies protect the Yurok Tribe’s rights and resources. EPA’s proposed rule is in furtherance of the trust responsibility and is necessary to protect tribes’ federal reserved fishing and water rights, as well as their sovereign interests in protecting these rights. As the EPA correctly observes in its proposed rule, tribes’ reserved rights to use and access the natural and cultural resources are a key part of tribal life and “are of deep cultural, economic, and subsistence importance to the tribes.”<sup>46</sup> The Yurok Tribe therefore supports EPA’s efforts to require states to evaluate tribal reserved rights to aquatic and aquatic-dependent resources in an area or downstream of an area when states are developing or revising WQS.

Specifically, by providing a multi-layered effort to include tribes’ input and expertise in determining when and how state WQS may impact their tribal reserved rights, EPA ensures that tribes will have a meaningful and substantial role throughout the process. As EPA explains, determining whether waters subject to state WQS impact a tribal reserved right involves an in-depth inquiry into several aspects of the right, including the type of right, where it is exercised, and in what manner.<sup>47</sup> This necessarily requires significant coordination with the impacted tribe. The Yurok Tribe supports EPA’s regulatory provisions that require coordination and consultation with impacted tribes early and often in this process by requiring that (1) when states assess the scope of tribal reserved rights, their assessment must be informed by the right holders themselves and that (2) EPA consult with affected rights holders when determining whether states WQS submissions adequately protect tribal reserved rights.

The Tribe makes the following suggestions to further strengthen the proposed regulatory framework and protections for tribes:

## **II. Proposed Regulations at 40 C.F.R. § 131.6 (g): Minimum Requirements for Water Quality Standards Submission**

40 C.F.R. § 131.6 (g) should incorporate language to include future uses in alignment with the three-year review process required for states under 40 C.F.R. § 131.20 and specify the inclusion of Traditional Ecological Knowledge as a type of data that may be used to develop water quality standards. The Tribe suggests **adding** the following language (bold and underlined) to 40 C.F.R. § 131.6 (g):

Where applicable, information which will aid the agency in evaluating whether the submission protects tribal reserved rights consistent with § 131.9, including:

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<sup>46</sup> Proposed Water Quality Standards, *supra* note 44.

<sup>47</sup> 87 Fed. Reg. at 74,367.



- (1) Information about the scope, nature, **and past, and current, and three-year forecasted** use of the tribal reserved rights, as informed by the right holders; and
- (2) Data and methods used to develop the water quality standards, **including Traditional Ecological Knowledge, if provided by tribes with free and informed consent.**

#### **A. Rationale for Including Projected Future Use in WQS Submissions**

EPA proposes requiring that the unsuppressed level of a resource should “account for situations where restoration efforts are planned or underway (e.g., efforts to improve habitat or reduce contamination), such that it would be reasonable to expect the opportunities for use of the resource to increase in the future.”<sup>48</sup> Although this language does not address the requisite time frame for a restoration effort to be considered in determining unsuppressed use levels, the Tribe interprets this provision to include longer-term restoration projects such as the Klamath dam removals. As noted above, in November 2022, the FERC approved the surrender of the Lower Klamath Project license and the removal of the four project developments on the river, which will be the largest dam removal and river restoration project in the world when it occurs.<sup>49</sup> Removal of the four dams is planned to take place between summer 2023 and the end of 2024.<sup>50</sup> The Tribe believes the Proposed Rule should account for the removal of the dams as a “restoration effort” in determining “unsuppressed use” of the Klamath, as it would be “reasonable to expect the opportunities for use” of the river to increase in the future after the dams are removed. To ensure the final rule is interpreted consistent with this belief, the Tribe requests that EPA clarify the requisite timeframe for a restoration project to trigger the requirement that the unsuppressed use of the water body be considered in setting water quality standards.

It follows that if setting the unsuppressed level of a resource incorporates planned restoration efforts, states should submit information regarding forecasted use of tribal reserved rights as informed by tribes to ensure water quality standards accurately represent the unsuppressed level.

