

# STGWG

## STATE AND TRIBAL GOVERNMENT WORKING GROUP

December 8-10, 2004

Arlington, Virginia

### MEETING HELD IN CONJUNCTION WITH U.S. DEPARTMENT OF ENERGY INTERGOVERNMENTAL GROUP MEETING

Participating Groups:

Energy Communities Alliance (ECA)

Environmental Council of the States (ECOS)

National Association of Attorneys General (NAAG)

National Governors Association (NGA)

STGWG

### MEETING NOTES

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**WEDNESDAY, DECEMBER 8, 2004**

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Q-question; A-answer; C-comment; R-response to comment

Presentation handouts available from Denise Griffin, NCSL, [denise.griffin@ncsl.org](mailto:denise.griffin@ncsl.org).

Acronym list on last page.

### STGWG EXECUTIVE SESSION

#### Welcome, Invocation, Introductions

*Armand Minthorn, Confederated Tribes of the Umatilla Indian Reservation, Co-Convenor*

*Tom Winston, Ohio EPA, Co-Convenor*

*Governor Jeff Sisneros, Santa Clara Pueblo*

#### Report out from Tribal Executive Session on 12/7

*Moderators: Peter Chestnut, Pueblo of San Ildefonso; and*

*Willie Preacher, Shoshone-Bannock Tribes—Tribal Issues Committee Co-Chairs*

#### Moderators' Remarks

o Seven Tribes participated as well as Steve Grey, DOE Director of Indian Affairs, and two DOE Tribal points of contact.

o Issues discussed:

- Implementation plan for DOE Indian Policy
- 2005 Tribal Summit
- Suggested expansion of covered tribal topics to include additional areas such as economic development
- Funding for tribal programs through multiple departments rather than just EM.

o Want to make states aware that Congress is looking at tribal funding as a place to "raid" for funds.

o Need shared message from Tribes and states regarding STGWWG and its mission.

### Discussion

C: Need to strengthen state and tribal collaboration through STGWWG to protect capacity and authority.

R: Will continue to work on Tribal Summit, long-term stewardship and waste reclassification by DOE. Hope to have specific recommendations for action by STGWWG after meeting with Herb Jones and Steve Grey. Also hope that STGWWG will provide state and tribal collaboration regarding Congress looking to raid Tribes' funding for other purposes.

C: Should get STGWWG recommendations to new department appointees.

C: States are having problems with oversight funding. States are busier than ever as cleanup in some places nears an end.

C: In Nevada, no problem yet but grant ends in 2006. Have heard words "zeroed out" and are concerned.

C: Funding for oversight not yet forthcoming for legacy management.

C: Perhaps a STGWWG letter is needed to address state and tribal concern over funding.

C: STGWWG is the only mechanism for Tribes at the national level—it offers the best opportunity for the future.

C: Environmental Management is becoming less robust as other offices get involved, e.g., Legacy Management.

Q: Is there any serious analysis of state legal authority regarding surveillance and maintenance?

A: Some in Missouri.

Q: Any resolution regarding natural resource damages?

A: Not in Missouri.

A: Ohio is still unresolved regarding legal status.

### **Agenda Overview**

*Moderator: Tom Winston*

### Moderator's Remarks

o Ambassador Linton Brooks will be the luncheon speaker. He was very interested in participating in the meeting. His office (National Nuclear Security Administration, NNSA) has reached out to Tribes and expressed its interest in serving as a kind of clearinghouse for tribal issues.

o Willie Preacher and Tom Winston will be on the End States panel, which is an outgrowth of October workshop in Chicago. Willie will serve as tribal representative in the end states process.

### Discussion

C: Tribes want to consider the **beginning state** as part of the **end states** issue. How clean will the end states be? Tribes would like cleanup to original state; they hope that DOE will respect tribal views on end states. Tribes want complete communication early and throughout the process.

C: End states issue began in 1995-1996. Tribes said that if the end states complied with treaties, then the Tribes would help with end states.

C: Credit should be given to DOE for listening to input on this topic and revisiting it.

C: Questions that need to be posed to DOE about end states: Is there radioactivity, and if so, how much? There are large strategic issues involved. What are the technical bases? These shouldn't get lost in the process. Concrete information is needed.

