National Congress of American Indians

FEDERAL CONSULTATION

At the historic first Annual Tribal Nations Summit hosted by the White House on November 5, 2009, President Obama promised to improve the partnership between the federal government and tribal nations. As an initial step toward fulfilling his promise, the President issued an Executive Memorandum that directed all federal agencies to develop a plan within 90 days for consultation and coordination with tribal governments under President Clinton's Executive Order 13175. In an effort to comply with the President's memorandum, federal agencies have stepped up their consult activities with tribes, and tribal leaders have seen unprecedented levels of tribal consultation on a broader array of issues.

The goal of consultation is to reach mutually agreeable understanding and decisions that acknowledge the interests of both the federal and tribal governments. Tribal leaders acknowledge that Executive Order 13175 and President Obama's Executive Memorandum on consultation are useful tools for improving the federal–tribal relationship, but tribal concerns remain over the effectiveness of implementation.

RECOMMENDATIONS

1. **Develop a uniform consultation process for all agencies**
   Tribal leaders have numerous responsibilities in addition to their obligation to monitor federal actions that might impact their respective tribe. It would save time and resources if the federal government were to collaborate and consult with tribes to develop a single comprehensive, administration-wide policy for meaningful tribal consultation, as opposed to each agency developing its own tribal consultation policy in a piecemeal fashion. An administration-wide policy would establish uniform standards for government-to-government consultation and ensure consistent application of those standards across agencies, in accordance with the federal government's legal obligations to American Indian and Alaska Native tribes and in fulfillment of the United States trust responsibility.

2. **Institutionalize the process**
   American Indians and Alaska Natives commend the Obama Administration's firm commitment to tribal consultation, but tribal leaders fear that future administrations may be unwilling to carry out their obligations under EO 13175. The Administration should support legislation to make tribal consultation legally enforceable.

3. **Utilize technology**
   The agencies should take advantage of technological advances by conducting tribal consultations via teleconferences or webinars, as appropriate.

4. **Implement more interagency collaboration**
   Oftentimes, the issues faced by tribal governments are multifaceted, and programs that affect Indian health, education, safety, and welfare are supported by several federal departments. Tribal leaders recognize that it is more efficient and comprehensive to have multiple federal departments and agencies participate in single consultation events (as has been done with the interdepartmental Tribal Justice, Safety, & Wellness conferences), rather than having several independent sessions.

5. **Focus on substance, not just process**
   Federal agencies should focus on the substantive requirements of Executive Order 13175. Too often, federal agency officials fulfill the procedural requirements of "consultation" but fail to reflect tribal concerns in final federal policies and regulations. Interpreting the Executive Order as only a procedural requirement (as just another hoop to jump through) misconstrues the Order's intent and undermines its effectiveness.

6. **Ensure appropriate procedures are followed**
   General guiding principles should be followed for effective consultation with tribes, including hosting tribal consultations in all regions and in locations that are easily accessible to Indian Country, providing sufficient notice, involving principals of the same stature (i.e., leadership matched with leadership, technical staff matched with technical staff), ensuring that the structural format is conducive to healthy dialogue and exchange, honoring and respecting distinct tribal cultures, and collaborating with tribes to develop the agenda.

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National Congress of American Indians

THE FEDERAL TRIBAL RELATIONSHIP

The status of Indian nations as sovereign governments is recognized specifically in the United States Constitution, treaties, federal laws, and numerous Supreme Court opinions. Throughout American history, Indian nations have been recognized as governments that pre-dated the United States and have maintained the right to govern their own people and their own lands. The treaties and laws have created a fundamental compact between Indian nations and the United States: Indian nations ceded millions of acres of land that made the United States what it is today, and in return received the guarantee of self-government on their own lands.

Tribal self-government serves the same purpose today as it always has: It empowers Indian nations to remain viable as distinct groups of people. Tribal cultures enrich American life, and tribal economies provide opportunities where few would otherwise exist. Tribal governments provide a broad range of governmental services on tribal lands, including education, law enforcement, justice systems, and basic infrastructures such as roads and bridges.

The federal trust responsibility, one of the most important doctrines in federal Indian law, derives from treaties and federal law. It is the obligation of the federal government to protect tribal lands and treaty rights, to support tribal self-government and tribal communities, and to carry out the directives of federal statutes and court cases. The Supreme Court has defined the trust responsibility as "moral obligations of the highest responsibility and trust" (*Seminole Nation vs. United States, 1942*).

THE FEDERAL POLICY OF TRIBAL SELF-DETERMINATION

There is a tension in federal Indian policy between tribal sovereignty and independence on the one hand, and the federal trust responsibility and oversight on the other. This tension was addressed over 40 years ago, when Presidents Johnson and Nixon established the federal policy of Tribal Self-Determination. This policy has guided federal-tribal relations for two generations without significant changes. Rejecting the historical extremes of termination and paternalism, it established the twin pillars of modern federal Indian policy—deference to tribal autonomy and respect for the federal trust responsibility to support tribal communities.

From one perspective, Self-Determination has been phenomenally successful. In 1970, the Bureau of Indian Affairs (BIA) dominated reservation life. The Self-Determination policy fundamentally changed tribes' relationship with the federal government. Today, federal laws and every federal agency are far more respectful of tribal authority. Many tribes across Indian Country have vastly improved services on reservations and created hundreds of thousands of jobs. Tribes have done the hard work of building tribal government institutions and enterprises, and they will pass this legacy to the next generation.

Yet, significant barriers have prevented full implementation of the policy. The Supreme Court has undermined tribal authority with devastating results for public safety, tax and revenue generation, and basic civil jurisdiction. Tribal lands and programs remain caught in a web of regulations and

bureaucracy. There has never been enough federal funding or other revenue to provide adequate services or to develop infrastructure. Economic development has also been highly uneven, with many reservations remaining in great poverty. Much work remains to be done.

Tribes call upon the Obama Administration to fulfill the vision of the Self-Determation Policy, actively seek opportunties for tribes to exercise self-government, remove federal restraints, and support tribal efforts to build economic development and deliver government services.

RECOMMENDATIONS

1. **Facilitate stronger interagency communication and coordination**
2. **Preserve inherent tribal sovereignty and minimize unnecessary federally imposed restrictions (e.g., leasing approvals, taxation, fee to trust, constitutional reform, etc.)**
3. **Actively seek to expand opportunities for tribes to exercise self-determination and administer programs to deliver services for their citizens; treat tribes as a state or local government for the purposes of receiving federal funds and administering programs**
4. **Acknowledge tribal differences and ensure that policies include a range of options and the flexibility to negotiate agreements that will meet tribal needs**
5. **Provide resources and support for tribal capacity-building and program implementation**
6. **Seek opportunities for the President, Cabinet, and other officials to meet with tribes in Indian Country**
7. **Deliver an updated message to Congress about the government-to-government relationship, federal trust responsibility, and federal Indian policy**
8. **Work with tribes over the next year to convene dialogue about the future of the federal trust responsibility and what tribes need/want from the federal government**
9. **Enhance existing opportunities and explore new options for all federal officials and staff to learn about tribal governments**
10. **Continue annual White House Tribal Nations Summits; convene future summits at the White House**

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National Congress of American Indians

CARCIERI FIX

Since 1934, the Department of the Interior (DOI) has construed the Indian Reorganization Act (IRA, P.L. 73-383) to authorize the Secretary to place land into trust for all federally recognized tribes. From 1934 to 2009, DOI has restored lands to enable tribal governments to build schools, health clinics, hospitals, housing, and community centers to serve their people. The Secretary has approved trust acquisitions for approximately 5 million acres of former tribal homelands, far short of the more than 100 million acres of lands lost through the federal policies of removal, allotment, and assimilation.

In February 2009, the U.S. Supreme Court issued *Carcieri v. Salazar*, which overturned this long-standing interpretation by construing the IRA to limit the Secretary's authority to place land into trust to only those tribes that were "under federal jurisdiction" as of 1934. Legislation is needed to prevent irrevocable damage to tribal sovereignty, tribal culture, and the federal trust responsibility. The *Carcieri* decision will also establish unequal treatment of current federally recognized tribes, which also runs counter to congressional intent and policy.

The *Carcieri* decision threatens tribal sovereignty, economic self-sufficiency, and self-determination. The IRA is a comprehensive federal law that provides not only the authority of the Secretary of the Interior to take lands into trust for tribes, but also for the establishment of tribal constitutions and tribal business structures. Disorder in these areas of the law threatens all types of economic development opportunities, loans and financing, contracts and loans, and tribal reservations and lands. The decision also has potential to create further chaos to public safety and criminal jurisdiction on Indian reservations across the country, and it threatens important land acquisitions for schools, housing, health clinics, and the protection of sacred sites.

The *Carcieri* decision has already resulted in costly, protracted litigation on a broad range of issues that is multiplying across the country. These cases are affecting all tribes, even those that were clearly recognized by the United States prior to 1934. The United States, at taxpayer expense, is a defendant in more than a half dozen of these lawsuits.

RECOMMENDATION

1. **Support bills to affirm congressional intent**
   The Administration should strongly support the enactment of legislation S. 1703 (Dorgan), H.R. 3697 (Cole), or H.R. 3742 (Kildee) to reaffirm Congress' intent that the IRA authorized the Secretary of the Interior to take land into trust for all federally recognized Indian tribes. The ability of all tribes, working with the Secretary, to have land placed into trust is central to tribal sovereignty, to the federal trust responsibility, and to the ability of tribes to protect their homelands and culture.

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National Congress of American Indians

TRUST REFORM

There are nearly 60 million acres of Indian land in the United States—an area the size of Nebraska. Land and natural resources are fundamental to tribal cultures and economies. Indian land is held in trust or restricted status by the federal government to protect it from alienation and trespass and to protect tribal autonomy. Indian land is also a primary source of economic activity for Indian communities. The federal government controls management and leasing of Indian trust lands and is responsible for tens of billions of dollars in revenues from oil, gas, timber, minerals, agriculture, and other resources. However, the federal trust system for Indian land is severely troubled and in urgent need of reform.

We commend the Administration and Congress for settling the "*Cobell*" litigation, a class-action lawsuit that has been pending since 1996, and we urge the Administration to also consider settlements on similar litigation on behalf of tribal lands. There is wide agreement that the federal government did not properly account for trust funds. The National Congress of American Indians is encouraging a settlement process for tribal trust litigation, as well as reforms to the trust system so that the problems of the past will not recur.

RECOMMENDATIONS

1. **Conduct tribal consultation**
   As a primary priority, the Administration should consult with tribes, work with Congress, and move forward on trust reform measures that will make the federal government a partner in tribal economic development, rather than a bureaucracy that stands in its way. We need to increase the efficiency of trust administration, improve returns on trust resources, and redirect trust administration to increase support for tribal development initiatives.

2. **Address fractional interest purchase and the Consolidation Program**
   Fractionation of land ownership is one of the root causes of trust mismanagement. The newly created $1.9 billion Indian Land Consolidation Fund under the Cobell settlement is a truly visionary and revolutionary development to address longstanding intractable problems. This is an historic opportunity to create a 10-year program that will outlive this Administration, and it is imperative to develop an effective program. Consultation with Indian tribes should begin immediately to identify lands for acquisition and to engage tribal expertise and labor in the acquisition process. The Administration should work directly with the relatively small number of tribal governments on the reservations where the fractionation exists. It is also critical that the Administration support amendments to the Indian Land Consolidation Act (P.L. 97-459) that streamline land acquisition procedures and create incentives for voluntary sales of fractionated interests by allowing the Secretary to offer more than fair market value.

3. **Reconsider federal lease approval and appraisal requirements**
   The Bureau of Indain Affairs (BIA) Indian land leasing regulations were written in the 1950s,

when termination was the dominant federal Indian policy. That unwise and discredited policy remains enshrined in the current BIA regulations. Most basically, the regulations focus essentially on ensuring that the Indian lessor receives a "fair annual rental." The Secretary of the Interior's trust responsibility is fulfilled so long as the Secretary protects his "wards" from squandering their assets. But Indian land is not protected from conversion to non-Indian use so long as value is paid. This conception of the Secretary's trust responsibility both does too little and too much. It does too much because tribal governments have become much more sophisticated, and after 4 decades of adherence to the tribal self-determination policy, requiring an independent review and approval of all tribal leasing decisions to ensure financial prudence is both demeaning and unnecessary. It does too little because some long-term leases can threaten the preservation of the tribe's culture and society, and the basic purpose of the Secretary's trust responsibility is to preserve Indian trust lands so that tribal self-government and culture can exist.

4. **Support the HEARTH Act as an Expansion of Navajo Leasing Act of 2000**
   We urge the Administration to drop bureaucratic objections to the HEARTH Act (H.R. 2523 and S. 3235) and to work with Congress to pass the legislation as soon as possible. The HEARTH Act promotes tribal self-determination in the management of tribal lands and would allow tribes to lease their own lands without the delay and bureaucracy of approval within the BIA. The legislation is also optional; each tribe would decide for itself whether or not to take advantage of the Act. Many tribes desire to manage their own lands and to promote economic development, and they are in the best position to decide for themselves whether this Act suits their needs. The Act is essentially a set of amendments that would expand access to the provisions of the Navajo Leasing Act of 2000 (P.L. 106-568) to all federally recognized tribes.

5. **Establish an Indian trust asset management demonstration project**
   Create a demonstration project where an Indian tribe can develop its own system and plan to take over resource management on the reservation. The plan would identify the trust assets, establish objectives and priorities, and allocate the available funding. Contracting and compacting tribes could establish their own management systems consistent with federal laws. Provide for comprehensive land use planning and a trust asset management agreement authorizing the tribe to lease land without the approval of the Secretary.

6. **Restructure BIA and Office of Special Trustee**
   Create a single line of authority for all functions that are now split between the BIA and the Special Trustee, and establish a Deputy Secretary of Indian Affairs with the responsibility of supervising any activities related to Indian affairs that are carried out by the Bureau of Reclamation, the Bureau of Land Management, and the Minerals Management Service. Transfer the functions of the Special Trustee to the Deputy Secretary for Indian Affairs.

7. **Audit of trust funds**
   Provide for the Inspector General of DOI to hire an independent auditor to conduct an audit of the Secretary's financial statements and report on the Secretary's internal controls. The Comptroller General would conduct a review of the audit.

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National Congress of American Indians

FEDERAL FUNDING

The relationship between the tribes and the federal government is based on mutual promises. Through treaties, agreements, and a long history of dealings, vast regions of Indian lands were ceded to the United States. In return the tribes received promises for protection of Indian lands; protection of tribal self-governance; and provision of social, medical, and educational services for tribal citizens. Federal investments to fulfill this trust responsibility are moral and just.

As part of the family of American governments, tribal governments have the power to determine their own governance structures, to pass laws, and to enforce laws through police departments and tribal courts. The federal funding that goes to Indian issues in every relevant program area—from education and public safety to the infrastructure and health care—lags behind the average for the rest of the United States. This trend was documented in the U.S. Civil Rights Commission report, "Quiet Crisis," issued in 2003. Tribes lack the same resources available to other governments to provide for the public safety and welfare of their citizens.

Indian Country has been hit especially hard by the Great Recession, and proposed federal funding cuts pose significant challenges to economic recovery in Indian Country, as well as to the fulfillment of the sacred trust responsibility. Tribal leaders have identified increased federal funding for tribal governmental services, infrastructure, natural resources, health care, and education as critical to the honorable fulfillment of the trust relationship with tribes. Especially in challenging economic times, tribes should receive at least the same level of resources that are provided to other governments to meet the needs of their citizens.

