

DECISION DOCUMENT
FOR
THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S APPROVAL
OF THE
**YUROK TRIBE OF THE YUROK
RESERVATION**
FOR TREATMENT IN A SIMILAR MANNER AS A STATE
UNDER CLEAN WATER ACT SECTION 518
FOR THE PURPOSES OF THE
WATER QUALITY STANDARDS AND CERTIFICATION PROGRAMS
UNDER
CLEAN WATER ACT SECTIONS 303(c) AND 401

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I. Background

A. Introduction

Section 303(c) of the Clean Water Act (“CWA”) requires states to develop, review and revise (as appropriate) water quality standards for surface waters of the United States. 33 U.S.C. § 1313(c). At a minimum, such standards must include designated water uses, water quality criteria to protect such uses, and an antidegradation policy. 40 C.F.R. § 131.6. In addition, Section 401 of the CWA provides that states may grant, condition, deny, or “waive certification” for federally permitted or licensed activities that may result in any discharge into the waters of the United States. 33 U.S.C. § 1341.

Section 518 of the CWA provides for the Environmental Protection Agency (“EPA” or “Agency”) to treat an eligible Indian Tribe in a similar manner as a state (“TAS”) to manage and protect water resources “within the borders of an Indian reservation” for certain CWA programs, including Section 303(c) water quality standards and Section 401 certification. 33 U.S.C. § 1377. EPA regulations establish the process by which EPA implements that provision and determines whether a Tribal application meets applicable TAS statutory and regulatory criteria for purposes of administering programs under Sections 303(c) and 401 of the CWA. *See* 40 C.F.R. §§ 131.4(c) and 131.8; 56 Fed. Reg 64876 (Dec.12, 1991); 59 Fed. Reg. 64339 (Dec. 14, 1994); 81 Fed. Reg 30183 (May 16, 2016).

This Decision Document provides the basis and supporting information for EPA’s decision to approve the Yurok Tribe’s TAS eligibility application (the “Application”) under Section 518 of the CWA and 40 C.F.R. Part 131 authorizing the Tribe to establish water quality standards pursuant to Section 303(c) of the CWA and certify federally permitted or licensed activities that may result in any discharge into waters of the United States pursuant to Section 401 of the CWA for the Tribe’s reservation areas covered by this decision. As described in further detail below, this approval applies to all surface waters that lie within the exterior borders of the Tribe’s formal Reservation except for land owned by Green Diamond Resources Company. This approval also applies to surface waters within the Klamath Lodge Compound, a parcel of Tribal trust land located outside the formal Yurok Reservation.

TAS approval does not constitute approval of any actual water quality standards. Rather TAS approval addresses only the Tribe’s eligibility to submit water quality standards to EPA for review under CWA Section 303(c). Development of such standards remains subject to all requirements of EPA’s regulations (including requirements for notice and comment), and such standards will still need to be submitted to EPA for review under Section 303(c) to ensure they meet applicable CWA and regulatory requirements. Approval of the Tribe for TAS authorization to administer the water quality standards and certification programs under CWA Sections

303(c) and 401 does immediately authorize the Tribe to issue certifications under CWA Section 401 (*see* 40 C.F.R. § 131.4 (c)), provided the Tribe designates a certifying authority as defined in 40 C.F.R. § 121.1(b). Approval also enables the Tribe to participate as a neighboring jurisdiction for the purposes of CWA Section 401(a)(2). In addition, Tribes authorized to administer the CWA water quality standards program are also “affected states” as that term is used in CWA Sections 402(b)(3) and (5) and 40 C.F.R. § 122.4(d). Affected states receive notice and have an opportunity to comment on certain permits issued under the CWA National Pollutant Discharge Elimination System program.

B. Application and Comments

Selected materials and documents relevant to this decision are included in Appendices I-IV of this decision document. Appendix I includes the Tribe’s September 29, 2023, Application for TAS for the purposes of the water quality standards and certification programs under Sections 303(c) and 401 of the CWA (without attachments). The 2023 TAS Application and supplemental materials were provided by the Tribe to clarify and amend the Tribe’s initial application submitted in July 20, 2016, not included as part of Appendix I, which collectively constitute and will be referred to as the Tribe’s “Application”. Appendix II includes a list of Reservation waters and relevant Reservation maps. Appendix III includes two prior TAS decisions EPA has previously finalized approving the Yurok Tribe’s TAS eligibility for purposes of certain grant programs under the CWA.

