



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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OFFICE OF
WATER AND
WATERSHEDS

Fawn R. Sharp
President
Quinault Indian Nation
P.O. Box 189
Taholah, WA 98587

SEP 20 2018

Re: Approval of the Quinault Indian Nation for Treatment in the Same Manner as a State for Sections 303(c) and 401 of the Clean Water Act

Dear President Sharp:

I am pleased to inform you that the United States Environmental Protection Agency has approved the application by the Quinault Indian Nation 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 Quinault Indian Nation meets the eligibility criteria of Section 518(e) of the CWA and EPA regulations at 40 CFR § 131.8(a). Therefore, the Quinault Indian Nation is 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 Quinault Indian 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 Quinault Indian Nation provided timely responses to our questions and the additional information needed to supplement the initial application. As the Quinault Indian Nation moves forward with adopting water quality standards, the EPA encourages the Quinault Indian Nation to engage the Washington Department of Ecology and local county governments. My staff is looking forward to working with the Quinault Indian Nation on this project. If you have any questions, please have your staff contact Maja Tritt at (206) 553- 6265 or Nick Vidargas at (206) 553-1460.

Sincerely,

A handwritten signature in blue ink that reads "Daniel D. Opalski" with a small "for" written below it.

Daniel D. Opalski
Director

Enclosure

cc: The Honorable Jay Inslee, Governor State of Washington
Bob Ferguson, Washington Attorney General
Maia D. Bellon, Director, Washington Department of Ecology

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

DECISION DOCUMENT:

**APPROVAL OF THE QUINAULT INDIAN NATION 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**

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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 (the EPA) decision to approve the Quinault Indian Nation's (QIN or the Tribe) application for treatment in a similar manner as a state for Clean Water Act (CWA) section 303(c) water quality standards¹ and section 401 water quality certification,² pursuant to section 518(e) of the CWA³ and part 131 of Title 40 of the Code of Federal Regulations (C.F.R.).⁴

Section 303(c) of the CWA requires states to develop, review, and revise (as appropriate) water quality standards for surface waters of the United States. At a minimum, such standards must include designated uses of waters, criteria to protect such uses, and an antidegradation policy.⁵ In addition, section 401 of the CWA provides that states may grant or deny "certification" for federally permitted or licensed activities that may result in a discharge to the waters of the United States.⁶ The decision to grant or deny certification is based on the state's determination whether the proposed activity will comply with, among other things, water quality standards it has adopted under CWA section 303. If a state denies certification, the federal permitting or licensing agency is prohibited from issuing a permit or license.

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. EPA regulations at 40 C.F.R. part 131 establish the process by which the EPA 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.⁷ As discussed in more detail below, while the Tribe's application was pending, the EPA issued a final interpretive rule streamlining the TAS process by interpreting section 518 as a congressional delegation of civil regulatory authority to eligible tribes.⁸ As a result, this approval is based on the Tribe's application as amended in light of the interpretive rule. This approval applies to all surface waters that lie within the boundaries of the Quinault Indian Reservation.

This decision does not constitute an approval of the Tribe's water quality standards. The EPA's review and approval or disapproval of the Tribe's 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 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 33 U.S.C. § 1313(c)

² 33 U.S.C. § 1341.

³ 33 U.S.C. § 1377(e).

⁴ 40 C.F.R. § 131.

⁵ 40 C.F.R. § 131.6.

⁶ 33 U.S.C. § 1341.

⁷ See 56 Fed. Reg. 64,876 (Dec. 12, 1991), as amended by 59 Fed. Reg. 64,339 (Dec. 14, 1994).

⁸ 81 Fed. Reg. 30,183 (May 16, 2016).

1. Application and Supporting Materials

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

- Quinault Indian Nation's Amended Application to Administer Water Quality Standards and Certification Programs (May 2017).
- Letter dated May 9, 2017, from Fawn R. Sharp, President, Quinault Indian Nation, to Nicholas Vidargas, Office of Regional Counsel, EPA Region 10, transmitting updated Application for Treatment in the Same Manner as a State under the CWA, with additional Exhibits.
- Quinault Indian Nation's Application to Administer Water Quality Standards and Certification Programs (December 2012).
- Letter dated December 21, 2012, from Fawn R. Sharp, President, Quinault Indian Nation, to Angela Chung, Water Quality Standards Unit Manager, Office of Water and Watersheds, EPA Region 10, transmitting Application for Treatment in the Same Manner as a State under the CWA.