RECOMMENDATIONS

1. **Ensure federal funding for full implementation of the Tribal Law & Order Act**
   Tribal governments serve as the primary instrument of law enforcement and justice delivery for the more than 50 million acres of land that comprise Indian Country. As a result of historic underfunding and complex jurisdiction issues, American Indians experience disproportionately high rates of violent crime. The full and successful implementation of the Tribal Law & Order Act requires full funding from Congress. The President and Congress should fully fund all of the provisions of the Tribal Law & Order Act of 2010 that authorize additional funding for law and order programs that affect Indian tribes, both for FY 2011 and in the future. The full seven percent tribal set-aside within the Office of Justice Programs identified in the President's FY2011 should also be appropriated.

2. **Ensure full funding for the Indian Health Care Improvement Act**
   For over 100 years, Native people have experienced disproportionately poor health outcomes. Adequate funding is needed to end this lasting injustice and to uphold the federal trust responsibility of the United States. The President and Congress should fully fund all of the provisions of the Indian Health Care Improvement Act, passed as part of the Patient Protection and Affordable Health Care Act of 2010, both for FY 2011 and in the future.

3. **Honor contractual obligations to tribal governments**
   The Indian Self-Determination and Education Assistance Act (Public Law 93-638) requires the payment of fixed institutional overhead costs called "contract support costs" to tribal contractors that operate essential governmental functions of the Indian Health Service and the Bureau of Indian Affairs. The payment of these costs is a legally binding governmental obligation. The government's current annual contract support cost shortfall is over $150 million. The President and Congress should act promptly to finally close the gap in funding contract support cost requirements.

4. **Protect core tribal governmental resources from across-the-board cuts**
   Much of the federal funding to tribal governments is categorized as domestic discretionary spending. In the context of the current national deficit and debt, policymakers and the nation as a whole are considering ways to address our federal fiscal challenges, including potentially deep cuts to discretionary spending. Tribes agree with many of the guiding principles and values in the Fiscal Commission co-chairs' draft proposal, which are to protect the truly disadvantaged, focus benefits on those who need them, and cut and invest to promote economic growth, including education and infrastructure. However, as the nation and lawmakers decide how to make the tough choices required to balance the federal budget, the core tribal programs should be protected from decreases and year-to-year fluctuations to honor the trust responsibility and treat tribes on a level consistent with federal support of state and local governments.

5. **Apply best practices for grantmaking in Indian Country**
   Over the last 40 years, the federal government has learned a great deal about grantmaking practices that best meet the needs of tribal communities. These practices, which most efficiently and effectively make federal resources available to tribes, should be implemented across all federal agencies.
   a. **Eliminate match requirements for grants to tribal governments**
      Most tribes have extremely limited resources, and much of the money available to them comes from grants and other federal sources. Because tribes lack the tax base available to other governments, imposing a match requirement on tribal governments has frequently resulted in tribes scrambling to find matching funds from limited resources and has often led to the underutilization of funds or precluded tribes from applying for them.
   b. **Ensure selection criteria and performance measures are appropriate for tribal governments**
      Competitive grant solicitations frequently call for data documenting the severity of the issue to be addressed. In many tribal communities, there has been a profound lack of meaningful data collection. Federal reviewers may need to be flexible about the data that tribes can provide and consult with tribes to ensure that performance measures reflect indicators that are relevant and important to the community itself.
   c. **Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise**
      Too often, peer reviewers have little knowledge or understanding of the unique needs in Indian Country. The Administration must work to ensure grant reviewers understand the unique opportunities and challenges that face Indian Country.

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National Congress of American Indians

CULTURAL PROTECTION

Protecting Native cultures is necessary for the survival of traditional Native religions, customs, identity, and status as sovereign nations. The culture and traditional religions of American Indian and Alaska Native peoples require the protection of the physical integrity of the places and objects that we hold sacred. It is therefore necessary for the federal government to remove legal and other barriers that stand in the way of this sacred spiritual duty of care and protection. Access to and usage of these lands and objects, as well as public understanding of Native cultural and religious practices and traditions, is integral to the preservation of Native lifeways and the unique contribution they make to our nation.

RECOMMENDATIONS

1. **Ensure full compliance with NAGPRA by carrying out all recommendations from GAO Report**
   A recent report by the Government Accountability Office (GAO) states that even though the Native American Graves Protection and Repatriation Act (NAGPRA) became law over 20 years ago, federal agencies have yet to fully comply with the Act. Based on its findings, the GAO made several recommendations. Those recommendations should be immediately implemented by the agencies to which they are directed.

2. **Call on Congress to enact a right of action to protect sacred places and issue a strengthened executive order on sacred places**
   There is currently no federal statute for the express purpose of protecting Native American sacred places. It is time for Congress to enact a right of action for tribes to defend sacred places. Unless tribes can sustain lawsuits, they will not have a seat at federal negotiation tables, and agencies and developers will continue to disregard existing consultation requirements. An executive order that requires meaningful consultation and respectful negotiations with tribes may obviate the need for litigation. However, if negotiated accords cannot be reached, tribes must be able to protect their sacred places in court.

3. **Issue an executive order on Native language revitalization**
   Native languages are an irreplaceable part of Native religions, ceremonial practices, and cultural heritage—and they are in a state of emergency. Seventy of our remaining 139 spoken languages could become extinct by 2015, and all these languages need immediate support at the local, tribal, state, and national levels. The President should take swift action to revitalize and protect Native languages by issuing an executive order that includes the following provisions: (1) mobilization of executive agencies to coordinate federal resources to revitalize and protect Native languages, and to report their changes and progress within 120 days; (2) establishment of an interagency working group on Native language revitalization; (3) appointment of a presidential board of advisors on Native languages; (4) creation of a White House initiative on Native language revitalization to coordinate these activities; and (5) convening of a White House conference on Native language revitalization.

4. **Vigorously enforce the Indian Arts & Crafts Act**
   On July 29, 2010, President Obama signed the Indian Arts & Crafts Amendments Act of 2010 into law. The new amendments expand the federal government's enforcement powers and strengthen the penalties for violations of the Act. It is imperative that the federal government fulfill its investigative and prosecutorial responsibilities under the amended Indian Arts & Crafts Act and vigorously pursue those who falsely represent themselves as Indian artists.

5. **Work with tribes to resolve ambiguities in federal laws, regulations, and policies that deny American Indians and Alaska Natives access to and usage of eagle feathers for traditional cultural purposes**
   Longstanding efforts by Native peoples to work with federal officials regarding eagle feather cultural and ceremonial usage have had minimal success. Despite federal attempts to accommodate Native peoples' usage through various exemptions and permitting procedures, federal laws enacted to protect bald and golden eagles and govern usage of feathers and other parts have had chilling effects on cultural usage by individuals in many tribal communities. Federal agencies should collaborate with tribes to address the complex web of issues related to eagle feather distribution, possession, use, investigation, and prosecution. Federal action on these issues, after appropriate tribal consultation, may demonstrate the required constitutional respect for Native American religious freedom and result in a stronger working relationship between tribes and the federal government.

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National Congress of American Indians

TRIBAL-STATE RELATIONSHIPS

Numerous tribes have established collaborative agreements and/or compacts with surrounding state governments on a broad range of activities, from law enforcement and taxation to climate change planning and education. Contrary to popular belief, these agreements do not diminish tribal sovereignty, nor do they undermine the tribes' trust relationship with the federal government. Rather, when a tribe enters into an intergovernmental agreement with a neighboring jurisdiction, it exercises sovereign authority to govern its citizens in the manner in which it sees fit. Tribal-state collaboration enables tribal governments to leverage scarce resources in serving their citizens while maintaining sovereignty in the decision-making process. When effectively implemented, it also benefits the surrounding communities and the state as a whole.

Indian Country urges the Obama Administration to continue supporting engagement between tribes and states on a government-to-government basis and in a manner similar to the relationships between other state or federal government agencies. At a time of budgetary challenges, it is critical that states and tribes respect each other's sovereignty and develop mutually beneficial working relationships.

RECOMMENDATIONS

1. **Limit state jurisdiction over tribes where there has been no consultation with or consent by tribes**
   The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) is a perfect example of the chaos that can ensue when the federal government authorizes state assumption of jurisdiction over tribes under specific circumstances where there has been no consultation with or consent by tribes. That law strips a subset of tribes that are subject to state jurisdiction under Public Law 53-280 (P.L. 280) of civil regulatory authority over their members, and it has the potential to create state criminal jurisdiction in non-P.L. 280 states where it has never before existed. This is an unfunded mandate on states, an affront to tribal sovereignty, and a dramatic departure from the federal policy of self-determination. The federal government should under no circumstances authorize state jurisdiction—civil or criminal—over American Indian and Alaska Native tribes without full consultation with and consent of affected tribes.

2. **Urge state governments to engage in and formalize tribal-state consultation policies and protocol**
   Several states (for example, the state of New Mexico) already have formal policies in place to consult regularly with the tribes residing within their state's borders. These mechanisms for timely and ongoing communication between the appropriate parties on issues of mutual interest have had marked and demonstrable success. The institutionalization of tribal-state consultation processes provides certainty about the process and forums through which issues can be discussed and addressed, even with changes of political leadership at the tribal and state levels.

3. **Promote an understanding of and respect for tribal sovereignty and the federal trust relationship**
   State legislators are often unfamiliar with the bounds of tribal sovereignty and the contours of the federal trust relationship with tribes. The federal government must seize every opportunity to promote and educate state officials about the special trust relationship it has with tribes and about the unique political status of American Indians and Alaska Natives in our country. The federal government should also raise cultural awareness about Native customs and traditional tribal governmental structures.

4. **Require states to wholly fulfill their obligations under P.L. 280**
   Passed in 1953, P.L. 280 gave jurisdiction over criminal offenses involving Indians in Indian Country to certain mandatory states and allowed other states to assume jurisdiction in a similar manner. Since its inception, P.L. 280 has caused jurisdictional confusion, increased tension between states and tribes, and resulted in profuse litigation. While some states have accepted their obligations under P.L. 280, most have viewed it as an unfunded mandate, and they have refused to take their law enforcement responsibilities on tribal lands seriously. This lack of law enforcement presence has resulted in epidemic rates of violence on Indian reservations and in a direct threat to Native people. Given the federal government's trust responsibility to provide for the public safety of tribal members, it should make it a priority to ensure that states are carrying out their P.L. 280 obligations.

5. **Provide more federal incentives and funding for tribal-state collaborative efforts**
   Section 202 of the recently enacted Tribal Law & Order Act (P.L. 111-211) authorizes the Attorney General to provide technical assistance funds to encourage tribal, state, and local law enforcement agencies to enter into cooperative law enforcement agreements to combat crime in Indian Country and nearby communities. Particularly when all government budgets are constrained, the federal government should provide similar support in other issues that transcend jurisdictional boundaries such as climate change planning, natural resources, transportation, and watershed management.

6. **Support efforts to address restrictive state settlement acts**
   A number of tribes entered into settlement agreements whereby they gave up large land claims in return for federal acknowledgement. The states often had the upper hand in these settlements and successfully insisted on restrictions which limited tribal sovereignty, including criminal, civil, and regulatory jurisdiction; the application of aspects of the Indian Self-Determination and Education Assistance Act (P.L. 93-638); and the application of the Indian Child Welfare Act (P.L. 95-608), among others. The federal government should consult with tribes to develop a framework for tribes and states to work together to eliminate excessive and unnecessary restrictions on tribal sovereignty.

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National Congress of American Indians

INTERNATIONAL INDIGENOUS ISSUES

Indigenous communities across the globe are increasingly relying on international law and international forums for enforcement of their human rights. American Indians and Alaska Natives have joined this trend. Tribes have been extremely vocal in the United States' undertaking to revisit its position on the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration). They have also engaged in the Universal Periodic Review process and other international arenas.

The importance of the UN Declaration to American Indian and Alaska Native tribes cannot be overstated. While not legally binding in and of itself, it nevertheless performs the invaluable functions of gathering together in one document the basic rights of Indigenous peoples. This performs an important educational function for the public at large and provides clear direction for those nation states that have endorsed the Declaration. Tribal leaders urge the United States to assume a position of international leadership on the following important issues of Indigenous rights.

RECOMMENDATIONS

1. **Endorse the United Nations Declaration on the Rights of Indigenous Peoples without reservations and proceed with its swift and full implementation**
   We commend the Obama Administration for undertaking a review of the position of the United States on the UN Declaration, and we sincerely hope that at the conclusion of its review, the United States will endorse the Declaration without reservations or conditions. The language of the Declaration speaks to its invaluable role as a statement of the "minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world." The endorsement of the United States is crucial to the advancement of Indigenous rights throughout the world.

2. **Support ratification of the Convention to Eliminate All Forms of Discrimination Against Women**
   Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) is often described as an international bill of rights for women, protecting them from discrimination and recognizing their many rights, including rights to full development and advancement; equal participation in political and public life; represent government internationally; have a nationality; equal rights to education; equal rights to employment; equal rights to health care; equal rights in other areas of economic and social life; freedom of movement and to choose their residence or domicile. CEDAW also encourages countries to take national action to end discrimination against women. Currently, 186 countries have ratified CEDAW, and the United States is only one of seven countries that has not. We urge the United States to uphold the rights of women worldwide and ratify CEDAW.

3. **Respond to the recommendations of the United Nations Committee on the Elimination of Racial Discrimination**
   In 2008, the UN Committee on the Elimination of Racial Discrimination condemned the United States for its inadequate response to violence against Indian women and recommended that the United States increase its efforts to prevent and prosecute perpetrators of violence against Indian women. We urge the United States to respond to the recommendations of the UN Committee on the Elimination of Racial Discrimination by (1) increasing the criminal authority of Indian tribes to prosecute non-Indian rapists, batterers, and other violent criminals; (2) increasing federal support to Indian tribes to enhance their response to violence against American Indian and Alaska Native women; (3) creating a grant program to provide federal support to nonprofit, non-governmental American Indian and Alaska Native women's organizations to provide services to survivors of domestic and sexual violence; and (4) creating a grant program to provide federal support to nonprofit, non-governmental American Indian and Alaska Native women's organizations providing services to survivors of domestic and sexual violence to build shelters.

4. **Implement mechanisms for accountability and oversight**
   American Indian and Alaska Native tribes have repeatedly stated that creating effective mechanisms to hold the United States accountable for its human rights obligations, to provide oversight and accountability, and to ensure accesses for redress of human rights violations for tribal governments and tribal citizens in the United States is a priority. We urge creation of an effective infrastructure to promote implementation and monitor compliance with international human rights treaties and other human rights obligations, and to coordinate the efforts of U.S. federal agencies and departments to promote and respect human rights in the United States.

5. **Urge the United Nations to recognize American Indian and Alaska Native tribes as sovereign nations and allow them to participate in UN forums as nations rather than through NGO representatives**
   Despite their governmental status and expertise on international issues, Indian tribes and their representatives are only allowed to participate in UN forums (e.g., the United Nations Framework Convention on Climate Change) as observers, a status that allows for attendance at meetings (unless a third of the parties present object) and for submission of oral statements, but not for the right to vote. Indian nations are sovereign governments within the United States and have status under international law as Indigenous peoples. Many have unique expertise on international issues. As such, they should be permitted to participate in UN forums as nations, to share their knowledge, and to influence international decisions in a meaningful way.

6. **Support the protection of Indigenous peoples, their lands and territories, and their traditional practices worldwide**
   As the United States government acknowledges the benefit that strong tribal nations offer to our great nation, we urge the Administration to support the rights of Indigenous peoples worldwide to strengthen the global community. The failure to protect Indigenous human and land rights and to respect the demonstrable and increasingly recognized effectiveness of traditional Indigenous ecological practices (e.g., in combating deforestation) undermines international efforts to combat climate change.

For additional information, please contact Katy Jackman, NCAI staff attorney, at 202.466.7767 or kjackman@ncai.org.

