



JENNIFER S. BAKER*

1900 Plaza Drive
Louisville, CO 80027
Telephone: (303) 673-9600
Fax: (303) 673-9155
E-Mail: jbaker@ndnlaw.com

**admitted in New Mexico, Oklahoma, the Navajo Nation,
the Yankton Sioux Tribe, and the Rosebud Sioux Tribe.
Not licensed in the State of Colorado
www.ndnlaw.com*

November 30, 2016

Lawrence Roberts
Principal Deputy Assistant Secretary – Indian Affairs
1849 C Street, NW
Mail Stop 3642
Washington, DC 20240

Tracy Toulou
Director, Office of Tribal Justice
950 Pennsylvania Avenue, NW
Room 2200
Washington, DC 20530

Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

Via Email: consultation@bia.gov

Re: Federal Decision-making on Infrastructure Projects

Dear Principal Deputy Assistant Secretary Roberts, Director Toulou, and Assistant Secretary Darcy:

Enclosed for your review and consideration please find the Yankton Sioux Tribe's written comments in response to the "Dear Tribal Leader" letter dated September 23, 2016, regarding the consultation process for federal decision-making on infrastructure projects. Should you have any questions regarding the enclosed documents contents, please do not hesitate to contact me.

Sincerely,

Jennifer S. Baker

Enclosure



OFFICERS:
ROBERT FLYING HAWK, CHAIRMAN
JODY ZEPHIER, VICE CHAIRMAN
GLENFORD "SAM" SULLY, SECRETARY
LEO O'CONNOR, TREASURER

COUNCIL:
JASON COOKE
GREGORY COURNOYER Jr.
DIANE MERRICK
ROSEANNE WADE
MONA WRIGHT

**YANKTON SIOUX TRIBE
COMMENTS ON INFRASTRUCTURE CONSULTATION
November 30, 2016**

While many agencies have well-written general statements of policies for consultation with tribes, which would probably work well if the federal actor implementing the policy had a very sophisticated understanding of tribes and understanding and acceptance of the benefit and importance of tribal consultation, our view is that existing policies need to provide more concrete guidance to the federal actors who may not have that knowledge or understanding.

In your framing paper, you asked whether there are particular agencies or particular consultation policies which are superior to others. For the reasons discussed in the prior paragraph, we would answer that the results seem to vary more by the particular federal decision-maker, not by agency, and not by differences in the language in agency policies. We can generalize that the BIA is generally better, and the Army Corps and BLM generally worse, but we see that more as a function of the differences in expertise and commitment to tribal self-determination of the federal decision-makers.

I. Key Problems with the Existing Framework

There are four primary problems common to most of the existing federal agency consultation policies:

1. Failure to correctly define/adequately define when consultation should begin.
2. Failure to comply with the policies and the lack of accountability for failures to comply.
3. Failure to identify when a project will or may impact tribal sovereign interests.
4. Failure of the federal agency to require necessary tribal approvals for on-Reservation infrastructure projects.

Below we will discuss ways that each of these problems can be diminished or resolved through Executive Department revisions of existing policies.

A. Failure to correctly define/adequately define when consultation should begin.

In our experience, the most significant problem with application of current consultation policies is that consultation does not begin early enough, so that by the time the federal agency engages with tribes, there is no meaningful consultation which can occur. Federal decision-makers often decide what action they want to take and then take pro forma actions to "consult" with tribes

after the fact, viewing consultation as merely a box that they need to check off before the action that they are going to take is formally approved.

This practice is inconsistent with several of the underlying rationales of a consultation policy, including: 1) tribes have unique knowledge which should inform federal decisions which impact tribal interests; and, independently, and 2) government-to-government consultation is proper out of respect for the tribal sovereign.

As with other contexts where decision-makers generally would prefer not to perform a task, the legal infrastructure should be written to more narrowly circumscribe the federal officers' discretion, replacing vague language with more concrete language or providing bright line rules whenever possible.

Section VII.E.1. of the Department of the Interior Policy on Consultation with Indian Tribes is a representative example of the vague language used in current federal consultation policies to define when consultation with tribes should start. It states: "Each Bureau or Office will consult with Indian Tribes as early as possible when considering a Departmental Action with Tribal Implications." The Department of the Interior's policy does not attempt to define what "as early as possible" means; nor does it provide any bright line rules or examples of proper/improper application of the rule.

