

DECISION DOCUMENT
FOR
THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S APPROVAL OF
**THE GILA RIVER INDIAN
COMMUNITY'S APPLICATION**
FOR TREATMENT IN A SIMILAR MANNER AS A STATE
UNDER CLEAN WATER ACT SECTION 518
FOR PURPOSES OF THE
WATER QUALITY STANDARDS AND CERTIFICATION PROGRAMS
UNDER
CLEAN WATER ACT SECTIONS 303(c) AND 401

TABLE OF CONTENTS

I. Background

- A. Introduction
- B. Application and Comments
- C. Statutory and Regulatory Provisions
- D. Policy Statements

II. Requirements and Findings for TAS Approval

- A. Federal Recognition
- B. Substantial Governmental Duties and Powers
- C. Jurisdiction Over “Waters Within the Borders” of the Tribe’s Reservation
 - 1. Map or Legal Description
 - 2. Statement Describing the Basis for the Tribe’s Assertion of Authority
 - 3. Identification of the Surface Waters for which the Tribe Proposes to Establish Water Quality Standards
 - 4. EPA’s Finding on the Tribe’s Jurisdiction
- D. Capability

III. Conclusion

Appendix I	TAS Application and Supporting Materials
Appendix II	List of Tribal Waters/Map
Appendix III	EPA Approval of Gila River Indian Community’s CWA 106 TAS

I. BACKGROUND

A. Introduction

Section 303(c) of the Clean Water Act (“CWA”) requires states to develop, review, and revise (as appropriate) water quality standards for surface waters of the United States. At a minimum, such standards must include designated water uses, in-stream criteria to protect such uses, and an antidegradation policy. 40 C.F.R. § 131.6. In addition, Section 401 of the CWA provides that states may grant, condition, or deny “certification” for federally permitted or licensed activities that may result in a discharge to the waters of the United States. 33 U.S.C. § 1341. The decision to grant or deny certification is based, in part, on the state’s determination whether the proposed activity will comply with water quality standards it has adopted under Section 303(c). If a state denies certification, the federal permitting or licensing agency is prohibited from issuing a permit or license. *See* 40 C.F.R. § 131.4.

Section 518(e) of the CWA authorizes the United States Environmental Protection Agency (“EPA”) to treat an eligible Indian tribe as a state (treatment in a similar manner as a state or “TAS”) to manage and protect water resources “within the borders of an Indian reservation,” for certain CWA programs, including Sections 303(c) water quality standards and 401 certification. EPA regulations establish the process by which EPA implements that authority and determines whether to approve a tribal application for TAS for purposes of administering programs under Sections 303(c) and 401 of the CWA. *See* 56 Fed. Reg. 64,876 (Dec. 12, 1991), as amended by 59 Fed. Reg. 64,339 (Dec. 12, 1994) (codified at 40 C.F.R. Part 131).

This Decision Document provides the basis and supporting information for EPA’s decision to approve the TAS eligibility application (the “Application”) from the Gila River Indian Community (the “Tribe”) under Section 518(e)(2) of the CWA and 40 C.F.R. Part 131, allowing the Tribe to establish water quality standards pursuant to Section 303(c) of the CWA and certify federally permitted or licensed activities pursuant to Section 401 of the CWA for areas within the border of the Tribe’s reservation. This approval applies to all surface waters that lie within the exterior borders of the Tribe’s reservation, as described in the Application and identified herein and in Appendix II. TAS approval does not constitute approval of water quality standards but rather the Tribe’s eligibility to submit water quality standards to EPA for approval under CWA Section 303. Any future development of such standards by the Tribe would remain subject to all requirements of EPA’s regulations (including the requirements providing for public notice and comment) and such standards would still need to be submitted to EPA for review under Section 303(c) to ensure they meet applicable CWA and regulatory requirements. However, approval of a tribe for TAS for purposes of water quality standards does immediately authorize that tribe to issue certifications under CWA Section 401 (*see* 40 C.F.R. § 131.4(c)), provided the tribe designates a “certifying agency” as defined in 40 C.F.R. § 121.1(e). In addition, tribes authorized to administer the CWA water quality standards program are also “affected states” under CWA Section 402(b)(3) and (5) and 40 C.F.R. § 122.4(d). As “affected states,” they receive notice and an opportunity to comment on certain permits issued under the CWA National Pollutant Discharge Elimination System program.

B. Application and Comment Process

The Tribe's application for TAS and documents relevant to the decision are listed in Appendices I-III, which comprises a portion of the administrative record for this determination. Included in this list are the Tribe's original application for TAS for purposes of the water quality standards and certification programs under Sections 303(c) and 401 of the CWA, dated June 8, 2011, and materials provided by the Tribe that amend and supplement the original Application ("supplemental materials") dated August 29, 2016, which together constitute and will be referred to as the Tribe's "Application."

As provided in 40 C.F.R. § 131.8(c)(2), Alexis Strauss, EPA Acting Regional Administrator, Region IX, sent letters dated February 23, 2017, to "appropriate governmental entities"¹ that offered an opportunity to comment on the Tribe's assertion of authority set forth in its original Application dated June 8, 2011, and its supplemental letter dated August 29, 2016. The letters were sent to the Governor of the State of Arizona, the Arizona Department of Environmental Quality, the Western Regional Office of the U.S. Bureau of Indian Affairs, and the Arizona State Director of the U.S. Department of Interior, Bureau of Land Management. No comments were received. In addition, EPA provided notice of the Tribe's Application to the general public through a local newspaper posting and directly via email to local governments adjacent to the Tribe's reservation, offering an opportunity to comment on the Tribe's assertion of authority. The public notice was published in the *Arizona Business Gazette* on February 23, 2017. No public comments were received. Finally, EPA conducted a courtesy call with local governments to answer questions about the TAS process and CWA Section 518. The local governments requested that EPA conduct future outreach prior to EPA approving any water quality standards the Tribe may submit.

C. Statutory and Regulatory Provisions

The following are the statutory and regulatory provisions governing this TAS decision:

1. Section 518 of the Clean Water Act, 33 U.S.C. § 1377, authorizes EPA to treat an eligible Indian tribe in a similar manner as a state if the tribe meets the specified eligibility criteria.
2. Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations, 56 Fed. Reg. 64,876 (Dec. 12, 1991), as amended by 59 Fed. Reg. 64,339 (Dec. 14, 1994) (codified at 40 C.F.R. Part 131), establish the requirements for a tribe to obtain TAS approval and the procedures for EPA to process a tribe's TAS application.
3. EPA's Revised Interpretation of Clean Water Act Tribal Provision, 81 Fed. Reg. 30183 (May 16, 2016), facilitates tribal involvement in the protection of reservation water quality as intended by Congress.

¹ EPA defines "appropriate governmental entities" as "States, Tribes, and other Federal entities located contiguous to the reservation of the Tribe applying for treatment as a State." 56 Fed. Reg. 64,876, 64,884 (Dec. 12, 1991).

D. Policy Statements

The following policy statements and guidance are also relevant to this TAS decision:

1. *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (Nov. 8, 1984).
2. Memorandum titled *EPA/State/Tribal Relations*, by EPA Administrator William Reilly (July 10, 1991).
3. Memorandum titled *Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations*, by EPA Administrator Robert Perciasepe and General Counsel Jonathan Cannon (Mar. 19, 1998).
4. Memorandum titled *Strategy for Reviewing Tribal Eligibility Applications To Administer EPA Regulatory Programs*, by EPA Deputy Administrator Marcus Peacock (Jan. 23, 2008).

