

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE UNDER THE CLEAN WATER ACT

June 2018

Prepared for:
United States Environmental Protection Agency



Prepared by:
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June 28, 2018

Alexis Strauss
Acting Regional Administrator
U.S. Environmental Protection Agency, Pacific Southwest, Region 9
75 Hawthorne St.
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Ayukii (hello) Ms. Strauss:

The Karuk Tribe is requesting treatment-in-a-similar-manner-as-a-state (TAS) eligibility to administer various regulatory programs under the Clean Water Act (CWA or Act). Enclosed is the Karuk Tribe's application for a determination by the Environmental Protection Agency (EPA) that the Tribe meets the eligibility requirements of section 518 of the CWA to be treated similar to a state and to administer a CWA section 303(c) water quality standards program and CWA section 401 water quality certification program.

In the past the Tribe has submitted similar applications under section 106 of the CWA, and EPA has determined that the Tribe has satisfactorily met the criteria established for TAS in section 518 of the Act and is entitled to receive funding under the Act. These prior determination letters are attached as Exhibits to the enclosed application, as a means of streamlining the determination process for this application.

Thank you for your time and consideration of the Karuk Tribe's application for TAS eligibility. Please do not hesitate to call General Counsel Fatima Abbas, at 530-643-1873 (office), or email her at fabbas@karuk.us, with any questions or concerns you may have concerning this application.

Yootva (thank you),

Russell 'Buster' Attebery
Chairman, Karuk Tribe

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APPLICATION FOR CLEAN WATER ACT ELIGIBILITY TO ADMINISTER A WATER QUALITY STANDARDS PROGRAM AND A WATER QUALITY CERTIFICATION PROGRAM

The **Karuk Tribe** hereby applies under section 518 of the Clean Water Act (CWA) to the U.S. Environmental Protection Agency (EPA) to become eligible to be treated in a similar manner as a state (TAS) to administer a CWA section 303(c) water quality standards program and CWA section 401 water quality certification programs.

1. BACKGROUND

The Karuk Tribe was first recognized by the United States in the late 1800's. However, after a period of administrative termination beginning in the mid-1940's, the Bureau of Indian Affairs ("BIA"), in 1978, undertook a comprehensive review and determined that its prior view regarding termination of the Tribe was "not entirely accurate."¹ As a result, in 1979, the Assistant Secretary for Indian Affairs notified the BIA Area Director that "the continued existence of the Karoks (Karuk) as a federally recognized tribe of Indians has been substantiated."² BIA thereafter included the Karuk Tribe on its initial list of federally recognized tribes, formally acknowledging the Karuk Tribe as a federally recognized Indian tribe and sovereign tribal nation, with a government-to-government relationship with the United States. The federal government's formal acknowledgment of the Karuk Tribe recognized the unique relationship of the Tribe to its aboriginal territory, which encompasses more than 1.4 million acres across Northern California.³

Although at the time of federal recognition the Tribe did not have any reserved or trust land, it continued its efforts to place land within its aboriginal territory in trust, which began in 1977 with a 6.6 acre parcel in Orleans. Currently, the United States holds approximately 900 acres in trust for the benefit of the Karuk Tribe, including parcels that are adjacent to or intersect the Klamath River and tributaries within the Klamath River watershed.

The Karuk Tribe's Constitution ("Constitution") was approved by the BIA in 1985. In 1996, the Tribe became a self-governance Tribe pursuant to the authorities in the Indian Self-Determination and Education Assistance Act, assuming fiduciary and administrative responsibility for implementing certain federal programs and/or functions. Today the Karuk Tribe is the second largest tribe in California with an enrollment of over 5,000 members.

¹ See National Indian Gaming Commission, *Restored Lands Legal Opinion for Karuk Tribe of California; Yreka Trust Property*, at 5-6 (April 9, 2012).

² *Id.* at 7.

³ See Department of the Interior, Bureau of Reclamation, *Reclamation: Managing Water in the West*, at pp. 6-7 (September 2011) (Karuk Aboriginal Territory encompasses about 1.4 million acres that included the Klamath and Salmon Rivers); see also Constitution of the Karuk Tribe, Article 1, Section 1, at **Exhibit G**).

The Karuk Department of Natural Resources (“DNR”) was established in the 1980s and has grown into a multi-program department with a mission of protecting, promoting, and preserving the cultural/natural resources and ecological processes upon which the Karuk depend. The Karuk DNR receives funding from the EPA under the General Assistance Plan (“GAP”), Tribal grants under CWA Section 319 (nonpoint source), and CWA Section 106. The Karuk DNR includes a Water Resources Program that has developed a Water Quality Control Plan with tribally-adopted standards last updated August 28, 2014. The Water Resources Program monitors over 130 miles of mainstem Klamath River as well as many more miles of major and minor tributaries to the Klamath River.

