Message

From: Rodrigues, Cecil [rodrigues.cecil@epa.gov]
Sent: 4/28/2021 3:22:58 PM
To: Levine, Bradley (ENRD) [Bradley.Levine@usdoj.gov]
CC: Lazos, Pamela [Lazos.Pamela@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Rivera, Nina [Rivera.Nina@epa.gov]
Subject: RE: CRW: Following Up on Our Call

Thanks Brad. If we get notice of the motion to intervene please let EPA know asap so we can inform out management.

From: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>
Sent: Wednesday, April 28, 2021 10:21 AM
To: Rodrigues, Cecil <rodrigues.cecil@epa.gov>
Subject: FW: CRW: Following Up on Our Call

Privileged & Confidential Attorney Client Communication

Cecil,

Following our conversation yesterday, I'm forwarding you the email sent to EIP counsel today. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thanks,
Brad

From: Levine, Bradley (ENRD)
Sent: Wednesday, April 28, 2021 10:12 AM
To: Mary Greene <mgreene@environmentalintegrity.org>; Sylvia Lam <slam@environmentalintegrity.org>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>
Cc: Ahearn, Devon (ENRD) (DAhearn@ENRD.USDOJ.GOV) <DAhearn@ENRD.USDOJ.GOV>; Lazos, Pamela <Lazos.Pamela@epa.gov>; Maslowski, Steven <Maslowski.Steven@epa.gov>; Nanda, Sushila <Nanda.Sushila@epa.gov>; Herb, Dawn <dherb@pa.gov>; Williams, Janna <jannwillia@pa.gov>; Andes, Fredric <Fredric.Andes@btlaw.com>
Subject: RE: CRW: Following Up on Our Call

Mary and Sylvia,

The United States does not concur with the filing of your motion to intervene at this time. The United States communicated the parties' collective offer to meet and discuss proposed modifications to the partial consent decree in this matter with EIP and LSRA. On behalf of the parties, the United States also expressed a willingness by the parties to have meaningful and productive discussions with EIP and LSRA and receive input and feedback from you. It is clear from our communications that EIP and LSRA are not willing to have those conversations without various preconditions. As to your specific demand that the United States enter into a common interest agreement as a precondition of those meetings, we do not believe that it is procedurally proper to enter into such an agreement given our position on your motion to intervene; therefore we decline to enter into that agreement.

As you know from prior experience in these types of matters, there are opportunities for the public to provide comments on proposed settlements, including material modifications to consent decrees. When the parties lodge any proposed modifications to the partial consent decree in this matter and a public comment process begins, we will let you know.

Should you wish to discuss this matter further, we remain open to talking with you.

Regards,
Brad

Bradley L. Levine
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Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
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P.O. Box 7611
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Room 2.900
Washington, DC 20002

From: Mary Greene <mgreene@environmentalintegrity.org>
Sent: Tuesday, April 27, 2021 2:48 PM
To: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>
Cc: Sylvia Lam <slam@environmentalintegrity.org>; Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>; Lazos, Pamela <Lazos.Pamela@epa.gov>; Maslowski, Steven <Maslowski.Steven@epa.gov>
Subject: Re: CRW: Following Up on Our Call

Hi Brad - what we have said is that we will consider discussing with our client, who is the decision-maker, postponing filing if two things happen:

1. EPA/DOJ/DEP enter into a CIA with us
2. We have a full seat at the negotiation table (ie, we participate in real-time - not get an update later or a chance to review what happened)

Please let us know if you are able to do this - it would be most appreciated. We need to update our client on where things stand. I'm not sure that we need to keep discussing this if you are not able to accommodate the above two requests.

I'm not sure what's confusing about Sylvia's or my message in that regard. We just need to know the answer to the CIA and agreement to have our client participate in real-time negotiations.

Looking forward to hearing that answer. I don't want to set up another phone call without hearing from you on those two points. We are all busy and Sylvia and I have already spent too much time on this back and forth - and now reading, below, the same thing you've been pitching for a few weeks now.

We want to partner with you, but we will recommend to our client that we go forward if that's not possible. We may get thrown out at this juncture, but at the same time, we may not. I don't think the judge is going to be particularly sympathetic to 6 years of nothing but deferred maintenance, while overflows continue to increase, and nothing but more deferred maintenance "in the works", conceptually at this stage, that will take, from what we've been told, 10-12 years to complete. And still no fix on the table much less in writing.

Best, Mary

> On Apr 27, 2021, at 2:32 PM, Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov> wrote:
>
> Sylvia,

Thank you for following up. Devon, Pam Lazos and Steve Maslowski from EPA, and I are available to discuss this matter with you tomorrow between 9:30-10:30 am.

