AGENDA

July 20, 2020
2:00 pm CDT/1:00 pm MDT
Microsoft Teams Meeting
Join Microsoft Teams Meeting

Conference Line 210-469-3886
Code 884 396 894#

Pre-Caucus Meeting regarding any discussions prior to RTOC Tribal & Full Caucus

**I am wondering if we could schedule sometime on this day to identify what information and issues, we need to debrief Tribal leadership on. For example, we could discuss the RTOC Charter & how selection of RTOC Tribal Caucus takes places, background information on GAP and other funding, Tribal consultation, and the need to recognize and support the Federal Trust Responsibility, WOTUS and other pertinent information.*

EPA Region 6 Tribal Operations Committee (RTOC) Caucus Meeting

July 21, 2020
10:00 a.m. – 3:30 p.m. CDT
9:00 a.m. – 2:30 pm MDT

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Meeting Minutes

I. **Opening – Cherokee Nation, Tribal Co-Chair**
a. James Williams – Muskogee Creek Nation

II. **Roll Call/Declaration of Quorum – Pueblo of Santo Domingo, RTOC Secretary**
a. Quorum established 16 out of 17

III. **Welcome/Introductions – Tribal Leaders, Tribal Caucus and Meeting Participants**
a. 73 participants in total
b. Wayne Isaacs – provided the opening and an introduction on the meeting.
c. Randy Gee provided the roll call –
   i. Wayne asked that the Tribal partners introduce all folks in attendance, including leadership.

IV. **Approval of Agenda**
a. 1st Motion –Caddo Nation to approve the modified agenda
b. 2nd Motion - Muscogee Creek Nation

V. **Approval of Minutes – November 19, 2019**
a. 1st Motion – Muskogee Creek Nation – November 19, 2019
b. 2nd Motion – Caddo Nation

VI. **COVID19 Updates from Tribes**

a. Caddo Nation – since March 2020 been running a food pantry for elders and now everyone. 179 families last week of $15,000 worth a food. Chairman is down with COVID-19 and several employees, tested negative. Creating own disinfectant. Services are limited, and buildings shut down, including EPA, and keeping their social distance.
b. Cherokee Nation – Sampling of hard surfaces if someone tests positive for the virus. Detect where the virus may be lingering once the building has been disinfected. Testing areas to ensure that the disinfection of the area is working. There were few instances in which the virus was still surviving. The EPA Department was the right department to be tasked with this responsibility, also have a fumigation machine and will run in offices for a couple hours.
    i. Could sampling protocols and how Cherokee Nation is conducting it be shared? Cherokee Nation put together some protocols for the office, including employees and vehicles. Wayne will send it out for Tribes to use and/or modify. Using a lab that is only located an hour away, so results return in 3-4 days. Started doing air sampling and will use the same lab. Cherokee Nation has established a COVID-19 hotline for employees and citizens to call.
c. Chickasaw Nation - Phillip – Using infrared thermometers and social distancing, temp standing devices, with flare camera. Use of backpack shocking and UV lights, retracting belts to keep people separated. Mobile air purifier – 1 micron. Working with child development centers and head starts. Thanks, EPA, for their flexibility with their grants.
    i. Questions – Purchased a hydrochloric generator, did your department purchase it? No, Cherokee Nation EPA is only doing the sampling. When an employee tests positive, that is when they go in and sample. Wayne sprays their office down every night. Hi-tech Air Solutions – Air reactor – big box that has titanium dioxide filters in it, with UV lights.
    ii. Caddo Nation is purchasing one of those generators to make their own hand sanitizer.
    iii. Policy – Cherokee nation – one entrance and exit, all other entrances are locked. Only inviting people that are doing work with us or doing work for. They do not see the public. Executive chief order that if you are on Cherokee Land, you need to wear a mask.
        1. Sub-committee that is focusing on COVID-19, help the smaller tribes out with information. Not sure if we need to make a motion to establish this workgroup.
        2. Wayne will send the information on establishing this workgroup to Randy.
    iv. RandyGee – FEMA has been doing some outreach to the Tribes and they have been on the call for the FEMA workgroup on COVID that also includes – DOI, HUD, others? Want to know: 1. what's the best way to reach out to Tribal partnerships to have their voices heard? 2. How do we get the word out to our communities? And 3. What would the structure of this work group be? At a TECO meeting – the National Pesticide Center did a good presentation on disinfectants. If we need to hear more from EPA, then we can arrange that information on a future call. Let Randy know if we need training and they can work with the Tribes/Pueblos to get this scheduled.
    v. Cherokee Nation – other tribal environmental offices will be contacted to do this work, because of our HAZWOPER and refreshers.
    vi. Caddo Nation - FEMA update is Wednesday afternoon. The Tribal Liaison feels that FEMA and CDC would be willing to work with us.
    vii. Santo Domingo Pueblo – provided comments on what we are doing in the Pueblo.

