

# WINTER 2016 FULL REGIONAL TRIBAL OPERATIONS COMMITTEE (RTOC) MEETING

January 27, 2016

Graton Rancheria Resort and Casino  
Rohnert Park, California

## OPENING / PRAYER 9:05am

Opening Prayer by Dan Mosley

## ROLE CALL/INTRODUCTIONS

Opening remarks by Co-Chair Bacock

Introductions were made around the room

Roll called for EPA by Co-Chair Michael Montgomery

Roll called for Tribal Reps by Co-Chair Bacock

## EPA OPENING REMARKS

Sitting in as RTOC Co-Chair for EPA is Michael Montgomery Associate Director US EPA Water Division.

Regional Administrator Jared Blumenfeld and EPA Land Division Leadership were not able to attend due to a prior engagement.

Opening remarks were given by Co-Chair Montgomery regarding the role of EPA in RTOC meetings and the higher degree of trust and consideration that should be given to Tribal environmental issues. Action items that were raised during the Reps retreat will be acknowledged and tagged for follow-up. Craig Wills was introduced as the new Grants Management Officer

## ISSUES FROM FALL RTOC

### LORI LEWIS, EPA FACILITATOR

17 formal action items were identified during fall RTOC. Responses to those action items are available on the website. Here are a few highlights:

Salton Sea issue – Project Officer Willard Chin worked with air division to have a conference call with seven tribes and 15 EPA staff.

Discussion on cross media issues was held. Tribes want more EPA involvement and they want to know what the role of EPA is.

Torres-Martinez Tribe could possibly be writing a letter to EPA RA requesting involvement and may be working with other tribes to see if they would be signing on with this as well. At this level a formal request would be the appropriate avenue to get EPA involved.

EPA is working the issues but this is a complex matter. This discussion will be moved forward and EPA will be working to address concerns. There are many Federal agencies involved with this and the Federal Regional Council may be a venue for further discussion.

Willard Chin will be point of contact for EPA staff.

Follow up Agenda Items - Many of the action items from the last RTOC are resulting in agenda items or mini trainings later today.

This afternoon is an ETEP Session, a session on GAP and a presentation about EPA's involvement with the NEPA process.

## NTOC (National Tribal Operations Committee) REPORT AND UPDATE

### ALEX CABILLO AZ, PAULA BRITTON CA, CLIFFORD BANUELOS NV

Alex Cabillo - NTOC was able to have a face to face meeting earlier this year in Albuquerque NM. Discussed assignments for the 2018 budget process and also strategic planning. Had issues and concerns with the lack of response from JoAnn Chase regarding the GAP Guidance and the 44 questions sent out from the NTOC to the AIEO (EPA's American Indian Environmental Office). There has been a lack of collaboration and progress with the AIEO regarding tribal issues. Would like to seek regional help with AIEO to see if AIEO could be more responsive and reflective of the needs of tribes across the nation. Looking into the charter and the scope of AIEO roles. A draft budget was sent out and information on that will be shared later with region 9.

Elections for executive positions were held and Billy Maines was re-elected to another term as NTOC Chairperson. Alex Cabillo was re-elected to another term as NTOC Vice Chairperson. Current Secretary was nominated and re-elected for another term.

Tribal Governance Group contacted NTOC to reach out for assistance with their Exchange Network. It appears that funding for the Exchange Network is diminishing while a different tech group, e-enterprise is seeing an increase in funding and engagement. There is tribal concern because representatives for e-enterprise are comprised of states with little tribal representation. Tribal Governance Group asked to make three tribal representatives part of this e-enterprise exchange process. Little outreach was done during the creation of the e-enterprise process, resulting in tribes not being offered the opportunity to participate effectively.

Clifford Banuelos – Regarding the transition document for the new Presidential administration, we would like to see emphasis on a list of priorities that has been narrowed down to seven: Climate change, water, air, toxics, healthy communities which include solid waste and GAP, environmental justice, enforcement and compliance.

Paula Britton – Spent time with strategic plan but felt like it was rushed. There was little time for discussion of problem areas such as the GAP Guidance. There was a conference call January 6, 2016 and a senior budget analyst spoke about the Omnibus Spending Act and brought up that there would be \$21 million dollars in implementation funding. Nobody knew about the spending act. Info is starting to come out about it, meeting minutes about it have been recently received. More information will be out soon, so hopefully it can be responded to appropriately.

The Omnibus Bill also contained changes to GAP for solid waste activities. When the GAP Guidance was issued there were strict restrictions on such solid waste services as transporting recyclables and backhaul. A 2 year moratorium was issued on implementing that specific paragraph in the guidance. This would give 2 years to help tribes get away from backhaul and transporting recyclables. The omnibus bill might extend moratorium for up to 4 years until 2020.

Question from audience: what is e-enterprise?

Answer from Alex Cabillo: Explanation of Exchange Network. It is a mechanism for states and tribes to convey and store environmental data electronically across the states and nation.

E-enterprise process was made to tie in all of the technologies, to have states and tribes to submit grants and data electronically as an alternative to the exchange network process. Tribes are not heavily involved in the exchange network process. E-enterprise is a chance for tribes to get funding and develop this mechanism.

Answer from panel: to help tribes understand the different steps of flowing data.

