



YUROK TRIBE

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July 6, 2021

Office of Management and Budget
New Executive Office Bldg., Rm. 10235
725 17th St. NW,
Washington, DC 20503

Attn: OMB Desk for Equity RFI

Re: Office of Management and Budget, Executive Office of the President, Request for Information, Methods and Leading Practices for Advancing Equity and Support for Underserved Communities through Government, Docket OMB_FRDOC_0001

Aiy-ye-kwee' Acting Director Young:

The Yurok Tribe appreciates the opportunity to provide information to the Office of Management and Budget ("OMB") regarding inequities in government access. We write to provide information on Area 5 (stakeholder and community engagement).¹ The Tribe applauds current efforts to improve stakeholder engagement as well as formal tribal consultation processes. To that end, the Tribe encourages federal agencies to improve formal tribal consultations by committing to standards of free, prior, and informed consent; providing sufficient advance notice of consultations; holding pre-meetings in advance of the consultation session with tribal leaders; and improving the form of notice to ensure that it is received in a timely fashion. With respect to broader engagement of stakeholders in tribal communities, federal agencies should consider increasing communication with those communities through a proactive, iterative, grassroots approach, described further below. The Tribe also recommends that agencies offer multiple methods of stakeholder engagement, including some form of in-person meetings that take place within local communities. Finally, federal agencies should budget more time and resources for stakeholder engagement.

I. Introduction

A. *Background on Yurok Tribe*

The Yurok Tribe is a sovereign nation and federally recognized Tribe, the largest within California with over 6,200 enrolled members. The Tribe's rural reservation is approximately one hour south of the Oregon border—beginning where the Pacific Ocean meets the Klamath River and extending approximately forty-five (45) miles upriver. The Tribe's aboriginal lands extend

¹ This comment was prepared with the assistance of Kristen Miller (kmiller@democracyforward.org) and Sean Lev (slev@democracyforward.org) of the Democracy Forward Foundation.

for more than 200 square miles. Among other purposes, the Yurok Tribe government is organized under the Yurok Constitution to “provide for the health, education, economy, and social wellbeing of our members and future members.”² The Yurok government also ensures “peace, harmony, and protection of individual human rights among our members and among others who may come within the jurisdiction of our tribal government.”³ The Yurok people have always lived along the Pacific Coast and inland on the Klamath River. As stated in the Yurok Constitution:

The Ancestral Lands of the Yurok Tribe extend unbroken along the Pacific Ocean coast (including usual and customary offshore fishing areas) from Damnation Creek, its northern boundary, to the southern boundary of the Little River drainage basin, and unbroken along the Klamath River, including both sides and its bed, from its mouth upstream to and including the Bluff Creek drainage basin. Included within these lands are the drainage basin of Wilson Creek, the drainage basins of all streams entering the Klamath River from its mouth upstream to and including the Bluff Creek and Slate Creek drainage basins, including the village site at Big Bar (except for the drainage basin upstream from the junction of Pine Creek and Snow Camp Creek), and the Canyon Creek (also known as Tank Creek) drainage basin of the Trinity River, the drainage basins of streams entering the ocean or lagoons between the Klamath River and Little River (except for the portion of the Redwood Creek drainage basin beyond the McArthur Creek drainage basin, and except for the portion of the Little River drainage basin which lies six miles up from the ocean). Our Ancestral Lands include all submerged lands, and the beds, banks and waters of all the tributaries within the territory just described. Also included within the Ancestral Lands is a shared interest with other tribes in ceremonial high country sites and trails as known by the Tribe, as well as the Tribe’s usual and customary hunting, fishing and gathering sites.⁴

The Yurok Reservation, established by Executive Order in 1855, is tethered to the lower forty-five miles of the Klamath River, a mile on either side, from the Yurok village of Req-woi at the mouth of the Klamath River to the Yurok village of Weitchpec. The Yurok people, our inherent sovereignty, and the Yurok Constitution provide the Tribal government with authority to create Yurok laws, manage Yurok lands and natural resources, and adjudicate violations of Yurok laws in Tribal Court. The Yurok Tribe’s jurisdiction lies throughout the Yurok Ancestral Territory and “extends to all of its member wherever located, to all persons throughout its territory, and within its territory, over all lands, waters, riverbeds, submerged lands, properties, air space, minerals, fish forests, wildlife, and other resources, and any interest therein now or in the future.”⁵

The Yurok Tribe and its members' health, wellbeing, and cultural resources are intimately connected with the health of the ecosystem and the species within them. As salmon people, we

² Yurok Const., Preamble.

