



State–Tribal Collaboration: Energy 101

Sovereignty is the right to govern land, resources, and people. There are currently 574 federally recognized Indian Entities as published in the Federal Register.¹ Each one possesses nationhood status and retains inherent powers of self-government as stated by U.S. Supreme Court Justice John Marshall in the Marshall Trilogy of cases in the 1820–1830s.²

Sovereignty is the inherent authority and right of a group, such as a nation, Tribe, or government, to govern itself without outside interference. In the context of Tribal Nations, Tribal sovereignty refers to their legal and political status as self-governing entities with the power to make and enforce laws, manage resources, and control internal affairs according to their own traditions and governance systems. This includes the right to establish their own governments, determine membership, enter into agreements, and operate institutions such as courts, schools, and law enforcement. Although Tribal sovereignty is recognized by the U.S. government, it has been limited or challenged over time through federal policies and court decisions. Despite these challenges, sovereignty remains a foundational principle in the pursuit of Tribal self-determination and the protection of cultural and political autonomy.

What is Tribal Sovereignty Based on?

Tribal nations have inherent sovereignty as their existence as entities predates the U.S. government. Tribal sovereignty is not

granted but recognized in Supreme Court rulings which affirm the “inherent sovereignty” of Tribal nations. The Constitution’s Commerce Clause and Treaties signed between the U.S. and Tribal Nations are inherent recognitions of the sovereignty of Tribal Nations, which has been reaffirmed through statutes and law. Under U.S. Supreme Court rulings, Tribes are often treated as “domestic dependent nations,” a term established in *Cherokee Nation v. Georgia* (1831), which positions them as distinct political entities with certain rights to self-governance, yet still subject to federal oversight. This statutory framing creates a framework of “limited sovereignty,” where Tribes can govern internal matters but often must operate within constraints set by federal agencies, courts, and congressional acts.

What Rights do Tribes Have?

While there is Congressional plenary power over Indian affairs, Tribes have the inherent right to:

- Form their own government
- Make and enforce laws, both civil and criminal
- Control all aspects of commerce within Tribal trust land, including imposing taxes
- Determine membership
- Exclude people from Tribal lands
- Invoke eminent domain on Tribal lands
- Invoke sovereign immunity.

¹ <https://www.federalregister.gov/documents/2021/01/29/2021-01606/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>

² <https://www.uaf.edu/tribal/academics/112/unit-1/marshalltrilogy.php>

Federally recognized Tribes have a government-to-government relationship with the U.S. federal government as defined in the U.S. Constitution's Commerce Clause. Additionally, the U.S. federal government has a legal obligation to protect Tribal lands, assets, resources, and treaty rights. In exchange for peace and the ceding of vast amounts of land, the U.S. federal government holds this trust responsibility based on treaties, law, and the general trust responsibility defined by the U.S. Supreme Court.

What Does This Mean for States?

States often do not have jurisdiction on Tribal lands or have only concurrent jurisdiction as Tribes are not subdivisions of states. Tribal sovereignty is inherent, and state laws generally do not apply to Tribes unless explicitly authorized by Congress. Thus, Tribes are parallel sovereigns to states.

Tribal nations are not subject to state income taxes on income earned on a federal Indian reservation. State, county, municipal, and other non-Tribal property taxes cannot be assessed for activities on reservation or trust land.

Tribes can impose taxes on their own people and on third parties and commerce within reservations and trust land (i.e. the Reno-Sparks Indian Colony tax revenue sharing agreement with the state of Nevada³). In addition, Tribes have regulatory authority over all utilities on Tribal land, including the ability to enact franchise codes for utilities and other infrastructure in the public interest.

Why is This Important?

Public utility commissions (PUCs) generally do not have jurisdiction on reservations. Tribes and Tribal Utility Authorities may not be subject to regulation by state bodies such as PUCs, depending on the land type, issues being addressed, and other factors. Legal analysis by the state attorney general may be required. However, Tribes may engage directly with state PUCs to influence decisions that may impact the Tribe, Tribal trust land, Tribal business holdings or other people or property the Tribe represents as a government entity.

State energy offices have no control over a Tribe's activities, unless the state is supplying grant or other funding that requires Tribes to agree to the terms and conditions of that funding.

Tribes with a utility authority have the right to negotiate directly with utilities operating on Tribal lands to determine rates and rules of operation on the reservation, including enacting franchise codes. PUCs do not have to be involved.

Finally, Tribes have sovereignty over their energy data. If states would like access to use that data they should contact the Tribe for permission.

Benefits of Recognizing Tribal Sovereignty

Recognizing Tribal regulatory authority over energy, data, and infrastructure is essential to achieving reliability, resilience, and U.S. energy independence. Recognizing Tribal sovereignty can help address regulatory gaps and issues of energy security.

References

Department of the Interior, Bureau of Indian Affairs.

2021. [Federal Register: Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs](#) (federalregister.gov/documents/2021/01/29/2021-01606/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of). Federal Register: The Daily Journal of the United States Government.

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³ <https://www.bia.gov/as-ia/ied/division-capital-investment/success-stories/reno-sparks-indian-colony>

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