

STGWG

Augusta, GA - May 20-22, 2008

~Meeting Summary and Presentations~

MONDAY, MAY 19, 2008

Tribal Executive Session

Attendees: Tom Bailor, Brian Barry, Gabe Bohnee, Russell Jim, Greg Kaufman, Armand Minthorn, Steve Morello, Brandt Petrasek, Willie Preacher, Governor Roybal, Francis SiJohn, John Stanfill, Kevin Tafoya and Neil Weber

Steve Morello, Deputy Assistant Secretary, U.S. - DOE Office of Congressional and Intergovernmental Affairs and Director of the Office of Tribal Energy Policy and Programs joined members for dinner and participated in a straight-forward, informational discussion on the areas highlighted below.

Update on Tribal Policy Implementation Framework and DOE Order 1230.2

Tribes agreed and stressed that the Framework is important and should serve as a guide for the implementation of the DOE Indian Policy. Tribes are concerned about insuring the effectiveness of implementation of both the Policy and Framework at the current time.

Mr. Morello reported that the Order (that established the responsibilities and roles of DOE management in carrying out its policy) was revised before there was an Implementation Framework (IF). DOE is currently redrafting the Order (from April 1992) and working on technical corrections to make the two correspond.

Tribal Online Training for Federal Employees

A federal government-wide tribal online training has recently been developed for use targeting federal employee staff and management. "Working Effectively with Tribal Governments" will provide federal workers with better understanding and greater knowledge of the issues involved in working effectively with Indian tribes. The hour-long training will be available and begin being utilized this fall. It will be found at www.GoLearn.gov and will provide insight into the legal, historic and cultural factors that must be understood in order to create successful collaborative undertakings among tribes and federal agencies. * Since the window has now closed to view the training for free via the web, Dr. Ines Triay indicated (during her session, DOE-EM Update, 5/21/08) that the training should be opened up to STGWG members free of charge. Brandt Petrasek is to work on making this available to members.

Mr. Morello explained that the online training is, essentially, Training 101 for Feds on tribes. It will teach federal employees about tribal ways and serve as a vehicle to give them the needed understanding for working with tribes. The Department is now looking to tribes for comments and suggestions on the project.

Comment: Managers need to go beyond [Training] 101 in the interest of working with tribes.
Morello: That's why there needs to be more emphasis on political appointees. Since we are entering a transitional period, we need to determine how we can do quick, effective training.

Question: If DOE wants to go beyond 101, why don't they recognize us as a State Department - recognize us as a sovereign nation?

Morello: That goes beyond the discussion at hand. That's a new territory altogether.

Mr. Morello noted that the transition book will benefit tribes also - in better understanding DOE's activities/interests.

Tribal Summit/Transition Planning

Mr. Morello explained that there is a working document that has been passed around DOE in regard to the Tribal Summits, as well as language included in the IF (Policy Principle VI). DOE is very supportive of holding these forums. The fact that it is an election year and there will be a transition in administrations makes it a difficult year - as the current administration will be replaced in January. Tribes have been contacted that they will be working with a new administration next year.

Question: How can DOE improve relationships with tribes when we haven't had a Tribal Summit in three years?

Morello: There are many longer-term issues that need to be looked at. It is important [for tribes] to get with the new administration right in the beginning - for eight or nine years.

Question: What is your ideal transition to new administration? How can all groups influence the next administration?

Morello: My advice is to get them when they're green and impressionable, and they're open to new ideas. As a political appointee, my term is up in January - but, I'm not going to stop my work in Indian Country.

There is word that Dr. Ines Triay will find a place to continue her strong representation of tribes and her ability to work effectively with others within the Department.

Mr. Morello noted that field experience could help his office. Hence, Brandt Petrusek and Kristen Ellis are putting together a transition book that will serve as an important tool for DOE (including headquarters and field offices) to better understand tribal ways. The transition book will also give tribes a guide to as where they stand with the new administration and what to expect within the Department during the change in administrations. This book will contain relevant chapters, one dealing with the DOE's relationship with STGWG. Over forty Feds are contributing to the project. Morello stressed that everyone who touches Indian Country needs to have communication with the Office of Congressional and Intergovernmental Affairs (CI).

Question: Will we have the opportunity to give input and feedback [to DOE] on documents?

Morello: Yes. I want and hope you will give us ideas on chapters. We will fold them in, or they could stand alone.

Over the past year, Mr. Morello has directed and worked with the DOE senior-level Tribal Steering Committee that meets monthly to discuss tribal energy issues that affect the Department. The group coordinates between and among the program offices within DOE. He is working with them on the transition book - each office is contributing a chapter on relevant events and information in their specific areas.

Tom Bailor (CTUIR) talked about the need in creating a deputy within the Office of CI.
Morello: I agree - that's my plan – there needs to be a deputy, there needs to be an appointee.

