

DECISION DOCUMENT
FOR
THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S APPROVAL OF
RESIGHINI RANCHERIA
FOR TREATMENT IN A SIMILAR MANNER AS A STATE
UNDER CLEAN WATER ACT SECTION 518
FOR 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, or deny “certification” for federally permitted or licensed activities that may result in a discharge to the waters of the United States. 33 U.S.C. § 1341.

Section 518 of the CWA authorizes the Environmental Protection Agency (“EPA”) to treat an eligible Indian tribe as a state (treatment in a similar manner as a state or “TAS”) to manage and protect water resources “within the borders of an Indian reservation” for certain CWA programs, including Sections 303(c) water quality standards and Section 401 certification. 33 U.S.C. § 1377. EPA regulations establish the process by which EPA implements that authority and determines whether to approve a tribal application for TAS 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 under Section 518 of the CWA and 40 C.F.R. Part 131 the TAS eligibility application (the “Application”) from the Resighini Rancheria (hereinafter “Tribe”) to be authorized to establish water quality standards pursuant to Section 303(c) of the CWA and certify federally permitted or licensed activities pursuant to Section 401 of the CWA for the areas covered by the Tribe’s Application and this decision. This approval applies to all surface waters that lie within the exterior borders of the trust parcels (the “Approved TAS Reservation Parcels”), as described in the Application and identified herein and in Appendix II. TAS approval does not constitute approval of any actual water quality standards, but rather TAS approval addresses only the Tribe’s eligibility to submit water quality standards to EPA for approval under CWA Section 303(c). Development of such standards would remain subject to all requirements of EPA’s regulations (including requirements for notice and comment), and such standards would still need to be submitted to EPA for review under Section 303(c) to ensure they meet applicable CWA and regulatory requirements. However, approval of the Tribe for TAS authorization to administer water quality standards and certification programs under CWA Sections 303(c) and 401 immediately authorizes 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 described in 40 C.F.R. § 121.1(e). In addition, tribes authorized to administer the CWA water quality standards program are also “affected states” as the term is used in CWA Sections 402(b)(3) and (5) and 40 C.F.R. § 122.4(d). As “affected states,” they receive notice and an opportunity to comment on certain permits issued under the CWA National Pollutant Discharge Elimination System program.

B. Application and Comments

Selected materials and documents relevant to the decision are included in Appendices I-III. Included are the Tribe's May 2018 application for TAS for purposes of the water quality standards and certification programs under Sections 303(c) and 401 of the CWA, supplemental materials provided by the Tribe to clarify the original application submitted in June 2020, and additional materials provided by the Tribe during EPA's review of the submission, which collectively constitute and will be referred to as the Tribe's "Application."

As provided in 40 C.F.R. § 131.8(c)(2), the EPA Regional Administrator for Region IX notified appropriate governmental entities in an August 11, 2020 letter 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"), Redwood National and State Parks, Governor Gavin Newsom of the State of California, and the Yurok 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. The public notice was published in The Del Norte Triplicate on August 21, 2020. Finally, EPA conducted additional outreach to local governments. Except for the Yurok Tribe (see below), no comments were received from the governmental agencies or local governments.

On October 8, 2020, consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*¹, EPA offered an opportunity for consultation regarding the Resighini Rancheria's assertion of authority to administer the water quality standards and certification programs under the Clean Water Act to the Yurok Tribe, a tribe contiguous to the Resighini Rancheria. On November 8, 2020, the Yurok Tribe accepted the offer of consultation and on December 4, 2020, EPA's Water Division Director Tomás Torres and other EPA Region IX staff held a consultation teleconference meeting with Yurok Tribe's Chairman Joseph James, tribal council members and tribal environmental staff. On April 13, 2021, the Yurok Tribe submitted comments pertaining to the Tribe's Application. On April 23, 2021, EPA staff held a follow up call with the Yurok Tribe's legal counsel and environmental staff to clarify and discuss the Tribe's submitted comments. EPA's response to the Yurok Tribe's comments are discussed in Appendix IV.

C. Statutory and Regulatory Provisions

The following are the statutory and regulatory provisions governing this TAS decision:

1. Section 518 of the CWA, 33 U.S.C. § 1377, authorizes EPA to treat an eligible Indian tribe in a similar manner as a state if the tribe meets the specified eligibility criteria.

