MEETING SUMMARY

of the

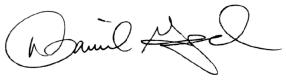
INDIGENOUS PEOPLES SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

December 13, 2000
Arlington, Virginia

Meeting Summary Accepted By:



Daniel Gogal
Co-Designated Federal Official
Office of Environmental Justice
U.S. Environmental Protection Agency

Jennifer Hill-Kelley
Acting Chair

Robert Smith
Alternate Designated Federal Official
American Indian Environmental Office
U.S. Environmental Protection Agency

CHAPTER SIX
MEETING OF THE
INDIGENOUS PEOPLES SUBCOMMITTEE

1.0 INTRODUCTION

The Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 13, 2000, during a four-day meeting of the NEJAC in Arlington, Virginia. Mr. Tom Goldtooth, Indigenous Environmental Network, continues to serve as chair of the subcommittee. Mr. Daniel Gogal, U.S. Environmental Protection Agency (EPA), Office of Environmental Justice (OEJ), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 6-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Indigenous Peoples Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair and the DFO. Section 3.0, *Focused Federal Agency Presentations*, summarizes discussions provided by representatives of Federal agencies about how those agencies are integrating environmental justice into their policies, programs, and activities that affect tribes and Alaskan Native villages. Section 4.0, *Presentations and Reports,* presents an overview of other presentations and reports received by the subcommittee, as well as summaries of the questions and comments on the part of the members of the subcommittee that those presentations and reports prompted. Section 5.0, *Draft Recommendations*, summarizes the draft recommendations and action items adopted by the subcommittee.

2.0 REMARKS

Mr. Goldtooth, opened the subcommittee meeting by welcoming the members present and Mr. Gogal. In his review of the guidelines of the NEJAC to remind the members and observers of the protocol to be followed, Mr. Gogal stated that the meeting was conducted for the members of the Indigenous Peoples Subcommittee. The comments of observers, rather than open discussion, would be welcome, he explained.

Exhibit 6-1

INDIGENOUS PEOPLES SUBCOMMITTEE

List of Members Who Attended the Meeting
December 13, 2000

Mr. Tom Goldtooth, **Chair**
Ms. Jennifer Hill-Kelly, **Vice Chair**
Mr. Daniel Gogal, **DFO**
Mr. Bob Smith, **Alternate DFO**

Mr. Brad Hamilton
Mr. Moses Squeochs
Mr. Dean B. Suagee
Ms. Jana L. Walker

List of Members
Who Were Unable To Attend

Ms. Sarah James
Mr. Charles Miller

Mr. Goldtooth requested Mr. Moses Squeochs, Yakama Nation Environmental Program, Confederated Tribes and Bands of Yakama Nation and member of the subcommittee, lead the subcommittee in invocation in the "manner of his people." Mr. Squeochs first led the invocation through a song-prayer and then interpreted the meaning of the song to the audience.

Mr. Goldtooth added that because it is difficult to compartmentalize environmental protection because "everything is intertwined," this is why such an invocation is used to open meetings of the Indigenous Peoples Subcommittee. It is one way in which tribal elders teach Native peoples to always respect Mother Earth, he explained. He stated that starting with an invocation also serves to remind non-Native Americans of native peoples' connection with Mother Earth.

Remarking that this meeting would be his last as chair of the subcommittee and as a member of NEJAC, he stated that one of his constant missions is to educate representatives of Federal agencies on the traditional values of his people in protecting the environment of Mother Earth. Mr. Goldtooth added that he feels he has accomplished his objectives as chair.

3.0 FOCUSED FEDERAL AGENCY PRESENTATIONS

Mr. Goldtooth explained that the purpose of today's meeting is to discuss how considerations of environmental justice are being integrated into the policies of Federal agencies. For a discussion of issues affecting tribes, it is important to bring together representatives of Federal agencies responsible for the trust relationship, he said. Indians are different than the general public because of the legal and political relationship between tribes and the Federal government, he reminded the audience. He asked the presenters to provide a "snapshot" of how agencies are integrating environmental justice into their policies, programs, and activities affecting Tribes and Alaskan Native villages.

3.1 AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

Mr. Francisco Tomei-Torres, Agency for Toxic Substances and Disease Registry (ATSDR), announced that Mr. Dean Seneca recently had been appointed Director, ATSDR Office of Tribal Affairs. The office, established in response to tribal requests, will assist with tribal-specific environmental health needs resulting from exposure to hazardous waste sites and pollution, he explained.

Mr. Tomei-Torres described ATSDR as an agency that can not promulgate regulations or authorize permits, nor does it possess enforcement power. Continuing, he described ATSDR as an agency created under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to ascertain the effects on public health of Superfund sites. Noting that one provision of the Executive order on environmental justice calls for agencies to assess disproportionately high health effects resulting from the activities of Federal agencies, he stated that ATSDR, as a "site-oriented agency," must be petitioned by an outside source to conduct site-specific health studies. ATSDR provides written or oral responses to address specific requests for information about health risks related to a particular site, chemical release, or hazardous material, he explained. These consultations, he continued, are intended to evaluate exposures and recommend specific actions, such as restricting use of or replacing water supplies, reducing site access, or removing contaminated material.

Pointing to a second provision of the Executive order to promote public participation, Mr. Tomei-Torres stated that ATSDR has been promoting public comment on community health studies. He then discussed the Board of Scientific Counselors, a Federal advisory committee that has established a standing subcommittee to address tribal issues. The board, comprised of scientists, provides advice to the U.S. Department of Health and Human Services (HHS) and ATSDR, on the adequacy of science in ATSDR-supported research and emerging problems that require scientific investigation, he said. ATSDR also has established an Office of Urban Affairs to address issues related to minority health, brownfields redevelopment, and environmental justice, he said, commenting that oversight of tribal affairs falls under ATSDR's Division of Health Assessment and Consultation. The agency has created a Community Involvement branch within the division with the function of researching community needs that can be addressed by ATSDR, he said. Mr. Tomei-Torres stated that ATSDR also has championed two brownfields redevelopment proposals submitted by tribes which have been approved for funding. He then re-emphasized that most contract funding comes from the Division of Health Assessment and Consultation.

He continued that ATSDR is one of the few Federal agencies to have prepared a written strategy on environmental justice. The strategy, currently under revision, focuses on community participation. Mr. Tomei-Torres stated that the strategy is designed not to designate a site as an environmental justice site simply because an affected community is an environmental justice population. Rather, he continued, ATSDR designates a site as an environmental justice site when ATSDR has not addressed a site with known environmental injustice. Currently, ATSDR has designated six sites as environmental justice sites, none of which are located on tribal lands, he said, adding that all but one site is located in EPA Region 4 and involves African-American communities.

Mr. Tomei-Torres then reported that ATSDR executes demographic studies to assess community needs by: (1) developing a geographic information system (GIS) map; (2) including diverse segments of the population in clinical studies; and (3) conducting investigations of cases of both multiple and cumulative exposure. Currently, he stated, no such studies had been undertaken on tribal lands; however, Congress recently had appropriated $500,000 in funding for studies of fish consumption among Alaskan

Natives, he added. Mr. Tomei-Torres then expressed his belief that it is important to note that, before beginning the studies, representatives of the ATSDR had traveled to Alaska to meet with members of communities.

Mr. Tomei-Torres turned the focus of his presentation to the members of the subcommittee by asking for their views about the issues of sovereignty and "urban Indians." Addressing the concept of sovereignty, he stated that Federal agencies are instructed to work with tribes on a government-to-government basis. However, he continued, he would like further guidance for pursuing such an approach with Alaskan Native tribes, who, he said, are not considered sovereign entities because they have not entered into a treaty with the United States government. Turning to the subject of "urban Indians," or Indians who live outside the boundaries of a reservation typically in urban communities, Mr. Tomei-Torres requested direction on the issue of responsibility for the health of such individuals. He added that staff of his agency are in need of training in addressing the needs of Alaskan Native villages and urban Indians.

Mr. Tomei-Torres then suggested that ATSDR could transfer its function to tribes through cooperative agreements. The process, he continued, would be the same as that by which ATSDR currently delegates authority to state health departments. In sum, the delegation of the function of ATSDR to tribes would best meet the need to work with tribes on a government-to government basis, he concluded.

In response to Mr. Tomei-Torres' comments about tribal sovereignty, Mr. Squeochs stated that, if Federal agencies are to best fulfill their charge to work with tribes on a government-to-government basis, each agency must understand its specific role in relation to those of other Federal agencies in how it addresses the needs of tribes and Alaskan Natives. Continuing, Mr. Squeochs stated that treaties had set aside lands upon which Native people could live and sustain their culture. Agency delegation of the functions of Federal agencies to tribes, he declared, would act as an impetus for acculturation and assimilation of Native people into the culture outside the reservation.

