

112TH CONGRESS
1ST SESSION

H. R. 2380

To prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Indian tribes regarding Federal Government activities that impact tribal lands and interests to ensure that meaningful tribal input is an integral part of the Federal decisionmaking process.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2011

Mr. GRIJALVA (for himself, Mr. KILDEE, Mr. LUJÁN, and Mr. PASTOR of Arizona) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Indian tribes regarding Federal Government activities that impact tribal lands and interests to ensure that meaningful tribal input is an integral part of the Federal decisionmaking process.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**
 2 **DECLARATION OF GOALS; DEFINITIONS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Requirements, Expectations, and Standard Procedures
 5 for Executive Consultation with Tribes Act” or the “RE-
 6 SPECT Act”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
 8 this Act is as follows:

Sec. 1. Short title; table of contents; findings; declaration of goals; definitions.

TITLE I—SENSE OF CONGRESS

Sec. 101. Sense of Congress.

TITLE II—CONSULTATION PROCEDURE

Sec. 201. Requirement for consultation.
 Sec. 202. Timing.
 Sec. 203. Scoping stage consultation.
 Sec. 204. Decision stage procedures.
 Sec. 205. Documentation and reporting.
 Sec. 206. Implementation.
 Sec. 207. Sensitive tribal information.

TITLE III—TRIBAL SOVEREIGNTY

Sec. 301. Tribal sovereignty.

TITLE IV—INDIAN TRIBAL WAIVERS

Sec. 401. Indian tribal waivers.

TITLE V—JUDICIAL REVIEW

Sec. 501. Judicial review.

9 (c) **FINDINGS.**—Congress finds that—

10 (1) the United States has a unique, legally af-
 11 firmed government-to-government relationship with
 12 Indian tribal governments as set forth in the Con-
 13 stitution of the United States, treaties, statutes, Ex-
 14 ecutive orders, and court decisions;

1 (2) the United States recognizes the right of In-
2 dian tribes to self-government and supports tribal
3 sovereignty and self-determination;

4 (3) the United States has enacted numerous
5 statutes and promulgated numerous regulations that
6 establish and define a trust relationship with Indian
7 tribes;

8 (4) the United States has a responsibility to
9 consult with Indian tribes on a government-to-gov-
10 ernment basis when formulating policies and under-
11 taking activities that will have impacts on tribal
12 lands and interests;

13 (5) procedures for such consultation should be
14 designed and structured to give Indian tribes oppor-
15 tunities to provide meaningful, informed input
16 throughout the development and decisionmaking
17 processes;

18 (6) building institutional knowledge and capac-
19 ity for effective consultation fosters greater effi-
20 ciency and benefits for future projects;

21 (7) the consultation process should be institu-
22 tionalized according to best practices that are de-
23 signed and administered by the agency and that ful-
24 fill the legal requirements mandated by this Act;

1 (8) consulting with Indian tribes during the for-
2 mulation of long-term management plans reduces
3 the likelihood of project delays and increases the ef-
4 ficiency of project implementations; and

5 (9) effective consultation demands ongoing, re-
6 spectful communication between agencies and Indian
7 tribes.

8 (d) DECLARATION OF GOALS.—The goals of this Act
9 are—

10 (1) to establish and support a process of reg-
11 ular, meaningful consultation and collaboration with
12 Indian tribes in the development of Federal policies
13 and the initiation of Federal activities that impact
14 tribal lands and interests;

15 (2) to strengthen the United States govern-
16 ment-to-government relationships with Indian tribes;

17 (3) to establish minimum standard procedures
18 to ensure the above goals are achieved; and

19 (4) to recognize tribal regulatory authority and
20 jurisdiction generally, and specifically through the
21 waiver process.

22 (e) DEFINITIONS.—For the purposes of this Act:

23 (1) INDIAN TRIBE.—The term “Indian tribe”
24 means an Indian or Alaska Native tribe, band, na-
25 tion, pueblo, village, or community that the Sec-

1 retary of the Interior acknowledges to exist as an In-
2 dian tribe pursuant to the Federally Recognized In-
3 dian Tribe List Act of 1994 (25 U.S.C. 479a), in-
4 cluding all tribes that have been added to the list
5 since the Act became law.

6 (2) AGENCY.—The term “agency” means any
7 authority of the United States that is an “agency”
8 under section 3502(1) of title 44, United States
9 Code.

