

TRIBAL CONSULTATION

June 2018

THE SITUATION



The trust relationship between tribes and the federal government has many different forms. One of these relationships involves **tribal consultation, which is the process by which federal agencies consult with tribal governments when federal activities have tribal impacts**. The requirement for federal agencies to engage in tribal consultation is not a matter of law, but rather is mandated by an Executive Order that has been reaffirmed by successive presidents.

WHAT'S THE PROBLEM?

House Republicans have repeatedly ignored Democratic requests to update federal policies and ensure tribes are consulted

before activities on affected land begins. The construction of the Dakota Access Pipeline project is a recent example of the consequences of ineffectual tribal consultation policy. Despite major tribal objections, the nearly 1,200-mile pipeline cuts through sacred burial grounds located on ancestral treaty lands and endangers the Standing Rock Sioux Tribe's main water source.

THE FACT

In 2000, **President Clinton set forth the first policy mandating executive agency consultation with tribes**. President Bush reaffirmed the federal commitment to this policy in 2004, as did President Obama in 2009.

WHY SHOULD AMERICANS CARE?

The differences among tribal consultation policies range from comprehensive to minimal, depending on the agency. This has **caused vast discrepancies in how tribes are treated during consultation, which in turn has resulted in contentious situations and costly delays and litigation** - much of which could have been avoided if real, meaningful consultation had occurred.

WHAT'S CONGRESS DOING?

H.R. 2689, the RESPECT Act, introduced by Ranking Member Raúl M. Grijalva (D-Ariz.), codifies the goals of the Clinton Executive Order by specifying standard consultation procedures for all agencies to follow and providing recourse for tribes when agencies violate their consultation obligation. The GOP has refused to move the bill, first introduced in 2011, out of Committee.



Dems support the enactment of H.R. 2689, the RESPECT Act. It defines consultation as the process of seeking, discussing, and considering the views of tribes on federal activities with tribal impacts, and seeking mutually agreed upon courses of action whenever possible.



The GOP continues to question the need for meaningful tribal consultation, and instead sides with private developers often at odds with tribes.

HOW DO WE MOVE FORWARD?

An Executive Order can easily be overturned by a succeeding president. Tribal consultation must be enacted into law. **Passage of the RESPECT Act will guarantee that meaningful, effective tribal consultation occurs now and in the future.**