2005-011317

The Secretary of Energy
Washington, DC 20585

January 20, 2006

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: SAMUEL W. BODMAN

SUBJECT: DOE American Indian and Alaska Natives Tribal Government Policy

I am committed to ensuring that the Department of Energy (DOE) meets its responsibilities to Indian Nations and works in a consistent manner with the government-to-government relationships between federally recognized tribes and the U.S. Government.

The attached American Indian and Alaska Natives Tribal Government Policy reaffirms that commitment and outlines the principles for the Department to follow. I am modifying this existing policy to provide for "periodic" summits.

I request that you be responsive to the Department's policy and look for ways to improve its implementation in order to ensure that all employees are aware of this Policy and its provisions. Tribal participation is frequently critical to DOE's decision-making processes.

If further guidance is needed, or if you have suggestions to improve the current policy, please contact Mr. Eric Ciliberti, Deputy Assistant Secretary for Intergovernmental Affairs, Office of Congressional and Intergovernmental Affairs, at (202) 586-4220.

Attachment

Printed on recycled paper

U.S. DEPARTMENT OF ENERGY AMERICAN INDIAN & ALASKA NATIVE TRIBAL GOVERNMENT POLICY

PURPOSE

This Policy sets forth the principles to be followed by the Department of Energy (DOE) to ensure an effective implementation of a government to government relationship with American Indian and Alaska Native tribal governments. This Policy is based on the United States Constitution, treaties, Supreme Court decisions, Executive Orders, statutes, existing federal policies, tribal laws, and the dynamic political relationship between Indian nations and the Federal government.[1] The most important doctrine derived from this relationship is the trust responsibility of the United States to protect tribal sovereignty and self-determination, tribal lands, assets, resources, and treaty and other federally recognized and reserved rights. This Policy provides direction to all Departmental officials, staff, and contractors regarding fulfillment of trust obligations and other responsibilities arising from Departmental actions which may potentially impact American Indian and Alaska Native traditional, cultural and religious values and practices; natural resources; treaty and other federally recognized and reserved rights.

BACKGROUND

Indian nations are sovereign with unique political and legal standing derived from a longstanding relationship as stated in the Purpose section of this document. The Indian nations retain an inherent right to self-governmental authority, and, therefore, Federal activities affecting self-governance rights and impacting upon trust resources require policy implementation in a knowledgeable and sensitive manner protective of tribal sovereignty and trust resources. The DOE released its Indian Policy in 1992 and subsequently issued DOE Order 1230.2 that established the responsibilities and roles of the DOE management in carrying out its policy. At the request of Indian nations in 1998, the Secretary of Energy agreed to revise the 1992 American Indian Policy and effect comprehensive implementation. This revision was based in part on comments from Indian nations and their leadership and replaces the 1992 Policy that is part of the 1992 Order.

DEFINITIONS

Indian Nation means any American Indian or Alaska Native Tribe, Band, Nation, Pueblo, or other organized group or community, including any Alaska Native village [as defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)], which is acknowledged by the Federal government to constitute a tribe with a government to government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for indigenous peoples because of their status as American Indian and Alaska Native tribes, Bands, Nations, Pueblos or communities.

American Indian and Alaska Native Tribal Government means the recognized government of an Indian nation and any affiliated or component band government of such nation that has been determined eligible for specific services by Congress or officially recognized in 25 CFR Part 83, "Indian Entities Recognized and Eligible to

Receive Services from the United States Bureau of Indian Affairs," as printed in the Federal Register.

Trust Responsibility includes, but is not limited to: promotion and protection of tribal treaty rights, federally recognized reserved rights, and other federally recognized interests of the beneficiary American Indian and Alaska Native nations; determining, documenting, notifying, and interacting with tribal governments with regard to the impact of Departmental programs, policies, and regulations to protect American Indian and Alaska Native traditional and cultural lifeways, natural resources, treaty and other federally recognized and reserved rights.

Consultation includes, but is not limited to: prior to taking any action with potential impact upon American Indian and Alaska Native nations, providing for mutually agreed protocols for timely communication, coordination, cooperation, and collaboration to determine the impact on traditional and cultural lifeways, natural resources, treaty and other federally reserved rights involving appropriate tribal officials and representatives throughout the decision-making process, including final decision-making and action implementation as allowed by law, consistent with a government to government relationship.

