

Subject:

FW: [EXTERNAL] Pechanga Written Comments on JPA

From: Margie Schaff [mailto:margieschaff@comcast.net]

Sent: Wednesday, July 25, 2018 8:57 AM

To: DSWContracts <DSWContracts@WAPA.GOV>

Good Morning-

Please consider these written comments on the draft Joint Planning Agreement to be discussed tomorrow.

Since Section 16 of the Joint Planning Agreement incorporates the GPCPs, and Section 38 of the GPCPs incorporates “Federal law” to control obligations and procedures established by the contract and the enforcement thereof, and federal law includes 10 CFR 904.13 as the procedures for Disputes which include provisions for arbitration, we have an issue with tribal sovereign immunity. We have two suggested resolutions.

First, we would like to clarify the definition of “Contractor” by replacing “and is” with “who has chosen to be”. This results in the following new definition of “Contractor”: “An entity with one (1) or more contracts or agreements with WAPA who has chosen to be a Party to this Agreement.” This will make clear that not all entities with WAPA contracts must sign this agreement, allowing any tribe to opt out of this agreement all together.

Second, we would like to add the following language to the Agreement, either as a new section or at an appropriate place. Since there may be other issues related to WAPA’s sovereign immunity, perhaps a new section will be needed? “Nothing in this Agreement or in any current or future schedules, attachments, exhibits, amendments, or addenda is intended to be or shall be construed as a waiver of any tribe’s sovereign immunity. The Parties understand and agree that neither this Agreement nor any underlying law or procedure shall confer jurisdiction on any state or federal court over any tribe for claims under this Agreement.”

Thank you-
Margie Schaff
Attorney for Pechanga Band of Luiseño Indians

Margaret Schaff and Associates, LLC
Office (best number to call): 303-443-0182
Cell: 303-717-3876

This message may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply email and delete the message and any attachments. Thank you.