

APHIS Directive 1040.1
9/8/95

RELATIONSHIPS WITH NATIVE AMERICANS AND TRIBAL GOVERNMENTS

1. PURPOSE

This Directive:

- a. States the Animal and Plant Health Inspection Service's (APHIS) policy concerning working relationships and mutual partnerships with Native Americans and tribal governments in the delivery of agricultural services and programs;
- b. Establishes the APHIS Native American Working Group (ANAWG);
- c. Identifies operating methods of the ANAWG; and
- d. Includes a glossary of terms associated with Native Americans (Attachment 1).

2. AUTHORITIES

- a. Departmental Regulation 1020-5, Native American Working Group, dated January 10, 1992.
- b. Departmental Regulation 1020-6, Policies on American Indians and Alaska Natives, dated October 16, 1992.
- c. Departmental Regulation 1340-2, Consolidating USDA Agencies' Services on Indian Reservations, dated August 6, 1991.
- d. Presidential Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments.
- e. Executive Order 12875, Enhancing the Intergovernmental Partnership.
- f. Executive Order 12866, Regulatory Planning and Review.
- g. Executive Order 12898, Environmental Justice in Minority Populations and Low Income Populations.
- h. Civil Rights Act of 1964, as amended, Title VI, Nondiscrimination in Program Delivery.

3. BACKGROUND

The United States Department of Agriculture's NAWG was established January 15, 1983, to improve opportunities for all rural Americans by providing effective and efficient direction and coordination of Federal agricultural and rural development programs within each of the individual States and territories. Agencies have the responsibility for directing services and programs to the Native American segment of the rural population on an equal basis with the rest of the rural population.

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American Indians, Alaska Natives, Eskimos, and Aleuts, herein referred to as *Native Americans*, are people with distinct cultures and traditions. Most reside in rural areas west of the Mississippi, but there are Native Americans living in every State of the Union. Approximately 28 percent live on reservations. Presently, 53 million acres of land in the United States are "Indian" lands. After the Alaska Native land selections are completed, almost 5 percent of all land in the United States will be in Native American ownership.

Explicit rights and privileges, including livestock grazing, hunting, subsistence, and gathering of plant resources, are associated with treaties and agreements between specific Tribes and the Federal Government. In addition, land and resources hold a special and unique meaning in the spiritual and everyday lives of many Native Americans.

Native American tribal governments also have distinct legal and political relationships with the United States Government, defined by history, treaties, statutes, court decisions, and the U.S. Constitution. These relationships differentiate Native American governments from other interests and constituencies that deal with all Federal agencies. Tribal governments have powers that are frequently separate, but equal to those of State and local governments, particularly regarding civil and criminal jurisdiction over individuals and corporations.

APHIS representatives have served on the USDA NAWG since 1983 to ensure that the Native American segment of the rural population is informed of APHIS' services and programs on an equal basis with the rest of the rural population. The APHIS NAWG was established in September 1994 under the direction of the Office of the Administrator.

The APHIS NAWG provides leadership in communicating and facilitating program delivery to tribal governments and intertribal committees. This is part of the continuing redemption of the U.S. Government's trust responsibilities, part of the APHIS customer service initiative, and in support of the Title VI program administered by Civil Rights Enforcement and Compliance to ensure nondiscrimination in program delivery. The APHIS Administrator retains authority for establishing Agency policy relating to APHIS activities of interest to Native Americans. At the same time, APHIS recognizes and respects the inherent capacity of tribal governments to manage and determine their respective needs.

4. POLICY

APHIS policy and philosophy does not suggest recognition of tribal authority that does not currently exist. Neither the Native American philosophy, nor the policy, will be used to arbitrate differences in opinion between Government agencies or to interpret any authorities, laws, or judicial findings. Unless specific judicial rulings or Acts of Congress indicate otherwise, APHIS' policy and philosophy should not be construed as validating the authority of any Native American government over lands or other natural resources or non-tribal members. APHIS will:

- a. Ensure the rights of sovereign tribal governments, as established through treaties, statutes, court decisions, and the U.S. Constitution.
- b. Enhance day-to-day working relationships by working directly with Native American governments, observing legislative mandates and

trust responsibilities, and respecting Native American cultural values when planning and initiating programs.

- c. Be flexible to accommodate the evolution of working relationships and mutual partnerships between APHIS programs and Native American governments. These partnerships/relationships generally will be consistent nationwide; however, they will vary according to legal and regulatory bases, program directives, and management requirements.

