

**RTOC Meeting San Francisco, California, Lorinda Sam, Jaclyn Listo,
Laurie Lee Suter
October 19, 2010**

Opening Prayer: John Mosley, Pyramid Lake Paiute Tribe, provided the opening prayer.

Welcoming / Opening Remarks: Cornelius Antone, RTOC Co-Chair thanked everyone for attending and welcomed everyone to San Francisco. Scott Cozart, Chairman of Soboba Band of Luiseno Indians, thanked everyone for being here.

Welcoming Remarks: Jared Blumenfeld, Regional Administrator thanked everyone for coming and remarked about the playoffs, go Giants. He thanked Cornelius for all the work he has done and for the recent visit to the Tohono O'odham Nation. He thanked Scott Cozart, Chairman of Soboba Band of Luiseno Indians and the tribal leaders for attending. The priority is to get tribal leader involvement, for all 149 tribes to come here to discuss their views. Their time and yours is very valuable. He acknowledged that it takes more of Tribal Leaders time; he is committed to honor and value the time and work together to hear people's voices. In order to be able to move forward, we need to work out a strategy. Jared would like to get other federal agencies involved to hear what they are doing for Region 9 tribes; they do not have the experience as EPA in working with tribes. This is the 18th year of this Conference, the tribe's testament to move things forward. Jared's objective is to get goals achieved one day at a time; every moment we are together to get something done; he is impatient; the planet is suffering, we need to push agreements; to get forward movement quickly. Funding will also be an issue; it is worthwhile; it is absolutely worth it. We need to come around the table and talk; we need purpose and political buy-in. The Multi-media \$30 million program will need planning; however nobody knows how to implement. Region 9 tribes do get most of the money, but we need better proposals than the rest of the nation to get the funding that is out there. Jared is committed to visiting all 147 tribes of Region 9.

In Summary:

- Political leadership involvement; elected hopefully the Chairperson
- To get other federal agencies here, be strategic, positive agenda
- Use money in responsible way
- Next meeting in February to focus on strategic planning
- In April, to bring the other federal agencies together; how are they prioritizing
- Let's focus on the 90% and get it done.

Introductions Roll Call: Cornelius Antone, RTOC Co-Chair conducted roll call. Everyone present introduced themselves.

Lori Lewis reviewed action items from the July Meeting held in Mooretown and a few reminders:

1. RTOC the structure of future meetings
2. #3 – Marine Life Protection Act. Tomorrow at 1:30pm during the California State Director, Linda Adams session this will be discussed
3. #10 – Certification and Training. On the agenda for today

Other actions items have been completed or in progress; for updates please look on the R9 Tribal website.

Lori reminded everyone that when they speak, to state their name, as this will assist the note takers; also to turn off cell phone or put on mute; when talking about acronyms, to define them and that there are only two screens, those in the middle will have a hard time seeing; feel free to move

Lastly, for the Tribal Leaders meeting/luncheon with Jared Blumenfeld and JoAnn Chase scheduled for tomorrow, there is a sign-up sheet outside if you are interested and this will help with planning.

Tribal Caucus Report: Cornelius Antone reported that there were five tribes in attendance at the orientation held yesterday morning. Ten to fifteen tribes could not find the room. The meeting lasted about 20 minutes.

Cornelius then reported on the following:

Arizona Report: Yavapai Prescott Tribe hosted the Arizona Manager's Meeting. The tribe reported they are doing erosion control with 319 funds, and using GAP funds for outreach & other education. They receive other funds from various agencies to address other environmental issues.

Navajo Nation Report provided by Stephen Etsitty. Mr. Etsitty reported on the retirement of Deb Misra and their search for a replacement. The position has been filled by Ronnie Ben. Round two of permitting phases, and they haven't had any issues. A health study was completed by multi-agency group on pregnant woman near uranium mines.

Central California Sarah Ryan: On October 6th meeting in Cloverdale, numerous tribes attended. Marine Life Protection Act was main issue; we will go into this topic later in the agenda. A request was made to Conference Coordinator to include this discussion in the California session for tomorrow.

Northern California Report: No issues brought up (Kate Sloan); need for Climate Change Work Group; need to develop focus.

