

# USACE AND TRIBAL GOVERNMENTS: PARTNERING AND CONSULTATION

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*"The views, opinions and findings contained in this report are those of the authors(s) and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation."*



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# RELATIONSHIPS WITH TRIBES

The relationship between the Federal government and federally recognized Tribal governments is a political relationship.

- Federal responsibilities to Tribes are based upon the Constitution, Federal Trust Doctrine, Treaties, statutes, regulations, Executive Orders, court decisions and acts of Congress.

The Foundational concepts of this relationship are:

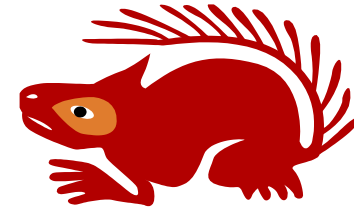
- Tribal Sovereignty
- Federal Trust Responsibility



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# E.O. 13175, NOVEMBER 6, 2000



## Obligations

- Consult regarding regulations, proposed legislation or other policy statements that may have substantial effects on tribes
- Use consensual mechanisms to develop regulations and policies affecting
  - Treaty Rights
  - Tribal Self-government
  - Tribal Trust Resources
- Annual reporting to OMB on consultations
  - USACE thru OASA(CW) has provided reports to OSD each year



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# PRESIDENTIAL MEMO ON G-TO-G RELATIONS

President Obama, Nov 5, 2009

- Commitment to “regular and meaningful consultation”
- Consistent implementation of E.O. 13175

President Bush, Sep 23, 2004

- Respect tribal rights of self-government & self-determination
- Cultivate mutual respect

President Clinton, Apr 29, 1994

- Consult prior to taking actions that affect tribes
- Assess effects of actions on trust resources

All recognize unique legal and political relationship



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# DOD 1998 AMERICAN INDIAN AND ALASKA NATIVE POLICY

- Developed in consultation with federally recognized tribes, and used a tribal advisory group
- OASA(CW) tribal liaison served on the DoD policy development team

## DoD will:

- Meet its responsibilities to tribes
- Recognize tribal sovereignty
- Consult before taking action
- Manage its lands consistent with the conservation of protected tribal resources



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# DOD INSTRUCTION 4710.02

14 Sept 2006

“Re-publishes” AI/AN Policy

Establishes principles & practices of “meaningful” consultation

- Consult on all proposed actions with potential to significantly affect tribes
- Develop and memorialize tribe-specific process for consultation
- Consult early enough that decision may be affected



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# DEPARTMENT OF ARMY AMERICAN INDIAN AND ALASKA NATIVE POLICY

24 Oct 2012

- Meet its responsibilities to Federally-recognized tribes
- Build stable and enduring G-to-G relationships
  - Sustain Army missions and minimize effects on protected tribal resources
- Recognize, respect and take into consideration the significance of protected tribal resources
- Fully integrate the principles of meaningful consultation and communication all organizational levels
- Importance of understanding and addressing tribal concerns prior to reaching decisions on matter that significantly affect tribal rights, tribal lands or protected tribal resources



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# CORPS' TRIBAL CONSULTATION POLICY

- Applies to all Corps programs and offices
- Conducted in an open, timely, meaningful, collaborative and effective deliberative communication process that emphasizes trust, respect and shared responsibility
- All requests for consultation by a Tribe to the Corps will be honored
- Developed in consultation with Federally recognized Tribes