5. RESPONSIBILITIES

- a. The Administrator, in support of the ANAWG, will:
 - (1) Ensure that APHIS operates within Government-to-Government relationships with federally recognized tribal governments; and
 - (2) Ensure that APHIS program managers are aware of and in compliance with the Presidential Memorandum of April 29, 1994.
- b. The ANAWG will:
 - (1) Consist of designated representatives from each APHIS headquarters unit, the APHIS representative of the USDA NAWG (serving as the Chair), the alternate representative to the USDA NAWG, the APHIS Native American Program Manager, and the Native American recruitment specialist;
 - (2) Recommend and develop Agency policies and activities to enhance delivery of program services and active partnerships with Native American tribes, intertribal committees, and organizations. The Group will provide assistance and advice for existing programs, consistent with the Presidential Memorandum of April 29, 1994;
 - (3) Provide advice, support, and other assistance to the Administrator and the APHIS Management Team to promote/facilitate all APHIS policies and programs affecting Native American tribes;
 - (4) Work cooperatively with APHIS field personnel to coordinate "listening" meetings with the tribes to discuss tribal interests, their needs, and issues of mutual interest and concern;
 - (5) Develop and ensure the delivery of informational materials on APHIS programs to individual Native Americans, tribes, and tribal leaders; and
 - (6) Assist APHIS managers and program personnel in establishing and maintaining tribal contacts.
- c. APHIS managers and program personnel, working within their authority, will:
 - (1) Consult with the tribal leaders of federally recognized tribal governments before taking actions that affect them;

- (2) Consider the impact of APHIS projects, programs, and activities on tribal trust resources and establish communication systems with tribal leaders to ensure that tribal government rights and concerns are considered during their development;
- (3) Facilitate direct and effective working relationships with tribal governments on activities that affect the tribes' trust property and/or governmental rights;
- (4) Work cooperatively with other Federal departments and agencies and enlist their interest and support in mutually beneficial efforts; and
- (5) Direct APHIS services and programs to the Native American segment of the rural population equally with the rest of the rural population. Design culturally sensitive programs which address the specific needs and unique qualities of life within tribal communities.

6. INQUIRIES

Direct inquiries concerning the APHIS NAWG to 303-969-6560. Direct inquiries concerning policy and regulations relating to the Native American Program and Title VI, Non-Discrimination in Employment Programs, to the Director, Civil Rights Enforcement and Compliance on 202-720-6312.

Administrator

Attachment

Agreement. After official treaty-making ended in 1871, the Federal Government continued negotiating with tribal governments until 1913, primarily to achieve further reductions in Indian lands. These negotiations, referred to as "agreements," were submitted to both the Senate and the House of Representatives for ratification; whereas, "treaties" only had to be ratified by the Senate, under Article II of the Constitution. The majority of agreements were attached as riders to appropriation bills, although some were approved by Congress in separate laws.

Documents approved by two or more parties that identify their respective roles and responsibilities in achieving mutual objectives, e.g., Memoranda of Understanding (MOU), Cooperative Agreements, Grants, and Contracts.

Alaska Native Corporation. Any Alaska Native village or regional corporation established pursuant to the Alaska Native Claims Settlement Act, Pub. L. No. 92-203 (ANCSA).

Alaska Native. As defined by section 3(b) of ANCSA, a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaka Indian Community), Eskimo (Inuit), or Aleut blood, or a combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Native. It also includes, in the absence of proof of a minimum of blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he/she claims to be a member of whose father or mother is (or, if deceased, was) regarded as native by any village or group.

American Indian. An individual who is a member of a Native American (American Indian) Tribe, band, or community.

APHIS Native American Working Group (ANAWG). Established in September 1994, the mission of the ANAWG is to recommend, develop, and implement policies and activities designed to increase the delivery of program services and the formation of active partnerships with Native American tribes, committees, and organizations primarily through assistance and advice to the existing programs.

Bureau of Indian Affairs. In 1824, Secretary of War, John C. Calhoun, created a Bureau of Indian Affairs (BIA) in the War Department. In 1832, Congress officially authorized an Office of Indian Affairs. In 1849, 150 years ago, the Office of Indian Affairs was transferred to the Department of the Interior where it obtained bureau status. The role of the BIA has changed from removal of eastern tribes to the West, to reservation confinement, to land allotment and assimilation, to termination, and finally to tribal self-government and self-determination. Today the BIA acts as the principal agent of the United States in carrying on the Government-to-Government relationship that exists between the United States and federally recognized Native American Tribes and carrying out the responsibilities of the United States as trustee for property it holds in trust for federally recognized tribes and individual Native Americans.

Co-Management. Two or more entities, each having legally established management responsibility, working together to actively protect, conserve, enhance, or restore lands and/or natural resources.

Cooperative Management. Two or more entities working together to actively protect, conserve, enhance, or restore lands and/or natural resources.

Federally Recognized. The United States Government acknowledges that a tribe and its members exist as a unique political entity which has a formal relationship with the U.S. Government; a relationship that is traceable to the Indian Commerce Clause and the Treaty Clause of the U.S. Constitution (Art. I, Sec. 8, Cl. 3 and Art. II, Sec. 2, Cl.s 2). "Recognition establishes that a "federally recognized" Tribe, an independent sovereign, has certain inherent rights and powers of self-government and, as such, is entitled to specific benefits and services enumerated in various Federal laws and rights reserved/granted to Tribes by treaties, executive orders, or special acts of Congress, or other judicial processes. For example, health and education benefits flowing from the trust relationship or off-reservation hunting and fishing rights as they relate to treaties with special Tribal Governments. The process, regulations, and criteria for attaining Federal recognition are located in 25 Code of Federal Regulations (CFR) 83."

