



Mark N. Fox
Office of the Chairman

MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes * Fort Berthold Indian Reservation
Tribal Business Council

Statement of the Honorable Mark N. Fox, Chairman
Mandan, Hidatsa and Arikara Nation

Department of Justice, Department of Interior and Department of Army
Improving Tribal Consultation on Infrastructure Decision-Making
November 17, 2016

The Mandan Hidatsa and Arikara Nation (MHA Nation) and all of the tribal governments here today have a government-to-government relationship with the United States. Most days, we implement our government-to-government relationship through tribal consultation. The wellbeing of our government-to-government relationship is measured by how successful and productive tribal consultation is. Looking around Indian Country, I have to say I am very concerned.

Just a few years ago, in 2009, President Obama directed all Federal agencies to update and improve their tribal consultation policies. We are living and working under those policies now. How well are we doing? Across Indian Country I hear about 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.

Just like the Standing Rock Sioux and other Sioux Tribes we have pipelines crossing our lands and threatening our waters. There is one proposed pipeline just upstream from our Reservation and another going straight through the middle of our Reservation. The oil pipeline companies want to cross Lake Sakakawea and the Missouri River, our main water supply. It is critical that the federal government not grant any permits for pipeline lake or river crossings near reservation lands without engaging in proactive meaningful consultation with Tribes whose water sources, sacred sites and other rights are affected. It is even more critical that the federal government not grant pipeline permits under or across the lake or river within reservation boundaries without tribal consent. Tribes have sovereign authority over all reservation lands, and the federal government must recognize the Tribes' jurisdiction, concurrent with the federal government, to protect the health and welfare of its members and the safety and integrity of its water sources.

Recently, and without consultation, a pipeline was drilled under the lake and through the MHA Nation's reservation mineral estate without the MHA Nation's consent, consent which is required by federal and tribal law. The MHA Nation is now in litigation to protect its sovereign right to prevent the pipeline encumbrance on its trust land. This litigation could have been avoided, and tribal dollars saved, had meaningful consultation occurred, and had the Corps of

Engineers solicited our input before granting the ROW.

Crucial to meaningful consultation under the Policy is early consultation. We are brought in after the Initial Planning Stage after crucial project components have already been developed or implemented. Without input at the planning stage, tribal consultation is little more than public notice and comment. The federal government must do a better job of soliciting tribal input at the initial planning stage. Only then can consultation be meaningful.

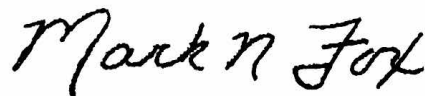
For these pipelines proposing to cross our waters, BLM and Army Corps staff working in this area need training and an understanding of our deep bond to the lands and waters of the Missouri River. Without a good understanding of who we are and what we value, how can agencies staff really hear what we are saying. And, use our comments to improve projects to make them better for everyone.

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. a deliberative process that is a meaningful government-to-government exchange.

Our government-to-government relationship is dependent on federal agency staff and whether or not they take meaningful consultation seriously. As leaders of these agencies, they need to know that you will require meaningful, effective and accountable tribal consultation. Our lands, waters, cultural and natural resources depend on meaningful government-to-government consultation.

We appreciate consultation and hold it vital to our self-determination. On that note, I want to use this opportunity to commend the Corps of Engineers and the Bureau of Indian Affairs for engaging in consultation with my Administration in an effort to return the surplus lands around Lake Sakakawea. Returning these lands is an important step toward righting the incredible injustice that was brought upon our people by the flooding of our heartland for the Garrison Dam. I express my sincere appreciation to the Corps and the BIA for working with the MHA Nation to restore these lands to tribal ownership

Sincerely,



Mark N. Fox
Chairman