



Quartz Valley Indian Reservation

July 31, 2017

To: Loretta Vanegas
USEPA Region 9
Water Tribal Section (W-3-4)
75 Hawthorne Street
San Francisco, CA 94105

From: Quartz Valley Indian Reservation Tribal Council

RE: APPLICATION FOR CLEAN WATER ACT ELIGIBILITY TO ADMINISTER A WATER QUALITY STANDARD PROGRAM AND A WATER QUALITY CERTIFICATION PROGRAM

Ms. Vanegas,

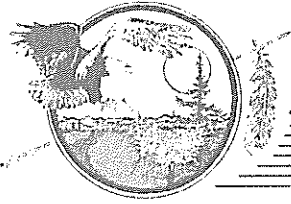
The Quartz Valley Indian Reservation (QVIR) hereby applies under section 518 of the Clean Water Act (CWA) to the U.S. Environmental Protection Agency to become eligible to be treated in a similar manner as a state (TAS) to administer a CWA section 303(c) water quality standards program and CWA section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

The following application was developed by our Environmental Program Director, Tribal Attorney and mapping consultants. We would like to direct any future correspondence on this application to our Environmental Director, Crystal Robinson, at 530-468-5907 ext 318 or crystal.robinson@qvir-nsn.gov. Ms. Robinson will coordinate with the Council, Tribal attorney and consultants on all matters related to this application that may need to be addressed.

We look forward to embarking on this process and receiving TAS to administer these programs on the Reservation for the protection of our cultural resources and ultimately, for the future of our Tribe.

Sincerely,

Frieda Bennett
Tribal Chairwoman
Quartz Valley Indian Reservation



Quartz Valley Indian Reservation

RESOLUTION OF THE QUARTZ VALLEY INDIAN RESERVATION

RESOLUTION NO. 2017-22

SUBJECT: APPLICATION TO THE US ENVIRONMENTAL PROTECTION AGENCY TREATMENT IN A SIMILAR MANNER TO THE STATE (TAS) PROGRAM

WHEREAS: Quartz Valley Indian Reservation is a sovereign, self-governing, federally-recognized body of an American Indian Tribe in accordance with the Re-Organization Act of June 18, 1934 (48 stat. 984.) as amended by the Act (49 stat. 378.) and again by Tillie Hardwick vs. U.S. (case – CA-79-1716-SW) August 3, 1983, with a special relationship on a government-to-government basis with the United States of America; and

WHEREAS: Quartz Valley Indian Reservation did, on March 29th 1939, adopt a Constitution and Bylaws which was approved by the Assistant Secretary of the Interior on June 15, 1939 and Article V, Section 1 of this Constitution and Bylaws authorizes Quartz Valley Indian Reservation “to negotiate with the Federal, State and local governments on behalf of the Tribe”; and

WHEREAS: Quartz Valley Indian Reservation is eligible for all rights and privileges afforded a Federally-recognized Indian Tribe; and

WHEREAS: The Business Council of Quartz Valley Indian Reservation is the duly authorized governing body of the Tribe to exercise full governmental responsibilities and is empowered to make Tribal Policy and carry out Tribal Business; and

WHEREAS: The Quartz Valley Indian Reservation desires US EPA to review the eligibility of the Tribe to receive TAS status; and

WHEREAS: The Quartz Valley Indian Reservation desires to administer a water quality standards program and a water quality certification program; and

WHEREAS: The Tribe in 2017 began the development of water quality standards and establishing the beneficial uses of the Tribe. Standards will provide the numeric baseline at which water quality must function at to obtain the cultural beneficial uses; and


THEREFORE, BE IT RESOLVED: That the Business Council of the Quartz Valley Indian Reservation hereby approves the submission of a TAS application to the US Environmental Protection Agency; and

BE IT FURTHER RESOLVED: That Quartz Valley Indian Reservation authorizes the Tribal Chairwoman or the Tribal Vice-Chairperson to sign and the Tribal Secretary or the Tribal Treasurer to attest this document to give full force effect unless and until specifically revoked by a duly adopted resolution of the Quartz Valley Indian Reservation General Council.

C*E*R*T*I*F*I*C*A*T*I*O*N

The foregoing Resolution was adopted by a vote of 4 For, 0 Against, 1 Abstentions, and No Votes at a scheduled meeting of the Business Council of Quartz Valley Indian Reservation on the 28 day of AUGUST, 2017 and that this resolution has not been rescinded or amended in any way.

