

DECISION DOCUMENT  
FOR  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S APPROVAL OF  
**QUARTZ VALLEY INDIAN COMMUNITY  
OF THE QUARTZ VALLEY  
RESERVATION OF CALIFORNIA**  
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 Findings on the Tribe’s Assertion of Jurisdiction over “Waters within the Borders” of the Tribe’s Reservation
- D. Capability

### **III. Response to Comments**

### **IV. Conclusion**

Appendix I	Application (without Attachments)
Appendix II	List of Tribal Waters/Map
Appendix III	EPA Approval of Tribe’s previous TAS Applications (CWA 106 and CWA 319)

## 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. 33 U.S.C. § 1313(c). 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 regarding 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 of the CWA authorizes the 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. 33 U.S.C. § 1377. 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* 40 C.F.R. §§ 131.4(c) and 131.8; 56 Fed. Reg 64876 (Dec. 12, 1991); 59 Fed. Reg. 64339 (Dec. 14, 1994); 81 Fed. Reg. 30183 (May 16, 2016).

This Decision Document provides the basis and supporting information for EPA’s decision to approve, under Section 518 of the CWA and 40 C.F.R. Part 131, the TAS eligibility application (the “Application”) from the Quartz Valley Indian Community of the Quartz Valley Reservation of California (“Tribe”) authorizing 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 Tribe’s reservation (“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. This TAS approval does not constitute approval of any actual water quality standards. Instead, TAS approval addresses only the Tribe’s eligibility to submit water quality standards to EPA for approval under CWA Section 303(c). Development of such standards would remain subject to all requirements of EPA’s regulations (including requirements for notice/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 the Tribe for TAS authorization to administer water quality standards and certification programs under CWA

Sections 303(c) and 401 does immediately authorize the 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” as the term is used under CWA Sections 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 Comments**

Selected materials and documents relevant to the decision are included in Appendices I-III. Included are the Tribe’s application, dated July 31, 2017, for TAS for purposes of the water quality standards and certification programs under Sections 303(c) and 401 of the CWA, supplemental materials provided by the Tribe to clarify the original application submitted in March 2019, and additional materials provided by the Tribe submitted during EPA’s review of the submission, which together constitute and will be referred to as the Tribe’s “Application.”

As provided in 40 C.F.R. § 131.8(c)(2), EPA Regional Administrator for Region 9, Michael Stoker, sent a letter dated December 7, 2018, notifying “appropriate governmental entities”<sup>1</sup> of the substance and basis of the Tribe’s assertion of authority in its Application. The notice letters, as well as copies of the Application, were sent to the United States Forest Service, United States Bureau of Indian Affairs (“BIA”), United States Bureau of Land Management (“BLM”), Governor Jerry Brown, of the State of California and California State Water Resources Control Board (“SWRCB”). Comments on the Application were received from BIA on January 30, 2019, and from the SWRCB on April 19, 2019. In addition, consistent with Agency practice, EPA also provided the public with notice of and an opportunity to comment on the Tribe’s assertion of authority. The public notice was published in *The Siskiyou Daily News* on October 24, 2018. Finally, EPA exercised its discretion and conducted additional outreach to local governments. Comments were received from one county government. All comments are discussed in Section III of this Decision Document.

## **C. Statutory and Regulatory Provisions**

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

1. Section 518 of the CWA, 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.

---

<sup>1</sup> EPA defines “appropriate governmental entities” to consist of “States, Tribes, and other Federal entities located contiguous to the reservation of the Tribe which is applying for treatment as a State.” 56 Fed. Reg. 64876, 64884 (Dec. 12, 1991).

2. 40 C.F.R. §§ 131.4(c) and 131.8 establish the regulatory requirements for a tribe to obtain TAS approval and the procedures for EPA to process a tribe's TAS application. *See* Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations, 56 Fed. Reg. 64,876 (Dec. 12, 1991); 59 Fed. Reg. 64,339 (Dec. 14, 1994); 81 Fed. Reg. 30183 (May 16, 2016).

#### **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*, November 8, 1984.
2. Memorandum entitled "*EPA/State/Tribal Relations*," by EPA Administrator Reilly, July 10, 1991.
3. Memorandum entitled "*Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations*," by EPA Assistant Administrator Robert Perciasepe and General Counsel Jonathan Cannon, March 19, 1998.
4. Memorandum entitled "*Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs*," by EPA Deputy Administrator Marcus Peacock, January 23, 2008.

