



TRIBAL ENVIRONMENTAL LAW SEMINAR 2023 FOR LEADERS, TRIBAL ENVIRONMENTAL PROGRAM MANAGERS & RESERVATION ATTORNEYS

An Interactive In-Person and Virtual Program

***Exercising Tribal Sovereignty to Protect Reservation Homelands in 2023: Will
This Be a Year of Positive Change?***

Presented by

OGDEN MURPHY WALLACE PLLC
Tribal Practice Group

Richard Du Bey, Jennifer Sanscrainte, Nicholas Thomas, Andrew Fuller, Aaron Riensche,
Drew Pollom, Ashley Austin and Melody Warren



***“All men were made by the
same Great Spirit Chief.
They are all brothers.***

***The earth is the mother of all
people, and all people
should have equal rights
upon it.”***

Hin-mah-too-yah-lat-kekt

Chief Joseph

(On a visit to Washington, D.C., 1879)





AGENDA (Day One)

8:00 PT / 10:00 CT	Greeting & Welcome Prayer - Overview of Program and Key Cases and Rulemaking Actions of Interest to Indian Country
8:45 PT / 10:45 CT	Tribal Environmental Talking Circle (All) - Achievements in 2022 - Challenges in 2023
9:30 PT / 11:30 CT	Tribal Consultation and Environmental Justice (<i>Andrew Fuller</i>)
10:05 PT / 12:05 CT	Break (15 minutes)
10:20 PT / 12:20 CT	Tribal Homelands – The Forever Promise (<i>Richard Du Bey</i>)
10:55 PT / 12:55 CT	Moving Beyond Resource Preservation: Taking Actions Now to Embrace the Needs of Future Generations (<i>Shane Cherry</i>)
11:30 PT / 1:30 CT	Working Lunch Break: (30 minutes)
12:00 PT / 2:00 CT	Transportation of LNG by Rail (<i>Aaron Riensche</i>)
12:35 PT / 2:35 CT	Preserving the Reservation Environment – Tribal Water Quality Management (<i>Nick Thomas</i>)
1:10 PT / 3:10 CT	Enforcing Tribal Environmental Law (<i>Drew Pollom</i>)
1:45 PT / 3:45 CT	Break (15 minutes)
2:00 PT / 4:00 CT	Preserving the Reservation Environment – Air Quality (<i>Richard Du Bey and Jada Garofalo</i>)
2:45 PT / 4:45 PT	Presentation of Day Two Workshop Case Study (All) (<i>Jennifer Sanscrainte</i>)
3:00 PT / 5:00 CT	Adjourn



Talking Circle:

- Achievements in 2022
- Challenges in 2023



BREAK

**12:05 p.m. – 12:20 p.m. CT /
10:05 a.m. – 10:20 a.m. PT**



WORKING LUNCH



BREAK

**3:45 p.m. – 4:00 p.m. CT /
1:45 p.m. – 2:00 p.m. PT**



AGENDA (Day Two)

9:00 PT / 11:00 CT	Greeting / Overview of Day One Presentations
9:30 PT / 11:30 CT	<u>Applying for Federal Grants to Support Tribal Environmental Programs: The Pueblo de San Ildefonso Story</u> (<i>Kaylene Ritter and Raymond Martinez</i>)
10:15 PT / 12:15 CT	<u>Review of Workshop Case Study: Class I Redesignation of the Reservation Air Resource</u> <ul style="list-style-type: none"> - <i>Establish Teams</i> - <i>Prepare Presentation to Tribal Council</i>
11:15 PT / 1:15 CT	Work Group Reports (<i>Jennifer Sanscrainte</i>)
12:00 PT / 2:00 CT	Final Closing Circle (All) <ul style="list-style-type: none"> - <i>Follow up tasks</i> - <i>Complete Evaluation Forms</i>
12:45 PT / 2:45 CT	Adjourn



Greeting / Overview of Day One Presentation



Review of Workshop Case Study: Cass I Redesignation of the Reservation Air Resource



Work Group Reports



Final Closing Circle

CLOSING CIRCLE



*"We did not inherit the Earth from our ancestors,
we borrow it from our children."*

ADJOURN

THANK YOU FOR ATTENDING!



Tribal Consultation and Environmental Justice

9:30 a.m. PT
March 29, 2023



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Andrew S. Fuller
Tribal Government and
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Ogden Murphy Wallace, PLLC

Tribal Consultation and Environmental Justice

The Biden Administration has made recognition and respect of Tribal sovereignty and self-governance a priority and is demonstrating a stronger commitment to engaging in consultation with Tribal Nations to further that goal.

Environmental justice has been adopted as a guiding principle of this Administration. Biden issued an Executive Order requiring that all federal agencies develop programs, policies, and activities to address the disproportionately high and adverse health, environmental, economic, climate, and other cumulative impacts on communities that are marginalized, underserved, and overburdened by pollution.

How can Tribes leverage the intersection of these Federal priorities to protect and advance their interests?

Consultation

Presidential Biden's Memorandum re: Tribal Consultation (Jan. 26, 2021)

"It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy. "

"History demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations."

Appointments

An historic number of Native Americans have been appointed to positions across the federal government in the past two years.

For Example:

Deb Haaland (Laguna Pueblo)– Secretary of the Interior

Charles Sams III (Cayuse and Walla Walla, Confederated Tribes of the Umatilla Indian Reservation) – Director of the National Park Service

Bryan Newland (Bay Mills Indian Community)– Assistant Secretary for Indian Affairs, Department of the Interior

Michael Connor (Taos Pueblo) - Assistant Secretary of the Army for Civil Works

Jaimie Pinkham(Nex Perce) – Primary Deputy Secretary for Civil Works, Army Corps of Engineers

Janie Hipp (Chickasaw Nation)– General Counsel, Department of Agriculture

Robert Anderson (Bois Forte Band)– Principal Deputy Solicitor, Department of Interior

PaaWee Rivera (Pueblo of Pojoaque) - Director of Tribal Affairs, White House Office of Intergovernmental Affairs.

Environmental Justice

Executive Order 14008 - Tackling the Climate Crisis at Home and Abroad, January 27, 2021

Expresses the Biden administration's broad, government-wide commitment to:

- Ensuring that all federal agencies develop programs, policies, and activities
- To address the disproportionately high and adverse health, environmental, economic, climate, and other cumulative impacts
- On communities that are marginalized, underserved, and overburdened by pollution.

Historic Funding

Bipartisan Infrastructure Law

\$1.2T package addressing infrastructure such as roads, bridges, ports, and airports. Also includes funding for:

- Environmental cleanup
- Water and wastewater infrastructure
- Energy efficiency and clean energy

Inflation Reduction Act

Ten-year plan investing in clean energy, manufacturing, and infrastructure:

- \$370B investment in clean energy; manufacturing, and infrastructure.
- \$100B in measures to reduce carbon emissions.

Environmental Justice

The Justice40 Initiative directs benefits to Tribal jurisdictions

40% of the benefits of those programs to disadvantaged communities.

The Justice 40 program defines **Community** as "either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions."

The interim guidance for the Justice40 program considers a number of indicators to determine whether a community is "disadvantaged." While quite a few of these factors are common within Indian Country, the interim guidance explicitly states that **"[i]n addition to the above definition of disadvantaged communities, geographic areas within Tribal jurisdictions should be included."**

Environmental Justice

Justice40 Programs

Programs subject to the 40% set-aside include those investing in:

- Climate change
- Clean energy and energy efficiency
- Clean transportation
- Affordable and sustainable housing
- Training and workforce development (related to climate, natural disasters, environment, clean energy, clean transportation, housing, water and wastewater infrastructure, and legacy pollution reduction, including in energy communities)
- Remediation and reduction of legacy pollution
- Critical clean water and waste infrastructure

See OMB, Interim Implementation Guidance for the Justice40 Initiative, *at* <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>

Environmental Justice

Bolstering Tribal Homeland and Reservation Population Resilience

The infrastructure law makes investments in Tribal communities' efforts to tackle the climate crisis and boost the resilience of physical and natural systems.

Significant recent investments to Tribal communities for:

- Restoration of aquatic and riparian habitat
- Climate adaptation planning
- Ocean and coastal management planning
- Capacity building
- Relocation, managed retreat, and protect-in-place planning for climate risks
- Fish passage and salmon recovery

Leveraging Consultation and EJ

Framing

What issues are you facing?

How can those issues be framed as environmental justice issues?

What are the desired outcomes?

What is necessary to achieve them?

Leveraging Consultation and EJ

Agency Education and Relationships

How can consultation be used to educate funding agencies of scope of tribal interests?

What relationships can be built with agencies to ensure access to opportunities?

What other relationships can be built to identify opportunities and develop associated programs?

What are your recent experiences with consultation and the BIL and IRA programs? Successes? Lessons Learned?

Questions?

OMW

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23rd Annual Tribal Client Service Seminar

Tribal Homelands–The Forever Promise

12:20 p.m. – 12:55 p.m. CT
March 29, 2023



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Overview

- Indian Reservations are the remaining homeland of Indian Tribes and the glue that binds the Tribal Community.
- Tribes and their members are entitled to the use and quiet enjoyment of their Reservation Homeland.
- Tribes are entitled to their protected rights to the use of on and off Reservation natural resources.

Overview, *cont.*

- These rights and entitlements are not limited to the level of past uses; as the Reservation Population grows and the world presents new challenges, the exercise of future focused Tribal rights must also evolve.
- The exercise of Tribal natural resource rights has significant cultural, as well as subsistence and economic value to the Tribe and its members.
 - ✓ Fish, shellfish and game
 - ✓ Maple syrup and wild rice
 - ✓ Plants for food and medicine

- The protection and preservation of the current baseline level of Tribal natural resources including the on and off Reservation habitat for these resources is not enough.
- Tribes should consider the resource needs of future generations and act now to assert their Treaty, Executive Order and Statutory rights to establish a sustainable Reservation Homeland.

- Indian Tribes have been disproportionately burdened by both on-reservation environmental risks as well as environmental and development related risks to Treaty protected off-reservation resources.
- The often lengthy administrative process is the enemy of timely action to protect Tribal natural resources and the quality of the Reservation environment.
- Our challenge, as advocates for Indian Tribes, is to work to change this picture. And to help Tribes develop proactive and creative approaches toward establishing enhanced resource and habitat opportunities.

The Goals

- A clean and productive Tribal Homeland-that sustains current and future generations.
- A federal government that honors its forever promise and trust obligation to tribes when:
 - implementing environmental cleanup actions; and
 - administering permit programs for projects that could impact tribal on and off reservation interests and resources.

- To achieve this goal, federal and state regulatory agencies must:
 - ✓ Recognize the inherent sovereignty of Tribal governments and the applicability of Tribal Law and environmental programs;
 - ✓ Honor Tribal Treaty and Executive Order Rights; and
 - ✓ Comply with EPA approved Tribal water and air quality standards

- Federal and state agencies should develop rules that confirm their legal obligation to consider and incorporate applicable Treaty and Executive Order rights into their regulatory programs.
 - Not a box to check
 - A matter of compliance
- Those regulations should require timely inter-governmental consultation with relevant Tribes as a component of the environmental programs that a federal agency either implements itself or delegates to states.
- The Federal consultation and trust obligation to Tribes does not go away when the federal agency delegates some or all of its responsibilities to a State.

State of Oklahoma v. U.S. DOI

USDC W. Dis't of OK, Case No. CIV-21-719-F (Nov. 9, 2022)

Re: Surface Mining and Reclamation Act (SMCRA)

Summary Judgment granted in favor of the U.S. DOI
Office of Surface Mining Reclamation and
Enforcement.

Finding that SMCRA pre-empted Oklahoma
regulatory control of surface mining covered by the
Federal Act.

Procedural History

- Oklahoma regulated surface coal mining and reclamation operations within its borders for decades – for over 100 years the State assumed that the Creek Indian Reservation was disestablished.
- Everything changed in 2020 with the Supreme Court's decision in McGirt v. OK, 140 S. Ct. 2452 (2020) where the Court held that the Creek Reservation in eastern Oklahoma had never been disestablished.

Question Presented to the Court

Can Oklahoma continue to regulate coal mining and reclamation on these Indian Reservations and get Federal grant funding?

In other words, can the State continue exercising its federally delegated authority under the SMCRA?

The Answer

- The SMCRA precludes State regulation of surface mining and reclamation operations on Indian lands.
 - The DOI - OSMRE “shall be the regulatory authority on Indian lands.” 30 C.F.R. § 750.6.
- Under SMCRA Indian lands are defined as “all lands, including mineral interest, within the exterior boundaries of any Federal Indian reservation . . . , and all lands including mineral interest held in trust for or supervised by an Indian tribe.” 30 U.S.C. § 129(9).
- State regulation of surface coal mining and reclamation operations on Indian land is now precluded by SMCRA.

Treaties, Statutes and Executive Orders

- Treaties to which the U.S. is a party are equivalent in status to federal legislation.
- Under the U.S. Constitution, treaties like federal statutes, are “the Supreme law of the Land.” (U.S. Const. art. VI, cl2).
- The Supreme Court “has drawn no fundamental interpretive distinction between reservations established by statute or executive order and those protected by treaty.” (Metlakatla v. Dunleavy, 9th Cir. No. 21-35185 (Sept. 8, 2022)).

The 9th Circuit Court in Metlakatla v. Dunleavy found that the type of legal instrument that establishes an Indian reservation makes no difference with regard to a tribe's attendant resource rights. And that federal recognition of an Indian tribe institutionalizes that relationship. As a practical matter it does not matter which type of document provides such recognition or establishes a reservation.

Tribal Treaty Rights are Enforceable

U.S. v. Washington, 853 F.3d 946 (9th Cir. 2017):

- In this case, also known as “the Culverts Case,” a unanimous panel of 9th Circuit Court of Appeals held that the State has an obligation to refrain from building and maintaining barrier culverts that interfere with Treaty rights by contributing to the decline in salmon populations.

- The 9th Circuit Court recognized the powerful connection between the Tribes and the natural resources they relied upon and stated that salmon were – in the words of the 1905 Supreme Court – “not much less necessary to the existence of the [tribes] than the atmosphere they breathed.”
- The 9th Circuit Court went on to reason that the right to protect and preserve fish habitats precluded the State from acting to “crowd the Indians out of any meaningful use of their accustomed places to fish.” (*emphasis in original*).

- The 9th Circuit Court relied in part on two cases that expanded the federal common law to include Treaty implied Tribal rights: Winters v. U.S., 207 U.W. 564 (1908) and U.S. v. Adair, 723 F.2d 1394 (9th Cir. 1983).
- Taken together, these foundational water rights cases hold that Tribal reserved water rights were necessary to allow the Tribal members to irrigate their lands to raise food and to sustain their Treaty-reserved on-reservation hunting and fishing rights.

Key Issue Presented to the U.S. Supreme Court*

- Whether a treaty right to take fish at usual and accustomed stations guaranteed that number of fish would always be sufficient to provide moderate living for Tribes.
 - Sustain the Reservation Population.
 - Tribal communities are growing, so the available harvest needs to accommodate the increased population.

**United States v. Washington*, 853 F.3d 946 (9th Cir. 2017), cert. granted, 138 S. Ct. 735 (2018).

Supreme Court Decision

In 2018, the U.S. Supreme Court* affirmed the 9th Circuit Court, which stated that:

- “[in] sum, we conclude that in building and maintaining barrier culverts Washington has violated and continues to violate, its obligations to the Tribes under the fishing clause of the Treaties.”

By affirming the decision of the 9th Circuit in Washington v. U.S., the U.S. Supreme Court recognized the enforceable right of Tribes to protect fish habitat as a component of their treaty fishing rights.

- **The Treaty is an enforceable environmental quality right.**

* By an equally divided Court. (Justice Kennedy recused himself). (584 U.S. ____ (2018) per curiam).

Metlakatla Indian Community v.
Dunleavy

USCA 9th Cir., No. 21-35185, D.C. No. 5:20-cv-00008-JWS
(Sept. 8, 2022)

Held that a 1981 federal statute provided the Metlakatla Indian Community with an implied right to non-exclusive off-reservation fishing for personal consumption, ceremonial purposes and commercial purposes.

In support of this decision, the Court made a number of important general findings of fact and law that go beyond the scope of this dispute. For example, the court found that “In recent years, changing conditions have threatened fish stocks available to the community. . . . Migratory fish such as salmon are subject to changes in their migratory routes in response to environmental conditions, including climate change.” (*Id.* at 14) (*emphasis supplied*).

Defining the Reservation Homeland

- In Metlakatla, the court reasoned that “Because the purpose of reservations are often unarticulated in a statute, treaty, or executive order, we consider ‘the circumstances surrounding their creation [] and the history of the Indians for whom they were created.’ Chehalis, 96 F.3 at 342. ‘We also consider their need to maintain themselves under changed circumstances.’” Colville v. Walton, 647 F.2d 42,47 (9th Cir. 1981), Cert. denied, 454 U.S. 1092 (1981). (Id. at 16-17).
- “Congress also expected fishing to support the Community not only at the time the reservation was created, but in the future. In the words of the Supreme Court in Arizona v. California, fishing ‘was intended to satisfy the future as well as the present needs’ of the Community.”