Finally, Appendix IV includes the sole written comment received by EPA in connection with the Tribe’s Application. As provided in 40 C.F.R. § 131.8(c)(2), the EPA Regional Administrator for Region 9, in letters dated April 10, 2024, notified appropriate governmental entities¹ of the substance and basis of the Tribe’s assertion of authority in its Application. The notice letters, as well as copies of the Application, were sent to the United States Forest Service Six Rivers National Forest, United States Bureau of Indian Affairs (“BIA”), Bureau of Land Management, Redwood National and State Parks, California State Governor Gavin Newsom, the Hoopa Valley Tribe, Karuk Tribe, Quartz Valley Indian Community of the Quartz Valley Reservation, and the Pulikla Tribe of Yurok People (formerly Resighini Rancheria) (“Pulikla Tribe”). In addition, consistent with Agency practice, EPA also provided the public with notice of and an opportunity to comment on the Tribe’s assertion of authority. EPA published notice of the Application and comment opportunity in the Eureka Times-Standard² on May 3, 2024. The State of California was the only appropriate governmental entity that submitted a comment,

¹ EPA defines “appropriate governmental entities” to consist of “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).

² The Eureka Times-Standard is a local daily newspaper covering the Northern Coast of California.

which was in support of the Tribe's Application and which requested that the Tribe coordinate with the State on potential future actions taken following the TAS approval. EPA did not receive any comments from the public.

On April 10, 2024, consistent with the notice to them as appropriate governmental entities and the *EPA Policy on Consultation with Indian Tribes*,³ EPA offered an opportunity for consultation regarding the Yurok Tribe's Application to the Hoopa Valley Tribe, Karuk Tribe, Quartz Valley Indian Community of the Quartz Valley Reservation, and the Pulikla Tribe. On April 15, 2024, the Pulikla Tribe accepted EPA's offer of consultation, and on July 10, 2024, EPA Region 9's Water Division Director and Water Division staff held a consultation teleconference meeting with the Pulikla Tribe's Chairperson, Tribal Council members, and Tribal staff. The Pulikla Tribe requested clarification about: (a) the scope of the Yurok Tribe's assertion of jurisdiction for purposes of the TAS Application on parcels outside of the formal Yurok Reservation; (b) how EPA would address lands owned by Green Diamond Resources Company; (c) whether any portion of the Klamath River was included within the formal Yurok Reservation; and (d) a hypothetical where two Tribes might have a claim to trust status for the same parcel. The Pulikla Tribe also made a general request for information about how CWA Sections 303(c) and 401 would be carried out in the context of adjacent Tribes or downstream Tribes. On December 11, 2024, EPA staff held a follow-up consultation meeting with the Pulikla Tribe's Tribal Council to provide the requested clarifications. In relevant part, EPA described the geographic scope of the Yurok Tribe's Application with regard to each of the areas and types of land raised by the Pulikla Tribe as well as the general issues EPA was considering regarding those areas and lands (all of which is described in detail below in Section II.C of this decision). EPA declined to explore the Pulikla Tribe's hypothetical scenario regarding multiple Tribal trust interests in a single parcel of land as that scenario is not raised by the Yurok Tribe's Application. The Pulikla Tribe made no further requests for clarification following these consultation meetings.

Consistent with Agency protocols, EPA staff also held a follow up call with Yurok Tribe's legal counsel and environmental staff to apprise them of comments received on the Application – *i.e.*, the State of California's written comment and the issues raised during consultation meeting with the Pulikla Tribe. No additional information was requested by EPA or submitted by the Yurok Tribe in response to comments.

C. Statutory and Regulatory Provisions

The following statutory and regulatory provisions govern this TAS decision:

³ EPA Policy on Consultation with Indian Tribes: https://www.epa.gov/system/files/documents/2023-12/epa-policy-on-consultation-with-indian-tribes-2023_0.pdf

1. Section 518 of the Clean Water Act, 33 U.S.C. § 1377, provides for EPA to treat an eligible Indian Tribe in a similar manner as a state if the Tribe meets the specified eligibility criteria.
2. 40 C.F.R. §§ 131.4(c) and 131.8 establish the regulatory requirements for a Tribe to obtain TAS approval and the procedures for EPA to process a Tribe's TAS application. *See Amendments to the Water Quality Standards Regulation That Pertain to Standards on Indian Reservations*, 56 Fed. Reg. 64,876 (Dec. 12, 1991); 59 Fed. Reg. 64,339 (Dec. 14, 1994); 81 Fed. Reg. 30183 (May 16, 2016).