³ *Id.*

⁴ *Id.*, art. I, § 1.

⁵ *Id.*, art. I, § 3.

value management of and reliance on a traditional subsistence diet and practices; they are a vital part of Yurok cultural identity and our economy. Abundant and thriving salmonid populations are essential for the continuation of subsistence, cultural, and economic lifeways of the Yurok people. Decreasing populations of salmonid, other fish and subsistence species negatively impact the Yurok Tribe and our people’s access to commercial fishing income, passing of traditional ceremonial and ecological knowledge to future generations’ children, food security, and health and wellbeing.

The Tribe provides a wide variety of government and social services to the many households that live in its service area. As part of this work, Yurok Tribe often interacts with the federal government regarding programs that impact the Tribe and our members. These interactions take the form of participating in government-to-government consultations,⁶ submitting public comments on rulemakings,⁷ and attending other forms of engagement, such as listening sessions held by advisory committees.⁸ The below suggestions are based on these experiences.

B. Background on Tribal Consultation and Stakeholder Engagement

As sovereign governments pre-dating and recognized under the United States Constitution, American Indian Tribes, including Yurok Tribe, have a nation-to-nation relationship with the federal government. To strengthen those relationships, the federal government has committed to engaging in “regular and meaningful consultation and collaboration with tribal officials.”⁹ Under Executive Order 13175, all agencies are directed to adopt an accountable consultation process that “ensures meaningful and timely input by tribal officials in the development of Federal policies that have tribal implications.”¹⁰

In addition to formal consultations with tribal leaders, federal agencies should proactively engage the broader tribal community. This kind of stakeholder engagement, which focuses on

⁶ See, e.g., Letter from Yurok Tribe Environmental Program to U.S. Environmental Protection Agency, Docket No. EPA-HQ-OPP-2011-0037-0009 (Dec. 20, 2010), available at <https://www.regulations.gov/document/EPA-HQ-OPP-2011-0037-0009> [hereinafter Yurok Consultation Letter] (submitting written comments following a tribal consultation process initiated under Executive Order 13175).

⁷ See, e.g., Comment of Yurok Tribe on Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h), Docket No. EPA-HQ-OPPT-2021-0202-0077 (May 17, 2021), available at <https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0202-0077>; Comment of Yurok Tribe on Proposed Rule for Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes, Docket No. NPS-2015-0002-0036 (May 22, 2015), available at <https://www.regulations.gov/comment/NPS-2015-0002-0036>.

⁸ See, e.g., Listening Sessions & Consultations, Operation Lady Justice, <https://operationladyjustice.usdoj.gov/listening-sessions-consultations> (last visited June 30, 2021) (listing listening sessions held by Operation Lady Justice, the Presidential Task Force on Missing and Murdered American Indians and Alaska Natives).

⁹ Exec. Order No. 13175, Consultation and Coordination With Indian Tribal Governments, 65 Fed. Reg. 67249 (Nov. 9, 2000). See also Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7491 (Jan. 29, 2021) (reaffirming the policies announced in Exec. Order 13175).

¹⁰ Exec. Order No. 13175.

grassroots movements, local organizations, and individual tribal members, should complement and inform government-to-government tribal consultations.

Both types of interaction are critical to improving federal programs, as well as the relationships between the United States Government and American Indian Tribes. The Tribe commends OMB for collecting information on how to improve stakeholder engagement. The Tribe also appreciates the federal government's commitment to meaningful tribal consultation, including through Executive Order 13,175 and the various tribal consultation policies adopted by federal agencies under that Order that are currently under review and hopefully improved upon.¹¹ However, existing tribal consultation processes and stakeholder engagement can be improved, as discussed below.

