

Summer 2024 RTOC Action Items

Identifier	Action Items	Tribal Contact	Lead	Response
1	NEPA presentation (follow up from previous RTOC Action Item) to include the following items: - Process on CATEX - Success stories – there needs to be a better way to tell our stories.	Southern California (Shasta Gaughen, Rob Roy)	ORC, WD, SEMD	The process on CATEX was touched on during the NEPA 102 Summer RTOC breakout session: https://www.epa.gov/tribal-pacific-sw/rtoc-meeting-materials-summer-2024 We can schedule future breakout sessions as requested to address these items further. One breakout session idea is for Tribes to share stories about how they were able to successfully navigate NEPA compliance at a future presentation.
2	PFAS in drinking water. What funding is available for treatment?	Southern California (John Flores)	WD	EPA does have funding available for PFAS mitigation through our new emerging contaminant grant programs. We just announced our Drinking Water project solicitation that includes EC projects. We encourage Tribes to apply for that funding by December 6th. We expect to receive \$13 million in FY25 to fund tribal projects. More info on Emerging contaminant funding here: https://www.epa.gov/tribal-pacific-sw/dwtsa . Please reach out to your Infrastructure project officer (right hand side bar on website) about your specific project needs. Relatedly, we are supporting Tribal Drinking Water systems to complete initial monitoring requirements for the new PFAS drinking water rule by 2027. We are offering voluntary, free PFAS sampling to all public water systems on Tribal land. Please reach out to your Drinking water program manager if you'd like to participate. More information and geographic contacts here: https://www.epa.gov/tribal-pacific-sw/pfas-project . Lastly we are hosting a breakout session at the Tribal conference that will cover these grant programs and PFAS sampling. It's on Thursday October 26th at 10:30 am.
3	BIA / SDGE Energy Issues for easements / ROWs - How can EPA assist with the process? - Some projects are funded by EPA [example (water projects) How can you energize a well without power?]. California Tribes who are impacted are: San Pasqual, Los Coyotes, Pala, Pauma, La Jolla, Santa Ysabelle	Southern California (John Flores)	WD/ORC/ORA	The R9 Tribal Advisor is working on a response and will be meeting with the Regional Administrator and the CA Public Utilities Commission. There was a workshop available to Tribes on tribal ROWs, titled Joint State-Federal Workshop & Consultation – Rights of Way for Utility Infrastructure Development on Tribal Lands, found at this link: https://www.cpuc.ca.gov/about-cpuc/commissioners/page-content/profile-list/commissioner-darcie-houck
4	What is the status of the NTC to FACA?	Eastern California (Teri Red Owl)	ORA	Kenneth Martin will attend the Fall RTOC to provide an update on this item.
5	Nevada Tribes request an EPA GAP field office in Reno or Carson City.	Nevada (Cliff)	CED/MSD	Currently the EPA does not have the resources to establish a new facility/office in a new city and state. The GAP Program understands this request and why it is important. While there are currently no resources available to do this, EPA staff can work remotely. EPA no longer can-do place-based work, remote work is an option. Larry Maurin and Alan Bacock are remotely placed in Nevada, for example. We understand there is a need for more local support for Nevada area Tribes. If more resources are made available that could give us the opportunity to do this in Nevada, then the EPA will explore this possibility.
6	Request for Project Officers to conduct site visits to provide technical assistance to Tribes.	Nevada (Cliff)	ORA-Tribal Advisor?	Through the RIPSC, CED had developed an assessment of when EPA had last visited each Tribe to prioritize visits. That assessment and discussion could continue under the Tribal Advisor's leadership. EPA wants POs to be out in the field. In addition to planning of site visits, we will consider setting aside funds for emergency/critical visits.
7a	Training requests: - Categorical Exclusions (CATEX)	Nevada (Cliff)	ORC	CATEX was touched on during the NEPA 102 Summer RTOC breakout session: https://www.epa.gov/tribal-pacific-sw/rtoc-meeting-materials-summer-2024
7b	Training requests: - Tribal and EPA lead (in-person), general overview of GAP training for new staff and/or new grantee's to be held yearly.	Nevada (Cliff)	CED	GAP 101 and 102 sessions will be available during the Conference. These sessions will be recorded and available for Tribes throughout the year to reference, in addition to previous conference sessions.
