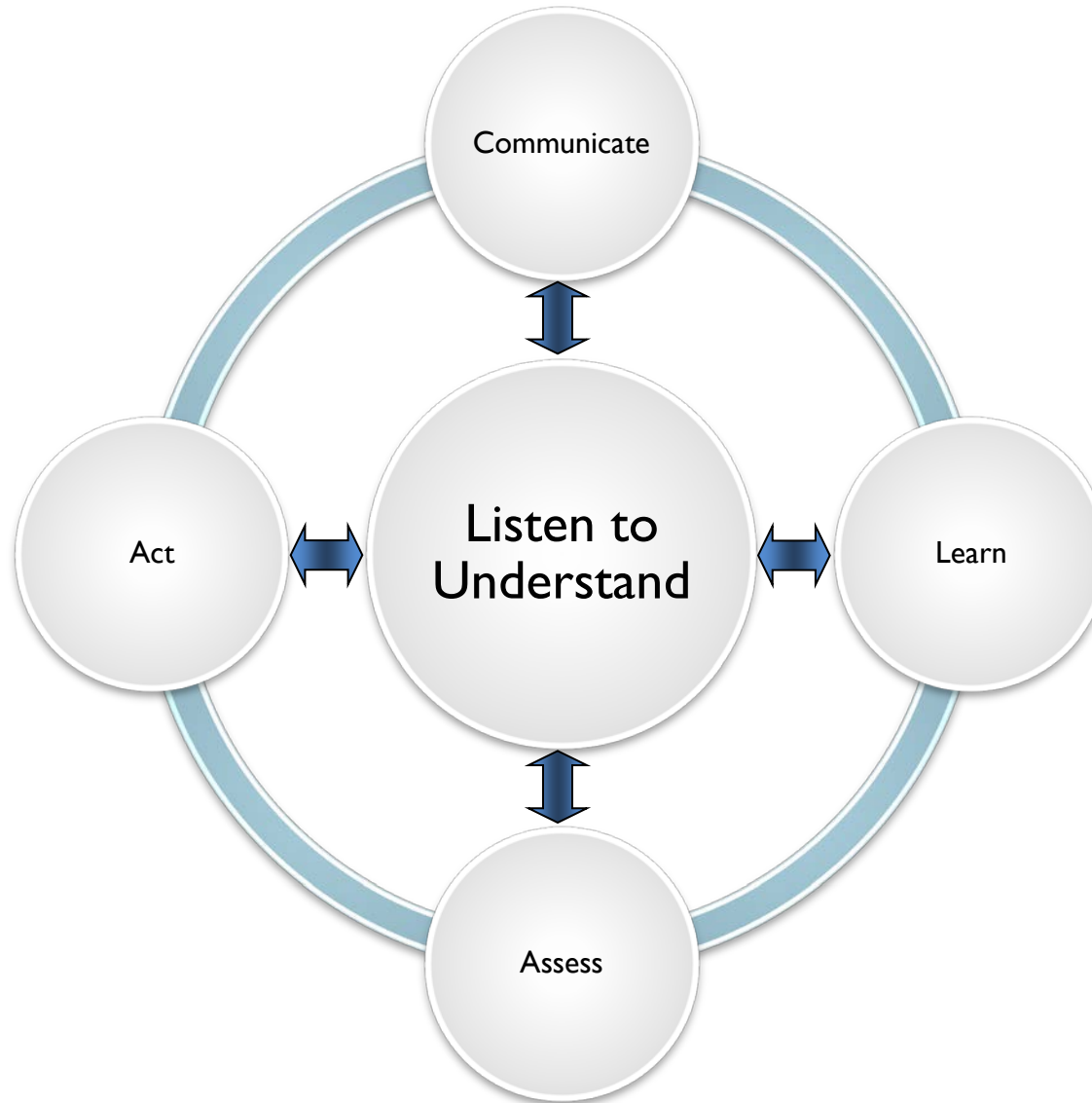


American Indian/Alaska Native Policy



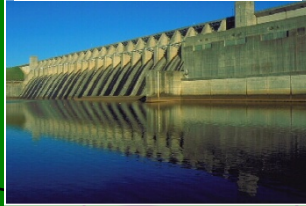
Army Civil Works

Value to the Nation

Recreation areas
376 M Visitors/yr
Generate \$15 B in
economic activity,
500,000 jobs



¼ of Nation's
Hydropower:
\$500 M + in
power sales



11,000 miles of
Commercial Inland
Waterways:
½ the cost of rail
1/10 the cost of trucks

299 Deep Draft
Harbors



627 Shallow Draft
Harbors

8500 Miles of
Levees



Emergency
Operations



Stewardship of
11.7 Million Acres
Public Lands

Environmental
Restoration



Regulatory
Responsibilities

- US Ports & Waterways convey > 2B Tons Commerce
- Foreign Trade alone creates > \$160 B Tax Revenues

