



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-3104

The Honorable Billy Cypress
Chairman
Miccosukee Tribe of Indians of Florida
P.O. Box 440021 - Tamiami Station
Miami, Florida 33144

Dear Chairman Cypress:

The Environmental Protection Agency has completed its review of the Miccosukee Tribe of Indians of Florida's (MTIF) Supplemental Application for treatment in a manner similar to a state (TAS) to administer the Tribe's federally approved water quality standards program pursuant to section 303(c) of the Clean Water Act. The Supplemental Application, which was submitted by the January 3, 2019 letter from Truman E. Duncan, Jr., MTIF Water Quality Control Officer, to Mary S. Walker, Region 4 Administrator, requested the addition of five land tracts to the current authorization. These tracts are Sherrod Ranch, Cherry Ranch, SEMA, Lambick, and Coral Way. The Application was reviewed to ensure it met the requirements of 40 C.F.R section 131.8, *Requirements for Indian Tribes to administer a water quality standards program* and was consistent with the EPA's *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Program* (January 23, 2008).

After review of the information received, we have determined that the Tribe meets all requirements to conduct a federally approved water quality standards program on the five land tracts. Therefore, the Supplemental Application is approved. The review can be found in the enclosed decision document.

We commend you and your staff for your continuing efforts to protect the quality of your waters. You and your staff have demonstrated a sincere concern for the protection of the environment. If you have questions or need information, please do not hesitate to contact me at (404) 562-9900 or have your staff contact Ms. Eve Zimmerman at (404) 562-9259.

Sincerely,

Mary S. Walker
Regional Administrator

Enclosure

cc: Mr. Truman E. Duncan, Jr.
Ms. Jeanine Bennett

**DECISION DOCUMENT
FOR
THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S APPROVAL OF
Miccosukee Tribe of Indians'
Supplemental Application**

**FOR TREATMENT IN A SIMILAR MANNER AS A STATE
UNDER CLEAN WATER ACT SECTION 518 FOR
SECTIONS 303(c) AND 401 WATER QUALITY STANDARDS AND
CERTIFICATION PROGRAMS**

SEPTEMBER 2020

Table of Contents

I.	Introduction.....	1
II.	Rationale.....	1
	A. Statutory and Regulatory Background.....	1
	B. Previous CWA Sections 303(c) and 401 TAS Approvals for the Miccosukee Tribe of Indians of Florida.....	2
	C. CWA Sections 303(c) and 401 TAS Application Covered by This Decision Document.....	2
	D. Relevant Documents	2
	1. Applications.....	2
	2. Letters and Notices from EPA.....	3
	3. Comments Received.....	6
	4. Statutory and Regulatory Provisions	7
	5. Guidance and Policy Statements	8
	E. Requirements and EPA Findings for TAS Approval	8
	1. Federal Recognition	9
	2. Substantial Governmental Duties and Powers.....	10
	3. Jurisdiction Over Waters Within the Miccosukee Tribe of Indians of Florida Reservation Lands	10
	a. Map or Legal Description.....	11
	b. Statement Describing Basis for the Tribe’s Authority.....	12
	c. Identification of Surface Waters for which the Tribe Proposes to Establish Water Quality Standards.....	13
	d. Conclusion.....	13
	4. Capability of the Tribe to Administer an Effective Water Quality Standards Program	13
III.	Conclusion	15

I. Introduction

The Miccosukee Tribe of Indians (also referred to as the “Miccosukee Tribe of Indians of Florida,” “MTIF” or “Tribe” herein) has applied to the U.S. Environmental Protection Agency for eligibility under section 518 of the Clean Water Act (CWA), 33 U.S.C. § 1377, to supplement the Tribe’s existing treatment in a similar manner as a state (TAS) authorities to administer its section 303(c) water quality standards program and its section 401 water quality certification programs for surface waters within the borders of five tracts (which are grouped into a total of 56 separate parcels, more fully described below) held in trust by the United States for the Tribe.

Part II of this Decision Document addresses the EPA’s rationale for its approval of the Tribe’s Supplemental Application for CWA sections 303(c) and 401 programs for the five tracts. Part III provides a conclusion, and approval of the Tribe’s Supplemental Application by the EPA Region 4 Regional Administrator.

