Bureau of Reclamation Implementation Plan for
Federal-Tribal Government-to-Government Policy
June 4, 1996

This plan is based on guidance provided in the February 24, 1995, memorandum from Ada E. Deer, Assistant Secretary—Indian Affairs, concerning Federal-Tribal government-to-government relationships.

A. Provide Employee Education

Reclamation shall identify employees working with Indians and provide them with appropriate information and training on principles of tribal sovereignty and the Federal-Tribal trust relationship, key Presidential, Secretarial and Reclamation Indian policy directives, and other mandates, policies, and laws affecting Reclamation’s working relationship with tribes. This shall generally be the responsibility of the action office and shall be charged to the relevant program, project or other cost authority.

Reclamation’s Native American Affairs Office (NAAO) and Regional and Area Office Native American program managers are available to offer advice concerning materials and training.

B. Respect Tribal Sovereignty

Reclamation shall identify whether their planned activities, undertakings, rulemaking, or other proposed actions will affect tribes, tribal rights, or trust assets, and shall insure that appropriate steps for interaction with tribal governments are taken. Each action office shall:

1. Insure that all staff working with tribes have some knowledge of tribal governments and processes generally.

2. When working with a specific tribe, insure that involved staff have adequate knowledge of that tribe's decisionmaking processes and pertinent tribal law, rules, and regulations. What constitutes “adequate” will vary with the nature and degree of tribal contact an individual has and the nature and degree of his involvement with matters potentially affecting the tribe.

3. Apply appropriate laws and regulations in “Indian country,” including lands within Indian reservations, non-reservation “dependent Indian communities” such as federally recognized Pueblos, and non-reservation trust lands. Tribal laws and regulations apply in lieu of State law in Indian Country, except when a Federal statute or court decision provides otherwise. Federal laws and regulations generally apply. Consult the Solicitor’s Office when in doubt.

EXAMPLE: Ascertain whether the tribe, State and/or Federal Government has regulatory authority over the activity in question (e.g. fishing, recreation, environmental) and work with that entity or entities.
EXAMPLE: Use tribal environmental codes for planning and operations when appropriate to do so.

EXAMPLE: Before carrying out on-reservation activities, coordinate with the tribal government or determine that it previously consented to the activity.

C. Design A Special Protocol

In determining what processes to use when working with tribes, Reclamation shall take into account that tribes as "domestic sovereigns" have a special relationship to the Federal Government. Reclamation shall:

1. Designate a Reclamation Native American Affairs Director and regional Native American program managers to facilitate Tribal-Reclamation communication. At the option of the area office manager, area offices may also designate similar positions. These positions shall, among other things, facilitate Tribal-Reclamation communications.

2. Coordinate with tribal officials to identify the communication channels to use in working with the tribe. When in doubt, Reclamation should formally address the tribal government and ask with whom it should be working on specified issues.

3. Evaluate the relevant process and modify as required to apply to tribes, while refraining from automatically using processes designed exclusively for states or local governments. Reclamation should never afford a tribal government less consideration than it would a similarly situated State government; sometimes, because of the different natures of tribal and State sovereignties, it will be appropriate to afford a tribe additional consideration.

EXAMPLE: Where a program requires that essential findings be made on matters of potential concern to a tribe, insure that the tribe is invited to provide input to be considered and to review draft documents before final findings are made.

EXAMPLE: In public involvement programs or processes, attempt to use processes that distinguish tribes from other "interest groups" by recognizing tribes as sovereign governmental entities possessing a special legal relationship with Federal bureaus and agencies.

4. Apply the requirements of appropriate Executive Orders, such as Orders 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review"), to design solutions and tailor Federal programs to address specific or unique needs of tribal communities. (Copies of these Executive Orders are included with this plan as Exhibits A and B).

