Water Update
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EPA's Environmental Justice (EJ) program is not exactly new given that it was created by EPA in 1992. EPA has, however, given the program increased attention in the last couple years. In November 2020, EPA stated it was "expanding outreach, engagement, and collaboration with various stakeholders to advance EJ" and that "EPA would be working to increase the integration of EJ when directly implementing federal environmental programs in Indian country, and throughout the United States." EPA has clarified that tribes may act as joint lead agencies and tribes having special expertise with respect to an environmental issue may be a cooperating agency. One specific example where this is having an impact is the consideration of fish consumption on setting water quality standards. Whereas it is common to consider water contaminants found is fish tissue in determining water quality standards, the way this is measured seems to be changing. EPA has stated that a 'heritage rate' (the amount of fish consumed before nonindigenous or modern sources contaminated the water or interfered with the natural lifecycle of fish) can be a factor for water quality standards and that these rates can be historic, current, or 'aspirational' rates. The term 'suppression' is used by EPA to describe how the amount of fish eaten now is less due to actual or perceived presence of contamination, reduced fish populations due to environmental changes, reduced access to fish, and changes in social structure like reallocation of time from traditional lifeways to other pursuits.

In the fall of 2021, EPA developed a new proposed rule called the "Federal Baseline Water Quality Standards for Indian Reservations." EPA stated that the proposed rule was developed to establish tribal baseline water quality standards for waters on Indian reservations and noted that "over 80% of Indian reservations do not have this foundational protection expected by Congress as laid out in the Clean Water Act for their waters". This rule is expected to be finalized by early 2023. In the spring of 2022, EPA proposed another regulation, the "Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights." In this rule, EPA states that it is pursuing a change to its water quality standards regulations to ensure that water quality standards do not impair tribal reserved rights.

The EPA's renewed focus on EJ is already having an impact on water policy in some states and has the potential to have more influence in the future. In Iowa, tribes are promoting the policy that waters upstream of the tribe's settlement can affect waters within the settlement. The Sac and Fox Tribe of the Mississippi in Iowa has worked with EPA to issue new water quality standards for nutrients for the Iowa River. The effect of these numeric nutrient criteria (NNC) is not limited to the portions of the Iowa River that are contained within tribal lands. These new standards state that failure to protect downstream water quality standards in tribal areas will have direct CWA

regulatory implications such as requiring TMDLs outside the tribal areas. Iowa's state agency was not involved in the development of the new standards and was only made aware through notification of a public comment period.

There is the potential for these new policies changes to impact MACA members to a greater degree in the future. MACA will continue to monitor the progress of these EPA's initiatives and keep you informed.

Each month Steve provides an update on a current water issue. Please share this information with the appropriate people in your company. ~ Bonnie McCarvel, MACA Executive Director.