II. Rationale

A. Statutory and Regulatory Background

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

Section 518 of the CWA, 33 U.S.C. § 1377, authorizes the EPA to treat an eligible Indian tribe in a similar manner as a state for certain CWA programs, including those under sections 303(c) and 401. EPA regulations establish the process by which the EPA implements that authority and determines whether to approve a tribal TAS application for purposes of administering sections 303(c) and 401 of the CWA. See 56 Fed. Reg. 64,876 (Dec. 12, 1991), as amended by 59 Fed. Reg. 64,339 (Dec. 14, 1994) (codified at 40 C.F.R. Part 131). Tribes authorized to administer the CWA water quality standards program are “affected states” under CWA section 402(b)(3) and (5), and 40 C.F.R. section 122.4(d). As “affected states,” they receive notice and an opportunity to comment on certain permits issued under the National Pollutant Discharge Elimination System (NPDES) program.

Under 40 C.F.R. section 131.8(b)(6), “[w]here the Tribe has previously qualified for eligibility or ‘treatment as a state’ under a [CWA] or Safe Drinking Water Act [(SDWA)] program, the Tribe need only provide the required information which has not been submitted in a previous application.” See also 59 Fed. Reg. 64,339.

B. Previous CWA Sections 303(c) and 401 TAS Approvals for the Miccosukee Tribe of Indians of Florida

On December 20, 1994, the EPA approved the Tribe’s application to administer a federally approved water quality standards program for surface waters within the Tribe’s Federal Reservation. The Federal Reservation consists of the I-75 Reservation (approximately 75,000 acres), the Southern Reservation (three 4.7-acre parcels), and the Krome Reservation (25 acres) located in South Florida. The EPA subsequently approved the initial Miccosukee Environmental Protection Code, Subtitle B: Water Quality Standards for Surface Waters of Miccosukee Tribe of Indians of Florida on May 25, 1999, which established water quality standards for the water resources located within the Federal Reservation.

On March 15, 2001, the EPA approved the Tribe’s supplemental application for CWA Sections 303(c) and 401 TAS authorities for 695.69 acres south of Tamiami Trail known as the Miccosukee Reserve Area (MRA), and the Tribe’s revisions to its existing tribal water quality standards to provide protection for surface waters within the exterior boundaries of the MRA.

C. CWA Sections 303(c) and 401 TAS Application Covered by This Decision Document

On January 3, 2019, the Tribe submitted to EPA Region 4 a Supplemental Application seeking CWA sections 303(c) and 401 TAS authority for the five additional tracts. Consistent with 40 C.F.R. section 131.8(b)(6), the Tribe’s Supplemental Application includes information which is new or different from its previous two approved applications.

This Decision Document provides the basis and supporting information for the EPA’s decision to approve the Supplemental TAS Application pursuant to CWA section 518 and 40 C.F.R. part 131. This approval applies to the administration of the section 303(c) water quality standards program and the section 401 certification program for surface waters that lie within the borders of the five aforementioned tracts: Sherrod Ranch, Cherry Cattle Ranch, SEMA, Lambick, and Coral Way properties (collectively referred to herein as the “Supplemental Reservation Lands”). The Supplemental Reservation Lands at issue in this application consist of 5,348 acres of land held in trust by the United States for the Tribe in three counties located in south Florida. See Pages 11-48 of the Tribe’s application signed by Truman E. Duncan, Jr., Water Quality Control Officer of the Miccosukee Tribe of Indians of Florida dated January 3, 2019.

D. Selected Relevant Documents

1. Applications
 - a. May 27, 1994 Application Pursuant to the Clean Water Act for Water Quality Standards Program for the Miccosukee Tribe of Indians of Florida.
 - b. December 20, 1994 Letter from John H. Hankinson, Jr., Regional Administrator, EPA Region 4, to Billy Cypress, Chairman, Miccosukee

Tribe of Indians of Florida, approving the Tribe's application for authorization to conduct a federally approved water quality standards program under Section 518 of the Clean Water Act.

