

State and Tribal Government Working Group

March 13 - 14, 2002

Washington, DC

MEETING SUMMARY

[Note on Summary: The meeting had multiple facilitators this time so different sessions are captured slightly differently.]

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| <p>STGWG EXECUTIVE SESSION WEDNESDAY, MARCH 13, 2002</p> |
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Welcome and Introductions

- Tribal co-convenor Armand Minthorn was called away on family emergency; Michael Chavarria, Santa Clara Pueblo, agreed to serve as co-convenor.
- New Member: Brian Hembacher, Deputy Attorney General, California; replaces Dan Miller, former NAAG representative.
- Guests from Pueblo of Jemez: Governor Paul Tosa, Councilman Paul Chinana, and Mehrdad Khatibi, Acting Director, Dept. of Resource Protection
- Jessie Roberson is unable to meet with group today; called to testify before Congress. May meet with group tomorrow.
- Paul Golan will present Top-to-Bottom Review.
- Greg Sullivan will present on Long-Term Stewardship tomorrow. Dave Geiser had to travel to Missouri for meeting with EPA and citizen stakeholders on Weldon Springs. Greg is not a policy person.

Executive Session Agenda Review

- Report-out from Tribal Session
- Changes/Issues with DOE
- Washington Hanford Agreement
- How STGWG will relate/dialogue with DOE
- Committee make-up and structure

Report from Tribal Executive Session 3/12/02

- Broad representation at session among Tribes
 - Jemez Pueblo representatives attended/observed tribal session
 - Implementation Plan for American Indian Policy
 - Jan '02 Draft seemed to address questions & issues
 - Tribes may ask STGWG to support DOE action on implementation
- Issue: Budget holding firm per promise (Top-to-Bottom Review)
- Issue: Annual Tribal summits promised - none have occurred yet- Status/Plan
- Issue: Report on Federal Trust Responsibility and stewardship may be at Fall STGWG meeting.
- Issue: Have questions about Cultural Resources Policy & coordination.

DOE Issues

- Budget
- JH Roberson appointed in Summer 2001
- Top-to-Bottom Review (TBR) of EM; mostly an internal DOE action
- Many programs on hold until review completed
- TBR issued with budget
- Budget includes block money for accelerated cleanup (AC); sites will compete for money
- Most sites had base budgets cut but have opportunity to compete for AC money
- Major reorganization in Department of Energy; many shifts of personnel
- Access to DOE difficult right now
- Many points in Top-to-Bottom Review are consistent with STGWG positions

Nevada and Yucca Mountain

- Citizens against disposal in Nevada
- Governor will veto presidential recommendation on Yucca Mountain
- Congress will vote on override
- State will work to prevent decision to approve Yucca Mountain
- NTS and Yucca Mountain issues are becoming intertwined
- Cut in cleanup budget at NTS an issue
- Yakama Tribe sees dilemma regarding removal of high level waste re availability of Yucca Mountain
- Size/capacity of Yucca Mountain?
 - 70,000 metric tons is the limit
 - Indication that cap will have to be changed to accommodate more waste
- Engineered barriers at YM represent a problem for 10,000 year life cycle of facility
- Process if Congress overrides veto
 - NRC licenses construction
 - NRC licenses operation
- Final EIS
 - May be separate NEPA analysis of Transportation

Long-term stewardship (LTS) and Missouri

- Weldon Springs cleanup:
 - 70-foot high aboveground disposal cell
 - CERCLA cleanup
 - Construction almost complete
- LTS discussions underway for some time
- Problems with ownership of LTS within DOE
- DOE-HQ, EPA & citizens meeting today at site to discuss LTS
- State not invited to discussion
- State not comfortable with approach/commitment to LTS at this site

Washington State Agreement with DOE on Hanford

- Agreement is not a formal legal agreement
- Align site baseline with site contract with tri-partite agreement
- Letter of intent provides process and commitment to process, not resolution of specific issues

- State of Washington has not agreed to give up anything
- State has agreed to discuss options to DOE proposal
- Dates in document are DOE dates, not agreed to by state
- State maintains full regulatory authority if agreement not reached
- DOE agrees to seek money for additional cleanup
- No agreement regarding money
- No guarantees regarding money
- There needs to be project-level justification of any funding values
- Why now?
 - Pilot case to give structure to \$800 million accelerated cleanup fund
 - May well serve as model for other site/states
 - Concern re DOE forcing states to compete
 - Concern re DOE using Washington Agreement as leverage

Q: Were tribes involved in setting cleanup standards?

