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Tribal opportunities with the U.S. Army Corps of Engineers

WASHINGTON, D.C. (June 17, 2016) - This week the assistant secretary of the Army for civil works is implementing two significant actions that will benefit federally recognized tribes and their communities. Based on tribal input, and in order to continue to uphold the tribal trust responsibility, these actions will expand opportunities for the U.S. Army Corps of Engineers and Indian tribes to partner on water resources projects and activities of mutual interest; such as flood risk management, ecosystem restoration, emergency response, and the protection and management of natural and cultural resources.

The first of these actions pertains to Section 1031(b) of the Water Resources, Reform and Development Act 2014, which provides authority for the Secretary of the Army to enter into a cooperative agreement with an Indian tribe, or a designated representative of an Indian tribe, to carry out authorized activities of the Corps to protect fish, wildlife, water quality, and cultural resources. Assistant secretary of the Army for civil works, Jo-Ellen Darcy, has now delegated that authority to the Corps for implementation at any level of the organization, but primarily at the district level where on the ground project operation and management activities occur.

According to Darcy, “The delegation of this authority will allow Corps divisions and districts to coordinate directly with their local federally recognized tribes to engage in cooperative agreements that are mutually beneficial to the Corps and tribes. More specifically, these agreements will allow tribes to build economic capacity while working on joint issues with the Corps pertaining to the protection of fish, wildlife, water quality, and cultural resources.”

Along the Columbia River, tribes now will be better able to partner in species protection and recovery projects. Tribes will also be able to help maintain infrastructure and conduct natural and cultural resource management activities such as invasive species control, planting and management of native species, and monitoring archaeological and sacred sites such as for the series of reservoirs on the Missouri River within the external boundaries of reservations.

“Tribes and the Corps are logical and natural partners when it comes to treaty resource management, water quality monitoring and cultural resource protection”, said Jeremy Red Star Wolf, Chairman of the Columbia River Inter-Tribal Fish Commission. “Tribes have state of the art expertise and a place-based commitment to getting the job done right. We’ve wanted to partner with each other on key projects for some time, the Cooperative Agreement Authority will now allow that to happen”.

The second action further facilitates better partnerships with tribal nations by deleting an unnecessary clause that in the past was included in a Corps’ project partnership agreement, a legally binding agreement between the government and a non-federal sponsor (state, municipal government, flood control district, port authority, etc.) for construction of a water resources project. It describes the project and the responsibilities of the government and the non-federal sponsor in the cost sharing and execution of work.

"The Army Corps decision to lift the long standing waiver requirements is welcome news!" exclaimed Walter Phelps, delegate to the Navajo Nation tribal council from Leupp Chapter. Phelps, who also serves on the council's resources and development committee and the Navajo-Hopi land commission, added "Not only does this benefit the Navajo Nation, but all tribal communities throughout the country will have a streamlined process to get important watershed related projects accomplished. We certainly appreciate the Army Corps swiftly acting in alleviating this tedious regulatory hurdle."

The waiver of sovereign immunity clause was found to be offensive and unnecessary, causing many Indian tribes not to participate with the Corps in water resource development projects or activities. As a result, important projects that could have benefitted tribal economics and environments, species of significance, or protected tribal communities from floods, were not being planned and constructed. In cases where projects did move forward, a significant amount of time and funds were expended discussing and figuring out how to move forward with the waiver of the sovereign immunity clause in place. The removal of this clause will eliminate a major impediment to tribal and Corps partnerships on water resources project development and implementation. The U.S. Army Corps of Engineers recognizes and supports tribal sovereignty, and will continue to search for ways to involve tribes in activities that build their economic capacity while managing important natural and cultural resources.

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