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[EXTERNAL] Scoping comment-Coastal plain: Executive Order

1 message

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Wed, Jun 6, 2018 at 9:48 AM

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In November 2000 Executive Order 13175 "Consultation and Coordination With Indian Tribal Governments" was published in the U.S. Federal Register. This order is intended to improve relations between tribal and the U.S. Federal Government, and to reduce burdens on tribes. It applies to federal government regulatory and legislative actions including those that "have substantial direct effects on one or more Indian tribes," including "Alaska Natives."

Section 2 of this order conveys several "Fundamental Principles" that are to guide U.S.-tribal dealings. These include recognition of tribes as "domestic dependent nations under its protection" and "a trust relationship;" recognition of tribes "right to self-government" and "sovereign powers over their members and territory;" and the right of tribes to "self-determination."

Section 3 of this order sets forth criteria for "formulating and implementing policies that have tribal implications." These criteria include adhering to principles of Section 2. Policy-making must respect the sovereignty, treaties and rights of tribes and encourage tribal self-determination of standards. Federal agencies are to consult with them, and, "where possible, defer to Indian tribes to establish standards," preserving tribal authority.

Section 4 orders that agencies not submit legislation to Congress inconsistent with Section 3 criteria.

Section 5 orders that each agency craft a tribal consultation process and submit it to the Office of Management and Budget [OMB]. It also puts limits on "promulgation" of regulations imposing costs on tribes and requires agencies to pay those costs. It also orders consultation processes be put into action from the development of regulations through their implementation. It requires documentation of this process—a "tribal summary impact statement" submitted to OMB that is to include any official tribal written communications and states "the extent to which the concerns of tribal officials have been met." Indeed it orders that "no agency shall promulgate any regulation" affecting tribes "unless the agency, prior to the formal promulgation of the regulation (1) consulted with tribal officials early in the process of developing the proposed regulation." This section encourages "consensual mechanisms" for policy-making affecting tribes.

Section 7 requires any draft final regulation with tribal implications submitted to OMB be accompanied by certification of compliance with all aspects of this order "stating that the requirements of this order have been met in a meaningful and timely manner."

P.L. 115-97, if implemented, would have significant consequences on the subsistence, culture, and spirit of the Gwich'in Nation. The Gwich'in Nation was not consulted through the process of producing nor promulgating this law. Furthermore, the Gwich'in Nation, under their own authority—according to Gwich'in Niintsyaa 2012—has resolved: "That the United States President and Congress recognize the rights of the Gwich'in People to continue to live our way of life by prohibiting development in the calving and post-calving grounds of the Porcupine Caribou Herd" and "That the 1002 area of the Arctic National Wildlife Refuge be made Wilderness to protect the sacred birthplace of the caribou."

The EIS process must include and show evidence of evaluating the production and promulgation of P.L. 115-97 relative to the requirements of Order 13175. If administrators cannot prove that these requirements have been met, the EIS must recommend that leasing, oil and drilling activities—as in violation—not be implemented.