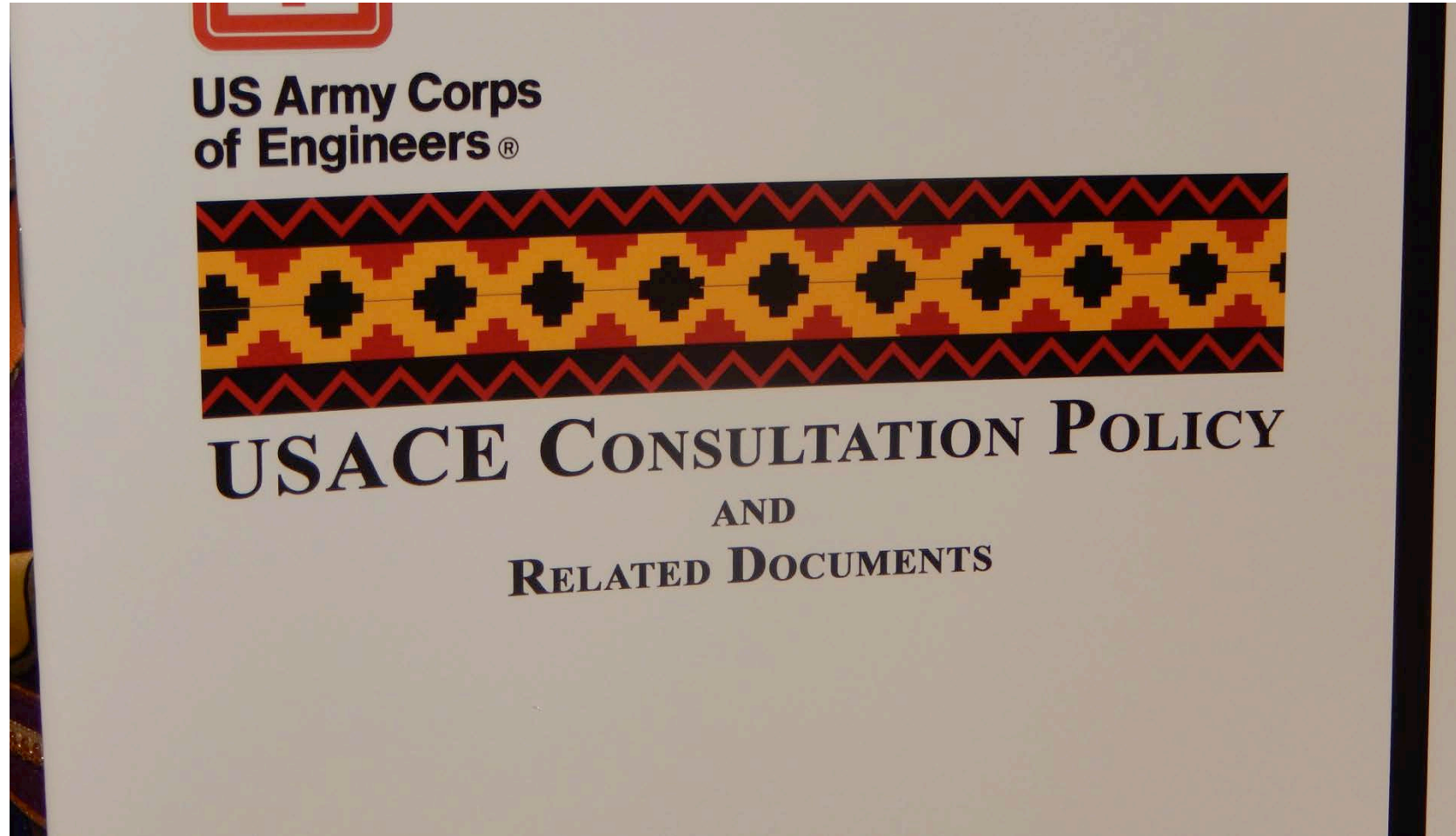
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# USACE CONSULTATION POLICY BOOKLET



Policy publication contents include USACE Consultation, USACE Tribal Policy Principles, DA American Indian and Alaskan Native Policy, DoD American Indian and Alaskan Native Policy, Tribal Consultation, Presidential Memorandum 5 November 2009, Consultation and Coordination with Indian Tribal Governments, E.O. 13175, 6 November 2000



# Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations With Indian Tribes

- Direct result of Presidential Memorandum on Government-to-Government Relations With Native American Tribal Governments (April 29, 1994)
- Interim Guidance Developed with OASA(CW)
- Tribal Policy Principles
  - Tribal Sovereignty
  - Trust Responsibility
  - Government-to-government Relations
  - Pre-decisional And Honest Consultation
  - Self Reliance, Capacity Building, And Growth
  - Natural And Cultural Resources
- Ushered in a new era of USACE and Army Civil Works meeting treaty and trust obligations.



