

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.


A PATH FORWARD:

SUBMITTING TRIBAL DATA OR ASSESSMENTS TO THE STATE OF OKLAHOMA FOR INCLUSION IN THE INTEGRATED REPORT

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TRIBAL LANDS IN OKLAHOMA

- BETWEEN 1887 AND 1906, INDIAN RESERVATIONS IN OKLAHOMA WERE BROKEN UP INTO ALLOTMENTS BY A SERIES OF CONGRESSIONAL AND PRESIDENTIAL ACTIONS.
- AS A RESULT OF THE ALLOTMENT PROCESS, TRIBAL JURISDICTIONS IN OKLAHOMA ARE A MOSAIC OF PRIVATELY OWNED LANDS, GOVERNMENT OWNED LANDS, TRIBALLY OWNED LANDS, AND TRUST AND ALLOTTED LANDS. MOST TRIBES RETAIN ONLY A REMNANT OF THEIR ORIGINAL JURISDICTION.
- THE LAND SITUATION COMPLICATES THE MANAGEMENT OF NATURAL RESOURCES.



- THERE ARE 38 FEDERALLY RECOGNIZED TRIBES IN OKLAHOMA. OF THESE, 30 (78%) HAVE “TREATMENT AS A STATE” (TAS) AUTHORITY FOR CLEAN WATER ACT (CWA) §106 AND 28 (74%) HAVE AN ACTIVE CWA §106 GRANT.

- ONLY ONE TRIBE HAS TAS AUTHORITY FOR A WATER QUALITY STANDARDS (WQS) PROGRAM.

- THIS SEEMS ODD...



WHY DOES ONLY ONE OKLAHOMA TRIBE HAVE TAS FOR A WQS PROGRAM?

- ON AUGUST 10, 2005, CONGRESS PASSED PUBLIC LAW 109-59, THE *SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS* (SAFETEA-LU).

THE PROBLEM: THE DEVIL'S IN THE DETAILS

- (B) TREATMENT AS STATE.—NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE ADMINISTRATOR MAY TREAT AN INDIAN TRIBE IN THE STATE OF OKLAHOMA AS A STATE UNDER A LAW ADMINISTERED BY THE ADMINISTRATOR ONLY IF—
 - (1) THE INDIAN TRIBE MEETS REQUIREMENTS UNDER THE LAW TO BE TREATED AS A STATE; AND
 - (2) THE INDIAN TRIBE AND THE AGENCY OF THE STATE OF OKLAHOMA WITH FEDERALLY DELEGATED PROGRAM AUTHORITY ENTER INTO A COOPERATIVE AGREEMENT, SUBJECT TO REVIEW AND APPROVAL OF THE ADMINISTRATOR AFTER NOTICE AND OPPORTUNITY FOR PUBLIC HEARING, UNDER WHICH THE INDIAN TRIBE AND THAT STATE AGENCY AGREE TO TREATMENT OF THE INDIAN TRIBE AS A STATE AND TO JOINTLY PLAN [SIC] ADMINISTER PROGRAM REQUIREMENTS.

FULL TEXT OF THE LAW

- <https://www.govinfo.gov/content/pkg/PLAW-109publ59/pdf/PLAW-109publ59.pdf>
- THE RIDER IS FOUND IN SECTION 10211: ENVIRONMENTAL PROGRAMS (PAGE 795).

THE PROBLEM CONTINUES...

- THE MIDNIGHT RIDER DID NOT CONTAIN A SUNSET PROVISION. AS A RESULT, EVEN THOUGH SAFETEA-LU WAS SUPERSEDED BY *MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP 21)* IN 2012, THE MIDNIGHT RIDER REMAINS IN EFFECT.

AN ASIDE...*CARPENTER V. MURPHY*

- IN MY OPINION, IT IS UNLIKELY THAT THE OUTCOME OF *CARPENTER V. MURPHY* WILL IMPACT STATE/TRIBAL AUTHORITY WITH REGARD TO ENVIRONMENTAL PROGRAMS BECAUSE THE MIDNIGHT RIDER DICTATES THAT OKLAHOMA TRIBES CANNOT ASSUME TAS AUTHORITY OVER ENVIRONMENTAL PROGRAMS WITHOUT FIRST NEGOTIATING AN AGREEMENT WITH THE STATE.

THE BAD NEWS

- TO MY KNOWLEDGE, ONLY ONE OKLAHOMA TRIBE HAS ATTEMPTED TO NEGOTIATE AN AGREEMENT WITH THE STATE OF OKLAHOMA. THE ATTEMPT WAS UNSUCCESSFUL.

