

**MEETING SUMMARY**

**of the**

**INDIGENOUS PEOPLES SUBCOMMITTEE**

**of the**

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**April 15, 2004  
New Orleans, Louisiana**

**Meeting Summary Accepted By:**

**Daniel Gogal  
Designated Federal Official**

**Terry Williams  
Chair**

**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 Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Mr. Terry Williams, Tulalip Tribes, 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 lists the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which summarizes 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, *Activities of the Subcommittee*, summarizes the activities of the subcommittee, which included discussions of recommendations on the draft *Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs*; for a document prepared by the subcommittee, a report prepared by the NEJAC, and the process for applying to serve on the subcommittee. Section 4.0, *Presentations*, provides an overview of each presentation as well as a summary of relevant questions and comments from the members of the subcommittee. Section 5.0, *Action Items*, summarizes the action items adopted by the subcommittee.

**2.0 REMARKS**

Mr. Williams, chair of the Indigenous Peoples Subcommittee, opened the meeting by welcoming the members of the subcommittee and Mr. Gogal, the DFO. Mr. Tom Goldtooth, Indigenous Environmental Network (IEN), presented a traditional invocation to begin the meeting. During the invocation, Mr. Goldtooth asked for peace and safety for all attendees of the meeting and their families. Following the invocation, Mr. Gogal welcomed all visitors and provided reviews of two documents for the members of the subcommittee to discuss during the meeting: (1) a preliminary draft document written by members of the subcommittee, *Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs* (the meaningful involvement document) and (2) a draft NEJAC report, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* (the cumulative risk report).

**3.0 ACTIVITIES OF THE SUBCOMMITTEE**

This section discusses the activities of the subcommittee, which included discussions of (1) comments and recommendations provided by tribal organizations with regard to the meaningful involvement document, (2) how the NEJAC cumulative risk report can better address tribal issues, and (3) the application process for serving on the Indigenous Peoples Subcommittee.

**3.1 Discussion of Recommendations for the Subcommittee's Meaningful Involvement Document**

Mr. Gogal provided a brief description of the process that the subcommittee followed when developing the meaningful involvement document. He stated that a Meaningful Involvement and Fair Treatment Work Group was created that consists of several members of the Indigenous Peoples Subcommittee, as well as Mr. Goldtooth; Ms. Anna Frazier, Dine CARE; and Ms. Jeanette Wolfley, Shashone-Bannock Tribes. Ms. Wolfley prepared the text of the document under the guidance of the other members of the Meaningful Involvement and Fair Treatment Work Group. Mr. Gogal explained that the purpose of the document is to provide advice to EPA about how to most effectively work with tribes in order to ensure their meaningful

**Exhibit 6-1**

**INDIGENOUS PEOPLES SUBCOMMITTEE**

**Members  
Who Attended the Meeting  
on April 15, 2004**

Mr. Terry Williams, *Chair*  
Mr. Daniel Gogal, *DFO*

Mr. Stephen Etsitty, *Proxy*  
Dr. Doo Jung Jin  
Mr. John Roanhorse  
Ms. Karen Wilde Rogers  
Ms. Pemina Yellow Bird

**Members  
Who Were Unable To Attend**

Mr. Calvert Curley  
Ms. Coleen Poler, *Vice Chair*  
Mr. Bob Smith, *Alternate DFO*

involvement and fair treatment in the development and implementation of Federally authorized tribal environmental programs. He added that the issues addressed in the document about public participation and due process, have been contentious issues within tribal organizations for several years. During deliberations with members of the subcommittee over the past year, Mr. Gogal explained, members of some tribal grassroots organizations debated the degree to which the Federal government should impose public participation requirements and due process on tribal governments that have very different ways of governing their people.

Mr. Gogal emphasized the importance of talking about “participation” rather than “consultation” during deliberations because the two words have different meanings. Issues involving public participation have caused several tribal organizations to view the meaningful involvement document as fuel for organizations that wish to diminish tribal sovereignty. Mr. Gogal stated that the members of the Indigenous Peoples Subcommittee agree that tribes should be sovereign and should be allowed to participate in and manage Federal environmental programs. Mr. Gogal said that it is an appropriate time for the subcommittee to address the issue of public participation in written format.

