

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

DECISION DOCUMENT:

**APPROVAL OF THE PUEBLO OF SAN FELIPE'S APPLICATION FOR
TREATMENT IN A SIMILAR MANNER AS A STATE FOR
CLEAN WATER ACT SECTIONS 303(c) WATER QUALITY STANDARDS
AND 401 WATER QUALITY CERTIFICATION PROGRAMS**

April 2023

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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 (the EPA or Agency) decision to approve the Pueblo of San Felipe’s application 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 programs, pursuant to section 518 of the CWA and part 131 in Title 40 of the Code of Federal Regulations (CFR). Section 518 of the CWA authorizes the EPA to treat an Indian tribe as a state to manage and protect water resources “within the borders of an Indian reservation,” for purposes of certain CWA programs, including the section 303(c) water quality standards and section 401 water quality certification programs.

The EPA received the Pueblo of San Felipe’s TAS application (referred to as “the application”) on March 8, 2022. The application includes six supporting exhibits identified as Exhibits A-F. The federal regulation at 40 CFR part 131 establishes the process by which the Agency implements the water quality standards program and its authority to determine whether to approve an Indian tribe’s TAS application for the purposes of administering programs under sections 303(c) and 401 of the CWA. *See* 56 Fed. Reg. 64876 (December 12, 1991), as amended by 59 Fed. Reg. 64339 (December 14, 1994) and clarified by 81 Fed. Reg. 30183 (May 16, 2016).

The application seeks approval to administer the CWA water quality standards and certification programs for all lands within the exterior boundaries of the Pueblo of San Felipe, as explained herein. The Pueblo of San Felipe consists of a total of 59,485.78 acres (for purposes of this application) and includes land grants (restricted fee lands), formal reservation lands, and trust lands. These lands comprise the formal and informal reservation collectively referred to as a “federal Indian reservation” under the CWA.

B. Index to Decision

The following documents constitute a portion of the full docket for this Agency decision, as detailed in Appendix A. All relevant materials in the docket are located in the EPA’s official files and electronic storage systems.

1) *Application Materials*

The Pueblo of San Felipe’s TAS application for the water quality standards and certification programs under CWA sections 303(c) and 401, respectively, includes the following documents:

- Pueblo of San Felipe Application for Clean Water Act Eligibility to Administer a Water Quality Standards and a Water Quality Certification Program (including cover letter from Governor Carl Valencia and Lt. Governor Joseph Trancosa, dated March 8, 2022)
 - Exhibit A: Bureau of Indian Affairs San Felipe Pueblo Land Status Report
 - Exhibit B: Letter of Certification, Bureau of Indian Affairs Southern Pueblos Agency Realty Officer
 - Exhibit C: Warranty Deed for the Former Ball Ranch
 - Exhibit D: Maps 1 and 2

- Exhibit E: Statement of San Felipe Legal Counsel
- Exhibit F: DNR [Department of Natural Resources] Organizational Chart

2) Comments Regarding Tribal Authority

As provided at 40 CFR 131.8(c)(2) and noted in Appendix A, the EPA provided appropriate governmental entities¹ notice and an opportunity to comment on the substance and basis of the Pueblo of San Felipe's assertion of authority, by letters dated May 31, 2022. The complete application and the EPA's 2010 approval of the Pueblo of San Felipe's 2009 TAS application for purposes of CWA section 106 were posted on an EPA website on June 1, 2022, during the comment period.

By letters dated May 31, 2022, the EPA offered the Pueblo of Santo Domingo and the Pueblo of Santa Ana the opportunity to consult and comment on the EPA's review of the application submitted by the Pueblo of San Felipe. The Pueblo of Santo Domingo and the Pueblo of Santa Ana both share a common border with the Pueblo of San Felipe and are thus also appropriate governmental entities for purposes of 40 CFR 131.8(c)(2).

The Pueblo of Santa Ana provided comments supporting approval of the Pueblo of San Felipe's application to the EPA, as noted in Appendix B of this document. The EPA also received responses from the New Mexico Environment Department and the U.S. Forest Service – Southwestern Region that supported approval of the Pueblo of San Felipe's application. The EPA received no adverse comments. A Response to Comments is found in Appendix B of this document.

Consistent with Agency practice, the EPA also provided local governments and the public an opportunity to comment on the assertion of authority in the Pueblo of San Felipe's application. A public notice was published in the *Albuquerque Journal* on Sunday, June 5, 2022. The notice identified the EPA's website with the posted TAS application, and requested that comments be submitted by Friday, July 8, 2022. The EPA did not receive any comments in response to the notice published in the newspaper.

3) Statutory and Regulatory Provisions

The following statutory and regulatory provisions govern this eligibility decision:

- Section 518 of the CWA, 33 U.S.C. section 1377, authorizes the EPA to treat an Indian tribe in a similar manner as a state if it meets specified eligibility criteria; and
- 40 CFR 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 Standards on Indian Reservations, 56 Fed. Reg. 64876 (December 12, 1991); 59 Fed. Reg. 64339 (December 14, 1994); and 81 Fed. Reg. 30183 (May 16, 2016).

¹ 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 (December 12, 1991). Consistent with the EPA's regulations, the EPA provided notice to all appropriate governmental entities in this case. The EPA also exercised its discretion to provide direct notice to certain additional entities identified in Appendix A.

