

## State and Tribal Government Working Group Meeting Notes

October 21, 2009

Hotel Monteleone

New Orleans, Louisiana

### TRIBAL EXECUTIVE SESSION (closed session) 9:00am–10:00am

Attendees:

Robert Alvarez, Tom Bailor, Brooklyn Baptiste, Gabe Bohnee, Peter Chestnut, Gilbert Gutierrez, Russell Jim, Greg Kaufman, Anthony Memmo, Titto Moses, Brooke Oleen, Willie Preacher, Anthony Smith, John Stanfill and Governor David Toledo

Governor Toledo of the Jemez Pueblo (NM) delivered the invocation. Gabe Bohnee and Peter Chestnut, Tribal Issues Committee Co-Chairman, provided introductions and stated the purpose of the session is to reacquaint ourselves with one another and talk about topics of concern for participating tribes that could potentially be brought forward as points of discussion with full STGWG, with participating intergovernmental groups and with the Department of Energy (DOE).

Willie Preacher spoke of his role as a Tribal representative to the National Transportation Stakeholders Forum (NTSF)—a body through which DOE communicates at a national level with states and tribes that may be affected by the Department's shipments of unclassified radioactive waste and materials, as well as occasional high-visibility shipments that are non-radioactive. He is interested in speaking with Bill Spurgeon as to where exactly the waste will now go now that Yucca Mountain is off the table as well as learning details on how many tribes are affected. A route and timeframe needs to be established so that tribes will be aware and can begin planning.

Titto Moses, another Tribal member of the NTSF, mentioned that during the early planning calls, the committee discussed the possibility of taking "affected", in reference to tribes, states and governments, out of the charter. However, members gained a better understanding of the meaning of this word after reading past documents referring to this subject.

Bob Alvarez noted that there isn't a clear answer as to where waste will be stored within the complex. In the meantime, DOE sites are going to be looked at more closely for storage options. As for defense high-level waste (HLW) at Hanford, Idaho and SRS, sixty percent that will be processed will stay awaiting disposal.

Russell Jim — “In reference to Dr. Triay's statement about already having interim storage at Hanford, there cannot be interim storage at a facility without it being an actual licensed facility. When will we amend the Nuclear Waste Policy Act?”

Greg Kaufman would like DOE to address the research and development of reprocessing nuclear waste and how much of stimulus will be put toward these efforts.

Bob Alvarez offered some words of caution on reprocessing. “As for the French and recycling, there is not any real magic to the process,” he said. Alvarez noted the expense and the fact that there is more byproduct.

Tom Bailor mentioned the plan likely is to cap a lot of waste and keep it where it is. Willie indicated that this is what is happening in Idaho, waste is being grouted in its place. Bailor is interested in knowing how much money is going to go to characterization—to geophysical work.

“There should be concern about the material outside the tanks; it is often much hotter than that inside the tanks. In reference to Hanford and its tank farms, [DOE] may want to grout. There isn’t the workforce or the technology to deal with the waste in the manner needed, and this seems to be DOE’s answer,” stated Bailor.

Bohnee informed the group that the Tank Closure Waste Management EIS is to be released this week, possibly on Friday, the document’s scheduled release date. He stated that the Nez Perce has been left out of it and that more information may surface at the White House Tribal Nations Conference in November.

Willie Preacher was curious as to just how DOE is sharing this and other information with tribes. He noted that the issue of consultation, the lack of early consultation, is one that Tribes will likely continue to face in working with DOE.

Preacher gave a quick report about happenings at Idaho National Lab. “The calcine needs to be processed and put ROD by the end of December. One hundred thousand gallons have been already grouted,” he said.

Based on data that cannot be officially shared, Bob Alvarez informed the group that roughly 2.3 trillion gallons of liquids have been contaminated. “Six million gallons of this [liquid] is plutonium, and 60 percent of it is buried in the soil. These types of things are not on the radar screen, but they’ll have to be dealt with as well,” said Alvarez.

Russell Jim — “Order 235.1, and on how DOE will manage waste. Yakama confronted this issue in 2004 and we won. If you sue, sue one tank at a time. There are 179 tanks out there. DOE can mix and call it low-level waste (LLW) in Idaho and at the Savannah River Site, but not at Hanford. However, they keep trying to do it. It’s a worrisome issue.”