Comment from Co-Chair Montgomery: There isn't enough information on e-enterprise. It was a struggle to work with tribes to get them to be part of the Exchange Network to get that data into that platform. There isn't a place at the table for tribes to have input on that exchange. Need to find out about getting tribal representation on to what is going into this new platform and find out the implications of e-enterprise. See if they can get Andy Battin to come out and talk about this.

ACTION ITEMS by Co-Chair Montgomery and Gail Louis:

- Increasing tribal representation to 3 people in the e-enterprise process. Time frame within a month
- Bring Andy Battin, time frame for conversation within a month.

Co-Chair Bacock requests clarification from EPA about the 21 million dollars included in the Omnibus Bill.

Clarification from Laura Ebbert about Omnibus. It contains vague language that says there is 21 million dollars for states and tribes for program implementation. JoAnn Chase requested information from NTC on what implementation could look like for that 21 million dollars. The home of the 21 million is not the AIEO but in fact the Office of Air and Radiation. It is not certain if the implementation funds are for programs and activities other than Clean Power Plan. AIEO would still like input on good ideas from tribes but the money has been targeted for the Office of Air and Radiation to administer. Proposals should be focused on issues that the Office of Air and Radiation would react well to.

Comment from Melody Sees: What needs to be done is a recommendation from NTOC regarding the 21 million.

Comment from Alex Cabillo: Elaboration on email received about Omnibus. It was recommended to create a formula for distribution. This appears to be a challenge. This money does not seem like a large amount per tribe if it were distributed evenly.

Comment from Co-Chair Bacock: AIEO wants thoughts and comments about a funding strategy from tribes. There are communication barriers to find out what these funds will be used for.

Comment from Marta Burg: She has been communicating with different Tribal Caucus members about how e-enterprise and the Information Exchange Network fit together. There are several different tools for reporting information. People were also wondering if e-enterprise and the Information Exchange Network could also tie into these tools. More education about the different programs and how the data may or may not be related could be helpful. EPA needs to report the use and environmental results from GAP funds. Is this data being gathered, if so where? If the tools for collecting and organizing data serve a useful purpose like getting the reports of environmental results from a certain grant, they could be supported by tribes, assuming there developed properly with tribal input.

Comment by Alex Cabillo: We need to speak with Andy Battin and find out all the issues pertaining to digital data collection.

Comment from Paula Britton: Expresses concern over parameters and standards for where action item data is being kept. Wants to talk to tribes and find out what data should be kept as proprietary and how it would be kept.

Comment from Ondrea Barber: Tribal Exchange Network Conference will be in Albuquerque NM February 9-10 2016. On the 8<sup>th</sup> there are training sessions available regarding e-enterprise.

## **TRIBAL CAUCUS REPORT**

### **ALAN BACOCK, TRIBAL CO-CHAIR**

Bulk of day was reporting out from different areas and hearing Tribes different issues. A discussion was led by Ken Norton about baseline water quality standards. Comments and concerns were brought forward regarding this and hopefully will be explored later as things move forward. Annette George shared a success story of the restoration of a spring and recovery of the Railroad Valley Springfish. Talked about what the Infrastructure Task Force does and how they are identifying barriers in Indian Country on solid waste management activities, connecting the dots with federal agency resources and exploring funding mechanisms. The Tribal Caucus also shared comments to assist in the development of a Pollinator Protection Plan template. Topics and priorities for future RTOC were discussed and voted on. Hot topics included, effective outreach, groundwater management, GIS, staff development training for project management facilitators.

Some topics will be for full RTOC, some will be Tribal Caucus and some will be workgroup related.

#### **Specific Issues**

**Issues with ETEP** - Who is the signatory for this process. What are EPA's and tribes primary responsibilities within ETEP?

**Issues with GAP Online** - Technical difficulties with inputting information. See if it can be put into environmental exchange network to see what kind of outputs tribes can receive.

**Issue of the Navajo nation uranium leaks** - Want to see that economic impacts are included in assessments. Don't want this to become another Flint Michigan incident.

**Issue of the Flint Michigan lead contamination** – Tribes do not want to see a similar situation occur in Indian Country. Tribes would like to know what EPA has learned through this experience and how to avoid it being duplicated elsewhere.

**Issue with Nor Cal 401 process with hydroelectric dams** - Why do waivers continue to be approved if it means reduced water quality for Hoopa? The process is not being upheld by EPA so water quality is not meeting tribal water quality standards by the time it reaches the reservation.

**Issue with Fire and erosion** – This is affecting tribes in Central California and there is a need for emergency response training. Also tribes would like to know how to integrate in activities for emergency preparedness support through GAP.

**Issue of integrating ordinances into ETEP** - Tribes want ETEPs to be inclusive so they make sense to the tribal leadership and are more effective.

**Issue with Developing ETEP** – Will funding be funneled through GAP in the future only for projects? Tribes want to ensure that funding is not going to be merely project based

**Issue on How EPA is compiling the capacity development data for Tribes** - Tribes would like to review what EPA is showing others to show capacity development. Since the EPA is to track progress on tribal capacity activities and report that information, tribes want to see the information being shared.