Mr. Dean Suagee, First Nations Environmental Program, Vermont Law School and member of the subcommittee, stated that he had been disturbed to hear Mr. Tomei-Torres inquire whether all tribes are sovereign. Mr. Suagee pointed out that the sovereignty of tribes and Alaskan Natives is a right guaranteed not solely under the provisions of a treaty. Noting that having a treaty with the United States is not prerequisite for tribal sovereignty, Mr. Suagee said that he understood the inquiry to have referred only to Alaskan Native villages. Mr. Suagee then said that, in *Alaska* v. *Native Village of Venetie Tribal Government*, in which the U.S. Supreme Court had ruled that lands owned by the Tribe were not "Indian country" and that therefore the Tribe did not have authority to impose a tax, the Court quoted with approval language from a concurring opinion in the 9th Circuit, saying that the intent of Congress in the Alaska Native Claims Settlement Act was to preserve Indian tribes as "sovereign entities for some purposes, but as sovereigns without territorial reach." Thus, the Court recognizes that Alaska tribes are sovereign, he said.

Mr. Squeochs then stated that the charge of ATSDR, while limited, is key. ATSDR has the capability to assess health risks to Indian communities by conducting studies of communities in which subsistence life styles prevail, he said. Continuing, he stated that ATSDR is a sister agency to the Indian Health Service (IHS) and the Centers for Disease Control and Prevention (CDCP), all three of which are agencies under the banner of HHS. Those agencies can work more efficiently together and achieve greater effectiveness, especially within the realm of health risks arising from the pursuit of subsistence life styles, said Mr. Squeochs. The trust responsibility is key, he emphasized, if agencies are to execute their mandate properly on tribal and Alaskan Native lands.

Mr. Brad Hamilton, State of Kansas Native American Affairs Office and member of the subcommittee, then expanded upon Mr. Squeoch's comment, stating that IHS currently restricts the services it provides to communities that are located in areas removed from urban centers. If IHS is to fulfill its mandate to provide health care to tribes and Alaskan Natives, he said, the agency must expand its service area to include less rural areas.

Mr. Goldtooth stated that a primary mission of environmental justice is to ensure that Federal agencies effectively provide community outreach to alleviate disproportionate adverse health or environmental effects on low-income or minority communities. The consensus developed over the years, he continued, is that many segments of minority population, including Native Americans, have been left unprotected by Federal agencies. In the case of "urban Indians," he continued, the

Federal government still has a responsibility to provide services, especially because, during the 1950s, it was Federal policy to relocate many tribal peoples to urban areas.

ATSDR, Mr. Goldtooth continued, has an obligation to serve urban populations of tribal members while the issue is under debate, rather than deny service until a decision has been made. He then stated that, not withstanding the debate about responsibility, it remains the responsibility of Federal agencies to work on a government-to-government basis with tribes and Alaskan Native villages. He then observed that working with all tribes and Alaskan Native villages appears to be an unmanageable task for by Federal agencies. A major issue for all tribes and Alaskan Natives, he continued, is whether their populations are affected by the processes of bioaccumulation and biomigration of toxic substances. Mr. Goldtooth then stated that ATSDR is responsible for determining whether tribes and Alaskan Natives indeed are affected by those processes. It seems, however, he observed, budget constraints always preclude research in that area.

Mr. Tomei-Torres responded that other Federal agencies, such as IHS, can provide more meaningful services than ATSDR is capable of offering. IHS, he continued, has a large environmental justice grant program for community outreach and has just announced the availability of grant funds totaling $1.5 million for Native American Research Centers for Health. Mr. Tomei-Torres then invited the members of the subcommittee to forward their comments to his office. He emphasized that his office champions research and is involved actively in establishing a national coordinated research agenda.

In response to Mr. Tomei-Torres' reference to the establishment of a national coordinated research agenda, Ms. Jana Walker, Law Offices of Jana Walker and member of the subcommittee, called the attention of the participants to a document prepared by the Indigenous Peoples Subcommittee titled *Recommendations on Environmental Health Needs Within Indian Country and Alaska Native Villages* (November 2000). The document presents recommendations on infrastructure, research needs, and collaboration among tribes, as well as recommendations for actions to be taken by various Federal agencies, she said. She then added that the document is available to the general public, as well as representatives of Federal agencies that have an interest in Native American health needs and research.

3.2 U.S. DEPARTMENT OF DEFENSE

Mr. Len Richeson, American Indian and Alaskan Native Liaison, Office of the Deputy Under Secretary of Defense for Environmental Security, U.S. Department of Defense (DoD), began his presentation by emphasizing that DoD has a trust responsibility to tribes that was included as part of the United States' obligations under its original treaties with Indian tribes. To fulfill that trust responsibility, he said, DoD's first responsibility is to address adverse environmental and health effects on or near tribal and Alaskan Native lands that result from DoD activities and operations. Risks can originate with such operations as the storage, treatment, and disposal of hazardous waste, he noted, while unexploded ordnance (UXO) and unsafe buildings and debris also can present problems. A preliminary assessment of the potential effects of DoD activities on Indian lands had indicated nearly a $300 million inventory of projects. Currently, he added, DoD is currently working with more than 150 tribes that suffer from adverse environmental effects.

Mr. Richeson then reviewed the objectives of DoD with regard to its relations with tribes. First, he stated, the Department is making every effort to comply with Executive Order 12898, as well as the Presidential memorandum on the conduct of government-to-government relations with Native American Tribal Governments. Second, he continued, DoD now is implementing a policy on consulting with American Indian and Alaskan Natives that had been developed through a process that included, he added, direct consultation with tribes, the Congress of the United States, and the National Tribal Environmental Council (NTEC). The policy, he added, is available to the public on the Internet at: <*www.denix.osd.mil/denix/public.html*>. Mr. Richeson stated that it is important to DoD that its employees know and understand the principles outlined in the document.

Mr. Richeson then stated that DoD was working to implement congressional direction to provide funding for addressing the effects of DoD activities on tribal lands. Further, Congress had charged DoD with developing a database to better track and understand those effects, he said.

Mr. Richeson then discussed DoD's accomplishments in the effort to address the adverse environmental effects of its activities on Indian lands. He first described the Native American Lands Environmental Mitigation Program (NALEMP), which provides funding to mitigate

environmental effects on Indian lands from past military activities. Second, he continued, DoD was developing the Native American Environmental Tracking System (NAETS) to define environmental priorities among projects to address environmental effects of DoD activities on Indian lands. He added that many Alaskan Natives have charged that DoD impacts in Alaska are under-represented in the data because the populations affected are small and live in rural areas. Continuing, he explained that Alaskan Natives maintain that the relative risk models do not consider adverse effects related to the subsistence lifestyles of many Alaskan Natives. The NAETS, he suggested, will help DoD better assess the effects of its activities on such populations. Finally, Mr. Richeson discussed the NALEMP report to Congress for the year 2000, which described DoD's efficiency and effectiveness in using the funds allotted to mitigate adverse environmental effects on tribal lands.

Mr. Richeson stated that the NALEMP budget is $10 million under the Defense Appropriations Act of 2001. He explained that the funds were to be used to mitigate adverse environmental effects on lands of Federally recognized tribes and land conveyed under the Alaskan Native Claims Settlement Act (ANCSA). Specifically, he continued, the funding is to be used to address problems that are not addressed under DoD's traditional environmental programs. Under NALEMP, he explained, DoD is able to use an unconventional assessment of risk that is better suited to the needs of tribes and Alaskan Natives than more traditional methods of risk assessment. Further, NALEMP is "a tool for maximizing the leverage of tribal environmental resources" and creating foundations for tribes to build upon, said Mr. Richeson. NAETS provides accountability to the NALEMP by setting funding priorities in an Internet-based user system and tracking adverse environmental effects, mitigation activities, and resolutions adopted by DoD and tribes. NAETS can be accessed at: <*www.denix.osd.mil/denix/public.html*>.

Mr. Richeson then described DoD initiatives for 2001. Those initiatives include execution of NALEMP funds, sensitivity training for both military and civilian personnel of DoD, the gathering of additional data on the effects of DoD's activities on Indian lands, and implementation of the Executive Order 13084 on consultation and coordination with Indian tribal governments, he said. Tribal consultation, he continued, includes contacting tribes and Alaskan Native villages before DoD undertakes a project. Such consultation will occur early in the decision-making process, and often as that process goes forward, he continued. Mr. Richeson then stated that training is of paramount importance, and open to employees of all Federal agencies. Well-trained personnel can implement the program more effectively than those who lack training, he pointed out. One result is improvement in the quality of the data gathered, he added. Such improved data, he emphasized, will provide greater leverage to the effort to obtain funding to address environmental issues on tribal lands.