Mr. Morello advised that the office needs to have a federal deputy, so as to not lose learning from one administration to the next. Secondly, there needs to be a director to report at a different level, in addition, to the deputy.

Mr. Morello explained that STGWWG will find out soon after the election whom is appointed to certain positions. He recommends getting a dialogue going early. STGWWG has the opportunity to recommend who some the key players could be in the next administration. “Have your people be in charge – offer up folks that could be a part of things.” He advised to institutionalize it with a deputy, that way the office is staffed upfront. “It is important that whoever comes in wants to get to know or knows about Indian Country.”

Armand Minthorn (CTUIR) explained to Mr. Morello that The Indian Policy was passed in 1992, and that it's a fine policy; however, it's currently 2008, and the policy is simply not being implemented in the field. He noted that there is ignorance at headquarters; hence there is no real enforcement of the policy.

Mr. Minthorn also touched on these additional areas:

GNEP. I want to know more on this and the policies that are going to affect us. We have no say in it. There needs to be direct consultation with the tribes. It's being shoved down our throats; we need to make decisions with DOE.

STGWWG. It's a very good group. We work as a group – states and tribes – we're very effective. Tribes cooperate with each other. However, years ago, STGWWG recommended to the Secretary of Energy that we would organize the annual Tribal Summits. The Secretary has now made them periodic (January 2006). There is a lot of frustration. Tribes want a *yearly* summit.

Mr. Minthorn stated that Governors and chairmen of tribes were ignored when in D.C. during the past Tribal Summit.

Energy Policy, energy corridors. We [CTUIR] have two corridors [that DOE proposed] passing through sacred site areas, yet DOE hasn't consulted with tribes.

Minthorn: Personally, I see one person (Morello) who speaks for themselves, one person, not DOE. DOE has no memory - we come back and say the same things over and over. It's the lack of implementation. Our resources are a part of everyday life; we will do what we need to do to protect them.

John Stanfill: Adding to what Armand said, we all share that same frustration. I believe that there are three underlying problems. 1. The understanding of the definition of term consultation; it is important that everyone is on the same page. 2. Sovereignty - the people we deal with need to know what this means. 3. Level of policy needs to be clearly set and understood by people below you (Morello) at headquarters and in the field.

Title V - Tribal Energy Office - update/activities

Mr. Morello understands that sovereignty is what is most cherished. He explained that energy resource development will give tribes the tools to be sovereign. He is frequently on the road and in Indian Country talking with tribes. He is eager to learn what they want, what resources they have and how they want to develop them. He is in a position and eager to help tribes. He explained that there is a potential for baseload, specifically, in geothermal and coal.

Morello: We don't have to go to the Federal Government and take money with strings; we have economic power.

Sovereignty, trust responsibility - issues of importance to tribes

Rebecca Miles (Nez Perce): Sovereignty is not a question; we all are here because we choose to be. [She spoke of] fiduciary responsibility and the 1855 Treaty - signed for any resource to be better than we left it. Every administration has to see it that way for [things to work]. She talked about how trust responsibility shouldn't be mixed with sovereignty.

Governor Roybal (San Ildefonso): Talked about trust responsibility. Sovereignty - each tribe has the right to take it to where they want to take it. Consultation is taking on different meanings - it is frustrating they (DOE) aren't meeting us as sovereign nations, like they do with other nations. We are treated like second, third, fourth-class citizens. All we are asking is for respect.

Mr. Morello thanked the governor for his honest words and explained that it is important to understand the tribes before you start doing business with the tribes.

Preacher: Talked about his Citizen Advisory Board (CAB). He explained how EM cannot discuss anything with the Office of Nuclear Energy (NE). I hear about the capping at our facility, not accelerated clean up. [It's that way] at most sites - it all stays where it's at. Consultation often comes after mission is underway. We hear all about it at CAB, but tribes haven't when I go back.

Comment: DOE listens, but it doesn't "listen". What do you determine as consultation? The Indian Policy is understandable, but who wants to understand it?

Discussion of the importance of environment and natural resources followed.

Francis SiJohn talked about economic diversity in communities and preservation - the importance of the protection of our environment. He noted that sovereignty is based on land-based issues.

Preacher: Headquarters need to understand that there is going to be nothing left. They need to understand who we (tribes) are, what we are and what we would like to see happen to protect the environment through treaties and everything that belongs to us, [including] songs and tribal rituals.

Morello: Thanked the tribal members for their honesty and the chance to be a part of this important discussion. He acknowledged to those tribal representatives present - You spoke from heart, have lived from experience, and are speaking for your people, too. He reiterated - You have our support if you need help writing anything (for the DOE transition book).

