



EPA Environmental Justice Webinar Series for
Tribes and Indigenous Peoples

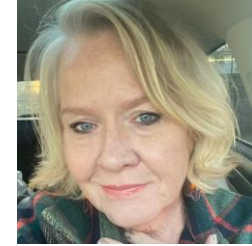
*Tribal Nations and Indigenous
Peoples Engagement in NEPA:
Challenges and Best Practices*

June 29, 2022

Please note that this webinar will be recorded and posted on EPA's webpage for public access.

PRESENTERS

Kim Merryman, Environmental Assessment, Environmental Protection Services, Department of Risk Management, Division of Legal and Compliance, Choctaw Nation of Oklahoma



Sally Manning, Environmental Director, Big Pine Paiute Tribe



Marilyn Yang, Intern, Office of Environmental Justice, USEPA



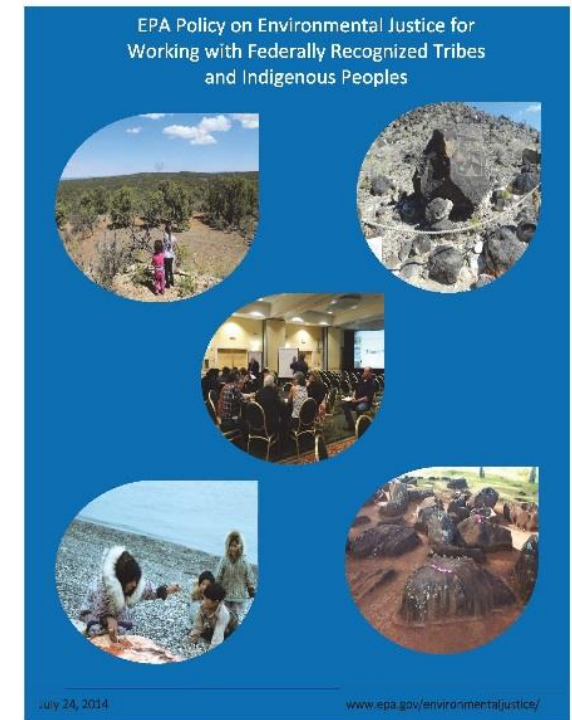
Danny Gogal, Tribal and Indigenous Peoples Program Manager, Office of Environmental Justice, USEPA (Facilitator & Presenter)



EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples

Issued in 2014 to clarify and integrate EJ Principles in a consistent manner in the Agency's work with **federally recognized tribes, indigenous peoples and others living in Indian country.**

Scope: Federally recognized tribes, state recognized tribes, tribal members, indigenous community organizations, Native Hawaiians, Pacific Islanders, individual Native Americans, and others living in Indian country.



ENVIRONMENTAL JUSTICE DEFINITION



Environmental Justice: The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Executive Orders

Executive Order 12898 – Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (1994)

- Each Federal agency shall make achieving environmental justice part of its mission by **identifying and addressing**, as appropriate, **disproportionately high and adverse human health or environmental effects** of its programs, policies, and activities on minority populations and low-income populations. [Sec 6-606 Native American Programs included]
- An accompanying Presidential Memorandum directed that human health, economic, and social effects, including effects on minority communities and low-income communities, be included in the analysis of environmental effects pursuant to NEPA.
- CEQ issued guidance (1997) for agencies on addressing environmental justice (EJ) in the NEPA process.
- In 2016, the Environmental Justice Interagency Working Group (EJ IWG, established under the Executive Order) issued a "Promising Practices" report of compiled agency approaches to incorporating EJ into environmental reviews.

Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad (2021)

- Creates White House Environmental Justice Interagency Council – federal coordination body for EJ (Sec. 220)
- Creates White House Environmental Justice Advisory Council to obtain advice on how Federal Government should address current and historic environmental injustice. (Sec. 221)
- Calls for the creation of a geospatial Climate and Economic Justice Screening Tool and interactive maps highlighting disadvantaged communities. (Sec. 222)

Presidential Memorandum on **EO 12898**

Consider the following for minority and low-income communities during the National Environmental Policy Act (NEPA) reviews:

- Analyze environmental effects, including human health, economic, and social effects
- Develop mitigation measures to address significant and adverse environmental effects
- Provide opportunities for effective community participation
- During EPA 309 Reviews, fully analyze effects on minority communities and low-income communities [including tribal and indigenous communities].

NATIONAL ENVIRONMENTAL POLICY ACT

National Environmental Policy Act (NEPA) declares a national policy which will encourage productive and enjoyable harmony between man and his environment

CONSISTENT PROCESS

NEPA *defines a process* that *federal agencies* must follow when proposing to take actions that may have environmental impacts

What is NEPA?

- Signed into law on Jan. 1, 1970
- National charter for environmental responsibility
- Procedural law, not substantive.
 - Establishes a process for environmental review of proposed federal actions.
- Established the Council on Environmental Quality (CEQ)

The Goal of NEPA

"to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. 4331(a).