VII. **Tribal Leadership and New Staff debrief of RTOC, issues and challenges – *this information will assist leadership in attendance during full caucus to make their comments and concerns to EPA.***

VIII. **Questions, Concerns, Discussion on Tribal Partnership Progress Reports – reports have been emailed to Tribal Caucus on July 6, 2020 – SEE REPORTS**

a. EELC – Cynthia Naha presented on the April 14-15, 2020
b. TECO Report – Jason White – May 19, 2020
c. ENIPC – January 31, 2020
d. National Tribal Toxics Council
e. National Tribal Water Council
f. NTC
g. TWAR – Tracey Horst – technical difficulties
h. NTAA – pass along a report out – Craig was having difficulty in communication.

LUNCH 12:00 – 1:00 p.m. CDT/11:00 a.m. – 12:00 p.m. MDT

IX. **New Business –**

a. Dale Beaver, Muskogee Creek Nation, will present his side of the McGirt case –
   i. McGirt case a long time in the making and one of those deals that you are not sure how it will go down. Can prepare but not prepare too much in case it does not go in your favor. Since it came down, it is taken up 80% of his time. It has pushed COVID19 to #2 on his list. Been talking about COVID 19 since the later part of February. It's not just a big win for Muskogee Creek Nation, but all of Indian country. McGirt case gave MCN criminal jurisdiction in their nation. What does this mean in the terms of immediate needs, as well as long term needs. Indian Child Welfare Act – intergovernmental agreements. It's going to have an effect on the 4 other civilized tribes. It is a good time in Indian nations history. Continue to capitalize on this ruling, but other rulings all over Indian country.
      1. Questions –
         a. Wayne – applaud the efforts of the creek nation on this A lot of manpower, efforts, late nights. Saw it through and had the backing from across Indian country, especially after the way the Murphey case went. Questions – Are you playing any golf this summer – no he is not.
         b. Randy – the effect of the environmental side?
            - No secret that governor formed a commission. A lot of them are oil and gas execs. Chief hill, statement released today – going to form their own commission. The McGirt case established 2 things 1. Established their reservation, 2. criminal jurisdiction over the reservation. Oil and gas do not want to pay more taxes or regulations. Partnerships to make things successful and working. Government to Government relationship, is important – being able to converse and build capacity together.
b. Tina Alvarado - USEPA Regional Counsel - overview of the McGirt case and the SAFETEA law
   i. 2017 – the McGirt started. A criminal case out of the 10th circuit. The 10th circuit held that Muscogee Creek Nation had been established. Supreme Court didn't hear the case when it came out but was actually heard this year. Girt vs OK case – OK court of appeals. Gorsuch did not have to recuse himself. Mr. McGirt, who was the defendant. May orgs and interest in this case. July 9th decided and held that the Creek reservation had not been disestablished and reaffirmed the Treaty law. Once a treaty creates a reservation, only congress can speak and disestablish the reservation. Federal government has to uphold their promises and if the fed gov wants to disestablish the reservation, they have

to do so in writing. Congress has not spoken. Congratulations to the creek nation and reaffirming their reservation.

ii. Language is very short; it was put in a bill related to transportation appropriations.
    1. TAS cooperative agreement provision – if a Tribe in OK wants to administer a program under the TAS authority and several EPA statues. Have to enter into an agreement with the state to jointly administer that program. EPA will approve the application and then the Tribe is able to provide for TAS. Citizen Potawatomi had an application that the OK state allowed to expire.
        - Caddo Nation – do you know if any of the Tribe's reservation that are under the Dawes act and Allotment act, was disbanded by congress?
            1. One day it would be nice to look at all the tribes' treaties to see what has been done and what's transpired. It's only Tina and she doesn't have the time to do that, so generally speaking, no. Given the ruling of this case, she assumes that many triebs are reviewing treaties to see an implication or litigation for other Tribes. Case by case.
        - Cherokee Nation – missed the questions
            1. Cooperative agreements. Doesn't know if this ruling changes
            2. With the success of this case, is there any way they can look at the rider and get the statement removed.
            3. Would have to come from congress. Would take tribes and lobbying to do.
        - Caddo asked a question –
            1. Congress gets to dictate the relationship the US has with tribes. Only congress can do this and it's in the constitute. Whether it conflicts with treaty
            2. Mentioned the Pueblos -
        - Muskogee Creek – How about permitting for air quality and storm water management or construction on tribal lands?
            1. EPA has direct implementation authority over the reservation. They would apply to EPA and not through the state. Because it is a reservation, EPA now has DI authority over that whole area. What happens to state permits that were issues, are they invalid now?
            2. Solid waste codes – tribal law will always apply in areas of the reservation. There are a lot of questions but not enough answers.
            3. Expand services – RCRA is not EPA and it does not fall under the approval of TAS. Sure, services can be expanded, and tribal authorities still applies.
        - Yvette – Wayne just asked about the gaming compacts and how it may affect them. Within the last half hour from the news cycle, the states supreme courts rules that the compact signed by the governor and 2 Tribes, read that its unconstitutional. With the ruling, Muskogee Creek Nation being the tribe that went to the supreme court, many tribes back off and there is a meeting happening today. If 2 of the 5 tribes are out, is there any chance that the state of OK can come to a legal agreement with the other 3. Coming from the environmental side, and knowing this is criminal jurisdiction, is there is a possibility that a legal presence would be set?

