U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7

DECISION DOCUMENT:

APPROVAL OF THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA APPLICATION FOR TREATMENT IN A SIMILAR MANNER AS A STATE FOR CLEAN WATER ACT SECTIONS 303(c) WATER QUALITY STANDARDS AND 401 CERTIFICATION PROGRAMS

August 2019

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I. Introduction and Index to Decision

A. Introduction

This Decision Document provides the basis and supporting information for the U.S. Environmental Protection Agency's (EPA or Agency) decision to approve the application from the Sac & Fox Tribe of the Mississippi in Iowa (the Tribe or the Meskwaki Tribe)[1] for treatment in a similar manner as a state (TAS) for Clean Water Act (CWA) section 303(c) water quality standards and section 401 water quality certification, pursuant to section 518(e) of the CWA and part 131 in Title 40 of the Code of Federal Regulations (C.F.R.).

Under section 303(c) of the CWA, 33 U.S.C. § 1313(c), states develop, review, and revise (as appropriate) water quality standards for surface waters of the United States. At a minimum, such standards are to include designated water uses, in-stream criteria to protect such uses, and an antidegradation policy. See 40 C.F.R. § 131.6. In addition, under section 401 of the CWA states may grant, condition, or deny "certification" for federally permitted or licensed activities that may result in a discharge to the waters of the United States. See 33 U.S.C. § 1341. The decision to grant or deny certification is based, in part, on whether the proposed activity will comply with water quality standards the state has adopted under section 303(c). If a state denies certification, the federal permitting or licensing agency is prohibited from issuing a permit or license. See 40 C.F.R. § 131.4.

Section 518(e) of the CWA authorizes the EPA to treat an Indian tribe as a state (treatment in a similar manner as a state, or TAS) to manage and protect water resources "within the borders of an Indian reservation," under certain CWA programs, including the section 303(c) water quality standards and section 401 certification programs. The EPA regulations at 40 C.F.R. part 131 establish the process by which the Agency implements that authority and determines whether to approve a tribal application for purposes of administering programs under sections 303(c) and 401 of the CWA.

This approval applies to all surface waters that lie within the Tribe's trust lands as depicted on the attached maps, Appendix B, see Meskwaki Trust Status Maps. The Tribe's trust lands consist of approximately 6,554 acres of land held in trust by the federal government for the Tribe, located in Tama County, Iowa.

This decision does not constitute an approval of the Tribe's water quality standards. The EPA's review and approval or disapproval of the Tribe's water quality standards is a separate action under the CWA. However, approval of the Tribe for TAS authorization to administer water quality standards and certification programs under CWA §§ 303(c) and 401 does immediately authorize the Tribe to issue certifications under CWA section 401 (see 40 C.F.R. § 131.4(c)), provided the Tribe designates a "certifying agency" as defined in 40 C.F.R. § 121.1(e). In addition, tribes authorized to administer the CWA water quality standards program are also "affected states" as the term is used under CWA section 402(b)(3) and (5) and 40 C.F.R.

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[1] The Tribe's Constitution refers to the Tribe as "the Meskwaki Indians." For purposes of this decision, the EPA refers to the Sac & Fox Tribe of Mississippi in Iowa as the "Tribe" or the "Meskwaki Tribe."

§122.4(d). As "affected states," they receive notice and an opportunity to comment on certain permits issued under the CWA National Pollutant Discharge Elimination System program.

B. Index to Decision

The following are selected documents relevant to this Agency decision, as detailed in Appendices A and B. All relevant materials are located in the EPA's official file and in electronic systems. For convenience, this Decision Document refers to all of the application, as clarified, and supporting materials collectively as the "Application".

1. Application and Supporting Materials

The Tribe's Application for TAS for the water quality standards and certification programs under CWA sections 303(c) and 401 includes the Application cover letter dated March 24, 2017, from the Meskwaki Natural Resources Department (MNRD) to EPA Region 7, which includes the following attachments:

Attachment A. BIA list of Federally Recognized Tribes
Attachment B. Tribal Constitution
Attachment C. Title 14- Natural Resource Code
Attachment D. Title 16- Property Codes
Attachment E. Meskwaki Settlement and West Bend Property Map
Attachment F. Meskwaki Trust Fee Status Map
Attachment G. Meskwaki Trust Only Lands Map
Attachment H. Meskwaki Fee Lands Map (Pending/Not Pending)
Attachment I. Meskwaki West Bend Fee Lands Map
Attachment J. Tribal Boundaries Map (with Tribal Waters labeled)
Attachment K. Letter from Meskwaki Attorney General
Attachment L. Job Description-Natural Resource Director
Attachment M. Job Description-Natural Resource Coordinator
Attachment N. Job Description-Natural Resource Project Leader
Attachment O. Job Description-Natural Resource Technician
Attachment P. Job Description-Natural Resource Intern
Attachment Q. Tribal Organizational Chart
Attachment R. Tribal Resolution for WQS

Clarifications to the Tribe's Application

The EPA requested clarification to the Application that was submitted on March 24, 2017. Generally, the Agency asked the Tribe to clarify the scope of the lands included in the Application, namely, whether the Tribe's intent was to seek TAS for each of the parcels depicted on the maps submitted with its application. See Application, Attachment F. In response to the EPA's request, the Tribe provided additional maps of the Tribe's trust lands and fee lands, see Application, Attachments E-J. Map F, Trust Status was clarified for convenience in identifying trust and fee land. The EPA has included both maps in this Decision Document, Appendix B. Also, the Tribe clarified that it is seeking TAS approval for the waters on its trust lands only. Specifically, the Tribe added this sentence to its application, "[a]s fee lands are changed to trust,

supplemental TAS applications will be submitted to the EPA for inclusion of these new lands to receive TAS under the Tribal Water Quality Standards." Through further correspondence, the Tribe clarified that the Application is for its trust lands only. See Appendix A, Supporting Information. Thus, the Tribe's fee lands are not the subject of the current Application. See Application, page 3, Appendix A, Supporting Information for correspondence and details.