D. Other Relevant Documents

The following documents are relevant to the TAS decision:

1. *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, November 8, 1984.
2. EPA Memorandum entitled "*EPA/State/Tribal Relations*," by EPA Administrator Reilly, July 10, 1991.
3. Memorandum entitled "*Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations*," by EPA Assistant Administrator Robert Perciasepe and General Counsel Jonathan Cannon, March 19, 1998.
4. Memorandum entitled "*Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs*", "by EPA Deputy Administrator Marcus Peacock, January 23, 2008.

II. Requirements and Findings for TAS Approval

Under CWA Section 518 and EPA's implementing regulation at 40 C.F.R. § 131.8(a), four requirements must be satisfied before EPA can approve a Tribe's application for treatment in a similar manner as a state for purposes of administering water quality standards under Section 303(c) and certifications under Section 401 of the CWA. 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 which are within the borders of the Indian

reservation and held by the Indian Tribe, within the borders of the Indian reservation and held by the United States in trust for Indians, within the borders of the Indian reservation and held by a member of the Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the 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 Act and applicable regulations.

EPA's regulation at 40 C.F.R. § 131.8(b) identifies what must be included in a Tribe's TAS application to administer the water quality standards program. Under 40 C.F.R. § 131.8(b)(6), where a Tribe has previously qualified for TAS under a different CWA or a Safe Drinking Water Act program, the Tribe need only provide the required information that has not been submitted in a previous application. For example, a Tribe that has previously shown that it meets the "government functions" requirement for the purposes of another EPA program generally need not make the showing again. *See* 59 Fed. Reg. 64339, 64340 (December 14, 1994) ("Simplification Rule").

A. Recognition by the Secretary of the Interior

The first requirement for TAS for purposes of Sections 303(c) and 401 of the CWA is that a Tribe is recognized by the Secretary of the Interior and meets the definitions in 40 C.F.R. §§ 131.3(k) and (l). 40 C.F.R. §131.8(a)(1). A Tribe must include in its application a statement that the Tribe is recognized by the Secretary of the Interior. 40 C.F.R. § 131.8(b)(1). In 40 C.F.R. § 131.3(l), the term "Indian Tribe" or "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." In 40 C.F.R. § 131.3(k), the term "Federal Indian Reservation" is defined as "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."

The Application states that the Tribe is recognized by the Secretary of the Interior. It is a federally recognized Tribe, listed in the current Department of the Interior published list of "Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs" as the "Yurok Tribe of the Yurok Reservation" *See* 89 Fed. Reg. 99,899, 99,902 (Dec. 11, 2024). Therefore, EPA has confirmed that the Yurok Tribe, whose Reservation is located within Humboldt and Del Norte Counties, California, is recognized by the Secretary of

the Interior and meets the definitions in 40 C.F.R. §§ 131.3(k) and (l), and thus meets the requirements in 40 C.F.R. § 131.8(a)(1) and (b)(1) for TAS approval.⁴

B. Substantial Governmental Duties and Powers

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

Consistent with 40 C.F.R. § 131.8(b)(6) and the Simplification Rule, the Tribe's Application relies on EPA's prior approvals of the Tribe's TAS applications for CWA Section 106 Water Pollution Control Program and CWA Section 319 Nonpoint Source Pollution Control grant eligibility, which found the Tribe had adequately described the form of Tribal government, its governmental functions, and the source of Tribal authority to carry out those functions. Those approvals are included in Appendix III of this TAS Decision Document. The Tribe's governance structure and its related governmental functions have not changed since the prior TAS approvals.

