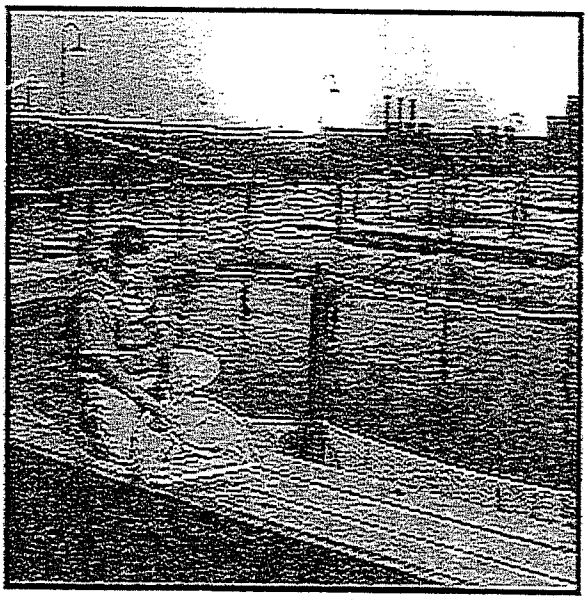
A Guide for DOE Employees

WORKING WITH INDIAN TRIBAL NATIONS



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INTRODUCTION

U.S. Department of Energy (DOE) employees and contractors frequently work with Indian tribes or nations as part of their jobs. The purpose of this guide is to help DOE employees and contractors initiate contact with tribes and build effective relationships.

DOE maintains a unique government-to-government relationship with tribal nations. This guide presents an overview of the history of the relationship between the tribes and the Federal government, as well as the laws and Executive Orders that define that relationship. The guide discusses the Federal government's trust responsibility to the tribes, tribal treaty rights, and the Department of Energy's American Indian policy.

The guide also discusses important cultural differences that could lead to communication problems if not understood and provides examples of potential cultural misunderstandings. In particular the guide discusses tribal environmental beliefs that shape tribal responses to DOE actions. The guide also provides pointers on tribal etiquette during meetings and cultural ceremonies and when visiting tribal reservations.

Appendix 1 gives examples of the tribal nations with whom DOE currently has Memoranda of Understanding.

While this guide provides an introduction and overview of tribal relations for DOE staff and contractors, DOE has also designated Tribal Issues Points of Contacts at each of its facilities. A list of these Points of Contact for all DOE facilities is provided in Appendix 2. DOE staff and contractors should consult with the appropriate tribal representatives at their site before initiating contact with a tribal nation, because many tribes have rules and procedures that must be complied with before DOE staff or contractors may go on tribal lands or conduct interviews with tribal members.

Appendix 3 is the complete DOE American Indian Policy.

Appendices 4-6 are Executive Orders that govern the relationship of all federal agencies with tribal nations.

DOE employees and staff are encouraged to educate themselves about the history and culture of tribal nations near DOE facilities. This guide provides a first step in that direction.

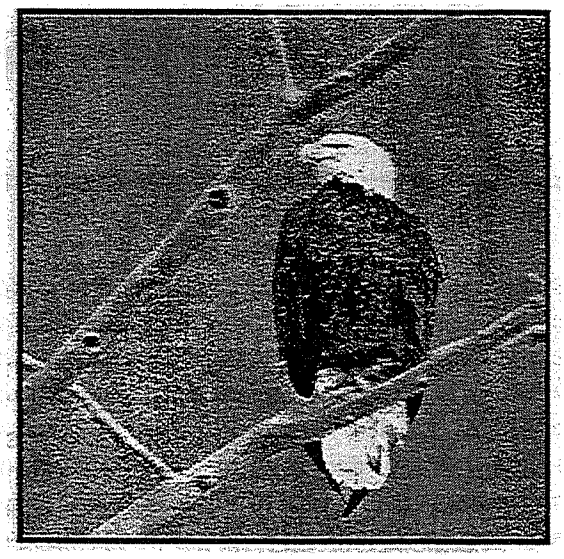
THE RELATIONSHIP BETWEEN DOE AND TRIBAL NATIONS

DOE is strongly committed to ensuring that Indian tribes play an integral role in the nation's overall energy policy. In addition, some DOE sites are located on lands that were once tribal lands, and in many cases the Federal government has continuing treaty obligations to these tribes.

Most people who have not had experience working with Indian tribes have three fundamental misconceptions. The first is that tribes are another racial minority, such as African Americans, Hispanic Americans, Asian Americans, and others. The second is that tribes are simply stakeholders, like an interest group or an environmental organization. The third is that Indian tribes are equal to a local governmental unit, like a city or county.

While it is true that tribes have a distinct cultural heritage, have an important stake in many DOE decisions, and provide many of the services that local governments provide, the relationship between DOE and the tribes is a government-to-government relationship.

Tribes are sovereign governments. Before Europeans first sailed to America, the tribes were already sovereign by nature. They conducted their own affairs and depended upon no other source of power to uphold their acts of government. The U.S. Constitution recognizes four sovereign governmental entities: the Federal government, state governments, American Indian tribal governments, and foreign nations. American Indian tribes, though uprooted and removed to reservations, retain inherent sovereignty. The United States did not grant tribal rights, rather, tribes reserved such rights as part of their pre-existing status as sovereign nations.

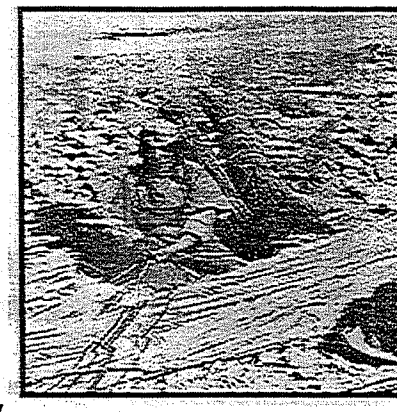


What does sovereignty mean? The attributes of sovereignty include, but are not limited to:

- **The power to establish a form of government**
- **The power to determine membership**
- **The power to legislate or otherwise adopt substantive civil and criminal laws**
- **The power to administer justice**
- **The power to exclude persons from the territory or reservation**
- **The power to charter business organizations**
- **The power of sovereign immunity.**

Tribes are not treated as mere administrative extensions of federal programs, but as separate governments. They are sovereign entities, recognized in the U.S. Constitution with rights and privileges negotiated in treaties and defined in case law. Interaction with federally recognized tribes must be conducted on a government-to-government basis. This is in addition to and goes beyond any public involvement and community -outreach efforts.

HISTORY OF THE RELATIONSHIP BETWEEI



WHO IS AN INDIAN?

It's not always easy to define who is Indian and who is not. Because of intermarriage between Indians and people of other ethnicities, there are many people who by blood are only partially Indian. So how can you determine who is an Indian? The simplest answer is that an Indian is a person with some amount of Indian blood who is recognized as such by the individual's tribe or community.

WHAT IS AN INDIAN TRIBE?

An "Indian tribe," is generally a community of Indians who are ethnologically similar, but who also exist in a legal/political sense.

Since 1978 the Bureau of Indian Affairs has used powers delegated by Congress to extend recognition to tribes. The Bureau's regulations require that a tribe seeking recognition has maintained a distinct identity, has exercised political authority over its members through history to the present, has drawn that membership from a historical tribe, and currently has governing procedures and methods of determining membership. In addition, Congress must not have expressly terminated or forbidden a federal relationship with the tribe.

As of this writing the Federal government has recognized 557 tribes by treaty, statute, executive order, the presence of a long-term historical relationship, or by other means. These tribes are variously called "Nations," "Bands," "Pueblos," "Communities," " Rancherias," and "Villages."

A number of DOE facilities are in the vicinity of federally recognized tribes (See Figure 1). Government-to-government relationships exist only with federally recognized tribes.

Although Indian tribes are sovereign, that sovereignty is not absolute. It has been challenged, defined, and fought over throughout U.S. history. To understand the present relationship between the tribes and the Federal government, it helps to understand something of the history of relations between the U.S. government and tribes. Here's a quick synopsis of federal policy towards Indian nations, provided by the National Congress of American Indians:

Pre-1492: Pre-Columbian Period - Indian people lived in organized societies with their own forms of government for thousands of years before contact with Europeans.

1492-1828: Colonial Period - The proliferation of colonists created a dominant presence on the East Coast of North America. These colonists acquired some Indian lands under the doctrine of discovery and signed treaties with the tribes for additional land. Following the Revolutionary War, the newborn United States took pains to maintain peace with the neighboring tribes, but pressure from settlers resulted in increased encroachment and conflict.

