

**EPA Region 9 RA Greeting and Check-in Call with Tribal Leaders**  
**April 13, 2020, 3:00 – 4:00 PM**  
**Questions and Answers (Incl. Follow-Up Questions)**

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**Overview on Meeting:** On April 13, Region 9 Regional Administrator (RA) John Busterud convened a virtual roundtable discussion for tribal leaders in Region 9 to address concerns and questions stemming from the COVID-19 pandemic. Topics included emergency management, enforcement, and grants, among others. EPA Region 9 staff and senior management were also on hand to answer questions. RA Busterud provided opening remarks. During his remarks, he shared with the group information on a new Agency website with information on disinfectants, drinking water, and wastewater, as well as links to other resources. Please see: <https://www.epa.gov/coronavirus> and <http://epa.gov/grants/rain-2020-g02> Following an introduction from the RA, we proceeded to the questions from the Tribes, summarized below by category.

**Emergency Management:**

- *How, exactly, is EPA assisting Tribes, outside of forwarding the information we have been receiving? With the fires, there were dedicated staff to handle the emergency situation. Has the same been set aside for the Covid-19 pandemic situation? Of course, we understand this virus is different than forest fires. (Kashia)*
  - Enrique Manzanilla, Superfund Division Director: Many tribes have declared their own emergencies. The President has declared a nationwide emergency which triggered FEMA and HHS assistance. HHS is the lead for this emergency declaration with FEMA coordination (activated March 14, 2020). EPA is working with FEMA virtually and monitoring activities. EPA's role under emergency response is for hazardous materials and oil spills but that role has yet to be activated. Recent EPA roles have been with medical waste management and assistance with decontamination of the Princess Cruise Ship, which was docked in Oakland, CA. EPA has a Point of Contact at HHS and FEMA and we are attending regular calls.
- *Sanitation: Rural tribes with no solid waste providers-Will there be any emergency type funding to assist tribes in trash removal? (North Fork Rancheria of Mono Indians of California)*
  - Enrique Manzanilla, Superfund Division Director: This issue has not been raised to HHS, FEMA or CAL OES, which would be the process needed. EPA can raise this during the state-wide calls. There is a FEMA Tribal Advisor.
- *What can Tribes expect from EPA Region 9 in terms of resources and planning and response to wildfire, flood, drought that threaten human health and the environment and how will EPA include Tribes in the implementation of protections for the environment? (Pyramid Lake Paiute Tribe)*
  - Enrique Manzanilla, Superfund Division Director: These issues could be supported through a Tribe's disaster planning process through FEMA. EPA can help coordinate with FEMA if needed.

## **Enforcement (ECAD, WD):**

- *As a result of the COVID-19 pandemic, EPA R9 has suspended monitoring and assessment services to tribal water facilities. Some of the technical services EPA provides both wastewater and drinking water facilities are vital to the health of the tribes. Has EPA worked out agreements with the State of Nevada or private companies to take over some of these services during the crisis? Does EPA consider themselves in compliance with CWA and CDWA regarding this suspension of services? (ITCN)*
  - Tomas Torres, Water Division Director: EPA can provide technical assistance and we have reached out to water systems. We have a contract with the Rural Community Assistance Corporation (RCAC) for circuit riders who can provide technical assistance to tribal water utilities. These circuit riders can be deployed as needed; they have been declared as “essential”. They have already been deployed in CA and AZ to provide technical assistance and chemical supplies for utilities.
  - Amy Miller, Enforcement and Compliance Assurance Division Director: EPA is not currently conducting compliance inspections. We can help if issues arise and if needed will take appropriate action.
- *Regarding coordination with other agencies on the essential employees for water facility tribal employees, is EPA communicating that directive to USDA and Indian Health Services, seems to be disconnect? (ITCN)*
  - Ensuring that drinking water and wastewater services are fully operational is critical to containing COVID-19 and protecting Americans from other public health risks. On April 7, Administrator Wheeler issued a letter to tribal leaders emphasizing the importance of wastewater and drinking water services. <https://www.epa.gov/sites/production/files/2020-04/documents/ow.tribalfinal.signed.pdf>
  - Sanitary surveys of drinking water systems on tribal land are on hold for now. In NV, Indian Health Services performs these sanitary surveys. EPA’s staff and contractors are not performing routine sanitary surveys at this time to prevent the transmission of COVID-19.
  - Likewise, EPA is not performing routine compliance inspections of wastewater and drinking water systems during the shelter in place to prevent the spread of the virus. However, if there is an acute or imminent human health or environmental threat, we will take the appropriate actions in the field to address that threat which may include a compliance inspection or emergency response. Please let EPA know of any such circumstance.
  - On March 27, EPA AA for OECA Susan Bodine issued a memo addressing compliance issues at regulated facilities during the COVID-19 crisis. The memo is not a no-action assurance for future enforcement actions but outlines when the agency may use enforcement discretion during COVID-19. It recognizes that regulated entities are expected to perform all requirements of the regulations, permits or orders. However, if they cannot meet all requirements, they must follow the terms of the permit, EPA orders or judicial orders to notify EPA and explain how the entity intends to mitigate non-compliance. <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>
- *Can EPA provide clarification on the recent press coverage for EPA to step back on enforcement; what has been suspended; what remains? (White Mountain Apache Tribe)*

