



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

OFFICE OF  
WATER AND  
WATERSHEDS

MAY 02 2018

The Honorable Chairman Michael Marchand  
Colville Business Council  
Confederated Tribes of the Colville Reservation  
P.O. Box 150  
Nespelem, Washington 99155

Re: Approval of the Confederated Tribes of the Colville Reservation for Treatment in the Same Manner as a State for Sections 303(c) and 401 of the Clean Water Act

Dear Chairman Marchand:

I am pleased to inform you that the U.S. Environmental Protection Agency has approved the application by the Confederated Tribes of the Colville Reservation for treatment in the same manner as a state for the purposes of Sections 303(c) and 401 of the Clean Water Act pursuant to Section 518(e) of the CWA. After reviewing the application and comments provided by the State of Washington and interested local county governments, the EPA finds that the Colville Tribes meet the eligibility criteria of Section 518(e) of the CWA and the EPA regulations at 40 CFR § 131.8(a). Therefore, the Colville Tribes are eligible to adopt water quality standards and seek the EPA's review and approval, pursuant to Section 303(c) of the CWA, and to certify that discharges comply with those water quality standards, pursuant to Section 401 of the CWA, for all surface waters of the Colville Reservation. I am enclosing a copy of the EPA's decision document for this TAS approval.

We appreciate all of the coordination efforts of your staff during the EPA's review. The Colville Tribes provided timely responses to our questions and the additional information needed to supplement the initial application. As the Colville Tribes move forward with adopting water quality standards, the EPA encourages the Colville Tribes to engage the Washington Department of Ecology and local county governments. My staff is looking forward to working with the Tribes on this project. If you have any questions, please have your staff contact Maja Tritt at (206) 553- 6265 or Ted Yackulic at (206) 553-1218.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Opalski".

Daniel D. Opalski, Director  
Office of Watersheds and Water

Enclosures

cc: The Honorable Jay Inslee, Governor State of Washington  
Bob Ferguson, Washington Attorney General  
Maia D. Bellon, Director, Washington Department of Ecology  
Carol Evans, Chairwoman Spokane Tribe of Indians  
Brian Crossley, Spokane Tribe of Indians  
Gary Passmore, Confederated Tribes of the Colville Reservation

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

**DECISION DOCUMENT:**

**APPROVAL OF THE CONFEDERATED TRIBES OF THE COLVILLE  
RESERVATION APPLICATION FOR TREATMENT IN A SIMILAR  
MANNER AS A STATE FOR  
CLEAN WATER ACT SECTIONS 303(c) WATER QUALITY STANDARDS  
AND 401 WATER QUALITY CERTIFICATION PROGRAMS**

Contents

**I. INTRODUCTION AND INDEX TO DECISION.....1**

A. INTRODUCTION.....1

B. INDEX TO DECISION.....1

    1. *Application and Supporting Materials*.....1

    2. *Comments Regarding Tribal Authority*.....2

    3. *Policy Statements*.....3

**II. REQUIREMENTS FOR APPROVAL.....4**

A. FEDERAL RECOGNITION..... 4

B. SUBSTANTIAL GOVERNMENTAL DUTIES AND POWERS.....5

C. JURISDICTION OVER WATERS WITHIN THE BORDERS OF THE CTCR.....6

    1. *Map or Legal Description*.....6

    2. *Statement Describing Basis for the Tribe's Authority*.....7

    3. *Identification of the Surface Waters for which the Tribe Proposes to Establish Water Quality Standards*.....8

    4. *Conclusion Regarding Jurisdiction*.....8

D. CAPABILITY.....8

**III. CONCLUSION.....10**

**APPENDIX A: SUPPORTING INFORMATION.....A-1**

**APPENDIX B: RESPONSE TO COMMENTS.....B-1**

**APPENDIX C: MAPS OF CTCR'S LANDS.....C-1**

## **I. Introduction and Index to Decision**

### **A. Introduction**

This Decision Document provides the basis and supporting information for the U.S. Environmental Protection Agency's ("EPA" or "Agency") decision to approve the Confederated Tribes of the Colville Reservation's ("CTCR" or the "Tribes") application for treatment in a similar manner as a state for Clean Water Act ("CWA") section 303(c) water quality standards and section 401 water quality certification, pursuant to section 518(e) of the CWA and part 131 in Title 40 of the Code of Federal Regulations ("C.F.R.").

Section 518(e) of the CWA authorizes the EPA to treat an Indian tribe as a state (treatment in a similar manner as a state, or "TAS") to manage and protect water resources "within the borders of an Indian reservation," under certain CWA programs, including the section 303(c) water quality standards and section 401 certification programs. The EPA regulations at 40 C.F.R. part 131 establish the process by which the Agency implements that authority and determines whether to approve a tribal application for purposes of administering programs under sections 303(c) and 401 of the CWA. *See* 56 Fed. Reg. 64876 (December 12, 1991), as amended by 59 Fed. Reg. 64339 (December 14, 1994). As discussed in more detail below, while the Tribes' application was pending, the EPA issued a final interpretive rule (81 Fed. Reg. 30183 (May 16, 2016)) streamlining the TAS process by interpreting section 518 as a congressional delegation of civil regulatory authority for eligible tribes. As a result, this approval is based on the Tribes' application as amended in light of the interpretive rule. This approval applies to all surface waters that lie within the boundaries of the Colville Reservation.

This decision does not constitute an approval of the Tribes' water quality standards submitted with this application. The EPA's review and approval or disapproval of the Tribes' water quality standards is a separate action under the CWA.

### **B. Index to Decision**

The following documents constitute a portion of the full docket for this Agency decision, as detailed in Appendix A. All relevant materials in the docket are located in the EPA's official file and in electronic systems.