**Issue on Lack of data sharing with the Salton Sea issue** – There are not enough monitoring locations around the Salton Sea. Conversation with EPA has started and it will be good to see how that conversation can be moved forward. There is a similar problem going on in Lake Henshaw with lack of data sharing. How can we get the proper data shared to tribes so they can make progress on the issues? How can EPA make data available that is important to tribes' issues?

**Issue with adequate visits from Project Officers** – Nevada tribes would like to see that there is enough funding for Project Officers to be able to come out and make adequate time for site visits.

**Issue of GAP training for new Environmental Directors** – would like to see this as something that could take place again.

**Issue of EPA engagement with local Tribal leaders** – Nevada tribes desire to see EPA engage with tribal leaders. ITC-N meeting would be a good place to meet and share what EPA does around Indian Country

#### **Issue for Facilitation and staff development training for RTOC**

**Issue with water quality assessment report** – Tribes are interested in bringing some additional impairments that are affecting tribes into the assessment report template. For instance, one tribe is experiencing degraded water quality due to pollution coming from a bridge crossing that spills into a local river. This issue will be handed over to the Clean Water Act Workgroup.

Question from John Parada: How can EPA help the tribes to make sure they are included as stakeholder to comment on such plans as ground water management?

Comment from Ondrea Barber: On RTOC website EPA posted a GAP allowable activity decision tree and ETEP simplified work flow chart. It would be helpful if EPA update those documents to include information regarding the position or person who is responsible for making these decisions.

Question from Melody Sees: The GAP training should be made available to any Environmental Director who feel they might need to learn about updates or just refresh their knowledge, not just new Environmental Directors.

## **PESTICIDE PROGRAM NOTIFICATIONS AND UPDATE**

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#### **KATY WILCOXEN, US EPA LAND DIVISION, WORKER SAFETY PROGRAM MANAGER, PESTICIDES PROGRAM**

Two programs make up the Worker Safety Program first is the Certification of Pesticide Applicators and secondly the Worker Protection Standard, which is a program for agriculture workers. The Worker Safety Program doesn't just protect the person using the chemicals, it also protects communities, community members, bystanders and the environment.

**Certification and Training Program** - Program is limited to restricted use pesticide (RUP). This is a specific high risk class of pesticides that have high risk to human health, environment or water quality. RUPs are used in agriculture, around homes, in construction and many different settings. As a tribe you may be hiring someone or have someone working within your tribe who is using RUPs and it is important to know if they have the proper credentials and training. Rules for the certification program are over 40 years old making them significantly outdated and are in need of being updated to protect human and environmental health.

#### Proposed changes to the rules

Make minimum age 18 to purchase RUPs

Require better training for people who work with RUPs

Aside from the 3 existing legal uses a new method for legal use of RUPs in Indian Country has been created.

Currently all tribes in Region 9 have a legal mechanism for them to apply RUPs

Tribe may be covered by a federal plan independently

Tribe may be covered by a federal plan nationally

Tribe may establish a tribal plan

Tribe may sign an agreement with state

Outreach was done in the fall, to get word out to tribes on these proposed changes and options.

**Agriculture worker protection program** – This is just for the realm of agriculture with rules similar to OSHA for workplace safety of people using all pesticides involved in agriculture only. This is limited to agriculture workers but has secondary benefits to the communities from protection of pesticide drift. Employer is responsible for providing the proper protection equipment for agricultural employees under this rule. This rule does not include people working in livestock operations.

Note\*\* WPS protects employees that work in agricultural settings like farms, but also protects pesticide handlers and workers that use and have contact with pesticides on forests, nurseries and greenhouses.

#### Proposed changes to the rules

Minimum age to do certain high risk activities around pesticides

Requiring training yearly as opposed to the prior rule of every 5 years

Requirement for posting warning signs around certain fields

These rules have been finalized as of September 28, 2015

2016 will be the compliance period for this time the old rules will still be in place.

Jan 2 2017 compliance is required with most of the revised WPS requirements

Jan 1 2018 compliance is required with all the revised WPS requirements.

#### **SONAM GILL, EPA REGION 9 PESTICIDES OFFICE, POLLINATOR PROTECTION LEAD**

Presentation on pollinator protection template for Region 9, discussion was held on this topic with same slideshow during Tribal Caucus.

Link to slideshow- [http://www.epa.gov/sites/production/files/2016-](http://www.epa.gov/sites/production/files/2016-01/documents/pesticides_program_updates_and_notifications_sonam_gill.pdf)

[01/documents/pesticides\\_program\\_updates\\_and\\_notifications\\_sonam\\_gill.pdf](http://www.epa.gov/sites/production/files/2016-01/documents/pesticides_program_updates_and_notifications_sonam_gill.pdf)

#### Co-Chair Bacock and Nina Hapner Tribal Caucus feedback items pertaining to pollinator protection template

The comments collected by tribes from the caucus have been recorded and were sent last night to you and today we will just share 3 of the most pertinent comments:

- Traditional Ecological Knowledge (TEK) needs to be incorporated throughout the template.
- There is a need for education geared across the board that includes such things as learning about what pollinators are and the function they serve, understanding and minimizing the effects and impacts made from pollutants and chemicals and

education about conservation and management practices as they pertain to pollinator habitat. The template that's developed should be meant to become an educational tool that can be used by the community.