National Congress of American Indians

FEDERAL ACKNOWLEDGEMENT

The federal government does not create the existence of an Indian tribe. Tribes exist and have existed since time immemorial. The federal acknowledgement process found at 25 C.F.R. Pt. 83 is simply intended to recognize those tribes in the United States that have existed as living, political, and cultural groups since historic times—and to deny recognition to groups that have not.

Unfortunately, the current federal acknowledgement process is in desperate need of reform. When this process fails, the denial bars Indian tribes from accessing resources necessary for their continued survival and constitutes a fundamental failure of the federal trust responsibility.

Despite the best intentions of those that created the process and those that currently administer it, the process simply does not work. It subjects tribes to unconscionably long delays and unreasonable documentary requests. It establishes an objective list of criteria but provides no guarantees of objectivity or fairness in the application of the criteria. These problems cause incalculable harm. The length of the process leaves tribes in limbo for decades, unable to guarantee services to their members or to prove to state and local governments that the federal government recognizes their sovereignty. The lack of transparency casts doubt on the federal government's willingness to faithfully perform its responsibilities. And the increasing demands on tribes in the process inflict hundreds of hundreds of thousands of dollars in unnecessary costs every year.

While the acknowledgement process began in 1978 with a firm commitment to fairness and impartiality, the process has deteriorated over the decades since the regulations were adopted. It now fails even the simplest metric: timeliness. The process can take decades. For example, the Shinnecock Indian Nation recently received recognition 32 years after submitting its application. Most of the recent decisions have been pending for more than 30 years. Such delays are common, and they seriously undermine the legitimacy of the acknowledgement process.

The documentation required also adds to the delay and raises questions about the acknowledgement process. The number and scope of the documentation requirements place an untenable burden on tribes attempting to engage in good faith with the Secretary. These requests defy the historical and cultural realities of tribal existence over the last centuries. They appear to change with each passing year.

Most troublingly, there are significant questions about the fairness and integrity of the process. In recent years, significant concerns have been raised among our members and among the public at large when actions during the acknowledgment process created the appearance that political forces shaped the nature of the process and influenced the outcome of acknowledgement decisions.

RECOMMENDATIONS

NCAI's position on federal acknowledgement remains virtually unchanged since its formative convention on the issue over 30 years ago. We continue to support the basic recognition criteria that NCAI helped to identify in the 1970's, and believe the central question in federal acknowledgement

is whether the tribe has maintained tribal relations from historic times. All inquiries in the process should be targeted toward answering this narrow question and making the process more efficient and fairer.

1. **Reform the process**
   The Administration should reform the acknowledgment process and provide adequate staffing to ensure timely, transparent, and fair consideration of each application. It should identify reasonable documentation requirements and allow tribes to address any gaps in the historical record. The process should include consideration of the historical and cultural realities informing each tribe's relationship with the federal government. Most importantly, NCAI encourages the Administration to take steps to ensure that the integrity of the process is restored.

For additional information, please contact John Dossett, NCAI General Counsel, at 202.466.7767 or jdossett@ncai.org.

National Congress of American Indians

DATA COLLECTION

Effective data collection in Indian Country is critically needed and is an important mandate for federal agencies. Fulfilling the federal government's trust responsibility to American Indian and Alaska Native tribes requires accurate data on tribal needs and resources. Close consultation and collaboration with Native communities will help facilitate effective data collection. Although there have been historical challenges in data collection, there are a number of practical steps federal agencies can take to improve current and future data collection efforts in Indian Country.

RECOMMENDATIONS

1. **Include Native community in national data sets**
   In order for Native communities to be eligible for certain federal grants, they must be included in national data sets. This inclusion is also important for policymaking and regional resource allocation. For example, Native communities are not always included in the calculation of state unemployment rates, but they should be because these data affect the distribution of federal funds to states. Consistency of data variables collected from Native communities with other national data sets is necessary for tribal data to be included in national data sets. One challenge in data collection in Native communities is small sample size. Oversampling Native populations in national data sets can help ensure that tribes are well represented. Geographic diversity is important in any oversampling efforts, as tribal communities are extremely diverse across, as well as within, geographic regions. Collection of longitudinal data can also help overcome problems of small sample size. Even if there are not enough data in a particular year to make generalizations across Indian Country, analysis of data accumulated over several years may allow for drawing more robust conclusions.

2. **Collect comprehensive data from Native communities**
   There are large data gaps in a number of areas, including energy resources on tribal lands and Native housing needs. Collecting specific data for each Native community, and for geographic regions overall, is important for federal agencies to be able to justify their federal budget requests and allocate resources equitably. Data collected from individual Native communities should also be in a consistent format, so that larger data sets can be compiled that are generalizable across geographic regions and Indian Country as a whole.

3. **Coordinate the collection of similar kinds of data by federal agencies**
   Different federal agencies sometimes collect data that may be redundant and could be aggregated to make efficient use of federal resources. For example, unemployment data are collected by both the Bureau of Labor Statistics and the Bureau of Indian Affairs. Different agencies in the Department of Health and Human Services collect multiple kinds of data that, when viewed together, can provide a more comprehensive view of a community's health (e.g., disease rates and socioeconomic indicators). Further, multiple agencies collect data related to different aspects of Indian Country law enforcement. Minimizing redundancy and administrative burdens in data collection is important for efficient use of both federal and community resources. Before asking Native communities to collect new data, federal agencies should assess

what related data have already been or are being collected. When new data are absolutely needed, federal agencies should attempt to minimize the administrative burdens of data collection and use parsimony in variables requested. The Administration should also encourage agencies to coordinate on related data collection efforts. Finally, coordination on federal agency definitions of "American Indian/Alaska Native" or "Native American" would also help to make it possible to compare data across agencies.

4. **Provide education, outreach, and technical assistance for Native communities**
   Native communities often receive data requests from federal agencies, and they are more likely to be responsive if they understand why such data are needed and how it will help Indian Country. Technical assistance, clear instructions, and training should be provided prior to requests for data collection, and data forms and variables should be clearly defined.

5. **Partner with Native communities in all aspects of data collection**
   Native communities should be involved in decisions about which variables will be collected, the format of data collection templates/forms, methods for data collection, data analysis plans, and interpretation of results. Native communities have expertise that can help federal agencies address past challenges, such as historical mistrust, in data collection. As sovereign governments, most tribes have their own data collection procedures, and they know what methods work best for them. They may also already have data collection models or specific local data that could be shared with federal agencies. Providing access to federal databases for Native communities and affiliated researchers can help expand the scope of data analyses. For example, Tribal Epidemiology Centers were named "public health authorities" in the 2010 reauthorization of the Indian Health Care Improvement Act, and should be granted access to federal health data. Any sharing of data, however, should be done with adequate protections and confidentiality/anonymity of individual Native communities. Clear and frequent communication with Native communities on how data are used by federal agencies will increase the likelihood that tribes will submit their own accurate data to federal agencies. Native communities should be consulted in the interpretation of results, particularly before any related decisions are made about policies and programs. Once data have been used to inform federal budgets and other policymaking, these outcomes should be shared with Native communities so they know how their data submissions helped Indian Country. Finally, considering cultural factors in data collection can help build trust with Native communities. Consultation with Native communities can improve the cultural appropriateness of data collection instruments. Native community members also could be invited to provide cultural competency training to federal agency staff.

6. **Include Native communities in federal research grants**
   Research is an important source of data about Native communities, and inclusion in federal grant competitions would help expand the data collection efforts. Federal research grant criteria are often geared toward academic researchers. One strategy federal agencies might consider is to create smaller-scale grants specifically targeted toward Native communities. Federal grants awarded to universities could require the inclusion of Native communities in projects relevant to them. Finally, federal agencies could include Native individuals on grant review panels.

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National Congress of American Indians

TRIBAL SELF-GOVERNANCE

Self-governance is a tribally driven, congressional legislative option, whereby tribal governments are authorized to negotiate annual appropriated funding and to assume management and control of programs, services, functions, and activities (or portions thereof) that were previously managed by the federal government. Self-governance allows tribes, as sovereign nations, to exercise their right to be self-governing and to take program funds and manage them in ways that best fit the needs of their citizens and tribal communities.

Since initiation of the first self-governance agreement 2 decades ago, the number of tribes operating their programs under this legislation has steadily increased. As of 2010, there are 260 self-governance tribes within the Department of the Interior—Bureau of Indian Affairs (DOI-BIA) and 331 self-governance tribes within the Department of Health and Human Services - Indian Health Service (DHHS -IHS). Over the last 2 decades, the self-governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress regarding ways to improve and advance self-governance.

RECOMMENDATIONS

1. **Enact Title IV Self-Governance amendments**
   In September 2010, the House of Representatives passed the Department of the Interior Tribal Self-Governance Act (H.R. 4347), legislation that would make comprehensive amendments to Title IV and some important amendments to Title I of the Indian Self-Determination and Education Assistance Act (ISDEAA, P.L. 93-638). The purpose of the bill is to enhance tribal self-governance by, among other things, making self-governance in DOI consistent with its Indian Health Service counterpart in Title V. No corresponding bill has yet been introduced in the Senate, but the Senate Committee on Indian Affairs (SCIA) held a hearing on November 18, 2010, and tribes are urging a prompt mark-up and passage before the conclusion of this Session. This legislation has been a top legislative priority of self-governance tribal leaders for nearly a decade and represents years of extensive dialogue and negotiation between DOI and tribal representatives. Tribes urge the Senate to act rapidly to pass a bill identical to H.R. 4347, so that this important legislation can be passed before the end of this Session. This legislation should be included in the cadre of legislative successes of the 111th Congress, joining the Indian Health Care Improvement Act and the Tribal Law and Order Act, which will underscore the commitment of this Administration to American Indian and Alaska Native people.

2. **Support and strengthen efforts to protect and expand tribal self-governance within DHHS**
   The expansion of self-governance within Title VI of the ISDEAA would greatly aid tribes in serving their people. Tribes are allowed more flexibility to redesign programs that are within the Administration on Aging, Administration on Children and Families, Substance Abuse and Mental Health Administration, and Health Resources and Services Administration, which are

under the DHHS. Tribes are allowed to reallocate program funding with provisions of Title VI legislation to better meet the needs of their citizens.

In 2000, Congress added Title VI to the ISDEAA, directing DHHS to study the feasibility of expanding self-governance to non-IHS agencies within DHHS. The March 2003 DHHS study concluded that expanding self-governance was feasible and identified several candidate programs for inclusion in self-governance agreements. Further, this study reaffirmed that tribes are capable of overseeing essential IHS programs and services. It noted that programs compacted or contracted by tribes are more sensitive to the needs of tribal citizens compared to state-operated programs. In 2003, a tribal bill that would have authorized a demonstration project to implement the study's recommendations was reported out of the SCIA, but it died at the end of the session.

Tribal leaders are very active in supporting Secretary Kathleen Sebelius's tribal agenda, including the Tribal Consultation Policy and participation on the Secretary's Tribal Advisory Council. In addition, tribal representatives serve on advisory committees and workgroups for several operating divisions within DHHS. Tribes urge this Administration to work with us in advancing a self-governance demonstration project within DHHS in consideration of the recommendations included in the 2003 Feasibility Study.

3. **Expand self-governance to agencies beyond BIA and IHS**
   The Administration should consult with tribal governments to identify programs outside of BIA and IHS that tribes have an interest in and capacity to administer. Demonstration projects could be developed within agencies where there is a high degree of tribal interest and capacity for program administration.

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National Congress of American Indians

LAND INTO TRUST

Restoration of the tribal land base is critical to building economic development, promoting tribal government, and protecting tribal culture. The National Congress of American Indians strongly urges the Department of the Interior (DOI) to move forward swiftly to take land into trust for tribes and improve the process.

The principal goal of the Indian Reorganization Act (IRA, P.L. 73-383) was to halt and reverse the abrupt decline in the economic, cultural, governmental, and social well-being of Indian tribes caused by the disastrous federal policy of "allotment" and the sale of reservation lands. Between the years of 1887 and 1934, the U.S. government took more than 90 million acres from the tribes—nearly two-thirds of all reservation lands—and sold it to settlers. The IRA is comprehensive legislation for the benefit of tribes that stopped the allotment of tribal lands. It continues the federal trust ownership of tribal lands, encourages economic development, and provides a framework for the reestablishment of tribal government institutions on their own lands.

Section 5 of the IRA, 25 U.S.C. §465, provides for the recovery of the tribal land base and is vital to the IRA's overall goals of recovering from the loss of land and reestablishing tribal economic, governmental, and cultural life:

> *The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.*

Of the 90 million acres of tribal land lost through the allotment process, only about 8 percent has been reacquired in trust status since the IRA was passed 76 years ago. Still, today, many tribes have insufficient lands to support housing and self-government, and some tribes have no land base at all. Reservation maps continue to show deeply fractured and checkerboarded reservation lands that are difficult to manage for economic or jurisdictional purposes. The IRA imposes a continuing duty on the Secretary of Interior to take land into trust for the benefit of tribes until their needs for self-support and self-determination are met.

The most significant problem that Indian tribes face in restoration of lands is simply inaction and delay. Many tribes have had land-to-trust applications pending for over a decade. The vast majority of applications are on-reservation acquisitions that are not controversial in any way and should be moved quickly into trust status.

RECOMMENDATIONS

Tribal leaders strongly support DOI's recent actions to improve the land to trust process. The June 2010 memoranda from Secretary Salazar are most welcome, as are the tribal quarterly reports on pending applications. These are excellent steps forward. However, there are additional steps that need to be taken to improve the process, including those below.

1. **Fully implement and clarify provisions of the BIA Land Acquisition Handbook**
   The Bureau of Indian Affairs (BIA) Land Acquisition Handbook calls for an annual review with Indian Country. This review has not occurred for two years. We believe that the Handbook should be simplified and the review process expedited to prepare it for ready use in BIA field offices. One particularly important step is to establish timeframes within the Handbook for action to be taken on each step of the land to trust process.

2. **Implement commonsense reforms to expedite the land-to-trust process**
   Additional funding and staffing will broadly assist in expediting the process and should be applied to maintaining the Indian Land Survey Program. Furthermore, tribes have enormous costs with title review and environmental review processes. These costs should be shared by the federal government, or there should be more opportunities for waivers. Hazardous material reviews and contaminant surveys should not be required on remote rangeland and forestland.

3. **Improve communication within the DOI**
   Improved communication with the Department, particularly with the Solicitor's office, is a critical step to ensuring the completion of title reviews.

4. **Remove requirements for title insurance when the tribe has an adequate abstract or chain of title**
   While clear evidence of title is essential to all successful real estate transactions, it is illogical and wasteful to require title insurance on inexpensive land when title evidence is clear.

5. **Avoid a lengthy rulemaking process and move swiftly to process land into trust applications**
   NCAI does not see a need for DOI to revise the regulations that govern land-to-trust acquisition, found at 25 C.F.R. 151. A rulemaking process would create even more delay, and would likely draw out controversy, as we saw in 1999, when Interior unsuccessfully attempted to amend the regulations. However, there are internal ways that BIA could improve the land-to-trust process, particularly by establishing time frames and improving the internal processes for considering land-to-trust applications.

For additional information, please contact John Dossett, NCAI General Counsel, at 202.466.7767 or jdossett@ncai.org.

National Congress of American Indians

WATER RIGHTS

When Indian reservations were established, American Indian tribes reserved water rights, and these are possibly the most important rights many Indian tribes have yet to exercise.

While the United States carries the legal obligation as trustee to protect these tribal rights, federal water policy and programs have too often supported non-Native communities to the detriment of tribal legal rights. As a result, many tribal communities now suffer from inadequate, often compromised, water supply. Today, too many homes on Indian reservations lack a clean and reliable water supply; in some cases, there is none at all. In addition, the lack of water and water infrastructure has halted economic development on some reservations and damaged precious cultural and natural resources. Increasing pressure on water supply from climate change, population growth, and economic development will require more tribes to resolve their water rights claims in the near future.