Section 518(e) of the CWA authorizes EPA to treat an eligible tribe in the same manner as a state for certain CWA programs, including sections 303 and 401. Under CWA Section 518(e) and EPA’s implementing regulation at 40 C.F.R. § 131.8(a), a tribe must satisfy four requirements before EPA approves that tribe to administer a CWA section 303(c) water quality standards program and CWA section 401 water quality certification program: (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 ... or otherwise within the borders of the Indian reservation;⁴ 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. *See* 40 C.F.R. § 131.8(a).

As demonstrated below, the Karuk Tribe satisfies each of the four requirements.

2. FEDERAL RECOGNITION (40 CFR 131.8(a)(1) and (b)(1))

The Karuk Tribe is a federally recognized tribe. *See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 82 Fed. Reg. 4915, 4917 (Jan. 17, 2017). As previously explained, the Tribe was first recognized by the United States in the late 1800’s, as evidenced by an 1852 treaty with the United States and subsequent government-to-government interactions through the 1890’s when the Department of the Interior provided numerous services to the Tribe. *See National Indian Gaming Commission, Restored Lands Legal Opinion for Karuk Tribe of California; Yreka Trust Property* (NIGC Karuk Restored Lands Opinion), at 3-7 (April 9, 2012). Then, beginning in the mid-1940’s, the Tribe entered into a period of administrative termination in which the federal government did not recognize a government-to-government relationship with the Tribe. *Id.* at 3. In 1978, the BIA undertook a comprehensive review and determined that its prior view regarding termination was “not entirely accurate” and “based on an insufficient review.” *Id.* at 5-6. In 1979, the Assistant Secretary for

⁴ For purposes of the CWA, the term “Indian reservation” includes trust lands validly set aside for Indian tribes even if such lands have not formally been designated as an Indian reservation. *See* 81 Fed. Reg. 30183, 30192 (May 16, 2016); *see also* discussion at Section 3, *infra*.

Indian Affairs notified the BIA Area Director that “the continued existence of the Karoks (Karuk)⁵ as a federally recognized tribe of Indians has been substantiated.” *Id.* at 7 (citing Memorandum to Sacramento Area Director from Assistant Secretary of Indian Affairs, re: Revitalization of the Government-to-Government Relationship between the Karok Tribe of California and the Federal Government (Jan. 15, 1979)). “In light of this finding, I am hereby [sic] directing that the government-to-government relationship...be re-established.” *Id.* BIA thereafter included the Karuk Tribe on its initial list of federally recognized tribes.⁶ The Tribe is listed as “**Karuk Tribe (previously listed as Karuk Tribe of California)**” in the Secretary of the Interior’s most recent list of federally recognized tribes, found at 82 Fed. Reg. 4915, 4917 (Jan. 17, 2017).

3. AUTHORITY OVER A FEDERAL INDIAN RESERVATION (40 CFR 131.8(a)(1) and 131.3(l))

The Karuk Tribe exercises governmental authority over lands held in trust by the United States for the benefit of the Karuk tribal government. *See* Constitution, Arts. II, VI, attached as **Exhibit G**; *see also* Letter from Alexis Strauss, Acting Director, Water Management Division to Nancy J. Marvel, EPA Regional Counsel (Sept. 18, 1996) at 2, attached as **Exhibit A**; Section 4, below, and authority discussed therein; *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 452-53 (1995)(tribal trust land is Indian country). Although these trust lands are not located within the boundaries of a formal “reservation,” EPA has determined that tribal trust land is properly treated as an informal reservation, and may be included within a Tribe’s jurisdictional authority for the purposes of the CWA. *See* 58 Fed. Reg. 6790-01 (Dec. 22, 1993).

In the 1991 preamble to the Water Quality Standards Regulation, EPA noted that the Agency considers lands formally set apart for the use of Indians — such as the tribal trust lands over which the Tribe seeks program authorization — to be “within a reservation” for purposes of section 518(e)(2), even if they have not been formally designated as “reservations.” *See* 56 Fed. Reg. 64876, 64881 (Dec. 12, 1991) (citing *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 510-11 (1991)).

In its 2016 Revised Interpretation of Clean Water Act Tribal Provisions, EPA confirmed this “longstanding approach” to tribal trust lands that have not been formally designated as reservations. *See* 81 Fed. Reg. 30183 (May 16, 2016). The Revised Interpretation did not change this approach:

Under EPA’s longstanding approach, and consistent with relevant judicial precedent, such tribal trust lands are informal reservations and thus have the same status as formal reservations for purposes of the Agency’s programs. *See, e.g.*, 56 FR at 64881; 63 FR at 7257-58; *APS [Arizona Pub. Service Co.]*, 211 F.3d at

⁵ The Karuk historically had been identified by several different names, including Karok. *See* NIGC Karuk Restored Lands Opinion, at 3, n. 2

⁶ The Karuk Tribe was listed on the BIA’s initial list of federally recognized tribal entities first published in 1979. *See* 44 Fed. Reg. 7235 (Feb. 6, 1979).

