



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3342

Subject: Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources

Sec. 1 Purpose. The purposes of this Order are to: a) encourage cooperative management agreements and other collaborative partnerships between Department of the Interior (Department) resource managers and tribes that will further shared interests in the management of Federal lands and resources; and b) establish a process and provide institutional support to ensure that land and resource managers evaluate and develop opportunities to further establish partnerships that benefit tribes and Federal agencies.

The Department has broad management responsibilities for Federal lands and resources, including permitting authorized development activities; managing vegetation, fish, wildlife, and other resources; protecting cultural resources; and providing recreational and educational opportunities on Federal lands and waters. Within the Department, the Bureau of Land Management (BLM), National Park Service (NPS), Fish and Wildlife Service (FWS), Bureau of Ocean Energy Management (BOEM), and Bureau of Reclamation (BOR) all have responsibility for managing these public resources for the benefit of current and future generations.

There are currently 567 federally recognized Indian tribes (tribes) in the United States, the ancestors of which inhabited the land that forms the present-day United States for millennia. This Order recognizes that tribes have special geographical, historical, and cultural connections to Federal lands and waters, and that tribes have traditional ecological knowledge and practices regarding resource management that have been handed down through generations. Federal land and resource managers value this traditional knowledge, which enhances Federal management decisionmaking and ensures a continued connection between tribes and Federal lands and waters.

Across the country, the Department has a wide variety of cooperative-management and collaborative-partnership arrangements with tribes – from providing technical assistance to formal agreements. Such successful arrangements are not only valued by the Department and tribes, but are also a benefit to the public at large. This Order articulates the principles and legal foundation for interactions between bureau land managers and tribes as those interactions relate to shared interests in managing, conserving, and preserving natural and cultural resources under the primary responsibility of Federal land and water managers. As described later in this Order, there are already numerous examples of cooperative-management agreements and other collaborative arrangements between Federal agencies and tribes that demonstrate the value of collaboration by furthering the interests of tribes while also enhancing the ability of Federal agencies to carry out their missions.

Sec. 2 **Background.**

a. The Department's Natural Resource Management Responsibility. This Order addresses partnership opportunities in the context of management and mission responsibilities of BLM, NPS, FWS, BOEM, BOR, and potentially other bureaus and offices (collectively, bureaus).

(1) NPS. The NPS manages units of the National Park System under and in accordance with what is commonly known as the NPS Organic Act, Act of August 25, 1916, ch. 408, 39 Stat. 535, codified as amended in various sections of Title 54 of the United States Code. The Organic Act directs the Secretary to “promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wildlife in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wildlife in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 54 U.S.C. 100101(a). Put another way, the fundamental purpose of the National Park System is conservation of park resources and values, and the NPS's principal responsibility is to manage park units to avoid impairment of those resources and values. *See generally* NPS Management Policies 2006 §1.4.

(2) BLM. The BLM manages the Nation's public lands pursuant to its organic act, the Federal Land Policy and Management Act of 1976 (FLPMA). 43 U.S.C. 1701 et seq., and other statutes. The FLPMA directs the Secretary, through the BLM, to manage the public lands “on the basis of multiple use and sustained yield,” which requires management of the public lands and resources for a variety of uses, including but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural, scenic, scientific and historical values to achieve and maintain in perpetuity output of various renewable resources of the public lands. 43 U.S.C. 1701(a). The BLM also manages some of the West's most spectacular landscapes, many of which are found in the BLM's 32 million-acre National Conservation Lands System. In sustaining the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations, BLM administers more public land – more than 45 million surface and 700 million sub-surface acres – than any other Federal agency in the United States.

(3) FWS. With 565 national wildlife refuges, 38 wetland management districts, and 5 national monuments, the National Wildlife Refuge System (NWRS) manages more than 850 million acres of lands and waters. The FWS manages the NWRS pursuant to various laws, including the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife System Improvement Act of 1997, 16 U.S.C. 668dd-668ee, and, for refuges in Alaska, the Alaska National Interest Lands Conservation Act of 1980, as amended. 16 U.S.C. 3101-3233. Under the Administration Act, the “mission of the System is to administer a national network of lands and waters for conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” 16 U.S.C. 668dd(a)(2). Each refuge is managed to fulfill the mission of the NWRS, the specific purpose for which each refuge was established, and for compatible wildlife-dependent recreation. 16 U.S.C. 668dd(a)(3).

