To: Herrera, Angeles[Herrera.Angeles@epa.gov]; Ball, Harold[Ball.Harold@epa.gov]
From: Manzanilla, Enrique
Sent: Tue 12/19/2017 9:16:32 PM
Subject: Fwd: Anaconda
NDEP 2nd Response to EPA Anaconda IAOC v.2017.10.24.docx
ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: Greg Lovato <glovato@ndep.nv.gov>
Date: December 19, 2017 at 1:03:44 PM PST
To: "'Strauss, Alexis'" <Strauss.Alexis@epa.gov>, "Quast, Sylvia" <Quast.Sylvia@epa.gov>
Cc: "Manzanilla, Enrique" <Manzanilla.Enrique@epa.gov>, "Minor, Dustin" <Minor.Dustin@epa.gov>, "Frederick J. Perdomo" <FPerdomo@ag.nv.gov>, "Jeff R. Collins" <jrcollins@ndep.nv.gov>
Subject: RE: Anaconda

Alexis,

We are available to talk at the following times:

Wednesday 1-2 pm (preferred)

Thursday 2 to 5 pm

We will plan to send a marked up version of the MOU later today or early tomorrow to reflect the current language and remaining issues that we see:

1) Use of term meaningful participation to mirror what is in agreed-to Deferral Agreement language;

2) Clarify that there has not been a determination as to whether waste on Tribal land

warrants response action; and

3) Clarify the sequence, availability and timing of government-to-government consultation with EPA available to Tribes on areas outside Reservation land.

In regard to the level of technical assistance funding to the Tribe, included below is the key language from the IAOC, which provides an initial cap for activity up until when a second ROD is issued, but leaves room for additional technical assistance funding in the interim. See excerpted and highlighted language below. This was covered explicitly in NDEP's October 24, 2017 2nd response to comments (attached), Item C.1.

E. OTHER REQUIREMENTS

72. Community Involvement and Tribal Assistance.

a. If requested by the Division, Respondent shall conduct community involvement activities under the Division's oversight as provided for in, and in accordance with, the Community Involvement and Participation Plan, which the Division will prepare within 90 days after the effective date of the Deferral Agreement and which will become, upon its completion, incorporated into this Settlement under Section XXXI (Integration /Appendices). Costs incurred by the Division in implementing the Community Involvement and Participation Plan constitute Future Response Costs to be reimbursed under Section XVII (Payment of Response Costs).

b. Because EPA does not have the authority to award Technical Assistance Grants at sites that are not on or proposed to the NPL, and in order ensure that members of the YPT, WRPT, and members of the surrounding community are able to acquire assistance to interpret information with regard to the performance of the Work and implementation decisions at relevant portions of the Site during the performance of the RI/FS and the Remedial Action, the Division shall provide resources or direct technical assistance to the YPT, WRPT, and a community organization that meets EPA eligibility requirements for a Technical Assistance Grant at 40 CFR Part 35 Subpart M. Costs incurred by the Division in providing such resources and technical assistance constitute Future Response Costs to be reimbursed under Section XVII (Payment of Response Costs), provided that Respondent's reimbursement obligation under this sub-Paragraph for all technical assistance provided to the YPT shall be limited to $100,000, to the WRPT shall be limited to $50,000, and to the

community shall be limited to $50,000. The Division may request that Respondent consent to increase the reimbursement limitations to account for reasonable additional costs incurred by the Division in providing technical assistance to the YPT, WRPT, and the community in accordance with the Community Involvement and Participation Plan, which consent shall not be unreasonably withheld. The Division shall separately track, account for, and bill for its Future Response Costs relating to the provision of technical assistance to the YPT, WRPT, and community under this sub-paragraph. The reimbursement limitations for technical assistance shall no longer apply once a future record of decision is issued for additional remedial action at the Site outside of the ROD-1 Boundary and beyond what is selected in the ROD-1 and further described in the RD/RA SOW.

Greg

-----Original Message-----
From: Strauss, Alexis [mailto:Strauss.Alexis@epa.gov]
Sent: Tuesday, December 19, 2017 8:36 AM
To: Greg Lovato <glovato@ndep.nv.gov>; Quast, Sylvia <Quast.Sylvia@epa.gov>
Cc: Manzanilla, Enrique <Manzanilla.Enrique@epa.gov>; Minor, Dustin <Minor.Dustin@epa.gov>
Subject: RE: Anaconda

Thank you Greg. I'm hopeful we can resolve past costs today. Regarding the tribal MOUs, I understand our respective teams had productive discussions yesterday. I'd like to finalize the tribal MOU language this week and prepare a cover letter to each tribe, inviting them to meet with us here in SF. Meanwhile, I recommend we continue all the other tasks which attend the larger deferral package...the more we can complete, the fewer remain to be done. Given the language in our deferral agreement re tribal participation, I am hopeful ARC and NDEP may agree to a different level of annual compensation for the tribes, rather than the one-time max I've seen in the draft; I think this is key to bringing the tribes into the MOUs. That said, we have all contemplated moving forward to complete all deferral package components with just the tribal MOUs pending - this is a likely scenario.

Let's plan to check in with one another in the next day or so, in which we can summarize the outcome of today's past-cost negotiation and confirm next steps. Is there an optimal time for you Wednesday afternoon or Thursday?

Thanks, Alexis

Alexis Strauss

Acting Regional Administrator

E.P.A. Region 9

75 Hawthorne Street

San Francisco, CA 94105

415-972-3572

-----Original Message-----

From: Greg Lovato [mailto:glovato@ndep.nv.gov]

Sent: Tuesday, December 19, 2017 8:03 AM

To: Strauss, Alexis <Strauss.Alexis@epa.gov>; Quast, Sylvia <Quast.Sylvia@epa.gov>

Subject: Anaconda Tribal MOU

Alexis and Sylvia,

I am meeting with our team today to review status of the Tribal MOU and the results of their discussion with EPA yesterday. I understand we still have a few items to resolve related to Tribal "meaningful participation", the definition of the Site as it relates to Tribal land, and the availability and timing of tribal government to government consultation with EPA on issues off Reservation land.

My recollection from our recent discussions with EPA is that the plan is to get the Tribal MOUs in a form that both EPA and NDEP consider ready to sign, and then to engage the Tribes in a final briefing and allow some time for them to consider the Deferral Agreement and MOU before we sign the Deferral Agreement. Since the Tribes communicated clearly on September 28 that they were not interested in negotiating the MOU I am wondering if this is the right course of action. Alternatively, if we offer them some nominal period of time to consider that is less than 60 days, they will likely object to being rushed.

I will be in touch soon and I hope your discussion with ARC on past costs and termination of orders is productive.

Greg