As background and for additional support, EPA summarizes the Tribe's governmental structure here. The Tribe's Application includes detailed information, appendices and other documents that contain narrative descriptions of the structure, duties, and powers of the Tribe's government. The Yurok Tribe is composed of the Yurok People who have always lived and managed the land along the Pacific coast and inland along the Klamath River now known as Yurok Ancestral Territory. The Council governs the Yurok Tribe under authority delegated by the Yurok people. The Yurok Tribe is the largest federally recognized Tribe in California with over 6,400 members. The Council is composed of nine members, including a Tribal Chairperson and Vice Chairperson who serve at large and seven Councilmembers representing seven districts. The Yurok Tribe administers a wide array of services to the Tribal membership and others within its jurisdiction through numerous departments and programs. Currently, there are 30 organized Tribal departments which employ a staff of over 350 full time and seasonal

⁴ Additional information regarding the Tribe's Reservation and authorities is also provided below in Sections II.B and II.C.

employees. Tribal departments include among others, Environmental, Cultural Preservation, Education, Fisheries, Forestry, Law Enforcement, Planning and Community Development, Self-Governance, Office of the Tribal Attorney, Prosecutor's Office, and Wildlife.

The Yurok Constitution expressly delegates authority from the Yurok membership to the Council and authorizes the Council to exercise all legislative powers with "authority to enact legislation, rules and regulations" to further Tribal objectives. Those objectives enumerated in the Preamble of the Yurok Constitution, include providing for the "health, education, economy, and social wellbeing" of its members and restoring, enhancing, and managing all natural resources. The Council also maintains constitutional authority to "administer and regulate affairs, persons with transactions within Tribal Territory" and to manage Tribal Lands. The Yurok Constitution vests judicial power in a Tribal Court to be established by ordinance. The Tribal Court is to give to the extent possible "full recognition and weight to Tribal customs, including traditional methods of mediation and dispute resolution." The Tribal Council put the Constitutional provision into effect by creating a Tribal Court under the Judicial Branch Ordinance. The Judicial Branch Ordinance vests the Tribal Court with jurisdiction throughout the entire Yurok Reservation to hear matters related to the Yurok Constitution and to construe and enforce Tribal ordinances and policies. The Tribal Court maintains jurisdiction over Tribal members and over non-members whose actions, presence, or consent place them within Tribal Court jurisdiction. For legislative and other major actions, the Tribal government abides by the Yurok Tribe Public Hearing Ordinance. The Ordinance requires that the Tribe provide 7 days' prior notice and at least two public hearings prior to adopting new legislation. This ordinance ensures Tribal members maintain input and participation in adopting legislation or major actions.

The Yurok Tribal government formed its first elected Tribal Council in 1994 and has since expanded its capacity and performs a variety of functions in service to the Tribal membership through its multiple departments and programs. Since the passage of the Hoopa Yurok Settlement Act (HYSA), the Yurok Tribe has enrolled over 6,400 Tribal members and acquired over 65,000 acres of land, 18,000 of which lie within the Yurok Reservation. The Tribe has developed government ordinances on fishing, environmental protection, cultural protection, preservation, land use, social services, and enrollment and elections, among others. The Tribe has worked towards resolution on major Tribal initiatives, extensive water quality monitoring efforts, the recent Klamath River Dam removal, natural resources protection, and fisheries management and restoration.

EPA has determined that, based upon the Tribe's current Application and EPA's prior approvals of the Tribe's CWA Section 106 Water Pollution Control TAS application in June 1997

and CWA Section 319 Nonpoint Source Pollution Control TAS application in March 2000, the Tribe has described and demonstrated that the Tribal governing body is currently carrying out substantial governmental duties and powers. The Tribe thus meets the requirements in 40 C.F.R. §§ 131.8(a)(2) and (b)(2) for TAS approval.

C. Jurisdiction Over Waters Within the Borders of the Tribe's Reservation

The third requirement applicable to Tribal TAS applications for water quality standards under Section 303(c) and certifications under Section 401 is that the water quality standards program to be administered by the Tribe must pertain to the management and protection of water resources that are "within the borders of the Indian reservation and held by the Indian Tribe, within the borders of the Indian reservation and held by the United States in trust for Indians, within the borders of the Indian reservation and held by a member of the Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the Indian reservation." 40 C.F.R. § 131.8(a)(3). To demonstrate that this requirement is met, the regulations require that the Tribe submit a statement of its authority to regulate water quality. The statement should include: (i) a map or legal description of the area over which the Tribe asserts authority over surface water quality; (ii) a statement by the Tribe's legal counsel (or equivalent official) that describes the basis for the Tribe's assertion of authority, which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the Tribe's assertion of authority; and (iii) an identification of the surface waters for which the Tribe proposes to establish water quality standards. 40 C.F.R. § 131.8(b)(3).

