



U.S. ARMY CORPS OF ENGINEERS

CONTRIBUTION TO PROGRESS REPORT FOR JULY 2014 - JULY 2015 IN COMPLIANCE WITH EXECUTIVE ORDER 13175

INTRODUCTION

The U.S. Army Corps of Engineers (Corps) serves as the Nation's engineers and provides engineering solutions to our Nation's toughest challenges, including those challenges in Indian Country. Recognizing our responsibility to the Nation's federally recognized tribes, the Corps implements the Corps' six Tribal Policy Principles: 1) Recognition of Sovereignty, 2) Government-to-government relationships with Federally recognized Tribes, 3) Pre-decisional consultation, 4) Fulfillment of the Trust responsibility, 5) Protection, where feasible, of cultural and natural resources, and 6) Promotion of tribal economic capacity building and self-reliance when carrying out our mission with federally recognized tribes. These Tribal Policy Principles echo those of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, 6 November 2000, and the Presidential Memorandum, *Tribal Consultation*, 5 November 2009. The Corps mission is to deliver vital public and military engineering services; partnering in peace and war to strengthen our Nation's security, energize the economy and reduce risks from disasters. Whether working directly in Indian Country or ensuring our trust responsibility to removed tribes, the Tribal Policy Principles and Executive Order 13175 are the foundation upon which we carry out our missions. This reporting period highlights the range of activities from the creation of a dedicated Tribal Nations Technical Center of Expertise to using remote technology to protect tribal artifacts from theft, as well as outreach with tribal youth in Science, Technology, Engineering and Mathematics (STEM) Programs.

CONSULTATION AND OUTREACH

For this reporting period, the Corps is highlighting several initiatives at National, Regional, and District level. The Corps Tribal Liaisons in the 38 Districts are dedicated to the Corps mission and to working with the Native American, Alaska Natives and NHO. Work with Tribal governments is different than working with State and local governments and other partners. District Tribal Liaisons conform their work hours to ensuring effective coordination with the tribes in their areas of responsibility, including working after normal work hours to meet with tribal organizations, driving hours into Indian Country for evening meetings, flying into remote Alaska Native villages, or attending weekend meetings. The dedication of the Corps Tribal Liaisons highlights the spirit of the Corps motto "*Essayons*", Let Us Try.

The Corps engages and consults with federally-recognized tribes, Alaska Natives and Native Hawaiian Organizations in carrying out our mission areas. Every place the Corps touches, Native Americans have been present since time immemorial. Each and every Corps employee must uphold our trust obligations to Native Americans, Alaska Natives and Native Hawaiian Organizations (NHO). The Corps works directly in Indian Country and with removed tribes to ensure the Corps meets our trust obligations. Issues covered in the daily interactions are varied and include staff level engagement through letters, phone calls, in person meetings,

senior level engagement and correspondence and formal Government-to-Government consultation on complex regulatory issues under Section 404 of the Clean Water Act, ecosystem restoration projects, repatriation of human remains, protection of sacred sites, access to usual and accustomed fishing and hunting sites, partnering for projects under various water resources authorities, permitting activities, and management of our nation's rivers -- the Mississippi, Missouri, Rio Grande, Columbia, and Snake, for example.

For the reporting period, July 2014 - July 2015, the Corps developed a set of metrics under which this report was developed. The Corps reports that the majority of our interactions, 65%, with Native Americans and Alaska Natives were under the Corps Regulatory Program. The Operation and Maintenance of Corps projects accounts for over 14% of Corps engagement. Corps Planning Studies account for over 13% of Corps engagement with tribes. The remainder of engagement falls under other Corps programs, including Native American Graves Protection and Repatriation Act.

Of the many face-to-face-meetings reported, most have been at the staff level, working on particular issues as directed by tribal and Corps leaders. Government-to-government meetings are defined as those in which the District Commander and the legal head of a Tribe decide a course of action, a path forward, or sign an agreement document account for over 6% of work with tribes.. Below are highlights of National, Regional, and District initiatives and work with Native Americans, Alaska Natives and Native Hawaiian Organizations. The Corps carries out the majority of our work through letters, emails and phone calls.