II. REQUIREMENTS FOR TAS APPROVAL

Under CWA Section 518(e) and EPA's implementing regulations at 40 C.F.R. § 131.8(a), four requirements must be satisfied before EPA can approve a tribe's application for treatment in a similar manner as a state for water quality standards under Section 303(c) and certifications under Section 401 of the CWA. The application must meet the following criteria: (1) the Indian tribe is recognized by the Secretary of the Interior and exercises authority over a reservation; (2) the Indian tribe has a governing body carrying out substantial governmental duties and powers; (3) the water quality standards program to be administered by the Indian tribe pertains to the management and protection of water resources which are within the borders of the Indian reservation and held by the Indian tribe, within the borders of the Indian reservation and held by the United States in trust for Indians, within the borders of the Indian reservation and held by a member of the Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the Indian reservation; and (4) the Indian tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the CWA and applicable regulations.

EPA's regulation at 40 C.F.R. § 131.8(b) identifies what must be included in a tribe's TAS application to administer a water quality standards program. Under 40 C.F.R. § 131.8(b)(6), where an Indian tribe has previously qualified for TAS under a different CWA or Safe Drinking Water Act program, the tribe need only provide the required information that has not been submitted in a previous application. EPA separately reviews tribal water quality standards under 40 C.F.R. § 131.21. As such, TAS approval does not constitute approval of water quality standards but rather establishes the tribe's ability to develop and submit water quality standards to EPA for its approval under CWA Section 303 and 40 C.F.R. § 131.8. However, approval of a

tribe for TAS for purposes of water quality standards does immediately authorize that tribe to issue certifications under CWA Section 401 (*see* 40 C.F.R. § 131.4(c)), provided the tribe designates a “certifying agency” as defined in 40 C.F.R. § 121.1(e). Tribes authorized to administer the CWA water quality standards program are also “affected states” under CWA Section 402(b)(3) and (5) and 40 C.F.R. § 122.4(d). As “affected states,” they receive notice and an opportunity to comment on certain permits issued under the CWA National Pollutant Discharge Elimination System program.

A. Federal Recognition

The first requirement for a tribal TAS application for water quality standards under Section 303(c) and certifications under Section 401 is that a tribe is recognized by the Secretary of the Interior and meets the definitions in 40 C.F.R. §§ 131.3 (k) and (l). 40 C.F.R. § 131.8(a)(1). A tribe must include in its application a statement that the tribe is recognized by the Secretary of the Interior. *See* 40 C.F.R. § 131.8(b)(1). In 40 C.F.R. § 131.3(l), the term “Indian Tribe” or “Tribe” is defined as “any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.” In 40 C.F.R. § 131.3(k), the term “Federal Indian reservation” is defined as “all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.”

The Application states that the Tribe is recognized by the Secretary of the Interior, and hence the Tribe has met the requirement set forth in 40 C.F.R. § 131.8(b)(1). EPA has confirmed that the Gila River Indian Community, whose reservation (the “Reservation”) is located in Pinal and Maricopa Counties, Arizona, is a federally recognized tribe listed in the current Department of the Interior’s published list of “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs” as the “Gila River Indian Community of the Gila River Indian Reservation.” *See* 83 Fed. Reg. 34863, 34864 (July 23, 2018).

Therefore, EPA finds that the Gila River Indian Community is recognized by the Secretary of the Interior and meets the definition of “Indian Tribe” in 40 C.F.R. § 131.3(l) with governmental authority over a “Federal Indian Reservation” as defined in 40 C.F.R. § 131.3(k), and thus meets the requirements in 40 C.F.R. § 131.8(a)(1) and (b)(1).

B. Substantial Governmental Duties and Powers

The second requirement for a TAS application for water quality standards under CWA Section 303(c) and certifications under CWA Section 401 is that a tribe has a governing body carrying out substantial governmental duties and powers over a defined area. 40 C.F.R. § 131.8(a)(2). To demonstrate this, 40 C.F.R. § 131.8(b)(2) requires that the tribe submit a descriptive statement that should: (i) describe the form of the tribal government; (ii) describe the types of governmental functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population, taxation, and the exercise of the power of eminent domain; and (iii) identify the source of the tribal government’s authority to carry out the governmental functions currently being performed.

A tribe that has previously shown that it meets the “governmental functions” requirement for purposes of another EPA Program generally need not make that showing again. *See* 59 Fed. Reg. 64,339, 64,340 (Dec. 14, 1994) (“Simplification Rule”). Consistent with 40 C.F.R. §131.8(b)(6) and the Simplification Rule, the Gila River Indian Community’s Application relies on EPA’s approval in March 1990 of the Tribe’s TAS application for CWA Section 106 (Water Pollution Control Program) grant, noting that when EPA approved this application it found the Tribe had adequately described the form of tribal government, its governmental functions, and the source of tribal authority to carry out those functions. As explained in the Tribe’s TAS Application for CWA Section 106 and summarized in the Application, the Tribe consists of a Community Council which includes a Governor, a Lieutenant Governor and seventeen Council Members elected for three-year terms by the Community. Per the Application, the Tribal Government exercises a wide range of government powers pursuant to ordinances adopted by the General Council. In addition to environmental protection, these ordinances address issues such as labor relations, taxation, nuisance, and regulation of Indian child welfare. The Application indicates that Tribe’s governance structure and its related governmental functions has not changed since the prior TAS approval. EPA’s approval of the Tribe’s CWA Section 106 application, dated March 1990, is provided in Appendix III.

Consistent with the Simplification Rule, EPA has determined that the Tribe has described and demonstrated that it has a governing body carrying out substantial governmental duties and powers over a defined area as required by 40 C.F.R. § 131.8(a)(2).

C. Jurisdiction Over Waters Within the Borders of the Tribe’s Reservation

The third requirement for TAS applications for water quality standards under CWA Section 303(c) and certifications under CWA Section 401 is that the water quality standards program to be administered by the tribe pertains to the management and protection of water resources that are within the borders of the Indian reservation. 40 C.F.R. § 131.8(a)(3). To demonstrate that this requirement is met, the regulations require that the Tribe submit a statement of its authority to regulate water quality. The statement should include: (i) a map or legal description of the area over which the tribe asserts authority over surface water quality; (ii) a statement by the tribe’s legal counsel (or equivalent official) which describes the basis for the tribe’s assertion of authority and which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the tribe’s assertion of authority; and (iii) an identification of the surface waters for which the tribe proposes to establish water quality standards. 40 C.F.R. § 131.8(b)(3).

1. Map or Legal Description

The Gila River Indian Community’s Application contains a map and a legal description of the area over which the Tribe asserts authority. As identified on the map in Appendix II and described in the legal description, the Gila River Indian Community’s Reservation is located in the Pima and Maricopa Counties of Arizona. The Gila River Indian Community was formally established by an act of Congress on February 28, 1859, and contains approximately 372,569 acres (or 581 square miles) of Reservation lands. Maps included in the Application include

Reservation boundaries, land tenure, and surface waters within the Reservation. Only 640 acres of the Reservation are fee land, which are surrounded by Gila River Indian Community trust lands. The Tribe's Application asserts jurisdiction over all lands and waters within the Reservation.

EPA has determined that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(i) by providing an adequate map of the area over which the Tribe asserts authority to regulate surface water quality.

2. Statement Describing the Basis for the Tribe's Authority

The Tribe's original TAS application for the CWA Section 303(c) and 401 programs included a Statement of the Tribal General Counsel that describes and relies on the Tribe's inherent sovereign authority over all lands and resources, including water resources, within the Reservation as the basis for the Tribe's authority to regulate water quality under the CWA. *See* Letter to Jared Blumenfeld, EPA Regional Administrator, Region IX, from Linus Everling, General Counsel, dated June 1, 2011. The Statement describes the Tribe's exercise of authority through the *Constitution and Bylaws of the Gila River Indian Community*, which empowers the Community to enact civil and criminal codes or ordinances governing the conduct of members of the Community and non-tribal members on the Gila River Indian Reservation. The Statement cites relevant federal Indian law precedent supporting the Tribe's exercise of inherent authority to regulate water quality in the areas covered by the application.