STGWWG Executive Session

Attendees: Tom Bailor, Brian Barry, Milton Bluehouse Jr., Gabriel Bohnee, David Borak, Denise Brooks, Bob Geller, Russell Jim, Greg Kaufman, Armand Minthorn, Todd Mullins, Ken Niles, John Owsley, Willie Preacher, Governor Roybal, Jim Sommerville, John Stanfill, Kevin Tafoya, Neil Weber, Mike Wilson and Tom Winston

Willie Preacher recapped the primary points of discussion from the Tribal Executive discussion and dinner with Steve Morello the night before (5/20):

The tribes talked about the lack of early consultation from DOE. The point was clearly made that there is a draft Implementation Framework (IF), and DOE needs to follow it.

DOE is in the beginning stages of writing a draft transition book (with the help of Brandt Petrusek and Kristen Ellis) that will serve as an educational tool for present employees and, most importantly, future political appointees within the Department to better understand tribes. The tribes suggested that they would like to provide input on chapters to be included. STGWWG wants to be a part of the transition book, and wants to help in writing parts of it.

STGWWG wants DOE to consider putting a career person in to the Office of Congressional and Intergovernmental Affairs, in addition to an appointee. DOE has to educate its employees with the arrival of new administrations. Someone is needed with access to decision-making. Tribal leaders need access to higher-ups. Peter Chestnut drafted a letter to Secretary Bodman on this subject; however, it has been agreed that we will hold on sending it so that we can include a broader scope of issues: positioning ourselves with the new administration, consultation as well as the introduction of a career person in to the Office of CI.

Sovereignty, fiduciary responsibilities and treaty rights are of the utmost importance to tribal governments. It is important for states, tribes and the Department to understand the definition of government-to-government relations. People should be willing to follow, respect and understand tribal issues. Tribes are still concerned about an apparent lack of understanding by some DOE personnel about tribal sovereignty and treaty rights, which can affect trust relationship.

Mr. Morello talked about the push for renewable energy, and how tribes could benefit. However, the tribes' major issue of importance is clean-up at this point.

DOE Environmental Management Update

Dr. Ines Triay, Principal Deputy Assistant Secretary; U.S. DOE-EM

The DOE Office of Environmental Management (EM) manages the world's largest environmental cleanup program, which includes 34,000 workers, 80 million gallons of highly radioactive liquid tank waste and 4,500 facilities to cleanup and demolish.

The number one priority of EM is safety - the program wishes to reduce risk while maximizing regulatory compliance. Since James Rispoli took over direction of EM in 2006, a major focus has

been strengthening program and project management. Details of the significant cleanup progress in fiscal year 2008 and plans for fiscal year 2009 may be found on the PowerPoint presentation.

Issues to be Resolved:

The Administration recognizes EM's fiscal year 2009 budget request would not enable DOE to meet all of the milestones contained in cleanup agreements negotiated with states and tribes. As well as budget cuts, an incomplete knowledge of the complexity of cleanup, inconsistent performance, overly optimistic assumptions, and emerging technical barriers have hampered delivery of agreed upon milestones. DOE-EM will provide independently audited cost and schedule baselines and life-cycle planning estimates to engage regulators, stakeholders and tribal nations in meaningful dialogue about existing priorities and mutually identify opportunities to complete cleanup.

Additional points covered by Dr. Triay:

Dr. Triay spoke of the transition period within the Department, and the importance of influencing the direction of the new administration. She wants us all to be equal partners in strategic planning efforts, and Jim Fiore (Director, DOE-EM Office of Management Analysis and Process Management) is the person at the table with a thorough understanding of EM issues. She explained that a report is due to Congress on September 30, 2008 - it will reflect what EM has accomplished and what yet needs to be completed. Preparation is also underway on EM's fiscal year 2010 budget - the plan is to present it to the transition team this December.

Q&A:

Comment: The states are still concerned about the reversal seen at the federal level to its commitment of accelerated cleanup savings being reinvested in the program. Instead, as sites close, EM budgets are reduced. Public opinion about the way the country manages cleanup of radioactive waste will affect its support for a nuclear energy renaissance.

Comment: It seems as though DOE-EM is attempting to process waste in a way that it can be identified as transuranic defense waste to allow for its disposal at WIPP. DOE may wish to work with the states and the local New Mexico communities around WIPP to change the rules limiting what types of waste may be accepted at the site.

Minthorn: When will the Framework be implemented by DOE?

Dr. Triay: We were poised to do so in November, and we're poised to do so now.

Minthorn: How will tribes' interests be maintained?

Dr. Triay explained that the tribes need to work at the field-level first. Tribes and field managers need to try and resolve the dispute first, and, if there is great concern - they should feel free to come to her for assistance.

Minthorn: [The current situation is that] sites are talking, but consultation is not occurring.

