

State and Tribal Government Working Group Meeting Notes

May 3, 2010

Doubletree Downtown Nashville

Nashville, Tennessee

TRIBAL EXECUTIVE SESSION (closed session) 9:00am–10:15am

Attendees:

Vice Chairman Brooklyn Baptiste, Gabe Bohnee, Rico Cruz, Greg Kaufman, Governor Joshua Madalena, Brooke Oleen Tieperman, Willie Preacher, Michael Sobotta and John Stanfill. Neil Weber and Peter Chestnut—participated by conference call.

Governor Madalena of the Jemez Pueblo (NM) delivered the invocation. Gabe Bohnee, Tribal Issues Committee Co-Chairman, welcomed the group and introductions were made. The first item of business was to elect a Tribal Co-Chair for the Integration and Disposition (I&D) Committee. Dr. Rico Cruz with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) expressed interest and Greg Kaufman, Pueblo of Jemez, seconded his nomination. Dr. Cruz became the new I&D Tribal Co-Chair and will work alongside Jane Hedges, I&D Committee State Co-Chair.

Additional key topics mentioned:

Willie Preacher spoke of his role as the Tribal representative to the Environmental Management Advisory Board (EMAB), representing STGWWG. EMAB provides independent and external advice, information and recommendations to the Assistant Secretary for Environmental Management (EM) on issues relating to accelerated site cleanup and risk reduction.

Preacher indicated that the Advanced Recovery and Reinvestment Act (ARRA) funding has been a hot topic, including the plan for FY11, the regulatory deadline as to when stimulus funds are targeted to be spent. He encouraged tribes to contact him with related issues so that he can bring them forward. The next EMAB meeting will be in September in Santa Fe, NM.

Kaufman mentioned the topic of Energy Parks, and that Jemez has three renewable energy projects that it is exploring. He added and hopes that DOE will encourage using its experts on the outside, not just relying on in-house folks.

Natural Resource Damages Assessment (NRDA) Update:

Conference call with Matt Duchesne, DOE-EM Office of Environmental Compliance

Matt Duchesne joined the tribes via conference call for an update on NRDA business and activities.

Duchesne reported that a DOE-wide NRD workshop was held in January at Fernald in Ohio. Approximately 40 people attended, including DOE officials and contractors. DOI, DOD and DOJ were also involved. An NRDA working group was formed.

Duchesne provided a draft NRDA policy at the workshop; he received over 100 comments and has since made changes to the draft. He sent it back out to the working group a week and a half ago for edits, and mentioned that it is due back to him Friday, May 7. He expects that it will take a few months for the concurrence process, but he anticipates that this policy will replace the dated 1997 policy.

Duchesne provided a brief update on site activities:

Oak Ridge: close to final settlement agreement

Los Alamos: finalizing statement of worth; single procurement and implementation of the plan; plans for procurement face-to-face meeting within the next few months

Hanford: proposals came in 3 or 4 weeks ago—March 22nd was closing date; this week—contractor is being selected

Duchesne explained that Los Alamos and Oak Ridge want to take lead in NRD process, and EM has been supportive by rolling up its sleeves and through consultation.

STGWG OPEN SESSION 10:30am–2:00pm

Attendees: (including those present at the STGWG Tribal and State Issues with U.S. DOE session from 2:00pm—5:00pm)

Vice Chairman Baptiste, Jerry Boese, Gabe Bohnee, Denise Brooks, Tony Carter, Jill Conrad, Dr. Benjamin Cross, Dr. Rico Cruz, Branden Doster, Claire Dunne, Debbie Duren, Sky Gallegos, Bob Geller, Jeff Gibson, Stuart Harris, Jane Hedges, Brian Hembacher, Greg Kaufman, Gov. Joshua Madalena, Roger Mulder, Todd Mullins, Melissa Nielson, Ken Niles, Brooke Oleen Tieperman, Brandt Petrasek, Willie Preacher, John Price, Don Sampson, Tom Schneider, Mike Sobotta, Jim Sommerville, Bill Spurgeon, John Stanfill and Ed Winner

*Bob Alvarez, Russell Jim and Tony Memmo were a part of Tuesday's meeting with STGWG, the National Governors Association's Federal Facilities Task Force, and the National Conference of State Legislatures' Environmental Roundtable with the U.S. Department of Energy.

