Office of the Chief and Council

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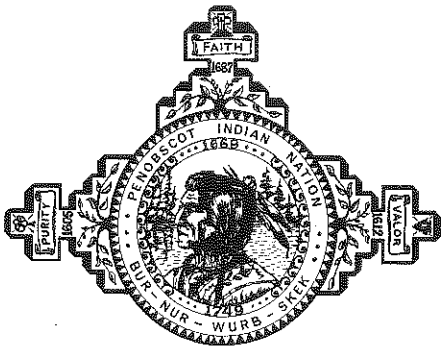

Penobscot Nation
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October 8, 2014

Via Email to porterfield.teri@epa.gov
Hon. Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Via Email to exsec@ios.doi.gov
Hon. Sally Jewell
Secretary of the Interior
Department of the Interior
1849 C St., NW
Washington, D.C. 20240

Re: Water Quality Standards and the Penobscot Nation's Reservation Fishery

Dear Administrator McCarthy and Secretary Jewell:

I write on behalf of the Penobscot Nation to request consultation regarding two matters of critical importance to the Penobscot Nation: (a) the State of Maine's request to the EPA for approval, under the Clean Water Act, of the State's water quality standards within the waters of the Penobscot Indian Reservation and (b) the Penobscot Nation's request to the EPA for approval of its water quality standards within the waters of the Penobscot Indian Reservation.

While these matters involve federal actions affecting the Penobscot Nation by the EPA, we are asking for a joint consultation with both of you because Secretary Jewell administers the Maine Indian Land Claims Settlement Act on which both actions turn.

As you know, the EPA and the Interior Department have for many years recognized that the Penobscot Nation has a reserved sustenance fishery in the Penobscot River, its aboriginal homeland. Until 2012, the State of Maine appeared to acknowledge the Nation's reserved sustenance fishery in at least certain portions of the River, but it maintained that all that meant was the opportunity to catch whatever fish might be available, not fish of a quality to sustain a Native American population. Today, Maine refuses to recognize the existence of the Nation's sustenance fishery in the River.

We are deeply concerned about the prospect that Maine may be given authority by the EPA to establish water quality standards in the Penobscot Indian Reservation pursuant to the Clean Water Act. We are concerned that, as a consequence, the Nation would lose the ability to protect is reservation fishery to ensure the promise of the Settlement Act. History has shown that Maine is hostile to the interests of the Penobscot Nation, and even if the State is required to abide by the minimum requirements of the Clean Water Act, the Nation believes that will not be enough to ensure the existence of a healthy sustenance fishery in the River.

The Nation has submitted its application for approval of its water quality standards to the EPA because it sees no viable alternative to protecting its longstanding interests in the River. We want to consult with you both to discuss, in more detail, our views on these issues and to hear yours.

For your reference, I enclose copies of the following:

(1) *Application of the Penobscot Nation to Administer Water Quality Standards Program and for Federal Approval of the Standards*[1];

(2) *Public Comments of the Penobscot Nation Regarding Maine's Application for Approval of Water Quality Standards for Application Within the Penobscot Indian Reservation*; and

(3) *Penobscot Nation's Supplemental Public Comments on Maine's Application for Approval of Water Quality Standards for Application Within the Penobscot Indian Reservation* with Exhibits A and B.

Thank you very much for considering this consultation request.

Sincerely,

Kirk Francis
Chief, Penobscot Nation

cc: Hon. Hilary Thompkins, Solicitor, Department of the Interior (via email to marigrace.caminiti@sol.doi.gov)
Hon. Kevin Washburn, Assistant Secretary for Indian Affairs, Department of the Interior (via email to ratana.warito@bia.gov)
Hon. Curt Spalding, Region 1 Regional Administrator, Environmental Protection Agency (via email to grantham.nancy@epa.gov)
Penobscot Tribal Council

[1] We would like to draw your attention in particular to Exhibit 3 to Attachment 3 (Jurisdictional Statement) to the *Application of the Penobscot Nation to Administer Water Quality Standards Program and For Federal Approval of the Standards*. The documents in that Exhibit show some of the history of the federal government's actions, as trustee for the Penobscot Nation, to address the health of the Penobscot River.