

**PROTOCOL GUIDELINES:**  
**CONSULTING WITH INDIAN TRIBAL GOVERNMENTS**

**BUREAU OF RECLAMATION**  
**NATIVE AMERICAN AFFAIRS OFFICE**

**February 3, 1998**

*(Revised February 9, 2001)*



## PREFACE

This document has been prepared as a result of several converging trends. It was initiated in response to requests from within Reclamation for guidance about the protocol for conducting consultation and maintaining a government-to-government relationship with Indian tribes. These topics are currently at the forefront of federal law and policy. Accordingly, the Commissioner has made the development and implementation of guidance about these topics a priority item for Reclamation.

Recent policy statements by the President and the Secretary of the Interior have emphasized and reaffirmed the importance of maintaining a government-to-government relationship with Indian tribes. Consultation is recognized as being an important facet of that type of relationship, and the policies are directed at improving federal-tribal interactions and communications. A variety of other laws and regulations also require consultation with Indian tribes and their members.

Indian tribes have embraced the policy of maintaining a government-to-government relationship. In response to federal policy commitments, tribes have offered recommendations about ways to improve federal-tribal interactions and communications. One of the recommendations that came out of the November 13-15, 1995, tribal government summit (on the government-to-government relationship and management of Indian trust/natural resources) was that protocols should be developed and implemented as a means for achieving effective federal-tribal consultation. The tribes viewed protocol as a priority action item.

Reclamation has responded by making commitments in its *Strategic Plan*, pursuant to the Government Performance and Results Act (GPRA), to increase opportunities for tribes to develop, manage and protect their water resources. In order to achieve this strategic goal regarding Indian tribes, Reclamation has made commitments to provide technical assistance to tribes in water resources use. Developing and maintaining government-to-government relationships with the tribes in the 17 western states may be assisted through the use of protocol agreements. Such agreements may facilitate Reclamation-tribal interactions. Although there is no guarantee that every tribe will desire to enter into a formal protocol agreement, developing relationships and establishing protocols are critical starting points for providing assistance to Indian tribes, through partnerships, so that they can develop and manage their water and related resources. The guidance offered in this document is intended to assist in achieving this strategic goal.

The guidance that follows is directed at promoting a flexible, yet conceptually integrated, approach for developing and improving Reclamation-tribal interactions. While it is recognized that many of the issues related to protocol, consultation, and maintaining a government-to-government relationship are at times both complex and subtle, they can be understood and met through an application of cultural awareness, sensitivity, and respect. Doing so will afford Reclamation an opportunity to form new relationships and enter into partnerships with tribes, so that they can receive the full benefits of the Reclamation program.



## TABLE OF CONTENTS

1. INTRODUCTION .....	1
Purpose .....	1
Objectives .....	2
Organization of the Document .....	2
2. BACKGROUND .....	3
Basics of Indian Law .....	3
What is an Indian Tribe .....	4
Tribal Sovereignty .....	4
Government-to-Government Relationship .....	5
3. CONSULTATION .....	7
Consultation -- What is it .....	7
With Whom Do You Consult .....	9
When is Consultation Necessary .....	9
Range of Consultation Contexts .....	10
4. PROTOCOL .....	11
Protocol -- What Does it Mean .....	11
Policy for Developing Protocol with Tribes .....	12
5. CULTURAL DIVERSITY AND AWARENESS .....	15
World View, Culture, and History .....	15
Awareness of and Respect for Diversity .....	16
Cultural Baggage .....	19
6. LAYING THE GROUNDWORK: MEETING WITH TRIBES .....	21
Pre-Meeting Activities .....	21
Meeting Logistics .....	23
Meeting Closure/Consensus .....	24
Post-Meeting Follow-Up .....	25
7. GUIDANCE FOR DEVELOPING PROTOCOL AGREEMENTS .....	27
What is a Protocol Agreement .....	27
Who Should Negotiate the Protocol Agreement .....	27
Preparing the Protocol Agreement .....	28
Who Should Sign the Protocol Agreement .....	29
Retention and Distribution of Signed Protocol Agreements .....	30
Caveat About Protocol Agreements .....	30
Tribal Discretion .....	31

8. OTHER ISSUES .....	33
Time Frame for Dealing with Tribes .....	33
Costs Associated with Consultation and Protocol .....	33
Budget Matters .....	33
Confidentiality .....	34
9. APPENDIXES	
Appendix A: List of Federally Recognized Tribes in the Seventeen Western States .....	A-1
Appendix B: Legal and Policy Requirements for Consultation .....	B-1
Indian Self-Determination and Education Assistance Act .....	B-1
American Indian Religious Freedom Act .....	B-3
Native American Graves Protection and Repatriation Act .....	B-4
Archaeological Resources Protection Act .....	B-10
National Historic Preservation Act .....	B-11
National Environmental Policy Act .....	B-11
Government-to-Government Relations .....	B-12
Sacred Sites .....	B-13
Consultation and Coordination with Indian Tribal Governments .....	B-14
Indian Trust Responsibilities .....	B-18
Tribal Rights, Trust Responsibilities, and Endangered Species Act .....	B-19
Indian Policy of the Bureau of Reclamation .....	B-22
Appendix C: Suggested Reading .....	C-1
Cultural Resources .....	C-1
Government .....	C-1
History .....	C-1
Indian-White Relations .....	C-2
Land Issues .....	C-3
Law .....	C-4
NAGPRA Related Material .....	C-6
Policies .....	C-6
Profiles and Biography .....	C-8
Religion .....	C-8
Treaties .....	C-9
Tribes .....	C-9
Water Management/Water Rights .....	C-10
Other Native American Interest .....	C-11
Sources on the Internet .....	C-11
Appendix D: Training Opportunities .....	D-1
Appendix E: Example Protocol Agreements .....	E-1

# 1. INTRODUCTION

Indian tribes have a unique political relationship with the government of the United States, including the Bureau of Reclamation. Recently, there has been a growing awareness that federal-tribal interactions, particularly communication, can be improved and enhanced. One means for Reclamation to achieve this end is through the development and implementation of protocols with the federally recognized tribes located in the 17 western states. Protocol is a tool for establishing mutually agreed-upon principles and procedures for interacting and communicating, and for understanding Reclamation-tribal expectations. Once established, agreements about Reclamation-tribal protocol can be used as a basis for maintaining government-to-government relationships, conducting meaningful and proactive consultations, and entering into partnerships and collaborative efforts.

## **Purpose**

This document is a reference tool that provides guidance about protocol. It is intended to provide management and staff with advisory information about entering into protocol agreements, conducting consultations, and developing and maintaining government-to-government relationships with tribes. These topics are interrelated and closely connected to a suite of underlying doctrines and concepts. As such, in addition to guidance about protocols, the document presents information about Indian law, consultation, cultural awareness, and conducting meetings with tribes. Information about related Reclamation policy guidance also is included, and those materials have been incorporated by reference into this document in order to integrate them into a unified policy perspective.

Another purpose of this document is to underscore the special relationship that Reclamation has with the federally recognized tribes in the 17 western states. Each tribe is a distinct legal-political entity, and the message presented here is that tribes are not to be treated as though they are alike or just another member of the public. Indian tribes are sovereign governments. In addition, each tribe has its own unique set of needs, concerns, and interests. Developing protocol, conducting consultation, and maintaining a government-to-government relationship will require openness and understanding, patience and flexibility, and an appreciation and acceptance of the fact that there are no linear solutions or cookbook answers.

Finally, and perhaps most importantly, the purpose of this document is to encourage more direct communications and a greater frequency of interactions between Reclamation management and staff and tribal governments and their members. The guidance offered is intended to facilitate that effort.

## **Objectives**

One of the objectives is that Reclamation management will draw upon this material as they begin to engage in proactive consultations with tribal governments. Achieving this objective will require management and staff to have greater and closer interactions with tribes, obtain and share expectations and interests, and develop interpersonal and governmental relationships. This will entail developing an appreciation, understanding, and respect for Indian culture.

A second objective is that, following initial consultations, Reclamation and tribes may decide to develop and enter into protocol agreements. These agreements are not intended to represent a static framework or a desired end point; rather, they are to memorialize mutually agreed on processes and procedures for maintaining a dynamic ongoing federal-tribal relationship.

A final objective is to foster situations where Reclamation and tribes can enter into partnerships and collaborative efforts. Those interactions are intended to bring to tribes the benefits of the Reclamation program, including opportunities to develop and enhance the tribes' water and related resources.

## **Organization of the Document**

This document is organized into a series of sections that focus on discrete, yet interrelated topics. It begins with a general presentation of the legal-political framework that forms the basis of the federal-tribal relationship (Section 2). Topics addressed include a discussion about what constitutes an Indian tribe, federal recognition, tribal sovereignty, and the government-to-government relationship. This is followed by an introduction to the topic of consultation (Section 3).

The topic of protocol is introduced and defined in Section 4, and its underlying policy framework is examined. This is followed by several related topics: cultural diversity and awareness (Section 5) and laying the groundwork for conducting meetings with tribes (Section 6). Guidance about how to develop a protocol agreement is then presented (Section 7), along with a discussion of other miscellaneous issues (Section 8).

A wide variety of information is found in the appendixes, including a list of federally recognized Indian tribes located in the 17 western states, organized by state (Appendix A). An in-depth analysis of the legal requirements for conducting consultation is provided in Appendix B. This section is intended to achieve two purposes. First, it is to provide management with a sense of the complexity and breadth of the legal responsibilities that are required to be satisfied through tribal consultation. Secondly, it is to enable staff practitioners to become more familiar with some of the more subtle legal intricacies of consultation, notice, and consent. Additionally, suggested reading (Appendix C) and training opportunities are identified (Appendix D) and examples of Reclamation-tribal protocol agreements are presented (Appendix E).

## 2. BACKGROUND

Federal Indian policy and federal-tribal relations are topics deeply rooted in the history of the political relationship between the United States and Indian tribes. As such, they touch upon and are influenced by the Constitution, treaties, statutes, executive orders, court decisions, and administrative actions. Against this backdrop a few of the central tenets of federal Indian law and policy stand out. This section examines some of those core themes and concepts. For an in-depth analysis of the history of federal Indian policy and federal-tribal relations, the reader is referred to the sources listed in the suggested reading section.

### Basics of Indian Law

One of the central tenets of Indian law is that the federal policy toward Indians has not been static. Instead, the national policy toward Indians has been marked by periods of inconsistent or contradictory policy shifts. At times the federal policy toward Indians has been idealistic (i.e., self-determination and self-governance), at others it has been less than altruistic (i.e., allotment, assimilation, and termination). Although marked by periods of fluctuating policy extremes, there are common themes that have persisted throughout the history of the federal-tribal relationship.

Drawing upon a historical perspective, Judge William C. Canby, Jr. has identified four core themes:

- Indian tribes are independent entities with inherent powers of self-government.
- The independence of Indian tribes is subject to the exceptionally great powers of Congress to regulate and modify the status of Indians.
- The power to deal with and regulate Indian tribes is wholly federal.
- The federal government has a responsibility for the protection of Indian tribes and their property, including protection from encroachments by the states and their citizens.<sup>1</sup>

---

<sup>1</sup> William C. Canby, Jr., *American Indian Law* (St. Paul, MN: West Publishing Company, 1988), pp. 1-2.

## **What is an Indian Tribe**

The term Indian tribe has two commonly used meanings, based on social-cultural and legal-political concepts. From a sociological or anthropological perspective, an Indian tribe is a group of related people who share a common social, political, economic, and religious way of life in a defined geographic space and speak a common language or dialect. A tribe in this sense derives its origin from a shared social or cultural experience.

Tribes are also legal-political entities that have been recognized by the federal government for special governmental purposes. Generally, the federal government has determined tribal status for legal and political purposes using the power granted through the Indian Commerce Clause and the Treaty Clause of the Constitution. Once recognized by the United States, a tribe will remain in existence as a legal-political entity until such time as Congress diminishes its status.

***Federally Recognized Tribes.*** Federal recognition can be derived from several sources, including a treaty, executive or administrative order, legislation, or by custom of dealing with the federal government. Currently, more than 550 tribes are recognized by the federal government as having a special political relationship with the United States. These tribes are eligible to receive the support, benefit, and protection of federal programs and services. The Bureau of Indian Affairs maintains and periodically publishes a list of federally recognized tribes.

***Federally Recognized Tribes Within the 17 Reclamation Western States.*** Nearly 280 federally recognized Indian tribes currently reside in the 17 Reclamation western states. Appendix A contains a list of these tribes, organized by state. These tribes are eligible to receive the benefits of the Reclamation program, including opportunities for partnerships and collaborative efforts to improve and enhance the management of their water and related resources.

## **Tribal Sovereignty**

Sovereignty is the power to govern, and Indian tribes historically have been recognized as being distinct, independent, political communities with the power to exercise self-government. The right of tribes to govern themselves is based on a preexisting sovereignty that has been recognized or acknowledged in treaties, executive orders, and Supreme Court decisions.

Felix S. Cohen explained one of the most basic principles of Indian law: *“Perhaps the most basic principle of all Indian law, supported by a host of decisions, is that those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts*

*of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.”<sup>2</sup>*

Although tribes possess the rights and powers of sovereignty, their sovereign powers have been diminished as a result of their relationship to the United States. This relationship is based on three underlying concepts:

- Prior to European contact, Indian tribes inherently possessed all powers of sovereignty.
- Each tribe began its relationship with the United States as a sovereign power; however, the powers of sovereignty have been limited by treaties and laws.
- What has not been expressly limited by Congress remains within the domain of tribal sovereignty.

Because of their relationship with the federal government, tribes are not foreign nations in the international sense of sovereignty. Rather, tribes are characterized as having the status of domestic dependent nations. This means that tribes are subject to the legislative authority of the United States. For example, tribes cannot enter into treaties with foreign nations. It also means that, in exchange for consenting to enter into treaties, the United States assumed a fiduciary obligation and is sometimes required to take certain actions on behalf of tribes. This latter principle provides the basis for the special federal-tribal relationship, and gives rise to the trust responsibility. (The reader is referred to Reclamation’s Indian trust asset policy and National Environment Policy Act implementing procedures for guidance about the trust responsibility.)

### **Government-to-Government Relationship**

A government-to-government relationship is a bilateral recognition of the sovereignty of the respective parties. As such, it is a concept that draws upon many of the principles found in international law and diplomacy, particularly those used for establishing and maintaining a formal relationship between nations. In order to successfully engage in this type of relationship it is necessary for the parties to interact in a manner that is respectful of each others position as a sovereign.

---

<sup>2</sup> Felix S. Cohen, *Handbook of Federal Indian Law: 1982 Edition*, edited by Rennard Strickland (Charlottesville VA: The Michie Company, 1982), p. 231.

When dealing with tribes, maintaining a government-to-government relationship frequently requires the federal government to:

- Ensure that appropriate senior level managers are present at initial and necessary follow-up meetings with tribal governments.
- Understand the tribe's political structure, including the appropriate terms for addressing tribal leaders.
- Conduct communications in a manner that is mindful of tribal preferences.
- Be sensitive to cultural diversity and apply an understanding of cultural awareness.
- Negotiate and develop agreed-upon principles and procedures for conducting interactions, including consultation.

### 3. CONSULTATION

Consultation is a term with many meanings, connotations, and expectations. It also is a concept that goes to the heart of federal-tribal governmental interactions. This section will explore what is meant by consultation.

#### **Consultation -- What is it**

Consultation historically has been a core component of the federal-tribal relationship. Its early origins can be found in the treaty making process, whereby federal and tribal sovereigns conducted their discourse on a government-to-government basis. As an outcome of that interaction, the term consultation frequently appears in treaties and is used to denote the process for maintaining and conducting formal federal-tribal communications. More recently, it is found in a variety of laws, regulations, and policies as something that is required to be completed. (See Appendix B for an in-depth analysis of the legal and policy requirements for consultation.)