### **TRIBAL ISSUES SESSION (open session) 10:00am–12:00pm**

Attendees:

Don Ami, Bob Alvarez, Richard Arnold, Tom Bailor, Vice Chair Baptiste, Brian Begley, Milton Bluehouse, Cathy Bohan, Gabe Bohnee, Denise Brooks, Tony Carter, Peter Chestnut, Jill Conrad, Sky Gallegos, Bob Geller, Gilbert Gutierrez, Cindy Hafner, Brian Hembacher, Russell Jim, Greg Kaufman, Anthony Memmo, Titto Moses, Ken Niles, Brooke Oleen, John Owsley, Bob Pence, Brandt Petrasek, Willie Preacher, Armando Rodriguez, Jim Sommerville, Fred Soto, John Stanfill and Governor Todedo

Brandt Petrasek started things off by acknowledging Governor Toledo and Vice Chair Baptiste and explained that their involvement as Tribal leadership shows the importance of the work we do as a group.

Petrasek also acknowledged the effort of STGWG Tribes in helping DOE move forward on policy, including Revision 144.1 to the DOE Order, which attaches the Policy and Framework. He explained that there are seven guiding principles of the Order and added that consultation at the earliest stages possible is necessary in dealing with tribes.

“The training component was simply missing. There is a need for all program offices to execute this— POCs, those of us at headquarters and those in the field offices. As training is a key element, the development of the online training course has been an intra-agency effort and was just released a month ago,” Petrasek said.

### Updates from DOE/NNSA Program Offices

- Status of Implementation of the DOE Order, Policy and Framework
- Status of Instituting DOE/NNSA Tribal Training

“Working Effectively with Tribal Governments’, a federal, government-wide tribal online training, is targeted towards federal employee staff and management, and has been recently introduced to provide federal workers with a better understanding and greater knowledge of the history, concepts, and issues involved in working effectively with those in Indian Country.

### *Armando Rodriguez & Brandt Petrasek, Office of EM*

Petrasek introduced Armando Rodriguez—a key person who works closely with DOE field officials in developing a training module for DOE headquarters that will be most effective.

Armando Rodriguez is the Deputy Assistant Secretary for Human Capital Business Services for DOE. “As a driver and manager at DOE headquarters, I am responsible for looking at the skill base of our workforce. The systems in place have been there forever, yet we do have individuals that are willing to look at new approaches,” he said.

Rodriguez talked about the Leadership Excellence Program and explained that one can take such training (a database, repository online program) to develop a competency.

“EM is taking a more aggressive approach by implementing the policy with the GTCC issue with Tribes. They’ve participated in informative drafting sessions, with the guidance of Richard Arnold,” Rodriguez added.

Petrasek referred to *A Guide for DOE Employees—Working with Indian Tribal Nations* (Tribal Guide), developed in 2000 and that it’s time to take another look at it and provide updates. He encouraged STGWG members to review the document in the next couple of months and follow up with him on edits to the Tribal Guide. He recommended inclusion of the Order, Policy and Framework, as well as incorporating the Tribal Points of Contact with the EM program. “There is a need to synchronize materials within the Department, and this is as big of a project as the training piece had been,” he said.

*Jill Conrad, Richland, WA Operations Office*

Jill Conrad, Department Program Manager, Office of Communications–Tribal Affairs at Richland, mentioned that she came on board just a few days after Assistant Secretary Triay had been appointed. One of the first things she heard from Triay was that training at Hanford needs to be specific for employees at Hanford. The plan under the Order for training DOE officials at Hanford takes on a three prong approach:

1. A 2–3 hour computerized training program is a requirement for all Hanford employees. (DOE hadn't a program that addressed tribes and cultural resource issues up to this point.)
2. All employees will receive background on the history as to why and how tribes are involved with the site. In addition, employees will receive management training as to how to effectively work with tribes and will receive a better understanding of the tribes' expectations/protocols.
3. Ideas are coming together to develop an educational program on the impacts on cultural resources for all employees. There is work to develop this type of program at Hammer, an educational training center at Hanford.

Conrad informed us that she will be meeting with Tribal leaders in DC on Nov. 5 for the White House Tribal Nations Conference. She will meet and begin work with tribes on the development of this project, as she has the energy and desire to push it forward.

*Cathy Bohan, DOE Tribal POC—West Valley, NY*

Cathy Bohan, the DOE Tribal Point of Contact for West Valley, reported there isn't quite the activity at West Valley as there is at Hanford. She noted that West Valley is a smaller site and not the same type of shared property. DOE is incorporating the fundamentals of the Indian Policy's guidelines to those that have interactions with tribes at the site.

Russell Jim— "Compliance is a key word to Order 144.1. In 1992, the first draft of Indian Policy that came out. We wanted to add compliance to treaty rights, and this did not happen until 2006. We need to think how this implementation is going to affect each and every child of future generations."

John Owsley asked if states have access to the online training.

Petrasek— "Yes, states should be able to utilize it. At first, because of ownership, Feds could only access it. Now, it's [the training] available to all."

