

THE CONFEDERATED TRIBES OF THE COOS, LOWER UMPQUA, & SIUSLAW INDIANS



TAS ADDENDUM FOR CLEAN WATER ACT ELIGIBILITY TO ADMINISTER A WATER QUALITY STANDARDS PROGRAM AND A WATER QUALITY CERTIFICATION PROGRAM

PREPARED BY:
THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, &
SIUSLAW INDIANS
DEPARTMENT OF CULTURE AND NATURAL RESOURCES

JUNE 2020

JUNE 2020 CTCLUSI TAS ADDENDUM SUMMARY

1. Purpose

This supplement modifies CTCLUSI's December 2019 *Application for Clean Water Act Eligibility to Administer a Water Quality Standards Program and a Water Quality Certification Program*. The purpose of this addendum is to clarify that CTCLUSI asserts jurisdiction over surface water within the boundaries of the Tribe's Reservation and trust lands, and not exterior to those boundaries.

2. Changes to Section 5, Paragraph 3

The third paragraph of Section 5 of the Application now reflects the extent of the Tribe's assertion of authority. The language has been changed in the following way: words in **bold** have been added, words in *italics* have been removed:

“The Tribe proposes to establish water quality standards on surface waters of *and pertaining to* the Tribe's Reservation and trust lands as a well as all associated riparian, wetlands, coastal beach front, and lakefront areas **within the boundaries of the Tribe's Reservation and trust lands**. Tribal lands that are in fee status will be subject to the Oregon Department of Environmental Quality (“ODEQ”) Water Quality Standards. The surface waters for which the Tribe proposes to establish water quality standards are those surface waters that occur on *and immediately adjacent to* the Tribal trust land areas described in Exhibit C and Exhibit E. In addition to the named waterbodies, the Tribe manages and protects all riparian areas, wetlands, tributaries, aquatic resources, and any unnamed surface waterbodies within the boundaries of the Tribe's Reservation and trust land.”

3. Updated List of Waterbodies in Section 5

The Tribe is asserting authority over the following waterbodies:

- On the Kentuck Slough Tract, wetlands immediately adjacent to Kentuck Slough.
- On the Sixes River Tract, wetlands immediately adjacent to the Sixes River.
- On Hatch Tract, the North Fork Siuslaw River and immediately adjacent wetlands.
- On Fossil Point Unit 1, Coos River and Coos Bay and immediately adjacent wetlands.
- On Gregory Point, the Pacific Ocean and immediately adjacent wetlands.
- On Fossil Point Unit 3, Coos River and Coos Bay and immediately adjacent wetlands.
- On Umpqua Eden, streams and wetlands immediately adjacent to Umpqua River.
- On Macy Tract, streams and wetlands immediately adjacent to the Umpqua River.
- On Lower Smith Tract: Spencer Creek, Johnson Creek, Rachel Creek, Bear Creek, Cedar Creek, and Coon Creek.
- On the Upper Lake Creek Tract: Lake Creek and Pucker Creek.
- On the Tioga Tract: Tioga Creek, Gooseberry Creek, Burnt Tributary, Wilsons Folly Creek, and Bear Gulch.
- On the Talbot Tract, streams and wetlands immediately adjacent to Big Tributary.
- On the Coos Head Tract, wetlands immediately adjacent to the Pacific Ocean.

The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (hereafter “CTCLUSI”, “Tribe”, or “Applicant”) hereby applies under Section 518 of the Clean Water Act (“CWA”) to the U.S. Environmental Protection Agency (EPA) to become eligible to be treated in a similar manner as a state (“TAS”) to administer a CWA Section 303(c) water quality standards program and CWA Section 401 water quality certification program. This TAS application (“Application”) establishes that CTCLUSI meet the eligibility requirements identified in 40 C.F.R. § 131.8(a).

1. The Applicant’s history and purpose in applying for CWA TAS status.

CTCLUSI is comprised of four constituent bands called the Hanis Coos, Miluk Coos, Lower Umpqua, and Siuslaw. Since time immemorial, our people lived along the coasts of the Pacific Ocean as well as the Coos, Umpqua, and Siuslaw estuaries and tributaries. Our expansive homeland stretched from the Pacific Ocean to the forested slopes of the Coastal Mountain range of Oregon encompassing 1.6 million acres and 80 miles of the Oregon coast, referred to as the Ancestral Territory (**Exhibit D** page 2).

In 1855, CTCLUSI signed a treaty with the United States government that ceded our Ancestral Territory in exchange for compensation of ceded lands and a large reservation. Unfortunately, the treaty was never ratified. As a result, we were never appropriated a reservation or compensated for our lands. A majority of our people were rounded up, confined, and then moved over a period of years to the southern end of the Siletz Reservation near Yachats Prairie, a place called the Alsea sub-agency. It is believed that about half of our people lost their lives during these dismal years as a result of disease, starvation, and exposure. In 1875, the Alsea sub-agency of the Siletz Reservation was thrown open for Euro-American settlement despite protests by several of our Chiefs, Headmen, and Tribal delegates. Our people became refugees in their own homeland and were forced to linger in the shadows of our Euro-American neighbors.