For convenience, this Decision Document refers collectively to the application and supporting materials, including the May 9, 2017 letter, and May 2017 Updated Application, as the "Tribe's Application."

2. Comments Regarding Tribal Assertion of Authority

As provided in 40 C.F.R. § 131.8(c)(2) and noted in Appendix A, the EPA, by letters dated July 17, 2017, provided notice to appropriate governmental entities⁹ and an opportunity to comment on the substance and basis of the QIN's assertion of authority to regulate the quality of surface waters on the Quinault Indian Reservation. The letters were sent both electronically and by first-class mail.

As noted in Appendix A, the EPA received a response from the State of Washington informing the EPA that the State had received a number of public comments on the Tribe's Application and that the State looked forward to working with the QIN and EPA on water quality issues in the region. The EPA also received a response from Commissioner Vickie L. Raines of Grays County expressing support for the Tribe's Application.

Consistent with EPA practice, the EPA also provided the public notice and an opportunity to comment on the assertion of authority in the Tribe's Application. A public notice was published in two regional newspapers — the Olympian and the Aberdeen Daily World. The published notices identified the EPA website on which the Tribe's Application was posted and notified the public of the opportunity to review documents at the EPA Regional office in Seattle, Washington, at the Aberdeen Timberland Library located in Aberdeen, Washington, and at the Amanda Park Timberland Library, located in Amanda Park, Washington. The notices requested that any comments be submitted by August 25, 2017.

In summary, the EPA received 25 comments on the QIN's assertion of authority in their amended application to regulate the quality of surface waters on the Quinault Indian Reservation under the CWA. A Response to Comments is provided in Appendix B of this document.

⁹ 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 EPA regulations, EPA provided notice to all appropriate governmental entities in this case and additionally provided notice to local governments. In this instance, EPA provided notice to the State of Washington, Jefferson County, and Grays Harbor County. No incorporated towns or cities are located near the Quinault Indian Reservation.

3. Statutory and Regulatory Provisions

The following statutory and regulatory provisions are relevant to the EPA's decision.

- Section 518 of the Clean Water Act, 33 U.S.C. § 1377, authorizes the EPA to treat an eligible Indian tribe in the same manner as a state if it meets specified eligibility criteria.
- "Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations" 56 Fed. Reg. 64,876 (Dec. 12, 1991), *as amended by* 59 Fed. Reg. 64,339 (Dec. 14, 1994) (codified at 40 C.F.R. part 131) (*see also* 81 Fed. Reg. 30183 (May 16, 2016)), establishes the regulatory requirements for a tribe to administer water quality standards and certification programs.

4. Policy Statements

The following are certain policy statements relevant to the EPA's decision.

- *Policy for the Administration of Environmental Programs on Indian Reservations* (November 8, 1984).
- Memorandum titled *EPA/State/Tribal Relations*, by EPA Administrator William Reilly (July 10, 1991).
- Memorandum titled *Adoption of the Recommendations from 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 Program Eligibility 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 treatment in a similar manner as a state 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 any required information that has not been submitted in a previous application. Where 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 401.¹⁰ Tribes authorized to administer the CWA water quality standards program are also deemed to be “affected states” under sections 402(b)(3) and (5) of the CWA, 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.

Consistent with 40 C.F.R. § 131.8(b)(6), the Tribe’s Application references the EPA’s January 26, 2001, approval of the Tribe’s 2000 TAS application for the CWA section 319 program.¹¹ Therefore, the QIN was only required to submit information which was not previously submitted. Where relevant, this decision document references the 2000 TAS Application.

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).¹² 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.”¹³ 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.”¹⁴

The QIN is included in the Department of the Interior’s current list of federally recognized tribes.¹⁵ Furthermore, as discussed below, the Tribe is exercising governmental authority over a reservation within the meaning of the CWA. Thus, the EPA has determined that the QIN meets 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 a 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 Tribe’s Application refers to the governmental description in its CWA sections 106 and 319 TAS application, and describes the Tribe’s form of government and the significant governmental functions the Tribe performs. The QIN adopted a Constitution on March 22, 1975.¹⁶ Article IV of the QIN Constitution established a governing body, the Quinault Business Committee, and authorizes the establishment of an independent Tribal Court. Article V, Section 3 of the QIN Constitution grants the Business Committee the authority, among other things: “[t]o enter into agreements on

¹⁰ See 40 C.F.R. § 131.4(c).