- Amy Miller, Enforcement and Compliance Assurance Division Director: The Susan Bodine memo addresses issues during the pandemic. Tribes can regulate under tribal regulations. EPA will move forward on any acute and imminent and substantial endangerment issues.

### **Administrative Grants Management Questions:**

Two questions related to recent legislation:

- *From the three stimulus funding packages, will EPA be providing tribes with any funding? (Viejias Band of Kumeyaay Indians)*
- *Can EPA Region 9 provide information on environmental program funding or compliance funding relief to be distributed under any of the recently enacted stimulus bills or any program and compliance assistance that might be forthcoming in other legislative proposals? (Pyramid Lake Paiute Tribe)*
  - Kerry Drake, Mission Support Division Director: In the Stimulus package, EPA received \$7.23M which about half was designated to clean EPA facilities and the remainder for EPA research and registration of pesticides, e.g., sanitizers. EPA did not receive any funds to pass to tribes or state or local governments in this act.
  - EPA's FY20 budget provided funding for tribal programs at essentially the same levels as last year.
- *What do we need to understand about the current situation with active grants? i.e. commitments and staff. Kashia Tribal Offices are closed, and much of the staff is working remotely, but not full time for safety and many have families at home. What are the timelines for grants being processed for the upcoming fiscal year? (Kashia)*
- *What effects on program funding such as reporting requirements, final work plans and budgets, etc. Will timeframes / deadlines be extended for submissions? What are the extensions to deadlines anticipated for our Environmental Programs? (Pyramid Lake Paiute Tribe)*
- *Grants Management, Deliverables, etc. What accommodations will be made for tribes that have lockdowns, shelter in place orders, and full or partial government shutdowns?*
- *How will 2nd quarter reporting be considered; automatic extensions or does each tribe need to submit a request to their EPA officer? (we've already asked for an extension, but if this drags out...) (North Fork Rancheria of Mono Indians of California)*
- *Can tribes utilize personnel costs to apply for the funding that will become available for the public health emergency? (our plan has a research and grant writing commitment) (North Fork Rancheria of Mono Indians of California)*
- *If the self-isolation and shut down of our offices continue, what will happen with our GAP and CWA programs? Will their project officers work with our programs if they're not able to complete the commitments in their work plans? Our grant is in the last year of the grant cycle, but with these unexpected circumstances, will they be allowed to carry over their commitments to next year? (Te-Moak Tribe of Western Shoshone)*
  - Please refer to the following RAIN documents: <http://epa.gov/grants/rain-2020-g02>

- Kerry Drake, Mission Support Division Director: Application deadlines will remain the same. If extensions are needed, please call your Grant Specialist and Project Officer.
- We are continuing to make on-time awards to grantees. If you have a hardship, please contact your Grant Specialist and Project Officer.
- In most cases, workplans can be modified, budgets can be modified, performance periods can be extended. If needed, email your Grant Specialist and Project Officer with a description of what is needed.
- Grant Deliverables – Compensation for employees is permitted if it is in accordance with your tribe’s policies and procedures for all personnel. If your project will be incomplete, contact your Project Officer. EPA can extend due dates for reports. Closeout reports can be extended up to 1 year. Contact your Grant Specialist and Project Officer if any extensions are needed.
- Carolyn Truong, Grants Management Officer: EPA is looking at requesting waivers for some requirements.
- Using EPA funds for Covid-19? It depends on the statutory authority of the program.
- If the shutdown continues and a tribe cannot complete the work or request a workplan revision EPA can terminate the agreement. If this is needed contact your Grants Specialist and Project Officer. There are some flexibilities, so please contact us.
- *Some Nevada tribal environmental staff are on admin leave or unemployment. I understand that tribes can still draw down, but because some smaller tribes rely on indirect and enterprise money that is lost during the pandemic, they sent staff home. (Cliff Banuelos, Inter Tribal Council of Nevada)*
  - Each tribe and each situation are different. Contact EPA.
  - Follow the Tribe’s policies and procedures.
  - If a waiver is needed, EPA can request a waiver.

