

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

Table of Contents

I.	Executive Summary	2
II.	Agency Overview & Background	2
A.	Mission Statement	2
B.	Agency Overview	2
C.	Any Department – Specific Tribal Collaboration/Consultation policy	4
III.	Agency Efforts to Implement Policy (11-18-4.C (1)(3))	5
IV.	Current & Planned Programs and Services	10
A.	Description of current and planned programs and services	10
B.	Main agency accomplishments and challenges	11
C.	Goals for fiscal year FY23	11
V.	Training & Employee Notification (11-18-4. (4)(6))	11
A.	STCA Training and Certification	11
B.	Employee Notification about STCA	12
VI.	Key Names & Contact Information (11-18-4.C (2))	12
VII.	Relevant Statutes & Mandates	12
A.	Agency specific and applicable state or federal statutes and mandates	12
VIII.	Agreements	13
IX.	Appendix	13

I. Executive Summary

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD) protects and conserves the state's natural resources and provides recreational opportunities throughout the state.

The department officially adopted the "Protecting and Promoting New Mexico's Environment Groups, Tribal Communication and Collaboration Policy" on December 18, 2009. The policy was updated in August 2019 to better align EMNRD with federal laws and policies and to make a clear distinction between consultation and collaboration.

Fiscal Year 2022 (FY22) included consultations and collaborations with tribes regarding shared forest stewardship, projects in state parks, oversight priorities in the oil and gas industry, mine land reclamation to ensure tribal interests are considered, and renewable energy development potential.

II. Agency Overview & Background

A. Mission Statement

The Energy, Minerals and Natural Resources Department strives to become a national model for an energy and natural resource agency with deep policy expertise, transparent processes, and a cohesive mission that balances conservation and development. The five divisions housed in EMNRD (Energy Conservation and Management, Forestry, State Parks, Oil Conservation, and Mining and Minerals) all play a crucial role in managing natural resources for future generations, ensuring responsible development, and expanding renewable energy.

B. Agency Overview

The New Mexico Energy, Minerals and Natural Resources Department (herein EMNRD) protects and conserves the state's natural resources and provides recreational opportunities across the state. EMNRD was created in 1987 through a merger between the Natural Resources and Energy and Minerals Departments. The agency contains nearly 500 full-time employees across six divisions.

The Agency is home to five programmatic divisions, one support division, two administratively attached departments, and one affiliated program:

- Energy Conservation and Management Division (ECMD)
 - WIPP Transportation Safety Program
- Forestry Division (FD)
- Mining and Minerals Division (MMD)
- Oil Conservation Division (OCD)

- State Parks Division (SPD)
- Program Support Division
- Administratively attached (not covered by this report)
 - New Mexico Department of Game and Fish
 - Youth Conservation Corps

Energy Conservation and Management Division (ECMD)

ECMD develops and implements effective clean energy programs including renewable energy, energy efficiency and conservation, and alternative transportation and fuels. ECMD promotes environmental and economic sustainability for New Mexico and its citizens. To this purpose, the division provides technical assistance and plans and administers statutorily required state and federal clean energy programs. The Division also regulates all high-temperature geothermal activities in the state.

ECMD houses one of EMNRD's affiliated programs, the Waste Isolation Pilot Program (WIPP) Transportation Safety Program. WIPP is a cooperative effort among shipment-corridor states, tribes, local officials, and the United States Department of Energy (DOE). Its goal is the safe and uneventful transport of radioactive materials.

Forestry Division (FD)

Forestry promotes healthy, sustainable forests in New Mexico for the benefit of current and future generations. The Division assists communities by evaluating those areas most vulnerable to damage from wildfire and forest insect diseases. Additionally, the division develops forest management programs and implements mitigation projects to improve the overall health of the state's forests and watersheds.

The Division has statutory authority for wildfire suppression on all non-federal, non-municipal, and non-tribal lands (approximately 43.5 million acres), and provides technical assistance to private landowners and tribal nations on forest and watershed management issues. The Forestry Division is divided into nine field offices: Bernalillo, Capitan, Chama, Cimarron, Las Vegas, Los Lunas, Silver City, Socorro, and Santa Fe. Additionally, the Division operates the New Mexico Forest and Watershed Health Office in Albuquerque and the Smokey Bear Historical Park in Capitan.