Cultural Resources include, but are not limited to: archaeological materials (artifacts) and sites dating to the prehistoric, historic, and ethnohistoric periods that are located on the ground surface or are buried beneath it; natural resources, sacred objects, and sacred sites that have importance for American Indian and Alaska Native peoples; resources that the American Indian and Alaska Native nations regard as supportive to their cultural and traditional lifeways.

Treaty and Trust Resources and Resource Interests include, but are not limited to: natural and other resources specified and implicit in treaties, statutes, and agreements, or lands or other resources held in trust by the United States for the benefit of tribes or individual Indian beneficiaries, including land, water, timber, fish, plants, animals, and minerals. In many instances, Indian nations retain hunting, fishing, and gathering rights, and access to these areas and resources on lands or waters that are outside of tribally-owned lands.

POLICY PRINCIPLES

I. DOE RECOGNIZES THE FEDERAL TRUST RELATIONSHIP AND WILL FULFILL ITS TRUST RESPONSIBILITIES TO AMERICAN INDIAN AND ALASKA NATIVE NATIONS.

The DOE will be diligent in fulfilling its federal trust obligations to American Indian and Alaska Native governments in policy implementation and program management activities. The DOE will pursue actions that uphold treaty and other federally recognized and reserved rights of the Indian nations and peoples. The Department recognizes that some Tribes have treaty-protected and other federally recognized rights to resources and

resource interests located within reservation boundaries, aboriginal territories, and outside reservation and jurisdictional boundaries, and will, to the extent of its authority, protect and promote these treaty and trust resources and resource interests, and related concerns in these areas.

When internal policies, regulations, and statutes, or other barriers prohibit or hinder the DOE trust protection actions or participation in eligible program initiatives, the Secretary will direct the agency to seek corrective protection measures, and tribal government program inclusion.

The DOE is committed to protecting treaty compliance and trust interests of Indian nations during interactions with state and local governments and other stakeholders with regard to DOE actions impacting upon American Indian and Alaska Native governments and peoples. The Department will inform and educate state and local governmental entities and other stakeholders about the DOE's role and responsibilities regarding its trust relationship with Indian nations.

The DOE will seek to determine the impacts of Departmental- proposed legislation upon Indian nations, in extensive consultation and collaboration with tribes. The Secretary will implement this notice and consultation effort consistent with the intent and purpose of this Policy.

II. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT TO GOVERNMENT RELATIONSHIP AND WILL INSTITUTE APPROPRIATE PROTOCOLS AND PROCEDURES FOR PROGRAM AND POLICY IMPLEMENTATION.

The DOE recognizes Tribal governments as sovereign entities with primary authority and responsibility for the protection of the health, safety and welfare of their citizens. The Department will recognize the right of each Indian nation to set its own priorities and goals in developing, protecting, and managing its natural and cultural resources. This recognition includes separate and distinct authorities that are independent of state governments.

The Department, in keeping with the principle of self-governance, recognizes American Indian and Alaska Native governments as necessary and appropriate non-Federal parties in the federal decision-making process regarding actions potentially impacting Indian country energy resources, environments, and the health and welfare of the citizens of Indian nations. The DOE will establish protocols for communication between tribal leaders, the Secretary, and federal officials. The DOE will ensure consistent application of program and policy implementation with Indian nations through periodic review, assessment, and collaboration with tribal representatives to audit protocol systems. Principles of consistent policy implementation will be tempered with consideration of the diverse cultures and ideals of the Indian nations.

III. THE DEPARTMENT WILL ESTABLISH MECHANISMS FOR OUTREACH, NOTICE, AND CONSULTATION, AND ENSURE INTEGRATION OF INDIAN NATIONS INTO DECISION-MAKING PROCESSES.

To ensure protection and exercise of tribal treaty and other federally recognized rights, the DOE will implement a proactive outreach effort of notice and consultation regarding current and proposed actions affecting tribes, including appropriate fiscal year budget matters. This effort will include timely notice to all potentially impacted Indian nations in the early planning stages of the decision-making process, including predraft consultation, in the development of regulatory policies on matters that significantly or uniquely affect their communities. As appropriate, the DOE will provide delivery of technical and financial assistance related to DOE-initiated regulatory policy, identifying programmatic impacts, and determining the significance of the impact. The DOE will continue to conduct a dialogue with Indian nations for long and short term decision-making when DOE actions impact Indian nations. The DOE will comply with the Consultation and Coordination With Indian Tribal Governments Executive Order 13084, May 14, 1998, and the Government to Government Relations With Native American Tribal Governments Executive Memorandum, April 29, 1994.

