

State and Tribal Government Working Group

May 16 – 17, 2001

Las Vegas, Nevada

MEETING NOTES

These meeting notes are a summary of notes recorded on easel charts during sessions of the State and Tribal Government Working Group (STGWG) Meeting on May 16 – 17, 2001. The notes reflect key comments and discussions among the Working Group members and key questions / answers between Working Group members and presenters. The content of presentations is not summarized in this record.

May 16, 2001

LAS VEGAS, NEVADA

Executive Session

Opening Remarks/Welcome/Member Introductions

- Co-Convenors: Tom Winston, Ohio; Terry Aguilar, Pueblo of San Ildefonso

Main Session Agenda Review

- Dr. Huntoon had to remain in D.C. for budget hearings and could not attend

Summary of Tribal Executive Session

- 6 tribes represented in Tribal Executive Session
- Tribal Perspective:
 - Have grown up on/with this land and are never going to leave
- American Indian Policy: Focus should be on implementation
- Cultural Resources Management Policy
 - Policy signed by Secretary May 2, 2001

- Concern now: Implementation
 - Important to states as well
- Long-term stewardship
 - Building into Tribal Agreements
- Natural Resource Damage Assessment at Hanford
- Transportation
 - Asked for tribes directly affected to coordinate within STGWG
- Staffing for Indian Affairs and policies is important in the new administration --vacancies exist right now.

Agreements in Principle (AIPs)

- Hope to get DOE to confirm commitments
- STGWG did survey of states & tribes
 - 10 of 14 responding states/tribes have AIPs
- 3 of 4 states without AIPs cover issues with other mechanisms (usually regulatory)
 - Illinois has no AIP & is concerned re "micro management" by DOE
- Enforceability an issue with AIPs
- Yakama Nation having great difficulties in negotiating AIP - currently in dispute resolution
- Ohio has moved away from AIP to link monitoring more directly to enforcement
- DOE-Oak Ridge has traditionally put AIP funding in "direct" budget - was better protected
 - Oak Ridge AIP funding now pulled out of direct and much more at risk
- Emergency response is not usually funded under EM, but is included in AIP
- Question: what is relationship between AIPs and TEC/WG consolidated grants?
- Question: How will AIPs affect other funding mechanisms?

- Nevada has used AIP to get oversight responsibility for self-regulated waste disposal
- Each AIP is unique in focus and approach
- *DOE poses affects on infrastructures of states & tribes
- Doe should fund programs so that states/tribes can help program move forward through effective oversight
- Question (Q): Has DOE-HQ forced budget cuts in this area across the complex?
- Answer (A): At Oak Ridge, Agreement funding is being cut out of proportion to operational funding cuts
- States/Tribes that haven't responded to AIP survey should
- Survey results should be compiled and shared at least internally within STGWG

Path Forward for STGWG

- Jesse Roberson set to be confirmed as new EM-1
 - STGWG should send message to Jessie, including work plan
- Workplan/Committee focus (See committee mission statements)
 - Tribal Issues
 - Transportation
 - D & D
 - Waste Management, Disposition & Integration
 - Stewardship
- STGWG should develop an integrated summary based on committee mission statements & issue to Carolyn Huntoon /Jesse Roberson
 - Any revisions by committees should be made in next 2 weeks
 - Should note that STGWG builds on, coordinates with, and complements work of other groups
 - Should emphasize that STGWG is only forum for collected wisdom from tribes
- Should place mission statements on STGWG web site
 - Should have detailed and summary versions

May 16, 2001

FULL Session

Invocation

- Diana Yupe, Shoshone-Bannock Tribes

Welcome and Introductions

- Tom Winston, Terry Aguilar, Co-Convenors
- Carl Gertz, DOE-Nevada Operations Office

Opening Remarks and Agenda

- Martha Crosland, DOE

DOE Update and Budget Discussion

Gene Schmitt, DOE

Briefing to STGWG

- Letter to STGWG from Dr. Huntoon
- New Nominations: Jesse Roberson, EM-1; Robert Card, Undersecretary of Energy
- FY 02 & FY 03 Budget Cycles
 - Timing affected by administration change
 - Expect "normal" process in future
- FY 02 Budget (See presentation)
 - Significant actions in Congress
 - Increased EM budget by \$1 Billion (FY-01 & FY-02)
 - Budget hearing encouraging
- Congress has asked for priorities for funding restoration
 - Action: Request by STGWG members to see recommendations when they go to Congress
- Top-to-bottom review of EM
 - Phase 1. Internal: How do we do business (~ 6/01)
 - Phase 2. Strategic review (~ 9/01)
- Phase 1
 - Requests to state
 - Requests to Energy Facilities Contractor Oversight Group (EFCOG)