***Not Defined in Federal Statutes or Executive Orders.*** Although the term consultation appears in many laws, there is no definition of tribal consultation in any statute or executive order.<sup>3</sup>

***Tribal Perspectives and Expectations.*** In the broadest sense, the term consultation probably has at least as many definitions as there are federally recognized tribes. Each tribe has its own view of what it means to be a sovereign, and they know how they prefer to engage in communications with the federal government. For example, some tribes only recognize consultation between high ranking government officials and tribal governmental leaders. Other tribes may be more willing to acknowledge and sanction communications between lower ranking federal-tribal representatives. Given this situation, *discretion is advised when talking to tribes about consultation -- the speaker and the listener may have different expectations about what is meant by consultation and how it should be conducted.*

***Points on a Continuum.*** One way to appreciate the mix of meanings that are ascribed to the term consultation is to view it as a continuum. There is a range of meanings, and all

---

<sup>3</sup> A general definition of the term *consultation* is provided in the regulations implementing section 106 of the National Historic Preservation Act. That definition provides: “*Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them [regarding matters arising in the section 106 process].” 36 CFR 800.16(f).

points on the continuum are essentially correct. Two points on this continuum, however, stand out as general reference points. For simplicity, these reference points can be thought of as consultation with a capital “C” and consultation with a lowercase “c.”

- *Consultation With a Big “C.”* This is formal communication on a government-to-government basis. It is conducted between the leaders of tribal governments and senior representatives from the federal government. After a relationship has been developed, agreements may be reached that recognize and sanction communications between federal-tribal designated representatives. A key component of this type of consultation is the federal government’s recognition of tribal sovereignty.
- *Consultation With a Little “c.”* This is the type of communication that frequently occurs between federal-tribal middle level management and technical staff at meetings, through telephone contacts, and during on-site visits. Although generally not recognized by tribes as communication on a government-to-government basis, it serves as a useful conduit for sharing information, satisfying certain legal requirements, and developing relationships.

The distance between these two points on the consultation continuum is at times subtle. It is often shaped by a variety of factors:

- Tribe’s political structure
- Tribe’s preferred methods of communication
- Subject matter
- Nature and complexity of the issues
- Degree to which the federal-tribal relationship has developed

***Plain Meaning.*** In the absence of a statutory definition, and in light of tribal perceptions, it is necessary to turn to the dictionary for a better understanding of the plain meaning of the word consultation. According to the dictionary, consultation is the act of consulting or conferring. *To consult means to ask for advice or to seek an opinion. It does not mean obtaining consent.*

***Working Definition.*** For purposes of this document, consultation is defined as: The process for seeking and considering the views of others. It involves establishing, conducting, and maintaining formal communication with tribal governments and their members.

## **With Whom Do You Consult**

Reclamation has an obligation to consult with Indian tribes. This responsibility is based on the unique political relationship that the United States has with federally recognized tribes and is set forth in statutes, executive orders, and Department of the Interior policy. This body of law and policy requires consultation with one or more of the following entities:

- Recognized tribal governments
- Designated tribal representatives
- Tribal elders and traditional religious leaders
- Lineal descendants

Depending on the applicable laws and policies, consultation with tribes may be required for proposed federal actions located on and off Indian lands and sometimes involves tribes residing outside of the 17 western states.

## **When is Consultation Necessary**

Three situations frequently give rise to the need to engage in consultation with Indian tribes.

***Proactive.*** Consultation is affirmatively initiated and conducted in order to build new or better working relationships with tribes. This is a relatively new approach to federal-tribal interactions. It is particularly useful as a means to set the tone for future interactions and consultations and to set the stage for partnerships and collaborative projects.

***Reactive.*** Consultation is required by law, regulation, or policy when Reclamation is proposing regulations, legislation or policies that have tribal implications or planning projects or activities that potentially could affect trust resources, endangered species, cultural resources, sacred sites, or human remains. This has been the traditional approach to consultation.

***At Tribal Request.*** Tribes may initiate consultation with Reclamation to learn about the Reclamation program, obtain technical assistance, or inquire about opportunities for partnerships and collaborative efforts. This type of consultation is likely to increase in frequency as tribes learn more about Reclamation.

## **Range of Consultation Contexts**

Consultation is a dynamic process that touches upon a wide variety of potential federal-tribal interactions. These interactions can occur in a range of consultation contexts, such as consultation with:

- A tribe about a single issue, program, or activity
- A tribe about multiple issues, programs, or activities
- A tribe and two or more Reclamation regions or offices
- Multiple tribes
- Multiple agencies and a single tribe
- Multiple agencies and multiple tribes

Depending on the issues, the complexity of consultation generally increases in magnitude in direct relationship to, or as consequence of, the number of parties involved in the consultation process. Therefore, it is recommended that the parties reach agreement in advance about how the consultation will be conducted. Such agreements will help to ensure that federal-tribal expectations and interests are considered, including the protocol for maintaining a government-to-government relationship.

## 4. PROTOCOL

Protocol is a term that is increasingly being used in the context of federal-tribal governmental relations. Although this word is being used more frequently, its precise meaning and the reasons why it has come into vogue remain somewhat poorly understood. This section focuses on what is meant by protocol and examines the recent policy statements that call for its development and implementation.

### **Protocol -- What does it Mean**

Protocol is a concept that is based on principles found in diplomacy and international law. In this context it is both the manners and means for conducting discourse between sovereign nations. As such, it is applicable as a conceptual frame of reference for guiding the conduct of federal-tribal governmental interactions.

*Diplomatic Context.* In diplomatic circles, protocol has two meanings:

- The etiquette or manners of diplomats when conducting ceremonial and formal business between nations.
- A preliminary memorandum often signed by diplomatic negotiators that records the basic agreements reached prior to the final form in which the agreement appears; or an agreement among diplomatic negotiators indicating the results reached by them at a particular stage in negotiations.

*Working Definition.* For purposes of this document, protocol has the following meanings when used in the context of federal-tribal interactions:

- The etiquette or manners used when conducting federal-tribal interactions and communications, with particular consideration given to applying an understanding of cultural diversity and awareness, and being respectful of sovereignty.
- A document that records mutually agreed-upon principles and procedures for conducting consultation, fulfilling trust responsibilities, and maintaining a government-to-government relationship.

Both of these meanings are of equal importance, and should receive the same level of consideration. However, it should be recognized that it is frequently necessary to apply the first part of this definition in order to achieve the second.

## **Policy for Developing Protocol with Tribes**

Recent federal policy has embraced the use of protocol during federal-tribal interactions. Federal agencies are specifically directed to develop protocol for conducting consultations with tribes (See Appendix B for a synopsis). The following is a brief overview of the policies that underlie the need to develop protocol with tribes.

***Government-to-Government Relations.*** The President's April 29, 1994, memorandum on government-to-government relations sets the stage for developing protocol with tribes. The memorandum states that each department and agency is to:

- Respect tribal sovereignty and operate within a government-to-government relationship with federally recognized tribes.
- Consult to the greatest extent practicable and to the extent permitted by law.

The memorandum from the Assistant Secretary -- Indian Affairs, dated February 24, 1995, provides guidance about how to implement the President's government-to-government policy. It specifically recommends that each agency should:

- Design a special protocol for consultation.
- Take a proactive approach to working with tribal governments.

Reclamation's June 14, 1996, plan for implementing a government-to-government relationship with tribes establishes the framework for designing a special protocol:

- Designate positions responsible for facilitating Reclamation-tribal communication.
- Coordinate with tribal officials to identify the appropriate channels of communication.
- Evaluate and modify the processes used to solicit the views of tribal governments.
- Design solutions and tailor programs to address specific or unique needs of tribal communication.

***Trust Rights, Trust Responsibilities, and Endangered Species Act.*** Secretarial Order 3206 states that the Departments of the Interior and Commerce recognize the importance of tribal self-governance and the protocols of a government-to-government relationship

with Indian tribes. It also provides useful guidance about how to conduct consultation and maintain meaningful interactions with tribes.

***Reclamation's Strategic Plan.*** One of Reclamation's long-term strategic goals is to increase opportunities for tribes to develop and manage their water resources (see Long-Term Goal 1.4). Accomplishments for this goal will be measured by the number of technical assistance activities provided to tribes in water resource use. Implementing this goal will require Reclamation to initiate, develop, and maintain communications and working relationships with tribes.

In subsequent sections of this document the concept of protocol will be examined from the perspective of understanding cultural diversity and awareness, and guidance will be provided about conducting meetings with tribes. That information will then be used to set the stage for additional guidance about how to develop and enter into protocol agreements.



## 5. CULTURAL DIVERSITY AND AWARENESS

Reclamation values the relationships it is developing and maintaining with Indian tribes. Because these relationships require understanding, sensitivity, and respect for Indian culture and lifeways, this section focuses on providing a framework for obtaining an awareness and appreciation of cultural diversity. When reading this section, the following items should be kept in mind:

- Each tribe is a unique and distinct cultural entity, and they should not be treated as though they are alike.
- Understand that the guidance presented here is intended only as a brief look into a cross-cultural frame of reference.
- Although much about working with Indians involves understanding and respect, there is always more to learn about interacting with people from different cultural heritages.
- Even though subsequent consultation experiences may become easier or more comfortable, discretion should still be exercised.

### **World View, Culture, and History**

Understanding the concept of “world view” is a key to appreciating cultural diversity. World view refers to a cultural frame of reference. As children grow up in family units within particular cultural systems, they develop a world view -- a general way of experiencing and interpreting the social, natural, and supernatural events of life. These ways of experiencing life create knowledge and belief systems that are so basic that people may take them for granted, never considering that people from other cultural groups may perceive things differently.

Even though we may accept variation in the attitudes and beliefs among the individuals of our own cultural group, we may not realize that individuals from other cultural groups might see life through a totally different but equally valid lens. *An awareness that there are alternative world views helps in establishing positive relationships with Indian tribes and their members.*

Reclamation employees expecting to work with Indian tribes should strive to cultivate a sensitivity to and a working grasp of the unique cultural, historical, and political aspects of the specific tribes with whom they will regularly interact in their region, office area, or specific project location.

The following is a list of people who may be able to provide information about tribes:

- Tribal elders and traditional religious leaders
- Tribal government staff
- Bureau of Indian Affairs employees
- Indian Health Service employees
- Reclamation's Native American Affairs Office staff
- Reclamation's Regional Native American Affairs Program Managers
- Reclamation's Area Office Native American Affairs Program Specialists
- Reclamation's cultural resource staff
- Reference materials

Some suggested readings are found in Appendix C. Although technical information about water and related resources is frequently relied on when Reclamation deals with a particular Indian tribe, other sources of information are useful for placing a tribe within a broader and richer cultural context. For example, information about traditions (legends, myths, or religious beliefs), customs (marriage, inheritance, and subsistence patterns), and history (prehistoric and contemporary) may provide a more in-depth appreciation and sense of their culture and present-day lifeways.

### **Awareness of and Respect for Diversity**

When people from different cultures interact, communication problems can often occur. Some problems stem from cultural differences. Often the problems relate to misunderstandings about differences in body language, the role of the participants, different cultural views about an issue, or underlying but unexpressed expectations. These challenges can be met and mitigated in several ways:

- Attend cross-cultural awareness training about Indian cultures. This type of training is particularly useful for Reclamation personnel who are likely to participate in federal-tribal interactions, including government-to-government consultations. It fosters an appreciation of and respect for cultural differences and helps to provide a framework for developing cross-cultural relationships. Some training opportunities are listed in Appendix D.

- Be aware of personal biases and expectations, and then avoid acting on them. Introspection and self-awareness can be useful skills when working with Indians, as it is when dealing with other people.
- Cultivating a responsible tribal contact is a useful way to learn the customary and acceptable behaviors of the tribe. This kind of relationship can provide insight into tribal dynamics and conventions, besides being personally enriching.

The following are additional examples of some of the cultural differences that may be encountered while interacting with Indians, along with some suggested interpretations and responses.

***Prayers or Blessings Before the Beginning of Meetings.*** When hosting a meeting, many tribes will offer prayers or blessings at the initiation or conclusion of a meeting. These invocations may be handled in a variety of ways, depending upon the cultural traditions of the tribe. Frequently, a tribe will have an elder or spiritual leader bless the meeting with a prayer or traditional song, usually in the tribe's language. Showing respect for the tribe's beliefs and practices, through appropriate behavior, is important for establishing trust and maintaining goodwill.

***English as a Second Language.*** For some Indians, especially the elders or more traditional tribal members, English was learned in forced academic settings or fairly late in life. Thus the English language may have unpleasant connotations or it may be spoken awkwardly or uncomfortably. Others, however, may exert a command over the English language that attests to their facility in moving through the dominant Euroamerican culture of the United States. Given this range, Reclamation employees need to be mindful of the fact that differences in English speaking abilities can create communication problems, misunderstandings, or inaccurate expectations.

Although most tribes have their own language, they generally will conduct meetings with Reclamation in English or arrange to have translators available. Sometimes this means that the translator will interpret alternately in English for Reclamation's participants and in the tribe's language for the Indian participants.

***Humor.*** Reclamation employees should be cautious about attempts to be humorous, particularly early in the relationship-building process. Humor sometimes does not translate well between people from different cultures and can occasionally lead to misunderstandings. Indian humor is frequently subtle or understated. Occasionally, tribal participants may exchange jokes in their own language (or they at least appear to be laughing about something). In those situations, Reclamation employees are encouraged to display patience and the tribal participants may decide to let the non-Indian participants in on the humor.

***Being Greeted With Silence.*** Indians sometimes speak very little at meetings. This is often because many Indian cultures frequently value and encourage quiet and reserved personalities. Always assume that they are listening, even if they may not be actively engaging in conversation. Sometimes in meetings Indian participants may be waiting to discuss matters more fully with other tribal members or elders before making any verbal statements or commitments.

***Attorney's Role.*** Often, a tribal delegation will ask its attorney to attend a meeting with federal officials. Some attorneys will speak for the tribal delegation; others may explain some technical points to the tribal delegation's leader. The attorney is representing the interests of the client tribe, and the tribal delegation decides the attorney's role.

***Duration of the Meeting.*** Generally, Indian people start meetings when everyone arrives and they finish when everyone has had a "say." Meetings can start fifteen minutes to one hour after the scheduled time and last several hours. This is often referred to as "Indian time." Understanding and accepting that other cultures place different priorities on the concept of time will go a long way toward establishing a strong, positive relationship with a tribe. While waiting for meetings to start, Reclamation employees may want to interact socially with tribal members, make additional meeting preparations, or relax.

***Proper Titles for Tribal Delegates.*** Because meetings with tribes are official meetings with another government, it is important that all tribal delegates are treated with respect and addressed by their proper titles. This can be achieved by finding out in advance the proper terms for addressing their leaders: Chief, President, Governor, Chairperson, and so forth.

***Conflict or Anger.*** The history of federal-tribal relations has left an indelible mark on Indian tribes. Indians, like other people, sometimes view federal employees with distrust or apprehension. If the federal government is perceived as having a record of breaking its promises, or using manipulation and deceptive tactics in its relationships, the people who feel that they have been let down may view federal representatives with anger or suspicion.

When dealing with Indian tribes and their representatives consider the possibility that conflict or anger occasionally may be encountered, especially early in the relationship-building process. An emotional response in reaction to anger or frustration expressed about historical events or past governmental actions (that may have nothing to do with Reclamation or its employees) might only compound or escalate a negative situation. Displaying sensitivity, listening without becoming defensive, and perhaps showing common interests are some possible appropriate nonconfrontational responses to manifested anger. As in any situation with conflict, always avoid condescension.

## **Cultural Baggage**

Cultural expectations are best left outside the meeting room door. Doing so will help to make one more receptive to tribal conventions, even those that may not be completely understood. It also helps to facilitate a greater appreciation of the fact that tribes are distinct cultural, legal, and sovereign entities and each would prefer to be treated as such -- *strive for awareness, sensitivity, and respect.*



## 6. LAYING THE GROUNDWORK: MEETING WITH TRIBES

This section is directed at the practical aspects of organizing and planning for meetings with Indian tribal governments, consortiums, and groups. It should be recognized that much of the guidance offered is also applicable to meetings with other entities and in different contexts. The Native American Affairs Office is supplying this guidance and these procedures not only to support Reclamation employees when they meet with tribes and their representatives, but also to increase the likelihood that Reclamation will develop positive long-term relationships with Indian tribes.