A: Process has been open to tribes; Umatilla has been involved.

Note: Cleanup standards have not been changed: Tripartite agreement is the place for that.

Comment: States are now being put in same position that tribes have always been in.

- May propose recommendation that states & tribes work together on this issue.

Committee Membership and Structure

Tribal Issues Committee:

- Important, productive, continuing mission
- Covering tribal perspective on issues ongoing important function

Stewardship Committee:

- Focus has shifted; now more detail-oriented
- Much work to be done; may expand over time

Transportation Committee:

- Focus: Keep STGWG updated/integrated
- A key but tangential issue

Integration and Disposition (I&D) Committee:

- Community protocols
- Waste characterization & disposal
- There are issues that STGWG needs to talk about
- If DOE doesn't lead, then STGWG needs to discuss

Decommissioning and Deactivation (D&D) Committee:

- Seems to be more site specific
- Leads back to I&D
- Move scope of committee work to I & D and Stewardship

Co-Chairs:

- Needed for Transportation (Tribal) and for I&D
- Suggestion: 2 state co-chairs for I&D
- Diana Yupe volunteered to be tribal co-chair for Transportation Committee.

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| <p>STGWG PLENARY SESSION WEDNESDAY, MARCH 13, 2002 - MORNING</p> |
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[Question—Q, Answer—A, Comment—C, Response to preceding comment/s—R]

Welcome and Invocation

- Welcome & Introduction: Co-Convenors Michael Chavarria, Santa Clara Pueblo; Tom Winston, Ohio
 - Special guests from Jemez Pueblo
- Invocation: Michael Chavarria
- Welcome from DOE: Martha Crosland, Office of Intergovernmental and Public Accountability
- Jessie Roberson will try to attend Thurs. 3/14; called to testify before Congress 3/13.

Report out from Executive Session

DOE Update, Top-to Bottom Review, Budget

- DOE update & Top-To-Bottom Review: **Paul Golan, DOE-EM**
 - See slide presentation
- 2002 & 2003 Budget Review: **Gene Schmitt, DOE**
 - See slide presentation

Additional notes:

- Support to STGWG will continue
- Grants to tribes will continue
- EMAB will be streamlined
- Transportation will be examined to identify focus on cleanup
- Science/technology not directly related to accelerated cleanup will be curtailed or transferred
- Cleanup (not already accelerated) will be slowed down until discussions with sites/states identify risk-based accelerated cleanup opportunities

Discussion

C: Yakama Nation was not involved in letter of intent between Washington State and DOE on Hanford.

- Need government-to-government interaction

C: Agreements need to incorporate compliance aspects of treaty agreements and treaty rights

C: Concern re using Rocky Flats as model for Hanford; e.g., no treaty/Indian issues; long-term environmental contamination

R: There is a difference. Bias toward the action of cleanup. DOE will continue moving toward understanding & government-to-government relationship. DOE will try to improve relationship.

C: DOE should work with tribes to identify viable end states. Tribes represent important resource for understanding holistic approach.

R: We all find current situation at Hanford unacceptable. We all must go after highest risks right away. DOE must perform in order to build trust.

- Reason for Rocky Flats model: Able to agree on most important things to do first and get on with that work.

C: Re Tennessee: Need certainty that transportation/disposition of materials not disposed of onsite will occur and be integrated.

R: DOE needs to build key disposition decisions into management & performance plans. EM will work this summer to identify these key integration decisions & build into plans.

C: Will have discussions between STGWWG & Paul Golan re I&D Communication Principles.

Q: Any plans for Congressional checks on reform fund?

A: DOE will roll up management plans into integrated plan and take back to OMB. OMB will hold DOE accountable against the plan.

