



*Nez Perce*

**TRIBAL EXECUTIVE COMMITTEE**

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

March 14, 2011

Secretary Ken Salazar  
Department of Interior  
1849 C Street NW  
MS 4141 – MIB  
Washington, D.C.

Re: Comments on Department of Interior Policy on Consultation with Indian Tribes

Sent via email to: [consultation@doi.gov](mailto:consultation@doi.gov)

Dear Secretary Salazar,

The Nez Perce Tribe would like to thank you for the opportunity to provide comments on the draft policy of the Department of Interior (DOI) regarding consultation with Indian Tribes. It is important that the (DOI) set the standard for compliance with the November 5, 2009 Executive Memorandum on Federal Consultation with Indian Tribes. Besides the Bureau of Indian Affairs, the DOI contains a multitude of federal agencies that work on issues that directly impact Tribal treaty rights and tribal governmental operations. Implementation of a policy on consultation by DOI will provide a strong foundation that Tribes can rely on in their interactions with these various agencies. As is stated in the policy, the Nez Perce Tribe will also look for this framework on consultation to provide consistency with how the agencies work with Tribes. The Nez Perce Tribe applauds the efforts of DOI to put this policy into place.

In general, the Nez Perce Tribe has consistently stated that a consultation policy should provide for:

- clear guidelines on what agency actions require consultation with Tribes;
- how notice of such consultation will be provided to an affected Tribe;
- that notice be provided early in any process;
- that consultation will be meaningful and persons involved have proper authority to consult with Tribal leaders on an issue; and

- that there is accountability from an agency for failing to adhere to a consultation policy.

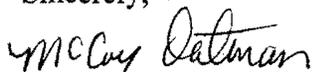
Under those general guidelines, the Nez Perce Tribe provides the following comments on the draft policy:

- The Nez Perce Tribe strongly supports the language in the Guiding Principles of Part II. It is important that appropriate Departmental officials are knowledgeable about any matter under consultation.
- The Tribe also supports the requirement that the persons involved in consultation from the DOI have decision making authority. Although the Nez Perce Tribe is willing to make staff available to work with DOI staff, it does not consider there to be true consultation until there is a meeting with DOI on a policy level on the issue at hand.
- The Tribe supports the broad definition of Department Action with Tribal Implications. This definition is one of the most important components of the policy as it serves as the trigger for all actions under the policy. Tribes expect agencies to use the definition broadly and think proactively about how their actions will affect a tribe. This also requires a good knowledge and background on tribal treaty rights, tribal governmental structure and culture that may be affected by an agency action.
- The Tribe supports the definition and use of Tribal Governance Officer and Tribal Liaison Official. These positions are extremely important in helping efficiently facilitate interactions between tribes and agencies.
- The Tribe supports Part IV of the policy regarding training. The Tribe has long advocated for proper training of employees and officials regarding their duties and responsibilities to tribes within the framework of their federal employment. It is important that the training include an emphasis on a need for knowledge of federal Indian law, jurisdictional issues and treaty rights. The Tribe would also recommend that DOI consider amending this section of the policy to encourage such training to include representatives from Tribes, both elected officials and staff of a tribal government. The Nez Perce Tribe believes such involvement by tribes in the training will increase the effectiveness of the trainings.
- The Nez Perce Tribe supports the policy guidelines requiring communication with tribes avoid using impersonal forms and use communication that effectively gains the attention of tribal leaders and to emphasize the need for effective on-going communication.
- The Nez Perce Tribe recommends that Section VI regarding Accountability and Reporting be strengthened. Although it is important that an office or bureau record and document interactions and communication, the policy does not provide any recourse for Tribes for failure to follow this policy nor does it provide a tribe with an avenue to provide input on these reports or to supplement such reports with their experiences regarding the reported tribal interactions. DOI should provide tribes with some method of input on an agencies compilation and reporting of tribal interactions.

- The Tribe supports the statement in the policy to require agencies to be open to consultation initiated by Tribes. Tribes should not have to wait for an agency to decide if an action has a tribal impact. The Nez Perce Tribe has a competent staff that works hard to protect and preserve our rights. When they identify areas of concern, the Tribe begins to work to remedy that situation and would expect consultation on those issues.
- The Tribe supports the procedure in the policy that encourages agencies to make repeated outreach to a tribe if no immediate tribal response is given from a preliminary consultation outreach. Tribal governments usually perform massive amounts of work on limited budgets and with limited workforce. A non-response by a tribe should never be used or interpreted as a lack of interest or negative response from a Tribe.
- The Tribe supports the requirement paragraph VIII C requiring a written response to any tribal request for consultation. The Nez Perce Tribe is unclear about the reference to the priority of such a request being treated as if received from a state governor. The Tribe can only assume that means such a request will receive the highest priority.
- The Tribe encourages the use of single meetings with staff contained in VIII D(2). The most effective results in addressing issues occur during such interactions. However, it should be clear that such meetings should be designed for the elected officials of the Tribe.
- In addition, part VIII D(2) encourages an agency to make all reasonable efforts to comply with the views of the Tribe. This is an encouraging component of the policy. However, this part could be enhanced to require written explanations by an agency when such views are not complied with in taking an action. The post consultation review process would be a positive step in that direction.
- Part VIII D(3) provides for notice on a final decision. It would be recommended that some sort of pre-decisional notice be employed as well when permissible.
- The Tribe believes the disclaimer provision again removes any accountability that an agency has to comply with the terms of the policy. Tribes look to these policies to be followed if put into place. When they are not followed, what recourse do tribes have if they are adversely impacted?

Overall, the Nez Perce Tribe believes the policy is a strong statement of the intent of DOI to provide a framework for agencies so that they will comply with the terms of the President's Executive Memorandum on consultation.

Sincerely,



McCoy Oatman  
Chairman