Message

From: Somerville, Eric [Somerville.Eric@epa.gov]
Sent: 2/21/2019 1:38:41 PM
To: Purify, Johnnie [Purify.Johnnie@epa.gov]
CC: Mcgill, Thomas [Mcgill.Thomas@epa.gov]
Subject: RE: Updates, if any for the State of Florida

Done.

I provided only bullets discussing (a) the publication of the Fed Reg notice, and (b) the upcoming March 11-12 meetings. If you think I should also include a summary of other WOTUS-related topics (e.g. litigation status of the CWR), please advise.

-Eric

Eric Somerville
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From: Purify, Johnnie
Sent: Thursday, February 21, 2019 7:35 AM
To: Laycock, Kelly <Laycock.Kelly@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>
Cc: Mcgill, Thomas <Mcgill.Thomas@epa.gov>
Subject: FW: Updates, if any for the State of Florida

Kelly and Eric,

Please update the attached shared document this morning.

Thanks,

Johnnie

404 Assumption (Water) 404 Assumption (Water)

- We continue to actively support the state in its efforts towards 404 assumption. EPA holds biweekly calls with FDEP to discuss the state's progress in developing a submittal package, and meets approximately every two months with FDEP in Tallahassee. The next in-person meeting is to be scheduled, and may happen mid-December or January 2019.
- Key outstanding issues include FDEP rulemaking, preparation and review of request package elements that have not been provided by FDEP in draft, ESA in permit reviews, and completion of the FDEP-Corps MOA.

- Before making their assumption request, Florida must pass a rule that will set up required program elements. The Florida rulemaking timeline and possible legal challenges to that rulemaking are currently driving the timeline.

- FDEP informed EPA staff that they may submit a package requesting state assumption of CWA 404 program administration in mid-December or January, but that post-election actions such as a freeze on rulemaking could affect this schedule.
- Upon receipt of a complete request package, EPA's statutory review (up to 120 days) must include a public hearing, a 45-day public comment period, and consideration of comments received from the public, USACE, USFWS, and NMFS.

WOTUS (Water) -

- The EPA and the Department of the Army are working through a two-step process to consider revisions to the definition of "waters of the United States," consistent with the President's February 2017 Executive Order. On June 15, 2018, the EPA and the Corps sent a proposed "Step 2" rule that would redefine "waters of the United States" (WOTUS) to the Office of Management and Budget for interagency review. The agencies will issue the proposal for public comment after the interagency review process is complete.
- Consulting with our state and tribal partners in developing a new rule to define waters of the United States has been a top priority for the agencies.
- The agencies have received incredible feedback through several rounds of discussions with state, local government, tribal governments, and stakeholders, the most recent round taking place the first week of March.
- The agencies will consider this important input as our work continues toward issuing a step two proposal.
- The District Court in SC recently issued a national stay of the Step 0 Applicability Date rule such that in some states the WOTUS Rule would be applicable. The Step 0 Rule changed the date the WOTUS rule was applicable until 2020. However, Florida was already covered by a stay of the Obama WOTUS Rule.

//JDP//

Johnnie Purify, Commander, USPHS
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Acting Chief, Wetlands and Stream Regulatory Section
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404-562-9298

"Leadership is what you do with people, not to them."
~Ken Blanchard

From: Mcgill, Thomas
Sent: Wednesday, February 20, 2019 4:57 PM
To: Purify, Johnnie <Purify.Johnnie@epa.gov>; Derby, Jennifer <Derby.Jennifer@epa.gov>; Lambert, Wesley <Lambert.Wesley@epa.gov>
Subject: FW: Updates, if any for the State of Florida

Wesley – Johnnie and Jennifer will follow-up with you with updates, but the EAA Reservoir issue isn't ours. I think it should go to Dan Scheidt/Cesar.

Johnnie – Please work with Kelly to update the 404 assumption bullets below, and with Eric on the WOTUS bullets.

Jennifer – Please work with staff and NEPA to update the Port Everglades write-up.

From: Lambert, Wesley
Sent: Wednesday, February 20, 2019 3:23 PM
To: Mcgill, Thomas <Mcgill.Thomas@epa.gov>
Subject: Updates, if any for the State of Florida

Tom: Can you look at these FL issues to see if they need updating? If there are any changes could you highlight them. They are due by Friday, Noon.

Thanks

Wesley

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EAA Reservoir Issue (Water)

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- The EAA Reservoir was authorized by Congress in the Water Resource Development Act (WRDA) of 2018, which was signed by the President on October 23, 2018. The Reservoir is 10,500 acres, with a 6500 acre Stormwater Treatment Area to treat water to meet Everglades phosphorus standards.

- The internal Corps' NEPA process in the Jacksonville District is proceeding to address Army Corps Headquarters comments.

- The EPA Region 4 NEPA program provided comments on the draft EIS via letter dated July 10, 2018, stating that overall EPA is supportive of the plan.

• The State of Florida conducted a study for construction of a reservoir south of Lake Okeechobee (Lake O) in the Everglades Agricultural Area that is intended to reduce harmful Lake releases to the St. Lucie and Caloosahatchee Estuaries. The additional storage and reduction of high water elevations within Lake Okeechobee would also increase flows into the central Everglades, including Everglades National Park. Florida submitted a post authorization change report request for the Central Everglades Planning Project to the Assistant Secretary of the Army (ASA) for Civil Works on March 30, 2018.

• The ASA for Civil Works completed their evaluation on May 30, 2018, and found the project feasible from an engineering and construction view point. However, the policy compliance review identified several technical, policy, and legal concerns related to risks associated with the cost of required dam safety design criteria, compliance with water quality standards, a risk that project benefits might not be achieved as identified in the justification for the project, and environmental requirements for NEPA compliance. The noted concerns can be addressed through an evaluation/validation effort in the next project phase.

Both the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida have EPA-approved tribal water quality standards that are applicable to certain waters within and/or downstream of the project areas. In a letter to the South Florida Water Management District (SFWMD) dated January 8, 2018, the Miccosukee Tribe raised a host of concerns relating to the State's water management practices in the Everglades, and specifically objecting to water storage in the EAA. The letter copied Mr. Glenn, as well as Mr. Bartlett from FDEP, and Florida state legislators.

Port Everglades Expansion Project – EPA's NEPA/309 Review (NEPA/Water)

- The project includes the deepening and expansion of Port Everglades harbor. Army Corps of Engineers (COE) Jacksonville District is the lead agency, with EPA as a cooperating agency (MPRSA Section 103).
- Key environmental issues include coral (endangered species), wetlands and water quality.
- COE rescinded a Record of Decision in 2016. COE considering a supplemental final EIS (SFEIS) to address dredge material disposal, expected in 1st quarter of FY2019. COE had proposed similar dredging method used for Port of Miami that resulted in extensive coral impacts and there was a resulting criminal case.
- Continued controversy from the public and environmental groups is expected.

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