



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 13, 2018

OFFICE OF
THE ADMINISTRATOR

Dear Honorable Leader:

The *Clean Water Act* affirms the role of authorized tribes and states to manage their water resources and explicitly provides an option for authorized tribes and states to assume responsibility for the dredged or fill permitting program pursuant to Section 404(g). I am writing to make you aware of two important actions the U.S. Environmental Protection Agency and the Department of the Army have taken regarding tribal and state assumption of the Clean Water Act Section 404 program authority.

In the Spring Regulatory Agenda, the EPA announced the agency's plan for the first comprehensive revision to the existing Section 404(g) regulations since 1988. The EPA intends to modernize these regulations and foster a greater interest by the authorized tribes and states in assuming this authority. The EPA would appreciate the opportunity to discuss these potential regulatory improvements with representatives from your tribe in a tribal consultation period planned for this fall. The EPA will send consultation letters to all tribal government leaders to initiate tribal consultation at that time, with further details regarding the planned tribal consultation period. If you or your staff have any questions or would like to meet about this proposed rulemaking effort, please contact Karen Gude at (202) 564-0831 or gude.karen@epa.gov.

In addition to the rulemaking effort by the EPA, the Department of the Army recently issued a memorandum to the U.S. Army Corps of Engineers that clarifies the program's approach to identifying waters that the Corps would retain should an authorized tribe assume Section 404 permitting authority. This guidance is consistent with the recommendations provided in a June 2017 *Federal Advisory Committee Act* report on assumable waters to the EPA Administrator. The EPA stands ready to assist your tribe if you are interested in assuming Section 404 program responsibility. Enclosed please find a summary of the key steps a tribe would take to assume Section 404 authority.

EPA staff in the Office of Water and the agency's regional offices are available to provide advice and assistance on this important program. The EPA is committed to enhancing the role of

authorized tribes and states to administer the nation's environmental laws. We look forward to working with the tribes, as co-regulators under the *Clean Water Act*, to seize this opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Wheeler", with a long horizontal flourish extending to the right.

Andrew R. Wheeler
Acting Administrator

Enclosure

cc: Tribal Environmental Directors
Regional Indian Coordinators
David Ross, Assistant Administrator, Office of Water
Felicia Wright, Acting Director, American Indian Environmental Office