- Funding resources should be included that are wide enough to cover a range of different federal agencies and foundations such as NRCS and others that may have an interest in pollinator protection.

## **PRESENTATION TO WENDELL SMITH**

A slide show was presented showing Wendell at work in Indian Country.

Tribal meeting participants shared stories, recognized the work of Wendell and presented him with gifts.

At the conclusion, a farewell speech was shared by Wendell.

LUNCH 12:15-1:30pm

## **BOB ADACHI VIDEO – BASIC INFORMATION ABOUT OFFICE OF INSPECTOR GENERAL (OIG) AUDITS AND FINDINGS**

### **BOB ADACHI, OFFICE OF INSPECTOR GENERAL, US DEPARTMENT OF EDUCATION**

Video presentation given about OIG audits and findings. Video focuses a lot on what not to do so tribes can avoid these federal audits. Audio on video was muffled and hard to understand during the session and in the future it is hoped that the video will be able to be placed online for viewing.

## **GAP EPA/Tribal Environmental Plan (ETEP) SESSION**

### **LAURA EBBERT, MANAGER US EPA LAND DIVISION TRIBAL SECTION REGION 9**

ETEP is an EPA Tribal Environmental Plan. ETEPs are required by the new GAP guidance. Every grantee that receives GAP money will engage with the EPA in developing an ETEP. Tribe's ETEP must cover all programs that EPA and the tribe are involved with. The ETEP will consist of 4 independent documents which included a Tribal Environmental Plan, Areas of involvement, Regulated Facilities Document and a Cover Memo. The ETEP is basically a road map that will enable you to show your Tribal Council and EPA where you would like to be in the future. It will help to communicate about short and long term goals and help you develop a better work plan from year to year. In order to build an ETEP you must first have a Tribal Environmental Plan (TEP). If your tribe does not have one or if it is outdated the best place to start before making a plan is taking a tribal environmental inventory. The TEP is a vital document to tribes in relation to the ETEP because without the TEP the ETEP would only benefit the EPA. The TEP is a proprietary document to the tribe so any information on any environmental goals, policies, activities and programs aside from EPA funded activities can be included in this document but information on what the tribe would want from the EPA must be included in it. Keep in mind that the EPA is a public federal agency and cannot protect sensitive information that could possibly be in the TEP. With that being established, sensitive, confidential and proprietary information should probably not be included in the TEP.

#### **The 4 Documents for an ETEP**

1. **Tribal Environmental Plan (TEP).** Refresh, revise or develop one. The TEP must include capacity indicators for GAP activities, list of 85 identified priority items categorized from most to least important and this document should have tribal community or council support.
2. **Areas of Involvement.** This document describes EPA's role in Indian Country. It also describes things EPA is doing with your tribe specifically. It is EPA's responsibility to prepare this document.
3. **Regulated Facilities Document.** Regulated facilities are facilities that EPA is involved with regulating. EPA uses the Information Exchange Network to look for regulated facilities that are geo located on your land. EPA will gather this data then send it back to tribes and wait for feedback to see if it is correct or lacking information.
4. **Cover Memo.** The cover memo is a document will bind the other three documents together. The cover memo will include items from the TEP that EPA will take out as the most important and actionable items. This call and answer sheet will take these items that the EPA may be actively engaging in and provide answers to them about what EPA is doing about the items. This document can either be signed or unsigned. It is no less or no more effective either way. EPA prepares the document and once a cover memo is produced a draft will be sent to the tribe for review and approval.

A flow chart was passed out to the audience. Laura would like RTOC to review the flow chart and respond to her with any comments or suggestions anyone may have about the chart. One chart is a GAP allowable activity decision making tree which shows what answers EPA will seek when determining whether or not an activity is allowable for GAP funding to be used. The other chart is a

simplified work flow chart about how the 4 documents of the ETEP are passed and finalized between tribes and EPA during the ETEP construction process.

Since Region 9 has so many tribes and EPA has a limited number of project officers EPA will only be able to process about 25% the ETEPs per year for 4 years. This should work out well due to the 4 to 5 year planning horizon with the ETEP.

Question from Sally Manning: What does EPA expect to see in the ETEP as it pertains to capacity indicators? How does a tribe incorporate capacity indicators into the ETEP?

Answer from Laura Ebbert: There are a couple of ways to do this. It is not recommended that you incorporate them into the body of the TEP. It would be a lot easier to include them at the end of the TEP or create a separate appendix to list them. If a tribe is struggling with finding indicators that fit and make sense, talk with your EPA Project Officer and share with them a draft of your TEP and see if they can help you come up with a solution.

Comment from audience member: Tribes who have already developed and submitted a TEP may have submitted a document that does not reflect what they really want to do because of what they understood to currently be considered a restriction.

Question from audience member: Has EPA contemplated or dealt with yet with a process for amending a TEP that has been submitted but not finalized? After a TEP is completed, what if circumstances change or if there were a reason a tribe would want to add something or change something?

Answer from Laura Ebbert: Amendments that are made during the process of finalization can be brought forth at any time. GAP guidance says that tribes and EPA together as partners in the grant process should look at the ETEP every year and make sure that there isn't anything that should be changed or re-prioritized. This is a living document that can be updated at any time. The 4 document modular approach was chosen because of it could facilitate ease of total ETEP update by reviewing and possibly changing any of the separate modular documents. If the tribe has chosen for a signatory document, updating the document will take longer than if the document does not require a signature.

