



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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SEP 26 2005

Ref: EPR-EP

Manuel Heart
Vice Chairman
Ute Mountain Ute Tribe
P.O. Box 248
Towaoc, Colorado 81334-0248

Subject: Water Quality Standards Program
Treatment in the Same Manner as a State Application

Dear Vice Chairman Heart:

I am pleased to inform you that the Agency approves the Ute Mountain Ute Tribe's application to administer a Clean Water Act (CWA) §303 (c) water quality standards program. A copy of the Decision Document is enclosed for your reference. Our approval is based on the Agency's determination that the Tribe meets the criteria for program approval found at 40 CFR 131.8(a). Please note that the scope of our approval is limited to administration of a CWA §303 (c) water quality standards program within the exterior boundaries of the Ute Mountain Ute Reservation. Pursuant to the federal water quality standards regulation at 40 CFR 131.4(c), one additional effect of our approval is that the Ute Mountain Ute Tribe may also issue water quality certifications consistent with CWA §401. This approval does not provide any additional Clean Water Act implementation authorities (e.g., permitting, enforcement) beyond the water quality standards and water quality certification programs.

EPA looks forward to working with the Ute Mountain Ute in the development, adoption, and triennial review of water quality standards for surface waters of the Ute Mountain Ute Reservation. EPA also commends the Tribe for the commitment to the environment that is demonstrated by the Tribe's existing water quality program and your very capable staff.

If you have questions regarding the water quality standards program, please feel free to contact George Parrish at (303) 312-7027 or Bill Wuerthele, EPA Region VIII Water Quality

Standards Coordinator, at (303) 312-6943. I thank you for your cooperation and patience in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. E. Roberts".

Robert E. Roberts
Regional Administrator

Enclosure

cc: Tom Rice, Environmental Programs Director, Ute Mountain Ute Tribe



DECISION DOCUMENT

**APPROVAL OF UTE MOUNTAIN UTE TRIBE
APPLICATION FOR TREATMENT IN THE SAME MANNER AS A STATE
UNDER SECTION 518 OF THE CLEAN WATER ACT FOR PURPOSES OF SECTIONS 303
AND 401 OF THE CLEAN WATER ACT**

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I. INTRODUCTION

Purpose.

This decision document provides the basis and supporting information for the Environmental Protection Agency's (EPA) decision to approve the Treatment in the Same Manner as a State (TAS) application of the Ute Mountain Ute Tribe (Tribe) to administer programs under § 303(c) (Water Quality Standards) and § 401 (Water Quality Certifications) of the Clean Water Act (CWA), pursuant to § 518(e) of the CWA. The approval applies to administration of the water quality standards program and conducting certifications for surface waters that lie within the exterior boundaries of the Ute Mountain Ute Reservation and within Ute Mountain Ute tribal trust lands outside the boundaries of the formal 1895 Reservation. For purposes of this decision document, the term "Reservation" will be used to refer collectively to the formal 1895 Reservation and the tribal trust lands outside of the formal Reservation.

Application.

The Tribe's TAS application for the purposes of CWA §§ 303(c) and 401 consists of the following documents:

June 29, 2000 Letter from Ernest House, Chairman, Ute Mountain Ute Tribe, transmitting Application for "Treatment in the Same Manner as a State" for the purpose of administering Water Quality Standards on the Ute Mountain Ute Reservation, Colorado, Utah, New Mexico, with attachments.

April 28, 2003 Letter from Daniel H. Israel confirming Ute Mountain Ute Tribe's regulatory authority, with attachment: Ute Mountain Ute Tribal Resolution 4234: Requirement of a Current Permit for all Vendors Operating on the Ute Mountain Ute Indian Reservation.

May 5, 2003 Letter from Scott Clow, Water Quality Specialist, Ute Mountain Ute Tribe with attachments:

- Ute Mountain Ute Tribal Resolution 2003-12: Adoption of Water Quality Standards for Surface Waters
- Summary of Findings Regarding Ute Mountain Ute Tribal Lands Oil & Gas Lease Information and Applicability of Water Quality Standards to Lessees dated October 8, 2002
- Ute Mountain Ute Tribe Producing Oil and Gas Wells on Reservation - listing all oil and gas leases, producing wells and

operators

- Ute Mountain Ute Tribe Vendor Liability Agreement
- Ute Mountain Ute Reservation Spill Reporting Procedures

December 16, 2004 Letter from Selwyn Whiteskunk, Chairman, Ute Mountain Ute Tribe, removing several small parcels of land in Utah from the scope of the application.