4) Policy Statements

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

- The document titled *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (November 8, 1984)²
- The EPA's memorandum titled *EPA/State/Tribal Relations*, by the EPA Administrator William K. Reilly (July 10, 1991)³
- The EPA's memorandum titled *Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations*, by the EPA Assistant Administrator Robert Perciasepe and General Counsel Jonathan Cannon (March 19, 1998)⁴
- The EPA's memorandum titled *Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs*, by the EPA Deputy Administrator Marcus Peacock (January 23, 2008)⁵

II. Requirements for Approval

Under CWA section 518 and the implementing regulation at 40 CFR 131.8(a), four requirements must be satisfied before the EPA can approve an Indian tribe's application for eligibility to administer a water quality standards program under CWA section 303(c) and a water quality certification program under CWA section 401. The requirements are:

- 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, within the borders of the Indian reservation and 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 the Indian reservation; and
- 4) The Indian tribe is reasonably expected to be capable, in the EPA 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 EPA's regulation at 40 CFR 131.8(b) identifies the information that must be included in an application by an Indian tribe to administer a water quality standards program. Consistent with the regulation at 40 CFR 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 which 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 administering a water quality standards program, the tribe likewise is eligible to the same extent as a state for purposes of

² Available at <https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf>

³ Available in pages 98-103 of *Working Effectively with Tribal Governments*

⁴ Available in the Supporting Information for this action

⁵ Available at https://www.epa.gov/sites/production/files/2015-10/documents/strategy-for-reviewing-applications-for-tas_0.pdf

certifications conducted under CWA section 401. *See* 40 CFR 131.4(c). Indian tribes authorized to administer the CWA water quality standards program are also “affected states” under CWA sections 402(b)(3) and (5), and 40 CFR 122.4(d). As “affected states,” they receive notice and an opportunity to comment on certain permits such as those issued under the National Pollutant Discharge Elimination System program.

The Pueblo of San Felipe submitted an application in 2009 to administer the CWA section 106 program (referred to as “the 2009 TAS application”), which was approved by the EPA on September 2, 2010 (referred to as “2010 CWA section 106 approval”). Relying on 40 CFR 131.8(b)(6), the Pueblo of San Felipe in its current application has cited to this application and approval and provided new information as appropriate.

A. Federal Recognition

Under CWA section 518 and its implementing regulation, the EPA can approve an application from an eligible “Indian tribe” that meets the definitions set forth in CWA section 518(h) and 40 CFR 131.3(k) and (l). *See* 40 CFR 131.8(a)(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.” CWA section 518(h)(2), 40 CFR 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.” CWA section 518(h)(1), 40 CFR 131.3(k).

Consistent with 40 CFR 131.8(b)(6), the application references the EPA’s approval of the Pueblo of San Felipe’s TAS application for the CWA section 106 program on September 2, 2010. The Pueblo is included as the “Pueblo of San Felipe” in the U.S. Department of the Interior’s current list of federally recognized tribes. *See* 86 Fed. Reg. 2112, 2114 (January 12, 2023). Furthermore, as discussed below, the Pueblo is exercising governmental authority over a reservation within the meaning of the CWA. Thus, the EPA has determined that the Pueblo of San Felipe meets the requirements of 40 CFR 131.8(a)(1) and (b)(1).

B. Substantial Governmental Duties and Powers

To demonstrate that it has a governing body currently carrying out substantial governmental duties and powers over a defined area, 40 CFR 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, but not limited to, the exercise of 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.

The Pueblo of San Felipe’s application, relying on the information in the 2010 CWA section 106 approval, states that it retains its traditional form of government, based on its inherent sovereign powers of self-governance. The Pueblo of San Felipe is governed by its Tribal Council, whose members serve for life, and a six-member Tribal Administration, consisting of a Governor,

Lt. Governor, War Chief, Lt. War Chief, Fiscale, and Lt. Fiscale, who serve in those capacities for a term of one year and then become permanent members of the Tribal Council.

The United States, acting through the U.S Bureau of Indian Affairs (BIA), has expressly acknowledged that the San Felipe Tribal Council possesses the inherent authority to enact tribal ordinances and laws to regulate the activities of both tribal members and non-members within the Pueblo's jurisdiction. *See, e.g.*, 73 Fed. Reg. 47214, 47215 (approving the Pueblo of San Felipe Liquor Control Ordinance).

In accordance with its traditional law, the Pueblo of San Felipe is charged with protecting the health, security and general welfare of the San Felipe people and others who enter the Pueblo boundaries and is empowered to enact ordinances to carry out this duty. The Pueblo of San Felipe has enacted and is in the continual process of developing and implementing, tribal ordinances and programs to protect the health, safety, morals, and welfare of all persons within the San Felipe Pueblo boundaries. Some existing laws implemented by the Pueblo of San Felipe include, but are not limited to, a comprehensive Housing Ordinance, the San Felipe Gaming Enterprise Charter, a Gaming Ordinance, a Liquor Control Ordinance, and a Tax Ordinance. Since the Pueblo of San Felipe's submittal of its 2009 TAS application, the Tribal Council has adopted a Judicial Code and a Sex Offender Registration and Notification Act (SORNA) ordinance, and taken numerous other actions to protect the health, security and general welfare of the San Felipe people and others who enter the San Felipe Pueblo boundaries.

In 2000, the Pueblo of San Felipe established its Department of Natural Resources (“Department” or “DNR”) to develop the Pueblo's technical capacity and infrastructure to administer environmental programs within the Pueblo boundaries. The Department works to ensure the protection, conservation, sustainability, and management of the land, water, and air resources of the Pueblo of San Felipe for enhancement and the beneficial purposes of present and future generations in a manner that reflects the cultural and traditional beliefs of the Pueblo of San Felipe and its Tribal Council. The Department is responsible for implementing the Pueblo of San Felipe’s surface water quality program

The above description of the bases of authority and of the functions carried by the Pueblo of San Felipe to regulate the conduct of its members, and to protect and maintain tribal resources and health, demonstrate that the Pueblo of San Felipe has met the requirements of 40 CFR 131.8(a)(2) and (b)(2).