Mr. Gogal reviewed the tentative timeline for finalizing the meaningful involvement document (see Exhibit 6-2). He stated that the timeline is flexible but emphasized the importance of receiving comments as soon as possible. Anyone with comments was encouraged to send them to Mr. Gogal within the next month. His e-mail and mailing addresses are provided on the first page of the preliminary working draft of the meaningful involvement document. Members of the subcommittee will revise the document during the next few months and will provide copies of the revised draft to the individuals who submitted comments. Those individuals will be given approximately 30 days to verify that their comments were adequately addressed and to submit any additional comments. Members of the subcommittee then will revise the document by August 2004 and submit it to the members of the NEJAC for their review and comment. After all comments are addressed and the Executive Council approves the document, Mr. Gogal explained, the NEJAC will submit the final document to the EPA Administrator for consideration.

Exhibit 6-2

**TENTATIVE TIMELINE FOR FINALIZING THE MEANINGFUL INVOLVEMENT DOCUMENT**

<b>May - June 2004</b>	Members of the subcommittee address comments and revise the draft document
<b>June - July 2004</b>	Individuals who submitted comments have 30 days to submit any additional comments
<b>August 2004</b>	Revised draft is submitted to the members of the NEJAC
<b>September 2004</b>	Final draft is submitted to the EPA Administrator

Mr. Goldtooth and Ms. Pemina Yellow Bird, North Dakota Intertribal Retirement Committee and member of the Indigenous People Subcommittee, expressed their thanks to Ms. Wolfley for preparing the meaningful involvement document. They requested that Ms. Wolfley tell the group about the process used to develop the draft document. Ms. Wolfley began by saying that she was hired by EPA to assist the Indigenous Peoples Subcommittee to write the document and that she worked with the members of the Meaningful Involvement and Fair Treatment Work Group to develop the concepts for the document. Members of the work group developed the framework of the document and defined the charge in Attachment A of the document. The charge to EPA states that the document discusses short- and long-term actions that EPA should take to help tribes address meaningful involvement and fair treatment issues related to development and implementation of Federally authorized or approved tribal environmental programs. Ms. Wolfley stated that it was her task to expand on the ideas and concepts in writing and that she made every effort to capture the perspectives of those in the work group. She stated that Chapter 2 was the most difficult to prepare because it was challenging to condense the history of tribal policy into a few pages. She stated that she had to compromise between giving credit to the tribal governments and showing respect for the rights of non-natives in terms of public participation. Ms. Wolfley stated that there seems to be an assumption that all tribal governments reject public participation, which is not the case.

Members of the subcommittee then discussed comments submitted by various tribal organizations and made recommendations for incorporating the comments into the meaningful involvement document. A summary of the subcommittee's discussion is provided below. Recommendations are presented according to the chapter of the document, followed by a general discussion of the purpose and focus of the document.

### **General Comments on the Meaningful Involvement Document**

This section provides a summary of general comments about the document:

- Mr. John Roanhorse, Institute of Tribal Environmental Professionals and member of the Indigenous Peoples Subcommittee, recommended that the document include an example of successful implementation of due process or public participation in Alaska.
- Mr. Gogal recommended that the members of the Meaningful Involvement and Fair Treatment Work Group consider articulating recommendations in the document and make a distinction between actions and recommendations. He also recommended that the document be formatted in such a way that recommendations stand out. In addition, Mr. Gogal suggested that the members of the Meaningful Involvement and Fair Treatment Work Group add a discussion about EPA's providing public participation training to tribes and that the members include language emphasizing that EPA should continue to conduct outreach to tribes and inform them that they are welcome to participate in the decision-making processes.
- Ms. Yellow Bird recommended adding a discussion of natural resources as described on page 3 of Mr. Dean Suagee, Director of the First Nations Environmental Law Program, Vermont Law School and former member of the Indigenous People Subcommittee, paper titled *Dimensions of Environmental Justice in Indian Country and Native Alaska*.
- Mr. Roanhorse recommended including the perspective of academia in the document. He agreed to provide the members of the subcommittee with several Harvard University reports and other academic reports that exhibit an unbiased perspective on the issues. The issues presented in the reports should be included in the subcommittee's document in a concise, unbiased way that tribal members can understand. Members of the subcommittee agreed that tribal communities are divided between those who support environmental justice issues and those who do not and that the document must appeal to both bodies of opinion.
- Mr. Goldtooth requested that an example from the work of Mr. Chris Peters, Seventh Generation Fund, be included in the document. Mr. Peters has developed methods that tribal communities can use to develop sustainable communities based on traditional values within a modern society.

### **Chapter 2**

This section provides a summary of the comments discussed related to chapter two of the meaningful involvement document.

