

RTOC Meeting
October 18, 2011

Opening Prayer

Welcome/Opening Remarks

Chairman Robert Smith welcomed everyone to Pala and the Conference. Co-Chair Antone presented Chairman Smith with a Pendleton blanket.

Keith Takata, Deputy Regional Administrator thanked Chairman Robert Smith for hosting the RTOC and Annual Conference. This is the 19th year we have had the conference. It goes back to Felecia Marcus, who was the Regional Administrator who started then and is the keynote speaker this year. Under her, the conference was held 8 years, 8 years under Wayne Nastri and 3 years under Jared Blumenfeld. Here we are, it is amazing. Mr. Takata thanked Shasta Gaughen and Rodney Watkins. Last year the conference was held in San Francisco, this year it is great to be back in Indian Country. He is looking forward to seeing the wastewater treatment plant this afternoon.

Regarding the budgets and the federal budget process and how EPA goes about tribal shares should be. You all use it to put your funding together. Sadly, we are all going to have to wait. We don't have a budget for FY12, as we are under a continuing resolution. Congress is waiting for the Special Committee who is dealing with the deficient. It is going to take awhile, he promises to keep us informed.

At the last RTOC, Bob Perciasepe and JoAnn Chase attended the meeting, and there was a spirited discussion on the guidebook. It was good discussion you all were frank with Bob and Joann. Joann was feeling a lot of pressure to get the guidebook out. The comment period has been extended to November. We have been talking a lot about the process and consultation. We are going to start talking about problems with guidebooks. We would be happy to bring your comments to Headquarters but you can bring your concerns to Headquarters which would all that more powerful.

When the consultation policy was being talked about, we really didn't pay any concern because Region 9 has their own. With the national policy, we have been getting many more requests for consultations. We need to do this in a efficient and respectful manner. How best to do those notifications. Should Headquarter do the National Guidance. Should the Region do it the same? We are working on those issues. Who should do those consultations? Permits or actions within the regions, the regions should do them. But

there are “in between” you can get an update on specific activities, there is a website and you will see all the activities.

We are looking forward to the conference, it represents the good work you all are doing. Jared will be here tomorrow and is facilitating a panel. Keith again welcomed everyone and thanked the Pala Tribe and wished everyone a great conference.

Co-Chair Antone thanked Keith Takata and asked Lorie Lewis to review action items.

Lori Lewis stated that the action items from the July meeting are on the website. The action items for this meeting are:

- Guidebook and consultation is in progress
- CWA 106 survey, 19 assessments received. Co-Chair Antone was unable to send out, but is going to do that within the next week; encouraged tribes to fill it out.
- Brownfields grants are due November 28th.
- 10 action items that came out in July and all have been completed or are in progress.

Announcements: Lori stated that she missed the July meeting; however she is back and will be keeping track of action items and key thoughts.

- Consultation Workgroup sign-up sheet is up and if interested please sign-up
- The Tour this afternoon, there is a sign-up sheet, only 25 slots for the bus however we can car pool. The tour is 1 hour long. If you are attending meet out in the front at 3:00pm.
- If you have cell phone or electronic device, turn off or mute.
- Any upcoming training that is announced will be posted on the white board.
- A reminder to fill out the evaluation before you leave today; the feedback assist Co-Chair Antone in preparing for the next meeting.

Co-Chair Antone conducted Roll Call.

Everyone introduced themselves.

Co-Chair Antone acknowledged and thanked the tribal leaders for attending the meeting.

Tribal Caucus Report

Co-Chair Antone reviewed the RTOC Tribal Caucus Meeting held yesterday.

