

TRIBAL CONSULTATION ON THE RECOMMENDATIONS FOR FEDERAL SUPPORT TO LOCAL LAW ENFORCEMENT EQUIPMENT ACQUISITION UNDER EXECUTIVE ORDER #13688

BACKGROUND

For decades, the Federal Government has provided, and continues to provide, Tribal, State, and local, law enforcement agencies (LEAs) with funding and equipment, either directly or indirectly, to support and augment LEA operations. This equipment ranges from standard office supplies and administrative items (e.g., desks or computers) to weapons and military or “military-style” equipment (e.g., firearms, ammunition, and tactical vehicles). The purpose of providing this equipment to LEAs via Federal programs is to enhance and improve the LEAs’ mission to protect and serve their communities. Equipment provided through Federal sources has become a critical component of LEAs’ inventory, especially as fiscal challenges have mounted and other sources of equipment and funding have diminished. LEAs rely on Federally-acquired equipment to conduct a variety of law enforcement operations including hostage rescue, special operations, response to threats of terrorism, and fugitive apprehension. Use of Federally-acquired equipment also enhances the safety of officers who are often called upon to respond to dangerous or violent situations; being improperly equipped in such operations can have life-threatening consequences, both for the law enforcement personnel and the public they are charged with protecting.

Over the last several years, however, community members, LEA leaders, civil rights advocates, and elected leaders have voiced concerns about what has been described as the “militarization” of law enforcement due to the types of equipment at times deployed by LEAs and the nature of those deployments.¹ The most widely publicized example of this phenomenon occurred during the widespread protests in Ferguson, Missouri, in August 2014. At times, the law enforcement response to those protests was characterized as a “military-style” operation, as evidenced by videos and photographs that showed law enforcement officers atop armored vehicles, wearing uniforms often associated with the military, and holding military-type weapons.² Even before the events in Ferguson, however, civil rights organizations conducted significant research on the perceived harms of “militarization” of civilian law enforcement agencies in the United States and advocated for systemic change.³

On January 16, 2015, the President issued Executive Order No. 13688, “Federal Support for Local Law Enforcement Equipment Acquisition”. The Executive Order emphasizes the need to better coordinate Federal support for the acquisition of certain Federal equipment by State, local, and Tribal law enforcement agencies and ensure that LEAs have proper training regarding the appropriate use of that equipment, including training on the protection of civil rights and civil liberties. To examine these issues, the Executive Order established a Federal interagency Law

¹ See, e.g., <https://www.aclu.org/feature/war-comes-home>.

² http://www.washingtonpost.com/politics/militarized-police-in-ferguson-unsettles-some-pentagon-gives-cities-equipment/2014/08/14/4651f670-2401-11e4-86ca-6f03cbd15c1a_story.html.

³ <https://www.aclu.org/feature/war-comes-home>.

Enforcement Equipment Working Group (Working Group), which was charged with “providing specific recommendations to the President regarding actions that can be taken to improve the provision of Federal support for the acquisition of equipment by LEAs.”

In May 2015, the Working Group delivered a report to the President (accessible at https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf) with specific recommendations that are summarized below. Notably, the report specifically states, “Before the recommendations are implemented with respect to Tribal LEAs, the Working Group will ensure that the specific requirements triggered by potential changes to Federal programs affecting sovereign tribes, including appropriate Tribal consultation, are met.”⁴ The consultation session at the NCAI Conference is one of the first steps in this process and will give Tribal leaders an opportunity to provide feedback on the recommendations to representatives of the Federal Working Group⁵. The consultation session will be complemented by a Tribal LEA listening session at the International Association of Chiefs of Police (IACP), Indian Country Law Enforcement Section (ICLES) meeting for Tribal leaders and their LEA officers to provide comment.

In addition, the Federal Working Group is accepting written comments from Tribal leaders through Monday, November 23, 2015 at 5:00 p.m. Eastern Standard Time. Written comments can be sent by email to LawEnfEquipment@usdoj.gov or (if necessary) via regular mail to:

Law Enforcement Permanent Working Group
810 7th Street NW
ATTN: Tracey Trautman
Washington, DC 20531

For questions about the consultation and listening sessions or submitting comments, please contact Tracey Trautman at (202) 305-1491 or Tracey.Trautman@usdoj.gov.