3.3 U.S. DEPARTMENT OF JUSTICE

Ms. V. Heather Sibbison, Counsel to the Assistant Attorney General, Indian Resource Section, U.S. Department of Justice (DOJ), first stated that her office is housed in the Agency's Environmental and Natural Resources Division. She then stated that although DOJ does not have an environmental justice policy, it promotes environmental justice through its litigation. The primary method by which her office can advance the principles of environmental justice for Native Americans, she continued, is through enforcement of existing laws that protect Indian people. She then described two initiatives undertaken by DOJ, one she characterized as internal and the other external.

DOJ's internal initiative, Ms. Sibbison said, is the promotion of communication and cooperation between the Agency's Indian Resources Section and the Environmental Enforcement Section. The purpose of the initiative is to share knowledge about issues of concern to tribes that is available in the agency's Indian Resources Section with personnel of the Environmental Enforcement Section who are unfamiliar with the process of consultation with tribal governments. She then stated that the initiative had been effective in conveying the cultural sensitivity required for effective tribal consultation and coordination. In addition, representatives of her office attend public meetings to improve the office's performance in the area of public outreach, she said. Further, legal issues that usually are not considered in an enforcement action and that stem from treaty rights and trust responsibility are being addressed more effectively, she said. Continuing, she stated that cases that her office undertakes are flagged immediately if they involve potential effects on Indian lands.

Ms. Sibbison then discussed DOJ's Community Oriented Policing Services (COPS) initiative that was created to promote community policing and add 100,000 "community policing officers" to communities. Under the Tribal Resources Grant

Program portion of the program, funds are provided to Indian tribes to enhance their law enforcement infrastructure and increase community policing efforts; a substantial amount of money is earmarked for training for tribal law enforcement personnel and for enforcement, Ms. Sibbison continued. Tribal law enforcement personnel can be trained to identify and investigate environmental crimes, she said. Tribal enforcement of tribal environmental programs, she added, often is more effective than enforcement by nontribal entities. Currently, DOJ's Office of Community Oriented Policing Services is integrating environmental enforcement into the standard tribal law enforcement training, she continued. Further, the office is developing specific training in tribal environmental law enforcement, she added, crediting Mr. Gogal for his efforts to develop that training curriculum.

Finally, Ms. Sibbison stated that the Bureau of Indian Affairs (BIA) have entered into a partnership with the U.S. Forest Service (USFS), an agency of the U.S. Department of Agriculture (USDA), to support a community outreach program that will provide training related to the National Environmental Policy Act (NEPA). The agencies are interested in integrating environmental enforcement into their training programs, as well, she reported.

Ms. Walker inquired whether COPS funding could be extended to support tribal environmental courts that would have jurisdiction over tribal matters. Ms. Sibbison responded that the issue had yet to be brought to her attention; however, she said, she would raise the issue at the next meeting of the work group. Mr. Suagee added that, in Indian country, civil penalties work much better than criminal action. Continuing, he stated that using the funding available to build an administrative infrastructure to support environmental enforcement might be more effective than focusing exclusively on courts. Further, he stated, if the enforcement infrastructure were built first, the burden on tribal courts could be reduced because the court could limit its review to the administrative record when an enforcement action comes before it. Mr. Suagee then expressed a desire to further discuss the development of the tribal environmental enforcement training curriculum.

3.4 ADVISORY COUNCIL ON HISTORIC PRESERVATION

Ms. Valerie Hauser, Coordinator, Native American Program, Advisory Council on Historic Preservation (ACHP), began by stating that ACHP had been created as an independent Federal agency under the National Historic Preservation Act of 1966 (NHPA) to provide a forum for influencing Federal activities, programs, and policies as they affect historic resources. Continuing, she stated that ACHP is responsible for administering Federal historic preservation programs and advising the President and the Congress about matters pertaining to historic preservation. Further, the agency is responsible for educating both government employees and the general public about the regulations that govern historic preservation. However, she continued, most of the work of the agency involves oversight of the effort the agency refers to as the "NHPA Section 106 process." Ms. Hauser explained that Section 106 of NHPA requires that Federal agencies consider the effects of their actions on historic properties, provide the council an opportunity to comment on Federal projects before they are implemented, and ensure that Federal agencies consider historic preservation in planning and decisionmaking. Ms. Hauser emphasized that any property to which an Indian tribe ascribes significant religious or cultural value is an historic property.

Ms. Hauser then described the 1992 amendments to the NHPA, which expanded responsibility under the act to include direct consultation with Indian tribes and Native Hawaiian organizations during the process of identifying historic properties. She added that Federal agencies must show a reasonable and good-faith effort to identify appropriate tribes and Native Hawaiians to consult, be respectful of tribal sovereignty, and recognize the unique government-to-government relationship between the parties.

Ms. Hauser stated that ACHP had launched a number of training courses that are open to both Federal agencies and tribes. However, ACHP focuses on providing outreach by training tribes about their rights related to historic preservation, she pointed out. She stated that training tribes and Native Hawaiians is a more effective means of ensuring enforcement of those rights and protecting their role in the consultation process than relying on the actions of Federal agencies. Further, ACHP works to facilitate the efforts of tribes to develop their own historic preservation programs, she said.

Ms. Hauser stated that she is the sole staff of ACHP's Native American Office. She added that the council has a staff of 32 and a small budget, some $3 million per year. Most of the council's funding, she continued, is used to facilitate

participation by tribes in the consultation process. Ms. Hauser stated that she maintains a database of almost 800 tribal points of contact, through which she can disseminate information about initiatives and historic preservation.

The ACHP does assist Federal agencies in historic preservation planning by helping integrate tribal consultation into agency policy, continued Ms. Hauser. She stated that ACHP had worked with the Department of the Army in developing its Tribal Consultation Guideline and had facilitated consultation with tribes and Native Hawaiians when the Army had developed its policy on historic preservation. Further, she said, her office had coordinated a day-long tribal consultation training session for the Federal Communications Commission (FCC) and representatives of the wireless communication industry. The training session, she explained, was conducted with the assistance of five tribes and the National Association of Tribal Historic Preservation Officers (NATHPO). ACHP held the session to provide representatives of the FCC the opportunity to develop the capability to conduct consultation with tribes with regard to the construction of cell towers. The effort, she noted, had facilitated the development of wireless communication in Indian Country while avoiding adverse effects on cultural resources.

Ms. Hauser concluded her presentation by stating that the NHPA requires the President to appoint a Tribal Native or Hawaiian representative as a member of the Council. In addition, the ACHP offers NATHPO a nonvoting seat on the council, to serve in an advisory capacity at the policy level for members of the council, and at the program and policy level for ACHP staff.

Ms. Jennifer Hill-Kelly asked Ms. Hauser at what point does tribal consultation begin during the National Pollutant Discharge Elimination System (NPDES) general permit process conducted in EPA Region 5. Ms. Hauser replied that tribal consultation must begin in the initial stages of permit evaluation. Generally, she added, the Section 106 process follows the procedure prescribed in NEPA. When Mr. Suagee observed that EPA has a poor record of compliance with Section 106 of the NHPA, Ms. Hauser agreed and extended that observation to include many other Federal agencies, as well. Unfortunately, she continued, most agencies consider the Section 106 process a last-minute step; therefore, the ability of tribes to discuss alternatives in the planning stages is “limited,” she added. The ACHP wishes to see Federal projects permitted in a way that does no irreparable damage to cultural resources, she said.

Mr. Suagee then stated that the Section 106 process is intended to protect properties that either qualify for or are listed in the National Register of Historic Places (NRHP). Many Native American sites are not listed on the NRHP, he pointed out, because tribes have kept information about sacred sites confidential. Agencies often do not consider historic properties in the initial project planning stages because the property is not listed in the NRHP, and they do not put enough effort into identifying potentially eligible sites, only to find later that the affected properties include significant cultural resources, he explained. Once a project nears the implementation phase, he declared, it may be impossible to conduct meaningful consultation with tribes.

3.5 U.S. DEPARTMENT OF THE INTERIOR

Ms. Elizabeth Bell, Counsel to the Assistant Secretary, BIA, U.S. Department of the Interior, began her presentation by informing the subcommittee that the Assistant Secretary of the Interior was scheduled to sign BIA’s Consultation Policy pursuant to the Executive Order on consultation and coordination with Indian tribal governments. She noted that the signing ceremony at which the Assistant Secretary, Tribal leaders, members of Congress, and staff of the White House are expected to attend, would be held in Seattle, Washington at the same time the NEJAC would be meeting in Seattle, she said. The policy, she said represents one and one-half years of work on the part of tribal leaders and a task force of the agency.

