

Appendix II: Response to Comments

APPROVAL OF THE SOUTHERN UTE INDIAN TRIBE'S APPLICATION FOR TREATMENT IN A SIMILAR MANNER AS A STATE FOR THE CLEAN WATER ACT SECTIONS 303(c) WATER QUALITY STANDARDS AND 401 CERTIFICATION PROGRAMS

Introduction

On March 2, 2015, the Southern Ute Indian Tribe (SUIT, or Tribe) applied for program eligibility, or Treatment in a similar manner As a State (TAS) under § 518 of the Clean Water Act (CWA), to administer water quality standards and water quality certification programs under the CWA §§ 303(c) and 401. In accordance with U.S. Environmental Protection Agency (EPA or Agency) regulations at 40 C.F.R. § 131.8(c)(2), (3), the Agency notified appropriate governmental entities¹ of the Tribe's application and provided an opportunity to comment on "the substance and basis of the Tribe's assertion of authority to regulate the quality of reservation waters." Consistent with Agency practice, the EPA also provided an opportunity for local governments and the public to review and comment on the assertion of authority in the Tribe's application. Two separate 30-day comment opportunities were provided during January 5 – February 3, 2017, and June 1 – 30, 2017. This document provides the EPA's responses to all comments received by the Agency during the comment periods on the Southern Ute Indian Tribe's application. The brief synopses of comments in this document are provided for the convenience of the reader and are not meant to replace the full set of comments. In developing responses, the EPA considered all comments received.

¹ The EPA defines "appropriate governmental entities" as "States, tribes, and 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).

Comments Received During the January 5 – February 3, 2017 Comment Opportunity:

Author Name: Martha Rudolph, Director of Environmental Programs

Organization/ Representing: State of Colorado, Department of Public Health and Environment

1) It is CDPHE's [Colorado Department of Public Health and Environment's] understanding that the Tribe has limited its application to surface water resources located on the Reservation lands that are held in trust by the United States for the benefit of the Tribe and Tribal members [i.e., limited to trust lands only, and excluding all other Reservation lands]. Based on that understanding of the scope of the application, CDPHE does not object to the SUIT application.

Response: The EPA notes and appreciates the comment from the State of Colorado that it does not object to the Tribe's application given the scope of the application being limited to reservation lands that are held in trust by the United States for the benefit of the Tribe. The Agency notes that its approval is limited to currently held trust lands identified within the boundaries of the SUIT Reservation as well as the trust land parcel contiguous to the Reservation identified in the Tribe's application. (See Application at p. 8.)

2) CDPHE did not verify the maps and legal descriptions identifying the lands and waters located on trust lands but is assuming that these descriptions are correct.

Response: The EPA appreciates the State of Colorado's comment assuming that the maps and land descriptions in the Tribe's application correctly depict the external Reservation boundaries and trust lands boundaries, and overlay of Reservation surface water resources. The application includes both a legal description and maps (see Application at pp. 9-10, and Exhibit 1), and the Tribe supplemented its application with higher resolution maps before the onset of the second 30-day comment opportunity. The EPA notes that no comments or information were received that dispute the boundaries depicted in the Tribe's application.

Before making the Tribe's application available for comment, the EPA confirmed the accuracy of these boundaries with available information and sources. The U.S. Department of the Interior, Bureau of Land Management verified that the maps and legal descriptions provided in the application are based on the Department of the Interior's most up-to-date database of Southern Ute Indian Reservation lands.

“After review of the maps supplied by the Southern Ute Indian Tribe, depicting Trust Land Status for SUIT TAS Application 2015, I concur that the data used for the exterior boundaries and trust boundaries, is based on the most recent and best available Public Land Survey System (PLSS) data available to the United States Department of the Interior, Bureau of Land Management.” (July 26, 2016 email from Dale Vinton, Geodesist, Public Land Survey System Data Manager, US DOI Bureau of Land Management, Cadastral Survey Branch)

The legal descriptions of the exterior boundaries of the Southern Ute Indian Reservation provided in the application are consistent with the legal description provided in Public Law 98-290 and the US DOI PLSS data. (See Application, Exhibit 1 and Exhibit 4: *Act of May 21, 1984, Pub. L. 98-290, 98 Stat. 201,*

202.) The EPA considers the maps and legal descriptions provided by the Tribe as the most up-to-date and accurate descriptions available of the Reservation external boundaries and trust lands boundaries.

3) Although we have no objections to the Tribe's application, we want to make clear that by not opposing the application the State is not ceding jurisdiction over any lands that are not held in trust, nor waiving its claims regarding jurisdiction over non-Tribal member's activities on fee lands under the State's reading of Public Law 98-290.

[Same comment also provided by the La Plata River and Cherry Creek Ditch Company.]

Response: The EPA notes and appreciates the State of Colorado's clarification of its reading of Public Law 98-290. Because the Tribe's application is limited to authority over surface water resources located on trust lands, there is no current Agency action or decision over CWA §§ 303(c) and 401 program authority for waters located on lands not held in trust or non-Tribal members' activities on fee lands. Therefore, this comment is outside the scope of the EPA's review of the application submitted by the Tribe.

4) CDPHE intends to continue working collaboratively with the Tribe on water quality standards and [CWA §] 401 certifications for waters that cross both tribal trust land and fee land, and continues to believe this will be very important moving forward.

Response: The EPA notes and appreciates the State of Colorado's comment that it intends to continue working collaboratively with the Tribe on CWA water quality issues and programs.

Author Name: Bruce Yurdin, Director, Water Protection Division

Organization/ Representing: State of New Mexico, Environment Department

5) The application does not include Bureau of Land Management, state, allotment or other private lands located within the Reservation boundaries. NMED [New Mexico Environment Department] has reviewed the application and supports the assertion of authority to regulate the quality of waters within the application boundaries.

Response: The EPA appreciates the State of New Mexico's comment supporting the Tribe's assertion of authority as set forth in the TAS application.

6) Because of the migratory nature of pollutants and waters, and the need to protect designated uses for surface waters in and outside of political boundaries, NMED supports the application and efforts to protect waters in and outside of the Southern Ute Indian Reservation.

Response: The EPA acknowledges and appreciates NMED's statement regarding the migratory nature of pollutants in surface waters, and that pollutants can and do readily migrate across jurisdictional boundaries. Further, the EPA acknowledges the need to protect sometimes differing designated uses on waters that are shared by, or form the boundaries between, state and tribal jurisdictions.

Author Name: William Walker, Regional Director

Organization/ Representing: U.S. Department of the Interior, Bureau of Indian Affairs, Southwest Regional Office

7) After reviewing the Tribe's application we recommend approval of the application.

Response: The EPA notes and appreciates that the Bureau of Indian Affairs, Southwest Regional Office (BIA) recommends approval of the SUIT TAS application.

8) We have worked with the tribe for many years, and are familiar with their governmental apparatus. They are well equipped to perform the functions required for TAS.

Response: The EPA acknowledges that the BIA has worked with the SUIT for many years, and that due to its role with the Tribe the BIA has experience across a broad range of tribal governmental functions and with multiple SUIT offices, including the Environmental Programs Department. The EPA also acknowledges and appreciates the comment that the BIA considers the SUIT to be well equipped to perform the regulatory functions of the CWA §§ 303(c) and 401 programs.

