



# PUEBLO OF SANTA ANA

## OFFICE OF THE GOVERNOR

16 November 2018



Anne L. Idsal, Regional Administrator  
U.S. Environmental Protection Agency, Region VI  
1445 Rose Avenue, Suite 1200  
Dallas, TX 75202-2733

**Re: The Pueblo of Santa Ana's Application for Treatment as a State Pursuant to  
Section 301 of the Clean Air Act**

Dear Regional Administrator Anne L. Idsal,

Enclosed please find the Pueblo of Santa Ana's application for Treatment as a State for the Administration of Air Programs in the Clean Air Act Section 105 Air Pollution Planning and Control Programs as well as Sections 107(d)(3), Section 126, and Section 505(a)(2).

The Pueblo proposes to build a long-term program in order to protect the air, environment and health of the land and people. In this application we demonstrate that we meet the requirements of eligibility for Treatment as a State under Fed. Reg. Vol. 63, No. 29 Thursday, February 12, 1998 Indian Tribes: Air Quality Planning and Management, Final Rule § 49.6 and § 49.7.

If you have any questions about this application or the air quality program, please direct them to Maxine Paul, Environmental Program Manager, at (505) 771-6461 or [maxine.paul@santaana-nsn.gov](mailto:maxine.paul@santaana-nsn.gov). Thank you.

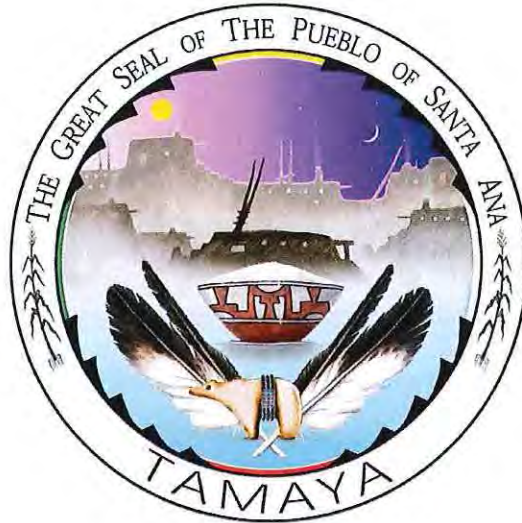
Sincerely,



Pueblo of Santa Ana  
Glenn Tenorio, Governor

02 DOVE ROAD ♦ SANTA ANA ♦ NM 87004

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**PUEBLO OF SANTA ANA**

**TREATMENT AS A STATE APPLICATION FOR  
ELIGIBILITY UNDER SECTION 301 (d) OF THE CLEAN AIR ACT  
FOR SECTIONS 105, 107(d)(3), 126, AND 505(a)(2)**

**November 27, 2018**

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**Narrative Statement**

The Pueblo of Santa Ana (“the Pueblo”) hereby applies under section 301(d) of the Clean Air Act (CAA), Tribal Authority Rule referenced in 42 U.S. Code 7601(d) to the United States Environmental Protection Agency (EPA) to become eligible to be treated in a similar manner as a state (TAS) to administer CAA Section 105 Air Pollution Planning and Control Programs as well as Sections 107(d)(3), Section 126, and Section 505(a)(2) of the CAA.

The Pueblo submits this application to fulfill the Tribal Eligibility Requirements of Fed. Reg. Vol. 63, No. 29 Thursday, February 12, 1998 Indian Tribes: Air Quality Planning and Management, Final Rule § 49.6. According to § 49.7(a)(8) of the same rule - Request by an Indian Tribe for Eligibility Determination and Clean Air Act Program Approval -, “Where the applicant has previously received authorization for a Clean Air Act program or for any other EPA-administered program, the applicant need only identify the prior authorization and provide the required information which has not been submitted in the previous application.” This application includes identifications of such previously received authorizations and documents that supported those authorizations. The Pueblo has been authorized for TAS for sections 106 and 303(c) of the Clean Water Act (CWA) as well as 401 Certification.

1. The Pueblo of Santa Ana is a Federally Recognized Tribe Exercising Authority over a Federal Indian Reservation.

A list of federally recognized tribes published by the Secretary of the Interior in the Federal Register, Vol. 81 No. 86 (May 4, 2016) includes the Pueblo of Santa Ana. For previous federal recognition approvals, see previous application documents and decision documents for TAS for CWA 106 (Approved in 1999) p. 1-2 and EPA Decision Document for TAS for CWA Sections 303(c) and 401 Certification, p. 5-6 .

2. The Pueblo of Santa Ana has a Governing Body Carrying Out Substantial Government Duties and Powers.

The form of the tribal government is described in Section 1(B) of the TAS for CWA 106 application (Approved in 1999) p. 2.

3. The Area Over Which the Pueblo of Santa Ana Asserts Jurisdiction to implement Programs with Funds under Section 105 of the Clean Air Act is Described.

There have been no changes to the jurisdictional boundary of the Trust lands of the Pueblo since the TAS CWA 303 authorization. See previous application documents and decision documents for TAS for CWA 106 (Approved in 1999) and TAS for CWA Sections 303(c) and 401 certification (Approved in 2015). The Pueblo asserts jurisdiction over this same area for the Clean Air Act Sections 105, 107(d)(3), 126, and 505(a)(2). The Department of Natural Resources has the authority to administer air quality programs per **Attachment 2**, “Resolution Directing the Department of Natural Resources to Administer Air Quality Programs, No. 2018-R-34”.

4. Narrative Statement Describing the Capability of the Applicant to Administer Effectively Any Clean Air Act Program for Which the Tribe is Seeking Approval.

The Pueblo has the capability to fully and adequately administer programs using funds under Sections 105, 107(d)(3), 126, and 505(a)(2) of the CAA. We add the following to the narrative statements of the Application for TAS for CWA 106 and the application for CWA Sections 303(c) and 401 Certification:

- a. The Pueblo of Santa Ana continues to manage numerous federal grants and programs from various agencies. These programs include but are not limited to those listed below.
  - i. Department of Natural Resources (DNR) currently administers: EPA General Assistance Program, EPA Clean Air Act 103 Program, EPA Clean Water Act 106 Program, EPA CWA 319 Program, BIA Tribal Resilience Program, NRCS Conservation Stewardship Program, NRCS Environmental Incentives Program, USFWS Tribal Wildlife Grants Program (15 years), BIA Invasive Species Program (5 years), BIA Endangered Species Program (5 years), BIA Woodland Management Program (19 years), BIA Forest Development Program, BIA Hazardous Fuels Reduction Program (19 years).
  - ii. Other departments administer public health programs including: Center for Disease Control (CDC) Good Health and Wellness in Indian Country, Indian Health Service Special Diabetes Program for Indians, and CDC Tribal Practices for Wellness in Indian Country.
- b. We propose that DNR administers the CAA at the Pueblo. DNR is described in the CWA 303(c) application p. 4-5. DNR is tasked by the tribal council to develop, establish and administer air programs under Resolution No. 2018-R-34 **Attachment 2**. There are currently 33 positions at DNR with three vacancies, shown in an organizational chart in **Attachment 4**. The Air Planning and Control program would be housed within the Environmental Program/Division.
- c. For a description of staff and technical and administrative capabilities, current staff position descriptions are attached in **Attachment 4**. Additionally, with 105 funding at least in part, we would hire one more staff person as the Environmental Program Specialist/Scientist. This Environmental Specialist/ Scientist would report to the Environmental Program Manager, and would be responsible for carrying out the permit review, research, calculations, and database management pertinent to a 105 program in addition to other duties.

**List of Attachments**

- 1) Statement of Counsel
- 2) Resolution Directing the Department of Natural Resources to Administer Air Quality Programs, No. 2018-R-34
- 3) Tribal Government Organizational Chart, October 2018
- 4) Position Descriptions
- 5) Map of the Exterior Boundaries of the Area over Which the Pueblo of Santa Ana Asserts Jurisdiction

## Attachment 1: Statement of Counsel



*[richardsonaindiancountrylaw.com](http://richardsonaindiancountrylaw.com)  
505.938-9136 direct line*

### **Statement of Legal Counsel for the Pueblo of Santa Ana Describing the Pueblo's Authority to Regulate Air Quality within the Pueblo's Lands**

#### **I. Introduction**

Pursuant to the Clean Air Act ("CAA"), 42 USC § 7601(d), this statement of legal counsel ("Statement") describes the basis for the Pueblo of Santa Ana's ("Pueblo") assertion of authority to administer and regulate air quality within the exterior boundaries of the Pueblo's Reservation. As set forth below, the basis for this assertion is the Pueblo's inherent sovereign authority. This Statement is offered in compliance with U.S. Environmental Protection Agency ("EPA") regulations pertaining to the establishment and administration of air pollution planning and control programs by Indian tribes, specifically 40 C.F.R. §§ 49.7. This Statement accompanies the Pueblo's application ("Application") for treatment in a similar manner as a state ("TAS") to regulate and protect air quality.

Similarly, in 2014, EPA approved the Pueblo's application for TAS under sections 106 and 303(c) of the Clean Water Act. Accordingly, in 2015, the EPA also approved the Pueblo's Water Quality Standards. The Pueblo's Department of Natural Resources administers the established standards and monitors water quality on the Pueblo's Reservation.

#### **II. Pueblo of Santa Ana is a Federally Recognized Tribe**

**Section 7692** of the CAA defines "Indian tribe" as any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Pueblo is a federally recognized Indian tribe on the list of federally recognized tribes periodically published in the Federal Register by the Secretary of the Interior. *See* 81 F.R. 5019 (2016).

#### **III. Pueblo of Santa Ana Governance**

Throughout its existence, the Pueblo has governed itself and its members pursuant to its inherent sovereign authority. The Pueblo has not adopted a written constitution; however, legislative authority is vested in the Pueblo's traditional Tribal Council. The Tribal Council, which is presided over by the Pueblo's Governor, exercises complete regulatory authority over all lands, waters and persons within the exterior boundaries of the Pueblo's Reservation, except to the extent precluded by federal law. The Tribal Council holds meetings when called by the Governor, generally monthly but more frequently if necessary. In exercise of its governmental powers, the Tribal Council has enacted several ordinances establishing various tribal programs and pertaining to matters of business regulation, taxation, zoning, tribal investment accounts, and gaming.

Attachment 1  
Statement of Counsel  
Pueblo of Santa Ana TAS CAA

The Pueblo also provides numerous basic governmental services such as law enforcement, social services, wellness programs and education. In 2015, the Pueblo opened its newly designed and equipped Tamaya Wellness Center which features a swim area complete with a lap pool, water slide, weight room, basketball courts, and renovated baseball and softball fields. The Santa Ana Pueblo Police Department, under the direction of the chief of police ensure the safety of tribal and community members who either reside on or enter the Pueblo.

The Pueblo also administers programs relating to agriculture, enterprises, tribal resources and economic development. From the Santa Ana Golf Club, the Santa Ana Native Plants Nursery to the Tamaya Vineyards, the Pueblo's resource development is diverse.

The Pueblo's Non-Profit Enterprise owns and operates the Santa Ana Star Casino and Hotel and is responsible for all gaming within the reservation boundaries. The Santa Ana Star Casino and Hotel just recently expanded to include a 204-room hotel. All gaming is regulated by the Santa Ana Gaming Regulatory Commission.

Each of the Pueblo's enterprises and economic development activities are authorized by resolution of the Tribal Council, which also appoints the members of the boards of directors and appropriates the initial capital for the enterprises. The Tribal Council then acts in its capacity as sole shareholder for each of the enterprises; at least annually, reports on the Pueblo's enterprises are made to the Tribal Council.

Finally, the Pueblo has also established a traditional tribal court system and a contemporary court to interpret and enforce the Pueblo's laws. The Lieutenant Governor serves as the chief judge in the traditional tribal court system. A chief judge is employed by the Pueblo and presides over the contemporary court.

### **III. The Pueblo Possesses Inherent Sovereign Authority Over its Reservation and its Members**

The United States Supreme Court ("Supreme Court") has consistently held that "Indian tribes retain 'attributes of sovereignty over both their members and their territory.'" *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980), quoting *U.S. v. Mazurie*, 419 U.S. 544, 557 (1975); see also, *Merrion v. Jicarilla Apache Tribe*, 455 U.S.130 (1982); *Williams v. Lee*, 358 U.S. 217 (1959). Tribal power to regulate tribal trust lands and tribal member activity thereon is "is a fundamental attribute of sovereignty." *Merrion*, 455 U.S. at 137. With respect to the Pueblo in particular, the Supreme Court has confirmed the Pueblo's jurisdiction over its Reservation. *United States v. Sandoval*, 231 U.S. 28 (1913).

Based on firmly established Supreme Court precedent, the Pueblo maintains inherent sovereign authority over its Reservation and the activities of its members within the Reservation. A map depicting the Pueblo's exterior boundaries of the area over which the Pueblo asserts jurisdiction is attached as **Attachment 5**. Therefore, the Pueblo has jurisdiction to regulate for the protection of air quality within its Reservation and over the activities that may jeopardize the quality of air.

### **IV. The Pueblo is Reasonably Capable of Carrying out the Necessary Functions Consistent with the Clean Air Act and Applicable Regulations**

Attachment I  
Statement of Counsel  
Pueblo of Santa Ana TAS CAA

The Pueblo has the capability to fully and adequately establish, review, implement an air quality program, consistent with the CAA and applicable regulations. As discussed above, the Pueblo has obtained TAS under the CWA and has established water quality standards. Furthermore, the Pueblo has ample experience managing other federal grants and contracts, including housing grants through the U.S. Department of Housing and Urban Development, Indian Self-Determination contracts and grants, and grants from the Administration for Native Americans. The Pueblo currently administers numerous programs for the public health, safety and welfare of its members through its established departments of law enforcement, tribal courts, education, social services, agricultural enterprises and tribal resources.

The Tribal Council established the Department of Natural Resources (“DNR”) in 1996 to manage environmental and natural resources programs, including CWA monitoring programs. The Department has hired qualified environmental professionals to oversee program implementation. DNR is headed by a Director who has worked for DNR for over 20 years and currently employs a staff of 30. The environmental programs currently managed by DNR are organized into the following divisions and programs: Water Resources, Rangeland and Wildlife; Geographic Information Systems/Information Technology; Environmental, Environmental Education, and Bosque Restoration. Each Division is managed by a qualified environmental professional who reports to the DNR Director. The Programs within each Division are managed by qualified Program Managers or Scientists who report to the Division Manager. Descriptions of Director, Manager and staff duties and qualifications associated with air quality are attached as **Attachment 4** to the Pueblo’s Application. DNR programs are supported primarily by grants from various organizations and agencies, including EPA (*e.g.* General Assistance Program and CWA §§ 106, 104(b)(3)). These programs utilize baseline data and conduct environmental assessments to provide recommendations and advice to the Tribal Council in order to develop management plans regarding the Pueblo’s natural resources.

The Pueblo’s commitment to environmental protection is further demonstrated through its environmental outreach and education programs. On at least an annual basis the DNR hosts a large environmental fair and has created an internship/externship program for visiting students to receive educational credits.

DNR also currently administers the following programs: CAA section 103 program, CWA sections 106 and 319 programs, BIA Tribal Resilience Program, NRCS Conservation Stewardship Program, NRCS Environmental Incentives Programs, USFWS Tribal Wildlife Grants Program, BIA Invasive Species Program, BIA Endangered Species Program, BIA Woodland Management Program, BIA Forest Development Program, and a BIA Hazardous Fuels Reduction Program. The Tribal Council has authorized DNR to assume primary responsibility for establishing, reviewing, implementing and revising air quality standards following approval of its Application. *See Attachment 2* of this Application, “Resolution Directing the Department of Natural Resources to Administer Air Quality Programs, No. 2018-R-34.”

The Pueblo proposes the Air Planning and Control Program be housed under the Environmental Program Division. The Pueblo also proposes to hire an Environmental Program Specialist/Scientist upon approval of this Application and section 105 funding. The Environmental Program Specialist/Scientist would be responsible for carrying out the permit



Attachment 1  
Statement of Counsel  
Pueblo of Santa Ana TAS CAA

review, research, calculations, and database management under the section 105 program. While the DNR or Environmental Program Division will be responsible for implementing the CAA programs, new air quality standards may be established and adopted by the Tribal Council in the future.

**V. Conclusion**

This Application satisfies the EPA's regulatory requirements regarding the Pueblo of Santa Ana's authority to establish and implement Air Pollution Planning and Control Programs pursuant to §105 of the CAA. This Application demonstrates that the Pueblo's Tribal Council possesses significant authority to carry out substantial governmental duties, including the regulation of air quality within the Pueblo's reservation. Furthermore, through its Department of Natural Resources, the Pueblo has the capability to conduct air pollution planning and control programs consistent with the CAA and applicable regulations. Accordingly, the Pueblo's Application should be approved.



Veronique Richardson  
Special Counsel for the Pueblo of Santa Ana  
7424 4<sup>th</sup> St. NW  
Los Ranchos de Albuquerque, NM 87107

# PUEBLO OF SANTA ANA

## RESOLUTION OF THE TRIBAL COUNCIL

### RESOLUTION NO. 2018-R-34

**RE: RESOLUTION DIRECTING THE DEPARTMENT OF NATURAL RESOURCES TO ADMINISTER AIR QUALITY PROGRAMS**

**WHEREAS**, the Pueblo of Santa Ana "Pueblo" is a federally recognized Indian tribe governed under a traditional form of government, and possessing all the inherent sovereign powers of self-government; and

**WHEREAS**, the Tribal Council of the Pueblo of Santa Ana is the duly recognized decision and policy making body for the Pueblo; and

**WHEREAS**, the Pueblo desires to responsibly manage its natural resources, including air quality to prevent the deterioration of air quality and protect the health of its people and ecosystems; and

**WHEREAS**, the Department of Natural Resources has administered environmental and natural resources programs on behalf of the Pueblo for 20 years; and

**WHEREAS**, it is in the best interest of the Pueblo for the Department of Natural Resources to develop and establish a program to promote air quality; and

**WHEREAS**, the Department of Natural Resources is encouraged to pursue funding opportunities for air quality planning, protection, control, education, and research, including treatment as a state pursuant to the Clean Air Act, to support and implement a program to promote air quality;

**NOW THEREFORE BE IT RESOLVED**, that the Tribal Council of the Pueblo of Santa Ana hereby approves the creation of an Air Quality Control and Planning Program at the Department of Natural Resources; and

**BE IT FURTHER RESOLVED** that the Tribal Council of the Pueblo of Santa Ana hereby approves of the process to seek Treatment as a State under the United States Environmental Protection Agency's Clean Air Act; and

**BE IT FINALLY RESOLVED** that the Governor of the Pueblo of Santa Ana or his designee are hereby authorized and directed to execute all documents necessary to carry out the intent of this Resolution on behalf of the Pueblo.

**CERTIFICATION**

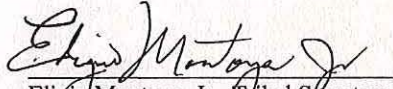
I, the undersigned, as the Governor of the Pueblo of Santa Ana, hereby certify that the Santa Ana Tribal Council, at a duly called meeting that was convened with proper notice and was held on the 17<sup>th</sup> day of October, 2018, at the Santa Ana Pueblo, New Mexico, a quorum being present, approved the foregoing Resolution with 25 members voting in favor and 0 opposed.