Ms. Bell stated that BIA’s consultation policy focuses on principles very similar to those set forth in the recommendations included in the subcommittee’s consultation guide. First and foremost, she said, the BIA consultation policy recognizes the unique legal relationship between tribes and the Federal government, including the concepts of self-government, tribal sovereignty, self-determination, treaty rights, and the trust and the government-to-government responsibilities of the U.S. government. Consultation, as it relates to the unique legal relationship between tribes and the Federal government should be conducted as a next step, she continued. Further, the agency should favor maximum participation of tribes through deference to tribal laws and policy, she said. Ms. Bell stated further that the agency should maximize the use of technology for the dissemination of information necessary for meaningful consultation.

Continuing, Ms. Bell stated that BIA's policy establishes a preference for tribal laws and policy when setting rules and regulations for negotiated rule-making with tribal governments. BIA also endorses the use of a task force of tribal leaders to work in partnership with BIA in the development of policy. She said that the method had been very successful thus far and had been applied during the development of the agency's new trust regulations, which she added, were expected to be in place by year's end. The primary focus of the policy, she continued, is true two-way communication between tribes and Federal decision makers. She then stated that the BIA recognizes that agreement will not always be reached. However, when agreement is achieved, the BIA is responsible for identifying the various positions and record why decisions were made, she added. Ms. Bell then stated that the BIA is accountable for documenting the outcomes of consultation through quarterly and annual reports. Further, the BIA requires that all agency staff receive training in Indian law, policy, protocol, and procedures every two years.

Ms. Bell stated that the BIA does not have a specific environmental justice policy; rather, she said, the BIA uses its Indian Affairs Manual (IAM), a collection of all the BIA's guidance documents, through which it encourages and fosters the goals of environmental justice. She explained that the IAM includes three environmental policies: a general environmental protection policy, a policy that outlines the specific responsibilities of various representatives of the BIA, and a policy on compliance with NEPA. She then stated that each of the policies refers specifically to Executive Order 12898 and environmental justice and describes how BIA will integrate environmental justice into its environmental policies. She then stated that the BIA wishes to develop a more formal environmental justice policy.

Ms. Bell next stated that the BIA does not conduct specific studies to address the unique human health and environmental hazards in Indian country. Rather, she explained, the agency contracts with other Federal agencies to conduct specialized studies. Further, the BIA provides funding for ATSDR to undertake elaborate studies when health crises arise, she said. She added that the BIA had done much work under Natural Resource Damage Assessment and Recovery actions to quantify the value of natural resources to Indian communities. The challenge to the agency, she said, is to derive a dollar value for a traditional natural resource that has significant subsistence and cultural value. She then stated that, for Superfund assessments and remedial actions that are conducted in Indian country, the agency also accounts for the significance of the unique subsistence and cultural values of natural resources. She described natural resource damage assessments and recovery actions, which provide supplemental funds under CERCLA to agencies that have trust responsibilities in common, and the integrated resource management planning program which funds "holistic" natural resource planning projects in Indian country.

Ms. Bell then stated that the primary hindrances to the BIA's environmental program are insufficient funding and staff. BIA's environmental and natural resource management program receives almost $14 million annually, she reported, with $2 million allocated for staff. The agency therefore receives $12 million annually to remediate an identified $365 million in environmental liability in Indian country, she pointed. She also stated that the BIA is subject to an Executive order to undergo an environmental audit of all BIA facilities, which, she speculated, probably would reveal even greater liability.

Continuing, Ms. Bell stated that priorities set by tribal leaders "drive the allocation of budget within BIA." She stated that programs essential to basic survival "naturally remain at the top of the priority list while the environment hovers around the sixth or seventh spot." For example, she added, the agency as a whole had received a large increase in funding, but funding for the environmental program had increased only slightly because of the number of programs having priority over it.

Ms. Bell then stated that BIA is committed to interagency collaboration. As an example of such collaboration, she identified DOJ's COPS program. Under that program, she suggested, it may be possible to obtain additional funding for tribal law enforcement, an area in which there are severe inadequacies. Further, the COPS program might provide funding for training judges in tribal environmental law, she said.

Ms. Bell then described a new interagency memorandum of understanding (MOU) that focuses on the environment, public health, and natural and cultural resources. The MOU, she said, is primarily an administrative efficiency document. Presentations on the MOU, she continued, had been made at both EPA's annual environmental management conference and the annual meeting of the NTEC. NTEC also had made the document available for public comment

on its Internet web site, she added. The MOU, she continued, establishes a steering committee comprised of senior managers of all Federal agencies except the U.S. Department of the Treasury, the U.S. Department of Labor, and the U.S. Department of Veterans Affairs. The document is expected to be presented to the White House's Domestic Policy Council for final interagency review before the end of the year, she said, adding that the BIA is working to have the document signed before the end of the Clinton administration. Once signed, the document would supercede the MOU of 1991 between the BIA, the U.S. Department of Housing and Urban Development (HUD), IHS, and EPA, except in areas in which the new MOU does not duplicate IHS guidance, she said. Under the provisions outlined in the MOU, an overall domestic policy work group would replace the environmental justice subgroup of the interagency work group on the environment and natural resources, she added.

Ms. Bell then outlined the next steps the BIA would take. She stated the first step is to encourage tribal leaders to make the environment a priority. Next, she stated, strengthening the NEPA process can be an effective means of ensuring progress toward fulfillment of the goals of public participation. She stated that the NEPA process must be conducted at the tribal level so that tribes can take action to make holistic natural resource management planning decisions. Further, she stated, the BIA must strengthen all tribal environmental programs. A great deal of economic development is taking place in Indian country, she pointed out, and states have attempted to assert regulatory jurisdiction. It is imperative, she declared, that tribes establish tribal environmental programs, including standards and codes specific to the individual tribe, rather than adopt state environmental standards.

Ms. Bell then reported that the state of Maine had applied for delegation to the state of NPDES permitting authority and had included Indian country in that application. The state had used freedom of information laws to obtain tribal records that tribal leaders had refused to release, she said. The tribal leaders consider the documents government records that are not subject to the jurisdiction of the state, she continued. The state, however, has held the tribal leaders in contempt of court and threatened to jail them. BIA had been unable to negotiate the matter with the state, and Federal courts had been unwilling to intervene, she added. Ms. Bell then stated that the repercussions of the decisions made in the case will be limited primarily to Maine, but suggested that other states might consider taking similar actions.

Ms. Bell then described the development of the Declaration on the Rights of Indigenous Peoples. There is disagreement, she said, about whether governments can use the word "peoples" in the implication of self-determination and collective rights. The BIA was developing a unified United States position on the issue and hopes to have completed a resolution before the end of the current administration, she reported. She then stated that most of the countries which formerly opposed the declaration currently were coming to recognize the self-determination of indigenous peoples as a collective right to be exercised within the nation-state, to an extent short of independence.

Ms. Hill-Kelly asked Ms. Bell how EPA works with Tribes to implement Federal environmental laws in Indian country in cases in which states pressure tribes to adopt state environmental standards. Ms. Bell responded that EPA was developing core water quality standards under the Clean Water Act, but noted that the agency's efforts had met with resistance on the part of some tribes because of a perceived threat to tribal sovereignty, she said. Tribes could use such standards as a stop-gap measure when a state claims jurisdiction, she suggested. The challenge facing the new administration would be to persuade tribal peoples that Federal stop-gap measures do not threaten tribal sovereignty; rather, their use frees tribes to develop their own programs, she added. Mr. Suagee observed that threats to tribal sovereignty are real and that those who challenge tribal sovereignty draw support from a number of decisions in the field of Indian law by the U.S. Supreme Court over the last quarter century, decisions that should be acknowledged as judicial activism. He suggested that tribes should endorse the core water quality standards, as the Indigenous Peoples Subcommittee had a year earlier, because this proposal helps to shield tribes from challenges to their sovereign authority. Ms. Bell stated her belief that the problem is lack of quality communication with tribes, adding however, that BIA does not have the resources "to go from tribe to tribe.'

Ms. Hill-Kelly then asked Ms. Bell how effective the effort to instill the concept of environmental justice among staff of the BIA had been in fostering change at the BIA. Ms. Bell responded that the effort had been more successful at EPA than at the BIA because the BIA has no office specifically responsible for environmental justice. Further, she stated, it has been difficult to obtain recognition of environmental justice as a priority of the BIA. Although there is agreement among staff of the

BIA that Indian populations are disproportionately affected by environmental issues, she stated, choices must be made, for example, between education and the environment. Ms. Bell then stated that, when the tribes themselves give greater emphasis to environmental justice, the concept will be given higher priority by the BIA. The structure of BIA gives deference to tribal priorities, she pointed out; therefore, the priorities of the BIA change as tribal priorities change.

