

Regional Tribal Operations Committee
February 9, 2012

Opening Prayer: Mr. Barnaby Lewis from Gila River Indian Community provided the opening prayer.

Welcome/Opening Remarks:

Tribal Co-Chair Antone

- Announced that the Gila River Indian Community Governor will be in attendance later in the morning around 11:00 a.m.

EPA Co-Chair Enrique Manzanilla

- Thanked everyone for attending.
- In these diminishing times & resources, we are looking at other options, and today we are providing video conferencing. Bob and Thomas are participating from the EPA San Diego Office. Later on, Region 9 staff, Jared Blumenfeld and Senior Managers will join us. This is an experiment which will help us save travel funds. We would like to get your input while using this. GAP can purchase video conferencing equipment. We will see how this works.
- Enrique extended congratulations to the new NTC representatives – Clay, Marie, Erica and Corn as the alternate; the new Nevada Representative, Nicholas from South Fork.
- We have a robust agenda today; we received the issues document two weeks ago and the new issues that came up yesterday.

Co-Chair Antone reminded everyone to put phones on vibrate or if you have to take a call to step out of the room.

Introductions and Roll Call:

Tribal Co-Chair Antone conducted roll call and reminded everyone of the video conferencing. Everyone provided introductions, including those on video conferencing. Co-Chair Antone thanked tribal leaders for attending.

Tribal Caucus Report:

Tribal Co-Chair Antone provided a summary of the Tribal Caucus Meeting from February 7th.

- Opening prayer by Barnaby Lewis
- Welcoming by Mr. Mix, Acting Director for GRIC DEQ
- Announcements
 - o NV Representative – Nicholas Palm; now we have a full committee of Tribal Representatives
 - o Kate Sloan will assist Syndi Smallwood on the Budget Workgroup
- Issues submitted; 6 total with response by EPA
 - o 3 new by Central California
 - o 3 new from Tribal Caucus
 - Tribal Science WG – support or assigned WG lead
 - TPPC question
 - Webinars considered consultation
- Stephen Etsitty gave presentation on consultation that Navajo Nation has gone through
- NTC report provided by Clay Bravo; focus on December meeting in Oklahoma; Clay Bravo will report more later

- Tribal Strategic Plan overview provided by Marta Burg; submitted to Tribes and EPA; today will be the first day that we will hear from EPA; it is a working document, hoping to have a final document by October; it will be considered a living document; last page was for RTOC operations which needs to be developed
- Central California issue raised; regarding invite to present to NTC; they are still working on the process
- GRIC DEQ presentation by Leroy Williams (testing, PM 10 and PM2.5, health effects) Will Antone discussed designations (off reservation, non-attainment and problems off reservation – those designations should not apply to res) Dan Blair discussed exceptional events, 12 haboobs this past year that affects their monitors; trying to get that clarified as an exceptional event.
- Presentation by Chairman David Roosevelt from Cabazon Band of Mission Indians regarding negotiations with State of California; he wanted to ensure that other tribes sovereignty is not affected
- Work Group reports
 - o Emergency Response Report provided by Alfreida Jake (checklist for preparedness; attended NCAI conference; Nevada ITCR is pushing the CERT program; they trained 48 people in a train-the-trainer program)
 - o Tribal Science Council report provided by Tia (summary)
 - o Pesticide WG update provided by Nina Hapner (NPDES is in full force; experimental testing)

Stephen Etsitty provided summary of Navajo Nation (NN) consultation with EPA; since these policies are fairly new, he thought NN would be helpful to the rest of the body, explain some of the work they have been doing prior to the new policies; they have had a variety of outcomes; when the policy came out, NN was heavily involved with consultation; they had several major consultation last year, two in the same month when the policy came out (May) when they were in San Francisco; it is a good time to raise; there are going to more examples;

Enrique Manzanilla thanked Stephen for raising these questions from actual experiences within the last several months; depending on the rules, etc., things are always not going to be the same. For Region 9, we like to think we were ahead of the game with a policy in the mid-80's. Given the new policy, we further with tribes; he anticipates that what Stephen raised will be a part of this discussion. When an agency is engaging in consultation with a tribe; with regard to HQ, the region tries their best on how they do consultation. It depends on a specific issue and circumstance. If we see a problem, we try to identify it. Navajo Nation written request to the Office of Air and Radiation is a good idea. Region 9 has a good relationship with OAR and will follow up with them.