8	Question - are there Tribes who are receiving decreased GAP funding due to other Tribes who have been re-established or receiving new funds?	Nevada (Cliff)	CED	AIEO allocation of resources to each region is based on factors that include the number of active recipients per year. As additional tribes across the nation become active under GAP, there may be a reduction in total funds available to each region. In Region 9, we fund work plans to ensure that base funds are prioritized for each Tribe, and support supplemental projects based on priorities in the published NOFO and until funds are exhausted.

9	Air Quality QAPP. The request is for the reviewer to assist the Tribe to complete the QAPP. What steps are necessary to receive the assistance in reviewing? The Tribe does not have the resources to hire a contractor to complete or does not have adequate staff (limited in staffing).	Nevada (Duck Valley Shoshone Paiute Tribes)	LSASD	Duane James and Audrey Johnson from the R9 Quality Assurance Program met with Duck Valley on 10/18 to discuss this specific issue. Two follow up discussions will occur: 1) QA Reviewer will reach out to Duck Valley to clarify any outstanding comments on the QAPP, 2) Audrey and Duck Valley staff will discuss QA independence and determine best path forward for meeting that QA requirement.
10	Contracting issue regarding Indian / Navajo hiring preference. The Buy Indian Act of 1910, how can this be amended? How can it be improved? The effort is to clean up abandoned uranium mines, would like to have ability to support local or small businesses, contractors, service providers.	Navajo Nation (Stephen Etsitty)	MSD/ORC	ORC and MSD are looking into The Buy Indian Act of 1910 to determine whether we can offer recommendations for improvement. On a related note, Region 9 awarded the Navajo Area - Abandoned Mine Remedial Construction and Services (AMRCS) multiple-award Contracts on January 14, 2021 for cleanup of over 200 mines. AMRCS is the largest contract award in Region 9 history. Each of the awarded contractors is a small business, 2 of whom identify as Native American owned. In the AMRCS solicitation, offerors were required to provide a Navajo Employment and Training Opportunities Plan, and each contractor has teamed with multiple Navajo owned small businesses in the place of performance.
11	Grants versus cooperative agreements. What steps are needed to move from cooperative agreement to grant? CA's are an administrative burden i.e., reporting, program management.	Navajo Nation (Stephen Etsitty)	MSD	Per 2 CFR § 200.1 Definitions, the difference between grants and cooperative agreements is: Grants do not have substantial programmatic involvement anticipated between EPA and the recipient during the performance of the activities. Cooperative Agreements have substantial programmatic involvement anticipated between EPA and the recipient during the performance of the activities. Additionally, there might be a specific EPA announcement and/or Published Assistance Listing for cooperative agreements and the applicant must tailor their proposal to the announcement's requirements. The Grant Program determines whether the activities require EPA substantial involvement. For example, GAP grants are for capacity building and may require EPA substantial involvement which include programmatic technical assistance such as: developing ordinances, QAPPs, and/or working towards Treatment as State in the CWA and CAA programs. Reporting requirements do not differ between grants and cooperative agreements.
12	Illegal dumping issue. The Tribe was informed that they had to monitor for one year and then the following year they can do the clean-up. When did the process change?	Southern Arizona (Chase Choate)	CED	Approval for funding dumpsite cleanups with GAP funding is on a case-by-case basis: It may be at the regional level if a Tribe is determined to have an "established" solid waste program. If they do not have a program in place or it is under development, then the approval is supposed to go through HQ. Region 9 is not aware of any 1-year monitoring requirement related to GAP funding dumpsite cleanup. There may be some context that we're missing in this case and happy to discuss further with the grantee.
13	Request for other EPA project officers (not just GAP) to attend RTOC. This will allow the Tribes to have one on one time with their Project Officers.	Eastern Arizona (Christy)	ORA	Unfortunately this is a funding issue regarding limited travel funds. We agree that Project Officers attending RTOCs is useful. The next RTOC will take place in San Jose in October and would be a good opportunity to meet with your Project Officer.
14	EPA working with other agencies i.e., IHS. These other agencies are not following through on how or when the funding is spent and not following up on timelines.	Eastern Arizona (Christy)	WD	IHS Deputy Director will attend Fall RTOC and the California Area representative will also speak at a breakout session during the annual conference on Tuesday at 3pm to discuss hiring efforts, timelines, etc.