Mr. Goldtooth then raised the issue of improving the NEPA process in Indian country. He stated that one issue that arises repeatedly is whether BIA reservation superintendents can fulfill the obligation of ensuring compliance with requirements under NEPA for consultation when BIA is ultimately responsible for ensuring the NEPA process is fulfilled. Mr. Goldtooth asked Ms. Bell what the BIA was doing to ensure that superintendents fulfill that obligation. Ms. Bell stated that the BIA had identified 3,000 agency staff and 2,000 tribal staff who need training; the agency, she added, estimates that it can train approximately 500 people each year. She then stated that resources for training are limited. Therefore, she said, the challenge is to establish a higher priority for NEPA training than for training in other areas.

Mr. Suagee then asked where specifically the environmental liability, estimated by BIA to be $360 million, is found. Ms. Bell responded that the BIA had taken a very liberal approach to the development of inventory of such liabilities. The agency considers any land or facility within the responsibility of BIA that is affected by environmental damage to be a liability. She stated that the facility management division of the BIA maintains a database that contains information about facilities in Indian country. When estimating environmental liability, the agency had searched the database and sent staff to agency offices to assess known environmental problems, she reported. She added that the agency was looking forward to the environmental audit as an opportunity to develop a more realistic figure. She then stated that the inventory had not been distributed.

Mr. Suagee then suggested that NEPA training should focus on the decision-making process, rather than treating NEPA as just a compliance requirement. NEPA, he continued, is designed to be a decision-making process through which adverse effects on the environment can be avoided. He observed that simply focusing on compliance excludes the fundamentals of public participation and development of alternatives. Unless alternatives are developed early in the NEPA process, he said, the focus becomes mitigation, rather than avoidance of such effects. Ms. Bell added that, in Indian country, the greatest pressure originates with business councils, which in turn are under pressure from investors to comply with regulations rapidly; such circumstances, she pointed out, inhibit meaningful consultation.

3.6 U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. James Floyd, Office of Public and Indian Housing, HUD, began his presentation by stating that HUD is one Federal agency that fights for social and economic justice. The major issue HUD faces in that effort, he said, is enlisting the cooperation of tribes and other Federal agencies. Pointing to programs that support social and economic justice within Indian Country, he noted that HUD developed the Native American Housing and Self-Determination Act (NAHASDA) in 1996, which reorganizes the system of Federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. In conjunction with the IHS and the BIA, NAHASDA had been intended to give tribes more sovereignty in making housing decisions and to empower tribes to make their own environmental "clearances," he said. Although many tribes do consider NAHASDA as an exertion of tribal sovereignty, he pointed out, some tribes consider NAHASDA a threat to sovereignty because it holds tribes accountable for any consequences that might arise from their decisions or environmental clearances.

Continuing, Mr. Floyd stated that the problem most likely is a result of poor communication between the agency and tribes. He then observed that Federal agencies are eager and quick to take action to address perceived problems with tribes, but are slow to listen carefully and accurately define the problems that tribes identify. He then stated that the opposite holds true for discussions between agencies; agencies are quick to listen, but slow to take action, he stated. A task force on interdepartmental agreements is preparing a collaborative interdepartmental agreement to better coordinate Federal programs in American Indian and Alaskan Native communities, he added. Mr. Floyd then reported that the task force had identified what he called "the platinum rule: "Do unto others as they would have you do unto them." Mr. Goldtooth then asked Mr. Floyd whether HUD

has, on staff at the headquarter level, a tribal environmental expert or advisor designated specifically for the environmental clearances prescribed under NAHSDA. Mr. Floyd answered that HUD offers training through its Chicago and San Francisco offices.

Mr. Suagee stated that, to his knowledge, HUD is the only Federal agency that has the authority to allow a non-Federal entity to certify compliance with environmental laws. Tribes can certify environmental compliance through NAHASDA, he continued, but must waive sovereign immunity, thereby opening themselves to liability in Federal courts. Therefore, he said, tribes or HUD must certify compliance and accept accountability. A third option under the regulations, he added, is for the tribe to prepare the environmental assessments with HUD preparing the Finding of No Significant Impact. Mr. Suagee noted that he was unaware of the extent to which that option has been exercised. Further, he said, he had discovered that any discussion of the third option had been omitted from a NAHASDA training manual.

3.7 U.S. FOREST SERVICE

Ms. Dorothy FireCloud, Tribal Government Program Manager, Cooperative and Internal Forestry, U.S. Forest Service (USFS), USDA, first stated that the environmental justice policies of the USFS include an agency directive on environmental justice issued in December 1997 and a guidance on environmental justice, and an interim strategic outreach plan for ensuring the participation of minority and Indian communities in all activities of USFS. Further, she reported, the agency had sponsored environmental justice training in Alaska and co-sponsored a roundtable meeting held in Albuquerque, New Mexico. USFS also had provided environmental justice training through the Southwest Strategies Tribal-Federal Subcommittee, she continued; Southwest Strategies is a group of 13 Federal agencies. In addition, USFS was co-sponsoring the Forum on the Environment to be held in Alaska in February 2001, she said.

Ms. FireCloud then described the tribal relations task force that prepared a report outlining specific issues confronting USFS. To address the issues set forth in the report, she reported, USFS had established an implementation team that includes 10 subgroups focusing on the following areas:

- Consultation
- Tribal Relations Directive
- Training
- Contracts, Grants, and Agreements
- Availability of Forest Products for Traditional Cultural Uses
- Forest Products Programs
- Occupancy and Use of National Forest System Lands
- Infrastructure of Tribal Relations Program
- Monitoring of Tribal Relations Program
- Evaluation of Tribal Relations Program

The agency plans to establish another subgroup to focus entirely on implementation of environmental justice within the agency, Ms. FireCloud said, adding that the agency currently is awaiting comments from tribes on the umbrella consultation document the agency had created in response to the Executive order on consultation. However, she added, the time line established in the Executive order had placed constraints on the agency's ability to address public comments.

Mr. Robert Ragos, Office of Civil Rights, USFS began his presentation by first stating that USFS, the largest organization in USDA, has just begun making progress in identifying environmental justice issues related to its activities. Continuing, he stated that USFS understands that environmental justice is pervasive in all its programs. USFS had taken the position that all problems resulting from agency activities that affect communities are environmental justice issues, he explained.

Mr. Ragos then reported that a primary focus of the agency is its public outreach strategy. The agency, he said, believes that for environmental justice to be successful requires collaborative interagency engagement and stewardship of communities. Further, the strategy calls for the development of infrastructure, systems and processes, and a database that will provide staff with the resources needed to engage the appropriate communities when making decisions.

Mr. Ragos next stated that the agency had begun to establish a dialogue with individuals at all levels who play a role in environmental justice, including representatives of academia, minority populations, and Federal agencies. The dialogue in turn is used to provide focus in development of the environmental justice program, he continued. The agency, said Mr. Ragos, was implementing the principles of environmental justice in its projects. He then described the project known as the Forest for the People and People for the Forest Forum. The project, he explained, has three phases: preparation of materials, development of

partnerships, and action activities undertaken in response to issues identified through the public dialogue. The agency plans to begin the project on the west coast and expand to other geographic locations to initiate public dialogue on USFS activities around the nation, he stated. Mr. Ragos then introduced Mr. Jeff Romm, College of Natural Resources, University of California at Berkeley, to discuss the partnership development phase of the project.

Mr. Romm began by stating that environmental justice problems related to forestry issues result from the inequitable distribution of opportunity and influence and the consequential decline of forests. The environmental justice movement is giving voice to those excluded from or under-represented in such claims, he pointed out. Through its Forest for the People and People for the Forest Forum project, USFS works with communities to define the relationship those communities would like to build and maintain with USFS. Mr. Romm then stated that more than 350,000 Native Americans live in California, but only 10,000 live on reservations. Native populations living in urban areas have no engagement in the activities of USFS, he pointed out. Another under-represented voice, he said, is the labor force, made up primarily of people of color, working in forests. USFS had begun to consider the implications for program activities should these groups be given voice, he said. A final element of the project, continued Mr. Romm, is collaborative stewardship and opportunities for tribal reservation foresters and national foresters to develop practicable management programs. He then stated that a symposium will be held at the conclusion of the project to provide people an opportunity to speak openly about their needs.

In response to a question posed by Ms. Hill-Kelly, Mr. Ragos stated that all line staff of USFS are responsible for ensuring that activities of the agency have no disproportionate effects on communities. Ms. FireCloud then announced that USFS planned to hold a training session in Palm Springs, California, for all agency officers; she suggested that an hour of the training could be devoted to a presentation on environmental justice by a member of the NEJAC subcommittee.

