



Shakopee Mdewakanton Sioux Community

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OFFICERS

Charles R. Vig
Chairman

Keith B. Anderson
Vice-Chairman

Freedom Brewer
Secretary/Treasurer

November 15, 2016

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

RE: Testimony of the Shakopee Mdewakanton Sioux Community

To Whom It May Concern:

Attached hereto, please find for submission the Shakopee Mdewakanton Sioux Community's Testimony in Response to the Department of Army, Department of Interior, and Department of Justice's Tribal Consultation on Infrastructure Development Projects and proposed legislation. This Testimony is being submitted during the consultation on November 15, 2016 held at the Shakopee Mdewakanton Sioux Community.

Sincerely,

William J. Hardacker
General Legal Counsel



Shakopee Mdewakanton Sioux Community

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Testimony in Response to the Department of Army, Department of Interior, and Department of Justice’s Tribal Consultation on Infrastructure Development Projects

The Shakopee Mdewakanton Sioux Community (“SMSC” or “Tribe”) is a federally-recognized tribal government, located in Prior Lake, Minnesota.

In recent decades, there has been a steady march of economic development toward our Reservation community. We are now surrounded by it. Our Tribe has been fortunate to play a significant role in the economic revitalization of our neighbors. With 4,200 employees, the SMSC is the largest employer in Scott County.

Our success with our tribal enterprises has allowed SMSC to provide a range of governmental services to our members. It has also enabled SMSC to partner with local governments to meet our broader community’s shared needs such as roads, water and sewer systems, and emergency services. Our Tribe administers social services for children and families, mental health and chemical dependency counseling, employee assistance, emergency assistance, public works, roads, water and sewer systems, health programs and a dental clinic, vehicle fleet and physical plant maintenance, membership enrollment, education assistance, regulatory commissions, economic planning and development, enterprise management and operations, cultural programs, an active judicial system, and many other governmental services. Our tribal government assumes full responsibility for the construction of all on-Reservation infrastructure. And in many instances, our infrastructure serves the needs of the neighboring communities surrounding our Reservation.

In developing this infrastructure, we have maintained close working relationships with Scott County and its towns and communities in order to assert, develop, and protect the Tribe’s economic and infrastructure priorities. However, we understand that this requires willing participants on both sides of the negotiating table, and that our good relations cannot always be replicated by other tribes with neighbors who decline to reach agreement on common objectives.

SMSC has had good relations with its federal agency partners in recent years. However, unlike many other tribes, SMSC has sought very little federal funding for infrastructure projects and perhaps thereby has avoided the difficulties other tribes have experienced with the breakdown in federal tribal consultation. For example, SMSC has expressed its support of the efforts of the Standing Rock Sioux Tribe in its ongoing attempt to gain a full and fair hearing with the U.S.

Army Corps of Engineers and the need to protect the water, land and sacred sites of all of our relatives on and surrounding the Standing Rock Sioux Reservation.

SMSC takes the position that a unique and robust tribal consultation process is required by the trust responsibility held by the United States for tribal people and tribal resources, and the solemn government-to-government relationship the federal government has with tribal governments. Indian tribes are not merely another set of stakeholders. Our unique rights and identity are based on solemn treaties, case law, statutes, and course of dealings.

Indian tribes have paid a high price for our unique relationship with the United States. It should not be sacrificed today for the sake of administrative convenience.

Accordingly, SMSC believes the tribal right to consultation should be made mandatory in federal statute. Moreover, SMSC believes that federal statute should require that a federal agency must obtain the concurrence of the affected Indian tribe before it takes any action which would negatively impact the human and natural resource environment of the Indian country of that Indian tribe. We have attached to this testimony some draft legislative language which should be signed into law and ask that each federal agency review it and give its enactment your support.