**GOVERNOR**

  
\_\_\_\_\_

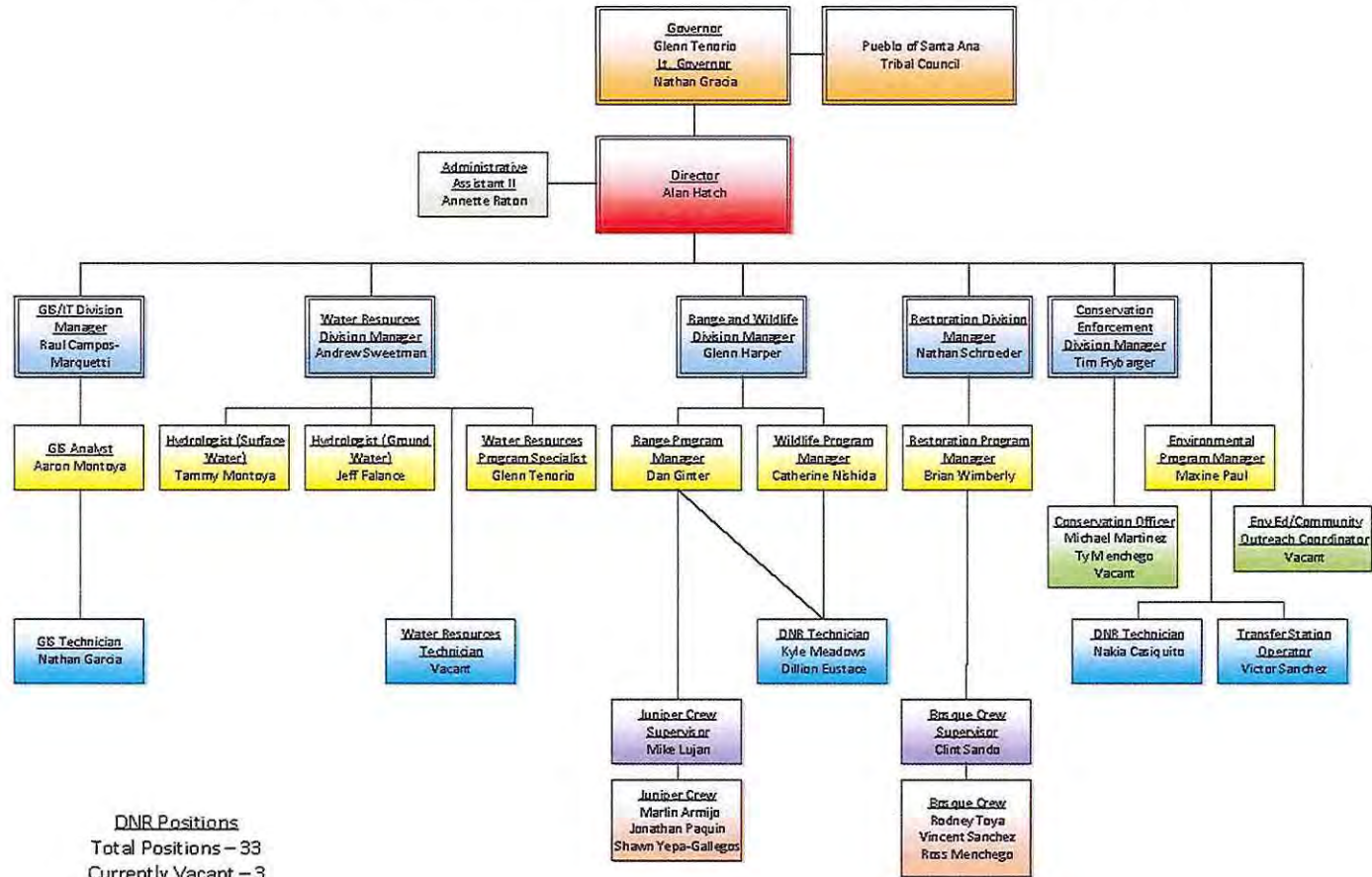
Glenn Tenorio

**ATTEST:**

  
\_\_\_\_\_

Eligio Montoya, Jr., Tribal Secretary

## Pueblo of Santa Ana, Department of Natural Resources



Attachment 3: Department of Natural Resources Organizational Chart

## Attachment 4: Position Descriptions

### Santa Ana Pueblo Position Classification and Description

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**POSITION TITLE:** Natural Resources Director  
**CLASSIFICATION:** Exempt  
**DEPARTMENT:** Department of Natural Resources  
**SUPERVISOR:** Governor  
**GRADE:** E6

#### **Position Summary:**

Accomplishes the Natural Resources Department's objectives by planning, organizing and directing all functions required to protect, preserve and enhance the natural living environment of the Pueblo of Santa Ana. Ensures compliance with all tribal, federal, state, county, or other regulatory agency laws, ordinances, codes and regulations designed to protect the natural resources of the Pueblo of Santa Ana.

*This list of duties and responsibilities is illustrative only of the tasks performed by this position and is not all-inclusive.*

#### **Essential Duties and Responsibilities:**

- Works with tribal leaders, community members, and DNR staff to identify resource management and environmental protection issues; develops and implements appropriate management strategies as approved by Tribal Council.
- Develops strategic plans for Natural Resources.
- Establishes, implements, and communicates management and environmental protection goals, objectives, policies and procedures in accordance with strategic plans.
- Increases management's effectiveness by recruiting, selecting, orienting, training, coaching, counseling, and disciplining managers; communicating values, strategies, and objectives; assigning accountabilities; planning, monitoring, and appraising job results; developing a climate for offering opinions; integrating functional objectives; providing and participating in educational opportunities.
- Contributes to departmental effectiveness by identifying short-term and long-term issues and goals that must be addressed; providing information and commentary pertinent to deliberations; recommending options and courses of action; implementing directives.
- Assures effective and efficient implementation of grant monies and assures program compliance with policies and regulations imposed by funding sources.
- Encourages a positive working relationship between departments, and the community at large within the Pueblo.
- Contributes to the organization's effectiveness by offering information and opinion as a member of executive management team; integrating objectives with other functions; accomplishing related results as needed.

- Achieves financial objectives by exercising control and implementation over the budgetary processes of all natural resources divisions; tracks expenditures to ensure compliance on grants and contracts.
- Coordinates and negotiates with federal and state agencies on restoration projects and contracts; works with congressional delegation regarding priority legislative issues affecting the Pueblo of Santa Ana.
- Serves as a liaison with districts, local agencies, other agencies and departments working with the Pueblo; represents the Pueblo's interests when interacting with federal agencies and regional entities.
- Prepares and presents reports on the status, activities, and plans for current and future operations to the Governor, Tribal Council, Tribal Administration, or required personnel; prepares tribal council resolutions.
- Secures additional funding for the continuation and expansion of program services.
- Develops and implements public information and education programs regarding natural resources programs.
- Maintains professional and technical knowledge by conducting research; attending seminars, educational workshops, classes and conferences; reviewing professional publications; establishing networks; participating in professional societies; conferring with representatives of contracting agencies and related organizations.
- Performs other duties as assigned.

**Knowledge, Abilities, Skills, and Certifications:**

- Knowledge of corporate and/or governmental management, operations, finance and accounting.
- Knowledge of local and regional environmental and natural resource management issues.
- Knowledge of tribal sovereignty issues.
- Knowledge and ability to efficiently and effectively develop, manage and monitor grant funds, as well as, program budgets.
- Knowledge of budget preparation and grant/proposal writing.
- Knowledge of tribal, federal, and state accounting, purchasing and auditing policies and procedures.
- Knowledge in human resources management policies and procedures.
- Knowledge of statistical compilation and analyses.
- Skill in problem solving, human relations, and time management.
- Ability to exercise initiative and independent judgment.
- Ability to maintain confidentiality.
- Ability to demonstrate a high level of sensitivity to community issues and concerns.
- Ability to communicate efficiently and effectively both verbally and in writing.
- Ability to establish and maintain good working relationships with the individuals of varying social and cultural backgrounds.

8/2007

**Minimum Qualifications:**

Master's degree in Natural Resources, Environmental Science or related field plus six years management experience administering natural resources programs; or equivalent combination of education and experience. Must possess and maintain a valid New Mexico driver's license.

**Physical Demands:**

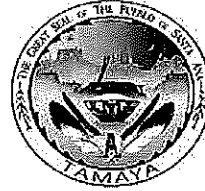
While performing the duties of this job, the employee is frequently required to stand; walk; sit; use hands to finger, handle, or feel; reach with hands and arms; climb or balance; stoop, kneel, crouch, or crawl; and talk or hear.

**Work Environment:**

Work is generally performed in an office setting with a moderate noise level. Infrequent work in the field is required where exposure to natural weather conditions and various dusts may occur while performing outdoor duties. Standing and walking may be on uneven surfaces or unstable ground. Situations where safety-toe shoes, safety goggles, gloves, or protective face shields are needed may occur.

8/2007

## Santa Ana Pueblo Position Classification and Description



**POSITION TITLE:** Environmental Program Manager  
**CLASSIFICATION:** Exempt  
**DEPARTMENT:** Department of Natural Resources  
**SUPERVISOR:** Director  
**GRADE:** E3

### **Position Summary:**

Manages projects, budgets, and activities related to the protection of the Pueblo's environment. Develops plans and coordinates with state and federal agencies to ensure their successful implementation. Organizes and attends meetings, develops presentation and outreach materials, and works collaboratively with other disciplines within DNR to carry out the goals and objectives of the department and Pueblo. Researches grant opportunities, develops proposals, and communicates with granting agencies in order to obtain funding for projects.

*This list of duties and responsibilities is illustrative only of the tasks performed by this position and is not all-inclusive.*

### **Essential Duties & Responsibilities:**

- Manages all aspects of the U.S. Department of Defense (DCD) Native American Lands Environmental Mitigation Program (NALEMP) cooperative agreement.
- Manages all aspects of the Environmental Protection Agency (EPA) General Assistance Program (GAP) grant.
- Works with EPA in building capacity needed to implement an air quality program.
- Oversees the Pueblo's solid waste program including all related infrastructure, facilities, and employees.
- Develops Request for Proposal (RFP) documents, evaluates proposals, makes selection recommendations, and manages contracts.
- Assists in developing goals and objectives for the Environmental Program in accordance with the Pueblo of Santa Ana and EPA goals.
- Assists in implementing watershed protection and water quality improvement projects.
- Assists in the development of data quality objectives, QA/QC protocols, and Quality Assurance Program Plans.
- Researches grant opportunities, develops proposals, tracks and manages budgets, and prepares reports.
- Provides technical assistance to other environmental staff, departments, committees, groups, and community members on programs and projects related to environmental protection.
- Compiles, computes, and generates information via computerized applications and produces various technical and visual reports, briefings, and decision documents to present internally or to external agencies; includes quarterly progress reports and final technical reports.



- Represents the Pueblo at external meetings, events, and workshops regarding environmental protection and natural resource management.
- Keeps DNR Director, Governor, Tribal Council, and other departments informed of status of program activities by attending meetings, submitting reports, and making presentations.
- Develops presentations and reports for the EPA and Army Corps of Engineers and conducts tours of Pueblo projects.
- Maintains professional and technical knowledge and acts as a technical representative by conducting research, attending seminars, educational workshops, classes and conferences; reviewing professional publications; establishing networks; participating in professional societies; conferring with representatives of contracting agencies and related organizations.
- Contributes to a team effort and accomplishes related results as required.
- Performs other duties as required.

**Minimum Qualifications:**

Bachelor's Degree in Environmental Science, Natural Resources, Hydrology, Biology, or related field. Must possess and maintain a valid New Mexico driver's license and be insurable through the Pueblo's insurance.

**Knowledge, Abilities, Skills, and Certifications:**

- Knowledge of applicable federal, state, county and local laws, regulations, and requirements pertaining to environmental protection.
- Knowledge of department organization, functions, objectives, policies and procedures.
- Knowledge of the principles of environmental conservation and management.
- Skill in operating various word-processing, spreadsheets, and database software programs in a Windows environment.
- Skill in preparing, reviewing, and analyzing operational and financial reports.
- Skill in statistical compilation and analysis.
- Ability to communicate efficiently and effectively both verbally and in writing.
- Ability to exercise independent judgment.
- Ability to interact and maintain good working relationships with individuals of varying social and cultural backgrounds.
- Ability to define problems, collect data, establish facts and draw valid conclusions.
- Ability to interpret applicable federal, state, county and local laws, regulations, requirements, ordinances and legislation.
- Ability to maintain confidentiality.
- Ability to work extended hours and to travel occasionally.
- Ability to work independently and meet strict time lines.

3/2015

**Physical Demands:**

While performing the duties of this job, the employee regularly is required to sit; use hands to finger, handle, or feel; reach with hands and arms; and talk or hear. The employee frequently is required to walk. The employee occasionally is required to stand; and stoop, kneel, crouch, or crawl. The employee must occasionally lift and/or move up to 50 pounds.

**Work Environment:**

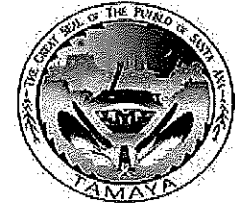
Work is generally performed in an office setting with a moderate noise level and occasionally performed outdoors. Exposure to natural weather conditions and various dusts may occur while performing outdoor duties. Situations where safety-toe shoes, safety goggles, gloves, or protective face shields are needed may occur.

3/2015

# Santa Ana Pueblo

## Position Classification and Description

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**POSITION TITLE:** DNR Technician I  
**CLASSIFICATION:** Nonexempt  
**DEPARTMENT:** Department of Natural Resources  
**SUPERVISOR:** Program Manager  
**GRADE:** NE5

### **Position Summary:**

Under direct supervision of a Program Manager at the Department of Natural Resources, provides support for the 1) assessment, collection, management, and analysis of data related to the Pueblo's natural resources and 2) maintenance and monitoring of infrastructure related to the Pueblo's natural resources. Maintains confidentiality of all privileged information.

*This list of duties and responsibilities is illustrative only of the tasks performed by this position and is not all-inclusive.*

### **Essential Duties & Responsibilities:**

- Collects and processes natural resources data from various settings within upland and riverine habitats.
- Collects, reviews, and manages biological data, such as vegetation, wildlife, fish, and macro invertebrate data.
- Collects hydrological data including groundwater data, water level readings, water quality data, stream flow data, piezometer data, and various other water related data throughout the Pueblo's waters including rivers, ditches, and ponds.
- Collects, reviews, and manages environmental data such as air quality, emissions, and solid waste.
- Assists with implementation of watershed restoration and monitoring.
- Monitors and maintains natural resources infrastructure including fences, waterlines, wildlife drinkers, and wells.
- Assists in writing grants and reports as directed by Supervisor.
- Participates in community outreach and environmental education to Pueblo youth and the community.
- Organizes files, prepares forms as directed, and answers phone calls and emails.
- Collects data using a Global Positioning System.
- Participates in presentations summarizing projects associated with the Department.
- Works with staff, consultants, and interdisciplinary teams from outside agencies.
- Assists with controlled burns to protect trees from future fire, disease, improve the habitat for many wildlife species, and manage competing vegetation.
- Operates and maintains project related equipment.

- Builds and maintains technical knowledge by conducting research; attending seminars, educational workshops, classes and conferences; reviewing professional publications; conferring with representatives of contracting agencies and related organizations.
- Contributes to a team effort and accomplishes related results as required.
- Performs other duties as required.

**Minimum Qualifications:**

High school graduate with an interest in the protection and management of the Pueblo's environment and the natural resources. Preference for a candidate with some college course work in Environmental Science, Biology, Wildlife Management, Ecology or related field. Must possess and maintain a valid New Mexico driver's license.

**Knowledge, Abilities, Skills, and Certifications:**

- Knowledge of the basic principles of environmental conservation and management related to natural resources.
- Ability to learn to identify southwestern flora and fauna in upland and riparian systems.
- Ability to learn to identify and survey for Willow Flycatcher, Yellow-billed Cuckoo, and Gray Vireo by sight and sound.
- Ability to become certified by the United States Fish and Wildlife Service to conduct surveys for Willow Flycatcher.
- Ability to use GPS/GIS, radio-telemetry, and Hydro-Lab equipment.
- Ability to communicate efficiently and effectively both verbally and in writing.
- Ability to interact and maintain good working relationships with individuals of varying social and cultural backgrounds.
- Ability to define problems, collect data, establish facts, and draw valid conclusions.
- Ability to handle multiple tasks and meet deadlines.
- Ability to maintain confidentiality.
- Ability to follow protocols and verbal instructions.
- Ability to exercise independent judgment.
- Ability to become certified as a Wildland Firefighter.
- Skill in operating various word-processing and spreadsheets in a Windows environment.
- Willingness to learn new computer programs, technical skills, and environmental concepts.
- Ability to travel occasionally.

**Physical Demands:**

While performing the duties of this job, the employee regularly is required to sit; use hands to finger, handle, or feel; reach with hands and arms; and talk or hear. The employee frequently is required to walk. The employee occasionally is required to stand; and stoop, kneel, crouch, or crawl. The employee must occasionally lift and/or move up to 25 pounds.

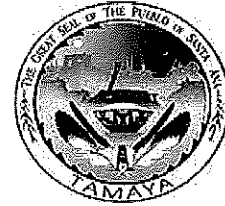
**Work Environment:**

Work is generally performed in both an office setting with a moderate noise level and in the outdoors. Exposure to natural weather conditions and various dusts may occur while performing outdoor duties. Exposure to biting insects, snakes, and other potentially disturbing and dangerous wildlife may occur. Situations where safety-toe shoes, safety goggles, gloves, or protective face shields are needed may occur.

# Santa Ana Pueblo

## Position Classification and Description

---



**POSITION TITLE:** Administrative Assistant  
**CLASSIFICATION:** Nonexempt  
**DEPARTMENT:** Department of Natural Resources  
**SUPERVISOR:** Administrative Assistant II  
**GRADE:** NE6

### **Position Summary:**

Under direct supervision of the Administrative Assistant II, contributes to the department's effectiveness by performing a variety of secretarial and administrative duties for departmental staff. Maintains confidentiality of all privileged information.

*This list of duties and responsibilities is illustrative only of the tasks performed by this position and is not all-inclusive.*

### **Essential Duties & Responsibilities:**

- Answers incoming telephone calls, determines purpose of calls, and forwards calls to appropriate personnel or department, ensuring professional telephone etiquette.
- Screens incoming calls and correspondence; exercises judgment and responds accordingly; receives, sorts, logs, and routes mail.
- Records and delivers messages or transfers calls to voice mail when appropriate.
- Welcomes visitors, determines nature of business, and announces visitors to appropriate personnel, maintaining professional and courteous demeanor.
- Completes departmental time sheets and forwards to Finance Department; tracks departmental leave and attendance.
- Assists with collating and distributing DNR newsletter.
- Prepares correspondence, reports, minutes, agendas, memos, forms, directories, resolutions, ordinances, and other documents and communications from drafts, recordings, or verbal instruction as requested.
- Edits and reviews all correspondence and documents for correct grammar, punctuation, and spelling.
- Assists with the preparation of special events to include environmental fairs, conferences, workshops, summer youth programs, and wood distribution to community members.
- Establishes and maintains an effective filing and retrieval system; maintains inventory of office supplies.
- Maintains and operates office machines, equipment, and computers. Performs or coordinates general maintenance and repair.
- Photocopies, collates, distributes, and files documents.
- Transmits outgoing faxes, and retrieves, logs, and distributes incoming faxes.
- Assists DNR staff with quarterly MBE/WBE reports for federal grants.
- Maintains confidentiality of all privileged information.

- Contributes to a team effort and accomplishes related results as required.
- Performs other duties as required.

**Minimum Qualifications:**

High School Diploma or GED plus three years administrative or secretarial experience; or equivalent combination of education and experience. Must be able to type at least 40 wpm and demonstrate proficiency in grammar, spelling, math, and filing. Must possess and maintain a valid New Mexico driver's License.

**Knowledge, Abilities, Skills, and Certifications:**

- Knowledge of business English, proper spelling, grammar, punctuation, and basic arithmetic.
- Knowledge of records management and basic accounting procedures.
- Skill in operating various word-processing, spreadsheets, and database software programs in a Windows environment.
- Ability to communicate effectively both verbally and in writing.
- Ability to establish and maintain professional relationships with individuals of varying social and cultural backgrounds and with co-workers at all levels.
- Ability to represent the organization in a professional manner, building respect and confidence.
- Ability to maintain confidentiality.
- Ability to handle multiple tasks and meet deadlines.
- Ability to carry out instructions furnished in verbal or written format.
- Ability to work independently with minimal supervision.
- Ability to demonstrate excellence in everything, and continually seek improvement in results.