Mining and Minerals Division (MMD)

The Mining and Minerals Division promotes public trust by ensuring the responsible utilization, conservation, reclamation, and safeguarding of lands and resources affected by mining. The division regulates coal and hard rock mining, reclaims abandoned mine lands, and provides public information on mining.

Oil Conservation Division (OCD)

The Oil Conservation Division assures the protection, conservation, management, and responsible development of oil, natural gas, and associated natural resources through dynamic regulation for the benefit of all New Mexicans.

The Division regulates oil and gas production activities, provides a clearinghouse for production data, permits new wells, establishes rules of operation, and monitors underground injection wells while maintaining a robust and extensive environmental oversight schedule. The OCD has five offices in Albuquerque, Artesia, Aztec, Hobbs, and Santa Fe.

Program Support Division

The Program Support Division assists all other divisions to meet their goals and objectives by providing administrative services as well as policy direction and management. Program Support consists of: Office of the Secretary (OFS), Administrative Services Division (ASD), Office of General Counsel (OGC) and Information Technology Office (ITO).

These administrative units provide legal, human resources, fiscal, and information technology support to all of EMNRD.

State Parks Division (SPD)

New Mexico State Parks protects and enhances natural and cultural resources, provides first-class recreational and educational facilities and opportunities, and promotes public safety to benefit and enrich the lives of its visitors.

Outdoor recreation is a driving force in New Mexico's economy and State Parks is a key player in this industry. Connected to communities statewide, New Mexico's thirty-five state parks are often economic drivers for local businesses, towns, and cities. Many rural communities rely upon a state park as a major source of economic development.

State Parks employs dedicated staff to ensure that parks are cared for and preserved to the highest professional standards.

C. Any Department – Specific Tribal Collaboration/Consultation policy your agency might have adopted in addition to STCA (11-18-4.C (1))

EMNRD's tribal consultation policy revision was completed on August 23, 2019, now codified as OFS-139. **See Appendix A.**

III. Agency Efforts to Implement Policy (11-18-4.C (1)(3))

A. Describe agency's efforts to communicate, collaborate and consult with tribes as described in your Tribal Collaboration and Communications policy (Division specific efforts to build meaningful dialogue and collaboration with tribes)

Energy Conservation and Management Division (ECMD)

- ECMD held meetings with New Mexico Tribal Resilience Action Network (NM TRAN), an ad-hoc workgroup of tribal environmental staff, and tribal members interested in promoting climate resilience and adaption for New Mexico tribes and Pueblos. The NM TRAN reached out to ECMD to request information on how they can become engaged in state climate adaptation planning.

Forestry Division (FD)

As a result of the ongoing Shared Stewardship initiative, the Forestry Division worked closely with numerous, nations, and/or pueblos in fiscal year 2022.

- Mary Stuever worked with the Mescalero Tribal Forestry program to prepare a field course on plant associations in August 2021. .
- Chama District staff assisted the federal Bureau of Indian Affairs and the Jicarilla Apache Tribe, primarily via locating resources, for the 970-acre Amargo Fire which burnt on the Reservation near Dulce. Lightning started the fire on August 7, 2021.
- Arnie Friedt, Cimarron District Forester, provided a Letter of Support to Taos Pueblo for a Reserve Treaty Rights Lands (RTRL) funding application. With this funding, Taos Pueblo would implement forest restoration treatments within the Sangre de Cristo Mountains, specifically in the Rio Fernando and Rio Pueblo watersheds. The treatments will protect watersheds, improve forest resilience, and protect communities and the environment from the threat of catastrophic wildfire.
- Mary Stuever, Chama District Forester, conducted a field course on plant associations for the Mescalero Apache Tribal Forestry program on August 23-27, 2021. Four Forestry Division employees participated.
- Lindsey Quam, Deputy State Forester, conducted a planning meeting with the Santa Clara Pueblo Forestry Department to work on a collaborative project for wetland and stream area erosion control best management practices. Each organization will develop and utilize the final document as a resource tool for their constituent base regarding wetland and stream area erosion control techniques that take advantage of "green build" techniques.
- Lindsey Quam, Deputy State Forester, initiated a Memorandum of Agreement (MOA) with the Pueblo of Acoma to perform work on the Horace Mesa Project.