EM Budget and Strategic Planning

Merle Sykes, Deputy Assistant Secretary; DOE-EM Office of Budget

DOE-EM must create an integrated priority list each year from which the Office of Management and Budget determines the budget request. EM includes financial needs to meet all compliance agreements in its budget request, but the resulting budgets may require changes to the schedule of such agreements.

The first objective of EM's budget office, and perhaps this group, is to persuade the new administration that cleanup of the former nuclear weapons complex is a top priority. To do so effectively, interested parties must present a clear business case for funding the program at high levels.

Priorities within the EM program include finishing all small sites first and managing nuclear materials, tank waste and spent nuclear fuel. With lower funding, lower priorities such as soil and groundwater remediation and deactivation and decommissioning of buildings may see cuts. As many of the cleanup projects at Los Alamos involve these lower priority issues, EM understands they will need to look at the site's budget to assure progress continues. The new management team at Los Alamos has addressed many of the performance issues that were holding back advancement in cleanup at the site.

DOE seeks input from states on budget considerations throughout the year, and this year there will be an additional three months to provide such input (through December) since the election will bring in a new administration. EM needs states to help make the case for fully funding the program as a top priority. EM is not confident, but hopeful, that its budgets will return to higher levels seen in the early to mid 2000s (upwards of \$7 billion instead of the roughly \$5.5 billion sought for fiscal year 2009).

DOE-EM understands the interest of the states to optimize use of the only disposal facility in the country for higher-level radioactive waste at WIPP, to ensure cleanup and closure of sites continue. States have a powerful ability to lobby their congressional delegations to encourage changes in law to expand the definition and scope of allowable materials for disposal at WIPP.

Planning for the Transition to a New Administration

Jim Fiore, Director; DOE-EM Office of Management Analysis and Process Management

For the DOE Office of EM or the states/tribes to persuade the new Administration to invest more in site cleanup, they must convince it that the program is being managed well. The National Academy of Public Administration (NAPA) recently completed a report detailing project management at EM and provided suggestions for improvement. Sixty percent of the recommendations have been implemented, and EM hopes to have the rest in place by the end of this year.

Report findings included insufficient staff at EM and the need to reorganize upper management and strengthen the Chief Operating Officer to oversee field work. To address the first, EM is looking at workloads and skill mixes to determine what positions are needed, and has instituted an intern program to bring in fresh talent. To assist with the second and other report recommendations, EM

is conducting technology readiness assessments, working to better its internal and external communications and looking at ways to speed its procurement process by centralizing it.

Transition team readiness is a top priority in the Office of Management Analysis and Process Management, with an ultimate goal of persuading the new administration and Congress to invest more in the EM program. EM needs to deliver better on its projects in terms of staying on cost and schedule. A more rigorous management system is in place today and will be institutionalized for continuity across changes in political will.

Q&A:

How can states and tribes partner with you to make your transition efforts successful?

- DOE-EM and the states/tribes need to ensure we are communicating the same message so that it gets through loud and clear. DOE has a set message and will share it with interested parties. Steve Morello, Deputy Assistant Secretary for Intergovernmental and External Affairs, has agreed to do the same with the tribes.
- The first material argument for investment is compliance with legal agreements made between DOE and states/tribes. Another argument is that investment in cleanup early will reduce total lifetime costs of the program. Finally, EM's mission is growing with added responsibility for managing new waste streams from increased research of nuclear energy and waste management, for example, with the Global Nuclear Energy Partnership.

Natural Resource Damages Assessment Panel Discussion and 2008 Work Plan

Neil Weber opened the session by providing a few comments on these topics:

- The LTS Committee decided to change its name and focus last year. The new name is the Natural Resource Injury Assessment/Long Term Stewardship Committee.
- DOE had answered 15 questions and it had been sent to the field as guidance. However, there was a problem about releasing it, although one state did have a copy and it has been distributed.

Steve Miller, DOE's General Counsel

Mr. Miller reported that CERCLA does not just cover remediation; it identifies trustees of the natural resources and has provisions for assessment and restoration.

He provided a review of several DOE sites and their NRD activities. Fernald is not a model, but some of the restoration activities were integrated into the cleanup. Rocky Flats had to deal with the mineral rights issue and a "quid pro quo" resolution. Weldon Springs is still in the earlier stages. There has been some progress on Los Alamos. DOE is attempting to deal with NRD with more of a consensus approach. DOE can't redo the past, but can do a better job in the future.

There is a need to convince OMB that NRD is important and can be looked at as an investment.

Ken Niles: Have the Rocky Flats mineral rights been purchased?

Miller: Yes, for \$6 million.

Brian Barry wondered what the best decision-making process is. Why don't we build NRIA or NRD into the remedy?

Dr. Triay said she is hoping that [DOE] can come up with some “Rules of Engagement”.