**Physical Demands:**

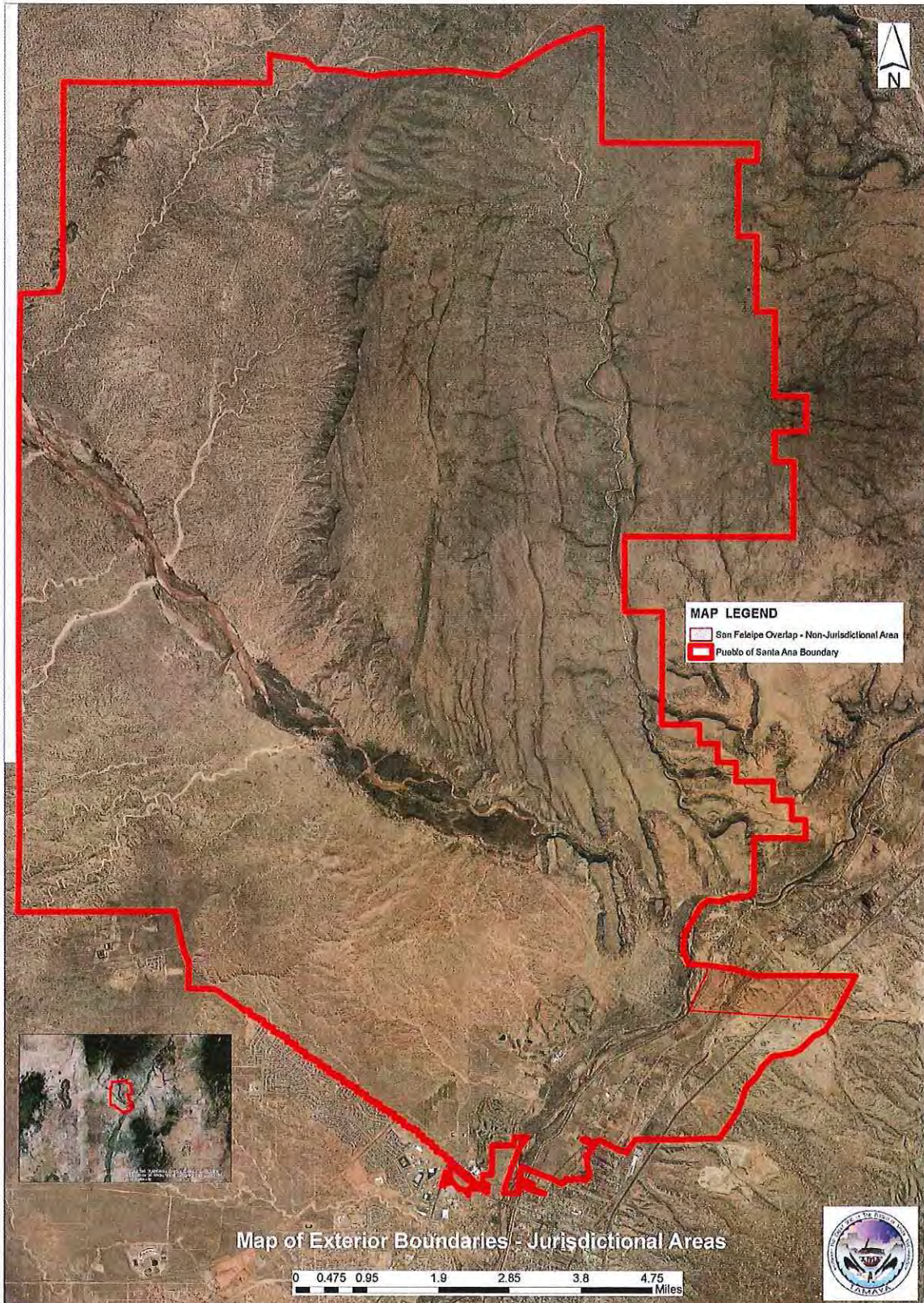
While performing the duties of this job, the employee regularly is required to sit; use hands to finger, handle, or feel; reach with hands and arms; and talk or hear. The employee frequently is required to walk. The employee occasionally is required to stand; and stoop, kneel, crouch, or crawl. The employee must occasionally lift and/or move up to 25 pounds.

**Work Environment:**

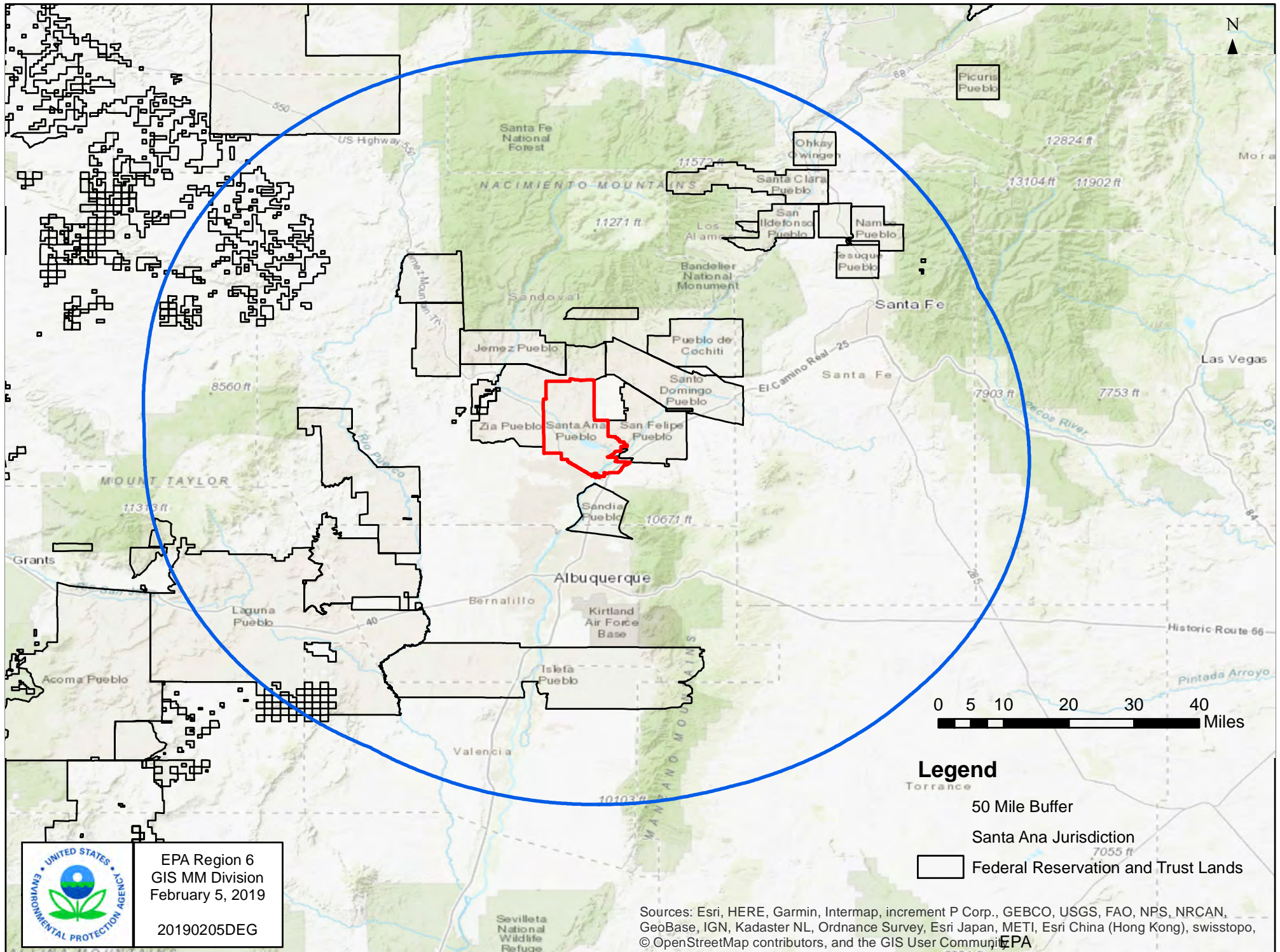
Work is generally performed in an office setting with a moderate noise level.

8/2007

**Attachment 5: Map of the Exterior Boundaries of the Area over Which the Pueblo of Santa Ana Asserts Jurisdiction**







EPA Region 6  
 GIS MM Division  
 February 5, 2019  
 20190205DEG

- Legend**
-  50 Mile Buffer
  -  Santa Ana Jurisdiction
  -  Federal Reservation and Trust Lands

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community

## **Pueblo of Santa Ana Lands**

The Pueblo of Santa Ana boundaries covered by the current TAS application, as depicted in the map in Attachment 5 of the application and in supporting documents from the prior TAS approvals, are made up of the grants and purchases:

- Original Spanish Land Grant - dates back to the 1600s and includes 15,400 acres. Was a square extending one league from each of the corners of the Mission Santa Ana. The Spanish land grant was confirmed by President Lincoln in 1864, ratified by Congress in 1869, and patented in 1883.
- The El Ranchito Grant - approved by the Court of Private Land Claims on December 7, 1900, and patented on October 18, 1934.<sup>1</sup>
- Claims confirmed by the Pueblo Lands Board - 20.197 acres within the El Ranchito Grant and 29.69 acres within the Felipe Gutierrez or Bernalillo Grant.<sup>2</sup>
- “550 tracts” (2001 trust properties):
- Parcel No.1: 14.8767 acres - Lot 9 in Block A of the Unit 20 Industrial Park; Sec 25, T13N, R3E, City of Rio Rancho, Sandoval County.Parcel No.2: 2.4707 acres – portion of Lot 23 within the NW 1/4 SW 1/4 NW 1/4 SW 1/4 of Section 30, T13N, R4E; located southwest of and adjacent to the southwest right of way line of U.S. Highway 550, Sandoval County.
- Parcel No.3: 1.1208 acres - portion of lot 22 within the NE 1/4 SW 1/4 NW 1/4 SW 1/4 of Section 30, T13 N, R4E; located southwest of and adjacent to the southwest right-of-way line of U.S. Highway 550, Sandoval County.
- Parcel No.4: 0.7661 acres – portion of Lot 16 within the SW 1/4 NW 1/4 NW 1/4 SW 1/4 of Section 30, T 13 N, Range 4 E; located southwest of and adjacent to the southwest right-of-way line of U.S. Highway 550, Sandoval County.
- Parcel No.5: 3.7976 acres - Tract lettered “A,” in Block lettered “A,” in Unit 20, Industrial Park, a subdivision in Section 25, T13N, R3E, City of Rio Rancho, Sandoval County.

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<sup>1</sup> A portion of this grant includes an area known as the “San Felipe Overlap.” As noted below, the Pueblo of Santa Ana requested that EPA not act at this time on the portion of its TAS application covering the San Felipe Overlap.

<sup>2</sup> See CWA 106 TAS application, Appendix 5 in Exhibit 3.

Santa A-106-1

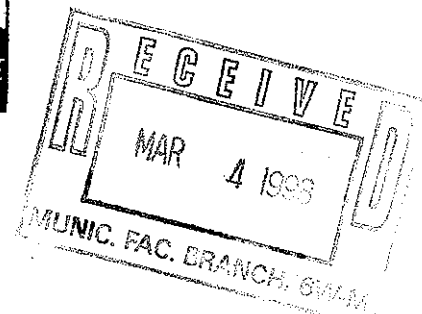
V2 F2 JN4

**SANTA ANA PUEBLO**  
2 Dove Rd.  
BERNALILLO, NEW MEXICO 87004

Office of the  
Governor  
Lt. Governor  
Secretary



Phone: (505) 867-3301  
(505) 867-3302  
FAX: (505) 867-3395



March 2, 1998


Mr. Bill Hathaway  
Director, Water Quality Management Division  
U.S. Environmental Protection Agency  
Region VI; 6-WQ  
1445 Ross Ave.  
Dallas, TX 75202-2733

Dear Mr. Hathaway:

The Pueblo of Santa Ana is pleased to submit the attached "Treatment in the Same Manner As a State" documentation as is required by EPA for funding eligibility under §106 of The Clean Water Act. The attached documentation was prepared on behalf of the tribe by Nordhaus & Associates, LLP and by Santa Ana's Department of Natural Resources (DNR).

If you have any questions or require further clarification, please contact Mr. Todd Caplan from our DNR at (505) 867-0615 or Ms. Jill Grant at Nordhaus & Associates at (202) 429-6501.

Sincerely,

  
Ronald Montoya  
Governor

enclosures

PUEBLO OF SANTA ANA

TREATMENT AS A STATE APPLICATION FOR  
ELIGIBILITY TO RECEIVE FUNDS UNDER SECTION 106  
OF THE CLEAN WATER ACT

PUEBLO OF SANTA ANA  
TREATMENT AS A STATE APPLICATION

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PUEBLO OF SANTA ANA  
TREATMENT AS A STATE APPLICATION

I. Narrative Statement

The Pueblo of Santa Ana ("Pueblo") is applying to the U.S. Environmental Protection Agency, Region 6 ("Region 6") for a grant under Section 106 of the Clean Water Act, 33 U.S.C. § 1256, in order to enable the Pueblo to carry out certain water quality monitoring and analysis activities and other water pollution control programs within the Pueblo's reservation. Under Section 518(e) of the Clean Water Act, 33 U.S.C. § 1377(e), Region 6 is authorized to provide Section 106 funds to the Pueblo if the Pueblo demonstrates that: (1) it is an Indian tribe, as defined in the Clean Water Act; (2) it has a governing body carrying out substantial governmental duties and powers; (3) the activities it intends to conduct under the Clean Water Act are within the borders of its reservation, as interpreted under the Clean Water Act; and (4) it has the capability to conduct those activities consistent with the Clean Water Act and applicable regulations. See also 40 C.F.R. §§ 35.265(a), 130.6(d). In this application, the Pueblo demonstrates that it meets all of these requirements and thus is eligible to receive Section 106 funds.

A. The Pueblo of Santa Ana is a Federally Recognized Tribe Exercising Authority Over a Federal Indian Reservation.

Section 518(h) of the Clean Water Act defines "Indian tribe" as "any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian Reservation." The Pueblo of Santa Ana, located in Sandoval County in north-central New Mexico, is identified as a federally

recognized tribe on the list of federally recognized tribes periodically published in the Federal Register by the Secretary of the Interior. The most recent list may be found at 62 Fed. Reg. 55270 (October 23, 1997) (the Pueblo is listed at p. 55,273). The Pueblo exercises governmental authority over the Santa Ana Indian Reservation, which includes the lands described in section C below.

B. The Pueblo of Santa Ana has a Governing Body Carrying Out Substantial Government Duties and Powers.

The Pueblo of Santa Ana has recognized the Indian Reorganization Act by resolution, but has not adopted a constitution under that statute. Instead, the Pueblo has a formal government structure that combines traditional Pueblo theocracy, a secular government and a contemporary administrative structure, described below.

The Traditional Religious Council, consisting of a Cacique, war captains, aides and fiscales, handles internal affairs of the Pueblo, including the annual selection of the chief administrative officers: the Governor and the Lieutenant Governor. Legislative power is invested in a Traditional Tribal Council, which is comprised of all male heads of households of the Pueblo. The Tribal Council, presided over by the Governor, has complete regulatory authority over all of the lands and persons within the Pueblo's exterior boundaries (except to the extent precluded by federal law). The Tribal Council holds meetings when called by the Governor, generally monthly but more frequently if necessary. The Governor, Lieutenant Governor and Tribal Administrator handle external affairs subject to the directives of the Tribal Council. The Governor, Lieutenant Governor and Tribal Administrator also oversee the administrative and executive functions of the Pueblo.

In exercise of its governmental powers, the Tribal Council has enacted several ordinances pertaining to such matters as business regulation, taxation, zoning, tribal investment accounts, gaming, gaming regulation and liquor. For example, the Pueblo administers the Santa Ana Possessory Tax Ordinance that imposes a property tax on improvements within rights-of-way crossing the reservation. The companies that are subject to and pay the tax are the Santa Fe Railroad; Mapco Pipeline, a partnership controlled by Shell Oil Company; U.S. West Telephone Company; Gas Company of New Mexico; and Public Service Company of New Mexico. The tax ordinance was initially challenged by Shell Oil Company before the Tax Administration Division of the Pueblo and then the contemporary tribal court. The matter was resolved through negotiation.

In addition, the Pueblo provides numerous basic governmental services such as law enforcement, social services and education. The Santa Ana Pueblo Police Department, under the direction of the chief of police, patrols the roads, answers calls regarding any suspected criminal activity, detains and/or arrests perpetrators as is necessary and provides security for the reservation generally.

The Pueblo also administers programs relating to agriculture, enterprises, tribal resources and economic development. The Santa Ana Farms Enterprise operates the Santa Ana Blue Corn Mill that grinds blue corn grown on the farms and purchased elsewhere. Blue corn is processed into a product called "parched corn" that is packaged and sold commercially. Blue corn is also sold to The Body Shops, which manufactures the corn into a woman's make-up product that is sold in Body Shops through out the world. Tribal Farms also operates the wholesale Santa Ana Native Plants Nursery and retail Native Plants Garden



Center. The Pueblo also owns the Santa Ana Golf Club that consists of a 27-hole championship golf course, club house, pro shop and bar & grille and the four-star rated Prairie Star Restaurant.

The Pueblo owns Southern Sandoval Investments, Ltd. which is a land acquisition and development company. It operates the Juniper Hills Mobile Home Park, is the developer of a 1500 acre tract of land in the West Side Development District and the owner of a clothing and apparel subsidiary called Warrior Apparel Company. Also, Santa Ana Capital Corporation which generates and manages commercial loans is a subsidiary of Southern Sandoval Investments, Ltd.

The Santa Ana Non-Profit Enterprise owns and operates the Santa Ana Star Casino and is responsible for all gaming within the reservation boundaries. All gaming is regulated by the Santa Ana Gaming Regulatory Commission.

Most recently the Santa Ana Tribal Council has authorized the formation of Santa Ana Hospitality Corporation. This company will be responsible for the development, ownership and management of a 350 room resort on the Rio Grande River that will be complimented with a new 18-hole golf course to be designed, constructed and managed by the Santa Ana Golf Club.

All of the Pueblo's enterprises and economic development activities are authorized by resolution of the Tribal Council, which also appoints the members of the boards of directors and appropriates the initial capital for the enterprises. The Tribal Council then acts in its capacity as sole shareholder for each of the enterprises; reports are normally made to the Council on a semi-annual basis.

Finally, the Pueblo has both a traditional tribal court system, with the Lieutenant Governor serving as chief judge, and a contemporary court. When both litigants are tribal members they can choose either court. When the plaintiff is a non-member and the defendant is a member of the Pueblo the contemporary court is utilized.

An organizational chart of the existing tribal government is attached as Exhibit 1.

C. Description of Area Over Which the Pueblo of Santa Ana Asserts Jurisdiction to Implement Programs with Funds under Section 106 of the Clean Water Act.

The map attached as Exhibit 2 shows the exterior boundaries of the area over which the Pueblo of Santa Ana asserts jurisdiction. The Pueblo asserts that it has the jurisdiction to implement programs with Section 106 funds over all waters within this area, namely, the watersheds of the Rio Jemez and the Rio Grande, which are depicted on the same map. The basis for this assertion of jurisdiction is set forth in a separate statement prepared by legal counsel for the Pueblo, and attached as Exhibit 3.

D. The Pueblo of Santa Ana has the Capability to Administer Programs Using Funds under Section 106 of the Clean Water Act.

The Pueblo of Santa Ana has the capability to fully and adequately administer programs using funds under Section 106 of the Clean Water Act, consistent with that Act and applicable regulations. To begin with, the Pueblo government already administers numerous programs for the public health, safety and welfare, through the Departments of Law Enforcement, Tribal Courts, Education, Children's Services, Agricultural Enterprises and Tribal Resources, as shown on the organizational chart attached as Exhibit 1 and described in more detail under section B above. The Pueblo also has experience managing many other federal grants and contracts, such as housing grants through HUD, Indian Self-Determination

contracts and grants, and grants from the Administration for Native Americans. In addition, the Tribal Council has established a Department of Natural Resources ("DNR") to manage environmental and natural resource programs, including the Clean Water Act programs at issue here, and has hired qualified environmental professionals to oversee program implementation.

The DNR is headed by a Director, and currently employs five other staff members. Since its inception in 1996, the DNR has established three environmental management programs. The environmental programs currently managed by the DNR are: 1) a Water Resources Program; 2) an Air Quality Program; and 3) a Land/Habitat Improvement Program. Each environmental program is managed by a qualified environmental professional who reports to the DNR Director. Qualification descriptions for the Director and Program Manager positions, as well as the DNR's QA/QC protocol, are outlined in the DNR's recently approved FY'98 Quality Management Plan (a copy of the plan is attached to this application as Exhibit 4). The DNR programs are supported primarily with grant dollars from various organizations and agencies, including U.S. EPA (*e.g.*, General Assistance Program, Clean Water Act §104 (b)(3) and Clean Air Act §103(b)). The programs are currently collecting baseline data and conducting environmental assessments to provide recommendations and advice to the Tribal Council and to develop management plans regarding the Pueblo's natural resources.

The Water Resources Program Manager and the DNR Director will be the primary agents responsible for administering Clean Water Act § 106 programs. In addition, a field technician will assist with monitoring activities, and other staff will be hired as needed to

conduct field work. Fiscal responsibilities associated with the programs will be managed by the Tribe's Financial Officer, as is done for all Tribal Departments.

II. Additional Clean Water Act Section 106 Requirements.

In addition to the eligibility requirements required under Section 518(e) and addressed above, Section 106(e) requires states to meet certain monitoring and analysis requirements and to have emergency authority in the event of endangerment to the public health due to water pollution. These requirements are imposed on tribes as well in 40 C.F.R. § 35.260(a) and (b), respectively. The Pueblo demonstrates below that it meets these requirements.

A. The Pueblo of Santa Ana Satisfies the Quality Assurance and Quality Control Requirements for Monitoring and Analysis Set Forth in 40 C.F.R. Part 31.

On February 2, 1998, EPA Region 6 approved a Quality Management Plan submitted by the DNR. The Quality Management Plan includes provisions regarding water quality monitoring and analysis activities that meet the applicable quality assurance and quality control requirements specified in 40 C.F.R. part 31. A copy of the plan is attached as Exhibit 4.

B. The Pueblo of Santa Ana has Emergency Authority to Restrain Pollution Causing an Imminent and Substantial Endangerment to Public Health and Welfare.

The Pueblo of Santa Ana has adequate authority and contingency plans to restrain discharges of dangerous pollutants. Pueblo officials and staff members, especially those assigned the duty of monitoring water resources, patrol the water courses within the Pueblo's lands regularly. All members of the Pueblo, including Pueblo officers and staff, have been instructed that upon witnessing any new or suspicious discharge they are immediately to contact the Governor of the Pueblo, the Director of the Pueblo Department of Natural

Resources and/or the Tribal Attorney. The Governor, the Director or the Tribal Attorney will in turn notify the New Mexico Environmental Improvement Division and will request EID to send a team immediately to analyze the quality of the discharge, so as to determine whether or not it constitutes a threat to public health or safety. Upon a determination that such discharge is within the Pueblo's jurisdiction, constitutes a threat to public health and safety and is not authorized, the Governor may direct the Tribal Attorney to undertake immediate action to restrain the discharge, either in Tribal court or in federal court. Such action will seek not only a court order halting any such discharge but also appropriate damages to compensate the Pueblo for any harm caused by the discharge.