- Blessing by John Villalobos
- Welcome by Theresa Nieto, Tribal Treasurer

- Review of Arizona Representative elections and successful nomination, Brenda Ball from Ak-Chin Indian Community
- There is a Representative vacancy in Nevada, after this meeting, Co-Chair Antone will work with EPA to get the position filled
- Review of action items that Co-Chair Antone received. Co-Chair discussed the process on how he works with each region to receive action items
- Northern California items:
 - o Request for RTOC form letter or recommendations for commenting on GAP guidance to help Tribes prepare responses.
 - o How does EPA R 9 intend to proceed (how will they implement and how will it impact tribal programs?) in light of OIG GAP report (2008) and the recs that come out of the proposed Guidance?
 - o 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?)
 - o Update on the Indirect Cost Rate policy change – did this happen (ie: was it published in the Federal Regulation as a final rule?)
- Make recommendations / letter on GAP Guide Book. We are working on a letter and 2 page documents that will be coming out in early November. How does EPA tend to proceed in light of report?
- Requested an update on FY12 budget. If we signed grant agreements is our funding secure?
- Requested an IDC policy update?
- Central California items:
 - o What region were the Tribes in from USEPA's 2007 Audits? Results made public?
 - o Update on the Tribal Program Managers position.
 - o Ask Region 9 EPA Staff for follow up on the tribal request for a Region 9 Certification and Training Plan.
 - o Will USEPA ever have the National Environmental Conference on Environmental Management again? Last one held in summer 2008 in Montana.
 - o What Consortiums are currently funded by GAP?
- There were other items discussed but internal for Tribal Caucus.
- For the NTC report, Co-Chair Antone will do a brief review as Clay Bravo will present later. Clay mentioned they are still working on the invigoration process and revising their charter and will send the timeline so that Co-Chair Antone can email to everyone.
- Mike DeSpain announced the GAP On-Line training which is posted on the white board.
- Presentation on the guidebook and the Workgroup addressed it by piece by piece, each media submitted to the Workgroup. With regard to Chapter 9, in Clay's

discussion with Luke Jones who is considering on omitting chapter 9. Comments are still being gathered, tribes should make comments. Conference calls will be held and the template will be sent out.

Marta Burg added:

- Gap solicitation, attachment E – when it is revised by EPA, do tribes want to review or not? The consensus was to review.
- Strategic plan – based on priorities made from several years ago. That was the groundwork, a few were GAP, water, solid waste, there were Workgroups for those. Some of the Workgroups that still need input from are: border, air and pesticides. A draft document will be sent out in December and hope to have it final by winter meeting. There was discussion on whether or not other regions have a strategic plan. Does EPA know if any other regions have plans? Let us know. For the Workgroups who haven't met, there will be conference calls between now and the holidays.

Work Group reports were provided by:

- Pesticide report by Nina Hapner
- Emergency response by Alfreda Jake
- Announcement of Circuit rider by Dan Mosley
- Announcement of IHS presentation on Drinking water system by Tom Keegan

Consultation discussion.

The national guidance, 10 pages, a lot is relying on regions to implement. We have had a Workgroup (WG) and worked with EPA to develop a document. We need to create an implementation plan. It is time for the consultation WG, to sit with EPA and decide to take the existing document and make it better so it complies with national document and work with your needs. Nate Lau did ask Marta to forward the request to make sure we have the right body of volunteers to participate in the WG and work on the document.

Co-Chair Antone asked if there were any additional comments to be added to the report.

Teri Red Owl added that there was a request of a 60-day extension on guidebook. Marta Burg stated the purpose of that request is only effective if Chapter 9 is included. If Chapter 9 is going to be omitted, then there is no need for extension request. However if Chapter 9 language is included, then the Tribes will be requesting an extension as it is the “meat” of the document as it is the implementation component.

Keith Takata stated he spoke with Luke Jones last week and since Clay Bravo spoke with Luke Jones yesterday. Keith will prepare a letter to Luke to ask about clarification and/or decision on Chapter 9.

Time frame: to be completed by next week.

Marta Burg announced that many brought her flash drives to upload the presentations provided yesterday. She does have the documents available if you are interested as the presentation is too large to email.

Tribal Outreach on Pursuing Options for Rulemaking Regarding Waters of the United States Under the Clean Water Act

Damaris Christensen, Office of Wetlands, Oceans & Watersheds and Chip Smith, Office of the Assistant Secretary of the Army provided a powerpoint presentation.

Ken Norton: Chair of National Tribal Water Council. A lot of comments, on groundwater connection the hydrologic connection, fully understanding CWA does not address wetlands and femoral. Tribes look at it as holistic. Look at groundwater recharge as waters of the US.

Beverly Harry: question regarding funding; In some cases, tribes pursuing 401 certification & 404 permitting. The authority has been transferred from corps to tribes, with the amount of work and duties that go with that permitting, there is no funding that comes along with that. Tribes have to take on that added responsibility for the permitting process. Is there any type of response that you can give to tribes?

Response by Damaris Christensen: she can't speak directly of funding, because she doesn't work in that capacity but she encouraged tribes to comment. There is a 3% overall increase, Tribes will see an impact and they are interested in those impacts. Chip added: they are required to do an economic impact they will be interested in hearing from tribes.

Stephen Etsitty: thanked Damaris & Chip for the presentation. Does EPA know what you're doing? Process wise, what we have been asking for decades. You haven't started writing a rule right?

Damaris Christensen: we are talking about rule making and moving forward.

Steve Etsitty: but you're starting the consultation process early.