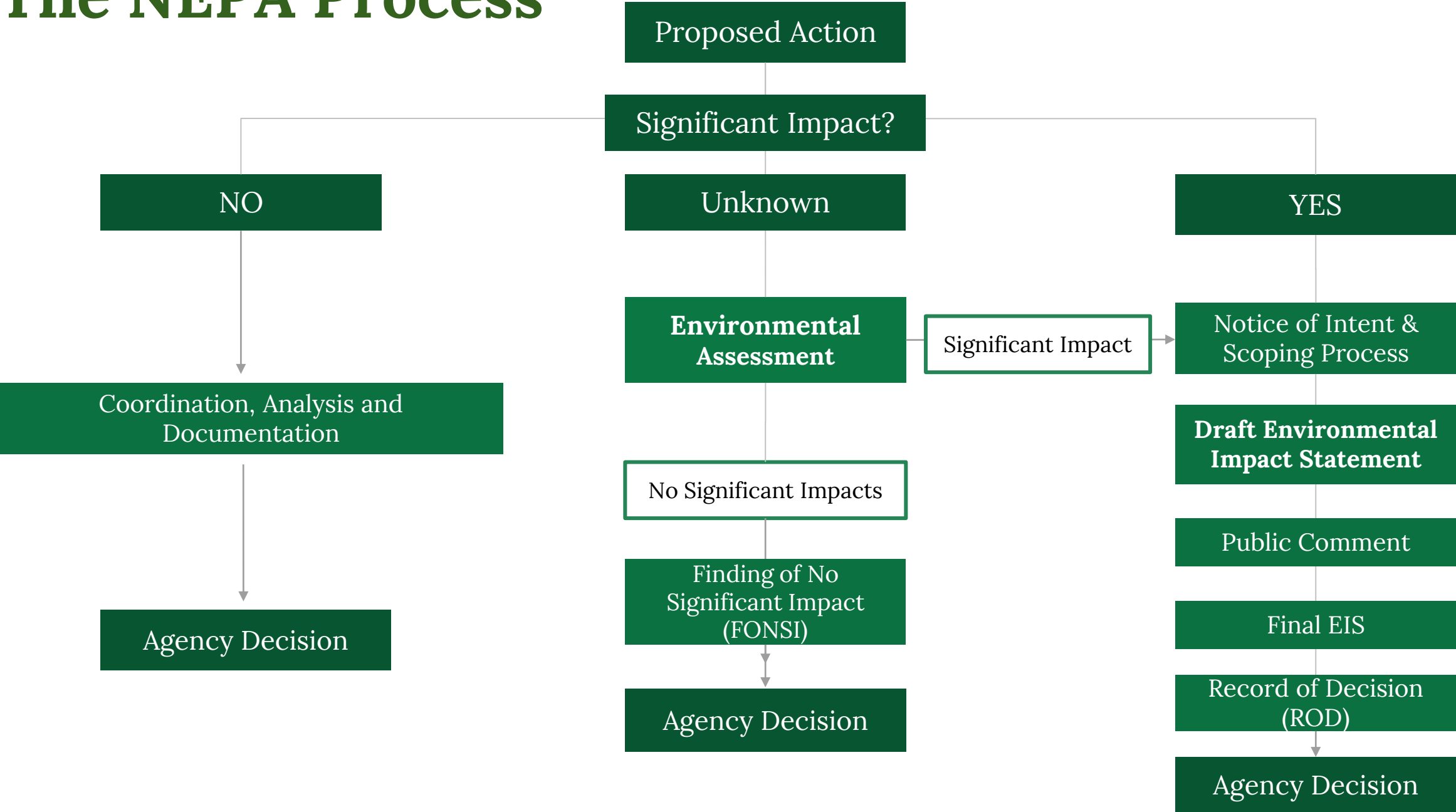
NEPA Requires

- Federal agencies to assess the environmental impacts of their proposed actions.
- Provide opportunities for public comment and review.

