

U.S. Department of the Interior
Secretary's Tribal Advisory Committee

Policy Recommendations



August 2023

Table of Contents

Table of Contents.....	1
Cover Letter to Secretary Haaland	4
STAC Recommendations Organized by Topic	
Interior Budget Recommendations for Indian Country	5-11
Co-Stewardship.....	12-16
<i>External State Dept. Letter</i> - International Indigenous Rights	17-20
Rights-of-Way	21-22
<i>External White House Letter</i> - Tribal Broadband & Spectrum on Tribal Lands	23-29
<i>External Letter</i> - White House Council on Native American Affairs (WHCNA).....	30-32
Fee-to-Trust.....	33-37
Public Safety in Indian Country	38-48
Office of the Solicitor.....	49-50
Office of Indian Affairs.....	51-54
Land and Minerals Management.....	55-57
Indian Water Rights	58-59
Cultural Heritage	60-61
Administrative STAC Requests	62-64

COVER LETTER

U.S. DEPARTMENT OF THE INTERIOR
SECRETARY DEB HAALAND



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

August 2023

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Secretary's Tribal Advisory Committee (STAC) Policy Recommendations

Dear Secretary Haaland and Assistant Secretary Newland,

As the appointed Chair and Vice Chair of the Secretary's Tribal Advisory Committee (STAC) at the U.S. Department of the Interior (Interior), we write to you on behalf of the Committee's membership by extending our gratitude to you for hosting the Department's first in-person meeting on May 16 – 17, 2023 in Washington, D.C. We are deeply appreciative of the time and attention that the Interior's high-level leadership took to present to STAC and be available for questions and subsequent meetings.

Under your leadership, you have marked a new era for Indian Country not only through the establishment of the Interior's first-ever STAC but by also holding the Department's first in-person meeting with Tribal leaders representing the collective priorities of the 574 federally recognized Tribes in the country. We applaud President Biden for your historic appointment as the first Native American Cabinet Secretary in the United States, as you continue to uplift his commitments to Indian Country memorialized under the [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#) and advance the federal trust responsibility.

In furtherance of our government-to-government relationship, and as one of your primary goals establishing STAC, we have prepared this document for Interior leadership outlining policy recommendations and requests collectively formulated and reviewed by STAC with input from the Tribal Nations we represent in the 12 Bureau of Indian Affairs (BIA) Regions. Our recommendations outline our most immediate and time-sensitive collective priorities promised by trust and treaty responsibilities the federal government is responsible to uphold.

The STAC recommendations and requests are extension of the conversations our Tribal Nations had with Interior, White House, and the White House Council of Native American Affairs leadership during the May 2023 meeting.

At present, we appreciate your consideration of each recommendation on the following topics:

1. Interior Budget Recommendations - Indian Country
2. Co-Stewardship
3. International Indigenous Rights
4. Rights of Way
5. Tribal Broadband & Spectrum Recommendations
6. White House Council on Native American Affairs (WHCNA)

7. Fee to Trust
8. Public Safety
9. Solicitor's Office
10. Bureau Office
11. Land and Minerals Management
12. Water Rights
13. Administrative STAC Requests

Following the publication of these recommendations, STAC is committed to following up on the progress and action taken by the federal government to address each of our concerns. We also welcome the opportunity to provide additional information or clarification as needed and look forward to hearing back from the Interior on how it intends to best address our concerns.

Again, we are extremely grateful for your leadership at Interior, and appreciate of your commitment to uplift our voices as part of President Biden's priorities for Tribal Nations. If you have questions or would like to schedule follow-up meetings, please email Heidi Todacheene, Senior Advisor to the Secretary and Executive Director of STAC at: STAC@ios.doi.gov

Respectfully,



Whitney Gravelle, STAC Chair
President, Bay Mills Indian Community
Secretary's Tribal Advisory Committee
U.S. Department of the Interior



Erica M. Pinto, STAC Vice Chair
Chairwoman, Jamul Indian Village of CA
Secretary's Tribal Advisory Committee
U.S. Department of the Interior



Heidi Todacheene
Senior Advisor to the Secretary & Executive Director of STAC
Office of the Secretary
U.S. Department of the Interior

Enclosures

INTERIOR BUDGET RECOMMENDATIONS FOR INDIAN COUNTRY

I. General STAC Recommendations

The U.S. Department of the Interior’s Secretary’s Tribal Advisory Committee (hereinafter “DOI STAC”) offers the following general recommendations as essential pillars for the federal government to uphold its trust and treaty obligations. They reflect the historic failure of the federal government to uphold trust and treaty obligations to Tribal Nations, which has impacted our ability to effectively exercise sovereignty, self-determination, and nation rebuilding efforts. The federal government has moral and legal obligations to address these issues based on the Nation-to-Nation relationship between the federal government and Tribal Nations, as prioritized by the Biden-Harris Administration under the [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#) and [Executive Order 13175](#) on Consultation and Coordination with Indian Tribal Governments.

(a) The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal Nations and our citizens – Native Americans experience some of the greatest disparities among all populations in this country. Indeed, the U.S. Commission on Civil Rights’ [Broken Promises report](#) found deep failures in the delivery of federal fiduciary trust and treaty obligations, concluding that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.” These funding shortfalls have yet to be addressed by the federal government further exacerbating public safety, health, education, housing, technology, and other chronic issues in our communities, as indicated by the report.

- **Recommendation:** Support the funding proposals provided under [S. 5186, Honoring Promises to Native Nations Act](#), introduced in the 117th Congress.

(b) Inadequate funding to Indian Country by DOI needs to be viewed as unfilled trust and treaty obligations – This funding is not delivered based on poverty or for social welfare purposes. The federal government’s trust obligations are the result of the loss of Native American lives and the millions of acres of land and extensive natural resources ceded to the U.S.—oftentimes by force – in exchange for which it is legally and morally obligated to provide benefits and services to Tribal communities in perpetuity. At no point has the government fully delivered upon these obligations.

(c) Above all, the COVID-19 crisis highlighted the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation – While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations for the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS), in the long-term, we are calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators.

- **Recommendation:** Advocate for BIA advanced appropriations in the federal budget.

DOI BUDGET RECOMMENDATIONS

(d) Tribal Nations must be treated in a manner befitting our sovereign government status, not as grant funded entities or special interest groups – Far too many dollars are only accessible via competitive federal grants or through allocations made at the discretion of state governments. Forcing Tribal Nations to compete for federal grants utilizes a process that fails the sacred and unique diplomatic relationship that exists between Tribal Nations and the United States.

(e) The sacred trust obligation to Tribal Nations transcends measurements, outputs, data, and statistics – While these things are important, the obligations due to Tribal Nations should not be based on this understanding. Rather, these are things that Tribal Nations concern themselves with as an internal matter to ensure they are providing strong services to their citizenship. We must explore a new approach together that better respects tribal sovereignty.

(f) Mandatory Funding for Binding Obligations – We celebrate the achievement of separate, indefinite appropriations for both 105(l) leases and Contract Support Costs.

While we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we strongly support the transfer of these line items to mandatory appropriations. This will ensure funding increases will be allocated to service delivery, opposed to the federal government's binding legal obligations. Additionally, STAC also recommends that federal funding and services are allocated to Direct Service Tribes and non- contractible, the latter meaning that inherent federal functions must be adequately funded to ensure the government can carry out its duties to Tribal Nations and their citizens at the highest level.

(g) Interior's FY24and FY25 Requests should build upon the Tribal Interior Budget Council's (TIBC) submitted FY25 Request while advocating for bolder change – Broadly, the President's Budget Request for FY 2023 was positive for Indian Country. After years of requests that neglected trust and treaty obligations, Tribes welcomed the more substantial increases, as well as the policy changes proposed by the Biden-Harris Administration that have permanency to resist falling victim to future administration's hostile policies and cannot be undone in a single request. In addition to our advocacy for the highest discretionary increases possible each fiscal year, we are seeking a long-term commitment to federal fulfillment of trust and treaty obligations—including full and mandatory funding for federal agencies and programs serving Tribal Nations. It is also important to note that these requested budget increases will further benefit the Interiors 12 BIA Regions that non-Indians live in too.

- **Recommendation:** Support the full FY25 funding requests submitted by the Tribal Interior Budget Council. *See attached "Executive Summary - Tribal Interior Budget Council FY25 Budget Submission."*

(h) Commit to advance appropriations for all DOI programs with a Tribal nexus – We continue to support advance appropriations as an important mechanism to provide certainty in funding to Tribal Nations and urge the DOI to support this mechanism for all federal Indian programs. Since FY 1998, there has only been one year (FY 2006) in which full-year funding

DOI BUDGET RECOMMENDATIONS

was enacted before the beginning of the new fiscal year. Congressional authorization of advance appropriations for Indian Affairs is a solution to the outsized impact of funding disruptions on Tribal Nations. Both mandatory and advance appropriations funding solutions must include all Indian Affairs accounts, and not just cherry-pick certain accounts. Providing certainty and continuity of services to all accounts is critical to maximizing the cost-savings nature of the solution because of inherently federal functions. If you provide funding for certain operations while others are disrupted, you are only paying part of the apparatus to be on the books while other work piles up, ceases entirely, or disproportionately suffers from duplicative labor input – not increasing efficiency and reducing costs.

(i) Fully fund BIA programs and services – We continue to note the historic and continued unmet funding obligations under BIA’s diverse line items. It is our expectation that, after years of federal budget requests that propose deep cuts to BIA, the Biden-Harris Administration funding submissions will propose substantial increases across the agency to increase funding for underfunded Indian services, which has not been fulfilled yet. As indicated above, the DOI should commit to mandatory funding for the BIA and work in partnership with the BIA since the yearly budget formulation process offers a much more comprehensive look at priorities of Tribal Nations. However, STAC has yet to see changes made to provide an additional calculation of BIA’s *unfunded* obligations to measure performance. Further, the implementation of an unmet needs calculation should be duplicated at the White House Office of Management and Budget (OMB) for all agencies managing funds for Tribes.

- **Recommendation:** *Also see* legislative language under “Sec. 8 Office of Management and Budget Office of Native Nations” in [S. 5186, Honoring Promises to Native Nations Act](#).

(j) Payments in lieu of taxes for Tribal Land into trust –There are many benefits to tribal trust acquisitions since it advances self-governance by not subjecting Tribal Nations to state laws and provides our citizens’ access to tribal services not afforded to landless Tribes, as exemplified by the COVID-19 relief and infrastructure programs. Additionally, Tribal Nations may benefit from: New Market Tax Credits; Indian Employment Tax Credits; tax-exempt financing; discounted leasing rates; federal contracting preferences; Foreign Trade Zone Customs Duty Deferral, Elimination, or Reduction; State/County Land Use Exemption; and Accelerated Depreciation for Business Property on Indian Reservations. These benefits allow Tribes to enhance housing opportunities for their members, realize clean energy development capacity on their lands, negotiate the use and sale of their natural resources, and protect Tribal ways of life including subsistence hunting and agriculture.

Unfortunately, many local governments oppose tribal trust applications since it diminishes state property taxes where nontaxable federal lands are within their boundaries. Regarding other federal lands for which DOI holds title, Congress provides funding for Payments in Lieu of Taxes (PILT) as a part of a department- wide program to offset losses. PILT payments are made annually for tax-exempt Federal lands administered by DOI agencies, including the Bureau of Land Management (BLM), National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and the Bureau of Reclamation (BOR). Further, PILT payments cover federal lands administered by the U.S. Forest Service, U.S. Army Corps of Engineers, and the Utah Reclamation Mitigation and Conservation Commission. However, DOI does not provide

DOI BUDGET RECOMMENDATIONS

PILT payments for the Tribal Lands it holds in trust for Tribal Nations.

- **Recommendation:** DOI's FY24 and FY25 budget request should include policy and funding requests advocating for a department wide PILT account (not limited to the BIA) to eliminate the discriminatory practice preventing Tribal governments from full access to federal programs designed to improve the lives of Native Americans living on tribal trust lands.

(k) Promote Self-Governance through Interagency Transfer Authority – We envision a future in which all federal dollars are eligible to be contracted or compacted under the Indian Self- Determination and Education Assistance Act (ISDEAA). In the short-term, we urge DOI to ensure all federal Indian funding can be transferred between federal agencies, so that it may be received through tribal contracts and compacts. STAC requests your immediate attention to this issue due to the unnecessary delays Tribes experienced during the COVID-19 crisis to access emergency relief funding for our citizens.

(l) Expansion and Evolution of Tribal Self-Governance – Tribal Nations have had great success exercising self-governance authority under ISDEAA and the PROGRESS Act, but tribal self-governance initiatives best exemplified by these laws have yet to be fully realized. Many opportunities remain to improve and expand upon its principles. An expansion of tribal self-governance for all federal programs under ISDEAA would be the next evolutionary step reflective of the federal government's full commitment to our self-determination. Tribal Nations have worked over multiple Congresses and Administrations to demonstrate that this expansion is feasible and pass this necessary legislation.

- **Recommendation:** We ask DOI to join us in supporting this evolution. All agencies' federal funds for Tribes should be placed into a block grant guaranteeing annual funding. A great example has been the implementation of the 477 programs, which would be beneficial if further expanded to include all agencies.

(m) Operations and Maintenance — Funding for every program, grant, service, activity, or of any other kind must include funding for operations and maintenance. Projects targeted by capacity improving funds are doomed to fall into disrepair if the Department does not account for future operational costs. Additionally, when operations and maintenance funds are reviewed, they should be reviewed with both short and long-term impacts in mind since including only short-term fixes eliminates the prospect of covered costs for future repairs.

II. STAC FY25 Interior Budget Priorities

STAC recommends that the DOI FY25 budget request support the priorities outlined by the Tribal Interior Budget Council (TIBC) FY Budget Submission [for the President's FY 2025 Budget Request to Congress.](#) In addition to the general budget recommendations outlined below, we strongly recommend DOI view the TIBC FY 2025 Executive Summary document attached to this request since it includes detailed information about BIA and Bureau of Indian Education (BIE) programs as well as detailed funding tables and graphs.

DOI BUDGET RECOMMENDATIONS

- (a) General budget lines that need increased support – We recommend increased funding activities, as indicated in our priorities above. The Indian Affairs FY 2024 and FY25 budget also must include funding to restore Tribal land status and programs that help Tribal Nations and their citizens overcome barriers to conventional financing and secure reasonable interest rates. We also request ongoing and increased support for BIA Tribal Climate Science Centers, Tribal Historic Preservation funding, and continued investments from DOI to facilitate climate mitigation, resilience, adaptation, and environmental justice projects in Indian Country.
- We further recommend that the DOI FY 2024 and 2025 Budget Request include TIBC’s priorities for the TIBC Historical Top Ten programs including: Social Services (TPA); Scholarships & Adult Education (TPA); Road Maintenance (TPA); Criminal Investigations & Police Services; Tribal Courts (TPA); Aid to Tribal Government (TPA); Housing Program (TPA); Indian Child Welfare Act (TPA); Detention/Corrections; and Johnson O’Malley. Specifically, the TIBC FY24 and 25 submission deliberative allocation includes an additional \$148.763 million increase for programs that were in the top 10 TIBC priorities under the previous ranking process.