II. Expectations and Recommendations For Tribal Consultation

In general, tribal “consultations” must be informed by the values of free, prior, and informed consent, occurring prior to the subject of the consultation. The consultation must include two-way dialogue and joint decision-making on a nation-to-nation level that is more than a procedural or box-checking exercise. To facilitate meaningful consultation, agencies should ensure that actions requiring consultation are properly identified, work to make consultation both timely and accessible, and dedicate appropriate agency staff to tribal consultations.

A. *Identifying Actions for Consultation*

To begin, Tribes should have the opportunity to say whether an action requires consultation and agencies should be aware that Tribes may be affected not just by on-reservation actions, but also by funding and personnel decisions related to Federal Indian programs and off-reservation actions. Tribes must be able to initiate consultation if and when an agency fails to begin consultation. Tribal consultation should not be treated in the same way as public notice. Rather, federal agencies should proactively reach out to tribes to seek their consent. Consultation should not be a formulaic box-checking exercise but a true engagement of tribal nations in determining their own future.

B. *Ensuring Timely and Accessible Consultations*

Agencies should also begin consultations early in the agency's process and devote sufficient time and resources to ensure that the consultation is meaningful. Notice should be sent sufficiently in advance of a consultation session to allow time for Tribes to review the consultation issue and develop recommendations. For the Yurok Tribe, ninety (90) days of advance notice should provide sufficient time for preparation on most consultation issues. Historically, agencies have not always consulted the Tribe early enough in the regulatory process to allow for meaningful engagement. For example, in an exchange with the Environmental Protection Agency (“EPA”) regarding a Proposed Federal Plan to Certify Restricted Use Pesticide Applicators Within Indian Country, the agency failed to provide the Tribe with enough time to internally review the plan

¹¹ See, e.g., U.S. Department of Health and Human Services Tribal Consultation Policy (Dec. 12, 2010), available at <https://www.hhs.gov/about/agencies/iea/tribal-affairs/consultation/index.html> [hereinafter HHS Tribal Consultation Policy].

and develop formal recommendations approved by the Tribe's Council.¹² As a result, an Environmental Specialist from the Tribe's Environmental Program was compelled to provide rushed and general feedback without the benefit of a full internal review.¹³

Further, to make certain that Tribes receive timely notice of consultation, the form of notice should include Tribal leader letters and several methods of distribution based on an up-to-date database of Tribal leaders. In addition, there should be a central website, listserv, and RSS feed that holds and distributes all federal agency consultation information and includes a calendar with all relevant consultation dates, deadlines, meeting information, and consultation forecasting.

The notice should also include all necessary background information on the topic to be consulted on, the consultation plan, and offers for pre-meetings with agency staff well before the official consultation meeting and/or comment deadline. Holding pre-meetings helps ensure that the consultation process is meaningful, as required by Executive Order 13175. Pre-meetings allow tribal and federal staff to ask clarifying questions and better prepare for the actual consultation session with tribal leaders. As part of this pre-meeting process, agencies should ask Tribes to provide information on the type of consultation activities and process that work best for them. Because Tribes vary in their cultures, governance structures, and resources, federal agencies should be flexible in their approach to consultations and should be prepared to adapt the process to an individual Tribe's needs.

Similarly, agencies should ensure that Tribal Consultations are accessible. Many Tribes (including the Yurok Tribe) have limited financial resources and staff. This makes it difficult for Tribes to attend certain types of consultations. In some instances, in-person meetings can prohibit participation when they are held in geographic locations that require participants to travel. For example, when conducting consultations on implementation guidance for the Native American Children's Safety Act, the Bureau of Indian Affairs held two in-person consultation meetings—for the entire country—in Albuquerque, New Mexico and Prior Lake, Minnesota.¹⁴ These kinds of consultation sessions are unlikely to be attended by Tribes who are located elsewhere and cannot afford the time and expense of traveling to another state. Moreover, federal agencies should reimburse tribes for time they spend on more technical consultation topics that require the involvement of specialized staff.

C. Federal Staff Dedicated to Tribal Consultation

Finally, consultation should include both Federal and Tribal representatives with expertise in the matter to be discussed and representatives with the authority to make decisions. Each agency, division, and department should have at least one staff position per region solely dedicated to

¹² Yurok Consultation Letter, *supra* n.2, at 1.