C. Jurisdiction over Waters within the Borders of the Pueblo of San Felipe

Under 40 CFR 131.8(b)(3), a tribe is required to submit a statement of authority to regulate water quality. The statement should include: (i) a map or legal description of the area over which the Indian tribe asserts authority to regulate surface water quality; (ii) a statement by the tribe's legal counsel (or equivalent official) that describes the basis for the tribe's assertion of authority and which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the tribe's assertion of authority; and (iii) an identification of the surface waters for which the tribe proposes to establish water quality standards.

1) Map or Legal Description

The Pueblo of San Felipe application includes maps and other documents described below that show the location of land belonging to the Pueblo and for which they seek authority to administer the water quality standards and water quality certification programs. The Pueblo of San Felipe application covers all waters within the boundaries of the Pueblo as described in the application.

In support of its current application, the Pueblo of San Felipe provided a San Felipe Pueblo Land Status report (Exhibit A), a map and certification letter from the BIA Realty Officer (Exhibit B), the Warranty Deed for the former Ball Ranch (Exhibit C), and maps of the Pueblo's lands (Exhibit D). Additional deeds and title documents for lands included within the Pueblo were provided in the prior CWA section 106 TAS application.

The following list of parcels make up the Pueblo of San Felipe boundaries consisting of 59,485.78 acres over which the Pueblo asserts jurisdiction for purposes of administering programs under CWA sections 303(c) and 401. Lands identified below are general descriptions of the tracts and include only the acreages of the tracts that are currently held and/or used by the Pueblo of San Felipe and included in this application.

- Original Grant - Pueblo restricted fee lands acquired by Spanish land grant on 09/20/1689 (confirmed 12/22/1858, Patented 11/01/1864) totaling (currently) 28,197.93 acres.
- Pueblo of San Felipe Reservation - Reservation lands acquired by Executive Order on 06/13/1902 totaling 11,972.90 acres.
- Santa Rosa de Cubero Grant – Pueblo restricted fee lands acquired between 1934 and 1938 totaling (currently) 1,440.01 acres.
- Portions of the Santo Domingo-San Felipe Joint Grant – Pueblo restricted fee lands acquired by Spanish land grant in joint ownership with the Pueblo of Santo Domingo on 09/10/1770 (confirmed 12/08/1898, patented 05/05/1905). The area belonging to the Pueblo of San Felipe within the Pueblo's original land grant totals 396.09 acres.
- Rehabilitation Fund Purchases – Trust land (multiple parcels) acquired by deed on 03/28/1941 totaling 160.00 acres.
- Trust Land Acquisition (exchange with Frank Bond & son) – Trust land acquired by deed on 11/30/1956 totaling 640.00 acres.
- Trust Land Acquisition – Trust land acquired by Public Law 87-231 on 09/14/1961 totaling 5,347.73 acres.
- School Site Transfer – Trust lands acquired by transfer from the U.S. on 03/20/1985 as described by Federal Register notice dated 08/30/1985 totaling 6.10 acres.
- Ball Ranch – Trust land acquired on 12/01/2010 and conveyed into trust on 06/14/2011 totaling 11,325.02 acres.

Santo Domingo – San Felipe Grant

As depicted in the Pueblo of San Felipe's application, the Pueblo seeks coverage over a 396.09 acre area within a larger area known as the San Felipe and Santo Domingo Joint Use Area located at the northern boundary of the Pueblo. See detailed map in Appendix C of this document (Exhibit D, Map 2 of application). According to the 1770 Spanish Land Grant record, both Pueblos were granted "the piece of lands they ask for equally to the one and to the other Pueblo, so that one league being measured from the Pueblo of Santo Domingo to the South and another from the San Felipe to the North in the center of the space of cultivable lands which may remain a permanent

landmark shall be placed so that each Pueblo may recognize its appurtenance ...” The Patent to Santo Domingo-San Felipe Grant (May 5, 1905) indicates that the total area for the grant, recognized by the United States and following any adjudicated private land claims, is approximately 1,070.688 acres. According to the BIA San Felipe Land Status report, the area apportioned to the Pueblo of San Felipe is 396.09 acres, which is the area that is included in this application.

The EPA sought and received clarification from the Pueblo of San Felipe and the BIA, Southern Pueblos Agency about the legal status of this grant. The EPA learned that both Pueblos have used this area for generations and that each recognizes and uses only that portion that is within their own original land grant boundaries. The areas are delineated by fencing along each of the Pueblos’ original land grant boundaries which separate the lands used by each. The portion located within the Pueblo of San Felipe is the 396.09 acres indicated on the BIA Pueblo of San Felipe Land Status Report. In support of the Pueblo of San Felipe’s application to include the 396.09 acres, the EPA received a letter from the BIA, Southern Pueblos Agency, Realty Officer James Ration certifying that all the “lands shown on the San Felipe Pueblo Land Status document dated 10/03/2011 belong to the Pueblo” and are not in conflict with lands belonging to the Pueblo of Santo Domingo, including the remainder of the Joint Use Area that belongs to them.

Based on all information presented in support of this application, the EPA concludes that it is appropriate to include the 396.09 acres of the Joint Use Area that are within the Pueblo of San Felipe’s original land grant as part of this approval. During the 30-day comment period for affected governmental entities, the EPA notified the Pueblo of Santo Domingo about the Pueblo of San Felipe’s assertion of jurisdiction for the CWA section 303(c) and section 401 programs over the 396.09 acre portion of the Joint Use Area. The EPA received no written feedback or comments from the Pueblo of Santo Domingo.

