

IIIRM Risk Workshop

3/14/2000

1:00 p.m. - 1:40 p.m.

Introductions and Purposes of the Workshop

Mervyn Tano: Okay, it's show time. . . . Well my name is Mervyn Tano. I'm with the International Institute for Indigenous Resource Management and on behalf of the folks at the Institute, we want to thank you all for coming to this workshop/inquiry on risk based decision making in Indian country. We'd like to extend a special thanks to the good folks over at the Office of Federal Facility Restoration and Reuse Office, represented today by Brandon Carter in the back there, and the U.S. Department of Energy's Center for Risk Excellence out of Argon in Chicago, represented by Dr. Al Young.

What I'd like to do is to do very quickly, if you don't mind, a round of introductions just so we know who's here and so if we can start. Well, why don't we start with you, Al, work our way through the inner circle as it were, and then work our way out.

Alvin Young: Thank you, Merv. I'm Al Young, I'm with the Center for Risk Excellence which is part of the Chicago Operations Office of the DOE and I'm located at the Argon National Laboratory in Argon, Illinois.

Richard Pacheco: Good afternoon. I'm Richard Pacheco. I work with the All Indian Pueblo Council, *(inaudible)* in the Pueblo Office of Environmental Protection and I'm the Project Manager of the *(inaudible)* for incorporating social values, *(inaudible)*.

Fred Fox: Good afternoon, my name is Fred Fox. I'm with the Three Affiliated Tribes. I work for the Water Resource Department and I'm currently the GIS Coordinator.

UF: *(inaudible)*

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UM: Good afternoon, my name is *(inaudible)*

UM: *(inaudible)*

Atul Salhotra: My name is Atul Salhotra, I'm with the Ram Group. We have just completed *(inaudible)*

Debbie Pretty Paint: Good afternoon. My name is Debbie Pretty Paint. I'm *(inaudible)* Crow Tribe with the Underground Storage Tank Program.

Steve Sarada: Hi, I'm Steve Sarada, *(inaudible)*.

Bruce Muller: I'm Bruce Muller with US Bureau of Reclamation in the Safety Office.

UF: *(inaudible)*

Alan Hancock: My name's Alan Hancock and I work for the Environmental Protection Agency in Region 7, Kansas City, Kansas, and I work for the Underground Storage Tank Branch.

Jonas Grant: My name is Jonas Grant. I work for the Ute Indian Tribe, *(inaudible)*. I'm the Director of Natural Resource. I do a lot of work *(inaudible)*

UF: *(inaudible)*

Enos Johnson: My name is Enos Johnson, I'm with the Chippewa Cree Tribe *(inaudible)* and I serve as a judge.

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Dan Connell: I'm Dan Connell, I'm with the Department of Energy, Richland. I'm in the Indian Nations Program.

Roger Gollub: Good afternoon, I'm Roger Gollub and I'm a (*inaudible*) and pediatrician with the Indian Health Service.

Michelle Fox: Hello, my name is Michelle Fox and I'm the GIS Coordinator for the Fort Belknap Indian Community, Harlem, Montana.

Jessica Alcorn: Hi, my name is Jessica Alcorn with Council of Energy Resource Tribes, (*inaudible*).

Marilyn Null: My name is Marilyn Null and I'm the Deputy for Community Based Programs with the Air Force out of the Pentagon.

UM: (*inaudible*)

Arthur Taylor: Arthur Taylor, Nez Perce Tribal Counsel, Lapwai, Idaho.

Mark Baker: I'm Mark Baker. I work for the U.S. Bureau of Reclamation and I help EIA and individual Indian tribes to get dam systems and dam safety.

Maggie Gover: I'm Maggie Gover. I'm the administrator for the National Tribal Environmental Council in Albuquerque.

Jim Konz: Jim Konz, U.S. EPA Superfund Program in Washington.

Howard Brown: Howard Brown, Northern Arapaho from Wyoming.

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Brandon Carter: Brandon Carter, U.S. Superfund Program, (*inaudible*)

Scott Fields: Scott Fields, Taos Pueblo War Chief's Office.

