

Appendix I: INDEX OF SELECTED MATERIALS
CONSIDERED BY THE EPA

APPROVAL OF
THE SOUTHERN UTE INDIAN TRIBE'S
APPLICATION FOR TREATMENT IN A SIMILAR MANNER
AS A STATE FOR THE CLEAN WATER ACT SECTIONS
303(c) WATER QUALITY STANDARDS AND 401
CERTIFICATION PROGRAMS

1. Application and Supporting Materials

March 2, 2015 Letter from Clement J. Frost, Chairman, Southern Ute Indian Tribe to Shaun McGrath, Regional Administrator, U.S. EPA Region 8, enclosing the Southern Ute Indian Tribe's *Application for a Determination of Eligibility to be Treated in the Same Manner as a State under Section 518(e) of the Clean Water Act and 40 C.F.R. 131.8 for Purposes of the Water Quality Standards and Certification Programs*. The enclosure included the Application above, and the following:

- Exhibit 1. Maps of Reservation and Water Resources over which Tribe Asserts Authority;
- Exhibit 2. Department of the Interior List of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs – 80 Fed. Reg. 1942, 1946 (January 14, 2015);
- Exhibit 3. Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation;
- Exhibit 4. Act of May 21, 1984, Pub.L. No. 98-290, 98 Stat. 201, 202;
- Exhibit 5. RESOLUTION NO. 2015-15 February 17, 2015;
- Exhibit 6. Resumes of Water Quality Program Staff.

June 13, 2016 Email from Sam W. Maynes, attorney for the Southern Ute Indian Tribe, to Kimberly Varilek, Associate Regional Counsel, U.S. EPA Region 8, regarding Tribal authority; maps depicting trust lands; and requesting action on after-acquired trust lands.

June 16, 2016 Letter from Sam W. Maynes, attorney for the Southern Ute Indian Tribe, to Kimberly Varilek, Associate Regional Counsel, U.S. EPA Region 8, regarding after-acquired trust lands.

July 26, 2016 Email from Curtis Hartenstine, Water Quality Program Manager, Southern Ute Indian Tribe, to George Parrish, Environmental Scientist, U.S. EPA Region 8: forwarding email from Dale Vinton, Geodesist and PLSS Data Manager, Bureau of Land Management, U.S. Department of the Interior, regarding data for maps depicting Reservation and trust land boundaries.

November 28, 2016 Letter from Clement J. Frost, Chairman, Southern Ute Indian Tribe to Shaun McGrath, Regional Administrator, U.S. EPA Region 8, regarding Tribal authority; application coverage; after-acquired trust lands; and request for expedited processing of application.

April 19, 2017 Three emails from Curtis Hartenstine, Water Quality Program Manager, Southern Ute Indian Tribe, to George Parrish, Environmental Scientist, U.S. EPA Region 8, transmitting higher resolution maps.

2. Letters and Related Documents from the EPA

December 28, 2016 Letter from Shaun McGrath, Regional Administrator, U.S. EPA Region 8, to Clement J. Frost, Chairman, Southern Ute Indian Tribe, regarding TAS application completion; and upcoming comment opportunity.

March 16, 2017 Email from George Parrish, Environmental Scientist, U.S. EPA Region 8, to Curtis Hartenstine, Water Quality Program Manager, Southern Ute Indian Tribe, transmitting comments received during the January 5 – February 3, 2017 comment opportunity.

May 19, 2017 Letter from Debra H. Thomas, Acting Regional Administrator, U.S. EPA Region 8, to Clement J. Frost, Chairman, Southern Ute Indian Tribe, regarding receipt of maps, and upcoming comment opportunity.

July 24, 2017 Email from George Parrish, Environmental Scientist, U.S. EPA Region 8, to Curtis Hartenstine, Water Quality Program Manager, Southern Ute Indian Tribe, transmitting comments received during the June 1 – 30, 2017 comment period.

3. Comments Process Regarding Tribal Authority

On January 5, 2017, Darcy O'Connor, Assistant Regional Administrator, Office of Water Protection, U.S. EPA Region 8, sent a letter notifying appropriate governmental entities (AGEs)¹ of the substance and basis of the Tribe's assertion of authority contained in its application as provided at 40 C.F.R. § 131.8(c)(2). It was sent to:

- John Hickenlooper, Governor of Colorado, 136 State Capitol Building, Denver, CO 80203
- Susana Martinez, Governor of New Mexico, 490 Old Santa Fe Trail, Room 400, Santa Fe, NM 87501
- Harold Cuthair, Chairman, Ute Mountain Ute Tribe, P.O. Box 248, Towaoc, CO 81334
- William Walker, Regional Director, Southwest Regional Office, Bureau of Indian Affairs, 1001 Indian School Road NW, Albuquerque, NM 87104
- Russ Bacon, Acting Forest Supervisor, San Juan National Forest, U.S. Forest Service, 15 Burnett Court, Durango, CO 81301
- Ruth Welch, Director, Colorado State Office, Bureau of Land Management, 2859 Youngfield Street, Lakewood, CO 80215

Courtesy copies of the letter were sent to:

- Annette Quill, Office of the Attorney General, Colorado Department of Law, Ralph L. Carr Judicial Building, 1300 Broadway, 10th Floor, Denver, CO 80203
- Dr. Larry Wolk, Executive Director and Chief Medical Officer, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246
- Hector Balderas, Attorney General, P.O. Drawer 1508, Santa Fe, NM 87504-1508

¹ "Appropriate governmental entities" is defined as "States, Tribes, and other Federal entities located contiguous to the reservation of the Tribe which is applying for treatment as a State." *See* 56 Fed. Reg. at 64884.

