



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 15 2015

To: Department of the Interior Members of the Glen Canyon Dam Adaptive Management Program

From: Jennifer Gimbel 
Secretary's Designee
Principal Deputy Assistant Secretary for Water and Science

Re: Department of the Interior (DOI) Tribal Consultation Plan for the Glen Canyon Dam Adaptive Management Program

Dear DOI members:

I am very pleased to transmit to you the Final DOI Tribal Consultation Plan for the Glen Canyon Dam Adaptive Management Program (GCDAMP). As you are aware, this Plan has been in development for quite some time. It reflects input from the GCD Adaptive Management Working Group (AMWG) Tribes and the DOI bureaus, and I appreciate the time and effort that the entire team has put into the development of this document. As each of you ensure your office's application of the Plan to your GCDAMP activities, please understand that I view this as a living document, and I expect that it may change as we continue to work with and learn from the Tribes and each other.

I know that tribal relationships are of the utmost importance to each of our DOI bureaus, as they are to Secretary Jewell and me. Thank you again for your dedication and your continued commitment to working with the Tribes, especially through the Glen Canyon Dam Adaptive Management Program.

cc: Tribal AMWG representatives

DEPARTMENT OF THE INTERIOR TRIBAL CONSULTATION PLAN FOR THE GLEN CANYON DAM ADAPTIVE MANAGEMENT PROGRAM

Introduction

The Grand Canyon (which includes Glen, Marble, and Grand Canyons) is a place of great spiritual and cultural importance for the Indian Tribes of the region, including the Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Navajo Nation, Kaibab Band of Paiute Indians, Las Vegas Tribe of Paiute Indians, Moapa Band of Paiute Indians, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe, Yavapai-Apache Nation, and Pueblo of Zuni. All of these Tribes possess a wealth of knowledge and expertise about the greater Grand Canyon and the Colorado River that has accumulated over countless generations of occupation and in-depth interactions. Aspects of Tribal knowledge that pertain to various elements of the environment and that have contributed to long-term adaptation, stewardship, cosmology, and other elements of culture have recently been discussed under the conceptual umbrella of Traditional Ecological Knowledge (TEK).

Five tribes participate in the Glen Canyon Dam Adaptive Management Program (GCDAMP) including: the Hualapai Tribe, Navajo Nation, Hopi Tribe, Pueblo of Zuni, and Kaibab Band of Paiute Indians and Paiute Indian Tribe of Utah (Shivwits Band), represented as the Southern Paiute Consortium. The Department of the Interior (DOI) bureaus involved in the GCDAMP include: Bureau of Reclamation (Reclamation), National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), U.S. Geological Survey (USGS), and the Bureau of Indian Affairs (BIA) (collectively, Interior bureaus). The Department of Energy (DOE) Western Area Power Administration (Western) is also a participating agency.

The overall purpose of this Tribal Consultation Plan (Plan) is to provide a framework in which the representatives of DOI and the Tribal governments engaged in the GCDAMP can interact in effective, respectful, and constructive ways, so that the rights and governmental status of the Tribes are honored and the traditional knowledge of the Tribes can be brought to bear in the design and implementation of the GCDAMP. The framework relies on, and is consistent with, Department of the Interior Policy on Consultation with Indian Tribes (the DOI Policy) and other relevant laws, executive orders, and policies. Section VII (Consultation Guidelines) of the DOI Policy begins with the statement: “Consultation guidelines are meant to establish uniform practices and common standards, which all Bureaus and Offices will use except when otherwise agreed to in writing by a Bureau or Office and an Indian Tribe, through an individual protocol conforming to the guidelines in this section.” The protocols described in Section VII of the DOI Policy will be applicable until future revisions or modifications are agreed upon pursuant to the DOI Policy. The bureaus associated with GCDAMP recognize that this Plan and any process established by it do not preempt or modify their respective rights and responsibilities under applicable law. This is intended to be a living document that may be modified or revisited based on the agreement of the Tribes and the Interior bureaus.