QUESTIONS FOR CONSIDERATION

1. Is your Tribal law enforcement agency currently a participant in any of the Federal equipment programs, including the DoD Law Enforcement Support Office (LESO) 1033 Program, DOJ’s Justice Assistance Grant (JAG), DOJ or Department of Treasury Asset Forfeiture Program or the DHS Homeland Security Grant Program (HSGP)?
2. Does the inability to receive items on the prohibited list cause any concerns relative to your law enforcement operations?
3. How often would you request items on the controlled list, and are any of them critical to your law enforcement operations?

⁴ See Report, footnote 13.

⁵ While this Tribal consultation does not fall under those noted in Executive Order 13175, the Federal Working Group is still seeking Tribal input prior to implementation of these provisions.

4. What administrative obligations are anticipated if the recommendations are implemented with respect to Tribal LEAs and how onerous would they be on Tribal governments?
5. Do you have any other comments on the recommendations in this report?

SUMMARY OF RECOMMENDATIONS:

The recommendations in the report are noted in five major areas, as outlined briefly below. The attached “Summary of Recommendations” document outlines the recommendations in greater detail.

1. *Equipment Lists:* The report recommends a controlled list, which includes equipment that can be provided to LEAs through grant funds or equipment transfer with sufficient justification, and a prohibited list, which contains items that may not be purchased with Federal funds or transferred.
2. *Policies, Training, and Protocols for Controlled Equipment:* This set of recommendations outlines policies and protocols that must be in place prior to the acquisition of controlled equipment. In addition, LEAs must commit to training and certifications relevant to the controlled equipment on hand. Finally, LEAs must collect information on the deployment or use of controlled equipment during “significant incidents” (as defined in the report recommendations) and make it available upon request by the granting or transferring agency.
3. *Acquisition Process for Controlled Equipment:* LEAs that wish to acquire the controlled equipment through Federal grant or equipment transfer programs must follow the process identified in the report recommendations and provide sufficient justification to the Federal agency. The process includes the identification of regional sharing agreements.
4. *Transfer, Sale, Return and Disposal of Controlled Equipment:* LEAs must follow the protocols outlined in the report recommendations if they wish to divest themselves of equipment through transfer, sale, return or disposal. The method by which equipment can be released is different for each agency.
5. *Oversight, Compliance and Implementation:* This recommendation recognizes that there will be sanctions on LEAs for programmatic or statutory violations. In addition, it recommends the establishment of a Permanent Working Group to continue the implementation of the recommendations across the Federal Government.

PERMANENT WORKING GROUP:

A Permanent Working Group (PWG) has been convened as recommended in item 5.1 and continues to be co-chaired by the Department of Justice, the Department of Homeland Security and the Department of Defense. The PWG is continuing to work on implementation issues related to all of the recommendations noted within and will continue to solicit feedback from relevant law enforcement stakeholders. As noted earlier, before the recommendations are implemented with Tribal LEAs, the Working Group will ensure that the specific requirements triggered by potential changes to Federal programs affecting sovereign tribes, including appropriate Tribal consultation, are met.

Attachment:

Final Report: “Recommendations Pursuant to Executive Order 13688 – Federal Support for Law Enforcement Equipment Acquisition”

TRIBAL CONSULTATION ON THE RECOMMENDATIONS FOR FEDERAL SUPPORT TO LOCAL LAW ENFORCEMENT EQUIPMENT ACQUISITION UNDER EXECUTIVE ORDER #13688

Opening and Welcome

Eugenia Tyner-Dawson, Senior Advisor for Tribal Affairs, Executive Director, Justice Programs Council on Native American Affairs, Office of Justice Programs, Department of Justice, Session Facilitator.

- Handed out copies of Dear Tribal Leader Letter, Framing paper, and the Report
- Working group established in January 2015, concluded work in May, 2015
- Executive Order requires consultation with tribal leaders before it goes forward to the President—the formal consultation was held on October 21, 2015 with Tribal leaders at the NCAI Annual Convention in San Diego, CA
- The Working group also wanted to present their report to Tribal Police Chiefs and their officers serving Indian Country. Thus, we are presenting this listening session to tribal law enforcement personnel here at the International Association of Chief of Police - Indian Country Law Enforcement Session in Chicago, IL.
- We thanks IACP and their staff, Jennifer Styles for assisting us with this opportunity.
- We thank NCAI and NNALEA for advising the working group and helping the workgroup's outreach to tribal chiefs of police for the framing paper.
- Turning over to Tracy Trautman, Deputy Director, Bureau of Justice Assistance, who also serves as a member of the federal workgroup.