- Phase 2
 - Will begin when Roberson & Card on board

Discussion

- Comment (C): Phase 1 letters went only to states, not to tribes
- Q: Funding for tribal issues
- A: Tribal funding in FY 02 Budget protected at FY 01 Levels
- Currently some funding cuts in FY-02 for site efforts associated with states
 - AIPs
 - Site-Specific Advisory Boards (SSABs)
- Q: Guidance to sites re funding for states?
- A: HQ made decisions on each site budget for state funding, especially where state funding specifically called out (but \$ can be moved around at site level)
- C: Major cuts in AIP funding inconsistent with declared priorities
- A: Hope that funding is restored at site level. Hope that budget items can be juggled
- C: Hearing a mixed message: DOE-HQ has a 50% lower value on AIPs than previously
- Q: How can states & tribes participate in top-to-bottom review?
- A: Not sure yet
- C: Does HQ understand that failure to fund can be a violation of DOE-State agreements (e.g., Hanford)?
- C: Concern that DOE-HQ does not understand need for independent oversight as key component in DOE meeting mission
- C: Logic of FY-02 budget and cuts not clear to state of South Carolina
- C: Preliminary outcomes of STGWG budget discussion:
 - FY 02 Budget not adequate to move clean-up forward
 - Cuts in state funding will inhibit states' ability to perform their role
- C: Tribes should work with states to participate in Phase 1 review
- C: Environmental Restoration program at Savannah River Site is devastated

- C: Innovative programs already planned & contracted are being cut
 - Frustration: want to work with DOE in improving the end program. Top-to-bottom review may not realize savings because careful thought has already gone into planning of these programs
- C: Concern that EM must continue to justify itself--don't lose progress already made
- Q: Why are foreign reactor fuel shipments a priority?
- A: Non-proliferation
- C: Concern that tribes were not recognized as sovereign governments in sending out Phase 1 letter
 - C: American Indian Policy requires tribal involvement and should have triggered inclusion in Phase 1 letter
- C: AIPs - not intended to provide expertise to regulators, but a different purpose. DOE should look closely at AIPs and what they are intended to do - AIPs are not expendable
- C: FY 02 Budget appears to put DOE back into decide-announce-defend mode that all wish to avoid returning to
- C: Announcement of STGWW certificate of appreciation for Dr. Huntoon

Tribal Issues

- Peter Chestnut and Diana Yupe, Moderators

American Indian Policy

Briefing

- Victoria Thornton, DOE
- Recommends a simple statement from STGWW urging DOE/EM to develop an implementation plan for the American Indian Policy (to Roberson)
- Announcement: Secretary wants to hold an Energy Roundtable with Indian leaders this summer
- Letter is already in to Secretary to reaffirm American Indian Policy

Discussion

- C: Good news that Secretary wants to have Indian Energy Roundtable. Tribes wish to work with DOE to prepare for this meeting.

Cultural Resources Policy

Briefing

- Andrew Wallo III, DOE
- Success: Secretary of Energy signed Policy on May 2, 2001
- Where do we go from here?
- Looking at what guidance needed
- How to integrate into operations & policies
- Waiting for leadership to get in place

Discussion

- Q: Status and role of Federal Preservation Officer (FPO)?
- A: That is an issue we are looking at. Examining bringing FPO into implementation of CR Policy. Have been working on making sure that stewardship documents, process, etc., includes Cultural Resources Policy.
- Q: What are the next steps for implementation of policy?
- A: Revise 5400.1 - Environmental Protection Order & include cultural resources
 - More aggressive approach at field level
 - Frame up stewardship activities - integrated approach
- Q: Timing on new order?
- A: Expect to scope it out toward the end of the year.
- Q: Will DOE consult with tribes to see how policies/orders affect the budget?
- A: The new order will not directly affect budget
- A: Funding for Cultural Resources Management policy - must come out of the DOE budget by this policy - at field level
- C: It is encouraging that stewardship and cultural resources management may be included in new environmental order (elevation from policy to order)
- C: It is important to include cultural resource management in long term stewardship planning.