B

DEPARTMENT OF THE INTERIOR

*Section*

GENERAL LAND OFFICE

*JMS.*

WASHINGTON

FEB 23 1948

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the \_\_\_\_\_ day of \_\_\_\_\_ and year above written.

*C. Adams Wright*  
Recorder of the General Land Office

6-1342



810

Sent to Gen. Galt, Santa Fe, N.M. April 28, 1883

The United States of America

to all to whom these presents shall come, Greeting:

Whereas it appears that the land claim of the Pueblo of Santa Ana situated in the County of Bernalillo Territory of New Mexico was approved by the United States Surveyor General of said Territory in his report to Congress of January fifth, A.D. one thousand and eight hundred and sixty-seven and said claim is designated by the letter 'I' in said report.

And whereas it appears that said claim reported as aforesaid was confirmed by the Act of Congress approved February ninth, A.D. one thousand eight hundred and sixty-nine, entitled "An Act to confirm the title to certain land to the Pueblo of Santa Ana in the Territory of New Mexico."

And whereas there has been deposited in the General Land Office of the United States, the descriptive notes and plat of the survey of said claim, confirmed as aforesaid, authenticated by the signature of the United States Surveyor General for the Territory of New Mexico, and his official seal, which descriptive notes and plat of survey, a tracing of which is herewith annexed and made a part hereof are in the words and figures as follows, to wit:

Descriptive notes of the survey of the Indian Pueblo of Santa Ana Grant in the Territory of New Mexico, confirmed as private land claim letter I Pueblo of Santa Ana in the County of Bernalillo on the limits of Santa Ana river, by an Act of Congress approved February ninth, one thousand eight hundred and sixty-nine, entitled "An Act to confirm the title to certain land to the Pueblo of Santa Ana in the Territory of New Mexico," and surveyed in August, one thousand eight hundred and sixty-

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7/11/83

fix by Janyer and Mr. Brown. United States  
deputy Surveyors, under their contract, num-  
ber sixty-eight of April fifteenth, one thou-  
and, eight hundred and seventy-six.

Beginning at the south-west corner of  
said grant survey at a stone twenty-four  
by thirty-six by eight inches in size marked  
S. A. No. 1 with stone mound, which corner is  
two miles, fifty-eight chains, thirty three and  
one third links due west of the terminus of  
one league or two miles fifty-eight chains,  
thirty three and one third links due south  
of the south-west corner of the Church in said  
Parish of Santa Ana. From which south-west  
or beginning corner a spinous tree, eight  
inches in diameter bears south ten de-  
grees East forty links distant.

Thence from said south-west corner on  
course East, variation of needle, thirteen  
degrees fifty minutes East. At one mile  
a stone eighteen by eight, by eight inches  
in size, marked 1/1 mile cor. on west side,  
with earth mound. At two miles a stone  
fourteen by twelve by four inches in size  
marked 2/2 mile cor. on west side, with  
earth mound. At three miles a cedar  
post three feet by four by four inches in  
size, marked 3/3 mile cor. on west side, with  
earth mound. From four feet, eighteen by  
twenty-four by twelve inches in size. At  
four miles a stone sixteen by ten by six  
inches in size marked 4/4 mile cor. on west  
side, with earth mound. At five miles, a  
stone twenty by nine by seven inches in  
size, marked 5/5 mile cor. on west side,  
with stone mound. At six miles, sixteen  
chains, sixty-six and two thirds links, a  
stone, twenty-four by twenty-four by six  
teen inches in size, marked 6/6 mile cor. on west  
side facing grant with stone mound. The four  
being the south-west corner of said grant.

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C. H. H. H. H. H.



Anna Ruelen grant survey

These due North from said south. each corner. va-  
 riation of needle thirteen degree forty minutes  
 each. At thirty nine chains along bed of river  
 course south-east. At one mile a stone twenty  
 four by twelve by six inches in size marked 1 mile  
 cor. on south side with stone mound. At two miles  
 a stone twenty three by eighteen by six inches in  
 size marked 2 mile cor. on south side with  
 stone mound. At three miles a stone eighteen  
 by thirteen by eight inches in size marked 3  
 mile cor. on south side with stone mound.  
 At four miles a stone fourteen by twelve  
 by nine inches in size marked 4 mile cor.  
 on south side with stone mound. At five  
 miles a stone twenty by fifteen by twelve  
 inches in size marked 5 mile cor. on south  
 side with stone mound. At five miles  
 fifteen chains sixty six and two thirds  
 links a stone twenty by fourteen by ten  
 inches in size marked 5 A. on side facing  
 grant with stone mound. The same being  
 the North East corner of said grant survey.

These from said North east corner on course  
 due West variation of needle thirteen degree  
 forty minutes each. At one mile a stone  
 thirty six by twenty four by twelve inches in  
 size marked 1 mile cor. on each side with  
 stone mound. At one mile forty chains  
 west edge of mesa. At one mile fifty eight  
 chains west of mesa. At two miles a stone  
 twenty by fifteen by twelve inches in size  
 marked 2 mile cor. on each side with  
 stone mound. At three miles a stone  
 fifteen by fourteen by ten inches in size  
 marked 3 mile cor. on each side with  
 stone mound. At four miles a stone four  
 ten by ten by eight inches in size marked  
 4 mile cor. on each side with stone mound.  
 At four miles fifty chains east bank of  
 river. At four miles ten chains a stone

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twelve by ten by eight inches in size marked  
 "H. C." on each side with earth mound. The same  
 being a witness corner for the five mile corner.  
 The true place for which falls in bed of river.  
 two chains each of witness corner. At five  
 miles sixteen chains sixty-six and two  
 third links, a stone fifteen by twelve by ten  
 inches in size marked "S. A." on side fac-  
 ing ground with earth mound. The same  
 being the north west corner of said ground  
 survey.

Thence from said North west corner, on  
 course south twenty-four minutes west  
 variation of needle thirteen degrees forty  
 minutes each. At sixteen chains sixty-six  
 and two third links, a stone twelve by  
 twelve by ten inches in size marked "5 mile cor." on  
 south side with earth mound. At one mile  
 sixteen chains sixty-six and two third  
 links, a stone fourteen by fourteen by four-  
 teen inches in size marked "4 mile cor." on  
 south side with earth mound. At two miles  
 sixteen chains sixty-six and two third  
 links, a stone twelve by eight by eight  
 inches in size marked "3 mile cor." on south  
 side with earth mound. At three miles six-  
 teen chains sixty-six and two third links,  
 a stone fourteen by fourteen by four inches  
 in size marked "2 mile cor." on south side  
 with earth mound. At four miles sixteen  
 chains sixty-six and two third links, a  
 stone twenty by twelve by eight inches  
 in size marked "1 mile cor." on south side  
 with earth mound. At five miles sixteen  
 chains sixty-six and two third links to  
 the place of beginning, and containing  
 upwards of thousand three hundred and  
 fifty acres and fifty square rods of  
 land being divided into several  
 parcels of land.

Section North of Range Three east of the Principal me-  
ridian in the Territory of New Mexico.

The testimony whereof I have hereto signed  
my name officially, and affixed my official  
seal, at my office in the City and County  
Santa Fe Territory of New Mexico, the thirteenth day of No-  
vember, one thousand eight hundred and eighty-six.

Henry M. Atkinson.

United States Surveyor General  
for New Mexico

(L.P.)

9-5  
Smith

118

Now know ye that the United States of America in consideration of the premises, and in conformity with the provisions of the said Act of Congress of February ninth A.D. one thousand eight hundred and sixty-nine, Have Given and Granted, and by these presents Do Give and Grant unto the said People of Santa Ana and to its successors and assigns the tract of land embraced and described in the foregoing survey, but with the stipulation as contained in said Act that the confirmation shall only be construed as a relinquishment of title on the part of the United States and shall not affect any adverse valid right, should any such exist.

To San and To Reed, the said tract of land, with the appurtenances unto the said People of Santa Ana, and to its successors and assigns forever with the stipulation aforesaid.

In testimony whereof, I, Chester A. Arthur, President of the United States, have caused these Letters to be made Patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this twenty-fifth day of April in the year of our Lord one thousand eight hundred and eighty-three and of the Independence of the United States the one hundred and seventh.

(Seal)

By the President: Chester A. Arthur  
 By W. M. Cook, Secretary

J. H. Clark, Recorder of the General Land Office

119  
 7  
 T. H. Clark

# The United States of America,

To all to whom these presents shall come, Greeting:

P. L. C.  
Docket No. 190, New Mexico.

WHEREAS, There has been deposited in the General Land Office of the United States evidence whereby it appears that in accordance with the provisions of the Act of Congress approved March 3, 1891, entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," the private land claim known as the Pueblo of Santa Ana or El Ranchito Grant, has been duly confirmed to the Pueblo of Santa Ana and its inhabitants, and to their heirs, assigns and representatives and legal representatives; and

WHEREAS, Said Claim has been surveyed and designated as in Township thirteen north of Range four east of the New Mexico Meridian, in the County of Bernalillo, New Mexico, containing four thousand nine hundred forty-five and twenty-four hundredths acres, according to the plat and survey of the said grant approved by the Court of Private Land Claims, December 7, 1900, copies of which are on file in the office of the Surveyor General for the Territory of New Mexico and in the General Land Office; said grant being more particularly described as follows:

Beginning at what is known as and called the Loma Infernado, situate about four hundred yards east of the present Rio del Norte and south of the plaza of Angostura, said Loma Infernado being the north boundary of the purchase made by the Indians of Santa Ana from Quiteria Contreras and others in the year 1763, running thence due east to a point two miles from the present bed of the Rio del Norte, thence southward at a uniform distance of two miles from said Rio Grande del Norte, as it now runs, to the north boundary of the town of Bernalillo, or Felipe Guteirrez Grant; thence west, along said north boundary, through the house of Cristoval Martinez Gallegos, now called that of Valdez, to the old bed of the Rio Grande at a point north of what is known as the Estero; thence south, through said Estero, following said old river bed, and the west boundary of said Bernalillo grant to an east and west line at the house of Baltazar Perea, the same being situate about a half mile north of the church at Bernalillo; thence west, along said east and west line to the top of the immediate elevation next to and on the west side of the Rio Grande del Norte; thence, following the top of said elevation, northward, until the same reaches the south line of the Angostura grant, the same being a line of stone monuments recognized by the Indians of Santa Ana and the owners of the Angostura grant as their dividing line; thence eastward, along said line, to the Loma Infernado, the place of beginning:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and these presents DOES GIVE AND GRANT, unto the said Pueblo of Santa Ana and its inhabitants, and to their heirs, assigns, and legal representatives, the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Pueblo of Santa Ana and its inhabitants, and to their heirs, assigns, and legal representatives, forever, in accordance with the terms of the decree of said Court, but subject to the proviso that this grant shall not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, but all such mines and mineral shall remain the property of the United States, with the right of working the same; and that the said grant is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891, and all the restrictions and limitations of said Act.

IN TESTIMONY WHEREOF, I, William H. Taft, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the EIGHTEENTH day of OCTOBER, in the year of our Lord one thousand nine hundred and NINE, and of the Independence of the United States the one hundred and THIRTY-FOURTH.

By the President: Wm. H. Taft  
By M. C. Young, Secretary.  
J. H. [Signature]  
Recorder of the General Land Office.

Patent Number  
**84386**

- (1) Lands within Pueblo Grant on which Pueblo Lands Board ruled that Indian title had been extinguished and land was in Non-Indian ownership. Designated in PLB Report by Exception Number. Patents were issued to Non-Indians without any quiet title action in U.S. District Court. Acreage is that given in Pueblo Lands Board Report. This often differs slightly from acreage on latest plat approved by General Land Office, which acreage is indicated in fourth column below.
- (2) In addition to the parcels on which Pueblo Lands Board ruled that title was in non-Indians, the U.S. District Court reversed the decision of the PLB on some parcels which PLB held to be in Indian ownership and decreed that these parcels also belonged to non-Indians, Case # 1814 in Equity. (3) This column shows in parenthesis acreages of private claims on which PLB ruled that Indian title was not extinguished; in addition the column shows acreages of land subsequently acquired by Pueblo

Ex. # No. Page	Private Claim Number  (P.C. and Parcel Number)	(1) Acreage in PLB Report on private claims owned by NON-INDIANS	Acreage in P.C. as shown on latest plat  Acres Plat No.	(2) Non-Indian by Decree of U.S. Dist. Court which reversed PLB decision. #1814	(3) Indian by P.L.B. decision or subse- quently acquired by Pueblo through purchase or exchange.	Acreage Deeded to NON-INDIANS by Pueblo in exchange	TOTAL NON-INDIAN acreage in the Private Claim as of 7-1-70
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SANTA ANA PUEBLO GRANT

NO NON-INDIAN PRIVATE CLAIMS within original Santa Ana Pueblo Grant were found by the Pueblo Lands Board.

Indian title was found to be burdened, however, with what was known as the SANTA FE NORTHWESTERN RAILWAY. Santa Fe Northwestern Ry. constructed line crossed the entire Pueblo grant, running in northwesterly direction along or near Jemez River. After construction a deed dated March 22, 1926 (approved April 28, 1926 by Asst. Secretary of Interior John H. Edwards pursuant to provisions of Pueblo Lands Act of June 7, 1924) was executed by Santa Ana Pueblo officials conveying to Santa Fe Northwestern Railway Co., its successors, and assigns forever, for consideration of \$297.02 a RIGHT OF WAY OR EASEMENT on 113.75 acres. Said deed provided that the land described therein shall revert to the Pueblo of Santa Ana whenever it shall no longer be used by the said Railway Company, its successors, assigns, lessees and tenants for a railroad right of way. Thereafter the railway company abandoned its railroad and the tracks were taken up.

Legal Opinion of William A. Brophy, Special Attorney for Pueblo Indians, dated August 28, 1942 (in Southern Pueblos Agency-Branch of Real Property Management file #371.3) states: "It is my opinion that, since the Santa Fe Northwestern Ry. Co. no longer uses the right of way for railroad purposes, that its easement and rights in said land have been extinguished and the full title has vested in the Pueblo of Santa Ana, subject of course to the usual restrictions upon Indian lands."

EL RANCHITO GRANT:

See pages 2 through 5.

29.69 acre tract within Felipe Gutierrez or Bernalillo Grant. See page 6.

\*Ex. is Exception Number used for private claims on which PLB said Indian title was extinguished. When "Comp" precedes the number, this refers to Complaint Number assigned to parcels on which PLB said Indian title was not extinguished. These private claims were therefore subsequently included in the Complaint filed in U.S. District Court.

#page number in Pueblo Lands Board Report is given as the claims do not appear in numerical sequence in that report.

NON-INDIAN PRIVATE CLAIMS IN SANTA ANA PUEBLO  
(See Sheet #1 for detailed explanation of each column below.)

Ex. No. *	# Private Claim Page Number	(1) Non-Indian by PLB Report.	Acreege on latest Plat. Plat No.	(2) Non-Indian by Court Decree #1814	(3) Indian by purchase or exchange or PLB **	Deceded to Non-Indians by Pueblo in Exchange	TOTAL NON-INDIAN in PC as of 7-1-70
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EN RANCHITO GRANT:

Note: re conflict with San Felipe. The Pueblo Lands Board, in Report No. 1 for Santa Ana on page 9, stated that there is a conflict of (b)... 695.02 acres lying within the northeasterly part of said purchase, which was excluded from the Santa Ana purchase by the Court of Private Land Claims, as shown in its decree. Claims adverse to the San Felipe Indians situated within this area will be passed upon by the Board when the San Felipe Pueblo is considered.

17	27	1,P.1	1.051	1.051	(a)		1.051
18	28	1,P.2	1.429	1.429	(a)		1.429
19	29	2,P.1	0.180	0.180	(a)		0.180
20	30	2,P.2	0.824	0.824	(a)		0.824
21	30	3,P.1	2.467	2.467	(a)		2.467
11	24	4,P.1	0.123	0.123	(a)		0.123

(b) A calculation of the acreage in the conflict area, made section by section from approved official survey plats, is 698.10 acres. (Copy of this calculation is in Southern Pueblos Agency file and Area Realty file.)

\* Ex. is Exception Number used for private claims on which PLB said Indian title was extinguished. When "Comp" precedes the number, this refers to Complaint Number assigned to parcels on which PLB said Indian title was not extinguished; these private claims were therefore subsequently included in the Complaint filed in U.S. District Court.

\*\* Acreage in parenthesis is acreage in the private claim on which Pueblo Lands Board did not extinguished Indian Title.

(a) Unnumbered supplemental plat of sec. 29, T. 13 N., R. 4 E. approved by General Land Office 10-10-1931  
#page number in PLB report #1, Claims are not in numerical order in that report.



**NON-INDIAN PRIVATE CLAIMS IN SANTA ANA PUEBLO**  
 (See Sheet #1 for detailed explanation of each column below.)

Ex. # No. Page *	Private Claim Number	(1) Non-Indian by PLB Report.	Acres on latest Plat. Plat No.	(2) Non-Indian by Court Decree #1814	(3) Indian by purchase or exchange or PLB **	Used to Non- Indians by Pueblo in Exchange	TOTAL NON- INDIAN in PC as of 7-1-70
EL RANCHITO GRANT (Continued)							
12	25 4,P.2	2.623	2.623 (a)				2.623
13	25 4,P.3	0.333 0.333	0.333 (a)				0.333
16	27 5,P.1	1.484	1.494 (a)				1.494
15	26 6,P.1	1.480	1.480 (a)				1.480
14	25 7,P.1	2.226	2.226 (a)				2.226
5	20 8,P.1	25.587	25.587 (a)				25.587
10	23 9,P.1	1.028	1.028 (a)				1.028

34.771

\* Ex. is Exception Number used for private claims on which PLB said Indian title was extinguished. When "Comp" precedes the number, this refers to Complaint Number assigned to parcels on which PLB said Indian title was not extinguished; these private claims were therefore subsequently included in the Complaint filed in U.S. District Court.

\*\* Acreage in parenthesis is acreage in the private claim on which Pueblo Lands Board did not extinguish Indian Title.  
 #page number in P.L.B. Report #1. Claims are not in numerical order in that report.

(a) Unnumbered supplemental plat for sec. 29, T. 13 N., R. 4 E. approved by General Land Office 10-10-1931.

**NON-INDIAN PRIVATE CLAIMS IN SANTA ANA PUEBLO**  
 (See Sheet #1 for detailed explanation of each column below.)

Ex. # No. *	Private Claim Page Number	(1) Non-Indian by PLB Report.	Acreege on latest Plat. Plat No.	(2) Non-Indian by Court Decree No. 1814	(3) Indian by purchase or exchange or PLB **	Deeded to Non- Indians by Pueblo in Exchange	TOTAL NON- INDIAN in PC as of 7-1-70
EL RANCHITO GRANT (continued)							
9	23 10,P.1	0.980	0.980 (a)				0.980
8	22 11,P.1	1.460	1.460 (a)				1.460
7	22 12,P.1	0.733	0.733 (a)				0.733
6	21 13,P.1	0.928	0.928 (a)				0.928
4	19 14,P.1	4.079	4.079 (a)				4.079
3	18 15,P.1	20.438	20.438 (a)				20.438
2	18 16,P.1	16.439	16.439 (a)				16.439

45.057

\* Ex. is Exception Number used for private claims on which PLB said Indian title was extinguished. When "Comp" precedes the number, this refers to Complaint Number assigned to parcels on which PLB said Indian title was not extinguished; these private claims were therefore subsequently included in the Complaint filed in U.S. District Court.

\*\* Acreege in parenthesis is acreege in the private claim on which Pueblo Lands Board did not extinguished Indian Title.  
 #page number in P.L.B. report no. 1. Claims are not in numerical order in that report.

(a) Unnumbered supplemental plat for sec. 29, T. 13 N., R. 4 E. approved by General Land Office 10-10-1931.