San Felipe Grant/El Ranchito Grant (Pueblo of San Felipe and Pueblo of Santa Ana)

The Pueblo of San Felipe expressly excludes from this application a portion of the San Felipe Grant near the southwest corner of the Pueblo identified on map 1 in Exhibit D as the San Felipe/Santa Ana Overlap Area, which is further identified as “in conflict with” the Pueblo of Santa Ana’s El Ranchito Grant. During the comment period for affected governmental entities, the Pueblo of Santa Ana stated they generally approve of the Pueblo of San Felipe’s request for TAS; however, they expressed concern about the characterization of the area as an “overlap” area and stated that in their view, the Pueblo of San Felipe “no longer has any valid claim to the former overlap area based on a decision by the U.S. Department of the Interior Board of Land Appeals.”⁶ The Pueblo of San Felipe responded that while they disagree with statements made in the Pueblo of Santa Ana comment letter, the Pueblo excluded the parcel of land from this application. The EPA acknowledges that this parcel was excluded from the application, and therefore the EPA is not taking any action or making any determination about the validity of claims asserted by either Pueblo at this time.

The EPA concludes that the Pueblo of San Felipe has satisfied 40 CFR 131.8(b)(3)(i) by providing maps and legal descriptions of the area over which the Pueblo asserts authority to regulate surface water quality under the CWA.

⁶ Pueblo of San Felipe, 190 I.B.L.A. 17 (2017). Available at <https://www.doi.gov/oha/organization/ibla/Finding-IBLA-Decisions>.

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

The Pueblo of San Felipe relies on both its inherent authority and the express congressional delegation of civil authority that section 518 of the CWA provides as the basis for its authority to administer the CWA section 303(c) and section 401 programs.

Section 518 includes an express congressional delegation of civil regulatory authority to eligible tribes for purposes of administering CWA programs over their entire reservations.⁷ When considering the congressional delegation of authority under the CWA, the main focus of the EPA's determination of 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. *See* 81 Fed. Reg. 30183, 30194 (May 16, 2016). As described in the previous section, the boundaries of the San Felipe Pueblo have been properly identified. In addition, the Pueblo of San Felipe asserts that there are no limitations or impediments to its ability to accept and effectuate the congressional delegation of authority under the CWA over lands within the Pueblo. Moreover, the EPA received no comments challenging this assertion of the Pueblo's authority, and the EPA is not otherwise aware of any impediment limiting the Pueblo's ability to effectuate the congressionally delegated authority. The EPA therefore concludes that the Pueblo of San Felipe can rely on the congressional delegation of authority to regulate surface water quality over their formal and informal reservation lands, as described above, and that the Pueblo has satisfied the application requirement at 40 CFR 131.8(b)(3)(ii).

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

The surface waters for which the Pueblo of San Felipe proposes to establish water quality standards are the same waters covered by the 2009 TAS application and include the following waters and their tributaries that occur within those areas: the Rio Grande River, Tonque Arroyo, Maria Chavez Arroyo, Lamita Arroyo, Arroyo de la Vega de los Tanos (Elota Arroyo), Borrego Arroyo, San Francisco Arroyo, the Indian and conservancy ditches, and all unnamed waters located within the boundaries of the Pueblo. Exhibit D of the application includes maps identifying the location of waterbodies within the boundaries of the Pueblo.

The EPA concludes that the property descriptions and maps the Pueblo of San Felipe submitted to identify the location of surface waters for which the Pueblo proposes to establish water quality standards satisfy 40 CFR 131.8(b)(3)(iii).

4) Comments on Pueblo of San Felipe's Assertion of Jurisdiction

As discussed above, the EPA provided the appropriate governmental entities and the public with notice of the opportunity to comment on the substance and basis of the Pueblo of San Felipe's assertion of authority and the scope of the lands sought to be covered by Pueblo of San Felipe's program, as part of the review process for this application. The EPA received no competing or conflicting jurisdictional claims regarding the identified lands included in the application.

⁷ *See Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183 (May 16, 2016) ("Interpretive Rule").

5) Conclusion Regarding Jurisdiction

Based on the above discussion, the EPA concludes that the Pueblo of San Felipe meets the requirements in 40 CFR 131.8(a)(3) and (b)(3).

D. Capability

To demonstrate that an Indian tribe is reasonably expected to be capable of administering an effective water quality standards program, 40 CFR 131.8(b)(4) requires that a tribe's application include a narrative statement of the tribe's capability. The narrative statement should include: (i) a description of the Indian tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act, the Indian Mineral Development Act or the Indian Sanitation Facility Construction Activity 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) which exercise the executive, legislative, and judicial functions of the tribal government; (iv) a description of the existing, or proposed, agency of the Indian tribe which 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 which proposes how the tribe will acquire additional administrative and technical expertise.

1) Description of the Pueblo of San Felipe's Prior Management Experience

The Pueblo of San Felipe has developed numerous administrative, agriculture, environmental, natural resource, finance, public health, and social service programs, and through the Pueblo's implementation of these programs, has demonstrated management experience. The Pueblo of San Felipe's application includes an organization chart that identifies the Pueblo's governmental structure. The organizational chart identifies positions within the DNR that implement a wide range of programs. In addition, as discussed above in section II.B., the Pueblo of San Felipe's TAS application for the CWA section 106 program identified existing laws and ordinances that illustrate the breadth of the Pueblo's management experience.

2) List of Tribally Administered Environmental Programs

The Pueblo of San Felipe's current application and the 2009 TAS application include a list of departments that serve public health or environmental protection functions. For example, the Pueblo of San Felipe's DNR provides services for agricultural programs, geographic information system (GIS) support, land management, and water resources. Each of these programs provides significant benefits to the Pueblo of San Felipe, and to surrounding communities. The Pueblo of San Felipe has also demonstrated its ability to effectively track and manage funding programs. As noted in the Pueblo of San Felipe's CWA section 106 TAS application, the Pueblo successfully administers a variety of federal grants such as the General Assistance Program. Since 2011, the Pueblo of San Felipe has successfully implemented cooperative agreements under CWA section 106.