Treaties and Executive Orders Establish Permanent Homelands

When interpreting Indian treaties, even where the treaty does not provide an explicit promise to provide water, or access to water, the courts have found an implied promise to do so reasoning, that without water the (fulfill the) purpose of the treaty – a permanent homeland – would have been meaningless.

- This is a “treaty Homeland Right.”

U.S. v. Washington, 853 F.3d 946, 964-65 (9th Cir. 2017)
(emphasis added).

The Courts have Led the Way Toward Establishing the Homeland Treaty Right

- If a Tribe can establish that a past or proposed state or federal action has or may adversely impact or limit its treaty protected right to:
 - Hunt
 - Fish
 - GatherOr simply enjoy the safety of its permanent Tribal Homeland.
- The *U.S. v. Washington* decision, in my view, provides Tribes with an enforceable right to enjoin such actions.

Why Were Indian Reservations Created?

- Indian Reservations were created to serve as permanent safe and sustainable Homeland environments.
- Nowhere is the protection of the environmental or the cultural and spiritual well-being of the reservation population more important than on Tribal Homelands.
- In addition to food and water, the Treaty Homeland right entitles the Tribe to the quiet enjoyment of its Reservation.

Is the Tribal Homeland Treaty Rights Enforceable?

- The contamination or diminishment of off-Reservation Treaty protected resources diminishes the Tribe's right to a food source necessary to support the Tribe's right to a Permanent Homeland.
- **This right is now enforceable.**
- Health impacts resulting from contaminated on-Reservation lands diminish the Tribes right to the quiet enjoyment of its Permanent Homeland. – This potential claims has not yet been presented to a Court.

Conclusion: The Culvert and the Metlakatla Decisions Expand Tribal Resource Rights under Treaty, Statute and Executive Order

- Treaty guaranteed rights to the use of natural resources now include a reserved environmental quality right.
- Tribes can use the reserved environment quality right to control both past and future proposed actions that may impair the habitat and/or lifecycle of treaty guaranteed off-reservation rights.
- Tribes now have more authority to influence CERCLA remedial actions, CWA permits and other state and federal regulatory decisions.

Conclusion

- Treaty based environmental quality rights should be considered as a part of the NEPA and SEPA decision making process.
- Tribes can assert their reserved environmental quality rights to protect the quiet enjoyment of their reservation environment and their use of on-reservation natural resources.
- Tribal reserved environmental quality rights likely expand the reach of Tribal authority to protect the on-reservation health of Tribal members and the quality of the Reservation Homeland environment.

The eloquent words of Nex Perce Chief Hinmaton
Yalatkit (Joseph):

**The Earth and myself are of
one mind.**

**The measure of the land and
the measure of our bodies are
the same.**



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*Restoring the Environment.
Protecting Our Future.*

Moving Beyond Resource Preservation: Taking Actions Now to Embrace the Needs of Future Generations

SHANE CHERRY

TRIBAL ENVIRONMENTAL LAW SEMINAR

OGDEN MURPHY WALLACE, PLLC

MARCH 29 & 30, 2023

RESOURCE PRESERVATION IS NOT ENOUGH

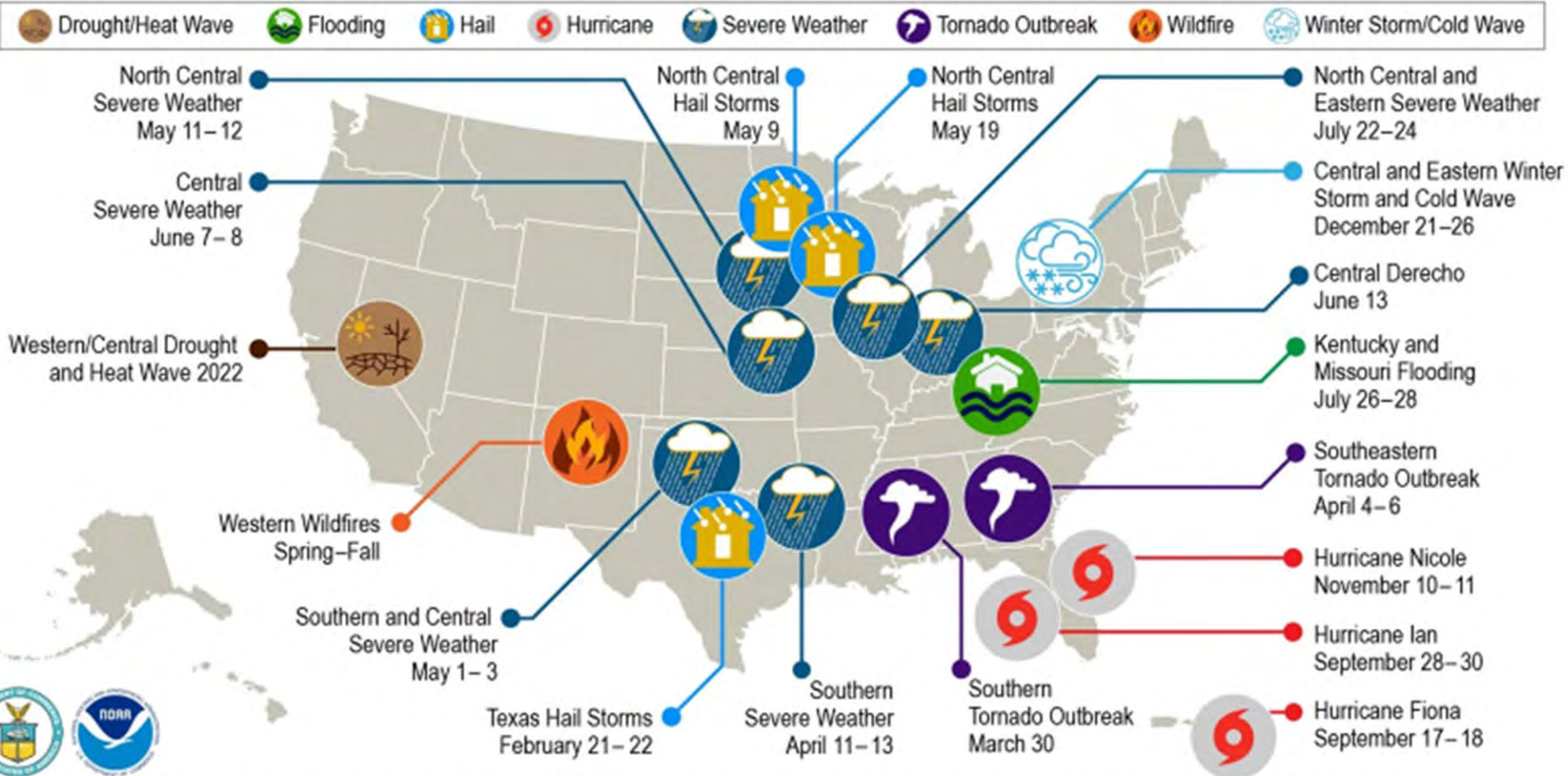


Resource preservation is not enough to support sustainable resilient communities. Past degradation of water, air, and ecological resources magnifies the vulnerability of those resources to the effects of climate change.

Climate change is more than melting glaciers and rising sea levels.



U.S. 2022 Billion-Dollar Weather and Climate Disasters



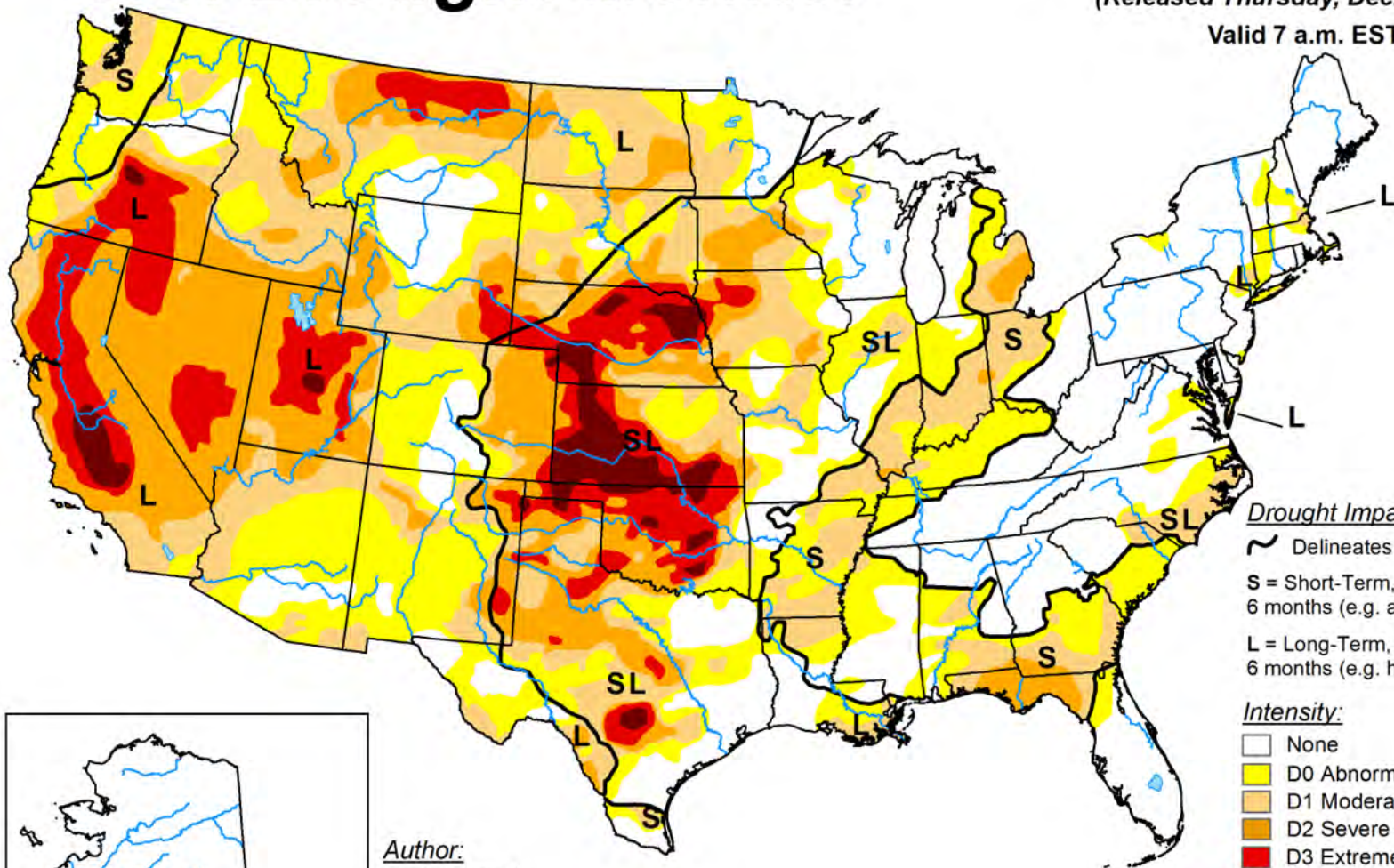
This map denotes the approximate location for each of the 18 separate billion-dollar weather and climate disasters that impacted the United States in 2022.

U.S. Drought Monitor

December 20, 2022

(Released Thursday, Dec. 22, 2022)

Valid 7 a.m. EST



Drought Impact Types:

~ Delineates dominant impacts

S = Short-Term, typically less than 6 months (e.g. agriculture, grasslands)

L = Long-Term, typically greater than 6 months (e.g. hydrology, ecology)

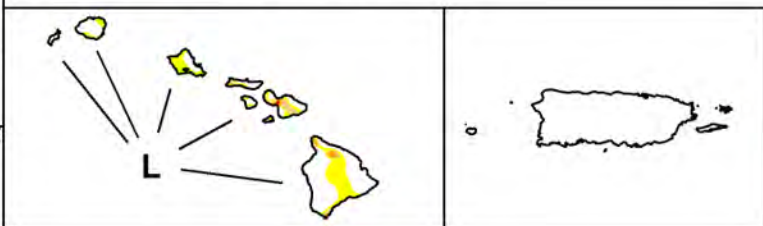
Intensity:

- None
- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought



Author:

Curtis Riganti
National Drought Mitigation Center



The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>



droughtmonitor.unl.edu

Climate change already affects global food supplies, energy prices, water resources, habitat ranges, international relations, manufacturing, transportation, insurance costs, zoning, building codes, regulations, and almost every aspect of our lives.



Climate change planning will require new thinking about how we do business, about how we consider remedies and solutions.

We need to plan for sustainable and resilient resources, programs, facilities, and operations.

Executive Order 14008

Tackling the Climate Crisis

Sec 203 – Establishes a National Climate Task Force and National Climate Advisor

“The Task Force shall facilitate the organization and deployment of a Government-wide approach to facilitate planning and implementation of key Federal actions to reduce climate pollution; increase resilience to the impacts of climate change; protect public health; conserve our lands, waters, oceans, and biodiversity; deliver environmental justice; and spur well-paying union jobs and economic growth.”

Sec 211 – Requires all federal agencies to prepare a Climate Action Plan

“The head of each agency shall submit a draft action plan to the Task Force and Chief Sustainability Officer... that describes steps the agency can take to bolster adaptation and increase resilience. . . and describes the agency’s climate vulnerabilities.”

Sec 216 – Establishes the goal of “conserving 30 percent of our lands and waters by 2030”

Interior, Agriculture, Commerce (NOAA), and CEQ shall solicit input from State, local, and Tribal officials, landowners, fishermen, and other key stakeholders to identify opportunities for conservation.

Sec 219 – Environmental Justice and Economic Opportunity

Federal funding will prioritize climate change planning and investment in underserved communities, environmental justice areas, and tribal lands.

Federal Funding for Climate Change Planning

- **Climate Change Plans** - Executive Order No. 14008 requires all federal agencies to develop and implement climate change plans.
- **Funding allocations** - climate change planning, ecosystem restoration, and resilience are funded by:
 - Infrastructure and Jobs Act 2022
 - Inflation Reduction Act of 2022
- **Grant Programs** - most funding will be grants for large-scale projects with long-term benefits.
- **Priorities** - funding under both acts is prioritized for work in underserved and tribal communities.
- **Funding Timelines** - Most of the appropriations in the Infrastructure and Jobs Act provide funds that are to be ***available until they are expended***.

