

VIDA Gun Lake Tribal Meeting Summary

Virtual Meeting Date: October 13, 2021, 4:45 – 5:45 pm ET

Agenda:

1. Welcome, Introductions, Purpose of the Meeting (Elizabeth Cisar, EPA)
2. Review of VIDA Provisions and Implications for Tribes (Kelsey Watts-FitzGerald, EPA)
3. Discussion
4. Closing (Elizabeth Cisar, EPA)

Attendees:

Gun Lake

Liz Binoniemi-Smith (Environmental Director, Gun Lake Tribe)
Ben Brenner (Gun Lake Tribal Council)
Jeff Martin (Secretary, Gun Lake Tribal Council)
Nicole Overbeck (Gun Lake Tribal Council)
Lakota Pochedley (Tribal Historic Preservation Officer, Gun Lake Tribe)
Tomie Williamson (Treasurer, Gun Lake Tribal Council)

EPA

Elizabeth Cisar, Senior Advisor, Office of Water
Brian Frazer
Betsy Valente
Jack Faulk
Holly Galavotti
Kelsey Watts-Fitzgerald
Dolores Wesson
Brendan Philip (ORISE)
Karen Gude
Jennifer Manville
MaryEllen Levine
Chase Raines

USCG

CDR Tiffany Duffy
John Morris

Discussion summary:

Topics discussed: Ballast Water and the Petition Process

- EPA clarified what is meant by “permanent ballast exchange plus treatment for vessels entering the St. Lawrence Seaway.” The existing Vessel General Permit (VGP) requires that prior to entering the Great Lakes via the St. Lawrence Seaway, any oceangoing vessel must perform a mid-ocean exchange of ballast water. If the vessel has freshwater ballast, they also must also treat that water before they discharge it. VIDA made these requirements permanent.
- Gun Lake Tribe acknowledged that state regulations will no longer be valid because of VIDA, specifically those of Michigan, Wisconsin, and Minnesota.

- EPA noted that VIDA allows states to establish more specific standards through certain procedures although states cannot petition for more stringent requirements until the final rule is released. One of key reasons why VIDA was enacted was to harmonize regulations as vessels travel from state to state around the country. VIDA calls for the development of national technology-based requirements that would apply to all vessels. There are challenges having different sets of state requirements applicable to vessels as they move through the Great Lakes.
- Gun Lake Tribe questioned if there has been any attempt to write a rule that would apply to the Great Lakes.
 - EPA responded that VIDA was clear in its call for national standards. VIDA allows for different requirements depending on the vessel size and class, but location is not a variable. EPA does not have the authority to do this under VIDA. The only way to address this is through the petition process.
- Gun Lake Tribe questioned if the petition process for Enhanced Great Lakes System Requirements and the provisions for no-discharge zones, emergency orders and review of standards apply to tribes that have treaty rights in the Great Lakes.
 - EPA responded that VIDA identifies governors as the party who can petition EPA for that type of petition, but not the tribes.
- Gun Lake Tribe expressed that as a federal nation, tribes should not have to go through the state governor. They are a federal nation, and this is a government-to-government treaty, and the second highest law of the land. This is what we're standing up for. We need to see action. We're talking about government-to-government meaningful consultation. We must work together. These resources are all of ours. It's not just us, it truly is for everybody.
- Gun Lake Tribe questioned why a water quality-based standard was done away with in favor of the technology-based requirement? What are the differences between the approaches, and who does it benefit? Does it benefit the ships and who owns them, or does it benefit the water?
 - EPA replied that technology-based standards under the Clean Water Act are very effective and have made a great difference in water quality. When EPA develops effluent guidelines based on technology, we evaluate what technology exists, but we must also have a record showing that technology is effective. The challenge is to figure out which technology is effective and is also economically achievable.
- Gun Lake Tribe expressed that it is a challenge for the tribe to have expertise on staff to vet whether the technology-based standards are sufficient. Having water quality standards are easier to understand and to determine whether they will be protective of the water.
 - EPA explained that through VIDA, the petitions and application process is the pathway to address water quality and sensitive waters concerns and EPA is working to determine how tribes fit into this process.
- Gun Lake Tribe expressed that one area of concern is that without the additional state regulations, there are areas where protections are going to be loosened. There will be more spread of invasive species even if ballast water is sterilized before it enters the basin and that threatens our resources. The tribe noted that it has connections to so many resources (e.g., wild rice, sturgeon) that could be devastated by invasive species. Tribes need to have the ability to raise a concern like that for governors.
 - EPA shared that states' concerns also included the spread of invasive species and are underpinned by concerns for the Laker exemption and ballast water standard in EPA's proposed rule.

- Gun Lake Tribe expressed that another concern about the spread of invasive species is the impact on at least one Traditional Cultural Property that is connected to Lake Michigan that was determined eligible by the Keeper, and some of the contributing natural resources. The threat of invasive species would pose a threat to some of those contributing resources. It is important that this is on the record as a concern.
- Gun Lake Tribe inquired as to what the petition process looks like for state governors. Is there a possibility to include a requirement that tribal consultation needs to occur, which would ensure that there is an opportunity for tribes to provide input on more stringent standards? The Tribe’s environmental departments have water quality specialists, but no people trained in the technology-based standards. Wondering if this is the same concern at the state level and how there is going to be further outreach to help folks understand what the technology-based standards are protecting.
 - EPA explained that for the petition process, EPA needs to promulgate the standards first, then while USCG develops the implementing regulations, EPA can start developing the petition/application process. There are four different types of petitions or applications, and each has procedures that must be followed, but those procedures are not very detailed at this point. The emergency order provision allows states to submit a petition, but there is a similar provision that allows EPA to issue an emergency order directly. It is yet to be determined how a tribe could request EPA to issue an emergency order under VIDA.