- Shelly Lemon, Surface Water Quality Group, New Mexico Environment Department, Harold Runnels Building, Room 2050, 1190 Saint Francis Drive, Santa Fe, NM 87505
- Scott Clow, Director, Environmental Programs Department, P.O. Box 448, Towaoc, CO 81334
- Christopher Banet, Water Resources Branch Chief, Southwest Regional Office, 1001 Indian School Road, NW, Albuquerque, NM 87104
- Kelly Palmer, Hydrologist, San Juan National Forest, U.S. Forest Service, 15 Burnett Court, Durango, CO 81301
- Connie Clementson, Field Manager, Tres Rios Field Office, 29211 Highway 184, Dolores, CO 81323
- Tanner Nygren, Natural Resource Specialist, Tres Rios Field Office, 29211 Highway 184, Dolores, CO 81323

Additionally, courtesy copies of the letter were sent to:

- Senator Cory Gardner, State of Colorado
- Senator Michael Bennett, State of Colorado
- Representative Scott Tipton, State of Colorado
- Senator Tom Udall, State of New Mexico
- Senator. Martin Heinrich, State of New Mexico
- Representative Ben Lujan, State of New Mexico

On June 1, 2017, Darcy O'Connor, Assistant Regional Administrator, Office of Water Protection, U.S. EPA Region 8, sent a letter notifying AGEs of an additional comment opportunity and the supplemental maps provided by the Tribe. The letters were sent to the same addressee² and courtesy copy lists noted above.

² The June 1, 2017 letter sent to the U.S. Forest Service was addressed to Kara Chadwick, the new Forest Supervisor for the San Juan National Forest.

The tables below identify the list of commenters who submitted comments to the EPA.

AGEs Who Submitted Comments During the Comment Periods
Bruce Yurdin, Director, Water Protection Division, New Mexico Environment Department
Martha Rudolph, Director of Environmental Programs, Colorado Department of Public Health and Environment
William Walker, Regional Director, Southwest Regional Office, Bureau of Indian Affairs, U.S. Department of the Interior
Kara L. Chadwick, Forest Supervisor, San Juan National Forest, U.S. Forest Service

Other Entities Who Submitted Comments During the Comment Periods
Chris S. La May, Town Manager, Town of Bayfield, Colorado
Julie Westendorff, Gwen Lachelt and Brad Blake, La Plata County Colorado Board of County Commissioners
Nancy Agro, Attorney representing water conservancy districts and ditch companies
Geoffrey Craig, Attorney representing Edgemont Ranch and Forest Lakes Metropolitan Districts and ditch companies
Floyd L. Smith, Attorney representing South Durango and Loma Linda Sanitation Districts
Tom Atencio, Lawrence Bartley, Edward Box, Alison deKay, Sandra Maez, Dixie, Melton, Board of Trustees, Town of Ignacio, Colorado
Ron LeBlanc, City Manager, City of Durango, Colorado
Ryan Halonen, Member at Large, Florida River Estates Home Owners Association
Brice F. Lee, President, La Plata Water Conservancy District
Amy N. Huff, Attorney representing Pine River Irrigation District
Amy N. Huff, Attorney representing Citizens Animas Irrigation Company
Amy N. Huff, Attorney representing King Consolidated Ditch Company; Morrison Consolidated Ditch Company; Thompson Epperson Ditch Company; and Pine River Canal Company
Wayne Semler, and Mae Morley, La Plata Archuleta Cattlemen's Association
Austin Rueschhcoff, Attorney representing San Juan Water Conservancy District
Todd Inglee, Colorado Cattlemen's Association
Lorene Bonds, La Plata River and Cherry Creek Ditch Company
Beth Van Vurst, Attorney representing Southwestern Water Conservation District

4. Statutory and Regulatory Provisions

The following are certain statutory and regulatory provisions relevant to the EPA's decision.

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

"Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations" 56 Fed. Reg. 64876 (December 12, 1991), as amended by 59

Fed. Reg. 64339 (December 14, 1994) (codified at 40 C.F.R. Part 131) (*see also* 81 Fed. Reg. 30183 (May 16, 2016)), establish the regulatory requirements for a tribe to administer water quality standards and certification programs.

5. Policy Statements

The following are certain guidance documents and policy statements relevant to the Agency's decision.

- a. EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 11, 1984.
- b. EPA Memorandum entitled "EPA/State/Tribal Relations," by EPA Administrator Reilly, July 10, 1991.
- c. EPA Memorandum entitled "Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations," by Robert Perciasepe and Jonathan Cannon, March 19, 1998.
- d. EPA Memorandum entitled "Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs," by Marcus Peacock, January 23, 2008.