

DOE Tribal Consultation Plan of Actions – Progress Report, March 2022

Purpose

On January 26, 2021, President Joseph R. Biden issued a *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (Presidential Memorandum).

The Department of Energy (DOE) issued an initial response to the Presidential Memorandum on May 18, 2021, that included the agency's initial plan of actions to address the Presidential memorandum and improve the DOE Tribal consultation process. *The U.S. Department of Energy Response to President Biden's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (DOE Plan of Actions) can be found at [POTUS Tribal Consultation Memo - DOE Response and Action Plan - FINAL.pdf \(energy.gov\)](#).

This document is a progress report on the status of action items listed in the DOE Plan of Actions.

Highlights

In its response to the Presidential Memorandum, DOE took stock of its current engagement with Tribal Nations in 2021 to better understand what it means to honor Tribal sovereignty and ensure that Tribal leaders' perspectives are better integrated into DOE's decision-making process and policy deliberations. This included gathering valuable, critical feedback and input from Tribal leaders and members of DOE's Tribal Working Groups.

Tribal Energy Steering Committee (TESC)

The Department's Tribal Energy Steering Committee (TESC) was created in 2009 to support implementation of DOE Order 144.1 *Department of Energy American Indian Tribal and Alaska Native Government Policy* and meet the Department's government-to-government responsibilities with Tribes. It is made up of representatives from DOE program offices and sites.

DOE reconvened the TESC in June 2021. It now serves as the primary venue for intra-agency discussion about the Department's Tribal and Alaska Native Corporations consultation obligations. It meets every two weeks to inform and guide the Department's response to the Presidential Memorandum and regularly has over 50 program staff in attendance.

Early Observations

Based on the feedback received from individual TESC members, DOE has several observations concerning its current relationships with Tribes and proposed actions:

- 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 owned and managed by DOE.

- There is significant variation of staff capacity to engage in Tribal and Alaska Native Corporation consultation across the DOE enterprise:
 - o Many program offices, sites, and National Laboratories do not have dedicated, trained staff, or have limited staff, to conduct Tribal consultation.
 - o 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, do have dedicated Tribal relations 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 cleanup, and energy infrastructure development.

Progress Updates on the DOE Plan of Actions

This section contains updates for each item in the DOE Plan of Actions ([POTUS Tribal Consultation Memo - DOE Response and Action Plan -FINAL.pdf](#))

*Action: **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.*

Progress Update:

In addition to the April 9th consultation session, many program offices and sites have interacted and sought input from Tribes and coordinated 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 received during the April 9, 2021, consultation session and letters received in response to the request for Tribal input;
- Letters written to the Secretary or other DOE leadership;
- 2018 and 2019 DOE annual reports on Tribal consultation (these are annual reports written by DOE Intergovernmental and External Affairs (IGEA), 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, and whether input has influenced decisions, upcoming 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 is defined process for 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.

Actions: 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

Progress Update:

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*.

In July 2021, the IGEA briefed the 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.

On October 5, the IPT had an initial meeting to discuss anticipated changes to the Order, including 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) and proposals for transparency in the process so Tribal leaders can make recommendations and provide input to proposed changes to the order. On November 4, the IPT met to identify next steps to the review and revision process including defining the process and timeline, identifying ways to communicate with and to involve Tribes, such as periodic meetings. The group also discussed the creation of a matrix of the Tribal input received so those comments can be used to identify potential changes and recommendations to the Order.

The review and recommendation timeline is still under development, but the process of developing recommended updates is anticipated to take most of 2022. DOE will provide an opportunity for Tribal leaders to provide input on changes to DOE Order 144.1 and review the draft DOE Order 144.1 revisions. Once finalized by the IPT, the recommended changes will be presented to the DRB for a decision.

*Action: **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.*

Progress Update:

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.

*Action: 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.*

Progress Update:

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 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.

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

Progress Update:

Over the fall of 2021, TESC members developed informational Tribal training modules for DOE staff and contractors to enable more effective interaction with Tribes. This training will be given to DOE staff starting in spring of 2022 and will have interactive, live options with modules that can be taught as standalone classes or combined with site-specific training. It will be made available on an as-needed basis on DOE's Learning Nucleus platform which is accessible to all DOE Federal employees.

The training will include:

- Indian Country, Law, and Policy overview including discussion of geographic, demographic, cultural, and historical aspects of Indian Country, the evolution of Federal Indian policy and law to include Tribal sovereignty and the Federal-Tribal relationship
- Tribal Consultation requirements and best practices including DOE Order 144.1
- National Environmental Policy Act (NEPA) Tribal consultation requirements
- Native American Grave Protection and Repatriation Act (NAGPRA) Tribal consultation requirements
- Archeological Resources Protection Act (ARPA) overview and Tribal consultation requirements
- National Historic Protection Act (NHPA) overview and Tribal consultation requirements

- Current White House and DOE Tribal Policy overview, including President Biden's Memorandum on Tribal Consultation as well as 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) to incorporate Tribal feedback.

*Action: 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.*

Progress Update:

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

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

Progress Update:

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.

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

Progress Update:

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.

Tribal Input on the Progress Report

On October 8, 2021, DOE shared a draft version of this progress report with Tribal leaders with the invitation to provide any feedback or input. The draft document was shared with the Tribal leaders who participated in the April 9th consultation session on DOE's Tribal consultation activities, members of DOE's Tribal Working Groups, and staff of Tribes adjacent to DOE sites, and was also posted on the Tribal Consultation section of the DOE website <https://www.energy.gov/congressional/strengthening-tribal-consultation>.

DOE received responses from:

- Governor Anthony Ortiz and Lt. Governor James Tenorio, Pueblo of San Felipe
- Chairman Delano Saluskin, Yakama Nation Tribal Council
- The Tribal Radioactive Materials Transportation Committee (TRMTC)
- Jack Bell, Director, Environmental Restoration and Waste Management Program, Nez Perce Tribe
- Anna Carr, Water Program Manager, Environmental Protection Department, Seneca Nation
- Norman Honie, Program Manager, Hopi UMTRA Project
- Derrick Watchman, President/Owner, Sagebrush Hill Group, LLC; member of Navajo Nation

These responses were used to finalize the progress report, particularly to expand the section on DOE Order 144.1. The responses also gave input and observations on DOE's Tribal engagement and consultation more generally or spoke to observations and concerns specific to individual Tribes who are interacting with DOE. The letters have been shared with TESC and will be included in recommendations for updating DOE Order 144.1.

Additionally, we received input and comment from the President of the Alaska Native Claims Settlement Act (ANCSA) Corporations Regional Association on Federal consultation policy including suggested consultation protocol for federal agencies. This input will be appropriately considered and factored into DOE's update to Order 144.1.

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.