### **Programmatic Grants Questions:**

Several questions about flexibility regarding deliverables and reporting:

- *How will the shutdown of our offices effect our environmental program’s end of the year appraisal? (Te-Moak Tribe of Western Shoshone)*
- *With so many of our outreach and educational events delayed or canceled, how will this influence us completing our deliverables and receiving [future] funding? (Pinoleville Pomo Nation)*
- *Will video conferencing be acceptable in meeting work plan deliverables? What is acceptable documentation? (North Fork Rancheria of Mono Indians of California)*
- *Will creativity be acceptable to meet some of the outreach activities, such as using social media platforms, video, even if they are not directly stated in the work plan, or should an amendment be submitted? (North Fork Rancheria of Mono Indians of California)*
- *Should the Tribe expect any significant changes in EPA grant program funding levels? (Middletown Rancheria of Pomo Indians)*

- As with past years, Grantees will need to describe the work that was done. Grantees can request extensions for workplan activities. End-of-Year Joint Evaluations will be based on revised workplans, consistent with prior years. If Admin leave was approved by the tribe, it will be an eligible cost, but will need to be well-documented.
- Grantees can expect flexibilities, but statutory limitations will still apply. EPA will be as flexible as possible, but it needs to be legal. Contact your Project Officer.
- Videos? Presenting a video might take the place of an in-person outreach event. The engagement that takes place and what was delivered should be provided.
- Funding levels have not changed for the Tribal Branch, Air Division and Water Division. We are working to award all grants by 9/30/2020.
- *Some directors act as defacto or actual emergency managers for their respective tribes. Some of that work involves writing last second continuity of operations plans, CDC grant applications, FEMA grant applications, etc. that are not in their GAP work plans. Are you saying simple work plans mods should be able to address this extra work? (ITCN)*
  - EPA does not have the authority to waive statutory requirements. To the extent these emergency activities are consistent with the statutes and regulations funding the task, a workplan modification may suffice. To the extent these activities fall outside the scope of activities allowable under the grant, using EPA funds to support staff time to complete them is an ineligible activity. Early coordination with your Project Officer is advised.

#### **ORC:**

- *It appears that USEPA has not extended all comment periods for federal rules or similar changes during this crisis, although some tribal programs have been put on administrative or unpaid leave and are not manning their offices. Does USEPA intend to respond to this concern and extend all comment periods? (ITCN)*
  - EPA is looking at various ways to address this type of concern, including virtual hearings and accepting comments electronically, as well as the possibility of extending comment periods on a case-by-case basis.
- *Is EPA proposing any statutory flexibility for tribes due to COVID? (White Mountain Apache Tribe New Questions)*
  - EPA does not have authority to waive statutory requirements.

#### **Border Fence:**

- *EPA Region 9 will be submitting comments on Border Fence - Due date for comment responses extended from April 15, 2020 to Friday, May 15, 2020. Will EPA's comments include environmental protections that will be applied to this activity? (Pyramid Lake Paiute Tribe)*
  - EPA Region 9 will be submitting scoping comments to the US Customs and Border Protection for the latest segments proposed for the Border Fence. This input is separate from public comment. EPA's comments will provide recommendations for how to evaluate and

reduce environmental impacts. Our comments typically address issues like water quality, hydrology, groundwater and drinking water impacts, air quality, and impacts to wildlife.

### **RA Priorities:**

- *What environmental protection priorities does Administrator Busterud have for serving the term as Region 9 Administrator? (Pyramid Lake Paiute Tribe)*
  - RA Busterud will address the RTOC at the Plenary Session in late April and will include this information in his address.