#### **1. Application and Supporting Materials**

The CTCR's application for TAS for the water quality standards and certification programs under CWA sections 303(c) and 401 includes the following documents:

- Letter dated December 20, 2013, from Gary Passmore, Director, Office of Environment Trust, Confederated Tribes of the Colville Reservation, to Dennis McLerran, Regional Administrator, the EPA Region 10, transmitting Application to Administer Water Quality Standards and Certification Programs.
- CTCR Application to Administer Water Quality Standards and Certification Programs (December 2013).

- Letter dated July 13, 2016, from Gary Passmore, Director, Office of Environmental Trust, Confederated Tribes of the Colville Reservation, to Dennis McLerran, Regional Administrator, the EPA Region 10 transmitting the CTCR's amended Application to Administer Water Quality Standards and Certification Programs, for Federal Approval of the Standards, and to Administer a Nonpoint Source Management Program, with additional attachments.
- CTCR's Amended Application to Administer Water Quality Standards and Certification Programs (September, 2016).

For convenience, this Decision Document refers to all of the application and supporting materials, including the July 13, 2016 letter and September 2016 Amended Application, collectively as the "Tribes' Application."

## 2. Comments Regarding Tribal Authority

As provided at 40 C.F.R. § 131.8(c)(2) and noted in Appendix A, the EPA by letters dated September 30, 2016, provided notice to appropriate governmental entities<sup>1</sup> and an opportunity to comment on the substance and basis of the CTCR's assertion of authority in their amended application to regulate under the CWA the quality of surface waters on the Colville Reservation. The letters were sent both electronically and by regular mail. The comment period started on October 11, 2016 and ended on November 10, 2016. The complete application was posted on an EPA Region 10 website during the comment period.

As noted in Appendix A, the EPA received responses from the State of Washington informing the EPA that the State had not received any public comments on the Tribes' Application, and that the State looked forward to continuing its strong working relationship with the CTCR and the EPA on water quality issues in the region. The EPA did not receive a response from the Spokane Tribe of Indians. A Response to Comments is found in Appendix B of this document.<sup>2</sup>

---

<sup>1</sup> The EPA defines the term "appropriate governmental entities" as "States, Tribes, and other Federal entities located contiguous to the reservation of the tribe which is applying for treatment as a State." 56 Fed. Reg. 64876, 64884 (Dec. 12, 1991). Consistent with the EPA's regulations, the EPA provided notice to all appropriate governmental entities in this case. In this instance, the EPA provided notice to the State of Washington and the Spokane Tribe of Indians.

<sup>2</sup> By letter dated July 17, 2014, the EPA provided the State of Washington, the Spokane Tribes of Indians, local governments and the public notice of and an opportunity to comment on the assertion of authority in their original Application. The EPA only received comments from the State of Washington. By letter of August 22, 2014 Maia D. Bellon, Director, Washington State Department of Ecology provided the EPA with comments on, among other subjects, the CTCR's assertion of inherent authority for waters on lands within and on lands outside of the formal Colville Reservation. As noted in the body of this decision, while the CTCR's Application was pending, the EPA issued a final interpretive rule, 81 Fed. Reg. 30183, May 16, 2016, streamlining the TAS process by interpreting section 518 of the Clean Water Act as a congressional delegation of civil regulatory authority for eligible Tribes. On July 13, 2016, the CTCR supplemented its Application by (1) asserting that the authority for their application is the express congressional delegation to eligible Indian tribes to administer regulatory programs over their reservation contained in Section 518 of the CWA, and (2) removing trust lands located outside of their formal reservation from their TAS application. As a result, by email dated November 1, 2016, the State of Washington withdrew the related

a. Comment Period

Consistent with Agency practice, the EPA also provided the public, including local governments, notice and an opportunity to comment on the assertion of authority in the Tribes' amended application. A public notice was published in two newspapers—the Spokane Spokesman Review and the Wenatchee World. The published notices identified the EPA's website on which the Tribes' Application was posted and notified local governments and the public of the opportunity to review documents at the EPA Regional office in Seattle, WA and at the Colville Public Library located in Colville, WA. The notices requested that any comments be submitted by November 10, 2016. The EPA did not receive any comments in response to these newspaper notices.

In summary, during the public comment period, the EPA received no adverse comments on the CTCR's assertion of authority in their amended application to regulate the quality of surface waters on the Colville Reservation under the CWA.

b. Post Comment Period Input

In an exercise of its discretion, the EPA solicited additional input from local county and municipal governments after the close of the public comment period. The EPA contacted local county and municipal governments by email dated June 6, 2017 and follow up telephone calls. The Board of Okanogan County Commissioners responded to the EPA's outreach efforts by letter dated July 11, 2017, wherein the Board requested a meeting with representatives of the EPA before the EPA made a decision regarding the Tribes' application for TAS. Representatives of the EPA met with county commissioners from Okanogan County in Okanogan, WA, on August 1, 2017. Pursuant to a separate request, representatives of the EPA also met with county commissioners from Stevens, Ferry, and Lincoln Counties in Colville, WA, on October 31, 2017. Stevens County also submitted a comment letter to EPA on December 26, 2017. The letter articulated Stevens County's, Ferry County's and Lincoln County's requests that the EPA deny the Tribes' application for TAS. However, the letter did not raise issues directly related to any of the four criteria which the EPA is required to evaluate when rendering a decision on the Tribes' application for TAS. Nevertheless, the EPA, at its discretion, including the December 26, 2017 letter as well as email correspondence related to its post comment period outreach efforts in the administrative record that supports this decision, and is responding to the issues raised in the letter in the attached Responsiveness Summary.

3. Policy Statements

- *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (November 8, 1984)

---

comments it had submitted on August 22, 2014. This Decision does not address the removed lands since they are no longer part of the Tribes' Application and thus, are outside the geographic scope of the EPA's approval in this Decision Document.