## **II. REQUIREMENTS FOR TAS APPROVAL**

Under CWA Section 518 and EPA's implementing regulation 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 purposes of administering 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 Act 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 the water quality standards program. Under 40 C.F.R. § 131.8(b)(6), where a 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.

#### **A. Federal Recognition**

The first requirement applicable for a tribal TAS application for water quality standards under Section 303(c) and certification under Section 401 of the CWA 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. It is a federally recognized tribe, listed in the current Department of the Interior published list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs" as the "Quartz Valley Indian Community of the Quartz Valley Reservation of California." *See* 84 Fed. Reg. 1200, 1203 (February 1, 2019). The Tribe's Reservation comprises approximately 694 acres located in Siskiyou County, California. Therefore, EPA has confirmed that the Tribe is recognized by the Secretary of the Interior and meets the definition of an "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) for TAS approval.

#### **B. Substantial Governmental Duties and Powers**

The second requirement applicable to a tribal 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 show that it has a governing body currently carrying out substantial governmental duties and powers over a defined area, 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) describes the types of governmental functions currently performed by the tribal governing body, such as those exercising police powers affecting or relating to the health, safety, and welfare of the affected population, taxation, and the exercise 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 "government functions" requirement for purposes of another EPA program generally need not make that showing again. See 59 Fed. Reg. 64339, 64340 (December 14, 1994) ("Simplification Rule"). Consistent with 40 C.F.R. 131.8(b)(6) and the Simplification Rule, the Tribe's Application relies on EPA's prior approvals of the Tribe's TAS applications for CWA Section 106 Water Pollution Control Program and CWA Section 319 Nonpoint Source Pollution Control grant eligibility, which 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. Those approvals are included as Appendix III to this TAS decision document. The Tribe's governance structure and its related governmental functions have not changed since the prior TAS approvals.

As background and for additional support, EPA summarizes the Tribe's governmental structure here. The Tribe's Tribal Constitution and By-Laws were approved by the U.S. Bureau of Indian Affairs on June 15, 1939. Article III of the Tribe's Constitution establishes the governing body as the General Community Council composed of all qualified members of the Community. Any enrolled member of the Community who is twenty-one years of age or over shall be entitled to vote. The General Community Council shall elect from its members by secret ballot a Chairman; a Vice-Chairman; and a Secretary-Treasurer; and such other officers and committees as may be deemed necessary. The General Community Council has the authority to promulgate and enforce ordinances for, among other things, the maintenance of law and order within the jurisdiction of the Tribe. (Art. III, §1(f). The Community Council may exercise any other powers of self-government possessed by federally recognized Indian tribes. Under the Tribal Constitution, the General Community Council is authorized to exercise local police powers and is responsible for approving, promulgating, and enforcing resolutions and ordinances, such as tribal approval of water quality standards.

EPA has determined that, based upon the Tribe's current Application and EPA's prior approvals of the Tribe's CWA Section 106 Water Pollution Control TAS application on May 2, 2005, and the CWA Section 319 Nonpoint Source Pollution TAS application on September 10, 2007, the Tribe has described and demonstrated that the Tribal governing body is currently carrying out substantial governmental duties and powers for purposes of 40 C.F.R. § 131.8(a)(2) and (b)(2), (6).

### **C. Jurisdiction Over “Waters Within the Borders” of the Tribe’s Reservation**

The third requirement applicable to tribal TAS applications for water quality standards under Section 303(c) and certifications under Section 401 of the CWA 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 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.” 40 C.F.R. § 131.8(a)(3). To demonstrate that this requirement is met, the regulations require that the applicant 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) that describes the basis for the tribe’s assertion of authority, 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 Application contains a map and a legal description of the area over which the Tribe asserts authority with an identification of the surface waters that are covered. The Reservation is located within a rural, sparsely populated area within the western portion of the Scott River watershed in the Klamath Mountain area in Siskiyou County, Northern California. The Scott River is one of the four major tributaries of the Klamath River contributing about 5% of the entire Klamath’s runoff. The Scott River watershed is a large area with substantial variation in geology, geomorphology, and climatology.

