

**US Army Corps of Engineers *Draft* Plan of Action to
Implement the Policies and Directives of
Executive Order 13175, Consultation and Coordination with
Indian Tribal Governments
January 07, 2010**

Introduction

The US Army Corps of Engineers (USACE), a major command within the Department of Defense (DoD), has a growing Tribal Nations program that has expanded since its inception in 1996 in terms of staffing, improved relations with Tribes, accomplishments, and recognition. The program is an outgrowth of the 1994 Presidential Memorandum that called on Federal agencies to work more closely with tribes.

USACE adopted its Tribal Policy Principles on 18 February, 1998. The Policy Principles were the result of nationwide listening sessions with Tribes and hard work and dedication on the part of District and Division USACE offices. Executive Order 13175 (EO 13175) signed by President Clinton on 6 Nov, 2000, and now, the Presidential Memorandum on EO 13175, signed by President Obama on 5 Nov 2009, have provided additional momentum to assess and improve our consultation and collaboration practices.

This document recaps the significant steps USACE has already taken to address the requirements of EO 13175 and outline our action plan for the next 270 days. We welcome the opportunity to receive additional comments to our proposed plan from tribal leaders and Tribal governments.

Development of the USACE Tribal Policy Principles

Several Federal laws, regulations, and policies create an obligation to consult with Federally-recognized tribes when Federal activities have the potential to affect tribal lands and resources. USACE also has responsibilities to Tribes resulting from the Federal trust doctrine, including treaties, Executive Orders, and agreements between the United States Government and tribal governments. USACE developed its policy to help its staff identify and address these obligations and responsibilities.

Input from Tribal members was received in a series of nationwide meetings in 1995 and 1996. Nearly 200 Tribes participated in these meetings or submitted written comments. Many concerns – from shoreline protection to access to sacred sites – were heard and taken into consideration USACE at all levels of the organization. As a result of the feedback from these discussions, USACE promulgated the final Policy, Policy Guidance Letter # 57, Tribal Policy Principles, on 18 February 1998.

Implementation of the USACE Policy and Assessment of Its Impact

The six principles that guide USACE activities and operations are:

- Meet the Trust responsibility;
- Honor the government-to-government relationship;
- Acknowledge the inherent sovereignty of Tribes;
- Engage in pre-decisional consultation;
- Protect natural and cultural resources when possible, and
- Find opportunities to use existing authorities to encourage economic capacity building and growth.

The Policy Principles affect every level of the organization, but are put into practice most directly at the local level. This is necessarily true because the government-to-government consultation often occurs between District Engineers and the Tribes that reside, or formerly resided, in the area of that District. Furthermore, USACE recognizes that the nature of the government-to-government relationship varies by Tribe. This emphasis on the local office has proven effective for establishing and maintaining positive relationships with Tribes.

In 1996, the Office of the Assistant Secretary of the Army for Civil Works hired its first Tribal Liaison, with the charge to work with the Corps to improve relationships with Indian Nations, and help establish a Tribal Nations Program throughout USACE. In 1998, only a handful of District offices had a Tribal Liaison on staff – primarily in Districts that interface with Missouri River and Columbia River Tribes who remember the building of dams, the destruction of habitat, and loss of lands. Today, there is a Tribal Liaison or point of contact in every District and Division office. Importantly, there has been a full-time Senior Tribal Liaison at HQUSACE since 2003. The Senior Tribal Liaison oversees the national program and advises a team of expert professionals in making decisions affecting Indian Country.

The OASA(CW) and Corps Senior Tribal Liaison sits on the DoD Native American Integrated Product Team which facilitates coordination and communication among parts of DoD on tribal issues and helps DoD meet its responsibilities under Federal law and policy related to tribal issues. The Senior Tribal Liaison also sits on the Interagency Working Group on Indian Affairs that reports to the Administration on cooperative efforts to improve consultation, and, in fact, chairs the Consultation Sub-Committee of that group.

Outreach to Tribes

USACE has become a presence at conferences and conventions, such as the National Congress of American Indians (NCAI), National Tribal Environmental Council (NTEC), Society for Native American Government Employees (SAIGE) and, this year, for the first time, the Indian Nations Conservation Alliance (INCA). USACE is a co-sponsor of the

American Indian Science and Engineering Society (AISES) and recruits young Native American graduate students to our ranks. This year, one of our Native American engineers received the honor of Professional Engineer of the Year at their annual meeting. USACE has its own Tribal website within the HQ homepage. It is updated frequently. Additionally, the Senior Tribal Liaison posts announcements, such as training sessions, to the SAIGE listserv, which, in turn, sends the information out to all agencies.

The Senior Tribal Liaison, with the help of her colleagues, has produced a bookmark, explaining what the Tribal Nations Community of Practice does; a 'pocket protocol' that tells employees what to do and what not to do while in consultation with Tribes; and a brochure explaining why we must consult with Tribes and why it makes sense.