Introductions

DOJ Attendees:

Gena Tyner-Dawson, Moderator

Tracey Trautman. Lead Federal Official for the Workgroup

DOI/BIA Attendees:

Darren Cruzan, and field agents from Sacramento, Portland, and DC,

Mario RedLegs,

Jerin Falcon

and Sharee Freeman, Office of Self-Governance Director

IACP Attendees: Jennifer Styles

Session attendees:

Police Chief Patrick Melvin, Salt River Pima Maricopa Indian Community

Tribal Officer, Salt River Pima Maricopa Indian Community

Police Chief Echevarria, Tulalip Tribe

Police Chief Rogers, Nez Perce Tribe

Police Chief, William Denke, Sycuan Band of Kumeyaay Indians

Police Officer, Seneca Nation

Raymond Cortiz Jr., Policy Chief of Southern Ute Tribe

Patrick Teton, Policy Chief, Fort Hall Police Department

(See IACP ICLES Meeting Attendee List)

Eugenia Tyner-Dawson:

She provided opening remarks to familiarize attendees with the purpose and the protocols of the Listening Session.

Tracey Trautman

Tracey then provided context for the Executive Order and walked through the five main areas of the recommendations. She then also went over all of the equipment on both the prohibited and controlled equipment lists in order to ensure that everyone understood what they were.

The session was then opened for comments, and the following was offered:

Chief Melvin, Salt River: They do participate in the 1033 program and have obtained an MRAP. It is extremely useful and they use it for high water rescue and for extraction purposes. Because it can have a negative connotation, they try to be very prudent in the usage of the vehicle so that residents don't feel threatened. They had a naming contest when it was first acquired and they bring it to community events so that the tribal members can see the capability that it has. They also introduce the MRAP to the children. They serve a 400 square miles jurisdiction. They need drones and hummers.

They also have a SWAT team and the team has started to train on the MRAP specifically.

Chief Rogers, Nez Perce:

They recently worked on a raid with local law enforcement and were able to use federal assets, such as an armored vehicle. They do not currently own any, but have recently signed up for the

1033 program. They are interested in trying to acquire a drone for surveillance purposes as they are in a heavily rural area.

Chief Echeverria, Tulalip Tribes:

They also have a need for an armored vehicle, although are interested in something more like a Suburban-type vehicle. They have good local/tribal cooperation and feel that they could get assistance in using a vehicle like this if so needed. He asked how they receive the military equipment. They are close to the Everett Naval Base.

Darren Cruzan, Deputy Director, Office of Justice Services, BIA:

What are the different types of camouflage that are prohibited?

Tracey Trautman, OJP

Tracey explained that we do not specify a pattern of camouflage that is prohibited as there are many different patterns.

Tracey Trautman asked the larger group if they felt there were any operational impediments to the recommendations in the EO. There were no comments from the group on this issue.

Chief Melvin, Salt River

He asked if they could still provide comments if they later found that their tribal leaders had an issue with this EO. Tracey Trautman mentioned that she could be contacted directly or via the LawEnfEquipment@usdoj.gov mail box; both addresses are in the Tribal Letter and Framing Paper.

Gena Tyner Dawson

She reminded the group that they written comment period was open until November 23, 2015. Hearing no other comments, the session was closed.

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Traditional Opening

James DeLaCruz, Quinault Indian Nation former Councilman

Welcome

Eugenia Tyner-Dawson, Senior Advisor for Tribal Affairs, Executive Director, Justice Programs Council on Native American Affairs, Office of Justice Programs, Department of Justice, Session Facilitator.