*Frederick Soto, DOE–NNSA*

Frederick Soto, Deputy Director for the Office of Diversity and Outreach, DOE–NNSA read from text. (Statement below)

"Good Morning, my name is Fred Soto and on behalf of Mary Ann Fresco, director of the Office of National Nuclear Security Administration's (NNSA) Office of Diversity and Outreach, I bring you greetings from the NNSA. Mary Ann could not

be here with you today.

As you know, Ms. Fresco serves as the lead coordination and oversight office for NNSA in providing program-wide efforts to fulfill requirements of the Department of Energy's (DOE) American Indian Tribal Policy. Her role includes acting as the liaison between DOE, NNSA and Environmental Management, and the four Pueblos that share land and other resources with the DOE.

Our interaction with federally recognized tribes is conducted on a government-to-government basis beyond standard public involvements through tribal elected leaders on issues and activities of tribal interest. As liaison, she facilitates an ongoing dialogue between the tribal leaders and leadership at DOE, to include the Secretary of Energy, the Under Secretary for the NNSA and managers who have direct responsibilities to the Tribal Nations. She is responsible for working with each of the four pueblos in order to facilitate a positive, safe and healthy relationship.

NNSA's government-to-government relationship with the Pueblos includes an immediate concern for the environment and the earth. This concern was affirmed by General Harencak's recent visit to the San Idelfonso and Santa Clara Pueblos. During the visit, the Governors re-affirmed the importance of their lands and sacred places, and recognized a unity of purpose and combined hope for managing the bounty and diversity of tribal lands. Future visits are planned for the Jemez and Cochiti Pueblos. General Harencak's visit acknowledged that we should not just passively adapt to the challenges in our environment but seek to:

- a. Meet the challenges ahead by responding in diverse ways to improve and adjust the environments and;
- b. Continue a dialogue that respects the need to honor cultural as well as material funding needs and the evolving needs of the Pueblos; and
- c. Keep Native American environmental issues at the forefront as key part modern environmental debates with the DOE.

Working together with each of the four pueblos, we hope to continue the dialogue between the tribal leaders and leadership at DOE and the Under Secretary for the NNSA to facilitate a positive, safe and healthy relationship.”

*Donald Ami, Los Alamos Site Office (NM)*

Donald Ami, DOE Intergovernmental Program Specialist and Tribal POC for the Los Alamos Site Office, started off with some analogies to football, recognizing the New Orleans' Saints and the possibilities and what can all happen as you pull together as a community.

He made reference to the Order and its major components and requirements, including: its tribal focus and how we should coordinate our interactions with headquarters and those in the field; training; contracts elements of order for contracts on various work projects; and the reporting aspect. He agrees that an annual compliance report needs to be produced to measure such interactions with tribal governments.

Ami talked about requiring contractors to implement the Order at Los Alamos and incorporating it into elements of contracts. He believes it would be beneficial to advise the contractors yearly and learn how they've actually implemented the Order.

He explained that he is involved in the oversight and helps conduct the lab contracts. "Currently, we have four contracts with four pueblos surrounding LANL, but the issues we are dealing with differ. It doesn't matter if you know one tribe or another; they're all different governments and have different issues important to them."

*Robert Pence, DOE Tribal POC–Idaho, Office of Nuclear Energy*

Bob Pence is pleased to be a part of such a mature and well-versed program at Idaho National Lab. He enjoys working together with the Shoshone-Bannock Tribes. He talked about the Agreement of Principle and how it addresses sovereignty, treaty rights, and trust responsibility in government-to-government relationships.

Pence explained that the senior leadership team at INL is well versed in the working policies and procedures and works with the Shoshone-Bannock Tribes on all NEPA issues. He stated that there is more communicating going on at INL than consultation, however, and stressed the importance of the need for all to understand the difference between consultations versus communication.

*Tony Carter, DOE Legacy Management*

[LINK](#) to PowerPoint presentation

In conclusion, Bailor said that interviewing tribes and incorporating these experiences into training efforts at some point would be a good idea. He added that consultation should take place on GTCC matters at the earliest point possible.

**The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) / State of Oregon Working Relationship Presentation**

*Tom Bailor, CTUIR & Ken Niles, State of Oregon*

[LINK](#) to PowerPoint presentation

Bailor explained that the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) didn't have an emergency response plan in place until it began work with the state of Oregon. "We share the Columbia River, participate with the Oregon Hanford Cleanup Board – we share our concerns and look to the states for help as well."

Bailor— "The memorandum of understanding (MOU) addresses project and policy coordination. We look at groundwater and protecting the Columbia River. We find ways to leverage strategically so that DOE can make better-informed decisions."