- EPA Memorandum titled “EPA/State/Tribal Relations,” by EPA Administrator Reilly (July 10, 1991)
- Memorandum titled “Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations,” by EPA Assistant Administrator Robert Perciasepe and General Counsel Jonathan Cannon (March 19, 1998)
- Memorandum titled *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs*, by EPA Deputy Administrator Marcus Peacock (January 23, 2008)

## II. Requirements for Approval

Under CWA section 518(e) and the implementing regulation at 40 C.F.R. § 131.8(a), four requirements must be satisfied before the EPA can approve an Indian tribe’s application for the water quality standards program under section 303(c) and the water quality certification program under section 401. These requirements are that: (1) the Indian tribe is recognized by the Secretary of the Interior and exercises authority over a reservation; (2) the Indian tribe has a governing body carrying out substantial governmental duties and powers; (3) the water quality standards program to be administered by the Indian tribe pertains to the management and protection of water resources that are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and (4) the Indian tribe is reasonably expected to be capable, in the Regional Administrator’s judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the CWA and applicable regulations.

The regulation at 40 C.F.R. § 131.8(b) identifies what must be included in an application by an Indian tribe to administer the water quality standards program. Consistent with the regulation at 40 C.F.R. § 131.8(b)(6), where an Indian tribe has previously qualified for TAS under a different CWA or Safe Drinking Water Act program, the tribe need only provide the required information that has not been submitted in a previous application. Where the EPA determines that an Indian tribe is eligible to the same extent as a state for purposes of water quality standards, the tribe likewise is eligible to the same extent as a state for purposes of certifications conducted under CWA section 401. *See* 40 C.F.R. § 131.4(c). Tribes authorized to administer the CWA water quality standards program are also “affected states” under CWA §§ 402(b)(3) and (5), and 40 C.F.R. § 122.4(d). As “affected states,” they receive notice and an opportunity to comment on certain permits issued under the National Pollutant Discharge Elimination System program.

### A. Federal Recognition

Under CWA section 518(e) and its implementing regulation, the EPA can approve an application from an eligible “Indian tribe” that meets the definitions set forth in CWA section 518(h) and 40 C.F.R. § 131.3(k) and (l). *See* 40 C.F.R. § 131.8(a)(1). The term “Indian tribe” is defined as “any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.” CWA section 518(h)(2), 40 C.F.R. § 131.3(l). The term “Federal Indian reservation” means “all land within the limits of any Indian reservation under the jurisdiction of the United States

Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.” CWA section 518(h)(1), 40 C.F.R. § 131.3(k).

Consistent with 40 C.F.R. 131.8(b)(6), the Tribes’ Application references the June 8, 1990, approval of the Tribes TAS application for the CWA section 106 program, and the September 27, 1991, approval of the Tribes’ TAS application for the CWA section 319 program. The CTCR is included in the Department of the Interior’s current list of federally recognized tribes. *See* 81 Fed. Reg. 26826, 26827 (May 4, 2016). Furthermore, as discussed below, the Tribes are exercising governmental authority over a reservation within the meaning of the CWA. Thus, the EPA has determined that the CTCR meet the requirements of 40 C.F.R. §§ 131.8(a)(1) and (b)(1).

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

To show that it has a governing body currently carrying out substantial governmental duties and powers over a defined area, 40 C.F.R. § 131.8(b)(2) requires that the tribe submit a descriptive statement that should: (i) describe the form of the tribal government; (ii) describe the types of governmental functions currently performed by the tribal governing body, such as those exercising police powers affecting or relating to the health, safety, and welfare of the affected population, taxation, and the exercise of eminent domain; and (iii) identify the source of the tribal government’s authority to carry out the governmental functions currently being performed.

Consistent with 40 C.F.R. § 131.8(b)(6), the CTCR’s Application refers to the governmental description in its CWA section 106 TAS application, which describes the Tribes’ form of government and the significant governmental functions the Tribes’ perform. The CTCR adopted a Constitution and By-Laws<sup>3</sup> on February 26, 1938, which were approved by the Commission of Indian Affairs on April 19, 1938. The CTCR’s Constitution established a governing body and a separate and independent judiciary. The governing body, the Colville Business Council, was established by Article 2 of the Constitution. Article 5 Section 1(a) of the Constitution grants the Business Council the authority, among other things: “[t]o confer with the Commissioner of Indian affairs . . . regarding the uses and disposition of Tribal property; to protect and preserve the Tribal property, wildlife and natural resources of the [Colville] Tribes [;] to cultivate Indian arts, crafts and culture; to administer charity [; and] to protect the health, security and general welfare of the [Colville] Tribes.” Article 5 Section 1(e) also provides the Business Council with the authority “to promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessment or license fees upon non-members doing business within the Reservation, or obtaining special rights or privileges.” This section also provides the same authority to the Business Council with regards “to members of the Tribes provided such ordinances have been approved by a referendum of the [Colville] Tribes.” Article 8 of the Constitution establishes the judiciary as a separate branch of the Tribes’ government, and provides for a Tribal Court and a Court of Appeals. Essentially, these authorities allow the CTCR to exercise traditional governmental powers related to the lands, resources, waters, and related activities within the Colville Reservation.

---

<sup>3</sup> Attachment D to the Tribes’ Application.



The Colville Business Council effectively operates both an executive and legislative branch of government. The Business Council has fourteen members, with elected members serving two-year terms. An Executive Director, who is responsible to the Business Council, oversees the day-to-day management of the tribal government which has three divisions—Services, Public Safety, and Land & Property Management. Each division has a director. The Land & Property Management Director is responsible for several divisions relevant to the CTCR’s CWA TAS eligibility. These divisions include Planning Building Permits, Roads, Natural Resources Management, Facilities Management, and History & Archeology. The organizational chart of the CTCR’s governing body is included in Attachment C to the Tribes’ Application.