### Pre-Meeting Activities

Schedule internal Reclamation meetings before scheduling meetings with tribal participants. Use these pre-meetings to identify tribal leaders, clarify issues, plan the meeting, and learn about the tribe's history, culture, and political structure. The following are some useful planning steps and topics to consider during pre-meetings.

***Identify Whom You Will be Meeting.*** Identify whom you will be meeting and give consideration to their role and position in the tribal government, or status within the traditional tribal community.

***Identify and Assess the Issues.*** Evaluate the information collected so far, decide the kind and level of meeting to hold, determine gaps in information, and prepare a meeting agenda. When meeting with tribal leaders, keep in mind that two different agendas may be converging on the table -- Reclamation's and the tribe's. Both agendas must be understood, respected, and ultimately integrated. *Be prepared to be flexible.*

***Identify What You Want to Accomplish.*** Consider why Reclamation is meeting with the tribe and what is desired or expected to be accomplished:

- To exchange information, discuss ideas, or seek advice.
- To obtain reactions to proposed agency plans or actions.
- To reach agreement on processes or procedures for maintaining communication and solving problems.
- To build opportunities for developing partnerships and working collaboratively.

***Assess Who Should Attend the Meeting.*** Reclamation’s participants may include, but are not limited to:

- Regional Director
- Area Manager
- Native American Affairs Program Manager
- Technical staff
- Native American Affairs Office representative
- Facilitator, if one is needed and agreed to by mutual consent

It may be appropriate for the Regional Director or the Area Manager to go to the first meeting, or first few meetings, to get the consultation process started off on the right footing. Their participation is likely to influence the type of meeting that will occur with the tribe.

***Identify the Type of Meeting.*** Determine whether the meeting is expected to be a formal meeting between senior Reclamation staff and the tribal chairperson or the tribal council, or whether it will be an informal meeting between designated Reclamation and tribal technical representatives. Identification of the type of meeting will help to ensure that the appropriate level and type of Reclamation staff will attend the meeting.

***Meeting Format.*** Give consideration to the meeting format and the type of relationship that has been established, or needs to be established, with the tribe. The format for the initial meeting (or first few meetings) with the tribe might conform to tribal procedures. Subsequent meetings ideally should conform to the procedures agreed-upon in a consultation protocol agreement. Possible meeting formats include: presentation followed by a discussion, listening session, small group “breakout,” question and answer session, or a combination of these.

***Assess the Role of Third Party Participants.*** Third party participants at meetings may include, but are not limited to:

- State or local government representatives
- Federal employees from other bureaus and agencies
- Contractors and consultants

Consider the following questions regarding third party participants:

- *What do they know about the topic?*
- *What is their stake in the meeting?*
- *Who are they politically and socially?*
- *What is their attitude about the meeting and toward Reclamation and the tribe?*
- *How are they perceived by the tribe?*
- *Will their actions have impacts on the proceedings?*
- *Are all affected groups present, and thus all sides of the issue, fairly represented?*
- *Who are the decision makers and are they present?*

## **Meeting Logistics**

***Selecting the Meeting Site.*** Reclamation employees should select meeting locations that are reasonably accessible to the tribe, from both a logistic and economic perspective. Selecting meeting locations on or near a reservation may be one approach. Alternating meeting locations at Reclamation and tribal offices might be an alternative and equitable solution. Also consider having some meetings in the field where Reclamation management and staff can walk the land with tribal members and possibly generate some mutual understanding.

***Promise Only What Can be Delivered.*** The Reclamation participants must make a “good faith effort” to exchange their ideas, views, and information at consultation meetings, not just freely and openly, but also honestly and tactfully. Statements made to tribal leaders will be taken seriously and viewed as representing the positions of Reclamation and the United States government. Offer, posit, and promise only what can be delivered.

***Visual Aides.*** Consider the usefulness of visual aides -- a map of the area, facility plans, diagrams, organizational and flow charts, and so forth. Visual information is sometimes easier to absorb than the verbal kind. Some tribal participants, including the decision makers, may be unfamiliar with technical information and formats. Encourage the attendance of tribal technical persons who can “interpret” these materials to those who have had limited exposure to them. Making allowances for the interpretation of technical

terms and concepts is not any different when working with Indians than it is in Reclamation's dealings with non-Indians. It helps to ensure that everyone fully understands what is being presented.

**Media Involvement.** If the media will be present at the meeting or if Reclamation and the tribe expect to be dealing with the media, consider organizing a working group with the tribe to prepare a joint media handout or press release before the meeting. If a cooperative work group is not desirable or feasible either the tribe or Reclamation, or both, may decide to issue its own press release. In the absence of an agreed-upon media protocol, this is a discretionary matter for both Reclamation and the tribe.

**The Host's Offer.** Commonly, when Indian tribes host meetings, they provide food, coffee, tea, and soft drinks for the guest participants. If Reclamation is considered the host for the meeting, try to emulate this behavior by offering similar appropriate refreshments as befit the occasion. Discretion, resourcefulness, and personal initiative may be required in order to be a good host.

### **Meeting Closure/Consensus**

Before leaving the meeting, assess the following:

- *Was the agenda covered?*
- *Did everyone have the opportunity to contribute?*
- *Did everyone understand the issues?*
- *Did everyone understand the process for action?*
- *Did everyone understand what will happen next?*
- *Did the participants make any commitments about what will happen next?*

Avoid developing a snapshot assessment of the meeting's outcome: an initial evaluation of the meeting may be different from the tribal delegation's. Further, while some meetings may move quickly to a formal consensus, others may require subsequent discussions and additional meetings. Even if everyone in the meeting seems to agree, the process the tribe will go through to decide its course of action may take time.

## Post-Meeting Follow-Up

Questions to be considered after the meeting, and some answers, might include:

- *How do you know if you have had a successful meeting?* Success can be measured from several levels or aspects. For example, simply obtaining a meeting with a particular tribe might be considered a success in one situation. In another, a written agreement might cap a series of negotiations. If there is an opportunity to talk informally with someone from the tribal delegation, ask for his or her assessment of the meeting. Find out what he or she expects will happen next.
- *What if there is a difference of opinion about what happened at the meeting?* Avoid putting off an oral inquiry to reconcile this difference. Since oral communication is the preferred means of information exchange among many Indian cultures, expect most contacts to be face-to-face and, to a lesser degree, by telephone. After these oral exchanges, send a letter recapping Reclamation's understanding of the meeting.

During the meeting Reclamation and the tribe will normally reach agreement about which party will be responsible for preparing and distributing meeting notes or summaries. Agreement should also be reached about the appropriate Reclamation-tribal authority to contact in the follow-up phase. If the topics of discussion were complex or controversial, it may be advantageous to circulate the meeting notes or summaries for review and comment before distributing them as a final document. This review will help to ensure that the views and interests of both parties are accurately characterized and reflected.

When Reclamation has the responsibility for providing meeting notes or summaries, consideration needs to be given to the time frame for expecting a reply from the tribe. In a polite letter to the appropriate tribal authority, send the meeting summary and a reiteration of the process and steps for action. In the letter, also state Reclamation's time frames, processes, or legal constraints, allowing a reasonable time for the tribe to consider and respond to the summary. Establishing "a reasonable time" should involve tribal definitions and expectations. Ideally, this interval should have been agreed to as part of the meeting's closure. Even in the absence of this type of agreement, Reclamation's "good faith effort" will include a clear delineation of any required deadlines and procedures. *As with all written correspondence with tribes, if a reply is not received within a reasonable amount of time, Reclamation employees are advised to follow-up with a telephone call to the designated tribal contact.*

Generally, the tribe will not make decisions regarding an issue until everyone has had a chance to have a voice. Have patience and try not to force issues or expect a response prematurely. Affording the tribe a reasonable opportunity to respond to each action item of a meeting helps in gaining the tribe's future trust and good will.



## **7. GUIDANCE FOR DEVELOPING PROTOCOL AGREEMENTS**

After initial meetings and consultations, it may be useful to negotiate and enter into an agreement that memorializes mutually agreed-upon federal-tribal protocol for conducting consultation and maintaining a government-to-government relationship. This section offers general guidance for developing protocol agreements. It is intended to provide a conceptual frame of reference about the intent, content, and format of such agreements. Examples of completed Reclamation-tribal protocol agreements are included in Appendix E.

### **What is a Protocol Agreement**

A protocol agreement (usually a written document) records mutually agreed-upon principles and procedures for conducting a federal-tribal relationship on a government-to-government basis. As such, it is intended to:

- Provide a framework for maintaining a government-to-government relationship.
- Ensure that appropriate levels of Reclamation leadership interact with tribal leadership.
- Establish procedures and designate representatives with authority for conducting consultation on a government-to-government basis.
- Enhance timely and open lines of communication.
- Clarify expectations and promote the recognition of tribal and Reclamation interests.
- Build opportunities for developing partnerships and working collaboratively on Indian water and related resources management projects.

### **Who Should Negotiate the Protocol Agreement**

The Reclamation negotiation team normally will consist of the Regional Director and/or Area Manager, Native American Affairs Program Manager, and technical staff. The regional Native American Affairs Program Manager usually will have the lead responsibility for coordinating Reclamation's involvement during negotiation and preparation of the protocol agreement. The Native American Affairs Office may be invited to participate.

## Preparing the Protocol Agreement

Each protocol agreement will be unique and designed to recognize that the tribe entering into the agreement is a separate sovereign with a special relationship with the United States. As such, each agreement needs to be developed in collaboration with the tribe and tailored to the specific needs and circumstances of the Reclamation-tribal relationship. The agreement also needs to be responsive to the particular type of relationship that the tribe has developed or is in the process of developing with Reclamation. For example, an agreement may be developed that acknowledges the processes and procedures that are currently being used to maintain an established ongoing federal-tribal relationship. In other instances an agreement may reflect the initial stages of a developing relationship.

***Background and Preparation.*** Because each protocol agreement must be developed in collaboration with the tribe, it is important that Reclamation staff negotiating the agreement first become knowledgeable about the tribe. As a starting point, the following should be considered:

- Cultural and historical information
- Tribe's political system and governing processes
- Appropriate channels of communication identified by the tribe

***Agreement Format.*** There are no set or preestablished requirements regarding a protocol agreement. The format and content of the agreement are to be developed jointly by Reclamation and the tribe, through negotiation, in a manner that is respectful of their mutual sovereignty. It is recommended, however, that agreements should be structured to resemble either a memorandum of agreement or a memorandum of understanding (see the example agreements in Appendix E for suggested format). Other less formal agreement formats may be appropriate, depending on tribal preferences and the nature of the federal-tribal relationship.

***Agreement Content.*** Each protocol agreement is to be tailored to the specific type of relationship that Reclamation and the tribe have developed or are in the process of developing. The following are examples of some of the recommended stipulations that should be considered, negotiated, and included (as appropriate) in the agreement:

- Agreement that Reclamation and the tribe will maintain a government-to-government relationship.
- Agreement on the types of issues that will require meetings and interactions between the Regional Director or Area Manager and the tribal council or chairperson.

- Agreement that Reclamation and the tribe will designate representatives (by position or title) to serve as points of contact for conducting consultation about specified types of issues (e.g., cultural resources, natural resources, and environmental compliance).
- Agreement on the appropriate methods for maintaining communication (e.g., telephone contact, fax, letter, informal meetings, and formal meetings).
- Agreement on the types of proposed Reclamation activities that the tribe would like to receive notice about and the appropriate method for providing notice.
- Agreement on the time frame for responding to oral and written communications.
- Agreement that Reclamation and the tribe will exchange information, research, and technical assistance.
- Agreement that the Regional Director or Area Manager will meet with the tribe on a periodic basis (e.g., annually, every six months, or other specified interval) to exchange information, discuss upcoming projects or activities, and monitor the effectiveness of the agreement.
- Agreement on how to resolve disputes (e.g., this may include the use of alternative dispute resolution processes, third party mediation, or mediation by the Regional Director or Native American Affairs Office Director).
- Agreement on how to amend or modify the document.
- Agreement on the time period in which the document will remain in effect.
- Agreement on the process for ending or canceling the document.

Other stipulations may be included in the agreement, as appropriate.

### **Who Should Sign the Protocol Agreement**

The protocol agreement will be signed by individuals possessing sufficient delegated authority to represent their respective sovereign governments. What this means is that the Regional Director

will normally sign a protocol agreement for Reclamation. Tribes will sign the agreement according to their established governmental customs and practices.

### **Retention and Distribution of Signed Protocol Agreements**

Duplicate original agreements should be prepared so that Reclamation and the tribe each receive an original signed protocol agreement. Because protocol agreements memorialize agreed-upon principles and procedures for maintaining a government-to-government relationship, it is important that Reclamation retains and maintains a record of these documents.

The Native American Affairs Program Manager will be the responsible entity for ensuring that original protocol agreements are retained by the regional office in a system that provides for their safekeeping and accessibility for future reference. This individual will also have the lead role in coordinating their distribution. In order to maintain a permanent Reclamation-wide record about agreements with tribes, a copy of each executed protocol agreement is to be submitted to the Native American Affairs Office. A copy of the protocol agreement should be provided to all other Reclamation offices that may have interactions with the tribe that has entered into the protocol agreement.

### **Caveat About Protocol Agreements**

A caveat needs to be considered when negotiating and entering into protocol agreements:

- The protocol agreement is intended to improve Reclamation-tribal interactions by memorializing agreed-upon procedures for conducting consultation and maintaining a government-to-government relationship. It is not intended to create any additional rights or responsibilities that may be enforceable against either Reclamation or the tribe. Nor is it intended to take away any rights.

This caveat is in keeping with the limitations provided in the President's government-to-government relationship memorandum, and is intended as guidance for implementing that policy:

- The President's government-to-government memorandum states that it "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."

If enforceable provisions are desired to satisfy specific legal responsibilities, transfer funds, or incur obligations, a separate and distinct agreement will be needed in order to accomplish those

intended purposes. *Legally enforceable provisions are not to be included in protocol agreements.*

### **Tribal Discretion**

Indian tribes have the discretion to decide whether they want to negotiate, prepare, and sign a formal protocol agreement. *If a tribe does not want to sign a protocol agreement, that decision is to be respected.* Sometimes, depending on tribal preferences, agreements about protocol may not result in a formal written document. Should that occur, Reclamation staff are encouraged to consider and apply this guidance, as appropriate, to establish with the tribe a general or informal frame of reference for conducting Reclamation-tribal interactions.



## **8. OTHER ISSUES**

This section examines a variety of miscellaneous issues associated with Reclamation-tribal interactions.

### **Time Frame for Dealing with Tribes**

The time frame for developing relationships, conducting consultations, and negotiating protocol agreements with tribes is largely open-ended and will vary on a case-by-case basis. These activities are frequently time consuming, particularly when Reclamation-tribal relations have not been established or maintained. In view of this situation, adequate advanced planning is advised. Plan for and anticipate that substantial amounts of time and personal involvement may be required to develop relationships that will lead to productive consultations and meaningful protocol agreements. Patience also is necessary, so plan to consult early and often.

Sometimes, before a tribe can take an action, approval must be obtained from the tribal council or similar governing body. Often approvals and decisions are adopted by a tribe in the form of a resolution. Since a resolution is a formal statement by a tribal government, time will be required for the tribe to deliberate and advance a resolution through the tribe's political process. When planning meetings with a tribal council, or placing matters before them for their consideration, attention needs to be given to the schedule that the tribe has established for tribal council meetings. The interval between meetings may range from several weeks to several months, depending on the tribe.

### **Costs Associated with Consultation and Protocol**

The costs associated with Reclamation's involvement in conducting consultation and negotiating protocol agreements are considered to be a normal cost of doing business. The Regional or Area Office will normally budget for and bear the costs for conducting these activities. However, if Reclamation is performing activities or services on a cost reimbursable basis, the costs associated with consultation and protocol will normally be considered to be reimbursable unless otherwise exempt by law.