Authorities

The federal government has a unique relationship with Tribal governments. The federal government supports the right of Tribes to exercise self-governance and has obligations as the trustee for Indian lands and natural resources. The federal Indian trust responsibility must be taken into account when federal agencies take actions that affect Indian trust lands and Indian trust

assets, including actions that are subject to federal laws, such as the National Environmental Policy Act (NEPA) and the Endangered Species Act of 1973 (ESA). Relations between the Federal government and Tribes are shaped by a body of law that includes the U.S. Constitution, treaties, statutes, Executive Orders, Secretarial Orders, and court decisions. This body of law resulted in the United States' trust responsibility to all federally recognized Indian tribes and individual Indian beneficiaries, that is referred to in this document as the federal Indian trust responsibility. The federal Indian trust responsibility consists of the highest moral obligations that the United States must meet to ensure the protection of tribal and individual Indian lands, assets, resources, treaties and similarly recognized rights.

Tribes also have rights under certain federal laws that were enacted to protect historic places, other cultural resources, and the graves of Indian Tribal ancestors. These statutes include the National Historic Preservation Act of 1966 (NHPA), as amended, the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), and Archaeological Resources Protection Act of 1979 (ARPA). In addition, the Grand Canyon Protection Act of 1992 (GCPA) provides that the Secretary shall continue to consult with Indian tribes and other entities when establishing and implementing long term-monitoring programs and activities.

Guidance Policies and Orders

Relations between the federal government and Tribes are also shaped by Executive and Secretarial Orders and agency policy. The DOI and federal bureaus involved in the GCDAMP have formulated and adopted policies regarding the conduct of their respective relationships with Native American Tribes. These policies include: (1) Department of the Interior Policy on Consultation with Indian Tribes, adopted in conjunction with Secretarial Order 3317, *Department of the Interior Policy on Consultation with Indian Tribes* (2011); (2) Department of the Interior Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (1997); (3) FWS's Native American Policy (1994); (4) USGS's Policy on Employee Responsibility Towards American Indians and Alaska Natives (1995); (5) Reclamation's Indian Policy of the Bureau of Reclamation (1998); (6) NPS's Director's Order 71 - Relationships with American Indians and Alaska Natives (1999); (7) BIA's Department of the Interior Bureau of Indian Affairs Government-to-Government Consultation Policy (2000).

In addition to the authorities cited above, on August 20, 2014, DOI Secretary Jewell issued Secretarial Order No. 3335 (*Reaffirmation of the Federal Trust Responsibility to Federal Recognized Indian Tribes and Individual Indian Beneficiaries*) which reaffirms the DOI's federal trust responsibility to federally-recognized Indian tribes and individual Indian beneficiaries. The Order sets forth seven "guiding principles" which the Secretary has directed the entire Department to honor:

1. Respect Tribal sovereignty and self-determination, which includes the right of Indian Tribes to make important decisions about their own best interests.
2. Ensure to the maximum extent possible that trust and restricted fee lands, trust resources, and treaty and similarly recognized rights are protected.
3. Be responsive and informative in all communications and interactions with Indian Tribes and individual Indian beneficiaries.

4. Work in partnership with Indian Tribes on mutually beneficial projects.
5. Work with Indian Tribes and individual Indian beneficiaries to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights.
6. Work collaboratively and in a timely fashion with Indian tribes and individual Indian beneficiaries when evaluating requests to take affirmative action to protect trust and restricted fee lands, trust resources, and treaty and similarly recognized rights.
7. When circumstances warrant, seek advice from the Office of the Solicitor to ensure that decisions impacting Indian Tribes and/or individual Indian beneficiaries are consistent with the trust responsibility.

Secretarial Order 3335 directs that, “[p]ursuant to the long-standing trust relationship between the United States, Indian Tribes and “individual Indian beneficiaries, all bureaus and offices of the Interior are directed to abide by the above guiding principles consistent with all applicable laws.”