2. Comments Regarding Tribal Authority

As provided at 40 C.F.R. § 131.8(c)(2) and noted in Appendix A, the EPA by letter dated March 1, 2019, provided notice to appropriate governmental entities[2] and an opportunity to comment on the substance and basis of the Tribe's assertion of authority in the Application to regulate under the CWA the quality of surface waters and issue certifications on the Tribe's trust lands. The letters were sent both electronically and by regular mail. The comment period ended on April 1, 2019. The complete Application was posted on the EPA Region 7 Public Notice website and is available in EPA's official file. The EPA did not receive any comments from appropriate governmental entities, i.e., here, the State of Iowa.

Consistent with Agency practice, the EPA also provided the public notice and an opportunity to comment on the assertion of authority in the Application. A public notice was published in three newspapers—the Meskwaki National Times, the Des Moines Register, and the Marshalltown Times Republican. The published notices identified the EPA's website on which the Tribe's Application was posted and notified local governments and the public of the opportunity to review documents at the EPA Regional office in Lenexa, Kansas. The notices requested that any comments be submitted by April 1, 2019. The EPA did not receive any comments in response to these newspaper notices. EPA exercised its discretion and also conducted additional notice of the Application to local governments. No comments were received from the local governments on the Application.

In summary, the EPA received no adverse comments on the Tribe's assertion of authority to regulate the quality of surface waters on the trust lands of the Tribe.

3. Statutory and Regulatory Provisions

The following are statutory and regulatory provisions governing this eligibility decision:

- Section 518 of the Clean Water Act, 33 U.S.C. § 1377, authorizes the EPA to treat an Indian tribe in a similar manner as a state if it meets specified eligibility criteria

- 40 C.F.R. §§ 131.4(c) and 131.8 establish the regulatory requirements for a Tribe to obtain eligibility approval and the procedures for the EPA to process a Tribe's eligibility application. See Amendments to the Water Quality Standards Regulation that Pertain to

[2] The EPA defines the term "appropriate governmental entities" as "States, Tribes, and other Federal entities located contiguous to the reservation of the tribe which is applying for treatment as a State." 56 Fed. Reg. 64876, 64884 (Dec. 12, 1991). Consistent with the EPA's regulations, the EPA provided notice to all appropriate governmental entities in this case. In this instance, the EPA provided notice to the State of Iowa.

Standards on Indian Reservations, 56 Fed. Reg. 64,876 (Dec. 12, 1991); 59 Fed. Reg. 64,339 (Dec. 14, 1994); and 81 Fed. Reg. 30183 (May 16, 2016)

4. Policy Statements

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

- *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (November 8, 1984)
- EPA Memorandum titled "EPA/State/Tribal Relations," by EPA Administrator Reilly (July 10, 1991)
- Memorandum titled "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)
- Memorandum titled *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs*, by EPA Deputy Administrator Marcus Peacock (January 23, 2008)

II. Requirements for Approval and EPA Findings

Under CWA section 518 and the implementing regulation at 40 C.F.R. § 131.8(a), four requirements must be satisfied before the EPA can approve an Indian tribe's TAS application for the water quality standards program under section 303(c) and the certification program under section 401. These requirements are that: (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 that are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an 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.

The regulation at 40 C.F.R. § 131.8(b) identifies what must be included in a TAS application by an Indian tribe to administer the water quality standards program. Consistent with the regulation at 40 C.F.R. § 131.8(b)(6), where an Indian tribe has previously qualified for TAS under a different CWA or Safe Drinking Water Act program, the tribe need only provide the required information that has not been submitted in a previous application. Where the EPA determines that an Indian tribe is eligible to the same extent as a state for purposes of water quality standards, the tribe likewise is eligible to the same extent as a state for purposes of certifications conducted under CWA section 401, see 40 C.F.R. § 131.4(c), provided the tribe designates a "certifying agency" as defined in 40 C.F.R. § 121.1(e). Tribes authorized to administer the CWA water quality standards program are also "affected states" under CWA §§ 402(b)(3) and (5), and 40 C.F.R. § 122.4(d). As "affected states," they receive notice and an opportunity to comment on certain permits issued under the National Pollutant Discharge Elimination System program.

A. Federal Recognition

The first requirement for a tribal TAS application for water quality standards under section 303(c) and certifications under section 401 is that a tribe is recognized by the Secretary of the Interior and meets the definitions in 40 C.F.R. §§ 131.3 (k) and (l), 40 C.F.R. § 131.8(a)(1). A tribe must include in its application a statement that the tribe is recognized by the Secretary of the Interior. See 40 C.F.R. § 131.8(b)(1). 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." See CWA section 518(h)(2), 40 C.F.R. § 131.3(l). The term "Federal Indian reservation" means "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation." See CWA section 518(h)(1), 40 C.F.R. § 131.3(k).

The Tribe, whose trust lands are located in Tama County, Iowa, is listed as *Sac & Fox Tribe of the Mississippi in Iowa* by the Secretary of the Interior and included in the Department of the Interior's current list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs", see 84 Fed. Reg. 1200, 1203 (February 1, 2019). Thus, the Tribe is a federally recognized tribe. The EPA previously found that the DOI determined that the Tribe is federally recognized when EPA approved the Tribe's eligibility applications for purposes of CWA section 106 grant funding, dated June 19, 2008, and CWA section 319 nonpoint source management program, dated March 9, 2018.