- Have committed to Congress to track and show progress against site-specific plans for use of money.

C: Concern re tribal participation on EMAB and its restructuring.

C: Concern re funding for Tribal Liaison within Department, at site & HQ level?

R: Will pass EMAB comment/concern to JH Roberson.

R: Will maintain Liaison budget for HQ.

- Have not directed cuts at site level, but decision power in hands of site.

C: Skepticism re another program coming down.

C: Top-to-Bottom Review a good idea. We (STGWWG) want to help make it happen.

R: Looking at tradeoffs between long-term & short-term remedies.

Q: Status of LTS in EM and at DOE-HQ?

A: LTS still in EM-50 & will stay

- Some support service contractors cut, as in other areas
- Work now assigned to federal staff
- No reduction in LTS budgets for closed sites

C: Important that native people be able to perform aboriginal practices in order to survive as a people. Must be included in approach.

C: Active cleanup means active disposal which means active state oversight. State oversight must be funded in order to produce active cleanup.

C: Important that regulated party not finance regulators.

- Important that DOE support states' abilities to independently understand issues
- State AIP funding is on the table

C: Re Transportation: Important to know what needs to be shipped where.

- Transportation Committee is working well and should be supported & continued.

Q: Re NEPA improvement: How will it be more effective?

A: We limit ourselves in NEPA to single preferred alternatives.

- RODs should allow multiple paths where viable.

Q: Re American Indian policy: What efforts will there be re tribal consultation on new visions?

A: STGWWG is one element, where most HQ staff get first input from tribes.

- JH Roberson has directed that DOE enter into new AIP with tribes.
- Requiring field managers to participate in local dialogues.

C: Disconnect between HQ & Field. Needs to be a fundamental structural change.

Q: States/Tribes cynical that reform budget will produce competition among states. Is it intended to do this?

A: Working to put line management rather than matrix approach in place.

- A whole new set of expectations by JH Roberson
- HQ staff expected to personally work the issues
- DOE does not view reform budget as competition; intends to fund what is needed to really do the job

End of morning session.

WEDNESDAY, MARCH 13, 2002 - AFTERNOON

TRIBAL ISSUES SESSION

Moderators: Tribal Issues Committee Co-Chairs Peter Chestnut, Pueblo of San Ildefonso;
Diana Yupe, Shoshone-Bannock Tribes

Progress of DOE Indian Policy Implementation Plan: Robert Paduchik, DOE

- Important for DOE to live up to commitment to government-to-government relations.
- Robert is standing in for Vickie Thornton while she is at Department of Education.
- Oversees:
 - Intergovernmental affairs
 - Indian Affairs
 - External Affairs
 - Will oversee Vickie when she is back
- Has limited experience with Indian affairs
- Wishes to listen
- Existence of Indian Policy indicates need for improvement
- Essential to put policy into action

3 Objectives/Goals:

1. Work to complete Implementation Plan for American Indian Policy (AIP) and have it be Department-wide
 - Will work that through Department process
 - Wants advice from STGWG on how to implement
2. Establish regular lines of communication and support among the tribal points of contact (POCs)
3. Conduct tribal leader summit with Secretary
 - Review Implementation
 - Look for opportunities to go further

Discussion

C: Current version of American Indian Policy is improvement over previous versions.
C: AIP requires early consultative process. Tribal governments were not consulted regarding Hanford Agreement in Washington State.

R: Policy is vague on what consultation means. Need to do a better job of conducting consultation. Not sure how consultative process will work in every case.

C: Appropriate positions must interact with appropriate government-to-government protocol. Decision-maker on one side must meet with commensurate decision-maker.

Q: Regarding EMAB: Will Tribal participation be protected?

A: Can't answer at this point.

Q: Regarding tribal liaison: How will this work effectively at/between HQ and states?

A: Tribal POC's don't report to HQ. HQ responsible to work with POC's to ensure that agreements are met.

Q: EM mission at INEEL and other sites: What happens after closure?

A: Can't answer at this point; will get answers and respond.

Q: How will Cultural Resources Policy be implemented?

