

RTOC Full Caucus
US EPA Region 9 Regional Office
75 Hawthorne Street, San Francisco, CA
January 30, 2014

Opening Prayer-Wicahpiluta Candelaria, Rumsen Ohlone Tribal Member

Introductions/Roll Call

EPA Opening Remarks, Jared Blumenfeld, Regional Administrator, U.S. EPA, Region 9

Regional Administrator (RA) Blumenfeld thanked everyone for coming. He talked about the GAP budget nationally. It set for 2024 to increase by 2.5%. When everything else is going down 6% this is a big deal. RA Blumenfeld also acknowledged Walter Guggenheimer. Mr. Guggenheimer has worked in the EPA Underground Storage Tank program for 20 years and that today is his last day. RA Blumenfeld thanked those who came in early to participate in the RTOC retreat and work on our priorities; this really does us all well. RA Blumenfeld mentioned the Pechanga Band of Luiseño Indians and their receipt of treatment as state (TAS) under the Clean Air Act.

Presentation of Pechanga Band of Luiseño Indian Treatment as a State under Clean Air Act (CAA) sections 105, 107(d), 126 and 505(a)(2), Jared Blumenfeld, Regional Administrator, U.S. EPA, Region 9
Certificate was presented to Pechanga Tribal Councilman, Andrew Masiel, Sr.

Pechanga Council Member:

- On behalf of tribe, people of Pechanga, thank you, they worked on this for a long time.
- This shows strength and exercise of sovereignty. The city of Temecula borders the Tribal Lands.
- The tribe will share the TAS for air with the city of Temecula.

Drought Situation

- Governor issued emergency drought declaration.
- Jared asked Jane to really think internally about how tribes relate to Cal FEMA and Cal Fire for fire protection planning.
- EPA will be talking with the state on how EPA works with tribes and make sure tribes are included in planning. EPA will see what people can be brought to the table in the upcoming RTOC meetings.
- Nevada is driest state in nation and Arizona is not far behind it. All of us at this table have a big role.
- Comment: there needs to be ground water protection laws in place.

Questions and Comments to RA Jared Blumenfeld:

Solid Waste Agency-wide Plan

Melody Sees: is Region 9 EPA going to be on that task force for solid waste agency wide plan?

RA Blumenfeld: They are going to be good troopers to implement it, the same for solid waste planning issues.

Marta Burg, Legal Policy Advisor: There were couple of points raised yesterday related to national multi-agency activity under the infrastructure task force umbrella. It sounds like good specifics to address solid waste related issues. The issue of concern there is asking if we could participate in how that sub group is chartered and ensure that there is tribal participation, Michelle Wilson said that chartering the sub group is an internal matter and that tribes shouldn't be involved in it until after. We're wondering why there's that shift in attitude, and recognizing the strategic measure related to open dumps is being proposed to remove it from the new version of the strategic plan. We asked if there could be tribal participation. Again she said developing it will be internal matter, and after they come up with proposals then present them to the tribes for consultation. Question is: Do you have suggestion as to how they may respond to that approach?

RA Blumenfeld: Michelle Baker does an awesome job. Executively RA Blumenfeld thinks tribes should be at the table, EPA is here to serve the tribes and tribes are the client. Reasons why we have RTOC is so that way tribes could explain what polices should be in their own voice. We [EPA] do need to be involved in the beginning. We want to be good representative of you.

Alex Cabillo: Two things came up this week that has to do with the GAP guidance and solid waste strategy. One of things seems to be saying is, “no you can’t do it that way.” Would ask from EPA region 9, ways in which we can do something together instead of ways we can’t do things together.

RA Blumenfeld: We [Region 9 EPA] belong to a larger organization. We do want to work on how to get it done with you. On GAP guidance, we want to work with you to explore that. There are lots of areas where there’s not much discretion. (Asks for our patience.) Not going to get changed very quickly. We are implementing what’s on the books.