Tom Winston noted that the terrestrial restoration work at Fernald was an ultimate win/win since it helped achieve cleanup, addressed the natural resource damage to the land (not the ground water) and saved DOE money. On the other hand, the ground water NRD component has been the source of very difficult negotiations after the cleanup was finished and was not integrated into the cleanup.

John Owsley asked if DOE had “generic discussions”.

Miller: No, it’s more case by case.

Bob Geller mentioned the guidance and why it was not in the form of DOE orders. He also suggested a status report on what DOE has done, suggesting that DOE tally actions at the sites.

David Hoyle, Physical Scientist - Savannah River Site, talked about trustee activities at SRS.

Matthew Duchene, DOE-EM Office of Compliance

Mr. Duchene briefed the group on NRDA issues across the EM complex. He talked about his role within DOE on NRD - the sites are responsible for NRD activities, but he coordinates and serves in an advisory role. In other words, it’s very decentralized.

He explained that DOE has held initial discussions with Kate Hudson, Director of the Bureau of Natural Resource Damages within the New York Office of General Counsel, about **Brookhaven National Laboratory**, and is awaiting notification from Hudson when the state is ready to begin a cooperative NRDA process. The state's primary concern is groundwater contamination.

EM has held discussions with **Energy Technology Engineering Center (ETEC)** on NRD issues, and has identified the resources of concern. The site is currently working on a remedial field investigation and EIS. The site has been reminded of the need to integrate remedial and NRDA data collection activities. DOE will follow up to ensure that the site is following through on integration.

Litigation is still pending at **Fernald**, with several pretrial motions before the court, while settlement negotiations continue.

At **Hanford**, litigation is still pending while the cooperative NRDA process continues. The site has awarded a contract for the first phase of developing a natural resource injury assessment plan.

DOE has held screening discussions with **Idaho National Laboratory**. All current data indicates there has been no injury to natural resources, except for the contamination of groundwater. Currently, DOE is evaluating whether to conduct a pre-assessment screen, and is holding off on taking any further action until current negotiations with the state on remedial issues are complete.

DOE has prepared an MOA, creating a trustee council, at **Los Alamos National Laboratory**, but is still awaiting two signatures. DOE has agreed to hire an NRDA firm to conduct a pre-assessment screen. But, the procurement process is underway at the site. The U.S. has signed a tolling agreement, halting the running of the statute of limitations on any NRD claims the state and San Ildefonso may have.

Oak Ridge is taking a watershed-by-watershed approach. Negotiations are continuing over exchanging a conservation easement on Black Oak Ridge for settlement of NRD claims for sediment contamination in Watts Bar Lake. A mix up in funding delayed completion of expert report, but now things are back on track.

Preliminary NRDA discussions have been held with **Paducah**. However, recent discussions with Kentucky indicate that the state would prefer to currently concentrate on clean-up, and take up NRD issues in the future. Efforts to planning a site visit are underway to identify contaminants and resources of concern.

Preliminary discussions have also occurred between **Portsmouth** and the state of Ohio regarding exchanging a conservation easement for settlement of NRD liability. Both the state and DOE are delaying further action until final resolution of the state's NRD claims at Fernald.

DOE trustee responsibility has been turned over to the Office of Legacy Management (LM) at **Rocky Flats**. Approximately \$3.5 million has been transferred to an NRD trust account. Trustees are holding meetings to develop options for use of funds and are seeking public input.

The **Savannah River Site** is sharing its clean-up documents with the trustees for comment, but no formal NRDA activities are currently underway.

The U.S. and the state of Missouri have signed a tolling agreement, stopping the running of the statute of limitations on NRD claims at **Weldon Springs**, and have a draft MOA creating a trustee council to undertake a cooperative NRDA process. The finalization of the MOA and initiation of a preassessment screen have been on hold at the State's request - current estimate is that it will be ready to resume NRDA activities in July.

At **West Valley**, NRD claim has been asserted by New York as part of a broader lawsuit and has been shelved by agreement of the parties involved. No further developments are likely until other claims are resolved.

Committee Work Plan Discussion and other business:

Neil Weber, NRIA/LTS co-chair, asked members to review the conclusions from the recent survey sent out to members regarding the status of NRIA at DOE sites. A status report, consisting of three charts of data, were compiled and included in members' packets. This data reflects: discussions within state or tribe about potential injuries/damages/restoration at site; informal discussions between state, DOE and/or trustees about potential injuries/damages/restoration at site; integration with CERCLA; as well as actions in the areas of litigation and cooperative assessment. The data reflects the status/activities of the following states and tribes: New York, West Valley; Ohio, Fernald Preserve; Ohio, Mound and Portsmouth; Oregon, Hanford; South Carolina, SRS; Tennessee, Oak Ridge Reservation; Pueblo de San Ildefonso, Los Alamos (NM); and the Yakama Nation, Hanford (WA).

