**STATEMENT OF MATTHEW L.M. FLETCHER**

**HOUSE OF REPRESENTATIVES**
**COMMITTEE ON NATURAL RESOURCES**

**SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES**

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## Summary

Chairman Gallegos and members of the Committee, it is a pleasure to testify today on the RESPECT Act, a bill to ensure effective consultation between the United States and Indian tribes in regards to federal activities that affect tribal lands and interests.

Today, I hope to provide an overview of the legal, political, and moral obligations of the United States to ensure meaningful consultation between the federal government and Indian tribes to ensure effective consultation between the United States and Indian tribes in regards to federal activities that affect tribal lands and interests. I believe the RESPECT Act is a powerful step toward fulfilling that obligation. Federal-tribal relations work better as a partnership of sovereigns instead of an adversarial relationship where outcomes are governed by which sovereign has the superior bargaining position. The RESPECT Act is a step on that road to partnership, cooperation, and respect between sovereigns.

In the current of federal Indian law and policy, known as the self-determination era, Congress and the Executive branch largely have embraced the trust relationship. In every significant Indian affairs statute of the last several decades, Congress has acknowledged the trust relationship. Unsurprisingly, many Indian tribes thrive under the self-determination policy, growing by leaps and bounds in their ability to govern. The old era of guardianship where the federal government made most major decisions for Indian tribes and Indian people is a relic of the past. Still, federal agencies too frequently move forward with controversial projects – notably the Line 5 and Back 40 Mine projects in the western Great Lakes – without bothering to engage in tribal consultation at all.

Overall, the draft bill is an excellent achievement. The present system is dominated by indeterminacy — no one knows exactly what constitutes consultation; no one knows definitely when to initiate consultation; no one knows exactly what the outcome of consultation is supposed to be; and no one knows how to enforce the consultation mandate, or whether it is enforceable at all. The indeterminacy contributes to the quick breakdown of communication, and a switch from cooperation to adversity.

The discussion draft's specific requirements obligating federal agencies to helpfully document tribal consultation activities will be extremely useful. The breadth of the scope of the consultation requirement in the discussion draft will also be useful. As Congress is aware, many federal projects are delayed by litigation after the breakdown of federal consultation efforts. A clear process will contribute greatly to increased efficiency.

In conclusion, the RESPECT Act is a major step forward in federal-tribal relations. The Indian nations that entered into treaties with the United States – and that petitioned for and received federal

acknowledgment by statute or administrative act – always understood the duty of protection to be a partnership. Consultation is merely an acknowledgment of the respect due to both sovereigns, federal and tribal. Every step the United States takes toward treating Indian tribes as partners is a positive step.

*Miigwetch*.

## Statement

Chairman Gallegos and members of the Committee, it is a pleasure to testify today on the RESPECT Act, a bill to ensure effective consultation between the United States and Indian tribes in regards to federal activities that affect tribal lands and interests.

I am Professor of Law and Director of the Indigenous Law and Policy Center at Michigan State University College of Law, and visiting professor at Michigan and Stanford Law Schools later on in 2019. I am a citizen of the Grand Traverse Band of Ottawa and Chippewa Indians, located in the heart of Anishinaabeki, Peshawbestown, Leelanau County, Michigan. Although I do not speak in my official capacity, I should note that I am an appellate judge for nine Indian tribes – the Grand Traverse Band, the Mashpee Wampanoag Tribe, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, the Pokagon Band of Potawatomi Indians, the Hoopa Valley Tribe, the Nottawaseppi Huron Band of Potawatomi Indians, the Santee Sioux Tribe of Nebraska, and the Tulalip Tribes.

My hornbook, FEDERAL INDIAN LAW (West Academic Publishing), was published in 2016 and my concise hornbook, PRINCIPLES OF FEDERAL INDIAN LAW (West Academic Publishing), in 2017. I co-authored the sixth and seventh editions of CASES AND MATERIALS ON FEDERAL INDIAN LAW (West Publishing 2011 and 2017), with David H. Getches, Charles F. Wilkinson, Robert A. Williams, Jr., and Kristen A. Carpenter. I also authored AMERICAN INDIAN TRIBAL LAW (Aspen 2011), the first casebook for law students on tribal law; THE RETURN OF THE EAGLE: THE LEGAL HISTORY OF THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS (Michigan State University Press 2012); and AMERICAN INDIAN EDUCATION: COUNTERNARRATIVES IN RACISM, STRUGGLE, AND THE LAW (Routledge 2008). I co-edited THE INDIAN CIVIL RIGHTS ACT AT FORTY with Kristen A. Carpenter and Angela R. Riley (UCLA American Indian Studies Press 2012), and FACING THE FUTURE:

THE INDIAN CHILD WELFARE ACT AT 30 with Wenona T. Singel and Kathryn E. Fort (Michigan State University Press 2009). My latest book, ON INDIAN-HATING, will be published by Fulcrum Publishing. My most recent law review articles are forthcoming in the *California Law Review* and the *Michigan Law Review*. I am the primary editor and author of the leading law blog on American Indian law and policy, Turtle Talk, http://turtletalk.wordpress.com/. I graduated from the University of Michigan Law School in 1997 and the University of Michigan in 1994.

Today, I hope to provide an overview of the legal, political, and moral obligations of the United States to ensure meaningful consultation between the federal government and Indian tribes to ensure effective consultation between the United States and Indian tribes in regards to federal activities that affect tribal lands and interests. I believe the RESPECT Act is a powerful step toward fulfilling that obligation. I also hope to provide a snapshot of the universe of cases in which tribes bring claims against the federal government alleging failure to meet consultation obligations.

## I. The Understanding of the Anishinaabeg Treaty Negotiators

In 1836, the collected Michigan Odawa nations met in Washington D.C. to negotiate a treaty with Lewis Cass and Henry Schoolcraft.[1] The Odawa ogemaag selected Aishquagonabe to speak for the Odawak treaty delegation that includes the federally recognized Indian tribes, Grand Traverse Band of Ottawa and Chippewa Indians, Little Traverse Bay Bands of Odawa Indians, and Little River Band of Ottawa Indians, plus the Grand River and Burt Lake Odawa bands still seeking federal acknowledgment. [The Ojibwe nations of the eastern Upper Peninsula of what is now the State of Michigan selected their own speaker.]

[1] See generally Matthew L.M. Fletcher, The Eagle Returns: The Legal History of the Grand Traverse Band of Ottawa and Chippewa Indians 2-33 (2011).

The Odawa nations that negotiated and executed the 1836 Treaty of Washington ceded approximately one-third of the land base of the Lower Peninsula of what is now the State of Michigan, represented in the land cession map drawn by Michigan State University professor Dylan Miner and attached to this document as Appendix 1. The Odawa tribes negotiated for permanent reservations, a promise the United States failed to implement, and for usufructary rights to hunt, fish, and gather on the ceded lands until those lands "were required for settlement."[2] As was established in the first decade of this century during the inland hunting, fishing, and gathering phase of *United States v. Michigan*,[3] much of the ceded territory was never required for settlement. Much of the ceded territory is north of the effective growing season and was therefore not valuable for agricultural land. Instead, the federal government sold or leased almost all the land at pennies on the dollar of the effective market rate to private non-Indian timber interests. Private interests completely eradicated the virgin timber of the entire Upper and Lower Peninsula area.[4] The economic value of that timber is incalculable. Importantly, the deforestation of the ceded territory dramatically undercut the ability of Michigan Anishinaabe to live their lives in accordance with Mino-Bimaadiziwin.[5] The forests housed the wildlife the Anishinaabe depended upon for food. The forests provided the materials for the summer and winter shelter Anishinaabe people required. The forests provided the medicines Anishinaabe people required. In short, the forests were uniquely critical to the livelihoods of the Anishinaabek. The Michigan virgin forests are gone and will not return in our lifetimes, in our children's lifetimes, in our grandchildren's lifetimes.

Imagine a world where the United States consulted with the Michigan Odawa nations before giving away the vast Michigan forests

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[2] Treaty of Washington, Article XIII, 7 Stat. 491 (1836).
[3] Fletcher, The Eagle Returns, supra, at 146-47.
[4] Robert H. Keller, An Economic History of the Indian Treaties in the Great Lakes Region, 4:2 Am. Indian J. 2, 10 (Feb. 1978).
[5] See generally Edward Benton-Benai, The Mishomis Book: The Voice of the Ojibwe (1979).

to private interests. Indian nations could have advised federal officials what those forests meant to the Anishinaabek. Imagine how Indian nations could have advised federal officials how to make the forests economically productive while still maintaining a sustainable forestry. But no. The forests are gone and they are not coming back. Most of the value of that timber left the state. All of the citizens of Michigan lost.

