

DECISION DOCUMENT
FOR
THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S APPROVAL OF
YERINGTON PAIUTE TRIBE
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

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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 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 (e) 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. 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. 64876 (Dec. 12, 1991), as amended by 59 Fed. Reg. 64339 (Dec. 14, 1994), and 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 a TAS eligibility application (the “Application”) from the Yerington Paiute Tribe (“Tribe”) 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 (“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(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 listed in Appendices I-III. Included in this list are the Tribe’s application for TAS for purposes of the water quality standards and certification programs under Sections 303(c) and 401 of the CWA, submitted to EPA February 2018, and supplemental materials provided by the Tribe in March and June 2018, which together constitute and will be referred to as the Tribe’s “Application”.

As provided in 40 C.F.R. § 131.8(c)(2), the EPA Regional Administrator for Region 9, Michael Stoker, sent a letter dated December 7, 2018, notifying “appropriate governmental entities”¹ of the substance and basis of the Tribe’s assertion of authority in its Application. The letter included the Region 9 Project Officer’s contact information for members of the public who wanted to obtain a copy of the Application to review. The notice letter, as well as copies of the Application, were sent to the Governor of Nevada and the State of Nevada, Division of Water Resources, who forwarded the letter to Nevada’s Division of Environmental Protection (“NDEP”), and the U.S. Bureau of Land Management. Comments were received from the NDEP on February 1, 2019. EPA’s responses to NDEP’s comments are discussed in Section III of this Decision Document.

In addition, consistent with agency practice, EPA also provided the general public with notice of and an opportunity to comment on the Tribe’s assertion of authority. The public notice was published in the Reno Gazette Journal on October 24, 2018. Finally, EPA exercised its discretion and conducted additional outreach to local governments. In response to the local government outreach, Lyon County’s designated representative stated that “Lyon County will not oppose any action that the Yerington Paiute Tribe takes in reference to their handling of water in the sovereign nation.” Apart from those provided by NDEP, no additional comments were received.

C. Statutory and Regulatory Provisions

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

¹ 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).

1. Section 518 of the Clean Water Act, 33 U.S.C. § 1377(e) 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. 64876 (Dec. 12, 1991), as amended by 59 Fed. Reg. 64339 (Dec.14, 1994) and 81 Fed. Reg. 30183 (May 16, 2016) (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.

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 regulations at 40 C.F.R. § 131.8(a), four requirements must be satisfied before EPA can approve a tribe's TAS application 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 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 "Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada." *See* 84 Fed. Reg. 1200, 1204 (Feb. 1, 2019). The Tribe's Reservation comprises approximately 1700 acres located in Lyon County, Nevada.

EPA has confirmed that the Yerington Paiute 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: (i) describes 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) identifies 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 needs not make that showing again. See 59 Fed. Reg. 64339, 64340 (Dec. 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 approval of the Tribe's TAS applications for CWA Section 106 (Water Pollution Control Program) and CWA Section 319 (Nonpoint Source Program) grants 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. The Tribe's governance structure and its related governmental functions have not changed since the prior TAS approval.

As background and for additional support, EPA summarizes again the Tribe's governmental structure here. The Tribe's Application includes a tribal attorney letter dated June 14, 2017, and other documents which contain narrative descriptions of the structure, duties and powers of the Yerington Paiute's Tribe's government. The documents provided by the Tribe include its Constitution and Bylaws, which were adopted by the Tribe in December 12, 1936, and since amended on June 15, 1976, and February 9, 1999. The Constitution and Bylaws of the Yerington Paiute Tribe were approved on January 4, 1937, by the Department of the Interior, Bureau of Indian Affairs, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935, 49 Stat. 378. The Tribe held its Charter Election on April 10, 1937, resulting in the establishment of the first Yerington Paiute Council. The Tribal Council serves both legislative and executive functions, in that it is empowered to both promulgate and enforce ordinances to provide for the general welfare of the Tribe. In 1937, the Tribal Council established a Tribal Court.

EPA has determined that, based upon the Tribe's Application and EPA's prior approval of the Tribe's CWA Section 106 Water Pollution Control TAS application on June 21, 2000, and the Tribe's CWA Section 319 Non-Point Source Pollution TAS application on January 30, 2003, 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 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 legal description of the boundaries of the Reservation, indicating the area over which the Tribe asserts authority. The Application also includes a map highlighting surface waters within the Reservation and an Atlas of Tribal Surface Water Resources for the Yerington Paiute Tribe. A copy of this map is included in Appendix II.

The Reservation consists of two parcels located in Lyon County, Nevada. Yerington Colony was purchased in 1917, pursuant to the Act of May 18, 1916, 39 Stat. 143, which appropriated money to the Bureau of Indian Affairs for purchase of land for non-reservation Indians in the State of Nevada. The Campbell Ranch Reservation (“Campbell Ranch”) was purchased on December 10, 1936, with funds appropriated pursuant to the Act of May 9, 1935, 49 Stat. 183, “[f]or the acquisition of lands . . . in accordance with the provisions of [the Indian Reorganization Act of 1934].”² The Application covers water resources located within Campbell

² The Indian Reorganization Act of 1934 authorizes the Secretary of the Interior to acquire lands in trust for the benefit of Indian tribes, and to create new Indian reservations from such lands, or to add such lands to existing Indian reservations. 25 U.S.C. §§ 465, 467 (1934). *See also Interior Dept. Appropriation Bill for 1940: Hearings Before the H. Subcommittee of the Committee on Appropriations, 76th Congress*

Ranch and Yerington Colony (collectively referred to herein as the “Reservation”), which collectively covers approximately 1,700 acres.

