

2024 BARRIERS TO ACCESS TRIBAL CONSULTATION AND LISTENING SESSION
REPORT OUT
U.S. Department of Agriculture (USDA)
Forests and Public Lands Management: Barriers to Access
April 23, 2024
Virtual Meeting

Mission Areas: Natural Resources and Environment (NRE)

Agency: U.S. Forest Service (USFS)

Consulting Officials:

- Meryl Harrell, Deputy Under Secretary, NRE
- Randy Moore, Chief, USFS
- John Crockett, Deputy Chief for State and Private Tribal Forestry, USFS
- Heather Dawn Thompson, Director, Office of Tribal Relations (OTR)

I. Opening Prayer, Welcome, and Opening Remarks from Consulting Officials

II. Nation-to-Nation Consultation (Tribal government officials)

A. Tribal Treaty Rights

- A Tribal leader commented on the need for training on treaty rights with Tribal leaders who have intimate knowledge. Tribal leaders called for policies that would require federal employees to learn from Tribal governments, so they know more about the territory that USFS is managing. The Tribal leader expressed that while Tribes are subject to Federal laws, the Federal government should also respect Tribal sovereign laws.
 - USFS acknowledged the need to listen more and implement feedback. USFS shared that senior leaders have held listening sessions and traveled to Indian Country. USFS shared that it has waived matching fund requirements where possible under the law. USFS also shared the first [Forest Service Tribal Action Plan](#), published in February 2023, which requires employees to be familiar with treaty rights in their area.
- A Tribal leader emphasized the importance of treaty rights in their National Forest. The Tribal leader noted concerns about fire damage to recreation areas. They looked at simple co-stewardship actions, such as work along shared USFS boundaries, but USFS informed them that their proposal did not meet Tribal Forest Protection Act (TFPA) standards.
 - USFS noted that it can be flexible in how agreements are built and if Tribes are hitting resistance locally, they can raise those concerns up to more senior leaders. USFS is trying to expand an understanding of new authorities and tools throughout the USFS workforce and will follow up to make sure local forests receive this information as well.

B. Indigenous Knowledge¹

For the purposes of this Report Out, Indigenous Knowledge, Indigenous Traditional Ecological Knowledge, Cultural Knowledge, and Native Science will be used interchangeably to accurately reflect Tribal comments.

- A Tribal leader, in reference to data sovereignty, expressed gratitude to the USFS for protecting Indigenous data, but requested that USDA review policies and enhance opportunities to protect data, knowledge, ownership, and disclosure.
 - NRE noted that the Freedom of Information Act (FOIA) allows for some exemptions to open records requirements and USFS specifically does have some authorities that allow for exemption to FOIA, but deeper discussion is necessary. Tribal leaders responded by noting that Nation-to-Nation relationships should seek to reduce the fear of sharing sensitive information because of public disclosure requirements.

C. *Unmet Budget Needs*

- A Tribal leader recommended expanding the use of the Good Neighbor Authority, co-stewardship agreements, the Tribal Forest Protection Act and other authorities, and expanded self-governance under the Indian Self-Determination and Education Assistance Act, often referred to as “638 authorization.” They also noted that the constant staff changes in USFS line officers presented challenges to Tribes. They noted that the National Environmental Policy Act (NEPA) requires a wildlife specialist report, yet despite having biologist on staff at the Tribe, they must wait for USFS to respond, which creates a lack of action on NEPA and limits forest restoration. A Tribal leader asserted that this is a good example of where 638 authorities would grant Tribes the federal funding to complete the environmental assessments quickly and cheaply. Expanding 638 authority would allow Tribes to fill empty Federal staff functions with Tribal staff. A Tribal leader also emphasized the importance of expanding 638 compacting authorities, citing it as the most efficient way of administering federal programs and funds in Indian Country. A Tribe called on USFS to identify barriers to achieving this objective with the USDA and Congress, emphasizing this as the biggest barrier Tribes face right now in working with the USDA.
- A Tribal leader reiterated concerns about USFS staff turnovers. Mescalero Apache noted that before a tribal liaison was hired locally, they relied on an archaeologist. They noted their signing of one of the first co-stewardship agreements, but the history of co-stewardship accomplishments was not shared with the new liaison. They raised questions around USFS recordkeeping and why they did not have better records of a multi-year, multi-million-dollar agreement with significant investments/accomplishments. They noted it is disconcerting that the Tribe has to assume the responsibility of providing information on what it has accomplished on USFS lands to the USFS. They also would like to see expanded 638 forest authorities and cited difficulties in moving forward, because heavy turnover makes it difficult to get things off the ground.
 - USFS responded with requests for Tribes to help new leaders as Tribes hold the expertise in these areas. USFS also noted that prior to co-stewardship agreements, TFPA was the only authority, but there are now more tools USDA can use.

III. **Listening Session (Open to Indian Country speakers)**

A. *Tribal Treaty Rights*

- A Tribal staff member noted that USDA should recognize unceded rights, particularly as a signatory to an interagency MOU on this topic. They also stated that cultural

burning is a Tribal right and a sovereign practice that is distinct from prescribed fire. They mentioned that cultural fire holds legal protection for their communities and requests that USFS not consider cultural burning as a federal action, but rather as a recognition from one sovereign to another. They emphasized that Tribes should not need to seek approval from USFS to practice cultural burning because it is distinct from fire suppression and the lack of it is part of the wildlife crisis. This staff member requested that USFS involve Indigenous people in biological assessments because current participation is limited and resulted in missed critical windows for action. They request incorporation in the process and policy development. They also noted that 98 percent of their tribe's lands are co-located for USFS and there is a lot of work happening for public benefit. In regard to data sovereignty, this staff member encouraged implementing a policy and would like USFS agreements to reference how Tribes are defining their own data sovereignty expectations to protect Indigenous Knowledge.