Nevertheless, we maintained our identity as Native People. In 1917, we officially banded together as CTCLUSI and established a formal elected government that we have maintained ever since. In 1941, the Bureau of Indian Affairs (“BIA”) took a small parcel into trust for CTCLUSI in the City of Coos Bay, Oregon. On this small Reservation, the BIA also erected a Tribal Hall that included an assembly hall, kitchen, offices, and medical clinic. In 1954, the U.S. government terminated our federal recognition. We refused to accept the termination of our existence as a tribe. In 1984, after three decades of hard work, our federal recognition was restored.

At the time of restoration, CTCLUSI held only our Tribal Hall on six acres and three other slivers of land totaling less than eight acres, a far cry from our original 1.6 million acres. Since restoration, we have continued the work of reconstructing our fragmented land base and revitalizing our culture. As of today, the Tribes’ Reservation and trust land base is greater than 14,800 acres, and more than 400 acres are held in fee. The most recent acquisition was accomplished via Title II of the Western Oregon Tribal Fairness Act (“WOTFA”), P.L. 115-103.

Part of revitalizing our culture is restoring, conserving, and protecting the resources that make us who we are. The waters of our Ancestral Territory and current land holdings are perhaps the most precious of such resources. Our very title as a collective people is a reference to the various waterbodies that we have lived alongside and depended on since time immemorial. As

such, CTCLUSI have endeavored to take an active role in the management of water quality of/or pertaining to our Tribal Lands.

In 2002, we applied for TAS under CWA Section 106, which was approved by the EPA that same year. Soon after, we received TAS approval for CWA Section 319 in 2003. In the two years following approval, we developed a Quality Assurance Project Plan (“QAPP”) for surface water quality monitoring and began collecting water quality samples in the Siuslaw River. In addition, we began implementing a nonpoint source pollution prevention program that identified the most significant contributors affecting water quality and culturally significant resources within our Ancestral Territory.

Since then, we have steadily grown our water quality program. Water quality monitoring has expanded to nine parameters in seven locations. Collaborating with local water quality stakeholders, we have worked systematically and naturalistically to restore watershed processes and improve water quality for culturally-significant resources such as salmon, lamprey, and shellfish. More recently, CTCLUSI is developing Tribal water quality standards based on information collected through our integrated water quality monitoring program. These standards will protect the beneficial uses of the waters of the Tribe.

With this Application, CTCLUSI is pursuing the first step towards federal approval of those Tribal water quality standards. Federal approval of our Tribal standards will allow for EPA enforcement, which is presently unavailable. Moreover, federally approved standards can compel upstream compliance, meaning that we will not be powerless to curtail upstream discharges that threaten our resources. Finally, CTCLUSI aims to use our federally approved standards to promote productive collaboration and co-management with federal, state, and other Tribal environmental offices. Such partnerships would ensure that all governments involved see their water quality interests adequately protected.

CTCLUSI look forward to working with the EPA throughout the eligibility application and water quality standards approval process. We will endeavor to respond comprehensively to comments by interested government parties and the public. Most importantly, we will employ our knowledge as the traditional stewards of these waterbodies to administer a water quality standards and certification program that improves the health and well-being of all people and resources.

2. The Applicant is an Indian tribe recognized by the Secretary of the Interior. 40 C.F.R. §§ 131.8(a)(1) and (b)(1).

CTCLUSI appears as “Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians” in the United States Department of the Interior’s list of *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 83 Fed. Reg. 4235 (Jan. 30, 2018) (attached as **Exhibit A**).

3. The Applicant possesses authority over a federal Indian reservation. 40 C.F.R. §§ 131.8(a)(1) and 131.3(l).

CTCLUSI exercises governmental authority over a federal Indian reservation in Southwest Oregon. This includes lands held by the United States in trust for the Tribal government that are not located within the boundaries of a formal reservation. See Section 5 of the Application for a detailed description of the Tribe's Reservation and trust lands.

4. The Applicant has a governing body carrying out substantial government duties and functions. 40 C.F.R. §§ 131.8(a)(2) and (b)(2).

The Applicant's federal recognition was restored on October 17, 1984 via the enactment of the Coos, Lower Umpqua, and Siuslaw Restoration Act ("Restoration Act") PL No. 98-481, 98 Stat. 2250, *codified at* 25 U.S.C. § 714-714f (omitted for editorial reclassification). CTCLUSI is organized under a Tribal Constitution that was approved by Tribal members on May 23, 1987. Ross O. Swimmer, then-Assistant Secretary of Indian Affairs, federally approved the Tribal Constitution on June 23, 1987, attached as **Exhibit B**.

The Tribal Constitution establishes that CTCLUSI governmental authority is divided amongst a General Council, a Tribal Council, and a Tribal Court.