1292-94. Tribes have always been able to seek TAS over such tribal trust lands for CWA purposes (several tribes have done so previously), and nothing in today's revised interpretation alters or affects their ability to do so.

Id. at 30192.

EPA and the courts treat 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 Pub. 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). Therefore, tribes without formal reservations may receive program authorization under the CWA for tribal trust lands.⁷

Thus, the Karuk Tribe can be treated in the same manner as a state for purposes of the CWA for those lands held in trust by the United States for the benefit of the Tribe.⁸ Maps showing the borders of the Tribe's trust lands are attached hereto as **Exhibit D**, and are included in a list of Karuk land attached as **Exhibit E**. Documentation demonstrating the trust land status is attached as **Exhibit F**. A map showing the boundaries of the Karuk Aboriginal Territory is also attached to this Application as **Exhibit C**. See section 5 of this Application for more information about the description of the Tribe's lands.

4. TRIBAL GOVERNANCE (40 CFR 131.8(a)(2) and (b)(2))

The Karuk Tribe is organized under the Tribe's Constitution, which was approved by the Bureau of Indian Affairs in 1985. In 1996, the Tribe became a self-governance tribe pursuant to the authorities in the Indian Self-Determination and Education Assistance Act, assuming fiduciary and administrative responsibility for implementing certain federal programs and/or functions. The Karuk Tribe carries out a wide range of functions, from land management programs to health programs, and has over fifteen governmental departments organized to further the missions of the Tribe.

The Karuk Tribe has a governing body that carries out substantial governmental duties and powers. The governing body of the Tribe is the Tribal Council, which consists of nine (9) members elected at large from the Tribe: six (6) Council Members, consisting of two (2) representatives elected from each of the three (3) Council Districts, and three (3) officers (the Chairperson, Vice-Chairperson and Secretary/Treasurer), elected from anywhere within 100 road miles of the Tribe's Aboriginal Territory. See Constitution, Art. X, at **Exhibit G**. As

⁷ For example, the EPA appropriately relied on this reasoning with respect to the Pawnee Nation of Oklahoma's request for TAS authorization under CWA sections 303(a) and 401 for the Nation's tribal trust lands. See Letter from Richard E. Greene, Regional Administrator, U.S. EPA Region 6 to Honorable George Elton Howell, President, Pawnee Nation of Oklahoma (Nov. 4, 2004); available at https://www.epa.gov/sites/production/files/2015-07/documents/pawnee_nation_approval_and_maps.pdf

⁸ EPA previously reached this conclusion in the context of the Tribe's Section 106 Application. See Memorandum from N. Marvel to A. Strauss regarding The Karuk Tribe of California Eligibility for Grants under Section 106 of the Clean Water Act, at pp. 3-4 (Memorandum, **Exhibit A**).

enumerated in Article V of the Constitution, the Tribal Council has “the authority and responsibility to exercise by resolution or enactment of Tribal laws all the inherent sovereign powers vested in the Tribe as a Sovereign Aboriginal People.” See Constitution, Art. VI. The Tribe has also adopted a Tribal Government Code of Conduct which applies to elected officials for the Tribe. See **Exhibit I**. The Tribal Council holds Health Board and Council meetings monthly and publishes meeting minutes. The location of the meeting rotates between Happy Camp, Orleans and Yreka.

For additional information demonstrating the Tribe’s governmental functions and authority, please see the Tribe’s previous approvals under Section 106 of the CWA, attached as **Exhibit A**.

5. MANAGEMENT AND PROTECTION OF WATER RESOURCES OF THE RESERVATION (40 CFR 131.8(a)(3) and (b)(3))

The water quality standards and water quality certification programs to be administered by the Tribe under the TAS program will assist the Tribe in managing and protecting water resources within the borders of and adjacent to the Tribe’s trust land (*see* Section 3, above).

The Tribe is requesting authority to administer a CWA section 303(c) water quality standards program and CWA section 401 water quality certification program over trust lands and water resources within or adjacent to its tribal trust lands. The Tribe’s trust lands comprise 57 parcels, totaling 901.34 acres. (*See Exhibit E, G.*) The boundaries of the areas for which the Tribe is seeking authority to administer the water quality standards and water quality certification programs are identified in the attached maps at **Exhibit D**. Those maps identify the lands that are held in trust by the United States for the Tribe, and therefore properly considered part of the Tribe’s informal reservation. See 56 Fed Reg. at 64881; 81 Fed. Reg. 30183.

The surface waters for which the Tribe proposes to establish water quality standards are those surface waters that occur within, or are adjacent to, the Tribe’s trust lands identified in the maps attached as **Exhibit D** and identified as trust land in the list of Karuk lands at **Exhibit E**.