Natural Resource Trustee Councils: NRDA Action at Hanford

Briefing

- Tom Zeilman, Yakama Nation (see overheads)
- CERCLA provisions re natural resources damage
- Based on concept of "Trustees"
- Scope and limitations of damages
- Regulatory procedure
- Assessment phase
- Timing Issues

Briefing

- Dan Landeen, Nez Perce Tribe (see overheads)
- Hanford Natural Resources Trustee Council
- 5 decision- making criteria
- Statute of limitations
- Example application: Horseshoe Landfill

Discussion

- Q: Under CERCLA, to what extent is the right to claim as trustee limited by ownership?
- A: Issue of "Dual Role"
- C: This is a problem for DOE, states, and tribes

Video - "As We See It Now"

Video Presentation

- Santa Clara Pueblo closing-the-circle presentation
- Joe Chavarria and Mike Chavarria, Santa Clara Pueblo

Discussion

- Q: Availability of tribes' closing-the-circle videos?

- A: Will try to view one at each STGWG Meeting. Contact Neil Weber for San Ildefonso video. Also see Martha Crosland.

Transportation

- Mary Lou Blazek, moderator

Impact of budget on Transportation

Briefing

- Dave Huizenga, DOE
- FY 02 Budget is flat with FY 01 Budget
- Looking for 5-10% efficiency at request of Secretary
- It may be that people will be shipping less under new budget
- Accelerated grant may require additional effort
- Protocols are in final review
- Transportation Emergency Preparedness Program (TEPP) -- issues may lead to more consistency in emergency preparedness programs

Updating baseline and transportation barrier reports

- Hope to post on web in next month or so

Discussion

- Q: Perspective on how DOE will work with tribes on shipping plans?
- A: Will meet our commitments. Will work with both states and tribes.
- Q: Will budget cuts affect shipments from INEEL to WIPP?
- A: INEEL has been given an efficiency challenge in order to meet goal. Rocky Flats still looking at 2006

Transportation External Coordination/Working Group (TEC/WG) Meeting, Feb. 2001

Briefing

- Max Power, Washington

- Outreach: Working on Publications/web sites to inform the community
- Protocols: In review
- Consolidated grants
- Issue: How to make financial assistance available
 - Current thinking: Keep options open
- Issue: How to parcel out funding
 - Some base level
 - Some level related to other factors
- Issue: Is there some floor/threshold to get into grant program?
 - Under discussion
- Issue: What are eligible costs?
- Issue: How does this work administratively?
 - Dave Huizenga, DOE
- Dilution of WIPP \$ is an issue of concern
- Need to find more \$ if expanded into consolidated grant program
- Besides \$, what else do we need to do to coordinate?
 - For instance, TEPP

Discussion

- Q: Tennessee is considering charging a fee for shipments. How will this affect grant program?
- A: DOE is tracking that. Could affect grant program, but DOE is not actively discouraging this if state needs to go this way.
- C: Consolidated grant program makes a lot of sense. Should persevere
- Q: Focus of protocol review within DOE?
- A: Process, not policy issues - How to turn a protocol into an order
- C: Many other agencies already using consolidated grants - this synergy will allow efficiencies
- C: WGA is recommending getting all parties for all types of waste together to plan.

- C: WGA recommends that regions must be part of conversation
- C: WGA recommending simple approach to \$ apportionment
- C: WGA recommending \$ at end of tunnel
- C: Shoshone-Bannock stopped 2 shipments; agreement with DOE resulted
- C: Tribes have a specific role in transportation - states must recognize tribal sovereignty
- C: There have been questions and concerns re how consolidated grants will affect/involve tribes - funding, etc.
- C: TEC/WG - insufficient or no government-to-government communications
- A: May need a more individual grant process for tribes
- C: Many southern states wish to represent themselves rather than through regional bodies
- C: WIPP experience has shown that flexibility and synergy are possible
- C: Need to be careful to keep program infrastructure up to standards

Rail shipments to WIPP

Briefing

- Ron Ross, Western Governors' Association (WGA) (See overheads)

Discussion

- Q: Can tribes have address to web page?
- A: Yes. When it comes back up, will disseminate through Martha Crosland. Tribes are welcome to come to meetings.
- Q: Tribal consultation re reactor movements on rivers?
- A: Mary Lou Blazek, Oregon, will get information
- C: Idea: Tribal consortium similar to WGA for synergy on transportation
- C: Some tribes have already been doing good coordination with each other & DOE

- C: Other people or tribes may not represent Santa Clara unless authorized
- C: STGWG Transportation Committee should structure to address tribal issues (coordination)

Adjourn for the day

May 17, 2001

FULL Session, CONTINUED

Welcome

- Tom Winston, Ohio, and Mike Chavarria, Santa Clara Pueblo, Co-Convenors for Day 2

Stewardship

- Neil Weber and Steve Tarlton, moderators

Workplan Update

- Neil Weber, Pueblo of San Ildefonso; Steve Tarlton, Colorado (See status handout)

