



LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

TRIBAL NATURAL RESOURCE DEPARTMENT

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Fish Culture - Fisheries Management - Wildlife Management - Water Resources - Environmental Protection - Conservation Law - Energy - Air Quality

November 30, 2016

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

RE: Federal Consultation with Tribes regarding Infrastructure Decision-Making

Dear Office of the Assistant Secretary-Indian Affairs:

The Lac du Flambeau Band of Lake Superior Chippewa Tribe respectfully submits the following comments in response to the Department of Interior, Department of Justice, Department of Army, and other Federal Agencies on *FEDERAL CONSULTATION WITH TRIBES REGARDING INFRASTRUCTURE DECISION-MAKING*, September 23, 2016 letter. We have also provided verbal comments during the November 15, 2016-Tribal Consultation session in Minneapolis.

WE admittedly state that any policy, rule or plan that is developed by any Federal Governmental Agency must uphold our inheritance of Tribal Sovereignty, Self-Determination, Self-Regulation and the Trust Responsibility of the Federal Government. Furthermore, "Government to Government" relationship between the Federal government and Indian Nations remains distinct from that which the Federal Government has with states and foreign nations.

WE submit the following comments and/or recommendations to address the two broad categories identified in the letter:

1) *Promoting Meaningful Government to Government Engagement within Existing Framework?*

Our Tribe has treaty ceded territories in Wisconsin, Michigan and Minnesota however; we are not being consulted directly by those federal agencies and/or those agencies are not aware that we have ceded territories and the rights associated with the treaties. Recommend we be consulted with on any proposed projects in these territories Furthermore, We also may have tribally owned lands throughout the region that maybe effected therefore; recommend initial meetings with appropriate staff of the federal agencies regarding these areas as well.

To have meaningful engagement with Tribes requires the awareness, recognition and acknowledgement of each Tribe's history and background. Therefore, it is absolutely essential that all levels of agency staff be trained or educated on Tribal Governments and Treaty obligations from information approved by each Tribe.

Another option is to appoint a tribal liaison/representative that would be responsible to assure that this is conducted and monitored. It would be valuable to have agency staff visit tribal lands and be provided an overview annually to maintain the government to government relationship.

There are several Federal Agency Tribal Consultation Policies and Resources, either enacted by Treaties, Statutes and or Presidential Executive Orders (Federal Agency Tribal Consultation Resources, May 2015). Most of these policies were developed without input from Tribes and a majority of the agencies do not utilize the policy or define consultation differently. Some of the federal agency staff are unaware of what the policy is or why it is needed on all levels. Consistency in the policy and how it adheres to treaties, statutes and presidential orders is of outmost significance.

One reviewed and detailed consultation policy is the Bureau of Reclamation, Native American and International Affairs Office, Protocol Guidelines: Consulting with Indian Tribal Governments, September 21, 2012. See enclosure. Recommend this consultation process and protocol to be used as a guiding document for other Departmental agencies to follow.

However, each Tribe may have established protocol/policy/ordinances and/or rules for their respective area of management that needs to be considered and incorporated in the process as well (i.e. Tribal Historic Preservation, TAS-WQS, 401 Permitting, etc.)

It is essential that each Department Agency of the Government reach out and obtain the specific information from each Tribe which could also be a part of the recommended training and/or site visits.

2) Identifying Any Necessary Change to the Existing Framework?

Define purpose, goals and objectives for consultation; which should state that the consultation with Indian Tribes is legal requirement for policies that have tribal implications under various obligations mentioned previously.

Formalize an agreement that set forth roles and responsibilities and authorities of each party to satisfy consultation requirements and outlays a clear pathway for: communication, incorporation of tribal input and processes (may include but not limited to internal tribal programmatic, legal, administrative, governmental, general membership) to be considered, including agreeable timeframes.

Communication at the inception phase of a discussion of any action that it appears tribes may have a direct or indirect interest in the outcome of an agency's action. We believe there should be no exemptions that preclude our Tribe from being able to provide input or be consulted with all Federal actions that impact our tribe, including treaty territories.

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Require direct communication via official letter to the Tribal President/Council; concurring emails or phone calls are not considered official notification.

Allow for ample time for the Tribe to receive, process and respond to requests for consultation.

Expect direct two-way communication. Require face-to-face meetings to take place on our Tribal Reservation.

Communication or Consultation through other forums or Inter-Tribal organization such as GLIFWC, GLITC, or other tribal organizations is not considered appropriate consultation for our Individual Tribe; however, since we have treaty territories and we are represented within these organizations; does not preclude us from participation in consultation in that capacity as well. Our Tribe has treaty ceded territories in Wisconsin, Michigan, and Minnesota.

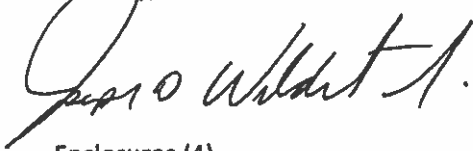
- **Confidential Information:** Some information may require an agency to hold confidential propriety information regarding natural resources, economic development and traditional/cultural religious practices and sites.
- **Levels of consultation and Protocol:** Unless otherwise directed by the Tribe, ensure the level of consultation is agreed upon upfront. The Tribal Leadership/Council decides at which level of consultation and/or if they will participate at all. If the level of Consultation arises to the Tribal Government/Council level it is expected that Senior Federal Agency Officials will be designated to participate. If the level of consultation is initiated at the technical level (program managers/directors) that will need to be verified by the Tribal Government/Council as well. In the technical level case, a representative of the tribal staff will be assigned to coordinate and communicate outcomes directly back to the Tribal Government Level, no official authorization is given to the technical level staff to make policy decisions.

Specific Comments to Infrastructure Projects:

Our Tribe supports the recommendations of The National Tribal Water Council-recommendations to Tribal Leaders, Standing Rock- Tribal Trust Compliance, and Federal Infrastructure Permitting, October 20, 2016, as well as Great Lakes Indian Fish and Wildlife Commission comments, Ensuring Meaningful Input into Infrastructure Development, November 29, 2016. See enclosures.

Thank you for the opportunity to comment on how the "Federal government agencies can improve Federal decision making processes that affect Tribal Land, resources, and treaty rights to ensure that those decision are fully consistent with obligations to Tribal Nations."

Sincerely,



Enclosures (4)