TRIBAL NATION–UNITED STATES DIPLOMATIC RELATIONS
The history of the relationship between Tribal Nations and the United States is complicated, shameful, and rarely told truthfully. Woven throughout is a tension between the United States’ recognition of our inherent sovereignty and its simultaneous insistence on controlling or limiting our exercise of that sovereignty. Additionally, woven throughout and beginning with first contact is an effort to dispossess Tribal Nations of vast tracts of land and natural resources, in part by efforts to assimilate us and terminate our rights and our existence within our own lands.

Tribal Nations are sovereign governments that exist within the borders of the United States. Our governments existed before the formation of the United States and continue to exist today. We are the rightful stewards of these lands and our creation stories, our traditions, our cultures, our language, and our understanding of the world, humanity, and all life forms are intricately tied to these lands. Tribal Nations possess inherent sovereignty—which means we have autonomous, independent government authority apart from any recognition of such authority by other entities. This sovereign authority includes jurisdiction over our people and lands, form of government, and administration of justice, and ultimately our right to make decisions that are best for our citizenship now and into the future.

In its early formative years, before the United States evolved into the strong and wealthy global power that it is today, the United States, including the period prior to its formation, sought to establish and maintain strong relations with Tribal Nations. As a reflection of this approach, the United States, in accordance with our sovereign government status, often took action within our lands only after securing our consent through nation-to-nation diplomacy, including through treaty-making. The Second Continental Congress, in adopting the Northwest Ordinance, pledged that our lands and property would not be taken from us without our consent and that our property and rights would not be disturbed. These diplomatic relationships and the understanding that consent was required for U.S. action were a recognition by the United States of Tribal Nations as sovereign political entities.

When the United States adopted its Constitution, it included provisions specifically directed at Tribal Nations and Native people, recognizing our unique status and giving the federal government power to take actions on our behalf. Soon after, the Supreme Court issued three opinions—called the Marshall Trilogy—that formally articulated the recognition of Tribal Nations’ inherent sovereignty while also citing the doctrine of discovery as placing limitations on that sovereign status. The doctrine of discovery is rooted in a self-serving document issued by the Pope in 1493 that said any land not inhabited by Christians was available to be “discovered” and therefore taken into possession, and that the land’s inhabitants should be Christianized. Judicial decisions, congressional statutes, and other federal actions have continued to shape the parameters of the relationship between the United States and Tribal Nations over time.

But the understanding that Tribal Nations possess inherent sovereignty, as reflected in the U.S. Constitution, Supreme Court decisions, and numerous laws, did not and still does not compel the United States to fully respect our rights and authorities. In the founding and expansion of the United States, acts of genocide were committed against our ancestors to allow others to pursue life, liberty, and happiness in our stolen homelands, while simultaneously depriving us of those same rights and liberties. The United States, and colonizers before it, rationalized its behavior and approach by utilizing the doctrine of discovery. The doctrine of discovery planted the rotten seed that, although Tribal Nations have inherent sovereignty, the United States need not treat us as full sovereigns because Native people are less human than our colonial counterparts. It also paved the way morally for the physical acts of genocide and the taking of lands committed in the name of colonial expansion.

Tribal Nations ceded millions of acres of land and natural resources to the United States, often involuntarily or out of necessity to prevent the killing of our people who sought only to protect their families, their homelands, and their way of life. These ceded lands and natural resources are a source of and the very foundation of the wealth and power that the United States, and its citizens, enjoys to this day. In exchange, the United States made promises that exist in perpetuity to ensure Native people’s health, overall well-being, and prosperity. This exchange is the basis for the general trust obligation to Native people.