The Tribe's General Council consists of all enrolled CTCLUSI members who are eighteen years of age or older. General Council members have the power to:

- Vote in Tribal Elections;
- Elect Tribal Council members and approve or disapprove of any salary wages paid for performance of Tribal Council duties;
- Exercise the powers of initiative and referendum;
- Propose Constitutional amendments;
- Recall elected Tribal officials;
- Make advisory recommendations to the Tribal Council; and
- Approve any fundamental changes in the jurisdiction, Reservation lands, or rights.

The Tribal Council consists of seven members elected by the Tribe's General Council: a Tribal Chief, elected for ten-year terms, and six Council Members, elected for four-year terms. The Tribal Council elects, from amongst themselves, a Chair and Vice-Chair. The Chief is a voting member of the Tribal Council, opens and closes Tribal meetings, and oversees all Tribal ceremonies. The Tribal Council meets semi-monthly to conduct Tribal business.

The Tribal Council possesses all executive and legislative powers not reserved to the General Council, including those police powers necessary to protect and maintain natural resource health. The Tribal Council exercises its governmental functions and duties by adopting resolutions and ordinances, which may then be codified into the Tribal Code. The Tribal Council has largely delegated day-to-day executive function to the Chief Executive Officer, who in turn oversees a sizeable administrative body divided into smaller departments:

- Enrollment Office;
- Police Department;
- Planning Department;
- Realty and Land Use;
- Finance Department;
- Human Resources Department;
- Health Services Department;
- Family Support and Behavioral Health Services Department;
- Education Department;
- Housing Department;
- Management Information Systems Department; and
- Culture and Natural Resources.

The Tribal Constitution also established a Tribal Court to fulfill the government's judicial duties and functions. The Tribal Court facilitates resolution of conflicts in accordance with the Tribal Constitution and CTCLUSI Tribal Code, exercising jurisdiction over the following civil issues and claims:

- Adoptions;
- Arbitrations;
- Appeals on decisions of tribal committees and boards;
- Civil rights;
- Collections;
- Contract disputes;
- Domestic violence;
- Election appeals;
- Employee rights;
- Enrollment appeals;
- Eviction;
- Juvenile matters;
- Torts;
- Traditional alternative dispute resolutions (Peace giving);
- Tribal code violations;
- Small claims; and
- Substance abuse deferment proceedings (Healing to Wellness).

Finally, CTCLUSI has a Tribal Police Department. The mission of the Tribal Police Department is to protect life and property and to enhance the quality of life for all persons residing upon or visiting CTCLUSI lands. Currently, all CTCLUSI lands held in federal reservation or trust status are protected by the Tribal Police Department.

5. The functions to be exercised by the Applicant pertain to the management and protection of water resources within the exterior boundaries of the reservation. 40 C.F.R. §§ 131.8(a)(3) and (b)(3).

The water quality standards and water quality certification programs to be administered by the Applicant will assist in managing and protecting water resources within CTCLUSI jurisdiction.

The boundaries of the Tribal trust land areas for which the Applicant is seeking authority to administer the water quality standards and water quality certification programs are identified by legal description in **Exhibit C** and with maps in **Exhibit D**. (*Disclaimer: maps distinguish between “trust” and “fee” land, where “trust” includes both reservation and trust designations.*). Lands conveyed into trust for CTCLUSI with the enactment of the WOTFA are described in **Exhibit E**.

The Tribe proposes to establish water quality standards on surface waters of the Tribe’s Reservation and trust lands as well as all associated riparian, wetlands, coastal beach front, and lakefront areas within the boundaries of the Tribe’s Reservation and trust lands. Tribal lands that are in fee status will be subject to the Oregon Department of Environmental Quality (“ODEQ”) Water Quality Standards. The surface waters for which the Tribe proposes to establish water quality standards are those surface waters that occur on the Tribal trust land areas described in **Exhibit C** and **Exhibit E**. In addition to the named waterbodies, the Tribe manages and protects all riparian areas, wetlands, tributaries, aquatic resources, and any unnamed surface waterbodies within the boundaries of the Tribe’s Reservation and trust land.

On October 17, 1984, the Applicant’s federal recognition was restored via Public Law 98-481, the Coos, Lower Umpqua, and Siuslaw Restoration Act (“Restoration Act”). The Restoration Act provided for the restoration of all rights and privileges that were diminished by the Western Oregon Tribal Termination Act. 25 U.S.C. § 714a(b). The Restoration Act also established approximately 8.5 acres of CTCLUSI Reservation lands. The following list of the Tribe’s Reservation and trust lands is ordered chronologically by date brought into trust, and includes:

- Alternative names for the tract
- References for the map appendix (**Exhibit D**)
- The named waterbodies associated with that tract
- Descriptions and history

“Kentuck Slough” (BIA No. 152T1000):

Names: Kentuck Slough

Maps: **Exhibit D** page 3

Waterbodies: Wetlands immediately adjacent to Kentuck Slough

Description and History:

On October 17, 1984, the Applicant’s federal recognition was restored via the Restoration Act. Kentuck Slough was conveyed as: "In Coos County, Oregon, a parcel containing 1.02 acres and described as parcel 3200 of section 106B of township 25 south, range 12 west, Willamette

meridian." 25 U.S. Code § 714e (1). This property is further described in the deed conveying the property into trust, found in **Exhibit C** pages 4-5.

