UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-3104

December 16, 2020

The Honorable David Hill
Principal Chief of the Muscogee (Creek) Nation
P.O. Box 580
Okmulgee, Oklahoma 74447

Subject: EPA's Response to Comments Regarding Consultation Under the National Historic Preservation Act with Respect to the State of Florida's Request to Assume Administration of a Clean Water Act Section 404 Program

Dear Chief Hill:

On September 2, 2020, the U.S. Environmental Protection Agency issued a letter to the Muscogee (Creek) Nation (MCN) that extended the opportunity for consultation and coordination under Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, on EPA's action to approve or disapprove the State of Florida's request to assume administration of a Clean Water Act (CWA) Section 404 program. EPA's letter provided the MCN a weblink to access the documents that were submitted to EPA with the State of Florida's request which included the Operating Agreement (OA) signed by the Florida Department of Environmental Protection (FDEP) and the Florida State Historic Preservation Officer (SHPO).

On September 15, 2020, EPA invited the MCN and other tribes with interests in Florida to participate in an informational webinar that was held September 22, 2020. The purpose of the webinar was to assist tribes with making an informed decision about whether they wanted to consult with EPA relative to Florida's request to assume the CWA Section 404 program. Although the MCN did not participate in the webinar, on September 22, 2020, EPA provided the MCN with the slide presentation that was given during the webinar. The presentation provided an overview of the federal requirements and processes regarding a state/tribe request to assume administration of a CWA Section 404 program, as well as an overview of the NHPA undertaking and Section 106 consultation process. The presentation also included information about EPA's plan and proposed processes to comply with NHPA Section 106 by entering into a programmatic agreement (PA) utilizing the OA between the FDEP and the SHPO as the foundation of the PA. The presentation also included a request that the tribes identify any issues, gaps and/or concerns they had with the OA which EPA would try to address in the PA.

On October 1, 2020, the MCN responded by email and accepted EPA's invitation to consult under Section 106 of the NHPA regarding the State of Florida's request. EPA and the MCN continued communication during the consultation process as summarized in Enclosure A. Additionally, EPA provided a copy a draft PA to the MCN and the other consulting parties on November 25, 2020. In

response to comments received, EPA made modifications to the PA and transmitted a revised version of the PA to the MCN and the other consulting parties on December 10, 2020.

Provided in Enclosure B is a responsiveness summary that includes EPA's responses to comments received from the MCN and the other consulting parties during the consultation process. EPA is providing the complete responsiveness summary per the request of the Advisory Council on Historic Preservation (ACHP) and agreement of the consulting tribes during a December 14, 2020 meeting. The EPA intends to execute a PA with the ACHP, FDEP, and the Florida SHPO prior to taking action on the State of Florida's request and will send the MCN a copy of the PA once executed.

We appreciate your engagement throughout the government-to-government consultation process and your important feedback and input on the PA. If you have any questions regarding this matter, please contact me at (404) 562-9345, or have a member of your staff contact Mr. Kelly Laycock at (404) 562-9132 or laycock.kelly@epa.gov.

Sincerely,

Jeaneanne M. Gettle, Director
Water Division

Enclosures:

A. Summary of Communication Between the EPA and Muscogee (Creek) Nation During Consultation Under Section 106 of the National Historic Preservation Act with Respect to the State of Florida's Request to Assume Administration of a Clean Water Act Section 404 Program
B. EPA Responses to Comments from the National Historic Preservation Act Section 106 Consulting Parties on Florida's Request for Assumption

cc: Corain Lowe-Zepeda, Tribal Historic Preservation Officer
Muscogee (Creek) Nation

Enclosure A:

Summary of Communication Between the EPA and Muscogee (Creek) Nation During Consultation Under Section 106 of the National Historic Preservation Act with Respect to the State of Florida's Request to Assume Administration of a Clean Water Act Section 404 Program

- 9/2/20: EPA letter issued to the Muscogee (Creek) Nation (MCN) inviting them to consult under the National Historic Preservation Act (NHPA) Section 106 with a link to access the documents that comprised Florida's request for Assumption.
- 9/15/20: EPA email to 8 Tribes with an invitation to an Informational Webinar on 9/22/20.
- 9/22/20: EPA hosted the Informational Webinar (no participation from MCN).
- 9/22/20: EPA email to 8 Tribes providing pdf of Webinar slides.
- 10/1/20: Email from the MCN requesting consultation on NHPA.
- 10/15/20: EPA hosted NHPA consultation call.
- 10/15/20: EPA email to the MCN transmitting Informational Webinar slides and OA.
- 10/23/20: EPA email transmitting notes from consultation call.
- 11/2/20: MCN letter issued to EPA with comments on the State's request for 404 Assumption.
- 11/25/20: EPA email to consulting parties transmitting draft PA for review and comment.
- 12/2/20: NHPA PA call with all consulting parties.
- 12/6/20: Letter from the MCN with comments on draft PA.
- 12/10/20: EPA email to consulting parties transmitting revised PA.
- 12/14/20: EPA hosted call with consulting parties to discuss revisions to PA.