Unfortunately, as the United States became more powerful, as maintaining strong relations with Tribal Nations became less necessary, and as greed took
over, the United States quickly moved away from an approach based on Tribal Nations as inherent sovereigns from which it must obtain consent. Instead, to justify and facilitate its continued theft, it began to view Tribal Nations as subsumed under the United States’ powers and subject to its whims—using terms such as “domestic dependent nations” and “wards” to describe us and referring to its “plenary power” over us. Eventually, the United States progressively moved away from the concept of “rights ceded” by Tribal Nations to viewing Tribal Nations as possessing only “rights-granted” by the United States. Over time, the United States has woven these concepts into its legal jurisprudence to create a narrative and understanding based upon legal fiction to justify its actions.

U.S. policy regarding Tribal Nations and Native people continues to evolve. For much of the United States’s existence, however, it took drastic measures to undermine Tribal Nations’ governance and assimilate Native people, thereby attempting to terminate Tribal Nations and the trust obligations we are owed. The United States took our homelands and placed us on reservations, often in remote areas with little or no resources or economies, prohibited exercise of our cultural practices, kidnapped our children, and took action to limit the exercise of our inherent sovereign rights and authorities. These assimilation and termination policies, and the acts of cultural genocide committed in furtherance of them, were a failure by all accounts—as Tribal Nations fought hard to maintain our cultural existence and have not gone away. And yet, ultimately, U.S. policy toward Tribal Nations remains to this day, at its core, based on two flawed assumptions: [1] that Tribal Nations are incompetent to handle our own affairs, and [2] that our Nations would eventually assimilate out of existence.

The United States’ actions towards Tribal Nations and Native people are designed to make our continued existence invisible to mainstream society, since acknowledging our contemporary existence would involve coming to terms with our complicated history together. Instead, the United States seeks to instill in its people a revisionist, incomplete, and often fictional historical understanding that is intended to conceal the truth. Our ongoing existence as sovereign nations is unknown to most, the truth about our long, complex, and complicated nation-to-nation relationship goes untold, and our existence is too often stereotyped, romanticized, and minimalized to a mere historical footnote.

For the past 50 years, and in response to the American Indian Movement and other Tribally-driven efforts, the United States has begun to take a different approach to its relationship with Tribal Nations, instead seeking to facilitate Tribal Nations’ self-determination and self-governance. For example, Congress enacted the Self-Determination and Educational Assistance Act, which authorized Tribal Nations to contract with the federal government for funding to provide services otherwise provided by the federal government. And multiple presidential executive orders have been issued calling on federal agencies, in recognition of our inherent rights and authorities, to consult with Tribal Nations when it comes to federal decisions that impact our people and our homelands. In addition, while the United States was unfortunately the last government to endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2010, declaring it to be aspirational and not binding, its endorsement still offers a foundation which we can further build upon.

However, despite some notable gains over this period, the United States is still far from a reality where it is fulfilling its trust and treaty obligations to Tribal Nations, fully respecting our inherent sovereign rights and authorities, and properly acknowledging and honoring our indigenous existence within these lands. The United States continues to issue federal Indian policy based upon a false premise that contributes, in large part, to the imperfect relationship we have today. Tribal Nations remain unified in our efforts to topple these foundational myths, as our perseverance and the sophistication of our governments reveal these myths to be falsehoods.

The current relationship requires a comprehensive overhaul, including a return to a nation-to-nation relationship rooted in diplomacy. As Indian country envisions its future, we must collectively seek a new model based on: fulfillment by the United States of its trust and treaty obligations; achieving full recognition of our sovereign governmental status and authorities; ensuring that every United States citizen receives a factual and truthful accounting of the complex and complicated history of Tribal Nation-U.S. relations; recognizing the preeminent role of Tribal Nations’ own laws as the means through which we define who we are and how we exert our sovereign powers and authorities; seeking to force the evolution of federal Indian policy in a manner that is consistent with self-determination and rooted in retained inherent sovereign authority as opposed to an approach that presumes Tribal Nations have been granted their sovereign rights; and demanding a reality where we as indigenous people are not marginalized, stereotyped, or discriminated against within our own lands.
Formative Era: Beginning-1871

Initial sustained contact between indigenous populations of North America and European subjugators. Tribal Nations used treaties to conduct business internationally with the Crowns (and later with the colonies, followed with the United States).