**NON-INDIAN PRIVATE CLAIMS IN SANTA ANA PUEBLO**  
 (See Sheet #1 for detailed explanation of each column below.)

Ex. # No. Page *	Private Claim Number	(1) Non-Indian by PLB Report.	Acreege on latest Plat. Plat No.	(2) Non-Indian by Court Decree #1814	(3) Indian by purchase or exchange or PLB **	Decided to Non- Indians by Pueblo in Exchange	TOTAL NON- INDIAN in PC as of 7-1-70
EL RANCHITO GRANT (continued)							
Comp "Z-2"	34	17, P.1 (Designated P.C. 22, P.1 on plat approved 10-12-1931)	10.174 (b)	(b) 9.958	(18.623) 8.665 Indian in Court Decree (Court partially re- versed P.L.B. decision		10.174
"X"	32	18, P.1			( 3.511) Court upheld PLB decision		0
1	17	19, P.1	10.962	10.962 (c)			10.962
comp "Y"	32	20, P.1	6.351 (c) Unnum. supplemental plat for sec. 20, T.13 N., R4E	6.351 (a)	(6.351) Purchased 6.351		0
comp "Z"	33	21, P.1 (Farm Land Claimed by Catholic Church)		0.84	0.84 Court upheld PLB decision		0
comp "Z-1"	34	21, P.2 (Catholic Chapel)			(0.83) Court upheld PLB decision		0
	22	(see PC 17, P.1 above)					

#page number in PLB report no. 1. Claims are not in numerical order in that report.

(a) U.S. District Court in Decree filed May 31, 1929 reversed PLB decision

\* Ex. is Exception Number used for private claims on which PLB said Indian title was extinguished. When "Comp" precedes the number, this refers to Complaint Number assigned to parcels on which PLB said Indian title was not extinguished; these private claims were therefore subsequently included in the Complaint filed in U.S. District Court.

\*\* Acreege in parenthesis is acreege in the private claim on which Pueblo Lands Board did not extinguished Indian Title.

(b) Court partially reversed decision of PLB Non-Indian tract extends westward as far as course of Bosque Ditch on May 31, 1929. This non-Indian tract is designated P.C. 22 on plat approved by Court Feb. 15, 1932.

(c) Unnumbered supplemental plat of sec. 30, T. 13 N., R. 4 E. approved by C.T.O. 10-10-1932

21.136

**NON-INDIAN PRIVATE CLAIMS IN SANTA ANA PUEBLO**  
 (See Sheet #1 for detailed explanation of each column below.)

<u>Ex. No. *</u>	<u>Private Claim Number</u>	<u>(1) Non-Indian by PLB Report.</u>	<u>Acreage on latest Plat. Plat. No.</u>	<u>(2) Non-Indian by Court Decree #1814</u>	<u>(3) Indian by purchase or exchange or PLB **</u>	<u>Deeded to Non-Indians by Pueblo in Exchange</u>	<u>TOTAL NON-INDIAN in PC as of 7-1-70</u>
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IN FELIPE GUTIERREZ OR BERNALILLO GRANT

Comp #	Parcel of 29.69 acres in secs. 20, 21, 28 and 29, T. 13 N., R. 4 E of Santa Ana Pueblo under deed executed October 14, 1713 from Juan Gonzales to Mrs. Josefa Baca, who sold to Cristobal Martin by deed dated December 20, 1739. Deed dated July 7, 1763 was executed by Quiteria Contreras, widow of Cristobal Martin, to Indians of Santa Ana.			claimed by Indians	(29.69)	- south of and adjacent to El Ranchito O Grant	
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(Felipe Gutierrez or Bernalillo Grant -- within boundaries of which the 29.69 acre parcel is located-- was confirmed to the heirs, legal representative and assigns of the original grantee, Felipe Gutierrez, by Court of Private Land Claims in 1897. The Pueblo Lands Board stated that Court of Private Land Claims appears to have disregarded a part of this deed to Santa Ana Indians in its decree of Confirmation. (see page 38, 39, and 40 of Pueblo Lands Board Report #1 on Santa Ana) Decree filed June 2, 1928 by U.S. District Court, District of New Mexico in case #1814 in Equity upheld decision of Pueblo Lands Board that Pueblo of Santa Ana had title to this tract.

# Unnumbered. Referred to in paragraphs 9, 10, and 11 of the Complaint filed in case No. 1814 in Equity in USDC.

\* Ex. is Exception Number used for private claims on which PLB said Indian title was extinguished. When "Comp" precedes the number, this refers to Complaint Number assigned to parcels on which PLB said Indian title was not extinguished; these private claims were therefore subsequently included in the Complaint filed in U.S. District Court.

\*\* Acreage in parenthesis is acreage in the private claim on which Pueblo Lands Board did not extinguish Indian Title.

# PUEBLO OF SANTA ANA

## OFFICE OF THE GOVERNOR

January 30, 2013

Ron Curry  
U.S. EPA Region VI  
Regional Administrator  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Re: The Pueblo of Santa Ana's Application for Authority to Establish and Implement Water Quality Standards and to Control Discharge Permitting Pursuant to Sections 303 and 401 of the Clean Water Act

Dear Mr. Curry:

Enclosed please find the Pueblo of Santa Ana's Application for Authority to Establish and Implement Water Quality Standards and to Control Discharge Permitting Pursuant to Sections 303 and 401 of the Clean Water Act. Through this Application, the Pueblo of Santa Ana seeks authority to establish and implement water quality standards and to control discharge permitting pursuant to Sections 303 and 401 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1313, 1341.

This document was revised in response to comments on a draft version reviewed by EPA Region 6 staff in 2012. We appreciate the assistance provided by EPA in the development and review and look forward to continuing our relationship to strengthen environmental protection and stewardship on the Pueblo of Santa Ana. If you have any questions, please contact Joseph McGinn at (505) 771-4754 or Bart Vanden Plas at (505) 771-6757.

Sincerely,



Pueblo of Santa Ana  
Myron Armijo, Governor

Enclosure: The Pueblo of Santa Ana's Application for Authority to Establish and Implement Water Quality Standards and to Control Discharge Permitting Pursuant to Sections 303 and 401 of the Clean Water Act

**The Pueblo of Santa Ana's Application for Authority to Establish and Implement Water Quality Standards and to Control Discharge Permitting Pursuant to Sections 303 and 401 of the Clean Water Act**

**Submitted to the U.S. Environmental Protection Agency, Region 6**



**The Pueblo of Santa Ana  
02 Dove Road  
Santa Ana Pueblo, NM 87004**

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## LIST OF EXHIBITS

- A. Map or Legal Description of the Area over which the Pueblo Asserts Authority to Regulate Surface Water Quality
- B. Statement of Legal Counsel for the Pueblo of Santa Ana Describing the Pueblo’s Authority to Regulate Water Quality within the Pueblo’s Lands
- C. Title Documents for Trust Parcels Located in Section 25, Township 13N, Range 3E and Section 30, Township 13N, Range 4E, N.M.P.M.

## **I. Introduction**

Through this Application, the Pueblo of Santa Ana seeks authority to establish and implement water quality standards and to control discharge permitting pursuant to Sections 303 and 401 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1313, 1341. Under Section 518(e) of the CWA, U.S. E.P.A. Region 6 is authorized to approve this Application if the Pueblo demonstrates that: (1) it is a federally recognized Indian tribe; (2) it has a governing body carrying out substantial governmental duties and powers; (3) it has the authority to regulate water quality within the borders of its reservation; and (4) it has the capability to conduct those activities consistent with the CWA and applicable regulations.<sup>1</sup> The Pueblo seeks to establish and implement water quality standards for portions of the Rio Jemez and Rio Grande watersheds which are located within the Pueblo’s exterior boundaries.

This Application is offered in supplement to the Pueblo of Santa Ana’s 1998 application to the U.S. E.P.A. for treatment as a State under Section 106 of the CWA (“1998 Application”).<sup>2</sup> The 1998 Application was approved by the U.S. E.P.A. and the Pueblo has conducted CWA Section 106 monitoring since 1998.

The information contained in the Pueblo’s 1998 Application and this Application satisfies the requirements of all pertinent federal regulations and the Pueblo’s Application should be approved.

## **II. Pueblo of Santa Ana’s Tribal Government**

For a detailed description of the Pueblo’s governing body, its form, duties, functions and authority please see the Pueblo’s 1998 Application previously submitted to EPA.

## **III. Pueblo of Santa Ana’s Authority to Regulate Water Quality**

For a detailed description of the Pueblo’s authority to regulate water quality please see the Pueblo’s 1998 Application previously submitted to EPA. An updated map of lands and waters over which the Pueblo exercises authority is attached hereto as Exhibit A. A statement from the Pueblo’s legal counsel describing the Pueblo’s authority to regulate water quality within the Pueblo’s lands is attached hereto as Exhibit B.

The Pueblo Boundary over which the Pueblo exercises authority in Exhibit A has only a few changes from the Pueblo’s 1998 Application. All lands within the designated boundary are now in trust. There are some additional lands adjacent to the Pueblo’s previous boundary in Section 25, Township 13N, Range 3E and Section 30, Township 13N, Range 4E, N.M.P.M. that are now in trust and included within the Pueblo boundary on Exhibit A. The title documents for the additional lands now in trust are attached hereto as Exhibit C. In addition, there is a small non-contiguous parcel in Section 30, Township 13N, Range 4E, N.M.P.M., that is also in trust and included on Exhibit A. The lands in Sections 29 and 30, Township 13N, Range 4E, excluded in the Pueblo’s 1998 Application are still excluded from the boundary indicated in Exhibit A.

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<sup>1</sup> 40 C.F.R. § 131.8(a).

<sup>2</sup> 40 C.F.R. § 131.8(b)(6) establishes that “[w]here the Tribe has previously qualified for eligibility or treatment as a State under a Clean Water Act or Safe Drinking Water Act program, the Tribe need only provide the required information which has not been submitted in a previous application.”



Exhibit A also delineates the area known as the San Felipe Overlap area. The Pueblo defers any assertion of jurisdiction over the San Felipe Overlap area pending resolution of the boundary dispute with the Pueblo of San Felipe.

As further described in Exhibit B, the Pueblo of Santa Ana possesses inherent sovereign authority to regulate its citizens, lands and waters and to regulate nonmember activities within the Pueblo, which may impact the Pueblo's water resources. The Tribal Council is the duly recognized decision and policy making body for the Pueblo. All uses of Pueblo land must be presented to and approved by the Tribal Council. Such approvals are set forth in Tribal Council Resolutions which include language authorizing and directing the Governor of the Pueblo to execute documents (e.g. lease, permit, license, right of way, or other form of agreement) on behalf of the Pueblo and, upon execution, require such documents to be transmitted to the Southern Pueblos Agency, Bureau of Indian Affairs, for approval in accordance with federal law. The Pueblo exercises its authority over lessees, permittees, or licensees by conducting inspections, issuing citations and orders to correct deficiencies or otherwise come into compliance with agreement provisions or Tribal regulation or risk enforcement or loss of legal right to continue with the activity subject to the agreement.

#### **IV. Pueblo of Santa Ana's Capability to Administer an Effective Water Quality Standards Program**

The Pueblo of Santa Ana has the capability to fully and adequately establish, review, implement, and revise water quality standards, consistent with the CWA and applicable regulations. As discussed above, the Pueblo has conducted CWA § 106 monitoring since 1998. Furthermore, the Pueblo has ample experience managing other federal grants and contracts, such as housing grants through the U.S. Department of Housing and Urban Development, Indian Self-Determination contracts and grants, and grants from the Administration for Native Americans. The Pueblo currently administers numerous programs for the public health, safety and welfare of its members through the Departments of Law Enforcement, Tribal Courts, Education, Children's Services, Agricultural Enterprises and Tribal Resources.

The Tribal Council established a Department of Natural Resources ("DNR" or "the Department") in 1996 to manage environmental and natural resource programs, including CWA monitoring programs. The Department has hired qualified environmental professionals to oversee program implementation. DNR is headed by a Director, and currently employs a staff of 25. The environmental programs currently managed by DNR are organized into the following divisions: Water Resources; Range and Wildlife; Geographic Information Systems; and Restoration. Each Division is managed by a qualified environmental professional who reports to the DNR Director. The Environmental Programs within each Division are managed by qualified Program Managers or Scientists who report to the Division Manager. Descriptions of Director and Division Manager duties and qualifications, as well as the DNR QA/QC protocol, are outlined in the Department's recently approved FY2011 Quality Management Plan ("QMP") (QTRAK #11-417). The Department will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards following approval of this Application.

DNR programs are supported primarily by grants from various organizations and agencies, including U.S. E.P.A. (e.g., General Assistance Program and Clean Water Act §106, §104 (b)(3)). The programs have been and are currently collecting baseline data and conducting

environmental assessments to provide recommendations and advice to the Tribal Council in order to develop management plans regarding the Pueblo's natural resources.

The Water Resources Division has conducted CWA §106 monitoring program since 1998. All monitoring is conducted pursuant to approved quality assurance procedures documented in the "Quality Assurance Project Plan for The Pueblo of Santa Ana Surface Water Quality Monitoring Program" ("QAPP")(current revision, QTRAK #11-064). The surface water quality monitoring program has developed and advanced over the past 12 years from assessing initial range land conditions to a long-term surface water quality monitoring program that provides quality-assured water-quality data to the EPA Water Quality Exchange ("WQX").

The Water Resources Division Manager and the Water Quality Scientist will be the primary agents responsible for administering CWA § 303 and § 401 programs to establish, review, implement, and revise the Pueblo's water quality standards. The Water Quality Scientist will manage the Water Quality Program within the Water Resources Division. In addition, a Technical Coordinator and Water Resources Technicians will assist with monitoring activities, and reviewing and implementing water quality standards. The Pueblo's Financial Officer will oversee and control all fiscal responsibilities associated with the programs. Job descriptions for the DNR Director and the Water Resources Division Manager are included in the DNR QMP. The responsibilities and qualifications of the Water Quality Scientist are explained in greater detail in the Division's Surface Water QAPP. While the DNR or Water Resources Department will be responsible for implementing the CWA §303(c) and §401 programs, new and revised standards will be adopted by the Tribal Council. Likewise, final actions for §401 certification will be issued by the Governor's office.

The Pueblo's commitment to environmental protection and water quality is further demonstrated through its environmental outreach and education program called Santa Ana Youth Hands on Hydrology Outreach ("SAY H2O"). The program has existed for the past nine years and the Pueblo is planning to expand the program in fiscal year 2012. The SAY H2O program provides environmental education to Pueblo youth in the areas of water quality, environmental stewardship, agriculture, and water rights. In 2011, the SAY H2O program focused on water rights in the Rio Jemez and included native language lessons, water flow monitoring and a field trip to the headwater of the Rio Jemez.

For additional information regarding the Pueblo's capability to administer an effective water quality standards program please see the Pueblo's 1998 Application previously submitted to EPA.

## **V. Conclusion**

This Application satisfies the U.S. E.P.A.'s regulatory requirements regarding the Pueblo of Santa Ana's authority to establish and implement water quality standards within the Pueblo's lands pursuant to § 303 and § 401 of the CWA. This Application demonstrates that the Pueblo's Tribal Council possesses significant authority to carry out substantial governmental duties, including regulation of water quality within the Pueblo's reservation. Furthermore, through its Department of Natural Resources, the Pueblo has the capability to conduct water quality monitoring activities consistent with the CWA and applicable regulations. Accordingly, the Pueblo's application should be approved.

Cc:

Ms. Nikole Whitt, U.S. EPA Region VI, State/Tribal Programs Section (Electronic)

Randy Gee, U.S. EPA Region VI, State/Tribal Programs Section (Electronic)

Diane Evans, U.S. EPA Region VI, State/Tribal Programs Section (Electronic)

Alan Hatch, PSA Director DNR

Joseph McGinn, PSA Water Resources Division Manager

## Exhibit B

### Statement of Legal Counsel for the Pueblo of Santa Ana Describing the Pueblo's Authority to Regulate Water Quality within the Pueblo's Lands

#### I. Introduction.

In this statement ("Statement"), the Pueblo of Santa Ana ("Pueblo") describes the basis for its assertion of authority to regulate waters within the exterior boundaries of the Pueblo's Reservation. As set forth below, the basis for this assertion is the Pueblo's inherent sovereign authority. This Statement is offered in compliance with U.S. Environmental Protection Agency ("EPA") regulations pertaining to the administration of water quality standards programs by Indian tribes, specifically 40 C.F.R. § 131.8(3). This Statement is supplementary to the Pueblo's application ("Application") for authority to establish and implement water quality standards and to control discharge permitting pursuant to sections 303 and 401 of the Clean Water Act, 33 U.S.C. §§ 1313, 1341.

The previously submitted and approved application for the Clean Water Act section 106 program describes the Pueblo's Reservation lands over which the Pueblo exercises jurisdiction. The current Application provides updated information on Pueblo Reservation lands over which the Pueblo exercises jurisdiction. The map attached to the Application as Exhibit A depicts the exterior boundaries of the Pueblo's Reservation and the area therein over which the Pueblo asserts jurisdiction for purposes of section 303 and 401.<sup>1</sup> All lands within Exhibit B are held in trust by the United States for the benefit of the Pueblo. Accordingly, there are no nonmember owned fee lands within the area shown in Exhibit A.

#### II. Pueblo Background.

The Pueblo is a federally recognized Indian tribe that has exclusively used and occupied the lands comprising its Reservation since time immemorial. Throughout its existence, the Pueblo has governed itself and its members pursuant to its inherent sovereign authority. The Pueblo has not adopted a written constitution; however, legislative authority is vested in the Pueblo's traditional Tribal Council. The Tribal Council, which is presided over by the Pueblo's Governor, exercises complete regulatory authority over all lands, waters and persons within the exterior boundaries of the Pueblo's Reservation, except to the extent precluded by federal law. The Tribal Council has enacted several ordinances and has established a traditional tribal court system and a contemporary court to interpret and enforce the Pueblo's laws. Further detail regarding the Pueblo's form of government is provided in the previously submitted and approved application.

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<sup>1</sup> For purposes of this Application, the area over which the Pueblo is asserting jurisdiction does not include the area owned by the Pueblo known as the San Felipe Overlap.

### **III. The Pueblo Possesses Inherent Sovereign Authority over its Reservation and its Members.**

The United States Supreme Court (“Supreme Court”) has consistently held that “Indian tribes retain ‘attributes of sovereignty over both their members and their territory.’” *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980), quoting *U.S. v. Mazurie*, 419 U.S. 544, 557 (1975); see also, *Merrion v. Jicarilla Apache Tribe*, 455 U.S.130 (1982); *Williams v. Lee*, 358 U.S. 217 (1959). Tribal power to regulate tribal trust lands and tribal member activity thereon is “is a fundamental attribute of sovereignty.” *Merrion*, 455 U.S. at 137. With respect to the Pueblo in particular, the Supreme Court has confirmed the Pueblo’s jurisdiction over its Reservation. *United States v. Sandoval*, 231 U.S. 28 (1913).

Based on firmly established Supreme Court precedent, the Pueblo maintains inherent sovereign authority over its Reservation and the activities of its members within the Reservation. Therefore, the Pueblo has jurisdiction to regulate for the protection of waters within its Reservation and over the activities of its members that may jeopardize the quality of those waters.

### **IV. The Pueblo Possesses Inherent Sovereign Authority to Regulate Nonmember Conduct within the Pueblo’s Reservation.**

In general, tribes have inherent sovereign authority to regulate the conduct of nonmembers who enter tribal lands. *Merrion*, 455 U.S. at 144 (“Nonmembers who lawfully enter tribal lands remain subject to the tribe’s *power* to exclude them. This power necessarily includes the lesser power to place conditions on entry, on continued presence, or on reservation conduct”); *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 651-52 (2001) (a tribe can regulate the conduct of nonmembers over whom it could “assert a landowner’s right to occupy and exclude”). However, in *Montana v. U.S.*, 450 U.S. 544 (1981), the Supreme Court held that tribes are generally divested of inherent sovereign authority to exercise regulatory jurisdiction over nonmember conduct on non-Indian fee lands within reservation boundaries. The Supreme Court in *Montana* announced two exceptions to this general rule. *Montana*, 450 U.S. at 565-66. The *Montana* exceptions provide that tribes may regulate the activities of nonmembers on non-Indian fee lands within a reservation: (1) when those nonmembers “enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements;” and (2) when the conduct of nonmembers on a reservation “threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.*

Until 2001, it was understood that tribes had broad authority to regulate the conduct of nonmembers on tribal land within a reservation and were without authority to regulate the conduct of nonmembers on non-Indian fee lands within a reservation unless jurisdiction over such nonmember conduct could be supported by one of the two *Montana* exceptions. However, the Supreme Court in *Nevada v. Hicks*, 533 U.S. 353 (2001) stated, in support of its limited holding, that the extent of tribal regulatory authority over the conduct of nonmembers on tribal or non-Indian fee land within a reservation is to be governed by the two *Montana* exceptions. “The ownership status of land, in other words, is only one factor to consider in determining whether regulation of the activities of nonmembers” is supported by one of the two *Montana* exceptions. *Hicks*, 533 U.S. at 360. Therefore, in light of the Supreme Court’s announcements in *Hicks*, this Statement analyzes the Pueblo’s regulatory authority over nonmembers on the Pueblo’s

Reservation under the two *Montana* exceptions, despite the absence of non-Indian fee lands within the Reservation.