"For training purposes, the state likes to use Oregon State University. Hammer doesn't have equal facilities for study and training. Both groups should agree to use the two facilities for development. The routine government to government meetings between the

State of Oregon and CTUIR are beneficial and productive. Tribes have taken new initiatives, tribes act as co-managers; they have an interest as well as state."

Ken Niles, STGWG Co-Convener, added that it is possible and beneficial to develop an agreement like this between states and tribes.

### **Highlights of the August 10<sup>th</sup> Tribal Dinner with Secretary Chu**

*Russell Jim and Gabe Bohnee, participating Tribal representatives*

Russell Jim— "There was an agreement of principle to address the issue of Legacy Management. It has not been renewed since '99 and has fallen by the wayside. There has yet to be a definition of government-to-government consultation."

"The event was history in the making. It was the first time a Secretary of Energy had ever come to sit down with Tribes. And, the Umatilla put together the cooks and good food."

The subject of energy development was the focus. The relationship of Indians to the environment was discussed. Jim stated, "I would like to hear DOE say that indigenous people are most affected by such environmental changes and degradation. Expressed concern will always find its way to the top and to Secretary Chu. If the person at top and in charge mentions it, staff will take it in to consideration."

Bohnee commented on the caliber of the meeting and those that were in attendance, including Sec. Chu as well as Under Secretary Johnson and Assistant Secretary Triay. He shared one of his takeaways from the event, "The Secretary's schedule is quite scripted. The fact that he is a busy individual, his time is limited. He spent 3 hours, instead of 2, talking with tribes at the event."

Jill Conrad offered a perspective from DOE. "The event was a first time informational discussion, not a formal tribal discussion," she said. Conrad spoke about peoples' connection to the land and how its importance was communicated well by the three Tribal Chairmen. She believes the Tribes' message was well heard by the Department.

Bohnee added, "Hopefully there are more opportunities to have these kinds of high-level discussions in informal sessions."

Lastly, Governor Toledo wanted to echo Don Ami's earlier words. He added that the tribes of Santa Clara, Cochiti, San Ildefonso, Jemez, and the 19 pueblos (20 tribes) each have a distinct and very different government. On behalf of Tribes, he appreciates DOE and its work to establish government-to-government relationships. He applauded everyone's presence.

### **STGWG OPEN SESSION 1:00pm-2:30pm**

Ken Niles and Willie Preacher welcomed all participants to the open session and offered opening remarks. Russell Jim with the Yakama Nation delivered the invocation.

### **Long-Term Management and Storage of Elemental Mercury Update**

*Frank Marcinowski, DOE Acting Deputy Assistant Secretary for Technical & Regulatory Support*

DOE is responsible for designating a facility or facilities for the long-term management of elemental mercury generated within the U.S. under the Mercury Export Ban Act of 2008. DOE is preparing an Environmental Impact Statement (EIS), in accordance with the National Environmental Policy Act (NEPA), to consider the impacts of the required action. The Mercury Storage EIS will evaluate alternatives for a long-term facility or facilities to open no later than January 1, 2013, the statutory start date for operations.

Marcinowski reported that seven scoping meetings took place this past summer. He explained that DOE is in the process of developing the draft EIS. He did not give a release date, but said that it wouldn't be too much longer before it is released to the public (possibly in January 2010). The Final EIS should be released late next summer or early in the fall with a Record of Decision (ROD) to identify the location(s) shortly thereafter.

Tribes are concerned about consultation on the issues surrounding elemental mercury. Bailor asked that DOE consult with tribes on these matters, and Marcinowski agreed that consultation would occur.

Niles asked if the draft EIS would include a preferred alternative location determined.

Marcinowski did not want to speculate on this matter.

### **Blue Ribbon Commission Discussion on Spent Nuclear Fuel and High Level Waste**

*Frank Marcinowski, DOE Acting Deputy Assistant Secretary for Technical & Regulatory Support*

Marcinowski reported that the Blue Ribbon Commission is to be established in the next few months. The U.S. House and Senate voted down appropriations, but \$5 million is what the commission will have to do its work and complete its efforts and deliberations in a two-year period. The group is governed by the provisions of the Federal Advisory Committee Act (FACA) so that its findings are to be objective and accessible to the public.

Niles—"Who will make the selection of the members?"

Marcinowski—"The Secretary is involved."

Niles also mentioned the fact that Max Powers' (a former STGWG state member from WA) name has been brought forward to sit on and be a part of the commission.

### **Greater than Class C (GTCC) Low Level Waste Draft EIS Update**

*Frank Marcinowski, DOE Acting Deputy Assistant Secretary for Technical & Regulatory Support*

Marcinowski explained that DOE is in a similar place in developing the GTCC draft EIS, like that of the Mercury Storage draft EIS (mentioned above). However, inventory levels have changed, so DOE hopes to have the draft completed in the spring of 2010. It is currently in the internal review process. The Final EIS should come out in 2011.

