To: Strauss, Alexis[Strauss.Alexis@epa.gov]; Manzanilla, Enrique[Manzanilla.Enrique@epa.gov]; Herrera, Angeles[Herrera.Angeles@epa.gov]; Ball, Harold[Ball.Harold@epa.gov]; Seter, David[Seter.David@epa.gov]; Rodriguez, Dante[Rodriguez.Dante@epa.gov]
Cc: jrcollins@ndep.nv.gov[jrcollins@ndep.nv.gov]
From: Greg Lovato
Sent: Wed 12/20/2017 6:20:46 PM
Subject: FW: Tribal MOU
20171219 YPT MOU NDEP edits.docx

Please see below and attached.

I understand we may try to connect with Enrique and his team tomorrow. We are available from 2 to 5 on Thursday.

Greg

From: Frederick J. Perdomo [mailto:FPerdomo@ag.nv.gov]
Sent: Wednesday, December 20, 2017 10:18 AM
To: Quast, Sylvia <Quast.Sylvia@epa.gov>; Minor, Dustin <Minor.Dustin@epa.gov>; collins.jim@epa.gov
Cc: Greg Lovato <glovato@ndep.nv.gov>; Jeff R. Collins <jrcollins@ndep.nv.gov>
Subject: Tribal MOU

Good morning,

Attached please find NDEP's edits to EPA's most recent draft of the Tribal MOU. In this draft, NDEP accepted all agreed upon edits to the MOU. The remaining edits primarily reflect two issues that require further discussion. These issues include use of the term "meaningful participation" or "participation" in the MOU as opposed to "coordination" and "consultation" and the process for resolving disputes related to major decision points and documents for off-reservation response actions.

- Coordination/Consultation v. Participation - NDEP previously expressed concern over the use of the term "participation" in the Deferral Agreement because the term could be interpreted as authorizing a level involvement that is inconsistent with NDEP's role as the lead regulatory agency. As a result, the parties agreed that the MOU should provide a "framework for the coordination with each Tribe in response actions and inter-government consultation after deferral of the Site." NDEP requests that the concepts of "coordination" and "consultation" in the Deferral Agreement are reflected in the Tribal MOU.

- Inter-government Consultation - With respect to major decision points and documents for off-reservation response actions, NDEP requests that the MOU provide a more orderly and inclusive process to resolve disputes. EPA's proposed revisions would potentially permit the Tribes to invoke government to government consultation, the dispute resolution procedures in Sections II(4) and IV of the MOU, or both to resolve disputes. NDEP requests that the Tribe exhaust the remedies in Sections II(4) and IV prior to invoking government to government consultation.

NDEP looks forward to further productive coversations to resolve these remaining issues in the MOU.

--Rick

Frederick “Rick” J. Perdomo

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