

Consultation Suggestions and Recommended Actions

Facilitated by Gay Kingman, Great Plains Tribal Water Alliance

October 6, 2016

During the Great Plains Tribal Water Alliance Forum for the Protection of Tribal Water, held on October 5-6, 2016 in Rapid City, South Dakota, Tribal member participants from the Great Plains Region provided suggestions and recommendation for improving consultation.

Tribes seek meaningful consultation with Federal agencies, according to laws, regulations and Executive Orders. As sovereign nations, Tribes want a demonstration of a commitment to consultation that seeks to understand each Tribe's governance structure, is continuous and programmatic, seeks opinions and asks for advice early in the planning process.

Suggestions to achieve meaningful consultation can be grouped in the following categories: Participants, Methodology, Funding, Laws and Regulations, Penalties for Non-Compliance, and Other Suggestions for Improving Participation in Regulatory Processes.

Participants

- Tribes request government-to-government consultation, however, any individual can establish association and consult in that capacity.
- Federal agencies should seek to understand an individual Tribes preferred method of communication.
- Federal agencies should return to field hearing on reservations in order to receive comments from individuals about how programs are working.
- Consultation should be on-going. Although some agencies, such as the American Council on Historic Preservation, have held consultations in the past, new issues are emerging and must be heard.
- Tribes should join voices when there is agreement, but recognize the sovereignty of each Tribe and retain the right of individual Tribe to consult.

Methodology

- Federal agencies should seek to promote cooperation, participation, and efficiency, by combining consultation on common jurisdiction and topics.
- Agencies must follow proper protocols and the Federal government should seek consistency among agency approaches.

- Proper notification must be given; 90-day notification is preferred and agreement must be reached when the clock starts. All communication has to be registered and verified for delivery to appropriate Tribal entity. Notification is NOT a proxy for consultation.
- Tribes should consolidate concerns to be forwarded to Federal agencies, but have each Tribe submit individually with the appropriate Tribal ratification.
- Meetings between designated Federal officials and Tribal staff during site visits do not constitute consultation. Its purpose is to develop relationships, share information, and be a conduit for the exchange of information.
- Communication should be open and transparent without compromising the rights of Indian Tribes.

Funding

- Consultation takes time and money from Tribal programs, cutting into the day-to-day responsibilities of the Tribal Historic Preservation Officer and other Tribal officials.
- Federal agencies should seek ways to reduce the time required for travel and meetings.
- Federal agencies should compensate Tribes for consultation.

Laws and Regulation

- All Federal actions requiring compliance under the National Environmental Policy Act should be Environmental Impact Statements, instead of Categorical Exclusions or Environmental Assessments.
- The application of other laws, permits or other actions that affect Tribes should be the subject of consultation.
- Clarification of what constitutes government-to-government consultation should be codified in Federal law, to be followed by all agencies.
- Consultation practices should be consistent nation-wide, regardless of the location of the project or Tribes with a current or ancestral tie to the project and project area.

Penalties for Non-Compliance

- Tribes believe that there should be financial consequences for failure to consult properly. Tribes seek financial penalties for non-compliance with the laws, regulations and Executive Orders governing consultation. Federal agencies must be held accountable for meaningful government-to-government consultation.
- If a Federal agency fails to consult properly, another Federal agency should step into the role of lead agency for the purpose of conducting meaningful consultation. Consideration should be given to suspending that agency's role in leading similar projects.

Other Suggestions for Improving Participation in Regulatory Processes

- Organize a Tribal organization to be the equivalent of the American Council on Historic Preservation or the Environmental Protection Agency. The land, water and air has been altered and should be studied, data collector and information analyzed from the Tribal viewpoint.
- Become co-managers of the Missouri River, bringing transparent science, data, analysis, and Tribal experts.
- Establish another authorized purpose in Federal law to rebuild Tribal nations and economies
- Establish an academy for our students to learn economics, ecosystems, healthcare, housing, other key issues.
- Create an association—equivalent to the U.N. Spiritual, medicinal leaders, Tribal governmental officials.
- Structure a Northern Plains Preservation Office, possibly working with the Great Plains Tribal Chairman's Association, which is a federally chartered organization, legally equivalent to working with a Tribe. The new organization would still have its own officers, would take the lead in the work. Great Plains Tribal Chairman's Association would be able to support resolutions, and other action that is to be taken. Collaboration is important.
- Register to vote! Can check online for individual state's registration requirements.