1828-1887: Removal, Reservation and Treaty Period - As the U.S. population and its military strength grew, so did the pressure by the U.S. government on eastern tribes to move west, resulting in forced migration and the creation of treaty reservations. Later, the United States government embarked on an aggressive military policy throughout the west to establish Indian reservations through treaties, acquiring more Indian land. In general, the treaties relinquished land for the right to tribal self-governance on reservations with the protection of the U.S.

THE TRIBES AND THE FEDERAL GOVERNMENT

1887-1934: Allotment Act - An increasing greed for land within the reservations and the desire to have Indians assimilate into mainstream American life resulted in the forced conversion of communally held lands into small parcels for individual Indian ownership. Over 90 million acres, nearly two thirds of reservation land, were taken and given to settlers without compensation to the tribes.

1934-1945: Indian Reorganization Act -
A more progressive policy ended the allotment period and began restoring Indian lands. The Federal government created programs and projects to rehabilitate Indian economic life. This period was marked by paternalism of the United States government towards Indian tribes.

1945-1965: Termination Period -
After World War II over 100 tribes with rich natural resources were identified as being sufficiently acculturated to have their federally protected status removed. State laws were imposed on many tribes, and millions of acres of valuable natural resource lands were taken through forfeiture sales. Federal policy emphasized the physical relocation of Indians from reservations to urban areas.

1965-present: Self-Determination Era -
In the late 1960s there was a growing recognition of the need to strengthen rather than eliminate tribal governments. In 1970 President Nixon made a clear break with termination policy. He declared termination a failure and asked Congress to repudiate it. He also encouraged Congress to pass legislation designed to enhance tribal autonomy. Through a series of Executive Orders, President Nixon reaffirmed the trust responsibility of the Federal government to the tribes.

In 1975, Congress enacted the *Indian Self-Determination and Education Assistance Act* that acknowledged the Federal government's trust responsibilities and directed the Bureau of Indian Affairs and Indian Health Services to turn over many of the services performed by those agencies to the tribes themselves. In the Indian Self-Determination and Education Assistance Act of 1988, Congress reaffirmed this policy, stating: "In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable Tribal governments, capable of administering quality programs and developing the economies of their respective communities." Presidents Ford, Carter, Reagan, Bush, and Clinton have all reaffirmed the policy of self-determination either by reauthorizing the Executive Orders originally issued by Nixon or by issuing additional Executive Orders. With control over their own lands and resources, tribes have made great strides toward reversing crippling economic blight and reviving their unique culture and societies.

In 1978 Congress passed the American Indian Religious Freedom Act (AIRFA) that states that it is the policy of the United States to protect and preserve American Indians' rights to believe, express, and practice their traditional religions. In the past other Federal laws, such as laws intended to protect wilderness areas and endangered species, have at times conflicted with access to sacred sites and possession of animal-derived sacred objects. AIRFA clarified that federal laws passed for other purposes were not intended to conflict with Indian rights to practice their traditional religions.

The Native American Graves Protection and Repatriation Act (NAGPRA), enacted in 1990, protects Indian human remains and cultural items from intentional excavation and removal, inadvertent discovery, and illegal trafficking. This Act also requires the "repatriation" of human remains and other cultural items held by federal agencies or federally assisted museums or institutions.

RECENT EXECUTIVE ORDERS

Congress passes laws establishing federal policy, but the President may then issue Executive Orders implementing these policies. These Executive Orders have the force of law and guide the activities of all federal agencies, including the Department of Energy. Subsequent presidents may rescind or reaffirm these orders. As noted above, all presidents since President Nixon have reaffirmed the policy of self-determination for Indian tribes.

Since 1994 President Clinton has issued a series of Executive Orders further defining the relationship of federal agencies to Indian tribes.

These Executive Orders include:

- **Government-to-Government Relations with Native American Tribal Governments: April 29, 1994**
  This Order outlines the responsibilities of federal departments to consult with Native American tribal governments in a government-to-government relationship.

- **Indian Sacred Sites, Executive Order 13007: May 24, 1996**
  This Order is designed to protect and preserve Indian religious practices by requiring Federal agencies to accommodate access to Indian sacred sites for ceremonial use. Agencies must also avoid affecting the physical integrity of such sites.

- **Tribal Colleges and Universities, Executive Order 13021: October 19, 1996**
  This Order is designed to ensure that tribal colleges and universities receive support from the Federal government to assist these schools in providing high-quality educational opportunities for their students.

- **American Indian and Alaska Education: August 6, 1998**
  This Order affirms the Federal government's special and historic responsibility for the education of American Indian and Alaskan native students.

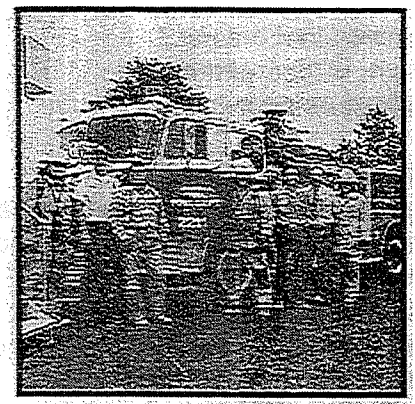
Copies of these Executive Orders are provided in the appendices.

What it Means to Have a Government-to-Government Relationship

- Government-to-government consultation occurs between federal agencies and elected tribal leaders. Although DOE may work with American Indian individuals, groups, organizations, and communities in compliance with NEPA, CERCLA, RCRA and other laws, this is not recognized as government-to-government consultation.

- The appropriate contact for government-to-government consultation is someone at approximately the same organizational level. Typically, tribal leaders expect to meet with elected officials, including members of Congress and the President of the United States. As a practical matter, the President often delegates authority to the Secretary of Energy. If tribal leaders are interested in particular matters, the Secretary designates an Assistant Secretary to meet with the tribal leaders.

- A distinction must be made between government-to-government consultation and the communication, coordination, and public-involvement efforts commonly carried out between tribal government staff members and equivalent



DOE employees. Many tribes have technical staff, legal counsel, advisors, and administrators employed to help run tribal affairs. These staff people usually do not speak on behalf of the tribe about tribal policies or other tribal governmental actions. However, they can be invaluable professional contacts for DOE staff. Staff-to-staff work may precede government-to-government consultation or may carry out the policies agreed to in government-to-government consultations.

- Many tribes have at least two forms of leadership — official tribal leaders who are elected or selected according to tribal tradition and traditional/spiritual leaders. Although formal consultation takes place with official tribal leaders, on issues involving cultural heritage or religious practice it may be appropriate to consult with traditional cultural and spiritual leaders as well.

- Although there may be tribal groups that provide information, advice, and technical assistance to the tribes on resource matters, contact with such groups does not substitute for government-to-government consultation with elected tribal leaders.

- There may be non-Indian groups or organizations claiming to represent tribal views and positions. In these instances DOE staff should consult with Indian tribes and tribal groups to verify this representation.

- Tribes differ on how they wish to consult with federal agencies. DOE staff should reach an understanding with each tribe on how it wishes to be consulted by identifying preferred methods of communication and developing protocols or Memoranda of Understanding (MOU). These agreements will identify points of contact for tasks and specify with whom staff work should be conducted. DOE has existing Memoranda of Understanding with many tribes (Appendix 1).

- Many tribes have rules and procedures that must be complied with before you go on tribal lands or before you conduct interviews with tribal members. Check with your DOE tribal representative about how to approach the tribe and what rules and procedures should be followed. Tribal representatives are listed in Appendix 2.

WHY THE FEDERAL GOVERNMENT HAS A TRUST RESPONSIBILITY TO THE TRIBES

The U.S. Constitution, ratified in 1789, delegated all power over Indian affairs to the Federal government. Some states continued to execute treaties or purchase lands from the tribes after this time, but the Constitution made these actions ineffective or illegal. Congress also passed laws restricting all dealings with Indians to licensed traders, outlawing the purchase of lands directly from Indians and assigning punishments to crimes committed by colonists against Indians.