¹¹ The Tribe’s 2012 TAS Application also references the EPA’s April 13, 2000 approval of the Tribe’s 2000 TAS application for the CWA 106 program. The two prior CWA TAS approvals are referenced together in this document.

¹² See 40 C.F.R. § 131.8(a)(1).

¹³ 42 U.S.C. § 1377(h)(2); 40 C.F.R. § 131.3(l).

¹⁴ 42 U.S.C. § 1377(h)(1); 40 C.F.R. § 131.3(k).

¹⁵ See 83 Fed. Reg. 4235, 4238 (Jan. 30, 2018).

¹⁶ See Tribe’s Application, Exhibit B.

behalf of the [QIN] with federal, state, and local governments [;] to provide for the execution and enforcement of the laws of the Quinault Nation [;] to govern the sale, disposition, and lease of tribally owned assets [; and] to manage, protect, and preserve the wildlife and natural resources of the Quinault Nation.” Article V Section 3 also provides the Business Committee with the authority “to provide for the . . . purity, volume, and use of all water to which the Quinault Nation and the Quinault people are entitled.” These authorities allow the QIN to exercise traditional governmental powers related to the lands, resources, waters, and related activities within the Quinault Indian Reservation.

The Quinault Business Committee effectively operates as both an executive and legislative branch of government. The Business Committee has eleven members, including the President, Vice-President, Secretary, Treasurer, and seven elected Councilmen, who serve staggered three-year terms. The President is the Chief Executive Officer of the QIN and is responsible to the Business Council. She oversees the day-to-day management of the tribal government.

In its application, the Tribe further describes governmental functions performed by the tribal governing body that affect health, safety, and welfare and are directly related to the protection of water quality. These functions are performed in accordance with tribal laws such as the Natural Resources Code, the Beach Lands Code, and the Land Use and Development Code.

The Tribe’s Application updates the information that the QIN previously provided to EPA in support of the QIN’s TAS applications for CWA sections 106 and 319. Therefore, the Tribe’s Application confirms previous EPA findings that the QIN has provided sufficient information to satisfy the requirement that the Tribe has 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 QIN

1. Map or Legal Description

The Tribe’s 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 QIN’s current reservation (the “Reservation”). The Tribe’s Application includes maps that delineate the boundaries of the Reservation and the surface waters contained therein.¹⁷ The Reservation was originally established by an Executive Order dated November 4, 1873 and was subsequently increased by 11,904 acres by Congressional Act in 1988.¹⁸ It contains approximately 1,292 miles of rivers and streams and the 3,609-acre Lake Quinault. Exhibit H of the Tribe’s Application provides a detailed legal description of the reservation boundaries.

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 Tribe’s assertion of authority as part of the review process for the QIN’s TAS application. The QIN’s TAS application identifies the land and surface waters covered by the application. No competing or conflicting jurisdictional claim by any other jurisdictional authority regarding the identified Reservation boundaries or the area within the boundaries was made. However, certain landowners on the shore of Lake Quinault dispute the Tribe’s ownership of and jurisdiction

¹⁷ See Tribe’s Amended Application (May 2017), Exhibit I: Ownership Pattern and Principle Water Resources of the Quinault Indian Reservation; Exhibit J: Quinault Indian Reservation and Major Public Lands in the Queets/Quinault Rivers Watershed; Exhibit K: Principal Water Resources and Reservation Zoning.

¹⁸ An Act to Declare That Certain Lands be Held in Trust for the Quinault Indian Nation, and for Other Purposes, Pub. L. No. 100-638 (102 Stat. 3327).

over the Lake and lakebed. As discussed in the Response to Comments, Appendix B, the EPA finds that Lake Quinault is unambiguously part of the reservation.

