

StrataRossLAPEm Resource

From: Waste'Win Young [wyoung@standingrock.org]
Sent: Monday, October 24, 2011 4:07 PM
To: Melissa
Cc: tmcculloch@achp.gov; Bjornsen, Alan; dyandancer@yahoo.com; Valerie Hauser; Lana Gravatt; Ben Rhodd; Rosebud Sioux Tribe; Rick Thomas; Wanda Wells; JB Weston; Steve Vance; Natural & Cultural Resource Director; James Lays Bad; James Whitted; Valerie Hauser; Chris Lindblad
Subject: RE: need feedback please

Hi Melissa,

Those emails I forwarded you were from Santee, Crow Creek and Northern Arapaho. But you have Santee and Crow Creek listed below also. All we are asking is for a second date to accommodate the tribes who were previously committed to another Section 106 Consultation on that same date. I do not feel that the NRC is open to this. I would like to include the following ruling from *Quechan v. United States Department of Interior*, No. 10-2241 (S.D. Cal. Filed December 15, 2010):

Quechan Tribe v. U.S. Department of the Interior, No. 10-2241:

In this case involving the Bureau of Land Management's (BLM's) decision to approve a programmatic agreement authorizing an array of solar collection panels and associated transmission lines on lands managed by the BLM located within the Imperial Valley in California, the Court issued a preliminary injunction halting the project, finding that the plaintiff, Quechan Tribe, was likely to prevail on its claim that the BLM failed to adequately consult with the plaintiff under section 106 of the National Historic Preservation Act (NHPA). The Quechan Tribe claimed, and environmental analyses indicated, that the project would wholly or partially destroy archeological sites, cultural resources, prehistoric areas of settlement and use, ancient trails, and burial areas within the 6,500-acre project area. After a thorough analysis of the documentation provided by BLM supporting its claims that it adequately consulted with the Quechan and other Tribes, the Court noted the following:

- “While public informational meetings, consultations with individual tribal members, meetings with government staff or contracted investigators, and written updates are obviously a helpful and necessary part of the process, they don’t amount to the type of “government-to-government” consultation contemplated by the regulations. This is particularly true because the Tribe’s government’s requests for information and meetings were frequently rebuffed or responses were extremely delayed as BLM-imposed deadlines loomed or passed.”
- “The Tribe was entitled to be provided with adequate information and time, consistent with its status as a government that is entitled to be consulted. The Tribe’s consulting rights should have been respected. It is clear that did not happen here.”
- “The Ninth Circuit has emphasized that consultation with Tribes must begin early, and that if consultation begins after other parties may have invested a great deal of time and money, the other parties may become entrenched and inflexible, and the government agency may be inclined to tolerate degradation it would otherwise have insisted be avoided.... [T]he fact that [Defendants] are

now pressed for time and somewhat desperate after having invested a great deal of effort and money is a problem of their own making and does not weigh in their favor.”

Wašté Win Young
Standing Rock Sioux Tribe
Tribal Historic Preservation Officer
(701)-854-8645 work
(701)-854-2138 fax

From: Melissa [<mailto:Melissa@pbprconsulting.com>]
Sent: Monday, October 24, 2011 2:40 PM
To: WasteWin Young
Cc: Alan B. Bjornsen (alan.bjornsen@nrc.gov); Ben Schiffer; Mike Butcher; Melanie Collins (melanie@stratawyo.com); Tony Simpson
Subject: RE: need feedback please
Importance: High

Good afternoon, Wast'eWin –

Have you received confirmation from the NRC that they will be able to staff a consultation on November 8-10? The most recent list I have from the NRC indicates that the Santee, Northern Arapaho, and Crow Creek Lakota have all confirmed their attendance for November 2-3, and we have made reservations for them accordingly. The most recent list of attending tribes we have received from NRC is as follows:

- Crow Creek Sioux (2)
- Crow (1)
- Flandreau Santee Sioux (1)
- Kiowa (1)
- Rosebud Sioux (2)
- Santee Sioux (2)
- Three Affiliated (1)
- Yankton Dakota (1)
- Fort Peck Assiniboine (1)
- Chippewa Cree (2)

Thanks for keeping me posted.

Melissa Butcher
PB Communications & Strategic Solutions
248 W. Burkitt St.
Sheridan, WY 82801
(307) 751-3789
melissa@pbprconsulting.com

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Subject: RE: need feedback please
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From: WasteWin Young

Created By: wyoung@standingrock.org

Recipients:

"tmcculloch@achp.gov" <tmcculloch@achp.gov>
Tracking Status: None
"Bjornsen, Alan" <Alan.Bjornsen@nrc.gov>
Tracking Status: None
"dyandancer@yahoo.com" <dyandancer@yahoo.com>
Tracking Status: None
"Valerie Hauser" <vhauser@achp.gov>
Tracking Status: None
"Lana Gravatt" <gravattlana@yahoo.com>
Tracking Status: None
"Ben Rhodd" <brhodd1@yahoo.com>
Tracking Status: None
"Rosebud Sioux Tribe" <rstthpo@yahoo.com>
Tracking Status: None
"Rick Thomas" <rickthomas_06@yahoo.com>
Tracking Status: None
"Wanda Wells" <wandawells@midstatesd.net>
Tracking Status: None
"JB Weston" <jb.weston@fsst.org>
Tracking Status: None
"Steve Vance" <steve.vance@crst-nsn.gov>
Tracking Status: None
"Natural & Cultural Resource Director" <ostnrranrd@gwtc.net>
Tracking Status: None
"James Lays Bad" <ostnrrapro@gwtc.net>
Tracking Status: None
"James Whitted" <jmswhitted@yahoo.com>
Tracking Status: None
"Valerie Hauser" <vhauser@achp.gov>
Tracking Status: None
"Chris Lindblad" <clindblad@standingrock.org>
Tracking Status: None
"Melissa" <Melissa@pbprconsulting.com>
Tracking Status: None

Post Office: SRSTEXCH.standingrock.local

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MESSAGE	4450	10/24/2011 4:07:25 PM

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