- *Chapter 2, Background* - Members of the subcommittee agreed to include a discussion of the court cases cited on pages 1 and 2 from comments submitted by the Pueblo Laguna (Nevada v. Hicks; Atkinson Trading Company, Inc. v. Shirley; United States v. Lara; and Curo v. Reina). Mr. Roanhorse stated that including a description of the court decisions is important because they demonstrate that the position of tribal communities has become more challenging to enforce in the past 10 years. Mr. Stephen Etsitty, Navajo Nation Environmental Protection Agency and proxy member of the Indigenous Peoples Subcommittee, agreed with Mr. Roanhorse and added that it is difficult to condense the history of tribal governments into a few pages of a document. Mr. Etsitty also stated that the four court cases should be reflected in the background paragraph of the document because the cases demonstrate how some state governments are beginning to encroach on tribal government regulatory actions. He added that the document should mention emerging issues that apply to tribes conducting meaningful public participation and due process, even though he recognized that it will not be possible for the document to include references to the most current issues.

- *Chapter 2, Section B, Environmental Jurisdiction on Tribal Lands* - Mr. Gogal confirmed that the members of the subcommittee wish to create a paragraph titled "Emerging Issues" as the first item in Section B of chapter two and that the text will discuss recent court cases. The text will serve as a placeholder and will require further discussion on the part of the work group. Mr. Etsitty recommended incorporating references to court cases throughout the document as appropriate. The discussion of court cases presently is limited to the first full paragraph on page 16. Ms. Wolfley stated that the discussion of court cases currently is limited to discourage tribes from structuring their programs according to court cases.
- *Chapter 2, Section B, Subsection 1, Development Impacting Indian Lands* - Mr. Roanhorse requested that language be added about (1) the impact of urban sprawl on reservations, (2) specific issues raised by individuals in Alaska, and (3) the clash between economic and industrial development and traditional values. Mr. Roanhorse requested that the subcommittee consider including examples from industry in this section.

### Chapter 3

This section provides a summary of the comments discussed related to chapter three of the meaningful involvement document.

- *Chapter 3, Section A, Subsection 2, Respecting Interests of Community*, first paragraph - Mr. Goldtooth recommended that Ms. Wolfley reword the following sentence to avoid focusing on the negative aspects of tribal government and to focus more on obtaining input from native people.

*"Some tribal leaders, in addressing the myriad of important issues pertaining to running a government appear to overlook the traditional tribal values of respect, reciprocity, humility, and connectedness as these relate to land and tribal members."*

Mr. Gogal reviewed a comment submitted by the Pueblo of Laguna suggesting that the word "religious" be added to the following sentence:

*"Tribal environmental program decisions affect the entire social, [religious], and political fabric of a community because such decisions impact the communal rights to live on, use, harvest, conserve, and transfer lands within the reservation, and the land, itself, as community."*

Members of the subcommittee reached a consensus not to include the word "religious" in the sentence. Rather, they agreed to develop appropriate language that refers to tribal cultural and spiritual beliefs. The language will be approved by all members of the subcommittee and then will be included throughout the document, where appropriate. Ms. Yellow Bird will work with Ms. Wolfley to develop the language and will e-mail it to the members of the subcommittee. Ms. Yellow Bird and Ms. Wolfley will refer to Mr. Suagee's paper and previous documents generated by the Indigenous Peoples Subcommittee for sample language.

Another comment submitted by the Pueblo of Laguna suggests adding the term "land bases" to the following sentence found in the first sentence of third paragraph:

*"Given the history of neglect by the Federal government in protecting tribal [land bases], waters, soils, air, and placing the health of tribal members at risk, tribal community members are keenly aware of the long term consequences of uninformed decision-making and over-exploiting resources."*

Members of the subcommittee reached a consensus to add the term "land bases" but agreed that additional discussion is needed about how the term applies to Alaskan Natives.

Members of the subcommittee agreed to expand the text in order to address the comment regarding the term "in their own vision" on page 4 of the Pueblo Laguna comments on the last paragraph of this

subsection. The members agreed that the quote provided in the comment should be cited in the document. Ms. Wolfley will ask Pueblo Laguna to identify the source of the quote.

### **Additional Discussion on the Meaningful Involvement Document**

Mr. Williams stated that many of the members of the subcommittee are reviewing the comments on the meaningful involvement document for the first time. He encouraged the members to review these comments in more detail during conference calls in the near future.