The United States' consultation with tribes to date in the present matter is a good example of how the process should work as to timely initiation of consultation. The United States promptly provided tribal leaders with notice that it is going to consider an issue, and it has asked tribes to provide their views on that issue, in light of each tribe's experiences. But, the current process is the opposite of how and when most "consultations" occur—after an agency has drafted and internally vetted a proposed policy or begun review of a proposed project or action. This difference between the present matter and the norm likely illustrates our view, stated above, that the abstract standards in existing consultation policies may be clear to the level of federal officers who initiated the current consultation, but that more specific guidance is necessary if there is to be similarly effective consultation in other matters by other agencies.

The agencies should define as precisely as possible when consultation should begin. In the context of rulemaking, federal officers and agencies have a defined process for authorizing development or revision of agency policies and rules. The beginning of consultation should be linked to that authorization to proceed. Where the federal action is not rulemaking, "as early as possible" can also easily be replaced with a more concrete standard, e.g., when a party seeks the first federal action related to a project, such as application to a federal agency for a permit for a particular project, tribal consultation should be triggered.

B. Failure to comply with the policies and the lack of accountability for failures to comply.

Closely related to the prior point, most of the existing federal consultation policies expressly disclaim judicial enforceability and provide no other consequences for failing to timely consult or for any other violation of existing consultation policies. The "duty" to consult is

effectively only a suggestion. Making it a duty would make consultation much more meaningful and is necessary to maintaining government-to-government relationships.

While not in the context of infrastructure development, the United States' "consultation" before approving the regulation for Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 FR 16577 (March 30, 2015), provides a good example of both our first and second points. The United States worked internally on the Hydraulic Fracturing Rule for years before it sought to consult with tribes. By the time it consulted with tribes, it had made all of the major decisions regarding the rule that it would propose and it had incorporated all of those major decisions into a draft rule. It then "consulted" with tribes. While the proposed rule was lengthy and complex, the United States literally changed exactly one word based upon a suggestion which a tribe made during "consultation."

Unsurprisingly, numerous tribes asserted that the federal action violated the government-to-government relationship between tribes and the United States as embodied in relevant part by the consultation policy.

In ensuing litigation, the United States Department of the Interior nominally asserted that its actions constituted consultation, but its primary defense was to assert that the Department's consultation policy was not judicially enforceable and that therefore it did not have to correct its failure to consult, to listen to tribal concerns, or to obtain the benefit of knowledge which tribes had regarding their unique situations.

Additional congressional action would not be necessary for an agency to create an enforceable consultation policy. As the United States has previously recognized, consultation with tribes on a government-to-government basis grows out of the Indian Commerce Clause of the United States Constitution, the Indian Reorganization Act, and other federal laws which codify tribal self-determination and the federal duty to strengthen and support tribal governments. Because there is already supporting federal legislation, an agency or department would create an enforceable consultation if the policy stated that it was judicially enforceable and the policy was published in the federal register. *E.g.*, *River Runners for Wilderness v. Martin*, 593 F.3d 1064, 1071- 72 (9th Cir. 2010); *Wilderness Soc. v. Norton*, 434 F.3d 584, 595-96 (D.C. Cir. 2006); *CropLife Am. v. EPA*, 329 F.3d 876, 883 (D.C. Cir.2003); *Cmty. Nutrition Inst. v. Young*, 818 F.2d 943, 946 (D.C. Cir.1987).

C. Failure to identify when a project will or may impact tribal sovereign interests.

Another recurring problem with agency implementation of existing consultation policies is that agencies frequently fail to recognize when their action will or may impact tribal interests. For example, the Corps St. Louis District failed to consult with the Yankton Sioux Tribe entirely with respect to permits sought by Dakota Access for the Dakota Access Pipeline. Presumably, this is because the Corps was unaware of the Tribe's extensive history in Iowa. As a result, the Tribe's unique knowledge of its culture and history in this region, including burials, were not taken into account by the Corps.

As it relates to infrastructure development, we believe this problem could be substantially diminished (but not wholly eliminated) by adding bright line guidance applicable to some of the

recurring scenarios in which tribal interests are sufficient to trigger the duty for government-to-government consultation. For example, the Department of the Interior's consultation policy states that consultation is required for:

Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an Indian Tribe on matters including, but not limited to:

1. Tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on federally managed lands;
2. The ability of an Indian Tribe to govern or provide services to its members;
3. An Indian Tribe's formal relationship with the Department; or
4. The consideration of the Department's trust responsibilities to Indian Tribes.