Three Supreme Court cases in the 1830s — sometimes referred to as the Marshall Trilogy after Chief Justice John Marshall, the author of the opinions — establish the bedrock of federal Indian law. These cases defined the relationship between the Federal government, the state governments, and tribal governments, as follows:

- ***Tribes are "dependent, domestic nations," not foreign nations.***
- ***Tribes are subject to the ultimate authority of the U.S. Congress but continue to be distinct political entities that rule their own territories within the United States.***
- ***The relationship between the United States and tribes resembles that of a ward to its guardian.***
- ***Tribes are not subject to state laws except as directed by the U.S. Congress.***
- ***Treaties between Indian tribes and the Federal government are of the same dignity and weight as other treaties.***
- ***Tribes may not sell tribal lands without the consent of the U.S. government***

In these and subsequent decisions, the Supreme Court has ruled that all federal agencies, including DOE, have a permanent legal obligation to exercise statutory and other legal authorities to protect tribal land, assets, resources, and treaty rights. This "trust responsibility" is a legally enforceable obligation, a duty, on the part of the U.S. Government to protect the rights of federally recognized Indian tribes. The language in Supreme Court cases suggests that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of dealings between the U.S. government and Indian tribes. The Supreme Court has noted that the Federal government, as trustee, is "charged with moral obligations of the highest responsibility and trust."

In general, the courts have not required specific procedures but generally have looked to see whether federal agencies have sought the views of tribes and considered their interests. President Clinton, in a 1994 memorandum, directed all federal agencies to assess the impacts of their plans, projects, programs, and activities on tribal trust resources, assure that tribal rights and concerns are considered in decision making and, to the extent practicable and permitted by law, consult with tribal governments before taking actions that affect them.

What are DOE's Trust Responsibilities?

DOE's trust responsibilities include:

- Consulting, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments.

- Protecting tribal people and their resources — land, air, water, vegetation, wildlife and fisheries — from DOE actions that could harm their health, safety, or sustainability.

- Protecting "reserved" rights (such as hunting and fishing rights that were specified in treaties as retained or reserved even though the lands are not part of the reservation).

- Protecting Indian cultural and religious artifacts and sites on land now managed by DOE, and avoiding any unnecessary interference with traditional religious practices, which includes providing appropriate access to sacred sites on DOE lands.

- Protecting the sovereignty of tribal governments.

TRIBAL TREATY RIGHTS

Many Indian lands were ceded by treaty to the United States. These treaties often reserved certain lands and rights for the tribes or established reciprocal obligations by the Federal government. These treaties, unless changed or abrogated by a subsequent treaty or statute, remain the supreme law of the land. Age alone does not invalidate them. Unless abrogated by Congress, treaties have the same force as federal statutes. As the Supreme Court stated in a 1979 decision: "A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations."

Courts follow certain principles of interpretations when reading treaties and other federal legal instruments regarding Indians. The Supreme Court has held that ambiguities in treaties are to be construed to what the Indians, at the time of negotiation of the treaties, may have understood them to say. The courts recognize the unequal bargaining relationship between the Indians and the United States when these treaties were negotiated. These negotiations were held in a language that was foreign to the tribes. The concept of land ownership itself was outside Indian cultural traditions, and many times the treaties were negotiated under duress.

In many treaties (including most of the treaties with tribes in the Northwest), the tribes reserved hunting, fishing, and gathering rights in territories beyond the land they reserved for occupation. In the Northwest treaties these lands were described as the "usual and accustomed" places. These lands are referred to as "ceded lands." Some DOE sites are located on ceded lands. Frequently tribes have rights to certain quantities of water from rivers, and the Supreme Court has ruled that the tribes' rights to the land include sufficient irrigation water to meet the tribes' current and future use. Various lawsuits have also raised the broader question of whether fishing and hunting rights include rights to a sustainable, natural environment upon which fish and game depend. Since such rights may be necessary to the primary purpose of the treaty, these rights may be implicit in treaties. The breadth of these rights has not been fully defined by the courts.

The rights of each tribe differ with the terms of the treaty governing its land. What remains constant, however, is the trust responsibility of federal agencies to protect the treaty rights of the tribes, which include protecting the tribes from actions by federal, state or local agencies that are not consistent with tribal rights whether within Indian lands or in ceded areas.

Even in those cases where no treaty exists, federal common law and federal statutes establish rights independent of the treaties. Tribal treaty rights are over and above these statutory rights.

What Treaty Rights Do Tribes Have?

- The scope of treaty rights depends on the language in each treaty.

- Some treaty rights extend beyond present-day boundaries of reservations or Indian trust lands. Off-reservation treaty rights may include grazing rights, hunting and fishing rights, gathering rights and interests, water rights, and subsistence rights.

- If Indian water rights are reserved by treaty, they are senior to virtually all other water rights and are sufficient to cover future, not just existing, activities on the reservation.

- The courts have ruled that if either hunting or fishing rights are reserved by treaty, both apply.

THE DEPARTMENT OF ENERGY'S AMERICAN INDIAN & ALASKA NATIVE TRIBAL GOVERNMENT POLICY

DOE policy states that:

DOE's American Indian and Alaska Native Tribal Government 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. The most important doctrine derived from this relationship is the trust responsibility of the United Sates to protect tribal sovereignty and self-determination, tribal lands, assets, resources, and treaty and other federally recognized and reserved rights.

DOE employees are directed to follow:

1. DOE recognizes the federal trust relationship and will fulfill its trust responsibilities to American Indian and Alaska Native Nations.

2. The Department recognizes and commits to a government to government relationship and will institute appropriate protocols and procedures for program and policy implementation.

3. The Department will establish mechanisms for outreach, notice, and consultation, and ensure integration of Indian nations into decision-making processes.

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.

5. The Department will initiate a coordinated department-wide effort for technical assistance, business and economic self-determination development opportunities, education, and training programs.

6. The Secretary of Energy will conduct an annual tribal leaders summit for performance review of policy implementation and issue resolution.

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.

DOE's work with tribes cuts across most of the Department's programs, i.e., fossil fuels, energy efficiency and renewables, energy deregulation, energy education and environmental management and cleanup. DOE maintains cooperative agreements with tribal nations which are directly impacted by DOE operations (Appendix 1).

Building a Relationship with Tribes

- Each DOE office has designated individuals and protocols for tribal contact as shown in Appendix 2. Check with these individuals before initiating contact with a tribe.

- It is particularly important to tribes that tribal sovereignty and tribal officials be treated respectfully. Dealing with a senior tribal official should be seen as equivalent to dealing with a very senior U.S. official. For instance, if you have an appointment with the President of the United States, the Secretary of Energy, or the CEO of a major company, you make sure you are on time, have all the information that may be needed, and are respectful of the time pressures these officials are under. The same kind of respect should be extended to tribal officials, as they are of equivalent rank in their nation.

- The history of the relationship between the Federal government and a particular government may influence how the tribes relate to DOE staff. DOE staff should learn about DOE's past and current involvement with the tribe in question to avoid duplication and to understand the context in which the relationship will take place.

- Due to the long and complex relationship between the Federal government and Indian tribes, tribes often mistrust the Federal government. Trust must be earned over time. DOE staff can earn trust by educating themselves about how tribal governments operate, demonstrating respect for tribal values, having a proactive interest in tribal welfare, and following through on commitments. Be respectful, predictable, and credible.

- The tribes' understanding of DOE's trust responsibilities also defines their expectations of DOE staff. Learn what their expectations are. Your agenda and expectations may be different than the tribes'.

- Tribes interpret consultation to be "a give-and-take process intended to develop consensus." Simply recording their views is not considered consultation.

- Recognize that tribal governments must deal with the entire welfare of the community, so these governments may be slow to get to DOE issues. Like most governments, tribes experience changing priorities with changing administrations. Also, due to a variety of factors, a high turn-over rate occurs frequently in tribal staff, and tribal governments are often understaffed. Be aware that changes, such as staff turnover, may affect your schedule.

- Don't promise things you can't deliver. If a proposed action requires acceptance or approval from someone else within DOE or another agency, explain in detail the steps you will take to secure approval; but don't over-promise. With a long history of broken promises from the Federal government, tribes may see you as untrustworthy if you can't deliver on your promises.

- If you don't have the information, offer to get it.

- Consider collaboration with other DOE offices and other federal or state agencies as a way to take actions you could not accomplish alone.

- Work to strengthen the capacity of the tribe to achieve its own goals. For example, the ultimate objective of protecting the health and environment of tribes may be achieved most effectively when environmental programs are carried out by the tribal governments. Whenever possible, bring resources, training, and other forms of support to the working relationship with tribal governments.

Why Does Culture Matter?

- The critical characteristic of culture is that it provides a group or society with a shared sense of meaning.

- Different cultures have different interpretations of what behaviors mean. It is easy for people from different cultures to offend or misinterpret each other's behavior by assuming that behavior will mean the same thing to someone from another culture.