March 28, 2005 Letter from Selwyn Whiteskunk, Chairman, Ute Mountain Ute Tribe, removing several small parcels of land in Utah from the scope of the application.

Chronology of Events.

1. June 29, 2000 - CWA § 303(c) water quality standards TAS application by the Ute Mountain Ute Tribe received by EPA Regional Administrator.
2. April 28, 2003 - Letter from Daniel H. Israel, Ute Mountain Ute Tribal Attorney, to Regional Administrator, EPA Region VIII, transmitting supplemental materials to application submitted by the Ute Mountain Ute Tribe.
3. May 5, 2003 - Letter from Scott Clow, Ute Mountain Ute Tribe, Department of Environmental Programs, to George Parrish, EPA Region VIII, Water Quality Unit, transmitting supplemental materials to application.
4. May 23, 2003 - Letter from Max H. Dodson, Assistant Regional Administrator, Ecosystems Protection and Remediation, EPA Region VIII, to Daniel H. Israel, Ute Mountain Ute Tribal Attorney, acknowledging receipt of supplemental materials to application submitted by the Ute Mountain Ute Tribe.
5. May 30, 2003 - Letter from Robert E. Roberts, EPA Regional Administrator, to Harold Cuthair, Chairman, Ute Mountain Ute Tribe, acknowledging receipt of their application.
6. July 16, 2003 - letters to "appropriate governmental entities" from Robert E. Roberts, Regional Administrator, EPA Region VIII, providing an opportunity for comments on the Ute Mountain Ute Tribe's assertion of authority:
 - a. Andrew Ross, Water Quality Control Division, CDPHE, State of Colorado
 - b. Jim Davis, Surface Water Quality Group, State of New Mexico
 - c. Bill Moellmer, Department of Environmental Quality, DWQ, State of Utah
 - d. Karen Smith, Department of Environmental Quality, State of Arizona

- e. Howard Richards, Chairman, Southern Ute Indian Tribe
- f. Patrick Antonio, Navajo Environmental Protection Agency, Navajo Nation
- g. Ed Rumbold, Colorado State Office, Bureau of Land Management
- h. Mark Blakeslee, New Mexico State Office, Bureau of Land Management
- i. Heidi Hadley, Utah State Office, Bureau of Land Management
- j. Larry Wiese, Mesa Verde National Park, National Park Service
- k. Glenn Cassamassa, District Ranger, Manti La Sal National Forest, Utah
- l. Bob Baracker, Southwest Regional Office, Bureau of Indian Affairs

7. July 16, 23, 30, 2003 - Publication of Notice regarding the opportunity to comment on the Ute Mountain Ute Tribe's assertion of authority (The Durango Herald, Durango, Colorado; The Farmington Daily Times, Farmington, New Mexico; and The San Juan Record, Monticello, Utah).

8. August 12, 2003 - Letter from L. Randy Kirkpatrick, Executive Director, San Juan Water Commission, to Marcy Leavitt, New Mexico Surface Water Quality Bureau, recognizing tribal authority to administer a water quality standards program within reservation boundaries. (Transmitted via August 22, 2003 letter from Marcy Leavitt to George Parrish, EPA Region VIII, Water Quality Unit.)

9. August 13, 2003 - Letter from Charles Wanner, Water Issues Coordinator, San Juan Citizens Alliance, to George Parrish, EPA Region VIII, Water Quality Unit, supporting tribal authority and capability to administer a water quality standards program.

10. August 15, 2003 - Letter from Mark T. Pifher, Director, Water Quality Control Division, Colorado Department of Public Health and Environment, to Office of Ecosystems Protection and Remediation, EPA Region VIII, recognizing Tribe meeting all minimum requirements for authority and capability to administer a water quality standards program.