### **Budget Matters**

Reclamation has the authority to consult with tribes during the preliminary formulation of the agency's budget, particularly with regard to those programs and activities that are for the benefit of Indians. Such consultations may be mutually beneficial. They afford Reclamation an

opportunity to share information, and they give the tribes a chance to learn about the Reclamation program, including those activities that tribes may be eligible to participate in through the Self-Determination Act, Tribal Self-Governance Act, or collaborative efforts and partnerships. Ideally, these consultations should be conducted early enough in the budget formulation process so that tribes can provide meaningful input.

It should be recognized that, although Reclamation may consult with tribes about certain items in the budget, there is no express mandatory requirement to afford tribes an opportunity to actively participate in all of Reclamation's budgetary matters. The Bureau of Indian Affairs (BIA) formulates its budget with full tribal participation. That type of involvement occasionally creates an expectation that the other Interior bureaus conduct their budgetary matters in the same manner as the BIA. Reclamation, however, operates under a different set of statutory authorities and obligations. For example, Reclamation does not have the authority to release the President's budget to tribes prior to its release to Congress by the Office of Management and Budget.

### **Confidentiality**

Tribes are particularly sensitive about the disclosure of certain kinds of information about religious practices and sacred sites, traditional knowledge, intellectual property, and cultural resources. In order to minimize the likelihood that sensitive material may be released, Reclamation staff are encouraged to refrain from acquiring sensitive information. Tribes should be informed that they should only submit to Reclamation information or material that the tribe is willing to release as part of the public record. If tribally sensitive information is discussed or collected during consultation, Reclamation staff should be mindful of the following:

- Tribal information that has been disclosed or collected should be protected to the maximum extent practicable.
- Information obtained from tribes may become part of the public record and be released as a result of requests made under the Freedom of Information Act (FOIA).
- When FOIA requests are made for the disclosure of tribal information, Reclamation offices are encouraged to notify and consult with the affected tribe.

In the event of a FOIA request, three exemptions may be applicable for withholding tribal information.

***Self-Determination Act.*** Under the regulations implementing the Self-Determination Act the following types of information are exempt from FOIA:

- Copies of tribal records that are clearly required to be maintained as part of a bureau's record keeping system.
- Records of contractors, including archived records.
- Records maintained solely by a tribe. 25 CFR 900.2(d).

***National Historic Preservation Act.*** The National Historic Preservation Act provides that a federal agency can withhold from FOIA disclosure, after consultation with the Secretary of the Interior, information about a historic property if the disclosure:

- May cause a significant invasion of privacy.
- Risk harm to the historic resource.
- Impede the use of a traditional religious site by practitioners. 16 U.S.C. 470w-3(a).

***Archaeological Resources Protection Act.*** Under the Archaeological Resources Protection Act a federal land manager can withhold information about the nature and location of any archeological resource that requires an ARPA permit or other permission under this act. 16 U.S.C. 470hh(a).



**APPENDIX A:**  
**LIST OF FEDERALLY RECOGNIZED TRIBES**  
**IN THE 17 WESTERN STATES**

Nearly 280 federally recognized tribes currently reside in the 17 Reclamation western states. For convenience, these tribes are listed by state -- but it should be recognized that tribal interests frequently extend beyond state boundaries. This list is based on the information published by the Bureau of Indian Affairs in the *Federal Register*, on March 13, 2000, and includes name changes and corrections. Regional and Area Offices may want to tailor this list to their particular needs, including providing additional information about current tribal contact persons, mailing addresses, and telephone numbers. Additional information sources and suggested readings about tribes and their reservations are found in Appendix C

**Arizona**

Ak Chin Indian Community of the Maricopa (Ak Chin) Reservation  
Cocopah Tribe of Arizona  
Colorado River Indian Tribes of the Colorado River Indian Reservation (*also in California*)  
Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation  
Fort Mojave Indian Tribe of Arizona, California and Nevada (*also in California and Nevada*)  
Gila River Indian Community of the Gila River Indian Reservation  
Havasupai Tribe of the Havasupai Reservation  
Hopi Tribe of Arizona  
Hualapai Indian Tribe of the Hualapai Indian Reservation  
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation  
Navajo Nation (*also in New Mexico and Utah*)  
Pascua Yaqui Tribe of Arizona  
Quechan Tribe of the Fort Yuma Indian Reservation (*also in California*)  
Salt River Pima-Maricopa Indian Community of the Salt River Reservation  
San Carlos Apache Tribe of the San Carlos Reservation  
San Juan Southern Paiute Tribe of Arizona  
Tohono O'odham Nation of Arizona  
Tonto Apache Tribe of Arizona  
White Mountain Apache Tribe of the Fort Apache Reservation  
Yavapai-Apache Nation of the Camp Verde Indian Reservation  
Yavapai-Prescott Tribe of the Yavapai Reservation

## California

Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation  
Alturas Indian Rancheria  
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation  
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation  
Bear River Band of the Rohnerville Rancheria  
Berry Creek Rancheria of Maidu Indians of California  
Big Lagoon Rancheria  
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation  
Big Sandy Rancheria of Mono Indians of California  
Big Valley Band of Pomo Indians of the Big Valley Rancheria  
Blue Lake Rancheria  
Bridgeport Paiute Indian Colony of California  
Buena Vista Rancheria of Me-Wuk Indians of California  
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation  
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria  
Cahuilla Band of Mission Indians of the Cahuilla Reservation  
Cahto Indian Tribe of the Laytonville Rancheria  
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation  
Capitan Grande Band of Diegueno Mission Indians of California  
Cedarville Rancheria  
Chemehuevi Indian Tribe of the Chemehuevi Reservation  
Cher-Ae Heights Indian Community of the Trinidad Rancheria  
Chicken Ranch Rancheria of Me-Wuk Indians of California  
Cloverdale Rancheria of Pomo Indians of California  
Cold Springs Rancheria of Mono Indians of California  
Colorado River Indian Tribes of the Colorado River Indian Reservation *(also in Arizona)*  
Cortina Indian Rancheria of Wintun Indians of California  
Coyote Valley Band of Pomo Indians of California  
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation  
Death Valley Timbi-Sha Shoshone Band of California  
Dry Creek Rancheria of Pomo Indians of California  
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria  
Elk Valley Rancheria  
Enterprise Rancheria of Maidu Indians of California  
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California  
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation  
Fort Mojave Indian Tribe of Arizona, California and Nevada *(also in Arizona and Nevada)*  
Greenville Rancheria of Maidu Indians of California  
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California  
Guidiville Rancheria of California  
Hoopa Valley Tribe

***California Continued***

Hopland Band of Pomo Indians of the Hopland Rancheria  
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation  
Ione Band of Miwok Indians of California  
Jackson Rancheria of Me-Wuk Indians of California  
Jamul Indian Village of California  
Karuk Tribe of California  
Kashia Band of Pomo Indians of the Stewarts Point Rancheria  
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation  
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation  
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation  
Lytton Rancheria of California  
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria  
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation  
Mechoopda Indian Tribe of Chico Rancheria  
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation  
Middletown Rancheria of Pomo Indians of California  
Mooretown Rancheria of Maidu Indians of California  
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation  
Northfork Rancheria of Mono Indians of California  
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony  
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation  
Pala Band of Luiseno Mission Indians of the Pala Reservation  
Paskenta Band of Nomlaki Indians of California  
Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation  
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation  
Picayune Rancheria of Chukchansi Indians of California  
Pinoleville Rancheria of Pomo Indians of California  
Pit River Tribe (includes Big Bend, Lookout, Montgomery Creek, and Roaring Creek Rancherias and XL Ranch)  
Potter Valley Rancheria of Pomo Indians of California  
Quartz Valley Indian Community of the Quartz Valley Reservation of California  
Quechan Tribe of the Fort Yuma Indian Reservation (*also in Arizona*)  
Ramona Band or Village of Cahuilla Mission Indians of California  
Redding Rancheria  
Redwood Valley Rancheria of Pomo Indians of California  
Resighini Rancheria (formerly know as the Coast Indian Community of Yurok Indians of the Resighini Rancheria)  
Rincon Band of Luiseno Mission Indians of the Rincon Reservation  
Robinson Rancheria of Pomo Indians of California  
Round Valley Indian Tribes of the Round Valley Reservation (formerly known as the Covelo Indian Community)  
Rumsey Indian Rancheria of Wintun Indians of California

### ***California Continued***

San Manuel Band of Serrano Mission Indians of the San Manuel Reservation  
San Pasqual Band of Diegueno Mission Indians of California  
Santa Rosa Indian Community of the Santa Rosa Rancheria  
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation  
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation  
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation  
Scotts Valley Band of Pomo Indians of California  
Sheep Ranch Rancheria of Me-Wuk Indians of California  
Sherwood Valley Rancheria of Pomo Indians of California  
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract)  
Smith River Rancheria  
Soboba Band of Luiseno Mission Indians of the Soboba Reservation  
Susanville Indian Rancheria  
Sycuan Band of Diegueno Mission Indians of California  
Table Bluff Reservation - Wiyot Tribe  
Table Mountain Rancheria of California  
Torres-Martinez Band of Cahuilla Mission Indians of California  
Tule River Indian Tribe of the Tule River Reservation  
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California  
Twenty-Nine Palms Band of Luiseno Mission Indians of California  
United Auburn Indian Community of the Auburn Rancheria of California  
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California  
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation  
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas  
Reservation  
Washoe Tribe (Carson Colony, Dresslerville, and Washoe Ranches) (*also in Nevada*)  
Yurok Tribe of the Yurok Reservation

### **Colorado**

Southern Ute Indian Tribe of the Southern Ute Reservation  
Ute Mountain Tribe of the Ute Mountain Reservation (*also in Utah and New Mexico*)

### **Idaho**

Coeur D'Alene Tribe of the Coeur D'Alene Reservation  
Kootenai Tribe of Idaho  
Nez Perce Tribe of Idaho  
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho  
Shoshone-Paiute Tribes of the Duck Valley Reservation (*also in Nevada*)

## **Kansas**

Iowa Tribe of Kansas and Nebraska (*also in Nebraska*)  
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas  
Prairie Band of Potawatomi Indians  
Sac and Fox Nation of Missouri in Kansas and Nebraska (*also in Nebraska*)

## **Montana**

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation  
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana  
Chippewa-Cree Indians of the Rocky Boy's Reservation  
Confederated Salish and Kootenai Tribes of the Flathead Reservation  
Crow Tribe of Montana  
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana  
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation  
Turtle Mountain Band of Chippewa Indians (*also in North Dakota*)

## **Nebraska**

Iowa Tribe of Kansas and Nebraska (*also in Kansas*)  
Oglala Sioux Tribe of the Pine Ridge Reservation (*also in South Dakota*)  
Omaha Tribe of Nebraska  
Ponca Tribe of Nebraska  
Sac and Fox Nation of Missouri in Kansas and Nebraska (*also in Kansas*)  
Santee Sioux Tribe of the Santee Reservation of Nebraska  
Winnebago Tribe of Nebraska

## **Nevada**

Confederated Tribes of the Goshute Reservation (*also in Utah*)  
Duckwater Shoshone Tribe of the Duckwater Reservation  
Ely Shoshone Tribe of Nevada  
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation (*also in Oregon*)  
Fort Mojave Indian Tribe of Arizona, California and Nevada (*also in Arizona and California*)  
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony  
Lovelock Paiute Tribe of the Lovelock Indian Colony  
Moapa Band of Paiute Indians of the Moapa River Indian Reservation  
Paiute-Shoshone Tribe of the Fallon Reservation and Colony

### ***Nevada Continued***

Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation  
Reno-Sparks Indian Colony  
Shoshone-Paiute Tribes of the Duck Valley Reservation (*also in Idaho*)  
Summit Lake Paiute Tribe of Nevada  
Te-Moak Tribes of Western Shoshone Indians of Nevada (four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)  
Walker River Paiute Tribe of the Walker River Reservation  
Washoe Tribe (Carson Colony, Dresslerville, and Washoe Ranches) (*also in California*)  
Winnemucca Indian Colony of Nevada  
Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch  
Yomba Shoshone Tribe of the Yomba Reservation

### **New Mexico**

Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation  
Mescalero Apache Tribe of the Mescalero Reservation  
Navajo Nation (*also in Arizona and Utah*)  
Pueblo of Acoma  
Pueblo of Cochiti  
Pueblo of Jemez  
Pueblo of Isleta  
Pueblo of Laguna  
Pueblo of Nambe  
Pueblo of Picuris  
Pueblo of Pojoaque  
Pueblo of San Felipe  
Pueblo of San Ildefonso  
Pueblo of San Juan  
Pueblo of Sandia  
Pueblo of Santa Ana  
Pueblo of Santa Clara  
Pueblo of Santo Domingo  
Pueblo of Taos  
Pueblo of Tesuque  
Pueblo of Zia  
Ute Mountain Tribe of the Ute Mountain Reservation (*also in Colorado and Utah*)  
Zuni Tribe of the Zuni Reservation

## **North Dakota**

Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation (*also in South Dakota*)  
Spirit Lake Tribe (formerly known as the Devils Lake Sioux Tribe)  
Standing Rock Sioux Tribe of North and South Dakota (*also in South Dakota*)  
Three Affiliated Tribes of the Fort Berthold Reservation  
Turtle Mountain Band of Chippewa Indians (*also in Montana*)

## **Oklahoma**

Absentee-Shawnee Tribe of Indians of Oklahoma  
Alabama-Quassarte Tribal Town  
Apache Tribe of Oklahoma  
Caddo Indian Tribe of Oklahoma  
Cherokee Nation  
Cheyenne-Arapaho Tribes of Oklahoma  
Chickasaw Nation  
Choctaw Nation of Oklahoma  
Citizen Potawatomi Nation  
Comanche Indian Tribe  
Delaware Tribe of Indians  
Delaware Nation (formerly Delaware Tribe of Western Oklahoma)  
Eastern Shawnee Tribe of Oklahoma  
Fort Sill Apache Tribe of Oklahoma  
Iowa Tribe of Oklahoma  
Kaw Nation  
Kialegee Tribal Town  
Kickapoo Tribe of Oklahoma  
Kiowa Indian Tribe of Oklahoma  
Miami Tribe of Oklahoma  
Modoc Tribe of Oklahoma  
Muscogee (Creek) Nation  
Osage Tribe  
Ottawa Tribe of Oklahoma  
Otoe-Missouria Tribe of Indians  
Pawnee Nation of Oklahoma  
Peoria Tribe of Indians of Oklahoma  
Ponca Tribe of Indians of Oklahoma  
Quapaw Tribe of Indians  
Sac and Fox Nation  
Seminole Nation of Oklahoma  
Seneca-Cayuga Tribe of Oklahoma

***Oklahoma Continued***

Thlopthlocco Tribal Town  
Tonkawa Tribe of Indians of Oklahoma  
United Keetoowah Band of Cherokee Indians of Oklahoma  
Wichita and Affiliated Tribes (Wichita, Keechi, Waco, and Tawakonie)  
Wyandotte Tribe of Oklahoma

**Oregon**

Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon  
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon  
Confederated Tribes of the Grand Ronde Community of Oregon  
Confederated Tribes of the Siletz Reservation  
Confederated Tribes of the Umatilla Reservation  
Confederated Tribes of the Warm Springs Reservation of Oregon  
Coquille Tribe of Oregon  
Cow Creek Band of Umpqua Indians of Oregon  
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation (*also in Nevada*)  
Klamath Indian Tribe of Oregon

**South Dakota**

Cheyenne River Sioux Tribe of the Cheyenne River Reservation  
Crow Creek Sioux Tribe of the Crow Creek Reservation  
Flandreau Santee Sioux Tribe of South Dakota  
Lower Brule Sioux Tribe of the Lower Brule Reservation  
Oglala Sioux Tribe of the Pine Ridge Reservation (*also in Nebraska*)  
Rosebud Sioux Tribe of the Rosebud Indian Reservation  
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation (*also in North Dakota*)  
Standing Rock Sioux Tribe of North and South Dakota (*also in North Dakota*)  
Yankton Sioux Tribe of South Dakota