- Cross-cultural miscommunication is an important concern when working with Indian tribes.

- Ultimately, people-to-people relationships are the seeds of effective, positive, and productive government-to-government relationships. The success of these relationships often depends on how informed the participants are of each other's history, government, culture, and appropriate etiquette.

TRIBAL CULTURE AND ETIQUETTE

Communication with people in Indian communities involves communication across cultures, akin to communication with someone from a foreign country. What does it mean to communicate with someone from a different culture?

Culture operates at two levels. Objective culture includes the visible aspects of culture — language, religion, ritual, dress, art and dance, political and economic institutions. Subjective culture refers to the beliefs, attitudes, values, behavior patterns, and modes of communication that are shared by a group. Subjective culture provides a way of understanding the world that is shared with other members of the group. It tells people within a group what their experiences mean. Behavior that means one thing in one culture may mean something very different in another.

In many cases we are not even aware of when our own culture defines the meaning of a behavior in ways that are at odds with the interpretation provided by another culture. As social critic Marshall McLuhan once stated: "Culture is like a glass dome. As long as you are inside you don't know you are enclosed." So we may feel insulted or put-upon by someone else's behavior, based on behavior that means something entirely different in their culture. Or we may give offense to someone else by engaging in behavior that is not offensive in our culture, but that is highly offensive in theirs. This is why it is essential that you know as much as possible about a tribal community before you begin to interact with it. The more you know about a culture, the less likely you are to create cross-cultural misunderstandings.

At the same time some cultural lessons can only be learned through actual interaction with the other culture. So if your responsibilities involve communication with tribes, you need to interact with people from that tribe. This can't just be formal interaction within official roles. To understand a culture, you need to understand its people. That requires regular and continuous interaction-- not just officially, but socially as well. The result should be that you continue to learn from and respect the tribal culture with which you are working

Etiquette is the part of culture that demonstrates respect, courtesy, and cooperation with others. Thus mistakes about etiquette may communicate disrespect or a lack of deference or concern for other people's feelings.

It's important to remember that there are currently nearly 560 federally recognized tribes, and some that are unrecognized as well. Many of these tribes speak very different languages and differ in other fundamental ways. Most Indigenous Americans think of themselves not as "Indian," but as members of a tribe; e.g., Navajo, Pueblo, Seneca. No two tribes are the same. Some are very progressive, some are very conservative, some are very traditional, and some are very contemporary.

Nevertheless, there are some generalizations about Indian cultures that are useful, and they are presented below. Some general guidelines for etiquette are provided later in this section.

Examples of Potential Cultural Misunderstandings:

In most Indian tribes, communication tends to be implicit, and much is conveyed without articulating the particular message. The nonverbal and situational context becomes very important. An example would be that in the tribal world all forms of traditional expression — names, words, intonations, drumming, dances, masks, brush strokes, chants — have unique symbolism and are the outward manifestation of a deeper reality (as they are in most religions).

There are significant differences in what is important in the dominant American culture and what is important in most tribal cultues.

The dominant American culture tends to emphasize:

- earned status
- individual achievement
- self-reliance
- independence
- factual/scientific thinking
- planned time
- individual competition

Tribal culture tends to emphasize:

- ascribed status
- relationships that are stable and harmonious
- reliance on others
- intuition
- time stretches
- cooperation

To illustrate, in the dominant American culture, a young person who performs exceptionally well academically or athletically would be showered with recognition and pushed to maximize his or her potential. In tribal culture, the exceptional performance of a single individual might be minimized in order to achieve harmonious relationships among all the young people.

Here are some of the areas in which there are frequent cultural misunderstandings when agencies deal with tribal cultures:

- Government agencies place great importance on schedules and time. Tribes place greater emphasis upon achieving consensus and harmony, and usually tribes believe that consensus and harmony are far more important than schedules and time. A meeting that might be announced for a few hours might go on for many hours until a conclusion is reached that brings about stability and harmony in relationships between members of the tribe. An agency may feel that it is essential to have a tribal response the following week in order to meet a goal; a tribe may feel that it is essential to take all the time necessary in order to discuss an issue that might affect the life of the tribe for generations.

- Tribal elders are treated with great respect, whether or not they hold elected office or an official position. In the dominant American culture, people's status is usually defined by their official position.

- Agencies feel they must justify their decisions based on facts and scientific thinking. Tribes often feel that intuition is a better guide to the underlying relationships and essential truth.

As these examples illustrate, there are significant differences in the cultural context in which a DOE employee operates and that in which tribes operate. These differences always hold the potential for cultural misunderstandings. The best way to overcome these potential misunderstandings is through regular communication and interaction. Maintain an attitude of open-mindedness and adaptability. A sense of humor, particularly an ability to laugh at one's self, may overcome otherwise difficult moments.

Tribal Environmental Beliefs

In mainstream American culture, there is a distinct separation between the "sacred" and the "mundane" (the everyday tasks of earning a living, finding food and shelter). But most American Indian tribes and individual tribal members conceive of spirituality and sacred sites and activities as including all aspects of their way of life — a "holistic" or all-inclusive existence. Indian people believe all living things are interconnected. The spiritual and natural worlds are not separate. Spirituality is a part of everyday life. For example, plants and animals are not only necessary for subsistence, but also possess spiritual significance and serve ceremonial purposes. Therefore, gathering sites are not just subsistence sites; they may be traditional, cultural places. Where non-Indian cultures may make a distinction between an economic activity, Indian people might consider both to have spiritual significance.

In Indian culture, celebrations, stories, songs, and dance are not "entertainment." These activities teach skills that determine the future success of younger tribal members as providers and productive members of the tribe and ensure the existence of the tribe for generations to come. Through subsistence activities, children learn respect for the wildlife and fish that are important for their subsistence. They also learn to share, respect, and provide for their elders, care for the land, and coexist with other human beings and cultures.

The vitality of Native American culture, health, religion, and the environment are inextricably linked. It may be difficult for a tribe to separate threats to their environment from threats to their health and culture. Many factors make these links much stronger for tribal members than for non-Indians.

The Significance for DOE of Tribal Beliefs on the Environment

- Environmental risks are often viewed not just as risks to the health of present tribal members, but also as threats to the continuity and integrity of the culture.

- Activities that non-Indians might interpret as "economic" activities (such as gathering food) may be considered "spiritual" activities by tribes.

- Many Indians practice a subsistence lifestyle, depending on fishing, farming, ranching, hunting, and gathering. The implications of this subsistence lifestyle are that the direct exposure of Indians to contaminated resources may be much greater than the equivalently direct exposure to non-Indians, and the consequences from the loss of resources are much greater.

- Many tribes use plants, roots, and other natural resources for medicines and in religious ceremonies. Their faith in the healing and spiritual power of natural resources depends on its purity and may be threatened if a resource is contaminated.

- Knowledge about what, where, and how a tribe uses natural resources may be proprietary information that the tribe does not want to release to DOE for fear the information will be misused. Establishing a methodology for collecting and releasing information may require careful collaboration between the tribe and DOE.

Tribal Decision Making and Meetings

Tribal governments place great emphasis on reaching decisions that produce long-term resolutions and benefits for future generations. Some tribes talk of making decisions that will produce benefits for the next seven generations. Native Americans see continuation of their culture being dependent on natural resources and keeping the land in pristine condition.

Since creating harmony and protecting cultural continuity are important tribal values, tribal meetings tend to allow for everyone to express their views. Tribal decision-making processes may seem slow and cumbersome to those who have to meet schedules and deadlines. DOE staff and contractors need to be flexible when estimating the time required by the tribe to reach decisions or to respond to questions.

Meetings with tribal officials usually start with words of spirituality, prayer or invocation. These prayers are intended to create a positive atmosphere that will lead to mutual understanding and a good outcome for all parties involved. U.S. government rules about separation of church and state do not apply to tribes. They do not necessarily see them as separate, and as sovereign nations they are free to follow their own cultural norms.

Pointers on Tribal Meeting Etiquette

- Always be conscious of your conduct. Tribal cultures put great emphasis on judging character by one's action, conduct, and response. The appropriate conduct is to be conservative and mindful. Often credibility and integrity will be assessed within the first five minutes of conversation or introduction. As a representative of the Federal government, your actions are indicative of your awareness of the government-to-government relationship with tribal nations.

- Don't be judgmental about how tribal meetings are run. Tribal sovereignty includes the tribes' rights to reach decisions and conduct meetings however they wish.

