

# EXHIBIT 11

Legal Authority Letter  
August 25, 2014

(CWA §319 and §§303(c)/401)

CHAIRMAN  
John A. Barrett  
VICE CHAIRMAN  
Linda Capps  
SECRETARY-TREASURER  
D. Wayne Trousdale



Jbarrett@potawatomi.org

Lcapps@potawatomi.org

Dtrousdale@potawatomi.org

## CITIZEN POTAWATOMI NATION

August 25, 2014

Ron Curry, Regional Administrator  
Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

RE: CPN Assertion of Authority for TAS under CWA §518

Dear Mr. Curry:

The purpose of this letter is to describe the basis of Citizen Potawatomi Nation's (Tribe) assertion of authority for Treatment as a State (TAS) under Section 518 of the Clean Water Act (CWA) to establish and implement water quality standards and control discharge permitting under Sections 303(c) and 401, respectively, and to administer a Section 319 Nonpoint Source program.

Consistent with Congressional mandate, the U.S. Environmental Protection Agency (EPA) issued a final rule in 1991 implementing the provisions of the CWA by setting forth the standard for processing tribal requests for TAS. Per the guidelines a tribe must: (1) be federally recognized and exercise governmental authority; (2) have a governing body that carries out substantial governmental duties and powers; (3) have a water quality standards program which pertains to the management and protection of water resources within Indian Country; and (4) be reasonably capable of carrying out the functions of an effective program in a manner consistent with the terms and purposes of the CWA and applicable regulations. CWA Section 518(e), 40 C.F.R. 131.8. Hereafter, the issues will be addressed:

1. The Citizen Potawatomi Nation is a federally-recognized tribe exercising governmental authority.

Citizen Potawatomi Nation is a federally-recognized tribe. *See* 79 F.R. at 4749 (2014), "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs".

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Furthermore, Citizen Potawatomi Nation is a participant with the United States government under a self-governance compact, 25 U.S.C. 485, *et seq.* Consistent with the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), Citizen Potawatomi Nation through its inherent sovereign authority has adopted a Constitution and enacted a Tribal Code of Laws governing activities conducted within Citizen Potawatomi Nation Indian Country.

2. The governing body of the Citizen Potawatomi Nation carries out substantial duties and powers.

Under Article 7 of the Citizen Potawatomi Nation Constitution, the Tribal Legislature is “empowered to enact legislation, transact business, and otherwise speak or act on behalf of the Citizen Potawatomi Nation”.

3. The water quality standards program pertains to management and protection of water resources within Citizen Potawatomi Nation Indian Country.

Citizen Potawatomi Nation Indian Country is a checkerboard pattern of land consisting of approximately 4,430 acres to which the United States holds title in trust for the Tribe. This land is “Indian Country” as defined in 18 U.S.C. §1151:

(a) 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,

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Federal courts have recognized and sustained tribal sovereignty and jurisdiction over tribal lands except as abrogated by an expressed Act of Congress. *See U.S. v. Wheeler*, 435 U.S. 313 (1978); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

The United States Supreme Court in *De Coteau v. District Court*, 420 U.S. 425 (1975) upholds the fact that the Allotment Acts passed during the territorial era did not extinguish reservation boundaries. Finally, the status of Indian reservations in Oklahoma is confirmed by a February 23, 1972 certification from the Anadarko Area director, Sidney Carney, which states:

I hereby certify that all Indian land, individually or tribal owned in the State of Oklahoma for which the U.S. Government, U.S. Department of Interior, Bureau of Indian Affairs, is the trustee \*\*\* does constitute duly established and existing Indian reservations in the State of Oklahoma of the respective tribes, and \*\*\* said reservations are recognized and sustained by this office.

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Tribes have jurisdiction and sovereignty over their reservations. The D.C. Circuit Court Appeals in *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439 (1988) ruled that

provisions of the Oklahoma Indian Welfare Act granting tribes or bands of Indians residing in Oklahoma the right to organize for its common welfare and to adopt constitution and bylaws, did not limit powers vested by existing law, but rather, repealed the Curtis Act which abolished tribal courts and gave Muscogee (Creek) Nation power to establish a tribal court with civil and criminal jurisdiction subject to statutes generally applicable to all tribes. Act of March 1, 1901; 31 Stat. 861; Oklahoma Indian Welfare Act §3, 25 U.S.C. §503; Indian Reorganization Act §§ *et seq.* 16, 25 U.S.C. § 461 *et seq.* 476.

Citizen Potawatomi Nation Indian Country has many surface waters and groundwater aquifers. The Tribe recognizes the need to protect its interests in and preserve these water resources. Tribal authority to regulate these reserved rights entails the authority to serve the purposes for which the right exists, i.e., subsistence and commercial uses for the benefit of the Tribe and its members. Moreover, such regulation perpetuates and upholds the political integrity of the Citizen Potawatomi Nation.

Due to fundamental tribal interest implicated by the need to comprehensively regulate water use and quality, Citizen Potawatomi Nation has jurisdiction to regulate water usage and quality throughout Citizen Potawatomi Nation Indian Country. This jurisdiction over water resources is consistent with the broad language of Sections 518(e)(2) and (h) of the CWA which recognizes tribal primacy over “[t]he management and protection of water resources \*\*\* within the borders of an Indian reservation,” 33 U.S.C. §1377(e)(2), and further defines an Indian reservation as “[a]ll land within the limits of any reservation \*\*\* notwithstanding the issuance of any patent.” 33 U.S.C. §1377(h).

Statutory language in the CWA confirms the legal doctrine developed in the federal cases cited before, absent express Congressional action vesting states with civil regulatory jurisdiction over reservation resources and land use, it is tribal governments which exercise this jurisdiction. CWA expressed Congressional language confirms that regulatory jurisdiction over reservation water is vested exclusively in the tribes.

EPA, through implementation of CWA §518, recognizes the Tribe’s inherent authority as described: “...a tribe will ordinarily have authority to administer Clean Water Act programs within the reservation boundaries.” 54 F.R. 14355 (1989). Supplemental Standards acknowledges that both tribes and states have inherent authority predating Clean Water Act Section 510 to set water quality standards within their respective territories. Congress intended to require compliance with minimum federal standards. It did not intend to restrict pre-existing inherent authority of tribes and states to establish standards stricter than federal standards. CWA §510, 33 U.S.C. §1310.

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4. Citizen Potawatomi Nation is capable of carrying out the functions of an effective water quality standards program consistent with the CWA and application regulations.

The Citizen Potawatomi Nation Tribal Legislature is authorized to initiate legal action in the name of the Tribe and has standing in federal district court to seek injunction relief from water pollution emergencies that threaten tribal resources, reserve rights, or the public health and safety. 28 U.S.C. §1362. Under this federal jurisdictional statute, a tribe stands in the shoes of its trustee, the United States, and therefore, would be entitled to assert. *Moe v. Confederated Salish Kootenai Tribes*, 425 U.S. 463 (1976).

### **Conclusion**

Citizen Potawatomi Nation therefore demonstrates its authority under CWA §518 as described herein for TAS to establish and implement water quality standards and control discharge permitting under CWA §§ 303(c) and 401, respectively, and to administer a CWA §319 Nonpoint Source program.

If there should be any questions raised about Citizen Potawatomi Nation's authority the Tribe requests an opportunity to respond to EPA before any final determination is made regarding eligibility of Citizen Potawatomi Nation for TAS.

Respectfully,



Gregory M. Quinlan, Esq.  
Tribal Attorney