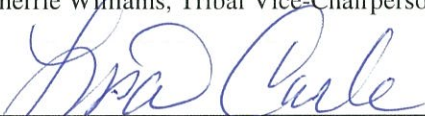
SIGNED:



Frieda Bennett, Tribal Chairwoman or
Sherrie Williams, Tribal Vice-Chairperson

8/28/2017

Date



Lisa Carle, Tribal Secretary or
Joselyn Kelley, Tribal Treasurer

8/28/2017

Date

Quartz Valley Indian Reservation

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

The Quartz Valley Indian Reservation (QVIR) hereby applies under section 518 of the Clean Water Act (CWA) to the U.S. Environmental Protection Agency 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 program.

1. BACKGROUND

QVIR is located in Quartz Valley, which is located in the western portion of the Scott River basin in Siskiyou County, Northern California. The Scott River Basin is 813 square miles and is major tributary to the Klamath River. The Scott River is listed as impaired for sediment (1992), temperature (1996), biostimulatory substances, dissolved oxygen and pH (2010) by the North Coast Regional Water Quality Board and State Water Quality Resources Board.

The Quartz Valley Indian Reservation began monitoring surface and groundwater on the Reservation land in 2007. The program has expanded each year and the water quality program now monitors 12 surface water sites for nutrients, bacteria and discharge; thirteen continuous groundwater monitoring sites, one continuous water chemistry site, 16 continuous temperature monitoring sites and 21 drinking water wells. The technical expertise has grown tremendously and the Tribe's understanding of the surrounding ecology has been astounding. The rivers are the lifeblood of the Tribe and without a healthy river, the culture suffers tremendously. For decades, the river quality and quantity have been impacted so greatly by the surrounding agricultural community that QVIR has sought to try and understand the impacts this can have to aquatic species. Developing the water quality program has allowed investigations into these questions.

QVIR's water quality studies indicate the following threshold exceedances of:

- Elevated temperatures above those suitable for salmonids (>19 C MWAT or maximum weekly average temperature).
- Elevated E. coli bacteria concentrations in several locations in the mainstem and tributaries as well as at high elevation in designated wilderness areas with permitted grazing allotments.
- Total nitrogen concentrations exceeding 0.12 mg/L.
- E. coli and total coliform detections in drinking water wells.
- Low flows that are associated with highly fluctuating diurnal concentrations of dissolved oxygen, pH, and temperature exceeding standards.

The Tribe in 2017 began the development of water quality standards and establishing the beneficial uses of the Tribe. Standards will provide the numeric baseline at which water quality must function at to obtain the cultural beneficial uses. The Tribe is now seeking "Treatment in a similar Manner as the State" to regulate waters of the Reservation.

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

This Tribe is listed as “Quartz Valley Indian Reservation” in the Secretary of the Interior’s list of federally recognized tribes at 81 FR 26826, May 4, 2016.

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

This Tribe exercises governmental authority over a federal Indian Reservation. This includes lands held by the United States in trust for the tribal government that are not located within the boundaries of a formal Reservation. See section 5 of this application for more information about the description of the Tribe’s Reservation lands.

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

The Quartz Valley Indian Reservation has a governing body carrying out substantial governmental duties and powers. See the QVIR Tribal constitution at the following url:

http://www.qvir.com/uploads/2/8/6/9/2869254/constitution_bylaws_-_qvir_1939.pdf

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 will assist in managing and protecting water resources within the borders of the Tribe’s reservation.

The boundaries of the Indian reservation areas for which the Tribe is seeking authority to administer the water quality standards and water quality certification programs are identified in the attached map and legal description.

The surface waters for which the Tribe proposes to establish water quality standards are those surface waters that occur on the reservation and trust areas described in the map and legal description provided. These include the following named waters and any associated tributaries that occur within the boundaries of the Reservation and trust lands: Shackleford and Sniktaw Creeks.

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

See Attachment A for the QVIR Tribal legal statement.

7. TRIBAL CAPABILITY

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

The responsibilities to establish, review, implement and revise water quality standards will be assigned to Quartz Valley Indian Reservation Environmental Department, 13824 Quartz Valley Rd Fort Jones, CA 96032. The Environmental Program has developed EPA approved water quality standards during FY16, the program annually collects the necessary data to compare to these standards and has been developing an analytical report summarizing those findings since 2007. Any revisions to the water

quality standards program would be delegated to program staff and may require the expertise of a technical consultant.

The Tribal entity that will be responsible for conducting water quality certifications under CWA section 401 is Quartz Valley Indian Reservation Environmental Department. The Environmental Program will be delegated the authority to review applications for projects which may result in any discharge to Tribal waters. Tribal water quality standards will guide the review, certification and permitting of the project. Final permits will be signed and approved by the Tribal Council. The Environmental Program currently reviews local projects within ancestral territory with the potential to impact cultural resources. Tribal comments, suggestions and requests are sent to the appropriate agency certifying the project.