¹³ *Id.*

¹⁴ Letter from Bureau of Indian Affairs to Tribal Leaders (2018), available at https://www.indianaffairs.gov/sites/bia.gov/files/sites/bia.gov/files/asia/consultation/DTLL%20and%20Draft%20Guidance%20for%20NACSA%20Consultations.pdf?_gl=1*4bpmy0*_ga*Nzg5NjMwODc3LjE2MjUwMTA5OTQ.*_ga_99DR80KW2E*MTYyNTE4ODg5My40LjAuMTYyNTE4ODg5My4w (listing consultation sessions).

tribal consultation who can work with Tribes throughout the year and develop better consultation policies that account for the nuances of differently situated Tribes—in addition to any federal staff that may already be designated.

III. Recommendations Regarding Stakeholder Engagement

To inform formal tribal consultation, agencies should conduct outreach to broader tribal communities, including local organizations, grassroots movements, non-profits, and individual tribal members. While some federal entities have conducted limited stakeholder engagement beyond formal consultations, existing practices are often insufficient to allow federal agencies to fully understand the needs of, and impacts of federal programs on, tribal communities. To address this, Yurok Tribe recommends that federal agencies increase their engagement of tribal communities through a proactive, grassroots approach that complements the formal consultation process. Further, as with formal consultations, agencies should ensure that stakeholder engagement is accessible by offering multiple methods and rounds of engagement. Finally, agencies should set aside sufficient time to design and conduct stakeholder engagement.

A. *Federal agencies should consider increasing community engagement through a proactive, grassroots approach.*

To begin, federal agencies should consider supplementing stakeholder engagement with increased, targeted engagement of tribal communities. Tribal communities have historically born the disastrous brunt of federal law, policy, and execution through loss of territory, resources, self-government, religious freedom, and even loss of their own children to welfare systems. Federal agencies should adopt a proactive, iterative, grassroots approach to identifying and connecting with local organizations and tribal communities prior to engaging with tribal leaders on consultation issues. Agency decision making would be greatly enriched if the Federal Government engaged tribal communities. To fully understand our needs and the impact of federal programs on our tribe, agencies should seek out the views of community activists, local non-profits, grassroots organizations, and individual tribal members. Each of these stakeholders will be able to add valuable knowledge and experience to the stakeholder discussion.

Such engagement can help identify the problems that our community could use help resolving. For example, in response to a "grassroots movement across the nation," the Department of Justice established an entire Taskforce--named the Operation Lady Justice--to address ongoing issues surrounding missing or murdered indigenous women.¹⁵ As the Taskforce acknowledged, those issues would not have been brought to national attention if not for the grassroots movement. Community engagement can also help agencies to understand the dimensions of a given problem. Further, gathering detailed information and stories from individuals and

¹⁵ Consultation Framing Paper on the Presidential Task Force On Missing and Murdered American Indians and Alaska Natives at 1 (last visited June 30, 2021), available at https://operationladyjustice.usdoj.gov/sites/g/files/xyckuh281/files/media/document/olj-framing_-paper-for-consultations.pdf.

local organizations would also be helpful in building robust administrative records that demonstrate the need for agency action.

To identify and connect with local communities and grassroots organizations, federal agencies should conduct a pro-active, iterative engagement process that leverages existing relationships with tribal leaders and national organizations. Agencies should be sensitive to tribal recommendations of whom they should speak with in the broader community and ask for formal introductions, if necessary.¹⁶ This could be done at multiple points during the consultation process. For example, consultation notices could include requests for recommended contacts. Similarly, agency staff could ask for contact recommendations during the pre-meetings discussed above in Part II(B). Importantly, this process should also be iterative. Upon reaching out to the first round of contacts, agencies should obtain further recommendations regarding other contacts, including advocacy organizations, grassroots groups, nonprofits, and individuals.

This approach is different from previous outreach efforts in several ways. First, it aims to seek out the views of local stakeholders and individuals. Second, and critically, this approach is *proactive* in its efforts to identify and contact local organizations and individuals. Even when previous consultations have allowed local organizations and individuals to participate, federal agencies and advisory committees have tended to rely on organizations and individuals to approach them. For example, the listening session tour held by the Operation Lady Justice Task Force allowed non-tribal leaders to provide testimony (if time allowed), but did not actively reach out and schedule engagements with such stakeholders. Instead, the Taskforce advertised their virtual listening sessions by sending two rounds of letters to Tribal leaders, along with other passive advertising.¹⁷ The Task Force then relied on individuals to register and attend the listening sessions. In contrast, a proactive approach would increase the likelihood that agencies are able to connect with local stakeholders, giving voice to the stakeholders most affected by federal policy.