The Tribe's trust lands which are the subject of its Application are located within the Tribe's Settlement (Meskwaki Settlement). The Meskwaki Tribe's trust lands within the Settlement are reservation lands. See 56 Fed. Reg. at 64881; *Oklahoma Tax Comm'n v. Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991) (holding that the "reservation" category of Indian country includes tribal trust lands even if such lands have not been formally declared a reservation); *U.S. v Papakee*, 485 F Supp.2d 1032, 1040-41 (N.D. IA 2007) (holding "that the Settlement is a 'reservation' for purposes of [18 U.S.C.] § 1151.").

Therefore, the EPA finds that the Meskwaki Nation is recognized by the Secretary of the Interior and meets the definition of "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).

B. Substantial Governmental Duties and Powers

The second requirement for a TAS application for water quality standards under CWA section 303(c) and certifications under CWA section 401 is that a tribe has a governing body carrying out substantial governmental duties and powers over a defined area. See 40 C.F.R. § 131.8(a)(2). To show that it has a governing body currently carrying out substantial governmental duties and powers over a defined area, 40 C.F.R. § 131.8(b)(2) requires that the tribe submit a descriptive statement that should: (i) describe the form of the tribal government; (ii) describe the types of governmental functions currently performed by the tribal governing body, such as those exercising police powers affecting or relating to the health, safety, and welfare of the affected

population, taxation, and the exercise of eminent domain; and (iii) identify the source of the tribal government's authority to carry out the governmental functions currently being performed.

A tribe that has previously shown that it meets the "governmental functions" requirement for purposes of another EPA program generally need not make that showing again. See 59 Fed. Reg. 64,339, 64,340 (Dec. 14, 1994) (Simplification Rule). Consistent with 40 C.F.R. § 131.8(b)(6) and the Simplification Rule, the Application refers to the governmental description in the Tribe's CWA section 106 TAS application, which describes the Tribe's form of government, the significant governmental functions the Tribe performs, and identifies the source of the Tribe's authority to carry out its governmental functions. As noted above, the Tribe's TAS application for the CWA 106 program was approved by the EPA on June 19, 2008.

As described in the Tribe's prior approved CWA section 106 TAS application, the Meskwaki Tribe is a self-governing sovereign Indian Tribe organized pursuant to the Indian Reorganization Act, 25 USC section 476. The governing document of the Tribe is the "Constitution and Bylaws of the Sac and Fox Tribe of the Mississippi in Iowa" (the Tribal Constitution), which was adopted by its members and approved by the Secretary of the Interior on November 13, 1937. A copy of the Tribal Constitution is included with the Application, Attachment B. In accordance with the Tribal Constitution, the Tribe's governing body is a seven-member Tribal Council that has authority to represent the Tribe in all matters pertaining to the business of the Tribe, Tribal Const., Art. III, Sec. 2. More specifically, the Tribal Council is authorized under the Tribal Constitution, among other matters, to (i) protect and preserve the property and natural resources of the Tribe, and (ii) regulate the use and disposition of property of members of the Tribe insofar as necessary to protect the peace, safety, and general welfare of the Tribe, Tribal Const., Art. X, Sec. 1(e) and (k).

In the exercise of its Constitutional powers, the Tribe has enacted a comprehensive set of laws, known as the Code of the Sac & Fox Tribe of Mississippi in Iowa, the "Tribal Code." The Tribal government has a highly developed organizational structure with regulatory bodies, see Application, Attachment Q, as well as a Tribal Police Department and Tribal Court System. All of these manifestations of the Tribe's sovereign authority illustrate the Tribe's assumption of governmental duties and its exercise of governmental powers.

In addition, the goals of the MNRD, the agency responsible for implementation of the water quality standards and certification programs as discussed more fully below, have included the development of tribal water quality standards since 2006. The Tribe has worked cooperatively with the EPA and the U.S. Geological Survey and other area agencies to create the baseline understanding of surface water quality within the Meskwaki Settlement.

The Tribal Council provided governmental support for the tribal water quality program in December 2016 by passing a Tribal Resolution stating that the Tribe desires to formally designate and establish tribal water quality standards within the exterior boundaries of the

Meskwaki Settlement for the protection of the Meskwaki waters.[3] See Application, Attachment R.

Consistent with the EPA's prior findings, the EPA has determined that the Tribe satisfies the requirement for a governing body that carries out substantial duties and powers over a defined area in satisfaction of 40 C.F.R. §§ 131.8(a)(2) and (b)(2).

C. Jurisdiction over Waters within the Tribe's Reservation

The third requirement for TAS applications for water quality standards under CWA section 303(c) and certifications under CWA section 401 is that the water quality standards program to be administered by the tribe pertains to the management and protection of water resources that are within the borders of the Indian reservation. See 40 C.F.R. § 131.8(a)(3). To address this requirement, under 40 C.F.R. § 131.8(b)(3), the Tribe is required to submit a statement of its authority to regulate water quality. The statement should include: (i) a map or legal description of the area over which the tribe asserts authority to regulate surface water quality; (ii) a statement by the tribe's legal counsel (or equivalent official) describing the basis for the tribe's assertion of authority, which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions 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).

1. Map or Legal Description

The Tribe's Application includes a series of maps showing the waters within the boundaries of the Tribe's trust lands. The Tribe's Application includes maps that delineate the boundaries of the Settlement and the surface waters contained therein, including maps distinguishing between the Tribe's trust lands that are the subject of its Application and its fee lands. See, Appendix B Maps of Meskwaki Settlement and Waters. See Appendix A, Application and Meskwaki Named Streams within Boundaries Map. The Application seeks TAS for the waters on the Tribe's trust lands only, approximately 6,554 acres of the Settlement. See Appendix A, Application and Meskwaki Trust Status Map.