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

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

As mentioned above, while the Tribe's 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 set forth in the EPA's *Revised Interpretation of Clean Water Act Tribal Provision*, ("Interpretive Rule"),¹⁹ 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.²⁰ In light of the congressional delegation of authority, the main focus of EPA's determination of the extent of an applicant tribe's jurisdiction for CWA regulatory purposes is identifying the geographic boundaries of the reservation area over which the congressionally-delegated authority would apply.²¹ 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.²² Such special circumstances 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.²³

By letter dated May 9, 2017, the QIN amended its application to rely on the congressional delegation of regulatory authority in CWA section 518 as provided for in the Interpretive Rule. The QIN 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 challenging this assertion of the QIN's authority to regulate water quality for any areas within the Reservation. However, as discussed below in Appendix B, Response to Comments, the EPA received a number of comments from landowners on the shore of Lake Quinault contending that the Tribe lacks jurisdiction over Lake Quinault. As stated above and discussed in more detail in Appendix B, below, the EPA finds no merit in the argument that the Quinault Indian Reservation does not include Lake Quinault. The EPA is not aware of any impediment limiting the QIN's ability to effectuate the congressionally delegated authority. The EPA therefore concludes that the QIN can rely on the congressional delegation of authority and has satisfied the application requirement of 40 C.F.R. § 131.8(b)(3)(ii).

¹⁹ 81 Fed. Reg. 30,183 (May 16, 2016).

²⁰ *Id.* at 30,190, 30,194.

²¹ *Id.* at 30,194.

²² *Id.* at 30,192–193.

²³ *Id.*

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

The QIN's TAS application asserts authority over all surface waters within the areas covered by the application, i.e., the Reservation.²⁴ These waters cover approximately 1,292 miles of rivers and streams, 3,609 acres of lakes, and 11,543 acres of wetlands. The reservation also includes sections of tidelands along the Pacific Ocean.

The EPA concludes that the QIN 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 QIN 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 Tribe'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 that the QIN has managed a tribal Water Quality Program (WQP) for the Reservation since the mid-1990s when the WQP was established through Indian General Assistance Program funding. The WQP is housed within the Environmental Protection Department of the Division of Natural Resources. The Tribe expanded the work of the WQP in 2000 and 2001 when EPA approved the Tribe's application for TAS for sections 106 and 319 of the CWA.

Consistent with the Constitution and By-Laws of the QIN, the Quinault Tribal codes implemented and enforced by the Environmental Protection Department were enacted by the Business Council and approved by the Bureau of Indian Affairs. These codes are identified in the Tribe's Application.²⁵ As previously noted, the EPA approved the Tribe's TAS applications for the CWA sections 106 and 319 programs on April 13, 2000 and January 26, 2001, respectively. The Tribe's Application describes activities performed by the

²⁴ See Tribe's Application, at 10–32.

²⁵ See Tribe's Application, Exhibit E: Selected Codes of the Quinault Indian Nation (Natural Resources, Beach Lands, Land Use, Civil Procedure, Criminal Procedure, Public Nuisance).

WQP. These include monitoring water quality, reporting on the results of monitoring efforts in annual assessment reports, and conducting watershed restoration projects.

The Environmental Protection Department operates under the Tribe's Division of Natural Resources and ultimately the Business Council. The WQP is a subunit of the Environmental Protection Department and will assume the primary responsibility for establishing, reviewing, implementing, and revising water quality standards. The WQP has a permanent staff of five employees and also draws on the expertise of the 80 to 100 professionals within the Division of Natural Resources. When needed, the WQP seeks external assistance from contractors. The Section Lead for the WQP is identified in the TAS application, and job descriptions and qualifications requirements for the following water-related staff positions are provided in Exhibit M of the Application:

- Freshwater Ecologist (Water Quality)
- Water Quality Technician
- Wetland Specialist
- Hydraulic Officer (E.P. Biologist 2)

Based on the information provided by the QIN that describe 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 Water Quality Program and the Division of Natural Resources, the EPA concludes that the QIN has met the requirements at 40 C.F.R. §§ 131.8(a)(4) and (b)(4).

III. Conclusion

The EPA has reviewed the Tribe's TAS application for purposes of CWA sections 303(c) and 401, as well as the prior approvals of the Tribe's TAS applications for purposes of CWA sections 106 and 319. The EPA has thoroughly assessed whether the application from the QIN meets the eligibility criteria established by CWA section 518(e) and the applicable regulations. Based upon this review, the EPA concludes that the QIN 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 within the Reservation. Pursuant to 40 C.F.R. 131.4(c), the QIN are also eligible to the same extent as a state for purposes of the water quality certification program under CWA section 401.