THE NOT-SO-BAD NEWS

- IN PRACTICE, THE PART (B)(2) OF THE OF THE MIDNIGHT RIDER HAS ONLY BEEN APPLIED TO REGULATORY PROGRAMS.

THE OUTCOME

- ONLY ONE TRIBE IN OKLAHOMA HAS EPA-APPROVED WQS. FOR THE TIME BEING, IT APPEARS THE OTHER 37 FEDERALLY RECOGNIZED TRIBES IN OKLAHOMA ARE EFFECTIVELY BARRED FROM ADMINISTERING A WQS PROGRAM, AND POSSIBLY **ANY** REGULATORY ENVIRONMENTAL PROGRAM.

MAKING THE BEST OF A BAD SITUATION

- TRIBES COLLECT QUALITY DATA. THESE DATA NEED TO BE USED. ONE WAY TO USE THESE DATA IS TO SUBMIT DATA OR ASSESSMENTS TO THE STATE OF OKLAHOMA FOR INCLUSION IN THE INTEGRATED REPORT.
- ALTHOUGH SUBMITTING DATA TO OKLAHOMA **IN NO WAY** SUBSTITUTES FOR HAVING REGULATORY AUTHORITY OVER A TRIBAL WQS PROGRAM, AT LEAST THE DATA CAN BE USED FOR ASSESSMENT AND LISTING DECISIONS.

THE PURPOSE OF THE WMDS WORKGROUP

- THE PURPOSE OF THE WMDS WORKGROUP WAS TO CREATE A GUIDANCE DOCUMENT TO WALK TRIBES THROUGH SUBMITTING DATA OR ASSESSMENTS TO THE STATE OF OKLAHOMA FOR INCLUSION IN THE INTEGRATED REPORT (IR). THE INTENT IS TO PROVIDE OKLAHOMA TRIBES WITH AN AVENUE OF ACCESS TO THE 305(b) AND 303(d) PROCESSES.

HOW DID THE GROUP GET STARTED?

- OCTOBER 16-18, 2017, EPA HOSTED A TRAINING WORKSHOP FOR TRIBES PARTICIPATING IN THE ATTAINS PILOT. THE TRAINING WAS HELD IN NORMAN, OKLAHOMA.
- DURING THE MEETING, LAURA SHUMWAY BROUGHT IN REPRESENTATIVES FROM ODEQ, OWRB AND OCC TO HAVE A ROUNDTABLE DISCUSSION ABOUT WATER QUALITY ASSESSMENT WITH OKLAHOMA TRIBES.
- A FEW TRIBES EXPRESSED FRUSTRATION THAT TRIBAL DATA ARE NOT USED FOR ASSESSMENT AND LISTING DECISIONS.
- STATE PERSONNEL EXPRESSED A WILLINGNESS TO WORK WITH TRIBES TO INCLUDE TRIBAL DATA IN THE STATE OF OKLAHOMA INTEGRATED REPORT.
- IN DECEMBER OF 2017, WE STARTED MEETING.

POTENTIAL BENEFITS OF SUBMITTING TRIBAL DATA OR ASSESSMENTS FOR INCLUSION IN THE IR

- FIRST AND FOREMOST, SUBMITTING TRIBAL DATA OR ASSESSMENTS TO THE STATE OF OKLAHOMA FOR INCLUSION IN THE INTEGRATED REPORT IS **NOT REQUIRED** NOW AND WILL NOT BE REQUIRED IN THE FUTURE. MANY TRIBES ARE NOT INTERESTED IN SHARING DATA WITH THE STATE OF OKLAHOMA.
- FOR TRIBES THAT ARE INTERESTED, HOWEVER, THIS PROVIDES AN AVENUE FOR 303(d) LISTINGS BASED ON TRIBAL DATA. 303(d) LISTINGS TRIGGER TMDLS. IN SOME CASES THIS MAY BE BENEFICIAL FOR TRIBES. (IN OTHER CASES, IT MAY NOT BE BENEFICIAL.)
- INCLUSION IN THE IR ALLOWS OTHER WATER MONITORING AGENCIES ACCESS TO TRIBAL ASSESSMENTS. THIS MAY FACILITATE COOPERATION ON PROJECTS PERTAINING TO SHARED WATER RESOURCES.

