

Congress of the United States
Washington, DC 20515

September 8, 2016

Mr. Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Dodaro,

We write to request an investigative report on the adequacy of and compliance with federal programs and policies that protect the health and environment of our tribal nations. Federal actions on or near tribal lands have a profound impact on Native Americans. American Indian/Alaska Native (AI/AN) communities face unique and acute risks associated with environmental degradation that must be accounted for in the decision-making process. Policies of tribal self-governance and tribal consultation by federal agencies have improved the management of tribal lands, but we are concerned that federal agencies are not consistently following these policies, or in some cases they fall short of what is necessary to manage the land and programs that protect the health and well-being of AI/AN communities.

Compliance with Meaningful Tribal Consultation Policies

A tragic example is currently playing out in North Dakota, where Dakota Access, LLC, a subsidiary of Energy Transfer Crude Oil Company, LLC, is attempting to construct an oil pipeline within one-half mile of the Standing Rock Sioux Tribe Reservation. There, the Army Corps of Engineers approved permits to construct the Dakota Access Pipeline without meaningful consultation with the Standing Rock Sioux Tribe.

Despite opposition from the tribe and several letters expressing concern about the proposed pipeline route from other federal agencies, the Army Corps approved the pipeline route without fully evaluating the potential impacts to neighboring tribal lands, sacred sites, and the tribe's water supply. A spill near the tribe's reservation could release thousands of barrels of crude oil, contaminating the tribe's drinking water, poisoning their ancestral homelands, and adversely affecting their health.

Unfortunately, the situation in North Dakota is not an isolated case. This summer, members of the Natural Resources Committee hosted a roundtable discussion with tribal leaders from across the country on the topic of environmental justice in Indian Country. Their testimony indicated a troubling pattern of inconsistent or complete lack of consultation, insufficient risk prevention and mitigation, and inadequate funding for environmental monitoring and remediation.

Under Executive Order 13175, executive agencies are charged with engaging in regular and meaningful consultation with tribal governments in the development of federal policies that have tribal implications. Pursuant to President Obama's 2009 memorandum on EO 13175, each agency was required to submit a detailed plan of actions to fully implement the objectives of EO 13175. Unfortunately, after hearing from tribal leaders, we are concerned about the inconsistency of the plans submitted and disparities in consultation from agency to agency.

During the roundtable discussion, the Puyallup Tribe, Ponca Tribe of Nebraska, and the Miccosukee Tribe all raised concerns about the lack of tribal consultation prior to agency action. Oftentimes, tribal leaders were informed too late or not at all prior to the issuance of permits, such as Section 404 permits under the Clean Water Act (CWA). In each case the tribes raised unique concerns, and their input may have required alternate mitigation techniques or permit conditions.

Adequacy of Superfund actions to protect tribes

In other cases, tribes were consulted, but their recommendations and requests fell on deaf ears. The St. Regis Mohawk tribe raised serious concerns with superfund mitigation efforts for a site adjacent to their reservation. They reported that while the EPA sought their input, it did not meaningfully take the Tribe's input into account when determining the level of remediation necessary. Later analyses of fish from nearby water sources have shown elevated levels of polychlorinated biphenyls (PCB's), threatening the health and wellbeing of the tribe and its citizens. Similar concerns related to uranium contamination were raised by the Navajo Nation.¹

Effectiveness of programs and policies in protecting Indian lands and trust resources

Finally, a lack of tribal resources threatens the ability for tribal governments to conduct their own environmental monitoring and mitigation efforts. The Red Lake Band of Chippewa Indians receives funding under Section 106 of the CWA to monitor and protect water quality on all 835,194 acres of its trust land. Unfortunately, that funding provides for just three full-time equivalent biologists, woefully inadequate to monitor the tribe's 100 lakes, update water quality standards, or update health advisories related to consuming mercury-rich fish.

Therefore, we would like you to address the following questions, and where practicable, include the examples outlined in this letter in your review:

Tribal Consultation

- To what extent have federal agencies, particularly the EPA and the Army Corps of Engineers, complied with or not with their government-to-government consultation and coordination responsibilities under Executive Order 13175?
- Do agencies use consistent definitions for "tribal impacts" under Executive Order 13175?
- Is the definition of "meaningful consultation" clearly defined and consistently applied?
- Do federal agencies consistently consult and engage with tribal governments at all stages of the permitting and development process?
- To what extent, if at all, do tribal consultation practices provide tribes with opportunities for input into contiguous, off-reservation developments that may result in pollution on their land? Please identify any opportunities to enhance these practices.
- What do tribes do when they believe their recommendations have been ignored or disregarded? What, if any, appeals options are available to them?

¹ See, GAO, *Uranium Contamination: Overall Scope, Time Frame, and Cost Information Is Needed for Contamination Cleanup on the Navajo Reservation*, GAO-14-323 (Washington, D.C.: May 5, 2014).

Programs and Policies that Protect American Indian/Alaska Native Communities

- What EPA programs and funding are available to Indian tribes to address environmental issues in Indian country? How have tribes carried out responsibilities for these programs and grants? How have tribes used these programs and grants to assert and fulfill tribal priorities? How, if at all, have tribes been able to use these programs and grants to address contiguous, off-reservation pollution sources?

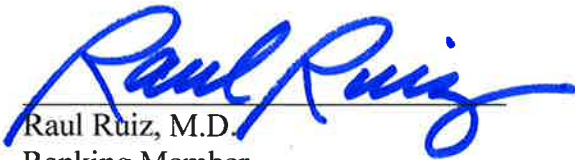
General Analysis of Superfund Sites on or Near Tribal Lands

- What is the status of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) response actions on contaminated sites on tribal lands? What is known about the extent to which these actions have addressed the contamination?
- To what degree have tribes been consulted and engaged related to CERCLA activities on or near their land?
- How do EPA programs ensure the health and well-being of tribal members located around contaminated sites, and are they taking into account unique tribal needs such as subsistence fishing and gathering?

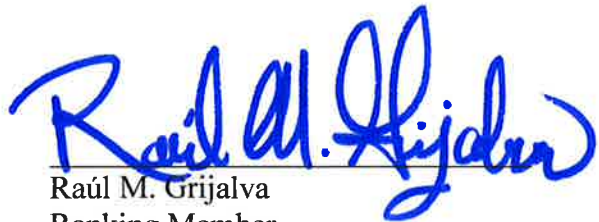
We urge you to issue a report on these critical issues facing our tribal nations. Our nation has a trust obligation to protect the trust resources, the economic vitality of tribal governments, and the health and well-being of tribal members. This report will provide much-needed information and oversight to determine if federal agencies are living up their trust obligations.

We look forward to hearing from you. Please contact my office if you have any questions.

Sincerely,



Raul Ruiz, M.D.
Ranking Member
House Subcommittee on Indian, Insular
and Alaska Native Affairs



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