- **1493** – The Pope issued a Papal Bull stating any land not inhabited by Christians was available to be “discovered.” Under this doctrine of discovery, while indigenous people maintained the right to occupy their land, the discoverer was granted sole authority to acquire the land.

- **1778** – The United States entered into the first of many treaties with Tribal Nations, thereby recognizing Tribal Nations as politically sovereign entities with treaty-making authority. A basic principle established by the treaties and the United States’ course of dealings with Tribal Nations and Indians was that the United States had a broad responsibility to Tribal Nations and Indians. This responsibility flowed both from the consideration promised in exchange for Tribal Nations’ homelands and agreement of peace—often extracted through unfair tactics and sometimes without consent—and from the fact that stripping away Tribal Nations’ homelands often stripped away the very means necessary for Tribal Nations to provide for their people.

- **1787** – The Second Continental Congress adopted the Northwest Ordinance to charter a government for the Northwest Territory and provide that good faith shall be observed toward Indians, that their lands and property shall not be taken from them without their consent, that their property and rights shall not be disturbed absent lawful wars authorized by Congress, and that laws shall be passed to prevent wrongdoing.

- **1787** – The United States adopted the Constitution, which gave Congress authority to regulate commerce with Tribal Nations and gave the Executive Branch treaty making authority with ratification by the Senate.

- **1790** – Congress enacted the first Nonintercourse Act, requiring authorization by the federal government before Indian lands were purchased.

- **1823** – The Supreme Court in *Johnson v. M’Intosh*, the first case in the Marshall Trilogy, found that, under the doctrine of discovery, the federal government had the exclusive right to extinguish Tribal Nations’ aboriginal title to land.

- **1824** – The Bureau of Indian Affairs was created within the War Department.

- **1830** – Congress enacted the Indian Removal Act, authorizing the President to force southern Tribal Nations’ removal west of the Mississippi. Many Tribal Nations were forcibly removed from their lands during this time.
1831 – The Supreme Court in *Cherokee Nation v. Georgia*, the second case in the Marshall Trilogy, held Tribal Nations are domestic dependent nations and that the relationship between Tribal Nations and the federal government is like that of a ward to a guardian.

1832 – The Supreme Court in *Worcester v. Georgia*, the third case in the Marshall Trilogy, recognized that Tribal Nations are sovereign nations with authority of self-government over their people and territories that predates the arrival of colonists, that Tribal Nations have the protection of the federal government, and that the doctrine of discovery gave the federal government the sole right to acquire their land.

1849 – The Bureau of Indian Affairs was transferred to the Department of the Interior.

1871 – Treaty making ended, and the United States instead began to carry out its relationship with Tribal Nations through legislation. This action was unilateral, and was carried out by a rider attached to the Indian Appropriations Bill of 1871.

### Allotment and Assimilation Era: 1871-1928

1879 – Carlisle Indian School, a well-known off reservation Indian boarding school, was established under the philosophy of “Kill the Indian, save the man.” During this time, the United States established and operated many Indian boarding schools, removing Indian children from their homes, families, and cultures.

1886 – The Supreme Court in *United States v. Kagama* held Congress has power to legislate with regard to Indians based on the obligations it owes to them.

1887 – Congress enacted the General Allotment Act (Dawes Act), which broke lands owned by Tribal Nations into parcels that were then provided to individual Indians to facilitate assimilation. Tribal Nations lost more than 90 million acres without compensation as a result of the allotment process.

1903 – The Supreme Court in *Lone Wolf v. Hitchcock* held Congress is authorized to unilaterally abrogate terms of a treaty.

1921 – Congress enacted the Snyder Act, which created a more effective funding authorization mechanism for the United States to satisfy its obligations to Indians, including for healthcare.

1924 – Congress enacted the Indian Citizenship Act, which extended United States citizenship to all American Indians; however, it wasn’t until the 1965 Voting Rights Act that states were required to allow American Indians to exercise their voting rights.