Mr. Goldtooth stated that the subcommittee would follow up on Ms. FireCloud's request. He then asked how many Native Americans are members of the staff of USFS. Ms. FireCloud responded that there are few Native Americans on the staff; however, she added, USFS had established the American Indian Advisory Council to ensure that more Native Americans are brought into the agency. Mr. Ragos added that Native Americans currently make up less than two percent of the agency's workforce. Mr. Goldtooth then asked at what level in the agency Native Americans generally are employed. Ms. FireCloud responded that Native Americans are employed primarily at the technical level, but one Native American is a district ranger. Mr. Goldtooth then reminded Ms. FireCloud and Mr. Ragos that under-representation of Native Americans in the USFS workforce is considered an environmental justice issue.

3.8 U.S. DEPARTMENT OF ENERGY

Mr. Derrick Watchman, Director of Indian Affairs, U.S. Department of Energy (DOE), opened his presentation by stating that the primary mission of DOE is the maintenance, research, and development of nuclear weaponry and energy resources. He then stated that his primary function is that of tribal facilitator. DOE, he continued, had been slow to recognize the special relationship between tribes and Alaskan Natives and Federal agencies. He reported that he had been discussing policy with appropriate representatives of DOE, but acknowledged that he had found it difficult to make progress.

Mr. Watchman then stated that many DOE properties are located on or near Tribal lands. Turnover of staff at such properties had made it difficult to achieve sustained success in addressing environmental problems affecting the properties, he added. Currently, he continued, only one percent of DOE employees are Native American. Therefore, he stated, DOE works to help tribes develop their own environmental management programs. Further, he stated, there is "a major electrical supply divide" in Indian country. DOE is attempting to provide electricity generated by Federal generating facilities to tribes, he continued. In addition, DOE is developing renewable resources, he said.

Mr. Watchman stated that DOE facilities had exercised protocols for consultation with tribes improperly. The facilities had assumed that direct communication with states constitutes consultation with tribal stakeholders, he explained. Continuing, DOE is emphasizing that only direct communication with tribal leaders and representatives fulfills requirements for consultation with tribes. Further, he said, DOE is establishing the role of Native American liaison to facilitate better communication with tribal communities. DOE also is ensuring that all

appropriate tribal leaders and representatives are included on master lists of points of contact, he added. Mr. Smith asked how DOE ensures that staff members are indeed true Native Americans. Mr. Watchman responded that DOE had solicited suggestions from members of tribal communities about how to address that issue.

Mr. Squeochs then asked Mr. Watchman how activities related to the sampling and monitoring of air and groundwater in the vicinity of Los Alamos, New Mexico, had affected subsistence activities of the pueblo communities. Mr. Watchman responded that DOE had recommended areas tribal people should and should not enter, but had left all the lands open. He then stated that the Pueblo of Jemez, New Mexico has an environmental department that performs the necessary monitoring and testing. However, he added, the pueblo currently must send the data to DOE for validation; the pueblo however, would prefer to have trained staff members who could interpret the data. In addition, the pueblo would like tribal members to have access to education and training that will qualify them to work for DOE, said Mr. Watchman.

Mr. Suagee then turned to renewable energy sources. He called the attention of the members of the subcommittee to a pamphlet developed in 1994 under a joint cooperative project between HUD and DOE that discusses energy efficiency and solar energy design in housing. He stated that the pamphlet had been sent to all the tribes in a single mass mailing, but that had been the extent of the effort to disseminate the information. However, he emphasized, the principles of energy efficiency and renewable energy sources discussed in the document are keys to sustainable development in Indian country. Mr. Suagee then stated that Mr. Watchman had failed to mention the energy efficiency technical assistance programs funded by DOE. Continuing, Mr. Suagee stated that those programs are a classic example of how Federal assistance programs administered by states fail to reach Indian communities because, unless states take responsibility or have a statutory set-aside, tribes receive no technical assistance from the states.

Further, said Mr. Suagee, NAHASDA expresses a policy of supporting access to the standard mortgage market for Federally insured mortgages. However, he stated, to qualify for Federally insured mortgages, houses must comply with the model energy code. DOE and HUD provide assistance to state governments in upgrading their building codes to incorporate the model energy codes, he explained. However, DOE has never considered tribal governments a part of its mission for this assistance program because the relevant federal statute does not mention tribes and because the people in this part of DOE apparently do not realize that state building codes are not applicable on tribal lands, he continued. He then stated that, until a procedure for providing technical assistance to tribes in incorporating energy efficiency into their building codes has been put in place, tribal housing would continue to be second- and third-rate. Therefore, he declared, Indian families will continue to bear much higher energy costs than necessary.

Agreeing with Mr. Suagee, Mr. Watchman stated that tribal appropriations in DOE had been “hit or miss” over the past few years. For example, he said, Congress had passed the National Energy Policy Act which included Title 26 that called for the development of energy resources in Indian country. However, DOE had never embraced the provision because of lack of funding from Congress, said Mr. Watchman. He emphasized that the National Energy Policy Act would become a major issue, but stated that he was unsure what priority rank Indian country would be given at the national level. He then stated he was “positive” that renewable energy is becoming a greater priority and will be required in the very near future. For example, he pointed out, DOE currently recommends that by 2010, 10 percent of all energy be obtained from renewable sources. Further, considering the remoteness of many tribal and Alaskan Native lands, renewable energy sources are the only feasible means of providing electricity to such lands.

Mr. Watchman then stated that DOE, EPA, DOI, and DOJ had hosted an American Indian and Alaskan Native environmental justice roundtable meeting in Albuquerque, New Mexico, to bring stakeholders together to define responsibilities. A primary theme of discussions held during the meeting, he continued, was that Federal agencies must take a “holistic approach” when implementing policy in Indian country. Federal agencies also must follow the lead of tribal governments and take tribal culture and values into consideration when formulating policy that will affect tribal lands, he said.

Noting that DOE had funded the development of a tribal risk assessment policy by a university, Mr. Goldtooth asked to be provided a copy of the document if indeed it had been completed. Part of the initiative for the development of the tribal risk assessment policy had been to give direction to

DOE in addressing contaminated sites in Indian country, continued Mr. Goldtooth. Further, it had been hoped the initiative would better define "how clean is clean" in Indian country. Mr. Watchman responded that he would have a member of DOE's environmental management staff contact Mr. Goldtooth about the matter. He also stated that there is an on-going debate about "how clean is clean." He then reminded the members of the subcommittee that the State Tribal Working Group meets quarterly to discuss relationship of tribes with DOE.

3.9 EPA ENVIRONMENTAL JUSTICE TRAINING COLLABORATIVE

Ms. Deldi Reyes, EPA Region 8, first explained that she was representing the EPA's Environmental Justice Training Collaborative (EJTC), a network of EPA staff who are pooling their resources and attracting support from outside EPA, including the support of states, community-based groups, and academia. EJCT promotes environmental training that complements existing environmental justice training programs provided by Federal agencies, she said. Ms. Reyes announced that EJCT had initiated several initiatives, including:

- Creating a workshop on fundamentals that encourages trainers to modify educational content to meet the specific learning needs of participants in a particular workshop and establish a baseline for the development of which more advanced workshops can be developed.

- Developing a methodology and materials essential to the training of environmental justice trainers.

- Establishing an annual environmental justice training institute to provide a forum for continuing development and refinement of training materials, improve the skills of the National Environmental Justice Training Team, and trainers in techniques of evaluation and needs assessment.

In developing the training curriculum, EJTC was seeking the views and support of all stakeholders, said Ms. Reyes. She then stated that the collaborative particularly was soliciting advice into the identification of environmental justice training issues within natural and cultural resources, NEPA, and in public participation. In addition, she stated that the EJTC would welcome the views of the members of the subcommittee to assist EJTC in defining learning objectives related to environmental justice in Indian country. She then requested that a member of the subcommittee attend one of the EJTC's pilot training courses.

3.10 U.S. DEPARTMENT OF EDUCATION

Ms. Karen Suagee, Office of Education Research and Improvement, U.S. Department of Education, began her presentation by telling the members of the subcommittee that she had been working actively with Executive Order 13096 on American Indian and Alaskan Native Education that had been signed in August 1998. An interagency task force of 14 Federal agencies and EPA is guiding work under the Executive order, she said. The priorities established under the Executive Order are to develop a research agenda, to develop education resource guidance, and to develop a policy on Federal collaboration and cooperation, she continued. In addition, the task force is creating a Federal database that identifies sources of Federal data, she said.

The task force holds community forums at which Tribal leaders, educators, researchers, practitioners, and policymakers come together to facilitate the provision of support and advice to the task force, continued Ms. Suagee. She added that the dialogue engaged in during the forums reflects many of the themes expressed during the current subcommittee meeting. The areas of interest communicated to the task force, she said, include community wellness, enhancement of tribal traditions, revitalization of Native languages, documenting authentic Indian history, environmental education, and adult education. Ms. Suagee then stated that education in Indian country is "very fragmented." Thus far, the task force had coordinated its activities with more than 560 tribes, concentrating on kindergarten through grade 12. Approximately, 90 percent of Indian children attend non-Indian schools, and there is a tremendous amount of mobility among them, she added. Ms. Suagee then discussed a recent mandate of the state of Montana that requires that all school districts in which a certain number of Indian children are enrolled adopt curriculum that is reflective of tribal history and traditions. She emphasized that the mandate is the first of such educational mandates to require tribal consultation.