"Tribal Hall Unit 1" (BIA No. 152T1001):

Names: Tribal Hall, Tribal Hall Unit 1

Maps: **Exhibit D** page 4

Waterbodies: No named waterbodies

Description and History:

On October 17, 1984, the Applicant's federal recognition was restored via the Restoration Act. Tribal Hall Unit 1 was conveyed as: "In Coos County, Oregon, a parcel described as lots 10-18, block 13, Empire Commercial tracts K73 2K 81, A. N. Foley Donation Land Claim Numbered 38, section 20 of township 25 south, range 13 west, Willamette meridian." 25 U.S. Code § 714e(2). This property is further described in the deed conveying the property into trust, found in **Exhibit C** pages 6-7.

"Sixes River" (BIA No. 152T1006):

Names: Sixes, Sixes River

Maps: **Exhibit D** page 5

Waterbodies: Wetlands immediately adjacent to the Sixes River

Description and History:

On October 17, 1984, the Applicant's federal recognition was restored via the Restoration Act. The Sixes Tract was conveyed as: "In Curry County, Oregon, a parcel described as the southeast quarter of the southeast quarter of the southwest quarter of section 11 of township 32 south, range 15 west, Willamette meridian." 25 U.S. Code § 714e(3). This property is further described in the deed conveying the property into trust, found in **Exhibit C** page 8.

"Peterman Tract" (BIA No. 152T1007):

Names: Peterman Tract, Three Rivers Casino Florence Complex Unit 1.

Maps: **Exhibit D** page 6

Waterbodies: No named waterbodies

Description and History:

On October 17, 1984, the Applicant's federal recognition was restored via the Restoration Act. The Peterman Tract was conveyed as: "In Lane County, Oregon, a parcel described as beginning at the common corner to sections 23, 24, 25, and 26 township 18 south, range 12 west, Willamette Meridian; then west 25 links; then north 2 chains and 50 links; then east 25 links to a point on the section line between sections 23 and 24; then south 2 chains and 50 links to the place of origin, and containing .062 of an acre, more or less, situated and lying in section 23, township 18 south, range 12 west, of Willamette Meridian." 25 U.S. Code § 714e(4). This property is further described in the deed conveying the property into trust, found in **Exhibit C** page 9.

“Tribal Hall Unit 2-7” (BIA No. 152T1002):

Names: See below

Maps: **Exhibit D** page 4

Waterbodies: No named waterbodies

Description and History:

In May 1994, the parcels identified as “Tribal Hall Unit 2,” “Tribal Hall Unit 3,” “Tribal Hall Unit 4,” “Tribal Hall Unit 5,” “Tribal Hall Unit 6,” and “Tribal Hall Unit 7” were taken into trust for CTCLUSI. These six lots comprise BIA No. 152T1002. These six lots are described in the deed conveying the property into trust, found in **Exhibit C** pages 10-15.

The alternative names and BIA tract identification numbers are as follows:

“Tribal Hall Unit 2” (BIA No. 152T1002): Also known as Melville 5000.

“Tribal Hall Unit 3” (BIA No. 152T1002): Also known as Melville 5003.

“Tribal Hall Unit 4” (BIA No. 152T1002): Also known as Melville 5007.

“Tribal Hall Unit 5” (BIA No. 152T1002): Also known as Melville 5009.

“Tribal Hall Unit 6” (BIA No. 152T1002): Also known as Melville 5008.

“Tribal Hall Unit 7” (BIA No. 152T1002): Also known as Gulley 5004.

“Wu-a-lach Unit 2” (BIA No. 152T1003):

Names: Wu-a-lach Unit 2, Flanagan Pioneer Cemetery, Wulatch, Wualach.

Maps: **Exhibit D** page 7

Waterbodies: No named waterbodies

Description and History:

On February 14, 1994, the parcel identified as “Wu-a-lach Unit 2” was taken into trust for CTCLUSI. This property is described in the deed conveying the property from Coos County into trust, found in **Exhibit C** pages 16-18.

“Tribal Hall Unit 8 & 9” (BIA No. 152T1005):

Names: Tribal Hall Unit 8 & 9, Barnhart I & II.

Maps: **Exhibit D** page 4

Waterbodies: No named waterbodies

Description and History:

On January 3, 1995, the parcels identified as “Tribal Hall Unit 8” and “Tribal Hall Unit 9” were taken into trust for CTCLUSI. These are described in the deed conveying the properties into trust, found in **Exhibit C** pages 19-22. The two parcels are defined as 6800 and 6900 in the deed.