6. TRIBAL LEGAL COUNSEL STATEMENT (40 CFR 131.8(b)(3)(ii))

A statement by the Tribe’s legal counsel providing references to the documents that establish legal title to the Tribe’s trust lands, and describing the basis of the Tribe’s assertion of authority, is attached hereto as **Exhibit H**.

The basis for the Tribe’s assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservations contained in section 518 of the Clean Water Act. This authority is described in the U.S. Environmental Protection Agency’s final interpretive rule, *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183 (May 16, 2016).

There are no limitations or impediments to the Tribe’s authority or ability to effectuate the delegation of authority from Congress as described in this application.

7. TRIBAL CAPABILITY (40 CFR 131.8(b)(4))

The Tribe is capable of administering effective water quality standards and water quality certification programs, as described below.

The overall organization of the Tribe's government is described above and in the Tribe's Constitution, attached as **Exhibit G**. The Tribe has ample experience in managing governmental programs, including environmental and public health programs. The Tribe's Low Income Assistance program, Karuk Tribal Temporary Assistance for Needy Families ("TANF") program, Adult Vocational Training grant program, Child Welfare Services, and land management program are just a few examples of the Tribe's experience in managing tribal programs for the benefit of its members.

Importantly, the Tribe has an established Department of Natural Resources ("DNR") whose mission is to protect, enhance and restore the cultural/natural resources and ecological processes upon which the Karuk people depend. The DNR staff ensures that the integrity of natural ecosystems and traditional values are incorporated into resource management strategies.

Within the DNR, the Tribe's Water Pollution Control Program focuses on water quality conditions within the mainstem Klamath River and tributaries entering the mid-Klamath River. The Karuk Tribe has entered into cooperative agreements with both the U.S. Geological Survey and the U.S. Fish and Wildlife to monitor and assess water quality conditions in the Klamath and its major tributaries. The Karuk Tribe's DNR has been monitoring daily water quality conditions of the Klamath River since January of 2000, and tributaries to the Klamath River since 1998. The Karuk Tribe has been collaboratively involved for a number of years in maintaining water quality stations and collecting water quality samples along the Klamath River and its tributaries, together with the EPA, the United States Geological Survey, the Yurok Tribe, the Klamath Tribal Water Quality Consortium, Oregon State University and PacificCorp. Since 2000, the Tribe's DNR has conducted and published Water Quality Assessment Reports, which are available on the Tribe's website at <http://karuk.us/index.php/departments/natural-resources/somes-bar-water-quality>. Real-time data is available on-line to Tribes, state and federal agencies, and entities at <http://waterquality.karuk.us:8080/>. An example of the Tribe's Water Quality Assessment Report is also attached hereto as **Exhibit J**.

The Tribe also has a Watershed Restoration team, which was established in 2002 with the goal of decreasing the sedimentation of waterways caused by nearby roadways. The team removed approximately 187,000 cubic yards of potential sediment within the Wooley Creek watershed. This helped secure the critically important Salmonid refugia, an important step in restoring the spring chinook, coho, fall chinook salmon, and the steelhead trout.

The responsibility for establishing, reviewing, implementing and revising water quality standards will be assigned to the Karuk Tribe's DNR, described above. The Tribal entity that will be responsible for conducting water quality certifications under CWA section 401 is the Director of the Karuk Tribe's Water Pollution Control Program. Experienced staff members are already working in the Tribe's Water Pollution Control Program and trained to administer the water quality standards. This includes the following staff members:

- Susan Fricke-Water Quality Program Manager
- Grant Johnson-Water Quality Program Biologist
- Lawrence Alameda Jr.-Water Quality Technician I
- Cameron Kingery-Water Quality Technician I

8. CONCLUSION

The Karuk Tribe respectfully requests that EPA determine that the Tribe meets the eligibility requirements of section 518 of the CWA to be treated similar to a state and to administer a CWA section 303(c) water quality standards program and CWA section 401 water quality certification program for its trust lands.

Respectfully submitted this 28th day of June, 2018.

Yootva (thank you),

FOR RUSSELL ATTEBERY



Russell 'Buster' Attebery
Chairman, Karuk Tribe

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June 28, 2018

Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency, Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Karuk Tribe Assertion of Authority for Treatment in the Same Manner as a State Under the Clean Water Act

The purpose of this letter is to describe the legal basis of the Karuk Tribe's ("Karuk" or "the Tribe") assertion of authority for treatment in the same manner as a State ("TAS") under Section 518 of the Clean Water Act ("CWA"), to establish and implement water quality standards and control discharge permitting under Sections 303(c) and 401, respectively.

INTRODUCTION

The basis for the Tribe's assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation contained in Section 518 of the CWA. This authority is described in the U.S. Environmental Protection Agency's ("EPA") final interpretive rule, *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183, May 16, 2016.

