



Battle Mountain Band Council
37 Mountain View Drive
Battle Mountain, Nevada 89820
PH: 775/635-2004
FX: 775/635-8016

Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Comments on Improving Tribal Consultation for Infrastructure Decision-Making November 29, 2016

I. Introduction

The Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians appreciates this opportunity to comment on improving tribal consultation. Government-to-government tribal consultation is a daily activity for us and it is not working. In the 1864 Treaty of Ruby Valley our ancestors reserved most of eastern Nevada and portions of Idaho, Utah and California. These homelands, reserved in treaty, were slowly taken from us without any consultation. Today our homelands are managed by the Bureau of Land Management (BLM).

BLM and the federal government owes us a enormous debt for the lands taken from us and our vast resources that are not used to fund the United States Treasury and multinational corporations. One of the ways the United States decided to make good on this debt to us and many other tribes is through its trust responsibility and ongoing government-to-government relationship with Indian tribes. These are not outdated concepts. These concepts are the foundation of our historic and modern relationship. The work your officials and staff do to uphold this relationship is an important measure of the success or failure of our treaty relationship.

II. Accountability and Training Needed to Improve Consultation

In our experience, most of the time, the requirements for government-to-government tribal consultation are not being fulfilled. BLM goes through the motions, but lacks the interest, knowledge, staff, resources, and time for real consultation. BLM prioritizes moving projects forward. Consultation about impacts to Western Shoshone natural and cultural resources and sacred sites is an afterthought at best.

When BLM does consult with us they sit there taking notes and then go out and do what they were planning to do anyway. I am not kidding when I say BLM told me one thing in consultation on Friday and then did the exact opposite the following Wednesday. After consulting with us and making commitments, just 5 days later, without a word of further consultation, BLM approved projects they told us would not be approved. How can this be right? How can you justify agency staff ignoring basic consultation requirements? We need accountability and your agencies need training.

We appreciate the effort's federal agencies are making to improve tribal consultation. Improvements are needed, but you do not need to reinvent the wheel. Federal agencies should start by training and requiring your staff to implement the very policies that were recently revised and reissued under President Obama's direction. Interior's consultation policy was just revised and reissued in December 2011. Five years later, the majority of BLM staff that we

work with every day do not have any idea about the requirements for meaningful consultation or how to consult with tribes.

Below are a few key points from Interior's consultation policy. If Interior staff were meeting these requirements this effort to improve consultation would not be necessary. Interior's 2011 policy says:

- Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making.
- Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility.
- Communication will be open and transparent without compromising the rights of Indian Tribes or the government-to-government consultation process.
- Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices.

Apparently this is not good enough. Your agencies, field offices and staff don't follow these requirements. Tribes need accountability and your staff need training.

We face so many roadblocks with BLM staff on a personal level we can't even get to meaningful tribal consultation. BLM and agency staff at all levels need training and they need to be held accountable for consultation. Only with accountability will your staff find the motivation needed to change and question their personal beliefs that limit consultation and limit the effectiveness of consultation.

Agencies must also be accountable for the ideas shared and discussed in tribal consultation. Every tribe has a story about consulting with agencies that don't do anything with the information we give them. We spend time and limited resources consulting with agencies and then nothing happens. Nothing changes. Projects move forward as if we did not consult at all.

Agencies need to take the time – and be given the time – to document consultation, make revisions to proposed projects based on consultation, discuss these revisions with tribes, and find a common ground that upholds the federal trust responsibility. Each agency office must be accountable for actually considering the information provided by Tribes. That's consultation. That's a deliberative process required by Interior's policy. That is a meaningful government-to-government exchange.

III. Mining Projects are Infrastructure Projects

Your work to improve consultation for infrastructure projects must include mining projects under the 1872 Mining Law. There is nothing special about that law or mining projects

to exclude consultation. Mining projects are infrastructure projects. They include roads, power lines, buildings, pipelines, waste disposal facilities, ore processing facilities and more.

In Nevada, we have hundreds of mines and mining claims on lands that were reserved in treaty by my ancestors and are now managed by BLM. Meaningful and accountable consultation for these mines is vital to protecting Western Shoshone sacred sites, cultural and natural resources, spiritual activities. Tribal consultation and upholding our government-to-government relationship is vital to protecting and maintaining the very things that make us Western Shoshone and allow us to pass on our identity and culture to our children.

