



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

NOV 15 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Status of Emergency Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

FROM: Kevin Minoli *KSM*
Designated Agency Ethics Official and
Acting General Counsel

TO: Ethics File for Dennis "Lee" Forsgren

On June 18, 2017, Mr. Dennis "Lee" Forsgren was appointed to a non-career SES position at EPA. As such, he is subject to Executive Order 13770, including Section 1, Paragraph 7 that applies to former registered lobbyists. During the past two years, Mr. Forsgren served as a federally registered lobbyist on behalf of the Miccosukee Tribe of Indians of Florida. Therefore, he is prohibited from participating in any particular matter on which he lobbied within the previous two years and prohibited from participating in the specific issue area in which that particular matter falls, unless he obtains a waiver pursuant to Section 3 of the Executive Order.

In September 2017, Hurricane Irma was bearing down on the state of Florida and was anticipated to have a devastating effect upon the Miccosukee Reservation and surrounding areas. In an abundance of caution given the imminent hurricane and the anticipated potential devastation, the EPA sought an emergency and limited duration waiver from Paragraph 7 to allow Mr. Forsgren to interact with the Miccosukee Tribe, if necessary. However, this waiver – that EPA sought on September 9, 2017 and was signed on October 2, 2017 -- was ultimately not necessary because the hurricane veered away from the Miccosukee Reservation. Consequently, the Tribe was not as severely impacted as initially anticipated and did not reach out to Mr. Forsgren at all. Therefore, this limited waiver was never utilized.

Because no matters arose as part of EPA's response to Hurricane Irma that involved Mr. Forsgren's participation with the Miccosukee Tribe or Reservation, EPA now considers the terms of the limited waiver null and void. Mr. Forsgren remains recused from interacting with the Miccosukee Tribe as memorialized in his attached Recusal Statement dated October 20, 2017. The signed waiver is also attached as a reference.

Attachments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

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OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Limited Waiver Issued under Executive Order 13770 for Dennis "Lee" Forsgren

FROM: Kevin S. Minoli *KSE*
Acting General Counsel
Designated Agency Ethics Official

TO: E. Scott Pruitt
Administrator

As you know, Executive Order 13770 (January 28, 2017) requires that every full-time political appointee sign an Ethics Pledge that sets forth additional ethics requirements. Waivers to the Pledge may be issued by the President or his designee. Any waivers issued pursuant to this Executive Order 13770 must be provided to the head of the Agency in which the person serves or has been appointed to serve. *See* the Office of Government Ethics Program Advisory entitled "Posting of Waivers Issued under Executive Order 13770," PA-17-05 (September 21, 2017).

Attached for your reference is a copy of EPA's emergency request for a limited waiver of Section 1, Paragraph 7 of Executive Order 13770 for Dennis "Lee" Forsgren, Deputy Assistant Administrator, Office of Water, and a copy of the limited waiver signed by the Counsel to the President on October 2, 2017. This limited waiver allowed Lee Forsgren to participate personally and substantially in matters that arose as part of EPA's response to Hurricane Irma and that regard the Miccosukee Tribe or the Miccosukee Indian Reservation. Mr. Forsgren previously served as a federally registered lobbyist on behalf of the Tribe. However, this limited waiver was never utilized and EPA now considers the terms of the waiver null and void.

Please feel free to contact me at (202) 564-8040 if you have any questions.

Attachments

cc: Ryan Jackson, Chief of Staff
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Emergency Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

FROM: Kevin S. Minoli *K-SM*
Acting General Counsel and Designated Agency Ethics Official

THROUGH: Ryan Jackson
Chief of Staff

TO: Donald F. McGahn II
Counsel to the President
The White House

This memorandum requests a limited waiver from Section 1, paragraph 7 of Executive Order 13770 (January 28, 2017) for Dennis "Lee" Forsgren, Deputy Assistant Administrator (DAA), Office of Water (OW), at the United States Environmental Protection Agency (EPA), to allow him to participate in EPA's efforts to respond to the impacts of Hurricane Irma. Prior to his appointment at EPA, Mr. Forsgren represented the Miccosukee Tribe of Indians on three different periods of time since 2000, including from 2016 until his appointment. The Miccosukee Tribe is a federally-recognized Indian Tribe whose reservation lands are in Broward and Miami-Dade Counties in Florida. He was listed as a federally registered lobbyist for his representation of the Tribe during the period of time that ended with his appointment at EPA, triggering certain recusal obligations for matters involving the Tribe under Section 1, Paragraph 7 of Executive Order 13770.