(4) BOR. The BOR manages, develops, and protects water and related resources in an environmentally and economically sound manner in the interest of the American public. It is the Nation's largest wholesale water supplier. Under the Reclamation Act of 1902, BOR's work initially focused on the construction of dams and facilities to store and convey water, and has been expanded to include hydropower production, flood control, municipal and industrial water, recreation, and fish and wildlife enhancement. Areas operated by BOR often include important cultural and natural resources and provide unique educational and interpretive opportunities.

(5) BOEM. The BOEM manages the development of the U.S. Outer Continental Shelf (OCS) energy and mineral resources in an environmentally and economically responsible way. Under the authority provided by the Outer Continental Shelf Lands Act (OCSLA), 43 U.C.C. 1331, et seq., BOEM's responsibilities include managing oil and gas resources as well as hard minerals and the development of renewable energy on the OCS; and environmental studies of the impacts of OCS development.

(6) In addition to the responsibilities outlined above, BLM, NPS, and FWS have specific and unique responsibilities associated with the Federal Subsistence Management Program in Alaska pursuant to Title VIII of the Alaska National Interest Lands Conservation Act. 16 U.S.C. 3101 et seq.

b. Government-to-Government Relationships with Tribes.

(1) Central to the Department's mission is honoring and supporting the United States government-to-government relationships with tribes. Underlying this relationship is the Department's obligation to uphold the Federal trust responsibility to tribes. This trust responsibility is a well-established legal obligation that originates from the unique, historical relationship between the United States and tribes. The legal and trust relationship with tribal governments has been set forth in the United States Constitution, treaties, statutes, executive orders, and numerous court decisions, and serves as the foundation for the Department's interaction with tribes. Further examination of these authorities most recently resulted in the Department's issuance of Secretary's Order 3335, Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries, dated August 20, 2014.

(2) This government-to-government relationship leads us to further consider how the Department can collaborate with tribes to better integrate tribal knowledge and concerns into the management of Federal lands and waters under the Department's charge, while also making better use of tribal capabilities and resources to enhance the ability of bureaus to accomplish their missions.

c. Partnership in Managing Federal Lands and Resources.

(1) By way of this Order, the Department intends to increase the opportunity for tribes to participate in the management of Federal lands and waters within the Department's jurisdiction and the integration of traditional ecological knowledge and practices into management and operations. This may include new opportunities for access to these resources if

such access is in keeping with the bureau's mission. Of course, tribes will be responsible for deciding whether or not a cooperative agreement or other collaborative partnership with a bureau is in its interest. Each bureau will be responsible for assessing what activities will be suited to provide these opportunities for collaboration and cooperation.

(2) Such arrangements may vary widely depending on the circumstances and may range from agreements that improve sharing of technical expertise; to arrangements that make the knowledge, experience, and perspectives of tribes and their members integral to the public's experience with Federal lands; to arrangements that combine tribal and bureau capabilities to improve resource management and help advance the responsibilities and interests of both a tribe and a bureau; to annual funding agreements under the Tribal Self-Governance Act. There is a broad array of cooperative and collaborative opportunities available to bureaus and the tribes pursuant to the various general authorities referenced below.

(3) This Order focuses on developing cooperative and collaborative opportunities with tribes and does not address "co-management" which the Department defines as a situation where there is a specific legal basis that requires the delegation of some aspect of Federal decisionmaking or that makes co-management otherwise legally necessary. For example, in some instances, such as management of the salmon harvest in the Pacific Northwest, co-management has been established by law.

Sec. 3 Authorities. This Order is issued in accordance with the authority provided by 25 U.S.C. Sections 2 and 9 and Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended. Each bureau has available authorities that authorize cooperative agreements, collaborative partnerships, and other similar arrangements with tribes for various purposes. Some authorities may authorize funding tribes to perform particular activities while others may authorize tribal participation without Federal funding or by using financial and other resources provided by the tribe. Bureau-specific authorities supporting agreements and partnerships contemplated by this Order include, but may not be limited to:

a. NPS - 54 U.S.C. 101702(d). Authorizes the Secretary to enter into cooperative agreements with tribal governments for the purpose of protecting natural resources of units of the NPS System through collaborative efforts on land inside and outside the units.

b. BLM - 43 U.S.C. 1737. Authorizes BLM to (1) enter into cooperative agreements regarding the management, protection, and sale of public lands; (2) conduct investigations, studies, and experiments regarding the same in cooperation with others, and; (3) accept contributions or donations of money, services and property for the management, protection, development, acquisition, and conveying of the public lands.

c. FWS - 16 U.S.C. 661 Fish and Wildlife Coordination Act. Authorizes FWS to enter into agreements to assist in the protection of fish and wildlife and their habitats.

d. BOR - U.S.C. 373d. Authorizes BOR to enter into grants and cooperative agreements with tribes to promote the development, management, and protection of their water resources.

e. BOEM - 43 U.S.C. 1346. Authorizes BOEM to enter into agreements to carry-out environmental studies on the impacts of OCS development and to obtain information for such studies from any person.