Ken Niles noted a change that Brooke Oleen has corrected. In regard to Hanford (Oregon), there have been discussions within the state about potential injuries/damages/restoration at site as well as informal discussions between the state, DOE and/or trustees about potential injuries/damages/restoration at site.

A big thanks to those who participated in and returned the surveys. This helped in completing an important action item on the NRIA/LTS 2008 Work Plan. The organization of a panel discussion at the Spring STGWG meeting with key DOE offices, states and tribes was also checked off the work plan list - thanks to the involvement of Mr. Duchesne, Mr. Hoel and Mr. Miller.

Mr. Weber explained that the "15 questions and answers" - regarding DOE's "NRD Guidance for EM Field Sites" - that were originally to be part of the discussion at the session today had went out to the field offices, but were never cleared for release beyond them. Weber proposed to have a committee conference call in the coming months; he hopes to pick a few of the 15 questions to target and be the focus of the discussion.

Transportation Committee Report

Ken Niles recently attended the Western Governors Association's WIPP Task Force meeting, and reported that DOE has made some changes in transportation of transuranic (TRU) waste shipping schedules.

All remote-handled (RH) waste shipments to date have been from Idaho National Laboratory (INL) (currently about 4 per week - began in 2007.) However, RH shipments from INL are scheduled to be suspended in August until December, as DOE ramps up other sites. Argonne National Laboratory-East shipments projected to begin July 2008 with one to two a week through November. Los Alamos National Laboratory shipments projected to begin in August and continue in September - 2 per week. Savannah River Site (SRS) shipments projected to begin in September - 2 per week through the end of the year. Oak Ridge shipments projected to begin in November and continue in December - 2 per week. Also, shipments from Oak Ridge, SRS and Los Alamos are dependent on approval from New Mexico Environment Department and/or EPA.

A new method is being considered for shipping RH waste to WIPP using: RH 72-B cask - holds three 55 gallon drums of waste and CNS 10-160B cask - holds ten 55 gallon drums of waste (overweight). Interest in using shielded 55 gallon drums that have an internal capacity for a 30 gallon drum of waste. Three can fit within a halfPACT; three halfPACTs per shipment means that nine 30 gallon drums of waste can be shipped in a legal weight shipment.

DOE intends to ship TRU waste from a number of sites around the country to INL, where it will receive treatment/characterization prior to going to WIPP. Small quantity sites (SQS) lack infrastructure to characterize waste and other sites lack specific treatment capabilities. Waste will be treated within six months of arrival and sent outbound within six months of treatment to comply with the Batt agreement. Hanford will be the first site to ship directly to INL as early as November 2008. Other sites include: Nevada Test Site, Lawrence Berkeley National Laboratory (CA), Lawrence Livermore National Laboratory (CA), GE Vellecitos Nuclear Center (CA), Argonne National Laboratory (IL), Knolls Atomic Power Laboratory (NY), Nuclear Fuel Services - Knolls Atomic Power Laboratory (TN), Paducah Gaseous Diffusion Plant (KY), Bettis Atomic Power Laboratory (PA) and Sandia National Laboratory (NM). DOE has agreed to follow all WIPP protocols for these shipments. Approximately 2,067 contact-handled (CH)-TRU shipments and 188 RH-TRU shipments will go to INL. Following treatment/characterization, approximately 795 CH-TRU shipments and 521 RH-TRU shipments will go from INL to WIPP.

As for the Spent Nuclear Fuel (SNF) transfer project, aluminum-clad spent nuclear fuel at INL will be sent to SRS. Non aluminum-clad SNF at SRS will be shipped to INL. Approximately 30 shipments will take place per year for the next ten years - 20 from INL and ten from SRS. The approximate start date is slated for 2012.

At SRS, the aluminum-clad fuel will be dissolved; the uranium recovered and will be blended down to LEU for commercial fuel fabrication, which will generate revenue for the government. The surplus of plutonium will be processed for disposal and vitrified with high-level waste at SRS. This will eliminate the need for SRS to build and operate a SNF packaging and dry storage facility, and will eventually complete the SNF mission at SRS. Approximately 650 canisters of SNF will not have to go to a national repository.

All non-aluminum clad SNF at INL will be moved to dry storage, and await shipment to a national repository.

Following the updates, Niles spoke of the frequent disruptions of transportation schedules of TRU waste shipments between Hanford and INL. The delays, due to winter weather conditions, also did not allow for optimum use of WIPP and associated transportation resources.

Dr. Triay wondered if the planning was flexible enough that one could change schedules in a short timeframe or because of weather. She agreed that DOE should analyze the feasibility of scheduling WIPP shipments from Hanford to INL during the winter months - increasing shipments from more southern-based sites during that time, such as SRS and Oak Ridge. DOE agreed to share both the analysis and conclusions.