5. Refer to the additional Reclamation protocol guidelines as issued by Reclamation's NAAO. (These are expected to become available later in 1996).
D. Take a Proactive Approach to Working with Tribal Governments: Consultation; Insuring that Assistance being Offered Suits the Need

Reclamation shall:

1. Consult directly and formally with tribes when it appears they may have an interest in the outcome of a Reclamation action. Consult in a timely manner to maximize tribal opportunity to participate in the decisionmaking process, and not in a manner that merely informs the tribe of final agency decisions. When in doubt as to whether the tribe has an interest, contact the tribe. When appropriate, formalize the consultation agreement in a Memorandum of Agreement (MOA) or other appropriate instrument. (Contact the NAAO Office or regional Native American program manager to discuss appropriate models).

2. Seek to establish a good working relationship with tribes. Attempt to understand their view as to what a “good working relationship” encompasses.

3. Simplify Reclamation processes for tribal customers and improve the delivery of services when possible in recognition of the United States' special relationship to tribes and their members.

4. Provide tribes with technical, training and other assistance. Meet with tribal officials to understand tribal needs, then work together to determine how Reclamation can help address those needs. Examples of types of assistance that should be considered, include, but are not be limited, those listed below. All assistance is subject to budgetary, program, and authorization constraints.

   a. Reclamation’s Native American technical assistance programs, general investigations, and other programs and projects serving Indian tribes or having potential to do so.

   b. Technology development and transfer. Development of new technology for use by tribes should be coordinated with the NAAO, which in turn will work with Reclamation’s Research Director, to insure non-duplication of effort.

   c. Training opportunities for tribes and tribal staff to assist the tribes to carry out their governmental responsibilities; training can be implemented through MOA's, Intergovernmental Personnel Act (IPA) agreements, workshops, etc.

5. Comply with Reclamation's Indian trust asset policy and procedures, as the trust relationship underlies all of Reclamation's actions having potential to affect trust assets.

E. Comply with Self-Determination and Self-Governance Policies and Programs

The Self-Determination ("638") and Self-Governance programs allow eligible tribes to take over Federal projects, programs, functions or activities (or components thereof) when certain requirements are met. The underlying policy of the Self-Determination and Self-Governance programs is to provide tribal governments with opportunities to exercise their governmental powers. In furtherance of these policies, Reclamation shall:
1. Familiarize employees working with potentially qualifying projects, programs, or activities with the 638 and Self-Governance programs. Potentially qualifying activities may include programs, projects, functions, or portions thereof, that are for Indians because of their status as Indians, otherwise “available” to Indians, or of special historic, cultural, or geographic significance to the tribe.

2. Provide employee training on 638 and Self-Governance programs so that Reclamation has knowledgeable staff to enter into and administer 638 contracts/grants and Self-Governance Annual Funding Agreements (AFAs). Reclamation’s NAAO and regional Native American program managers can provide additional information on training opportunities.

3. Enter into 638 contracts and AFAs when requested by qualifying tribes and consistent with other applicable Self-Governance and Self-Determination law, regulations and policies.

4. Increase tribal awareness of 638, Self-Governance and other options to participate in various Reclamation programs, projects, functions, and activities. This will generally include contacting eligible tribes and providing information about Reclamation programs, projects and activities that may be of tribal interest.

5. When appropriate, assist tribes to develop technical expertise and infrastructure to execute 638 contacts and AFAs. Consider providing training through MOA’s, IPA agreements, and workshops.

Attachments

Exhibit A: Executive Orders 12875 (“Enhancing the Intergovernmental Partnership”)
Exhibit B: Executive Order 12866 (“Regulatory Planning and Review”)
The Federal Energy Management Programs (FEMP) in the Federal Government's performance review and evaluation of energy management programs and projects must be consistent with the existing Federal energy management policies and strategies. These programs and projects should be aligned with the overall energy management goals and objectives of the Federal Government, and they should be designed to achieve measurable energy savings and environmental benefits.

The FEMP must also be aligned with other Federal energy management initiatives and programs, such as the Energy Star Program, the Federal Leadership in Environment and Energy Protection (FLEET) program, and the Federal Energy Management Program (FEMP) of the Office of Management and Budget (OMB).

In addition, FEMP programs and projects should be integrated into the overall energy management policies and strategies of Federal agencies, and they should be evaluated against the agency's energy management performance goals and objectives.