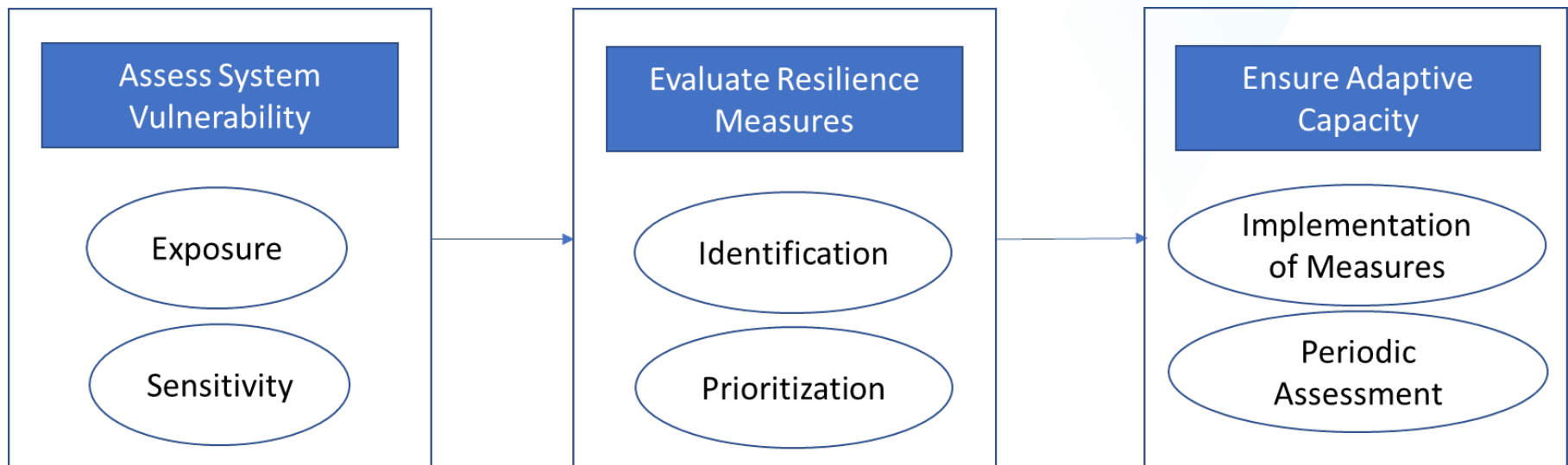
Federal Funding for Climate Change Planning

Infrastructure and Jobs Act of 2022 ~ \$160B

- ▶ Superfund - \$3.5B (FY2022, additional to other funds)
- ▶ USACE water resources - \$12.8B
- ▶ Western water infrastructure - \$13.1 B
- ▶ Dam safety - \$136M
- ▶ Brownfields - \$1.5B
- ▶ Emerging contaminants - \$47.4B
- Ecosystem Restoration - \$2.13B
- Watershed Management - \$918M
- National fish passage program - \$200M
- Pacific coastal salmon recovery - \$250M
- ▶ Klamath Basin restoration - \$162M
- NOAA coastal management - \$2.91 B
- EPA state and tribal assistance grants (water) - \$55.8B
- EPA recycling infrastructure grants - \$375M
- EPA geographic emphasis programs – \$18.5B

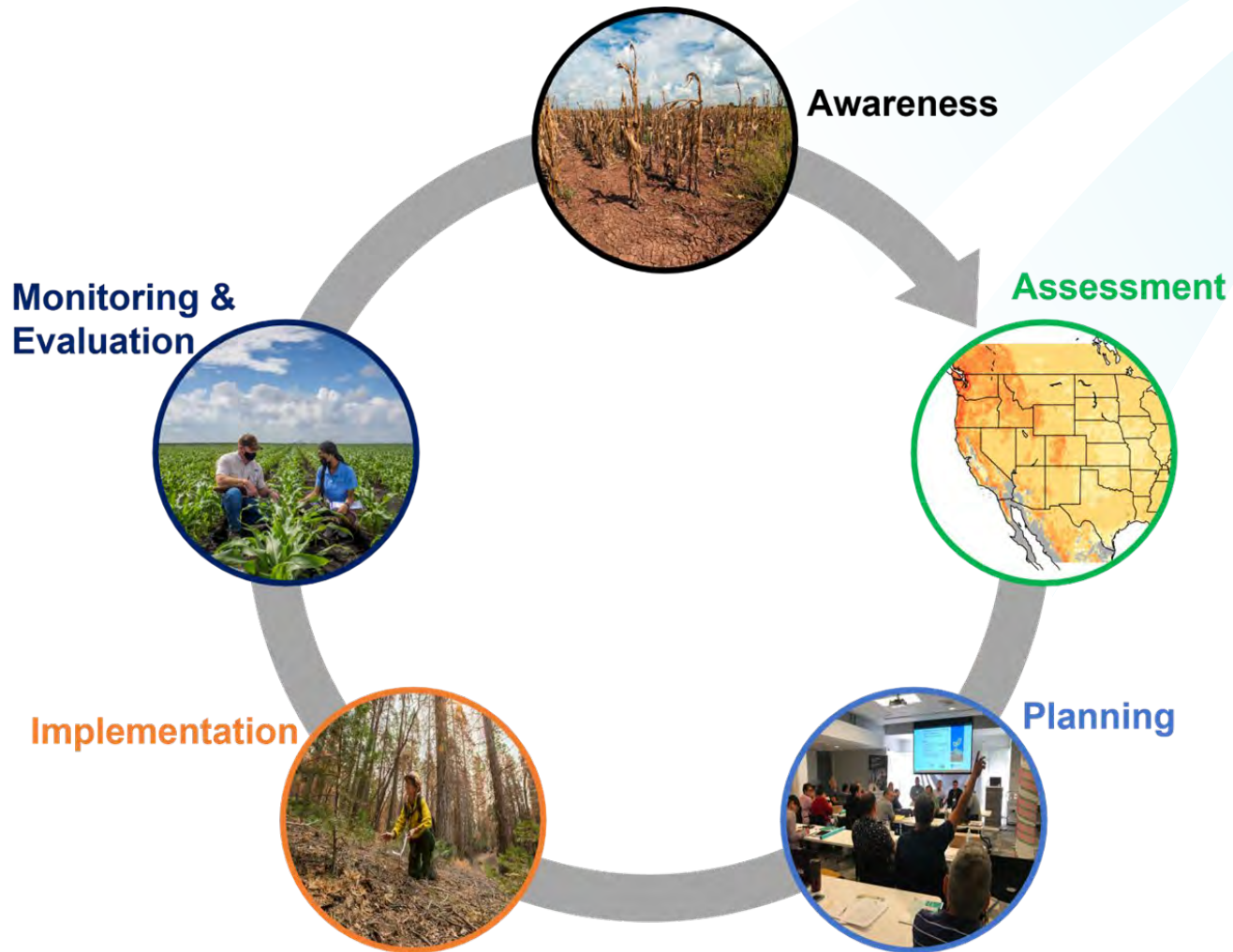
Climate Change Planning Process

Two-step assessment of vulnerabilities (exposure and sensitivity) allows for the identification and prioritization of resilience measures. Implementation and monitoring ensures adaptive capacity to manage vulnerabilities.



EPA. 2019. *Climate Resilience Technical Fact Sheet*

Schematic for Climate Change Planning





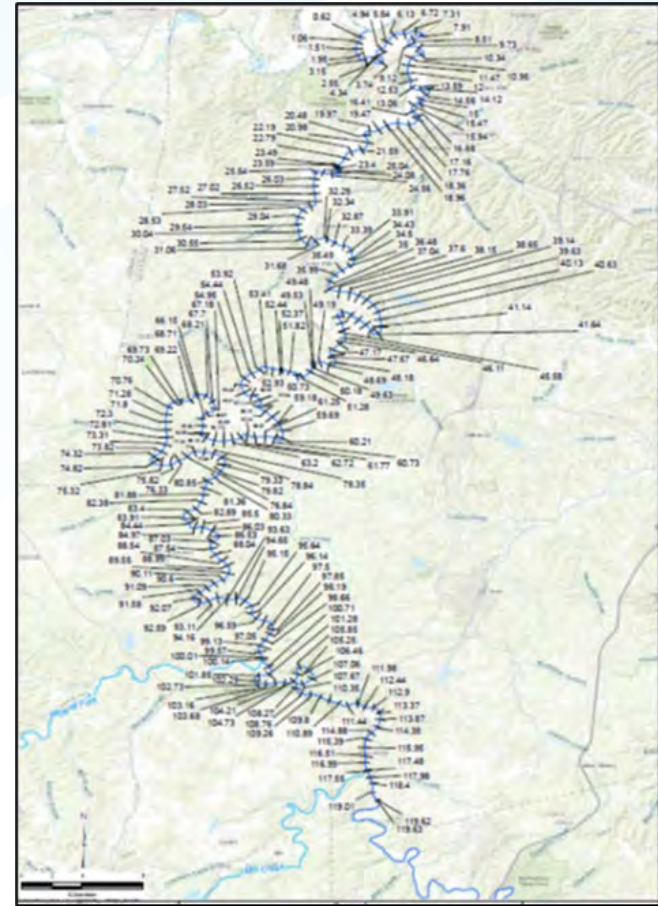
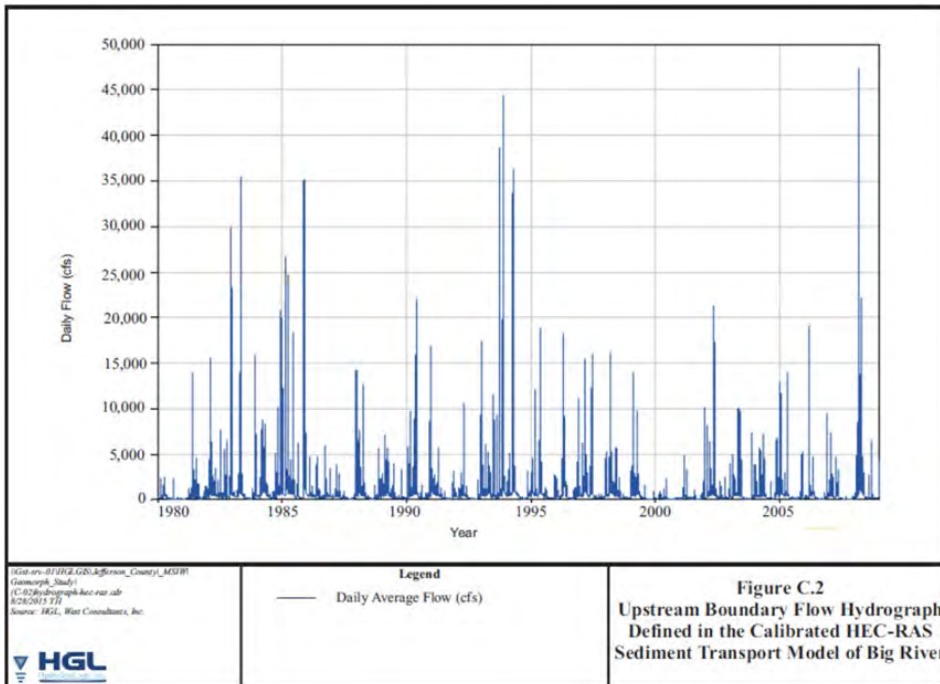
Vulnerabilities create vulnerabilities.

McKinney Fire in California, August 2022



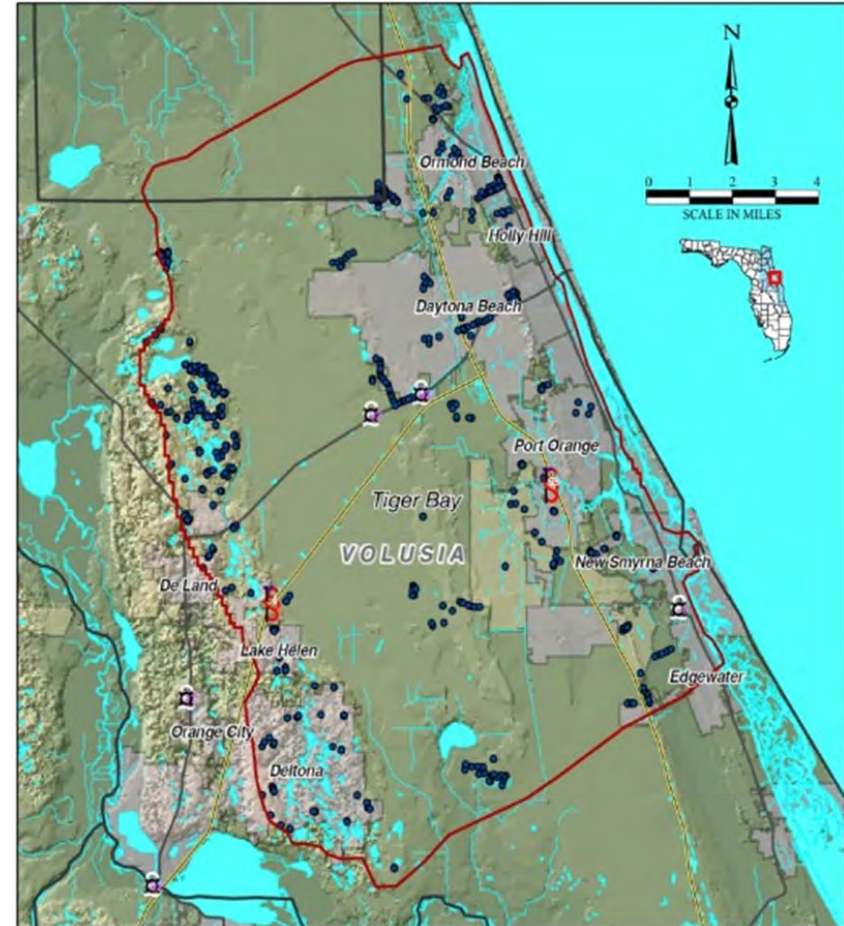
Example - Big River

- Historic flow records were used to model hydraulics and sediment transport.
- Regional rainfall is predicted to increase 30 – 50 percent in response to climate change.
- Sediment remedy must be resilient to flow increases resulting from climate change.



Example – Saltwater Intrusion Model for Tiger Bay, Volusia County, Florida

- ▶ Developed a groundwater model for an area covering about 24 x 34 miles; used the USGS SEAWAT-2000 code as a simulator for density-dependent groundwater flow and transport.
- ▶ Incorporated the salient sub-regional hydrogeologic influences based on data from several sources, including SJRWMD, the U.S. Geological Survey (USGS), and the National Oceanic and Atmospheric Administration.
- ▶ Used the calibrated model to perform a predictive simulation to evaluate the effects of projected pumping rates.
- ▶ Conducted sensitivity analyses to assess the range of predictive uncertainty of the model.



Applicability to Natural Resources

- ▶ Water supply
- ▶ Food production and supply
- ▶ Propagation of culturally significant plants
- ▶ Fisheries and aquatic habitat
- ▶ Management of timberlands
- ▶ Wetlands and water resources



Taking Action for the Future

- ▶ Inventory current condition of resources
- ▶ Consider past conditions and identify restoration opportunities
- ▶ Identify climate change effects
- ▶ Assess resource vulnerability to climate change
- ▶ Determine opportunities to adapt and build resilience
- ▶ Align plans and projects with funding streams
- ▶ Integrate restoration, adaptation, and resilience
- ▶ Implement an action plan that preserves, restores, and sustains water, air, and ecological resources

CONTACT

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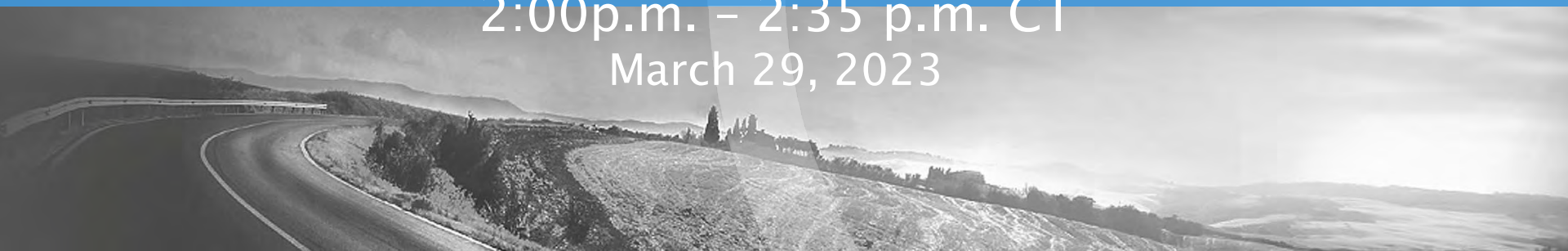
425.218.9748



www.hgl.com

Transportation of Liquefied Natural Gas by Rail

2:00p.m. – 2:35 p.m. CT
March 29, 2023



OGDEN
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WALLACE
ATTORNEYS

Aaron Riensche
Member
Ogden Murphy Wallace, PLLC

Overview

LNG = Liquefied Natural Gas

- Highly volatile substance
- Generally illegal to transport by rail until 2020
- Trump-era regulation legalized rail transport
- Regulation has been under review by Biden administration for two years

What is LNG?

- Methane, refrigerated liquid.
- Cryogenic, highly flammable:
 - Must be maintained at -260°F
 - Creates a flammable gas cloud when released

What are the risks?

- Risks include BLEVE
- Boiling Liquid Expanding Vapor Explosion
-

What is a BLEVE?

- Fire – If released LNG is ignited, immediate fireball
- Thermal radiation – can burn skin at a distance of 4 times the radius of the fireball
- Blast – Concussive force, can break window glass at 4 times the radius of the fireball
- Projectiles – Can throw metal fragments over large distances
 - Records of large truck/tanker pieces thrown from 80 to 260 meters.

Fireball from accident

Fireball from accidental ignition of Falcon5 LNG test in 1987

<https://www.osti.gov/servlets/purl/1367739>



BLEVE Narrowly Averted in Ohio

- East Palestine derailment
 - Vinyl Chloride
- Evacuated 1-mile radius
- Deliberate burn to avoid BLEVE

Ohio Train Derailment



Ohio Train Derailment



Why are we facing this threat?