Troy Lucio: Troy Lucio. I work for the Zuni Tribe as an Environmental Technician.

Chris Pleiman: My name's Chris Pleiman. I work for the Air Force in Anchorage, Alaska, and I serve as the Director for National Cultural Resource Programs.

Margaret (*inaudible*): I'm Margaret (*inaudible*), I'm with the U.S. Geological Survey. I'm here with Todd Hinkley who can't make it to all of the meetings and I work in the earth surface processes team on the impacts of climate change in the desert northwest, particularly on the Navajo (*inaudible*).

Mike Ebinger: I'm Mike Ebinger from Los Alamos National Lab where I do (*inaudible*) assessments.

Kim O'Leary Epley: Good afternoon, I'm Kim O'Leary Epley, a professional facilitator and do tribal strategic planning and (*inaudible*).

Phil Robinson: I'm Phil Robinson with the U.S. Environmental Protection Agency, Washington DC and I'm with the Tribal Program for the Office of (*inaudible*).

Margaret Chavez: I'm Margaret Chavez. I'm with the All Indian Pueblo Council, Pueblo Office of Environmental Protection. I'm the community relations coordinator under the Superfund program.

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Jed Peynetsa: Good afternoon, my name's Jed Peynetsa from Pueblo City and I work with the Zuni Environmental Protection Program.

Bobby Palfrey: Bobby Palfrey. I'm from the Tulane University Medical Center. We've done a number of projects for the Department of Energy and *(inaudible)* technology evaluation.

UF: *(inaudible)*

Kathleen Schmidt: Hi, I'm Kathleen Schmidt. I work for the Department of Energy in the *(inaudible)* and I serve in the communications department.

Patti Stone: Patti Stone *(inaudible)* from Colville Confederated Tribe.

Don Hurst: I'm Don Hurst, *(inaudible)* with Fulcrum Environmental Consulting, Washington.

Terry Bahryeh: Terry Bahryeh, Underground Storage Tank Program, Region 8. I'm the Indian Coordinator for that program.

UF: *(inaudible)*

Dan Reider: Dan Reider, EPA Washington, DC, *(inaudible)* program *(inaudible)*

Ernest Antonio: Ernest Antonio from the Pacific Northwest National Laboratory. *(inaudible)* environmental monitoring, *(inaudible)*.

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Mervyn Tano: We've got some seats up here if you all want to move up please. I'll ask you a favor. As you speak, would you move the mike a little closer to you so it picks it up and sends it through this house speaker system. I think that will help everybody to hear each other.

Okay, we've got folks from all over the country working with Indian tribes, working with federal agencies as contractors, regulators, federal facility managers, tribal organizations. We've got a whole range of folks, all interested in the notion of risk and risk assessment. What I wanted to do today at the outset of this workshop/inquiry, is to pose a question that is, you should all have the paper that we just sent around. Environmental protection and environmental cleanup decision making in Indian country is risk relevant.

What I'd like to do is tell you the story of an experience I had down in Awateearoar(?) as the people from New Zealand called New Zealand, the land of the long white cloud. I was with a colleague of mine who at that time was teaching a Maori Studies class at the University of Whakatane in Hamilton, New Zealand. He had some Maoris there and he had some folks, New Zealanders, who were not Maori. All graduate students. And they were working on a hypothetical situation and that is deciding on the permissible level of fecal coliform discharge to a waterway from a much needed municipal wastewater treatment facility. Understand, this was a hypothetical situation, a hypothetical river, a hypothetical wastewater treatment facility, and hypothetical numbers. And yet, the discussion was heated. It was almost electric mainly because there were two kinds of

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views being presented there, at least from my perspective, sitting back as a stranger there, putting on my analytical, dispassionate, objective hat.

It seemed to me the issue was this. You had some folks you said, "We're traditionalists." We are the Maori and this is what we believe. And then you had folks who had been working for some of the tribes who were dealing with resource management issues and their positions were, "Well, yes, I understand that. We believe that too, but you have to understand that we need this wastewater treatment facility," or "We need to develop our forests," or "We need to award a consent," which is what they call a permit there to a forestry company or some sort of developer.

