



Fact Sheet: Southern Ute Indian Tribe Water Quality Standards Program Authority Application

The Southern Ute Indian Tribe of the Southern Ute Indian Reservation in Colorado submitted to the U.S. Environmental Protection Agency (EPA) Region 8 an application for program authority to administer the Clean Water Act (CWA) § 303(c) Water Quality Standards (WQS) and § 401 Certification programs. This authority is also referred to as Treatment in a Similar Manner as a State, or TAS, status. The EPA is reviewing the Tribe's application and will be soliciting comments from appropriate governmental entities (states, tribes, and other federal entities located contiguous to the Reservation) and the public as part of the Agency's review.

Clean Water Act Water Quality Standards and Tribes

There are two steps in the process for tribes to implement CWA-approved WQS for reservation surface waters. Pursuant to CWA § 518(e), a tribe must first apply to the EPA for CWA program authority (or TAS) for purposes of implementing the § 303(c) WQS and § 401 Certification programs. The CWA authorizes the EPA to approve tribes that meet statutory and regulatory criteria to administer the WQS program. (See CWA § 518, 33 U.S.C. § 1377; 40 C.F.R. Part 131.) Where the EPA determines that a tribe qualifies for TAS for WQS purposes, the tribe likewise qualifies for TAS for purposes of certifications conducted under CWA § 401. Second, if the EPA approves a tribe's CWA WQS program authority application, then the tribe may submit its WQS to the EPA for review and approval determination under CWA § 303(c). EPA review and approval or disapproval of the tribe's WQS is a separate Agency action from the WQS TAS determination. A tribe may however submit both its WQS TAS application and WQS to the EPA concurrently. Upon EPA approval of an eligible tribe's WQS, those WQS go into effect under the CWA and may serve as the basis for water quality assessments and protections (e.g., NPDES discharge permit limitations).

The WQS program authority application requirements and review process are set forth at 40 C.F.R. §131.8. The information required in a tribe's application (see § 131.8(b)) includes:

- A statement that the Tribe is recognized by the Secretary of the Interior;
- A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area;
- A descriptive statement of the Tribe's authority to regulate water quality; and
- A narrative statement describing the capability of the Tribe to administer an effective WQS program.

EPA Review of the Southern Ute Indian Tribe's Program Authority Application

Pursuant to EPA regulations and established procedures, the Agency will review the Southern Ute Indian Tribe's program authority application for purposes of administering the CWA WQS and certification programs. The EPA Region 8 will make the Tribe's application materials available on its website and will be holding a public comment opportunity in its evaluation of the Tribe's application.

- Under EPA's regulations (40 C.F.R. Part 131), the EPA provides notice of a tribe's assertion of authority over waters included in its application to appropriate governmental entities (states, tribes, and other federal entities located contiguous to the reservation) for comment. Comments are limited to the tribe's assertion of authority. The EPA also provides notice to local governments and the public.

Comments will be solicited directly from appropriate governmental entities (including the States of Colorado and New Mexico, the Ute Mountain Ute Tribe, the Bureau of Indian Affairs, the Bureau of Land Management, and the San Juan National Forest of the U.S. Forest Service). Local governments and the public are encouraged to comment directly to the EPA. A copy of the Tribe's application materials is available at: <https://epa.gov/wqs-tech/water-quality-standards-regulations-southern-ute-indian-tribe>.

In its review, the EPA will consider: the Tribe's application materials; all comments received on the Tribe's application materials, including the statement of authority; any Tribal response(s) to comments received; and appropriate legal considerations. A more detailed description of the EPA review process is in the EPA's *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs* (see Attachments A and B to the Strategy, available on the web at: <https://www.epa.gov/tribal/strategy-reviewing-tribal-eligibility-applications-administer-epa-regulatory-programs-1>).

Background

Currently there is one tribe in Colorado that has EPA-approved WQS in effect under the CWA (both TAS for WQS and EPA approval of its WQS). The Ute Mountain Ute Tribe of the Ute Mountain Ute Reservation received TAS for WQS on September 26 2005, and initial EPA approval of its WQS on October 19, 2011.

The Southern Ute Indian Reservation in southwestern Colorado supports a wide variety of land uses including oil and gas development, farming and ranching, and recreational tourism. Eight rivers traverse the Reservation in five main watersheds, predominantly running north to south and draining to the San Juan River. The landscape ranges from mountainous on the eastern side to agricultural and semi-arid desert lands on the western side. The largest community is Ignacio, where the Tribal Council and other government operations are housed. Nonpoint sources of pollution (sediments, nutrients, etc.) are the principal water quality issue on the Reservation.