Mr. Goldtooth inquired whether EPA's American Indian Environmental Office (AIEO) or the National Tribal Environmental Council (NTEC) were approached about providing comments. Mr. Gogal responded that he had attended several meetings with AIEO during which the work group developed the charge that is clearly stated in Attachment A of the document. Mr. Gogal said that AIEO believes that this document addresses a sensitive issue but recognizes that it is an appropriate issue for the NEJAC to address. Mr. Gogal also stated that he has been in contact with individuals at NTEC as well as other tribal organizations to obtain their input on the document. Mr. Gogal added that he was scheduled to participate in a meeting with NTEC in the next week to discuss the document further.

Mr. Roanhorse described an example of one tribe that created a separate company to focus on public participation and implementation of environmental programs, thus alleviating the burden on the tribe. Mr. Gogal agreed that this approach should be considered as an option for tribes.

Mr. Gogal noted that the document has three audiences: (1) EPA and the NEJAC, (2) tribal organizations, and (3) nontribal organizations. He added that the purpose of the document is to describe the fundamental rights of the tribes and advise EPA about how to enforce those rights but that its additional purpose is to promote understanding and appreciation of the tribal system among nontribal organizations.

Ms. Yellow Bird responded that the document should not have nontribal individuals as a target audience. She emphasized the importance of focusing on receiving feedback from native individuals. Ms. Yellow Bird later clarified that it is not her intention to exclude nontribal people from discussions with the tribes but that the subcommittee should make the concerns of tribal people its priority and that the ultimate goal of the document should be to preserve tribal culture. Ms. Yellow Bird emphasized the importance of focusing "on the resource" when writing the document and when providing advice to EPA. Given the fact that the issues involve resources that fall under tribal control, Ms. Yellow Bird said, it is very important that the subcommittee focus on tribal cultures and needs. She clarified that it is not her intention to exclude anyone from having a voice but rather to focus on gathering public comments from tribal members.

Mr. Gogal stated that the issues of public participation requirements and due process become critical when tribes seek to participate in Federal environmental programs because any organization participating in a Federal program must follow a process of public participation and fair treatment. However, the mechanisms by which tribes seek to conduct public participation can vary from those of other government entities as long as the tribal mechanisms have the fundamental components. Mr. Williams responded by saying that tribes must follow a process of public participation to a reasonable extent but also have the right to develop their own environmental policies rather than "mirror" the processes of the Federal government.

### **3.2 Discussion of Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts**

Mr. Charles Lee, Associate Director for EPA OEJ, joined the members of the subcommittee along with Dr. Hector Gonzalez, City of Laredo. Mr. Lee provided background about the NEJAC's draft report on cumulative risks and impacts. He explained that two indigenous representatives participated in a work group that developed the draft cumulative risk report. He described the eight themes used to organize the recommendations in the report and added that the report will serve as guidance for EPA to make changes over the next several years. Mr. Lee said that he welcomes comments from the tribal members about their perspective on cumulative risks. He explained that the report lacks discussion of ecological restoration and recovery concepts, which are different from traditional risk assessment methods.

Mr. Williams stated that members of tribal communities have been aware of the issues surrounding cumulative risks for many years and have responded to EPA by providing information and comments. Mr. Williams also stated that tribal communities that have subsistence lifestyles are most affected by cumulative risks. As an example, Mr. Williams explained that tribal women in the Tulalip Tribes collect grasses and chew on them to soften them for basket weaving. Some of these grasses have been sprayed with chemicals that cause adverse health effects for those women. Mr. Williams went on to explain that the tribal government was able to stop the spraying of an area of grasses that the women can now use for basket weaving without the risk of negative health effects. He also cited scientific studies proving that subsistence-lifestyle tribal members who change to a diet of processed food exhibit higher risks of developing diabetes, cancer, and heart disease. He stated that EPA and other Federal agencies must recognize the effects that their actions have on tribal traditions and must understand how heavily subsistence communities rely on natural resources.

Mr. Williams stated that the U.S. government must recognize that the species that members of tribal communities rely on for food do not live solely on tribal land but more often somewhere else, which is another way that cumulative risks impact tribal communities. Mr. Williams said that the Federal government must therefore focus on restoration and recovery to restore essential species to tribal lands.

Mr. Williams addressed the issue of implementing a program that focuses on restoring species on tribal lands. He stated that most health issues found among members of tribal communities are caused by contamination that is unregulated. Therefore, Mr. Williams stated, EPA should develop a new statutory process that includes a method for identifying species that need restoration and should develop programs that will reduce the risks to those species.