Consistent with Congressional mandate, EPA issued a final rule in 1991 implementing the provisions of the CWA by setting forth the standard for processing tribal requests for TAS status. According to the guidelines a tribe must: (1) be federally recognized and exercise governmental authority; (2) have a governing body that carries out substantial governmental duties and powers; (3) have a water quality standards program that pertains to the management and protection of water resources within Indian Country; and (4) be reasonably capable of carrying out the functions of an effective program in a manner consistent with the terms and purposes of the CWA and applicable regulations. *See* CWA Section 518(e), 40 C.F.R. § 131.8. As evidenced below, the Tribe satisfies each of these criteria.

1. THE KARUK TRIBE IS A FEDERALLY-RECOGNIZED TRIBE EXERCISING GOVERNMENTAL AUTHORITY.

The Karuk Tribe is a federally-recognized tribe. *See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 82 Fed. Reg. 4915, 4917 (Jan. 17, 2017). The Tribe was first recognized by the Department of the Interior in the late 1800's, as evidenced by an 1852 treaty with the United States and subsequent government-to-government interactions through the 1890's when the Department provided numerous services to the Tribe. *See National Indian Gaming Commission, Restored Lands Legal Opinion for Karuk Tribe of California; Yreka Trust Property* (NIGC Karuk Restored Lands Opinion), at 3-7 (April 9, 2012). After a period of administrative termination beginning in the mid-1940's, in 1978, the Bureau of Indian Affairs ("BIA") undertook a comprehensive review and determined that its prior view regarding termination was "not entirely accurate" and "based on an insufficient review." *Id.* at 5-6. In 1979, the Assistant Secretary for Indian Affairs notified the BIA Area Director that "the continued existence of the Karoks (Karuk)¹ as a federally recognized tribe of Indians has been substantiated." *Id.* at 7 (citing Memorandum to Sacramento Area Director from Assistant Secretary of Indian Affairs, re: Revitalization of the Government-to-Government Relationship between the Karok Tribe of California and the Federal Government (Jan. 15, 1979)). "In light of this finding, I am hereby [sic] directing that the government-to-government relationship...be re-established." *Id.* BIA thereafter included the Karuk Tribe on its initial list of federally recognized tribes.² The Tribe drew up a constitution (approved by BIA in 1985), held elections and established a Tribal Council.³ A true and correct copy of the Tribe's current Constitution is attached as **Exhibit G** to the TAS Application.

As a government organization, the Karuk Tribe has demonstrated its ability to effectively administer a multitude of social, cultural and economic programs. The Tribal government currently employs more than 200 people in administrative, child welfare, community/economic development, education, elders, energy assistance, health, housing, human services and natural resources programs. In little more than a decade the Karuk Tribe has developed housing divisions, health clinics and Head Start programs in Orleans, Happy Camp and Yreka, its three major population centers. The Karuk Tribe also has administered salmon fisheries enhancement

¹ The Karuk historically had been identified by several different names, including Karok. *See National Indian Gaming Commission, Restored Lands Legal Opinion for Karuk Tribe of California; Yreka Trust Property*, at 3, n. 2

² The Karuk Tribe was listed on the BIA's initial list of federally recognized tribal entities first published in 1979. *See* 44 Fed. Reg. 7235 (Feb. 6, 1979).

³ Constitution of the Karuk Tribe (formerly known as the "Karuk Tribe of California"). Original Constitution Adopted April 6, 1985; Amendments Adopted by Special Election July 19, 2008, 73 Fed. Reg. 18535, 18544 (April 4, 2008).

projects, acquired and expanded retail business, planned and developed Rain Rock Casino, assisted a number of local people in starting small business enterprises and staffed Workforce Development personnel at Community Computer Centers in Orleans, Happy Camp and Yreka.

Furthermore, the EPA has consistently determined that “the Tribe has satisfied the recognition requirement set forth in section 518(h) of the CWA.” *See* EPA Memorandum re: The Karuk Tribe of California Eligibility for Grants Under Section 106 of the Clean Water Act; *see also* EPA Memorandum re: The Karuk Tribe’s Application for Financial Assistance with respect to the Water Pollution Control Program under the Clean Water Act Section 106 (September 18, 1996); EPA Memorandum re: The Eligibility of the Karuk Tribe of California for Grants Under Section 319 of the Clean Water Act (collectively, prior EPA determination letters are attached as **Exhibit A** to TAS Application).

2. THE GOVERNING BODY OF THE KARUK TRIBE CARRIES OUT SUBSTANTIAL DUTIES AND POWERS.

The governing body of the Karuk Tribe is the Tribal Council, which is responsible for generally administering the tribal government. The Tribal Council consists of nine (9) members elected at large from the Tribe: six (6) Council Members, consisting of two (2) representatives elected from each of the three (3) Council Districts, and three (3) officers (the Chairperson, Vice-Chairperson and Secretary/Treasurer), elected from anywhere within 100 road miles of the Tribe’s Aboriginal Territory. *See* Constitution of the Karuk Tribe (“Constitution”), Art. V, attached as **Exhibit G** to TAS Application.