- c. June 6, 2000 Supplemental Application for TAS to administer Section 303(c) water quality standards program and 401 certification programs on the Miccosukee Reserved Area (MRA) signed by Truman E. Duncan, Jr., Water Quality Control Officer dated June 6, 2000.
- d. March 15, 2001 Letter from Beverly H. Banister, Director, Water Management Division, EPA Region 4, to Billy Cypress, Chairman, Miccosukee Tribe of Indians of Florida, approving the Tribe's request to amend its application to conduct a federally approved water quality standards program under Section 518 of the Clean Water Act.
- e. The Tribe's Supplemental Application for TAS to administer Section 303(c) water quality standards program and 401 certification programs on five properties held in trust for the Tribe signed by Truman E. Duncan, Jr., Water Quality Control Officer dated January 3, 2019.
- f. March 2, 2020 letter from Jeanine Bennett, In-House General Counsel for the Miccosukee Tribe of Indians of Florida, to Mary Walker, Regional Administrator, providing supplemental information to the Supplemental Application regarding the basis for the Tribe's assertion of authority.

2. Letters and Notices from EPA

- a. February 14, 2019 letter from Mary S. Walker, EPA Region 4, Acting Regional Administrator, to Truman E. Duncan, Water Quality Control Officer, acknowledging receipt of the Tribe's January 3, 2019 Supplemental Application.
- b. April 12, 2019 letter, consistent with the requirements of 40 C.F.R. Section 131.8(c)(2), from Mary S. Walker, Acting Regional Administrator, to "appropriate governmental entities"¹ (AGEs) providing the substance and basis of the Tribe's assertion of authority to regulate water quality in the TAS Supplemental Application. The letter requested comments on the Tribe's assertion of authority² and informed the entities

¹ The EPA defines the term "appropriate governmental entities" as "States, Tribes, and other Federal entities located contiguous to the reservation of the Tribe applying for treatment as a State." 56 Fed. Reg. at 64,884.

² By letter dated March 2, 2020, the Tribe clarified the basis of its assertion of authority as being the congressional delegation of authority in CWA Section 518. See 81 Fed. Reg. 30,183 (May 16, 2016) and discussion *infra* at Section II.E.3.b.

that a copy of the Supplemental Application with the supporting information and maps was available on the EPA Region 4 website. The notice-and-comment request letter was sent to the following individuals:

- The Honorable Ronald DeSantis
Governor of Florida
400 South Monroe Street
Tallahassee, Florida 32309
 - Mr. Bruce Maytubby, Sr., Director
Eastern Regional Office
Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville, Tennessee 37214
 - Ms. Tamara Whittington, Superintendent
Big Cypress National Park
33100 Tamiami Trail East
Ochopee, Florida 34141
 - Mr. Pedro Ramos Superintendent
Everglades National Park
40001 State Road
Homestead, Florida 33034-6733
 - The Honorable Marcellus W. Osceola, Jr.
Seminole Tribe of Florida
6300 Stirling Road
Hollywood, Florida 33024
 - Colonel Andrew D. Kelly Jr.
U.S. Army Corps of Engineers
Jacksonville District
701 San Marco Boulevard
Jacksonville, Florida 32207-0019
 - Mr. Leopoldo Miranda, Regional Director
U.S. Fish and Wildlife Service
1875 Century Boulevard NE, Suite 400
Atlanta, Georgia 30345
- c. Consistent with long-standing Agency practice and the Region's processing of the Tribe's previous two CWA Sections 303(c) and 401

TAS applications, the EPA also provided the public with an opportunity to review and comment on the assertion of authority in the Tribe's Supplemental Application.

Legal notices communicating this opportunity were placed in the Miami Herald in Miami, Florida, the Lake Okeechobee News in Okeechobee, Florida, and the Highlands News-Sun in Sebring, Florida on April 17, 2019. The legal notices informed the public that the Tribe had applied for eligibility to develop water quality standards pursuant to the CWA for all surface waters within its Supplemental Reservation Lands. The notices also informed the public that they could review the Tribe's application with the maps depicting the Supplemental Reservation Lands on the EPA Region 4 website. The notices requested that any comments regarding the Tribe's assertion of authority to regulate surface water quality on its Supplemental Reservation Lands be submitted to the Florida Department of Environmental Protection.

The EPA subsequently conducted additional outreach to local governments in the affected communities informing them of the Tribe's Supplemental Application and offering to provide additional information. Letters were mailed to the Miami-Dade Board of County Commissioners, the Hendry County Administrator, and the Highlands County Administrator on September 5, 2019.