Your email below, and the subsequent email from Mary which is attached, are somewhat inconsistent with our most recent discussion from last Wednesday 4/21, and I would like to clarify any confusion before we speak tomorrow.

First, as you know, the United States has indicated it does not concur with the filing of your motion to intervene at this time. Second, when we spoke last Wednesday, EIP conditioned its participation at a meeting with the parties to discuss proposed modifications to the partial consent decree in this matter on, among other things, the United States' agreement to enter into a common interest agreement with EIP. Your email below seems to indicate that EIP may no longer be predicating its participation in a discussion with the parties on a common interest agreement.

As we have stressed in multiple conversations with EIP, the United States and the parties to the consent decree hope to have meaningful conversations with EIP and LSRA about the proposed modifications to the consent decree. This is in addition to traditional public participation opportunities regularly afforded the public upon lodging modifications such as these. Based on our conversations with you, we believe this would be a valuable opportunity for EIP and LSRA to meaningfully participate in this process, provide feedback to the parties, and as you have previously stated, offer your expertise and resources to help effectively and efficiently obtain the shared goal of fixing the sewage system and reducing the sewage pollution into Harrisburg's waterways.

As we explained, we have been coordinating with all of the parties to the decree on dates for a meeting with EIP and LSRA. We hope to have multiple options when we speak with you tomorrow.

Please let us know if you are available to speak tomorrow between 9:30-10:30 am. If so, I will circulate a call-in number or if you would prefer a video call, could you please send a zoom invite.

Regards,
Brad

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From: Sylvia Lam <slam@environmentalintegrity.org>
Sent: Tuesday, April 27, 2021 10:31 AM
To: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; Mary Greene <mgreene@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Hi Devon and Brad,

Hope you both are having a good week so far.

Could you provide us with an update on scheduling the meeting that was requested by the existing parties and our request for a common interest agreement with EPA and DEP? Our client is feeling rather restless about the lack of movement (and understandably so), and we'd like to inform LSRA of some progress when we connect with the Riverkeeper this week to discuss next steps.

Thanks,
Sylvia

Sylvia Lam
Attorney
Environmental Integrity Project
(202) 888-2701

From: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Sent: Tuesday, April 20, 2021 10:31 PM
To: Sylvia Lam <slam@environmentalintegrity.org>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; Mary Greene <mgreene@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Thanks, Sylvia. We are available at 1pm. I'll send around a call-in number.

Thanks,
Devon

Devon Ahearn
Trial Attorney
Devon.ahearn@usdoj.gov
(202) 514-2717

From: Sylvia Lam <slam@environmentalintegrity.org>
Sent: Tuesday, April 20, 2021 5:51 PM
To: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; Mary Greene <mgreene@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Hi Devon and Brad,

Thanks again for the discussion earlier. I've talked with Mary and we were hoping to get on the phone again with you tomorrow. We're free any time before 1:30.

Please let us know the best time that works for you.

In addition, I'm attaching the St. Louis CD and the Washington Suburban Sanitary Commission CD to this email. For both, plaintiff-intervenors were also parties to the consent decrees as well.

Thanks,
Sylvia

Sylvia Lam
Attorney
Environmental Integrity Project
(202) 888-2701

From: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Sent: Tuesday, April 20, 2021 3:28 PM
To: Sylvia Lam <slam@environmentalintegrity.org>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; Mary Greene <mgreene@environmentalintegrity.org>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Sounds good. I'll open the line then.

Devon Ahearn
Trial Attorney
Devon.ahearn@usdoj.gov
(202) 514-2717

From: Sylvia Lam <slam@environmentalintegrity.org>
Sent: Tuesday, April 20, 2021 3:26 PM
To: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; Mary Greene <mgreene@environmentalintegrity.org>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Hi Devon, sorry I missed your call. I can chat at 3:30. Mary may be just getting out of a meeting at 3:30, but hopefully she can either hop on as soon as she's out or I can report back to her after we chat.

Talk to you shortly.

Sylvia Lam
Attorney
Environmental Integrity Project
(202) 888-2701

From: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Sent: Tuesday, April 20, 2021 3:22 PM
To: Sylvia Lam <slam@environmentalintegrity.org>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; Mary Greene <mgreene@environmentalintegrity.org>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Sylvia,

I just left you a quick voicemail. Are you free to talk to me and Brad this afternoon? I can open my conference line at 3:30 – (866) 410-9426, code 1322228.

