TEC Tribal Topic Group Meeting
September 22, 2005 – Pueblo, CO

Group Chair: Jay Jones (DOE/OCRWM)

Tribal Topic Group Members Present: Richard Arnold (Southern Paiute/CGTO), Vicki Best (Bechtel SAIC-YMP), Kevin Blackwell (DOT/FRA), Sandra Covi (UPRR), Barbara Durham (Timbisha Shoshone Tribe), Greg Fasano (Bechtel SAIC-YMP), Elizabeth Helvey (BSC), Angela Hill (DOE/OCRWM), Judith Holm (DOE/OCRWM), Marsha Keister (INL), Dan King (Oneida Nation), Gary Lanthrum (DOE/OCRWM), Corinne Macaluso (DOE/OCRWM), Calvin Meyers (Moapa Band of Paiutes), Michele Titto Moses (CTUIR), Ellen Ott (DOE/GC), Wilda Portner (SAIC), Willie Preacher (Shoshone-Bannock Tribes), Linda Sikkema (NCSL), Lora Tom (Paiute Indian Tribe of Utah), Christopher Wells (SSEB), Edward Wilds (CT Dept. of Environmental Protection), Andrea Wilkins (NCSL)

(NOTE: Other TEC members, DOE and contractor staff, and guests participated in this meeting, but only Tribal Topic Group members and their alternates are listed here.)

This meeting concentrated on funding issues and Tribal outreach for Yucca Mountain transportation planning.

Action Items:

Responsible Party	*Action to be Taken*
Wilda Portner	Update Tribal Group membership roster to include all Tribal representatives at the Pueblo TEC meeting. Distribute to Topic Group members.
Corinne Macaluso	Send letter to 39 corridor Tribes announcing Tribal 180(c) Group. Develop a list of initial issues to be discussed at first meeting of TEC 180(c) Tribal Topic Group and send out to 39 corridor Tribes and other Tribal representatives who have expressed an interest in joining the group. (A post Group meeting decision was made by DOE to poll Tribal Topic Group Members as to their preference for how to best address Tribal 180(c)-related issues.)
Corinne Macaluso/ Wilda Portner	Email definition of "responsible jurisdiction" to Tribal Topic Group members.
Gary Lanthrum	Follow up on face-to-face meeting with the Timbisha Shoshone Tribe.
Jay Jones/Corinne Macaluso/ Wilda Portner	Email and fax December 2005 and September 2006 *Federal Register* Notices to Tribal representatives on the Tribal Topic Group membership roster.
Corinne Macaluso/Judith Holm	Send 39 corridor Tribes copy of Q&A Booklet.

Summary:

Willie Preacher, Shoshone-Bannock Tribes, honored the gathering with opening and closing prayers.

Jay Jones then provided an introduction/update on Topic Group activities, including recommendations made during the April meeting (slides will be available on the TEC Website), and expressed DOE's intent to work with the Tribes on transportation issues related to Yucca Mountain. Tribal members questioned the accuracy of the map used in the presentation, "Indian Tribes along Potential Transportation Routes to Yucca Mountain." They specifically wanted to know about the absence of Tribes with aboriginal or treaty rights along the corridor. Tribal representatives asked that the map be updated. Jay responded that the map reflects Tribes through whose reservation (or within ½ mile of the transport corridor) could be crossed by Yucca Mountain shipments. He added that DOE staff will be talking to/meeting with the 39 Tribes to whom the March 8, 2005, program introduction letter was mailed and they might identify other Tribes with whom DOE may need to interact. Judith Holm interjected that the Tribal Topic Group provided major input to the March 8 letter. Jay also reported that he participated in the May DOE State and Tribal Governments Working Group (STGWG) by phone. STGWG focuses on cleanup issues associated with the DOE Environmental Management program.

Barbara Durham, Timbisha Shoshone, asked if Yucca Mountain shipments would cross Timbisha trust lands. Gary Lanthrum assured her they would not and that a letter had been sent to the Tribe committing to that fact. Ms. Durham suggested a face-to-face meeting between OCRWM and the Timbisha Shoshone Tribe. Gary said he would support that. She also stated the Tribe's frustration with obtaining "affected status" from the Department of the Interior.