EPA has determined that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(i) by providing an adequate map and 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 Authority

The Tribe’s TAS Application for the CWA Sections 303(c) and 401 programs included a Statement from the Tribe’s legal counsel dated June 14, 2017, that describes and relies on the congressional delegation of authority under CWA Section 518 as the basis for the Tribe’s authority to regulate surface water quality 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). 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. EPA is also not otherwise aware of any impediment limiting the Tribe’s ability to effectuate the congressionally delegated authority. EPA therefore concludes that the Tribe has properly asserted the congressional delegation of authority to regulate surface water quality on its Reservation 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

The Yerington Paiute Tribe has identified surface waters within its Reservation for which it proposes to establish water quality standards, which include 27,050 feet of rivers, streams and principal ditches, and 3.5 acres of freshwater wetlands.³

The aforementioned waters are identified on the map which was submitted by the Tribe in its Application. 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.

494 (1939) (summarizing land purchases under Indian Reorganization Act of June 18, 1934, including purchase of 1,036.24 acres for the Yerington Paiute in 1936 [Campbell Ranch]).

³ This approval is not a determination as to the scope of federal jurisdiction over any of the identified waters. See the Response to Comments section below for additional discussion.

4. EPA's Findings on the Tribe's Assertion of Jurisdiction Over "Waters Within the Borders" of the Yerington Paiute Tribe Reservation

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

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 Clean Water Act Section 106 and the Non-Point Source Pollution Program under Clean Water Act Section 319, the Tribe described its governmental structure as consisting of the Yerington Paiute Tribal Council, which is comprised of seven council persons elected by secret ballot. According to the narrative statement and organizational charts included in the Application, the Yerington Paiute Tribe's Constitution and Bylaws established the Tribal Council as the Tribe's governing body. The Tribal Council elects from its own members: a chairperson, a vice-chairperson, a secretary, and a treasurer. The Council members hold office for two-year terms.

The Tribal Council's primary responsibility is to promote and secure the social and economic well-being of the Tribe and its members. Under the Constitution, the Tribal Council is

empowered to enact all tribal laws, regulations, ordinances, resolutions, and constitutional amendments and to provide general business direction necessary to protect the health, safety, and welfare of the Tribe. The Tribe's government also includes a Tribal Court, established in 1937.

In approving the Tribe's CWA Section 106 and CWA Section 319 TAS Applications, EPA found that the Tribe possessed adequate general managerial experience, accounting systems and governmental structure, in addition to extensive experience managing a variety of environmental and public health programs. The Yerington Paiute Tribe's Environmental Department is the agency in charge of and has served as the technical staff support for the Tribe's environmental programs and a variety of community health programs. The Tribe uses Bureau of Indian Affairs (BIA) Public Law 93-638 funds to manage education, social services, commodities and law enforcement. These are further supported by the tribal court and judicial system, which were established on November 14, 1937, with the adoption of a Law and Order Code at Campbell Ranch. The Law and Order Code authorizes the Tribal Court to apply the provisions of the Code and any additional ordinances, resolutions or procedures adopted by the Tribe. *See* Yerington Paiute Law and Order Code 1-30-010.

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 CWA Section 106 Water Pollution Control Program and the CWA Section 319 Non-Point Source Pollution TAS applications, the Yerington Paiute Tribe's Environmental Department staff has received EPA General Assistance Program funding and gained more experience in implementing its environmental programs, including Water Pollution Control Program, Nonpoint Source Pollution Prevention Program, Clean Air Act Section 103 Program, USDA infrastructure grant and a National Fish and Wildlife Foundation Wetlands grant. The Tribe has also submitted its Water Pollution Ordinance and Water Pollution Law and Order Code to illustrate the capability of the Tribe. 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 other criteria related to the capability of the Tribe to administer the CWA Section 303 water quality standards and Section 401 certification programs. The Yerington Paiute Tribe's Environmental Department is the entity that has been assigned the primary responsibility for establishing, reviewing, implementing and revising water quality standards and certifying permits.

The Tribe's current TAS application contains a description of the department and staff that will administer the water quality standards and certification programs, as provided by 40 C.F.R. § 131.8(b)(4)(iv)-(v). Among others, the Application describes the position of the Environmental Director, who is responsible for oversight of tribal environmental programs, and the Water Quality Coordinator, who is responsible for collection of samples and implementation of Clean Water Act grant work plans. The position descriptions and resumés of the program staff

who will administer the water quality standards and certification programs were included as part of the Application. These position descriptions and resumés indicate that the Tribe possesses the administrative and technical capability to administer these programs.