Clay Bravo asked in regards to phase 4, is there a timeline to get specific; can the agency get back to the tribe in response to the tribes request?

Enrique Manzanilla doesn't know about specific timeframe; he thinks it should be discussed. The RTOC representatives and Region 9 will be working on a reconciliation of old and new policy.

Colleen McKaughan: a lot of Office Air and Radiation rules are complex rules and under a lot of pressure; they are trying to address consultation the best they can; Janet McCabe met with Stephen yesterday; they do have work to do under consultations. When people are working on things at Headquarters, there are a lot of moving parts. They do have a lead person on consultation; she did send a note to Laura McKelvey on this, this morning, requesting an update. There are a lot of things

going on with rule making. Sometimes consultation goes the way they like it to go; they do the best they can and thanked him for working with them; their intentions are always good; however, some circumstances aren't good and things fall into the cracks. She will do her best to see that the follow up happens. If you have any questions, pick up the phone and call her.

Nate Lau: they have been working with Marta and working with the Consultation WG; we scheduled a conference call for February 22nd; since the policy came out in May, the process has changed; the WG can identify the issues. There is also a tribal consultation advisor, located in each of the region. There is an advisor in each national workgroup.

Stephen: appreciates the comments; to Colleen, in the policy there is an aspect with regard to short term timeframe, it does not say anything about court driven deadlines, it is to be meaningful consultation with tribes, perhaps EPA needs to look at this. In this particular case it is regarding mercury.

Colleen: we can take back your comments from today and yesterday with regard to WG policy.

Enrique: the concept was sound w/ good intentions; not every circumstance was addressed.

National Tribal Operations Committee Report and Updates

Clay Bravo, NTOC Co-Chair reported that at the NTC meeting they discussed:

- Consultation with regard to the guidebook; Chapter 9 implementation and response universally; they received comments from Region 9, Region 8 and La Jolla Band; he doesn't know if other comments were received but those were the only three he received.
- The alternate for Region 9 is Corn Antone. Region 10 has to work out some concerns with their alternate.
- Presentations from Region 6 Regional Administrator, National Tribal Science Council, and National Tribal Water Council, who made requests regarding participation and involvement;
- Discussed the budget process for FY2014; we have a 5 year budget plan in place and how we will address those request we have made;
- National program guidance, how is the national office going to ensure that our request / our issues are being heard and put into the guidance;
- We received a request from TPPC, our response is better coordination with them; we are working on that;
- We had 3 presentations on climate change and they were able to meet with us in OK;
- NTC is making process, new Tribal EPA paradigm, how are we going to meet with the national groups and how that responsibility is going to take place; he committed to personally making contact with the national groups; the only way he will be able to do that is to receive travel dollars;
- He participated in a conference call with the newly established ____ Council; they too wanted to know what the line of communication will be.
- This past year they spent a lot of time on invigoration; but he is tired. He apologized to Corn that he was not able to participate due to family concerns, but he did try to make as many conference calls as possible.

Tom Keegan: regarding discussion on the guidebook; do you know when EPA will be releasing information on Section 9? He was told it was sent out nationally in the letter sent out by the agency.

Clay Bravo: implementation on GAP takes place at the regional level; some of that will go down to the region. We don't know what that time frame is but each region will place a major role in that.

Nate Lau: the guidebook will be a component of GAP, will use it to develop workplan in future years; he feels that have been doing that in Region 9; he doesn't think there will be too much difference; the GAP announcement will include some of those instructions; the awards in October 13 will reflect the guidebook if everything works out; final by September of this year.

Tom Keegan: when will we see the language?

Nate Lau: it is only like 2 paragraphs. He thought EPA sent this out.

Tom Keegan: we didn't discuss in caucus?

EPA FY12 Budget Update:

Enrique stated that we scheduled the RTOC so we would have the President's FY 2013 budget by this time, but it won't be available until later in the month. This is an important item to have. If look at list special needs project reflects reduction at 30 million dollars.

- GAP: very small reduction. It's good. The Region 9 allocation numbers are projections at this point.
- Still waiting under Drinking Water the regional allocation. Water programs have national programs. There is nothing he can say right now for FY 2013 until president's budget is out.

