



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Ref: 8P-AR

Honorable Matt Mead, Governor
State of Wyoming
State Capitol, 200 West 24th Street
Cheyenne, Wyoming 82002-0010

Honorable Darwin St. Clair, Jr., Chairman
Shoshone Business Council
P.O. Box 538
Fort Washakie, Wyoming 82514

Honorable Darrell O'Neal, Sr., Chairman
Northern Arapaho Business Council
P.O. Box 396
Fort Washakie, Wyoming 82514

Dear Governor Mead, Chairman St. Clair and Chairman O'Neal:

On January 6, 2014, the State of Wyoming requested that the Environmental Protection Agency administratively stay its decision approving the Northern Arapaho Tribe and the Eastern Shoshone Tribe of the Wind River Indian Reservation (the Tribes) for treatment in a similar manner as a state (TAS) under the Clean Air Act (CAA), pending agency reconsideration or judicial review. On February 6, 2014, the Northern Arapaho Tribe requested that the EPA administratively stay its TAS decision, so long as the stay does not delay or restrict the federal funding sought by the Tribes in their TAS application and reserves the legal rights of the Tribe and other affected governments. On February 12, 2014, the Eastern Shoshone Tribe requested a partial stay of the EPA's decision pending the outcome of litigation. In consideration of these requests, the EPA has decided to stay in part its TAS decision as described below. The State's request that the EPA reconsider its TAS decision remains pending.

Background

On December 6, 2013, the Regional Administrator for Region 8 of the EPA approved the Tribes' application under CAA section 301(d) and the EPA's regulations at 40 CFR Part 49 for TAS with respect to certain non-regulatory provisions of the CAA. *See* 78 Fed. Reg. 76829 (Dec. 19, 2013). As required by EPA regulations, the EPA's decision included a determination of the geographic scope of

the Tribes' TAS approval. As part of that determination, the EPA concluded that the boundaries of the Wind River Indian Reservation were not altered by a 1905 Congressional Act, 33 Stat. 1016 (1905) (1905 Act). In addition, the Tribes requested that the EPA not address at this time the lands subject to Section 1 of a 1953 Congressional Act, 67 Stat. 592 (1953), which include the towns of Pavillion and Kinnear. Thus, the EPA's TAS decision did not address those lands, and they were not included in the geographic scope of the EPA's approval.

On January 6, 2014, the State of Wyoming submitted to the EPA its Petition for Reconsideration and Stay of Approval of the EPA's TAS decision pending agency reconsideration or judicial review. On February 6, 2014, the Northern Arapaho Tribe submitted its request for an administrative stay of the EPA's TAS decision. On February 12, 2014, the Eastern Shoshone Tribe submitted its request for a partial stay of the EPA's decision. As described below, and in consideration of the State's and the Tribes' views, the EPA has decided to stay the effect of its TAS decision with regard to the geographic area of the Reservation included in the decision that is disputed by the State. During the administrative review process on the Tribes' TAS application, the State disputed the Reservation status of lands opened for homesteading by the 1905 Act that have not since been restored to Tribal trust status pursuant to Secretarial Orders of the U.S. Department of the Interior (DOI) implementing a 1939 statute, 53 Stat. 1128 (1939) (1939 Restoration Act). The stay applies to all such disputed lands within the scope of the EPA's decision.

During the administrative review process, the State did not dispute the Reservation status of lands that were either unopened to homesteading by the 1905 Act or opened but since restored to Tribal trust status pursuant to DOI orders implementing the 1939 Restoration Act. The EPA's TAS decision will remain in effect for all of these undisputed Reservation lands that were included in the geographic scope of the decision. With regard to these areas, the Tribes may perform all of the non-regulatory functions covered by the EPA's TAS decision, including, for example, applying for grants under CAA section 105 at a reduced matching share, and participating in air quality planning and management issues.

Due to the unique circumstances of this case, the EPA is granting this stay to allow for orderly implementation of the EPA's TAS decision pending resolution of the Reservation boundary issue through agency reconsideration or through the State's anticipated appeal to the Tenth Circuit. The EPA remains committed to continuing communications among the Tribes, the State and across the federal government, and is hopeful that granting this stay with regard to the area disputed by the State will be conducive to further inter-governmental discussions regarding any jurisdictional concerns.

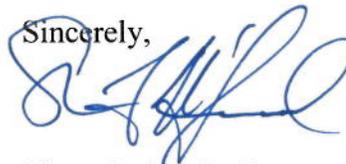
The EPA believes that staying the effect of its TAS decision with regard to the area disputed by the State should further all of the governments' mutual interest in orderly implementation of the EPA's TAS decision pending resolution through administrative or judicial review of the area disputed by the State, including the City of Riverton, while allowing the Tribes to administer the EPA's TAS approval with regard to the undisputed areas of the Reservation.

Stay

The EPA is today staying the effect of its TAS decision with regard to all lands opened for homesteading by the 1905 Act that were included in the geographic scope of the TAS decision and that have not since been restored to Tribal trust status pursuant to DOI Secretarial Orders implementing the 1939 Restoration Act, pending agency reconsideration or issuance of the mandate by the Tenth Circuit in the State's anticipated challenge to the EPA's TAS decision, whichever is later. Thus, the scope of the stay includes, *inter alia*, the City of Riverton. The TAS decision remains in effect for all other lands included in the geographic scope of the TAS decision.

As part of this stay, the EPA's underlying legal and factual analysis concerning the effect of the 1905 Act on the Wind River Indian Reservation boundaries ("Legal Analysis of the Wind River Indian Reservation Boundary," Attachment 1 to the EPA's Wind River TAS Approval Decision Document) is stayed pending agency reconsideration or issuance of the Tenth Circuit's mandate, whichever is later. In granting this stay, the EPA is not agreeing with or adopting the State's legal or factual arguments concerning the effect of the 1905 Act on the Wind River Indian Reservation boundaries or the potential effects of the EPA's TAS approval decision.

Sincerely,



Shaun L. McGrath
Regional Administrator

cc: Peter K. Michael, Wyoming Attorney General
Kimberly D. Varilek, Eastern Shoshone Attorney General
Baldwin, Crocker & Rudd, P.C., Counsel for Northern Arapaho Tribe