11. August 15, 2003 - Letter from Stephen A. Austin, Senior Hydrologist, Navajo Nation, to Office of Ecosystems Protection and Remediation, EPA Region VIII, acknowledging Ute Mountain Ute Tribe seems to have met all minimum requirements; and supporting tribal authority and capability to administer a water quality standards program.

12. August 22, 2003 - Letter from Ron Curry, Secretary, Environment Department, State of New Mexico, to Robert E. Roberts, EPA Regional Administrator, recognizing Tribal authority to administer a water quality standards program within reservation boundaries, and requesting more detailed maps of the Ute Mountain Ute Reservation lands in New Mexico.

13. October 16, 2003 - Letter from Scott Clow, Ute Mountain Ute Tribe, Department of Environmental Programs, to George Parrish, EPA Region VIII, Water Quality Unit, providing precise description of Tribal reservation lands located in New Mexico.

14. December 16, 2004 - Letter from Selwyn Whiteskunk, Chairman, Ute Mountain Ute Tribe, to Robert Roberts, EPA Regional Administrator, removing several small parcels of land in Utah from the scope of the application.

15. March 28, 2005 - Letter from Selwyn Whiteskunk, Chairman, Ute Mountain Ute Tribe, to Robert Roberts, EPA Regional Administrator, removing several small parcels of land in Utah from the scope of the application.

16. May 9, 2005 - Letter from Robert E. Roberts, EPA Regional Administrator, to Selwyn Whiteskunk, Chairman, Ute Mountain Ute Tribe, acknowledging receipt of the Tribe's application noting the Tribe is not applying for the full complement of its land base.

II. REQUIREMENTS FOR THE PURPOSES OF ADMINISTERING A WATER QUALITY STANDARDS PROGRAM

Under CWA § 518(e) 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 to administer a water quality standards program under section 303(c). These four requirements are:

- (1) the Indian tribe is recognized by the Secretary of the Interior and meets the definition in 40 C.F.R. § 131.3(k) and (l);
- (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 border 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 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.

Under 40 C.F.R. § 131.4(c), where EPA finds that a Tribe is eligible to be treated similarly to a state for purposes of water quality standards, the Tribe is also eligible to be treated similarly to a state for purposes of certifications conducted under Clean Water Act section CWA § 401.

Federal Recognition.

The Ute Mountain Ute Tribe of the Ute Mountain Ute Reservation is a federally recognized tribe. 68 Fed. Reg. 68180 (December 5, 2003). Therefore, the Tribe meets the requirement under 40 C.F.R. § 131.8(a)(1).

Substantial Governmental Duties.

To demonstrate that the Tribal governing body is currently carrying out substantial governmental duties and powers, 40 C.F.R. § 131.8(b)(2) states that the Tribe's application should (i) describe the form of the Tribal government; and (ii) describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population, taxation, and the exercise of the power of eminent domain; and (iii) identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

Additionally, the regulations specify that "[w]here the Tribe has previously qualified for treatment as a State under a Clean Water Act...program, the Tribe need only provide the required information which has not been submitted in a previous treatment as a State application." 40 C.F.R. § 131.8(b)(6). The Tribe was previously approved for TAS status for the purposes of administering the Clean Water Act § 106 grant program. To supplement its previous submissions, the Tribe provided a copy of its amended Constitution and By-Laws.

i. Form of Tribal government.

The Ute Mountain Tribal Constitution, approved by the U.S. Department of the Interior on June 6, 1940, and subsequently amended, specifies the following information about the Tribe's form of government: the Tribe is governed by the Ute Mountain Tribal Council (Council). The Council is composed of seven members; each member serves for a term of three years. All voters elect a Chairman. Five members are from the Towaoc Community, and are voted in by the Towaoc Community; one member is from the White Mesa Community, and is voted in by the White Mesa Community. The Chairman chooses a Vice-Chairman. After each election, the Council chooses a Treasurer and such other officers and committees as it deems necessary.

The Tribe's 1989 CWA § 106 submission, approved by EPA in 1989, provided that the Tribe also operates a Tribal Court system, including a lower Tribal Court and a Court of Appeals.

ii. Types of Governmental Functions Currently Performed.