9) Believe it promotes self-determination for the SUIT, the pursuit of which BIA continues to promote.

Response: The EPA notes the BIA's belief that approval for CWA §§ 303(c) and 401 program authorities will promote SUIT self-determination.

Author Name: Ron LeBlanc, City Manager

Organization/ Representing: City of Durango [Colorado]

10) The City of Durango (City) manages, co-manages and operates permitted discharges immediately upstream of, and within the Southern Ute Indian Reservation. The City recognizes that the current application seeks only the authority to receive treatment similar to that of a state and does not grant any authority to adopt or impose water quality standards or to directly issue or decline permits for uses of any kind. The City may have concerns about the application as current and future operations may be impacted by the SUIT TAS. The grant of authority and the terms and conditions stated as part of that grant of authority may have significant long term implications for the City and other individuals and entities located upstream of the Reservation.

[Same comment also provided by: Florida Water Conservancy District; Florida Consolidated Ditch Company; Animas Consolidated Ditch Company; Animas Water Company; King Consolidated Ditch Company; Morrison Consolidated Ditch Company; Spring Creek Extension Ditch Company; and La Plata Archuleta County Cattlemen's Association.]

Response: The EPA appreciates the City of Durango, Colorado's comment that the City operates permitted discharges upstream of, and within, the Southern Ute Indian Reservation, and that the City may have concerns about impacts to any such existing, or potential future, operations and permitted discharges. The EPA notes that the comment does not address the assertion of authority to manage and protect reservation water resources contained in the Tribe's TAS application, and is thus outside the scope of the TAS comment process. Instead, the commenter's concern appears to relate to potential

impacts of tribal water quality regulation on the commenter's upstream permitted activities. Although such issues are beyond the scope of the current process, EPA notes that the Agency's current decision is limited to approving the Tribe's TAS eligibility. The decision does not review or approve any actual water quality standards under Section 303(c) of the CWA. Any such approval (or disapproval) of standards would occur in a separate EPA decision following submission of standards by the Tribe for EPA's review. Further, the EPA notes that the TAS application is limited to the Tribe's eligibility to administer the CWA §§ 303(c) and 401 programs on trust lands. The Tribe's eligibility to administer a CWA permitting program is not addressed in this TAS decision, nor is the Tribe's eligibility to administer water quality standards or certifications on any lands owned by the City. The EPA also notes that any water quality standards adopted by the Tribe and submitted to EPA for approval under the CWA would need to satisfy all CWA and regulatory requirements, including requirements for public involvement in the water quality standards adoption process. These requirements will ensure an appropriate opportunity for interested entities, such as the City, to provide input on the Tribe's adoption of its water quality standards. Similarly, any CWA permit issued in connection with the City's discharging operations would undergo public involvement that would afford an appropriate venue to raise any concerns the City may have. Finally, the EPA notes that EPA's regulations at 40 C.F.R. § 131.7 provide a mechanism for states and tribes to resolve disputes relating to differing water quality standards on shared water bodies.

11) The application states that the Tribe does not intend to waive or concede that its regulatory authority does not extend to all water bodies within the boundaries of the Reservation. The City of Durango is concerned that any grant of authority be specific as to the future rule making authority of the Tribe as it relates to after acquired trust lands and as to activities outside of tribal trust lands.

Response: The EPA notes the concern expressed by the City of Durango (see Comment 3 and Response above). The Tribe's application does specify that limiting the scope of its assertion of authority to trust lands does not waive or concede that its regulatory authority does not extend to all Reservation water bodies. (See Application Section IV, p. 8.) However, the geographic scope of the Tribe's assertion of authority in its application is specifically limited to "surface waters located on trust lands". Hence, the Tribe's assertion of authority, and EPA's TAS decision, do not address CWA §§ 303(c) and 401 jurisdiction over any Southern Ute Indian Reservation non-trust lands (e.g., Reservation fee lands). Such lands are outside the scope of the Agency's action on the Tribe's application.

The EPA's current action on the SUI TAS application applies only to those lands identified in the Tribe's application as currently held in trust. A TAS application must identify the specific area over which a tribe seeks program eligibility. Therefore, the EPA does not have sufficient information to approve TAS authority for surface waters on trust lands not currently identified in this application. As required by the TAS regulation (40 C.F.R. § 131.8), any lands transferred into trust status for the benefit of the Tribe in the future (after-acquired, or future trust lands) would require a supplemental TAS application from the Tribe, and a separate Agency action for such lands, to be covered under the Tribe's CWA regulatory authorities. The process for a supplemental application to include lands taken into trust for the Tribe at a future date would also include appropriate governmental and public notification and participation to help ensure that, in the unlikely event jurisdictional issues exist regarding such future trust lands, such issues are raised to the EPA for proper consideration and decision.

Pursuant to the EPA's TAS regulation for the CWA § 303(c) water quality standards program (see 40 C.F.R. 131.8), the EPA is charged with determining whether an applicant tribe meets the applicable TAS criteria, including that the tribe has demonstrated appropriate authority to regulate water quality on the reservation lands covered by the TAS application. As part of this regulatory process, the EPA provides notice to appropriate governmental entities – states, tribes and federal entities located contiguous to the reservation of an applicant tribe – and provides an opportunity for these entities to comment on the applicant tribe's assertion of authority (including any jurisdictional boundaries). As a matter of established Agency practice, the EPA also makes such notice broad enough that other potentially interested entities (e.g., local governments and the public) can participate in the process.

12) Concern over exposure to potentially conflicting or inconsistent water quality regulations.

[Same comment also provided by: South Durango Sanitation District; Loma Linda Sanitation District; Southwestern Water Conservation District; and San Juan Water Conservancy District.]

Response: The EPA notes and appreciates that the City of Durango is concerned about potentially conflicting or inconsistent water quality regulations. However, this comment does not address the Tribe's assertion of authority to manage and protect reservation water resources contained in the Tribe's application and is thus outside the scope of the TAS comment process. Concerns regarding potentially conflicting or inconsistent water quality regulations should be addressed through the appropriate opportunity for comment when water quality regulations are proposed for adoption in the future. The EPA also notes that differences between applicable water quality standards of separate regulating entities can exist in many contexts – e.g., across state-state boundaries – and that EPA's regulations at 40 C.F.R. § 131.7 provide a mechanism for states and tribes to resolve disputes relating to differing water quality standards on shared water bodies. The EPA encourages the Tribe and its neighboring jurisdictions to work collaboratively to develop and implement water quality standards.

13) Concern over adequate notice and transparency in SUIT TAS application review process; similar concern for any water quality standards development and adoption by the Tribe; and uncertainty about who would develop and implement SUIT water quality standards.

[Same comment also provided by: King Consolidated Ditch Company; Morrison Consolidated Ditch Company; Thompson Epperson Ditch Company; and Pine River Canal Company.]

Response: The EPA appreciates the comment and shares the desire that CWA TAS applications and adoption of CWA § 303(c) water quality standards undergo robust notice and comment opportunities that broadly reach interested parties consistent with EPA regulations.