Kate Sloan: when do you think you will have amounts determined for 106?

Enrique: May be different times for different programs. Assumes it probably won't happen all at the same time.

Kate: this FY 12 budget, if there are cuts, is there a potential to effect 2013 budget?

Enrique: any funding you have already is secure. There are unobligated funds if you hold onto it too long.

Welcome by Jared Blumenfeld via video conference:

EPA Regional Administrator Jared Blumenfeld (via video conferencing)

- Thanked everyone for allowing them to join via video conferencing which we had discussed at the annual conference at Pala. Being able to join at RTOC without being in the room; especially for the rural tribes.
- The strategic plan, great that we are working on one; includes a lot of priorities in Indian country; this document is really helpful in what we should be doing, how we should be doing it, the process and the outcomes and by what time frame. It is less about money. It is about what do we want to get done, and then how much is it going to cost. That is how we approach our strategic plan.
- Thanked Gila River Indian Community for hosting the RTOC.

RTOC Strategic Plan:

Marta Burg provided a powerpoint presentation.

Jared Blumenfeld thanked Marta. It has been a good process thus far. He would like to have discussed at some point, scheduling, what should consultation look like? What would you like? How can we resolve communication? Second issue, across agency issues, EPA specific, healthy homes, sustainable housing, community gardens, indoor air quality; our mission is human health and the environment, how do we leverage with other agencies. They had a good meeting in Nevada, 8 months ago, they brought together all the Nevada tribes and agencies, (BLM, DOE, etc.). That is part of what EPA is doing, these

issues are connected. How do we work with the other agencies for the Tribes? Healthy living, tribal leaders have said diabetes, EPA is not the primary agency for this, but what is the role we can play? Like locate food production, community gardens; those are bigger issues. Leveraging partnerships; how do we get foundations, utilities, entities that have money that aren't federal agencies, that focus on tribal priorities; looking at outside funding sources; bringing a strategic plan to a non-federal agency the better and more powerful. Big credit for coming up with the idea; and anything we can do to strength it, we will do what we can.

Priority 1 –

Enrique Manzanilla: looks at the strategies that go beyond EPA, leveraging; there may be opportunities what other federal agencies that can support the objectives that you are seeking; broaden it beyond the GAP program. GAP is an important tool but may not be the only one.

Jared Blumenfeld: when he visits tribes, he would want to strengthen the education to tribal council of what gap funds can do. He knows Tribal Councils do change. How can we involve the elected officials of the governance of GAP?

Clay Bravo asked if Jared could give an example.

Jared Blumenfeld: visited 60 communities; amazing, how many different pots of money come into tribal governments. In the mix of the issues that tribes are dealing with, the environmental issues aren't getting to the top of the agenda. How can we put it on the top of the profile? There needs to be supplementing of how programs work.

Priority 2 – Kristen Guillatt (via video conferencing) 106, 319 and wetlands; how do we protect the existing funding that we have? We have so many success stories and we need your help in highlighting; documenting success stories; before and after pictures. Water is improving in Indian Country. Leveraging funding; we will never have enough funding; having the RTOC help EPA get the right federal partners to work on these objectives; there are tribes who have success in this. Protecting what we have; highlighting, how do we bring the right partners to the table?

Priority 3 – Kristen Guillatt; New authority they received, having the abilities to move funding between programs; it is there; advocating HQ to use this year. HQ is working on the process and hope to implement as soon as possible.

Linda Reeves, this is not all about getting the money, but educating; we did flat line, did not increase; highlighting the need; it's very important to look outside the agency in lobbying resources to meet our goals; there are other agencies such as IHS that took a big hit. We have a great opportunity, infrastructure projects, to reduce energy, water usage that benefits the tribe, it is our shared goal but yet we have a long road to go on. Many of those projects are designed by IHS, training is needed; foundation is needed to get to the goal.

Welcoming by the GRIC Governor :

Mr. Rudy Mix, Acting Director introduced Gregory Mendoza, GRIC Governor.

- Governor Mendoza welcomed everyone.
- You are here as a historic time, a vote on Tuesday with regard of development of a freeway through the community. The vote on Tuesday was a clear directive, about protecting the natural environment.
- A strong supporter of environmental issues. He was on Earth ambassadors, confirmed by the First Lady Barbara Bush.