- d. September 5, 2019 letters from Jeananne M. Gettle, Water Division Director, to Hendry County Administrator, Highlands County Administrator, and Miami-Dade County Office of Intergovernmental Affairs notifying each party that the Tribe had requested an amendment of its authorization to administer its federally-approved water quality standards program to add five tracts of lands in South Florida and offering to provide additional information. The letters were sent to the following individuals:

Ms. Jennifer Davis, County Administrator
Hendry County
640 South Main Street
LaBelle, Florida 33975

Mr. Randy Vosburg, County Administrator
Highlands County
600 South Commerce Ave
Sebring, Florida 33870

Mr. Joe Rasco, Director
Office of Intergovernmental Affairs
Miami-Dade County
Board of County Commissioners
Stephen P. Clark Center
111 NW 1st Street, Suite 1032
Miami, Florida 33128

- e. January 14, 2020 letter from Jeaneanne M. Gettle, Water Division Director, to the Honorable Marcellus Osceola, Jr., Chairman of the Seminole Tribe of Florida, offering the Seminole Tribe of Florida an opportunity to consult and coordinate on this Decision, in accordance with the EPA's Policy on Consultation and Coordination with Indian Tribes and the EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights.
- f. February 20, 2020, 10:19 AM email from Eve Zimmerman, EPA Region 4, to Kevin Cunniff, Lisa Meday, Stacy Myers, and Whitney Sapienza of the Seminole Tribe of Florida, regarding Consultation Call Summary for the Miccosukee TAS Application.

3. Comments Received

The EPA received one comment letter from the Bureau of Indian Affairs, supportive of the Tribe's Supplemental Application. In addition, the EPA confirmed with the remaining federal agencies and local governments notified above that they had no comments on the Tribe's Supplemental Application.

Relevant summaries of the comment letter received, and communications are provided below.³

- a. An April 30, 2019 letter from Mr. Bruce W. Maytubby, Sr, Regional Director of Eastern Region of the Bureau of Indian Affairs, stated that the BIA supports the Tribe's Supplemental Application to amend its TAS authorization to administer its water quality standards program granted December 1994 and amended March 2001 in accordance with section 518 of the CWA. The letter further provided that the BIA believes that the Tribe's Supplemental Application complies with the statutory and regulatory language of 33 U.S.C. section 1377 and 40 C.F.R. section 131.8(a), and that the Tribe is fully capable of carrying out the functions related to administering a water quality standards program consistent with the terms and purposes of the CWA and its regulations.

³ The State of Florida Department of Environmental Protection initially requested additional information regarding the Tribe's Supplemental Application. The State subsequently withdrew that request.

- b. A May 20, 2019 email from James M. Riley, US ARMY CESAJ, Jacksonville Planning District, stated that the U.S. Army Corps of Engineers (Corps) has no comments on the Tribe assertion of authority, but would like the opportunity to review the proposed tribal water quality standards for the Supplemental Reservation Lands.
 - c. A June 4, 2019 email from Laura Perdices, Big Cypress National Park, to Eve Zimmerman stating that the Big Cypress National Park has no comments on the Tribe's assertion of authority.
 - d. A June 6, 2019 email from Lisa Meday, Seminole Environmental Resources Management Department, to Eve Zimmerman stating that the Seminole Tribe of Florida has no comment on the substance and basis of the Tribe's assertion of authority to regulate the quality of the Supplemental Reservation Lands.
 - e. A memorandum to the file documenting the May 23, 2019 call from Mr. Bob Johnson of Everglades National Park. The Everglades National Park has no comment on the Tribe's Supplemental Application.
 - f. A June 19, 2019 email from Bob Progulske, U.S. Fish and Wildlife Service, to Eve Zimmerman stating that the U.S. Fish and Wildlife Service has no comments or concerns regarding the Miccosukee Tribe's authority to regulate the quality of the waters on the five tracts contained in the supplemental application.
 - g. A memorandum to file documenting the October 3, 2019 calls to the Hendry County Attorney's Office, the Highlands County Administrator Office, and the Miami-Dade County Office of Intergovernmental Affairs documenting conversations with the three counties' response to the September 5, 2019 letters notifying the three governments of the TAS application and of the offer of additional information.
4. Statutory and Regulatory Provisions
- a. Section 518 of the Clean Water Act, 33 U.S.C. § 1377, authorizes the EPA to treat an eligible Indian tribe in a similar manner as a state if the tribe meets specified eligibility criteria.
 - b. 40 C.F.R. sections 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 81 Fed. Reg. 30,183

(May 16, 2016); 59 Fed. Reg. 64,339 (Dec.14, 1994); 56 Fed. Reg. 64,876 (Dec. 12, 1991).

