

November 14–17, 2011 • Santa Fe, NM



**2011 National Tribal Water Quality Conference**  
Posuwageh (Water Meeting Place)  
Where Clean Water Act Sections 106 and 319 Meet

**National Teleconference and In-Person Consultation Session  
with EPA’s Office of Water’s Acting Assistant Administrator  
on Definition of “Waters of the United States”**

**Date:** Tuesday, November 15, 2011 in the Pueblo Ballroom

**Time:** 10:45am –11:45am Pacific, 11:45am – 12:45pm Mountain  
12:45pm – 1:45pm Central, 1:45pm – 2:45pm Eastern

**Call Number:** 1-866-299-3188, Conference Code: 202-564-5066

**EPA Contact:** Felicia Wright, 202-566-1886, [Wright.Felicia@epa.gov](mailto:Wright.Felicia@epa.gov)

*Onsite participants will be able to pre-order lunch a box lunch on Monday, November 14, 2011 at the conference registration desk. Box lunches will be \$18.00 (includes taxes).*

**Payment will only be accepted in cash – no check or charge.**

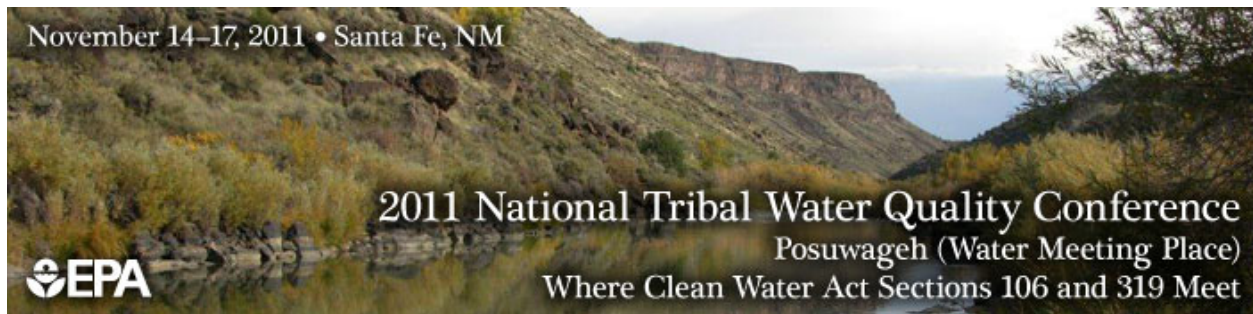
### **About the Event**

Conference participants are invited to participate in a lunch-time session that will also be part of a national teleconference discussion on potential revisions to EPA regulations defining “waters of the United States” that are subject to Clean Water Act (CWA) authority. Participants will form a live audience at the conference that will tie into the national consultation call with EPA’s Acting Assistant Administrator for Water, Nancy Stoner. Ellen Gilinsky, OW’s Senior Policy Advisor, will be present to facilitate the conference session, and is available for separate consultations with designated officials at the conference on this proposed EPA action. EPA sent out a notification letter inviting all tribal leaders to consult on this issue in October. A call number is provided above for tribal representatives that wish to call in individually.

### **Background**

Under the Clean Water Act (CWA), permits are required to discharge pollutants, and dredged or fill material, into waters of the United States, such as streams, rivers, wetlands, lakes, and other waterbodies. If the waters are not considered “waters of the U.S.,” they are not subject to Clean Water Act requirements. For example, no permits—and thus no steps to minimize the amount or effects of the fill materials or pollutants—are required under federal law.

Two Supreme Court cases concerning the extent of waters covered by the Act (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers [SWANCC] [2001] and United States v. Rapanos [Rapanos] [2006]) have addressed interpretation of the Agencies’ long-standing definition of “waters of the U.S.” In May, 2011, EPA and the U.S. Army Corps of Engineers (Corps) released draft guidance to clarify how the EPA and the Corps understand existing requirements of the CWA and the agencies’ implementing regulations in light of the Supreme Court decisions. Agency guidance on how to



interpret these cases has been helpful, but many stakeholders have asked for additional clarity. Thus, the agencies are pursuing rulemaking options to clarify the definition of “waters of the U.S.” regulated under the Clean Water Act. A proposed rule would likely address many of the issues covered in the May 2, 2011, Draft Guidance on Identifying Waters Protected by the Clean Water Act, which EPA mailed in hardcopy to all federally-recognized tribes in early May 2011, and can be found at <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>.

The definition of “waters of the U.S.” affects the implementation of Clean Water Act programs on tribal lands and upstream of tribal waters, including Section 401 tribal and state certification requirements, under which tribes can request accommodation for environmental and cultural values within a federal permit; section 402 national pollutant discharge elimination system (NPDES) permits, which regulate discharges of pollutants that may directly or indirectly reach jurisdictional waters; section 404 permits, which regulate the discharge of dredged or fill material; section 303, which calls for water quality standards; and section 311, which requires oil spill response and prevention plans.