

October 27, 2016

Mr. Aaron Yue, Project Manager
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
5796 Corporate Avenue
Cypress, California 90630

Ms. Pamela S. Innis
Topock Remedial Project Manager
Office of Environmental Policy and Compliance
U.S. DEPARTMENT OF THE INTERIOR
P.O. Box 25007 (D-108)
Denver, Colorado 80225-007

Re: Fort Mojave Indian Tribe Comments on Data Gap Work Plan-3

Dear Mr. Yue and Ms. Innis:

On behalf of my client, the Fort Mojave Indian Tribe (the Tribe), I have reviewed the Technical Memorandum: Topock Soil RFI/RI-Plan to Address Data Gaps Identified During Work Plan Implementation (DGWP-3) prepared on September 21, 2016. The comments below are divided into General which address process and Specific which address individual proposed soil sample locations.

The Tribe uses these comments to remind the agencies of the spiritual and cultural importance of reducing or avoiding, whenever possible, any impacts to the Topock site. It is, and has always been, the Tribe's position that the activity of sample marking and collection results in an unalterable and unacceptable impact to the sacredness of the area. When there are reasonable alternatives and methods available that reduce the impacts to the area, the Tribe expects the agencies to consider and adopt those alternatives and methods as specified in the Programmatic Agreement, CIMP and Treatment Plan.

General Issues

There are five General Issues:

1. Interpretation of a "New Sample" and Counting of total samples collected: The Soils EIR allows for up to 73 additional/contingency soil samples. When questioned on the 10/5/16 teleconference, DTSC responded that they performed an internal evaluation and have defined only new sample locations as qualifying for an additional/contingency sample. DTSC maintains that an additional soil sample proposed for collection at a location already disturbed and sampled is not counted as an additional/contingency sample. The Tribe does not agree with this interpretation of the Soils EIR. Every single sampling activity contributes to the overall impact to the area, both new sample locations and returning to prior sampling locations and contribute to cumulative impacts and effects under CEQA, NHPA and other laws. The Tribe concludes that the DTSC interpretation of the counting of

additional/contingency samples leads to further impacts beyond those accounted for in the Soils EIR and are therefore neither acceptable to the Tribe nor considered pursuant to CEQA and NEPA. These impacts include those associated with marking the sample location, mobilization of personnel and equipment, disturbance to the ground during ingress and egress, and ground disturbance during the actual sampling. In addition, some samples in rocky soil in AOC-4 were collected using hand equipment yet proposed samples at the same location are now proposed to be collected using hydrovac trucks thereby further intensifying impacts.

2. Lack of Sufficient Detail Related to New Sample Justification: The DGWP-3 does not contain sufficient details for a complete review by the Tribe. Details regarding the selection of comparison criteria (background vs. eco vs. human screening levels) are not provided. On a recent teleconference, PG&E referenced the description of the use of screening levels in data gap determination in the Soil Characterization Work Plan. However, that document is neither cited nor referenced in DGWP-3. Therefore, it is difficult to understand which comparison criteria were used at any given proposed sample location. In addition, for some samples only the generic chemical category, i.e., metals or dioxin-TEQ, is cited as the exceedance when, if the specific metal or dioxin congener had been provided, the Tribe could have performed an adequate review. Also, the existing sample or samples that serve as the basis for the proposed samples should always be listed in the justification. This information had been requested by the Tribe in both DGWP-1 and -2, but is still missing in DGWP-3 and must be provided to complete an adequate review of the plan prior to approval.
3. Consideration of Alternatives: The Tribe believes that there are reasonable alternatives to the proposed additional sampling and the impacts that sampling will have on the area. These alternatives include using risk assessment to evaluate existing data and in those areas where risks are acceptable then the need for additional samples is eliminated. Other alternatives include modeling or mapping concentration trends (e.g. in BCW) and use those results to limit additional samples. For example, dioxin congener evaluation is a common fingerprint methodology to determine if multiple samples came from the same source. The dioxin data along BCW could be subject to such an evaluation as further confirmation of decreasing concentrations within BCW. A third alternative is to plan to use confirmation sampling. If an area has concentrations that may require remediation then using confirmation samples that will be collected during an action is a reasonable alternative. The Tribe believes that it is the duty of the agencies to consider these alternatives and methods to reduce impacts to the area.
4. Missing Evaluation of Background. There is precedent in California to use characterization data to determine the background range of dioxin congeners in soil. That evaluation has not been done at the TCS and some of these detected concentrations may be due to background.
5. Scouring of BCW sediment. The regular scouring and migration of sediment in BCS due to water flow from rain events is a known occurrence. This knowledge, coupled with the decreasing concentration in the lower stretch of BCW, should be sufficient to estimate sediment concentrations and use those estimates in risk calculations without additional samples.