C: It's clear that states and Tribes can work together here. End states and long-term stewardship cannot be separated.

C: We must be vigilant on this issue.

C: There may be some agreement that there is a role for risk; it's just not the only element that needs to be considered.

C: STGWG Executive Committee needs to monitor DOE appointments.

C: There needs to be official acknowledgement by DOE of risk to tribal people, especially those who live traditional lifestyles.

C: Umatilla has joined Oregon and Washington in filing intent to sue regarding natural resource damages. Washington state voters Initiative 297 serves as a restraining order. (Initiative 297, passed in November 2004, bars the Department of Energy from sending more radioactive waste to Hanford until the existing waste there is cleaned up. It also places additional restrictions on waste burial and permits.)

C: There should be full STGWG support for Tribes to be primary organizer of the next Tribal Summit.

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**THURSDAY, DECEMBER 9, 2004**

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**STGWG TRIBAL SESSION WITH DOE**

## **U.S. Department of Energy Office of Congressional and Intergovernmental Affairs**

*Herbert Jones, DOE Deputy Assistant Secretary for Intergovernmental and External Affairs, Office of Congressional and Intergovernmental Affairs*  
*Steve Grey, DOE Director of Indian Affairs*

### **H. Jones**

- o DOE wants a dialogue with tribal community; his office is working on drafting a proposal for future tribal summits.
- o DOE wants to enhance tribal points of contact and provide more resources to conduct interaction.
- o In September, Secretary Abraham sent a letter seeking input on enhancement; since his resignation, it is on hold but planning is ongoing.
- o DOE wants to hold tribal summits on a regular basis.
- o Some meetings are to be topical and programmatic, to be held with tribal leadership on issues of interest to the Tribes affected by those issues. The meetings would be substantive, with an opportunity for tribal leaders and DOE administration to interact.
- o The national scope meetings would be designed in conjunction with the offices involved, based on consultation and government-to-government relations. The topics are to be determined by the tribal-department interaction.
- o DOE wants further development of tribal issues points of contact, including additional training.
- o Internal communication at DOE: this is currently done on an "as needed" basis. Hope to do a bulletin board and regular meetings. Better communication will help develop and prioritize tribal meetings. Will also allow transfer of information—what worked, what did not and why, which improvements were tried, etc. Goal is better information exchange, more time provided for planning.
- o When a letter on the summit goes out, it will be a draft on which DOE will solicit input from Tribes.

### **S. Grey**

- o Did site visits to northwest earlier this year. Was able to look specifically at programs and to see what issues Tribes are facing.
- o Wants to do site visits on a regular basis.

H. Jones: The level of interest from DOE leaders is promising. Leaders are taking an active role.

### **Q & A**

Q: Is there a new list of tribal points of contact?

A: Go to the Congressional and Intergovernmental (CI) website for the list, updated regularly:

<http://www.ci.doe.gov/indianpoc.htm>.

Q: In New Mexico, three or four people are listed as points of contact—how are we to know which one to go to?

A: If questions, call CI and we will direct you to the correct person: 202-586-5377. Note Steve Grey's email address at headquarters: [Steven.Grey@hq.doe.gov](mailto:Steven.Grey@hq.doe.gov)

Q: What is the status of the Indian Policy Implementation Plan?

A: Hope is that the summit process can provide guidance for implementation plan process.

Q: Tribes are now dealing with multiple program offices at DOE rather than just one. Can CI help if we have difficulties?

A: Yes, we hope you will use us if there's a problem.

C: Jemez Pueblo has benefited from a number of DOE programs this year. We suggest a clearinghouse for this information on your website. Difficult to know where to start to get aid and information. Also, we suggest that the draft letter on the summit be sent to STGWG contacts as well as governors.

Q: What are plans for the 2005 summit? STGWG offered to help plan '04 summit and we make the same offer for this year's summit.

A: As drafted now, in odd number years, the summit would be national and in DC. In even years, it would be regional and programmatic. In 2005 and 2006, it would be programmatic and regional with the overall pattern taking effect in 2007.