The EPA's TAS regulations for the CWA §§ 303(c) water quality standards and 401 certification programs (see 40 C.F.R. § 131.8 (c) *Procedure for processing an Indian Tribe's application*) include a process for notice to appropriate governmental entities – states, tribes and federal entities located contiguous to the reservation of an applicant tribe. Section 131.8(c)(2) - (3) affords these entities notice and 30 days to submit comments on the applicant tribe's assertion of authority. As a matter of Agency

policy,² the EPA also makes such notice (e.g., via newspaper and website publications) broad enough that other potentially interested entities, such as local governments and the public, can participate in the process. The EPA notified appropriate governmental entities and provided a 30-day comment opportunity on the substance and basis of the Tribe's assertion of authority in its application from January 5 – February 3, 2017. Legal notices were placed in local newspapers³ in Durango, Ignacio, and Bayfield, Colorado. The Tribe's application and all materials were made available on the EPA's website and paper copies were made available in the Tribe's Environmental Programs Office and the Durango Public Library; newspaper and website notices were published with details on obtaining more information and how to submit comments; and the EPA contacted local media outlets with press release materials that linked to the website materials. Additionally, the EPA and the Tribe shared further outreach materials with local print and radio news media; the Tribe held meetings with the State of Colorado; the EPA responded to local newspaper information requests and questions; and the EPA published a Fact Sheet and Frequently Asked Questions on its website. Several commenters requested additional time to submit comments. Although not required by the regulations, in response to these requests the EPA repeated these outreach activities and afforded a second 30-day comment opportunity from June 1 – 30, 2017.

The EPA notes that the Agency's review of actual water quality standards involves a separate CWA action from review of the Tribe's TAS application. To the extent it addresses the process for adoption of water quality standards, the comment does not address the assertion of authority to manage and protect reservation water resources contained in the Tribe's TAS application, and is thus outside the scope of the TAS comment process. The EPA notes, however, that 40 C.F.R. Part 25 establishes public notification and outreach requirements for the water quality standards adoption process. All states, eligible tribes and U.S. territories adopting water quality standards must meet the minimum requirements for public participation in 40 C.F.R. Parts 25 and 131 in order for the EPA to approve their water quality standards. Hence, the same level of public notice and review are required to be conducted for adoptions of new or revised tribal, state, U.S. territory or federal water quality standards.

The application (see Application at p. 18-19 and Exhibit 5) clearly identifies the Tribe's Environmental Programs Department as the Tribal governmental office responsible for developing, reviewing and implementing water quality standards that are adopted by the Southern Ute Indian Tribal Council.

14) Any grant of SUI TAS authority should not interfere with the State of Colorado's authority to administer the CWA NPDES [National Pollutant Discharge Elimination System] permit process. The City asserts that the authority to administer the NPDES permits on fee lands within the [Southern Ute Indian] Reservation has been previously delegated by the EPA to the State under the authority of Public Law 98-290, and any extension of direct or indirect authority to the Tribe that could in any way impact, limit or alter that previously delegated authority to the State would be unlawful.

[Same comment also provided by South Durango Sanitation District and Loma Linda Sanitation District.]

² See EPA's outreach and policy recommendations in *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs*, at p. 6-7 and Attachments (<https://www.epa.gov/sites/production/files/2014-10/documents/strategy-for-reviewing-applications-for-tas.pdf>).

³ The same notices were posted on the websites of the Durango Herald, The Drum, and the Pine River Times.

Response: The EPA appreciates the comment and notes that the City of Durango asserts that the State of Colorado has been delegated CWA § 402 NPDES program authority by the EPA for permits discharging to waters on Southern Ute Indian Reservation fee lands under the authority of Public Law 98-290; and that any grant of CWA §§ 303(c) and 401 program authority should not interfere with any CWA NPDES permitting authority delegated to the State of Colorado. This comment does not address the assertion of authority contained in the Tribe's TAS application to manage and protect reservation water resources by administering water quality standards and certifications, and is thus outside the scope of the TAS comment process. Further, the EPA notes that the Tribe's TAS application addresses only the Tribe's eligibility to administer the water quality standards and certification programs, and only on trust lands. The application does not seek eligibility to administer CWA programs on non-trust lands and does not seek eligibility to administer CWA discharge permitting on any lands. Nothing in the Tribe's application or EPA's TAS decision affects the State of Colorado's authority to administer its EPA-approved NPDES permit program. The EPA also notes that EPA is the entity currently administering CWA NPDES permitting on the Southern Ute Indian Reservation.

15) The maps provided with the Tribe's TAS application are not adequate to allow the City to determine which properties within the Reservation are Trust lands. The City requests that adequate notice of the specific areas to be subject to jurisdiction of the Tribe be given and an opportunity for further comments be allowed prior to any final review of the Tribal TAS application.

Response: The EPA notes and appreciates the City of Durango's comment about the adequacy of the maps provided in the Tribe's application (see Comment 2 and Response above). This comment was shared with the Tribe, and subsequently the Tribe supplied higher resolution, more detailed maps depicting the trust lands covered by its application. Those higher resolution maps were made available during a second (June 1 – 30, 2017) comment opportunity on the Tribe's application. Before making the Tribe's application available for comment, the EPA worked to confirm the accuracy of these boundaries with available information and sources. The U.S. Department of the Interior, Bureau of Land Management verified that the maps and legal descriptions provided in the application are based on the Department of the Interior's most up-to-date database of Southern Ute Indian Reservation lands.

“After review of the maps supplied by the Southern Ute Indian Tribe, depicting Trust Land Status for SUIT TAS Application 2015, I concur that the data used for the exterior boundaries and trust boundaries, is based on the most recent and best available Public Land Survey System (PLSS) data available to the United States Department of the Interior, Bureau of Land Management.” (July 26, 2017 email from Dale Vinton, Geodesist, Public Land Survey System Data Manager, US DOI Bureau of Land Management, Cadastral Survey Branch)

The EPA notes that the City did not offer any further comments or any conflicting data or information regarding the trust lands boundaries depicted in the Tribe's application as supplemented by the additional higher resolution maps.

16) The City desires to enter into a cooperative process to assure that reasonable water quality standards be recognized to protect the environment of the entire four corners region.

Response: The EPA appreciates this comment and the City of Durango's desire to work cooperatively towards water quality standards protective of the environment. Because this comment does not address

the assertion of authority contained in the Tribe's TAS application to manage and protect reservation water resources by administering water quality standards and certifications, it is outside the scope of the TAS comment process. The EPA also notes that adoption of new and revised water quality standards is a separate action under the CWA, distinct from the EPA's decision on the Tribe's TAS application for eligibility to administer the CWA §§ 303(c) and 401 program authority on trust lands. However, the EPA also notes that development and adoption of water quality standards are subject to the public participation requirements as described in CWA § 303 and 40 C.F.R. Parts 25 and 131. These procedures help ensure an appropriate opportunity for interested entities, such as the City, to provide input to, and to work cooperatively with, the Tribe during adoption of water quality standards.

Author Name: Julie Westendorff, Gwen Lachelt and Brad Blake, La Plata County Board of County Commissioners

Organization/ Representing: La Plata County, Colorado

17) The La Plata County Board of Commissioners reviewed the Southern Ute Indian Tribe's (SUIT) application; appreciates the opportunity to comment; and commends the SUIT for its ongoing commitment to improve the air and water quality for the benefit of the health and welfare of its residents and environment. La Plata County recognizes and acknowledges the SUIT's authority to regulate water resources located on trust lands within the boundaries of the SUIT's reservation.

