Message

From: Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]
Sent: 11/6/2018 7:00:54 PM
To: Able, Tony [Able.Tony@epa.gov]
CC: Allenbach, Becky [Allenbach.Becky@epa.gov]; Zapata, Cesar [Zapata.Cesar@epa.gov]; Bouma, Stacey [Bouma.Stacey@epa.gov]; Gordon, Lisa Perras [Gordon.Lisa-Perras@epa.gov]; Cooper, Jamal [cooper.jamal@epa.gov]; Wetherington, Michele [Wetherington.Michele@epa.gov]
Subject: RE: GA Narrative Revision Update

Tony,

I would like to have a briefing about what they submitted so that I can answer questions from the 14th floor. After I understand what they submitted (compared to what we needed), I will alert the 14th floor and determine next steps.

jmg

From: Able, Tony
Sent: Tuesday, November 06, 2018 12:04 PM
To: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>
Cc: Allenbach, Becky <Allenbach.Becky@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>
Subject: FW: GA Narrative Revision Update

See updates below. We've completed review and will a draft partial approval/disapproval and cover letter for your consideration tomorrow afternoon.

Tony Able, Supervisory Scientist, P.G.
Acting Chief, Water Quality Planning Branch
U.S. Environmental Protection Agency, Region 4
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Atlanta, GA 30303

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"We never know the worth of water until the well is dry."
— Thomas Fuller

From: Gordon, Lisa Perras
Sent: Monday, November 5, 2018 6:20 PM
To: Bouma, Stacey <Bouma.Stacey@epa.gov>; Able, Tony <Able.Tony@epa.gov>
Cc: Cooper, Jamal <cooper.jamal@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>
Subject: GA Narrative Revision Update

Forwarding the email update from Jamal.

Stacey, Tony,

Here is the update on the review of the GA narrative revisions:

The EPA sent a letter on October 5, 2018, requesting the State clarify its interpretation of the court cases submitted and provide documentation including methods and analysis for each parameter to demonstrate how "unreasonably" interfere will continue to protect the most stringent designated use. The EPA received a supplemental memo on November 2, 2018. After review of the memo, EPA did not receive sufficient new technical information including "methods used and analyses conducted to support water quality standards revisions" to satisfy that requirement in 40 C.F.R. 131.6. The EPA discussed the supplemental memo with the U.S. Fish and Wildlife Service and National Marine Fisheries Service on November 5, 2018 and concluded that there is insufficient information for the analysis of the required effects determinations on species for ESA Section 7 consultation.

The EPA staff reaffirms the recommended partial approval/disapproval.

- Revision #1 - approval of "designated use of the water body" to replace "legitimate uses", based on satisfying 40 CFR 131.11 and consistency with the Clean Water Act, and
- Revision #2 - disapproval of "unreasonably", based on inadequate scientific justification submitted, as required by 40 CFR 131.6 and 131.11.

The statutory deadline for disapproval is 90 days (by November 12, 2018). EPA would be vulnerable to a CWA mandatory duty lawsuit for failure to approve within 60 days (which would have been by October 13) and failure to disapprove within 90 days (November 12). EPA could get a 60-day NOI for failure to take that mandatory duty. EPA can still take whichever action it determines appropriate after the dates have passed. Neither action, an approval or disapproval, is foreclosed based on not meeting the deadlines. To successfully defend against an APA arbitrary and capricious lawsuit on its action, EPA would need an adequate administrative record for its action.

WQS staff can have a final draft decision document and cover letter for your (Jeaneanne) consideration by COB Wednesday, November 7, 2018 in order to meet the statutory deadline. The updated fact sheet is attached for reference.

Jamal