He mentioned that there has been consultation with tribes, as there have been a number of workshops on GTCC issues between the Department and tribes, and such issues are built into the draft.

Niles—“Do you anticipate a preferred site?”

Marcinowski did not know nor could speculate on a preferred location.

Alvarez—“Are you ruling out geologic disposal of GTCC waste?”

Marcinowski—“No, no we are not.”

### **Overview of DOE Settlement at Hanford**

*Andy Fitz, Assistant Attorney General, State of Washington; Jane Hedges, State of Washington; Ken Niles, State of Oregon*

**[LINK](#) to PowerPoint presentation**

### **National Transportation Stakeholders Forum Update**

Niles explained that the Transportation External Coordination Working Group (TECWG or TEC) was formally funded by the Office of Civilian Radioactive Waste Management. Due to severe budget cuts, TEC is no longer meeting. However, there is still a forum to continue discussions on transportation and how to safely manage and dispose of our nation's spent nuclear fuel (SNF) and high-level radioactive waste. The Office of EM is now the lead on these efforts and will continue to work with those that are impacted by these transportation routes through the National Transportation Stakeholders Forum. A steering group has recently been tasked with the development of a new draft charter. The group has also decided to have a meeting this spring in the Midwest.

Bill Spurgeon, Transportation Specialist with DOE's Office of Packaging and Transportation, indicated that safety is the utmost priority. The top 30 percent of truckers transporting SNF/high-level radioactive waste have the highest DOT scores. He explained that traffic managers are polled twice a year and that there have only been three minor traffic accidents this year.

In conclusion, Spurgeon added that the overall number of shipments are decreasing. “We still don't know what the AARA will do. It may bring these numbers up, but we are going to get the waste ready for shipment and disposal,” he said.

## **TRIBAL SESSION WITH DOE 2:45pm–4:00pm**

### **Report and Status on STGWWG's Priority Issues for DOE in 2009**

*Sky Gallegos, Deputy Assistant Secretary, Office of Congressional & Intergovernmental Affairs*

Deputy Assistant Secretary Gallegos addressed a number of STGWWG's recommendations to the DOE for Priority Issues in 2009.

As background, in Dec. 2008, STGWWG sent a follow up letter from a meeting to the Obama Transition Team to define these important priorities for DOE to consider.

First, Gallegos commented on the **status of the Director of Indian Energy Policy and Programs**, explaining that search for this individual is taking place. Work is underway and happening closely with the White House to fill this important role. However, she explained they are sorely lacking in resumes to fill the position; she looks to STGWWG for such resumes and recommendations.

As for STGWWG's recommendation for **Congressional and Intergovernmental Career Staff**, the Deputy Assistant Secretary agrees completely.

"I acknowledge the fact that the Office of Congressional and Intergovernmental Affairs has career staff. There is a dozen career staff on the Congressional side, and it's clear that there are benefits. The fact that you want it for Intergovernmental side, I agree with you on that recommendation."

**Tribal Summit**—Secretary Chu is committed to holding a Tribal Summit this year. On November 5, 2009, Tribal leaders will meet at the Tribal Nations Conference with the president, Secretary Chu, Secretary Salazar, among many others. The president will give remarks and have an open dialogue with the tribes.

In preparing for our summit, Gallegos explained that she would like to organize a listening tour/regional meeting and participate with key program liaisons and hold meetings in different regions of the country. She mentioned the possibility of a mid-November meeting. She thinks those involved could use these as mini-planning sessions for next year. She also mentioned a possibility to piggyback on the National Congress of American Indians (NCAI) meeting in March 2010.

**Commitment to Indian Policy by Secretary of Energy**—The reaffirmation of Indian Policy Act currently sits ready for Chu to sign. It is near completion and reaffirms the Secretary's commitment to the Indian Policy and Order, including the framework. A general discussion took place on the progress of the implementation of Policy and Order.

Gallegos reported, "We have begun meetings with a senior subset state policy group of folks. We bring these folks together to make sure the DOE policy missions are moving forward and states' issues are moving forward. We are also revitalizing Tribal POCs to talks on a regular basis. We should work to combine those meetings at least once a month with both states and tribes." Additionally, she mentioned that November 29<sup>th</sup> is the Tribal POCs meeting.

As for STGWWG's recommendation for **Increased Funding for DOE's Environmental Management program**, Gallegos provided a brief, informative update of facts on stimulus funding.