1. Purpose of negotiations is to draft legislation. IF the other 3 in the state could reach an agreement of the legislation, send to congress and congress passes it, it could happen. Political is a different story, legally, anyone can draft legislation and get congress to pass it.
2. Even though it's a criminal case, it determined the definition of the criminal jurisdiction for the reservation. Will impact areas of civil jurisdiction and it was acknowledged by the court.

X. **Old Business**

a. LANL tritium ventilation update – Don Ami (invited)
   i. Doesn't have much of an update. Have not made any direct communications with the regulators, EPA, NMED, etc. Getting closer to the point in which they will be having these discussions. Not at a point where they can provide any specific information for public dissemination. Once they get their team up and running and working with the regulators, they will post the information to the public reading room and will have access to this information. Have not moved any items on the ground or staged anything. Waiting for personnel to come back and do paper exercises.
      1. Randy – when the information is available on the public reading room, Randy and I will get those out.
   b. Navigable Waters Protection Rule and 401 Certification Rule
   i. Lauren ?? and copy of presentation
      1. Questions from Tribal Caucus for Lauren
   ii. Rose Quack – Office of Water – update on the Navigable Waters protection rule – WOTUS – rule signed by USACE and EPA on June 22nd, 2020 and implementation of the rule be in all states except Colorado. Two challenges brought by Tribal Nations, including States and Cattlemen's Association.
      1. Two Challenges by Tribes – Navajo Nation and 6 tribal nations that brought a challenge for district court of AZ. 2019 rule – codified 20015 definitions and challenges to NWPR.
         a. Questions from Tribal Caucus –
            - Isleta Pueblo – "On specificities of a water body?
              1. Provide clarification on the questions. Particular water bodies – without knowing specifics on the arroyo in question, she can't speak to it, but if the arroyo is an ephemeral stream, it would be excluded from the definitions. It would be then left to Tribe or state to regulate jurisdiction on them. Jurisdictional waters under the definition of the US
              2. Isleta – Does this mean that Kirtland Air Force Base & Sandia National Labs can discharge without restrictions? Are existing permits no longer in effect?
                 i. The rule does not affect regulations already in existence.
            - Muskogee Creek Nation – any mapping completed yet in Indian country clarifying WOTUS?
              2. No maps have been created. There are websites of water bodies that show the approved jurisdictional boundary of waters. Don't have any specifics within Indian country to map, for a particular are and if these waters are jurisdictional or not.
              3. How can you regulate WOTUS without knowing where all the Waters are located?
                 i. This is something EPA has been doing since CWA has become effective. It's not a new challenge with this rule, its jurisdictional determinations.

- Tesuque - How can a Tribe enforce water standards on ephemeral streams that the Tribe regulates?
    i. Tribes often rely on EPA for enforcement, if there are violations to WQS to ephemeral streams, it would have to be enforced under tribal law. If the contamination reaches jurisdictional water, then EPA would assume that authority. IF it doesn't reach a jurisdictional water, then it would have to be done by Tribal law.
    ii. Rose For clarification, are tribal nations allowed to regulate Ephemeral Water Bodies and will they have enforcement powers for Their Water Quality Standards?
    iii. McGirt case has implication on jurisdictional waters here in OK.
- Please feel free to email me at kwok.rose@epa.gov or CWAwotus@epa.gov with questions on the Navigable Waters Protection Rule. Thanks for having me on.

c. Workshop, Training & General Announcements – Tribal Caucus
    i. Wayne sent out some information regarding COVID19
    ii. Randy – heard that the registration deadline from Virtual TLEF is the first week of August, on the 3rd. http://www7.nau.edu/itep/main/forms/tlfVReg
    iii. Karen Dye – Cherokee Nation – ITEC Conference starts next week. Opening ceremony is July 27th. She has been sending out the agenda and other information regarding registration, etc.

d. Final questions, Concerns, Discussion to prepare for full RTOC Meeting – July 22, 2020

XI. **Review of Action Items – RTOC Secretary & Ombudsman**

XII. **Closing and Adjournment – Cherokee Nation, Tribal Co-chair**

Technical Issues – Laguna is having issues with his connection, with chat, raising hand.

- Suggestion s for tomorrow – it's hard to see who all is on and to chat. Perhaps when Tribal Leadership is present that we share our cameras as leaders are making statements.
- TECO or ITEC – suggested that Tribal Caucus leadership show their videos when chatting.
- Randy doesn't mind showing his camera, his camera does not have a camera on it. Ramona does not either.