Response: The EPA appreciates La Plata County's review and comments on the Tribe's application; and its recognition of the Tribe's ongoing commitment to air and water quality. The EPA notes and appreciates La Plata County's recognition of the Tribe's authority to regulate water resources located on trust lands.

18) The County further agrees and acknowledges that the SUIT's prior exercise of police powers; management experience; existing environmental and public health programs; and technical staff render it capable of administering an effective water quality standards program.

Response: The EPA appreciates the comment and acknowledges that La Plata County has worked with the SUIT for many years, and has experience across a broad range of tribal governmental functions and with multiple SUIT offices, including the Environmental Programs Department. The EPA also acknowledges that La Plata County considers the SUIT to be capable of administering an effective water quality standards program.

19) The County's primary concern respecting the SUIT's application is promoting awareness of this regulatory change and the potential for new, more stringent, water quality standards among County residents or entities who hold, or may seek, NPDES permits for point sources upstream from the waters the SUIT proposes to regulate.

Response: The EPA appreciates the comment but notes that concerns over the stringency of water quality standards and any potential effects to NPDES permits are outside the scope of the Agency's review of the Tribe's TAS application (please see Comment 10 and Response above). The comment does not address the assertion of authority to manage and protect reservation water resources contained in the Tribe's TAS application, and is thus outside the scope of the TAS comment process. However, the EPA notes that the Agency shares the County's desire that CWA TAS applications and adoption of

CWA § 303(c) water quality standards undergo robust notice and comment opportunities that broadly reach interested parties consistent with EPA regulations (please see Comment 13 and Response above).

20) The County expresses concern about the sufficiency of identification of waters for which the SUIIT proposes to establish [water quality] standards. The maps submitted lack the detail necessary to identify all waters (including tributaries, floodplains, ponds, lakes, impoundments and other features), and thus all abutting or upstream facilities, which may be subject to such standards, and whether County residents could be impacted in pursuing NPDES permits.

[Same comment also provided by the Town of Ignacio.]

Response: The EPA notes and appreciates La Plata County’s comment about the sufficiency of identification of waters identified in the Tribe’s application. The EPA notes that the Application asserts authority over all surface water resources on trust lands. (Please see Comments 2 and 15, and Responses above.) In response to certain comments received by EPA, the Tribe provided higher resolution, more detailed maps depicting the trust lands covered by its application. Those maps were made available during a second (June 1 – 30, 2017) comment opportunity on the Tribe’s application. The EPA also notes the concern over whether County residents could be impacted in pursuing NPDES permits. However, this comment is outside the scope of the Agency’s review of the Tribe’s TAS application (please see Comment 10 and Response above).

21) Notice to impacted permittees – the County requests affirmative notice to upstream permittees of the SUIIT’s pending promulgation of new water quality standards [to] promote a predictable and effective transition to tribal jurisdiction over water quality on trust lands. The County requests that potentially impacted permittees be notified if EPA approves the SUIIT’s TAS application.

[Same comment also provided by: Town of Ignacio; Florida Water Conservancy District; Florida Consolidated Ditch Company; Animas Consolidated Ditch Company; Animas Water Company; King Consolidated Ditch Company; Morrison Consolidated Ditch Company; Spring Creek Extension Ditch Company; Pine River Irrigation District; Citizen’s Animas Irrigation Company; Edgemont Ranch Metropolitan District; Forest Lakes Metropolitan District; Los Pinos Ditch Company; Sullivan Ditch Company; Thompson Epperson Ditch Company; Schroder Ditch Company; Animas Valley Ditch and Water Company; El Rancho Florida Metropolitan District; South Durango Sanitation District; Loma Linda Sanitation District; Pine River Canal Company; San Juan Water Conservancy District; and La Plata Archuleta County Cattlemen’s Association.]

Response: The EPA appreciates the comment regarding direct notice to potentially affected NPDES permit holders upstream of waters on trust lands. However, this comment is outside the scope of the Agency’s review of the Tribe’s TAS application (please see Comment 13 and Response above). Pursuant to 40 C.F.R. § 131.8(c)(2) - (3), the Agency is required to notify appropriate governmental entities of, and provide them an opportunity to comment on “the substance and basis of the Tribe’s assertion of authority to regulate the quality of reservation waters.” Consistent with Agency policy,⁴ the EPA also makes such notice broad enough that other potentially interested entities (e.g., local governments and the public) can participate in the process. (Please see Comment 13 and Response

⁴ For further discussion on EPA policies and procedures for public outreach and notification during TAS application review please see EPA’s *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs*.

above for a description of the notice and comment process in this case.) EPA’s regulation at 40 C.F.R. § 131.8(c)(5) also requires written notice to the Tribe of EPA’s decision to approve the Tribe’s TAS application. While the comment is outside the scope of the TAS application review process, the EPA notes that the Agency maintains a list of approved tribal water quality standards and water quality standards TAS applications on its website.⁵ Concerns regarding actual water quality standards – as opposed to TAS eligibility – should be addressed through the appropriate opportunity for comment when water quality regulations are proposed for adoption in the future. The Agency notes that all states, eligible tribes and U.S. territories adopting water quality standards must meet the public participation requirements in 40 C.F.R. Parts 25 and 131.

22) La Plata County encourages a public process for establishing water quality standards. The County hopes that the SUIT, EPA, and other participating agencies will provide robust, comprehensive, and (ideally) individualized notice to affected permittees and land users about those [water quality standards] public hearings, to enhance public participation and awareness.

[Same comment also provided by: Town of Ignacio.]

Response: The EPA appreciates the comment but notes that the Agency’s review of actual water quality standards involves a separate CWA action from review of the Tribe’s TAS application. The comment does not address the assertion of authority to manage and protect reservation water resources contained in the Tribe’s TAS application, and is thus outside the scope of the TAS comment process. However, the EPA shares the desire that adoption of CWA § 303(c) water quality standards undergo robust notice and comment opportunities that broadly reach interested parties (please see Comment 13 and Response above). The Agency notes that all states, eligible tribes and U.S. territories adopting water quality standards must meet the public participation requirements in 40 C.F.R. Parts 25 and 131, ensuring a public process when SUIT water quality standards are adopted.

Author Name: Tom Atencio, Lawrence Bartley, Edward Box, Alison deKay, Sandra Maez, Dixie Melton, Ignacio Town Board of Trustees

Organization/ Representing: Town of Ignacio, Colorado

23) The Town of Ignacio is on non-trust land, within the exterior boundaries of the [Southern Ute Indian] reservation. Public Law 98-290 (at Sections 4 and 5) define Jurisdiction Over Reservation, and Jurisdiction Over Incorporated Municipalities within the Reservation. These Sections include language imposing certain jurisdictional protections, which should be considered during this review process. The Town’s primary concern is promoting awareness of this regulatory change and the potential for more stringent water quality standards that may affect residents or entities with NPDES permits.

