

WINNEBAGO TRIBE OF NEBRASKA

P.O. Box 687 • Winnebago, Nebraska 68071 • PH: 402-878-2272 • Fax: 402-878-2963

Visit us at: www.winnebagotribe.com

November 30, 2016

BY EMAIL
consultation@bia.gov

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

Re: Training and Accountability Needed to Improve Tribal Consultation

The Winnebago Tribe of Nebraska appreciates this opportunity to comment on improving tribal consultation. Our homelands are downstream from the proposed Missouri River crossing for the Dakota Access Oil Pipeline. The Missouri River runs through our Reservation. Our Tribe is among the hundreds of millions of tribal members and United States' citizens that would be impacted by any leak in the Pipeline.

The Dakota Access Oil Pipeline case highlights the serious consequences of failed tribal consultation. About 12 million tribal members and United States citizens draw their drinking water from the Missouri River. Many of these drinking water systems were funded by federal tax dollars. Millions more depend on clean Missouri River waters to support natural resources. A small or catastrophic leak of the Pipeline would impact our cultural and natural resources and spoil our remaining homelands.

Few issues in Indian Country get as much attention as the Dakota Access Oil Pipeline, but every day, for projects large and small, the federal government fails to fulfill its obligations for meaningful government-to-government tribal consultation. Meaningful tribal consultation is the modern expression of the treaty and trust relationship between the United States and Indian tribes. These are not outdated concepts. These are concepts that apply to our daily interactions with federal agencies and are vital to the protection and maintenance of our natural and cultural resources.

Across Indian Country every tribe has experienced agencies checking the box, ignoring tribal comments and coming to consultation meetings with their minds already made up. What is happening today does not live up to our government-to-government relationship. This is not meaningful consultation.

We appreciate this effort to improve tribal consultation, but we do not need to reinvent the wheel. Just a few years ago, in 2009, President Obama directed all Federal agencies to update and improve their tribal consultation policies. Overall these are good policies. We do not need to

create more paper.

Instead we need federal agency officials and staff to take tribal consultation seriously. And, they need to be given the time to take tribal consultation seriously. Federal agency officials and staff need training on tribal consultation and they need to be held accountable for tribal consultation.

The Department of the Interior's policy from 2011 is a good example. Just 5 years after this revised policy was issued, we regularly meet with agency officials and staff that do not have any idea about meaningful tribal consultation. 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.

Just issuing a revised and updated policy is not good enough. Your agencies, field offices and staff do not follow these requirements. We need accountability and federal agency officials and staff need training.

First, federal agency officials and staff need training at all levels. Adequate training is important for effective implementation the same as any other policy. Training for tribal consultation needs to be done independent of a particular permitting decision and should not be an after thought.

To reach its full potential, training should contain a cultural component. Without knowledge of tribal history, culture, and politics, it is difficult, if not impossible, for federal agency officials and staff to engage in meaningful consultation. When we meet in consultation, our discussions will be more meaningful if federal agency officials and staff have an understanding of who we are and what we value.

In addition, each agency has a national policy, but often regional and field offices have no idea what these policies require. It is not our job to teach federal officials and staff about their own policies, and this wastes precious time in consultation. Federal agency officials and staff need training on tribal consultation policies and how to implement those policies.

We hope that this training will also reduce many of the personal barriers we experience to meaningful tribal consultation. All too often, we meet with federal agency officials and staff whose mind is already made up or whose personal beliefs limit consultation and limit the effectiveness of consultation. Only through training and interaction can we begin to take down these barriers.

Second, accountability is needed to motivate agency officials and staff to actually take into consideration the information discussed in 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. 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. Without this level of accountability, we often have no idea whether the information we provided was considered and how our information was used in the agency decision-making process.

To ensure that agencies are accountable for tribal consultation, tribes need to be able to seek enforcement or recourse when agencies do not provide meaningful tribal consultation. Agencies should create administrative processes for tribes to appeal when consultation efforts fail or are not adequate. Appeals could be to a White House or Headquarters official or to a tribal consultation board consisting of a few Headquarters officials.

In some cases we have been providing information for decades, but agency officials and staff refuse to hear what we are saying or cannot fit what we are saying into whatever permitting box they are trying to fulfill. With training agency officials and staff will be able to hear us better or listen with more open minds. And, with accountability we will know how the information we provided was used by agencies. This process cannot be rushed and agencies must be provided the time and resources to complete meaningful tribal consultation.

This is the “deliberative process” required by Interior’s policy. Federal agency leaders need to require this level of meaningful, effective and accountable tribal consultation from their officials and staff. Federal agencies already have the policies in place. It is just a matter of federal agencies taking these policies seriously, upholding their trust responsibility, and not being pressured to move forward with projects without meaningful tribal consultation.

Our government-to-government relationship, which is based on treaties and the United States’ trust responsibility, is dependent on each federal agency official and staff and whether or not they take meaningful consultation seriously. This responsibility must be upheld at the personal level and the agency level. Tribal consultation is the very expression of our treaty relationship and is vital to protecting and maintaining our natural and cultural resources. Our lands, waters, cultural and natural resources are dependent on meaningful government-to-government consultation.

Sincerely,



Frank White, Chairman
Winnebago Tribe of Nebraska