B. Federal agencies should work with Tribes to offer multiple methods of engagement that are both accessible and meaningful.

To ensure the participation of local stakeholders, federal agencies should ensure that their methods of engagement to ensure that they are both accessible and meaningful.

As is true of tribal governments, many local organizations and tribal communities have limited resources, making it difficult to attend in-person meetings held in distant locations. Likewise, while virtual listening sessions can be a way to address geographic constraints, they too can be

¹⁶ See, e.g., U.C. Davis Health System, *Building Partnerships: Key Considerations When Engaging Underserved Communities Under the MHSA* 4 (2008), available at <https://health.ucdavis.edu/crhd/pdfs/resources/building-partnerships-yellow.pdf> (recommending that tribal leaders share knowledge of, and provide formal introductions to, other community-based organizations and community leaders who may be able to assist with the engagement process).

¹⁷ See Transcript from Operation Lady Justice Listening Session at 4 (Sept. 17, 2020), available at <https://operationladyjustice.usdoj.gov/sites/g/files/xyckuh281/files/media/document/oljbiageneralconsult091720.pdf> (describing efforts to publicize the listening session tour).

inaccessible for many people who live on reservations with poor or no internet access, such as the Yurok Tribe. A 2019 study released by Arizona State University found that more than half the population on reservations live without a land-based internet provider—with 33% relying on cell phone service for at-home internet and 18 % lacking internet access entirely.¹⁸ In keeping with these findings, internet access on Yurok’s reservation is constrained. Those who do have internet access typically have a download speed of 1 to 2 megabits per second (“mbps”).¹⁹ Without reliable internet, reservation residents cannot access virtual listening sessions. And where individuals have only a spotty connection of 1 to 2 mbps, they cannot reliably access virtual conferencing. To give a sense of perspective, a minimum of 10 mbps per device is recommended to engage in video conference calls—more if a household has more than one device online at time.²⁰ And for many households in the U.S., 100 mbps is considered standard.²¹ Aside from poor connectivity, individuals may simply find it challenging to navigate the process of dialing-in and using platforms like WebEx or Zoom. Indeed, such difficulties appeared to prevent a number of registered individuals from speaking at the virtual listening sessions held by Operation Lady Justice.²²

To address these issues, federal agencies should do two things. First, agencies should work with Tribes to learn which kinds of engagement are accessible and meaningful for different local communities. This could occur during the engagement process described above. For example, when seeking recommendations about a particular issue impacting a certain subset of the tribal population, agencies should engage with the relevant tribal department and ask for references regarding how best to engage that community. These conversations should occur before engagement occurs in order to increase participation and ensure that the engagement will be meaningful. Likewise, agencies could ask for feedback regarding previous engagement efforts. As part of this process, federal agencies should also collaborate with Tribes to think creatively about different methods of stakeholder engagement, instead of limiting themselves to the

¹⁸ Arizona State University American Indian Policy Institute, *Tribal Technology Assessment Fact Sheet* at 2 (Fall 2019), available at https://aipi.asu.edu/sites/default/files/tta_fact_sheet_compressed.pdf (summarizing the findings of the full study); see also Arizona State University American Indian Policy Institute, *Tribal Technology Assessment: The State of internet Service on Tribal Lands* (Fall 2019), available at https://aipi.asu.edu/sites/default/files/tribal_tech_assessment_compressed.pdf (full study).

¹⁹ A lucky few have recently upgraded to 8 – 9 mbps

²⁰ How Much Speed Do I Need?, www.highspeedinternet.com (last visited June 30, 2021), <https://www.highspeedinternet.com/resources/how-much-internet-speed-to-work-from-home>.