**Texas**

Alabama-Coushatta Tribes of Texas  
Kickapoo Traditional Tribe of Texas  
Ysleta Del Sur Pueblo of Texas

## **Utah**

Confederated Tribes of the Goshute Reservation (*also in Nevada*)  
Navajo Nation (*also in Arizona and New Mexico*)  
Northwestern Band of Shoshoni Nation of Utah (Washakie)  
Paiute Indian Tribe of Utah  
Skull Valley Band of Goshute Indians of Utah  
Ute Indian Tribe of the Uintah and Ouray Reservation  
Ute Mountain Tribe of the Ute Mountain Reservation (*also in Colorado and New Mexico*)

## **Washington**

Confederated Tribes of the Chehalis Reservation  
Confederated Tribes of the Colville Reservation  
Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation  
Hoh Indian Tribe of the Hoh Indian Reservation  
Jamestown S'Klallam Tribe of Washington  
Kalispel Indian Community of the Kalispel Reservation  
Lower Elwha Tribal Community of the Lower Elwha Reservation  
Lummi Tribe of the Lummi Reservation  
Makah Indian Tribe of the Makah Indian Reservation  
Muckleshoot Indian Tribe of the Muckleshoot Reservation  
Nisqually Indian Tribe of the Nisqually Reservation  
Nooksack Indian Tribe of Washington  
Port Gamble Indian Community of the Port Gamble Reservation  
Puyallup Tribe of the Puyallup Reservation  
Quileute Tribe of the Quileute Reservation  
Quinault Tribe of the Quinault Reservation  
Samish Indian Tribe  
Sauk-Suiattle Indian Tribe of Washington  
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation  
Skokomish Indian Tribe of the Skokomish Reservation  
Spokane Tribe of the Spokane Reservation  
Squaxin Island Tribe of the Squaxin Island Reservation  
Stillaguamish Tribe of Washington  
Suquamish Indian Tribe of the Port Madison Reservation  
Swinomish Indians of the Swinomish Reservation  
Tulalip Tribes of the Tulalip Reservation  
Upper Skagit Indian Tribe of Washington

**Wyoming**

Arapahoe Tribe of the Wind River Reservation  
Shoshone Tribe of the Wind River Reservation

## APPENDIX B:

### LEGAL AND POLICY REQUIREMENTS FOR CONSULTATION

Consultation with Indian tribes and their members is required by a variety of statutes, executive orders, and policies. The following is an overview of the major legal requirements for consultation. The requirements for notification and consent also are addressed in order to distinguish these closely related topics from the subject of consultation. This section is intended to highlight the authorities and contexts that give rise to formal and informal federal-tribal communications, and the requirements for satisfying those responsibilities. A synopsis of each authority is presented, and the reader is referred to the pertinent sections of either the United States Code or the Code of Federal Regulations for a review of the codified statutory or regulatory language.

#### Statutes

The statutory framework for consultation involves three bodies of law pertaining to: Indians, cultural resources, and the environment.

#### **Indian Self-Determination and Education Assistance Act (25 U.S.C. 450)**

The Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended) establishes a self-determination policy and permits federally recognized Indian tribes to plan, conduct, and administer programs and services that traditionally have been managed by the federal government. The act is organized into six titles: Indian Self-Determination (Title I), Indian Education Assistance (Title II), Tribal Self-Governance Demonstration Project (Title III, repealed by Pub. L. 106-260), Self-Governance (Title IV), Tribal Self-Governance (Title V, applicable only to the Indian Health Service), and Tribal Self-Governance -- Department of Health and Human Services (Title VI, demonstration project feasibility study). Only Title I and Title IV are applicable to the Reclamation program. Title I provides for self-determination contracts and grants, and is commonly referred to as the "638 process." Title IV is a recent amendment that makes permanent and expands upon the tribal self-governance demonstration project. The following examines the consultation requirements under these titles.

***Title I - Indian Self-Determination.*** Title I, referred to as the Indian Self-Determination Act, gives express authority to the Secretaries of the Interior and Health and Human Services to contract with and make grants to Indian tribes and tribal organizations for planning, conducting, or administering programs and services (including construction)

that are funded by the federal government for the benefit of Indians. The regulations implementing this title establish certain consultation requirements:

- Consultation is to be maintained with tribal governments and tribal organizations about the federal agency's budget process related to the programs, functions, services, and activities available to be performed under self-determination contracts. 25 CFR 900.3(b)(6).
- Lists of government-furnished personal and real property made available to an Indian tribe or tribal organization for use in a self-determination contract before October 25, 1994, are to be developed in consultation with each tribe or tribal organization. The tribe or organization will indicate which personal property items on the list should be retained by the federal government. If an Indian tribe or organization desires to take title to real property on the list, the property is to be inspected for hazardous substances, and steps are to be taken to transfer title. 25 CFR 900.87(a) and (b). (Note that authorization from Congress is normally required before Reclamation can transfer real property.)
- The parties to a self-determination contract are encouraged to consult during the development of the Program of Requirements (POR) and following submission of the POR to the federal agency having jurisdiction over the program to be contracted. 25 CFR 900.117(b). A POR is a planning document that provides background information and design criteria for use in preparing construction documents. 25 CFR 900.113(g).
- If an Indian tribe or tribal organization is contracting solely to perform construction management services, consultation is required with the Indian tribe or tribal organization during the performance of a self-determination construction contract on a regular basis, as agreed to by the parties, to facilitate the exchange of information. 25 CFR 900.131(a)(1).

It should also be recognized that the Indian Self-Determination Act and its regulations have numerous provisions that require either Reclamation or the tribe to provide or respond to formal written notice within prescribed time frames and procedures. For example, notice is required about the following:

- Allocation and availability of funds
- Intent to contract
- Conflict of interest
- Tort claims

- Awarded funds are insufficient to complete a contract
- Intent to suspend, withhold, or delay payment
- Intent to terminate a construction contract for convenience
- Reassumption of a project
- Emergency reassumption
- Appeals

A comprehensive internal agency procedures handbook for non-construction contracting under Title I has been developed by a joint federal-tribal work group. Copies of this handbook, and supplemental guidance, are available through the Native American Affairs Office.

***Title IV - Tribal Self-Governance.*** Title IV, the Self-Governance Act of 1994, expands upon the principles found in the Self-Determination Act and provides greater opportunities for Indian tribes to actively participate in programs and services conducted by the Department of the Interior. Under this act tribes participating in self-governance can negotiate and enter into annual funding agreements to plan, consolidate, and administer certain programs, services, functions, and activities currently administered by the Department. Questions about self-governance should be directed to the Native American Affairs Office, Regional or Area Office Native American Affairs Program Manager, or Field Solicitor.

### **American Indian Religious Freedom Act (16 U.S.C. 1996)**

In 1978 Congress passed a joint resolution regarding American Indian religious freedom. The American Indian Religious Freedom Act (AIRFA) is a Congressional policy statement that recognizes that Indians have the right to practice traditional religions, access sacred sites located on public lands, and use and possess sacred objects. It also directs all federal departments and agencies to evaluate, within one year after passage of AIRFA, their policies and procedures in consultation with traditional Indian religious leaders. AIRFA was amended in 1994 to provide for the traditional use of peyote by Indians for religious purposes.

Although AIRFA does not confer special religious rights to Indians, courts have held that it does impose certain procedural requirements:

- Federal agencies are required to learn about and to avoid unnecessary interference with traditional Indian religious practices. See Crow v. Gullett, 541 F.Supp. 785, 793 (D.S.D. 1982).
- Federal agencies must evaluate their policies and procedures in light of AIRFA's purpose, and ordinarily should consult with tribal leaders before approving projects likely to affect religious practices. *Id.*
- Federal agencies can satisfy the procedures required by AIRFA by including the consideration of Indian religious concerns in evaluations and documents completed under the National Environmental Policy Act. See Wilson v. Block, 708 F.2d 735, 747 (D.C. Cir. 1983), cert. denied 464 U.S. 1056 (1984).

### **Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)**

The Native American Graves Protection and Repatriation Act (NAGPRA) requires consultation with Indian tribes, traditional religious leaders, and lineal descendants of Native Americans regarding the treatment and disposition of specific kinds of cultural items -- human remains, funerary objects (associated and unassociated), sacred objects, and cultural patrimony. See 25 U.S.C. 3001 for a definition of NAGPRA cultural items. Under this act, consultation is required:

- Prior to the intentional excavation or removal of Native American human remains and objects. 25 U.S.C. 3002(c).
- In the event of an inadvertent discovery of Native American human remains and objects. 25 U.S.C. 3002(d).
- During the completion of the inventory of human remains and associated funerary objects, and summary of unassociated funerary objects, sacred objects, and cultural patrimony. 25 U.S.C. 3003 and 3004.
- When repatriating human remains and objects. 25 U.S.C. 3005.

The regulations implementing NAGPRA establish a procedural framework for conducting consultation, providing notice, and obtaining consent. *This framework is at times complex and may present procedural difficulties, particularly if NAGPRA is not considered early in project planning.*

The following is a synopsis of the NAGPRA regulations that specifically deal with consultation, notice, and consent. It is intended to introduce managers and planners to the complexities of NAGPRA, while at the same time providing the level of detail needed to guide NAGPRA practitioners.

***Intentional Archeological Excavation.*** The intentional excavation of NAGPRA cultural items is allowed only if:

- The objects are excavated or removed in accordance with the requirements of the Archaeological Resources Protection Act. 43 CFR 10.3 (b)(1).
- Consultation has been completed, or in the case of tribal lands, consent has been obtained from the tribe. 43 CFR 10.3(b)(2).
- There is proof of the consultation or consent. 43 CFR 10.3(b)(4).

Reasonable steps must be taken to determine whether a planned activity may result in the excavation of NAGPRA cultural items. If it appears likely that NAGPRA cultural items will be excavated, the following procedures must be followed:

- Written notice must be provided to tribes that are likely to be culturally affiliated with the NAGPRA cultural items. 43 CFR 10.3(c)(1).
- Written notice must also be provided to any present-day Indian tribe that aboriginally occupied the area of the planned activity and any other tribes that are likely to have a cultural relationship to the NAGPRA cultural items. 43 CFR 10.3(c)(1).
- The notice must be in writing and describe the planned activity, its general location, the basis on which it was determined that NAGPRA cultural items may be excavated, and the basis for determining likely custody of those items. 43 CFR 10.3(c)(1).
- The notice must also propose a time and place for meetings or consultation to further consider the activity and the proposed treatment and disposition of the NAGPRA cultural items. 43 CFR 10.3(c)(1).
- Telephone contacts should be made if there is no response in 15 days to the written notice. 43 CFR 10.3(c)(1).
- Following consultation a written plan of action must be prepared and implemented. 43 CFR 10.3(c)(2).

***Inadvertent Discoveries.*** In the event of a discovery of NAGPRA cultural items the following procedural steps must be completed:

- The person making the discovery is required to provide immediate telephone notification, with written confirmation to the federal land managing agency or, if on Indian lands, to the responsible tribal official. 43 CFR 10.4(b).
- If the inadvertent discovery occurred in connection with an ongoing activity on federal or tribal lands, the person providing notice must also stop the activity in the area of the inadvertent discovery and make reasonable efforts to protect the NAGPRA cultural items. 43 CFR 10.4(c).
- If the discovery is made on federal lands, the land managing agency must complete the following within three days after receipt of the written confirmation of notification:
  - Certify receipt of the notification. 43 CFR 10.4(d)(1)(I).
  - Take immediate steps to protect the discovery. 43 CFR 10.4(d)(1)(ii).
  - Notify the tribes likely to be culturally affiliated with the discovery by telephone and with follow-up written confirmation. 43 CFR 10.4(d)(1)(iii).
  - Initiate consultation. 43 CFR 10.4(d)(1)(iv).
- The activity may resume 30 days after the notified federal agency certifies the receipt of the written confirmation of notice, and all of the requirements of NAGPRA and other laws have been completed (an otherwise lawful test). 43 CFR 10.4(d)(2).
- Similar notification procedures apply to discoveries made on tribal lands; however, consent is required before the cultural items may be excavated or removed. 43 CFR 10.4(e).
- All authorizations (leases and permits) to carry out activities on federal lands must include a requirement for the holder of the authorization to provide notice in the event of a discovery. 43 CFR 10.4(g).

**Consultation.** In the event of intentional excavation or inadvertent discoveries, federal agency officials must consult with known lineal descendants and Indian tribal officials.

- The consulting parties may include:
  - Indian tribes that have aboriginal lands where the planned activity will occur or where the inadvertent discovery has been made. 43 CFR 10.5(a)(1).
  - Indian tribes that are, or are likely to be, culturally affiliated with the NAGPRA cultural items. 43 CFR 10.5(a)(2).
  - Indian tribes that have a demonstrated cultural relationship with the NAGPRA cultural items. 43 CFR 10.5(a)(3).
- Consultation is to be initiated after appropriate steps have been taken to identify lineal descendants and provide them with written notice. 43 CFR 10.5(b)(1).
- The notice must propose a time and place for meetings or consultation, proposed treatment measures, and the proposed disposition of NAGPRA items. 43 CFR 10.5(b)(2).
- The consultation must seek to identify traditional religious leaders who should be consulted to identify, where applicable, lineal descendants. 43 CFR 10.5(b)(3).
- During the consultation process the following information, as appropriate, must be provided in writing to lineal descendants and tribal officials that are likely to be affiliated with the NAGPRA items:
  - A list of all lineal descendants and tribes that are being, or have been, consulted. 43 CFR 10.5(c)(1).
  - An indication that additional documentation used to identify affiliation will be supplied upon request. 43 CFR 10.5(c)(2).

- During the consultation process the following information, as appropriate, must be requested:
  - Name and address of the Indian tribal official that will act as the tribal representative during the consultation process. 43 CFR 10.5(d)(1).
  - Names and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process. 43 CFR 10.5(d)(2).
  - Recommendations on how the process should be conducted. 43 CFR 10.5(d)(3).
- Following consultation, the federal agency must prepare, approve, and sign a written plan of action. 43 CFR 10.5(e).
  - A copy of the plan must be provided to the lineal descendants and involved tribes.
  - The lineal descendants and tribal officials may sign the plan of action.
- Whenever possible, comprehensive agreements should be entered into with Indian tribes. 43 CFR 10.5(f).
  - The agreements should address all federal land managing activities that could result in the intentional excavation or inadvertent discovery of cultural items.
  - Consultation regarding the agreement should lead to the establishment of standard procedures for carrying out the regulatory requirements regarding consultation.
  - Signed agreements, or correspondence related to efforts to reach agreements, constitute proof that consultation has been completed.

***Custody.*** When transferring custody of NAGPRA cultural items intentionally excavated or inadvertently discovered back to lineal descendants or tribes, the following procedures must be followed:

- Notice of the proposed disposition must be published in a newspaper of general circulation in the area where they were excavated or discovered and, if applicable, in a newspaper of general circulation in the area(s) in which the tribes now reside. 43 CFR 10.6(c).
- The notice must be published at least two times, at least a week apart. 43 CFR 10.6(c).
- The transfer must not occur until at least 30 days after the publication of the second notice in order to allow time for additional claimants to come forward. 43 CFR 10.6.

***Summaries and Inventories.*** Consultation is required during the preparation of summaries of unassociated NAGPRA cultural items and inventories of associated NAGPRA cultural items held in museums and federal collections.

- Consultation about summaries and inventories is required with lineal descendants, tribal officials, and traditional religious leaders. 43 CFR 10.8(d)(1) and 10.9(b)(1).
- Consultation about summaries and inventories may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue. 43 CFR 10.8(d)(2) and 10.9(b)(2).
- During summary consultation copies of the summary are to be provided to lineal descendants (when known), tribal officials, and traditional religious leaders. 43 CFR 10.8(d)(3).
- During inventory consultation federal agencies must provide information about the tribes that have been or are being consulted, a description of how the inventory is being conducted, time frames for completing the inventory, and an indication that additional information will be supplied upon request. 43 CFR 10.9(b)(3).
- During summary and inventory consultation federal agencies must request information about the name and address of the tribal official that will act as the representative during consultations, recommendations on how to conduct the consultation process, names and appropriate methods to contact lineal descendants and traditional religious leaders. 43 CFR 10.8(d)(4) and 10.9(b)(4).