The Bernalillo District is also working with the Cibola National Forest on a Good Neighbor Agreement related to the project.

- The Bernalillo District has assisted with fuelwood distribution to four chapters on the eastern portion of the Navajo Reservation. Two volunteer groups from Kansas churches have been working to get the wood to the chapter houses from a project on private lands in the Jemez Mountains. The District also assisted additional chapters near Gallup.
- Joe Carrillo, Chama District Timber Management Officer, communicated with Santa Clara Pueblo on developing a five-year plan for project implementation utilizing anticipated increases in project funding with State and Federal funds.
- Work continued on the Red Cabin and No Name Spring forest restoration projects located on the Mescalero Apache Reservation.
- The Alamo Navajo School Board forestry crew worked with the Socorro District and Salado Soil and Water Conservation District (SWCD) to implement 150 acres of Wildland Urban Interface (WUI) treatment in Hop and Patterson Canyons in Magdalena.
- Lindsey Quam, Deputy State Forester, hosted the 2nd Tribal Working Group quarterly meeting. Five tribes attended the meeting, which featured presentations by the Division's Forest Health Program, Forest and Watershed Health Office, the Forest Guild, Department of Interior – Bureau of Indian Affairs, and the South-Central Climate Adaptation Science Center.
<https://www.hcn.org/articles/south-wildfire-pueblos-in-new-mexico-turn-to-goats-for-fire-management>
- Joe Carrillo, Chama District Timber Management Officer, conducted a Natural Resources Conservation Service (NRCS) closeout inspection on an Environmental Quality Incentives Program (EQIP) project on the Santa Clara Pueblo for approximately 10 acres. The activity included woody residue treatment within the Las Conchas burn scar, and replanting trees in the lower Santa Clara Creek watershed.
- Lindsey Quam, Deputy State Forester, provided a quarterly project update to the Pueblo of Acoma, who requested that the Forestry Division provide these updates regarding any projects being conducted in and surrounding the Bluewater Basin near Mount Taylor.
- Lindsey Quam, Deputy State Forester, provided additional information and clarification to the Pueblo of Jemez regarding a Memorandum of Agreement (MOA) between the Forestry Division and the Pueblo.
- Lindsey Quam and the Bernalillo District have maintained contact with several tribal council members of the Pueblo of Zuni regarding their interest in the development of an MOA, and potential opportunities for collaboration to develop natural resource projects within priority areas of the Pueblo.
- Todd Haines, Bernalillo District Forester, and Clay Benton, Timber Management Officer, worked with the Inmate Work Camp Program (IWC) and the City of Rio Rancho to begin a new bosque restoration project that includes cross-river

coordination with the Pueblo of Sandia. Two IWC crews (19 inmates) began work on the maintenance of the 136-acre Bosque owned by the City of Rio Rancho the second week of January 2022.