Based upon EPA's program office review of the information in the Tribe's Application and discussions with the tribal environmental 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. RESPONSE TO COMMENTS

On December 7, 2018, the 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. Region 9 also provided notice of the Application in local newspapers and sent email notices to local governmental entities. One comment was received from NDEP on February 1, 2019. The comment stated that NDEP "is supportive of tribal efforts to protect and improve water quality." NDEP also requested that EPA "evaluate and explain the prospective authority of the [Yerington Paiute Tribe (YPT)] under CWA to designate beneficial uses or water quality standards for the Wabuska Drain and West Campbell Ditch," noting that "it has not been established that the ditches listed in YPT's application (i.e., Wabuska Drain and West Campbell Ditch) are Waters of the United States subject to CWA jurisdiction."

This TAS approval does not address the scope of federal jurisdiction over any of the identified waters. As indicated above, EPA has determined that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(iii), which requires that a tribe's application include "[a]n identification of the surface waters for which the Tribe proposes to establish water quality standards." The identification requirement in 40 C.F.R. § 131.8(b)(3)(iii) and the other TAS eligibility criteria, described above, do not require the Tribe to demonstrate or EPA to determine if the identified waters are waters of the United States. Accordingly, EPA's determination that the Tribe has identified surface waters within its Reservation for which it proposes to establish water quality standards is not a determination that the waters identified by the Tribe are waters of the United States.

As noted above, this 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(c). Development of such standards would remain subject to all requirements of EPA's regulations 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. EPA-approved water quality standards are applicable for CWA purposes only for those waters that are waters of the United States.

IV. CONCLUSION

EPA has determined that the Yerington Paiute 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. § 131.6. 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 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).



Deborah Jordan
Acting Regional Administrator



Date

Index to
THE ADMINISTRATIVE RECORD

WITH RESPECT TO THE

Yerington Paiute Tribe

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 Yerington Paiute Tribe Clean Water Act Section 106. | June 21, 2000 |
| 2. | Draft Water Quality Standards TAS Application submitted to Region 9 | February 14, 2015 |
| 3. | EPA comments submitted to Tribe on draft TAS Application. | November 8, 2016 |
| 4. | Letter from Tribe's Legal Counsel to describe the basis for the Tribe's Assertion of Authority to regulate water quality throughout the Reservation. | June 14, 2017 |
| 5. | Letter and revised Application submitted by the Tribe to CWA Project Officer and ORC for review. | August 4, 2017 |
| 6. | Final Revised Application submitted to EPA for review. | January 2018 |
| 7. | Rachael Saunders, acting Environmental Director submitted revised staff resumés to be included in TAS Application. | July 12, 2018 |
| 8. | The Reno Gazette- Journal 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 |
| 9. | Letter from Regional Administrator to Governor Brian Sandoval, State of Nevada, notifying the State 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 Acting District Manager, Colleen Dulin, 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 State Engineer, State of Nevada, Jason King notifying the State 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 Jeff Page, Yerington County, County Manager, providing additional local outreach on Tribe's application. | December 12, 2018 |

| <u>Document#</u> | <u>Description</u> | <u>Date of Document</u> |
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| 13. | Comment Letter from Nevada Division of Environmental Protection (NDEP), Administrator Greg Lovato on behalf of Nevada Division of Water Resources. | February 1, 2019 |
| 14. | Email transmission from Jason Brush to Mr. Jeff Page, Lyon County, Nevada, County Manager, providing additional local Outreach on Tribe's application. | June 20, 2019 |
| 15. | Email transmission from Jason Brush to Mr. Bob Hastings Lyon County, Commission Chairman, District 1, providing additional local outreach on the Tribe's application. | June 20, 2019 |
| 16. | Email transmission from Jason Brush to Ms. Vida Keller, Lyon County, Commissioner, District 2, providing additional local outreach on the Tribe's application. | June 20, 2019 |
| 17. | Email transmission from Jason Brush to Mr. Ken Gray, Lyon County, Commissioner, District 3, providing additional local outreach on the Tribe's application. | June 20, 2019 |
| 18. | Email transmission from Jason Brush to Mr. Joe Mortensen, Lyon County, Commission, Vice-Chair, District 4, providing additional local outreach on the Tribe's application. | June 20, 2019 |
| 19. | Email transmission from Jason Brush to Mr. Greg Hunewill, Lyon County, Commissioner, District 5, providing additional local outreach on the Tribe's application. | June 20, 2019 |
| 20. | Email transmission from Jason Brush to Mr. George Dini, Mayor, City of Yerington, Nevada, providing additional local outreach on the Tribe's application. | June 20, 2019 |
| 21. | Email transmission from Mr. Ken Gray, Lyon County, Commissioner, District 3, acknowledging receipt of local government email and stating no issues seen with Tribe's TAS Application. | June 25, 2019 |
| 22. | Email transmission from Mr. Jeff Page, Lyon County Manager, acknowledging receipt of local government email and stating Lyon County will not oppose any action the Tribe takes in handling Water in the sovereign nation. | June 25, 2019 |