- New GRIC Governor of one month, the youngest governor. He has served 7 months on Council and was the chief of staff for the previous Governor.
- Teaching of good fundamentals of government. The community is blessed with all the development; a spa, wonderful restaurants, other activities, Huhugam center; major freeway, border city of Awautukee; a very sacred area here, the mountains. Agricultural people but very progressive.
- Proud of DEQ, the department has been recognized for an excellent air quality program; the community has been implementing energy, sub-divisions, renewable energy; GRIC is impacted by GHG, etc..
- Using LEED certifications for projects; new boys and girls club, post office, plans for green fire stations and recreation centers; we are moving in this direction.
- Look forward to working with us; enjoy the stay.

Continuance of RTOC Strategic Plan:

Priority 4 – Jeff Scott (via video conferencing); off to a great start by developing the plan (hazardous waste and superfund to be added); add underground storage tanks to the list; securing third party funding. To implement solid waste projects; very happy with management that there will be money for implementation.

Jane Diamond (via video conferencing) is through 128(a) grants and TBA. There is still money available for tribes to look at specific properties. Clancy is in attendance, any questions to speak with him. Have great relationship with tribes.

Priority 5 – Colleen McCaughan workgroup meeting yesterday, there were new members that joined the workgroup and help work on the strategic objectives. The air part is extremely complicated. The requirements the tribes are required to meet is very burdensome. We are hearing the message from the states too. TAS and exceptional events; she talked with GRIC today about this; getting documentations on these is burdensome; task on applications, these can take a really long time. Colleen has had discussion with regional counsel, encouraging Tribes to work on their emissions inventory; all sources on tribal lands, how big are they, etc.

Jared Blumenfeld: to include in the plan how tribes can share better practices and how EPA can help share that so that we do not have to reinvent the wheel.

Enforcement: Kathleen (new yesterday) what are the specific things we would put at the top of the list; writing codes or doing more federal inspector credentials; maybe we can have another dialogue at the next RTOC; is open to dialogue, would be pleased to do that; what the most critic things we can focus on.

Created a new Strategic Plan WG; looking at the overall document; there is a role where we want EPA on this. The RTOC Workgroups will have a continued role to participate; there will be joint conference calls. Have a breakout session at the May meeting but continued conference calls. She will be sending the document out to tribal leader input and then a final product at the November meeting.

Priority 6 – Enrique stated that climate change was added. EPA will be sending out a plan, although a little late in doing so.

Priority 8 – We need to reach out to other federal agencies; looking at it for economic development; working with DOE, DOI, etc.

Cross media - How IPM is supported in Indian Country.

Marta thanked all EPA for useful input; this will help with follow up and for the WG's in moving the document forward. Willard to work with Marta and it will be sent out to RTOC.

Co-Chair Antone announced that the tribal leader's meeting at 1:30 will be in Ocotillo Room.

EPA Agency-wide Plan to provide Solid Waste Management Capacity Assistance to Tribes

Kim Katonica, EPA Office of Resources Conservations and Recovery provided a presentation via video conference. <<< powerpoint slide>>>

Slide 9 – there are no new resources to implement the plan

John Mosley stated we need additional funding.

Marie Barry: when combing IHS and EPA site assessment funds; you need to take a look at wildcat dumps that do not meet the standards.

EPA asked for suggestions.

Marie Barry stated she will work with Nancy Sock basin on this aspect.

Marta Burg: US/Mexico Border breakout session; that relates to UDM waste which can be scattered and does not meet the open dump definition; it should be considered in future efforts.

Question: Is there any coordination between the efforts, GAP guidebook (also to assessment) and effort for the provisions for waste management; there is a section in the gap guidebook, we want to make sure there is consistency.

EPA: yes

Elliot Talgo: a case of vandalism, 300 gallons of hydrologic spill within one area; he tried to apply for funding through Superfund Program but it is considered non-hazardous. Why can not fall under a dump closure because it is considered a dump site. We are not able to get any funding. Would this be eligible under GAP?

EPA: asked Elliot to send them the specifics of the case so they could investigate the situation.

John Mosley: to answer the question about building sustainable programs; he feels that is very difficult because most tribes do not have a sustainable program; tribes will ask for other federal dollars.