Department of the Interior Policy on Consultation with Indian Tribes § III.

For senior federal officers, this would be a well-crafted statement of exactly when tribal interests are sufficiently implicated. But as is also readily apparent, it does not contain any bright lines or specific guidance for the federal officers who must determine when an action "may have a substantial direct effect on an Indian Tribe." When is an effect "substantial?" When is it "direct?"

As it relates to infrastructure development projects, there should be some bright lines stating when tribal interests are sufficient. Any consultation policy should require consultation when a project may have a substantial direct effect on a tribe, and should also expressly add that tribes have a judicially enforceable right to be consulted if:

- a) Any part of the project is within a tribe's Indian County;
- b) Any part of the project is within land for which the tribe retains any hunting, fishing, or other treaty rights;
- c) the agency is considering possible detriment to any waters which subsequently flow through a tribe's Indian Country or aquifers which pass under the tribe's Indian Country or provide drinking water for a tribe's reservation;
- d) the agency is considering whether the project might impact stream flow in any stream in which the tribe might hold water rights;
- e) the agency is considering whether a project might impact or harm Indian historical artifacts, Indian historical property, or possible Indian burials; anywhere within land for which the tribe held aboriginal title or on which the tribe ever had a Reservation or to which a tribe has ancestral and historical ties; and
- f) Any federal statute requires consultation with the tribe.

D. Failure of the federal agency to require necessary tribal approvals for on-Reservation infrastructure.

In its framing paper the United States asked what actions it could take to make sure that non-federal parties engage meaningfully with tribes. Based upon recurring problems we have seen, we would suggest that where infrastructure will pass through a Reservation or through known off-Reservation tribal sacred, cultural, or historic sites, federal consultation with the Tribe should be required (as discussed above) and a part of that consultation should include consultation between the tribe and the United States to determine the “meaningful engagement” which should be required of the non-federal party. In most instances, the United States should then make clear that any federal approval is conditioned upon the non-federal party completing that “meaningful engagement” with the Tribe.

While plainly contrary to basic principles of federal Indian law, we have seen repeated instances where a non-federal entity asserts that a federal permit for an on-Reservation project or other federal actions eliminates the need for the non-federal party to engage with a tribe or to obtain tribal authorization. Most recently, this issue was raised in a case where the Army Corps of Engineers permitted a pipeline which would pass directly through a tribe’s mineral estate. The Army Corps’ permit expressly noted that it was not purporting to determine whether any other permits or authorizations, i.e. tribal permits or rights-of-way, were required. But the pipeline company then used the federal approval to successfully obtain an injunction against the tribe, permitting the pipeline company to construct its pipeline through a mineral estate that the United States owns in trust for the tribe, over the tribe’s objection and without ever obtaining tribal permission.

We assume that the United States would disagree that an injunction should have been issued against the tribe, but the current point is that these types of recurring problems for tribes based upon subsequent interpretations of approvals issue by the tribe’s trustee should be avoided when possible through consultation. Instead tribes and the United States should consult on whether infrastructure properly requires tribal approval and then the United States should require tribal authorization of use permits or rights of way as a condition, enforceable by the United States or the Tribe, for any federal permit on trust land.

II. Specific Solutions Available Within the Existing Framework

While the following will not fully resolve the problems with the current consultation system, they will provide for more meaningful consultation and improvement in the areas described above.

- A. Agency policies must be consistent with one another across the board.
- B. All federal actions which require, at minimum, an environmental assessment pursuant to the National Environmental Policy Act (“NEPA”) should require an environmental impact statement if the federal action will or may affect tribal interests.
- C. An agency must seek out each potentially affected tribe and ask that tribe to define its own relevant interests for purposes of assessing the impacts of the federal action.

D. As stated above, agencies must initiate consultation promptly upon receipt of a request, application, or other notification soliciting federal funds, a federal permit, or other event triggering a duty to consult.

E. Agencies need to acknowledge and incorporate treaty councils and traditional leadership during the consultation process by including them in correspondence and meetings at the request of a tribe.

F. Consultation should conform with any applicable protocols adopted by a tribe to govern consultation. For example, the Yankton Sioux Tribe has adopted protocols entitled “Thanktonwan Consultation Wo’ope,” a copy of which is attached to these comments.

G. Consultation must occur face-to-face unless otherwise agreed by both the tribe and the agency.

H. All correspondence must be addressed to both the governing body of a tribe and the tribe’s tribal historic preservation officer.