Eastern California Report: Terri Cawelti thanked Region 9 to help in buried car parts; and participating in Owens Valley air issues project. The representatives discussed California boundaries to break the geographical area into smaller groups.

Southern California Report: Action item, request for clarification on boundaries and what tribes they represent.

NTOC Report provided by Clay Bravo (also to reported after break); reenergizing the NTOC, recommendations made by EPA on how many people would be represented on that group; anyone who sits on NTOC will do lots of work with no perks.

Core Water Quality Standards: Ken Norton presented on behalf of the National Water Office. He discussed dealing with promulgation of core water quality standards and who want to opt in, developing a concept paper on how tribes can opt in. Corn mentioned the concept document will be coming out and be forwarded.

Standard Operating Procedures (SOP): For the Charter Work Group, there is a document that was developed by Marta Burg and Robert Columbro. Robert has copies, if you would like a copy, please see the note takers.

Future of RTOC Update: Cornelius Antone provided a PowerPoint presentation of the "Future of the RTOC Concept document".

Concept Concerns

- If meetings are media specific, Tribes will not be able to participate
- Meetings may become conference calls which is not acceptable by Tribes.
- Issues may not be able to be heard if meetings are media specific
- Issues may not be heard for quite some time if media specific

Next Steps

- Tribal Caucus will revise its meeting day by:
- Reducing time on Managers Reports
- Increase amount of "issues" to be addressed & dealt with
- Create an open forum for tribes to have discussion such as Ruby Pipeline, Algae Plumes in N. Cali, etc.

- Work on changes to guidelines, i.e. GAP amendments/modifications
- Keep Tribal Tours only when Meeting on Tribal lands
- Keep January/February Meeting for budget planning
- Keep April Meeting as budget reporting
- Keep the 4 Meetings
- Have the ability to have Special Meetings

Comment from Ron Johnny: wanted to talk about the different projects.

Comment from Samuel Elizondo: GAP has one fiscal year; the 106 has another fiscal year; would like consistency in the fiscal years for the various grants.

Comment from Robert Columbro: that we get a commitment from EPA, when tribe's requests are given a response in a timely manner.

Comment from John Mosely: Air Quality template; to make the input of data easier. (This is an item added to the action item list; see attached)

Comment from Teri Cawelti: provided a summary on action item #14, is it possible to get a table of grants. Some type of guidance for tribes to have some understanding if there are errors?

Comment to add on the next agenda: GREEN Building Codes template – Michelle Baker and David Edmunds.

Break (15 minutes) (10:14pm)

NTOC Report: Erica Helms-Schenk, Soboba Band of Luiseno Indians, NTOC Representative stated that NTOC is focused on the reinvigoration of what NTOC is looking to do. They are looking at the recommendations from EPA and the feed-back they requested. NTOC will be drafting comments and will send out to Tribes. Clay Bravo, NTOC Co-Chair also stated that the discussion is internal to USEPA and NTOC right now. Tribes should be seeing document soon. Also, the EPA Strategic Plan is out, it is important that we are aware at the Regional level on what the plan is and what we can do to maneuver within it. Where does the Region fit into this?

UST Presentation: (agenda item moved up from the afternoon) Roland Chester, Inter-Tribal Council of Arizona (ITCA) Underground Storage Tanks (UST) Program Coordinator Compliance Assistance and Training Support (CATS) provided a presentation on the CATS Program. The presentation is a summary covered information on the 5 year Cooperative Agreement (2004-2014) between ITCA and USEPA; it is a National Program and is open to all federally recognized tribes, it is not limited to just one Region. The objectives of the program is to provide UST compliance training for owners/operators; compliance awareness for tribal personnel; Operator and Compliance tribal inspector training to increase protection of human health & environment via compliance rate increase & awareness; tribal Workgroup meetings; technical advisory sub-committee; and a CATS listserv.

Action Item: provide Roland contact information if interested in getting on the listserv.

Question: How many Tribes have UST?

Question: In Lake County, how do we deal with UST that are leaking outside Tribal lands that impact Tribal Lands? Can ITCA add a component in its workplan, on how can Tribes access data on county land and what they are suppose to be doing? How to handle what's happening the in the states? Would make the program broader and help those tribes who do not have active USTS.

Question: How many tribes in Region 9 have UST?