¹ <https://www.epa.gov/sites/default/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>

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); and 81 Fed. Reg. 30183 (May 16, 2016).

D. Policy Statements

The following policy statements and guidance are also relevant to this TAS decision:

1. *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, November 8, 1984.
2. 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. The application must meet the following criteria: (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 Safe Drinking Water Act program, the tribe need only provide the required information that has not been submitted in a previous application.

A. Federal Recognition

The first requirement applicable for a tribal TAS application for water quality standards under Section 303(c) and certification under Section 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. *See* 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 and Eligible to Receive Services from the United States Bureau of Indian Affairs” as the “Resighini Rancheria, California.” *See* 86 Fed. Reg. 7554 (January 29, 2021). Therefore, EPA has confirmed that the Resighini Rancheria, whose trust lands are located within Del Norte County, California, which constitutes a reservation, is recognized by the Secretary of the Interior and meets the definition of an “Indian Tribe” in 40 C.F.R. § 131.3(l) with governmental authority over a “Federal Indian Reservation,” as defined in 40 C.F.R. § 131.3(k), and thus meets the requirements in 40 C.F.R. § 131.8(a)(1) and (b)(1) for TAS approval.²

B. Substantial Governmental Duties and Powers

The second requirement applicable to a tribal TAS application for water quality standards under CWA Section 303(c) and certifications under CWA Section 401 is that a tribe has a governing body carrying out substantial governmental duties and powers over a defined area. 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, 40 C.F.R. § 131.8(b)(2) requires that the

² Reservations include both formal reservations (*e.g.*, named reservations established through federal treaties with tribes, federal statutes, or Executive Orders of the President) as well as tribal trust lands that may not be formally designated as reservations, but that qualify as informal reservations. *See, e.g.*, 56 Fed. Reg. 64876, 64881, December 12, 1991; 81 Fed. Reg. 30183, 30192 (May 16, 2016); *Arizona Public Service Co. v. EPA*, 211 F.3d 1280, 1292-1294 (D.C. Cir. 2000), *cert. denied sub nom., Michigan v. EPA*, 532 U.S. 970 (2001). Tribes may thus seek TAS authorization for both formal and informal reservations, and both types of lands are referred to as reservations.

tribe submit a descriptive statement that should: (i) describe the form of the tribal government; (ii) describe the types of governmental functions currently performed by the tribal governing body, such as those exercising police powers affecting or relating to the health, safety, and welfare of the affected population, taxation, and the exercise of eminent domain; and (iii) identify the source of the tribal government's authority to carry out the governmental functions currently being performed.

A tribe that has previously shown that it meets the "government functions" requirement for purposes of another EPA program generally need not make that showing again. *See* 59 Fed. Reg. 64339, 64340 (December 14, 1994) ("Simplification Rule"). 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 as Appendix III to 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 included a tribal legal counsel letter, dated May 14, 2018, from California Indian Legal Services as well as a tribal attorney memorandum dated January 14, 2020, from Lester Marston, and other documents that contain narrative descriptions of the structure, duties, and powers of the Tribe's government. The Tribe was organized under the authority of the Indian Reorganization Act of 1934 and operates under its Constitution, which was ratified by its members on February 20, 1975, and approved by the Secretary of the Interior on April 10, 1975. On June 3, 1998, the Tribe amended its Constitution; these changes were adopted by the Tribe's General Council ("composed of all members of the community who are at least eighteen (18) years of age which consists of all reservation members") on June 3, 1998, and ratified by the Bureau of Indian Affairs on July 23, 1998. Under the Tribe's Constitution, a five-member Tribal Council is elected by the General Council. The Tribal Council consists of a Chairperson, Vice-Chairperson, Secretary, Treasurer, and Council Member. The Tribal Council is responsible for representing the Tribe and its members in all negotiations with other government agencies and their officers. The Constitution provides that the Tribal Council shall manage, develop, protect and regulate the use of tribal property, wildlife, water, minerals, and all other natural resources within Tribal jurisdiction. In 2003, the Tribal Council enacted a comprehensive Water Quality Ordinance, Solid Waste Disposal Ordinance, and Interference with Tribal and Indian Property Ordinance, all of which address the Tribe's jurisdiction and authority over its lands, waters, air and total environment. These laws are enforced by the Tribe's Environmental Protection Authority, and violators are subject to civil penalties and fines. The Tribe carries out and operates in all respects as a sovereign government with its Tribal Council empowered to pass all tribal laws and regulations necessary to protect the health, safety and welfare of the Tribe.