Finally, SMSC wishes to thank each of the federal agency representatives for attending this consultation meeting. We commend the Department of the Army, the Department of Interior, and the Department of Justice for your continuing efforts to address the concerns of Indian country even as we all transition into the new Administration, and ask that you brief your successors on what you have heard.

2
3 **BILL # _____**

4
5 *A bill to require federal agencies to use a structured, government-to-government consultation*
6 *framework with Indian tribes before federal activities or policies substantially impact tribal*
7 *authority over human and natural resources in Indian country.*

8
9 *Be it enacted by the Senate and House of Representatives of the United States*
10 *of America in Congress assembled,*

11
12 SEC. 1.—TITLE.--This Act may be cited as the “Respect Meaningful Tribal
13 Consultation Act of 2016.”

14
15 SEC. 2. —FINDINGS.--Congress finds that –

16 (A) the United States has a unique, well-established government-to-
17 government relationship with the tribal governments of Indian tribes;

18 (B) the United States recognizes the right of Indian tribes to exercise self-
19 governance and self-determination authority over the human and natural resource
20 environment in the Indian country of each Indian tribe;

21 (C) consultation with Indian tribes before a federal activity that will impact
22 Indian country is finalized or implemented can diminish unintended consequences,
23 mitigate adverse impacts, and identify reasonable and cost-efficient alternatives;
24 and

25 (D) it is the policy of the United States that, before a federal agency activity
26 is finalized or implemented, each federal agency shall consult with, and make a
27 good faith effort to honor the decisions of, affected Indian tribes seeking to
28 diminish or eliminate the adverse impacts of a proposed federal agency activity on
29 tribal authority over human and natural resources in Indian country.

30
31 SEC. 3. — DEFINITIONS

32 (A) INDIAN TRIBE.--The term “Indian tribe” has the meaning given that term
33 in section 4 of the Indian Self-Determination and Education Assistance Act (25
34 U.S.C. 5304).

1 (B) AGENCY.--The term “agency” means any authority of the United States
2 that is an “agency” under section 3502(1) of title 44, United States Code.

3 (C) ACTIVITY.--The term “activity” means any regulation, rulemaking,
4 policy, guidance, or operational decision of an agency.

5 (D) IMPACT.—The term “impact” means the impact of a proposed federal
6 agency activity on the self-governance and self-determination authority of an
7 Indian tribe over the human and natural resource environment in Indian country.

8 (E) INDIAN COUNTRY.—The term “Indian country” means the territory
9 described in Section 1151 of Title 18.

10
11 SEC. 4. — MANDATE TO CONSULT AND SEEK CONCURRENCE.

12 In recognition of the government to government relationship between each
13 Indian tribe and the United States, each agency activity that the agency determines
14 may have a direct, significant, and measurable impact on one or more Indian tribes
15 shall not be adopted or implemented by the agency unless it is preceded by
16 consultation with the affected Indian tribe and by the concurrence of that Indian
17 tribe with the proposed agency activity within sixty days of receipt by that Indian
18 tribe of an agency request for concurrence.

19
20 SEC. 5.—PROCEDURE FOR FEDERAL OVERRIDE OF TRIBAL NON-CONCURRENCE.

21 If an Indian tribe declines to concur under Section 4, the cabinet-level
22 official responsible for the agency may make the proposed activity applicable to
23 the affected Indian tribe only upon issuance by that cabinet-level official of a
24 determination in writing to the affected Indian tribe which describes in detail the
25 compelling federal interest that warrants override by the agency of the self-
26 governance and self-determination authority of the affected Indian tribe over the
27 human and natural resource environment in Indian country.

28
29 SEC. 6.—JUDICIAL REVIEW.

30 The United States district courts shall have original jurisdiction over any
31 civil action filed by an affected Indian tribe objecting to the determinations
32 described in sections 4 and 5 of this Act, which determinations shall be subject to
33 strict scrutiny. In any action brought under this section, the district courts may
34 order appropriate money damages, declaratory, injunctive and mandamus relief.