### **BREAKOUT SESSION TO DISCUSS ETEP**

Meeting participants had the opportunity to join one of five groups who were led by a tribal and EPA staff member that had experience working through the ETEP process. The group leaders provided successes, pitfalls and suggestions for completing the ETEP process. Session Leaders were:

1. Michael Despain
2. Sally Manning
3. Roselyn Lwenya
4. Rob Roy
5. Ken Norton

## **ROLE OF EPA IN NEPA / STATE ENVIRONMENTAL REVIEW PROCESS**

### **CONNELL DUNNING, US EPA ENVIRONMENTAL REVIEW OFFICE**

#### **HISTORY OF National Environmental Policy Act (NEPA)**

National Environmental Policy Act of 1969 is a Continuing policy of the federal government to use all practical means and measures including financial and technical assistance to foster and promote general welfare, create and maintain conditions under which man and nature can exist in productive harmony and fulfil the social economic and other requirements of present and future generations of Americans.

NEPA is a procedural law that applies to major federal actions. It is responsible for creating the Council on Environmental Quality (CEQ). It ensures that there is always a lead federal agency responsible for the action and the decision process. This act requires that there is public involvement and input. The ultimate goal of NEPA is informative decision making. NEPA applies to anything that is federally funded requires federal approval or uses federal resources. It applies to rules regulations, plans, policies, treaties and international agreements. If there is any federal link NEPA may apply. Who provides NEPA oversight? The CEQ prepares environmental reports and creates guidance documents but does not have oversight authority when it comes to NEPA. There is a leading federal agency for every NEPA action. Every federal agency has existing authorities, which NEPA supplements. Agencies usually have different NEPA implementing procedures specific to the agency which can sometimes be frustrating. Public involvement is instrumental to NEPA and federal agencies are encouraged to be vigilant about facilitating this. It must be demonstrated by the decision makers that data on public input was gathered prior to making a decision.

#### **KEY ISSUES AND IMPACTS THAT ARE LOOKED AT FOR REVIEW**

- Hydrology and water use
- Air quality

- Wildlife and habitat
- How cultural and/or tribal resources are addressed
- Cumulative impacts
- How has TEK been considered?
- Other issues and impacts

#### **EPA ROLE IN NEPA**

- Unique reviewing authority established under the Clean Air Act section 309
- They have a mandate to review and comment on every Environmental Impact Statement (EIS), but rarely reviews and comments on other NEPA documents
- Provides guidance for areas of expertise that they have
- They can act as a lead agency for an EPA action, but is limited in authority when action is being conducted by another lead agency
- Authorized to refer a matter to the CEQ if the impacts are severe and are not being addressed by a federal agency
- Aside from a reviewing role the EPA also plays a guidance role that acts as a cooperating agency
- EPA will connect tribes to other federal agencies and document issues and concerns of tribes
- Will work with tribes on dealing with Bureau of Indian Affairs (BIA) NEPA documents

#### **WHAT NEPA IS NOT**

- Only the lead agency has the authority to decide if an action will commence or if there will be an alternative.
- That lead agency is not required to choose the most environmentally preferred alternative
- NEPA alone does not have a penalty or enforcement clause can only act in an advisory capacity

#### **NEPA ROLE IN STATE ENVIRONMENTAL REVIEWS**

Whereas almost all other states use the NEPA process some states have their own environmental policy such as California and the California Environmental Quality Act (CEQA). When a CEQA action is initiated and an Environmental Impact Report (EIR) is being prepared there may or may not be a future federal action. The analysis of a federal action though cannot be linked with the state. NEPA does not usually get involved in state actions and is not mandated to review state actions or comment on EIRs. NEPA has been assigned to Caltrans which is a complex matter as it pertains to NEPA role in state review. It is possible that by the next year and a half that NEPA may not be required for Caltrans projects because of the Transportation Reauthorization Bill will allow them to use state documents.

Comment from Mervin Wright Jr.: In regard to the Truckee River Project the Bureau of Reclamation (BOR) is using the term extraordinary project. This sounds like a loophole term that might be used to get the Bureau away from NEPA compliance. The BOR is also asking Pyramid Lake Tribe to become a cooperating agency. Tribal Council has not made a decision to become a cooperating agency due to concerns over the impacts of increasing the flows of the canal and how it will definitely impact flows to Pyramid Lake, water quality and endangered species.

Question from Mervin Wright Jr.: When it comes to the Department of Interior, how inclined would the EPA be to become involved in a federal action with for example the Truckee River project?

Answer from Connell Dunning: It is recommended to examine the BOR NEPA implementing regulations to find out what an extraordinary project is by definition. Also, find out what is the criteria that would allow an extraordinary project to have an expedited process. Seeing that there is a possibility that this project could affect water quality standards someone from EPA Water Division could probably provide you with the answers regarding federal oversight. Since the BOR NEPA has not been completed, bringing this issue up could certainly help make sure it is given the proper analyzation and that all the information is disclosed.