Regarding a legal description of the Tribe's land, the Tribe explains in its Application that the Meskwaki Settlement was established July 13, 1857 when members of the Meskwaki Tribe purchased eighty acres of land in Tama County, Iowa. The title to this land was held by the Governor of Iowa in trust for the benefit of the members of the Tribe. Legal title to the property was later (1896) transferred to the Federal Government and held in trust for the Tribe. Since the original land purchase the Tribe has purchased additional land and its current holdings in Tama County comprise approximately 7,607 acres and in Palo Alto County approximately 758 acres. As depicted in the maps submitted by the Tribe, legal title to most of the Tribe's land is held in trust by the federal government for the benefit of the Tribe (referred to herein as the Tribe's trust

[3] As noted above, in its Application, the Tribe seeks TAS only for the waters within its trust lands. The maps submitted by the Tribe depict both its trust and fee lands within the Meskwaki Settlement. See Appendix A, Application and Appendix B, Maps.

lands). The fee land owned by the Tribe is the subject of pending or contemplated fee-to-trust applications. See Appendix A, Application and Maps delineating fee land and land held in Trust.[4]

The EPA concludes that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(i) by providing maps or a legal description of the area over which the Tribe asserts authority to regulate surface water quality under the CWA.

2. Statement Describing the Basis for the Tribe's Authority

The Application asserts authority to administer the CWA section 303(c) and 401 programs over all surface water resources on the Tribe's trust lands based on the express delegation of authority to eligible Indian Tribes to administer CWA regulatory programs over their reservations contained in section 518 of the CWA. See 81 Fed. Reg. 30183 (May 16, 2016) In light of the congressional delegation of authority, 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 30194. As described above, the Tribe's trust lands are reservation lands where the Tribe may regulate water quality.

The Tribe's legal counsel also asserts that there are no limitations or impediments to or special circumstances limiting the Tribe's ability to accept and effectuate the congressional delegation of authority under the CWA section 518. See Appendix A, Application and Attorney General Letter. The EPA has no additional information, whether from an outside source or within its own records, of any impediment limiting the Tribe's ability to effectuate the congressionally delegated authority.

The EPA therefore concludes that the Tribe can rely on the congressional delegation of authority to regulate surface water quality over its trust lands and has satisfied the application requirement of 40 C.F.R. § 131.8(b)(3)(ii).

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

A tribe must also identify in its application for TAS approval the surface waters for which it proposes to establish water quality standards. See 40 C.F.R. § 131.8(b)(3)(iii). The Tribe's Application asserts authority over all surface waters within the areas covered by the Application, i.e. the Tribe's trust land. See Appendix A, Application. These waters cover approximately seven miles of the Iowa River. See Appendix A, Application and Letters and related documents from the EPA. Additional waters on the trust land include four named streams (Onion, Raven, Bennett, and Cattail Creeks) and several unnamed creeks and unnamed ponds.

[4] Currently, the Tribe holds approximately 1,786 acres in fee status, which is not included in the Application. Of that fee land, approximately 900 acres were within the process to be placed in trust status through the Bureau of Indian Affairs at the time the TAS application was submitted to EPA (2017). As fee lands are changed to trust, the tribe will submit supplemental TAS applications to the EPA for inclusion of these new lands to receive TAS for CWA section 303(c) water quality standards and section 401 certification.

The EPA therefore concludes that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(iii) by identifying the surface waters within the Tribe's trust lands over which it proposes to establish water quality standards.

4. Conclusion Regarding Jurisdiction

Based on the above discussion, the EPA concludes that the Tribe meets the requirements in 40 C.F.R. §§ 131.8(a)(3) and (b)(3).

D. Capability

The fourth and final requirement for a TAS application for water quality standards under section 303(c) and certifications under section 401 of the CWA is that a Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the CWA and applicable regulations. See 40 C.F.R. § 131.8(a)(4). To demonstrate that a tribe has the capability to administer an effective water quality standards program, 40 C.F.R. § 131.8(b)(4) requires that the tribe's application include a narrative statement of the tribe's capability. The narrative statement should include: (i) a description of the tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act; (ii) a list of existing environmental and public health programs administered by the tribal governing body and copies of related tribal laws, policies, and regulations; (iii) a description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government; (iv) a description of the existing, or proposed, agency of the tribe that will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards; and, (v) a description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan that proposes how the tribe will acquire additional administrative and technical expertise. See 40 C.F.R. §§ 131.8(b)(4)(i)–(v).

The Tribe's Application documents that it is reasonably expected to be capable of carrying out the functions of the water quality standards and certification programs in a manner consistent with the terms and purposes of the CWA and applicable regulations. The Application states the Tribe has managed a tribal water quality program for the Settlement since 2008.