The Tribal Constitution empowers the Council to exercise numerous powers. Among the Council's powers are the following: negotiate with Federal, State and local governments; prevent the sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets, without the consent of the Tribe (specifically stating that no lease shall be made to a

nonmember of the Tribe unless it has been approved by and authorized by the Council); select subordinate boards, tribal officials, and employees of the Council not otherwise provided for in the Constitution; employ legal counsel; provide by ordinance, for the removal or exclusion from the reservation of any nonmembers whose presence may be injurious to its members; regulate the conduct of members of the Tribe and to protect the public peace, safety, morals and welfare of the reservation through the promulgation and enforcement of ordinances; regulate, by ordinance, nonmembers doing business on the reservation.

The Tribe's 1989 CWA § 106 submission, approved by EPA in 1989, described various programs and services under the Tribal government. Among these include: social services, education, housing, economic development, land and natural resources, public safety, and public works.

iii. Source of Tribal Authority.

The Tribe's Application states that its authority is derived from three sources. The Tribe asserts that its authority is derived from its inherent tribal power as a sovereign; treaties and Federal laws; and the Tribal Constitution and By-laws.

The Tribe cites the following treaties and agreements, codified in Federal law: 1868 Treaty with the Ute Indians, 15 Stat. 619; Agreement of September 13, 1873, ratified by Act of April 29, 1874, ch. 136, 18 Stat. 36 (1874) ("Brunot Cession"); Agreement of March 6, 1880, ratified by the Act of June 15, 1880, ch. 223, 21 Stat. 199 ("1880 Act"); Act of February 20, 1895 ch. 113, 25 Stat. 133 ("1895 Act").

iv. Conclusion

Based on the information the Tribe previously submitted in connection with its TAS application for the CWA § 106 grant program, and on the information in its Constitution and By-Laws, the Tribe has satisfied the elements of 40 C.F.R. § 131.8(b)(2) and meets the criterion at 40 C.F.R. § 131.8(a)(2).

Authority Over Reservation Waters.

Pursuant to 40 C.F.R. § 131.8(b)(3), a tribe must submit a statement describing its authority to regulate water quality. The statement "should include: (i) A map or legal description of the area over which the Indian Tribe asserts authority to regulate surface water quality; (ii) A statement by the Tribe's legal counsel (or equivalent official) which describes the basis for the Tribes [sic] assertion of authority and which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders,

codes, ordinances, and/or resolutions which 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).

i. Map or Legal Description

Consistent with 40 C.F.R. § 131.8(b)(3)(i), the Tribe has submitted maps (and a legal description) of the Reservation land over which the Tribe asserts authority to regulate surface water.

The Ute Mountain Ute Reservation consists of a contiguous block of land in Colorado and New Mexico and several tribal trust parcels in the State of Utah. The contiguous portion of the Reservation in Colorado and New Mexico was set aside in an 1895 treaty. The tribal trust land in Utah was added after 1895. In the preamble to EPA's final rule, "Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations," EPA noted that the Agency considers trust lands formally set apart for the use of Indians to be "within a reservation" for purposes of CWA § 518(e)(2) even if they have not been formally designated as reservations. 56 Fed. Reg. 64876, 64881 (December 12, 1991) (citing Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S. Ct. 905, 910 (1991)). EPA and the courts have treated tribal trust lands outside the boundaries of formal reservations as "reservations" under EPA regulations and 18 U.S.C. § 1151(a) (the reservation component of "Indian country"). See Arizona Public Service Co. v. U.S. Environmental Protection Agency, 211 F.3d 1280, 1294 (D.C. Cir. 2000), cert. denied 532 U.S. 970 (2001); HRI, Inc. v. EPA, 198 F.3d 1224, 1249-54 (10th Cir. 2000). The Tribe's application states that its Reservation is approximately 933 square miles, or 597,288 acres. Furthermore, the Tribe's application states that all the land within the Ute Mountain Ute Reservation is owned in trust for the Tribe.

ii. Tribal Statement describing basis for the Tribe's assertion of authority

The Tribe's Application and supplemental materials include statements prepared by attorneys representing the Tribe that thoroughly address the basis of the Tribe's assertion of authority to establish water quality standards for all surface water within the exterior boundaries of the Reservation.