- \$55 million in direct formula funding
- \$35 million is out the door
- \$24.9 million in EE block grants have gone to 165 tribes

- \$10 million in weatherization has gone out to tribes, the Navajo Nation among others have received dollars
- EECGB funds are at halfway mark. Gallegos compared the process to a war room, and that the easiest to process get processed first. She explained that DOE plans to get more of these funds out the door.

Bailor talked about the blending of DOE's issues—Energy Efficiency and Cleanup—and noted they are separate issues altogether. He continued to explain that there is a lack of characterization, just a need for shovel-ready projects and that none of that is coming out of stimulus money. Characterization should be considered.

Gallegos explained that as far as Energy Efficiency Conservation Block Grant funds go, the Secretary is aware that we won't get to where we need to be without weatherization, characterization and leveraging public dollars. She is looking for ideas on how to put into place some ways in which tribes can access those funds, such as workshops.

Willie Preacher, STGWW Co-Convener, made a comment about the Tribal Summit and the idea to piggyback with NCAI. He mentioned STGWW tried this once with NCAI and that STGWW has its own issues and would like to meet separately. He added that it will be a good form of government-to-government consultation.

In closing, Ms. Gallegos provided the group with her contact information and encouraged communication. STGWW was impressed by this and let her know it's available to assist DOE and is ready to consult on any matter.

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Don Ami commented that NNSA also has career people and it was a great idea to bring them in. He added that DOE has gotten so big, and that it does make a lot of sense to have these folks to work with tribes with specific issues.

Gabe Bohnee, Tribal Issues Co-Chair, concluded the session by talking about how a new take on weatherization will help to solve some of these problems.

He explained that there will be value in regional forums leading up to the Tribal Summit. He mentioned what is going on in Lewiston, ID - EPA region 10. "The fact that the plateau tribes live in an arid environment, different to that of those living in wet areas is apparent. Housing is an issue important to tribes, as are many issues. HUD housing help our folks live healthy lifestyle and working with the EPA on relevant regional forums has been beneficial," Bohnee said.

## NRDA Session

Peter Chestnut, Tribal Issues Co-Chair, introduced Matt Duchesne, DOE Environmental Protection Specialist and attorney, to the group. Chestnut noted that there has been a change in perspective within the Department. The lead person on Natural Resources Damages (NRD) is Matt Duchesne; however, now there are two people at headquarters working on NRDA!

Duchesne started the conversation and mentioned the lawsuit that the Yakama Nation filed against DOE for reimbursement of costs they incurred in NRD. Hanford's schedule, to get tank waste cleaned up, was talked about and adjusted to extend to the year 2047 so cleanup does not have to wait.

An open discussion continued on the fact that the NRD process should get started at Hanford and Los Alamos National Lab (LANL).

At LANL, a Natural Resource Trustee Council has been established and the Memorandum of Agreement has been signed off on by many groups. Amendments and negotiations are happening that will make certain tribes can join the process, these being: Santa Clara, Cochiti Pueblo, San Ildefonso and Jemez. A report concluded that there are certainly NRD damages and the goal of the NRDA process is to restore lands to baseline conditions.

Duchesne agreed that there has been a real shift in attitude to address NRD within DOE. He mentioned the settlements at Fernald and Rocky Flats. "There has been much growth beyond EM. EM is not the always the landlord. At LANL, NNSA is in charge; at Oak Ridge, it's the Office of NE; and at Weldon Springs, the Office of Legacy Management is the landlord," he stated.

"There is not an established policy and there aren't clear lines of responsibility or authority. We are in the process of finalizing a briefing for Assistant Secretary Triay to convene a working group or to set up a meeting within the Department. We will determine the need for a department-wide policy on NRD," he added.

Duchesne informed the group that invitations went out internally to hold a workshop for select DOE officials to address NRD issues across the complex. It was set for this coming Nov. 4-5. However, there was difficulty in aligning schedules, so it has been moved to Jan. 2010 instead. "There is momentum within DOE and the need to address NRD issues," he said. The workshop will include basic training on the regulations from the Department of Interior and some training from the Department of Justice on case law.

Russell Jim — "We (the Yakama Nation) did a pre-assessment screen and provided it to DOE. They were surprised, as there were over 3000 products relative to birds that contained traces of lead; there were injuries to those resources. There was resistance to going down the path to NRD. The Judge sided with the Yakama Nation, indicating lack of funding and due cause of many problems for Yakama Nation. What is out there? There is no full characterization of the Hanford site. My people ask if they can gather foods/medicines. Does your attorney provide lawsuits on other issues and still work on those related to nuclear waste? I am not allowed to have an attorney most familiar with these issues. It's micromanagement without the contractor. Why don't we try and work together,

get the proper people and develop a line item? I hope [this concern] will make its way to [Ms. Gallegos]. It's frustrating," he said.