- c. “Notice: Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs,” 85 Fed. Reg. 5,462, 5,464 (Jan. 30, 2020).

5. Guidance and Policy Statements

- a. EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 11, 1984, which was reaffirmed most recently by EPA Administrator Wheeler on April 5, 2019.
- b. Memorandum entitled “EPA/State/Tribal Relations” by EPA Administrator Reilly, July 10, 1991.
- c. 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.
- d. Memorandum entitled, “Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs,” by EPA Deputy Administrator Marcus Peacock, January 23, 2008.
- e. EPA Policy on Consultation and Coordination with Indian Tribes (May 2011).
- f. Interim Final EPA Region 4 Consultation Policy Standard Operating Procedures, November 2018.

E. Requirements and EPA Findings for TAS Approval

Pursuant to CWA section 518 and the EPA’s implementing regulations at 40 C.F.R. section 131.8(a), four requirements must be satisfied before the EPA can approve a tribe’s TAS application to administer a water quality standards program under CWA section 303(c) and a certification program under CWA section 401. These requirements are:

(1) the “Indian tribe” is recognized by the Secretary of the Interior and exercises authority over a “reservation” as defined at 40 C.F.R. sections 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 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 CWA and applicable regulations.

Following a determination by the EPA to approve an Indian tribe to administer a water quality standards program, the EPA then separately reviews tribal water quality standards pursuant to 40 C.F.R. section 131.21. A program eligibility approval per 40 C.F.R. section 131.8 does not constitute an approval of tribal water quality standards. Where the EPA determines that a tribe is eligible to the same extent as a state for purposes of implementing a water quality standards program, the tribe likewise is eligible to the same extent as a state for purposes of a certification program conducted under CWA section 401. See 40 C.F.R. § 131.4(c).

The federal regulation at 40 C.F.R section 131.8(b)(6) provides where the tribe has previously qualified for eligibility or "treatment as a state" under a CWA or SDWA program, the Tribe need only provide the required information which has not been submitted in a previous application.

1. Federal Recognition

Under section 518 of the CWA and its implementing regulations, the EPA can approve a program eligibility application only from an "Indian tribe" that meets the definitions set forth in CWA section 518(h) and 40 C.F.R. sections 131.3(k) and (l). See 40 C.F.R. § 131.8(a)(1) & (b)(1).⁴ The term "Indian tribe" is defined as "any Indian tribe, band, group or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation." 33 U.S.C. § 1377(h)(2); see also 40 C.F.R. § 131.3(l). The term "reservation" means "all lands 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." 33 U.S.C. § 1377(h)(1); see also 40 C.F.R. § 131.3(k).

The Tribe's original CWA sections 303(c) and 401 TAS Application, dated December 20, 1994, addressed the federal recognition requirement by referencing the Department of the Interior's listing of

⁴ 40 C.F.R. Section 131.8(a) provides the criteria upon which EPA Regional Administrators accept and approve tribal applications for purposes of administering a water quality standards program. 40 C.F.R Section 131.8(b) provides the elements for a tribe to include in its application for authorization to administer a water quality standards program.

federally recognized Indian tribes. The Tribe was included as “Miccosukee Tribe of Indians” on the most recent list of federally recognized tribes in the United States. See 85 Fed. Reg. 5,462, 5,464 (January 30, 2020). The EPA has therefore determined that the Tribe 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. Substantial Governmental Duties and Powers

As noted above, one of the four requirements applicable to a tribal TAS application for water quality standards under Section 303(c) and certifications under section 401 is that a tribe has a governing body carrying out substantial governmental duties and powers. See 40 C.F.R. § 131.8(a)(2). To show that the tribe has a government body currently carrying out substantial governmental duties and powers over a defined area, 40 C.F.R. section 131.8(b)(2) requires that an Indian tribe submit a descriptive statement that should: (i) describe the form of the tribal government; (ii) describe the types of governmental functions currently performed by the tribal governing body; and (iii) identify the source of the tribal government’s authority to carry out the governmental functions currently being performed.

