

U.S. ARMY CORPS OF ENGINEERS

CONTRIBUTION TO PROGRESS REPORT FOR 2011-2012 IN COMPLIANCE WITH EXECUTIVE ORDER 13175 AND THE PRESIDENT'S PROCLAMATION OF 2009

INTRODUCTION

The US Army Corps of Engineers (Corps) has a growing Tribal Nations program that implements the Corps' six Tribal Policy Principles: 1. Recognition of Sovereignty; 2. Government-to-government relationships with Federally recognized Tribes; 3. Pre-decisional consultation; 4. Fulfillment of the Trust responsibility; 5. Protection, where feasible, of cultural and natural resources; and 6. Promotion of tribal economic capacity building and self-reliance. The Policy Principles echo those of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, 6 Nov 2000, and the Presidential Memorandum, *Tribal Consultation*, 5 Nov 2009. While the concepts embodied in these documents are immutable, their implementation evolves each year. In 2012, the Corps has Tribal Liaisons or tribal points of contact in every Division and District office. The program started with three liaisons in 1996. In January and March of this year, drafts of the Corps Tribal Consultation policy were sent to all Tribes. About 20 comments were received and considered as the policy developed. In September 2011, the first Watershed Assessment Cost Sharing Agreement (WACSA) under Section 203 (Tribal Partnership Program) of the Water Resources Development Act (WRDA) of 2000 was signed by the Pueblo of Santa Clara (NM) and the Albuquerque District. In the last two years, various Districts responded to the incredible flooding along the Missouri River affecting all basin Tribes, and the fires and subsequent flooding that affected many Pueblos along the Rio Grande. Many tribal partnerships were further solidified during these disasters, as the Corps and Tribes worked together.

POLICY DEVELOPMENT AND IMPLEMENTATION

The Tribal Nations Community of Practice within the US Army Corps of Engineers is comprised of roughly 200 individuals spread across the Nation and in every District office in Alaska, Hawaii and the 48 contiguous states. Each District contact is fully aware of our policy principles and the DoD tribal policy.

This year, quarterly teleconferences were established and are held in each regional division: Great Lakes and Rivers, Mississippi Valley, North Atlantic, Northwestern, Pacific Ocean, South Atlantic, South Pacific and Southwestern. Minutes are circulated to all districts within the division and are also sent to HQUSACE in Washington DC. This new practice has led to sharing of valuable information, including lessons learned, throughout all the regions. If there is an issue in one region, another region may have already faced that issue. This information sharing also has the effect of increasing the array of possibilities available to tribal communities as different ideas spread throughout the Corps community and are passed on to tribes.

Several task forces were formed at the annual Tribal Liaisons meeting in December 2011. One of these, the Impediments/Opportunities task force met in January 2012 and will meet again in August 2012. Thus far, a list of impediments in our service to Indian Country was made. Some have already been addressed. For example, because the Corps is such a decentralized organization, many individuals in the field do not know whom to contact at HQ. This was solved simply by finding the source of organization charts and sending them out as they are updated. Other issues to be addressed in the near future include the Trust responsibility as a ranking factor in scoring projects.

To help support capacity building and self determination, the biggest change we have made in the last ten years has been to learn how to listen to tribal members at meetings and take their advice and input seriously. Recently, we drafted a booklet entitled *How to Plan a Water Resources Project with the US Army Corps of Engineers: A Guide for Tribal Governments*. Printed in January 2011, and again in June 2012, it explains, in straightforward terms and a minimum of acronyms, how to work with us. Tribal governments have praised it highly, as have other Federal agencies and other offices within the Corps. More Tribes seek us as partners each year.

The draft Corps Tribal Consultation Policy, vetted with HQ, regional and local Corps offices, and with all Federally recognized Tribes will be signed later this year and will become the cornerstone of a booklet that will also include the DoD American Indian and Alaska Native policy, EO 13175, and the President's Proclamation of 2009. All of our documents list the six Tribal Policy Principles-- a pocket protocol, a wallet-sized card on consultation tips; a bookmark, a brochure entitled *Consulting with Tribal Nations: Guidelines for Effective Collaboration with Tribal Partners*, the booklet mentioned above, and the upcoming consultation policy. In this way, we strive to give the Tribal policy principles as much visibility as possible.

CONSULTATION AND OUTREACH

The Corps consults with Federally-recognized Tribes and Native Hawaiian Organizations every day. Issues are varied: ecosystem restoration, repatriation of human remains, protection of sacred sites, access to usual and accustomed fishing and hunting sites, partnering for projects under various water resources authorities, permitting activities, and management of our rivers—the Mississippi, Missouri, Rio Grande, Columbia and Snake, for example.