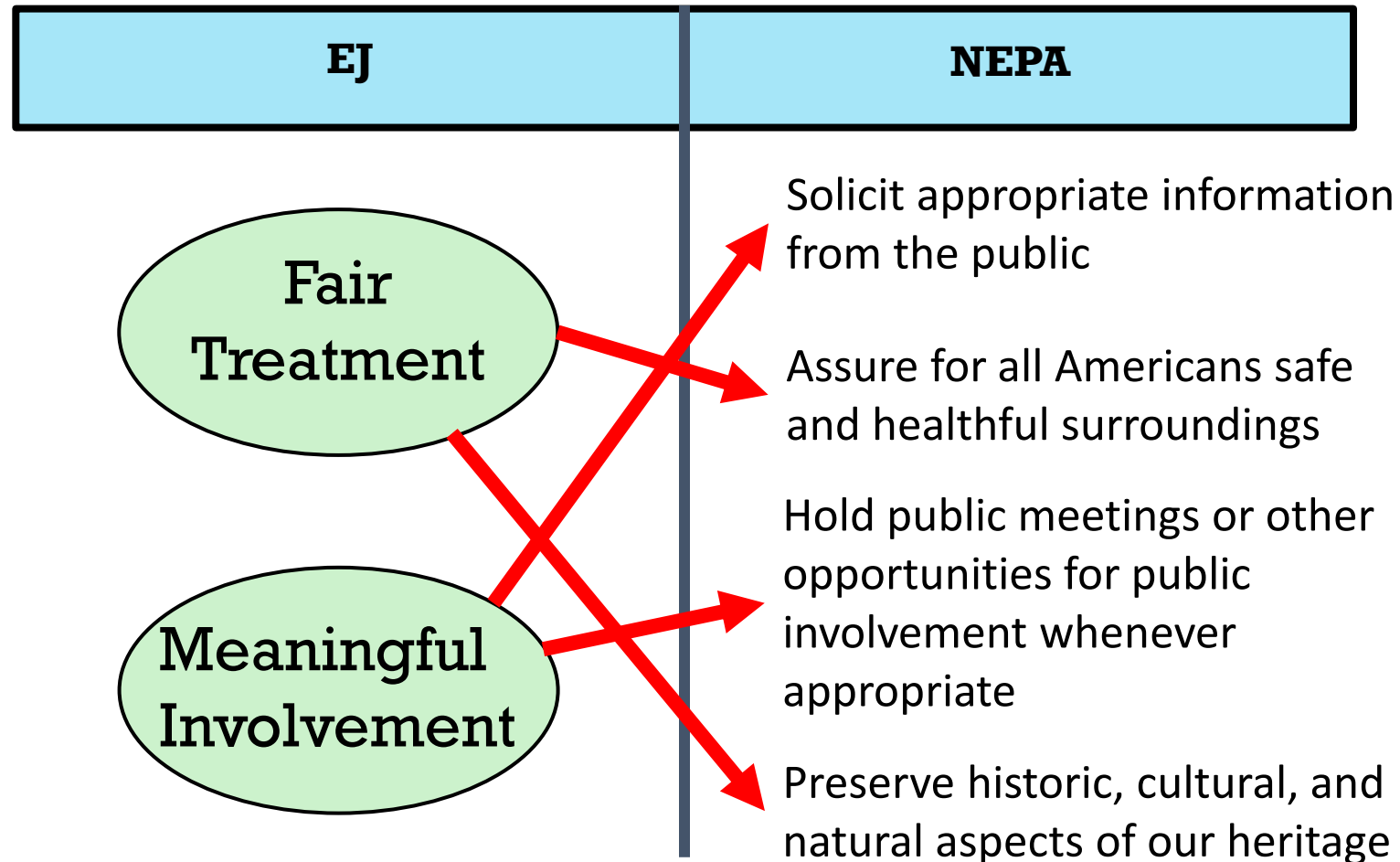
Important Definitions

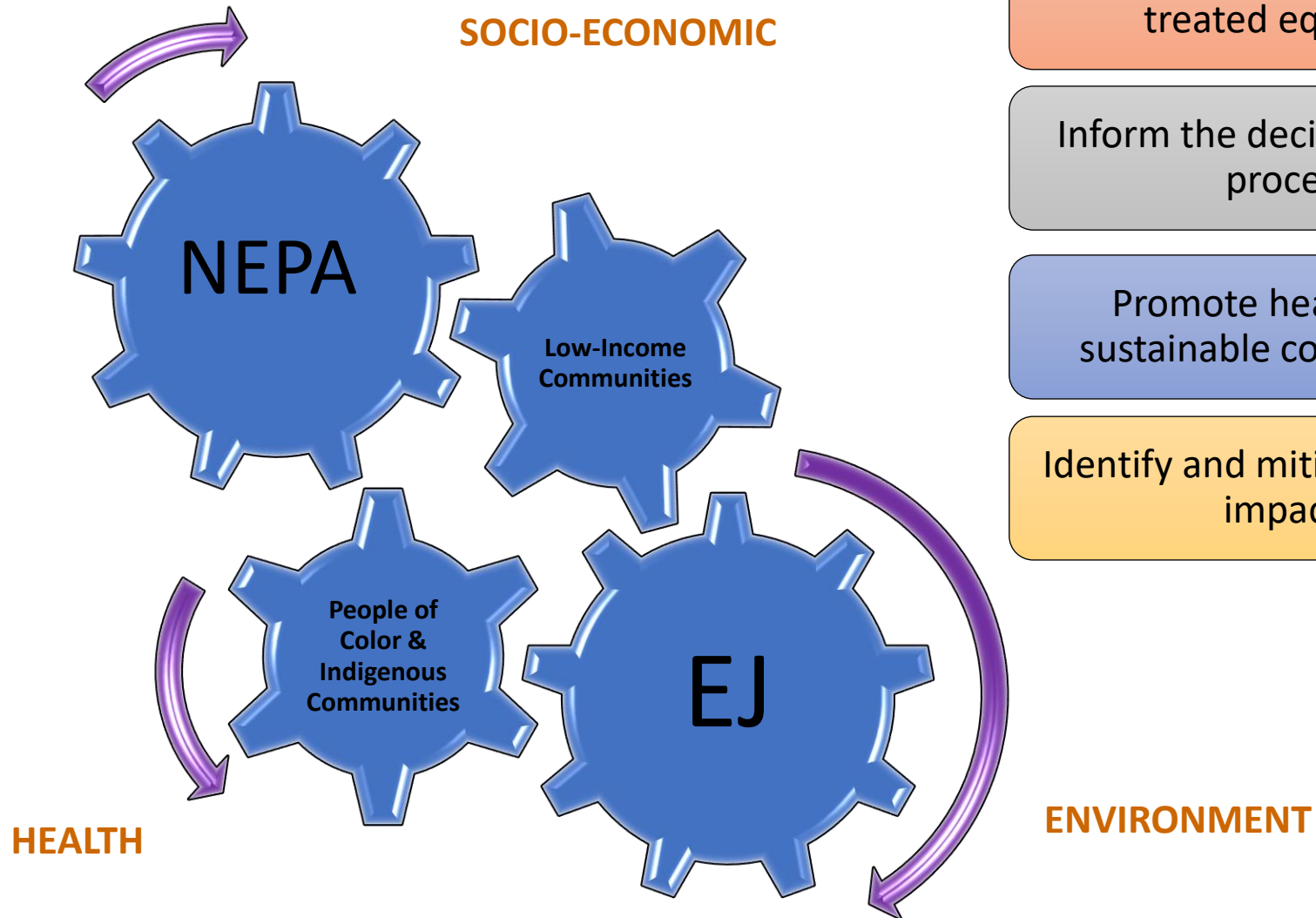
- Federal actions may include:
 - Making decisions on permit applications
 - Adopting federal land management actions
 - Constructing highways, bridges, and other publicly owned facilities
 - Projects supported by federal funds
- Lead Agency - A federal agency preparing or having taken primary responsibility for preparing the environmental documents
- Cooperating Agency – Upon request by the lead agency, any federal, state, tribal, or local agencies with having special expertise with respect to an environmental issue or jurisdiction by law may become a cooperating agency