- A notice of intent to repatriate unassociated NAGPRA cultural items is required to be published in the Federal Register. 43 CFR 10.8(f).
- Notification of the completion of the inventory must be published in the Federal Register and sent to likely and identified culturally affiliated tribes. 43 CFR 10.9(e).

**Repatriation.** Consultation is required for the repatriation of associated and unassociated NAGPRA cultural items.

- Notices of intent to repatriate unassociated and associated NAGPRA cultural items are required to be published in the Federal Register. 43 CFR 10.10(a)(3) and 10.10(b)(b)(2).
- Consultation is required to determine the appropriate place and manner of repatriation. 43 CFR 10.10(d).

### **Archaeological Resources Protection Act (16 U.S.C. 470aa)**

The Archeological Resources Protection Act (ARPA) provides a means for protecting archeological resources located on public and Indian lands. This act delimits prohibited activities, establishes civil and criminal penalties, and creates a permitting process. Permits are required prior to excavating or removing archeological resources located on either public or Indian lands. In the case of Indian lands, the consent of the tribe or Indian owner also is required prior to the issuance of a permit. Although ARPA does not specifically require consultation, it does impose a notification requirement:

- Tribes are required to be notified before an ARPA permit is issued for actions that could result in possible harm to, or destruction of, sites on public lands having cultural or religious importance. 16 U.S.C. 470cc(c) and 43 CFR 7.7(a).
- Notice is to be provided at least 30 days before a permit is issued. 43 CFR 7.7(a).
- The notice is to be sent to the chief executive officer or other designated tribal official. 43 CFR 7.7(a)(1).
- If a tribe requests a meeting during the 30-day period, a meeting may be held with official tribal representatives to discuss their interests, including ways to avoid or mitigate potential harm or destruction. Any adopted mitigation measures are to be included in the permit. 43 CFR 7.7(a)(3).

- In the event that a permit must be issued immediately because of an imminent threat of loss or destruction of an archeological resource, the 30-day period is waived. However, tribes are required to be notified after the permit is issued. 43 CFR 7.7(a)(4).

### **National Historic Preservation Act (16 U.S.C. 470)**

The National Historic Preservation Act (NHPA), as amended, creates a framework for the preservation of important cultural resources and establishes a procedural process for the consideration of the effects of federal undertakings on historic properties. The term historic property means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places. NHPA requires federal agencies to conduct consultation with Native Americans when carrying out preservation and compliance responsibilities:

- Properties of traditional religious and cultural importance to an Indian tribe may be determined to be eligible for the National Register. 16 U.S.C. 470a(d)(6)(A).
- Consultation is required with any tribe that attaches religious and cultural significance to historic properties. 16 U.S.C. 470a(d)(6)(B).
- An agency's preservation related activities are to be carried out in consultation with Indian tribes. 16 U.S.C. 470h-2(a)(2)(D).
- An agency's procedures for compliance with section 106 are to provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with Indian tribes, regarding the means by which adverse effects on such properties will be considered. 16 U.S.C. 470h-2(a)(2)(E)(ii).

The regulations implementing NHPA's section 106 compliance process also establish procedural requirements for conducting consultation with Indian tribes. See 36 CFR Part 800.

### **National Environmental Policy Act (42 U.S.C. 4331)**

The National Environmental Policy Act (NEPA) is a procedural process that has been established to ensure that federal agencies will have available and consider detailed information concerning significant environmental impacts; and that relevant information will be made available to the public during decision making. The regulations implementing NEPA require tribal consultation and involvement during the NEPA process.

- Federal agencies are to consult with Indian tribes early in the NEPA process. 40 CFR 1501.2(d)(2).
- Affected Indian tribes are to be invited to participate in the scoping process. 40 CFR 1501.7(a)(1).
- During the analysis of environmental consequences to an Indian reservation, discussions must consider possible conflicts between the proposed action and the objectives of tribal land use plans, policies, and controls. 40 CFR 1502.16(c).
- Indian tribes must be invited to comment on a draft Environmental Impact Statement when the effects may occur on a reservation. 40 CFR 1503.1(a)(2)(ii).
- As part of the public involvement process, notice must be provided to Indian tribes when effects may occur on reservations. 40 CFR 1506.6(b)(3)(ii).
- When effects take place on an Indian reservation, an Indian tribe may become a cooperating agency by entering into an agreement with the lead agency. 40 CFR 1508.5.

The reader is referred to Reclamation's *NEPA Handbook* for additional guidance about how the NEPA process is used to consider Indian trust assets, sacred sites, and off-reservation effects.

## **Executive and Secretarial Orders**

The authority underlying executive and secretarial orders is found in a variety of sources, including the U.S. Constitution, treaties, judicial decisions, and statutes.

### **Government-to-Government Relations**

The Presidential Memorandum of April 29, 1994, is the most recent policy statement about maintaining a government-to-government relationship with Native American tribal governments. It directs that executive agency activities that affect Native American tribal rights or trust resources are to be implemented in a knowledgeable and sensitive manner that is respectful of tribal sovereignty.

Each department and agency is required to:

- Operate within a government-to-government relationship with federally recognized tribes.
- 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.
- Assess the impact of agency activities on tribal trust resources and assure that tribal government rights and concerns are considered before the activities are undertaken.
- Remove any procedural impediments to working directly and effectively with tribal governments on activities that affect trust property or governmental rights of tribes.
- Work cooperatively with other agencies to accomplish the goals established by the President in this memorandum.

The memorandum from the Assistant Secretary -- Indian Affairs, dated February 24, 1995, provides additional guidance on the President's federal-tribal government-to-government policy. It specifically recommends that each agency design a special protocol, and take a proactive approach to working with tribal governments:

- Establish and apply processes and procedures that recognize tribes as separate sovereigns with a special relationship with all federal bureaus and agencies.
- Communicate directly with tribes.
- Establish permanent systems for communication between bureau management and tribal officials through appropriate channels as indicated by tribal officials.

The memorandum from the Commissioner, dated June 14, 1996, outlines Reclamation's action plan for implementing a government-to-government relationship with Indian tribes.

### **Sacred Sites**

Executive Order 13007, dated May 24, 1996, establishes new requirements for the protection and preservation of Indian religious practices. Each federal agency is required to accommodate

access to and ceremonial use of Indian sacred sites by Indian practitioners, and avoid adversely affecting the physical integrity of such sacred sites.

- Each agency is required to develop and implement procedures in compliance with the Presidential memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments,” including consultation with tribal governments.
- The developed procedures, where practicable and appropriate, are to ensure that reasonable notice is provided about 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.
- Each agency is to report to the President the 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.

On September 16, 1998, the Commissioner issued final guidance for implementing this order.

### **Consultation and Coordination with Indian Tribal Governments**

On November 6, 2000, the President signed Executive Order (EO) 13175 on consultation with Indian tribal governments. This EO builds on previous administrative actions and is intended to:

- Establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications;
- Strengthen government-to-government relationships with Indian tribes; and
- Reduce the imposition of unfunded mandates upon Indian tribes.

For purposes of this EO, “policies that have tribal implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

This EO revokes EO 13084 (Consultation and Coordination with Indian Tribal Governments, issued on May 14, 1998).

The EO modifies and expands many of the concepts and procedures found in the 1998 EO on Consultation and Coordination with Indian Tribal Governments (EO 13084). Its format and procedural requirements generally parallel the EO on Federalism (EO 13132), dated August 4, 1999. The following is a section-by-section analysis of the new EO.

**Sec. 1. Definitions.** Definitions are added for “policies that have tribal implications” (see above) and “tribal officials.” The latter means “elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.”

**Sec. 2. Fundamental Principles.** Fundamental principles are provided to guide agencies when formulating or implementing policies that have tribal implications. The principles affirm the unique legal relationship that tribes have with the United States, including the trust relationship. They also recognize the right of Indian tribes to self-government and provide support for tribal sovereignty and self-determination.

**Sec. 3. Policymaking Criteria.** Agencies are required to adhere to the fundamental principles (Sec. 2) and the EO’s policymaking criteria, to the extent permitted by law, when formulating and implementing policies that have tribal implications. The criteria provide:

- Respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the federal government and Indian tribal governments. Sec. 3(a).
- Grant Indian tribal governments the maximum administration discretion possible with respect to federal statutes and regulations administered by Indian tribal governments. Sec. 3(b).
- When undertaking to formulate and implement policies that have tribal implications, agencies are required to:
  1. Encourage Indian tribes to develop their own policies to achieve program objectives;
  2. Where possible, defer to Indian tribes to establish standards; and
  3. In determining whether to establish federal standards, consult with tribal officials as to the need for federal standards and any alternatives that would limit the scope of federal standards or otherwise preserve the prerogatives and authority of Indian tribes. Sec. 3(c).

**Sec. 4. Special Requirements for Legislative Proposals.** Agencies are prohibited from submitting legislation to Congress that would be inconsistent with the policymaking criteria in Sec. 3.

**Sec. 5. Consultation.** Each agency is required to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Sec. 5(a).

- Within 30 days after the effective date of the EO, the agency head is required to designate an agency official with principal responsibility for the agency's implementation of the EO. Sec. 5(a).
- Within 60 days after the effective date of the EO, the responsible agency official is required to submit to the Office of Management and Budget (OMB) a description of the agency's consultation process. Sec. 5(a).

Regulations that impose unfunded mandates are prohibited. Sec. 5(b). To the extent practicable and permitted by law, agencies are prohibited from promulgating any regulation that has tribal implications, imposes substantial direct compliance costs on Indian tribal governments, and is not required by statute unless:

- Funds are provided by the federal government to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation; or
- The agency, prior to the formal promulgation of the regulation,
  1. Consulted with tribal officials early in the process of developing the proposed regulation;
  2. In a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides the Director of OMB with a tribal summary impact statement (a description of the extent of the agency's tribal consultation, a summary of the nature of the tribe's concerns and the agency's position supporting the need to issue the regulations, and a statement of the extent to which the concerns of tribal officials have been met); and
  3. Makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

Regulations that preempt tribal law are prohibited. Sec. 5(c). To the extent practicable and permitted by law, agencies are prohibited from promulgating any regulation that has tribal implications that preempts tribal law unless:

- The agency, prior to the formal promulgation of the regulation,

1. Consulted with tribal officials early in the process of developing the proposed regulation;
2. In a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides the Director of OMB with a tribal summary impact statement (a description of the extent of the agency's tribal consultation, a summary of the nature of the tribe's concerns and the agency's position supporting the need to issue the regulations, and a statement of the extent to which the concerns of tribal officials have been met); and
3. Makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

Agencies are encouraged to explore and where appropriate, use consensual mechanism for developing regulations, including negotiated rulemaking, on issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty or other rights. Sec. 5(d).

***Sec. 6. Increasing Flexibility for Indian Tribal Waivers.*** Agencies are required to review the process under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those procedures. Sec. 6(a).

To the extent practicable and permitted by law, agencies are required to consider any application by an Indian tribe for a waiver of statutory or regulatory requirements with a general view toward increasing opportunities for using flexible approaches when a proposed waiver is consistent with applicable federal policy objectives and is otherwise appropriate. Sec. 6(b).

To the extent practicable and permitted by law, agencies are required to render a decision about an application for a waiver with 120 days after receipt of an application, or as otherwise provided by law or regulation. If a waiver is not granted, timely written notice of the decision and the reasons therefor must be provided. Sec. 6(c).

This section applies only to statutory or regulatory requirements that are discretionary and subject to a waiver by the agency. Sec. 6(d).

***Sec. 7. Accountability.*** When final draft regulations having tribal implications are transmitted to OMB, agencies are required to include a certification from the official designated with compliance responsibility for the EO, stating that the requirements of the EO have been met in a meaningful and timely manner. Sec. 7(a).

When transmitting proposed legislation that has tribal implications to OMB, agencies are required to include a certification from the official designated with compliance responsibility for the EO, stating that all relevant requirements of the EO have been met. Sec. 7(b).

Within 180 days after the effective date of the EO the Director of OMB and the Assistant to the President for Intergovernmental Affairs are required to confer with tribal officials to ensure that the EO is being properly and effectively implemented. Sec. 7(c).

**Sec. 8. Independent Agencies.** Independent agencies are encouraged to comply with the EO.

**Sec. 9. General Provisions.** The EO supplements but does not supersede the requirements of EO 12866 (Regulatory Planning and Review), EO 12988 (Civil Justice Reform), OMB Circular A-19, and Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments. Sec. 9(a).

The EO is intended to complement the consultation and waiver provisions in sections 6 and 7 of EO 13132 (Federalism). Sec. 9(b).

**Sec. 10. Judicial Review.** A disclaimer provides that the EO is intended to only improve the internal management of the executive branch. It is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies or any person.

The Commissioner has designated the Director, Native American Affairs Office, as the agency official with the principal responsibility for ensuring compliance with the EO. Fulfillment of that responsibility will include, in part:

- Review and certification of draft regulations and proposed legislation that have tribal implications
- Coordination of a review of the procedures under which tribes may apply for a waiver of statutory and regulatory requirements and identification of ways to streamline those procedures.

*The guidance offered in this document about the process for consulting with Indian tribal governments is intended to facilitate implementation of the EO and will be used to satisfy certain procedural requirements.*

### **Indian Trust Responsibilities**

The Department Manual Part 512, Chapter 2, articulates the policy, responsibilities, and procedures for consulting with tribes to identify and assess impacts to Indian trust resources (originally issued as Secretarial Order 3175, dated November 8, 1993):

- It is the policy of the Department of the Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members, and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health or safety.
- Heads of bureaus and offices are responsible for assessing impacts to trust resources and for consulting with the recognized tribal government whose trust assets are potentially affected.
- All consultations are to be conducted in an open and candid manner respectful of tribal sovereignty, so that all interested parties may evaluate for themselves the potential impact of the proposal on trust resources.

Reclamation's Indian Trust Asset policy was announced by the Commissioner on July 2, 1993, and procedures for its implementation (through the NEPA process) were signed by the Commissioner on November 29, 1993. A guidance document, dated August 31, 1994, provides questions and answers about Reclamation's implementing procedures.

### **Tribal Rights, Trust Responsibilities, and the Endangered Species Act**

On June 5, 1997, the Secretaries of the Interior and Commerce jointly issued Secretarial Order 3206. This order provides guidance about the federal-tribal relationship, and its relationship to tribal rights, trust responsibilities, and the Endangered Species Act:

- It clarifies responsibilities when action is taken under the Endangered Species Act effect (or may effect) Indian lands, tribal trust resources, or the exercise of Indian tribal rights.
- It further acknowledges the trust responsibility and treaty obligations of the United States toward Indian tribes and tribal members, and the government-to-government relationship in dealing with tribes.
- It directs that the responsibilities under the Endangered Species Act are to be carried out in a manner that harmonizes trust responsibilities, tribal sovereignty, statutory missions, and strives to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species.

***Working Relationships.*** The order establishes a policy framework for establishing and maintaining effective working relationships and mutual partnerships to promote the conservation of sensitive species (including candidate, proposed, and listed species) and the health of ecosystems on which they depend. Such relationships are intended to focus on:

- Cooperative assistance
- Consultation
- Sharing information
- Creating government-to-government partnerships

**Guiding Principles.** The order articulates a set of principles that are to be followed:

- *Principle 1. Work directly with Indian tribes on a government-to-government basis to promote healthy ecosystems.*
  - Whenever agencies and offices are aware that actions planned under the Endangered Species Act may impact tribal trust resources, the exercise of tribal rights, or Indian lands, they are to consult with and seek the participation of the affected Indian tribes to the maximum extent practicable.
  - The tribes are to be afforded adequate opportunities to participate in data collection, consensus seeking, and associated processes.
- *Principle 2. Recognize that Indian lands are not subject to the same controls as federal public lands.*
- *Principle 3. Assist Indian tribes in developing and expanding tribal programs so that healthy ecosystems are promoted and conservation restrictions are unnecessary.*
  - Tribal exercise of sovereignty over the management of Indian lands and tribal trust resources is to be respected.
  - Government-to-government consultations are to be conducted to discuss the extent to which tribal resource management plans for tribal trust resources located outside of Indian lands can be incorporated into actions that address the conservation needs of listed species.
  - In the event that it is determined that conservation restrictions are necessary in order to protect listed species, consult with the affected tribes and provide written notice about intended restriction as far in advance as practicable.