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 the EPA’s prior approval of the Tribe’s December 20, 1994 CWA Sections 303(c) and 401 TAS Application, which addressed each of these elements, and none of which has changed. The EPA has determined that, based upon the Tribe’s Supplemental Application and the EPA’s prior approval of the Tribe’s 1994 Application, 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), (6).

3. Jurisdiction Over Waters Within the Miccosukee Tribe of Indians of Florida Reservation Lands

Pursuant to 40 C.F.R. section 131.8(a)(3), the water quality standards program to be administered by the Indian tribe must pertain 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 members 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.

To address this requirement, 40 C.F.R. section 131.8(b)(3) requires the tribe to submit a descriptive statement of authority to regulate water quality. Per the regulation, the statement should include: (i) a map or legal description of the area over which the 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 tribe's 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. See 40 C.F.R. § 131.8(b)(3). The Tribe's Supplemental Application addresses each of these elements as discussed in turn below.

a. Map or Legal Description

The Tribe has submitted maps and legal descriptions of the five additional areas of land and surface waters over which the Tribe claims jurisdiction. See January 3, 2019 Supplemental Application at pp. 11, 19, 27, 29, 37, and 43. The Sherrod Ranch property lands and waters are located within the Florida county of Hendry. See Hendry County Property Records Bk. 692, pp. 1885-90 (filed February 4, 2005). The Cherry Ranch property lands and waters are located within the Florida county of Highlands. See Highlands County Property Records Bk. 1747, pp. 337-42 (filed March 26, 2004). The Lambick, Coral Way, and SEMA property lands and waters are located within the Florida county of Miami-Dade. See Miami-Dade County Property Records Bk. 28,181, pp. 4766-68 (Lambick), 4838-42 (SEMA), and 4958-61 (Coral Way) (filed July 10, 2012). Each property is within the borders of the Miccosukee's reservation and held in trust by the United States for the Tribe.

The Supplemental Reservation Lands collectively consist of a total of 5,348 acres and comprise five tracts or boundaries grouped into a total of 56 separate parcels:⁵

- Sherrod Ranch (2,421 acres total, six parcels), taken into trust for the Tribe by the United States pursuant to 25 U.S.C. § 465 on January 21, 2005;
- Cherry Ranch (2,361 acres total, one parcel), taken into trust for the Tribe by the United States pursuant to 25 U.S.C. § 465 on March 25, 2004;
- Lambick (214 acres total, 11 parcels), taken into trust for the Tribe by the United States pursuant to 25 U.S.C. § 465 on June 25, 2012;
- SEMA (302 acres total, 33 parcels), taken into trust for the Tribe by the United States pursuant to 25 U.S.C. § 465 on June 29, 2012; and
- Coral Way (50 acres total, five parcels), taken into trust for the Tribe by the United States pursuant to 25 U.S.C. § 465 on June 29, 2012.

As detailed in the Supplemental Application and the Appendices thereto, the Tribe claims jurisdiction over the surface waters located within the boundaries of the Supplemental Reservation Lands. Some of the tract boundaries extend to the centerline of various surface waters; specifically:

- The Sherrod Ranch tract, as articulated in Exhibit A to the Warranty Deed dated January 21, 2005, is comprised of all of Sections 1, 12, and 13; the east of one-half (E ½) of Section 14; and the east one-half (E ½) of Section 11 lying South of the centerline of Canal Charlie (denoted on the map of the Sherrod Ranch Property in the Supplemental Application as the "Wingate Mill

⁵ For purposes of CWA Section 518(e)(2), the EPA interprets the term "reservation" to include trust lands set apart for the use of a tribe, even if the lands have not been formally designated as reservations. See 56 Fed. Reg. at 64,881.