Response: The EPA notes and appreciates the comment, and acknowledges the geographic location of the Town of Ignacio within the exterior boundaries of the Southern Ute Indian Reservation, and that the Tribe’s TAS application does not depict the Town of Ignacio to be located on any of the trust lands covered in the application. The Tribe’s application is limited to surface waters on trust lands and does not request CWA §§ 303(c) and 401 program authority over other Reservation lands. Thus, the issues identified by the commenter regarding Public Law 98-290 are not raised by the application or EPA’s decision. The EPA shares the Town of Ignacio’s desire for robust notice and comment opportunities on the Tribe’s application (please see Comment 13 and Response above). With regard to the stringency of

⁵ See the EPA website at: <https://www.epa.gov/wqs-tech/epa-approvals-tribal-water-quality-standards-and-contacts>.

water quality standards and any potential affects to NPDES permit holders on non-trust land, EPA notes that such issues are outside the scope of the Agency's review of the Tribe's TAS application (please see Comment 10 and Response above).

Author Name: Brice Lee, President

Organization/ Representing: La Plata Water Conservancy District

24) The La Plata Water Conservancy District (LPWCD) water users are located within and upgradient to the external boundary of the Southern Ute Indian Tribe (SUIT) Reservation, and are concerned that approval of the Tribe's request to establish and regulate its own water quality standards may have significant repercussions on the LPWCD and its constituents. The LPWCD water users farm and ranch these lands and are committed to maintaining these activities without undue regulation and interference.

Response: The EPA notes and appreciates the comment from the LPWCD that some of its water users operate farming and ranching activities within and upstream of the Reservation; and that LPWCD is concerned over undue regulation and interference with such activities. The EPA's TAS regulation for the CWA § 303(c) water quality standards program (see 40 C.F.R. § 131.8) provides an opportunity for comments on the applicant tribe's assertion of authority. However, concern over undue regulation and interference with farming and ranching activities is outside the scope of the Agency's review of the Tribe's application.

25) The LPWCD is concerned by the lack of notice it received of the Tribe's application, and only learned of the comment opportunity about one week before the February 3, 2017 deadline.

Response: The EPA notes and appreciates the comment regarding adequate and direct notification of the LPWCD and its water users (please see Comment 13 and Response regarding public notice). The EPA's notification requirements for TAS applications are found in 40 C.F.R. § 131.8(c)(2) - (3).⁶ The EPA notes that the LPWCD was directly notified during the second (June 1-30, 2017) comment opportunity on the Tribe's application, and no additional comments or concerns were provided by the LPWCD. The EPA notes that the adoption and review of CWA water quality standards involve separate CWA actions from review of the Tribe's TAS application and are outside the scope of EPA's TAS decision. Any adoption of water quality standards by the Tribe would be subject to public participation requirements as described in CWA § 303 and 40 C.F.R. Parts 25 and 131.

26) The LPWCD understands the Clean Water Act exempts farming and ranching activities but remains concerned that the SUIT may assert their waters are being impacted by agricultural activities, and that members may receive inquiries from SUIT personnel pertaining to such activities and perceived impacts.

[Same comment also provided by: La Plata River and Cherry Creek Ditch Company.]

Response: The EPA notes and appreciates the comment from the LPWCD regarding agricultural activities and impacts to water quality. However, concerns over future contacts regarding waters that

⁶ For further discussion on EPA policies and procedures for public outreach and notification during TAS application review please see EPA's *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs*.

may be impacted by agricultural activities are outside of the scope of the EPA's review of the assertion of authority in the Tribe's TAS application. Opportunity for public involvement regarding water quality standards adopted by the Tribe will be available in accordance with 40 C.F.R. Parts 25 and 131, including the opportunity to raise concerns regarding agricultural activities. In addition, the EPA clarifies here that the CWA exempts certain farming and ranching activities from compliance with some but not all CWA requirements.

27) SUIT may develop water quality standards more stringent than those set by Colorado, placing an undue burden on LPWCD constituents, and potentially impacting permitting for LPWCD activities and projects.

[Same comment also provided by: La Plata River and Cherry Creek Ditch Company.]

Response: The EPA notes and appreciates the comment from the LPWCD. However, the stringency of water quality standards and potential impacts to NPDES permits are outside of the scope of the Agency's review of the Tribe's TAS application (please see Comments 10 and 12, and Responses above). The EPA notes that EPA's regulations at 40 C.F.R. § 131.7 provide a mechanism for states and tribes to resolve disputes relating to differing water quality standards on shared water bodies.

28) The LPWCD requests a 120-day extension of the comment period beyond Feb 3, 2017.

Response: The EPA notes and appreciates the LPWCD's comment. (Please see Comment 13 and Response above.) The EPA notes that several commenters requested additional time to submit comments on the assertion of authority in the Tribe's application. In response to these requests the EPA afforded a second 30-day comment opportunity from June 1 – 30, 2017, even though not required by 40 C.F.R. § 131.8(c). The LPWCD was contacted regarding the second comment period, but provided no additional comments or concerns on the Tribe's TAS application.

Author Name: Nancy Agro, Attorney

Organization/ Representing: Florida Water Conservancy District; Florida Consolidated Ditch Company; Animas Consolidated Ditch Company; Animas Water Company; King Consolidated Ditch Company; Morrison Consolidated Ditch Company; and Spring Creek Extension Ditch Company

29) My clients do not oppose the Southern Ute Indian Tribe's request for Treatment as a State.

Response: The EPA notes and appreciates that the clients represented in this letter do not oppose the Tribe's TAS request for CWA §§ 303(c) and 401 program authority.

30) The CWA exempts regular farming and ranching activities from regulation (CWA 404(f)). Clients request EPA confirm that the Tribe has no authority to regulate agricultural activities under the CWA. Further, if the Tribe attempts to regulate in an area unregulated by, or exempt from, the CWA, we request notification and an opportunity to comment.

[Same comment also provided by: Pine River Irrigation District; Citizen's Animas Irrigation Company; Edgemont Ranch Metropolitan District; Forest Lakes Metropolitan District; Los Pinos Ditch Company; Sullivan Ditch Company; Thompson Epperson Ditch Company; Schroder Ditch Company; Animas

Valley Ditch and Water Company; El Rancho Florida Metropolitan District; and Pine River Canal Company.]

Response: The EPA notes and appreciates the comment regarding CWA regulation of farming and ranching activities and the request for direct notification and comment opportunity for any future attempts to regulate agricultural activities. However, concerns over whether the CWA regulates farming and ranching activities, and requests for notification and comment regarding any future CWA regulation of farming and ranching activities are outside the scope of the EPA's review of the assertion of authority in the Tribe's TAS application (please see Comment 26 and Response above).

The EPA clarifies here that the CWA exempts certain farming and ranching activities from compliance with some but not all CWA requirements. The EPA also notes that any approval of the Tribe's TAS application only authorizes implementation of the CWA §§ 303(c) and 401 programs for those lands and waters identified in the Tribe's application.

31) Clients may be conducting activities upstream of tribal lands that are not regulated by SUIT water quality standards under the CWA, but may require a CWA Section 401 Certification. Concern that if the Tribe adopts water quality standards more stringent than the State of Colorado then CWA Sections 401 and 402 may become more cumbersome and potentially inaccessible for essential projects.