- Handed out copies of Dear Tribal Leader Letter, Framing paper, that goes hand in hand with the president's report
- Working group established in January 2015, concluded work in May, 2015
- EO requires consultation with tribal consultation before it goes forward to the President—that's the purpose of this consultation
- We have one more listening session tribal leaders and tribal law enforcement personnel— Sunday October, 25th at the International Association of Chief of Police - Indian Country Law Enforcement Session in Chicago, IL.
- Thanks NCAI for advising working group and helping the workgroup's outreach to tribal chiefs of police for the framing paper.
- Moderating conversation this evening
- Turning over to Susan Dozier—senior policy advisor in the Executive Office of President—(see bio)

Introductions

Mel Sheldon, Chair, Tulalip Tribes

James Delacruz, Quinault former Councilman

Henry Cagey, Lummi Nation Councilman

Bonnie Juneau, Tulalip Tribes, Board of Directors

Theresa Sheldon, Tulalip Tribes, Board of Directors

Deborah Parker, Staff Consultant and former Vice Chair, Tulalip Tribes

Marsha Hurd, Office of Tribal Justice, Department of Justice

October 21, 2015 – National Congress of American Indians Annual Convention 2015
Town and Country Resort Hotel, Palm Court Six, San Diego, CA

Kay Rhoads, Principal Chief, Sac and Fox Nation

Robert Williams, Committee Member, Sac and Fox Nation

Christina Snider, Staff Attorney, Dry Creek Rancheria Band of Pomo Indians

Federal Comments

Susan Dozier - Federal Lead Official

- Post-Ferguson, President signed EO about looking at how federal funds and federal equipment are being used to militarize law enforcement agencies ~18000
- President signed EO in January (post-Ferguson) establishing the Law Enforcement Equipment Working Group (LEEWG), chaired by DOD, DHS, DOJ, to look at where federal funds were going and how the equipment was being used
- Federal dollars and federal equipment intended to help state and local LEAs appropriately protect and serve communities and officers.
- Recommendations from the LEEWG: 1) create permanent working group (PWG), 2) need for consistent govt-wide constraints and controls on certain equipment (prohibited/controlled list of equipment), 3) harmonize process across federal agencies, 4) lift up and figure out best support for law enforcement agencies to use this equipment
- Prohibited list went live immediately, recommendations went live October 1
- Recommendation from permanent working group was that this should be an evolving process— want to see what sort of impact these recommendations will have on tribal law enforcement

Tribal Comments/Discussion/Response

Henry Cagey

- Our law enforcement doesn't have riot gear, military equipment, so I'm not sure this even applies to a lot of tribes
- Is there opportunity for tribes to apply for the funds that other cities are going to get?
- We have limited funds so we aren't even set up to deal with a lot of these things
- It's not just the schools, it's the colleges—we have a college campus and government campus on reservation
- Is there a path that we can get some of this equipment?

Susan Dozier

- With streamlining the process and creating oversight, they've required during the application process that policy and training procedures be put in place for acquisition and use of federal dollars and federal equipment
- You can continue to apply to any of the federal agencies that are providing funds or the equipment itself

- Dollar amounts have not been reduced by the report or the PWG, but distributing agencies have changed the way the application process goes as far as what requirements need to be attested to

Gena Tyner-Dawson

- Two Grants:
- Coordinated Tribal Assistance Solicitation Purpose Area 1: Hiring grants and equipment grants—tribe-specific programs covered under this—you qualify and 2) JAG funds, and you can apply for equipment under these funds (though the funds are not extensive).

Susan Dozier

- I am thinking that getting the funding is probably the issue with tribal governments, but once you get the funds there are other requirements that you will have to go through for seeking this money to purchase controlled equipment
- DOD DOJ DHS GSA all do equipment expenditures

Henry Cagey

- Half of our rez is surrounded by water. (Lummi Nation)

Susan Dozier

- For non-prohibited, controlled equipment, you will have the opportunity to describe what the purpose for the requested equipment is—all of those requests will go through an actual review process, need to implement policy and training before you can use/spend funds to acquire controlled equipment and will have to attest to the same
- Not as knowledgeable about the grant process itself, but on a quarterly basis, PWG will sample the applications and confirm the safeguards are being adhered to – want to ensure that the equipment is used as it was initially applied for

Henry Cagey

- GSA Surplus—will we get priority over that?
- There is a website we go to for surplus—we go to a website to get trucks, etc. and it's either free or low cost

Susan Dozier

- Those items will still be available so long as they are not prohibited items
- If it's controlled, you will have to go through the process previously discussed

Henry Cagey

- We have to go to the BIA and they have to send the damn request in—if you can streamline excess surplus policy for us to get GSA surplus, by going directly to GSA and not having to wait on BIA, that would be great
- BIA assigns you your number, so when I want something I have to get Ed’s permission before it’s okay for me to get anything

Bonnie Juneau

- You want law enforcement to be military-like, but there are times when maybe there is an active shooter coming into someplace, and to have a mobile emergency response center for emergencies and major incidents would be helpful (command and control vehicles)
- I don’t think we use the battering rams.