4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the Indigenous People Subcommittee.

4.1 MR. SCOTT JONES, LOWER BRULE SIOUX TRIBE OF SOUTH DAKOTA

Mr. Scott Jones, Public Relations Director, Lower Brule Sioux Tribe of South Dakota, began his presentation by thanking the members of the subcommittee for their hard work. He then turned to the subject of the Indian General Assistance Program (GAP). Federal agencies, he stated, were seeking the views of tribes about, as well as their involvement in the development of, numerous environmental impact statements (EIS), environmental assessments (EA), and environmental management plans. However, he continued, he has been informed that GAP funds cannot be expended to assist tribes in implementing the NEPA process. Specifically, he said, he had been told that GAP funds cannot be used for activities conducted in response to requirements set forth under NEPA, or for the examination of the various types of government documents that propose action alternatives, policies, or principles of management. Mr. Jones stated that, absent financial support, tribes find it difficult to deal with the enormous tasks of providing meaningful comment on the development of these documents and supporting involvement in their development.

Mr. Jones then discussed grievances related to the failure of the Omaha District of the U.S. Army Corps of Engineers (USACE) to comply with Federal law. He stated that the Omaha District had constructed a series of six earthen dams on the Missouri River; the project, he continued, constituted the taking of tribal trust lands. He then stated that the taking of tribal trust lands requires an Act of Congress. No such legislation had been enacted, said Mr. Jones, nor had the appropriate Federal action been taken before the project went forward. Therefore, he pointed out, the construction of the dams had been a clear violation of existing Federal law, including the Native American Graves Protection and Repatriation Act (NAGPRA), the NHPA, NEPA, the American Indian Religious Freedom Act (AIRFA), the Fifth Amendment to the Constitution, various Executive orders, and various internal regulations of USACE. Further, the wave action of the dam water is undercutting riverbanks where ancestral burial sites are located, thereby exposing graves, destroying sites that are listed on the NRHP, and eroding land along the boundary of the Lower Brule Reservation, which includes 80 miles of riverbank of the Missouri River that falls within both Federal land to which the tribe retains certain rights and Tribal Trust lands. The tribe affected by the dams retains haying and grazing rights, as well as subsurface mineral rights, he added.

Mr. Jones stated that the tribe had received the EIS prepared for the dam project, which he described as enormous, on the closing date for public comment on the permit. USACE had granted an extension, he continued, but the closing date of the extension falls on the closing date for comments on another EIS. Therefore, he said, information for both EIS' must be reviewed at the same time despite the tribe's limited resources.

Mr. Jones then stated that the tribe had estimated conservatively that 110 acres of tribal land is lost each year because of the projects. Considering that the taking of tribal trust land requires congressional action and that USACE had taken no repertory action, he declared, his office could only conclude that USACE had been given official latitude to violate existing Federal laws.

Mr. Jones then suggested that representatives of Federal agencies should travel to Indian country to see firsthand the problems confronting tribes on Indian lands. Doing so would help Federal officials to develop a better understanding of the effects of their actions and decisions on tribes in Indian country, he suggested. In addition, those representatives could hear directly from tribes how policies and activities work "at the ground level." Mr. Jones then stated his belief that it also is important that representatives of Federal agencies come to Indian lands and hear directly from the tribes because, just as with the Lower Brule Lakota, tribal culture is an oral one and the tribal elders still communicate through traditional oral presentation techniques.

Mr. Jones then thanked the members of the subcommittee for their work on the two documents the subcommittee had prepared, the *Guide on Consultation and Collaboration with Indian Tribal Governments* and the *Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making*. He stated his hope that the documents would evolve into a Federal requirement that would guarantee tribal participation in Federal activities that affect tribal lands, as well as effective tribal consultation.

Mr. Jones then discussed the overall inability of prominent tribal representatives to participate in the consultation process to facilitate the protection of sacred sites. Continuing, he stated that such areas as Yellowstone, the Missouri River, the Black Hills of South Dakota, Pipestone Quarry in southwest Minnesota, Slim Buttes/Cave Hills Formations in South Dakota, Devil's Tower National Monument in Wyoming, Scottsbluff in Nebraska, the Little Big Horn in Wyoming, the

Badlands in south west South Dakota, and the Fort Pierre National Grasslands are managed by the National Park Service, USFS, the Bureau of Land Management, or USACE. He stated that the agencies are holding the tribal sacred sites "hostage" under the guise of management for a public that has no concept of, or insight into, the central importance of those sacred places to the continued existence of the Lakota people. The adverse environmental effects on these sacred sites result from the degradation of the quality of air and water in the vicinity of those sites, and increases in noise levels, the influx of tourists, and the development of facilities to accommodate tourism. Mr. Jones then stated that tribes need the help of the Indigenous Peoples subcommittee in bringing their concerns to the attention of the Federal government. Exhibit 6-2 provides a list of projects to protect sacred Indian sites.

Exhibit 6-2

LIST OF PROJECTS TO PROTECT SACRED INDIAN SITES

The following individuals are working to preserve sites deemed sacred by the Lakota Sioux tribe:

- Elaine and Charley Quiver, Chief Johnson Holy Rock, and Chief Oliver Red Cloud have been working to preserve areas of the Black Hills, South Dakota; and Mato Tipila at Devil's Tower in Wyoming.
- Arvol Looking Horse and Alan Hare (Keeper of the Sacred Pipe) have been working to preserve the Lakota sacred Pipestone Quarry in Minnesota and areas of the Black Hills in South Dakota.
- Tim Mentz and the Standing Rock Lakota have been working to preserve and protect the Slim Butte/Cave Hills formations and areas of the Black Hills, both in South Dakota.
- Terry Gray and Freemont Fallis have been working to preserve the Front Range area of Colorado
- Francis Brown and the Medicine Wheel Coalition have been working for the protection of the centuries old Medicine Wheel site in northern Wyoming.

Mr. Smith suggested that Mr. Jones contact Ms. Tanya Fish, EPA American Indian Environmental Office at (202) 260-7939, to obtain more information about the purposes and activities for which funds available under GAP can be used, as well as guidance related to allowable uses of such funds. Mr. Smith then described the new Performance Partnership Grant (PPG) Program, under which tribes can streamline the effort to meet reporting requirements by providing the required information for as many as 17 grants in a single report. The matching requirement under the PPG program currently is 5 percent for the first 2 years, he continued; however, he added, that requirement might be increased to 10 percent, depending upon the social or economic status of the tribe. The high matching percentages required under a number of Federal grant programs default to 5 or 10 percent when such grants are incorporated into the PPG program, continued Mr. Smith. Mr. Williams then added that tribes can obtain additional funding for work under NEPA through the BIA. Mr. Williams then stated the White House Council for Environmental Quality (CEQ) also offers NEPA training for at least two Tribal members a year; CEQ covers the costs of air travel, lodging, and the course itself, he added.

Mr. Suagee then repeated Ms. Bell's earlier comment that environmental programs have little priority at the BIA; they therefore are least likely to be funded by that agency, he pointed out. Mr. Suagee then observed that there appears to be more activity on Lower Brule Lakota lands than can be managed with the current tribal resources.

Mr. Goldtooth added that he had encountered a similar problem – too much work for the available environmental staff to accomplish – when he was an environmental director in Minnesota. Referring to Ms. Bell's earlier statement that BIA funds are allocated on the basis of priorities set by the tribes, he suggested that tribal leaders begin to give higher priority to environmental concerns in Indian country.

Ms. Hill-Kelly stated that the USACE permit for the dams must be certified and that, under the certification process, the effects of the undertaking on the tribe must be considered. Such consideration, she continued, would include the effect of the project on cultural resources. Mr. Jones responded that EPA Region 5 had coined new language that states that the impact on cultural resources is an interrelated environmental impact. Mr. Jones then stated that the tribe had conducted independent research to assess the adverse effects on the sacred sites of the construction, operation, and maintenance of the dams. That research, he charged, had been ignored. In the eyes of the tribe, he continued, USACE wanted the project to go forward and was "willing to push the project through at any cost."

Mr. Goldtooth responded that the issues faced by the Lower Brule Tribe provide a prime example behind the purpose of the NEJAC. Continuing, he stated that many individuals who could provide help and guidance to Mr. Jones were present at the current meeting of the NEJAC.