While the Tribe's application was pending, EPA issued a final interpretive rule clarifying the authority of tribes to administer regulatory programs over their entire reservations pursuant to CWA Section 518. *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30, 183 (May 16, 2016) ("Interpretive Rule"). The Interpretive Rule interprets Section 518 as an express congressional delegation of civil regulatory authority to administer CWA regulatory programs to eligible tribes. This reinterpretation of Section 518 eliminates the need for individual applicant tribes to demonstrate their inherent authority to regulate reservation waters under the CWA. Instead, tribes can rely on the general congressional delegation of authority in CWA Section 518 as the source of their authority to regulate reservation waters under the CWA. *Id.* at 30, 190, 30, 194. In light of the congressional delegation, EPA determines the extent of an applicant tribe's jurisdiction for CWA regulatory purposes by identifying the geographic boundaries of the Indian reservation area over which the congressionally delegated authority would apply. *Id.* at 30, 194. In the Interpretive Rule, EPA also recognized that there may be rare instances where special circumstances limit or preclude a particular tribe's ability to accept or effectuate the congressional delegation of authority over its reservation. *Id.* at 30, 192–193. Such special circumstances could arise, for instance, under a separate federal statute establishing unique jurisdictional arrangements for a specific state or reservation, or under the provisions of particular treaties or tribal constitutions that may limit a tribe's ability to exercise relevant authority. *Id.*

By letter dated August 29, 2016, the Tribe supplemented its Application to rely on the congressional delegation of authority in CWA Section 518. The Tribe also asserted that there are no limitations or impediments to its ability to accept and effectuate this congressional delegation of authority under the CWA. Moreover, EPA has no independent information, whether from an

outside source or contained within its own records, identifying any impediment limiting the Tribe's ability to effectuate the congressionally delegated authority.

EPA therefore concludes that the Tribe can rely on the congressional delegation of authority and has satisfied the application requirement of 40 C.F.R. § 131.8(b)(3)(ii).

3. Identification of the Surface Waters for Which the Tribe Proposes To Establish Water Quality Standards

A tribe must also identify in its application for TAS approval the surface waters for which it proposes to establish water quality standards. *See* 40 C.F.R. § 131.8(b)(3)(iii). In its Application, the Gila River Indian Community has identified all the surface waters contained within its Reservation for which it is proposing to establish water quality standards. As noted above, this includes all surface waters within the Reservation. Specifically, the Tribe describes the following as waterbodies existing in whole or in part on the Reservation: Upper Gila River, Lower Gila River, Santa Cruz River, Santa Rosa Wash, Vekol Wash, McClellan Wash, East Maricopa Floodway, Pee Posh Wetlands and the Salt River. These waterbodies are indicated in the map and the list of tribal waters, included in Appendix II. The Tribe has satisfied 40 C.F.R. §131.8(b)(3)(iii) by identifying the surface waters within its Reservation over which it proposes to establish water quality standards.

4. EPA's Finding on the Tribe's Assertion of Jurisdiction

Based on the information included in the Tribe's Application as discussed above, EPA finds that the Gila River Indian Community meets the requirements of 40 C.F.R. §§ 131.8(a)(3) and (b)(3).

D. Capability

The fourth and final requirement for a TAS application for water quality standards under Section 303(c) and certifications under Section 401 of the CWA is that a tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the CWA and applicable regulations. *See* 40 C.F.R. § 131.8(a)(4). To demonstrate that a tribe has the capability to administer an effective program, 40 C.F.R. § 131.8(b)(4) requires that the tribe's application include a narrative statement of the tribe's capability. The narrative statement should include: (i) a description of the tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act, the Indian Mineral Development Act or the Indian Sanitation Facility Construction Activity Act; (ii) a list of existing environmental and public health programs administered by the tribal governing body and copies of related tribal laws, policies, and regulations; (iii) a description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government; (iv) a description of the existing or proposed agency of the tribe that will assume primary responsibility for establishing, reviewing, implementing, and revising water quality standards; and (v) a description of the technical and administrative capabilities of the staff to administer and manage an effective water

quality standards program or a plan that proposes how the tribe will acquire additional administrative and technical expertise. *See* 40 C.F.R. §§ 131.8 (b)(4)(i)–(v).

The Tribe has submitted in its Application a description of grant programs it has implemented or is implementing, including EPA's Clean Water Act Section 106 Water Pollution Control Grants and Clean Water Section 319 Nonpoint Source Pollution Control Grants. In addition, the Gila River Indian Community's Department of Environmental Quality ("DEQ") was established in 1995 and administers the many ordinances adopted by the Community to protect the environment, including administering the Tribe's Solid Waste Disposal Ordinance, Wastewater Management Ordinance, and Air Quality Ordinance, among other programs. As a part of implementing these programs, DEQ has conducted multiple phases of a remedial investigation for TCE contaminants for ground water, characterized wetlands, analyzed water quality monitoring wells, assessed the hydrology of the Salt-Gila confluence area, and conducted water sampling under the Gila River Indian Community's Quality Assurance Protection Plan. In addition, EPA approved the Gila River Indian Community's Tribal Implementation Plan (TIP) under the Clean Air Act on August 27, 2011. The TIP includes general and emergency authorities, ambient air quality standards, permitting requirements for minor sources of air pollution, enforcement authorities, procedures for administrative appeals and judicial review in Tribal court, requirements for area sources of fugitive dust and fugitive particulate matter, general prohibitory rules, and source category-specific emission limitations and standards.

The DEQ serves as the implementing agency and provides technical support for the Community's environmental programs. Six professional staff currently work within DEQ's Water Quality Program. Based upon their experience in implementing the various environmental programs, the staff are trained personnel with the capability to develop and administer an effective water pollution control program. Since EPA's approval in 1990 of the Tribe's CWA Section 106 Water Pollution Control Program TAS application, the DEQ staff has gained substantial experience in implementing its environmental programs. Copies of the applicable Tribal environmental ordinances are included in the Application.

As discussed above and in the Gila River Indian Community's Application, the Tribe's legislative and executive functions are performed and carried out by the Community Council as established by the Tribe's Constitution and Bylaws. The Community Council established the Judicial Branch to provide trial and appellate services in civil matters within the Gila River Indian Reservation to manage the ongoing legal affairs of the Tribe.

Consistent with 40 C.F.R. §§ 131.8(b)(4)(iv)–(v), EPA program staff also considered the capability of the Tribe to specifically administer the CWA Section 303(c) water quality standards and Section 401 certification programs. The Gila River Indian Community DEQ Water Quality Program is the entity that has been assigned the primary responsibility for establishing, reviewing, implementing and revising water quality standards and certifying permits. It will be responsible for administering the water quality standards program and for receiving and processing applications for certification of compliance with water quality requirements and standards for projects that are subject to federal agency permits or licenses and that may result in discharge in navigable waters or impact water quality within the Gila River Indian Community. The Tribe is developing a process for CWA Section 401 certifications; after a thorough analysis

by the Water Quality Program staff, the Water Quality Program Manager will be responsible for any final action regarding approval of Section 401 certification applications.

The Tribe's current TAS application contains a description of the agency and staff who will administer the water quality standards and certification programs, as provided by 40 C.F.R. §§ 131.8(b)(4)(iv)-(v). The resumés of the program staff who will administer the water quality standards and certification programs were included as part of the Application. These resumés indicate that the Tribe possesses the administrative and technical capability to administer these programs.

Based upon EPA's review of the information in the Tribe's Application and discussions with the Gila River Indian Community staff, EPA finds that the Tribe has demonstrated that it has the capability to administer the CWA Sections 303 and 401 water quality standards and certification programs and has met the requirements of 40 C.F.R. §§131.8(a)(4) and (b)(4).

III. Conclusion

EPA has determined that the Gila River Indian Community has met the requirements of CWA Section 518(e) and 40 C.F.R. § 131.8, and therefore approves the Tribe's TAS Application to administer the water quality standards program of CWA Section 303(c) and its implementing regulations set forth at 40 C.F.R. § 131.6. Consistent with 40 C.F.R. § 131.4(c), the Tribe is also eligible to the same extent as a state for the purposes of certifications under CWA Section 401 and its implementing regulations at 40 C.F.R. § 131.4 and will be treated in the same manner as an "affected state" under CWA Section 402(b)(3) and (5) and its implementing regulations at 40 C.F.R. § 122.4(d).