DOE Long-Term Stewardship (LTS)

Briefing

- David Geiser, DOE
- Dave has 2 challenges:
 - New to Program
 - Limited experience in outreach
- Today:
 - General overview
 - Pilot projects
 - The National Study
 - Site-specific planning guidance
- General overview (See overheads)

- Values-based model for LTS
- Program overview
- Now at a point where LTS issues must be resolved
- Need to resolve issues in next 5 years
- Working right now in four areas
 - Putting organization in place
 - Planning efforts
 - Involving external stakeholders
 - Communicating results
- Organization
 - 8 employees
 - Coordinated with Idaho and Grand Junction
 - Coordinated with other groups
 - Executive steering group
 - Field steering group
 - Coordinated with other DOE offices
 - Interagency coordination
- Q: Relationship among HQ, Idaho, Grand Junction?
- A: See overheads for summary
- Q: Contact in Idaho?
- A: Julie Connor (208) 526-0648
- Planning
 - Kicking off strategic planning effort on 5/22
 - Will take 1 year
 - Will involve groups, states, tribes
 - National & local effort
- Program Planning underway
 - Sites currently/almost in LTS
 - Sites transferring in/out of DOE
 - Transfer of responsibilities within DOE
- Site-specific plans
- Guidance to sites
- External Coordination
 - NGA

- Energy Communities Alliance
- EMAB
- Environmental Council of the States
- National Council of Science
- National Academy of Public Agencies

- Communication
 - New DOE leaders understand LTS issues
 - Need to continue working with Congress
 - Need to work with middle management & field offices in DOE

- C: Key to communication for operating sites: differentiate between LTS and "Closure"

- National Defense Authorization Act (NDAA) Report to Congress - Key Challenges for LTS (See overheads)

- Q: How will LTS process involve tribes?
- A: Not sure yet
 - It is important to do
 - There is guidance for tribal governments
 - There is no guidance for local governments - thus emphasis here

- C: Treaties and tribal agreements will have to be included/supported in LTS planning/process
- A: Need to be educated and address this
 - HQ may not have role in resolving individual issues between sites & tribes

- Q: How can tribes help DOE-HQ address tribal issues?
- A: Two major opportunities for involvement
 - Strategic plan
 - Guidance to sites

- C: Important to recognize and act in a way that acknowledges tribes as sovereign governments - not just a local government

- C: Tribes have unique contribution to make to LTS because of their history & experience with long-term relationship with the land

- C: Abandoned uranium mines are impacting Navaho lands. Institutional control mechanisms that work for local governments won't work for tribal lands. Tribes need to be included in strategy development

- A: A clean-up decision is a stewardship decision. Note: Uranium mine cleanup is a Nuclear Regulatory Commission (NRC) issue - DOE involved only after cleanup is done & approved by NRC
- C: Important to include tribal perspective in LTS strategy
- C: *Essential to define effective public involvement & implement that
- Q: Re CERCLA end state → LTS. How will risk transfer at closure?
- A: Need to evaluate composite risk rather than risk from individual Operable Units
- C: Need to understand time frame for strategy development so that opportunities for involvement can be identified
- Q: Schedule for LTS plan development at site level?
- A: HQ has committed to develop guidance by 10/01/01
 - HQ has given sites until 2004 to develop plans
 - Some sites need plans before then
 - Approach to orders - incorporate in other orders
 - General environmental protection
 - Life cycle management
- Pilot Projects (See overheads)
- Comments on National Stewardship study
- Q: Problem - Inability of DOE to commit long-term funding for LTS. Ideas on how to address?
- A: Don't have good cost information
- C: DOE needs to actively pursue long-term funding.
- C: There are precedents
 - Yucca Mountain
 - Department of Interior fund for mining sites
 - DOE can now keep \$ from external sources
- DOE will be recommending legislation for trust funds (discussion starting within DOE)
- Policy Issues for STGWG (Stewardship)
- Land transfer survey
- Responses from 10 sites; results being compiled

- The issue of land transfer is not well formed
- STGWG might want to be involved in establishing structure (See overheads)
- Dave Geiser will get survey of land transfer agreements around Complex
- NDAA data analysis
- Evaluate how LTS costs estimated from site to site
- Will also use NGA analysis
- Result: This is very preliminary cost estimate
- Bases vary from site-to-site
- C: No common basis/structure that can be rolled up
- C: Should not be used as a benchmark for LTS funding
- C: An important first cut-but only that
- C: Uncertainties are great
- Uncertainty varies from site-to-site
- NDAA Analysis - comparison across sites
- C: Report/data not amenable to comparison
- C: STGWG members asked for site-specific results
- Cost Estimates:
 - There are methods for estimating long term costs (intergenerational equity)
- Treaty Obligations:
 - First draft of questionnaire being reviewed by Tribal Issues Committee
- C: Many tribes look at cleanup to background because of cultural impacts
- C: Many DOE facilities occupy ancestral tribal lands - tribes want these lands back

