

**SUBJECT: U.S. DEPARTMENT OF ENERGY POLICY ON CONSULTATION AND ENGAGEMENT WITH FEDERALLY RECOGNIZED INDIAN TRIBES AND ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS**

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## **PURPOSE AND SCOPE**

It is the policy of the Department of Energy (DOE or the Department) to recognize and fulfill its legal obligations to respect and protect Tribal self-determination and inherent sovereignty; identify and conserve Tribal trust resources; carry out its unique relationships with federally recognized Indian Tribes and entities identified in the Alaska Native Claims Settlement Act (ANCSA) Corporations, as defined in DOE Order 144.1; and invite Indian Tribes to consult on a government-to-government basis whenever there is a DOE action with potential impacts on Tribal interests. DOE shall engage Indian Tribes in good faith and invite Indian Tribes to consult in the earliest stages and throughout the decision-making process to ensure robust, interactive, pre-decisional, informative, and transparent consultation. Tribal consultation should maximize opportunities to seek consensus wherever possible.

This Policy and its governing principles provide a foundation and guideline for Departmental interactions and consultation with Indian Tribes and ANCSA Corporations, as further described in DOE Order 144.1 and other applicable requirements such as Sec. 161 of the Consolidate Appropriations Act of 2004.

Definitions of terms in this document, such as “Indian Tribe” or “Tribe”, “Tribal implications”, “consultation”, and “engagement” are available in DOE Order 144.1.

## **BACKGROUND**

Federally recognized Indian Tribes are sovereign nations whose unique political and legal standing predates the founding of the United States, as acknowledged in the United States Constitution, treaties, Supreme Court decisions, Executive Orders, statutes, and existing federal policies. The Supreme Court has recognized that the United States has charged itself with moral obligations of the highest responsibility and trust. [*Seminole Nation v. United States*, 316 US 286, 297 (1942)]. Its longstanding government-to-government relationship with Indian Tribes forms the basis for the United States’ trust responsibility to protect Tribal sovereignty and self-determination, Tribal lands, assets, resources, and treaty and other federally recognized and reserved rights. For these reasons, prior to taking or implementing any actions that may affect such Tribal rights or resources, the Department must consult with Indian Tribes regarding a proposed Departmental action having Tribal implications as defined in DOE Order 144.1 in a collaborative and culturally sensitive manner. Congress has directed federal agencies to engage and consult with ANCSA Corporations on a similar basis. DOE will seek to determine the impacts of legislation and Departmental proposed policy upon Indian Tribes and ANCSA Corporations through consultation or collaboration with them consistent with the intent and purpose of this Policy.

In 2010, the United States government announced its support for the United Nations Declaration on the Rights of Indigenous Peoples. This support is nonbinding under international law and is not a statement of current international law but has significant moral and political force. The United States recognizes the significance of the Declaration's provisions on free, prior and informed consent, which the United States understands to call for a process of meaningful consultation with Tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken.

Given the nature of the Department's history and missions arising from predecessor agencies, there is a recognition that DOE has an important and ongoing relationship with those Tribes with historic ties to DOE sites or who are impacted by site activities. Many DOE Elements, including programs, sites, power marketing administrations, and laboratories maintain longstanding and enduring relationships with Tribes to identify and resolve key issues, communicate in a collaborative manner, and consult in a meaningful way. Engagement between staff at the Department and staff of Tribal governments or ANCSA Corporations is necessary and important to prepare decisionmakers for consultation, ensure understanding of the issues being discussed, align expectations, ensure that technical aspects of proposed Departmental action are discussed at a level that allows decisionmakers to understand the implications of decisions and actions, and identify potential resolutions.

## **POLICY**

### **I. DOE RECOGNIZES THE FEDERAL GOVERNMENT'S UNIQUE RESPONSIBILITIES TO FEDERALLY RECOGNIZED INDIAN TRIBES AND ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS AND COMMITS TO FULFILLING THOSE RESPONSIBILITIES.**

DOE will be diligent in fulfilling its federal trust responsibility to Indian Tribes and ANCSA Corporations through government-to-government consultation, implementation of its American Indian and Alaska Native Policy, and program management activities. DOE will pursue actions that uphold treaty and reserved and other federally recognized rights of Indian Tribes and ANCSA Corporations. The Department recognizes that certain Indian Tribes and ANCSA Corporations may have treaty, trust, or other federally protected rights to resources located on and off reservation lands, aboriginal territories, and potentially including usual and accustomed areas, and jurisdictional boundaries. DOE will, to the extent of its authority, seek to uphold and protect Tribal rights and trust resources.

The Department will, consistent with and supportive of treaty and reserved and other applicable rights of Indian Tribes and ANCSA Corporations, maximize the inclusion of Indian Tribes and ANCSA Corporations in as many aspects of DOE's mission as possible.