In the first instance, the Tribe's statement expresses that because the water resources to be regulated are within the borders of the Ute Mountain Ute Reservation, no further demonstration of authority is necessary, suggesting that the CWA section 518 should be read as an express Congressional delegation of authority to eligible tribal governments for purposes of administering CWA programs, including the water quality standards program. As

explained in the 1991 preamble to its final regulation addressing tribal eligibility for the water quality standards program, EPA declined to read the CWA as a delegation of authority to eligible tribes, noting that "pending further judicial or Congressional guidance on the extent to which section 518 delegates additional authority to Tribes," the extent of tribal authority will be determined on a Tribe-by-Tribe basis. 56 Fed. Reg. at 64877-78.

The Tribe also provides separate information demonstrating authority over waters of the Reservation. The Tribe cites to three sources of authority to regulate the quality of all waters on the Reservation: the Tribe's inherent sovereign power; a number of treaties and federal laws; and the Tribe's Constitution and By-Laws.

For the reasons discussed below, EPA finds that the Tribe has authority to establish water quality standards for surface waters on the Reservation.

The Tribe's application only asserts jurisdiction over the Tribe's Reservation, which includes Tribal trust lands in Utah. All of the Reservation lands are held in trust by the United States for the Tribe. Under well-established principles of Federal Indian law, the Tribe has inherent authority to establish water quality standards over these lands. California v. Cabazon Band of Mission Indians, 480 U.S. 202, 207 (1987) (A tribe that owns lands within a reservation retains inherent sovereign authority to manage uses of those lands); U.S. v. Mazurie, 419 U.S. 544, 557 (1975).

In situations where nonmember activities take place on lands held by the Tribe or Tribal members, the caselaw confirms that a Tribe retains significant authority over nonmember activity. See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982) (Tribes retain the "inherent power necessary to tribal self-government and territorial management"); see also Strate v. A-1 Contractors, 520 U.S. at 454 (1997) (stating that "[w]e 'can readily agree,' in accord with Montana, 450 U.S. at 557, 101 S.Ct. At 1254, 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").

The Tribe also submitted information regarding its consensual relationships with nonmembers doing business on the Reservation in support of its assertion of inherent sovereign authority over nonmembers on the Reservation for purposes of administering the CWA water quality standards and certification programs.

The Supreme Court in Montana v. United States, 450 U.S. 544, held that, in the absence of a federal grant of authority, tribes generally lack inherent jurisdiction

over the activities of nonmembers on nonmember 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 nonmember activities on fee lands within the reservation where nonmember “conduct threatens or has some direct effect on the political integrity, the economic security, or the 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 v. A-1 Contractors, 520 U.S. 438, 445 (1997) (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]”)¹.

The Tribe, through its attorney, confirms its regulatory authority over nonmembers who have the potential to create water pollution control concerns on the Reservation. The Tribe asserts that “all existing nonmember facilities on Ute Mountain Ute Tribe Reservation trust lands with potential to degrade reservation water quality are owned and operated by nonmembers who have a ‘consensual relationship’ with the Tribe or tribal members, as evidenced by commercial dealing, contracts, leases, or other arrangements.” (Emphasis added).

¹EPA has not taken the position that it is necessary to analyze nonmember activities on tribal trust 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 decision document, the Tribe could show authority over the area covered by the Application under the Montana test.

The Tribe has submitted several documents supporting this assertion. They include: a list of oil-and-gas leases identifying the lease agreements entered into by oil-and-gas well operators, including nonmembers, on the Reservation (this list includes all nonmember lease activity on the Reservation); a summary of relevant language in existing leases relating to, among other things, protection of environmental resources and requirements for compliance with Tribal law; and a sample letter from the Tribe to all oil-and-gas lease operators clarifying spill reporting and cleanup requirements for oil, production water, and toxic liquids associated with oil and gas production on the Reservation. The list of leases included with the application evidences consensual relationships entered into between the Tribe and all oil-and-gas operators, including nonmembers, on the Reservation.