A: Important for implementation to occur in the field; HQ is not enough.

C: Tribes need Secretary-level involvement; accountability-should be the case now.

C: Consultation also includes budget matters. Budgets must protect restoration/resources critical to life of Tribes. Consultation should include budget discussions.

C: Office of Indian Affairs should be conduit to Secretary.

C: Can use some concepts developed in states: DOE interaction to help make Tribe-DOE consultation work.

R: Different in some ways, especially in that state is not sovereign entity as are Tribes. Secretary is committed to government-to-government relations.

- Very important to get the policy effectively implemented. This will be a priority.

C: Hope that this administration can accomplish government-to-government relationship and meet treaty responsibilities.

C: End states must comply with treaty rights. Tribes will help achieve.

Q: Will Robert fill-in for Vickie until fall?

A: Yes, initially Robert would handle until Vickie's return. But there is a lot to accomplish. If Tribes desire, can take message back to put temporary person in that position.

C: Implementation Plan has been developed in consultation and is practical; moving it forward in next few weeks is important. It should be moved forward as final rather than treated as draft.

C: Critical to start using the plan and really consult with Tribes.

C: Policy and plan should be used as part of the accelerated clean-up process. Do it now.

R: Goal: Get implementation plan in place before fall. Need Department-wide evaluation and buy-in.

- Department needs mechanism for addressing when policy/plan doesn't work as intended.
- Important for consultative role to reside with action (at program/project level).

C: Tribes want consultation at local and HQ level.

Q: What are lessons learned and actions regarding consultative failure on Washington Hanford Agreement?

A: Office of Indian Affairs needs to educate and inform POC's.

Request: Find out what went wrong with Hanford Agreement and identify corrective actions and respond.

C: Implementation Plan may need some fine-tuning. Need to make sure that it applies to Department as a whole.

C: Should use consultative process on any revision to plan.

C: STGWG reaffirms offer to help structure tribal summit to ensure success.

C: Tribes can help with information/knowledge transfer to future generations as part of long-term stewardship.

C: DOE should view Tribes as part of the picture - as governments rather than "members of the public."

C: Counting on DAS to champion Implementation Plan within the Department.

R: Will set up a working group on Implementation Plan.

Q: Is there a proposed date for summit?

A: Not yet. Want to get plan in place and POC's moved forward, then have summit.

C: Cultural Resources Policy: Integrate within overall Environmental Protection Order. Hoping that Implementation Plan for Indian Policy will provide mechanism/model for consultation.

C: Regarding Hanford Agreement: There was no consultation on Agreement itself, but Tribes were involved in the process that led to portions of the Agreement.

C: Regarding temporary replacement for Vickie: DOE needs to know wishes of Tribes.

C: Regarding Summit: There needs to be discussion among Tribes.

Q: How best to get Tribal input on review of Implementation Plan?

A: Consensus of Department and affected Tribes, then wider review/comment - with a definite deadline.

C: Should get review by rest of Department, then group consultation with Tribes. Then send out for additional comments - but not long/extended period.

Q: Will Indian Policy be the official consultation policy?

A: Yes.

C: Then all Tribes should be involved in the discussion.

INTEGRATION & DISPOSITION (I & D) / DEACTIVATION & DECOMMISSIONING (D & D)

Moderators: I&D Committee Co-Chair Mike Wilson, Washington;

D&D Committee Co-Chairs Tuss Taylor, Kentucky; John Owsley, Tennessee

- Scrap metals
- Waste Management PEIS
- CERCLA Cells
- D&D of NNSA facilities

Waste Management Activities Overview: Karen Guevara, DOE

(See presentation)

Discussion

CERCLA Cells:

Q: Lifetime of cells?

A: 30 or 100 years; will confirm.

Q: Does life-cycle cost include LTS costs?

A: Yes.

C: Important to avoid letting cost be the only driver for disposal cell decisions.

C: Need to get updated disposition maps.

R: Will get out as soon as security concerns addressed.

Q: Effect of acceleration on disposal capacity?

A: Looking at this.