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# CORPS' TRIBAL CONSULTATION POLICY

- Threshold: “may have the potential to significantly affect”
- Government-to-Government
- Event or proposal driven
- Majority of interaction will be staff-to-staff
- Decision Making will be Leader to Leader with assistance of local Tribal Liaison



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# USACE Tribal Policy Principles

## Recognition of Tribal SOVEREIGNTY

Federal relationships with Tribes are **GOVERNMENT TO GOVERNMENT**

We honor our **TRUST RESPONSIBILITY** to work for the benefit of Tribes

**CONSULTATION** prior to decision making

Protection of **CULTURAL** and **NATURAL** resources

Promotion of **GROWTH** and **ECONOMIC** capacity



# USACE Tribal Nations Community of Practice

## DEDICATED TO:

Collaboration, Consultation and Consensus with federally recognized Tribes.

Working effectively in Indian Country on behalf of the Corps.

Ensuring that Tribes are equal players in addressing water resources challenges.

Promote cultural awareness and conserving heritage assets.



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# CORPS' TRIBAL CONSULTATION POLICY

What is “meaningful” consultation?

- Pre-decisional consultation is required: no more “done deals”
- Substance: working toward consensus
- Tribes are not just another stakeholder or interested party
- Interactive dialogue, a process of communication, exchange of ideas, and consideration of each party’s ideas and interests
- Result in decisions or paths forward which should be documented and acknowledged by the consulting parties



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## Tips for Successful Consultation Meetings

### Before a meeting

- › talk early; talk often
- › consult your Tribal Liaison
- › know your Tribal contacts
- › plan meeting with Tribal input
- › provide project info beforehand

### During a meeting

- › listen more than you talk
- › don't interrupt
- › respect elders
- › don't be defensive; don't argue
- › expect changes to agenda
- › partake in/offer snacks, coffee
- › small gifts (i.e., castle pins) are ok



## More Consultation Tips

### After a meeting

- › don't rush off; stay and talk
- › share a meal
- › send out draft meeting notes
- › follow up with a phone call
- › collaboratively plan next step

### The 6 USACE Tribal Policy Principles

- › recognition of sovereignty
- › gov't to gov't relationships
- › consultation before decisions
- › trust responsibility
- › protect cultural/natural  
resources when possible
- › promote economic capacity



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# CORPS' TRIBAL CONSULTATION POLICY

- Applies to potentially affected Tribes, including Tribes whose aboriginal territories extend to the lands where an activity would occur
- Tribes will be contacted sufficiently early to allow timely review of the proposed action
- If contacted Tribes notify the Corps that other Tribes are potentially affected, the Corps has the responsibility to notify those Tribes as well



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# CORPS TRIBAL CONSULTATION POLICY

Consultation is conducted at the District Command under the guidance of the District Tribal Liaison, unless there is a request for HQUSACE (and/or OASA(CW) in the case of Civil Works) input, or if HQUSACE determines input is necessary.



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# CORPS TRIBAL CONSULTATION POLICY

Encourages the development of consultation procedures for individual projects or programs at the local level to meet the needs of a particular Tribe

Encourages the development of a dispute resolution process during the consultation process, including provisions to elevate consultation to higher Corps and/or Tribal levels



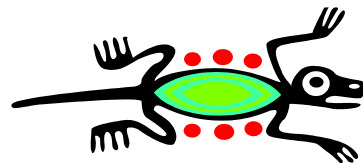
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# WHAT CONSULTATION IS

- There is no one definition of consultation
- A process based on respect and relationships
- A two-way ongoing dialogue; both parties talk and listen
- A continuous, collaborative, dynamic progression, not a single event when the agency wants something
- No set number of meetings required
- Is issue-focused, with a concern for implementation & goal of consensus
- Means different things to different Tribes



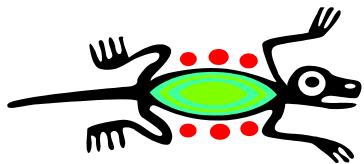
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# THE BASICS

- Consultation creates relationships
- Relationships encourage understanding
- It all begins with respect for the person and his/her culture
- Understand cultural differences and how they can be bridged
- Talk early, talk often
- Listen and learn
- Be open, be flexible, be humble
- Recognize that Tribal communities have overcome incredible odds
- Every visit or discussion is an opportunity to learn



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# THE BASICS

Establish the Relationship First

- Identify opportunities to build relationships before you need to

Learn Tribe's History

Understand That Cultural Differences Affect Meetings

Know Tribal Hot Buttons

- Sovereignty-Self Determination
- Treaty Obligations
- Unique Details (i.e., Oklahoma Tribes)