Calvin Meyers, Moapa Band of Paiutes, agreed, stating he has a problem with "affected status," and that I-15 and the railroad run through his reservation (there are 300 Tribal members). He believes the Yucca Mountain shipments will pass through Moapa lands and stated that he never believes what DOE says and that what the non-Indian wants they get. He emphasized DOE's trust responsibility to the Tribes and said the Department has a greater impact on them than they realize.

Jay summarized some of the recommendations from the April Topic Group meeting, stating that:

- Regional and national meetings with Tribes may be held following initial contact by OCRWM.
- Contacting Tribes is the first step in the Tribal Strategy.
- Individual Tribes should have Assessment Plans, where Tribal priorities are established for DOE.

Richard Arnold said that the Yucca Mountain Native American Interaction Program (YM NAIP) originally focused on cultural resource issues, but is now discussing 180(c), rail routing, and other issues. Jay stated that OCRWM is a national program, but will be working closely with Robert Lupton (DOE NV) as the program moves closer to the state of Nevada. Sixteen of the 17 NV Tribes involved in the NAIP attended the July meeting and had questions on 180(c). Jay was asked if all the Tribes present in Pueblo are listed on the Tribal Topic Group membership roster, to which Jay replied, "Yes," and he instructed Wilda Portner to double check the roster.

Jay was asked if he considered the Tribal Topic Group a method of "consultation." He replied that consultation means different things to different people and that the Topic Group is a beginning at a lower staff level. Greg Fasano added that anything DOE does with Tribes "contributes" to the government-to-government process. A Tribal member stated that the Tribal Topic Group meetings were not perceived as consultation; when talking issues, consultation has to be more involved at a higher level of authority, and consultation must take place with each Tribal nation.

Contact with 39 Corridor Tribes

A letter signed by Gary Lanthrum, Director of OCRWM's Office of National Transportation (ONT), was sent to the Tribes in March. It introduced the program and asked for input on best approaches to interacting with the Tribes. Jay Jones and other DOE staff/contractors have been calling Tribal leaders to follow up on the letter; the letter has been faxed to several Tribes again, and attachments remailed. Follow-up phone calls are continuing and OCRWM is maintaining a chart that reflects the progress being made. In many instances, Tribal leaders have referred DOE/contractor callers to other Tribal staff/organizations for further interaction. Vicki Best has spoken with four of the Consolidated Group of Tribes and Organizations (CGTO) Tribes who are interested in having Jay address special Tribal Council meetings (3 were represented at the Tribal Group meeting).

180(c)

Jay stated that DOE recognizes Tribes as sovereign nations and will work with them to determine the best approach to interacting with Tribes. The 180(c) process will be different for States and Tribes, but DOE may use the State approach as a building block for Tribal funding procedures. Tribal representatives should be part of the review board for the 180(c) application process.

Tribal members expressed disappointment that DOE uses the phrase "if budgets allow" when discussing Tribal visits and funding. They said that doesn't seem to be the case with State funding. Jay said that some budgetary restrictions do apply, but that perhaps DOE could attend Tribal Council meetings every 5 or 6 months if requested. Tribal Update Meetings are held twice a year in NV. Gary Lanthrum replied that DOE does not typically meet one-on-one with States, but works on a regional basis.

Corinne Macaluso provided an update on the 180(c) process.

States and Tribes are being treated at the same level as far as the 180(c) process is concerned. There will be direct funding to Tribes; Tribes will not get their funding through the States. Funding will include $200K for planning and determining who needs training for DOE shipments to Yucca Mountain and a $100K base amount plus a formula-based amount (the formula will be worked out through the Tribal 180(c) Topic Group). Gary Lanthrum said the *Federal Register* Notice to be published in December will make it clear that States and Tribes will receive separate funding. Corinne added that the Notice will allow States and Tribes to determine the level of training needed and who will be trained. Allowable activity considerations will include percentage used for purchasing equipment. Based on comments from the Group that some Tribes do not have staff to review *Federal Register* Notices, DOE agreed to email/fax the December Notice and the follow-up Notice (estimated September 2006) on Final Policy Procedures for 180(c) to Tribal Topic Group members. A pilot program is expected in the FY 2007 timeframe.