3) Description of Entities which Exercise Executive, Legislative, and Judicial Functions

As described in section B above, the Pueblo of San Felipe's government exercises executive, legislative and judicial authority. These functions are exercised by the Tribal Council and the Tribal Administration. The Tribal Council enacts tribal ordinances and laws to regulate the activities of both tribal members and non-members within the Pueblo of San Felipe's jurisdiction. The Tribal Administration includes a Governor, Lt. Governor, Fiscale and Lt. Fiscale. After completing a one-year term in these positions, members are appointed to the Tribal Council and serve for life.

4) Description of the Agency of the Tribal Government which will Assume the Primary Responsibility for Establishing, Reviewing, Implementing, and Revising Water Quality Standards

The Pueblo of San Felipe's DNR will be responsible for establishing, reviewing, implementing, and revising water quality standards. The 2009 TAS application includes the following mission statement for the Department: "protect, preserve, and enhance the land, water, air, wildlife, and cultural resources of the Pueblo for the benefit of present and future generations."

As stated above, the EPA approved the Pueblo of San Felipe's TAS application for funding under the CWA section 106 water pollution control program in 2010. The Pueblo of San Felipe has used these funds to develop quality assurance project plans, conduct water quality monitoring, and assess water quality data. Under the current monitoring program, the DNR staff conducts monitoring of surface waters at 10 sites, on a monthly basis. Parameters include temperature, specific conductance, dissolved oxygen, pH, turbidity, Escherichia coli, and stream velocity. Selected sites are tested for total nitrogen, total phosphorous, dissolved metals, and radionuclides on an annual (or more frequent) basis. Data are uploaded to the federal Water Quality Portal, which is used by over 400 Indian tribes, states, and federal and local agencies. The DNR uses this data to prepare an annual Tribal Assessment Report for the Tribal leadership and community. Finally, staff in the DNR participate in training opportunities and continually seek opportunities to expand the monitoring program to assess the functions and health of the Pueblo of San Felipe's water resources.

5) Description of the Technical and Administrative Capabilities of the Staff to Administer and Manage an Effective Water Quality Standards Program

The Pueblo of San Felipe's application identifies the DNR as the entity with primary responsibility for administering the Pueblo's water quality standards and certification programs. The Governor retains oversight of the Department's activities and will issue water quality certifications under CWA section 401, based on review of information by staff. The Department's staff responsible for carrying out the duties to establish, review, implement, and revise water quality standards include:

- Director: The DNR's Director provides direction, oversight, and planning for effective operation of programs. This position requires a bachelor's degree in a relevant field.
- Environmental Specialist: The DNR's Environmental Specialist manages the CWA section 106 program which includes surface water sampling, data collection, management, analysis and reporting, and additional duties. This position requires a bachelor's degree in Environmental Science.

- Water Resource Specialist: The DNR's Water Resource Specialist is also responsible for activities under the CWA section 106 program, as well as development of watershed plans, implementation of restoration projects and monitoring of irrigation systems. This position requires a bachelor's degree or four years of related work experience.

Based on the information provided by the Pueblo of San Felipe describing capability to administer effective water quality standards and certification programs under the CWA, the work completed under CWA section 106 funding, and the EPA's experience working with the DNR, the EPA concludes that the Pueblo of San Felipe has met the requirements at 40 CFR 131.8(a)(4) and (b)(4).

III. The EPA's TAS Determination is a Separate Process from an EPA Decision on a Tribe's Submittal of Water Quality Standards

This TAS decision does not constitute an approval of any water quality standards. The EPA's review and approval (or disapproval) of new or revised water quality standards is a separate action under the CWA, distinct from the EPA's decision on the Pueblo of San Felipe's application for eligibility to administer the CWA section 303(c) and section 401 programs. Under the CWA, an Indian tribe must first be approved for TAS before EPA can approve or disapprove water quality standards submitted by the tribe under CWA section 303(c). Development of such standards would remain subject to all requirements of the EPA's regulations, including requirements for notice and comment. Such standards would still need to be submitted to the EPA for review under section 303(c) to ensure they meet applicable CWA and regulatory requirements. If the EPA approves an Indian tribe's water quality standards, those standards then become federally applicable water quality standards for CWA purposes over those waters of the United States that are within the scope of the TAS approval.

IV. Conclusion

The EPA has reviewed the Pueblo of San Felipe's application for TAS for CWA sections 303(c) and 401. The EPA has assessed whether the application meets the eligibility criteria established by CWA section 518 and the applicable regulation. Based upon this review, the EPA concludes that the Pueblo of San Felipe has made the required demonstration to meet the eligibility and application requirements at 40 CFR 131.8(a)(1)-(4) and (b)(1)-(6) to administer the water quality standards program for surface waters of the Pueblo as described in this decision. Pursuant to 40 CFR 131.4(c), the Pueblo of San Felipe is also eligible to the same extent as a state for purposes of the water quality certification program under CWA section 401. Additionally, by virtue of this decision, the Pueblo of San Felipe will be an "affected state" within the meaning of CWA section 402(b)(3) and (5) and its implementing regulation at 40 CFR 122.4(d).



Charles W. Maguire
Director
Water Division
EPA Region 6

April 18, 2023

Date

Appendix A: Supporting Information

The following documents constitute a portion of the full docket for this Agency decision. All relevant materials in the docket are located in the EPA’s official file and in electronic systems.