- The Chama District Forest and Watershed Restoration Act (FAWRA) grant preparation team met with the Jicarilla Apache Nation in late January 2022 and as a consequence included a Tribal parcel in the Rio Chama Headwaters FAWRA proposal.
- Joe Carrillo, Chama District Timber Management Officer, inspected 96 acres of treatment along the San Juan River on the Navajo Nation in January 2022. This activity completed and began two different funding allocations from State Severance Tax monies.
- Lindsey Quam, Deputy State Forester, hosted a quarterly tribal work group meeting with tribal natural resource programs. Discussion topics included funding opportunities, bark beetle management, pile burn workshops, prescribed burning opportunities and tribal engagement programs offered by partner organizations.
- James Anzalone, Socorro District Forester, met with representatives from the Alamo Navajo Chapter's Forestry Program to discuss employment and training opportunities with the Socorro District, including forestry and fire positions that can lead to professional certifications, and potential applicants including soon to be graduates from Western New Mexico University (WNMU).
- The organization Chizh for Cheii "Wood for Grandpa," which helps provide firewood for those in need on the Navajo reservation, received wood permits from the State Land Office (SLO) for a forest thinning project in a high priority area of the Zuni Mountains to be carried out by the division. More than 130 acres has been completed on the project with 10+ acres made easy to access for Chizh for Cheii.
- Lindsey Quam, Deputy State Forester, Collin Haffey, Forest and Watershed Health Coordinator, Clay Benton, Timber Management Officer, and James Anzalone, Socorro District Forester, coordinated potential firewood distribution efforts with Zuni Pueblo.
- Carmen Austin, Climate Change Specialist, met with the owner of Old Wood Mill in Santa Fe to discuss their interest in partnering with nations, tribes, and pueblos to expand the availability of firewood. Carmen discussed the bipartisan infrastructure bill that authorizes \$8 million via a firewood bank program effort to supply firewood to heat homes.
 - Old Wood Mill is also working with the Bernalillo District to distribute wood scraps to three Navajo Nation chapter houses.
- A forest thinning project on state land near the continental divide is providing wood for multiple entities, including Navajo Nation chapters, (offered to) Zuni Pueblo, and a sawmill in Milan. Approximately 300 acres are complete with 3-4 cords of wood produced per acre.

- Collin Haffey, Forest and Watershed Health Coordinator, met with Taos Pueblo Natural Resource Managers in May 2022 to discuss long-term restoration planning and implementation. They also discussed how the Forestry Division can support the Pueblo's prescribed fire goals.
- Mary Stuever, Chama District Forester, and Pablo Montenegro, Chama District Fire Management Officer, met with representatives from the Jicarilla Apache Nation, Jicarilla Bureau of Indian Affairs, Bureau of Land Management (BLM), and Santa Fe and Carson National Forests to discuss fire response for 2022 both on and adjacent to the Jicarilla Apache Reservation.
- Lindsey Quam, Deputy State Forester, participated in two tribal meetings with Picuris Pueblo and Taos Pueblo, the U.S. Forest Service, Bureaus of Indian and Affairs and other interagency partners to provide information regarding the Hermits Peak/Calf Canyon fires and listen to concerns raised by the Pueblo's for protection of lands, cultural properties, sacred sites, and other concerns.
- The Forestry Division partnered with the USDA Forest Service (USFS) to host a Tribal listening session with a majority of the middle Rio Grande and northern Pueblos regarding the Hermits Peak/Calf Canyon and Cerro Pelado Fires. This session allowed an opportunity for tribes to engage with all four incident management teams and vice versa. This further provided an opportunity for information exchange including tribal concerns and considerations during suppression and recovery strategies on these fires.
- Joe Carrillo, Chama District Timber Management Officer, met with the Jicarilla Apache Nation Board of Directors for Running Elk Corporation to discuss opportunities to collaborate on thinning projects on the Jicarilla Apache Reservation and Trust lands. Potential agreements, funding opportunities, and collaborative project work were discussed.
- Jacob Pederson, Forest Restoration Officer, drafted a General Services Agreement for Santa Clara Pueblo with the intent of utilizing the Pueblo to support post-fire forest and watershed restoration throughout Northern New Mexico.

Mining and Minerals Division (MMD)

Abandoned Mine Lands (AML)

The New Mexico Abandoned Mine Land (AML) Program, as well as its national counterparts, were formed by the passage of the Surface Mining Control and Reclamation Act (SMCRA) on May 2, 1977 (amended in 2006). This law places a fee on active coal mines that varies depending on whether it is surface-mined coal or underground-mined coal. These monies are placed in a fund, the Abandoned Mine Reclamation Fund, which then finances projects to reclaim coal mines abandoned prior to the enactment of SMCRA. Under certain conditions, abandoned non-coal mines may also be reclaimed.