- Keep your voice to a moderate level. Speaking loudly may be taken by tribal elders, leaders, and members as arrogance, or may be interpreted as a talking down to them, (i.e., a federal agency taking a paternalistic position).

- Elders are highly respected in tribal communities, whether or not they hold any official position. They are the repository for the continuity of tribal culture and are often the source of considerable intuitive wisdom.

- When speaking with a tribal elder, allow more time for a response than you normally would allow. First, English is a second language for many tribal elders. Also, tribal people allow a greater pause time between speakers, even in their own language; a pause indicates the other person is considering what you said. Indian elders may respond by using a story or an analogy to demonstrate their point. A hurried follow-up question may disrupt their response to your first question. Therefore, if you are in a hurry, you may get no answer at all.

- Give your undivided attention to the person who is speaking. Being impatient about time is culturally inappropriate behavior — if something is important enough to talk about, it is important enough to give whatever time is necessary to discuss and ultimately resolve the issues. It is considered especially rude to look at your watch, clip your finger nails, yawn, walk out, raise your hand, or shake your head while a tribal elder or a tribal leader is talking.

- Sometimes prolonged eye contact is inappropriate. In "Indian Country," not making or holding eye contact is respectful behavior. While in meetings, maintaining direct eye contact for extended amounts of time with tribal elders, leaders, and members is considered inappropriate in some tribal cultures. Because tribal representatives are not making eye contact doesn't mean they aren't listening.

- When beginning an important discussion or when responding to questions by tribal elders and officials, laughter may be taken as a lack of seriousness or as belittling the subject or the questioner.

- Tribes may attach much greater significance to proposed DOE actions than DOE staff. Tribal people have a highly personal vested interest in DOE activities because they know from experience how DOE actions may impact their communities, the environment, and their livelihood. DOE staff may have difficulty in appreciating what DOE's actions mean in the context of tribal culture.

- Some tribal leaders are sensitive to unprofessional, overly casual attire when meetings are held with representatives of the Federal government, especially with those representing the Washington, D.C. headquarters office. Casual attire in the West is more acceptable, particularly among those who meet regularly with tribal officials and go straight from their work place to meetings. However, for a business meeting dress respectfully as you would when meeting with any high elected official or a distinguished representative of another government.

- DOE terms, vocabulary, acronyms, and standard operating procedures may not be familiar to a tribe. DOE staff need to develop an understanding of the prior involvement, education, and training the tribe has had. Some tribes may need DOE staff to limit or explain the use of terms, while other tribes may already have an understanding of the subject matter. Never underestimate the knowledge of tribal officials; but at the same time, be conscious of the terms and concepts you are using to ensure that both tribal officials and DOE staff are effectively communicating

Cultural Ceremonies

Cultural ceremonies are the bedrock of tribal identity as a government and people. Ceremonies are the reaffirmation of ancestral knowledge handed down from generation to generation. In this manner, songs, dances, prayers, and cultural ceremonial dress are direct links to cultural, religious, and family history. Tribal members' participation in cultural ceremonial life means a commitment to cultural and religious values and teachings. When it appears appropriate, DOE staff and contractors may want to plan their visits so they have the flexibility to participate in a social or cultural event that will help build understanding and foster trusting relationships.

Things You Need to Know About Tribal Etiquette During Cultural Ceremonies:

- Respect for cultural ceremonies is best shown through action. During invocations, prayers, or opening songs, be observant and determine appropriate behavior based on the behavior of tribal members .

- Show your respect for tribal ceremonies by allowing sufficient time to observe the entire ceremony. Just "putting in an appearance" may be seen as insulting and may increase suspicion about your sincerity.

- It is customary to remove hats for the duration of the invocation, prayers, or songs.

- While prayers or invocations are being said, lower your head and don't look around.

- Ask permission before taking pictures. Many tribal members are sensitive about being photographed. A general rule of thumb is to ask whether it is permissible to take pictures, video tape, record, or otherwise document cultural ceremonies before reaching for a camera.

Visiting Tribal Reservations

Even though there are no immigration officials requiring passports, entering a reservation is entering the property of a sovereign nation. DOE staff and contractors are guests of the tribe of which they are visiting, and must observe the tribe's customs and laws.

Tribes differ significantly in their willingness to allow visitors on parts of the reservation away from official buildings or tourist facilities. It is wise to inquire in advance about tribal rules and attitudes and to request permission before visiting parts of the reservation away from official buildings. Above all, the reservation is the home of the tribe and its people, and the privacy of the people should be respected.

Things You Need to Know about Visiting Reservations:

- Don't assume that you are free to wander about or ask tribal members direct questions about their lives. This is the height of rudeness in most Indian cultures.

- Never point (especially when visiting the Navajo Reservation). Pointing is seen as very rude and offensive and has cultural, religious, and metaphysical significance that makes it even more offensive.

- DOE staff may find it helpful to develop personal relatonships with members of the tribe who can help with communication and protocol information.

- Photography may be restricted. Ask for permission to photograph individuals, ceremonies, or meetings. Don't assume automatically that it is appropriate.

- When visting cultual or sacred sites, be respectful of all artifacts. Refrain from handling or otherwise disturbing these artifacts.

Appendix 1
Existing Agreements with Tribes and Nations include:

Hanford Site: Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe.
Los Alamos National Laboratory: Cochiti Pueblo, Jemez Pueblo, Santa Clara Pueblo, San Ildefonso Pueblo.
Sandia National Laboratory: Isleta Pueblo.
Idaho National Laboratory: Shoshone-Bannock Tribes.
West Valley Demonstration Project: Seneca Nation of Indians.

INDIAN ISSUES POINTS OF CONTACT U. S. DEPARTMENT OF ENERGY HEADQUARTERS

OFFICE	CONTACT	MAIL CODE/ROOM #	TELEPHONE # AND FAX #
Office of Congressional and Intergovernmental Affairs	Derrick Watchman	CI-01 7B-164	202/586-0211 202/586-4891-Fax
Office of Worker and Community Transition	Pamela De Rensis	WT- 6G-051	202/586-6751 202/586-1540-Fax
Office of Defense Programs	John Ordaz John Rich	DP-13 GTN, C-162 DP-21 1F-020	301/903-8055 301/903-6628-Fax 202/586-3494 202/586-2180-Fax
Office of Economic Impact and Diversity	Eugene Tates	ED-03 4B-058	202/586-4556 202/586-5488-Fax
Office of Energy Efficiency and Renewable Energy	Thomas Sacco	EE-14 6H-034	202/586-0759 202/586-1605-Fax
Office of Environment, Safety, and Health	Lois Thompson	EH-412 GB-096	202/586-9581 202/586-3915-Fax
Energy Information Administration	Georgia Collier	EI-22 2H-055	202/586-1108 202/586-0552-Fax
Office of Environmental Management	Martha Crosland Brandt Petrasek	EM-11 5A-031 EM-11 1H-087	202/586-5944 202/586-0293 202/586-4818 202/586-0293-Fax
Office of Science	Joe V. Martinez	SC-14 GTN, E-432	301/903-5825 301/903-4110-Fax
Office of Fossil Energy	Edward Kilroy	FE-12.1 3070/270 Corporate Center	301/903-2783 301/903-6434-Fax
Office of Field Management	Shel Cullison	FM-30 1I-61	202/586-5205 202/586-4931-Fax
Office of the General Counsel	Judy Odoulamy Dean Monroe	GC-73 6H-064 GC-51 6A-113	202/586-6399 202/586-7396-Fax 202/586-2948 202/586-7373-Fax
Office of Management and Administration	Carrie Morgan	MA-3 4D-035	202/586-6807 202/586-3294-Fax
Office of Policy	Gay Leslie	PO-52 7H-085	202/586-6428 202/586-4341-Fax
Office of Fissile Materials Disposition	Ken Sprankle	MN-63 GG-092	202/586-7113 202/586-2710-Fax
Office of Nuclear Energy	Nancy Hebron	NE-20 GTN, A-278	301/903-1536 301/903-7020-Fax
Office of Civilian Radioactive Waste Management	Elissa Turner	RW-44 GF-253	202/586-1710 202/586-4959-Fax