Response: Roland did not have the number with him, but stated that on the OUST website in the Indian Country link, the reporting information is there. It is sorted by operating, closed, leaking, etc... by each Region. In addition, adding components to the existing workplan, will be a challenge as the program is just beginning. As far as their funding is concerned, it is for UST, not Leaking Underground Storage Tanks (LUST). ITCA will try to guide the person requesting to appropriate State, etc.. Roland will take this into consideration and talk with Inter-Tribal Council and EPA Headquarters; and also with National Committee on this concern.

Comment from Gayle Honanie, Hopi Tribe. The Hopi Tribe use to have UST Program however there is no funding available to continue the program. There are 3 UST, 1 AST and they have proposals for a new UST for the travel centers. What worries her is that since they only have 3 USTs, the funding would not be available to them. Although tribes have UST, we are not given the ability to run that program. A lot of the inspections are conducted by EPA on operating USTs.

Comment from Jeff Scott, USEPA. In Region 9 there are 700 tanks on Tribal Lands (200+ operating facilities - gas stations). EPA will have a presentation during the conference on the question on access to information on States. The State of California has geo tracker information on cleanups, etc. and EPA staff can assist with finding information.

Comment from Jean Gamache, USEPA. In Region 9 there are 40 / 50 tribes with UST.

Question from Rob Roy. He thanked Roland for the presentation. When the tribe did not have the program, three USTS at gas station; EPA inspections found violations; after Rob attended ITCA inspector trainings and is now a certified inspector, during the last EPA inspection, their facilities were 100% effective with no violations. He requested from ITCA to try to get a Region Work Group together and create a program to have the ability to conduct inspections on other tribal facilities, to work together and be proficient.

Comment from Marie Barry, Washoe Tribe. On Thursday during the Conference for break out session from 1:45pm - 2:45pm, there will be a presentation on a pilot project that Washoe Tribe is doing and working with the other tribes in Nevada.

Cornelius thanked Roland for the presentation and reminded everyone about the handouts and sign-in sheets for the ITCA CATS program.

Lunch break at 1:00pm

EPA Response to Tribal Caucus Report (1:15pm)

Enrique Manzanilla, RTOC EPA Co-Chair responded to the Tribal Caucus action items.

#1 - Arizona Tribes recommending that EPA staff be required to take the “Working Effectively with Tribal Governments” training course.

Response: Although it is not an absolute requirement for staff to attend the course; Enrique is going to see who hasn't taken the course. Enrique will report back before the next conference.

#2 – USEPA has a trust responsibility to Tribes & recognizing that is very important especially when it comes to designating attainment and non-attainment areas of tribal air sheds. Tribal lands should be designated separate from state or county designations.

Response: to wait for the presentation later today.

#3 – Communication is not efficient / effective between GAP Project Officers and Tribal environmental program staff. It is recommended that working relationships become stronger through respect and professional communication.

Response: Enrique is requesting that the Tribes come and talk with Enrique on a one on one basis regarding this concern. Do not wait until the RTOC meeting to bring up these concerns.

#4 – Tribal Leaders will request EPA's involvement in reviewing the EIRs as well as an explanation as to why they don't oversee the actions that affect the whole coastline of the US.

Response: Sara Ryan stated that it is the Marine Life Protection.

Enrique stated that this is going to be discussed tomorrow. EPA reviews 29% of Federal EIRs in the country; let Enrique know which EIR they would like to have reviewed. He can't guarantee they can review each and every one, but please talk with him.

#5 – Create a California Issues Workgroup to be resource for California Tribes dealing with environmental and consultation issues. Tribal caucus requests EPA participation.

Response: Sara Ryan provided additional information in that communication with the tribes and that there are opportunities where stakeholder groups, biological objectives; tribes strategizing; Central California are having to react to issues, lack of communication by state or counties; they did not necessary ask for EPA to participate.

Enrique stated that EPA can participate as a resource and when issues are raised they can help when necessary.

Create a concise set of issues with specific counties as well as a list of participants.

Cornelius Antone is to assist to identify participants.

Sara Ryan is to develop a list of concise issues.

Timeframe: 2 – 4 weeks to get the list by the end of November.