#### **B. Rationale for Including Traditional Ecological Knowledge in WQS Submissions**

40 C.F.R. § 131.6(g)(2) provides that states must submit data and methods used to develop water quality standards for EPA to ensure tribal reserved rights have been adequately taken into account in the development of the water quality standards. The Tribe recommends specifically including that Traditional Ecological Knowledge (TEK)<sup>51</sup> if provided with free and informed

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<sup>48</sup> Water Quality Standards, *supra* note 47.

<sup>49</sup> Associated Press, *The largest dam demolition in history is approved for a Western river*, NPR (Nov. 17, 2022), <https://perma.cc/FUC7-FSKK>.

<sup>50</sup> Malik Patterson, *Klamath River dams to be removed by the end of 2024*, KTVL (Nov. 19, 2022), <https://perma.cc/Q5XP-7PXH>.

<sup>51</sup> While there are many forms and definitions of Traditional Ecological Knowledge (“TEK”) and the term should be individually defined by impacted rights holders/tribes themselves based on their unique and specific beliefs and practices, the White House issued a memorandum in November 2021 recognizing Indigenous TEK as form of knowledge that contributes to scientific, technical, social, and economic advances. White House Office of Science and Technology Policy (OSTP) and White House Council on Environmental Quality (CEQ), Memorandum for the Heads of Federal Departments and Agencies: Indigenous Traditional Ecological Knowledge and Federal Decision Making (Nov. 15, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/11/111521-OSTP-CEQ-ITEK-Memo.pdf>. In follow up guidance issued by the White House OSTP and CEQ, it recognized Indigenous Knowledge as broadly speaking, “a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes

consent,<sup>52</sup> should be a type of data that states provide. EPA's Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples provides that the principle of encouraging the integration of TEK into the Agency's environmental science, policy, and decision-making processes applies to EPA's direct implementation of its programs. Certainly, this principle applies to EPA's review of state water quality standards and assessment of whether they meet EPA's minimum requirements. However, if states are not required, or at least encouraged to include TEK in the data submitted, then there is a high-risk states will opt not to include TEK. And if states do not include TEK in their submissions, EPA cannot integrate TEK into its review and assessment. Including the suggested language will ensure EPA is best positioned to integrate TEK into its review of state water quality standards and thereby better fulfill its commitment to providing tribes fair treatment and meaningful involvement in decisions affecting tribal members' health and environment.

### III. Proposed Regulations at 40 C.F.R. § 131.9: Establishment of Water Quality Standards Factors

40 C.F.R. § 131.9 should incorporate principles of shared decision-making and intent on behalf of the EPA to seek funding to ensure substantial participation from right holders during tribal consultation. Federally recognized tribes, like the Yurok Tribe, have a nation-to-nation relationship with the federal government as sovereign governments that pre-date and are recognized under the United States Constitution. To strengthen those relationships, the federal government has committed to engaging in "regular and meaningful consultation and collaboration with tribal officials."<sup>53</sup> Although the Proposed Regulations will require EPA to initiate tribal consultation with the right holders when reviewing WQS submissions to determine whether state WQS protect applicable reserved rights, it does not invite those tribal reserved right holders to contribute to or collaborate on WQS to protect those rights.<sup>54</sup> The Proposed Regulations should enhance tribal sovereignty while also minimizing adverse impacts on tribal self-governance by allowing tribes, *should they elect*, as part of the tribal consultation process to submit plans and draft WQS for consideration to protect resources to which they possess tribal reserved rights.

The Tribe suggests **adding** the following language to 40 C.F.R. § 131.9 (b): "In reviewing State water quality standards submissions under this section, EPA will initiate tribal consultation with the right holders, consistent with applicable EPA tribal consultation policies" **The EPA will consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable, including by providing affected tribes adequate opportunities to participate in data collection, consensus seeking, and associated processes. The EPA will seek to provide funding for any such tribal consultation.**

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and Indigenous Peoples through interaction and experience with the environment." White House OSTP and White House CEQ, Memorandum for the Heads of Federal Departments and Agencies: Guidance for Federal Departments and Agencies on Indigenous Knowledge (Nov. 30, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf>. The guidance is "intended to promote and enable a Government-wide effort to improve the recognition and inclusion of Indigenous Knowledge." *Id.* at 3.