Wrap up Session

Mr. Winston talked about the importance of tailoring the message we need to collectively share with the new administration. He talked about the mechanics - how the group is going to share this information. What aspects of conversation would constitute consultation, and how might we communicate our ideas to DOE?

Winston mentioned working with Jim Fiore (and the EM Office of Management Analysis and Process Management) and others within the Department to explore opportunities regarding strategic options and priorities. The goal will be to identify and articulate budget and planning approaches that provide risk reduction, achieve compliance and are prudent investments. He indicated that this could be the primary focus of the fall Intergovernmental meeting, which would be timely given the change in administration. STGWG is eager to help DOE make decisions on proposals and to help in making the case.

He explained that two members of each of the five organizations involved in the Intergovernmental meeting: Energy Communities Alliance (ECA); Environmental Council of the States (ECOS); National Association of Attorneys General (NAAG); National Governors Association (NGA); and STGWG would give us a body of ten to work with DOE on timing issues. Mr. Winston didn't think that we've ever met with DOE collectively as groups and that this union would be effective in relaying our message(s) to the Department. It was decided that Brian Hembacher and Willie Preacher will be the two STGWG representatives.

Jim: We are now in the position. Before it seemed like we were lobbying - there was fear. We could stand up in front of Congressional subcommittee at this time. We need to determine what the path is forward, and there has to be the understanding of treaty rights and compliance issues. When you do it faster and cheaper, you affect treaty rights.

Winston: As sites close, interest lessens. Rocky Flats - CO isn't at the table. This program is at risk; we are fighting for every dollar. How can we package our message for the next administration? We might be packaging several messages.

- STGWWG needs to stress that way we do business is government-to-government. This is an opportunity for us to push the agenda.
- The formation of a smaller group can effectively flush out issues. We need to work with Jim Fiore, and he is aware and ready to work with us. Two representatives from each of five groups: STGWWG ECA, ECOS, NAAG, NGA can formulate ideas before the fall Intergovernmental meeting. We will know who's elected and use that meeting to communicate ideas.
- What does/will DOE's transition book look like? We could have discussions at the Intergovernmental meeting on which parts we are in agreement on or which parts need another look.

Preacher: We have continually tried to educate DOE about our treaty rights, trust responsibility, fiduciary responsibility – they are part of our lives, part of our circle that we live in. It will always be our message. He explained that the DOE transition book should serve as a tool so that the Department understands the value [of the above] and how important these are to tribes.

- There is a need to institutionalize what consultation is and means. We need to look at lessons learned from the past. (We consulted this is what happened / we did not consult and this is what happened.)

Minthorn: Patience and persistence does pay off; it is a discipline, and it has to have direction. It's discouraging to me, when it comes to treaty rights - the lack of process and how we need to protect them. We work with states, cities and counties daily on addressing and protecting treaty rights. However, I will not compromise my treaty rights, signed in 1855 by my ancestors. States are sovereign, and tribes are sovereign. Tribes are unique because of our treaties - this is why it is important for DOE to adhere to its Policy.

Dr. Triay said she appreciated being part of the discussion and meeting. She asked Melissa Nielson and David Duchesne to take the points discussed back to their respective groups. They agreed. She noted that the fall Intergovernmental meeting will serve as an important forum to further discuss these subjects at hand and mark where we all are at for future plans.

Dr. Triay also wants to initiate discussions with field managers, including strategic-planning and baselines. These talks should start occurring in early June, and, by end of June, discussions should take place with regulators, tribal nations, and other stakeholders - field managers should be involved,

too. A working group should be formed in July. In August or September, we can all talk about what we agree/disagree on. Also, DOE is open to the idea of a video conference in August/September.

THURSDAY, MAY 22, 2008

Tribal Issues

Members received updates from DOE Program Offices.

Mary Ann Fresco, National Nuclear Security Administration

Mary Ann Fresco gave the group some background and explained that NNSA was established by Congress in 2000 and is a separate, organized agency within the DOE. NNSA is responsible for the management and security of the nation's nuclear weapons, nuclear nonproliferation and naval reactor programs. It also responds to nuclear and radiological emergencies in the United States and abroad.

She stressed that treaty rights and sovereignty are critical in the understanding of tribes. She spoke of government-to-government consultation - "sometimes we don't understand it, but I've seen it work effectively at the highest of levels." She explained that she does a lot of educational outreach - currently welcoming folks to be a part of NNSA's summer intern program - looking for future leaders. Ms. Fresco also recommended to members to put together a STGWWG-only book, outlining the issues critical to group that could serve as a guide (with all relevant information in one place) for the Department.

Deborah Swichkow, Office of Nuclear Energy

Deborah Swichkow informed the group that the draft GNEP Programmatic Environmental Impact Statement (PEIS) is due for release in mid-June, public meetings will begin in July and the final PEIS is scheduled to be released sometime in 2009. The scope of the draft PEIS is no longer site-specific, but programmatic in its scope. Only one thing has changed, and that is the schedule.