1. Map or Legal Description

a. Reservation Lands For Which EPA Is Approving TAS Application

i. The Formal Yurok Reservation

The Yurok Tribe is located within Humboldt and Del Norte Counties, California. The lands that ultimately became the Yurok Reservation have a complex history, with various configurations of Tribal reservations being established by Executive Orders beginning in 1855.⁵ To resolve lingering disputes over boundaries and ownership,

⁵ The Klamath River Reservation was established by Executive Order of November 16, 1855, and was initially intended to extend from the mouth of the Klamath River upstream 45 miles to the Hoopa Valley Reservation. However, the reservation as finally defined left a gap between the Klamath River Reservation and the Hoopa Valley Reservation. The Klamath River Reservation was redefined by Executive Order dated October 16, 1891, which added the gap lands (the "Extension") to the Klamath River Reservation.

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Congress enacted the Hoopa Yurok Settlement Act (HYSA) in 1988.⁶ The HYSA established the Yurok Reservation and defined it by reference to the Executive Order of October 16, 1891 (excluding the Resighini Reservation, now the Pulikla Reservation).

The Yurok Reservation is, roughly, an area one mile on each side of the Klamath River from the mouth of the river at the Pacific Ocean upstream to the Hoopa Valley Reservation. Pursuant to the HYSA, the Bureau of Indian Affairs published the legal boundaries for the Yurok Reservation in a Federal Register announcement (Notice, 54 Fed. Reg. 19465 (May 5, 1989)) as follows: “The area of land known as the “Extension” defined as the Reservation Extension under the Executive Order of October 16, 1891, to include a tract of country one mile in width on each side of the Klamath River and extending from the limits of the Hoopa Valley Reservation to the Pacific Ocean, excluding the Resighini Rancheria as provided in section 11 paragraph (b) of the Act of October 31, 1988 (Pub. L. 100- 580), constitutes the Yurok Reservation. The exterior boundaries of the Yurok Reservation are defined, in part, by field notes of survey and plats as surveyed by the General Land Office, including but not limited to those plats approved April 8, 1904, all within Township 9 North, Ranges 3 and 4 East; Township 10 North, Ranges 3 and 4 East; Township 11 North, Ranges 2 and 3 East; Township [sic] 12 North, Range 2 East; Township 13 North, Range 2 East; Township 14 North, Range 1 East; and those plats approved April 8, 1929, January 29, 1931, and July 1, 1931, all within Township 9 North, Range 4 East and those dated August 26, 1905, all within Township 13 North, Range 1 East, Humboldt Meridian, Humboldt County, California. The Smith-Bissell Survey approved on July 19, 1888, shall be recognized for purposes of establishing the common boundary between the Yurok and Hoopa Valley Reservations.”

The Application contains detailed maps and descriptions of the formal Yurok Reservation. *See* Application, Appendix P (generally) and Appendices S to Y (segments). The formal Reservation is nearly 56,000 acres and is composed of an assortment of Tribal trust, Tribal fee, allotment, Tribal member fee, and nonmember fee, county, state and federal government lands.

With one notable exception, the Yurok Tribe’s Application seeks TAS eligibility, and this Decision Document approves the Tribe’s eligibility, to administer CWA Sections 303(c) and 401 over the entire formal Yurok Reservation. That exception is that the Yurok Tribe elected not to include lands currently owned by the Green Diamond Resource Company (“Green Diamond”) within the scope of its Application at this time. EPA is, therefore, not including any such Green Diamond lands within the scope of this Decision. These lands are indicated on maps in Appendix Q of the Application, and

⁶ Hoopa-Yurok Settlement Act, Pub. L. No. 100-580, 102 Stat. 2924, 2926 (1988).

Green Diamond parcels are identified in Appendix NN of the Application. EPA is aware that the Yurok Tribe is working cooperatively with Green Diamond on land acquisition issues and that the Tribe may supplement its TAS Application in the future to include any newly acquired lands. EPA would address any such lands in a separate TAS review and decision.