10 (3) ACTIVITY.—The term “activity” means a
11 project, program, policy or other action including,
12 infrastructure projects, regulations, program com-
13 ments by Federal entities, and agency-drafted pro-
14 posed legislation, that is funded in whole or in part
15 under the direct or indirect jurisdiction of an agen-
16 cy, including those carried out by or on behalf of an
17 agency; those carried out with Federal financial as-
18 sistance; or those requiring a Federal permit, li-
19 cense, or approval.

20 (4) SACRED SITE.—The term “sacred site”
21 means any specific, discrete, narrowly delineated lo-
22 cation on Federal land that is identified by an In-
23 dian tribe—

1 (A) as sacred by virtue of its established
2 religious significance to, or ceremonial use by,
3 an Indian religion; or

4 (B) to be of established cultural signifi-
5 cance.

6 (5) MEMORANDUM OF AGREEMENT.—The term
7 “memorandum of agreement” means a document
8 that records the terms and conditions agreed upon
9 by an agency and an Indian tribe through the con-
10 sultation process regarding an activity, including any
11 measures to be taken to resolve or mitigate adverse
12 impacts on the Indian tribe.

13 (6) NEW DISCOVERY.—The term “new dis-
14 covery” means any unexpected development that oc-
15 curs during the course of an activity, such as the
16 discovery of a new archeological site, unanticipated
17 impacts on organisms or ecosystems, or the realiza-
18 tion of unintended consequences of a new regulation,
19 that may have impacts on tribal lands and interests.

20 (7) STANDARD PROCESS.—The term “standard
21 process” means a streamlined process for agency-In-
22 dian tribe interaction agreed to by both parties
23 through consultation and certified in a memorandum
24 of agreement that applies to certain specified Activi-
25 ties or limited categories of Activities.

1 **TITLE I—SENSE OF CONGRESS**

2 **SEC. 101. SENSE OF CONGRESS.**

3 It is the sense of Congress that consultation con-
4 stitutes more than simply notifying an Indian tribe about
5 a planned undertaking. Consultation entails a process of
6 open, ongoing communication, interaction and coordina-
7 tion that may include written correspondence, meetings,
8 telephone conferences, site visits, e-mails, on-line informa-
9 tion sharing, consensual mechanisms for developing regu-
10 lations including negotiated rulemaking, and more. Con-
11 sultation means the process of seeking, discussing, and
12 considering the views of other participants, and, where
13 feasible, seeking agreement with them regarding proposed
14 activities and other matters. Mutual understanding and
15 respect is the basis of effective, meaningful consultation.
16 Effective, meaningful consultation requires a two-way ex-
17 change of information, a willingness to listen, an attempt
18 to understand and genuinely consider each other's opin-
19 ions, beliefs, and desired outcomes, and a seeking of agree-
20 ment on how to proceed concerning the issues at hand.
21 Effective, meaningful consultation does not guarantee
22 such agreement, but at a minimum contributes to the
23 building of relationships based on mutual respect and un-
24 derstanding. Consultation can be considered effective and
25 meaningful when each party demonstrates a genuine com-

1 mitment to learn, acknowledge and respect the positions,
2 perspectives, and concerns of the other parties. Ultimately,
3 effective, meaningful consultation means collaboration.

4 **TITLE II—CONSULTATION** 5 **PROCEDURE**

6 **SEC. 201. REQUIREMENT FOR CONSULTATION.**

7 (a) SCOPE.—Agencies shall have an accountable
8 process to ensure meaningful and timely input by Indian
9 tribes and tribal officials prior to undertaking any activity
10 that may have substantial direct impacts on the lands or
11 interests of one or more Indian tribes, on the relationship
12 between the Federal Government and Indian tribes, or on
13 the distribution of power and responsibilities between the
14 Federal Government and Indian tribes. Consultation with
15 Indian tribes shall occur for all Activities that would affect
16 any part of any Federal land that shares a border with
17 Indian country as defined in section 1151 of title 18,
18 United States Code, but is not limited to activities on such
19 lands.