Theresa Sheldon

- YES WE DO, mostly because the police are really excited about that

Bonnie Juneau

- But shields could have potential
- And we have an amphitheater so there is potential for a riot
- Our department has been good with these grants, but the amount of the COPS grants could be increased because it’s a small drop in the bucket compared to the overall budget—match funds are a huge

Gena Tyner-Dawson

- Coordinated tribal assistance solicitation—equipment / hiring
- TLOA 2010 eliminated matching requirements in tribal pot of funds, but when they compete on par with other law enforcement agencies, the match is required.
- Several years ago, DOJ COPS did not pay for indirect costs, but the Obama administration changed this policy and included tribal indirect cost rates as allowable costs for tribal specific COPS grants.
- Will ask the COPS office if there is a process for submitting compelling justification for waiving the cost match.

Theresa Sheldon

- DHS—would that be outside of CTAS?

Gena Tyner-Dawson

- Yes, and tribes had to struggle with that over the years with tribal law enforcement using tribal indirect costs without contributing to the indirect cost pool.

Henry Cagey

- Communication / coordination with other jurisdictions is another challenge—we've got a lot of concurrent and neighboring jurisdictions—this is really important for tribes
- It took three hours for them to figure out if they could come or not when we had a fire this summer (equipment but also response should be coordinated)

Susan Dozier

- Requesting agencies have to have these policies and procedures before equipment and funds actually get into their hands; better communication by and between agencies is something the 21 Century Task Force on Policing recommended and the LEEWG also echoed. LEAs are encouraged to improve policy, training and procedures on communication by and amongst agencies.

Henry Cagey

- Who is our tribal rep at the table?

Gena Tyner-Dawson

- DOJ, DHS, and DOD have all invited different agencies to attend—my understanding is that the tribes didn't send someone
- DOI participates, I am not sure that it was from someone from BIA
- We might have that discussion with your permanent workgroup about how you communicate with OJP, OTJ or Darren Cruzan

Bonnie Juneau

- Remembering that all tribes have different needs and that tribes are sovereign and it doesn't mean that they have the same needs—so one tribe does not apply to everyone.

Kay Rhoads

- You might just look at BIA regions
- That would address your issue because plains Indians are not going to address water issues of the NW

Bonnie Juneau

- Going to Bad River tribe, their relationship with their law enforcement is totally different—they work together differently—jurisdictional differences
- We deal with ocean going vessels so different risks

Susan Dozier

- LEEWG/PWG held stakeholder meetings and meetings with civil rights groups, true the PWG was not made up of reps from all of the law enforcement agencies, there are many but all received feedback considered during the process and want you to know that this is a continuing/evolving process, will also find out who from DOI or DIA was on the PWG and if that person was the tribal liaison. Do you see equipment sharing as well among tribes and between tribes and state/local LEAs?

Bonnie Dozier

- I love the idea of equipment sharing—usually when you have an emergency all the local tribes come together, so there may be potential, the officers may feel differently about it

Kay Rhoads

- OK City, real cooperative effort in emergencies, but also a little bit different than other regions because of the OK Indian Welfare Act as well

Bonnie Juneau

- So yeah, I think it's a great idea to look at the local (BIA) regions and to talk to tribal leaders to make sure our voices and concerns are heard

James DelaCruz

- Quinault has had problems with the training of law officers for 6 month periods and a lot of the feedback is that they are discriminatory for tribal officers so we don't have qualified training or officers
- I think someplace in ABQ

Gena Tyner-Dawson

- So that is in Artesia, and some of the places have agreements with the state on a case by case basis
- I know Darren Cruzan was looking at an agreement to build another facility in a different part of the country because there are issues of capacity during training and it's extremely difficult on the communities themselves
- It's an issue of capacity and they would like access to a lot of that equipment
- You asked about an opportunity to comment elsewhere; on the letter, there is a point of contact to submit more comments and we are leaving the record open for about 30 days; you can also contact Tracy Trautman

Bonnie Juneau

- Would the next step be to go back to our police for that feedback?

Gena Tyner-Dawson

- Please. We will leave the consultation record open until November 23, 2015. Your letter has the details.

