

NATIONAL
LABORATORY
OF THE ROCKIES

*State-Tribal Energy Collaboration:
Introduction to Tribal Sovereignty
and Governance*

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Welcome



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National Laboratory of the Rockies (NLR)

We want to express our gratitude and acknowledge that the land our main campus is on in Golden, CO is the traditional and ancestral homelands of the Arapaho, Cheyenne, and Ute peoples. We recognize and pay respect to the Indigenous peoples from our past, present, and future, and we are grateful to those who have been and continue to be stewards of this land.

We recognize that we work throughout the traditional territories of the Indigenous peoples of Alaska. Our Research and Testing Facility is located on the ancestral lands of the Lower Tanana River Dene people. We acknowledge and honor the ancestral and present land stewardship and place-based knowledge of the peoples of those territories.



NLR at a Glance

3,717 Workforce, including:

- 2,906 regular/limited term
- 454 contingent workers
- 193 postdoctoral researchers
- 100 graduate student interns
- 64 undergraduate student interns

—as of 10/1/2025

World-class research expertise in:

- Energy Systems Integration
- Transportation and Fuels
- Buildings and Industry

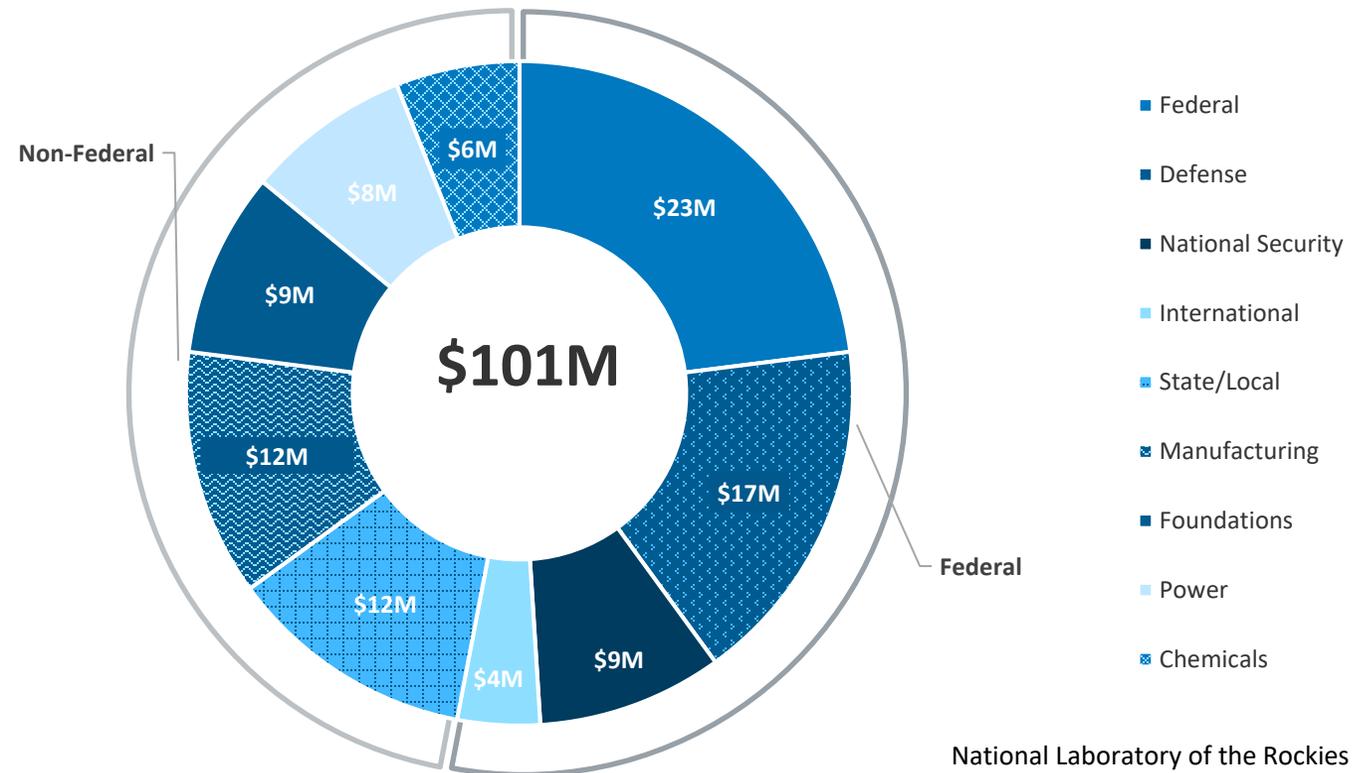
Partnerships with:

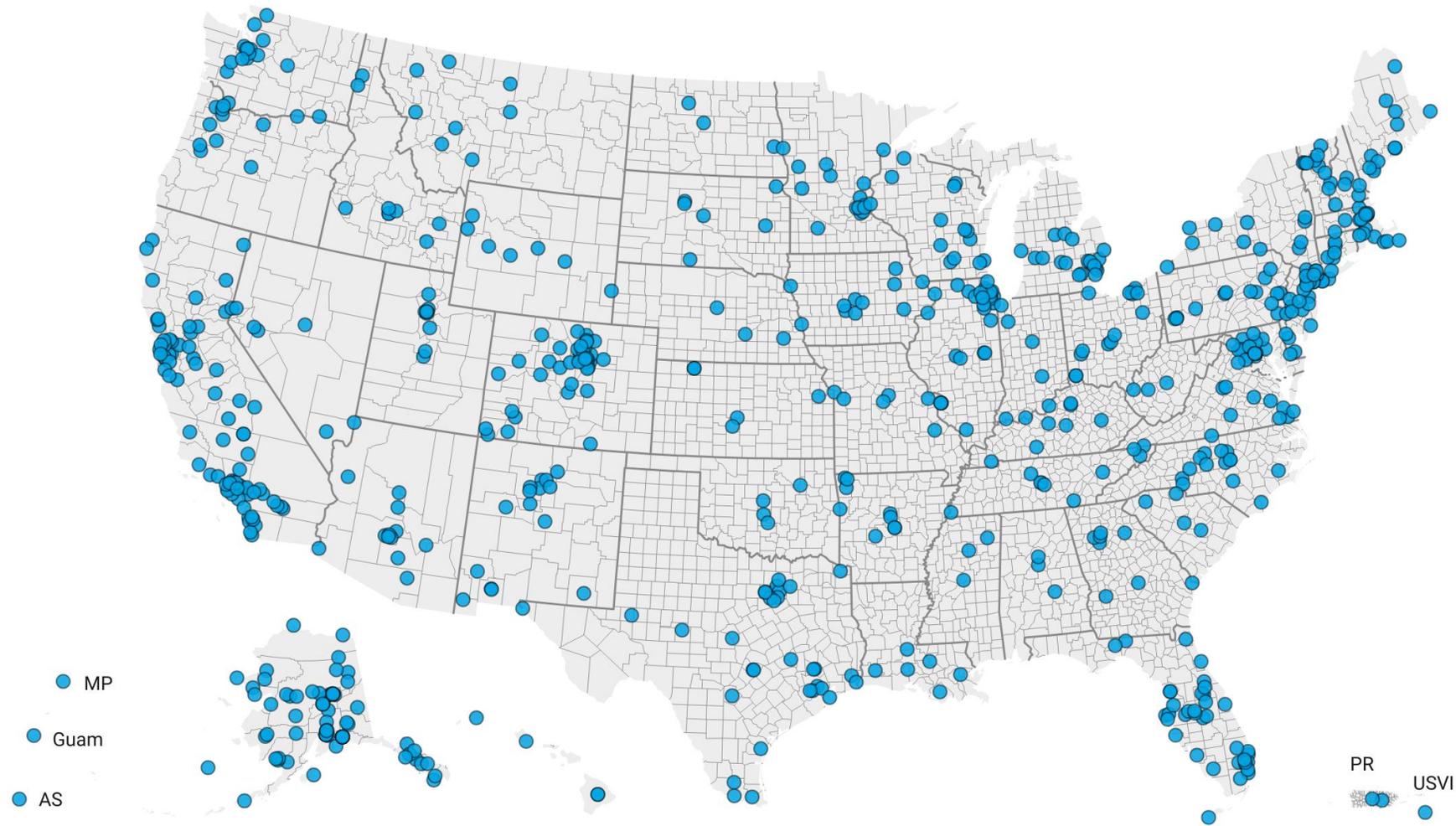
- Industry
- Academia
- Government

4 Campuses operate as living laboratories



FY 2025 Partner Bookings by Sector





NLR has partnered/supported **more than 3,000** communities, tribes, jurisdictions, utilities, and businesses to achieve their **energy goals** through planning, technical assistance, capacity building, workforce development, and more.