C: Kentucky perspective: CERCLA cell supported but need:

- Reduced footprint
- LTS

Scrap Metals PEIS: Andrew Szilagyi, DOE

(See presentation)

- Resource for this issue: **John Neave (301) 903-7678**

Discussion

Q: When is last time DOE-HQ wrote a PEIS?

A: Long time ago.

- DOE - EPA Joint Policy on Decommissioning under CERCLA (See handout)

C: Concern that CERCLA non-time critical removal actions don't have sufficient involvement.

Q: Neither states nor EPA has approval authority on non-time critical removals?

A: Think that EPA doesn't have authority to approve use of process, but does have approval of decisions/documents.

- DOE has unencumbered removal authority, but needs to include agencies under executive order. Suggestion: Do under site-specific Agreement.

C: Not required that EPA approves; this expected to come in under site-specific agreements.

C: DOE and Tenn. have undertaken large removal actions. State/EPA don't have authority; it is understood that they will be involved.

Q: Approach to non-CERCLA D&D at DOE sites?

A: NNSA and Science doing demolition of largely uncontaminated facilities.

- Congress has required NNSA to conduct demolition as part of facility upgrades. NNSA plans (maybe) to transfer more contaminated facilities to DOE-EM.

C: CERCLA should be involved if there is a release to environment. Demolition applies when no release to environment

C: If D&D activity will affect tribal interests, Tribes should be involved.

C: Concern that Historic Preservation Act provision being involved/considered is D&D.

R: Provisions of Historic Preservation Act are considered.

C: Rocky Flats defined the difference between deactivation & decommissioning.

C: Self-regulation under CERCLA doesn't work because there are no enforcement abilities and because application is inconsistent across the complex.

- I&D Committee, new co-chairs: Mike Wilson, Wash., John Walker, Nev.

- Tuss Taylor and John Owsley will continue to track D&D issues for the committee.

End of afternoon session.

THURSDAY, MARCH 14, 2002 - MORNING

LONG-TERM STEWARDSHIP (LTS) SESSION

Moderators: Stewardship Committee Co-Chairs Steve Tarlton, Colorado; Neil Weber, Pueblo of San Ildefonso

Institutional Controls: Greg Sullivan, DOE-EM

- Institutional controls (ICs) - work with Commission on Uniform State Laws
- How to effect real estate laws
- ELI/ECA case studies
- Role of property people in remedial decisions
- Top-to-Bottom Review direction
- Call to action
- LTS Strategy (already working on strategic plan)
 - STGWG and other entities commented
 - Engage rest of Department
 - Take revised draft and issues to Executive Steering Committee in April.
 - LTS S&T Road Map - end of FY '02

Discussion

Q: Identify budget cuts?

A: Have to complete in FY '02.

Q: Follow-on work?

A: Will find out.

- LTS planning guidance

- Last year's may work at closure sites
- How to integrate at sites with continuing mission
- Focus on integration in DOE systems, plans

Q: DOD & GSA say they can't place covenants on property to be sold. Can you resolve?

A: Need to work through and DOE facilitate discussion.

Q: Need confidence in IC's at time of remedy. Role of EPA?

Q: LTS includes DOE's own land? Where are Tribes in GSA land transfer process? Affects treaty rights.

A: Discussion with GSA not about specific transfers. Concern noted. DOE lands go through GSA process more than Atomic Energy Act (AEA) authority.

Q: Any effort to address assured funding for IC's?

A: Not well defined. Propose UMTRCA trust fund as model. Still look at not requiring LTS plan for all sites.

Q: Change in policy?

A: LTS responsibility still transfers to landlord. Planning still under discussion.

C: Tribes are at extreme disadvantage due to lack of integration at fed level.

Q: How to fund recommendations of LTS S&T road map?

A: How to leverage lab funding/capacity.

C: Concern about cuts. STGWG requests copy of work plan, who funds/meets needs. Then STGWG review and comment.

R: Strategic Plan identifies who's to do what.