Consultation

Federal agencies recognize that relations with Tribal governments are an integral part of their missions. Consultation is essential to maintaining constructive relations with Tribal governments, and is not just a procedural requirement. There is no standard definition of “consultation,” although it generally means more than simply providing information about what an agency is planning to do and allowing concerned people to comment. Rather, “consultation” generally means that there must be two-way communication. For purposes of this Plan, consultation is defined as “the process of seeking, discussing, and considering the views of Native Americans and Tribes listed above. It is built upon the exchange of ideas, not simply providing information.”

Because Tribes are governments, the relationship between the federal government and the Tribes is sometimes described as “government-to-government.” This is recognized in Executive Order 13175 (*Consultation and Coordination with Indian Tribal Governments*), which states, “The United States continues to work with Indian Tribes on a government-to-government basis to address issues concerning Indian Tribal self-government, Tribal trust resources, and Indian treaty and other rights.”

On December 1, 2011, the Secretary of the Interior signed Secretarial Order 3317, (Department of the Interior Policy on Consultation with Indian Tribes) with the purpose of updating, expanding, and clarifying the Department’s policy on consultation with American Indian and Alaska Native Tribes and to “acknowledge that the provisions for conducting consultation in compliance with Executive Order 13175 (*Consultation and Coordination with Indian Tribal Governments*) and applicable statutes or administrative actions are expressed in the Department of the Interior Policy on Consultation with Indian Tribes [the DOI Policy].” Section 2 of Secretarial Order 3317 takes note of the consultation process that led to the development of the policy document, which included convening a “working group of Tribal leaders and Department officials to recommend new approaches to consultation.” The protocols included in this document were

developed through consultation among DOI bureaus and the Tribes and, as discussed below, are consistent with the DOI Policy.

Guiding Precepts

The federal agencies and Tribes involved in the GCDAMP commit to a mutually respectful working relationship that acknowledges Tribal sovereignty and the Tribes' diverse cultural and spiritual values regarding the Grand Canyon (i.e., the Colorado River corridor). This commitment will result in positive outcomes in areas of mutual concern, and reduce the potential for conflicts. The following are guiding principles for this working relationship:

- The Interior bureaus and Tribes involved in the GCDAMP have a common interest in maintaining and improving the condition of cultural and natural resources in Glen, Marble and Grand Canyons.
- The Interior bureaus value the relationships they have developed and are maintaining with the Tribes affiliated with GCDAMP. These relationships require understanding, sensitivity, and respect for Tribal culture and lifeways.
- The Interior bureaus recognize that each Tribe is a unique and distinct cultural entity, and may have diverse concerns that are associated with the Colorado River corridor.
- The Tribes involved with GCDAMP have knowledge of the cultural and natural resources that are valuable to DOI decision makers.
- The Interior bureaus involved in the GCDAMP will interact with Tribal representatives in ways that reflect awareness of the governmental status of Tribes and that demonstrate respect for Tribal knowledge and religious beliefs.
- The Tribes recognize that each federal agency has a distinct and unique mission within the GCDAMP.

Traditional Ecological Knowledge

The term traditional ecological knowledge has been used to describe the knowledge held by indigenous cultures about their immediate environment and the cultural practices that build on that information. The Tribes involved in the GCDAMP advocate for the inclusion of their TEK, when they choose to offer it, and expect that their input will be treated with the same kind of respect as is the knowledge derived from the efforts of western scientists engaged in the GCDAMP. Although there are some fundamental differences between indigenous and Western scientific approaches to the acquisition of knowledge, these differences may be addressed through mutual respect coupled with appropriate consultation and collaboration. It should be noted that TEK is intended to lead to more inclusive approaches to management decisions that have in the past relied almost exclusively on western scientific principles. By broadening the knowledge base, it presents an opportunity for information sharing among various interests and fields of expertise.