The Tribal Council, as enumerated in Article VI of the Constitution, has “the authority and responsibility to exercise by resolution or enactment of Tribal laws all the inherent sovereign powers vested in the Tribe as a Sovereign Aboriginal People.” *See* Constitution, Art. VI. The members of the Karuk Tribe have expressly delegated authority to the Tribal Council, as the governing body of the Tribe, to carry out substantial duties and powers vested in the Tribe. Some of those duties and powers include the power to negotiate and contract with the federal, state, Tribal and local governments, private agencies and consultants; to purchase, lease or otherwise acquire land; to prevent the sale, disposition, lease or encumbrance of Tribal lands; to establish and manage Tribal enterprises and the economic affairs of the Karuk Tribe; to establish and oversee certain Tribal committees; to license and regulate, including assessing applicable taxes and fees, the conduct of all business activities within Tribal jurisdiction; to manage, develop, protect and regulate the use of Tribal land, wildlife, fish, plants, air, water, minerals, and all other natural and cultural resources within Tribal jurisdiction. *Id.* at Art. VI (1-11.). The Tribal Council also has the authority to “enact laws and codes...to maintain order...to protect the safety and welfare of all persons within the Tribal jurisdiction...and to provide for the enforcement of the laws and codes of the Tribe.” *Id.* at Art. VI (9).

The Tribe has also adopted a Tribal Government Code of Conduct which applies to elected officials for the Tribe. *See Exhibit I to TAS Application.* The Tribal Council holds Health Board and Council meetings monthly and publishes meeting minutes. The location of the meeting rotates between Happy Camp, Orleans and Yreka.

The Tribe has a comprehensive government structure and is currently administering numerous programs for the benefit of Tribal members. The Tribe has ample experience in managing governmental programs, including environmental and public health programs. The Tribe's Low Income Assistance program, Karuk Tribal Temporary Assistance for Needy Families ("TANF") program, Adult Vocational Training grant program, Child Welfare Services, and land and transportation management programs are just a few examples of the Tribe's experience in managing tribal programs for the benefit of its members. Importantly, the Tribe has an established Department of Natural Resources ("DNR") whose mission is to protect, enhance and restore the cultural/natural resources and ecological processes upon which the Karuk people depend. The Natural Resources staff ensures that the integrity of natural ecosystems and traditional values are incorporated into resource management strategies.

3. THE TRIBE HAS ADEQUATE AUTHORITY OVER THE WATER RESOURCES LOCATED WITHIN THE BORDERS OF THE RESERVATION.

The Karuk Tribe's land base consists of approximately 1,660 acres of allotment, trust, and fee land. *See Exhibits C-E.* Of those acres, the United States currently holds approximately 900 acres of land in trust for the Tribe; the trust land encompasses a number of parcels located within the Tribe's aboriginal territory. *See Exhibit E.* Just as tribes have regulatory authority within the boundaries of its reservation and on its trust lands, the Karuk Tribe has authority over the water resources located adjacent to or within its trust land. *See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 510-11 (1991) (holding that a "reservation" also includes trust lands that have been validly set apart for a tribe's use even though the land has not been formally designated as a reservation); *see also Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 452-53 (1995)(same).

The Tribe is requesting authority to administer a CWA section 303(c) water quality standards program and CWA section 401 water quality certification program over trust lands and water resources within or adjacent to its tribal trust lands. The Tribe's trust lands comprise 57 parcels, totaling 901.34 acres. A list of these parcels, the APN number, location, trust date, BIA tract number and approximate acreage is attached to the TAS application as **Exhibit E**. Documentation of the trust status is attached to the TAS application as **Exhibit F**. These trust lands are not considered a formal reservation, but rather an "informal reservation" as recognized by EPA.

Although the Tribe's trust lands are not located within the boundaries of a formal "reservation," EPA has determined that tribal trust land is properly treated as an informal reservation, and may be included within a Tribe's jurisdiction for the purposes of the CWA. *See* 58 Fed. Reg. 6790-01 (Dec. 22, 1993). In the 1991 preamble to the Water Quality Standards Regulation, EPA stated that the Agency considers lands formally set apart for the use of Indians — such as the tribal trust lands over which the Karuk Tribe seeks program authorization — to be "within a reservation" for purposes of Section 518(e)(2), even if they have not been formally designated as a "reservation." *See* 56 Fed. Reg. 64876, 64881 (Dec. 12, 1991) (citing *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 510-11 (1991)).