Damaris Christensen: this rule making would probably be on fast track.

Steve Etsitty: he appreciates that. We have been following court case and are interested in the consultation process and for Navajo Nation are interested in jurisdictional process. We

need to have a meaning avenue for consultation before rules are proposed. Process wise would like to pat them on the back.

Steve Etsitty: requested clarification on definition on interstate waters – is there a possibility of analysis that definition? Maybe include boundaries of tribal and state lands.

Chip Smith: it has been a tough issue for us. He requested Tribes to make comment on that.

Steve Etsitty: you are required to impact analysis?

Chip Smith: if they went into rule making, they would do a formal economic analysis. EPA and the Army Corps of Engineers want to do a voluntary environmental assessment and look at the cost that is associated with current practices if there is a % of change. They are looking at administrative cost to process applications, training, a general sense for agencies if they propose a final. They have gotten a lot of comments on the cost for implementation from both state and tribes.

Steve Etsitty: tribes will be interested in, land into trust, what are those impacts. Pay attention to your resources and work with other agencies. If you run into cost please let us know so we can share with other agencies.

Robert Goodwin: Permitting process: recreation dredging.

Ronnie Ben (Navajo Nation): with regard to construction activities, there is a lot of dredging and filling. Contractors looking for materials, looking for arroyo's, drainage areas and they take material out and leaving as is. The contractors do not remediate. The Army Corps of Engineers needs to look at permitting and guidance for that. The damage is done and there is no remediation. Also, are tributaries included?

Rhonda Pope: tribe went through the 404 permit process. One of the problems is nobody knew what policy was in effect, was it Army Corps of Engineers, EPA, or SHPO? The process was a nightmare. There is a lot of mining activity around her reservation. There needs to be a respect in dealing with tribes, there was not a true understanding of tribes. There was an encroachment of their rights. They came across an issue with NAGPRA and Army Corps did not know how to interpret the laws. There needs to be true education on working with tribes.

National Tribal Operations Committee Report/Updates

Clay Bravo

- The NTC is working on the Reinvigoration process, the changing of the additions/amendments to the charter. The charter is going to guide us, through the

process on how to communicate with you, gather the information from the regions and forward the priorities to the agency. Michelle Depass and Joann Chase attended the meeting in San Francisco and they are dedicated to ensuring this process takes effect and is completed. The goal is to finish by this year. How are we going to coordinate with the other workgroups (air, water, science, pesticides) NCAI, NTEC? All these groups that are forwarding issues to Headquarters however the NTC does not get the information. NTC should be aware and comment and make changes to it. As the RTOC, you have that same responsibility.

- Endorsed two items with the Tribal Science Council, climate change and tribal ecological knowledge. Will be meeting with them in October at the Cherokee Nation to discuss next steps.
- Appointments to NEJAC, Monica from Region 5 and Stephen Etsitty may assist. The disparities between large tribes and smaller tribes in environmental justice is very important.
- With regard to the Budget, we are in a continuing resolution process. Across the board reduction that took place. Clay wanted to be ensured that tribes would not endure cuts.

Stephen Etsitty

- They met in DC in mid-July and there was a debate in DC in Congress & President about the debt ceiling. There was an agreement but the formulation of 'super committee' they are finding \$1.3 trillion dollars (some amount) for federal budget cuts. They have a deadline by the end of the year to locate those. All these things happen after we submitted our budget request for FY2013 to EPA and OMB. He thinks, the budget we submitted is wiped out, the game is changed. Anything we felt positive in July, is suspect and he imagines the NTC needs to see what the real landscape is in light of the budget deficient. We should expect some serious cuts within the next 10 or so months. The situation is serious not only for us, but for our colleagues at EPA. He has not been on the last few conference calls, but has been listening to the news on the budget cuts. Need to gather up the budget Workgroup and how will we defend against budget cuts.

Marie Barry

- Often NTC is briefed on legal cases that are pending. They try to do that once a quarter. The next briefing will be on the next call, Region 9 will get a briefing the status on the next call. However they have not been briefed on the last call.

No questions/comments to the NTC report.

Office of Chemical Safety and Pollution Prevention (OCSPP) Tribal Strategic Plan

Announcement was made regarding a webinar EPA is hosting regarding NPDES pesticide general permit. It is a court order and must be implemented by November 21st There are several questions from tribes what this means for them. The webinar will be held Thursday, November 10 at 10:30 PST. If you have pesticides that are applied over or in water, you may be interested. Co-Chair Antone will provide an email with additional information.