#6 – Request to pesticide programs in Region 9 to have Headquarters conduct 2 webinars prior to the Certification and Training consultation so that Tribes can participate meaningfully.

Response: Enrique stated that there will be separate discussion this afternoon on this issue.

#7 – Have RTOC orientations at every RTOC for new Tribes/Tribal staff. Have copies of charter available for education people on RTOC.

Response: Corn already discussed this item.

#8 – Do not reduce RTOC to few than 4 meetings

Already discussed

#9 - Requesting list of EPA water trainings in all of Region 9 as well as national courses.

#10 – Request tribal contacts for sustainability.

Erica Helms-Schenk asked who the EPA contacts are.

Response: Heather White replied that all of us in the team do sustainability; however Michelle Baker, Chuck and Nancy Sockabasin are the contacts. Heather White will provide a list within 3 weeks; and will email Erica, who will then forward to group.

In addition, Enrique stated that HUD issued 3 grants last week on sustainability. Fresno State received a grant for \$4Million, Apache County received a planning grant for \$830,000 and Sacramento received a grant.

#11- Revise Action Item #7, EPA to host CA Certification Trainings for Tribal Water Operators.

#12 – What is the process to follow for federal water certification?

Response: Will follow up within 2 weeks. Kristin Gullatt and Linda Reeves are the lead.

For #9 Kristin requested clarification; does the tribe want Regional or National courses?

Erica Helms-Schenk replied, yes all the courses.

#13 – Request we get a climate change working group on mitigation and adaptation planning.

Kate Sloan elaborated on this action item. There is small working group from the north coast; the group would like to see a real focus on climate change which is cross media. Climate Change is cross cutting and tribes want to be involved.

Question: Can Tribal Science Council work with other media on this?

Response: Stephanie Valentine stated there is a National Work Group; contact is Brian McLean, Director of EPA's Office of Atmospheric Program, who is also a keynote speaker at the Conference. Stephanie will gather additional information and report back to group. EPA can also find out what existing workgroup exists and find out more information.

Enrique stated that there could be funds where climate adaptation could be incorporated. EPA will see what is available for adaption/planning/mitigation/implementation. He also stated that this is the reason EPA would like to involve other federal agencies; USDA, Rural Development, DOE, etc.. The 106 Non Point Source and GAP have language that could address climate change, there are possibilities but EPA needs to be more expansive.

Nina Hapner asked what the priorities of the National Science Work Group are. They did send out an assessment which requested what were the Tribes climate change issues; perhaps revisit the assessment and their priorities. Nina will talk further with Tia Chullakorn who is a member of the National Science Work Group.

Timeframe: Nina to discuss with Tia; and to have a response within 2 weeks.

#14 – What works with what grants?

Response: Enrique requested to let EPA continue to have discussions on this item. He will request if there is any additional clarification/specificity needed.

Timeframe: within 30 days to have a response to the Grants Workgroup.

Sara Bartholomew stated that in regards to the Air Quality System Database, that there are resources if you are having difficulty, please talk with your project officer who can provide you information. ITEP can also assist. EPA can also connect you with a Tribe who has been successful. On the EPA website in the "Tribal data toolbox" there is information available. Linda Ronca-Bautista at the TAMS Center can assist with this.

Beverly Harry from Pyramid Lake Paiute Tribe stated that they have had success in entering the data into the system; however, when you enter the data, there are errors that continue to come up. She further discussed their issues with AQS.

Justin Whitesides stated that he received a message from EPA that if they didn't enter their data, that they would lose their funding. He was not able to enter their data; the system does not work.

Gayle Honanie, Hopi Tribe talked about the training and the books.

Action Item: To identify the problems in AQS and to develop a short list.

Lead: Justin Whitesides; Colleen McKaughan to follow up.

Timeframe: One month

Action Item: What issues to discuss with newly elected officials.

Corn will send out to the group.

Enrique to work with Corn on the Action Items; Enrique is going to get it out to the Tribal Caucus well in time before the next meeting.

Certification & Training Plan Update – Nina Hapner, Stewarts Point Rancheria and Katy Wilcoxon, EPA Pesticide Office provided a PowerPoint presentation on the Certification and Training (C&T Plan) update.

