



QUESTIONS AND ANSWER Coeur d'Alene Tribe Treatment in the Same Manner as a State (TAS)

The U.S. Environmental Protection Agency Region 10 (EPA) has approved the Coeur d'Alene Tribe (the Tribe) as eligible for “treatment in the same manner as a state” or “TAS”, pursuant to Sec. 518(e) of the federal Clean Water Act (CWA). The TAS decision grants the Tribe authority to establish water quality standards (WQS) under Sec. 303(c) of the CWA and to issue water quality certifications under Sec. 401 of the CWA for Reservation waters of Coeur d'Alene Lake and the St. Joe River, except for Heyburn State Park. EPA, the Tribe, and the State of Idaho (the State) – collectively called the Governments in this document – have collaborated to provide this information document about the Tribe’s TAS approval to the public. This document provides detailed technical and legal information to help answer questions about this TAS approval, but does not highlight every issue or topic that may be relevant to all readers nor does it provide detailed responses to all questions that may arise.

1. What does it mean that the Coeur d'Alene Tribe has TAS for water quality standards (WQS) and 401 certification under the Clean Water Act (CWA)?

Answer: In 1987, Congress amended the CWA by adding Sec. 518 to address the roles of Indian tribes. Sec. 518 amended the CWA by providing a method for tribes to assume the same duties and authorities as states under a particular section of law. Sec. 518(e) describes the criteria a tribe must meet in order to be eligible for “treatment in the same manner as a state” (also referred to as “treatment as a state” or “TAS”). In accordance with Sec. 518(e), EPA established regulations at 40 CFR 131.8 that describe the process and criteria for TAS approval. Once EPA approves a tribe’s TAS status for a particular program under the CWA, the tribe generally administers that program in the same way as do states. When TAS status is approved by EPA, it is limited to the specific program covered by EPA’s TAS decision.

EPA has approved that portion of the Tribe’s TAS application that requested CWA authority under Sec. 303(c) and Sec. 401 with respect to those waters of Coeur d'Alene Lake and the St. Joe River within the Coeur d'Alene Reservation (the Reservation), not Heyburn State Park.

Section 303(c) Water Quality Standards: For Sec. 303(c) of the CWA, the Tribe is now expected to develop water quality standards (WQS) for the waters covered by the TAS decision. Standards developed by the Tribe under the CWA, just like standards the State develops for its waters outside the Reservation, will be published for public review and comment. The Tribe has been working with EPA and the State’s Department of Environmental Quality (DEQ) to refine the Tribal WQS so they meet the requirements of the CWA and its supporting regulations. Note that the State WQS must meet the same requirements, as well. In July 2004, the Coeur d'Alene Tribal Council adopted a formal resolution confirming the Tribe’s resolve to publish its proposed standards for public

review and comment, consistent with federal law, before submitting them to EPA for final approval. If the Tribal WQS are approved by EPA, those WQS would go into effect under the CWA for a number of possible purposes. (Please see the answer to question #7 for more information about the final approval process for Tribal WQS.)

Section 401 Water Quality Certification: The Tribe is now authorized to be the certifying agency to prepare water quality certifications for federal permits and licenses of activities that cause a discharge to the Reservation waters of Coeur d'Alene Lake and the St. Joe River, except for Heyburn State Park. As the government agency responsible for Sec. 401 water quality certifications, the Tribe will follow the procedures established by EPA regulations at 40 CFR Part 121 as each certification is developed.

2. Where (in which waters) will the Tribal Water Quality Standards (WQS) be in effect?

Answer: The Tribe's WQS, if approved by the EPA, would apply to the Reservation waters of Coeur d'Alene Lake and the St. Joe River, but not Heyburn State Park. . (Please see the answer to question #5 for more information on this topic.)

3. Which facilities will be subject to the Tribal Water Quality Standards (WQS)?

Answer: At this time, facilities within the Reservation with National Pollutant Discharge Elimination System (NPDES) permits are the only sources that will be directly affected. (Please see question #4 and #9 for more information about NPDES permits.)

4. How will the Tribal water quality standards (WQS) affect Coeur d'Alene area facilities, activities, and stakeholders?

Answer: An overview of how the Tribe's approved WQS will be utilized follows. Some of the topics included in the overview are discussed in more detail in answers to other questions in this document.

Tribal WQS and NPDES permits – The Tribe's WQS will set goals for how clean Reservation waters of the Coeur d'Alene Lake and the St. Joe River should be and establish benchmarks for how activities that affect those waters can maintain acceptable water quality. Individual sources that discharge directly into those waters will need an NPDES permit from EPA that includes limits as stringent as necessary to meet the WQS.