“Tribal Hall Unit 10” (BIA No. 152T1004):

Names: Tribal Hall Unit 10, 1308 Neese

Maps: **Exhibit D** page 4

Waterbodies: No named waterbodies

Description and History:

On January 3, 1995, the parcel identified as “Tribal Hall Unit 10,” were taken into trust for CTCLUSI. This property is described in the deed conveying the property into trust, found in **Exhibit C** pages 23-25.

“Tribal Hall Unit 11” (BIA No. 149T1068):

Names: Tribal Hall Unit 11, Reeves-Jim Vick, 1297 Ocean Blvd, The Ocean Boulevard property

Maps: **Exhibit D** page 4

Waterbodies: No named waterbodies

Description and History:

This property is described in the deed conveying the property into trust, found in **Exhibit C** pages 26-29.

“Tribal Hall Unit 12” (BIA No. 149T1061):

Names: Tribal Hall Unit 12, Eichler

Maps: **Exhibit D** page 4

Waterbodies: No named waterbodies

Description and History:

On March 12, 1998, the parcel identified as “Tribal Hall Unit 12” was taken into trust for CTCLUSI. This property is described in the deed conveying the property into trust, found in **Exhibit C** pages 30-31.

“Tribal Hall Unit 13” (BIA No. 149T1086):

Names: Tribal Hall Unit 13, 1325 Neese

Maps: **Exhibit D** page 4

Waterbodies: No named waterbodies

Description and History:

In June of 2001, “Tribal Hall Unit 13” parcel was taken into trust by deed. This property is described in the deed conveying the property into trust, found in **Exhibit C** pages 32-33.

“Hatch Tract” (BIA No. 149T1060):

Names: Hatch Tract, Three Rivers Casino Florence Complex Unit 2

Maps: **Exhibit D** page 6

Waterbodies: North Fork Siuslaw River and immediately adjacent wetlands

Description and History:

In March 1998, the Department of Interior formally acknowledged that the “Hatch Tract,” a 98-acre parcel in Florence, Oregon, had been taken into trust for CTCLUSI. This property is described in the deed conveying the property into trust, found in **Exhibit C** pages 34-36.

“Elks Unit 1” (BIA No. 149T1062):

Names: Elks Unit 1

Maps: **Exhibit D** page 8

Waterbodies: No named waterbodies

Description and History:

On June 11, 1998, the parcel identified as “Elks Unit 1” was taken into trust for CTCLUSI. This property is described in the deed conveying the property into trust, found in **Exhibit C** page 37.

“Connecticut” (BIA No. 149T1063):

Names: Connecticut

Maps: **Exhibit D** page 9

Waterbodies: No named waterbodies

Description and History:

On January 12, 1999, the parcels identified as “Connecticut” were taken into trust for CTCLUSI. This tract consists of two parcels. This property is described in a letter from BIA to CTCLUSI dated 25 February 1999, found in **Exhibit C** pages 38-40.

“California” (BIA No. 149T1070):

Names: California

Maps: **Exhibit D** page 9

Waterbodies: No named waterbodies

Description and History:

On August 10, 1999, the parcels identified as “California” were taken into trust for CTCLUSI. These properties are described in a letter dated December 23, 1999 from BIA to CTCLUSI, found in **Exhibit C** pages 41-42.

“Elks Unit 2” (BIA No. 149T1074):

Names: Elks Unit 2

Maps: **Exhibit D** page 8

Waterbodies: No named waterbodies

Description and History:

On May 25, 2000, the parcel identified as “Elks Unit 2” was taken into trust for CTCLUSI. This property is described in the deed conveying the property into trust, found in **Exhibit C** page 43.

“Springfield House” (BIA No. 149T1088):

Names: Springfield House, Lott

Maps: **Exhibit D** page 10

Waterbodies: No named waterbodies

Description and History:

On June 20, 2001, the .25- acre “Springfield House” parcel was taken into trust by deed. This property is described in the deed conveying the property into trust, found in **Exhibit C** pages 44-46.

“Fossil Point Unit 1” (BIA No. 149T1108):

Names: Fossil Point Unit 1, Miluk Village

Maps: **Exhibit D** page 11

Waterbodies: Coos River and Coos Bay and immediately adjacent wetlands

Description and History:

On September 5, 2002, the parcel identified as “Fossil Point Unit 1” was taken into trust for CTCLUSI. This property is described in the deed conveying the property into trust, found in **Exhibit C** pages 47-49.

“Alishanee Unit 1 & 2” (BIA No. 149T1116):

Names: Alishanee Unit 1 & 2

Maps: **Exhibit D** page 12

Waterbodies: No named waterbodies

Description and History:

In March 2004, the parcels identified as “Alishanee Unit 1” and “Alishanee Unit 2” were taken into trust for CTCLUSI. These properties are described in the deed conveying the property into trust, found in **Exhibit C** pages 50-52. The two units are identified as lots 6100 and 6200 in the deed.

