Message

From: Campbell, Rich [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E27D0A99A96942119FF85AE2A6132062-RCAMPBEL]
Sent: 3/4/2019 11:14:22 PM
To: Quast, Sylvia [Quast.Sylvia@epa.gov]
Subject: FW: from Tony Davis: FW: Rosemont Mine application, Arizona

Attorney Client / Ex. 5

From: PerezSullivan, Margot
Sent: Monday, March 4, 2019 1:29 PM
To: Blake, Ellen <Blake.Ellen@epa.gov>; Quast, Sylvia <Quast.Sylvia@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>
Cc: Ebbert, Laura <Ebbert.Laura@epa.gov>; Glenn, William <Glenn.William@epa.gov>; Campbell, Rich <Campbell.Rich@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>
Subject: Fwd: from Tony Davis: FW: Rosemont Mine application, Arizona

Good Afternoon,

Attorney Client / Deliberative Process / Ex. 5

Charles, I've copied you in case we need to get headquarters approval on a statement / response.

Margot Perez-Sullivan
U.S. Environmental Protection Agency
D: 415.947.4149
C: 415.412.1115
E: perezsullivan.margot@epa.gov

Begin forwarded message:

> **From:** "Davis, Tony" <TDavis@tucson.com>
> **Date:** March 4, 2019 at 1:06:24 PM PST
> **To:** "perezsullivan.margot@epa.gov" <perezsullivan.margot@epa.gov>
> **Subject: FW: from Tony Davis: FW: Rosemont Mine application, Arizona**
>
> I think I sent this and my third email to you to the wrong address. Sorry.
>
> Tony
>
> **From:** Davis, Tony
> **Sent:** Monday, March 4, 2019 1:45 PM
> **To:** 'perez.sullivan@margot.epa.gov' <perez.sullivan@margot.epa.gov>
> **Subject:** from Tony Davis: FW: Rosemont Mine application, Arizona
>
> Margot,

In this email to your regional administrator, EarthJustice attorney Gillespie requested an opportunity for an EPA-tribal consultation on this matter. He said that consultation is required by the National Historic Preservation Act and by EPA's own policy, but that EPA thus far hasn't consulted with tribes.

He requested that EPA seek a 15-day time extension with the Corps of its March 1 deadline for making a decision on elevating the case to allow for this consultation.

Here are my questions on this email:

a)Is EPA going to consult with the tribes on this matter before finalizing a decision to elevate or not elevate the Rosemont issue? Why or why not?

b)Do EPA officials believe the agency has a legal and procedural obligation to consult with the tribes, as Mr. Gillespie says here? Why or why not?

c)What is EPA's response to this statement by Mr. Gillespie?
Your email yesterday evening was too little too late. It did not provide tribal leaders with an opportunity to respond, let alone engage in consultation. Indeed, your email suggests that you had made your decision, before even reaching out to the tribes.

d)Has EPA formally notified the Army Corps of its decision not to elevate the Rosemont matter to Headquarters?

Thank you, Margot.

Tony Davis
520-806-7746 o
520-349-0350 c

From: Stu Gillespie <sgillespie@earthjustice.org>
Sent: Monday, March 4, 2019 1:08 PM
To: Davis, Tony <TDavis@tucson.com>
Subject: FW: Rosemont Mine application, Arizona

Tony –

Below is my response to EPA's email regarding its decision not to elevate.

Stu

From: Stu Gillespie
Sent: Friday, March 1, 2019 2:58 PM
To: 'stoker.michael@epa.gov' <stoker.michael@epa.gov>
Cc: Heidi McIntosh <hmcintosh@earthjustice.org>
Subject: FW: Rosemont Mine application, Arizona

Dear Mr. Stoker –

I appreciated the opportunity to briefly speak with you over the phone. I realize that you were travelling, and thus have followed up with my concerns (as you instructed) in the email below.

I represent the Tohono O'odham Nation, Pascua Yaqui Tribe, and Hopi Tribe in regards to the proposed Rosemont open-pit copper mine that would be located on the Tribes' ancestral homelands in the Santa

Rita Mountains near Tucson, Arizona. Late yesterday evening, you informed the Tribes that you did not plan to exercise your authority to elevate the U.S. Army Corps' decision to grant a 404 permit for the mine for EPA Headquarters' level review. If you do not exercise your authority to elevate the permit, the Corps can promptly issue the permit to Rosemont, resulting in significant adverse impacts to aquatic resources and profoundly impacting historic resources of deep cultural, religious, and spiritual importance to the Tribes.