### Indian Reorganization Era: 1928-1945

1928 – The Merriam Report was released, which recommended major changes in federal Indian policy.

1933 – John Collier, who believed in reinvigoration of Tribal Nations’ governments to control their own destinies, was appointed Commissioner of Indian Affairs.

1934 – Congress enacted the Indian Reorganization Act, which ended allotment, permitted the federal government to acquire lands into trust on behalf of Tribal Nations, and provided Tribal Nations a federally-sanctioned vehicle to adopt governing documents.

1934 – Congress enacted the Johnson-O’Malley Act, which provided federal funding for certain services administered to Indians by other entities, such as states, and has been used mostly in the context of education.
Termination Era: 1945-1968

- **1953** – Congress stated in House Concurrent Resolution 108 that the official policy of the federal government toward Tribal Nations was termination of federal benefits and recognition. Under this policy, many Tribal Nations’ federal recognition was terminated—but most of these Tribal Nations have since been re-recognized.

- **1953** – Congress enacted Public Law 280 to cede some federal jurisdiction over Tribal Nations’ lands to certain states.

- **1955** – The Facilities Transfer Act transferred Indian health programs from the BIA to the Public Health Service, establishing the Indian Health Service.

- **1956** – Congress enacted the California Rancheria Act, which provided for termination of California rancheria lands’ trust status and distribution of assets.

- **1956** – Congress enacted the Indian Relocation Act to encourage Indians to relocate to urban areas.

- **1965** – Congress enacted Voting Rights Act of 1965. States were required to allow American Indians to exercise the right to vote in state elections.

Self-Determination Era: 1968-Present

- **1968** – President Johnson issued a message to Congress, entitled “The Forgotten American: The President’s Message to the Congress on Goals and Programs for the American Indian.” His message proposed ending termination and promoting self-determination, and he said “[t]he special relationship between Indians and the Federal government is the result of solemn obligations which have been entered into by the United States Government.”

- **1968** – In conjunction with his message to Congress, President Johnson issued Executive Order No. 11399, entitled “Establishing the National Council on Indian Opportunity.” The Council included representation from Indian country and the federal government, and it helped to establish the current era of federal Indian policy by formulating President Nixon’s Special Message on Indian Affairs.

- **1968** – Congress enacted the Indian Civil Rights Act, which recognized and placed certain constitutional limits on powers of self-government exercised by Tribal Nations and required Tribal Nations’ consent for state assumption of jurisdiction over civil or criminal actions in Indian country.

- **1968** – The American Indian Movement (AIM) was established to advocate on behalf of Indian country.

- **1969** – The United Southeastern Tribes (which would later become United South and Eastern Tribes, Inc.) was established with the shared idea that unity between Tribal Nations was necessary to improve and strengthen their dealings with the federal government.

- **1970** – President Nixon issued a message to Congress, entitled “Special Message on Indian Affairs,” in which he advocated self-determination, greater protection of Indian rights, the end of termination, and upholding the trust responsibility regardless of each Tribal Nations’ progress toward self-sufficiency.

- **1974** – The Supreme Court in *Morton v. Mancari* held that a hiring preference for Indians did not “constitute ‘racial discrimination’” but said instead the Constitution “singles Indians out as a proper subject for separate legislation” due to “the unique legal status of Indian tribes under federal law and upon the plenary power of Congress [drawn from the Constitution], based on a history of treaties and the assumption of a guardian-ward status.” This seminal holding is one of the cornerstones of federal Indian law and has since been applied in many cases upholding actions carrying out the unique obligations the United States owes to Indians.

- **1975** – Congress enacted legislation establishing the American Indian Policy Review Commission for the comprehensive investigation and study of Indian affairs.
1975 – Congress enacted the Self-Determination and Educational Assistance Act, which authorized Tribal Nations to contract with the federal government for funding to provide services otherwise provided by the federal government.