Update Tribes about Federal Governmental Processes

- Update Tribes on Corps policies, programs and processes

Understand Individual Tribe' Government Processes and Culture



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# THE BASICS

## Face Potential Disagreement/Conflict

- Be prepared for debate, heated discussion, disagreement, and surprise agenda items

## Don't Be Defensive, Don't Take Personally

## Written Protocols

- Encouraged in Corps and DoD Policy
- Specific to consultation event and unique to each tribe

NOTE: One Misstep through lack of transparency or sincerity, disingenuousness or dishonesty may derail years of relationship building



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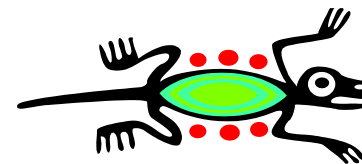
# CONSULTATION IS GOAL ORIENTED

## Short-term objectives

- “Working meetings” to provide information, discussions – staff works together
- Setting milestones
- Identifying goals

## Long-term objectives

- Agreement (Programmatic, MOU, MOA)
- Formal Consultation Meeting/Signing Ceremony (G2G)
- Work Products
- Documents
- Study, design, construct & maintain a project
- Build lasting relationship



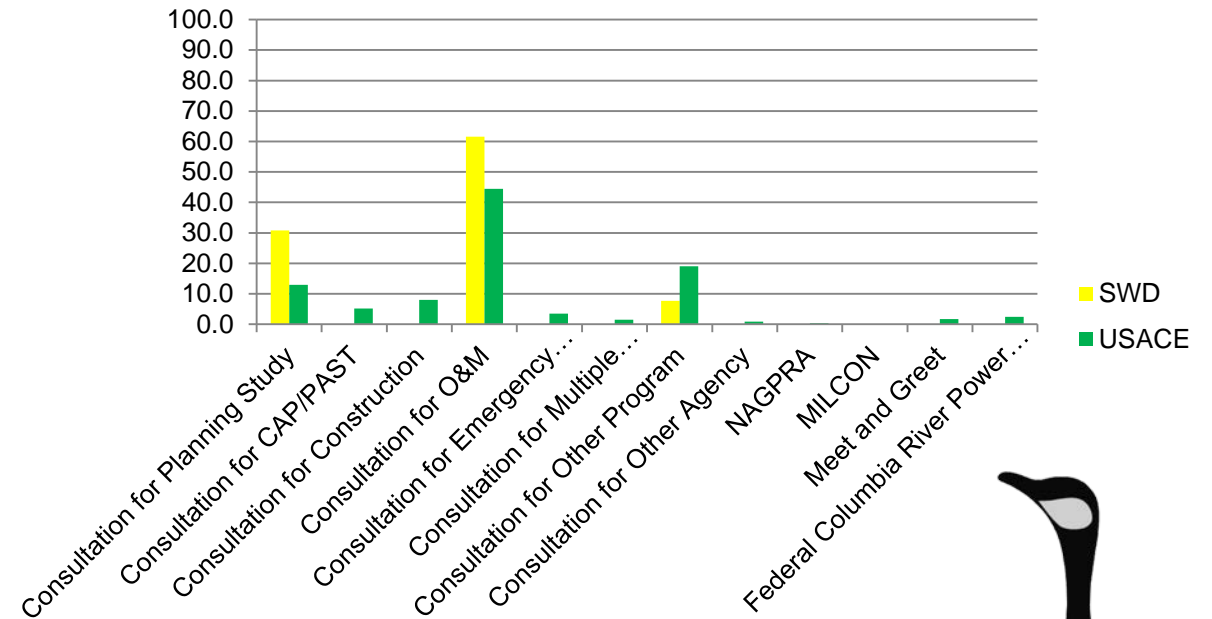
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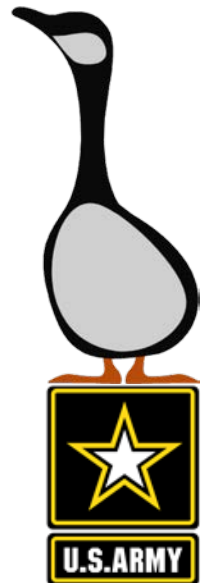
# TRIBAL NATIONS TECHNICAL CENTER OF EXPERTISE

Established by the Corps in 2015

Mission is to improve the quality and effectiveness in delivering Corps missions and Trust Responsibilities



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# CONSULTATION REPORTING PER E.O. 13175