- NRE acknowledged the important recommendations in reports and the distinction of cultural burning, which aligns with the historic removal of access to cultural burning on ancestral homelands. The agency emphasized their commitment to continuing work in this area and noted that many co-stewardship agreements have been able to find pathways to enable cultural burning. The agency agreed to lift those up through existing authorities. NRE also committed to following up on biological assessments.

B. Indigenous Knowledge

- A community member highlighted the recent renaming of a trailhead within a local national park and the importance of language. They also noted efforts with the USFS and appreciated seeing an agency recognizing this through renaming of federal sites. USFS needs some beginning processes, orientations, and trainings to provide staff with understanding of cultural competency, understanding significance and science of Indigenous Traditional Ecological and Cultural Knowledge (ITEK), and to deal with constant need for re-educating staff because of high turnover.
- A community member emphasized how the poor incorporation of Indigenous history results in the celebration of genocide and colonization. One example referenced cultural burners who are experiencing the criminalization of cultural burning, locally treated as arson. They noted how these conflicts are rooted in painful history, as limits on controlled burning were some of the original attacks on Tribal nations. This individual requested USFS to create opportunities for education on cultural burning to understand the ceremonial use of fire for Tribes.
 - USFS acknowledge the need for improving an understanding of how narratives were formed and how website information may represent a past view of the area's history. The agency noted how there is a continuous need to shift and change these narratives and ongoing consultations and relationships help to view forests through a Tribal lens.
 - USFS made a commitment to reach out to the respective Forest Supervisor and appreciated the reminder to look at the ways in which USFS represents itself to make sure representations are honest and consistent with Tribal experiences. The agency shared recognition of the importance of cultural burning and expressed a commitment to seeking opportunities for expanded partnership within the cultural burning networks.

- A Tribal staff member commented positively on the efforts of the USFS Northwest Forest plan but stated the need for a better incorporation of Indigenous knowledges and people. Rather than being an extractive process, this should be a collaborative process through co-stewardship or co-management.

C. Unmet Budget Needs

- A community member noted how the lack of procedures creates challenges for USFS staff. One example cited was where process delays resulted in ancestral remains being exposed on park lands, which created difficulties for the park in securing proper procedures across agencies and during road construction projects. They further emphasized that protecting ancestors on forest lands is a day-to-day issue and that having a point of contact is not the same as having a partnership.
- A commenter reiterated that examples from Tribes show opportunities to use 638 authorities to fill the lack of federal staffing. One example mentioned how a lack of funding to maintain sites resulted in its closing. They also emphasized the need to make culturally appropriate signage/names in places like USFS visitors centers. The commenter noted that tribes are advocating for expanding 638 authorities for greater opportunities to oversee management on the ground. NFBC member was also concerned that the current TFPA requirements create barriers and limit its authority to serve Tribes by required lands to border or be adjoined to USFS lands.
 - USFS clarified that the agency does not have the same authorities as the Department of Interior (DOI) has but has learned a lot about other legal authorities.
 - USFS has tried to look at Tribal trust lands as a way to be more flexible, in lieu of new authorities, but acknowledged that legislation can have restrictive authorities that raises surprising barriers to USDA as well.
- A commenter spoke to the support for stronger State to Tribal consultation and specific concerns regarding natural resources management and wildlife management, as well as mining interests.

IV. Tribal Caucus Report-Out

The Tribal caucus partner offered a summary report-out of the caucus which occurred immediately prior to the consultation.

A. Tribal Treaty Rights

- An intertribal organization emphasized that treaty rights are inherent to Indigenous people who were here before settlers arrived. These rights are not “given” to the Tribes. Training on this topic for line workers is critical for those in the forests to understand those treaty rights consistently. Staff turnover has a major impact on that understanding. USFS must collaborate with and involve Tribes on all projects from day one. Their jobs are to initiate these relationships immediately.

B. Indigenous Knowledge

- An intertribal organization emphasized that ITEK requires collaboration. “Extraction” of knowledge is ineffective, such as simply taking the knowledge and writing it into regulations. USFS should collaborate with Tribes from the first step of the project and every step along the way. Knowledge is inherent to the bodies and minds that contain it. They cannot be separated. The process must be collaborative along the way.

C. Unmet Budget Needs

- An intertribal organization shared that regarding funding and budget needs, there were few comments, apart from a desire for 638 [compacting and contracting authorities]. Comments are more about how Tribes need to be funded for autonomy and self-direction, not for existing programs. 638-like authority for contracting or compacting is the primary way USFS can collaborate, so that Tribes have the capacity to have the staff to collaborate on projects, share ITEK is a complete circle.

V. Closing Remarks

- USFS expressed that it is on a learning journey, but with intention. The Forest Service Tribal Action Plans show how the USFS will build on successes and identify a path forward. USFS also noted that spending time in Indian Country helps USFS to better understand their past, and this is critical to knowledge and understanding of treaty rights. USFS suggested establishing an annual educational opportunity where USFS can learn from Tribes on treaty rights to keep knowledge fresh. USFS expressed gratitude for tribal partnerships and continuing engagement.