C: We hope it won't be 2007 before the Indian Policy Implementation Plan is further developed.

R: The Implementation Plan process can take place at same time as summit process.

Q: Will the draft letter on the summit suggest topics for regional/programmatic meetings?

A: A list has been brought to our attention that could be part of the meetings. The Implementation Plan, consultation, government-to-government relations are included on the list.

A. And also the clearinghouse mentioned earlier.

C: Site visits are good for both DOE and Tribes; they allow direct interaction between the two. Without implementation of the Indian Policy, Tribes will do what they can to be heard. Must have consistent interaction to get issues heard. The full STGWG group will consider a motion that STGWG Tribes be the primary organizers of summit. The national summit can facilitate regional summits. Without Implementation Plan there will be continued exclusion of Tribes and less interaction.

C: We appreciate what DOE has done, but there is always room for improvement. STGWG is a good start and DOE needs consistent presence here. Tribes continue to say some things over and over. Until there is a result, Tribes must continue to do so.

R: Want to clarify that DOE's draft summit proposal to be circulated is a direct result of the 2004 summit, comment period and meetings. Since the 2004 summit, it's clear that we must have a two-way street for the Indian Policy to work.

C: When leadership vacancies at DOE are filled, we hope you will be able to educate them regarding the importance of tribal policies and issues.

Q: What has been the difficulty in producing an implementation plan for the Indian Policy? Implementation plans for other policies haven't taken nearly as long.

A: Having a department-wide implementation plan that includes a programmatic process is complex. But it can be accomplished in part during the interim.

### **FY2005 Funding to Tribes**

*Alice Williams, Director, Office of Environmental Management Transition, National Nuclear Security Administration (NNSA)*

#### **A. Williams**

- o \$750k for the Los Alamos Pueblo Project is already in place.
- o \$1.4 million will go to the pueblos and the Santa Fe Indian School.

#### **Q & A**

Q: Through which office will the funding come?

A: Transfer of LANL to NNSA won't be complete until 2007. For now, use the contacts you have. At the site, Mike Gardipe has been replaced by someone from Ed Wilmot's office; contact that person.

Q: After 2007, what will happen to funding levels?

A: Expect there to be level funding.

C: Use Mary Ann Fresco's office at NNSA to help get issues moved along. They are happy to route questions, help expedite answers. Along with setting up scholarships and internships, tribal concerns are a priority.

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**FRIDAY, DECEMBER 10, 2004**

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### **STGWG OPEN SESSION**

#### **WELCOME AND INVOCATION**

*Armand Minthorn, Confederated Tribes of the Umatilla Indian Reservation, Co-Convenor*

*Tom Winston, Ohio EPA, Co-Convenor*

#### **Opening Remarks**

o Letter to DOE on the five key issues identified in closing joint session will be a coordinated effort led by the National Governors Association (NGA). The five issues are:

- Funding
- End States
- Long-Term Stewardship
- Waste Disposition
- Natural Resource Damages.

- o Steve Gunderson will interact for NGA and Peter Chestnut for STGWG. The National Association of Attorneys General will be represented by Paula Cotter and the Energy Communities Alliance by Seth Kirshenberg. NGA will put together talking points; the draft will be shared with STGWG in early 2005.
- o Question to the group: Is there continued interest in joint meetings with the other intergovernmental groups? Response:
  - The current meeting structure—one independent and one joint meeting—is working well.
  - There is general agreement among the working group members that having one joint intergovernmental meeting a year with ECA, ECOS, NAAG and NGA is productive and worthwhile.

### **TRIBAL ISSUES**

*Moderators: Peter Chestnut, Pueblo of San Ildefonso; and Willie Preacher, Shoshone-Bannock Tribes—Tribal Issues Committee Co-Chairs*

#### **Moderators' Remarks**

- o Tribal/DOE Summit. Tribes are seeking STGWG support and help in identifying issues for the summit.
- o Long-Term Stewardship. Are concerned with type of cleanup, residual contamination, long-term monitoring of sites.
- o End States working group. Group was formed after October meeting in Chicago. Willie Preacher is tribal representative to the group. Tribes will have an opportunity for input, either by letter or other format.
- o Indian Policy Implementation Plan. Have concern about how long it is taking; there's been no progress for several years.
- o Waste reclassification. Would like some consistency on reclassification.