Issues Review from Fall RTOC

- 2 items Lori Lewis was asked to highlight is: one was drought related and dealt with emergency response and flexibility in working with work plans. It was determined that it was necessary to draft program language that would list eligible clean water act 319 non-point source fire prevention and post fire activities. That language is currently in the process of being finalized.
- #8- An action for caucus to nominate a Region 9 tribe or tribal person to participate on Tribal Grants Council. If interested in tribal grants council talk to Laura Ebbert.

Respect our Land (Video & Discussion) Brenda Begay, White Mountain

Delbert Altaha for Brenda Begay, she couldn’t be here today.

- Information Film project is a GAP work task force for environmental outreach.
- Environmental Protection Office (EPO) hired White Spring Creative out of Mesa, Arizona to do the film.
- Project took about 5 months.
- Tribal Professional Service Agreement was put in for White Spring.
- White Spring and EPO coordinated the script and scenery of the film.
- Film was shown to tribal council who requested extra copies, for schools and other places.
- The film covered all the main environmental issues on the reservation.

Q: How is film being used to get the word out?

Delbert Altaha: Have lot of tribal departments and programs on reservation, schools and others that go out and present.

Q: Is there any possibility that other tribes could use this film to show to general councils?

Delbert Altaha: It’s out there for everyone to use.

Corn Antone, Tribal Co-Chair: We can get a copy and put on RTOC website.

Break (Tribal Leaders leave for Meeting with Regional Administrator)

Corn Antone, Tribal Co-Chair thanked all the tribal leaders attending as they went to the Tribal Leaders Meeting.

Federal Certification and Training Plan for Pesticide Applicators of Restricted Use Pesticides (RUPs) in Indian Country, Katy Wilcoxon, US EPA Region 9 Pesticides Office (power point)

Overview

- Finalized in February 2014.
- Doesn’t require applicators or EPA to notify tribes. To rectify this, everyone certified to apply RUPs will be listed on a publicly available database.
- Nationwide Plan implemented by regions.
- Doesn’t require additional training, relies on the state certifications for the RUP.
- Certifications are free.

- Allows an applicator to apply RUPs anywhere in Indian Country where the boundary of the tribes is shared with a state.
- Navajo Nation has own Certification and Training Plan.
- Doesn't prohibit the tribe from developing its own plan.
- If find an applicators using RUPs without a certification, this violation goes to EPA, all other violations of label doesn't change the way a tribes does enforcement.
- Webinars will be held – dates being scheduled.
- Letters have been sent to Tribal Councils and Environmental Departments.
- EPA would like feedback.

Q: Are there herbicides? Does this apply to this? Yes it does.

Q: Marla Stanton, she applied for BIA noxious weed grant. Last year they said if you have the restricted pesticides they won't fund you anymore. She [Marla] has certification through state of Nevada. They can't get those (restricted pesticides) through BIA noxious weed grant. Concerned that RUP applicators will assume tribal credentials won't apply.

Katy Wilcoxon: Issue is that BIA requires certified applicator to apply product. Submit application to our office showing certification then issue federal one that will fulfill requirement.

Marla Stanton: BIA is not allowing restricted pesticides as of last year.

Katy Wilcoxon: EPA has been speaking with BIA on a national level. This could be followed up at the next RTOC meeting.

Marla Stanton: Concerned that RUP applicators will assume tribal credentials won't apply.

Katy Wilcoxon: That has come up and working to assure jurisdiction issues are understood.

Dave Taylor: Is there a differentiation between tribes that have pesticide enforcement grants from EPA vs. Region 9 that have pesticide enforcement grant.

Katy Wilcoxon: This plan applies everywhere. There is some differentiation between tribes that have pesticide program and inspection programs specifically.

Marcy Katzin: In regard to implementation of certification plan, if tribes that currently have authority in their pesticide program to do inspection and enforcement, they will be doing inspections to see if the applicators are complying with the requirements in this plan.

Nina Hapner: Discussion on how to properly notify pesticide applicator in tribal areas, it needs to be clear to them that when they are applying on tribal lands where there is pesticide enforcement programs, some of the tribal inspections are still going to apply to them even though they have federal certified license.