III. Reforms to the Federal Budget Process

STAC offers the following recommendations for DOI, in coordination with the Office of Management and Budget (OMB), to advance necessary and essential reforms to the federal budget process in addition to the aforementioned OMB requests provided above.

(b) DOI must work with OMB to produce a crosscut of federal Indian funding
OMB has asserted over \$20 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number seems to be widely inflated with far less reaching Tribal Nations. While we’re unsure of the origins of this total number, we suspect that OMB arrives at this figure by calculating the amount for which Tribes and entities are eligible, regardless of whether these dollars reach Indian Country. While OMB has provided a high-level crosscut of federal funding in the past, TIBC has asked for a full, detailed accounting of federal funding distributed to Indian Country. STAC believes that this information is essential to effective consultation for federal budget formulation, as well as determining the federal government’s success meeting its tribal obligations.

(c) DOI budget requests should contain full funding figures developed in consultation with Tribal Nations – Several federal agencies engage in a Tribal budget formulation process, which is intended to influence the President’s annual budget request. However, subsequent allocations published in the President’s annual budget is then significantly scaled back. We recognize that the Administration is unable to incorporate all tribal recommendations into its annual request, but Congress should, at minimum, be informed of the full annual funds that Tribal Nations are requesting. We ask that in order to meet our request, DOI should have clear, defined channels of communication on Tribes’ annual budget request with OMB to adequately reflect funding shortfalls, both total and by agency/program, in the President’s annual budget submitted to Congress.

(d) OMB should provide an annual review unfulfilled trust and treaty obligations
The only way the United States can effectively measure its progress to fulfill its trust and treaty obligations is through a cost comparison that reviews the federal budget on an annual basis. OMB should work in partnership with DOI and Indian Country to determine its complete budgetary fulfillment of trust and treaty obligations through each of its federal agencies.

(e) DOI's role in government efficiency must extend to reducing burdens and improving the delivery of trust obligations for Indian Country – A primary function of DOI is to improve administrative management, develop better performance measures and coordinating mechanisms, and reduce any unnecessary burdens on the public. In fulfilling this responsibility, DOI, in coordination with OMB must approach its dealings with Indian Country in a manner that works to significantly diminish unnecessary burdens placed on Tribal Nations. Moving away from a competitive grants-based mentality is an initial step toward a more appropriate approach. In addition to measuring the performance of Tribal Nations with appropriated federal dollars, OMB must also work to measure federal agency's performance in carrying out trust duties and functions.

CO-STEWARDSHIP RECOMMENDATIONS

CO-STEWARDSHIP RECOMMENDATIONS

1. Intergovernmental Collaboration

DOI should continue its efforts to implement Secretary Haaland and Vilsack's [Joint Secretarial Order 3403](#) on *Fulfilling the Trust Responsibility to Indian Tribal Nations in the Stewardship of Federal Lands and Waters*. DOI can be used as an example for internal coordination and communications in meeting the federal trust responsibility to the Tribal Nations.

The Assistant Secretary for Fish, Wildlife and Parks and the Assistant Secretary for Land and Minerals Management should work internally with the Assistant Secretary of Indian Affairs, the Assistant Secretary for Water and Science, and the Assistant Secretary for Insular Areas to protect and meet their trust responsibility to the Tribal Nations by working directly with Tribal Nations to protect, restore and rebuild our ecosystem through tribal, federal and state co-stewardship agreements. This collaboration should prioritize natural resources and treaty rights protection without unnecessarily curtailing economic development and legally mandated multiple uses of public lands. STAC's request for additional internal coordination and collaboration between DOI bureau leadership is necessary to standardize/unify internal Tribal consultation and engagement practices to be more consistent throughout the agency.

2. Increased Funding

Co-stewardship with Tribal Nations facilitates improved ecosystems for all, that Tribal Nations are not only focused on today but are also focused on to ensure resources are abundant for future generations. To meet these goals, DOI should maximize funding for technical and legal staff to assist Tribal Nations in developing co-stewardship agreements.

In some areas, the Tribal Nations have a plan to help the federal government meet their trust responsibility, but federal funding is needed for implementation, restoration, protecting and rebuilding the ecosystem into the future past the Biden-Harris Administration. In areas where a plan has not been developed, DOI should provide funding and technical support for Tribal Nations to explore options, create a base report, and work toward implementation of a plan to restore and preserve their ecosystems.

3. Public Education

The National Park Service ("NPS") should work with Tribal Nations that have National Parks in their homelands (and areas of traditional use and ancestral homelands) to accurately convey information about tribal history and culture to the public. It is also necessary for NPS to engage their staff in education about its local Tribes, and develop culturally appropriate training materials for its employees, especially in locations that have a historically or politically fraught relationship with Tribal Nations in its respective state.

DOI should increase efforts to educate the public about sacred plants and wildlife through engagement and development of educational materials with its local Tribes. News reports about tourists antagonizing park animals and getting injured by them threatens the very

CO-STEWARDSHIP RECOMMENDATIONS

animals themselves if the safety of their coexistence with humans becomes questioned, which in turn, diminishes relationships with local Tribes. For example, DOI must inform visitors that the buffalo are sacred to many Tribal Nations and must be respected or ensures graffiti/vandalism to sacred sites are against federal policy. Moreover, Tribal Nations have worked too hard for too long to see buffalo and other animals returned to their native environments in the public parks for their existence to be threatened by insensitive, foolish, and misguided tourist behavior. This is also applicable to the deterioration of sacred sites.

4. Departmental Education

DOI should continue to train its staff to read and understand treaties, treaty-reserved rights, and the Indian canons of construction. Supporting quarterly or bi-annual training on this subject matter for DOI and BIA/NPS/BLM regional employees will lead to more fulfilling relationships with Tribal Nations. This education improves DOI staff's ability to understand tribal goals and respect/understanding of indigenous culture.

5. Protection of Traditional Use & Natural Resources

NPS should continue to work with Tribal Nations to protect, restore, and rebuild tribal foods and medicines. NPS should also explore all options to facilitate the exercise of treaty-reserved fishing, hunting, and gathering rights in National Parks.

The Office of Land and Minerals Management should review their policies and procedures to assure that tribal co-management and co-stewardship is implemented toward restoring, protecting, and rebuilding our environment, and this is further reflected in the behavior of its employees when dealing with Tribal Nations. Economic development on public lands must account for impacts to the natural environment, and if projects have such impacts, a mitigation plan needs to be developed. Most Tribal Nations support economic development but not at the expense of our natural resources or disrespect for cultural traditions.

6. Focus on Co-Management Not Only Co-Stewardship

Restoration of ancestral lands to a Native Nation should always be the goal. Joint Secretarial Order 3403 is a significant, monumental action. We wholly promote co-stewardship, but we also want to ensure that the DOI is also promoting co-management of land and resources where Native Nations have an *equal* seat at the table and an equal say in how the lands and resources are used and managed. Tribal Nations want to work with this Administration to protect the lands, the waters, and other natural resources that ground us and fuel our culture and spiritual practices. We can think of no better partner than the first Native Secretary of the Interior.

7. Homeland Restoration

DOI should continue to seek permanent, mandatory funding for Tribal Nations to reacquire and manage their homelands and surface and groundwaters that originate on or flow through their homelands. This includes addressing the problem of fractionated land, which poses substantial hurdles for many Tribal Nations. Thus, we ask DOI to work to continue to extend

CO-STEWARDSHIP RECOMMENDATIONS

the Land Buy-Back program and also to develop a similar program that will assist Tribal Nations in their efforts to acquire fee land within their reservations. Both efforts will facilitate economic development and ease governance. Tribal Nations should also be afforded the first right of refusal to reclaim land from the federal government or State that have been turned into parks or recreation areas in our traditional homelands.

8. Permitting – Consultation

Treaties are the supreme law of the land.¹ Federal agencies, including DOI, have a trust responsibility to Tribal nations,² and agencies cannot act to render treaties meaningless; only an act of Congress can diminish a treaty.³ If the resources that a treaty right depends upon are destroyed, the right is violated.⁴

A recognition of the supremacy of tribal treaty rights is apparent in Executive Order (“EO”) 13175 and the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights (“MOU”). Section 3(a) of E.O. 13175 provides in relevant part: “Agencies shall respect Indian tribal self-government and sovereignty, (and) honor tribal treaty and other rights.”⁵ The MOU recognized that “integrating consideration of tribal treaty and reserved rights into agency decision-making and regulatory processes is consistent with the federal government’s trust responsibility to federally recognized Tribal Nations and to fundamental principles of good government. Treaties themselves are the source of legal authority to ensure that agency processes account for reserved treaty rights.”⁶

Although meaningful consultation with Tribal Nations is always required pursuant to Executive Order 13175. We ask, that DOI take particular care in ensuring that true, meaningful, consultation occurs in instances where the federal government is considering granting a permit to a project on or near our lands, or where applicable develop consultation policies that embody the pillars of Free Prior and Informed Consent (FPIC). In many instances, federal agencies do not honor the treaty trust responsibility and instead push forward projects without consideration of the impact on treaty rights. Furthermore, the Department of Interior oftentimes does not participate in these permitting processes leaving Tribal Nations alone to defend treaty obligations.

Projects such as the Line 5 Dual Pipelines, Line 5 Great Lakes Tunnel Project, or the Dakota

¹ *People v Jondreau*, 384 Mich 539 (1971) (interpreting U.S. Const., Art. VI, cl.2. and the Treaty of 1836).

² See DOI, Reaffirmation of the Federal Trust Responsibility to Federally Recognized Tribal Nations and Individual Indian Beneficiaries, Order No. 3335 (2014), <https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf>; Presidential Memorandum (29 Apr. 1994) Government-to-Government Relations With Native American Tribal Governments; Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments (06 Nov. 2000); and, the Office of the Secretary of Defense, Trust Responsibility and Consultation Matrix.) In carrying out its federal trust responsibility, it is the Corps’ responsibility to ensure that tribal “treaty rights are given full effect,” including denying a permit for a project that would impair treaty rights. *Nw. Sea Farms, Inc. v. U.S. Army Corps of Eng’rs*, 931 F. Supp. 1515 (W.D. Wash. 1996).

³ *People v LeBlanc*, 399 Mich 31, 58 (1976) (citing *Menominee Tribal Nation v United States*, 391 US 404, 413 (1968)).

⁴ See *United States v Washington*, 853 F 3d 946 (9th Cir 2017), *aff’d by Washington v United States*, 138 S Ct 1832 (2018) (holding that where state-owned culverts located under state roads obstructed fish passage, diminishing the supply of fish, the state had violated its duty owed to Tribal Nations under treaties that guaranteed fishing rights).

⁵ Executive Order 13175. Section 3(a).

⁶ Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights (Nov. 9, 2021).

CO-STEWARDSHIP RECOMMENDATIONS

Access Pipeline, for example, significantly impact our lands, resources, and way of life and has the potential to do so for generations to come.

EXTERNAL LETTER
U.S. DEPARTMENT OF STATE
SECRETARY ANTONY BLINKEN

**INTERNATIONAL INDIGENOUS RIGHTS
RECOMMENDATIONS**



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

August 2023

The Honorable Blinken
Secretary
U.S. Department of State
2201 C. St. NW
Washington, DC 20451

Re: DOI STAC Request for the Immediate Establishment of Special Envoy on Indigenous Issues at State & Support for Enhanced Indigenous Participation at the United Nations

Dear Secretary Blinken:

As the appointed Chair and Vice Chair of the Secretary's Tribal Advisory Committee (STAC) at the U.S. Department of the Interior (Interior), we write to ask for your immediate attention to: 1) establish the first-ever "Office of the Special Envoy for Indigenous People" under your leadership at the U.S. Department of State; and 2) prioritize your support for the General Assembly of the United Nations to adopt permanent measures to enhance the participation of Indigenous Peoples' governance bodies in furtherance of the federal trust relationship.

Under the leadership of Secretary Haaland, the U.S. Department of the Interior's STAC was established in furtherance of President Biden's objectives, as laid out in [Executive Order No. 13175](#) and his "[Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#)" establishing a permanent forum to facilitate intergovernmental discussions between the Secretary, high-level officials, and elected Tribal leaders to advance its long-standing government-to-government relationship between Tribal Nations and the United States.

As the Chair and Vice Chair of the Interior's STAC, we represent the collective priorities of the 574 federally recognized sovereign Tribal Nations in the United States, supported by a total of 24 appointed STAC members who serve as elected Tribal leaders from each of the Interior's respective 12 Bureau of Indian Affairs (BIA) Regions. Together, we respectfully request your attention to the issues below:

1) *State Department's Establishment of a new "Office of the Special Envoy for Indigenous People"*

The United States has a responsibility to ensure that it upholds the federal trust and treaty responsibility and to advance the government-to-government relationship with Tribal Nations through its federal agencies in the Executive Branch. The federal trust relationship is unique to the United States stemming from the U.S. Constitution, Indian treaties, federal laws, and U.S. Supreme Court decisions and codified laws. Tribal leaders in the United States have consistently made historic contributions towards the equality of Indigenous Peoples at the United Nations and continue to have cross-cutting issues with other countries that directly impact our tribal citizens.

Unlike any other group of people in the United States, American Indian and Alaska Natives are legally classified as a political status, and not a racial classification. This legal decision stems from Indian Tribes' political status as sovereign entities defined under the U.S. Constitution, decisions by the Supreme Court,

and memorialized in Indian treaties. The U.S. Congress has routinely codified this relationship, most notably in the provision of health care by establishing a health system for Tribal populations exclusively, and a variety of other federal programs developed over the course of our country's history that currently exist at the Interior Department.

Together, we have had positive experiences working with the State Department's current leadership who diligently works with our Tribal governments to address international Indigenous issues to the best of their ability. However, we recognize the complexities of our legal relationship with the United States, and the nuances that 574 separate sovereign Tribal governments present, especially when coupled with a patchwork of federal-state jurisdictional and political distinctions that must be tailored to an overlay of international law when coordinating issues with other Indigenous nations across the world. We acknowledge this is no easy task but hope that you consider the establishment of a new Special Envoy to assist your agency navigate these unique challenges, especially in furtherance of President Biden's priorities for Indian Country and the modernization of the federal trust relationship.