DOE commits to protecting the rights and trust interests of Indian Tribes during interactions with state and local governments and other stakeholders with respect to DOE actions having Tribal implications. The Department, in partnership and collaboration with Indian Tribes, will inform and educate state and local governmental entities and other stakeholders about DOE's role and responsibilities regarding its government-to-government relationship and trust responsibility to Indian Tribes and rights of ANCSA Corporations.

## **II. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH INDIAN TRIBES AND WILL INSTITUTE APPROPRIATE PROTOCOLS AND PROCEDURES FOR PROGRAM AND POLICY IMPLEMENTATION.**

DOE acknowledges that federally recognized Indian Tribes are distinct sovereign governments with primary authority with primary authority over their citizens and territories and recognizes that ANCSA Corporations have interests in the health, safety, and welfare of their Alaska Native shareholders. The Department further acknowledges the right of each Indian Tribe and ANCSA Corporation to set its own priorities and goals in developing, protecting, and managing its natural and cultural resources.

DOE commits to inviting Indian Tribes and ANCSA Corporations to consult early in the planning process and whenever a Departmental plan, action, or ongoing activity has Tribal implications. DOE will seek to operate under the assumption that all proposed actions, programs, and related activities, including those with land or resource use or resource impacts, may have Tribal implications, and as appropriate, that it should accordingly consult with potentially impacted Indian Tribes and ANCSA Corporations. DOE recognizes that many Indian Tribes maintain cultural connections and interests to traditional homelands from which they may have been removed pursuant previous federal Indian policies, and further, that their Tribal reservation lands have been significantly reduced from their original lands. DOE acknowledges that Indian Tribes and ANCSA Corporations should be consulted when any plan, action, or ongoing activity have the potential to affect such lands.

DOE will utilize best practices and procedures to enhance its consultation requirements with respect to Departmental actions having Tribal implications. Best practices and procedures for consultation will include protocols for communication between officials of Indian Tribes and ANCSA Corporations and the Secretary, senior, and other Departmental officials and representatives. In accordance with *EO 13175, Consultation and Coordination With Indian Tribal Governments*, "funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the federal government".

## **III. THE DEPARTMENT WILL ESTABLISH MECHANISMS FOR OUTREACH, NOTICE AND CONSULTATION, AND WILL ENSURE INTEGRATION OF INDIAN TRIBES AND ANCSA CORPORATIONS INTO DECISION-MAKING PROCESSES.**

To ensure the protection and exercise of their respective rights, DOE will consult with Indian Tribes and ANCSA Corporations on Departmental actions having Tribal implications, such as proposed policies, projects, and programs that may have the potential to impact their interests, such as data collection.

DOE will consult with Indian Tribes and ANCSA Corporations when proposed Departmental actions may potentially impact their interests, which may include but are not limited to, Tribal lands and traditional homelands, cultural or natural resources, treaty and reserved rights, and other protected interests. The requirements for conducting engagement and consultation are set forth in DOE Order 144.1.

In support of these goals, DOE will implement DOE-wide training for headquarters and field staff on the policies, authorities, and history underlying the federal government's unique responsibilities to Indian Tribes and ANCSA Corporations, including the government-to-government relationship, Tribal sovereignty and governance, and Native American history especially as these may relate to energy projects and polices, consultation requirements and best practices, Indigenous Knowledge and use of Native Languages, DOE responsibility in protecting Tribal data, and American Indian and Alaska Native cultural awareness.

DOE will conduct periodic reviews and evaluations of DOE consultation policies and activities in collaboration and consultation with Indian Tribes and ANCSA Corporations.

#### **IV. DEPARTMENT-WIDE COMPLIANCE WITH APPLICABLE FEDERAL CULTURAL RESOURCE PROTECTION AND OTHER LAWS AND EXECUTIVE ORDERS WILL ASSIST IN PRESERVATION AND PROTECTION OF HISTORIC, CULTURAL, AND SACRED SITES AND TRADITIONAL RELIGIOUS PRACTICES.**

The Department will incorporate trainings on sacred sites and cultural resource protection and use the interagency *Best Practices Guide For Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites* and other applicable interagency documents. The Department will engage and consult with any interested Indian Tribe, including ANCSA Corporations, regarding Departmental actions that may have the potential to impact lands of religious or cultural significance to Indian Tribes. Regarding actions by DOE on lands not under DOE control or actions of another federal agency occurring on DOE land, DOE will consult with Indian Tribes and ANCSA Corporations in accordance with this Policy. Consultation will include Indian Tribes or ANCSA Corporations in identifying and evaluating historic and cultural resources and sacred sites including traditional cultural properties and places; facilitating the involvement of Indian Tribes and ANCSA Corporations in determining and managing adverse effects; and where appropriate, collaboration in the development and signing of memoranda of understanding, agreements, grants, and contracts with DOE.