Joint Tribal Liaison Positions

Recognizing the importance of DOI's relationship with the GCDAMP Tribes, in 2010, the Secretary of the Interior's Designee appointed a Native American Tribal Liaison to serve as liaison between the Tribes and the Designee on Tribal-related issues, concerns, and requests of the Interior bureaus related to the GCDAMP. The primary goal of establishing this position is to ensure effective communication between and among the Secretary's Designee, the Tribes, the Interior bureaus, and AMP stakeholders.

In December 2012, the Tribes and the Interior bureaus agreed that the position might be more effective if the Tribal liaison position reflected both DOI and Tribal perspectives and agreed to pilot a new structure with a half-time federal liaison and a half-time Tribal member liaison. This structure will be referred to as the Joint Tribal Liaisons (JTL) effective May 2014.

Duties and Responsibilities of the Joint Tribal Liaisons

The JTLs are responsible for facilitating effective consultation with the Tribes on GCDAMP matters. The JTLs will work closely with each other to ensure that Tribal issues, perspectives, and concerns are well communicated to the federal agencies, the Secretary's Designee, and GCDAMP and that the work and discussions of the federal agencies and the GCDAMP are well communicated to the Tribal nations.

The JTLs will defer to individual DOI agencies on issues that are explicitly a bureau responsibility, such as government-to-government consultations that are the responsibility of a particular bureau and for actions and processes outside of GCDAMP. The role of the JTLs is to assist with these communications, but the bureaus will retain the authority and responsibility for these consultations. The JTL's position should be to listen to Tribes and bureaus and facilitate communication, however; the position does not involve setting policy or making decisions for Interior bureaus or for the Tribes.

The responsibilities of the JTLs, and specifically those of the Tribal member JTL, are distinct and independent from those of the Tribal representatives who receive support to participate in the GCDAMP on behalf of their Tribe. The Tribal member JTL must broadly represent not only all of the Tribes involved with GCDAMP and their issues but also the Secretary's Designee and the Interior bureaus when facilitating discussions between the Tribes and the bureaus and analyzing proposed GCDAMP projects and plans. As such, the Tribal JTL may not simultaneously serve as the Tribal GCDAMP or Technical Work Group member and Tribal liaison.

Communication and Coordination

The JTLs serve as the primary contact between the Secretary's Designee and the GCAMP Tribes and other Native American Tribes traditionally or culturally associated with Glen and Grand Canyons. The JTLs develop and maintain effective partnerships with the GCDAMP, the Interior bureaus, and Tribes and serve as the Designee's representative on Native American issues related to the GCDAMP. The JTLs will work directly and consistently with the Interior bureaus to make sure that lines of communication are open and will report regularly on their efforts. This will involve spending time with each Bureau and Tribe as necessary to fully understand issues and

perspectives, as well as to communicate regularly about potential concerns from Tribes or other agencies on these issues. The JTLs will also work with the other GCDAMP stakeholders to increase understanding of Tribal issues by the AMWG and Technical Work Group (TWG) members. The JTLs will attend AMWG, TWG, and other GCDAMP related meetings as appropriate.

The JTLs will coordinate regularly (i.e., at least biweekly, usually by phone) with the Tribes and Interior bureaus. The JTLs will ensure that Interior bureaus are aware of scheduled meetings with Tribes and that concerns raised at meetings are communicated to the appropriate bureaus. Each of the JTLs will coordinate regularly with one another, and shall address issues raised by the GCDAMP Tribes and the bureaus. The JTLs will also meet, as appropriate, with other Grand Canyon traditionally associated Tribes. Those issues that cannot be addressed or resolved shall be elevated and discussed with the Secretary's Designee.

Feedback shall be provided to the Tribes in a timely manner regarding issues raised for coordination with the bureaus, and those elevated for discussion with the Secretary's Designee. The JTLs will make certain that the federal agencies involved in the GCDAMP are aware of the Tribes' diverse concerns with the Colorado River corridor. Further, Tribal representatives are responsible for keeping the officials of their Tribal governments informed regarding the GCDAMP, so that the Tribes' GCDAMP representatives can speak on behalf of their leadership.