Re Top-to-Bottom Review:

- Universal acceptance criteria: What are applicable requirements?
- What would site have to do to be accepted into LTS?
- May emphasize RODs and remedies
- Work internally and with other feds

Q: DOD position: Once ROD or permit selects remedy, no longer subject to state/EPA oversight. What is DOE position?

A: We're on work group with DOD. DOE policy not set. Likely to be tested.

C: Site acceptance criteria need Tribal involvement. Return of aboriginal lands may have different requirements.

R: Will circulate through STGWG.

C: Tribes marginal. BIA has little knowledge. Attempts continue to degrade treaty rights. LTS is waste of money if it's to cover sacrifice zone.

Q: Some value in engaging BIA training/education?

A: Encourage DOE to do so.

Q: How to integrate Cultural Resources Management Plan into LTS?

A: Increasing pressure on museums / commemoration - not integrated with LTS up to now. Co-location of LTS records in such centers. Need more discussion internally; need strategy.

Q: OK for hard facilities, but what about cultural values in land?

A: Address in uniform acceptance criteria.

C: Cultural resources impacted by LTS are not considered. DOE has responsibility to assess lack of response from DOE. Section 106 not done - has to be.

R: DOE has policy on these issues. Need STGWG help to identify non-compliance.

C: Washington is interested in museum/study center concept in conjunction with Tribes.

Q: Is DOE integrating records retention into LTS planning?

A: DOE has tried to make sure records destruction is not occurring for records that will be needed; has a staff member assigned to better integrate records management.

- Fed coordination efforts: engage other agencies in dialogue.
- Inter agency military committee (DOD and DOI). Areas where BLM & military land abut; expect to meet in April.
- ECOS workshop in April.
- Goal: Coordinate acceptance criteria.
- Still early; there may be several options in how to manage:
 - Single or multi-agency
 - Involve states?

Q: Take LTS study to sites as training?

A: Add to closure training.

Q: Original policy - separate budget item by 2004? Still require LTS cost estimate?

A: Required for IPABs. Work with CRESA to build standard method to estimate.

Also need uniform acceptance criteria.

Q: Role of LTS in Top-to-Bottom Review? Is it really a priority for EM, or something to move out? Going to finish what you start? More important if closure is accelerated. Transfer responsibility, even if not property?

A: FUSRAP, e.g.: Sometimes take responsibility but not property. Will involve local/state governments in discussion. No decisions yet.

C: Concern re transfer to agency that doesn't know what it's getting into.

R: Can be done well.

Other Federal LTS Activities: Murray Newton, EPA

-Institutional Controls - EPA post-ROD authority

- Topics for discussion

1. Guidance - Site managers guide implementing monitoring ICs in common - by summer, development of implementation plans
2. IC tracking system objective
3. IC tracking research
4. Data collection form
5. Data collection pilots: 72 sites in EPA Regions 3 and 5. Preliminary results: few tracking systems; they were filing systems
6. Meeting/Workshops
7. 50-state study done in 2-year intervals. Not yet published but plans to release soon (will advise Denise on release date).
8. Information collection
9. Pilots
10. LTS framework document: EPA effort on hold for the interim.
11. Post-ROD authority: DOD contesting EPA ROD. EPA position is to put IC in place. Dispute resolution: Each agency to prepare, review and respond to each other's briefs.

Discussion

Q: DOE enforcement of CERCLA: Could EPA ask for more information from agencies?

A: EPA is asking for clarity on controls.

Q: How to stay tuned to issue - via a website?

A: Keep in touch with regional offices.

Land Transfers: Andrew Duran, DOE

- Office is legal and management authority on real property issues
- Tracks real property that DOE disposes
- Coordinates with other offices on transfers
- Prepares maintenance report
- LTS efforts to track through Facility Information Management System (FIMS) in LTS transfers
- Developing policy that includes LTS issues
- 68% of DOE property is DOI

Discussion

Q: Treaty lands included?

A: Yes.

- Title is in federal holding. DOE itself does not own property but is one of the few agencies that have control and custody of land.
- There are NHPA/Cultural requirements.
- GSA disposals: A process is in place within designated requirements.
- DOE disposals: Same requirements as GSA, with an exception: Follow Homeless Act as described in HUD.