With the unique political classification of our Tribal citizens in mind, as defined under the law, we respectfully request the establishment of the first-ever "Office of the Special Envoy for Indigenous People" within your agency to honor our long-standing government-to-government relationship and establish a parallel office to help manage international Indigenous issues akin to our domestic relations managed by Interior.

2) Prioritize UN's Adoption of Permanent Measures to Enhance Indigenous Participation

During the United Nations Permanent Forum on Indigenous Issues (UN PFII) in New York City in April 2023, Indigenous leaders across the United States and the world (including Interior STAC representatives) participated in a consultation to review the existing mechanisms for permanent participation for Indigenous peoples at the UN. Throughout the history of the UN, Indigenous People have made great accomplishments to the advancement of our communities including: the adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples, the establishment of the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples. However, despite these important achievements, no current mechanism exists for the formal recognition of Indigenous Peoples' representatives and institutions at the UN.

With the upcoming General Assembly in Geneva in October 2023, we ask that you prioritize support to the Expert Mechanism on the Rights of Indigenous Peoples and Human Rights Council encourage the General Assembly to adopt permanent measures ensuring indigenous peoples' governance bodies/institutions (including traditional indigenous governments, indigenous parliaments, and assemblies and councils) are able to participate at the UN as observers. At minimum, Indigenous Peoples should have the same participatory rights as non-governmental organizations in consultative status with the Economic and Social Council, especially with the increased global awareness of Indigenous-related issues including climate change; the Indian boarding/mission schools in the United States, Australia, and Canada; and ongoing missing and murdered Indigenous people crisis spanning across our borders in Mexico and Canada.

Over the decades, several Tribal leaders who currently serve on the Interior STAC have continuously advocated to the Human Rights Council (Council) to advance this issue. While the Council is working to facilitate dialogue on this topic and encouraging stakeholders to examine means to enhance Indigenous participation in the UN, we believe your support could be a positive step forward. One of which includes Indigenous participation not only internationally, but also domestically at the Department of State, which further is detailed in our request above.

Indigenous governing institutions should have more than a UN observer status, so our Tribal governments have an equal opportunity to submit proposals, make statements, and participate in UN activities on a permanent basis, especially to prioritize our needs on Indigenous issues over non-government organizations. Currently, none of the existing participation processes or mechanisms recognizes the distinct political and legal nature of the Tribal governments in the United States nor can our governing institutions participate at the UN without a special invitation. This is especially concerning since the UN adopts annual resolutions on the rights of Indigenous people every year, which as elected Tribal leaders, we should rightfully be included.

Conclusion

For too long, Indigenous communities across the globe have been marginalized and left unheard. But your prioritization of these two requests would help modernize the existing structure at the State Department and serve as a model for our UN partners to reflect the true nature of the United States' government-to-government relationship with Tribal Nations. Most importantly, your support could put into motion the permanent and positive advancements for the goals of the Biden-Harris Administration, but also for a better future for our country and historically overlooked people around the world.

If you have questions or would like to schedule follow-up meetings, please email Heidi Todacheene, Senior Advisor to the Secretary and Executive Director of STAC at: STAC@ios.doi.gov

Respectfully,



Whitney Cravelle, STAC Chair
President, Bay Mills Indian Community
Secretary's Tribal Advisory Committee
U.S. Department of the Interior



Erica M. Pinto, STAC Vice Chair
Chairwoman, Jamul Indian Village of CA
Secretary's Tribal Advisory Committee
U.S. Department of the Interior



Heidi Todacheene
Senior Advisor to the Secretary & Executive Director of STAC
Office of the Secretary
U.S. Department of the Interior

Cc: United Nations Permanent Forum for Indigenous Peoples
White House Domestic Policy Council
White House Council for Native American Affairs

RIGHTS-OF-WAY RECOMMENDATIONS

RIGHTS OF WAY RECOMMENDATIONS

1. General Recommendations & Concerns

There are two primary areas of concern with rights of way (ROW): (1) ensuring Tribal Nations have flexibility with respect to ROW to promote tribal sovereignty and economic development on tribal lands; and (2) remedying the problem of expired ROW on trust land by supporting Tribal Nations and allottees in dealing with holdovers.

2. Tribal Nations Should Have Greater Sovereign Authority Over ROW on Tribal Lands, Providing for Flexibility and Streamlining Grants of ROW

The BIA should streamline the ROW permitting and construction process for Tribal Nations opting into it. For land wholly owned by a Tribal Nation, the Tribal Nation should have the authority to grant, approve, or disapprove ROW without further input from the BIA. Presently, Tribal Nations can administer the ROW regulations under the ISDEAA but do not have the authority to grant, approve, or disapprove ROW.

The BIA should conduct tribal consultation sessions focusing on insurance and/or bonding challenges faced by Tribal Nations in dealing with ROW issues. In addition, the BIA should explore whether there can be ROW reciprocity between Tribal Nations and the Federal Government. This includes supporting Tribal Nations in enacting their own regulations tailored to their own unique needs for granting ROW on trust land, similar to the HEARTH Act.

The BIA should convey support to Congress for legislative efforts to expand tribal opportunities by adjusting ROW limitations. The BIA must convey its support of and provide technical assistance to Congress regarding bills such as [S. 1322, the Unlocking Native Lands and Opportunities for Commerce and Key Economic Developments Act of 2023](#) (UNLOCKED Act). The UNLOCKED Act would authorize all federally recognized Tribal Nations to issue leases of up to 99 years and affirm tribal authority to issue ROW to eliminate barriers to tribal infrastructure and economic development projects.

The BIA should offer informational/training sessions on ROW for those Tribal Nations that may be interested in assuming control over ROWs under the UNLOCKED Act.

The BIA should request from Congress and provide grant funding for Tribal Nations to build capacity to handle ROW issues. ROW issues often require complex skill sets such as title clearing experience and geographic information systems (GIS) fluency. Many Tribal Nations do not have personnel with this subject matter expertise. The BIA should provide grant funding to improve tribal capacity to handle ROW issues by training personnel, providing technology needed to work on these issues, and offering technical support.

EXTERNAL LETTER
THE WHITE HOUSE
OFFICE OF SCIENCE TECHNOLOGY AND POLICY
&
DOMESTIC POLICY COUNCIL

BROADBAND & SPECTRUM ON TRIBAL LANDS
RECOMMENDATIONS



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

August 2023

Dr. Arati Prabhakar
Director, Office of Science & Technology Policy
Executive Office of the President
The White House
Washington, D.C. 20504

The Honorable Neera Tanden
Director, Domestic Policy Council
Executive Office of the President
The White House
Washington, D.C. 20504

Re: DOI STAC Request – E.O. to Standardize Tribal Consultation & Consent for Broadband Development, and Recognition of Spectrum Sovereignty on Tribal Lands

Dear Director Prabhakar and Director Tanden:

As the appointed Chair and Vice Chair of the Secretary's Tribal Advisory Committee (STAC) at the U.S. Department of the Interior (Interior), we write to ask for your immediate attention to issue: 1) an Executive Order to standardize Federal Tribal consultation and consent policies for broadband infrastructure development on Tribal lands; and 2) federal recognition of electromagnetic spectrum (EMS) sovereignty to advance digital parity on Tribal lands consistent with the President's work to increase digital equity for the most disadvantaged and historically underrepresented people in the country.

Under the leadership of Secretary Haaland, the Interior STAC was established in furtherance of President Biden's objectives, as laid out in [Executive Order No. 13175](#) and his "[Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#)" establishing a permanent forum to facilitate intergovernmental discussions between the Secretary, high-level officials, and elected Tribal leaders in furtherance of our long-standing government-to-government relationship between Tribal Nations and the United States to advance the Federal trust relationship.

As the Chair and Vice Chair of the Interior STAC, we have been appointed by Secretary Haaland to represent the collective priorities of the 574 federally recognized Tribes in the United States. In total, STAC has 24 appointed members who serve as elected Tribal leaders from each of the respective 12 Bureau of Indian Affairs (BIA) Regions across the country. Together, we respectfully request your attention to ensure your Administration works towards the advancement principles of equity to adhere to the United States' trust responsibility to Tribal Nations, especially in this rare case of unclarified Federal policy impacting the most digitally disconnected communities in the United States.

1. E.O. Standardizing Federal Tribal Consultation & Consent policy for Broadband Development

The Biden-Harris Administration's most significant Indian Country infrastructure allocations under the Investing in America initiative are the historic tribal broadband investments totaling approximately \$6 billion dollars, representing broadband development on Tribal lands as the President's top priority for Indian Country.⁷ As representatives of Tribal Nations from every region in the country, we are deeply

⁷ The Tribal Broadband Connectivity Program is a nearly \$3 billion grant program and part of the Biden-Harris Administration's Internet for All Initiative. The funds are made available from President Biden's Bipartisan Infrastructure Law (\$2 billion) and the Consolidated Appropriations Act, 2021 (\$980 million).

appreciative of President Biden's efforts to ensure Tribal lands⁸, especially rural Tribal communities, have access to wireless telecommunications services. These historic investments made through the Department of Commerce's National Telecommunications and Information Administration (NTIA) are critical to our governments since only approximately 65 percent of the population on rural Tribal lands have access to wireless broadband service, meeting a 25/3 Mbps speed threshold, compared to 99 percent of the population in urban areas that have the same wireless services that meet industry standard speeds.

However, these historic infrastructure investments have shed light on the desperate need for the Biden-Harris Administration to establish a uniform Tribal Consultation and Consent policy for all federal agencies. Tribal broadband development and electromagnetic spectrum (EMS) ownership on Tribal lands is an extremely rare case where no federal policy or uniformity exists, which has resulted in numerous procedural hurdles and legal ramifications, especially for agencies that lack understanding of working with tribal governments and the jurisdictional complexities stemming from Tribes' legal land status.

For example, these historic investments has led to the urgent deployment of broadband projects on our Tribal lands, but many third-party telecommunications providers fail to adhere to legal requirements mandating them to obtain Tribal consent for rights-of-way (ROW) access on Tribal lands to build infrastructure projects with federal funds. Nor are they compliant with Interior's federal guidance for new ROWs acquisitions to change copper wire to fiber optic lines causing trespass violations on Tribal lands in multiple regions across the United States⁹. Additionally, the development of fiber optics lines on Indian lands without first initiating mandatory Tribal consultation or consent is causing further complications since the federal government has failed to develop maps documenting the location of third-party infrastructure development of fiber lines on Tribal lands resulting in a failure of the trust relationship.

The absence of an Executive Order mandating a uniform Tribal consultation and consent policy with respect to broadband infrastructure utilizing federal funds on Tribal lands has also relinquished Eligible Telecommunications Carriers (ETCs) from the responsibility to directly engage with Tribes in their service areas and thus from annual report requirements documenting the engagements on their Form 481 filings. This is critical since these annual reports provide our governments with access to unredacted third-party ETC filings detailing the location of current and planned fiber line development on Tribal lands. Due to this, numerous Tribal Nations are now being denied access to third-party information due to the absence of clear White House guidance establishing uniformity in agency implementation of expensive broadband infrastructure projects resulting in ROW trespass ramifications for the undocumented fiber line development on our lands.

Further, we have immediate concerns regarding the duplication and overlap of the Administration's infrastructure funding attached to Tribal lands including the Tribal Broadband Connectivity Program (TBCP), Broadband Equity Access and Deployment (BEAD)¹⁰, ReConnect¹¹, and RUS programs that this Administration has collectively provided a total of more than \$50 billion dollars—the most in history.

On July 10, the Department of Commerce Office of the Inspector General (OIG) published a memo entitled, "NTIA's Reliance on Self-Certification Increased Risk of Fraud for TBCP."¹² The memo outlines fraud risk stemming from self-certification for TBCP funding stating that it has created potential

⁸ The term "Tribal lands" has the meaning given that term in section 73.7000 of title 47, Code of Federal Regulations, as of April 16, 2020, and includes the definition "Indian Country" as defined in section 1151 of title 18, United States Code, and includes fee simple and restricted fee land held by an Indian Tribe. This term also includes the definition "Hawaiian Home Lands". The term "Hawaiian Home Lands" means lands held in trust for Native Hawaiians by Hawaii pursuant to the Hawaiian Homes Commission Act, 1920.

⁹ https://www.bia.gov/sites/default/files/dup/assets/public/raca/national_policy_memoranda/pdf/npm-trus-44-a1_streamlining-rows-and-business-lease-applications-amendment-1_final_signed_508_0.pdf - See pg. 5.

¹⁰ BEAD totaled \$42.45 billion.

¹¹ Reconnect 3 and 4 totaled over \$2.8 billion

¹² <https://www.oig.doc.gov/OIGPublications/OIG-23-022-M%20%28SECURED%29.pdf>

risk for Tribes “to misrepresent information in multiple application and funding documents submitted to NTIA.” While it is not immediately clear if the identified “potential major risks” are real or not, this is another example of the immediate need for the President to issue an Executive Order creating uniformity amongst its federal agencies to manage broadband and electromagnetic spectrum on Tribal lands. The OIG memo itself fails to be cohesive with established self-certification standards afforded to state governments and existing USDA certification standards for the Reconnect program, and appears to be unfairly prejudicial against Tribal governments, especially if the identified risks are merely “potential” since it’s attached to historic federal funding in Indian Country that is now under the threat of rescission.

Similarly to state governments, Tribal governments should be able to continue self-certification to further prevent the continuation of paternalistic federal policies of the past. Many of the federal agencies that disburse billions of dollars allocated through the aforementioned federal funds or manage broadband infrastructure and spectrum licensing on Tribal lands lack basic requirements to consistently engage with Tribal Nations consistent with President Biden’s directives. This is illustrated in the OIG memo since our ability to self-certify mandates carriers to interact with our governments and obtain consent to provide services to our citizens. Deviation from this process without Tribal consultation effectively removes our government’s ability to self-govern to deploy wireless services to our citizens and further negates the purpose of the Administration’s historic investment on the most under connected areas in the country.

2. Federal Recognition of Electromagnetic Spectrum (EMS) Sovereignty on Tribal Lands

As identified under the U.S. Department of the Interior’s Federal Indian Boarding School Initiative Investigative Report, the United States has a dark history of Indian territorial dispossession “as the cheapest and safest way of subduing the Indians...helping the whites acquire desirable land, and of changing the Indian’s economy so that he would be content with less land” as a cost-effective measure to separate Indian Tribes from their territories and resources.¹³

Today, the United States is repeating the implementation of these past assimilation policies by advancing modern Indian territorial and natural resources dispossession as applied to our finite digital resources on Tribal lands by prohibiting our governments’ permanent access to electromagnetic spectrum (EMS) licenses within our territorial jurisdiction. The Federal Communications Commission’s (Commission) sale of finite EMS licenses from Tribal lands at private auctions to for-profit corporations without tribal consultation, consent or compensation is a failure of the United States’ federal trust responsibility, moral and fiduciary obligation to protect tribal resources, and continuation of the territorial dispossession policies implemented during the disgraced assimilation period of the Federal Indian boarding school era.

