

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

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• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band
Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

MINNESOTA

Fond du Lac Band
Mille Lacs Band

November 29, 2016

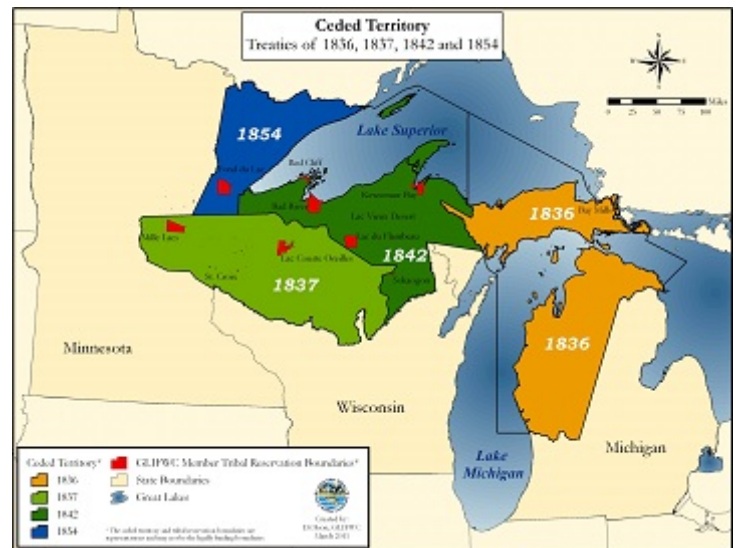
VIA ELECTRONIC MAIL

Office of the Assistant Secretary - Indian Affairs
Attention: Office of Regulatory Affairs & Collaborative Action
1849 C Street, NW, MS 3071
Washington, DC 20240

Re: Ensuring Meaningful Input Into Infrastructure Development

Dear Sir or Madam,

Staff of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) submit these comments on the Departments of Interior, Justice and Army's request for tribes' views on how the federal government can better account for and integrate tribal input into infrastructure reviews and decisions. GLIFWC is an intertribal natural resource agency that assists its eleven member tribes in implementing federal court orders related to the tribes' exercise of treaty-reserved, off-reservation hunting, fishing and gathering rights. These rights are exercised in territories ceded to the United States in the mid-1800s (see map at right). The natural resources that are the subject of these rights are used by the tribes to maintain their lifeway, and they depend on them for subsistence, medicinal, cultural, religious and economic purposes.



GLIFWC's member tribes are concerned about activities that have the potential to degrade the quality and/or quantity of ceded territory natural resources. These threats are myriad - from metallic mineral mining to confined animal feeding operations to infrastructure development. Many of these threats manifest themselves in degradation of water resources, which in turn degrades the natural resources that depend on water. Water is sacred to the Anishinaabe, and the protection of water is a primary underlying driver for tribes to engage on infrastructure and other environmental issues.

In general, it must be noted that while the US cannot delegate its treaty obligations, states are often responsible for issuing many of the permits necessary for infrastructure development to proceed, often under programs delegated by the federal government. This is particularly the case in Michigan, where primary implementation of Section 404 of the Clean Water Act has been delegated to the state. Tribes need federal agencies' assistance to make sure that the full range of potential impacts on treaty rights and treaty protected resources are thoroughly evaluated. To fail to do so diminishes the tribes' rights.

GLIFWC's member tribes would like to see a more comprehensive analysis of cumulative impacts, particularly where infrastructure projects cross state lines. States do not often assess the cumulative impacts of particular projects except within that state's boundaries. For tribes whose ceded territories cross state lines, cumulative impacts do not stop at state borders.

ENSURING MEANINGFUL TRIBAL INPUT

With respect to ensuring meaningful tribal input into infrastructure reviews, several comments are in order. First, for consultation to be meaningful and effective, tribes must have the capacity to engage with the other governments involved. This may mean a significant commitment of time and/or other specialized resources. Tribes will often need assistance in obtaining and sustaining those resources throughout the environmental review and permitting processes, as well as during formal consultation.

Meaningful engagement takes time and must begin early. The best examples of tribal engagement occur when the parties have an existing relationship and a level of trust in and understanding of each other. Ensuring meaningful input may also involve multiple levels of input, from formal consultation with elected tribal officials to less formal, more technical meetings with tribal staff that are working to understand the project so that they can understand what the impacts on the tribe are likely to be.

In addition to using their own resources, tribes often reach out to experts within federal agencies to assist them in understanding particular technical issues. Federal agencies can help tribes by providing technical assistance to tribal technical staff involved in project review.

Tribes will know that their input has been meaningful when they are able to come to consensus with the appropriate federal agency or agencies about what decision should be made. GLIFWC's member tribes are party to a Memorandum of Understanding (MOU) with the US Forest Service that calls for the tribes and the Forest Service to strive for consensus in management decisions that may affect the resources that are subject to the tribes' rights. In particular:

- The MOU requires that the Forest Service include in decision and analysis documents, how tribal information and involvement was taken into account in analyzing the effects of potential management actions and in making the decision.

- If consensus cannot be reached, a dispute resolution process is in place.
- Ultimately the Forest Service has the authority to make decisions within its jurisdiction, but the commitment to strive for consensus, explicitly explain how treaty rights have been taken into account, and the dispute resolution process help ensure tribes that their concerns have been heard and their input has had meaning.

BARRIERS TO MEANINGFUL CONSULTATION AND POTENTIAL POLICY CHANGES

One significant barrier to meaningful consultation results when tribes perceive that federal agencies are treating consultation as a box to be checked rather than as a process that provides meaningful information that should be seriously considered. Tribes may be willing to devote significant time and resources to engaging with agencies, but if the agencies dismiss their input without giving it the attention it deserves, opportunities for meaningful input begin to rapidly break down. Thus, it should be the explicit policy of each federal agency to treat substantive tribal input on a proposal for infrastructure development as they would the input of any other governmental entity with a jurisdictional nexus to the project.

Training is another important way to break down barriers to meaningful consultation. All federal employees should understand the importance of treaties, the requirement to consult, and the seriousness with which the tribes regard the consultation process. In addition, federal employees should receive training about the particular tribes in their region. Finally, federal employees as well as tribal staff should be able to contact a tribal liaison within the agency. Federal agencies should ensure that the job of tribal liaison is not simply added to an already busy employee's duties, but should encourage that person to devote significant time to developing relationships with tribes, helping to facilitate agency/tribal interactions, answering questions, and generally assisting in the engagement and consultation processes.

Thank you for your consideration of these comments, please do not hesitate to contact me at any time with questions or if you would like to discuss these issues further.

Sincerely,



Ann McCammon Soltis, Director
Division of Intergovernmental Affairs

cc: Voigt Intertribal Task Force