#### **Discussion**

C: STGWG Tribes want to acknowledge and express appreciation for Herb Jones' and Steve Grey's attendance at the meeting.

C: When the new Secretary is confirmed, there might be window of opportunity for letter of input regarding issues of concern and offering assistance for the next tribal summit.

C: Have some lingering concerns about time frame for the tribal summit that was given during the tribal session with DOE. We need to take advantage of current higher level enthusiasm.

C: Part of the reason the Indian Policy needs implementation is to get participation by the Secretary's office in consultation regarding policies and actions, not just as a formality.

C: Without implementation of Indian Policy, there cannot be meaningful government-to-government interaction. Agree with Tom Winston and Peter Chestnut on need for letter to go to Secretary. Also want full STGWG support for STGWG Tribes to be

organizers of summit as they are the Tribes most affected by DOE activities. Summit needs to be once a year. In the interim, Tribes should consider the option of a congressional hearing.

Q: Will Tribal Issues Committee take the lead on draft letter to go to full STGWG?

A: Yes.

Q: Who provided tribal funding information during Tribal-DOE session?

A: Information came from Gene Schmitt, Mary Ann Fresco and Alice Williams. No one from EM side made statements regarding funding.

o Tribal Issues Committee priority issues for the coming year:

- Planning for the 2005 Tribal Summit.
- Drafting letter to the new Secretary on tribal concerns, to go out over co-convenors' signatures.
- Monitoring progress on the Implementation Plan for the DOE Indian Policy.
- Providing tribal input on the End States process.
- Monitoring long-term stewardship and waste reclassification developments.

**LONG-TERM STEWARDSHIP (LTS)**

*Moderators: Neil Weber, Pueblo of San Ildefonso; and  
John Owsley, Tennessee—LTS Committee Co-Chairs*

Moderators' Remarks

o We are still unclear about who is ultimately responsible for long-term stewardship. Dave Geiser's remarks during the plenary session did not resolve the uncertainties.

Discussion

C: At Rocky Flats, the transition from EM to Legacy Management is fairly clear. For non-EM sites, there is a need to make sure EM functions do not get lost in other functions due to money pressures in the new organizations that inherit the sites.

Q: NNSA site in Missouri is still in confusion. NNSA drafted guidance which was withdrawn. Will guidance be issued?

A: Yes, NNSA still plans to issue guidance.

C: Biggest issue is for sites with continuing missions.

C: Facilities want continuation based on agreements in place.

C: Good to use Mary Ann Fresco's office at NNSA to get information to help sort the issue out. We have a basic understanding of the EM long-term stewardship program, but are unclear on some aspects of the new structure.

Q: Should there be a letter to Ambassador Brooks on the issue?

A: Yes, it could be done formally or informally. Informally could be more expedient.

R: LTS chairs will provide questions today.

Q: To whom do we send our message in non-NNSA programs?

A: It varies; inquire of the site contacts.

C: Losing "risk-based" from end states is a big issue for Washington. The continuing mission for Hanford is closure—but they don't have end states in place.

C: For 2005, STGWW should promote reuse of remediated sites. Include this position in letters to DOE.

Q: Are we expecting consistent application of EM guidance by other programs?

A: That is the starting point but deviation should be discussed.

C: The state is obligated to enforce state law—e.g., the Colorado environmental covenants law.

R: Environmental covenants are a common remedy.

C: In Tennessee, placing a provision in the CERCLA decision makes it enforceable.

Q: Question to the group: Other issues from the long-term stewardship session?

Response:

- Need for states to follow and enforce state laws.
- Roles and responsibility of states and Tribes in long-term stewardship and how DOE views the lack of regulatory authority.
- More information needed on beneficial reuse.

C: In Tennessee, NNSA will use land as a buffer. The state expects it to be cleaned up to industrial reuse levels from the outset.

R: How you define beneficial reuse is important. It differs for Tribes, e.g.; industrial reuse would **not** be beneficial reuse.