In its application, the CTCR further describe governmental functions performed by the tribal governing body affecting health, safety, and welfare, and directly relating to the protection of water quality. These functions are performed in accordance with tribal laws such as the Water Resources Use and Permitting Act, the Hazardous Substances Control Act, and the Shoreline Protection Act. The Tribes have recently revised several water quality protection codes, including the Tribes’ codes for forest protection, *see*, Colville Tribal Law and Order Code § 4-12; hydraulic projects permitting, *see*, Colville Tribal Law and Order Code § 4-9; and, on-site wastewater treatment and disposal, *see*, Colville Tribal Law and Order Code § 4-5. In 2010, the CTCR enacted the Colville Environmental Quality Commission Act which created an environmental appellate body to oversee administrative appeals of final water quality decisions for Chapter 4-5 through 4-10 and 4-16 of the Colville Tribal code *see*, Colville Tribal Law and Order Code § 4-23.

The Tribes’ Application updates the information previously provided to the EPA in support of the CTCR’s TAS applications for CWA sections 106 and 319. Therefore, the Tribes’ Application confirms previous EPA findings that the CTCR satisfies the requirement for a governing body that carries out substantial duties and powers over a defined area in satisfaction of 40 C.F.R. §§ 131.8(a)(2) and (b)(2).

## **C. Jurisdiction over Waters within the Borders of the CTCR**

### **1. Map or Legal Description**

The Tribes’ Application includes a series of maps showing the area covered by the TAS application. As the maps indicate, the application covers all waters within the boundaries of the CTCR’s current reservation (the “Reservation”). The Tribes’ Application includes maps that delineate the boundaries of the Reservation and the surface waters contained therein.<sup>4</sup> The Reservation is bounded on the east and south by the mid-point of the Columbia River and on the west by the mid-point of the Okanogan River. The northern boundary is formed by the line separating Township 34 and 35. The Reservation covers approximately 1,397,673 acres.

---

<sup>4</sup> See, Appendix C Maps of Colville Reservation and Waters

As discussed above, the EPA provided appropriate governmental entities and the public notice and the opportunity to comment on the substance and basis of the Tribes' assertion of authority as part of the review process for the CTCR's TAS application. The CTCR's TAS application identifies the land and surface waters covered by the application. No competing or conflicting jurisdictional claim regarding the identified Reservation boundaries or the area within the boundaries was made.

The EPA concludes that the CTCR has satisfied 40 C.F.R. § 131.8(b)(3)(i) by providing maps and a legal description of the Reservation area over which the Tribes assert authority to regulate surface water quality under the CWA.

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

The CTCR's original TAS application for the CWA sections 303(c) and 401 programs includes a Statement of the Reservation Attorney and Special Environmental Counsel of the CTCR that describes and relies on, among other things,<sup>5</sup> the Tribes' inherent sovereign authority over all lands and resources, including water resources, within the Reservation as the basis for the Tribes to regulate water quality under the CWA. *See* Attachment G of the Application. The Statement describes the CTCR exercise of authority over all lands, waters and persons within the Reservation. The Statement cites relevant federal Indian law precedent supporting the CTCR's exercise of inherent authority to regulate water quality in the areas covered by the application.

As mentioned above, while the Tribes' Application was pending, the EPA issued a final interpretive rule clarifying the authority of tribes to administer regulatory programs over their entire reservations pursuant to CWA section 518. This clarification is described in EPA's *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183 (May 16, 2016) ("Interpretive Rule"), which construes section 518 as an express congressional delegation of civil regulatory authority to eligible tribes. This reinterpretation of section 518 eliminates the need for applicant tribes to demonstrate their inherent authority to regulate reservation waters under the CWA. Instead, applicant tribes can rely on the congressional delegation of authority as the source of their authority to regulate reservation waters under the CWA. *Id.* at 30190, 30194. In light of the congressional delegation of authority, the main focus in determining the extent of an applicant tribe's jurisdiction for CWA regulatory purposes is identifying the geographic boundaries of the Indian reservation area over which the congressionally delegated authority would apply. *Id.* at 30194. In the Interpretive Rule, the EPA also recognized that there may be rare instances where special circumstances limit or preclude a particular tribe's ability to accept or effectuate the congressional delegation of authority over its reservation. *Id.* at 30192-193. Such special circumstance could arise, for instance, under a separate federal statute establishing unique jurisdictional arrangements for a specific state or reservation, or under the provisions of particular treaties or tribal constitutions that may limit a tribe's ability to exercise relevant authority. *Id.*

---

<sup>5</sup> The Statement is entitled the *Regulatory Authority of the Colville Confederated Tribes Over Water Pollution Sources Within the Borders of the Colville Indian Reservation*. In addition to relying on the CTCR's inherent sovereign authority over the lands and resources within the Reservation, the Statement also relies on tribal proprietary rights and the federal delegation of authority as provided for in section 518 of the CWA as the basis for the Tribes to regulate.

By letter dated July 13, 2016, the CTCR amended its application to rely on the congressional delegation of regulatory authority in CWA section 518 as provided for in Interpretative Rule. The CTCR asserted that there are no limitations or impediments to their ability to accept and effectuate this congressional delegation of authority under the CWA. The EPA received no comments from appropriate governmental entities or others challenging this assertion of the CTCR's authority to regulate water quality for any areas within the Reservation. The EPA is not aware of any impediment limiting the CTCR's ability to effectuate the congressionally delegated authority. The EPA concludes that the CTCR can rely on the congressional delegation of authority and has satisfied the application requirement of 40 C.F.R. § 131.8(b)(3)(ii).