<sup>52</sup> Confidentiality requirements for information regarding tribal cultural resources tribal consultation should also be developed or covered prior to the release of data to the EPA.

<sup>53</sup> Exec. Order No. 13175, Consultation and Coordination With Indian Tribal Governments, 65 Fed. Reg. 67,249 (Nov. 6, 2000). *See also* Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7491 (Jan. 29, 2021) (reaffirming the policies announced in Exec. Order 13175).

<sup>54</sup> Proposed Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights, Environmental Protection Agency (Nov. 2022), <https://perma.cc/WA3P-H8B6>.

This added language is, in part, borrowed from Joint Secretarial Order 3206 on American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (“Order”).<sup>55</sup> The Order attempts to clarify the federal-tribal relationship under the ESA. Both tribal and federal government officials supported the Order’s impact on the shared responsibility of developing plans for the management of endangered species in Indian country, enhancing tribal sovereignty, and improving the government-to-government relationship.<sup>56</sup> To that end, the Order directed agencies to “consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable . . . includ[ing by] providing affected tribes adequate opportunities to participate in data collection, consensus seeking, and associated processes.”<sup>57</sup> Tribal government officials noted that effective communication with government agencies was crucial to the effective development of any such plans, and praised the requirement for increased communications of federal agencies on programs that may impact tribal resources after the Order.<sup>58</sup>

Including similar language within the definition of tribal consultation in EPA’s Proposed Rule would enhance tribal partnerships in determining any requisite WQS protect tribal reserved rights. The Proposed Regulations would require states to include “documentation of the state’s efforts to obtain information about the existence of any applicable tribal reserved rights, their current and past use, scope, and nature, as well as the level of water quality that protects those rights.”<sup>59</sup> Inviting tribes to participate in data collection, consensus seeking, and associated processes regarding the extent of their reserved rights would thus help to ensure meaningful collaboration and involvement.

One final area of consensus among those interviewed regarding Joint Secretarial Order 3206 was that funding was inadequate for the effective administration of the programs at issue.<sup>60</sup> Funding for staffing, equipment, and land management was scarce and limited many tribes’ ability to participate in the process of formulating resource plans.<sup>61</sup> For example, lack of funding led the Rosebud Sioux Tribe in South Dakota to discontinue environmental programs.<sup>62</sup> Here, EPA’s Proposed Rule does not specify whether funding will be available to enhance tribal participation in consultation and WQS formation. Meaningful tribal participation in this process may require additional funding for tribes whose reserved rights are implicated by the proposed regulations.

#### **A. Unsuppressed Level Should Specifically Include Consideration of Other Federal Statutes such as the Endangered Species Act**

EPA’s proposed 40 C.F.R. § 131.9(a)(1) would require that State WQS protect unsuppressed use of any resources to which tribal reserved rights apply.<sup>63</sup> In determining the “unsuppressed level”

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<sup>55</sup> Joint Secretarial Order No. 3206, American Indian Tribal Rights, Federal-Tribe Trust Responsibilities, and the Endangered Species Act (June 5, 1997), <https://www.doi.gov/sites/doi.gov/files/elips/documents/3206-american-indian-tribal-rights-federal-tribal-trust-responsibilities-and-the-endangered-species-act.pdf>.

<sup>56</sup> Drew Kraniak, *Conserving Endangered Species in Indian Country: The Success and Struggles of Joint Secretarial Order 3206 Nineteen Years On*, 26 Colo. Nat. Resources, Energy & Env’tl. L. Rev. 322 (Feb. 2015), <https://perma.cc/YE7H-F7CJ>.

<sup>57</sup> Joint Secretarial Order No. 3206, *supra* note 55.