Experienced staff members are already on board at Quartz Valley Indian Reservation Environmental Department and trained to administer the water quality standards and certification programs. This includes Crystal Robinson, Environmental Director and Sarah Schaefer, Water Quality & Fisheries Coordinator.

Ms. Robinson has been working as a biologist in the middle Klamath and major tributaries for sixteen years with experience at the Klamath National Forest, the CA Department of Fish and Wildlife, the CCC, AmeriCorps, Resource Conservation District and Northern California Resource Center (a local non-profit in the Scott Valley). She has been working with Tribe's in the basin for eleven of the sixteen years administering CWA Tribal programs. She has established water quality standards for the QVIR and completed a Water Quality Control Plan for the Karuk Tribe. She currently is the administrator of the Klamath Tribal Water Quality Consortium as well as the Environmental Director for QVIR. She has founded and directed two state certified microbiology laboratories and is currently setting up a drinking water system at QVIR. Her area of expertise is in salmonid habitat, water quality and public health assessment.

Ms. Schaefer has been working in various fields applicable to the administration of the water quality and certification program. She has a degree in wildlife biology as well as her teaching credential. Her focus for the Tribe over the past few years has been environmental education and management of the water quality and fisheries field staff. The water quality program consists of surface and groundwater sampling, sample analysis, public health sampling and real-time data transmission.

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April 6, 2017

Loretta Vanegas
USEPA Region 9
Water Tribal Section (W-3-4)
75 Hawthorne Street
San Francisco, CA 94105
Email: vanegas.loretta@epa.gov

Dear Ms. Vanegas:

I have been asked for a letter describing the legal basis for the authority of the Quartz Valley Indian Community of the Quartz Valley Reservation of California ("Tribe") to regulate water resources on the lands of the Tribe in Siskiyou County, California. It is presented in support of the Tribe's application for Treatment as a State ("TAS") under the Clean Water Act.

The Tribe is a federally recognized Indian Tribe. (See 81 FR 5019, 5022 (January 29, 2016).) In 1939, the Tribe adopted and the Secretary of Interior approved a Constitution and Bylaws pursuant to the Indian Reorganization Act. (AIRA, 25 U.S.C. §476.) Pursuant to Article I of the Constitution, the "jurisdiction of the Quartz Valley Indian Community shall embrace land purchased by the United States in Quartz Valley, California, heretofore proclaimed an Indian Reservation . . . any additional land bought by the Federal Government for the use of the Community, or any land bought by the Community itself."

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 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 FR 30183, May 16, 2016.

Letter to Loretta Vanegas, EPA
Subject: Quartz Valley Indian Community
Dated: April 6, 2017

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The Tribe is aware of the following issues that potentially could be raised concerning the Tribe's authority or ability to effectuate the delegation of authority requested in this application. However, none of these issues will impede the Tribe's authority or ability to effectuate the delegation of authority for the following reasons. These potential issues arise from the following history concerning the Tribe's termination and restoration as a federally recognized Indian tribe.

The original Quartz Valley Indian Reservation purchased by the United States in 1940 consisted of 604 acres near Fort Jones in Siskiyou County. In 1967, the federal relationship with the Tribe and the reservation was terminated under the California Rancheria Act of 1958. Its federal recognition was later restored under the stipulated judgment in *Hardwick v. United States*, No. C-79-1710-SW (N.D.Cal. 1983), entered on December 22, 1983, based on the determination that the Bureau of Indian Affairs had violated the requirements of the Rancheria Act in carrying out the termination of the Tribe.

The original boundaries of the Tribe's reservation were fully restored as Indian Country by court order, dated March 14, 1989. However, legal title to most of the original reservation lands had passed into non-Indian ownership during the period of termination. Since its restoration, the Tribe has worked to repurchase lands which have been available for sale on and in the vicinity of the reservation.

In approximately 1996, the Tribe purchased and diligently sought to place in federal trust, Siskiyou County Assessor Parcel numbers 24-350-260 (Parcel A), 24-350-270 (Parcel B), 24-350-460 (Parcel C), 24-350-470 (Parcel D), and 24-350-530, 540 (Parcel E), totaling 90 acres. Parcel A is separated from the original reservation boundaries by a county Road, Sniktaw Lane. That parcel, in fact, is contiguous to the existing boundaries of the Quartz Valley Indian Reservation. All of the remaining parcels, B through E, are contiguous either to each other or to Parcel A. In 1992, after an eight year process, the United States finally accepted the conveyance of these parcels in trust for the Tribe. Combined with previous purchases this brings the Tribe's current total of federally owned trust land to 143.37 acres compared with its original 604 acre reservation. The Tribe exercises jurisdiction over the entire original Rancheria and the additional land it has acquired.