20 (b) MULTI-AGENCY ACTIVITIES.—In the case of
21 agency-drafted proposed legislation, the drafting agency,
22 and any other agency that will be implementing the legis-
23 lation, shall each be considered involved in the activity.
24 If more than one agency is involved in an activity, some
25 or all of the agencies may designate a lead agency, which

1 shall fulfill their collective consultation responsibilities.
2 Those agencies that do not designate a lead agency shall
3 remain individually responsible for their consultation re-
4 sponsibilities under this Act.

5 (c) LIMITATION.—Nothing in this Act shall exempt
6 an agency from additional consultation required under any
7 other law or from taking any other consultative actions
8 as required by any other law or agency prerogative in addi-
9 tion to those required by this Act. Nor does it preclude
10 an agency from additional consultation that complies with
11 agency regulations for consultation, advances agency con-
12 sultation practices, or supports agency efforts to build or
13 strengthen government-to-government relationships with
14 Indian tribes. The requirements of this Act supplement,
15 but do not replace, other consultation requirements such
16 as the Federal Energy Regulatory Commission regulations
17 for license applicants.

18 **SEC. 202. TIMING.**

19 Consultation as described in sections 203 and 204
20 shall be completed prior to the expenditure of any Federal
21 funds on the activity or prior to the issuance of any license
22 other than for funding nondestructive project planning ac-
23 tivities provided that such actions do not restrict the sub-
24 sequent consideration of alternatives to avoid, minimize,
25 or mitigate the activity's adverse tribal impacts.

1 **SEC. 203. SCOPING STAGE CONSULTATION.**

2 (a) **PLANNING DOCUMENT.**—As early as possible in
3 the planning stage of an activity, the agency shall compile
4 a draft of the scope of the project, including any geo-
5 graphic areas important to Indian tribes that might be
6 affected and any other anticipated tribal impacts. The
7 agency shall make a good faith effort to include areas that
8 might reasonably be expected to contain sites important
9 to Indian tribes whether or not such sites are explicitly
10 known to the agency.

11 (b) **TRIBAL CONSULTATION PARTNERS.**—The agency
12 shall consult with all Indian tribes that may be impacted
13 by an activity. When appropriate, the agency shall consult
14 with regional and national tribal organizations such as the
15 National Congress of American Indians, the National
16 Tribal Environmental Council, the Native American Fish
17 and Wildlife Society, the United South and Eastern
18 Tribes, the National Association of Tribal Historic Preser-
19 vation Officers, the Michigan Anishinaabek Cultural Pres-
20 ervation and Repatriation Alliance, and the Affiliated
21 Tribes of Northwest Indians, to determine which Indian
22 tribes may be affected by the activity. Under no cir-
23 cumstance shall the agency treat consultation with inter-
24 tribal organizations as a substitute for consultation with
25 each affected Indian tribe, unless the Indian tribes com-
26 prising such an organization agree that consultation

1 should proceed through the intertribal organization. The
2 agency shall remain responsible for its consultation re-
3 sponsibilities under this Act to any affected Indian tribes
4 not participating in such an agreement. Other resources
5 for identifying Indian tribes that need to be consulted in-
6 clude officials, such as cultural resource specialists, from
7 other agencies who have consulted with Indian tribes in
8 the region in the past, ethnographies, local histories, local
9 university experts, oral accounts, the National Park Serv-
10 ice's Native American Consultation Database, MAPS: GIS
11 Windows on Native Lands, Current Places, and History,
12 and the Library of Congress Indian Land Cessions docu-
13 ment Web site.

14 (c) INITIAL CONTACT WITH CONSULTATION PART-
15 NERS.—The agency—

16 (1) shall send, via United States mail and e-
17 mail, if possible, a copy of the planning document
18 and a letter requesting consultation meetings to the
19 relevant tribal government officials including the
20 tribal leader and all members of any elected tribal
21 governing body, such as a tribal council, relevant
22 tribal governmental agencies, including the Tribal
23 Historic Preservation Officer or cultural resource
24 manager, and relevant non-tribal stakeholders, such
25 as the State Historic Preservation Officer and local

1 governments that have jurisdiction on any affected
2 land via agreement with the agency;

3 (2) at the request of the Indian tribe, shall
4 send, via United States mail and e-mail, if possible,
5 a copy of the planning document and a letter re-
6 questing consultation meetings to nongovernmental
7 tribal stakeholders, such as elders councils and reli-
8 gious leaders;

9 (3) shall not request consultation with non-
10 governmental tribal stakeholders without the written
11 consent of the Indian tribe; and

12 (4) shall follow-up with phone calls to confirm
13 receipt of the documents by all recipients.