Aishquagonabe and the rest of the Odawa ogemaag negotiated for permanent reservations and for the right to continue to use and maintain the forests. Ultimately, the United States did not fulfill the promise to guarantee permanent reservations, leaving the off-reservation rights as the only remaining valuable consideration for the Michigan Odawaak. Like other treaty negotiations, the American treaty negotiators received massively valuable consideration from the Michigan Odawa nations.[6] In exchange for the cession of their aboriginal title, the Odawa nations received deforestation and the eradication of their lifeways.

The takeaway from this history is that federal-tribal relations work better as a partnership of sovereigns instead of an adversarial relationship where outcomes are governed by which sovereign has the superior bargaining position. The RESPECT Act is a step on that road to partnership, cooperation, and respect between sovereigns.

## II. The Duty to Consult

Indian tribes and the federal government's relationship began as a sovereign-to-sovereign relationship grounded in treaty relations.[7] There are hundreds of treaties between the United States and various Indian tribes. The creation of the treaty relationship between the United States and a given Indian tribe is a form of recognition of that tribe as a

[6] Cf. Washington State Dept. of Licensing v. Cougar Den, Inc., 2019 WL 1245535, at *11 (S.Ct., Mar. 19, 2019) (Gorsuch, J., concurring in judgment) ("[T]he millions of acres the Tribe ceded were a prize the United States desperately wanted.").
[7] Matthew L.M. Fletcher, Federal Indian Law § 5.3, at 212 (2016).

sovereign entity, sometimes referred to as a domestic sovereign.[8] The United States, after all, does not enter into treaties with state governments, corporations, or churches, only foreign nations and Indian tribes. Indian tribes that do not have a formal treaty relationship with the United States, primarily those tribes located in California and Alaska, are acknowledged to enjoy the same relationship with the federal government so long as they are federally acknowledged as a tribal sovereign, either through an Act of Congress or through the federal acknowledgment process.[9]

The treaty relationship imposed a "duty of protection" on the United States for the benefit of recognized Indian tribes.[10] Colloquially, the duty of protection means that the United States as a "superior" sovereign agrees to protect domestic sovereigns, i.e., Indian tribes. The Supreme Court recognized the duty of protection in the Marshall Trilogy of cases.[11] Unfortunately for Indian tribes, the Court analogized the duty of protection to a guardianship.[12] One positive side-effect of that era was the Supreme Court's recognition of the duty of protection as an independent source of Congressional authority to legislate in Indian affairs.[13] In the modern era, the duty of protection is more accurately described as the trust relationship.[14]

In the current of federal Indian law and policy, known as the self-determination era, Congress and the Executive branch largely have embraced the trust relationship. In every significant Indian affairs statute of the last several decades, Congress has acknowledged the trust relationship.[15] Unsurprisingly, many Indian tribes thrive under

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[8] Fletcher, Federal Indian Law, supra, § 5.3, at 212-15.
[9] Fletcher, Federal Indian Law, supra, § 5.1, at 170-75.
[10] Fletcher, Federal Indian Law, supra, § 5.2, at 175.
[11] Johnson v. McIntosh, 21 U.S. 543 (1823); Cherokee Nation v. Georgia, 30 U.S. 1 (1831); Worcester v. Georgia, 31 U.S. 515 (1832).
[12] Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831) (Marshall, C.J., lead opinion).
[13] United States v. Kagama, 118 U.S. 375, 384 (1886).
[14] Fletcher, Federal Indian Law, supra, § 5.2, at 181-94.
[15] For a survey of statutes, see Fletcher, Federal Indian Law, § 5.2 at 188-94.

the self-determination policy, growing by leaps and bounds in their ability to govern. The old era of guardianship where the federal government made most major decisions for Indian tribes and Indian people is a relic of the past.

Or it should be.