The Tribe's WQS will serve as a basis for establishing water-quality based effluent limitations for facilities with NPDES permits that are discharging to those Reservation waters. The facilities with permits issued by EPA that could be affected by the Tribe's WQS have been satisfying the State's WQS outside the Reservation. Since the WQS the Tribe is developing are very similar to those of the State, EPA does not expect that the facilities will need to undertake additional measures when their NPDES permits are reissued. (Please see the answer to question #9 for more information about NPDES permits.)

Tribal WQS and Section 401 Certification – The Tribe will also evaluate whether a discharge under a federal license or permit would be consistent with its WQS when granting, denying, or conditioning a water quality certification under Sec. 401 of the CWA. That means a facility with an NPDES permit discharging into Reservation waters for which the Tribe is approved will now be required to obtain a Tribal 401 certification.

Tribal WQS and total maximum daily loads (TMDLs) – The Tribe and EPA will refer to the Tribal WQS when identifying whether those waters are impaired and developing TMDLs under Sec. 303(d) of the CWA. (Please see question #11 for more information about TMDLs.)

Tribal WQS and Upstream and Downstream waters – When EPA renews NPDES permits upstream of the Reservation, EPA will evaluate whether any changes to effluent limits are necessary in order to avoid violating the downstream WQS, taking into account the dilution that occurs before reaching the Reservation waters.

Tribal WQS and the Lake Management Plan (LMP) – As the governments implement the Lake Management Plan (LMP), there are a number of ways that point and non-point sources both on- and off-reservation may be affected in order to meet the goals of the LMP, including attainment of both the Tribe's and the State's WQS. The need will continue for steps to be taken so that waters entering the Lake, whether into Reservation or State waters, do not degrade those waters. Off-reservation sources may be affected as part of the LMP effort to achieve the Tribe's and State's WQS. (Please see the answers to questions #12 and 13 more information about the LMP).

Tribal WQS and the local economy – No economic impact is expected, including no effect on property values or tax revenues. These topics are discussed in the answers to questions #14 and 15.

Tribal WQS and recreation and access – These topics are discussed in the answers to questions #15 and 16.

5. What Government has the authority to set water quality standards (WQS) on the Coeur d'Alene Reservation?

Answer: EPA is the regulatory agency responsible under the Clean Water Act (CWA) for protecting water quality on the Coeur d'Alene Reservation, not the State of Idaho. To date, EPA has not promulgated federal WQS for the Reservation, and EPA has not authorized the State of Idaho to set WQS on the Reservation. The Tribe's standards, when approved will apply to the lower third of Coeur d'Alene Lake and the St. Joe River within the Reservation boundaries (except for Heyburn State Park) for CWA purposes. For other waters on the Reservation, EPA will use the Tribe's standards as guidance in applying the CWA.

6. Are State and Tribal water quality standards (WQS) expected to be compatible?

Answer: Yes. While there are differences between the Tribe's and the State's use designations, the water quality criteria used by each jurisdiction to protect those uses are largely the same. Because the Tribe's standards are new, its criteria are consistent with EPA's latest recommendations in "National Recommended Water Quality Criteria: 2002." The State of Idaho has proposed updates to its toxics criteria and expects to propose further updates in the future that will bring the Tribe's and State's criteria even closer together.

To the extent differences do exist, the State and the Tribe will work together to resolve differences on a case-by-case basis, in the same manner that differences are worked out between neighboring states such as Idaho and Washington.

In the case of a continuing disagreement or dispute, federal regulations do require that states or tribes take into account water quality standards of downstream waters in designating their uses (at 40 CFR 130.10). These regulations also provide for a dispute resolution mechanism to address any unreasonable consequences that may arise as a result of differences in State and Tribal WQS (at 40 CFR 131.7). Idaho's DEQ and the Coeur d'Alene Tribe intend to work out differences more informally. The ability of the Governments to work cooperatively has been demonstrated in the meetings which have taken place during development of the Tribe's TAS application..

7. When will the Tribe's water quality standards (WQS) be in effect?

Answer: It may take a year or more after gaining TAS status for the Tribe's standards to go into effect under the CWA. The process includes these steps:

1. After the Tribe is approved for TAS status, the Tribal Council will provide a public process for review and comment on the WQS that the Tribe is developing in coordination with EPA and IDEQ.
2. The Tribe will evaluate the comments, adopt any appropriate revisions, and then submit the WQS to EPA for review.
3. EPA will review the Tribe's standards following the same process used to review WQS submitted by a state, which may take at least six months to complete.
4. The Tribe's WQS will be in effect under the CWA only after EPA approval.

8. Will the public be able to comment on the Tribe's water quality standards (WQS)?

Answer: Yes. Once their TAS status is approved by EPA, the Coeur d'Alene Tribe is committed to providing an opportunity for public comments on its WQS before submitting them to EPA for final approval. As noted above, the Coeur d'Alene Tribal Council adopted a formal resolution in July 2004, confirming the Tribe's resolve to publish its proposed standards for public review and comment, consistent with federal law, before submitting them to EPA for final approval.