- If the proposed conservation restriction is directed at a tribal activity that could raise the potential issue of a direct take under the Endangered Species Act, meaningful government-to-government consultation is required in order to strive to harmonize the federal trust responsibility, tribal sovereignty, and the agency's statutory mission.
- *Principle 4. Be sensitive to Indian culture, religion, and spirituality.*
  - Take into consideration the impacts of actions and policies under the Endangered Species Act, regarding Indian use of listed species for cultural and religious purposes.
- *Principle 5. Make available to Indian tribes information related to tribal trust resources and tribal lands, facilitate the mutual exchange of information, and strive to protect sensitive tribal information from disclosure.*
  - Recognize the critical need for Indian tribes to possess complete and accurate information related to Indian lands and trust resources.
  - Make available to Indian tribes all information that is related to Indian lands and trust resources.
  - Protect, to the maximum extent practicable, tribal information that has been disclosed or collected.
  - Promptly notify and, when appropriate, consult with affected tribes regarding all requests for tribal information.

***Agreements.*** When appropriate, and at the request of an Indian tribe, federal-tribal intergovernmental agreements are to be pursued in order to formalize agreed on arrangements about sensitive species, such as:

- Land and resource management
- Multi-jurisdictional partnerships

***Dispute Resolution.*** The order also encourages the use of alternative dispute resolutions. Federal-tribal disputes regarding implementation of the order are to be addressed through government-to-government discourse, using alternative dispute resolution processes to resolve conflicts about technical and policy issues.

**List of Tribal Contacts.** Finally, by way of policy guidance to U.S. Fish and Wildlife Service and the National Marine Fisheries Service, each regional and field office is to maintain a current list of tribal contact persons within each region, and ensure that meaningful government-to-government communications occur. Although the order does not specifically impose this requirement on Reclamation, it is nonetheless sound advice.

## Reclamation Policy

### Indian Policy of the Bureau of Reclamation

On February 25, 1998, the Commissioner issued Reclamation's Indian Policy. The full text of that overarching policy statement is provided below:

**General Principle:** The Bureau of Reclamation will comply with both the letter and the spirit of federal laws and policies relating to Indians; acknowledge and affirm the special relationship between the United States and federally recognized Indian tribes; and actively seek partnerships with Indian tribes to ensure that tribes have the opportunity to participate fully in the Reclamation program as they develop and manage their water and related resources.

- **Government-to-Government:** The United States government has a unique legal relationship with federally recognized American Indian tribes, based on a recognition of the inherent powers of tribal sovereignty and self-government. Reclamation will uphold this special relationship and implement its activities in a manner consistent with it.
- **Trust Resources:** The United States government has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian tribes or Indian individuals by treaties, statutes, and executive orders. Reclamation, as a federal executive agency, shares this responsibility.
  - **Trust Asset Protection:** Reclamation will carry out its activities in a manner that protects trust assets and avoids adverse impacts when possible. When Reclamation cannot avoid adverse impacts, it will provide appropriate mitigation or compensation.
  - **Water Rights:** The Department of the Interior's policy is to attempt to resolve Indian reserved water rights claims through negotiated settlements rather than litigation when feasible. Reclamation actively supports and participates in the Department's settlement negotiation and implementation activities.

- *Tribal Trust and the Endangered Species Act:* Consistent with the June 7, 1997, Secretarial Order on “American Indian Tribal Rights, Federal-Tribal Trust Responsibility, and the Endangered Species Act,” Reclamation will implement the Endangered Species Act in a manner that respects the exercise of tribal sovereignty over the management of Indian lands and tribal trust resources.
- ***Protocol / Consultation:*** Reclamation will pursue meaningful and proactive consultations with Indian tribal governments on matters of mutual interest. Reclamation will work with interested tribal governments to negotiate protocols about mutually agreed-upon principles and procedures for conducting consultations, maintaining government-to-government relationships, and entering into partnerships and collaborative efforts.
- ***Self-Determination / Self-Governance:*** Pursuant to the federal policies of Indian tribal self-determination and self-governance, and the Indian Self-Determination and Education Assistance Act (P.L. 93-638, as amended), Reclamation will negotiate and enter into Self-Determination contracts and Self-Governance annual funding agreements for eligible programs and activities with tribes desiring to do so.
- ***Religion / Culture:*** Reclamation will provide Indian tribes the opportunity to be involved early in the process when considering actions that may affect their religion or culture. Reclamation will show respect for tribal cultural values.
- ***Sacred Sites:*** Consistent with Executive Order 13007 (EO), Reclamation will manage federal lands under its jurisdiction to: (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; these actions will be carried out to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions. Compliance with the EO will be carried out in a manner consistent with Reclamation’s government-to-government policy for working with Indian tribes, including consulting with tribally designated representatives whenever it appears that Reclamation activities may compromise the integrity of or access to sacred sites.
- ***Human Remains and Cultural Items:*** Reclamation is committed to treating human remains and cultural items with dignity and respect. Consultation will be conducted as appropriate with lineal descendants, Indian tribes, and traditional religious leaders to

develop mutually agreed-upon avoidance, treatment and repatriation processes.

- *Cultural Resources:* Reclamation recognizes that cultural resources can have special importance to tribes and will seek to work with tribes to the maximum extent possible to avoid impacts to cultural resources identified by tribes as important, and to determine appropriate mitigation measures when impacts cannot be avoided. Reclamation will administer its cultural resources responsibility in a spirit of stewardship and in a positive manner.
- ***Opportunities to Work Together:*** Reclamation will ensure that Indian tribes have the opportunity to become full participants in the Reclamation program.
  - *Partnerships to Provide Technical Assistance:* Reclamation recognizes that many Indian tribes have a critical need for water resource infrastructure, and will seek to provide assistance, through partnerships, to assist tribes in developing and managing their water resources.
  - *Opportunities to Participate in the Reclamation Program:* Reclamation will ensure that Indian tribes have the opportunity to learn about, participate fully in, and receive the benefits of the Reclamation program.
- ***Incorporate this Policy in Reclamation Activities:*** Reclamation will incorporate this Indian policy into its activities.

## APPENDIX C:

### SUGGESTED READING

#### **Cultural Resources**

Klesert, A. L. and Alan S. Downer

1990 *Preservation on the Reservation: Native Americans, Native American Lands, and Archaeology*. Albuquerque, New Mexico: University of New Mexico Press.

#### **Government**

American Indian Resources Institute

1988 *Indian Tribes as Sovereign Governments*. Oakland, California: American Indian Lawyer Training Program, Incorporated.

Lipoic, James J., Margery Hunter Brown, and Richmond L. Clow

1998 *Tribal Government Today, Politics on Montana Indian Reservations*. Boulder, Colorado: University of Colorado Press.

O'Brien, Sharon

1989 *American Indian Tribal Governments*. Norman, Oklahoma: University of Oklahoma Press.

Taylor, Graham D.

1980 *The New Deal and American Indian Tribalism*. Lincoln, Nebraska: University of Nebraska Press.

#### **History**

Grinds, Donald A., Jr. and Bruce E. Johansen

1991 *Exemplar of Liberty: Native America and the Evolution of Democracy*. Los Angeles, California: University of California, Los Angeles.

Prucha, Francis P.

1990 *Atlas of American Indian Affairs*. Lincoln, Nebraska: University of Nebraska Press.

## **Indian-White Relations**

Indian Resources Institute

1988 *Indian Tribes as Sovereign Governments: A Sourcebook on Federal-Tribal History, Law, and Policy*. Oakland, California: American Indian Resources Institute Press.

Berkhofer, Robert F., Jr.

1978 *The White Man's Indian: Images of the American Indian from Columbus to the Present*. New York, New York: Alfred A. Knopf.

Deloria, Vine, Jr.

1974 *Behind the Trail of Broken Treaties*. New York, New York: Dell Publishing Company.

Greaves, Tom (editor)

1994 *Intellectual Property Rights for Indigenous Peoples: A Source Book*. Oklahoma City, Oklahoma: Society for Applied Anthropology.

Hagan, William T.

1979 *American Indians* (revised edition). Chicago, Illinois: University of Chicago Press.

Haynie, Nancy A. (compiler)

1984 *Native Americans and the Military, Today and Yesterday*. Fort McPherson, Georgia: U.S. Army Forces Command Information Branch.

Josephy, Alvin M., Jr.

1973 *The Indian Heritage of America*. New York, New York: Alfred A. Knopf.

Matthiessen, Peter

1983 *In the Spirit of Crazy Horse*. New York, New York: Viking Press.

Nabokov, Peter (editor)

1991 *Native American Testimony*. New York, New York: Penguin Books.

Prucha, Francis P.

1971 *Indian Peace Medals in American History* (State Historical Society of Wisconsin, Madison). Lincoln, Nebraska: University of Nebraska Press.

1977 *A Bibliographical Guide to the History of Indian-White Relations in the United States*. Chicago, Illinois: University of Chicago Press.

1982 *Indian-White Relations in the United States: A Bibliography of Works Published, 1975-1980*. Lincoln, Nebraska: University of Nebraska Press.

1995 *Great Father: The United States Government and the American Indians*. Lincoln, Nebraska: University of Nebraska Press.

Reed, James B. and Judy A. Zelio

1995 *States and Tribes: Building New Traditions*. Denver, Colorado: National Conference of State Legislatures.

Rosenstiel, Annette

1983 *Red and White: Indian Views of the White Man, 1492-1982*. New York, New York: Universe Books.

Stedman, Raymond W.

1982 *Shadows of the Indian: Stereotypes in American Culture*. Norman, Oklahoma: University of Oklahoma Press.

Utley, Robert M. and Wilcomb E. Washburn

1977 *The American Heritage History of the Indian Wars*. New York, New York: American Heritage Publishing Company.

Viola, Herman J.

1990 *After Columbus, The Smithsonian Chronicle of the North American Indians*. Washington, D.C.: Smithsonian Books.

Washburn, Wilcomb E.

1974 *The Indian in America* (The New American Nation Series). New York, New York: Harper and Row.

Washburn, Wilcomb E.

1987 *History of Indian-White Relations. Handbook of North American Indians* (vol. 4). Washington, D.C.: Smithsonian Institution.

## **Land Issues**

Gordon-McCutcham, R. C.

1991 *The Indians and the Battle for Blue Lake* (Forward by Frank Waters). Santa Fe, New Mexico: Red Crane Books.

Kickingbird, Kirke and Karen Ducheneaux

1973 *One Hundred Million Acres* (the social, historical and legal significance of Indian land problems). New York, New York: Macmillian Company.

O'Donnell, Janet

1991 *The Dispossession of the American Indian, 1887-1934*. Bloomington, Indiana: University of Indiana Press.

Ross, Norman A. (compiler)

1973 *Index to Expert Testimony Before the Indian Claims Commission: The Written Reports* (The Library of American Indian Affairs). New York, New York: Clearwater Publishing Company.

Sutton, Imre

1975 *Indian Land Tenure, Bibliographical Essays and a Guide to the Literature*. New York, New York: Clearwater Publishing Company.

1985 *Irredeemable America: The Indians' Estate and Land Claims*. Albuquerque, New Mexico: University of New Mexico Press.

Tiller, Veronica E. Velarde

1996 *American Indian Reservations and Trust Areas*. Washington, D.C.: U.S. Department of Commerce, Economic Development Administration.

United States Indian Claims Commission

1980 *Final Report, 1979*. 96th Congress, 2nd Session, House Document No. 96-383. (Serial No. 13354). Washington, D.C.: U.S. Government Printing Office.

## **Law**

United States Commission on Civil Rights

1981 *Indian Tribes: A Continuing Quest for Survival*. Washington, D.C.: U.S. Government Printing Office.

Brakel, Samuel J.

1978 *American Indian Tribal Courts: The Costs of Separate Justice*. Chicago, Illinois: American Bar Foundation.

Canby, William, Jr.

1988 *American Indian Law in a Nutshell* (second edition). St. Paul, Minnesota: West Publishing Company.

Clinton, R.N., N.J. Newton, and M.E. Price

1991 *American Indian Law: Cases and Materials*. Charlottesville, Virginia: The Michie Company.

Cohen, Felix S.

1942 *Handbook of Federal Indian Law*. Washington: U.S. Government Printing Office (Reprinted: University of New Mexico Press, Albuquerque).

Cohen Felix S. (Rennard Strickland editor)

1982 *Handbook of Federal Indian Law: 1982 Edition*. Charlottesville, Virginia: The Michie Company.

Deloria, Vine, Jr. and Clifford M. Lyle

1983 *American Indians, American Justice*. Austin, Texas: University of Texas Press.

Getches, David H., Charles F. Wilkinson, and Robert A. Williams

1993 *Cases and Materials on Federal Indian Law*. St. Paul, Minnesota: West Publishing Company.

Kickingbird, K., L. Kickingbird, A. Tallchief Skibine, and C. Chibitty

1980 *Indian Treaties*. Washington, D.C.: Institute for the Development of Indian Law.

Native American Rights Fund

1985 *Indian Cases: The 1984-85 Supreme Court Term*. Boulder, Colorado: The NARF Legal Review.

Pevar, Stephen

1983 *The Rights of Indians and Tribes* (ACLU Handbook). New York, New York: Bantam Books.

Reeser, Ralph and Bonnie L. Paquin

1995 *A Complete Guide to P.L. 93-638: Contracting Through the Indian Self-Determination and Education Assistance Act*. Fairfax, Virginia: Native American Technologies.

Shattuck, Petra T. and Jill Norgren

1991 *Partial Justice: Federal Indian Law in a Liberal Constitutional System*. New York, New York: St. Martin's Press.

U.S. Commission on Civil Rights

1980 *American Indian Civil Rights Handbook* (second edition). Clearinghouse Publications, No. 35. Washington, D.C.: U.S. Government Printing Office.

Utter, Jack

1993 *American Indians: Answers to Today's Questions*. Lake Ann, Michigan: National Woodlands.

Wilkinson, Charles F.

1988 *American Indians, Time, and the Law*. New Haven, Connecticut: Yale University Press.

1992 *Crossing the Next Meridian*. Covelo, California: Island Press.

Williams, Robert A., Jr.  
1990 *The American Indian in Western Legal Thought: The Discourses of Conquest*. New York, New York: Oxford University Press.

### **NAGPRA Related Material**

Giesen, Myra J. (editor)  
1995 *Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) Compliance Workshop Proceedings*. Lawrence, Kansas: Haskell Indian Nations University.

CEHP  
1993 *Compilation of State Repatriation, Reburial and Grave Protection Laws*. Washington, D.C.: U.S.D.A. Soil Conservation Service.

Pace, Julie A. (symposium editor)  
1992 Symposium: The Native American Graves Protection and Repatriation Act of 1990 and State Repatriation-Related Legislation. *Arizona State Law Journal* Vol. 24, No. 1. Tempe, Arizona: Arizona State University, College of Law.

Price, H. Marcus III  
1991 *Disputing the Dead: U.S. Law on Aboriginal Remains and Grave Goods*. Columbia, Missouri: University of Missouri Press.

McQuick, P. (editor)  
1985 *Proceedings: Conference on Reburial Issues*. Washington, D.C.: Society for American Archaeology/Society of Professional Archeologists.

Swidler, Nina, Kurt E. Dongoske, Roger Anyon, and Alan S. Downer (editors)  
1997 *Native Americans and Archaeologists: Stepping Stones to Common Ground*. Walnut Creek, California: Altamira Press.