Question from Sarah Ryan: Housing and Urban Development (HUD) is one of the agencies that hands over the finding of no significant impact by the responsible entity. Does EPA have a different process with tribal land environmental reviews as opposed to other land environmental review?

Answer from Connell Dunning: No. HUD does delegate NEPA to a local level so the finding of no significant impact is signed on a local level. When EPA is in a role of compliance they sign a finding of no significant impact.

Question from audience: Lately you see more and more projects that are pushed by elected officials. It seems very often these elected officials are asking for NEPA to be waived entirely. Where in that process does EPA or an agency who does review to say no these actions will not be waived? What good is having a law that can be waived for certain individuals, companies or groups? Where is the protection factor in that?

Answer from Connell Dunning: CEQ could push back. Also, my counterparts at EPA headquarters can coordinate with other federal agencies. If there is a push for NEPA to be waived it will be a federal agency that will then have to follow up on that.

Question from Meyo Maruffo: Tribal projects seem to be bound to the NEPA process whereas state run projects often more often seem to get that process waived. How does the NEPA process get overturned? Does EPA ever require a project to do the NEPA process, and how does that happen?

Answer from Connell Dunning: The trigger for NEPA is a federal action, approval, policies, permits, federal funds, or decision. If that trigger is not checked NEPA will not follow. If that is checked there are a suite of projects that have few impacts that are categorically excluded from that NEPA process. If a project is excluded or seeking an environmental assessment they may be encouraged to consider if the impacts made will be significant and with that in mind they should maybe consider the EIS process. Question about overturning is not understood, asked if by overturned she meant waived?

Comment from Mervin Wright Jr.: NEPA is procedural and if any part of that procedure is missed or not completed the only thing that can be done is to re-do that process. It seems that this is the only thing tribes can hope to rely on to delay a project. Unfortunately when a state or company project is a categorical exclusion or has had an element of the procedural process waived and is under the scope of examination, it often seems to work out in their favor.

Comment from Connell Dunning: Each agency has a list of the actions they that are allowable under the categorical exclusion list and they have to be re-noticed and put out to the public. The federal agencies are supposed to follow those implementing regulations. There is no enforcement mechanism with NEPA, it is referred to as a self-enforcing statute. Lawsuits and actions seem to shift according to trending actions.

Questions from Co-Chair Montgomery: Where there is an National Historic Preservation Act (NHPA) requirement, what is the relationship with complying with an NHPA and the cultural resources component of an EIS? How do they interact?

Answer from Connell Dunning: NHPA is the resource component referred to in the question. This is a huge component to any EIS. As they are being reviewed the federal agency is required to identify how they are meeting NHPA. The NEPA process is looked to as a way for them to document how they are meeting those requirements. They are not required to meet the NHPA requirements at the time a draft EIS is published. Prior to the record of decision it is expected that they demonstrate how they are meeting those requirements. For example, by showing how they have been consulting with tribes and identifying the issues they have. They can also request an update of the MOA between the federal agency and the State Historic Preservation Office.

Comment from Co-Chair Montgomery: If there were significant concerns on the part of the tribe it would be good for us to know that they have elevated that to the lead agency, so it can be tracked and commented on when they weigh in on those concerns as a cooperating party or otherwise.

Final comment from Connell Dunning: In our role of reviewing, we have to provide neutral comments. We are a neutral third party reviewer of a federal agency action they are reviewing. Input is received from proponents and opponents of an action. All shared information is welcomed and taken into consideration when a comment letter is drafted. These comment letters ultimately represent an independent review by the EPA.

## **GAP FAQ'S SESSION**

### **LAURA EBBERT, MANAGER US EPA LAND DIVISION TRIBAL SECTION REGION 9**

Tribes may not currently be in possession of the 5 or 6 decision making documents that AIEO has issued. Following last RTOC, the questions that were asked at the Tribal Caucus were sent out. We would like to walk you through the documents and the decision making process. How does a Project Officer decide if an activity that has been requested is eligible under the program? A flow chart and a hand book containing GAP Guidance, GAP Guidebook and Solid Waste Supplemental were passed out. It is mentioned that all these documents are available in digital format online.

One factor which is eligibility will mainly be discussed today and how this factor will help your Project Officer will decide if a proposed activity will be ok under the GAP work plan.

Two other factors will also be examined.

*Reasonability-* Is the cost, scope and duration of a project reasonable under the work plan? Project Officer will evaluate activity and determine reasonability. Tools use to determine reasonability rely a lot on prudent person perspective. It is also determined by consultation from other Project Officers and reviewing other work plans.

*Allocability-* Is the work proposed and the person proposing it allocable under the GAP grant? Does that cost belong in the GAP grant?

*Eligibility-* GAP Guidance is an administrative document. It is a set of instructions to the Regional Program Manager for how to administer the GAP program in the region. It contains some instructions that are informative to tribes but mostly it contains instructions that are for Regional Program Manager. Instructions like who they can give money to and how they can give that



money. Allowable activities are activities that are generally supported by GAP. GAP is a capacity building program and is context based so if a program is being done again it must be reviewed find out if a tribe has already built capacity within that program. Tribes should become familiar with the restricted activities list because there are a lot of activities that people think GAP should pay for that are listed in the restrictions section.