[Same comment also provided by: Pine River Irrigation District and Citizen's Animas Irrigation Company.]

Response: The EPA notes and appreciates the comment concerning the stringency of water quality standards and potential impacts to CWA § 401 certifications and § 402 NPDES permits. However, the stringency of water quality standards and potential impacts to NPDES permits are outside the scope of the Agency's review of the Tribe's TAS application (please see Comments 10 and 12, and Responses above). Also, the EPA notes that some CWA § 402 NPDES permits and other activities require certification (under CWA § 401) that such discharge will not exceed water quality standards in the immediate or downstream receiving waters. Adoption of CWA water quality standards are subject to public participation requirements as described in CWA Section 303 and 40 C.F.R. Parts 25 and 131, providing opportunities for consideration of such comments.

32) Clients request notice and an opportunity to comment on any future applications of the Tribe for TAS status and promulgation of water quality standards.

[Same comment also provided by: Pine River Irrigation District and Citizen's Animas Irrigation Company.]

Response: The EPA notes and appreciates the comment regarding adequate and direct notification regarding future CWA TAS applications and adoptions of new or revised water quality standards (please see Comment 13 and Response regarding public notice). Adoption of CWA water quality standards are subject to public participation requirements as described in CWA Section 303 and 40 C.F.R. Parts 25 and 131.

33) Clients suggest that the Tribe coordinate with the State of Colorado setting water quality standards that are consistent with and not stricter than the State standards.

Response: The EPA appreciates this comment and supports states and tribes cooperatively working towards water quality standards protective of the environment. However, the consistency and stringency of water quality standards is outside the scope of EPA's review of the Tribe's TAS application (please see Comment 12 and Response above). Adoption of CWA water quality standards are subject to public participation requirements as described in CWA Section 303 and 40 C.F.R. Parts 25 and 131, providing opportunities for consideration of such comments.

Author Name: Amy Huff, Attorney

Organization/ Representing: Pine River Irrigation District

34) The Pine River Irrigation District (PRID) operates Vallecito Reservoir, providing water to ditch companies, municipal water suppliers, corporations, and individuals. While PRID does not object to the Southern Ute Indian Tribe's desire to administer the Water Quality Standards Program on tribal lands exclusively, PRID does have concerns about the Tribe's authority to establish classifications and standards for streams and rivers within the Pine River Drainage that traverse tribal lands.

[Same comment also provided by: King Consolidated Ditch Company; Morrison Consolidated Ditch Company; Thompson Epperson Ditch Company; and Pine River Canal Company.]

Response: The EPA notes and appreciates the PRID's comment that it does not object to SUIT's desire to apply to administer the CWA §§ 303(c) Water Quality Standards and 401 Certification programs on tribal lands exclusively; and that the PRID has concerns about the Tribe's authority to establish classifications and [water quality] standards within the Pine River watershed. The EPA notes that there are Southern Ute Indian trust lands within the Pine River drainage, and those trust lands are included in the Tribe's TAS application. (See Application at Exhibit 1, map 4, and note that the Tribe refers to this as the Los Pinos River watershed.) To the extent surface waters within the Pine River drainage are located on tribal trust lands, the Tribe has (as explained in EPA's decision document approving the Tribe's application) demonstrated appropriate authority to administer the water quality standards and certification programs over such waters. The comment does not provide any information that would question the substance and basis for the Tribe's assertion of authority over such trust land waters. The TAS application is, however, limited to trust lands, and therefore any concerns over standards for streams and rivers within the Pine River Drainage that are not on trust lands are outside the scope of this application and the Agency's review.

Author Name: Amy Huff, Attorney

Organization/ Representing: Citizens Animas Irrigation Company

35) The Citizens Animas Irrigation Company is a nonprofit mutual ditch company supplying water from the Animas River. While the Citizens Animas Irrigation Company does not object to the Southern Ute Indian Tribe's desire to administer the Water Quality Standards Program on tribal lands exclusively, it does have concerns about the Tribe's authority to establish classifications and standards for streams and rivers within the Animas River Drainage that traverse tribal lands.

Response: The EPA notes and appreciates the Citizens Animas Irrigation Company's comment that it does not object to SUIT's desire to apply to administer the CWA §§ 303(c) Water Quality Standards and

401 Certification programs on tribal lands exclusively; and that it has concerns about the Tribe's authority to establish classifications and [water quality] standards within the Animas River watershed. The EPA notes that there are Southern Ute Indian trust lands within the Animas River drainage, and those trust lands are included in the Tribe's TAS application. (See Application at Exhibit 1, map 3.) To the extent surface waters within the Animas River drainage are located on tribal trust lands, the Tribe has (as explained in EPA's decision document approving the Tribe's application) demonstrated appropriate authority to administer the water quality standards and certification programs over such waters. The comment does not provide any information that would question the substance and basis for the Tribe's assertion of authority over such trust land waters. The TAS application is, however, limited to trust lands, and therefore any concerns over standards for streams and rivers within the Animas River Drainage that are not on trust lands are outside the scope of this application and the Agency's review.

Author Name: Ryan Halonen, Member at Large

Organization/ Representing: Florida River Estates Home Owners Association

36) As a small community upstream of Southern Ute Indian Tribal Land, we are concerned about the potential administrative and financial burdens of adhering to multiple and changing water regulations due to an additional regulatory authority.

Response: The EPA notes and appreciates the Florida River Estates Home Owners Association's comment regarding potential administrative and financial burdens. However, this comment addresses issues relating to compliance with actual CWA water quality standards and is outside the scope of the Agency's review of the Southern Ute Indian Tribe's TAS application. As noted elsewhere, any adoption of CWA water quality standards by the Tribe would need to comply with applicable public participation requirements, which would provide an opportunity to raise concerns regarding the water quality standards.

Author Name: Chris La May, Town Manager

Organization/ Representing: Town of Bayfield, Colorado

37) The Town of Bayfield recognizes and acknowledges the Southern Ute Indian Tribe's authority to regulate water resources located on trust lands within the boundaries of the SUIT's reservation, and acknowledges that the SUIT is capable of administering an effective water quality standards program.

Response: The EPA notes and appreciates the Town of Bayfield's comments on the Tribe's application; its recognition of the Tribe's authority to regulate water resources located on trust lands; and the Tribe's capability to administer an effective water quality standards program.

38) It is the Town's understanding that the Tribe is only requesting TAS authority for surface water resources (limited to "navigable waters") located on Reservation trust lands [i.e., limited to "navigable waters" on trust lands only, and excluding all other Reservation lands].

[Same comment also provided by: Edgemont Ranch Metropolitan District; Forest Lakes Metropolitan District; Los Pinos Ditch Company; Sullivan Ditch Company; Thompson Epperson Ditch Company; Schroder Ditch Company; Animas Valley Ditch and Water Company; and El Rancho Florida Metropolitan District.]

Response: The EPA notes and appreciates the Town of Bayfield's comment regarding the geographic scope of the Tribe's application (as described in the Application - see pp. 9-10). (See Comment 2 and Response above.)