**A. Consensual Relationships.**

All lands within the Pueblo's Reservation are held in trust for the benefit of the Pueblo. Therefore, all uses of Pueblo land within the Reservation by nonmembers must be presented to and approved by the Tribal Council. Such approvals are set forth in Tribal Council Resolutions, which include language authorizing and directing the Governor of the Pueblo to execute agreements (e.g. leases, permits, licenses, rights of way, or other forms of agreements) on behalf of the Pueblo. Most agreements approved by the Tribal Council, which authorize nonmember use of lands within the Pueblo's Reservation, also require federal approval. *See, e.g.*, 25 C.F.R. Parts 84, 162, 169 and 211. If applicable, such agreements are transmitted to the Southern Pueblos Agency, Bureau of Indian Affairs, or other designated agency for approval. Examples of ongoing agreements authorizing nonmember use of Pueblo lands include but are not limited to the following:

- Rights of way agreements for utility and oil and gas purposes;
- Lease for gravel mining;
- Office space leases;
- County fire station lease;
- Youth soccer complex lease;
- Agreements authorizing recreation activities; and
- Agreements with federal and state partner agencies (e.g. U.S. Army Corps of Engineers; Bureau of Reclamation; Bureau of Indian Affairs; Middle Rio Grande Conservancy District) for various uses.

As noted above, all lands within the Pueblo's Reservation are held in trust and, therefore, nonmember use of those lands must be conditioned upon Pueblo consent and in most instances federal consent as well. That consent is evidenced by written agreements authorizing nonmember use of Pueblo land. As a result, all nonmember activity on the Pueblo's Reservation that has the potential to degrade water quality is conducted by nonmembers who have a consensual relationship with the Pueblo "through commercial dealings, contracts, leases, or other arrangements." *Montana*, 450 U.S. at 565. Further, the basis for those consensual relationships is the nonmembers' use of Pueblo land; the use of which can impact water quality. Subjecting such nonmembers to Pueblo regulatory authority for water related matters is a consequence that is directly related to the basis for the consensual relationships. *See, Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.*, 554 U.S. 316, 339-40 (2008) (reasoning that under the first *Montana* exception, the asserted tribal authority must have some correlation to the nature of the consensual relationship). These consensual relationships fall squarely within the types of relationships contemplated under the first *Montana* exception. Therefore, the Pueblo possesses inherent sovereign authority pursuant to the first *Montana* exception to regulate nonmember conduct on the Pueblo's Reservation that may impact waters on the Reservation.

**B. Conduct that Threatens or has a Direct Effect on the Political Integrity, Economic Security or the Health or Welfare of the Pueblo.**

In 1991, the EPA stated that in assessing tribal jurisdiction over nonmembers for purposes of the second *Montana* exception, it looks to whether the water related impacts to a tribe from

nonmember activity are “serious and substantial.” 56 Fed. Reg. 64876, 64878 (December 12, 1991). The EPA noted that activities subject to environmental regulation “generally have serious and substantial impacts on human health and welfare.” *Id.* In addition, the EPA’s conclusion that nonmember activities may have a serious and substantial on tribal water quality was upheld in *Montana v. E.P.A.*, 141 F.Supp.2d 1259 (D. Mont. 1998).


The Pueblo is located in a high-desert environment where surface water resources are scarce. The limited surface waters within the Pueblo’s Reservation are used by the Pueblo and its members for, among other uses, irrigation, livestock watering, fishing, ceremonial and religious purposes and some domestic uses. Water is vitally important to the Pueblo and its members, and the regulation of water quality is crucial to ensure continuation of the culture and lifestyle of the Pueblo and its members. As noted by the Ninth Circuit Court of Appeals, “[r]egulation of water on a reservation is critical to the lifestyle of its residents and the development of its resources. Especially in arid and semi-arid regions of the West, water is the lifeblood of the community. Its regulation is an important sovereign power.” *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 52 (9th Cir. 1981).

As described above, nonmembers conduct various activities on the Pueblo’s Reservation. For example, on the Reservation, several oil and gas and utility companies have placed infrastructure within the rights of way granted to those companies; there exists a significantly sized gravel mining operation; and a local county fire department operates a facility. These nonmember activities could impact Pueblo water through releases of contaminants, sediment and other materials. If not properly regulated, all of these nonmember activities present the potential for “serious and substantial impacts” to the Pueblo’s scarce water supply, which in turn will have a direct effect on the political integrity, economic security or health and welfare of the Pueblo and its members. Therefore, the Pueblo possesses inherent sovereign authority pursuant to the second *Montana* exception to regulate nonmember conduct on the Pueblo’s Reservation that may impact waters on the Reservation.

**V. Conclusion.**

The foregoing discussion clearly establishes that the Pueblo maintains inherent authority to regulate waters within the exterior boundaries of the Pueblo’s Reservation. Accordingly, the Pueblo’s burden under 40 C.F.R. § 131.8(b)(3) has been satisfied.

January 26, 2013



Samuel D. Hough  
Luebben Johnson & Barnhouse LLP  
7424 4th St NW  
Los Ranchos de Albuquerque, NM 87107



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BUR INDIAN AFFAIRS  
ALBUQUERQUE, N.M.

THIS INDENTURE, made this 19<sup>th</sup> day of October, 2011, between the Pueblo of Santa Ana, Grantor, and the United States of America, as trustee for the Pueblo of Santa Ana, Grantee,

WITNESSETH:

WHEREAS, pursuant to the provisions of the Act of Congress approved June 18, 1934 (48 Stat. 984), commonly referred to as the "Indian Reorganization Act," the Secretary of the Interior is authorized, in his discretion, to take title to any lands or rights acquired pursuant to said act in the name of the United States in trust for the Indian tribe for which the land is acquired, and such lands or rights shall be exempt from State and local taxation, and

WHEREAS, the Pueblo of Santa Ana has purchased in fee the parcels herein described and now desires to convey said parcels to the United States pursuant to said Act, to be held in trust for the Pueblo of Santa Ana,

NOW THEREFORE, the said Pueblo of Santa Ana, for valuable consideration the receipt of which is hereby acknowledged, has granted, bargained, sold, conveyed, released and confirmed and by these presents does grant, bargain, sell, convey, release and confirm unto the United States of America, in trust for the Pueblo of Santa Ana, its successors and assigns forever, all of the following described real property, situate, lying and being within the County of Sandoval, State of New Mexico, to-wit:

LEGAL DESCRIPTION  
OF REAL PROPERTY

SITUATE IN THE COUNTY OF SANDOVAL, STATE OF NEW MEXICO and being more particularly described as follows:

(Note: The following described five parcels of land are identical in form and location to those parcels described in their respective Warranty Deeds and Special Warranty Deeds to the Pueblo of Santa Ana, which are all recorded in the title records of Sandoval County, New Mexico, as follows: Parcel 1, Warranty Deed recorded as document 200426807, at Book 407, page 26807, on August 24, 2004; Parcel 2, Warranty Deed recorded as document 200426809, at Book 407, page 26809, on August 24, 2004; Parcel 3, Warranty Deed recorded as document 200426808, at Book 407, page 26808, on August 24, 2004; Parcel 4, Warranty Deed recorded as document 200739710, at Book 410, page 39710, on October 9, 2007; and Parcel 5, Special Warranty Deed recorded as document 200808701, at Book 411, page 8701, on March 7, 2008. These five parcels are now more particularly described by the following legal descriptions, as shown on the survey plat entitled "South 550 Properties - Proposed Trust Transfer Lands," prepared by Gary E. Gritsko, N.M.P.S. # 8686 and dated December, 2008, which plat was recorded in the title records of Sandoval County, New Mexico, simultaneously with this Warranty Deed.)

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**PARCEL NO. 1:**

A parcel of land being all of Lot 9 in Block A of the Unit 20 Industrial Park recorded on December 17, 1989 in Rio Rancho Estates Plat Book No. 4, Pages 114 to 116 (Vol. 3, Folio 814-B), Instrument No. 47050, within Section 25, Township 13 North, Range 3 East, New Mexico Principal Meridian, City of Rio Rancho, Sandoval County, New Mexico, said parcel being more particularly described as follows:

Beginning at the Northerly most point on the Easterly boundary line of said Lot 9, a point on the Southwesterly right-of-way line of U.S. Highway 550 (formerly New Mexico State Road No. 44) and Easterly boundary line of said Section 25; Thence departing said highway right-of-way line, S 00°46' 45" W., 975.27 feet on the Easterly boundary line of said Lot 9 and Section 25; Thence, departing said Section 25 boundary line, N. 32° 04' 26" W., 346.05 feet on the Southwesterly boundary line of said Lot 9; Thence N. 66°34' 21" W., 356.59 feet on said boundary line; Thence N. 41°30' 00"W., 943.41 feet on said boundary line; Thence S. 89°40' 43" E., 962.65 feet on the Northerly boundary line of said Lot 9 to a point on the Southwesterly right-of-way line of said U.S. Highway 550; Thence S. 49°13' 40" E., 246.52 feet on said boundary and right-of-way line to the point of beginning. Said parcel containing 14.8767 acres, more or less.

SUBJECT TO patent reservations, restrictions, and easements of record and taxes for the year 2010 and subsequent years; with warranty covenants.

**PARCEL NO. 2:**

A parcel of land being a portion of Lot 23 within the NW 1/4 SW 1/4 NW 1/4 SW 1/4 of Section 30, Township 13 North, Range 4 East, New Mexico Principal Meridian, said parcel is located southwest of and adjacent to the southwest right-of-way line of US 550 (formerly New Mexico State Road No. 44), in Sandoval County, New Mexico, and is shown on the Official Plat of Survey on file in the bureau of Land Management office, said parcel being more particularly described as follows:

Beginning at the Northerly most point of the parcel herein described, a point on the southwest right-of-way line of said US 550, from which the intersection of said right-of-way line and the west line of said Section 30 bears N. 49°13' 40" W., 366.28 feet; Thence S. 49°13' 40" E., 64.22 feet on said highway right-of-way line and Northeasterly boundary line of said parcel; Thence departing said highway right-of-way line, S 00°44' 36" W., 287.74 feet on the Easterly boundary line of said Lot 23; Thence N. 89°41' 20" W., 330.00 feet on the Southerly boundary line of said Lot 23; Thence N. 00°46' 45" E., 329.26 feet on the Westerly boundary line of said Lot 23 and west line of said Section 30; Thence S. 89°43' 19" E., 280.67 feet on the northerly boundary line of said Lot 23 to the point of beginning. Said parcel containing 2.4707 acres, more or less.

SUBJECT TO patent reservations, restrictions, and easements of record and taxes for the year 2010 and subsequent years; with warranty covenants.

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**PARCEL NO. 3:**

A parcel of land being a portion of Lot 22 within the NE 1/4 SW 1/4 NW 1/4 SW 1/4 of Section 30, Township 13 North, Range 4 East, New Mexico Principal Meridian, said parcel is located southwest of and adjacent to the southwest right-of-way line of US 550 (formerly New Mexico State Road No. 44), in Sandoval County, New Mexico, and is shown on the Official Plat of Survey on file in the Bureau of Land Management office, said parcel being more particularly described as follows:

Beginning at the Northerly most point of the parcel herein described, a point on the southwest right-of-way line of said US 550, from which the intersection of said right-of-way line and the west line of said Section 30 bears N. 49° 13' 40" W., 430.50 feet; Thence S. 49° 13' 40" E., 430.11 feet on said highway right-of-way line and Northeasterly boundary line of said parcel; Thence departing said highway right-of-way line, S 00° 49' 44" W., 8.74 feet on the Easterly boundary line of said Lot 22; Thence N. 89° 40' 05" W., 329.34 feet on the Southerly boundary line of said Lot 22; Thence N. 00° 44' 36" E., 287.74 feet on the Westerly boundary line of said Lot 22 to the point of beginning. Said parcel containing 1.1208 acres, more or less.

SUBJECT TO patent reservations, restrictions, and easements of record and taxes for the year 2010 and subsequent years; with warranty covenants.

**PARCEL NO. 4:**

A parcel of land being a portion of Lot 16, within the SW1/4 NW1/4 NW1/4 SW1/4 of Section 30, Township 13 North, Range 4 East, New Mexico Principal Meridian, as shown on the plat of the Bureau of Land Management Dependent Re-survey and subdivision of Section 30, dated August 15, 1955, which parcel is located southwest of and adjacent to the southwest right-of-way line of U.S. 550 (formerly New Mexico State Road 44), in Sandoval County, New Mexico, said parcel being more particularly described as follows:

Beginning at the Northerly most point of the parcel herein described, a point on the southwest right-of-way line of said U.S. 550 at the intersection of said right-of-way line and the west line of said Section 30; Thence departing said section line, S. 49° 13' 40" E., 366.28 feet along said highway right-of-way line and the northeasterly boundary line of said parcel; Thence departing said highway right-of-way line, N. 89° 43' 19" W., 280.67 feet on the southerly boundary line of said Lot 16; Thence N. 00° 46' 45" E., 237.86 feet on the westerly boundary line of said Lot 16 and west line of said Section 30, to the point of beginning. Said parcel containing 0.7661 acres, more or less.

SUBJECT TO easements and reservations of prior deeds, restrictive covenants and any other instruments of record, zoning regulations, taxes and other assessments for the year 2010 and subsequent years; with warranty covenants.

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**PARCEL NO. 5:**

Tract lettered "A," in Block lettered "A", in Unit 20, INDUSTRIAL PARK, a subdivision in Section 25, Township 13 North, Range 3 East, New Mexico Principal Meridian, within the City of Rio Rancho, Sandoval County, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Sandoval County, New Mexico, on January 18, 2005, in Volume 3, Folio 2491-A, and in Rio Rancho Estates Plat Book No. 16, Page 32, which tract is more particularly described as follows:

Beginning at the northwest corner of the tract herein described, being the northwest corner of said Tract A, Block A, whence the U.S.C.G.S. Triangulation Station "Pilgrim," a brass cap in place, bears N. 83° 19' 19" E., 1426.37 feet distant; thence S. 89° 40' 43" E., 175.96 feet to the northeast corner of said tract; thence, S. 41° 30' 00" E., 943.41 feet; thence, S. 66° 34' 21" E., 356.59 feet; thence, S. 32° 04' 26" E., 346.05 feet; thence S. 00° 46' 45" W., 55.30 feet, to the southernmost corner of said tract; thence, N. 32° 04' 26" W., 409.67 feet; thence, N. 66° 34' 21" W., 211.51 feet; thence, N. 82° 23' 01" W., 268.14 feet; thence, N. 70° 14' 58" W., 19.11 feet; thence, N. 41° 30' 00" W., 930.08 feet; thence, N. 00° 48' 44" E., 28.03 feet, to the point of beginning. Said parcel containing 3.7976 acres, more or less.

**SUBJECT TO THE FOLLOWING:**

1. Taxes for the year 2010 and subsequent years;
2. Restrictive Covenants filed in the office of the County Clerk of Sandoval County, New Mexico, Book Misc. 259, page 992;
3. Terms, conditions, stipulation and any obligation of performance by the parties as contained in that certain Declaration of Non-Disturbance dated May 1, 1991, and filed in the office of the County Clerk of Sandoval County, New Mexico, on May 3, 1991, in Book Misc. 259, page 998;
4. All interest in and to all oil, gas, coal and other minerals and rights incident thereto as contained in that certain Warranty Deed filed in the office of the County Clerk of Sandoval County, New Mexico, Book DR 174, page 189; and
5. Any and all easements as shown and provided for on the recorded plat of the Property filed in the office of the County Clerk of Sandoval County, New Mexico, on January 18, 2005, in Vol. 3, folio 2491-A.

With warranty covenants.

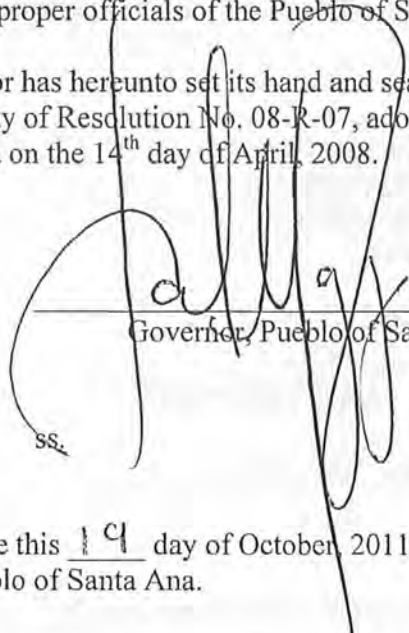
TOGETHER with the water and ditch rights appurtenant to or used in connection with the said land; together with all and singular the lands, tenements, hereditaments and appurtenances hereunto belonging, or in any wise appertaining, and the revision and revisions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the said Grantor either in law or

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equity, of, in and to the above described premises, with the hereditaments and appurtenances thereunto belonging;

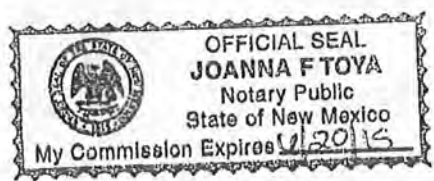
TO HAVE AND TO HOLD, the premises above bargained and described with the appurtenances, unto the said Grantee, its successors and assigns, forever, subject to the conditions, however, that no right, title or interest in or to the lands hereby conveyed, or any part thereof, shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may now or hereafter be provided by Congress; and no sale, grant, lease or other encumbrance of any character or other conveyance of said lands, or any title or claim thereto, made by or under authority of the aforesaid Pueblo as a community, its governing body, officers or any individual thereof, shall be of any validity in law or in equity unless the same shall be first approved by the Secretary of the Interior in accordance with valid federal law; nor shall any sale, grant, lease, or other encumbrance of any character or other conveyance of said lands, or any title or claim thereto, made by or under authority of the United States, or of the Secretary of the Interior, be of any validity in law or in equity unless the same shall have the written consent of the Tribal Council and proper officials of the Pueblo of Santa Ana.

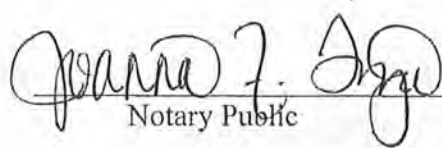
IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal the day and year first above written, under the authority of Resolution No. 08-R-07, adopted by the Tribal Council of the Pueblo of Santa Ana on the 14<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
Governor, Pueblo of Santa Ana

STATE OF NEW MEXICO )  
  )  
COUNTY OF SANDOVAL )

Subscribed and sworn to before me this 19 day of October, 2011, by Lawrence Montoya, Governor of the Pueblo of Santa Ana.



  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
4/20/2015

See Exhibit "A" Acceptance of Conveyance by Bureau of Indian Affairs and authority citations.

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# United States Department of the Interior



## BUREAU OF INDIAN AFFAIRS

Southern Pueblos Agency  
1001 Indian School Road, NW  
Albuquerque, New Mexico 87104

IN REPLY REFER TO:

### EXHIBIT A Acceptance of Conveyance

In accordance with Section 5 of the Indian Reorganization Act of June 18, 1934, 25 United States Code, Section 465, and pursuant to the authority delegated to the Assistant Secretary of Indian Affairs by the Secretary of Interior in 209 DM 8, to the Commissioner of Indian Affairs by the Assistant Secretary of Indian Affairs in 230 DM 1, and to the Regional Directors by the Commissioner of Indian Affairs, in 3 IAM 4, and to the Superintendents, Southwest Region by the Regional Director, in Albuquerque Area Addendum Release No. 9401, the real property formerly known as the "550 Property", described in deed dated October 19, 2011, for approximately 23.032 acres, more or less, is hereby accepted by the United States of America in trust for the Pueblo of Santa Ana, New Mexico.

By:  
Acting Superintendent  
Southern Pueblos Agency  
Bureau of Indian Affairs  
Southwest Region

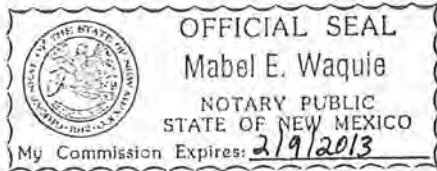
[Signature]  
Signature      Acting Superintendent

10/21/2011  
Date

Angela Arviso  
Printed Name

Subscribed and sworn to before me this 21<sup>st</sup> day of October, 2011

(SEAL)



By: Notary Public

(Signed) Mabel E. Waquie

Mabel E. Waquie  
Printed Name

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202 – 2733

July 20, 2015

The Honorable Lawrence Montoya  
Governor  
Pueblo of Santa Ana  
2 Dove Road  
Santa Ana Pueblo, NM 87004

Dear Governor Montoya:

I am pleased to inform you that the U.S. Environmental Protection Agency (EPA) has completed its review under Clean Water Act (CWA) section 518 of the Pueblo of Santa Ana's application dated January 30, 2013, as amended, for treatment in a similar manner as a state (TAS) to administer the water quality standards and certifications programs under CWA sections 303(c) and 401, 33 U.S.C. sections 1313(c) and 1341. Based on that review, EPA is today approving the Pueblo of Santa Ana's application.

Approval of the TAS application means that the Pueblo of Santa Ana is eligible to administer the water quality standards program under CWA section 303(c) for waters within the Pueblo as identified in the application. Pursuant to the federal regulation at 40 CFR 131.4(c), the Pueblo of Santa Ana is likewise eligible for purposes of certification under CWA section 401. Per the Pueblo of Santa Ana's request, EPA has temporarily excluded from its decision today the area known as the "San Felipe Overlap" and will await further direction from the Pueblo on this area.

