



GREAT PLAINS TRIBAL CHAIRMEN'S ASSOCIATION, INC.

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GREAT PLAINS TRIBAL CHAIRMEN'S ASSOCIATION TESTIMONY ON CONSULTATION POLICY

As we face the final months of the Obama administration, we welcome this opportunity to add to the testimony on the necessity of strengthening tribal consultation regulations and policies. As we enter a new administration, it cannot be emphasized enough how important it is to get in place good, stringent consultation requirements in order to ensure that Indian tribes in the United States, pursuant to the policies of the United States Congress and those of the Executive Branch, are able to fully and jointly deliberate with the United States government any and all programs, policies and changes that will affect these tribes. Just as the Bureau of Indian Affairs has done with the Indian Child Welfare Act, in promulgating those regulations which will go into effect in December of 2016, so too do the Department of Interior and other departments, agencies and services of the United States of America need to promulgate strengthened federal regulations and departmental policies on consultation.

The best evidence of the potential value of good consultation policies is in a United States District Court case by Judge Karen Schreier, who held that:

This Court addressed this Order and its effect upon consultation in its Order Granting Plaintiffs' Motion for Preliminary Injunction. This Court said that "[c]onsultation' is defined as 'a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and all interested parties.' 25 U.S.C. § 2011(b)(2)(A). Interested parties (including tribes and school officials) shall be given an opportunity: (i) to present issues (including proposals regarding changes in current practices or programs) that will be considered for future action by the Secretary; and (ii) to participate and discuss the options presented, or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action.

Yankton Sioux Tribe v. Kempthorne, 442 F. Supp. 2d 774, 783 (D.S.D. 2006), emphasis added; citing 25 U.S.C. § 2011(b)(2)(B). We cannot accept any less than the law provides and hopefully this administration will act to promulgate regulations and policies in the final months which will strengthen these laws.

It should be noted that in addition to the many treaty obligations that require continuing consultation and deliberative action with treaty tribes, there is also the requirement of consultation in federal law. Below are just some of the many federal laws requiring consultation with tribes, upon which this administration may build a strengthened set of regulations and policies:

Tribal Education: 25 U.S.C. § 2011(b)(2)(B).

Accreditation of BIA Schools: 25 U.S.C. § 2001.

Federal Public Safety and Justice: 25 U.S.C. § 2802.

Indian Health Service: 25 U.S.C. § 1631.

GAO Facilities Construction: 25 U.S.C. § 2005.

Surface Mining: 30 U.S.C. § 1300.

Federal Administration of Violence Against Women Act 42 U.S.C. § 14045d.

In addition to the laws, the Executive Branch (the President) has the authority to create regulations both to flesh out the statutes described above and to create additional duties by the Executive Branch, as long as they do not conflict with statutory obligations. President Obama, early in his administration, ordered all departments and agencies to create a consultation policy. President Clinton passed a set of consultation policies in the final month of his administration which stood through the entire eight years of the Bush administration, and helped to create a long-term working relationship between tribes and the federal government which helped to jointly guide programs affecting tribes.

These regulations and policies on consultation have helped make federal Indian policy better by requiring that federal programs and policies for or in the interest of Indian tribes and individual members be *mutual* between tribes and the federal government. It has also helped to make stronger the current federal policy of supporting and strengthening tribal self-determination – a policy established by the United States Congress in its Statement of Findings in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. § 450 *et seq.*

Reviewing the “Federal government’s historical and special legal relationship with, and resulting responsibilities to American Indian people” the Congress found that “prolonged Federal domination of Indian service programs has . . . denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities.” 25 U.S.C. § 450 (a)(1). By strengthening the Executive Branch’s regulations and policies regarding consultation with Indian tribes, this administration will be following the findings and carrying out the promises of the Congress in helping Indian tribes toward this goal of having an effective voice in the planning and implementation of programs for the benefit of Indian tribes and individual Indians.

Just as the Bush administration left alone the consultation policies of the Clinton administration through its eight years, we believe that the Trump administration will do the same, especially with a strong consultation policy that is well-rooted in treaties, federal statutes, and the federal Indian policies expressed in the statutes of the United States Congress, as upheld and fleshed out by the Judicial Branch.

Please contact the Executive Director of the Great Plains Tribal Chairmen's Association, Inc. with any comments or questions. A. Gay Kingman, Executive Director, Great Plains Tribal Chairmen's Association, Inc. Cell: 605-484-3036 or E-mail, Kingmanwapato@rushmore.com.

Thank you.

A handwritten signature in cursive script that reads "John Yellowbird Steele".

Chairman John Yellowbird Steele
Great Plains Tribal Chairmen's Association, Inc. &
President, Oglala Sioux Tribe