More useful to tribes is the GAP Guidebook. The GAP Guide Book is a list of things you can do under GAP. The Guide Book is grouped according to thematic areas. Sections of the Guide Book cover air, water, and waste activities. If you read the pre-amble to each section you will get a sense of what kind of activities are appropriate under GAP. The Guide Book contains a list of indicators. Indicators are destinations or outlined in an ETEP. These are capacity levels a tribe may wish to build with GAP activities. It is possible for custom indicators can be built. If a tribe wishes to do so, this is something that you should discuss with your Project Officer. Appendices to the GAP Guidance and Guide Book contain valuable information.

The FAQ's are mostly re-iteration of items within the Guide Book but there are some clarifications on certain items in it as well.

- Re-iteration of the fact that GAP cannot be used to fund Economic Development enterprise
- Inter-Tribal Consortia do not have to build ETEPs
- The difference between ongoing capacity needs and program implementation. GAP does not fund ongoing program implementation once a particular capacity has been reached
- GAP needs to support things that are new and different not revising existing plans. In order to revise an existing plan or document using GAP resources there must be significant change to that document for it to be considered new capacity building otherwise its implementation.

Overview of clarifying table of allowable and unallowable solid waste activities.

Overview of 44 questions from the National Tribal Caucus to the AIEO. They answered the first 9 and claimed that some of the other questions had already been answered previously. The first question suggests that the GAP Guidance goes against the EPA 1984 Indian Policy. AIEO spent some time explaining what the GAP Guidance is intended to do and not do. Question 8 asks how is performance measured and compiled. EPA currently has 2 performance indicators, this does not seem to be very effective. EPA would like to develop a more robust set of performance indicators for GAP and other tribal programs. The difficulty lies with compiling 83 pages of guidance into some sort of performance indication scheme.

Laura provided a brief overview and walkthrough of the flowchart handout.

The flowchart shows how a Project Officer will determine eligibility of an allowable activity.

Questions that Project Officers ask themselves when reviewing a proposal for an activity.

Will your program or project build capacity?

If it is capacity building, is it part of planning, developing or establishing a tribe's Environmental Management Program?

Is there an indicator that describes the destination you're trying to get to? If not you can develop one with your Project Officer.

Is it in your ETEP? In order for something to be eligible it must be in your ETEP.

If it is not capacity building does it fall under GAPs limited ability to fund implementation for things like certain Solid Waste activities.

Question from Audience: Waste related implementation activities and the moratorium on the imposition of restrictions which may be extended to 2020 according to language in Omnibus Bill. Does that moratorium negate any or all of the restrictions contained in the Guide Book as described in the FAQs and in the list of unallowable activities of regulating waste included in book?

Answer from Laura Ebbert: The previous short duration waiver listed one specific bullet in the whole packet of information. General cost of government services including trash collection, transportation, backhaul and disposal. Those activities are implementation, which means the 7 steps you must meet before you can get implementation must be satisfied.

Question from Don Bay: Under this guidance have you funded any test drives yet? If so, what were they?

Answer from Laura Ebbert: Limited duration test drives have been funded but only under the old guidance. A test drive is like a baby implementation program.

Comment from Sally Manning: The Region 9 request for GAP proposals packet for proposals we just submitted in December 2015 contained appendices that explained or clarified ways to approach certain GAP requirements, and these appendices weren't mentioned in this presentation.

Comment from Laura Ebbert: Had forgot to include those in this book, will see about having those included.

Comment from audience: If you get a response back from your project officers or higher up regarding no funding due to GAP Guidance, inform your RTOC Reps they need to hear it and can help elevate it.

## **EPA RESPONSE TO TRIBAL CAUCUS REPORT**

**MICHAEL MONTGOMERY ASSOCIATE DIR. US EPA WATER DIVISION**

**Air Division**

1. Improved data collection and data sharing around the Salton Sea area. Tribes have asked EPA to identify and get involved with improving and sharing data. EPA would like to see a list of detailed concerns about this issue. A letter from Torres-Martinez and other tribes sent to the Regional Administrator requesting more EPA involvement and a definition of EPA's role would be helpful for the agency. EPA will work on the issues up the chain on their end. Point of contact will be Willard Chin. There will be a report out on this next RTOC.
2. Superfund division. Concerns about wet weather after the fire season which could cause possible flood impact issues and erosion control issues. There is interest in engaging with the Emergency Response Group. The Co-Chair position for the Emergency Response Group is currently vacant. Bill Jones will likely fill that role and he has been informed and is looking forward to working on this issue. A workgroup call will be set up, Mike Despain will be the lead. This will happen within a week.