The Tribe also states that any party developing mineral resources on the Reservation must execute a lease which must be signed by the Tribe and approved by the U.S. Department of the Interior. The Tribe also states that such leases require that mineral development operations conform with applicable Tribal laws and adhere to certain federal regulations. In addition to the list of leases described above, the Tribe's assertions find support in certain federal laws which require lease agreements prior to various uses of tribal trust lands. See 25 U.S.C. § 415 (Indian Long-Term Leasing Act; tribally- or individually-owned restricted Indian lands to be leased by the owner with approval of the Secretary of the Interior for a period of 25 years); 25 U.S.C. § 2101 et seq. (Indian Minerals Development Act of 1982; allowing tribes, with approval of the Secretary of the Interior, to enter into agreements for the extraction, processing, or development of energy or non-energy mineral resources); 25 U.S.C. § 396a (Indian Mineral Leasing Act of 1938; allowing leasing of Indian lands for mining purposes, with the approval of the Secretary of the Interior).

The Tribe has also demonstrated its considerable control over the Reservation by requiring Tribal permits and compliance with Tribal law as a prerequisite to conducting business on the Reservation. As an example, the Tribe submitted a 1996 Tribal Resolution requiring all vendors of food and other goods, including nonmembers, doing business on the Reservation to possess a valid Tribal permit. The Tribe also submitted a sample liability agreement that all vendors must sign explicitly recognizing the requirement to abide by Tribal law.

Based on all of this information, EPA believes that the Tribe could also show that it has inherent sovereign authority over nonmember activities covered by the TAS application based on the first Montana exception because those activities would be through a consensual relationship with the Tribe.

i. **Identification of surface waters for which the Tribe proposes to establish water quality standards.**

EPA's decision covers all surface waters within the Reservation as described in this Decision Document. This includes the following surface waters on the Reservation identified by the Tribe for the purpose of establishing water quality standards:

In Colorado:

San Juan River and all tributaries,
Mancos River and all tributaries,
McElmo Creek and all tributaries,
Navajo Wash and all tributaries, lakes, reservoirs and wetlands;

In New Mexico:

All tributaries to the San Juan River, including all lakes, reservoirs and wetlands;

In Utah:

Recapture Creek and all tributaries,
Westwater Creek and all tributaries,
Right Hand Fork (Cottonwood Wash watershed),
Allen Canyon Creek and all tributaries, lakes, reservoirs and wetlands.

iv. **Conclusion.**

The Tribe has adequately demonstrated its authority to regulate water quality on the Reservation pursuant to 40 C.F.R. § 131.8(b)(3) and meets the criterion at 40 C.F.R. § 131.8(a)(3).

Capability.

The Ute Mountain Ute Tribe has demonstrated that it is capable of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the Clean Water Act and applicable regulations at 40 C.F.R. § 131.8. In determining that the Tribe is capable of developing and implementing an effective water quality standards program consistent with the requirements of the CWA, the EPA has considered the following:

(1) The Ute Mountain Ute Tribe manages water quality through the Water Pollution Prevention Program in the Tribe's Environmental Programs Department. The Tribe has had a water quality program for over 15 years, and since 1989, the Tribe has

managed CWA §106 grant funds to support water quality monitoring on the Reservation. The Tribe has received EPA approval for its Quality Assurance and Quality Control (QA/QC) program under the Tribe's Quality Assurance Project Plan (QAPP). The Tribe's Water Quality Coordinator has been with the Environmental Programs Department since 1996. The Director of the Environmental Programs Department has been with the Tribe since 2001. In addition to holding Bachelor's degrees, these key environmental staff have received training from: U.S. Environmental Protection Agency; U.S. Fish & Wildlife Service; Colorado Division of Wildlife; U.S. Bureau of Indian Affairs; Institute for Tribal Environmental Professionals; National Enforcement Training Institute; Rocky Mountain Center for Occupational and Environmental Health; Geographic Data Services Center (U.S. Department of the Interior); and Environmental Systems Research Institute, Inc. The Tribe's Water Quality Coordinator has also taught environmental coursework through the Tribe, EPA Region VIII CWA §106 Program, and the Institute for Tribal Environmental Professionals.