Michael Stoker
Regional Administrator

10/29/18
Date

Appendix I
TAS Application and Supporting Materials



GILA RIVER INDIAN COMMUNITY

Governance Center

Office of the General Counsel

August 29, 2016

Ms. Audrey L. Johnson
Water Division
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105

RE: Updated Statement by legal counsel for the Gila River Indian Community's application for Treatment as a State for Sections 303 and 401 of the Clean Water Act pursuant to Section 518 of the Clean Water Act and accompanying regulations, including 40 CFR § 131.8

Dear Ms. Johnson:

This letter supplements the Gila River Indian Community's ("Community") previous letter dated June 1, 2011, regarding the authority of the Community to exercise regulatory authority over the lands within the Gila River Indian Reservation. Specifically, the June 1, 2011 letter accompanying the Community's application for TAS under the Clean Water Act addressed, in great detail, the legal basis for the regulatory authority of the Community over the water resources and the authority to regulate water quality on fee lands (non-Indian lands) within the boundaries of the Community for purposes of Sections 303 and 401 of the Clean Water Act, 33 U.S.C. §§ 1313 and 1341. The basis for the Community's TAS application, when it was made five years ago in 2011, was and is the express delegation of authority of section 518 of the Clean Water Act to eligible Indian tribes to administer regulatory programs over their reservations.

On July 19, 2016, the Community's Department of Environmental Quality received a letter from you regarding the EPA's new interpretive rule revising EPA's approach to tribal jurisdiction under the Clean Water Act for purposes of treatment as a state ("TAS"). See 81 Fed. Reg. 30183 (May 16, 2016). Given that the EPA's new interpretative rule no longer requires Indian tribes to demonstrate their inherent authority to be approved for TAS, the Community does not understand why a supplement to its application is necessary because under the new rule, the Community's application is now *broader* than what is required for approval because it demonstrates the Community's inherent authority, which is not necessary.

Instead of moving forward on the Community's application, which is admittedly complete, EPA now requires the Community to "supplement" its prior application with a "statement from legal counsel asserting the Tribe's authority to regulate water quality as delegated by Congress pursuant to section 518 of the CWA and as described in the recently published TAS interpretive rule." The June 1, 2011 letter accomplishes exactly this. You have

Ms. Audrey L. Johnson
Water Division
U.S. Environmental Protection Agency Region IX
August 29, 2016
Page 2

also asked the Community to identify any issues that may affect the Community's "authority or ability to effectuate the delegated authority." There are none of which we are aware.

Earlier this year, in response to a letter from Community Governor Stephen Lewis, EPA stated that it is diligently preparing the documents to support a final determination and anticipates a decision by the end of the calendar year. The Community looks forward to approval of its TAS application.

If you need any additional information regarding this matter, please let me know.

Respectfully submitted,



Linus Everling, General Counsel
Gila River Indian Community

cc: Governor Stephen R. Lewis
Lieutenant Governor Monica Antone
Executive Director, Department of Environmental Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 19, 2016

Ondrea Barber, Executive Director
Department of Environmental Quality
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85147

Re: Gila River Indian Community's Treatment as a State Application for Surface Water Quality Standards

Dear Ondrea:

As you may know, EPA recently published an interpretive rule revising the Agency's approach to tribal jurisdiction under the Clean Water Act "treatment in a similar manner to states" (TAS) provision (section 518 of the statute). *See* 81 FR 30183 (May 16, 2016). Under this revised approach, tribes will no longer be required to demonstrate their inherent authority to be approved for TAS eligibility to administer regulatory programs under the statute. Instead, EPA has concluded that section 518 includes a congressional delegation of authority to eligible tribes to regulate their entire reservations under the statute, irrespective of who owns the reservation land. The revised approach applies to all TAS applications for regulatory programs under the Clean Water Act, including those applications that were pending when EPA finalized the interpretive rule.

Because the Gila River Indian Community's pending application is premised on the prior approach to jurisdiction, the Tribe will need to supplement their application to assert authority under this new approach. We believe this can be done in a very simple and straightforward manner through a letter from the Tribe supplementing its prior application with a statement from legal counsel asserting the Tribe's authority to regulate water quality as delegated by Congress pursuant to section 518 of the CWA and as described in the recently published TAS interpretive rule. The letter should also identify any issues that may affect the Tribe's authority or ability to effectuate the delegated authority, and if any such issues exist, should explain why they do not impede the Tribe's ability to move forward with the assertion of delegated authority.

EPA's Office of Water has prepared the following draft language, which you can use in asserting delegated authority:

The basis for the Tribe's assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservations contained in section 518 of the Clean Water Act. This authority is described in the U.S. Environmental Protection Agency's final interpretive rule, *Revised Interpretation of Clean Water Act Tribal Provision*, 81 FR 30183, May 16, 2016.

[Option A] There are no limitations or impediments to the Tribe's authority or ability to effectuate the delegation of authority from Congress as described in this application.

[Option B] The Tribe is aware of the following issues that [have been, potentially could be] raised concerning the Tribe's authority or ability to effectuate the delegation of authority requested in this application. ***[Provide detailed description including relevant citations. As examples, issues might include potential disputes regarding the asserted boundaries of the Tribe's reservation areas and/or other issues that might be asserted to limit or affect the Tribe's ability to effectuate the delegation of authority.]*** However, none of these issues will impede the Tribe's ability to effectuate the delegation of authority for the following reasons: ***[Provide complete legal analysis]***

As you prepare your application supplement, you may also wish to review the final interpretive rule and other documents you may find helpful, including a fact sheet and frequently asked questions, at <https://www.epa.gov/wqs-tech/revised-interpretation-clean-water-act-tribal-provision>.

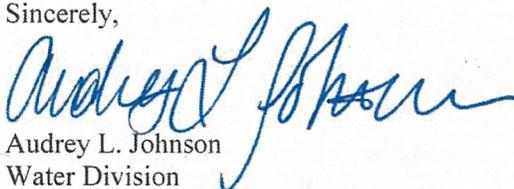
Once you have prepared this supplement to your application, please contact me or my staff to discuss before submitting the materials to EPA.

As the TAS interpretive rule notes, tribes are no longer required to demonstrate that they retain inherent authority to regulate the conduct of nonmembers using the *Montana* test. Going forward, the primary jurisdictional concern in evaluating an application for a regulatory program will be identifying the geographic boundaries of the reservation areas over which a tribe's delegated authority would apply. With that in mind, I recommend that the Tribe ensures submittal of all information the Tribe believes is relevant to assertion of jurisdiction over reservation lands and to highlight any possible areas of dispute or current litigation.

After EPA receives your letter, we will need to provide the appropriate governmental entities (AGEs) with a 30-day period to provide comments on the Gila River Indian Community's assertion of the congressionally delegated authority. EPA will need to provide this new notice even if a notice had previously been provided under the inherent authority rationale. Because we are no longer relying on the Tribe's inherent authority, EPA will not need to develop a subsequent proposed finding of facts to support a jurisdictional finding under the *Montana* test, or provide the AGEs with an opportunity to comment on the proposed findings. Proceeding under the rationale set forth in EPA's TAS interpretive rule should help streamline and expedite any TAS decision on your application once it is complete.

We are available to discuss any questions you may have regarding the revised rule and your TAS application.

Sincerely,



Audrey L. Johnson
Water Division

cc: Glenn Stark, Water Quality Manager

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

William R. Rhodes
Governor



Joseph Manuel
Lieutenant Governor

June 7, 2011

Mr. Jared Blumenfeld
Regional Administrator
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105

**Re: Request by the Gila River Indian Community for Section 303 and 401
Program Authority under the Clean Water Act**

Dear Administrator Blumenfeld:

The Water Quality Act of 1987, as amended, authorized the Administrator of the United States Environmental Protection Agency (EPA) under 33 U.S.C. § 1377 (e) to grant program authority to an Indian Tribe for purposes of Sections 303 and 401 of the Clean Water Act, 33 U.S.C. § 1313 and U.S.C. § 1341. This letter and attached documents constitute the Gila River Indian Community's application to EPA under those provisions of the Clean Water Act.