1976 – Congress enacts the Indian Health Care Improvement Act, authorizing specific Indian Health Service programs and permitting IHS to bill Medicare and Medicaid.

1977 – The American Indian Policy Review Commission issued its final report, which recommended that Congress reaffirm and direct all executive agencies to administer the trust responsibility consistent with a set of specific legal principles, called for consultation with Tribal Nations and empowering Tribal Nations’ governments, and made other specific recommendations.

1978 – The Supreme Court in United States v. Wheeler held Tribal Nations’ criminal jurisdiction over Indians arises from their inherent sovereign authorities and is not granted by the United States.

1978 – The Supreme Court issued a decision in Oliphant v. Suquamish Indian Tribe, stating Tribal Nations have no criminal jurisdiction over non-Indians in Indian country without congressional authorization based on its reasoning that an exercise of such powers would be “inconsistent with their status” as “domestic dependent nations.”

1978 – Department of the Interior Solicitor Krulitz issued a letter to the Department of Justice stating the federal government stands in a fiduciary relationship with Tribal Nations, thereby permitting money damages for trust asset mismanagement, and that the Department of Justice should not take a conflicting position.

1978 – Congress enacted the Indian Child Welfare Act to stop the practice of removing Native children from their families and Tribal Nations.

1978 – Congress enacted the American Indian Religious Freedom Act, to eliminate interference with the free exercise of Native American religions, based on the First Amendment of the U.S. Constitution; and to recognize the civil liberties of Native Americans, Alaska Natives, and Native Hawaiians to practice, protect and preserve their inherent right of freedom to believe, express, and exercise their traditional religious rights, spiritual and cultural practices.

1979 – Department of Justice Attorney General Bell issued a letter to Secretary of the Interior Andrus setting forth the Department of Justice’s position interpreting the federal government’s fiduciary responsibility to Tribal Nations regarding asset management more narrowly than what Tribal Nations argue for.

1980 – The Supreme Court in Washington v. Confederated Tribes of the Colville Indian Reservation held the state had authority to impose taxes on certain reservation activities.

1980 and 1983 – The Supreme Court issued decisions in United States v. Mitchell, which, although ruling in favor of the Tribal Nation party, construed the federal government’s compensable fiduciary trust responsibilities to Tribal Nations for asset management more narrowly than what Tribal Nations argue for. The letter from Solicitor Krulitz was filed in the case and cited in the dissent.

1989 – The Supreme Court issued decision in Cotton Petroleum Corporation v. New Mexico, which applied the Bracker balancing test to weigh state, Tribal, and federal interests in determining whether states can imposing tax on non-Tribal entities conducting commercial activities on Tribal land. SCOTUS noted that Congress could offer tax immunity, if it chose to do so.

1994 – Congress enacted the American Indian Trust Fund Management Reform Act, which reaffirmed and specified federal trust responsibilities, authorized Tribal Nations to manage trust funds, and established the Office of the Special Trustee for American Indians.

1994 – Congress passed the Federally Recognized Indian Tribe List Act, which directs the Department of the Interior to publish annually a list of federally-recognized Tribal Nations and stipulates that federal agencies must treat all federally-recognized Tribal Nations equally.

1997 – Secretary of the Interior Babbitt issued Secretarial Order No. 3206, entitled “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,” which clarified responsibilities when actions taken under the Endangered Species Act affect Indian lands, Tribal Nations’ trust resources, or the exercise of Tribal Nations’ rights.

2000 – Secretary of the Interior Babbitt issued Secretarial Order No. 3215, entitled “Principles for the Discharge of the Secretary’s Trust Responsibility,” which provided guidance to employees who carry out the trust responsibility as it pertains to Indian trust assets and reaffirmed the letter from Solicitor Krulitz. The Department of the Interior then codified those principles for managing Indian trust assets in the Departmental Manual.

2000 – President Clinton issued Executive Order No. 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” which required federal agencies to consult with Tribal Nations for policies that have Tribal implications.