<sup>58</sup> Kraniak, *supra* note 56.

<sup>59</sup> Proposed Water Quality Standards, *supra* note 54.

<sup>60</sup> Kraniak, *supra* note 56.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> 87 Fed. Reg. 74,361.

of a water body, the Rule requires balancing of “heritage use of a resource with what is currently reasonably achievable for a particular waterbody.”<sup>64</sup> EPA has requested comment on “whether additional language should be included in the final rule specifying the considerations for determining unsuppressed WQS.”<sup>65</sup> In determining what is reasonable to achieve for the waterbody, EPA should specify that compliance with other federal statutes, including the Endangered Species Act (ESA), is an important component of “reasonableness.” This may come into play when the ESA requires designation of part of a water body as critical habitat for an endangered or threatened species, thus restricting activities on the water body.<sup>66</sup> Any cooperative agreements between Federal and State agencies that establish a program for the conservation of endangered and threatened species should also provide the state with valuable information regarding what is “reasonable to achieve” for a body of water.<sup>67</sup>

For example, the District Court for the Northern District of California ruled on February 6<sup>th</sup> of this year that an order by the Oregon Water Resources Department blocking water releases from the Upper Klamath Lake impermissibly threatened downstream Coho Salmon and Southern Resident killer whale populations under the ESA.<sup>68</sup> In determining unsuppressed use of any aquatic or aquatic-dependent resources on the Klamath River to which tribal reserved rights apply, what is “reasonable to achieve” must include the planned water releases as well as any other future obligations imposed by the ESA to protect endangered or threatened species in the river. If the ESA compels a certain action to be taken on a water body, this action, and its attendant effects on water quality, should be considered *per se* reasonable to achieve for that body of water.

## **B. Additional Guidance Should be Provided on Evaluating Evidence in Determining Unsuppressed Levels of the Exercise of Tribal Reserved Rights**

EPA lists several types of evidence when considering water quality necessary to protect aquatic or aquatic-dependent resources or users of the resources, including consideration of “fish consumption rate surveys, studies or accounts of heritage fish consumption rates, peer-reviewed articles or reports on the types and levels of pollutants that can adversely affect the resource in question, and monitoring data reflecting historic and/or current water quality.”<sup>69</sup> The Yurok Tribe generally supports using available data and information as outlined in the proposed regulations to consider the water quality necessary to support meaningful exercise of tribal reserved rights, subject to the amendments outlined above. However, another important consideration to emphasize is the need to consider indigenous knowledge and tribal input at every stage in the process; not only should states consult with tribes when compiling data on the nature and scope of the impacted rights, but also when that data is being assessed, evaluated, and used to set protective WQS. Thus, in addition to amending proposed provision 40 C.F.R. § 131.6 (g) to require consideration of TEK when made available by tribes as outlined above, EPA should consider releasing robust guidance on what data sources are relevant to this inquiry and how these sources of information should be balanced and weighed to determine the appropriate action to take.

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<sup>64</sup> 87 Fed. Reg. at 74,369.

<sup>65</sup> *Id.*

<sup>66</sup> See 16 U.S.C. § 1532.

<sup>67</sup> See *id.* at § 1535.

<sup>68</sup> *Yurok Tribe et al. v. U.S. Bureau of Reclamation et al.*, No. 19-cv-04405-WHO, 2023 WL 1785278 (N.D. Cal. Feb 6, 2023); See also *Baley*, 942 F.3d at 1335.

<sup>69</sup> 87 Fed. Reg. 74,368.

