

US. Department of Energy
Washington, D.C.

ORDER

DOE 1230.2

4-8-92

SUBJECT: AMERICAN INDIAN TRIBAL GOVERNMENT POLICY

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1. PURPOSE. This Order establishes responsibilities and transmits the Department of Energy's (DOE) American Indian Policy.
 2. APPLICATION TO CONTRACTS. The provisions of this Order apply to all Departmental Elements and are to be applied to covered contractors to the extent implemented under a contract or other agreement. A covered contractor is a seller of supplies or services awarded a procurement contract, over the small purchase threshold, which might reasonably be expected to involve meetings with representatives of American Indian Tribes addressing significant issues of interest to the Department.
 3. POLICY. Departmental policy is outlined in Attachment 1.
 4. REFERENCES.
 - a. DOE 1220.1, CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS, of 9-30-91, which establishes policies, responsibilities, and procedures for: (1) the management and coordination of congressional and intergovernmental affairs activities within a centralized system of the Department of Energy; and, (2) carrying out the non-legal functions and processes involving the development, preparation, coordination, and clearance of all proposals contained in the DOE legislative program.
 - b. Title 25, United States Code (U.S.C.) 1301, (1982), which defines Indian Tribes.
 5. EXCEPTION.
 - a. This policy does not affect Departmental interactions with State-recognized Tribes with respect to matters provided for by statute or regulation.
 - b. The Naval Nuclear Propulsion Program is exempt from the provisions of this Order.
 6. DEFINITION. American Indian Tribe is any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native entity, which is recognized as eligible for the special programs and services provided by the United States because of their status as Indians.

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Congressional and Intergovernmental
Affairs

7. RESPONSIBILITIES.

- a. Assistant Secretary for Congressional and Intergovernmental Affairs (CP-1) shall provide policy guidance to all Departmental Elements concerning the Department's relationships with American Indian governments and related public interest groups.
- b. Deputy Assistant Secretary for InterGovernmental and Public Liaison (CP-30) shall:
 - (1) Serve as the central point of contact for American Indian governments and public interest groups on energy matters relating to intergovernmental activities.
 - (2) Identify and maintain a point-of-contact system and internal communications mechanism among Departmental personnel whose responsibilities include interacting with tribal government representatives.
 - (3) Identify and monitor progress toward eliminating regulatory, statutory, and/or procedural impediments to the Department's working directly with tribes.
 - (4) Monitor Headquarters and field element implementation of procedures for consultation with tribal governments to assure that tribal rights and concerns are considered prior to the Department taking actions that may affect them.
 - (5) Identify and maintain key reference resources needed to support Indian policy implementation activities and distribute these resources or reference lists to Headquarters and field elements.
 - (6) Assist the Office of Professional and Technical Training and Development (AD-70) in developing and monitoring the administration of appropriate training to increase the awareness of Indian rights and concerns among DOE and contractor personnel.
 - (7) Monitor Headquarters and field element creation and implementation of appropriate procedures for consulting with tribal leaders to comply with cultural resource management and American Indian religious freedom protection laws.
 - (8) Promote cooperation with Federal and State agencies that have related responsibilities.
- c. General Counsel (GC-1) shall provide advice and other counseling to appropriate DOE components pertaining to proposed policy, regulations, and activities of the Department involving Indian Tribes.

- d. Assistant Secretary for Environment, Safety and Health (EH-1) shall develop DOE-wide guidance and coordinate activities implementing DOE'S cultural resource management program, including those activities affecting Indian Tribal cultural resource sites and items.
- e. Secretarial Officers shall:
 - (1) Identify a point of contact whose responsibilities include interacting with tribal government representatives.
 - (2) Develop internal guidelines to implement the DOE Indian Policy in areas under their cognizance. The guidelines should include, but are not limited to, procedures for identifying regulatory, statutory, and/or procedural impediments to working directly with tribes and procedures for consultation with tribal governments prior to the Department taking actions that may affect them.
 - (3) Secretarial Officers shall, with the assistance of the Deputy Assistant Secretary for Intergovernmental and Public Liaison and the General Counsel, determine which programs, policies, and regulations impact significantly upon American Indian tribes to assure their participation in the development and promulgation of these Departmental actions. To the extent possible, the tribes should be involved in the process.
 - (4) Inform the Deputy Assistant Secretary for Intergovernmental and Public Liaison regarding all contacts with American Indian tribal officials and intertribal organizations about meetings, briefings, or similar levels of interaction.
 - (5) Coordinate all meetings/briefings with American Indian tribal officials or intertribal organizations with the Deputy Assistant Secretary for Intergovernmental and Public Liaison.
 - (6) Coordinate with the Assistant Secretary for Congressional and Intergovernmental Affairs to ensure necessary notification of proposed meetings/briefings and to obtain guidance whether a representative from the Office of Congressional and Intergovernmental Affairs should accompany staff when meeting with representatives of Indian intergovernmental groups.
 - (7) Include in a procurement request package, for each procurement requiring the application of this Order, the following:
 - (a) Identification of the Order;
 - (b) Identification of the specific requirements with which a contractor or other awardee is to comply, or, if this is not practicable, identification of the specific paragraphs or

other portions of this Order with which a contractor or other awardee is to comply; and

