

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

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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 2023 (FY23) included 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 over 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)

- Numerous discussions and information meetings regarding renewable energy development on Native lands throughout the fiscal year. As increased federal funding becomes available, EMNRD/ECMD are continuing these meetings designed to align Pueblo, tribe, or nation governments with funds and providing technical assistance on project implementation.

Forestry Division (FD)

Tribal Collaboration group is a grass roots type group put together because State Forestry felt there was a need to try and coordinate natural resources/forestry discussions, opportunities, information between the Forestry Division and Pueblos, tribes, and nations. The group meets three times a year and discussions include funding opportunities, needs, guest presentations from groups or entities partners may not be aware of or could benefit from, project opportunities and ways to collaborate etc. Attendance fluctuates on which tribes attend but on average there are approximately 8 tribes represented, almost all of which are Pueblo.

The goal is to try and develop projects with Pueblos, tribes and nations, provide technical assistance, and funding. The Division has several projects underway with tribal partners:

- **Mescalero Apache** (multi-year project with funds more than \$1 million)
- **Santa Clara** (over a decade of partnership with excess of \$8 million project funds)
- **Sandia** (multi-year projects, primarily in bosque, several hundred thousand in funds provided to date, also engaged with project development on Bobcat Ranch in the Red River area, which the Pueblo owns)
- **Jemez** (1st project with \$200k+ reforestation and watershed treatment)
- **Acoma** (multi-year and multi-agency collaboration effort on the Mt. Taylor landscape (\$100k+ contributed, along with Forest Service funds, Laguana has also been a participant, but Acoma specifically requested assistance for this project)

Interest but no consistent movement towards MOA's or projects with the following:

- **Zuni**
- **Isleta**
- **Santa Ana**
- **Tesuque**
- **San Ildefonso**
- **Taos**
- **Jicarilla**

- **Kewa**
- **Cochiti**

Lastly, State Forestry is involved with a separate working group that focusses on Tribal Wildfire initiatives/collaboration.

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 AML program collaborates with tribal interests wherever a reclamation project occurs.

Mining Act Reclamation Program (MARF)

The Mining Act Reclamation Program (MARF) 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 MARF program has worked with Picuris Pueblo regarding mine closeout and bond release, as well as additional vegetation studies.

Uranium Mine Waste Disposal and Clean Up

This year, the Mining and Minerals Division established a coordinator to gather information and begin working to clean up uranium mine waste in western New Mexico. Working with tribal interests, especially the Navajo Nation, has proven critical to the success of this effort.

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.

The OCD has worked with the Navajo Nation, the Jicarilla Apache Nation the Ute Mountain Ute Tribe. These collaborations will continue and expand in FY24, with a focus on locating and plugging orphan and abandoned oil and gas wells.

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 Pueblos, tribes, and nations on projects at Fenton Lake Park, Villanueva State Park, and Pecos Canyon State Park as well as others.

Mining and Minerals Division (MMD)

- EMNRD Mining and Minerals Division will continue to work with the Ft. Sill Apache on an expanding mine exploration project in area identified by Ft. Sill as culturally important.

State Forestry Division

- EMNRD Forestry Division will continue to work with it's tribal collaboration group and develop forest management projects.

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.

Regarding project-specific tribal consultation, EMNRD has not received negative feedback from Pueblos, tribes or nations. 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 FY23 relating to tribes and Native organizations.

- Continue successful collaboration, consultation, and education with tribes as related to all EMNRD programmatic activities.
- 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

<p>Program Support Matthew Lovato 505.476.3321 matthew.lovato@emnrd.nm.gov</p>	<p>Energy Conservation & Management Division Jeremy Lewis, Acting Director 505.476.3315 Jeremy.lewis@emnrd.nm.gov</p>
<p>State Forestry Division Laura McCarthy 505.476.3340 Laura.mccarthy@emnrd.nm.gov</p>	<p>Mining and Minerals Division Albert Chang 505.476.3435 Albert.change@emnrd.nm.gov</p>
<p>Oil Conservation Division Dylan Fuge 505.476.3451 Dylan.fuge@emnrd.nm.gov</p>	<p>Office of the Secretary Todd Leahy, Deputy Secretary & Tribal Liaison 505.476.3316 todd.leahy@emnrd.nm.gov</p>
<p>State Parks Division Toby Velasquez 505.476.3366 toby.velasquez@emnrd.nm.gov</p>	<p>Secretary of EMNRD Sarah Cottrell Propst 505.476.3316 sarah.propst@emnrd.nm.gov</p>

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.