

## **4.12. Tribal Resources**

This section addresses FERC requirements for Tribal Resources (18 CFR, Section 5.6, (d)(3)(ii)-(xii)) for the PAD. This section describes the legal rights of Native American tribes in general and identifies specific Native American tribes within the Project region. (No federally recognized tribal lands are within or directly adjacent to the proposed boundary of the Project.) This section also discusses any identified tribal resource interests that may be affected by continued operation of the Project under an original license.

### **4.12.1. Introduction**

#### *4.12.1.1. Overview of Government-to-Government Relations*

The United States has a unique legal relationship with federally recognized tribal governments as put forth in the Constitution of the U.S., treaties, statutes, executive orders, and court decisions. The United States recognizes Indian tribes as “domestic dependent nations,” which have inherent sovereign powers over their own tribal members and territory (Executive Order 13175). Treaties (contracts between sovereign nations) for some tribes were negotiated between tribal leaders and the U.S. government representatives in the mid- to late 19th century. Most treaties between tribes and the United States include a cession of land from the tribe to the United States and reservation by the tribe of certain lands and rights. These rights vary by treaty, but generally include a portion of land for a homeland and/or hunting, fishing and gathering rights, both on and off the reservation.

Indian reservations have also been formed by executive order. An executive order is an order issued by the U.S. Executive office on the basis of authority specifically granted by the U.S. Constitution or a congressional act to the Executive branch. The executive orders that delineated the borders of and established Indian reservations were typically not negotiated with the affected tribes. Rather, the terms of executive orders were made on behalf of the tribes by the U.S. government and without formal consent of the tribes (FindLaw 2005). Executive orders generally reserve water, hunting, and fishing rights on reservation lands only.

There are 562 federally recognized tribal governments in the United States. There are also tribes that still maintain a tribal government but have never negotiated a treaty with the U.S. or been federally acknowledged through executive order or otherwise. These tribes are not recognized by the federal government as sovereign nations.

For federally recognized tribes, the federal government maintains a special trust relationship. In exchange for the lands ceded to it, the United States provides certain services in perpetuity. These typically include health, education, economic assistance, and protection against crimes and infringements by U.S. citizens. As part of the trust relationship, tribal lands are held in trust by the U.S. government and managed on behalf of the tribes. The U.S. Department of Interior, Bureau of Indian Affairs (BIA) is charged with the administration and management of the 55.7 million acres of land held in trust by the United States for American Indians, Indian tribes, and

Alaska Natives. The BIA is responsible for developing forestlands, leasing assets on these lands, directing agricultural programs, protecting water and land rights, developing and maintaining infrastructure, and economic development. In addition, the BIA is responsible for providing education services to Indian students (BIA 2005).

In November 2000, Executive Order 13175 articulated a process of consultation and coordination with Indian tribal governments to provide regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications. Consistent with the federal government's broader tribal consultation obligations, the Federal Energy Regulatory Commission (FERC) has issued a "Policy Statement on Consultation with Indian Tribes in Commission Proceedings" (2003) to articulate its commitment to promote a government-to-government relationship between itself and federally recognized Indian tribes. The policy statement recognizes the sovereignty of tribal nations and FERC's trust responsibility to federally recognized Indian tribes. Because FERC cannot delegate tribal consultation, it has established a tribal liaison position to fulfill this commitment and to coordinate consultation with other jurisdictions as appropriate.

#### *4.12.1.2. Tribal Interests in Alaska*

In 1936 the government extended the Indian Reorganization Act of 1934 (IRA) to include Alaska Natives and urged Native villages to adopt constitutions for self-government under the act. The designation "Native Village of Tyonek (IRA)" indicates that they were one of the villages incorporated under this law. The Native Village of Tyonek, the tribal government, operates social programs and performs other governmental services but does not have jurisdiction over lands conveyed to the Tyonek Native Corporation under the Alaska Native Claims Settlement Act (ANCSA) of 1971.

ANCSA revoked the reservation status of lands in the Moquawkie Indian Reservation. Following ANCSA, the Native Village of Tyonek formed the Tyonek Native Corporation (TNC), the business/development arm of the tribe, in 1973. The TNC manages the monetary and property compensation received through the regional native corporation formed by ANCSA. The regional corporation for the Cook Inlet area is Cook Inlet Region Inc. (CIRI). In and around Tyonek, the TNC owns the surface rights to lands it selected under ANCSA. CIRI owns the subsurface rights both to village and regional selected lands in the Project area.

#### *4.12.1.3. Overview of Tribal Interests*

Several federally recognized tribes were identified as having potential interests within the Project region that may be affected by the Chakachamna Project licensing, based on location of traditional tribal territories and after seeking comments from tribal representatives. These tribes are as follows:

- Native Village of Tyonek
- Kenaitze Indian Tribe
- Knik Tribe

Federally recognized tribes with lands or historical use that may be affected by the Chakachamna Project do not have a signed treaty with the U.S. government identifying the rights of the tribe; none of the identified tribes has reservations or trust lands directly within or adjacent to the proposed Project boundary.

The Project area has been used by Native peoples for subsistence and cultural purposes. The Native Village of Tyonek has expressed interest in the Project because of its proximity to the Village. Their concerns include impacts to the salmon fishery and impacts to their traditional lifestyle. The Tribe is concerned about impacts to their subsistence lifestyle and having the village impacted by workers. The Tribes is concerned that the tribe and traditional culture be respected and that their governmental status be respected through consultation.

#### **4.12.2. Tribal Consultations**

TDX, in the course of preparing this Pre-Application Document and Notice of Intent contacted the following tribes to discuss their potential interests:

- Native Village of Tyonek
- Kenaitze Indian Tribe
- Knik Tribe
- Eklutna Native Village
- Native Village of Salamatof

TDX has also communicated with both CIRI and TNC; these entities are on the active distribution list for the Project and have been invited to all stakeholder meetings; TDX has met with representatives of each corporation to discuss the Project.

With the filing of the PAD and NOI, it is anticipated that FERC will initiate a formal Initial Tribal Consultation meeting as described in 18 CFR § 5.7 will take place within 30 days and will be initiated by FERC.

#### **4.12.3. Potential Adverse Impacts**

As appropriate within specific resource sections of this PAD potential impacts on tribal interests have been identified, to the extent that Project construction and operation may impact tribal cultural or economic interests (e.g., impacts of project-induced soil erosion on tribal cultural sites). Additionally, the construction and operation of the project may affect tribal interests not necessarily associated with resources specified in this PAD, e.g., tribal fishing practices or agreements between the tribes and other entities that have a connection to project construction and operation.

#### **4.12.4. Proposed Protection, Mitigation, and Enhancement Measures**

No potential PME measures have been identified, specific to tribal resources. The potential need for PME measures related to tribal resources will be evaluated through the tribal consultation and resource studies that will be conducted as part of the relicensing process.