Specific Issues

Comments on specific proposed new soil sampling locations are provided in the following table. Due to the complexity of the review process, only sample locations outside the TCS fence line have been reviewed. The lack of comment on a particular within-fence line sample location should not be interpreted as an approval from the Tribe.

TABLE OF SPECIFIC COMMENTS ON PROPOSED SAMPLE LOCATIONS

SWMU /AOC	SAMPLE LOCATION ID	COMMENT	RECOMMENDATION
AOC1	AOC1-T1g	This location is close to AOC1T2h which only has 34 Dioxin TEQ (mammal)	Delete sample, use existing data
AOC1	AOC1-T7, T8	These locations between AOC1TCS4e (870 TEQ-mammal) and AOC1-T5d (520 TEQ mammal). Concentrations decreasing along this stretch.	Delete sample, use nearby data and pattern
AOC1	AOC1-8	This sample location is near AOC1-T5d. There is a potential source of dioxin in AOC14. Move this sample to the slope beneath AOC14-14W, 19	Move sample to slope and additional environmental impacts must be considered by DTSC and DOI.
AOC1	AOC1-5,6,7	Concentrations beginning at AOC1-T5D (520 TEQ) reduce to concentrations in sediment at the mouth of BCW to 110 TEQ or below (AOC1-BCW28). Concentrations decreasing along this stretch.	Delete samples and use existing concentrations and pattern
AOC4	AOC4-33, 34, 35	These samples are up the sidewall of the drainage as much as 15' above the bottom. These sidewalls are very rocky and have very limited soil thickness. If aerial dispersion did occur, then surficial deposition and then subsequent scouring during rain events would have removed these concentrations from this steep slope. In addition, there are numerous nearby samples for these proposed locations (e.g., AOC4A06 to AOC4E06 near proposed AOC4-33) that show low concentrations of the target analytes (e.g., dioxin TEQs at 11, 8.2, 2.6, 4.3 and 3.6, respectively). These are low concentrations and are samples near/adjacent (around 10 feet) to the physical barrier of the ravine side-wall. Other relevant samples are AOC4-	Delete samples and use the existing data and the physical ravine side-wall barrier

		J06-J07 (10 TEQ) and slightly further AOC4-L07-L08 (40 TEQ). The low adjacent concentrations plus the unlikely presence on the steep sidewall make these proposed samples not likely informative.	
AOC4	AOC4-37	The AOC4-37 location is far up topography from the other samples. The bounding of dioxin concentrations on the south side of the water tanks are adequately bound by low concentrations in AOC4-19 and 20 (6 and 8 TEQs respectively). While AOC4-28 seems to have the elevated dioxins, PAHs and PCBs the focus on the south side of the water tanks will provide more informative data.	Delete sample AOC4-37
AOC4	AOC4-36, 38, 39	These three sample locations are proposed below the water tanks. The question of interest is decreasing concentrations away from the potential sources in AOC4. Therefore, move AOC4-36 to the east towards AOC4-39. Move AOC4-39 down slope towards the bottom and also east towards AOC4-38. Delete sample location AOC4-38.	Move AOC4-36 and 39 and delete AOC4-38 and additional environmental impacts must be considered by DTSC and DOI.
AOC4	AOC4-40	This sample is proposed to look at slope areas east of the water tanks as a source to AOC10 locations. There is already evidence of sediment transport from this sample area to AOC10 locations and samples. If the AOC4-40 sample location had been impacted by dioxins and PCBs, then these analytes would have been found in AOC10 samples. Since no PCBs have been detected in AOC10, that supports the conclusions that the AOC4-40 proposed location is outside the area impacted by these chemicals.	Delete AOC4-40
AOC9	AOC9-21, 22	Proposed sample locations AOC9-21 and 22 are placed to evaluate upstream inputs into the AOC9-15 location. AOC9-21 is on the road and AOC9-22 in a drainage just above the AOC9-15 location. There is clear surficial evidence of sediment transport from the AOC4-40 proposed location to AOC9-22, AOC9-23 and	Delete samples AOC9-21 and 22.