Tribal Nations Technical Center of Expertise

In June 2015, the Corps established a dedicated Tribal Nations Technical Center of Expertise (TNTCX) in the Corps Albuquerque District. The Corps establishes centers of expertise in Corps Divisions, Districts, Laboratories, that have a demonstrated capability and expertise in specialized areas that can furnish beneficial and expert assistance. The TNTCX ensures the Corps ability to support our tribal responsibilities that the federal government has to tribes resulting from Federal Trust Doctrine, Treaties, statutes, regulations, Executive Orders, and agreements between the U.S. government and tribal governments. The establishment of a dedicated TNTCX will provide a cost effective administrative tool, one that will benefit the Corps and Tribal Nations, through improved control, consistency, data acquisition and management of Tribal initiatives.

The TNTCX will assist in improving capabilities and management, eliminating redundancy, optimizing the use of specialized expertise and resources throughout the Corps, enhance Corps-wide consistency, facilitate technology transfer, and help maintain institutional knowledge, improve service to Native Americans, Alaska Natives and NHO, including rapid response in emergencies in tribal communities. The TNTCX will work with Corps Senior Tribal Liaison to implement a Corps-wide Tribal Tracking Database System in the next reporting period to more effectively capture nationwide statistics on Tribal projects and programs for business analysis as well as Executive and Congressional information requests.

By creating a TNTCX, the Corps recognizing the increasing needs by Native American

communities, Alaska Natives and NHO for sustainable engineering solutions. This is consistent with the policy of the U.S. to strengthen the Corps partnership with tribal governments and support the ability of tribal governments to build and sustain their own communities. The TNTCX will provide direct services and reach back capabilities to Corps districts and provide work for others assistance on a reimbursable basis for agencies of the federal government, state, tribal and local governments, and private firms as outlined in the Corps Engineering Regulation for the Corps-wide Centers of Expertise Program (E.R. 1110-1-8158).

Regional Engagement

In June 2015, Ms. Jo Ellen Darcy, Assistant Secretary of the Army, Civil Works (ASA(CW)), addressed and responded to questions at a meeting of the All Pueblos Council of Governors. This historic address was the first time ASA(CW) had been invited and addressed this prestigious tribal council. The organization's membership includes the Ysleta Del Sur Pueblo of Texas, Pueblo of Laguna (NM), Pueblo of Acoma (NM), Pueblo of Isleta (NM), Pueblo of Sandia (NM), Pueblo of Santa Ana (NM), Pueblo of Jemez (NM), Pueblo of Zia (NM), Pueblo of San Felipe (NM), Kewa Pueblo (NM), Pueblo de Cochiti (NM), Pueblo of San Ildefonso (NM), Pueblo of Santa Clara (NM), Pueblo of Nambe (NM), Ohkay Owingeh (NM), Pueblo of Tesuque (NM), Pueblo of Pojoaque (NM), Pueblo of Picuris (NM), Pueblo of Taos (NM). Ms Darcy discussed the Corps expanding engagement in Native American communities and the Corps shifting emphasis on resolving conflicts and improving consultation on those conflicts; the greater emphasis by the Corps on partnering with tribes and making sure Native American communities have the opportunity to benefit from the Corps' Civil Works Programs. In addition, Ms. Darcy highlighted some of the challenges of working with Native American communities including: 1) intercultural understanding, 2) mutual unfamiliarity required a lot of learning by both Native American communities and the Corps, and 3) the instrumental role of Tribal Liaison program.

Response and Contingency Operations

During the 2014-15 reporting period, the Corps coordinated extensively and continuously with the Pueblo of Santa Clara, New Mexico (NM), Federal Emergency Management Agency (FEMA), and numerous other federal and state agencies for the mitigation of increased flood risk resulting from the Las Conchas Wildfire. Assistance to the Pueblo began within hours of the Las Conchas Wildfire in May 2011. The Las Conchas fire burned over 150,000 acres and became the largest wildfire in NM history at the time. The historic Native American community of over 1,000 residents is located at the mouth of Santa Clara Canyon which was devastated by the wildfire. The creek that runs through the canyon saw runoff increase a thousand fold and higher in the days after the fire. In addition, rainfall runoff from the mountains reaches Santa Clara village in 20 minutes or less, heightening the immediacy of the danger. Long-term collaboration has allowed the Tribe to strategically employ the various resources of the Corps. A watershed study conducted through the Corps Tribal Partnership Program (Section 203 of the Water Resources Development Act of 2000, as amended) collected data in the immediate aftermath of the wildfire that has directly contributed to both flood risk reduction and planning for future stabilization efforts. Under the Corps Advance Measure Program (P.L. 84-99) the Corps constructed approximately \$12 million in flood risk reduction facilities. Under its Interagency

and Intergovernmental Support Authorities, the Corps is directly producing for FEMA and the Pueblo designs, and estimates for additional future flood risk management activities. Additional flood risk measures are being addressed through the Corps Continuing Authorities Program Small Flood Risk Management Authority.