For the reporting period, July 2011-July 2012, the Corps reports 943 written/teleconference communications, 436 face-to-face meetings and 76 government-to-government meetings. Districts report coordination and consultation with 250 (44%) Tribes in Alaska and the continental states, as well as with Native Hawaiian Organizations, including the Office of Hawaiian Affairs and Hui Malama I Na Kapuna O Hawaii Nei. In addition, each District sent out four mass mailings to *all* Tribes during the reporting time frame: two drafts of the Corps'

Consultation Policy, one draft of the Regulatory Program's Nationwide Permit changes, and the draft changes to the Corps' Levee Vegetation Guidance.

The Corps is organized along river basins, not along state boundaries. The discussion below presents a summary of each of our eight Divisions, grouped by geographical region: Eastern, Midwestern, and Western. In reporting, each District has listed written/teleconference communications, face-to-face-meetings, and government-to-government meetings. Most meetings occur at the staff level, working on specific projects and programs. Government-to-Government meetings are defined as those in which the District Commander and the legal head of a Tribe decide a course of action, a path forward, or sign an agreement document.

EASTERN REGION

North Atlantic Division (NAD). NAD consists of New England (NAE), New York (NAN), Baltimore (NAB), Philadelphia (NAP) and Norfolk (NAO) Districts. Collectively, they report 78 written/teleconference communication, 9 face-to-face meetings, and 5 government-to-government meetings. *South Atlantic Division (SAD)*. SAD consists of Wilmington (SAW), Mobile (SAM), Charleston (SAC), Savannah (SAS) and Jacksonville (SAJ) Districts. Collectively, they report 58 written/teleconference communications, 48 face-to-face meetings and 3 government to government meetings.

New England District is currently consulting with the Narragansett Indian Tribe (RI), Wampanoag Tribe of Gay Head (Aquinnah) (MA), Mashpee Wampanoag Indian Tribal Council, Inc. (MA) and the Mashantucket Pequot Indian Tribe (CT) on two projects with the only Corps involvement being review of permit applications by the State of CT and the State of MA for commuter rail expansions (South Coast Rail, MA) and electric transmission line utility easement expansions (CT and MA). The latter also includes a proposed easement across 1.4 miles of USACE fee property at Mansfield Hollow Lake, a flood control facility in northeastern CT. For the past several years, the Tribes, headed by the Narragansett, have been documenting sacred stone structures, some having been determined Eligible for listing in the National Register of Historic Places (NRHP) by the Keeper of the National Register. Addressing these structures that occur throughout New England has been problematic for federal agencies. At a government-to-government meeting on 26 Jul 2012, the Corps and the Tribes arrived at the following decisions: declared all stone structures within the right of way Eligible, based on precedent, and identified three areas so integrally related to the projects and the undertakings, that they would be surveyed for additional stone structures, although they lie outside of the right of way.

MIDWESTERN REGION

Great Lakes and Rivers Division (LRD). LRD consists of the Buffalo (LRB), Chicago (LRC), Detroit (LRE), Huntington (LRH), Pittsburgh (LRP), Louisville (LRL) and Nashville (LRN) Districts. Collectively, they report 38 written/teleconference communications, 63 face-to-face meetings, and 0 government-to- government meetings. *Mississippi River Division (MVD)*. MVD

consists of St Paul (MVP), St. Louis (MVS), Rock Island (MVR), Memphis (MVM) New Orleans (MVN) and Vicksburg (MVK) Districts. MVD reports 146 written/teleconference communications, 12 face-to-face meetings, and 4 government-to-government meetings. *Southwestern Division (SWD)*. SWD is comprised of Tulsa (SWT), SWF (Fort Worth), and Galveston (SWG) Districts. Collectively, SWD reports 22 written/teleconference communications, 19 face-to-face meetings, and 1 government-to-government meeting.

Tulsa District has the most active Interagency and International Services (IIS) program with Tribes in the Nation. The District assists Tribes in applying for federal grants and when the Tribe receives funding, it is transferred to the Corps who oversees the contract to build the facility. Several projects are underway under Corps management in 2012. The Quapaw Tribe of Indians (OK) is constructing an administration building, a wellness center, and a convenience store. The Cheyenne and Arapaho Tribes (OK) have just finished a Head Start facility. The Tonkawa Tribe of Indians of Oklahoma (OK) is constructing a new gymnasium and a rehabilitation center. The Tribe has also received an infrastructure project that will provide fire protection and many other improvements. Finally, the Otoe-Missouria Tribe of Indians (OK) has received a low interest loan from USDA for an extensive wastewater lagoon system. Tulsa District is providing contract and construction management oversight.