39) The Town of Bayfield discharges treated wastewater into the Pine River upstream of the Reservation. The Town understands that its discharge upstream of tribal lands is not regulated by SUIF water quality standards under the CWA, but may require a CWA Section 401 Certification. The Town of Bayfield is concerned that if the Tribe adopts water quality standards more stringent than the State of Colorado then CWA § 401 certifications and its § 402 permits may become more cumbersome and potentially create the need for costly facility improvements.

Response: The EPA notes and appreciates the comment concerning the stringency of water quality standards and potential impacts to CWA § 401 certifications and § 402 NPDES permits. However, the stringency of water quality standards and potential impacts to NPDES permits is outside the scope of the Agency's review of the Tribe's TAS application. (Please see Comments 10 and 12, and Responses above.) Development of CWA water quality standards are subject to public participation requirements as described in CWA § 303 and 40 C.F.R. Parts 25 and 131, providing opportunities for consideration of such comments.

Author Name: Geoffrey Craig, Attorney

Organization/ Representing: Edgemont Ranch Metropolitan District; Forest Lakes Metropolitan District; Los Pinos Ditch Company; Sullivan Ditch Company; Thompson Epperson Ditch Company; Schroder Ditch Company; Animas Valley Ditch and Water Company; and El Rancho Florida Metropolitan District

40) My clients divert water from the Pine, Animas and Florida River basins; discharge treated wastewater into the Pine and Florida River basins; and have irrigation return flows into the Pine and Animas River basins. My clients do not oppose the Southern Ute Indian Tribe's request for TAS. However, there are some uncertainties as to the extent of the Tribe's authority once it establishes water quality standards and particularly for discharge permits that occur off reservation or on private land within the reservation.

Response: The EPA notes and appreciates that the clients represented in this letter conduct activities upstream of, and within, the Reservation; do not oppose the Tribe's request for TAS; and have concerns about potential impacts to their discharge permits. The concern regarding uncertainties over future water quality standards and any potential impacts to NPDES permit holders is outside the scope of the Agency's review of the Tribe's TAS application (please see Comment 10 and Response above). Adoption of CWA water quality standards are subject to public participation requirements as described in CWA § 303 and 40 C.F.R. Parts 25 and 131, providing opportunities for consideration of such comments. The EPA also notes that the Tribe's TAS application is limited to eligibility to administer CWA water quality standards and certifications. The Tribe has not applied to administer CWA discharge permitting and the EPA is the entity currently administering CWA § 402 NPDES permitting on the Southern Ute Indian Reservation.

41) The Metropolitan District clients discharge treated wastewater into the Pine and Florida River basins upstream of the Reservation. These clients understand that discharges upstream of tribal lands are not

regulated by SUIT water quality standards under the CWA, but may require a CWA § 401 Certification. These clients are concerned that if the Tribe adopts water quality standards more stringent than the State of Colorado then their CWA § 401 certifications and their § 402 permits may become more cumbersome and potentially inaccessible for essential projects. All of the clients request notice and opportunity to comment on any future CWA TAS applications and for adoption of any new or revised water quality standards.

Response: The EPA notes and appreciates the comment concerning the stringency of water quality standards and potential impacts to CWA § 401 certifications and § 402 NPDES permits. However, the stringency of water quality standards and potential impacts to NPDES permits is outside the scope of the Agency's review of the Tribe's TAS application (please see Comments 10 and 12, and Responses above). Development of CWA water quality standards are subject to public participation requirements as described in CWA § 303 and 40 C.F.R. Parts 25 and 131, providing opportunities for consideration of such comments.

Author Name: Floyd Smith, Attorney

Organization/ Representing: South Durango Sanitation District and Loma Linda Sanitation District

42) The South Durango and Loma Linda Sanitation Districts (Districts) are small political subdivisions operating wastewater treatment plants which have undergone improvements to meet increasingly higher [more stringent] [water quality] standards. The water quality standards used to determine discharge permit requirements for these facilities are important to their continued viability.

Response: The EPA notes and appreciates the comment on behalf of the South Durango and Loma Linda Sanitation Districts and their concerns about potential impacts to NPDES permits for those facilities. However, this comment is outside the scope of the substance and basis of the Tribe's assertion of authority to manage and protect water resources on trust lands. (Please see Comment 10 and Response above.)

Comments Received During the June 1 – June 30, 2017 Comment Period:

During the January 5 – February 3, 2017 comment period, several commenters requested additional time to submit comments. Although EPA’s TAS regulations do not require an extended comment period, in response to these requests the EPA afforded a second 30-day comment opportunity from June 1 – 30, 2017.

Author Name: Kara Chadwick, Forest Supervisor

Organization/ Representing: San Juan National Forest, Forest Service, U.S. Department of Agriculture

43) The Forest Service has reviewed the Southern Ute Indian Tribe application for TAS for administering a water quality standards program; and expresses support for approval of their application.

Response: The EPA notes and appreciates the Forest Service’s comment supporting approval of the Tribe’s application.

44) The Tribe has a demonstrated commitment to, and capacity for, stewardship of water resources on tribal lands. The grant of TAS status would complement its existing water quality monitoring and nonpoint source management programs, and provide for a holistic approach for protection and management of surface water resources on tribal lands.

Response: The EPA appreciates the Forest Service comment recognizing the Tribe’s commitment to, and capacity for, water resources stewardship.

Author Name: Lorene Bonds, Secretary/Treasurer

Organization/ Representing: La Plata River and Cherry Creek Ditch Company

45) The La Plata River and Cherry Creek Ditch Company opposes granting the Southern Ute Indian Tribe’s CWA §§ 303(c) and 401 program authority. The Southern Ute Reservation is a checker board reservation and references to the Ute Line or Northern Reservation line does not designate or include or imply that any non-trust lands are included in this reservation or that they are under jurisdiction of the Southern Ute Tribe. Granting SUIT regulation and control over trust lands water quality must be limited to these lands and not non-trust lands.

Response: The EPA appreciates and notes the comment in opposition of the Tribe’s application and statements that there are no non-trust lands in the Reservation or that any non-trust lands are under the Tribe’s jurisdiction. The Tribe’s TAS application and EPA’s decision are expressly limited to trust lands. Any issues regarding jurisdiction over non-trust lands are thus outside the scope of the Agency’s review and decision regarding the Tribe’s TAS application for authority over surface waters on trust lands.

Author Name: Beth Van Vurst, General Counsel

Organization/ Representing: Southwestern Water Conservation District

46) The Southwestern Water Conservation District (SWCD) takes no position on the Southern Ute Indian Tribe's assertion of authority over "navigable waters" on Reservation trust lands for purposes of administering water quality standards and Section 401 certification programs.

Response: The EPA notes that the SWCD takes no position on the Tribe's assertion of authority in its application.

47) The SWCD believes it is essential that the public, and in particular those who currently hold or may apply for federal permits or licenses, understand the effects of Tribal water quality standards. The SWCD encourages the Tribe to engage in considerable outreach including: individual notification of federal permit or license holders; and public meetings or workshops throughout the San Juan River Basin regarding potential impacts to those owning fee lands within the Reservation, and landowners upstream of the Reservation. Additionally, the Tribe should distribute a written document that answers "Frequently Asked Questions" about any Tribal water quality standards.