### 3. Identification of the Surface Waters for which the Tribe Proposes to Establish Water Quality Standards

The CTCR's TAS application asserts authority over all surface waters within the areas covered by the application, i.e. the Reservation. (*See* Application, at pages 10--32). These waters cover approximately 2,671 miles of rivers and streams, 9,535 acres of lakes, and 36,100 acres of portions of the Columbia River Reservoirs (Lake Roosevelt, Rufus Woods and Pateros). Portions of the Columbia River and Okanogan River provide 202 miles of external boundaries for the Reservation. The river boundary of the Reservation is the mid-point of each of these two rivers. Table 1 of the application identifies several watersheds within the Reservation and the application discusses each of these watersheds in detail. (*See* Application at pages 12—32).

The EPA concludes that the CTCR has satisfied 40 C.F.R. § 131.8(b)(3)(iii).

### 4. Conclusion Regarding Jurisdiction

Based on the above discussion, the EPA concludes that the CTCR meets the requirements in 40 C.F.R. §§ 131.8(a)(3) and (b)(3).

### **D. Capability**

To demonstrate that a tribe has the capability to administer an effective water quality standards program, 40 C.F.R. § 131.8(b)(4) requires that the tribe's application include a narrative statement of the tribe's capability. The narrative statement should include: (i) a description of the tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act, the Indian Mineral Development Act or the Indian Sanitation Facility Construction Activity Act; (ii) a list of existing environmental and public health programs administered by the tribal governing body and copies of related tribal laws, policies, and regulations; (iii) a description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government; (iv) a description of the existing, or proposed, agency of the tribe that will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards; and, (v) a description of the technical and administrative capabilities of the staff to administer and

manage an effective water quality standards program or a plan that proposes how the tribe will acquire additional administrative and technical expertise.

The CTCR's Application documents that it is reasonably expected to be capable of carrying out the functions of the water quality standards and certification programs in a manner consistent with the terms and purposes of the CWA and applicable regulations. The TAS application states the CTCR has managed a tribal water quality program for the Reservation since the 1980s. In 1985, the CTCR entered into an agreement with the Washington Department of Ecology and the Washington Department of Natural Resources regarding implementation of a Colville Water Quality Management Plan. Consistent with this agreement, the Tribes work collaboratively on water quality issues in shared water bodies and the Tribes solely implement programs related to water quality in other waters within the Reservation. In shared water bodies, the Tribes and State of Washington typically coordinate efforts to develop consistent requirements.

The Office of Environmental Trust with the CTCR government administers the various water quality codes that the CTCR has enacted. The Office is a department within the Tribes' governing body. It was created by the Business Council and reports to the CTCR's Executive Director as well as the Business Council.

As previously noted, the CTCR has a judiciary that consists of a Tribal Court and a Court of Appeals. The Judiciary is led by the Chief Judge who is appointed by the Business Council and has several associate judges who are also appointed by the Business Council. The Judiciary handles both civil and criminal matters.

Consistent with the Constitution and By-Laws of the CTCR, the Colville Tribal codes implemented and enforced by the Office of Environmental Cleanup were enacted by the Business Council and approved by the Bureau of Indian Affairs. These codes are identified in the Tribes' Application. *See* Attachments H (federal promulgated water quality standards for the Colville Reservation) and L (Colville Tribal codes) of the Application. As previously noted, the EPA approved the Tribes' TAS applications for the CWA sections 106 and 319 programs on June 8, 1990 and September 27, 1991, respectively. The Tribes' Application describes activities performed by the Office of Environmental Trust. These include permitting, monitoring water quality (the Tribes regularly collect samples and data from 120 streamflow and 150 water quality sites), reporting on the results of monitoring efforts in annual assessment reports, and conducting watershed restoration projects with Tribal funds and funds that the Tribes received through CWA section 319 grants.

The Office of Environmental Trust operates under the Tribes' Executive Director and ultimately the Business Council. It will assume the primary responsibility for establishing, reviewing, implementing, and revising water quality standards. The Office has a permanent staff of 17 employees, 12 of whom will solely focus on water quality standards, and water management and protection. Job descriptions and qualifications requirements for the following water-related positions are provided in Attachment M of the Application:

- Environmental Trust Director

- Environmental Planner II
- Watershed Program Manager
- Hazardous Waste Manager
- Water Administrator
- Forest Practices Administrator
- Watershed Specialist
- Water Regulatory Specialist
- Water Resources Specialist
- Water Resource Operations Supervisor
- Water Resource Technician

The water quality-related work of the Office of Environmental Trust is additionally supported by staff in other Offices, and contractors have additionally been employed to support program work.

Based on the information provided by the CTCR that describes its capability to administer effective water quality standards and certification programs under the CWA and based on the Application's description of work undertaken by the Office of Environmental Trust, the EPA concludes that the CTCR have met the requirements at 40 C.F.R. §§ 131.8(a)(4) and (b)(4).

### III. Conclusion

The EPA has reviewed the CTCR's TAS application for purposes of CWA sections 303(c) and 401, as well as prior decisions approving the Tribes' TAS applications for purposes of CWA sections 106 and 319. The EPA has assessed whether the application from the CTCR meets the eligibility criteria established by CWA section 518(e) and the applicable regulations. Based upon this review, the EPA concludes that the CTCR has made the required demonstration to meet the eligibility and application requirements at 40 C.F.R. §§ 131.8(a)(1) -(4) and (b)(1) -(4) to administer the water quality standards program for surface waters on the Reservation. Pursuant to 40 C.F.R. 131.4(c), the CTCR is also eligible to the same extent as a state for purposes of the water quality certification program under CWA section 401.