Finally, Mr. Williams said that EPA should be aware that tribes have traditional knowledge that can be useful in modeling projects; however, much of the traditional knowledge is considered sacred by the tribal people. Tribes will share such information with the understanding that the information will not be made public without their prior consent.

Mr. Goldtooth emphasized the importance of addressing the cultural and psychological impacts that a loss of natural resources has on tribal people. These impacts are not easy to define in government processes and are often considered to be insignificant. Mr. Goldtooth said that these impacts, such as depression resulting from loss of land, should be described in the cumulative risk report. He added that there have been several initiatives to quantify psychological and cultural impacts on tribal communities but that this has proven to be a challenging process. Mr. Goldtooth also stated that the scientific studies described in the cumulative risk report use western forms of science. He explained that tribal people rely on traditional forms of science, which also should be noted in the cumulative risk report.

Mr. Goldtooth explained that there are alternatives to risk assessment when cumulative risk impacts are to be quantified. He advocated the use of a precautionary approach and urged the members of the subcommittee to obtain training in the precautionary approach in order to learn how such a process can be implemented in the future.

Mr. Lee thanked the members of the subcommittee for their comments and suggestions for improving the cumulative risk report. He explained that risk assessment is a new and evolving field and that relatively few of individuals were experienced in risk assessment methods. Mr. Lee recommended that the cumulative risk report include a discussion of the links between risk assessment and ecological assessment.

Mr. Lee stated that he would like one of the final 15 recommendations in the report to address cumulative risks from a tribal perspective. He agreed to follow up with Mr. Gogal in order to discuss how the language in the cumulative risk report could be adjusted to incorporate the comments offered during the subcommittee's meeting.

### **3.3 Discussion of the Application Process for Serving on the Indigenous Peoples Subcommittee**

Mr. Gogal reported that OEJ currently is seeking nominations for individuals who are interested in serving on the Indigenous Peoples Subcommittee beginning in January 2005. He explained that two individuals, Mr.

Peters and Ms. Charon Asetoyer, Native Women's Health Education Resources Center, have been recommended by OEJ to serve on the subcommittee but could not attend the NEJAC meeting.

Mr. Gogal reviewed the process for applying to serve on the subcommittee. Exhibit 6-3 summarizes the application requirements. Mr. Gogal stated that although there is no official deadline for receiving applications, OEJ encourages applicants to submit their application packages as soon as possible. All applications should be sent to Mr. Gogal or Mr. Lee at OEJ. Their contact information is provided in the meaningful involvement document and on OEJ's web site. After receiving applications, Mr. Gogal explained, OEJ will contact the applicants if additional information is needed.

**Exhibit 6-3**

**DOCUMENTS TO SUBMIT WHEN APPLYING TO  
SERVE ON THE INDIGENOUS PEOPLES  
SUBCOMMITTEE**

- A letter addressed to Mr. Gogal or Mr. Lee that describes your interest in serving on the subcommittee and all of your relevant experience. The letter also must identify one of the following categories that describes your field of expertise:
  - Government
  - Academia
  - State/Local Government Representative
  - Business/Industry Representative
  - Tribal/Grass Roots
- One letter of recommendation
- A resume including all of your contact information and relevant experience

Mr. Gogal explained that OEJ must submit at least three names for each category of expertise to EPA OECA and that OEJ provides its own recommendation for each individual. Mr. Gogal added that an individual who applies to serve on the Indigenous Peoples Subcommittee also is considered for the other six subcommittees. If an individual is selected to serve on one of the subcommittees, the person will be contacted and given the opportunity to accept or decline the offer.

Mr. Gogal said that the issues that the Indigenous Peoples Subcommittee will address in the next two years are (1) how the National Historic Preservation Act (NHPA) can be used to preserve tribal lands and sacred places and (2) the impacts of global warming on indigenous populations.

Mr. Gogal reported that EPA Region 10 has agreed to sponsor an Alaskan representative to serve on the Indigenous Peoples Subcommittee. Mr. Gogal pointed out that this is a wonderful opportunity for Alaskan tribal people to provide input during the subcommittee's deliberations. OEJ is in the process of identifying individuals in Alaska who are interested in serving on the subcommittee, and Mr. Gogal encouraged the Alaskan participants in the meeting to discuss this opportunity with other tribal members in Alaska.

Mr. Goldtooth asked what steps are being taken to improve the transition between members of the subcommittee. He encouraged the subcommittee to consider increasing the time of overlap for individuals serving on the subcommittee and to conduct an orientation process for new subcommittee members.

