

Progress Report on the DOE Tribal Consultation Plan of Actions

Draft—Pre-decisional Deliberative

Purpose

This is the U. S. Department of Energy’s (DOE) draft progress report in response to the January 26, 2021, Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (Presidential Memorandum). It addresses Section 1. c., of the Presidential Memorandum, which requires “[T]he head of each agency shall submit to the Director of OMB, within 270 days of the date of this memorandum, and annually thereafter, a progress report on the status of each action included in the agency’s plan, together with any proposed updates to its plan.”

DOE’s response to the Presidential Memorandum, including the agency’s Initial Plan of Actions can be found at [POTUS Tribal Consultation Memo - DOE Response and Action Plan -FINAL.pdf \(energy.gov\)](#).

Other Relevant Documents:

[Executive Order 13175](#) (2000) *Consultation and Coordination With Indian Tribal Governments*

[DOE Order 144.1](#) *Department of Energy American Indian Tribal Government Interactions and Policy* (2009)

Highlights

DOE’s response to the Presidential Memorandum is an opportunity to reflect on the Biden Administration and DOE’s commitment to honoring Tribal sovereignty and ensuring that Tribal leaders’ perspectives are better integrated into DOE’s decision-making process and policy deliberations. DOE values the time and commitment of the many Tribal leaders and members of DOE’s Tribal Working Groups who have provided critical feedback to help DOE meet its goals.

DOE Order 144.1 Department of Energy American Indian Tribal Government Interactions and Policy

The DOE Directives Review Board (DRB) oversees the maintenance and development of directives established as the primary means to set, communicate, and institutionalize policies, requirements, and responsibilities for DOE elements and contractors. Accordingly, the DRB will review and approve any revision of DOE Order 144.1 *Department of Energy American Indian Tribal Government Interactions and Policy*.

Tribal Energy Steering Committee (TESC)

The Department’s Tribal Energy Steering Committee (TESC), created in 2009 to support implementation of DOE Order 144.1, along with and DOE’s *American Indian Tribal and Alaska Native Government Policy*, and to meet the Department’s government-to-government responsibilities with Tribes, is made up of representatives from DOE program offices and sites, and serves as the primary venue for cross-agency discussion about the Department’s Tribal consultation obligations. It meets bi-weekly to, among other reasons, inform and guide the Department’s response to the Presidential Memorandum.

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Early Observations

Based on the feedback received from individual TESC members, DOE has a number of observations concerning its current relationships with Tribes and a number of actions that could improve those relationships in response to the President's Memorandum:

- To date, Tribal consultation and engagement is primarily conducted individually by program offices and/or relevant DOE sites with longstanding relationships with Tribes who currently have reservation lands nearby, treaty rights, and other historical and cultural ties to the lands occupied by DOE sites.
- DOE has Tribal consultation responsibilities, but many program offices, sites, and National Laboratories do not have dedicated, trained staff, or have limited staff, to ensure that consultation occurs.
- DOE offices that explicitly focus on Tribal interactions, such as the Office of Indian Energy, or those with longstanding land management responsibilities, such as the National Nuclear Security Administration, Office of Environmental Management, and Office of Legacy Management, have dedicated Tribal program staff, as do the relevant Power Marketing Administrations. Some of these offices also support DOE Tribal working groups, which focus on engaging Tribal governments interested in DOE's activities including nuclear energy, environmental clean up, and energy infrastructure development.
- Some DOE offices and sites, particularly the research and development offices, do not have dedicated, trained staff, nor resources to support Tribal consultation.

Progress on DOE's Plan of Actions

To meet the goals outlined in the Presidential Memorandum, DOE began its Tribal consultation on April 9, 2021, to collect initial feedback from Tribal leaders on DOE's existing Tribal consultation policy. Tribal feedback from the initial virtual listening session, as well as written comments submitted by Tribal leadership and intertribal organizations, were incorporated into an initial DOE "Plan of Actions to Address the Presidential Memorandum and Improve the DOE Tribal Consultation Process". This section contains updates for each item in the initial Plan of Actions ([POTUS Tribal Consultation Memo - DOE Response and Action Plan -FINAL.pdf](#))

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.

In addition to the April 9th consultation session, many program offices and sites have interacted and sought input from Tribes, while coordinating additional listening sessions.

Additional information from Tribal Leaders, DOE program offices, laboratories, and Power Marketing Administrations is supporting DOE's response to the Presidential Memorandum. This information includes:

- Comments and letters received during the April 9, 2021, consultation session;

- Letters written to the Secretary or other DOE leadership;
- 2018 and 2019 DOE annual report on Tribal consultation (these are annual reports written by DOE Intergovernmental and External Affairs (IGEA)) team, which is the office that develops and monitors implementation of agency consultation procedures);
- Information from a subsequent data call to DOE programs in August 2021 asking for recent Tribal engagement and consultation activities, if/how this has influenced decisions, planned consultations, and how DOE Headquarters and other offices can support these efforts;
- Information from a survey of DOE cultural resource managers on how they engage with Tribes and if they conduct regular, formal consultation; and
- Input gathered in 2018 from the DOE Tribal Working Groups to update DOE's *Working with Tribal Nations Guide*.