The federal government continues to bypass development of tribal water resources and move slowly on water rights settlements. In 2009, the federal government spent over $3 billion on water projects in foreign countries. Yet over the past 28 years, the federal government spent a total of only $1.7 billion on Indian water rights settlements. Of the 565 federally recognized Indian tribes, fewer than 75 have resolved their water rights claims through litigation or settlement.

The federal government, in partnership with tribal governments, should establish water rights, resolve claims, and appropriate the necessary funding to ensure tribal access to water resources.

RECOMMENDATIONS

1. **Create and implement an executive order**
   The White House needs to issue and implement an Executive order requiring federal agencies to cooperate with tribal governments to develop tribal water infrastructures, manage reservation water quality, and resolve tribal water claims.

2. **Support resolution of tribal water rights claims**
   The White House should direct federal agencies to prioritize resolution of tribal water rights claims, which could be bolstered through an Executive order. As the trustee of Indian water rights, the federal government should act as an advocate for Indian water rights with respect to Indian Water Rights Settlements. In the FY2012 budget, the President should request increased funding for the Bureau of Indian Affairs (BIA) Indian water rights office, Bureau of Reclamation (BOR), and other programs supporting Indian water rights negotiation and settlement. Going forward, the Administration should create a permanent, sustainable, well-funded mechanism for funding Indian water rights settlements.

3. **Prioritize Reclamation Fund monies to fund Indian water rights settlements**
   The Administration must encourage Congress to prioritize the Reclamation Fund due to its critical role as the primary funding source for Indian water rights settlements. The Reclamation Fund is an appropriate primary funding mechanism for Indian water rights settlements in the west. Created in 1902 to finance agricultural water projects and infrastructure to build up the 17 western states, the Reclamation Fund is ideally positioned to fund Indian water rights settlements that comply with Reclamation Act requirements. The Reclamation Fund acquires money through repayments on the sale, lease, or rental of public lands, as well as revenues from mineral leases and timber sales. These payments have been increasing in recent years, largely due to increasing oil and gas prices, and the available balance makes it a viable mechanism for funding Indian water rights settlement.

4. **Support water resources development and management on tribal lands**
   The federal government should work with tribes to build tribal technical capacity to develop water resources, water management, and water infrastructure. This could be done by instructing agencies, such as BOR, United States Geological Survey, and Environmental Protection Agency, to work with tribes on water resources projects on tribal lands. The Administration could also increase tribal management of water resources on Indian lands by repealing the BIA moratorium on the approval of tribal water codes.

5. **Support tribal and DOI preparation, litigation, negotiation, and settlement of water rights claims**
   The BIA regional offices distribute vital funding to tribes for the purpose of conducting essential technical studies that enable them to participate fully and effectively in the litigation and negotiation processes. Over the past decade, these resources have been badly cut, to the point that tribes are seriously crippled in these efforts. Additional financial and human resources are necessary to assist tribes in developing and pursuing Indian water rights claims. The Department of the Interior (DOI) Indian Water Rights Office has been an important partner for Indian tribes when working on their settlements, and therefore should be made permanent within DOI's structure and should be effectively staffed and funded.

For additional information, please contact Jose Aguto, NCAI Policy Advisor, at 202.466.7767 or jaguto@ncai.org.

National Congress of American Indians

ENVIRONMENTAL PROTECTION

Tribes are heartened by the meaningful commitment and actions that the Obama Administration has taken in carrying out the Environmental Protection Agency's (EPA) Indian Policy to improve the environmental and health conditions of tribal lands, waters, natural resources, and communities. Tribes note, among other things, the revitalized interagency effort led by EPA that has significantly reduced the number of tribal homes lacking access to safe drinking water and basic sanitation; the creation of a Tribal Grants Council; advocacy for the creation and substantial funding the Tribal Multimedia Implementation Grants program; increased funding for the Indian Environmental General Assistance Program; increased participation in the Information Exchange Network; efforts to improve coordination with the National Tribal Caucus; and continued support for tribal advisory bodies across the media programs. To take EPA's successes to the next level, we urge the Administration to consider the following recommendations.

RECOMMENDATIONS

1. **Support the enactment of an Indian Environmental Act and pilot projects**
   Tribal environmental departments must often juggle multiple, modest grants with limited and varying timelines provided by different agencies and sub-agencies. This reality often diverts scarce resources toward the fulfillment of bureaucratic requirements and away from tangible on-the-ground activities that address environmental issues most important to the tribe. Tribes must be provided with a greater degree of autonomy to address their environmental priorities. This can be done by streamlining requirements and permitting more flexible use of funding, which would enable more consistent, efficient, and targeted use of funds.

   The Administration can address these challenges comprehensively by working with the tribes and with Congress to develop an Indian Environmental Act that would offer the opportunity for qualified tribes to move to self-governance in the area of environmental services. The intent of the Act would be to provide tribal governments with control and decision-making authority over the federal financial resources provided for the benefit of Indian people. An interim step, prior to enactment of legislation, could be for the EPA Administrator to implement a 4-year pilot project that could demonstrate the success of self-governance in addressing the environmental policy needs of Native communities.

2. **Provide access to the EPA's assessment of environmental conditions and programs across Indian Country**
   Indian Country is encouraged by EPA's efforts to conduct an assessment of the circumstances, opportunities, and challenges Indian tribes face with respect to environmental programs. The assessment—conducted within the agency several years ago—has not yet been shared with the tribes. We urge EPA to consult with tribes on the outcomes of the assessment.

3. **Invest in tribal capacity to conduct climate change planning, adaptation, and mitigation**
   In the absence of comprehensive climate legislation, the Administration is redoubling its efforts to assist states, tribal, and local governments to adapt to climate change and develop clean

energy solutions. As tribes are disproportionately and profoundly vulnerable to and impacted by climate change, such efforts to assist them are all the more necessary. The Council on Environmental Quality's Climate Change Adaptation plan, which calls for agency and interagency efforts to assist tribes, is a welcome first step that requires further action to realize the vision.

Primarily due to limited resources, other pressing priorities, and the lack of capacity, tribes have not developed climate action plans comparable to those developed by the majority of states. Many other agencies have not yet made comparable investments to those made by EPA to build tribal institutional capacity through the Indian Environmental General Assistance Program (GAP). Because of this, tribal environmental professionals may be the most appropriate personnel capable of administering this critical activity on behalf of tribes. The Administration must urge Congress to appropriate increased funding for the GAP program, specifically to support climate adaptation planning.

Interagency collaboration is also critical in the areas of energy efficiency and natural resource management, intimately related to environmental protection. See the papers on climate change, energy, and natural resources in this briefing book for further information.

For additional information, please contact Jose Aguto, NCAI Policy Advisor, at 202.466.7767 or jaguto@ncai.org.

National Congress of American Indians

ALASKA NATIVE SUBSISTENCE

Federal laws protecting American Indian and Alaska Native hunting, fishing, and gathering rights apply throughout the United States, but nowhere are they more critical than in Alaska, where hunting, fishing, and gathering remain an economic necessity. Subsistence resources constitute a substantial majority of the nutritional needs of Alaska's Native people, especially in rural areas where the need for subsistence resources for daily nutritional, spiritual, and cultural sustenance is the greatest. The Indigenous peoples of Alaska have a basic human right to their subsistence way of life and to maintain their cultural beliefs and practices. Indian Country strongly supports the efforts of Alaska Natives to obtain stronger federal protections for Alaska Native subsistence hunting, fishing, and gathering rights. The U.S. Government has a trust responsibility to Alaska Natives to honor the commitment it made to them in the Alaska Native Claims Settlement Act of 1971 (ANCSA) and in Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). This commitment is to establish and implement a comprehensive federal program that will protect their way of life. Fulfilling this commitment is central to the survival of this and future generations of Alaska Natives.

RECOMMENDATIONS

1. **Develop legislation to provide lasting protection for Alaska Native subsistence**
   The very foundation of Alaska Native culture and nutritional need is met by subsistence hunting and fishing. When Congress enacted Title VIII of ANILCA, it envisioned state implementation of the federal priority for subsistence uses on all lands and waters in Alaska through a state law implementing a rural priority. That system operated for a mere 7 years before the Alaska Supreme Court ruled in 1989 that the State Constitution precluded the State's participation in the cooperative federalism program. Ironically, the State had insisted on a "rural" rather than "Native" subsistence preference in ANILCA. Since 1989, all efforts to amend the State Constitution to comply with ANILCA's rural priority, and thus to have a unified subsistence management regime, have failed. Over the last decade, the State of Alaska, anti-subsistence groups, and the previous Administration have aggressively and successfully taken actions to subvert federal law and polices. They have also virtually gutted state subsistence laws, leaving those who once depended on Native-owned or state lands to fulfill their subsistence needs without meaningful protection. The erosion of federal protections led to the recently completed secretarial review of the subsistence management program.

   Unfortunately, the results of the secretarial review are inadequate. The proposed changes to the federal management program do not address the fundamental problems with the existing law. The checkerboard system of protection was not what Congress envisioned when it enacted Title VIII. Congress recognized that "the continuation of the opportunity for subsistence uses . . . is essential to Native physical, economic, traditional, and cultural existence." Rather than defending and maintaining a system that no longer serves its intended purposes, Indian Country calls upon the White House and Congress to consider options that realize Congress's original intention that

Alaska Native hunting, fishing, and gathering rights be protected. Necessary changes in federal law include (a) a "Native plus rural" priority for subsistence, (b) the extension of subsistence priority to Native-owned lands and all navigable waters and marine waters in Alaska, and (c) providing an ongoing and meaningful role for Alaska Natives in the federal subsistence management program. While only Congress can make the statutory changes necessary to fix the fundamental problems with Title VIII of ANILCA, the Administration can, and should, work with the Alaska Native leadership to develop legislation that the Administration can propose to Congress to ensure the continuation of this Alaska Native subsistence way of life.

2. **Convene a high-level interagency meeting with key White House officials, including the Domestic Policy Council and departments with jurisdiction over subsistence uses**
   Subsistence management and the legal rights of Alaska Natives cut across a number of departments within the Administration, including Interior, Agriculture, Justice, and Commerce. If meaningful protections are to be provided for subsistence hunting and fishing in Alaska, there must be an ongoing dialogue between Alaska Native leaders and the agencies with jurisdiction over the various aspects of Alaska Native ways of life. This is a critically important moment in history for Alaska Natives with respect to hunting and fishing, the foundation of a subsistence way of life, and a mainstay of Native nutrition and economies. Presidential involvement has been a hallmark of all of the major federal laws affecting Alaska, including the Alaska Statehood Act; ANCSA; and ANILCA, including Title VIII of that Act, which was intended to provide protection for subsistence hunting and fishing rights and to fulfill the promises of ANCSA. The same level of White House commitment and involvement is needed today.

3. **Take interim administrative measures to increase protections for subsistence**
   In addition to convening a high-level interagency meeting on subsistence, the President should issue an Executive Order to advise federal agencies and the Federal Subsistence Board that Title VIII of ANILCA is "Indian Legislation," enacted under the plenary authority of Congress over Indian Affairs. The President should also direct the Office of Subsistence Management to implement a subsistence management program in accordance with the Executive Order. Title VIII was enacted to protect the subsistence way of life of rural Alaska residents, including residents of Native villages. In implementing the statute, Congress expressed its long-standing concern for, and obligation in, protecting subsistence uses of Alaska Natives and fulfilling the purposes of ANCSA. Although the statute provides for a "rural" preference, it is important to remember that the subsistence title would never have been added to ANILCA had it not been for the efforts of Alaska Natives.

For additional information, please contact John Dossett, NCAI General Counsel, at 202.466.7767 or jdossett@ncai.org.

National Congress of American Indians

CLIMATE CHANGE

The Intergovernmental Panel on Climate Change (IPCC) finds that "Indigenous peoples of North America and those who are socially and economically disadvantaged are disproportionately vulnerable to climate change." Among the most climate-sensitive North American communities are those of Indigenous populations that depend on one or a few natural resources. Thus, the IPCC finds that "the most vulnerable industries, settlements and societies are generally those in coastal and river flood plains, those whose economies are closely linked with climate-sensitive resources, and those in areas prone to extreme weather events." Nearly all tribes fit into one of those categories, and most Alaska Native communities fit into all three.

In Alaska, where temperatures are rising at twice the rate of other parts of the world, 184 out of 213 (86 percent) Alaska Native villages are susceptible to flooding and erosion. Of the nine villages reviewed by the Government Accountability Office in 2003, four—Kivalina, Koyukuk, Newtok, and Shishmaref—are in imminent danger from flooding and erosion and must be relocated. The Environmental Protection Agency predicts that the next 40 to 80 years will see loss of more than half of salmon and trout habitats throughout the United States. A large number of tribes rely upon these species for subsistence, cultural practices, and economic development. Tribes in the Great Plains must travel longer distances to find native plants, such as chokecherry and wild turnip, which they utilize for subsistence and medicinal purposes. Native foods and fisheries are declining, and tribal access to traditional foods and medicines is often limited by reservation boundaries. The role of climate change in separating tribal people from their natural resources poses a threat to Indigenous identity.

The uniquely far-reaching and disproportionate impact of climate change upon Native people, the absence of comprehensive climate legislation, and the federal trust responsibility collectively merit strong and urgent action by the Administration to support tribes in adapting to climate change impacts and in preserving the uniqueness and diversity of tribal cultures. The Council on Environmental Quality's Climate Change Adaptation Task Force has consistently mentioned tribes along with states and local governments in its report, which provides recommendations to the President about how federal agency policies and programs can better prepare the nation's response to climate change. While this is a welcome acknowledgement of the important role of tribes in addressing climate change impacts, these actions must be tailored to the tribal context.

RECOMMENDATIONS

1. **Provide tribes with formal consultative roles in developing federal climate change policy**
   Tribal governments must have formal participatory and consultative roles in all federally led climate task forces and initiatives, particularly on the climate change adaptation advisory board overseeing federal policy development and implementation. This can be done through the creation of a federal-tribal advisory body on climate adaptation and through the establishment of a tribal liaison position within CEQ.

2. **Ensure equal access to climate change adaptation funding and programs**
   As the federal response to climate impacts will often be folded into existing programs, the administering federal agencies must not only account for the climate impacts upon tribes but also seek to remedy existing programmatic inequities that render tribal infrastructures, institutional capacities (or lack thereof), and government services particularly vulnerable to such impacts. The federal government should provide funding for climate change adaptation planning, a process that has been completed by 32 states but only a handful of tribes. The agencies must also identify and remove barriers to tribal access to programs available to states that would benefit tribal climate adaptation efforts—for example, the Coastal Zone Management Act (P.L. 92-583) and the Land and Water Conservation Fund. Finally, equal access to energy efficiency programs and funding will ensure quality tribal housing stock into the future. The agencies must also designate a lead federal agency to address the urgent needs and relocation of Alaska Native Villages and to remove barriers to tribal access to funds that can address their needs.

3. **Protect and advance the contribution of tribal lifeways to climate change adaptation efforts**
   The federal government must protect and advance tribal lifeways, which have demonstrable value to the entire nation. A key first step would be to establish a federal-tribal task force to study and address tribal cultures and lifeways, the climate change impacts upon them, and those lifeways' benefits to developing appropriate climate strategies. Programmatic support should also be provided for federal natural resource programs that can protect indigenous ecological systems, subsistence plants, and animals; for intertribal sharing and application of traditional knowledge and culture, especially as ecological zones shift northward; and for implementation of tribal adaptation and mitigation practices that are demonstrably effective by tribal peoples. Finally, the Administration must work to see that tribal governments, colleges, organizations, and peoples are expressly included in climate research.

