

DR. JOE SHIRLEY, JR.
Navajo Nation President

MR. BEN SHELLY
Navajo Nation Vice President



SHARON CLAHCHISCHILLIAGE
Executive Director

NAVAJO NATION WASHINGTON OFFICE

February 3, 2010

Honorable Robert Michael Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Gates,

Thank you for soliciting recommendations from tribal leaders across the nation to be incorporated into your agency's plan to implement Executive Order 13175. We are pleased this Administration is demonstrating commitment to an ongoing process to improve collaboration between the federal government and tribal nations. The following preliminary recommendations are submitted to your agency on behalf of the Navajo Nation Executive branch and are based on the existing Executive Order 13175. These recommendations are intended to assist your agency in developing your tribal consultation policies in execution of President Obama's November 5th Executive Memorandum.

The Navajo Nation is recommending agencies push forward to partner with tribal nations. A significant amount of dialog and information collection has already occurred. The federal government is well aware of the issues we face. Now is the time to advocate for resources and policies that will ultimately improve quality of life for the Navajo people. To further develop the technical aspects of these recommendations, please contact the Navajo Nation Washington Office at 202-682-7390. Since its inception, the Navajo Nation Washington Office has served as the conduit between the federal agencies and the Navajo Nation. We look forward to working with you.

Sincerely,

A handwritten signature in blue ink that reads "Sharon Clahchischillage".

Sharon Clahchischillage, Executive Director
Navajo Nation Washington Office

cc: NNWO file



THE NAVAJO NATION'S RECOMMENDATIONS FOR IMPLEMENTING E.O. 13175

The Current Executive Order 13175 (E.O. 13175) Requires More than Dialog with Tribes

Under President Obama's November 5, 2009 Executive Memorandum, agencies are required to give an action plan detailing E.O. 13175 implementation and to further agency specific tribal consultation policy development. As the Executive agencies work to meet the requirements of the November 5th Executive Memorandum, the Navajo Nation requests agencies push beyond mere dialogue with tribes to move forward to implement practical solutions developed through consultation with the tribes.

Not only would new efforts to move beyond dialog make tribal consultation an effective Executive policy, but it would meet the intent of E.O. 13175, that is to foster tribal self-governance and facilitate the federal trust responsibility. Under E.O. 13175, the Executive agencies are charged with developing administrative policies to achieve program objectives that "shall grant Indian tribal governments the maximum administrative discretion possible." To accomplish this goal of maximum administrative discretion, agencies are to "encourage Indian tribes to develop their own policies to achieve program objectives, where possible, defer to Indian tribes to establish standards, and in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes." Too often, the Navajo Nation, along with other tribal nations, has given recommendations to Executive agencies, but the substance of these recommendations has rarely effectuated administrative policy. These policy objectives of promoting tribal self-government have yet to be truly completely and consistently implemented. The intent behind the policy criteria within the E.O. 13175 should now be the main focus of this new tribal consultation effort.

The Navajo Nation recommends Executive agencies take the next step beyond dialog by developing internal procedures that encourage tribes to develop their own policies and to defer to these tribally established standards. In this era of tribal self-determination, this Administration has the opportunity to assist tribal nations to change our high rates of unemployment, poverty, and health disparities. Moving tribal consultation beyond listening sessions and data collection also requires agency leadership participation. The policy makers responsible for making decisions ought to be participating in tribal consultation to make these efforts effective. The Navajo Nation appreciates candid dialog and negotiations with agency officials.

All plans and policies Executive agencies develop for tribal consultation should focus on detailing procedures to implement the substantive goals of E.O. 13175. These tribal consultation procedures will inherently be different for each agency, but at a minimum, each agency should be held to specific accountability and evaluation measure to determine whether the goals of E.O. 13175 are translating into practical policies and regulations that truly improve the quality of life for American Indians.

Transparent & Accountable Tribal Consultation

Under E.O. 13175, the Office of Management and Budget (OMB) is charged as the reporting entity for administrative tribal consultation policy accountability. It is unclear whether this is an effective mechanism to ensure a transparent and accountable tribal consultation policy development process. Under the November 5th Executive Memorandum, additional due dates have been mandated. Yet, no specific enforcement mechanisms to facilitate the accountability process are given. If this Administration is committed to regular and meaningful consultation and collaboration with tribes, then additional resources need to be allocated for ensuring not only implementation, but also accountability. True accountability requires enforcement mechanisms to be put into place. The Navajo Nation recommends that your agency coordinate with the President to develop an administrative enforcement process to provide much needed oversight.