Institutionalizing meaningful Tribal consultation practices across the DOE complex is a work-in-progress. DOE received feedback from Tribes, the DOE Tribal Working Groups (including the State and Tribal Government Working Group, the Indian Country Energy and Infrastructure Working Group, and the Nuclear Energy Working Group), TESC, and DOE staff indicating that Tribal interactions are not consistent across the Agency; when it occurs, it tends to be project-based (e.g. linked to DOE's implementation of section 106 of the National Historic Preservation Act); there's no set definition of how it occurs or what steps or activities it needs to include; and there is a lack of training for DOE staff on how to interact effectively with Tribal staffs and government officials and staff.

Update Order 144.1 to expressly include DOE offices created after Order 144.1 was issued in 2009.

Review DOE Order 144.1 Framework and Implementation Plans to explore updating and incorporating Tribal ideas on how best to conduct effective Tribal consultation

In July 2021, the IGEA team briefed the Directives Review Board (DRB) on the need to update Order 144.1. The DRB approved the creation of an Integrated Project Team (IPT) comprised of representatives from DOE offices to review and recommend updates to DOE Order 144.1.

In September 2021, the IPT will have an initial meeting. Anticipated changes include updates to accurately reflect the current DOE organizational structure. For example, Order 144.1 was published before DOE's Office of Indian Energy was established. The IPT will also review Tribal recommendations for potential revisions into DOE Order 144.1 and will revise it to reflect current DOE practices and office structures.

TESC members will provide an opportunity for Tribal leaders to review the draft DOE Order 144.1 revisions and provide input. Once finalized by the IPT, the recommended changes will be presented to the DRB for a decision.

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.

DOE participates in several interagency fora, including the White House Council on Native American Affairs and the weekly White House-led Intergovernmental Affairs Offices Tribal Engagement Check In.

*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.*

DOE developed a Tribal consultation landing page that is located on the Congressional and Intergovernmental section of the agency's website, <https://www.energy.gov/congressional/strengthening-Tribal-consultation>. This page has a link to the *DOE Tribal Consultation Plan of Actions* that was developed after consultation with Tribal leaders in the spring of 2021 and provides links to DOE Order 144.1, along with other relevant information.

Additional enhancements to the site will be made to include points of contact for DOE program office and information on upcoming or past Tribal consultations.

***Require training** to include consultation guidance for all DOE employees who may be making any decisions that could affect Tribal rights or resources.*

TESC members are developing informational Tribal training modules for DOE staff and contractors to enable more effective interaction with Tribes. This training will have interactive, live options with modules that can be taught as standalone classes or combined with site-specific training and will be made available on an as-needed basis on DOE's Learning Nucleus platform which is accessible to all DOE employees.

The topics of these training modules will include:

- An Indian Country overview including discussion of geographic, demographic, cultural, and educational aspects like Tribal colleges, and some Tribal governance
- Indian Law, which includes the legal framework of sovereignty and an outline of the Federal-Tribal relationship
- An overview of the National Environmental Policy Act, Native American Grave Protection and Repatriation Act, Archeological Resources Protection Act, and the National Historic Protection Act where DOE has specific consultation obligations to fulfill
- DOE Tribal Consultation Policy and Practices

As part of this training, DOE staff will develop comprehensive case studies for best practices and lessons learned, and future efforts will focus on updating *DOE's Working with Tribal Nations Guide* that was originally published in 2000 addressing feedback from the DOE Tribal Working Groups.

*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.

DOE's National Tribal Energy Summit has been postponed until spring 2022 due to COVID-19-related issues and the potential overlap with the White House Tribal 2021 Nations Summit.

*Recommend all DOE programs provide at least **30 days notice** before consultations.*

This recommendation will be included in the training and policies that are in development and has been communicated to all DOE offices with tribal equities for implementation.

*Recommend that DOE programs provide **early and meaningful involvement** in DOE policies that affect Tribal Nations and Alaska Native Corporations before they are implemented.*

This recommendation will be incorporated into training and the updated DOE's *Working with Tribal Nations Guide* and has been communicated to all DOE offices with tribal equities for implementation.

Conclusion

DOE is committed to ensuring that Tribal perspectives are seamlessly integrated into our policies and programs and that we engage in regular, meaningful, and robust consultation with Tribal Nations. With additional input from Tribal leaders and Tribal staff, and Alaska Native Corporations, the Department will ensure meaningful consultation and collaboration is an integral part of decisions that may impact Tribal Nations.