The NEPA Process



Cross-Walking EJ and NEPA





Ensure that everyone is treated equitably

Inform the decision-making process

Promote healthy and sustainable communities

Identify and mitigate adverse impacts



Choctaw Nation of Oklahoma and NEPA



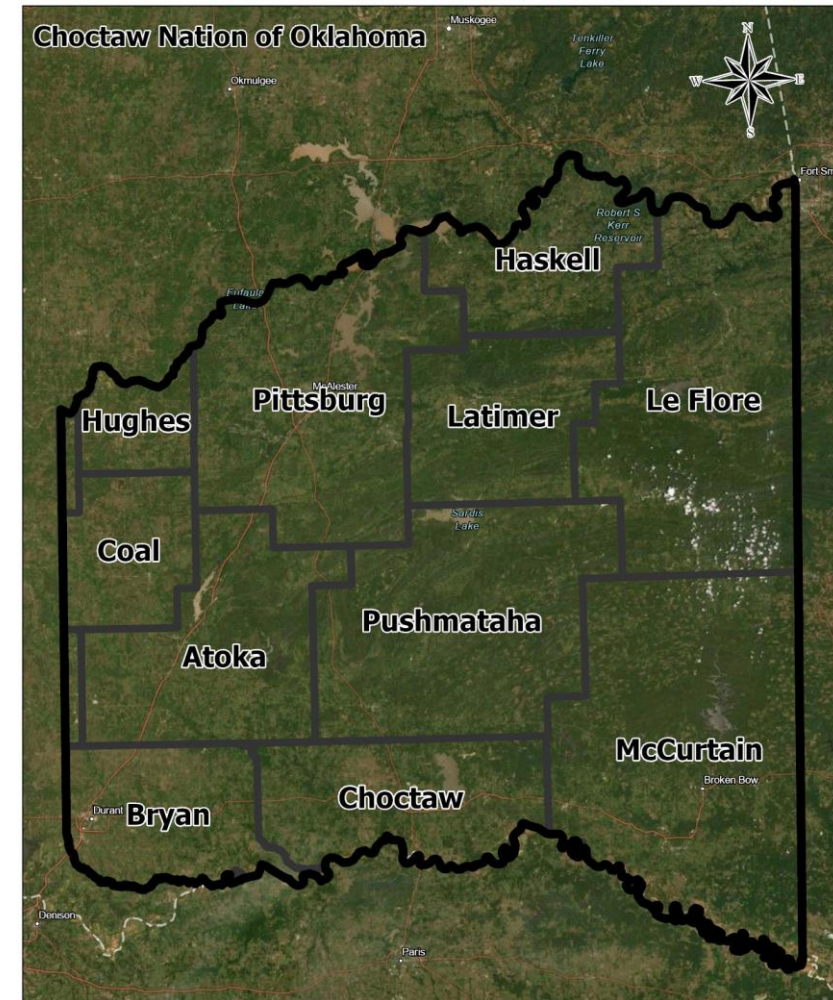
Webinar: Tribal Nations and Indigenous Peoples Engagement in NEPA:
Challenges and Best Practices.



Choctaw Nation of Oklahoma

The Choctaw Nation of Oklahoma is a federally recognized tribe with over 200,000 tribal members. The jurisdictional area of the Choctaw Nation reservation area includes 10 1/2 counties (and portions of 2 more) in Southeastern Oklahoma and approximately 7.04 million acres.

Choctaw Nation is committed to upholding our sovereign obligation to properly manage and maintain the natural resources within the borders of our reservation in order to continue traditions passed down by our ancestors.