Land Transfer Back to Tribal Nation

Ever since the late 1990s, various tribal Chairmen of the Mandan, Hidatsa, and Arikara (MHA) Nation have formally requested that the ASA(CW) office work with Corps, Department of Interior (DOI), and the MHA Nation to effect a transfer of lands no longer needed for the operation and maintenance of the Garrison Dam and Reservoir Project, North Dakota. Over the past several years, the Corps, at the direction of the ASA(CW), has worked closely with DOI and the MHA Nation to identify land that could be transferred to DOI to be held in trust for the tribe. The result of these efforts was the development of a Memorandum of Agreement (MOA) with the DOI to facilitate the process for the land transfer. The MOA was formally signed on May 6, 2015, identifying approximately 30,000 acres of land that could be transferred to the DOI to be held in trust for the MHA Nation. This agreement represents a major step forward in the land transfer, and will facilitate the necessary real estate actions to complete the transfer. The lands included in the transfer were originally for the acquired for the construction, maintenance, or operation of the Garrison Dam and Reservoir Project, and the transfer was authorized by the Fort Berthold Mineral Restoration Act of 1984, Public Law 98-602, 98 Stat. 3152 (Oct. 30, 1984). These lands have been determined to no longer be needed for the project. This agreement outlines the process and conditions for the land transfer. Under the terms of the agreement, the land use current land use will continue and not change after the transfer and that public access will be maintained.

Tribal Housing

For many years, a coalition of Tribes have been working with the ASA(CW) office to address concerns associated with displaced Tribal Housing and Fishing Access Sites along the Columbia River. As the series of dams were constructed along the Columbia River over the previous century, a variety of Native villages were displaced and fishing access sites were lost. And while replacement housing and fishing access sites were provided, these varied significantly in quality as compared to non-Native villages. The tribes remain concerned about the both fishing access and the inadequate tribal housing provided. A fact finding report was completed by the Portland District in 2014 to review many of the existing records associated with the housing compensation. The preliminary analysis shows that there may be remaining unmet needs, but the report did not identify any specific actions at this point. Nonetheless, we are working with the tribes and the Corps to explore options for replacing lost housing and/or improving the fish access sites. The Army Office of General Counsel is currently conducting a legal review of the report and its findings. Depending on the outcome of the legal review, the Army will develop a process with the Tribes to address these issues.

Regulatory Permitting (Section 404 of the Clean Water Act)

In August 2014, the Corps Buffalo District Regulatory office received an application from

American Rock Salt (ARS) for construction of a rail spur proposed to cross jurisdictional tributaries in Livingston County, New York. The spur would increase salt production and distribution prior to the winter months for roadway safety. U.S. NY Senator Charles E. Schumer sent a letter to the Chief of Engineers, LTG Thomas P. Bostick, in support of the project. Previous construction activities at the mine in 1999, not involving Corps permits, resulted in identification of, and impacts to Native American burial sites and identification of a complex of archaeological sites. These actions were completed by previous owners of the mine with consultation with the Seneca Nation of Indians and Tonawanda Seneca Nation collaboration. The end result of these actions and impacts left the Seneca and Tonawanda Seneca Nations very dissatisfied with process and outcome. The Corps Buffalo District reached out to the Seneca and Tonawanda Seneca Nations to start consultation, get a better understand the Seneca and Tonawanda Seneca Nations concerns and project history, where the Seneca and Tonawanda Seneca Nations requested a Corps archeologist be included in the process. The Corps Buffalo District obtained the archeological expertise from the Corps Pittsburg District. The end result was completion of a Memorandum of Agreement (MOA) prior to Corps permit issuance that the Nations were very satisfied with. The MOA outlines the details of how the new work would be completed with full consideration and sensitivity to the involved Nations.

Technological Advances

The Corps Mobile District has been working to foster strong relationships with Tribal Nations within their area of responsibility through the use of solid communication and the application of technology. An example of project based relationship building is the conception and execution of the development of the Real-Time Effects Cultural Evaluation Networking Tracking, Planning and Sensitivity Tool (RECENTPAST). This tool has created a multifaceted monitoring and alert system for cultural resource exposure rates on selected projects for inland and offshore cultural resources. The tool using existing U.S. Geological Survey data sets and real time flow rates to track site exposure. As a result, the Mobile District has been successful in pursuing, investigating, and convicting violators of the Archaeological Resources Protection Act (ARPA) with nine convictions which will be addressed in the next reporting period. The ongoing work and court proceeding took place during the current reporting period. The investigators worked closely with an interagency group comprised of the Corps, U.S. Fish and Wildlife Service, U.S. Department of Justice, and the Chickasaw Nation, and the Choctaw Nation of Oklahoma. Part of the success involved the new applications of technology such as cameras to monitor looting activity.

