

Decision Document for  
the U.S. Environmental Protection Agency's Approval of  
**Salt River Pima-Maricopa Indian  
Community**

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” or “agency”) 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 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 from the Salt River Pima-Maricopa Indian Community (hereinafter “Tribe”) authorizing the Tribe 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.

As discussed in more detail below, this approval applies to all land within the boundaries of the Tribe’s reservation (“Reservation”), with the exception of those parcels that are held by the United States Bureau of Reclamation as part of the Central Arizona Project.

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 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 agency as described in 40 C.F.R. § 121.1(e). Approval also enables a tribe to participate as a neighboring jurisdiction for purposes of CWA Section 401(a)(2). In addition, tribes authorized to administer the CWA water quality standards program are also “affected states” as the term is used under 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 application and cover letter dated February 12, 2021, 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 in October 2022 to clarify the original application, 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 9, in a letter dated May 15, 2021, notified “appropriate governmental entities”<sup>1</sup> 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 Bureau of Indian Affairs (“BIA”), Governor Doug Ducey of the State of Arizona, and the Fort McDowell Yavapai Nation. In addition, consistent with agency practice, EPA 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 East Valley Tribune on May 16, 2021. No comments were received from the appropriate governmental entities or from the public.

On May 15, 2021, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA offered the neighboring Fort McDowell Yavapai Nation an opportunity to consult with EPA on the agency’s TAS action. The Fort McDowell Yavapai Nation declined EPA’s offer for consultation.

## 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.
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. Policy Statements

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

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<sup>1</sup> 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).

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 “Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona” *See* 88 Fed. Reg. 2112, 2114 (Jan. 12, 2023). Therefore, EPA has confirmed that the Salt River Pima-Maricopa Indian Community, whose reservation is located within Maricopa County, Arizona, 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.

## 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 tribe submit a descriptive statement that should: (i) describe the form of the tribal government; (ii) describes 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 letter, dated February 12, 2021, from the Salt River Pima-Maricopa Indian Community’s Office of the General Counsel and other documents that contain narrative descriptions of the structure, duties, and powers of the Tribe’s government. The Tribe’s reservation was created by a series of Presidential Proclamations, concluding with

the Proclamation of June 14, 1879. The Tribal government was organized in its current form under the authority of the Indian Reorganization Act of 1934 and operates under its Constitution, which was ratified by its members in 1940 and approved by the Secretary of the Interior on June 11, 1940, and March 18, 1971. The Constitution has been amended twice, first on April 23, 1996, and again on August 15, 2005. Both amendments were approved by the BIA. The Constitution provides that the Salt River Pima-Maricopa Indian Community Council shall manage, develop, protect and regulate the use of tribal property, wildlife, water, minerals, and all other natural resources within Tribal jurisdiction. Under the Tribe's Constitution, a seven-member Tribal Council is elected by popular vote of the registered voters of the Salt River Pima-Maricopa Indian Community; five Council Members are elected by the voters of the Salt River District, and two Council Members are elected for the Lehi District. A President and Vice President also serve on the Council. The Salt River Pima-Maricopa Indian Community Council is responsible for representing the Tribe and its members in all negotiations with other government agencies and their officers. The Tribe's environmental agency, the Environmental Protection & Natural Resource Division, has responsibility over ten programs including: Air Quality, Waste Management, Range Management, Land Use Clearances, Community Action and Revitalization, Brownfields, Eagle Management, Pesticides & Hazardous Substances, Environmental Compliances, and Water Quality. 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.

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 on June 1, 1995 and the CWA Section 319 Nonpoint Source Pollution Control TAS application on October 30, 1998, 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 regulations require that the applicant 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

The Salt River Pima-Maricopa Indian Community is located in Maricopa County, Arizona on the Salt River adjacent to the boundaries of Mesa, Tempe, Scottsdale, Fountain Hills, Fort McDowell Yavapai Nation, and Tonto National Forest. The Salt River Pima-Maricopa Indian Community Reservation established by Executive Order on June 14, 1879, consists of approximately 53,000 acres.