Now it seemed to me that much like the situation in the United States, that consent or the permit is based on an environmental regulatory paradigm that assumes some degree of contamination, whether that contamination is expressed as a part per million or a part per billion, or at a risk level, let's say not greater than one-in-a-million, or 10^{-6} , to those human beings who might drink that water, or who might eat the shell fish that live in those waterways.

Expressed in those terms, the Maori resource manager can negotiate a permissible level of discharge, because they've got the facts and figures, they understand below a particular level, it's going to be, the water's going to be safe for those shellfish and it's going to be safe for folks who want to swim there, folks who want to drink the water.

But expressed another way, that same regulatory paradigm assumes, in the context of traditional Maori belief, the total defilement of that waterway. Because any

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contamination by human waste renders the entire waterway unfit for any kind of use.

Under those assumptions then, what you have is a Maori resource manager who says there's no way we can accept anything other than zero discharge.

Now, again, being dispassionate, being from thousands of miles away I was sitting back and thinking about the debate that was going on and thinking about similar debates that we've had with some of you here about the role of traditional belief, of culture and the tension that exists between folks who espouse that particular world view and the folks who are more technically oriented, who can live with the notion of 10^{-6} , you can live with an MCL, promulgated by the U.S. Environmental Protection Agency and memorialized in administrative regulations. It seemed to me at that time that how we go about the work of environmental protection and environmental restoration in the sense that set cleanup standards is really backwards. Because what we're saying is that for any activity, we will let you contaminate our environment to a certain level. It is a level considered by itself that in my mind someone who is not a traditionalist, believes it's safe. Yet, I understand why it is that people cannot accept that because thinking of it in another way, it is the total defilement of the resource. I thought maybe what we ought to be doing is turning this thing on its head, that we ought to be, instead of dealing with each individual activity, each individual proposed development, each individual chemical as an individual, as an individual insult to our environment or as a permissible discharge level, maybe what we ought to do is as a community, as a people decide on what we can live with in total of our total risk burden. And that perhaps what we ought to be doing then is awarding consents or permits, based not on what this particular

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development will do to increase our risk whether it's permissible or not, but rather to step back and ask the question, can this development actually lower our total risk burden? So for me, even if I turn it upside down, the environmental regulatory regime upside down, I still come out and say, yes, risk is relevant. Because you need, even if you accept my paradigm, we still need risk assessment to identify or to inventory our total risk burden. And if we are going to be dealing with folks who are proposing development, proposing cleanup levels through a consent process or through a permit process, we are still going to have to measure the results of their activity so that we know whether or not they have actually reduced our burden or not.

So again, the answer for me is, to the question, is risk relevant, is an emphatic "Yes." And you probably suspect that since I am a member of The Society for Risk Analysis, and since the Institute is working with our colleagues at the Center for Risk Excellence and ASTM to develop a standard for quality of life that is really risk driven, yet we still live with this notion of two separate world views.

And the question we have today is how are we going to marry these two separate world views together, how are we going to marry them up, and can this marriage work? And I'm suggesting it's not going to be easy. Some folks have characterized this split in world views as an Indian, a non-Indian, Maori and papeha(?). We've also had some folks who have done a lot of work in risk communication and have characterized it as the cultural rationality and the technical rationality of risk. Let me list some of the characteristics of the folks who have this technical rationality of risk. They have trust in

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scientific methods, explanations and evidence. They appeal to authority and expertise.

The boundaries of their analysis tend to be narrow and reductionist, that is, get it down

to as fine and analytical point as you possible can. Risks are depersonalized, 10^{-6} , not

my grandmother, not your grandmother, 10^{-6} . The emphasis is on statistical probability,

again, 10^{-6} . The focus is on consistency. If a particular standard is good today for this

waterway, it should be good tomorrow for the neighboring waterway. And only risks that

can be specified and measured are relevant and I think that's one of the key issues we

have now when we speak of cultural risks, when we talk about risks to tribal

sovereignty, we lack the metrics for those. And so the tendency is for the technical

rationalists to ignore, discount, those types of risk.

