

MODERNIZING THE TRUST: REDEFINING THE UNITED STATES-TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONSHIP AND ADVANCING TRUST ASSET REFORM

DRAFT - FOR DISCUSSION PURPOSES ONLY
Subject to Tribal Leader Review, Revision, and Approval
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KEY STRATEGIES OF INDIAN TRUST MODERNIZATION

I. Strengthen Trust Standards – Adopt Implementing Laws and Regulations

Administrative Actions:

- The President should issue a special message and a related Executive Order on Federal trust functions and responsibilities.
- DOI should develop trust responsibility regulations after full consultation with Tribes.
- The DOI Solicitor should issue an M-Opinion based on the 1978 Krulitz letter that the trust responsibility applies to all federal agencies and that sets certain implementation standards.

Legislative Actions:

- **Trust Modernization Legislation.** Congress should enact legislation that reaffirms and directs all federal agencies to comply with clear and specific federal trust responsibilities regarding actions that affect Indian interests and trust assets.

II. Strengthen Tribal Sovereignty – Empower Each Tribe to Define its Path

Administrative Actions:

- DOI should continue to expedite trust acquisitions, especially within reservation boundaries and for Tribes with little or no land.
- DOI should encourage more Tribes to adopt tribal leasing regulations under the HEARTH Act.
- The President should issue an Executive Order on Tribal environmental regulation and jurisdiction based on Secretarial Orders 3206 and 3225.

Legislative Actions:

- **Trust Modernization Legislation.** Allow Tribes to manage any or all of their own trust assets.
- **Establish Tribal Jurisdictional Authority Equivalent with Other Sovereigns.** Within their boundaries, Tribes should have authority comparable to states and the Federal government. This means jurisdiction for legislation, regulation, and civil and criminal

court proceedings to the extent that Tribes are able to take on that authority and responsibility.

- **Exclude State and Local Jurisdiction at the Reservation Boundary.** There should be no state taxation of tribal activities on tribal lands. Also, amend the Indian Financing Act to provide that the tribal political subdivisions are nontaxable for any federal, state or local tax liability.
- **Assure Tribal Control over Education of Tribal Students.** Tribes should be able to assume full control over the public and federal education systems on their lands and play a major role in the curriculum for other schools on or near their lands serving Native students.
- **Provide that All Federal programs are contractible or compactible.** Indian Country has prospered when and where the federal government has authorized 638 contracting and “self-governance” compacting. These programs should be expanded to all federal programs that affect Indian country.
- **Expand Protection of Off-Reservation Resources.** Tribal resources found off Tribal lands, such as sacred places, should be accorded protections consistent with Tribal values.
- **Implement the United Nations Declaration on the Rights of Indigenous Peoples.** The United States must implement the UNDRIP, not merely endorse its principles.
- **Enact a Clean Carcieri-Fix.**
- **Protect Civil and Voting Rights.** Allow tribes the same right to establish polling places and to regulate voting as other governments.

III. Strengthen Federal Management – For Trust Assets Still Subject to Federal Control

Administrative Actions:

- **Probate and Appraisals.** DOI should eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals, and expedite probate of allotments.
- **Trust Land Title Insurance.** DOI should issue a Secretarial Order regarding implementation of the Department of Justice Title Standards for acquisition of land in trust for Indian Tribes, including clarifying application of the Non-Intercourse Act, that the United States is the stakeholder for such title insurance policies, and that no tribal sovereign immunity waiver is required.
- **Conflict-of-Interest Issues.** DOI should better address and avoid potential conflicts of interest regarding implementation of federal trust responsibilities.

Legislative Actions:

- **Trust Modernization Legislation.** This should sunset the Office of Special Trustee and reintegrate its responsibilities to provide clear and unified supervisory authority within DOI for Indian trust management, and also should improve lease compliance and trespass enforcement.

IV. Strengthen Federal-Tribal Relations – One Table with Two Chairs

Administrative Action:

- President Obama should restructure the White House Council on Native American Affairs to provide for direct Tribal representation selected by Tribes themselves.

Legislative Actions:

- **Trust Modernization Legislation.** Congress should establish a council or commission based on the White House Council on Native American Affairs, but including direct Tribal representation selected by Tribes themselves, like the Tribal/Interior Budget Council.
- **Fulfill Treaty Obligations for Tribal members of Congress.** Several treaties provide for a tribal representative in the Congress, though there is not one. Such a representative should have a status no less than that enjoyed by delegates from Puerto Rico and the District of Columbia. Having a congressional delegate should not diminish the representative obligations of members of Congress with Indian constituents and should not undermine the ability of the Indian Affairs committees to do their work.
- **Establish a Cabinet-Level Position.** The position of Assistant Secretary of Indian Affairs should be elevated to a Cabinet-level position within the Administration, with the authority to report directly to the President. Ambassadorial status should be accorded to federal representatives to Indian Country and Indian Country representatives to the federal government.
- **Recognize the right under UNDRIP to Free, Prior, Informed Consent for actions impacting Tribes.**

V. Strengthen Federal Funding and Improve Its Efficiency – A Pillar of the Trust Responsibility

Administrative Actions:

- Federal agencies should propose budgets that fully fund the trust responsibility.
- The President’s budget should full fund the trust responsibility.
- Indian budgets should be handled through the mandatory component of the federal budget.

Legislative Actions:

- Congress should enact appropriations bills that fully fund the trust responsibility.
- Congress should enact legislation that amends the Indian Financing Act to provide to tribal governments federal income tax revenues of tribal citizens and otherwise modernize that Act to foster economic activity on reservations.

Intent of this Document. This document is largely comprehensive in the sense of identifying many, if not most, of the challenges and principles relative to the nature and evolution of the federal-tribal trust relationship. As a practical matter and given the rhythms and vagaries of the legislative process, it is also true that at any given time, legislation may be pending in Congress or initiatives being pursued in federal agencies that address one or more—but not all—of the

challenges and principles outlined above. In these cases, this document should be not understood to mean that all of the principles must be included in such legislation or administrative initiatives. Instead, this document assumes that, depending on the circumstances, any one, some, or all of the principles outlined above may be pursued as appropriate opportunities present themselves, whether administrative or legislative.

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