Corinne answered questions on training, saying that money will be provided 4-3-2-1 years before shipments begin. DOE can provide that training if it is determined that is what is needed and will work with Tribes to help them determine how best to get the training they need.

Regarding the funding of operational activities through 180(c), Corinne stated that DOE has not announced a position on the issue.

Reimbursement for equipment and time expended in responding to a shipping accident was raised.

Corinne answered that truckers have to carry $5M in insurance. Kevin Blackwell said the railroads also carry insurance. Kevin and Sandra Covi agreed that in a lawsuit to recover losses, the jury can go back to the carrier. Price Anderson offers additional coverage.

Other concerns included:

- Training offered under 180(c) will be worthless without the money to do what the Tribes need to do in the way of emergency response.
- DOE has been working with States for a long time and now it expects the Tribes to play catch up.
- Jurisdiction is a key issue. Need a definition of "responsible jurisdiction." Corinne agreed to email the definition to Tribal Topic Group members.

The Group agreed that a Tribal 180(c) Topic Group should be established for TEC. (A post Group meeting decision was made by DOE to poll Tribal Topic Group Members as to their preference for how to best address Tribal 180(c)-related issues.) Corinne Macaluso said DOE needs to focus on the best approach for getting all 39 corridor Tribes involved in such a group. Those Tribes will need to be notified once a 180(c) Tribal Group is formed, and sent a list of the other Tribes being considered for 180(c) Tribal Group membership.

To initiate discussions with those members of the Tribal Topic Group that are interested in Section 180(c) issues, OCRWM/ONT is planning to develop a paper with the following: (a) 180(c)-related topics, (b) input DOE has heard from Tribes on the topics, (c) short description of recommended approach for Tribes (i.e., how DOE is proposing to address each topic), and (d) next steps to work through the topics to refine/modify the approach. As this document grows, it will become a record of interactions, similar to the issue papers produced by the TEC Section 180(c) Topic Group.

Routing Process

Jay chairs the Rail/Routing Topic Group. There are limited highways and rail lines available for shipping to Yucca Mountain. DOE is working with the States and needs to get Tribes involved in the route selection process. The RADTRAN computer model is being used to assess possible impacts along transportation routes and TRAGIS for selecting routes. Sandia Labs is helping DOE with a decision model. There will be several opportunities for Tribes to provide input on route selection.

Gary replied to a routing question by saying that all routes would be pre-approved. Enroute shipment could experience problems and the drivers would need to be able to divert. Kevin Blackwell added that shipments might have to be diverted to unapproved segments of track in some cases or be stopped in place, if problems occur on the rail line.

Rail Inspections

Kevin Blackwell answered questions on rail inspections from group members. The rail companies and the FRA inspect the rail lines on a continuing basis as part of routine operations. A safety compliance oversight policy is in place for DOE shipments and focuses on the railways to be used for them.

Security/Notification

DOE was asked about Tribal notification of shipments and the impact of "National Security" status. Gary replied that spent fuel shipment information can be shared with jurisdictions through which they travel.

Yucca Mountain Schedule

When asked about the schedule for opening of the repository, Gary answered that the license application submittal schedule has slipped from December 2004 and there is no new schedule for submission. New DOE leadership is in place. The Nuclear Waste Policy Act gives the U.S. Nuclear Regulatory Commission (NRC) 3 years and a possible 1-year extension to review a license application. Following application approval, construction would take 3 to 5 years. Shipments may not start for some time.

Tribal Fees

When the question was raised as to whether Tribes can impose fees for hazardous material shipments, Dan King responded that Tribes cannot levy fees because the States already do so.

Other Suggestions and Recommendations

- Corinne suggested the 39 Tribes be sent the Q&A booklet.
- Need to consider helping Indian people understand the concept of "radiation."
- An educational trailer/mobile information center would be useful.
- Judith Holm suggested video or CD to explain OCRWM program.
- Regional contacts should be used to contact Tribes about TEC and other transportation information.