INDIAN ISSUES POINTS OF CONTACT U. S. DEPARTMENT OF ENERGY HEADQUARTERS

OFFICE	CONTACT	MAIL CODE/ROOM #	TELEPHONE # AND FAX #
Albuquerque Operators Office	Ki Tecumseh	P.O. Box 5400 Albuquerque, NM 87185-5400	505/845-5361 505/845-6053 505/845-6206-Fax
Bonneville Power Administration	John Smith Katherine A. Cheney Leslie Atkins	West 707 Main, Suite 500 Spokane, WA 99201	509/358-7446 509/353-2907-Fax 509/358-7470 509/353-2909-Fax 202/586-5629 202/586-6763-Fax
Denver Regional Office	Stephen L. Sargent	BPA, Room 8G-061 (Hqs.) 1617 Cole Boulevard Golden, CO 80401	303/275-4820 303/2754830-Fax
Golden Field Office	Christopher Powers	1617 Cole Boulevard Golden, CO 80401	303/275-4742 303/275-4789-Fax
Idaho National Engineering and Environmental Laboratory	Willie Preacher	Lockheed Idaho Technology Co. P.O. Box 1625 Idaho Falls, ID 83415-3695	208/526-4845 208/526-3857-Fax
Idaho Operations Office	Robert Pence	850 Energy Drive Idaho Falls, ID 83401-1563	208/526-6518 208/526-8789-Fax
Kirtland Area Office	Tami L. Toops	Pennsylvania & H Street Albuquerque, NM 87185-5400	505/845-5264 505/845-4671-Fax
Lawrence Livermore National Laboratory Field Office Diné College	Steve Grey	P.O. Box 808, L-716 Livermore, CA 94566 Diné College LLNL/DC Field Office P.O. Box 580 Shiprock, NM 87420	925/422-8336 505/368-5120 505/368-4868-Fax
Los Alamos Area Office	Donna Vigil	528 35th Street Los Alamos, NM 87544	505/667-0451 505/665-1718-Fax
Los Alamos National Laboratory	Barbara Grimes	P.O. Box 1663 Los Alamos, NM 87545	505/665-1453 505/665-4411-Fax
Morgantown Energy Technology Center	Madhav Ghate	3610 Collins Ferry Road P.O. Box 880 M.S. CO5 Morgantown,WV 26507-0880	304/285-4135 304/285-4403-Fax
Naval Petroleum Reserves in Colorado, Utah, Wyoming	David Miles	7290 Salt Creek Route Casper, WY 82601	307/437-9631 307/437-9623-Fax

INDIAN ISSUES POINTS OF CONTACT U. S. DEPARTMENT OF ENERGY HEADQUARTERS

OFFICE	CONTACT	MAIL CODE/ROOM #	TELEPHONE # AND FAX #
National Petroleum Technology Office	Ginny Weyland	P.O. Box 3628 Tulsa, OK 74101	918/699-2041 918/699-2005-Fax
National Renewable Energy Laboratory	Linda Lung	1617 Cole Boulevard Golden, Colorado 80401-3393	303/275-3044 303/275-3076-Fax
Nevada Operations Office	Robert Furlow	P.O. Box 98518 Las Vegas, NV 89193-8518	702/295-0845 702/295-1455-Fax
Oakland Operations Office Office of Public Affairs		1301 Clay Street Suite 700 North Oakland, CA 94612-5208	510/637-1812 510/637-2015-Fax
Oak Ridge Operations Office	Thomas Wynn	P.O. Box 2001 Oak Ridge, TN 37830	423/576-0630 423/576-7813-Fax
Richland Operations Office	Kevin Clarke Dan Tano	825 Jadwin Avenue P.O. Box 550 Richland, WA 99352	509/376-6332 509/376-1563-Fax 509/376-1967 509/376-0306-Fax
Sandia National Laboratories	Jim Chavez	Mail Stop 0131 P.O. Box 5800 Albuquerque, NM 87185-0355	505/844-4485 505/844-8496-Fax
Savannah River Operations Office	Arthur Ben Gould	EQMD P.O. Box A Aiken, SC 29802	803/725-3969 803/725-8434-Fax
Southeastern Power Administration	Joel Seymour	2 South Public Square Sam Elbert Building Elbertson, GA 30685	706/213-3810 706/213-3884-Fax
Southwestern Power Administration	Marti Ayers	P.O. Box 1619 Tusla, OK 74101	918/595-6609 918/595-6758-Fax
Western Area Power Administration	R. Steven Warner	P.O. Box 3402 Golden, CO 80401-0098	303/275-2500 303/275-2637-Fax
West Valley Demonstration Project	Bryan Bower	P.O. Box 191 - 10282 Rock Springs Road West Valley, NY 14171	716/942-4368 716/942-2068-Fax
Yucca Mountain Project Office	Scott Wade Jozette Booth	P.O. Box 30307 Las Vegas, NV 89036-0307	702/794-5459 702/794-5467-Fax 702/794-1317 702/794-5038-Fax

Appendix 3
U.S. Department of Energy
American Indian Policy

PURPOSE

This policy outlines the principles to be followed by the Department of Energy (DOE) in its interactions with federally-recognized American Indian tribes. It is based on federal policy, treaties, federal law and the DOE's responsibilities as a federal agency to ensure that Tribal rights and interests are identified and considered in pertinent decision-making. The policy provides general guidance to DOE personnel for management actions affecting American Indians and emphasizes implementation of such activities in a knowledgeable and sensitive manner. This policy does not affect DOE interactions with State-recognized Tribes with respect to matters provided for by statute or regulation.

DEFINITION

INDIAN COUNTRY means (a) all land within the limits of any Indian reservation under the Jurisdiction of the United States Government, notwithstanding the issuance of any potent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 USCS 1151)

BACKGROUND

American Indian Tribal Governments have a special and unique legal and political relationship with the Government of the United States, defined by history, treaties, statutes, court decisions, and the U.S. Constitution. The United States has entered into more than 600 treaties and agreements with American Indian tribes. These treaties and agreements create a variety of legal responsibilities by the United States toward American Indian tribes and provide the basis for a government-to-government relationship. Other responsibilities toward American Indians are created by Congress through statutory enactments. Although the Department of the Interior, through the Bureau of Indian Affairs, has the principal responsibility for upholding obligations of the Federal Government to American Indians, this responsibility extends to all Federal agencies.

POLICY

1. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH AMERICAN INDIAN TRIBAL GOVERNMENTS.

DOE recognizes Tribal governments as sovereign entities with, in most cases, primary authority and responsibility for Indian country. In keeping with the principle of American Indian self-government, the Department will view tribal governments as the appropriate non-Federal parties for making decisions affecting Indian country, its energy resources and environments, and the health and welfare of its populace. The Department will recognize the right of each Tribe to set its own priorities and goals in developing and managing its energy resources. The Department recognizes that some tribes have treaty-protected interests in resources outside reservation boundaries.

2. DOE RECOGNIZES THAT A TRUST RELATIONSHIP DERIVES FROM THE HISTORICAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND AMERICAN INDIAN TRIBES AS EXPRESSED IN CERTAIN TREATIES AND FEDERAL INDIAN LAW.

In keeping with the trust relationship, the DOE will consult with Tribal governments regarding the impact of DOE activities on the energy, environmental and natural resources of American Indian tribes when carrying out its responsibilities.

3. THE DEPARTMENT WILL CONSULT WITH TRIBAL GOVERNMENTS TO ASSURE THAT TRIBAL RIGHTS AND CONCERNS ARE CONSIDERED PRIOR TO DOE TAKING ACTIONS, MAKING DECISIONS OR IMPLEMENTING PROGRAMS THAT MAY AFFECT TRIBES.

The DOE will take a proactive approach to solicit input from Tribal governments on departmental policies and issues. The Department will encourage Tribal Governments and their members to participate fully in the national and regional dialogues concerning departmental programs and issues.

4. CONSISTENT WITH FEDERAL CULTURAL RESOURCE LAWS AND THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT (P.L. 95-341), EACH FIELD OFFICE OR DOE INSTALLATION WITH AREAS OF CULTURAL OR RELIGIOUS CONCERN TO AMERICAN INDIANS WILL CONSULT WITH THEM ABOUT THE POTENTIAL IMPACTS OF PROPOSED DOE ACTIONS ON THOSE RESOURCES AND WILL AVOID UNNECESSARY INTERFERENCE WITH TRADITIONAL RELIGIOUS PRACTICES.

DOE will comply with all cultural resource legislation and implementing regulations in the management and operation of its programs and facilities. Consultation with appropriate American Indian tribal governments is part of the compliance process involving Federal cultural resource laws and the American Indian Religious Freedom Act. Consultation may include, but is not limited to 1) the exchange of information concerning the location and management of cultural resources, 2) repatriation or other disposition of objects and human remains, 3) access to sacred areas and traditional resources located on DOE lands in accordance with safety, health and national security considerations, and 4) assessment of Potential community impacts.