WESTERN REGION

Northwestern Division (NWD). NWD consists of Kansas City (NWK), Omaha (NWO), Walla Walla (NWW), Seattle (NWS) and Portland (NWP) Districts. NWD reports 193 written/teleconference communications, 195 face-to-face meetings, and 15 government-to-government meetings. NWD is the largest Division, almost 2000 miles wide and encompasses 14 states. *Pacific Ocean Division (POD)*. POD includes the Alaska (POA) and Honolulu (POH) Districts, along with the US Trust Territories of the South Pacific. POD reports 109 written communications/teleconferences, 30 face-to-face meetings and 15 government-to-government meetings. *South Pacific Division (SPD)*. SPD consists of San Francisco (SPN), Sacramento (SPK), Albuquerque (SPA) and Los Angeles (SPL) Districts. SPD reports 179 written communications, 48 face-to-face meetings, and 41 government to government meetings.

Omaha District manages the Missouri River. Many Tribes were displaced when Congress authorized the Pick-Sloan program in the 1950s. Under Pick-Sloan, six dams were constructed along the river and the resident Tribes have been engaged with the Corps since that time. Healing began in the early 1990s with massive outreach to Tribes along the river. In 2005, a Programmatic Agreement (PA) was signed by 20 Tribes, four SHPOs, the Bureau of Indian Affairs (BIA), ACHP and the National Trust for Historic Preservation (NTHP). This document is still the most comprehensive PA ever ratified by the Federal government concerning cultural resources. Work is ongoing in the implementation of the agreement. Tribes are also getting far more involved with providing input into Corps management of the river through the Missouri River Recovery Implementation Committee (MRRIC) Tribes who actively participate in MRRIC

process include the Lower Brule Sioux Tribe of the Lower Brule Reservation (SD), the Cheyenne River Sioux Tribe of the Cheyenne River Reservation (SD), Standing Rock Sioux Tribe of North & South Dakota (SD/ND), Yankton Sioux Tribe of South Dakota (SD), Crow Creek Sioux Tribe of the Crow Creek Reservation (SD), Oglala Sioux Tribe (SD), the Three Affiliated Tribes of the Fort Berthold Reservation (ND) (Mandan, Hidatsa and Arikara Nations)¹, and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation (MT). In 2011-2012, the Corps has been working on potential land transfers of its unused acreage with the Standing Rock and the Mandan, Hidatsa and Arikara Nations.

COLLABORATION

The Corps supports a unique cultural immersion course entitled *Native American Perspectives on Corps Projects*. The course is aimed at all those who interact with Tribes, including District Commanders. The average student enters the course knowing that he or she is learning about the environment from a Native American perspective, and leaves with a greatly enhanced perspective on the interconnectedness of all components in the natural and cultural world. The course takes place on Indian reservations throughout the US. Students sleep in tents or tepees and engage in typical Native activities such as food preparation and tracking. In October 2012, The Osage Nation (OK) will host the course. In February 2013, the Seminole Tribe of Florida (FL) will be the host. Sessions rotate between these reservations, as well as the Confederated Tribes of the Umatilla Indian Reservation (OR), Pueblo of Cochiti (NM), and the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin (WI). The course is taught by tribal members.

Twice each year, HQUSACE sponsors a two and a half day training course, *Consulting with Tribal Nations*. It is held at Corps Districts and, occasionally, at Indian Reservations near Corps Districts. Begun in 2005, the following Districts have hosted the training: Memphis, New York, New England, Jacksonville, Louisville, Detroit, Buffalo, Chicago, Kansas City, Vicksburg, Tulsa, Albuquerque, Seattle, Walla Walla and Alaska. In December 2012, the training will be hosted by the Los Angeles District and the spring training will be held at the Portland District in March or February 2013. Instructors include Tribal Liaisons representing HQ, St. Louis, Sacramento, Albuquerque, Tulsa Districts, the Office of the Assistant Secretary of the Army (Civil Works), and the hosting district's liaison. The Assistant Counsel for Portland District is also an instructor. More importantly, instructors include Tribal officials from the region. Tribes who have participated and given unselfishly of themselves include the Lummi Tribe of the Lummi Reservation (WA), Lower Brule Sioux Tribe of the Lower Brule Reservation (SD), Cherokee Nation (OK), Eklutna Native Village (AK), and The Muscogee (Creek) Nation (OK). The Tribes present a panel discussion on the topics of their choice, that usually include tribal history, how they interact with the federal government, what their rights are, and what our responsibilities to them are. A typical agenda also includes History of Indian Legislation,

¹ Formerly called the Three Affiliated Tribes of the Fort Berthold Reservation

Partnering with Tribes, Laws that Require Consultation, Consultation Strategies and Cross Cultural Communication, Corps and DoD policies, a local presentation of the host district's relationship with Tribes, and one or two Tribal panels. Tribal members may comment on any aspect of the course or on any issue they have with the Corps or with the federal government. *Consulting with Tribal Nations* is often an employee's first exposure to an American Indian or an Alaska Native.