4.2 INTER-TRIBAL COUNCIL ON UTILITY POLICY

Mr. Robert Gough, Secretary, Inter-Tribal Council on Utility Policy (COUP), first stated that six dams operated by the USACE are located on the upper Missouri River. He then stated that tribes soon would be able to buy hydroelectric power from the series of six dams, which have a direct effect on tribal land. While researching how to best supply the power from the dams to the tribal lands, he continued, COUP had discovered a huge wind resource. Mr. Gough stated that, under the 1944 Amendments to the Rural Electrification Act, surplus power from reservoir projects was to be provided to the Secretary of the Interior to be transmitted for use at the "lowest possible rates." Under the Act, he explained, tribes, which are not utilities, are entitled to preference in energy sources. Paradoxically, because of their relationship to DOI and consistent with the Act's original mission to provide inexpensive power to rural and underdeveloped regions, tribes are entitled to "cheap power," but the Federal government cannot sell power to tribes because they are not considered utilities, he pointed out. The tribes along the upper Missouri successfully lobbied for a waiver from the Western Area Power Administration (WAPA) that allowed tribes to purchase power, said Mr. Gough. The waiver established a precedent for all other areas regulated by WAPA, he observed. He then stated that he had mentioned the current events because it marked the start to ending injustice to tribes. Previously, he pointed out, the Federal government had used tribal lands and water to generate a $1.5 billion energy economy of which tribes received almost nothing.

Mr. Gough then stated that, while engaging in the 10-year negotiations about providing hydroelectric power to tribes, his organization was involved in integrated resource planning (IRP), he continued. Specifically, COUP is exploring ways to incorporate renewable energy sources into the IRP process. His organization, he said, had discovered that wind, a renewable energy resource, could provide more energy than hydroelectric plants. He stated that South Dakota has the best wind in the Nation for use in generating power because the wind speed is particularly constant, blowing at approximately 17 to 20 miles per hour. Mr. Gough then stated that more than 250 gigawatts of wind power could be generated on tribal lands alone, while hydroelectric plants can generate only 2 gigawatts of power along the Missouri River.

Mr. Gough then stated that he had served as chair of the Climate Change Workshop held in Albuquerque, New Mexico, two years earlier. The primary concerns expressed at that workshop related to carbon dioxide. At that event, he continued, tribes agreed to take a lead in promoting renewable energy for "the sake of the planet, the nation, and the local economy." The potential wind energy on the tribal lands in South Dakota far exceeds the needs of the reservations, he pointed out. Therefore, said Mr. Gough, tribes could provide power thereby decreasing reliance on nonrenewable sources of energy, such as coal, and curtailing the need for USACE to draw down the Missouri River.

Mr. Gough then described the Green Tag Program proposed by COUP, under which tribes could transfer the energy generated by tribal wind farms onto the Federal grid. Further, the Federal government could "green tag" that energy and buyers could be certified as users of "green power," he suggested. In addition, he continued, Federal installations could use the power. The tribe would be able to sell power economically; serve the tribes' treaty partner, the Federal government; and develop the local economy. He then stated that tribes simply need the authority to sell electric power. Mr. Gough stated that the authority to sell renewable energy would help fulfill the tribal entitlement to preference in energy sources and help meet tribal environmental and economic needs, as well.

A member of the audience asked about the effect of transferring the authority of the Federal power grids to private industry. Mr. Gough responded that the Federal government would retain certain controls over industry. Most important, he said, the Federal government could give preference to companies that use green power generated on tribal lands. Further, he continued, if a Federal agency enters into a power marketing contract with tribes under which it agrees to buy a certain percentage of power, tribes can use that contract as security when applying to banks for economic development loans.

4.3 UPDATE ON MEDICINE LAKE HIGHLANDS

Mr. Gogal provided an update about the environmental justice issues and status of proposed power plant projects at Medicine Lake Highlands. He stated that, after months of discussions between the Pit River Tribe, EPA, and the Native Coalition, USFS and BLM disapproved one of the two proposed power plants. The record of decision could serve as a model for Federal decisions that affect cultural resources, he said. The outcome was the result of very skillful and persistent work by the tribe and the Native Coalition, Mr. Gogal pointed out. Continuing, he said that the second power plant proposal had been approved and currently was under appeal brought by the Tribe and the Native Coalition. He stated that EPA was continuing to provide review and assistance to the tribe, including:

- Evaluation of possible problems related to air permits associated with the facility
- Provision of financial assistance to the tribe through the GAP program
- Assignment of staff to monitor the proposed development and provide assistance

5.0 DRAFT RECOMMENDATIONS

Mr. Goldtooth opened the subcommittee's discussions of the development of draft recommendations of the Indigenous Peoples Subcommittee to be forwarded to the Executive Council of the NEJAC. In addition, Mr. Goldtooth asked Mr. Williams to offer ideas and suggestions for making environmental justice sustainable in Indian country.

The member of the subcommittee were asked to consider the following question in its efforts to identify specific recommendations: "How do Federal agencies integrate the principles of environmental justice principles into their policies, programs, and activities that affect tribes and Alaskan Native villages?" After some deliberation, the members offered the following recommendations:

- Financial and technical resources and training for tribes and Federal agencies should be provided to enhance awareness and understanding of laws, regulations, and polices that affect Indian country.
- Each Federal agency should develop a system, such as DoD's NAETS program, to "track" complaints related to environmental justice that are levied by tribes, so that the agency can be held accountable for responding equitably to tribal concerns and needs; transparency is important.
- When Federal agencies coordinate their activities, ACHP should be included as early as possible in the planning stage.
- Interagency coordination should be enhanced to effectively protect the environment and public health, provide sustainable development to leverage inadequate Federal funding, and overcome the limits of each agency's mission to deliver services to tribes (such as BIA funding for environmental liabilities).
- The long-range environmental planning of EPA and other Federal agencies should include environmental liability; information in the possession of the BIA should be made available to other Federal agencies and to tribes.
- The recommendations generated at the environmental justice roundtable meeting of Federal agencies and tribes held in Albuquerque, New Mexico, should be reviewed thoroughly and implemented after additional comment has been obtained from tribes and tribal organizations.
- Partnerships between EPA, other Federal agencies, and tribal colleges and the American Indian Higher Education Consortium (AIHEC) should be strengthened to assist tribes in building environmental, natural resource management, and sustainable development capacity.
- Effort should be made to ensure that Federal agencies are fully aware of the Executive Order on tribal colleges, which can help bring support to those institutions.
- Demographic information about the academic disciplines studied by Native American students and the placement of such students in different types of institutions of higher education should be collected to determine how much tribal community resources potentially are available for capacity-building.

- Federal agencies should solicit information from each tribe about what that tribe needs, and the Federal agencies should seek support from Congress to meet those needs, such as reprogramming funds, or redirecting staff.

- The Federal government and the Interagency Working Group on Environmental Justice should create a document that identifies resources available to assist tribes in protecting the environment and public health, and promoting economic development.

- Develop lists of contacts at Federal agencies, including at the local and regional levels; such lists should be distributed to tribes so tribes can encourage or lead interagency coordination.

- Federal agencies should pool resources and create shared environmental justice programs to address tribal issues.

- Develop non-Federal sources of funding for projects and programs (such as renewable energy).

Mr. Williams then offered several suggestions for making environmental justice sustainable in Indian country. Identifying cultural sustainability as the goal of any such effort, Mr. Williams outlined the following recommendations to be implemented by Federal agencies and tribes.

- Define for agencies what constitutes coordination and collaboration.

- Define for agencies what is required to foster capacity-building within tribes.

- Identify what works best for tribes in working with agencies. The NEPA model seems to work best for tribes.

- Evaluate environmental effects by drawing on a tribe's traditional knowledge of its physical environment, such as determining the loss of species in cases in which loss of species equals loss of culture.

- Identify what Federal agencies should do to fulfill their trust responsibility – agencies should take responsibility for fulfilling this obligation or tribes will be forced to seek redress for trust mismanagement.

- Establish a NEPA process that will address sustainability for Alaskan Natives and protect their health; doing so will connect the people to the land.

- Use the NEPA process to build a record of their needs. Tribes should define the process and use the interagency process to "deal" with it.

- Demand "truth in advertising;" without an accurate view of the history of Native Americans included in the text books used in public schools, the general public otherwise will remain largely ignorant about Indian affairs and will not support efforts to meet tribal needs and goals.

- Include among the factors evaluated during the NHPA Section 106 process an overview of relevant historical information.

- Federal agencies and applicants that conduct environmental assessments (EA) should, at the beginning of the EA process, meet the requirements set forth in Section 106 of NHPA. The statement that tribes should be consulted "early and often" should be replaced with a statement that tribes should be consulted according to "purpose and need."

- Enact a Tribal Environmental Policy Act through which tribes can clearly explain their use of their homelands and their objectives and purposes in maintaining land uses.