

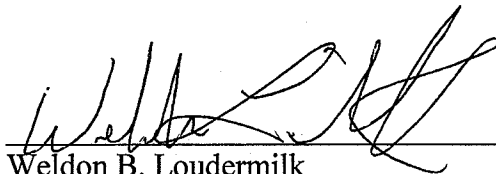
INDIAN AFFAIRS DIRECTIVES TRANSMITTAL SHEET

(modified DI-416)

DOCUMENT IDENTIFICATION NUMBER 59 IAM 7	SUBJECT Paleontological Resources	RELEASE NUMBER # 10-32
FOR FURTHER INFORMATION Division of Environmental and Cultural Resources Management		DATE APR 30 2012

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter establishes policy on the specific requirements and responsibility of Indian Affairs (IA) headquarters and field staff for the protection and management paleontological resources on Indian lands.



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FILING INSTRUCTIONS:

Remove: None

Insert: 59 IAM 7 (New)

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- 1.1 Purpose.** This chapter establishes policy on the specific requirements and responsibility of Indian Affairs (IA) headquarters and field staff for the protection and management paleontological resources on Indian lands.
- 1.2 Scope.** This policy is specific to imbedded fossils on all Indian lands as defined.
- 1.3 Policy.** It is the policy of IA that:
- A.** Before any person excavates or removes any imbedded fossil from Indian lands, Bureau of Indian Affairs (BIA) issue a permit under the authority of the Secretary of the Interior. No permit is required for exploration or surface collecting of non-imbedded fossils; however, these exempted activities are subject to tribal jurisdiction and/or landowner consent.
 - B.** Permits adhere to 25 C.F.R. 162.100 *et seq.*; are subject to compliance with the National Environmental Policy Act of 1969; National Historic Preservation Act of 1966 (as amended through 2000), Section 106; and Endangered Species Act 1973, Section 7; and must not include any sale or transfer of title.
 - C.** The BIA ensure applicants: (1) are professional or commercial collectors; (2) have the written consent of the tribal government for tribally-owned Indian land; or have not less than the applicable percentage of the title-holders interest for individually owned Indian land, as required by 25 U.S.C. 2218 (b); and make a good faith effort to notify all interest title-holders in individually owned land; (3) arrange with the consenting parties the return or disposition of fossils recovered, where no sale of the fossils is intended (such arrangements shall be included in the terms and conditions of the permit); (4) notify any land lessees in the proposed permit area and/or, in the case of individually owned Indian land, the tribe having jurisdiction over that land; and (5) if necessary, obtain a bond sufficient to cover the cost for full restoration of any area damaged by the excavation and any associated activity (e.g., transporting materials to and from the excavation).
 - D.** After ensuring the elements of 1.3 C. have been met, permits will be issued as letters of authorization from the Regional Director addressed to the qualified permittees, and will include the following basic elements:
 - (1) A brief description of the type of activity permitted;
 - (2) A definition of the land area where the permitted activity will occur;
 - (3) A time frame under which the permit is valid;
 - (4) A clear statement of the disposition of any fossils recovered; and
 - (5) Any other terms and conditions relevant to the specific lands under consideration.
 - E.** All sales of imbedded fossils from Indian lands must be approved under the authority of the Secretary by the respective Regional Director. Fossils to be sold are subject to 25 C.F.R. 152.17 and appraisals under 25 C.F.R. 152.24. The BIA may advertise the

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sale of fossils on behalf of an Indian landowner, in agreement with the procedures in 25 C.F.R. 152.26-29. The BIA is not required to assist with, nor accept any liability for marketing, preparing, storing, packing, shipping, transporting or handling any fossils.

1.4 Authority. The authority and responsibility for paleontological resources appears in the following laws, regulations and legal decisions and opinions.

A. Statutes

- (1) The Paleontological Resources Preservation Act of 2009. 47 U.S.C. 470aaa (applies to Federal lands and not Indian lands).
- (2) The National Environmental Policy Act of 1969. 42 U.S.C. 4321 *et seq.*
- (3) 16 U.S.C. 470 *et seq.* The National Historic Preservation Act of 1966 (as amended, through 2000) Section 106.