Susan Dozier

- It is important to me that tribal leaders know that we did not intentionally leave tribal leaders from the table, or law enforcement reps from the state and local agencies—the oversight agencies were there, and many were excluded, but we want to make it clear that we will continue to accept these comments and we hope that you will submit it

Gena Tyner-Dawson

- We will convene a meeting on Sunday, and Tracy Trautman from DOJ will be there to lead the listening session discussion at IACP ICLES.

Susan Dozier

- IACP was instrumental in creating standards that will be released either at the end of this month at their conference or in December and it's going to reference some of the issues you brought up with respect for the need for training and policy and procedures to avoid discriminatory practices— their recommendations address the need to create oversight programs that are open and applicable to all agencies irrespective of gender, rank, and origin because we want a community of officers using federal dollars and federal equipment in ways that support LEAs to appropriately use this to protect and serve communities and for officer safety.

Henry Cagey

- P. 48- crack here to work better with these agencies—we know we have good relationship with DOI and DOJ—we would like to work with the other folks a lot better but they need a better policy to work with us, because what does that look like because we don't know how to talk to these folks so they need to learn how to talk to us—DHS is on the rez every day and we don't know what they do—if we can coordinate a lot better with these agencies
- Better funding with DHS—these folks should be able to help us and can they?
- DOJ for the seizure—they keep the money and equipment and whatever they seize and we don't get it
- We can talk about Interior all day
- USFS, BLM, all the other agencies within interior, we need to learn how to better coordinate with the tribes

Marcia Hurd

- That sounds like something OTJ can work on.

Gena Tyner-Dawson

- I know that some of these departments, DOD, DHS, have tribal liaisons, so they may be a good point of contact.

Henry Cagey

- We want tribal 8a companies that may be able to supply the equipment
- Tribes that have 8a programs like Couer d’Alene, that can build emergency equipment, we want a strengthening of that ability—if we have an Indian company that has that equipment, we want to be able to supply that equipment

James DelaCruz

- HIDTA Money included?

Marcia Hurd

- I’ve been working on this, and they are interested in getting the HIDA folks to coordinate with tribal folks

Henry Cagey

- We’re never consulted when the money is disbursed, it’s already decided by the time we get there

Theresa Sheldon

- I think it’s about access—no matter what funding/language, we need to always have “and tribes” so we can compete

Bonnie Juneau

- They say there is no money left or they don’t have the data, and we do have that data (I-5 tribes) – we need to make sure that tribes get appropriate funding to deal with these issues— we’ve realized that it’s not just a tribal issue, it’s county-wide, state-wide, etc.
- We need to be able to share this information—criminals know how to slip through the cracks, it’s about communicating with tribes because we all want safer communities

Gena Tyner-Dawson

- Kay Rhoads—you said Sac and Fox already has some of these things?

Kay Rhoads

- We have a mobile command center and we already work with the local police a lot
- I don’t identify as much with many of the problems you are describing

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- We have cross-jurisdiction with a lot of these areas because of the COPS grants so a lot of our equipment is a lot more up to date than the local police, and in fact they rely on us a lot

Susan Dozier

- Do you have policies in place or best practice guides that you can share so that other tribes and state/local agencies can see how you got to that point of mutual cooperation?

Kay Rhoads

- Yes, our AG has been really good about writing these things and we would be willing to share

Gena Tyner-Dawson

- Thank you for participating this evening
- I would like to turn the session discussion over to Susan for any closing remarks. Susan?

Susan Dozier

- Continuing process, working group will remain in effect, we're hoping post-administration as well, so send us your concerns and questions

Gena Tyner-Dawson

Gena inquired whether anyone had additional questions or comments. She reminded everyone of the due date for additional comments. Hearing no more comments. She adjourned the session.



THE TULALIP TRIBES

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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

November 20, 2015

Law Enforcement Equipment Permanent Working Group
810 Seventh Street NW
ATTN: Tracey Trautman Washington, DC 20531

Emailed as requested to: LawEnfEquipment@usdoj.gov and Tracey.Trautman@usdoj.gov.

RE: Comments on Executive Order 13688

Dear Working Group:

This letter is in response to the tribal consultation request regarding Executive Order 13688. The Tulalip Tribes welcomes this opportunity, on a government-to-government basis, to provide comments.