_____/s/ Angela Chung for_____
Daniel D. Opalski, Director
Office of Water and Watersheds
EPA Region 10

____9/20/2018_____
Date

Appendix A: Supporting Information

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

I. Application and Supporting Materials	
<p>Letter dated May 9, 2017, from Fawn R. Sharp, President, Quinault Indian Nation, to Nicholas Vidargas, Office of Regional Counsel, EPA Region 10, transmitting updated Application for Treatment in the Same Manner as a State under the CWA.</p> <ul style="list-style-type: none">• 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">○ Exhibit A: 82 Fed. Reg. 4915 (Jan. 17, 2017)○ Exhibit B: Constitution of the Quinault Indian Nation○ Exhibit C: Quinault Business Committee By-Laws○ Exhibit D: Treaty of Olympia, January 6, 1856○ Exhibit E: Selected Codes of the Quinault Indian Nation (Natural Resources, Beach Lands, Land Use, Civil Procedure, Criminal Procedure, Public Nuisance)○ Exhibit F: Letter dated January 26, 2011, from Chuck Findley, Acting Regional Administrator, EPA Region 10, to Pearl Capoeman-Baller, President, Quinault Indian Nation, approving Application for Treatment as a State for purposes of Section 319 of the CWA○ Exhibit G: December 19, 2006 Agreement between EPA, Region 10, and Quinault Indian Nation, Delegating Authority to Administer Certain Sections of the Federal Implementation Plan under the Clean Air Act○ Exhibit H: Grant Deed of Conservation Easement, Containing Legal Description of Quinault Indian Reservation○ Exhibit I: Map Showing Ownership Pattern and Principal Water Resources of Quinault Indian Reservation○ Exhibit J: Map Showing Quinault Indian Reservation and Major Public Lands in the Queets/Quinault Rivers Watershed○ Exhibit K: Map Showing Principal Water Resources and Reservation Zoning, Quinault Indian Reservation, WA○ Exhibit L: Legal Memorandum from Karen Allston, Senior Assistant Attorney General, Quinault Indian Nation, Explaining Legal Dispute over Lake Quinault; with Attachments: (1) Federal Court Order Dismissing Plaintiffs' Suit Against QIN; (2) Washington State Appellate Affirming Summary Judgment Order Dismissing Action with Prejudice; (3) July 12, 1961 Opinion of the Office of the Solicitor, Department of Interior, Affirming QIN Ownership of Lake Quinault; (4) August 19, 2009 Memorandum from the Office of the Solicitor, Department of Interior, Determining that QIN Own Lakebed of Lake Quinault; and (5) Bureau of Land Management, Department of Interior, Survey of Lake Quinault Shoreline and Encroachments○ Exhibit M: Job Descriptions and Qualifications Requirements for Water-Related Positions	May 9, 2017

Letter dated December 21, 2012, from Fawn R. Sharp, President, Quinault Indian Nation, to Angela Chung, Unit Manager, Office of Water and Watersheds, EPA Region 10, transmitting Application for Treatment in the Same Manner as a State under the CWA.

- Original Application for Treatment as a State to Administer a Water Quality Standards Program and Request Approval of Water Quality Standards
 - Exhibit A: 77 Fed. Reg. 47,868 (Aug. 10, 2012)
 - Exhibit B: Constitution of the Quinault Indian Nation
 - Exhibit C: Quinault Business Committee By-Laws
 - Exhibit D: Selected Codes of the Quinault Indian Nation (Natural Resources, Beach Lands, Land Use, Civil Procedure, Criminal Procedure, Public Nuisance)
 - Exhibit E: The Treaty of Olympia, January 6, 1856
 - Exhibit F: August 19, 2009 Memorandum from the Office of the Solicitor, Department of Interior, Determining that Quinault Indian Nation Owns Lakebed of Lake Quinault
 - Exhibit G: Act of Congress expanding size of Quinault Indian Reservation (Nov. 8, 1988)
 - Exhibit H: Map Showing Principal Water Resources and Reservation Zoning, Quinault Indian Reservation, WA
 - Exhibit I: Legal Description of North Boundary Area of Reservation
 - Exhibit J: November 9, 2012 Memorandum by QIN Office of the Attorney General Analyzing Application of *Montana v. United States* Test.
 - Exhibit K: List of Surface Waters for Which QIN Intends to Develop Water Quality Standards
 - Exhibit L: Memorandum dated April 13, 2000, from Mary St. Peter, Assistant Regional Counsel, EPA Region 10, to Diana Boquist, Tribal Office, EPA Region 10, Determining that QIN Is Eligible for TAS under Section 106 of the CWA
 - Exhibit M: December 19, 2006 Agreement between EPA, Region 10, and Quinault Indian Nation, Delegating Authority to Administer Certain Sections of the Federal Implementation Plan under the Clean Air Act.
 - Exhibit N: Job Descriptions and Qualifications Requirements for Water-Related Positions