EPA requests this limited waiver to allow Mr. Forsgren participate fully and without limitation in EPA's response to the range of environmental and human health impacts related to Hurricane Irma. Specifically, when done as part of his participation in EPA's Hurricane Irma response effort, the waiver would enable Mr. Forsgren to engage with the Miccosukee Tribe and its representatives, advise the Administrator and other senior officials on matters related to the Tribe and its Reservation, and participate in decision-making that is related to the Tribe and its Reservation. A significant focus of the agency's response effort is providing services and support to state, local, and tribal governments, and the Miccosukee Tribe is and will be a government the EPA needs to be able to engage with freely and without restriction for this purpose. Because of Mr. Forsgren's understanding of and relationships with the Tribal Government and his position

as the senior appointee in the agency's Office of Water, Mr. Forsgren is uniquely positioned to help EPA achieve its mission in this emergency situation.

BACKGROUND

On January 28, 2017, President Trump signed Executive Order 13770, "Ethics Commitments by Executive Branch Appointees." All individuals appointed to political positions on or after January 20, 2017 are required to sign the ethics pledge, which sets forth the lobbying restriction at Section 1, paragraph 7:

If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

Mr. Forsgren signed the ethics pledge and has been acting consistent with its requirements since his appointment. Because he had been a federally registered lobbyist for Miccosukee Tribe within the preceding two years, he requires a waiver to work on the part of EPA's response to Hurricane Irma that will inevitably be specific to the Tribe. Section 3 of Executive Order 13770 allows the President or his designee to grant a waiver of any restriction contained in the Ethics Pledge.

MR. FORSGREN'S UNIQUE EXPERTISE AS IT RELATES TO EPA'S RESPONSE TO HURRICANE IRMA

Mr. Forsgren represented the Miccosukee Tribe from 2000-2003, 2005-2012, and most recently 2016 until his appointment to EPA in June 2017. In that role, he represented the Tribe on Everglades restoration, Army Corps projects that impact the Tribe in the Everglades, and Water quality issues impacting the Everglades. Through that representation he developed an understanding of the Tribe and its Reservation that is unmatched at EPA. He also developed a personal relationship with many Tribal leaders that would make him uniquely effective at communicating with them during an emergency situation, if necessary. Finally, he also gained a thorough understanding of how the Tribe and its Reservation are impacted by the water levels in its lands and surrounding areas such as the Everglades.

Because of its location within the southern reaches of Florida, the Miccosukee Reservation will almost certainly be impacted in a significant and adverse way by the wind, rain, and subsequent flooding attributable to Hurricane Irma. With wide-spread life-threatening impacts predicated across nearly all of the State of Florida, Administrator Pruitt must be able to utilize all of his senior officials in EPA's response to this emergency. That is especially true when one of those senior officials has a level of expertise to bring to the response that addresses an agency need and is not possessed by others. Mr. Forsgren possesses that unique expertise with regard to the Miccosukee Tribe, and his ability to engage with them regarding the response effort

will advance the agency's efforts to provide support and assistance to impacted governments in the most effective and timely manner possible.

REQUEST FOR A LIMITED WAIVER

The EPA is requesting a waiver from Mr. Forsgren's recusal obligations under Section 1, paragraph 7 of the Executive Order that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. The waiver would not extend to any other issue that Mr. Forsgren is currently recused from participating in under the Executive Order. In addition, while we are requesting a waiver without an end date in recognition of the amount of time the agency anticipates it will be engaged in response efforts, the waiver's limited substantive scope ultimately will also serve as a limitation on the duration of the waiver as well.

CONCLUSION

For the reasons set forth above, EPA respectfully requests a limited waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Lee Forsgren to effectively carry out his duties as Deputy Assistant Administrator and advise the EPA Administrator and other senior officials on matters related to the agency's response to Hurricane Irma. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

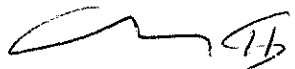
FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

SUBJECT: Limited Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Dennis "Lee" Forsgren
Deputy Assistant Administrator
United States Environmental Protection Agency

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 for Mr. Dennis "Lee" Forsgren that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. I have determined that it is in the public interest to grant this limited waiver because of serious threat to life and the environment posed by Hurricane Irma to the Miccosukee Reservation and surrounding areas, and Mr. Forsgren's expertise and experience working with the Miccosukee Tribe. He is an ideal person to engage with the Tribe and assist the Administrator and his senior leadership team to make EPA's response to Hurricane Irma more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a limited waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Forsgren so that he can ably advise the EPA Administrator. Accordingly, I authorize Dennis "Lee" Forsgren to participate personally and substantially in matters that arise as part of EPA's response to Hurricane Irma and that regard the Miccosukee Tribe or the Miccosukee Indian Reservation. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.



Donald F. McGahn II
Counsel to the President

Dated: 2 October 2017