- The New Mexico AML program sent letters to the following tribes regarding a Notification of Application for Revision 14-1, GeoSouthwest Mill and Tailings, Luna County, New Mexico: Chairman Timothy Nuvangyaoma, Hopi Tribe; President Gabe Aguilar, Mescalero Apache Tribe; Chairwoman Gwendena Lee-Gatewood, White Mountain Apache Tribe; Governor E. Michael Silvas, Ysleta del Sur Pueblo; and Chairwoman Lori Gooday-Ware, Fort Sill Apache Tribe.

Mining Act Reclamation Program (MARP)

The Mining Act Reclamation Program (MARP) was created under the New Mexico Mining Act of 1993 to regulate hard rock mining reclamation activities for all minerals except the exploration and extraction of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction; the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes; the development or extraction of coal; the extraction of geothermal resources; smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas; or the extraction, processing or disposal of commodities, by product materials or wastes or other activities regulated by the federal Nuclear Regulatory Commission.

- The MARP program issued Tribal Notification letters requesting review and comment for the Minimal Impact Exploration Operation Permit Application, Cline's Mine Exploration Project, Eddy Co., NM June 2021 to the following tribes: the Comanche Nation of Oklahoma, Isleta del Sur Pueblo, Tesuque Pueblo, Kiowa Tribe, and the Mescalero Apache.
- The MARP program issued Tribal Notification letters on July 26, 2021 requesting review and comment for Permit Modification 21-1 Application, Copar South Pit, Mine, Sandoval County, NM to the following tribes: Pueblo of Cochiti, the Comanche Nation of Oklahoma, the Hopi Tribe, Pueblo of Isleta, Pueblo of Jemez, Jicarilla Apache Nation, Pueblo of Laguna, Navajo Nation, Ohkay Owingeh, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of Sandia, Pueblo of Santa Ana, and Pueblo of Santa Clara.
- The MARP program sent a Request for Comments on September 22, 2021 to the following Tribes regarding the Minimal Impact Exploration Permit Application, Black Spring Section 4 and 9 Exploration Project, Menefee Mining Corporation, McKinley County, New Mexico (Permit No. MK055EM): Chairman Timothy Nuvangyaoma, Hopi Tribe; Director Leigh Kuwanwisiwma, Hopi Cultural Preservation Office; Governor Vernon Abeita, Pueblo of Isleta; Dr. Henry Walt, Pueblo of Isleta, THPO; President Jonathan Nez, Navajo Nation; Dr. Richard Begay, Navajo Nation; THPO Governor John Antonio, Pueblo of Laguna; Governor Brian Vallo, Pueblo of Acoma; Mr. Damian Garcia, Pueblo of Acoma, THPO; Governor Mark Mitchell, Pueblo of Tesuque; Mr. Mark Mitchell, Pueblo of Tesuque, THPO; and Governor Val R. Panteah, Sr., Pueblo of Zuni.

- The MARP program in MMD received an application from Freeport MacMoran Incorporated for the EMMA Expansion Project in October 2021 (Application for Revision 21-1 for Tyrone Mine Permit No. GR010RE). As part of the processing of the application, MMD sent tribal consultation letters to Brian D. Vallo, Governor, Pueblo of Acoma; Chairman Jeff Haozous, Fort Sill Apache Tribe; Timothy L. Nuvangyaoma, Chairman, The Hopi Tribe; Governor Vernon Abeita, Pueblo of Isleta; Gabe Aguilar, President, The Mescalero Apache Tribe; President Jonathan Nez, Navajo Nation; and Gwendena Lee-Gatewood, Chairwoman, The White Mountain Apache Tribe.
- The MARP program in MMD received an application for a Regular Exploration Permit (Tererro Exploration Project, Permit No. SF040ER) on January 18, 2022. As part of the processing of the application, MMD sent tribal consultation letters to Governor Raymond Loretto, DVM, Pueblo of Jemez.

Oil Conservation Division (OCD)

OCD works with tribes, nations, and Pueblos who have active oil and gas operations within their tribal territories on well inspections, spill clean ups, well plugging, and remediation. OCD only works on tribal land when the tribe requests support.

State Parks Division (SPD)

Almost all State Parks projects that involve ground-disturbing programmatic activities (maintenance excluded) require consultation with the State Historic Preservation Officer and any tribes that have expressed an interest in a given area (denoted by county). This requirement is based on language in the National Historic Preservation Act (for federal lands) and in our own internal policy (for state lands).