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Executive Order
EO 12866
03/21/1992

THE EXECUTIVE ORDER

Section 1. General

The President of the United States, by virtue of the authority vested in him by the Constitution and the laws of the United States, including section 309 of the Act of April 5, 1933, as amended, hereby issues this Executive Order on Executive Order 12866. (4)

Section 2. Organization for the Control and Management of Executive Orders

(a) The President shall designate the Director of OMB as the Director of the Office of Information and Regulatory Affairs. The Director shall be a member of the Executive Office of the President of the United States and shall be appointed by the President, subject to the advice and consent of the Senate.

(b) The Director shall be responsible for the development and implementation of policies and procedures for the control and management of Executive Orders, including the development of a system for the identification, classification, and tracking of Executive Orders.

(c) The Director shall coordinate with other executive branch agencies to develop and implement policies and procedures for the control and management of Executive Orders.

(d) The Director shall provide a report to the President on the implementation of this Executive Order annually.

Section 3. Duties of the Director

(a) The Director shall have the authority to:

(1) develop and implement policies and procedures for the control and management of Executive Orders;

(2) provide guidance to executive branch agencies on the development and implementation of policies and procedures for the control and management of Executive Orders;

(3) develop and implement policies and procedures for the control and management of Executive Orders, including the development of a system for the identification, classification, and tracking of Executive Orders;

(4) provide training and technical assistance to executive branch agencies on the development and implementation of policies and procedures for the control and management of Executive Orders;

(5) establish performance measures for the control and management of Executive Orders;

(6) provide a report to the President on the implementation of this Executive Order annually.

Section 4. Implementation

(a) The Director shall develop and implement policies and procedures for the control and management of Executive Orders, including the development of a system for the identification, classification, and tracking of Executive Orders.

(b) The Director shall provide a report to the President on the implementation of this Executive Order annually.

(c) The Director shall coordinate with other executive branch agencies to develop and implement policies and procedures for the control and management of Executive Orders.

Section 5. Amendments

(a) This Executive Order may be amended or rescinded by the President or by the Director in accordance with the procedures established by the Director.

(b) The Director shall provide a report to the President on the implementation of this Executive Order annually.

Section 6. Repeal

(a) Executive Order 12866, as amended, is hereby repealed.

Section 7. Effective Date

(a) This Executive Order shall take effect on the date of its issuance.

Section 8. Repeal

(a) This Executive Order shall take effect on the date of its issuance.

(b) The Director shall provide a report to the President on the implementation of this Executive Order annually.

Section 9. Certification

(a) The Director shall provide a report to the President on the implementation of this Executive Order annually.

Section 10. Review

(a) The Director shall provide a report to the President on the implementation of this Executive Order annually.

Section 11. Repeal

(a) This Executive Order shall take effect on the date of its issuance.

(b) The Director shall provide a report to the President on the implementation of this Executive Order annually.
Executive Order 12831, dated September 30, 1992

White House

November 1, 1993

The President

Executive Order (as amended)

INFORMATION PROVISION TO THE PUBLIC BY THE PRESIDENT'S OFFICE

The President, in the exercise of the powers vested in him by the Constitution and laws of the United States, does hereby order that all Executive branch agencies and departments, and all officers, employees, and agents thereof, shall

(a) promptly provide the public with all information of any kind possessed by the President or the Executive branch agencies and departments that is reasonably likely to be requested by the public in reasonable form, and

(b) promptly respond to any request for such information submitted to the agencies and departments in a manner consistent with the provisions of this order. This order shall apply to all information, whether or not produced in response to a legal action or request, and whether or not the information is or has been designated as confidential, privileged, or otherwise protected from disclosure.

The provisions of this order shall be enforced by the Attorney General of the United States, and any person who shall willfully violate any provision of this order shall be guilty of a misdemeanor and shall be liable to a penalty of not more than $10,000 for each violation. The Attorney General may, in his discretion, seek such further relief as may be appropriate in any action brought under this order.

The provisions of this order shall be deemed to be in the public interest.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the White House to be affixed.

[Signature]

The President