I. Agencies must understand who the tribe’s governing body is in order to properly engage in consultation. For example, the governing body of the Yankton Sioux Tribe is the Tribes General Council, rather than the more common tribal council.

J. An agency should determine each tribe’s preferred method of communication and correspond with each tribe accordingly.

K. Consultation should occur on tribal lands. If the United States does require a tribe to travel for consultation, funding should be provided by the agency or by the entity requesting that the agency take a particular action so that the tribe does not have to bear the expense of participating in a consultation made necessary by no fault or action of its own.

L. An agency should provide for a mediator to facilitate consultation if requested by the tribe to ensure that the agency is responsive to the tribe’s questions.

M. An agency should provide for a translator upon request.

N. Following each consultation meeting, the agency should provide the tribe with a transcript of the meeting.

O. Consultation must allow for adequate time for the tribe to do its own studies and assessments, allowing time particularly for projects that could impact water.

P. Any and all cultural resource, historic property, or traditional cultural property surveys must include tribal member participants who are members of affected tribes.

Q. Such surveys must comply with any relevant tribal standards.

R. Tribes must be able to enforce their consultation rights without going to court. This means that there must be a process for addressing an agency's failure to properly consult and repercussions for an agency's failure to properly consult.

S. "Appendix C," 33 C.F.R. Part 325, must be abolished. It is currently being implemented in violation of the National Historic Preservation Act ("NHPA") and NEPA. As a result of its unlawful implementation, the full scope of tribal interests that would be affected by a project is not being considered.

T. Nationwide Permit 12 must be rescinded and must not be renewed. It violates the NHPA and NEPA, and it deprives tribes of the ability to engage in meaningful consultation about the respective federal action.

III. Specific Statutory Solutions

A. Legislation is necessary to require a tribe's free, prior and informed consent prior to an agency taking an action that may affect that tribe's interests. The United States has already acknowledged this principle by signing onto the United Nations Declaration on the Rights of Indigenous Peoples. Free, prior and informed consent is required by virtue of the treaties pursuant to which tribes retained rights and the United States contractually bound itself to comply with the terms contained therein.

B. The authority of the Advisory Council on Historic Preservation ("ACHP") must be expanded. The ACHP was established pursuant to 54 U.S.C. § 304101. Under 54 U.S.C. § 306108, the ACHP is authorized to comment with regard to a federal undertaking. However, the ACHP currently lacks the ability to enforce its findings or make binding decisions. Although the ACHP is often the only neutral party in a historic preservation dispute, the agency is under no obligation to follow its recommendations. The law must be amended to enable the ACHP to issue written directives with which an agency must comply where tribal resources are at issue, and to authorize the ACHP to suspend an agency's decision-making authority in the event that an agency fails to fulfill its consultation duties.

IV. Conclusion

The Tribe appreciates the opportunity to provide these comments, and hopes that this consultation process regarding infrastructure consultation is just the first of many necessary steps that will be taken to improve consultation and better fulfill the federal government's trust and other legal obligations to tribes. The United States is presently failing in its duty to protect tribes' rights when federal actions threaten tribal interests, but the current framework provides numerous opportunities for improvements that can make a significant difference in the treatment of tribes and their concerns during consultation on infrastructure projects. Please note that these improvements can and should apply across the board to all tribal consultations. In addition to regulatory measures, we have provided two recommendations for statutory changes that can

dramatically improve the consultation process. While we understand that statutory changes cannot be effectuated by the agencies soliciting these comments, we hope that these agencies will take the necessary steps to bring these recommendations before Congress.



Ihanktonwan Consultation Wo'ope

Protocols for Consultation with the Yankton Sioux Tribe

I. Purpose

The purpose of these protocols is to provide federal agencies with standards with which they must comply when engaging in consultation with the Yankton Sioux Tribe in order to ensure that consultation is meaningful and will fulfill the purpose and intent of Executive Order 13175 as well as applicable federal statutes, regulations, and agency policies, manuals, and Secretarial Orders. Consultation shall create understanding, commitment, and trust between the parties, and should be used to identify opportunities and solve problems.

