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July 18, 2011

Consultation Policy Comments,
Department of the Interior
Room 5129, MIB
Washington, DC 20240.

E-mail: consultation@doi.gov

Re: Policy on Consultation with Indian Tribes

Thank you for the opportunity to comment on the Department of Interior's (DOI) proposed policy for consulting with Indian Tribes. We support DOI's effort to maintain government to government coordination but question the mechanics of the proposed policy which we suspect will be costly to maintain both in terms of fiscal and personnel resources. We are not aware that the existing consultation mechanism is broken and until DOI can demonstrate that it is fixing a "real problem" and implementing procedures that will both work better and at more reasonable cost to the taxpayer, **we do not support implementation of the Policy on Consultation with Indian Tribes as proposed.**

The AMA is a non-profit membership organization established in 1939 to represent the mining industry. The AMA is composed of more than 1200 individual prospectors, geologists and engineers, vendors, small family miners, junior mining companies, and major mining companies. Our members look for and produce gold, silver, platinum, diamonds, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, etc. from Federal, State, and private lands throughout Alaska.

The proposed policy would create an expensive new bureaucracy in Interior. The cost of establishing a new Tribal Governance Officer and the associated office and an undefined number of Tribal Liaison Officers within the individual DOI agencies is not identified in the proposal. The Nation cannot afford to grow government at this time of fiscal concern. Not only will this bureaucracy be costly in terms of government funds (wages, travel and meeting costs, supplies and equipment) but it may also create project delays and associated costs due to an additional layer of approvals required for decision making.

The proposed process appears to duplicate the NEPA process. The NEPA process is well understood by most government and private entities. The NEPA process is intended to be used by all entities and all have an equal opportunity under the law to be heard. The proposed Consultation Policy appears to give a subgroup of the public an advantage and one that the rest of the public is expected to pay for.

If implemented, the proposed policy must include consultation with Alaska Native Regional and Village Corporations. The 12 Alaska Native Regional Corporations are responsible for

managing subsurface resources on approximately 44 million acres in Alaska. The 200 Village Corporations focus on managing surface rights for portions of the lands for which the subsurface is owned by the Regional Corporations. A balanced DOI policy would include consultation with Alaska Regional and Village Corporations.

The Tribal Consultation Policy fails to recognize the unique situation of Alaskan Tribes.

Alaskan Tribes are legally different than Tribes elsewhere in the United States. Native relationships in Alaska were defined in many ways in 1971 by the Alaska Native Claims Settlement Act (ANCSA). ANCSA created a very different situation than in the other 49 states. It has been described as America's last great Indian Treaty. It is a milestone of Alaska and federal law.

With minor exceptions, ANCSA extinguished Native Land in Alaska and instead created a system of Native Corporations. Thus, the land management authority that is vested in Tribes in the other 49-states is vested in ANCSA Native Corporations in Alaska. With respect to land, Corporations are the organizations with authority and expertise. Alaska Tribes lack land management, environmental, law enforcement, or other land and environment related authorities that come with "Native Land" elsewhere in the U.S. With respect to land management, it makes little sense to coordinate only with Tribal government — which lacks authority and frequently lacks expertise — but exclude the government-established ANCSA landowner who was given authority. This is especially odd as the corporate landowner has much greater expertise and frequently represents the same people as the Tribe. "Tribal" consultation in Alaska should include both groups equally - the Corporation as well as the Tribe.

Alaskan Tribes are functionally different. Outside of Alaska, states have a small number of discrete Tribes. The Tribes often have a large membership and frequently have funding sources other than federal government grants. Often this funding source is based on their ownership of the land. For example, according to the University of Arizona, the state of Arizona has 250,000 Native Americans and 21 Tribes. The 2010 Census indicates Minnesota has 11 Tribes and almost 55,000 Native Americans. In these situations, the reservation land and population base makes it relatively easy for BLM to consult the Tribes. The Tribes have a well-established organization with some sophistication, in part due to their large membership. Because the Tribes have reservations, it is clear what actions may affect the reservation. Put another way, Tribal Consultation is much more defined and easier to accomplish.

Alaska is different. According to the 2010 census, Alaska has 90,000 Native Alaskans and membership is divided into approximately 286 Tribes. Even if every Native Alaskan participated in a Tribe, the average Tribe would only have approximately 300 people. Many Tribes actually have fewer members than that. Tribes of this size just do not have the population base to develop the sophistication of Tribes elsewhere in the US. This problem is made exacerbated because almost all of the Tribes are located in areas without roads and without an economic base. Their sole revenue sources are government grants. In addition, because of the lack of employment, many of the most educated tribal members live away from the Tribe and work for Native Corporations. With respect to DOI coordination, the problem is compounded by the fact that the Tribes do not have land management authority and therefore have no reason

to develop land management expertise. It makes no sense to exclude the Native Corporations with much greater expertise, typically much higher level of education, and are recognized in federal law. “Tribal” Consultation in Alaska should include both groups equally.

A typical example will illustrate the problem. Imagine a small village — 50 households and 150 people. Not all are members of any Tribe. In addition, because of village migration and intermarrying, some are members of Tribes in other locations. Many of the villages also have a city government, and Regional and Village ANCSA Corporations. For this example, BLM is proposing an action that may affect the Native Land (i.e., ANCSA land) near the village. The DOI policy would require consultation with the Tribe, which represents some but not all of the people in the village, but would not require consultation with the corporate leadership, which is better able to coordinate and is actually the entity affected. It would also exclude consultation with the City Government which represents all of the affected Native population. This is a very frequent situation in Alaska. It is caused by the significant differences between Alaska Tribes and other American Tribes. The proposed DOI policy must recognize these differences.

The workload for consulting with Alaska Tribes is different. The geographically dispersed and often isolated small Tribes, without land, create another difficulty. Outside Alaska, the locations of Reservation Land give a definable focus to the actions that require Tribal Consultation. Alaska Tribes are dispersed in 286 locations across the state — a Tribe for every small village. Almost all DOI actions in Alaska are perceived by the Villages as affecting one or more village. Without “reservation” lands, it is very difficult to determine what action does or does not affect a particular Tribe. The proposed policy creates an endless requirement for consultation in Alaska. It will create a huge workload for DOI and it creates the potential to endlessly bog down agency action. It also provides unlimited opportunities for third party lawsuits claiming that consultation was not sufficient.

Summary. For all of the reasons outlined above, DOI policy must recognize the significant differences between Alaska and other Tribes. At minimum it should consider ANCSA Corporations on the same level as Tribes. It should also mandate that local government, if one exists, be included in the same manner as Tribes.

Sincerely,

signed

Steven C. Borell, P.E.
Executive Director

Cc: Governor Sean Parnell
Senator Lisa Murkowski
Senator Mark Begich
Congressman Don Young