2003 – The Supreme Court issued a decision in *United States v. Navajo*, which construed the federal government’s compensable fiduciary trust responsibilities to Tribal Nations for asset management more narrowly than what Tribal Nations argue for.

2003 – The Supreme Court issued a decision in *United States v. White Mountain Apache Tribe*, which found the federal government, when using a Tribal Nation’s trust land or property, owes a duty to maintain that land or property.


2009 – The Supreme Court issued a decision in *Carcieri v. Salazar*, which ruled that the Secretary of the Interior’s authority to acquire land into trust on behalf of Tribal Nations under the Indian Reorganization Act was limited to only those Tribal Nations that were “under federal jurisdiction” in 1934.

2009 – President Obama held the first White House Tribal Nations Conference, where Tribal Leaders were invited to meet with the President and members of his Cabinet to discuss issues of importance to Indian country. President Obama continued to hold the White House Tribal Nations Conference each year.

2009 – President Obama issued a Memorandum for the Heads of Executive Departments and Agencies, entitled “Tribal Consultation,” which directed agencies to develop detailed action plans to implement the Tribal Nation consultation policies and directives of Executive Order No. 13175.

2009 – The United States settled the *Cobell* trust fund mismanagement litigation, and Secretary of the Interior Salazar issued Secretarial Order No. 3292, entitled “Individual Indian Trust Management,” which provided for the establishment of the Secretarial Commission on Indian Trust Administration and Reform to evaluate the Department of the Interior’s management and administration of Indian trust assets.

2010 – The United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), becoming the last nation to sign on, stating the “aspirations [the declaration] affirms, including the respect for the institutions and rich cultures of Native peoples, are one we must always seek to fulfill.”

2010 – The Indian Health Care Improvement Act is permanently reauthorized as a part of the Patient Protection and Affordable Care Act after a 10 year effort from Tribal Nations and organizations.

2011 – In *United States v. Jicarilla Apache Nation*, the Department of Justice asserted that the federal government’s legally enforceable trust obligations are limited to the terms of statutes and regulations, questioning the legal effect of the letter from Solicitor Krulitz. The Supreme Court reaffirmed that it looks to common law to determine the scope of federal Indian trust liability. It also stated “[t]he Government, following a humane and self-imposed policy . . . has charged itself with moral obligations of the highest responsibility and trust.”

2013 – President Obama issued Executive Order No. 13647, entitled “Establishing the White House Council on Native American Affairs,” to ensure that the federal government engages in a true and lasting government-to-government relationship with federally recognized Tribal Nations in a more coordinated and effective manner, including by better carrying out its trust responsibilities.
2013 – The Secretarial Commission on Indian Trust Administration and Reform issued a report that recognized trust duties are not discretionary and recommended that the federal government (1) reaffirm that all federal agencies have a trust responsibility to Indians that demands a high standard of conduct, (2) develop a uniform consultation policy, and (3) restructure and improve the management, oversight, and accountability of federal trust administration.


2013 – President Obama signs the Violence Against Women Act Reauthorization (VAWA) into law. Tribal advocates fought hard to ensure that the law recognized our rights as inherent as opposed to granted. In signing the bill into law, President Obama expressed “Tribal governments have an inherent right to protect their people, and all women deserve the right to live free from fear.”

2014 – Secretary of the Interior Jewell issued Secretarial Order No. 3335, entitled “Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries,” which reaffirmed the letter from Solicitor Krulitz and set forth guiding principles for bureaus and offices to follow to ensure that the Department of the Interior fulfills its trust responsibility.

2016 – Standing Rock Protest begins in opposition to the Energy Transfer Partners’ Dakota Access Pipeline project that would cross beneath the Missouri and Mississippi Rivers, as well as part of Lake Oahe near the Standing Rock Indian Reservation. The protest was in direct opposition to the threat the pipeline posed to the region’s clean water and ancient burial grounds.