C: If anyone has issues after the meeting, forward to John Owsley or Neil Weber.

C: There are questions from the NGA session that STGWW needs to answer. Kara Colton will take lead on getting state input. Also want Willie Preacher and Neil Weber to provide tribal input.

C: Maintaining sites for the future is important for Tribes. Need to remind DOE of obligations to treaty rights regarding land.

R: The definition of beneficial reuse should be defined by the **site, tribal use, and treaty**.

o Long-Term Stewardship Committee priority issues for the coming year:

- Monitor the topic area on behalf of the full STGWW and plan sessions on the topic for STGWW meetings.
- Serve as state-tribal contact on this topic area.

- Draft LTS questions for Mary Ann Fresco, NNSA, for presentation at the December 2004 meeting.
- Draft letters on LTS issues raised at the December 2004 meeting for: Arnie Edelman, Office of Science; Debbie Swichkow, Office of Nuclear Energy; and Mary Ann Fresco, NNSA (followup letter to questions provided at meeting).
- Support Integration and Disposition Committee efforts to track and comment on DOE's waste disposition plans.

## **TRANSPORTATION**

*Moderator: Susan Hughs, Oregon—Transportation Committee*

### **Tribal Planning for Yucca Mountain Shipments**

*Presentation By Jay Jones, Office of Civilian Radioactive Waste Management, DOE Office of National Transportation*

See handout.

#### **J. Jones**

- o As chair of the Tribal Topic Group of the Transportation External Coordination (TEC) Working Group, would like to see more Tribes on TEC.
- o Next TEC meeting is in the spring, check web site for date:  
<http://www.ntp.doe.gov/tec/>.
- o Shipping to Yucca won't begin until 2010.
- o 40 Tribes live along the transportation routes.
- o His office is preparing a letter to the affected Tribes; coordinating with Steve Grey's office as well.

#### **Q & A**

C: STGWWG Tribes commend Jay Jones and the DOE Transportation program for outlining goals and objectives with Tribes. It is refreshing to see the recognition of tribal sovereignty and the importance of government-to-government relations. This is what Tribes have been seeking and hope that others will follow your example. It seemed in Ambassador Brook's remarks yesterday that there was a lack of understanding that Tribes are directly involved in national security, not indirectly.

R: The Ambassador was possibly misunderstood. He does in fact recognize that Tribes are directly involved in national security issues as they relate to transportation. He feels that Tribes have equal standing with the Department and are key to the success of DOE programs.

C: Glad to see DOE is working with the Tribes around Yucca Mountain. In addition to formulas used for route selection, DOE needs to talk to Tribes about what is culturally significant along the route. Seneca has experience with spent nuclear fuel and transportation. The Tribe received notice during the route selection process that there was no provision to consider tribal cultural and historical significance of lands along routes. This must be considered.

C: Ongoing problem with use of the Multi-Attribute Utility Analysis model in transportation route selection: it does not allow **cultural component** to be considered.

C: Seneca Nation is interested in participating in TEC.

R: Contact J. Jones, 202-586-1330, [jay.jones@rw.doe.gov](mailto:jay.jones@rw.doe.gov); or check OCRWM website, [www.ocrwm.doe.gov](http://www.ocrwm.doe.gov), or TEC web site, <http://www.ntp.doe.gov/tec/>.

Q: What is 180(c)?

A: 180 is the Transportation section of the Nuclear Waste Policy Act. Section 180(c) covers the training of public safety officials of local and tribal jurisdictions through which radioactive waste will be transported.

Q: Is there a more specific route map available?

A: On the OCRWM website (Appendix J of Yucca FEIS, Vol. 2):

[http://www.ocrwm.doe.gov/documents/feis\\_2/vol\\_2/apndx\\_j/appndx\\_j.htm](http://www.ocrwm.doe.gov/documents/feis_2/vol_2/apndx_j/appndx_j.htm).

Hard copy or CD also available through J. Jones (see contact information above).