State-Tribal Energy Collaboration Project Goals

- Identify and answer key state questions about Tribes, Tribal energy support, and Tribal energy issues.
- Identify ways for state governments and Tribes to successfully collaborate on Tribal self-determined energy goals
- Publish 6 fact sheets, hold 5 webinars, and conduct 2 in-person trainings

Margaret (Margie) Schaff



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Utility Operations in Indian Country

Substantial Growth in Indian Country over the last 25 years

- Human Resources
- Infrastructure
- Buildings
 - Resorts/Commercial/Agricultural
 - Government/Community
 - Residential (often HUD)
- Economic Impact

Tribes are not just “racial/political” groups or “Stakeholders”. Tribes are governments.

Types of Utility Operations

- Energy (Electricity, Gas, Propane, Others)
- Water/Sewer
- Telecommunications
- Solid Waste
- Other Related (building codes, safety codes, zoning, etc.)

Fun Facts:

Tribes must operate their governments without a traditional tax base.

Utility costs are often the largest monthly expense for tribal members.

Utility services can not be deferred and are health and safety issues.

Previously, most utility services were provided by third parties, but as tribes develop, they are taking on utility responsibilities.

“Self Governance” ”Self Sufficiency” “Self Determination” “Energy Sovereignty”

“Indian Country”

As defined in federal law (18 U.S.C. § 1151.)
the term “Indian Country” means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Types of Lands in Indian Country

1. Tribal Trust – Federal lands held in trust for the benefit of the Indian Tribe as a whole.
2. Tribal Fee – Fee land owned by the Indian Tribe. Often times it is in the “Fee to Trust” Process.
3. Indian Allotments - Federal lands held in trust for the benefit of the (sometimes numerous) Tribal, Indian, and sometimes non-Indian owners. Many times, these are not within reservation boundaries and sometimes are not affiliated with any tribe.
4. Indian Fee – fee lands owned by a tribal member.
5. Non-Indian Fee – lands within Indian Country that are owned by non-Indians.
6. Easements, Rights of Ways, Leases and other property rights.

“Checkerboarded”

When lands within a reservation are checkerboarded with tribal, fee, allotted, and other lands, the jurisdictional analysis will be different for each of the lands.

Federal/Tribal Relationship

The Federal Trust Responsibility

- Grounded in treaties and statutes and expressed in federal case law.
- “Trust” – Trustee/Beneficiary relationship
- Trust Resources – Indian resources held in trust- Land, Natural Resources.

Treaties

- Have the force of statutory law.
- Different tribes have different treaties.

Alaska is different

Federal Indian Policy

- Historically paternalistic and destructive – federal policies for Indian Country have been largely unsuccessful for Indians and for society generally.
- Federal policy since 1961 has been “Self-Determination” with a “Tribal Resurgence and Governance” policy since 1980.
 - Example 1975 Indian Self-Determination and Education Assistance Act – 638 Contracts

Easements and Rights of Ways in Indian Country – governed in 25 CFR 169

Federal Indian Resources and Rights are both ON and OFF Reservations.

★ When States deal with tribes, often they are dealing with federal matters. Ask – Could the state do this on a federal military base or on other federal lands?

Elements of Tribal Sovereignty

Inherent Tribal Sovereignty – Does not derive from the United States. Federal Law acknowledges that tribal power stem from tribal rights that have never been extinguished from times before the USA.

Tribal Powers:

- Determine form of Tribal Government
- Determine Membership
- Power to Legislate and Tax
- Power to Exclude Persons from Tribal Territory
- Power to Administer Justice

Sovereign Immunity – Immunity from suit is a well established feature of sovereignty for all governments. The Government may not be sued without its consent.

- Applies within or outside of tribal lands
- Applies to commercial and governmental purposes
- Applies without regard to whether the actions are subject to state jurisdiction

Tribal Laws – Examples - Tribes can make utility laws, form utility commissions to regulate utility matters, franchise utilities, determine eminent domain policies and procedures, etc.

Just as a State has sovereign powers within its jurisdiction, so does a Tribe.

Initial Issue: Jurisdiction – Federal or Local?

- The federal government has significant jurisdiction over energy, telecommunications and water activities.
- Anything *not federal* is state, or if under Indian jurisdiction, tribal.
- Unless statutory, tribes, tribal businesses and tribal members have the same federal obligations as states and others.
 - Notable exception is that tribes, like states, are not federally taxed. Tribal members *are* federally taxed, unless the income results from federally held trust resources.

- Tribal utilities or businesses doing business in a manner that is federally regulated or tribes that wish to build or own federally jurisdictional facilities, such as managing wholesale loads, hydroelectric dams, transmission or power generators that are connected to the grid, must know and follow federal law and regulations.
- FERC has acknowledged that tribes are “governments” and are not “Public Utilities” (generally for-profit entities) under the Federal Power Act.

Next Issue: State or Tribal?