14 (d) CONSULTATION MEETING ARRANGEMENTS.—

15 The agency shall negotiate with stakeholder representa-
16 tives to determine the time, place, agenda, travel funds,
17 facilitator, format, and goals of a consultation meeting.

18 The agency shall make a good faith effort to engage in
19 consultation, keeping thorough documentation of all steps
20 taken to contact and engage the Indian tribe in consulta-
21 tion. If, after a good faith effort, the agency fails to en-
22 gage the Indian tribal government, it may terminate its
23 scoping stage consultation efforts by providing all con-
24 sultation partners with a written notification and expla-
25 nation for its decision, signed by the head of the agency,

1 and proceed to the decision stage procedures described in
2 section 204.

3 (e) CONSULTATION MEETING FORMAT.—A consulta-
4 tion meeting shall begin with confirmation of the format,
5 facilitator, and agenda, with adequate time scheduled for
6 introductions and for interaction throughout the meeting
7 among participants. Whenever possible, tribal stake-
8 holders shall be brought into the ongoing planning process
9 directly by forming ad hoc workgroups including tribal
10 leaders or their designees and, if appropriate, initiating
11 a process for consensual development of regulations, such
12 as negotiated rulemaking. The meeting shall conclude with
13 planning for the next meeting, if necessary.

14 (f) TERMINATION OF SCOPING STAGE CONSULTA-
15 TION WITH A MEMORANDUM OF AGREEMENT.—

16 (1) TERMINATION.—Scoping stage consultation
17 shall terminate upon the execution of a memo-
18 randum of agreement signed by the head of the
19 agency and the Indian tribal government.

20 (2) SIGNATORIES.—The Indian tribal govern-
21 ment and the agency may jointly invite additional
22 parties to be signatories of the memorandum of
23 agreement. The signatories have sole authority to
24 execute, amend, or terminate the memorandum of
25 agreement. If any signatory determines that the

1 terms of the memorandum of agreement cannot be
2 or are not being carried out, the signatories shall
3 consult to seek amendment of the memorandum of
4 agreement. If the memorandum of agreement is not
5 amended, any signatory may terminate the agree-
6 ment, with the option to return to scoping stage con-
7 sultation. The agency shall provide all non-signatory
8 consulting partners with the opportunity to submit
9 a written statement, explanation, or comment on the
10 consultation proceedings that shall become part of
11 the agency's official consultation record.

12 (3) MOA.—The memorandum of agreement—

13 (A) may address multiple activities if the
14 activities are similar and repetitive or are multi-
15 State or regional in scope, or where routine
16 management activities are undertaken at Fed-
17 eral installations, facilities, or other land man-
18 agement units;

19 (B) may establish standard processes for
20 certain categories of activities determined
21 through consultation and defined in the memo-
22 randum of agreement;

23 (C) shall include a provision for monitoring
24 and reporting on its implementation;

1 (D) shall include provisions for termination
2 or reconsideration if the Activity has not been
3 completed within a specified time; and

4 (E) shall include provisions to address new
5 discoveries, which may include halting the activ-
6 ity and returning to scoping stage consultation.

7 (g) TERMINATION OF SCOPING STAGE CONSULTA-
8 TION WITHOUT A MEMORANDUM OF AGREEMENT.—The
9 agency shall make a good faith effort through sustained
10 interaction and collaboration to reach a consensus result-
11 ing in a memorandum of agreement. If, after a good faith
12 effort, the agency determines that further consultation will
13 not be productive, it may terminate consultation by pro-
14 viding all consultation partners with a written notification
15 and explanation for its decision, signed by the head of the
16 agency, and proceed to the decision stage procedures de-
17 scribed in section 204. The Indian tribal government may
18 at any point decide to terminate consultation. In such
19 case, the agency shall provide the Indian tribal govern-
20 ment with the opportunity to submit a written statement,
21 explanation, or comment on the consultation proceedings
22 that will become part of the agency’s official consultation
23 record. Any nongovernmental consultation partners may
24 decide to withdraw from consultation at any time. In such
25 case, the agency shall provide the withdrawing nongovern-

1 mental consultation partner with the opportunity to sub-
2 mit a written statement, explanation, or comment on the
3 consultation proceedings that will become part of the
4 agency's official consultation record.