C: There are some problems with TEC. Cultural and historical significance must be included. Definition of "affected" is a problem. Nineteen Tribes in Nevada were denied affected status which prevented them from protecting themselves. Also concerned with canisters—will cost a lot of money for service facility to repackage.

o Transportation Committee priority issues for the coming year:

- Transportation planning for Yucca Mountain shipments
  - As they relate to agreements with Tribes, as well as monitoring activities with the states and overall transportation planning effort.
- National disposition of waste
  - The need to address transportation impacts in the proposed "national dialogue" or whatever forum is chosen to provide input on DOE's complex-wide plans.
- Incident-free transport
  - Several times in the past year LLW shipment containers have leaked. Number of shipments will be increasing. STGWG needs to monitor shipments and be vocal advocate for incident-free record.
- Monitoring commitments made by DOE:
  - To develop a complex-wide lifecycle baseline and a new mega database to handle that data;
  - To provide a comprehensive list of all types of waste being shipped;
  - To provide transparent decision-making and abundant consultation with states and Tribes.
  - In this effort, DOE recognizes the sovereign status of Tribes and will participate in discussions accordingly.

## **INTEGRATION AND DISPOSITION (I & D)**

*Moderator: Mike Wilson, Washington—I & D Committee Co-Chair*

### Moderator's Remarks

#### o High-level waste—legislation and litigation update:

- 9<sup>th</sup> Circuit recently tossed out case saying it was too soon to say if DOE's plans violated the Nuclear Waste Policy Act.
- Understand South Carolina is not interested in pursuing litigation; the issue was addressed in the Defense Authorization Bill.
- Washington waiting for case to be ripe to consider next step.

### Discussion

C: Yakama Nation interceded in Idaho case on reclassification. Won at the district court level; DOE went to Congress for legislative relief. NWPA still in effect at Hanford so Yakama is asking the 9<sup>th</sup> Circuit for reconsideration of its decision.

C: Concerned at Yakama about leaving residual liquid high-level waste in casks, putting grout on top and calling it "incidental".

C: Commercial facilities bring Texas into the mix as well as Utah. Also means interstate compacts come into play.

C: Tennessee has encouraged the use of commercial facilities.

C: Washington believes if it meets site requirements and comes from within compact areas then it is okay.

C: At Los Alamos, they're burying low-level waste in unlined trenches on top of mesas, 30 feet from the edge of the mesa.

Q: Comments on proposal from SSAB chairs re a national forum?

C: National forum is needed but do not have great hopes it will resolve problems, based on past experiences.

C: Should organize the forum so that there are **results**.

C: State legislation may be required for state participation in the dialogue (e.g., in Washington, Initiative 297).

C: There's been no comprehensive Department view of waste management and disposition. There's been a "revolving door" of personnel.

C: Need sustainable decision-making.

C: We need to call for concerted DOE effort to answer the questions mentioned. National forum may not be the best way to go. Effort is needed to compile data and then have dynamic interaction for sustainable decision-making. Endorse the concept but with concerns.

C: We may want to set performance standard rather than endorsing a national forum. Or we could monitor and weigh in if/when appropriate. Should make contact with SSAB and say we agree with the need for this to be elevated in importance.

C: Consensus is that STGWWG endorses the concept behind the national forum.

o I & D Committee priority issues for the coming year:

- Updating of waste disposition maps
  - "What, where, when, and **why**" answers needed as part of national dialogue.
- Continuing to follow management/gridlock/roadblock issues identified:
  - Yucca Mountain (progress, capacity)
  - WIPP (expanded authorizations)
  - Nevada Test Site (Fernald and other waste)
  - Hanford litigation and Washington State Initiative 297
  - Commercial facilities.

**WRAP UP**

The Nez Perce extended invitation for group to meet in Idaho in the spring. Group agreed it would be a good choice as STGWWG has never held a meeting near Nez Perce lands. The time frame will be late April or early May.

ACRONYMS

CI – Office of Congressional and Intergovernmental Affairs

EM – Office of Environmental Management

FEIS – Final Environmental Impact Statement

I & D – Integration and Disposition

LANL – Los Alamos National Laboratory

LTS – Long-Term Stewardship

NNSA – National Nuclear Security Administration

OCRWM – Office of Civilian Radioactive Waste Management

SSAB – Site-Specific Advisory Board

WIPP – Waste Isolation Pilot Project