(2) The Tribe's Water Quality Coordinator will assume the responsibility of maintaining and implementing the water quality standards program. He holds a Bachelor's degree in Chemistry and Environmental Sciences and has received extensive additional training with EPA staff to assume these responsibilities. For instance, he has been receiving copies of adjoining State's and Tribe's water quality standards revisions, reviewing those and assisting in developing appropriate comments and cooperative monitoring strategies. He conducts and supervises monitoring and analysis, reviews and updates QA/QC procedures, developed and maintains a GIS-linked computer database, provides briefings and training to the Tribal council and staff, writes and oversees grants, and administers the Water Pollution Prevention Program following CWA requirements. He has also assisted in collecting water quality data and documentation needed for oil spills, fire rehabilitation, endangered species recovery efforts, and salinity controls involving exceedence of water quality standards. He is an active participant in multiple interagency efforts addressing water quality issues in the San Juan River watershed and other local watersheds. In recognition of this level of capability and his efforts, he was awarded an EPA Region VIII Friend of EPA Award in 2004.

(3) Following EPA recommended approaches and drawing on its surface water monitoring information, the tribal staff prepared a comprehensive set of proposed water quality standards for consideration by the public and the Tribal Council. The proposed standards were noticed for public comment on June 18, 2002, in 5 local newspapers, and 21 letters were sent to local government and federal agency personnel. On August 7, 2002, the Tribe held a public hearing to take comment on the proposed standards. On November 18, 2002, the Ute Mountain Ute Tribal Council approved and adopted the water quality standards. The Tribal water quality

standards development process was conducted in a manner consistent with federal requirements at 40 C.F.R. Part 25.

(4) In a letter to the Tribe dated August 5, 2002, EPA Region VIII commented on the proposed standards. The Region informally reviewed the water quality standards from a technical perspective and noted that the Tribal standards include the basic CWA requirements, including identification and designation of beneficial uses for Tribal waters, numeric and narrative water quality criteria to protect those uses, and an antidegradation policy. In the August 5, 2002 letter, the Region provided largely editing comments (noting typographical errors, etc.) and thanked the Department for receiving EPA comments (multiple sets of informal comments were exchanged with subsequent improvements) in developing their proposed water quality standards. The letter noted that proposed tribal water quality standards can be formally approved by EPA only after a Tribe receives water quality standards program authority.

(5) The Tribe's water quality standards are comprehensive. For example, the Tribe performed Use Attainability Analyses for individual ephemeral desert washes that are not suitable for full contact recreation; wrote variances and site-specific criteria for several naturally-elevated parameters in certain waters; wrote Mixing Zone and Dilution policies; and applies standards for the protection of wetlands. The Tribe was able to develop this level of sophistication in its water quality standards through application of the extensive biological and chemical information derived from its well organized and documented monitoring program. The Tribe's numeric criteria include all of the EPA published criteria values for the priority pollutants. For key conventional and non-conventional pollutants, e.g., ammonia, the Tribe adopted EPA recommendations as well. Where EPA had no national recommendation for constituents of concern to the Tribe, the Tribe demonstrated program capability by developing its own numeric values or narrative standards.

(6) Comments received on the Tribe's application from appropriate governmental entities, including the State of Colorado, the State of New Mexico, and the Navajo Nation, recognized Tribal authority and capability to administer a water quality standards program within Reservation boundaries.

Based on the above information, EPA finds the Ute Mountain Ute Tribe to be capable 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. Thus, the Tribe fulfills the requirement at 40 C.F.R. § 131.8(a)(4).

III. CONCLUSION

The U.S. Environmental Protection Agency has determined that the Ute Mountain Ute Tribe has met the requirements of 40 C.F.R. § 131.8, and the Tribe is eligible to be treated in a similar manner as a State under § 518 of the Clean Water Act for purposes of the Clean Water Act § 303 water quality standards program. EPA's determination that the Tribe is eligible for the water quality standards program includes a determination that the Tribe is eligible for the CWA § 401 certification program.

Nlt & Nltb

Regional Administrator

26 Sept '05
Date