Q: How extensive is coordination with DOI / BIA in disposing of property to indigenous tribes?

A: DOE coordinates.

- Original owners have no special authority; they follow same rules as others.
- DOE has authority requirements under Atomic Energy Act.
- A priority for disposal. Fed agencies have priority status to acquire land.
- Is program responsibility to follow disposal rules - who is responsible to dispose.
- Manager has authority to decide disposal - to GSA or other.
- Describe public involvement - what level of review.
- Decision to transfer is at site level.
- Congressional decisions are usually binding.

Q: Land swap between agencies: Process the same?

A. Agencies can swap.

Q: Isn't it true that the Secretary can also make that decision?

A: Since Secretary delegated that to site manager, he can still make the decision.

Q: Shouldn't the Secretary then involve the Tribes, per the Indian Policy?

A: Can't answer. General counsel would need to answer.

Q: Does DOE own land?

A: No, they have control and custody. Owning land is a legal concept; the land is under federal ownership.

Q: DOD issue re conflict: is land transfer the same?

A: Yes.

Q: Clarify: Can federal agency place institutional controls on land deed restrictions/covenants if they don't "own" land?

A: DOE can place restrictions on property.

Q: Who has deeds for DOE property?

A: On east coast, DOE should have deeds. In some areas original documents (deeds) lost.
- DOE released property with restrictions in considerations for safety and health.

Q: Restrictions are made; enforcement is up to DOE. How are restrictions tracked?

A: DOE adds to list but the issue is funding for tracking. Enforceability is an issue and monitoring plan is important.

C: Concerned about private owner use of restricted lands.

Q: How is 5-year review involved in transfer?

A: Fed agency should have responsibility.

A: 5-year review never goes away and the responsibility stays with agency.

Q: If there is a violation of 5-year review?

A: They should fix.

Q: If fed agency doesn't have control, then what?

A: Fed agency has a responsibility, they have to fix.

Q: West Valley is owned by state; what applies if it is transferred?

A: Transfer is subject to Act.

INTRODUCTION OF EM-1, JESSIE HILL ROBERSON

- JHR made brief comments and answered several questions before returning to testimony before Congress.

End of morning session.

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| THURSDAY, MARCH 14, 2002 - AFTERNOON |
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TRANSPORTATION SESSION

Moderator: Max Power, Washington

National Transportation Program: Judith Holm, DOE

Agenda:

- Report on TEC/WG meeting
- National Transportation Program update

Transportation External Coordination Working Group (TEC/WG)

1. Consolidated Grant
2. Road and Rail Transportation
3. Future of TEC
4. Security and Terrorism

TEC is broad-based, 10 years old. Includes rail and roads.

- DOE close to issuing "protocol" order and guidance for transportation.
- DOE now has good training program for emergency responders.
- Consolidated Grant
 - Input from Tribes and states in revised draft; not yet sent to Assistant Secretary for policy action.
- Rail
 - Rail option important to DOE now
 - Pro-actively working on routing.
- Security: Principal community link is through U.S. Attorney's office.
 - NRC is doing top-to-bottom review of transportation security for nuclear materials.
- TEC Tribal Topic Group:
- Transportation issues need more tribal involvement.