The original Quartz Valley Indian Reservation purchased by the United States in 1940 consisted of 604 acres near Fort Jones in Siskiyou County. In 1967, the federal relationship with the Tribe and the Reservation was terminated under the California Rancheria Act of 1958. The Tribe’s federal recognition was later restored under the stipulated judgment in *Hardwick v. United States*, No. C-79-1710-SW (N.D. Cal. 1983), entered on December 22, 1983, based on the determination that the BIA had violated the requirements of the Rancheria Act in carrying out the termination of the Tribe’s status. The original boundaries of the Tribe’s Reservation were fully restored as Indian Country in that same litigation by U.S. District Court Order dated March



14, 1989, and the Tribe has included the restored 604-acre formal Reservation in its TAS Application.<sup>2</sup>

Since restoration of the Reservation, the Tribe has worked to repurchase lands which have been available for sale both on and in the vicinity of the formal Reservation. In approximately 1996, the Tribe purchased and sought to place in federal trust several parcels immediately south of the formal Reservation. These included Siskiyou County Assessor Parcel numbers 24-350-260 (Parcel A), 24-350-270 (Parcel B), 24-350-460 (Parcel C), 24-350-470 (Parcel D), and 24-350-530 and 540 (Parcel E),<sup>3</sup> totaling 90 acres. Parcel A, which borders on Sniktaw Lane, is contiguous to the existing southern boundary of the formal Reservation. All of the remaining parcels, B through E, are contiguous either to each other or to Parcel A. In 2002, the United States accepted the conveyance of these parcels in trust for the Tribe, and the Tribe has included these 90 acres of tribal trust land in its TAS Application for a total of 694 acres.<sup>4</sup> The entirety of the covered lands are identified on the Map attached hereto as Appendix II. Further references herein to the Reservation will include both the formal Reservation and these tribal trust land parcels, unless otherwise noted.

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

## 2. Statement Describing the Basis for the Tribe's Assertion of Authority

The Tribe's TAS Application for the CWA Sections 303(c) and 401 programs includes a Statement from the Tribe's Legal Counsel dated April 6, 2017, that describes and relies on the express congressional delegation of authority to eligible Indian tribes to administer CWA

---

<sup>2</sup> The original *Hardwick* decision decided that 17 California rancherias had been wrongly terminated. The Tribe's full restoration of the original Reservation was not completed until the subsequent Tribe-specific *Hardwick* Order in 1989. The 1989 order restores the original boundaries as described in Exhibit A of the *Hardwick* 1983 stipulation. Exhibit A includes a legal description of the original Reservation, including the notation that the original Reservation is 604 acres.

<sup>3</sup> Parcel E includes two parcels on the submitted Map that are numbered 24-350-530 and 24-350-540. The Application and the BIA Grant Deed taking these parcels into trust refer to these two numbered parcels as a unit.

<sup>4</sup> EPA's longstanding position is that reservations include both formal reservations (e.g., named reservations established through federal treaties with tribes, federal statutes, or Executive Orders of the President) as well as tribal trust lands that may not be formally designated as reservations, but that qualify as informal reservations. *See, e.g.*, 56 FR 64876, 64881, December 12, 1991; 81 FR 30183, 30192 (May 16, 2016); *Arizona Public Service Co. v. EPA*, 211 F.3d 1280, 1292-1294 (D.C. Cir. 2000), *cert. denied sub nom.*, *Michigan v. EPA*, 532 U.S. 970 (2001). Tribes may thus seek TAS authorization for both formal and informal reservations, and both types of lands are referred to as reservations.

regulatory programs contained in CWA Section 518 as the basis for the Tribe's authority to administer these CWA programs on its Reservation.

In light of the congressional delegation of authority, the main focus in determining the extent of an applicant tribe's jurisdiction for CWA regulatory purposes is identifying the geographic boundaries of the Indian reservation area over which the congressionally delegated authority would apply. *See* 81 Fed. Reg. 30183, 30194 (May 16, 2016). As described above, all of the Tribe's lands included in the Application are reservation lands where the Tribe may regulate water quality under the CWA on its Reservation. The Tribe asserts in its Application that there are no limitations or impediments to its ability to accept and effectuate this congressional delegation of authority under the CWA on its Reservation. EPA is not otherwise aware of 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 to regulate surface water quality over its Reservation lands 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

In its Application, the Tribe identifies surface waters within its Reservation for which it proposes to establish water quality standards, which include Fretis Ditch, which drains into Shackleford Creek, and Shackleford Creek, which is a tributary of the Scott River and provides important habitat for coho salmon.<sup>5</sup> *See* 40 C.F.R. § 131.8(b)(3)(iii).