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 2004 and the CWA Section 319 Nonpoint Source Pollution Control TAS application in October 2016, EPA has determined that the Tribe has described and demonstrated that the Tribal governing body is currently carrying out substantial governmental duties and powers for purposes of 40 C.F.R. §§ 131.8(a)(2) and (b)(2).

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 of the CWA is that the water quality standards program to be administered by the tribe pertains 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 applicant tribe must 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

The Application contains several maps and land descriptions of the area over which the Tribe asserts authority with an identification of the surface waters that are covered. The Resighini Rancheria is located in Del Norte County, Northern California on the Klamath River in the outskirts of the town of Klamath.

The Resighini Rancheria is the only reservation in California situated within the exterior boundaries of lands granted to a separately federally recognized Indian Tribe (the Yurok Reservation). The Resighini Rancheria consists of a single 228-acre parcel on the southern banks of the Klamath River. The Tribe has submitted a BIA title report³ which verifies the location of the Resighini Rancheria parcel. There is a long history of redefined reservations and tribal lands along the lower Klamath River, dating back to the creation of the Klamath River Reservation by

³ U.S. Department of the Interior, Bureau of Indian Affairs, Title Status Report, Land Area 556, Tract Number T-5086, Certified 10/23/2004. This title report, as well as the submitted maps and aerial photographs, are included in Appendix II.

Presidential Executive Order on November 16, 1855.⁴ On January 7, 1938, the tract of land now known as the Resighini Rancheria was conveyed to the United States “in trust for such Indians of Del Norte and Humboldt Counties, in California, eligible to participate in the benefits of the [Indian Reorganization] Act of June 18, 1934 . . . as shall be designated by the Secretary of the Interior” In 1988, Congress enacted the Hoopa-Yurok Settlement Act, which resolved many of the disputes about the River and divided the contested lands into the Hoopa Valley Reservation and the Yurok Reservation, but explicitly “...exclud[ed] the Resighini Rancheria,” which retained its previous status. *See* 25 U.S.C. §1300i-1(c)(1).

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

Statement Describing the Basis for the Tribe’s Assertion of Authority

The Tribe’s TAS Application for the CWA Sections 303(c) and 401 programs includes a statement from the California Indian Legal Services dated May 14, 2018 that describes and relies 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 on the Resighini Rancheria. The Tribe’s position was reaffirmed and supplemented in the legal memorandum from Lester Marston to the Tribal Chair dated January 14, 2020.

⁴ The Klamath River Reservation was created in 1855 by President Franklin Pierce's Executive Order issued November 16, 1855, pursuant to the authority granted by the Act of March 3, 1853, 10 Stat. 226, 238, and the Act of March 3, 1855, 10 Stat. 686, 699. The Reservation consisted of “a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River” for approximately 20 miles, encompassing an area not exceeding 25,000 acres. Between 1864 and 1892, numerous acts of federal officials and court decisions cast into doubt the continued existence of the Klamath River Reservation. In 1891, the Hoopa Valley Reservation was extended by Executive Order to include all land one mile in width on each side of the Klamath River, from “the present limits” of the Hoopa Valley Reservation to the Pacific Ocean. The Klamath River Reservation was thus effectively made part of the Hoopa Valley Reservation, as extended. In 1892, by Act of the United States Congress on June 17, 1892, 27 Stat. 52, the Klamath Reservation was opened to non-Indian settlement. This Act led to uncertainty about the status of the Klamath River Reservation. On January 7, 1938, the tract of land now known as the Resighini Rancheria was conveyed to the United States “in trust for such Indians of Del Norte and Humboldt Counties, in California, eligible to participate in the benefits of the [Indian Reorganization] Act of June 18, 1934 . . . as shall be designated by the Secretary of the Interior” In 1973, the United States Supreme Court, in the case of *Mattz v. Arnett*, 412 U.S. 481 (1973), concluded that the Klamath River Reservation was not terminated by the Act of June 17, 1892, and that the land within the boundaries of the reservation was still Indian country, within the meaning of 18 U. S. C. § 1151.