5. THE DEPARTMENT WILL IDENTIFY AND SEEK TO REMOVE IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON DOE PROGRAMS.

DOE recognizes that there may be regulatory, statutory and/or procedural impediments which limit or restrict our ability to work effectively and consistently with tribes. In keeping with this policy, we will seek to remove any such impediments. Additionally, we will, to the maximum extent permitted by law, apply existing statutory, regulatory and procedural requirements in a manner that furthers the goals of this policy.

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

DOE will seek and promote cooperation with other agencies that have related responsibilities. In many areas of concern to DOE, cooperation and mutual consideration among neighboring governments (Federal, State, Tribal and local) is essential. Accordingly, DOE will encourage early communication and cooperation among all governmental parties. This recognizes that the principle of comity among equals and neighbors often serves the best interests of all parties.

7. THE DEPARTMENT WILL INCORPORATE THIS POLICY INTO ITS ONGOING AND LONG-TERM PLANNING AND MANAGEMENT PROCESSES.

It is key to this effort to ensure that the principles of this policy are effectively institutionalized by incorporating them into the Department's ongoing and long-term planning and management processes. Department managers will include specific programmatic actions designed to facilitate tribal participation in Departmental program planning and activities.

James D. Watkins
Admiral, U.S. Navy (Retired)
Secretary of Energy

Reaffirmed:
Hazel O'Leary
Secretary of Energy
Date

Reaffirmed:
Frederico Pena
Secretary of Energy
Date

Reaffirmed:
Bill Richardson
Secretary of Energy
Date

Appendix 4
Government-to-Government Relations with Native American Tribal Governments

The following memorandum was sent to all heads of executive departments and agencies and appeared in the May 4, 1994 issue of the Federal Register. It was signed and released in conjunction with the historic meeting between the President and representatives of Tribal governments held at the White House on April 29, 1995.

The White House
Washington, DC
April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with Native American Tribal Governments

The United States government has a unique legal relationship with Native American Tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American Tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of Tribal sovereignty.

Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American Tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal government operates within a government-to-government relationship with Federally-recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign Tribal governments.

In order to ensure that the rights of sovereign Tribal governments are fully respected, executive branch activities shall be guided by the following:

a. The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with Federally-recognized Tribal governments.

b. Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with Tribal governments prior to taking actions that affect Federally recognized Tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

c. Each executive department and agency shall assess the impact of Federal government plans, projects, programs, and activities on Tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.

d. Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with Tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

e. Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

f. Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of Tribal communities. The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

Appendix 5
Executive Order 13007
Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites.

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions,

1) Accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and

2) Avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For the purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian " refers to a member of such an Indian Tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Section 2: Procedures.

(a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section I of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among the other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian Tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Section 3

Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551 (13)).

Section 4

This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

WILLIAM J. CLINTON
The White House
May 24, 1996

Appendix 6
Executive Order 13021
Tribal Colleges and Universities

By the authority vested in me as President by the Constitution laws of the United States of America, in reaffirmation of the special relationship of the Federal government to American Indians and Alaska Natives, and, for the purposes of helping to:

(a) ensure that Tribal colleges and universities are more fully recognized as accredited institutions, have access to the opportunities afforded other institutions, and have Federal resources committed to them on a continuing basis;

(b) establish a mechanism that will increase accessibility of Federal resources for Tribal colleges and universities in Tribal communities;

(c) promote access to high-quality educational opportunity for economically disadvantaged students;

(d) promote the preservation and the revitalization of American Indian and Alaska Native languages and cultural traditions;

(e) explore innovative approaches to better link Tribal colleges with early childhood, elementary, and secondary education programs; and

(f) support the National Education Goals (20 U.S.C. 5812), it is hereby ordered as follows:

Section 1 Definition of Tribal Colleges and Universities.

Tribal colleges and universities (Tribal colleges) are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 et seq.), and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95-471, title II (25 U.S.C. 640a note).

Section 2 Board of Advisors.

(a) Establishment.

There shall be established in the Department of Education a Presidential advisory committee entitled the President's Board of Advisors on Tribal Colleges and Universities ("Board"). Notwithstanding the provisions of any other Executive Order, the responsibilities of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Board, shall be performed by the Secretary of Education ("Secretary"), in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) Composition.

The Board shall consist of not more that 15 members who shall be appointed by the President. The Board shall include representatives of Tribal colleges. The Board may also include representatives of the higher, early childhood, elementary, and secondary education communities; Tribal officials; health, business, and financial institutions; private foundations; and such other persons as the President deems appropriate. Members of the Board will serve terms of two years and may be reappointed to additional terms. A Member may continue to serve until his or her successor is appointed. In the event a Member fails to serve a full term, an individual appointed to replace that Member will serve the remainder of that term. All terms will expire upon the termination of the Board.

(c) Role of Board.

The Board shall provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of this order. The Board shall also provide recommendations to the President and the Secretary at least annually on ways Tribal colleges can:

1) utilize long-term development, endowment building, and master planning to strengthen institutional viability;

2) utilize the Federal and private sector to improve financial management and security, obtain private sector funding support, and expand and complement Federal education initiatives;

3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors;

4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

5) help achieve National Education Goals and meet other high standards of education accomplishment.

(d) Scheduled Meetings.

The Board shall meet at least annually to provide advice and consultation on Tribal colleges and relevant Federal and private sector activities, and to transmit reports and present recommendations.

Section 3 Office of White House Initiative.

There shall be established in the Department of Education the White House Initiative on Tribal Colleges and Universities ("Initiative"). The Initiative shall be authorized to:

(a) provide the staff support for the Board;

(b) assist the Secretary in the role of liaison between the executive branch and Tribal colleges;

(c) serve the Secretary in carrying out the Secretary's responsibilities under this order; and

(d) utilize the services, personnel, information, and facilities of other Federal, State, Tribal, and local agencies with their consent, and with or without reimbursement, consistent with applicable law. To the extent permitted by law and regulations, each Federal agency shall cooperate in providing resources, including personnel detailed to the Initiative, to meet the objectives of the order.

Section 4 Department and Agency Participation.

Each participating executive department and agency (hereinafter collectively referred to as "agency"), as determined by the Secretary, shall appoint a senior official, who is a full-time officer of the Federal government and who is responsible for management or program administration, to serve as liaison to the White House Initiative. The official shall report directly to the agency head, or agency representative, on agency activity under this order and serve as liaison to the White House Initiative. To the extent permitted by law and regulation, each agency shall provide appropriate information in readily available formats requested by the White House Initiative staff pursuant to this order.

Section 5 Five-Year Plan.

(a) Content.

Each agency shall, in collaboration with Tribal colleges, develop and document a Five-Year Plan of the agency's efforts to fulfill the purpose of this order. These Five-Year Plans shall include annual performance indicators and appropriate measurable objectives for the agency. The plans shall address among other relevant issues:

1) barriers impeding the access of Tribal colleges to funding opportunities and to participation in Federal programs, and ways to eliminate the barriers;

2) technical assistance and information that will be made available to Tribal colleges regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, or contracts; and

3) an annual goal for agency funds to be awarded to Tribally controlled colleges and universities in:

4) grants, cooperative agreements, contracts, and procurement;

5) related excess property-type acquisitions under various authorities such as section 923 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2206a) and the Federal Property and Administrative Services Act of 1949, chapter 288, 63 Stat. 377 (codified as described at 40 U.S.C. 471 note); and

6) the transfer of excess and surplus Federal computer equipment under Executive Order 12999.

In developing the Five-Year Plans required by this order, agencies shall strive to include Tribal colleges in all aspects and activities related to the attainment of the participation goals described in Executive Order 12928, "Promoting Procurement with Small Businesses Owned as Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions." The Plans may also emphasize access to high-quality educational opportunity for economically disadvantaged Indian students; the preservation and revitalization of American Indian and Alaska Native languages and cultural traditions; innovative approaches to better link Tribal colleges with early childhood, elementary, and secondary education programs; and the National Education Goals.

(b) Submission.

Each agency shall submit its Five-Year Plan to the White House Initiative Office. In consultation with the Board, the White House Initiative Office shall review these Five-Year Plans and develop an integrated Five-Year Plan for Assistance to Tribal Colleges, which the Secretary shall review and submit to the President. The Five-Year Plan for Assistance to Tribal Colleges may be revised within the five-year period.

(c) Annual Performance Reports.