In recent years, over 300 Tribal Nations¹⁴ and numerous members of the United States Congress, including respected leaders in the U.S. Senate Committee on Commerce, Science, and Transportation Subcommittee on Communications, Media, and Broadband, have requested the Federal acknowledgement of our digital sovereignty on Tribal lands, but continued to be ignored.¹⁵ In November 2021, Commission Chairwoman Rosenworcel addressed Congress about the continuing need to bridge the digital divide in Tribal communities, but the Commission has yet to facilitate tribal spectrum access and ownership consistent with the **unified request of an astounding more than half the 574 federally-recognized Tribes and Native Hawaiian community** in compliance with the federal trust responsibility and Presidential priority to seek digital equity in the most marginalized and disconnected areas in the country.

¹³ Committee on Labor and Public Welfare, Indian Education: A National Tragedy – A National Challenge, S. Rep. No. 91-501 at 143 (1969). See also U.S. Department of the Interior, *Federal Indian Boarding School Investigative Report Vol. 1*, 21 (May 2022).

¹⁴ https://www.warren.senate.gov/imo/media/doc/SupporterList_DIGITALReservations_07272020.pdf

¹⁵ Senate Committee on Commerce, Science, and Transportation to FCC Advancing Tribal Priorities, Aug. 1, 2022.

<https://www.warren.senate.gov/oversight/letters/senator-warren-and-representative-kahele-urge-fcc-to-advance-broadband-and-spectrum-access-for-native-communities>

Although the Biden-Harris Administration infrastructure allocations have attempted to remedy the disproportionate digital divide on Tribal lands, the Commission continues to prioritize private industry profits over the lives of Native Americans and tribal self-governance of modern natural resources on Tribal lands exacerbating existing disparities in some of the poorest and geographically isolated areas in the United States including the missing and murdered indigenous people crisis, youth suicide, low education outcomes, employment opportunities, and access to basic telehealth services and voting information continuing failed federal “Reservation Era” policies of the 19th Century, or in this case, establishing a new “Digital Reservation Era” policies of the 21st Century—a modern Indian digital resources dispossession era that the Administration can take action now to begin to reverse.

Similarly, Tribal Nations across the country urge the Biden-Harris Administration to uphold its promise to lead the country with “science and truth” guided by established findings from the National Aeronautics and Space Administration (NASA) that “electromagnetic spectrum is a limited natural resource” that the U.S. Department of the Interior has a fiduciary duty to uphold, as this resource is located on Tribal lands.

The scientific fact that EMS is a natural resource has been further identified as such by numerous agencies including: Department of Justice¹⁶, Department of Commerce (NTIA)¹⁷, GAO¹⁸, Department of Defense¹⁹ including the Army-Navy²⁰-Air Force²¹, Department of Energy (DOE) Office of Scientific and Technical Information (OSTI)²², CDC²³, United Nations²⁴, International Telecommunication Union²⁵, National Science Foundation²⁶, Aerospace Corporation²⁷, and the National Academies of Sciences, Engineering and Medicine²⁸.

Despite these findings by federal agencies, there is currently no federal agency tasked to review or regulate finite EMS use over Tribal lands, which is exceedingly concerning since the United States is responsible for ensuring it honors its trust obligations including the fiduciary duty to manage Indian lands and assets to advance Indian economic development, which has historically been managed by the U.S. Department of the Interior similar to other “energy resources” like geothermal resources under 25 C.F.R. 224.30.²⁹ Throughout time regarding other tribal resources, Federal laws explicitly increase tribal control over natural resources and financial benefits on trust lands, but in this rare case, finite EMS licenses continue to be bought and sold off Tribal lands without consultation, consent, or compensation from sovereign Tribal nations contradicting the purpose of similar federal laws to make Tribal lands profitable to make up for the lack of tax base that state/local governments deprive property tax or levy tax income from their citizens.³⁰ This was apparent most recently in April 2023 when NTIA requested comments on the development on the National Spectrum Strategy by holding its first-ever Tribal Consultations, which has previously routinely included a variety of non-Indian stakeholders³¹. While, NTIA scheduled the

¹⁶ <https://bja.ojp.gov/program/it/help/glossary>

¹⁷ <https://www.ntia.doc.gov/book-page/regulating-use-spectrum>

¹⁸ <https://www.gao.gov/assets/gao-20-535.pdf> (pg. 9)

¹⁹ https://media.defense.gov/2022/Sep/14/2003076792/-1/-1/0/CI_2400_11.PDF

²⁰ <https://www.doncio.navy.mil/chips/ArticleDetails.aspx?ID=2347#:~:text=The%20electromagnetic%20spectrum%20is%20generally,nation%20where%20it%20is%20used.&text=Spectrum%20differs%20greatly%20from%20natural,%2C%20air%2C%20coal%20and%20land.>

²¹ https://www.doctrine.af.mil/Portals/61/documents/doctrine_updates/du_12_07.pdf

²² <https://www.osti.gov/servlets/purl/1060943>.

²³ https://www.cdc.gov/nceh/radiation/ionizing_radiation.html

²⁴ <https://agris.fao.org/agris-search/search.do?recordID=US8646995>

²⁵ [https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/Documents/Events/2016/Nov-SM-Economics/Presentations/Day%201%20-%20Session%202_Fard%20\(Economics%20of%20spectrum\).pdf](https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/Documents/Events/2016/Nov-SM-Economics/Presentations/Day%201%20-%20Session%202_Fard%20(Economics%20of%20spectrum).pdf)

²⁶ https://www.nsf.gov/news/news_summ.jsp?cntn_id=189863

²⁷ <https://aerospace.org/article/spectrum-management-key-regulatory-issues>

²⁸ <https://www.nationalacademies.org/news/2022/09/potential-effects-of-operating-a-terrestrial-radio-network-near-gps-frequency-bands-assessed-by-new-report>

²⁹ Under existing federal mechanisms, the FCC and NTIA split regulatory responsibilities between non-federal (including state and private) and federal uses, respectively.

³⁰ While Congress has been silent on tribal interests regarding EMS, there is a presumption of non-applicability on Tribal lands because the United States has a preexisting responsibility to protect our sovereignty.

³¹ This includes state and local governments, equipment manufacturers, technology standards associations, and the communications industry.

consultations for April 18 and April 20, 2023, with a comment deadline to respond to the Strategy on April 17, 2023, and a separate deadline of April 21, 2023 to respond to questions proposed during the consultations. NTIA's comment deadlines and notification timeline were grossly inadequate, especially for such a valuable finite resource that has received numerous requests, both Federal and Tribal, to establish clear consultation and consent policies to tribal communities can obtain digital parity, as outlined in the President Biden's digital equity priorities, and further contradicts the purpose of the Administration's goal to make unused federal spectrum available for commercial purposes since it's reasonable to assume Tribal equities will be deprioritized based off the handling of recent consultations.

We further echo the concerns of USET SPF³² and COLT³³ (collectively representing 46 Tribes) regarding the ongoing lack of adequate consultations and Tribal input to develop the Biden-Harris National Spectrum Strategy that infringes on the legal management and self-governance of our lands, including the federal government's planning for development and allocation of commercial EMS resources omitting Tribal equities. This prevents Tribes from modern economic development on our lands to lease EMS resources for new field-testing initiatives for technology development or other opportunities like creation of wireless testbeds, spectrum sharing, analytics of EMS modeling, and the shameful continuation of the Commission's EMS auctions for licenses on our lands developed without our legal consent. Because EMS resources are finite, like the historic sale of Indian lands at the hands of the Federal government, Tribal Nations are now at immediate risk to lose our remaining unlicensed/unutilized EMS licenses that will undoubtedly change the Indian economy similarly to federal objectives to diminish tribal economic by separating Tribes from their resources executed during the Indian boarding school assimilation era.

Further, under the authority of the Departments of the Interior and Health and Human Services, there is a long-standing fiduciary and legal duty to Tribes to provide a meaningful level of services to Indian citizens to advance tribal self-governance through the administration of PL 93-638 contracts for services on Tribal lands. These services are only attainable for tribal citizens through high-speed internet and wireless communications that meet industry standard speeds, which is failing on many reservations. The Commission's acknowledgement of this fiduciary duty was legally justified under 47 U.S.C. § 927 for the first time during the COVID-19 pandemic when it unilaterally assigned 2.5 GHz licenses for the immediate deployment of high-speed wireless broadband services on Tribal lands establishing precedent that no explicit Congressional authority is required to allocate EMS to Tribes.³⁴

Consequently, the nonsensical EMS assignment procedure on Tribal lands is a unique case since Indian Country is the only location in the world where EMS licenses are assigned to tribal self-governance service buildings or Tribal libraries³⁵ instead of the standard geographical land base assignments practiced everywhere in the United States outside of Tribal lands further creating gaps in Indian digital parity. These practices further contribute to the disproportional rates of public safety and health care service failures and unequal increases in Native American deaths exemplified during the pandemic, and event today when death rates on non-Tribal lands are compared to any other population in the country.³⁶ Since the Commission has demonstrated it can unilaterally assign unutilized 2.5 GHz licenses to Tribes to deploy high-speed broadband, **this is now a human rights issue since lives are being unnecessarily lost by the sole fact that they live on Tribal lands** further reinforcing the similarities of the Reservation Era policies and consequences to tribal sovereignty, self-governance, and management of our lands.

³² *Attachment 1* - United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) Comments to NTIA on Development of a National Spectrum Strategy, Docket ID No. NTIA-2023-0003 (April 17, 2023).

³³ *Attachment 2* - Coalition of Large Tribes (COLT) Comments on the Development of a National Spectrum Strategy, Docket ID No. NTIA-2023-0003 (April 20, 2023).

³⁴ While Indian Country is grateful for these emergency assignments, the Commission's internal assignment process continues to lack transparency in the selection process further highlighting the need for a separate agency like the Interior Department to help manage digital assets on Tribal lands.

³⁵ See E-Rate program requirements for Tribal libraries.

³⁶ <https://www.ihs.gov/newsroom/factsheets/disparities/>

Conclusion

We believe that the Biden-Harris Administration can be the first in history to address true equity for tribal citizens and modernize the federal trust responsibility over finite EMS resources and digital self-determination on Tribal lands. President Biden's acknowledgement of tribal digital sovereignty over EMS resources will define a modern tribal self-governance era and finally break the federal government's history of Indian territorial and resource dispossession illustrated by the resource dispossession injustices experienced during the Federal Indian boarding school and Reservation Era.

To avoid exacerbating issues identified above and resolve numerous digital tribal parity issues outside the scope of this letter³⁷, we respectfully ask the Biden-Harris Administration to take immediate action to issue an Executive Order requiring a uniform Tribal consultation and consent policy for broadband infrastructure development on Tribal lands and acknowledge the federal government's fiduciary duty to advance our ownership over finite EMS resources on Tribal lands consistent with its trust responsibility.

If you have questions or would like to schedule follow-up meetings, please email Heidi Todacheene, Senior Advisor to the Secretary and Executive Director of STAC at: STAC@ios.doi.gov

Respectfully,



Whitney Gravelle, STAC Chair
President, Bay Mills Indian Community
Secretary's Tribal Advisory Committee
U.S. Department of the Interior



Erica M. Pinto, STAC Vice Chair
Chairwoman, Jamul Indian Village of CA
Secretary's Tribal Advisory Committee
U.S. Department of the Interior



Heidi Todacheene
Senior Advisor to the Secretary & Executive Director of STAC
Office of the Secretary
U.S. Department of the Interior

Cc: Federal Communications Commission
U.S. Department of Commerce
White House Council for Native American Affairs
U.S. Senate Committee on Commerce, Science, and Transportation

³⁷ Additional federal policies promote paternalistic treatment of Tribal Nations exacerbating disparities on Tribal lands. For example, federal broadband funding is provided to States, and not to Tribes directly; Tribes must go through states to receive "Eligible Telecommunications Carrier" or "ETC" status; telecommunications buildout requirement timelines on Tribal lands are shortened when compared to off-reservation; and Tribes remain largely ineligible or only eligible for a small percent of the federal government's largest annual broadband allocations.

EXTERNAL LETTER

WHITE HOUSE COUNCIL ON NATIVE AMERICAN
AFFAIRS
RECOMMENDATIONS



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

August 2023

Morgan Rodman
Executive Director
White House Council on Native American Affairs
U.S. Department of the Interior
Sent via Email

Re: STAC General Recommendations for the White House Council on Native American Affairs

Dear Executive Director Rodman:

As the appointed Chair and Vice Chair of the Secretary's Tribal Advisory Committee (STAC) at the U.S. Department of the Interior (Interior), we write to you on behalf of the Committee's membership by extending our gratitude to you for joining the Department's first in-person meeting on May 16 – 17, 2023 in Washington, D.C. in conjunction with the White House Domestic Policy Council. We are deeply appreciative of the time and attention that the White House Council on Native American Affairs (WHCNAA) took to present to STAC membership.

As you know, the Interior STAC collectively represents the priorities of the 574 federally recognized Tribes in the country, as established by Secretary Haaland in furtherance of the federal government-to-government relationship with Tribal Nations and President Biden's commitments to Indian Country memorialized under the [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#) and advance the federal trust responsibility.

In this letter to WHCNAA, we have outlined STAC's policy recommendations and requests collectively formulated and reviewed by STAC with input from the Tribal Nations we represent in the 12 Bureau of Indian Affairs (BIA) Regions. Our recommendations outline our most immediate and time-sensitive priorities for WHCNAA, and in relation to the forthcoming 2023 White House Tribal Nations Summit.

The STAC recommendations detailed below are extension of the conversations our Tribal Nations had with Interior, White House, and the White House Council of Native American Affairs leadership during the May 2023 meeting, and welcome an opportunity to follow up with you on our requests at your earliest convenience:

WHCNAA Recommendations and Requests:

- STAC requests a meeting with the WHCNAA discuss how we can work together on our common interests in implementing an all-of-government approach to the federal government meeting its treaty and trust obligations to Tribal Nations. During this meeting, we would like to also discuss what opportunities STAC membership can have to help organize the selected topics for discussion during the 2023 White House Tribal Nations Summit to help address issues of concern and facilitate conversations with federal agencies.
- WHCNAA should encourage all federal agencies to communicate, coordinate, and pursue cross budget and discipline approaches to meet the needs of Tribal Nations most

effectively. This includes the WHCNAA completing a comprehensive assessment of the needs of Indian Country to support requests for funding to meet needs and provide data to both the White House and United States Congress.