Transport of LNG by rail has long been illegal

- Historically prohibited
 - Only by special approval from Pipeline & Hazardous Materials Safety Administration (PHMSA)
 - 49 CFR 107.105
- 2017, Association of American Railroads asked for rule change because of customer interest
 - From Pennsylvania to New England
 - From U.S. to Mexico

Executive Order

2019 – Executive Order 13868

Secretary of Transportation must

- Within 100 days, propose a rule permitting transportation of LNG by rail
- Within 13 months, finalize rule
- This is a very short timeline

Rulemaking Process

Quick Refresher:

1. Agency issues notice of proposed rulemaking
2. Public has opportunity to make comments
3. Agency issues final rule

Final Rule

2020 – Final Rule (LNG by Rail Rule)

- 85 Fed. Reg. 44994 (July 24, 2020)
- No Environmental Impact Statement

Safety Standards

LNG can be carried only in special rail cars:

- DOT-113C120W cars – history of use with cryogenic flammable materials
- Special modification for LNG – 9/16” thick outer tank
- DOT-113C120W cars usually have 7/16” thick outer tank

Voluntary safety standards that apply if carrying 20 or more cars of LNG

- Such as 50mph speed limit
- No limit on the number of cars
- By comparison, East Palestine derailment involved 5 cars carrying vinyl chloride

PHMSA'S Safety Arguments

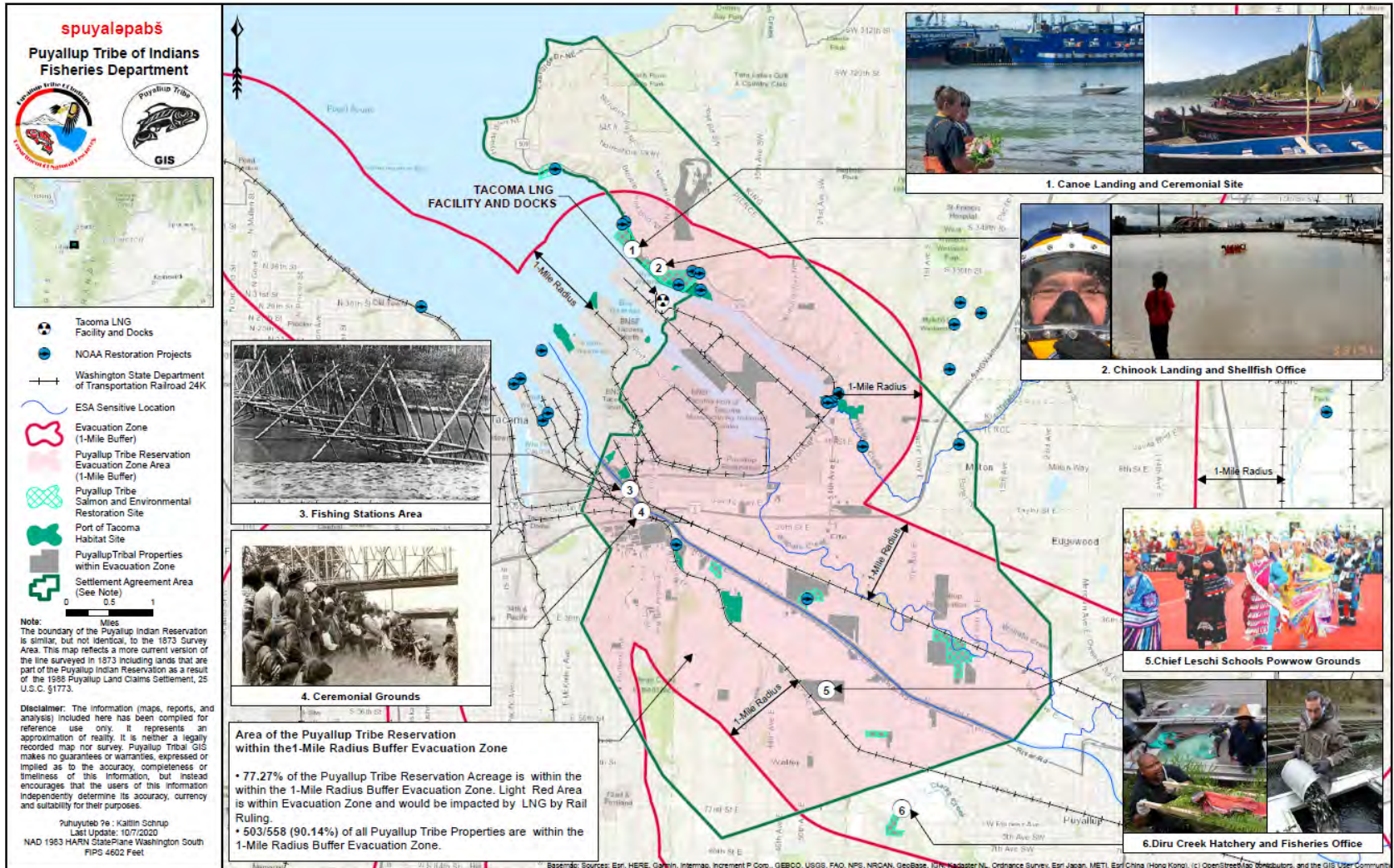
- 2 derailments with 7/16" shells
 - Almost all cars breached
- 1 derailment with 9/16" shells
 - 8 of 40 cars breached
 - Occurred at 42mph
- Many comparisons to history of ethylene transport
 - But ethylene only transported in 1-3 cars per train

BLEVE Risk Addressed in Rule

Inadequate reasoning to minimize risk of BLEVE

- Recognized 2 BLEVEs occurred in accidents involving LNG in Spain
- Said the required railcars here are better
- One test with no BLEVE:
 - Car was carrying liquid nitrogen
 - Not flammable

Puyallup Tribe's Concerns



Legal Challenges

August 2020 – Puyallup Tribe of Indians filed challenge to the Final Rule in 9th Circuit

Same day: two other legal challenges were filed in the D.C. Circuit

- Coalition of states
- Coalition of environmental groups

Tribe's challenge transferred to D.C. Circuit and consolidated with the other two.

- The other two were filed earlier in the day than the Tribe's.

Tribe's Petition

Petitioner's grounds for review include, but are not limited to, Respondents' amending those regulations (1) without preparing a full environmental impact statement pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; (2) without engaging in adequate government-to-government consultation with federally-recognized Indian tribes, including Petitioner the Puyallup Tribe of Indians, *e.g.*, Exec. Order 13175; and (3) without complying with the Administrative Procedures Act, 5 U.S.C. § 706.

Issues Raised

Parties generally challenged:

- Adequacy of safety analysis;
- Failure to prepare Environmental Impact Statement;
- Adequacy of Environmental Justice analysis.

Tribe also challenged:

- Failure to consult.

“Consultation” History

Notice of Proposed Rulemaking issued in October 2019

PHMSA meeting with Tribe a few weeks later

- To discuss an LNG facility being built on edge of Puyallup Reservation
- PHMSA never mentioned proposed LNG by Rail Rule

When Tribe found out about the proposed rule later, requested another meeting in February 2020.

- Meeting lasted less than half hour;
- Never reached topic of LNG by Rail Rule.

PHMSA later offered additional meetings

- Only with “chief counsel” (i.e. PHMSA’s lawyer)
- Never offered a meeting with a decisionmaker.

“Consultation” History

Continued

In final LNG by Rail Rule, PHMSA:

- Claimed these interactions satisfied its consultation obligations;
- Dismissed Tribe’s concerns because there was no evidence of current plans to use rail transport in the Tacoma LNG operations.
- (Of course, up until that moment, rail transport of LNG had been illegal.)

Change in Administration

- Biden Administration, Executive Order 13990
 - Direct agencies to consider suspending, revising, or rescinding certain agency action, in light of the administration's climate change goals.
 - LNG by Rail Rule was on the list.

Abeyance

PHMSA asked D.C. Circuit to place case in abeyance

Court granted the request

- Basically, case is on hold indefinitely
- PHMSA required to provide quarterly status reports

New Rulemaking

Spring 2021, PHMSA announced plans to issue two new rules

- One to suspend the LNG by Rail Rule
- One to replace it.

Suspension Rule

- Notice of Proposed Rulemaking issued in November 2021
- Public comments due in December 2021
- Tribe and other petitioners commented in favor of suspension
- Industry commenters against suspension
- STILL NO FINAL RULE

Replacement Rule

- Still no Notice of Proposed Rulemaking
- Repeated pushing back of target dates
- PHMSA says it is continuing to conduct testing and studies

Current Status

Legal challenges still in abeyance

Still legal to transport LNG by rail

- Anywhere in the U.S.
- Unlimited quantities
- Subject to voluntary speed limits that apply only if train carries 20 or more LNG cars

Current Status

- To be continued...
 - Waiting for new rule.
 - Case taken out of abeyance (at some point) if no new rule.
- Wait and see...
 - What happens with rulemaking
 - What happens with litigation

Alternative Approaches



Two derailed BNSF train locomotives are on their sides with broken track seen in the background, on the Swinomish Reservation in Anacortes on Thursday. (Ken Lambert / The Seattle Times)

The Swinomish Example

In the news for two reasons:

1. Recent train derailment and spill of Bakken crude.
2. Lawsuit against BNSF currently in trial.

Swinomish Trespass Claim

Filed in the 1970s, based on the following statute:

No grant of a right-of-way over and across any lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), as amended; the Act of May 1, 1936 (49 Stat. 1250); or the Act of June 26, 1936 (49 Stat. 1967), shall be made without the consent of the proper tribal officials. ...

25 U.S.C.A. § 324 (West)

Swinomish Easement Agreement

Trespass Lawsuit Settled:

- Easement Agreement
- Limits train traffic through reservation to one eastbound and one westbound train per day
- No more than 25 cars per train
- BNSF must report to Tribe at least annually about the nature and identity of all cargo

Current Lawsuit

Swinomish Tribe sued BNSF for breach of Easement Agreement

- 2015
- Exceeding limits on number of trains and cars
- Failing to inform about carrying Bakken crude

Options to Consider

A couple questions, if there is train traffic through your reservations:

- Did your Tribe ever consent under 25 U.S.C. § 324?
 - If not, potential trespass claim.
- If the Tribe consented, did it do so under an agreement that places any restrictions on the train traffic?
 - If so, are those restrictions being respected?

Protecting Tribal Interests

What can you do to protect your tribe's interests?

- Watch for replacement rule and make comments when it comes out.
- Consider participating in litigation:
 - Filing petition for review against replacement rule; or
 - Filing amicus brief either in existing litigation or litigation against replacement rule.

OMW special environmental counsel memos

- Issued for the LNG by Rail Rule
- Will issue a new one when replacement rule comes out.



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Preserving the Reservation Environment: Tribal Water Quality Management



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Albuquerque v. Browner – Key Facts

- City operates a waste treatment facility that dumps into Rio Grand approximately 5 miles north of Reservation.
- EPA grants Isleta Pueblo TAS status.
- Isleta Pueblo adopts water quality standards for portion of Rio Grande flowing through reservation.
- Isleta Pueblo's standards were more stringent than federal and NM standards.
- City sued as EPA was in the process of revising City's NPDES permit to meet the Isleta Pueblo's WQS.

Albuquerque v. Browner -- Outcome

- Key Holdings from 10th Circuit:
 - Tribe could establish WQS more stringent than federal standards.
 - EPA has authority to require upstream NPDES dischargers to comply with downstream tribal standards.
 - EPA's approval of ceremonial use standard in connection with approval of tribal standards did not violate establishment clause.

Background on TAS

- Section 518 of the CWA provides for tribes to be afforded "treatment in the same manner as a state" or "TAS" to regulate water pollution within the exterior boundaries of their reservations (the "Reservation Environment").
- Tribes that receive TAS status have the same authority as states to adopt water quality standards that can be equal to or more stringent than the federal minimum standards.
- For TAS, the Tribe needs to be included on the Department of the Interior's published list of federally recognized tribes (available at 82 Fed. Reg. 4915, (January 17, 2017)).

TAS Cont'd

- Pursuant to 40 CFR § 131.8(b)(3)(ii), applications must include a statement by Tribes' legal counsel that describes the basis for the Tribes' assertion of authority.
- EPA previously required applicant Tribes to make a jurisdictional showing sufficient to satisfy the *Montana* test before approving TAS applications and water quality standards that would regulate non-member activities.
- EPA's 2016 reinterpretation of CWA Section 518 now recognizes that the statute expressly delegates authority to Tribes to implement water quality standards, thereby removing any need to satisfy the *Montana* test.
- EPA is responsible for implementing the CWA within Indian Country until a Tribe requests delegated authority. The catch – EPA has not developed WQS for Indian reservations.
- There are no limitations or impediments to the Tribe's authority or ability to effectuate the delegation of authority from Congress.

Major Elements of a Tribal Water Quality Management Program (WQMP)

Major elements of the CWA plan to control pollution:

- Develop an inventory of the surface waters within the exterior boundaries of the reservation.
- Determine the use of the surface waters.
- Establishment of water quality standards to protect the designated uses of surface waters.
- Exercise CWA § 401 Certification Authority for federal and state permits, including CWA § 402 NPDES Permits.
- Implement a Tribal permit program to control the discharge of pollutants from point sources.
- Establishment of effluent standards for discharge of pollutants.

Water Quality Standards

- WQS represent the minimum acceptable water quality for surface water bodies.
- Calculated based on the use classification of the water (i.e., natural resource protection (e.g., ricing), spiritual, ceremonial, protection of future reserved rights for population growth, fishing, swimming, drinking water supply, etc.).
- Creating these standards are the Tribe's obligation.
- Tribal water quality standards, enacted by tribal governments as ordinances, must be consistent and no less stringent than federal water quality criteria established under the Clean Water Act.
- Tribes, like States, may choose to enact more stringent standards than those promulgated by the Environmental Protection Agency (e.g., to protect against contaminant uptake by treaty protected fish or game).

Water Quality Standards Cont'd

- Water quality standards establish an in-stream level for contamination that may not be exceeded
- Designate water bodies for use or class
- Temperature standards (temperature is a pollutant)
- Fish consumption as an important recently recognized as an important foundation for water quality standards (e.g., Washington)

Water Quality Standards – Core Components

- Designated Uses
- Criteria
- Antidegradation Requirements

Designated Uses

The WQS regulation requires states, territories and authorized tribes to specify goals and expectations for how each water body is used. Typical designated uses include:

- Traditional, cultural and/or spiritual
- Protection and propagation of fish, shellfish and wildlife
- Recreation
- Public drinking water supply (or potential drinking water sources)
- Agricultural, industrial, navigational and other purposes
- *Consider Reservation Homeland and build in future use considerations.*

Water Quality Criteria

- Water quality criteria are adopted to protect the designated uses of a water body.
- Water quality criteria can be numeric (e.g., the maximum pollutant concentration levels permitted in a water body) or narrative (e.g., a criterion that describes the desired conditions of a water body being “free from” certain negative conditions).
- Tribes can adopt both numeric and narrative criteria.
- Narrative criteria are harder to enforce.

Water Quality Criteria Cont'd

- Establishing water quality criteria is a scientifically complex and fact-intensive process.
- The concept of a water quality standard is to establish a level of contamination for particular substances which has been demonstrated to be safe.
- Examples:
 - Aquatic Life Criteria
 - Biological Criteria
 - Human Health Criteria
 - Microbial/Recreational Criteria

Antidegradation Requirements

- An objective of the CWA is to “maintain the chemical, physical and biological integrity of the Nation's waters.”
- Antidegradation requirements provide a framework for maintaining and protecting water quality that has already been achieved so that the WQS are not diminished.

Groundwater

- At present, the Environmental Protection Agency undertakes no direct regulation of discharges to groundwater. See *County of Maui v. Hawaii Wildlife Fund* -- guidance on “functional equivalence” is needed.
- Leaves that regulatory sphere to the states and tribes.
- Tribes need to consider the complete water cycle – quantity and quality.

Nonpoint Sources

- Can cause significant water quality problems
- Sources and issues depend on the watershed
- Sources of nonpoint pollution include
 - Stormwater
 - Forest practices
 - Boats and marinas
 - Failing on-site septic systems
 - Agricultural practices
 - Roads, bridges and construction projects
- One response is to develop best management practices (BMPs) that are enforced by ordinance

Enforcement

- Under Tribal law, the Tribal Council has the sovereign authority to enact Tribal Water Quality laws that delegate authority to a Tribal agency or department to enforce its water pollution laws through civil actions
 - Fines and Injunctive Relief
 - Could be administrative or judicial
- Violating permit terms: effluent limits; WQS for receiving waters; BMPs
- Discharging pollutants without a permit

Due Process

“The Indian Civil Rights Act (ICRA), 25 U.S.C. §§ 1301–04, expressly provides that no tribe may ‘deny to *any person* within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.’ ” *See also Iowa Mut. Ins. Co.*, 480 U.S. at 19, 107 S.Ct. 971 (noting that ICRA “provides non-Indians with various protections against unfair treatment in the tribal courts”).

- Provide Public notice and opportunity to comment before laws are enacted
- Administrative Orders (agreed to by parties or following judicial hearing)
- Provide for Appeal Rights

Why exercise sovereign power in this way?

- Many reasons – “Use it or lose it” is one key reasons
- Group discussion regarding others (time permitting)

QUESTIONS?