Departmental consultation will include the prompt exchange of information regarding identification, evaluation, and protection of cultural resources. To the extent allowed by law, consultation will respect and address the policies of participating Indian Tribal or ANCSA Corporations confidentiality and management of cultural resources, as appropriate. Consultation will include matters regarding:

- Indigenous Knowledge;
- climate adaptation;
- repatriation and other disposition of objects and human remains;
- access to sacred areas and traditional resources located on DOE lands, consistent with safety and national security considerations; and
- cultural resources impact assessment of potential loss to Tribal communities.

#### **V. THE DEPARTMENT WILL INITIATE A COORDINATED DEPARTMENTWIDE EFFORT TO COMMUNICATE AND PROVIDE INDIAN TRIBES AND ANCSA CORPORATIONS WITH ENERGY RESOURCE DEVELOPMENT, TECHNICAL**

**ASSISTANCE, BUSINESS AND ECONOMIC SELF-DETERMINATION  
DEVELOPMENT OPPORTUNITIES, EDUCATION, AND TRAINING PROGRAMS.**

The Department will implement a coordinated and consistent communication effort to inform Indian Tribes and ANCSA Corporations about:

- Energy development opportunities on Tribal lands, traditional homelands, or on lands which may affect an Indian Tribe or ANCSA Corporation;
- DOE funding opportunities
- Energy efficiency opportunities;
- Research and development activities;
- Renewable and conventional energy generation, transmission, distribution, marketing, and energy services;
- Emerging energy markets;
- Emerging energy technology opportunities;
- Tribal power purchase preference, grants, and contracts; National, regional, or local energy infrastructure and projects that may impact Tribal treaty or trust resources
- Educational opportunities, including education in science, technology, engineering, and mathematics (STEM);
- Workforce development, internships, fellowships, and scholarships;
- Available technical assistance and training opportunities • Conventional and renewable energy development programs; and
- Contracting opportunities for Tribal government and service-providers, Tribal enterprises, and Indian owned and operated businesses.

DOE recognizes the need for direct funding and technical assistance from applicable DOE and National Laboratory programs that address regulation, energy planning, and development of energy resources on and off Tribal lands and ANCSA Corporation lands.

DOE commits to elevating Indigenous Knowledge in federal scientific and policy processes. DOE recognizes the importance of Indigenous Knowledge in management decisions that relate to land and resource management, and sacred sites, or that may affect traditional homelands. Where appropriate, DOE will identify actions and suggested practices and guidance in alignment with Indigenous Knowledge and pursue opportunities to collaborate with Indian Tribes.

**VI. THE SECRETARY OF ENERGY WILL CONDUCT PERIODIC SUMMITS AND REGULAR AND MEANINGFUL DIALOGUES WITH INDIAN TRIBAL AND ANCSA CORPORATE LEADERS IN SPACES THAT ARE ACCESSIBLE TO TRIBES.**

The Secretary of Energy and Departmental leaders will engage with the leaders of Indian Tribes and ANCSA Corporations in periodic one-on-one dialogues, summits, roundtables, listening sessions and other engagements with the following aims: assessing current energy issues affecting Tribes; discussing the Department's missions and activities pertaining to energy, research and development, environment, cleanup, and national security, as appropriate; and assessing the effectiveness of implementation of this U.S. Department of Energy Policy. These dialogues should occur in spaces that are accessible for Indian Tribe and ANCSA Corporate leaders, with time allotted that is commensurate with the complexity and gravity of the agenda items. Periodic dialogues with Indian Tribes or ANCSA Corporations, individually or collectively, should not be does not be considered a substitute for consultation.

**VII. THE DEPARTMENT WILL WORK WITH OTHER FEDERAL, STATE, AND LOCAL GOVERNMENTS RELATIVE TO ACTIONS POTENTIALLY AFFECTING INDIAN TRIBES AND ANCSA CORPORATIONS.**

DOE will coordinate with other federal and state agencies on related responsibilities to Tribal matters. The Department's mission encompasses many complex issues where intergovernmental cooperation among multiple governments (Tribal, federal, state, and local) is essential. DOE will coordinate with such other governmental entities and encourage early communication regarding Departmental actions having Tribal implications, including aligning funding programs and application procedures, as appropriate, consistent with applicable requirements. DOE will further promote interagency and interdepartmental coordination among Tribal, federal, state, and local governments to assist Indian Tribes and ANCSA Corporations in resolving issues

**CONTACT**

Questions concerning this Policy should be directed to the Office of Congressional and Intergovernmental Affairs at [TribalConsultation@hq.doe.gov](mailto:TribalConsultation@hq.doe.gov) or 202-586-5450.

BY ORDER OF THE SECRETARY OF ENERGY:



DAVID M. TURK  
Deputy Secretary