### **Policies**

Abernathy, Thomas Perkins  
1959 *Western Lands and the American Revolution*. New York, New York: Russell and Russell.

American Indian Policy Review Commission  
1977 *Final Report*. Submitted to Congress May 17, 1977. Washington, D.C.: U.S. Government Printing Office.

- Deloria, Vine, Jr.  
1985 *American Indian Policy in the 20th Century*. Norman, Oklahoma: University of Oklahoma Press.
- Deloria, Vine, Jr. and Clifford M. Lyle  
1984 *The Nations Within: The Past and Future of American Indian Sovereignty*. New York, New York: Pantheon Books.
- Garbarino, Merwyn S. and Robert F. Sasso  
1994 *Native American Heritage* (third edition). Prospect Heights, Illinois: Waveland Press.
- Johanson, Bruce E.  
1982 *Forgotten Founders: Benjamin Franklin, The Iroquois and the Rationale for the American Revolution*. Ipswich, Massachusetts: Gambit.
- Kelly, Lawrence C.  
1983 *The Assault on Assimilation: John Collier and the Origins of Indian Policy Reform*. Albuquerque, New Mexico: University of New Mexico Press.
- Legters, Lyman H. and Fremont J. Lyden  
1994 *American Indian Policy: Self-Governance and Economic Development*. Westport, Connecticut: Greenwood Press.
- Paquin, Bonnie  
1992 *Historical Review of Federal Indian Policy*. Fairfax, Virginia: Falmouth Institute.
- Philp, Kenneth R.  
1977 *John Collier's Crusade for Indian Reform: 1920-1954*. Tucson, Arizona: University of Arizona Press.
- Prucha, Francis P.  
1990 *Documents of the United States Indian Policy*. Lincoln, Nebraska: University of Nebraska Press.
- Schaaf, Gregory  
1990 *Wampum Belts and Peace Trees, George Morgan, Native Americans and Revolutionary Diplomacy*. Golden, Colorado: Fulcrum Publishing.
- Taylor, Theodore W.  
1972 *The States and Their Indian Citizens*. Washington, D.C.: U.S. Department of the Interior, Bureau of Indian Affairs.
- Taylor, Theodore  
1983 *American Indian Policy*. Mt. Airy, Maryland: Lomond Publications, Incorporated.

Tyler, S. Lyman  
1973 *A History of Indian Policy*. Washington, D.C.: U.S. Department of the Interior, Bureau of Indian Affairs.

Utter, Jack  
1993 *American Indians, Answers to Today's Questions*. Lake Ann, Michigan: National Woodlands Publishing Company.

Washburn, Wilcomb E.  
1973 *The American Indian and the U.S.: A Documentary History*. New York, New York: Random House.

### **Profiles and Biography**

Dockstader, Frederick J.  
1977 *Great North American Indians: Profiles in Life and Leadership*. New York, New York: Van Nostrand Reinhold Company.

Eastman, Charles A. (Ohiyesa)  
1918 *Indian Heroes and Great Chieftains* (Reprint, 1991, Lincoln, Nebraska: Bison Books, University of Nebraska Press).

Neithammer, Carolyn  
1977 *Daughters of the Earth: The Lives and Legends of American Indian Women*. New York, New York: Macmillan.

Wall, Steve and Harvey Arden  
1990 *Wisdomkeepers: Meetings with Native American Spiritual Elders*. Hillsboro, Oregon: Beyond Walls.

### **Religion**

Deloria, Vine, Jr.  
1992 *God is Red: A Native View of Religion* (2nd ed.). Golden, Colorado: North American Press.

Hirschfelder, A. and P. Molin  
1992 *The Encyclopedia of Native American Religions*. New York, New York: Facts-on-File.

Hultkrantz, Ake  
1987 *Native Religions of North America*. San Francisco, California: Harper and Row.

Hurdy, John M.

1970 *American Indian Religions*. Los Angeles, California: Sherbourne Press.

Native American Rights Fund

1979 *We Also Have a Religion: The American Indian Religious Freedom Act and the Religious Freedom Project of the Native American Rights Fund*. Boulder, Colorado: Native American Rights Fund.

Peterson, Scott

1990 *Native American Prophecies; Examining the History, Wisdom and Startling Predictions of Visionary Native Americans*. New York, New York: Paragon House.

Reeves, B. O. K. and M. A. Kennedy

1993 *Kunaitupii: Coming Together on Native Sacred Sites*. Calgary, Alberta: Archaeological Society of Alberta.

United States Federal Agencies Task Force

1979 *American Indian Religious Freedom Act Report* (P.L. 95- 341). Chairman, Cecil D. Andrus, Secretary of the Interior, Washington, D.C.: U.S. Department of the Interior.

Vecsey, Christopher (editor)

1991 *Handbook of American Indian Religious Freedom*. New York, New York: Crossroad Publishing Company.

## **Treaties**

Kappler, Charles J. (compiler)

1904- *Indian Affairs: Laws and Treaties* (5 vols.) Washington, D.C.: U.S. Government Printing Office (Reprinted: AMS Press, New York, 1971).

## **Tribes**

Davis, Mary B. (editor)

1994 *Native Americans in the Twentieth Century: An Encyclopedia*. Garland Publishing, New York and London.

D'Azevedo, Warren L. (editor)

1986 Great Basin. *Handbook of North American Indians* (vol. 11). Washington, D.C.: Smithsonian Institution.

Heizer, Robert F. (editor)

1978 California. *Handbook of North American Indians* (vol. 8). Washington, D.C.: Smithsonian Institution.

Hodge, Frederick W. (editor)  
1907- Handbook of American Indians North of Mexico. *Bureau of American Ethnology*  
1910 *Bulletin* 30 (Reprinted 1971, New York: Rowman and Littlefield).

Hyde, George E.  
1959 *Indians of the High Plains*. Norman, Oklahoma: University of Oklahoma Press.

Lowie, Robert H.  
1954 *Indians of the Plains*. Garden City, New York: Natural History Press.

Ortiz, Alfonso (editor)  
1979 Southwest (Pueblos). *Handbook of North American Indians* (vol. 9). Washington, D.C.: Smithsonian Institution.

1983 Southwest (Navajo, Apache, etc.). *Handbook of North American Indians* (vol. 10). Washington, D.C.: Smithsonian Institution.

Suttles, Wayne (editor)  
1990 Northwest Coast. *Handbook of North American Indians* (vol. 7). Washington, D.C.: Smithsonian Institution.

Swanton, John R.  
1952 The Indian Tribes of North America. Washington, D.C.: *Bureau of American Ethnology*.

Waldman, Carl  
1985 *Atlas of the North American Indian*. New York, New York: Facts on File.

Wissler, Clark  
1966 *Indians of the United States*. New York, New York: Anchor Press-Doubleday.

## **Water Management/Water Rights**

Indian Resources Institute  
1988 *Tribal Water Management Handbook: Building Homelands on 19th Century Promises*. Oakland, California: American Indian Resources Institute.

Burton, L.  
1991 *American Indian Water Rights and the Limits of Law*. Lawrence, Kansas: University Press of Kansas.

Checchio, Elizabeth and Bonnie G. Colby  
1993 *Indian Water Rights: Negotiating the Future*. Water Resources Research Center. Tucson, Arizona: The University of Arizona.

Getches, David H.

1997 *Water Law in a Nutshell* (third edition). St. Paul, Minnesota: West Publishing Company.

Lawson, M. L.

1982 *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944-1980*.

Norman, Oklahoma: University of Oklahoma Press.

Lord, William B. and Mary G. Wallace

1989 *Proceedings of the Symposium on Indian Water Rights and Water Resources*

*Management*. Bethesda, Maryland: American Water Resources Association.

McGuire Thomas R., William B. Lord, and Mary G. Wallace (editors)

1993 *Indian Water in the New West*. Tucson and London: University of Arizona Press.

Nelson, M. C.

1977 *The Winters Doctrine: Seventy Years of Application of 'Reserved' Water Rights to Indian*

*Reservations*. Arid Lands Resource Information. Tucson, Arizona: University of

Arizona, Office of Arid Lands Studies

### **Other Native American Interest**

Barreiro, Jose

1992 *Indian Roots of American Democracy*. Ithica, New York: Akwe: Kon Press.

Cornell, Stephen

1988 *The Return of the Native: American Indian Political Resurgence*. New York, New York:

Oxford University Press.

Gattuso, John

1993 *Native America*. New York, New York: Houghton Mifflin Company.

Waldman. C.

1985 *Atlas of the North American Indian*. New York, New York: Facts-on-File.

Wall, Steve

1993 *Wisdom's Daughters*. New York, New York: Harper Collins.

### **Sources on the Internet**

Bibliography: Native American Land and Water Rights

<http://www.indians.org/library/bibl.html>

Bureau of Indian Affairs (home page)  
<http://www.doi.gov/bureau-indian-affairs.html>

Index of Native American Resources on the Internet  
<http://www.hanksville.org/NAresources/>

Indian Circle Web Ring (connects to internet web pages of federally recognized tribes)  
<http://www.indiancircle.com/>

Indian Land Areas Judicially Established (map)  
[http://www.wes.army.mil/el/ccspt/natamap/usa\\_pg.html](http://www.wes.army.mil/el/ccspt/natamap/usa_pg.html)

Indian Law  
<http://www.indian-law.com/>

Native Americans (federal laws)  
<http://www.legal.gsa.gov/legal22x.htm>

Native American & Aboriginal Law  
<http://www.nesl.edu/research/native.htm>

Native Americans and the Environment  
<http://www.conbio.rice.edu/nae/>

Native Americans and the Environment: Water Rights and Dams  
<http://www.conbio.rice.edu/nae/water.html>

Native American Repatriation & Reburial: A Bibliography  
<http://www-sul.stanford.edu:80/depts/ssrg/native/appf.html>

Senate Committee on Indian Affairs  
<http://www.senate.gov/~scia/>

## **APPENDIX D:**

### **TRAINING AND EDUCATION**

Continuous training and education of Reclamation's management and staff are needed to help develop and maintain the expertise and attitudes appropriate for working effectively with Indian tribes. The laws, policies, and court decisions pertaining to Indian issues frequently change. In order to remain current and responsive to these changes, it is important for Reclamation to continuously develop and improve the knowledge, skills, and abilities of the personnel involved with Indian issues and projects. The following is a summary list of vendors that have provided training to Reclamation. *Other qualified vendor are available, and this list is neither intended to be exhaustive nor is it to be construed as an endorsement by Reclamation of the listed vendors.*

**The Falmouth Institute**  
**3702 Pender Drive, Suite 300**  
**Fairfax, VA 22030**  
**1-800-992-4489**  
**[www.falmouthinst.com/](http://www.falmouthinst.com/)**

The Falmouth Institute offers a wide variety of courses suitable for Reclamation staff and management, and for technical assistance to Indian tribes. More than 110 courses, including topics such as:

- Indian law
- Indian water rights and water law
- Hunting and fishing rights
- Self-Determination

Call or write the Falmouth Institute for the current training catalog or visit their Internet site for additional information about training, publications, and links to additional information about Indians. Courses are offered throughout the year at a variety of locations. On-site training customized to Reclamation's needs can be arranged. An excellent course for anyone more than incidently involved with tribal construction is *Construction Contracting Under the Indian Self-Determination, P.L. 93-638, as amended.*

**Native American Technologies, Inc. (NATEC)**  
**3918 Prosperity Avenue, Suite 205**  
**Fairfax, VA 22031**  
**(703) 641-0251**  
**[www.ael.org/eric/ned/ned064.htm](http://www.ael.org/eric/ned/ned064.htm)**

NATEC currently offers two courses of interest to Reclamation. *Working Effectively With Indian Tribes* is targeted at federal managers who need a better understanding of the cultural and legal issues relating to American Indians. It covers the laws, policies, history of U.S. and tribal relations, and how to effectively implement these laws. The course takes a full two days. Two other courses that may be of interest are under development:

*Environmental Planning for the Seventh Generation* and *Working Effectively With Federal and State Governments* (intended for Indian tribal leaders). All NATEC courses can be delivered on-site with a minimum enrollment of 30 attendees. A special one-half day executive summary can be given in conjunction with an on-site presentation of *Working Effectively With Indian Tribes*.

**National Preservation Institute**  
**P.O. Box 1702**  
**Alexandria, VA 22313**  
**(703) 765-0100**  
**[www.npi.org](http://www.npi.org)**

The National Preservation Institute (NPI) gives training in cultural resources management related to Native American issues. The course *Identification and Management of Traditional Cultural Places* provides an excellent presentation of current topics of interest to cultural resources management staff. Topics addressed include identification of traditional cultural places, community consultation processes, relationship to applicable federal laws and regulations. NPI course updates and contents can be found on the Internet or by e-mailing a request for information.

**Universities of Nevada at Reno**  
**Division of Continuing Education**  
**Midby-Byron Center**  
**Reno, NV 89557-0024**  
**(702) 784-4046**  
**[www.dce.unr.edu/hrm/](http://www.dce.unr.edu/hrm/)**

The Division of Continuing Education offers two courses that address Native American consultation issues: *Native American Graves Protection and Repatriation Act: Implications and Practical Application*; and *Introduction to Federal Projects and Historic Preservation Law*. These courses should be mandatory for cultural resources staff and are highly recommended for program managers that are regularly involved in cultural resources. Both are high quality

courses taught by acknowledged experts, including key staff from the National Park Service and the Advisory Council on Historic Preservation. Courses are offered several times per year at Reno and other locations around the nation.

**White Bison, Inc.**

**6145 Lehman Drive, Suite 200**

**Colorado Springs, CO 80918**

**719 548-1000**

**[www.whitebison.org](http://www.whitebison.org)**

White Bison, Inc. is nonprofit American Indian organization that provides training and consultation in the areas of cultural awareness, conflict management, management of change, breakthrough thinking, leadership, empowered employees, and self-managed high performance work teams. The theories and models used in the applications combine management theories with American Indian teachings and traditions. White Bison, Inc. tailors its training to the specific problems and needs of the client's organization and can lengthen, shorten, or combine the following courses:

- *Honoring Differences* (5 days). Intensive training designed to redirect the thinking that brings about discrimination based on race, ethnic background, disability, gender or sexual preference. The goal is for the participants to realize an appreciation of the value and contribution of differences among people and to consider a new paradigm for relating to others.
- *Multicultural Diversity* (2 days). This workshop provides managers and employees with information about diversity issues, demonstrates strategies for capitalizing on individual, ethnic, minority, and gender issues. Particular emphasis is placed on the benefit that differences bring to a competitive, customer driven marketplace. One of the outcomes is the creation of a team model for incorporating differences -- increasing sensitivity and appreciating cultural differences. Participants are encouraged to separate "style" from "stereotype" issues.
- *Leadership and Team Building* (2 days). A seminar designed to explore the issues of trust, accountability, and the dynamics of building high performance work teams. A variety of techniques and systems are presented as tools for group goal setting, defining roles and responsibilities, and creating individual and team accountability. Techniques for problem solving and creative thinking are also an integral part of this program.
- *Servant Leadership: Spirit of the Earth* (3 days). A leadership program based on the four principles of change and teaching of the Medicine Wheel. Its purpose is to create a dynamic model of leadership that supports and encourages the development of an organization's potential through the empowerment of the

individual. One of the goals is to implement values and behaviors that support productive, flexible, responsible, and community minded organizations that can anticipate and use change to benefit their own objectives.

White Bison, Inc. also offers a long-term change management and community development program designed to create a productive, empowered and competitive organization. More detailed information on this and other courses, seminars and programs can be obtained by contacting White Bison, Inc.

## **APPENDIX E:**

### **EXAMPLE PROTOCOL AGREEMENTS**

The following are examples of protocol agreements that have been negotiated and entered into by Reclamation and Indian tribes or tribal organizations. It is included as an example of the type of agreement that Reclamation and a tribe may decide to develop. The format and content of other negotiated agreements may vary from these examples, depending upon tribal preferences and the type of relationship that Reclamation and the tribe have developed or are in the process of developing.