POTENTIAL BENEFITS TO THE STATE OF OKLAHOMA

- SOME OF THE WATER RESOURCES MONITORED BY TRIBES ARE NOT MONITORED BY THE STATE OF OKLAHOMA.
- TRIBAL DATA IS OFTEN MORE TEMPORALLY DENSE THAN STATE DATA.
- THE STATE STRUGGLES WITH BACTERIOLOGICAL DATA BECAUSE THEY HAVE TROUBLE MEETING THE 6-HOUR HOLDING TIME. MOST TRIBES COLLECT BACTERIOLOGICAL DATA DURING THE RECREATIONAL SEASON.
- SHARING ASSESSMENTS OPENS AVENUES FOR COLLABORATION.

PARTICIPANTS

- REPRESENTATIVES FROM THE KICKAPOO TRIBE, THE IOWA TRIBE AND CITIZEN POTAWATOMI NATION
- REPRESENTATIVES FROM THE OKLAHOMA CONSERVATION COMMISSION (OCC)
- REPRESENTATIVES FROM THE OKLAHOMA WATER RESOURCES BOARD (OWRB)
- REPRESENTATIVES FROM THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY (ODEQ)
- REPRESENTATIVES FROM THE UNITED STATES GEOLOGICAL SURVEY (USGS) WATER SCIENCE CENTER


WHAT DOES THE DOCUMENT CONTAIN?

THE DOCUMENT CONTAINS THE INFORMATION NECESSARY TO ASSESS DATA FOR THE NINE BASIC PARAMETERS IDENTIFIED IN THE *FINAL GUIDANCE ON AWARDS OF GRANTS TO INDIAN TRIBES UNDER SECTION 106 OF THE CLEAN WATER ACT (2006)*. EPA EXPECTS MATURE WATER MONITORING PROGRAMS TO COLLECT DATA ON THE FOLLOWING PARAMETERS:

1. DISSOLVED OXYGEN (DO)
2. PH
3. WATER TEMPERATURE
4. TURBIDITY
5. PHOSPHORUS
6. TOTAL NITROGEN (REPORTED SEPARATELY AS TKN, AMMONIA AND NITRATE/NITRITE)
7. MACROINVERTEBRATES
8. *E. COLI* OR ENTEROCOCCI
9. BASIC HABITAT INFORMATION



THE NINE PARAMETERS PERTAIN TO THE FOLLOWING BENEFICIAL USES:

- FISH AND WILDLIFE PROPAGATION
 - PRIMARY BODY CONTACT RECREATION
 - SECONDARY BODY CONTACT RECREATION
 - PUBLIC AND PRIVATE WATER SUPPLY
 - AESTHETICS
 - THE DOCUMENT ALSO DESCRIBES HOW TO MAKE A “NUTRIENT-THREATENED” DETERMINATION
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THE DOCUMENT ALSO CONTAINS:

- E-MAIL ADDRESSES FOR STATE, FEDERAL AND TRIBAL REPRESENTATIVES WHO PARTICIPATED IN DEVELOPING THE DOCUMENT
- PERTINENT CITATIONS IN THE OKLAHOMA ADMINISTRATIVE CODE AND THE CONTINUING PLANNING PROCESS DOCUMENT
- LINKS TO RESOURCES, INCLUDING STATE AGENCY SOPS

WHAT THE DOCUMENT DOES NOT CONTAIN:

- THE DOCUMENT DOES NOT ADDRESS THE FULL RANGE OF DATA THAT TRIBES COLLECT. TRIBES MAY NEED TO CONSULT WITH AGENCY PERSONNEL REGARDING THE ASSESSMENT OF DATA TYPES NOT COVERED IN THE DOCUMENT (FISH, METALS, TOXICANTS, ETC.).

NEXT STEPS

- THE DOCUMENT IS AVAILABLE ON THE OWRB WEBSITE.

http://www.owrb.ok.gov/quality/standards/pdf_standards/StateofOklahomaDataSharingGuidance.pdf

- THE INTER-TRIBAL ENVIRONMENTAL COUNCIL (ITEC) HAS RECENTLY RECEIVED AN EXCHANGE NETWORK GRANT TO OFFER ATTAINS TRAINING TO TRIBES. THE OKLAHOMA CONSERVATION COMMISSION (OCC) WILL PROVIDE ASSESSMENT TRAINING TO TRIBES AS PART OF THE ATTAINS TRAINING.

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JULIE CHAMBERS, OWRB

SARAH GALLAWAY, OCC

RACHEL HARLEY, KTO

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ELENA JIGOULINA, ODEQ

GREG KLOXIN, OCC

JOE LONG, ODEQ

SHANA MASHBURN, USGS

NICOLE NEWCOMER, ODEQ

LANCE PHILLIPS, OWRB

SHANON PHILLIPS, OCC

MONTY PORTER, OWRB

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