IV. Current & Planned Programs and Services for Native Communities (11-18-4.C (5))

A. Provide a description of current and planned programs and services provided to or directly affecting Native communities and the funding for each program

State Parks Division (SPD)

- New Mexico State Parks will be working with the Navajo Nation on trail development in and around Navajo Lake State Park and along the San Juan River.

B. Main agency accomplishments and challenges regarding work with tribes and Native organizations including significant state-tribal issues, recommendations and/or priorities addressed in FY22.

With regard to project-specific tribal consultation, EMNRD has largely not received negative feedback from tribes or pueblos. However, a common challenge found across all EMNRD divisions is a limited response from tribal governments.

We would like to work more closely with the Indian Affairs Department to augment tribal relationships and help facilitate communication.

C. Goals for fiscal year FY22 relating to tribes and Native organizations.

- Continue successful compliance consultation and education with tribes as related to all EMNRD programmatic activities.
- Through continued outreach, increase tribe, nation, and Pueblo engagement on climate change issues through the Climate Change Task Force and the development of the 2023-2028 climate action plan.
- Expand support for tribes, nations, and Pueblos outdoor recreation opportunities through the Land and Water Conservation Fund grant program.
- Develop and strengthen working relationships in the oil and gas sector to allow for successful management of the OCD's well plugging program funded by the federal infrastructure bill.

V. Training & Employee Notification (11-18-4 (4)(6))

A. STCA Training and Certification

The EMNRD policy is designed and implemented to ensure that all EMNRD agency managers and employees who have ongoing communication with tribal government entities complete the training provided by the State Personnel Office. Employees will be trained and certified to promote effective communication and collaboration between State and tribal governments.

Additionally, EMNRD has developed its own training program designed to supplement those offered by the State Personnel Office and the Indian Affairs Department. This training focuses on EMNRD-specific situations that involve the natural resources of Native tribes, nations, and Pueblos.

B. Employee Notification about STCA

To ensure that all employees are aware of EMNRD's policy pursuant to the State-Tribal Collaboration Act the policy is posted on the department's intranet and is part of each employee on-boarding packet. Possible revisions have been discussed to incorporate the Equity Principles adopted by the Climate Change Task Force. If these revisions are adopted through EMNRD's policy process a new version of the policy will be made available to all EMNRD employees.

VI. Key Names & Contact Information (11-18-4.C (2))

A. Organizational chart and contact information

Program Support Matthew Lovato 505.476.3321 matthew.lovato@state.nm.us	Energy Conservation & Management Division Louise N. Martinez 505.476.3315 louise.martinez@state.nm.us
State Forestry Division Laura McCarthy 505.476.3340 laura.mccarthy@state.nm.us	Mining and Minerals Division Gerard (Jerry) Schoeppner 505.476.3435 gerard.schoeppner@state.nm.us
Oil Conservation Division Adrienne Sandoval 505.476.3451 adrienne.sandoval@state.nm.us	Office of the Secretary Todd Leahy, Deputy Secretary & Tribal Liaison 505.476.3316 todd.leahy@state.nm.us
State Parks Division Toby Velasquez 505.476.3366 toby.velasquez@state.nm.us	Secretary of EMNRD Sarah Cottrell Propst 505.476.3316 sarah.propst@state.nm.us

VII. Relevant Statutes & Mandates

A. Agency specific and applicable state or federal statutes and mandates.

(Ex. State Tribal Collaboration Act, Transfer of Water Rights, National Historic Preservation Act, etc.)

State Parks is required to conduct tribal consultation on a state level through EMNRD as well as its own policy (State Parks Section 9A). State Park's programmatic actions also fall under the New Mexico Cultural Properties Act (NMAC IV, ch. 10). Because State Parks manages federal property and/or receives federal funding, the National Historic Preservation Act (NHPA), Native American Graves Protection and Repatriation Act (NAGPRA), and the Archaeological Resources Protection Act (ARPA) also apply.