#### 4.0 PRESENTATIONS

This section summarizes the presentations made to the Indigenous Peoples Subcommittee.

##### 4.1 Maniilaq Association

Ms. Hazel Apok, Maniilaq Association, began by explaining that the Maniilaq Association is a nonprofit consortium of 12 Federally recognized tribes in northwest Alaska. As a representative of the association, Ms. Apok offered several recommendations to members of the subcommittee. She recommended that the subcommittee advise EPA to recognize tribes as sovereign nations and allow them to exercise self-governance. She also stated that the most appropriate way to determine whether Alaskan tribes are practicing public participation is to survey each tribe in Alaska and learn about the processes that it follows to implement environmental programs. She recommended that EPA increase its collaboration with tribal organizations, preferably in person. Ms. Apok explained that each tribe in Alaska governs its people in a different manner and that how each governs is written into tribal policies, bylaws, and constitutions. She added that a survey would allow EPA to determine whether the policies of each tribe are consistent with EPA regulations.

Mr. Williams responded to Ms. Apok's testimony by saying that members of the subcommittee and many individuals in EPA are unaware of the issues facing tribes in Alaska. He emphasized the importance of having a representative from Alaska serve on the subcommittee and eventually on the Executive Council of the NEJAC. Mr. Williams asked the Alaskan Natives present at the meeting to consider serving on the subcommittee and to spread the word to others in their communities. He emphasized that if an Alaskan Native was on the subcommittee, this would help other members of the subcommittee to relay the issues facing Alaskan tribal members to the NEJAC. Ms. Apok responded that members of the subcommittee should visit the tribal members in Alaska and determine who would be the best individual to represent the Alaskan people on the Executive Council of the NEJAC.

#### **4.2 Native Village of Selawik**

Mr. Bente Davis, Native Village of Selawik, stated that tribal communities in Alaska need additional training related to applying for grants. He stated that such training would enable the communities to become more self-sufficient and effective in obtaining funding from EPA. He also requested that individuals who are trained in a technical field also should be trained in managing grants.

Mr. Gogal responded that this issue applies directly to the issues brought up in the meaningful involvement document. He acknowledged that there is a need to provide public participation resources such as grant application training to tribes so that they can effectively implement environmental programs.

Mr. Roanhorse agreed with the presentation and comments and said that the members of the subcommittee, EPA, and other government agencies must learn more about the issues facing tribal communities in Alaska. He added that there is much to be learned to determine how the subcommittee can help to create programs that are more appropriate for tribal communities in Alaska.

Ms. Yellow Bird asked Mr. Gogal whether EPA currently has a grant management program. Mr. Gogal responded that such programs exist but are not consistent among EPA regions. He added that training about writing grant applications is available on EPA Region 5's web site.

Mr. Williams asked Mr. Davis what recommendations the subcommittee can make to the NEJAC about obtaining input from the tribes in Alaska. Mr. Davis replied that the subcommittee should approach the tribal members in Alaska in person and should develop a survey asking these people to provide their ideas about meaningful involvement and fair treatment. Dr. Doo Jung Jin, Northwest College, agreed that it is a good idea for representatives of the subcommittee to visit the tribal members in Alaska and witness how they conduct public involvement. Ms. Apok added that public participation is taking place in Alaskan tribes but in a number of different ways.

Mr. Gogal asked Ms. Apok to submit an example of successful public participation in an Alaskan tribal community for inclusion in the meaningful involvement document, and Ms. Apok agreed to do so.

#### **4.3 Ugashik Traditional Village**

Mr. Roy Matsuno, Ugashik Traditional Village, expressed concern about lack of funding for enforcement of tribal environmental policies and requested additional funding of enforcement programs for tribes. Mr. Roanhorse asked who tribal organizations are taking enforcement actions against, and Mr. Matsuno responded with a few examples. He explained that there have been several fuel spills by commercial fishermen and that tribal communities have no avenue for enforcing cleanup activities. He also explained that a barge owned by the state of Alaska on a river near a tribal community is contaminating the tribe's water source. The tribal community currently does not have the enforcement authority to force the state to decontaminate the barge.

Mr. Etsitty informed the group that tribal compliance is one of the national priorities of EPA's Office of Enforcement and Compliance Assurance (OECA) for fiscal years 2005 through 2007. Mr. Etsitty encouraged Mr. Matsuno and other participants in the meeting to contact OECA representatives and provide comments for them to consider, including comments regarding the tribal compliance national priority. Mr. Gogal provided the names of OECA contacts to Mr. Matsuno.