Marie Barry: over the years Region 9 has reached out to the other federal partners, for solid waste; for Nevada we coordinate meetings with federal partners to see where we can optimize the resources;

Willard Chin reminded everyone to provide comments /evaluation on the video conferencing.

October Issues Review

Willard Chin stated that EPA provided a response on the Action Item from the October RTOC meeting. He summarized the list:

1. N. California - Request for RTOC form letter or recommendations for commenting on GAP guidance to help Tribes prepare responses

2. N. California - How does EPA R 9 intend to proceed (how will they implement and how will it impact tribal programs?) in light of AIG GAP report (2008) and the recs that come out of the proposed Guidance?
3. N. California - Update on FY 12 budget situation and potential impacts on FY 12 R 9 Tribal Programs (if we have our signed grant agreements in place, is our funding for FY12 secure?)
4. N. California - Update on the Indirect Cost Rate policy change – did this happen (ie: was it published in the Fed Regulation as a final rule?)
5. Central California - What region were the Tribes in from USEPA's 2007 Audits? Results made public? Provide additional 16 audits (sample etc)
 - o John asked for clarification: john is assuming there was a small sample size, you base the whole decision on that; it is not good science.
 - o Marta:
 - o Nate:
6. Central California - Update on the Tribal Program Managers position
7. Central California - Ask Region 9 EPA Staff for follow up on the tribal request for a Region 9 Certification and Training Plan.
8. Central California - Will USEPA ever have the National Environmental Conference on Environmental Management again? Last one held in summer 2008 in Montana.
 - o Samuel Elizondo Question: would EPA consider having a conference every 3 years to bring tribes together from coast to coast?
 - o Willard, seems there is interest in doing something larger.
9. Central California - What Consortiums are currently funded by GAP?
10. Marie Barry/Marta Burg - Is there language in the statute that says it has to be reauthorized?
 - o Willard requested further clarification on this.
 - o Marie: reauthorization of GAP to see if there is a way to get funding.
 - o Marta: she will go back to see her notes within the next couple of week
11. Marie Barry/Marta Burg - What happens once R9 gets the tribal strategic plan completed? Will it be shared across the regions?
 - o Marie: that is a general question for the whole RTOC. She wants to make she coordinates with the other regions.
12. Tribal Caucus - Can this process be done under self-governance? (asset protection) GAP Attachment E Guidelines.
13. Tribal Caucus - Provide comments to HQ on OCSPP. (a) send electronic copy of comment letter to Corn. (b) send it on to RTOC.
14. Does EPA have a formalized policy to respond to training requests from tribes/groups. How does a tribe or group of tribes request training from EPA that is provided by an EPA staff member? Etc...
 - o EPA did send Robert Hall; due to limited funding, EPA can fund these requests; but will consider it on a case by case basis.

EPA Response to Tribal Caucus Report

Willard Chin provided report out of the February 7, 2012 Action Item:

1. Task: Tribal GAP Online Steering Committee Member will provide training to tribes in Nevada, Southern Cal, Arizona and Northern California
Status: Washoe Tribe agreed to host training for Nevada Tribes.
2. Task: Update from EPA on FY12 budget that Congress just passed & the reported cuts to EPA. We want to know how this will effect tribal programs and which ones and how much.
Status: Enrique Manzanilla will provide an update on FY12 funding at RTOC.

3. Task: Fracking and US EPA recent decision in Wyoming regarding contamination of ground water as a result of fracking. Are there any proposals, plans or permits underway in Region 9 for this practice? Is there any potential for fracking in other areas to contaminate Region 9 ground water.

Status: Fracking is not likely to occur in Region 9, because we do not have the shale/gas resources that are present.

- a. Question: Kate Sloan thanked Mr. Albright for his thorough information. One of reasons she asked, they have heard rumors of this occurring. How these activities affect groundwater in other areas? She just wanted to put onto peoples radar.
 - b. Comment: Marie Barry, there is new research, this type of activity is causing earthquake more frequently in areas; if in California to be cautious.
4. Task: Update on the IDC policy change as proposed. What is the status?

Status: The policy remains in draft form. The Office of Grants and Debarment will be reviewing this Interim Policy sometime in FY13 consulting with Tribes in accordance with the EPA Policy on Consultation & Coordination with Indian Tribes.