Daniel D. Opalski, Director  
Office of Water and Watersheds  
EPA Region 10

May 2, 2018  
Date

## Appendix A: Supporting Information

The Agency decision is based on the documents listed below. All relevant materials in the docket are located in EPA's official files and in electronic systems.

Description (signature, addressee, subject)	Date
<b>I. Application and Supporting Materials</b>	
<p>Letter from Gary Passmore, Director, Office of Environmental Trust, Confederated Tribes of the Colville Reservation to Dennis McLerran, Regional Administer, EPA Region 10</p> <ul style="list-style-type: none"> <li>• Amended Application for Treatment as a State to Administer a Water Quality Standards Program and Request Approval of Water Quality Standards               <ul style="list-style-type: none"> <li>○ Attachment A: 75 Fed. Reg. 60810</li> <li>○ Attachment B: Executive Order Creating the Colville Indian Reservation</li> <li>○ Attachment C: CTCR Organization Chart</li> <li>○ Attachment D: Constitution and By-Laws of the Confederated Tribes of the Colville Reservation</li> <li>○ Attachment E: Colville Tribe Law and Order Code Table of Contents</li> <li>○ Attachment F: Maps of Traditional Territories and Former Reservations</li> <li>○ Attachment G: Regulatory Authority of the Confederated Tribes Over Water Pollution Sources Within the Borders of the Colville Indian Reservation</li> <li>○ Attachment H: 40 C.F.R. 131.35 Federally Promulgated Water Quality Standards for the Colville Indian Reservation</li> <li>○ Attachment I: EPA Approval of Treatment as a State for Clean Water Act Section 106</li> <li>○ Attachment J: EPA Approval of Treatment as a State for Clean Water Act Section 319</li> <li>○ Attachment K: Lake Roosevelt Cooperative Management Agreement</li> <li>○ Attachment L: Tribal Codes Pertaining to Water Quality Protection</li> <li>○ Attachment M: Job Descriptions and Qualifications Requirements for Water-Related Positions</li> </ul> </li> </ul>	<p>July 13, 2016</p>

Description (signature, addressee, subject)	Date
<p>Letter from Gary Passmore, Director, Office of Environmental Trust, Confederated Tribes of the Colville Reservation, to Dennis McLerran, Regional Administrator, EPA Region 10</p> <ul style="list-style-type: none"> <li>• Original Application for Treatment as a State to Administer a Water Quality Standards Program and Request Approval of Water Quality Standards <ul style="list-style-type: none"> <li>○ Attachment A: 75 Fed. Reg. 60810</li> <li>○ Attachment B: Executive Order Creating the Colville Indian Reservation</li> <li>○ Attachment C: CTCR Organization Chart</li> <li>○ Attachment D: Constitution and By-Laws of the Confederated Tribes of the Colville Reservation</li> <li>○ Attachment E: Colville Tribe Law and Order Code Table of Contents</li> <li>○ Attachment F: Maps of Traditional Territories and Former Reservations</li> <li>○ Attachment G: Maps of Trust Land Properties</li> <li>○ Attachment H: Regulatory Authority of the Confederated Tribes Over Water Pollution Sources Within the Borders of the Colville Indian Reservation</li> <li>○ Attachment I: 40 C.F.R. 131.35 Federally Promulgated Water Quality Standards for the Colville Indian Reservation</li> <li>○ Attachment J: EPA Approval of Treatment as a State for Clean Water Act Section 106</li> <li>○ Attachment K: EPA Approval of Treatment as a State for Clean Water Act Section 319</li> <li>○ Attachment L: Lake Roosevelt Cooperative Management Agreement</li> <li>○ Attachment M: Tribal Codes Pertaining to Water Quality Protection</li> <li>○ Attachment N: Job Descriptions and Qualifications Requirements for Water-Related Positions</li> </ul> </li> </ul>	<p>December 20, 2013</p>
<p><b>II. Letters and related documents from EPA</b></p>	
<p>Letter from Dennis McLerran, Regional Administrator, EPA Region 10 to appropriate governmental entities providing notice of an opportunity to comment on the substance and basis of the Confederated Tribes of the Colville Reservation's assertion of authority in their original application:</p> <ul style="list-style-type: none"> <li>• The Honorable Jay Inslee, Governor, State of Washington</li> <li>• The Honorable Rudy Peone, Chairman, Spokane Tribe of Indians</li> </ul>	<p>July 17, 2014</p>
<p>Letter from Dennis McLerran, Regional Administrator, EPA Region 10 to appropriate governmental entities providing notice of an opportunity to comment on the substance and basis of the Confederated Tribes of the Colville Reservation's assertion of authority in their amended application:</p> <ul style="list-style-type: none"> <li>• The Honorable Jay Inslee, Governor, State of Washington</li> <li>• The Honorable Carol Evans, Chairwoman, Spokane Tribe of Indians</li> </ul>	<p>September 30, 2016</p>

Description (signature, addressee, subject)	Date
Memorandum from Maja Tritt, Water Quality Standards Coordinator, to Ted Yackulic, Assistant Regional Counsel, entitled " <i>Review of Confederated Tribes of the Colville Reservation's Application for the Water Quality Standards Program: Demonstration of Capabilities</i> "	February 23, 2017
Public notice providing an opportunity to comment on the substance and basis of the Confederated Tribes of the Colville Reservation's assertion of authority, published in the <i>Spokane Spokesman Review and Wenatchee World</i> .	July 22, 2014
Public notice providing an opportunity to comment on the substance and basis of the Confederated Tribes of the Colville Reservation's assertion of authority in their original application, published in the <i>Spokane Spokesman Review and Wenatchee World</i> .	October 11, 2016
Screen capture documenting materials posted for public comment period	July 22, 2014
Screen capture documenting materials posted for public comment period	October 11, 2016
<b>III. Comments received by EPA</b>	
Letter from Maia D. Bellon, Director, Washington State Department of Ecology to Ted Yackulic, EPA Region 10	August 22, 2014
Email from Thomas C. Laurie, Senior Advisor for Tribal & Environmental Affairs, Washington State Department of Ecology to Ted Yackulic, EPA Region 10	November 1, 2016
Letter from the Okanogan County Board of Commissioners to Cami Grandinetti, EPA Region 10	July 11, 2017
Letter from the Stevens County Commissioners to Chris Hladlick, Regional Administrator, EPA Region 10	December 26, 2017
Email from Chris Branch, Commissioner Okanogan County, to Cami Grandinetti, EPA Region 10	August 2, 2017
Email from Ted Yackulic, EPA Region 10, to Ferry, Lincoln and Stevens County Commissioners	December 13, 2017