Date Created: 5.20.2022
Credits: Choctaw Nation GIS Department
Contact: cngis@choctawnation.com - 580.524.8280, ext. 2257
Path: Z:\Cody 2021\TribalBoundary_Counties\TribalBoundary_Counties.aprx
Disclaimer: The data on this map is for informational and planning purposes only. The Choctaw Nation of Oklahoma is not responsible for the misuse or misrepresentation of the data.





Choctaw Nation of Oklahoma and NEPA

- **The Choctaw Nation Environmental Protection Service** was created in 2004 and consisted of 3 employees. We had an EPA Air and an EPA GAP grant we were utilizing to identify trust, restricted and fee lands while creating our GIS department.
- This office now has 47 employees and 8 departments: Land Assessment, Compliance, Water Resources, Indoor Air Quality, GAP, Wetlands, Brownfields, Recycling and the HUD Environmental Review team.





Choctaw Nation of Oklahoma and NEPA

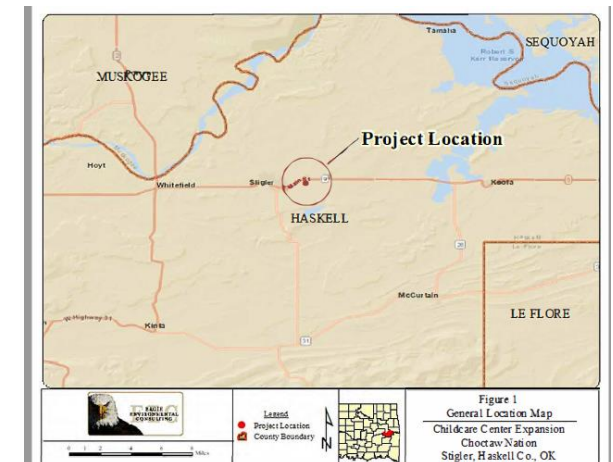
- The CNO Land Assessment team is responsible for providing due diligence for Choctaw Nation properties.
- Due Diligence includes:
 - ASTM 1527-21 Phase I Site Assessments
 - The Endangered Species Act
 - The National Environmental Policy Act (NEPA)
 - Clean Water Act
 - Clean Air Act
 - RCRA





Choctaw Nation of Oklahoma and NEPA

- We are developing a NEPA component for our rapidly growing land assessment team which includes:
 - Categorical Exclusions-Internal working with BIA
 - Roads
 - Forestry
- Environmental Assessments
 - Contract and shadow while developing internally



Stigler Childcare Center Expansion



Choctaw Nation of Oklahoma and NEPA

- How did we get here?
 - Federally funded projects
 - Daisy Drone Project



Daisy Drone Project

- BIA projects on trust land
 - Talihina Forestry Building
 - Choctaw Nation Cultural Center



Choctaw Nation Cultural Center



Choctaw Nation of Oklahoma and NEPA

Other things to consider:

- Checkerboard status-Fee, trust and restricted lands
- Tribal Sovereignty-McGirt Ruling declaring our reservation still exists.
- **SAFETEA-** Section 10211 was a last-minute rider on the large transportation bill, sponsored by Senator Inhofe and passed over the objection of many Oklahoma Tribes. The legislation creates a special grant of authority for the state of Oklahoma over Indian country within the state and specifically mandates that EPA grant any request by Oklahoma to administer federal environmental regulations in Indian country “without any further demonstration of authority by the state.”
- The Choctaw Nation does not waive any rights to regulate its own tribally owned land, whether in fee, trust or otherwise, and reserves the right to either continue to regulate such land on its own as a sovereign nation, or have it regulated on its behalf by the EPA.



Choctaw Nation of Oklahoma and NEPA

Yakoke (thank you)!

Kim Merryman

Environmental Assessment Officer

Choctaw Nation of Oklahoma Environmental Protection Service



Feb 8, 2022 at 10:50:35 AM
33.938831° N 96.419482° W



Living out the Chahta Spirit
FAITH ♦ FAMILY ♦ CULTURE



Mar 30, 2022 at 11:34:37 AM
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Tribes and NEPA: **Consultation, World Views, & Advice for the Future**