5. Task: GAP Guidance. Once this is finalized, what is the plan for EPA to work with Tribes to revise and update their previously approved environmental plans so they are consistent with this new guidance?

Status: the draft guide book consultation period with tribes closed on January 30, 2012. EPA anticipates there will be a section on tribal environmental plans in the revised draft guide book which will be made available for review.

- a. Kate Sloan brought this question. A way to terminate GAP funding in the future. As a director, she is just speaking for itself, her tribe does have an approved tribal environmental plan; they should be able to update and revise their plan as developing/emerging issues; or concerns we have right now; she wants to make sure we have that commitment from the region.
- b. Marta Burg: the plans were generalized statement from tribes/programs; what is now recommended.
- c. Clay Bravo: same discussion at NTC level; what happens when a tribe reaches capacity level? They didn't get an answer; not sure if you're going to get an answer today. EPA is telling you to go look for funding elsewhere. He thought he heard the administrator say to ask your tribal leadership for funding. There needs to be some responsibility from the EPA.
- d. Marta Burg: after the draft guidance was revised that there would be another opportunity for review? What is the clarification?
- e. Nate Lau: the short answer is yes, the tribes will get another opportunity to comment on the revised.
- f. John Mosely: will speak for himself, he will most likely not comment. The tribes and EPA have a huge responsibility to build capacity? What does that mean? Does EPA know what that world is going to look like? What will the relationship be like?
- g. Stephen Etsitty: the concept of capacity building, as a parent, if you remember, you know what it is like before you had kids; there is always going to be a need to build capacity in some areas; keep your mind open; there is always learning.
- h. Gayle Honanie: this was the first year she approached her tribal council for funding; she thought she could hire a person to do all areas without any constraints; they're response was your getting money from EPA; it is going to be very difficult for her to request direct funding. Concerned that if this becomes law then other tribes may be hit the same way.

6. Task: What is the EPA doing to assist the Yerington Paiute Tribe with getting the Anaconda Mine listed on the NPL for Superfund?
7. Status: This is Yerington specific.
8. Washoe Tribe specific. Marie Barry says to skip it.
9. Task: When will the NTOC invite workgroups to present? What will the protocol be for sending out invitations?
Status: Clay Bravo gave an overview of the NTOC process. They have a conference call coming up; as soon as they finalize that he will report out to the Co-Chair.
10. Task: Would it be possible to have the new mining rules as a presentation or session at the Annual EPA Conference?
Status: Clancy volunteered to have John Hillenbrand present during Conference.
11. Task: How do we get tribal representation on District Air Board Committees to articulate tribal issues.
Status: Tom Keegan stated the air board is appointed by the Governor. Erica Helms-Schenk asked to get the information and disperse it and move from there.
Follow-Up: Colleen McKaughan
Timeframe: 2 weeks.
12. Task: Request EPA to assign and support new workgroup co-lead for Tribal Science WG.
Follow-Up: Kristin Guillatt
Timeframe: 2 weeks.
13. Task: Does the state have to notify the Tribes if they are testing experimental pesticides that would affect tribal lands?
Status: Correction this was brought up by the Pesticide Workgroup not TPPC. When they had the call for the WG, one of the tribes in CA had experimental pesticide applied, (including if the tribe has an approved water quality standards); Nina understood the State approved.
Follow-Up: Pam Overman
Timeframe: 2 weeks
14. Task: Concern that EPA considers webinars consultation; it limits tribal environmental staff to participate.
Kate Sloan expanded on the question. Gilbert Pasqua: it's a process we are working on.
Bob Goodwin: EPA can spend months/years on policy before they give to tribes.

2012 Conference Update:

Rosanna provided an update on the annual conference. If you have any comments or presentation ideas email her.

Announce Next RTOC Meeting / Adjournment:

Co-Chair Antone announced the next meeting will be held during May 8 – 10 in San Francisco, California. He is working on a block of rooms and will let everyone know. (Update meeting rescheduled to May 1-3).

EPA Co-Chair Enrique Manzanilla thanked everyone and for the video conference experience. EPA will be sending out a questionnaire survey asking for feedback.

Tribal Co-Chair Antone thanked everyone for putting this meeting together. Have a safe trip home.

Meeting Adjourned.