II. Scope

These consultation protocols apply to any effort by a federal agency to consult with the Yankton Sioux Tribe pursuant to federal law(s), including but not limited to the National Environmental Policy Act implementing regulations (40 C.F.R. Part 1500), the National Historic Preservation Act (16 U.S.C. § 470 et seq.) and implementing regulations (36 C.F.R. Part 800), the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 et seq.) and implementing regulations (43 C.F.R. Part 10), the American Indian Religious Freedom Act (42 U.S.C. §§ 1996 & 1996a), the Archeological Resources Protection Act of 1979 (16 U.S.C. §§ 470aa-mm), Executive Order 13175, and Executive Order 12989.

III. Protocols

A. Cultural Protocols

1. Relationship-building should be at the center of any consultation, as this is a primary cultural protocol for the Ihanktonwan. Relationship building cannot occur through just one meeting, or by telephone or email. It requires time, trust, and respect for the relationship.
2. Agencies must recognize that water is viewed as the first medicine, and it must be honored and protected. Water is vital to the spiritual practices, culture, and health of the Ihanktonwan.
3. Agencies shall respect the fact that Yankton Sioux Tribal members have experience and knowledge that makes them uniquely qualified to identify Ihanktonwan cultural resources, and shall weigh their views accordingly.



4. Agencies must recognize that certain members of the Tribe possess inherent abilities and historical knowledge passed down through generations that make those tribal members uniquely equipped and able to identify sites of spiritual, cultural, and historical interest. These skills and knowledge should be utilized through tribal surveys of areas that may be impacted by a proposed action.
5. Agencies must recognize and respect the cultural practice of speaking in a “circular” manner, which may mean that it takes time for a speaker to arrive at the ultimate point but which conveys relevant information necessary to a proper understanding of that point.
6. Elders must be respected.
7. Agencies must recognize the Ihanktonwan practice reciprocity, which means that if remains are unearthed, something must be given back in return to restore balance. There are consequences dictated by the universe for disturbing graves and remains, and this should be avoided.
8. Agencies must respect the practice of making offerings.
9. Sharing a meal at the conclusion of a meeting is customary and expected.

B. Behavioral Protocols

1. Parties shall respect each participant and respect each other’s diversity.
2. Parties shall speak with respect, courtesy, dignity, care, and moderation to maintain an amicable atmosphere.
3. Parties shall avoid the use of language of dominance and/or oppression.
4. Parties shall refrain from disruptive gestures or actions.
5. Parties shall avoid tactics to induce intimidation. This includes manner of dress. Parties should dress in traditional or civilian clothing.
6. Parties shall treat everyone involved in a consultation meeting, particularly elders, with respect.
7. When an individual is speaking, all parties must refrain from interrupting that individual.
8. Parties shall not be dismissive of any statement made, but rather, shall acknowledge and value all contributions and bring them into consideration in any decision.
9. Parties shall refrain from reaching any decision until consultation has concluded and sufficient information has been exchanged.



10. Parties shall contribute and express opinions with complete freedom.
11. Parties shall carefully examine the views of others and accept valid points when made by others.
12. Parties shall focus on the subject of the consultation and avoid extraneous conversation.

C. Procedural Protocols

1. Consultation shall only include government-to-government, in-person meetings with the Tribe's General Council. Consultation shall not be conducted via telephone or written correspondence unless expressly agreed to by the Chairman of the Yankton Sioux Tribe ("Tribe") in writing.
2. A meeting shall not be considered consultation unless the relevant federal agency is represented at the meeting by an individual with decision-making authority over the proposed federal action at issue.
3. Multi-tribal or public meetings shall not be considered consultation unless expressly agreed to by the Chairman of the Tribe in writing unless the meeting is comprised exclusively of the federal agency and the Oceti Sakowin.
4. The consultation process shall commence as early as possible. Initial notification by a federal agency to the Tribe of a proposed action shall occur within two weeks of the federal agency becoming aware of the proposed action.
5. A federal agency shall contact the Chairman of the Tribe and the Ihanktonwan Treaty Steering Committee for the Tribe to notify the Tribe of a proposed federal action and initiate the consultation process. If the proposed federal action is expected to impact tribal cultural, spiritual, or historical resources, the federal agency shall also contact the Tribal Historic Preservation Officer. Notification pursuant to this protocol does not constitute consultation, but merely initiates the consultation process.
6. The consultation process shall include a pre-consultation meeting at which preliminary information shall be exchanged and an overview of the proposed federal action shall be provided, to be scheduled by the Chairman of the Tribe and/or his staff.
7. During or prior to the pre-consultation meeting, the relevant federal agency shall inform the Tribe of the potential impacts on the Tribe of the proposed federal action.
8. During or prior to the pre-consultation meeting, the relevant federal agency shall inform the Tribe of which federal officials will make the final decision with respect to the proposed federal action.