9. Which facilities with National Pollutant Discharge Elimination System (NPDES) permits could be affected by Tribal water quality standards (WQS)?

Answer: The National Pollutant Discharge Elimination System (NPDES) permit program was created under the federal Clean Water Act (CWA) to control water pollution. The NPDES program regulates “point sources” that add, or “discharge,” pollutants into waters of the United States. Point sources are conveyances such as pipes or man-made ditches. Industrial, municipal, and other facilities must have permits if they discharge pollutants through point sources to surface waters. EPA administers the NPDES program throughout the State of Idaho and the Coeur d’Alene Reservation.

Within the Coeur d’Alene Reservation, presently only two point sources could be directly affected by the Tribal WQS. The City of St. Maries has an NPDES permit for its small municipal Publicly Owned Treatment Works (POTWs) that discharges to the Reservation waters of the St. Joe River. In addition, discharges to the St. Joe River from the Potlatch facility in St. Maries have been subject to an NPDES permit. An EPA Fact Sheet is available that provides more information on facilities with NPDES permits.

10. Will the Tribe now issue National Pollution Discharge Elimination System (NPDES) permits?

Answer: No. EPA will continue to issue NPDES permits throughout the State of Idaho. The Tribe applied only for authority to establish water quality standards (WQS) under Sec. 303(c) of the Clean Water Act (CWA) for the Reservation waters of Coeur d’Alene Lake and the St. Joe River, and to issue water quality certifications under Sec. 401 of the CWA for federal permits and licenses for activities that discharge to those waters. EPA retains the authority for implementing all other CWA programs within the Reservation. A tribe must qualify for TAS status for each provision of the CWA or environmental program for which it seeks to implement. So, achieving TAS status for WQS does not provide any other authority to the Tribe. At this time, no tribe has yet been approved for TAS status to administer the NPDES program on its reservation. Any NPDES permit issued by EPA will be designed to achieve the Tribe’s WQS and maintain the State’s WQS in the waters of Coeur d’Alene Lake. In addition, the Tribe will be authorized to issue, deny, or waive a Sec. 401 water quality certification for any discharge regulated by an NPDES permit.

11. How will Tribal water quality standards (WQS) affect Total Maximum Daily Loads (TMDLs)?

Answer: The Tribe’s TAS status or subsequent EPA approval of its WQS is not expected to affect TMDLs for Reservation waters. Basically, a TMDL is a “pollution budget” for a waterbody that is failing to meet the WQS. A TMDL is both a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation that limits the amount of pollutants that can be discharged from sources.

A number of water bodies on the Reservation have been listed under Sec. 303(d) of the CWA as impaired by water pollution. Listed waterbodies require development of a TMDL that will achieve WQS. For Reservation waters, EPA will continue to be responsible for issuing the TMDLs, working closely with the Coeur d'Alene Tribe and the Idaho DEQ. Once the Tribal WQS are approved, the TMDLs for waters flowing into Coeur d'Alene Lake and the St. Joe River will be prepared to ensure that Tribal WQS are attained in those receiving waters. For impaired waters on the Reservation not flowing into the Lake and St. Joe River, EPA will use the Tribal WQS to guide preparation of the TMDL, as well as the WQS of the downstream state. An EPA Fact Sheet is available that provides more information on TMDL projects within the Reservation.

12. Does TAS status give the Coeur d'Alene Tribe enforcement authority for water quality standards (WQS) under the Clean Water Act (CWA)?

Answer: No. EPA's approval of TAS status for the Tribe does not provide any enforcement authority to the Tribe under the CWA. EPA will continue to be responsible for implementing the Tribal WQS under the CWA. Rather, if the Tribe chooses to undertake any regulations or enforcement measures in cooperation with the other Governments, they will be established under Tribal law, pursuant to the Tribe's inherent authority as a sovereign government.

Under the CWA, the Tribe's WQS will serve as benchmarks for water quality when EPA issues NPDES permits to facilities that discharge to the Reservation waters in Coeur d'Alene Lake and the St. Joe River that are covered by the TAS approval. EPA is responsible for both issuing and enforcing those NPDES permits. Since the Tribe is approved to issue Sec. 401 water quality certifications, it has the authority to identify measures and conditions that EPA should include in the permit. Also, as TMDLs are developed by EPA on the Reservation, the Tribe's WQS will be used to determine the amounts of pollutant loadings that can be allowed and still meet the Tribal WQS on the Reservation, and still meet the WQS of the downstream state.