#### **Water division**

1. Northern California questions about Clean Water Act specifically waivers for enforcing standards on the Klamath. Gail Louis will handle this. Discussions were held with Ken Norton about the 401 cert process for the hydro power project on the Klamath. There is an unused provision in the Clean Water Act under 401a2. There will be follow up discussions held with Ken Norton to further clarify what can be done at the regional level. Discussions are being held with Region 10 office with regard to activities going on in the Klamath, seeing that it is a bi-regional watershed. This conversation will be held within the next 3 weeks.
2. Water Quality Assessment Report guidelines and tribes being able to add impairments such as bridges to the list. Suggestion made that this should go to the Clean Water Act Workgroup and they can work with the tribes on this issue. A call will go out to Jay Collingham. Gail Louis will handle this.
3. Navajo Nation concerns. Economic and other impacts from uranium on ground water and surface water. If the uranium is not naturally occurring and is from mines or mill sites Superfund Division can be brought in. Scope of time frame for meeting will be around a month. Lead will be Superfund Division and Gail Louis.
4. Flint Michigan concerns. What level of protection is afforded to environmental justice communities? There are also issues pertaining to the Safe Drinking Water Act. Was the monitoring that was supposed to happen actually happening? The first step in assuring drinking water supplies are safe is water quality monitoring. There are tribes that are being served by a public water system that is regulated by the state. The EPA needs to talk with these states to ensure that tribes would be notified if a state utility changes their source water. EPA has a lot of information about drinking water systems they are overseeing for tribes. If there is a significant change in those systems that EPA oversees such as a change of source water they would like to be privy to see that information from the state so it could be examined with the degree of importance that it requires. David Albright will make contact with these state groups within a month.
5. State groundwater legislation. Information will be gathered about ground water use. Will give to California workgroup since it is a California issue. If the workgroup needs EPA assistance to elevate this issue so they can get information when it comes to groundwater use, EPA may help. Hopefully the California Workgroup can come up with some specific requests for EPA involvement. Co-Chair Bacock states that tribes were also curious as to whether there could be funding available for any programs involved with ground water monitoring.

#### **Land Division**

1. Number of questions about ETEP, GAP Online and how tribal capacities are tracked. Laura clarifies the answers again about the questions answered earlier.
  - Who signs the ETEP? No one can sign or anyone can sign. That is up to the tribe to decide what they want.
  - There were concerns about GAP Online such as the slow speed at which it operates. GAP Online is not Exchange Network compliant. EPA and AIEO determined that because GAP Online is not numerical based that it is not data but is considered information.
  - You might be using the wrong browser version if you're having freezing issues with GAP Online. Talk with your Project Officer who will help you roll back your browser to the version that is compatible with GAP Online.
  - Move GAP Online to the Exchange Network. This is currently being looked at, discussed and considered.
  - Tribes would like to integrate ordinances into ETEPs. Do it the more you include in the ETEP the better.
  - Worry about development of ETEP how might funnel tribe into more project based funding. GAP funding is not project based, they would just like to be able to report to Congress where GAP money is going.
  - How is EPA compiling capacity development of tribes? Can we review those developed capacities? Right now there are only 2 performance measures and they are not too descriptive. When this can be articulated on a more detailed level this information will be shared.
  - GAP Training and GAP Online for new Environmental Directors. These trainings will be explored and we will look into having some of these trainings at RTOC meetings coming up in the near future.

- Nevada tribal leaders asked EPA to come in and talk about EPA programs. They will accommodate. If there are any other tribes in the region that would like this they would gladly accommodate.
2. Issue of dealing with inadequate site visits from Project Officers.
- Due to limited funding Water Division Project Officers typically go out on multi day trips to visits to multiple tribes. A half day is usually set aside and dedicated to a single tribe for site visits and technical assistance.
  - For Air Division Project Officers site visits are on an as needed basis. If you want a site visit let them know and they will find a way to make it happen. Project Officer visits are not on a regular scheduled basis and are not required.
  - Travel funds are limited for Land Division Project Officers. They are trying to secure more travel funds to do additional outreach and site visits. If there is a specific request let them know.
  - Project Officers for GAP are required to make site visits to tribes once a year. It is important for Project Officers to meet with tribes in the tribal community to see the land they are working on and the community they are working with.

Additional from Laura Ebbert: RTOC requested facilitation training, project management training and task management training. They are looking into options. A note has been sent to Jeff Scott, and Laura will report back at next RTOC.

Additional from Co-Chair Bacock: How does EPA share the capacity development of tribes and how can they be a part of that? How is EPA tracking progress on tribal activities and reporting them?

Answer from Laura Ebbert: EPA tracks accomplishments in particular programs. GAP is currently still using 2 old indicators that are not very detailed:

1. How many tribes have TAS (Treatment in a manner similar to a state)?
2. How many Tribes are utilizing a federal program?

AIEO is delayed in coming up with a new performance tracking strategy under the new GAP Guidance.

## **REVIEW NEW ISSUES / ACTION ITEMS**

### **LORI LEWIS, EPA FACILITATOR**

At the retreat the decision by RTOC reps was to take comments and action items in all the sessions and combine them in one color coded list. The things that were addressed by Mike and Laura today will be documented and added to the list. Only 2 main action items were addressed today. Increasing tribal representation to 3 people e-enterprise/e-networking process and bringing in Andy Battin to share about network sharing/e-enterprise process. Laura also asked people to review ETEP Guidance/Guide Book/ Solid Waste Supplemental and the flow charts and give feedback on those at any time as they are living documents.

## **CLOSING COMMENTS**

Closing Comments from Co-Chair Montgomery

Closing Comments from Co-Chair Bacock

## **ANNOUNCE NEXT RTOC MEETING LOCATION / ADJOURN**

Annual budget presentation will take place during next meeting

San Pasqual will host the next RTOC meeting

April 12-14 2016

Adjourned at 5:13PM