Thanks,
Devon

Devon Ahearn
Trial Attorney
Devon.ahearn@usdoj.gov
(202) 514-2717

From: Sylvia Lam <slam@environmentalintegrity.org>
Sent: Tuesday, April 20, 2021 11:39 AM
To: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>; Andes, Fredric <Fredric.Andes@btlaw.com>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Devon,

Our client has been patient and accommodating, as it has been almost two weeks since we sought concurrence from the parties and as we have shared our motion to intervene last week soon after you requested to see it. We have also expeditiously responded to meeting requests.

Having said that, we need some assurance that the existing parties are actually considering our request for concurrence and are willing to work with us. There is worry that this is a delay tactic. Because of that, if the proposed meeting cannot take place until next week, I believe my client would feel reassured if we could hold an interim meeting this week so he can hear from at least some folks to justify further delay.

You have our availability for this week. Please get back to us about this interim meeting by noon tomorrow. We also would like to have the larger meeting calendared before the end of the week.

We held off filing today because we agreed not to file if we could meet this week. But we did not hear back until last night that meeting this week may not happen. If the existing parties cannot agree to what is laid out above or if we don't hear back before COB Friday, we will relay to the court that EPA and CRW have been unwilling or unable to take a position and DEP does not concur with our MTI. If this is inaccurate, please let us know by COB Friday as well.

Thanks,
Sylvia

Sylvia Lam
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Environmental Integrity Project
(202) 888-2701

From: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Sent: Monday, April 19, 2021 7:06 PM
To: Sylvia Lam <slam@environmentalintegrity.org>; Andes, Fredric <Fredric.Andes@btlaw.com>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Lisa

Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Sylvia,

Thank you for sending us your availability for a meeting to discuss potential modifications to the partial CD. As we've discussed, we expect this meeting to be a productive conversation about projects that would be encompassed by the potential modifications as well as an opportunity to engage with you and your client and to solicit your input and feedback. For the meeting to be meaningful, we need to ensure that all of the parties are available and have an opportunity to prepare. We are looking into dates over the next two weeks and will provide you with our availability.

Thanks,
Devon

Devon Ahearn
Trial Attorney
Devon.ahearn@usdoj.gov
(202) 514-2717

From: Sylvia Lam <slam@environmentalintegrity.org>
Sent: Saturday, April 17, 2021 9:45 AM
To: Andes, Fredric <Fredric.Andes@btlaw.com>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Subject: Re: CRW: Following Up on Our Call

My apologies, I need to slightly revise our availability for this upcoming week. Please refer to the times listed here:

- 4/19: 11-1, 4-5
- 4/20: 11:30-2:30, 3:30-5
- 4/21: 1-5
- 4/22: 9-12, 2-3, 4-5
- 4/23: 10:30-2, 3-5 (which is not preferred but can work)

Thanks,
Sylvia

Sylvia Lam
Attorney
Environmental Integrity Project
1000 Vermont Avenue, NW, Suite 1100
Washington, DC 20005
(202) 888-2701

From: Sylvia Lam
Sent: Friday, April 16, 2021 5:54 PM
To: Andes, Fredric <Fredric.Andes@btlaw.com>
Cc: Levine, Bradley (ENRD)

<Bradley.Levine@usdoj.gov>; jannwillia@pa.gov <jannwillia@pa.gov>; dherb@pa.gov <dherb@pa.gov>; Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Fred, Janna, Devon, and Brad:

If the proposed meeting can take place next week, we can agree to defer filing our motion to intervene to the following week.

Devon, you've asked for our availability. The following times next week work for EIP and LSRA:

- 4/19: 11-1, 3-5
- 4/20: 11:30-2:30, 3:30-5
- 4/21: 1-5
- 4/22: 9-12, 2-3, 4-5
- 4/23: 9-2, 3-5 (which is not preferred but can work)

Please let us know as soon as possible.

Thanks,
Sylvia

Sylvia Lam
Attorney
Environmental Integrity Project
(202) 888-2701

From: Andes, Fredric <Fredric.Andes@btlaw.com>
Sent: Friday, April 16, 2021 4:15 PM
To: Sylvia Lam <slam@environmentalintegrity.org>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Subject: RE: CRW: Following Up on Our Call

Sylvia, we will also get back to you before Tuesday. Thanks.