IV. Tribal Consultation Needed to Protect Tosawihl Quarries Sacred Site

Right now one of our sacred sites is being destroyed because of a lack of meaningful and accountable consultation. All of the problems mentioned above are happening at the Tosawihl Quarries in north central Nevada.

The Tosawihl Quarries is a landscape traditional cultural property. Western Shoshone tribes have lived in and utilized the Tosawihl Quarries since time immemorial. The Quarries include prayer points, ceremonial locations, sacred waters, medicines, and minerals, chert collecting areas, doctoring areas, burial sites and spirits that are sacred and vital to the identity of the Band and other Western Shoshone.

Located in the middle of the Tosawihl Quarries is the Hollister Mine permitted by BLM. The Hollister Mine is an underground mine with large above ground exploration and infrastructure projects. Even after decades of supposed consultation and telling BLM about the sacred resources in the Tosawihl Quarries, BLM did not take our views seriously. Year after year, BLM took the information we provided and did nothing. BLM put our information on the shelf and approved mining activities.

It took a dispute resolution opinion from the ACHP for BLM to finally take the information we provided in consultation seriously. After about 14 years of doing nothing with the information we provided, BLM finally documented and found large portions of the Tosawihl Quarries eligible for the National Register.

But this was too late! BLM allowed the mining company to build a power line and utility road straight through one of these traditional cultural properties. Parts of this TCP have been destroyed. The spirits we pray to are no longer there. BLM calls this a temporary impact but if we can't pray there for 30 years – a whole generation – how can we pass these cultural practices to our children.

And, now our limited resources are being wasted on litigation over impacts on these TCPs. This is a violation of your trust responsibility. If BLM took consultation seriously and was accountable for what is discussed in consultation none of this would be necessary.

Consultation cannot be successful if agency staff are not willing to listen. They need cultural training. We've been telling them for years it is not just the rocks, not just archeology.

Just as important are the prayer points, the spirits that inhabit these places, the sacred places in the Tosawihi Quarries.

BLM did not want to listen to us. They knew that if they recognized our sacred landscape it would make restrict mining and make mining more expensive. This is not a consultation problem. This is a cultural problem. Without cultural training and accountability agency staff will never be able to hear what we tell them in consultation. You can't fix consultation without fixing this cultural problem.

V. Efforts to Improve Tribal Consultation Must Include Programmatic Agreements

This effort to improve consultation must also recognize the special case of Programmatic Agreements under Section 106 of the National Historic Preservation Act. Consultation for infrastructure projects is not always just something agencies do once and then move on. A lot of infrastructure projects require ongoing consultation under a Programmatic Agreement, including mines and dams.

Too many agencies think once a Programmatic Agreement is signed they are done. That's not true. Programmatic Agreements require ongoing consultation. Programmatic Agreements allow for unexpected impacts, unknown impacts and staged project development.

But, this also requires ongoing consultation over the life of the infrastructure project. If agencies are not willing to follow through with ongoing consultation, then they should not use Programmatic Agreements to delay consideration of project impacts.

VI. Tribal Consultation through Partnerships with Tribes

We support for Secretary Jewell's recent Order on Identifying Partnerships with Tribes in the Management of Federal Lands. Currently BLM manages many of the homelands we reserved in treaty. BLM should identify these lands for cooperative management and collaborative partnerships. These partnerships are a form of consultation and would help Interior agencies fulfill consultation requirements.

VII. Conclusion

Where we live consultation is not working. Interior and other agencies can start by just implementing training and accountability so that agency officials and staff take their revised and reissued consultation policies seriously. For this to work, and for agencies to follow through with what they learn in consultation, federal agencies need time to engage tribes in a real discussion that is not limited by pressures to permit projects.

The United States and its federal agencies have a trust responsibility to tribes and our resources. This relationship is based on treaties that are the Supreme Law of the Land. Federal agencies do not have a trust responsibility to mining companies or oil pipelines. Meaningful tribal consultation needs to be prioritized over permitting projects.