The proposed federal plan for certification of applicators in Indian Country is a complicated plan and RUPs can only be used by someone who is a certified through an EPA approved plan.

Tribes have three options for certifying applications of RUPs.

1. Develop own tribal plan;
2. Enter into a written agreement with a state certifying agency; or
3. Develop a federal certification plan.

Currently there are 5 Tribes who have EPA approved plans (4 tribal plans, 1 federal (Navajo)). This means that in most of Indian country, there is no legal way to certify applicators to apply RUPs. In 2009 the TPPC requested OPP to prioritize this issue and establish a way to certify applicators in Indian country.

Review of key elements of OPP's proposed plan:

1. Establishes a method for legal use of RUPs in Indian country where no other EPA approved plan applies.
2. Allows EPA to take action if uncertified applicators apply RUPs in Indian country.
3. Certification is issued by EPA for RUP use in Indian country. Federal certification is based on a certification issued by a state with an EPA approved state plan.
4. Federal inspections by EPA or federally credentialed tribal inspector. Federal enforcement by EPA, if appropriate.
5. Tribe may further restrict or prohibit the use of RUPs through implementation of tribal codes, laws or regulations.
6. Does not preclude a tribe from developing a tribal plan or entering into a Memorandum of Understanding with state later.

Summary of July RTOC

1. EPA must provide better information and consultation

2. TPPC does not represent the interests of all tribes
3. Tribes must have control over RUP use on their land
4. EPA must recognize other tribal mechanisms to limit or control pesticide use, beyond just codes and ordinances.
5. Tribes requested an interactive webinar with OPP.

Since the July RTOC meeting, this is what has happened: In August there were letters submitted to Steve Owens, Assistant Administrator of OPPS, by the Pitt River Tribe, Kashia Band of Pomo Indians of the Stewart's Point Rancheria and the Summit Lake Paiute Tribe. In September there was a webinar for TPPC which are a part of ongoing webinars. In October there was a revised draft plan presented to TPPC.

New language: only certify applicators from contiguous states with some exceptions.

New language: language now includes "tribal codes, laws, regulations or other applicable tribal requirements".

The TPPC Recommended the following: 1. Plan must include requirement for applicators to notify tribe of RUP applications; and 2. OPP should host informational webinar prior to consultation.

The OPP Response: 1. Determine whether agency has legal authority to require notification; and 2. considering webinar.

The current timeline is during the Fall 2010/Early 2011; there will be Tribal consultation (letters to tribes announcing calls in late November). In 2011 to publish first federal register notice announcing public comment on draft plan and to also implement the final plan.

There are issues, such as 1. Should the plan include an opt-out provision (no RUP use at all)? If so, how? 2. Should the plan allow partial certification (for specific chemical or categories but not all uses), according to needs to the tribe? 3. Should the plan require applicators to notify a tribe prior to RUP application, if the tribe wants it? If so, how?

Q: Must be certified to purchase the RUP's?

A: Yes

Comment: purchase is legal however the seller does not question where RUP's are to be applied.

Comment: Arizona uses 1080 forms for notification; can region take the lead in developing a form?

Nina Hapner stated that the Arizona tribes required the 1080 form for agriculture. EPA does not know if they have the statutory authority. One of the questions that came up was would this be something the Region can do? The region has a better chance of meeting our needs versus on a national level? We have more contact with the Region than Headquarters? Consider ways to do this in our regions, especially when there is a system in place already. This will be discussed at 8:30am on Friday during the Conference.

Question: Where did the concept of contiguous come in?

Response: Pam Cooper, EPA R9 stated that many of the states/tribes have very good relationships and they know the applicators.

Question: For general use chemicals, which do not require any certification, regulation is really needed. These chemicals come with technical labels, technicians that are out in the field, getting hurt, there is no protection for tribal weed technicians, being protected by regulations. This is really needed; would like to see some type of protection for those who have to work in these conditions, near water or open lands.

Break (2:43pm)

Update on Air Issues: Laura McKelvey, EPA Community and Tribal Programs provided a PowerPoint presentation on Tribal Air Issues: Designations and Tribal NSR.

Many tribes are now requesting designation that reflects tribal boundaries and that early EPA decisions were often made without tribal consultation. Prior to 1998 Tribal Authority Rule (TAR), EPA had limited experience in dealing directly with tribes on designation issues. Tribes have sophisticated air quality programs.