The Tribes respectfully request the opportunity for meaningful government-to-government consultation with you regarding this monumental decision. Section 106 of the National Historic Preservation Act (NHPA) imposes an obligation on federal agencies to consult with tribal nations before a decision is made on a federal undertaking. *See Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999). The purpose of consultation with Indian tribes under the NHPA is to ensure that all types of historic properties and all public interests in such properties are given due consideration. *See Te-Moak Tribe v. U.S. Dep't of Interior*, 608 F.3d 592, 609 (9th Cir. 2010). The EPA acknowledges its trust obligations to tribes and the need for meaningful consultation to "assure that tribal concerns and interests are considered *whenever* EPA's actions and/or decisions may affect" tribes. *See* EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), 2 (emphasis added).

You have not, however, engaged in any consultation with tribal leaders regarding your decision to not elevate the 404 Permit for higher review. Your email yesterday evening was too little too late. It did not provide tribal leaders with an opportunity to respond, let alone engage in consultation. Indeed, your email suggests that you had made your decision, before even reaching out to the tribes. I thus respectfully request that you seek an extension of time to the 15-day period to review the proposed permit so that you can meaningfully consult with tribal leaders regarding the significant impacts of the proposed Rosemont mine on aquatic, cultural, religious, spiritual, and historic properties. This consultation process is essential to determine whether or not to elevate the permit, which could result in the EPA denying, restricting, or withdrawing the proposed disposal site for dredge and fill material.

I look forward to your prompt response regarding this critical and time-sensitive matter.

Sincerely,
Stuart Gillespie

From: "Strauss, Alexis" <Strauss.Alexis@epa.gov>
Date: February 28, 2019 at 7:21:10 PM EST
To: "Stephen.Lewis@gric.nsn.us" <Stephen.Lewis@gric.nsn.us>, "robert.valencia@pascuayaqui-nsn.gov" <robert.valencia@pascuayaqui-nsn.gov>, **Personal Matters / Ex. 6** "jrussell-winiecki@yan-tribe.org" <jrussell-winiecki@yan-tribe.org>, "bball@ak-chin.nsn.us" <bball@ak-chin.nsn.us>, "Dale.Ohnmeiss.DEQ@gric.nsn.us" <Dale.Ohnmeiss.DEQ@gric.nsn.us>, "chonyumptewa@hopi.nsn.us" <chonyumptewa@hopi.nsn.us>, "stautolo@pascuayaqui-nsn.gov" <stautolo@pascuayaqui-nsn.gov>, "christopher.horan@srpmic-nsn.gov" <christopher.horan@srpmic-nsn.gov>, "loretta.stone@scat-nsn.gov" <loretta.stone@scat-nsn.gov>, "cornelius.antone@tonation-nsn.gov" <cornelius.antone@tonation-nsn.gov>, "BrendaPusher-Begay@wmat.us" <BrendaPusher-Begay@wmat.us>, "dlewis@yan-tribe.org" <dlewis@yan-tribe.org>, "jennifer.heminokeky@fortsillapache-nsn.gov" <jennifer.heminokeky@fortsillapache-nsn.gov>, "thora@mescalerodrmp.org" <thora@mescalerodrmp.org>,

"tammy.parker@ashiwi.org" <tammy.parker@ashiwi.org>
Cc: "Stoker, Michael B." <stoker.michael@epa.gov>, "Munoz, Charles" <munoz.charles@epa.gov>
Subject: Rosemont Mine application, Arizona

Dear Governor Lewis, Chairman Valencia, Chairperson Rambler, Chairwoman Russell-Winiecki, and Tribal EPA Directors Ball, Ohnmeiss, Honyupmtewa, Tautolo, Horan, Stone, Antone, Pusher-Begay, Lewis, Heminokeky, Padilla and Parker,

As Regional Administrator, I send you my respectful greeting, and regret the need to reach you in this more impersonal manner. I am presently away from the Regional Office, but wanted to convey some time-sensitive information. Our US EPA Regional Office has received from the U S Army Corps of Engineers its Notice Of Intent to issue a Clean Water Act permit for the proposed Rosemont Mine in Arizona.

I'm addressing this to you as in prior years the U. S. Forest Service had consulted with the twelve tribal governments listed here as it prepared an Environmental Impact Statement for this proposal. Per a 1992 Memorandum of Agreement (MOA) between the EPA and Army Corps regarding Clean Water Act permitting, EPA is given 15 days to review the proposed permit. I have decided not to elevate this matter for further review.

I am providing you with this update today given the brief time provided to EPA in the above-noted MOA. Should you wish to discuss this further, please call me at (213) 215-3104, or email me at stoker.michael@epa.gov and we can set up a mutually convenient time to talk.

Sincerely yours,
Mike Stoker

Michael Stoker
Regional Adminstrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105