December 21, 2012

II. Letters and related documents from EPA

<p>Letter from Michelle L. Pirzadeh, Acting Regional Administrator, EPA Region 10, to the State of Washington and appropriate governmental entities providing notice of an opportunity to comment on the substance and basis of the Quinault Indian Nation’s assertion of authority in their original application.</p> <ul style="list-style-type: none"> • The Honorable Jay Inslee, Governor, State of Washington • Ms. Fawn Sharp, President Quinault Indian Nation • Ms. Karen Allston, Senior Assistant Attorney General, Quinault Indian Nation • Mr. Robert W. Ferguson, Attorney General, State of Washington • Ms. Maia D. Bellon, Director, Washington Department of Ecology • Mr. Wes Cormier, Commissioner. Grays Harbor County • Mr. Randy Ross, Commissioner, Grays Harbor County • Ms. Vickie Raines, Commissioner, Grays Harbor County • Ms. Kate Dean, County Commissioner, Jefferson County • Mr. David Sullivan, County Commissioner, Jefferson County • Ms. Kathleen Kler, County Commissioner, Jefferson County 	<p align="center">July 17, 2017</p>
<p>Public notice providing an opportunity to comment on the substance and basis of the Quinault Indian Nation’s assertion of authority, published in <i>The Olympian</i> and <i>The Aberdeen Daily World</i>.</p>	<p align="center">July 25, 2017</p>
<p>Screen capture documenting materials posted for public comment period</p>	<p align="center">July 22, 2017</p>
<p>Screen capture documenting materials posted for public comment period</p>	<p align="center">October 11, 2016</p>
<p>Quinault Indian Nation’s Application to Manage Non-Point Source Water Pollution Assessment and Management Program under Section 319(h)</p>	<p align="center">October 23, 2000</p>

III. Comments received by EPA

Letter from Maia D. Bellon, Director, Washington State Department of Ecology, to Nicholas Vidargas, EPA Region 10	August 29, 2017
Twenty-three email messages from three private citizens, Grays Harbor County, WA, transmitted to Nicholas Vidargas, EPA Region 10	Various dates
Letter from Commissioner Vickie Raines, Grays Harbor County, to Maia Bellon, Director, Washington State Department of Ecology	August 24, 2017

Appendix B: Response to Comments

The Quinault Indian Nation submitted an application to the EPA 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 EPA practice and pursuant to 40 C.F.R. 131.8(c), the EPA 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 EPA policy and practice, the EPA provided the QIN an opportunity to respond to the agency regarding all comments received.

The EPA received the following comments:

- Letter dated August 29, 2017, from Maia D. Bellon, Director, Washington State Department of Ecology;
- 19 emails from Tom Landreth, Owner, North Quinault Properties, LLC;
- One email from Abel Eng;
- Three emails from Guy Boudia;
- Letter dated August 24, 2017, from Commissioner Vickie Raines, Grays Harbor County.

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 their respective water quality permit issuance authority in all boundary areas.

Response: The QIN is not seeking, and EPA is not approving, eligibility or approval of a water quality permit program under Section 402 of the CWA. The EPA will continue to be responsible for issuing National Pollution Discharge Elimination System (“NPDES”) Permits under Section 402 of the CWA for discharges to waters of the Quinault Indian Reservation. As a general matter, the EPA encourages states and tribes with TAS status to work cooperatively with each other when developing water quality standards under the CWA.

The EPA notes that conditions in NPDES permits issued on a reservation, like those issued in a state, must “ensure compliance with the applicable water quality requirements of all affected States.”²⁶ Further, under Section 518(e) of the CWA, the EPA has established a mechanism for resolving any unreasonable consequences that may arise as a result of differing water quality standards set by states and tribes located on common bodies of water.²⁷

Comment: The Washington Department of Ecology is willing to consider any QIN/Federal/State intergovernmental instrument or program to insure coordinated, effective, and responsive environment protection for the Quinault Indian Nation, the Residents of the Quinault Indian Reservation, and the residents of the State of Washington.