Step 1 – send out letters - state recommendations for designation process – not required by tribes

Step 2 – get feedback on data – 120 days for consultation process

Walk thru the process and focus on issues

Jurisdictional boundaries generally based on counties – have not been considering tribal boundaries
Some of the issues for Tribes are state and local agencies have no jurisdiction over tribal lands whether or not they are part of the same nonattainment area; and many tribes receive pollution transported from upwind sources.
EPA to determine designation to be based on “9 factor analysis”: air quality data; emissions data, level of control of emissions sources; population density and degree of urbanization; traffic and community patterns; growth rates & patterns; meteorology; geography; and jurisdiction and boundaries.

Example cases: case 1: tribal Air Quality data showing attainment and has no contributing sources (surrounding area in nonattainment); case 2 tribe has clean Air Quality data, contributing sources and has requested attainment, the rest of the county is an Non Attainment.; case 3 tribe has no air quality data, contributing sources and wants an attainment designation but the rest of the county is Non Attainment; case 3 reservation is split between two counties, scenario A placing portions in attainment and other in Non Attainment Scenarios B designated into two different Non Attainment areas.; Case 4 tribe would like to have same designation as surrounding county(ies) but wants to be a separate Non Attainment area.

Tribal Authority Rule – (TAR) – provides overview and understanding, highlight key issues. Present Implementation and Outreach Plan (Title5). Concerns that Indian country didn’t have permitting

What New Source Review (NSR) Program requires;

1. Prevention of Pollutions – install state of the art controls, air analysis & impact studies, and public involvement
2. Non Attainment area – Install Lowest Achievable Emission Rate (LAER), offset emission, alternative site analysis, statewide facility compliance, and public involvement.
3. Minor NSR – 40CFR51.160-.164: cannot violate NAAQ’s or FIP/SIP/TIP, state requirements are very broad

The PSD Permit Requirements are: install best available control technology (BACT); perform air quality analysis to assess impacts on air quality; perform analysis (assess impacts on national parks and wilderness areas and other analysis); and allow for opportunities for public involvement.

The key issues in the final rule are the Minor NSR Program. The applicability is the minor NSR thresholds and the emissions test for sources undergoing modifications. The permit application is a case by case control technology review. The implementation is the rules in phases and the public notice requirements. There is also the NA NSR Program EPA will issue permits unless tribal implementation plan is in place. TIP could provide permit fees for a program. Permits take different times for approval such as a gas station vs. power plants vs. asphalt plant.

The schedule for the Final Rule is the proposed rule by 8/9/06; Federal Regulation publication by 8/21/06; and Comment period closed on 3/20/07.

Consultation & outreach history is that the 1990’s draft rule was developed by Region 9 & sent to Headquarters. In 2002 consultation letters sent to tribal leaders (tribes agreed to 3 onsite meetings) and in 2006 the proposal was presented. There will be trainings: 4 webinar trainings for tribes, EPA regional offices, air program managers, and tribal organizations.

The comment period was reopened & extended twice at Tribal request. The Tribal NSR WG organized to work on implementation issues.

2011 Conference Update: Rob Watkins from Pala Band of Mission Indians provided an update of the 19th Annual Tribal EPA Conference. The dates for RTOC are October 17, 18, 2011 and the Conference dates are October 19 – 21, 2011. The Casino has 500 sleeping rooms and a block of rooms will be set aside. Starting next month, they will begin accepting registration. Save the Date cards will be available tomorrow.

Review of Action Items

Lori Lewis reviewed the Action Items.

See attached list of Action Items.

Everyone was reminded:

1. If anyone is interested in being the list serve for the ITCA CATS Program to your contact information on the sheet in the back of the room.

Roland Chester (602) 258-4822

Roland.chester@itcaonline.com

2. If anyone is interested in receiving Air Quality information or to participate in conference calls, please send your contact information to Laura McKelvey.

Laura McKelvey (919) 541-5497

Mckelvey.laura@epa.gov

3. Everyone was reminded to complete evaluations and submit to Erica Helms-Schenk. There are raffle prizes.

Meeting adjourn at 4:10pm