## Appendix B: Response to Comments

The Confederated Tribes of the Colville Reservation submitted an application for treatment in a similar manner as a state for purposes of administering the water quality standards and water quality certification programs under Clean Water Act (CWA) sections 303(c) and 401.

In accordance with U.S. Environmental Protection Agency (EPA or Agency) practice and pursuant to 40 C.F.R. 131.8(c), the Agency notified appropriate governmental entities and the general public of, 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 the Agency’s policy and practice, EPA provided the CTCR an opportunity to respond to all comments received.

EPA received the following comments:

- Letter dated August 22, 2014, from Maia D. Bellon, Director, Washington State Department of Ecology; and
- Email dated November 1, 2016, from Thomas C. Laurie, Senior Advisor for Tribal & Environmental Affairs, Washington State Department of Ecology.

As noted in the Decision, by Mr. Laurie’s email of November 1, 2016, the Washington Department of Ecology withdrew certain comments concerning the CTCR’s assertion of inherent authority. EPA responses do not address the withdrawn comments.

### Summary of Comments and EPA’s Response

*Comment:* The Washington State Department of Ecology requests that EPA provide the State and Tribe with a clear delineation of water quality permit issuance authority in all boundary areas.

*Response:* The CTCR is not seeking, and EPA is not approving, eligibility or approval of a water quality permit program under Section 402 of the CWA. EPA will continue to be responsible for issuing National Pollution Discharge Elimination System (“NPDES”) Permits under Section 402 of the CWA for discharge to waters of the Colville Reservation.

*Comment:* The Washington Department of Ecology is willing to consider any CTCR/Federal/State intergovernmental instrument or program to ensure coordinated, effective, and responsive environmental protection for the Colville Reservation, the Residents of the Colville Reservation, and the residents of the State of Washington.

*Response:* EPA appreciates the Washington Department of Ecology’s willingness to consider Tribal/Federal/State intergovernmental efforts to ensure effective environmental protection for the Colville Reservation, the Residents of the Colville Reservation, and the residents of the State of Washington.

*Comment:* The Okanogan County Board of Commissioners requested on December 26, 2017 that before the EPA makes a decision on the CTCR application for TAS, the EPA meet with the Okanogan County Board to discuss the impact of the application if approved.

*Response:* Representatives of the EPA met with the Okanogan County Board of Commissioners on August 1, 2017. During this meeting, the EPA representatives and County Commissioners discussed the impact of approving the application. During this discussion, the County Commissioners articulated an interest in having input during any subsequent development of water quality standards by the CTCR, and did not articulate opposition to the approval of the CTCR application for TAS. If requested EPA will meet with the Okanogan County Commissioners or other proximately located county commissioners to discuss water quality standards that the CTCR submits to the EPA for approval before the EPA makes a decision on the submitted water quality standards. The EPA also encourages the Okanogan County Commissioners to continue working with the CTCR as the CTCR develops water quality standards and to share any comments through the eventual associated public comment period.

*Comment:* Stevens County did not receive timely notice of the CTCR application for TAS and EPA has a duty to coordinate with local governments.

*Response:* EPA provided the public, including local governments, notice and an opportunity to comment on the CTCR's assertion of authority in their amended application for TAS. A public notice was published in two newspapers—the Spokane Spokesman Review and the Wenatchee World. The published notices identified the EPA's website on which the Tribes' Application was posted and notified local governments and the public of the opportunity to review documents at the EPA Regional office in Seattle, WA and at the Colville Public Library located in Colville, WA.

Based on input received from Okanogan, Stevens, Ferry and Lincoln counties, the EPA recognizes that they would have appreciated more direct notification about the CTCR application for TAS. Although the EPA does not have a statutory duty to coordinate with the counties prior to making a CWA TAS determination,<sup>6</sup> and the commenter does not cite any authority for such a duty, the EPA conducted additional outreach to the counties to ensure that their input was considered prior to completing the action on the CTCR application. The EPA also is considering potential options to voluntarily address this input as part of future TAS application reviews. For example, the EPA is considering exercising its discretion to notify counties of TAS applications covering areas overlapping or adjacent to their jurisdictional boundaries as a "cc" when sending the letter requesting comments to the appropriate state governmental entity.

---

<sup>6</sup> Section 511(c) of the Clean Water Act, 33 § 1371(c) exempts the EPA from the requirements of the National Environmental Policy Act (NEPA) when it considers and makes a decision regarding a tribe's application for TAS. In addition, as noted in the preamble to the final rule entitled the "Amendments to the Water Quality Standards Regulations That Pertain to Standards on Indian Reservations," 56 Fed. Reg. 64876 (Dec. 12, 1991), EPA defines "governmental entities" – the entities to whom EPA provides notice of a tribe's application for TAS – as states, tribes, and other federal entities that are located contiguous to the reservation of the tribe which is applying for TAS, *id.* at 64884. EPA provides these entities with notice because, unlike county or municipal governments, states, tribes or other federal agencies may identify competing jurisdictional claims of authority in an area subject to a TAS application, *id.*

*Comment:* The CTCR has a long history of government turnover that has led to instability in decision making and of reliability on standards.