- (c) Requirements for the flowdown of provisions of this Order to any subcontract or subaward. For application to awarded management and operating contracts, Heads of Headquarters Elements may set forth this information in a written communication to the contracting officer rather than in a procurement request package.

f. Heads of Field Elements:

- (1) In conjunction with the responsible Program Secretarial Officer, identify a point of contact whose responsibilities include dealing with American Indian issues related to the office's mission.
- (2) In conjunction with the responsible Program Secretarial Officer, develop internal guidelines to implement the DOE Indian Policy at sites under their cognizance. The guidelines should include, but are not limited to, procedures for identifying regulatory, statutory, and/or procedural impediments to working directly with tribes and procedures for consultation with tribal governments prior to the Department taking actions that may affect them.
- (3) Represent the Department in American Indian intergovernmental activities related to their programmatic, operational, and administrative responsibilities, keeping the Deputy Assistant Secretary for Intergovernmental and Public Liaison and appropriate Program Secretarial Officer, informed of routine developments and interactions on a timely basis.
- (4) Coordinate with the Deputy Assistant Secretary for Intergovernmental and Public Liaison, with concurrent notification to the responsible Program Secretarial Officer, when organizing conferences, workshops, seminars, and public hearings for American Indian government officials.
- (5) Maintain direct communications on a regular basis with the Assistant Secretary for Congressional and Intergovernmental Affairs, with concurrent notification to the responsible Program Secretarial Officer, to keep the Department informed of any significant interactions and unusual events which may have an impact on intergovernmental activities relating to their field elements.
- (6) Coordinate with the Assistant Secretary for Congressional and Intergovernmental Affairs, as well as the responsible Program Secretarial Officer, to ensure necessary notification of proposed meetings/briefings and to obtain guidance whether a representa-

tive from the Office of Congressional and Intergovernmental Affairs should accompany staff when meeting with representatives of American Indian intergovernmental groups.

- (7) Include in a procurement request package, for each procurement requiring the application of this Order, the following:
- (a) Identification of the Order;
 - (b) Identification of the specific requirements with which a contractor or other awardee is to comply, or, if this is not practicable, identification of the specific paragraphs or other portions of this Order with which a contractor or other awardee is to comply; and
 - (c) Requirements for the flowdown of provisions of this Order to any subcontract or subaward. For application to awarded management and operating contracts, Heads of Field Elements may set forth this information in a written communication to the contracting officer rather than in a procurement request package.

BY ORDER OF THE SECRETARY OF ENERGY:



JOHN J. NETTLES, JR.
Director of Administration
and Human Resource Management

U.S. DEPARTMENT OF ENERGY AMERICAN INDIAN POLICY

PURPOSE

This policy outlines the principles to be followed by the Department of Energy (DOE) in its interactions with federally-recognized American Indian tribes. It is based on Federal policy treaties, Federal law and the DOE's responsibilities as a Federal agency to ensure that tribal rights and interests are identified and considered pertinent decision-making. The policy provides general guidance to DOE personnel for management actions affecting American Indians and emphasizes implementation of such activities in a knowledgeable and sensitive manner. This policy does not affect DOE interactions with State-recognized Tribes with respect to matters provided for by statute or regulation.

DEFINITION

INDIAN COUNTRY means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 USC 1151)

BACKGROUND

American Indian Tribal Governments have a special and unique legal and political relationship with the Government of the United States, defined by history, treaties, statutes, court decisions, and the U. S. Constitution. The United States has entered into more than 600 treaties and agreements with American Indian Tribes. These treaties and agreements create a variety of legal responsibilities by the United States toward American Indian Tribes and provide the basis for a government-to-government relationship. Other responsibilities toward American Indians are created by Congress through statutory enactments. Although the Department of the Interior, through the Bureau of Indian Affairs, has the principal responsibility for upholding obligations of the Federal Government to American Indians, this responsibility extends to all Federal agencies.

