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Reply To: West Palm Beach

December 17, 2020

Andrew Wheeler
EPA Administrator
Environmental Protection Agency
MS 1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Wheeler.andrew@Epa.gov

Lieutenant General Scott A. Spellmon
Department of the Army
Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers
United States Army Corps of Engineers
ATTN: CECW-ZA
441 G Street, NW
Washington, DC 20001
Scott.A.Spellmon@usace.army.mil

Re: Request for Government to Government Consultation
State of Florida Assumption of Clean Water Act Section 404 Program - Indian Country

Dear Administrator Wheeler and Lieutenant General Spellmon,

The Seminole Tribe of Florida (Seminole Tribe) is a federally recognized tribe pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended. As a sovereign nation, the Seminole Tribe enjoys a special Government-to-Government relationship with federal agencies such as the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE). The Seminole Tribe has a significant interest in issues related to the State of Florida's (State/FDEP) application to seek assumption from the EPA of the Clean Water Act Section 404 Permitting Program (404 Program). If EPA moves forward with approval of the

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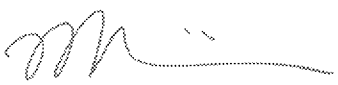
State's 404 Program, it will set a precedent for other states around the Country to follow. The Seminole Tribe participated in the State's rule development process, the Memoranda of Agreement between FDEP and EPA and the USACE, and the Operating Agreement (OA) between FDEP and the State Historic Preservation Office (SHPO). The Seminole Tribe considered it imperative to provide feedback to the State to help protect tribal rights and waters as the application package was being developed.

Although the Seminole Tribe has been engaged in this process for almost three years we have still not been provided with the EPA-USACE Retained Waters List GIS Layer map delineating which waters the USACE will continue to issue 404 permits for, including in Indian Country, and which will be subject to the State of Florida 404 assumed program if approved by EPA. In light of this delinquency and the concern that some existing Indian Country may have been excluded from the Retained Waters List GIS Layer map, the Seminole Tribe formally requests that EPA and the USACE consult with the Seminole Tribe on the map before EPA makes its decision on the State's application.

A request for meaningful government to government consultation in accordance with Executive Order 13175 by a federally recognized Tribe should always be granted. The Seminole Tribe understands that EPA is under a timeline to either approve or deny the State of Florida's application. However, on behalf of the Seminole Tribe we ask that EPA and USACE take the time needed so that the Seminole Tribe, and other impacted Tribes, can be provided the Retained Waters List GIS Layer map, to review same and have meaningful consultation on same as it will guide which lands, including Indian Country, that the USACE will continue to have jurisdiction over and which will be covered by the State's proposed 404 Program.

Sincerely,



Michelle Diffenderfer, Esquire
Rachael Santana, Esquire

c:
Mary Walker, Regional Administrator - EPA Region 4
Colonel Andrew Kelly – Jacksonville District Commander
Marcellus W. Osceola, Jr. - Chairman, Seminole Tribe of Florida
Jim Shore, Esquire – General Counsel, Seminole Tribe of Florida
Andrew J. Bowers – Executive Director of Operations

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Paul N. Backhouse, Ph.D., RPA - Senior Director and Tribal Historic Preservation Officer, Heritage and Environment Resources Office
Stacy D. Myers – Sr. Scientist/Liaison, Heritage Environment Resources Office
Kevin M. Cunniff – Director, Environmental Resource Management Department
Anne H. Mullins, MCRP – Director, Tribal Historic Preservation Office