We would appreciate it if the EPA would process this application as soon as possible. If you have any questions or need further information, please contact me or Margaret Cook, Executive Director of the Gila River Indian Community's Department of Environmental Quality at (520) 562-2234 ext. 2225. We look forward to EPA's approval of the Community's application.

Respectfully submitted,

Governor William R. Rhodes
Gila River Indian Community

cc: Linus Everling, General Counsel
Lieutenant Governor Joseph Manuel
Margaret Cook, Executive Director, Department of Environmental Quality
Glenn Stark, Program Manager, Department of Environmental Quality
Mariela Lopez, Project Officer, U.S. Environmental Protection Agency

Enclosures



GILA RIVER INDIAN COMMUNITY
Governance Center
Law Office

June 1, 2011

Mr. Jared Blumenfeld
Regional Administrator
Office of the Regional Administrator
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

RE: Statement by Legal Counsel for the Gila River Indian Community's Application for Treatment as a State for Sections 303 and 401 of the Clean Water Act Pursuant to Section 518 of the Clean Water Act and accompanying regulations, including 40 CFR § 131.8

Dear Administrator Blumenfeld:

The legal basis for the regulatory authority of the Gila River Indian Community (the Community) over the water resources and the authority to regulate water quality on fee lands (non-Indian lands) within the boundaries of the Community for purposes of Sections 303 and 401 of the Clean Water Act, 33 U.S.C. § 1313 and U.S.C. § 1341, is provided herein.

The Gila River Indian Community is a federally recognized Indian tribe, whose reservation was established by an act of Congress on February 28, 1859. The Community is governed according to the *Constitution and By-laws of the Gila River Indian Community*, adopted pursuant to its inherent sovereign authority and the Indian Reorganization Act, 25 U.S.C. § 476. The Community encompasses approximately 581 square-miles (or 372,569 acres) of south central Arizona and is home to the *Akimel O'odham* (Pima) and *Pee Posh* (Maricopa) people. Under its *Constitution*, "The jurisdiction of the Community shall extend to all lands now comprised within the Reservation and to such other lands as may hereafter be acquired for the use and benefit of the Community and be added thereto."¹ In order to protect water quality, the Community wishes to exercise its authority over water resources found within the boundaries of the Gila River Indian Community (a map showing water resources located within the boundaries of the Gila River Indian Community is provided as part of this application). Water resources found within the boundaries of the Gila River Indian Community are vital to the Community's health and welfare and must be protected.

¹ Constitution and By-Laws of the Gila River Indian Community, art. II (March 17, 1960).

The federal Clean Water Act (CWA) authorizes a tribe to be treated in the same manner as a state once the tribe has demonstrated that “the functions to be exercised by an Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.”² Because the Gila River Indian Community or individual members of the Community are the beneficial owners of nearly all of the land within the boundaries of the Gila River Indian Reservation, the Community is the governmental entity that best has the ability to manage and protect its water resources.

The Community’s authority to regulate water quality on fee lands (non-Indian lands within the boundaries of the Community) is supported by the standards enunciated in such cases as *Montana v. United States*.³ Under *Montana*, there are three bases for tribes to exercise their governmental authority over non-members on fee lands: (1) express congressional delegation, (2) when non-Indians “enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements”⁴ or (3) when the conduct of non-Indians on fee lands “threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.”⁵ The Community is asserting authority over activities conducted on fee lands within the Gila River Indian Community because of the consensual relationships between the Community and non-Indian residents, and because the conduct of non-Indians has a serious, substantial and direct effect on the health and welfare of the Community.

First, the Community exercises its civil authority to regulate the activities of non-members on trust and fee lands under its own laws and the laws of the United States. Pursuant to the express delegation of authority by the United States Congress under the Indian Reorganization Act of 1934,⁶ the Community was authorized to organize. The Community adopted its *Constitution and Bylaws of the Gila River Indian Community*, which was approved by the United States on March 17, 1960.⁷ The Community’s *Constitution* specifically empowers the Community to enact civil and criminal codes or ordinances governing the conduct of members of the Community and non-members on the Gila River Indian Reservation.⁸ The Community has exercised its civil regulatory authority in a number of diverse areas including: regulation of traffic,⁹ removal and exclusion of non-members from the Reservation and civil trespass,¹⁰ requiring sex offender registration and notification,¹¹ requiring business licenses and

² 33 U.S.C. § 1377(e)(2).

³ *Montana v. United States*, 450 U.S. 544 (1981).

⁴ *Id.* at 565.

⁵ *Id.* at 566.

⁶ 25 U.S.C. § 461 *et seq.*

⁷ Pursuant to 25 U.S.C. § 476.

⁸ *Constitution and Bylaws of the Gila River Indian Community*, art. XV § 1(b)(8) (March 17, 1960).

⁹ GR-03-08 (March 6, 2008).

¹⁰ GR-97-01 (July 18, 2001).

¹¹ GR-02-07 (July 18, 2007).

imposing taxes,¹² regulating alcoholic beverages,¹³ regulating hunting and fishing,¹⁴ protecting native plants,¹⁵ regulating animals and livestock,¹⁶ imposing environmental health regulations including communicable diseases and tuberculosis,¹⁷ and regulating zoning and construction.¹⁸

The Community has specifically exercised its civil regulatory authority through the adoption of numerous ordinances protecting its environment and natural resources, including ordinances regulating sewer use,¹⁹ solid waste disposal,²⁰ pesticides,²¹ medical waste management,²² wastewater management,²³ and, most notably, its air quality management plan.²⁴ The Community regulates these activities within the Reservation pursuant to its sovereign authority as expressed in its *Constitution* and as outlined in *Montana*; in fact, many of the Community's laws and ordinances specifically cite to *Montana* as a basis for exercising civil regulatory authority.

Second, the Community finds that, if left unregulated, compliance and enforcement issues pursuant to Sections 303 and 401 of the Clean Water Act could pose an imminent threat to the political integrity, economic security, and health and welfare of the Gila River Indian Community. The Supreme Court has held that where a tribe is required to exercise its authority in order to protect tribal interests, the tribe retains authority to regulate non-Indians on fee lands where the fee lands are surrounded by Indian lands.²⁵ The non-Indian fee lands within the Community (approximately 640 acres total) are surrounded by Community owned lands. These non-Indian fee lands are utilized primarily for agricultural activities, which include a cattle feeding operation. Such uses of fee lands by non-Indians have the potential to threaten the beneficial uses of surface waters through soil erosion and livestock waste, which can occur through discharges to surface water. The Community must be able to regulate activities on fee lands that affect water quality because impairment of Community waters would have a serious and substantial effect on the health and welfare of the Gila River Indian Community.

The Community has a long-standing dependence upon its waters and related resources. Based upon the Community's ownership of nearly all of the lands within the boundaries the Gila River Indian Community, its dependence upon and commitment to its water resources, and the other factors outlined in this letter, the Community has the authority to regulate all lands and

¹² GR-06-05 (June 15, 2005).

¹³ GR-03-05 (April 6, 2005).

¹⁴ GR-02-84 (June 20, 1984).

¹⁵ GR-03-90 (June 20, 1990).

¹⁶ GR-01-04 (January 7, 2004).

¹⁷ GR-05-01 (December 19, 2001); GR-05-05 (June 1, 2005).

¹⁸ GR-02-04 (March 4, 2004).

¹⁹ GR-03-87 (August 19, 1987).

²⁰ GR-04-95 (April 19, 1995).

²¹ GR-04-96 (April 13, 1996).

²² GR-04-02 (March 20, 2002).