“Gregory Point” (BIA No. 152T1010):

Names: Gregory Point, Chief’s Island, Baldich

Maps: **Exhibit D** page 13

Waterbodies: Pacific Ocean and immediately adjacent wetlands

Description and History:

On June 10, 2013, 24 acres of excess federal Coast Guard land, identified as “Gregory Point,” was transferred into trust for CTCLUSI via the Oregon Surplus Federal Land Act of 2008. Pub. L. No. 110-364(3), 122 Stat. 4018. It is referred to in the Act as: “The Federal land referred to in subsection (a) consists of the parcels of Coast Guard land (including any improvements to the land) comprising approximately 24 acres, located in Coos County, Oregon, in the areas commonly known as “Gregory Point” and “Chief’s Island”, as depicted on the maps.” Pub. L. No. 110-364(3). **Exhibit C** pages 53-57 is a legal description of the property.

“Fossil Point Unit 3” (BIA No. In Progress):

Names: Fossil Point Unit 3

Maps: **Exhibit D** page 14

Waterbodies: Coos River and Coos Bay and immediately adjacent wetlands

Description and History:

On September 13, 2019, Fossil Point Unit 3 was taken into trust for CTCLUSI. This property is described in the document conveying the property into trust, found in **Exhibit C** pages 58-59.

Western Oregon Tribal Fairness Act (“WOTFA”) Tracts

On January 8, 2018, the federal government took 14,742 acres of land into trust “to be part of the reservation of [CTCLUSI]” via Title II of the WOTFA. These lands are named, described as:

“Umpqua Eden” (BIA No. In Progress):

Names: Umpqua Eden

Maps: **Exhibit D** page 15

Waterbodies: Streams and wetlands immediately adjacent to Umpqua River

Description and History: Conveyed via Title II of the WOTFA **Exhibit E**

“Macy Tract” (BIA No. In Progress):

Names: Macy Tract

Maps: **Exhibit D** page 16

Waterbodies: Streams and wetlands immediately adjacent to the Umpqua River

Description and History: Conveyed via Title II of the WOTFA **Exhibit E**

“Lower Smith Tract” (BIA No. In Progress):

Names: Lower Smith Tract, Smith Tract, Smith River, Huunata, Huu’nata, Huu-nata.

Maps: **Exhibit D** page 17

Waterbodies: Spencer Creek, Johnson Creek, Rachel Creek, Bear Creek, Cedar Creek, and Coon Creek

Description and History: Conveyed via Title II of the WOTFA **Exhibit E**

“Upper Lake Creek” (BIA No. In Progress):

Names: Upper Lake Creek, Upper Lake Tract, Pikiitii, Pkiitii

Maps: **Exhibit D** page 18

Waterbodies: Lake Creek, Pucker Creek

Description and History: Conveyed via Title II of the WOTFA **Exhibit E**

“Tioga” (BIA No. In Progress):

Names: Tioga, Tekeat

Maps: **Exhibit D** page 19

Waterbodies: Tioga Creek, Gooseberry Creek, Burnt Tributary, Wilsons Folly Creek, and Bear Gulch

Description and History: Conveyed via Title II of the WOTFA **Exhibit E**

“Talbot” (BIA No. In Progress):

Names: Talbot

Maps: **Exhibit D** page 20

Waterbodies: streams and wetlands immediately adjacent to Big Tributary

Description and History: Conveyed via Title II of the WOTFA **Exhibit E**

“Coos Head” (BIA No. In Progress):

Names: Coos Head

Maps: **Exhibit D** page 21

Waterbodies: wetlands immediately adjacent to the Pacific Ocean

Description and History: Conveyed via Title II of the Western Oregon Tribal Fairness Act (WOTFA) **Exhibit E**

6. Tribal Legal Counsel Statement. 40 C.F.R. § 131.8(b)(3)(ii).

The Tribal Constitution provides for the Applicant’s exercise of authority in general over the Reservation and trust lands as described. See **Exhibit B**, Art. I. Sec. 1. Specifically, the Tribal Constitution affirms the Tribal Council’s “jurisdiction...to the fullest extent permitted by law...over all lands [and] waters...located within the exterior boundaries of the tribal reservation, over any tribal land or land held by individual members in trust status, and over any ‘Indian Country’ of [CTCLUSI] as defined by federal law.” See **Exhibit B**, Art. I. Sec. 2. Thus, the federally-approved Tribal Constitution provides for CTCLUSI authority over the Reservation and trust lands described above.

At the time of application, no non-member fee land exists within the boundaries of the CTCLUSI Reservation or trust lands. Thus, there would be no obstacles to an assertion of authority under *Montana v. U.S.*, 450 U.S. 544 (1981). Nevertheless, the basis for the Applicant’s assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their Reservation, as described in CWA Section 518. This authority is described in the U.S. Environmental Protection Agency’s final interpretive rule, *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183 (May 16, 2016).