Sally Manning, Environmental Director
Big Pine Paiute Tribe of the Owens Valley



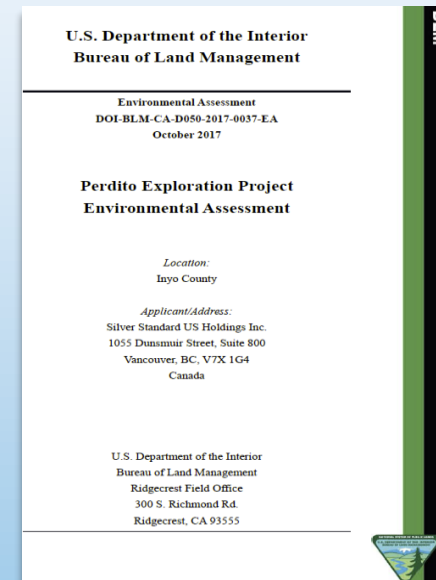
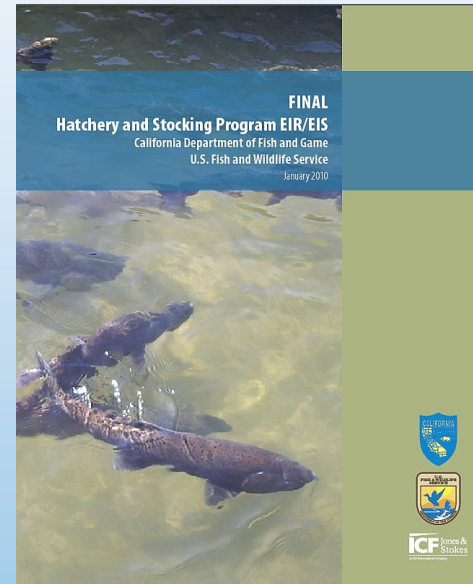
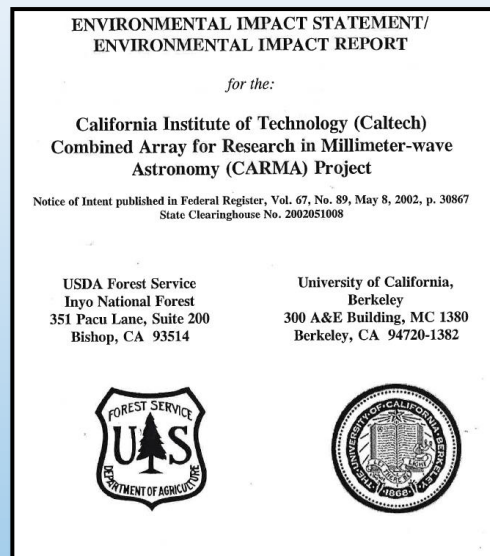
White House Council on Environmental Quality (CEQ) website:

“Enacted by Congress in 1969, the National Environmental Policy Act (NEPA) is a cornerstone of our Nation’s efforts to **protect the environment** and **engage the public** in government decision making. NEPA was enacted to improve Federal decision making by ensuring **high quality information** about the environmental effects of proposed actions and their reasonable alternatives are made available to decision makers and the public before an action is taken.”



Protect the Environment

Challenge = proposed development or alteration on Tribal ancestral lands.
These are often the public/federal lands where NEPA applies. Projects may be mines, research-related, recreation, logging, water infrastructure, etc.



For Tribal *ancestral* lands, Who truly has claim to these lands, and what information should be considered in deciding if an action moves forward?

Engage the Public

In NEPA, Tribes are included in the definition of **public**.

Tribes also are included among the groups in need of **Environmental Justice** considerations,

Executive Order 12898: *Federal Actions to Address **Environmental Justice** in Minority Populations and Low-Income Populations – Section 6-606: Native American Programs*



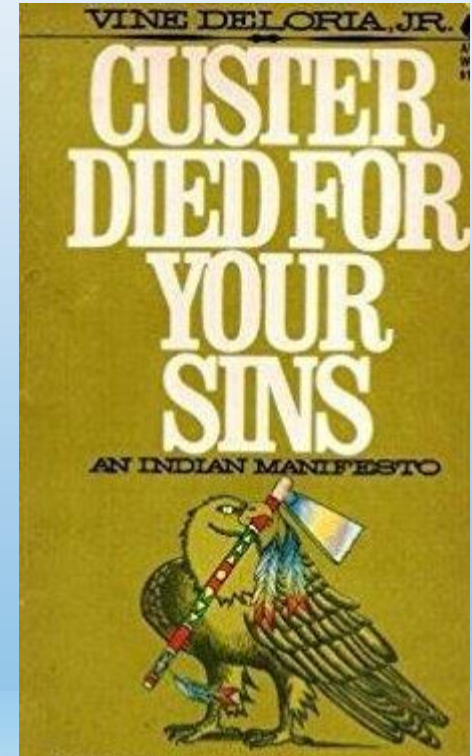
Different! A fact pointed out by author/scholar Vine Deloria, Jr.

History of Black America is one of exclusion.

History of Native America is one of forced inclusion.

In 2019, Dr. David E. Wilkins considered Deloria's 1969 book (50 years later!) and found things still on the mark:

"Both groups had suffered horrific abuse throughout history — slavery, land dispossession, forced removal, and ever-present demeaning stereotypes — but the tactics used against each had been very different, tailored to feed the demands of the expanding United States economy and population. [... ..] this lethal extractive legacy continues — lead in the drinking water of African American communities in Flint, fossil fuel pipelines fouling the land and water in Indian Country, climate change-driven ice melt in the Arctic. All have their origins in the country's foundational structures built upon the corrupt pillars of slavery and colonialism."



Engage the Public

= Engage a Tribe through “Consultation”

But, language in the law and current NEPA regulations is weak.

- Law as amended, does not mention Tribal Consultation.
- The toughest regulation is **§ 1501.2 “Apply NEPA early in the process”**
It calls for the lead agency to consult “early with appropriate State, Tribal, and local governments and with interested private persons and organizations” “for actions subject to NEPA that are planned by private applicants or other non-Federal entities”

“Consult” is used several times in the regulations, but it calls for consultation with *other federal agencies*, especially those with special expertise and/or from which permits will be needed for the project to proceed, e.g. EPA, USFWS, ACOE, etc.