Article III of the Tribe's Constitution establishes the General Community Council, composed of all voting members of the Tribe, as the Tribe's governing body. The General Community Council has the authority to promulgate and enforce ordinances for, among other things, the maintenance of law and order within the jurisdiction of the Tribe. (Art. III, §1(f).) In addition, the Community Council may exercise any other powers of

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self-government possessed by federally recognized Indian tribes. (Art. III, § 2. See also 1 *Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs 1917-1974* 445 (Oct. 25, 1934) at 447.) Under its constitution, the General Community Council is authorized to exercise local police powers.

On its reservation the Tribe exercises civil and criminal jurisdiction over its members. (See *Oliphant v. Sequamish Indian Tribe* (1978) 435 U.S. 191; *Montana v. United States*, 450 U.S. 544 (1981).) The power to exclude non-members from the Tribe's reservation, includes the power, through licensing or otherwise, to place conditions on non-tribal members' use of reservation land and resources. (See *Merrion v. Jicarilla Apache Tribe* (1982) 455 U.S. 130, 144; *Ortiz-Barraza v. United States* (9th Cir.1975) 512 F.2d 1176, 1179.)

Pursuant to its governmental authority, the Tribe, through its General Community Council currently exercises substantial governmental powers over its reservation.

The Tribe's jurisdiction on its reservation includes regulatory authority over its water resources. The Tribe already exercises primary responsibility for NEPA compliance on the Rancheria. The Bureau of Indian Affairs, in its internal manual setting forth NEPA procedures for Indian Country, recognizes that "tribal governments have substantial authority for environment protection within their rancherias as an aspect of their retained tribal sovereignty." (30 B.I.A.M., Supp. 1 §2.6). That authority is reinforced by 25 U.S.C. Section 476 which provides that a tribe organized under the IRA exercises ". . . all powers vested in any Indian tribe or tribal council by existing law . . . (Subd. (e).)

Due to the fundamental tribal interest implicated by the need to regulate water use and quality, the Tribe does have jurisdiction to regulate water use and quality throughout the Reservation and on trust land in the vicinity of its reservation. This jurisdiction over water resources is consistent with the broad language of Section 518 (e) (2) and (h) of the Clean Water Act ("ACWA"), which recognizes tribal primacy over "the management and protection of water resources within the borders of an Indian reservation," (33 U.S.C. §1377 (e) (2)) and further defines "Indian reservation" as ". . . all land within the limits of any reservation "notwithstanding the issuance of any patent." (33 U.S.C. §377 (h).)

Shackleford Creek crosses the original reservation. Shackleford Creek is a tributary of the Scotts River and provides important habitat for Coho Salmon. The Tribe has constructed 10 houses within the boundaries of the original reservation and has constructed an additional 15 houses on Parcels B and C, which together constitute 40 acres. Wells supply all of the houses with water. Accordingly, the Tribe has a compelling governmental interest in both surface waters and ground water located on its Indian lands.