Governor Madalena gave the invocation, then STGWG Co-Convener Ken Niles opened up the floor to those present for a brief discussion on the flooding in Tennessee. Bill Spurgeon, with family in the city, and Debbie Duren, from Tennessee and recently moved from Nashville, offered some insight to the group on the great flood. With 13.5 inches of total rainfall from May 1-2, the Cumberland River crested 12 feet about flood stage levels, according to the National Weather Service. "We've seen nothing like this;

it's quite the spectacle," Duren remarked. Meetings went on as scheduled downtown, where waters had not reached the conference center.

Committee Focus and Business Reports

Committee Co-Chairs gave a brief explanation of the focus, duties and plans moving forward for their committees in the areas of Integration and Disposition (I&D), Natural Resource Injury Assessment/Long-Term Stewardship (NRIA/LTS), Transportation and Tribal Issues.

Integration and Disposition Committee:

Jane Hedges reported that the I&D Committee had been inactive the past few years. She was interested in hearing peoples' thoughts as to if there is a fundamental need or value for the committee.

With the appointment of Dr. Cruz as I&D Tribal Co-Chair, it was decided that membership will see what kind of course the committee will take with added leadership. Brian Hembacher noted that with the waste disposition issues surrounding the recent license suspension of the Yucca Mountain repository, there may be potential topics to explore.

Tribal Issues Committee:

Bohnee recapped items discussed amongst the tribes during the closed Tribal Executive Session, including: appointment of Dr. Cruz as I&D Tribal Co-Chair; conference call and NRDA update with Matt Duchesne; issue of disposition of high level waste; Preacher's EMAB update, specifically the ARRA FY11 regulatory deadline. The Tribal Issues Committee is active and conducts business regularly.

Transportation Committee:

Niles stated that transportation issues have been raised to the full STGWG, but that the group hasn't functioned as a committee per se. He said that his initial thought was to recommend discontinuing the committee. However, given that there is a new national transportation forum, it is probably useful to continue the committee for the time being to see whether there are issues that the committee members would like to pursue.

NRIA/LTS:

Duren explained that the committee had a conference call at the first of the year to discuss the current 2010 Work Plan. She stressed the importance of having this committee since there is much interest and activity, including putting together resource information.

Greg Kaufman, Jack Bell, Branden Doster and Barbara Harper have also been added to the committee roster.

Duren recently received a link from DOI which the group may find helpful. DOI has posted a draft NRDAR document library at www.cerc.usgs.gov/nrdar. This is a compilation of documents and resources relevant to restoration activities by agencies within or supported by DOI. The information includes case fact sheets, agreements, settlement documents, assessment documents and restoration documents.

National Transportation Stakeholders Forum Preview

Ken Niles, Member—State of Oregon and Bill Spurgeon, Transportation Specialist, EM Office of Packaging and Transportation

Niles provided background on the group. The National Transportation Stakeholders Forum came out of the former Transportation External Coordination Working Group (TEC WG). The TEC WG was predominantly funded by DOE's Office of Civilian Radioactive Waste Management program and focused in large part on transportation planning issues related to the eventual opening of Yucca Mountain in Nevada. This former group included many stakeholders, such as industry and associations.

Today, with the Yucca Mountain program seemingly cancelled, NTSF consists of only states and tribes and works with DOE's Office of Environmental Management. The goal is to communicate at a national level with state and tribal governments about ongoing, upcoming or tentatively planned DOE shipments or shipping campaigns that may have an impact on their jurisdictions.

The inaugural one day meeting will take place on May 26, 2010 in Chicago, IL. The talk show style format will include active moderators and technology will be used to survey the audience for instant feedback to be used for future meeting planning. States will have a chance to meet and tribes will caucus separately on May 25. A tour of Argonne National Lab is scheduled for May 27. Niles encouraged those with an interest in transportation issues to attend.