- The WHCNA should also support and advocate for increased high-level Indigenous political representation in all federal agencies and help make recommendations for the placement of appointed Indigenous employees to work on all issues that impact Indian Country, especially at the U.S. Department of Justice and the Federal Communications Commission, among others.
- STAC requests WHCNA's advocacy to support our Interior Budget Recommendations for Indian Country at the White House Office of Budget and Management (OMB), especially to ensure federal funding is provided directly to Tribal Nations (opposed to through states) and for increased Tribal set-aside grants.
- STAC further requests the assistance of WHCNA to advance the priorities outlined in each of the External letters provided under this recommendations document including the:

1) State Department request for Secretary Blinken to establish a Special Envoy for Indigenous Issues; and

2) White House request for an Executive Order requiring a uniform Tribal consultation and consent policy for broadband infrastructure development on Tribal lands and acknowledge the federal government's fiduciary duty to advance our ownership over finite EMS resources on Tribal lands.

If you have questions or would like to schedule follow-up meetings, please email Heidi Todacheene, Senior Advisor to the Secretary and Executive Director of STAC at: STAC@ios.doi.gov

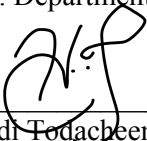
Respectfully,



Whitney Gravelle, STAC Chair
President, Bay Mills Indian Community
Secretary's Tribal Advisory Committee
U.S. Department of the Interior



Erica M. Pinto, STAC Vice Chair
Chairwoman, Jamul Indian Village of CA
Secretary's Tribal Advisory Committee
U.S. Department of the Interior



Heidi Todacheene
Senior Advisor to the Secretary & Executive Director of STAC
Office of the Secretary
U.S. Department of the Interior

FEE-TO-TRUST RECOMMENDATIONS

FEE-TO-TRUST RECOMMENDATIONS

1. Streamlining the Fee-to-Trust Process

(a) Legal Description Review – The Legal Description Review (LDR) is often the first bottleneck and large expense that Tribal Nations run into when beginning the land-into-trust process. The rigorous requirements of the LDR and the lack of capacity of the government to complete this review often results in Tribal Nations getting stuck at this step of the process causing further delays to other steps in the fee-to-trust process. There have been instances where tracts of land suddenly cannot pass the Bureau of Land Management surveyor (BILS) legal description review despite having carried the same legal description in its fifty (50) year chain of title and having provided title policies to the various owners throughout those years. This causes a chain reaction in which the Tribal Nation must obtain the services of a CFeds surveyor to survey the land. This can take anywhere from 1-3 months and cost thousands of dollars to complete. If the CFed survey results in even the subtlest legal description change, the Tribal Nation must then file a quiet title petition with the county.

Currently, the Solicitor's office can only accept a change in legal description through the quiet title process which can take anywhere from 10-12 weeks and cost additional thousands. The DOI needs to find a way to streamline the LDR process to reduce both the financial and time burden placed on Tribal Nations to get the title of their lands accepted. One of the main reasons the LDR process is so inefficient is the lack of CFed surveyors available to complete this process in a timely manner. One recommendation would be to either accept the legal description that has been with the parcel of land if the Tribal Nation can show a clear and unbroken chain of title for 50 or more years, or to remove the requirement that the land surveys be completed by CFed certified surveyors.

(b) Preliminary Title Opinion – The Preliminary Title Opinion (PTO) has become another bottleneck for Fee-to-Trust acquisitions. Despite Tribal Nations performing their due diligence in preparing notice of their applications for the BIA to send to the Solicitors office for approval, it takes months for the Solicitor's office to review a Tribal Nation's application. When Tribal Nations inquire about the reason for the delay, they are told the BIA and Solicitors office are short staffed. This conflicts with the DOI's primary focus, which is the continued restoration of Tribal lands. The DOI cannot fulfill this focus and its promise if it does not make active efforts to maintain staff levels to prioritize the Fee-to-Trust applications. One recommendation would be for the DOI to request additional funding from Congress for increased resources to hire additional BIA and Solicitor's office personnel. The DOI should be able to advertise and fill a position as soon a position becomes vacant. Another recommendation is for the DOI to make greater efforts to streamline the Fee-to-Trust process and combine or eliminate some of the steps outlined in the Quick Reference Guide. At a minimum, more of the steps should be done concurrently so that the applications can move faster through the process.

(c) Environmental Compliance Review – The Environmental Compliance Review is another large expense in the Fee-to-Trust process that precludes many Tribal Nation's ability to place land into trust. Due to the federal regulations that guide this process, not many companies are able to provide this service at a reasonable cost in many areas. When a Tribal Nation is able to afford this service, it can take weeks, sometimes months, before the

FEE-TO-TRUST RECOMMENDATIONS

provider can complete the initial Phase I environmental assessment. In addition, Tribal Nations are being unnecessarily asked to conduct Phase 2 environmental assessments based on the “possibility” of contamination found on the land during Phase 1. There should be more than a possibility needed before requiring Tribal Nations to incur deeper costs and burdens by undertaking a Phase 2 environmental assessment.

The timeline should also be reconsidered for environmental assessments as they are currently only valid for six months. Due to the time and cost that it takes for Tribal Nations to get the assessments completed, their determinations should be valid for longer. Currently, Tribal Nations must wait to complete the Phase I environmental assessment or they run the risk of it becoming redundant while waiting on the Solicitors to complete the PTO. Conversely, Tribal Nations could waste valuable time waiting to commence environmental assessments while waiting for approval of the PTO.

1. Mass land surveys will allow Tribal Nations to speed up the process and save funds a Fee-to-Trust application.

(d) Expedited Conversion of Land – Conversion of land held in other-than-trust status by Tribal Nations or individual Indians into trust status should be expedited. There has been previous backlash from tribal leaders because of the previous administration’s proposed rule changes for the land-into-trust process. Where possible, the DOI should eliminate or combine some of the 16 steps for processing trust applications as identified in the DOI’s Fee-to-Trust handbook. Many of these factors are not required by statute and delay the process unnecessarily. Eliminating or combining these steps would allow Tribal Nations to continue the process even when there is a delay at one step. For example, the Fee-to-Trust handbook includes recordation at the county level on its list of steps for formal acceptance of trust land, but statutory formal acceptance occurs at acceptance of conveyance. Removing this requirement would remove the uncertainty¹ for Tribal Nations about whether the land had been formally accepted into trust until they receive documentation to record with the county which can arrive months after a Tribal Nation received notice of acceptance.

(e) Time Limitations – Time limitations should NOT be imposed once an application has started. If there is a delay in completing a step during the land-to-trust application process, Tribal Nations should be able to begin the next steps simultaneously while waiting for the delayed step to be completed. This will ensure that applications need not be re-submitted due to a delay in completing one of the steps and will lessen total processing time.

2. Prioritization of the DOI’s Trust Relationship with Indian Tribal Nations

(a) Trust Relationship as Primary Focus – When it comes to the Fee to Trust process, DOI’s primary focus and objective must always be the restoration and protection of Tribal homelands. Currently, the BIA is required to give a lot of weight to the concerns of state and local governments. Concerns unrelated to this objective, including the concerns of other jurisdictions, must never guide the final decisions or policymaking of the DOI. The DOI’s primary responsibility is to its trust relationship with Indian Tribal Nations, not to state and local jurisdictions. Recognition of non-tribal concerns can be achieved through the

FEE-TO-TRUST RECOMMENDATIONS

existing written comment period for impacts on regulatory jurisdiction, real property taxes, and special assessment.

(b) Consultation with Tribal Nations – Tribal Nations should be consulted on changes to the Fee-into-Trust application process. During the Trump administration era Tribal Leaders from across the country pushed back on the proposed amendments to 25 C.F.R. 151. Many of the proposed changes would have increased the burden on Tribal Nations in what was an already burdensome process. The BIA claimed the proposed changes would supposedly “streamline” the land-to-trust but many of my fellow tribal leaders objected to the changes which added obvious hurdles to the process instead of streamlining it. Ultimately, although many of these proposed changes were never implemented, the BIA reversed an Obama-era policy without consulting the Tribal Nations by reinstating a 30-day waiting period for land-into-trust applications. The DOI should establish a Tribal Nations-DOI taskforce of Tribal leaders/staff and key DOI employees who regularly work on fee-to-trust issues to work together to identify areas where increased efficiency is possible and make recommendations for policy improvements. Very pleased with the Biden Administration to return the decision for Fee-to-Trust Applications back to the BIA Regional Office.

(c) Timely Completion of Trust Applications – Currently the DOI lack efficiency in reviewing and approving trust applications. Many simple, straight-forward requests for acquisition of trust land often linger for months, if not years. This is well beyond the period of time needed for the BIA to thoroughly review and issue an application decision. The BIA should promulgate an internal policy guideline to³⁸ complete each land-into-trust application within 6-months. This will ensure that every application is completed in a timely manner thereby reducing the adverse effects on Tribal Nations’ economic self-determination that occurs when land-into-trust applications are delayed by the time-consuming application process. Prioritization of processing fee-to-trust applications, however, should not result in DOI employees disregarding other critical services provided by the BIA to Tribal Nations and individual Indians.

(d) Consistency in Enforcement – The BIA needs to provide assurances that they will maintain consistency in enforcement of uniform application rules to help promote efficiency and reliability in the land-into-trust process. The unnecessary and unrealistic demands in the LDR portion of the trust application process is unduly burdensome. Trust applications are frequently and significantly delayed and then returned because of the excessive standards required by the Bureau of Land Management (BILS) surveyor and the current land-into-trust process. One example of better consistency in enforcement is to amend Section 151.9 to eliminate the separate process for contiguous parcels. There is no clear reason to treat land acquisition within the boundaries of the reservation separately from parcels contiguous to the boundaries of the reservation. This would make the process more efficient and provide more certainty for Tribal Nations with the presumption of approval extended to a majority of parcels within the boundaries. Additionally, many of the reasons given for when the Secretary may take land into trust as listed in section 151.3 are absent from the reasons that shall be given “great weight” by the Secretary in 151.9-12. The DOI should amend to provide

³⁸ In the BIA’s Fee-to-trust Quick reference guide on its website it lists the PTO as step #5 when it should actually be listed as Step #6. The Preparing of Notice of Application should be listed as Step #5.

FEE-TO-TRUST RECOMMENDATIONS

uniformity in the statute to ensure consistency in enforcement.

3. Respect Tribal Sovereignty

(a) Treaty Evidence Should be Conclusive – All Tribal Nations should have the opportunity to restore their homelands through the land-into-trust process. This means all treaty evidence should be conclusive and the exercise of jurisdiction over Tribal citizens should be added. The DOI should make the following changes to reflect this policy: 1) 151.4a(2)(i) and (ii) should be moved from ‘presumptive evidence’ to ‘conclusive’ evidence, and; 2) evidence of the federal governments requiring or even permitting attendance or participation of Tribal citizens at boarding schools or in other programs directed at individual Tribal citizens in implementation of the trust obligation should be add to 151.4(a)(1) as sufficient evidence to trigger a finding that the United States has exercised jurisdiction over the Tribal Nation itself.

(b) Tribal Nations Must be Protected from State Intrusions on Tribal Sovereignty – State governments have been extorting Tribal Nations by freezing the assets of Tribal Nations through state-chartered banking systems. The DOI must fulfill its trust and treaty obligations to ensure Tribal Nations are protected from this affront to our sovereignty.

Address Restrictive Settlement Acts – In order for the federal government to fulfill its trust and treaty obligations to Tribal Nations and to act in accordance with its policy of self-determination, the DOI must examine ways in Part 151 to address the negative impacts of Restrictive Settlement Acts (RSAs). The statute should be amended to contain an express commitment to applying the Indian canon of construction to prevent and avoid any further adverse interpretation of RSAs in federal courts.

PUBLIC SAFETY RECOMMENDATIONS

The United States' obligation to provide law enforcement and ensure public safety is deeply entrenched in the United States' explicit treaty commitments, in its trust responsibilities, and in its course of dealing with the Tribal Nations. Please see the STAC public safety recommendations as outlined below:

1. Specific Changes Needed Regarding Law Enforcement Funding

(a) Administrative Orders - DOI must issue an administrative order to protect funds intended for tribal law enforcement from being whittled down as they pass through the intradepartmental process to ensure the maximum amount of funding intended for tribal law enforcement actually makes it into tribal accounts. Indian Country has long complained that each federal agency, region, and office with pass-through responsibilities for tribal programs has, in turn, gobbled up funds that Congress expressly intended for Tribal Nations. DOI must take every action to stop this and must not make budget requests inconsistent with these actions. In some cases, DOI's response to tribal outcries about need has been to hire additional federal employees. Occasionally, this might be appropriate, but active steps must be taken to safeguard getting the necessary resources out to the ground in Indian Country.³⁹

(b) Adequate Contract Support Costs Rates - Ensure the good-faith negotiation of adequate direct contract support cost rates. Currently, the BIA defaults to an 18% direct contract support cost rate, a rate found nowhere in the ISDEAA. This rate is often inadequate to cover total direct contract support costs much less just the fringe costs needed to operate the program, costs mandated by third parties (e.g. insurance carriers) which Tribal Nations have no choice but to pay. Instead of negotiating in good faith a realistic direct contract support costs rate as mandated by 25 U.S.C. §5325 (a)(2), however, BIA takes a "one-size-fits-all" approach. This forces many Tribal Nations to cover direct contract support costs with its base contract dollars, thereby decreasing the total base contract amount BIA makes available for services—a violation of the ISDEAA. Furthermore, BIA must pay contract support costs, whether direct or indirect, at least at the same time as the base funding is distributed, not months later.

(c) Adequate Budget Requests – DOI must make realistic, tribal needs-based budget requests on behalf of Indian Country. DOI needs to fully account for all the public safety and law enforcement needs of every Tribal Nation and must convey that figure to the Legislative and Executive branches. Indian Country knows that Congress is unlikely to fund every Tribal Nation at its full need, but that does not negate the need for the Department to convey the most brutally accurate figure to Congress and the Administration.

To arrive at a realistic nationwide tribal budget, we recommend that DOI incorporate each Tribal Nation's own estimated needs for law enforcement for the next ten years. DOI should convey these estimates to Congress and the Administration on a per-Tribal Nation basis—each Tribal Nation's request for each of the next ten years should be a separate item on a spreadsheet that includes every federally recognized Tribal Nation. This will provide budgetary justification for the all-Indian Country request DOI ultimately makes and will serve as a realistic look for Congress and the

³⁹ A simple solution, one formerly utilized by the BIA, is to mandate that funds leftover at the end of the year be paid out to each 638 Tribal Nation at the same percentage as that Tribal Nation's budget bears to the total BIA budget. This will help keep 638 and direct service Tribal Nations on an equal footing going forward.

Administration regarding how deep and cross-cutting tribal law enforcement needs are across the country.