He added that Trustee Councils are wallowing because of lack of funding.

Duschesne commented on the idea of an NRD line item for such activities, as has been previously discussed. "We're concerned because our budget will be tighter in the coming years, there could be a possibility of taking money from cleanup or cutting a line item [the NRD line item] altogether," he said.

Russell Jim added that there should be a message sent to the Office of Management and Budget that we're not just talking about funding, but the health of people—real health issues are being ignored.

*END of STGWG meeting notes from New Orleans, LA*

### New Orleans Meeting Follow-up Conference Call Monday, November 9, 2009

Ken Niles led the discussion on follow-up items from Assistant Secretary Triay's presentation at the Intergovernmental meeting in New Orleans on October 23, 2009. STGWG went through the Action Items and the Key Outcomes for DOE-EM that came from this presentation. Melissa Nielson commented for DOE on many of these items below.

1. Melissa's group to **evaluate each site on how well they are engaging 1) regulators, 2) tribes, and 3) stakeholders.**
  - a. Different grades OK for Base vs. ARRA programs; and for each intergovernmental group.
  - b. Is there a difference between messages from sites and HQ?

It was determined that there is not sufficient consultation. The Office of CI will develop a way to better work with these groups. Of course, DOE looks for input from groups, but this item will take on more of an internal approach.

John Owsley: Will there be feedback to site folks, so that all will hear message?

Melissa Nielson: Those in the field will be at the next Intergovernmental meeting. Feedback will be provided at the spring meeting. There will be a high-level of evaluation taken on how things are going.

Tom Bailor: How will tribes participate in this review? We would expect through appropriate consultation, and that our definition of consultation be considered. Perhaps, case studies and discussion points on past interactions between groups could be gathered to better flush out ideas in the decision-making process.

Brandt Petrusek: States and tribes should provide examples of consultation to DOE and indicate when it did/did not occur.

Melissa Nielson: Yes, examples would be very helpful. Also, be sure to explain how it could work for the better. This would be useful to us (HQ) and those at the sites—lessons learned.

ACTION ITEM—Brooke Oleen will solicit from STGWWG positive/negative examples of consultation with states/tribes from DOE site offices and provide this information to DOE by the end of December/early January 2010. How could these discussions be more successful?

2. Develop clear milestones for *formal, routine, and structured* engagement on the **strategic plan/5-year plan/budget & compliance/prioritization**.
  - a. Ensure meaningful consultation, not checking off a box.

Nielson indicated that Merle Sykes' group (Budget) will work on this item. Comments could be provided thereafter.

3. Engage with groups about **post-ARRA planning**.
  - a. Consult about the appropriateness of extending ARRA projects beyond FY'11.
  - b. Inés mentioned a subtask related to the aging workforce (needs clarification).

This will be another matter evaluated by Sykes and her staff. FY'11 is a self-imposed deadline through EM on ARRA projects. 2015 is when the dollars need to be spent. It is understood that regulators may need more time/flexibility. This is a dialogue between DOE and its regulators, not necessarily STGWWG. Higher priority projects to be picked up, limited planning, shovel-ready projects.

Bob Geller added that characterization tasks should fall under ARRA. It is important to recognize characterization/risk.

4. Dr. Triay said **compliance milestones** should be tracked as a **performance measure**.
  - a. Principle: Compliance milestones and improvement in project performance are tied.
  - b. 'Restructure the EM portfolio' to separate projects and operations; share all EM annual performance metrics, and make sure they make sense.

Nielson reported that this item has been completed and integrated into performance plans at DOE.

1. Ensure all field managers have compliance as part of their performance plan.
2. Tracking compliance milestones through restructured portfolio will make them easier to see.

Bob Geller commended Melissa and DOE on the inclusion of these compliance milestones in measuring performance as a critical and major step.

5. Initiate discussion of **Waste Interdependencies**.
  - a. Note extreme negative reaction whenever EM publishes a NOI.
  - b. Waste disposition maps: what's missing, what needs to change?
  - c. Facilitate input from groups to NRC.
  - d. Provide info about what Frank Marcinowski agreed to with NRC.
  - e. Identify 'What would allow you [Groups] to assist us on waste disposition?'

Nielson said that Christine Gelles is committed to talking more frequently with STGWWG and member groups. The idea of incorporating such subjects as 1) Waste Interdependencies and 2) Strategic Planning (as well as other possible issues) was discussed and could be a part of the monthly ARRA calls.

Jessica Aberly indicated it would be helpful to know when these other items will be included on the ARRA calls.

