

The U.S. Department of Energy Response to President Biden’s Memorandum on Tribal Consultation and Strengthening Nation-to Nation Relationships

EXECUTIVE SUMMARY

To meet President Biden’s directive in his Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, the U.S. Department of Energy (DOE or the Department) conducted a Tribal consultation on April 9, 2021, to collect feedback from Tribal leaders on DOE’s existing Tribal consultation policy. Feedback from this session, and from written comments submitted by Tribal leadership and intertribal organizations, were considered and DOE developed an initial DOE “Plan of Actions to Address the Presidential Memorandum and Improve the DOE Tribal Consultation Process” (Action Plan). The Action Plan includes initial actions the agency will take, including actions to develop a more comprehensive Action Plan, to implement the policies and directives of Executive Order 13175 and includes broader actions to improve the Department’s DOE Tribal Consultation Process and DOE Order 144.1, “Department of Energy American Indian Tribal Government Interactions and Policy.” The Department will be guided by this Action Plan as it collects additional data via future Tribal consultations, listening sessions, and roundtables in the spring and summer culminating in an updated Action Plan, anticipated to be issued in the fall of 2021.

BACKGROUND

DOE recognizes the significance of its long-standing relationships with Tribes, especially those near DOE sites throughout the country, in the protection of legal, cultural, and natural resource interests and in addressing environmental and energy security needs. In 2009, DOE issued Order 144.1, “Department of Energy American Indian Tribal Government Interactions and Policy” (Order 144.1) to better coordinate departmental, programmatic, and field responsibilities for interacting with Tribal governments through guiding principles and a framework for policy implementation. The framework focused on DOE offices that had long-term, recurring relationships with tribes because of activities and operations around sites with landlord responsibilities.

In addition to direct government-to-government relationships with Tribal Nations, DOE established and supports Tribal working groups, including the State and Tribal Government Working Group (STGWG), Indian Country Energy and Infrastructure Working Group (ICEIWG) and Nuclear Energy Tribal Working Group (NETWG). These working groups support Order 144.1 and its American Indian and Alaska Native Tribal Government Policy and serve as venues for consistent engagement with Tribes to address Tribal interests related to DOE program actions including but not limited to environmental cleanup, ongoing nuclear energy research and development, and Tribal energy development. Additionally, DOE engages with Tribes to address research and defense-related activities, programs to maximize energy security,

and power marketing. DOE has an internally focused Tribal Energy Steering Committee (TESC) comprised of representatives from all DOE programs that interact with Tribes.

DOE RESPONSE

DOE has initiated a focused, strategic, and ongoing outreach effort to engage in government-to-government conversations with Tribal representatives to inform its response to the President's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships pursuant to EO 13175. The following provides more details on this outreach effort.

March 9: After two years of dormancy, DOE restarted the TESC with a coordination call to discuss the Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships and proposed next steps. DOE with support from TESC participating members:

- Collected existing consultation plans, strategies, high-level activities, and processes from DOE program offices to guide discussions on developing the Action Plan.
- Informed the Department's STGWG, ICEIWG, and NETWG about the April 9 consultation with Tribal governments and Alaska Native Corporations.

April 9: DOE conducted a three-hour Tribal consultation session to evaluate the Department's existing consultation policy and to inform the development of the Action Plan.

- DOE Secretary Granholm provided opening remarks.
- Senior DOE officials participated including:
 - Department of Energy Deputy Chief of Staff
 - Acting Assistant Secretary for Congressional and Intergovernmental Affairs (CI)
 - Acting Assistant Secretary for Energy Efficiency and Renewable Energy (EERE)
 - Acting Assistant Secretary for Environmental Management (EM)
 - Acting Assistant Secretary for Fossil Energy (FE)
 - Acting Assistant Secretary for Nuclear Energy (NE)
 - Director of the Office of Indian Energy (IE)
 - Executive Director of the Loan Programs Office (LPO)
 - Director of the Office of Legacy Management (LM)
 - Acting Associate Administrator for External Affairs, National Nuclear Security Administration (NNSA)
 - Interim Administrator of the Western Area Power Administration (WAPA)
 - Administrator of the Southwestern Power Administration (SWPA)
 - Manager of National Relations for the Bonneville Power Administration (BPA)
- Leaders and representatives from 41 Tribes participated and written comments were provided by 14 Tribes and two intertribal organizations.
- The consultation session was facilitated by Jana Ganion, ICEIWG Co-Chair, and Director of Sustainability and Government Affairs for Blue Lake Rancheria.

- The following five questions were circulated prior to the consultation and discussed during the consultation:
 - Do the seven Guiding Principles, as outlined in DOE’s 2009 policy (Order 144.1) capture the necessary elements to ensure regular and meaningful consultation with tribal officials?
 - Does Order 144.1 and the associated Implementation Plan provide an adequate framework to guide DOE’s consultation, cooperation with Tribal Nations, and the effective implementation of its policy?
 - Considering the breadth and depth of DOE’s mission and activities, what do you see as the primary challenges and opportunities in working with DOE?
 - What are the most productive approaches or improvements for DOE to consider ensuring regular and meaningful consultation?
 - What topics and decisions related to DOE’s mission should be a priority in current and future consultations?
- The IE and LPO directors announced a series of Tribal consultations, listening sessions, and roundtable discussions that will occur over the spring and summer, including the first session to discuss the DOE’s Tribal Loan Guarantee Program (TLGP).
- Tribal leadership appreciated the opportunity to participate and noted their appreciation for Secretary Granholm’s participation.