Each agency shall submit to the White House Initiative Office an Annual Performance Report that shall measure each agency's performance against the objectives set forth in its Five-Year Plan. In consultation with the Board, the White House Initiative Office shall review and combine Annual Performance Reports into one annual report, which shall be submitted to the Secretary for review, in consultation with the Office of Management and Budget.

Section 6. Private Sector.

In Cooperation with the Board, the White House Initiative office shall encourage the private sector to assist Tribal colleges through increased use of such strategies as;

(a) matching funds to support increased endowments;

(b) developing expertise and more effective ways to manage finance, improve information systems, build facilities, and improve course offerings; and

(c) increasing resources for and training of faculty.

Section 7 Termination.

The Board shall terminate two years after the date of this Executive Order unless the Board is renewed by the President prior to the end of that two-year period.

Section 8 Administration.

(a) Compensation.

Members of the Board shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as Government service (5 U.S.C. 5701-5707).

(b) Funding.

The Board and the Initiative shall be funded by the Department of Education.

(c) Administrative Support.

The Department of Education shall provide appropriate administrative services and staff support for the Board and the Initiative. With the consent of the Department of Education, other agencies participating in the Initiative Office consistent with statutory authority and shall make use of section 112 of title 3, United States Code, to detail agency employees to the extent permitted by law. The Board and the White House Initiative Office shall have a core staff and shall be supported at appropriate levels.

William J. Clinton

Appendix 7
American Indian and Alaska Native Education

Executive Order
August 6, 1998

THE WHITE HOUSE
AMERICAN INDIAN AND ALASKA NATIVE EDUCATION

By the authority vested in me as President by the Constitution and the laws of the United States of America, in affirmation of the unique political and legal relationship of the Federal government with Tribal governments, and in recognition of the unique educational and culturally related academic needs of American Indian and Alaska Native students, it is hereby
ordered as follows:

Section 1. Goals.

The Federal government has a special, historic responsibility for the education of American Indian and Alaska Native students. Improving educational achievement and academic progress for American Indian and Alaska Native students is vital to the national goal of preparing every student for responsible citizenship, continued learning, and productive employment. The Federal government is committed to improving the academic performance and reducing the dropout rate of American Indian and Alaska Native students. To help fulfill this commitment in a manner consistent with Tribal traditions and cultures, Federal agencies need to focus special attention on six goals:

(1) improving reading and mathematics;

(2) increasing high school completion and postsecondary attendance rates;

(3) reducing the influence of long-standing factors that impede educational performance, such as poverty and substance abuse;

(4) creating strong, safe, and drug-free school environments;

(5) improving science education; and

(6) expanding the use of educational technology.

Section 2. Strategy.

In order to meet the six goals of this order, a comprehensive Federal response is needed to address the fragmentation of government services available to American Indian and Alaska Native students and the complexity of intergovernmental relationships affecting the education of those students. The purpose of the Federal activities described in this order is to develop a long-term, comprehensive Federal Indian education policy that will accomplish those goals.

(a) Interagency Task Force.

There is established an Interagency Task Force on American Indian and Alaska Native Education (Task Force) to oversee the planning and implementation of this order. The Task Force shall confer with the National Advisory Council on Indian Education (NACIE) in carrying out activities under this order. The Task Force shall consult with representatives of American Indian and Alaska Native Tribes and organizations, including the National Indian Education Association (NIEA) and the National Congress of American Indians (NCAI), to gather advice on implementation of the activities called for in this order.

(b) Composition of the Task Force.

(1) The membership of the Task Force shall include representatives of the Departments of the Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human services, Housing and Urban Development, Transportation, Energy, and Education, as well as the Environmental Protection Agency, the Corporation for National and Community Service, and the National Science Foundation. With the agreement of the Secretaries of Education and the Interior, other agencies may participate in the activities of the Task Force.

(c) Interagency plan.

The Task Force shall, within 90 days of the date of this order, develop a Federal interagency plan with recommendations identifying initiatives, strategies, and ideas for future interagency action supportive of the goals of this order.

(d) Agency participation.

To the extent consistent with law and agency priorities, each participating agency shall adopt and implement strategies to maximize the availability of the agency's education-related programs, activities, resources, information, and technical assistance to American Indian and Alaska Native students. In keeping with the spirit of the Executive Memorandum of April 29,1994, on Government-to-Government Relations with Native American Tribal Governments and Executive Order 13084 of May 14, 1998, each participating agency shall consult with Tribal governments on their education-related needs and priorities, and on how the agency can better accomplish the goals of this order. Within six months, each participating agency shall report to the Task Force regarding the strategies it has developed to ensure such consultation.

(e) Interagency resource guide.

The Task Force shall identify, within participating Federal agencies, all education-related programs and resources that support the goals of this order. Within 12 months, the Task Force, in conjunction with the Department of Education, shall develop, publish, and widely distribute a guide that describes those programs and resources and how American Indians and Alaska Natives can benefit from them.

(f) Research.

The Secretary of Education, through the Office of Educational Research and Improvement and the Office of Indian Education, and in consultation with NACIE and participating agencies, shall develop and implement a comprehensive Federal research agenda to:

(1) establish baseline data on academic achievement and retention of American Indian and Alaska Native students in order to monitor improvements;

(2) evaluate promising practices used with those students; and

(3) evaluate the role of native language and culture in the development of educational strategies. Within one year, the Secretary of Education shall submit the research agenda, including proposed timelines, to the Task Force.

(g) Comprehensive Federal Indian education policy.

(1) The Task Force shall, within two years of the date of this order, develop a comprehensive Federal Indian education policy to support the accomplishment of the goals of this order. The policy shall be designed to:

(A) improve Federal interagency cooperation;

(B) promote intergovernmental collaboration; and

(C) assist Tribal governments in meeting the unique educational needs of their children, including the need to preserve, revitalize, and use native languages and cultural traditions.

(2) In developing the policy, the Task Force shall consider ideas in the Comprehensive Federal Indian Education Policy Statement proposal developed by the NIEA and the NCAI.

(3) The Task Force shall develop recommendations to implement the policy, including ideas for future interagency action.

(4) As appropriate, participating agencies may develop memoranda of agreement with one another to enable and enhance the ability of Tribes and schools to provide, and to coordinate the delivery of Federal, Tribal, State, and local resources and services, including social and health-related services, to meet the educational needs of American Indian and Alaska Native students.

(h) Reports. The Task Force co-chairs shall submit the comprehensive Federal Indian education policy, and report annually on the agencies, activities, accomplishments, and progress toward meeting the goals of this order, to the Director of the Office of Management and Budget.

Section 3. Regional partnership forums.

The Departments of Education and Interior, in collaboration with the Task Force and Federal, Tribal, State, and local government representatives, shall jointly convene, within 18 months, a series of regional forums to identify promising practices and approaches on how to share information, provide assistance to schools, develop partnerships, and coordinate intergovernmental strategies supportive of accomplishing the goals of this order. The Departments of Education and the Interior shall submit a report on the forums to the Task Force, which may include recommendations relating to intergovernmental relations.

Section 4. School pilot sites.

The Departments of Education and the Interior shall identify a reasonable number of schools funded by the Bureau of Indian Affairs (BIA) and public schools that can serve as a model for schools with American Indian and Alaska Native students, and provide them with comprehensive technical assistance in support of the goals of this order. A special team of technical assistance providers, including Federal staff, shall provide assistance to these schools. Special attention shall be given, where appropriate, to assistance in implementing comprehensive school reform demonstration programs that meet the criteria for those programs established by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 (Public Law 105-78), and to providing comprehensive service delivery that connects and uses diverse Federal agency resources. The team shall disseminate effective and promising practices of the school pilot sites to other local educational agencies. The team shall report to the Task Force on its accomplishments and its recommendations for improving technical support to local educational agencies and schools funded by the BIA.

Section 5. Administration.

The Department of Education shall provide appropriate administrative services and staff support to the Task Force. With the consent of the Department of Education, other participating agencies may provide administrative support to the Task Force, consistent with their statutory authority, and may detail agency employees to the Department of Education, to the extent permitted by law.

Section 6. Termination.

The Task Force established under Section 2 of this order shall terminate not later than five years from the date of this order.

Section 7. General provisions.

This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. This order is not intended to preclude, supersede, replace, or otherwise dilute any other Executive order relating to American Indian and Alaska Native education.

WILLIAM J. CLINTON
THE WHITE HOUSE
August 6, 1998

1. An Introduction to Indian Nations in the United States, National Congress of American Indians, 1301 Connecticut Ave NW, Second Floor, Washington DC, 20036, p. 4.