Response: The EPA appreciates the Washington Department of Ecology’s willingness to consider Tribal/Federal/State intergovernmental efforts to ensure effective environmental protection for the

²⁶ 40 C.F.R. § 122.4(d).

²⁷ See 40 C.F.R. § 131.7.

Quinault Indian Nation, the Residents of the Quinault Indian Reservation, and the residents of the State of Washington.

Comment: Grays Harbor County Commissioner Vickie L. Raines states that she supports the Quinault Indian Nation's request to be treated as a State for matters regarding water quality standards for surface waters within their exterior boundaries.

Response: The EPA appreciates the Commissioner's support of the QIN's Application.

Comment: Several commenters submitted comments and supporting documents conveying their argument that the Quinault Indian Nation does not own the bed of Lake Quinault. The commenters essentially made the same comment: that there is a colorable legal dispute regarding the ownership of Lake Quinault. The same matters have been raised by Lake Quinault waterfront landowners in state and federal lawsuits against the Tribe and the State of Washington. No courts have weighed in on the substance of these comments as the lawsuits have all been dismissed on procedural grounds.

Response: For purposes of a response, the EPA is responding to these comments collectively, rather than individually. The EPA has reviewed the comments and voluminous supporting materials submitted in support of the comments concerning ownership of Lake Quinault. Many of the comments and materials speak to matters which are not relevant to the EPA's review of an application for treatment as a State. For example, one commenter suggested, in numerous submissions, that his and others' civil rights are, or have been, violated because of the QIN's management of the Lake – specifically, the 2013 closure of the Lake by the Tribe. Disputes between the QIN and neighboring landowners over the proper management of the Lake are not relevant to EPA's determination, nor are neighboring landowners' civil rights within the purview of the EPA in the context of this review. Another commenter complained that the QIN is not sufficiently transparent in how it spends the money it collects for fishing or boating permits on the Lake. This concern is not relevant to the EPA's review of the Tribe's application as it does not speak to the Tribe's assertion of authority to implement the Clean Water Act on its reservation.

Most of the comments purport to demonstrate that the legal boundary of the Quinault Indian Reservation omits Lake Quinault, or, in the alternative, at least one commenter argues that the Reservation only includes part of the Lake. After reviewing the submissions in support of this assertion, the EPA finds no reason to disagree with the reasoned opinions of the Department of the Interior that Lake Quinault is contained entirely within the boundary of the Quinault Indian Reservation. Specifically, the EPA agrees with the Tribe and the Department of the Interior that the Executive Order of President Ulysses S. Grant, dated November 4, 1873 is facially unambiguous in its description of the boundary of the Reservation. None of the materials submitted with these comments support contradicting the well-reasoned and legally supported Solicitor Opinion dated July 12, 1961 (“The entire Quinault Lake is within the boundary of the Quinault Reservation”)²⁸ and Solicitor Memorandum dated August 19, 2009 (“[I]t is evident that President Grant intended to convey the entire bed of Lake Quinault to the Tribe as an essential fishing ground . . . [and] the rights to this navigable water did not vest with the state upon entry into the nation on an equal footing, because those rights had already been patented to the Tribe.”)²⁹

Finally, several commenters argued that another sovereign nation established jurisdiction over Lake Quinault prior to or to the detriment of the QIN. Commenters variously argued that the Kingdom of

²⁸ See Tribe's Application, Exhibit L.

²⁹ See Tribe's Application, Exhibit L.

Spain, the United States, and the State of Washington established or were given ownership over Lake Quinault, and such ownership subsequently passed to those landowners that possess waterfront property on Lake Quinault. Absent from these arguments was an acknowledgement of the sovereignty of the Quinault Indian Nation itself and its “first in time” claim to ownership of Lake Quinault. It is that sovereignty that the various treaties between the United States and Native American tribes seek to respect and codify. The EPA declines the request to question the sovereignty of the Quinault Indian Nation and its jurisdiction over Lake Quinault as the evidence of the Tribe’s ownership appears overwhelming. It is unambiguous that the Quinault Indian Reservation includes Lake Quinault, as evidenced by the actions of President Ulysses S. Grant in 1873 and the analyses by the Department of the Interior a century later.