The Applicant is aware of only one issue that potentially could be raised concerning the authority or ability to effectuate the delegation of authority requested in the Application. The Applicant’s Reservation is located within a Public Law 280 state, meaning that the State of Oregon does possess civil adjudicatory jurisdiction over the Applicant. 28 U.S.C. § 1360. However, Public Law 280 will not impede the Applicant’s authority or ability to effectuate the congressional delegation of CWA authority. Public Law 280 does not grant the state civil regulatory jurisdiction over the Applicant nor does it affect or impede the Applicant’s sovereign authority to adopt and enforce civil regulatory laws. *Bryan v. Itasca County*, 426 U.S. 373, 390-2 (1976). Moreover, when Congress authorized state criminal and some civil jurisdiction over Indian country to select states by means of Public Land 280, it explicitly disclaimed the grant of any state authority over water resources of tribes. Act of Aug. 15, 1953, Pub. L. No. 83-280, § 4(b), 67 Stat. 588, 18 U.S.C. § 11629(b) (current version at 28 U.S.C. § 1360(b)) (“Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community. . . ; or shall authorize regulation of the use of such property. . .”).

7. The Applicant is capable of administering effective water quality standards and water certification programs. 40 C.F.R. §§ 131.8(a)(4) and (b)(4).

The overall organization of the Applicant’s government and descriptions of the executive, legislative, and judicial functions of the government are described in Section 4 of the Application.

The Applicant's experience with general management programs is described in pages 6-9 of *Application for Treatment Similar to a State Pursuant to Section 105 and 505(A)(2) of the Clean Air Act*, submitted to EPA in 2009. This document is attached as **Exhibit F**.

CTCLUSI currently manages multiple programs, including Family Services, an Elders Program, and a dental clinic. Other divisions and departments work with the CTCLUSI Department of Culture and Natural Resources ("CNR") on projects where impaired conditions require preparation, resilience, or mitigation.

Apart from managing these more general governmental programs, the Applicant, through the CNR, has experience managing multiple environmental and natural resource programs:

- **Air Quality:** The Applicant's experience and objectives in air quality management are summarized on pages 2-5 of the *Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians FY20 & FY21 Clean Air Act Section 105 Grant Proposal*, attached as **Exhibit G**.
- **Water Quality:** The Applicant's experience in managing water quality is described in *Tribal Water Quality Monitoring Strategy (2008-2015)* and *Tribal Integrated Water Quality Monitoring Program: Surface Water & Fixed Station Quality Assurance Project Plan Version 4.0*, attached as **Exhibit H** and **Exhibit I**, respectively.
- **Nonpoint Source Pollution:** The Applicant's experience in managing nonpoint source pollution is described in *Nonpoint Source Pollution Management Plan*, attached as **Exhibit J**.
- **Waste:** The Applicant's experience in managing waste is described in *Tribal Integrated Waste Management Plan*, attached as **Exhibit K**.
- **Spill Response and Brownfields:** The Applicant's spill response program is described in the *Tribal Estuary Response Plan*, attached as **Exhibit L**.
- **Restoration:** The Restoration Program is supported by the Pacific Coast Salmon Recovery Fund.
- **Forestry:** This Program is supported through several sources of funding, including the Bureau of Indian Affairs' forestry projects funding, and the Administration for Native Americans' Environmental Regulatory Enhancement Stewardship Capacity Building Project grant.

The CNR is the existing agency which will assume responsibility for establishing, reviewing, implementing, and revising water quality standards. The CNR was referred to as the Department of Natural Resources ("DNR") prior to 2018. The Tribes established the CNR in order to conserve and manage resources on Tribally-held lands and to work with other governments to influence conservation and resource management throughout the Ancestral Territory. The department has staff with expertise in forestry, archaeology, traditional ecological

knowledge, biology, air quality, water quality, spill response, brownfields, and restoration. CNR has established land, water, and air quality programs which exist to manage our resources, restore habitat in our aboriginal homelands, and protect the environment and natural resources that are significant to the Tribe such as salmon, elk, shellfish, lamprey, and weaving materials. Currently, the CNR's responsibilities are:

- Research, monitor, assess, manage, use, conserve, protect and restore the natural resources within the CTCLUSI Tribal lands and ancestral territory;
- Work with other governments to influence positive conservation and management of resources within the CTCLUSI ancestral territory;
- Spearhead Tribal responses to actions within the CTCLUSI ancestral territories that jeopardize resources;
- Promote knowledge of both traditional and contemporary environmental science to CTCLUSI Tribal members and the local community; and
- Protect cultural resources, archeological sites, and historic properties.

The responsibilities to establish, review, implement and revise water quality standards, and the responsibilities for conducting water quality certification under Clean Water Act Section 401 will be assigned to the CTCLUSI Water Quality Program, located in the Department of Culture and Natural Resources. The Water Quality Program has completed day-to-day work relating to the waters of the Tribe since 2003. Presently, the Water Quality Program completes work according to an EPA approved work plan, formalized in a Performance Partnership Grant ("PPG") contract. The Water Quality Program operates both CWA Section 106 and CWA Section 319 Programs.