²³ GR-01-08 (February 6, 2008).

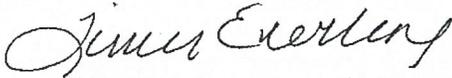
²⁴ GR-06-06 (December 6, 2006).

²⁵ *Brendale v. Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408, 432-33 (1989).

waters to protect the health and welfare of its members within the boundaries of the Gila River Indian Community.

If any additional information is needed regarding the Community's authority, please notify this office so that we may have an opportunity to respond before EPA makes its final determination regarding the Gila River Indian Community's eligibility for treatment as a state.

Respectfully submitted,


Linus Everling, General Counsel
Gila River Indian Community

cc: Governor William R. Rhodes
Lieutenant Governor Joseph Manuel
Margaret Cook, Executive Director, Department of Environmental Quality

APPLICATION OF THE GILA RIVER INDIAN COMMUNITY
FOR PROGRAM APPROVAL FOR
ADMINISTRATION OF PROGRAMS UNDER
SECTION 303(C) AND SECTION 401 OF THE
CLEAN WATER ACT (CWA)

I. General Information

A. Applicant

Gila River Indian Community, Arizona

2011 Community Council

Governor William R. Rhodes
Lieutenant Governor Joseph Manuel

Augustine Enas, Council Member, District 1
Arzie Hogg, Council Member, District 1
Jewel Witman, Council Member, District 2
Dale Enos, Council Member, District 3
Myron G. Schurz, Council Member, District 3
Greg Mendoza, Council Member, District 4
Christopher Mendoza, Council Member, District 4
Barney Enos, Jr., Council Member, District 4
Jennifer Allison, Council Member, District 4
Brian E. Davis, Council Member, District 5
Brenda L. Robertson, Council Member, District 5
Janice Stewart, Council Member, District 5
Albert Pablo, Council Member, District 6
Terrance B. Evans, Council Member, District 6
Anthony Villareal, Sr., Council Member, District 6
Martha Miller, Council Member, District 7

B. Applicant's Address

Gila River Indian Community, Governance Center, Executive Office, 525 West
Gu u Ki, P.O. Box 97, Sacaton, AZ.

C. Applicant's Telephone Number

Gila River Indian Community, Governance Center, Executive Office, Telephone: (520) 562-9840, Fax: (520) 562-9769

Direct telephone numbers for Applicant's representatives are listed below:

D. Applicant's Representatives

Representatives of the Gila River Indian Community with regard to this application are as follows:

Linus Everling, General Counsel, Gila River Indian Community, Governance Center, Law Office, (520) 562-9840

Margaret Cook, Executive Director, Gila River Indian Community, Department of Environmental Quality, (520) 562-2234 Ext. 2225

*Glenn Stark, Program Manager, Gila River Indian Community, Department of Environmental Quality, Water Quality Program, (520) 562-2234 Ext. 2233

Manuel M. Fontes, Environmental Engineer, Gila River Indian Community, Department of Environmental Quality, Water Quality Program (520) 562-2234 Ext. 2285

**Primary contact for this application.*

E. Purpose of Application

The purpose of this application is to qualify the Gila River Indian Community (the Community) for program approval for administration of programs under Section 303 (c) (Water Quality Standards) and Section 401 (Water Quality Certifications) of the Water Quality Act (also known as the Clean Water Act (CWA)), 33 U.S.C. § 1250 *et seq.*, as amended, pursuant to Section 518 (e) of the CWA, 33 U.S.C. § 1377 (e).

F. Date of Application

May 12, 2011

II. Regulatory Requirements

The following are the criteria that must be met in order to qualify the Gila River Indian Community for program approval for administration of programs under Section 303 (c) (Water Quality Standards) and Section 401 (Water Quality Certifications) of the Water

Quality Act (also known as the Clean Water Act (CWA)), 33 U.S.C. § 1250 *et seq.*, as amended, pursuant to Section 518 (e) of the CWA, 33 U.S.C. § 1377 (e). The criteria are as follows:

- A. The Applicant is a Federally Recognized Indian Tribe
- B. The Indian Tribe has a Governing Body Carrying out Substantial Governmental Duties and Functions
- C. The Water Quality Standards (WQS) Program to be Administered by the Indian Tribe Pertains to the Management and Protection of Water Resources that are Within the Borders of the Tribe's Reservation
- D. The Indian Tribe is Reasonably Expected to be Capable of Administering an Effective WQS Program

- A. The Applicant is a Federally Recognized Indian Tribe

The Gila River Indian Community is acknowledged in the list of federally recognized Native American Tribes within the requirements of sections 131.3(k) and (l) published in the Federal Register on August 11, 2009.¹ A copy of the August 11, 2009 Federal Register is provided herein as Attachment A of this application.

- B. The Indian Tribe has a Governing Body Carrying Out Substantial Governmental Duties and Functions

The Community has a governing body carrying out substantial governmental duties and powers. In addition to the background provided below, the Community has provided documentary evidence as provided herein as Attachment B of this application which includes:

1. Bureau of Indian Affairs, *Constitution and Bylaws of the Gila River Indian Community, Arizona*. United States Department of the Interior, Washington, D.C., March 17, 1960.
2. Gila River Indian Community Code, *Title 1: Administration of Community Affairs*.
3. Gila River Indian Community, *Organizational Chart*.
4. Gila River Indian Community, *Resolution GR-317-67: Adoption of an Organizational Plan for the Community Government*.

¹ Federal Register, Volume 74, No. 153, Page 40220 (August 11, 2009).

5. Gila River Indian Community Code, *Title 13: Business Licenses and Taxation*.
6. Gila River Indian Community, *Financial Management and Procurement Policy*.
September 17, 2008.

Background of the Establishment of Tribal Governing Authority

An act of Congress established the Gila River Indian Community on February 28, 1859. The Community covers approximately 581 square miles (372,569 acres) of south central Arizona and the population consists of *Akimel O'odham* (Pima) and *Pee Posh* (Maricopa) peoples. It is located south of and borders on the cities of Phoenix, Chandler, and Gilbert. It has an on-reservation population of approximately 15,500 people.

The Gila River Indian Community has a long history of Government-to-Government interactions with the United States of America. The Community established constitutional law in 1960 and on March 17, 1960 the U.S. Department of the Interior approved the Gila River Indian Community's Constitution and Bylaws. Thereby the Community is divided into seven (7) unique geographical districts. Each district is represented by at least one (1) Council Member, elected to a three-year term. One additional Council Member is elected for every 300 members residing in the District in excess of the base enrollment of 151. The Governor, Lieutenant Governor, Chief Judge and Associate Judges are elected by the Community for a three-year term. The Governor is the Community's chief executive officer. The Lieutenant Governor acts to assist the Governor in his or her duties. The Governor, or in his or her absence, the Lieutenant Governor is the presiding officer of the Community Council. The presiding officer is permitted to participate in discussion of Community business and is eligible to vote in the case of a tie. The Community is governed by the Community Council. The Community Council consists of 17 elected Council Members, the Governor and Lieutenant Governor. The Council meets on the first and third Wednesday of every month to act upon the business of the Community. The Gila River Indian Community's governing body consists of three (3) separate and independent branches: Judicial, Administrative and Legislative.

The Gila River Indian Community's Department of Environmental Quality has primary responsibility for the protection of environmental quality on Community lands and for the administration and enforcement of the Community's water quality. The Gila River Indian Community established the Water Quality Program in May of 1990 and the Department of Environmental Quality in 1995. The Water Quality Program is now one of six (6) different programs operated by the Gila River Indian Community's Department of Environmental Quality. Each of the six programs has been recognized by the U.S. Environmental Protection Agency (EPA) for a number of milestones in environmental stewardship.