Engage a Tribe, Minor advantage is the National Historic Preservation Act

The [National Historic Preservation Act](#) (NHPA) of 1966, as amended in 1992, enhanced Native American tribal roles in historic preservation.

Section 106 of NHPA calls for the Federal lead agency to [consult with Native American tribal governments](#).

[NHPA Section 106 is the “law” triggering Tribal Consultation in the NEPA process. Lead agency must reach out to Tribe in case the Tribe has information suggesting the project may cause a “significant impact” = violation of NHPA.]

NHPA addresses “historical” things related to Native American and other cultures. Overall, the focus is antiquities more than living things being used now and into the future. Language in the law emphasizes physical things, e.g., “historic property.”]



“Tribal Cultural Resources” are *any* things tribes value and feel are important for perpetuating core lifeways into future generations.



Laws default to allow the dominant culture make the ultimate determination with regard to “significance.”



The National Environmental Policy Act (NEPA) and the Silencing of Native American Worldviews

Kurt E. Dongoske, RPA, Theresa Pasqual,
Thomas F. King, PhD

Upon its enactment, the United States's National Environmental Policy Act (NEPA) established a national policy for promoting the protection and enhancement of the human environment. NEPA sets forth procedural requirements for federal agencies to prepare Environmental Impact Statements (EISs) for any major federal actions that may impact the environment. At the core of these environmental documents is the dominant Western worldview of scientific materialism. In many instances, NEPA's sole reliance on a Western scientific materialist evaluation of environmental impacts fails to consider and incorporate Native American perspectives of, values about, and relationships with the environment. For example, many Native American Tribes perceive the environment through an animistic ontological lens that embodies a sense of stewardship, manifest through a spiritual, umbilical connectedness to the natural world. Thus, Native American perceptions of the environment often clash with the dominant Western culture's scientific perspectives, especially as they relate to determining environmental impacts. This conflict of cultural worldviews intensifies when compliance with other federal laws is coupled with the NEPA process. This article examines the effects of employing solely a Western scientific perspective in assessing environmental impacts on indigenous communities through the NEPA process and how this can have the unintended consequence of promoting the perpetuation of colonialist attitudes toward Native peoples. It will also discuss how taking into consideration Native American

worldviews can offer more affirmative and inclusive environmental practices associated with the NEPA process.

Environmental Practice 17: 36–45 (2015)

Much development within the United States is subject to federal environmental review because of some federal involvement (land, funding, permitting, licensing, etc.). The National Environmental Policy Act (NEPA) is the primary environmental legislation – whose regulations require federal agencies to prepare Environmental Assessments (EAs) or Environmental Impact Statements (EISs) – for federal action(s) that may affect the environment. Under NEPA, environmental impact assessments (EIAs) are normally grounded in the dominant Western Euro-American worldview of scientific materialism. Scientific materialism perceives the natural world as composed of matter and energy; it follows that science's role is to understand how that matter is organized into physical and biological (plant and animal) entities that comprise ecosystems, identifying the forces that govern interaction among such variables and predicting (with a certain degree of reliability) the effects (both positive and negative) of a proposed federal action on the environment. We assert that, in most NEPA cases, uncritical reliance on scientific materialism fails to consider and incorporate Native American perspectives, beliefs, and values, particularly including Native peoples' relationships to the environment. We contend that there are other ways to understand the environment and how it can be affected. Notable among these, and demanding of respect in the US, are the traditional perspectives of Indian Tribes and other Native Americans, such as Alaska Natives and Native Hawaiians. Based on our collective experience, these perspectives get short shrift in NEPA analyses.

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High Quality Information

For Tribal ancestral lands, Tribes know they have excellent information to bring to bear on decisions!

Dongoske, K.E., T. Pasqual, and T. F. King. 2015. (NEPA) and the Silencing of Native American Worldviews. *Environmental Practice*. 17(1): 36-45.

But there is an imbedded “western” bias in NEPA and NHPA (ie, the law).

https://www.researchgate.net/publication/276379243_The_National_Environmental_Policy_Act_NEPA_and_the_silencing_of_Native_American_worldviews

High Quality Information

Dongoske et al, 2015, refer to the bias as, “scientific materialism.”

Focus is on quantifiable components of nature, but not nature as a whole, which to Indigenous peoples includes “culture.”

Western = “reductionist.”

Experts at breaking down into bite-sized pieces.

This is how NEPA is implemented, 50 years and counting. The lead agency relies on piecemeal input from the botanist, wildlife specialist, archaeologist, hydrologist, etc., that is, each specialized discipline (looking at their own body part of the elephant!).

Usually, no one to ties it all together; it’s not required.



High Quality Information

Paraphrasing Dongoske et al 2015:

The lead agency carried out the scientific studies without meaningful consideration of the views of the Tribal people. Within this NEPA process, the scientific materialist perspective prevailed [...]. As a result, the Tribal perspectives on the ecosystem were relegated to second-class status, at best.