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National Congress of American Indians

ENERGY

Tribal energy resources are critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. They are also integral to tribal efforts to generate jobs and improve the standard of living of their members. Tribes control approximately 10 percent of America's energy resources. The Department of the Interior (DOI) estimates that undeveloped reserves of coal, natural gas, and oil on tribal lands could generate nearly $1 trillion in revenues for tribes and surrounding communities. The Department of Energy (DOE) estimates that wind power from tribal lands could satisfy 14 percent of total U.S. electricity demand, and tribal solar resources could generate 4.5 times the total amount of energy needed to power the country. Yet at this time only one commercial scale renewable energy project operates in Indian Country. Too many tribal homes lack access to electricity and affordable heating sources. Some reservations with vast energy potential are home to some of the poorest tribal communities in America. Energy development could be the best opportunity that tribal communities have to create sustainable, long-term economic development and improve the quality of life for tribal citizens.

To fully utilize the energy potential available in tribal communities, we further urge the Administration to provide tribes with equitable access to federal funding. Under the American Recovery and Reinvestment Act (P.L. 111-5) alone, state governments received nearly $12 billion for energy programs administered by DOE. In contrast, tribes received only $64 million of funding under these programs, with the vast majority through a 2 percent tribal set-aside of the Energy Efficiency Conservation Block Grant Program.

RECOMMENDATIONS

1. **Support enactment of the Indian Energy Parity Act (S. 3752)**
   Tribes continue to urge the Administration to actively and aggressively support the likely successor legislation in the 112th Congress of the Indian Energy Parity Act (IEPA, S.3752). The Act proposes promising policy solutions to pervasive barriers to tribal energy development. IEPA seeks to streamline or eliminate an array of outmoded federal bureaucratic processes in an effort to remove excessive and often unnecessary government involvement with nearly every transaction related to tribal trust land. The bill also seeks to bring tribal processes in line with similar experiences on state land. (SCIA documented a 49-step process to develop an oil well in Indian Country that took more than 2 years, compared to a seven-step process that took 2 weeks to develop the same oil well on state lands). It also seeks to address the lack of adequate tribal access to federal programs related to energy development and energy efficiency programs that state and local governments have been accessing almost exclusively since the mid-1970s.

2. **Provide sufficient financing for tribal energy projects**
   Federal production tax credits, investment tax credits, and grants in lieu of tax credits are the primary drivers of renewable energy development. However, tribal governments are unable to access these credits and assign them to private partners. This poses a significant barrier to the ability of tribes to undertake such projects. Earlier versions of IEPA contained provisions

addressing financing, which we hope the Administration will seriously consider and support for inclusion in future legislation. At the same time, the Indian wage and health credit and the accelerated depreciation allowance for property placed in service on Indian lands have been extended in 1-year increments after their initial, 10-year authorization lapsed in 2003. To provide investors and their tribal partners more certainty, these tax incentives should be made permanent.

3. **Enact agency-level solutions to facilitate tribal energy development**
   Even in the absence of comprehensive legislation, federal agencies have the authority and discretion to address many of the obstacles identified by IEPA and to undertake other actions to promote energy development.
   a. **Promote interagency and federal-tribal coordination**
      Memoranda of Understanding could be developed and implemented to parallel interagency effort to address tribal lack of access to basic water infrastructure. Immediate efficiencies could be achieved by designating one lead federal agency for renewable and traditional energy projects. Tribes also urge the establishment of a tribal-interagency advisory body to ensure meaningful tribal participation in these efforts.
   b. **Ensure the inclusion of tribal representatives and lands in national, regional, and state plans to upgrade and expand the transmission grid**
      Given that many tribal communities lack full access to the energy resources that other Americans take for granted, tribes must be included in planning the future of the transmission grid.
   c. **Eliminate inequities in energy development policies and practices**
      The $6,500 fee—payable to the Bureau of Land Management for each application for a permit to drill on Indian lands—presents an inequitable disincentive to energy development on tribal lands. The Administration should eliminate or otherwise ameliorate state and local taxation of tribal energy projects. It should also eliminate DOI oversight of the appraisals of tribal trust land and assets.
   d. **Amend or clarify regulations to enhance access to energy development opportunities**
      The Administration can interpret the Energy Policy Act of 2005 (P.L. 109-58) to support and fund tribal capacity building; to clarify criteria regarding fulfillment of renewable portfolio standards; and to reduce the tribal cost share for energy projects under the Energy Policy Act of 2005 back to levels in the Energy Policy Act of 1992. With respect to energy efficiency, revision of DOE Weatherization regulations and policies would enable tribes to receive funding directly, without carrying the burden of proving that state programs do not serve their members. The Administration could also interpret the Green Jobs Title of the Energy Independence and Security Act (P.L. 110-140) to include tribal governments, businesses, and veterans associations so that they might be able to access programs such as Pathways Out of Poverty.
   e. **Invest in tribal energy programs at DOE**
      Meaningful funding must be provided for the highly effective yet underfunded DOE Tribal Energy Program. The appointment of a Director for DOE's Office of Indian Energy Policy and Programs and the provision of staffing, funding, and budgetary authority for that office would represent significant progress toward that end.
   f. **Support energy efficiency and green job development**

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National Congress of American Indians

NATURAL RESOURCES

Tribes are America's first stewards. They have cared for the land for millenia, managing resources for the generations yet unborn and using knowledge, traditions, and practices handed down by their ancestors. And still today, the physical, cultural, social, economic, and spiritual well being of Native people—and all people—depends upon the health of our natural resources that have been sustained for generations through the ingenuity of Native traditional ecological knowledge.

However, tribal natural resources face a diverse array of threats and inequalities generally not of tribes' making. Climate change has a disproportionate impact upon Indigenous communities due to tribes' high dependence on natural resources. There are dire consequences to catastrophic declines in the health and populations of animals, fish, and plants on which Native communities depend: The social and cultural fabric of tribal communities frays, and the symptoms of social decay—suicide, domestic violence, substance abuse—have tragic and preventable human and economic costs in tribal communities and in the larger society.

Many existing federal programs that address natural resources do not regularly consult and collaborate with tribes, nor do they provide tribes with equitable funding allocations compared to those provided for federal and state lands. Strong federal-tribal institutional relationships, led by one or two federal agencies, that exist in areas such as tribal housing, health, transportation, law and order, and environmental protection, do not exist in the natural resources arena. Federal natural resources programs that apply, or should apply, to tribal lands and waters, are spread across many federal agencies, some of which have not worked regularly with tribes.

These circumstances have resulted in decades of federal neglect, exclusion, underfunding, and under-representation of tribal natural resource interests. Dozens of federal natural resources programs, including those in the Coastal Zone Management Act (P.L. 92-583) and the Forest Legacy program, exclude tribes from eligibility by law, regulation, policy, or practice. Further, over time, percentage increases in Bureau of Indian Affairs (BIA) funding are comparably lower than that of other bureaus within the Department of the Interior. Subsistence resources are also under persistent legal, policy, and environmental attacks.

To comprehensively address the opportunity to implement a different vision for the future of tribal natural resource management, a group of over a dozen intertribal organizations formed an alliance known as ONR (Our Natural Resources) to develop and advance a national tribal natural resources strategy. At the direction of tribal leaders, ONR provides a unique blend of expertise in the long-needed effort to consolidate and unify the tribal voice and engage the federal government to address tribal natural resource needs. The most relevant of ONR's draft goals to the Administration are outlined below, with additional context and recommended actions.

RECOMMENDATIONS

1. **Establish and advance tribal government involvement in the development and implementation of laws, programs, and policies that affect tribal interests in natural resources**
   To achieve this goal, the Administration should formalize tribal participation in federal decision making on natural resources in which tribes have an interest. They should also invest in strategies that build tribal capacity to engage in natural resources management. Many aspects of tribal governance—such as housing, transportation, public safety, environmental protection, and health—have formally established federal-tribal relationships through advisory bodies, and are primarily administered by a single agency. No such relationship exists regarding tribal natural resources, further challenged by the diversity of natural resources and a plethora of relevant federal agencies and intertribal organizations. Many federal natural resource advisory boards lack tribal representatives. For example, the Northern Pacific Fishery Management Council under the Magnuson-Stevens Act lacks a Native representative, even though many Alaska Natives rely heavily upon fish for subsistence. The Administration should convene a federal-tribal task force to develop a strategy to create federal-tribal advisory bodies addressing tribal natural resources, and to ensure tribal representation on existing federal natural resource advisory bodies.

2. **Provide increased base funding and ensure equitable participation in natural resources funding, programs, and initiatives**
   Base funding levels are currently insufficient to support tribal capacity to manage natural resources and must be increased. Tribal natural resource programs that are legally categorized as earmarks, yet are annually funded, some for over 15 years, must be acknowledged as federal programs. (Dozens of federal natural resource programs provide funding to states, local governments, and private citizens, yet bar tribal eligibility in law or practice. Federal agencies must work with tribes to identify and overcome these exclusions to the fullest of their administrative discretion.)

3. **Acknowledge and advance the role of tribal wisdom in natural resource management**
   The federal government should work energetically to involve practitioners of tribal wisdom and beliefs to participate in the development of natural resource management policies and practices. They should also work with these practitioners as true partners and to develop protocols to ensure that sensitive information is protected and that tribes share equitably in the benefits from research and management of natural resources. Through true partnership with these practitioners, the Administration should support the protection of tribal "First Foods," subsistence practices, medicines, harvesting, and sacred sites.

4. **Invest in educational programs that promote the participation of all sectors of the tribal community in natural resource management**
   The wisdom possessed by tribal communities is best preserved and applied when all sectors are involved in natural resource management. The Administration should support programs that enable all sectors of the tribal communities to actively participate in the management of tribal natural resources.

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National Congress of American Indians

U.S. DEPARTMENT OF AGRICULTURE PROGRAMS

The U.S. Department of Agriculture (USDA) and its diverse array of programs can and should play an increasingly significant role in tribal communities. Agriculture is of growing importance to American Indian economies, with an 88 percent increase in the number of American Indian farmers between 2002 and 2007. According to the Census of Agriculture, annual Indian agriculture production now exceeds $1.4 billion in raw agriculture products.

Enhanced federal support for agriculture, ranching, natural resource management, and other activities through USDA programs would generate significant benefits for tribes, rural communities, and the nation, promoting economic development, job opportunities and growth, community revitalization, pride and self-sufficiency, youth engagement, locally grown produce, healthier eating, and active lifestyles.

RECOMMENDATIONS

1. **Enact an Indian Agriculture Act**
   The *Keepeagle* litigation demonstrated clearly that USDA support for American Indian farmers has been lacking. The momentum from the settlement must be translated into institutional support within the Department for agricultural endeavors in Indian Country. A tangible way to demonstrate this support is by urging Congress to enact an Indian Agriculture Act (IAA). The intent of the IAA would be to focus and adapt USDA programs to promote agricultural production on Indian lands, one of the last remaining areas in the nation with sizeable arable and grazing lands. Among other things, the IAA would establish an Indian Agriculture Office and Advisory Board; provide start-up grants, loans, and technical assistance to farmers and related businesses; improve irrigation and the infrastructure; and help establish value-added agriculture business for tribes. Funding for these and other tribally directed activities could be generated by establishing an Indian Agriculture Economic Development Trust Fund capitalized with 25 percent of the revenue generated from the sale of electricity by the Western Area Power Authority.

2. **Expand the Federally Recognized Tribal Extension Program (FRTEP)**
   Though Congress mandates research and extension services in every county in the nation, the program does not offer comparable benefits to Indian Country. Funded since 1914, USDA's extension program exists in over 97 percent of America's counties, comprising over 3,100 extension offices. In contrast, the Federally Recognized Tribal Extension Program (FRTEP) currently consists of 30 extension agents on Indian reservations, serving less than 4 percent of reservation residents. FRTEP funding should be increased by 15 percent ($20 million per year) to facilitate the creation of the 100 offices necessary for the program to provide the same benefits it offers other areas. Extension programs revitalize rural communities, enhance local agricultural production, and involve youth in healthy activities and career opportunities. As such, they address critical needs faced by rural tribal communities.

3. **Ensure equitable tribal participation in U.S. Forest Service Programs**
   An independent study performed under the National Indian Forest Resources Management Act found that tribal forests, including grasslands, receive one-third of the funding on a per-acre basis as national forests, and that at least 1 million acres of tribal forests are in dire need of forest management. However, two of the principal programs in the Cooperative Forest Assistance Act (CFAA)—the Forest Legacy Program and the Forest Stewardship Program—provide states with the discretion to determine whether tribes participate in these programs. As a result, tribes receive virtually no funding from either program. Tribes must be treated equitably in the Forest Legacy program through authorization of a separate tribal program for the same purposes as the Forest Stewardship program, as was supported in the Senate-passed version of the 2008 Farm Bill. Also, where appropriate, procedures should be established to transfer Forest Service land to the Department of the Interior to provide trust lands for specific tribes.

4. **Reform the Food Distribution Program on Indian Reservations**
   The following recommendations offer significant potential to reform the Food Distribution Program on Indian Reservations (FDPIR).
   a. **Permanently include traditional Native foods in FDPIR**
      Before processed foods entered the diets of American Indians and Alaska Natives, tribal communities relied on traditional hunting, fishing, gathering, and agriculture. This lifestyle meant tribal citizens maintained healthy lives and were exposed to few chronic health problems. Many tribal leaders have voiced their support of a return to diets that include these traditional foods to encourage healthy living and cultural sustainability. The success of this strategy requires the permanent inclusion of traditional foods in FDPIR.
   b. **Encourage local food production and markets**
      Establishing and supporting local food markets would benefit the local economy, encourage the production and consumption of tribal traditional foods, and offset additional costs for the delivery of fresh foods to rural tribal communities. This can be accomplished through meaningful funding of Sec. 4211 of the Farm Bill.
   c. **Eliminate asset tests in FDPIR**
      USDA has traditionally aligned FDPIR rules with those governing the Supplemental Nutrition Assistance Program (SNAP), both for administrative convenience and as a matter of fairness. By maintaining parallel eligibility standards between the two programs, USDA ensures that the program is a comparable alternative to SNAP. Tribes, however, do not have the same option as states to lift the asset test on eligibility. Without eliminating these asset tests, Native families who live in states that have lifted the asset test for SNAP are burdened with an asset test administered by FDPIR that is not faced by their non-Native fellow citizens. If not addressed, FDPIR will be the only federal nutrition program that requires an asset test as part of eligibility.

5. **Implement labeling standards for Native-grown products**
   NCAI recommends that the Food and Drug Administration develop regulations regarding labeling of products that are American Indian/Alaska Native-grown or raised to ensure that consumers know when they are buying Native products. This will avoid non-Native producers using Native imagery and tribal names to market their products that are not grown by Native people.

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National Congress of American Indians

TRIBAL LAW & ORDER ACT IMPLEMENTATION

American Indian and Alaska Native tribes commend President Obama for signing the Tribal Law & Order Act (TLOA) into law on July 29, 2010. This new law takes a comprehensive approach to improving public safety on Indian reservations and reforming the entire justice system in Indian Country—from prevention, to law enforcement, to courts, to detention, and rehabilitation. But, like other laws, the TLOA will not mean much if it is not implemented, and successful implementation is going to require significant coordination and consultation between various federal agencies and tribal governments. The passage of the TLOA creates momentum for improving law enforcement on Indian reservations, but this effort cannot succeed without effective implementation and adequate funding.

RECOMMENDATIONS

1. **Urge Congress to fully fund TLOA programs**
   Effective implementation of the TLOA is contingent upon adequate federal funding for TLOA-authorized programs. The Administration should urge Congress to appropriate the full seven percent set-aside of the Office of Justice Programs identified in the President's FY2011 budget and ensure that tribal justice systems are adequately and equitably funded to provide sufficient services to meet their obligations under the TLOA in forthcoming budget years.