Water Quality Program staff have access to numerous other CTCLUSI technical and administrative professionals in dealing with technical matters and administrative issues. The Water Quality Program staff tasked with overseeing the programs will collaborate with other department staff, such as Forestry, Archaeology, and Restoration, as well as other departments within the government, including the Tribal Police Department, Planning Department, and Realty & Land Use. These staff are consulted by Water Quality Program staff for assistance when needed depending on the nature of any given water quality issue.

The CNR Water Quality Program is staffed with experienced water quality specialists ready to administer a water quality standards and certification program. The Water Quality Program currently includes four personnel at the following positions:

Water Protection Specialist. Responsible for the CTCLUSI Water Quality Program Plan and Non-Point Source Pollution Management Plan, which involves evaluating and analyzing surface waters relating to Tribal lands, providing technical assistance in the development of Tribal resolutions, ordinances, policies, and legal codes related to water resources, performing water quality monitoring (including calibrating and maintaining equipment), archiving and analyzing collected

water quality data, completing daily, quarterly, and annual water reports, reviewing and updating the QAPP when necessary. The Water Protection Specialist is responsible for monitoring water quality on Tribal lands and coordinates restoration activities. This position also helps oversee environmental assessments for newly acquired properties. This position regularly participates in the Coos Watershed Association (Board), the Smith River Watershed Council (Board), Coos Coho Strategic Action Plan, the Siuslaw Watershed Tech Team, Siuslaw River Coastal Coho Strategic Action Plan and Business Plan Workgroup, Siuslaw Coho Partnership, Oregon Central Coast Estuary Collaborative, Oregon Dunes Restoration Strategy, and the Smith Umpqua Dunes Stewardship Group.

Biologist and Water Protection Specialist. This position is responsible for monitoring water quality on Tribal lands and coordinates restoration activities, and participates in the Tenmile Lakes Basin Partnership (Board). Monitors wildlife populations, invasive species and habitat conditions. Collaborates with local stakeholders and agencies protecting culturally significant species. Responsible for training and overseeing new CNR employees on established water quality monitoring protocols and sampling locations. This position also reviews permits, environmental policy, and assists in ensuring project compliance to environmental regulation.

Air and Water Protection Specialist. This position oversees the Ambient Air and Meteorological Station, indoor and outdoor air quality outreach, and wildfire smoke hazard response. The Air and Water Protection Specialist position assists with water quality monitoring, restoration activities, nonpoint source pollution projects, and outreach coordination efforts. This position is responsible for engaging with a number of community stakeholders and partners, including the Siuslaw Watershed Council, the Coos Watershed Association, and the Partnership for Coastal Watersheds. Assists Water Protection Specialist(s) by analyzing and monitoring data associated with the CTCLUSI Water Quality Program, implementing quality control procedures for water quality data collection, reviewing and updating the QAPP when necessary, completing daily, quarterly, and annual water reports, and any other water resources task as required.

Tribal Resource Response Specialist. This position was made available in late 2017 as part of the capacity building of the Tribal Response Program within the CNR. This position is responsible for implementing resource protection within Tribal Ancestral Lands, with particular regard to marine and estuary ecosystem protection, oil spills response, hazardous pollutant contamination, and Brownfields remediation. This position overlaps with air and water quality programs for natural and cultural resource protection from pollutants, and in building laboratory capacity to monitor for pollutants. This position is active in many emergency response coalitions, partnering with the United States Coast Guard, National Oceanic and Atmospheric Administration, the Environmental Protection Agency, Oregon Department of Environmental Quality, and many other federal and state agencies. The Tribal Resource Response Specialist also reviews permits, environmental policy, and assists in ensuring project compliance to environmental regulation.

EXHIBIT A

[“Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs” at 83 Fed. Reg. 4235 (Jan. 30, 2018)]

EXHIBIT B

[CTCLUSI Constitution]

EXHIBIT C

[Legal Descriptions of the Tribal trust land areas for which the Applicant is seeking authority to administer the water quality standards and water quality certification programs]

EXHIBIT D

[Maps of the Tribal trust land areas for which the Applicant is seeking authority to administer the water quality standards and water quality certification programs]

EXHIBIT E

[Western Oregon Tribal Fairness Act (WOTFA)]

EXHIBIT F

[*Application for Treatment Similar to a State Pursuant to Section 105 and 505(A)(2) of the Clean Air Act*]

EXHIBIT G

[*Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians FY20 & FY21 Clean Air Act Section 105 Grant Proposal*]

EXHIBIT H

[*Tribal Water Quality Monitoring Strategy (2008-2016)*]

EXHIBIT I

[*Tribal Integrated Water Quality Monitoring Program: Surface Water & Fixed Station Quality Assurance Project Plan Version 4.0*]

EXHIBIT J

[*Nonpoint Source Pollution Management Plan*]

EXHIBIT K

[*Tribal Integrated Waste Management Plan*]

EXHIBIT L

[*CTCLUSI Tribal Estuary Response Plan*]