400 miles of
Shore protection
Destination for
75% of U.S.
Vacations



How Tribes Are Unique

- Federally-recognized Tribes are sovereign Nations
- Federal government has a legal relationship (Trust responsibility) with each Tribe based on treaties, statutes, court decisions & executive orders
- Are culturally unique, languages, beliefs, origins
- Respect the military culture, yet some members still mistrust us since it was the Army who removed them from their lands
- Do not get “hand outs” – the government agreed to provide certain services in exchange for lands

Presidents and Indian Policy

- Johnson – maximum choice, self-help, self-development, self-determination
- Nixon – special relationship between tribes and Federal government, rejected extremes of Federal paternalism and Federal termination (solemn obligation)
- GHW Bush – affirmed policies on sovereignty, self-determination, trust responsibility
- Clinton – EOs 13084 & 13175 on tribal consultation
- GW Bush – emphasized economic development and education
- Obama – acknowledges sovereignty, improving consultation thru EOs and national meetings, looking for opportunities to improve conditions on reservations

Department of Defense Policy

- Indian Lands
 - Reservations (46.2 M acres)
 - Allotted lands (8.9 M acres)
 - Not Alaska Native Claims Settlement Act corporation lands [Alaska Native Claims Settlement Act]
- Off-reservation reserved or treaty rights – hunting and fishing rights, and also off-reservation tribal resources such as subsistence resources in Alaska
- Tribal rights – access to sacred sites
- Other legal obligations – pre-decisional consultation

USACE National Policy Development

- Tribal Policy Task Force (94, 96, 98, 99, 00)
 - 1995 Listening Sessions (2 vol report)
- Assessment of Corps / Tribal Relations 96
- Tribal Policy Principles Feb 1998 (Policy Guidance Letter #57)
- Indian Sacred Sites - Policy Guidance Letter #58
- Established HQ Tribal Desk, 2003
- Partnering with Indian Nations training began 2005
- Tribal Nations CoP, 2006
- USACE Consultation Policy, November 1, 2012

PGL #57: Tribal Policy Principles (1998)

- Tribal sovereignty
- Trust responsibility
- Government-to-Government relationship
- Pre-Decisional consultation
- Self-reliance, capacity building, growth
- Natural and cultural resource management and protection

Note: These principles derive from the unique historical and political relationship between the federal government and American Indians/Alaska Natives.

PGL # 58: Indian Sacred Sites

- Implements E.O. 13007 (May 1996)
- Accommodates access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners
- Avoids adversely affecting physical integrity of sacred sites, maintain confidentiality
- Maintains confidentiality of information
- Ceremonial use may include collection of plants, clearing of habitat, gathering of animal parts or feathers, and other resource consuming activities

Planning Assistance

- Planning Assistance to Tribes and States, allows for technical assistance cost shared 50/50
 - Comprehensive water and related land resources planning - projects in 14 Corps Districts
 - Over 100 agreements with Tribes, 30 Tribes (~ 5% of Federally-recognized Tribes)
 - ` \$5 million since 1991 - 10% of annual PAS budget (average)

Tribal Partnership Program

- Focused on Tribal water and related land resource needs (WRDA 2000, Sec. 203)
- Natural and cultural resource projects (acknowledges they are inextricably linked)
- ~16 recon reports; 12 feasibility studies initiated; 30 tribal partners in FY 12-13
- NAE, NWK, NWO, NWS, NWW, POA, SPA, SPL
- Credit for traditional cultural knowledge and in-kind
- Flood risk mgt, environmental/watershed assessments, coastal data collection, etc.

Reburial & Conveyance Authority

- Discretionary authority to rebury human remains on Corps/Federal lands
- Corps Commanders must identify suitable lands for this purpose
- Recovery, preparation and reburial costs 100% Federal expense
- Discretionary authority to transfer those lands to Tribes or use as cemeteries

NWD Land Access Policy

- ER 1130-2-550 (Recreation Authorization)
- May waive day fees for boating, swimming beaches, and other recreational services for Tribal members
- Special use permits should be issued w/o charge to Tribal members for ceremonial purposes
 - Requests must be submitted by the Tribal Government or coordinator that has been authorized by the Tribe to the Commander or their Representative

Corps Affects Tribal Lands & Resources

- Projects constructed/operated by Corps (~30% of Corps Civil Works projects affect directly treaty and trust resources of ~20% of Tribes in the lower 48 States)
- Projects constructed by the Corps, operated and maintained by non-Federal sponsors
- Activities authorized by the Regulatory Program
- Rivers and Harbors Act of 1899, Sec 10 (structures in navigable waters)
- Clean Water Act Sec. 404 (fill in waters of the U.S., including wetlands)
- Support for Others (WRDA 1992) (now “Interagency and International Services”)
- Military Projects
- (installations, housing, airports, clearing ordnance, HTRW)