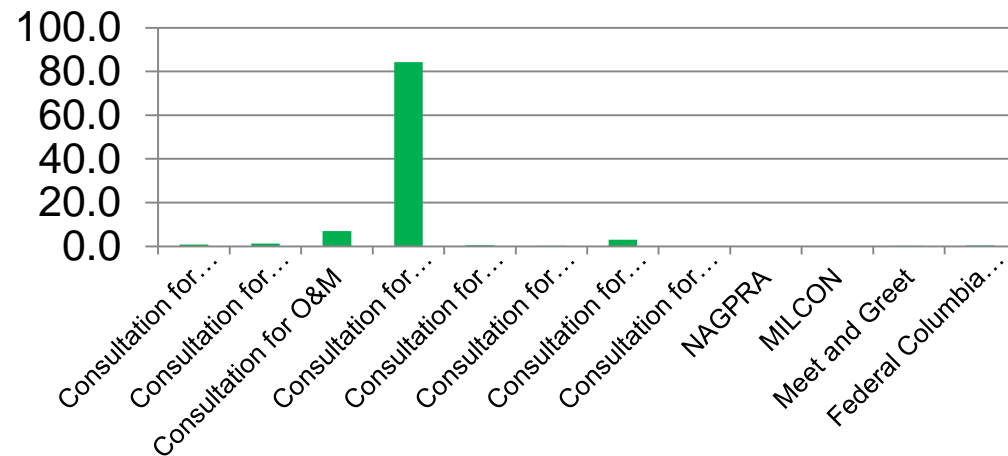
The Corps reports annually on Tribal consultation and coordination through OSD to OMB

During the reporting period, July 2014 – July 2015, the Corps conducted over 8,000 consultations and outreach coordination with Indian Tribal Governments

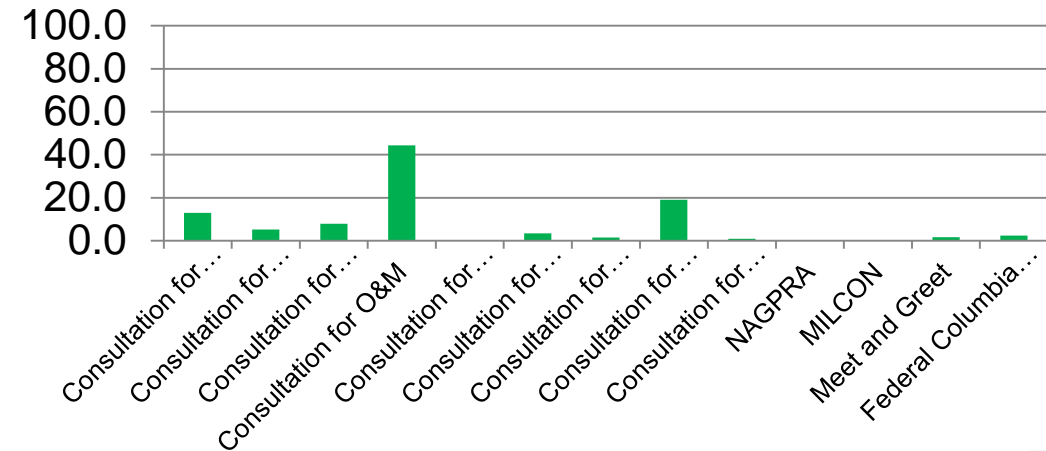
Each year, Corps interaction with tribes has increased

There are very few issues raised to higher headquarters involving tribal consultation

### USACE % All Consultations



### USACE (w/o Reg)



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# CIVIL WORKS AFFECTS TRIBAL LANDS & RESOURCES

- Projects (~500) constructed/operated by the Corps (~30% directly affect 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 (thousands)
- Activities authorized by the Regulatory Program (Rivers & Harbors Act 10, Clean Water Act 404), ~60,000 per year
- Emergency Response/Contingency Ops: assisted Santa Clara during and after to recover from major fire and rain/erosion---USACE used PL 84-99 to construct ~\$12 million worth of flood risk reduction facilities in collaboration with FEMA
- 6,036 consultations and outreach contacts with tribal governments (291 of 567 or 51%) in Fiscal Year 2015



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# COOPERATING ACTIVITIES WITH TRIBES

Welcome To Cochiti Lake



Ku Wah Tze Hopah

You Are Entering Lands Owned by Cochiti Pueblo  
and Managed for Flood Control and Recreation  
by the US Army Corps of Engineers



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# COOPERATING ACTIVITIES WITH TRIBES

USACE districts engage with tribes on a daily basis partnering on various initiatives. The following are examples that demonstrate the depth and breadth of USACE engagement with tribal nations.