Canal”), and East of the centerline of Canal Alpha North (denoted on the map of the Sherrod Ranch Property in the Supplemental Application as the “Lard Can Canal”) of the centerline intersection with Canal Charlie; and the East one-half (E ½) of Section 2, lying East of the centerline of Canal Alpha, Township 48 South, Range 32 East, Hendry County, Florida; and

- The Cherry Ranch tract, as articulated in Exhibit A to the Warranty Deed dated March 18, 2004, is comprised of land lying in parts of Sections 19, 28, 29, 30, 31, 32, and 33 of Township 38 South, Range 31 East, Highlands County, Florida, extending to the centerline of the ditch that generally forms the northern boundary of the tract.

The Supplemental Application makes clear that the Tribe is asserting authority only to regulate surface waters located on the Supplemental Reservation Lands. It does not cover the approximately-189,000-acre area of land owned by the State of Florida, but perpetually leased to the Tribe pursuant to a Lease Agreement between the State and the Tribe, referred to herein as the “Leased Lands.” See 25 U.S.C. § 1742(6) and (8).

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

b. Statement Describing Basis for the Tribe’s Authority

The Supplemental Application included statements from the Tribe’s In-House General Counsel that described and asserted the bases for the Tribe’s authority. The Statement initially described the Tribe’s “inherent sovereignty,” based on its Constitution and its Bylaws, as a source of its jurisdiction over the water resources of the Supplemental Reservation Lands. See generally Supplemental Application, Letter from Jeanine Bennett, Esq., In-House General Counsel, to Mary S. Walker, EPA Region 4 Regional Administrator. (January 3, 2018 [sic]⁶). The Tribe subsequently clarified that it is relying upon the congressional delegation of authority in CWA section 518 as the source of its authority to regulate reservation waters under the CWA. See 81 Fed. Reg. at 30,194. In light of the congressional delegation, 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. *Id.* at 30,194. The EPA also recognizes that there may be rare instances where special circumstances limit or preclude a particular tribe’s ability to accept or effectuate the congressional delegation of authority over its reservation. *Id.* at 30,192-93. Such special circumstances could arise, for instance, under a separate federal statute establishing unique jurisdictional arrangements for a specific state or reservation, or under the provisions of particular treaties or tribal constitutions that may limit a tribe’s ability to exercise relevant authority. *Id.*

The Tribe’s In-House General Counsel’s Statements confirmed that there are no limitations or impediments to the Tribe’s ability to accept and effectuate the congressional delegation of authority under the CWA. The EPA is not aware of any impediments to the Tribe assuming regulatory authority

⁶ The date of the Tribe’s In-House General Counsel’s statement appears to be a typographical error and should be January 3, 2019.

under the CWA for the water resources located within the exterior boundaries of the Supplemental Reservation Lands, and therefore concludes that the Miccosukee Tribe of Indians of Florida has properly asserted the congressional delegation of authority to regulate surface water quality on its Reservation and has satisfied the requirement of 40 C.F.R. section 131.8(b)(3)(ii).

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

The Tribe asserts authority over all surface waters located on the Supplemental Reservation Lands. The Tribe has included with its Supplemental Application a series of maps and property records depicting these surface waters of the Supplemental Reservation Lands. See Supplemental Application at pp. 9-48. The Tribe anticipates more fully delineating the water resources for which it will develop water quality standards during the water quality standards development process.

This TAS approval does not address the scope of federal jurisdiction over any waters of the United States. The EPA has determined that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(iii), which requires that a tribe's application include "[a]n identification of the surface waters for which the Tribe proposes to establish water quality standards." The identification requirement in 40 C.F.R. § 131.8(b)(3)(iii) and the other TAS eligibility criteria, described above, do not require the Tribe to demonstrate or the EPA to determine if the identified waters are waters of the United States. Accordingly, the EPA's determination that the Tribe has identified surface waters within the Supplemental Reservation Lands for which it proposes to establish water quality standards is not a determination that the waters identified by the Tribe are waters of the United States.⁷

d. Conclusion

The EPA concludes that the Miccosukee Tribe of Indians of Florida has demonstrated jurisdiction to establish water quality standards for the waters within the identified Supplemental Reservation Lands. The Tribe has adequately demonstrated that it meets the requirements of 40 C.F.R. §§ 131.8(a)(3) and (b)(3).