Documentation of our review can be found in the enclosure titled *Decision Document: Approval of the Pueblo of Santa Ana's Application for Treatment in a Similar Manner as a State for Clean Water Act Sections 303(c) Water Quality Standards and 401 Certification*. As part of the review, EPA solicited comments from appropriate governmental entities and other interested parties regarding the Pueblo of Santa Ana's assertion of authority to regulate water quality for the areas covered by the application. The Pueblo of San Felipe, the New Mexico Environment Department, the U.S. Forest Service and the Bureau of Indian Affairs provided comments. A response to comments is included as an appendix to the Decision Document.

The Pueblo of Santa Ana also submitted tribally-adopted water quality standards for EPA review and approval. EPA will provide separate review of the Pueblo of Santa Ana's water quality standards. If approved, those standards would apply under section 303(c) of the CWA to all surface waters covered by this approval of the Pueblo of Santa Ana's TAS application. The tribally-adopted water quality standards may be used for the Pueblo of Santa Ana's decisions under CWA section 401 to grant, deny, or condition a water quality certification, prior to EPA's action under CWA section 303(c).

EPA looks forward to working with the Pueblo of Santa Ana in implementing its water quality programs. If you have any questions or concerns, please contact me at (214) 665-7101 or contact Diane Evans of my staff at (214) 665-6677.

Sincerely,

A handwritten signature in blue ink, appearing to read "W.K. Honker".

William K. Honker, P.E.

Director

Water Quality Protection Division

Enclosure

cc: Alan Hatch, Director  
Pueblo of Santa Ana  
Department of Natural Resources

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 6**

**DECISION DOCUMENT:**

**APPROVAL OF THE PUEBLO OF SANTA ANA'S APPLICATION FOR  
TREATMENT IN A SIMILAR MANNER AS A STATE FOR  
CLEAN WATER ACT SECTIONS 303(c) WATER QUALITY STANDARDS  
AND 401 CERTIFICATION**



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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 (EPA or Agency) decision to approve the Pueblo of Santa Ana's 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 (CFR).

Section 518(e)(2) of the CWA authorizes EPA to treat an Indian tribe as a state (treatment in a similar manner as a state, or "TAS") for water resources "within the borders of an Indian reservation," for certain CWA programs, including sections 303 and 401. EPA regulations at 40 CFR 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) (codified at 40 CFR part 131). This approval applies to all surface waters that lie within the Pueblo of Santa Ana boundary and within certain additional lands held in trust by the United States for the benefit of the Pueblo of Santa Ana, as described in the application and identified herein. As described below, at the Pueblo of Santa Ana's request, this approval does not include or address the area known as the San Felipe Overlap.

This decision does not constitute an approval of the Pueblo of Santa Ana's water quality standards. EPA's review and approval or disapproval of the Pueblo of Santa Ana's water quality standards is a separate action under the CWA. Under section 303(c) of the CWA, states and authorized tribes 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 (40 CFR 131.6). In addition, CWA section 401 provides that states and authorized tribes may grant or deny "certification" for federally permitted or licensed activities that may result in a discharge to the waters of the United States. The decision to grant or deny certification is based on the state's or authorized tribe's determination regarding whether the proposed activity will comply with, among other things, water quality standards it has adopted under CWA section 303(c). If a state or authorized tribe denies certification, the federal permitting or licensing agency is prohibited from issuing a permit or license.

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

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

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

The Pueblo of Santa Ana's application for TAS for the water quality standards and certification programs under CWA section 303(c) and section 401 includes the following documents:

- Letter dated January 30, 2013, from Myron Armijo, Governor, Pueblo of Santa Ana, to Ron Curry, Regional Administrator, EPA Region 6, with an enclosure and supporting exhibits
  - The Pueblo of Santa Ana's Application for Authority to Establish and Implement Water Quality Standards and to Control Discharge Permitting Pursuant to Sections 303 and 401 of the Clean Water Act

- Exhibit A. Map or Legal Description of the Area over which the Pueblo Asserts Authority to Regulate Surface Water Quality
  - Exhibit B. Statement of Legal Counsel for the Pueblo of Santa Ana Describing the Pueblo's Authority to Regulate Water Quality within the Pueblo's Lands
  - Exhibit C. Title Documents for Trust Parcels Located in Section 25, Township 13N, Range 3E and Section 30, Township 13N, Range 4E, N.M.P.M.
- Letter dated February 3, 2014, from George Montoya, Governor, Pueblo of Santa Ana, to William Honker, Director, EPA Region 6 – Water Quality Protection Division, with two enclosures
  - Opinion of Counsel on Boundary and CWA Jurisdiction for the Eastern Angostura Border
  - Opinion of Counsel on CWA Jurisdiction in Former San Felipe Overlap
- Letter dated September 4, 2014, from George Montoya, Governor, Pueblo of Santa Ana, to Ron Curry, Regional Administrator, EPA Region 6, requesting that EPA temporarily exclude the area known as the “San Felipe Overlap” from EPA’s decision on the Pueblo’s TAS application
- Letter dated September 11, 2014, from Richard W. Hughes, Attorney at Law, with six enclosures
  - Exhibit A - map of overlap area and adjacent lands
  - Exhibit B - Notice of Filing of Plat of Survey, New Mexico. 79 Fed. Reg. 8205. (February 11, 2014)
  - Exhibit C - letter dated August 1, 2014, from Jesse Juen, State Director, Bureau of Land Management, to Timothy Humphrey, Sr., Stetson Law Offices, P.C.
  - Exhibit D – report dated June 19, 1897, from the United States Attorney, to the Attorney General
  - Exhibit E - map of parcels acquired by the Pueblo of Santa Ana from the Spaniards (previously used as an exhibit in the El Ranchito Case, before the Court of Private Land Claims)
  - Exhibit F - plat and patent of the El Ranchito Grant, dated October 18, 1909.
- U.S. Department of the Interior Solicitor's Opinion (M-37027), dated June 7, 2013, titled “Boundary Dispute: Pueblo of Santa Ana Petition for Correction of the Survey of the South Boundary of the Pueblo of San Felipe Grant,” referenced in the Opinion of Counsel on CWA Jurisdiction in Former San Felipe Overlap
- Excerpt from the Pueblo of Santa Ana’s FY2011 Quality Management Plan (EPA QTRAK #11-417), referenced in the Pueblo of Santa Ana’s application
- Excerpt from the Pueblo of Santa Ana’s Quality Assurance Project Plan (EPA QTRAK #11-064) for the surface water quality monitoring program, referenced in the Pueblo of Santa Ana’s application

## 2. Letters from EPA

- Letter dated February 25, 2013, from Ron Curry, Regional Administrator, EPA Region, to Myron Armijo, Governor, Pueblo of Santa Ana, acknowledging receipt of the request for TAS approval for the CWA section 303(c) and section 401 programs.

- Letter dated June 2, 2014, from Ron Curry, Regional Administrator, EPA Region 6 to Joseph E. Sandoval, Governor, Pueblo of San Felipe, acknowledging receipt of comments on the Pueblo of Santa Ana’s TAS application.
- Letter dated July 14, 2014, from William K. Honker, Director, EPA Region 6 – Water Quality Protection Division, to Governor George Montoya, Pueblo of Santa Ana, transmitting comments received during the comment process.
- Letter dated October 29, 2014, from William K. Honker, Director, EPA Region 6 – Water Quality Protection Division, to George Montoya, Governor, Pueblo of Santa Ana, acknowledging receipt of the request to temporarily exclude the area known as the “San Felipe Overlap” located near the southeast corner of the Pueblo from EPA’s decision on the TAS application.

### 3. Comments regarding Tribal authority

As provided at 40 CFR 131.8(c)(2), EPA provided notice to appropriate governmental entities<sup>1</sup> of the substance and basis of the Pueblo of Santa Ana’s assertion of authority, by letters dated March 24, 2014, along with Exhibit A from the application. The complete application and excerpts from the 1998 application for the CWA section 106 program were posted on an EPA Region 6 website during the comment period. EPA sent letters to the following entities:

- |   |  |
|---|--|
| • Pueblo of Cochiti   | • U.S. Forest Service - Regional Office          |
| • Pueblo of Isleta  | • U.S. Forest Service - Santa Fe National Forest |
| • Pueblo of Jemez   | • U.S. Department of Energy                      |
| • Pueblo of Sandia  | • U.S. Geological Survey - Water Science Center  |
| • New Mexico Environment Department                             | • Sandoval County                                |
| • New Mexico Indian Affairs Department                          | • Village of Jemez Springs                       |
| • New Mexico Energy, Minerals, and Natural Resources Department | • Jemez Valley Public Schools                    |
| • New Mexico Office of the State Engineer                       | • Town of Bernalillo                             |
| • New Mexico State Land Office                                  | • City of Rio Rancho                             |
| • New Mexico Department of Transportation                       | • Coronado Soil and Water Conservation District  |
| • Bureau of Indian Affairs - Albuquerque Area Office            | • Ciudad Soil and Water Conservation District    |
| • Bureau of Indian Affairs - Southern Pueblos Agency            | • Middle Rio Grande Conservancy District         |
| • Bureau of Land Management -State Office                       |  |
| • Bureau of Reclamation   |  |
| • Federal Highway Administration                                |  |
| • Indian Health Service   |  |
| • National Park Service   |  |
| • U.S. Army Corps of Engineers                                  |  |
| • U.S. Fish and Wildlife Service – Southwest Region             |  |
| • U.S. Fish and Wildlife Service – Ecological Services          |  |

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<sup>1</sup> 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’s regulations, EPA provided notice to all appropriate governmental entities in this case. EPA also exercised its discretion to provide direct notice to certain additional entities identified on the below list.

EPA received the following comments on the Pueblo of Santa Ana's application:

- U.S. Forest Service - Southwestern Region, letter dated April 8, 2014, from Calvin Joyner, Regional Forester
- New Mexico Environment Department, letter dated May 13, 2014, from Ryan Flynn, Secretary
- Bureau of Indian Affairs - Southwest Region, letter dated June 6, 2014, from William Walker, Regional Director

A Response to Comments is found in Appendix I of this document. Consistent with Agency practice, EPA also provided an opportunity for the public and entities not listed above, to review and comment on the assertion of authority in the Pueblo of Santa Ana's application. A public notice was published in the *Albuquerque Journal* on Sunday, March 23, 2014. The notice identified EPA's website with the Pueblo of Santa Ana's application and the opportunity to review documents at the Pueblo of Santa Ana's Department of Natural Resources (DNR) office. The notice also requested that comments be submitted to the New Mexico Environment Department by Wednesday, May 7, 2014, to be forwarded to EPA. Neither the New Mexico Environment Department, nor EPA, received any comments in response to the public notice.

#### 4. Tribal Consultation and Comments regarding Tribal authority

By letters dated March 25, 2014, EPA offered the Pueblo of San Felipe, the Pueblo of Zia and the Pueblo of Santo Domingo, the opportunity to consult and comment on EPA's review of the application submitted by the Pueblo of Santa Ana. Each of these three Indian tribes shares a common border with the Pueblo of Santa Ana and is thus also an appropriate governmental entity for purposes of EPA's notice and comment regulation. Copies of the Pueblo of Santa Ana's application materials from January 2013 and February 2014 were provided with each letter.

The Pueblo of San Felipe requested consultation with EPA, and a conference call with the Pueblo of San Felipe was held on Tuesday, May 13, 2014. The Pueblo of San Felipe also submitted information as identified below:

- Letter dated April 24, 2014, from Joseph E. Sandoval, Governor, Pueblo of San Felipe to William K. Honker, Director, EPA Region 6 - Water Quality Protection Division
- Letter dated May 6, 2014, from Pinu'u Stout, Natural Resources Director, Pueblo of San Felipe to William K. Honker, Director, EPA Region 6 Water Quality Protection Division, with enclosed disk
- Email dated May 13, 2014, from Debra A. Haaland, Tribal Administrator, Pueblo of San Felipe, to Christina Kracher, EPA Region 6 - Office of Environmental Justice and Tribal Affairs, with attachment (document related to letter dated May 6, 2014).
- Letter dated May 15, 2014, from Joseph E. Sandoval, Governor, Pueblo of San Felipe to Ron Curry, Regional Administrator, EPA Region 6

#### 5. Policy Statements

- *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (November 8, 1984).
- 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 Robert Perciasepe and Jonathan Cannon (March 19, 1998)
- *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs* (January 23, 2008)

## II. Requirements for Approval

Under CWA section 518(e) and the implementing regulation at 40 CFR 131.8(a), four requirements must be satisfied before EPA can approve an Indian tribe’s application for the water quality standards program under section 303(c) and water quality certification program under section 401. These are: (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 CFR 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 CFR 131.8(b)(6), where an Indian tribe has previously qualified for TAS under a different CWA program, the tribe need only provide the required information which 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, see 40 CFR 131.4(c). Tribes authorized to administer the CWA water quality standards program are also “affected states” under CWA section 402(b)(3) and (5) and 40 CFR 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, EPA can approve an application from an “Indian tribe” that meets the definitions set forth in CWA section 518(h) and 40 CFR 131.3(k) and (l). See 40 CFR 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 CFR 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 CFR 131.3(k).

Consistent with 40 CFR 131.8(b)(6), the Pueblo of Santa Ana’s application references the 1998 application for the CWA section 106 program, which included a citation to a Secretary of the Interior listing of all federally recognized Indian tribes in the United States at 62 Fed. Reg. 55270 (October 23, 1997). The Pueblo of Santa Ana is included in the Department of the Interior’s current list of federally recognized tribes. See 80 Fed. Reg. 1942 (January 14, 2015). Furthermore, as discussed below, the Tribe is exercising governmental authority over a reservation within the

meaning of the CWA. Thus, EPA has determined that the Pueblo of Santa Ana meets the requirements of 40 CFR 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 CFR section 131.8(b)(2) requires that the Indian 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; and (iii) identify the source of the tribal government's authority to carry out the governmental functions currently being performed.

Consistent with 40 CFR 131.8(b)(6), the Pueblo of Santa Ana's application refers to the governmental description in its application for the CWA section 106 program, which describes the Pueblo's form of government and the significant governmental functions it performs. In sum, the governing body consists of a Traditional Religious Council and a Traditional Tribal Council. Legislative power is vested in the Traditional Tribal Council, which has complete regulatory authority over all of the lands and persons within the Pueblo's exterior boundaries (except to the extent precluded by federal law). The Governor, Lieutenant Governor and Tribal Administrator handle external affairs subject to the directives of the Tribal Council and oversee the administrative and executive functions of the Pueblo. The Pueblo of Santa Ana has both a traditional tribal court system, with the Lieutenant Governor serving as chief judge, and a contemporary court.

The Pueblo of Santa Ana describes its inherent sovereign authority to regulate its citizens, lands and waters and to regulate nonmember activities within the Pueblo, which may impact the Pueblo's water resources. The Tribal Council, the Pueblo of Santa Ana's legislative body which is presided over by the Governor, is the duly recognized decision and policy making body for the Pueblo. The application describes that the Tribal Council exercises complete regulatory authority over all lands, waters and persons within the exterior boundaries of the Pueblo, except to the extent precluded by federal law. All uses of Pueblo land must be presented to and approved by the Tribal Council. Such approvals are set forth in Tribal Council resolutions which include language authorizing and directing the Governor of the Pueblo to execute documents (*e.g.*, lease, permit, license, right of way, or other form of agreement) on behalf of the Pueblo and, upon execution, require such documents to be transmitted to the Southern Pueblos Agency, Bureau of Indian Affairs, for approval in accordance with federal law. The Pueblo of Santa Ana exercises its authority over lessees, permittees, or licensees by conducting inspections, issuing citations and orders to correct deficiencies or otherwise come into compliance with agreement provisions or tribal regulation or risk enforcement or loss of legal right to continue with the activity subject to the agreement.

In furtherance of this authority, the Tribal Council has enacted numerous ordinances which regulate water usage and other water related matters within the Pueblo. The Tribal Council exercises its governmental powers by enacting ordinances, providing basic governmental services, and administering Tribal programs. The Tribal Council established the DNR in 1996 to manage environmental and natural resource programs, including CWA monitoring programs. The DNR is headed by a Director, and currently employs a staff of approximately 25 people.

On November 26, 2013, the Pueblo of Santa Ana adopted water quality standards by Tribal Council resolution. The Pueblo of Santa Ana has also adopted a Wildlife Conservation Code and Solid Waste Code, both of which include provisions for protection of water quality. Following approval of the TAS application, the Pueblo of Santa Ana intends to adopt a water quality code for implementation of water quality standards and enforcement under tribal law. In exercise of its governmental powers

generally, the Tribal Council has enacted several ordinances pertaining to such matters as business regulation, taxation, zoning, tribal investment accounts, gaming, gaming regulation and liquor. In addition, the Pueblo of Santa Ana provides numerous basic governmental services such as law enforcement, social services, and education.

The Pueblo of Santa Ana's submissions in its application and supplemental information, including the prior applications for the CWA section 106 and 319(h) programs and EPA approvals, adequately demonstrate that the Tribe's governing body is currently carrying out substantial governmental duties and powers over a defined area. Thus, EPA concludes that the Pueblo of Santa Ana meets the requirements in 40 CFR 131.8(a)(2) and (b)(2).

### **C. Jurisdiction over Waters within the Borders of the Pueblo of Santa Ana**

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

The Pueblo of Santa Ana's application includes, as Exhibit A, a map describing the area covered by the TAS application. Overall, the application covers an area of approximately 78,000 acres. Pueblos are inherently different from other tribes because their lands were often the subject of land grants from Spain dating back to the 1600s and are held largely in fee. The area covered by the Pueblo of Santa Ana's TAS application consists of Pueblo fee lands and lands which are held in trust by the United States for the Pueblo.<sup>2</sup> The application does not include any lands owned by non-members of the Pueblo.<sup>3</sup>

The Pueblo of Santa Ana boundaries covered by the current TAS application, as depicted in the map in Exhibit A of the application, are made up of the grants and purchases listed below.

- Original Spanish Land Grant - dates back to the 1600s and includes 15,400 acres. Was a square extending one league from each of the corners of the Mission Santa Ana. The Spanish land grant was confirmed by President Lincoln in 1864, ratified by Congress in 1869, and patented in 1883.
- The El Ranchito Grant - approved by the Court of Private Land Claims on December 7, 1900, and patented on October 18, 1934.<sup>4</sup>
- Claims confirmed by the Pueblo Lands Board - 20.197 acres within the El Ranchito Grant and 29.69 acres within the Felipe Gutierrez or Bernalillo Grant.<sup>5</sup>
- "550 tracts" (2001 trust properties):
  - Parcel No.1: 14.8767 acres - Lot 9 in Block A of the Unit 20 Industrial Park; Sec 25, T13N, R3E, City of Rio Rancho, Sandoval County.

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<sup>2</sup> For purposes of its programs, EPA treats as reservations Pueblos and trust lands validly set aside for the use of a tribe even if the lands have not been formally designated as a reservation. *See, e.g.*, 56 Fed. Reg. at 64881; 63 Fed. Reg. 7254, 7258 (February 12, 1998); *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991); *United States v. John*, 437 U.S. 634, 649 (1978); *Arizona Public Service Company v. Environmental Protection Agency*, 211 F.3d 1280, 1292-1294 (D.C. Cir. 2000), *cert. denied sub nom., Michigan v. EPA*, 532 U.S. 970 (2001); *HRI, Inc. v. EPA*, 198 F.3d 1224, 1249-54 (10th Cir. 2000).

<sup>3</sup>In its application, the Pueblo states that certain properties which the Pueblo Lands Board determined were validly held by non-Indians are not a part of the Pueblo for purposes of the application. Thus, Exhibit A does not include these lands or any other non-member owned fee lands. *See also*, CWA 106 TAS application, Exhibit 3.

<sup>4</sup> A portion of this grant includes an area known as the "San Felipe Overlap." As noted below, the Pueblo of Santa Ana requested that EPA not act at this time on the portion of its TAS application covering the San Felipe Overlap.

<sup>5</sup> See CWA 106 TAS application, Appendix 5 in Exhibit 3.



- Parcel No.2: 2.4707 acres – portion of Lot 23 within the NW 1/4 SW 1/4 NW 1/4 SW 1/4 of Section 30, T13N, R4E; located southwest of and adjacent to the southwest right of way line of U.S. Highway 550, Sandoval County.
- Parcel No.3: 1.1208 acres - portion of lot 22 within the NE 1/4 SW 1/4 NW 1/4 SW 1/4 of Section 30, T13 N, R4E; located southwest of and adjacent to the southwest right-of-way line of U.S. Highway 550, Sandoval County.
- Parcel No.4: 0.7661 acres – portion of Lot 16 within the SW 1/4 NW 1/4 NW 1/4 SW 1/4 of Section 30, T 13 N, Range 4 E; located southwest of and adjacent to the southwest right-of-way line of U.S. Highway 550, Sandoval County.
- Parcel No.5: 3.7976 acres - Tract lettered “A,” in Block lettered “A,” in Unit 20, Industrial Park, a subdivision in Section 25, T13N, R3E, City of Rio Rancho, Sandoval County.