<< FY2011-2016 Tribal Strategic Plan powerpoint>>

Marie Barry: how can we move if it's not coming from the region? How can we get that message across at Headquarters?

Pam Cooper: We are working on that. We will be communicating that to Headquarters (example of California issue). Pam asked Ken Norton if he could get the message out to the National Tribal Water Council.

Marie Barry: there are a lot of different tribal strategies from EPA, Enforcement/Environmental information, if everything ties in, it is easier to coordinate.
Pam Cooper: that is great proposal.

Ronnie Ben: requested if Pam could elaborate on the general permit? Will it be a blanket permit to cover pesticide use for a particular agency or specific to application? Will the general permit be used for inspection?

Pam Cooper: she does not know. It is based on the Cotton Council Case. Do they need a NPDES? We do not know. We are waiting to see what happens. We are reaching out to the pesticide and water folks with the tribes. The contact person is Marcy Katzin, Tribal Liaison and her number 415-947-4215 or email katzin.marcy@epa.gov

Kevin Conrad (Cocopah): Tribal Universities and/or Colleges, are there similar opportunities for disadvantaged colleges that are not tribal?

Pam Cooper: this is a Headquarter driven objective & Karen Robinson at Headquarters is the contact.

Enrique Manzanilla: make your comment on this.

Nina Hapner: in yesterday tribal caucus meeting, the CTAG are looking to work with Tribes on developing training and using tribal colleges, extensions, any group that need training it

is not just for tribes that have cooperative agreements. She provided example letter yesterday and encouraged tribes to use as a template for letters/comments.

Goal 4 – EPA states that “much data has been identified at various governmental levels and organizations.” However, the Agency fails to identify where and what data has been identified. Further, are there any databases currently in use that would help to meet this objective 1?

When data is being evaluated, they want to make sure the area who are affected are a part of that evaluation.

The Lifeline model is unavailable to tribes to assess their communities. However, models are needed that everyone has the ability to use, and are based in consistent quality assurance and quality control. The Tribal Focus Exposure and Risk Screening Tool, also known as T-FERST, is such a model to which tribes have access.

All comments mentioned are in the letter in some shape or form.

Nina Hapner to send template/sample letter to Co-Chair Antone; who will send it by next week.

Response to Tribal Caucus Report

Enrique Manzanilla provided responses to the Tribal Caucus Report:

Marta Burg has a question regarding the guidebook. Given that the focus of the guidebook is implementation, new framework, agreements between EPA and Tribes is a concept in the guidebook. Historically at one time, tribes were encourages to developed TEAs. There was issue on how much EPA could sign-off on. So the question is, whether the current status, how Region 9 is treating these plans, potentially in the guidebook.

Enrique Manzanilla: does not know the answer to this.

2012 Conference Update

Teri Red Owl reported that Owens Valley will be hosting the conference next year to be held in San Francisco. The dates will be November 12 – 16, 2012. She is still working on the cooperative agreement and changes in the conference agreement.

Tom Keegan: requested to acknowledge the past recipients who have won the Connor Byestewa Award but to also include the Tribes who have hosted the conference.

Review New Issues/Distribute Evaluation Forms/Announcement Next RTOC Meeting Location/Closing Comments

Lori Lewis reviewed the Action Items:

1. Contact Luke Jones at Headquarters and find out status if Chapter 9 will be implementation; who: Nate Lau; by when: 10/28
2. Post presentation powerpoint on R9 tribal website; who: Willard Chin; when: 10/28
3. Provide comments to Headquarters on OCSPP; who: all tribes; when: 11/4
 - a. Send electronic copy of comment letter to Co-Chair Antone; who: Nina Hapner; when: 10/18
 - b. Send it on to RTOC; who: Co-Chair Antone; when: 10/22
4. Develop form letter for tribes to comment on GAP guidance; who: Co-Chair Antone; when: 11/7
5. Find out status of indirect cost rate policy change (send to co-Chair Antone); who: Gilbert Pasqua/Pam Overman; when: 11/7
6. Provide additional information on 16 audit (sample etc.); who: Gilbert Pasqua/Pam Overman; when: 11/7
7. Meeting notes out to people: who: Jackie Listo; when: 11/7

Items for next RTOC

- Update on GAP guidance and input to tribes
- Is regional policy/approach to TEA/TEPs consistent with Guidebook Chapter 3? Explore and discuss at or before next RTOC Meeting.

Next Meeting will be held during February 7-9, 2012 in Las Vegas, Nevada, hosted by the Las Vegas Paiute Tribe.

RTOC Meeting Adjourns

2:23pm meeting adjourned