

MBSS

MAYNES, BRADFORD, SHIPPS & SHEFTEL LLP
ATTORNEYS AT LAW

THOMAS H. SHIPPS
SAM W. MAYNES
JOHN BARILOW SPEAR
STEVEN C. BOOS**
ADAM T. REEVES
ELISABETH TAKEUCHI
CHARLES C. SPENCE+
SHAY L. DENNING++

*Also Admitted in Arizona and Navajo Nation
**Also Admitted in Arizona, New Mexico, Utah and Navajo Nation
+Also Admitted in New Mexico, Idaho, Utah and Wyoming
++Also Admitted in New Mexico
^Admitted Only in New Mexico and South Dakota
^^ Admitted Only in Arizona

SPECIAL COUNSEL:
DANIEL MINZER
SHERRI D. WAY

ASSOCIATES:
JEFFREY M. KANE
ANDREW HANSEN
ANTHONY MAESTAS^
JULIANNE BEGAY ^^

OF COUNSEL:
PATRICIA A. HALL*

JANICE C. SHEFTEL - RETIRED
BYRON V. BRADFORD (1907-1985)
FRANK E. (SAM) MAYNES (1933-2004)

smaynes@mbssl1p.com

June 16, 2016

Delivered via email: varilek.kimberly@epa.gov

Kimberly Varilek, Associate Regional Counsel
U.S Environmental Protection Agency - Region 8
80C-EISC
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Southern Ute Indian Tribe's Treatment as a State Application under Clean Water Act Section 518(e) and 40 C.F.R. § 131.8 for the Water Quality Standards and 401 Certification Programs

Dear Kimberly:

I am writing to supplement the email I sent you Monday regarding the after-acquired trust lands issue. What I omitted from Monday's email, but which I alluded to and which we think is important for EPA to consider, are EPA-approved tribal water quality standards that appear to automatically apply to water bodies on after-acquired trust lands. Specifically, I was referring to EPA's approved Water Quality Standards of the Port Gamble S'Klallam Tribe, which define "Reservation" as "all lands and tidelands acquired for the use and benefit of the Port Gamble S'Klallam Tribe, as set forth by Secretary of Interior Proclamation on June 16, 1938 *and such other lands as are now or may be designated in the future as Port Gamble S'Klallam reservation land by the United States*" [emphasis added] and EPA's approved Water Quality Standards of the Bishop Paiute Tribe, which define "tribal land" as "all lands in trust for the benefit of the Bishop Paiute Tribe or lands held in fee status owned by the Bishop Paiute Tribe, *including those lands obtained for or by the Tribe hereafter.*" [emphasis added]. *Port Gamble S'Klallam Tribe Water Quality Standards for Surface Waters*, 5, <https://www.epa.gov/sites/production/files/2014-12/documents/port-gamble-tribe-wqs.pdf> (Effective Sept. 27, 2005); *Bishop Paiute Tribe Water Quality Control Plan*, 63, <https://www.epa.gov/sites/production/files/2014-12/documents/bishop-tribes.pdf> (Effective Aug. 15, 2008).

For the reasons set forth in my email and because it would appear to be consistent with at least EPA's two previous tribal water quality standards approvals cited above, we are hoping

WEST BUILDING - 835 EAST SECOND AVENUE, SUITE 123
POST OFFICE BOX 2717
DURANGO, COLORADO 81302-2717
(970) 247-1755 / (970) 247-8827 - FACSIMILE

GUARANTY BANK BUILDING
1331 SEVENTEENTH STREET, SUITE 410
DENVER, COLORADO 80202
(720) 345-0300 / (720) 345-0301 - FACSIMILE

June 16, 2016

Page 2

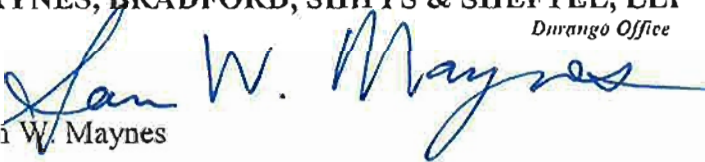
EPA will not require reapplications whenever the United States acquires new land into trust for the Tribe's benefit. Before submitting its application, the Tribe discussed with EPA the approach of limiting the Tribe's TAS application to trust lands and we received no indication that additional applications would be required for later-acquired trust land.

We hope this information is helpful as you and your colleagues consider the after-acquired trust lands issue. If you have questions about that issue or about other aspects of the Tribe's TAS application, please contact me or Lorelyn Hall. My contact information is shown on the letterhead. Lorelyn is copied here, and she can also be reached by phone at 970-563-2140.

Sincerely,

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP

Flagstaff Office


Sam W. Maynes

cc: Lorelyn Hall (via email: lhall@southernute-nsn.gov)