ACTION ITEM—Brooke will continue to inform STGWWG on the dates/times of the ARRA calls and when discussions/updates on additional items will take place.

6. Create the **NRDA progress matrix**; provide more resources for Matt Duchesne, if necessary.

ACTION ITEM—STGWWG will assist NGA and ECOS on this project.

7. Facilitate group interaction with the **Blue Ribbon Commission**.
  - a. Status updates about establishment and progress of B.R.C.
  - b. Facilitate group interaction with B.R.C.

STGWWG hopes to learn more and be a part of discussion once the commission has been formally established. Brian Barry encouraged STGWWG to ask for tribal representation on the commission by way of letters to Secretary Chu/Assistant Secretary Triay.

ACTION ITEM—Tribal Representation on the BRC will be included in letters to Secretary Chu and Assistant Secretary Triay.

8. Develop an EM policy for **Energy Parks**, to give it some structure.
  - a. Consider an office dedicated to Energy Parks.

Greg Kaufman noted that DOE seems to not have a real definition for Energy Parks; it is very loose and seems it can be what we want it to be. Tribes and states have a say about future land use and its development.

9. Dr. Triay said having more DOE **site representatives** at intergovernmental meetings is an "excellent idea."

Niles reported that DOE will have site representatives attend future intergovernmental meetings.

10. **Footprint reduction:** Request Frank/Melissa to look at whether 50% reduction by 2011 (and 90% by 2015) is realistic, and request feedback from the groups on this. **Characterization:** request specific actions from Frank/Melissa that would be vetted through the groups.

How much cleanup is proposed for 90% reduction by 2015? Does this include both soil and groundwater cleanup?

Willie Preacher commented that at INL there is capping of waste and more stabilization than actual cleanup.

Bailor mentioned investment in R&D issues.

ACTION ITEM—STGWG will ask for clarification on footprint reduction by way of letter to Assistant Secretary Triay.

**OTHER BUSINESS discussed on the call:**

- Niles mentioned that he has tried to view DOE's online Tribal Training and wasn't able to do so. Petrasek will check on this and reminded the group that this training is closely held and not to be distributed to folks too far out.
- There was discussion on keeping the momentum going on the Tribal Summit. We need to mention this again in future letters.
- Kaufman discussed the need to remind DOE of the importance of the Director of Indian Energy Policy and Programs, so that tribes have a POC on such issues as soon as possible.
- Chestnut reiterated the need for a Tribal Summit early next year and that STGWG would like to help in the planning efforts. The need for a Director of Indian Energy Policy and Programs as well as mention of our need for Intergovernmental Affairs senior career staff should all be points highlighted in a larger letter.

From this conference call with full STGWG, the decision was made to send two separate, focused letters to 1) Secretary Chu and 2) Assistant Secretary Triay, copying all necessary DOE officials. The outline for these letters is below.

1. **Secretary Chu**
  - a. Consultation (lessons learned from states and tribes)
  - b. Director of Indian Energy Policy and Programs
  - c. Intergovernmental Affairs senior career staff—will assure continuity
  - d. Approval and commitment by Secretary to the Indian Policy
  - e. Tribal Summit—no later than early 2010, programmatic in nature, with a focus on energy, science and the environment. Work with tribes to assist in the

planning, especially since there is not yet a Director of Indian Energy Policy and Programs.

- f. Blue Ribbon Commission—Tribal representation
2. Assistant Secretary Triay
- a. Thank you for attending the Intergovernmental meeting & attention to Intergovernmental groups' priorities (including some of STGWWG's) through action items.
  - b. STGWWG commends DOE on work/action items to be taken in these critical areas:
    - i. Compliance Milestones—DOE has ensured that those in the field have compliance as part of their performance plan.
    - ii. NRDA—site-by-site matrix to be developed and providing more resources to Matt Duchesne for NRDA activities will be helpful.
    - iii. Blue Ribbon Commission—transparency, interaction with BRC is important to STGWWG. Request Tribal representation. DOE will facilitate group interaction with the BRC.
    - iv. Characterization—very important, needs to be considered
      - Clarification needed.
      - EM footprint reduction and ARRA funds—"shovel ready"/funding until 2011 (DOE internal deadline) vs. 2015 deadline.
        - How much cleanup is proposed for 90% reduction by 2015?
        - Does this include both soil and groundwater cleanup?
      - Investment in R&D issues.
    - v. Energy Parks—develop an EM policy and better direction (currently definition is "loose").
      - STGWWG to be a part of the discussions and the process regarding future use of DOE property moving forward. States and tribes then will know likely or potential next steps in order to plan accordingly.

*Please see STGWWG Key Outcomes (additional document), includes a brief overview of the meeting, a summary of tribal and full STGWWG issues and action items.*