Re-Internment

The Corps Huntington District led the successful re-interment of Native American remains that were previously excavated and stored, in 2001, from the Marmet Lock and Dam (WV) construction site. The human remains, associated funerary items, and surrounding soil matrix were reburied after consultation was completed with the Shawnee Tribes. The Huntington District has fostered and developed a relationship with the Shawnee Tribes that will continue well into the future. This was the first reburial of this type for both the Huntington District as well as the Shawnee Tribes. Two Tribal Officials representing the Shawnee Tribes traveled from Oklahoma to Marmet Lock and Dam (WV) to assist in the reburial of the 25 individuals. The two

Tribal Officials presented the Huntington District with two blankets to express their gratitude for the respect the Huntington District has shown in the treatment of their ancestors. The process for this successful Native American Graves Protection and Repatriation Act (NAGPRA) reburial will be a model for future consultation and reburials.

Native Hawaiian Organizations

For the first time, the Corps is highlighting work that the Honolulu District carries out with NHO. The Honolulu Districts works with NHO under the execution of the Formerly Used Defense Sites (FUDS), Corps Civil Works mission, and the Corps Interagency and International Services (IIS) program which provides technical assistance on a reimbursable basis. The Corps Honolulu District meets regularly with the West Hawaii Island Coordinator for the Office of Hawaiian Affairs (OHA), the OHA Maui Island Coordinator to ensure effective coordination on the Corps Mokuula Ecosystem Restoration Project in Lahaina and the Corps Iao Stream Flood Control Project in Kahalui.

Science, Technology, Engineering and Mathematics (STEM)

The Corps recognizes the critical role that Science, Technology, Engineering and Mathematics (STEM) education plays in enabling the U.S. to remain the economic and technological leaders of the global marketplace, and enabling the Department of Defense and Army in the security of our Nation. The Corps is committed to teaming with others to strengthen STEM-related programs that inspire current and future generations of young people to pursue careers in STEM fields.

Consistent with the Corps National Memorandum of Understanding with the Boy Scout of America dated March 1987, a partnership was formed between the Corps Northwest Division located in Portland, Oregon and the Boy Scouts of America (BSA) in the Pacific Northwest. The focus of the partnership is to conduct STEM related outreach to and increase STEM program opportunities for the Native American/Alaskan Native community. The first program was successfully implemented and completed in June 2015, a BMX themed STEM program, for approximately 28 youth from Portland, Oregon's Native American Youth and Family Center. Ten Corps volunteers from the Northwestern Division and Portland District helped to deliver a STEM based curriculum in which the youth were broken up into teams of two to build a BMX bike prior to performing various experiments that incorporated math skills, mechanical engineering elements, scientific theories, proper nutrition, and physical fitness. Combining a STEM theme to an activity such as bike riding proved to be very successful based on student responses upon course completion.

POLICY DEVELOPMENT AND IMPLEMENTATION

The Corps' Tribal Consultation Policy, signed in 2012, affirmed and formalized current tribal consultation procedures. The Tribal Consultation Policy recognizes the Corps' responsibilities to federally- recognized tribes are the supreme law of the land as stated in Article Six of the United States Constitution. The Tribal Consultation Policy outlines the Corps' responsibilities to federally-recognized Tribes as well as a framework for consulting with

them. It is purposefully general in nature because each of the 566 federally- recognized tribes (including Alaska Native entities) are distinct and separate governments; the consultation process that may be unique to each tribe. The Corps recognizes the sovereign status of tribal governments and our obligation for pre-decisional government-to-government consultation.

During this reporting period, quarterly or monthly teleconferences were conducted in each regional Division: Great Lakes and Rivers, Mississippi Valley, North Atlantic, Northwestern, Pacific Ocean, South Atlantic, South Pacific, and Southwestern. Minutes are circulated to all Districts within the Division and are also sent to HQ USACE in Washington, D.C. This practice supports information sharing, including lessons learned, throughout each Corps Division. If there is an issue in one Division, another Division may have already faced that issue. The Corps' Senior Tribal Liaison participates in the phone calls when possible, and uses information from them to report important developments to the senior leadership.