In its 2016 Revised Interpretation of Clean Water Act Tribal Provision, EPA confirmed this "longstanding approach" to tribal trust lands that have not been formally designated as reservations. *See* 81 Fed. Reg. 30183 (May 16, 2016). The Revised Interpretation did not change this approach:

Under EPA's longstanding approach, and consistent with relevant judicial precedent, such tribal trust lands are informal reservations and thus have the same status as formal reservations for purposes of the Agency's programs. *See, e.g.,* 56 FR at 64881; 63 FR at 7257-58; *APS (Arizona Pub. Service Co. v. U.S. Environmental Protection Agency*, 211 F.3d 1280, 1292-94 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 970 (2001)) (full citation added). Tribes have always been able to seek TAS over such tribal trust lands for CWA purposes (several tribes have done so previously), and nothing in today's revised interpretation alters or affects their ability to do so.

81 Fed. Reg. at 30192.

EPA and the courts have consistently treated tribal trust lands located 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 Pub. Service Co*, 211 F.3d at 1294; *HRI, Inc. v. EPA*, 198 F.3d 1224, 1249-54 (10th Cir. 2000). Therefore, Tribes without formal reservations, such as Karuk, have adequate authority over and may receive program authorization under the Clean Water Act for waters in and adjacent to its tribal trust lands.

The Karuk Tribe recognizes the need to preserve and protect its interests in these water resources. Tribal regulation of such resources perpetuates and upholds the political integrity of the Karuk Tribe, and implicates fundamental tribal interests. This further supports the Tribe's authority and jurisdiction over its trust lands and related water resources and water quality.

4. THE KARUK TRIBE IS CAPABLE OF CARRYING OUT THE FUNCTIONS OF AN EFFECTIVE WATER QUALITY STANDARDS PROGRAM CONSISTENT WITH THE CWA AND ITS IMPLEMENTING REGULATIONS.

As described in more detail in Section 7 of the Tribe's Application, the Karuk Tribe is fully capable of administering effective water quality standards and water quality certification programs. The Tribe's Department of Natural Resources includes Water Quality, Watershed Restoration and Eco-Cultural Revitalization Programs. *See Exhibit K* to TAS Application [Karuk Department of Natural Resources Strategic Plan for Organizational Development (2015) at pp. 3-11.] The Water Quality Program conducts monitoring and research along 130 miles of the Klamath River and tributaries. This includes collection of data on temperature, dissolved oxygen, sediment, nutrients, phytoplankton, toxins, etc. This data informs tribal, as well as state and federal, processes and policies. Additionally, the Water Quality management level staff represent the concerns of the Karuk Tribe on Klamath Basin watershed management activities and promote sound water management practices that improve and restore water quality conditions. This program includes a Water Quality Program Manager, Water Quality Biologist and Technicians as needed. In addition, the Watershed Restoration Program conducts cross-programmatic work that has a direct effect on improving water quality and quantity. With oversight from the Tribal Council, the DNR creates and administers an annual budget. Operationally, fourteen (14) program areas are identified that functionally fall within the purview of DNR. *See Exhibit L* to TAS Application. Some of these program areas do have dedicated programs or divisions with existing capacity (*i.e.* staff and funding), others are incorporated into programmatic work to various degrees, and some require additional efforts to develop the necessary dedicated capacity. *See Exhibit K* to TAS Application, pp. 3-11.

The Tribal Council is also authorized to initiate legal action in the name of the Tribe and has standing in federal district court to seek injunctive relief from water pollution emergencies that threaten tribal resources, reserved rights, or the public health and safety. *See* 28 U.S.C. § 1362. Under this federal jurisdictional statute, a tribe stands in the shoes of its trustee, the United States, and therefore, would be entitled to assert a claim regarding water quality-related issues, should the need arise. *See Moe v. Confederated Salish Kootenai Tribes*, 425 U.S. 463 (1976).

CONCLUSION

As described above, the Karuk Tribe has demonstrated its authority under CWA § 518 for TAS status, to establish and implement water quality standards and control discharge permitting under CWA §§ 303(c) and 401, respectively.

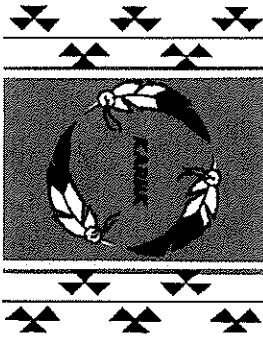
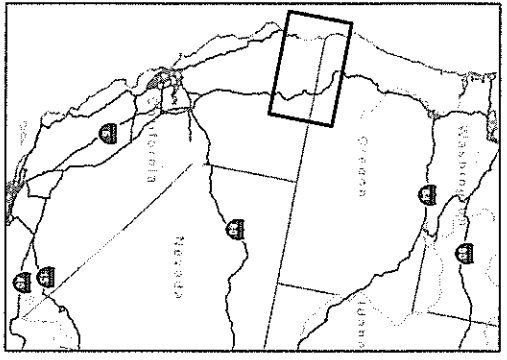
If there should be any question regarding the Karuk Tribe's authority, the Tribe requests an opportunity to respond to EPA before EPA makes any final determination regarding the

Tribe's eligibility for TAS status. Please feel free to contact me at fabbas@karuk.us or 530-643-1873 with any questions regarding this legal opinion.