Training Opportunities

USACE offers a 2.5 day training course, *Consulting with Tribal Nations*, an offshoot of DoD's *American Indian Cultural Communications Course*. The course is free of charge and includes sections on USACE policy, history of Indian law, consultation strategies, cross cultural communication, a review of USACE authorities and programs, and speakers from the Tribes of the area. It is regionally focused and tailored to the District that holds it. Since 2005, the training has taken place in the Albuquerque, Memphis, Jacksonville, Nashville, New England, New York, Seattle, Kansas City, Buffalo and Detroit Districts. When possible, the course is sponsored by a Tribe and Tribal facilities are used. Dialog with local tribes helps participants learn more about cultural practices and unique tribal interests that may interact with the military mission. Cultural events are also included. Over 500 people have been trained. Upcoming sessions in 2010 include a session hosted by the Walla Walla District and the Confederated Tribes of the Umatilla Indian Reservation, and, in the fall, our annual meeting will be hosted by the Tulsa District and the Cherokee Nation..

USACE offers a unique cultural immersion course entitled *Native American Cultural and Environmental Resources*. Classes are four days long and take place on an Indian reservation. Sessions are routinely offered with the Umatilla, Rose Bud Sioux, Seminole, Osage and, for the first time in 2010, Pueblo de Cochiti. Students learn to expand their understanding of the USACE's Environmental Operating Principles through the eyes of a different culture. It is a hands-on course with group activities and traditional foods.

Every year, one week of training in the Planning Associates curriculum is devoted to Tribal and Cultural Resources issues. It travels around the country and has been given in St. Louis, Seattle and Honolulu. There are also Tribal components in the New Commanders Course and the Regulatory Executive Seminar.

The Senior Tribal Liaison and select regional staff are often called upon to visit individual Districts for a mini-consultation session. Such presentations have taken place in Jacksonville, Philadelphia and Alaska Districts.

USACE Programs That Support and Enhance Consultation with Tribes

The training program works hand in hand with application of USACE authorities in Indian Country. Very popular programs include Planning Assistance for States and Tribes (PAST) and a group of authorities called the Continuing Authorities Program (CAP) which covers small projects, including stream bank protection and erosion control. Section 203 of the Water Resources Development Act (WRDA) of 2000 (reauthorized as Section 2011 of WRDA 2007) is the Tribal Partnership Program, a study authority whose scope is very wide. Several types of projects are named, plus “other projects the Secretary ..deems appropriate.” It is also the only authority that lists cultural resources as something that can be studied. About 100 Tribes have taken advantage of the CAP program and Section 203.

Section 208 of WRDA 2000 allows the Corps to rebury Native American human remains inadvertently discovered on Corps lands to another, safer location on Corps lands in consultation with the Tribe claiming them. The Corps is authorized to pay for certain reburial expenses.

USACE administers the Native American Lands Environmental Mitigation Program (NALEMP) for DoD. Mitigation projects are eligible for NALEMP funding if they involve environmental impact(s) to federally-recognized tribal lands or ANSCA-conveyed properties. DoD oversees efforts to gather information concerning potential environmental impacts, assess each impact for eligibility in the program, prioritize impacts for mitigation, and consult with the affected tribe(s). When an area is chosen for remediation, a Cooperative Agreement (CA) is drawn up between DoD and the Tribe. This is the only program that has authority to use CAs instead of contracts. Over 50 Federally recognized Tribes have remediated their lands using NALEMP.

Tribal Nations Program Highlights

- Rehabilitation of Celilo Village on the Columbia River by special legislative authority. Village completed in 2009.
- Reestablishment of usual and accustomed fishing sites along the Columbia, also by special legislation. Ongoing.
- Programmatic Agreement for treatment of cultural resources along the Missouri River, signed in 2004 by 20 Tribes, HQUSACE, Northwestern Division and Omaha District; Bureau of Indian Affairs; State Historic Preservation Officers of four states, the National Trust for Historic Preservation and the Advisory Council on Historic Preservation. Awarded commendation by National Trust in 2005.
- Transfer of lands from USACE to Three Affiliated Tribes of ND and Crow Creek Sioux Tribe of SD. Ongoing.
- Stabilization of Corydon Cemetery at Kinzua dam on behalf of Seneca Nation. Begun 2007.

- Native American Graves Protection and Repatriation Act (NAGPRA) compliance. Nationwide, USACE is ahead of many other agencies in its repatriation efforts. Ongoing.

**USACE Plan of Action to Implement the Policies and Directives of
Executive Order 13175
Consultation and Coordination with Indian Tribal Governments
January 5, 2010**

Elements of DoD's action plan adopted by USACE to demonstrate effective consultation with Tribes within the 270 day (3 Aug 10) deadline includes:

- Annually gathering data to demonstrate level of and number of consultations with Federally recognized Tribes, to include NAGPRA consultations;
- Monitoring compliance related to the development or revision of integrated cultural and natural resource management plans that could affect tribal lands or interests, and reporting on number of plans completed by Tribes for USACE;
- Gathering Tribal input on the effectiveness of our policies, guidance, and initiatives related to consultation with Tribes;
- Reprinting and promoting to Tribal governments and Corps Districts/Divisions the pamphlet, *Consulting with Tribal Nations* and the pocket protocol, *Tips for Successful Consultation Meetings*. A version of the *Project Partnership Kit* entitled the *Tribal Partnership Kit*, will be written and made available in 2011.
- Continuing our training program with two-three *Consulting with Tribal Nations* sessions, 2-3 *Native American Cultural and Environmental Resources* course, and one session of the *Cultural Resources/Tribal* training session of the Planning Associates curriculum.