Response: The EPA notes and appreciates SWCD's comment regarding impacts to those holding federal permits or licenses; and its recommendations regarding public outreach and participation for the adoption of Tribal water quality standards. However, these comments are outside the scope of the Agency's review of the Tribe's application (please see Comment 13 and Response above regarding public notice and participation in the adoption of new and revised water quality standards). The EPA notes that review of a Tribe's CWA TAS application is a separate and distinct action from development and adoption of new and revised water quality standards. Adoption of CWA water quality standards is subject to public participation requirements as described in CWA § 303 and 40 C.F.R. Parts 25 and 131, ensuring public outreach and participation. This was discussed in the EPA's Frequently Asked Questions published in the EPA's website during its review of the Tribe's CWA TAS application.

Author Name: Amy Huff, Attorney

Organization/ Representing: King Consolidated Ditch Company; Morrison Consolidated Ditch Company; Thompson Epperson Ditch Company; and Pine River Canal Company

All comments reiterating previous comments (see Comments 13, 21, 30 and 34 and Responses.)

Author Name: Austin Rueschhoff, Attorney

Organization/ Representing: San Juan Water Conservancy District

48) The San Juan Water Conservancy District (SJWCD) appropriates and maintains water rights, sponsors water resource projects, and develops water storage projects to address future water supply needs in Archuleta County [Colorado]. SJWCD intends to take part in Watershed Management Plan for the Upper San Juan River Basin, and is concerned that the Tribe's application could harm its ability to adequately create a Watershed Management Plan that protects the San Juan River Basin above the SUIT lands.

Response: The EPA notes and appreciates the comment from the SJWCD regarding its efforts to participate in developing a Watershed Management Plan for the Upper San Juan River Basin. These comments, however, are outside the scope of the Agency's review of the Tribe's assertion of authority contained in its TAS application.

49) The SJWCD is concerned that approval of the Tribe's application will impair its ability to fully develop and divert its water rights associated with an off-channel reservoir project.

Response: The EPA notes and appreciates the SJWCD's comment regarding perceived impacts to its ability to fully develop and divert water rights. However, this comment is outside the scope of the EPA's review of the Tribe's assertion of authority contained in its application.

50) The SJWCD is concerned that approval of the Tribe's application will confuse property owners on which [water quality] standards to follow and hamper or impair local water protection efforts.

Response: The EPA notes and appreciates the SJWCD's comment regarding perceived impacts to local water protection efforts and confusion over applicable water quality standards. However, this comment is outside the scope of the EPA's review of the Tribe's assertion of authority contained in its CWA TAS application (please see Comment 12 and Response above for a discussion of conflicting or inconsistent water quality standards in waters with shared jurisdiction). The EPA notes that the trust lands covered by EPA's TAS decision are clearly identified in the Tribe's TAS application.

Author Name: Wayne Semler, President, and Mae Morley, Secretary

Organization/ Representing: La Plata Archuleta County Cattlemen's Association

51) The La Plata Archuleta County Cattlemen's Association represents livestock ranchers in La Plata and Archuleta Counties. Its members can be adversely impacted by establishing water quality standards other than those adopted by the Colorado Water Quality Control Commission.

[Same comment also provided by the Colorado Cattlemen's Association.]

Response: The EPA notes and appreciates the La Plata Archuleta County Cattlemen's Association comments regarding potential adverse impacts from establishing water quality standards other than those adopted by the Colorado Water Quality Control Commission. The comment does not address the assertion of authority to manage and protect reservation water resources contained in the Tribe's TAS application, and is thus outside the scope of the TAS comment process. The EPA's approval of the Tribe's TAS application does not review or approve any actual water quality standards under § 303(c) of the CWA. Any such approval (or disapproval) of water quality standards would occur in a separate EPA decision following submission of standards adopted by the Tribe for EPA's review. The Agency notes that the Water Quality Control Commission – the entity responsible for adopting water quality standards for the State of Colorado - has not been authorized to adopt water quality standards on the Southern Ute Indian Reservation. Adoption of CWA water quality standards are also subject to public participation requirements as described in CWA § 303 and 40 C.F.R. Parts 25 and 131, providing opportunities for consideration of such comments. As noted elsewhere, EPA's regulations at 40 C.F.R. § 131.7 also provide a mechanism for states and tribes to resolve disputes relating to differing water quality standards on shared water bodies.

52) The La Plata Archuleta County Cattlemen's Association notes that the Tribe's application is limited to "navigable waters" on Reservation trust lands, but the Tribe's application also notes that the Tribe may affect more lands (396,000 acres) than the lands held in trust by the United States.

Response: The EPA notes and appreciates the La Plata Archuleta County Cattlemen's Association comment that more lands than the trust lands covered in the Tribe's application may be affected by the Tribe. The Tribe's TAS application and EPA's TAS decision are expressly limited to trust lands. Any issues regarding jurisdiction over non-trust lands are thus outside the scope of the Agency's review of the Tribe's application.

53) The La Plata Archuleta Cattlemen's Association is concerned that the Tribe may develop water quality standards that are more stringent than those set by the State of Colorado, which would place an undue burden on its members. The non-Indian entities will have no input into water quality standards established by the Tribe.

Response: The EPA appreciates the Cattlemen's Association comment regarding the stringency of water quality standards and potential burdens on its members, but notes that concerns over the stringency of water quality standards are outside the scope of the Agency's review of the Tribe's TAS application (please see Comment 10 and Response above). The EPA shares the Cattlemen's Association's desire that adoption of CWA § 303(c) water quality standards undergo a robust notice and comment opportunity that broadly reaches interested parties consistent with EPA regulations (please see Comment 13 and Response above). The concern over the stringency of water quality standards is outside the scope of the Agency's review of the Tribe's assertion of authority contained in its TAS application (please see Comment 10 and Response above). The EPA notes again, however, that adoption of CWA water quality standards is subject to public participation requirements as described in CWA § 303 and 40 C.F.R. Parts 25 and 131, providing opportunities for consideration of comments from all interested parties.

Author Name: Todd Inglee, President

Organization/ Representing: Colorado Cattlemen's Association

54) The Colorado Cattlemen's Association (CCA) sees significant legal conflicts in the Southern Ute Tribe's assertion of authority over the surface water resources that they hold in trust. While the Tribe is limiting its assertion of authority, for purposes of this application, to those waters on land held in trust, this application and subsequent jurisdictional claims may well extend to waters within tribal boundaries that affect water quality per the Clean Water Act. The CCA requests that the EPA respect and uphold the delegation under the Clean Water Act for these lands to the Colorado Department of Public Health and Environment.

Response: The EPA notes and appreciates the Colorado Cattlemen's Association comments regarding potential impacts to lands within the Reservation beyond those trust lands identified in the Application and its request that the EPA respect and uphold the delegation of CWA authority to the Colorado Department of Public Health and Environment. The Application and EPA's TAS decision are expressly limited to trust lands. Any issues regarding jurisdiction over any other Reservation lands are thus outside the scope of the application and the Agency's review. The Agency also notes that EPA's decision does not involve any aspect of the State of Colorado's authority to administer water quality standards over areas within its jurisdiction, and that the State of Colorado has not asserted a competing claim of jurisdiction over the area covered by the Tribe's TAS application. The EPA reiterates that the State of Colorado has not been authorized to adopt water quality standards on the Southern Ute Indian Reservation.