B. A list of any current or pending agreements with tribal nations, the site location

Programmatic agreement between EMNRD, Office of Surface Mining and the Advisory Council on Historic Preservation for all Abandoned Mine Lands (AML) program grants.

VIII. Appendix

A. EMNRD tribal consultation policy

POLICY AND PROCEDURE OFS-139

SUBJECT: General Tribal Government Consultation and Communication

PURPOSE: Promote effective communication and collaboration between the Energy, Minerals and Natural Resources Department (EMNRD) and Indian nations, tribes, or pueblos; promote positive government-to-government relations between EMNRD and Indian nations, tribes, or pueblos; promote cultural competency in providing effective services to American Indians or Alaska Natives; and to notify EMNRD employees of the provisions of the State-Tribal Collaboration Act and this policy.

APPLICABILITY: All EMNRD divisions and employees.

POLICY: EMNRD's policy is to work with tribal governments to create a positive government-to-government relationship and to promote effective communication and collaboration.

REFERENCES: Governor's Executive Order 2005-004
State-Tribal Collaboration Act, NMSA 1978, § 11-18-1 *et seq.*

PROCEDURES:

- I. Background
- II. Definitions
- III. Principles
- IV. Tribal Liaison
- V. Procedures
- VI. Annual Report
- VII. Limitations

APPROVAL: _____
Cabinet Secretary or Designee

DATE: _____

I. BACKGROUND

- A. This consultation and communication policy establishes the Energy, Minerals and Natural Resources Department (EMNRD's) commitment to work with tribal governments to create government-to-government relationships and to promote coordinated collaboration.
- B. This policy establishes a framework to jointly address issues of concern and to establish a meaningful consultation process with Indian nations, tribes, and pueblos in New Mexico.
- C. This policy applies to all federally recognized tribes with traditional use or occupancy in New Mexico.

II. DEFINITIONS

- A. "American Indian or Alaska Native" means: (1) individuals who are members of any federally recognized Indian tribe, nation, or pueblo; (2) individuals who would meet the definition of "Indian" pursuant to 18 U.S.C. 1153; or (3) individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States Public Health Service, the United States Department of the Interior, Bureau of Indian Affairs, or other federal programs.
- B. "Consultation" means the process of government-to-government dialogue between EMNRD and tribal governments regarding EMNRD's programmatic actions or proposed actions that affect or may affect the tribal government's interest, to resolve those concerns.
- C. "Communication" means verbal or written interactions between governments or government entities.
- D. "Indian nation, tribe, or pueblo" means any federally recognized Indian nation, tribe, or pueblo located wholly or partially in New Mexico.
- E. "Programmatic actions" means any EMNRD rulemaking, policy, guidance, legislative proposal, grant funding changes, or operational activity that may have a direct effect on an Indian nation, tribe, or pueblo including, but not limited to: (1) tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance; (2) the ability of an Indian nation, tribe, or pueblo to govern or provide services to its members; and (3) any action that impacts an Indian nation, tribe, or pueblo's relationship with EMNRD.
- F. "Tribal government" means the governing structure of a sovereign, federally recognized tribe, pueblo, band, or nation within the United States.
- G. "Tribal liaison" means the EMNRD employee designated by the Secretary to serve as a contact person for issues pertaining to tribal government consultation and communication. EMNRD, through cooperation with the Department of Indian Affairs

(DIA), shall, on an annual basis, contact tribal governments to ensure that the consultation process is effective, and that tribal liaison contact information is updated.

III. PRINCIPLES

- A. The state and tribal governments are sovereign governments.
- B. Tribal governments are unique, and each has its own governmental structure, process, and protocols. To maintain government-to-government relationships, EMNRD shall work with tribal governments to develop mutually acceptable protocols for consultation.
- C. Some tribal governments claim locations within New Mexico as traditional use or occupancy and therefore, hold significant concerns related to the lands and resources under EMNRD's jurisdiction even though located elsewhere.
- D. EMNRD shall work in good faith with tribal governments to address and mutually resolve expressed tribal government concerns.
- E. Meaningful consultation requires direct two-way communication and effort to respond to requests in a timely manner. Communication, consultation, and collaboration with tribal governments shall be a fundamental principle of all EMNRD operations.