2. **Meet statutory deadlines**
   There are numerous deadlines for implementation contained within the TLOA, some of which have already passed. Federal agencies must take necessary measures to meet the TLOA implementation deadlines, implement all provisions without deadlines as soon as possible, maintain the focus and momentum provided by the law, and avoid the bureaucratic delays and inaction that have plagued previous federal efforts to improve law enforcement in Indian Country.

3. **Establish the Indian Law and Order Commission immediately**
   Under the TLOA, the federal government was ordered to establish, within 60 days of enactment, an Indian Law and Order Commission made up of tribal, federal, state, and local justice officials and other experts,. The Commission has the potential to serve as a tremendous resource during TLOA implementation and into the future, but the 60-day deadline for its creation has come and gone and, to our knowledge, the federal government has not taken action.

4. **Fulfill consultation responsibilities**
   Consultations with tribal leaders and appropriate tribal justice officials are mandated by several provisions of the TLOA. Federal agencies must continue to take this consultation requirement seriously and to engage in ample consultation and collaboration with appropriate tribal leaders and law enforcement officials at each step of the implementation process.

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National Congress of American Indians

VIOLENCE AGAINST NATIVE WOMEN

The epidemic of violence perpetuated against American Indian and Alaska Native women in the United States is nothing short of a human rights crisis. The Department of Justice estimates that one of three Indian women will be raped in her lifetime, that six of 10 will be physically assaulted, and that Indian women are stalked at more than double the rate of any other population of women in the United States. This violence threatens the lives of Indian women and the future of American Indian tribes and Alaska Native villages. Ending this pattern of violence requires the elimination of institutional barriers that deny Indian women equal access to justice.

The inclusion of a tribal title, the Safety for Indian Women title, within the Violence Against Women Act of 2005 (VAWA 2005) was an historic achievement. VAWA 2005 clarified that the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in protecting the safety of Indian women.

RECOMMENDATIONS:

1. **Fully implement VAWA 2005**
   Passage of the Safety for Indian Women Title in VAWA 2005 represented a turning point in Congress's recognition of the severity of violence committed against Indian women. However, until that title is fully implemented, it will not bring Native women the protection that the law prescribed. The Department of Justice should develop guidelines for the implementation of the habitual offender and firearms provisions; conduct cross-training for Assistant United States Attorneys and tribal prosecutors for the investigation, charging, and prosecution of cases under these provisions; and ensure that the Director of OVW carries out her statutorily mandated responsibilities to release a solicitation and to award a contract for the creation of the national tribal order of protection and sexual offender registry.

2. **Enforce full faith and credit provision of VAWA**
   The full faith and credit provision of VAWA applies to both criminal and civil orders of protection. Although this provision attempts to ensure that every protection order is recognized, Indian tribes are prevented from granting full faith and credit and criminal enforcement to orders of protection violated by non-Indian perpetrators. Even if an individual violates the state protection order repeatedly, the tribal criminal justice system cannot respond. It is imperative to the safety of American Indian and Alaska Native women that federal law enforcement officials take appropriate action to ensure that tribal protection orders are being recognized and enforced by outside jurisdictions and, similarly, that tribal authority to enforce protection orders from outside jurisdictions continues to be recognized.

3. **Ensure access to the National Crime Information Center (NCIC) database**
   Public safety is dependent on timely information. It is therefore imperative that all tribes have the ability to access federal databases, not only for the purpose of obtaining criminal history information, but also for entering such information into the database. Access to the protection

order, sex offender, and missing person national registries is especially critical in the effort to increase access to justice services and protect the safety of Native women. The Department of Justice should host trainings for tribal judges and law enforcement personnel to educate them on the gaps in the current system and on how to facilitate better coordination to ensure that life-saving protection orders get entered into the NCIC database. They should also consider the creation of a task force to identify the outstanding barriers tribes face in acquiring full access to federal criminal history databases and to develop a plan of action to resolve these issues.

4. **Support tribal jurisdiction over non-Indian offenders in VAWA 2011 reauthorization**
   The lack of tribal jurisdiction over non-Indian offenders on Indian lands may be the key reason for the disproportionate violence suffered by American Indian and Alaska Native women. The 1978 U.S. Supreme Court decision in *Oliphant v. Suquamish Tribe* stripped Indian tribes of their inherent criminal jurisdiction over non-Indians unless such jurisdiction is specifically authorized by Congress. As such, Indian women—four out of five of whom describe their offenders as white—often have no criminal recourse against non-Indian offenders. These non-Indian perpetrators are well aware of the lack of tribal jurisdiction over them, the vulnerability of Indian women, and the unlikelihood of being prosecuted by the federal government (or state government in P.L. 280 states) for their actions. This jurisdictional gap feeds the epidemic of violence against Indian women and is at odds with the United States' recognition of tribal sovereignty and the policy of tribal self-determination. Further, it is in stark contrast to the purposes of the Violence Against Women Act that have guided our nation since its enactment over 15 years ago.

   American Indian and Alaska Native tribes urge the Obama Administration to support the restoration of tribal criminal jurisdiction over non-Indian perpetrators of domestic violence, sexual assault, dating violence, and stalking who commit said crimes within the exterior boundaries of the reservation in the upcoming reauthorization of VAWA. This violence cannot be adequately addressed as long as tribes lack the legal authority to fully respond to crimes committed against Indian women.

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National Congress of American Indians

ADAM WALSH ACT IMPLEMENTATION

The provisions addressing Indian tribes in the Adam Walsh Child Protection and Safety Act of 2006 (AWA)—particularly those found in title I, the Sex Offender Registration and Notification Act (SORNA)—were included without any input from Indian tribes themselves and represent a dramatic departure from the way other criminal justice matters are handled on tribal lands. The distribution of authority in SORNA is an affront to tribal sovereignty. The law strips a subset of tribes that are subject to state jurisdiction under P.L. 280 of exclusive civil regulatory authority over their members without any rational justification. (Public Law 280 did not grant states civil regulatory authority over tribal lands. This may have been misunderstood by the original drafters of the Adam Walsh Act, who likely excluded those tribes under the mistaken belief that states already had jurisdiction over their lands.) Due to inartful drafting, it also has the potential unintended consequence of creating state jurisdiction in non-P.L. 280 states where it has never before existed and where states themselves do not want such authority. The delegation of tribal criminal and civil authority to the states contemplated by the Act is an unnecessary complication of the already confusing system of criminal and civil jurisdiction on tribal lands, and it threatens to disrupt already tenuous tribal–state relations. The Act also represents a substantial unfunded mandate for tribes, many of whom already suffer from a severe shortage of resources for public safety.

The proactive approach that the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) has taken to address implementation of SORNA in Indian Country before the July 26, 2011, deadline is commendable, but if the AWA is to achieve its stated purpose of creating a seamless national sex offender tracking system, then the following concerns must be addressed.

RECOMMENDATIONS

1. **Support immediate passage of a legislative fix that would:**
   a. **Reaffirm tribal sovereignty**
      Without further clarification, Section 113(a) of the Act may require anyone who resides on a reservation to register with both a compliant tribe *and* the state where the reservation is situated. If that is the case, then the Act amounts to a wholesale loss of inherent civil regulatory authority and a radical expansion of state regulatory authority over *all* tribes, even beyond the authority granted to states under P.L. 280 in mandatory P.L. 280 states. This cannot have been the intent of Congress when passing the Act, and the SMART Office has issued implementation document #12 to clarify this issue. However, in *US v. Begay*, the ninth circuit court of appeals may have read the statute in precisely this unintended manner.
   b. **Permit mandatory P.L. 280 tribes to opt in under AWA**
      As written, the Act excludes all tribes that fall under mandatory P.L.-280 criminal jurisdiction. Consequently, there are a number of tribes that are not allowed to assert jurisdiction under the Act, and in those circumstances, states have been granted unprecedented civil regulatory power over tribes. There is no reason to treat them differently if they choose to assert jurisdiction and meet the requirements of the Act. Congress needs to

remove the arbitrary distinction made in Section 127 of the Act and allow all tribes to participate in the national sex offender registration system on an equal basis.

c. **Further extend the compliance deadline for tribes**
With the July 26, 2011, deadline quickly approaching and with only two tribes that have substantially implemented SORNA, it is imperative that Congress immediately pass legislation that would extend the deadline for tribal SORNA compliance to a more realistic date in the future.

d. **Provide adequate funding for implementation**
It is clear that tribes need significant additional resources to implement the law. Without adequate funding, it is less likely that the purpose of the Act will be carried out. It will likely cost tribes $300,000 a year or more to become substantially compliant. Section 126(d) should be amended to provide more money for tribal implementation over an extended period of time.

e. **Deny jurisdiction over tribes to non-compliant states**
Given the way Section 127 of the Act is currently worded, the Department of Justice has determined that if a tribe is found to be non-compliant, it could lose its jurisdiction to a state—even if the state is non-compliant. This is simply a slap in the face to tribes and a reversal of the federal policy of tribal self-determination. The AWA should be amended to clarify that a transfer of civil regulatory authority to a state for purposes of running a sex offender registry will not occur unless the state has been found to have substantially implemented the Act.

f. **Provide for mandatory consultation**
Despite the fact that a clear objective of the AWA was inclusion of Indian tribes in the national sex offender registration scheme, Section 127 was inserted without prior consultation with tribes. As a result, tribal participation is structured in a way that creates unnecessary challenges to effective implementation of the Act. The Department of Justice must conduct meaningful government-to-government consultation with Indian tribes if they wish to successfully address these challenges. The Act should be amended to reflect the Department of Justice's intention to consult with tribes in an ongoing way.

2. **Develop a process for assessing tribal compliance**
Under Section 127 of the Act, the Attorney General has the authority to assess the compliance of tribal registration jurisdictions. If the Attorney General determines that a tribe is not in compliance, then the tribe's responsibilities and authority under the Act are delegated to the state within which the tribe's lands are located. Such a delegation represents a major infringement on tribal sovereign authority and an unprecedented vesting of power in the Attorney General, yet the Supplemental Guidelines provide no indication of the process that the Attorney General will use to assess tribal compliance. Given the federal government's unique trust relationship with Indian nations and policy of tribal self-determination, any action that would abridge a tribal government's sovereign authority on its own lands should be seen only as an action of absolute last resort. We strongly recommend that the Department of Justice consult with tribal governments to develop a detailed, transparent process for assessing tribal compliance.

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National Congress of American Indians

HOMELAND SECURITY AND EMERGENCY MANAGEMENT

Nearly 40 tribes are located directly on or near the U.S. international borders with Mexico and Canada. Hundreds of other tribal governments are the only major governmental presence in rural and isolated locations, serving as the first, and oftentimes only, law enforcement authority and emergency responders for Native and non-Native communities. Tribal governments have broad emergency and first-responder responsibilities, as well as extensive border security responsibilities, including immigration, anti-terrorism, and smuggling. In addition, dozens of tribes have critical national infrastructure on their lands, including national oil pipelines, nuclear facilities, missile sites, and dams.

RECOMMENDATIONS

1. **Increase homeland security grant program access and funding**
   Tribal infrastructure and capacity is still lacking in homeland security efforts that will allow tribal governments to work effectively and efficiently with surrounding non-tribal jurisdictions. The Department of Homeland Security (DHS) has made progress in including tribal governments in its outreach and communication efforts. However, the Administration must do more to remove eligibility barriers to many programs. Tribal governments have made significant strides in developing emergency preparedness plans for their communities by using tribal resources, coupled with access to training programs developed by the Emergency Management Institute under the DHS Federal Emergency Management Agency. DHS programs that directly fund tribes, such as the Tribal Homeland Security Grant Programs, require increased budgets that will assist tribes in meeting national emergency preparedness framework objectives and compliance requirements.

2. **Support amendments to the Stafford Act to authorize tribal officials to seek presidential disaster declaration**
   The Administration needs to fully support changing the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) to allow a tribal leader to request a major disaster or emergency declaration from the President. A direct request is critical because many states are precluded by law from assisting tribes, which creates obstacles in the disaster response and recovery process. The authority for tribal leaders to declare major disasters or emergencies will also alleviate situations where tribal boundaries cross two or more states.

3. **Recognize the validity of tribal IDs as passports**
   Native peoples know their territory and community members, and they seek to maintain tribal, cultural, and membership integrity. Tribal nations, as sovereigns, should be allowed to travel domestically and to return from international destinations utilizing tribal identification cards (IDs). The Departments of State and Homeland Security should seek to collaborate with tribal governments in working to recognize aboriginal and treaty rights for travel in their homelands and beyond. If they meet State Department standards, tribally-issued IDs should be recognized

for passport purposes by the U.S. Government, and the U.S. should ask other nations to respect tribal IDs as valid for international travel.

4. **Federal assistance in implementing enhanced tribal ID cards**
   Tribal communities located on or near international boundaries—which are imposed by the federal government without tribal consultation—are eager to implement secure ID card distribution to tribal members. However, they lack the resources to develop costly, technologically enhanced IDs. Many states have received grants for enhanced ID efforts, and the same grants should be made available to tribal governments for this purpose.

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National Congress of American Indians

HEALTH CARE

Indian Country won a substantial victory this year with the passage and permanent reauthorization of the Indian Health Care Improvement Act (IHCIA) as part of the Patient Protection and Affordable Care Act (PPACA). Additionally, American Indians and Alaska Natives realized a number of positive provisions in the overall PPACA legislation. As such, Indian Country strongly supports implementation of health-care reform and seeks to ensure that the Indian health-care delivery system is strengthened and improved, so that Indian people and Indian health programs benefit from reformed systems. In order to achieve these results, there are fundamental components necessary to fully implement the IHCIA and the PPACA in Indian Country. Without them, the Indian health-care delivery system will be severely hampered, and the rights of Indian people and our sovereign governments will be undermined.

RECOMMENDATIONS

1. **Fully fund the Indian Health Service**
   By ceding millions of acres of land, American Indians and Alaska Natives have already paid for their health-care coverage. Failure to acknowledge that Native people are different from other groups needing health-care coverage will result in either an abrogation of the federal trust responsibility or denial of the right of Native people to fully participate in health reform. Indian health-care providers, who form a crucial system of care in some of the most remote communities in the country, must receive the funding necessary to operate Indian Health Service (IHS) facilities and fund community-based programs on which tribal communities rely. Underfunding results in atrocious medical practices, poor facility conditions, and unreliable management. Overall improvements in IHS will protect the future of tribal nations and fulfill the government's treaty responsibility.

2. **Evaluate moving Indian Health Service appropriations**
   The current vehicle through which the IHS receives its funding is the Department of the Interior appropriations bill. Tribal leaders have long suggested that, as a health agency, the IHS appropriations is a better fit within and should be funded under the Labor/Health and Human Services (HHS) appropriations bill. We believe that moving IHS appropriations under HHS will provide IHS with more budgetary support, and that this will ultimately have the potential to increase the overall quality of health care in Indian Country. We request that an evaluation of this potential change, in consultation with Indian Country, be conducted so that tribal leaders have a better understanding of the possible impacts of this shift in health appropriations dollars.

3. **Fully implement the Indian Health Care Improvement Act and Patient Protection and Affordable Care Act**
   By permanently reauthorizing IHCIA as a provision of the PPACA, Congress honored its trust responsibility to tribes regarding health care. The focus must now be on ensuring that both the IHCIA and the PPACA are fully and immediately implemented. To date, the Administration has successfully coordinated implementation of the PPACA between federal agencies and tribal

governments. Continued support and coordination is necessary to ensure that tribal governments, through consultation, are provided the opportunity to give feedback and direction that directly affect them as employers and insurance consumers. Ensuring federal agencies adhere to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, will support the government's continued success in fulfilling its trust responsibility.

