



## **COEUR D'ALENE TRIBE**

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The Coeur d'Alene Tribe appreciates the opportunity to submit comments with our recommendations on Tribal Consultation and Government-to-Government Coordination in response to President Obama's Memorandum regarding Executive Order 13175. We applaud the President's reminder that "history has shown that a failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results." We are hopeful that this exercise will strengthen our relationship with the federal government and reinvigorate the commitment behind the President's policy on collaboration and communication with Indian Tribes.

We believe very strongly in the purpose and intent of Executive Order 13175. It is important to note that the Order requires agencies to respect tribal sovereignty, grant tribal governments maximum administrative discretion, encourage tribes to develop their own policies, defer to tribes to establish their own standards and forbids agencies from submitting legislation to Congress that would be inconsistent with such directives. If the directives of the Order are properly implemented, the federal trust responsibility and the unique relationship with Tribes can be more properly fulfilled. However, we have several apprehensions about past implementation of the Order. There are two concerns that are at the forefront.

First, the Executive Order appears to be viewed by federal agencies as a procedural requirement with no focus on substantive goals of tribal self-government and fulfillment of the federal trust responsibility. We often felt that consultation was unproductive. Time and resources have been spent on engaging with federal agencies only to receive little response. Sadly, we feel that consultation has become simply a "listening session" with little to no action resulting. Second, there is no accountability for federal agencies that ignore or refuse to carry out their responsibilities under the Executive Order. While these are legitimate concerns, we recognize the importance and usefulness of the Executive Order as a way of improving our relationship with the federal government. Overall, we are hopeful that this will strengthen our relationship with the government and produce positive and substantive results.

First, we recommend that consultation refocus on substantive goals while respecting tribal sovereignty and the federal trust responsibility. Substantive requirements of the Executive Order 13175 should be the focus of consultation. Federal agency representatives tend to fulfill the procedural requirements of “consultation,” but fail to reflect tribal concerns in final federal policies and regulations.

The purpose of the Executive Order is to improve the governmental services and programs on Indian reservations within a framework of tribal self-determination. In a nation-to-nation relationship, tribal consultation should be defined as a process of decision-making that works in a cooperative manner toward reaching a consensus before a decision is made or action is taken. The goal of consultation is to reach mutually agreeable understandings and decisions that acknowledge the interests of both the federal and tribal governments.

As such, agency plans need to respect the fundamental purpose of tribal self-determination and the federal trust responsibility. Both are long-standing federal policies intended to guarantee that Indian tribes maintain their cultures and viability as distinct groups of people. An understanding of the values of tribal cultures is needed in order to instill meaning into any proposal that affects tribes.

Second, we recommend that a system is developed to ensure accountability and tracking provisions. As stated in Section 7 of the Executive Order, the Office of Management and Budget is to ensure accountability, however, these provisions are not effective. Federal officials can choose to ignore both the substantive and the procedural aspects of the Executive Order.

We would like federal agencies to develop a tracking system that ensures actions that reflect a mutual benefit of the agency and tribes. We understand that agencies are bound by legal, fiscal, and policy restraints. However, within these limitations, the federal government has a responsibility to respond to legitimate tribal concerns. In order to ensure a proper response by the agencies, we feel that an oversight system is needed. When tribal recommendations are denied, this tracking system should include justifications for why the recommendations were not included in the final plan. This will ensure accountability on the agency side while providing proof to tribes that their recommendations were considered.

Moreover, the primary responsibility for oversight in the Executive Order is the OMB. We feel that the OMB is not organized effectively to assess tribal issues. This is emphasized by the fact that OMB’s primary role is in developing federal budgets. National Tribal organizations like NCAI have recommended to the Obama Transition Team that the President create an OMB Assistant Director for Tribal Government Programs. Currently, tribal programs are organized under natural resources programs and budgets. We agree with NCAI and would like to see a reorganization of OMB that prioritizes Indian programs and ensures meaningful consultation.

Third, we recommend that agencies focus on solutions by bringing decision makers to Tribal Consultations. Effective dialog can only happen when decision makers empowered to discuss the issues in detail and negotiate solutions attend the consultation. Consultation and negotiations works best when it is focused on a particular subject and when the agency is forthcoming about the factors that affect its decision making process, all of which cannot happen without decision makers present.

Fourth, we recommend an increase in interagency cooperation. We feel that the development of interagency task forces to address issues that are the responsibility of more than one federal agency is essential for effective consultation. For example, law enforcement on Indian reservations is managed by a range of federal agencies, but primarily the Bureau of Indian Affairs, Federal Bureau of Investigation, Department of Justice and the U.S. Attorneys offices. These agencies often have little coordination and produce ineffective policies. Cross functional teams are needed to ensure that the federal agencies work together to resolve common issues.

Fifth, we recommend that federal agencies create opportunities for both formal consultation on developed proposals and early informal scoping on tribal issues. Most of the opportunities for sharing information happen early in the decision-making process. It becomes more and more difficult to influence federal policy decisions if you wait until they are ready for a written and formal consultation.

The formal consultation requirement should not become a barrier to regular communications with tribes. We encourage the agencies to engage regularly with tribes to better understand tribal issues. This will ensure early discussions so that federal agencies are able to develop proposals based on an understanding of the issues. Furthermore, early discussions and pre-draft consultation helps insure that real problems are identified at the beginning and properly studied, ensuring that time and resources are not spend frivolously.

In conclusion, we are encouraged and excited to see the results of the executive branch's renewed commitment to implementing Executive Order 13175. We hope that the recommendations we have provided are taken into consideration and that future consultations can be more constructive. Thank you for your time in this matter. If you have any questions, please contact Helo Hancock, Legislative Director at 208-686-0752 or via email at [hhancock@cdatribe-nsn.gov](mailto:hhancock@cdatribe-nsn.gov).

Sincerely,

A handwritten signature in blue ink that reads "Chief J. Allan". The signature is written in a cursive, flowing style.

Chief J. Allan  
Chairman  
Coeur d'Alene Tribe