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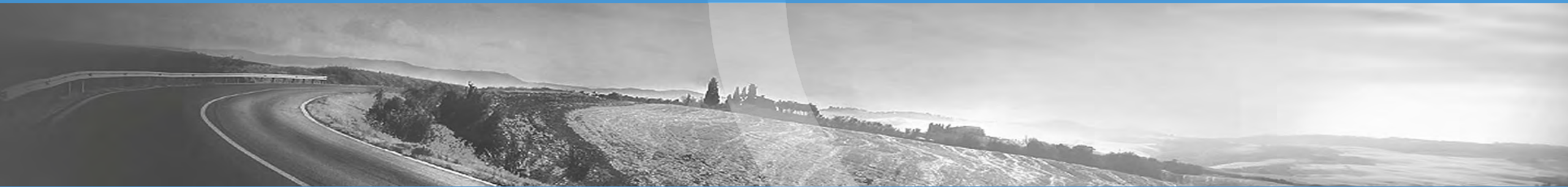
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Enforcing Tribal Environmental Law

1:10 p.m./ 3:10 p.m. CT
March 29, 2023



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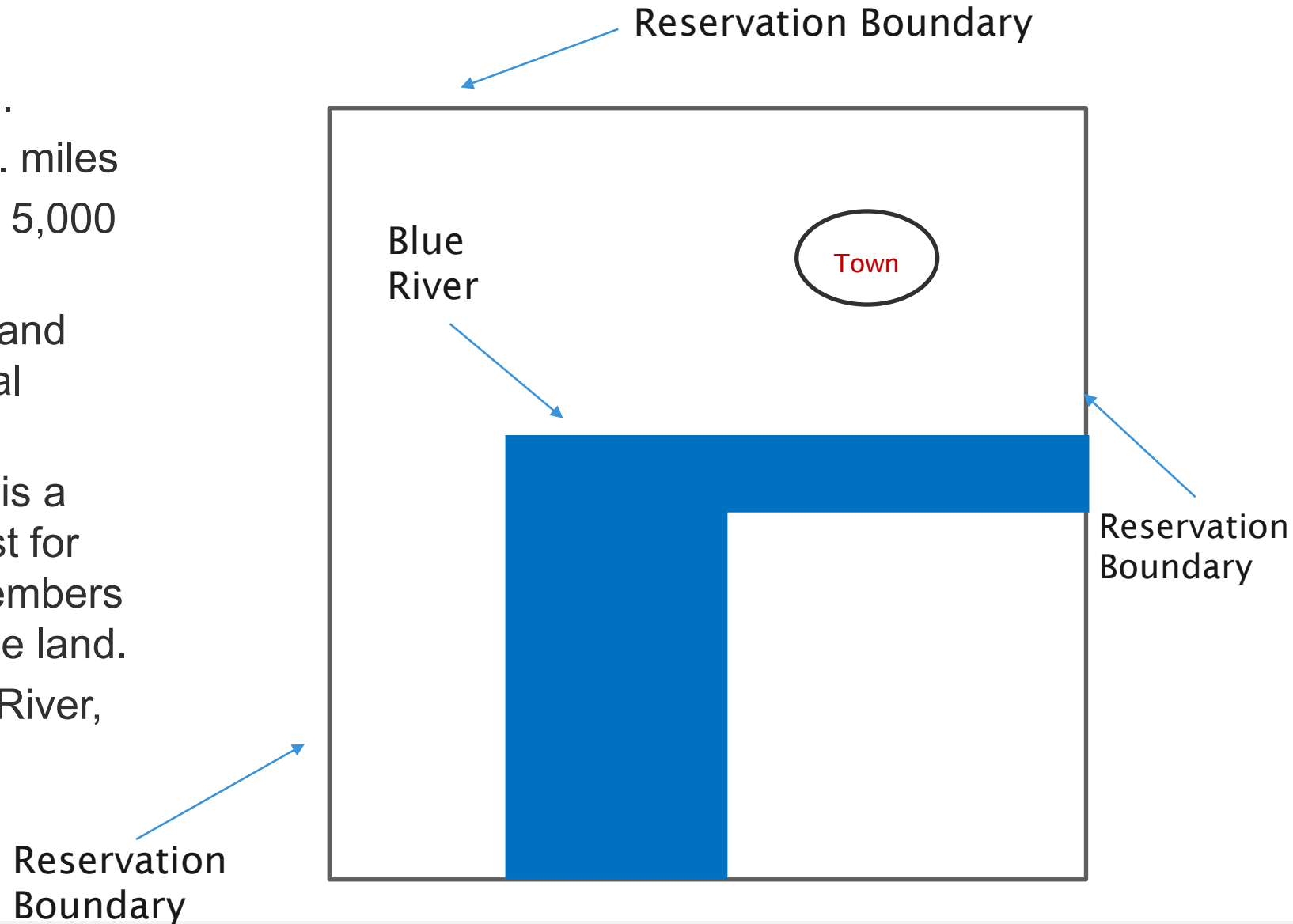
Roadmap

- Ability of Tribal Council to delegate responsibility to a tribal agency to enforce tribal law.
- Role of Tribal Governments in the development, implementation, and enforcement of tribal law.
- Hypothetical enforcement of Tribal environmental regulations.
- Key Takeaways and considerations.
- Questions.



The Tribe

- Located in Great Lakes area.
- Reservation size is 1,000 sq. miles
- 8,000 members with roughly 5,000 on the Reservation.
- Most of the members live in and around Town, where the tribal government is located.
- Most of the land is rural and is a combination land held in trust for the Tribe, held in trust for members of Tribe, and non-member fee land.
- Town is located on the Blue River, which is the source of the Community's water supply.

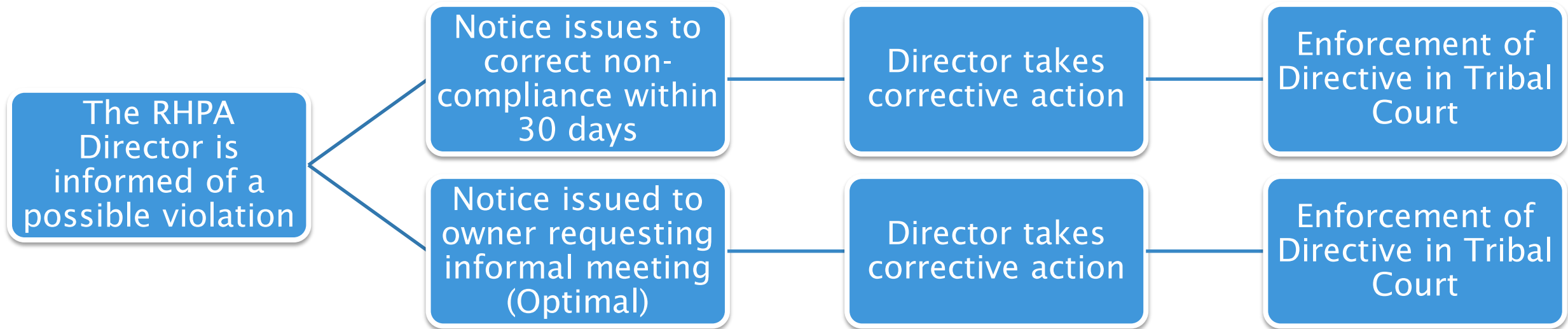


The Tribe's Above Ground Storage Tank(AST) Program

- Above Ground Storage Tank ordinance enacted by the tribal council in 2020.
- Purpose of the AST is to regulate tanks with heating oil and other petroleum products.
- Administered and regulated by the Director of Tribal Reservation Home Protection Agency (RHPA).
- The AST Ordinance requires regular inspection of tanks for corrosion, the use of secured transfer areas and secondary containment systems, prompt notification of spills.



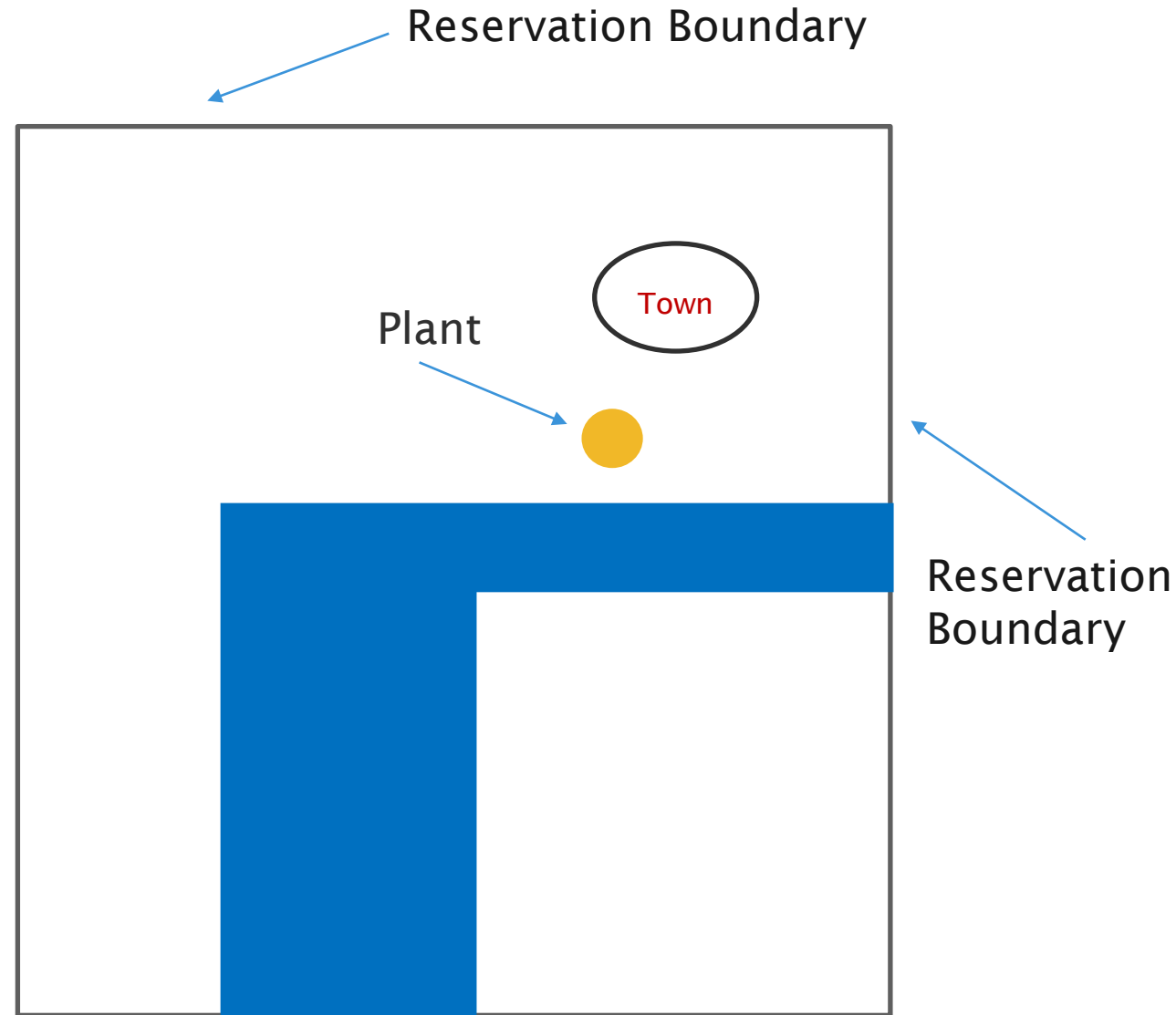
Tribe's Administrative Procedure Process



Acme Corp

- Operates chemical and petroleum plants across the country.
- Due to the toxic nature of their operations, they like to site their plants in more rural areas of the country.
- Ten years ago, they purchased non-member fee land within the Tribe's reservation and then five years ago Acme built a petroleum products plant on its fee land parcel which is about 5 miles south of Town within the Reservation boundaries and right next to the Blue River.

Reservation Boundary



Relationship between the Tribe and Acme Corp.

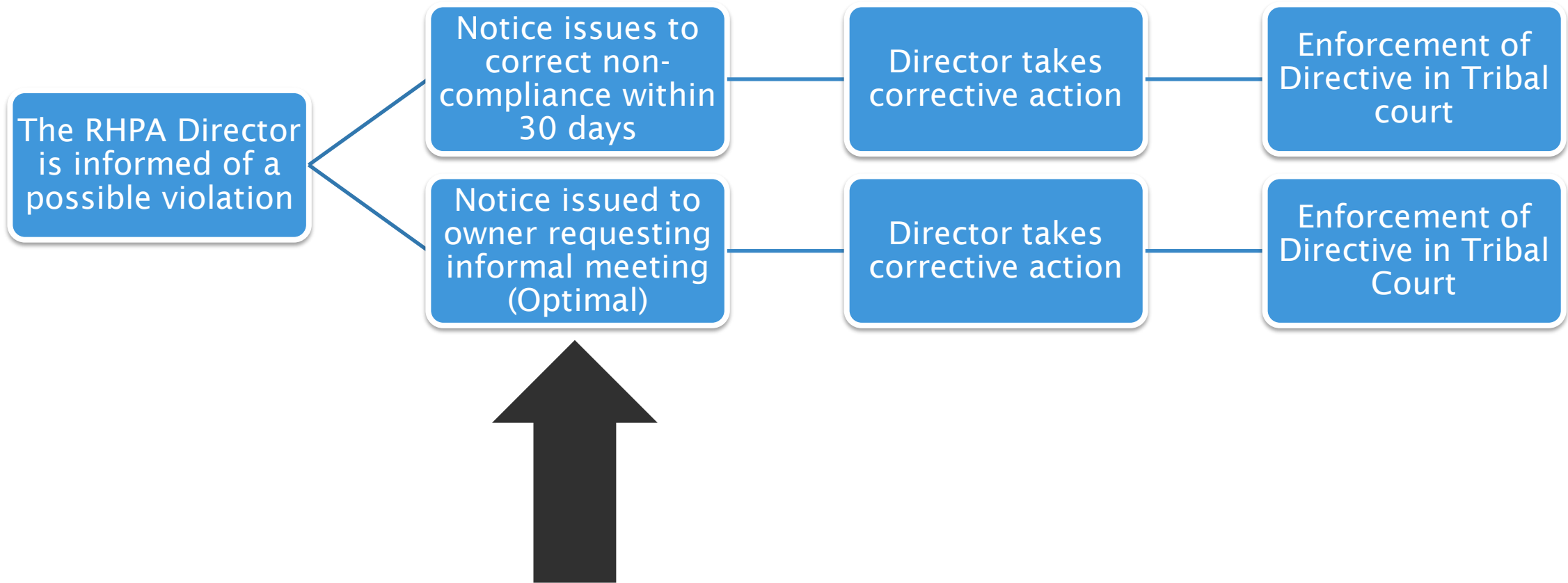
- Tribal members were very concerned about 1) the economic impact of Acme Corp's plant and 2) possible environmental impact of the plant.
- To ease economic concerns, Acme Corp enters into an agreement with the Tribe's TERO office offering special placement and job training to tribal members at the plant. As a result, 25% of the plant's employees are tribal members.
- When the plant opened five years ago Acme promised they would have the systems in place to manage their ASTs prevent spills and contamination of the Blue River and local water supply.



Incident One: The Leak

- Tribal member named Fred LaClair works at the plant through the TERO worker agreement.
- One day is looking around the storage tank and sees a leak!
- He immediately reports it to his boss who sends it to Acme's Safety and Response team who initiates a clean up of the leak.
- Acme reports the leak to the State but does not report it to the Tribe as required by tribal AST ordinance.
- Fred decides to report the spill to the Tribe's RHPA.
- The Director of the RHPA notes that this is the first time that a spill has occurred at the plant and is encouraged by the reports that Acme appears to be addressing the leak immediately.
- Since the Tribe's AST ordinance requires acme to notify the Tribe and because ACME did not do this be notified, Director decides to submit a letter to Acme stating they've violated the AST ordinance and requests they update their notification protocol to inform RHPA.