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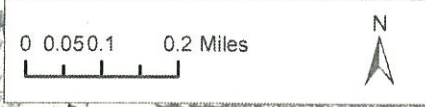
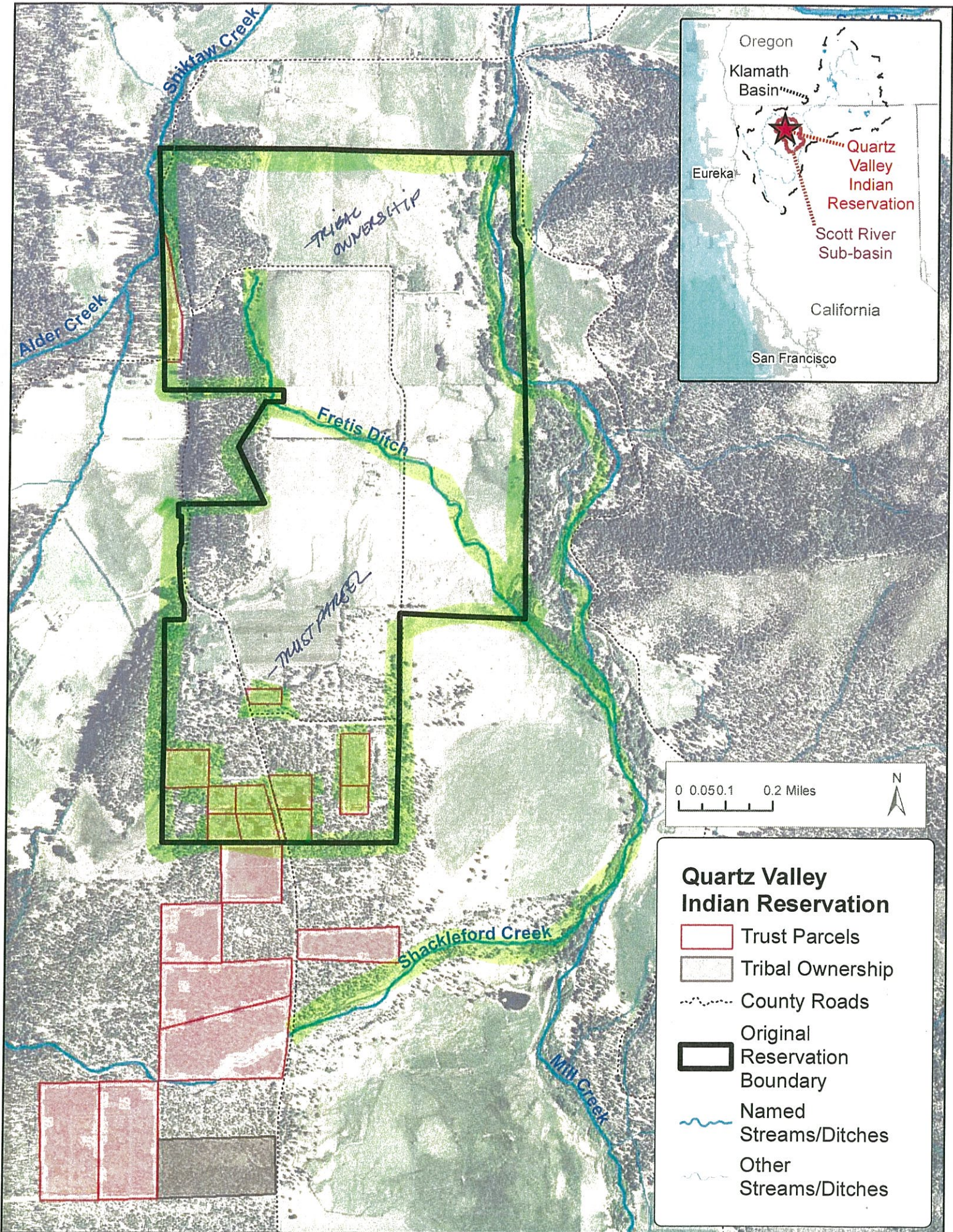
In my opinion, despite its history and the acquisition by non-Indians of some fee owned land within the boundaries of the original rancheria, under the Tribe's Constitution and Bylaws and Ordinance No. 04-02 EPA, described below, the Tribe has the authority to regulate water use and quality on its Indian lands and within the entire 604 acre original rancheria boundaries. The Tribe has authorized its General Community Council and Business Council to exercise emergency powers comparable to those granted the EPA Administrator in CWA Section 504 (66 Fed. Reg. 3801 to be codified at 40 C.F.R. §35.588 (a)(2)), since under the Constitution and Ordinance No. 04-02 EPA, the tribal EPA office and the Tribe's Business Council may seek emergency relief in court to prevent or restrain the release of pollutants into the waters of the lands subject to the Tribe's jurisdiction.

The General Community Council has implemented those emergency powers by adopting tribal Ordinance No. 04-02 EPA, copy enclosed for your reference, which expressly authorizes the Tribe's Business Council to take actions necessary to abate any discharge of a pollutant into the waters of the Quartz Valley Indian Reservation, which is defined as including the Tribe's original 604 acre reservation and any other lands owned by the Tribe or owned by the United States in trust for the Tribe. (See Ord. No. 04-02 EPA, Section 3.G.) In the event of a discharge of prohibited pollutants into the water of the Reservation, the Business Council is specifically authorized to file suit in any court of competent jurisdiction for both immediate injunctive relief and damages as necessary to remedy any such discharge. In my opinion, 28 U.S.C. Section 1360 confers jurisdiction on the state courts in Siskiyou County over such actions.

Very truly yours,

DAVID J. RAPPORT
Attorney for the Quartz Valley Indian
Community

Cc: Crystal Robinson, QVIC



Quartz Valley Indian Reservation

- Trust Parcels
- Tribal Ownership
- County Roads
- Original Reservation Boundary
- Named Streams/Ditches
- Other Streams/Ditches

