



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
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October 6, 2015

The Honorable Gina McCarthy, Administrator
% Water Docket
U.S. Environmental Protection Agency
Mail Code 2822T
Attention Docket ID No. EPA-HQ-OW-2014-0461
1200 Pennsylvania Ave., NW
Washington, DC 20460

Filed electronically at <http://www.regulations.gov>

Dear Administrator McCarthy:

This letter is in response to the Environmental Protection Agency's (EPA) August 7, 2015, notice in the *Federal Register* of the Revised Interpretation of the Clean Water Act Tribal Provision of the Clean Water Act, Section 518.

EPA's reinterpretation makes reference to EPA's TAS requirements under the Clean Air Act. Airsheds are very different from watersheds which, within reservation boundaries, can have defined beds and banks, etc. that cross lands of tribal member, non-members, and non-Indians.

If a state is delegated or has an EPA-approved environmental program, we are required to provide an Attorney General's Statement documenting we have adequate authority to carry out the program. It appears EPA no longer wants to hold tribes to that same standard. We believe it is reasonable for EPA to require and to review information on a tribe's legal authority as part of this process to ensure the requirements established by US Supreme Court decisions concerning the assertion of tribal jurisdiction over non-members and non-Indians will be met.

It also appears that EPA wants to eliminate the requirement to seek comments on EPA's factual findings concerning inherent tribal authority for treatment as a state from appropriate governmental entities and local parties. We would also not support this change to the process.

We believe this proposal has the potential to have significant impacts in our state and anticipate our Attorney General's Office will work together with other state Attorney Generals on a response should a rule be reinterpreted. Thank you again for the opportunity to provide comments on EPA's revised interpretation of the Clean Water Act. We appreciate your serious consideration of our comments and recommendations.

Sincerely,

Steven M. Pirner
Secretary

cc: Shaun McGrath, Administrator, EPA – Region 8