Tribe's Administrative Procedure Process after First Spill



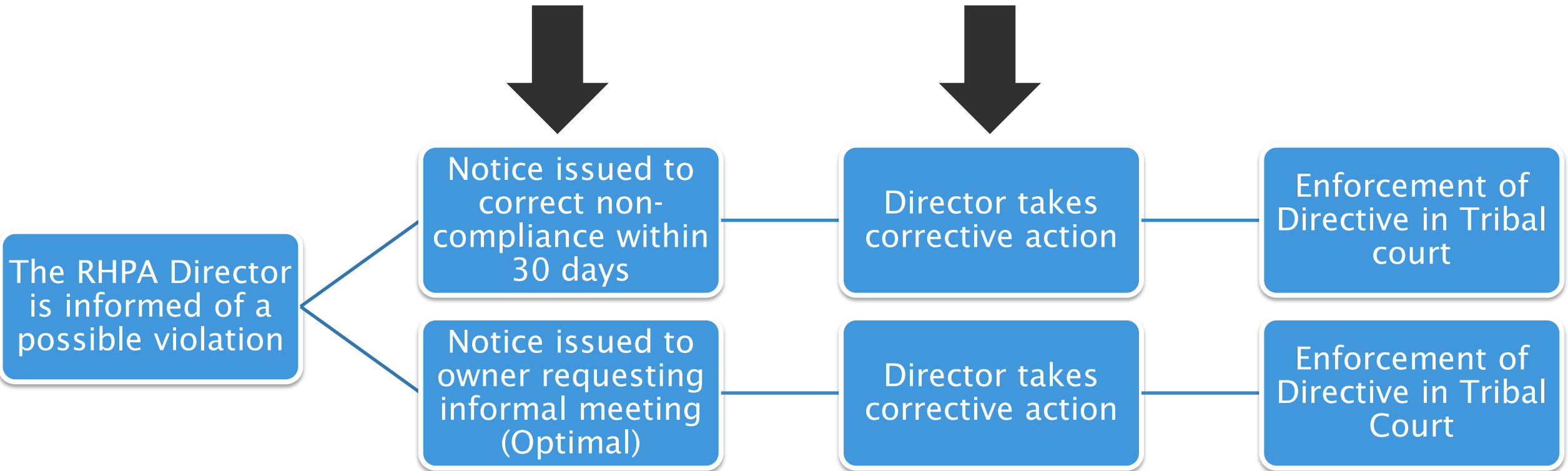
Incident Two: The Spill

- 3 months go by after the first leak when suddenly the same storage tank that previously leaked has burst open due to corrosion.
- Because Acme Corp did not conduct regular inspections of the tanks, Acme did not realize the tank had corrosion until the spill.
- The spill happened at a quiet time for the plant so it was not discovered until hours later.
- Upon hearing about this incident, Fred again contacts the Director of RHPA.
- The Director immediately goes out to the plant where the storage tanks are located and starts taking pictures and prepares a reports.
- Acme notifies Minnesota about the leak but once again does not notify the Tribe.
- The Director issues a Notice of Violation to Acme detailing violations of AST Ordinance, giving Acme 30 days to respond. Acme fails to response
- Based on the facts the Director decides to issue a citation to ACME for violating the AST Ordinance.

The Director's Citation- Violations of the AST Ordinance

- Violation of the notification requirements for spills from the above ground storage tanks.
- Failing to provide adequate inspection of the above ground storage tanks for corrosion.
- Failing to provide an adequate containment area to prevent spilling contamination onto the ground soil.

Tribe's Administrative Procedure Process After The Second Spill



Acme's Response

- Acme ignores the letter for the RHPA and files a lawsuit in the Federal District Court for the State.
- In their lawsuit, they claim that they are not subject to the Tribe's AST ordinances because the Tribe does not have jurisdiction over them.
- Acme makes the following arguments:
 - They were operating on non-member fee land
 - They had no commercial relationship with the tribe
 - Their conduct did not threaten the safety and welfare of the Tribe and tribal citizens



Tribal Civil Jurisdiction

- “...the general proposition is that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” *Montana v. United States*, 450 U.S. 544, 565 (1981)
- “A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” *Montana v. United States*, 450 U.S. 544, 565 (1981).
- “A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Montana v. United States*, 450 U.S. 544, 566 (1981).

Jurisdictional Hook One: Consensual Relationship

- The Tribe argues that the Acme Corp.'s TERO placement agreement is an “other arrangement” satisfying the first *Montana* exception.
- “In other words, Dolgencorp argues that noncommercial relationships do not give rise to tribal jurisdiction under *Montana*... This is unquestionably a relationship “of a commercial nature.” *Dolgencorp, Inc. v. Mississippi Band of Choctaw Indians*, 746 F.3d 167, 173 (5th Cir. 2014).



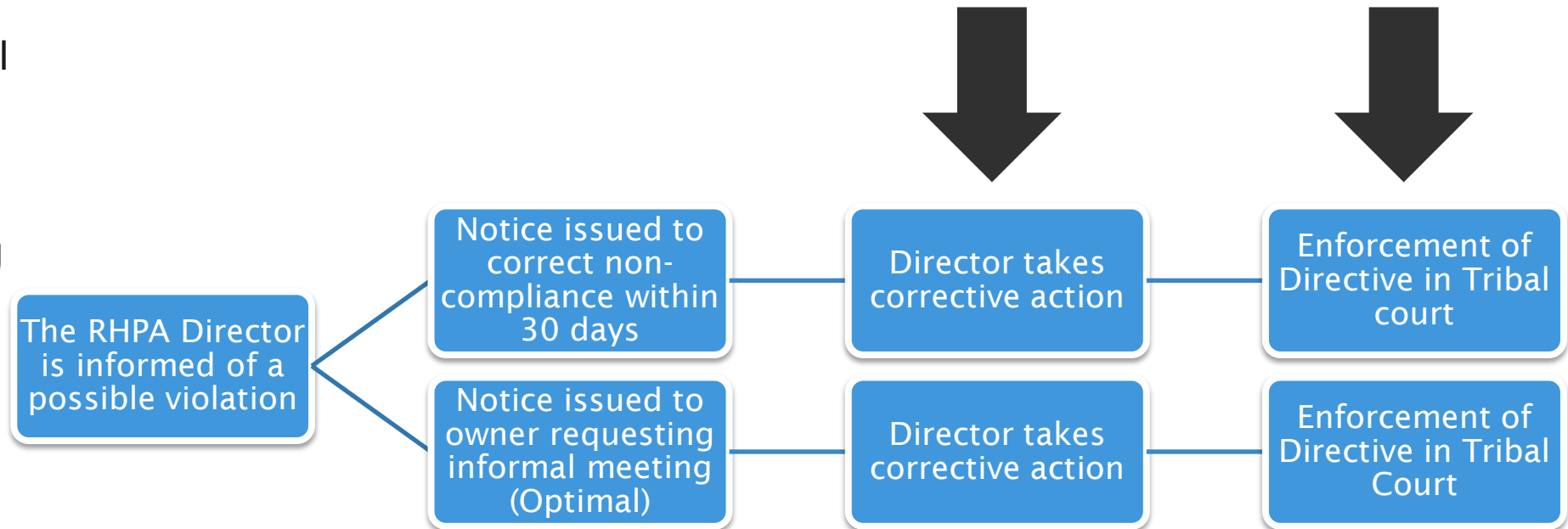
Jurisdictional Hook Two: Threat to Health and Safety

- The Tribe argues that the Acme Corp.'s spillage of petroleum threatens the safety, health, and welfare of the Tribe.
- “We conclude that FMC's storage of millions of tons of hazardous waste on the Reservation “threatens or has some direct effect on the political integrity, the economic security, or the health or welfare” of the Tribes....” *FMC Corporation v. Shoshone-Bannock Tribes*, 942 F.3d 916, 935 (9th Cir. 2019)



Tribe Prevails: Back to the Tribal Process

- Tribe prevails at federal Court, sending it back down to the tribe
- Acme has their hearing in front of the Tribal Court. They lose and a fine is imposed.
- Acme has a right to appeal the finding to Tribal Court of Appeals.



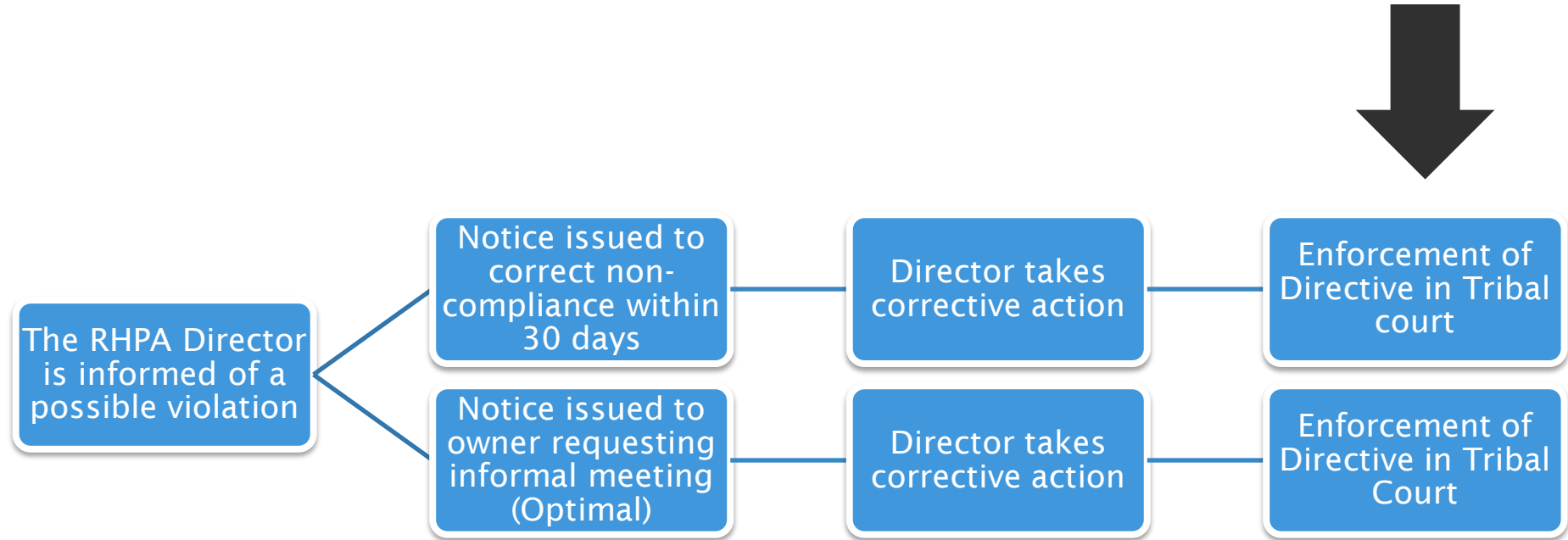
Back to Federal Court!

- Acme argues that the tribal ordinances and regulations on AST are invalid and exceeding their sovereign powers.
- “Nonetheless, both the Supreme Court and this circuit have held that non-Indian defendants *must exhaust tribal court remedies* before seeking relief in federal court” *Burlington Northern R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1244 (9th Cir.1991).



Tribe Prevails (Again)

- Tribe prevails at federal Court (again), sending it back down to the tribe.
- Acme has their appeal in front of the tribal court of appeals and loses.
- Acme decides to not take their case back to federal court and instead amends their AST policies to align with the AST Ordinances.



Key Takeaways: **All Roads Lead to the Exercise of Tribal Sovereignty**

- A Tribe is acting in its sovereign or governmental capacity when it asserts its civil regulatory authority to enforce its AST Ordinances.
- An administrative framework with define steps helps assert the civil regulatory jurisdiction.
- Enforcement **requires action**.





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Class I Redesignation

*– An option under the Clean Air Act
to enhance air quality protections on
and near Tribal Lands*

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Overview



- Clean Air Act Summary
- Where does Class I Redesignation sit under the CAA?
- What is the Prevention of Significant Deterioration (PSD) Program under the CAA?
- What is a Class I Area under the PSD program?
- How does Class I Redesignation benefit tribal communities?
- Procedural steps for Class I Redesignation
- Dispute Resolution Process – For permit or redesignation disputes
- Common questions, answers, and considerations for tribes
- Additional questions?



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Clean Air Act Summary

Clean Air Act Summary – 42 U.S.C. § 7401 et seq.



Subchapter I: Programs and Activities – 42 U.S.C. §§ 7401-7515

Subchapter II: Emission Standards for Moving Sources – 42 U.S.C. §§ 7521-7590

Subchapter III: General Provisions – 42 U.S.C. §§ 7601-7628

Subchapter IV: Noise Pollution – 42 U.S.C. §§ 7641-7642

Subchapter IV-A: Acid Deposition Control – 42 U.S.C. §§ 7651-7651o

Subchapter V: Permits – 42 U.S.C. §§ 7661-7661f

Subchapter VI: Stratospheric Ozone Protection – 42 U.S.C. §§ 7671-7671q

Subchapter VII: American Innovation and Manufacturing – 42 U.S.C. § 7675



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Where does Class I
Redesignation sit
under the CAA?

Where does Class I Redesignation Sit Under the CAA?

Clean Air Act – 42 U.S.C. § 7401 et seq.

Subchapter I: Programs and Activities – 42 U.S.C. §§ 7401-7515

Subchapter II: Emission Standards for Moving Sources – 42 U.S.C. §§ 7521-7590

Subchapter III: General Provisions – 42 U.S.C. §§ 7601-7628

Subchapter IV: Noise Pollution – 42 U.S.C. §§ 7641-7642

Subchapter IV-A: Acid Deposition Control – 42 U.S.C. §§ 7651-7651o

Subchapter V: Permits – 42 U.S.C. §§ 7661-7661f

Subchapter VI: Stratospheric Ozone Protection – 42 U.S.C. §§ 7671-7671q

Subchapter VII: American Innovation and Manufacturing – 42 U.S.C. § 7675

Where does Class I Redesignation Sit Under the CAA?



Subchapter I: Programs and Activities – 42 U.S.C. §§ 7401-7515

Part A – Air Quality and Emissions Limitations – 42 U.S.C. §§ 7401-7431

Part B – Ozone Protection – *Repealed and replaced by Title V*

Part C – Prevention of Significant Deterioration of Air Quality – 42 U.S.C. §§ 7470-7492

Class 1 Redesignation – 42 U.S.C. § 7474

Part D – Plan Requirements for Nonattainment Areas – 42 U.S.C. §§ 7501-7515

Where does Class I Redesignation Sit Under the CAA?

Clean Air Act

Subchapter I: Programs and Activities

Part C – Prevention of Significant Deterioration of Air Quality

Subpart i - Clean Air

§ 7474. Area redesignation

➡ (a) AUTHORITY OF STATES TO REDESIGNATE AREAS

(b) NOTICE AND HEARING; NOTICE TO FEDERAL LAND MANAGER; WRITTEN COMMENTS AND RECOMMENDATIONS; REGULATIONS; DISAPPROVAL OF REDESIGNATION

➡ (c) INDIAN RESERVATIONS

Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respect to the provisions of subsection (e).

(d) REVIEW OF NATIONAL MONUMENTS, PRIMITIVE AREAS, AND NATIONAL PRESERVES

(e) RESOLUTION OF DISPUTES BETWEEN STATE AND INDIAN TRIBES



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What is the Prevention of Significant Deterioration (PSD) Program under the CAA?

What is the Prevention of Significant Deterioration (PSD) Program?

42 U.S.C. § 7470 – Congressional Declaration of Purpose

The purposes of this part are as follows:

- (1) to **protect public health and welfare from any actual or potential adverse effect** which in the Administrator's judgment may reasonably be anticipate [1] to occur **from air pollution** or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air) [2], **notwithstanding attainment and maintenance of all national ambient air quality standards**;
- (2) to **preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value**;
- (3) to **insure that economic growth will occur** in a manner consistent with the preservation of existing clean air resources;
- (4) to **assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State**; and
- (5) to **assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences** of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

What is the Prevention of Significant Deterioration (PSD) Program?



Class I: Most protected; allowable increments of new pollution are very small.

Class II: Moderately protected; allowable increments of new pollution are modest.

Class III: Least protected; allowable increments of new pollution are large (but not so large that the area would exceed NAAQS).

What is the Prevention of Significant Deterioration (PSD) Program?

6 Criteria Air Pollutants:

- Ozone (O₃)
- Particulate matter (expressed as PM₁₀ and PM_{2.5})
- Carbon monoxide (CO)
- Nitrogen oxide (NO_x)
- Lead (Pb)
- Sulfur dioxide (SO₂)
- Other pollutants subject to PSD
 - “regulated NSR pollutant” at 40 CFR 52.21(b)(50)

Increments:

- 42 U.S.C. §§ 7473, 7475(a)(3), 7476;
40 C.F.R. § 51.166; 40 C.F.R. § 52.21(d).

Pollutant	Increments		
	Class I µg/ m ³	Class II µg/ m ³	Class III µg/ m ³
Particulate Matter			
PM ₁₀ , Annual arithmetic mean	4	17	34
PM ₁₀ , 24-hour maximum	8	30	60
PM _{2.5} , Annual arithmetic mean	1	4	8
PM _{2.5} , 24-hour maximum	2	9	18
Sulfur Dioxide			
Annual arithmetic mean	2	20	40
24-hour maximum	5	91	182
3-hour maximum	25	512	700
Nitrogen Dioxide:			
Annual arithmetic mean	2.5	25	50

What is the Prevention of Significant Deterioration (PSD) Program?



- **Definitions** – found at 40 C.F.R. § 52.21(b)(1),(2)
 - *Major Stationary Source* – 40 CFR 52.21(b)(1)(i)
 - *Major Modification* – 40 CFR 52.21(b)(2)(i)
- **Requirements** – specifics found at 42 U.S.C. § 7475
 - Permit issued in accordance with PSD program requirements
 - Install Best Available Control Technology (BACT)
 - Air quality analysis showing:
 - New emissions (from proposed project) will not cause or contribute to violation of NAAQS
 - New emissions (from proposed project) will not cause or contribute to violation of PSD increment (listed on previous slide)
 - Evaluate whether proposed source will affect or have adverse impact on air quality values in nearby Class I areas
 - Continued air quality monitoring
 - Additional analyses on visibility, vegetation, and soil
 - Proposed permit subject to specific notice and comment public engagement periods



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What is a Class I
area under the PSD
program?