The DOE will implement permanent workshops and programs for field and headquarters staff on American Indian and Alaska Native cultural awareness and tribal governance.

Due to the nature of the trust responsibility to tribal governments, performance reviews of consultation activities will be conducted, in collaboration with tribal governments.

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

The Department will consult with any American Indian or Alaska Native tribal government with regard to any property to which that tribe attaches religious or cultural importance which might be affected by a DOE action. With regard to actions by DOE in areas not under DOE control or when an action of another federal agency takes place on DOE land, DOE will consult with tribes in accordance with this Policy. Such consultation will include tribal involvement in identifying and evaluating cultural resources including traditional cultural properties; facilitating tribal involvement in determining and managing adverse effects; collaboration in the development and signing of memoranda of understanding with DOE, when appropriate.

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 defer to tribal policies on confidentiality and management of cultural resources. Consultation will include matters regarding location and management methodology; 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.

The DOE will comply with current and forthcoming cultural resource protection laws and Executive Orders including Native American Graves Protection and Repatriation Act; Archaeological Resources Protection Act; American Indian Religious Freedom Act; National Historic Preservation Act; National Environmental Policy Act; Freedom of Information Act; Privacy Act; Indian Sacred Sites Executive Order 13007, May 24, 1996; Consultation and Coordination With Indian Tribal Governments Executive Order 13084, May 14, 1998; Government to Government Relations With Native American Tribal Governments Executive Memorandum, April 29, 1994; Tribal Colleges and Universities Executive Order 13021; Executive Order 12898 on Environmental Justice.

V. THE DEPARTMENT WILL INITIATE A COORDINATED DEPARTMENT-WIDE EFFORT FOR TECHNICAL ASSISTANCE, BUSINESS AND ECONOMIC SELF-DETERMINATION DEVELOPMENT OPPORTUNITIES, EDUCATION, AND TRAINING PROGRAMS.

The Department will implement a consistent national outreach and communication effort to inform tribal leaders and tribal program officials about access to internships and scholarships; availability of technical assistance and training opportunities; conventional and renewable energy development programs; related tribal business and individual member business enterprise, service-provider, and contracting opportunities.

The DOE recognizes the need for direct funding and technical assistance from applicable DOE-sponsored programs within the Department and the National Laboratories which deal with regulation, energy planning, and development of energy resources on tribal lands and Alaska Native site-controlled and trust lands.

The Department will provide information and outreach programs to tribal and individual member businesses on opportunities to participate, compete, and participate in renewable and conventional energy generation, transmission, distribution, marketing and energy services, grants, and contracts. The Department will assist in development of balanced, sustainable, and viable American Indian and Alaska Native communities by continuing to implement Title XXVI, Indian Energy Resources, of the National Energy Policy Act that provides for the promotion of resource development and energy integration.

The Secretary will create programs that encourage and support the establishment of federal, private, tribal and intertribal partnerships. The Department will provide assistance and coordinate with other federal agencies in the development of energy-related projects.

VI. THE SECRETARY OF ENERGY WILL CONDUCT PERIODIC SUMMITS WITH TRIBAL LEADERS FOR PERFORMANCE REVIEW OF POLICY IMPLEMENTATION AND ISSUE RESOLUTION.

The Secretary will engage tribal leaders in periodic dialogue, to discuss the Department's implementation of the American Indian and Alaska Native Policy. The dialogue will provide an opportunity for tribal leaders to assess policy implementation, program delivery, and discuss outreach and communication efforts, and other issues.

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

The DOE will seek and promote cooperation with other agencies that have related responsibilities. The Department's mission encompasses many complex issues where cooperation and mutual consideration among governments (federal, state, tribal, and local) are essential. The DOE will encourage early communication and cooperation among all governmental and non-federal parties regarding actions potentially affecting Indian nations. The DOE will promote interagency and interdepartmental coordination and cooperation to assist tribal governments in resolving issues requiring mutual effort.

January 2006

---

[1] This Policy is not intended to, and does not, grant, expand, create or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this Policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, any treaty rights of any Indian tribes, or to preempt, modify, or limit the exercise of any such rights. Nothing herein shall be interpreted as amending or changing current DOE orders and guidance regarding classified information, including need to know.