



**EASTERN SHAWNEE TRIBE
OF OKLAHOMA
ENVIRONMENTAL/LAND MANAGEMENT DEPARTMENT
10080 S. Bluejacket Rd., Wyandotte, OK 74370
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January 25, 2022

Andrew Byrne
Senior Advisor for Consultation
U.S. Environmental Protection Agency
1300 Pennsylvania Ave NW
Washington, DC 20460
Byrne.Andrew@epa.gov

BY ELECTRONIC MAIL

Re: Consultation comments regarding proposed withdrawal and reconsideration of EPA's October 1, 2020 decision approving the State of Oklahoma's SAFETEA request

Dear Mr. Byrne,

The Eastern Shawnee Tribe of Oklahoma appreciates the opportunity to engage in consultation regarding the Environmental Protection Agency's (EPA) proposed withdrawal and reconsideration of the October 1, 2020, decision approving the State of Oklahoma's request to administer environmental programs on Indian lands in the state of Oklahoma pursuant to the 2005 SAFETEA rider. The Eastern Shawnee Tribe of Oklahoma strongly supports the withdrawal of the October 1, 2020, decision. The October 1, 2020, decision was an affront to tribal sovereignty of Oklahoma Tribal nations. The Eastern Shawnee Tribe of Oklahoma urges the EPA to consider the following comments to protect the interest of all Tribal nations in Oklahoma:

First, EPA should finalize the withdrawal of the October 1, 2020, decision. This will allow EPA to make a sounder decision that will protect Tribal interests. Second, a legal review should be conducted at the efficacy of the 2005 SAFETEA rider and its statute of limitations for implementation. If the SAFETEA Rider had expired in 2009, then presumably the State of Oklahoma has no authority to enact the request to implement environmental programs on Indian lands in 2020. Third, a review should be conducted to determine if the environmental programs under the State of Oklahoma's request meets the applicable requirements of the law.

The Eastern Shawnee Tribe of Oklahoma also recognizes that upon review and consideration of the items listed in the previous paragraph, that EPA could again approve the State of Oklahoma's request to

implement environmental programs on Indian lands. The Eastern Shawnee Tribe of Oklahoma offers the following comments if the EPA approves the State of Oklahoma's request a second time:

EPA should exercise its power to impose appropriate conditions to protect tribal interests. EPA should evaluate Oklahoma's performance to each of the environmental programs. Should Oklahoma be found in noncompliance, EPA must require the State of Oklahoma correct compliance issues prior to approving the State's request.

EPA should exercise its authority to implement administrative conditions in cooperative agreements with the State of Oklahoma, as appropriate by law, to collaborate and coordinate efforts to consult with Tribal nations on environmental protection programs.

EPA should require that the State of Oklahoma enter into memorandums of understanding or intergovernmental agreements with any Tribal nation that is affected by the SAFETEA decision. This will protect the interests of the Tribes. An agreement would give the Tribal nations and the State of Oklahoma the opportunity to collaborate and consult on environmental issues while protecting the environmental laws and policies enacted by the Tribe.

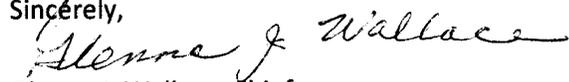
EPA should require the State of Oklahoma develop an environmental council with Tribal representation to go over State delegated environmental programs on Indian lands. This will give the Tribal nations a voice with input into the State's environmental protection programs that will help the State determine shortfalls and provide an opportunity for unity.

EPA should require the State of Oklahoma work toward approval of Treatment as a State (TAS) applications submitted from Tribal nations. EPA should set strict terms in which the State of Oklahoma works with the Tribe rather than exercising power of veto. Treatment as a State should be considered for Tribes where the State of Oklahoma is not asking for administration of environmental programs.

The Eastern Shawnee Tribe of Oklahoma urges EPA to finalize the withdrawal of the October 1, 2020, decision. The Eastern Shawnee Tribe of Oklahoma urges EPA not to approve a request by the State of Oklahoma to implement environmental programs. However, prior to any decision, the Eastern Shawnee Tribe of Oklahoma would like to see EPA's plan on setting and enforcing conditions for the State of Oklahoma to work with the affected Tribal nations.

The Eastern Shawnee Tribe of Oklahoma thanks you for the opportunity to provide comments. We hope this will help the EPA come to a more informed decision regarding SAFETEA.

Sincerely,



Glenna J. Wallace, Chief

Eastern Shawnee Tribe of Oklahoma