



## *Sokaogon Chippewa Community*

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November 30, 2016

**\*\*Submitted VIA USPS and Electronic Mail\*\***

Office of the Assistant Secretary-Indian Affairs  
Office of Regulatory Affairs & Collaboration Action  
1849 C Street, NW, MS 3642  
Washington, DC 20240

Re: Federal Consultation with Tribes Regarding Infrastructure Decision-Making

Dear Mr. Roberts,

I am submitting comments on behalf of the Sokaogon Chippewa Community, Mole Lake Band of the Lake Superior Chippewa Indians. We are located in Forest County which is in northeastern Wisconsin. Our Tribe consists of 1,529 tribal members and our land base is approximately 5000 acres.

First of all, I would like to say Miigwech, "thank you," for holding the various consultation meetings. We did provide oral comments at the consultation in Minneapolis, MN on November 15, 2016. Our concern with these consultation sessions are that they are more of a listening session than meaningful dialogue between federal governments. We heard an elder say, "sit with us, pray with us, visit our land, eat with us and offer asema (tobacco) as we talk about projects." When we heard that we thought, "That is exactly how it should be," when convening meaningful dialogue. All too often there is a disconnect with tribes and our concerns because the majority of agency staff are located in the bigger cities and have never visited our homelands. When you have never met a tribal leader, or his people, then we just become words on a piece of paper and a major barrier forms. This is because the tribes perceive federal agencies consultation as a box to be checked, rather than a process that provides meaningful information to be considered.

Below are some of our thoughts/concerns on meaningful consultation:

- Treaties signed with Tribal Nations are the law of the land. These treaties that our ancestors signed was their way of protecting our way of life for many generations. Many of these large infrastructure projects threaten the natural resources that we depend on for subsistence, medicinal, cultural, religious and economic uses. WATER is the most important sacred

**Ga-na-waji Ga-wi-nug Way-ji-mooki-ji-wung Yi-ewe-meing-gun-a-sepii**

medicine to anishinaabe, the protection of water is a primary underlying driver for tribes to engage on infrastructure and other environmental issues.

- I've heard that this consultation is for potential impacts to our "on reservation" lands. We disagree with this statement because in our treaties we have reserved rights in off reservation ceded territories that require the same respect. By not including off reservation ceded territories you are not honoring those treaties!
- Tribes will know our input has been meaningful when we are able to come to a consensus with federal agencies about decisions that need to be made.
- Consultation is challenging because we don't always have the capacity to engage with federal agencies. Projects often require technical expertise that the tribe does not have.
- Trust Responsibility lies with the federal agencies and if a federal agency delegates an authority, such as 404 of the Clean Water Act, to states. They often say, "We don't have trust responsibility." If this happens the authority should be enforced or taken back from the State for refusing to HONOR the responsibility that comes along with the delegation.
- We feel federal agencies should enforce current laws and policies when it comes to tribes. Furthermore, you could change regulations to close loop holes such as the section 404 of the Clean Water Act. These loopholes allow mine tailings to be used as, "fill material," and lakes, rivers and streams to be treated as, "waste treatment systems," further decreasing protection of said waterbodies. This allows it to receive pollution that would not be permitted if it were not a "waste treatment system" therefore eliminating the need for tribal consultation.
- It should be the policy of each federal agency to treat substantive tribal input on a proposal for infrastructure development as they would the input of any other government entity with a jurisdictional nexus to the project.
- Even if policies are in place, the people who implement those policies are at the core of whether they result in meaningful tribal engagement. All federal employees who are tasked with working in areas where a tribal nation exists should be properly trained on the importance of treaties and government to government consultation. Often staff have no knowledge of tribal nations, much less understanding the importance of consultation with them. To make existing policies work you should designate tribal liaisons who have the ability and time to commit and form working relationships with Tribes.
- Insert a requirement for Free, Prior, and Informed Consent into consultation language for all infrastructure projects that cross tribal homelands or ceded territory.

A good example of collaboration is we as a member tribe of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) have a Memorandum of Understanding with US Forest Service that call for the tribes and the Forest Service to strive for consensus in management decisions that may affect resources that are subject to tribes's rights.

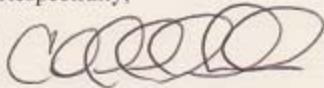
- The MOU requires that the Forest Service include, in decision and analysis documents, how tribal information and involvement was taken into account when analyzing the impacts of potential management actions and in making the decision.
- If consensus cannot be reached, a dispute resolution process is on place.

- Ultimately the Forest Service had the authority to make decisions within its jurisdiction, but the commitment to strive for consensus, explicitly explain how treaty rights have been taken in account, and the dispute resolution process help ensure tribes that their concerns have been heard and their input had had meaning.
- This example is a good existing relationship and we have obtained a level of trust in and understanding in each other.

Ensuring meaningful input may involve many levels of input, from formal consultation with elected officials to less formal, more technical meetings with tribal staff that are working to understand the project so that they can understand what the impacts on the tribe are likely to be. Ultimately, what is extremely important is contacting the tribes early on in the process and start the dialogue because all too often we are being notified after the fact.

If you have any questions please feel free to contact me at 715-478-7585 or [chris.mcgeshick@sec-nsn.gov](mailto:chris.mcgeshick@sec-nsn.gov).

Respectfully,



Chris McGeshick, Tribal Chairman

Sokaogon Chippewa Community, Mole Lake Band of the Lake Superior Chippewa Indians

Cc: file