As this body well knows, the United States often must decide between many competing interests. Tribal interests in governance, lands, sacred sites, historical sites, economic markets, and jurisdiction often conflict with private, non-tribal interests, state interests, federal interests, and even the interests of other tribes. When the United States must may difficult choices between these completing interests, it is all too easy for government officials to invoke the old guardian-ward model of federal decisionmaking involving tribal interests. To be fair to federal officials, the Supreme Court has effectively given free reign to federal agencies to ignore tribal interests and sweep away the trust relationship.[16]

In my own experience as in-house counsel for Indian tribes from 1998 to 2004, I saw both sides of meaningful tribal consultation. On one hand, I attempted to negotiate with the Department of Labor on the question of whether the Fair Labor Standards Act's minimum wage requirements would apply to tribally run public safety departments, such as police and fire. At that time (the late 1990s), the Department's view was that tribal governments were not governments entitled to an exemption under the law, an agency interpretation made without contacting affected tribes at all that could have cost individual tribes hundreds of thousands or even millions a year. Conversely, I worked with the Environmental Protection Agency on behalf of two other tribal clients (in the early 2000s) on the implementation of the Clean Water and Clean Air Act's authorizations to treat Indian tribes as states for purposes of enforcement. The former situation cost my tribal client

[16] Fletcher, Federal Indian Law, § 5.2, at 209-12.

thousands of dollars in attorney fees before the government agreed to change its policy decision.

Great Lakes tribes now are aligning to protect treaty rights in the western Great Lakes that are threatened with activities, namely, Enbridge Line 5 and the Back 40 Mine. Bryan Newland, the Chairman of the Bay Mills Indian Community, described how the EPA gave tribes 10 days to comment to changes on a settlement agreement favoring the Line 5 owners, but were not given a copy of the proposed changes at all. Bryan Newland, Will the EPA allow the Line 5 Pipeline to remain in the Straits of Mackinac?, Turtle Talk blog, May 31, 2018, https://turtletalk.blog/2018/05/31/will-the-epa-allow-the-line-5-pipeline-to-remain-in-the-straits-of-mackinac/. In the context of the Back 40 Mine, a federal judge relieved the EPA of its duty to consult under the National Historic Preservation Act because the State of Michigan assumed jurisdiction over the mine activities.[17] In both instances, federal consultation with Indian tribes was either nonexistent or minimal. In both the Line 5 and Back 40 situations, public opinion strongly opposes the projects. The RESPECT Act is needed to change the government's understanding of the partnership between Indian tribes and the United States when treaty rights are at stake.

The federal government's duty to consult is a critical element to the United States' ongoing duty of protection, the basis for the general trust relationship.[18] The duty of consultation is also a key element to the duty of free, prior, and informed consent codified in the United Nations Declaration on the Rights of Indigenous Peoples.[19]

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[17] Menominee Indian Tribe of Wisconsin v. EPA, 2018 WL 6681397 (E.D. Wis., Dec. 19, 2018).
[18] Colette Routel & Jeffrey Holth, Toward Genuine Consultation in the 21st Century, 46 U. Mich. J. L. Reform 417, 420-35 (2013).
[19] See generally Study of the Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach, A/HRC/39/62, at 5-8 (Aug. 10, 2018); S. James Anaya & Sergio Puig, Mitigating State Sovereignty: The Duty to Consult with Indigenous Peoples, 67 U. Toronto L.J. 435 (2017).

## III. Comments on the RESPECT Act Discussion Draft

Overall, the draft bill is an excellent achievement. The present system is dominated by indeterminacy — no one knows exactly what constitutes consultation; no one knows definitely when to initiate consultation; no one knows exactly what the outcome of consultation is supposed to be; and no one knows how to enforce the consultation mandate, or whether it is enforceable at all. The indeterminacy contributes to the quick breakdown of communication, and a switch from cooperation to adversity.

The discussion draft's specific requirements obligating federal agencies to helpfully document tribal consultation activities will be extremely useful. The breadth of the scope of the consultation requirement in the discussion draft will also be useful. As Congress is aware, many federal projects are delayed by litigation after the breakdown of federal consultation efforts. A clear process will contribute greatly to increased efficiency.[20]

*Treaty rights*. The discussion draft appears to leave out reference to treaty rights. I recommend included explicit reference to treaty rights to ensure that treaty rights affected by federal activities are included. Section 4(1) defines "activities" broadly, and properly so. Section 4(A) in particular is broad enough to include most, if not all, tribal interests arising from treaty rights. However, recent treaty rights litigation such as the culverts case in the Pacific Northwest, the pipeline cases in the northern Great Plains and in the Great Lakes area, and other treaty rights matters involve the critical treaty right to a homeland, originally recognized in the Supreme Court decision *United States v. Winans*.[21] Federal approvals of projects far from reservation lands that have the potential to destroy off-reservation resources protected by treaty rights such as clean water and fish habitat should require tribal consultation.