The MNRD administers the Tribe's Natural Resources Code as a subordinate agency of the Tribe. The MNRD has delegated powers and duties and responsibilities of the Tribal Council under Title 14, Sac & Fox of the Mississippi in Iowa Code, section 14-2201. The Director of the MNRD reports to the Tribal Council. The organizational structure of the Department is such that the Director, who is appointed by the Tribal Council, is the administrative head of the Department. By statute, the Director is responsible, among other matters, for all natural resources functions on the Settlement. In addition, the Director has the authority to promulgate rules and regulations for the operation of the MNRD, subject to final review and approval by the Tribal Council, Sac & Fox Tribe of the Mississippi in Iowa Code section 14-2205

The implementation of the water quality and certification programs will be under the MNRD and will be conducted by experienced staff. The MNRD will assume the primary responsibility for establishing reviewing, implementing, and revising water quality standards. In addition to the Director, staff are already on board and trained to administer the water quality standards and certification programs. Job descriptions and qualifications requirements for the following water-related positions are provided in Attachments L-P of the Application, including:

- ☐ Natural Resource Director
- ☐ Natural Resource Coordinator
- ☐ Natural Resource Project Leader
- ☐ Natural Resource Technician
- ☐ Natural Resource Interns - Seasonal

The Tribe has consistently shown it is capable of administering and managing its water resources program. For example, the Tribe's water program collects physical, chemical, and biological data and uses the data to assess the Settlement's stream, pond, and groundwater conditions annually. The program also conducts outreach and education to the tribal community including its youth to help Settlement residents understand, protect, and improve the quality of its water resources. The Tribe is also administering and managing a non-point source control program under section 319 of the CWA.

The Tribe implements and manages programs on environmental capacity building (under the Indian General Assistance Program), wetlands program development (under CWA section 104(b)(3)), and ambient air quality (under CAA section 103). For example, the Tribe has administered and is successfully managing the following environmental and natural resource programs:

- *Indian General Assistance Program* – Implements a variety of environmental and natural resource projects and maintains the administrative capabilities of the Tribe to effectively operate those projects
- *Wetlands Program Development Grant Program* – Coordinates and accelerates the protection, management, and restoration of wetlands through research, investigations, experiments, training, demonstrations, surveys, and studies
- *Ambient Air Quality Program* – Investigates the causes and promotes the prevention of air pollution on the Settlement; also operates a meteorological station which tracks and records meteorological data on the Tribe's Settlement
- *Tribal Response Program* – Coordinates the Brownfields and Tribal Response Program under CERCLA section 128(a)

Based on the information provided by the Tribe that describes its capability to administer effective water quality standards and certification programs under the CWA, the EPA concludes that the Tribe has met the requirements at 40 C.F.R. §§ 131.8(a)(4) and (b)(4).

III. Conclusion

The EPA has reviewed the Tribe's TAS application for purposes of CWA sections 303(c) and 401, as well as prior decisions approving the Tribe's TAS applications for purposes of CWA sections 106 and 319. The EPA has assessed whether the Application from the Tribe meets the eligibility criteria established by CWA section 518(e) and the applicable regulations. Based upon this review, the EPA concludes that the Tribe has made the required demonstration to meet the eligibility and application requirements at 40 C.F.R. §§ 131.8(a)(1)-(4) and (b)(1)-(4) to administer the water quality standards program for surface waters on the Tribe's trust lands. Pursuant to 40 C.F.R. 131.4(c), the Tribe is also eligible to the same extent as a state for purposes of the water quality certification program under CWA section 401.

In accordance with the EPA Delegation Manual and Delegation 2-78, issued May 11, 1994, the Regional Administrators are authorized to determine whether an Indian Tribe shall be treated in a similar manner as a state for purposes of regulatory programs under sections 303(c) and 401 of the CWA. The Regional Administrator, EPA Region 7, hereby approves the Application and finds the Meskwaki Tribe is eligible for treatment in the same manner as state to implement the CWA water quality standards and certification programs.

APPROVED BY:

James B. Gulliford
Regional Administrator
U.S. Environmental Protection Agency Region 7