Mr. Minthorn explained that GNEP has an impact on tribes - including environment and resources. He stressed that tribes shouldn't be "invited" to consult. The initial plan to consult with tribes on GNEP at this time is by letter. It was determined that Mr. Fred Brockman is the point of contact regarding GNEP consultation.

Tony Carter, Office of Legacy Management

Tony Carter reported that the Office of Legacy Management (LM) is responsible for the control and custody of legacy lands. It was recently named a high performing organization in 2007, the second of only two organizations in the entire U.S. government to receive this designation, and is projected to generate \$15 million in savings over five years—a 29 percent reduction from baseline operational costs.

He also noted:

- Fernald Visitors Center plans to open in August 2008
- LM facilitates conversation for environmental justice issues
- WM will only accept a site if it no longer needs cleaned up

Question: How clean is clean?

Carter: When regulators and communities are in agreement, LM then steps in.

Paloma Hill, Office of Civilian Radioactive Waste Management

Paloma Hill explained that despite the President's request of \$494.5 million, Congress appropriated \$386.4 million for OCRWM in FY 2008, a reduction of \$108.1 million from the initial request. This large reduction contributed to significant management challenges and caused a reduction of approximately 900 personnel within the program.

She also reported:

- Submittal of a license application to the Nuclear Regulatory Commission (NRC) to construct and operate a geologic repository for the final disposal of the country's high-level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada by June 30, 2008. (Was submitted June 3 - YEA!)
- Because of budget constraints, there will not be another Transportation External Coordination (TEC) Working Group meeting this fiscal year, but still evaluating whether one will be held prior to end of the calendar year
- Re-establish TEC Planning Committee and reorganization of TEC topic groups and sub-groups - based on feedback from most recent meeting in San Antonio, TX (Feb. 2008)
- 600,000 jobs will be opening up within the Department within the next ten years, as many employees are reaching the age of retirement

EM Waste Disposition Update

Frank Marcinowski, Deputy Assistant Secretary for Regulatory Compliance; DOE-EM

Plans for EM waste stream management in the near future include:

Spent Fuel Transfer - Aluminum-clad enriched uranium will be sent from Idaho National Lab to the Savannah River Site in South Carolina for processing at H-canyon. Some of the byproducts will be combined into a mixed oxide fuel for use at commercial nuclear reactors. Non aluminum-clad enriched uranium will be sent to Idaho for storage. The transportation transfer campaign will begin in late 2009/early 2010 and continue for about ten years.

Sodium-bonded fuel will be consolidated at Idaho National Lab.

Surplus Plutonium from several sites around the complex, including Hanford in Washington, is being consolidated and stored at Savannah River Site.

Depleted uranium hexafluoride - DOE-EM is not yet sure where excess depleted uranium will be disposed, either at the Nevada Test Site or EnergySolutions in Utah. An analysis is being conducted to determine whether shallow burial is appropriate.

Greater than Class C (GTCC) low-level waste - DOE-EM is currently completing an environmental impact statement (EIS) to recommend a disposal method and location for GTCC waste (activities associated with the Global Nuclear Energy Partnership would add to the stockpile of this waste). The draft EIS is facing a one-year delay and will likely be released in mid to late fiscal year 2009.

Transuranic (TRU) waste disposition is ongoing at WIPP. A DOE board decides the schedules and sites that will ship waste, and will report those to the states as they become available. Hanford is building the capacity to repackage TRU waste at its own site in order to be characterized appropriately for shipment and disposal at WIPP, but in the meantime its TRU waste will be sent to Idaho for repackaging (where the capacity already exists).

Uranium 233 will be down blended and sent to WIPP for disposal according to Congressional direction.

A final draft EIS on liquid tank waste is expected to be released later this year.

National Nuclear Security Administration (NNSA) Complex Transformation

Theodore (Ted) A. Wyka, NNSA Manager; Complex Transformation Supplemental Programmatic Environmental Impact Statement

The idea of transforming the NNSA Complex into a more efficient manager of the nation's nuclear weapons stockpile began with a nuclear posture review conducted by the Bush administration in 2001. The review found that efficiencies could be made by reducing redundancies in the large geographic and personnel scope of the Complex, heightening security and reducing costs. The U.S. has already destroyed 12,000 nuclear weapons, and plans to consolidate special nuclear material from eight NNSA sites around the country to fewer and smaller "Centers of Excellence," shrinking the overall Complex footprint by about 40 percent.

A programmatic EIS for the transformation is expected to be released by the end of this summer, and a Record of Decision will be made in October 2008.

Meeting adjourned on time at 12 pm. Please see STGWG Key Outcomes (additional document), includes a brief overview of meeting, a summary of tribal and full STGWG issues and action items.