THE PATH FORWARD: PLAN OF ACTIONS TO ADDRESS THE PRESIDENTIAL MEMORANDUM AND IMPROVE THE DOE TRIBAL CONSULTATION PROCESS (ACTION PLAN)

To address President Biden’s Memorandum on Tribal Consultation and Strengthening Nation-to-Nation-Relationships, DOE will next:

- Conduct regional consultations, listening sessions, and roundtable discussions in the spring and summer of 2021 to expand on the initial April 9 Tribal consultation. These additional consultations/listening sessions/roundtable discussions will include representatives from Departmental programs with actions or decisions that could have the potential to affect tribal rights or resources.
- Update Order 144.1 to expressly include DOE offices created after Order 144.1 was issued in 2009.
- Coordinate with other Federal agencies that consult with Tribes under EO 13175 to have consistent plans and, where appropriate, conduct joint consultation sessions to reduce the burden placed on tribal leadership and maximize efficiencies.

- Review DOE Order 144.1 Framework and Implementation Plans to explore updating and incorporating Tribal ideas on how best to conduct effective tribal consultation
- Explore developing a Tribal consultation web page that includes program-level Tribal affairs points of contact, lists Tribal consultation opportunities, keeps a running record of consultations conducted, and metrics that evaluate the effectiveness of DOE's Tribal consultation.
- Require training to include consultation guidance for all DOE employees who may be making any decisions that could affect Tribal rights or resources.
- Begin planning the National Tribal Energy Summit, which currently has been held on a bi-annual basis, with the next tentatively scheduled summit to take place in the fall of 2021. The summit provides a venue for Tribal leaders and their designated representatives, Administration officials, representatives from Federal agencies, state governments, private industry, utilities, and academia to build relationships and networks, exchange ideas, and explore cross-cutting and cost-effective solutions to national energy interests. Schedule the Secretary of Energy to participate along with key DOE leadership who have programs that affect tribal rights or resources.
- Recommend all DOE programs provide at least 30 days notice before consultations.
- Also recommend that DOE programs provide early and meaningful involvement in DOE policies that affect Tribal Nations and Alaska Native Corporations before they are implemented.

TIMELINE

Below is a timeline of proposed actions to submit an updated DOE Action Plan by the October 25, 2021, deadline in President Biden's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships. Please note that consultation can be addressed as part of the agenda of consultations on other areas of interest to tribal governments. This will be important to attract a wider audience and maximize efficiency. All dates are in 2021.

- **April 29 – July 2:** DOE offices will hold additional consultations with Tribal governments and listening sessions/roundtable discussions with intertribal organizations, Tribal working groups, and native communities on the Department's guiding documents. The TESC will serve to guide the process for additional consultations to ensure all relevant DOE offices are appropriately engaging with Tribes. Relevant DOE offices include offices that traditionally have engaged with Tribes and offices that have limitedly engaged in the past, but given their mission, policies, and activities could potentially impact Tribes.
- **July 5 – July 30:** Draft an update to the DOE Action Plan.

- **August 2 – September 15:** Make the DOE Action Plan available to Tribal leaders and their staff for feedback and input.
- **September 15 –September 27:** Update the DOE Action Plan by incorporating Tribal leader feedback and collect data from programs to include in the White House directed report on agency actions to fulfil the initial Action Plan.
- **September 28 – October 22:** Undergo DOE internal review of the final draft version of the updated DOE Action Plan and Report of DOE Actions to the White House.
- **October 25:** Submit updated Action Plan and Report of DOE Actions to the White House.

RECOMMENDATIONS TO DOE FOR TRIBAL CONSULTATION, IMPROVING ITS TRIBAL POLICY AND STRENGTHENING GOVERNMENT-TO-GOVERNMENT RELATIONSHIPS

Below are summaries of the recommendations that were provided by Tribal Nation and Alaska Native Corporation leaders and their designated representatives during the April 9 DOE consultation session. DOE will explore these suggestions further, in consultation with Tribes, within the next 180 days to strengthen Order 144.1 and meet or exceed the expectations of EO 13175. The recommendations provided by the Tribal Nations and the Alaska Native Corporations are organized by DOE’s 2009 American Indian and Alaska Native Tribal Government Policy principles. Attached to this response are a transcript of the April 9 consultation session and the submitted written comments for consideration.

Policy Principle 1: DOE Recognizes the Federal Trust Relationship and will Fulfill its Trust Responsibilities to American Indian and Alaska Native Nations.

Recommendations:

- DOE should engage with Tribes to clarify the concept of “achieving mutual understanding.”
- DOE should engage with Tribes to revise Order 144.1 and implementation plan, including “the seven principles.”
- DOE should revise its American Indian and Alaska Native Tribal Government Policy Framework to incorporate the United Nations Declaration on the Rights of Indigenous Peoples framework where appropriate.