In declining to set a national applicable threshold for unsuppressed levels or use of a resource, EPA cites to the National Environmental Justice Advisory Committee (NEJAC)'s 2002 report, which notes that suppression effects may occur in two circumstances: (1) when a waterbody and the resources it supports become contaminated such that individuals refrain from consuming fish caught from the body of water, and (2) when fish populations are depleted from their historic quantities and species varieties such that individuals cannot catch or consume as many fish as “they had or would.”<sup>70</sup> However, the NEJAC report also notes the “downward spiral” that may ensue if environmental standards permit further and further contamination or depletion of fish.<sup>71</sup> For example, if WQS are set based “on a picture of exposure” that assumes current fish consumption rates of an impacted community will remain stable, when that rate includes suppression resulting from water quality or resource availability, agencies will “permit relatively greater quantities of pollutants to remain in or be discharged to the waters and sediments.”<sup>72</sup> Thus, NEJAC recommends that EPA identify appropriate “baselines” reflecting higher levels of consumption to be employed when setting and approving WQS, taking into account historic, cultural, and aspirational interests of the impacted communities.<sup>73</sup>

Given these concerns, the Yurok Tribe supports proposed 40 C.F.R. 131.9(a)(1), which requires that state and federal WQS protect tribal reserved rights at an unsuppressed level. As EPA aptly raises,<sup>74</sup> for many, including the Yurok Tribe, in determining unsuppressed levels, what is reasonably achievable will not be the current fish consumption rate. Because “the snapshot of contemporary consumption practices provided by recent surveys arguably represents a nadir—a low point from which tribes are working to recover as environments are restored and traditional practices reinvigorated.”<sup>75</sup> As such the Tribe emphasizes the point that EPA raises—that it is imperative that when states and EPA are determining an unsuppressed level, that they not only consider the legally protected nature of the tribal reserved right, but also past and future uses of the rights, including restoration efforts that are underway such as habitat restoration and mitigation efforts.

While the Tribe supports the inclusion of historic data, of equal or even greater importance in some aquatic ecosystems are models of future projected water quality and ecosystem functioning following restoration efforts. For example, with the impending removal of dams on the Klamath River, historic habitat areas for salmon and other aquatic species for which historic data may not exist will become available for repopulation. For such areas, the only potentially relevant data may be from models projecting how dam removal will affect their hydrology and ecology. Thus, it is imperative that states and EPA utilize such data in determining whether water quality standards set

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<sup>70</sup> Nat'l Env't Just. Advisory Council, *Fish Consumption and Environmental Justice*, p.44, 46 (2002), [https://www.epa.gov/sites/default/files/2015-02/documents/fish-consump-report\\_1102.pdf](https://www.epa.gov/sites/default/files/2015-02/documents/fish-consump-report_1102.pdf).

<sup>71</sup> *Id.* at 44.

<sup>72</sup> *Id.* at 46; *see also id.* at 43-49.

<sup>73</sup> *Id.* at 49.

<sup>74</sup> *Id.*

<sup>75</sup> Catherine A. O'Neill, *Fishable Waters*, 1 Am. Indian L.J. 181, 217 (2013), <https://digitalcommons.law.seattleu.edu/faculty/306>; *see also id.* at 216 (“Indeed, the forces of suppression, often perpetrated or permitted by federal and state governments, have included inundation of fishing places; depletion and contamination of the fishery resource; and years of prosecution, intimidation, and gear confiscation.”),

for these areas will be sufficient. This is vastly preferable to utilizing only historic data, or worse, where no historic data exists, no data to determine the necessary water quality standards in these areas. Not using model outputs risks setting inadequate water quality standards that fail to protect reserved rights once restoration efforts are underway and such habitat areas are modified. Further, to the extent that certain data is unavailable, it is all the more important for EPA to provide funding and technical assistance to tribes to commission studies, modeling, and data analysis relevant to determining unsuppressed levels. It is imperative that both state and federal agencies establish a framework enabling direct payment to tribes for services rendered. Presently, there has been resistance towards compensating the Yurok Tribe directly for their contributions in providing services that benefit the general public. It is crucial that a mechanism be established to facilitate this process.

When unsuppressed levels are determined, Yurok encourages EPA to ensure more protective WQS are established, taking into account historic, cultural, and aspirational interests of the tribes to avoid further depletion and contamination of tribal resources. Yurok hopes close consultation between tribes, EPA, and states as this regulatory framework is implemented and as states begin the process of reviewing their WQS for compliance with the proposed regulation will help achieve this outcome. Consultation is key to ensure the rights of tribal communities are protected.

