

**US Army Corps of Engineers (USACE)  
Update on Compliance with Policies and Directives of  
President Obama's Memorandum on Tribal Consultation, 5 Nov 2009**

**July 25, 2011**

**Introduction**

The US Army Corps of Engineers (USACE), a major command within the Department of the Army, has an active Tribal Nations program that has expanded since its inception in 1996 in terms of improved relations with Tribes, accomplishments, and recognition. 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 Corps District and Division offices. Executive Order 13175, signed by President Clinton on 6 Nov, 2000 and the Presidential Memorandum on EO 13175, signed by President Obama on 5 November 2009, have provided additional momentum to assess and refine our consultation and collaboration practices. The Chief of Engineers reissued the Tribal Policy Principles in his memorandum of 10 May 2010.

**Implementation of the USACE Tribal Policy Principles**

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 local offices lead the way:

There is a Tribal Liaison or point of contact in every District and Division office and 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 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 responsibility of that District. Because the nature of the government-to-government relationship varies by Tribe or by region, an emphasis on the

local office has proven effective for establishing and maintaining positive relationships with Tribes. HQUSACE supports the field and lends direct assistance on a case by case basis.

The Senior Tribal Liaison sits on the DoD Native American Integrated Product Team (IPT) which facilitates coordination and communication among all branches of DoD on tribal issues. The IPT ensures 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 is a member of 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 the Indian Nations Conservation Alliance (INCA). In November 2011, we will present a session on Partnering in Indian Country at the American Water Resources Association (AWRA) conference.

USACE is a co-sponsor of the American Indian Science and Engineering Society (AISES) and recruits young Native American graduate students to our ranks. Last 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. 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 Liaisons do; a 'pocket protocol' that tells employees what to do and what not to do at consultation meetings with Tribes; a brochure explaining why we must consult with Tribes and why it makes sense; and a new handbook entitled *How to Plan a Water Resources Project with the US Army Corps of Engineers: A Guide for Tribal Governments*. We have also finished a draft USACE Consultation Policy.

### Training the Workforce

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, New England, New York, Louisville, Seattle, Kansas City, Buffalo, Detroit, Walla Walla, Tulsa and Vicksburg 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 affect the military mission.

Cultural events are also included. Over 500 people have been trained. Upcoming sessions in 2011 include a session hosted by the Alaska District in conjunction with our 8<sup>th</sup> annual Tribal Liaisons organizational meeting, and a spring training at a location yet to be determined, most likely hosted by the St. Paul District and the Lac du Flambeau Nation.

USACE offers a unique cultural immersion course entitled *Native American Perspectives and Corps Missions*. Classes are four days long and take place on an Indian reservation. Sessions are routinely offered with the Umatilla, Lac du Flambeau, Osage and Pueblo de Cochiti. Students learn to expand their understanding of 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, three days of training in the Planning Associates curriculum are devoted to Tribal and Cultural Resources issues. The course travels around the country and has been given in St. Louis, Seattle, Portland 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 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. The most popular type of project under Section 203 is currently ecosystem restoration.

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. . Over 50 federally recognized Tribes have remediated their lands using NALEMP.

### **USACE Tribal Nations Program Highlights in Recent Years**

- Programmatic Agreement under Section 106 of the National Historic Preservation Act (NHPA) 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.
- Stabilization of Corydon Cemetery at Kinzua dam in 2007 in consultation with the Seneca Nation of Indians.
- Nationwide consultation with Federally recognized Tribes on changes to a Regulatory program regulation in 2008/09. All Tribes notified. About 20% of Tribes (over 100) attended meetings sponsored by Corps or commented on issue.
- Albuquerque District Ecosystem restoration along the Rio Grande river and in the Espanola Valley are under way and are co-sponsored by several Pueblos.
- Portland and Seattle Districts have been continuously involved with reestablishment of usual and accustomed fishing sites along the Columbia River, and in consultation concerning the upcoming US-Canada Columbia River border treaty. Many Tribes are involved, including the four Treaty Tribes of the Lower Columbia River: Nez Perce, Umatilla, Yakama and Warm Springs.
- Portland District recently completed the rehabilitation of Celilo Village on the Columbia River by special legislative authority. The new village was turned over to BIA in 2009.

