



The Secretary of Energy  
Washington, DC 20585

May 18, 1994

MEMORANDUM FOR ALL DEPARTMENTAL ELEMENTS

FROM: HAZEL R. O'LEARY *Hazel R. O'Leary*

SUBJECT: GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE  
AMERICAN TRIBAL GOVERNMENTS

The attached memorandum signed by the President on April 29, 1994, outlines principles that define our responsibility to ensure that the Department operates within a government-to-government relationship with all federally recognized tribal governments. Accordingly, you are hereby requested to ensure that all program components that fall within your purview are fully aware of the intent of this Presidential directive. Additionally, you are requested to ensure that the rights of sovereign tribal governments are fully respected and that departmental activities affecting Native American tribal rights or trust resources are implemented in a knowledgeable and sensitive manner respectful of this tribal sovereignty.

The attached Department of Energy American Indian Policy is consistent with the principles outlined in this Presidential memorandum. Its purpose is to provide you with further guidance as we work toward implementing departmental activities and actions affecting tribal governments.

Thank you for your cooperation and assistance.

Attachments

THE WHITE HOUSE  
WASHINGTON

April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with  
Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

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(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

*William G. Clinton*

## 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 interaction 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 in 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. (18USCS 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.**

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 responsibility, 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.

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