Other Reasons to Consult

- interests not restricted to cultural resource issues
- sponsors & partners for water resources projects
- applicants for DA permits
- contractors and consultants
- lease Corps lands and operate recreation areas
- play important roles in planning, operating and maintaining projects and programs (co-management)
- embody a vast pool of untapped talent and cultural knowledge
- **Working with Tribes helps fulfill our Trust responsibility and accomplish our mission**

Consultation Considerations

- DoD threshold = “may have the potential to significantly affect”
- Indian Nations are not simply stakeholders in the Government-to-Government context
- Collaborative & ongoing process, may be event, project, proposal, or program driven
- Local protocols can facilitate staff-to-staff communication
- Based upon trust and respect
- Education both directions

Other Social/Cultural Effects

- Communities have been impacted a/o displaced
- Traditional resource areas lost & degraded
- Sacred sites lost & degraded
- Land and water resources lost & degraded
- Tribal/trust resources may include:
 - Topographical features (mountains, rivers, lakes, springs, deserts, trees, caves, rock shelters, routes to sacred places)
 - Fish and wildlife species, medicinal or sacred plants
 - Archeological sites, sacred sites, ceremonial sites, burial grounds, collections of artifacts
 - Petroglyphs and pictographs
 - Resource gathering and processing sites (e.g., pinyon groves, caribou migration routes)

What is Meaningful Consultation?

- Be pre-decisional: no more “done deals”
- Work toward consensus, but ultimately Corps makes decisions
- Tribes are *not* just another stakeholder, user group, or the “public”
 - Protect Indian rights from adverse impacts
 - Consider cultural factors and perspectives
 - Beyond NEPA and NHPA

Tribal Consultation Process

- DE is responsible for G2G relations, and signing documents
- PM/PgM, assisted by TL and OC (and Regulatory when necessary) coordinate, work at staff levels, make determinations of effect,
- “Likely to have an impact on a Tribal right or resource”
- Consider adjustments to action to avoid impacts
- Informal and formal consultation

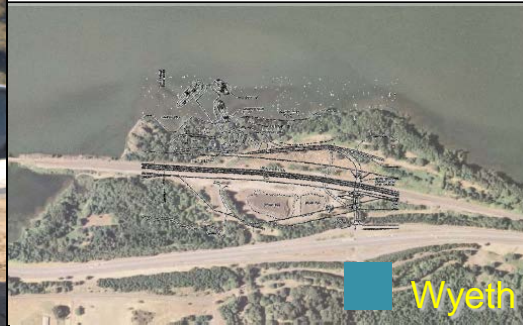
Why the Corps Engages with Tribes

- Trust responsibility
- Treaty obligation



Signing the Fish Accords

Celilo Redevelopment



Cochiti Dam and Lake

- 1940' s- US Congress passes legislation for Rio Grande Flood control
- 1950' s- Area of Pueblo de Cochiti identified as site of Dam and Reservoir
- Early 1960' s- Pueblo threatened with condemnation in acquisition of project lands
- Late 1960' s- construction begins
 - Pan-tribal Religious site destroyed
 - 50% of Pueblo agricultural lands destroyed
- 1970' s- Cochiti Dam and Lake begins operations
 - Remaining Ag lands taken out of production
- 1970' s-2000- Litigation, confrontation, hostility (on both sides) characterize USACE-Cochiti relations

USACE-Pueblo Reconciliation

- 2000- Drought and ESA increases management pressure on USACE
 - Cochiti Dam management flexibility tightly constrained by relationship
- Albuquerque DE and Pueblo Governor initiate monthly “Partnering Meetings”
 - Governor and DE realize progress only made through frank, open discussion
 - USACE comes to appreciate broad negative impacts to tribe commits to reconciliation
- 2003- Reconciliation Ceremony held near destroyed religious site
 - Entire Pueblo community attends
 - DE apologizes for damage done to community, commits to future collaboration
- 2010- Pueblo de Cochiti host USACE Cultural Immersion Training

