

**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:

1 **SEC. 1 ____ . TRIBAL CONSULTATION POLICY OF THE CORPS.**

2 (a) POLICY.—It shall be the policy of the Army Corps
3 of Engineers to recognize the sovereign status of tribal
4 governments and its obligation under Executive Order
5 13175 which requires all Federal agencies to “ensure
6 meaningful and timely input by tribal officials in the devel-
7 opment of regulatory policies that have tribal implica-
8 tions” to engage in pre-decisional meaningful consultation
9 with federally recognized Tribes.

10 (b) PRINCIPLES OF TRIBAL CONSULTATION POL-
11 ICY.—The following principles shall guide the Army Corps
12 of Engineers consultation with tribal communities:

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

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

18 (B) Tribes are responsible for their own
19 governance and managements.

1 (2) TRUST.—The Trust responsibility will be
2 honored and fulfilled.

3 (A) The Federal Government has a unique
4 legal and political relationship with tribal gov-
5 ernments that recognizes self-government and
6 self-determination.

7 (B) The Army Corps is committed to sup-
8 porting projects and programs beneficial to
9 Tribes through partnership with them.

10 (C) The Army Corps of Engineers shall en-
11 sure that it addresses tribal concerns regarding
12 protected tribal resources, tribal rights (includ-
13 ing treaty rights) and Indian lands. The Army
14 Corps shall protect and allow access to pro-
15 tected tribal resources under its jurisdiction to
16 the extent practicable and will work to develop
17 and implement accesses policies as needed .

18 (D) The Army Corps of Engineers will
19 share information that is not otherwise con-
20 trolled or classified information with Tribes.

21 (3) GOVERNMENT TO GOVERNMENT RELATION-
22 SHIP.—The Army Corps of Engineers shall maintain
23 a government to government relationship with
24 Tribes.

1 (A) Tribes have a unique and distinctive
2 political and legal relationship with the United
3 States.

4 (B) A Tribe may have access to the Chief
5 of Engineers, the Assistant Secretary of the
6 Army (Civil Works, and other high level individ-
7 uals if the need arises.

8 (C) While most interaction will be staff to
9 staff, decision making will be leader to leader
10 (the head of the Tribe and the district com-
11 mander), with the assistance of the local subject
12 matter expert (typically, the Tribal Liaison).

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

16 (A) Tribes potentially affected by a project
17 or permit, including Tribes whose aboriginal
18 territories extend to the lands where an activity
19 would occur, shall be contacted by letter, tele-
20 phone, or email sufficiently early to allow a
21 timely review of the proposed action. If con-
22 tacted, Tribes shall notify the Army Corps of
23 Engineers that other Tribes are potentially af-
24 fected, and the Army Corps of Engineers has
25 the responsibility to notify those Tribes as well.

1 (B) Any activity that has the potential to
2 significantly affect protected tribal resources,
3 tribal rights (including treaty rights) and In-
4 dian lands, including individuals projects, pro-
5 grams, permit applications, real estate actions,
6 issuance of regulations, and policies (regardless
7 of land status), shall be reviewed at the district
8 level by an individual who effectively interacts
9 with Tribes, usually the tribal liaison.

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

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

23 (E) Consultation procedures for individual
24 projects or programs may be developed at the

1 local level to meet the needs of particular
2 Tribes.

3 (F) In recognition of the varied organiza-
4 tions and customs of different Tribes, written
5 protocols for consultation procedures may be
6 considered and implemented at the local level
7 with a specific Tribe.

8 (G) A dispute resolution process will be de-
9 veloped at the onset of the consultation process,
10 including a provision to elevate the consultation
11 to higher Army Corps and tribal levels if re-
12 quested.

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

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

19 (B) providing information on opportunities
20 to compete for requests for proposals or other
21 potential contracts with the Army Corps of En-
22 gineer to the extent permitted by law and pol-
23 icy;

1 (C) sharing appropriate information on
2 Army Corps of Engineers programs, policies
3 and procedures, and public documents;

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

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

9 (F) identifying and implementing, within
10 existing authority, other capacity-building op-
11 portunities as they occur.

12 (6) PROTECTION.— The Army Corps shall pro-
13 tect natural and cultural resources.

14 (A) The Army Corps of Engineers recog-
15 nizes the importance of strict compliance with
16 the Native American Graves Protection and Re-
17 patriation Act, the National Historic Preserva-
18 tion Act, and other statutes concerning cultural
19 and natural resources.

20 (B) The Army Corps of Engineers ac-
21 knowledges that compliance with the above stat-
22 ues may not comprise the full range of con-
23 sultation, nor of cultural property and resource
24 protection.

1 (C) To the extent allowed by law, the
2 Army Corps of Engineers shall protect the loca-
3 tion of historic properties , properties of reli-
4 gious and cultural significance, and archae-
5 ological resources, in consultation with and
6 when requested by any affected Tribe.

7 (c) OTHER CONSIDERATIONS.—The Army Corps of
8 Engineers shall ensure that its officials are trained and
9 qualified to implement the principles set forth in this sec-
10 tion. Therefore, the Army Corps shall, to the extent prac-
11 ticable—

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

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

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

19 (4) maintain open lines of communication
20 through consultation with Tribes during the deci-
21 sionmaking process for those matters that have the
22 potential to significantly affect protected tribal re-
23 sources, tribal rights (including treaty rights) and
24 Indian lands;

1 (5) provide Tribes with points of contact on
2 project-related issues, and issues in general;

3 (6) encourage partnerships on projects with
4 Tribes; and

5 (7) encourage collaborative partnerships on
6 projects with by other Federal and state agencies
7 with Tribes to further their goals and projects.

8 (d) RECORDS.—Professionals of Army Corps of Engi-
9 neers who interact with Tribes shall keep records of con-
10 sultation meetings and other tribal interactions. These
11 records will be accessible and may be made available for
12 purposes of reporting to Office of Management and Budg-
13 ets through the Defense Department. Each year, the
14 Army Corps of Engineers shall synthesize information
15 from the records and a report shall be submitted to the
16 Defense Department. A copy of this report will be distrib-
17 uted to federally recognized Tribes upon request.

18 (e) EFFECTIVE IMPLEMENTATION.—The Army
19 Corps of Engineers shall incorporate the 6 tribal policy
20 principles including predecisional consultation, into its
21 planning ,management, budgetary, operational, and legis-
22 lative initiative, management accountability system and
23 ongoing policy and regulation development processes.

24 (f) NO NEW REQUIREMENTS.—The policies set forth
25 in this section shall not establish new requirements, but

1 reaffirms procedures and policies already in place. The As-
2 sistant Secretary of the Army (Civil Works) shall regularly
3 review and assess the effectiveness of these policies and
4 update the policies, including through a public comment
5 process, every 5 years.

6 (g) DEFINITION OF CONSULTATION.—For purposes
7 of this section, the term “consultation” means deliberate,
8 timely, meaningful, and effective communication that em-
9 phasis trust, respect, and shared responsibility. To the ex-
10 tent practicable and permitted by law, consultation works
11 toward mutual consensus and begins at the earliest plan-
12 ning stages, before decisions are made and actions are
13 taken. It shall be deliberate, timely, and meaningful with
14 an emphasis on fostering an active and respectful dialogue
15 concerning actions taken by the U.S. Army Corps of engi-
16 neers that may significantly affect tribal resources, tribal
17 rights (including treaty) rights or Indian lands.