ii. Klamath Lodge Compound

The Yurok Tribe also included a single parcel exterior to the formal Yurok Reservation boundary within the scope of its TAS Application. This parcel is known as the Klamath Lodge Compound and is held in trust by the United States on behalf of the Tribe. A map of this parcel (APN 127-070-024) depicting the parcel boundaries in relation to the formal Yurok Reservation and its legal description is included as Appendix S of the Application. The Klamath Lodge Compound is approximately 14 acres located in Del Norte County. The Tribe has provided information verifying that the Bureau of Indian Affairs in the U.S. Department of the Interior has taken title on behalf of the Yurok Tribe to the Klamath Lodge Compound.⁷ Consistent with applicable judicial precedent and principles of federal law, such Tribal trust lands qualify as informal reservations and thus are within the definition of “Federal Indian reservation” at section 518(h)(1) of the CWA and 40 C.F.R. § 131.3(k) and have the same status as formal reservations for purposes of Tribal TAS eligibility under the CWA – which requires that any lands included within the scope of a Tribe’s TAS eligibility qualify as Indian reservation lands.⁸ Accordingly, EPA is including the Klamath Lodge Compound within the geographic scope of this TAS approval.

The Yurok Tribe has satisfied the requirement to provide maps and legal descriptions of the formal Yurok Reservation and the Klamath Lodge Compound. 40 CFR Section 131.8(b)(3)(i).

b. Lands for Which EPA Is Not Approving TAS Application At This Time

i. Phase I and Phase II Lands Located Outside of the Formal Yurok Reservation

The Yurok Tribe has undertaken, and continues to undertake, an extensive land acquisition program. This program is discussed at length in the supplemental Tribal Attorney letter included in the Application as Appendix Z. The Tribe has asked EPA to include in the Agency’s TAS review certain lands that the Tribe either has acquired, or that the Tribe seeks to acquire, referred to as Phase I and Phase II Lands. These lands

⁷ See 77 Fed. Reg. 77007 (Dec. 31, 2012).

⁸ See, e.g., 56 Fed. Reg. at 64881; 63 Fed. Reg. 7254, 7257-58 (Feb. 12, 1998); 81 Fed. Reg. at 30192; *Arizona Public Service Co. v. EPA*, 211 F.3d 1280, 1292-94 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 970 (2001).

are shown in Appendix R of the Application. Taken together, the total area of the Phase I and Phase II Lands amounts to approximately 47,000 acres.

As indicated on the map at Appendix R to the Application, certain Phase I and Phase II parcels extend into the formal Yurok Reservation. To the extent that land in these parcels is within the exterior boundaries of the formal Reservation, they qualify as reservation lands and are properly included within the scope of the Tribe's TAS eligibility, as discussed above and below in the EPA findings on the formal Yurok Reservation.

However, the Tribe has also requested that EPA include within the scope of the Tribe's TAS eligibility certain Phase I and Phase II Lands located outside of the boundaries of the formal Yurok Reservation. In particular, the Tribe suggests that these lands constitute "informal reservation" lands for purposes of TAS under the CWA. The Application indicates, however, that while the Phase I parcels and some of the Phase II parcels have been acquired by the Tribe, they have not been taken into trust by BIA. And with regard to the remaining Phase II parcels, they have neither been acquired by the Tribe, nor taken into trust by BIA. These lands do not, therefore, currently constitute "informal reservation" lands and are not currently eligible for TAS status under the CWA. Accordingly, EPA is not, at this time, including the Phase I and Phase II Lands located outside of the boundaries of the formal Yurok Reservation within the scope of this TAS approval. EPA will continue to work with the Tribe and with BIA as the Tribe's land acquisition process moves forward. To the extent additional Tribal land acquisitions are taken into trust, the Tribe may supplement its TAS application to include such lands, and EPA would conduct a separate TAS review at that time.

ii. Additional Parcels Located Outside of the Formal Yurok Reservation

The Tribe initially included in its TAS Application two additional contiguous parcels that are Indian allotment lands located outside the boundaries of the formal Yurok Reservation.⁹ These parcels are indicated on the maps in Appendices P and Q of the Application. The Tribe, in its Email from Louisa McCovey, Yurok Tribe's Environmental Director, dated November 5, 2024, clarified that these parcels are not at this time held in trust for the benefit of the Tribe. They do not, therefore, currently have reservation status, and EPA is not including these parcels within the geographic scope of this TAS approval.

⁹ Indian allotments are another category of Indian country (see 18 U.S.C. § 1151(c)) that can be located either within, or outside, the boundaries of an Indian reservation. When located within a reservation, an allotment will also qualify as Indian reservation land. However, where an allotment is located outside of any reservation boundary (as is the case with the two parcels described here), it would not generally have reservation status and would not be eligible for TAS under the CWA.

