Message

From: Covington, Jeryl [Covington.Jeryl@epa.gov]
Sent: 4/9/2019 10:43:34 PM
To: Covington, Jeryl [Covington.Jeryl@epa.gov]
Subject: 2019.04.09 ADC Conference Call 45RNO-16-R9

3:30 PM EST

ECRCO L Dorka, D Rhines,
CRFLO: A Wilson
Region 9: Desean Garnett (ORC) and Mary Grisier (Pesticides Program)
ADC: Andrew Goff

L Dorka noted that 99.9 % of the complaint issues were being addressed with the agreement with HDOA. Wanted to drop a footnote to reference the current work to address the actions with the Navy and the Dept. and Health.

Review of the agreement.
In the purpose and jurisdiction, did tie it into the language that is used BY ADC on the website. AG: The jurisdiction section is pared down. Not much more that can be paired down. AG: No questions about page 1. IN LD attempted to pull information from your website. Requested that ADC fill in the number of employee. Will have to get the actual number. Staff that does irrigation work; the number may have11, there are 4 employees in the office.
LD Went through the specific commitments and stated the obligations for agencies that have less than 15 employees. AG: Looked at some of the footnote regulatory references. LD stated that the 15 employees require the agency to have grievance procedures and a coordinator. The name of the coordinator has to be include in the notice. LD stated that HDOA is willing to provide some of the information. LD: addressed PP program which will include the accessibility and disability program. LD provided example on public participations for comments (i.e. hearings). Note the agency's guidance wrt federal environmental laws. AG: If you go through a public assessment. Go through all of the steps governed by other laws. FOSI. Rules promulgation will require public hearings. Can add a comment that to the extent that ADC required to have public engagement; can have the same provision to utilize HDOA's PP plan. Will incorporate language for disabilities and LEP.

Training: basic statement that staff is trained on elements that are adopted. May want to send staff to HDOA training (One annual training or the bi-annual pesticides). If done independently, the training can be done via consultants or by ADC staff. Communicating the notice, LEP, disabilities, and PP or you can send them to HDOA. Can add (in c to clarify – training section).

LD General language related to fulfillment of the commitment.

3:52

Client is going to ask about the jurisdiction. It does not constitute an admission of jurisdiction. LD: Cannot add this language because I could not sign this agreement.
AG: Only concern with footnote to the MOA, suit is pending, should wrap up September if it goes to trial on summary judgement. DO not want to enter into agreement if the courts say you cannot entered into an MOA. All of these issues are being handled in another litigation case. To the extent that this land management issue… cannot be added due to the case resolution matter but it must be on a civil rights issue. If an environmental issue is bing address in court that does not limit the jurisdiction of the civil rights issue. The complaint is stating that we are pumping water into the ocean without a permit ECRCO is alleging that this action is having a discriminatory impact. It I sour understanding that there are conversation about pursuing a MOU; but if you do not want this reference. MOU entered into and a BMP is approved by the Department of

Health. If the court said that the MOU is not valid, ADC will begin implementation of the MOU and there could be a suit at the state level indicating that the MOU is not robust enough.

Internal discussion w CRFLO.

LD: How would you phrase it to be consistent It is our understanding that ADC is in litigation wrt what? AG filed for summary judgement and motion to dismiss. The motion is going to be heard on May 10th. Would have to run this by your Board by the end of April. I think that you need 5 to 7 days for a notice of a board meeting. It is 90% that ECRCO will issue something to HDOA next week. AG: Would like to get this done. Holds me up from other things that I would do.
LD: Ok to use the language in the complaint and not that there is pending litigation. We can draft it and sen it to you. TO the extent that complaint that the ADC is not complying with the CWA, there is pending litigation. Footnote could be placed at the beginning on the first issue that talks about the claim that ADC discriminated. AG: Asked what was accepted for the investigation. LD: responded that the phrasing was very broad and generally some action or inaction wrt pesticides wrt leases and land program. We do that on purpose as not to limit the legal standard. ...Pending litigation that relates to this issue. Would like to brief principals. Would like an indication from you that this is the draft and some idea of a timeframe to sign the agreements. The soonest that your Board can consider this agreement.

LD: Will try to send today. Can you get back to me?

Region 9 had no questions.

4:09 PM