2017 – President Trump in his signing statement associated with appropriations legislation implied that some services for Indians are unconstitutionally race based, stating he will treat provisions that allocate benefits on the basis of race, ethnicity, and gender—listing the Native American Housing Block Grant program—in a manner consistent with the equal protection clause of the Constitution. He has since continued to include such language in appropriations legislation signing statements.

2017 – President Trump signed a presidential memorandum to advance approval of construction of the Dakota Access Pipeline.

2018 – The Centers for Medicare and Medicaid Services within the Department of Health and Human Services took the position that providing or approving an exemption from Medicaid work requirements for Indians would raise civil rights concerns.


2018 – The Reclaiming Native Truth: A Project to Dispel America’s Myths and Misconceptions Report issued. It is the largest public opinion research project ever conducted by, for and about Native peoples. The research has been critically important in helping to start important and potentially transformative conversations with leaders in entertainment, media, K-12 education, philanthropy and other sectors. It has helped to validate, through data, the experiences of Native peoples across the country of how invisibility and toxic stereotypes that are perpetuated primarily by media, pop culture and K-12 education fuel bias and racism against Native peoples. It has raised important awareness among non-Natives allies about these systemic issues and the abundance of opportunities to work in partnership with Native peoples to advance narrative change and social justice.

2019 – On August 9, the Fifth Circuit Court of Appeal affirmed the constitutionality of the Indian Child Welfare Act [the Department of Justice defended the Indian Child Welfare Act’s constitutionality]. This decision was a reversal of the 2018 U.S. District Court for the Northern District of Texas decision in *Brackeen v. Bernhardt* that held the Indian Child Welfare Act violates the Constitution, including the equal protection clause [it further held that ICWA is race based, finding the principles of *Morton v. Mancari* do not extend to cover it].
ORDER NO. 3335

Subject: Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries

Sec. 1 Purpose. In 2009, Secretary’s Order No. 3292 established a Secretarial Commission on Indian Trust Administration and Reform (Commission). The Commission issued its Final Report and Recommendations in December 2013, which sets forth its views and recommendations regarding the United States’ trust responsibility. In response to the report, this Order sets forth guiding principles that bureaus and offices will follow to ensure that the Department of the Interior (Department) fulfills its trust responsibility.

Sec. 2 Authority. This Order is issued pursuant to the U.S. Constitution, treaties, statutes, Executive Orders, and other Federal laws that form the foundation of the Federal-tribal trust relationship and in recognition of the United States’ trust responsibility to all federally recognized Indian tribes and individual Indian beneficiaries.

Sec. 3 Background. The trust responsibility is a well-established legal principle that has its origins with the formation of the United States Government. In the modern era, Presidents, Congress, and past Secretaries of the Interior have recognized the trust responsibility repeatedly, and have strongly emphasized the importance of honoring the United States’ trust responsibility to federally recognized tribes and individual Indian beneficiaries.

a. Legal Foundation. The United States’ trust responsibility is a well-established legal obligation that originates from the unique, historical relationship between the United States and Indian tribes. The Constitution recognized Indian tribes as entities distinct from states and foreign nations. Dating back as early as 1831, the United States formally recognized the existence of the Federal trust relationship toward Indian tribes. As Chief Justice John Marshall observed, “[t]he condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence ... marked by peculiar and cardinal distinctions which exist nowhere else.” Cherokee Nation v. Georgia, 30 U.S. 1, 16 (1831). The trust responsibility consists of the highest moral obligations that the United States must meet to ensure the protection of tribal and individual Indian lands, assets, resources, and treaty and similarly recognized rights. See generally Cohen’s Handbook of Federal Indian Law § 5.04[3] (Nell Jessup Newton ed., 2012); Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942).

The U.S. Supreme Court has repeatedly opined on the meaning of the United States’ trust responsibility. Most recently, in 2011, in United States v. Jicarilla, the Supreme Court recognized the existence of the trust relationship and noted that the “Government, following ‘a humane and self-imposed policy ... has charged itself with moral obligations of the highest responsibility and trust,’ obligations ‘to the fulfillment of which the national honor has been