- Opportunity to meet with National Rail Administration and others outside DOE.
- Tribes not consulted or involved in rail route selection process before decision-making.
- DOE Indian Policy not being used by some DOE offices in transportation area.
- Consolidated grant plan ignores treaty rights and individual tribal needs.
- Affected tribes need to be more involved.
- Tribal governments left out of Idaho agreement with DOE & Navy for rail and roads.
- Tribes don't like consolidated grant approach.
 - Each tribe needs to be consulted and funded based on need.
- TEC useful overall for Tribes, especially for information gathering.
- Biological hazards not discussed at TEC, though of concern to some Tribes.
- Most interest is in radioactive material issues.
- TEC does not address site-specific concerns, but each Tribe can raise issues at TEC.
- Transportation needs to work with site/s on specific concerns.
- Tribal TEC group met Nov. 2001 - helped identify issues for TEC consideration.
- DOE-EM shipments are authorized in D.C. NNSA allows sites to do so. Tribes should be notified at least 7 days in advance.
- TEC, like STGWG, benefits from continuity of involvement on complex issues.
- Tribes are vulnerable. Ecological effects can affect people.
- Tribal regulatory authority exists, yet rarely exercised. Federal preemption still allows for some tribal enforcement authority.
- Consolidated grant program evolved to recognize tribes' need to be treated differently from states.
- Yakama Nation in 1978 banned transport of nuclear material across its lands. Has never been challenged.
- Tribal infrastructure varies widely. DOE has difficulty dealing with "capacity building."
- Q (DOE): Rail topic group: What participation would be useful? Need feedback.
- Packing and certification for Defense Programs are classified.
- Certification of civilian shipment packages being transferred from DOE-EM to NRC-Nuclear Regulatory Commission.
- STGWG expressed concern years ago about DOE "self-certification".
- More direct involvement of DOE National Transportation Office with sites on packaging needs to be happening now.
- Protocols and manual will roll-out-this year.
- 3 transportation orders in DOE being reviewed for consolidation.

Consolidated Grant

- Intended to combine DOE program funding into one fund.
- Working well for states on WIPP shipments.
- Formula based on risk seems fair for states.
- Coming to closure soon (within weeks) on Consolidated Grant path.
- No risk assessment model includes intangible(s) such as culture.
- Initial DOE funding for tribal risk assessment has disappeared.
- Clean Water and Air acts don't properly address risks from health and safety concerns using tribal perspectives. STGWG could address this in future.
- DOE has been shipping spent nuclear fuel since 9/11, using NRC advisories on law enforcement, escorts, state notification. Tracked one commercial shipment, with JHRoberson's ok. "Close to precedent setting." Shipper paid costs.
- DOT organizing an Office of Security now.

- Package designs sent to NRC for certification by DOE are for unclassified commercial shipments.

Transportation Protocols

- A set of practices for shipping radioactive materials. Organized by activity. Each category of material described. Intend uniform practices for each material and activity across programs.
- This uniformity seen as a "major advance."
- Rail has separate issues, e.g. right-of-way ownership, access for emergencies, right to inspect and cite. (State of WA inspects and recommends citations to NRA.)
- This presentation seen as useful.
- STGWG/TEC folks will continue to participate in TEC.
- West Valley shipments may not have followed protocols and notified Seneca Nation appropriately.
- Idaho had overall lead. West Valley DOE dealt with N.Y., Pennsylvania and Senecas. 3 Routes identified and each had objections. Selected route was one Seneca preferred not be used. 2-year process. Route chosen did not go through Seneca.
- Shoshone-Bannock Tribes stopped two shipments across their land. No tribal involvement had been done with Shoshone-Bannock during planning stage.
- DOE wants to do better job negotiating with railroads. DOE developing guidance based on "best practices" for sites. Will discuss at TEC.
- Initial model based on population and ignored cultural, tribal considerations.
- Cultural issues not in the Protocols. Need to go beyond risk factor, using government-to-government consultations.
- Additional consultations needed.
- DOE will do before next shipment to INEEL.

WRAP UP AND PATH FORWARD

- Handouts from I&D Committee:
 - (1) 17 items listed principles for DOE intersite shipment.
 - (2) Draft document (2-pages) intends to go beyond principles to protocols. Called "Consultation Process" in draft.
- STGWG needs to hold presenters accountable for commitments made.
- Condolences to Armand Minthorn in his time of loss.
- Need to follow up on Tribal TEC meeting from November 2001.

Request: Invite Defense Programs to next STGWG for N.M. Pueblos, since they provide funds for some tribal programs.

Request: Nevada requests NNSA presence also at next meeting.

Adjourn.

Fall 2002 Meeting Note: The date and location of the Fall 2002 meeting were decided prior to the meeting. Following the cancellation of the October 2001 meeting in Ellicottville, New York, the Executive Committee chose to reschedule the meeting in Ellicottville for the first week in October 2002. Exact days will be confirmed soon and members notified.