(d) Inclusion of Tribal Nation Voices in Budget Process – DOI should use a process whereby Tribal Nations self-attest to their needs based on their best estimates of projected needs. These needs should be segmented according to type of need: law enforcement personnel (including the raises and cost of living increases that they deserve), equipment, facilities, housing, domestic violence services, anti-gang and anti-trafficking organized crime services, tribal courts, and other line items. This will promote accountability to each individual Tribal Nation to provide accurate information to DOI so that DOI can include it in the Administration’s budget request to Congress. DOI should solicit these estimates each year and update its figures accordingly. Our goal by being transparent in the actual costs of public safety and law enforcement administration in Indian Country is to show Congress how much of the budget goes to administrative overhead at the Department.

The Department should ensure that Tribal budgets are permitted to account for all of the following: funding for officers at the full level of staffing need; housing and benefits to ensure competition for and retention of officers; purchase of, operation and maintenance of, and periodic replacement of vehicles; facility maintenance and improvement; and improved capacity for fire response.

The Tribal Law and Order Act (TLOA) reports to Congress use some calculation methodologies that rest on various statistical assumptions that are not accurate for Indian Country. The TLOA report assumes that all Tribal Nations of a similar size have law enforcement agencies and tribal courts with the same composition.⁴⁰ Census data from 2010 was used to estimate service populations for each Tribal Nation as recently as 2019.⁴¹ Outdated service population data is likewise used to estimate the size of the court, which is then used to estimate the cost of the court.⁴² Even cost estimates for detention and corrections facilities only account for existing BIA-funded detention and corrections centers.⁴³ This, despite the fact that Indian Country has, for years, been pushing for additional detention and correction facilities to handle overpopulated facilities. We appreciate the TLOA reports, but for level of need, the self-attested concept to be provided by Tribal Nations and aggregated by the Department of the Interior will likely paint a much more accurate figure.

2. Specific Changes Needed Regarding Law Enforcement Personnel

(a) Hiring Personnel – DOI should develop concrete steps to address understaffing of law enforcement personnel in our communities. Understaffing is a significant issue that impacts the ability of tribal communities to address public safety issues in their communities. This has been an ongoing issue that only seems to get worse. Many tribal communities are located in rural areas that are experiencing high rates of major crimes, but the number of officers is significantly less than the national standard of 2.8 to 3.3 officers per 1,000 inhabitants in rural areas. Federal facilities are also significantly understaffed. These issues have been expressed to the DOI for decades and are continually highlighted as priorities in Indian Country. As the Senate

⁴⁰ Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, at 4 (2019) (TLOA Report).

⁴¹ Id.

⁴² Id.

⁴³ Id. at 5.

Appropriations Committee recently reported, the “disparities between BIA law enforcement, Tribal law enforcement, State and local law enforcement, and other Federal law enforcement salaries and benefits may result in difficulty recruiting and retaining BIA and Tribal law enforcement personnel.” We therefore ask that the DOI develop concrete steps to address the significant understaffing of law enforcement personnel in our communities.

(b) Adequate Training - DOI should also continue to prioritize training, including joint training opportunities to improve cross-jurisdictional relationships, and work with tribal communities to provide cultural awareness training to staff. This also includes, reassessing the law enforcement policies that prevent tribal law enforcement agencies from implementing law field training programs for newly hired officers prior to their attendance at the Police Academy. DOI should also provide support for additional tribal law enforcement police academies. Currently there is only one basic tribal law enforcement academy to support tribal law enforcement nationwide. This is not enough. The Administration must make the recruitment, education, development, and retention of tribal law enforcement officers a top priority. Other initiatives may include developing law enforcement training curriculum for tribal colleges and universities.

(c) Tribally-Operated Law Enforcement Departments – DOI should find ways to streamline existing programs to maximize flexibility and resources for tribal law enforcement. Studies have shown that public safety improves when tribal nations have the resources to enforce their own laws and to protect their people. However, lack of funding, jurisdictional issues, and access to information present barriers to Tribal Nations seeking to strengthen their public safety systems. We encourage the DOI to identify ways to streamline existing programs to allow for Tribal Nation's to implement their own tribal law enforcement departments, including, through sharing of data, 638- contracting, and Special Law Enforcement Commissions.

(d) Support Programs and Initiatives for Law Enforcement Housing – DOI should develop programs that support housing for our law enforcement community. We need funding to support housing for our law enforcement officers, especially on remote reservations. Sufficient and adequate housing is a perennial problem in Indian Country, and the lack of housing makes it even harder to find and retain law enforcement officers on our reservations. DOI should urge the Administration to prioritize the reauthorization and full funding of the Native American Housing Assistant and Self-Determination Act, which provides housing assistance to law enforcement officers. The Department must provide the technical assistance necessary for Congress to reauthorize NAHASDA.

3. Improvement of Justice System Capacity

(a) Increase Tribal Court Funding – DOI needs to provide funding for needed upgrades to tribal detention and court facilities and their component systems. This includes providing sufficient funding to clear all of the detention facilities on the BIA’s construction priority list and support tribal court facilities. Many of our facilities are in buildings that have been condemned, need significant repairs, or lack the space we need to administer tribal justice programs. This must be corrected. In addition, Tribal Nations also need full funding for their Prosecutor’s and Attorney General’s offices. This must include funding for needed records management software and E-filing and E-payment systems to facilitate access to our courts.

(b) Create Partnerships for Inmate Care – DOI must work with the Indian Health Service, the Centers for Medicare & Medicaid Services, the Department of Justice, state correctional facilities, health insurance plans, and any other relevant entities to ensure that inmates in tribal correctional facilities receive proper and timely medical attention. Reporting has recently shed light on the deplorable state of healthcare for inmates in tribal jails and correctional facilities. Funding for tribal jails must include resources for prompt medical attention for inmates.⁴⁴

(c) Elevate and improve the Special Law Enforcement Commissions Process – According to the United States, “SLECs are force multipliers because they permit local, county, and tribal officers to assist in federal investigations of major crimes occurring in Indian Country.”⁴⁵ Yet, it seems almost impossible to get Special Law Enforcement Commissions (SLECs) through the federal system. We could be using SLECs to support our limited patrol officers. But time and time again, delays in administrative processing result in background checks expiring and applicants moving on to other positions.

(d) Support The Establishment of Legal Clerkships in Service of Indian Country’s Law Enforcement Needs – Investing in cultivating the next generation of our tribal lawyers is critically important. This is even more so when these future lawyers intend to work in service of tribal communities—as prosecutors, public defenders, and court clerks. Clerkships during law school are critically important experience and resume-building activities for our students but, unfortunately, can be out of reach to those who cannot financially support unpaid or underpaid clerkships. We envision that the Administration could create a scholarship fund to support positions in tribal Attorney Generals’ offices, Tribal Courts, and Public Defender’s offices. These scholarships are a necessary investment in tribal workforces and will support Indian Country’s woefully under-resourced tribal court systems.

(e) Coordinate with State Partners – DOI should create guidance to support the Freedom of Religious Act for the Tribal members who are in State Facilities.

4. Provide Access to Necessary Law Enforcement Resources

(a) Invest In Technologies to Support the Policing of Large Land-Based Reservations – Large land-based reservations are responsible for monitoring and policing the activities of huge swaths of this country. For example, the Pine Ridge Reservation is the size of the State of Connecticut. The Oglala Sioux Tribal Nation and other similarly situated Tribal Nations in the Great Plains have repeatedly drawn attention to the conditions of roads and other infrastructure, contributing to wear and tear on law enforcement and emergency response vehicles. The distances required for travel across large land-based reservations contribute to long response times on emergency calls and the weather in the Great Plains, which contributes to road wash-outs, impassible snow and ice, and a quicksand-like “gumbo” road conditions. We need technology that is not susceptible to these problems. Rural law enforcement and public safety operations need helicopters and planes for

⁴⁴ [1] Nate Hegyi, Inmates continue to die in tribal jails despite promises of reform, NPR (May 19, 2023) <https://www.npr.org/2023/05/19/1176999580/bureau-indian-affairs-reform-tribal-jails-inmates-progress#:~:text=Press-Despites%20promised%20reforms%2C%20inmates%20are%20still%20dying%20in%20tribal%20jails,attempted%20suicides%20recorded%20since%202016.>

⁴⁵ [2] United States Attorney’s Office: District of New Mexico, Indian Country Law Enforcement Coordination—BIA Special Law Enforcement Commission (SELCE) Training, April 18, 2017 <https://www.justice.gov/archives/usao-nm/blog/indian-country-law-enforcement-coordination-bia-special-law-enforcement-commission-sl-3#:~:text=SLECs%20are%20force%20multipliers%20because,crimes%20occurring%20in%20Indian%20Country.>

enforcement actions and drones for surveillance of criminal activities. These are not luxury items, but serious utilitarian tools now necessary for us if we are going to have a chance at bringing crime and trafficking under control on our reservations. Relatedly, we need to install high-resolution cameras on major trafficking routes to help with our investigations by tracking and identifying the vehicles passing through our reservation. We also need resources for qualified and trained personnel to operate these various technologies.

(b) Provide Resources for Suspicious Substance Testing – Many tribal law enforcement programs do not have Drug Roadside Test kits and need them to identify substances they find during traffic stops. Having access to these kits ensures the safety of our officers by empowering them with better knowledge of the circumstances and individuals they are confronting and protects the civil rights of the innocent because test kits can clear suspicion and prevent needless arrests.

(c) Provide Funding for Gun Buybacks – DOI should work with Tribal Nations to develop and fund gun buy-back programs where cash is offered in exchange for the voluntary relinquishment of guns in Indian communities. Gun buyback programs allow communities to raise awareness of firearm risks and educate community members about safe firearm storage. They can also help make connections between law enforcement, violence prevention organizations, families, and community leadership.

(d) Develop a nation-wide missing tribal persons alert system – Too often when tribal men, women, or children go missing there is no ability to provide national notifications for Native Americans.

(e) DOI Should Study the Average Lifespan of Tribal Law Enforcement Vehicles and Their Constituent Parts – Tribal law enforcement equipment—particularly squad cars—face different challenges and wear depending on each Tribal Nation’s geographic location, prevailing weather conditions, reservation size, terrain, and law enforcement activity. At present, it is unclear whether the Department properly estimates the lifespan of cars, their tires, transmissions, etc. Moreover, it is unclear whether the lifespan of this equipment and its parts would be consistent from Tribal Nation to Tribal Nation. Accordingly, the Department should study the lifespan of law enforcement equipment across Indian Country so that the Department can provide better estimates for the use-life of this equipment.

5. Support and Provide Technical Assistance for Legislative Fixes

(a) Work with Tribal Nations on a Castro-Huerta Solution – DOI should Provide ongoing technical assistance to Tribal Nations to address uncertainties and challenges raised by the Supreme Court’s decision in Castro-Huerta and support and push for a legislative solution. The full effects of Castro-Huerta may not be known for many years. In conjunction with the Department of Justice, the Department must provide technical and other assistance to Tribal Nations to address jurisdictional issues and challenges arising out of Castro-Huerta. The Department should also work with Tribal Nations to push for a legislative solution to the decision. The Department should also push the Administration to put its weight behind a legislative initiative to fix the Castro-Huerta decision. As Justice Gorsuch said in his dissent, the ball is in Congress’ court, but we need DOI’s help to pressure the Administration to make a legislative fix to this decision a priority.

6. Data Management, Collection, and Access

(a) Develop a consistent data system and public reporting protocols in regards to domestic violence and missing and murdered indigenous people. This system should inform families and other community partners outside of law enforcement entities about missing and murdered indigenous people.

(b) Improve consistency in documenting tribal affiliation in official records, coroner reports, and vital records, including by tagging and cross-referencing data points across systems. Law enforcement departments should share data with state, federal, and tribal databases. Inconsistent data collection, misclassification, and under-reporting leads to the reporting of false or incomplete information. Failure to cross-reference databases has also hindered valuable information sharing.

Many Indigenous victims have been incorrectly classified in law enforcement or missing persons' databases as White, Hispanic, Asian, or unknown. Inconsistent reporting and documentation leads to data gaps. Data gaps, the nonexistence or inconsistency of data, can hinder investigations, accurate reports of cases affecting tribal communities, and media reporting.

7. Missing and Murdered Indigenous People Investigations & Support

(a) Provide grant funding to Tribal Nations and advocacy groups to address missing and murdered indigenous people investigations and provide community support. Community partners such as Tribal Nations and missing and murdered indigenous people ("MMIP") advocacy groups should be allowed to participate free of charge in trainings provided by the BIA to address investigations, cold cases, forensics etc. It is often the families, community organizations, or Tribal Nations that are searching or gathering information to provide to law enforcement in these scenarios. Tribal governments play a key role as a contact for families needing assistance during an MMIP incident. Tribal governments and MMIP organizations also provide vital community outreach and media coverage during the critical time after an MMIP incident occurs.

There are also a high number of MMIP cases that are not reported to law enforcement due to a mistrust of law enforcement. In addition, investigations may be stalled by BIA staffing issues. Tribal governments and MMIP organizations can act as a liaison between all entities. Additional grant funding for Tribal Nations to provide this outreach would be beneficial in addressing MMIP crises in a timely manner.

(b) Provide grant funding to Tribal Nations for victim services – While BIA provides limited victims services to MMIP victims, many survivors and families reach out to the Tribal Nations for services. Due to lack of staffing within the BIA and location of BIA area offices, it is not feasible that all families will receive prompt and timely victims' services. DOI should provide grant funding to Tribal Nations for victim services so all survivors and their families are best served.

(c) Funding Tribally-Provided Victim Services – Currently, BIA Victims Services Specialists provide families with information pertaining to outside resources and helplines. There should be trauma and victim impact services provided to survivors and family members close to their homes.

Grant funding would provide immediate trauma and grief counseling services, data reporting, temporary financial support to the victims' dependents, liaison services for law enforcement and survivors, community knowledge, and media coverage.

(d) Increased Staffing for BIA Missing and Murdered Units – BIA should implement additional staffing within Missing and Murdered Units to help work with Tribal Nations in their regions to accurately address crises and provided timely and meaningful services to victims and victims' families.

8. Advocacy in Public Communications

(a) DOI should improve public communication regarding time-sensitive MMIP issues. Advocacy in public communications and media is vital when a person goes missing. More outreach to media outlets on tribal cases needs to be done to make sure non-tribal communities are aware of MMIP case details. BIA regional offices should provide personnel to help families navigate the reporting and investigation process with law enforcement. These agents can serve as a communication point person, helping to reduce the emotional and traumatic burden for families of repeating incident details to multiple agencies. BIA should also raise awareness through community engagement, predominantly with youth, about the prevalence of MMIP incidents, sex trafficking, domestic violence, drug and alcohol abuse, and contributing risks. The BIA should provide resources and helpful contacts on these issues.