Since all of the sources on the Reservation will be evaluated as part of planning and implementing the Lake Management Plan (LMP), the Tribal and State WQS will be the goals for a number of activities designed to protect water quality. The Governments and stakeholders expect to apply a number of tribal, state, local, and federal authorities to address a variety of possible pollution sources.

13. How will the Tribe's TAS status relate to Superfund efforts in the Coeur d'Alene Basin and the Coeur d'Alene Lake Management Plan (LMP)?

Answer: The Tribe is working in partnership with the State and local governments to prepare a revised LMP that is funded and implemented so that the Lake does not pose unacceptable risks to human health and the environment. In 2002, EPA issued a Superfund Record of Decision (ROD) for cleanup in the Coeur d'Alene Basin. This ROD deferred any remedial decision for Coeur d'Alene Lake, relying instead on the efforts by the State, the Tribe, and local governments under the Coeur d'Alene Lake Management Plan (LMP) to address contamination threats in the Lake. The Governments (the Tribe,

the State, and local governments) initiated development of the LMP in 1991, and issued the LMP in 1995. Since then, various measures identified in the 1995 LMP have been implemented to some degree and additional measures have been identified. The Governments anticipate taking many actions to address water quality issues both inside and outside the Reservation which may reduce or eliminate the potential for Superfund actions in the Lake.

14. Will there be economic impacts to the Coeur d'Alene area as a result of approving the Tribe to develop water quality standards (WQS) under the Clean Water Act (CWA) for the Reservation waters of Coeur d'Alene Lake and the St. Joe River?

Answer: No. Approval of the Tribe's TAS status is not expected to cause economic impacts. EPA's experience elsewhere in this Region and around the country has found that tribes with TAS status to develop WQS under the CWA have not adversely affected agricultural, silvicultural, municipal or industrial activities. EPA's approval of the Coeur d'Alene Tribe to manage water quality is not likely to impact the economy of the Coeur d'Alene area, particularly because the WQS that are being developed by the Tribe for EPA approval are quite similar to the State's WQS.

Furthermore, Tribal TAS authority will better enable the State and the Tribe to develop a revised Lake Management Plan and to coordinate its implementation to protect water quality throughout the Lake, which may reduce or eliminate any potential for Superfund actions in the Lake. Tribal CWA standards that protect water quality and beneficial uses are likely to preserve local property values and to enhance recreation opportunities that are important to the region's economy.

15. Will Tribal Water Quality Standards (WQS) affect property values or tax revenues?

Answer: The Tribe's TAS status and subsequent EPA approval of its WQS are not expected to adversely affect property values or tax revenues from property taxes assessed by local governments. Instead, Tribal standards that protect water quality on Coeur d'Alene Lake and the St. Joe River within the Reservation will serve to preserve and protect surrounding property values and the tax base. The Tribe has substantial investments in the region's business community. Those investments have helped make the region a more attractive place to live and recreate, which benefits regional property values and the local and state tax bases. There is no reason to expect that the Tribe would use its TAS authority to undermine its substantial investments in the economy and the natural resources that sustain it.

16. Will the Tribe's TAS status affect my access to use the lake for boating, swimming, and fishing?

Answer: EPA's approval of Tribal TAS status will not impose restrictions or affect public access to use Coeur d'Alene Lake for boating, swimming, and fishing, so long as those uses do not violate EPA approved Tribal water quality standards. The Tribe, pursuant to its inherent sovereignty, has adopted statutes that formally provide for public

uses of the lakebed and adjacent waters in specific and well-defined ways. Consistent with these provisions, public access and use of submerged lands and waters within the Reservation have continued since Tribal ownership was affirmed in 2001. Furthermore, the Tribe continues to make investments to protect the lake, its tributaries, and associated fish and wildlife to the benefit of all in the community.

17. Will TAS status give the Coeur d'Alene Tribe the authority to collect a permit fee for my dock?

Answer: No. EPA's approval of Tribal TAS status does not provide the Coeur d'Alene Tribe the authority to collect a permit fee for docks encroaching on submerged lands within the Reservation. Rather, the Tribe may use its inherent authority to collect permit fees and control the use of its lakebed and adjacent waters, based on its ownership of those lands, as affirmed by the United States Supreme Court in 2001.

Please see attached acronym list.

ACRONYMS

CWA: Clean Water Act

DEQ: Idaho Department of Environmental Quality

EPA: United States Environmental Protection Agency

IDEQ: Idaho Department of Environmental Quality

LMP: Lake Management Plan

NPDES: National Pollutant Discharge Elimination System

POTW: Publicly Owned Treatment Works

ROD: Superfund Record of Decision

Sec.: Section of a federal statute

TAS: Treatment in the same manner as a state

TMDL: Total Maximum Daily Loads

WQS: Water Quality Standards