POLICY

1. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH AMERICAN INDIAN TRIBAL GOVERNMENTS 1

DOE recognizes Tribal governments as sovereign entities with, in most cases, primary authority and responsibility for Indian country. In keeping with the principle of American Indian self-government, the Department will view Tribal governments as the appropriate non-Federal parties for making decisions affecting Indian country, its energy resources and environments, and the health and welfare of its populace. The Department will recognize the right of each Tribe to set its own priorities and goals in developing and managing its energy resources. The Department recognizes that some Tribes have treaty-protected interests in resources outside reservation boundaries.

2. DOE RECOGNIZES THAT A TRUST RELATIONSHIP DERIVES FROM THE HISTORICAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND AMERICAN INDIAN TRIBES AS EXPRESSED IN CERTAIN TREATIES AND FEDERAL INDIAN LAW.

In keeping with the trust relationship, the DOE will consult with Tribal governments regarding the impact of DOE activities on the energy, environmental and natural resources of American Indian Tribes when carrying out its responsibilities.

3. THE DEPARTMENT WILL CONSULT WITH TRIBAL GOVERNMENTS TO ASSURE THAT TRIBAL RIGHTS AND CONCERNS ARE CONSIDERED PRIOR TO DOE TAKING ACTIONS, MAKING DECISIONS OR IMPLEMENTING PROGRAMS THAT MAY AFFECT TRIBES.

The DOE will take a proactive approach to solicit input from Tribal governments on departmental policies and issues. The Department will encourage Tribal Governments and their members to participate fully in the national and regional dialogues concerning departmental programs and issues.

4. CONSISTENT WITH FEDERAL CULTURAL RESOURCE LAWS AND THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT (P.L. 95-341), EACH FIELD OFFICE OR DOE INSTALLATION WITH AREAS OF CULTURAL OR RELIGIOUS CONCERN TO AMERICAN INDIANS WILL CONSULT WITH THEM ABOUT THE POTENTIAL IMPACTS OF PROPOSED DOE ACTIONS ON THOSE RESOURCES AND WILL AVOID UNNECESSARY INTERFERENCE WITH TRADITIONAL RELIGIOUS PRACTICES.

DOE will comply with all cultural resource legislation and implementing regulations in the management and operation of its programs and facilities. Consultation with appropriate American Indian tribal governments is part of the compliance process involving Federal cultural resource laws and the American Indian Religious Freedom Act. Consultation may include, but is not limited to 1) the exchange of information concerning the location and management of cultural resources, 2) repatriation or other disposition of objects and human remains, 3) access to sacred areas and traditional resources located on DOE lands in accordance with safety, health and national security considerations, and 4) assessment of potential community impacts.

5. THE DEPARTMENT WILL IDENTIFY AND SEEK TO REMOVE IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON DOE PROGRAMS.

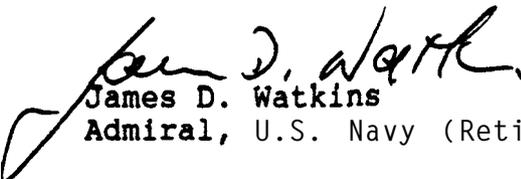
DOE recognizes that there may be regulatory, statutory and/or procedural impediments which limit or restrict our ability to work effectively and consistently with Tribes. In keeping with this policy, we will seek to remove any such impediments. Additionally, we will, to the maximum extent permitted by law, apply existing statutory, regulatory and procedural requirements in a manner that furthers the goals of this policy

6. THE DEPARTMENT WILL WORK WITH OTHER FEDERAL AND STATE AGENCIES THAT HAVE RELATED RESPONSIBILITIES TO CLARIFY THE ROLES, RESPONSIBILITIES AND RELATIONSHIPS OF OUR RESPECTIVE ORGANIZATIONS AS THEY RELATE TO TRIBAL MATTERS.

DOE will seek and promote cooperation with other agencies that have related responsibilities. In many areas of concern to DOE, cooperation and mutual consideration among neighboring governments (Federal, State, Tribal and local) is essential. Accordingly, DOE will encourage early communication and cooperation among all governmental parties. This recognizes that the principle of comity among equals and neighbors often serves the best interests of all parties.

7. THE DEPARTMENT WILL INCORPORATE THIS POLICY INTO ITS ONGOING AND LONG-TERM PLANNING AND MANAGEMENT PROCESSES.

It is key to this effort to ensure that the principles of this policy are effectively institutionalized by incorporating them into the Department's ongoing and long-term planning and management processes. Department managers will include specific programmatic actions designed to facilitate tribal participation in Departmental program planning and activities.


James D. Watkins
Admiral, U.S. Navy (Retired)