In an effort for greater consistency in reporting engagement and formal Government-to-Government consultation, a team of Tribal Liaisons volunteered to develop a set of standardized metrics to more effectively capture Corps work with Native Americans, Alaska Natives and NHO. The standardized metrics were used in the development of this report and will be refined with the implementation of the Corps-wide Tribal Tracking Database System which will be utilized in future reporting.

TRAINING AND TOOLS

The Corps is a leader in the federal family in providing tuition free training on consulting with tribal nations. The Consulting with Tribal Nations occurs twice per reporting period. The Corps has been providing this training for over a decade. Course attendees include Corps staff from around the Nation, FEMA, Federal Highways Administration, U.S. Army National Guard, state organizations and private firms. During the reporting period, the Corps Nashville District hosted the 21st Consulting with Tribal Nations from January 13 – 16 in Nashville, Tennessee and the Corps Kansas City District hosted the 22nd Consulting with Tribal Nations from May 12 – 14 in Kansas City, Missouri. The course is taught by Corps Tribal Liaisons and includes tribal members that work with the local Corps district, including removed tribes. In addition to the course, the Corps Senior Tribal Liaison is working with senior instructors on succession planning and developing younger Tribal Liaison to serve as course instructors.

The Corps provides training on Native American Perspectives and Corps Programs. This unique training provides an immersion experience with a Tribal Nations. During the reporting period, the Corps partnered with the Seminole Tribe of Florida to serve as the host to Corps staff on reservation lands. During this unique course Corps staff build skills by interactions with Tribal members, hands on activities, and cooperative efforts in a remote setting. Corps staff thinks “outside of the box” and gain a fresh perspective on interdependencies among natural resources and human activities, and the enormous importance of maintaining the web of sustainability. The Corps is extremely appreciative of the partnership with the Seminole Tribe of Florida and their Tribal Historic Preservation Officer and his staff in hosting another successful course during the reporting period.

The Corps is a learning organization and as such is working to ensure the Tribal Liaison cadre has “Advanced Training” beyond the Consulting with Tribal Nations course. This a new initiative for the Tribal Liaison cadre and during the reporting period the Corps partnered with the FEMA Tribal Liaison and FEMA’s National Emergency Management Institute to provide dedicated training to Corps Tribal Liaisons on *Emergency Management for Tribal Leaders*. By partnering with FEMA, the Corps has been able to ensure effective support of amendments to the Stafford Act in the Sandy Recovery Improvement Act of 2013, which enabled federally recognized tribes the option to make their own request for a Presidential emergency or major disaster declaration independently of a state.

The Corps Tribal Nations Program is also partnering with the Corps Conflict Resolution and Public Participation Center of Expertise on facilitation training and cross cultural communication. This internal partnership will better enable Corps Tribal Liaisons to anticipate, prevent and manage conflicts through collaboration while ensuring interests of the tribes are addressed consistent with the Corps consultation policy and in a transparent manner.

OPPORTUNITIES AND CHALLENGES AHEAD

The Corps has a multitude of opportunities through our authorities and programs to further enhance its support for and partnerships with federally-recognized tribes, Alaska Natives and NHO. The Corps has many authorities and programs that can provide assistance Tribes suffered drought, floods, and fires but as a general matter, most tribes do not have the fiscal resources to address these challenges. Native American communities need flood protection, erosion control, navigation improvements, elimination of hazardous waste, and assistance in planning for the future, and ecosystem restoration to protect their tribal and trust resources. The unique perspectives and intimate knowledge of their surroundings makes Native American communities key in defining water resource problems and acceptable solutions. The Tribes challenge the creativity of Corps engineers and technical staff and produces better projects. The Corps has shown consistently that, with the help and traditional knowledge of tribal partners, these issues can be tackled. The Corps can fulfill its missions and its trust responsibility through a focus on its water resources missions.

The Corps understands that we need to continually train our staff as well as Tribal Liaisons on working with and consulting with tribal nations. The Corps recognizes that there are relationships with federally recognized tribes that are extremely effective and that others may be more challenging and that we need to continually work to ensure we maintain our trust responsibilities and improve those relationships. The Corps is committed to working with Native Americans, Alaska Natives and NHO and believe the steps that we have implemented during the reporting period, from the establishment of the TNTCX, Advanced Training for the Tribal Liaison cadres, succession planning will assist in delivering vital water resources projects to Native American communities as well as ensuring Corps staff continue to meet our trust responsibilities and improve challenging relationships.