[20] Dean B. Suagee, Consulting with Tribes for Off-Reservation Projects, 25:1 Nat. Resources & Env't, 54, 55 (Summer 2010).
[21] 198 U.S. 371, 385 (1905).

Explicit reference to treaty rights would be helpful to avoid conflict over the scope of the duty of consultation.

*State government activities*. Many tribes are frustrated with state governments that are implementing federal programs affecting tribal interests. In some instances, the United States has delegated federal powers to state government to effectuate a particular purpose, such as implementing the Clean Water Act. Absent the delegation to the state, the United States would remain obligated to engage in tribal consultation. The discussion draft could be clarified to ensure that states implementing or administering federal programs respect the duty of tribal consultation.

*Section 105(b) — Payment for Tribal Documentation Work*. This section alone would constitute a great advance in federal-tribal relations. Few tribes would choose to divert scarce tribal resources to a project in response to the requests of the federal government to explain the tribe's interest and how that interest might be affected by a proposed federal project. As the cases listed in Appendix II indicate, all too often federal consultation efforts devolve into an adversarial situation. Federal money available to handle those requests for information is more likely to make a tribe respond to consultation inquiries.

I might suggest expanding this section to include more activities. Quick research into tribal laws available at the National Indian Law Library's website showed that there are relatively few tribal consultation statutes or formal offices for responding to consultation requests.[22] It would be very helpful if there were funding available for tribes to develop their own tribal consultation laws and consultation offices. As the record shows, many tribes cannot efficiently respond to federal consultation requests, and sometimes federal inquiries go

[22] The Rincon Band of Luiseño Mission Indians' tribal consultation ordinance (Rincon Tribal Code § 2.800 et seq.) appears to be a very good model, and is available here: https://narf.org/nill/codes/rincon_luiseno/index.html.

nowhere because there is no formalized tribal process. Federal self-determination appropriations could be increased to meet that need.

*Section 401 — Judicial Review*. Tribal consultation only works if the government notifies and begins consulting with affected Indian tribes prior to the earliest stages of a project, a notion that undergirds Section 101 of the discussion draft. The survey of cases contained in Appendix II includes a few cases where an agency waited until a project was well underway, or where an agency went ahead with a project before receiving a response from a tribe, or where the agency made no effort whatsoever to engage in consultation. There are also cases where a tribe sued an agency successfully under another statute, such as the National Environmental Policy Act or the National Historic Preservation Act, while the tribe's claims under the tribal consultation policy failed. In a situation where the agency, for whatever reason, does not consult with an Indian tribe but moves forward with a project anyway, judicial review is a critical tool for tribes. Section 401 is a great first step.