Description (signature, addressee, subject)	Date
I. Application and supporting materials	
<p>Letter from Carl Valencia, Governor, and Joseph Trancosa, Lt. Governor, Pueblo of San Felipe, to Charles Maguire, Director, U.S. Environmental Protection Agency - Water Division</p> <ul style="list-style-type: none"> • Pueblo of San Felipe Application for Clean Water Act Eligibility to Administer a Water Quality Standards Program and a Water Quality Certification Program <ul style="list-style-type: none"> o Attachment 1: Bureau of Indian Affairs San Felipe Pueblo Land Status Report o Attachment 2: Letter of Certification, BIA Southern Pueblos Agency Realty Officer o Attachment 3: Warranty Deed for the Former Ball Ranch o Attachment 4: Maps 1 and 2 o Attachment 5: Statement of San Felipe Legal Counsel o Attachment 6: DNR Organizational Chart 	March 8, 2022
II. Letters and related documents from the EPA	
Letter from Charles W. Maguire, Director, EPA Region 6 - Water Division, to Governor Carl Valencia, Pueblo of San Felipe, acknowledging receipt of the TAS application	March 10, 2022
Letter from Charles W. Maguire, Director, EPA Region 6 - Water Division, to Honorable Joseph Sanchez, Governor, Pueblo of Santa Ana, Re: Notification of consultation and coordination on the Pueblo of San Felipe’s request for approval for eligibility under CWA section 518(e)	May 31, 2022
Letter from Charles W. Maguire, Director, EPA Region 6 - Water Division to Honorable Sidelio Tenorio, Sr, Governor, Pueblo of Santa Domingo, Re: Notification of consultation and coordination on the Pueblo of San Felipe’s request for approval for eligibility under CWA section 518(e)	May 31, 2022

Description (signature, addressee, subject)	Date
<p>Letters from Charles W. Maguire, Director, EPA Region 6 - Water Division, to appropriate governmental entities providing notice of and an opportunity to comment on the substance and basis of the Pueblo of San Felipe's assertion of authority:</p> <ul style="list-style-type: none"> • Pueblo of Cochiti • Pueblo of Sandia • New Mexico Environment Department • New Mexico Indian Affairs Department • New Mexico Energy, Minerals, and Natural Resources Department • New Mexico Office of the State Engineer • New Mexico Office of the Attorney General • New Mexico State Land Office • New Mexico Department of Transportation • Bureau of Indian Affairs - Southwest Region • Bureau of Indian Affairs - Southern Pueblos Agency • Bureau of Land Management • Bureau of Reclamation • Los Alamos National Laboratory • Federal Highway Administration - New Mexico Division • Indian Health Service - Albuquerque Area • Natural Resources Conservation Service • U.S. Army Corps of Engineers • U.S. Fish and Wildlife Service - Southwest Region • U.S. Fish and Wildlife Service - NM Ecological Services • U.S. Forest Service - Region 3 • U.S. Forest Service - Sandia District • U.S. Geological Survey - New Mexico Water Science Center 	<p>May 31, 2022</p>
<p>Screen capture documenting materials posted for public comment period</p>	<p>June 1, 2022</p>
<p>Public notice providing an opportunity to comment on the substance and basis of the Pueblo of San Felipe's assertion of authority, published in the <i>Albuquerque Journal</i>. Copies of notice mailed to:</p> <ul style="list-style-type: none"> • Middle Rio Grande Conservancy District • Santa Fe County Manager and Clerk • Sandoval County Manager and Clerk 	<p>June 1, 2022</p>
<p>Letter from Charles W. Maguire, Director, EPA Region 6 – Water Division, to Carl Valencia, Governor, Pueblo of San Felipe, transmitting comments received during the comment process.</p>	<p>August 23, 2022</p>

III. Comments received by the EPA	
Letter from Sherri Schwenke, Regional Forester, U.S. Department of Agriculture (USDA), Forest Service – Southwestern Region, to Charles W. Maguire, Director, EPA Region 6 – Water Division	June 21, 2022
Letter from John Rhoderick, Acting Director, Water Protection Division, New Mexico Environment Department, to Diane Evans, EPA Region 6 – Water Division	June 30, 2022
Letter from Joseph Sanchez, Governor, Pueblo of Santa Ana to Charles W. Maguire, Director, EPA Region 6 – Water Division	August 12, 2022
Email from Pinu’u Stout, Director, Pueblo of San Felipe Department of Natural Resources, to Diane Evans, Environmental Scientist, EPA Region 6 – Water Division	September 23, 2022

Appendix B: Response to Comments

The Pueblo of San Felipe submitted an application for treatment in a similar manner as a state for purposes of administering the water quality standards and water quality certification programs under CWA sections 303(c) and 401.

In accordance with the EPA's practice and pursuant to 40 CFR 131.8(c), the Agency notified appropriate governmental entities and the general public of, and provided an opportunity to comment on, "the substance and basis of the Pueblo's assertion of authority to regulate the quality of reservation waters." In addition, the EPA offered the Pueblo of Santa Ana and the Pueblo of Santa Domingo the opportunity to consult and provide their views on the EPA's review of the application submitted by the Pueblo of San Felipe. Consistent with the Agency's policy and practice, the EPA provided the Pueblo of San Felipe an opportunity to respond to all comments received.

The EPA received the following comments:

- Letter dated June 21, 2022, from Sherri Schwenke, Regional Forester, USDA Forest Service - Southwestern Region
- Letter dated June 30, 2022, from John Rhoderick, Acting Director, Water Protection Division, New Mexico Environment Department
- Letter dated August 12, 2022, from Joseph Sanchez, Governor, Pueblo of Santa Ana⁸

Summary of Comments and the EPA's Responses

Comment: The New Mexico Environment Department expressed support for approval of the Pueblo of San Felipe's application. The New Mexico Environment Department also concurred with the Pueblo's assertion of authority to regulate the quality of waters within the lands identified in the application.