Spurgeon added that this meeting will establish and set the stage for what the topics are going to be regarding transportation of radioactive waste and materials (including occasional high-visibility shipments that are nonradioactive) and what the remaining issues include now that Yucca is off the table.

State Perspectives on Litigation Related to the Cancellation of Yucca Mountain License

Jane Hedges, State of Washington

Hedges discussed the state of Washington's legal involvement in efforts to stop the federal government with abandoning Yucca Mountain as the nation's high-level waste repository.

DOE's Hanford site is situated on 586 square miles near the towns of Richland, Pasco and Kennewick, WA, with a total population of ~250,000. Hanford is the largest environmental cleanup project in the world. Much of Hanford's wastes are intended to be disposed of in a high-level waste repository. That includes 2,100 metric tons of spent nuclear fuel; more than 1,900 capsules of strontium and cesium; and eventually

hundreds and possibly thousands of canisters of immobilized high-level waste, which is currently stored in 177 aging underground tanks. Without Yucca Mountain, these wastes are stranded at Hanford.

On March 3, 2010, Washington submitted a petition for leave to intervene to the Nuclear Regulatory Commission (NRC) to oppose an anticipated motion by DOE to dismiss with prejudice its application for construction authorization to proceed with a deep geologic repository (meaning the site could not be revisited or looked at again as a possibility for a deep geologic repository). The state opted for the intervention rather than litigation initially, but retained the right to take other legal action. The Prairie Island Indian Community, the states of Minnesota and South Carolina; Aiken County, South Carolina; and the National Association of Regulatory Utility Commissioners also submitted intervention petitions.

On April 13, 2010, Washington filed a Petition for Review and a Motion for Preliminary Injunction against DOE in the DC Circuit because the NRC Licensing Board “punted” the issue, deciding not to consider any of the petitions to intervene or DOE’s motion to withdraw itself until such time as the litigation was resolved in the federal courts. A preliminary injunction was sought to prevent DOE from taking further steps to terminate or dismantle the Yucca Mountain project before a ruling and so as not to remove the only current option on the table.

The focus of the state’s litigation is that DOE lacks the authority under the Nuclear Waste Policy Act (NWPA) to unilaterally terminate the Yucca Mountain project, as Congress has designated Yucca Mountain as the permanent repository under NWPA, and DOE has submitted an application for license under the NWPA. Washington contends that DOE violated the National Environmental Policy Act (NEPA) in its termination of the project in favor of an unknown and yet-to-be-identified alternative and has not completed a final environmental impact statement as required by NEPA to assess the environmental consequences of its decision.

Concern was expressed for that of the waste treatment plant at Hanford in that the disposal and requirements for the separation of LLW and HLW were defined for that of the Yucca repository.

Tribal Tutorial on Shoshone-Bannock Tribes’ Treaty

Willie Preacher, Shoshone-Bannock Tribes

Preacher provided background information on the Shoshone-Bannock Tribes’ treaty, the Fort Bridger Treaty of 1868, including how the tribe uses it and how it relates to trust responsibility with the federal government and DOE.

The Fort Hall Reservation, homeland to the Shoshone-Bannock Tribes, is located in the southeastern part of Idaho. The 1867 Executive Order proclaimed 1.8 million acres for the reservation. But, after a series of cessations, the current reservation is comprised of

544,000 acres, of which 96 percent is individually or tribally owned. There are approximately 4400 enrolled members of the Tribes.

A total of 11 treaties were signed with the leaders of the Bannock and Shoshone people, and only one, the Fort Bridger Treaty (July 3, 1868), was officially ratified by the Senate as required under the United States Constitution. In addition, two Executive Orders were issued by the president and two Agreements have been signed since this time.

The Shoshone-Bannock Tribes and the Department of Energy—Idaho Operations Office signed an Agreement in Principle, in December 2007, thus renewing the formal relationship between the two parties for another five-year period. This agreement is the latest in a series between the tribes and the department, dating back to 1992. The agreement is significant in that it formally establishes a government-to-government relationship and officially recognizes the Federal Government's trust responsibility to federally recognized Indian tribes and the Shoshone-Bannock Tribes' sovereignty. It also acknowledges their ancestral connection to the Idaho National Laboratory (INL), and their 1868 Fort Bridger Treaty, with its retained rights.

