

Fall 2023 RTOC Action Items

23-Oct-23 Last updated 1/24/23

	Action Items	Tribal Contact	Lead	Responses
1	AIEO will review the general implications and potential legal barriers for EPA consulting on NEPA actions, including when EPA is either the lead agency or a supporting agency.		Andy Byrne	Regarding the National Environmental Policy Act (NEPA), depending on the particular situation or action in question, EPA may either be the lead agency, a cooperating agency, or a participating agency. Under NEPA, the EPA Consultation Policy would apply when EPA is the lead agency or a cooperating or participating agency exercising action authority (issuing permits or other project approvals) and EPA would carry out its consultation responsibilities consistent with the Policy, working jointly with other agencies as appropriate. If EPA were instead a cooperating agency or participating agency not exercising action authority, the acting authority does not lie with EPA and the EPA Consultation Policy does not apply; in this instance, EPA would encourage the interested Tribe to work directly with the lead agency. However, even if EPA's Consultation Policy is not implicated, the agency still encourages engagement with Tribes on issues of interest and EPA encourages Tribes to reach out to their regional EPA office in such situations.
2	Determine if there are performance oversight requirements similar to ETEPs and accomplishment reporting for states/other grantees (follow-up from Shasta Gaughen concerns).	Shasta Gaughen	Laura Ebbert	States and Tribes are bound by the same reporting requirements, found at 2 CFR Part 200.329. Region 9 is looking into the possibility that there are best practices to be shared between state and tribal recipient communities where related programs exist (for example, both states and tribes may receive Clean Water Act grants under Section 106). This action item is ongoing and progress has been made to address this item. EPA will provide a more detailed response on this item for the Spring RTOC.
3	Develop a ELMs project for GAP administrative burden.	Lisa Gover	Laura Ebbert	The RTOC GAP workgroup formed a subcommittee to lean/improve the GAP EOY process. They are meeting monthly and plan to present a proposed new process at the Spring RTOC. Ruben Mojica Hernandez is also in touch with Lisa Berrios (AIEO) regarding this issue. On January 4th, 2024. Ruben and Juliann Schroeder met with Lisa Berrios, from AIEO to discuss this action item. During the meeting Ruben and Lisa they discussed the R9 EOY revamp effort that is currently underway. Lisa was interested in this effort, so Ruben will be providing updates to AIEO on the progress of this effort to include AIEO in R9 efforts to reduce administrative burden on Tribes.
4	Does CAA have authority to use deobligated state funds for tribal work? (part of a larger discussion on use of deobligated funding)	Roman Orona	Eddy Holman / Kate Harper	According to the HQ Air and Radiation Office, deobligated CAA state funds cannot be used for Tribal work because the money for state funds and the money for Tribal funds are allocated from Congress separately.
5	Schedule a Tribal RTOC Reps session for new RTOC reps for the Winter RTOC (Rob Roy offered to mentor)	Roman Orona	Juliann Schroeder	Conference room reserved for Monday afternoon of Winter RTOC week.

6	Follow-up needed on IHS funding for water operations and maintenance (O&M). Question on why there have been delays on IHS funding being distributed. IHS has line item but never receives the funding?	Nina Hapner, others	Tomas Torres, Emmanuelle Rapicavoli	<p>Indian Health Service (IHS) is authorized under both PL 86-121 and the Indian Health Care Improvement Act of 2010 to provide “operations and maintenance assistance, and emergency repairs to tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities.” However IHS has not received congressional appropriations under this authority. In 2018 the IHS undertook a study to assess the operation and maintenance needs associated with American Indian and Alaska Native Village owned water and wastewater utilities. This assessment was the first attempt at quantifying at the national level the cost gap to operate water and wastewater systems serving tribal homes and communities. The IHS concluded there were data limitations with this initial study and sought to reevaluate the O+M funding gap for American Indian water utilities. Region 9 understands from conversations at the EPA HQs-led infrastructure task force (https://www.epa.gov/tribal/federal-infrastructure-task-force-improve-access-safe-drinking-water-and-basic-sanitation), that IHS requested new funding in fiscal year 2024 to reevaluate the national O+M needs of tribal water utilities.</p> <p>EPA will be following up with IHS on this issue with the HQ-led infrastructure task force.</p>
7	EPA R9 to put together a CA water boards and CA Tribal environmental reps discussion focused on tribal voices being at the table earlier for funding opportunities		Licia Maclear	<p>Licia Maclear (Water) spoke and emailed with CA area Tribal RTOC Representatives to get more context and determine next steps to address this issue. The group determined that the CalEPA Tribal Advisory Committee (https://calepa.ca.gov/tribal/committee/) is an appropriate venue for Tribes to raise these concerns.</p>
8	(Carryover from Summer RTOC Action Item) How does Region 9 evaluate its compliance with the Justice 40 Initiative? Is Region 9 conducting any analysis on the % of benefit for Tribal communities?	Lisa Gover	Michael Cloyd	<p>Response from OEJECR: Justice40 is a whole-of-government approach jointly led by the Council on Environmental Quality (CEQ), Office of Management and Budget (OMB), and the White House Office of Domestic Climate Policy (Climate Policy Office), along with the White House Environmental Justice Interagency Council. Justice40 sets the goal that at least 40% of the benefits of certain federal investments flow to disadvantaged communities. At EPA, there are 79 programs currently covered under the Justice40 initiative, so Justice40 is being implemented at the program level.</p> <p>Response from R9: This scorecard provides some high level achievements of the Justice40 initiative: https://ejscorecard.geoplatform.gov/scorecard/environmental-protection-agency/ . However Michael Cloyd from EPA R9 is working on finding tribal specific , regional data to better respond to this action item.</p>

Recommendations/Other Major Items of Note from Fall RTOC Discussions

- Note for EPA that statutes should always be specified when statutory authority or restrictions are referenced.
- Recommendation to AIEO to make sure Tribes get to review their data that is entered into GAP Hub during the EOY evaluation process.
- EPA should address barriers to grant funding for future opportunities- example is the 83-page NOFO document for the “Solar for All” program.
- Reminder to Laura Ebbert to follow-up with Donna Begay about allotment lands needing attention.
- Tribal Co-Chair requests that RTOC workgroups should do work between the RTOC meetings and use the RTOC meetings only to provide needed updates.

- Tribal Co-Chair requests that EPA Region 9 Division Directors meet with him one-on-one to discuss major issues as needed.
- Laura Ebbert will report to RTOC regularly on EPA's progress made on direct implementation work.