9. Each consultation meeting shall be scheduled by the Chairman of the Tribe and his staff.
10. The pre-consultation meeting and consultation meetings shall be held at a time and location convenient for the Tribe.
11. Consultation meetings shall be scheduled a least thirty-five (35) days in advance to allow for adequate notice to the General Council, which is comprised of tribal members age 18 years and older and which is the governing body of the Tribe.
12. All meetings shall be opened with a prayer.
13. All meetings shall be closed with a prayer.
14. All meetings shall be followed by a meal or include a meal as part of the necessary relationship-building.
15. Consultation meetings shall not designate an end time, but shall continue until all have had an opportunity to speak.
16. The federal agency shall provide the services of a court reporter to record each consultation meeting. A transcription of each meeting shall be provided to the Tribe within ten (10) days following said consultation meeting.
17. Prior to the final consultation meeting, the parties shall mutually agree that the following consultation shall be the final consultation meeting. If agreement cannot be reached to terminate consultation after the subsequent meeting, the subsequent meeting shall not be deemed the final meeting. No party shall unreasonably withhold consent to terminate consultation, but consultation shall continue until each party is satisfied that meaningful consultation has been achieved.
18. While there is no set number of meetings required for consultation to be deemed sufficient, consultation shall consist of no less than two meetings and shall not be considered complete until the parties are satisfied that all necessary information has been adequately exchanged.



Summary of Consultation Steps:

1. Federal agency learns of proposed federal action that may affect the Yankton Sioux Tribe.
2. Federal agency promptly (within two weeks) notifies the Chairman of the Tribe and the Ihanktonwan Treaty Steering Committee (and the Tribal Historic Preservation Officer for the Tribe if the proposed action is expected to impact tribal cultural, spiritual, or historic resources) of the proposed action. The consultation process is thus initiated.
3. The Chairman and/or his staff schedules a pre-consultation meeting.
4. A pre-consultation meeting is held.
 - a. Opening Prayer
 - b. Meeting
 - c. Closing Prayer
 - d. Meal (may also occur during the midpoint of the meeting)
5. The Chairman or his staff schedules a consultation meeting.
6. A consultation meeting is held.
 - a. Opening Prayer
 - b. Meeting
 - c. Closing Prayer
 - d. Meal (may also occur during the midpoint of the meeting)
7. Federal agency provides the Chairman of the Tribe with a transcript of the consultation meeting within 10 days.
8. Repeat steps 5-7 until meaningful consultation has been fully achieved, mutually agreeing prior to the final meeting that it will be the final consultation meeting.

D. Governmental Protocols

1. Federal agencies shall respect the unique legal and political relationship between the United States and the Yankton Sioux Tribe.
2. Consultation shall be conducted in accordance with Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, which requires the “free, prior and informed consent” of an Indian tribe prior to adopting and implementing legislative or administrative measures that may affect it.
3. Consultation shall be meaningful and shall include collaboration with tribal officials.



4. The Yankton Sioux Tribe's views shall be incorporated into a federal agency's decision-making process.
5. Consultation shall be conducted and resulting agency decisions shall be made in such a way that the government-to-government relationship between the Tribe and the United States is strengthened. The Yankton Sioux Tribe shall be considered as a collaborative partner with the federal agency.
6. Federal agencies shall recognize the Yankton Sioux Tribe's right to self-government and its inherent sovereign powers. Federal agencies shall be respectful of the Tribe's sovereignty.
7. Federal agencies shall acknowledge and abide by the treaties between the United States and the Yankton Sioux Tribe.
8. Federal agency actions during and after consultation shall reflect the trust responsibility of the United States to the Yankton Sioux Tribe.

IV. Compliance

All parties shall comply with the protocols contained herein when engaging in the consultation process. Should a party fail to comply with one or more protocols, the other party shall notify the non-compliant party of the violation and the parties shall mutually agree upon a time and location for a meeting between the parties to resolve the matter. The goal of this meeting shall be to restore balance and reduce or eliminate discord by talking through the violation and reaching a mutual understanding to move forward in compliance with the protocols. Should the non-compliant party fail to participate in this meeting or fail to correct its non-compliant behavior in subsequent meetings, the other party may pursue legal remedies through enforcement of these protocols in Yankton Sioux Tribal Court.