Message

From: Logan, Paul [Logan.Paul@epa.gov]
Sent: 4/9/2019 6:27:37 PM
To: O'Connor, Darcy [oconnor.darcy@epa.gov]
CC: Joffe, Brian [Joffe.Brian@epa.gov]; Matsumoto, Kimi [Matsumoto.Kimi@epa.gov]; Chin, Lucita [Chin.Lucita@epa.gov]; Robinson, Valois [Robinson.Valois@epa.gov]; Bohan, Suzanne [bohan.suzanne@epa.gov]; Belille, Jean [Belille.Jean@epa.gov]; Bahrman, Sarah [Bahrman.Sarah@epa.gov]; Minter, Douglas [Minter.Douglas@epa.gov]; Darling, Corbin [Darling.Corbin@epa.gov]
Subject: Dewey Burdock - Ex. 5 Attorney Client (AC)

Darcy,

I missed last Tuesday's briefing for you and Suzanne on Dewey Burdock (out sick), and am following up on questions that I understand you asked about our "EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights." I conferred with Brian, Kimi and OGC on your questions. In summary, I'd recommend as a legal matter that the region follow the EPA treaty rights guidance when offering tribal consultation on the revised draft UIC permits for the Dewey Burdock project, to avoid a legal vulnerability to any final permits that may be issued. We would ultimately be defending any final permits in the 8th Circuit, and courts in the 8th Circuit have found that DOI has violated the Administrative Procedures Act (APA) by failing to follow its tribal consultation policies. The tribes in this case could bring the same challenge against EPA, and might

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Please let me know if you have any questions.

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