IV. TRIBAL LIAISON

The EMNRD tribal liaison shall report directly to the Secretary or designee and assist EMNRD with:

- A. developing and ensuring implementation of this policy;
- B. serving as a contact person who shall maintain ongoing communication between EMNRD and affected Indian nations, tribes, or pueblos; and
- C. ensuring that training is provided to EMNRD staff as specified in NMSA 1978, § 11-18-4(B).

Nothing in Section IV shall preclude the tribal liaison from providing or facilitating additional training.

V. PROCEDURES

- A. Identification: Programmatic actions requiring consultation shall be identified by EMNRD or tribal governments as early as possible to give sufficient time for meaningful consultation.
- B. Initiating Consultation: EMNRD shall consult with tribal governments upon:
 - 1. written request for consultation by one or more tribal governments to EMNRD;
or

2. written invitation for consultation by EMNRD to one or more tribal governments.
- C. Written Notification: The written notification for consultation shall:
1. be timely;
 2. identify the proposed programmatic action to be consulted upon and provide relevant information regarding the action; and
 3. identify the tribal liaison authorized to consult on behalf of EMNRD and request names for authorized consultants from the tribal government.
- D. Inclusion: Tribal governments shall have the opportunity to provide input and recommendations on the proposed programmatic actions to EMNRD officials responsible for the final action.
- E. Final Decision Making: The EMNRD tribal liaison and the consulting tribal government or governments shall develop a timeframe for consultation between EMNRD and tribal governments on EMNRD's proposed programmatic actions to include a date when EMNRD shall make a final decision as to how to proceed with the proposed action.
- F. Representation at Consultation: Government-to-government consultation shall be between tribal and EMNRD officials. Each time a programmatic action requires compliance with this policy, employees shall notify the Office of the Secretary. While EMNRD employees are encouraged to maintain regular communication and cooperation with tribal governments, official consultation occurs through the Office of the Secretary. Consultation meetings may be held wherever practical, including tribal government locations.
- G. Scope: EMNRD shall consult appropriate to the scale of the undertaking in compliance with all applicable state and federal laws.
- H. Confidentiality: Successful consultation is dependent upon EMNRD protecting confidential information provided by tribal governments to the extent allowed by applicable federal and state laws, including the New Mexico Public Records Act, and the Inspection of Public Records Act. EMNRD will protect and exhibit a high degree of respect and sensitivity regarding the confidential information provided by tribal governments and will ensure confidentiality whenever possible.

VI. ANNUAL REPORT

No later than July 31 of every year, EMNRD shall submit a report to the DIA on EMNRD activities pursuant to the State-Tribal Collaboration Act. The report shall include:

- A. the policy EMNRD adopted pursuant to the State-Tribal Collaboration Act;

- B. the names of and contact information for the EMNRD employees who are responsible for developing and implementing EMNRD programs that directly affect American Indians or Alaska Natives;
- C. EMNRD's current and planned efforts for implementing this policy;
- D. a certification by the State Personnel Office of the number of EMNRD managers and employees who have completed the training required by Section IV.C. of this policy;
- E. a description of current and planned programs and services provided to or directly affecting American Indians or Alaska Natives and the amount of funding for each program; and
- F. the method EMNRD established for notifying EMNRD employees of the provisions of the State-Tribal Collaboration Act.

VII. LIMITATIONS

- A. This policy creates no benefit, substantive or procedural right, or entitlement, enforceable by law, for any tribal government or tribal official, and state government or state official.
- B. This policy shall not diminish any administrative or legal remedy otherwise available by law to EMNRD or a tribal government.
- C. This policy shall not be construed to waive the sovereign immunity of the State of New Mexico or a tribal government, or to create a right of action by or against the State of New Mexico or tribal government or its officials for failure to comply with this policy.
- D. This policy does not prevent EMNRD and tribal government from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, or established administrative procedures and practices mandated by federal, state, or tribal laws or rules or regulations.
- D. EMNRD retains the final decision-making authority with respect to actions undertaken by EMNRD.