B. Guidance

- (1) 25 C.F.R. 152 Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and sale of Certain Indian lands.
- (2) 25 C.F.R. 162 Leases and Permits, Section 100 *et seq.*
- (3) 41 C.F.R. 201 Federal Information Resources Management.
- (4) 381 DM 1 Origination of Records and Information. Directives Management.
- (5) Black Hills Institute of Geological Research v. United States, 812 F.Supp.1015, 1021 (D.S.D 1993)
- (6) Black Hills Institute of Geological Research v. United States, 12 F.3d 737, 742 (8th Cir.1993), cert. denied, 115 S.Ct.61 (1994)
- (7) Solicitor's Opinion, Field Solicitor, Santa Fe to State Director, Bureau of Land Management (BLM), Santa Fe: Fossil Ownership – Severed Surface and Mineral Estate, November 22, 1978.
- (8) Solicitor's Opinion, Associate Solicitor, Energy and Minerals to Director, BLM: Paleontological Resources on Public Lands, January 17, 1986
- (9) Solicitor's Opinion, Field Solicitor, Pacific Northwest Region to Area Director, BIA, Billings: Applicability of the 1906 Antiquities Act to Fossil Collecting on the Blackfeet Reservation, January 30, 1991.
- (10) Solicitor's Opinion, Field Solicitor, Pacific Northwest Region to Area Director, BIA, Billings: Fossil Removal on Individual Indian Trust lands on the Blackfeet Reservation, May 21, 1996.
- (11) Solicitor's Opinion, Associate Solicitor, Division of Indian Affairs to Acting Deputy Commissioner, Indian Affairs: Review of Paleontological Policy of the Bureau of Indian Affairs, July 12, 2002.

1.5 Responsibilities.

- A. **Assistant Secretary - Indian Affairs** discharges the duties of the Secretary with the authority and direct responsibility to protect and preserve Indian trust assets. Provides program and budget support for IA programs and operations ensuring they are in compliance with relevant statutes and Departmental directives.
- B. **Director, Bureau of Indian Affairs** ensures appropriate organizational arrangements, resources, and personnel are available to implement paleontological resources management and protection. Reviews and approves or disapproves Region specific permitting procedures.
- C. **BIA Regional Directors** issue permits, approve sales and otherwise implement the provisions of this policy at the Regional level. Regional Directors may, as appropriate, delegate these functions to Agency Superintendents or Field Office Directors.
- D. **BIA Agency Superintendents and Field Office Directors** may approve sales and otherwise implement the provisions of this policy at the Agency or Field Office level when delegated the authority by their Regional Director.

1.6 Definitions.

- A. **Fossil.** Any remains, impressions or traces of organisms preserved in or on the earth's crust. This definition does not include (a) fossil fuels, such as gas, oil or coal; (b) objects which were carved or sculpted from fossils by humans; (c) objects of antiquity as defined in the Antiquities Act of 1906 (16 U.S.C. 431-433); (d) archaeological resources as defined in the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1) Section 3(1); or (e) cultural items, as defined in the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001) Section 2.
- B. **Imbedded.** If a fossil cannot be moved from its location without the aid of a tool or instrument including, but not limited to, a penknife, nail file, stick or hand held rock then it is imbedded. For the purposes of this policy, if any part of a fossilized organism is imbedded, the entire organism is considered imbedded.
- C. **Indian lands.** Lands of Indian tribes or Indian individuals which are either held in trust by, or subject to restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or Indian individual. Fossils are considered part of the surface estate.
- D. **Paleontological resources.** Fossils for the purposes of this policy.
- E. **Permit.** Used the same as "lease," in 25 C.F.R. 162.101; a written agreement between Indian landowners and a tenant or lessee whereby the tenant or lessee is granted a right to possession of Indian land for a specified purpose and duration.
- F. **Person.** For the purposes of this policy, means an individual, corporation, partnership, trust, institution, association, or any other governmental or private entity.

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- G. Professional collector.** A person who excavates or collects paleontological resources solely for the purpose of scientific study or public education, and who is academically qualified or associated with an institution that is qualified to conduct scientific studies or educate the public.
- H. Commercial collector.** A person who excavates and/or collects paleontological resources for the purpose of selling or marketing them to another person.