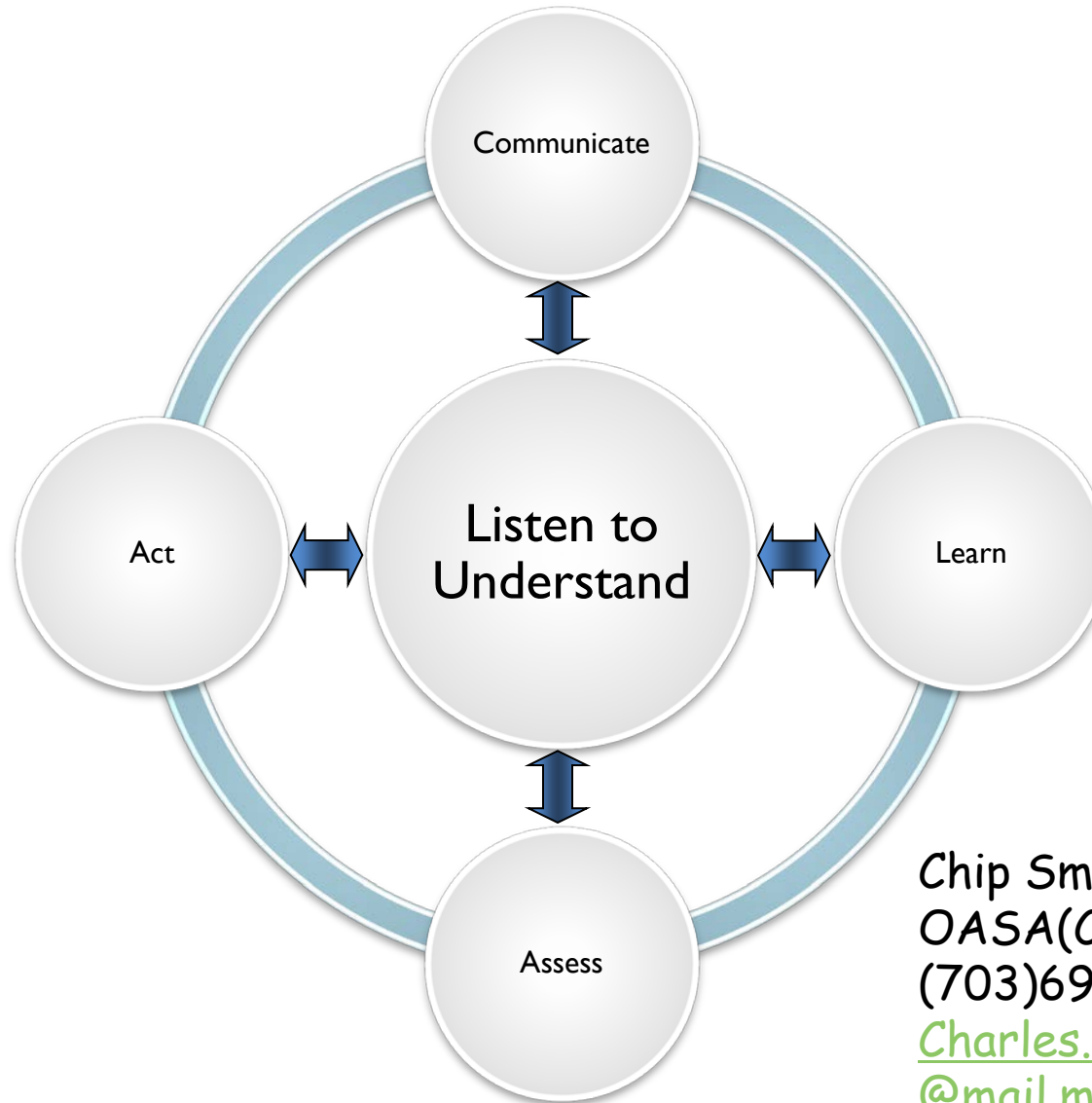
USACE Tribal Program is Growing

- Tribal Nations CoP is ~100 strong
- CoP Charter establishes goals & objectives
- Tribal Liaison at HQ has access to Army leaders
- Leaders take Tribal responsibilities seriously
- Education a major thrust, cross-cultural learning going both directions
- Tribal Liaisons in ~8 districts and POCs in 30
- 2 training sessions & 1 CoP meeting, annually

Practical Issues

- Confidentiality (e.g., locational information)
- Reimbursement for “invitational” travel & PD
- Payment for services
 - Monitoring
 - Consultation
 - Instruction/presentations
- Food –*
 - OK for conferences, “iffy” for training or meetings. Cannot be meals, just ‘refreshments.’ primarily for Corps employees on travel status
- Gifts –*
 - give plaques, certificates, Corps castle pins.
 - receive valuable gifts “on behalf of the Corps”
 - Can keep gifts valued at less than \$20
 - * See ER 37-1-18, USACE sponsored & co-sponsored meetings (Aug 04)

Questions?



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Program Challenges

- Funding vs. needs & ability to pay in Indian Country
- Visibility/accountability at leadership levels
- Leadership changes (both Corps and Tribal)
- Identify/remove procedural impediments
- Working with different cultures
- Hiring more Native employees
- Following through on promises, agreements
- Reaching mid-level management
- Consistency at one level; uniqueness at another
- Speed at which we work (slow)