SPOKANE TRIBAL BUSINESS COUNCIL
PO Box 100, Wellpinit, WA 99040

November 30, 2016

The Honorable Larry Roberts, Acting Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street, NW, MS 3071
Washington, D.C. 20240

E-mail: lawrence.roberts@bia.gov
Elizabeth.Appel@bia.gov
consultation@bia.gov

Re: Spokane Tribe's Comments on Tribal Government Input in Federal Infrastructure Decision Making

Dear Mr. Roberts:

On behalf of the Spokane Tribe of Indians ("Tribe"), I thank you for the opportunity to provide these comments on the need to improve how federal agencies interact with Indian tribes concerning impacts to tribal resources arising from federally permitted infrastructure projects. These written comments supplement the in person testimony provided by our Vice Chairman, David Browneagle, at Daybreak Star Cultural Center in Seattle, Washington on October 25, 2016.

As a preliminary matter, please be advised that our Tribal Council has enacted a resolution formalizing our Tribe's support for the Standing Rock Sioux Tribe's struggle against the Dakota Access Pipeline. We place the Standing Rock Sioux Tribe's current struggle within a historic context in which Indian tribes bear disproportionate impacts from energy infrastructure projects. Indeed, our Tribe has yet to receive fair compensation for the inundation of our Reservation bottom lands and destruction of our salmon fishery caused by the Grand Coulee Dam and the creation of Lake Roosevelt in 1939. Our Tribe knows all too well the long and often shameful history of the United States authorization of energy infrastructure development projects over the objections of Indian tribes, and we are acutely aware of the devastation caused by this abdication of the federal trust obligation.

Given our past and current struggles, we empathize with those Indian tribes across the United States who face the prospect of large, federally permitted energy infrastructure projects within their homelands. In addition to Standing Rock, we also support Lummi in its efforts to protect Cherry Point. We likewise support the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Coquille Indian Tribe, the Cow Creek Indian Tribe and the Klamath Indian Tribe in their efforts to protect tribal cultural and natural resources threatened by the proposed Jordan Cove LNG export facility and Pacific Connector Pipeline. Of course, there are many, many

more examples, and we generally support the right of all Indian tribes to protect cultural and natural resources threatened by federally permitted energy infrastructure projects.

We concur with the analysis and join the recommendations set forth in the National Congress of American Indians Comments on Tribal Trust Compliance and Federal Infrastructure Decision-making ("NCAI Comments"). In particular, we share NCAI's concern that the Administration's investment in improving infrastructure permitting and planning in a way that includes tribal concerns is often undermined by agency practices in which tribal consultation either does not occur at all, or consultation obligations are unlawfully delegated to applicants. We note that in most instances, tribes must dedicate limited resources to participate in multiple local, state and federal permit review processes that are regularly tilted in favor of applicants who are seldom willing to assist tribes in defraying often significant project review costs.

With respect to agency specific concerns, we agree with NCAI that the Army Corps Appendix C undermines tribal rights secured under NHPA § 106. Of course, Indian tribes, the ACHP and individual SHPOs have long called for the Army Corps to withdraw Appendix C. We now join in that request. We also agree that the Army Corps should no longer rely on Nationwide Permit 12 to avoid cumulative impacts analyses for large crude oil and LNG pipeline projects. As an example, the Army Corps utilized Nationwide Permit 12 to provide hundreds of water crossing approvals for the Dakota Access Pipeline project without providing any detailed environmental or cumulative impact review.

We share the view that it is inappropriate for FERC hold up its ex parte rules as a reason to abdicate NHPA §106 obligations to Indian tribes: a result which effectively punishes tribes who choose to exercise their legal rights to intervene in FERC proceedings. Nor can we agree with FERC's attempts to delegate its NHPA § 106 obligations to third party applicants.

We also join NCAI's call for the ACHP to update its regulations and guidance to provide tribes with signatory status, not just invited, so that their signatures are required for an MOA authorized under 33 CFR § 800.6(c). The current paradigm allows an agency to enter into an MOA over the objections of affected Indian tribes and defer meaningful NHPA §106 impacts assessments until after a project is permitted.

Each of these agency specific concerns, among others discussed by NCAI, often combine to undermine any opportunity for meaningful tribal consultation on federally permitted energy infrastructure projects. We commend the Administration for seeking input from Indian tribes concerning how to best address this recurring failure, which is most recently exemplified by the stand-off at Standing Rock. We are hopeful that the Administration will issue guidance that incorporates the twelve principles and best practices detailed in the NCAI Comments.

Respectfully,

Carol Evans

Carol Evans
Chairwoman
Spokane Tribal Council