15	Sackett vs EPA regarding waters of the U.S.. How does this affect Tribes? How do we protect our wetlands? How will EPA prepare?	Eastern Arizona (Christy)	ORC	The Sackett decision issued by the Supreme Court in May 2023, determined that "waters of the US" encompass only relatively permanent, standing, or continuously flowing bodies of water forming streams, oceans, rivers, and lakes and that when wetlands are included as a "water of the US," they have a continuous surface connection to bodies of water such that there is no clear line between the "waters" and the "wetlands." EPA and the Army Corps of Engineers amended the regulatory definition of "waters of the US" to conform with the Supreme Court decision. Information on that rule may be found here: https://www.epa.gov/wotus/amendments-2023-rule . Since "waters of the US" is a threshold term establishing the geographic scope of jurisdiction of the CWA, the new definition is applicable to water quality standards and TMDLs (CWA 303), CWA 401 certification, CWA 402 NPDES permitting, and CWA 404 discharge of dredge or fill material. Each jurisdictional determination is unique. Feel free to contact the EPA Water Division if you need assistance with any of those activities.

16	Request for EPA to coordinate with Army Corp of Engineers during the monsoon due to silt / sand that causes flooding which is a safety hazard i.e. CWA 401 certificate.	Northern AZ (Dr. Sarah Abney)	ORA-Tribal Advisor	Region 9's Senior Tribal Advisor has been briefed by the Hopi Tribe Chairman's office on this issue, will continue to coordinate with the Chairman's office and Hopi Tribe staff on how EPA might help.
17	Assistance from EPA on the monitoring of the uranium transportation routes through tribal lands in Northern Arizona (Hualuapi, Navajo to Utah).	Northern AZ (Dr. Sarah Abney)	ARD	Matt Lakin discussed that this is an active area they are working on. ARD staff coordinated with EPA HQ radiation program to determine if they had monitoring capabilities to assist. HQ cannot support the request due to limitations in their capacity; they are focused on monitoring during emergencies, and not able to provide ongoing monitoring. EPA's health physicists indicated that the risk to the communities from transportation was low.
18	Concern that some EPA programs (water) require a cost-share. Some Tribes can not support these grants.	Northern AZ (Dr. Sarah Abney)	WD/ARD/MSD	If the cost share requirement is silent in statute but not in EPA regulation, then there is a process for the agency to waive this requirement. For example: Wetlands, CWA 106. One of the recommendations we elevated to the RA in response to President Biden's Executive Order 14112 on removing barriers and streamlining Tribal access to resources, was to reduce administrative and financial burden by removing cost-share requirements for Tribes that are not required by statute. For example, the Wetlands program requires a 25% Cost Share per regulation. PPGs also have a zero match requirement.
19	Timing of the EPA Tribal Conference date; it is within 30 days after the funding begins. It is burdensome for tribes regarding their financial systems.	Northern AZ (Dr. Sarah Abney)	CED/Conference Cosponsor	We are glad to have the conference cosponsor explore with R9 Tribes in which quarter during FY 2026 the next Conference should be held.
20	O & M funding. Where is the funding? Some systems are 40+ years old that need to be replaced. IHS paid for the systems to be installed.	Northern AZ (Dr. Sarah Abney)	AIEO/WD/CED	AIEO heard this was a challenge- leads a workgroup with federal and Tribal. There was a presidential budget request from Indian Health Service in FY2027- \$10 million to follow the need and \$250 million will be allocated for O&M. We've invited IHS leadership to the RTOC to discuss this ask. We will continue to follow this and advocate.
21	Salton Sea. The request is for the EPA to continue to have meetings with Tribes regarding the Salton Sea due to this being a serious public health and environmental concern.	Southern California (Rob Roy)	ARD/SEMD	Matt Lakin and ARD staff met with Rob Roy on Sept 6th about future engagements with Tribes near the Salton Sea. A follow-up call with Tribes is scheduled in the next few weeks.
22	Chevron deference. The ask is clarification on impacts of the overturning of the Chevron deference and how does that affect Tribes. How is EPA planning to proceed given the ruling? Provide an overview/summary of what that ruling was? And what the implications could be?	Tribal Caucus	ORC	Suzanne Andrews coordinating a response from OGC before the Fall RTOC.