Indian Country. All the land under supervision of the United States Government that has been set aside for the use of Native Americans. This includes Native American reservations, as well as other areas under Federal jurisdiction and designated for Native Americans' use. As a general rule, State jurisdiction does not extend to Indian country, rather tribal and Federal law governs (exception P.L. 280). The Indian country designation is the benchmark for approaching the allocation of Federal, tribal, and State authority with respect to Native Americans and their lands.

Lands. Includes all uplands, wetlands, and open waters, such as streams, lakes, estuaries, and bays.

Native American. Most frequently, a person who is a member of any Native American tribe, band, group, or nation in the "lower" or conterminous 48 States of the United States and peoples indigenous to the United States, including Alaska, i.e., Alaska Indians, Eskimos (Inuits), Aleuts, and Alaska Natives.

Native American Governments. Governing bodies, including executive and legislative branches, of federally recognized tribes as regarded by Federal law and formally identified by the Department of Agriculture. Does not include other entities representing Native interests, such as corporations, societies, commissions, committees, associations, or other groups not officially designated by the Secretary of Agriculture as a "Government."

Native American Tribe (or Tribe). Any Native American tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the U.S. Government to Native Americans because of their status as Native Americans. Generally, a group of Native Americans that has been "federally recognized" as constituting a distinct and historically continuous political entity for at least some governmental purposes. Legally, no universal definition exists. The term "Tribe" may apply to a distinct group within a Native American village or community, the entire community, or a large number of communities or may refer to several different groups or villages speaking different languages but sharing a common government, or a widely scattered number of villages with a common language but no common government.

Reservation. "Trust assets" or an area of land "reserved" or held in "trust" and protected by the U.S. Government for a Native American tribe(s), band, or village to live on and use pursuant to treaties, statutes, and executive orders (Bureau of Indian Affairs 1968; Felix Cohen 1982). The term reservation refers to the early practice (in 1640) whereby Native American tribes were coerced, enticed, or otherwise persuaded to relinquish or "cede"

the majority of their homelands by treaty to the Federal Government, while "reserving" a portion of their original lands or natural resources for their use. There are about 300 Federal Native American reservations, also known as Indian pueblos, rancherias, communities, or colonies, located in 33 States. Properties located outside the contiguous boundaries of reservations, as well as lands conveyed under the Alaska Native Claims Settlement Act, that are held in fee title by Native Americans, as private property, generally are not considered to be reservations.

Sovereign. A body of persons or a state having independent and self-governing power, status, or authority. An 1831 Supreme Court decision confirmed that Native American nations were distinct, self-governing political entities, dependent upon the United States as their trustee. Tribes are described as "domestic dependent nations," coining the term "Nations within a Nation."

Treaty. Refers to any agreement, compact, alliance, convention, act, or contract between two or more independent (sovereign) nations with a view to the public welfare, including terms of peace, alliance, boundary establishment, trade, or other issues of mutual interest. Under the U.S. Constitution (Article II, Sec. 2, Cl. 2) the term "treaty" refers to international agreements concluded by the President with the advice and consent of the Senate, provided that "two thirds of the Senators present..." ratify the treaty. Treaties are binding on the States and others as "the supreme law of the land" (Article VI, Cl.2).

Tribal Government. The governing body of a Native American tribe that has been officially recognized as such by the Federal Government. Native American tribes are sovereigns, that is, governments, and State law does not apply to trust lands within reservation boundaries without Congressional consent.

Trust Relationship. Native American tribes are not foreign nations, but constitute "distinct political" communities "that may, more correctly, perhaps be denominated domestic, dependent nations" whose "relationship to the United States resembles that of a ward to his guardian." This language, in *Cherokee Nation v. Georgia (1831)*, reaffirmed the doctrine of Federal trusteeship in Native American affairs. Today, a trust relationship or partnership refers more accurately to a relationship resembling that of a "beneficiary to a trustee."

Trust Responsibilities. Treaties and agreements entered into by Native American tribal governments with the U.S. Government to "hold in trust," protect, and support Native American lands, sovereign rights, resources, and traditional-use areas. The U.S. Government acknowledges a unique legal relationship with Native American tribal governments that is traceable to the Indian Commerce Clause and the Treaty Clause of the U.S. Constitution (Art. I, Sec. 8, Cl. 3 and Art. II, Sec. 2, Cl.s 2), treaties, statutes, and court decisions.

USDA Native American Working Group (NAWG). On January 15, 1983, the Secretary ordered the establishment of the NAWG within the Governmental and Public Affairs Committee of the Secretary's Policy and Coordination Council to assist the Office of Intergovernmental Affairs (OIA), Office of Public Affairs, and the Director of Native American Activities to ensure the effective coordination or guidance of all USDA policies and programs regarding Native Americans.