4. **Support multi-year renewal of the Special Diabetes Program for Indians**
   The Special Diabetes Program for Indians (SDPI), created by Congress in 1997, has become America's most effective approach to addressing diabetes in tribal communities. The effort has led to improvements in blood glucose control, reductions in amputations, and advancements in preventing kidney failure. New cases of diabetes-related dialysis in American Indian and Alaska Native populations decreased by 31% between 1999 and 2007, while remaining relatively unchanged in whites and blacks. This reduction has a significant economic impact, as preventing kidney failure is critical to preventing people with diabetes from needing dialysis or kidney transplants, the main driver in increasing Medicare costs. In addition, the magnitude of the reduction in the mean blood sugar levels of American Indians and Alaska Natives with diagnosed diabetes translates to a 40% reduction in the risk of certain diabetes complications such as blindness, kidney failure, heart disease, and amputations. This is clearly a strong return on the federal investment. However, the program is set to expire soon. At this critical stage in the program's life, it is more important than ever that we find a way to renew this program. It has literally been life-saving to Native people suffering from diabetes, and it has been life-changing to those who have avoided diabetes because of early detection and prevention efforts. This program is helping to ensure that future generations of American Indians and Alaska Natives are free of diabetes, and it must be renewed.

5. **Promote community-based prevention programs**
   Investments in prevention and public health, including community-based programming, are essential in reversing the devastating health disparities facing Indian Country. Provisions of IHCIA authorize the Secretary of HHS to fund grant programs for prevention programs that serve tribal communities. Successful prevention programs are more cost-efficient and create less drain on local health providers. They also give tribes local control and provide opportunities for real community investment. However, community-based programs are not "one size fits all." Successful programs are built to target communities that are most at risk of illness and disease, including tribal communities. Additionally, agencies should engage tribal governments and tribal citizens in the design, implementation, and focus of these programs.

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National Congress of American Indians

EDUCATION

Indian nations have the largest stake in improving the education of their citizens. Investments in education prepare Native children for active and equal participation in the global market. Education policy must prepare Native children to be positive, involved members of their communities. Most importantly, investments in education equips the future leaders of tribal governments. There is no more vital resource to the continued existence and integrity of Indian tribes than Native children.

Education policies over the last few decades have supported tribes exercising sovereignty over education programs serving American Indian and Alaska Native children. This trend must continue in the upcoming reauthorization of the Elementary and Secondary Education Act (ESEA). Indian Country strongly supports the efforts of the Administration and Congress to ensure that the needs of Indian students are considered from the beginning of the drafting process.

RECOMMENDATIONS

1. **Require states to enter into collaborative agreements with tribes**
   In order for tribes and their tribal education agencies (TEA) to build capacity and better serve their citizens, states must recognize tribal authority over the education of their students. Upon request, states should negotiate with tribal governments to transfer education programs, funding, services, and administrative responsibilities to tribes. The Department of Education should incentivize the cooperation of both the state and the tribes in these agreements through financial penalties of Title 1 funding. For example, TEAs should be empowered to implement their own school improvement plan via the accreditation process. Additionally, tribes should be given funds to build capacity for their education departments in the same ways as states and local school districts.

2. **Restore Director of Indian Education to Deputy Assistant Secretary for Indian Education**
   The current Director of Indian Education position is underutilized and functions almost exclusively as a grants manager. This position and office must be elevated so that there is authority to engage in all titles of the ESEA that impact Indian student education. The Deputy Assistant Secretary should also be authorized to facilitate interagency collaboration and to oversee the role of the TEAs in various titles.

3. **Invest in cultural and language revitalization**
   Culturally Based Education (CBE) is a teaching model that encourages quality instructional practices rooted in cultural and linguistically relevant context. We recognize, however, that limited quantitative data has been gathered to fully document the benefits of CBE. For this reason, tribes are calling for CBE to be identified as a promising practice in Indian education and for programs to receive the multi-year funding necessary to build an evidence base that conclusively distinguishes what works for which populations and under what circumstances.

4. **Strengthen and expand Native teacher and administrator preparation programs**
   Reauthorize and increase annual funding for the Department of Education's *Professional Development for Teachers and Administrators* program [20 U.S.C. 7442] and the *In-service Training for Teachers of Indian Children* program [20 U.S.C. 7452]. These programs provide critical support for the preparation, training, and ongoing professional development of teachers and administrators who are currently working in, or plan to work at, tribal schools or schools with a high concentration of Indian students. Tribal colleges and universities, which are chartered by sovereign Indian nations and are consortia led by or including tribal colleges, should be recognized as the primary awardees. Specific authority and funding should be provided for special education teacher preparation and training, and the existing authorities should be amended to include a specific credentialing program for classroom aids and a requirement for fieldwork in Indian schools.

5. **Promote inter-agency coordination and collaboration**
   Collaboration between the Department of the Interior and the Department of Education should be statutorily required. Increased collaboration should include training and technical assistance for Bureau of Indian Education (BIE) staff, use of alternative assessments for tribal schools, assistance in curriculum selection, and instructional practices.

6. **Establish a tribal advisory committee to advise the Secretary of the Interior on policy issues and budget development for the BIE school system**
   There has never been a formal, established mechanism for tribally operated schools to raise issues and provide substantive advice to the Secretary on an ongoing basis. This is especially important with respect to developing the budget request for programs that serve BIE schools. Since the schools in the BIE system are the sole responsibility of the federal government, the Secretary of the Interior should be consulting closely and regularly with representatives selected by the tribes and with the tribal school boards who operate those schools in order to learn directly from them about their needs and recommendation.

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National Congress of American Indians

YOUTH WELLNESS

For years, tribal leaders have been calling for a renewed federal focus on youth wellness and early intervention. However, investments in services for Indian youth are too often made at the back end, when intervention services are needed. Efforts address only the symptoms of poverty and lack of opportunity, and fail to harness the inherent potential of Native children and teenagers. Young people have the capacity to create and lead positive community change. Tribes need support for a tribal youth-led wellness initiative that addresses their needs for safety, education, health care, and job skill development, with coordination across the systems and departments through which these services are delivered. Programs must be developed that cut across agencies to foster healthy lifestyles, safe and supportive environments, successful students, and stable communities. Native children are a valuable resource, and ongoing investments are required to ensure that they grow into healthy youth and become the next generation of tribal leaders, community members, and business leaders.

Tribal governments know better than anyone the issues their communities face, and the Administration should provide resources to support tribes in developing their own solutions.

RECOMMENDATIONS

1. **Reform juvenile justice**
   There is a growing consensus among tribal leaders and the nation at large that while placing juvenile offenders into detention facilities may be legitimized by federal, state, and tribal law, it is not necessarily in the long-term interests of children or their communities. Detention is too often a dumping ground for youth who should be served by other public systems. This is especially the case for non-violent, first-time, or low-level offenders who typically pose little threat to public safety. These children do not need to be confined; instead, they should stay in school, stay with their families, and be provided with mentoring programs that focus on oversight, curfews, homework, and healthy social activities. However, effective implementation of such alternatives to incarceration in Indian Country will require funding and technical assistance for new, culturally relevant programs that will meet local needs and promote tribal self-determination.

2. **Support early and routine school-based assessments**
   Schools should require regular comprehensive assessments for students on everything from mental health and dental needs to drug abuse, victimization, and educational attainment. These types of assessments will not only help parents and professionals detect the need for intervention and enhance the delivery of any necessary services, but they will help prevent juvenile delinquency by addressing children's health, social, educational, and other needs before they manifest themselves in the form of delinquent behavior.

3. **Invest in after-school programs**
   It is no secret that, like many other young people, tribal youth get into trouble after school because they have nothing better to do. Oftentimes, Native children grow up in rural areas that lack the multitude of youth programs that are available in other settings, and their schools typically lack the resources to provide an adequate array of after-school activities to keep children busy. After-school opportunities—whether they are cultural, recreational, community-oriented, or academic—all have positive effects on academic success, social behavior, and intellectual development. These programs also provide invaluable opportunities for at-risk students. Tribal youth need access to these types of activities.

4. **Provide adequate funding**
   With all of the other critical needs in Indian Country, sometimes tribal youth programs get left out. Tribes need dedicated funding in order to take a more comprehensive approach to tribal youth wellness and juvenile justice reform. A new grant program could support several project phases—e.g., stage one for project development, stage two for implementation, stage three for evaluation, etc. However, in the long run, this type of short-term grant program will not suffice—tribes will need a permanent funding stream to support youth wellness activities. Currently, most of the funding for these kinds of activities comes from either health-based or law enforcement-based programs. Yet, the focal point for a large part of the type of reform that we are suggesting is the schools. It is time to allocate more educational resources toward programs and initiatives that support tribal youth wellness.

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National Congress of American Indians

VETERANS

American Indians and Alaska Natives are well recognized for their dedication and commitment to serving in the armed services throughout America's history and up to the present day. In recent years, many have made supreme sacrifices in Iraq and Afghanistan. Returning veterans are entitled to the benefits that the federal government has made available, and we urge the Administration to assist in efforts to meet the needs of all veterans with an emphasis on the following priorities identified by Native veterans.

RECOMMENDATIONS

1. **Immediately appoint a Director of Tribal Government Relations at the Department of Veterans Affairs**
   The Department of Veterans Affairs (VA) established the Office of Tribal Government Relations earlier this year but has yet to appoint a director to lead, manage, and coordinate outreach and communication to improve programs and services for American Indian, Alaska Native, and Native Hawaiian veterans. The selection process has been completed, yet the position is unfilled. We strongly urge the Secretary of Veterans Affairs to act promptly to fill this position.

2. **Prioritize the implementation of the Indian Health Service/Veterans Health Administration Memorandum of Understanding**
   A Memorandum of Understanding (MOU) between the Indian Health Service (IHS) and the Veterans Health Administration (VHA) was signed in 2005 to better serve American Indian and Alaska Native veterans. The MOU was reissued by IHS and VHA this year because the collaborative effort has not lived up to its objectives in preventing the IHS from discouraging Native veterans from utilizing IHS facilities and directing them to the VA for health care, regardless of the health risks from delayed care. Some VA health facilities are selective in the services they will provide for Native veterans, so not all services are available at all facilities. Further, VA and IHS facilities may be hundreds of miles apart, and Native veterans may lack the transportation and financial means to visit both facilities. Health care providers should not have the discretion to decide whether or not to provide services; it should be the choice of the individual Native veteran. Both agencies are seeking to develop strategies for information sharing and data exchange regarding patient information and referrals. Meanwhile, many native veterans bear the brunt of ineffective implementation and are frustrated by the resulting deterioration of health services. We strongly urge the IHS and VHA to prioritize swift and full implementation of the Indian Health Service/Veterans Health Administration MOU.

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National Congress of American Indians

TAX, FINANCE, AND REGULATORY POLICIES

Clear tax and regulatory policy that affirms tribal sovereignty and is developed in consultation with tribal governments is necessary to effectively build tribal economies. Tribal governments need to be able to fully enact and utilize tax and regulatory policy to create conditions that encourage economic growth. Currently, state and local jurisdictions are looking for ways to tax investors and tribal business partners, and they are even finding new and creative ways to tax sales of tribal assets and goods on reservations. This jurisdictional over-reach by state and local governments often acts as a deterrent to investment and economic growth for tribes. It also contradicts the federal policy intended to create tax incentives to encourage investment in tribal government enterprises. Tribal leaders have expressed the need for the Administration to support the following recommendations.

RECOMMENDATIONS

1. **Expand tax exempt bonding authority**
   The Internal Revenue Code (IRC) has limited the authority of Indian tribal governments to issue tax-exempt bonds to only "essential governmental function(s)." As interpreted by the Internal Revenue Service, this provision has severely limited tribes' ability to finance development projects that are needed to generate revenue. Credit markets have not been willing to consider tribal debt due to perceived risk, making an incentive or guarantee necessary for many tribal governments to secure loans. Indian tribes have long sought the same options to finance development projects that are currently enjoyed by state and local governments. In addition, the Administration should support amending the Finance Act to allow for government guarantees of lower-limit tribal tax exempt debt.

2. **Provide incentives for investment**
   Investment and production tax credits must be made available to incentivize capital investments on or near tribal lands, including authorizing the full use of the existing accelerated depreciation and Indian employment tax credits. Although all of these have been available in some form, they have proven ineffective or unusable by tribes and investors. The accelerated depreciation and employment tax credits are inconsistently available because they are renewed from year to year and are often not renewed in time or are made retroactive. This inconsistency or uncertainty makes the multi-year, large-scale projects—which they were intended to incentivize—unreliable for tribal and investor use. The Administration should support long-term investment and production tax incentives that can be counted on by investors and used as an asset by tribes.

3. **Address the problem of dual taxation in Indian Country**
   The Administration should strongly support the tribal provisions in the Sales Tax Fairness and Simplification Act. Like state governments, tribal governments provide a broad range of services on reservations and must develop a source of tax revenue if they are to move away from dependence on inadequate federal funding. States have the legal right to collect taxes on reservations under a set of common law rules. At the same time, tribal governments retain their right to tax all sales within the reservation. There is frequent litigation between tribes and states over the fairness and interpretation of these common law rules, which have remained static

while tax systems have changed dramatically. In consultation with tribes, the Administration must support legislative and regulatory strategies to address the problem of dual taxation in Indian Country.

4. **Reform tribal pension provisions**
   Section 906 of the Pension Protection Act of 2006 (P.L. 109-280) creates a false dichotomy between tribal employees. The law forces tribes to carry two pension plans and distinguish between "essential government" and "commercial" activities. The language amended the IRC 414(d) and the Employee Retirement Security Act 3(32) to create an unjustified standard that does not exist for state or local governments. In light of the 906 provisions, tribal employers must now distinguish among their employees and face uncertain oversight, creating unnecessary barriers to providing pension benefits to their employees. This has become unmanageable for federal regulators and tribal employers. A clear and consistent regulatory fix is needed, making it imperative that the Administration clarify that tribal governments should be given the same authority and leeway that state governments have in providing benefits for their employees. This is especially important in light of the greater need that tribes have to generate revenue from economic programs in lieu of a tax base.

5. **Expand access to New Market Tax Credits**
   New Market Tax Credits (NMTC) are an increasingly important tool to catalyze private sector investments that create jobs and enhance access to capital for small businesses and community development, especially in distressed communities like Indian reservations. Tribal entities do not fit easily into the categories of groups that can be recognized as a "qualified active low income community business" (QALICB). Under Section 45D of the IRC, these entities must be either corporations (for profit or nonprofit) or partnerships for federal income tax purposes. The corporate entities that tribes set up are considered a disregarded entity for tax purposes and treated as the tribal governmental entity. Tribal governments or their affiliates could be designated as a permitted type of QALICB under section 45D, making the tax credit usable for tribes.

6. **Exclude the value of tribal benefits**
   A provision in the Patient Protection and Affordable Care Act upholds the right of tribal governments to provide health benefits to their members without it being considered a taxable event. This is significant in that it reinforces the rights of tribal governments to provide benefits, which are grounded in treaty and federal policy, to their members in lieu of the federal government without the value of the benefits being considered taxable income. The health-care exclusion should be used to justify additional benefits provided to tribal members as a group or consistently to their members. Promoting all forms of education benefits, including cultural education, should also be excluded from taxation. Scholarships, elders' meals, reimbursements for pow-wows, and holiday gifts for children all should be benefits subject to tribal discretion and should not become a taxable event for members. The Administration should support a policy at the Department of the Treasury, and any necessary legislation, to clarify the ability of tribal governments to provide needed health, education, cultural, and other benefits without tribal leadership worrying that cultural and family support programs may become subject to audits—a disincentive for tribes to take care of their people and continue their cultural practices.

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National Congress of American Indians

BUSINESS DEVELOPMENT

Historical underfunding has meant that tribes rely on their own economic programs to generate revenue in order to maintain governmental services. Local economic development and business development efforts are now essential for tribes. Full Administration support is critical for future tribal economic advancement.