#### 4.4 National Tribal Environmental Council, Bureau of Indian Affairs

Mr. David Conrad, Executive Director, NTEC, provided several suggestions to the subcommittee for improving the meaningful involvement document. He urged members of the subcommittee to adopt a “Bias for Action” approach that focuses on the positive progress related to tribal environmental programs that has been made in tribal communities. He stated that such an approach would provide incentives for tribal organizations to take action and provide comments to the subcommittee.

Mr. Conrad stated that he is aware of several tribal members who do not agree with the charge included in the meaningful involvement document and stated that some tribal members are not commenting on the document because they do not believe that the subcommittee has credibility. To change the perspective of these tribal members, Mr. Conrad recommended that the document emphasize successes rather than the negative aspects of the issues that divide tribal communities. Mr. Conrad said that tribes must be motivated to obtain training in public participation rather than being forced to do so by a strictly prescribed plan.

Mr. Conrad concluded by saying that tribal governments are being singled out by the Federal government with regard to public participation requirements and due process. Several tribal communities believe that the subcommittee's meaningful involvement document will report only the criticisms and will give the impression that tribal people cannot run a government effectively.

Ms. Wolfley responded that the members of the subcommittee are aware of the differing opinions between tribal members and organizations. However, she added, those opinions have not stopped the subcommittee from preparing the document because it is important to address the issues that are dividing tribal communities. Ms. Wolfley added that the most important point that the document addresses is whether tribes should be forced to adopt European ideals of public participation and due process. She argued that EPA still is learning about implementation of public participation requirements and due process in a traditional context.

Mr. Williams stated that tribes need to be aware of the flexibility that is inherent in EPA requirements. Tribes must follow Federal requirements, but they do not have to follow them precisely, said Mr. Williams. He also pointed out that there is a Federal regulation that recognizes tribal members as citizens, of both their tribes and the United States. Under that regulation, the Federal government has an obligation to ensure that citizen rights to public participation and due process are protected.

Mr. Gogal addressed Mr. Conrad's point about the disagreement of tribes regarding the charge in the meaningful involvement document. He explained that the charge has been in place for 14 years and that the members of the subcommittee believe that this is an appropriate time to address the issues again. Mr. Gogal challenged tribal members to take a proactive approach in obtaining information about what is working for states and the Federal government.

Ms. Yellow Bird thanked Mr. Conrad for his comments and agreed that tribes do “feel singled out” by the Federal government when it comes to public participation and due process. She added that the Federal government should review all forms of government, including tribal governments, to ensure that the appropriate processes are being followed.

#### 4.5 Newhelen Tribe

Ms. Agnes Rychnovsky, Newhelen Tribe, described a mining project that is scheduled to take place near her village in Alaska. She expressed her concern about the potentially devastating impacts that mining would have on a nearby lake that currently is pure. Ms. Rychnovsky stated that the mining company has been able to obtain air and water quality permits from the state of Alaska without the state recognizing the potential impacts on tribal communities. She added that tribes are not provided with sufficient notice to give testimony against the permits, and she urged the members of the subcommittee to support the inclusion of tribal representatives at the beginning of any decision-making process that may have an impact on their communities.

Ms. Yellow Bird asked Mr. Lee what the NEJAC can do to address the fact that these tribes are being asked to implement meaningful public participation but that the state is not providing them with the same rights. Mr.

Lee responded that Ms. Rychnovsky and other Alaskan tribal members should contact EPA Region 10 to inquire about the public participation process. Mr. Lee and Mr. Gogal agreed to contact EPA Region 10 in order to discuss the issues and determine the best approach for improving the public participation process for the Alaskan tribes. Ms. Rychnovsky thanked the subcommittee members for their time and extended an invitation for the NEJAC to have a meeting in Alaska.

#### **4.6 Makah Tribe**

Mr. Vince Cook, Makah Tribe, expressed his appreciation to the subcommittee for preparing the meaningful involvement document. He suggested that the members of the Meaningful Involvement and Fair Treatment Work Group move the paragraph currently appearing before the conclusions on page 33 of the document to the background chapter. The paragraph states that "EPA needs to budget for, and offer, financial assistance and technical support to promote and provide for meaningful involvement and fair treatment." Mr. Cook proceeded to provide additional suggestions for conducting effective outreach in tribal communities. His approach involves meeting individuals in a tribal community face-to-face and engaging them in the decision-making process.