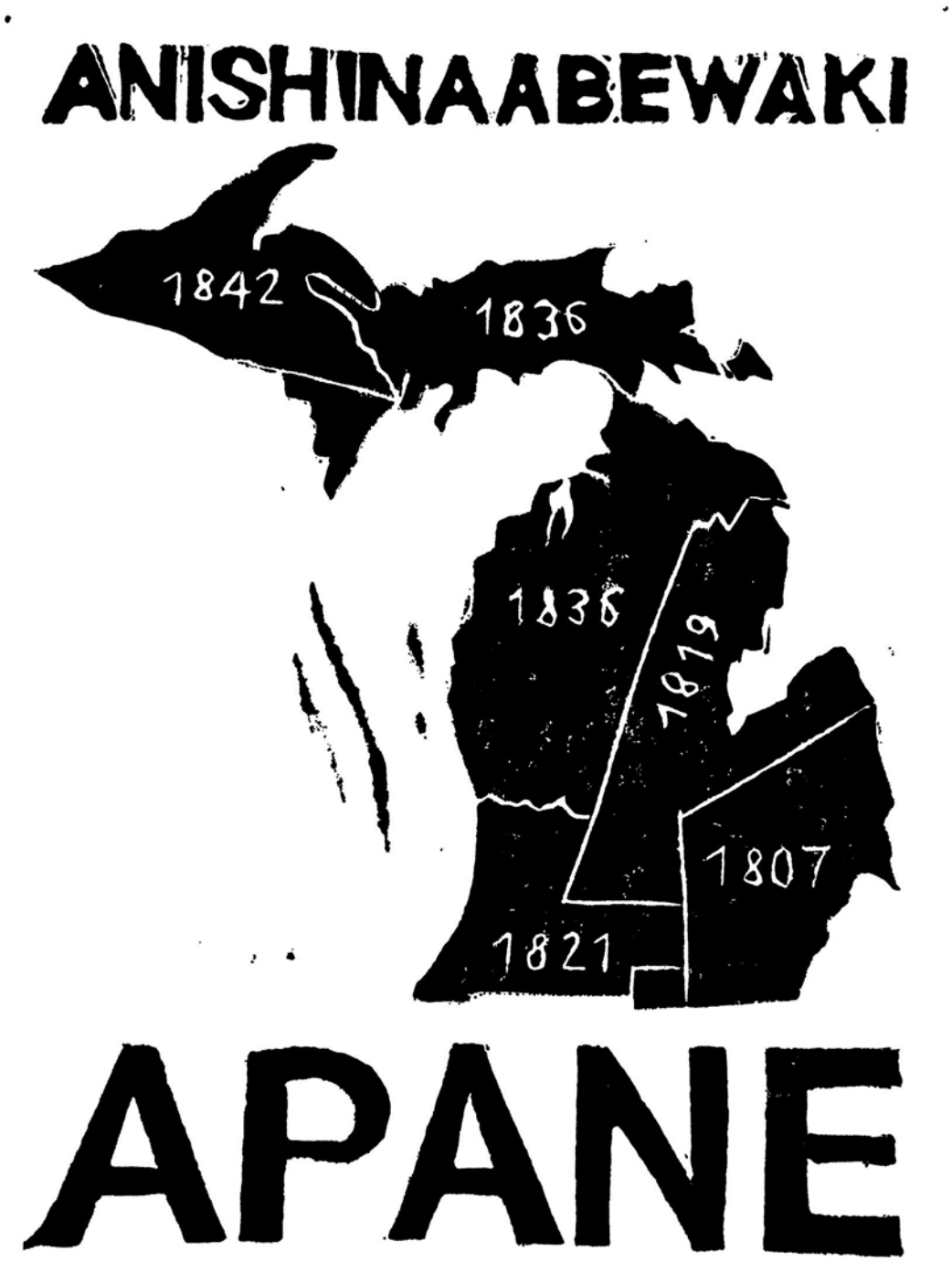
*Survey of Federal Court Litigation over Tribal Consultation*. The table that appears as Appendix II is a non-comprehensive list of federal court cases brought by Indian tribes against federal agencies or federal officials alleging that the United States failed to adequately consult with those tribes. A significant number of these cases concluded with injunctions against federal projects going forward, either because of the failure to adequately consult with tribes or for some other violation of federal law raised by the tribal plaintiffs, such as the failure to comply with NEPA. It is possible, perhaps even likely, that tribal consultation could have addressed the issues raised by the tribes.

In conclusion, the RESPECT Act is a major step forward in federal-tribal relations. The Indian nations that entered into treaties with the United States – and that petitioned for and received federal

acknowledgment by statute or administrative act – always understood the duty of protection to be a partnership. Consultation is merely an acknowledgment of the respect due to both sovereigns, federal and tribal. Every step the United States takes toward treating Indian tribes as partners is a positive step.

*Miigwetch*.

Appendix I




DYLAN MINER, *ANISHINAABEWAKI APANE – ALWAYS (AND CONTINUOUSLY) INDIGENOUS LANDS* (2017)

# Appendix II

| Case | Tribal Interest | Form of Consultation; Outcome | Likely Compliance with Proposed RESPECT Act? | Federal Court Outcome |
|---|---|---|---|---|
| Coyote Valley Band of Pomo Indians v. DOT, 2018 WL 1569714 (N.D. Cal. 2018) | Sacred sites [Coyote Valley + Round Valley tribes] | Notice + Comment; Approval of project over tribal objections | No | Agency allowed to proceed |
| Havasupai v. Provencio, 906 F.3d 1155 (9th Cir. 2018) | Sacred sites + Environmental | None | No | Agency allowed to proceed [cert petition filed March 2019] |
| Cachil Dehe Band v. Zinke, 889 F.3d 584 (9th Cir. 2018) | Economic [gaming] | Notice [tribe did not respond] | Possibly | Agency allowed to proceed |
| Hopi v. EPA, 851 F.3d 957 (9th Cir. 2017) | Economic interest | Notice + Comment (excluded in late stages); Approval of project over tribal objections | No | Agency allowed to proceed |
| Standing Rock Sioux v. US Army Corps, 205 F.Supp.3d 4 (D.S.D. 2016) + related proceedings (ongoing) | Sacred sites + Environmental interests | (Late) Notice + Comment; Approval of project over tribal objections | Likely no | Agency allowed to proceed |
| Cheyenne River Sioux v. Jewell, 205 F.Supp.3d | Bureau of Indian Education | Notice + Comment (certain info excluded from gov't | No | [Tribe stated claim of inadequate |