These waters are identified on a Reservation Map as well as other maps which were submitted by the Tribe in its Application. *See* Appendix II. Therefore, EPA has determined that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(iii) by identifying the surface waters over which it proposes to establish water quality standards.

4. EPA's Findings on the Tribe's Assertion of Jurisdiction over "Waters within the Borders" of the Reservation

Based upon the information contained in the Application, EPA finds that the Tribe has established that it meets the requirements for TAS approval set forth in 40 C.F.R. § 131.8(a)(3) and (b)(3).

---

<sup>5</sup> The Tribe had initially identified Sniktaw Creek near the northwestern corner of the Reservation as a water body included in its Application. This is a meandering creek with frequent changes in channelization. The Tribe had the creek surveyed in early 2019, and now believes that the creek is not within the boundaries of the Reservation. For that reason, Sniktaw Creek is no longer included in the Application and is not included within the scope of this TAS decision. *See* Email from Crystal Robinson, Quartz Valley Indian Reservation, to Tom Hagler, et al., EPA, April 23, 2019.

#### **D. Capability**

The fourth and final requirement to approve 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).

As discussed above and in the Tribe's previous TAS applications for the Water Pollution Control Program under CWA Section 106 and the Nonpoint Source Pollution Control Program under CWA Section 319, the Tribe described its governmental structure as including the General Community Council, established by Article III of the Tribe's Constitution and composed of all voting members of the Tribe, as the Tribe's governing body. The General Community Council has the authority to promulgate and enforce ordinances for, among other things, the maintenance of law and order within the jurisdiction of the Tribe. The Community Council may exercise any other powers of self-government possessed by federally recognized Indian tribes. EPA finds that the Tribe possesses adequate general managerial experience, accounting system and governmental structure, in addition to extensive experience managing a variety of environmental and public health programs. For example, the responsibilities to establish, review, implement and revise water quality standards will be assigned to the Quartz Valley Indian Reservation Environmental Department ("Environmental Department") established in May 2005. The Environmental Department has already developed water quality standards and annually collects the necessary data to compare to these standards and has been developing an analytical report summarizing those findings since 2005. The water quality standards program would be delegated to program staff and may utilize a technical consultant. The Tribal entity that will be responsible for conducting water quality certifications under CWA Section 401 is the Environmental

Department. The Environmental Department will be delegated the authority to review applications for projects which may result in any discharge to Tribal waters. Tribal water quality standards will guide the review and certification of such projects. Final certifications will be signed and approved by the Tribal Council.

The Environmental Department currently reviews local projects within the Reservation. The environmental staff are trained personnel with the capability to develop and administer an effective water pollution control program. Since EPA's approval of the Tribe's eligibility for Water Pollution Control funding under CWA Section 106 and Nonpoint Source Pollution Control funding under CWA Section 319, the Environmental Department staff has gained more experience in implementing these environmental programs as well as the EPA General Assistance Program. The Director of the Environmental Department, Water Quality and Fisheries Coordinator and staff have additional experience working with other environmental programs and agencies such as Klamath National Forest, California Department of Fish and Wildlife, AmeriCorps and Resource Conservation District to monitor and assess water quality conditions in the Klamath and its major tributaries. The Tribe has been collectively involved for several years in maintaining water quality stations, development of a water quality control plan, tribally-adopted water quality standards, and collecting water quality samples along the Klamath River and its tributaries. The Tribe's ability to implement these programs illustrates its capability to administer an effective water pollution control program. Therefore, the Tribe has satisfied the criteria listed under 40 C.F.R. § 131.8(b)(4)(i)-(iii).