Sec. 4 **Limitations.**

a. Cooperation and collaboration must take place within the framework of the Department's legal responsibilities and authorities. In exercising their legal authorities to implement this Order, bureaus should be mindful of legal limits on the delegation of inherently Federal functions to non-Federal entities. The bureaus should consult with the Office of the Solicitor for further guidance on the question of whether a particular program, service, function, or activity is inherently Federal.

b. In addition to legal constraints, the implementation of this Order must occur within the financial resources available to bureaus through the standard budget and appropriations process. Typically, it takes additional resources to work with tribes in evaluating, developing, and entering into a cooperative agreement or collaborative partnership. The bureaus should have candid discussions with tribes regarding the need and availability of financial resources associated with any proposal.

Sec. 5 An Approach to Cooperative and Collaborative Partnerships. Pursuant to this Order, bureaus must identify opportunities for cooperative management arrangements and collaborative partnerships with tribes and undertake efforts, where appropriate, to prepare their respective bureau staffs to partner with tribes in the management of the natural and cultural resources over which the bureaus maintain jurisdiction and responsibility. Although this Order is intended to encourage cooperative management agreements and collaborative partnerships consistent with the principles contained herein, it is not expected that all areas managed by the various bureaus, such as units of the National Park System, will provide such an opportunity. The bureau efforts shall include, but are not limited to, identification of key personnel to explore such opportunities, development of bureau-specific guidance for cooperative and collaborative partnerships with tribes, and, where requested, engagement in consultation with tribal governments at regional, and unit-specific levels to better understand tribal interests in specific cooperative and collaborative opportunities. Further, the Office of the Solicitor will develop a working group to advise bureaus on legal issues associated with exploring opportunities for and entering into cooperative agreements and collaborative partnerships with tribes.

a. Scope. The scope of the activities subject to this Order include, but are not limited to:

- (1) Delivery of specific programs and services.
- (2) Management of fish and wildlife resources.
- (3) Identification, protection, preservation, and management of culturally significant sites, landscapes, and resources.
- (4) Management of plant resources, including collection of plant material.

(5) Management and implementation of maintenance activities.

(6) Management of information related to tribal, cultural, and/or educational materials related to bureau units.

b. Principles. Tribes offer significant knowledge and experience in the management of natural resources, including traditional ecological knowledge and practices, which can enhance the bureaus' management of Federal resources and better protect tribal rights and interests. The bureaus shall abide by the following guiding principles in identifying opportunities for and implementing cooperative management opportunities and collaborative partnerships with tribes:

(1) Bureaus may choose to prioritize potential cooperative arrangements and collaborative partnerships that have been the subject of ongoing discussions prior to the effective date of this Order.

(2) Cooperative agreements and collaborative partnerships with tribes can help ensure effective management of Federal lands and resources, including managing resources according to the purpose for which the resources are set aside.

(3) Respect of the government-to-government relationship between the United States and tribes.

(4) Seeking cooperative management opportunities and collaborative partnerships, where appropriate in furtherance of the United States trust responsibility to tribes and support of Indian self-determination and self-governance.

Sec. 6 **Examples.** The bureaus already partner with tribes across the country in cooperative management and collaborative partnerships in many instances. The following are existing examples of the types of arrangements anticipated by this Order.

a. FWS Region 7 (Alaska). The FWS has a Memorandum of Understanding with the Kuskokwim River Intertribal Fisheries Commission. This group functions in an advisory capacity to help formulate management strategies and actions for the Kuskokwim River subsistence salmon fishery, increasing the ability of Alaska Native villages to have meaningful input into the active management of subsistence resources.

b. FWS Region 8 (Nevada). The Desert National Wildlife Refuge Complex collaborates with seven bands of Nuwuvi (Southern Paiute) on various activities, including protecting and managing cultural resources, planning restoration projects that incorporate traditional knowledge, and collaborating on interpretive displays, among other activities.