Tribal concerns regarding the lands and the impact of INL include the protection of the environment, including: the aquifer, air quality, archaeological sites and cultural resources, game, and plants; safe operations; health; risk minimization and management; and tribal economic self sufficiency.

Tribes want DOE to consult with and work effectively with them on new missions at INL; issues related to present day and future land use, including rehabilitation of use areas; notification of accidents/events; and the overall cleanup of the site.

The federal government has the responsibility to honor agreements and treaties, which is why it is important for both federal government officials and tribes to be knowledgeable about the treaties that affect them in future decisions. There is a need for more public awareness of the legal and political framework that has shaped federal-tribal relations. This is the first of many future tribal tutorials from STGWG member tribes with a focus on the distinct and separate tribal treaties and legal drivers to be shared with states, other tribes and DOE officials.

Bob Geller: Does a government-to-government relationship exist between DOE and your tribe?

Preacher: We are well informed about what is happening; we get information as far as shipments go. I have been the liaison for the tribe with DOE since 1998 and have seen some improvements, but better and early communication is key.

Paducah Lunch Presentation

Reinhard Knerr, Site Lead for Paducah Gaseous Diffusion Plant and Director of the Paducah Environmental Remediation/D&D Project

In anticipation of the Paducah Gaseous Diffusion Plant tour, members were briefed on the history of the plant, located on 3,420 acres in western Kentucky, and the part it played in the enrichment of uranium for commercial nuclear reactor fuel from 1952-1993. In 1993, the U.S. Government created the United States Enrichment Corporation (USEC) as a privatized company that would maintain uranium enrichment operations for the United States, which is ongoing at Paducah.

STGWG also learned about the plant's current activities, challenges and missions in the areas of environmental restoration and waste management. In 2009, Paducah received \$78.8 million in additional ARRA funds that have helped accelerate efforts, including the single biggest challenge of cleaning up three contaminated groundwater plumes. In April 2010, the C-400 TCE Source Removal Project began to extract a major source of TCE contamination to the plumes.

STGWG TRIBAL & STATE ISSUES WITH THE U.S. DEPARTMENT OF ENERGY

2:00pm—5:00pm

Report and Status on STGWG Tribal Priority Issues

Sky Gallegos, Deputy Assistant Secretary, DOE Office of Congressional and Intergovernmental Affairs

Sky Gallegos acknowledged Governor Madalena and Vice Chairman Baptiste for their attendance and noted the participation of Tribal leadership attests to the importance of such meetings.

As for personnel issues, Gallegos reported that Jeffrey Lane has been nominated as DOE's Assistant Secretary for Congressional and Intergovernmental Affairs. He is from Tennessee and most recently served as chief of staff for Senators Michael Bennet of Colorado (2009), Ken Salazar of Colorado (2007-2009) and John Edwards of North Carolina (2000-2002). He helped direct Senator Salazar's legislative work on the Energy and Natural Resources, Agriculture and Finance Committees. He should be confirmed before the Memorial Day recess.

One of the first items of business is to hire a Senior Political Director of Tribal Affairs within the Office of Indian Energy Policy and Programs. DOE is looking for a few more nominees and could use some more resumes along with recommendations as to how the office should be staffed. There are also plans to add another senior political appointee within Gallegos' office to help with the coordination efforts of the Tribal Summit and in response from the memo from the president on tribal consultation this past November. There should be a decision made regarding this position in the next few weeks.

President Obama had directed all federal agencies to submit a detailed tribal consultation plan to him, with a progress report due in August. The memo also directs the White House Office of Management and Budget to submit a report on the implementation of the tribal consultation policies by the agencies. The current path chosen to address President Obama's signed memorandum on tribal consultation and for the DOE-wide Implementation of DOE Order 144.1, the Policy and Framework—a working group meets weekly and each representative returns to its office or agency that didn't have these directives with ideas for a collective plan for moving forward. The final report is due to the president in November 2010.