4. Capability of the Tribe to Administer an Effective Water Quality Standards Program

Pursuant to 40 C.F.R. section 131.8(a)(4), an Indian tribe must be 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. To demonstrate that a tribe has the capability to administer an effective water quality standards program, 40 C.F.R. section 131.8(b)(4) requires that the application include a narrative statement of the tribe's capability. The narrative statement should include: (i) a description of the tribe's

⁷ As noted above in this Decision Document, this TAS approval does not constitute approval of water quality standards, but rather the Tribe's eligibility to submit water quality standards to the EPA for approval under CWA Section 303(c). Development of such standards would remain subject to all requirements of the EPA's regulations, and such standards would still need to be submitted to the EPA for review under Section 303(c) to ensure they meet applicable CWA and regulatory requirements. Any EPA-approved water quality standards would be applicable for CWA purposes only to those waters that are waters of the United States.

previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act; (ii) a list of existing environmental and public health programs administered by the tribal governing body and copies of related tribal laws, polices, and regulations; (iii) a description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government; (iv) a description of the existing, or proposed, agency of the tribe that will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards; and (v) a description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan that proposes how the tribe will acquire additional administrative and technical capabilities. 40 C.F.R. § 131.8(b)(4)(i)-(v).

In assessing the Tribe's capability as required above, the EPA regional program staff relied, pursuant to 40 C.F.R. § 131.8(b)(6), on information in the Tribe's previously-approved December 20, 1994 CWA sections 303(c) and 401 TAS Application that has not changed, and on information gained from working with the Tribe since that time.

The Tribe has been an independent federally recognized Indian Tribe since 1962. In 1971, it became the first tribe in the nation to formalize a contract with the Bureau of Indian Affairs to assume complete responsibility for managing its own financial, social, economic and political affairs. The Tribe's governing body is the Miccosukee Business Council, which carries out substantial governmental duties and powers. In 1990, the Council established the Miccosukee Environmental Protection Agency (MEPA) as the Tribe's regulatory agency for the protection of land, air, and water. The Water Resource Management Department (WRMD) and the Tribal Water Resources Board, which are in the MEPA, are responsible for protecting the waters on over 75,000 acres of land in south Florida.

Consistent with 40 C.F.R. section 131.8(b)(4)(iv) - (v), the Miccosukee WRMD has been staffed over the past 25 years by very capable, experienced in-house environmental professionals who have developed and implemented the CWA Section 303(c) water quality standards and Section 401 certification programs. The WRMD staff is known and respected in south Florida for its water quality expertise and participates in intergovernmental initiatives and work groups dealing with local issues.

In particular, the WRMD staff includes trained personnel who have extensive experience implementing the water quality standards program since the EPA's 1994 TAS approval. The Tribal program has a history of updating its water quality standards and completing its triennial reviews on time, as well as completing section 401 certifications. The Tribe was among the first tribes with TAS to address nutrient pollution problems when it developed, adopted, and received EPA approval in 1999 for a numeric water quality criterion for phosphorus to protect its most nutrient-sensitive waters.

The Miccosukee WRMD will continue to be the entity that has primary responsibility for establishing, reviewing, implementing and revising water quality standards and certifying permits. It will continue administering the water quality standards program and receiving and processing applications for certification of compliance with water quality requirements and standards for projects that are subject to federal agency permits or licenses that may result in discharge in CWA navigable waters or impact water quality within the Miccosukee Tribe reservation waters. The additional water resources within the

additional 5,348 acres will not add any significant new burden to the staff already administering the CWA section 303(c) water quality standards and section 401 certification programs.

The 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

The EPA has determined that the Miccosukee Tribe of Indians of Florida have met the requirements of CWA section 518 and 40 C.F.R. section 131.8, and therefore approves the Tribe's Supplemental Application for program eligibility 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. section 131 for the water resources located within the Supplemental Reservation Lands. Consistent with 40 C.F.R. section 131.4(c), the Tribe is also eligible to the same extent as a state for the purpose of certifications under section 401 of the CWA and its implementing regulations set forth at 40 C.F.R. section 131.4 for such Supplemental Reservation Lands. By virtue of these decisions, the Tribe will also be an "affected state" within the meaning of CWA section 402(b)(3) and (5) and its implementing regulation at 40 C.F.R. section 122.4(d).