- Examples in NWP
  - Columbia River Treaty Fishing Access Sites Co-Management – Columbia River Intertribal Fish Commission
  - Willamette Valley BiOp Working Group – Confederate Tribes of Warm Springs and Confederated Tribes of Grand Ronde
  - Federal Columbia River Power System Cultural Workgroup – Yakama Nation, Confederated Tribes of Warm Springs, Confederated Tribes of Umatilla, Nez Perce Tribe
- Examples In NWW
  - Co-management of Dworshak National Fish Hatchery – Nez Perce Tribe
  - Lower Granite Dam adult fish trap – Nez Perce Tribe
  - Pacific Lamprey Workgroup; Fish Passage O&M Coordination Group; Fish Passage Studies Workgroup; Technical Management Team – Nez Perce, Umatilla, Yakama, & Warm Springs



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# COOPERATING ACTIVITIES WITH TRIBES (CON'T)

- Examples in NWO
  - Programmatic Agreement for O&M of Missouri River Mainstem System for Compliance with NHPA – 19 Missouri River Tribes
  - Missouri River Recovery Implementation Committee – 18 Missouri River Tribes
  - Multiple Recreation leases, water supply (municipal & irrigation) – Standing Rock Sioux Tribe, Lower Brule Sioux Tribe, Crow Creek Sioux Tribe
- Examples in LRE
  - License agreement with Sault Ste Marie Chippewa and Bay Mills Indian Community to care and maintain burial site at Soo Locks
- Examples in LRP
  - Ongoing work with the Seneca Nation including weekly water quality sampling to test for harmful algae blooms. Resulted in a Sec 1135 study on Kinzua Dam upper reservoir
  - Annual Kinzua Reservoir clean up



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# COOPERATING ACTIVITIES WITH TRIBES (CON'T)

- Examples in SWT
  - Discussion of lease opportunities at Sardis Lake – Choctaw Nation
  - Recreation lease within Eufaula State Park, Lake Eufaula Advisory Committee – Muscogee Creek Nation
  - Cost Shared studies – Chickasaw Nation, Choctaw Nation, Tonkawa Tribe
  - Lease on Keystone Lake – Osage Nation
- Examples in SPN
  - The Brush Arbor lease, Lake Sonoma – Dry Creek Rancheria Band of Pomo Indians
  - Lake Mendocino Camp Kyen Pomo Cultural Center – Co-management with Coyote Valley Band of Pomo



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# COOPERATING ACTIVITIES WITH TRIBES (CON'T)

## - Examples in SPA

- Cochiti Dam Native Speaker Park Ranger – Pueblo de Cochiti
- USACE Cultural Immersion Training - Pueblo de Cochiti
- Project to implement English/Keres (Native Language) signage
- Joint investigation Jemez Canyon Dam Stewardship – Santa Ana Pueblo
- Cooperative Agreements to support Cochiti Dam O&M – Pueblo de Cochiti, Santa Ana Pueblo
- Partners on 10 Flood Plain Management Services Studies – Navajo Nation
- Negotiations on 4 Tribal Partnership Projects – Navajo Nation
- Negotiations on 2 Planning Assistance to States/Tribes – Navajo Nation
- District Leadership engages in regular (i.e., monthly, quarterly, bi-annual, annual) “Partnering Meetings” – Ohkay Owingeh, Santa Clara, San Ildefonso, Cochiti, Kewa, San Felipe, Santa Ana, Zia, Jemez, Sandia, Acoma, Isleta
- Ongoing Tribal Partnership Projects – Santa Clara Pueblo, Acoma, Kewa, San Felipe, Zia
- Espanola Valley Feasibility Study – Sponsors include Ohkay Owingeh, Santa Clara, San Ildefonso



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# Tribal Liaison Program

## Insight – Influence - Impact

A major challenge for agency leadership is navigating the increasingly complex and sometimes volatile conditions of today's intergovernmental relations

- Tribal Liaisons Provided Added Value
  - Liaisons help leadership sharpen their ability to understand and assess intergovernmental contexts
  - Design and execute strategies that enhance the agency's effectiveness and reputation



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# Tribal Liaison Training

## Insight – Influence - Impact

The primary Tribal Program Training Goal is to provide the tools to effectively analyze, plan for, and respond to the conditions where Tribal Liaisons operate. Training introduces two overarching leadership competencies *Situational Awareness and Strategic Engagement*.