Christie Hansard: Suggests, in addition to list of applicators that can work on tribal lands, a list of products that are restricted use.

Bill Campbell: There are tribal lands that overlap states as well as regions. Is there going to be any issue there?

Katy Wilcoxon: An applicator has to be certified by one state that they intend to apply RUP's.

Beverly Harry: Wanted to thank you [EPA] for working hard on different kinds of certification. They applied for grant through BIA. Not sure how the regulatory process is being communicated through to the Phoenix area office. Seeing more concentration of pesticides in water ways. Dealing with issue of pollutants in their water. There are a lot of cultural resources that we need to protect.

Jeff Scott: He had conversation set up during holiday with head of pesticide office. Right now anyone using RUP on tribal lands actually doesn't have authority to do that. No way to give them that authority right now. This is plugging that hole. What's been true in past if someone got state certification to use RUP they could use. Open to our ideas about how to deal with this.

Lunch-

Announcements:

John Parada- Los Coyotes Band is planning watershed management training for May 6-7, 2014. Native American Environmental Protection Coalition (NAEPC) will be contact for registration. Contact Christine Foster (NAEPC), Tiffany Wolfe (Rincon Band of Lusieno) or John Parada (Los Coyote).

Break

The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes Representative from the Office of Resources Conservation and Recovery- Federal, State and tribal Programs Branch Michelle Wilson

- Wants to emphasize that solid waste management in Indian country was a federal responsibility.
- We have a commitment working with other agencies to assure that using resources as much as possible.
- They are an active member of federal infrastructure task force. Working part of that group to do best they can for us with limited resources. Process they can deliver best services for resources to us is by supporting sustainable waste management through integrated waste management plans. A bit of background on that.
- Agency wide plan was signed by Mathy Stanislaus in November 2013.
- Main elements of plan: major focus is sustainable programs.
 - o Looking how we can give best programs to the tribes through integrated solid waste management plans.
 - o Numbers of agencies do have responsibilities in tribal area.
- Going to provide funding for support for development and implementation. Tend to direct staffing through priority of integrated solid waste management plan.
- What they intend to do is to work with existing information they have. They believe it's most important for a tribe to set own solid waste management plan goals and criteria. EPA funding going to be primarily in this area to work through GAP.
- Have two performance measures with development of integrated waste management plan and cleanup closure and upgrade of open dumps.
- For 2013 moving open dump measure to focus on sustainability aspect of program.
- Committed to developing a good performance measure. Want to listen to tribes and interact.

Nina Hapner: When presented to solid waste some workgroup issues, we asked to have someone from Indian Health Services to be there. Questions came up on the Indian Health Services database. Was any one there? Did you have an opportunity to have any of those questions answered?

Michelle Wilson: They were contacted. No, has not had a chance to speak with them.

Nina Hapner: Imperative that I.H.S work with EPA to rectify the situation regarding the database. There is a lot of inaccurate information.

Michelle Wilson: Not sure whether or not those tribes in region 9 are located in one of those Indian Health Service areas or more than one. They are working with Indian Health Services making sure they are truthing that data. These surveys are relatively simple to complete.

Beverly Harry: This amount of inefficiency with this transition is going to cause a lot of frustration to tribes. This continuing degradation of level of service that is given to tribes is only to provide service of life or limb. Want to find out from you where you're to have I.H.S maintain that service that is very important to tribes.

Marta Burg, Legal Policy Advisor: Wondering if we could put aside 5 minutes for drinking water/waste water workgroup. Sounds like we need to re-activate the group and need volunteers.

Linda Reeves: Revisions to regional drinking water tribal set aside guidance being done. Soliciting volunteers to help revise guidance. Just now looking at discreet revisions in guidance.

Rob Roy Announcement:

- There is a Solid Waste Work Group sign-up sheet.
- At last RTOC there was discussion on reinvigorating the EPA Region 9 Solid waste workgroup. Solid Waste workgroup is now working with Jenny Stevenson of EPA.
- A letter has been put together for Council about the Agency Wide Solid Waste Plan.