RECOMMENDATIONS

1. **Support the tribal small business 8(a) program**
   The tribal 8(a) program has already been altered in the Senate by placing a justification requirement on contracts that exceed $20 million. This is a far lower threshold than that applied to other sole source awards. In addition, a bill has been introduced that would effectively decimate the program for tribal participation. Tribes use the 8(a) program to support the economic health of entire communities, and it has proven effective regardless of a tribe's location or size, making it a viable tool for all tribal governments. The Administration must send a clear message to Congress, including Democratic members of the House and Senate, stating that this program should be showcased as a success, not unduly targeted.

2. **Expand surety bonding authority**
   The Administration should support the expansion of the Bureau of Indian Affairs' Guaranteed Loan Program to ensure access to surety bonding for eligible Indian-owned construction companies. Expansion of this program will reduce the perceived risk associated with tribal sovereign immunity that is assumed by insurance companies. It will also increase access to infrastructure and other construction-related projects, as well as generate job opportunities and business growth during difficult economic times at a no, or very limited, cost to the federal government. The Administration should use existing authorities to provide surety bond guarantees and to encourage Congress to increase funding for the expansion of the Guaranteed Loan Program.

3. **Elevate the Office of Native American Affairs at the Small Business Administration**
   The Administration needs to support legislative language that would elevate the Office of Native American Affairs (Office) within the Small Business Administration (SBA). With limited authority and resources, the Office promotes Native-owned 8(a) business development, HUBZone empowerment and other government contracting, entrepreneurial education, and capital access. With the passage of legislation, the Office will be brought into line with other administrators at the SBA and have the capacity to provide funding for Indian-focused technical services through tribal colleges and existing service providers.

4. **Support amendments to the Buy Indian Act**
   Through a combination of regulation and expanded legislation, the Administration should support changes to the Buy Indian Act that will ensure that preference is given to on-reservation Native individuals and enterprises in awarding contracts, and subsequent subcontracts, with the

Department of the Interior, Indian Health Service and other agencies serving American Indian andAlaska Native populations. The Buy Indian Act should also be amended to require the recipient of a contract to provide training and employment preferences to Native people.

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National Congress of American Indians

HOUSING

Housing remains a critical issue for Indian Country. American Indians and Alaska Natives face some of the worst housing and living conditions in the United States, where 14 percent have no electricity, nearly 12 percent lack plumbing, and 11 percent lack kitchen facilities. In some areas, up to 50 percent of Native homes are without phone service. Additionally, 23 percent of Native households pay 30 percent or more of household income for housing. Barriers to housing development in Indian communities include limited private investment opportunities, low functioning housing markets, and poverty.

RECOMMENDATIONS

1. **Continue to support funding for Indian housing**
   The Native American Housing Block Grant, Indian Community Block Grant, and Indian Housing Loan Guarantee Fund are the primary funding resources that American Indian and Alaska Native tribes use to construct and maintain housing for low-income families and to promote homeownership. These funds are administered by the U.S. Department of Housing and Urban Development (HUD). An additional housing program that is important for tribes is the Bureau of Indian Affairs' Housing Improvement Program (HIP). HIP is a competitive grant program that allows tribes to provide repairs and rehabilitation to homes owned by the tribe or by individual tribal members whose housing was not built with federal housing funds. HIP is a small program, but it is essential to providing repairs for disabled or elderly tribal members, whose homes need retrofitting to provide handicapped access.

2. **Consult with tribes on the impact of off-reservation HUD projects**
   Section 106 of the National Historic Preservation Act (P.L. 89-665 as amended) mandates that federal agencies consult with tribes about any federal undertakings that could affect tribal cultural properties, including HUD-funded, off-reservation, non-Indian housing projects. Of great concern to tribes is that HUD has asserted that it can delegate this federal consultation obligation to its non-federal grant recipients, such as cities and nonprofits—nearly all of whom are motivated to build as quickly as possible, with little or no regard for tribal concerns. HUD has been minimally responsive, and even resistant at times, to tribal efforts to work with them to find common ground where tribal consultation rights are respected and cultural properties are protected while addressing HUD's administration concerns.

3. **Implement the Indian Veterans Housing Opportunity Act**
   This Act (P.L. 111-269) amends the Native American Housing Assistance and Self-Determination Act (NAHASDA) to revise the definition of "gross income" to exclude amounts received by a veteran or his or her family, for service-related disability, dependency, or indemnity when determining eligibility for NAHASDA low-income housing assistance. HUD should swiftly implement the Act.

4. **Establish an interagency tribal housing task force**
   The White House should establish a task force consisting of senior politically appointed officials to enhance Native American housing. Tribal representatives should meet with the task force on an ongoing basis to discuss strategies to address the most pressing issues related to tribal housing and community development.

5. **Amend the land leasing regulations for the home site leasing**
   The Bureau of Indian Affairs should revise the federal regulations that govern land leasing for tribal housing home sites. These regulations, and the role of the BIA reality offices as currently established, impede housing development in tribal communities.

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National Congress of American Indians

TRANSPORTATION

Transportation infrastructure is essential to tribal economies, education systems, health care and social service programs. Indian reservation roads comprise over 120,000 miles of public roads with multiple owners, including the Bureau of Indian Affairs (BIA), Indian tribes, states, and counties. However, many of the road systems are still underdeveloped but still make up the primary transportation systems for American Indian and Alaska Native communities. Current road conditions make it very difficult for tribal community residents to travel to hospitals, stores, schools, and employment centers.

We commend the President for his support of a $50 billion transportation infrastructure program to invest in the job creation and transportation development needed to address the high unemployment rates and inadequate road infrastructure in Indian Country.

RECOMMENDATIONS

1. **Increase funding for Indian Reservation Roads Program (IRR) and IRR Bridges Program**
   There is a documented $40 billion backlog of maintenance and construction in Indian Country, and increasing the funding for the IRR and IRR Bridge Program will help ease this critical need.

2. **Increase funding for BIA Indian roads and bridge maintenance**
   Roads and bridges that are owned and maintained by the BIA receive funding exclusively from the BIA budget. There has not been an increase in funding to keep up with inflation to bring many of these federal-owned roads to updated standards, which has created a backlog.

3. **Support tribal-specific transportation provisions in the upcoming transportation authorization**
   The next transportation authorization is anticipated in 2011; tribal-transportation-specific provisions need to be considered in the Administration's position regarding the upcoming transportation authorization.

4. **Appoint the Deputy Assistant Secretary of Tribal Government Affairs**
   The enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59) in 2005, authorized a new position within Department of Transportation—the Deputy Assistant Secretary of Tribal Government Affairs. Five years later, this position has yet to be appointed.

5. **Give Indian tribes the authority to raise revenue to fund transportation infrastructure**
   Treat Indian tribal governments equitably and give them the same authority as state and local governments to raise revenue to fund the costs associated with building and maintaining transportation infrastructure.

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National Congress of American Indians

WATER INFRASTRUCTURE

In 2008, the Indian Health Service (IHS) reported that more than 13 percent of tribal homes lack basic access to safe drinking water and/or basic sanitation compared to the national rate of less than 0.6 percent. Many water infrastructure projects authorized by Congress and to be implemented by the Department of the Interior (DOI) lack meaningful funding, resulting in water projects falling into disrepair before even being completed, as well as in large percentages of tribal residents without irrigable water.

For this reason, Indian tribes have long advocated for funding equitable to that provided to state and local governments for water infrastructure under the Clean Water and Safe Drinking Water State Revolving Funds (SRFs), as well as for meaningful appropriations to authorized water infrastructure projects. The IHS estimates that 341,909 tribal homes experience some degree of deficiency in their drinking water and/or sanitation systems. Residents of some Alaska Native villages must use "honey-buckets" and have their waste transported by all-terrain vehicles to untreated sewage lagoons nearby. Many of these lagoons overflow because 186 of the villages are subject to flooding, melting permafrost, and erosion due to warming temperatures. A health study concluded that residents in Alaska Native villages that lack in home water service have higher incidences of respiratory, gastrointestinal, and skin infections.

In 2000 and 2002, the U.S. Government committed to the United Nations Millennium Development Goals of a 50 percent reduction in tribal lack of access to safe drinking water and basic sanitation facilities by 2015. These commitments were implemented through two Memoranda of Understanding (MOU) signed by the Environmental Protection Agency (EPA), DOI, Department of Health and Human Services (HHS), Department of Housing and Urban Development (HUD), and Department of Agriculture (USDA). Further, EPA included these goals as a "target" in their 2009–2014 Strategic Plan.

RECOMMENDATIONS

1. **Support amendments to the Clean Water Act and Safe Drinking Water Act to increase the tribal set-asides to 3 percent of the SRFs**
   The tribes are grateful that the Obama Administration consistently advocates for 2 percent set-asides in the President's annual budget request. This advocacy resulted in tribal SRF appropriations of over $59.7 million in FY2010. That amount is over two times more than the amount provided in the last years of the previous Administration. Tribes are also grateful for the $90 million in SRF funds provided under the American Recovery and Reinvestment Act (P.L. 111-5).

   An IHS study finds that $53.7 million per year is needed until 2018 to reduce tribal lack of access by 50 percent. While a laudable goal, it still leaves tribal homes with a level of need that is 10 times higher than the national population (6 percent). Therefore, such funding must be maintained until 2018. The most effective approach is for the Administration to urge

Congressional action to enact a 3 percent set-aside through amendments to the Clean Water Act and the Safe Drinking Water Act.

2. **Provide funding for the operation and maintenance of tribal water infrastructure**
   Because of minimal maintenance and repair, some tribal water infrastructure must be replaced before the end of its design life. This in turn diverts funding from homes that do not have water infrastructure. The turnover in operators of tribal water systems is often high due to lack of funding for salaries. Federal funding for the operation and maintenance of drinking water and wastewater infrastructure on tribal lands has never been appropriated. Statutory authority exists for the HHS Secretary to provide operation and maintenance assistance to tribes through Public Law 86-121 and Public Law 94-437, the Indian Health Care Improvement Act. Support for the operation and maintenance of tribal water infrastructure is critical to sustainable water and sanitation systems.

3. **Provide funding for congressionally authorized water infrastructure projects**
   Many tribal water infrastructure projects authorized by Congress and to be implemented by DOI, lack meaningful funding even decades since the initial authorization. As a result, these capital improvement projects in Indian Country fall into disrepair before even being completed, and large percentages of tribal residents remain without potable and irrigable water, threatening public health and deterring, if not halting, economic and agricultural development on those lands.

4. **Improve interagency coordination on water infrastructure**
   In 2007, top federal officials from EPA, DOI, HHS, HUD, and USDA signed two MOUs to increase common understanding and coordination among their related water infrastructure programs applicable to Indian Country. While laudable, the MOUs fell short of compelling federal agencies to remedy administrative inefficiencies and redundancies in water project management. To the extent feasible, a lead federal agency should be designated for each water project. For example, one federal agency should be provided the authority to manage a drinking water project from aquifer to faucet, to consolidate funding sources, to use such funding with some degree of flexibility, and to streamline and eliminate redundant administrative processes related to standards, grant reporting requirements, permits, environmental impact statements, and other processes.

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National Congress of American Indians

TELECOMMUNICATIONS

Tribal communities still lag behind the rest of the United States in access to radio, wireless, and broadband services. This disparity underscores the critical role the Administration can play in ensuring the advancement of telecommunications access throughout Indian Country.

RECOMMENDATIONS

1. **Call on Congress to establish and fully fund the Tribal Broadband Fund**
   To ensure access to broadband services in Indian Country, the Administration should urge Congress to create a Tribal Broadband Fund that is separate from the Universal Service Fund. A separate Tribal Broadband Fund will address issues specific to Indian Country, such as comprehensive infrastructure, sustainable adoption of broadband, and digital literacy. The establishment and funding of a Tribal Broadband Fund will guarantee that services are provided to all corners of Indian Country.

2. **Reform the Tribal Land Bidding Credit**
   The Administration must encourage the Federal Communications Commission (FCC) to revisit the Tribal Land Bidding Credit (TLBC) program to determine whether it can be modified to facilitate tribal access to spectrum on tribal lands and better promote deployment of communications services for tribal communities. The TLBC has seen limited success in tribal communities, largely because it does not necessarily place spectrum licenses in the hands of those motivated to develop the type of projects and deployment plans that would effectively serve tribal lands. The Administration should support the FCC in undertaking a new review of the TLBC, with the goal of increasing access to spectrum and removing barriers to use.

3. **Increase funding for the United States Department of Agriculture's Substantially Underserved Trust Area program**
   The Substantially Underserved Trust Area (SUTA) program is a tribally targeted program for infrastructure support that is mandated by the 2008 Farm Bill. The Administration needs to direct funding to this program in order to provide telecommunications infrastructure for tribal areas that currently have little to no support for broadband and other telecommunication service. The SUTA program would make Rural Utilities Service loans available with low interest rates for designated projects

4. **Include Indian Country in Spectrum Dashboard data**
   In order to ensure that services provided to Indian Country are viable, the Administration and Congress must invest the resources necessary to obtain an accurate assessment of broadband capabilities within tribal communities. The current Spectrum Dashboard contains detailed information, mapping, and research capabilities for areas where broadband service is either already available or could potentially could be provided, yet Indian Country is poorly represented in this data. Indian Country must be (a) represented in the Spectrum Dashboard with meaningful, timely data; and (b) granted access to the Dashboard.

5. **Reform the Universal Service Fund**
   As noted in recommendation 1, the Universal Service Fund should be referred to provide critical investments to expand telecommunications services in Indian Country. The following recommendations would make substantial progress toward that goal.
   a. **Create the Connect American Fund**
      The Connect America Fund (CAF) will enable U.S. households to access a network that is capable of providing both high-quality voice-grade service and broadband. It is vital that Indian Country is included specifically in the creation of the CAF in order to ensure that adequate funding is awarded to Indian Country.
   b. **Support the creation of a separate tribal account within the Mobility Fund**
      The Administration must support the creation of a separate fund targeting tribal lands within the Mobility Fund. Tribal lands have historically had limited access to telecommunications services and would greatly benefit from a fund set aside exclusively for tribal participation. Setting aside funds for tribes would provide adequate time for the FCC to coordinate with tribes and seek tribal leader input on how to best use the funds to bring needed services to tribal lands.
   c. **Establish a tribal seat on the USF Federal-State Joint Board**
      The Administration should support ongoing congressional efforts to establish a tribal seat on the Federal-State Joint Board. In order for tribes to have representation, a tribal seat must be created and filled in consultation with tribal leaders.

6. **Restore Funding for the PTFP within the Department of Commerce**
   The Administration needs to provide sufficient funding for the Public Telecommunications Facilities Program (PTFP). Without PTFP funding, tribes with construction permits will not be able to build their radio stations. Fully funding the PTFP program will ensure that public safety and programming infrastructure for tribal communities is supported and improved.

7. **Urge Congress to fully fund the new Office of Native Affairs and Policy within the FCC**
   The Administration must call on Congress to fully fund the Office of Native Affairs and Policy, which was recently created within the FCC. This funding is critical to supporting the efforts of the Office of Native Affairs and Policy in order to effectively expand the FCC's outreach to tribal governments and to coordinate with them in addressing the telecommunications needs faced by Indian Country.

8. **Expand the Rural Utilities Service's Community Connect Grant program**
   The Administration should increase funding for the Community Connect Grant program, which provides competitive grants for broadband deployment to rural communities that lack broadband service. Many American Indian and Alaska Native communities are eligible for this program, but due to the low funding level, they are unable to compete with other non-Native communities.

9. **Create a Federal-Tribal Broadband Initiative**
   The Administration should establish a Federal-Tribal Broadband Initiative through which the federal government can coordinate both internally and directly with tribal governments on broadband-related policies, programs, and initiatives.

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