### **WOTUS:**

- *Would the Administrator consider working with Tribes on the redefining of WOTUS to ensure that the water resources of Tribes are maximally protected? (Pyramid Lake Paiute Tribe)*
  - The EPA and USACE conducted tribal consultation over both the 2019 Rule repealing the 2015 WOTUS rule and the Navigable Waters Protection Rule (NWPR); summaries of issues raised during tribal consultation can be found at the NWPR website. As a part of the Resource and Programmatic Assessment developed for the NWPR, EPA found that nothing in the rule text will affect the ability of tribes to apply and enforce independent authorities to protect aquatic resources under tribal law. CWA grants to develop and implement water quality programs under Sections 106, 319, 320, and 104(b)(3) will not be affected by the NWPR and these funds will remain available to tribes to develop & implement programs to protect aquatic resources.
- *What type of enforcement compliance is expected by the EPA and does EPA expect States to assume enforcement responsibilities contemplated here? (Pyramid Lake Paiute Tribe)*
  - The scope of CWA geographic jurisdiction will be decreased by the NWPR and waters outside of CWA jurisdiction will be outside of EPA's enforcement authority under the NWPR. However, there is nothing in the NWPR that would limit the ability of states or tribes to apply and enforce independent authorities over aquatic resources under state or tribal law.

### **SDWA Compliance Funding:**

- *Is EPA promoting any legislative proposals that would assist in funding Safe Drinking Water Act (SDWA) compliance actions? How does such a proposal protect human health and the environment? What environmental protection benefits will result from the rule? (Pyramid Lake Paiute Tribe)*
  - We are unaware of any program or compliance assistance that might be forthcoming in other legislative proposals. However, there appears to be widespread acknowledgement and interest by Congress that additional stimulus legislation is needed with an expanded scope across many sectors. Recent efforts by the water advocacy organizations have laid crucial groundwork for future stimulus phases.
  - In the interim, EPA Region 9 is prepared to work with its Federal partners (CDC, Indian Health Services) and technical assistance providers (Rural Community Assistance Corporation, Rural Water Association) to provide program and compliance assistance for meeting SDWA and CWA goals and objectives.

**Supplying PPE to Tribes:**

- *Wondered if any tribe asked under the Emerg Mgmt questions, if EPA is able to supply any PPE, or if budgets could be modified during the current project period to include purchasing additional PPE to protect staff carrying out project related activities (mainly face masks). I understand from another EPA contact that any agency PPE was recalled by GSA. We continue to advocate for available PPE, as tribal governments don't rate at the same level of priority in our Operational Area when allocation decisions are being made for a limited supply of PPE (first priority being health care facilities and first responders). (Federated Indians of Graton Rancheria)*
  - EPA nationally has donated unused PPE to federal response efforts, and Region 9 further donated 1,150 N95 masks directly to CalOES to support responders in California. Tribes in need of PPE may consider making a request through FEMA or CalOES for support. Tribes needing PPE for staff not engaged in health care might first consult with CDC on recommended types of PPE appropriate to each worker/work type. Purchase of PPE for grant-funded personnel completing tasks specified in the work plan may be an allowable cost. Coordination with your Project Officer on needed work plan or budget modifications is recommended.
  - PPE distribution to Water and Wastewater Utilities – FEMA is supplying reusable cloth masks to critical infrastructure employees throughout the country. EPA is coordinating the water sector request and facilitating the distribution through the Water/Wastewater Agency Response Network (WARN) Chair in each state. Requests for PPE are currently prioritized based on the number of COVID-19 cases in the state. California is expected to receive its first shipments next week. We do not have a time estimate for Arizona or Nevada shipments. Cost is free and availability is for any drinking water or wastewater utility, regardless type, size or affiliation (WARN or other membership). EPA expects that masks be allocated at a rate of 2 masks per full-time employee (FTE), with priority to staff working on-site
  - In California there are seven identified points of distribution (PODs) throughout the state (listed below). Region 9 will be reaching out to tribal drinking water operators in California to assess PPE needs for their employees and supply that information to the PODs. We will be partnering with RCAC to assist with the distribution of the masks for utilities that request them. Tribal Utilities may also be receiving communication directly from CalWARN to advise them of mask availability.

State	Cartons (500 masks per carton)	Locations
CA	150	East Bay Municipal Utilities District
CA	50	Long Beach Water
CA	50	San Jose Water
CA	50	City of Redding
CA	50	J.C.S.D. (riverside county)
CA	50	San Diego County Water Authority
CA	N/A	Sacramento Water authority