Consistent with 40 C.F.R. § 131.8(b)(4)(iv)-(v), EPA program staff also considered the agency of the Tribe that will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards and the technical and administrative capabilities of that agency. As previously stated, the Environmental Department 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 permits or licenses and which may result in discharge in navigable waters or impact water quality within the Reservation. The Tribe will have an established process for CWA Section 401 certifications; after a thorough analysis by the Environmental Department staff, the Environmental Director will be responsible for any final action regarding approval of Section 401 certification applications. Also, the General Community Council has the authority to enforce tribal ordinances and policies, including compliance with tribal water quality standards. Petitions for review of any final action, such as the denial of a Section 401 certification application, will be presented to the Tribal Council.

Based upon EPA's program office review of the information in the Tribe's Application,

EPA finds that the Tribe has demonstrated that it has the capability to administer the CWA Sections 303(c) 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. RESPONSE TO COMMENTS**

On December 7, 2018, EPA Regional Administrator for Region 9, Michael Stoker, sent a letter notifying “appropriate governmental entities” of the substance and basis of the Tribe’s assertion of authority in its Application. EPA Region 9 also provided notice of the Application in local newspapers. Two comment letters were received from “appropriate governmental entities” one from the BIA on January 30, 2019 and one from the SWRCB on April 19, 2019.

The BIA comment letter stated that BIA supports the Tribe’s assertion of authority to administer Water Quality Standards and Certification programs under the Clean Water Act and recommends that EPA approve the Tribe’s Application. EPA appreciates the BIA’s support and recommendation to proceed with this TAS approval.

The SWRCB letter confirmed that the SWRCB had received no comments from local governmental or other entities for transmittal to EPA. The SWRCB further acknowledged that the Tribe has jurisdiction over water quality within its Reservation.

The SWRCB also submitted comments that went beyond the scope of the requested input on the Tribe’s assertion of authority. The SWRCB requested coordination with the SWRCB and the North Coast Regional Water Quality Board on, among other things, any actual water quality standards and certification conditions proposed by the Tribe. EPA appreciates the SWRCB’s desire to coordinate on future proposed water quality standards and encourages such coordination between all relevant parties. The SWRCB also noted that CWA Section 518(e) addresses situations where states and eligible Indian tribes have differing water quality standards on common water bodies. EPA notes that the Agency has established procedures for these situations. *See* 40 C.F.R. § 131.7. Finally, the SWRCB referenced CWA Section 101(g), which addresses issues regarding water quantity rights and allocations as an issue of concern. EPA notes that today’s TAS decision relates to the Tribe’s authority to regulate Reservation water quality under the CWA water quality standards and certification programs and in no way addresses any matters regarding water quantity allocation or water quantity rights.

As a courtesy, EPA also provided notice of the Tribe’s Application to members of the Siskiyou County, California, Board of Supervisors (Board) on December 12, 2018, and offered an opportunity for comment. The Reservation is located in a rural area surrounded by Siskiyou County. The Board staff requested and received a copy of the Tribe’s Application on December 21, 2018. The Board submitted a comment letter dated January 3, 2019 (Board Letter).

The Board Letter raised two questions regarding the Tribe’s assertion of authority. First, the Board asked for more precision regarding whether Sniktaw Creek was included in the

Application as being within the borders of the Tribe's Reservation. In response to the comment, the Tribe had the relevant area of the Reservation surveyed, as noted above, and has determined that Sniktaw Creek is not within the boundaries of the Reservation. Accordingly, the Tribe is not claiming any jurisdiction over Sniktaw Creek, and Sniktaw Creek is not included within the scope of this TAS decision. Second, the Board asked for clarification as to whether the Tribe's Application includes groundwater, noting that the Board understood the Application to administer CWA programs as applying only to surface waters on the Tribe's Reservation. EPA agrees. This TAS decision approves the Tribe's eligibility to administer surface water quality regulation within the Reservation under Sections 303(c) and 401 of the CWA. This decision does not address groundwater regulation. EPA Region 9 discussed these issues with the Board's designated representative on July 23, 2019.

As part of our local outreach efforts, EPA also notified the City Administrator for Fort Jones, California, of the Tribe's Application, but no comments were received from Fort Jones.

