AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 5303
OFFERED BY MS. MOORE OF WISCONSIN

At the end of title I, add the following:

SEC. 1. TRIBAL CONSULTATION POLICY OF THE CORPS.

(a) POLICY.—It shall be the policy of the Army Corps of Engineers to recognize the sovereign status of tribal governments and its obligation under Executive Order 13175 which requires all Federal agencies to “ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications” to engage in pre-decisional meaningful consultation with federally recognized Tribes.

(b) PRINCIPLES OF TRIBAL CONSULTATION POLICY.—The following principles shall guide the Army Corps of Engineers consultation with tribal communities:

(1) RESPECT.—All Federal recognized Tribes are sovereign governments and will be treated with respect.

(A) Sovereignty is the foundation of tribal governments; and

(B) Tribes are responsible for their own governance and managements.
(2) **TRUST.**—The Trust responsibility will be honored and fulfilled.

(A) The Federal Government has a unique legal and political relationship with tribal governments that recognizes self-government and self-determination.

(B) The Army Corps is committed to supporting projects and programs beneficial to Tribes through partnership with them.

(C) The Army Corps of Engineers shall ensure that it addresses tribal concerns regarding protected tribal resources, tribal rights (including treaty rights) and Indian lands. The Army Corps shall protect and allow access to protected tribal resources under its jurisdiction to the extent practicable and will work to develop and implement accesses policies as needed.

(D) The Army Corps of Engineers will share information that is not otherwise controlled or classified information with Tribes.

(3) **GOVERNMENT TO GOVERNMENT RELATIONSHIP.**—The Army Corps of Engineers shall maintain a government to government relationship with Tribes.
(A) Tribes have a unique and distinctive political and legal relationship with the United States.

(B) A Tribe may have access to the Chief of Engineers, the Assistant Secretary of the Army (Civil Works, and other high level individuals if the need arises.

(C) While most interaction will be staff to staff, decision making will be leader to leader (the head of the Tribe and the district commander), with the assistance of the local subject matter expert (typically, the Tribal Liaison).

(4) INTEGRAL PROCESS.—Consultation will be an integral, invaluable process of the Army Corps of Engineer planning and implementation.

(A) Tribes potentially affected by a project or permit, including Tribes whose aboriginal territories extend to the lands where an activity would occur, shall be contacted by letter, telephone, or email sufficiently early to allow a timely review of the proposed action. If contacted, Tribes shall notify the Army Corps of Engineers that other Tribes are potentially affected, and the Army Corps of Engineers has the responsibility to notify those Tribes as well.
(B) Any activity that has the potential to significantly affect protected tribal resources, tribal rights (including treaty rights) and Indian lands, including individuals projects, programs, permit applications, real estate actions, issuance of regulations, and policies (regardless of land status), shall be reviewed at the district level by an individual who effectively interacts with Tribes, usually the tribal liaison.

(C) Consultation shall be conducted at the district or division level under the guidance of an individual who effectively interacts with Tribes, usually the tribal liaison, unless there is a request for input for Army Corps headquarters or headquarters determines input is necessary.

(D) Commands shall ensure that all Tribes with an interest in a particular activity that has the potential to significantly affect protected tribal resources, tribal rights (including treaty rights) and Indian lands are contacted and their comments taken into consideration.

(E) Consultation procedures for individual projects or programs may be developed at the
local level to meet the needs of particular Tribes.

(F) In recognition of the varied organizations and customs of different Tribes, written protocols for consultation procedures may be considered and implemented at the local level with a specific Tribe.

(G) A dispute resolution process will be developed at the onset of the consultation process, including a provision to elevate the consultation to higher Army Corps and tribal levels if requested.

(5) SUPPORT.—The Army Corps of Engineers will support tribal self-determination, self-reliance and capacity building by—

(A) partnering with Tribes on studies, projects, programs and permitting procedures to the extent permitted by law and policy;

(B) providing information on opportunities to compete for requests for proposals or other potential contracts with the Army Corps of Engineer to the extent permitted by law and policy;
(C) sharing appropriate information on Army Corps of Engineers programs, policies and procedures, and public documents;

(D) utilizing tribal knowledge for planning purposes and to inform operations activities;

(E) supporting tribal efforts to lease and operate water resource projects and lands, if appropriate; and

(F) identifying and implementing, within existing authority, other capacity-building opportunities as they occur.

(6) PROTECTION.— The Army Corps shall protect natural and cultural resources.

(A) The Army Corps of Engineers recognizes the importance of strict compliance with the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act, and other statutes concerning cultural and natural resources.

(B) The Army Corps of Engineers acknowledges that compliance with the above statutes may not comprise the full range of consultation, nor of cultural property and resource protection.
(C) To the extent allowed by law, the Army Corps of Engineers shall protect the location of historic properties, properties of religious and cultural significance, and archaeological resources, in consultation with and when requested by any affected Tribe.

(e) OTHER CONSIDERATIONS.—The Army Corps of Engineers shall ensure that its officials are trained and qualified to implement the principles set forth in this section. Therefore, the Army Corps shall, to the extent practicable—

(1) build relationships with Tribes soon after each change of command by face to face interaction at the local headquarters or at tribal offices;

(2) identify and remove procedural impediments to working with Tribes;

(3) share appropriate procedures, regulations, and organizational information with Tribes;

(4) maintain open lines of communication through consultation with Tribes during the decisionmaking process for those matters that have the potential to significantly affect protected tribal resources, tribal rights (including treaty rights) and Indian lands;
(5) provide Tribes with points of contact on project-related issues, and issues in general;
(6) encourage partnerships on projects with Tribes; and
(7) encourage collaborative partnerships on projects with by other Federal and state agencies with Tribes to further their goals and projects.

(d) RECORDS.—Professionals of Army Corps of Engineers who interact with Tribes shall keep records of consultation meetings and other tribal interactions. These records will be accessible and may be made available for purposes of reporting to Office of Management and Budgets through the Defense Department. Each year, the Army Corps of Engineers shall synthesize information from the records and a report shall be submitted to the Defense Department. A copy of this report will be distributed to federally recognized Tribes upon request.

(e) EFFECTIVE IMPLEMENTATION.—The Army Corps of Engineers shall incorporate the 6 tribal policy principles including predecisional consultation, into its planning, management, budgetary, operational, and legislative initiative, management accountability system and ongoing policy and regulation development processes.

(f) NO NEW REQUIREMENTS.—The policies set forth in this section shall not establish new requirements, but
reaffirms procedures and policies already in place. The Assistant Secretary of the Army (Civil Works) shall regularly review and assess the effectiveness of these policies and update the policies, including through a public comment process, every 5 years.

(g) Definition of Consultation.—For purposes of this section, the term “consultation” means deliberate, timely, meaningful, and effective communication that emphasizes trust, respect, and shared responsibility. To the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages, before decisions are made and actions are taken. It shall be deliberate, timely, and meaningful with an emphasis on fostering an active and respectful dialogue concerning actions taken by the U.S. army Corps of engineers that may significantly affect tribal resources, tribal rights (including treaty) rights or Indian lands.