Depends on *where* the activity takes place, *who* is involved in the activity, and the type of interests at stake.

Consider the jurisdictional statements in a tribe's treaty, the tribe's Constitution, tribal laws and ordinances, tribal council resolutions and other governance documents.

Can the tribe exercise jurisdiction?

- *Devils Lake Sioux Indian Tribe v. North Dakota Pub. Serv. Comm'n*, 896 F. Supp. 955 (D. N.D. 1995): The issue of tribal jurisdiction over utilities on reservations is a federal question
- *Nevada v. Hicks*, 533 U.S. 353, 360 (2001): Tribal “ownership [] of land . . . is only one factor to consider in determining whether [an exercise of tribal governance] of nonmembers is necessary to protect tribal self-government or to control internal relations, but land status “may sometimes be a dispositive factor.”

On Trust and Tribally owned lands:

- *Worcester v. Georgia*, 31 U.S. 515, 555 (1832): Tribes have plenary and exclusive power over **their members and their territory** subject only to limitations imposed by federal law.
- *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982): “Tribes have inherent sovereign authority in Indian Country to regulate **entities doing business on tribal lands** as an essential attribute of Indian sovereignty; it is a necessary instrument of self-government and territorial management.” And, tribes can impose energy taxes on third party activities on trust lands in Indian Country.

On Non-Tribal/Trust lands in Indian Country:

- *Montana v. United States*, 450 U.S. 544 (1981): (1) a tribe may regulate the activities of non-members who enter consensual relationships with a tribe or its members through commercial dealing, contracts, leases, or other arrangements; and (2) a tribe may retain inherent power to exercise civil authority over the conduct of nonmembers when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Can the State Exercise Jurisdiction?

Almost all reservations have third party utility companies providing services to the tribe and to tribal members. There is generally a *de facto* application of state rules by the utilities to their tribal customers on Indian lands.

McGirt v. Oklahoma, 140 S. Ct. 2452, 2476 (2020): The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's history" *Rice v. Olson*, 324 U.S. 786, 789 (1945). Chief Justice Marshall, for example, held that Indian Tribes were "distinct political communities, having territorial boundaries, within which their authority is exclusive . . . which is not only acknowledged, but guaranteed by the United States" a power dependent on and subject to no state authority. *Worcester v. Georgia*, 6 Pet. 515, 557 (1832); see also *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164, 168-169 (1973). And in many treaties, like those now before us, the federal government promised Indian Tribes the right to continue to govern themselves.

A review of the relevant state laws, including the state constitutions, is also important as many states limit interactions with Indians.

- *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-43 (1980): The Supreme Court established a two-part test, either of which can make state civil regulations inapplicable to Indians in Indian Country. 1) the exercise of state authority may be preempted by federal law. 2) The application of state laws or regulations may "infringe on the right of reservation Indians to make their own laws and be ruled by them." These cases are to be analyzed against a "backdrop of tribal sovereignty" giving rise to a presumption that state jurisdiction does not apply in Indian Country.
- In making the decision whether there is preemption or infringement, the courts have used a balancing test in which they balance federal, tribal, and state interests related to the matter.

State Taxes

Including Utility Taxes and State Programs which amount to Taxes

Okla. Tax Comm'n v. Chickasaw Nation, 515 U.S. 450, 458 (1995): “[A]bsent cession of jurisdiction or other federal statutes permitting it . . . a State is without power to tax reservation lands and reservation Indians.”

Utility taxes can also be rejected based on tribal sovereign immunity.

- California statute acknowledges the right of Indian tribes to decline to pay certain utility (water) fees based on sovereign immunity.
- Case Law- *Oneida Tribe of Indians of Wisconsin v. Village of Hobart*, 891 F. Supp. 2d 1058 (2012)

Many States have forms for declaration of tax exemption.

Project website

- [State-Tribal Energy Collaboration website](#)
 - Recorded webinars
 - Energizing Together: Building State and Tribal Collaboration
 - State-Tribal Collaboration on Energy: Examples from Western States
 - Government to Government Best Practices
 - Workshop materials from Golden, CO and Washington, DC events
 - Fact sheets
 - State-Tribal Energy Collaboration 101
 - Tribal Right to Create Laws
 - State Role in Legal Framework
 - How Tribal Entities Govern Business and Commerce
 - Types of Tribal Land
 - Tribal Utility Programs

NLR's State, Local, & Tribal (SLT) Government Program

Supporting Energy Solutions Across Multiple Communities

States >



Local Governments
and
Communities >



Tribes >



Islands and
Territories >



<https://www.nlr.gov/state-local-tribal>

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