Fredric P. Andes, Esq.
Partner, Barnes & Thornburg LLP
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Chicago, Illinois 60606-2833
Phone: 312/214-8310
Fax: 312/759-5646
Cell: 773/354-3100
E-Mail: fandes@btlaw.com
Learn more about our COVID-19 Resources

From: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Sent: Friday, April 16, 2021 3:10 PM
To: Sylvia Lam <slam@environmentalintegrity.org>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Andes,

Fredric <Fredric.Andes@btlaw.com>
Subject: [EXTERNAL]RE: CRW: Following Up on Our Call

Sylvia,

Thank you for sharing the brief in support of LSRA's motion to intervene. After reviewing the draft, we need some more time to discuss your requests with our client and management, and we will get back to you accordingly before Tuesday.

Thanks,
Devon

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Devon.ahearn@usdoj.gov
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From: Sylvia Lam <slam@environmentalintegrity.org>
Sent: Friday, April 16, 2021 10:01 AM
To: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Andes, Fredric <Fredric.Andes@btlaw.com>
Subject: RE: CRW: Following Up on Our Call

Hi Devon,

We've considered your request, and in the interest of collaboration and with a conciliatory spirit, we are attaching our draft memorandum in support of our MTI.

We would be happy to get on a call with the existing parties today as it considers our proposal and request for concurrence. As I noted yesterday, we ask that you please get back to us by COB today.

Thanks,
Sylvia

Sylvia Lam
Attorney
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(202) 888-2701

From: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Sent: Thursday, April 15, 2021 5:55 PM
To: Sylvia Lam <slam@environmentalintegrity.org>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Andes, Fredric <Fredric.Andes@btlaw.com>
Subject: RE: CRW: Following Up on Our Call

Thanks, Sylvia. Would it be possible for us to see a draft of the motion to intervene before filing?

Thanks,
Devon

Devon Ahearn
Trial Attorney
Devon.ahearn@usdoj.gov
(202) 514-2717

From: Sylvia Lam <slam@environmentalintegrity.org>
Sent: Thursday, April 15, 2021 9:53 AM
To: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>; Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>
Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Andes, Fredric <Fredric.Andes@btlaw.com>
Subject: RE: CRW: Following Up on Our Call

Devon,

Thank you for getting the ball rolling on setting up a meeting between the existing parties and our client. I will check in with LSRA and my team and get back to you with our availability.

I also want to thank you, Brad, and Fred, for meeting with us to discuss your clients' perspectives and where things stand in the litigation and consent decree process.

We spoke with our client, who shared the same appreciation, and as we conveyed during our meetings this past week, we are approaching this matter with a collaborative mindset and remain certain that we can offer expertise and resources to help effectively and efficiently obtain the shared goal of fixing the sewage system and reducing the sewage pollution into Harrisburg's waterways. Having said that, we believe our client needs a seat at the table before LSRA continues to expend such resources, given that our past efforts to participate in this matter outside of litigation have not been successful.

However, we would like to propose a compromise that would hopefully be amenable to each of our clients. We intend to file our motion to intervene on Tuesday but are open to filing a joint motion at the same time or shortly thereafter to stay the MTI for a period of time (we propose 60 days) for us to meet and discuss the parties' proposals and progress on the modified consent decree. This will allow the existing parties to meet with us without the need to work on any briefs at the same time. After 60 days, if we all feel there is a path forward, we can move to continue the stay, or otherwise file a joint status report with a proposed briefing schedule to resume briefing the MTI.

We are now asking for each party's position **by COB Friday (tomorrow)** on the MTI along with the proposed accompanying (or soon to follow) joint motion to stay.

Thanks,
Sylvia

Sylvia Lam
Attorney
Environmental Integrity Project
(202) 888-2701

From: Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>
Sent: Wednesday, April 14, 2021 2:43 PM
To: Lisa Widawsky Hallowell <lhallowell@environmentalintegrity.org>; Sylvia Lam <slam@environmentalintegrity.org>; Mary Greene <mgreene@environmentalintegrity.org>

Cc: Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>; jannwillia@pa.gov; dherb@pa.gov; Andes, Fredric <Fredric.Andes@btlaw.com>
Subject: CRW: Following Up on Our Call

Lisa, Sylvia, and Mary,

Thank you for speaking with me and Brad this afternoon. As we discussed, we've been in touch with EPA, PADEP, and CRW, and we are hoping to set up a meeting with you and your client within the next few weeks to discuss potential modifications to the consent decree in *United States v. Capital Region Water* (case no. 1:15-cv-00291-CCC) and meaningful ways for the public to be engaged in that process. We understand that you are following up with your client about our proposal. We'll look forward to hearing back from you—if you could send us your availability for the meeting, we will go ahead and get it scheduled.

Thanks,
Devon

Devon Ahearn
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