A Tribal Steering Committee has been formed (more formal than the working group mentioned above) and has been meeting regularly. Its first piece of business is to put together a report on all tribal activities and training aspects of each program. The committee has been working with tribes to identify one or two priority issues. Every Senior Assistant Secretary received a collective report on this tribal initiative to see what can be added. A fellow, Jodie Tall Bear, has been working with EM and its field contacts on training, including the online Tribal training.

As for the Tribal Summit, Gallegos asked the group if working with the Environmental Protection Agency in conducting regional meetings makes sense and how STGWG feels on having the Summit separate or together with other tribes in October 2010.

A lot of time and energy has gone into allocating funds to tribes and states through weatherization and Energy Efficiency Conservation Block Grants (EEBG). This annual program has tripled in funds because of the American Recovery and Reinvestment Act. "The largest obstacle is the sheer amount of funds to disperse. One billion of those dollars have been spent since the end of April and this is great, because it is tied to jobs. Once the Director of Indian Energy Policy and Programs has been appointed, this will help to move things along," Gallegos said.

EEBG Breakdown of Dollars

- \$2.7 billion to local entities, cities, counties, tribes and some states, of which 99% has been obligated
- \$2.4 billion (or 88%) is ready to be spent
- \$736 million (or 29%) has been contracted
- 5% has actually been spent
- \$54 million just to tribes
- The Arapahoe and the Navajo to receive \$10 million
- Dollars to 80 tribes have not been obligated—working with them to get paper work done
- \$42 million ready to be spent

COMMENTS:

Preacher commented that he does not want DOE to lose interaction with STGWG tribes on the Tribal Summit.

Weber added that he serves on the National Tribal Operations Committee (NTOC), established by the EPA in order to improve communication and build stronger partnerships with tribes. NTOC is comprised of 19 Tribal leaders (Tribal Caucus) and EPA's Senior Leadership Team, including the Administrator, the Deputy Administrator and the Agency's Assistant Administrators and Regional Administrators. NTOC meets regularly to discuss implementation of the environmental protection programs for which EPA and the tribes share responsibility as co-regulators. Gallegos was happy to have a Point of Contact, Neil, which she can work with on her end.

Updates from DOE/NNSA Program Offices

DOE program office points of contact reported on the status of implementation of DOE Order 144.1, the DOE Tribal Policy and the Framework for implementation of the Policy as well as the current status of instituting the DOE/NNSA Tribal Training.

Brandt Petrasek, EM Tribal Programs Manager, Office of Public and Intergovernmental Accountability

Petrasek reported that Dave Brockman and Jill Conrad, at the Richland site office, have been making progress and HQ has been playing off of their hard work. The online training has been being utilized across the Department. He added that getting the senior political appointees in position has been a big move, ultimately getting to the point of early consultation across the board and with tribes is the goal.

Jill Conrad, Tribal Affairs Program Manager, Office of Communications and External Affairs—Richland, Washington

Conrad noted that there are six segments involved in the tribal training that all employees receive at Hanford, and included is a one or two days hands-on training session to talk about cultural issues at the Hammer facility. (STGWG's own Russell Jim is featured in the cultural video that is shown as a part of the training.) She added that the 2015 vision of Hanford is based on CERCLA decisions vs. NEPA decisions. Tribes can plan for next five years by talking regularly through consultation and getting it done earlier.

Jennifer Dundas, Physical Scientist and Tribal Point of Contact, West Valley Demonstration Project, New York

Dundas introduced herself as the new Tribal POC for West Valley. She explained that her site doesn't have a direct impact on tribal lands, but that site activities can have an indirect impact on tribal lands downstream and relating to waterways. West Valley has been working with the Seneca Nation and invited the tribe to a session on emergency preparedness training. "Tactics on how we are prepared to respond led to discussions on how they would respond to emergencies," she said.

Claire Dunne, Director of Intergovernmental Affairs, Immediate Office of the Administrator, DOE-NNSA

Dunne explained that she has been working as the Director of Intergovernmental Affairs with the National Nuclear Security Administration (NNSA) for four months. NNSA is the landlord and responsible for eight sites in seven states. Dunne's job is to interface with states and tribes on issues of importance related to their respective sites. To ensure an open and effective communication pathway, she stated that she is the single point of contact at headquarters and is available to states and tribes for requests for information about NNSA programs.

