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January 31, 2022

Via Electronic Mail

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

Re: 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 Cherokee Nation ("Nation") appreciates the invitation to engage in consultation regarding the Environmental Protection Agency's (EPA) proposed withdrawal and reconsideration of its October 1, 2020 decision approving the State of Oklahoma's request to administer numerous federal environmental regulatory programs within the Cherokee Nation's reservation in Oklahoma pursuant to the 2005 SAFETEA rider (the "October 1 decision").¹ The Nation supports the proposed withdrawal of the October 1 decision and commends the EPA's action to reevaluate the same in the context of meaningful consultation as required by the long-standing EPA Policy for Administration of Environmental Programs on Indian Reservations, November 8, 1984, as more recently affirmed on April 5, 2019. Additional review of the October 1 decision is further supported by President Biden's January 26, 2021, Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships.

As stated in the Nation's previous consultation with the EPA and associated written comments, the October 1 decision was adopted by the EPA after a short three-week consultation period, which deviated from EPA required processes. As the Nation has previously stated, additional action must be taken by the EPA to fully evaluate the implications of its October 1 decision. Specifically, the

¹ Section 10211 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users ("SAFETEA"), Pub. L. No. 109-59, 119 Stat. 1144, 1937 (Aug. 10, 2005).

EPA should evaluate current state programs to ensure the same are being administered consistent with federal law before any state delegation of authority is considered. Such an evaluation should include identification of policy and enforcement gaps that could impact human health and the environment on Cherokee reservation lands, consistent with EPA policy and the federal trust responsibility owed to Indian tribes. A blanket delegation of EPA authority to the state to administer regulatory programs in Indian country – one that does not consider the real-world consequences to the air, land, water or people in the Cherokee Nation's reservation – would be inconsistent with EPA's mission and a misuse of its authority.

To the extent that EPA finds it necessary or appropriate to approve any current or future delegation of state authority under SAFETEA, the agency should impose appropriate conditions to protect the tribal interests on reservation lands. Among the conditions imposed should include a requirement that the State negotiate intergovernmental agreements or memorandums of understanding requiring collaboration with tribal governments whenever federal environmental programs are administered by the state on reservation lands or other Indian country as they term is defined in 18 USC §1151. Such agreements are not prohibited by SAFETEA and will provide a framework for cooperation and coordination that will improve the effectiveness of any state environmental programs administered on reservation lands.

The Cherokee Nation restates its commitment to protecting the environment within our reservation boundaries, and values its partnerships with state and federal environmental agencies. To this end, we look forward to continuing our intergovernmental engagement with the EPA and, where applicable, the State of Oklahoma.

Sincerely,

Church Wood: Dr.

Principal Chief Chuck Hoskin Jr. Cherokee Nation