Now, the cultural rationalists on the other hand has these characteristics, trust in

democratic explanations and reliance on democratic evidentiary processes. So it

doesn't matter if Richard Pacheco has not been qualified via some sort of a set of

questions as to his expertise as a toxicologist. In our way of jurist prudence, which is I

think the way we tend to view it, in terms of scientific validity as well, is that you've got to

be qualified as an expert before you can hold forth as an expert. Well, the cultural

rationalists will accept my story and accept Richard's story and it will accept Matt

Leivas' story, and they will accept Dr. Alan Young's story. The cultural rationalists'

model of risk comes from their personal experiences, my cousin who had this problem,

my auntie, you know and I think most cultural rationalists have aunties, they don't have

aunts. *(laughter)*. And my auntie had this problem. They all have uncles though.

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So here's what we have. We've got these widely different characteristics and so for us today, we have to say, is it worth trying to do this matchmaking bit that we're trying to do? And I think the answer is, yeah, we've got to do it. We've got to do it because risk is going on anyway. And risk is like that pachyderm and the visually challenged person, or for you non-politically correct folks, the blind man and the elephant. I mean it depends on what side, what piece of that elephant you have a hold on. Is it a rope? Is it a wall, is it a tree? And risk, I believe, is very much like that. I have that technical rationalist view of risk as a way of assessing some of the problems that we have of measuring those problems and measuring the results of various kinds of interventions. But I also have this notion, a view much like Paul Slovic, that risk assessment is also a political process. It is, you know who is the top dog? The alpha male, the alpha female, who is calling the shots? Who decides what's just, what's clean? And if we believe in tribal sovereignty, and if we believe in government to government relationships, we believe in the right of Indian people to take charge of their own destinies, then it seems to me that there's no choice but to get into that risk arena and struggle and fight and cooperate with those other folks whether they be more culturally rational than you or more technically rational than you, and marry these two world views together.

It seems to me that what we're trying to do here in the short time that we have is not to come up with the wedding vows for the cultural rationalists and the technical rationalists, but I think with the people that we have here, the experience that folks have around this table, we ought to be able to start figuring out the kinds of questions that need to be answered before this marriage can take place. I would suggest that you take a look at

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some of these risk issues in Indian country and see if they make sense. I'm not going to read through them, but I want to suggest that these questions and similar questions are the kinds of provocative questions that need to be asked. And I think the time has come for us to really speak to each other, that we can't, it's time in the marriage context, it's time for tough love, okay? We can't let people get away with 10^{-6} , if we don't understand what 10^{-6} is. We've got to ask and we've got to probe and we've got to get clarification, and on the other side, yeah, we're going to have to understand that these questions are valid questions, that imbedded in those kinds of questions are a great deal of baggage, if you will, of history, of hundreds of years, and thousands of years of history. We have to understand that in that history people have developed, not just a fondness, they have developed a tie, a connection to a place. We have to understand that the place is not for the cultural rationalists and for, I think especially native peoples and Indian people's especially, that the place is not fungible, you know it is not 40 acres of prime agricultural land in Iowa that could be traded for 5 acres of urban land in Denver, Colorado, which could be traded for a couple of square feet in Honolulu, Hawaii. The issues that I think the cultural rationalists or the native folks have about land has to be understood in that context. On the other hand, those folks who are trying to come up with standards, and trying to come up with risk figures, to come up with the metrics, they can't ignore or blow off the kind of ambiguity that comes when folks say seventh generation, that we are concerned about the seventh generation. You're going to have to demand that those folks tell you exactly what that means within the context and you've got to work together to establish the context and get those figures together.

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Now, it seems to me that's what we've got to do. It's past time for political correctness, it's past time for this notion of, well jeez, you know, I don't know what these people want and so I'm going to just blow them off, or it's past time for observation that these guys are callused, uncaring people who would sell their mother down the river for a dollar.

Those things don't work, those kinds of attitudes don't add anything to the debate. And I would suggest that if we can take that challenge from today and in our work in risk assessment, risk analysis, risk management, risk communication in the future, that we will move this process much closer to a satisfactory risk assessment paradigm, a mutually satisfactory risk assessment paradigm. I'll leave you with those thoughts and any questions? Okay, I had you all snowed.