C. The Water Quality Standards (WQS) Program to be Administered by the Indian Tribe Pertains to the Management and Protection of Water Resources that Are Within the Borders of the Tribe's Reservation

A legal description of the Gila River Indian Community's boundaries and a map indicating water resources over which the Community asserts authority is provided herein as Attachment C of this application. The Gila River Indian Community wishes to exercise jurisdiction over the following water resources: Upper Gila River, Lower Gila River, Santa Cruz River, Santa Rosa Wash, Vekol Wash, McClellan Wash, East Maricopa Floodway, Pee Posh Wetlands and the Salt River.

Pursuant to 40 C.F.R. 131.8(b)(3)(ii), a statement from the Gila River Indian Community's General Counsel describing the Community's legal basis for regulatory authority over water resources and fee lands (non-Indian lands) within the boundaries of the Community for purposes of Sections 303 and 401 of the Clean Water Act, 33 U.S.C. § 1313 and U.S.C. § 1341 is provided herein as Attachment D of this application. In summary, this assertion of authority is based on the Community's Constitution, federal law and the Community's inherent authority as a sovereign nation.

D. The Indian Tribe is Reasonably Expected to be Capable of Administering an Effective WQS Program

Pursuant to the express delegation of authority by the United States Congress under the Indian Reorganization Act of 1934,² the Community was authorized to organize. The Community adopted its Constitution and Bylaws of the Gila River Indian Community, which was approved by the United States on March 17, 1960.³ The Gila River Indian Community's Constitution specifically empowers the Community to enact civil and criminal codes or ordinances governing the conduct of members of the Community and non-members on the Gila River Indian Community.⁴

The Community has exercised its civil regulatory authority in a number of areas including: regulation of traffic,⁵ removal and exclusion of non-members from the Reservation and civil trespass,⁶ requiring sex offender registration and notification,⁷ requiring business licenses and imposing taxes,⁸ regulating alcoholic beverages,⁹ regulating hunting and fishing,¹⁰

² 25 U.S.C. § 461 *et seq.*

³ Pursuant to 25 U.S.C. § 476.

⁴ Constitution and Bylaws of the Gila River Indian Community, Arizona, art. XV § 1(b)(8) (March 17, 1960).

⁵ GR-03-08 (March 6, 2008).

⁶ GR-97-01 (July 18, 2001).

⁷ GR-02-07 (July 18, 2007).

⁸ GR-06-05 (June 15, 2005).

⁹ GR-03-05 (April 6, 2005).

¹⁰ GR-02-84 (June 20, 1984).

protection of native plants,¹¹ regulating animals and livestock,¹² imposing environmental health regulations including communicable diseases and tuberculosis control,¹³ and regulating zoning and construction.¹⁴

The Community has long been vigilant about protecting its environment and officially established the Gila River Indian Community's Department of Environmental Quality in 1995. The Community has specifically exercised its civil regulatory authority through the adoption of numerous ordinances protecting its environment, including ordinances regulating solid waste disposal,¹⁵ pesticides,¹⁶ medical waste management,¹⁷ wastewater management¹⁸ and air quality.¹⁹ Copies of the above ordinances are provided herein as Attachment E of this application.

As stated earlier, the Department of Environmental Quality's, Water Quality Program has been in existence since 1990. Based on the mission and vision of the Water Quality Program, operational responsibilities have been divided as follows:

1. Groundwater Section
2. Surface Water Section
3. Wastewater Section
4. Aquatic Ecosystems Section

These four management sections incorporate nine elements that have been developed and implemented by the Water Quality Program. These nine elements include:

1. Groundwater Protection and Management
2. Surface Water Protection and Management
3. Wastewater Management
4. Aquatic Ecosystem Protection and Management
5. Environmental Quality Monitoring
6. Environmental Quality Assessments
7. Point and Nonpoint Source Management
8. Outreach/Community Involvement
9. Inspections, Compliance, Assistance and Enforcement

Moreover, the Gila River Indian Community previously applied for and received eligibility determinations under Section 106 of the CWA on March 30, 1990 and Section

¹¹ GR-03-90 (June 20, 1990).

¹² GR-01-04 (January 7, 2004).

¹³ GR-05-01 (December 19, 2001); GR-05-05 (June 1, 2005).

¹⁴ GR-02-04 (March 4, 2004).

¹⁵ GR-04-95 (April 19, 1995).

¹⁶ GR-04-96 (April 13, 1996).

¹⁷ GR-04-02 (March 20, 2002).

¹⁸ GR-01-08 (February 6, 2008).

¹⁹ GR-06-08 (August 20, 2008).

319 of the CWA on January 14, 2005. Assessing the quality of the Community's surface water, groundwater and aquatic resources is a key and intergral part of the Water Quality Program and provides the foundation for the administration of water quality standards for which the Community is seeking approval. The Water Quality Program has prepared numerous water quality assessments including:

- Water Quality Summary, 1997 – 1998
- Water Quality Assessment, [305(b) Report], 1993
- Nitrates in Groundwater, 2002
- Hydrology of the Salt-Gila Confluence Area, 2003
- Assessment of the Eastern Maricopa Floodway, 2003
- Pesticides in Groundwater Assessment, 1999
- Gila River Wetlands Characterization, 2003
- Nonpoint Source Assesement, 2004
- Pee Posh Wetlands Characterization, 2007
- Phase I-VII Remedial Investigation North Central TCE Investigation, 2004 – 2010
- Water Quality Assesement Report for the CWA 106 Program, 2009; 2010

All water quality sampling is conducted under the Water Quality Program's Quality Assurance Plan for Data Collection, approved by the U.S. EPA on June 24, 1999 and as amended. The quality assurance plan is a single document comprised of two volumes describing the standard operating procedures and quality assurance processes associated with the collection of water quality data, including groundwater.

Surface water is a scarce and highly valued resource within the Gila River Indian Community. This scarcity is due to the arid climate of Southwest, upstream land use (including farming, cattle grazing and mining) and urban development surrounding the reservation. As a result, water quality management has become critical to the health and welfare of the Community.

Surface Water Quality Standards and Protection Ordinance

To address the issue of water quality management, the Community's legal department (Law Office) has been an instrumental participant in the development of the Gila River Indian Community's Surface Water Standards and Protection Ordinance which includes enforcement powers and administrative appeals procedures. This ordinance is currently being reviewed in draft form by U.S. EPA, Region 9. Once approved by the EPA, the Gila River Indian Community's Department of Enviromental Qualtiy, Water Quality Program will assume primary responsibility for establishing, reviewing, implementing and revising the water quality standards. Moreover, the Water Quality Program will also be responsible for processing applications for Section 401 certifications.

Description of Staff Resources

The Water Quality Program consists of six (6) full-time professionals who possess the necessary technical knowledge, inspection experience and enforcement capabilities to effectively administer Clean Water Act programs for which the Gila River Indian Community is seeking approval. The Water Quality Program Team and their qualifications are provided herein as Attachment F of this application. Program staff are funded by the Gila River Indian Community General Fund and CWA 106 Grant funds.

III. Request for Approval

Based upon the above and supplementary attachments provided herein as part of this application, the Gila River Indian Community respectfully requests that the U.S. Environmental Protection Agency (EPA) approve the Community's Application for program approval for water quality standards and water quality certification programs pursuant to Sections 303 and 401 of the Clean Water Act, (also known as the Clean Water Act (CWA)), 33 U.S.C. § 1250 *et seq.*, as amended, pursuant to Section 518 (e) of the CWA, 33 U.S.C. § 1377 (e).

Attachments

Attachment A

1. Bureau of Indian Affairs, *Indian Tribes Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, Federal Register, Vol. 74, No. 153, August 11, 2009.

Attachment B

1. Bureau of Indian Affairs, *Constitution and Bylaws of the Gila River Indian Community, Arizona*. United States Department of the Interior, Washington, D.C., March 17, 1960.
2. Gila River Indian Community Code, *Title 1: Administration of Community Affairs*.
3. Gila River Indian Community, *Resolution No. GR-191-73*.
4. Gila River Indian Community, *Organizational Chart*.
5. Gila River Indian Community, *Resolution GR-317-67: Adoption of an Organization Plan for the Community Government*.
6. Gila River Indian Community Code, *Title 13: Business Licenses and Taxation*.
7. Gila River Indian Community, *Financial Management and Procurement Policy*. September 17, 2008.

