



**MEMORANDUM OF UNDERSTANDING
REGARDING INTERAGENCY COORDINATION AND COLLABORATION
FOR THE PROTECTION OF TRIBAL TREATY RIGHTS
RELATED TO NATURAL RESOURCES**

White House Tribal Nations Conference

November 29, 2016

The White House Council on Native American Affairs Environment, Climate Change, and Natural Resources Subgroup developed the attached memorandum of understanding (MOU). The MOU affirms the signatory Agencies' commitment to protect tribal treaty rights and similar tribal rights relating to natural resources through consideration of such rights in agency decisionmaking processes and enhanced interagency coordination and collaboration.

The following agencies are signatories to the MOU as of the above date:

- U.S. Department of the Interior
- U.S. Department of Agriculture
- U.S. Department of Justice
- U.S. Department of Commerce
- U.S. Department of Defense
- U.S. Environmental Protection Agency
- U.S. Department of Transportation
- White House Council on Environmental Quality
- Advisory Council on Historic Preservation

This list will be updated as other agencies join the MOU.



MEMORANDUM OF UNDERSTANDING

among the

U.S. Department of the Interior,

U.S. Department of Agriculture,

U.S. Department of Justice ,

U.S. Department of Commerce,

U.S. Department of Defense,

U.S. Environmental Protection Agency,

U.S. Department of Transportation,

White House Council on Environmental Quality,

Advisory Council on Historic Preservation

REGARDING INTERAGENCY COORDINATION AND COLLABORATION FOR THE PROTECTION OF TRIBAL TREATY RIGHTS

I. Purpose and Principles

The signatory agencies (Parties) enter into this Memorandum of Understanding (MOU) to affirm our commitment to protect tribal treaty rights and similar tribal rights relating to natural resources through consideration of such rights in agency decisionmaking processes and enhanced interagency coordination and collaboration.

II. Background

From 1778 to 1871, the Federal Government's relations with American Indian tribes were defined and conducted largely through the treaty-making process. These treaties established unique sets of rights, benefits, and conditions for the treaty-making tribes that agreed to cede millions of acres of their homelands to the United States in return for recognition of property rights in land and resources and Federal protections.

Through treaty-making, Indian tribes granted land and other natural resources to the United States, while retaining all rights not expressly granted. Treaties with American Indian tribes cover a wide variety of subjects, including rights reserved by tribes relating to natural resources, such as the right to hunt, fish, and gather both on land ceded or given up by tribes, and on land retained by tribes. Although the treaty-making era ended in 1871, Federal treaties with tribes ratified by the U.S. Senate remain the law.

Under the U.S. Constitution, treaties are part of the supreme law of the land, with the same legal force and effect as Federal statutes. Treaties bind both the Federal Government and the signing Indian tribe or tribes, and generally constitute recognition of rights to lands and resources, as well as rights to fish, hunt, and gather. As such, the Federal Government has an obligation to honor and respect tribal rights and resources that are protected by treaties. This means that federal agencies are bound to give effect to treaty language and, accordingly, must ensure that federal agency actions do not conflict with tribal treaty rights. Integrating consideration of tribal treaty rights into agency decisionmaking processes is also consistent with the Federal Government's trust responsibility to federally recognized tribes.

After the treaty-making era ended in 1871, agreements between tribes and the Federal Government were instead generally memorialized through other sources of law, including Acts of Congress, such as land claims settlement acts, and in some cases through executive orders. The Parties recognize that, like treaties, these other sources of federal law may also protect reserved tribal rights relating to natural resources. The Parties intend to consider these other natural resources rights as well, as part of the activities listed below.

III. Participating Agency Agreement

The Parties, as members of the White House Council on Native American Affairs, Environment, Climate Change, and Natural Resources Subgroup, will work together and consult with federally recognized tribes, as appropriate, in developing and implementing the following actions:

1. Continue the Parties' current efforts to integrate consideration of tribal treaty rights into their decisionmaking processes to ensure that agency actions are consistent with such applicable rights;
2. Develop and share tools and resources to identify, understand, and analyze tribal treaty rights that may be affected by agency actions;
3. Consider tribal treaty rights as part of the Parties' respective tribal consultation policies and procedures;
4. Identify and share best practices for considering tribal treaty rights in Federal decisionmaking processes, for example, in determining the potential effect of

proposed agency actions on tribal treaty rights, or in analyzing potential environmental impacts of Federal actions pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; and

5. Establish a working group with members from each of the Parties to enhance interagency collaboration and coordination and address significant issues as they arise. This working group will include a sub-group of agency attorneys to provide legal support to the working group and facilitate interagency coordination on legal issues relating to tribal treaty rights.

IV. General Provisions and Limitations

This MOU is a voluntary agreement that expresses the good-faith intentions of the Parties, is not intended to be legally binding, does not create any contractual or fiscal obligations, and is not enforceable by any party. It does not create any right or benefit, substantive or procedural, enforceable by law or equity, by any party, against the Parties, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the Parties.

All commitments made by the Parties in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates the Parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

V. Administrative Provisions

1. This MOU takes effect upon signature of the Parties and shall remain in effect until December 31, 2021. This MOU may be extended or amended upon written request from any Party and the subsequent written concurrence of the others.
2. Any Party can opt out of this MOU by providing a 60-day written notice to the other signatories.
3. Other Federal agencies may participate in this MOU at any time while the MOU is in effect. Participation will be evidenced by an agency official signature on the MOU.

VI. Signatures of the Parties of the MOU on Tribal Treaty Rights


See attachments.

Sally Jewell

Sally Jewell
Secretary
Department of the Interior

September 22, 2016

Date



Thomas J. Vilsack
Secretary
U.S. Department of Agriculture

9/24/16
Date

Loretta E. Lynch

September 26, 2016

Loretta E. Lynch
Attorney General
U.S. Department of Justice

Date



9/19/16
Date

Bruce H. Andrews
Deputy Secretary of Commerce

Ashton Carter

Ashton Carter
United States Secretary of Defense

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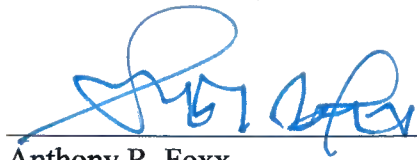
Date



Gina McCarthy
Administrator
Environmental Protection Agency

SEP 20 2016

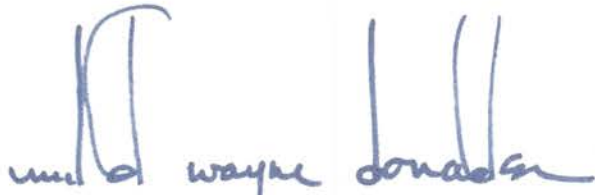
Date



Anthony R. Foxx
Secretary
U.S. Department of Transportation

11/29/16

Date

Handwritten signature of Milford Wayne Donaldson in blue ink.

September 20, 2016 _____

Milford Wayne Donaldson, FAIA
Chairman
Advisory Council on Historic Preservation

Christina Goldfuss

Christina Goldfuss
Managing Director
White House Council
on Environmental Quality

09/26/16

Date