### **C. In Furtherance of Protecting Tribal Subsistence Fishing, EPA Should Set a Mandatory Risk of Cancer Rate of at least $10^{-6}$**

Proposed 40 CFR 131.9(a)(2), requires that the “health of the right holders to at least the same risk level as provided to the general population of the State.”<sup>76</sup> EPA explains that it anticipates this provision would mean that the appropriate cancer risk level for the general population, of “at least  $10^{-5}$  along with a fish consumption rate that reflects the reserved right,” would apply when determining human health criteria.<sup>77</sup> The Yurok Tribe respectfully suggests that such a proposed acceptable risk level is not sufficiently stringent. The Tribe agrees with EPA’s determination that tribes exercising their rights should not be considered “highly exposed” subgroups based on their increased rates of fish consumption, which would mean a higher acceptable risk of cancer level of  $10^{-4}$  under EPA’s 2000 methodology.<sup>78</sup> However, as proposed by EPA, states are left with the option of setting an acceptable risk of cancer level of either  $10^{-5}$  (or one in 100,000) or  $10^{-6}$  (one in one million) for tribes exercising their rights. EPA should instead mandate a higher protection for tribal populations by requiring that states use at least a  $10^{-6}$  risk level when setting WQS in bodies of water that impact tribal reserved rights, either directly or because the tribal reserved rights are located downstream.

EPA calculates ambient water quality criteria at a  $10^{-6}$  (one in one million) cancer risk level for the general population, which the agency views as “appropriate for the general population.”<sup>79</sup> And while EPA may accept higher levels of risk ( $10^{-5}$ ), EPA should impose standards that would

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<sup>76</sup> 87 Fed. Reg. at 74,378.

<sup>77</sup> *Id.* at 74,369.

<sup>78</sup> EPA, Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health 2-6 (2000) <https://www.epa.gov/sites/default/files/2018-10/documents/methodology-wqc-protection-hh-2000.pdf>

<sup>79</sup> *Id.* at 1-8.



protect tribal members who exercise tribal reserved rights, and in particular those who exercise subsistence living, to the highest extent possible. This would be in line with EPA's long held view that fish consumers at higher risk of exposure to certain carcinogens may warrant increased protection.<sup>80</sup> As such, the Tribe suggests **adding** the following language to 40 C.F.R. § 131.9(a)(2):

§ 131.9 Protection of tribal reserved rights.

(a) Water quality standards must protect tribal reserved rights applicable to waters subject to such standards. To protect tribal reserved rights, water quality standards must, to the extent supported by available data and information, be established to protect:

...

(2) The health of the right holders to at least the same risk level as provided to the general population of the State, **provided that the cancer risk level used in deriving human health water quality criteria for carcinogens where there are applicable tribal reserved rights is not greater than 10<sup>-6</sup> (one in one million).**

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The Yurok Tribe appreciates the opportunity to comment on the proposed rule to review WQS regulations at 40 C.F.R Part 131, to require state and federal WQS to protect tribal reserved rights to aquatic and aquatic-dependent resources. With the recommendations included above, this proposal is consistent with the Biden-Harris Administration's commitment to tribal communities in addressing continuing threats to human health and the environment. We look forward to engaging with the EPA for further consultation. Please contact Melodie Meyer ([mmeyer@yuroktribe.nsn.us](mailto:mmeyer@yuroktribe.nsn.us)) and Alexander Mesher ([amesher@yuroktribe.nsn.us](mailto:amesher@yuroktribe.nsn.us)) with any questions about the points raised in this letter.

Wok-hlew',



Joseph L. James  
Yurok Tribe Chairman

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<sup>80</sup> Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance, 57 Fed. Reg. 60848, 60849 (Dec. 22, 1992) (recognizing that "carcinogens that bioaccumulate, particularly given the exposure of fishermen to such carcinogens, may justify a more protective risk level of 10<sup>-6</sup> for the average fish consumer").