The Corps is always engaged in collaborative efforts with Tribes and organizations representing consortia of Tribes. An example is our relationship with the Columbia River Intertribal Fish Commission (CRITFC), an organization that advocates for all Columbia basin Tribes, especially the four Treaty tribes of 1855: the Confederated Tribes of the Umatilla Indian Reservation (OR), Confederated Tribes and Bands of the Yakama Nation (WA), the Confederated Tribes of the Warm Springs Reservation of Oregon (OR), and the Nez Perce Tribe (ID). CRITFC's staff is primarily composed of members of these Tribes. CRITFC, the Corps, and other federal and state entities monitor the river to ensure *salmonid* populations reach their spawning grounds. They also monitor the Pacific lamprey, a species of cultural importance that was about to be placed on the Endangered Species List prior to CRITFC/Corps involvement. CRITFC also advocates for a seat at the table for Tribes at the renegotiation of the Columbia River Treaty between the US and Canada.

The unfortunate flooding and fires of the past two years in the Southwest and along the Missouri River has strengthened our partnership with FEMA. Collaborations with FEMA now include training Tribal communities in disaster preparedness and response. Hopefully, there will be a joint Corps/FEMA session at an NCAI event in the near future. The session will distinguish between Corps services authorized under PL 84-99 and FEMA services authorized under the Stafford Act.

The Albuquerque and Los Angeles Districts have been particularly active in developing ongoing partnerships with Tribes in their area of responsibility. The practice effectively allows tribes to develop personal knowledge of individual District Commanders and personnel facilitating rapid and effective communications on a wide range of topics of mutual concern. The District is in the process of developing several studies under the Section 203 authorities, including the Hopi Tribe of Arizona, Augustine Band of Cahuilla Indians (CA), the Tohono O'odham Nation of Arizona, and three with the Navajo Nation (UT, AZ, NM) The first executed Watershed Assessment Cost Share Agreement (WACSA) in the Nation was signed by the Albuquerque District and the Pueblo of Santa Clara (NM) in September 2011.

The Corps participates in Tribal conferences--National Congress of American Indians (NCAI), United South and Eastern Tribes (USET), Associated Tribes of Northwest Indians (ATNI), National Tribal Environmental Council (NTEC) and American Indian Science and Engineering Society (AISES). We are co-sponsors of AISES' yearly career fair and recruit young American Indians, Alaska Natives and Native Hawaiians. In October 2011 at the annual NCAI convention,

the Corps organized and led a panel of federal officials who presented their programs to Tribes and took questions from them.

The Tribal program has a small budget (25K) that funds such expenditures as sending Liaisons to conferences and training, and bringing Liaisons to HQ to learn more about the Corps and the Tribal program. It funds booths at NCAI, NTEC and ATNI. Some funds are also spent on reprinting our Tribal brochure, booklet, bookmark, and pocket protocol.

OPPORTUNITIES AND CHALLENGES AHEAD

The Corps has a multitude of opportunities in Indian Country. Tribes suffer drought, floods, and fires. They want flood protection, erosion control, navigation improvements, elimination of hazardous waste, and assistance in planning for the future, and ecosystem restoration to protect their tribal and trust resources. We have shown consistently that, with the help and knowledge of tribal partners, these issues can be tackled.

As a result of its numerous missions, Corps interactions with Native American tribes take many different forms for equally varied purposes. The increasing awareness by Tribes of Corps Civil Works authorities is resulting in rapid growth in the number tribally initiated projects, a great opportunity for Native American governments. The unique perspectives and intimate knowledge of their surroundings, makes Native American communities key in defining water resource problems and acceptable solutions. The Tribes challenge the creativity of Corps engineers and technical staff and produces better projects. We can fulfill Corps missions and our Trust responsibility at the same time due to our water resources missions.

Our biggest challenge is to introduce our workforce to a culturally different worldview. Therefore, our highest priority is education. Concepts such as sovereignty, government-to-government, pre-decisional consultation and the Trust responsibility are not always intuitively easy to understand and most people have previously not been exposed to them.

An often cited challenge is wording in various pieces of legislation that is too narrow, too broad, contradictory, or subject to various interpretations. For example, one program along the Missouri allowed the Corps to pay travel and per diem for Tribes to travel to meetings; another program expressly forbade it. A section in another piece of legislation allows the use of cooperative agreements, but only for two specific Tribes.

Other challenges include the inability of some Tribes to cost-share projects, a requirement since WRDA 1986. Additionally, different authorities have different cost shares, while some allow in-kind contributions, others do not. We are pursuing a policy that will waive cost-sharing for Tribes, but this will be a long-term effort.

Corps Tribal Liaisons are passionate about their duties and consider it a privilege to work in Indian Country. We will succeed in meeting our challenges because we look at the long-term effects of our actions, something we have collectively learned from our tribal colleagues.

15 August 2012, G L Reynolds, CECW-IF