Attachment C

1. Boundary Description for the Gila River Indian Community, 2011.
2. Yoshi, Laura, Acting Regional Administrator, Office of the Regional Administrator, U.S. Environmental Protection Agency Region IX. Letter of Eligibility Determination under 40 C.F.R. Part 49 for a Clean Air Act (CAA) Air Quality Management Plan. Gila River Indian Community. 21 October 2009.
3. Executive Order, 31 August 1876.
4. Executive Order, 14 June 1879.
5. Executive Order, 5 May 1882.

6. Executive Order, 15 November 1883.
7. Executive Order No. 1387, 31 July 1911.
8. Executive Order No. 1416, 28 September 1911.
9. Executive Order No. 1782, 2 June 1913.
10. Executive Order, 27 August 1914.
11. Executive Order, 19 July 1915.
12. Gila River Indian Community: Surface Water Resources. Map. Gila River Indian Community, Department of Environmental Quality, 2011.

Attachment D

1. Everling, Linus, Statement from the Gila River Indian Community's General Counsel to Mr. Jared Blumenfeld, Office of the Regional Administrator, U.S. Environmental Protection Agency Region IX, San Francisco, California. March 2011.

Attachment E

1. Solid Waste Ordinance. Gila River Indian Community Code, Title 18, Chapter 2.
2. Pesticide Ordinance. Gila River Indian Community, Title 18, Chapter 3.
3. Medical Waste Ordinance. Gila River Indian Community Code, Title 18, Chapter 6.
4. Wastewater Management Ordinance. Gila River Indian Community Code, Title 15, Chapter 6.
5. Air Quality Management Plan. Gila River Indian Community Code, Title 18, Chapter 7.

Attachment F

1. Department of Environmental Quality, Water Quality Program Staff, 2011.
2. Department of Environmental Quality, Water Quality Program Organizational Chart, 2011.
3. Department of Environmental Quality, Water Quality Program Sections, 2011.

4. Gila River Indian Community. Department of Environmental Quality: Annual Report. Department of Environmental Quality, 2004.
5. Gila River Indian Community. Department of Environmental Quality: Annual Report. Department of Environmental Quality, 2005.

Appendix II
List of Tribal Waters/Map

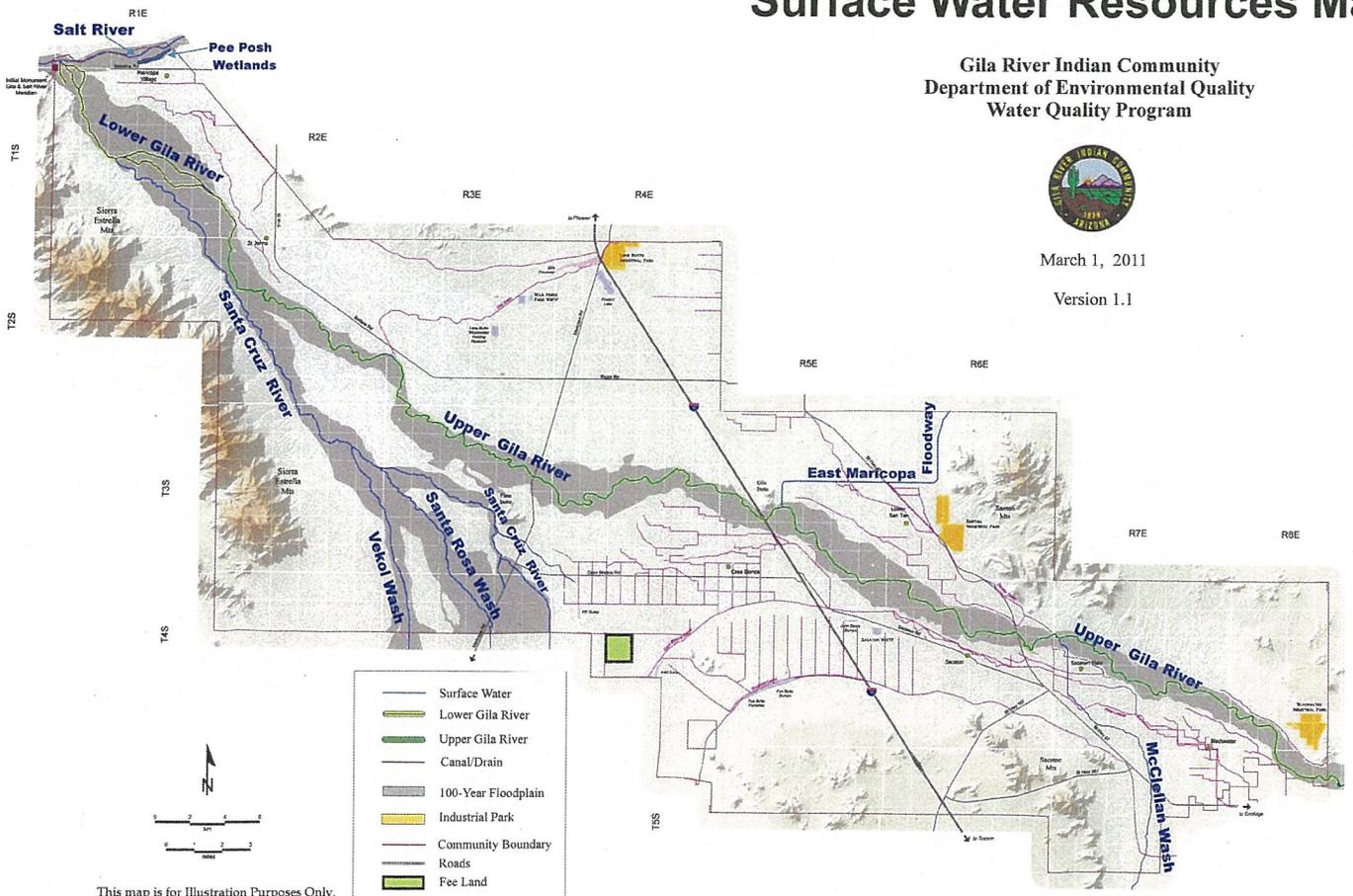
Surface Water Resources Map

Gila River Indian Community
 Department of Environmental Quality
 Water Quality Program



March 1, 2011

Version 1.1



This map is for Illustration Purposes Only.

Appendix III

EPA Approval of Gila River Indian Community's CWA 106 TAS



March 30, 1990

Thomas R. White, Governor
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

Dear Governor White:

It gives me great pleasure to formally announce our Agency's approval of the Gila River Indian Community's application for treatment as a State with respect to the State Water Pollution Control Program under the Clean Water Act's Section 106. As you are probably aware, the approval of your community's application is the first such approval which has occurred within our Region. You and your staff are to be commended on your very fine effort to develop not only this application, but your application for Section 106 grant funds as well. In this regard, my staff has informed me that we will be extending a grant offer to the community in the immediate future.

I am also pleased to accept your invitation to speak before the Tribal Council on May 2. Our Agency welcomes the opportunity to celebrate these achievements with you.

Please do not hesitate to contact me or Wendell Smith, of my staff, regarding coordination of the above mentioned matters. I look forward to working with you on this new and challenging opportunity to protect and restore water quality in the Gila River Indian Community.

Sincerely,

A handwritten signature in cursive script that reads 'Daniel W. McGovern'.

Daniel W. McGovern
Regional Administrator

Enclosure

cc: Randolph Wood, Director
Department of Environmental Quality
State of Arizona
Att: Ronald L. Miller, Assistant Director

Janice Dunn, Project Coordinator
Department of Commerce
State of Arizona

Wilson Barber, Jr.
Area Director
Bureau of Indian Affairs

John R. Lewis, Executive Director
Inter-Tribal Council of Arizona