Quoting Dongoske et al 2015:

*“Consideration of the long-term and cumulative impacts that result from the **incremental erosion of Native American cultures caused by such insults** is seriously lacking from any current NEPA analysis. The cumulative effects that result from these insults should be part of the environmental justice analysis contained within the NEPA process.”*

Recommendations: What can the Tribe do?

- Participate/Don't Procrastinate – read the letter, check the online info, make some notes, respond to letter, schedule a meeting, attend the public meetings
- List/articulate Tribe's concerns (in writing)
 - *What “resources” will be affected if project proceeds?*
 - *Tribal Consultation process – when, where, field visit?, how will it end?*
 - *What do existing laws and policies say about your concerns?*
- Find your “friends” – allies with similar concerns about project. Share or collaborate.
- Is there anything that can be done to make your concern go away? If so, recommend it or demand it!
- If needed, insist on “mitigation.” Think big. Project proponents want their projects and have money to spend. You won't get anything you don't ask for!
- State, in writing, that Tribal Consultation has not ended.



Recommendations: What can the Lead Agency staff do?

- Show up and listen; Do not “mine” for data.
- Because of NEPA’s legal and regulatory underpinnings, plus timelines and case-law, agency staff has limits. Be forthcoming about what can or can’t be done and why.
- Be patient, communicative, respectful of Tribal concerns, and (if needed) persistent.

Lead Agency can *try*:

- * Early in process, have Tribe agree on the Project Description, making sure it’s not too narrowly stated.
- * Revise an Alternative and/or strive to Avoid an impact even if the impact does not reach a legal threshold of “significance.”
- * Negotiate for Mitigation measures.
- * Bring in someone who actually *can* address the Tribe’s concerns.

Recommendations: What can Federal Government do?

Resources!

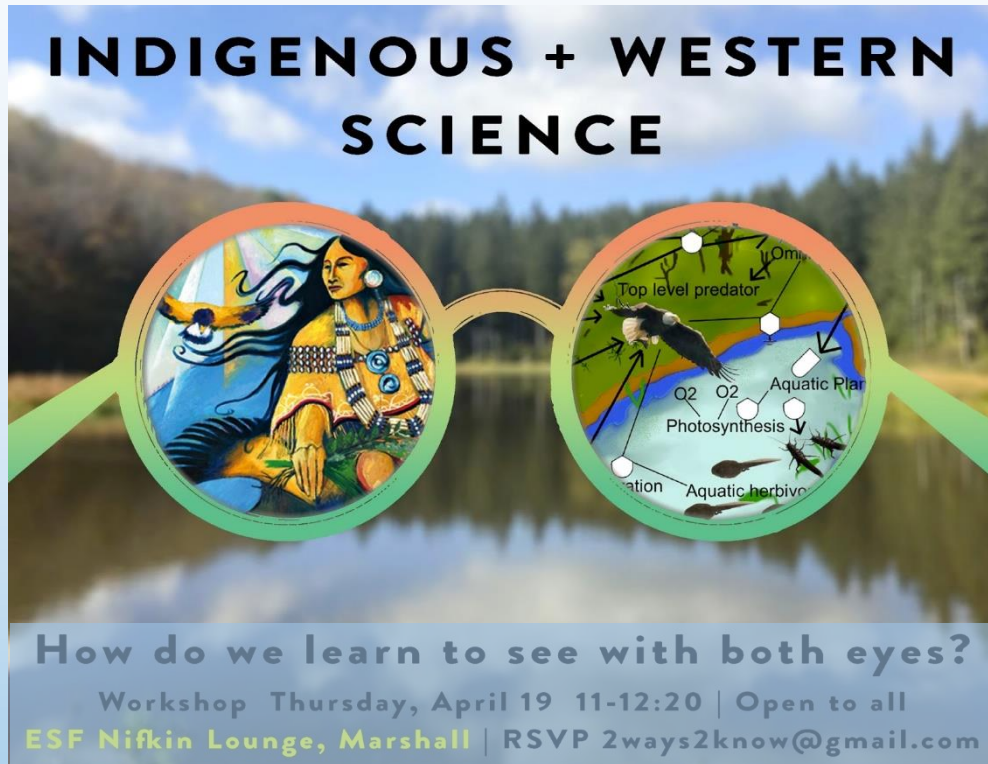
Decolonize!

How?

- Require consultation to end in Consensus, or better, **Consent**.
- Give tribes permitting authority?
- Improve NEPA's "cumulative impacts" analysis to consider, meaningfully, effects **7 generations** into the future (at minimum!)
- **Merge** world views – consider what western and Indigenous perspectives have to offer and work on a new way to make decisions which protect, respect, and sustain people and the environment.



Merge = Two-eyed seeing



A Final Word from Dongoske et al 2015:

“NEPA analysts should stop relegating Tribal concerns to the “cultural resources” sections of their descriptions of the affected environment. They should stop equating “cultural resources” with archaeological sites [...] Rather, they should start systematically involving Native Americans in every aspect of EIA, [...] not as trainees in the various sciences, but as colleagues, who make their own contributions to the analysis and resolution of impacts.”

Questions and Answers Period & Evaluation

- Please type your questions in the chat box.
- We would appreciate your feedback on the webinar and ask that you complete the short online survey. Link posted in chat box: <https://forms.gle/wJP3ad4Pw2SftULEA>

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