2. Statement Describing the Basis for The Tribe's Assertion of Authority

The Tribe, in its Supplemental Letter from Interim General Counsel McMahon dated July 20, 2016, and again in its Letter from Associate General Counsels Meyer and Mesher dated September 29, 2023, stated that it is relying on the express congressional delegation of authority to eligible Indian Tribes to administer CWA regulatory programs contained in CWA Section 518 as the basis for the Tribe's authority to administer these CWA programs. In light of the congressional delegation of authority, the main focus in determining the extent of an applicant Tribe's jurisdiction for CWA regulatory purposes is identifying the geographic boundaries of the Indian reservation area over which the congressionally delegated authority would apply. *See* 81 Fed. Reg. at 30194.

The Tribe is seeking TAS eligibility with respect to surface waters located within the formal Yurok Reservation (excluding the Green Diamond lands described above) and within the Klamath Lodge Compound Tribal trust (*i.e.*, informal reservation) parcel located outside of the formal Yurok Reservation. The geographic boundaries of these areas are discussed above in Sections II.C.1.a.i and ii. With respect to these areas, the Tribe asserts in its Application that there are no limitations or impediments to its ability to accept and effectuate the congressional delegation of authority under the CWA. EPA received no comments from appropriate governmental entities or the public identifying any impediments to the Tribe's jurisdiction, and EPA is not otherwise aware of any limitation or impediment. EPA therefore concludes that the Tribe has properly asserted the congressional delegation of authority to regulate surface water quality for the areas covered by the Application within the formal Yurok Reservation and the Klamath Lodge Compound and has satisfied the application requirement of 40 C.F.R. § 131.8(b)(3)(ii).

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

In its Application, a comprehensive list of surface waters within the Yurok Reservation is provided (Appendix AA). The Yurok Tribe identifies, all surface waters within the formal Yurok Reservation and Klamath Lodge Compound for which it proposes to establish water quality standards in the future. Although many of the surface waters are unnamed, the Tribe has assigned all waters internal to the formal Yurok Reservation an identification number. Therefore, EPA has determined that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(iii) by identifying the surface waters over which it proposes to establish water quality standards.

4. EPA's Findings on the Tribe's Assertion of Jurisdiction Over "Waters Within the Borders" of the Reservation

Based upon the information contained in the Application, EPA finds that the Yurok Tribe satisfies the requirements for TAS approval set forth in 40 C.F.R. §§ 131.8(a)(3), (b)(3) for the reservation lands included within the scope of this TAS Decision Document.

D. Capability

The fourth and final requirement to approve a Tribal TAS application for water quality standards under Section 303(c) and certifications under Section 401 of the CWA is that a 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. See 40 C.F.R. § 131.8(a)(4). To demonstrate that a Tribe has the capability to administer an effective water quality standards program, 40 C.F.R. § 131.8(b)(4) requires that the Tribe's application include a narrative statement of the Tribe's capability. The narrative statement should include: (i) a description of the Tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act, the Indian Mineral Development Act or the Indian Sanitation Facility Construction Activity Act; (ii) a list of existing environmental and public health programs administered by the Tribal governing body and copies of related Tribal laws, policies, and regulations; (iii) a description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the Tribal government; (iv) a description of the existing, or proposed, agency of the Tribe that will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards; and (v) a description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan that proposes how the Tribe will acquire additional administrative and technical expertise. See 40 C.F.R. §§ 131.8(b)(4)(i)-(v).

As discussed above, the Tribal Council is empowered to pass all Tribal laws and regulations necessary to protect the health, safety, and welfare of the Tribe. The Yurok people, inherent sovereignty, and the Yurok Constitution are the sources of the Tribal government's authority to carry out current governmental functions and develop government ordinances under Tribal law. The Yurok Tribe's authority to regulate water quality is governed by the Yurok Constitution, which maintains Tribal jurisdiction throughout the Yurok Reservation. In 2004, the Yurok Tribe adopted the Yurok Tribe Water Pollution Control Ordinance (WPCO) and Water Quality Control Plan (WQCP) for the Yurok Reservation by Resolution 04-46. The WPCO and WQCP apply to all federal, state, county, and Tribal government actions that have the potential to affect waters of

the Yurok Reservation. The WPCO authorizes the Yurok Tribe Environmental Department (YTED) to enforce its provisions.

