Message

From: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
Sent: 1/14/2021 4:03:04 PM
To: Hurld, Kathy [Hurld.Kathy@epa.gov]; Beck, Whitney [beck.whitney@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]
Subject: FW: Deliberative: FL Assumption - Request for review
Attachments: draft letter to Seminole Tribe of OK and Jena Tribe of Choctaw Indians - 01-12-2020 clean ogc.docx

FYI

Mindy Eisenberg
Associate Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
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Washington, DC 20460
Cell Ex. 6 Personal Privacy (PP)
eisenberg.mindy@epa.gov

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Thursday, January 14, 2021 10:15 AM
To: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>
Cc: Kramer, Jessica L. <kramer.jessical@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Mcgill, Thomas <Mcgill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: Deliberative: FL Assumption - Request for review

Jeaneanne,

David asked that I send the attached edits to the letter, which reflect OGC's and ORC's review. Thanks for your attention.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>
Sent: Tuesday, January 12, 2021 4:16 PM
To: Wildeman, Anna <wildeman.anna@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Walker, Mary <walker.mary@epa.gov>
Cc: Kramer, Jessica L. <kramer.jessical@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Mcgill, Thomas <Mcgill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: Deliberative: FL Assumption - Request for review

Deliberative

Anna, David and Mary:

Under the programmatic agreement executed as part of the assumption process for FL the parties agreed to a 30-day timeframe to "engage in and complete further discussions with the Florida SHPO, FDEP, the ACHP, and the Consulting Tribes, to consider potential amendments to this PA regarding continuing tribal engagement and EPA oversight of the State's administration of its 404 program." EPA initiated these discussions in December and is set to conclude them at the end of this week. We have not, at this time, identified a need to amend the PA. To wrap this up, we intend to document suggestions/comments received and our responses and transmit those responses to the parties who participated in the meetings (the consulting parties from assumption). We are in the process of preparing the wrap-up document but have one issue we need your input on relative to these discussions.

As you are aware, EPA completed consultation pursuant to the National Historic Preservation Act on FL's request to assume the 404 Program prior to our decision to approve that request in December. The ACHP acknowledged our completion of the consultation process at that time and EPA summarized for the consulting parties the consultation process and provided copies of the executed Programmatic Agreement. During the discussions referenced above, the consulting Tribes have made numerous assertions that we should have included the Jena Tribe of Choctaw Indians and the Seminole Tribe of OK in our consultation process under the NHPA. We do not agree with their perspective and have indicated the same to them. However, in order to be completely transparent we have developed the attached letter which could be sent to the Jena and Seminole of OK letting them know about FL's assumption of the 404 Program and the existence of the Programmatic Agreement (and the underlying Operating Agreement). This would inform them of the processes that are available should they have interests that are impacted by FL's CWA 404 permitting program.

I would appreciate your review and feedback on this letter prior to Thursday. If approved we would send the letter before the end of the week and include it as part of our response summary discussed in paragraph 1. If you have any questions on this matter, please let me know.

Thanks
Jeaneanne