Message

From: Byrne, Andrew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7780BA77939E4CB3A5F8AED1EDA8C70A-BYRNE, ANDREW]
Sent: 7/14/2020 4:03:23 PM
To: Mason, Scott [Mason.Scott@epa.gov]
CC: Wright, Felicia [Wright.Felicia@epa.gov]
Subject: RE: McGirt case and SAFETEA

Interesting, thanks for the heads up. Please let me know if we can provide any additional information. OGC and R6 ORC are putting in overtime on this issue right now and we're in regular communication with them.

Andy Byrne
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Creating Tangible Environmental Results with Tribes
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From: Mason, Scott <Mason.Scott@epa.gov>
Sent: Tuesday, July 14, 2020 11:55 AM
To: Byrne, Andrew <Byrne.Andrew@epa.gov>
Cc: Wright, Felicia <Wright.Felicia@epa.gov>
Subject: RE: McGirt case and SAFETEA

Two minutes before you sent this, I received a similar point from Matt Leopold. The implications are broad and unknown. Hoping to get a call scheduled with Matt, Chad and other asap.

Thanks for bringing this up to me.

Scott Mason IV
Director
American Indian Environmental Office
International and Tribal Affairs
U.S. Environmental Protection Agency

From: Byrne, Andrew <Byrne.Andrew@epa.gov>
Sent: Tuesday, July 14, 2020 10:50 AM
To: Mason, Scott <Mason.Scott@epa.gov>
Cc: Wright, Felicia <Wright.Felicia@epa.gov>
Subject: McGirt case and SAFETEA

Scott –

An early FYI on an issue that may involve you or Chad in the future (weeks to months from now).

As you know, last week's Supreme Court *McGirt* decision found that a set of reservations in Oklahoma were never disestablished. The 5 primary affected reservations are said to contain about 19 million acres of land, vastly increasing

the amount of Indian country in the state. However, much of the land is owned by non-members. Land within a reservation but owned outright by non-members is known as non-member owned fee land.

There is a unique provision in a federal law from 2005 (the Safe, Accountable, Flexible, Efficient Transportation Equity Act, known as SAFETEA) applicable only to Oklahoma that allows the State, if it so chooses, to request from EPA the authority to manage environmental programs in Indian country. Typically, states do not have authority in Indian country. In the past 15 years the State has not chosen to apply for this authority, but one practical result of the *McGirt* decision is that the State potentially sees a very large piece of land going outside of their jurisdiction and so is preparing an application to EPA to invoke SAFETEA and assume environmental regulatory authority over all parts of non-member owned fee land in the state. They would not apply for Indian country held in trust in the State – EPA, or tribes with TAS, would still be the regulatory authority for those areas.

Region 6 will be the lead office to work with the State on this possible request, the final decision would be the Administrator's unless otherwise delegated. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

This is a new issues and lots of pieces are still in motion, please let me know if you have any questions.

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