- LTS Website that John Walker, Nev., maintains:
<http://www.ndep.state.nv.us/lts/states.htm> *Exit EM* →
- Information Management survey (See overheads)
- C: Tribal oral history approach/experience should be considered in LTS information management
- C: Accountability is a key consideration - not in place now and no mechanism to establish accountability
- C: Survey/Process needs to identify who has information now and how it gets distributed (e.g., classified information)
- C: Need to preserve history of DOE - Historians should be involved
- Classified Waste:
- STGWG conducted survey (See overhead for results of survey)
- Tennessee concerns:
 - Disposal of classified material in CERCLA disposal cell
 - DOE satisfied concerns
 - State allowing disposal of classified waste
 - A number of issues yet to be resolved
- Nevada Test Site Issues:
 - Classified material buried - not at declared disposal site
 - State requesting that sites be declared waste sites & LTS be considered
 - DOE is not responsive
- Options for future efforts (See overheads)
- Committee will continue to evaluate
- Q: Did survey consider non-DOE waste on DOE sites?
- C: 2 reasons to classify
 - Material
 - Configuration
- Q: What is balance at disposal sites?
- A: Mostly configuration

Waste Management, Integration, and Distribution

- Ann Dold, moderator

Case Studies; Lessons Learned

- Dave Huizenga, DOE
- Battelle Columbus
 - 100-120 Drums
 - 3 Shipments 9/01
- ETEC (6-9/01)
 - Contact handled: 12 drums
 - Remote handled: 8m3
- MURR
 - 7 drums (9/01)
- Case studies (See overheads)

STGWG Discussion of Problems and Lessons-Learned in Case Studies

- Problem (P): DOE tried to work it all out internally before involving states - no early communication
- Lesson Learned (LL): Need interaction with externals to get "right" answer

- P: Word got to states from site discussions without coordination
- LL: Process
- All at table; early in process

- P: Multiple attempts to solve at same time - uncoordinated
- LL: All players at table together early

- P: No identified path forward for states
- LL: Defined process for communication and consultation needed

- P: Role of tribes in small quantity shipments not defined
- LL: Let tribes decide what their role will be

- P: Confusion in DOE re process as shown in letter
- LL: Coordination within DOE

- P: Letter had errors and misconceptions
- LL: Need quality assurance

- P: Letter went to different states at different times - cascading responses
- LL: Other common methods should have made letter confirming only
- P: Letter conflicted with existing promise to Washington state
- LL: Identify & understand & include agreements
- P: No communication among some states
- LL: Share information -- all at table
- P: Letter appeared to abrogate agreement between Tennessee & DOE re storage of waste (clear path to Tennessee)
- LL: See Washington state experience
- P: Did not consider private vendor alternatives
- LL: Broad discussion
- P: Discussion stopped for long period, then suddenly picked up again - urgently
- LL: Continue discussion
- P: Conflicting messages from different points in DOE
- LL: Coordination & information sharing
- P: Protocol for who contacted whom and in what order was not clear or followed
- LL: There needs to be a protocol
- P: Existing commitments weren't factored into discussion
- LL: See Washington & Tennessee
- LL: Should look at process and lessons learned from mixed waste shipping issue

Status / Activities of Other Organizations

- Environmental Council of the States
- Interstate Technology Regulatory Cooperation Group
- National Academy of Sciences
- Energy Communities Alliance
- National Governors' Association
- Environmental Management Advisory Board (See overheads)

- Rocky Flats Stewardship Report (See overheads)
- Colorado state statute (See overheads)
- ASWAMO CERCLA subcommittee looking at post-closure issues
- NAAG looking at state laws & LTS
- International Institute for Indigenous Resource Management (Merv Tano group) next meeting: June or July

Meeting Summary and Actions

- Action: Letter to Jesse Roberson
- Action: Detailed & summary versions of committee missions/work plan
- Actions will be captured; key outcomes drafted, issued, finalized
- Action: Letter to Secretary re tribal participation in planning Indian Energy Summit
- STGWG should track AIP funding issue

Next Meeting

- Fall Meeting: New York, hosted by Seneca Nation

Closure

- Closing remarks: Tom Winston and Mike Chavarria

Adjournment