Background on the Tulalip Tribes

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, Skykomish, and other allied bands signatory to the 1855 Treaty of Point Elliott. The United States Constitution recognizes three distinct sovereigns in addition to the Federal government- the several states, foreign nations, and Indian Tribes. As a sovereign government, Tulalip Tribes' governing responsibilities mirror that of other sovereign governments. The Tulalip Tribes, as it has been for thousands of years, is a government exercising its powers to determine the best needs of its traditional territory and tribal citizens.

Decades of failed United States policy has resulted in a great need for many services in our tribal community. Tulalip culture, language, values, and spiritual beliefs were nearly eradicated under U.S. government superintendence. Furthermore, disruption of traditional ways of life has caused a variety of ills among our community, including a diabetes epidemic, chemical dependency problems, and disproportionate poverty. The needs of the Tulalip Tribal community remain great. Federal and state grant funding as well as related partnerships are an important overall component to the Tulalip Tribes' service delivery plan.

Our tribal government has developed many programs to provide benefits to our citizens to respond to these problems. Tribal programs teach our youth the traditions and language of the Tulalip people, provide for the healthcare and physical needs of our people, and seek to abate the numerous problems that have come about from a historical lack of tribal self-determination.

However, as mentioned we cannot provide these services exclusively from tribal hard dollars; we rely on the available resources to provide innovative, necessary services to tribal members and other Natives in our service delivery area.

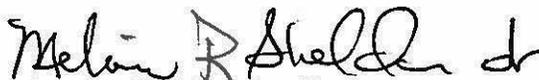
Executive Order 13688

As we understand this document, it outlines five major areas related to the provision of controlled equipment through federal grant and transfer programs. These recommendations are intended to also apply to Tribal LEAs that acquire controlled equipment through Federal resources. Indian Tribes and Alaska Native Villages are potentially eligible to participate in this process and the EO 13688 provides the terms and conditions of participation. In section 5 of the report, entitled, "Oversight, Compliance and Implementation" there is a reference on page 32 of this document (5.2), to a receiving agency's compliance with the 1964 Civil Rights Act and the ability of DOJ's investigate any complaints or misuse. We object to this provision as Indian Tribes are sovereign and hold special legal rights distinctly different than non-tribal governments. See e.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Mortan v. Mancari*, 417 U.S. 535 (1974).

During the consultation hearings, we also were told that this equipment could not be used for water patrols. Our reservation borders the water, we are a fishing culture and our Law Enforcement actively patrols the waters for safety and natural resources management. We need equipment for our water patrolling activities. Finally, all Tribes should be able to apply for all funds that are provided to any other police department as a means of access. We thank you for this opportunity to respond.

Sincerely,

THE TULALIP TRIBES OF WASHINGTON


Melvin R. Sheldon, Jr., Chairman

Cc: Tulalip Board of Directors,
Tulalip General Manager

Input from Tribal Leaders:

Comments were taken during both of the consultation sessions. The Office of Justice Programs received one written response. The letter was dated November 20, 2015, and was sent on behalf of Chairman Melvin Sheldon of the Tulalip Tribe. This letter contained two main issues, as follows:

1. The tribe objected to a section in the report entitled, "Oversight, Compliance and Implementation", where there is a reference (page 32) to a receiving agency's compliance with the 1964 Civil Rights Act and the ability of DOJ to investigate any complaints or misuse. They object to this provision as Indian Tribes are sovereign and hold special legal rights distinctly different from non-tribal governments. (See: *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Morton v Mancari*, 417 U.S. 535 (1974)).
2. They also noted that they were told during one of the consultation hearings that this equipment could not be used for water patrols.

Response to Tribal Letter:

1. The Tulalip Tribes raise an important point regarding the applicability of civil rights statutes to tribal governments, and the recommendation language has been amended accordingly:

Statutory Violations: For alleged violations of law, including, where applicable, civil rights laws, the matter will be referred for investigation to the Federal agency's Office of Civil Rights (OCR) or other appropriate compliance office, or the U.S. Department of Justice.

2. Nothing in the Executive Order prohibits the use of equipment for water patrols. Boats and other watercraft are not on the controlled or prohibited list.

Conclusion:

The tribal consultation period is complete and the items raised in the letter by the Tulalip Tribe have been adjudicated. The Permanent Working Group will clarify the appropriate Civil Rights statute that is applicable to tribes, and publish this in the next implementation update and post to the EO 13688 website on the Bureau of Justice Assistance webpage.