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| 1052 (D.S.D. 2016) | restructuring | materials); Proposal sent to Congress without tribal consent | | consultation] |
| Colorado River Indian Tribes v. DOI, 2015 WL 12661945 (C.D. Cal. 2015) | Sacred sites | Notice + Comment + [partial] Remediation; Approval of project over tribal objections | Likely not | Agency allowed to proceed |
| Yakama v. USFS, 2015 WL 1276811 (E.D. Wash, 2015) | Sacred site (Yakama and Umatilla tribes) | Notice + Comment; Approval of project over tribal objections | No | Agency enjoined (violation of NHPA) |
| Quechan v. DOI, 927 F.Supp.2d 921 (S.D. Cal. 2013), aff'd, 673 Fed.Appx. 709 (9th Cir. 2016) | Historic sites | Notice [tribe did not respond for 4 years] | Possibly | Agency allowed to proceed |
| Summit Lake Paiute v. BLM, 496 Fed.Appx. 712 (9th. Cir 2012) | Sacred sites | Notice + Comment + Site Visits; Approval of project over tribal objection | No | Agency allowed to proceed |
| Quechuan v. DOI, 755 F.Supp.2d 1104 (S.D. Cal. 2010) | Sacred site | Notice + Comment; Approval of project over tribal objections | No | Agency enjoined (violation of NHPA) |
| Crow Creek Sioux v. Donovan, 2010 WL 1005170 (D.S.D. 2010) | Suspension by HUD of Contractors | None | Not clear | Agency allowed to proceed |
| Te-Moak Shoshone v. DOI, 608 F.3d 592 (9th Cir. 2009) | Sacred site | Notice (1 year late) | No | Agency enjoined [NEPA violation] |

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| South Fork Shoshone v. DOI, 588 F.3d 718 (9th Cir. (2009) | Sacred site | Notice + Comment + Study + Cooperation; Approval of project over tribal objections | Possibly | Agency enjoined [NEPA violation] |
| Yankton Sioux v. HHS, 533 F.3d 634 (8th Cir. 2008) | Closing of Indian Health Service ER | Report issued to Congress including presentation of "tribe's views" | No | Agency allowed to proceed |
| Pit River Tribe v. USFS, 469 F.3d 768 (9th Cir. 2006) | Sacred sites | None | No | Agency enjoined |
| Fallon Shoshone Paiute v. BLM, 455 F.Supp.2d 1207 (D. Nev. 2006) | Sacred sites + Indian ancestral remains | Notice + Comment [terminated after tribe retained experts]; Approval of project over tribal objection | No | Agency enjoined (violation of NAGPRA) |
| Yankton v. Kempthorne, 442 F.Supp.2d 774 (D.S.D. 2006) | Indian education restructuring | Notice + Comment; Approval of project over tribal objections | No | Agency enjoined (violation of BIA consultation policy) |
| Cheyenne Arapaho v. US, 2006 WL 8436383 (W.D. Okla. 2006) | Economic interest (gaming) | None | No | [federal gov't motion to dismiss denied] |
| Eight Northern Indian Pueblos v. Kempthorne, 2006 WL 8443876 (D.N.M. 2006) | Bureau of Indian Education restructuring | Notice [inadequate as to consequences of project] | No | Agency enjoined |
| Yankton Sioux v. US Army Corps, 194 F.Supp.2d | Indian ancestral remains | Notice + Cooperation [partial, until gov't | No | [tribe's motion for injunction denied as |

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|---|---|---|---|---|
| 977 (D.S.D. 2002) | | terminated] | | unripe] |
| Winnebago v. Babbitt, 915 F.Supp. 157 (D.S.D. 1996) | BIA agency hiring freeze + Reduction in Force | None | No | Mandamus issued against agency |
| Lower Brule Sioux v. Deer, 911 F.Supp. 395 (D.S.D. 1995) | BIA Reduction in Force | None | No | Mandamus issued against agency |
| Oglala Sioux v. Andrus, 603 F.2d 707 (8th Cir. 1979) | BIA superintendent reassignment | None | No | Agency enjoined (violation of general trust duty) |