5 **SEC. 204. DECISION STAGE PROCEDURES.**

6 (a) PROPOSAL DOCUMENT.—The agency shall com-
7 pile a document consisting of the plan for the activity, its
8 anticipated tribal impacts, any memorandum of agree-
9 ment, and any written statements made by consulting
10 partners during the scoping stage as described in section
11 203. The agency shall include sufficient supporting docu-
12 mentation to the extent permitted by law and within avail-
13 able funds to enable any reviewing parties to understand
14 its basis. The agency may use documentation prepared to
15 comply with other laws to fulfill the requirements of this
16 provision to the extent that such documentation is suffi-
17 ciently pertinent to and focused on the relevant issues as
18 to allow reasonable ease of review. The agency shall mail
19 and e-mail, if possible, a copy of the Proposal Document
20 to all consultation partners, including any who withdrew
21 from the process. At a minimum, the document shall go
22 to the tribal leader and all members of any elected tribal
23 governing body. The agency shall follow up with phone
24 calls to confirm receipt of the document. After these steps
25 have been completed, the Proposal Document shall be pub-

1 lished in the Federal Register, subject to the provisions
2 of section 207.

3 (b) PUBLIC COMMENT PERIOD.—The agency shall
4 provide a period of not less than 90 days after publication
5 in the Federal Register for comments on the Proposal
6 Document. A 30-day extension shall be granted upon re-
7 quest by any member of the Indian tribe.

8 (c) PRELIMINARY DECISION.—After expiration of the
9 comment period, the agency shall prepare a preliminary
10 decision letter, signed by the head of the agency. The let-
11 ter shall state the decision to proceed or not proceed with
12 the activity, the decision’s rationale, any changes in the
13 proposal made in response to comments, and any points
14 where the decision conflicts with the expressed requests
15 of any of the consultation partners. It shall particularly
16 address why the decision was made to disregard any such
17 requests. The agency shall mail and e-mail, if possible, a
18 copy of the letter to all consultation partners, including
19 any who withdrew from the process. At a minimum, the
20 letter shall go to the tribal leader and all members of the
21 tribal governing body. The agency shall follow up with
22 phone calls to confirm receipt of the letter.

23 (d) FINAL DECISION.—The agency shall provide a
24 60-day period following the issuance of the preliminary de-
25 cision letter for response by the consultation partners.

1 Thereafter, the agency shall notify in writing, signed by
2 the head of the agency, the consultation partners, includ-
3 ing any who withdrew from the process, of the agency's
4 final decision.

5 **SEC. 205. DOCUMENTATION AND REPORTING.**

6 (a) **OFFICIAL CONSULTATION RECORD.**—The agency
7 shall keep an official consultation record that allows accu-
8 rate tracking of the process so that agencies and con-
9 sulting parties can correct any errors or omissions, and
10 provides an official record of the process that can be re-
11 ferred to in any litigation that may arise. The agency shall
12 document all efforts to initiate consultation as well as doc-
13 umenting the process once it has begun. Such documenta-
14 tion, including, but not limited to, correspondence, tele-
15 phone logs, and e-mails, shall be included in the agency's
16 official consultation record. The agency shall also keep
17 notes so that the consultation record documents the con-
18 tent of consultation meetings, site visits, and phone calls
19 in addition to information about dates and who partici-
20 pated.

21 (b) **PAYMENT FOR TRIBAL DOCUMENTATION**
22 **WORK.**—If the agency asks an Indian tribe for specific
23 information or documentation regarding the location, na-
24 ture, and condition of individual sites, to conduct a survey,
25 or in any way fulfill the duties of the agency in a role

1 similar to that of a consultant or contractor, then the
2 agency must pay for such services, if so requested by the
3 Indian tribe, as it would for any private consultant or con-
4 tractor.

5 (c) REPORT TO CONGRESS.—Each agency shall on a
6 biennial basis submit to Congress a report on its consulta-
7 tion activities.

8 **SEC. 206. IMPLEMENTATION.**

9 Not later than 30 days after the date of the enact-
10 ment of this Act, the head of each agency shall designate
11 an official with principal responsibility for the agency's re-
12 view of existing consultation and coordination policies and
13 procedures, and implementation of this Act. Not later than
14 60 days after the effective date of this order, the des-
15 ignated official shall submit to the Office of Management
16 and Budget a description of the agency's revised consulta-
17 tion process in conformity with this Act.