Policy Principle 2: The Department Recognizes and Commits to a Government-to-Government Relationship and will Institute Appropriate Protocols and Procedures for Program and Policy Implementation.

Recommendations:

- DOE should update and expand its Order 144.1 to expressly include offices created after Order 144.1 was issued in 2009.
- Promulgation of DOE policies, rules and regulations, actions, and proposed actions with potential interest and impacts to Tribal Nations and Alaska Native Corporations should be subjected to Tribal consultation. The Department can increase its consultation with Tribes as part of the National Environmental Protection Act (NEPA) process and in fulfilling EO 13175.
- Sufficient time should be allowed for meaningful tribal consultation. Sufficient time means at least 30 days of advance notice of a consultation and applies to the length of the consultation session.
- Whenever practical, in-person or video enabled Tribal consultation is preferred.
- DOE should create a Director-level position within the CI office, known as Director of Tribal Government Relations, responsible for coordinating Tribal engagement across DOE and serve as the designated agency official to coordinate implementation of the Action Plan. Of note, Order 144.1 calls for a Deputy Assistant Secretary of Intergovernmental and Tribal Affairs.
- Each office subject to Order 144.1 should designate a liaison responsible for Tribal engagement and coordination with the Director of Tribal Government Relations.
- DOE should increase capacity building and training to ensure that staff have the technical expertise necessary for better communication with Tribal leaders.
- DOE should engage with Tribes to establish clear metrics, accountability, policies, and protocols for Tribal consultation and engagement.
- DOE should create a website to maintain a record of:
 - An annual report explaining outcomes of Tribal consultations and the process DOE utilized to reach the outcomes.
 - Tribal affairs points of contact for each program office
 - DOE resources related to Tribal consultation including the Policy and Order 144.1

Policy Principle 3: The Department will Establish Mechanisms for Outreach, Notice and Consultation and Ensure Integration of Indian Nations into Decision-making Processes.

Recommendations:

- DOE should commit to quarterly Tribal consultation sessions. This includes DOE program offices and Power Marketing Administrations subject to Order 144.1

undertaking their own Tribal consultation on specific policy and relevant work before decisions are made.

Policy Principle 4: 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.

Recommendations:

- DOE should maximize its efforts to be transparent with Tribal communities when making determinations or decisions related to its activities.
 - DOE should engage with local Tribes to clarify the concept of “cleanup” at contaminated sites.
 - DOE should evaluate and consider increasing current funding made available as grants or stipends for Tribal consultation participation where appropriate.
 - DOE should pursue National Historic Preservation Act Section 106 consultations at the beginning of the decision-making process as opposed to before final determinations.

Policy Principle 5: The Department will Initiate a Coordinated Department-wide Effort for Technical Assistance, Business and Economic Self-determination Development Opportunities, Education, and Training Programs.

Recommendations:

- DOE should coordinate technical assistance to tribes and support training for DOE employees and contractors on tribal consultation.
- DOE should mandate annual Tribal sensitivity trainings for all staff who engage with Tribes in any professional capacity. Where appropriate, Tribal engagement education and trainings should be tailored to regional and local Tribal governing structures and involve those local Tribal governments in crafting culturally relevant and specific training materials.
- DOE should prioritize technical assistance for Tribal communities to develop renewable energy projects and projects that increase energy access.
- DOE should explore additional funding for Tribal workforce development needs, including energy-related education, training, internships, and career-level jobs for Tribal membership.
- DOE should evaluate current and consider increasing, where appropriate, funding for grants to support capacity building of technical expertise in tribal communities.
- DOE should reduce the percentage under cost sharing agreements for clean energy development on Tribal lands.

Policy Principle 6: The Secretary of Energy will Conduct Periodic Summits with Tribal Leaders for Performance Review of Policy Implementation and Issue Resolution.

Recommendations:

- DOE should conduct an annual National Tribal Energy Summit.
- DOE Secretary and Senior Leadership should prioritize participation in National Tribal Energy Summits.
- As needed, DOE should conduct regional summits as follow up conversations from the annual National Tribal Energy Summit. The sessions will include opportunities for policy deliberation.

Policy Principle 7: 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

Recommendations:

- DOE should support interagency communication and coordination on tribal engagement and consultation, and Federal activities related to tribal communities. This may include:
 - An interagency website to consolidate all information tribes may need, including consultation policies.
 - Interagency tribal collaboration calls conducted quarterly to discuss tribal matters, lessons learned best practices, funding opportunities, training, etc.
 - Creation of basic regulatory consultation standards across all federal agencies, setting a minimum standard baseline to rely upon regardless of Federal agency.

APPENDICES

1. DOE Order 144.1 “Department of Energy American Indian Tribal Government Interactions and Policy”
2. Executive Order 13175
3. Secretary Granholm’s Remarks from the April 9, 2021 Consultation Session
4. Written Comments Submitted by tribal leadership and intertribal organizations
5. Transcript of the April 9 consultation call with tribal nations and Alaska Native Corporations