

BPA Tribal Policy: *It's about trust*





Trust Responsibility

The federal Indian trust responsibility is a legal obligation under which the United States “has charged itself with moral obligations of the highest responsibility and trust” toward Indian tribes (***Seminole Nation v. United States, 1942***). This obligation was first acknowledged by Chief Justice John Marshall in ***Cherokee Nation v. Georgia (1831)***. Over the years, the trust doctrine has been at the center of numerous Supreme Court cases, making it one of the most important principles in federal Indian law and the government-to-government relationship between the federal government and federally recognized tribes.

In 1994, President Bill Clinton set the tone and instilled a mandate, based on the belief that “the entire government, not simply the Department of Interior” had a trust responsibility with tribal governments.



BPA Tribal Policy

The BPA Tribal Policy recognizes the unique government-to-government relationship the agency has with federally recognized tribes within the BPA service territory including Idaho, Oregon, Washington, western Montana and portions of California, Nevada, Utah, Wyoming and eastern Montana.

BPA is a federal self-funded nonprofit agency based in the Pacific Northwest that markets wholesale electrical power and operates and maintains high-voltage transmission lines and facilities. As part of its mission, BPA promotes energy efficiency, renewable resources and new technologies. The agency also funds regional efforts to protect and rebuild fish and wildlife populations affected by the hydroelectric power development in the Columbia River Basin.

To accomplish its mission, BPA consults and partners with tribes in its service territory. The Tribal Policy was developed in 1993 through government-to-government consultation with tribes within the Columbia River Basin. This policy recognizes the trust responsibility between the federal government and tribes, shaping a framework for government-to-government consultation.

General Principles

The principles set forth below follow the Department of Energy's American Indian Policy (DOE Order 144.1 – Jan. 16, 2009) and serves as guidelines to BPA and the tribes throughout the development of their government-to-government relationships.

- I.** BPA recognizes that a trust responsibility derives from the historical relationship between the federal government and the tribes as expressed in Treaties, Statutes, Executive Orders, and Federal Indian case law. Using these legal underpinnings, BPA and the tribes will work cooperatively to arrive at an understanding of how the trust responsibility applies to a government-to-government relationship.
- II.** BPA commits to a government-to-government relationship with the tribal governments and recognizes the unique character of each tribe. Tribal governments have the primary authority and responsibility for many reservation affairs, and may be co-managers of natural resources within their respective ceded, treaty, or usual and accustomed areas.
 - A.** BPA fully respects tribal law and recognizes tribal governments as sovereigns.
 - B.** In keeping with the principle of self-government, BPA recognizes, where appropriate, the legal authority of tribal governments for making tribal decisions which may affect Indian and non-Indian peoples and tribal cultural and natural resources both on and off reservation.
 - C.** BPA will consult with the tribal governments to assure that tribal rights and concerns are considered prior to BPA taking actions, making decisions, or implementing programs that may affect tribal resources.
- III.** The objectives outlined below define BPA's policy regarding the requirement for consultation with tribal governments and are intended to assure that tribal rights and interests are protected in all BPA decisions.



Women's high-top moccasin, Plateau, Schi'tsu'umsh (Coeur d'Alene)
Coeur d'Alene Tribe's general collection.



Storage baskets made with pine needles, plant fiber and cedar root
Lawrence Aripa Collection.

- A.** The objectives of consultation include:
- Assure that tribal policy makers and elected officials understand the technical and legal issues necessary to make informed decisions;
 - Improve policy-level decision making of both the tribes and BPA;
 - Encourage tribal implementation of fish and wildlife measures BPA funds;
 - Protect tribal lifestyles, culture, religion, economy;
 - Encourage compliance with tribal laws;
 - Comply with Federal Indian law, statutes, and policy;
 - Improve the integrity and longevity of decisions;
 - Strive to develop and achieve mutually agreeable decisions reflecting a consensus.
- B.** BPA will consult with tribal governments by deliberating, discussing, or seeking the opinion of the tribes when a proposed BPA action may affect the tribes or their resources. BPA will solicit tribal opinions and study them before taking an action that may affect the tribes or their resources.
- C.** BPA will strive to differentiate between technical and policy issues, allowing for proper technical level and then policy level consultation. Technical level consultations should generally include the development, analysis, and review of information and the preparation of technical reports and recommendations. Consultation should result in a common understanding of the technical and legal issues that affect or are affected by a decision. BPA will strive to resolve such issues and arrive at a decision that responds to the tribal concerns expressed.

- D.** Where BPA and one or more of the tribes address issues of common concern, BPA will endeavor to use consultation to try and reach decisions that are compatible and mutually agreeable with the tribal interests.
- IV.** BPA will seek mutually beneficial business partnerships with the tribal governments through its various programs, pursuant to its authorities.
- V.** BPA recognizes it has mutual concerns and goals with the tribes regarding the long term quality of life and natural resources in the Pacific Northwest and that both BPA and the tribes have decisions to make regarding those resources. BPA will respect the authority of the tribes to manage natural resources and respect their decisions regarding those resources. BPA will involve the tribes in the beginning of its planning and management activities of water resources, fish and wildlife resources and other natural resources to achieve mutually beneficial results.
- VI.** BPA recognizes mutual respect between governments must be rooted in the individual working relationships of its members. BPA will enhance cultural awareness among its staff and will seek other opportunities to establish consistent individual working relationships between BPA and tribal staff at all levels.
- VII.** BPA recognizes the importance of cultural resources to Native Americans and will respect tribal values. BPA recognizes that the tribes include as cultural resources such things as distinctive shapes in the landscape, natural habitats for subsistence or medicinal plants, traditional fisheries and wildlife, sacred religious sites, and places of spiritual renewal. BPA will work with the tribes to identify important cultural resources for the purposes of inventory, protection, and mitigation where appropriate.



- VIII.** BPA will protect cultural resources by fulfilling its obligations as a Federal trustee, as required under terms of a treaty, and as required by the American Indian Religious Freedom Act (as amended), the Native American Graves Protection and Repatriation Act, the Native American Free Exercise of Religion Act, the National Historic Preservation Act, the Archaeological Resources Protection Act and other applicable laws and regulations. Prior to taking actions that may have an impact on cultural resources, BPA will consult with potentially affected tribes.
- IX.** To facilitate a government-to-government relationship, BPA will work cooperatively with each tribe to develop points of contact and specific lines of communication.
- A.** Within the limits of its legal authority, BPA will not change this policy without advance notice and consultation with the tribes.
- B.** BPA will make its best efforts to ensure that if future changes in its organization nullify any part of the policy, then BPA will promptly consult with the tribes and revise the policy accordingly.
- C.** Successful implementation of this policy requires commitment throughout BPA's chain of command. BPA managers and staff will be accountable for creating and maintaining a mutually beneficial government-to-government relationship with the tribes.

Tribal Affairs

If you would like more information about Tribal Affairs services or programs, please contact us.

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