What is a Class I Area Under the PSD program?



42 U.S.C. § 7472 – Initial Classifications

(a) AREAS DESIGNATED AS CLASS I

Upon the enactment of this part, all—

- (1) **international parks,**
- (2) **national wilderness areas which exceed 5,000 acres** in size,
- (3) **national memorial parks which exceed 5,000 acres** in size, and
- (4) **national parks which exceed six thousand acres in size,** and which are in existence on August 7, 1977, shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before August 7, 1977, shall be class I areas which may be redesignated as provided in this part. The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(b) AREAS DESIGNATED AS CLASS II

All areas in such State designated pursuant to section 7407(d) of this title as attainment or unclassifiable which are not established as class I under subsection (a) shall be class II areas unless redesignated under section 7474 of this title.

What is a Class I Area Under the PSD program?



Clean Air Act

Subchapter I: Programs and Activities

Part C – Prevention of Significant Deterioration of Air Quality

Subpart i - Clean Air

§ 7474. Area redesignation

(a) AUTHORITY OF STATES TO REDESIGNATE AREAS

(b) NOTICE AND HEARING; NOTICE TO FEDERAL LAND MANAGER; WRITTEN COMMENTS AND RECOMMENDATIONS; REGULATIONS; DISAPPROVAL OF REDESIGNATION

➡ (c) INDIAN RESERVATIONS

Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respect to the provisions of subsection (e).

(d) REVIEW OF NATIONAL MONUMENTS, PRIMITIVE AREAS, AND NATIONAL PRESERVES

(e) RESOLUTION OF DISPUTES BETWEEN STATE AND INDIAN TRIBES



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**How does Class I
Redesignation
benefit tribal
communities?**

How does Class I Redesignation benefit tribal communities?



- 1. Increases tribal role in protection of tribal air quality and air quality related values**
 - Tribal managers will receive notice of all PSD permit applications for sources located outside the reservation
- 2. Increases opportunities for tribal assertion of sovereignty**
 - Developing Air Quality Related Values and ensuring air quality is protected facilitates tribal role in self-governance
- 3. Builds tribal Clean Air Act implementation capacity**
 - Tribal managers will have opportunity to advocate for protected tribal air quality, pursue dispute resolution (e.g., 42 U.S.C. § 7474(e)), and participate in public notice and comment periods for disputed sources
- 4. Protects reservation and tribal resources**
 - Class I increments and Air Quality Related Values (AQRVs) apply

How does Class I Redesignation benefit tribal communities?



4. Protects reservation and tribal resources

- Class I increments apply &

- Air Quality Related Values (AQRVs) apply

- AQRV not defined by CAA except that may include visibility

- “Mandated” Class I areas:

- Federal Land Manager may consider visibility, scenic, cultural, physical, or ecological resources for a particular area. 40 C.F.R. Part 51, Appendix W, 6.2

- “Non-Federal” Class I redesignated areas:

- CAA does not expressly address; EPA has not promulgated rules
 - 42 U.S.C. § 7474(e) allows avenue for tribe or state to invoke dispute resolution to resolve issues that cause or contribute to cumulative change in air quality and for EPA administrator to resolve the issues to protect the air quality related values of the lands involved

Increments			
Pollutant	Class I $\mu\text{g}/\text{m}^3$	Class II $\mu\text{g}/\text{m}^3$	Class III $\mu\text{g}/\text{m}^3$
Particulate Matter			
PM ₁₀ , Annual arithmetic mean	4	17	34
PM ₁₀ , 24-hour maximum	8	30	60
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Annual arithmetic mean	2.5	25	50



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Procedural steps for Class I Redesignation

Procedural steps for Class I Redesignation



42 U.S.C. § 7474(b) / Tribal Actions – 40 C.F.R. § 52.21(g):

- 1) Confer with regional EPA office to gather information
- 2) Confer with state prior to issuance of notice and not longer than 60 days before public hearing
- 3) Notice of hearing to: States, tribes, Federal Land Manager 30+ days before public hearing
- 4) Description of reasons for proposed redesignation 30+ days before public hearing
- 5) Analysis of health, environmental, economic, social, and energy effects of proposed reclassification available for public review 30+ days before public hearing
- 6) Establish that the redesignation will not cause or contribute to a concentration of air pollutant to exceed maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard
- 7) Consultation with elected leadership of local and substate governments and Federal Land Managers in nearby Class I areas
- 8) Hold a public hearing

Procedural steps for Class I Redesignation



EPA Actions

- 1) Issue notice of proposed rulemaking/ opportunity for public comment in the Federal Register
- 2) Public hearing
- 3) Preparation of written response to comments received during public comment period
- 4) Resolve issues raised between state and tribe through dispute resolution process, if necessary
- 5) Issue a final rule in the Federal Register approving/ disapproving Class I redesignation
 - EPA may only approve the Class I redesignation if all procedural requirements are met
 - EPA may only disapprove the Class I redesignation if not all procedural requirements are met
 - If EPA disapproves the redesignation, the tribe may correct deficiencies and resubmit the application



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Dispute Resolution – For permit or redesignation disputes

Dispute Resolution Process – For permit or redesignation disputes

42 U.S.C. § 7474(e) Resolution of Disputes Between State and Indian Tribes / 40 C.F.R. § 52.21(t) ***Disputed permits or redesignations.***

If any . . . Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the . . . governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected . . . tribal reservation, the . . . Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute.

If requested by any . . . Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved.

If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.

In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.



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Common questions, answers, and considerations for tribes



Is Class I Redesignation right for your reservation?

- Tribal Air Quality Management Goals:
 - How does a Class I area redesignation fit with the tribe's overall goals?
 - Will a Class I designation further the tribe's goals for protection of public health, ecosystems, and tribal cultural values?
 - What additional requirements for sources within the redesignated area will ensure protection of Air Quality Related Values (AQRVs)?
- Tribal Technical Resources:
 - What technical resources and staff are available to develop the Class I redesignation application materials and technical report?
 - What resources and expertise are available to conduct outreach, public notice and comment, and public hearings?
 - What resources may be needed, both to develop expertise within the tribe's governing and resource management structures, and to possibly retain outside expertise?
 - What technical expertise is in place or must be obtained to ensure effective implementation of the new Class I area, for example, expertise to interpret modeling analyses, review PSD permit applications, and implement AQRVs in the context of permit issuance?
- Economic Opportunities:
 - What are the tribe's plans for economic growth within the reservation?
 - What major sources are located, or may be planning to locate, in the area proposed for redesignation or nearby?
 - Are any existing major sources likely to expand their operations in ways that impact reservation air quality?
 - How might a Class I area redesignation impact increment consumption and economic development opportunities in the area?



Is Class I Redesignation right for your reservation? (continued)

- Sovereignty and Cross Governmental Relations:
 - What jurisdictions may be affected by the redesignation?
 - How many states are located within 100 kilometers of the reservation boundaries?
 - Are there major metropolitan areas within this distance?
 - Could the redesignated area be affected by emissions from large sources located at a distance greater than 100 kilometers?
 - Are there possibilities for cooperative management?
 - How will the proposed Class I area fit into regional air management plans?
- Lessons to learn from state-designated Class I and Mandatory Class I Areas:
 - What opportunities for education, outreach, and coordination for creating relationships with FLMs within the region can be explored?
 - Are there any mandatory federal Class I areas located near the tribe's reservation? If so, what types of issues have these areas encountered?
 - Are there any state-designated Class I areas near the tribe's reservation? If so, what types of issues has the state encountered?
 - How have mandatory areas been administered and implemented in relation to state PSD permitting actions?
- Related jurisdictional disputes:
 - Will the redesignation process trigger any boundary or jurisdictional disputes? If so, is the tribal government prepared to address these issues?



Quiz:

- 1) Does a tribe need to use treatment as a state (TAS) status to pursue redesignation?
- 2) What happens if a state or tribe disagrees with a proposed redesignation or proposed permitting decision?



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**Additional
questions?**



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Thank you for
your time!

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References:



- Richard Lattanzio, CLEAN AIR ACT: A SUMMARY OF THE ACT AND ITS MAJOR REQUIREMENTS, CONGRESSIONAL RESEARCH SERVICE (2022), <https://crsreports.congress.gov/product/pdf/RL/RL30853#:~:text=The%20act%20establishes%20federal%20standards,major%20sources%20of%20air%20pollution>
- ENVIRONMENTAL PROTECTION AGENCY, GUIDANCE FOR INDIAN TRIBES SEEKING CLASS I REDESIGNATION OF INDIAN COUNTRY PURSUANT TO SECTION 164(c) OF THE CLEAN AIR ACT (2013), <https://www.epa.gov/sites/default/files/2016-08/documents/guidancetribesclassiredesignationcaa.pdf>.
- Ann Juliano, *Redesignating Tribal Trust Land under Section 164(c) of the Clean Air Act*, 35 TULSA L. J. 37 (2013).
- John S. Seitz, Director, ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF AIR QUALITY PLANNING AND STANDARDS, Memorandum: Clarification of Prevention of Significant Deterioration (PSD) Guidance for Modeling Class I Area Impacts (October 19, 1992), <https://www.epa.gov/sites/default/files/2015-07/documents/class1.pdf>.



Applying for Grants to Fund Climate Adaptation: The Pueblo de San Ildefonso Story



Raymond Martinez, Department of Environmental and Cultural Preservation (DECP), Director

Kaylene Ritter, Abt Associates

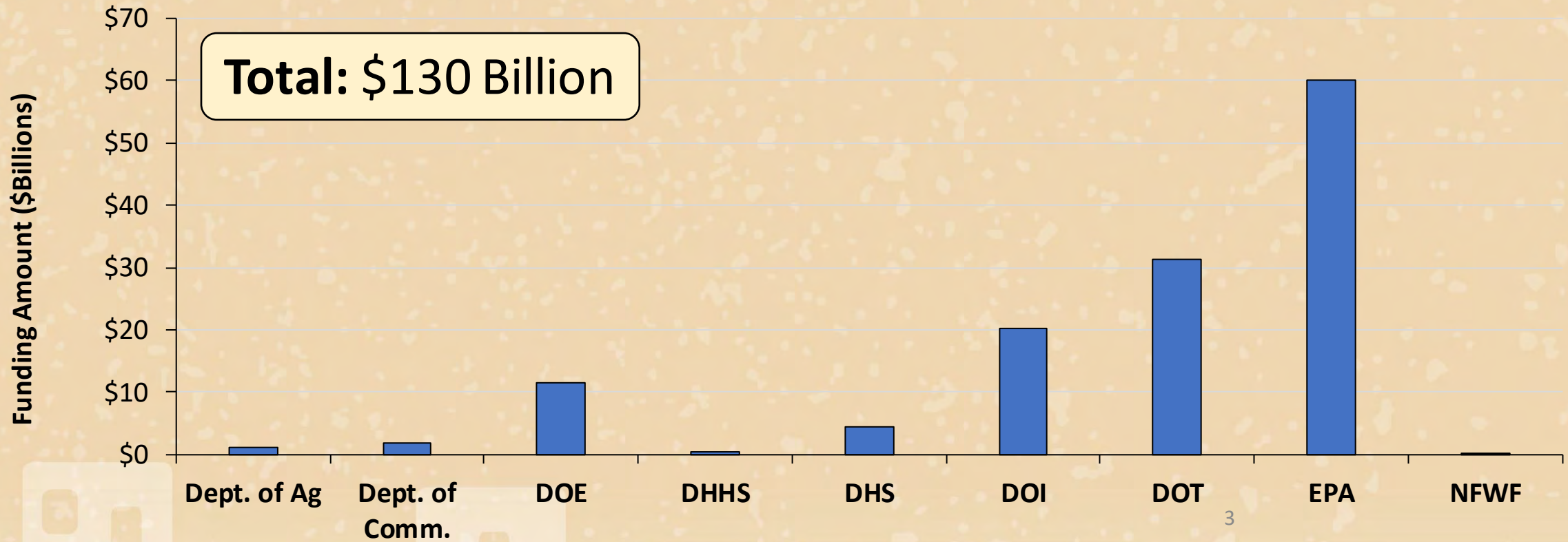


Current Grant Opportunities

- Bipartisan Infrastructure Law (BIL) and the Inflation Reduction Act (IRA) have unprecedented funding available to Tribal Nations:
 - BIL ~ \$130 billion in grants with Tribal eligibility
 - IRA ~ \$89 billion in grants with Tribal eligibility
- The Pueblo is engaged in identifying and applying for Federal funding to implement their Climate Action Plan, with Abt's support



BIL Environmental Grants with Tribal Eligibility



IRA Grants with Tribal Eligibility

Agency/Department	Amount
Department of Agriculture	\$24,875,450,000
Department of Energy	\$13,462,000,000
Department of the Interior	\$5,096,000,000
Department of Transportation	\$3,496,060,000
Dept of Housing and Urban Development	\$837,500,000
Environmental Protection Agency	\$41,279,000,000
Grand Total	\$89,046,010,000

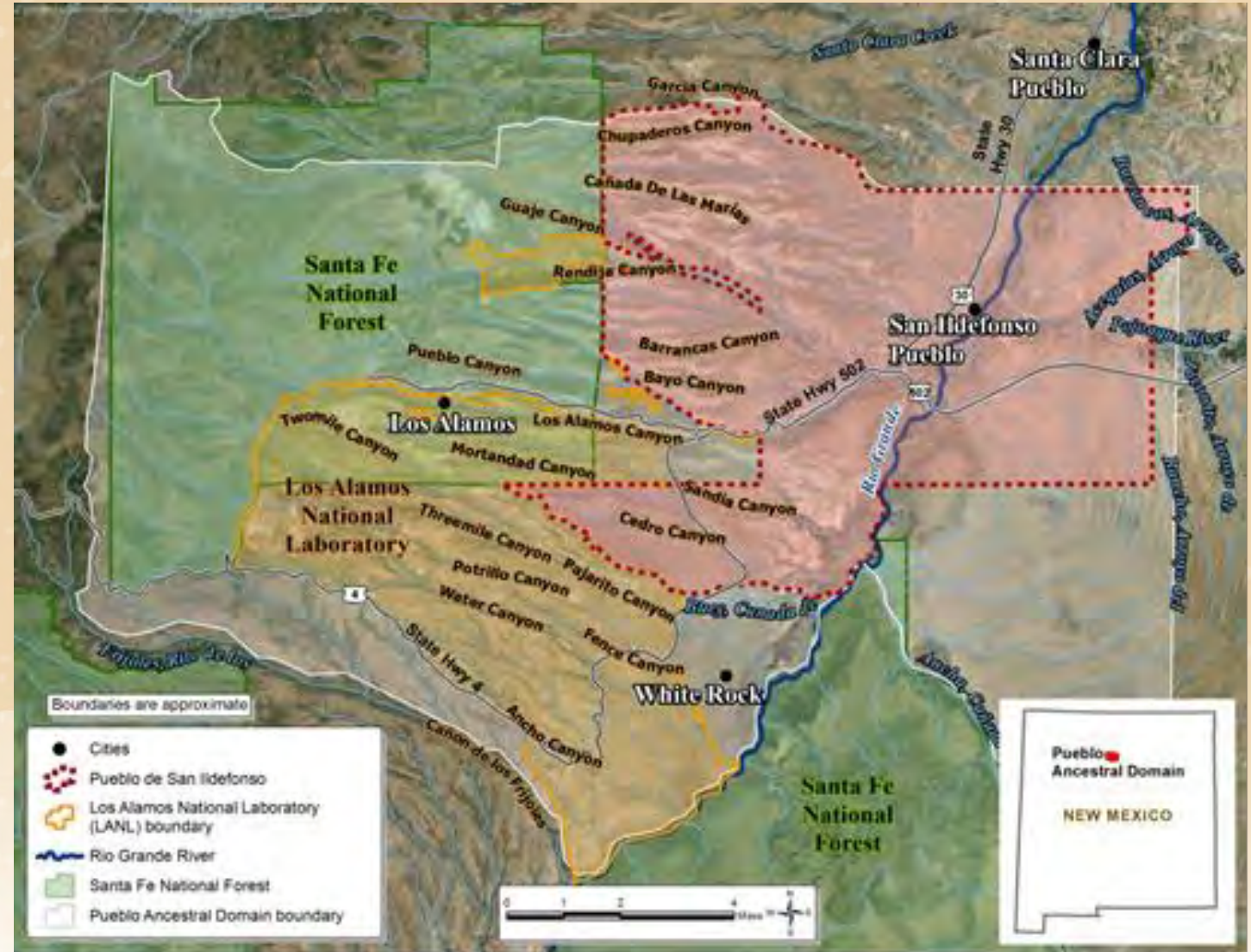
Total: \$89 Billion

About the Pueblo



Po' Woh Geh Owingeheh (Pueblo de San Ildefonso)