*Response:* EPA has determined that the CTCR has a governing body carrying out substantial governmental duties and powers over a defined area. In its application for TAS, the CTCR described the form of its tribal government; described the types of governmental functions currently performed by its governing body, such as those exercising police powers affecting or relating to the health, safety, and welfare of the affected population, taxation, and the exercise of eminent domain; and identified the source of the tribal government's authority to carry out the governmental functions currently being performed. The application includes copies of the CTCR Constitution and Bylaws, a table of contents for the CTCR Tribal Law and Order Code, and tribal codes pertaining to water quality protections. These attachments and the accompanying narrative description contained in the CTCR's application for TAS contradict the assertion regarding instability in decision making and reliability on standards. It is noteworthy that the comment did not include any evidence to support the comment.

*Comment:* Any standard set by the CTCR, or EPA for the CTCR would directly impact our current NPDES permit holders and economic development in our County.

*Response:* EPA acknowledges the commenter's interest in water quality standards that may be established by the CTCR for waters within the CTCR Reservation and concerns regarding the potential impact that standards may have on the local economy. However, the approval of the TAS application does not also approve water quality standards for the Colville Reservation. The EPA understands that the CTCR is developing water quality standards for its reservation. EPA will not review these standards until the CTCR has completed their development, provided the public with an opportunity to review and comment on the standards, finalized and adopted the standards, and submitted the standards to EPA for review and action. 40 C.F.R., Subpart C, §§ 131.20 and 131.21 articulate the process for the subsequent development, public participation, submittal and review of tribal water quality standards. EPA's review will be the subject of a separate agency action. EPA encourages the commenter to work with the CTCR as it develops its standards.

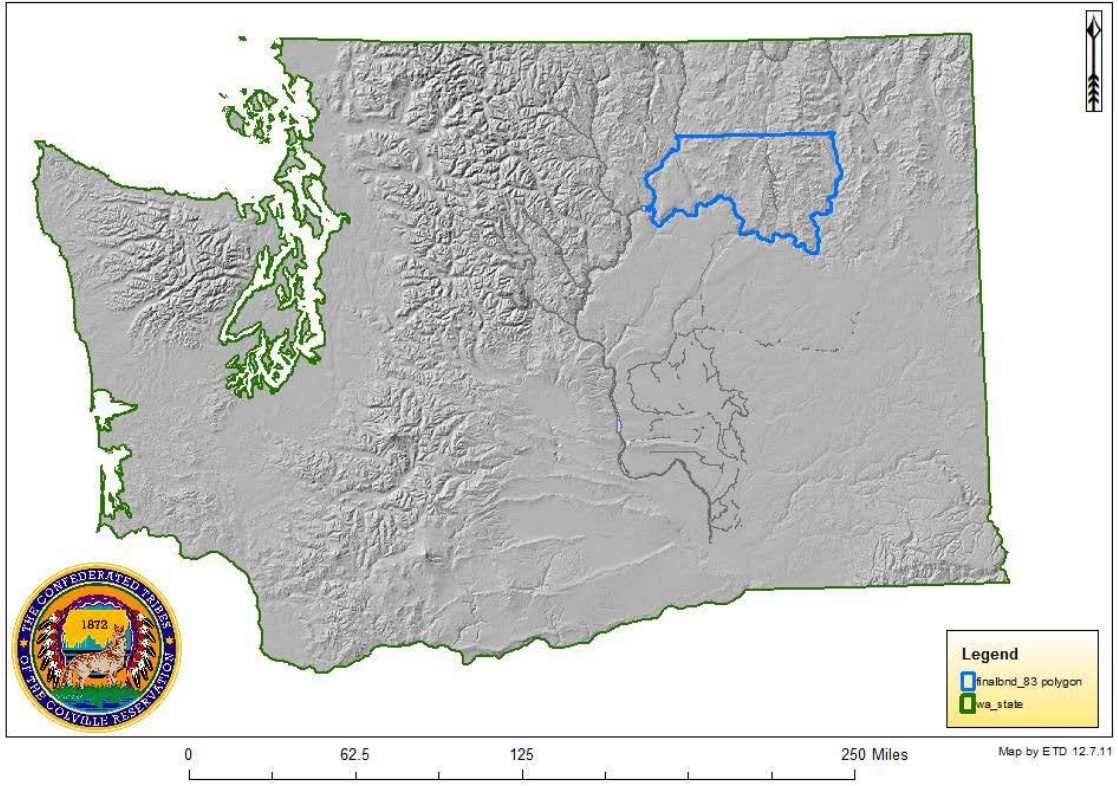
*Comment:* The CTCR as a sovereign entity does not consider themselves as having to work with neighboring counties. They tend to work with the State and the Federal governments. There is a long history of the CTCR not consulting, informing, or working with counties located in areas contiguous to the CTCR reservation let alone neighboring counties.

*Response:* EPA notes that this comment does not concern the CTCR's assertion of authority or any of the criteria by which EPA is required to evaluate a tribal application for TAS for the administering sections 303(c) and 401 of the CWA. Nevertheless, the CTCR application at pages 43 and 44 provides examples of the CTCR's efforts to coordinate with other governmental entities. In addition, EPA notes that Okanogan County and the CTCR have had some discussions related to the development of water quality standards, and that the CTCR has offered to meet

with the Okanogan County Commissioners and present information on the subject. EPA encourages the commenter to work with the CTCR on this issue.

## Appendix C: Maps of the Colville Reservation and Water

Boundary and Position of the Colville Indian Reservation in Washington State



Surface Water Resources of the Colville Indian Reservation