23	Request Financial Training for the Tribal Finance Departments during RTOC meetings, Annual EPA Tribal Conference and for EPA to go out to Tribes. (Christian, Soboba)	Tribal Caucus	MSD	EPA has provided 3 formal grants trainings at the annual conferences and Nevada Tribal Environmental Managers Meeting, and 39 outreach and technical assistance activities to tribes (virtual and in person). Given the resource restriction of travel dollars, we promote the EPA online training for all Tribal staff, financial and programmatic: oEPA Grants Management Training for Applicants and Recipients US EPA https://www.epa.gov/grants/epa-grants-management-training-applicants-and-recipient oEPA Grants Webinars US EPA: Live and recorded webinars covering several topics: budgeting, subawards, etc. https://www.epa.gov/grants/epa-grants-webinars
24	Request for CFR Training (40). How to navigate the CFR. How Tribes can become familiar with the CFR. Preference for a Tribal Attorney to present. Two parts for the Training (ask Nina); might be a series of trainings.	Tribal Caucus	MSD	The Office of Grants and Debarment is working on training webinars for the updated 2 CFR Part 200 (effective October 1, 2024). Additionally, R9 Grants Branch has updated our 2024 edition of the EPA Region 9 Grants Handbook which contains updates and revisions to federal grant regulations and policies. https://www.epa.gov/system/files/documents/2023-03/epa-region-9-grants-handbook.pdf
25	Tribes continue to have data sovereignty concerns. The concern for protection of information about cultural sites and other sensitive information must be protected. The request is for EPA to work with Tribes to assist in the protection of data.	Tribal Caucus	ORC	All records held by EPA are subject to disclosure to any person upon request unless they fall under an exemption. The most relevant exemptions to Tribes are likely: (1) exemption 3 - matters specifically exempted from disclosure by statute (National Historic Preservation Act Section 304); (2) exemption 4 - trade secrets and confidential business information; (3) exemption 6 - personal privacy; and (4) exemption 7 - enforcement confidential information. EPA may be challenged in its application of the exemptions and may be required to disclose records if EPA loses the challenge. This is the reason why EPA often suggests to only provide information that is truly needed and to otherwise allow EPA employees to view sensitive data but to not leave it in their possession.

26	EPA to work with Bureau of Ocean Energy Management (BOEM) on off-shore wind turbines due to the impact affecting aquatic resources and life. (Catherine Buchannan)	Tribal Caucus	CED	EPA Region 9 has been coordinating with the Bureau of Ocean Energy Management for several years as they have developed strategies for permitting offshore wind facilities and as they begin to consider individual project plans. We participate in regular interagency meetings and provide comments on siting and impacts, as appropriate. Environmental, community and cultural impacts are always at the forefront of our reviews. Jason Gerdes contact Catherine Buchanan.
27	Request update from EPA on Mining Law Reform Workgroup.	Tribal Caucus	Sarah Samples	https://www.doi.gov/sites/doi.gov/files/mriwg-report-final-508.pdf Sarah Samples summarized the Mining Workgroup report. There are 13 specific Tribal recommendations.
28	Can there be QAPP templates for the new requirements? And training how to correctly fill them out properly.	Tribal Caucus	LSASD	The QAPP office is in the process of collecting examples and anticipate having some examples available on the R9 QA website by the end of November. Additionally, Audrey Johnson, Manager of the QA Branch, will present at the Winter RTOC and share the finalized QAPP Guidance.
29	RTOC Tribal Co-Chair looks to address new QAPP requirements and the administrative burden it places on tribes; QAPP templates alone will not suffice for this ask. Requesting to elevate this issue as a standalone request and not just a footnote in administrative burden, for the Regional Administrator to discuss with all RAs.	Roman Orona, RTOC Tribal Co-Chair	Martha Guzman, RA Laura Ebbert, EJCEERD Duane James, LSASD	Region 9's Regional Administrator, Deputy Regional Administrator, three division directors, and the Senior Tribal Advisor are all working on this issue. We do not have a substantive response but are continuing to address these concerns. We are also looping in our national program office for further support and exploring if President Biden's E.O. 14112 impacts QAPPs."