



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

Office of the General Manager

June 21, 2011

Consultation Policy Comments  
Office of the Secretary  
Department of the Interior  
Room 5129 MIB  
Washington, DC 20240  
Attn: Ms. Kallie Hanley

**Sent Via Regular Mail & E-mail**

Dear Ms. Hanley:

Proposed Department of the Interior's Policy on Consultation with Indian Tribes

The Metropolitan Water District of Southern California (Metropolitan) is submitting this letter in response to your agency's request for comments on the proposed policy concerning the U.S. Department of the Interior's (DOI's) consultation efforts with Native American Tribes. [Federal Register, Volume 76, Number 96 (May 17, 2011), Pages 28446-28449, FR Doc No. 2011-11971]. Metropolitan appreciates the opportunity to provide comments on this worthwhile endeavor for improved consultation efforts with Native American Tribes.

Metropolitan is a consortium of 26 cities and water districts that provide drinking water to nearly 19 million people of southern California (i.e., in parts of Los Angeles, Orange, San Diego, Riverside, San Bernardino, and Ventura counties). Metropolitan currently delivers an average of 1.7 billion gallons of water per day to a 5,200-square-mile service area. Metropolitan also participates in an array of programs and planning efforts to ensure reliability of its water supply for its member agencies. Accordingly, Metropolitan works or has worked with a number of representatives from the DOI, including staff and management from the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service, and U.S. Geological Survey.

After reviewing the Federal Register notice, Metropolitan has a series of questions. The intent is to encourage the DOI to consider all aspects of its proposed policy in a straightforward and unambiguous manner.

1. **Definitions (FR, Page 28446).** Who will determine whether a DOI activity will have a "substantial direct effect on an Indian Tribe"? What thresholds of significance criteria will be used to establish that a substantial direct affect might occur?

Consultation Policy Comments

Page 2

June 21, 2011

2. **Accountability and Reporting (FR, Page 28447):** “Methods that ensure accountability and reporting are essential to regular and meaningful consultation. The heads of Bureaus and Offices will include in future annual performance plans of their employees appropriate performance measures consistent with this Policy.” Is a similar performance measure in place for DOI employees when coordinating with other affected/impacted governmental agencies during the consultation phase with Native American Tribes?
3. **Consultation Guidelines (FR, Page 28447), Section A, Initiating Consultation.** How does this timeline impact other regulatory permitting processes that may involve Native American consultation, such as with a non-federal agency or private applicant obtaining a Section 404 permit under the federal Clean Water Act, through the U.S. Army Corps of Engineers who in turn coordinates with the U.S Fish and Wildlife Service?
4. **Consultation Guidelines (FR, Page 28448), Section A, Initiating Consultation:** “In the event that the Bureau or Office makes an attempt to initiate consultation and does not receive a response, the Bureau or Office should make reasonable and periodic efforts throughout the process to repeat the invitation.” Shouldn’t there be a prescribed timeline for initiating consultation rather than allowing for unlimited time? For example, wouldn’t it be more appropriate to have a confirmation that the failure of any Native American Tribe to respond to reasonable invitations to consult will not delay or extend any regulatory timelines?
5. **Consultation Guidelines (FR, Page 28449), Section F, Impact of Consultation Guidelines:** Can the policy list possible generic “exigent” circumstances where DOI has to take measures that deviate from it?

Metropolitan recognizes the value of this policy by the DOI and subsequently how it may affect the policies of its bureaus and offices. Please contact me at (213) 217-6217 should you have questions about the comments presented in this letter. In addition, please add Metropolitan to your mailing list for future public notices/documentation on this matter. Thank you.

Very truly yours,



Delaine W. Shane  
Principal Environmental Specialist, Environmental Planning Team

DWS:dws