The Yurok Tribe Fiscal Department is responsible for the management of all Tribal funds and accounts for over 650 projects. It coordinates the annual Tribal Audit, the 401k retirement plan audit and program audits. In addition, the Fiscal Department maintains property and equipment records. The YTED is primarily responsible for administering Tribal environmental programs. YTED's mission is to protect and manage the land, air, and water resources of the Yurok Reservation for the benefit of current and future generations of Tribal members. YTED implements environmental monitoring, data collection, management, and reporting to EPA for the Yurok Reservation. In addition, YTED oversees regulatory actions subject to Yurok Tribal environmental codes and ordinances for the Yurok Reservation. EPA finds that the Tribe has described and maintains adequate general managerial experience, an accounting system, and governmental structure; provided a list of existing environmental and public health programs administered by the Tribe; and has extensive experience managing a variety of environmental and public health programs including water quality programs, and, therefore, has satisfied the application requirements of 40 C.F.R. §§ 131.8(b)(4)(i)-(iii).

Regarding the application requirements of 40 C.F.R. §§ 131.8(b)(4)(iv)-(v), the YTED will assume the responsibilities to review, implement, and revise water quality standards. The Tribe's YTED began their water quality monitoring program on the Reservation in 1997. In relation to its water quality work, YTED is dedicated to the monitoring and protection of water quality and water resources of the Tribe, including the Klamath River. YTED has developed a Nonpoint Source Management Plan, outreach materials specific to the Tribe's protection of the Klamath Basin Watershed, and a Quality Assurance Program Plan for extensive water quality monitoring parameters, including biomonitoring. The YTED is also an active member of the Klamath Basin Tribal Water Quality Consortium. In undertaking these activities, the environmental staff's program capacity and technical expertise has grown significantly in water quality monitoring, assessment, data management, reporting, and permitting. The YTED has developed a widespread water quality and hydrologic program covering the mainstem Klamath River, the Klamath River Estuary, numerous minor Klamath River tributaries, and the Trinity River. The YTED is administered by a director and consists of five divisions: Community and Ecosystems; Water; Pollution Prevention; Enforcement, Response, and Education; and Food Sovereignty. In addition to its numerous efforts discussed previously, YTED was delegated authority to regulate water quality by the Yurok Tribal Council in the WPCO and WQCP.

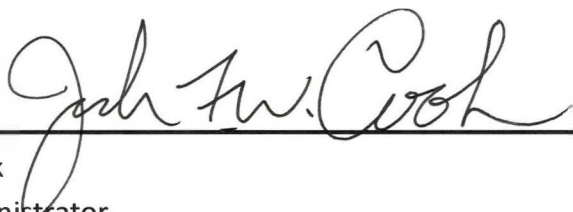
The YTED will also be responsible for providing water quality certifications on federally licensed or permitted activities that may result in any discharge into waters of the United States

under CWA Section 401. The Tribe intends to establish a process for CWA Section 401 certifications where, after a thorough analysis by the Tribe's YTED staff, the Director of the Tribe's Environmental Department will be responsible for any final action regarding CWA Section 401 requests for certification. Petitions for review of any final action, such as the denial of a CWA Section 401 request for certification, will be presented to Tribal Council.

EPA finds that the Tribe has demonstrated that it has the capability to administer the CWA Sections 303(c) water quality standards and 401 certification programs and has met the requirements of 40 C.F.R. §§ 131.8(a)(4) and (b)(4).

III. Conclusion

EPA has determined that the Yurok Tribe has met the requirements of CWA Section 518 and 40 C.F.R. § 131.8, and therefore approves the Tribe's Application for TAS to administer the CWA Section 303(c) water quality standards program and its implementing regulations set forth at 40 C.F.R. § 131 for the lands within the boundaries of the formal Yurok Reservation (except the Green Diamond lands) and within the Klamath Lodge Compound. Consistent with 40 C.F.R. § 131.4(c), the Tribe is also eligible to the same extent as a state for the purpose of providing certifications under CWA Section 401 and its implementing regulations set forth at 40 C.F.R. § 121. By virtue of these decisions, the Tribe will also be an "affected state" within the meaning of CWA Sections 402(b)(3) and (5) and its implementing regulations at 40 C.F.R. § 122.4(d).



Josh F.W. Cook
Regional Administrator

Date 7-1-25