		AOC9-15. However, since AOC9-15 does not have the same detected chemicals as in AOC4, the data do not support any connection between these areas. (There is further evidence in the AOC10a-3 data [on the road] which also does not contain these same analytes.) It is most likely that the AOC4-40 location does not contain elevated dioxins or PCBs and therefore the AOC9-21 and 22 locations are not sources to AOC9-15.	
AOC10	AOC10a-4	This proposed sample is to determine a migration pathway down gradient of AOC10a-3. However, the only metal exceedance of any criteria in AOC10a-3 is Nickel (32 ppm vs. background of 27). This is not a sufficiently strong reason to collect this sample.	Delete sample AOC10a-4
AOC10	AOC10-25	Sample proposed based on dioxin TEQ concentrations in AOC10-15. Sample AOC10-15 was collected in an above-grade pile of soil which has clear boarders. AOC10-25 is just up-gradient of AOC10-15 and not likely a source of dioxin to a pile of soil. If at a later time if removal of concentrations at AOC10-15 is warranted then step-out samples beyond the boundaries of the soil pile could be used.	Delete sample AOC10-25
AOC10	AOC10-26	Proposed sample is to analyze for dioxin in deposited sediment.	Sample locations accepted and additional environmental impacts must be considered by DTSC and DOI.
AOC10	AOC10-27	Proposed sample is to look at dioxin down-gradient from AOC10-15. This sample location is on the other side of a large soil berm across the drainage. Also, when comparing metal concentrations between AOC10-15 and AOC10-5 (near the proposed AOC10-27 location) there does not seem to be a relationship.	Delete sample AOC10-27
AOC14	AOC14-20, 21	Samples proposed in exposed debris within road-cut. It is presumed that the purpose is to look at the vertical extent of contamination above and below the	Sample locations accepted and additional environmental impacts must be considered by

		debris. [Note that during the field walk the exact locations of these 2 trenches were not provided. Will these be set in the field during sampling or have locations been set?]	DTSC and DOI.
AOC27	AOC27-51	Sample proposed to determine the lateral and vertical extent of debris found in samples AOC27-6, 7, and 8. However, there is visual information regarding the depth of debris in this area. The slope between the road and the bottom of BCS has visible debris which is below the level of the road. There is sufficient information from the previous trenches and the visual observations to estimate the area of debris. In addition, AOC27-6 and 7 have elevated metals, PAHs and dioxin. If it is likely that this area would be subject to a removal action, then extent can be determined during the removal.	Delete sample ACO27-51 and perform visual inspection.
Perimeter Samples	PA-10, 11, 12	These samples are all previous locations and therefore are proposed to not count as new samples by DTSC. It is unclear how the previous samples were collected (hand-tools?) but hydrovac is proposed to collect these proposed samples. These locations are proposed for deeper samples. While PA 10 and 11 have elevated PAHs compared to criteria, PAH 12 concentrations are not significantly greater and PCBs less than twice the lowest criterion. Note that the sample locations were not marked during the site visit so their exact locations could neither be determined nor fully evaluated.	Delete PA-12. Samples PA-10, 11 accepted and additional environmental impacts must be considered by DTSC and DOI.
Perimeter Samples	PA-18, 19, 20, 21	These samples are all previous locations and therefore are proposed to not count as new samples by DTSC. It is unclear how the previous samples were collected (hand-tools?) but hydrovac is proposed to collect these proposed samples. These locations are proposed for deeper samples. For PCBs, only PA-18 has a detection above the screening criteria. For PAHs, all four samples are above screening	Delete PA-18, 19, 20, 21 and if these areas subject to remediation, use confirmation sampling.

		<p>criteria. However, if these areas are candidates for removal, then a limited removal plus confirmation sampling can be used.</p> <p>Note that the sample locations were not marked during the site visit so their exact locations could neither be determined nor fully evaluated.</p>	

The Tribe requests that, in addition to considering reducing the number of proposed additional samples (see Table above), there must be a specific consultation regarding the interpretation of the Soils EIR in relation to impacts from the collection of additional soil samples prior to approval of DGWP-3 and any further field work. The Tribe must be involved in this discussion regarding how impacts to the site, a sacred area, are determined and hereby requests a meeting to consult with DTSC to address this question prior to the approval of DGWP-3.

Sincerely,



Michael J. Sullivan, Ph.D., CIH
 Consultant to Fort Mojave Indian Tribe

cc:

- Timothy Williams, Chairman, FMIT
- Shan Lewis, Vice-Chairman, FMIT
- Linda Otero, Director, ACS, FMIT
- Nora McDowell, FMIT
- Leo Leonhart, Technical Consultant, Hargis + Associates
- Courtney A. Coyle, Legal Counsel, FMIT
- Jason West, Field Manager, BLM
- Karen Baker, DTSC
- Ana Mascarenas, MPH, Assistant Director EJ and Tribal Affairs, DTSC
- Tribal Representatives: CRIT, Cocopah Tribe, Hualapai Tribe, Chemehuevi Tribe
- TRC Members: C. Schlinger, M. Eggers, B. Prucha, E. Rosenblum