Dunne mentioned the Nuclear Posture Review that was rolled out, prompted from threats to US security and the flux in international dynamics, and the administration's plan to work multi-laterally to consolidate and streamline the nuclear weapons complex while maintaining a reduced weapons stockpile.

COMMENTS:

Bohnee: We have a tribal policy that we follow. We let project managers know that consultation occurs to our group of nine, the Nez Perce Tribal Council. Thanks to Dave Brockman and Jill Conrad for their understanding of Federal Trust Responsibility and for their work with us.

Weber invited Dunne out to New Mexico and to Los Alamos National Lab (LANL) to visit with area tribal governments.

Representative John Heaton, NM, explained that there is no integration between EM and NNSA at LANL and that the public only sees cleanup issues and clean up doesn't happen. He stated that LANL is a crown jewel research site and it's important to keep people supportive of it. He brought up the idea of separate budgets for that of the site.

Tony Carter, Senior Policy Advisor, Office of the Director—DOE Legacy Management
Carter gave background on the Office of Legacy Management (LM) and its mission to manage the Department's post-closure responsibilities while ensuring the future protection of human health and the environment. LM is the landlord for 87 sites in 28 states, including Puerto Rico.

Carter explained that LM is implementing DOE tribal policy requirements and that the new director has familiarized himself with the policy. All LM staff whose work involves tribal activities has read the policy, roles and responsibilities relating to the policy have been assigned, and a DOE tribal point of contact has been identified. He spoke of a cultural sensitivity and history training for senior LM staff that will be provided by the Navajo Nation and the Hopi tribe in June.

There will also be a Long-Term Stewardship Conference, November 16-18, 2010, "Managing Today's Change, Protecting Tomorrow's Future—A Global Perspective on

LTS&M,” in Grand Junction, CO. Please contact Tony Carter at tony.carter@hq.doe.gov for more information.

Update on Greater-Than-Class-C Waste Consultation Activities and Other Q & A

Frank Marcinowski, Acting Chief Technical Officer and Deputy Assistant Secretary for Technical and Regulatory Support, DOE-EM

Marcinowski explained that DOE interacted with the tribes early on during the Greater-Than-Class C (GTCC) Environmental Impact Statement (EIS) process. DOE still has not issued a draft GTCC EIS. He reported that tribes impacted by Hanford, Nevada Test Site and Los Alamos helped to develop narratives (text boxes) and that traditional use of medicines and cultural resources will have an impact on siting. Some tribes chose not to participate, but still have the opportunity to review and add language to the draft EIS. Marcinowski stated that he realizes that this process does not constitute formal consultations with tribes, but serves as open and needed discussions for a path to put out the draft EIS this summer. A 90 day comment period is expected.

The draft EIS will evaluate potential alternatives involving various disposal methods for application at several DOE sites and generic commercial sites. The EIS will also evaluate the long-term safety and stability of these conceptual disposal facilities after waste has been emplaced and the facility permanently closed.

The plan is to dispose of 12,000 cubic meters of waste from decommissioned nuclear power plants; GTCC-like material is included. Seventy-five percent of it has been commercially generated. The focus is on intermediate or deep geologic disposal (near surface is not included), yet a preferred alternative will not be identified. There are eight or nine alternatives, but they are not narrowing in nature, and differences will be identified in the summary. Currently DOE is awaiting a congressional order under the Nuclear Waste Policy Act; it cannot release a Record of Decision until Congress moves on this issue.

DOE Energy Parks Initiative

Dr. Benjamin Cross, Senior Advisor to Chief Technical Officer, DOE-EM

Energy Parks are not an official DOE initiative yet. Dr. Cross explained that DOE is taking the initiative and looking for input on what Energy Parks need to be and what they need to exactly offer. They will bring about foot print reduction across the complex and then provide sustainable jobs. There are different natural resources available and plentiful at different sites that DOE hopes to clean up and protect for future generations.