c. BLM. The BLM entered into a cooperative management agreement in 2012 with the Paiute Shoshone Indians of the Bishop Community to manage the Volcanic Tablelands in central California. The agreement identifies opportunities for cooperation on range management, cultural resource protection, recreation programs, and youth engagement initiatives.

d. BLM. The BLM manages the Kasha-Katuwe Tent Rocks National Monument, located in north-central New Mexico, in close cooperation with the Pueblo de Cochiti to protect the Monument's resources and sustain the cultural diversity of the Pueblo and surrounding communities. An agreement between BLM and the Tribe details mutual management responsibilities which range from trail maintenance and visitor services work to coordinating law enforcement with BLM.

e. BOEM. The BOEM's Environmental Studies Program has worked closely with Inupiat whalers on Alaska's North Slope to map subsistence harvest hunting areas for use in the environmental studies associated with offshore oil and gas activities.

f. NPS. The NPS Unit, Redwoods National Park, has an annual funding agreement in place with the Yurok Tribe under which the Tribe conducts watershed restoration and rehabilitation, culvert replacement, cultural resources inventories and assessments, oral histories, invasive plant removal, air quality monitoring, and scientific research related to California Condor recovery. The Tribe has also conducted large-scale demolition and restoration of a former NPS maintenance facility, maintained water systems, and has established a youth partnership program for trail maintenance.

g. NPS. The NPS, Grand Portage National Monument, and Isle Royale National Park have an annual funding agreement with the Grand Portage Band of the Lake Superior Chippewa Tribes for the maintenance and construction at the National Monument, interpretive services and planning, resource management, basic cultural and natural resource research, and the mainstay of repair and rehabilitation of Park facilities.

h. BOR. The BOR and the Pyramid Lake Paiute Tribe (PLPT) are jointly developing Truckee River Operating Agreement (TROA) modeling tools. The PLPT is a signatory party to TROA and responsible for scheduling releases of Stampede Dam project water for fish and wildlife purposes. The BOR then makes the releases. In addition, PLPT is using funds provided by BOR for managing invasive species on the reservation around BOR's Marble Bluff Dam with primary benefits to reservation land and water and ancillary benefits to BOR facilities.

i. BOR. The BOR currently has a contract with the Confederated Tribes of the Colville Reservation for law enforcement services to enforce laws on BOR land within the exterior boundary of the Colville Reservation. Tribal police officers must be certified, and the delegation does not include enforcement of any hunting, fishing, or boating regulations. In addition, BOR regularly contracts with the Confederated Tribes of the Colville Reservation and Spokane Tribe of Indians to inspect, or recover eroding burials through professional archeological excavation and in accordance with tribal traditions.

Sec. 7 Implementation. The Deputy Secretary is responsible for implementing all aspects of this Order, in coordination with the Assistant Secretaries and heads of bureaus. This responsibility may be delegated as appropriate. This Order does not alter or affect any existing duty or authority of the bureaus. In addition, all heads of bureaus are directed to immediately begin implementing Section 5 of this Order by identifying opportunities for cooperative management agreements and collaborative partnerships, and outlining any specific steps

(e.g., instructions to field staff, identification of key personnel, development of bureau-specific guidance, engaging in tribal consultation) to be undertaken.

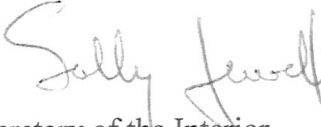
Sec. 8 **Planning and Reporting Requirements.**

a. Within 75 days of the effective date of this Order, each bureau will provide a report to the Deputy Secretary summarizing a strategy for achieving the directive in Section 5, with elements as specified in Section 7 above, and the overall purposes articulated herein. The report should identify any efforts underway for engaging in new cooperative management opportunities and collaborative partnerships with tribes.

b. Annually thereafter, each bureau will report to the Deputy Secretary on completed arrangements between the bureaus and tribes, as well as on any arrangements then under consideration. Annual reports should also include any arrangements that were declined and the reasons for such declination. Annual reports should include any benefits the public receives from the arrangements entered into by the bureaus beyond monetary benefits, including, but not limited to, benefits resulting from the use of traditional ecological knowledge, and tribal resources.

Sec. 9 Effect of the Order. This Order is intended to improve the internal management of the Department. This Order and any resulting report or recommendation are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officer or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 10 Expiration Date. This Order is effective immediately and will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded, or revoked, whichever occurs first.


Secretary of the Interior

Date: OCT 21 2016