²¹ *Id.*

²² See, e.g., Transcript from Operation Lady Justice Listening Session at 11 (Sept. 10, 2020), available at <https://operationladyjustice.usdoj.gov/sites/g/files/xyckuh281/files/media/document/olbjbialaskaconsult091020.pdf> (registered speaker was “in the meeting,” but not “dialed in” and therefore unable to speak); Transcript from Operation Lady Justice Listening Session at 4 (Sept. 8, 2020), available at <https://operationladyjustice.usdoj.gov/sites/g/files/xyckuh281/files/media/document/olbjapiacificconsult090820.pdf> (registered speaker was unable to offer testimony apparently because her “audio [was not] set up correctly”); Transcript from Operation Lady Justice Listening Session at 10 (Aug. 31, 2020), available at <https://operationladyjustice.usdoj.gov/sites/g/files/xyckuh281/files/media/document/olbjianorthwestconsult083120.pdf> (listening session host unsuccessfully tried to coach a registered speaker through unmuting their phone or headset, before moving on to a series of other registered speakers who also did not speak—either because they were not present or ran into technical difficulties).

standard menu of in-person and virtual listening sessions. While in-person meetings held in local communities are likely to be more accessible than meetings held virtually or in other states, Yurok understands that it may not be feasible to hold a meeting on every reservation of every tribe affected by a particular agency action. Accordingly, federal agencies should think about how to supplement in-person and virtual meetings with other meaningful interactions. For example, agencies could explore the use of focus groups, group interviews, surveys, questionnaires, the proactive solicitation of written comments, and one-on-one interviews of individuals with particularly valuable expertise or experiences. In all cases, efforts to design and conduct new methods of engagement should be collaborative, transparent, and respectful.²³ Second, agencies should be prepared to offer multiple methods and rounds of engagement. Doing so will not only increase participation (by ensuring that stakeholders have several opportunities to be a part of the process), but also likely improve the kinds of information the agencies gather.

C. *Federal agencies should budget more time for designing and conducting stakeholder engagement.*

To implement the above approaches effectively, federal agencies should budget more time for designing and conducting stakeholder engagement.

In the past, consultation strategies generally, and individual listening sessions in particular, have been remarkably short in duration. Indeed, the time allotted to past listening sessions has been strikingly insufficient to allow for meaningful engagement of local communities.

For example, the Operation Lady Justice Taskforce held a series of regional listening sessions that were scheduled to last 3.5 hours each.²⁴ Even if these listening sessions had been well-advertised and well-attended, 3.5 hours per region is simply inadequate to facilitate a meaningful exchange between an agency and the many communities that live in each region. For example, Operation Lady Justice held one listening session, scheduled for 3.5 hours, to listen to tribal leaders from California, Alaska, Washington, Oregon, and Idaho—a region that is home to 381 Tribes and over a million American Indians.²⁵ Even if Operation Lady Justice had wanted to actively engage each of these communities—each of which has a distinct culture with varied challenges—it would have been physically impossible to hear from leaders of all 381 Tribes, much less other stakeholders from those communities.²⁶

²³ Substance Abuse and Mental Health Administration – Native American Center for Excellence, Steps for Conducting Research and Evaluation in Native Communities at 1 (date unknown), *available at* <https://www.samhsa.gov/sites/default/files/nace-steps-conducting-research-evaluation-native-communities.pdf>.

²⁴ Operation Lady Justice Letter to Tribal Leaders at 1 (providing a schedule of the listening sessions).

²⁵ June 3, 2020 Virtual Listening Session –Tribes in BIA’s Pacific, Northwestern and Alaska Regions, <https://operationladyjustice.usdoj.gov/news/tribes-bias-pacific-northwestern-and-alaska-regions-webinar> (last visited on June 30, 2021).

²⁶ If only a third of Tribes had sent representatives to the listening session, each tribal leader would have been able to speak for just over 1.5 minutes.

Yurok Tribe appreciates your attention to these matters and respectfully requests that federal agencies consider reforming their approach to tribal consultation and stakeholder engagement in line with the above recommendations. If the agency has any questions, please feel free to contact Tribal Council Operations at Tara@yuroktribe.nsn.us.

Wok-hlew',

A handwritten signature in blue ink, appearing to read "Joseph L. James".

Joseph L. James
Chairperson,
Yurok Tribe