By letter dated September 4, 2014, and until further notice by the Pueblo of Santa Ana, the Governor requested that EPA temporarily exclude the area known as the “San Felipe Overlap” located near the southeast corner of the Pueblo from EPA’s decision on the Pueblo of Santa Ana’s TAS application. The Pueblo of San Felipe has submitted comments to EPA asserting a competing claim to the San Felipe Overlap area, and that area is currently the subject of ongoing appeals relating to a Bureau of Land Management resurvey. The Pueblo of Santa Ana has reserved its option to request that EPA act on its TAS application with regard to the San Felipe Overlap once these appeals are final.<sup>6</sup>

EPA provided notice to appropriate governmental entities and the public of the lands over which the Pueblo of Santa Ana asserts jurisdiction as part of the review process for the application for the CWA section 303(c) and section 401 programs. No “competing or conflicting claim” to the boundaries identified was made, with the exception of the San Felipe Overlap, which is not being addressed in this decision.

EPA concludes that the Pueblo of Santa Ana has satisfied 40 CFR 131.8(b)(3)(i) by providing a map and a legal description of the area over which the Pueblo asserts authority to regulate surface water quality.

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

The Pueblo of Santa Ana’s TAS application includes a Statement of the Legal Counsel (“Statement”) of the Pueblo, which adequately describes the legal basis for the Pueblo’s inherent sovereign authority over all lands and resources, including water resources, within the Pueblo. (See Application, Exhibit B). The Statement describes the Pueblo of Santa Ana’s exercise of authority through the Tribal Council, which is presided over by the Pueblo’s Governor, over all lands, waters and persons within the Pueblo boundaries. The Statement cites relevant federal Indian law precedent supporting the Pueblo of Santa Ana’s exercise of inherent jurisdiction over the Pueblo’s membership and territories.

Eligibility for TAS for CWA sections 303(c) and 401 is limited to activities pertaining to waters within the Pueblo of Santa Ana and lands held in trust for the benefit of the Pueblo. The Pueblo’s TAS application states that there are no non-member owned fee lands within the Pueblo boundaries. The Statement does, however, include a description of certain non-member activities occurring on the Pueblo’s lands and describes the various consensual relationships through which such non-members are able to use Pueblo lands. The Statement also describes the importance of the Pueblo of Santa Ana’s waters and the potential impacts of non-member activities on the waters. The legal counsel

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<sup>6</sup> See letter from George Montoya, Governor, Pueblo of Santa Ana, to Ron Curry, Regional Administrator, EPA - Region 6 (September 4, 2014).

cites legal precedent demonstrating that the Pueblo could show authority over such non-member activities if needed.

EPA concludes that the Pueblo of Santa Ana has satisfied 40 CFR 131.8(b)(3)(ii).

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

The Pueblo of Santa Ana's TAS application asserts authority over all surface waters within the exterior boundaries of the Pueblo as described in Exhibit A to the application. The Pueblo has established water quality standards under tribal law for all surface waters within such exterior boundaries. The map included as Exhibit A of the application includes a depiction of the surface waters within the Pueblo. As detailed in the tribally-adopted water quality standards and the EPA-approved Nonpoint Source Assessment Report (see TAS application for CWA 319(h)), the major water bodies on the Pueblo include the Rio Grande, the Rio Jemez and wetlands associated with both water bodies. Other water bodies within the Pueblo boundaries include tribal irrigation ditches, and ditches operated by the Middle Rio Grande Conservancy District (Albuquerque Main Canal and Riverside Drain), unnamed ponds, arroyos, ephemeral streams and springs. Both the Nonpoint Source Assessment Report and the Nonpoint Source Management Plan further characterize and detail the hydrology and waters within the Pueblo, and highlight the importance of these water bodies to the Pueblo of Santa Ana.

EPA concludes that the Pueblo of Santa Ana has satisfied 40 CFR 131.8(b)(3)(iii).

### 4. Authority over Reservation Waters

CWA section 518(e)(2) authorizes EPA to treat a tribe in a similar manner as a state for water resources "within the borders of an Indian reservation." EPA has interpreted this provision to require that a tribe show authority over the water resources for which it seeks TAS approval. 56 Fed. Reg. at 64880. The Pueblo of Santa Ana has asserted that it has inherent authority to set water quality standards and issue certifications for all surface waters within the Pueblo boundaries as described in the application and supplemental information. As stated above, all of the lands covered by the TAS application are Pueblo fee lands or lands held in trust for the Pueblo of Santa Ana.

Under well-established principles of federal Indian law, a tribe retains attributes of sovereignty over both its lands and its members. *See, e.g., California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987); *U.S. v. Mazurie*, 419 U.S. 544, 557 (1975). Further, tribes retain the "inherent authority necessary to self-government and territorial management" and there is a significant territorial component to tribal power. *Merrion v. Jicarilla Apache Tribe*, 450 U.S. 130, 141-142. *See also White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 151 (1980) (significant geographic component to tribal sovereignty). These principles support the Pueblo of Santa Ana's assertion of inherent authority over its members and territories.

In addition, in situations where non-member activities take place on lands held by a tribe or tribal members, the case law confirms that a tribe retains significant authority over non-member activity. *See Merrion*, 455 U.S. at 141 (tribes retain the "inherent power necessary to tribal self-government and territorial management"), 144 (a tribe also retains its well-established traditional power to exclude nonmembers from tribal land, including "the lesser power to place conditions on entry, on continued presence, or on reservation conduct."); *Strate v. A-1 Contractors*, 520 U.S. 438, 454 (1997) (stating that "[w]e 'can readily agree,' in accord with *Montana*, 450 U.S. at 557, that tribes retain

considerable control over nonmember conduct on tribal land”); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333, 335 (1983) (noting that “[a] tribe’s power to exclude nonmembers entirely or to condition their presence on the reservation is equally well established” and “tribes have the power to manage the use of its territory and resources by both members and nonmembers”). *See also Plains Commerce Bank*, 128 S.Ct. at 2723 (“persons are allowed to enter Indian land only ‘with the assent of the [tribal members] themselves,’” quoting *Worcester v. Georgia*, 6 Pet. 515, 561 (1832)). Thus a tribe can regulate the conduct of persons over whom it could “assert a landowner’s right to occupy and exclude.” *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 651-652 (2001), quoting *Strate*, 520 U.S. at 456. *See also Plains Commerce Bank*, 128 S.Ct. at 2723, quoting *South Dakota v. Bourland*, 508 U.S. 679, 691 n. 11 (1993) (“Regulatory authority goes hand in hand with the power to exclude”).

The Pueblo of Santa Ana’s TAS application describes certain non-member activities on the Pueblo that have the potential to impact water quality. Specifically, the Statement notes the existence of, among other things, oil and gas utility companies and a gravel mining operation on the Pueblo’s lands. The Supreme Court in *Montana v. United States*, 450 U.S. 544 (1981), held that absent a federal grant of authority, tribes generally lack inherent jurisdiction over non-member activities on non-member fee lands, with two exceptions. The first *Montana* exception states that a tribe may have inherent sovereign authority over “the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements.” *Montana*, 450 U.S. at 565. The second *Montana* exception states that Indian tribes retain inherent sovereign power to exercise civil jurisdiction over non-member activities on fee lands within the reservation where non-member “conduct threatens or has some direct effect on the political integrity, the economic security, or health or welfare of the tribe.” *Id.* at 565-66. In analyzing tribal assertions of inherent authority over nonmember activities on Indian reservations, the Court has reiterated that the *Montana* test remains the relevant standard. *See, e.g., Strate*, 520 U.S. at 445 (describing *Montana* as “the pathmarking case concerning tribal civil authority over nonmembers”); *see also Nevada v. Hicks*, 533 U.S. 353, 358 (2001) (“Indian tribes’ regulatory authority over nonmembers is governed by the principles set forth in [*Montana*]”).

The Statement describes the various consensual relationships, including right-of-way agreements and leases, through which non-members are able to operate on the Pueblo’s lands. The Statement also describes the importance of water to the Pueblo of Santa Ana and its members and the various uses – including irrigation, livestock watering, fishing, ceremonial and religious purposes, and domestic uses – made of the scarce water resources on the Pueblo’s lands. The Statement asserts that regulation of water quality is crucial to ensure continuation of the Pueblo’s culture and lifestyle. Therefore, EPA believes that the Pueblo of Santa Ana could show that it has inherent sovereign authority over non-member activities that have the potential to affect the surface waters on the Pueblo’s lands under both *Montana* exceptions.<sup>7</sup>

##### 5. Conclusion Regarding Jurisdiction

Based on the above discussion, EPA concludes that the Pueblo of Santa Ana meets the requirements in 40 CFR 131.8(a)(3) and (b)(3).

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<sup>7</sup> EPA has not taken the position that it is necessary to analyze non-member activities on tribal lands, such as those covered in this application, to find that a tribe has inherent authority to set water quality standards for such areas. EPA believes, however, that as explained in this document, the Pueblo of Santa Ana could show authority over the area covered by the application under the *Montana* test.

## D. Capability

To demonstrate that a tribe has the capability to administer an effective water quality standards program, 40 CFR 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 capabilities.

The Pueblo of Santa Ana's application, along with activities completed under related projects, 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 Tribal Council established the DNR in 1996 "to manage environmental and natural resource programs." EPA approved the Pueblo of Santa Ana's TAS application under CWA section 518(e) for funding under the CWA section 106 water pollution control program in May 1998. EPA also approved the Pueblo of Santa Ana's application under the CWA section 319(h) program in September 2014. In addition, the Pueblo of Santa Ana has successfully implemented cooperative agreements under CWA section 104(b)(3), as well as under the General Assistance Program. The application notes that the Pueblo of Santa Ana has managed grants from U.S. Department of Housing and Urban Development and the Administration for Native Americans, along with Indian Self-Determination contracts and grants.

The DNR includes a staff of approximately 25 individuals and is organized into the following divisions: Water Resources, Range and Wildlife, Geographic Information Systems, and Restoration. The Manager of each division reports to the Director of the DNR, who reports to the Tribal Administration. The Pueblo of Santa Ana's Quality Management Plan includes a summary of the position descriptions for the DNR Director and Division Managers. Qualifications include a four-year degree and relevant work experience for DNR management positions, with similar requirements for staff in the Water Resources Division.

The Pueblo of Santa Ana has implemented a water quality monitoring program since 1998. Under the current program, DNR staff conducts ambient monitoring in surface waters for the following parameters: dissolved oxygen, pH, specific conductivity, temperature, turbidity, *Escherichia coli*, and several nitrogen and phosphorus compounds. The Pueblo of Santa Ana uploads monitoring data to EPA's Water Quality Exchange (WQX) and uses this information to prepare assessment reports. The Pueblo of Santa Ana also developed a Nonpoint Source Assessment and a Nonpoint Source Management Plan, which were approved by EPA in July 2014.


Following EPA-recommended approaches and drawing on its surface water monitoring information and experience, the DNR staff developed a set of draft water quality standards for consideration by Tribal leadership. Based on input from the Tribal Council and administration, the DNR prepared water quality standards for public review and initiated a public participation process to obtain input

on the proposed standards from neighboring Indian tribes, state agencies, federal agencies, local entities and the surrounding community. The Pueblo of Santa Ana held a public hearing on its proposed water quality standards on November 6, 2013; made appropriate revisions in response to comments received; and presented the standards to the Tribal Council for adoption on November 26, 2013. The water quality standards contain a complete set of designated uses, narrative and numeric criteria generally based on EPA's recommended criteria values, an antidegradation policy and general policies for implementation of standards. Throughout the development of the standards, the DNR staff demonstrated a clear understanding of the technical and programmatic issues needed to develop, maintain and implement a water quality standards program. Finally, the Pueblo of Santa Ana's application states that the Governor's office will be responsible for final actions for water quality certifications under CWA section 401, based on review of requests for certification by the DNR staff.

Based on the information provided by the Pueblo of Santa Ana that describes its capability to administer effective water quality standards and certification programs and the work completed by the DNR over the past 15 years, EPA concludes that the Pueblo of Santa Ana has met the requirements at 40 CFR 131.8(a)(4) and (b)(4).

### III. Conclusion

EPA has reviewed the Pueblo of Santa Ana's TAS application for purposes of CWA section 303(c) and section 401, as well as prior decisions approving the Pueblo of Santa Ana's TAS applications for purposes of CWA section 106 and section 319(h). EPA has assessed whether the application from the Pueblo of Santa Ana meets the eligibility criteria established by CWA section 518(e) and the applicable regulation. Based upon this review, EPA concludes that the Pueblo of Santa Ana has made the required demonstration to meet the eligibility and application requirements at 40 CFR 131.8(a)(1)-(4) and (b)(1)-(4) to administer the water quality standards program. Pursuant to 40 CFR 131.4(c), the Tribe is also eligible to the same extent as a state for the purposes of the water quality certification program under CWA section 401.



William K. Honker, P.E.

Director

EPA Region 6 – Water Quality Protection Division



Date

## Appendix I: Response to Comments

### Pueblo of Santa Ana's Application for Treatment in a Similar Manner as a State for the Clean Water Act Section 303(c) Water Quality Standards and Section 401 Certification Programs

The Pueblo of Santa Ana 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 CFR 131.8(c), the Agency notified appropriate governmental entities of, and provided them an opportunity to comment on, "the substance and basis of the Tribe's assertion of authority to regulate the quality of reservation waters." In addition, EPA offered the Pueblo of San Felipe, the Pueblo of Zia and the Pueblo of Santo Domingo the opportunity to consult and provide their views on EPA's review of the application submitted by the Pueblo of Santa Ana. Consistent with the Agency's policy and practice, EPA provided the Pueblo of Santa Ana an opportunity to respond to all comments received.

EPA received the following comments:

- Letter dated April 8, 2014, from Calvin Joyner, Regional Forester, U.S. Department of Agriculture Forest Service – Southwestern Region
- Letter dated April 24, 2014, from Joseph E. Sandoval, Governor, Pueblo of San Felipe
- Letter dated May 6, 2014, from Pinu'u Stout, Natural Resources Director, Pueblo of San Felipe, with enclosed disk
- Email dated May 13, 2014, from Debra A. Haaland, Tribal Administrator, Pueblo of San Felipe, with attachment (document related to letter dated May 6, 2014)
- Letter dated May 13, 2014, from Ryan Flynn, Secretary, New Mexico Environment Department
- Letter dated May 15, 2014, from Joseph E. Sandoval, Governor, Pueblo of San Felipe
- Letter dated June 6, 2014, from William Walker, Regional Director, Bureau of Indian Affairs – Southwest Region<sup>8</sup>

#### Summary of Comments and EPA's Responses

*Comment:* The New Mexico Environment Department and the U.S. Forest Service expressed support for approval of the Pueblo of Santa Ana's application. The New Mexico Environment Department also noted several recent projects for the protection of water quality undertaken by the State and the Pueblo of Santa Ana.

*Response:* EPA appreciates the support of the New Mexico Environment Department and the U.S. Forest Service. EPA recognizes the New Mexico Environment Department's cooperative efforts with the Pueblo of Santa Ana and the surface water quality programs of other Indian tribes. EPA supports continued cooperative efforts between the State and the Tribe.

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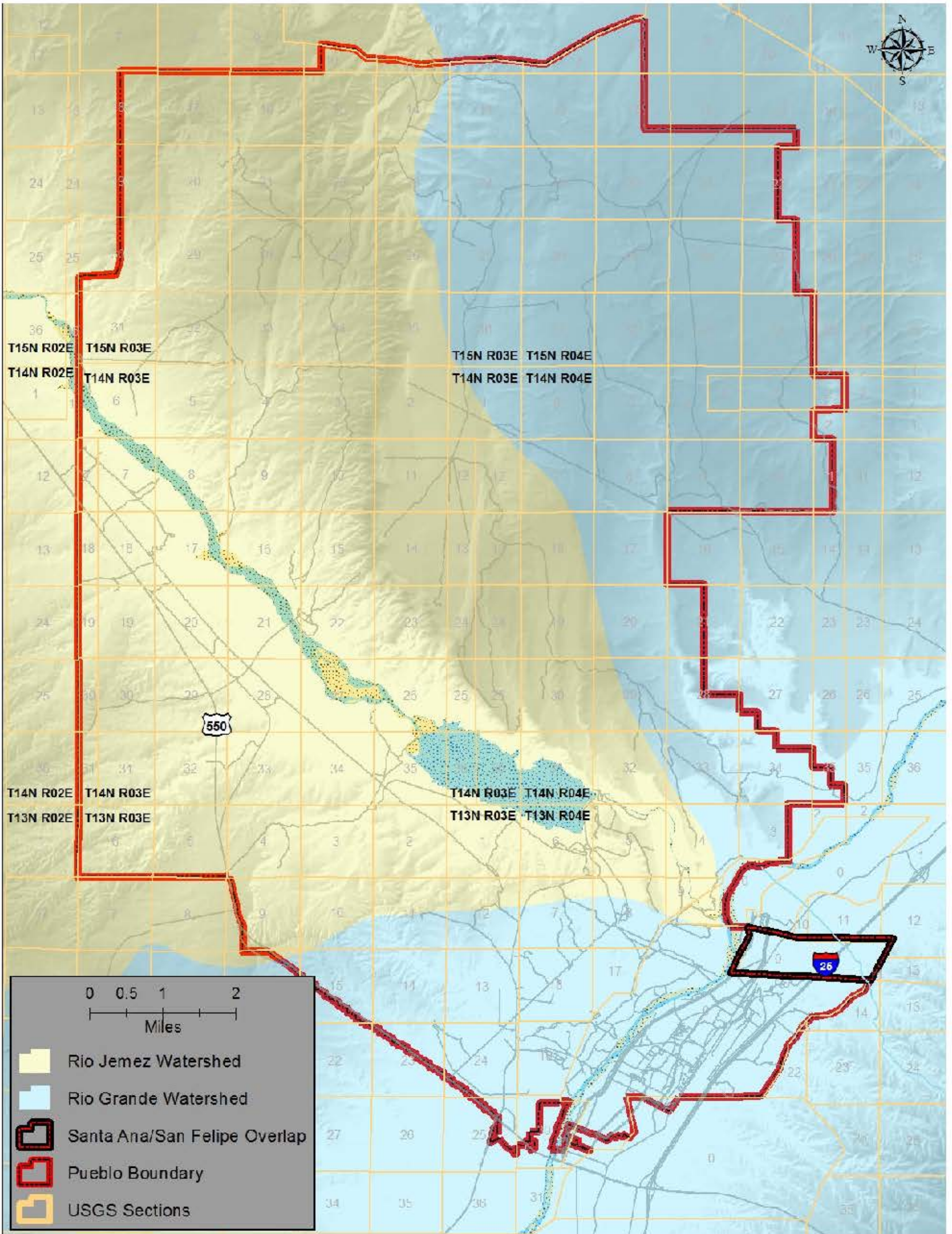
<sup>8</sup> Although this letter was submitted subsequent to the available comment period, EPA has exercised its discretion to include and consider the letter as part of our decision making.

*Comment:* The Pueblo of San Felipe expressed support for approval of the Pueblo of Santa Ana's application, for the lands that it recognizes as Pueblo of Santa Ana having conclusive jurisdiction. The Pueblo of San Felipe commented that approval of the area identified in the application as the "San Felipe Overlap" or the "El Ranchito Tract" would be premature during the Pueblo of San Felipe's administrative appeal to the Bureau of Land Management.

*Response:* By letter dated September 4, 2014, and until further notice by the Pueblo of Santa Ana, the Governor requested that EPA temporarily exclude the area known as the "San Felipe Overlap" located near the southeast corner of the Pueblo from EPA's decision on the Pueblo's TAS application. EPA's decision, therefore, does not include or address the San Felipe Overlap. EPA appreciates the support of the Pueblo of Felipe regarding approval of Pueblo of Santa Ana's TAS application as it applies to other areas.

*Comment:* The Bureau of Indian Affairs expressed support for approval of the Pueblo of Santa Ana's application, but noted that the Pueblo of Santa Ana's authority over the "San Felipe Overlap" is not effective, during the Pueblo of San Felipe's administrative protest to the Bureau of Land Management. The Bureau of Indian Affairs also noted that the Pueblo of San Felipe may appeal a decision from the Bureau of Land Management to the Interior Board of Land Appeals.

*Response:* As noted above, the Pueblo of Santa Ana requested that EPA temporarily exclude the area known as the "San Felipe Overlap" from the decision on the TAS application. EPA's decision, therefore, does not include or address the San Felipe Overlap. EPA appreciates the support of the Bureau of Indian Affairs regarding approval of Pueblo of Santa Ana's TAS application as it applies to other areas.



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- Rio Jemez Watershed
- Rio Grande Watershed
- Santa Ana/San Felipe Overlap
- Pueblo Boundary
- USGS Sections