#### **IV. Conclusion**

EPA has determined that the Tribe has met the requirements of CWA Section 518 and 40 C.F.R. § 131.8, and therefore approves the Tribe's Application for TAS to administer the water quality standards program of Section 303(c) of the CWA and its implementing regulations set forth at 40 C.F.R. Part 131. 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 Section 401 of the CWA and its implementing regulations set forth at 40 C.F.R. § 131.4. By virtue of these decisions, the Tribe will also be an "affected state" within the meaning of CWA Sections 402(b)(3) and (5) and its implementing regulation at 40 C.F.R. § 122.4(d).



Deborah Jordan  
Acting Regional Administrator



Date

**Index to**  
**THE ADMINISTRATIVE RECORD**

WITH RESPECT TO THE  
QUARTZ VALLEY INDIAN COMMUNITY  
OF THE QUARTZ VALLEY INDIAN RESERVATION  
OF CALIFORNIA

Program Authorization Application

For

The Clean Water Act's Section 303- Water Quality Standards

And

Section 401 - Certification Programs

<u>Document#</u>	<u>Description</u>	<u>Date of Document</u>
1.	Application from the Quartz Valley Reservation CWA Section 106	May 2, 2005
2.	Letter from Tribe's Legal Counsel to describe the basis for the Tribe's Assertion of Authority to regulate water quality throughout The Reservation.	April 6, 2017
3.	Final Water Quality Standards TAS Application submitted to Region 9 for review and comment.	July 31, 2017
4.	EPA comments submitted to Tribe on final draft TAS Application.	February 23, 2018
5.	Crystal Robinson, Environmental Director submitted revised staff resumes to be included in TAS Application.	April 11, 2018
6.	Email from Quartz Valley Indian Reservation with BIA Title Status information for included parcels.	July 31, 2018
7.	Siskiyou Daily News Proof of Publication regarding the October 24, 2018 notice requesting comments on the Tribe's assertion of authority to regulate surface water quality in the areas described in the Tribes application.	October 24, 2018
8.	Letter from Regional Administrator to Mike Turek, Tribal Relations Manager, notifying the U.S. Forest Service, Six Rivers National Forest of the Substance of and basis for the Tribe's assertion of jurisdiction and opportunity to comment.	December 7, 2018
9.	Letter from Regional Administrator to Amy Dutschke, Regional Director, notifying the U.S. Bureau of Indian Affairs, of the Substance of and basis for the Tribe's assertion of jurisdiction and opportunity to comment.	December 7, 2018
10.	Letter from Regional Administrator to Jerome Perez, State Director, notifying the U.S. Bureau of Land Management of the Substance of and basis for the Tribe's assertion of jurisdiction and opportunity to comment.	December 7, 2018
11.	Letter from Regional Administrator to Governor Jerry Brown notifying the State of California of the Substance of and basis for the Tribe's assertion of jurisdiction and opportunity to comment.	December 7, 2018
12.	Email transmission from EPA Acting Manager, Christina Yin to Siskiyou County, Board of Supervisors providing additional local outreach on Tribe's application.	December 12, 2018



<u>Document#</u>	<u>Description</u>	<u>Date of Document</u>
13.	Comment Letter from Siskiyou County, Board of Supervisors	January 03, 2019
14.	Comment Letter from U.S. Bureau of Indian Affairs in support of the Tribe's Application.	January 30, 2019
15.	Email transmission from David Rapport, Legal Counsel, to Tom Hagler, Regional Attorney regarding "Hardwick" Case judgment from 1983 for restored rancheria, including Quartz Valley.	March 19, 2019
16.	Email transmission from David Rapport, Legal Counsel to Tom Hagler, Regional Attorney regarding referenced legal case "Hardwick".	March 28, 2019
17.	Comment Letter from California State Water Resources Control Board in support of the Tribe's application.	April 19, 2019
18.	Email transmission from Crystal Robinson, Tribal Environmental Director regarding Sniktaw Creek's Survey completed to determine the creek is not inside the Reservation's boundary.	April 23, 2019
19.	EPA held call with Siskiyou County Board designated representative Elizabeth Nielsen to discuss Board's comment letter submitted.	July 23, 2019
20.	Email transmission from Manager, Jason Brush to local community Fort Jones City Administrator providing additional local outreach on the Tribe's Application.	August 5, 2019
21.	1989 Court Order reflecting restoring of the Tribe's boundaries and sets up a process for bringing new parcels into Tribal Control.	September 2019