#### **4.7 Tulalip Tribes**

Mr. Williams presented the results of a project that he and other members of the Tulalip Tribes began in 2003. The project involves the development of three training manuals. The first manual describes ways that tribes can interpret NHPA and the National Environmental Policy Acts (NEPA) to ensure that tribal individuality is maintained. The second manual describes a methodology for adapting a watershed analysis of the northwest United States to the hydrology of various other regions in the United States, thus providing a standard methodology for tribes to use when researching the watersheds in their regions. The third manual currently is under development. Mr. Williams explained that all three manuals are collaborative decision-making tools that tribes can use to address environmental problems in their regions.

Mr. Williams described the treaties that exist between tribal people and other American people to ensure that the two groups can coexist peacefully and live in parallel without causing harm to each other. However, Mr. Williams explained, those treaties are not being upheld. Tribal communities are being overwhelmed by environmental impacts resulting from the actions of nontribal people. Mr. Williams explained that tribes historically survived and stayed in good health because 100 percent of the required resources were available and that the tribes did not have to spend time searching for food or other essential items. He reported that only about 20 percent of the essential resources are available to tribes today because of either species shift or climate change. Mr. Williams said that it may be possible to restore tribal lands to the extent that 80 percent of the essential resources are available.

Mr. Williams explained that members of the Tulalip Tribes use NEPA, watershed analysis, and traditional knowledge to establish collaboration with the U.S. government. He added that the tribes have established a NEPA-style process that allows a tribal agency to become a co-lead for the program and to invite trustees to participate with tribes in identifying available species in the area. Based on interviews with approximately 14 percent of the population in Tulalip, Mr. Williams explained that approximately 100 plants are critical to the day-to-day lives of Tulalip natives. After determining the availability and status of each species, the tribes used NEPA and watershed analyses to determine species presence or absence and used traditional knowledge to identify how the loss of each species impacts the cultural and spiritual aspects of the tribes.

Mr. Williams explained that tribal and nontribal populations within the watershed were interviewed to determine their commonalities and an implementation strategy. Based on the interview results, it was determined that the Tulalip Tribes can achieve species recovery that 80 percent of the essential species will be present in the watershed. To achieve this goal, the tribes established a watershed group to analyze the potential for and design of restoration and recovery projects. So far, Mr. Williams reported, the group has worked with the community to raise \$11 million in grant money that will be used to restore the salmon population; a matching grant in the amount of \$40 million. Mr. Williams acknowledged that the goal of the project will not be achieved in a short time. He concluded by encouraging tribes to continue to conduct cumulative risk analyses and to create legal mechanisms that will allow them to achieve cooperating agency

status. He reported that the watershed group will meet again in June 2004 and will begin contacting other tribes to determine whether they wish to implement similar projects.

Mr. Lee stated that a new grant program has been established for sustainability projects. He agreed to send information about the program to Mr. Gogal for distribution. Mr. Lee added that he would like to include a description of Mr. Williams' project in the cumulative risk report. Mr. Lee will coordinate with Mr. Gogal and Mr. Williams to obtain the project description for the report.

## **5.0 ACTION ITEMS**

This section summarizes the action items adopted by the subcommittee.

- T Members of the subcommittee will address comments and revise the preliminary draft of the meaningful involvement document.
- T Ms. Yellow Bird will develop language concerning the cultural and spiritual meaning of environmental resources for inclusion in the meaningful involvement document.
- T Mr. Roanhorse will provide the members of the subcommittee with several academic reports from Harvard reports that present unbiased analyses of the effects of economic development on tribal communities.
- T Members of the subcommittee will continue to address all public comments on the meaningful involvement document in follow-up conference calls.
- T Members of the subcommittee will research the possibility of EPA hosting a NEJAC meeting in Alaska.
- T Members of the subcommittee and members of tribal organizations will continue to conduct outreach to tribal communities in order to obtain feedback on the meaningful involvement document.
- T Ms. Apok will provide the members of the subcommittee with an example of successful implementation of public participation in Alaskan tribal communities.
- T Mr. Gogal and Mr. Lee will contact individuals at EPA Region 10 to discuss what Region 10 is doing to ensure that Alaskan tribes are being offered a fair public participation process.
- T Mr. Gogal and Mr. Lee will discuss how to include the comments of the subcommittee in the NEJAC cumulative risk report.
- T Mr. Lee will provide Mr. Gogal with information about a new grant program for sustainability projects.