### **Program Highlights in 2011**

- Consultation over the effects of flooding with approximately 40 Tribes along the Missouri and Mississippi Rivers. Omaha District has consulted or visited with Rocky Boys, Wind River, Winnebago, Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, Three Affiliated Tribes, Sisseton-Wahpeton, Yankton Sioux, Flandreau Santee Sioux, Blackfeet, Omaha and others. Memphis District continues to consult with a tribal coalition headed by the Quapaw and Osage. New Orleans District made contact with the Chitimacha.
- Albuquerque District is consulting the Pueblos of Cochiti, Santa Ana, Nambe, Santa Clara, Santo Domingo, San Ildefonso, Jemez, and other tribal communities concerning the effects of the Las Conchas wildfire and subsequent flash flooding.

The District has supplied sand bags to and begun flood response training to several Pueblos.

- Chicago District has consulted with 99 Tribes (too numerous to mention) in the ongoing Great Lakes and Mississippi River Inter-basin Study.
- Pittsburgh District has renewed consultation with the Seneca Nation regarding erosion control on their homelands near Kinzua Dam.
- The Mandatory Center of Expertise (MCX) for Curation at St. Louis District continues its fine work on Native American Graves Protection and Repatriation Act (NAGPRA) compliance. GAO's audit of eight federal agencies' compliance with NAGPRA showed USACE leading in virtually all assessed metrics. It is often singled out for demonstrating government-wide best management practices for NAGPRA implementation.

As of today, all Districts have completed initial summary requirements, and over 95% of the collections with human remains have been inventoried. Districts are working with tribes to determine affiliations, if possible, and currently, districts have repatriated 808 individuals, 43,888 associated funerary objects and 2968 unassociated funerary objects.

- Los Angeles, Albuquerque, Detroit, New England, Omaha, Alaska, Kansas City and Jacksonville Districts are undertaking studies funded under Section 203 of WRDA 2000 (Tribal Partnership Program). Tribes include projects for Lower Brule, Saint Augustine, Tohono O'odham, Havasupai, Hopi, Navajo, Soboba, Pueblo of Jemez, Pueblo de Santa Ana, Maliseets, Passamaquody, Shishmaref, Newtok, Unalakleet, Tazlina, Angoon, Fond du Lac, Bad River Chippewa, Saginaw/ Chippewa, Kickapoo, and Miccosukkee Nations. Projects are divided between ecosystem restoration studies and flood control studies.
- Albuquerque District has drafted the first Federal Cost Sharing Agreement (FCSA) for a watershed study under Section 203. More appropriately called a Watershed Assessment Cost Sharing Agreement (WACSA), it will be signed by the Pueblo of Santa Clara and the Assistant Secretary of the Army for Civil Works
- Tulsa District is supporting several tribes in Oklahoma through its Interagency and International, and Investigations Programs. Notably, it is assisting with design review and construction management for an 8.5M clinic in collaboration with eight tribes-- Cherokee, Quapaw, Seneca-Cayuga, Ottawa, Miami, Peoria, Eastern Shawnee, and Modoc.
- Sacramento District has developed mapping with an overlay of Indian Country to assist the Regulatory Division to pinpoint Tribal issues at the beginning of permit application review under Sec. 404 of the Clean Water Act and Sec. 10 of the Rivers and Harbors Act.
- Rock Island District is negotiating a scope of work with the Sac and Fox Nation for the hydrology and interior drainage analysis of the Iowa River under our Planning Assistance to Tribes and States authority (Sec. 22 WRDA 1970).
- Headquarters is drafting an official USACE Tribal Consultation policy.

**USACE Continuing Goals Implementing the Policies and Directives of Executive Order 13175 and the President's Proclamation of 5 Nov 2009**

- Develop metrics and annually gather data demonstrating level of and number of consultations with Federally recognized Tribes, to include NAGPRA consultations;
- Gather Tribal input on the effectiveness of our policies, guidance, and initiatives related to consultation with Tribes through face-to face meetings, phone calls, e-mail, or possibly, a questionnaire;
- Continue training program with two *Consulting with Tribal Nations* sessions per year, two *Native American Perspectives and Corps Missions* course, and one session of the *Cultural Resources/Tribal* training session of the Planning Associates curriculum.
- Integrate USACE training program with OSD's in a manner benefitting both, such as pooling instructors.