### Biannual Consulting with Tribal Nations Training

- Training at Districts for no tuition cost
- Key to this training is participation by members of local Tribes.

### Tribal Nation Program via Community of Practice introduced Advanced Training to broaden Tribal Liaison skillsets

- ACHP provided Section 106, FEMA provided EM for Tribal Leaders, and Udall Foundation provided Conflict Resolution

### Annual Native American Perspectives PROSPECT Course

- Hosted by: Confederated Tribes of Umatilla, Osage Nation, Seminole Tribe of Florida, Cherokee Nation, Pueblo de Cochiti, Jicarilla Apache Nation
- Host Tribe creates agenda and class held on Tribal land
- A unique opportunity for cultural immersion training



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# Situational Awareness

Being aware of what is happening in the vicinity, in order to understand how information, events, and one's own actions will impact goals and objectives, both immediately and in the near future.

- Cultural Intelligence
  - Understand and leverage the cultural cues and practices that drive personal and institutional behavior
- Diplomacy
  - Manage the 'context' for success in unfamiliar and volatile environments
- Risk Analysis
  - Identify and prioritize the key threats to success and develop strategies to mitigate them



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# Strategic Engagement

Interact or otherwise establish relationships directed by long-term or overall aims and interests. Engaging with complex issues on an ad-hoc basis can result in ineffective or even damaging outcomes.

- Engagement
  - Mapping and cultivating productive relationships with governments, interest groups, and other key constituencies
- Reputation Management
  - Building trust, mitigating risks, and responding effectively to crises
- Sustainability
  - Building value and acceptance by supporting responsible community efforts



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# USACE SUPPORTING TRIBAL SOVEREIGNTY

## Interagency and International Services

- 100% Reimbursable Program
- Technical Assistance, Grant application assistance, Construction management, Contract administration

## Tribal Partnership Program, Section 203

- Only Program specifically addressing Tribal needs
- 28 Tribes participating, capability of \$3.5M in FY17
- Demand increasing exponentially

## Flood Plain Management Services (FPMS)

## Planning Assistance to States (and Tribes)

## Watershed Studies, Section 729

## Continuing Authorities



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# USACE SUPPORTING TRIBAL SOVEREIGNTY

## Readiness and Contingency Operations/ Advance Measures

- \$12M for Santa Clara Pueblo

## Cooperative Agreements

- Initial Success with Pueblos of Santa Ana and Cochiti (Section 3117 of WRDA 2007)
- Section 1031(b) of WRRDA 2014

## International Cooperation

- Coastal Salish Gathering (Puget Sound Tribes and First Nations)
- Gathering of the Maliseets (Houlton Band of Maliseets Indians of Maine and First Nations Maliseets)



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# Working Effectively in Indian Country



### Interagency and International Services

- Technical Assistance
- Grant Application Assistance
- Contract Administration Support



### Response and Contingency Operations

- Support Immediate Emergency Response Priorities
- Sustain Lives With Critical Commodities, Temporary Emergency Power, and Other Needs
- Initiate Recovery Efforts by Assessing and Restoring Critical Infrastructure



### Regulatory Program – Protecting the Integrity of America's Waters



## TRIBAL NATIONS PROGRAM



### Ensuring that Tribes are Equal Players in Addressing Water Resources Challenges

- Tribal Partnership Program
- Watershed Studies
- Flood Plain Management Services Program
- Planning Assistance to States Program



### Partnering with Tribes to Provide Consultation and Cultural Immersion Training



### Tribal Nations Technical Center of Expertise (TNTCX)

The TNTCX mission is to improve USACE's quality and effectiveness in delivering USACE missions and Federal Trust Responsibility



# Consulting with Native American Indians, Alaska Natives and Native Hawaiians



### Obligation for Pre-Decisional Government-to-Government Consultation



### Working to Fulfill Federal Trust Responsibility Promoting Cultural Awareness and Conserving Heritage Assets



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