The Application contains maps and descriptions of the lands on the Reservation for which the Tribe is asserting jurisdiction. With one exception described below, the maps and tabular parcels submitted by the Tribe cover all waters within the exterior boundaries of the reservation. The United States Bureau of Reclamation's (USBR's) Arizona Canal and associated USBR parcels are not within the Reservation, and the Tribe is therefore not asserting any jurisdiction over those parcels. The Tribe has also consistently avoided asserting jurisdiction over the separate but related USBR Central Arizona Project (USBR CAP), which does run through the Tribe's reservation. As a result, both the USBR's Arizona Canal and the USBR CAP are excluded from this Application. The Tribe submitted a map and a tabular parcel list describing both USBR Arizona Project and the USBR CAP.<sup>2</sup>

## 2. 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 Salt River Pima-Maricopa General Counsel dated September 12, 2019, 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 Salt River Pima-Maricopa Indian Community. The Tribe's position was reaffirmed and supplemented in the legal memorandum from Jennifer K. Giff of the SRPMIC General Counsel to the EPA Regional Administrator dated February 12, 2021.

When considering the congressional delegation of authority under the CWA, the main focus of EPA's determination of the extent of an applicant tribe's jurisdiction for CWA regulatory purposes is identifying the geographic boundaries of the Indian reservation area over which the congressionally delegated authority would apply. *See* 81 Fed. Reg. 30183, 30194 (May 16, 2016). The Tribe is asking for recognition of its authority over its entire Reservation

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<sup>2</sup> Public Law 95-399 (Sept. 30, 1978) resolved several disputes about the Reservation's southern boundary. Section 4 of that Act enumerated the USBR properties and rights of way associated with the Arizona Canal, and, at Act Section 4(b), explicitly excluded them from the definition of the Reservation. For that reason, the Tribe has no jurisdiction over the USBR's Arizona Canal. The Tribe's jurisdiction over the USBR CAP is limited by litigation and the corresponding court judgment, which recognized the Tribe's grant of a broad easement to the USBR CAP. *See* Grant of Easement dated January 14, 1980, and related Judgment Dated January 16, 1980. The subsequent Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (P.L. No. 100-512) did not explicitly prohibit Tribal jurisdiction to the USBR CAP but provided a comprehensive settlement of claims and procedures related to the USBR CAP, including authorizing an agreement by which the Tribe "waive[d]...all present and future claims of water rights or injuries to water rights...." P.L. No 100-512, at Section 10(b)(1). Given these agreements and congressional actions, as well as the risk of additional litigation, the Tribe has consistently avoided asserting jurisdiction over the USBR CAP. The maps and tabular parcels submitted by the Tribe include descriptions of both the USBR Arizona Project and the USBR CAP.



with the exception of the USBR CAP parcels. As discussed in more detail at Footnote 2, above, the Tribe, through grants of easements and by Congressional action, has limited authority over the USBR CAP parcels. With that exception, 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 has properly asserted the congressional delegation of authority to regulate surface water quality within the Salt River Pima-Maricopa Indian Community reservation 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 the Tribe identifies surface waters within the Salt River Pima-Maricopa Indian Community for which it proposes to establish water quality standards. *See* 40 C.F.R. § 131.8(b)(3)(iii). The surface waters include portions of the Salt River and Verde River that are within the Reservation. These waterbodies are identified on the map submitted as Appendix D of the 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.

### 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 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).

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. In 1995, the Tribe enacted comprehensive surface water ordinances. In 1998, the Council approved and adopted Community Water Quality standards. The Tribe's Community Development Department reviews and regulates land development proposals, resources and business leases, permitting and licensing, planning and zoning, enforces cultural resources and environmental laws, and land ownership. The Tribe's Planning Services Division regulates and assures compliance with the Community's adopted land use planning and development policy. 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 including water quality, and therefore has satisfied the criteria listed under 40 C.F.R. § 131.8(b)(4)(i)-(iii).

Regarding the criteria listed under 40 C.F.R. § 131.8(b)(4)(iv)-(v), the Environmental Protection and Natural Resources Division ("EPNR") will have the responsibilities to establish, review, implement, and revise water quality standards. The Tribe's EPNR began their water quality monitoring program on the Reservation in 2000. In relation to its water quality work, ENPR has developed a Nonpoint Source Management Plan, outreach booklets specific to the Tribe's wetlands and protection of the watershed, and a Quality Assurance Program Plan (QAPP) for biomonitoring. In undertaking these activities, the environmental staff's technical expertise has grown significantly. The EPNR is a division of the Community Development Department and is run by the EPNR manager. The manager oversees three branches including the Water Quality Program, the Land Use Compliance Program, and the Pesticides and Hazardous Substances Program. Each branch comprises of one branch manager and has between six and nine staff persons.

The EPNR will be responsible for conducting water quality certifications 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 EPNR staff, the director of the Tribe's Water Quality 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 of 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 Salt River Pima-Maricopa Indian Community 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).

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Martha Guzman  
Regional Administrator

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Date