Appendix C: Maps of the Quinault Indian Reservation and Waters

Figure 1: Quinault Indian Nation – Ownership Pattern and Principal Water Resources

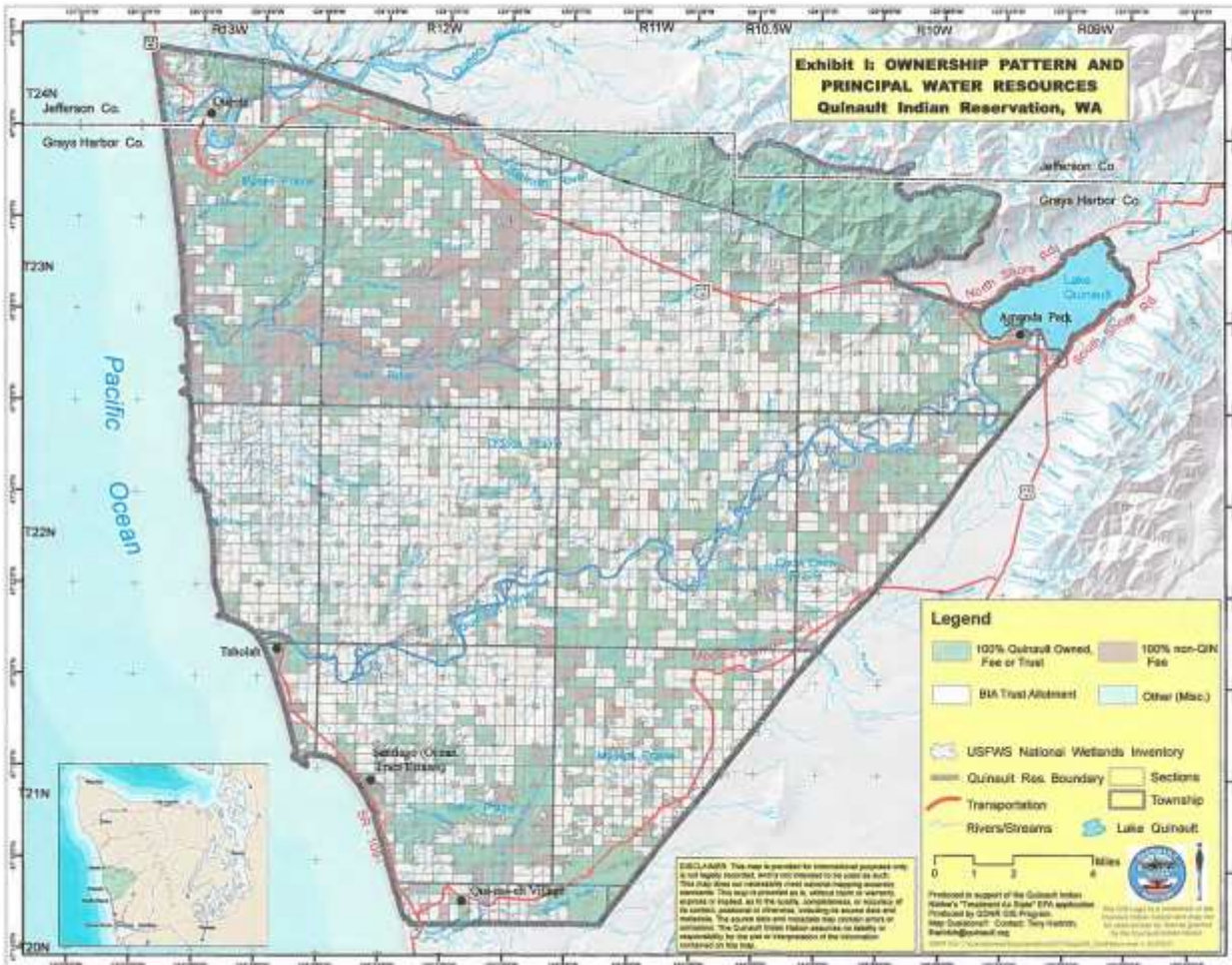


Figure 2: Quinault Indian Reservation - Principal Water Resources and Reservation Zoning