- Agricultural-based economy with a resurgence of traditional arts
 - Famous for black-on-black, high-polished pottery
- Encompasses approximately 30,000 acres within the larger Ancestral Domain of more than 60,000 acres
- Los Alamos National Laboratory is directly adjacent to the Pueblo
 - Contamination concerns





Tribal Council

- Governor
- Lt. Governor
- 10 Council Representatives

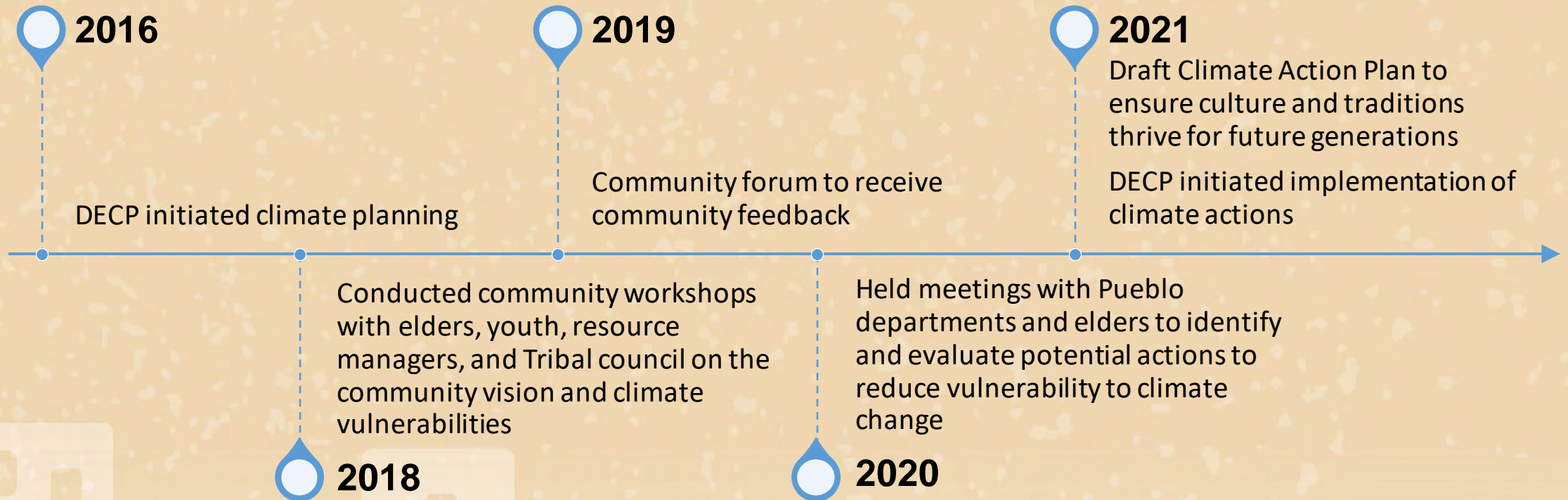
Pueblo Departments

- Health and Human Services
- Natural Resources Department
- Department of Environment & Cultural Preservation (DECP)
- Education Department
- Tourism Department
- Tribal Courts

The Pueblo's Climate Planning



The Pueblo's Climate Planning Timeline



Community Vision

- Key aspects of community life that are critical to preserve and protect
- Developing climate adaptation actions to preserve and sustain these aspects of community life for future generations



High Risk Vulnerabilities (Examples)



Traditional activities

Traditional pottery making utilizes materials from the Pueblo's local lands. Making pottery requires access to clay, sand, ash, plants (for pigments), and other materials



Traditional Places

Continued existence of sacred sites, such as sacred springs, depends on sustained groundwater levels.



Community Health

Elders and other community members who are ill or have compromised respiratory systems may be especially susceptible to health problems associated with poor air quality.



Infrastructure and Governance

Pueblo departments are compartmentalized from each other; managing community resources will require work across these departments.

Adaptation Actions (Examples)



Traditional activities

Restore and protect critical areas from erosion and aridity by revegetating native grasses and plants to ensure plants, animals, and Pueblo materials are available for future use in traditional activities.



Traditional Places

Enhance water retention and facilitate groundwater recharge to protect and maintain sacred springs and other water sources.



Community Health

Create cool and clean air spaces at home that can reduce exposure to extreme heat and wildfire smoke (e.g., install air filtration, cooling systems, enhanced insulation).



Infrastructure and Governance

Convene regular meetings with representatives from each Pueblo department to identify specific issues that would benefit from cross-departmental coordination.



Climate Resilience Implementation with Federal Grant Funding

The Pueblo's Climate Adaptation Grants

- 3 BIA Resiliency Grants (2019, 2021, 2023)
 - Impacts of climate on contaminants exposure & health
 - Traditional resilient farming
 - Wildfire mitigation
- Southwest Climate Adaptation Science Center Grant (2021)
 - Wildfire landscape management practices
- NOAA NIDIS Coping with Drought Grant (2022)
 - Sacred springs protection and restoration
- U.S. EPA Enhanced Air Quality Monitoring for Communities Grant (2022)
 - Air particulate and pollutants monitoring

Our Approach



Closely monitor for grant opportunities



Creatively align grants with the Pueblo's climate adaptation priorities



Prepare the grant application

U.S. EPA Grant - Enhanced Air Quality Monitoring for Communities



- Identified the opportunity and made the connection to one of the Pueblo's priority climate vulnerabilities: Poor air quality



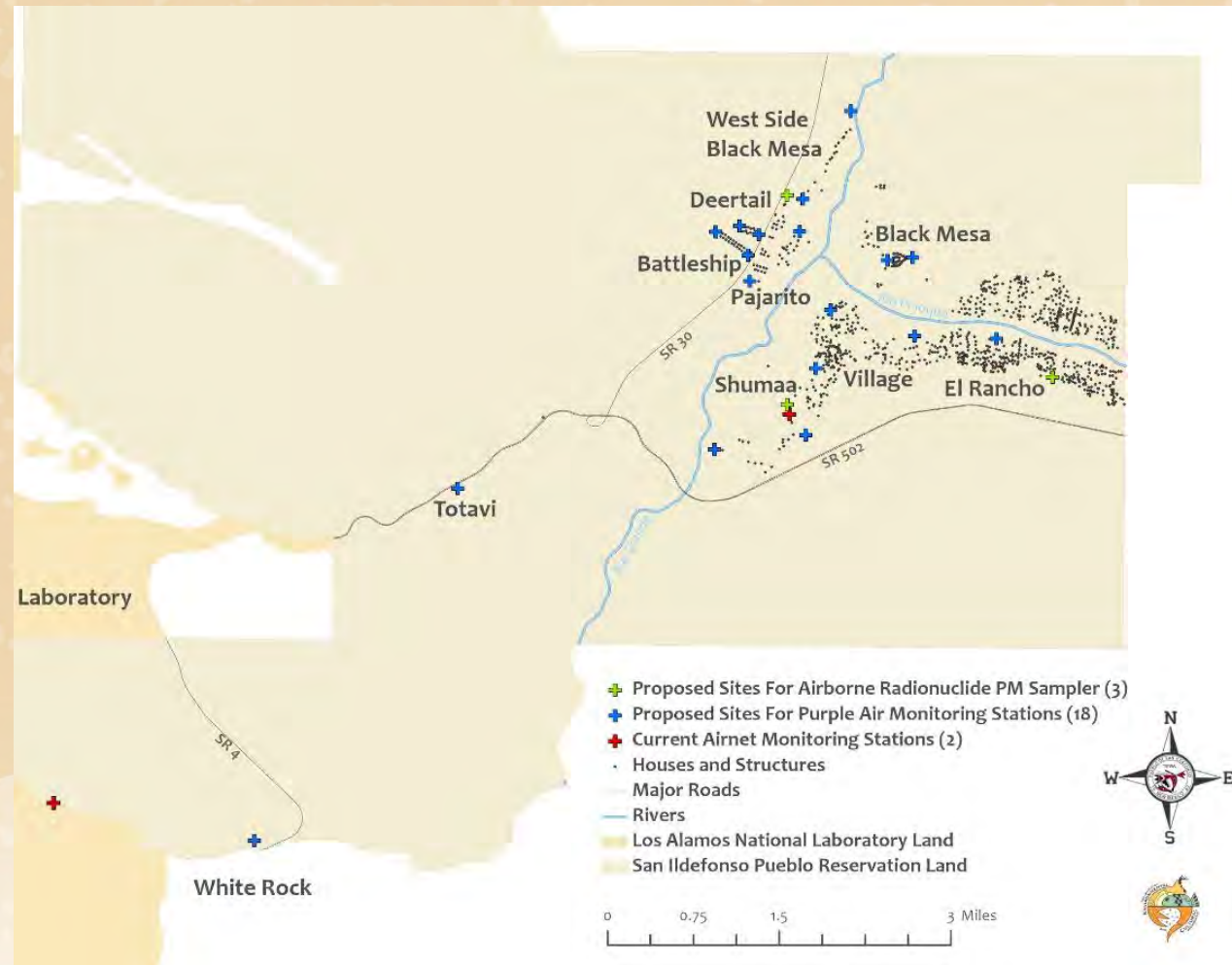
- Worked as a team to develop a project concept that aligned with grant eligibility requirements while meeting the Pueblo's needs



- Prepared the grant, including developing project description, budget, filling out application forms

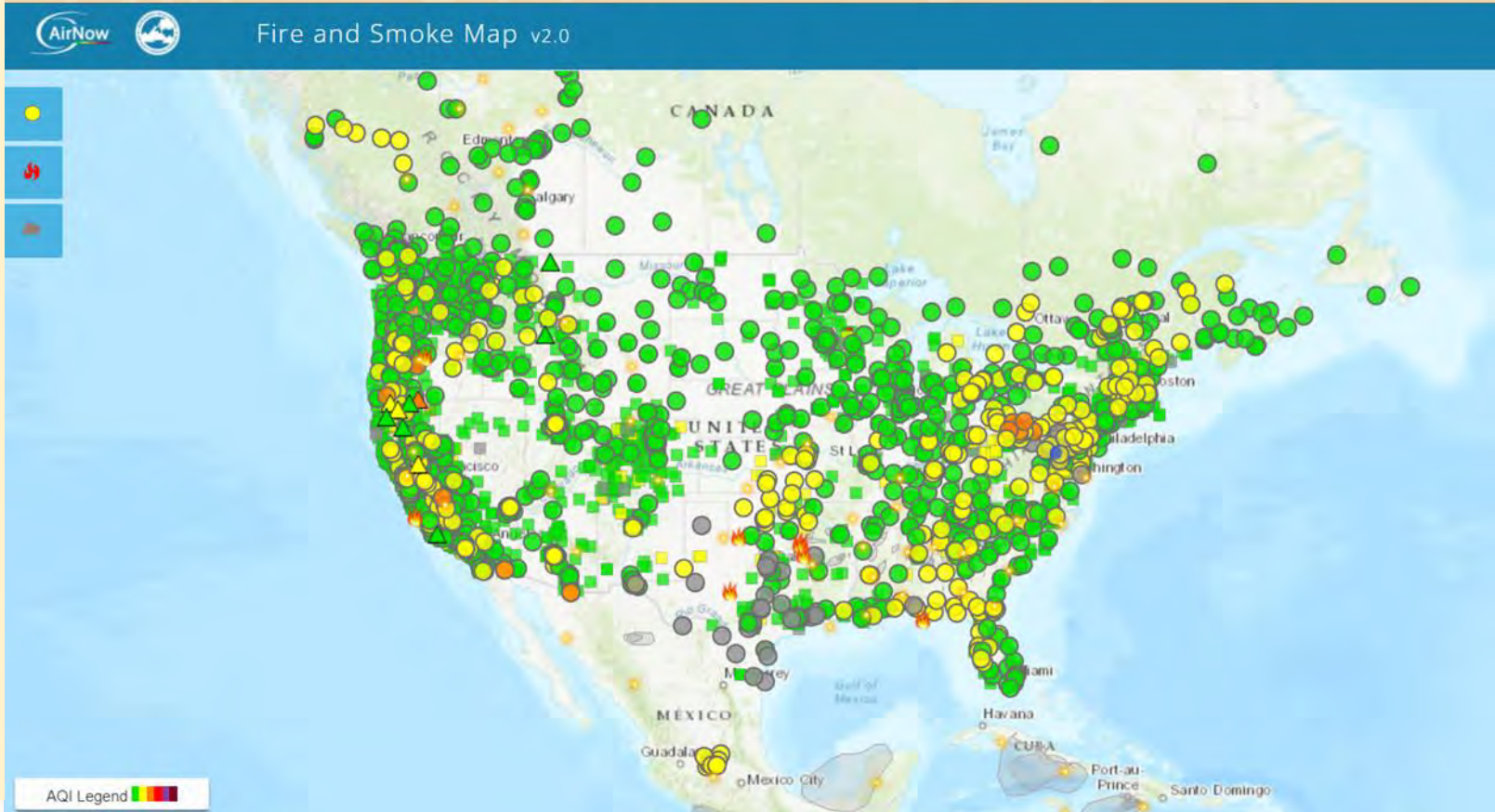
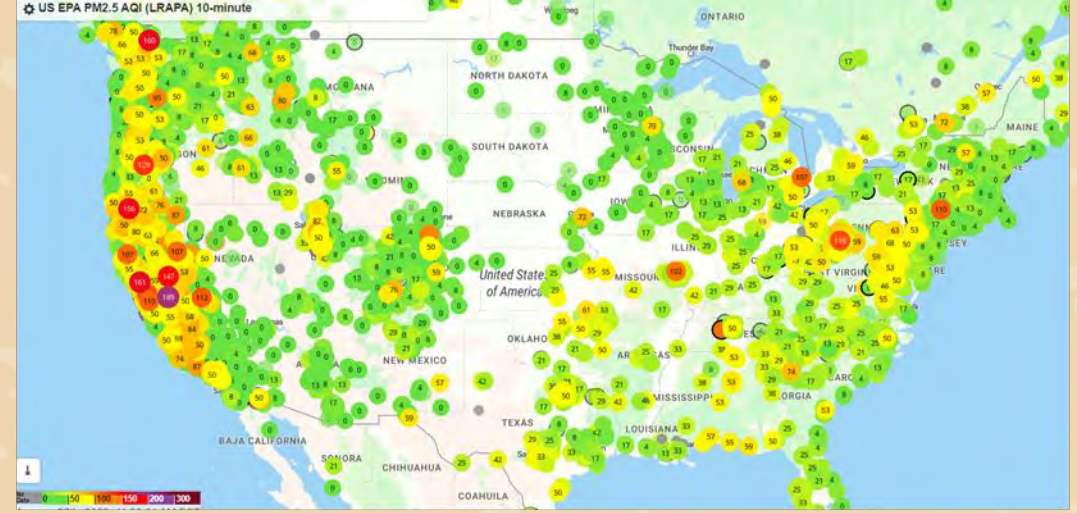
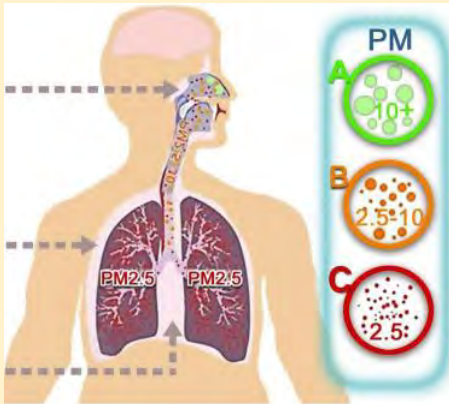


- Completed the online application process, addressed post-award Q&A



Particulate Matter (PM) Monitoring with PurpleAir

- Measures airborne PM - dust, smoke, and other organic and inorganic particles
- Concentrations can be used to convert to Air Quality Indices. Air quality can be communicated to public in real time
- Low cost ~ \$250 each. Easy installation and maintenance. Dense network can be established.
- $PM_{1.0}$ - proxy for wildfire and wood smoke, PM_{10} $PM_{2.5}$ for dust



NOAA-NIDIS Grant – Coping With Drought



- Identified the opportunity and made the connection to one of the Pueblo's priority climate adaptation projects: Restoring groundwater-fed springs



- Worked as a team to develop a project concept that aligned with grant eligibility requirements while meeting the Pueblo's needs (e.g., needed a research question)



- Prepared the grant, including preparing a letter of intent to the federal agency, addressing Q&A, and completing project and budget application forms



- Completed the online application process, addressed additional Q&A, accepted the award



Coping with
Drought
Research
Competition
Grant for a Water
Retention Project

Lessons Learned

- From preparing an application to receiving funds can take time (in some cases more than a year)
- Some grants have more red-tape than others, and this can be difficult to predict (it doesn't necessarily correlate with grant size)
- Agencies are learning too – direct communication can be helpful to overcome bumps along the way
- Be prepared for multiple grant platforms and application processes across agencies (in some cases, different platforms for submitting vs accepting the grant)
- It doesn't end with award...expect post-award Q&A
- Pay attention to match requirements – vary by agency and opportunity



Questions and Discussion



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