NTOC Report and Updates

Syndi Smallwood:

- Elections: NTOC Tribal Co-Chair, Billy Means, Region 10; Vice Chair: Wes Martel, Region 8; and Secretary: Gerald Wagner, Region 8.
- This year is the 30th anniversary of Indian Policy and 20th anniversary of NTOC itself.
- Met with Administrator. NTOC will be sending a list of requests to finally address items both in Indian Policy and the memo that have not been dealt with.
- NTOC developed a work group that will be dealing with how to work with national work groups.
- Met with assistant administrators and made presentations to them on funding and issues.
- Talked a lot about fracking (hydraulic fracturing). The Administrator wants to hear from tribes on climate change as far as expanding partnerships with tribe.

Alex Cabillo: -

- Reiterate that on fracking, a group at the conference in Lemoore, California said they had vital information on fracking.
- Talked about climate change, another area was network exchange, a data question, on water data and air data. There is still a big question in headquarters that the information exchange is a vital component of the headquarters work. What it really is for is mechanism where states can submit their regulatory oversights. They've created an opportunity for tribes to participate in that process.
- Talked about mining a lot. There is a focus on quality. As we look at quality we need to look at quantity. We need to be looking at those entities like mining operations and their extravagant water budgets that are wasting and destroying water.

Marta Burg: Related to the memo proposing to prepare for the new administrator and wondering if the solid waste could get into that.

Alex Cabillo: They are very keen about this [memo for new administrator]. Marta will send a memo to Alex Cabillo and Sydney Smallwood next week.

Rob Roy: Was disappointed that NCAI was denied the grant this year to continue work to advocate for exchange network for tribes. He has not seen much advocacy from officers on exchange network. Is that something that might change going forward?

Audrey Johnson: As for the exchange network, tribes can apply annually. The RFP got more daunting. It's up to 25-30 pages now. In the past it hasn't been something tribes have gone after. With new tools that are coming out from headquarters and EPA with data analysis, more and more tribes are willing to actually go for it. Tribes need to make sure they have an IT person right now to manage that grant.

Kristen Gullatt: It's not a user friendly system. EPA hasn't pushed it as much. The funding pot is very small and competitive.

Laura Ebbert: If you are collecting data on any EPA media grants there are folks to connect with.

Bill Campbell: Tribes in his area have dumps they would love to clean up. Their funding has been cut back so much they can't afford it. Tribes that have large land holdings are finding that there are commercial wastes dumped on their property.

Alex Cabillo: Will be more thorough and detail next time when reporting. One of things emphasized to office of water is the work that tribes are doing in protection of outstanding tribal resource waters.

Co-Chair Antone – Annette George-Harris is Nevada representative for NTOC.

Tribal Caucus Report-Co-Chair Antone

- Target dates for strategic plan: at next meeting [April 2014] hope to have review. In July 2014 we want to approve this document.
- Power point presentation by Alan Bacock. Out of that discussion came 3 items:
 - o 1. Provide template for tribes to support us.
 - o 2. Template for tribes specifically in California, requesting that the governor's office or liaison help encourage better consultation and coordination between tribes and local governments.
 - o 3. Develop a draft position for tribal caucus showing impacts to tribes because these large scale project but also encouraging use of distributing generation.
- Presentation by the California Ocean Science Trust looking to work with more tribes on California coast.
- Short presentation or request by Tom Keegan and Marta Burg on headquarters revised drinking water. Sign-up sheet on door if interested in work group
- Work group reports:
 - o Kate Sloan - Consultation work group: working on the TEK (Traditional Ecological Knowledge) document, the suggested comments that RTOC made to the document were not well taken when the document was taken back to the TSC tribal caucus, and Kate Sloan needs an alternate.
 - o Nina Hapner - Pesticide work group: will have call before next RTOC; TPPC meeting has new facilitator - Inter-tribal Council of Arizona (ITCA); and website is up and online.
 - o Syndi Smallwood - Air work group: air grants to be in by Feb 18, 2014; National Tribal Air Association (NTAA) has new facilitator – Institute for Tribal Environmental Professionals (ITEP); and website is: www.ntaa.org.
 - o Sarah Ryan - California issues work group: inviting tribes to come to sessions.
 - o Syndi Smallwood - Budget work group gave a report on current status.
 - o Charter work group: working on some issues that have to do with elections and it is hard to get primaries to get alternates.
 - o Rosanna Marrufo gave update on conference.
- Kate Sloan, Northern California, was very concerned about the drought declaration.
- There was a question on what is the hold up on getting RCAC's (Rural Community Assistance Corporation) contract signed.
- Blind interval testing, mature tribes need this type of testing to build integrity with their programs.
- Concerns from Eastern California tribes on GAP and how it's being implemented.