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. 30183, 30194 (May 16, 2016). As described above, the Resighini Rancheria's Application is for land within the exterior boundary of the Tribe's reservation. 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 on its reservation. EPA is not otherwise aware of any impediment limiting the Tribe's ability to effectuate the congressionally delegated authority. EPA therefore concludes that the Tribe can rely on the congressional delegation of authority to regulate surface water quality over the Resighini Rancheria and has satisfied the application requirement of 40 C.F.R. § 131.8(b)(3)(ii).

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

In its application, the Tribe identifies surface waters within the Resighini Rancheria for which it proposes to establish water quality standards. *See* 40 C.F.R. § 131.8(b)(3)(iii). These waters, which are waters within Parcel T-5086 (including Waukell Creek, Junior Creek, a back channel of the Klamath River, a small portion of the Klamath River, and some unnamed tributaries to Junior Creek), are identified on a reservation map as well as other maps which were submitted by the Tribe in its Application. 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.

3. 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 Tribe has established that it meets the requirements for TAS approval set forth in 40 C.F.R. §§ 131.8(a)(3) and (b)(3).

D. Capability

The fourth and final requirement to approve a 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 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).

Based on the information discussed in Section II.B. above and in the Tribe's previous TAS applications for the Water Pollution Control Program under CWA Section 106 and the Nonpoint Source Pollution Control Program under CWA Section 319, EPA finds that the Tribe has described and maintains adequate general managerial experience, an accounting system and a 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, and therefore has satisfied the criteria listed under 40 C.F.R. § 131.8(b)(4)(i)-(iii).

In regard to the criteria listed under 40 C.F.R. § 131.8(b)(4)(iv)-(v), the Tribe's Natural Resources Department ("NRD"), which was established in 2002, will have the responsibilities to establish, review, implement, and revise water quality standards. The Tribe's NRD began their monitoring program on the reservation land in 2002. The program has expanded each year and the water quality program now monitors nine surface water sites for nutrients, bacteria and discharges, two groundwater monitoring sites, one water chemistry site and ten continuous temperature monitoring sites. The environmental staff's technical expertise has grown significantly and the Tribe's understanding of the surrounding ecology is extensive. The Tribe claims that the rivers are its lifeblood and, without a healthy river, the culture would suffer tremendously. For this reason, the NRD has focused on trying to understand the impact of surrounding agricultural practices on aquatic species. The Water Quality Standards program would be delegated to program staff and may utilize technical consultants.

The NRD will also be responsible for conducting water quality certifications under CWA Section 401 and would be delegated the authority to review pending federal permits or licenses for projects which may result in any discharge to waters. The NRD's review will result in a certification decision on whether said discharges are consistent with water quality requirements. The Tribe will have an established process for CWA Section 401 certifications: after a thorough analysis by the Tribe's NRD staff, the director of the Tribe's Water Pollution Control Program will be responsible for any final action regarding approval of Section 401 certification applications. Petitions for review of any final action, such as the denial of a Section 401 certification application, will be presented to the Tribal Council.

Based upon EPA's program office review of the information in the Tribe's Application and on its experience working with the Tribe, EPA finds that the Tribe has demonstrated that it has the capability to administer the CWA Sections 303(c) and 401 water quality standards and 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 Tribe has met the requirements of CWA Section 518 and 40 C.F.R. § 131.8 as to the Resighini Reservation and therefore approves the Tribe's Application for TAS to administer the water quality standards program of Section 303(c) of the CWA and its implementing regulations set forth at 40 C.F.R. § 131. Consistent with 40 C.F.R. § 131.4(c), the Tribe is also eligible to the same extent as a state for the purposes of certifications under Section 401 of the CWA 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).

**DEBORAH
JORDAN**

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DEBORAH JORDAN
Date: 2021.08.31
16:55:07 -07'00'

August 31, 2021

Deborah Jordan
Acting Regional Administrator

Date