08/13/19
Date

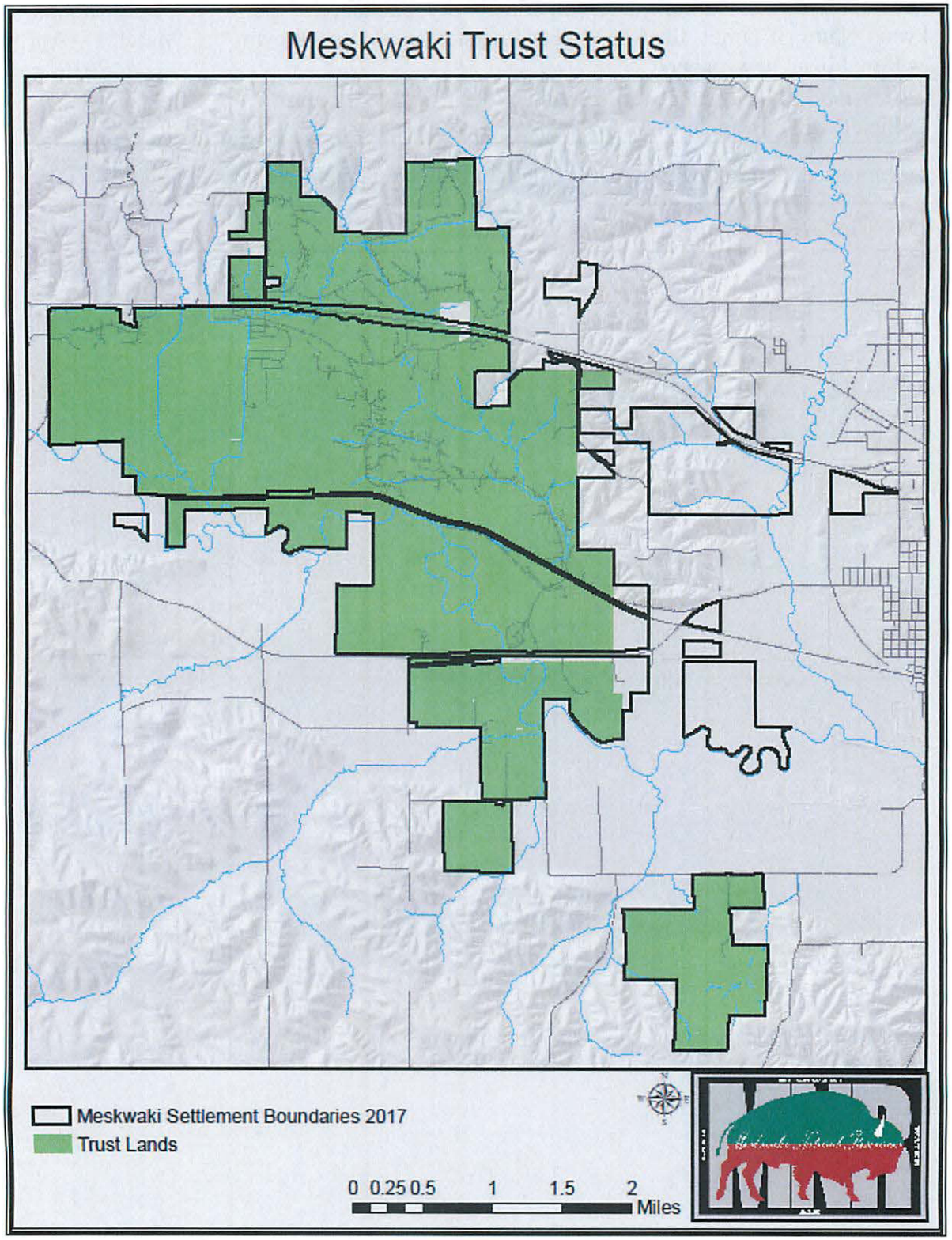
Appendix A: Supporting Information

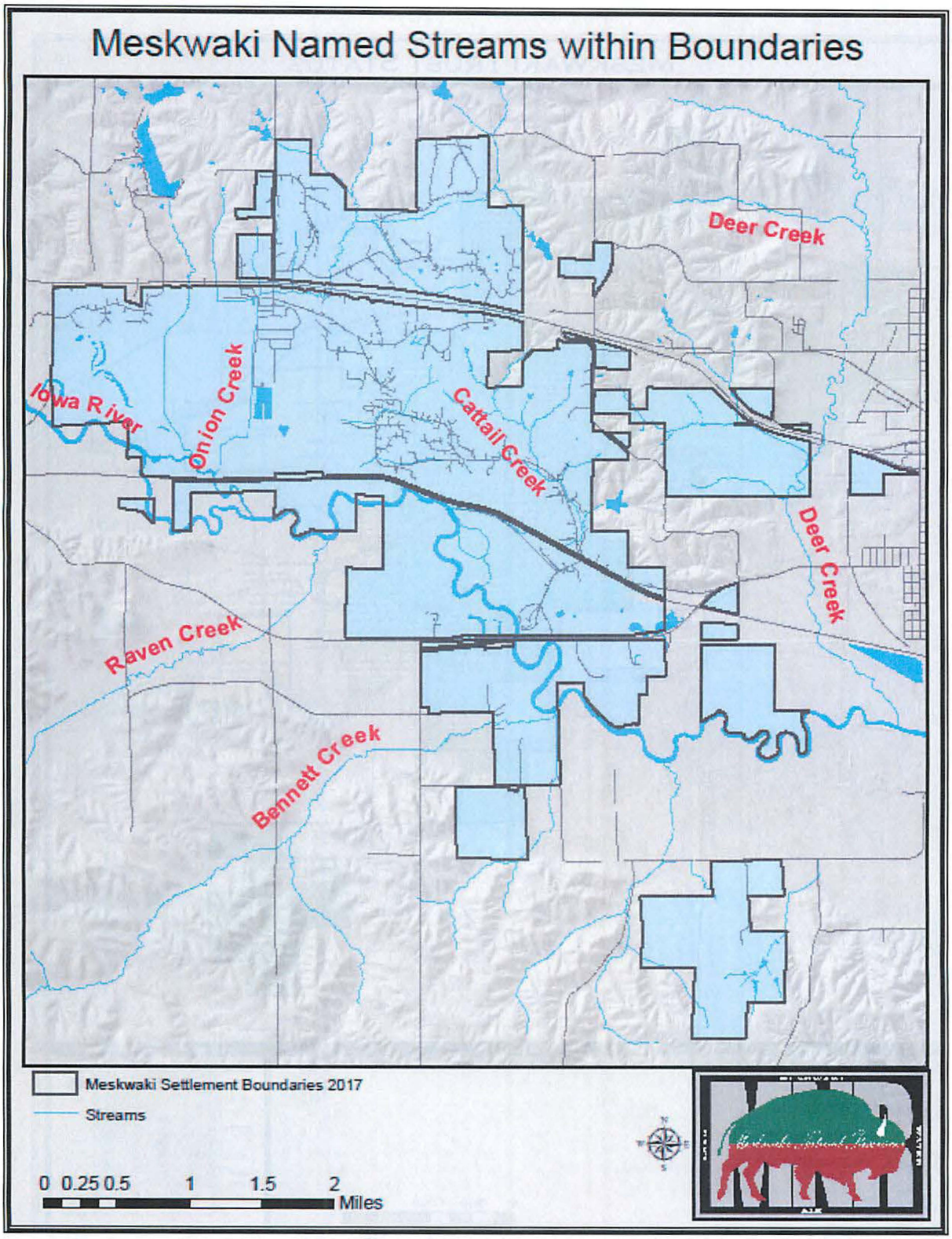
The following selected documents are relevant to this Agency decision. All relevant materials are located in the EPA's official file and in electronic systems.