9. Emergency Shelter

(a) Elevate the needs of the most vulnerable and advocate for resources for their shelter and care. Our emergency shelter programs need support. These programs provide emergency shelter and food, and some programs also assist with scheduling health, vision, and dental appointments, meet with school personnel for academic needs, and provide cultural and entertainment activities. Shelter facilities also need funding for ongoing building repairs, transportation, and utility bills. We need support to ensure our most vulnerable citizens can access safe spaces. Often the people using these services are fleeing from dangerous situations; it is critically important to support them and help break the cycles of violence to which they are typically exposed.

(b) Add a search and rescue account (and fund it).

10. Improve How DOI Request Law Enforcement Funding from Congress by Highlighting the National Security Risks of the Public Safety Crisis.

(a) Background

There are entrenched gang, drug⁴⁶, and human trafficking⁴⁷ operations in some areas of Indian Country. These groups can have ties to international gangs, cartels, and terrorism financing

⁴⁶ Sarah Kershaw, Drug Traffickers Find Haven in Shadows of Indian Country, The New York Times (Feb. 19, 2006)(reporting on the “havens and allies” large-scale criminal organizations have found “in the wide-open and isolated regions of Indian country”).

⁴⁷ See Lisa Kaczke, Many missing and murdered indigenous women remain unknown. These are the cases we do know. Argus Leader (June 27, 2019) <https://tinyurl.com/y32xa2>; Nick Pachelli, ‘Nobody saw me’: why are so many Native American women and girls trafficked?, The Guardian (Dec. 18, 2019) <https://www.theguardian.com/us-news/2019/dec/18/native-american-women-trafficked-searchlight-new-mexico> (reporting that nearly a quarter of New Mexico’s trafficking victims are Native American)

operations.⁴⁸ Put simply, the national security apparatus needs to step up to the plate.⁴⁹ This will require the Department to coordinate with the Department of Homeland Security and the Department of Defense, not just the Department of Justice. Tribal Nations need access to National Defense and Security personnel, subject matter knowledge, and funding if they are to have any chance at keeping these illicit and dangerous operations at bay. These activities on tribal lands undercuts the United States National Security operations elsewhere. Congress consistently appropriates vast sums for our National Defense and Security; this proposal merely seeks to tap into those resources to address a public safety crisis that undoubtedly threatens the nation.

In 2008, one of the key findings of the National Drug Intelligence Center's drug threat assessment was that Mexican drug trafficking organizations were the principal wholesale suppliers and producers of illicit drugs available throughout Indian Country.⁵⁰ Twelve years later, in 2020, the National Drug Threat Assessment still named Mexican traffickers as the principal wholesale suppliers and producers of most of the illicit drugs in Indian Country.⁵¹ The 2020 report also noted that drug transportation runs through the reservations that border Mexico and Canada and ends grimly: "Reservations near the borders of Canada and Mexico will likely continue to be exploited for their location along transnational smuggling routes."⁵² The reservations in the Great Plains Region, for example, are vast and remote and contain similar geographic and structural obstacles to curtailing trafficking and prosecuting those criminals.

We ask the Department of the Interior to engage the national security apparatus to safeguard Indian Country from entrenched gang, drug, and human trafficking operations.

(b) Improve resource sharing with National Security agencies – Increase the DOI's fiscal, personnel, and resource collaboration with federal agencies responsible for National Security, including the Department of Homeland Security, the Department of Defense, Department of Justice (including the Federal Bureau of Investigation), the Drug Enforcement Agency, and the Bureau of Alcohol, Tobacco, Firearms and Explosives. It is unfair to saddle the inadequately resourced Department of the Interior and relevant Department of Justice programs with responsibility for correcting from entrenched gang, drug, and human trafficking operations issues alone. The Secretary and the Department could enter into cooperative agreements and other arrangements to jointly administer funding for programs and national security activities authorized by Congress. We urge the Secretary to use her access to the White House to kick start a whole-of-government approach to addressing the national security implications of public safety conditions

⁴⁸ "Terrorist financing encompasses the means and methods used by terrorist organizations to finance their activities. This money can come from legitimate sources, for example from business profits and charitable organizations, or from illegal activities including trafficking in weapons, drugs or people, or kidnapping." United Nations Office on Drugs and Crime, Combating Terrorist Financing, [https://www.unodc.org/unodc/en/terrorism/expertise/combating-terrorist-financing.html#:~:text=Terrorist%20financing%20encompasses%20the%20means,drugs%20or%20people%2C%20or%20kidnapping](https://www.unodc.org/unodc/en/terrorism/expertise/combating-terrorist-financing.html#:~:text=Terrorist%20financing%20encompasses%20the%20means,drugs%20or%20people%2C%20or%20kidnapping; see also Remarks by Sen. John McCain, Hearing before the Committee on Indian Affairs United States Senate, 9 (Sep. 27, 2017) (noting the links between trafficking of Native Americans, trafficking activity across the Mexico-Arizona border, and increasing opioid trafficking activity).); see also Remarks by Sen. John McCain, Hearing before the Committee on Indian Affairs United States Senate, 9 (Sep. 27, 2017) (noting the links between trafficking of Native Americans, trafficking activity across the Mexico-Arizona border, and increasing opioid trafficking activity).

⁴⁹ [1] See Carrie F. Cordero, Breaking the Mexican Cartels: A Key Homeland Security Challenge for the Next Four Years, 81 UMKC L. Rev. 289 (2012) (arguing that the United States has an obligation to prosecute the Mexican cartels operating in the United States and throughout the Western Hemisphere).

⁵⁰ National Drug Intelligence Center, Indian Country Drug Threat Assessment, 6 (2008)

<https://www.justice.gov/archive/ndic/pubs28/29239/29239p.pdf>

⁵¹ Drug Enforcement Administration, NDTA National Drug Threat Assessment, 83 (2020) https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf. In addition, the Treasury Department recognizes that the Colombian transnational criminal organizations selling and distributing cocaine and heroin in the United States depend on their partnerships with Mexican transnational criminal organizations. National Strategy for Combating Terrorist and Other Illicit Financing, 20 (2018) <https://home.treasury.gov/system/files/136/nationalstrategyforcombatingterroristandotherillicitfinancing.pdf>.

⁵² Id. at 88.

in Indian Country.

The Department should request Congress host hearings to explore the National Security implications of deteriorating public safety conditions in Indian Country and the law enforcement challenges facing Indian Country. These hearings should include leadership from the National Security agencies.

(c) Substance Abuse Support and Public Safety – DOI should work with the Indian Health Service, the Centers for Medicare & Medicaid Services, the Substance Abuse and Mental Health Services Administration, and other relevant entities to mount a whole-of-government approach to combatting substance use and mental health issues facing our communities. Indian Country is fighting a tidal wave of substance use disorders and mental health crises. Some Tribal Nations have had to declare States of Emergency due to the increasing rates of homicide and methamphetamine use on our lands.⁵³ Despite the documented and increasing rates of these issues, Indian Country lacks the facilities and trained personnel to mount a comprehensive response.

For example, one of our most pressing needs is for on-reservation drug treatment facilities. Indian Country's existing residential and outpatient treatment facilities—where there are any—desperately need renovations to accommodate additional patients. We would also like to offer skills-based transitional living facilities to assist patients with their long-term recovery goals, but we lack the necessary resources for development and operations.

Our communities will also need funding to purchase Naloxone and similar overdose kits for our public spaces and to support training law enforcement officers and other public officials on the use of such medicines. We need funding to support drug rehabilitation programs and education initiatives to prevent drug use. We need funding to support families who have lost someone to this epidemic or are dealing with the ongoing traumas of dealing with a loved one struggling with this addiction. We need the discretion to provide culturally appropriate healing practices as we see fit.

11. Advocacy and Legislation related to Public Safety

(a) DOI should recommend the adoption of Federal legislation to protect Indians in Indian Country and provide a simple set of guidelines for law enforcement agencies and courts to follow, modeled off the Pueblo Lands Act.

(b) DOI should convey its support for a legislative fix to the General Crimes Act that would

⁵³ Dakota News Now, Oglala Sioux Tribal Nation issues state of emergency in response to homicides, meth, (Jan. 7, 2020) <https://www.dakotane.wsnow.com/content/news/Oglala-Sioux-Tribal-Nation-issues-state-of-emergency-in-response-to-homicides-meth-566781121.html>. In 2016, the Oglala Sioux Tribal Nation saw the number of homicides on the Pine Ridge Reservation nearly double in what was widely reported to be crime fueled by an increase in methamphetamine use. In early 2017, the FBI reported that the drugs were coming to the Reservation from outside areas, such as Denver. Tiffany Tan, FBI: Murders down 80% on Pine Ridge following meth-fueled spike in 2016, Rapid City Journal, (Mar. 4, 2018) <https://tinyurl.com/498cz7dk>; see also Associated Press, Homicides on Pine Ridge reservation nearly doubled in 2016, (Feb. 12, 2017) <https://apnews.com/article/6d7b7f5f215b47a299e65eca09466a16>. Earlier this year, this theory was confirmed after six individuals were convicted in a meth conspiracy after trafficking meth into South Dakota from Colorado, primarily to the Pine Ridge Reservation. Hunter Duntzman, Six convicted in Pine Ridge meth conspiracy after 'pounds' of drug entered South Dakota, Mitchell Republic, (Mar. 17, 2022) <https://tinyurl.com/bdctbk9v>. The Lummi Nation (in Northwest Washington and close to the Canadian border) declared a Public Health Crisis because of illegal drug use in 2017. KGMI, Lummi Nation declares Public Health Crisis, (Dec. 21, 2017) <https://kgmi.com/news/007700-lummi-nation-declares-public-health-crisis/>

expressly state that federal jurisdiction is exclusive of state jurisdiction in any kind of Indian Country.

(c) DOI needs to consult with Tribal Nations to assure the validity of their reservation boundaries so that there are no jurisdictional boundary issues.

OFFICE OF THE SOLICITOR RECOMMENDATIONS

1. Develop fixes to Supreme Court Rulings and Other Legal Precedent

(a) Oliphant – The STAC requests that the Solicitor’s Office support a federal legislative fix to the Supreme Court’s 1978 decision in *Oliphant v. Suquamish Indian Tribal Nation* to restore Tribal Nations’ sovereign rights to exercise criminal jurisdiction over all persons with respect to conduct within their territorial jurisdiction.

(b) Indian Civil Rights Act – The STAC requests that the Solicitor’s Office support a federal legislative fix to the Indian Civil Rights Act to remove the sentencing limitations imposed on Tribal Governments.

(c) Castro Huerta – The STAC requests that the Solicitor’s Office support a federal legislative fix to the Supreme Court’s 2022 decision in *Oklahoma v. Castro-Huerta*. One proposed fix involves requiring express consent from Tribal Nations for state exercise of criminal jurisdiction over non-Indian crimes involving Indian victims. Another proposed fix involves amending the General Crimes Act to expressly state that federal jurisdiction is exclusive of state jurisdiction for non-Indian crimes in Indian Country.

2. Support Increased Indigenous Representation within the Department of Justice

The STAC believes that tribal representation is needed within the Department of Justice to increase prioritization of Indian country issues, and to increase the Department’s understanding of trust and treaty obligations. The STAC requests that the Solicitor’s Office support this concept.

In conjunction, the Solicitor’s Office should also assist in increasing coordination between federal, state, and tribal law enforcement agencies in relation to Missing and Murdered Indigenous Peoples, and the efforts of the Not Invisible Act Commission.

3. Re-develop Trespass Regulations to Effectively Support Various Tribal Nations

DOI has failed to effectively prevent trespass on tribal land when trespass is committed by a fossil fuel company or oil pipeline. Recently, Judge Conely of the United States District Court for the Western District of Wisconsin held on summary judgement that Enbridge Energy, Inc. had been trespassing on the Bad River Band’s reservation since June of 2013, when its easement across various parcels of reservation land held in trust by the United States for the Bad River Band and its citizens expired. However, the Judge also found that Enbridge would be allowed to continue to trespass until if and when it could complete a re-route around the Bad River Band’s reservation. The Court’s decision threatens to unravel the work of Congress and the Department of Interior to restore tribal control over reservation land.

Moreover, such a decision will only invite more brazen trespass across Indian country by signaling that if a right-of-way holder overstays on tribal land long enough and is backed by sufficiently sizable financial interests (not to mention a foreign government), it will exempt itself from the very federal laws requiring it to leave.

It cannot be that tribal rights in land secured by treaty and confirmed by federal statute and regulations can be so easily overridden by purported equitable considerations. Absent a clear regulation from DOI that no trespasser on tribal land is too big to enjoin, hard fought gains in tribal control over reservation land will crumble, one trespass at a time.

DOI through the Solicitor’s office should develop proper trespass regulations that allows DOI to effectively participate and help remove a trespasser from tribal lands, on and off reservation.

OFFICE OF INDIAN AFFIARS
RECOMMENDATIONS

1. DOI needs to improve services at the BIA Regional Offices by reopening offices for in-person services and hiring the staff necessary to serve Tribal Nation's needs.

If we are not able to speed up the staff hiring process, BIA should explore options to provide the funds to the Tribal Nations. Teleworking is no longer necessary, and in fact it is imperative for offices to be reopened. The Tribal Nations and their citizens are not getting proper services by teleworkers, it is less efficient and effective for Tribal Nations by allowing this to continue.

2. The BIA needs to build its staff to facilitate quicker response times and timely delivery of services.

There are concerns about wait times to fill positions at the Area Offices. We recommend that the personnel hiring function be at the Area Offices, as it used to be. We understand that only one Area office (Anadarko, Ok) is charged with the personnel hiring process for the Areas. Returning personnel hiring to each Area Office would expedite the process. Plus, each Area Office knows its region the best and how best to serve the needs of the Tribal Nations and Agency offices in that Area.

3. The Bureau of Indian Education and Bureau of Indian Affairs should find funding tied to Early Headstart/Day Care along with Headstart Program to facilitate increased incorporation of Tribal cultural and language into Tribal Head Start Programs.

(a) Children are the future of all Tribal Nations. It is critical to teach children about their culture, their heritage, and their language as early as possible including early educational opportunities like Head Start programs. Many Tribal families do rely heavily on Head Start programs to provide not only holistic education but also support economic stability by providing childcare during school hours, providing meals, and transportation for students. Since Early Head Start, Head Start and Day Care are programs are relied on heavily by tribal citizens, DOI should work with the Bureau of Indian Affairs and Bureau of Indian Education to find additional resources for Tribal Head Start programs. These programs need to explore all possibilities for maximizing the ability of Tribal Nations to teach our language and culture in Head Start programs, including potentially transferring certain functions to BIE.