Respectfully,

A handwritten signature in cursive script, appearing to read "Fatima Abbas", written over a horizontal line.

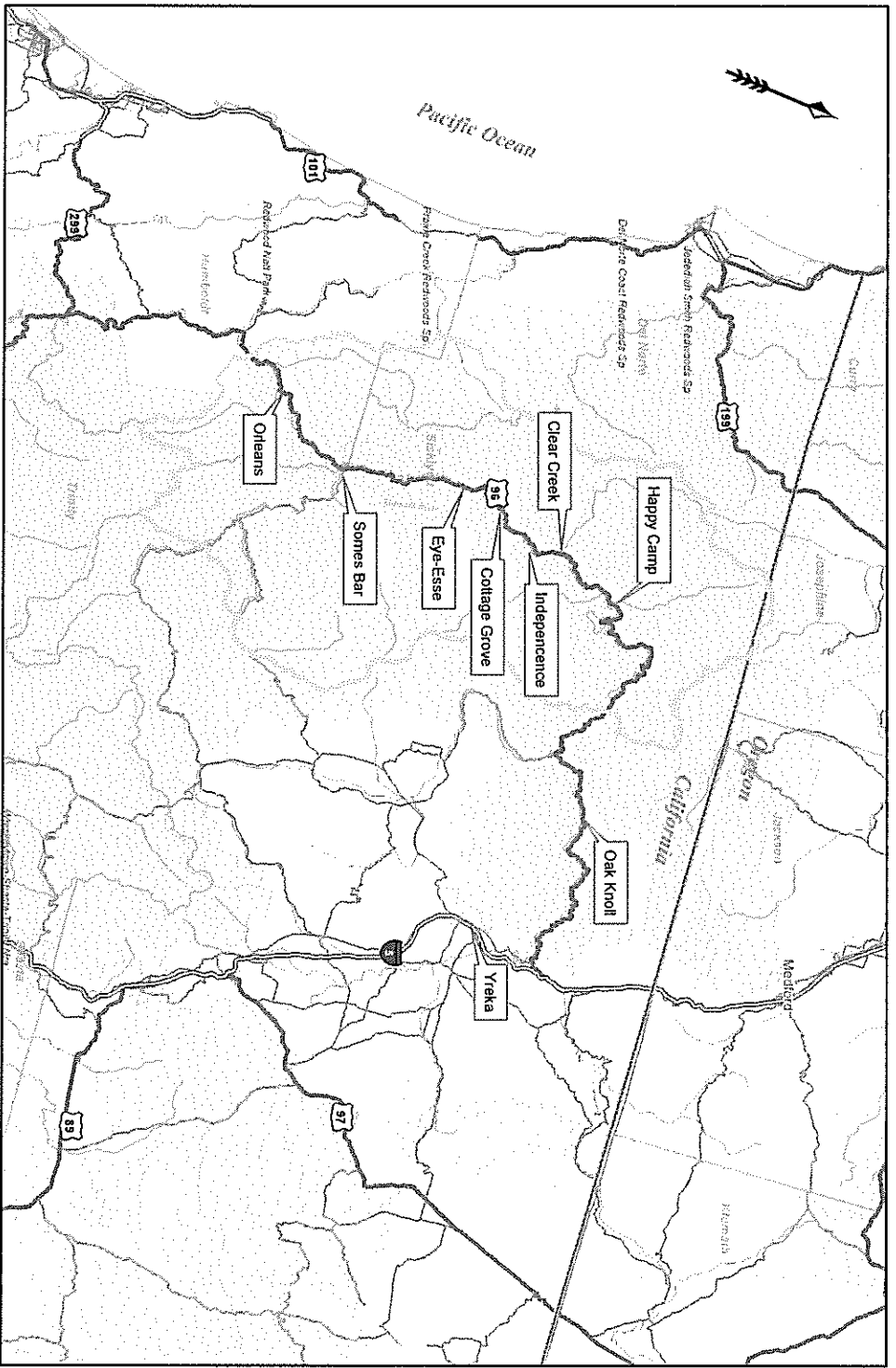
Fatima Abbas
General Counsel, Karuk Tribe



The Karuk Ancestral Territory Boundary was developed using historic ethnographic, linguistic and tribal data sources.

Legend

- Cities
- State Boundaries
- Karuk Territory



Disclaimer:
The Karuk Tribe makes no warranty, expressed or implied, as to the accuracy or completeness of the data displayed.

Map Created by Scott Quinn, Karuk Land Department, July 18, 2012.
Projection: Albers
Source: ESRI Data & Maps CD, Streammap USA, and the Karuk Tribe of California
Created in ArcGIS 10.0 using ArcMap

Karuk Aboriginal Territory & Trust & Fee Land Map Locations