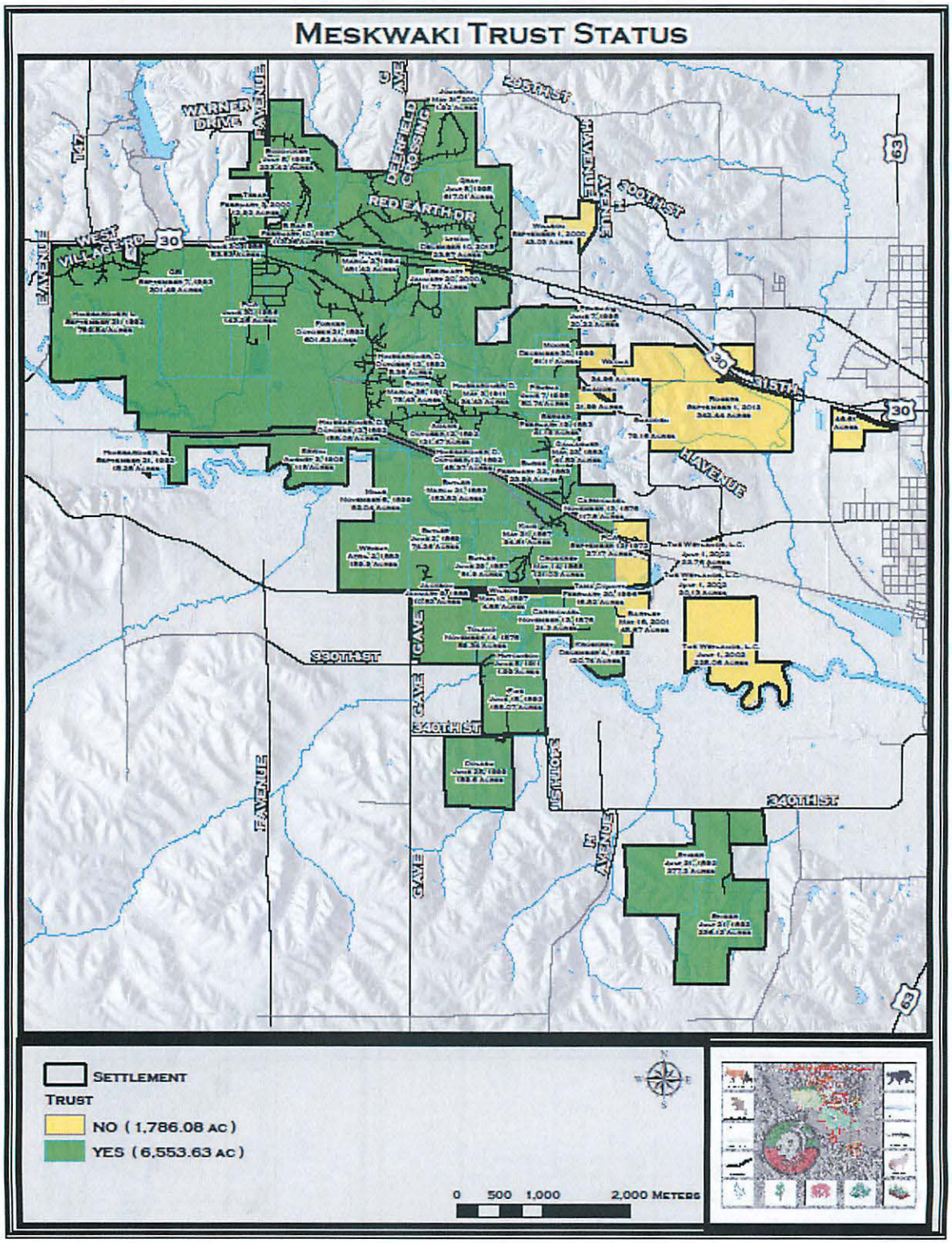
Description (signature, addressee, subject)	Date
Letter from Meskwaki Natural Resources Department (MNRD), to Heather Duncan, EPA Region 7 • Application for Treatment as a State to Administer a Water Quality Standards Program and Request Approval of Water Quality Standards o Attachment A. BIA list of Federally Recognized Tribes o Attachment B. Tribal Constitution o Attachment C. Title 14- Natural Resource Code o Attachment D. Title 16- Property Codes o Attachment E. Meskwaki Settlement and West Bend Property Map o Attachment F. Meskwaki Trust Fee Status Map o Attachment G. Meskwaki Trust Only Lands Map o Attachment H. Meskwaki Fee Lands Map (Pending/Not Pending) o Attachment I. Meskwaki West Bend Fee Lands Map o Attachment J. Tribal Boundaries Map (with Tribal Waters labeled) o Attachment K. Letter from Meskwaki Attorney General o Attachment L. Job Description-Natural Resource Director o Attachment M. Job Description-Natural Resource Coordinator o Attachment N. Job Description-Natural Resource Project Leader o Attachment O. Job Description-Natural Resource Technician o Attachment P. Job Description-Natural Resource Intern o Attachment Q. Tribal Organizational Chart o Attachment R. Tribal Resolution for WQS	March 24, 2017
I. Application and Supporting Materials	
Application clarifications submittal and updated Attachment F Meskwaki Settlement Fee Trust Status Map, email from Crystal Davis, Meskwaki Nation Natural Resources Department to the EPA, January 10, 2018	January 10, 2018
II. Letters and related documents from EPA	
Letter from Jim Gulliford, Regional Administrator, EPA Region 7 to appropriate governmental entities providing notice of an opportunity to comment on the substance and basis of the Meskwaki Nation's assertion of authority to the Honorable Governor Reynolds, State of Iowa	February 26, 2019
Clarification emails from EPA to MNRD, December 8, 2017, and Jan. 5, 2018; second request for clarification Jan. 31, 2018; and, MNRD's reply message of Jan. 31, 2018	December 8, 2017 thru Jan. 31, 2018