Consultation Protocols for the Adaptive Management Program

Consultation among federal agencies and tribes on matters relating the GCDAMP may be conducted during regularly scheduled AMWG and TWG meetings and in separate meetings between one or more federal agencies and one or more tribes held in conjunction with AMWG and TWG meetings. The agencies and the tribes are committed to working to make such meetings serve the purposes of consultation. It is recognized, however, that there are likely to be instances in which consultation will need to take place outside of such regularly scheduled meetings, such as when issues arise that have not been anticipated in an annual work plan. A consultation meeting may also be necessary to maintain the collaborative relationship between an agency and a tribe.

Meetings

The discussion of issues in regularly scheduled meetings of the GCDAMP constitutes a step in the consultation process, but additional government-to-government consultation may become necessary, particularly for specific federal actions or proposals. Accordingly, Tribal and federal agency representatives may need to engage in consultative discussions both before and after GCDAMP meetings. The JTLs will play an active role in the facilitation of these meetings, including the dissemination of relevant information and communications to the respective parties.

(1) Consultation in Conjunction with All AMWG and TWG Meetings. Before each AMWG and TWG meeting, the Designee or the TWG chair, respectively, will be available to meet with Tribal representatives as a group to review the agenda in order to facilitate participation in the meetings. Other federal agencies may be asked to participate in a pre-meeting session if the agency is involved in an agenda item that Tribal representatives want to discuss. During each AMWG and TWG meeting, the chair will ask Tribal representatives if any agenda item or issue raised will require additional consultation. If additional consultation is needed, the relevant

federal agencies and Tribal representatives will schedule a mutually convenient time to meet for further consultation.

(2) *Annual Meeting of All Agencies and All Tribes.* An annual meeting will be held of all federal agencies involved in the GCDAMP and all Tribes for review of the draft work plan for the coming year. Since the AMWG has determined to move to adoption of a triennial workplan it is anticipated that the primary meetings on the budget will occur during development of the triennial workplan. This process assumes that only minor changes will occur in succeeding years. If necessary, separate meetings will be held between one or more agencies and one or more Tribes. This meeting will be integrated into the annual calendar so that tribal concerns identified during the consultation can be discussed in advance of a final work plan proposal. In the interests of logistics, this meeting should be held in conjunction with other regularly scheduled meetings.

(3) *Annual Meeting of GCMRC and All Tribes.* There will be at least one annual meeting of GCMRC and all of the Tribes. The focus of the meeting will be to discuss the specifics of the annual work plan in order to identify potential opportunities for collaborations as well as conflicts between project locations, methodologies, or other aspects of GCMRC sponsored work that might impact TCPs or other traditional aspects of Tribal association with the Grand Canyon. It may be necessary to schedule subsequent meetings with individual Tribes to discuss culturally sensitive topics that cannot be discussed within a group setting. The scheduling of the meeting will be established cooperatively between GCMRC and the Tribes and other entities conducting sponsored work as needed.

(4) *Unanticipated Issues.* When an issue arises that has not been anticipated in an GCDAMP annual work plan, the agency and/or tribe initiating the issue will notify all of the interested entities and offer to consult before the AMWG or TWG meeting at which the issue will be discussed.

(5) *Additional Meetings for Consultation.* If additional consultation meetings are needed for any GCDAMP topic or issue, such meetings will be scheduled at mutually acceptable times.

Confidentiality

Consistent with the DOI Policy, when matters under consultation involve confidential or culturally sensitive information, the bureaus will work with the Indian Tribe to develop a consultation process that addresses the sensitivity of the information to the extent permitted by Federal law. The bureaus will take every legal precaution to protect confidential or culturally sensitive information when requested by one or more Tribe. If litigation or legal requirements impact a bureau's schedule for conducting consultation or their ability to protect such information, the bureau shall explain these constraints to the Indian Tribe.