18 **SEC. 207. SENSITIVE TRIBAL INFORMATION.**

19 Notwithstanding any provision of the Administrative
20 Procedures Act, consultation meetings shall be closed to
21 the public at the request of the Indian tribal government.
22 Notwithstanding any provision of the Freedom of Infor-
23 mation Act, all information designated by the Indian tribe
24 as sensitive, such as the location of Sacred Sites or other
25 details of cultural or religious practices, shall be deleted

1 from any public publication made as part of the consulta-
2 tion process or in the process of carrying out the activity.
3 Once information has been designated as sensitive, the
4 agency will determine in consultation with the Indian tribe
5 who may have access to the information for the purposes
6 of carrying out the activity.

7 **TITLE III—TRIBAL** 8 **SOVEREIGNTY**

9 **SEC. 301. TRIBAL SOVEREIGNTY.**

10 (a) IN GENERAL.—Agencies shall recognize and re-
11 spect Indian tribal self-government and sovereignty, honor
12 tribal treaty and other rights, and strive to meet the re-
13 sponsibilities that arise from the unique legal relationship
14 between the Federal Government and Indian tribal gov-
15 ernments.

16 (b) MAXIMUM TRIBAL ADMINISTRATIVE DISCRE-
17 TION.—With respect to Federal statutes and regulations
18 administered by Indian tribal governments, the Federal
19 Government shall grant Indian tribal governments the
20 maximum administrative discretion possible.

21 (c) ALTERNATIVES TO FEDERAL REGULATION.—
22 When undertaking to formulate and implement policies
23 that have tribal implications, agencies shall—

24 (1) encourage Indian tribes to develop their own
25 policies to achieve program objectives;

1 (2) where possible, defer to Indian tribes to es-
2 tablish standards; and

3 (3) in determining whether to establish Federal
4 standards, consult with tribal officials as to the need
5 for Federal standards and any alternatives that
6 would limit the scope of Federal standards or other-
7 wise preserve the prerogatives and authority of In-
8 dian tribes.

9 **TITLE IV—INDIAN TRIBAL**
10 **WAIVERS**

11 **SEC. 401. INDIAN TRIBAL WAIVERS.**

12 (a) APPLICATION PROCESSES.—Agencies shall review
13 the processes under which Indian tribes apply for waivers
14 of statutory and regulatory requirements and take appro-
15 priate steps to streamline those processes.

16 (b) GRANTING MAXIMUM TRIBAL LATITUDE.—Each
17 agency shall, to the extent practicable and permitted by
18 law, consider any application by an Indian tribe for a waiv-
19 er of statutory or regulatory requirements in connection
20 with any program administered by the agency with a gen-
21 eral view toward increasing opportunities for utilizing
22 flexible policy approaches at the Indian tribal level. Max-
23 imum tribal latitude shall be granted in cases in which
24 the proposed waiver is consistent with the applicable Fed-
25 eral policy objectives and is otherwise appropriate.

1 (c) **DECISION TIME LINE.**—Each agency shall, to the
2 extent practicable and permitted by law, render a decision
3 upon a complete application for a waiver within 120 days
4 of receipt of such application by the agency, or as other-
5 wise provided by law or regulation. If the application for
6 waiver is not granted, the agency shall provide the appli-
7 cant with timely written notice of the decision and the rea-
8 sons therefor.

9 (d) **LIMITATION.**—This section applies only to statu-
10 tory or regulatory requirements that are discretionary and
11 subject to waiver by the agency.

12 **TITLE V—JUDICIAL REVIEW**

13 **SEC. 501. JUDICIAL REVIEW.**

14 An Indian tribe alleging that the requirements of this
15 Act have not been met may bring a civil action in a United
16 States district court. Immediately upon, or anytime after,
17 the filing of such a suit, the court may restrain the agency
18 from any further action in furtherance of the activity until
19 such time as the court determines that the requirements
20 of this Act have been met. The agency shall be liable for
21 any damages that the court may award to compensate the
22 Indian tribe for adverse impacts resulting from an activity
23 conducted without consultation fulfilling the provisions of
24 this Act.

○