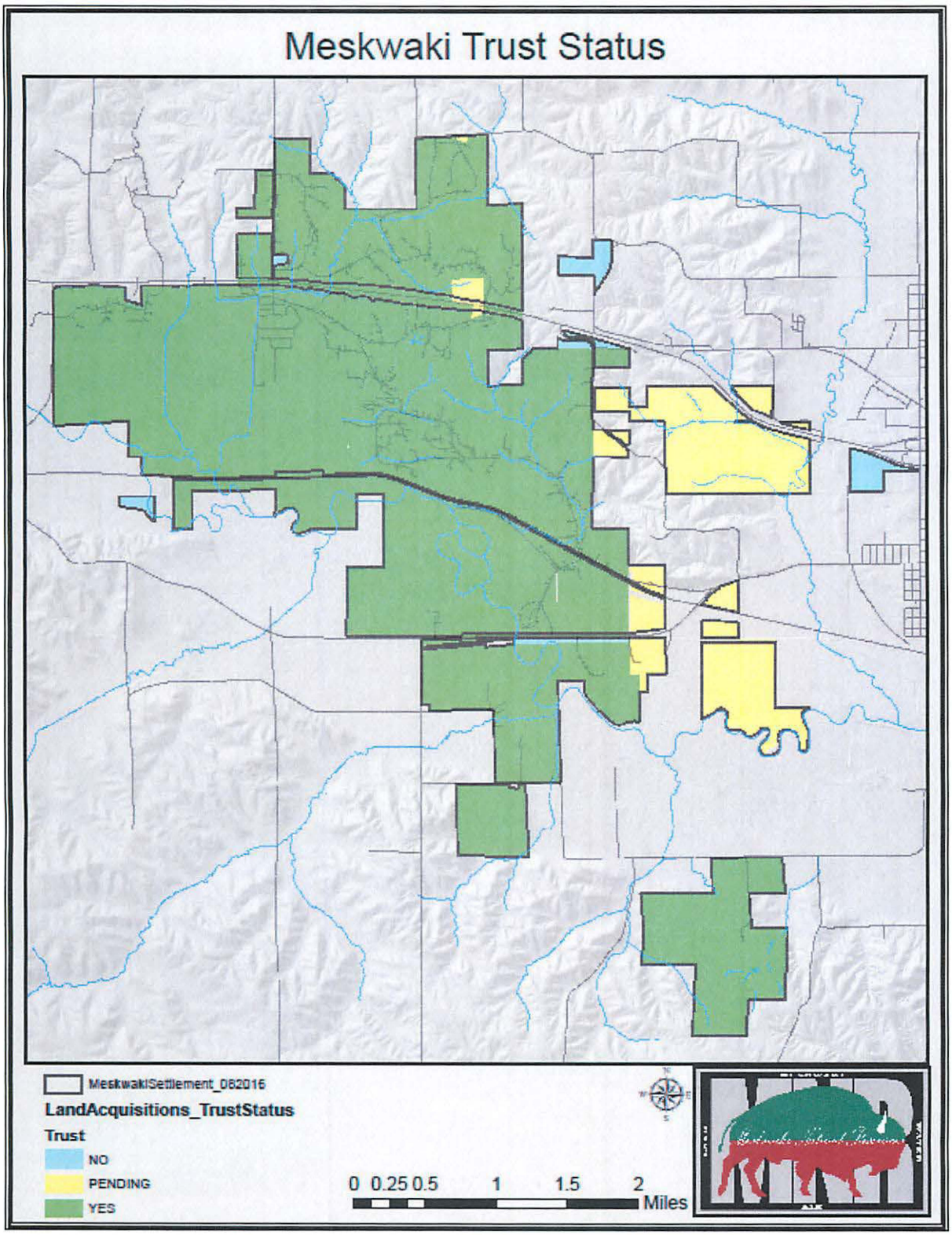
Description (signature, addressee, subject)	Date
Public notice providing an opportunity to comment on the substance and basis of the Meskwaki Nation's assertion of authority, published in the Meskwaki National Times, the Des Moines Register, and Marshalltown Times Republican newspapers	Date of publications March 1 – April 1, 2019
Outreach e-mail to the local governmental entities from EPA Region 7, Amy Shields, PhD, Branch Chief, WQS Branch, Water Division	May 17, 2019
Screen capture documenting materials posted for public comment period	March 1, 2019
EPA Map, Iowa River Miles, Meskwaki Settlement	June 17, 2019

Appendix B: Maps of the Meskwaki Settlement and Water




Meskwaki Named Streams within Boundaries
Deer Creek
Iowa River
Onion Creek
Cattail Creek
Deer Creek
Raven Creek
Bennett Creek
Meskwaki Settlement Boundaries 2017
Streams
0 0.25 0.5 1 1.5 2
Miles


MESKWAKI TRUST STATUS
WARNER DRIVE
DEERFIELD CROSSING
RED EARTH DR
WEST VILLAGE RD
295TH ST
300TH ST
315TH ST
330TH ST
340TH ST
HAVE AVE
GAVE
FAVE
IAVE
SETTLEMENT
TRUST
NO (1,786.08 AC)
YES (6,553.63 AC)
0 500 1,000 2,000 METERS


Meskwaki Trust Status
MeskwakiSettlement_082016
LandAcquisitions_TrustStatus
Trust
NO
PENDING
YES
0 0.25 0.5 1 1.5 2
Miles