Response: The EPA appreciates the support of the New Mexico Environment Department. The EPA recognizes the New Mexico Environment Department's cooperative efforts with the Pueblo of San Felipe and the surface water quality programs of other Indian tribes. The EPA supports continued cooperative efforts between the State and the Pueblo of San Felipe.

Comment: The Pueblo of Santa Ana submitted a letter of support of the Pueblo of San Felipe's application. The labeling of the area identified as the "San Felipe/Santa Ana Overlap Area" was also commented on by the Pueblo of Santa Ana.

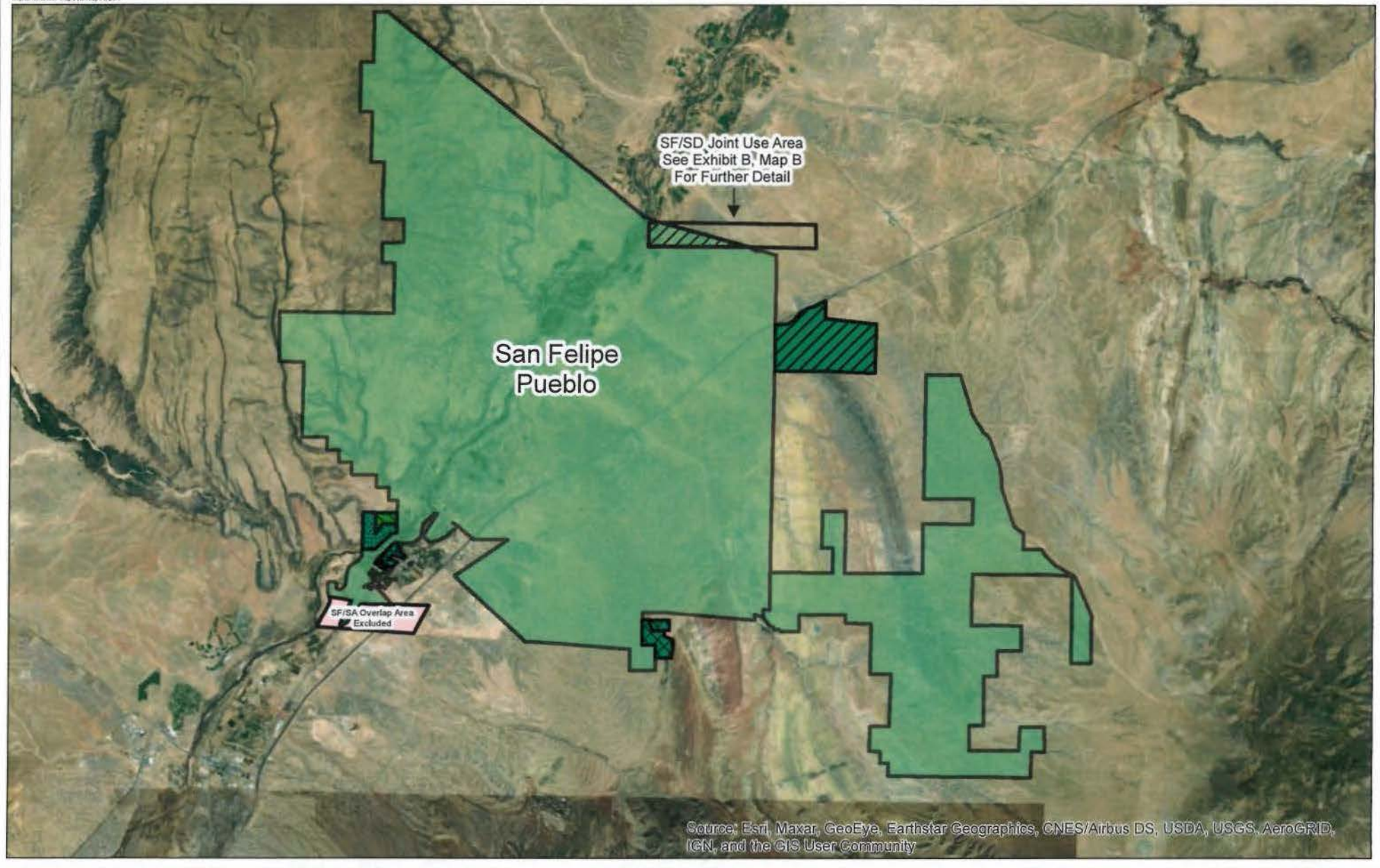
Response: The EPA appreciates the support of the Pueblo of Santa Ana. We acknowledge the concerns expressed by the Pueblo regarding the labeling of the "Overlap Area" and the decisions from the U.S. Department of the Interior related to this area. The EPA notes that the Pueblo of San Felipe excluded this area from the application and, therefore, the EPA is taking no action which will affect this area.

⁸ Although this letter was submitted after the comment period closed, the EPA has exercised its discretion to include and consider the letter as part of our decision-making.

Comment: The USDA Forest Service – Southwestern Region expressed support for approval of the Pueblo of San Felipe’s application. The USDA Forest Service’s Water Resource staff on the Cibola National Forest, south of the Pueblo of San Felipe, also noted there are several small intermittent and ephemeral drainages that flow North from Forest, across private lands and onto the Pueblo. As responsible stewards of these precious water resources and as good neighbors, they will continue to do what they can to protect this resource.





Response: The EPA appreciates the support of the USDA Forest Service - Southwestern Region. The EPA acknowledges the USDA Forest Service’s cooperative efforts with the Pueblo of San Felipe and the surface water quality programs of other Pueblos and Indian Tribes. The EPA supports continued collaborative efforts between the agency and the Pueblo of San Felipe.