(b) The Bureau of Indian Education should provide additional funding to retain teachers for all levels of education for tribal schools. Schools, like many tribal entities, have a difficult time retaining qualified staff. The demand for schoolteachers is high, and the damage to students is higher when positions do not get filled. Tribal Nations that are in more rural areas face additional hardships in when hiring and retaining qualified teachers. The rural community does not have many of the benefits and perks that urban communities do. Paying higher wages does assist with hiring teachers but unfortunately most Tribal Nations cannot pay higher wages. The Tribal Nations depend on the funding from BIE and BIA to cover salaries but there is not enough funding allocated to Tribal Nations to remedy this staffing shortage.

(c) Fully funding BIE and Tribally Controlled schools at the same rate as public schools per Native student, including lineal descent Native students, would further the ability for hiring and

retaining teachers. A tribal survey to determine how many tribal schools are located on tribal land. This survey should include funding for the school, and the cultural learning that is done at those schools.

(d) The Bureau of Indian Education should provide more scholarships, internships, and apprenticeships to improve educational and employment opportunities to Native American students through an increase in funds to the Scholarship and Adult Education program. Providing higher educational opportunities to qualified students. Investments in Native American children opens and expands new doors to the next generation of tribal leaders. Increasing educational opportunities to these students promotes economic development and improves standards of living for tribal communities.

(e) The Scholarship and Adult Education program funds a new initiative to provide internships to qualified students from economically disadvantaged rural communities. Internships and apprenticeships allow qualified students the chance to learn on the job-skills and direct training to move into the workforce. Paying or supplementing these students who are working in approved internships and apprenticeships is another way of opening and expanding the doors to the next generation of leaders in our tribal communities. This includes seeking information on how underfunded Tribal Scholarships and Adult Education programs are and develop a guideline on how Tribal Students can gain access to other funding opportunities and internships.

4. The Bureau of Indian Affairs should increase funds allocated to Tribal organizations, schools, and students under the Johnson O'Malley.

Over 90% of Native American students do not attend BIE schools, but rather attend public schools in their community. Johnson O'Malley funding spent for the educational enhancement of Native students in these public schools and is one of the most critical tools Tribal Nations have to support their students in public schools. The Native student populations in K-12 public schools areas increasing rapidly. Although JOM funds are based upon statistical data supplied to BIE and BIA by the schools and the Tribal Nations, there remains a shortage of qualified staff to support Native student populations. There also must be and accountability of the use of these funds for JOM funds in the schools. and a shortage of qualified staff to support Native student populations. JOM should be fully funded as part of the trust obligation to educate and support our students.

The Bureau of Indian Affairs should review Title VII Impact Aid funding to determine whether these funds need to be increased due to inflation and need. Additionally, the Bureau of Indian Affairs needs to seek information and report to Tribal Nations on how Impact Aid Funds are made available for the benefit of Tribal Students.

5. Improve the Tribal Probate Process

The Bureau of Indian Affairs Probate process, as is, is inefficient and time-consuming. The BIA should consider options to stream-line the process. One way in which to improve the process is to hire additional judges with probate experience to the Office of Hearing and Appeals to prevent the current and future backlogging of probate cases.

In addition, the process should be easier to navigate. A few ways to improve the process are: Hire additional judges with probate experience to the Office of Hearing and Appeals to prevent the current and future backlogging of probate cases.

For example, there are over 1500 pending cases in Pine Ridge alone. Such backlogs need to be addressed; Improve Title & Records by ensuring there is enough trained staff and that the most modern technologies are being used to promote efficiencies; and Ensure BIA personnel and Trust Officers assist landowners with obtaining full accountings of their land holdings, with their leases, and with writing their wills about who will inherit their land. This will help address issues of land fractionation that plague many reservations, particularly large land-based reservations.

(a) Return Trust Officers to the Tribal level so that tribal members can have easy access to visit with them about their questions. This is especially important for our elderly and those who do not have access to internet or reliable internet. There needs to be the opportunity to have easily accessible, in-person meetings over documents and maps to discuss and resolve land and lease matters, which, of course, are very important issues for our members.

6. Resolve Inadequate Indian School Equalization Program Funding

The Bureau of Indian Education needs to help resolve challenges with inadequate Indian School Equalization Program (ISEP) funding. ISEP is the largest single source of revenue for tribal schools. ISEP funds are intended for teacher salaries, classroom supplies, sports, field trips, and associated activities. The ISEP does not assess the costs of school operations. Unfortunately, some Tribally controlled schools find themselves with inadequate amounts of ISEP funding that is further constrained by needing to use such funds for expenditures other than educational programs, such as facilities operations and maintenance. ISEP funding needs to be enhanced and it needs to be protected by adequately funding other school budgetary needs. Doing so will help bring Indian students' education funding to parity with the national average. This will help ensure our students do not fall further behind.

7. Create Partnerships to Strengthen Food Sovereignty in Schools

The Bureau of Indian Education and the Department of Interior overall should work with the United States Department of Agriculture and any other relevant federal agencies to ensure that indigenous foods are included in meals served to students who attend BIE schools, Tribally-Controlled schools and other schools on tribal lands.

LAND AND MINERALS MANAGEMENT RECOMMENDATIONS

Bureau of Land Management

1. It is recommended that Oil and Gas lease payment consists of more accurate reporting and monitoring measures. The leases for Tribal Nations and individual Indian monies should be more closely monitored. The leases and payments should be more accurately detailed by the Interior to the IIM recipients.
2. Consultation requests should be met in an efficient manner. Response and follow up to Tribal Nations on actions taken by Interior in regard to consultation outcomes and determination or outcome response letters need to be sent to Tribal Nations within a reasonable time.
3. There should be more accuracy when oil and gas is sold by the producer or vendor. Tribal members lose royalties due to lack of education or knowledge by staff or appropriate staff to work on accounts. There is not enough monitoring on all tribal citizens IIM accounts and leases. This lack of oversight on production on tribal members' trust members trust land can be detrimental when it comes to producing revenue.
4. There needs to be ownership documents provided to map and give exact acreage owned by individual landowners on their trust land documents. The information should Identify actual acres owned by the landowner (portion of track).
5. There needs to be more oversight into the sale of production on mineral owner's land. Landowners get back payments and/or need to get payments on timely sales. There should be auditing oil and gas accounts. Audits need to check to see if the landowners are getting the accurate payments to heirs.
6. Ensure the current rates of sale on leases are correct.
7. There needs to be an electronic process (mineral owners' portal) to self-monitor royalty payments.
8. On oil and gas sales bid lease sale track leases should be identified ahead of time before sales bids are up for new leases. There should be leases identified as eligible for production or non-production.

Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement

We recommend a pause of all BOEM leasing processes until:

1. DOI commits to a consent-based process for developing and siting offshore renewable energy development that respects and prioritizes treaty rights impacts. Consent from tribal governments with fishing rights that could be affected by offshore energy development must be a siting condition.

2. BOEM is able to provide clear and complete information on the cumulative impacts of offshore energy (including floating wind technology) at the scale and scope currently being proposed for our coasts. This information is essential to informed decision-making by tribal governments regarding potential impacts to treaty resources and is necessary to support a consent-based process and science-based decision-making.
3. DOI identifies long-term capacity funding to support Tribal Nations in engaging with the extensive multi-state BOEM processes.

BSEE-Specific Recommendations

1. BSEE must provide clear technical guidance for how offshore energy at the scale and scope and with the technology (including floating offshore wind) being proposed will be managed for safety and environmental compliance. Because floating offshore wind is a new and emerging technology, gaps in knowledge and ability to design safety protocols must be identified.
2. BSEE must provide a clear plan for monitoring environmental impacts and adaptive management protocols. These plans should be developed in consultation with tribal governments.
3. BSEE must provide tribal consultation guidance and/or adopt the DOI guidance.

Note: Proponents of offshore energy development claim that it is clean energy without a clear impact to natural resources. Similar claims were made in relation to the Columbia River hydro system. Now the mainstem Columbia River water is no longer drinkable, there are 13 listed ESA stocks in the mainstem, and more ESA listed stocks in the tributaries. Significant gaps in science and process remain offshore energy development. Let's not make the same mistake.

WATER RIGHTS RECOMMENDATIONS

Considering the Supreme Court's recent decision in *Arizona v. Navajo Nation*, 21-1484, 2023 WL 4110231 (U.S. June 22, 2023), narrowing the United States' liability for breach of trust, a statement by the Secretary acknowledging her trust responsibility to Tribal Nations with respect to water is needed. The Secretary should confirm the United States' trust and treaty responsibility to Tribal Nations to protect tribal water resources and promote tribal economic self-sufficiency and self-determination.

1. 1990 Criteria and Procedures

The 1990 *Criteria and Procedures for the Participation of the Federal Government in Negotiations for Settlements of Indian Water Rights Claims* are outdated and ill-suited to facilitate most modern-day water settlements. The criteria for approval of settlement funding should not be based solely on the United States' litigation risk, but rather on the United States' policy encouraging tribal self-sufficiency, self-determination, and fulfilling the United States' trust responsibilities to Tribal Nations. See Reid Peyton Chambers, *Protection and Implementation of Indian Reserved Water Rights as a Necessary Condition for Tribal Economic Development*, Wisconsin Law Review, 384, 409-12 (2022); Robert T. Anderson, *Indian Water Rights and the Federal Trust Responsibility*, 42 University of Tulsa Law Review, 23, 34-45 (2006). Relying on litigation criteria disadvantages Tribal Nations who are not able to litigate their water rights because their water resources remain adjudicated.

In 2016, the Obama Administration sought and obtained comments from Tribal Nations on the 1990 *Criteria and Procedures for the Participation of the Federal Government in Negotiations for Settlements of Indian Water Rights Claims* but failed to make any changes to them. The Secretary should again host consultation sessions and make changes to the *Criteria and Procedures* to improve the process for approving tribal water settlements.

2. SIWRO Involvement Post-Implementation

SIWRO should continue to advise agencies of the United States' responsibilities with respect to tribal water settlements post-implementation, to ensure that the Tribal Nations' statutory and contractual rights are upheld, and the United States fulfills its trust responsibilities to Tribal Nations. SIWRO's involvement is needed both before and after litigation ensues.

Litigation involving tribal water settlements is handled by the Commercial Litigation Branch in DOJ, whose principal goal is to limit the United States' liability, as opposed to ensuring the United States' responsibilities to Tribal Nations are fulfilled. These attorneys have little experience with Tribal Nations or tribal settlements. SIWRO should be involved to ensure that the Tribal Nations' settlements are properly interpreted and protected in litigation.

3. Water Rights Settlement Funding

The STAC supports increased funding to Tribal Nations for technical and legal support in the context of water rights settlement. Many Tribal Nations experience annual underfunding of our requests for BIA funding for these purposes. The STAC requests that the SIWRO continue to advocate for increased technical and legal funding.

Funding solicitations for active Indian Water Rights negotiations (with established Tribal, Federal, and state teams) should accept both technical and legal proposals for up to three years of negotiations efforts, to increase predictability of funding, provide greater assurances to negotiating parties, and therefore improve stability and progress of negotiations processes.

CULTURAL HERITAGE RECOMMENDATIONS

Various Federal agencies' cultural heritage working groups to the extent they exist need to merge and form one large cultural heritage working group to coordinate cross-Government issues.

We understand that recently there were at least three cultural heritage working groups in Federal Government working distinctly from one another: (1) law enforcement- incorporating input from the FBI, Department of Justice, the State Department, and the National Park Service, (2) a grants-administering group with representatives of the Institute of Museum and Library Services, National Endowment for the Arts, and National Endowment for the Humanities, and (3) an underwater cultural heritage group bringing together the Department of Commerce & NOAA, the Coast Guard, and Navy.

Such groups, if they still exist, and like groups should be talking to each other to develop comprehensive solutions for helping Tribal Nations protect their cultural resources and heritage. Such a merged working group would help make sure issues do not fall through the cracks which can happen when there are separate, siloed working groups. Among other things, such a merged working group could help ensure that museums that are out of compliance with NAGPRA do not receive discretionary grants from Federal agencies.

ADMINISTRATIVE STAC REQUESTS

1. Changes to Meeting Format

(a) Additional Time for Topics – The time allotted for each topic on the meeting agenda was very short. Thirty minutes is not enough time to discuss these important topics. Consider increasing the meetings from 2 days to 3 or 4 days. Additional days will allow for robust discussions between STAC and the various DOI departments and officials, and for STAC members to discuss responses and/or recommendations that can be used to set goals and show progress.

(b) Region-Focused Meetings – There should be opportunities for breakout sessions/meetings where each region will be able to meet with at least one bureau/agency within DOI to address particularly important issues impacting their region. These meetings should occur with greater frequency and outside of the bi-annual STAC meetings that are convened.

2. Post-Meeting Follow-up

(a) Compiling and Sharing Information – There is a significant amount of information shared at the STAC meetings, which cannot be completely absorbed in one sitting. In addition to the minutes that must be circulated following the STAC meetings, the materials provided during each meeting, presentations, recommendations, data, and other related documents should be compiled in a centralized location (through a clearinghouse location or other electronic system) that is accessible to STAC members and their Technical Advisors. This centralized location will also be vital to accessing information shared prior and during STAC meetings.

(b) Setting Goals/Tracking Progress – At the conclusion of each session, there should be deliverables or next steps established so that we can convey to our regions what the STAC is working on and be able to track the progress of the STAC.

(c) Outcomes Document - As a result of recommendations submitted by the STAC, an outcomes document should be developed by the DOI that shows what issues were resolved and how they were resolved or explain if any issues were not resolved and explain why they were not resolved. Any resolved or unresolved issues should be reported out monthly to the STAC. This document may serve as an annual report to be shared with each of the Regions represented by the STAC.

(d) STAC Scorecard - The STAC will separately create a scorecard by which to assess DOI's progress on the STAC's recommendations. Annually, the STAC will rate DOI's progress and update the recommendations and scorecard accordingly.

3. Coordination with National Organizations

(a) Inclusion of Regional or Local Tribal Organizations – The STAC Rules of Order should be amended to include coordination with regional organizations. Most of the twelve Bureau of Indian Affairs (BIA) Regions have a Regional Organization made up of the elected Tribal Leaders of the Tribal Nations in their Region. The Regional Organizations are the

closest to the Tribal Nations they serve and could be very helpful to the STAC. Some of these Regional Organizations are: USET, ATNI, GPTCA, MAST, Intertribal Council of Arizona, Intertribal Council of Nevada, [BAE1] etc.

5. Alternative STAC Support

(a) Alternate Member STAC Travel - The STAC members, both primary and alternate, should have their travel supported by the DOI to participate in STAC fully and adequately. As the STAC represents 574 federally recognized Tribal Nations throughout the United States, and represents diverse and unique areas of Indian Country, it is extremely important that all members of the STAC can participate and attend meetings of the STAC in-person.