Jeff Scott:

- Information on budget. We don't know how much were going to get yet. We are anxious to find out. EPA will share information as soon as received.
- Drought declaration waiving CEQA and how were overseeing CWA enforcement and the other one being the Nevada tribes request for us to do more enforcement under the CWA.

Kristen Gullatt: Jared Blumenfeld tasked Jane Diamond with drought issues for EPA. She is meeting with the state board on Friday. Regarding drought, we are creating an EPA internal workgroup.

Ken Greenberg: Regarding clean water enforcement section we are aimed at waste water discharges, storm discharges or protection of wetlands.

Beverly Harry: Very concerned about pollutants and concentration of pollutant in water ways. With these types of conditions provides an issue to fresh water fisheries. Wants to reiterate the need for enforcement from EPA during this time when there may be more of a concentration of pollutants in waterways.

Kerri Vera: Suggestion for enforcement department: on Tule River they recently had non-point source inspection. When they got call from enforcement division it was very abrupt. They have had a non-point source program for 14 year. There was no dialogue at all from EPA representatives. Suggest that something to be a goal to find out from the tribe what they're doing.

Dave Taylor: Regarding sampling and analysis, there are probably 6 different kinds. Their general policy, for every 10 samples you take you should be taking one blank of verification.

Beverly Harry: Pyramid Lake Paiute Tribe been operating a water quality lab. Probably before the time of quality assurance and quality control, Pyramid Lake was already operating with different fuel protocol and lab protocol's. USGS would send a vile that had a known amount of known particular kind of nutrient. Had to go in and test this particular unknown concentration. Most of time scored 4.4, meaning they were doing excellent work. Was hoping this program would be brought back because it was an excellent program.

Dave Taylor: EPA did have a performance testing program. EPA decided at some point that financially they could no longer support this program. If you want to continue to receive those kind of samples, those would have to purchase from a private vendor.

Laura Ebbert: Recognizes that under the new guidance and guidebook there are things that EPA can no longer do that they used to do. We should be sure we are writing those things down. We should be taking note of places where we feel we are losing critical capacity development opportunities. They all have a great sense of the important work they do together.

Alan Bacock: Share his concerns. Looking at consultation for example, a lot of various small tribes within eastern California are heavily influenced by decisions of Federal agencies and local governments and we can't anticipate what they desire to do. A lot of planning they [tribe] comes up against is not their plans.

Laura Ebbert: Great example of GAP, will commit as an action item.

Alan Bacock: Second thing: part of the limitation is their ability to truly engage with city of Los Angeles (LA) and LA Department of Water and Power. If EPA requires us to move forward in the direction they are asking us to then we want support to be able to pleat out water and land issues that exist within eastern sierra.

Jeff Scott: Reiterating, how seriously he takes what EPA is trying to do here. We have a lot of struggles to overcome. He is impressed by energy of the group here and appreciates folks who come to meeting. Happy to be a part of this and all extra hours people spend.

2014 Conference Update-Rosanna Marrujo

Looked at Thunder Valley but the facility is not large enough. The 2014 conference will be in Sacramento, California at the Holiday Inn Capital Plaza, October 14-16, 2014. The RTOC will be on October 13, 2014. Information will be on the website.

Next RTOC meeting: **April 29, 2014 to May 1, 2014 in Santa Rosa, California at the Hyatt Vineyard Creek Hotel and Spa.**