Appendix C: Maps from Application to Administer a Water Quality Standards Program and a Water Quality Certification Program



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Legend

-  San Felipe/Santa Ana Overlap Area
-  San Felipe/Santo Domingo Joint Use Area
-  San Felipe Pueblo
-  Jose Sena Abeita Allotment

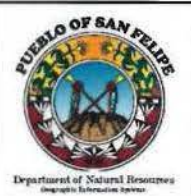
Fee Lands

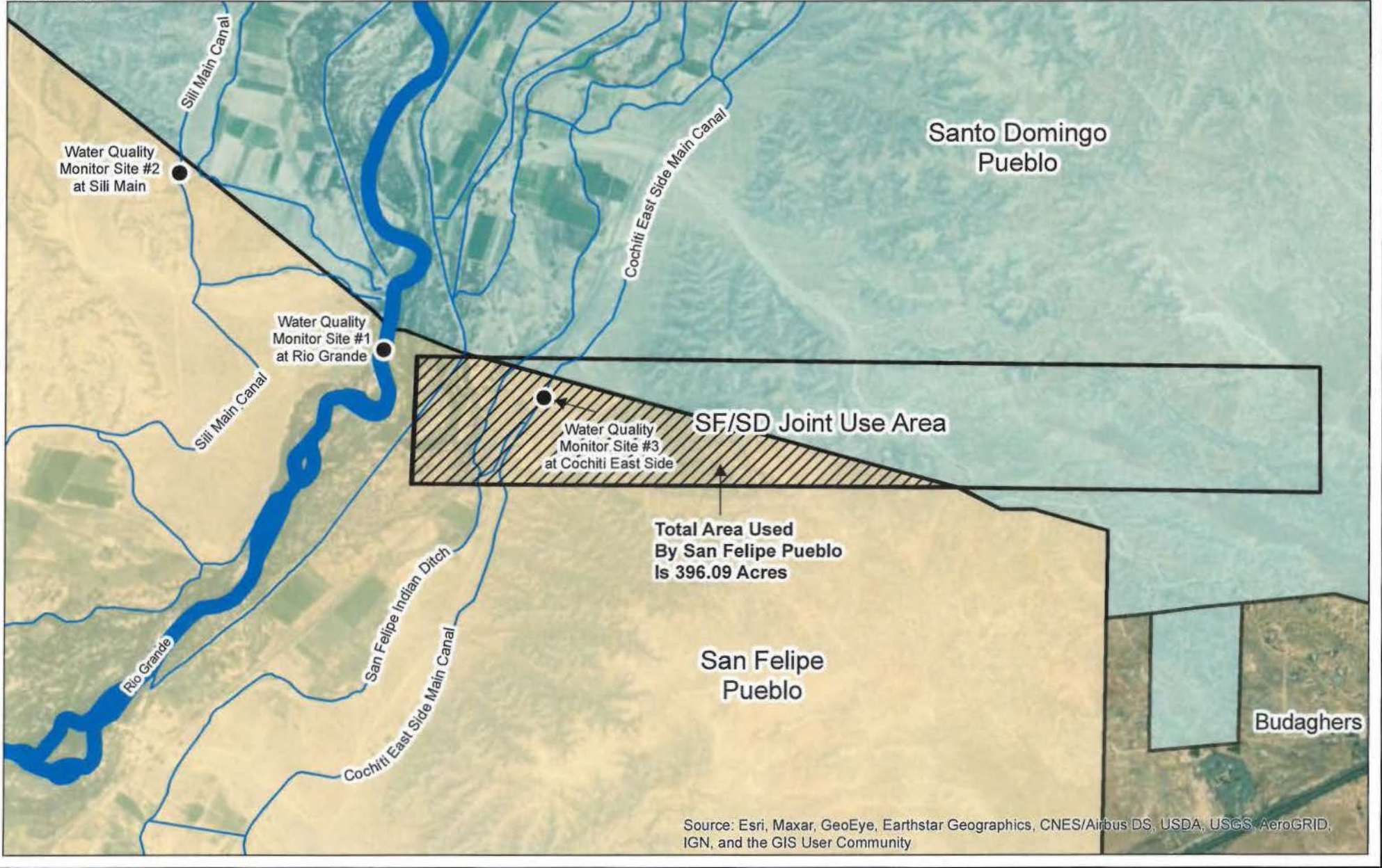
-  Eldridge
-  Santillanas
-  Moore Ranch
-  Wessely & Melick

Exhibit D, Map 1 San Felipe Lands for U.S.EPA CWA TAS



UTM Zone 13 NAD 83
This scale applies to the map only. It does not apply to the aerial photograph or other data used in the map. The scale of the map is not uniform and varies with the scale of the data used in the map. The scale of the map is not uniform and varies with the scale of the data used in the map.





Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

- Legend**
- MRGCD
 - Rio Grande
 - ▨ San Felipe/Santo Domingo Joint Use Area
 - ▭ Santo Domingo Pueblo
 - ▭ San Felipe Pueblo



Exhibit D, Map 2 San Felipe & Santo Domingo Joint Use Area

NAD 83
UTM Zone 13 NAD 83

This map was prepared by digitizing the 1971 San Felipe and Santo Domingo Joint Use Area. The map is based on the 1971 San Felipe and Santo Domingo Joint Use Area map. The map is based on the 1971 San Felipe and Santo Domingo Joint Use Area map. The map is based on the 1971 San Felipe and Santo Domingo Joint Use Area map.

PUEBLO OF SAN FELIPE
Department of Natural Resources
Geographic Information System